

***Purton v Purton* [2016] TASC 9 (19 October 2016) – Magistrates Court of Tasmania**

‘Management of application proceedings’ – ‘Procedure’ – ‘Protection orders’

Case type: Directions in relation to application to revoke a Police Family Violence Order (‘PFVO’).

Facts: The applicant was served with a PFVO. It stated that the Sergeant was satisfied that the applicant had committed a family violence offence but did not explain why the order was made ([9]). The applicant applied to revoke the order ([10]).

Issues: The parties sought directions in relation to the nature of the application to revoke, the manner in which such an order should be made, and which party bears the onus of proof ([29]).

Decision and Reasoning: Magistrate McKee explained the procedure for challenging a PFVO. The application is not an appeal, nor an administrative review ([40]). It is an application for the court to exercise a discretion to revoke a PFVO ([41]).

The onus of proof is on the applicant to satisfy the Court on the balance of probabilities that it is appropriate to revoke the PFVO ([24]). Since the applicant is unaware of the basis upon which the order was made, the respondents (the police) would have to lead evidence to establish that the applicant committed the offence ([50]).

However, if the police applied to revoke or extend the PFVO, the onus of proof would lie on them ([56]).