

## ***Olsen v State of Tasmania* [2005] TASSC 40 (13 May 2005) – Supreme Court of Tasmania**

‘Aggravated assault’ – ‘Bail’ – ‘Legal representation’ – ‘People with mental illness’ – ‘Physical violence and harm’ – ‘Unrepresented litigant’

Charge: Aggravated assault

Proceedings: Bail application

Facts: The applicant was charged with aggravated assault against his former female partner. The Crown case was that the assault consisted of a threatening gesture or gestures with a replica pistol. The applicant vehemently denied these allegations. The Crown informed the court that they would not oppose bail if the applicant was able to produce a suitable surety. The applicant suffered from schizophrenia and would benefit from the supervision of a surety to ensure he did not breach any bail conditions. However, through no fault of his own, the applicant was unable to produce a surety.

Issue: Whether the application for bail should be granted.

Decision and Reasoning: The application for bail was refused. His Honour noted that, *‘Were I free of the restraints imposed by the Family Violence Act, s12, I would grant bail. I would do so because on the face of it, the assault is not a serious one, because the applicant has been in custody since 10 or 11 April, and because it will be some time before this applicant has his case heard.’* His Honour further noted that the applicant had no relevant prior convictions ([3]).

However, s 12 of the *Family Violence Act 2004* (Tas) provided that the applicant not be granted bail unless his release on bail would not be likely to adversely affect the safety, well being and interests of the complainant. The onus was on the unrepresented applicant to show this but he had no idea of where the complainant was living (so as to ascertain information about her safety). In light of this and in the absence of a surety to monitor the applicant’s behaviour, the application for bail was refused. His Honour concluded by stating that, *‘I want to say very strongly that this man needs legal assistance and he needs it urgently, otherwise he is likely to stay where he is for a considerable period of time’* ([10]).