

Domestic Violence: Victim Protection and Intervention

by Felicia Browne & Alicia Nicholls

Victims of domestic violence in Barbados are on the verge of receiving greater protection. The Domestic Violence (Protection Orders) Amendment Act, Cap 130A was recently passed by the House of Assembly and is currently before the Senate for debate. The Act, which seeks to make several sweeping changes to domestic violence protection available to victims, has evoked mostly public approval for the increased protection of women, men and children that are victims of domestic violence. In this article, we will attempt to discuss some of the salient features of the amended Act.

Domestic violence legislative framework

The legislative framework for domestic violence protection in Barbados is based primarily on the Domestic Violence (Protection Orders) Act, Cap 130A, the Sexual Offences Act and the Offences Against the Person Act. The main Act, however, is the Domestic Violence (Protection Orders) Act of 1993 which provides for the granting of protection orders in domestic violence and related matters. Marital rape, however, is covered in the Sexual Offences Act. Barbados has also ratified both the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on October 16, 1980 and the Inter-American Convention on the Prevention, Punishment and Eradication for Violence against Women on May 16, 1995.¹ It should be noted that the domestic violence legislation in Barbados is not limited to violence against women and recognises that men could also be victims of abuse at the hands of a female spouse or partner. A male spouse or partner in a cohabitational or visiting relationship, once falling within the definitions of the Act, may also seek relief under the Act. Additionally, the Act also recognizes that children can be victims of domestic violence.

In a 2009 report, Cadres stated that respondents were asked to identify the ways in which domestic violence perpetrated between adults has been known to have a negative impact on children, and the responses are listed below: Significant decreases in the quality of schoolwork; Fighting at school; Shortened attention spans; Frequent crying; Eating disorders, eating either too much or too little; Constant anxiety and fearfulness of hypothetical situations such as losing a parent to an act of violence; Sudden fear of being in dark places. One woman's son, at a younger stage, would hit back when she spanked or scolded him. He also tended to be insubordinate, and would seek solace with his father when scolded by his mother. Now he has grown to be more protective of his mother than aggressive, not wanting anyone to come into close contact with her.

¹ <http://caribbean.unwomen.org/en/caribbean-gender-portal/caribbean-gbv-law-portal/gbv-country-resources/barbados>

Another woman had been summoned to her daughter's school on numerous occasions, on account of "unusual behaviour": aggressive behaviour, zero schoolwork and most notably, completely unfeminine behaviour. The daughter explained that no man is ever to hit or beat her, as she witnessed this happen to her mother. One woman's son became withdrawn at school, and tends to become very aggressive regarding the most frivolous matters. He has taken on the role of his mother's protector and frequently enquires where his mother is going, with whom, and the time she expects to return.

Solo female survivor: The individual female respondent claimed to know of two (2) cases of children who were abused, and have both now grown to be aggressive and rebellious as teenagers. Male survivor: The male respondent claimed that his female abuser verbally abused him in front of his child, and then turned to verbally abusing the child directly. The child responded with threats of violence so it seems as though this may make him aggressive in later life. Overall, respondents argued that though they may try to help their children, a history of domestic violence leaves a "scar" on the lives of children that can't be healed, such that the unusual behaviours displayed immediately following periods of abuse have the potential to surface at any time.

The recent suspicious deaths of two young children, both alleged to have been victims of child abuse, as well as what seems anecdotally to be an increase in the deaths of women at the hands of male partners, have led to an outcry from civil society groups and the wider public for more robust domestic violence legislation. In 2011, the Minister of Social Care, Constituency Empowerment and Community Development, the Hon. Steven Blackett, was reported to have referred to domestic violence as "a scourge", citing statistics from the Royal Barbados Police Force which indicated that domestic violence accounted for 21 percent of murders between 2000 and 2007.² A year later in 2012, the United Nations Human Rights Chief, Navi Pillay, highlighted domestic violence as a problem in Barbados and implored Barbadian authorities to adopt more effective domestic violence legislation.³

Major changes to the Act

The amendments are as follows:

- The new Act now provides a definition of domestic violence, which the original Act lacked. It defines "domestic violence" as the "wilful infliction or threat of infliction of harm by one person in a domestic relationship upon another person in that relationship and includes child abuse, emotional abuse, financial abuse, physical abuse and sexual abuse".

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<http://www.nationnews.com/nationnews/news/36356/domestic-violence-scurge>

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<http://www.un.org/apps/news/story.asp?NewsID=41723#.VrIBk2grLcc>

- It amends the definition of “harassment” by including twenty-first century methods of harassment such as persistent contacting by e-mail or publication of material relating to the victim on the internet without the victim’s consent.
- It replaces the definition of “child” and restricts it to a person under 18 years of age who is not married.
- It expands the class of persons who may seek relief under the Act. These include spouses, former spouses, children, dependents or other person who is considered to be relative of the perpetrator by virtue of consanguinity or affinity, including cohabitational and visiting relationships. However, one flaw of the Act is it limits a cohabitational relationship to one based on the parties living as husband and wife, which excludes people who live-in homosexual relationships.
- The Act mandates that a protection order granted must provide that the respondent against whom the order was sought attend appropriate counseling and therapy and may also provide that the complainant or any other person in respect of whom the order was made attend counseling or therapy as well.
- The Act mandates members of the Police Force to respond to every complaint alleging domestic violence. The Commissioner of Police is required to keep a Domestic Violence Register to record information obtained by a police force member who responds to a complaint alleging domestic violence.
- It provides for the power of a subordinate police officer, where a member of the Police Force exercises his power of arrest, to issue an emergency protection order where he/she has reasonable cause to believe that issuing such order is necessary to ensure the safety of a person at risk, with or without the consent of the person at risk. The Act outlines several considerations the subordinate police officer must take into account in determining whether to issue said order.
- The Act places a duty on any person who attends to, examines or otherwise interacts with a child and is aware or has reasonable cause to suspect that the child is a victim of domestic violence, to immediately notify the Child Care Board or member of the Police Force of that suspicion. Any person failing to do this is guilty of an offence and liable on summary conviction to a fine of \$5,000 or imprisonment for a term of 12 months or to both. It likely this may have been influenced by several cases where child abuse was known but not reported.

Recommendations

These changes to the Act will provide for the immediate protection of victims and their families. For instance, the expansion of the classes of persons who may seek relief under this Act gives greater protection to victims, including dependants like the disabled which were not expressly stated under the original Act. However, the definition of “cohabitational relationships” only gives protection to victims of domestic violence in heterosexual and not same-sex relationships who are living in the same household, meaning they would have to rely on the Offences Against the Person Act. The definition of “visiting relationship” is, however, gender-neutral which will allow victims of a same-sex relationship in which they are not living together to seek relief under the Domestic Violence (Protection Order) Act.

While the new obligation to report child abuse has been deemed draconian by some, it is no more onerous than the reporting requirements found in other child abuse acts in other jurisdictions. For example, the “mandated reporter” provision in the Child Abuse and Neglect Reporting Act, part of the California Penal Code, sets out an exhaustive list of persons mandated to report suspected cases of child abuse or child neglect, including teachers and clergy members, among others.⁴

However, there are areas in which the Act can go further. In this respect, the Good Practices in Domestic Violence Report published by the United Nations is instructive. There still remains a paucity of statistics on the prevalence of domestic violence in Barbados. The Good Practices report, which advocates an evidence-based approach to legislative intervention, recommends that legislation provide “that statistical data be gathered at regular intervals on the causes, consequences and frequency of all forms of violence against women, and on the effectiveness of measures to prevent, punish and eradicate violence against women and protect and support complainants/survivors” and that the data should be disaggregated by sex, age, race etc. One recommendation we would like to see is an amendment to the Act to allow for the collection of such data as well as monitoring and evaluation.

Additionally, the amended Act also does not make provision for support services for victims, which is one of the good practices recommended in the Good Practices Report. These support services are essential for the rehabilitation of victims and their families.

Another recommendation of the Good Practices Report is penalties for non-compliance by relevant authorities. The Report adds that Article 5 of the Costa Rican Criminalization of Violence against Women Law (2007). It provides that relevant officials “must act swiftly and effectively, while respecting procedures and the human rights of women affected”, failing which could lead to them being charged with the crime of dereliction of duty. In light of the concerns raised by the public about the perceived

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11165.7. (a) of California Penal Code <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=11001-12000&file=11164-11174.3>

inaction by officials of the Child Care Board in the face of reports made about alleged child abuse, this is one amendment as well we would like to see.

Notwithstanding the above, legislation by itself cannot and will not eradicate the scourge of domestic violence. Cadres reports that this type of violence features amongst all races, and did not believe racial background to be a factor in the likelihood that a person may become abusive as an adult. They were, however, of the opinion that black female victims tend to be more vocal and thus more likely to speak out about the abuse being suffered, whereas their counterparts of other racial origins might be more concerned about social appearances, and more content to try to mask their suffering from the public as a result. There was consensus that perpetrators tend to familiarise themselves with the loopholes existing in the local laws and tailor their behaviour to suit. It was argued that perpetrators are often highly educated and knowledgeable individuals; one woman's abuser was actually an island constable, and so he was familiar with the laws and what could and could not be done legally. In Barbados once the perpetrator keeps behaviour within the law, or knows persons who work in law enforcement, the victim suffers more.

Law enforcement personnel often do not think of what they can do to prevent incidents of domestic violence, and instead are usually more concerned with the action and excitement created by a potential bust than the need to address the issue from a law enforcement standpoint. Another major concern relates to the level of confidentiality in Barbados: the Cadres report states that they could understand why wealthy victims prefer to seek private means of medical treatment, since domestic issues become open to the public eye in the hospital here. The women were of the opinion that male/female victims admitted to the hospital to deal with injuries inflicted by abuse should receive a different type of treatment.

At present, personal information is recorded and displayed for all patients of the hospital. This should never be the case for victims of domestic violence. One woman's abuser actually accompanied her to the hospital, and refused to leave when the doctor asked to speak with her privately. Security personnel did not intervene. The woman believed that this scenario should have been dealt with by the police, so that the abuser would have been removed from the situation instead of having the opportunity to interfere. Until such time, the situation at the hospital will continue to make it possible for the abuser to cause further damage. The attitude of indifference amongst the police seems to be the same regardless of the gender of the officer. Male victims of abuse also often bemoan the lack of sympathy they sometimes receive from law enforcement authorities and are less reluctant than women to report abuse at the hands of a female spouse or partner.

What this clearly shows is that while vitally important, legislation alone is not enough to stamp out the domestic violence scourge. There needs to be adequate enforcement supported by increased human and financial resources and training provided for Child and Victim Protection authorities like the Child Care Board, as well as police officers so they are better equipped to protect victims. There also needs to

be continued advocacy and awareness campaigns to educate and sensitize the general public about the problem of domestic violence.

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