



## ANALYSIS

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| 1. Title<br>1. Short Title<br>2. Separation and non-molestation orders | 3. Consequential amendments |
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1994, No. 7

An Act to amend the Cook Islands Act 1915

(4 July 1994)

**BE IT ENACTED** by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title - This Act may be cited as the Cook Islands Amendment Act 1994, and shall be read together with and deemed part of the Cook Islands Act 1915 (hereinafter referred to as "the principal Act").
2. Separation and non-molestation orders - The principal Act is amended, by inserting after Part XVIII, the following new Part -

**"PART XVIII****SEPARATION, OCCUPATION AND NON-MOLESTATION ORDERS****Separation Orders**

523A. Application for separation order - Either party to a marriage may apply to the Court for a separation order.

523B. Grounds for separation order - The Court may make a separation Order if it is satisfied that there is a state of disharmony between the parties to the marriage of such a nature that it is unreasonable to require the parties to continue, or, as the case may be, to resume, cohabitation with each other.

523C. Effect of separation order - So long as a separation order remains in force, neither party to the marriage shall be under an obligation to cohabit with the other party, but, except as provided by this Act or any other enactment, the order shall not otherwise affect the marriage or the status, rights, and obligations of the parties to the marriage.

523D. Discharge of separation order on resumption of cohabitation

- (1) A separation order shall cease to have any force or effect if -
- (a) the husband and the wife, with the free consent of both parties, have resumed cohabitation as husband and wife for a period of 3 months or more; or
  - (b) the order is discharged by the Court under section 523E of this Act.
- (2) Without limiting the provisions of paragraph (a) of subsection (1) of this section, the husband or wife may apply to the Court for the discharge of the separation order on the grounds that it has ceased to have effect under that paragraph, and, on proof that the order has ceased to have effect as aforesaid, the Court shall discharge the order.

523E. Discharge of separation order by Court - (1) Subject to subsection (2) of this section, the Court may, on the application of either party, discharge any separation order if the Court is satisfied that the circumstances have so changed since the making of the order that it is reasonable that the order should be discharged.

(2) The Court shall not discharge the order if an application for dissolution of marriage has been filed by either party, and is pending.

523F. Effect of separation order on property rights - (1) If, while a separation order is in force, either the husband or wife dies intestate as to any property, that property shall devolve as if the survivor had predeceased the intestate.

(2) Notwithstanding subsection (1), in any case to which that subsection applies, the Court, on the application of the survivor made within 6 months of the date of death of the intestate, may in its discretion order that such provision as the Court thinks fit shall be made for the survivor out of the estate of the deceased husband or wife.

### Orders for occupation of home

523G. Orders in respect of matrimonial homes and tenancies - (1) Notwithstanding section 25(2) of the Matrimonial Property Act 1976, the Court may make an order under section 27 or section 28 of that Act, in any case where a husband and wife who are still married to each other or are not living apart and are not separated, if the Court is satisfied that such an order -

- (a) is necessary for the protection of the husband or wife; or
- (b) is in the best interests of a child of the marriage.

(2) The Court may make an order pursuant to subsection (1) of this section on an application made *ex parte* if it is satisfied that the respondent -

- (a) has threatened or used violence against, or threatened or caused bodily harm to, the applicant or a child of the marriage; and
- (b) is likely to do so again;

and that the delay caused by proceeding on notice would or might expose the applicant or a child of the marriage to physical injury.

(3) On making an *ex parte* order pursuant to subsection (1) of this section, the Court shall at the same time make an interim non-molestation order pursuant to section 523I, unless it considers that there are special reasons why such an order should not be made.

(4) An order made *ex parte* under this section shall expire -

- (a) on the discharge of an interim non-molestation order made in conjunction with it; or
- (b) if no such non-molestation order is made, 7 days from the date of its making;

(5) Where an order is made *ex parte* against any respondent, the respondent may apply immediately for variation or discharge of the order.

523H. Orders in respect of matrimonial homes and tenancies where parties living apart - (1) Without limiting the power of the Court to make an *ex parte* order in any other circumstances the Court may make an order under section 27 or section 28 of the Matrimonial Property Act 1976 on the *ex parte* application of a husband or wife, or former husband or wife, who are living apart or are separated, if the Court is satisfied that the respondent has used violence against, or caused bodily harm to, the applicant or a child of the marriage and that the delay caused by proceeding on notice would or might cause undue hardship to the applicant or to a child of the marriage.

(2) On making an *ex parte* order pursuant to subsection (1) of this section, the Court shall at the same time make an interim non-molestation order under section 523I and 523J of this Act unless it considers that there are special reasons why such an order should not be made.

(3) Where an order under this section is made, *ex parte* against any respondent, the respondent may apply immediately for variation or discharge of the order.

### Non-Molestation Orders

523I. Ancillary Non-molestation orders - (1) Where the Court makes an order of the kind referred to in sections 523A, 523G or 523H of this Act, the Court may, at the same time, or at any time thereafter while the order remains in force, make a non-molestation order on the application of either party if it is satisfied that the making of the order is necessary for the protection of the applicant or any child in the custody of the applicant.

- (2) Where a non-molestation order made under this section is in force, the person against whom it was made -
- (a) shall not enter or remain on any land or in any building which is in the occupation of the applicant or in which the applicant or any child in the custody of the applicant dwells or is present -
    - (i) without the consent (express or implied) of the applicant in any case where an occupation order in the applicant's favour is in force in respect of the land or building;
    - (ii) without the consent (express or implied) of the applicant in any case where the applicant is in occupation of the land or building and there is a separation order or separation agreement in force between the parties; or
    - (iii) in any case, in circumstances which constitute a trespass;
  - (b) shall not molest the applicant by watching or besetting the applicant's dwellinghouse or place of business, employment, or residence, or by following or way-laying the applicant in any public place or by making persistent telephone calls to the applicant at the applicant's dwellinghouse or place of business, employment, or residence;
  - (c) shall not molest any child in the custody of the applicant by watching or besetting the child's place of residence or education, or by following or way-laying the child in any such public place, or by making persistent telephone calls to the child at the child's place of residence or any other place.

523J. Non-molestation orders in respect of de-facto couples - (1)  
 Any man or woman who are not and who has not been married to the other, but who is or has been living with the other in a relationship in the nature of marriage may apply to a Judge of the High Court for a non-molestation order, and the Court, if it is satisfied that the making of the order is necessary for the protection of the applicant or of a child in the custody of the applicant, may make a non-molestation order.

(2) In determining whether an order should be made under this section, the Court shall have regard to all the circumstances of the case, including but not limited to -

- (a) the duration of the relationship; and
- (b) the relative material contributions of the parties to the relationship; and

- (c) the welfare of the parties to the relationship and of any child in their custody;
- (d) such other circumstances as it appears to the Court are just and equitable.

(3) Where a non-molestation order made under this section is in force, the person against whom it was made -

- (a) shall not, if the Court so orders, enter or remain on any land or in any building which is in the occupation of the applicant or in which the applicant or any child in the custody of the applicant dwells or is present -
  - (i) without the consent (express or implied) of the applicant; or
  - (ii) in any case, in circumstances which constitute a trespass;
- (b) shall not molest the applicant by watching or besetting the applicant's dwellinghouse or place of business, employment, or residence, or by following or way-laying the applicant in any public place or by making persistent telephone calls to the applicant at the applicant's dwellinghouse or place of business, employment, or residence; and
- (c) shall not molest any child in the custody of the applicant by watching or besetting the child's place of residence or education, or by following or way-laying the child in any such public place, or by making persistent telephone calls to the child at the child's place of residence or any other place.

523K. Other non-molestation orders - (1) Any person to whom sections 523I and 523J do not apply, may apply to a Judge of the High Court for a non-molestation order against any other person, and the Court, if it is satisfied that the making of the order is necessary for the protection of the applicant or of a child in the custody of the applicant, may make a non-molestation order.

(2) Where a non-molestation order made under this section is in force, the person against whom it was made -

- (a) shall not molest the applicant by watching or besetting the applicant's dwellinghouse or place of business, employment, or residence, or by following or way-laying the applicant in any public place or by making persistent telephone calls to the applicant at the applicant's dwellinghouse or place of business, employment, or residence; and

- (b) shall not molest any child in the custody of the applicant by watching or besetting the child's place of residence or education, or by following or way-laying the child in any such public place, or by making persistent telephone calls to the child at the child's place of residence or any other place.

523L. Ancillary orders - Where an order is made under this Part, the Court may in addition to such order, and without otherwise affecting the rights and obligations of any person, make such ancillary orders as to possession of chattels belonging to any party to the proceedings as in the circumstances appear just and equitable.

523M. Jurisdiction of Justices of the Peace - (1) Notwithstanding the provisions of this Part or of the Judicature Act 1980-81, any application for an order under sections 523I, 523J, 523K or 523L may be determined by a Justice of the Peace, provided that every order made by a Justice of the Peace shall be an interim order.

(2) Every interim order shall assign a date (which shall be as soon as reasonably practicable thereafter) for a hearing before a Judge of the High Court as to whether a final order should be made in substitution for the interim order.

(3) The copy of the interim order served on the respondent shall notify the respondent that unless the respondent attends on the assigned date to show cause why a final order should not be substituted for the interim order, the Court may discharge the interim order and make a final order in its place.

(4) At the hearing referred to in subsection (2) of this section the Court may -

- (a) discharge the interim order; or
- (b) discharge the interim order and make a final order in its place; or
- (c) on good cause being shown, adjourn the hearing to a fixed time and place.

(5) Where a hearing is adjourned under subsection (4)(c) of this section to another day, the Court shall, at the adjourned hearing, exercise either the power conferred on it by subsection (4) (a) or the power conferred on it by subsection (4)(b) of this section.

523N. Ex-parte non-molestation orders - (1) An order may be made pursuant to sections 523I, 523J, 523K or 523L on an application made *ex parte* if the Judge or Justice of the Peace determining the application is satisfied that the respondent -

- (a) has threatened or used violence against, or threatened or caused bodily harm to, the applicant or a child in the custody of the applicant; and
- (b) is likely to do so again;

and that the delay caused by proceeding on notice would or might expose the applicant or a child in the custody of the applicant to physical injury.

(2) Where an order is made *ex-parte* under this section, the respondent may immediately apply for a variation or discharge of the order.

523O. Offences and penalty - (1) ~~Every person who does any act or omits to do any act in~~contravention of an order made under this Part commits an offence and shall on conviction be liable to a fine not exceeding \$200 or to 3 months imprisonment or to both.

(2) A constable shall, notwithstanding the provisions of any other Act, be empowered to arrest without warrant any person whom he has good cause to suspect has committed an offence under subsection (1), provided that any person so arrested shall be brought before the Court as soon as practicable.

523P. Interpretation - In this Part -  
"Court" means the High Court of the Cook Islands;  
"Matrimonial Property Act 1976" means the Matrimonial Property Act 1976 of New Zealand as applied in the Cook Islands by the Matrimonial Property Act 1991-92."

3. Consequential amendments - The Rarotonga Regulations and Offences Ordinance 1917 is amended, by repealing section 35.

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This Act is administered by the Justice Department.