

SAINT LUCIA. Domestic Violence (Summary Proceedings) Act, 1995 (Act No. 7 of 1995), 20 April 1995. (*Saint Lucia Gazette*, 1995, pp. 111-127.)

Part I. *Preliminary*

2. In this Act --

"applicant" means any person who applies or on whose behalf an application is made, pursuant to this Act, for an order;

"child" means a person under the age of 18 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 or have lived together in the same household; or

(d) a child, whether or not a child of the man and woman referred to in paragraph (c) or either of them who --

(i) is or has been a member of their household;

(ii) resides in that household on a regular basis; or

(iii) is a child of whom either the man or woman is a guardian;

"cooling off period" means a period not exceeding two days;

"court" means the Family Court or a court of summary jurisdiction;

"common law spouse" in relation to a person, means someone of the opposite sex who is living with that person as husband or wife although not legally married to that person;

"dependant" in relation to a person includes a dependant person under the age of eighteen years who normally resides or resides on a regular basis with the first-mentioned person;

"domestic violence" means any act of violence whether physical or verbal abuse perpetrated by a member of a household upon a member of the same household which causes or is likely to cause physical, mental or emotional injury or harm to the abused party or any other member of the household;

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

"household residence" means --

(a) in relation to both spouses, the dwelling-house that is habitually used by both parties or either of them as the only or principal family residence together with any land, buildings or improvements appurtenant to it and wholly or mainly used for the purpose of the household;

(b) in relation to a man or a woman who are no longer spouses, the dwelling-house that was last habitually used by either of them, before or after they ceased to be spouses, as the only or principal family residence, together with any land, buildings, or improvements appurtenant to it, used wholly or mainly for the purpose of the household;

"Minister" means the Minister responsible for Social Affairs;

"occupation order" means an order made under section 7 and includes an interim order made under that section;

"parent" means --

(a) the parent or grandparent of a spouse;

(b) the parent or grandparent of a respondent, either by consanguinity or affinity; or

(c) the parent of a child of the household;

"specified person" means the spouse of the respondent, a parent, a child or dependant of that person;

"spouse" includes a former spouse, common law spouse and former common law spouse;

"protection order" means an order or interim order made under section 4;

"respondent" means a person against whom an order is granted pursuant to this Act;

"tenancy order" means an order made under section 11 or an interim order made under section 12;

"tenant", in relation to any dwelling house, 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 enactment or rule of law to continue to be the tenant of the dwelling house.

3. (1) An application for an order other than a tenancy order under this Act may be made by --

(a) the spouse of the respondent who is the person on whom the alleged conduct has been, or is likely to be perpetrated by the respondent;

(b) any member of the household on his own behalf or on behalf of any other member of the household; or

(c) the parent of the specified person or of the respondent though not residing in the household, on behalf of the specified person;

(2) The application under subsection (1) may be made by --

(a) a person with whom the child or dependant normally resides or resides on a regular basis or any other member of the household; or

(b) a parent or guardian of the child or dependant;

where the alleged conduct involves a child or dependant.

(3) The application under subsection (1) may be made by --

(a) a person experienced or qualified in social welfare approved by the Minister in writing; or

(b) a police officer; or

(c) a person holding the office or performing the duties of a probation officer or medical social worker

where the dependant is mentally disabled.

(4) An application for a tenancy order may be made by the respondent's spouse in the circumstances in subsection (1)(a) or by a parent or guardian of a child or a dependant.

4. (1) Application may be made to the court in accordance with Form 1 of the Schedule for a protection order prohibiting the respondent --

(a) from entering or remaining in the household residence of a specified person;

(b) from entering or remaining in a specified area where the household residence of a specified person is located;

(c) from entering the place of work or education of a specified person;

d. from entering or remaining in any place where a specified person happens to be;
or

e. from molesting a specified person by --

(i) watching or besetting the specified person's household residence, place of work or education;

(ii) following or waylaying the specified person in any place;

(iii) making persistent telephone calls to a specified person; or

(iv) using abusive language or behaving towards a specified person in any other manner which is of such nature and degree as to cause annoyance to, or result in ill-treatment of the specified person.

(2) On hearing an application under subsection (1) the court may make a protection order if it is satisfied that --

(a) the respondent has used, or threatened to use, violence against, or caused physical, mental or emotional injury to a specified person and is likely to do so again; or

(b) having regard to all the circumstances, the order is necessary for the protection of a specified person,

and the court may, if it thinks fit, attach a power of arrest to the order.

(3) 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 notice would or might entail --

(a) risk to the personal safety of a specified person; or

(b) serious injury or undue hardship.

(4) Any protection order made on an *ex parte* application shall be an interim order.

(5) Where a protection order is granted on an *ex parte* application, the respondent may apply immediately for it to be discharged.

5. (1) Where a protection order or an interim protection order is made and --

(a) it 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 conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(2) Subject to this section, where a protection order is in force, a police officer may arrest without warrant a person who he has reasonable cause to suspect has committed a breach of the order.

(3) No person shall be arrested under this section unless the police officer believes that the arrest of that person is reasonably necessary for the protection of the applicant.

(4) For the purpose of subsection (2), the police officer shall take into account --

- (a) the seriousness of the act which constituted the alleged breach; and
- (b) the restraining effect of other persons or circumstances on the respondent.

(5) Notwithstanding this section a police officer may in the absence of a protection order take such steps as may be necessary and appropriate including the exercise of the power of arrest for the protection of any member of a household where he knows or has good cause to believe that a person is the object of domestic violence and is likely to be further abused.

6. (1) A protection order may cease to have effect if a party to the proceedings in which the order was made applies to the Court for it to be discharged.

(2) A copy of an application 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 4 (2).

Part II. Occupation Orders

7. (1) Application may be made in accordance with Form 2 of the Schedule to the court for an occupation order granting a specified person named in the order the right to live in the household residence.

(2) Subject to section 14 and subsection (3) of this section, the Court may, on an application under subsection (1), make an occupation 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 to occupy the household residence or any other premises forming part of the household residence.

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

(a) is necessary for the protection of a specified person; or

(b) is in the best interest of a child.

8. (1) Where an occupation order is made, the specified person to whose benefit it is made is entitled, to the exclusion of the respondent, personally to occupy the household residence to which that order relates.

(2) The conditions attached to an occupation order may include such arrangements as may be necessary for the financial support of the member of the household where appropriate.

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

(a) the respondent has used violence against or caused physical or mental injury to a specified person; and

(b) the delay that would be caused by proceeding on notice could or might expose the specified person to physical injury.

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

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

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

(a) on the discharge of the occupation order by the Court;

(b) on the discharge of an interim protection order made pursuant to subsection (3); or

(c) in any other case, at the expiration of a period of seven days after the date on which the occupation order was made.

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

10. The Court may, if it thinks fit, on the application of either party, make an order --

(a) extending or reducing any period specified by the Court pursuant to subsection (2) of section 7; or

(b) varying or discharging the terms and conditions imposed by the Court pursuant to that subsection.

Part III. Tenancy Orders

11. (1) An application may be made to the Court in accordance with Form 3 of the Schedule for a tenancy order vesting in the applicant, the tenancy of any dwelling house --

(a) of which the respondent is either the sole tenant or a tenant holding jointly or in common with the applicant; and

(b) which is the household residence of the applicant or the respondent,

at the time of the making of the order.

(2) Subject to section 16, the Court may make a tenancy order in an application under subsection (1) if the court is satisfied that such an order --

(a) is necessary for the protection of the applicant; or

(b) is in the best interest of a child or a dependant,

on such terms and conditions as the Court may think 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 means of both parties.

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

(a) the respondent has used violence against, or caused physical or mental injury to, the applicant, child or dependant; and

(b) the delay that would be caused by proceeding on notice would or might expose the applicant, child or dependant, to physical injury.

(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 the applicant and the respondent are living together in the said household shall expire --

(a) on the discharge of the tenancy order 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.

13. (1) Where a tenancy order is made the applicant shall, unless the tenancy is sooner determined, become the tenant of the dwelling-house 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 applicant.

(3) Nothing in this Act or in any tenancy order --

(a) limits or affects the operation of any enactment or rule of law for the time being applicable to any tenancy to which a tenancy order applies, or to the dwelling-house held under the tenancy; or

(b) authorizes the Court to vary, except by vesting the tenancy pursuant to section 15, any express or implied term or condition of the tenancy.

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

(a) the applicant or respondent; or

(b) the legal representative of either party,

make an order (in this section referred to as a "revesting order") revesting 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 dwelling house subject to the terms and conditions of the tenancy in force immediately before the date on which the revesting order was made.

Part IV. *Provisions Relating to Occupation Orders and Tenancy Orders*

15. (1) Before making any occupation order other than an interim occupation order or 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 occupation order or tenancy order as a party to that application.

(3) 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 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.

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

(a) it has jurisdiction to make an occupation 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 an occupation order.

16. (1) On or after making an occupation order or a tenancy order, the court may, subject to subsection (2), make an order granting the applicant the use, for such period, on such terms and subject to such conditions as the court thinks fit, all or any of --

(a) the furniture;

(b) household appliances; and

(c) household effects,

in the household residence or other premises to which the occupation order relates or in the dwelling-house to which the tenancy order relates.

(2) Notwithstanding subsection (1), an order made under that subsection shall continue in force for a period of three months beginning on the date on which the order is made unless the Court otherwise directs, but in any event, shall expire if the occupation order made in relation to the household residence or other premises or the tenancy order made in relation to the dwelling-house expires or is discharged.

17. (1) Every interim order made under this Act on an *ex parte* application shall specify 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 which is served on the respondent shall notify the respondent that unless he attends on the specified date 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 order in substitution therefor.

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

(a) discharge the interim order; or

(b) discharge the interim order and make an order in substitution for it; or

(c) on good cause being shown, adjourn the hearing to such 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 by paragraph (b) of that subsection.

(5) In this section --

"interim order" means an interim protection order, an interim occupation order or an interim tenancy order as the case may be;

"order" means a protection order, an occupation order or a tenancy order, as the case may be, not being an interim order.

Part V. Miscellaneous Provisions

18. (1) No person shall be present during the hearing of any proceedings under this Act except --

(a) officers of the Court;

(b) parties to the proceedings and their counsel;

(c) witnesses; or

(d) any other person permitted by the Magistrate to be present.

(2) A witness shall leave the courtroom if asked to do so by the Magistrate.

(3) 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.

19. Every question of fact arising in any proceedings under this Act (other than criminal proceedings) shall be decided on a balance of probabilities.

20. (1) Subject to subsection (4), no person shall publish any report of proceedings under this Act (other than criminal proceedings) except with the leave of the Court which heard the proceedings.

(2) Any person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

(3) Nothing in this section limits --

(a) the provisions of any other enactment relating to the prohibition or regulation of the publication of reports or particulars relating to judicial proceedings; or

(b) the power of the Court to punish any contempt of court.

(4) This section shall not apply to the publication of any report in any publication that --

(a) is of a *bona fide* professional or technical nature; or

(b) is intended for circulation among members of the legal or medical professions, officers of the Public Service, psychologists, marriage counsellors or social welfare workers.

21. In any proceedings under this Act a Court may make any order with the consent of all the parties to such proceedings.

22. (1) The Court shall, on making an order under this Act, recommend either or both parties to participate in counselling of such nature as the Court may specify.

(2) A party who refuses or neglects to attend such counselling may be summoned to re-appear before the Court and may, in the absence of reasonable excuse, be fined a sum not exceeding five hundred dollars.

23. (1) Any person aggrieved by --

(a) an order by the Court; or

(b) the refusal of the Court to make an order,

may, within twenty-eight days after the decision of the Court, appeal to the High Court.

(2) Except where the Court which makes an order under this Act otherwise directs, the operation of such order shall not be suspended by virtue of an appeal under this section, and every order may be enforced in the same manner and in all respects as if no appeal under this section were pending.

24. (1) Any person who perpetrates domestic violence commits an offence and is liable summarily to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(2) Any person found guilty of an offence under this Act for which no penalty is prescribed shall be liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

25. (1) The rights conferred on any person in respect of any property by an order made under this Act shall be subject to the rights of any other person entitled to the benefit of any mortgage, security, charge or encumbrance registered before the order was registered or if the rights of that other person entitled to that benefit arise under an instrument executed before the date of the making of the order.

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

26. Rules of Court may be made for the purpose of regulating the practice and procedure of the Court in proceedings under this Act, providing for such matters as are necessary for giving full effect to this Act and for its administration.

27. This Act shall be in addition to and not in derogation of any jurisdiction of the High Court in respect of matters referred to in this Act.

28. Nothing in this Act shall be construed as altering the right of a spouse to ownership of property.