

## ***Buxton v Brinckman* [2011] TASMC (21 July 2011) – Magistrates Court of Tasmania**

‘Bail’ – ‘Bail – interim family violence order’ – ‘Breach of temporary protection order’ – ‘Inconsistency’ – ‘Statutory interpretation’

Charge: Breach of interim family violence order

Proceeding: Reasons for decision

Facts: An interim family violence order (IFVO) was made against the defendant that prohibited him from entering the premises of the protected persons. The defendant was living with his parents. The agreed facts established that one of the protected persons started living at his parents’ address as well. In breach of the order, the defendant continued to live in his parents’ house. However, at the relevant time the defendant was on bail. One of the conditions of the bail order was that he was to reside at his parents’ house.

The magistrate found that the elements of the offence were proven. The defendant submitted that given that he was obliged to reside at his parents’ house by the bail conditions, this relieved him of criminal responsibility for the breach of the IFVO. That is, because the failure to live at his parents’ premises would amount to a breach of bail, this should excuse the breach of the IFVO.

Issue: Whether the defendant was guilty of the offence charged.

Decision and Reasoning: While there may be some circumstances where a person might claim a defence of breaching a statutory obligation on the basis that some other law compels the breach, this was not the situation in this case. Section 6 of the *Family Violence Act 2004* (Tas) (the Act) provides that the Act prevails to the extent of any inconsistency with another act. The Court acknowledged that the defendant’s parents made it impossible for him to comply with the bail condition without breaching the IFVO. However, the defendant could have applied for a variation of bail. In the interim period before bringing that matter before the court, the breach of bail may have been excused on the grounds of ‘reasonable cause’. As such, he was not relieved of criminal responsibility for breaching the IFVO.