

This Article summarises the far reaching provisions of the Family Violence Protection Act and emphasises the need for practitioners to exercise great care to ensure that their clients rights are protected

Family Violence Protection Order Application-Deal with it Very Seriously

Most Practitioners will have clients from all walks of life who present with an Application for an Intervention order under the Family Violence Protection Act 2008. These Applications need to be managed with great care. The definition of Family Violence in the Act is wide and there is a low threshold to get over in order to obtain an interim order with the balance of probabilities being the standard of proof on the final hearing.

The Order is a civil order but once obtained has the potential to:

1. Require the respondent to leave his or her house irrespective of financial contributions or accommodation options;
2. Impact the amount of time the respondent can spend with his or her children or whether he or she can live with those children;
3. Create an exposure to obtain a criminal record which could effect future employment options particularly for teachers and other people who work with children; and
4. Require the respondent to disclose the order on any application for a visa to travel to the United States resulting in an awkward dialogue with the United States Immigration authorities.

All this can happen in less then twenty minutes at a Magistrates Court near you. It is essential that the respondent attend the first hearing date in person. Often clients choose not to attend hoping that that their legal representative will take care of things for them and sometimes hearings take place without either the respondent or his legal practitioner in attendance. Such an approach is to court disaster. The writer recently saw a court award an applicant and his two children a four year intervention order against a mother who had previously lived with the those children for eight years.

No one was at court to represent the mother and the letter her solicitor had sent giving a perfectly justifiable reason for her non-appearance was not taken into account by the magistrate.

The process is initiated by an Application and quite often this be accompanied by an interim order which can be obtained ex parte if it can be demonstrated that it is necessary to ensure the safety of the Applicant preserve his or her property or protect a child. This order will stay in place until the final hearing. There will be three court events to deal with before the Respondent has an opportunity of

overturning the order. These are the mention date, a directions hearing and the contest. The magistrate will deal with the respondent's entitlement to legal aid at the first mention date.

Practitioners should be aware of the meaning of Family Violence in the Act:

Meaning of family violence

(1) For the purposes of this Act, family violence is-

(a) behaviour by a person towards a family member of that person if that behaviour-

- (i) is physically or sexually abusive; or*
- (ii) is emotionally or psychologically abusive; or*
- (iii) is economically abusive; or*
- (iv) is threatening; or*
- (v) is coercive; or*

(vi) in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person; or

(b) behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in paragraph (a).

Examples The following behaviour may constitute a child hearing, witnessing or otherwise being exposed to the effects of behaviour referred to in paragraph (a)-

- overhearing threats of physical abuse by one family member towards another family member;*
- seeing or hearing an assault of a family member by another family member;*
- comforting or providing assistance to a family member who has been physically abused by another family member;*
- cleaning up a site after a family member has intentionally damaged another family member's property;*
- being present when police officers attend an incident involving physical abuse of a family member by another family member.*

(2) Without limiting subsection (1), family violence includes the following behaviour-

(a) assaulting or causing personal injury to a family member or threatening to do so;

(b) sexually assaulting a family member or engaging in another form of sexually coercive behaviour or threatening to engage in such behaviour;

(c) intentionally damaging a family member's property, or threatening to do so;

(d) unlawfully depriving a family member of the family member's liberty,

or threatening to do so;

(e) causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the family member to whom the behaviour is directed so as to control, dominate or coerce the family member.

(3) To remove doubt, it is declared that behaviour may constitute family violence even if the behaviour would not constitute a criminal offence.

This is an area of law which is primarily statute driven. The Act has extensive and all encompassing definitions of family violence, economic abuse, emotional or psychological abuse family member domestic partner and relative. There is very little case law to assist practitioners on how the Courts interpret these provisions and there can be no substitute for viewing and listening to how Magistrates apply the legislation.

There are ways of dealing with an intervention order but they do require good negotiating skills and a proactive approach in order to minimize the potential for major collateral damage. Such an approach might incur the proffering of an undertaking to the court, making sure that the standard exceptions relating to spending time children are included as well as ensuring that the orders do not have the effect of excluding the respondent from his or her residence.

In some cases it may be possible to obtain an order for costs if it can be shown that the application was frivolous vexatious or made in bad faith but normally each party will bear his or her own costs.

Applications for Intervention Orders under the Family Violence Protection Act and its cousin the Stalking Intervention Orders Act are extremely popular. They cost nothing to issue and many of the larger courts deal with up to twenty a day. There is also the rather chilling statistic that of all Applications listed for a contest only five per cent (5%) result in the interim order being over turned.

There is the right to apply for the variation or revocation of the order only if there has been change in circumstances since the family violence order was made and that change justifies a variation or revocation of the existing order. A respondent can appeal the decision of the Magistrate to the County court within thirty days of the decision being made. The hearing will take place de novo but it is worth bearing in mind that that court will apply the same tests as the Magistrate and there is the possibility that the length of the order will be increased.

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