

Short Notes on:

## **A BRIEF LOOK AT THE PROCESS OF A PROTECTION ORDER APPLICATION**

### ***Introduction***

South Africa is a country wherein the right to freedom and security is protected by the Constitution<sup>1</sup>. The judicial system reflects this direction by encompassing the relief mechanisms directed by the Domestic Violence Act 116 of 1998 (hereinafter referred to as the 'DVA') and the Protection from Harassment Act 17 of 2011 (hereinafter referred to as the 'PHA'). Although many are aware of the above, it is equally important to understand which Act has authority in which instance.

### ***The DVA***

The DVA allows for any person involved in a domestic relationship with the perpetrator of the violence against them to approach the Court and seek protection by way of an application for a protection order against domestic violence.

To further expand, a domestic relationship in terms of the DVA is recognised as any of the below:

- 1) A relationship of marriage between the complainant and respondent (in its present or past form and specifically includes marriage by way of any law, custom or religion);
- 2) The complainant and respondent live together whether married or not alternatively, share or shared the same residence;
- 3) The complainant and respondent are the parents of a child, alternatively, have parental rights in terms of a child;
- 4) The complainant and respondent are family,
- 5) The complainant and respondent are or were engaged in an intimate or sexual relationship<sup>2</sup>

Various acts fall under the classification of domestic violence. These include acts of physical, sexual, emotional or economic abuse. Any act of intimidation, harassment, stalking, controlling or abusive behaviour or the unreasonable disposal of household effects or property.<sup>3</sup>

---

<sup>1</sup> S12 of the Constitution of the Republic of South Africa, 1996.

<sup>2</sup> S1 of the DVA.

<sup>3</sup> S1 of the DVA.

## **The PHA**

Alternatively, complainants may use the PHA mechanisms against any person where the respondent is either known, unknown or reasonably suspected of engaging in the harassment of the complainant or persons related to the complainant.<sup>4</sup>

Harassment under the PHA is defined more in terms of the safety and security of a person. Therefore, it includes any conduct which the respondent knows or ought to have known causes harm to the complainant or related persons. This would include various forms of stalking, watching, and attempts to engage in physical or verbal communication. Harm is further inclusive of sexual harassment, mental, physical, psychological and economic harm.<sup>5</sup>

### **Further Procedure**

The judicial system further uses the available mechanisms to ensure that there is as little contact between the complainant and respondent during the process. For example, should a complainant approach the Court to initiate the application process for a protection order, oral or physical evidence will be used to consider the application by the Court.

Should the Court be satisfied that there is *prima facie* evidence of harassment or domestic violence, the Court must issue an interim protection order in terms of the DVA or PHA. This is to be done regardless of the lack of notice furnished to the respondent. The content of this order will place restricting conditions or obligations on the respondent to prevent any further acts of harassment or domestic violence.

This interim order will then be served on the respondent by either the Sheriff or a South African Police Services member, depending on the nature of the matter.

The respondent will then be asked to show cause as to why the interim order should not be finalised against them on the return date to the Court, which is usually after a period of approximately three (3) months.

---

<sup>4</sup> S1 of the PHA.

<sup>5</sup> S1 of the PHA.

If the interim order is not granted, then the respondent will still be served a copy of the application and further notice to show cause as to why the protection order should not be issued against them on the return date.

### **Conclusion**

Suppose the interim order is finalised against the respondent. In that case, the Court will additionally issue a warrant of arrest against the respondent, which will be suspended as long as there is adherence to the conditions and obligations set out in the finalised order. However, it will be deemed a criminal offence if the respondent fails to adhere to these conditions. Accordingly, the respondent will be liable for a fine currently not exceeding two hundred thousand rand (R200 000) or imprisonment for a period not exceeding five (5) years.

Contact SchoemanLaw Inc should you need any assistance with your domestic violence or harassment applications

Jared Poole

Professional Assistant