

## **STALKING ACT 1997**

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**BERMUDA  
1997 : 2**

### **STALKING ACT 1997**

[Date of Assent 4 March 1997]

[Operative Date 31 October 1997]

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WHEREAS it is expedient to create an offence of stalking and to provide protection for persons affected by stalking:

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Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

### **Short title**

1 This Act may be cited as the Stalking Act 1997.

### **Interpretation**

2 In this Act—

"clerk" means clerk to the court;

"complainant" means a person who applies for a protection order;

"connected person" means a person who has a family or domestic connection with a victim of stalking or with a complainant;

"court" means—

(a) in section 20, any competent court;

(b) otherwise, a court of summary jurisdiction;

"offensive weapon" means an article made or adapted for use for causing injury to the person, or intended for such use by the person having the article in his possession;

"prescribed form" means a form prescribed by rules of court;

"protection order" means an order under section 6, including a temporary order;

"respondent" means a person in respect of whom a protection order, or an application for such an order, is made;

"to stalk" has the meaning assigned to it in section 3;

"temporary order" means a protection order of a kind described in section 11;

"victim", in relation to stalking, has the meaning assigned to it in section 3(1).

### **Meaning of "stalking"**

3 (1) For the purposes of this Act, a person stalks another person (the "victim") if—

(a) without lawful authority the first-mentioned person engages in conduct described in subsection (2)—

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- (i) with the intention—
  - (aa) of causing physical or mental harm to the victim; or
  - (bb) of inducing in the victim apprehension or fear for the victim's safety or for the safety of a connected person; or
- (ii) when he knows that that conduct is likely to cause such harm to the victim or to induce in the victim such apprehension or fear; and

(b) that conduct actually has that result.

(2) The conduct referred to in subsection (1) is conduct consisting of acts, done over a period of time, which include any one or more of the following—

- (a) following the victim or a connected person;
- (b) telephoning or sending electronic messages to, or otherwise contacting, the victim or a connected person;
- (c) interfering with property in the possession of the victim or a connected person;
- (d) entering the place of residence or employment of the victim or a connected person, or any other place frequented by the victim or a connected person, and loitering there;
- (e) loitering outside the place of residence or employment of the victim or a connected person, or outside any other place frequented by the victim or a connected person;
- (f) keeping the victim or a connected person under surveillance.

### **Offence of stalking**

4 (1) A person who stalks another person is guilty of an offence and, subject to subsection (2), liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$2,500 or to both.

(2) Where a person is found guilty of an offence of stalking contrary to subsection (1) and it is proved in the proceedings, on the balance of probabilities—

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- (a) that he was in possession of an offensive weapon when he did an act forming part of the conduct constituting the stalking; or
- (b) that an act forming part of that conduct was a breach of—
  - (i) a protection order made in respect of him under this Act; or
  - (ii) an order made in respect of him under section 9A of the Matrimonial Proceedings (Magistrates' Courts) Act 1974; or
  - (iii) a protection order made in respect of him under the Domestic Violence (Protection Orders) Act 1997,

the court may, instead of sentencing him under subsection (1), sentence him to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$5,000 or to both.

### **Application for protection order**

5 (1) A person (a "complainant") may apply to the court in the prescribed form for a protection order in respect of another person (a "respondent") in the cases set forth in subsection (2).

(2) Such an application may be made—

- (a) where proceedings for an offence of stalking the complainant contrary to section 4 have been instituted against the respondent and have ended in the respondent's conviction; or
- (b) where such proceedings have been instituted but have not been concluded; or
- (c) where the court is satisfied that such proceedings are imminent.

(3) The provisions of subsections (2) to (4) of section 6, and of sections 7 to 9, of the Domestic Violence (Protection Orders) Act 1997 (applications by representatives), together with so much of section 2 of that Act as is necessary for the interpretation of those provisions, apply mutatis mutandis in relation to applications for protection orders under this Act as they apply in relation to applications for protection orders under that Act.

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### **Power to make protection order**

6 (1) In a case to which paragraph (a) of section 5(2) applies, the court may make a protection order in respect of the respondent if it is satisfied that the order is needed for the complainant's protection.

(2) In a case to which paragraph (b) of section 5(2) applies, the court may make a protection order in respect of the respondent if it is satisfied that—

- (a) the respondent has stalked the complainant; and
- (b) the order is needed for the latter's protection.

(3) In a case to which paragraph (c) of section 5(2) applies, the court may make a protection order in respect of the respondent if it is satisfied that—

- (a) the respondent will stalk the complainant; and
- (b) the order is needed for the latter's protection;

but such an order must be a temporary order.

### **Procedure on an application**

7 (1) Subject to section 11, where an application for a protection order has been made, the court shall issue a summons in the prescribed form summoning the respondent to a hearing.

(2) The summons, together with a copy of the application, must be served on the respondent personally.

### **Content of protection order**

8 (1) A protection order may, subject to this Act, make provision as specified in subsection (2).

(2) A protection order may prohibit the respondent from—

- (a) following the complainant or a connected person;
- (b) telephoning or sending electronic messages to, or otherwise contacting, the complainant or a connected person;
- (c) interfering with property in the possession of the complainant or a connected person;
- (d) entering the place of residence or employment of the complainant or a connected person, or any other place frequented by the complainant or a connected person, and loitering there;

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- (e) loitering outside the place of residence or employment of the complainant or a connected person, or outside any other place frequented by the complainant or a connected person;
- (f) keeping the complainant or a connected person under surveillance;
- (g) inciting or assisting another person to stalk the complainant.

### **Notice to respondent**

9 (1) Subject to this Act, the court shall not make a protection order in respect of a person unless—

- (a) he has had actual notice in the prescribed form of the application for the order; and
- (b) he has been given the opportunity to oppose, or otherwise make representations in relation to, the making of the order.

(2) Where a protection order is made or varied by the court, the clerk shall forthwith—

- (a) arrange for an order in the prescribed form to be formally drawn up and filed in the court; and
- (b) cause—
  - (i) a copy of the order to be served on the respondent; and
  - (ii) copies also to be sent to—
    - (aa) the Commissioner of Police; and
    - (bb) any other party to the proceedings.

### **Power of arrest**

10 (1) The court may attach a power of arrest to a protection order if it is satisfied that the respondent—

- (a) in the past caused actual bodily harm, or threatened to cause bodily harm, to the complainant or a connected person; and
- (b) is likely in the future to cause bodily harm to the complainant or a connected person.

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(2) Where a power of arrest is attached to a protection order, a police officer may arrest without warrant a person who he has reasonable cause to suspect is in breach of the order.

(3) Where a person is arrested without a warrant in reliance on subsection (2)—

(a) he shall be brought before the court within the period of 48 hours beginning at the time of his arrest, or as soon as reasonably practicable after the arrest, to be dealt with under section 17; and

(b) he shall not be released within that period except on the direction of the court;

but nothing in this section authorises his detention at any time after the expiry of that period.

### **Temporary order**

11 (1) The court may make a protection order without section 7 or subsection (1) of section 9 having been complied with if the court is satisfied that undue hardship, or the risk of harm, will be caused to the complainant otherwise.

(2) A protection order made by virtue of subsection (1) of this section is in this Act referred to as a temporary order; and a person in respect of whom an application for a protection order is made under this Act is a respondent to the application for the purposes of this Act even though a temporary order is made on the application and he may have had no prior knowledge of the making of the application.

(3) Without prejudice to the generality of subsection (1), a court, in considering whether to make a temporary order must have evidence—

(a) that the respondent's conduct complained of by the complainant is serious; and

(b) that the complainant is in fear of a repetition of that conduct; and

(c) that further such conduct is likely to be directed to the complainant.

### **Explanation to respondent**

12 Where the court proposes to make a protection order and the respondent is before the court, the court shall before making the order explain to him in language that he understands—

(a) the terms, purpose and effect of the order; and

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- (b) the consequences if he should fail to comply with it; and
- (c) the means by which it may be varied or revoked.

### **Duration of protection order**

13 (1) Subject to subsection (3) of this section and section 14, a protection order remains in force for such period, not exceeding 12 months, as the court specifies in the order.

(2) Where a protection order contains a number of requirements or prohibitions, the court may specify in the order different periods, being periods none of which exceeds 12 months, as the periods for which the several requirements or prohibitions are to remain in force.

(3) A protection order made pursuant to subsection (2) of section 6 ceases to have effect on the expiry of 60 days beginning on the date of the making of the order unless the order—

- (a) specifies an earlier time of expiry; or
- (b) is earlier revoked under section 15; or
- (c) is a temporary order.

### **Duration of temporary order**

14 (1) A temporary order remains in force for such period, not exceeding 28 days, as the court specifies in the order.

(2) Notwithstanding subsection (1), where—

- (a) the court adjourns the hearing of an application for a protection order; and
- (b) a temporary order is in force,

the court may extend the period for which the temporary order is to remain in force until the date fixed for the further hearing of the application.

(3) Subject to subsections (1) and (2), where a temporary order has been made on an application for a protection order, the temporary order ceases to be in force—

- (a) in the case where the respondent is present when a protection order is made, when the latter order is made;
- (b) in the case where the respondent is not so present, when the protection order is served on him;
- (c) when the application is dismissed.

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### **Variation or revocation of protection order**

15 (1) Where a protection order is in force, a party to the proceedings in which the order was made may make application to the court in the prescribed form for the order to be varied or revoked.

(2) On an application under subsection (1), the court may vary or revoke the order.

(3) The clerk shall cause a copy of an application under subsection (1) to be served on each person, other than the party making the application, who was a party to the proceedings in which the original order was made.

(4) A protection order shall not be varied without the respondent being given the opportunity to oppose, or otherwise make representations in relation to, the variation.

### **Standard of proof in relation to protection order**

16 Any question of fact to be decided by the court in, or in connection with, the making, variation or revocation of a protection order is to be decided by the court on the balance of probabilities.

### **Offence**

17 Where a protection order is made or varied and—

(a) the respondent was present when the relevant order was made; or

(b) the respondent was not present at that time but a copy of the order has been served on him,

he is guilty of an offence if he contravenes the order, and liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$2,500 or to both.

### **Prosecution**

18 (1) The complainant who applied for a protection order (including a person who applied under section 6(4) of the Domestic Violence (Protection Orders) Act 1997, as applied by section 5(3) of this Act) may institute a prosecution under section 17 to enforce the order.

(2) Where such a prosecution is instituted against a person, the summons shall require him to appear to answer the information at a time not later than 72 hours after the time at which the summons is issued.

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(3) Service of the summons referred to in subsection (2) shall be effected not later than 24 hours before the time appointed in the summons for the hearing of the information.

### **Evidence**

19 Notwithstanding any other law to the contrary, in any hearing of an application for a protection order made by a children's officer under paragraph (b) of section 6(4) of the Domestic Violence (Protection Orders) Act 1997 (as applied by section 5(3) of this Act) in the interests of a child, the spouse of the person in respect of whom the order is sought is a compellable witness.

### **Bail**

20 (1) The following provisions of this section have effect, notwithstanding any law to the contrary, in relation to the grant of bail in respect of an offence against section 17.

(2) Matters that the court must take into account are—

- (a) the need to ensure that persons at risk are protected from harm; and
- (b) any hardship that may be caused to the respondent or a connected person if bail is not granted or if, where bail is granted, a particular condition is imposed.

(3) The court may grant bail on such terms and conditions as it thinks fit.

(4) Where a person contravenes a condition attached to bail that has been granted to him, the bail is forfeit and he may be re-arrested.

### **Power to enter premises**

21 A police officer may without warrant enter any premises for the purpose of giving assistance to any one present on the premises if he has reasonable cause to suspect that a protection order is being contravened.

### **Appeal**

22 (1) Subject to subsection (3), a person aggrieved by a decision of a court in proceedings under this Act (not being proceedings under, or in respect of an offence against, section 4 or 17) may appeal to the Supreme Court against the decision.

(2) For the purposes of—

- (a) enforcing an order made by the Supreme Court on an appeal under subsection (1); or

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(b) varying or revoking under section 15 an order made by that Court on such an appeal,

such an order is deemed to be an order of the court from which the appeal was brought to the Supreme Court, and not the Supreme Court itself.

- (3) An appeal does not lie by virtue of subsection (1) from—
- (a) the making, variation or revocation of a temporary order;  
or
  - (b) the refusal of the court to make a temporary order.

### **Commencement**

23 This Act comes into operation on such day as the Minister responsible for Legislative Affairs may appoint by notice published in the Gazette.