

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN

SANDRA GAUTHIER

Applicant

- and -

MATHIEU GAUTHIER

Respondent

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

[1] On January 28, 2024, an Emergency Protection Order (EPO) against the Respondent was issued for a duration of 90 days following a hearing before a Justice of the Peace pursuant to the *Protection Against Family Violence Act*, SNWT 2003, c 24 (the *Act*). The matter was forwarded to this Court for review, in accordance with section 5 of the *Act*.

[2] The materials forwarded to the Court for review did not contain a transcript or the recording of the hearing before the Justice of the Peace.

[3] The standard practice is that EPO hearings are recorded by the Justice of the Peace and the recording is forwarded along with the rest of the supporting materials to the Justice of the Peace Program. A transcript is prepared from the recording. All of the materials are then forwarded to this Court for review.

[4] Included with the materials forwarded for review was an email from the Justice of the Peace which indicates that the hearing was recorded but that she is unable to find the recording.

[5] The importance of having a record of the EPO hearing has been stated by this Court in several cases including *Francis v Itsi*, 2017 NWTSC 49 at paras 6-8:

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.

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.

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.

[6] It continues to be of utmost importance that there is a record of the EPO hearing and that Justices of the Peace take all reasonable steps to preserve the record of the hearing.

[7] Without a transcript or recording, I must review the materials that were forwarded to determine whether the EPO should be confirmed or whether a hearing should be ordered. The notes of the Justice of the Peace, when they contain enough information, can be sufficient to confirm an EPO.

[8] In order to confirm an EPO, I must be satisfied that there was evidence before the Justice of the Peace that was provided by a duly sworn or affirmed witness. If there was evidence, then I must be satisfied that the evidence supported the granting of the EPO.

[9] The handwritten notes of the Justice of the Peace indicate that the Applicant was affirmed. On this basis, I am satisfied that the witness provided sworn evidence to the Justice of the Peace.

[10] Before an EPO can be issued, a Justice of the Peace must be satisfied that the Applicant is entitled to seek an EPO and must also be satisfied on a balance of probabilities that family violence has occurred, and that by reason of seriousness or urgency the order must be made without delay to protect the person at risk or property at risk of damage.

[11] The Justice of the Peace's notes indicate that the Applicant and the Respondent are spouses who are separated. Pursuant to s. 2(1)(a) of the *Act*, the Applicant was entitled to seek an EPO against the Respondent.

[12] With respect to whether family violence has occurred, the *Act* defines family violence in s. 1(2):

(2) In this Act "family violence" means any of the following acts or omissions committed against an applicant, any child of the applicant or any child who is in the care of the applicant:

- (a) an intentional or reckless act or omission that causes bodily harm or damage to property;
- (b) an intentional, reckless or threatened act or omission that
 - (i) causes the applicant to fear for his or her safety,
 - (ii) causes the applicant to fear for the safety of any child of the applicant or any child who is in the care of the applicant, or
 - (iii) causes any child of the applicant or any child who is in the care of the applicant to fear for his or her safety;
- (c) sexual abuse;
- (d) forcible confinement;
- (e) psychological abuse, emotional abuse or financial abuse that causes harm or the fear of harm to the applicant, any child of the applicant or any child who is in the care of the applicant.

[13] The Justice of the Peace's notes refer to the Respondent verbally abusing the Applicant, threatening to kick her and their son out of the house and pressuring her to relinquish her claim to any portion of his pension. The notes also refer to the Respondent slapping the Applicant in front of their child and the Applicant

expressed fear for her safety and their son's safety. I am satisfied that this conduct meets the definition of family violence in several ways.

[14] The Justice of the Peace's handwritten notes provide the basis for concluding that there was evidence before her to support a finding that family violence had occurred.

[15] With respect to whether the situation was one of urgency and seriousness to justify an order being made without delay to protect the Applicant, the Justice of the Peace's notes refer to the Applicant stating that the Respondent's behaviour has escalated since they separated and began divorce proceedings and that she is afraid that he will kick her and their son out of the family home. This is of concern because the Respondent is in the military and the family is in military housing and the Applicant cannot afford to live elsewhere.

[16] Based on the information provided in the Justice of the Peace's notes, I am satisfied that there was evidence before the Justice of the Peace to support the finding that the urgency or seriousness of the situation justified issuing the EPO.

[17] For these reasons, I confirmed the EPO.

[18] As there is no transcript or recording of the hearing, I am unable to determine whether there are any defects or discrepancies between what occurred at the hearing and what is contained in the EPO.

[19] A review of the EPO itself reveals several spelling errors. Pursuant to s. 5(3.1), I have varied the order to correct those errors. EPO are Orders of the court and while they are issued in situations of urgency, care should still be taken to ensure that the provisions in the EPO are accurate and words are not misspelled.

S.H. Smallwood
Chief Justice

Dated at Yellowknife, NT, this
2nd day of February, 2024

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THE HONOURABLE CHIEF JUSTICE
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