

## ***Rana v Police* [2020] SASC 21 (13 February 2020) – South Australian Supreme Court**

‘Application for revocation of an intervention order’ – ‘Legal representation and self-represented litigants’ – ‘People with mental illness’ – ‘Protected person’ – ‘Revocation of an intervention order’ – ‘Women’

**Case type:** Application for permission to appeal against a Magistrate’s decision refusing an application for the revocation of an intervention order.

**Facts:** The appellant filed an application in the Magistrates Court for revocation of an intervention order that was issued against him in 2008. The appellant was absent at the application hearing. The intervention order involved allegations that ‘the appellant sent letters to the protected person (a female), presented at the protected person’s door on a number of occasions, caused the protected person to install additional security in her home and other matters’ ([3]). The protected person maintained that she regularly did not feel safe and believed that the appellant was capable of inflicting harm as he was not mentally stable ([4]). The Magistrate noted that the appellant had significant mental health problems in the past, and summarily dismissed the application pursuant to s 26(4) of the Intervention Orders (Prevention of Abuse) Act 2009 (SA) ([8]. Under s 26(4), the Court may dismiss an application for revocation of a final intervention order without receiving submissions or evidence from the protected person if 1) it is satisfied the application is frivolous or vexatious; or 2) if not satisfied there has been a substantial change in the relevant circumstances since the order was issued or last varied ([9]).

**Issue:** The appellant sought permission to appeal against the Magistrate’s decision to refuse his application for the revocation of the intervention order on 3 grounds:

- > ‘The Magistrate applied the wrong onus, as the burden of proof applied was proof beyond reasonable doubt rather than proof on the balance of probabilities;
- > There was an apprehension of bias as the matter was decided in his absence; and
- > A psychological report the appellant sought to tender on appeal stated he would benefit from release of the order.’

Held: David AJ refused permission to appeal and found that the Magistrate was open to summarily dismiss the appellant's application for the revocation of the intervention order ([16]). In respect of the first appeal ground, David AJ held that although the Magistrate did apply the incorrect onus, this could have only been in the appellant's favour. By applying the higher onus of proof beyond reasonable doubt, it was apparent that the Magistrate was satisfied on the balance of probabilities either that the application was frivolous or vexatious or he was not satisfied that there was a substantial change in the circumstances ([11]). In respect of the second appeal ground, his Honour found that the basis of the appellant's submissions in his affidavit did not go to the question of whether there had been a change in the relevant circumstances. Instead, the submissions indicated a preoccupation with past events ([12]). In respect of the third appeal ground, David AJ held that the psychologist's conclusion that the appellant 'is a different person now tha[n] in the past and would benefit from release of the order' fell short of there being a change in the relevant circumstances since the order was last issued. Consequently, there was no merit in the appeal ([13]-[15]).