

## ***MS v Commissioner of Police* [2021] QCA 31 (2 March 2021) – Queensland Court of Appeal**

‘Application for leave to appeal against conviction’ – ‘Breach protection order’ – ‘Parenting orders’ – ‘People with mental illness’ – ‘Protection order’

Charges: Contravention of a domestic violence order (aggravated offence) x 1.

Proceedings: Application for leave to appeal against conviction.

Facts: A protection order prevented the male applicant from contacting, attempting to contact, or asking someone else to contact his female former partner except under strict circumstances. A Family Court order was also in place granting the mother sole parental responsibility for their child and restricting contact between the parties. The applicant breached the protection order by sending an email addressed to a number of people including his former partner and solicitor titled, “[The child] need to know about my mental health diagnosis.” The applicant was sentenced in the Magistrates Court to 6 months imprisonment, suspended after 2 years. The applicant’s appeal to the District Court was dismissed.

Grounds of appeal:

1. The primary judge erred in not allowing the appeal based on the existence of parental responsibility in the applicant’s communications.
2. The primary judge erred in not applying s 24 of the *Criminal Code* (Qld).

Held: Application for leave to appeal was refused. There was no inconsistency: condition 6 of the protection order did not preclude the application of the exception in paragraph 18 of the Family Court order. The email was appropriately characterised as not for the “sole purpose of communication regarding parental responsibility,” and did not fall within the condition/exception in the protection order and Family Court order. On that basis, there was no room for the operation of s 24 of the Code which could not apply to a mistake by the applicant in the interpretation of the Family Court order.