



# LAW SOCIETY PROFESSIONAL TRAINING

Centre of Excellence for  
Professional Education and Training



## The Irish legal framework for women who have suffered gender violence

Joan O'Mahony



THE BAR of  
NORTHERN  
IRELAND



# LAW SOCIETY PROFESSIONAL TRAINING

---

Centre of Excellence for  
Professional Education and Training



## DOMESTIC SEXUAL AND GENDER BASED VIOLENCE



Abogacía  
Española  
CONSEJO GENERAL



THE BAR of  
NORTHERN  
IRELAND

*Abuse is never a one time event.*

This chart uses the wheel to show the relationship of physical abuse to other forms of abuse. Each part shows a way to control or gain power.



NIETY  
SIONAL TRAINING

Centre of Excellence for  
Professional Education and Training

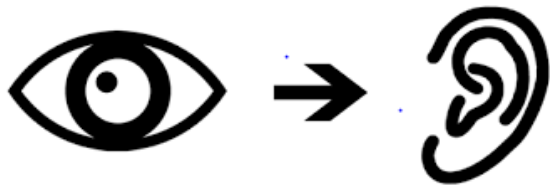


# I SEE WHAT I KNOW

## OR

# I KNOW WHAT I SEE

Perception determines our behaviours and attitudes







LAW SOCIETY  
PROFESSIONAL TRAINING

Centre of Excellence for  
Professional Education and Training



# HOW IS IT FOR SOLICITORS?

-  LEARN TO LISTEN :
-  REMEMBER WE ARE NOT COUNSELLORS
- 
-  GIVE CLEAR AND UNAMBIGUOUS ADVICE
-  DO NOT MAKE PROMISES
- BE AWARE OF THE LANGUAGE WE USE



- THE IRISH CONSTITUTION



- THE SUPREME COURT
- THE COURT OF APPEAL
- THE HIGH COURT
- THE CIRCUIT COURT
- THE DISTRICT COURT

# Current statutory position

- LEGISLATION AND LEGAL REMEDIES
- MAIN STATUTE THE DOMESTIC VIOLENCE ACT 1996
- THE DOMESTIC VIOLENCE (AMENDMENT ) ACT 2002
- THE CIVIL LAW (MISCELLANEOUS PROVISIONS) ACT 2011
- THE DOMESTIC VIOLENCE BILL 2017



# Where are cases heard

- JURISDICTION
- CIRCUIT COURT
- DISTRICT COURT
- CASES HEARD IN CAMERA





# SAFETY AND WELFARE

- O'B –V- O'B
- “FOR BETTER OR WORSE”
- GUIDING PRINCIPLES



# Interim Orders

## 1996 ACT

- PROTECTION ORDER
- INTERIM BARRING ORDER(8 DAY RETURN DATE)
- AVAILABLE UNTIL THE HEARING OF THE FINAL ORDERS

## 2018

- ALLOWS FOR EMERGENCY BARRING ORDER EVEN IF APPLICANT HAS NO PROPERTY INTEREST.
- LASTS FOR 8 WORKING DAYS
- ONE A MONTH SAVE IN EXCEPTIONAL CIRCUMSTANCES

# Final Orders SAFETY ORDERS

## 1996 ACT

- SAFETY ORDER  
Prohibits Putting  
Applicant or Children in  
Fear
- INCLUDES
- MOLESTING WATCHING  
or BESETTING ORDERS

## 2018

- USING OR
- THREATENING TO USE  
VIOLENCE
- MOLESTING WATCHING  
BESETTING
- FOLLOWING OR  
COMMUNICATING  
(INCLUDING BY  
ELECTRONIC MEANS)



# Parties Who Can Apply SAFETY ORDERS

## 1996 ACT

- SPOUSE
- COHABITEES – 6/12 months cohabitation
- PARENT
- PARENT OF CHILD WHOSE OTHER PARENT IS THE RESPONDENT
- LIVES WITH THE RESPONDENT IN NON CONTRACTUAL RELATIONSHIP eg brother sister

## 2018

- THE SAME EXCEPT THE COHABITATION REQUIREMENT GONE IN FAVOUR OF LIVING IN AN INTIMATE AND COMMITTED RELATIONSHIP



## Section 5 New Provision

SETS OUT EXTENSIVE LIST OF FACTORS TO BE  
TAKEN INTO CONSIDERATION IN DETERMINING  
APPLICATIONS

JUDICIAL DISCRETION NOT TO BE FETTERED.



LAW SOCIETY OF IRELAND  
PROFESSIONAL TRAINING

Centre of Excellence for  
Professional Education and Training



# WHO CAN APPLY

## FINAL ORDERS BARRING Orders

- SPOUSES
- COHABITATION 6/9 MONTHS
- PARENT
- PROPERTY INTEREST?
- SPOUSES
- CIVIL PARTNERS
- LIVING IN AN INTIMATE AND COMMITTED RELATIONSHIP
- PARENT





# FINAL ORDERS BARRING

- LEAVE THE PREMISE
- NO ENTRY
- PROHIBIT USING OR THREATENING VIOLENCE
- MOLESTING PUTTING IN FEAR WATCHING BESETTING
- 2018
- ADDITION OF
- FOLLOWING OR COMMUNICATING (INCLUDING BY ELECTRONIC MEANS)

# NEW PROVISIONS

GARDAI CAN COMMUNICATE WITH ON-CALL  
JUDGE TO APPLY FOR OUT OF HOURS BARRING  
ORDER



LAW SOCIETY  
PROFESSIONAL TRAINING

Centre of Excellence for  
Professional Education and Training



# NEW PROVISIONS

- CROSS EXAMINATION THE APPLICANT /RESPONDENT MAY NOT CROSS EXAMINE A WITNESS SAVE IN THE INTERESTS OF JUSTICE SEC 17
- THE COURT TO GIVE REASONS FOR ITS DECISIONS SEC.18
- CRIMINAL PROSECUTION FOR BREACH TO BE HEARD IN CAMERA SEC 35
- FORCED MARRIAGE SEC 39
- COERCIVE CONTROL SEC 40

# AGGRAVATING FACTOR

- THE RELATIONSHIP BETWEEN THE DEFENDANT AND THE VICTIM WILL BE AN AGGRAVATING FACTOR IN DETERMINING SENTENCE.

