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CAYMAN ISLANDS



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**A BILL FOR A LAW TO PROVIDE PROTECTION IN CASES
INVOLVING DOMESTIC VIOLENCE; AND TO MAKE PROVISION
FOR INCIDENTAL AND CONNECTED MATTERS**

DISCUSSION DRAFT

THE PROTECTION AGAINST DOMESTIC VIOLENCE BILL, 2009

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to provide protection for specified categories of persons living within the household residence against acts of domestic violence by permitting them to make an application for one or more types of orders.

PART I - PRELIMINARY

Part I comprises clauses 1 to 3 and defines the words and terms used throughout the legislation.

Clause 1 provides the short title.

Clause 2 defines the various terms used for the purposes of the legislation including applicant, child, dependant, household residence, parent, prescribed person, respondent, spouse and visiting relationship.

Clause 3 identifies and defines the following conduct as that which would constitute an act of domestic violence committed against a prescribed person-

- (a) emotional or psychological abuse;
- (b) financial abuse;
- (c) physical abuse; or
- (d) sexual abuse.

PART II - PROTECTION, OCCUPATION AND TENANCY ORDERS

Part II comprises clauses 4 to 18 and identifies the types of orders for which an application may be made in respect of domestic violence conduct and the conditions and procedures attached to such orders.

Clause 4 provides for the different types of orders for which a victim of domestic violence may apply and it permits an application for an order to be made by a third party on behalf of a prescribed person.

Clause 5 permits the Court, after hearing an application for a protection order, to make an order prohibiting the respondent from committing any further specified act of domestic violence against a prescribed person. The Court is also empowered to entertain a protection order on an *ex parte* application under this clause.

Clause 6 specifies the terms that may be attached to the granting of a protection order.

Clause 7 provides for the factors that the Court shall take into consideration in determining whether or not to impose a prohibition or direction against a respondent when a protection order is granted.

Clause 8 deals with the matters to be specified in an interim order made on an *ex parte* application and it stipulates the matters for which the respondent is to be notified and the powers of the Court at the hearing of an interim order.

Clause 9 permits a respondent to apply to the Court for the discharge of a protection order.

Clause 10 provides for an application to be made to the Court by or on behalf of a prescribed person for an occupation order.

Clause 11 sets out the circumstances under which an *ex parte* application may be made to the Court for an occupation order.

Clause 12 provides for the variation or discharge of an occupation order.

Clause 13 requires the Court before making an occupation order other than an interim occupation order, to direct that notice be given to any person having an interest in the property which would be affected by the order.

Clause 14 provides for an application to be made to the Court by or on behalf of a prescribed person for a tenancy order vesting in the prescribed person, the tenancy of any household residence in which the respondent is either the sole tenant or a tenant holding jointly or in common with the prescribed person.

Clause 15 provides for an interim tenancy order to be made on an *ex parte* application if specific conditions are present.

Clause 16 permits a prescribed person to become the tenant of the household residence in which the respondent is currently a tenant and in such circumstances the respondent shall cease to be the tenant.

Clause 17 empowers the Court, on the application of the prescribed person or respondent or the legal representative of either party, to make a re-vesting order which re-vests the tenancy accordingly.

Clause 18 requires that notice be given to any person having an interest in the property which would be affected by a tenancy order.

PART III- ANCILLARY ORDERS

Part III consists of clauses 19 to 21 and provides for a range of ancillary orders that may be made in circumstances where a protection, occupation or tenancy order has been granted in favour of a prescribed person.

Clause 19 empowers the Court on making a protection order, an occupation order or a tenancy order, of its own volition or at the instance of an applicant, to make an order for the maintenance of any prescribed person entitled to be maintained by the respondent.

Clause 20 permits the Court after making an occupation order or a tenancy order, to make an order granting to the applicant the use of all the property in the household residence to which the occupation or tenancy order relates.

Clause 21 deals with an ouster order and provides that where an agreement, including a charge or a lease of premises provides that, if the respondent ceases to reside in his household residence, a person may take action that would be prejudicial to the interests of the respondent or a member of the respondent's household, that person is not entitled to take any action if the respondent ceases to reside in the household residence in compliance with either an occupation order or a tenancy order granted under this Law.

PART IV - OFFENCES, POWERS OF ARREST AND BAIL

Part IV consists of clauses 22 to 24 and deals with the offences, powers of arrest and bail as they relate to the breach of a protection, occupation and tenancy order.

Clause 22 makes it an offence for a respondent to contravene any terms of a protection order, an occupation order or a tenancy order, whether interim, or otherwise. Where a respondent commits such an offence he is liable on summary conviction to a fine of ten thousand dollars, to imprisonment for a term of one year or both.

Clause 23 deals with the police powers of arrest.

Clause 24 deals with the matters to be taken into consideration by the Court when deciding whether to grant bail to a respondent.

PART V- GENERAL

Part V comprises clauses 25 to 35 and deals with general provisions relating the application of this legislation.

Clause 25 preserves the right of a person to ownership of property.

Clause 26 protects the rights of a person entitled to the benefit of a charge and stipulates the circumstances under which such a right may be enforced.

Clause 27 identifies the persons that are authorised to be present at proceedings concerning the application for any order.

Clause 28 prohibits a person from publishing a report of any proceedings under the legislation unless he is first granted leave of the Court.

Clause 29 requires that the standard of proof to be applied when deciding a fact arising in proceedings other than criminal proceedings under this legislation should be on a balance of probabilities.

Clause 30 permits the Court to make an order by consent of all the parties.

Clause 31 requires the respondent or a prescribed person or both to participate in a counselling programme if the Court makes such an order.

Clause 32 provides a right of appeal to a person aggrieved by a Court order.

Clause 33 provides for the appropriate Rules to be made for the purpose of giving effect to this legislation.

Clause 34 repeals the Summary Jurisdiction (Domestic Violence) Law (1998 Revision).

Clause 35 contains savings and transitional provisions.

THE PROTECTION AGAINST DOMESTIC VIOLENCE BILL, 2009

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CAYMAN ISLANDS

A BILL FOR A LAW TO PROVIDE PROTECTION IN CASES INVOLVING DOMESTIC VIOLENCE; AND TO MAKE PROVISION FOR INCIDENTAL AND CONNECTED MATTERS

ENACTED by the Legislature of the Cayman Islands.

PART I - PRELIMINARY

1. This Law may be cited as the Protection Against Domestic Violence Law, 2009. Short title

2. In this Law- Interpretation

“apartment” means a separate and self-contained set of premises constructed for use as a place of residence and forming part of a building from some other part of which it is divided;

“applicant” means any person who applies or on whose behalf an application is made for an order, under this Law;

“charge” means an interest in land securing the payment of money or money’s worth or the fulfilment of any condition, and includes a sub-charge and the instrument creating a charge;

“child” means any individual under the age of eighteen who has never been married and who is-

- (a) a child of both parties to a marriage;
- (b) a child (whether or not a child of either party to a marriage) who is or has been living in the household residence as a member of the family;
- (c) a child of a man and a woman who, although not married to each other are living together or have lived together in the same household residence;
- (d) a child (whether or not a child of the man and woman referred to in paragraph (c) or either of them)-
 - (i) who is or has been a member of their household residence;
 - (ii) who resides in that household residence on a regular basis;
 - or
 - (iii) of whom either the man or woman is a guardian; or
- (e) a child that has a duly recognised mental impairment,

and includes an adopted child and a step-child;

“Court” means the Grand Court or a court of summary jurisdiction;

“dependant” includes-

- (a) a member of the family of a respondent who is a person eighteen years of age or older and ordinarily resides or resides on a regular basis with the respondent and is reliant on the respondent for his welfare or maintenance; and
- (b) a person who, by reason of physical or mental disability, age or infirmity, is reliant on the respondent for his welfare or maintenance;

“dwelling house” means a building used or intended to be used mainly as a separate dwelling or place of residence and includes an apartment;

“electronic” means relating to technology and having electrical, magnetic, optical, electromagnetic, or similar capabilities, whether digital, analogue or otherwise;

“*ex parte* application” means an application made without notice to the respondent;

“household residence” means the dwelling house that is used habitually by a prescribed person and the respondent as the only or principal family residence

together with any buildings or improvements appurtenant thereto and wholly or mainly used for the purposes of the household;

“member of the household residence” means a prescribed person who habitually resides in the same household residence as the respondent;

“occupation order” means an order made under section 10 and includes an interim order made under section 11;

“parent” means any person who is a parent or grandparent of a prescribed person or respondent and includes a step-parent or guardian;

“party to a marriage” includes a man and a woman who, although not married to each other, are living with each other in the same household residence as husband and wife;

“prescribed person” means the spouse, parent, child or dependant of the respondent or any person who is a member of the household residence or is in a visiting relationship with the respondent;

“police officer” means a member of the Royal Cayman Islands Police Service;

“protection order” means an order made under section 5 and includes an interim order made under that section;

“public general holiday” has the meaning assigned by the Public Holidays Law (2007 Revision) (2007 Revision);

“respondent” means a person who is named in an application made pursuant to this Law;

“spouse” includes-

- (a) a woman who cohabits with a man as if she were in law his wife;
- (b) a man who cohabits with a woman as if he were in law her husband; and
- (c) a former spouse;

“tenancy order” means an order made under section 14 and includes an interim order made under section 15;

“tenant”, in relation to a household residence, includes any person-

- (a) whose tenancy has expired or has been determined; and
- (b) who is for the time being deemed under or by virtue of any Court order or law to be the tenant of the household residence; and

“visiting relationship” means a close personal relationship-

- (a) between a man and a woman who do not share a common household residence; and
- (b) that is identifiable by virtue of its nature and intensity having regard to-
 - (i) the amount of time that the persons spend together;
 - (ii) the place where that time is ordinarily spent;
 - (iii) the manner in which that time is ordinarily spent;
 - (iv) the duration of the relationship; and
 - (v) the existence of a child (if any) of both parties.

Commission of domestic violence

3. (1) A person commits an act of domestic violence against a prescribed person where it is proved that his conduct caused or is intended to cause-

- (a) emotional or psychological abuse;
- (b) financial abuse;
- (c) physical abuse; or
- (d) sexual abuse.

(2) In this section-

“emotional or psychological abuse” means behaviour which is intended to harass or undermine the emotional or mental well-being of a prescribed person including-

- (a) intimidation by using abusive or threatening language in a manner calculated to cause annoyance to, instil fear in or result in ill-treatment of the prescribed person;
- (b) following the prescribed person to or waylaying him at any place;
- (c) depriving the prescribed person of the use of property;
- (d) watching or besetting of the place where the prescribed person resides, works or conducts business;
- (e) interfering with the property of the prescribed person;
- (f) damaging any property owned by, or available for the use or enjoyment of, the prescribed person, or any property in the care or custody or situated at the residence of the prescribed person;
- (g) forced confinement of the prescribed person;
- (h) the making of persistent telephone calls to the prescribed person at his place of residence, work or any other place where he resides or conducts his activities;
- (i) sending any data, text, mail, image, sound or code by electronic means to the prescribed person; and
- (j) making unwelcome and repeated or intimidating contact with the prescribed person;

“financial abuse” means behaviour which is intended to exercise coercive control over, exploit or limit a prescribed person’s access to financial resources so as to ensure financial dependence;

“physical abuse” means any act or omission which causes physical injury; and

“sexual abuse” includes sexual contact of any kind that is coerced by force or threat of force.

(3) Any act of abuse identified in subsection (1) which is committed on a single occasion shall be regarded as an act of domestic violence even though some or all of those acts, when viewed in isolation, may appear minor.

(4) Without prejudice to the generality of subsection (1), a person abuses a child if he-

- (a) causes or allows the child to see or hear the physical, sexual, emotional or psychological abuse of a person with whom the child resides; or
- (b) places the child, or allows the child to be placed at real risk of seeing or hearing the abuse described in paragraph (a).

PART II- PROTECTION, OCCUPATION AND TENANCY ORDERS

Application for Orders

4. (1) The Court may, on application by a prescribed person against whom an act of domestic violence has been committed, grant a protection order, an occupation order or a tenancy order in accordance with this Law.

Power of Court to grant a protection order, an occupation order or a tenancy order

(2) Where an act of domestic violence is alleged to have been committed against a child or a dependant, an application for an order under subsection (1), may be made by-

- (a) a person with whom the child or dependant ordinarily resides or resides on a regular basis;
- (b) a parent or guardian of the child or dependant;
- (c) a dependant who is not mentally disabled;
- (d) a person who is approved by the [Ministry responsible for children and family services]; or
- (e) a police officer.

(3) An application under subsection (1) may be made on behalf of a spouse, parent, member of the household residence or person in a visiting relationship with the respondent by-

- (a) a police officer; or
- (b) any other person, whether or not he is a member of the household residence, with the leave of the Court.

(4) In determining whether to grant leave under subsection (3)(b), the Court may take into account whether or not-

- (a) the application is-
 - (i) in accordance with the wishes of the prescribed person identified in subsection (3); or
 - (ii) in the best interests, of the prescribed person identified in subsection (3); and
- (b) there is any conflict between the interests of the person seeking leave and the prescribed person entitled to apply.

Protection Order

Application for a protection order

5. (1) On hearing an application for a protection order, the Court may make an order prohibiting the respondent from committing any further act of domestic violence specified in section 3(1) against a prescribed person if it is satisfied that-

- (a) the respondent has committed or threatened to commit an act of domestic violence against the prescribed person and is likely to repeat such acts; or
- (b) having regard to all the circumstances, the order is necessary for the protection of the prescribed person.

(2) A protection order may be made on an *ex parte* application if the Court is satisfied that the delay that would be caused by proceeding on summons may-

- (a) result in a risk to the personal safety of a prescribed person; or
- (b) cause the prescribed person serious or undue hardship.

(3) A protection order made on an *ex parte* application shall be an interim order.

(4) Where a protection order is granted on an *ex parte* application, it must be served personally on the respondent who may apply to the Court for it to be discharged.

Terms of protection order

6. (1) A protection order may-

- (a) prohibit the respondent from-
 - (i) engaging or threatening to engage in conduct which would constitute domestic violence towards the applicant;

- (ii) being on premises specified in the order, that are premises frequented by the applicant including any property, business, school or place of employment;
- (iii) being in a locality specified in the order;
- (iv) engaging in direct or indirect communication with the applicant;
- (v) taking possession of, damaging, converting or otherwise dealing with property that the applicant may have an interests in, or is reasonably used by the applicant;
- (vi) approaching the applicant within a specified distance;
- (vii) causing or encouraging another person to engage in conduct referred to in paragraphs (i) to (vi);
- (b) direct that the order be applied for the benefit of a child or dependant of the applicant or respondent; and
- (c) direct that the respondent-
 - (i) return to the applicant specified property that is in his possession or under his control;
 - (ii) pay compensation for monetary loss incurred by an applicant as a direct result of conduct that amounted to domestic violence;
 - (iii) pay interim monetary relief to the applicant for the benefit of the applicant and any child, where there is no existing order relating to maintenance until such time as an obligation for support is determined, pursuant to any other written law;
 - (iv) relinquish to the police any firearm licence, firearm or other weapon which he may have in his possession or control and which may or may not have been used;
 - (v) make or continue to make payments in respect of rent or charge payments for premises occupied by the applicant; or
 - (vi) ensure that reasonable care is provided in respect of a child or dependant person.

(2) A protection order may contain such other prohibitions and directions as consented to by the applicant or respondent or both.

(3) Where the Court makes an order which, among other things, directs the payment of compensation under subsection (1)(c)(ii), such compensation shall include, but not be limited to-

- (a) loss of earnings;
- (b) medical and dental expenses;
- (c) moving and accommodation expenses; and
- (d) reasonable legal costs, including the cost of an application pursuant to this Law.

(4) The Court shall have jurisdiction to award compensation not exceeding fifteen thousand dollars and the payment of such compensation shall be received by the Court on behalf of the applicant.

(5) Where the Court grants a protection order the Court may at the same time make an interim occupation or tenancy order.

(6) Where the Court makes an occupation order or an order which, among other things, directs the respondent to return to the applicant specified property that is in his possession or control, the Court may, in that same order, if it thinks necessary and notwithstanding any other law, direct the police to remove the respondent either immediately or within a specified time from the said place or residence, or to accompany the applicant either immediately or within a specified time to specified premises in order to supervise the removal of property belonging to the applicant and to ensure the protection of that person.

(7) A protection order may be made for such period as the Court considers necessary but shall not exceed three years.

(8) Where the order contains any prohibitions or directions, the Court may specify different periods, none of which shall exceed three years as the period for which each prohibition or direction shall remain in force.

Matters to be considered

7. In determining whether or not to impose one or more of the prohibitions or directions specified under section 6, the Court shall have regard to the following-

- (a) the nature, history or pattern of the violence that has occurred and whether a previous protection order or interim order has been issued;
- (b) the need to protect the applicant and any other person for whose benefit the protection order has been granted from further domestic violence;
- (c) the welfare of any child;
- (d) the accommodation needs of the applicant and any other person;
- (e) the hardship that may be caused as a result of making of the order;
- (f) the income, assets and financial obligations of the respondent, the applicant and any other person affected by the order;
- (g) the need to preserve and protect the institution of marriage and other relationships whilst affording protection and assistance to the family as a unit; or
- (h) any other matter, that in the circumstances of the case, the Court considers relevant.

8. (1) An interim order made under section 5, 11 and 15 of this Law on an *ex parte* application shall specify a date for a hearing which shall be as soon as practicable thereafter to determine whether an order shall be made in substitution for the interim order. Interim orders

(2) The copy of an interim order which is served on the respondent shall notify the respondent that unless the he attends Court on the date specified in the order to show cause why an order should not be made in substitution for the interim order, the Court may discharge the interim order and make an another order in substitution.

(3) At the hearing referred to in subsection (1), the Court may-

- (a) discharge the interim order;
- (b) discharge the interim order and make a substituted order; or
- (c) on good cause being shown, adjourn the hearing to a date and place as the Court may specify.

(4) Where a hearing is adjourned under subsection (3)(c) the Court shall, at the adjourned hearing, exercise either the power conferred by paragraph (a) or (b) of that subsection.

(5) In this section-

“interim order” means an interim protection order, interim occupation order or interim tenancy order; and

“order” means a protection order, an occupation order or a tenancy order, not being an interim order.

9. (1) A respondent may apply to the Court for the discharge of a protection order. Application by respondent for discharge of a protection order

(2) A copy of an application made under subsection (1) shall be served personally on each person who was a party to the proceedings in which the original order was made.

(3) In determining whether to discharge a protection order the Court shall have regard to the matters referred to in section 5(1).

Occupation Order

10. (1) An application may be made to the Court by or on behalf of a prescribed person for the grant of an occupation order. Application for an occupation order

(2) Subject to subsection (3), the Court may, on an application under subsection (1), make an occupation order granting to the prescribed person, for such period and on such terms and subject to such conditions as the Court thinks fit, the right to occupy the household residence to the exclusion of the respondent.

(3) The Court may make an order under subsection (2) only if it is satisfied that such an order-

- (a) is necessary to protect the prescribed person from an act of domestic violence; or
- (b) would be in the best interests of a child.

Ex parte application for an occupation order

11. (1) An occupation order may be made on an *ex parte* application if the Court is satisfied that-

- (a) the respondent has committed or threatened to commit, an act of domestic violence against a prescribed person; and
- (b) the delay that would be caused by proceeding on summons-
 - (i) will or may result in a risk to the personal safety of a prescribed person; or
 - (ii) cause the prescribed person serious or undue hardship.

(2) An occupation order made on an *ex parte* application shall be an interim order and served personally on the respondent.

(3) Where the Court grants an occupation order on an *ex parte* application, the Court may at the same time make an interim protection order.

(4) An occupation order which is made on an *ex parte* application while the prescribed person and the respondent are living together in the same household residence expires-

- (a) on the discharge of the order by the Court; or
- (b) on the discharge of an interim protection order made pursuant to subsection (3).

Variation or discharge of an occupation order

12. (1) The Court may, if it thinks fit, on the application of the applicant or respondent, make an order-

- (a) extending or reducing any period specified by the Court pursuant to section 10(2); or
- (b) varying or discharging any terms and conditions imposed by the Court under that section.

(2) Where an occupation order is made on an *ex parte* application, the respondent may apply for a variation or discharge of that order.

13. (1) Before making an occupation order (other than an interim occupation order) the Court shall direct that notice be given to any person having an interest in the property which would be affected by the order.

Procedure relating to
occupation orders

(2) The person referred to in subsection (1) shall, upon being notified pursuant to that subsection, be entitled to appear and be heard in the matter of the application for the occupation order as a party to that application.

Tenancy Order

14. (1) An application may be made to the Court by or on behalf of a prescribed person for a tenancy order vesting in the prescribed person the tenancy of any household residence-

Application for a
tenancy order

- (a) of which the respondent is either the sole tenant or a tenant holding jointly or in common with the prescribed person; and
- (b) which is the household residence of the prescribed person or the respondent,

at the time of the making of the order.

(2) The Court may make a tenancy order in an application under subsection (1) on such terms and conditions as it thinks fit including a condition that the respondent shall continue to maintain and pay the whole or part of the rent as may seem to the Court to be appropriate in the circumstances of the case, taking into consideration the financial circumstances of both parties, if it is satisfied that such an order-

- (a) is necessary for the protection of a prescribed person; or
- (b) is in the best interests of a prescribed person.

15. (1) A tenancy order may be made on an *ex parte* application if the court is satisfied that the-

Ex parte tenancy order

- (a) respondent has committed or threatened to commit an act of domestic violence against a prescribed person; and
- (b) the delay that would be caused by proceeding on summons-
 - (i) will or might result in a risk to the personal safety of a prescribed person; or
 - (ii) cause the prescribed person serious or undue hardship.

(2) Any tenancy order made on an *ex parte* application shall be an interim order.

(3) Where the Court makes a tenancy order on an *ex parte* application the Court shall, at the same time, make an interim protection order unless the Court considers that there are special reasons why such an order should not be made.

(4) A tenancy order which is made on an *ex parte* application while a prescribed person and the respondent are living together in the same household residence expires-

- (a) on the discharge of the tenancy order granted by the Court;
- (b) on the discharge of an interim protection order made under subsection (3); or
- (c) in any other case, at the expiration of a period of seven days after the date on which the order was made.

(5) Where a tenancy order is made on an *ex parte* application, the respondent may apply immediately for variation or discharge of that order.

Prescribed person shall become tenant

16. (1) Where a tenancy order is made the prescribed person shall, unless the tenancy is sooner determined, become the tenant of the household residence subject to the terms and conditions of the tenancy in force at the time of the making of that order and the respondent 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 prescribed person.

Revesting order

17. (1) The Court may, if it thinks fit, on the application of-

- (a) the prescribed person or respondent; or
- (b) the legal representative of either party,

make a revesting order which revests the tenancy accordingly.

(2) Where a revesting order is made under subsection (1), the person in whose favour it is made shall, unless the tenancy is sooner lawfully determined, become the tenant of the household residence subject to the terms and conditions of the tenancy in force immediately before the date on which the revesting order was made.

Notice of tenancy order

18. (1) Before making any tenancy order other than an interim tenancy order, the Court shall direct that notice be given to any person having an interest in the property which would be affected by the order.

(2) The person referred to in subsection (1) shall, upon being notified pursuant to that subsection, be entitled to appear and to be heard in the matter of the application for the tenancy order as a party to that application.

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

make a tenancy order, whether or not it makes an occupation order, if it is satisfied that-

- (a) it has jurisdiction to make the tenancy order and that the making of such an order is appropriate; and
- (b) subsection (1) has been complied with in respect of the making of a tenancy order.

PART III- ANCILLARY ORDERS

19. (1) On making a protection order, an occupation order or a tenancy order, the Court may at the same time and of its own volition or at the instance of an applicant, make an order in accordance with the provisions of the Maintenance Law (1996 Revision), for the maintenance of any prescribed person entitled to be maintained by the respondent if no such order for maintenance is already in force.

Maintenance order
(1996 Revision)

(2) The duration of an order for maintenance under this section shall not exceed the duration of a protection order, an occupation order or a tenancy order.

20. (1) Subject to subsection (2), the Court may on or after making an occupation order or tenancy order, make an order granting to the applicant the use of all or any of-

Order granting use of
furniture etc.

- (a) the furniture;
- (b) the household appliances;
- (c) household effects; and
- (d) any other property,

in the household residence to which the occupation or tenancy order relates for such period and subject to such terms and conditions as the Court thinks fit.

(2) An order made under subsection (1) shall continue in force for a period of three months from the date of the making thereof unless the Court otherwise directs but shall expire before that period if the occupation or tenancy order expires or is discharged.

21. (1) Where an agreement, including a charge or a lease of premises provides that, if the respondent ceases to reside in his household residence, a person may take action that would be prejudicial to the interests of the respondent or a member of the respondent's household, that person is not entitled to take any action if the respondent ceases to reside in the household residence in compliance with either an occupation order or a tenancy order granted under this Law.

Ouster order

(2) Where the Court is satisfied on evidence before it that an agreement referred to in subsection (1) exists in relation to the respondent, the Court shall at

the time of making an order described in subsection (1), direct that a notice of such order be sent by the Clerk of the Court to the person referred to in subsection (1) notifying him of such order and the provisions of subsection (1).

PART IV- OFFENCES, POWERS OF ARREST AND BAIL

Breach of a protection order, an occupation order or tenancy order

22. (1) Where a protection order, an occupation order or a tenancy order, whether interim, or otherwise, is made and-

- (a) is served personally on the respondent; and
- (b) the respondent contravenes the order in any respect,

the respondent commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of one year or both.

(2) In the case of a continuing breach of an order specified in subsection (1), the respondent may be ordered by the Court to pay a further sum of one hundred dollars for each day that such breach continues after the date of its proof and in reckoning for the purposes of this subsection any period of twenty-four hours, no account shall be taken of any Saturday, Sunday or a public general holiday.

Powers of arrest

23. (1) Subject to the provisions of this section, where an order specified in section 22(1) is in force, a police officer may arrest without warrant a respondent whom he has reasonable cause to suspect of having committed a breach of that order.

(2) A respondent shall not be arrested pursuant to this section unless a police officer believes that his arrest is reasonably necessary for the protection of a prescribed person.

(3) For the purposes of subsections (1) and (2), a police officer shall take into account-

- (a) the seriousness of the act which constituted the alleged breach;
- (b) the time that has elapsed since the alleged breach was committed; and
- (c) the restraining effect of other persons or circumstances on the respondent.

(4) A respondent who is arrested under this section shall be-

- (a) entitled to make a telephone call to one person of his choice other than the applicant;
- (b) informed by the police officer who arrested him of his rights conferred by paragraph (a); and

- (c) taken before the Court within a period of forty-eight hours beginning at the time of his arrest.

24. (1) Notwithstanding any other law to the contrary, where the court is required to determine whether to grant bail to a respondent in respect of an offence under this Law, the matters that it shall take into account include-

Bail

- (a) the need to ensure that a prescribed person is protected from domestic violence;
- (b) the welfare of a child; and
- (c) any hardship that may be caused to the respondent or to members of the respondent's household residence if bail is not granted or a particular condition is imposed.

(2) The Court may grant bail on such terms and conditions as it thinks fit and any person who contravenes or fails to comply with any condition of bail is liable to be rearrested.

PART V- GENERAL

25. Nothing in this Law shall be deemed to alter any right a person may have to ownership of property.

Property ownership

26. (1) The rights conferred on any person in respect of any property by an order made under this Law shall be subject to the rights of any other person entitled to the benefit of any charge affecting the property if such charge was registered before the making of the order or if the rights of the person entitled to the benefit arise under an instrument executed before the date of the making of the order.

Protection of charge

(2) Notwithstanding anything in any enactment or in any instrument, no money payable under any such charge shall be called up or become due by reason of the making of an order under this Law.

27. (1) No person shall be present during the hearing of any proceedings under this Law unless such proceedings are criminal proceedings and the person is-

Conduct of proceedings

- (a) an officer of the Court;
- (b) a party to the proceedings;
- (c) the attorney-at-law for a party to the proceedings;
- (d) a witness; or
- (e) any other person permitted by the Court to be present.

(2) Nothing in this section shall limit any other power of the Court to hear proceedings in camera or to exclude any person from the Court.

Restriction on publication of proceedings

28. (1) No person shall publish a report of any proceedings under this Law unless he is first granted leave of the Court which heard the proceedings.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of two thousand dollars or to imprisonment for a term of six months or both.

(3) Nothing in this section limits-

- (a) the provisions of any other enactment relating to prohibition or regulation of the publication of reports or particulars relating to judicial proceedings; and
- (b) the power of the Court to punish any contempt of court.

Standard of proof

29. A question of fact arising in any proceedings under this Law (other than criminal proceedings) shall be decided on a balance of probabilities.

Orders by consent

30. In any proceedings under this Law, the Court may make an order by the consent of all the parties to such consent proceedings.

Counselling

31. (1) The Court may, on making an order under this Law, order that either the respondent or a prescribed person or both, participate in a counselling programme as the Court may specify.

(2) Where the Court makes an order which directs counselling under subsection (1) the order shall specify-

- (a) that the Court receive written notification from the counselor or therapist of sessions missed without reasonable excuse; and
- (b) the date by which the counselor or therapist shall submit a report to the Court in respect of the counselling or therapy.

(3) A report under subsection (2) shall include a prognosis for resolution.

Appeals

32. (1) A person aggrieved by-

- (a) the making of an order by the Court; or
- (b) the refusal of the Court to make an order,

may appeal where applicable to the Grand Court or Court of Appeal.

(2) The operation of an order shall not be stayed pending an appeal unless the court, upon an application and having regard to the circumstances, otherwise directs.

33. The Rules Committee, constituted under section 19 of the Grand Court Law (2008 Revision) may- Rules
(2008 Revision)

- (a) make Rules of Court under that section; or
- (b) make Summary Court Rules under section 44 of the Summary Jurisdiction Law (2006 Revision), (2006 Revision)

for the purpose of giving effect to this Law, and the Rules Committee may in particular, but without prejudice to the generality of this section, make provision for the hearing without delay of any application for an order and the procedure upon giving notice of appeal from decisions of a Court and the giving of any recognisance thereupon.

34. The Summary Jurisdiction (Domestic Violence) Law (1998 Revision) is repealed. Repeal of the Summary Jurisdiction (Domestic Violence) Law (1998 Revision)

35. (1) Any rule made under the former Law and in force immediately before the coming into force of this Law, so far as it is not inconsistent with the provisions of this Law, continues in force as if made under this Law. Savings and transitional provisions

(2) Except as may be expressly provided in this Law, this Law does not affect the rights of any party to any proceeding commenced in any court before this Law came into force.

(3) Every application, matter and proceeding filed or commenced in a court under the former Law and partly dealt with immediately before this Law came into force, may be continued, completed, enforced and dealt with in all respects as if this Law had not come into force.

(4) Every application, matter and proceeding filed or commenced in a court under the former Law and not wholly or partly dealt with immediately before this Law came into force, shall be taken to be an application, matter or proceeding commenced under this Law, and the provisions of this Law are to apply accordingly.

(5) In the case of an appeal under the former Law that has been commenced but not finally determined before this Law comes into force, the Court shall continue to deal with the appeal as if this Law had not come into force and when the appeal is finally determined, the former Law shall apply as if the appeal had been finally determined before this Law came into force.

(6) In this section-

“the former Law” means the Summary Jurisdiction (Domestic Violence) Law (1998 Revision). (1998 Revision)

Passed by the Legislative Assembly the day of , 2009.

Speaker.

Clerk of the Legislative Assembly.

DISCUSSION DRAFT