

CITATION: *Paul Arnold Stuart v Leah Michelle Potter & Amye Un* [2023] NTLC 29

PARTIES: Paul Stuart ARNOLD
v
Leah Michelle POTTER
AND:
Paul Stuart ARNOLD
v
Amye UN

TITLE OF COURT: LOCAL COURT

JURISDICTION: CIVIL – PERSONAL VIOLENCE

FILE NO(s): 22329668 & 22329670

DELIVERED ON: 24 October 2023

DELIVERED AT: Darwin

HEARING DATE(s): 26 September 2023

JUDGMENT OF: Judicial Registrar Leanne Gordon

CATCHWORDS:

PERSONAL VIOLENCE - PROCEDURE FOR INTERIM HEARING - TEST FOR INTERIM
ORDERS - HARM - INTIMIDATION

REPRESENTATION:

Counsel:

Applicant: Ms Franz

Defendants: Mr Lawrence

Solicitors:

Applicant: Darwin Family Law

Defendants: Withnalls Lawyers

Judgment category classification:	B
Judgment ID number:	[2023] NTLC 29
Number of paragraphs:	71

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 22329668 & 22329670

BETWEEN:

PAUL STUART ARNOLD

Applicant

AND:

LEAH MICHELLE POTTER

Defendant (Court file 22329668)

AND:

AMYE UN

Defendant (Court file 22329670)

REASONS FOR DECISION

(Delivered 24 October 2023)

JUDICIAL REGISTRAR GORDON

1. This is an application for Interim Personal Violence Restraining Orders under section 19 of the *Personal Violence Restraining Orders Act 2016* on Court files 22329668 & 22329670.
2. Submissions were received concurrently on both files, and noting the similarity of issues to be determined and the commonality of the Applicants evidence across both files, joint written reasons have been produced for both files.
3. Submissions on the making of interim orders were received on 26 September 2023, the first return date of the Applications filed 12 September 2023. The decision was reserved, noting additional evidence required consideration and there was no evidence of imminent or serious risk of physical harm to the applicant.
4. Section 19 of the Act provides:
"At any time during proceedings for the hearing of an application for a personal violence restraining order, the Court may make an order... under this section."
5. Section 19 thereafter deals with appearances at an interim order application and the date of commencement for any interim order, although notably it does not establish the test to be applied when making interim orders. This is likewise the case in the *Domestic and*

Family Violence Act 2007, as noted by Judicial Registrar Norrington in *Nguyen v Schroder*¹, who found that the tests for finalising a substantive domestic violence application had application for the purposes of an interim order².

6. I share this view in relation to personal violence orders. Accordingly, the considerations for making an interim personal violence order should be the same as the test for the making of a final personal violence restraining order provided for in section 15, that is the Court should be satisfied, '*on the balance of probabilities a personal violence offence has been committed or is likely to be committed by the defendant*'.
7. Adopting this test however, must be done in the context of an interim hearing and not as a replacement or hybrid of the final hearing, where all allegations and disputed matters can be considered and rigorously tested as required.
8. As her Honour Justice Kelly noted in *Bonney v Thompson*³, again in relation to an interim domestic violence order:

"An interim DVO, made pursuant to s 35 is a different kind of order. It may be made at any time – before all of the evidence is in, or even before any of the evidence is in... It cannot be expected that the magistrate making an interim DVO will necessarily have been able to consider all of the matters set out in s 19 or be satisfied that a CJS DVO should be made."
9. The process of a final hearing is a distinct a separate process and any decision made on an interim basis stands alone and is not a de facto determination of the proceedings proper.
10. The matter of *Nguyen* also sets out the process for conducting an interim hearing in domestic violence matters, drawing from Family Court processes and noting the similarities to the dynamics between the parties and risk factors across those jurisdictions. In my view those dynamics, albeit in the absence of a family relationship, are often present in personal violence matters, and the processes, potential orders and outcomes and consequences for breach are significantly mirrored across the personal and domestic violence jurisdictions.
11. Similarly the Supreme Court in *Atkinson v Bardon*⁴ ('*Atkinson*') found that it was "*[i]t is instructive to consider the comparable provisions in the Domestic and Family Violence Act*" when engaging in the legislative interpretation of the *Personal Violence Restraining Orders Act 2016*.
12. In *Nguyen*⁵ Judicial Registrar Norrington referred to the matter of *Cowling v Cowling*⁶ which provides that interim hearings:

"... are an abridged process where the scope of the inquiry is necessarily significantly curtailed. As a consequence the Court needs to exercise considerable caution against being drawn into matters properly dealt within the trial process. Ordinarily, at interim hearings, the Court

¹ [2020] NTLC 11.

² *Ibid* at paragraphs 10-17.

³ [2011]NTSC 81 at 35.

⁴ [2018] NTSC 9 at 45.

⁵ *Ibid* at 48.

⁶ (1998) FLC 92-801 at 18.

should not be drawn into issues of fact or matters relating to the merits of the substantive cases of each of the parties.”

13. Furthermore, generally an interim hearing will be conducted on the basis of available affidavit evidence, as limited as it may be, particularly at an early stage of the proceedings, with submissions from the parties and oral evidence would only be called in exceptional circumstances, or at the request of the presiding Judicial Officer.
14. I am satisfied that the procedural principles in *Nguyen* are applicable to interim hearings in personal violence restraining order matters.
15. Additionally, in deciding whether a personal violence restraining order should be made, it should be noted that section 16 of the Act directs that the safety and protection of the protected person is of paramount importance. While not specifically legislated in relation to interim decision making at section 19, common sense would suggest this consideration must also apply to the making of interim orders.
16. Thus, an interim hearing for a personal violence restraining order requires a finding, at an interim stage of the proceedings that *“on the balance of probabilities a personal violence offence has been committed or is likely to be committed by the defendant”* and that the safety of the protected person is of paramount importance when making a decision whether to issue interim orders.
17. In determining same, while Affidavit evidence and submissions will, as a matter of course be considered, it is not for the Court to engage in a fact-finding exercise or conduct a quasi-hearing. Rather the Court will engage in a considered review of the available evidence, assess the strengths of any submissions and make a determination, on the balance of possibilities, as to the necessity for an interim order to be made in order to protect the applicant from personal violence.
18. Personal violence offences are defined by section 4 of the Act. In the current matter the conduct complained of is alleged to satisfy the definition in section 4(b)(i) being ‘conduct causing harm’ and section 4(b)(iii) intimidation.
19. The Court in *Atkinson*⁷ noted in relation to section 4 *“The conduct that may be the subject of an order is therefore quite far reaching, and is not limited to threats or attempts to commit acts of violence on the person of an individual”*
20. There is no legislative definition provided for ‘harm’ and counsel for the Respondents submits that a plain English dictionary definition should be applied. I agree with the submission.
21. The Cambridge dictionary defines harm as a verb *“to hurt someone or damage something”*⁸, while Miriam Webster provides *“to damage or injure physically or mentally”*⁹. The definitions are broad, and in my view, ought be so. Community standards and understanding of acceptable behaviour and what may cause harm continue to evolve and the mental or emotional consequences of harmful behaviours are now better understood and accepted. The community is conscious of surreptitious behaviours being employed

⁷ *Atkinson v Bardon* [2018] NTSC 9 at 27.

⁸ <https://dictionary.cambridge.org/dictionary/english/harm>.

⁹ <https://www.merriam-webster.com/dictionary/harm#h1>.

and tolerance for bullying behaviours is changing, particularly in an increasingly digital landscape.

22. Intimidation is defined by section 5 as being:

5 Intimidation

(1) Intimidation of a person is:

(a) harassment of the person; or

(b) any conduct that causes a reasonable apprehension of:

(i) violence to the person; or

(ii) damage to the property of the person, including the injury to or death of an animal that is the person's property; or

(c) any conduct that has the effect of unreasonably controlling the person or causes the person mental harm.

(2) For deciding whether a person's conduct amounts to intimidation, consideration may be given to a pattern of conduct in the person's behaviour.

Examples of harassment for section 5(1)(a) are provided as follows:

Examples of harassment for subsection (1)(a)

- 1 Regular and unwanted contacting of the person, including by mail, phone, text messages, fax, the internet or another form of electronic communication.*
- 2 Giving or sending offensive material to the person.*

The case against Amye Un

23. Turning then to the conduct of the respondents in the matters before the Court to determine whether a personal violence offence has been committed and interim orders should issue, I will first consider the Application against Amye Un.

24. The Applicant relies on his self-authored Affidavit filed 12 September 2023, served on Defendant Un on 16 September 2023 and his further Affidavit prepared with the assistance of legal counsel, which was tendered to the Court and provided to the Defendant's counsel at the hearing on 26 September.

25. The evidence of the Applicant is that he has known Defendant Un since 2021 when she was elected as a Counsellor for the City of Darwin at which time, the Applicant likewise held the role of Counsellor¹⁰.
26. The Applicant states that despite what he previously considered a cordial friendship, Defendant Un seemingly 'out of the blue' began what the Applicant describes as a 'concerted and targeted campaign' against him resulting in mental harm and reputational harm to himself personally and his business endeavours¹¹.
27. The Facebook post first complained of is at annexure 2 of the Applicants first affidavit which links a news story with the heading "Arnold won \$100k govt grant after DVO". To which Defendant Un added the following commentary (produced verbatim¹²):
- "Need to open this STORY so public can see what's going on with our Politician in Darwin. Look like unfairfull to other SMALL BUSINESS.*
- If Mr. Arnold. Can receive Government Grant \$100k after DVO why NOT this 100K just Split to more than 10 small business so they can improve their business. WHY have to be ARNOLD only.*
- So that way so many small business be shuts down, because NO HOPE.*
- NOW ON I LIKE TO MAKE A FRIEND WITH Mr. Paul Kirby and others ZOMBIES..."*
28. It should be noted that both the Applicant and the Defendant are the faces of local small businesses, albeit in considerably different fields and not in direct competition with each other, while Paul Kirby is a member of parliament and is, among other portfolios, the Minister for Business, Jobs and Training.
29. Also annexed are some comments or commentary in response to Defendant Un's Facebook post, largely posted by other authors, and although Defendant Un may be considered responsible for generating the conversation, she cannot be held accountable for the content therein.
30. There was a further incident which took place at a by-election polling place on 2 September 2023. The Applicant describes the incident as follows:
- "On 2 September 2023 I attended the polling place at the Darwin Entertainment Centre to vote in the Local Government By-election. As the outgoing member I spent some time engaging with the candidates...*
- On the second occasion that I was there I was approached from behind by Ayme Un. She sought to talk about the breach notice and threatened me with action from her lawyers.*
- After telling her I was not in a positon to discuss this and to move from my space, she persisted to try and engage me in conversation.*

¹⁰ Affidavit of Paul Stuart Arnold filed 12 September 2023 at Annexure 1.

¹¹ Ibid at paragraph 9.

¹² Noting Ms Un has English as a second language and there are grammatical and language errors which make the material somewhat difficult to understand, but not to an incomprehensible degree.

I ultimately lost patience with the deliberate attempt to engage me in conversation on a matter that I am not at liberty to discuss, and therefore told Amye Un to fuck off.

She eventually left my space...”¹³

31. The incident was then discussed in social media in a post purported authored by George Mamouzellos¹⁴ and allegedly shared by Defendant Un on social media¹⁵.

32. George Mamouzellos paints a considerably different picture:

“The next thing that happened was that a by-election happened for a position on council, that was attended by Counsellor Un and former counsellor Paul Arnold, who was the outgoing member.

Mr Arnold had resigned from his position after claiming to have mental health problems followed by being arrested and briefly thrown in jail following allegations of domestic violence...

Apparently what happened is that Counsellor Un was talking to a group of people and decided to get her water bottle from her bag, which was on the floor nearby to Mr Arnold.

*As she walked to get her water bottle she said something like “Hi Paul”, to which Mr Arnold told her to “F*** off” before he “slapped her with another breach”.*

33. Mr Mamouzellos writes that due to a recent medical incident he contacted Defendant Un and offered to do a “quick messy writeup so that she didn’t make a series of posts herself and get worked up”.

34. He offers that Defendant Un thought it was a good idea although he notes “Everything in this article is the opinion, recollection, and speculation of the writer George Mamouzellos” and further, “This whole thing was written in one go from memory, so it might be a bit messier than usual”.

35. This is largely the case against Defendant Un as I understand it, the social media posting in relation to the business grant and the election day incident likewise described and discussed on social media.

The case against Leah Potter

36. For the case against Defendant Potter, the Applicant again relies on two Affidavits, one filed 12 September and the other tendered at the Hearing on 26 September 2023.

37. The Applicant again relies on social media posts made by Defendant Potter¹⁶ relating to him, including one on 13 June 2023 which is extracted below. Notably the highlighted text (my emphasis) was apparently added in a later edited version of the original post:

¹³ Affidavit of Paul Stuart Arnold filed 12 September 2023 at Annexure 1 paragraphs 20-26.

¹⁴ The relationship between George Mamouzellos and either of the parties and his involvement in any of the matters discussed is unknown.

¹⁵ Affidavit of Paul Stuart Arnold filed 26 September 2023 at Annexure “A”.

¹⁶ Ms Potter is the owner of a Facebook profile “What a CROC (Leah Potter Comedian)”.

*“Defence veteran and “NT ICON” Paul Arnold has had his bail strongly opposed by the prosecutor due to the **alleged** complete disregard he showed for a domestic violence order.*

*He **allegedly** held a woman hostage several times, **allegedly** attacked her violently and **allegedly** smashed up her house while under the DVO...”¹⁷*

38. A further, undated post, offers the following opinions of Defendant Potter:

“... Violent offender Paul Arnold, ex Lyons Ward Alderman who disregarded a DVO against him and continued to violently assault a woman, hold her hostage and smash up her house... 5 other women have reached out to this page [What a CROC] with evidence of what a an entitled sex-pest Paul Arnold is... (The NT News describe this sex-pest as an NT ICON in their headlines. Much like Rolf Harris is an Aussie Icon.)”¹⁸

39. Annexure 7 of the Applicants Affidavit of 12 September shows a social media discussion, which appears to concern the Applicant, that emanates from a post by Defendant Un (the original post is not provided) in which Defendant Potter comments “Because he is a nasty, entitled little man with a history of stalking and harassing women”.

40. A number of other posts are also produced, in the same vein, including Annexure 9, which states in large highlighted text “I’m not making vague allegations. I’m calling Paul Arnold out as a serial abuser of women.”

41. In his further affidavit on 26 September, the Applicant notes that this post came after Defendant Potter was served with his application for a personal violence order. The further Affidavit also included a range of social media posts which he says constitute personal violence including the following comments:

a) *“Paul ARNOLD has been busy trying to put together a campaign of gaslighting to attempt to avoid the consequences of his own actions.”*

b) *“Today my dear friend Amye Un had a heart attack following a campaign of bullying from disgraced ex Darwin City Councillor Paul ARNOLD. He just got out of jail after breaching a domestic violence order and despite still wearing an ankle bracelet, the alleged violence offender proceeded to continue his abusive behaviour towards Councillor UN.”*

c) *And to all of the cowards who refused to speak out in the wake of the controlling and bullying behaviour from Paul ARNOLD Shame on all of you.”*

42. Further, on 18 September 2 days after service of this Application Ms Potter shared a joke online followed by the comment “I’m just kidding I didn’t really slap my partner. I’m not Paul Arnold.” Followed by a laughing emoji. The second line of the post has been subsequently edited to remove the reference to the Applicant and now reads “I’m anti-violence”¹⁹.

43. This line of public behaviour, which the Applicant describes as “a series of highly defamatory and inflammatory posts”²⁰ where he alleges “her bullying and harassing social

¹⁷ Affidavit of Paul Stuart Arnold filed 12 September 2023 at Annexure 2 & 3.

¹⁸ Affidavit of Paul Stuart Arnold filed 12 September 2023 at Annexure 4.

¹⁹ Affidavit of Paul Stuart Arnold filed 26 September 2023 at Annexure “A”.

²⁰ Affidavit of Paul Stuart Arnold filed 12 September 2023 at Annexure 1 at paragraph 7.

media posts and commentary on a criminal matter of which she knows nothing is extremely damaging to both my livelihood and my life"²¹, is what constitutes the case for a personal violence restraining order against Defendant Potter.

44. In support of his Application and as evidence of the harm caused the Applicant has also entered into evidence, on both files, a medical certificate dated 26 July 2023 which provides:

"[Mr Arnold] is currently suffering significantly from mental health decline. His mental state is such that he has required multiple visits a week to myself as his GP or his psychologist or Top End Mental Health Services.

Currently he is not fit to attend the Court Hearing that is set for Monday the 31st of July.

I request that his Court Hearing be postponed for 2 months such that he is fit to attend."

45. Counsel for the Defendants argued that this correspondence was created for, and thus is only relevant to the Applicants criminal matters and should be disregarded.
46. The Applicants legal representative argued that evidence of a declining mental state in late July can be relevant to the risk of harm in September and that the medical evidence referred to an inability to participate for an extended period, 2 months. It is not a time and place letter and as such its weight and relevance can be applied more broadly.
47. With respect, I accept the submission of the Applicant. This is a case which turns solely²² (on the evidence to date) on conduct causing psychological harm and intimidation, there is no evidence of physical harm, property damage or stalking. The medical evidence in my view, can be relied upon to indicate psychological deterioration, past and ongoing.
48. Findings must now be made, on the balance of probabilities, whether a personal violence offence (being conduct causing harm or intimidation) has been committed or likely to be committed against the Applicant by each Defendant.

Conclusion

49. Defendant Un's primary direct conduct was the initial Facebook posting in relation to the grant of government funding. Counsel for the Defendant argued that the Defendant is entitled to voice her opinions on Facebook in relation to social and community issues which concern her.
50. Described by Counsel as a 'political tiff' where Defendant Un has formed a counter view to which the Applicant has taken umbrage should not constitute personal violence and rather should be expected and tolerated in a democratic society. In my view, this submission carries weight.
51. Although the story related to the Applicant as the winner of the grant the primary focus was on the inequitable distribution of funds and the perils of small business. But for

²¹ Affidavit of Paul Stuart Arnold filed 12 September 2023 at Annexure 1 at paragraph 10.

²² I understand the Applicant also alleges economic abuse pursuant to s4(b)(v) but this wasn't argued or supported by evidence, beyond speculation and concern, at the time of the interim hearing.

mentioning the presence of a DVO against the applicant, there is no vitriol, name calling or accusations directed to the applicant.

52. The second posting and the content therein, purportedly authored with the Defendant's permission, in my view likewise does not constitute a personal violence offence committed by Defendant Un against the Applicant.
53. Were the Court to sanction community members with Court Orders every negative comment or difference of opinion or fact aired on social media the administration of justice in relation to personal and domestic violence orders would be untenable. In my view, the conduct of Defendant Un has not crossed the line to intimidation or harassment.
54. Although I accept the Applicants evidence that he is displeased and concerned with her postings, in my view the nature of the evidence relied upon for an Order against Defendant Un is not such that it would result in 'hurt, damage or injury' to a standard considered harm under the Act.
55. Defendant Potters postings however are both higher in volume and more personal in nature than those of Defendant Un. The comments do, in my view, stray out of the realm of robust political discourse into a personal attack and could reasonably be the basis of the allegedly '*serious negative effect on [the applicant's] fragile mental health*'²³.
56. It was not denied that Defendant Potter is the author of the social media posts put into evidence where the Applicant is referred to as an 'entitled sex pest', compared to convicted paedophile Rolf Harris, 'a nasty entitled man with a history of stalking and abusing women' and 'serial abuser of women' and so forth. Rather it was submitted that despite doing so the Courts jurisdiction to issue an interim personal violence order should not be invoked in response.
57. Notably, the Applicant has plead not guilty to all criminal charges currently before the Court and the matters have been listed for hearing, following which a determination as to the Applicants guilt will be made by the Court. Until, such time, he is entitled, as are all defendants in criminal matters, to a presumption of innocence.
58. It must be stated that this proceeding is not a claim of defamation, nor is the Court exploring or upholding the right to free speech, this court must constrain itself to the application of the *Personal Violence Restraining Orders Act 2026* to the alleged conduct of the Defendants. Additionally, this decision does not say that people aren't free to share contrary or controversial opinions of other people on social media and other public spaces. Rather, when doing so they must be aware of the potential legal consequences of airing their opinion.
59. Thus Defendant Potter, while at liberty to conduct herself as she sees fit on social media, must be mindful if such conduct causes harm to another person, she may find her social media engagement or other dialogue relating to the Applicant restrained by Order of this Court, in order to prevent further harm.

²³ Affidavit of Paul Stuart Arnold filed 26 September 2023 at paragraph 4.

60. Counsel for the Defendant noted that the examples provided in the legislation for acts of harassment include 'regular and unwanted contacting of the person'²⁴ and in this instance there has been no direct contact between the parties. In my view, this argument cannot carry weight. Noting the examples given are not an exhaustive list and provide guidance only, the mere lack of direct contact does not diminish the operation of sections 4(b)(i) of the other aspects of intimidation as defined by section 5.
61. I also note that section 5(2) provides "*For deciding whether a person's conduct amounts to intimidation, consideration may be given to a pattern of conduct in the person's behaviour.*" I do find that Defendant Potter is demonstrating a pattern of behaviour in relation to the Applicant, that being, making a series of public, insulting or derogatory remarks.
62. And it is not the truth of the content or otherwise that is the key consideration for this Court, it is the consequence of the conduct.
63. I do place weight on the medical evidence of the Applicant, albeit brief. I do find, on the balance of probabilities, that the Applicants mental health is likely to be unstable or negatively affected at the time of the interim hearings.
64. The Applicant has given direct evidence, in his Affidavits²⁵, that it is the conduct of the Defendants which has causing him mental harm.
65. I am satisfied at this interim stage of the proceedings and based on my views of the untested evidence, that a personal violence offence, being conduct causing mental harm, has been committed and further, is likely to be committed by Defendant Potter, against the Applicant.
66. Turning again to the guidance provided for in the decision on *Nguyen* I note with approval the following principles:
- "The Court must determine whether an interim court DVO is really required at that stage in the proceedings. This involves the Court balancing the nature and imminence of the risk of domestic violence being perpetrated on the protected person, or the risk of a child being exposed to domestic violence and the possible consequences of delaying the making of an order until the matter can be fully heard, on one hand, against:*
- (a) The defendants right to have a reasonable opportunity of appearing at the hearing and presenting their case. This includes the right to test the evidence of the applicant and to present evidence to the Court to respond to and counter the allegations made by the applicant; and*
- (b) any hardship or prejudice to the defendant which may arise from the making of an interim Court DVO, on the other."*²⁶
67. In my view, the risk of ongoing mental harm to the Applicant is real and should not be underestimated. There is likely to be a significant period of time until the final hearings

²⁴ See paragraph 23.

²⁵ See for instance paragraphs 27, 45 & 61.

²⁶ *Nguyen v Schroeder* [2018] NTSC 9 at 36(4).

in these matters could be heard noting the proceedings the hearing date availability in this jurisdiction currently sits at mid-2024.

68. The Defendant, although not yet having placed any evidence before the Court, was ably represented in her defence against the making of interim orders. I also note that the Applicant's evidence of Defendant Potters' conduct (i.e. screen shots of social media interactions) was largely not disputed, rather the effect and consequence of same was in issue.
69. No submissions were received in relation to any potential hardship the Defendant may face should the Court issue Orders against her.
70. I also note there is nothing in this decision that prevents the Defendants from participating in robust discussions on Facebook and from continuing to advocate for issues they are passionate about, including family and domestic violence and the local business community of Darwin and the Northern Territory. However, they must ensure they do so in a manner which does not constitute a personal violence offence against the Applicant, and indeed any other members of the community.
71. For the reasons set out above the application for an interim personal violence restraining order against Amye Un is refused.
72. An interim personal violence restraining order will issue against the Defendant Leah Potter in the following terms:

On an interim basis and until further Order the Defendant is restrained from:

1. Approaching, contacting or remaining in the company of the protected persons directly or indirectly (contact includes by mail, phone, text messages, facsimile, email or other forms of communication including all forms of social media);
2. Directly or indirectly referring too, identifying, describing or discussing the protected person in any public or published forum, including all social media platforms; and
3. Intimidating or harassing or verbally abusing the protected person.