

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

MARIE ADELE GON

Appellant

- and -

FRANCIS JAMES GON

Respondent

MEMORANDUM OF JUDGMENT

Marie Adele Gon applies for a Protection Order pursuant to section 7 of the *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24. The Respondent, Francis James Gon, is Ms. Gon's son. The Application is made without notice him.

1. WHETHER THE APPLICATION SHOULD PROCEED *EX-PARTE*

[1] As a general rule, parties must be given notice before orders affecting them are issued. There are, however, exceptional circumstances where our law recognizes the appropriateness of issuing orders without notice to the other party.

[2] Section 7 of the *Act* specifically states that applications for Protection Orders may be made without notice. It does not set out criteria to be used in determining in what circumstances proceeding in this fashion is appropriate, but generally speaking, in considering whether proceeding *ex-parte* is appropriate, considerations such as urgency and concerns for the applicant's safety are among the things that are taken into consideration.

[3] In the Affidavit filed in support of her Application, Ms. Gon deposes that she makes her application without notice to Mr. Gon because she is fearful of what he might do if he were given notice. She wants to be protected by the Order before Mr. Gon is aware of these proceedings. Based on the evidence before me, I am satisfied that it is appropriate, in this case, to entertain Ms. Gon's application on an *ex-parte* basis.

2. MERITS OF THE APPLICATION

[4] Ms. Gon's Affidavit sets out the reasons why she seeks a Protection Order. She is 71 years old and lives in Behchoko. She deposes that throughout the years, Mr. Gon has been verbally abusive to her. He has threatened her. He has caused damages to her property. In a relatively recent incident, he threw a knife at her, which prompted her to apply for an Emergency Protection Order. Pursuant to section 4 of the *Act*, such an order can be issued where the applicant establishes that family violence has occurred and that, because of the seriousness or urgency of the situation, an order should be made without delay to protect the person at risk of harm. Ms. Gon's application for an Emergency Protection Order was allowed on March 5, 2008. That Order expired on May 4, 2008. Ms. Gon deposes that a few days later, Mr. Gon came to her house while she was there alone. He banged on the door, wanting to be let in. She was frightened so she called her other son and asked him to come pick her up. Mr. Gon got into her house and locked himself in. At the time she swore her Affidavit on May 9, he was still in her house.

[5] On this evidence, I am satisfied on a balance of probabilities that family violence has occurred within the meaning of the *Act*, and that a Protection Order should be issued.

[6] As I have already stated, *ex-parte* proceedings are the exception, not the rule. When an order is made against a person without that person having had an opportunity to be heard, it is extremely important to ensure that this person is made aware of the order as soon as possible, and has an opportunity to be heard on the matter and have it reconsidered.

[7] There are provisions in the *Act* that are consistent with achieving this. Section 8 provides that a respondent is not bound by either an Emergency Protection Order or a Protection Order until he or she has received notice of it. Section 9 provides for a review mechanism that can be invoked by the respondent at any time after he or she has received notice of an Order being issued. It will be open to Mr. Gon, once he has

been given notice of the Order I am issuing today, to apply to this Court for such a review, adduce evidence, and seek to have the Order varied, or revoked in whole or in part.

[8] One issue that is not addressed specifically in the Application is the question of duration of the Order. The *Act* does not set limits for the duration of Protection Orders, unlike what is the case for Emergency Protection Orders. The draft Order submitted with the Application does not include a specific duration, so it appears that what Ms. Gon is seeking is a permanent order. As I am very reluctant to make a permanent order on an *ex-parte* basis, I will set a date for the matter of duration to be addressed. If either party, and in particular Mr. Gon, wishes to make application to have other aspects of my Order reviewed, that can be addressed at the same time if the parties are ready to proceed.

3. CONCLUSION

[9] For those reasons, pursuant to section 7 of the *Act*, I make the following Order:

1. The Respondent is restrained from contacting or communicating with the Applicant until further order of this Court;
2. The Applicant shall have exclusive possession of House #261 in Behchoko, Northwest Territories;
3. The Respondent shall be removed from House #261 in Behchoko, by a peace officer, as soon as practicable;
4. Following his removal from House #261 in Behchoko, the Respondent shall not be within 100 meters of that residence;
5. A copy of this Order shall be provided to the Officer in Charge of the Behchoko Detachment of the Royal Canadian Mounted Police;
6. This Order shall be endorsed with the provisions of section 18 of the *Protection Against Family Violence Act*, S.N.W.T. 2003, c. 24;
7. This matter shall be spoken to in the Supreme Court of the Northwest Territories on Thursday, May 29th, 2008, at 2:00PM.

8. This Order, and a copy of section 9 of the *Act*, and a copy of this Memorandum of Judgment, shall be served personally on the Respondent forthwith.

L.A. Charbonneau
J.S.C.

Dated at Yellowknife, NT, this
13th day of May 2008

Counsel for the Applicant: Jeremy Walsh

S-1-FM2008000072

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