

***Houseman v Higgins* [2015] NTSC 88 (7 December 2015) – Northern Territory Supreme Court**

‘Breach of domestic violence order’ – ‘Domestic violence order’ – ‘Formalities in making domestic violence order’ – ‘Service’

Charge: Breach of domestic violence order

Appeal type: Appeal against acquittal, validity of domestic violence order

Facts: The respondent was served with a police domestic violence order under s 41 of the *Domestic and Family Violence Act 2007* (NT) (the Act). The order set out the reasons for making the order and conditions of full non-contact. However, it did not provide a specified period for which the order was in force. The Court of Summary Jurisdiction confirmed and varied the order to be in force for 12 months.

After being in contact with the protected person, the respondent was subsequently arrested for breaching the domestic violence order. However, at the time of arrest the respondent had not been served with the court confirmed and varied domestic violence order. The magistrate found the respondent was not guilty on the basis that the domestic violence order made by the police ceased to be in force once confirmed by the court and the respondent had not been served with the court order.

Issues:

- > Whether the domestic violence order was invalid because it did not state the period the order was to be in force.
- > If the order was valid, whether the magistrate erred in finding the respondent not guilty in failing to apply s 120(2)(b)(ii) of the Act.

Decision and Reasoning: The appeal was upheld.

- > Southwood J found it is not necessary for police to state the duration of a domestic violence order for it to be valid. A police domestic violence order continues in force until it is revoked. Under s 27 of the Act a domestic violence order is in force for the period stated in it. This section does not state that an order cannot be made for an unspecified or unlimited period, nor does any other provision in the Act. Further, s 42 contained in Part 2.6 of the Act, provides the police must record the reasons for making the order and the time and place for its return. Again, this provision does not require police to specify the period for which the order is to be in force. The purpose of Part 2.6 is to protect the protected person until a court can consider the matter. Consistent with this purpose, a police domestic violence order is to remain in force until further order or until the order is revoked. This is made clear by s 82 of the Act

which states that at a show cause hearing the court may either confirm the order with or without variations or revoke it.

- > Given the order was valid, the respondent's conduct in contacting the protected person constituted a breach of both the domestic violence order made by the police and the confirmed and varied order made by the court under s 120(1) of the Act. The fact the respondent had not received a copy of the court order at the time of arrest was not a defence under s 120(2)(a) of the Act, as the police domestic violence order was still in force: s 120(2)(b)(ii) of the Act. Therefore, the charge should not have been dismissed and the magistrate erred in dismissing the charge and in failing to consider s 120(2)(b)(ii) of the Act.