

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN

RHONDA PATRICIA FRANCIS

Applicant

- and -

REGINAL ITSI

Respondent

RULING ON A REVIEW UNDER S. 5(2) OF THE  
PROTECTION AGAINST FAMILY VIOLENCE ACT

[1] On June 22, 2017, an Emergency Protection Order (EPO) was issued following a hearing held before a Justice of the Peace pursuant to the *Protection Against Family Violence Act*, S.N.W.T. 2003, c.24 (the *Act*). In accordance with the requirements of section 5 of the *Act*, the matter was forwarded to this Court for review.

[2] The transcript of the hearing does not include any of the evidence presented. It does not include the Justice of the Peace's reasons for granting the EPO, or the terms of the Order. It reflects a discussion about administrative matters which took place at the very end of the teleconference, after the EPO was issued.

[3] The materials forwarded to this Court include a handwritten note from the Justice of the Peace that reads:

(...) Recording for this hearing failed. Recorder was on, but did not record, why beats me. Only recorded the last few minutes.

[4] A similar problem arose very recently in another matter. *Drybones v Rasumussen*, Unreported, FM 2017 000 037, June 6, 2017. I can only reiterate what I said in that case.

[5] Section 5 of the *Act* requires that all EPOs be reviewed by this Court. Upon review of the materials forwarded to the Court by the Justice of the Peace, if the Court is satisfied that there was evidence before the Justice of the Peace to support the granting of the EPO, the EPO is confirmed. If this Court is not so satisfied, a hearing into the matter is ordered.

[6] For this Court to discharge its statutory duties, having a record of the EPO hearing is crucial. It is difficult to assess the sufficiency of the evidence presented without having a transcript of it.

[7] In addition, it cannot be emphasized enough that EPO hearings are judicial proceedings. They are also exceptional in nature, in that they take place in the absence of the Respondent. That being the case, the preservation of a complete record of the evidence, the Justice of the Peace's reasons for granting the order, and the terms of the order, is of the utmost importance. Respondents are entitled to have access to the particulars of the evidence that formed the basis for an order issued against them.

[8] It is part of the responsibility of every Justice of the Peace who holds a hearing pursuant to the *Act* to take all reasonable steps to ensure that a complete record is preserved. They must ensure that the equipment used to record hearings is in good working order. That equipment should be tested regularly, preferably each time, to ensure that it is functioning properly. This should be done before the Justice of the Peace swears in the witnesses and begins hearing evidence.

[9] As I noted in *Drybones v Rasumussen*, in the absence of a transcript, it may not be possible for this Court to carry out the review mandated by section 5 of the *Act*. In that event, a full hearing would be required. The Applicant would have to appear and repeat everything he or she told the Justice of the Peace at the initial

hearing. This is resource intensive for the Court and cumbersome for the parties. More importantly, it entirely defeats the purpose of this legislation.

[10] While it is inevitable that malfunctions may occur from time to time, if the equipment is in good working order and tested before each hearing, those should be an exceedingly rare occurrence. The EPO hearing in *Drybones v Rasumussen* was held on May 17, 2017. The hearing in the present matter was held on June 22, 2017. It is of particular concern that there have been two cases within the span of a month where EPO hearings were not adequately recorded. If there is an issue with equipment, or with training as to its use, this needs to be addressed immediately.

[11] Turning to the review mandated by section 5, in this case, as was the case in *Drybones v Rasumussen*, a document entitled “PAFVA – Justice of the Peace Checklist” and handwritten notes were sent to this Court along with the EPO.

[12] The Checklist indicates that the Applicant and Respondent are common law spouses; that the Applicant gave her evidence under oath at the EPO hearing; that there is a previous history of violence and an escalation in the violence; that there is long-standing history of abuse and that there is concern for the safety of children and property. The notes are fairly detailed and refer to various acts of physical violence, damage being done to property, and emotional abuse.

[13] While it would have been far preferable to have the benefit of a transcript of the evidence of the Applicant, on the basis of the Checklist and the handwritten notes, I am satisfied that there was evidence before the Justice of the Peace to support the granting of the EPO. The EPO issued on June 22, 2017 is confirmed.

[14] I direct that a copy of this Ruling, and a copy of my Ruling in *Drybones v Rasumussen* be sent to the Chief Judge of the Territorial Court and to the Manager, Justice of the Peace Program.

L.A. Charbonneau  
J.S.C.

Dated at Yellowknife, NT, this  
6<sup>th</sup> day of July, 2017

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THE HONOURABLE JUSTICE L.A. CHARBONNEAU**

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