



# Peace and good behaviour orders - what constitutes a threat?

**Date: Monday May 9, 2022**

Peace and good behaviour orders aren't easy to obtain as a result of the strict legislative test contained in the *Peace and Good Behaviour Act 1982* (Qld) (**the Act**). In the 2021 District Court decision of *Sinclair v Lynch [2021] QDC 190*, McGinness DCJ helpfully outlined what constitutes a threat for the purposes of making an order pursuant to the Act.

## The facts

Mr Sinclair and Mr Lynch were once good friends. At some point, their friendship went awry, culminating in Mr Lynch making a complaint, and seeking an order, against Mr Sinclair pursuant to the Act.

At first instance, and following a hearing, an Acting Magistrate made an order against Mr Sinclair:

- requiring him to be of good behaviour towards Mr Lynch for a period of 12 months; and
- not to approach, enter or remain within 50 metres of Mr Lynch or Mr Kennelly.

Mr Sinclair appealed the order. The appeal was heard by way of rehearing.

## Provisions of the *Peace and Good Behaviour Act*

A complaint may be made under section 5 of the Act where:

- the defendant has threatened, or procured someone, to do bodily injury to the complainant or someone under their care or to destroy or damage the complainant's property and the complainant is in fear of the person complained against; or
- where the intentional conduct of the defendant directed at the complainant has caused the complainant to fear that the defendant will destroy or damage any property of the complainant.

Once a complaint is brought under section 5(1) or section 5(2) of the Act, a justice of the peace must consider whether the complaint has been substantiated to the justice's satisfaction and whether it is reasonable in the circumstances for the complainant to have the relevant fear. In coming to a determination, the justice may make such inquiries and receive such evidence as they think fit.

If they consider the complaint to be substantiated, they may issue a summons to the defendant to appear at a hearing of the matter in the Magistrates Court.

Upon consideration of the evidence, the Court may dismiss the complaint or make an order against the defendant. These proceedings are civil in nature. However, given their serious nature, the Court is required to apply the *Brigenshaw* standard, which provides that the strength of the evidence necessary to establish a fact or facts on the balance of probabilities may vary according to the nature of what is sought to be proven.

## The hearing at first instance

The complaint filed by Mr Lynch against Mr Sinclair alleged that "on dozens of occasions" Mr Lynch had been "subjected to physical threats and very loud instances of public degrading and vilification." He stated that he feared for his safety and that of his boat.

The evidence at the hearing comprised Mr Lynch's affidavit and oral evidence. During his evidence, Mr Lynch alleged that Mr Sinclair had verbally abused him on countless occasions and that he had been physically assaulted by a friend of Mr Sinclair's (although he did not contend that Mr Sinclair procured his friend to do bodily harm to Mr Lynch).

Mr Sinclair admitted during his evidence that he used the word "arsehole" on numerous occasions, had asked Mr Lynch if he and Mr Kennelly were in a homosexual relationship, and had told Mr Lynch that rumours to that effect were rife in the community. However, he denied ever threatening Mr Lynch or his boat.

The Magistrate's reasons for making an order against Mr Sinclair under the Act were as follows:

*"I am satisfied having considered the material that it is appropriate the court grant an order naming you as a respondent."*

## On appeal

Mr Sinclair, appearing for himself, appealed on several grounds including, relevantly, that:

- Mr Lynch did not present any evidence that Mr Sinclair had made any threats therefore there were no legal grounds to commence the action; and
- The Magistrate failed to state his findings of fact, how he applied the legal rules to the facts, and failed to allow evidence to be presented to the court that had a direct bearing on the truth and therefore the outcome of the case.

McGinness DCJ allowed the appeal for the following reasons:

- The Magistrate's decision was devoid of any reasons for concluding the making of an order was appropriate.
- The Magistrate should have made clear in his reasons, how the evidence amounted to threats or if not threats under section 5(1) of the Act, whether he was satisfied to the requisite standard that Mr Sinclair's conduct was intentional and actually caused Mr Lynch fear of damage to Mr Lynch's property under section 5(2) of the Act.
- An error of law had occurred as the Magistrate had heard and decided the application without providing adequate reasons.

As to whether the evidence substantiated that Mr Sinclair had threatened Mr Lynch within the meaning of the Act, Her Honour:

- found that the incidents of verbal abuse did not constitute a relevant threat under section 5(1) of the Act; and
- was not satisfied to the requisite standard, that Mr Sinclair's intentional verbal abuse caused Mr Lynch to fear that Mr Sinclair would destroy or damage any of his property.

For those reasons, the evidence was insufficient to warrant the granting of a good behaviour order under the Act.

## Get help from a criminal lawyer

If a [peace and good behaviour order](#) application has been brought against you or you are seeking to make such an application yourself, you should contact Gilshenan &Luton for legal advice and assistance.

### Contacting Gilshenan &Luton

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