

Robust protection for women against violence and harassment



Jayson George: Senior Associate, Bowmans
e-mail: info-cpt@bowmanslaw.com

There are various reasons why victims of gender-based violence (GBV) or harassment suffer in silence, including economic dependence on a perpetrator, stigma, lack of knowledge of the law, or lack of confidence in the protections that the law offers.

Obtaining a protection order against someone who is abusing, bullying, or harassing another person is a straightforward legal process in South Africa.

The relevant laws are broad and robust, offering protection to victims experiencing virtually any kind of abuse or harassment, whatever the nature of their relationship with the perpetrator.

THE RELEVANT LAWS

Depending on the context, protection is available through either of two laws: the Domestic Violence Act No. 116 of 1998 (DVA) or the Protection from Harassment Act No. 17 of 2011 (PFHA).

When the victim and perpetrator are, or were, married or in a marriage-like relationship, are cohabiting, dating, or in another consanguineous relationship, the law to turn to is the DVA. Domestic violence takes many forms, including physical, mental, emotional, sexual, or verbal abuse. It extends to the perpetrator depriving the victim of food, money, or freedom of movement, or stalking them, making threats or entering their residence, workplace, or place of study.

While there must always be a domestic relationship in matters falling under the DVA, there is no such requirement in the PFHA. Under the PFHA, the perpetrator could be anyone, from a colleague, acquaintance, or neighbour to an online stalker or a complete stranger.

The forms of harassment for which the victim can seek relief under the PFHA are extensive, including unsolicited or threatening phone, text, or social media messages, online bullying, or the perpetrator 'just happening' to pop up in-person at the victim's location.

DETAILED EVIDENCE IS KEY

Should a victim decide to seek legal protection, a key principle that applies in cases of domestic violence and non-domestic harassment is this: the more information the applicant has about the conduct concerned, and the more detailed this information is, the better.

Useful evidence would include photographs, doctors' reports, copies of text, WhatsApp and e-mail messages, and a detailed written summary of events, down to the exact swear words the perpetrator used and the dates and times of every incident. Also important is an address (whether place of residence, work, or business) for the perpetrator, for purposes of serving the interim order, once granted.

Gathering evidence can be more challenging if (in a harassment case) the perpetrator's identity is unknown. The perpetrator could be making anonymous threats through an unknown telephone number or fake social media account, or even fraudulently using someone else's device to harass the victim.

In such situations, a court might order an electronic service provider to investigate and disclose details of who owns the number or account – bearing in mind that this can be difficult to ascertain for sure.

HOW TO APPLY FOR A PROTECTION ORDER

Applying for a protection order is not as daunting as it might seem, and can be done without the perpetrator being present, initially.

All victims of domestic violence can report to the Domestic Violence Clerk at the Magistrate's Court falling within their area of residence, from Monday to Friday. There they will need to complete the regulated forms to obtain the protection order. The process is entirely free.

If all the documentation is in order and there is sufficient detail, the documents are taken to the magistrate on duty to consider the application for an interim protection order.

In our experience, it happens very seldom that the applicant is called to give oral evidence, and it is rarer still for a perpetrator to be present. Depending on the seriousness of the abuse or harassment suffered, the court may grant a final interdict immediately.

When an interim protection order is granted, it is critical to note that the magistrate will also set a return date, usually in a few months' time, for the order to be finalised. It is imperative that victims attend on the scheduled return date.

Sadly, many victims do not show up for the return date, or they withdraw the case before then. However, if the interim order is not made final, the protection falls away and the process must be restarted. Whilst domestic violence or harassment per se is not a criminal offence yet, the gravity of a domestic violence act may be, such as common assault, assault with the intention to commit grievous bodily harm, attempted murder and, of course, contempt of court where the perpetrator breaches the protection order. When victims follow through and stand up for their rights, the law can offer real protection, with real consequences for perpetrators who breach it. ♀

Occupational & Primary Health

Healthy employees

Successful business



Risk insights and management are reported



Employees are declared fit for duty through a medical



All occupational health legal requirements are met successfully



Early risk identification and management measures are put in place



Mobile and walk-in clinics, where medical surveillance is provided, are present



Injury-on-duty and COID claims are effectively managed



Chronic conditions are monitored

With over 28 years' experience, we provide industry-leading **occupational health solutions including medical surveillance and primary care** to enhance your business' financial health. We have the expertise to engage and guide your business, to successfully integrate your workplace wellness requirements by making sure of the following: