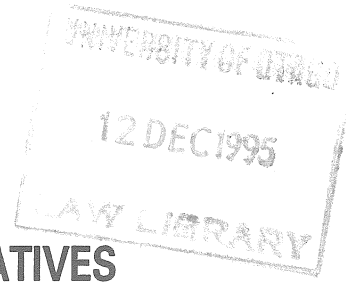


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HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Thursday, 7 December 1995

DOMESTIC VIOLENCE BILL

Proposed Amendment

Hon. D. A. M. GRAHAM, in Committee, to move the following amendment:

New heading and new clauses 17B to 17G: To insert on page 31, after clause 17A, the following heading and clauses:

Standard Condition Relating to Weapons

17B. Standard condition relating to weapons—(1) Subject to section 17C of this Act, it is condition of every protection order—

- (a) That the respondent must not possess, or have under his or her control, any weapon; and
- (b) That the respondent must not hold a firearms licence; and
- (c) That the respondent must,—
 - (i) As soon as practicable after the service on him or her of a copy of the protection order, but in any case no later than 24 hours after such service; and
 - (ii) On demand made, at any time, by any member of the Police,—
surrender to a member of the Police—
 - (iii) Any weapon in the respondent's possession or under the respondent's control, whether or not any such weapon is lawfully in the respondent's possession or under the respondent's control; and
 - (iv) Any firearms licence held by the respondent.

(2) Subject to section 17C of this Act, on the making of a protection order,—

- (a) Where the protection order is a temporary order, any firearms licence held by the respondent is deemed to be suspended;
- (b) Where the protection order is a final order, any firearms licence held by the respondent is deemed to be revoked.

(3) The respondent does not fail to comply with the standard condition contained in subsection (1) of this section merely by

having in his or her possession, or having under his or her control, any weapon or any firearms licence, where,—

- (a) In the case of a weapon, the weapon was in his or her possession, or under his or her control, immediately before the making of the protection order; and
- (b) In the case of a weapon or a firearms licence, the weapon or licence is in his or her possession, or under his or her control, during the period necessary to comply with the terms of that standard condition that relate to the surrender of the weapon or licence.

(4) Subject to **section 17c** of this Act, where, pursuant to that section, a protection order is varied so as to include the standard condition relating to weapons,—

- (a) The reference in **subsection (1) (c) (i)** of this section to service of a copy of the protection order is to be read as a reference to service of a copy of the order by which the standard condition is so included:
- (b) The references in **subsections (2) and (3) (a)** of this section to the making of a protection order are to be read as references to the making of the order by which the standard condition is so included,—

and the provisions of this Act apply accordingly with all necessary modifications.

(5) Subject to **section 17c** of this Act, where, pursuant to a direction made under **section 15** of this Act, a protection order applies against an associated respondent, the provisions of this section apply, with all necessary modifications, in respect of the associated respondent.

17c. Court may dispense with, modify, discharge, or re-impose standard condition relating to weapons—(1) Where,—

- (a) The Court makes a final protection order on an application on notice; or
- (b) Pursuant to **section 64 (1)** of this Act, the Court—
 - (i) Discharges a temporary protection order and makes a final protection order in its place; or
 - (ii) Confirms a temporary protection order to the extent that it has not already become final,—

the Court may, subject to **section 17d** of this Act,—

- (c) Direct that the standard condition relating to weapons is not to be a condition of the protection order; or
- (b) Modify the terms of that standard condition.

(2) Subject to **section 17d** of this Act, the Court may, if it thinks fit, on the application of the applicant or the respondent, vary a protection order,—

- (a) Where the standard condition relating to weapons is not a condition of the protection order, by directing that the standard condition relating to weapons (whether with or without modification) is to be a condition of the protection order:
- (b) Where the standard condition relating to weapons is a condition of the protection order (whether with or without modification), by—
 - (i) Discharging the standard condition relating to weapons:
 - (ii) Modifying the terms of that standard condition.

(3) Subject to **section 17D** of this Act, where a protection order applies against an associated respondent, the Court may, on the application of the applicant or the associated respondent, vary the protection order, in so far as it relates to the associated respondent,—

(a) Where the standard condition relating to weapons is not a condition of the protection order, by directing that the standard condition relating to weapons (whether with or without modification) is to be a condition of the protection order:

(b) Where the standard condition relating to weapons is a condition of the protection order (whether with or without modification), by—

(i) Discharging the standard condition relating to weapons:

(ii) Modifying the terms of that standard condition.

(4) For the avoidance of doubt (but without limiting **subsection (3)** of this section), it is hereby declared that a Court may—

(a) Direct that the standard condition relating to weapons—

(i) Is not to be a condition of a protection order, in so far as the protection order relates to the respondent; but

(ii) Is to be a condition of a protection order (whether with or without modification), in so far as the protection order relates to the associated respondent:

(b) Discharge the standard condition relating to weapons in so far as the condition relates to the respondent, but not in so far as the condition relates to the associated respondent.

(5) Where an application is made under **subsection (2)** or **subsection (3)** of this section in respect of a temporary protection order, the Registrar must assign a hearing date, which must be—

(a) As soon as practicable; and

(b) Unless there are special circumstances, in no case later than 42 days after the application is made.

(6) **Sections 8, 10, and 11** of this Act, so far as applicable and with the necessary modifications, apply in relation to—

(a) Any application under this section, on behalf of a protected person, for—

(i) A direction that the standard condition relating to weapons be a condition of a protection order; or

(ii) The modification or discharge of the standard condition relating to weapons; and

(b) The defending, on behalf of a protected person, of any such application made by the respondent or the associated respondent—

as they apply in relation to the making of an application for a protection order.

17D. Further provisions relating to powers conferred by section 17C—(1) A Court must not exercise the power conferred by **section 17C** of this Act—

(a) To direct that the standard condition relating to weapons is not to be a condition of a protection order; or

(b) To discharge the standard condition relating to weapons—

unless the Court is satisfied that the standard condition relating to weapons is not necessary for the protection of the persons for whose benefit the protection order applies from further domestic violence.

(2) Subject to **subsection (3)** of this section, a Court may only exercise the power conferred by **section 17c** of this Act to modify the terms of the standard condition relating to weapons in the following ways:

- (a) To permit a person to whom the standard condition applies to have in his or her possession, or have under his or her control, a specified weapon, or weapons of a specified class, either unconditionally or subject to such conditions as the Court thinks fit:
- (b) Where necessary, to permit such a person to hold a firearms licence:
- (c) In any case where the terms of the standard condition have already been modified so as to make them less onerous than the terms set out in **section 17B** of this Act, by reinstating (whether in whole or in part) those terms as so set out.

(3) A Court may exercise the power conferred by **section 17c** of this Act to modify the terms of the standard condition relating to weapons in any of the ways set out in **paragraph (a) or paragraph (b) of subsection (2)** of this section only if the Court is satisfied—

- (a) That the standard condition relating to weapons, in the terms set out in **section 17B** of this Act, is not necessary for the protection of the persons for whose benefit the protection order applies from further domestic violence; and
 - (b) That the standard condition relating to weapons, in the terms proposed, will sufficiently protect those persons from further domestic violence.
- (4) In determining whether or not to exercise any of the powers conferred by **section 17c** of this Act,—
- (a) The need to protect those persons for whose benefit the protection order applies from further domestic violence is the paramount consideration; and
 - (b) Without limiting **paragraph (a)** of this subsection, the Court must, so far as is practicable, have regard to the following matters:
 - (i) Whether the persons for whose benefit the protection order applies consent to the exercise of the power in the manner proposed:
 - (ii) With respect to any domestic violence that is relevant in relation to the exercise of the power, the nature and seriousness of that domestic violence, and how recently that domestic violence occurred:
 - (iii) The effect that the terms of the standard condition relating to weapons is having, or will have, on the persons to whom the condition applies, or will apply, if the powers are not exercised in the manner proposed:
 - (iv) Such other matters as the Court considers relevant.

(5) Where the terms of the standard condition relating to weapons are modified pursuant to **section 17c** of this Act, the terms of that standard condition (as set out in **section 17B** of this

Act) apply subject to the terms of that modification, and the provisions of this Act apply accordingly.

(6) The fact that—

(a) The standard condition relating to weapons has been discharged pursuant to **section 17c** of this Act; or

(b) The terms of the standard condition relating to weapons have been modified pursuant to that section—

does not oblige any member of the Police to issue a firearms licence to any person to whom that standard condition applied or, as the case requires, applies.

17E. Further provisions relating to effect of standard condition relating to weapons—(1) Where—

(a) A temporary protection order becomes a final order in accordance with **section 61 (1)** of this Act; and

(b) At the time the order becomes final, any firearms licence held by the respondent or an associated respondent is suspended pursuant to **section 17B (2)** of this Act,—

that firearms licence is deemed to be revoked.

(2) Where a person's firearms licence is suspended pursuant to **section 17B (2)** of this Act,—

(a) That person is deemed, for all purposes, not to be the holder of a firearms licence during the period of the suspension; but

(b) Immediately on that suspension ceasing to be in force, then, except where the firearms licence is revoked (whether pursuant to **subsection (1)** of this section or otherwise) or ceases to be in force, that firearms licence revives.

(3) Where, pursuant to **subsection (1)** of this section or **section 17B** of this Act, a firearms licence is revoked or deemed to be revoked, that revocation has effect as if the firearms licence had been revoked pursuant to **section 27** of the Arms Act 1983, except that nothing in this subsection—

(a) Limits the terms of the standard condition relating to weapons; or

(b) Confers on any person any right to appeal to any court, other than under **section 73** of this Act, against the revocation of that firearms licence.

17F. Retention, return, and disposal of surrendered weapons and licences—(1) Where a person to whom the standard condition relating to weapons applies surrenders any weapon to a member of the Police pursuant to **section 17B** of this Act, the following provisions apply:

(a) In any case where the person's firearms licence is suspended by virtue of **section 17B (2)** of this Act,—

(i) Subject to **subparagraph (ii)** of this paragraph, to **paragraphs (b) and (c)** of this subsection, and to **section 17c** of this Act, the Police must detain the weapon for the period of the suspension, and, except where the weapon may lawfully be retained pursuant to any other enactment, must return the weapon to the person as soon as practicable after that suspension ceases to be in force:

(ii) Subject to **paragraph (c)** of this subsection, the person whose firearms licence is suspended may, at any time during the period of the suspension, if the

weapon is owned by him or her, sell or otherwise dispose of the weapon to a person approved for the purpose by a member of the Police, and in any such case the weapon must be delivered to that other person:

- (b) In any case where the person's firearms licence is revoked by virtue of **section 17B (2) or section 17E (1)** of this Act, then, subject to **paragraph (c)** of this subsection, subsections (2) to (4) of section 28 of the Arms Act 1983 apply, with all necessary modifications, as if the weapon were a firearm that had been delivered to a member of the Police pursuant to section 28 of the Arms Act 1983:
- (c) If, at the time of the surrender of the weapon, the person was not lawfully entitled to possess the weapon (disregarding, for that purpose, the effect of the standard condition relating to weapons), the weapon is deemed to have been seized and detained pursuant to the Arms Act 1983, and the provisions of sections 65 and 70 of that Act apply accordingly:
- (d) In any other case,—
 - (i) Subject to **subparagraph (ii)** of this paragraph, to **paragraph (c)** of this subsection, and to **section 17C** of this Act, the Police must detain the weapon for the period during which the standard condition relating to weapons remains in force, and, except where the weapon may lawfully be retained pursuant to any other enactment, must return the weapon to the person as soon as practicable after the standard condition relating to weapons ceases to be in force:
 - (ii) Subject to **paragraph (c)** of this subsection, the person may, at any time during the period during which the standard condition relating to weapons remains in force, if the weapon is owned by him or her, sell or otherwise dispose of the weapon to a person approved for the purpose by a member of the Police, and in any such case the weapon must be delivered to that other person.

(2) Where a person's firearms licence is suspended pursuant to **subsection (2) of section 17B** of this Act, and that person surrenders that licence to a member of the Police pursuant to that section, the Police must detain that licence for the period of the suspension, and, except where the licence is revoked or ceases to be in force, or may lawfully be retained pursuant to any other enactment, must return the licence to the person as soon as practicable after that suspension ceases to be in force.

17G. Arms Act 1983 not affected—(1) Nothing in any of **sections 17B to 17F** of this Act limits or affects any provision of the Arms Act 1983 that authorises or permits—

- (a) The revocation of any firearms licence; or
 - (b) The seizure of any weapon.
- (2) Where—
- (a) A person's firearms licence is suspended pursuant to **section 17B (2)** of this Act; and
 - (b) During the period of that suspension, that firearms licence is revoked pursuant to the Arms Act 1983,—
- that suspension ceases to be in force.

EXPLANATORY NOTE

This Supplementary Order Paper proposes an amendment to the Domestic Violence Bill in relation to weapons.

New clauses 17B to 17G are intended to be inserted in substitution for *clauses 18B to 18F*.

Clauses 18B to 18F provide for the imposition, as a special condition of a protection order, of a condition that prohibits the respondent and any associated respondent from possessing weapons and holding a firearms licence. The imposition of this special condition is at the discretion of the Court, and provision is made for the effect of the special condition to be relaxed, in very limited circumstances, if the condition is depriving a person of the means of earning a livelihood.

Proposed *new clauses 17B to 17G* would essentially convert the terms of the special condition relating to weapons contained in *clauses 18B to 18F*, into a standard condition of a protection order, although with certain modifications. It would be a standard condition of a protection order (whether a temporary or a final order) that the respondent and any associated respondent is prohibited from possessing weapons and holding a firearms licence. However, provision is made for a Court, on making a final protection order (but not a temporary order), or on an application to vary a protection order (whether final or temporary), to order that the standard condition relating to firearms is not to be a condition of the protection order, to discharge the standard condition, or to modify the terms of the standard condition. A Court may also, on application, vary a protection order by imposing the standard condition.

Various restrictions are imposed on the Court's power to dispense with or modify the standard condition relating to weapons. In all cases, the paramount consideration is the need to protect the persons for whose benefit the protection order applies from further domestic violence.