

Peace and Good Behaviour Regulation 2020

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019* (HRA), I, Yvette D'Ath, Attorney-General and Minister for Justice and Leader of the House, provide this human rights certificate with respect to the *Peace and Good Behaviour Regulation 2020* (the remade Regulation), a remake of the *Peace and Good Behaviour Regulation 2010*, made under the *Peace and Good Behaviour Act 1982*.

In my opinion, the remade Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The *Peace and Good Behaviour Act 1982* (the Act) provides for four types of orders: peace and good behaviour orders (Part 2 of the Act); public safety orders (Part 3 of the Act); restricted premises orders (Part 4 of the Act) and fortification removal orders (Part 5 of the Act). The Regulation predominantly relates to peace and good behaviour orders.

With respect to peace and good behaviour orders, the Act provides that a person (the complainant) may make a complaint to a Justice of the Peace with respect to another person (the defendant). The Justice of the Peace may then issue a summons for the defendant to appear or a warrant for the defendant to be apprehended and brought before a Magistrates Court. The court may make a peace and good behaviour order, which is an order requiring the defendant to 'keep the peace and be of good behaviour' for the period specified in the order. The court may also impose such other conditions as it thinks fit.

The *Peace and Good Behaviour Regulation 2010* (the current Regulation) provides procedural and operational support for Part 2 of the Act by proscribing the following with respect to peace and good behaviour orders:

- a. filing requirements if a summons or warrant is issued by a Justice of the Peace;
- b. requirements if a summons or warrant is not issued by a Justice of the Peace;
- c. filing requirements if mediation is ordered by a Justice of the Peace;
- d. service requirements for complaints and summonses;
- e. a time period for a warrant issued by a Justice of the Peace;
- f. matters to be included in a warrant issued by a Justice of the Peace;
- g. matters to be included in an order for mediation made by a Justice of the Peace;
- h. that complaints and summonses under the Act must be in the approved form; and
- i. what must be included in an approved form.

The current Regulation is due to expire on 1 September 2020.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The right to privacy and reputation (section 25 of the *Human Rights Act 2019* (HR Act)) is limited by sections 8, 9, 10, and 11 of the remade Regulation. As set out below, the limits are reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

Further, the right to a fair hearing (at section 31 of the *Human Rights Act 2019* (HR Act)) is promoted by sections 5 and 7 of the remade Regulation, as follows:

- Section 5 of the remade Regulation applies if a Justice of the Peace decides not to issue a summons or a warrant under section 5(2A) of the Act and provides that the Justice of the Peace must make a note on the complaint as to why the Justice of the Peace was not satisfied either that the matter of the complaint was substantiated; or that it was reasonable in the circumstances for the complainant to be in fear of the defendant. Such a notation informs a complainant the basis on which a Justice of the Peace decided not to proceed with a complaint, promoting transparency in decision making on behalf of the Justice of the Peace. The right to a fair hearing is therefore promoted because the section ensures procedural fairness is afforded to the complaint.
- Section 7 of the Regulation provides that when a defendant is served with a summons under the Act, the defendant must also be served with a copy of the relevant complaint. When answering the summons and appearing before the court, the defendant will have had the opportunity to review the alleged complaint against him or her and prepare a response before a decision is made that is detrimental to the complainant's interests. The right to a fair hearing is therefore promoted because the section ensures procedural fairness is afforded to the defendant.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

(a) the nature of the right

The right to privacy protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation. The scope of the right to privacy is very broad and protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally. Only lawful and non-arbitrary intrusions may occur upon privacy, family, home, correspondence and reputation.

Sections 8, 9, 10, and 11 of the remade Regulation limit the right to privacy and reputation as they require certain documents, for example a complaint, to include private information of either the complainant or the defendant like the name and address of the complainant or defendant and the facts on which the complaint is based. In addition to being provided to the relevant decision maker (whether the Justice of the Peace or the court), the documents may be required to be filed in the court, after which they would become part of the court's record of proceedings and possibly available to the public in certain circumstances.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of limiting the right to privacy and reputation by requiring the name and address of the complainant and defendant is to ensure any summons, warrant or mediation order subsequently issued by the Justice of the Peace is served upon or executed with respect to the correct person, thereby providing the person with the opportunity to appear before the court and respond to the allegations made against them. Including the complaint's personal details is important to let the defendant know who is making the allegations against them and, similarly provide them with the opportunity to respond.

The purpose of limiting the right to privacy and reputation by requiring private information about the alleged facts on which the complaint is based is to ensure the complaint contains all relevant information. This ensures a Justice of the Peace is able to perform his or her functions under section 5 of the Act, including the issuing of a summons or warrant for the defendant to appear before the court.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The limitations on the right to privacy and reputation achieve the purpose identified above, as requiring the provision of personal information and the alleged facts on which the complaint is based assists a Justice of the Peace or court or mediator to perform their respective functions under the Act. The inclusion of personal information is also necessary to facilitate the issuing of a summons, warrant, or order for mediation.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

No less restrictive or reasonably available ways to achieve the purpose of the provision have been identified.

Although these documents may be filed in the court and therefore become part of the court's record of proceedings, public access to this record is governed by section 154 of the *Justices Act 1886*. That section provides, for example, that a person is not entitled to part of the record of proceeding if, in relation to an exhibit, the record contains confidential or sensitive information. This is a protective safeguard which means that the impact on the right to privacy and reputation of the complainant and defendant is ameliorated.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

On balance, the importance of the court, Justices of the Peace and mediators being able to properly perform their functions under the Act, as well as summonses, warrants, and orders for mediation being served on the correct defendant and containing sufficient information for the defendant to answer the case against him or her outweighs the limitation on the right to privacy and reputation.

(f) any other relevant factors

N/A

Conclusion

I consider that the *Peace and Good Behaviour Regulation 2020* is compatible with the *Human Rights Act 2019* because it does limit a human right, but that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

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Attorney-General and Minister for Justice
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