CITATION:	*Thomas v Keatch* [2021] NTLC 014
PARTIES:	Mark William Thomas
	V
	Martyn Keatch
TITLE OF COURT:	LOCAL COURT
JURISDICTION:	CIVIL
FILE NO(s):	22110016
DELIVERED ON:	18 May 2021
DELIVERED AT:	DARWIN
HEARING DATE(s):	30 March 2021
JUDGMENT OF:	Norrington JR

CATCHWORDS:

CIVIL LAW – PERSONAL VIOLENCE RESTRAINING ORDERS ACT 2016 (NT) – Application for an Interim Personal Violence Restraining Order - procedure.

CIVIL LAW – PERSONAL VIOLENCE RESTRAINING ORDERS ACT 2016 (NT) – power to proceed ex parte to make an Interim Personal Violence Restraining Order.

Personal Violence Restraining Order 2016 (NT) s 3, s 4, s 9, s 10, s 12, s 14, s 15, s 16, s 17, s 19

Domestic Violence Act 1992 (NT), s 4(3)

Domestic and Family Violence Act 2007 (NT), s 52A

Firearms Act 1997 (NT), s 39

Interpretation Act 1978 (NT), s 62B(2)

Local Court Act 2015 (NT), s 6

Local Court (Civil Procedure) Act 1989 (NT), s 20(1)

Local Court (Civil Jurisdiction) Rules 1998 (NT), Part 36, r 7.16

Aristocrat Technologies Australia Pty Ltd v Allam [2016] HCA 3

Atkinson v Bardon & Ors [2018] NTSC 9

Barfuss & Ors v Altmann [2008] NTCA 1

Bonney v Thompson [2011] NTSC 81

DL JE Graetz P/L v NTHG P/L [2002] NTCA 6

Justin Antony Firth v Niall Martin Atkinson [2017] NTLC 19

Jacksons v Sterling Industries Ltd [1987] HCA 23 at 7

Joy Marjorie Cahill v Anthony David Cahill JA 67 of 2001

Ndjamba v Toyota Finance Australia Ltd [2010] NTSC 23

Sieling and Sieling (1979) FLC 90-627

Stowe and Stowe [1980] FamCA 92

Thomas A Edison Ltd v Bullock (1912) 15 CLR 679

WJM v NRH [2013] QMC 12

REPRESENTATION:

Counsel:

	Applicant:	Mr Peattie
	Defendant:	No Appearance

Solicitors:

	Applicant:	Solicitor for the Northern Territory
	Defendant:	No Appearance

Judgment category classification:	A
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IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 22110016

BETWEEN

Mark William Thomas

Applicant

AND

Martyn Keatch

Defendant

REASONS FOR JUDGMENT

(Delivered 18 May 2021)

NORRINGTON JR

Introduction

1. These are proceedings commenced under section 12 of the *Personal Violence Restraining Orders Act 2016* ("the Act").

2. The applicant filed an Application for a Personal Violence Restraining Order ("PVRO") with the Local Court on 23 March 2021. The matter first came before the Court on 30 March 2021 for mention. The defendant had not been served with a copy of the application prior to the first mention of the matter. At the first mention of the matter, counsel for the applicant sought leave to have the matter proceed *ex parte* and made an oral application asking for an Interim Personal Violence Restraining Order ("interim PVRO") to be made.

3. During the interlocutory hearing I posed three questions for counsel for the applicant:

   (a) Where is the source of the Court's power to make an *interim PVRO ex parte* in light of *Atkinson v Bardon & Ors* [2018] NTSC 9?

   (b) Can the Court proceed to make an interim PVRO prior to the parties attending mediation under section 14 of the Act?

(c) What is the appropriate test to be applied in considering whether an interim PVRO should be made?

4. After hearing submissions from counsel for the applicant, I granted leave to proceed *ex parte* and made an interim PVRO. The matter was otherwise adjourned and I indicated that I would deliver my reasons for the decision at a later date. These are the reasons for that decision.

Relevant Legislation

5. The objects of the Act are found in section 9. They provide:

> **9 Object of, and achievement of, Act**
>
> (1) The object of this Act is to ensure the safety and protection of persons who experience personal violence outside a domestic relationship as defined in the *Domestic and Family Violence Act 2007*.
>
> (2) The object of this Act is to be achieved by providing for:
>
> (a) the making of personal violence restraining orders to protect persons from certain violence; and
>
> (b) the enforcement of the orders.

6. As was observed by Acting Justice Mildren in *Atkinson v Bardon & Ors* (Supra), there is no definition of 'personal violence' to be found in the Act[1].

7. Under section 12 of the Act, an application for a PVRO is to be made in accordance with the rules of the Court. Rule 7.16 of the *Local Court (Civil Jurisdiction) Rules 1998*, prescribes the relevant form to be used for the application.

8. After an application is filed, section 13 of the Act requires the registrar of the Court to serve the defendant with written notice of the time and place of the hearing:

> **13 Notice of hearing of application**
>
> As soon as practicable after the application is filed, a registrar must give written notice to the person whose protection is sought and defendant of the time and place for the hearing of the application.

[1] *Atkinson v Bardon & Ors* [2018] NTSC 9 at 25

9. Section 14 requires that matters are ordinarily referred to mediation prior to the Court hearing the application:

> **14 Referral to mediation**
>
> (1) Before hearing an application for a personal violence restraining order, the Court must refer the person whose protection is sought and defendant for mediation under the *Community Justice Centre Act 2005*.
>
> (2) However, the Court must not make a referral and must proceed to hear the application if it is satisfied that a referral is not appropriate in the circumstances, including, for example, because:
>
> (a) there is a history of violence committed against the person by the defendant; and
>
> (b) there has been a previous attempt at mediation between the person and defendant in relation to the application and the attempt was not successful.
>
> (3) A referral stays the proceedings until a report is given to the Court under subsection (6).
>
> (4) The referral is taken to be an application under section 13 of the Community *Justice Centre Act 2005* for the provision of mediation services for a dispute between the person and defendant.
>
> (5) The Director of the Community Justice Centre must accept the referral.
>
> (6) The Director must give the Court a written report on the outcome of the mediation or attempted mediation.
>
> (7) The Court may refer the matter back to the Director with directions about the mediation.
>
> (8) In deciding the application for the personal violence restraining order, the Court must take a report of the Director into account.

10. Section 15 outlines the test to be applied by the Court to determine if the Court may make a PVRO:

> **15 Deciding application**
>
> (1) The Court may decide to make a personal violence

restraining order if it is satisfied on the balance of probabilities a personal violence offence has been committed, or is likely to be committed, by the defendant against the person whose protection is sought.

(2) Otherwise, the Court must dismiss the application.

(3) The Court may decide the application even if the defendant does not appear at the hearing.

11. Section 4 provides for a definition of 'personal violence offence':

4 Personal violence offence

A **personal violence offence** is:

(a) an offence against any of the following provisions of the Criminal Code:

(i) Part V, Division 2;

(ii) Part VI, Divisions 3 to 6A;

(iii) section 211 or 212;

(iv) another provision prescribed by regulation; and

(b) any of the following conduct committed by a person against another person:

(i) conduct causing harm;

(ii) damaging property, including the injury to or death of an animal;

(iii) intimidation;

(iv) stalking;

(v) economic abuse;

(vi) attempting or threatening to commit conduct mentioned in subparagraphs (i) to (v).

12. Sections 5, 6, 7 of the Act provide for definitions of 'intimidation', 'stalking' and 'economic abuse', respectively.

13. Section 16 outlines the considerations to be applied when the Court is determining whether it may make a PVRO:

16 Matters to be considered by Court

(1) In deciding whether to make a personal violence restraining

order, the Court must consider the safety and protection of the person whose protection is sought and any affected child to be of paramount importance.

(2) In addition, the Court must consider the following:

(a) the defendant's criminal record as defined in the *Criminal Records (Spent Convictions) Act 1992*;

(b) the defendant's previous conduct whether in relation to the person, affected child or someone else;

(c) other matters the Court considers relevant.

(3) In this section:

affected child, in relation to an application for a personal violence restraining order, means a child whose wellbeing is affected or likely to be affected by a personal violence offence committed or likely to be committed by the defendant against the person.

14. If the Court determines under section 15 that it may make a PVRO, then section 17 provides for how the Court is to determine what orders should be made:

17 Content of orders

(1) A personal violence restraining order may provide for any of the following:

(a) an order imposing the restraints on the defendant stated in the order as the Court considers are necessary or desirable to prevent the commission of a personal violence offence against the protected person;

(b) the other orders the Court considers are just or desirable to make in the circumstances of the particular case.

(2) In this section:

restraint includes prohibition.

15. Section 19 provides the Court with an express power to make an interim PVRO:

19 Interim personal violence restraining order

(1) At any time during proceedings for the hearing of an application for a personal violence restraining order, the Court may make an order (an ***interim personal violence***

restraining order) under this section.

(2) The Court may make the interim personal violence restraining order:

(a) even if the defendant does not appear at the hearing; or

(b) if the defendant appears at the hearing:

(i) even though the defendant has not given evidence; or

(ii) even if the defendant objects to the order being made.

(3) The interim personal violence restraining order is in force until the earlier of the following:

(a) it is revoked by the Court;

(b) if a personal violence restraining order is made for the same parties and the defendant is before the Court:

(i) on the making of the personal violence restraining order; or

(ii) on the later date ordered by the Court;

(c) if a personal violence restraining order is made for the same parties and the defendant is not before the Court:

(i) when the personal violence restraining order is given to the defendant; or

(ii) on the later date ordered by the Court.

The Court's power to make an interim PVRO ex parte?

16. The starting point for considering whether the Court has the power to make an *interim PVRO ex parte* requires an examination of what an 'interim personal violence restraining order' is. Section 3 of the Act provides:

> **3 Definitions**
>
> In this Act:
>
> ……..
>
> ***interim personal violence restraining order***, see section 19(1).

17. Section 19, as extracted above, is the source of power for the Court to make an interim PVRO, being the interlocutory form of order.

18. Section 3 also provides for a definition of a 'personal violence restraining order':

> **3 Definitions**
>
> In this Act:
>
> ……..
>
> ***personal violence restraining order,*** see section 10.

19. Section 10, as extracted above, is the source of power for the Court to make an PVRO, being the final form of order.

20. In both sections 10 and 19 the legislature went to the effort of putting the terms '*interim personal violence restraining order'* and '*personal violence restraining order'* in bold, italics and brackets so as to clearly to distinguish between the two types of orders under each section. This is in addition to defining each term in the definitions section. Accordingly, it is irresistibly clear that an *interim PVRO* and a PVRO are different orders to which different sections of the Act apply.

21. After counsel for the applicant made an oral application for an interim PVRO, I alerted counsel to the authority of *Atkinson v Bardon & Ors* [2018] NTSC 9. *Atkinson v Bardon* was an application to the Supreme Court for declaratory relief following a decision from the Local Court to grant a personal violence restraining order in circumstances where the defendant had not been served with the application or indeed given notice of the time and place of the hearing of the application. In that matter, Acting Justice Mildren gave detailed consideration to the *Personal Violence Restraining Orders Act 2016* and the power of the Local Court to make a personal violence restraining order *ex parte*.

22. Ultimately after careful consideration of the Act and the relevant authorities, His Honour concluded:

> *[51] The Act, in my opinion, does not support the conclusion that the Court had power to make <u>any order</u> where the defendant had not been served at all with the initiating process and given notice of the time, date and place of the hearing. That being so, and the Court not being in error as to whether or not the plaintiff had been given notice under s.13 of the Act, the Court lacked jurisdiction to make the order.*[2]
>
> [My emphasis added]

[2] *Atkinson v Bardon & Ors* [2018] NTSC 9 at 54.

23. Counsel for the applicant submitted that I was not bound by the decision as the Court in *Atkinson v Bardon* (supra) was concerned with the making of a final PVRO *ex parte* and not an *interim PVRO ex parte*. Whilst it is true that any findings and observations made by His Honour in relation to interim orders was *obiter dictum*, given the principle of judicial comity, the level of consideration undertaken by His Honour and the status of the Court, any such findings should not be departed from without good reason for doing so.

24. In *Atkinson v Bardon* (supra) the defendant had not been served with the application for a PVRO when Local Court made a final PVRO. The order made at first instance was not an *interim PVRO* but rather a PVRO (a final order). The defendant was subsequently charged with breaching the PVRO. In the course of the criminal proceedings the defendant argued that the PVRO was voidable because it had been made in circumstances where the defendant had not been served. Judge Neill heard the interlocutory application in the criminal proceedings and found that the PVRO was validly made. His Honour published his reasons as reported in *Justin Antony Firth v Niall Martin Atkinson* [2017] NTLC 19.

25. The defendant then applied to the Supreme Court seeking a declaration that the PVRO be found to be void *ab initio.* Acting Justice Mildren heard the application and his reasons for decision were published in *Atkinson v Bardon* (supra). Ultimately His Honour declared that there was no PVRO as the Local Court had acted beyond power to make the order in circumstances where the defendant had not been served with the application or indeed given notice of the time and place of the hearing of the application under section 13 of the Act. The thrust of His Honours reasoning focused on the principle of natural justice requiring that the defendant have the right to be heard and that such a right could only be taken away by the legislature by plain words of necessary intendment.[3] His Honour found at paragraph 44 that:

> *[44] Although the words of s.15 (3) on their face would appear to permit the Court to deal with an application ex parte, the extent of the power to proceed in the absence of the defendant is ambiguous. Does it mean a defendant who has been served pursuant to s.13, or does it mean even a person who has not been so served? The power to proceed where the defendant does not appear is a general power only. It does not express the power to deny natural justice with irresistible clarity. In my opinion, the power to proceed in the absence of the defendant contained in s.15(3) must be read as referring only to cases where notice has*

[3] *Atkinson v Bardon & Ors* [2018] NTSC 9 at 22 and 44, quoting from *Saeed v Minister for Immigration and Citizenship* 241 CLR 252 at [14]- [15] and *Annetts v McCann* (1990) 170 CLR 596 at 598.

been given in accordance with the requirements of s.13. Construing s. 15(3) in this way conforms with the principle of legality.

26. As is outlined above, section 15 of the Act provides the Court with the power to make a PVRO as distinct from an *interim PVRO*. What is clear from the judgment in *Atkinson v Bardon* (supra) is that His Honour did not analyse Court's power to make an *interim PVRO* under section 19 of the Act. When *Atkinson v Bardon* (supra) is read in this context, there is clearly no *ratio decidendi* or *obiter dictum* in the matter which directly addresses the question of whether the Court has the power to make an *interim PVRO ex parte*.

27. The starting point for interpreting the legislation is the plain wording of the Act. As is outlined above, section 19 provides that the Court may make an interim PVRO "*At any time during proceedings for the hearing of an application for a personal violence restraining order*".

28. It was submitted by counsel for the applicant that proceedings commence upon the filing of the application and not upon service being affected on the defendant.

29. In the matter of *Justin Antony Firth v Niall Martin Atkinson* [2017] NTLC 19, Judge Neill did briefly consider the provisions of section 19 of the Act when he was determining the role of service under the Act. His Honour's findings are also *obiter dictum* as the matter he was dealing with was a final PVRO made under section 15 of the Act. His Honour found at paragraphs 13:

> *13. The role of service of the initiating Application in the scheme of the Act is clear when section 19 of the Act is considered. That section empowers the Court to make interim orders:*
>
> *"At any time during proceedings for the hearing of an application for a personal violence restraining order...".*
>
> *I am satisfied and I rule that "at any time" includes the time after the filing of the initiating Application but before it has been served on the Defendant.*

30. I agree with these findings. Had the parliament intended for an *interim PVRO* to only be made after notice has been given to the defendant it would have placed limitations on the wording in section 19. As it stands, I find that there is no tension between the requirements for service of an application for a PVRO under section 13 and the ability of the Court to make an *interim PVRO* under section 19.

31. It is entirely consistent with principles of natural justice for defendants to have to be served before a Court makes a final determination of a matter. However, there is nothing novel about interim orders being made *ex parte*, particularly for protective legislation. An interpretation that "at any time" includes the time after the filing of the initiating application but before it has been served on the Defendant, is also consistent with the objects of the Act as found at section 9. In urgent cases involving serious risks, it would be difficult to *"ensure the safety and protection of persons who experience personal violence"* if protective orders could not be made until a defendant was given notice of the time and place of the hearing of the substantive application.

32. Protective orders are required from time to time at short notice and in urgent circumstances. When the legislature debated the second reading of the Bill that gave rise to the Act, the Member for Nelson raised concerns about how the proposed Act would allow for orders to be made in urgent circumstances. The Member sought a briefing from the Attorney-General and read the answer he received from the Minister's office into Hansard. The Honourable Member said:

> *The other issue I raised during the briefing – I will read the e-mail because it covers all the concerns I had about the urgency of a personal violence restraining order. The answer I received is worth reading into Hansard. This came from the ministerial adviser. 'I am informed by the Department of Attorney-General and Justice that magistrates will not be available to sign, make, an interim personal violence restraining order outside of business hours. However, if a matter is urgent the matter can be listed for the same day the application is filed at court or the day after. If the matter is considered of such a serious nature a concerned party should contact the police to report the conduct.*
>
> *'It should also be noted that the proposed consideration stage amendment to insert new clause 14A for interim personal violence orders allows a court to make an order during any time proceedings for the hearing of an application for a personal violence restraining order. This will significantly reduce the time required for seeking a personal violence restraining order.*
>
> *'Currently, when a person applies for a personal violence restraining order they provide the application to the Registrar of the court. The matter is then listed at the next available listing time, usually a Friday; to allow sufficient time for service unless deemed an urgent application. The matter is then listed for hearing and at that hearing, the matter is deferred and the application referred to mediation, noting in certain circumstances a matter does not need to be referred to mediation if*

there is a history of violence committed against the person by the defendant and there has been a previous attempt at mediation. This process can take a number of weeks.

'New clause 14A allows for the granting of an interim personal violence restraining order at any time during the proceedings.

'The need for an interim personal violence order will not arise in a vacuum; it will often be precipitated by an indictable offence or group of offences by the party against whom the order will be sought. Accordingly, it is likely that, for example, an incident occurred over the weekend, the offender would be taken into custody immediately and an interim personal violence order could be sought first thing on Monday morning.'

I thank the ministerial adviser and the minister for the clarification. With a domestic violence order the police can act on the spot. My concern was the comparison here. In time we can see whether these changes are working according to the e-mail and if there are any issues in relation to this.[4]

[My emphasis added]

33. There was no reply from the Attorney-General to these matters during the debate. All members were in support and the Bill passed with agreed amendments. Whilst this passage is not particularly persuasive or a part of the second reading speech to the Bill, the passage can be taken into account pursuant to sections 62B(2)(f) and (h) of the *Interpretation Act 1978 (NT)* and does provide further support for the interpretation of section 19 as proposed by counsel for the applicant.

34. After considering the Act as a whole, the authorities listed above and the debates of the Bill to the Act, I find that the Court does have the power to make an *interim PVRO* under section 19 prior to the defendant being served with the application and being given notice of the time and place of the hearing of the application under section 13 of the Act.

Is it necessary for parties to attend mediation prior to an *interim PVRO* being made?

35. Section 14 of the Act uses mandatory language that appears to require mediation prior to a determination of the matter:

> **14 Referral to mediation**
>
> (1) Before hearing an application for a personal violence

[4] Northern Territory, DEBATES – Thursday 21 April 2016, pages 8206-7.

restraining order, the Court must refer the person whose protection is sought and defendant for mediation under the *Community Justice Centre Act 2005*.

(2) However, the Court must not make a referral and must proceed to hear the application if it is satisfied that a referral is not appropriate in the circumstances, including, for example, because:

(a) there is a history of violence committed against the person by the defendant; and

(b) there has been a previous attempt at mediation between the person and defendant in relation to the application and the attempt was not successful.

36. In *Atkinson v Bardon* (supra) the Court did turn its mind to the role of section 14. At paragraph 42 Acting Justice Mildren observed:

> *[42] The focus of the Act seems to be that, once the defendant is brought before the Court, before hearing the application, unless there are good reasons for doing otherwise, the parties are to be referred to mediation in the first place, pursuant to s.14 of the Act. Whilst mediation is ongoing, the proceedings are stayed until a report is given to the Court. It is only if the court is satisfied that a referral is not appropriate in the circumstances, <u>that the Court may proceed to hear the application</u>. Whilst the categories of cases where it is inappropriate are not closed, the examples given in s.14 (2), suggest that the Court should only refuse to refer the parties to mediation in extreme cases. Clearly, if the defendant has not been served at all, and knows nothing of the application, s.14 would have no role to play <u>if the Court could move to hear the whole application in the defendant's absence.</u> This is to be contrasted with the approach taken under the Domestic and Family Violence Act, which has no provision for mediation.*
>
> [My emphasis added]

37. As has been outlined above, His Honour was dealing with a matter where the substantive application for a PVRO was heard and determined. It was not a hearing of an application for an *interim PVRO*. This is an important distinction because section 14 refers to "*hearing an application for a personal violence restraining order*" and not the hearing of an application for an *interim PVRO*. As was submitted by counsel for the applicant, these are different types of orders with separate

definitions contained in the Act. As will be outlined in detail below, the Court is to apply different considerations when hearing each respective application. Had the legislature intended for section 14 to apply to determinations of applications for *interim PVRO's*, the section would have included the words *'or interim personal violence restraining order'*.

38. Further, an interpretation that section 19 should be subject to section 14 is inconsistent with the express words found in section 19 which provide for the Court to make an *interim PVRO* at 'any time during the proceedings'.

39. I find that the requirement for parties to attend mediation or for the Court to excuse parties from attendance at mediation under section 14(2), is not required prior to the Court hearing an application for an *interim PVRO*. If I am wrong in this regard, I would have nevertheless found that this matter is not suitable for mediation given the nature of the allegations and the dynamics of the manner in which the parties are associated. That being, the Chairman of the Agents Licencing Board acting in a disciplinary capacity on the one hand and the person who is the subject of that inquiry on the other.

The appropriate test to be applied in considering whether an *interim PVRO* should be made?

40. Counsel for the applicant submitted that the test outlined in section 15 and the considerations listed in section 16 and 17 do not apply in the determination of an *interim PVRO* application. I agree with this submission.

41. The express language of sections 15, 16 and 17 all only refer to determinations of *'personal violence restraining orders'* and not *'interim personal violence restraining orders'*.

42. Whilst these matters were not fully explored by Acting Justice Mildren in *Atkinson v Bardon* (supra), His Honour did observe at paragraph 43:

> *[43] The next observation I would make is that before making a DVO, s.16(2) (a) and (b) required the Court to consider the defendant's criminal record and his or her previous conduct in relation to the affected person, child or someone else. It is hard to see how this could be done in circumstances like the present. <u>On the other hand, the Court could have made an interim personal violence restraining order under s.19, even if the requirements of s.16(2) (a) and (b) were not satisfied.</u> Whilst, on the other hand, s. 16(1) of the Act requires the Court to consider the safety and protection of the person to be of paramount importance <u>before making a final</u>*

> *order under s.15, the possibility of significant harm to an individual is much less in a case involving neighbours than in the case of a dispute between persons who are living in a domestic relationship.*
>
> [My emphasis added]

43. For these reasons, I find that in order to make an interim PVRO:

    (a) The Court does not need to be satisfied on the balance of probabilities that a personal violence offence has been committed, or is likely to be committed, by the defendant against the person whose protection is sought; and

    (b) The Court does not have to consider the matters contained in section 16 and 17.

44. Unfortunately, the Act does not provide any clear guidance as to the test to be applied or the threshold to be met in order for the Court exercise its power to make in *interim PVRO*. There is very little guidance from this Court or the Northern Territory Supreme Court in relation to these matters. However, there is some guidance from the Northern Territory Supreme Court on the making of *ex parte* orders generally.

45. In *Ndjamba v Toyota Finance Australia Ltd* [2010] NTSC 23 Justice Blokland heard an appeal of an *ex parte* order made by the Local Court. In considering whether the Local Court should have proceeded *ex parte*, Her Honour said at paragraph 8:

> 8. I am mindful that courts proceed cautiously concerning ex parte applications. The primary considerations on whether or not to proceed ex parte concern whether there is urgency; whether irreparable damage would flow from making an ex parte order; whether hardship would flow to a party against whom an order is made and whether such an order can be set aside.

46. In the case of an *interim PVRO* made *ex parte*, such an order can be subject to an application to set aside under section 20(1) of the *Local Court (Civil Procedure) Act 1989*. In *Atkinson v Bardon* (supra), the Court found at paragraph 39:

> [39] The Act does not contain any provision for the making of rules of court or regulations in respect of the Act. However, s.14 of the *Local Court Act* provides that the Court's civil jurisdiction also includes any other jurisdiction that is conferred on the Court by another Act. Section 48 (1) of the *Local Court Act* provides for the making of Rules of Court providing for "the practice and procedure of the Court in the exercise of any of its jurisdiction, whether conferred by this or another Act." Accordingly, to the

> extent that the *Local Court (Civil Jurisdiction) Rules* deal with the practice and procedure of the Court relating to its jurisdiction under the Act, those rules would apply. I accept therefore, that the plaintiff could have applied to have the order set aside under a rule providing for such an application. There does not appear to be any such rule. Rather, it was put that resort could be had to s.20 (1) of the *Local Court (Civil Procedure) Act.*

47. The second to last sentence of this passage is not entirely correct, there is a rule for such an application, as provided for in Part 36 of the *Local Court (Civil Jurisdiction) Rules 1998* and there is also a prescribed form.

48. The *Domestic and Family Violence Act 2007* is protective legislation of a similar kind to this Act. Indeed, as is outlined in the objects[5] of the *Personal Violence Restraining Orders Act 2016,* the Act is intended to offer protection for those who are not covered by the *Domestic and Family Violence Act 2007.* It is therefore useful to consider approaches taken in the making of *ex parte* DVO's under that legislation.

49. In *Joy Marjorie Cahill v Anthony David Cahill* JA 67 of 2001[6]. Justice Bailey heard an appeal following the making of an *ex parte* interim DVO, under the *Domestic and Violence Act 1992* (now repealed). At paragraph 6 on page 4 of the transcript, His Honour highlighted the particular care the Court should take when making *ex parte* DVO orders:

> It is clear, from the terms of the Domestic Violence Act, that the Court of Summary Jurisdiction has the power to grant interim ex parte restraining orders. See section 4(3) of the Act. The making of such an interim order has significant and far-reaching consequences, and it is obvious that a court should exercise considerable caution before making such orders, particularly on an ex parte basis.

50. The far reaching consequences were articulated by His Honour at paragraph 1 of page 6 of the transcript:

> On the basis of the transcript, there is no indication the learned magistrate was satisfied that the criteria for granting an interim restraining order had been made out or that he had reached his decision to grant the order in accordance with the Act. As things stand, it is impossible to know the basis upon which the order was granted, an

[5] Section 9, *Personal Violence Restraining Orders Act 2016*

[6] This is an unreported judgment from case number 20115625. References are to the transcript of the proceedings as recorded at Darwin on Wednesday 12 December 2001 at 2.09pm.

> order which, if breached by the appellant, could see him imprisoned, and, if not breached, have significant and far-reaching effects upon him in relation to firearms licences, bail applications and Family Court proceedings.

51. I note that the making of an *interim PVRO* similarly results in the suspension of a defendant's firearms licence, permit or certificate of registration.[7]

52. In *Bonney v Thompson* [2011] NTSC 81, Justice Kelly considered the appropriate circumstances in which an applicant should apply for an 'interim court variation order' under section 52A of the *Domestic and Family Violence Act 2007*. This is not an *ex parte* order. This is an interim order made where the defendant has had notice and an opportunity to be heard. Her Honour said at paragraph 41:

> 41. An applicant should not apply for an interim variation order under s 52A, unless an interim order is really required for some reason – for example an urgent order is required to restrain imminent threatened domestic violence before the applicant has time to prepare the necessary affidavits, or an adjournment of the application is necessary for some reason.

53. The Family Court of Australia regularly hears *ex parte* applications in matters where injunctions are sought to protect parents and children from domestic violence or to protect property from being dissipated or destroyed. It is therefore useful to consider how those Courts determine when it would be appropriate to grant leave to proceed *ex parte*.

54. In matter of *Sieling and Sieling* (1979) FLC 90-627, the Full Court of the Family Court of Australia observed at paragraphs 8 to 15:

> 8. Whenever a Court acts ex parte it is departing from one of the primary rules of natural justice, that each party should be given an opportunity to present his or her case to the Court. (See The Commissioner of Police v. Tanos [1958] HCA 6; (1957-58) 98 C.L.R. 383, 395-396; Lonard (1976) FLC 90-066 at p. 75,336.) For this reason, an ex parte order should be made only where there is a real and urgent need to protect a person or to preserve property and it should remain in force only until both parties can come before the Court.

[7] Section 39, *Firearms Act 1997*.

9. The High Court Rules, O. 51, r. 5 provides:

(1) Except as by these Rules otherwise provided, an application shall not be made without previous notice to the party to be affected thereby, but the Court or a Justice, if satisfied that the delay caused by giving notice would or might entail irreparable or serious mischief, may make an order ex parte upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court or Justice think just.

(2) A party affected by such an order may move to set it aside."

10. A series of decisions of English and Australian courts have defined the circumstances in which it is permissible for Courts to act ex parte. Mr. Broun referred the Court to Spry, on Equitable Remedies 1971 pp. 459-463 where the authorities are outlined. In a recent decision Ansah v. Ansah (1977) 2 W.L.R. 760, the Court of Appeal reviewed the circumstances in which the Court should exercise its power to make ex parte orders in matrimonial cases:

"Orders made ex parte are anomalies in our system of justice which generally demands service or notice of the proposed proceedings on the opposite party: see Craig v. Kanssen (1943) K.B. 256, 262. Nonetheless, the power of the court to intervene immediately and without notice in proper cases is essential to the administration of justice. But this power must be used with great caution and only in circumstances in which it is really necessary to act immediately. Such circumstances do undoubtedly tend to occur more frequently in family disputes than in other types of litigation because the parties are often still in close contact with one another and, particularly when a marriage is breaking up, in a state of high emotional tension; but even in such cases the court should only act ex parte in an emergency when the interests of justice or the protection of the applicant or a child clearly demands immediate intervention by the court. Such cases should be extremely rare, since any urgent applications can be heard inter partes on two days' notice to the other side: see Rayden on Divorce 12th ed. (1974) p. 909, para. 47, and the notice in the Daily Cause List headed `Matrimonial Causes and Matters — Urgent Applications'. Circumstances, of course, may arise when prior notice cannot be given to the other side; for example, cases where one parent has disappeared with the children, or a spouse,

usually the wife, is so frightened of the other spouse that some protection must be provided against a violent response to service of proceedings, but the court must be fully satisfied that such protection is necessary."[8]

11. In Lee and Lee (1977) FLC 90-314, Butler J. considered the scope and application of reg. 42. In the opinion of this Court his Honour's comments should not be taken as implying that reg. 42 empowers the Court to go outside the general principles established for the making of ex parte orders. In particular the Court should give directions as to the service of the order and as to the hearing of an application for a further order.

12. The general principles are that the Court must be satisfied that the matter is of such urgency that the applicant's interests (or the interests of the child) can be protected only by an immediate order. It is necessary to balance the likelihood of harm to the applicant against the hardship to the respondent of making an order without hearing him. The more drastic the order the more grave must be the risk to be averted and the more important the requirement that the respondent be heard at the earliest opportunity. An order that a party be excluded from the home or that a child be removed from the custody of a party must be supported by evidence of an imminent risk of such a nature that the Court cannot wait even the period of time necessary for short service.

13. An order restraining dealings in property may have less drastic consequences for the respondent, or the consequences may be such that the respondent can be protected by an undertaking as to damages. Nevertheless, in such cases the need for urgent action by the Court may also be less apparent and the possibility of postponing the matter and bringing it on at short notice should be considered.

14. In Ansah, the Court of Appeal emphasised that if an order was made ex parte it should be limited in time to avoid serious injustice; the time should be the shortest period which must elapse before a preliminary hearing could be arranged (p. 764). The formula ``until the further hearing of this application... at the time and place to be notified" was considered by the Court, in the

[8] Whilst not referenced by the full court in *Sieling (supra),* the passage quoted from *Ansah (supra)* comes from the judgment of Lord Justice Ormrod at page 764 of that decision.

circumstances of that case, to be undesirable (p. 764). It would follow that if, for any reason, such a formula is used, liberty should be reserved to either party to apply to set the order aside.

15. While it is not possible to lay down precise or exhaustive guidelines to cover the many different cases which arise, the matters which the Court should consider when asked to act ex parte include the following:

- the nature and imminence of the risk to the applicant, to a child, to property interests or to a third party;
- any hardship or prejudice to the respondent and children or to any third party which may arise from proceeding to make the order ex parte;
- where the order relates to property, whether there is a need to protect the respondent by requiring the applicant to give an undertaking as to damages;
- the possible consequences of delaying the order until the respondent can be heard, and the steps which could be taken to give notice to the respondent;
- the need to protect the respondent by ensuring that the order is clear in its terms, that it is served within the shortest possible time, that a return date is fixed and that the respondent be informed of his rights to apply to have the matter brought on before the return day.

55. In the matter of *Stowe and Stowe* [1980] FamCA 92, the Full Court of the Family Court of Australia followed the reasoning in *Sieling (supra)* and *Ansah (supra)* and further observed at 25 and 26:

25. In those limited circumstances where it is necessary to make an ex parte order, the onus rests upon the applicant for the injunction both at the ex parte stage and at the later hearing of the matter to satisfy the Court that the circumstances justify the making and continuation of the order, This is so irrespective of whether the respondent formally applies to set aside the order. Counsel for the appellant husband submitted — correctly in our view — that the Court's discretion could miscarry if the onus were put upon the respondent to satisfy the Court that the order should be discharged.

> 26. That having been said, some regard must also be paid to the realities of the situation, in that the applicant must, at the first stage, establish a prima facie case for an ex parte order to be made. The applicant may seek to introduce additional material upon the further hearing of the matter. Whether or not this is done, as a practical matter the respondent requires an opportunity both to challenge the applicant's evidence, and to present his own evidence to the Court. But the onus, as such, does not shift to the respondent merely because the Court has already determined that a prima facie case has been established.

56. The requirement for an applicant to initially show that there is a *prima facie* case is also consistent with the two stage test used by courts hearing applications for interlocutory injunctive relief at common law. Given that the Act is silent on the test to be applied to determination an *interim PVRO* application, it must fall to the common law to provide the appropriate test. After all, an *interim PVRO* is at its core a statutory injunction enforced by criminal sanctions.

57. The common law test for interlocutory injunctions was considered by the Court of Appeal of the Northern Territory in the matter of *Barfuss & Ors v Altmann* [2008] NTCA 1. Justice Southwood (with whom the other justices agreed) summarised the principles as laid down by the High Court of Australia. His Honour found at paragraphs 17 - 19:

> [17] The principles applicable to the granting of an interlocutory injunction have been restated by the High Court in two recent cases. First, in *Australian Broadcasting Corporation v Lenah Game Meats Pty* Ltd (2001) 208 CLR 199 the majority of the High Court, Gleeson CJ, Gaudron, Gummow and Hayne JJ, stated that where an interlocutory injunction is sought it is necessary to identify the legal or equitable rights which are to be determined at the trial and in respect of which final relief is sought. The final relief need not be injunctive in nature.
>
> [18] Secondly, in *Australian Broadcasting Corporation v O'Neill* (supra) Gummow and Hayne JJ, who gave the principal judgment of the Court, stated that:
>
> "[65] The relevant principles in Australia [as to the obtaining of an interlocutory injunction] are those explained in *Beecham Group Ltd v Bristol Laboratories Pty Ltd.* This Court (Kitto, Taylor, Menzies and Owen JJ) said that on such

applications the court addresses itself to two main inquiries and continued:

'The first is whether the plaintiff has made out a prima facie case, in the sense that if the evidence remains as it is there is a probability that at the trial of the action the plaintiff will be held entitled to relief ... The second inquiry is ... whether the inconvenience or injury which the plaintiff would be likely to suffer if an injunction were refused outweighs or is outweighed by the injury which the defendant would suffer if an injunction were granted.'

By using the phrase "prima facie case", their Honours did not mean that the plaintiff must show that it is more probable than not that at trial the plaintiff will succeed; *it is sufficient that the plaintiff show a sufficient likelihood of success to justify in the circumstances the preservation of the status quo pending the trial* (emphasis added). That this was the sense in which the Court was referring to the notion of a prima facie case is apparent from an observation to that effect made by Kitto J in the course of argument. With reference to the first inquiry, the Court continued, in a statement of central importance for this appeal:

'How strong the probability needs to be depends, no doubt, upon the nature of the rights [the plaintiff] asserts and the practical consequences likely to flow from the order he seeks.' (Emphasis added)

.....

[67] Various views have been expressed and assumptions made respecting the relationship between the judgment of this Court in *Beecham* and the speech of Lord Diplock in the subsequent decision, *American Cyanamid Co v Ethicon Ltd*. It should be noted that both were cases of patent infringement and the outcome on each appeal was the grant of an interlocutory injunction to restrain infringement. Each of the judgments appealed from had placed too high the bar for the obtaining of interlocutory injunctive relief.

[68] Lord Diplock was at pains to dispel the notion, which apparently had persuaded the Court of Appeal to refuse

interlocutory relief, that to establish a prima face case of infringement it was necessary for the plaintiff to demonstrate more than a 50 per cent chance of ultimate success. Thus Lord Diplock remarked:

'The purpose sought to be achieved by giving to the court discretion to grant such injunctions would be stultified if the discretion were clogged by a technical rule forbidding its exercise if upon that incomplete untested evidence the court evaluated the chances of the plaintiff's ultimate success in the action at 50 per cent or less, but permitting its exercise if the court evaluated his chances at more than 50 per cent.'

[69] In *Beecham*, the primary judge, McTiernan J, had refused interlocutory relief on the footing that, while he could not dismiss the possibility that the defendant might not fail at trial, the plaintiff had not made out a strong enough case on the question of infringement. Hence the statement by Kitto J in the course of argument in the Full Court that it was not necessary for the plaintiff to show that it was more probable than not that the plaintiff would succeed at trial.

[70] When *Beecham* and *American Cyanamid* are read with an understanding of the issues for determination and an appreciation of the similarity in outcome, much of the assumed disparity in principle between them loses its force. There is then no objection to the use of the phrase "serious question" if it is understood as conveying the notion that the seriousness of the question, like the strength of the probability referred to in *Beecham,* depends upon the considerations emphasised in *Beecham*.

[71] However, a difference between this Court in *Beecham* and the House of Lords in *American Cyanamid* lies in the apparent statement by Lord Diplock that provided the court is satisfied that the plaintiff's claim is not frivolous or vexatious, then there will be a serious question to be tried and this will be sufficient. The critical statement by his Lordship is "[t]he court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there

is a serious question to be tried". That was followed by a proposition which appears to reverse matters of onus:

'So *unless* the material available to the court at the hearing of the application for an interlocutory injunction *fails to disclose* that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.' (Emphasis added.)

Those statements do not accord with the doctrine in this Court as established by *Beecham* and should not be followed. They obscure the governing consideration that the requisite strength of the probability of ultimate success depends upon the nature of the rights *asserted and the practical consequences likely to flow from the interlocutory order sought.* (Emphasis added.)

[72] The second of these matters, the reference to practical consequences, is illustrated by the particular considerations which arise where the grant or refusal of an interlocutory injunction in effect would dispose of the action finally in favour of whichever party succeeded on that application. ..."

[19] The relevant principles may be summarised as follows. The plaintiff must identify the legal or equitable rights which are to be determined at the trial and in respect of which final relief is sought and he must show that there is a sufficient likelihood of success to justify in the circumstances of the particular case the preservation of the status quo pending trial. The requisite strength of the probability of ultimate success that must be demonstrated depends upon the nature of the rights asserted and the practical consequences likely to flow from the orders sought. [9]

58. If the threshold is met, the next question is what restraint should be imposed. Given that in *interim PVRO* is at its core an injunction which will necessarily interfere with the defendants' rights, as a general rule, the scope of the restraint and the duration of

[9] The full citation for the cases referred to are *Australian Broadcasting Corporation v O'Neill* [2006] HCA 46; *Beecham Group Ltd v Bristol Laboratories Pty Ltd* [(1968) 118 CLR 618; *American Cyanamid Co v Ethicon Ltd* (1975) AC 396.

the restraint should go no further than is reasonably necessary to prevent the commission of personal violence offence.[10]

59. Section 17 of the Act provides that the Court may order such restraints on the defendant as the Court "*considers are necessary or desirable to prevent the commission of personal violence*". However, section 17 outlines what a '*personal violence restraining order'* may provide for and not what an '*interim PVRO'* may provide. As established above, these are different types of orders.

60. Although Section 17 may not directly apply, the power to grant an interlocutory injunction must be exercised consistently with the purpose for which the power was granted.[11] There must also be a sufficient connection between the order made and the final relief sought.[12] Accordingly, the exercise of this interlocutory power should be consistent with section 17. That is, that the Court may make an *interim PVRO* as the Court considers is necessary or desirable to prevent the commission of a personal violence offence against the protected person.

61. Having considered the legislation and the relevant authorities, it appears to me that when a party applies for an *interim PVRO* to be made *ex parte*, the Court must be satisfied of the following:

    1. That there is a serious question to be tried;
    2. That the balance of convenience favours the making of an order;
    3. That the there is sufficient urgency and seriousness to justify the granting of leave to proceed ex parte;
    4. If 1 to 3 are satisfied, then the Court can proceed to make an *interim PVRO* with such restraint to only go as far as is necessary or desirable to prevent the commission of a personal violence offence against the protected person;
    5. If an interim PVRO is made *ex parte*, the Court must list the matter for a further mention within the shortest possible time so the defendant may seek that the order be revoked or varied.

62. In relation to consideration 1, as highlighted by Justice Southwood in *Barfuss & Ors v Altmann* (Supra), there has been much debate about this test. At the end of the day, it is really irrelevant whether the test is '*prima facie* case' or a 'serious question to be

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[10] *WJM v NRH* [2013] QMC 12 at 58 referring to *Australian Securities and Investments Commission, In the Matter of Richstar Enterprises Pty Ltd (ACN 099 071 968) v Carey (No 3)* [2006] FCA 433 at 26 -27.

[11] *Jacksons v Sterling Industries Ltd* [1987] HCA 23 at 7.

[12] *DL JE Graetz P/L v NTHG P/L* [2002] NTCA 6 at 40-45, Riley J following *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* (2002) 76 ALJR 1 at 5; *Patrick Stevedores Operations No. 2 Pty Ltd v Maritime Union of Australia [No.3]* (1998) 72 ALJR 873 at 885 *and Jackson v Sterling Industries Ltd* (1987) 162 CLR 612 at 619.

tried', it is ultimately a question of the likelihood of a final PVRO being made, based upon the test found in section 15 of the Act.

63. In relation to consideration 2, this involves the Court balancing on one hand the nature and imminence of the risk of personal violence being perpetrated on the protected person and the possible consequences of delaying the making of an order until the matter can be fully heard, against:

    (a) The defendants right to have a reasonable opportunity of appearing at the hearing and presenting their case. This includes the right to test the evidence of the applicant and to present evidence to the Court to respond to and counter the allegations made by the applicant; and

    (b) any hardship or prejudice to the defendant which may arise from the making of the order sought.

64. The risk to the protected person can be in the form of any type of personal violence offence as defined in section 4 of the Act. However, the more grave the risk, then the more likely it will be that the Court will find that the risks outweigh the potential hardships to the defendant. For example, threatened physical harm is more likely to outweigh the hardship to the defendant than will abusive text messages.

65. In relation to consideration 3, there must be clear and cogent evidence of urgency combined with an immanent serious risk. If a defendant is to lose their right to be heard, there must be a compelling reason why the defendant cannot be served prior to the hearing. Unlike many other proceedings, applications for a personal violence orders can generally be listed and heard within a matter of days after filing. Accordingly, there must either be very recent threats that would satisfy the Court that personal violence offence will be carried out prior to the hearing of the matter on notice, or there is evidence that an order is required because the defendant is likely to have a violent response to being served with the application.[13]

66. In providing the clear and cogent evidence in support of their case, the applicant also has a duty to "*take particular care to put all the facts, favourable and unfavourable, to the applicant to the court*".[14] In *Thomas A Edison Ltd v Bullock* (1912) 15 CLR 679 at 681-2, Isaacs J held:

> *Dalglish v Jarvie*, a case of high authority, establishes that it is the duty of a party asking for an injunction ex parte to bring under the notice of the Court all facts material to the determination of his right to that

[13] *Ansah (supra)* at page 764.
[14] Cahill (Supra) at paragraph 7 on page 4 and referring to *Thomas A Edison v Bullock* (1912) 15 CLR 679 at 681.

> injunction, and it is no excuse for him to say he was not aware of their importance. *Uberrima fides* is required, and the party inducing the Court to act in the absence of the other party, fails in his obligation unless he supplies the place of the absent party to the extent of bringing forward all the material facts which that party would presumably have brought forward in his defence to that application. Unless that is done, the implied condition upon which the Court acts in forming its judgment is unfulfilled and the order so obtained must almost invariably fail.

67. Following the reasoning in Bullocks case, Justice Gageler in *Aristocrat Technologies Australia Pty Ltd v Allam* [2016] HCA 3 stated at paragraph 15:

> 15. It is an elementary principle of our ordinarily adversarial system of justice that full and fair disclosure must be made by any person who seeks an order from a court ex parte, with the result that failure to make such disclosure is ordinarily sufficient to warrant discharge of such order as might be made. The principle is not confined to particular types of interlocutory orders. Its rationale lies in the importance to the administration of justice of the courts and the public being able to have confidence that an order will not be made in the absence of a person whose rights are immediately to be affected by that order unless the court making the order has first been informed by the applicant of all facts known to the applicant which that absent person could be expected to have sought to place before the court had the application for the order been contested.[15]

Application to these facts

68. In these proceedings the applicant relied upon an affidavit affirmed on 23 March 2021. In that affidavit, the applicant alleges having been the subject of threatening, harassing and stalking behaviour from the defendant. It is also alleged that the defendant damaged property at the applicant's place of work.

69. The facts alleged are as follows. The applicant is appointed as the chairperson of the Agents Licencing Board of the Northern Territory ("the Board"). The Board undertook a disciplinary inquiry in relation to a company, A40F Group Pty Ltd, that was under the supervision and control of the defendant. The company in question held a licence as a Real Estate Agent. The applicant was involved in the Board's dealings with A40F Group Pty Ltd by virtue of his capacity as the chairperson of the Board and as the presiding member of the inquiry. The defendant participated in the

[15] Footnote references removed.

inquiry and resisted any disciplinary action being taken. Ultimately, following the Board's inquiry, A40F Group Pty Ltd's licence was revoked on 11 March 2020.

70. The applicant alleges that in February 2021 the defendant telephoned him on his private mobile number. The defendant identified himself. The applicant informed the defendant that it was "*not appropriate for us to be speaking*" and then ended the call. The defendant then repeatedly telephoned the applicant, sent text messages and left voice mail messages. The messages are alleged to have included some of the following:

> *"You do know me. I want justice"*;
>
> *"The chairman of the board means nothing to me. A very grave mistake has been made here. I will be in Darwin in two days for about three weeks. I want to meet"*; and
>
> *"I want answers to three questions. If I don't get those answers, I'll be asking you, face to face"*.

71. It is further alleged that on 16 March 2021, the defendant then attended the applicant's chambers, in which he works as a barrister. The defendant demanded to see the applicant and when he could not, he left only to return and damage the door to the building.

72. It is alleged that the following day someone set off the fire alarm at the applicant's chambers and removed the fire extinguisher from the fire cabinet and placed it next to the door of the applicant's chambers. The applicant has reviewed the CCTV footage of the incident and although he accepts he cannot positively identify the defendant, he attests to the footage of the man who set off the fire alarm being "*consistent with photos I have seen of the defendant, provided to me as part of the Board's inquiry*".

73. It is also alleged that the defendant's business card was found under the door of the applicant's chambers the day after the fire alarm incident.

74. The applicant attests to these incidents having caused feelings of intimidation, stress and fear, as well as having taken a toll on the applicant's mental health and ability to work.

75. As has been outlined above, when the matter came before the Court for mention, the defendant had not been served with notice of the application. The applicant sought that an *interim PVRO* be made on an *ex parte* basis restraining the defendant from:

    (a) contacting the applicant directly or indirectly;

(b) attending the applicant's place of work;

(c) causing damage to the applicant's property and the property of the applicant's place of work;

(d) threatening to use violence against the applicant; and

(e) harming the applicant.

76. Having perused the material filed by the applicant in support of the application I make the following findings.

77. The applicant has a strong prima facie case for the Court to be satisfied on the balance of probabilities that a personal violence offence has been committed, or is likely to be committed, by the defendant against the applicant. In my view, the application has a sufficient likelihood of success and accordingly, I find that there is a serious question to be tried.

78. I have no evidence of what hardship or prejudice the defendant may face if an *interim PVRO* is made, apart from the risk of arrest and punishment if he were to breach any such order. I do not have information as to whether the defendant holds a firearms licence which would be suspended if an order be made. I do not consider that the terms of the orders sought cause any real hardship or prejudice to the defendant as it is not necessary or indeed appropriate for the defendant to have any contact with the applicant. On the other hand, I do find that on the untested evidence before me that there is a real risk of a personal violence offence being perpetrated on the applicant if an *interim PVRO* is not made. Whilst there has not been any threats of physical violence, the alleged behaviour appears to be escalating and is already having an impact on the applicant's occupation and mental health. After weighing up these matters, I find that the balance of convenience favours the making of the *interim PVRO*.

79. Regarding urgency and seriousness, the alleged behaviour is very concerning. It is concerning enough for a person to contact a statutory officeholder privately following an unfavourable disciplinary decision, but to then attend that officeholder's chambers to attempt to confront him is a troubling escalation. When this is combined with the allegations of damaging the office door, setting off of the fire alarm and the placement of the fire extinguisher, a malicious motive can only be assumed. It is these alleged escalations which satisfy me as to the urgency and seriousness of the matter and it is for this reason that I grant leave to proceed *ex parte*.

80. For all of these reasons I find that it is both necessary and desirable to make an *interim PVRO*. The terms of the orders I make are as follows:

1. That until further order, the defendant is restrained from:

   (a) contacting the protected person directly or indirectly;

   (b) attending the protected person's place of work;

   (c) causing damage to the protected person's property and the property of the protected person's place of work;

   (d) threatening to use violence against the protected person; and

   (e) harming the protected person.

Dated this 18th day of May 2021

Kris Norrington
LOCAL COURT
JUDICIAL REGISTRAR