



ST CHRISTOPHER AND NEVIS

CHAPTER 12.04

DOMESTIC VIOLENCE ACT

and subsidiary legislation

Revised Edition

showing the law as at 31 December 2009

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Domestic Violence Act

Act 3 of 2000 in force 3rd April, 2004

Amended by Act 10 of 2005

Revision Date: 31 Dec 2009

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CHAPTER 12.04

DOMESTIC VIOLENCE ACT

AN ACT to make provision for the protection of any person subjected to domestic violence, and to provide for related or incidental matters.

PART I – PRELIMINARY

1. Short title.

This Act may be cited as the Domestic Violence Act.

*[Section 2 was omitted and as a result sections 3 to 22 inclusive)
have been renumbered accordingly]*

2. Interpretation.

In this Act,

“child” means

- (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 or have lived together in the same household;
- (d) a child, whether or not a child of the man and woman referred to in paragraph (c) or either of them,
 - (ii) who resides in that household residence on a regular basis, or
 - (iii) who of whom either the man or woman is a guardian;

“court” means a Family Court, High Court or a court of summary jurisdiction;

[Amended by Act 10/2005]

“de facto spouse” in relation to a person, means a person of the opposite sex to the first-mentioned person, who is living with the first-mentioned person as the person’s husband or wife although not legally married to the first - mentioned person;

“dependant”, in relation to a person, includes a person

- (a) who is over the age of eighteen years; and
- (b) who normally resides or resided on a regular basis with the first-mentioned person;

“domestic violence offence” means a prescribed offence committed by a person against

- (a) a spouse of the person;
- (b) a child or dependant of the person or of a spouse of the person;
or
- (c) a parent;

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

“financial abuse” means a pattern of behavior of a kind, the purpose of which is to exercise coercive control over or to exploit or limit a person’s access to financial resources so as to ensure financial dependence on another person;

[Inserted by Act 10/2005]

“household residence” means,

- (a) in relation to both spouses, the dwelling house that is used habitually by both spouses or either of them as the only or principal family residence together with any land, buildings or improvements appurtenant thereto and wholly or mainly used for the purposes of the household;
- (b) in relation to a man or a woman who are no longer spouses, the dwelling that was last used, habitually, 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 thereto and used wholly or mainly for the purposes of the household;

“Minister” means the Minister responsible for Women’s Affairs, but where a Ministry of Gender Affairs is established Minister shall mean the Minister responsible for Gender Affairs;

“occupation order” means an order made under section 10 or 12 of this Act;

“parent” means

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

“physical abuse” means any act or omission which causes or is intended to cause

- (a) physical injury; or
- (b) reasonable apprehension of physical injury;

[Inserted by Act 10/2005]

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“prescribed offence” means any of the following:

- (a) use of violence or threatening to use violence;
- (b) causing physical or mental injury;
- (c) coercion;
- (d) molestation;
- (e) arbitrary deprivation of liberty;
- (f) an offence under section 5 of the Juvenile Act;

“prescribed person” means the spouse of the respondent, a parent or a child or a dependant of the spouse;

“psychological abuse” means a pattern of behavior of any kind, the purpose of which is to undermine the emotional or well-being of a person, including

- (a) persistent intimidation by the use of abusive or threatening language;
- (b) persistent following of a person from place to place;
- (c) depriving the person of the use of his or her property;
- (d) the watching or besetting of the place where the person resides, works, carries on business or happens to be;
- (e) interfering with or damaging the property of the person;
- (f) the forced confinement of the person;
- (g) persistent telephonic or other electronic contact of any description with the person at the person’s place of residence, work or anywhere else; and
- (h) the making of unwelcome and repeated or intimidatory contact with a child, dependent or elderly relative of the person;

[Inserted by Act 10/2005]

“protection order” means an order made under section 7 or 8 of this Act;

“respondent” means a person against whom an injunction or order is granted pursuant to this Act;

“sexual abuse” includes sexual contact of any kind that is coerced;

[Inserted by Act 10/2005]

“spouse” includes a former spouse, *de facto* spouse and former *de facto* spouse;

“tenancy order” means an order made under section 14 or 16 of this Act;

“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 any enactment or rule of law to continue to be the tenant of household residence, and the term tenancy has the corresponding meaning.

PART II – DOMESTIC VIOLENCE

3. Domestic violence prohibited.

(1) No person shall engage in any conduct that constitute domestic violence.

(2) A person who engages in any conduct that constitute domestic violence commits a domestic violence offence, and shall be proceeded against in accordance with the provisions of this Act.

4. Meaning of domestic violence.

For the purposes of this Act, conduct that constitute domestic violence include

- (a) violence that results in or is likely to result in
 - (i) physical harm,
 - (ii) sexual suffering, or
 - (iii) psychological suffering;
- (b) threats of violence;
- (c) coercion;
- (d) arbitrary deprivation of liberty;
- (e) molestation;
- (f) conduct of an offensive or harassing nature;
- (g) conduct which amounts to psychological abuse, intimidation or persecution;
- (h) financial abuse.

[Paragraph (h) inserted by Act 10/2005]

PART III - PROTECTION AGAINST DOMESTIC VIOLENCE

Injunction and Protection Orders

5. Application for an injunction.

(1) An application for an injunction or a protection order against domestic violence may be made to a court where a person is subjected or is about to be further subjected to domestic violence.

(2) For the purposes of subsection (1) of this section an application for an injunction or a protection order may be made by any of the following persons:

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- (a) the spouse of the respondent;
- (b) where the alleged conduct involves a child or a dependant,
 - (i) a person with whom the child or dependant normally resides or resides on a regular basis,
 - (ii) a parent or guardian of the child,
 - (iii) a parent or guardian of the dependant,
 - (iv) in case the dependant is not mentally disabled, the dependant,
 - (v) a person experienced or qualified in social welfare and approved by the Minister or a trained person approved by the Minister,
 - (vi) a police officer,
 - (vii) a person holding the office or performing the duties of a probation officer or medical social worker;
- (c) in a case where the person who is the subject of domestic violence is physically or otherwise incapacitated, an application may, with the written consent of that person and the approval of the Minister, be made by any of the persons referred to in sub-paragraph (v) or (vii) of paragraph (b).

[Paragraph (c) inserted by Act 10/2005]

6. Grant of an injunction or a protection order.

(1) The court may, upon hearing an application submitted to it under the provisions of subsection (1) of section 6 of this Act, grant an injunction or order, as the case may be, if it is satisfied that,

- (a) the respondent is engaged or is about to engage in conduct that constitute domestic violence;
- (b) the injunction or order, having regard to all the circumstances of the case, is necessary for the protection of a prescribed person.

(2) An injunction or a protection order granted under the provisions of subsection (1) of this section may prohibit the respondent

- (a) from entering or remaining in the household residence of any prescribed person;
- (b) from entering or remaining in any area specified in the injunction or protection order, being an area in which the household residence of a prescribed person is located;
- (c) from entering the place of work or place of education of any prescribed person;

- (d) from entering or remaining in any place where a prescribed person happens to be;
- (e) from subjecting a prescribed person to any conduct that constitute domestic violence.

(3) The court may, if it thinks fit, make provision in an injunction or a protection order for a power of arrest.

7. Grant of an injunction or a protection order on an *ex parte* application.

(1) The court may, upon application, grant an injunction or a protection order, as the case may be, if it 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 prescribed person;
- (b) serious injury or undue hardship to the prescribed person.

(2) An injunction or protection order granted under subsection (1) of this section shall be of an interim nature, and the respondent may at anytime apply to the court to have the injunction or protection order, as the case may be, discharged.

8. An application for an occupation order.

(1) An application for an occupation order may be made to the court where a prescribed person is granted a protection order under this Act.

(2) For the purposes of subsection (1) of this section an application for an occupation order may be made by any of the persons

9. Grant of occupation order.

(1) Upon receipt of the application referred to in subsection (1) of section 9 of this Act, the court may make an occupation order granting a prescribed person the right to live in the household residence of the respondent if it is necessary for the protection or is in the best interest of a prescribed person.

(2) An occupation order may be granted for such period, and on such terms and conditions as the court thinks fit.

(3) Before granting an occupation order under subsection (1) of this section, the court shall direct that notice be given to any person who has an interest in the property that is to be affected by the occupation order.

(4) The person referred to in subsection (3) of this section shall, after the notice has been served on him, be heard in the matter of the application for the occupation order as a party to that application.

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10. Effect of occupation order.

(1) The prescribed person to whom the occupation order relates shall be entitled, to the exclusion of the respondent, personally to occupy the household residence to which the occupation order relates.

(2) Where the household residence in respect of which the occupation order is made is being rented by the respondent then the court shall order the respondent to continue paying the rent for the duration the occupation order remains in force.

(3) On or after making an occupation order the court may make an order granting to the applicant the use, for a specified period, and subject to any terms and conditions as the court thinks fit, all or any of the following:

- (a) furniture;
- (b) household appliances;
- (c) household effects;

in the household residence or other premises to which the occupation order relates.

[Subsection (3) inserted by Act 10/2005]

11. Grant of occupation order on an *ex parte* application.

(1) The court may, upon an *ex parte* application, grant an occupation order if it is satisfied that

- (a) the respondent has used violence against, or caused physical, or mental injury to a prescribed person; and
- (b) the delay that would be caused by proceeding on notice could or might expose the prescribed person to physical injury.

(2) An occupation order granted under subsection (1) of this section shall be of an interim nature, and the respondent may at any time apply to the court to vary or discharge the order.

(3) An occupation order made on an *ex parte* application while the prescribed person and the respondent are living together in the same household residence shall expire on the discharge of the order by the court or at the expiration of a period of seven days from the date on which the occupation order is made.

Tenancy orders

12. Application for tenancy orders.

(1) An application for a tenancy order may be made to the court where a prescribed person is granted a protection order under this Act.

(2) An application for a tenancy order made under this section may be made by any of the persons specified in subsection (2) of section 6 of this Act.

13. Grant of tenancy orders.

(1) Upon receipt of the application referred to in subsection (1) of section 13 of this Act, the court may grant a tenancy order vesting in the prescribed person the tenancy of any dwelling house which, at the time of granting the order,

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

(2) Subject to subsections (3) and (4) of this section the court may grant a tenancy order if it is satisfied that the order is necessary for the protection or is in the best interest of the prescribed person.

(3) Before granting a tenancy order under subsection (1) of this section, the court shall direct that notice be given to any person who has an interest in the property that is to be affected by the tenancy order.

(4) The person referred to in subsection (3) of this section shall, after the notice has been served on him, be entitled to appear and be heard in the matter of the application for the tenancy order as a party to that application.

14. Effect of tenancy order.

(1) Upon the grant of a tenancy order, 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 the order, and the respondent shall cease to be the tenant.

(2) A tenancy order shall have effect and shall be enforced as if it were an order of the court for possession of the land granted in favour of the prescribed person.

- (3) Nothing in this Act or in a tenancy order shall
- (a) limit or affect the operation of any enactment or rule of law for the time being applicable to a tenancy to which a tenancy order applies, or to the household residence held under the tenancy; or
 - (b) authorise the court to vary, except by vesting the tenancy pursuant to this section, or revesting the tenancy pursuant to section 16 of this Act, any express, or implied term, or condition of the tenancy.

15. Grant of tenancy orders on an *ex parte* application.

(1) The court may, upon an *ex parte* application, grant a tenancy order if it is satisfied that

- (a) the respondent has used violence against, or caused physical or mental injury to a prescribed person; and
- (b) the delay that would be caused by proceeding on notice could or might expose the prescribed person to physical injury.

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(2) A tenancy order granted under subsection (1) of this section shall be of an interim nature, and the respondent may at any time apply to the court to vary or discharge the order.

(3) A tenancy order which is made on an *ex parte* application while the prescribed person and the respondent are living together in the same household residence shall expire on the discharge of the order by the court or at the expiration of a period of seven days from the date on which the order is made.

16. Revesting order.

- (1) The court may, upon the application
- (a) of the prescribed person or the respondent; or
 - (b) of the personal representative of the prescribed person or the respondent;

make a revesting order revesting the tenancy in the respondent.

(2) Upon the making of a revesting order, the respondent shall, unless the tenancy is sooner determined, become the tenant of the household residence subject to the terms and conditions of that tenancy.

Rehabilitation orders

17. Rehabilitation orders.

(1) Where a person is convicted of an offence under this Act, the court may, instead of imposing a sentence, make a rehabilitation order programme or rehabilitation programme.

- (2) A rehabilitation order shall only be made under the following circumstances:
- (a) where the person is a first time offender under this Act and has no previous convictions for such offences;
 - (b) where the convicted person has not previously breached any order made under this Act; or
 - (c) where a suitable programme of education and training is available for such persons.

(3) The court shall, before making a rehabilitation order under this section, have regard to any submission and representations by the prosecution and the defence.

(4) A rehabilitation order may be made subject to such conditions as the court may think fit to impose.

(5) Where the person in respect of whom a rehabilitation order is made fails to comply with the conditions attached to the order, the court may, after holding an inquiry, terminate the rehabilitation order and pass sentence in accordance with the provisions of this Act.

PART IV – MISCELLANEOUS PROVISIONS**18. Conduct of proceedings.**

(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;
- (c) Counsel of each party to the proceedings;
- (d) any other person permitted by the court to be present.

(2) Any witness shall leave the courtroom if requested to do so by the court.

(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. Criminal proceedings may be concurrent.

Where a person is charged with a domestic violence offence and an application for a protection order is before the court, the court may exercise its power to grant the order, notwithstanding that the offence for which the person is charged and the application for the protection order arises out of the same conduct.

20. Restriction on publication of reports of proceedings.

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

(2) Any person who contravenes subsection (1) of this section 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. Evidence.

(1) In any proceedings under this Act, except criminal proceedings, the court may receive such evidence as it thinks fit whether it is otherwise admissible in a court of law or not.

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(2) Subject to section 18 of this Act, the rules of evidence that apply to criminal proceedings shall apply to any criminal proceedings conducted under this Act.

22. Standard of proof.

Every question of fact arising in any proceedings under this Act, except criminal proceedings, shall be decided on a balance of probabilities.

[Previously section 23, then renumbered section 23A by Act 10/2005. As a result of renumbering section 23A as section 22, section 23B has been renumbered as section 23]

23. Penalty for offences.

A person who commits any of the offences under this Act for which no penalty is prescribed is liable, on summary conviction, to a fine not exceeding five thousand dollars or to imprisonment for a period not exceeding six months or both.

[Inserted in as section 23B by Act 10/2005]

24. Form of service of injunction and protection order.

(1) Where an injunction or protection order is made or varied by the court, the clerk shall arrange for an injunction or order in the prescribed form to be formally drawn up and filed in the court.

(2) A copy of an injunction or order made under subsection (1) of this section shall be served

- (a) personally on the respondent;
- (b) on any other person who was a party to the proceedings;
- (c) on a police officer not below the rank of Sergeant in the district of the court in which the order was made;
- (d) on the police officer in charge of the police station nearest the prescribed person to whom the order relates;

by the applicant or his agent.

25. Service other than personal service.

(1) Where it appears to the court that it is not reasonably practicable to serve a copy of an application for an injunction or protection order personally, the court may

- (a) order that the copy of the application of the injunction or protection order or the copy of the injunction or protection order, be served by such other means as the court thinks just; or
- (b) make an order for substituted service.

26. Breach of injunctions and protection orders.

Where an injunction or protection order, whether interim or not, is made and served on the respondent, and the respondent contravenes the order in any respect, then the respondent commits an offence and is, on conviction, liable to a fine not exceeding five thousand dollars or to imprisonment for a period not exceeding six months or both.

27. Arrest without warrant.

(1) Subject to the provisions of this section, where an injunction or protection order is in force, a constable may, without a warrant, arrest a person whom the constable reasonably believes has committed a breach of an injunction or order referred to in this section.

(2) No person shall be arrested under this section unless the arrest of that person is reasonably necessary for the protection of the prescribed person.

(3) For the purpose of subsection (1) the constable shall take into account

- (a) the seriousness of the act constituting the alleged breach;
- (b) the time that has elapsed since the commission of the alleged breach;
- (c) the restraining effect of other persons or circumstances on the respondent;
- (d) the need for a cooling-off period.

(4) Where an arrest is made under this section

- (a) the person arrested shall be entitled to make a telephone call to one person of his choice, other than the prescribed person;
- (b) the constable who made the arrest shall inform the person arrested, as soon as practicable after the arrest, of the right conferred by paragraph (a) of this subsection.

28. Issue of warrant.

Where the Court is satisfied, by information given on oath, that

- (a) there are reasonable grounds to suspect that a prescribed person on premises has suffered injury or is in imminent danger of suffering further physical injury at the hands of a person to whom this Act applies and the prescribed person needs assistance to prevent or deal with the injury; and
- (b) a police officer is refused permission to enter the premises for the purpose of giving assistance to the prescribed person;

the court may issue a warrant authorising a police officer to enter the premises specified in the warrant at any time within 24 hours after the issue of the warrant and subject to any conditions specified in the warrant, to take such action as is necessary to prevent the commission or repetition of the offence or a breach of the peace or to protect life or property.

29. Grant of bail.

(1) Where the court is required to determine whether to grant bail in respect of an offence committed under this Act the court shall take into account, *inter alia*,

- (a) the need to ensure that a prescribed person is protected from violence or harassment;

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- (b) the welfare of a child, where the defendant or the victim of the alleged offence has custody of the child;
- (c) any hardship that may be caused to the defendant or to members of the family if bail is not granted;
- (d) the defendant's record with regard to the commission of violent acts and whether there is evidence on record of physical or emotional abuse of children; and
- (e) any other matter which may be relevant to the case in question.

(2) Where bail is granted to the defendant, the court may direct that the defendant report at such times as are specified, at a specified police station.

30. Conditions on which bail may be granted.

(1) Where the defendant is charged with an offence under this Act, the court, in granting bail, may also order that the recognizance be subject to any of the following conditions as the court considers appropriate:

- (a) that the defendant does not harass or molest, a prescribed person;
- (b) that the defendant does not go to the premises in which a prescribed person lives or works; and
- (c) that the defendant does not be in a locality in which are situate the premises in which a prescribed person resides or works.

(2) Where a police officer believes on reasonable grounds that a person who has been granted bail subject to one or more of the conditions set out in subsection (1) has failed to comply with any condition of the recognizance, the police officer may apprehend the person without a warrant.

(3) Where

- (a) bail is granted to a person upon a condition imposed under subsection (1); and
- (b) the person contravenes or fails to comply with the condition;

the bail shall be forfeited and the accused re-arrested.

31. Orders by consent.

In any proceedings under this Act a court may make any order by the consent of all the parties to such proceedings.

32. Counselling.

(1) The court may, 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 counseling may be summoned to re-appear before the court and may, in the absence of a reasonable excuse, be fined a sum not exceeding five hundred dollars.

[Subsection (2) inserted by Act 10/2005]

33. Appeals.

(1) Any person aggrieved by the decision of the court may, within twenty-eight days after the decision of the court, appeal to the Court of Appeal.

(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 such injunction or other order may be enforced in the same manner and in all respects as if no appeal under this section is pending.

34. Protection of mortgagee.

(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 affecting the property if such mortgage, security, charge or encumbrance was 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.

35. Assistance to victims of domestic violence.

Whenever a police officer intervenes in a case of domestic violence, the police officer shall, as soon as possible, take all reasonable measures within his power to prevent the victim of domestic violence from being subject to violence again and shall also take the following steps:

- (a) where a victim indicates that he has suffered injuries, though not visible, which require medical assistance, the police officer shall assist the victim to obtain medical treatment as soon as possible;
- (b) where a victim of domestic violence expresses concern for his safety, the police officer shall assist the victim in getting to a place of safety;
- (c) where a victim of domestic violence request it, a police officer shall protect a victim by accompanying the victim when the victim is taking his personal belongings from a place where the respondent may reside;
- (d) advise the victim of domestic violence on the importance of preserving the evidence; and
- (e) inform the victim as to his rights and of services which may be available to assist him, whether they are government or private services.

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36. Preparing of reports.

(1) Where a police officer intervenes in an incident of domestic violence, he shall prepare a written report relating to the incident, and the report shall contain the allegations of the persons involved and the witnesses, the type of investigation conducted and how the incident was resolved.

(2) A police officer in charge of a police station shall ensure that all records of domestic violence are properly compiled so as to facilitate easy reference to data.

(3) A police officer in charge of a police station shall ensure that confidentiality is maintained with respect to the identity of persons involved in cases of domestic violence.

37. Role of Ministry in alleviating domestic violence.

The Ministry responsible for Women's Affairs or Gender Affairs, where such a Ministry is established, shall be responsible for

- (a) promoting and developing education programmes for the prevention of domestic violence;
- (b) studying, investigating and publishing reports on the domestic violence problem in Saint Kitts and Nevis, its manifestations and scope;
- (c) identifying groups and sectors in society in which and sectors in order to make them aware of the skills required to combat domestic violence;
- (d) creating awareness among society with regard to the needs of victims of domestic violence and their families;
- (e) developing strategies to encourage changes in the policies and procedures of government agencies in order to improve their response to the needs of the victims of domestic violence;
- (f) conducting programmes on information support and counselling services for victims of domestic violence;
- (g) encouraging the establishment of shelters for victims of domestic violence;
- (h) encouraging programmes of service for boys and girls who come from homes where there is abuse and violence;
- (i) providing training and orientation services for persons who assist in the treatment and counselling of victims of domestic violence and abuse;
- (j) analyzing and carrying out studies on the need for education and retaining of persons who engage in conduct that constitute domestic violence and abuse, and for their rehabilitation.

38. Rules of Court.

Rules of Court may be made for the purpose of regulating the practice and procedure of the court in proceedings under this Act, and such rules may provide for such matters as are necessary for giving full effect to the provisions of this Act and for the due administration of the Act.

39. Jurisdiction.

Nothing in this Act shall be regarded as removing any jurisdiction which the Supreme Court may have in respect of the matters referred to under this Act.

40. Ownership of property.

Nothing in this Act shall be deemed to have altered any right which a spouse may have to ownership of property.

41. Regulations.

The Minister may make regulations for the better carrying out of the provisions of this Act, and without prejudice to the generality of the foregoing, the Minister may make regulations

- (a) prescribing the form of any application required to be made under this Act;
- (b) prescribing the form of notice of proceedings under this Act;
- (c) prescribing the form of injunction, and any order required to be made under this Act.