

## ***R v MKW* [2014] QDC 300 (18 June 2014) – Queensland District Court**

‘Abuse of process’ – ‘Breach of domestic violence order’ – ‘Concurrent criminal proceeding’ – ‘Double jeopardy and other charges’ – ‘Double punishment’ – ‘Grievous bodily harm’ – ‘Permanent stay of proceedings’ – ‘Physical violence and harm’

Charge/s: Grievous bodily harm.

Proceeding: Application for a permanent stay of proceedings.

Facts: An indictment before the District Court charged the applicant with grievous bodily harm. The incident involved the applicant drinking alcohol in a group which included the complainant (his de facto partner). An argument ensued. The applicant struck the complainant with a collapsible chair. He was charged with breaching a domestic violence order, pleaded guilty in the Magistrates’ Court and was sentenced to 12 months’ imprisonment with parole release after four months. The police then obtained a medical report indicating that the complainant’s injuries, if left untreated were likely to have caused ‘disfigurement or loss of vision’ and could have proved life threatening (see at [3]). As a result, he was then charged with grievous bodily harm (GBH) three days after being released from custody.

Issue/s: Whether the continued prosecution of the GBH charge would constitute an abuse of process under s 16 of the *Queensland Criminal Code* because the applicant had already been punished for the same act.

Decision and Reasoning: The application was dismissed. O’Brien DCJA considered the test as applied in *R v Dibble; ex parte Attorney-General (Qld)* [2014] QCA 8 (11 February 2014). His Honour concluded at [9] that the applicant was punished in the Magistrates’ Court for the act of striking the complainant with the chair and that it was this same act which formed the basis of the GBH charge. Ordinarily, to punish the defendant again for that same act would contravene s 16 of the Code. However, the Crown submitted that s 138 of the *Domestic and Family Violence Protection Act 2012* (Qld) (the Act) operates to authorise the continued prosecution of the GBH charge. The Court accepted this argument. The crucial issue was whether the original prosecution for the breach offence against the Act constituted a ‘proceeding’ under that act. If it did, s 138(3)(a) would apply so that the prosecution for the breach offence would not affect any other proceeding against the applicant arising out of the same conduct. His Honour concluded that the prosecution for the breach offence was a proceeding under the Act (see at [15]). As such, *R v Dibble; ex parte Attorney-General (Qld)* (where a permanent stay was granted) was distinguished on the basis that the Act specifically authorises continuation of the prosecution. However, this issue has not been authoritatively resolved and uncertainty remains. See at [17] where his Honour states –

*'I should add that, if my tentative view of s 138(4) of the legislation is correct and if the applicant were to be convicted of the indictable offence, then the question remains as to whether s 16 of the Code prohibits him being further punished for that offence. At the very least, I would consider that ordinary and well-established sentencing principles would require that regard be had to the penalty imposed in the Magistrates Court for the breaching offence.'*

See pages 111-113 of the Queensland *Domestic and Family Violence Protection Act (2012)* Bench Book and the summary of *R v Dibble; ex parte Attorney-General (Qld)* [2014] QCA 8 (11 February 2014) for further information.