DOMESTIC VIOLENCE
THE DOMESTIC PROTECTION BILL 1982

by

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DOMESTIC VIOLENCE - THE DOMESTIC PROTECTION BILL 1982

To begin at one point in the cycle - the story of Peter.

aged 6 months - crying and crying, dirty, hungry, angry.
1 year - a broken leg, bruising, pain, fear, anger
1 year + - malnourished, uncuddled, screamed at, hit, ignored
5 - Peter, why are you so dumb, dumb, dumb ....
7 - You wicked, stupid boy, go to the principal - weak ..
8 - a State Ward - confusion, fear, anger, pain - "I'm no good!"
8 + - foster homes, family homes, Peter you are so stupid,
so naughty, rejection, pain, aggression, drugs,
offending, pain, hopelessness, training centre,
anger, offending, court
15 - unemployed, I'M no good, anger, aggression, pain,
prison, raped, marriage, violence, Fatherhood,
offending, prison .... I'M no good ... anger, pain

When Peter is 22 his year old daughter is made a State Ward because
of abuse and neglect.

New Zealand - an uncaring, oppressive, cold society revering
discipline and punishment - a place where 'big boys don't cry' -
a society polarised by sex, race and money - the powerful, the
powerless and those at the bottom of the heap?

There can be little doubt that personal, social and organisational
violence are epidemic in New Zealand. The Domestic Proceedings
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spouse or former spouse.

Part 1 - The Parameters of Domestic Violence Between Cohabiting
Adults in New Zealand

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There can be little doubt that personal, social and organisational violence are epidemic in New Zealand. The Domestic Proceedings Bill, 1982, is a small attempt to intervene in the cycle of violence created by society by giving the courts the jurisdiction to grant non-violence, non-molestation and occupation/tenancy orders to an applicant who is seeking protection from a legal or collomlaw spouse or former spouse.

Part 1 - The Parameters of Domestic Violence Between Cohabiting Adults in New Zealand

(a) Incidence - Although no totally accurate figures can be given it is clear from what is known that spousal violence is common in all sections of New Zealand society - it is not confined to the poor, the uneducated, the addicted or to any one race.
It has been estimated that nearly 10% of Police work in concerned with domestic violence, one third of violent offences reported to the Police occur in the home. The Christchurch Battered Women’s Support Group has advised or assisted some 850 women since July 1978, during the first six months of 1982 Halfway House in Auckland provided a refuge for 35 women. Dr Church, of the Christchurch Support Group, has estimated from Family Court statistics that severe violence between spouses is occurring in 1.2% of marriages. The true incidence of violence may in fact be much higher. From an intensive nation wide self-report study in the U.S.A. it has been estimated that violence occurs between 50 - 60% of all couples. 12.1% of husbands admitted acting violently to their wives in the preceding year. 11.6% of wives admitted acting violently towards their husbands. Violence ranges from verbal abuse, to degrading treatment, to severe physical injury and death.

(b) Cause and effect - It is believed that violence is a response learned in childhood, reinforced by experience in society which combine to create an individual with low self-esteem, poor levels of self-control and a potential for violence. The Select Committee on Violent Offending endorsed the views of Professor Metge that the following factors may play a significant part in the generation of violent behaviour:

[i] rejection, neglect, and violence, verbal as well as physical, in the home;

[ii] consistent failure in the school system, reinforcing the low or negative self-valuation acquired in the home;

[iii] poor or 'low' self-image coupled with a desperate need to assert one's own value in the face of people who put one down;

[iv] failure to develop effective internal controls;

[v] alienation from, and resentment of, authority figures in one's own group and in society at large;

[vi] the glorification of strength, maleness, and toughness projected especially in the mass media;

[vii] the ready accessibility and widely condoned abuse of alcohol.

A cycle of fear and violence is created which physically and emotionally cripples individuals and affects social structures.
Prevention and 'Cure' - The Domestic Protection Bill is an attempt to give some limited protection to victims of violence. However, to really attack the problem society must deal with the causes of violence. Of prime importance is a change in the attitude that physical discipline of children is acceptable, that marriage is a relationship in which the use of physical force is acceptable, the 'Big boys don't cry', that women, particularly black women, are second and third class citizens. Strauss and Gelles have suggested the following 'cures' for spousal violence:

1. Public awareness of the incidence;
2. Defining marriage as a relationship in which physical force is unacceptable;
3. Reduction to the fullest extent possible of the use of force by the Government;
4. A limit on the depiction of violence in the mass media;
5. Gradually eliminating physical punishment as a mode of child rearing;
6. Encouraging parents to reduce violent acts among their children;
7. Sponsor research to determine the social and psychological conditions which lead some parents to be cold and distant rather than warm and loving, and translate the results into programmes to assist such parents;
8. Recognise the inevitability and legitimacy of conflict within the family. Once it is recognised the way is open to learn efficient and constructive ways of resolving it;
9. Give women economic equality and independance;
10. Reduce or eliminate sex-typed patterns of family-role responsibilities;
11. Establish comprehensive and high quality day-care for pre-schoolers;
12. Stop making differences between boys and girls in the way parents interact with them;
13. Cease implicit toleration of wife abuse which comes from the attitudes of those in positions of control - Police, Judges, lawyers, legislators.

In an attempt to change attitudes and to encourage parents to learn more effective modes of child rearing the Swedish Government in 1979 made it illegal for parents to subject children to corporal punishment or other humiliating treatment.
Part 11 - The Role of the Lawyer

How one perceives a situation is a result of past experiences, emotions and expectations. A problem can only be dealt with within its social context, which includes the professionals who are dealing with it as well as the clients. If, as it has been argued, New Zealand is a society which tolerates a high level of physical and verbal violence in families and in which sexual stereotypes are still strong, then it may well be that your attitudes and the way you react to your clients, are adversely affected by your past experiences. Battered women all too often report that they have remained in a violent relationship, to the life-long detriment of their children, because professionals have not believed them, have told them to try harder to make their marriage work or have told them not to provoke their partners. 11

Section 8 of the Family Proceedings Act places a duty on a lawyer to promote reconciliation and conciliation in all matters in issue between a husband and wife that are or may become the subject of proceedings under the Act or under the Guardianship Act. The lawyer is placed in a dilemma - an underreaction may result in severe injury to a client or a child, an over-reaction may exacerbate the situation.

A client who asks for assistance in obtaining protection from a partner should be taken seriously. If the client shows signs of fear - if s/he is anxious, nervy, exhibits signs of mild paranoia - then s/he is showing the classic symptoms of a victim of abuse. Dr Church reports that the following are danger signals which should never be ignored: previous threats to kill the wife or the children, a past history of assaults resulting in injury, evidence of morbid or delusional jealousy on the part of the violent husband, or indications that the violent husband is only poorly socialised e.g. he has assaulted others or assaulted his wife in public. 12

If you are dealing with a frightened client then her immediate needs for medical treatment, emotional and economic support and accommodation should be dealt with first and the decision as to any form of counselling should be left for agreement between the client and a specialist. The Family Court Counselling Co-ordinator should be able to assist you in determining the most appropriate specialist referral. There is a considerable body of research and experience in the U.S.A. which suggests that various forms of counselling and
mediation can assist couples to break out of the cycle of violence. 13 Lawyers should be aware of the social services available in their locality.

To be of any use court orders must be enforced whenever they have been breached. The applicant will only be safe when the respondent accepts that the applicant has removed herself from his control and no longer intends to tolerate his abuse. The Police should be given a copy of any protection order as soon as it is granted by the court. Clients should be advised to carry a copy of any orders and to give a copy to the child's school, to obtain a medical certificate every time she is injured and to complain to the Police every time an order is breached. Lawyers should be alert to the fact that service of court documents on the respondent may precipitate an attack on the applicant. 14

Part 111 - The Domestic Protection Bill 1982

The Bill, which is intended to take the place of the provisions in the Family Proceedings Act which provide for non-molestation and occupancy/tenancy orders, is to come into effect on 1.3.83. It provides for three types of orders - non-violence, non-molestation and occupation/tenancy orders. The provisions of the Bill give equal protection to those who are married, divorced, or are or have been living together in the same household. "Living together" is not defined. Thus an argument may be made that the Bill intends to give protection to members, or former members, of a household who have never cohabited as husband and wife, for example, flatmates, relatives. 15 There would seem to be no policy reason why non-violence and non-molestation orders should be available only to couples who have lived together as husband and wife. There may be a policy reason for confining occupation orders to situations where the applicant and respondent have lived together as husband and wife. The same wording is used to found jurisdiction for all three orders. Having regard to this and the title of the Bill it seems likely that the Bill will be interpreted as providing protection only where the couple have 'lived together on a domestic basis as husband and wife'. Barker J. in Furnace held that such a state of affairs required a couple to have lived under the same roof in a relationship intended to have some permanence. "Living together as husband and wife" has been widely interpreted as requiring an
integrated relationship involving many elements that go to make up the marital consortium. 17

The Bill does not provide protection for homosexual couples or a man/woman who is being harrassed or abused by a former friend who s/he may have had a sexual relationship with but has never lived with.

The Bill grants a concurrent jurisdiction to the District Court and the Family Court.

Non-violence Orders 18

Clause 4 provides that an application may be made by a man or a woman who 'are or have been married to each other or are or have been living together in the same household.' The Bill gives no indication whether an application must be filed within a certain time of the cessation of the relationship.

The Court is given jurisdiction to make an order restraining the respondent from using violence against, or causing bodily harm to, the applicant or a child of the family, or threatening to do so (cl.4) where the court is satisfied that the respondent has used violence against, or caused bodily harm to, the applicant or a child of the family, and is likely to do so again. (cl.5)

When a non-violence order is in force a member of the Police may arrest without warrant a person who is believed, on reasonable and probable grounds, to have breached the order. 19 The arrest shall not occur unless the Police believe, after having considered: the seriousness of the act constituting the alleged breach; the time that has elapsed since the alleged breach; the restraining effect on that person of other persons or circumstances; the need for a cooling-off period - that the arrest is reasonably necessary for the protection of the person for whose protection the order was made. (cl.8) A person who is arrested is to be held in Police custody for 24 hours; s/he is granted the right to one telephone call to somebody other than the applicant or a child of the family; s/he may ask to be brought before a Judge or a Justice as soon as is practicable or the Police may decide to have the person brought before a Judge. The Judge may direct that the arrested person be released immediately, or at any specified time or detained in custody until the expiry of the 24 hour period. The Bill does not require
that the arrested person be informed of the right to make a telephone call or to ask to be brought before a Judge. [cl.9 & 10]

No penalty other than arrest and detention for 24 hours is provided for the breach of a non-violence order.

The order when made restrains threats, but threats alone are not sufficient to give jurisdiction to make an order. "Violence" is not defined. Violence can be construed as covering emotional abuse which occurs in the absence of physical force or injury. It is submitted that, because of the consequences of a breach of an order, 'violence' is likely to be restrictively interpreted and orders granted only where the applicant or a child of the family has suffered real physical or emotional harm. The English courts have been reluctant to attach a power of arrest to non-violence injunctions save in exceptional circumstances. Hopefully the New Zealand courts will accept that the jurisdiction is a protective one and grant non-violence orders when there is a reasonable apprehension that the applicant or a child might suffer real injury although no serious injury has yet been sustained.

A non-violence order restrains actual or threatened violence, everywhere, including in the common household, and, in appropriate circumstances, should be obtained in conjunction with, rather than in place of, a non-molestation order.

Non-molestation Orders

Clauses 11-14, which provide for the making of non-molestation orders, largely repeat the provisions of s.s.176 and 177 of the Family Proceedings Act with alterations to expand protection to unmarried couples. The Court is given jurisdiction to make an order on, or at any time after, making a separation or occupation/tenancy order or where a man and a woman 'have been living together in the same household' and the Court is satisfied that the order is necessary for the protection of the applicant or of any child of the applicant's family. [cl.11] It should be noted that cl.11(2) is the only provision in the Bill which grants jurisdiction only where the man and woman 'have been living together'. Other clauses give jurisdiction where they 'are or have been living together'. If clause 11(2) is interpreted as being restricted to the past tense it will not be possible for an applicant to apply for an order while she is still living with the respondent unless she also applies for a separation order or an occupation order. If such is
the case unmarried applicants who live in property of which they are the sole tenant will be denied the protection of a non-molestation order. A person in this situation would be forced to rely on the Trespass Act to have the other party excluded from the home. S/he would then be able to apply for a non-molestation order. A person who has a non-violence order may also require a non-molestation order. The latter grants protection from conduct short of violence which can be regarded as such a degree of harrassment as to call for the intervention of the court 23 and makes it an offence for the respondent to, inter alia, enter onto land or buildings occupied by the applicant or any child in the custody of the applicant, in any case in circumstances which constitute trespass, or, without the consent of the applicant, when the applicant has an occupation/tenancy order or a separation order or agreement. If the applicant does not have a separation order or agreement and is living in property to which the respondent has a right of entry a non-molestation order should be coupled with an occupation/tenancy order.

Occupation Orders and Tenancy Orders

Where a man and a woman [whether or not they are or have been married to each other] are or have been living together in the same household, either of them may apply for the right to live in the household residence or, where applicable, for the tenancy of any dwellinghouse of which the parties are joint or common tenants or the respondent is the sole tenant and in which at least one of the parties reside at the time of the order. [cl.15,19] The court may make such orders if it is satisfied that they are necessary for the protection of the applicant or in the best interests of any child of the family.

An occupation order gives the party to whom it is granted the right to occupy the premises to the exclusion of the other party for such period or periods and subject to such terms and conditions as the court thinks fit. [cl.16,17] It does not appear that the order gives the right to the possession of the household effects. The Bill makes no provision for a tenancy order to be made for a limited period or subject to conditions but does give the court jurisdiction to discharge such an order. [cl.22] A tenancy order has the effect, unless the tenancy is sooner lawfully terminated, of making the successful applicant the tenant of the dwelling house subject to the existing terms of the tenancy and, presumably,
responsible for existing obligations and liabilities attached to the tenancy. The Bill provides for service of notice of the application on any otherperson who has an interest in the property. [cl.24]

Occupation and tenancy orders are to be enforced as if they were orders for the possession of land made pursuant to s.31(1)(d) of the District Courts Act 1947. 24 An occupation/tenancy order would therefore only be effective protection if it was coupled with a non-molestation order (which carries the possibility of arrest and prosecution for breach).

The extension of the right to an occupation/tenancy order to an applicant who has no rights under the Matrimonial Property Act may give rise to applications based solely on the interests of a child of the family. This has been the trend in England where, in deciding whether to grant an occupation injunction under the Domestic Violence and Matrimonial Proceedings Act 1976, the Court of Appeal has considered the relative hardship of the parties, alternate accommodation available, the risk of violence if the applicant was forced to return to live with the respondent and, as a paramount factor, the needs of the children of the family.

"...[was] it fair to exclude the husband from the matrimonial home taking into account the behaviour of the parties, the effect on the children if the husband stayed, the effect if he went, the personal circumstances of the husband and wife, and the effect on their health, physical and mental."

"But the real problem is who is to go and the solution is to be found in the children - who keeps the children - because the person who keeps the children has to stay, there can be no question about that." 25

The Court of Appeal has granted occupation injunctions to both married and unmarried applicants where, whether the respondent has been violent or not, the court has accepted that the applicant will not continue to live with the respondent and the applicant and the children are unable to find suitable alternate accommodation. 26 Support for this approach may be obtained from the New Zealand cases decided pursuant to s.27 Matrimonial Property Act 1976. 27

Orders will presumably be made for such length of time as is necessary
to enable the parties to regulate their affairs, to determine any
interest they may have in the property or, in the case of an applicant
with no interest in the property, to find other suitable accomodation.
The English Court of Appeal has considered orders granted to an
applicant who has no interest in the property as purely temporary -
as "first aid not intensive care for battered women." The
President of the Family Division has indicated in a practice note
that in most cases a period of up to three months is likely to
suffice in the first instance.

The term 'household residence' is defined as 'the dwelling house
that is used habitually or from time to time by the man and the woman
or either of them as the principle residence of the household'.
Thus it could be argued that the court has jurisdiction to make an
order in relation to a property where the respondent is living but
which has never been shared with the applicant.

Ex parte Orders

All types of orders may be made ex parte. No guidelines are given
in the Bill for the granting of ex parte non-violence or non-molestation
orders. Presumably ex parte orders will only be granted in circum-
stances in which it is necessary to act immediately to protect the
applicant or a child. Such circumstances may arise where protection
must be provided against a violent response to the service of
proceedings.

Occupation/tenancy orders can only be made on ex parte application
if the court is satisfied that the respondent has - [a] used violence
against, or caused bodily harm to the applicant or a child of the
family; and [b] is likely to do so again - and the delay caused by
proceeding on notice would or might expose the applicant or a child
of the family to physical injury. Thus an applicant who has
been forced to remove the children to inadequate accomodation
because of the respondents violence cannot get an ex parte order
solely on the basis of the need of the children to be returned to
their home as soon as possible.

Ex parte orders are to be interim orders in the first instance with
the court assigning a date for a hearing at which the court is to
determine whether to discharge the order, to make a formal order
in the place of the interim order, or to adjourn the matter to a
fixed time and place.
Where the court makes an ex parte occupation/tenancy order it shall at the same time make a non-molestation order unless it considers that there are special reasons why such an order should not be made. [cl.25(2)] Possibly this provision is a recognition that an occupation order alone is not a particularly effective measure for ensuring that the respondent remains off the property.

**Discharge of Orders**

Clause 6 provides that the court may, on application, discharge a non-violence order if it is satisfied -

[a] that the order ought not to have been made; or
[b] because of a change of circumstances the protection of the order is no longer needed; or
[c] the interests of the person who obtained the order require it to be discharged.

As the Bill provides for a right of appeal [cl.27] and grants the court the jurisdiction to discharge an order made ex parte [cl.23(3)] it would seem that cl.6(a) gives the disgruntled respondent the right to an endless rehearing of the matter.

A non-molestation order ceases to have effect if the parties voluntarily resume cohabitation or the court, on application, discharges it. [cl.13] No guidelines are given to the court for the exercise of this discretion.

The court can, on the application of either party, discharge an occupation/tenancy order, or vary the period of an occupation order or vary or discharge any terms or conditions attached to it. [cl18,22] Occupation and tenancy orders made on ex parte application while the respondent and the applicant were living together in the same household expire -

[a] when they are discharged by the court; or
[b] on the discharge of an interim non-molestation order made in conjunction with it; or
[c] at the end of seven days if no non-molestation order has been made in conjunction with it or the occupation/tenancy order has not been discharged by this time. [cl.25(3)]

Thus where the parties were cohabiting at the time of the application and the court does not consider that the protection of a non-molestation order is necessary an occupation or tenancy order made ex parte will last for a maximum of 7 days. Lawyers must therefore be careful
ensure that the date assigned by the court for the hearing on notice comes within this period.

Where an occupation or tenancy order has been made ex parte the respondent may apply immediately for variation or discharge of the order.

Footnotes

1. For studies on the way children are raised in New Zealand see:
   (b) Donnelly, F., Big Boys Don't Cry, Cassell 1978.
   (c) Mackay, Children in Foster Care, D.S.W. WN. 1980
   (d) H.R.C., Report on Children & Young Persons Homes, 1982.
2. Social Development Council, Families and Violence, WN 1980;
5. N.Z. Herald, 13.9.82, p.9
7. Church, J., How to Get Out of Your Marriage Alive, 1978;
   Church J., and D., Listen to Me Please, Battered Women's Support Group, Christchurch, 1981.
8. Select Committee on Violent Offending, supra, para 61; see also
   Strauss & Gelles, supra fn.6; Social Development Council, supra;
   Freeman, M., Violence in the Home, Saxon House, 1979; Eekelaar, J.,
9. Strauss & Gelles, supra fn.6, p.563-5.
11. Church, J. & D., fn.7 supra.
13. [a] mediation - Citizen Dispute Settlement Center [Miami] -
   Boston Municipal Court Mediation Programme -
   Crime and Justice Foundation, 19 Temple Place,
   Boston, Mass.
   [b] counselling - Conciliation Court; Crisis Intervention and


15. Domestic protection legislation in a number of U.S. states is wide enough to cover such people, see. fn. 13[c].
19. cl.7; cf. s.315 Crimes Act 1961.
20. S.O.C., Families and Violence, 1980 defines 'violence' as
"... conduct, verbal or non-verbal, which will damage the receiver physically, socially, intellectually or emotionally. Damage means to hinder normal growth or development or to divert it into deviant behaviour."


23. Horner, [1982] 2 All E.R. 495, 497 per Ormrod L.J. in granting a non-molestation order to an applicant who had a non-violence order
24. i.e. by obtaining a warrant pursuant to s.99 District Courts Act.
Walker, [1978] 1 W.L.R. 533; Spindlow, [1979] 1 All E.R. 169; Samson, [1982] 1 W.L.R. 252; cf. Elsworth, (1980) Fam.L.R. 245; Myers, [1982] 1 W.L.R. 247 - where the court considered only whether the applicant was acting reasonably in refusing to live with the responder; the interests of the children were not considered and the court did not cite the other C.A. decisions on the topic. The welfare approach has also be used in Australia - In Marriage of Gillie, 1978 F.L.C. 90-442.

2.4.82 F.P.009150/82 in which Judge Bisphan listed the following as relevant considerations when dealing with an application from
a separated woman for an occupation order, in the absence of a substantive application, under the Matrimonial Property Act s.27:

[a] the respective matrimonial property interests of the parties in the home;
[b] the circumstances of the person applying;
[c] the suitability of the home for the applicant;
[d] the financial circumstances of the parties in relation to the home;
[e] the interests of the children - which spouse is likely to get custody;
[f] the balance of convenience in relation to the parties pending the determination of the matrimonial issues;
[g] misconduct.

As it was accepted that the children should stay with the mother the application was successful.

30. cf. Rule 16(2)(a) Family Proceedings Rules - however clause 28 of the Bill provides that, in the absence of rules made under the Bill, the District Court Rules shall apply.
31. cf. s.179 Family Proceedings Act.
DOMESTIC PROTECTION

ANALYSIS

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A BILL INTITULED

An Act to mitigate the effects of domestic violence and to confer protection from molestation in the domestic sphere

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. **Short Title and commencement**—(1) This Act may be cited as the Domestic Protection Act 1982.

(2) This Act shall come into force on the 1st day of March 1983.
2. Interpretation—In this Act, unless the context otherwise requires,—

"Child of the family" means—

(a) A child of a husband and wife; and includes a child (whether or not a child of the husband or wife) who is or has been a member of the family of the husband and wife:

(b) A child of a man and a woman who are or have been living together in the same household:

(c) Where a man and a woman who are or have been living together in the same household (whether or not they are or have been married to each other), a child (whether or not a child of the man and the woman or either of them) who is or has been a member of that household:

"Court" means a Family Court or a District Court; and "Judge" has a corresponding meaning:

"Dwellinghouse" includes any flat or town house, whether or not occupied pursuant to a licence to occupy within the meaning of the Companies Amendment Act 1964:

"Household residence" means—

(a) The dwellinghouse that is used habitually or from time to time by the husband and the wife or either of them as the only or principal family residence, together with any land, buildings or improvements appurtenant to any such dwellinghouse and used wholly or principally for the purpose of the household:

(b) Where a man and a woman who are not married to each other are or have been living together in the same household (whether or not they are or have been married to each other), the dwellinghouse that is used habitually or from time to time by the man and the woman or either of them as the only or principal residence of the household, together with any land, buildings or improvements appurtenant to any such dwellinghouse and used wholly or principally for the purposes of the household:

"Non-molestation order" means an order made under section 11 of this Act; and includes an interim order made under that section:

"Non-violence order" means an order made under section 5 of this Act; and includes an interim order made under that section:
Domestic Protection

“Occupation order” means an order made under section 16 of this Act; and includes an interim order made under that section:

“Tenancy order” means an order made under section 20 of this Act; and includes an interim order made under that section:

“Tenant”, in relation to any dwellinghouse, includes any person whose tenancy has expired or been determined, and who is for the time being deemed under or by virtue of any enactment or rule of law to continue to be the tenant of the dwellinghouse; and the term “tenancy” has a corresponding meaning.

Cf. 1976, No. 166, ss. 2 (1), 28 (6)

3. Act to bind the Crown—This Act shall bind the Crown.

Non-violence Orders

4. Application for non-violence order—Where a man and a woman are or have been married to each other or are or have been living together in the same household, either the man or the woman may apply to the Court for an order restraining the other party from using violence against, or causing bodily harm to, the applicant or a child of the family, and from threatening to do so.

5. Power to make non-violence order—(1) On hearing an application under section 4 of this Act, the Court may make the order sought if it is satisfied that the respondent has used violence against, or caused bodily harm to, the applicant or a child of the family, and is likely to do so again.
   (2) Where an application under section 4 of this Act is made ex parte, any non-violence order made in the first instance shall be an interim order.

6. Power to discharge non-violence order—The Court may, at any time, on the application of either party, discharge a non-violence order if it is satisfied—
   (a) That the non-violence order ought not to have been made; or
   (b) That, by reason of a change in circumstances, the protection of the order no longer needs to be afforded to the person for whose protection it was made; or
   (c) That the interests of the person on whose application the order was made require the discharge of the order.
7. Power to arrest for breach of non-violence order—Where a non-violence order is in force, any member of the Police may, subject to section 8 of this Act, arrest without warrant any person whom the member of the Police believes, on reasonable and probable grounds, to have committed a breach of the order, whether or not the breach has in fact been committed, and whether or not the arrested person committed it.

8. Restriction on power of arrest—No member of the Police shall arrest any person under section 7 of this Act until that member of the Police believes, after considering,—
   (a) The seriousness of the act that constituted the alleged breach; and
   (b) The time that has elapsed since the alleged breach was committed; and
   (c) The restraining effect on that person of other persons or circumstances; and
   (d) The need for a cooling-off period,—that the arrest of that person is reasonably necessary for the protection of the person for whose protection the order was made.

9. Rights of person arrested to make a telephone call—Where a person is arrested under section 7 of this Act, he shall be entitled to telephone one person of his choice, not being the applicant or a child of the family.

10. Detention of person arrested—(1) Where a person is arrested under section 7 of this Act, he shall, subject to subsection (2) of this section, be detained in Police custody for a period of 24 hours.
   (2) If, at any time during the period of 24 hours referred to in subsection (1) of this section, the arrested person asks to be brought before a Judge, or a member of the Police considers that the arrested person should be brought before a Judge, the arrested person shall, as soon as practicable, be brought before a Judge or, if a Judge is not available, before a Justice.
   (3) The Judge or Justice may direct either—
      (a) That the arrested person be released forthwith or at any specified time within the period of 24 hours; or
      (b) That the arrested person continue to be detained in Police custody until the expiry of the period of 24 hours.
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(4) Where, between 11 o'clock at night and 6 o'clock in the following morning, an arrested person makes a request under subsection (2) of this section, or a member of the Police considers that the arrested person should be brought before a Judge, that person shall, unless the contrary is proved, be deemed to have been brought before a Judge as soon as practicable if he is brought before a Judge, or, if a Judge is not available, a Justice, by 11 o'clock on that following morning.

(5) Nothing in this section authorises the arrested person's detention after the expiry of the period of 24 hours.

Non-molestation Orders

11. Power to make non-molestation order—

(1) Where—

(a) A Family Court makes a separation order; or

(b) A Court makes an occupation order or a tenancy order under this Act,—

the Court may, at the same time, or any Court may at any time thereafter while the order remains in force, make a non-molestation order on the application of either party if it is satisfied that the making of the order is necessary for the protection of the applicant or any child of the applicant’s family.

(2) Where a man and a woman (whether or not they are or have been married to each other) have been living together in the same household, either party may apply to a Court for a non-molestation order, and the Court, if it is satisfied that the making of the order is necessary for the protection of the applicant or of any child of the applicant’s family, may make a non-molestation order.

(3) Where an application under subsection (1) or subsection (2) of this section is made ex parte, any non-molestation order made in the first instance shall be an interim order.

Cf. 1980, No. 94, ss. 176 (1)—(2), 177 (1)

35 12. Effect of non-molestation order—Where a non-molestation order is in force, the person against whom it was made—

(a) Shall not enter or remain on any land or building which is in the occupation of the applicant or in which the applicant or any child in the custody of the applicant dwells or is present—
Domestic Protection

(i) Without the consent (express or implied) of the applicant in any case where an occupation order or an order made under section 27 (1) of the Matrimonial Property Act 1976 is in force, in the applicant's favour, in respect of the land or building; or

(ii) Without the consent (express or implied) of the applicant in any case where a tenancy order or an order under section 28 (1) of the Matrimonial Property Act 1976 is in force, in the applicant's favour, in respect of the land or building; or

(iii) Without the consent (express or implied) of the applicant in any case where the applicant is in occupation of the land or building and there is a separation order or separation agreement in force between the parties; or

(iv) In any case, in circumstances which constitute a trespass; and

(b) Shall not molest the applicant by watching or besetting the applicant's dwellinghouse or place of business, employment, or residence, or by following or waylaying the applicant in any public place within the meaning of section 2 of the Summary Offences Act 1981, or by making persistent telephone calls to the applicant at the applicant's dwellinghouse or place of business, employment, or residence; and

(c) Shall not molest any child in the custody of the applicant by watching or besetting the child's place of residence or education, or by following or waylaying the child in any such public place, or by making persistent telephone calls to the child at the child's place of residence or any other place.

Cf. 1980, No. 94, s. 176 (3)

13. Duration of non-molestation order—A non-molestation order shall cease to have any force or effect if the parties, with the free consent of each, have resumed cohabitation, or if the Court, on the application of either party, orders that it be discharged.

Cf. 1980, No. 94, s. 176 (5)
14. Offence to contravene non-molestation order—
Every person commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding 3 months, or to a fine not exceeding $500, who does any act in contravention of a non-molestation order.

Cf. 1980, No. 94, s. 176 (4)

Occupation Orders

15. Application for occupation order—Where a man and a woman (whether or not they are or have been married to each other) are or have been living together in the same household, either the man or the woman may apply to the Court for an order granting the applicant the right to live in the household residence.

Cf. 1976, No. 166, s. 27 (1); 1980, No. 94, ss. 178, 179

16. Power to make occupation order—(1) On hearing an application under section 15 of this Act, the Court may, notwithstanding anything in the Matrimonial Property Act 1976, but subject to subsection (2) of this section, make an order granting to the applicant, for such period or periods and on such terms and subject to such conditions as the Court thinks fit, the right personally to occupy the household residence or any other premises forming part of the household residence.

(2) The Court may make an order under subsection (1) of this section only if the Court is satisfied that such an order—
(a) is necessary for the protection of the applicant; or
(b) is in the best interests of a child of the family.

(3) Where an application under section 15 of this Act is made ex parte, any occupation order made in the first instance shall be an interim order.

(4) Section 25 of this Act shall apply in respect of every ex parte application for an occupation order and in respect of every occupation order made on an ex parte application.

Cf. 1976, No. 166, s. 27 (1); 1980, No. 94, ss. 178, 179

17. Effect of occupation order—(1) The person in whose favour an occupation order is made shall be entitled, to the exclusion of the other person, personally to occupy the household residence or the other premises to which the order relates.
Domestic Protection

(2) An occupation order shall be enforceable as if it were an order for the recovery of land made pursuant to section 31 (d) of the District Courts Act 1947.

Cf. 1976, No. 166, s. 27 (2), (4); 1980, No. 94, ss. 178, 179

18. Power to vary or discharge occupation order—On the application of either party, the Court may—
   (a) Extend or reduce any period specified by the Court pursuant to section 16 (1) of this Act; or
   (b) Vary or discharge any terms and conditions imposed by the Court pursuant to section 16 (1) of this Act; or
   (c) Discharge the occupation order.

Tenancy Orders

19. Application for tenancy order—Where a man and a woman (whether or not they are or have been married to each other) are or have been living together in the same household, either the man or the woman may apply to the Court for an order vesting in the applicant the tenancy of any dwellinghouse, being a dwellinghouse within the meaning of the Tenancy Act 1955—
   (a) Of which at the time of the making of the order the other party is or was either the sole tenant or a tenant holding jointly or in common with the applicant; and
   (b) Of which at the time of the making of the order under this subsection the other party is a tenant as aforesaid; and
   (c) In which the applicant party or the other party resides at the time of the making of the order under this subsection.

Cf. 1976, No. 166, s. 28 (1); 1980, No. 94, ss. 178, 179

20. Power to make a tenancy order—(1) On hearing an application under section 19 of this Act the Court may, notwithstanding anything in the Matrimonial Property Act 1976, but subject to subsection (2) of this section, make the order sought.
   (2) The Court may make an order under subsection (1) of this section only if the Court is satisfied that such an order—
      (a) Is necessary for the protection of the applicant; or
      (b) Is in the best interests of a child of the family.
(3) Where an application under section 19 of this Act is made ex parte, any tenancy order made in the first instance shall be an interim order.

(4) Section 25 of this Act shall apply in respect of every ex parte application for a tenancy order and in respect of every tenancy order made on an ex parte application.

Cf. 1976, No. 166, s. 28 (1); 1980, No. 94, ss. 178, 179

21. Effect of tenancy order—(1) On the taking effect of a tenancy order, unless the tenancy is sooner lawfully determined, the applicant shall become the tenant of the dwellinghouse upon and subject to the terms and conditions of the tenancy in force at the time of the making of that order, and the other party shall cease to be the tenant.

(2) Every tenancy order shall have effect and may be enforced as if it were an order of the Court for possession of the land granted in favour of the applicant.

(3) Nothing in this Act or in any tenancy order limits or affects the operation of any enactment or rule of law for the time being applicable to any tenancy to which section 19 of this Act applies or to the dwellinghouse held under the tenancy, or authorises the Court to vary, except by vesting or revesting the tenancy pursuant to this section, any express or implied term or condition of the tenancy.

Cf. 1976, No. 166, s. 28 (2)–(3); 1980, No. 94, ss. 178, 179

25 22. Power to discharge tenancy order and revest tenancy—(1) On the application of the other party or his personal representative, the Court may, if it thinks fit, make an order discharging the tenancy order and revesting the tenancy accordingly.

(2) On the taking effect of any revesting order made under subsection (1) of this section, unless the tenancy is sooner lawfully determined, the person in whose favour it is made shall become the tenant of the dwellinghouse upon and subject to the terms and conditions of the tenancy in force at the time of the making of the revesting order.

Cf. 1976, No. 166, s. 28 (4)–(5); 1980, No. 94, ss. 178, 179
Procedure

23. Interim orders—(1) Every interim order made under this Act on an ex parte application shall assign a date (which shall be as soon as reasonably practicable thereafter) for a hearing on whether an order should be made in substitution for the interim order.

(2) The copy of any such interim order served on the respondent shall notify the respondent that unless the respondent attends on the assigned date to show cause why an order should not be substituted for the interim order, the 10 Court may discharge the interim order and make an order in its place.

(3) At the hearing referred to in subsection (1) of this section the Court may—

(a) Discharge the interim order; or

(b) Discharge the interim order and make an order in its place; or

(c) On good cause being shown, adjourn the hearing to a fixed time and place.

(4) Where a hearing is adjourned under subsection (3) (c) of this section to another day, the Court shall, at the adjourned hearing, exercise either the power conferred on it by subsection (3) (a) or the power conferred on it by subsection (3) (b) of this section.

(5) In this section—

"Interim order" means an interim non-violence order or an interim non-molestation order or an interim occupation order or an interim tenancy order, as the case may be:

"Order" means a non-violence order or a non-molestation order or an occupation order or a tenancy order, as the case may be, not being an interim order.

Cf. 1980, No. 94, s. 177 (2)-(5)

24. Procedure in relation to occupation orders and tenancy orders—(1) Before any occupation order (other than an interim occupation order) or any tenancy order (other than an interim tenancy order) is made, such notice as the Court directs shall be given to any person having an interest in the property which would be affected by the order, and any such person shall be entitled to appear and to be heard in the matter as a party to the application.
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(2) Where an application is made for an occupation order, the Court may treat that application as an application for a tenancy order or an occupation order or both and may, if it is satisfied—

5  (a) That it has jurisdiction to make a tenancy order; and
(b) That the making of a tenancy order is appropriate; and
(c) That subsection (1) of this section has been complied with in respect of the making of a tenancy order,—

make a tenancy order (whether or not it makes an occupation order).

(3) Where an application is made for a tenancy order, the Court may treat that application as an application for an occupation order or a tenancy order or both and may, if it is satisfied,—

15  (a) That it has jurisdiction to make an occupation order; and
(b) That the making of an occupation order is appropriate; and
(c) That subsection (1) of this section has been complied with in respect of the making of an occupation order,—

make an occupation order (whether or not it makes a tenancy order).

Cf. 1976, No. 166, s. 37

25  **25. Power to make occupation orders and tenancy orders ex parte**—(1) An occupation order or a tenancy order may be made on an *ex parte* application if the Court is satisfied that the respondent—

(a) Has used violence against, or caused bodily harm to, the applicant or a child of the family; and
(b) Is likely to do so again—

and that the delay caused by proceeding on notice would or might expose the applicant or a child of the family to physical injury.

35  (2) On making an *ex parte* order pursuant to subsection (1) of this section, the Court shall at the same time make an interim non-molestation order unless it considers that there are special reasons why such an order should not be made.

(3) An order made *ex parte* under this section while the applicant and the respondent (whether or not they are or have been married to each other) are living together in the same household shall expire—

(a) On its discharge by the Court; or
(b) On the discharge of an interim non-molestation order made in conjunction with it; or
(c) If no such non-molestation order has been made and if the order made *ex parte* under this section has not sooner been discharged by the Court, at the close of the seventh day after the date of its making.

(4) Where an order is made *ex parte* against any respondent, the respondent may apply immediately for variation or discharge of the order.

Cf. 1980, No. 94, ss. 178 (2)-(5), 179

26. Counselling—On making an order under this Act, the Court may recommend either party or both of them to undergo counselling of a nature specified by the Court.

27. Appeals—(1) Where in any proceedings under this Act, a Court has made or has refused to make an order, or has otherwise finally determined or has dismissed the proceedings, a party to the proceedings or any other person prejudicially affected may, within 28 days after the making of the order or decision or within such further time as the Court may allow in accordance with section 73 (1) of the District Courts Act 1947, appeal to the High Court in accordance with the provisions of Part V of that Act (except section 71) and those provisions shall apply accordingly with any necessary modifications.

(2) The Court appealed from may on the *ex parte* application of the appellant order that security under section 73 (2) of the District Courts Act 1947 shall not be required to be given under that section.

(3) A party to any appeal under subsection (1) of this section may, with the leave of the Court of Appeal, appeal to the Court of Appeal against any determination of the High Court on a question of law arising in an appeal under that subsection.

(4) On an appeal to the Court of Appeal under this section, the Court of Appeal shall have the same power to adjudicate on the proceedings as the High Court had.

(5) The decision of the Court of Appeal on an appeal to that Court under this section, and on an application to it under this section for leave to appeal, shall be final.

(6) Subject to subsections (3) to (5) of this section, the 40 decision of the High Court on an appeal to that Court under subsection (1) of this section shall be final.
(7) Except where the Court making the order appealed from otherwise directs, the operation of an order made under this Act shall not be suspended by an appeal under this section, and every order made under this Act may be enforced in the same manner in all respects as if no appeal under this section were pending.

Cf. 1980, No. 94, s. 174 (1), (2), (5)–(9)

28. Rules of Court—(1) In addition to all other powers conferred by the District Courts Act 1947, the Governor-General may from time to time, by Order in Council, make rules regulating the practice and procedure of Family Courts and District Courts in proceedings under this Act, and providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

(2) In the absence of any rules under this section or in any situation not covered by any such rules, the District Courts Rules 1948 shall apply, with all necessary modifications, to proceedings under this Act.

29. Matrimonial Property Act 1976 not affected—Nothing in this Act limits or affects the power of the Court to make an order, including an ex parte order, under section 27 or section 28 of the Matrimonial Property Act 1976.

Repeals and Transitional Provisions

30. Repeals—Sections 176 to 179 of the Family Proceedings Act 1980 are hereby repealed.

31. Transitional provisions—(1) All applications, appeals, proceedings, and other matters which before the commencement of this Act have been made under any of the provisions of section 174 or of sections 176 to 179 of the Family Proceedings Act 1980, and which have not been determined or completed before the commencement of this Act, shall be determined and completed as if this Act had not been passed.
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(2) All orders which originated under any of the provisions of sections 176 to 179 of the Family Proceedings Act 1980 and which are subsisting or in force on the commencement of this Act and all orders which, pursuant to subsection (1) of this section, are made under any of those provisions after the commencement of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated or been made under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated.

(3) The Acts Interpretation Act 1924 shall apply subject to this section.