

COMMENTS ON THE ADMINISTRATION OF THE
DOMESTIC VIOLENCE ACT 1995
SEMINAR OF THE JAMAICA BAR ASSOCIATION
NORMAN MANLEY LAW SCHOOL, JULY 20, 1996

A. INTRODUCTION

FIRST, LET ME THANK THE CHAIRMAN AND MS. NANCY ANDERSON FOR INVITING ME TO SHARE SOME OF MY INSIGHTS ABOUT THE DOMESTIC VIOLENCE ACT BASED ON MY EXPERIENCE AS FAMILY COURT JUDGE. IT IS MERELY FROM THE STANDPOINT OF A FAMILY COURT JUDGE THAT I WOULD WISH TO SPEAK TODAY.

IT IS RATHER DIFFICULT TO MAKE A COMPREHENSIVE AND PROPER ASSESSMENT OF THE EFFECTIVENESS OF THE DOMESTIC VIOLENCE ACT SINCE IT ONLY BECAME OPERATIONAL IN MAY, 1996 - MERELY TWO MONTHS AGO. THIS, IS IN EFFECT, ONE YEAR AFTER IT RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL.

FOR CONVENIENCE OF DISCUSSION, IT MAY BE HELPFUL TO DIVIDE INTO THREE CATEGORIES THE MATTERS WHICH ARE BROUGHT TO THE FAMILY COURT UNDER THE DOMESTIC VIOLENCE ACT. THE THREE CATEGORIES ARE AS FOLLOWS:

1. MENTAL OR PSYCHOLOGICAL ABUSE .
2. PHYSICAL ABUSE.
3. SEXUAL ABUSE.

THE LAST CATEGORY, SEXUAL ABUSE, MAY BE VIEWED AS A SUBSET OF THE SECOND CATEGORY, I.E., PHYSICAL ABUSE. HOWEVER, I DELIBERATELY PROVIDE A SEPARATE CLASSIFICATION CALLED SEXUAL ABUSE BECAUSE OF

THE FREQUENCY WITH WHICH THIS TYPE OF ABUSE OCCURS AND ITS DISTINCTIVE CHARACTERISTICS.

AS I HAVE ALREADY INDICATED, THE THREE TYPES OF ABUSE ARE CLASSIFIED ONLY FOR CONVENIENCE OF DISCUSSION. IT IS CLEAR THAT THE CATEGORIES OFTEN OVERLAP. SEXUAL ABUSE, FOR EXAMPLE HAS, NOT ONLY ELEMENTS WHICH MAY CLEARLY BE DEFINED AS PHYSICAL ABUSE, BUT ALSO ELEMENTS WHICH CLEARLY INVOLVE MENTAL OR PSYCHOLOGICAL ABUSE.

B. EXAMPLES OF CASES OF ABUSE FREQUENTLY ENCOUNTERED

MENTAL AND PSYCHOLOGICAL ABUSE

NOT MANY CASES OF CLEARCUT MENTAL ABUSE HAVE BEEN BROUGHT TO THE ATTENTION OF THE FAMILY COURT. THIS IS PERHAPS BECAUSE VICTIMS OF MENTAL OR PSYCHOLOGICAL ABUSE MIGHT NOT RECOGNIZE THAT THEY HAVE RECOURSE UNDER THE DOMESTIC VIOLENCE ACT WHEN THEY SUFFER THIS TYPE OF ABUSE. S 4 (2) SPECIFICALLY GIVES THE COURT THE POWER TO DEAL WITH MATTERS OF MENTAL ABUSE. IT IS OFTEN NOT UNTIL THE ABUSE BECOMES PHYSICAL THAT IT IS BROUGHT TO THE ATTENTION OF THE COURT. UPON INQUIRY, IT IS OFTEN DETECTED THAT THERE HAD BEEN PROLONGED MENTAL ABUSE OF THE TYPE UPON WHICH THE COURT MAY ACT.

ANYWAY, I WAS ABOUT TO PROVIDE SOME EXAMPLES OF MENTAL OR PSYCHOLOGICAL ABUSE HEARD BY THE FAMILY COURT. THE FIRST IS THE CASE OF DISAGREEMENT BETWEEN A HUSBAND AND WIFE WHICH LED TO THE HUSBAND LOCKING THE WIFE OUT OF THE HOME ON NUMEROUS OCCASIONS AND SO PREVENTING HER FROM ENTERING THE HOME UPON RETURNING FROM WORK. HE FREQUENTLY KEPT HER STANDING OUTSIDE FOR HOURS UNTIL IT PLEASED HIM TO LET HER IN. ON ONE OCCASION, HE LET HER STAND IN THE RAIN UNTIL SHE WAS SOAKED FOR SEVERAL HOURS. IT WAS ONLY AFTER SHE BROKE THE LOCK OF THE DOOR ON ONE OCCASION WHICH LED TO A SEVERE BEATING FROM THE HUSBAND THAT THE MATTER WAS BROUGHT TO THE ATTENTION OF THE COURT. HOWEVER, IT WAS EVIDENT THAT SHE HAD BEEN SUFFERING FROM PROLONGED MENTAL ABUSE.

ANOTHER, AND PERHAPS CLEARER INSTANCE OF MENTAL ABUSE, INVOLVED A CASE WHERE TWO PEOPLE WERE IN A COMMON LAW RELATIONSHIP WHICH ENCOUNTERED DIFFICULTIES. THE RESPONDENT FREQUENTLY TURNED UP AT THE PLACE OF EMPLOYMENT OF HIS BABY MOTHER AND VERBALLY ABUSED HER CAUSING MUCH MENTAL ANGUISH AND EMBARRASSMENT. THIS WAS AN ESSENTIAL CONSIDERATION IN BRINGING THE MATTER BEFORE THE COURT. HOWEVER, AS YOU MIGHT HAVE GUESSED, IT WAS NOT UNTIL THE RESPONDENT PHYSICALLY ABUSED THE BABY MOTHER THAT SHE FINALLY BROUGHT THE MATTER TO THE FAMILY COURT.

PHYSICAL ABUSE

BY FAR, THE LARGEST NUMBER OF CASES COMING BEFORE THE FAMILY COURT MAY BE CLEARLY CLASSIFIED AS CASES OF PHYSICAL ABUSE. THOSE CASES IN WHICH THE COURT HAS SO FAR APPLIED THE DOMESTIC VIOLENCE ACT ARE PREDOMINANTLY IF NOT EXCLUSIVELY CASES WHICH INVOLVE SPOUSAL ABUSE - MORE SPECIFICALLY THE BEATING OF THE WOMAN IN THE LEGAL OR COMMON LAW RELATIONSHIP. THE CASE BROUGHT BEFORE THE FAMILY COURT OF A WOMAN BEING BEATEN WITH A HAMMER AND SHOVEL UNTIL SHE WAS UNCONSCIOUS IS ILLUSTRATIVE OF THE TYPE OF EXTREME PHYSICAL ABUSE WITH WHICH THE COURT HAS TO DEAL. BREAKING OF LIMBS AND CHOPPING AND STABBING ARE ALSO CASES OF PHYSICAL ABUSE FREQUENTLY BROUGHT BEFORE THE COURT.

MANY OF THESE CASES OF PHYSICAL ABUSE INVOLVE SERIOUS CRIMINAL OFFENCES. HOWEVER, BECAUSE THE APPLICANTS WISH TO AVOID A PUBLIC HEARING OF THE DOMESTIC MATTER AS WILL OCCUR IN THE RESIDENT MAGISTRATES COURT, THEY SEEK RECOURSE FROM THE FAMILY COURT WHERE, AS YOU KNOW, THE HEARINGS ARE DONE IN CAMERA. CLEARLY, THERE ARE LIMITATIONS IN THE JURISDICTION OF THE FAMILY COURT WHICH PREVENTS IT FROM DEALING FULLY WITH THESE MATTERS. UNDER THE DOMESTIC VIOLENCE ACT, THE COURT RESPONDS BY PUTTING IN PLACE PROTECTION ORDERS. HOWEVER, DESPITE CLEAR EVIDENCE OF SERIOUS CRIMINAL ACTS, THE RESPONDENT MIGHT GO WITHOUT PUNISHMENT FOR THOSE OFFENCES. THIS SUGGESTS THE NEED FOR SOME REFORM.

SEXUAL ABUSE

I DO NOT BELIEVE THAT THE DOMESTIC VIOLENCE ACT ANTICIPATED THE FREQUENCY WITH WHICH THE COURT NEEDED TO DEAL WITH MATTERS OF SEXUAL ABUSE. PERHAPS THE MAJORITY OF EPISODES OF PHYSICAL ABUSE RELATED TO THE COURT CULMINATED IN SOME FORM OF SEXUAL ABUSE. THERE ARE HOWEVER, CASES WHERE THE EVIDENCE PROVIDED, INDICATE A SHARP FOCUS ON SEXUAL ABUSE. THERE IS THE CASE WHERE A HUSBAND WENT HOME FROM WORK, DEMANDED SEX FROM HIS WIFE WHO RESISTED HIS ADVANCES. HE, IN TURN, LEVELLED A SERIES OF ACCUSATIONS AGAINST HER OF INFIDELITY, THEN CHOKED HER, FORCED HER TO THE FLOOR AND HAD SEX WITH HER. AFTERWARDS, WHILE SHE WAS LYING ON THE FLOOR CRYING, HE WENT TO ANOTHER PART OF THE HOUSE AND, ACCORDING TO THE WIFE, EJACULATED IN A CUP, RETURNED, PINNED HER DOWN TO THE GROUND AND FORCED HER TO DRINK THE CONTENTS OF THE CUP. THE RESPONDENT CLAIMED THAT IT WAS ONLY STARCH IN THE CUP AND THAT HE MERELY INTENDED TO HUMOUR HIS WIFE.

IN ANOTHER CASE, THE EVIDENCE INDICATED THAT A HUSBAND DEMANDED SEX FROM HIS WIFE WHO REFUSED ON GROUNDS THAT SHE WAS HAVING HER PERIODS OR MENSES. FOLLOWING AN ARGUMENT, THE HUSBAND USED PHYSICAL FORCE TO HAVE SEX WITH HER. THE WIFE LATER RAN INTO THE BATHROOM AND WHILE SHE WAS CROUCHING IN THE BATHROOM IN TEARS, THE HUSBAND BROKE THE LOCK TO THE DOOR AND URINATED ALL OVER HER. THE EVIDENCE SUGGESTS THAT THIS WAS NOT THE FIRST TIME THAT THIS BEHAVIOUR HAD OCCURRED.

STATISTICS ON DOMESTIC ABUSE

WHILE I WOULD HAVE LIKED TO PROVIDE DETAILED STATISTICS ON THE FREQUENCY WITH WHICH THE VARIOUS TYPES OF ABUSES WERE HEARD BY THE FAMILY COURT UNDER THE ACT, THE LIMITED NOTICE FOR MY INVOLVEMENT IN THIS MORNING'S EXERCISE, DID NOT GIVE ME TIME TO COMPILE THE DETAILED INFORMATION. I CAN TELL YOU THOUGH, THAT SINCE THE ACT BECAME OPERATIONAL IN MAY 1996, APPROXIMATELY TWO MONTHS AGO, 51 APPLICATIONS WERE MADE UNDER THE ACT. FORTY-FIVE OF THESE

APPLICATIONS WERE MADE BY WOMEN AND, INTERESTINGLY, SIX WERE MADE BY MEN.

IF ONE SHOULD GO BY THE INDICATIONS OF THESE STATISTICS, IT APPEARS THAT THE COURT WILL HAVE A VERY LARGE NUMBER OF MATTERS TO HEAR UNDER THIS ACT. THERE IS NO DOUBT THAT SINCE THE ACT BECAME OPERATIONAL, IT HAS PROVIDED THE ENCOURAGEMENT FOR MORE WOMEN IN PARTICULAR, TO COME FORWARD AND REPORT CASES OF ABUSE, KNOWING THAT A PROTECTION ORDER CAN BE PUT IN PLACE UNDER THE DOMESTIC VIOLENCE ACT AND THAT THE MATTERS WILL BE HEARD IN CAMERA. THERE ARE OBVIOUSLY SOME LIMITATIONS WHICH STILL NEED TO BE ADDRESSED.

LIMITATIONS IN THE ADMINISTRATION OF THE ACT

ONE OF THE LIMITATIONS ALREADY MENTIONED IS THE FACT THAT MANY INCIDENTS OF ABUSE UNDER THE DOMESTIC VIOLENCE ACT HAVE A CRIMINAL ASPECT WHICH IS OUTSIDE OF THE JURISDICTION OF THE FAMILY COURT. AS ALREADY NOTED, THE APPLICANTS FREQUENTLY PREFER NOT TO WASH THEIR DIRTY LINEN IN PUBLIC AND THEREFORE DO NOT PROCEED WITH CRIMINAL ACTION IN THE RESIDENT MAGISTRATES COURT. THE ABUSER FREQUENTLY GOES UNPUNISHED FOR MAJOR CRIMINAL OFFENCES. IF THE CRIMINAL ASPECT OF THE ABUSE WERE TO BE HEARD IN CAMERA, THEN THE ABUSERS WHO PERPETUATE THESE CRIMINAL ACTS WILL NOT GO UNPUNISHED FOR THOSE OFFENCES. IT IS REASONABLE TO ASSUME THAT IN THE SAME WAY AS THE DOMESTIC VIOLENCE ACT WITH ITS IN CAMERA PROCEEDINGS LED TO A LARGE NUMBER OF CASES OF ABUSE BEING NOW BROUGHT TO COURT, IN THE SAME WAY LEGISLATION WHICH AFFORDS IN CAMERA PROCEEDINGS FOR CRIMINAL MATTERS ASSOCIATED WITH DOMESTIC VIOLENCE WILL SEE MORE OF THE OFFENDERS BROUGHT TO JUSTICE. THIS MATTER REQUIRES SOME THOUGHT.

ANOTHER LIMITATION IN THE ADMINISTRATION OF THE ACT IS THAT WHEN A PROTECTION ORDER IS PUT IN PLACE, SOME APPLICANTS TURN AROUND AND COMPROMISE THE ORDER WHICH WAS PUT IN PLACE TO PROTECT THEM. FOR EXAMPLE, IN ONE CASE, AN ORDER WAS PUT IN PLACE TO PROHIBIT THE HUSBAND FROM ENTERING OR REMAINING IN THE PREMISES OCCUPIED BY THE WIFE. NATURALLY, THIS MEANT THAT HE HAD TO GO AND LIVE SOMEWHERE

ELSE. THE OBJECTIVE WAS TO PROTECT THE WIFE BY ENSURING THAT THE HUSBAND HAD NO CONTACT WITH HER. HOWEVER, SUBSEQUENT TO THE PROTECTION ORDER, THE WIFE WENT TO THE PREMISES OF THE HUSBAND TO OBTAIN MONEY - OR AT LEAST SO SHE EXPLAINED.

ANOTHER CONCERN IN THE ADMINISTRATION OF THE ACT IS THAT AN ORDER FOR THE PROTECTION OF A WOMAN MIGHT UNINTENTIONALLY PREVENT A FATHER FROM HAVING ACCESS TO HIS CHILDREN. IF THE CHILDREN ARE OLD ENOUGH THEY MAY VISIT THE FATHER AND THEREFORE THE DIFFICULTY IS OVERCOME. HOWEVER, THOSE CHILDREN OF TENDER AGE WILL NOT BE ABLE TO VISIT THE FATHER AND HE IS PROHIBITED FROM VISITING THE PREMISES OF THE MOTHER IN WHOSE CUSTODY THE CHILDREN ARE MOST LIKELY TO BE. IN CASES LIKE THESE, THE COURT OFTEN PUT IN PLACE AN ARRANGEMENT WHERE A THIRD PARTY WILL FACILITATE ACCESS ARRANGEMENTS. IT DOES NOT APPEAR THAT THE ACT ANTICIPATED THESE CIRCUMSTANCES.

FINALLY, I WISH TO POINT TO THE FREQUENCY WITH WHICH APPLICATIONS ARE MADE UNDER THE DOMESTIC VIOLENCE ACT FOR EX PARTE HEARINGS. WHILE IT IS RECOGNIZED THAT THERE WILL BE CIRCUMSTANCES WHERE SUCH EX PARTE HEARINGS ARE ABSOLUTELY NECESSARY, IT NEEDS TO BE MADE CLEAR TO APPLICANTS THAT IT IS ONLY UNDER EXCEPTIONAL CIRCUMSTANCES THAT AN ORDER WILL BE MADE UNDER AN EX PARTE APPLICATION. TOO MANY APPLICANTS SEEM TO HAVE A DIFFERENT UNDERSTANDING OF HOW THE ACT WORKS. THIS IS REDUCING THE LEVEL OF EFFICIENCY WITH WHICH THE COURT FUNCTIONS SINCE THE APPLICANTS FREQUENTLY HAVE TO BE ADVISED THAT THE COURT WISHES TO HEAR THE OTHER PARTY AS WELL. TOO OFTEN, WHEN THIS IS MADE CLEAR, THE APPLICANTS FAIL TO RETURN TO PURSUE THE APPLICATION.

THE EXPERIENCE OF THE FAMILY COURT TO DATE IN THE ADMINISTRATION OF THE DOMESTIC VIOLENCE ACT SUGGESTS THAT THERE IS A GREATER NEED FOR COUNSELLING SERVICES THAN THE COUNSELLING DEPARTMENT IS NOW STAFFED AND EQUIPPED TO PROVIDE. MANY OF THE MATTERS REALLY DO NOT REQUIRE THE INTERVENTION OF THE COURT BUT EXTENSIVE OUT-OF-COURT COUNSELLING. ADDITIONALLY, MORE EXTENSIVE FOLLOW-UP COUNSELLING IS REQUIRED FOR MANY OF THE CASES HEARD BY THE COURT,

ESPECIALLY IN CASES WHERE IT IS EVIDENT THAT THE RELATIONSHIP MAY BE RESCUED.

CONCLUSION

I TRUST THAT I HAVE BEEN ABLE TO PROVIDE YOU WITH SOME INSIGHTS INTO THE NATURE OF THE CASES BROUGHT BEFORE THE FAMILY COURT UNDER THE DOMESTIC VIOLENCE ACT. IT IS EARLY DAYS YET FOR THE ACT. HOWEVER, INDICATIONS ARE THAT THE ACT IS PROVIDING RELIEF FOR A NUMBER OF WOMEN IN PARTICULAR, WHO PREVIOUSLY FELT THAT THEY HAD NO RECOURSE TO LEGAL INTERVENTION IN DEALING WITH THE ABUSE THEY SUFFERED. OVER TIME, AND WITH SOME CLARIFICATIONS AND ADJUSTMENTS, THE LIMITATIONS I MENTIONED WILL, NO DOUBT BE ADDRESSED. I BELIEVE THAT THE ACT REPRESENTS A PROGRESSIVE MEASURE FOR ASSISTING FAMILY RELATIONSHIPS. IN ORDER FOR ITS FULL BENEFIT TO BE REALIZED, IT IS NECESSARY FOR THE BAR AND THE BENCH TO WORK TOGETHER IN THE INTEREST OF CONCILIATION AND OF SUSTAINING THE FAMILY AS AN IMPORTANT UNIT IN THE SOCIETY.

THANKS FOR GIVING ME THE OPPORTUNITY TO SHARE SOME OF MY EXPERIENCE WITH YOU.

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