

Chapter 18

FAMILY ABUSE INTERVENTION ACT

(Assented to December 5, 2006)

Recognizing that the values and cultures of Nunavummiut and the guiding principles and concepts of Inuit Qaujimajatuqangit reflect the right of every individual in Nunavut to a full and productive life, free from harm and fear of harm;

Recognizing that family abuse continues to be a serious problem in Nunavut;

Stressing the importance of *inuuqatigiitsiarniq*, which means respecting others, relationships and caring for people, and *tunnganarniq*, which means fostering good spirit by being open, welcoming and inclusive;

Affirming the commitment of the Government of Nunavut to *pijitsirniq*, which means serving and providing for families and communities;

Incorporating and encouraging *qanuqtuurniq*, which means being innovative and resourceful;

The Commissioner of Nunavut, by and with the advice and consent of the Legislative Assembly, enacts as follows:

PART 1

INTERPRETATION AND PRINCIPLES

Interpretation

Definitions

1. In this Act,

"applicant" means

- (a) a person who applies for an order under this Act, or
- (b) where an application for an order under this Act is made on behalf of another person, the person on whose behalf the application is made; (*requérant*)

"assistance order" means an order granted under subsection 18(1); (*ordonnance de prévention*)

"child" means a person who has not attained 19 years of age; (*enfant*)

"clerk" means the clerk of the Court appointed under the *Judicature Act*; (*greffier*)

"Court" means the Nunavut Court of Justice; (*Cour*)

"designated justice of the peace" means a justice of the peace designated under section 48; (*judge de paix désigné*)

"emergency protection order" means an order granted under subsection 7(1); (*ordonnance de protection d'urgence*)

"family home", in relation to a spousal, family or intimate relationship, means the premises where an applicant and respondent normally reside together, and includes premises that an applicant vacates or has vacated because of family abuse; (*foyer familial*)

"firearm" means a firearm as defined in the *Criminal Code*; (*arme à feu*)

"Inuit Qaujimagatuqangit" means traditional Inuit values, knowledge, behaviour, perceptions and expectations; (*Inuit Qaujimagatuqangit*)

"mental or emotional abuse"

- (a) means a pattern of behaviour of any kind, including verbal statements, the purpose of which is to deliberately undermine the mental or emotional well-being of a person, and
- (b) includes repeated threats made with the intent to cause extreme emotional pain to a person, a child of or in the care of a person or a family member of a person; (*violence psychologique ou affective*)

"necessary personal belongings" include clothing, identification documents, cheque books, bank cards, credit cards, medical services cards, vehicles, keys, prescription drugs, glasses, prosthesis and other therapeutic devices or supplies; (*effets personnels nécessaires*)

"residence" means the premises where an applicant normally or temporarily resides, and includes the premises that an applicant vacates or has vacated because of family abuse or stalking; (*résidence*)

"respondent" means a person against whom an order under this Act is sought or granted; (*intimé*)

"weapon" means a weapon as defined in the *Criminal Code*. (*arme*)

Meaning of Family Abuse

Meaning of family abuse

2. (1) For the purposes of this Act, family abuse occurs when a person, a child of or in the care of a person, a parent of a person or another family member of a person is

subjected to one or more of the acts or omissions listed in section 3 by another person with whom the person has

- (a) a spousal relationship;
- (b) an intimate relationship;
- (c) a family relationship; or
- (d) a care relationship.

Meaning of spousal relationship

(2) For the purposes of this Act, a spousal relationship exists between two persons

- (a) who are or were married to each other;
- (b) who are or were living together in a conjugal relationship outside marriage for a period of at least one year; or
- (c) who together are or were the natural or adoptive parents of a child, whether within or outside marriage.

Extended meaning of spousal relationship

(2.1) For the purposes of this Act, a spousal relationship is deemed to exist between two persons who together act or acted as the foster parents of a child, whether within or outside marriage.

Meaning of intimate relationship

(3) For the purposes of this Act, an intimate relationship exists between two persons, whether or not they have ever lived together, who are or were dating each other, and whose lives are or were enmeshed to the extent that the actions of one affect or affected the actions or life of the other.

Scope of intimate relationship

(4) For the purposes of this Act, the lives of two persons are not enmeshed merely because they are dating or dated each other on a number of occasions.

Meaning of family relationship

(5) For the purposes of this Act, a family relationship exists between two persons, whether or not they have ever lived together,

- (a) who are related by blood, marriage or adoption; or
- (b) whom it is reasonable in the circumstances to regard as being related.

Meaning of care relationship

(6) For the purposes of this Act, a care relationship exists between two persons, whether or not they have ever lived together, if one person is or was dependent on the other person for assistance in his or her daily life activities because of disability, illness or impairment.

Scope of daily life activities

(7) In this section, daily life activities include personal grooming, preparing meals, shopping for groceries, taking care of financial affairs, making appointments and arranging transportation to appointments.

Acts constituting family abuse

- 3.** (1) The following acts and omissions constitute family abuse:
- (a) an intentional or reckless act or omission that causes, or a threatened act or omission to cause
 - (i) injury, or
 - (ii) damage to property in the context of intimidation;
 - (b) an intentional, reckless or threatened act or omission that causes, or a series of intentional or threatened acts that cause a reasonable fear of
 - (i) injury, or
 - (ii) damage to property in the context of intimidation;
 - (c) sexual abuse, including sexual contact of any kind that is coerced by force or threat of force;
 - (c.1) sexual abuse of any kind, including sexual exploitation, sexual interference and encouragement or invitation to sexual contact, of a person with a mental or physical disability or a child;
 - (d) forced confinement;
 - (e) conduct that reasonably, in all the circumstances, constitutes mental or emotional abuse;
 - (f) an intentional or reckless act or omission that unjustifiably or unreasonably deprives a person of food, clothing, shelter, medical attention, transportation or other necessities of life;
 - (g) conduct of any kind the purpose of which is to control, exploit or limit a person's access to financial resources for the purpose of ensuring the person's financial dependency.

Self-defence

(2) An act committed in self-defence or in defence of another person does not constitute family abuse if no more force than is reasonable in the circumstances is used.

Criminal proceedings distinct

(3) Family abuse may be found to have occurred for the purposes of this Act regardless of whether, in respect of any act or omission described in subsection (1), a criminal charge has been laid, withdrawn or dismissed.

Vicarious responsibility

(4) A person who encourages or solicits someone else to commit an act or omission which, if done by the person, would constitute family abuse is deemed to have committed that act personally.

Declaration of Principles

Principles governing Act

4. This Act shall be interpreted and administered in accordance with the following principles:

- (a) the paramount objective of this Act is to promote the safety of Nunavummiut;
- (b) all Nunavummiut are entitled to protection from family abuse and the threat of family abuse;
- (c) all Nunavummiut have a responsibility to control their conduct and refrain from engaging in family abuse;
- (d) all Nunavummiut have a responsibility to control their conduct and refrain from damaging the well-being of the family;
- (e) all Nunavummiut are entitled to be treated with respect;
- (e.1) the views of elders deserve careful consideration and respect;
- (f) every family's well-being should be supported and promoted;
- (g) measures taken for the protection of applicants should, as far as practicable, promote the integrity of the family and the community, while giving priority to the wishes of the applicants;
- (h) communities should be encouraged to provide services, wherever possible, to support applicants and respondents and to facilitate the reunification of the family;
- (i) members of the extended family should be given the opportunity to be heard and their opinions should be considered when decisions affecting their interests are being made;
- (j) there should be no unreasonable delay in making or carrying out an order.

Remedies Available

Remedies available for family abuse

5. The following remedies are available to or in respect of a person who is being or has been subjected to family abuse:

- (a) an emergency protection order;
- (b) a community intervention order;
- (c) an assistance order;
- (d) a compensation order.

Remedies available for stalking

6. The following remedies are available to a person who is being or has been subjected to stalking:

- (a) an emergency protection order;
- (b) an assistance order;
- (c) damages for the tort of stalking in a civil suit.

PART 2

PREVENTION OF AND PROTECTION FROM FAMILY ABUSE

Emergency Protection Orders

Test for granting emergency protection order

7. (1) On an application that may be made *ex parte*, a designated justice of the peace may grant an emergency protection order if the designated justice of the peace is satisfied that all the following criteria are met:

- (a) family abuse has occurred;
- (b) there is a reasonable likelihood that the family abuse will continue, resume or be repeated;
- (c) an order is, by reason of seriousness or urgency, necessary or advisable for the immediate or imminent protection of a person.

Content of emergency protection order

(2) The designated justice of the peace may include in an emergency protection order one or more of the following provisions:

- (a) a provision restraining the respondent from communicating with or contacting, without justification, the applicant and any other specified person;
- (b) a provision restraining the respondent from engaging in any specified conduct that is threatening, annoying or harassing to the applicant and any other specified person;
- (c) a provision restraining the respondent from attending at or near, or entering, any place that
 - (i) is attended regularly by the applicant and any other specified person, including a residence, business, school or place of employment, or
 - (ii) the respondent knows the applicant and any other specified person will attend;
- (d) a provision restraining the respondent from following the applicant and any other specified person from place to place;
- (e) a provision granting the applicant or respondent temporary possession of necessary personal belongings, regardless of ownership, for a specified period not to exceed 90 days;
- (f) a provision directing a member of the Royal Canadian Mounted Police to accompany, within a specified period of time, the applicant, the respondent and any other specified person to the family home or a residence to supervise the removal of necessary personal belongings in a safe and orderly manner and to ensure the protection of the applicant and any other specified person;
- (g) a provision restraining the respondent from taking, converting, damaging or otherwise dealing with property in which the applicant has an interest;

- (h) a provision granting the applicant temporary custody of a child for a specified period not to exceed 90 days;
- (i) a provision recommending that the parties attend family counselling, on such terms as the designated justice of the peace considers necessary to ensure the safety and well-being of the applicant and any other specified person;
- (j) a provision recommending that a child attend specified counselling, and, if the designated justice of the peace considers it appropriate, ordering the respondent to pay for that counselling;
- (k) a provision recommending that the respondent attend specified counselling;
- (l) any other provision that the designated justice of the peace considers necessary or advisable to provide for the immediate or imminent protection of the applicant and any other specified person.

Calming period

(3) If a designated justice of the peace finds that there is a need for a period for the applicant or respondent or both to calm down, the designated justice of the peace may include a provision restraining the respondent from communicating with or contacting the applicant and any other specified person for a specified period, not to exceed 72 hours.

Surrender of weapons

(4) If a designated justice of the peace finds that the respondent used or threatened to use a firearm or other weapon in the course of the family abuse, or if the designated justice of the peace determines that the respondent will likely use a firearm or other weapon in the course of family abuse, the designated justice of the peace may include a provision directing the respondent to surrender to a member of the Royal Canadian Mounted Police, for a specified period not to exceed 90 days,

- (a) any firearm, weapon or ammunition that the respondent owns, possesses or controls; and
- (b) any document that authorizes the respondent to own, possess or control an item referred to in paragraph (a).

R.C.M.P. may seize weapons

(5) If a provision under subsection (4) is included in an emergency protection order, the designated justice of the peace shall also include provisions authorizing a member of the Royal Canadian Mounted Police, in the event that the respondent does not deliver up the items, to use such force and assistance as are reasonable in the circumstances

- (a) to enter and search any place where the member has reason to believe the items referred to in the order are located; and
- (b) to seize the items referred to in the order.

Limit on surrender

(6) A provision made under subsection (4) is subject to any subsequent order respecting the respondent's ownership, possession or control of the firearm or weapon made under the *Criminal Code*, the *Firearms Act* (Canada) or this Act.

Occupation of family home or residence

(7) If a designated justice of the peace finds that the respondent would be a danger to the applicant and any other specified person if the respondent remained in the family home or a residence, the designated justice of the peace may include one or more of the following provisions:

- (a) a provision granting the applicant and any other specified person temporary exclusive occupation of the family home or a residence, regardless of ownership, for a specified period not to exceed 90 days;
- (b) a provision requiring the respondent to vacate the family home or a residence, either immediately or within a specified period of time;
- (c) a provision directing a member of the Royal Canadian Mounted Police to remove, immediately or within a specified period of time, the respondent from the family home or a residence.

Interests of persons residing in family home or residence

(8) In considering whether to include a provision granting the applicant and any other specified person temporary exclusive occupation of the family home or a residence, the designated justice of the peace shall consider all the circumstances, including the interests of the respondent and any other person residing in the family home or residence.

Appropriate terms

(9) An emergency protection order or any provision of the order may be subject to any further terms or conditions that the designated justice of the peace considers appropriate.

Emergency protection orders take effect immediately

8. (1) An emergency protection order takes effect immediately, unless otherwise ordered by the designated justice of the peace.

Order continues in effect

(2) Unless otherwise ordered by the Court, an emergency protection order is not stayed by

- (a) an application to revoke an order under subsection 13(1);
- (b) a direction for a rehearing under paragraph 15(3)(b); or
- (c) an application to vary or revoke an order under subsection 39(1).

Priority over other civil orders

9. (1) An emergency protection order prevails over any existing order made under the *Child and Family Services Act*, *Children's Law Act*, *Family Law Act* or *Divorce Act* (Canada), to the extent necessary to provide for the immediate or imminent protection of the applicant or a child of or in the care of the applicant.

Limitation on priority

(2) An emergency protection order is subject to and varied by any subsequent order made under the *Child and Family Services Act*, *Children's Law Act*, *Family Law Act* or *Divorce Act* (Canada) against or affecting the applicant, respondent or child of or in the care of either of them.

Emergency protection order expiry date

10. A designated justice of the peace shall set out the date on which an emergency protection order expires, which may not exceed one year.

Written copy of order

11. The designated justice of the peace who grants an emergency protection order shall immediately arrange for the preparation of a written copy of it.

New application after emergency protection order expires

12. (1) When an emergency protection order has expired or will expire within the next 30 days, and the applicant believes that there is a continuing need for protection, the applicant may submit a new application under subsection 7(1).

Notice of new application

(2) An application referred to in subsection (1) may not be made *ex parte*.

Compliance with emergency protection order

(3) The respondent's prior compliance with an emergency protection order does not in itself mean that the criteria for granting an emergency protection order are not met.

Challenging Emergency Protection Orders

Application to revoke order

13. (1) A respondent against whom an emergency protection order is granted may, within 21 days after being given notice of the order, or within such further time as the Court allows, apply to the Court to have the emergency protection order revoked.

Limitation

(2) No application to have an emergency protection order revoked shall be made if a judge has ordered a rehearing of the matter under paragraph 15(3)(b).

Notice to parties

(3) The clerk shall give notice to the respondent and the applicant of the place, time and date of the hearing.

Nature of hearing to revoke order

14. (1) On an application under section 13, a judge may, subject to subsections 7(2), (3), (4), (7) and (9), confirm, revoke or vary the emergency protection order or any provision in the order, including the duration of any provision, and may include a provision requiring that the respondent attend specified counselling.

Onus on respondent

(2) At a hearing, the onus is on the respondent to demonstrate that the emergency protection order is not necessary or advisable for the immediate or imminent protection of a person.

Use of evidence in support of application

(3) In addition to any other evidence, a judge shall consider, as evidence, the evidence that was before the designated justice of the peace who granted the emergency protection order.

Right of cross-examination

(4) A respondent has the right to cross-examine any witness who testifies at the hearing, and may cross-examine any deponent whose affidavit was before the designated justice of the peace.

Respondent absent

(5) If the respondent fails to attend the hearing, the emergency protection order may be confirmed in the respondent's absence.

Adjournment to allow applicant to obtain advice

(6) If the parties to an emergency protection order agree that it should be revoked but the judge is not satisfied that the applicant's agreement is freely and voluntarily given, the judge may adjourn the proceeding to allow the applicant to obtain legal or other advice.

Review of Emergency Protection Orders

Order sent to Court

15. (1) Immediately after granting an emergency protection order, a designated justice of the peace shall forward a copy of the order and all materials submitted in support of the application to the Court.

Speedy review of order

(2) Unless the respondent has applied under subsection 13(1) to have the emergency protection order revoked, a judge shall review the order in chambers within five days after receipt of the order or, if a judge is not available within that period, as soon as one can be made available.

Decision on review

(3) The judge, on reviewing the emergency protection order and the supporting materials, shall

- (a) confirm the order if the judge is satisfied that there was sufficient evidence before the designated justice of the peace to support the granting of the order; or
- (b) direct a rehearing of the matter by the Court if the judge is not satisfied that the evidence before the designated justice of the peace was sufficient to support the granting of the order or of any of its provisions.

Deemed order of Court

(4) An emergency protection order that is confirmed pursuant to paragraph (3)(a) is deemed to be an order of the Court.

Notice to parties

(5) If a judge directs that a matter be reheard, the clerk shall give notice to the respondent and the applicant of the place, time and date of the rehearing.

Trial *de novo*

16. (1) Subject to subsection (2), a rehearing is to be conducted as a trial *de novo*.

Evidence

(2) In addition to any other evidence, the evidence that was before the designated justice of the peace may be considered as evidence at the rehearing, and, if the respondent attends the rehearing, the respondent may cross-examine any witness who testifies at the hearing and any deponent whose affidavit was before the designated justice of the peace.

Power on rehearing

(3) On a rehearing, a judge may make an order containing any of the provisions that a designated justice of the peace is authorized to include under section 7 and may include a provision requiring that the respondent attend specified counselling.

Community Intervention Orders

Community intervention order

17. (1) On application, a designated justice of the peace may grant a community intervention order if the designated justice of the peace is satisfied that

- (a) family abuse has occurred; and
- (b) it is appropriate to make the order.

Content of community intervention order

(2) A community intervention order shall include a provision restraining the respondent from committing family abuse and may include one or more of the following:

- (a) a provision directing that the applicant and the respondent attend traditional Inuit counselling with a specified traditional counsellor;

- (b) a provision directing that the applicant and the respondent meet with a specified traditional counsellor on a specified date or dates;
- (c) a provision directing that the traditional counsellor report on a specified date or dates to the designated justice of the peace about progress in remedying the family abuse;
- (d) any other provision that the designated justice of the peace considers necessary or advisable to provide both for the protection of the applicant and any other specified person and for the integrity of the family.

Calming period

(3) If a designated justice of the peace finds that there is a need for a period for the applicant or respondent or both to calm down, the designated justice of the peace may include a provision restraining the respondent from communicating with or contacting the applicant and any other specified person for a specified period, not to exceed 72 hours.

Objection to counsellor

(3.1) Either the applicant or the respondent may refuse to attend traditional Inuit counselling or meet with a specified traditional counsellor if the applicant or the respondent is able to satisfy the designated justice of the peace that counselling sessions with the specified traditional counsellor would be counterproductive to the counselling process.

Report of traditional counsellor

(4) After receiving a report from the traditional counsellor, a designated justice of the peace may, on his or her own motion, revoke a community intervention order or grant an emergency protection order in accordance with section 7.

Interested persons may make submissions

(5) Any interested person may make submissions to the designated justice of the peace hearing an application for a community intervention order.

Community intervention order expiry date

(6) A designated justice of the peace shall set out the date on which a community intervention order expires, which may not exceed three years.

Other order in force

(7) An application for a community intervention order may be submitted while an emergency protection order or assistance order is in force, and the community intervention order does not affect any provision in those orders.

Priority of other order

(8) An application for an emergency protection order or assistance order may be submitted while a community intervention order is in force, and the community intervention order is subject to those orders.

Traditional counsellor

(9) A traditional counsellor may consist of any or all of the following:

- (a) an elder or specified member of the community;
- (b) a group of specified members of either or both the applicant's and respondent's families;
- (c) a specified group of members of the community or a specified community group.

Assistance Orders

Assistance order

18. (1) On application, a judge may grant an assistance order if the judge is satisfied that

- (a) family abuse has occurred; and
- (b) there is a reasonable likelihood that family abuse will continue, resume or be repeated.

Content of assistance order

(2) A judge may include in an assistance order one or more of the following provisions:

- (a) a provision restraining the respondent from communicating with or contacting, without justification, the applicant and any other specified person;
- (b) a provision restraining the respondent from engaging in any defined conduct that is threatening, annoying or harassing to the applicant and any other specified person;
- (c) a provision restraining the respondent from attending at or near, or entering, any place that
 - (i) is attended regularly by the applicant and any other specified person, including a residence, business, school or place of employment, or
 - (ii) the respondent knows the applicant and any other specified person will attend;
- (d) a provision restraining the respondent from following the applicant and any other specified person from place to place;
- (e) a provision granting the applicant or respondent temporary possession of necessary personal belongings or specified personal property for a specified period of time;
- (f) a provision directing a member of the Royal Canadian Mounted Police to accompany, within a specified period of time, the applicant, the respondent and a specified person to the family home or a residence to supervise the removal of necessary personal belongings in a safe and orderly manner and in order to ensure the protection of the applicant or any other specified person;

- (g) a provision restraining the respondent from taking, converting, damaging or otherwise dealing with property in which the applicant has an interest;
- (h) a provision granting the applicant temporary custody of a child for a specified period of time;
- (i) a provision granting the respondent access to a child, on such terms as may be necessary to ensure the safety of the applicant and any other specified person;
- (j) a provision authorizing the seizure, until further order of the Court, of any personal property of the respondent used in furtherance of the family abuse or stalking;
- (k) a provision recommending that the parties attend family counselling, on such terms as the judge considers necessary to ensure the safety of the applicant and any other specified person;
- (l) a provision recommending that a child attend specified counselling, and, if the judge considers it appropriate, ordering the respondent to pay for that counselling;
- (m) a provision requiring or recommending that the respondent attend specified counselling;
- (n) any other provision that the judge considers appropriate to protect the applicant and any other specified person or to prevent the continuation, resumption or repetition of family abuse.

Occupation of family home or residence

(3) If a judge finds that the respondent would be a danger to the applicant and any other specified person if the respondent remained in the family home or a residence, the judge may include one or more of the following provisions:

- (a) a provision granting the applicant and any other specified person temporary exclusive occupation of the family home or a residence, regardless of ownership;
- (b) a provision requiring the respondent to vacate the family home or a residence, either immediately or within a specified period of time;
- (c) a provision directing a member of the Royal Canadian Mounted Police to remove, immediately or within a specified period of time, the respondent from the family home or residence.

Interests of persons residing in family home or residence

(4) In considering whether to include a provision granting the applicant and any other specified person temporary exclusive occupation of the family home or a residence, the judge shall consider all the circumstances, including the interests of the respondent and any other person residing in the family home or residence.

Appropriate terms

(5) An assistance order or any provision of the order may be subject to any further terms or conditions that the judge considers appropriate.

Priority of other civil orders

19. An assistance order is subject to and varied by any subsequent order made under the *Child and Family Services Act*, *Children's Law Act*, *Family Law Act* or *Divorce Act* (Canada) against or affecting the applicant, respondent or child of or in the care of either of them.

Compensation Orders

Compensation order

20. (1) If, on application, a judge determines that the respondent has engaged in family abuse, the judge may grant a compensation order requiring the respondent to reimburse the applicant or any specified person for any monetary loss suffered or expense incurred as a result of the family abuse.

Types of expenses

(2) The losses and expenses for which the respondent may be ordered to make reimbursement include the following:

- (a) loss of income;
- (b) damage to personal property;
- (c) expenses relating to new accommodations, moving and security measures;
- (d) medical expenses and other expenses relating to dentistry, therapy, counselling, prescription drugs, glasses, prosthesis or any other therapeutic device or supplies;
- (e) legal fees and other expenses relating to an application under this Act.

PART 3

PREVENTION OF AND PROTECTION FROM STALKING

Meaning of stalking

21. (1) Stalking occurs when a person

- (a) repeatedly engages in conduct that causes another person reasonably, in all the circumstances, to fear for his or her own safety;
- (b) acts without lawful excuse or authority; and
- (c) knows that the other person is harassed, intimidated or threatened or is reckless as to whether the other person is harassed, intimidated or threatened by the conduct.

Examples of conduct

(2) For the purposes of this Act, examples of the conduct referred to in subsection (1) include

- (a) following from place to place the other person or anyone known to the other person;

- (b) communicating directly or indirectly with or contacting the other person or anyone known to the other person;
- (b.1) using an electronic means of communication, such as a cell phone, text or instant messaging, email, chatroom, blog or other Web site, to send information to or spread information about the other person;
- (c) besetting or watching any place where the other person, or anyone known to the other person, resides, works, carries on business or happens to be; and
- (d) engaging in threatening conduct directed at the other person or anyone known to the other person.

Certain persons deemed to have fear

(3) If, but for minority or mental incompetence, a person would reasonably, in all the circumstances, fear for his or her safety owing to conduct referred to in subsection (1), the person is conclusively deemed to have the fear referred to in that subsection.

R.C.M.P. may assist in identification

22. A member of the Royal Canadian Mounted Police who has reason to believe that a person is being stalked and can identify the person who is stalking or is suspected of stalking may, on the request of the person being stalked or a person acting on his or her behalf, disclose to him or her the name of the other person, and any additional information necessary to identify the other person, for the purpose of facilitating an application for an emergency protection order or an assistance order under this Act.

Availability of emergency protection order and assistance order

23. A person who is being or has been stalked may apply for and be granted an emergency protection order or assistance order in accordance with Part 2, with such modifications as the circumstances require, and references to family abuse shall be read as references to stalking.

Tort of stalking

24. (1) A person who stalks another person commits a tort against that person, and is liable in an action brought in court.

Action without proof of damages

(2) An action may be brought under subsection (1) without proof of damages.

PART 4

PROCEDURE AND MISCELLANEOUS

Applications

Age of applicant

25. (1) An application for a remedy under this Act may be made only by a person who has attained 14 years of age, and may be made without a next friend or guardian *ad litem*.

Age of respondent

(2) No application may be made or granted against a respondent who has not attained 14 years of age.

Applying for an emergency protection order, assistance order or compensation order

26. (1) An application for an emergency protection order, assistance order or compensation order may be submitted

- (a) by the applicant; or
- (b) on the applicant's behalf and with the applicant's consent, by a family member, friend, lawyer, member of the Royal Canadian Mounted Police or member of a prescribed category of persons.

Deemed consent

(2) If, but for minority, mental incompetence or special vulnerability to the respondent, a person would reasonably, in all the circumstances, submit an application for an emergency protection order, the person is conclusively deemed to have consented to an application made on his or her behalf.

Applying for a community intervention order

27. An application for a community intervention order may be submitted

- (a) by a person subjected to or engaging in family abuse; or
- (b) on behalf of a person referred to paragraph (a), with his or her consent, by a family member, friend, elder or member of a prescribed category of persons.

Manner of application

28. An application for an order under this Act must

- (a) contain the prescribed information; and
- (b) be submitted in the prescribed manner.

Parties

29. Unless a designated justice of the peace or judge orders otherwise, a person who applies for an order under this Act on behalf of another person is not a party to the proceedings.

Applicant must disclose any order or agreement

30. In a proceeding relating to an order under this Act, the applicant must disclose to the designated justice of the peace or judge the details of every order affecting the applicant and respondent and of every agreement between them, including the following:

- (a) an order made under this Act;
- (b) any recommendation or report made under a community intervention order;
- (c) an order or agreement respecting custody or access;
- (d) an order made under the *Child and Family Services Act*, *Children's Law Act*, *Family Law Act* or the *Divorce Act* (Canada);
- (e) a proceeding under the *Criminal Code*;
- (f) a recognizance issued under section 810 of the *Criminal Code*;
- (g) a peace bond.

Hearings

Conduct of hearing

31. A designated justice of the peace or judge may conduct a hearing under this Act in a manner the designated justice of the peace or judge considers appropriate in the circumstances in order to

- (a) put the parties at ease;
- (b) help the parties understand the proceedings; and
- (c) reach a just determination.

Hearing in private

32. A designated justice of the peace or judge may order that any hearing under this Act or any part of a hearing be held in private.

Publication ban

33. A designated justice of the peace or judge may, on his or her own motion, make an order prohibiting the publication or broadcast of the name of a party, witness or child or any information likely to identify the applicant, witness or child if the designated justice of the peace or judge is satisfied that the publication or broadcast could

- (a) affect the safety of, or cause undue hardship to the applicant or witness; or
- (b) affect the safety or physical or emotional well-being of the child.

Certain information to be kept confidential

34. No person shall disclose to another person any information in a court document or record relating to a proceeding under this Act that identifies or is likely to identify the current address of an applicant, other than information that is necessary to enforce the order, unless the applicant consents.

Factors to be considered

35. In determining whether to grant an order under this Act, and what provisions should be included in the order, the designated justice of the peace or judge shall consider, but is not limited to considering, the following factors:

- (a) the nature of the family abuse;
- (b) the history of family abuse by the respondent towards the applicant or any other person;
- (c) the existence of immediate danger to persons or property;
- (d) the best interests of the applicant and any child that may be affected by the order.

Notice of Orders

Respondent bound when given notice

36. An order under this Act takes effect on pronouncement, but, subject to the terms of the order, a respondent is not bound by an order or any provision in the order until he or she is given notice of it.

Dispensing with notice

37. On application, a designated justice of the peace or judge may waive giving the respondent notice of an order if

- (a) reasonable attempts to give the respondent notice have failed; or
- (b) the designated justice of the peace or judge is satisfied that the respondent is evading being given notice.

Direction to R.C.M.P.

38. An order under this Act is a direction binding on members of the Royal Canadian Mounted Police

- (a) to immediately give notice of the order to the respondent; and
- (b) to take any reasonable steps necessary to enforce compliance with the order.

Variation and Revocation of Orders

Justice of the peace may vary or revoke emergency protection order

39. (1) On application, a designated justice of the peace may revoke or vary an emergency protection order, including any provision in the order, if the designated justice of the peace is satisfied that there has been a material change in circumstances.

Timing of application

(2) An application to vary or revoke an emergency protection order may be submitted, on notice to the other party, by the applicant or the respondent at any time after the order is confirmed under paragraph 15(3)(a), confirmed or varied under subsection 14(1) or granted under subsection 16(3).

Application to be made to original justice of the peace

(3) An application to vary or revoke an emergency protection order must be submitted, where possible, to the designated justice of the peace who granted the original emergency protection order.

Other provisions not affected

(4) The variation of one or more provisions of an order does not affect the other provisions in the order.

Review of variation

(5) An order varying an emergency protection order must be reviewed in accordance with section 15.

Court may vary or revoke order

40. (1) On application, a judge may confirm, revoke or vary an order made by the Court under this Act, including any provision in the order, if the judge is satisfied that there has been a material change in circumstances.

Other provisions not affected

(2) The variation of one or more provisions of an order does not affect the other provisions in the order.

Adjournment to allow applicant to obtain advice

(3) If the parties to an order made under this Act agree that it should be varied or revoked but the judge is not satisfied that the applicant's agreement is freely and voluntarily given, the judge may adjourn the proceeding to allow the applicant to obtain legal or other advice.

Appeals

Appeal

41. (1) An applicant or respondent may, within 30 days after the date of an order made by the Court under this Act, or within such further time as a judge of the Court of Appeal may allow, appeal the order to the Court of Appeal.

No stay of proceedings

(2) Unless a judge of the Court or the Court of Appeal orders otherwise, an appeal does not operate as a stay of the order.

Power on appeal

(3) The Court of Appeal may, on hearing an appeal made under subsection (1), affirm, revoke or vary the order, and make any other order that the Court of Appeal considers appropriate.

Warrants

Arrest without warrant

42. A member of the Royal Canadian Mounted Police may arrest, without a warrant, any person

- (a) whom the member believes, on reasonable grounds, has contravened any term of an order made under this Act; or

- (b) whom the member finds contravening any term of an order made under this Act.

Warrant permitting entry

43. (1) A justice of the peace or judge may issue a warrant if, on an *ex parte* application by a member of the Royal Canadian Mounted Police, the justice of the peace or the judge is satisfied by information on oath that there are reasonable grounds to believe that

- (a) a person likely is being or was subjected to family abuse;
- (b) a person who likely is being or was subjected to family abuse will be found at the place to be searched; and
- (c) the person making the application has been or will likely be refused access to the place.

Powers under warrant

(2) A warrant may authorize the person executing the warrant to do any or all of the following:

- (a) enter and search the place named in the warrant and any adjoining place;
- (b) assist or examine, with a person's consent, a person who may have been subjected to family abuse;
- (c) remove, with the person's consent, a person who may have been subjected to family abuse and a child of or in the care of the person;
- (d) seize any thing that may provide evidence that a person is or was subjected to family abuse.

Exigent circumstances

(3) Notwithstanding subsection (1), a member of the Royal Canadian Mounted Police may exercise any of the powers referred to in subsection (2) without a warrant where the conditions for obtaining a warrant exist but the delay necessary to obtain a warrant would result in a danger to any person.

Use of force

(4) A person named in a warrant may use such force and assistance as are reasonable in the circumstances to execute the warrant.

Identification

(5) On request, a person executing a warrant shall identify himself or herself and explain the purpose of the entry.

General

Exclusion of liability

44. No action or other proceeding shall be instituted for any loss or damage suffered by a person by reason of anything done, caused, permitted or authorized to be done, attempted to be done or omitted to be done by a person acting in good faith

- (a) pursuant to or in the exercise of any power conferred by this Act;
or
- (b) in the carrying out of any order made under this Act or any duty imposed by this Act.

Effect of order on property interests

45. An order under this Act does not in any manner affect the title to or an ownership interest in real property or personal property.

Effect of order on residential tenancy

46. (1) If a family home or residence is rented by a respondent pursuant to a tenancy agreement, and an applicant who is not a party to the tenancy agreement is granted exclusive occupation of the family home or residence, no landlord shall evict the applicant solely on the basis that the applicant is not a party to the tenancy agreement.

Deemed tenancy

(2) For the duration of the exclusive occupation, the applicant is deemed to be a tenant under the tenancy agreement, and the landlord continues to have the rights granted under the *Residential Tenancies Act*.

Assumption of lease

(3) If an applicant is granted exclusive occupation of rental premises pursuant to an assistance order, the applicant may request the landlord to advise him or her of the status of the tenancy agreement and of any claims against the respondent arising from the tenancy agreement, and the applicant may, at his or her option, assume the responsibilities of the respondent pursuant to the tenancy agreement.

Other right of action not affected

47. (1) Subject to subsection (2), a remedy under this Act is in addition to, and does not affect or diminish, any other right of action or remedy that may be available to an applicant.

No double compensation

(2) When assessing damages or compensation in an action or proceeding arising out of family abuse or stalking that is the subject of another action or proceeding, the judge shall take into account any damages or compensation awarded in the other action or proceeding in respect of the same behaviour.

Administration

Designation of justices of the peace

48. (1) The senior judge of the Court referred to in the *Judicature Act* may designate one or more justices of the peace to hear and determine applications for emergency protection orders under this Act.

Other designated justices of the peace

(2) Every judge of the Court is, by virtue of his or her office, a designated justice of the peace.

Consequential amendment

(3) On the coming into force of sections 2 and 3 of *An Act to Amend the Judicature Act and Other Acts in Relation to Judges*, S.Nu. 2000,c.3, subsection (1) is amended by striking out "senior judge" and substituting "Chief Justice".

Tabling of annual report

49. The Minister shall table an annual report on the operation of this Act which contains the prescribed information.

Offences and Penalties

Obstruction

50. A person who obstructs or hinders any person who is performing a function authorized by this Act or by an order made under this Act is guilty of an offence and liable on summary conviction

- (a) in the case of a first offence, to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months or to both; and
- (b) in the case of a second or subsequent offence, to a fine of not more than \$10,000 or to imprisonment for a term of not more than two years or to both.

Breach of publication ban

51. (1) Any person who discloses, publishes or broadcasts any information in contravention of this Act or contrary to an order made under this Act is guilty of an offence and liable on summary conviction

- (a) in the case of an individual, to a fine of not more than \$5,000 or to imprisonment for a term of not more than two years or to both; and
- (b) in the case of a corporation, to a fine of not more than \$50,000.

Liability of officers, directors and agents

(2) If a corporation commits an offence under subsection (1), any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is guilty of an offence and liable on summary conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

Prohibition against public mischief and perjury

52. No person shall, in making an application under this Act, commit perjury or public mischief within the meaning of the *Criminal Code*.

Regulations

Regulations

53. The Commissioner, on the recommendation of the Minister, may make regulations

- (a) prescribing categories of persons who may apply for an emergency protection order, assistance order or compensation order under subsection 26(1);
- (b) prescribing categories of persons who may apply for a community intervention order under section 27;
- (c) respecting the manner of making an application for an order under this Act and the information to be contained in the application as referred to in section 28;
- (d) respecting the procedures to be followed for applications, hearings and rehearings;
- (e) respecting the manner of giving notice of an order under this Act;
- (f) prescribing the information to be contained in an annual report as referred to in section 49;
- (g) respecting any matter that the Commissioner, on the recommendation of the Minister, considers necessary or advisable to carry out the intent and purpose of this Act.

COMMENCEMENT

Coming into force

54. This Act or any portion of this Act comes into force on a day or days to be fixed by order of the Commissioner.