

**Aspects of the**

**PROTECTION  
AGAINST DOMESTIC  
VIOLENCE ACT**

**NO. 22 OF 2001**

**Explained**

*A project of the Women's Bureau on  
'Laws pertaining to women and families'  
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## **FOREWORD**

*The Bureau of Gender Affairs has launched a series of booklets on laws pertaining to women and their families.*

*It is proposed to discuss the key pieces of legislation which exist in Dominica to date reference the above. It hopes to facilitate understanding of these relevant pieces of legislation which would serve to promote guidance in decision making as regards the law.*

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*Areas of legislation addressed in the series are:*

- ⇒ Maintenance Act*
- ⇒ Registration of Births and Deaths*
- ⇒ Intestates Estate Act*
- ⇒ Protection Against Domestic  
Violence Act*
- ⇒ Married Women's Property Act*

## **NOTE**

*The information contained in this publication is intended to be and should be considered solely as a guide and should not be quoted as, or considered to be, the legal authority. It may become non-applicable in whole or in part. Final authority must be found in the Protection against Domestic Violence Act, No. 22 of 2001, its regulations and related legislation in decisions of the Courts interpreting them.*

### *Where can I get information on the Act?*

1. You can purchase a copy of the Act from the Government Printery at the cost of \$10.20.
2. You could visit the Women's Bureau, the Magistrate's Court Office, Dominica National Council of Women Office, Attorney General's Chambers.
3. Contact a local attorney.

### *Introduction*

Domestic Violence can be defined as any act of violence, including physical or verbal abuse and intimidation carried out by a person upon a person associated with him or her which causes or is likely to cause physical, mental or emotional injury or harm to that person or any other associated person including in particular a relevant child or dependant. Put simply, domestic violence is "family violence" and it is a social issue. It affects the society and it can affect the health and the socio-economic development of the person involved. Most importantly domestic violence is contrary to human rights.

Summary of findings from a recent study conducted by the Women's Bureau in Dominica showed that domestic violence is widespread and that it has multiple causes. It also revealed that although both men and women were victims of abuse, women suffered more physical abuse and men suffered more verbal abuse. The view was expressed in the summary that one of the ways in which we can play a role in eradicating the plague of domestic violence is to enforce the existing Domestic Violence Legislation.

This booklet seeks to explain the pertinent sections of the Protection Against Domestic Violence Act No. 22 of 2001 which was passed in the House of Assembly on 17<sup>th</sup> December, 2001.

## Definitions Explained

Section 2 of the Act defines domestic violence as “physical, sexual, emotional or psychological or financial abuse committed by a person against a spouse, child or any other person who is a member of the household, dependant or parent of a child of that household.”

According to the Act violence can occur - within a family - within a domestic unit - within interpersonal relationships.

A person who applies under the Act for an Order or some form of relief is called the **Applicant** or **Complainant**.

The person against whom the relief or order is sought is called the **Respondent**.

The persons who are to be protected by the Act are:

1. spouse (meaning husband or wife)

Under this Act spouse also includes - parties in a common law relationships.

2. parents (parents of a child of the household by blood, by adoption)

- parent or grandparent of the spouse
- parent or grandparent of a respondent/dependent

3. children (by birth, adoption, residential

or Magistrate.

Proceeding under the Act cannot be published (other than criminal proceedings) except with the permission of the court where the matter was heard.

*Can I appeal the making of an order or refusal to make an order under this Act?*

Yes. An application to appeal can be made to the Court of Appeal no later than 28 days after the decision of the court.

**What effect does notice to appeal have on an order?**

- No order is suspended pending on appeal unless the court directs otherwise.

*Does a Tenancy Order affect mortgage rights?*

The rights of a mortgagee still exists under a tenancy order.

**Where can I get Application Forms to seek protection under the Act?**

Application Forms are available at the Magistrate's Court Office, (Roseau and Portsmouth). Limited supply of forms are also available at Police Stations.

behaviour for a period not exceeding six months.

When such a bond is entered into other conditions may be attached. The bond can also be revoked by the court if the domestic violence situation continues.

***What happens to the case if the complainant refuses to give evidence?***

Where oral evidence of a fact would be allowed in any hearing the police report or statement given can be used as evidence if the complainant refuses to be sworn in as a witness. If the complainant gives evidence which is inconsistent or contradictory to the statement given in the police record, the written statement can be used to highlight that inconsistency or contradiction.

***Can bail be granted under the Act?***

Bail can be granted but the court will take into consideration several factors before such a decision is made. If the court decides to grant bail, it may do so with certain appropriate conditions attached.

***Will the hearing under the Act be held in Open Court?***

All hearings under this Act will be held in Court. Persons who are permitted to be present are - officers of the court, parties to the proceedings and their lawyers, witnesses and any other person permitted to remain with the consent of the judge

or through guardianship)

4. dependant
5. persons in a visiting relationship for a period exceeding 12 months

**Parent** - A person who is a parent or grandparent in relation to a child, dependant, spouse or respondent as the case may be by blood, by marriage or by adoption.

**Child** - For purposes of the Act a child is a person under 18 and who is not married. The child can live with the applicant all the time or for even a period of time. The child does not have to be a child of both the applicant and the respondent or even one of them. Once the child is an adopted child, a step child or a child who is treated as a child of the family, the Act can be used to offer protection.

In the Caribbean culture we are aware of children who are taken to live with families without formal adoption or some children who just sleep at homes of older persons. These children would be considered children of the family based on the period of time they live at the home.

**Dependant** - A dependent is a person over 18 years who for reasons of physical or mental

disability, age or sickness is reliant on the man

and/or woman of the house for his or her welfare. So for instance if a disabled person over eighteen or a grandmother whose age or condition does not allow them to work or support themselves financially, lives with a family then they are in the category of dependants of that family.

**Persons in a visiting relationship** - The persons must be in a visiting relationship for a period exceeding 12 months. They do not have to be living together and they may or may not have a child in common.

*What exactly are the types of abuse the Act addresses?*

**Physical Abuse** - Physical abuse would cover situations where a respondent inflicts or attempts to inflict intentional harm through the use of physical force or some type of weapon, which may or may not induce external injuries, internal injuries or both.

Physical indicators of physical abuse are bruises, fractures, lacerations, burns, wounds, internal injuries.

*Examples through the voice of victims:*

- He beat me with a piece of wood and pushed my head in a toilet bowl.
- She flung a chair at me which hit me in the

**If a respondent refuses to attend counselling or therapy as ordered by the court - what is the penalty?**

- If the court finds that non compliance with the order was due to unreasonable refusal or neglect the respondent can be charged three thousand dollars(\$3,000.00).

*What are the police powers of arrest under the Act?*

Police can enter premises with or without a warrant to deal with or prevent injury in a domestic violence situations. When a police has reasonable grounds to believe that a respondent has acted against an Order in force, the police may detain and arrest the respondent without a warrant. The police will arrest only when this is reasonably necessary for the protection of someone and he or she has to take into account the seriousness of the act done, the time since the act was done in relation to the report. A person arrested under these circumstances has a right to make a telephone call. This call cannot be made to the applicant for the order or the person affected.

*What other measures does the law provide?*

In some cases where the court thinks that there are reasons why it should not impose an order or the penalty for breaking an order the court may with the consent of the applicant or complainant require that the respondent enter into a bond of good

substituted service. In this case the Order can be sent by Registered Post to the last known address of the respondent. This service can also be done by advertising the Order in two weekly newspapers. The court may direct other ways to serve the documents. If there has been no proper service the respondent will not be bound by the terms of the Order.

If a respondent has notice of an Order and acts against the terms of the Order - what is the penalty?

- If found guilty of breaking the order there can be a fine not exceeding nine thousand dollars (\$9,000.00) or imprisonment for a term of three months.
- If found guilty a second time for breaking an order there can be a fine not exceeding fifteen thousand dollars (\$15,000.00) or imprisonment for a term not exceeding twenty four months or to both fine and imprisonment.
- If found guilty for a third time or any other time for breaking an order then the respondent can be sentenced to prison for a term not less than twenty four months but not exceeding five years.

middle of my back.

- He threaten to cut up my face with a knife so that no one else would even look at me.
- My mother burnt my hand for stealing her five dollars.

### *Sexual Abuse*

*Sexual abuse occurs where by means of physical force, coercion or psychological intimidation, the respondent compels another person to engage in a sexual act/against his or her will. Acts such as undesired touching/oral, anal, vaginal.*

#### *Examples through the voice of victims:*

- Whenever I come home at a time he considered too late he would tear off my clothes and forcibly examine my vagina to see if I had sex with anyone else.
- He forced me to have sex at knife point.

### *Emotional or Psychological Abuse*

Psychological and emotional abuse is an act that attempts to damage another person's self esteem, identity or development.

#### *Examples through the voice of victims:*

- She said she did me a favour by picking me off the streets.
- Whenever I placed food on the table for him he would leave coins near the untouched food.
- My mother would always call me names referring to my hair and my colour because I did not look like her other children with her husband.
- He would make fun of my size and call me names in front of the children and other persons.

### *Financial Abuse*

*Things that are done or not done which prevent adequate provision for the family, dispossession or destruction of personal or joint property.*

Examples through the voice of victims:

- As soon as I got home I had to give her my pay packet. This is the last I would see of it.
- He would never give me money. I always had to make a list of what I wanted and he would select what he wanted to buy.

### *What is an ex parte order?*

In certain situations particularly where there is risk to the personal safety of a person or the possibility of serious injury or hardship, the court can grant an Order without having had a hearing on the matter with all the parties involved. The order would be granted simply on the strength of the information in the application and on the police report. All ex parte orders are Interim Orders.

### *What is an Interim Order?*

This is an order made to be enforced for a period of time. An Interim Order made under an ex parte application shall not be enforced for more than 21 days after it has been made. By that time there should be a hearing to decide whether the order should be varied, discharged or continue in force for a particular period of time. At the hearing there can be an adjournment but the final date should not exceed 42 days from the date of the application for the order.

### *How is the Order served?*

An Order under the Act can be served by personal service or substituted service.

Under personal service, the person serving the documents must ensure that the correct respondent is served. If it is not possible to serve the order by personal service, the court can make an Order for



### *An Occupation Order*

This order allows the applicant to occupy the household residence for a fixed period of time. The respondent has to be out of the house for that period of time. The court will decide what other conditions are necessary to be attached to that order.

The Court will only give this order if it is necessary for the protection of a prescribed person (woman or man), a child, dependant or any combination thereof. Any person who has interest in the household residence and will be affected by the order will have to be given notice and be required to be present at any proceedings for the order.

### *Tenancy Order*

This order can be made if the respondent is either the sole tenant or holds the property jointly or in common with the applicant. It can only be made where neither party has interests but the property is the household residence of one of them.

A tenancy order acts as if the property was taken from one person and given to another person. Mortgages and other conditions in relation to the house are not affected by the change.

When a tenancy order is made the court is also empowered to make an order granting the applicant the use of furniture, household appliances and household effects for a particular period and on particular terms and conditions.

### *What remedies are available under the Act?*

- Protection Order/Non Molestation
- Occupation Order
- Tenancy Order
- Counselling

### **I am a victim - what can I do**

- Particularly in the case of physical abuse make a report to the police.
- The police will take a form called Form 15 to take your information.
- Ensure that you give accurate information and that your information is taken down correctly.
- Bring along a friend or family member for support.
- If you require medical attention, the police will give you a medical form which you will take to the hospital.
- If you did not get a form ensure that the doctor writes full detail of your injuries.
- The medical report will form part of the evidence if the matter is brought to court.

*What exactly are those orders available through the court?*

(1) Protection Order

If the court is satisfied that a person has used or threatened violence or caused injury to an applicant, a child of the family or a dependant then a Protection Order can be granted which prevents the respondent from entering or remaining in the residence where the applicant occupies or from entering in an area around that residence. The order can also prevent the person from entering or remaining in the vicinity of the work place or school of a particular person.

When a Protection Order is made or varied by the Court a copy of that Order will also be sent to the Police Officer in charge of the station located nearest to the area where the respondent or the applicant resides.

Whenever Protection Order is made several conditions can be attached to that order. For instance the respondent

- can be asked to return certain property
- can be asked to pay compensation for loss caused because of the violence. The compensation can include costs of moving, legal costs, loss of earnings, medical expenses.
- to continue to support the family

- a
  - to be asked to leave the residence for period of time
  - can be asked to give up a firearm
  - to continue to meet commitments such as rent and mortgage payments
  - to provide care for the family
  - to receive professional counselling or therapy
  - can be prevented from damaging or taking certain possessions and dealing with property in which the applicant has interest.

There is also a non-molestation aspect to the order whereby the respondent cannot walk or constantly pass by the person's residence, place of work or school. The respondent also cannot do the following:

- follow or stalk the person
- call the person on the telephone all the time at all kinds of hours
- use abusive language toward the person
- do any of those things mentioned above or engage another person to do those things