Citation: *Blodgett v. Liley,* 2016 YKTC 4

Date: 20160225
Docket: 15-00576
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

Between:

CHASE CHRISTOPHER BLODGETT

Informant

And:

WALTER EDWARD LILEY

Defendant

Appearances:
Chase Christopher Blodgett — Appearing on own behalf
Walter Edward Liley — Appearing on own behalf

REASONS FOR JUDGMENT

[1] Chase Blodgett, the informant, has laid an information under s. 810 of the *Criminal Code* and seeks an order that Walter Liley, the defendant, enter into a recognizance with a condition prohibiting Mr. Liley from having any contact or communication with him. From the evidence, although not explicitly stated as being a desired term of the recognizance, it appears that Mr. Blodgett is also seeking that Mr. Liley not be allowed to attend at any hockey games that the Burnt Toast-sponsored hockey team is playing in the Whitehorse Women's Hockey League ("WWHL"). Mr. Blodgett plays hockey on the Burnt Toast team.

[2] The Information reads as follows:

> Chase Christopher BLODGETT fears that Walter Edward LILEY will cause personal injury to him in that Walter Edward LILEY did on or about the 1st day of May 2015 and 31st day of May 2015 at the City of Whitehorse in the Yukon Territory utter the words 'very well spoken from a person who is really fucked up himself. Plus I personally know of six women who are quitting because of your on and off ice bullshit, you're a bully', contrary to s. 810 of the Criminal Code

[3] By way of background, Mr. Blodgett is a transgendered individual. He continues to play hockey in the WWHL.

[4] I will state at the outset that there is nothing in the evidence before me that indicates Mr. Blodgett's transgendered identity is a factor giving rise to any of the grounds for why he believes that he has reason to fear that the actions of Mr. Liley may result in harm to himself or to his property. I simply make reference to Mr. Blodgett's transgendered identity as this information forms part of the context of the circumstances giving rise to the application, and this information was mentioned by Mr. Blodgett in the course of the hearing.

Evidence

Overview

[5] Much of the testimony before me fell into the category of hearsay evidence, and consisted of what other individuals may have stated to the witness testifying. On occasions a witness would be asked leading questions in direct examination. There was also considerable testimony on issues that were obviously of importance to the

witness, but in my opinion were not of probative value for the purpose of considering whether a recognizance should or should not be issued.

[6] Rather than repeatedly interrupt the hearing to ensure that the strict rules of evidence and examination of witnesses were adhered to, I chose to allow the testimony to be presented with as few interruptions as possible in order for the hearing to proceed as expeditiously as possible. I did, however, advise both the informant and the defendant of some of the problems in regard to the hearsay nature of the testimony, the leading questions, and my concerns regarding the lack of relevance of some of the testimony to the issue I am required to determine.

[7] In coming to my decision, I have taken into account these concerns and have treated the testimony of the witnesses with all due consideration for the application of the rules of evidence.

[8] While I have reviewed the testimony of all the witnesses, I will not repeat their testimony any more than what I believe is required for the purposes of my decision, including ensuring that sufficient evidence is referred to in order to allow for any reader of this judgment to be able to understand the reasons for my decision.

[9] I will say that both the informant and the defendant had obviously worked hard at being prepared for this hearing, had made best efforts to present their respective cases with all due respect for the process and each other, and conducted themselves appropriately in the courtroom.

[10] Mr. Blodgett testified at the hearing. He also called four witnesses.

Stephanie Hedley

[11] Ms. Hedley is a player and an official in the WWHL.

[12] She resides at a residential complex in Whitehorse, where she is also a Manager for the complex. There are several residential living units at that address, including Mr. Blodgett's. I will refer to this address as "the Complex".

[13] Ms. Hedley stated that both she and Mr. Blodgett found screws embedded in their vehicle tires while they were parked at the Complex. Ms. Hedley stated that she and Mr. Blodgett use different driveways.

[14] She testified that it was not unusual for Mr. Liley to be at Burnt Toast games in the 2014-2015 hockey season, as his girlfriend at the time, Anna Peacock, played for Burnt Toast. However, he continued to come at the beginning of this season although Ms. Peacock was no longer on the team.

[15] She observed Mr. Liley sitting in the stands behind the Burnt Toast team's players' bench on October 3, 2015. She stated that Mr. Liley's now ex-girlfriend, Ms. Peacock, was not playing during that game.

[16] She also noted Mr. Liley to be watching a Burnt Toast game on October 31, 2015. In her opinion Mr. Liley looked angry. She took two photographs which were filed as an Exhibit. She said that she walked out to Mr. Blodgett's vehicle with him and noticed that he had a flat tire.

[17] Ms. Hedley testified as to Mr. Blodgett's fear of Mr. Liley. She stated that she would walk Mr. Blodgett out to his vehicle after hockey games upon his request. She also accompanied him to the Victoria Faulkner Women's Shelter where Mr. Blodgett discussed his concerns about what he viewed as Mr. Liley's stalking behaviour, explosive temperament, aggressive texting and mean behaviour.

[18] Ms. Hedley expressed her own concerns for her safety as a result of Mr. Liley's behaviour, including a concern that he would defame her to her employer.

Jennifer Wallace

[19] Ms. Wallace is a goaltender for the Burnt Toast team this season. She testified that she saw Mr. Liley at Burnt Toast games on October 3, 6, 15 and 31, 2015. She testified to an incident that occurred on October 15, 2015. She was playing goal that night and observed Mr. Liley watching the game from the stands and near the goal line at her end of the rink. Ms. Wallace interpreted Mr. Liley's demeanour as being intimidating towards her. She stated that he was staring at her for a sustained period of time, even when the play had moved to the other end of the ice. At the end of the game she took her helmet off and skated around the ice so that he could see who she was. It was her opinion that Mr. Liley had been thinking that the goalie was Mr. Blodgett.

[20] Ms. Wallace stated that she was aware Mr. Blodgett had expressed concerns in the dressing room about an unnamed threatening person and he was fearful of this person. As a result, she had walked Mr. Blodgett to his car on several occasions.

[21] Ms. Wallace stated that while she played numerous league games in October 2015 for several teams, she only saw Mr. Liley at Burnt Toast and Gold team games. I note from other evidence that Ms. Peacock is a player on the Gold team in the 2015 - 2016 season.

Rodney Edwards

[22] Mr. Edwards knows Mr. Liley as an acquaintance. He has helped Mr. Liley out on a few occasions. He stated that he was doing so on October 12, 2015. On that day Mr. Liley spoke to him about two other individuals, including a Micheal Achtymichuk, and informed him that the two of them had been attending a house party at the Complex. Mr. Edwards confirmed with Mr. Achtymichuk that what Mr. Liley had said was in fact accurate.

Micheal Achtymichuk

[23] Mr. Achtymichuk stated that he has known Mr. Liley for one to one-and-one-half years as a friend. He stated that he spent a fair amount of time with Mr. Liley over the past year and that they had shared a number of personal things.

[24] He stated that between October 3 – 17, 2015 he had attended at the Complex on a number of occasions, sometimes staying overnight.

[25] He said that he would not know how Mr. Liley would have been aware of what he had been doing at the Complex in the week prior to October 12, 2015. He stated that he believed Mr. Liley was watching his truck or his property.

[26] Mr. Achtymichuk confirmed that Mr. Blodgett had told him he was afraid of Mr. Liley and that he believed Mr. Blodgett had reason to be afraid of Mr. Liley.

[27] Mr. Achtymichuk agreed with the question put to him in direct examination that on November 29, 2015 he was at the Kopper King and that Mr. Liley stated to him the following: "I am not done with Blogs [Mr. Blodgett] or Heds [Stephanie Hedley]. Blogs needs to be careful because he is in big trouble with the RCMP". Mr. Achtymichuk admitted in cross-examination that he had been drinking alcohol that night and that it was possible that he could have been wrong in what he said he heard or that he could have misconstrued it.

[28] He stated that he did not want to be in court testifying as he did not want to be involved and was afraid that he would be targeted by Mr. Liley.

Chase Blodgett

[29] Mr. Blodgett testified that he has known Mr. Liley for approximately one-and-one-half years, as Ms. Peacock's boyfriend. Mr. Blodgett and Ms. Peacock were friends previously. He stated that he liked Mr. Liley at first and that he found him to be charming, intelligent and of good humour.

[30] He stated that his fear of Mr. Liley is based more on a cumulative series of events than any single incident. He cites in particular the following behaviour of Mr. Liley in support of his position:

- Showing up at the hockey rink to watch his games or at other places known to Mr. Blodgett (April 3, 2015 at Antoinette's);

- The two times his tires have had screws in them or the one occasion when there was a gash in the tire;
- Mr. Liley's demeanour;
- Mr. Liley delivering a package of material to the sponsor of Mr. Blodgett's hockey team (Burnt Toast);
- Mr. Liley making a complaint to the RCMP about him;
- Mr. Liley being observed driving by the Complex on several occasions at all times of day. (Mr. Blodgett agreed in cross-examination that Mr. Liley could be driving to visit a nearby friend but stated that Mr. Liley could have used an alternate route to avoid passing by the Complex)

[31] Mr. Blodgett stated that the positive attributes he ascribed to Mr. Liley upon first meeting him, now form part of the reason why he is fearful of Mr. Liley. He says that these attributes make it very easy for Mr. Liley to gather information about him because he comes across so well to people.

[32] Mr. Blodgett provided some text changes between himself and Mr. Liley. These read as follows:

Friday, April 3, 2015

Mr. Liley (bold)

20:43 ***Hope u don't mind me coming. C u there***

Mr. Blodgett

20:45 *They have out tickets. Bree ain't coming either. Text here she is staying at my place. Party there*

20:45 *To have**

20:47 *Our sponsors are hosting brunch for us tmw buying beer and eggs. Can u come? Also can u tell mike?*

20:47 ***Tickets? For a hockey party. Maybe i will talk to Antoinette. Old dawson pal***

20:55 ***Haha. Peacock will nvr be able to get to that after a big nt. Hahaha***

20:56 ***C u in a while. I m so stoked***

22:47 ***C u in 20 ish***

Thursday, April 9, 2015

20:07 *Hey Wally. Can we have a talk sometime*

22:37 ***Ya sure***

Friday April 10

11:54 *Cook it should only take a few minutes. What's ur schedule like these days?*

11:54 *Cool**

13:06 ***Maybe Sunday***

14:08 *Weekend is kinda busy. I can do phone call Sunday but not in person likely*

14:09 *Time with Bree Sunday*

[33] There were further text exchanges between Mr. Blodgett and Mr. Liley on May 5, 2015. The original three were from Mr. Liley asking whether Mr. Blodgett would support Ms. Peacock in her attempts to quit smoking. Mr. Blodgett responded at length by chastising Mr. Liley for trying to infuse himself into Mr. Blodgett's friendships. He further commented on what he perceived as Mr. Liley being "abusive, manipulative and controlling to the woman" that Mr. Liley "supposedly" loved. The overall tenor of Mr. Blodgett's response to Mr. Liley was to criticize his perceived shortcomings and suggest he get some counselling.

[34] Mr. Liley responded as follows:

> 21:51 ***Very well spoken…from a person is really fkd up himself. Do the right thing for Peacock, and don't enable her in this battle with hr demons***
>
> 21:55 Ps. ***I personally know of 6 women who are quitting bcuz of ur on and off ice bullshit. Peacock herself felt like quitting a bunch of times***
>
> 21:58 ***And said, @ I don't even feel like playing any more, bcuz of his drama and bullshit" ur a bully Blodge. Counselling?***
>
> 22:00 ***Pretty sad if u cant actually focus on the crux of the matter, and that is Anna doing something she has wanted in a very long time.***
>
> Mr. Blodgett:
>
> 22:06 *Ok send me one more text because I know you have to have last word… It's a power control thing. Send it….I know you want too.*

[35] The final text messages between Mr. Blodgett and Mr. Liley filed in this proceeding were in June, 2015.

June 13, 2015

> Mr. Liley
>
> 20:25 ***Heard ya got a camper. I cd show u how to inspect and repack the bearings if u want. We cd chat while working. Couple nts open this wk***

June 17, 2015

> Mr. Blodgett
>
> 09:02 *Thanks for the offer. I don't think that's a good idea so I am going to pass.*

[36] Mr. Blodgett perceived these text messages as being aggressive and manipulative. He stated that he responded as he did to Mr. Liley on April 3 in order to attempt to dissuade him from attending Antoinette's.

[37] He stated that he has stood outside of Ms. Peacock's door and and heard Mr. Liley and Ms. Peacock arguing. He states that he has heard of and witnessed Mr. Liley's explosive temperament.

[38] He said that he went to the Victoria Faulkner Women's Centre with Ms. Hedley in order to learn how to keep themselves safe. He was provided a safety plan from the Centre. This safety plan was filed as an exhibit in this proceeding.

[39] Mr. Blodgett also filed as an exhibit a Facebook post he made on October 26, 2015. This post reads as follows:

> Dear friends. There is an unsafe man in this community who has made threats to me and engaged in behaviours I consider stalking. My crimes? Being friends with his ex whom he is having difficulty hearing no from. For nearly 10 months I and some of my other friends have been silently victimized by him. I and another friend have consulted with the Victoria Faulkner's Women Centre and they advised us that in order to be safe make sure the people around us know. This man is known to some of you. This man is charming and intelligent and is very easily likeable when you meet him. While he has done some bad things I do not believe that he is a bad person. However in order to protect my safety I kindly request that if any men ask about me in any capacities (my job, how my hockey season is going etc) that they be deferred to me. I also have a new appreciation for the lack of proactive protection afforded under law. I will no longer being silently victimized. This is me taking back my power.

[40] Although unnamed in this Facebook post, Mr. Blodgett was speaking of Mr. Liley.

[41] Mr. Blodgett also expressed concerns that, as Mr. Liley knows where he lives, he could access his residence.

[42] Mr. Blodgett stated that he may have seen Mr. Liley at the hockey rink one time in November and no times since then, including when he has been playing as a substitute for teams other than his own.

Walter Liley

[43] Mr. Liley stated that everything was fine between himself and Mr. Blodgett prior to the e-mail exchange in April 2015 regarding his attendance at Antoinette's restaurant. There was little contact between them after that date, although he did recall one occasion when he stopped by the Complex to see Ms. Peacock. He stated that Mr. Blodgett and Ms. Hedley were outside working on their bikes. He said that this contact was pleasant in nature.

[44] Mr. Liley stated that, looking back, he would have used different words in the May 2015 text exchange between himself and Mr. Blodgett. He stated that at the time he was frustrated and simply wanted Mr. Blodgett to support Ms. Peacock in her attempt to quit smoking. He testified that he did not intend the text messages to be threatening.

[45] Mr. Liley provided documentary evidence of two phone calls he received from Mr. Blodgett's phone number at 8:34 and 8:37 p.m. on October 15, 2015. Mr. Liley stated that he hung up on the first call and received a voice mail on the second call. In this voice mail message, he states that Mr. Blodgett accused him of stalking him by being at

the game that night and watching him. Mr. Liley testified that he was there to watch Ms. Peacock play. In cross-examination, Mr. Blodgett had testified that it was possible that he made these two phone calls and left a voicemail message.

[46] Mr. Liley testified that he believed Mr. Blodgett and Ms. Hedley became involved with the Board of Directors of the WWHL and influenced them to revoke his status as a referee before he was even able to start. He filed as an exhibit a letter he wrote to the Editor of the Whitehorse Star setting out his concerns in this regard, without identifying any individuals.

[47] Mr. Liley also provided a sworn affidavit from Nancy Smith, the Office Manager for Evergreen Homes and Construction. She stated in this affidavit that on October 16, 2015, at approximately 2:00 p.m., she received a telephone call from an individual who identified himself as “Chase”. She states that “Chase” mentioned that Wally was an Evergreen employee and that he had been stalking/attacking him and his friends for one year, with the last two months being particularly dangerous. Chase stated that he had contacted the RCMP who told him that they could do nothing until Wally broke the law. Chase stated that, as a result he (and his friends) were going public in the hopes of safety. Chase asked that Evergreen speak to Wally about his conduct.

[48] I note from the evidence that the phone number from which this call was made was identified as being Mr. Blodgett’s phone number.

[49] Mr. Blodgett was offered the opportunity to have the hearing adjourned in order to allow for him to cross-examine Ms. Smith on her affidavit if he considered it necessary. He declined to seek an adjournment. Mr. Blodgett testified in cross-

examination that he had not made this phone call, stating that other individuals had access to his phone. The inference I take from Mr. Blodgett's testimony is that he was testifying that therefore someone else could have made this call. I understand from Mr. Blodgett that, in not seeking to cross-examine Ms. Smith, he was not disputing the accuracy or truth of her affidavit, but was denying any involvement on his part.

[50] When Mr. Liley was asked in cross-examination why he came to the hockey game on October 31, despite Mr. Blodgett previously leaving him a message stating that he considered Mr. Liley's attendance at any of Mr. Blodgett's hockey games as constituting "stalking" behaviour, Mr. Liley agreed that, because he enjoyed hockey, he was watching the hockey game at the Canada Games Center on October 31, but that he was doing so while waiting for a friend from Dawson to arrive. He said that once this friend arrived, he left the game and went to the swimming pool where they remained until closing time.

[51] Mr. Liley agreed that Ms. Peacock was not playing in this game. Mr. Liley stated that Mr. Blodgett was only one player out of 30 and that he would not be dictated to by Mr. Blodgett. When asked, Mr. Liley stated that there was not a game on the other rink, but a practice instead.

[52] Mr. Liley denied having slashed Mr. Blodgett's car tire that evening.

[53] Mr. Liley also denied having any involvement with respect to any of the incidents involving screws found in Mr. Blodgett's car tires. I also understood this to also be a denial of any involvement in screws being found in Ms. Hedley's tires as well.

[54] Mr. Liley denies watching Mr. Blodgett's residence or having been involved in any stalking behaviour. He testified that in his opinion this is just a perception Mr. Blodgett has.

[55] Mr. Liley states that he is a member of the Canada Games Center and will sometimes watch hockey games when he is there.

[56] He agreed in cross-examination that he could avoid passing by the Complex on his way to his friend's house nearby but that he simply takes his route based upon traffic at the time.

[57] Mr. Liley denied having stared down Ms. Wallace on October 15.

[58] Mr. Liley agreed that he sent correspondence dated November 27, 2015 to the President of the Whitehorse Women's Hockey Association setting out some of his concerns with respect to how the situation had been handled. He also acknowledged hand delivering this e-mail to Burnt Toast restaurant on December 11, 2015. Mr. Liley was asked in cross-examination whether the following paragraph could be perceived as a threat:

> We can do this in a meeting. It will be a civil affair, where you will be able to put a face to the name of Walt Liley. My name has been discredited and disrespected. I hold no ill-will against the board of the WWHA, but I need to know that there were lessons learned. As for the other person(s) involved in this, the perpetrator(s), lawyers and the RCMP will take care of that.

[59] Mr. Liley denied that this was ever intended to be or to convey a threat to Mr. Blodgett.

[60] Mr. Liley acknowledged providing at least five major sponsors of the WWHL correspondence that he stated was issued to inform these sponsors of what he perceived as wrongdoing and misrepresentation on the part of the Board. He stated that he did so to point out the injustice in how he was treated and also to point out the individuals involved, although he redacted the names of these individuals prior to providing the correspondence to the sponsors.

[61] Mr. Liley denied that any of his actions give Mr. Blodgett reason to fear him or that any of his behaviours were unacceptable.

Law

[62] Section 810 of the *Criminal Code* reads as follows:

> (1) An information may be laid before a justice by or on behalf of any person who fears on reasonable grounds that another person will cause personal injury to him or her or to his or her spouse or common-law partner or child or will damage his or her property.
>
> (2) A justice who receives an information under subsection (1) shall cause the parties to appear before him or before a summary conviction court having jurisdiction in the same territorial division.
>
> (3) The justice or the summary conviction court before which the parties appear may, if satisfied by the evidence adduced that the person on whose behalf the information was laid has reasonable grounds for his or her fears,
>
> *(a)* order that the defendant enter into a recognizance, with or without sureties, to keep the peace and be of good behaviour for any period that does not exceed twelve months, and comply with such other reasonable conditions prescribed in the recognizance, including the conditions set out in subsections (3.1) and (3.2), as the court considers desirable for securing the good conduct of the defendant; or

> *(b)* commit the defendant to prison for a term not exceeding twelve months if he or she fails or refuses to enter into the recognizance.

[63] The case of ***S.G.*** v. ***L.V.*** (2012), 319 Nfld. & P.E.I.R. 300 (Nfld. Prov. Ct.) provides a comprehensive analysis of the law as it relates to s. 810 applications. Rather than rephrasing what Gorman J. stated, in order to put it into my own words, I will simply refer to paragraphs 23 – 28, with which I agree and wherein he states:

> **23** As can be seen from the wording of the legislation, section 810 of the *Criminal Code* contains both an objective and subjective element (see ***D.B. v. J.J.***, [2010] N.J. No. 312 (P.C.) and ***Vokey v. Higdon*** (1994), 124 Nfld. & P.E.I.R. 74 (Nfld. S.C.)). The applicant must be fearful of the respondent and the fear must be based upon reasonable grounds.
>
> **24** The burden of proof rests upon the applicant and it is based on a balance of probabilities (see ***Miller v. Miller*** (1991), 87 Nfld. & P.E.I.R. 250 (Nfld. P.C.)). In ***F.H. v. McDougall***, [2008] 3 S.C.R. 41, the Supreme Court of Canada, in the context of a civil case, indicated that this onus of proof requires a determination of "whether it is more likely than not that an alleged event occurred."
>
> **25** Section 810 of the *Criminal Code* does not create a criminal offence. However, it provides a judge with a broad power to restrain and limit the liberty of any person subject to a section 810 order and it provides for imprisonment as a potential penalty if the recognizance is breached (see section 811 of the *Criminal Code*).
>
> **26** A judge hearing a section 810 *Criminal Code* application must attempt to balance two competing interests: (1) the right of the respondent to be free from restrictions and (2) the right of the applicant to protective intervention in appropriate circumstances. An applicant does not have to wait to be harmed for a section 810 *Criminal Code* recognizance to be issued. Section 810 is preventative in nature (see ***D.(J.M.) v. P.(J.G.)*** (1991), 107 N.S.R. (2d) 44 (Fam. Ct.) and ***R. v. Parks***, [1992] 2 S.C.R. 871, at paragraph 31), but an application for a section 810 recognizance cannot be granted unless sufficient evidence is presented.
>
> **27** In ***Basha v. Flynn***, [2010] N.J. No. 115 (P.C.), I summarized the applicable principles in the following manner:

(1) a judge conducting a section 810 *Criminal Code* application must attempt to balance two competing interests: (1) the right of the respondent to be free from restrictions and (2) the right of the applicant to protective intervention in appropriate circumstances;

(2) an applicant does not have to wait to be harmed for such an order to be issued. Section 810 is preventative in nature (see ***D.(J.M.) v. P.(J.G.)*** (1991), 107 N.S.R. (2d) 44 (Fam. Ct.)), but an application for a section 810 recognizance cannot be granted unless sufficient evidence is presented;

(3) section 810 provides the Court with a broad power to restrain and limit the liberty of any person subject to a section 810 order. It has been held that the filing of a section 810 application provides a justice with the authority to issue a warrant for the arrest of a respondent (see ***R. v. Allen*** (1985), 18 C.C.C. (3d) 155 (Ont. C.A.)) and that it allows a court to impose conditions upon a respondent pursuant to section 515 of the *Criminal Code* (see ***R. v. Wakelin*** (1992), 71 C.C.C. (3d) 115 (Sask. C.A.));

(4) section 810 of the *Criminal Code* does not create a criminal offence (see ***MacAusland (Informant) v. Pyke*** (1995), 37 C.R. (4th) 321 (N.S.S.C.)), but the *Criminal Code* provides for imprisonment as a potential penalty if a section 810 recognizance is breached (see section 811 of the *Criminal Code, **R. v. Kelly*** (2004), 233 Nfld. & P.E.I.R. 108 (N.L.P.C.) and ***R. v. Loder***, [2005] N.J. No. 105 (P.C.)):

(5) the onus of proof in a section 810 application rests with the applicant and it is one of a balance of probabilities (see ***Miller v. Miller*** (1991), 87 Nfld. & P.E.I.R. 250 (Nfld. P.C.)); and

(6) the applicant must persuade the application judge that he or she fears for his or her safety and the application judge must be satisfied that their fear is a reasonable one. This fear need not be specifically stated by an applicant as the court can infer it from the totality of the evidence received (see ***J.H. v. W.B.*** (2001), 44 C.R. (5th) 39 (Y.T. Terr. Ct.)).

> **28** In ***J.H. v. W.B***, (2001), 44 C.R. (5th) 39 (Y.T. Terr. Ct.), it was held that "the protective reach of a peace bond encompasses psychological injuries." I agree. I also conclude that in assessing whether a fear exists and if it is reasonable the nature of the relationship between the parties is a consideration.

[64] In ***Bergeron*** v. ***Vaneltsi***, 2012 YKSC 19, Veale J. stated as follows:

> [14] The imposition of a peace bond or recognizance requires the exercise of the court's preventative justice power (*J.H. v. W.B.*, 2001 YKTC 502, *R. v. Budreo* (2000), 46 O.R. (3d) 481 (C.A.)). Although s. 810 does not create an offence and it may be invoked on the civil standard on a balance of probabilities, there are nonetheless serious implications for a defendant brought before a justice under this section. A s. 810 peace bond can lead to significant restrictions on someone's liberty. As well, where a justice determines that a peace bond is warranted, a defendant who refuses to enter into one can face a prison term of up to 12 months (s. 810(3)(b)). A breach of a term of a recognizance leads to a criminal prosecution under s. 811, and the potential for imprisonment of a term up to two years. Accordingly, while a peace bond hearing allows for some relaxation of the legal formalities required in a punitive offence-driven process (*J.H. v. W.B.),* basic procedural safeguards remain critical.

[65] For further consideration of the principles applicable to s. 810 applications, see also ***R.*** v. ***Soungie***, 2003 ABPC 121; ***R.*** v. ***Musoni*** (2009), 243 C.C.C. (3d) 17 (Ont. S.C.J.) at paras. 20-29 affirmed (2009), 248 C.C.C. (3d) 487 (Ont. C.A.).

Analysis

[66] Mr. Blodgett and Mr. Liley were, at one time and for a relatively brief period, friends. The connection between them was Mr. Blodgett's friend, Ms. Peacock, who was also for a period of time Mr. Liley's girlfriend.

[67] This is a distinguishing factor from those cases where the informant and the defendant were previously involved in an intimate relationship, either with each other or with a third party, with all the associated dynamics that are often at play in such cases.

Has Mr. Blodgett established that he has a subjective fear of harm from Mr. Liley?

[68] Mr. Blodgett has testified that he fears that Mr. Liley will harm him or his property. The evidence shows that Mr. Blodgett has taken steps consistent with having such a fear, such as attending at the Victoria Faulkner Women's Centre, having friends walk him to his vehicle, and telling his friends that he is fearful.

[69] There is nothing in the evidence that points to Mr. Blodgett's testimony that he is fearful of Mr. Liley as being false or fabricated for any particular reason or motive.

[70] Subjective fear is somewhat difficult to assess in the absence of evidence that undermines the credibility of the assertion of being fearful. Such evidence can perhaps be found when the actions of the informant who states that he or she is fearful are inconsistent with such an assertion. Repeated communications initiated by the informant with the defendant may provide such undermining evidence to an assertion of fear, although the nature of the relationship between the parties may be such that even that does not displace the fact that the informant may nonetheless be fearful of the defendant.

[71] Subjective fear may not be rational or logical but may nonetheless exist. The test is whether an informant actually fears that the defendant will harm his or her self or property. In the absence of any evidence of a motive or planning on the part of an

informant to fabricate evidence of fearfulness, or otherwise evidence of actions that are so in contradiction of evidence of fearfulness so as to undermine that evidence of fear, it is difficult to find that an informant does not have a subjective fear.

[72] I find that to be the case here. I accept that Mr. Blodgett has a subjective fear that Mr. Liley will harm either him or his property.

Is Mr. Blodgett's subjective fear, when objectively viewed, reasonable?

[73] In order to determine whether a subjective fear is reasonable when viewed objectively, the entirety of the circumstances must be considered. These include the relationship of the parties, the actions of either or both of the parties, including whether there has been any threatening behaviour, the credible and reliable evidence in support of the reasonableness of the informant's fear and any credible and reliable evidence which stands in contrast to the reasonableness of the informant's fear.

[74] It is important to remember that the evidence must be credible and reliable, not only when standing on its own, but when considered in light of the entirety of the evidence. Speculation is not to be engaged in and inferences should generally not be drawn from the evidence unless these inferences are supported from the whole of the evidence. This requires, also, that the evidence be properly before the Court and admissible in accordance with the rules of evidence. In this regard hearsay evidence is to be accorded little, if any, weight.

[75] I recognize that a s. 810 application is not a criminal proceeding within the ambit of the *Criminal Code* per se. I also recognize that s. 810 proceedings are often

conducted by individuals who have little or no legal training and cannot, as such, be expected to understand and conform with the rules of procedure and evidence as would be expected were counsel to be conducting the proceeding.

[76] This said, however, a s. 810 application limits the freedom of a defendant and, further, has the potential for exposing a defendant to criminal charges. As such, care must be taken not to place an individual on s. 810 recognizance unless the informant discharges his or her burden to establish, on a balance of probabilities and on reliable and credible evidence, that the informant has a subjective fear of harm that, when viewed objectively from the position of a reasonable and properly informed person, is considered to be a valid fear.

[77] In ***J.H.*** v. ***W.B.***, 2001 YKTC 502, Stuart J. referred to the objective test as follows:

> 29 Objective Test - In applying the reasonable grounds test, three fundamental notions frame the inquiry:
>
> 1. The test must be assessed on a balance of probabilities.
>
> 2. As the matter is quasi criminal - part civil, part criminal - the reasonable test must draw on both civil and criminal notions of the test of a reasonable person. Both call for the perception of a reasonable person in a similar situation, with similar experience (see R. v. Lavalee, [1990] 1 S.C.R. 852 at 883; R. v. Nelitz, [1993] B.C.J. No. 1207 (Prov. Ct.) and Law v. Canada (Minister of Employment and Immigration), [1999] S.C.J. No. 12 at para 7.).
>
> 3. Common sense and experience are as important as the law in assessing the reasonableness of a fear of harm. The life of the law has not been logic, it has been experience (La Forest, J., R. v. Lyons, [1987] 2 S.C.R. 309 at 364.) La Forest, in drawing on the wisdom of Holmes, reminds courts that the viability of our decisions depends on attending to

> both the dictates of law and the realities of human interactions.

[78] I find, on the evidence before me, that, notwithstanding Mr. Blodgett's subjective fear of Mr. Liley, this fear does not meet the threshold of being an objectively reasonable fear. It is not enough that Mr. Blodgett believes or interprets the actions of Mr. Liley as meaning that Mr. Liley intends to cause him harm. Mr. Liley testified that he has not caused any damage, within the meaning of s. 810, to Mr. Blodgett or his property and that he has no intention of doing so. I find that there is little in the evidence that would contradict this assertion on the part of Mr. Liley.

[79] There is no reliable and credible evidence that Mr. Liley has, in fact, damaged any of Mr. Blodgett's property. No evidence places Mr. Liley in the vicinity of Mr. Blodgett's car when he found screws in the tire. The possibility that Mr. Liley could have been in the vicinity and done so is speculation at best.

[80] The evidence that Mr. Liley was at the Canada Games Centre the same evening that Mr. Blodgett's tire was noted to have a gash while parked there is also speculative. In this case he was in the general area, but to find, even when considering the entirety of the evidence, it likely that Mr. Liley slashed the tire would also be engaging in speculation and it would be improper to do so.

[81] Despite Mr. Blodgett's concerns as expressed in his Facebook post, there is no evidence that any male was going about and asking about Mr. Blodgett.

[82] There is virtually no evidence Mr. Liley has made any threats to harm Mr. Blodgett or his property. I do not consider the comments made by Mr. Liley to Mr.

Achtymichuk in the bar, even if taken as stated in the direct examination of Mr. Achtymichuk, to be a threat to cause damage to Mr. Blodgett or his property.

[83] There is no evidence before me of any loud or aggressive physical or verbal confrontation between Mr. Liley and Mr. Blodgett or any evidence that Mr. Liley ever attempted to access Mr. Blodgett's residence, contrary to Mr. Blodgett's concerns in this regard as expressed by him.

[84] There is, at best, minimal evidence of any stalking behaviour on the part of Mr. Liley. The closest to this that I can find in the evidence is in the testimony of Ms. Wallace that Mr. Liley was standing near the goal that she was tending in what she considered to be an intimidating manner, believing that it was Mr. Blodgett in goal. There is no reason I am aware of for Ms. Wallace to be untruthful in her testimony. However, this one incident, even in the context of the remainder of the evidence is insufficient evidence of stalking behaviour on the part of Mr. Liley.

[85] I also consider the evidence that Mr. Liley knew Mr. Achtymichuk had been partying at the Complex far too frail and remote to establish that Mr. Liley was parked outside Mr. Blodgett's residence and observing events. There is no evidence that Mr. Liley was ever observed doing so.

[86] I also find the fact that Mr. Liley may have driven by 1the Complex on several occasions not evidence of stalking or harassing behaviour, as I also do not find the fact that Mr. Liley was watching WWHL games evidence of stalking or harassing behaviour. While this may be Mr. Blodgett's perception, I do not find that this perception is an objectively reasonable one.

[87] I also find that the fact that Mr. Liley contacted the RCMP due to his concerns in regard to Mr. Blodgett's actions, thus causing Mr. Blodgett to fear for his livelihood, as establishing any objectively reasonable basis for any such fear of loss of employment. In any event, I do not consider that a fear of harm to one's employment to be within scope of "damage to property" under s. 810.

[88] I say this, considering each of these events in light of each other and the cumulative impact of them.

Conclusion

[89] In conclusion, while I find that Mr. Blodgett has a subjective fear that Mr. Liley will cause damage to him or his property. I find, on a consideration of the entirety of the evidence when viewed cumulatively, that there is no objective basis or reality to this fear and that Mr. Blodgett has not discharged his burden. As such the application is dismissed.

[90] Although I did not say this at the conclusion of my reading of this judgement before the informant and the defendant in open Court, I will nonetheless add that I would hope Mr. Liley would take note of my finding that Mr. Blodgett has a subjective fear of him and that therefore he would conduct himself in a manner that would not add to, but rather alleviate, Mr. Blodgett's concerns.

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COZENS T.C.J.