1998/63

DISTRICT COURTS AMENDMENT RULES 1998

MICHAEL HARDIE BOYS, Governor-General

ORDER IN COUNCIL

At Wellington this 30th day of March 1998

Present:

THE HON TAU HENARE PRESIDING IN COUNCIL

PURSUANT to section 122 of the District Courts Act 1947 and section 42 of the Harassment Act 1997, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, makes the following rules.

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RULES

1. Title and commencement—(1) These rules may be cited as the District Courts Amendment Rules 1998, and are part of the District Courts Rules 1992* ("the principal rules").

(2) These rules come into force on 1 May 1998.

2. Interpretation—Rule 3 (1) of the principal rules is amended by inserting in the definition of the term "the Act", after the expression "means", the words ", except in Part 6A,".

3. Search of court records generally—Rule 69 (4) of the principal rules is amended by inserting, after paragraph (la), the following paragraph:

"(lb) The Harassment Act 1997:".

4. New Part 6A inserted—The principal rules are amended by inserting, after Part VI, the following Part:

*S.R. 1992/109
Amendment No. 1: S.R. 1995/64
Amendment No. 2: S.R. 1995/130
Amendment No. 3: S.R. 1995/319
Amendment No. 4: S.R. 1996/152

"PART 6A

"PROCEEDINGS UNDER HARASSMENT ACT 1997

"*General*

"461A. **Application of Part**—(1) This Part applies to every proceeding under the Harassment Act 1997.

"(2) To avoid any doubt, the term 'proceeding' in subclause (1) has the same meaning as in rule 3 (1).

"461B. **Interpretation**—In this Part, unless the context otherwise requires,—

" 'The Act' means the Harassment Act 1997:

" 'Associated respondent' means—

"(a) A person against whom a restraining order applies by virtue of a direction made under section 18 of the Act; or

"(b) A person against whom such a direction is sought:

" 'Interlocutory application' does not include a main application; but includes an application that is ancillary to a main application:

" 'Main application' means—

"(a) An application, under section 9 of the Act, for a restraining order:

"(b) An application, under section 22 of the Act, for a variation of a restraining order:

"(c) An application, under section 23 of the Act, for a discharge of a restraining order:

" 'Protected person' means a person for whose protection a restraining order is made.

"461C. **Construction**—(1) This Part must be so construed as—

"(a) To ensure that the object of the Act (as set out in section 6) is attained; and

"(b) To secure the just, speedy, simple, and inexpensive determination of every proceeding under the Act.

Cf. S.R. 1996/148, r. 4

"461D. **Procedure and practice**—(1) No practice that is inconsistent with this Part may prevail in any proceeding under the Act.

"(2) When a Judge hears or determines a proceeding under the Act, the Judge may from time to time give such directions, not inconsistent with the Act or this Part, as the Judge thinks proper for regulating the business of the Court over which he or she presides.

Cf. S.R. 1996/148, r. 5

"461E. **Application of rules in other Parts**—(1) The provisions of rules 4, 8, 9, 30 to 32, 88, 89, 103, 112, 113, 126, 127, 130 to 132, 151 to 167, 208, 250 to 253, 258, 259, 300 to 341, 425 to 430, 435, 437, 483, and 531 do not apply to proceedings under the Act.

"(2) The provisions of a rule that is contained in a Part other than this Part and that is not excluded by subclause (1) apply, so far as they are applicable, and with all necessary modifications, to proceedings under the Act.

"(3) When the Court applies the provisions of a rule of the kind referred to in subclause (2), the Court must do so in such manner and with such modifications (if any) as the Court thinks best calculated—

"(a) To ensure that the object of the Act (as set out in section 6) is attained; and

"(b) To promote the ends of justice.

Cf. S.R. 1996/148, rr. 6 (1), (2), 7

"461F. **Cases not provided for**—(1) The Court may give directions with respect to the procedure and practice to be followed in a particular case where the Court is satisfied, in the circumstances of the particular case,—

"(a) That the provisions of the Act, or of these rules, or the practice of the Court, do not make adequate provision for procedure or practice; or

"(b) That difficulties arise or doubt exists as to the appropriate procedure or practice.

"(2) The directions that a Court gives under subclause (1) must be such as the Court thinks necessary—

"(a) To ensure that the object of the Act (as set out in section 6) is attained; and

"(b) To promote the ends of justice.

Cf. S.R. 1996/148, r. 6 (3)

"*Forms*

"461G. **Forms**—(1) Any form authorised or directed to be used by this Part may be varied if the circumstances of a particular case require.

"(2) Without limiting the generality of subclause (1),—

"(a) Where a form authorised or directed to be used by this Part contains or specifies material that is inapplicable in the circumstances of a particular case, that material may be deleted or omitted from the completed form:

"(b) Where a form authorised or directed to be used by this Part contains explanatory material intended only for the information of a particular person, that material need not be included in a copy of the form that is required to be served on or given to another person to whom that material is not relevant.

"(3) Where these rules do not authorise or direct the use of a particular form, the parties or the Court may devise an appropriate form, using forms that are authorised or directed to be used by these rules as guides.

Cf. S.R. 1996/148, r. 9

"461H. **Headings**—(1) Every application, notice, or order, must have, on the first page, a general heading (which may be in form 40A) that shows—

"(a) The office of the Court in which the application or other matter is proceeding; and

"(b) The distinguishing number of the application or other matter; and

"(c) The name of the Act; and

"(d) Subject to subclause (2) and to rule 461N, the full name, address, and occupation of each party, so far as they are known to the party presenting the document for filing.

"(2) Unless any form authorised or directed to be used by these rules otherwise requires, and subject to rule 461N, all other documents that are filed, issued, or served in a proceeding under the Act must have on the first page a general heading that complies with subclause (1), except that, where it is not necessary to distinguish between 2 or more persons,—

"(a) Given names may be indicated by initials only:

"(b) Addresses and occupations may be omitted.

Cf. S.R. 1996/148, r. 12

"*Main Applications*

"461I. **Commencement of proceedings**—(1) Every proceeding under the Act must be commenced by filing a main application in the proper Court as determined by rule 461O.

"(2) Every main application must be made on notice to every person intended to be affected by the order sought by the application.

Cf. S.R. 1996/148, r. 13

"461J. **Form of application for main applications**—(1) Every application for a restraining order must be in form 40B.

"(2) Every application, under section 22 of the Act, for a variation of a restraining order must be in form 40C.

"(3) Every application, under section 23 of the Act, for a discharge of a restraining order must be in form 40C.

"461K. **Documents accompanying main applications**—(1) Every main application must be accompanied by—

"(a) A notice of proceeding in form 40D, which must be signed by the applicant or the applicant's solicitor or counsel; and

"(b) An affidavit by or on behalf of the applicant, and containing (where applicable) the matters specified in rule 461L.

"(2) If a restraining order made by a Court is to be used in support of a main application filed in another Court, a copy of the order, or a copy of a copy of the order, must be filed with the application, unless the Registrar otherwise directs.

"461L. **Supporting affidavits**—(1) Every affidavit accompanying a main application must set out the matters on which the application is based.

"(2) An affidavit accompanying an application for a restraining order must contain sufficient particulars—

"(a) To show the grounds on which the applicant claims to be entitled to the order; and

"(b) To inform the Court of the facts relied on in support of the application.

"(3) An affidavit to which subclause (2) relates must, in particular,—

"(a) Indicate the nature and history of the harassment that the applicant alleges that the respondent has engaged in, including—

"(i) An outline of the current situation or most recent incident:

"(ii) An outline of the behaviour that forms part of a pattern of behaviour from which protection is needed:

"(iii) Details of any contact with police about the behaviour from which protection is needed:

"(b) Where special conditions are sought, show why they are regarded as necessary to protect the applicant from further harassment:

"(c) Where the application seeks a direction that the restraining order apply against an associated respondent, show why the direction is sought, including—

"(i) Details of the way in which the respondent is encouraging or has encouraged the associated respondent's behaviour; and

"(ii) An outline, similar to that required by paragraph (a), of the nature and history of the harassment that the applicant alleges that the associated respondent has engaged in.

"(4) Where an application is made under section 13 of the Act by a representative, an affidavit containing the matters specified in subclauses (2) and (3) may be made by any person who has knowledge of the relevant facts.

"461M. **Number of copies to be filed**—There must be filed with every main application such number of copies of the application and the accompanying documents as the Registrar directs as being required for service.

"461N. **Request that residential address be kept confidential**—(1) In this rule, the term 'applicant' means—

"(a) A person who applies for a restraining order; and

"(b) A protected person who is a party to a proceeding under the Act.

"(2) If an applicant wishes his or her residential address to be kept confidential from the other party or parties, the applicant must file a notice in form 40E—

"(a) Stating the applicant's residential address; and

"(b) Requesting that the address be kept confidential.

"(3) On filing the notice in accordance with subclause (2), the applicant is not required to disclose the applicant's residential address in a document that is available to another party (despite any other rule).

"(4) Where the applicant's solicitor has instructed another solicitor ('the agent') to act as the agent of the applicant's solicitor in the proceeding, the applicant may also request in the notice filed in accordance with subclause (2) that the name and address of the applicant's solicitor be kept confidential, and in that case,—

"(a) If the name of the agent is disclosed in a document that is available to another party, the name of the applicant's solicitor is not required to be disclosed in that document; and

"(b) Any rule requiring disclosure of the applicant's solicitor in a document that is available to another party may be complied with by disclosing the name of the agent.

"(5) To the extent that a document discloses any matter that is to be kept confidential in accordance with this rule, the document may not be searched, inspected, or copied under rule 69, unless the Court otherwise directs.

"(6) Where the applicant changes his or her address as shown in a notice filed in accordance with subclause (2), he or she may, by notice in form 40E, notify that change of address to the Registrar.

"(7) This rule does not affect the obligation to state an address for service in accordance with rule 43.

Cf. S.R. 1996/148, r. 22

"461O. **Proper Court for filing main application**—(1) The proper Court, for the purposes of rule 461I, is—

"(a) The Court nearest to the place where the applicant or 1 of the applicants resides; or

"(b) The Court nearest to the place specified by the applicant or 1 of the applicants as his or her address for service; or

"(c) The Court nearest to the place where the respondent or an associated respondent resides; or

"(d) With the written consent of every respondent and every associated respondent, any other Court.

"(2) Written consent given under subclause (1) (d) must be filed with the application.

Cf. S.R. 1996/148, r. 27

"461P. **Proceedings commenced in wrong Court**—(1) The Registrar may refuse to file a proceeding which, in the Registrar's opinion, is tendered for filing in the wrong Court.

"(2) If the Registrar refuses to file a proceeding, the applicant may apply to a Judge for a direction that the applicant is entitled to file the proceeding in that Court.

"(3) Where a proceeding is commenced in the wrong Court, a Judge may, on such terms and conditions as the Judge considers appropriate,—

"(a) Transfer the proceeding to the Court in which it ought to have been commenced; or

"(b) Order that the proceeding continue in the Court in which it was commenced.

"(4) No objection may be taken at the hearing or at a subsequent proceeding on the ground that the proceeding was filed in the wrong Court.

"(5) Subclause (4) does not limit subclause (3).

Cf. S.R. 1996/148, r. 28

"461Q. **Procedure on filing main applications**—Where a main application is filed, the Registrar must—

"(a) Enter the application in the records of the Court; and

"(b) Fix a date and time for the hearing of the application, which must be as soon as practicable; and

"(c) Inform all parties to the proceeding of the date and time fixed for the hearing; and

"(d) Ensure that the respondent and any associated respondent is served with copies of—

"(i) The application; and

"(ii) The notice of proceeding; and

"(iii) The affidavit accompanying the application.

Cf. S.R. 1996/148, r. 29 (1)

"*Notice of Defence*

"461R. **Notice of defence or address for service**—(1) Subject to any directions given by a Judge in relation to any particular case, a respondent or an associated respondent who intends to defend a main application must, not fewer than 5 clear days before the date set for the hearing, file in Court—

"(a) A notice of defence in form 40F; and

"(b) An affidavit setting out sufficient particulars to indicate the grounds on which the defence is based, and sufficient information to inform the Court of the facts relied on in support of the defence.

"(2) Subject to any directions given by a Judge in relation to any particular case, the notice of defence and affidavit required to be filed in Court under subclause (1) must be served on the applicant not fewer than 5 clear days before the date set for the hearing.

"(3) If a respondent or an associated respondent fails to comply with subclause (1) or subclause (2), the Court may—

"(a) Strike out the defence; or

"(b) Allow the respondent or associated respondent to defend the application, or appear at the hearing, only on such terms as the Court considers appropriate.

"(4) Subclause (3) does not limit any other power the Court may exercise where a party fails to comply with these rules.

"(5) A respondent who does not intend to defend a main application may give an address for service by filing in Court a notice of that address and serving a copy on every other party to the proceeding.

"*Representatives*

"461S. **Appointment of representative of child**—For the purposes of section 11 of the Act, a representative of a minor who is a child must be appointed in accordance with these rules as either a next friend to the minor or as a guardian *ad litem* of the minor.

"461T. **Appointment of representative of person unable or unwilling to take proceeding**—Rules 85 (3), 86, and 87 apply to a representative appointed under section 13 of the Act and to the person on whose behalf the representative was appointed as if each reference in those rules—

"(a) To a guardian *ad litem* were a reference to the representative; and

"(b) To a minor were a reference to the person on whose behalf the representative was appointed.

"461U. **Effect of minor ceasing to be child**—(1) If a minor in relation to whom a representative has been appointed turns 17 years or marries before turning 17, all subsequent steps must be taken in the minor's name.

"(2) If the minor continues to prosecute or defend the proceeding, he or she is liable for all the costs of the proceeding (including solicitor and client costs) in the same manner as if he or she had commenced it or had become a party to it at a time when he or she was not a child.

Cf. S.R. 1996/148, r. 41

"461V. **Effect of ceasing to be unable or unwilling to take proceedings**—(1) If a party on whose behalf a representative was appointed under section 13 of the Act ceases to be a person to whom that section applies, the party must take all subsequent steps in the proceeding in the party's own name.

"(2) If the party continues to take steps in the proceeding after he or she ceases to be a person to whom section 13 of the Act applies, the party is liable for all the costs of the proceeding (including solicitor and client costs) in the same manner as if he or she had commenced it or had become a party to it when he or she was not a person to whom that section applied.

Cf. S.R. 1996/148, r. 42

"*Service*

"461W. **Personal service of applications**—(1) Except as provided by rule 461Z, every main application and the documents required by the Act or by this Part to accompany such an application must be served personally on every person who is required to be served with the application and those documents.

"(2) Service of every such application must be effected—

"(a) Not fewer than 10 clear days before the day of the hearing of the application, if service is effected in New Zealand; or

"(b) Not fewer than 21 clear days before the day of the hearing of the application, if service is effected out of New Zealand.

Cf. S.R. 1996/148, r. 52 (2)

"461X. **Main applications to be served by Registrar**—(1) Except as otherwise provided by this Part, the Registrar must serve or cause to be served, without delay, every main application under the Act.

"(2) The Registrar may also in his or her discretion, and must on the direction of a Judge, serve or cause to be served any other document required to be served for the purpose of any proceeding under the Act.

"(3) In the case of a document that the Registrar is required to serve or cause to be served under this rule, the Registrar may authorise service to be effected by—

"(a) A bailiff; or

"(b) A member of the police, where—

"(i) No bailiff is available to serve the document; or

"(ii) The Court or the Registrar considers it appropriate in the circumstances; or

"(c) A solicitor for a party; or

"(d) A solicitor acting as agent for that solicitor; or

"(e) A person employed or engaged by a party or by either solicitor.

Cf. S.R. 1996/148, r. 43

"461Y. **Parties may not effect service**—Personal service of a document may not be effected by a party to the proceeding, but the party may be present when service is effected.

Cf. S.R. 1996/148, r. 51

"461Z. **Substituted service**—Where for any sufficient reason service of a document cannot be effected in the manner specified in relation to that document by these rules, the Court or a Registrar may give any direction provided for by rule 239 or make any order provided for by that rule.

"*Interlocutory Applications*

"461ZA. **Interlocutory applications**—The provisions of rules 255 to 257 and 260 to 299 apply, with all necessary modifications, to interlocutory applications made in any proceeding under the Act.

"461ZB. **Applications for enlarging time used as delaying tactic**—No order enlarging time may be made under rule 6 if it appears to the Court or the Registrar, as the case may be, that the application for the order is made with the principal object of delaying the proceeding to the detriment of the other party.

Cf. S.R. 1981/261, r. 56 (4)

"*Conferences*

"461ZC. **Power of Judge to call conference**—(1) For the purpose of ensuring that every application under the Act may be determined in a just, expeditious, and economical manner, a Judge may at any time, either on the application of either party or their solicitors or counsel or without such application, on such terms as the Judge thinks fit, direct the holding of a conference of—

"(a) Parties; or

"(b) The solicitors or counsel representing the parties.

"(2) The Judge must preside over the conference and may adjourn the conference from time to time and from place to place.

"(3) If the conference is held under subclause (1) (a), the solicitor or counsel representing any party may attend either in the place of the party or with the party.

"(4) If the conference is held under subclause (1) (b), any party who is not represented by a solicitor or counsel may attend the conference.

Cf. S.R. 1996/148, r. 71

"461ZD. **Orders and directions**—(1) At any conference held under rule 461ZC the Judge presiding may make such orders and give such directions as appear best adapted—

"(a) To ensure that the object of the Act (as set out in section 6) is attained; and

"(b) To secure the just, expeditious, and economical disposal of the application under the Act.

"(2) Without limiting the generality of subclause (1), the Judge may—

"(a) Settle the issues to be determined:

"(b) Direct by whom and within what time any affidavit or other document must be filed:

"(c) Require any party to make admissions in respect of questions of fact, and, if that party refuses or fails to make an admission in respect of any such question, require that party (subject to the direction of the Judge hearing the application) to bear the costs of proving that question at the hearing:

"(d) Abridge, extend, or fix a time for the filing of any document or the doing of any other thing:

"(e) Require further or better particulars of any facts or other circumstances connected with the application:

"(f) Fix a time and place for the hearing of the proceeding:

"(g) Give such consequential directions as may be necessary.

"(3) Where a party fails to comply with an order or a direction given or made under this rule, the Court may—

"(a) If the party failing to comply with the order or direction is the applicant, order the proceeding to be dismissed or stayed until the order is complied with:

"(b) If the party failing to comply with the order or direction is not the applicant, order that the party be allowed to defend or to appear at the hearing only on such terms as the Court considers appropriate:

"(c) Take the failure into account in exercising the Court's power to make an order as to costs.

"(4) Subclause (3) does not limit any other power the Court may exercise where a party fails to comply with an order or direction.

Cf. S.R. 1996/148, r. 72

"*Amendments*

"461ZE. **Amendment before service**—(1) The Registrar may, on the written request of the applicant at any time before the service of an application, amend the application filed in the Court.

"(2) The Registrar may, on the written request of the respondent, or any associated respondent, at any time before service of a notice of defence or a notice of opposition, amend the notice filed in Court.

Cf. S.R. 1996/148, r. 67

"*Transfer of Proceeding or Hearing*

"461ZF. **Transfer of proceeding**—A Court or Registrar may order that a proceeding in that Court be transferred to another Court if the Court or, as the case requires, the Registrar is satisfied that the proceeding can be more conveniently or fairly dealt with in that other Court.

Cf. S.R. 1996/148, r. 78

"461ZG. **Transfer of hearing**—A Court or Registrar may order that the hearing of an application filed in that Court be transferred to another Court if the Court or, as the case requires, the Registrar is satisfied that the application can be more conveniently or fairly heard in that other Court.

Cf. S.R. 1996/148, r. 79

"461ZH. **Transfer with or without application**—(1) A Court or Registrar may order a transfer under rule 461ZF or rule 461ZG—

"(a) On the Court's or, as the case requires, the Registrar's own motion; or

"(b) On the application of a party on not fewer than 3 clear days' notice.

"(2) Where a Registrar declines an application to transfer a proceeding or hearing, the applicant may ask the Court to review that decision; and in that case the Court may make such decision on the application as it thinks fit.

"(3) Where an order is made for transfer of a proceeding or hearing,—

"(a) The order must be endorsed on the application; and

"(b) The Registrar must cause notice of the transfer to be given to all parties.

Cf. S.R. 1996/148, r. 80

"461ZI. **Procedure on transfer of proceeding**—(1) Where an order is made under rule 461ZF for the transfer of a proceeding,—

"(a) The Registrar of the Court in which the order is made must send to the Registrar of the other Court all the documents in his or her custody relating to the proceeding; and

"(b) The Registrar of the Court to which the proceeding is transferred must enter the proceeding in the records of that Court.

"(2) On transfer, the proceeding continues as if it had been originally filed in the Court to which it has been transferred.

"(3) This rule applies with any necessary modifications to the transfer of a proceeding to the High Court under section 43 of the District Courts Act 1947.

Cf. S.R. 1996/148, r. 81

"461ZJ. **Procedure on transfer of hearing**—(1) Where an order is made under rule 461ZG for the transfer of a hearing,—

"(a) The Registrar of the Court in which the application is pending must—

"(i) Send to the Registrar of the other Court all the documents in his or her custody relating to the proceeding; and

"(ii) Note the records of the Court accordingly; and

"(b) The Registrar of the Court in which the proceeding is to be heard must make an appropriate entry in the records of the Court.

"(2) For the purposes of the hearing, the application must be dealt with as if it had been filed in the Court of hearing.

"(3) When the hearing is concluded,—

"(a) The Registrar of the Court of hearing must return all the documents relating to the proceeding, including every order that has been

made in that proceeding, to the Registrar of the Court from which the documents were sent; and

"(b) The Registrar to whom the documents are returned must record every order made in the proceeding in the records of the Court.

Cf. S.R. 1996/148, r. 82

"Form of Restraining Order

"461ZK. **Form of restraining order**—A restraining order must be in form 40G.

"Availability of Records for Criminal Proceedings

"461ZL. **Transfer of information to criminal court**—(1) In this rule, the term 'harassment offence' means an offence against—

"(a) Section 8 of the Act; or

"(b) Any other enactment in any case where the offence—

"(i) Is committed by a person against whom a restraining order is in force, or in respect of whom a proceeding on an application for a restraining order is pending, at the time the offence is committed; and

"(ii) Is committed against a person for whose protection the restraining order was made or has been applied for, as the case may be; and

"(iii) Consists of or includes a specified act within the meaning of section 4 of the Act.

"(2) This rule applies where, in the course of a criminal proceeding in respect of an harassment offence, there is reason to believe that—

"(a) The defendant in that criminal proceeding is or has been a respondent or an associated respondent to a proceeding ('the civil proceeding') under the Act for a restraining order; and

"(b) Information relating to the civil proceeding may be relevant to the criminal proceeding, including (without limitation) for the purposes of assisting with the preparation of a probation officer's report under section 15 of the Criminal Justice Act 1985.

"(3) Where this rule applies, the Court dealing with the criminal proceeding, or a Registrar of that Court, may request the Registrar of the Court in which the civil proceeding was brought to supply—

"(a) Information about the current status of the civil proceeding:

"(b) A copy of any order made in the civil proceeding.

"(4) A Registrar to whom a request is made under subclause (3) must, without delay, provide to the requesting Court or Registrar as much of the information requested as the requested Registrar has available to him or her."

Cf. S.R. 1996/148, r. 96

5. New forms inserted—The First Schedule of the principal rules is amended by inserting, after form 40, the new forms 40A to 40G set out in the Schedule.

Rule 5

SCHEDULE

NEW FORMS INSERTED IN FIRST SCHEDULE OF PRINCIPAL RULES

Rule 461H

Form 40A

HEADING FOR APPLICATIONS, NOTICES, AND ORDERS UNDER HARASSMENT ACT 1997

No. .....

In the District Court
at .....

HARASSMENT ACT 1997

Applicant
[*Give full name, *address, and occupation*]

Respondent
[*Give full name, *address, and occupation*]

*Associated Respondent
[*Give full name, address, and occupation*]

**Delete or omit if inapplicable*

NOTE

Rule 461N of the District Courts Rules 1992 permits the residential address of an applicant for a restraining order or of a protected person to be omitted from this heading if he or she wants the address to be kept confidential from the other parties.

SCHEDULE—*continued*

Form 40B Rule 461J (1)

APPLICATION FOR RESTRAINING ORDER

Section 9, Harassment Act 1997

(General heading—Form 40A and endorsement)

*I, [*Full name*], apply for a restraining order against [*Full name*], the respondent.

OR

*I, [*Full name of appointed representative*], the appointed representative of [*Full name of the applicant*], the applicant, apply on behalf of the applicant for a restraining order against [*Full name*], the respondent.

*The proposed duration of the order sought is a period of ..... [*State period if the order is sought for a period of more or less than 1 year*].

***Request for protection from respondent's associates**

*I seek a direction that the restraining order apply against [*Full name*], the associated respondent.

***Request for special conditions**

*I request that the following special conditions be part of the restraining order: [*Set out in sufficient detail the nature of the special conditions sought*].

Affidavit in support

I rely on the content of the affidavit dated [*Specify date*] (* of [*Name of deponent if deponent is not the applicant*]) filed in support of this application.

.....
Applicant

.....
Date

**Delete or omit if inapplicable*

Date of hearing
(*To be completed by the Registrar*)

I appoint [*Date*] at ..... a.m. (p.m.) at the District Court at ..... for the hearing of this application.

.....
Registrar

.....
Date

SCHEDULE—*continued*

Form 40B—*continued*

NOTES

Affidavit in support

An affidavit must be filed with this application. The affidavit must contain sufficient particulars to show the grounds on which you claim to be entitled to the order and to inform the Court of the facts relied on. In particular it must state the matters required to be stated by rule 461L of the District Courts Rules 1992.

Where the application is made by a representative, the accompanying affidavit or affidavits can be made by anyone with knowledge of the relevant facts.

Other accompanying documents

A notice of proceeding in form 40D must also be filed with this application.

Advice

If you need help, consult a lawyer or contact a District Court office immediately.

Office hours

The office of the District Court is open from ..... to ..... on Mondays to Fridays inclusive.

SCHEDULE—*continued*

Form 40C Rule 461J (2) and (3)

APPLICATION FOR *VARIATION *DISCHARGE OF RESTRAINING ORDER

(General heading—Form 40A and endorsement)

*I, [*Full name*], apply for an order that the restraining order made in the District Court at ..... on [*State date of order*] be varied by [*State precisely the nature of the variation sought by referring to section 22 (1) of the Act*].

*I, [*Full name*], apply for an order discharging the restraining order made in the District Court at ..... on [*State date of order*].

on the following grounds:
[*State grounds*]

Affidavit in support

I rely on the content of the affidavit dated [*Specify date*] (* of [*Name of deponent if deponent is not the applicant*]) filed in support of this application.

.....
Applicant

.....
Date

**Delete if inapplicable*

Date of hearing
(*To be completed by the Registrar*)

I appoint [*Date*] at ..... a.m. (p.m.) at the District Court at ..... for the hearing of this application.

.....
Registrar

.....
Date

Advice

If you need help, consult a lawyer or contact a District Court office immediately.

Office hours

The office of the District Court is open from ..... to ..... on Mondays to Fridays inclusive.

SCHEDULE—*continued*

Rule 461K

Form 40D

NOTICE OF PROCEEDING

Sections 9, 22, and 23 of the Harassment Act 1997

(General heading—Form 40A and endorsement)

To: [..... the respondent]

*[..... the associated respondent]

***Notification of application for restraining order**

[*Full name*] has filed an application for a restraining order against *you/*the abovenamed respondent.

***Notification of application for variation of restraining order**

[*Full name*] has filed an application for variation of the restraining order made in the District Court at ..... on ..... between [*Full name*], the protected person, and [*Full name*], the respondent, *and [*Full name*], the associated respondent.

***Notification of application for discharge of restraining order**

[*Full name*] has filed an application for discharge of the restraining order made in the District Court at ..... on ..... between [*Full name*], the protected person, and [*Full name*], the respondent, *and [*Full name*], the associated respondent.

***Notification of application for variation or discharge of restraining order by associated respondent**

[*Full name*], the associated respondent, has filed an application for *variation *discharge of the restraining order made in the District Court at ..... on ..... between [*Full name*], the protected person, and [*Full name*], the respondent, and [*Full name*], the associated respondent, in so far as the order affects *him *her.

A copy of the application is attached. The nature of the order or orders sought is specified in the application which also states the date of the hearing.

The applicant's address for service is: .....

.....

*Applicant/

*Applicant's Solicitor

.....

Date

**Delete or omit if inapplicable*

SCHEDULE—*continued*

Form 40D—*continued*

GENERAL INFORMATION

Notice of defence

If you wish to defend the application, you may file a notice of defence in the office of this Court at least **5 clear days** before the date of the hearing. An affidavit must be filed with the notice of defence. A copy of the notice of defence must be served on the other party. That copy may be delivered to the address for service given by that person.

If you do nothing, the hearing may proceed and the Court can make an order in your absence.

Address for service

If you do not wish to defend the application but you do wish to know what is happening, you should—

(a) File in this office of the Court a notice giving the address of a place in New Zealand at which documents can be left for you; and

(b) Serve a copy of the notice on the other party to the proceeding. That copy may be delivered to the address for service given by that person.

Advice

If you need help, consult a lawyer or contact a District Court office immediately.

Office hours

The office of the District Court is open from ..... to ..... on Mondays to Fridays inclusive.

SCHEDULE—*continued*

Rule 461N

Form 40E

NOTICE OF RESIDENTIAL ADDRESS AND REQUEST FOR CONFIDENTIALITY

(General heading—Form 40A and endorsement)

To: The Registrar
District Court
.....

*I, [*Full name*], am applying for a restraining order against [*Full name*], the respondent.

*I, [*Full name*], am a party to an application for a *variation *discharge of a restraining order made for my protection.

My residential address is [*Address*].

My contact telephone number(s) *is *are:
..... Home ..... Work

I request that my residential address and telephone numbers be kept confidential from the other *party *parties.

I have provided an address for service.

If your solicitor is using another solicitor as an agent to file the proceedings

*I also request that the name and address of my solicitor be kept confidential from the other *party *parties.

My solicitor's name and address is: [*Name and address*].

.....
Applicant

.....
Date

**Delete or omit if inapplicable*

SCHEDULE—*continued*

Form 40F Rule 461R

NOTICE OF DEFENCE

(General heading—Form 40A and endorsement)

I, [*Full name*], of [*Address*], [*Occupation*], the (*respondent) (*associated respondent) give notice that I intend to defend the application for [*Specify the order*].

Affidavit in support

I rely on the content of the affidavit dated [*Specify date*] filed in support of this notice.

.....
(*Respondent)
(*Associated Respondent)

.....
Date

To: The Registrar
The Applicant
(*The Respondent)
(*The Associated Respondent)

This notice is filed by ..... whose address for service is at .....

**Delete or omit if inapplicable*

SCHEDULE—*continued*

Rule 461ZK

Form 40G

RESTRAINING ORDER

Section 16, Harassment Act 1997

(General heading—Form 40A and endorsement)

Upon application, the Court makes a restraining order against [*Full name*], the respondent.

*The Court also directs that the order applies against the following person/s:

[*Full name of each person in respect of whom the Court makes a direction under section 18 (1) of the Act*].

The order expires on [*Date*] unless earlier extended.

CONDITIONS OF ORDER

This order protects [*Name of protected person*], the protected person. The conditions of the order are as follows:

Standard conditions prohibiting harassment and contact

It is a condition of this order that—

1. The respondent, and any associated respondent, must not—
   (a) Do, or threaten to do, any specified act (set out below) to the protected person; or
   (b) Encourage any person to do any specified act to the protected person, where the act, if done by the respondent or any associated respondent, would be prohibited by this order.

A "specified act" is any 1 of the following acts:

- Watching, loitering near, or preventing or hindering access to or from, the protected person's place of residence, business, employment, or any other place that the protected person frequents for any purpose; or
- Following, stopping, or accosting the protected person; or
- Entering, or interfering with, property in the possession of the protected person; or
- Making contact with that person (whether by telephone, correspondence, or in any other way); or
- Giving offensive material to the protected person, or leaving it where it will be found by, given to, or brought to the attention of, that person; or
- Acting in any other way—
  (i) That causes the protected person to fear for his or her safety; and
  (ii) That would cause a reasonable person in that person's particular circumstances to fear for his or her safety.

A specified act is regarded as being done to the protected person if—

(a) It is done to a person with whom the protected person is in a family relationship; and

(b) The doing of the act is due wholly or partly to the protected person's family relationship with that person.

SCHEDULE—*continued*

Form 40G—*continued*

***Special conditions**

The Court also imposes the following special conditions: [*Set out any special conditions imposed*].

Unless otherwise stated, these special conditions last until the order expires.

.....
Registrar

.....
Date

*IMPORTANT INFORMATION FOR RESPONDENT/ASSOCIATED RESPONDENT

Effect of restraining order

This order prohibits you from having contact with the protected person in any of the ways specified above. The order may also contain special conditions relating to contact between you and a protected person. You should read the terms of the order very carefully to find out what contact you may not have with a protected person and persons with whom the protected person has a family relationship.

Duration of restraining order

Unless the order states that this restraining order lasts for a different period, it will remain in force for 1 year from the date on which it was made.

Modification or discharge of this order

You (or any other party) can apply to the Court at any time—

(a) For a variation or discharge of any special conditions of this order, or for the imposition of a new special condition:

(b) For the duration of this order to be varied:

(c) For this order to be discharged.

Consequences of a breach of this order

If, without reasonable excuse, you—

(a) Contravene this order; or

(b) Fail to comply with any condition of this order,—

you commit an offence. The maximum penalty for this offence is imprisonment for 6 months or a $5,000 fine, or both. However, in the case of certain repeat offences, the maximum penalty for this offence increases to imprisonment for 2 years.

Advice

If you need help, consult a lawyer or contact a District Court office immediately.

SCHEDULE—*continued*

Form 40G—*continued*

Office hours

The office of the District Court is open from ..... to ..... on Mondays to Fridays inclusive.

***IMPORTANT INFORMATION FOR PROTECTED PERSON**

Effect of restraining order

The effect of this order is to prohibit the respondent or associated respondent from having contact with you in any of the ways set out in the order. This order may also contain special conditions relating to contact between you and the respondent or associated respondent.

The order also prevents the respondent or associated respondent from having contact with anyone with whom you have a family relationship if that contact is due partly or wholly to that relationship.

Duration of restraining order

Unless the order states that this restraining order lasts for a different period, it will remain in force for 1 year from the date on which it was made.

Modification or discharge of this order

You (or any other party, including the respondent or any associated respondent) can apply to the Court at any time—

(a) For a variation or discharge of any special conditions of this order, or for the imposition of a new special condition:

(b) For the duration of this order to be varied, if the Court is satisfied that an extension is necessary to protect you from further harassment:

(c) For this order to be discharged.

If the respondent or associated respondent makes any of these applications, you will be notified and have an opportunity to dispute the application.

Consequences of a breach of this order

If, without reasonable excuse, the respondent or associated respondent—

(a) Contravenes this order; or

(b) Fails to comply with any condition of this order,—

he or she commits an offence. The maximum penalty for this offence is imprisonment for 6 months or a $5,000 fine, or both. However, in the case of certain repeat offences, the maximum penalty for this offence increases to imprisonment for 2 years.

**Delete or omit if inapplicable*

SCHEDULE—*continued*

Form 40G—*continued*

Advice

If you need help, consult a lawyer or contact a District Court office immediately.

MARIE SHROFF,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the rules, but is intended to indicate their general effect.

These rules, which come into force on 1 May 1998, prescribe the procedure to be followed in respect of proceedings relating to restraining orders under the Harassment Act 1997.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette:* 2 April 1998.
These rules are administered in the Ministry of Justice and Department for Courts.