LCJ v KGC and Commissioner of Police **[2012] QDC 67 (30 March 2012) – Queensland District Court**

*Note this case was decided under now superseded legislation however the case contains relevant statements of principle.

'Domestic violence order' – 'Emotional and psychological abuse' – 'Following, harassing, monitoring' – 'Physical violence and harm'

Appeal Type: Appeal against a protection order.

Facts: The appellant applied for and was granted a protection order (under the then *Domestic and Family Violence Protection Act 1989* (Qld)). The applicant (the respondent/aggrieved) tendered evidence to the Magistrate that the appellant was physically violent to her on two occasions by grabbing her around the neck. There was also evidence that the appellant threatened to kill her if she went to the police. There was a history of violence in the relationship, which had involved verbal and physical abuse and controlling behaviour since 1992.

Issue/s: Some of the issues concerned –

1. Whether it was open to the Magistrate to be satisfied that the appellant committed domestic violence against the aggrieved.
2. Whether it was open to the Magistrate to be satisfied that the appellant was likely to commit further domestic violence against the aggrieved.

Decision and Reasoning: The appeal was allowed and the protection order was discharged.

1. In relation to whether the Magistrate's conclusion that the appellant committed domestic violence against the applicant was correct, Irwin DCJ concluded that the Magistrate was entitled to prefer the evidence of the applicant's witnesses over the unsigned statements of the appellant and his witnesses. The statements tendered by the applicant were signed. The appellant's statements were not. It was also open to the Magistrate to conclude that the appellant had continually harassed and intimidated the applicant.
2. However, Irwin DCJ concluded that it was not open on the evidence for the Magistrate to conclude that the appellant was likely to commit an act of domestic violence again, or carry out a threat to do so. After the application was made, the applicant stated that the appellant had left the house where they were living, had not returned and there had been minimal contact since a temporary protection order was made. There was no evidence of physical violence and she said she did not feel threatened by him. As such, there was not sufficient evidence to support an inference that domestic violence was likely to occur again. While there were a string of emails that did constitute harassment, the last of these were 12 months before the Magistrate made the protection order. The appellant had also clearly indicated he wished to have no further contact with the applicant.