CITATION:	*Registrar of the Supreme Court v Jenkins* [2019] NTSC 51
PARTIES:	REGISTRAR OF THE SUPREME COURT v JENKINS, Trevor
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT exercising Territory jurisdiction
FILE NO:	69 of 2017 (21736976)
DELIVERED:	21 June 2019
HEARING DATES:	31 January and 16, 17 and 18 July 2018
JUDGMENT OF:	Southwood J

CATCHWORDS:

CIVIL PROCEDURE – VEXATIOUS LITIGANT PROCEEDINGS – Respondent found to be a vexatious litigant under the *Vexations Proceedings Act 2006* (NT) – Respondent found to have frequently instituted or conducted vexatious proceedings in the Supreme Court and the Local Court, – Proceedings instituted and pursued without reasonable ground, to harass or annoy, to cause delay or detriment, and for wrongful purpose – section 2 of the *Vexations Proceedings Act 2006* (NT) – Orders made prohibiting the respondent from instituting proceedings in the Supreme Court of the Northern Territory and the Local Court of the Northern Territory without leave of the Supreme Court – section 4 of the *Vexatious Proceedings Act 2006* (NT)

EVIDENCE – Whether the decision, or of a finding of fact, in other proceedings involving the respondent is inadmissible under section 91 of the

Evidence (National Uniform Legislation) Act 2011 (NT) – Evidence of decisions or findings of fact in other proceedings involving the respondent constituted critical evidence in the vexatious litigant proceedings – Court may have regard to orders made by any court or tribunal – section 91 did not prevent tender of evidence – Evidence admitted

Care and Protection of Children Act 2007 (NT) s 187, s 188, s 189, s 194, s 194(7), s 196
Court Security Act 1998 (NT) s 12(2), s 15
Criminal Code 1983 (NT) s 188(1), s 188A(1), s 188A(2)(b)
Evidence (National Uniform Legislation) Act 2011 (NT) s 91, s 138
Federal Court of Australia Act 1976 (Cth) s 37AO(1)
Justices Act 1996 (NT) s 63A
Local Court (Criminal Procedure) Act 1928 (NT) s 62(b), s 62A(b), s 63A, s 191
National Crime Authority Act 1984 (Cth) s 12(1), s 13, s 14
Police Administration Act 1978 (NT) s 158
Summary Offences Act 1923 (NT) s 47(a), s 47(c), s 47(e), s 47A(2)
Supreme Court Rules 1987 (NT), r 23.01, r 23.02
Trespass Act 1987 (NT) s 5, s 7(1)
Vexatious Proceedings Act 2006 (NT), s 2, s 2(d), s 3, s 3(b), s 3(c), s 4, s 4(1)(a), s 4(1)(c), s 4(1)(d), s 6, s 7(2), s 7(3), s 7(4), s 7(1)(a), s 7(1)(b), s 7(6)(c), s 10(1)
Vexatious Proceedings Act 2005 (Qld) s 6(1)
Vexatious Proceedings Act 2008 (NSW) s 6(a), s 6(c), s 8(1)
Vexatious Proceedings Act 2011 (Tas) s 6(1)
Vexatious Proceedings Act 2014 (Vic)
Vexatious Proceedings Registration Act 2002 (WA)

Attorney-General (Vic) v Bahonko [2011] VSC 352; *Attorney General (NSW) v Chan* [2011] NSWSC 1315; *Attorney General v Gargan* [2010] NSWSC 1192; *Attorney-General for the State of Victoria v Andrew Garrett* (2017) 51 VR 777; *Attorney-General (Vic) v Horvath, Senior* [2001] VSC 269; *Attorney-General (Vic) v Knight* [2014] VSC 549; *Attorney-General (NSW) v Martin* [2015] NSWSC 1372; *Attorney-General (NSW) v Mohareb* [2016] NSWSC 1823; *Attorney-General (Vic) v Pham* [2014] VSC 311; *Attorney-General (Vic) v Shaw* [2007] VSC 148; *Attorney General (NSW) v Wilson* [2010] NSWSC 1008; *Conomy v Maden* [2019] HCA Trans 49 (20 March 2019); *Fuller v Toms* [2013] FCA 1422; *Hanks v the Queen* [2011] VSCA 7; *HWY Rent Pty Ltd v HWY Rentals (in liq) (No. 2)* [2014] FCA 449; *Jones v Cusack* (1992) 109 ALR 313; *Mahmoud v Attorney-General of New South Wales* [2017] NSWCA 12; *Mathews v State of Queensland* [2015] FCA 1488; *Official Trustee in Bankruptcy v Gargan (No 2)* [2009] FCA 398; *Slaveski v Attorney-General (Vic)* [2013] VSCA 165; *Viavattene v Attorney-General* (NSW) [2015] NSWCA 44 – referred to

Jarrett v Seymour & Ors (1993) 46 FCR 521, (1993) 46 FCR 557; *Elliott v Seymour & Ors* [1993] HCA 70; 68 ALJR 173 – distinguished

Paul Mullen and Grant Lester, 'Vexatious Litigants and Unusually Persistent Complainants and Petitioners: From Querulous Paranoia to Querulous Behaviour' (2006) 24 Behavioural Sciences and the Law 333

REPRESENTATION:

Counsel:

Applicant:	R Brebner with L Peattie
Respondent:	Self-represented

Solicitors:

Applicant:	The Solicitor for the Northern Territory
Respondent:	Self-represented

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Registrar of the Supreme Court v Jenkins [2019] NTSC 51
No. 69 of 2017 (21736976)

BETWEEN:

REGISTRAR OF THE SUPREME COURT
Applicant

AND:

TREVOR JENKINS
Respondent

CORAM: SOUTHWOOD J

REASONS FOR JUDGMENT

(Delivered 21 June 2019)

Introduction

[1] This proceeding was commenced by Originating Motion filed on 3 August 2017. The Originating Motion was amended on 31 January 2018 and by an amended Originating Motion filed on 6 February 2018 the applicant[1] applied for orders against the respondent under the *Vexatious Proceedings Act 2006* (NT) ('the Act').

[2] On 18 July 2018, having found the respondent had frequently instituted and conducted vexatious proceedings in the Northern Territory ('the Territory'), I made orders prohibiting the respondent from instituting proceedings in the

1 The Registrar of the Supreme Court is an authorised applicant under *Vexatious Proceedings Act 2006*, s 7(6)(c).

Supreme Court and the Local Court without leave, with the exception that the respondent was not prohibited from applying for bail or conducting a defence of any criminal charge that may be brought against him. It was necessary to amend those orders to specify that leave was to be obtained from the Supreme Court, and on 19 July 2018, I amended the orders. I also referred the transcript of the last three days of the hearing on 16, 17 and 18 July 2018 to the applicant for the purpose of considering whether contempt proceedings should be commenced against the respondent for his behaviour during the hearing. That reference was subsequently withdrawn.

[3] On 18 July 2018 I made some short remarks and stated that I would publish detailed written reason later. Following are my reasons.

The *Vexatious Proceedings Act 2006* (NT)

[4] The Act is based on a model bill developed through the forum of the Standing Committee of Attorneys-General to "deter and curtail the activities of vexatious litigants".[2] The model bill has been adopted (with some variation) in several other jurisdictions in Australia.[3]

[5] The Act does not affect any inherent jurisdiction or other powers of the Court, including the powers under the *Supreme Court Rules 1987* (NT),[4] to

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2 Northern Territory, *Parliamentary Debates*, Legislative Assembly 15 June 2008 (The Hon Peter Toyne, Attorney General).

3 *Vexatious Proceedings Act 2005* (Qld); *Vexatious Proceedings Act 2008* (NSW); *Vexatious Proceedings Act 2011* (Tas); cf *Vexatious Proceedings Act 2014* (Vic), *Vexatious Proceedings Registration Act 2002* (WA), *Federal Court of Australia Act 1976* (Cth). Subsection 7(3) of the Act is identical to: *Federal Court of Australia Act 1976* (Cth), s 37AO(1); *Vexatious Proceedings Act 2008* (NSW), s 8(1); *Vexatious Proceedings Act 2011* (Tas), s 6(1); and *Vexatious Proceedings Act 2005* (Qld), s 6(1).

4 See, e.g. *Supreme Court Rules*, rr 23.01, 23.02.

restrict vexatious proceedings.[5] Under the Act the Supreme Court has power to: (i) make an order staying all or part of any proceedings in the Territory already instituted by the person; (ii) make orders prohibiting a person from instituting proceedings in any court in the Territory without the leave of this Court and; (iii) make any other orders it considers appropriate.[6] Any proceeding instituted in breach of such an order is permanently stayed.[7]

[6] Orders prohibiting a person from instituting proceedings in the courts are not to be made without good reason.[8] To deprive a litigant of access to the courts is a serious measure.[9] In exercising the discretion to make orders under the Act it must be borne in mind that the effect of such orders is to limit a person's right of recourse to the courts in the Territory. The orders are protective, not punitive. The purpose of the Act is not to punish a litigant for past litigious misdeeds, but to shield both the public and the courts themselves.[10]

[7] Before exercising the discretion to make a vexatious proceedings order, the Court must be satisfied on the balance of probabilities that a person has: (i)

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5 *Vexatious Proceedings Act 2006* (NT), s 6.

6 Ibid, s 7(3).

7 Ibid, ss 7(4), 10(1).

8 *Conomy v Maden* [2019] HCA Trans 49 (20 March 2019).

9 *Attorney General (NSW) v Wilson* [2010] NSWSC 1008 at [11].

10 *Official Trustee in Bankruptcy v Gargan (No 2)* [2009] FCA 398 at [3], cited with approval in *Attorney General v Gargan* [2010] NSWSC 1192 at [8].

instituted or conducted vexatious proceedings in Australia, and (ii) has done so frequently.[11]

[8] A vexatious proceeding includes any proceeding which is:

(a) An abuse of the process of a court or tribunal; or
(b) Instituted to harass or annoy, to cause delay or detriment, or for another wrongful purpose; or
(c) Instituted or pursued without reasonable ground; or
(d) Is conducted in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose.[12]

[9] The factors included in (a) to (d) above overlap, and the factors in sub-paragraphs (b) to (d) could properly be regarded as particular aspects of an abuse of process.[13] However, sub-paragraph (b) connotes a subjective intention on the part of a respondent, and sub-paragraph (d), which does not, is concerned with the consequences of a respondent's conduct.[14] Further, a proceeding may fall into either sub-paragraph (b) or (d) regardless of its prospects of success.

[10] The Act defines 'proceedings' broadly and non-exhaustively.[15] The definition includes interlocutory proceedings.[16]

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11 *Vexatious Proceeding Act*, s 7(1)(a); *Mathews v State of Queensland* [2015] FCA 1488 at [81]. Subsection 7(1)(b) of the Act has no application here.

12 *Vexatious Proceedings Act*, s 2.

13 *Attorney General (NSW) v Chan* [2011] NSWSC 1315 at [33].

14 Ibid at [33].

15 Ibid, ss 2, 3.

16 Ibid, s 3(b).

[11] The act of 'instituting proceedings' is also defined broadly and non-exhaustively.[17] For criminal proceedings, a proceeding will be instituted upon the making of a complaint, the laying of an information for an indictable offence, or the obtaining of a warrant for the arrest of an alleged offender.[18] For civil proceedings, a proceeding will be instituted by 'the taking of a step or the making of an application that may be necessary before the proceeding can be started against a party'.[19] In both civil and criminal proceedings, a proceeding will be instituted by the taking of a step or the making of an application that may be necessary to start *an appeal* in relation to the proceeding or a decision made in the course of the proceeding.[20]

[12] Counsel for the applicant submitted that equivalent provisions to s 4(1)(a) of the Act in other jurisdictions have been interpreted broadly. In *HWY Rent Pty Ltd v HWY Rentals (in liq) (No. 2)*,[21] Perry J held that a party had instituted proceedings by requesting a bankruptcy notice from an Official Receiver, even though the request was not an application to the Federal Court but a prerequisite to the creditor commencing proceedings in court by way of creditor's petition.[22] It was submitted that her Honour's conclusion was relevant to this proceeding because a number of the vexatious

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17 Ibid, s 4.

18 Ibid, s 4(1)(c).

19 Ibid, s 4(1)(a).

20 Ibid, s 4(1)(d).

21 [2014] FCA 449.

22 [2014] FCA 449 at [103].

proceedings instituted by the respondent concern material left by the respondent at the registries of the Supreme Court and Local Court which was rejected or was yet to be processed by the courts. I accept this submission.

[13] In the present case, the respondent has from time to time tried to institute proceedings by filing incoherent, illegible and unhygienic material at the Supreme Court and Local Court registries. He has also purported to institute proceedings by emailing various forms to court officers. This has imposed a substantial burden on Registry staff. In my opinion, such steps are sufficient to constitute instituting a proceeding for the purposes of the Act.

[14] Vexatious proceedings include civil proceedings that are *conducted* vexatiously by a respondent or a defendant.[23] It is doubtful that vexatious proceedings include criminal proceedings that are conducted vexatiously by an accused person.[24] It is unnecessary to resolve this issue here.

[15] In considering whether a person has frequently instituted or conducted vexatious proceedings, the court may have regard to: (i) proceedings commenced or conducted before any court or tribunal in Australia; (ii) the orders of any court or tribunal; and (iii) any proceedings instituted or orders made before the commencement of the Act.[25] I accept counsel for the applicant's submissions that whether a person has "frequently" instituted or

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23 *Vexatious Proceedings Act 2006* (NT), s 2(d).

24 *Mahmoud v Attorney-General of New South Wales* [2017] NSWCA 12 at [32]; *Viavattene v Attorney-General* (NSW) [2015] NSWCA 44 at [26] and [78].

25 *Vexatious Proceeding Act*, s 7(2).

conducted vexatious proceedings must be answered by reference to the circumstances of the particular case.[26] "Frequently" does not mean "habitually and persistently".[27] A court may find that a person has instituted or conducted vexatious proceedings frequently even though the number of proceedings is quite small, such as where the proceedings are an attempt to re-litigate an issue determined against the person.[28]

[16] This proceeding involves, among other matters, several proceedings in which the respondent attempted to re-litigate cases which had been determined against him.

The applicant's case

[17] The applicant's case was as follows.

> The respondent has frequently instituted vexatious proceedings in the Territory and it is in the interests of justice that [orders be made prohibiting him from commencing further proceedings in the Supreme Court and Local Court without leave of the Supreme Court]. The respondent has recently instituted or conducted [72] vexatious proceedings in the Supreme Court and Local Court. The courts have made positive findings that the respondent has instituted proceedings without merit and has conducted proceedings oppressively and for an improper purpose. The respondent has shown a sustained lack of regard for the authority of the courts and their processes and has undermined the administration of justice. In spite of judicial efforts to assist him, the respondent shows no insight into his past conduct nor any willingness to change his behaviour. If an order is not made, it may reasonably be concluded that the respondent's vexatious conduct will

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26 *HWY Rent Pty Ltd v HWY Rentals (in liq) (No. 2)* [2014] FCA 449 at [112]; *Attorney General (NSW) v Gargan* [2010] NSWSC 1192 at [7]; *Attorney General (NSW) v Wilson* [2010] NSWSC 1008 at [12]; *Jones v Cusack* (1992) 109 ALR 313.

27 *HWY Rent Pty Ltd v HWY Rentals (in liq) (No. 2)* [2014] FCA 449 at [111].

28 *HWY Rent Pty Ltd v HWY Rentals (in liq) (No. 2)* [2014] FCA 449 at [112]; *Fuller v Toms* [2013] FCA 1422 at [77]; *Conomy v Maden* [2019] HCA Trans 49 (20 March 2019).

continue into the future and the respondent is likely to impose a very significant and unjustified burden on other litigants and the courts.

The applicant's evidence

[18] The applicant relied on the following affidavits: (i) the affidavits of Ms Tracey Jane Holmes made on 3 August 2017, 22 September 2017 and 29 January 2018; (ii) the affidavit of Mr Lachlan Sebastian Peattie made on 22 September 2017, and (iii) the affidavit of Mr Demetrios Laouris made on 25 September 2017. The affidavits were read and the respondent cross-examined Ms Holmes until he was stopped for continually asking questions I had disallowed. His application to cross-examine Mr Peattie was refused. There was no legitimate basis for the respondent to cross-examine Mr Peattie. Mr Peattie's affidavit was read solely for the purpose of tendering the transcripts of various proceedings, and the respondent was unable to suggest any relevant topics for cross-examination.

[19] At all material times Ms Holmes was either the Acting Supreme Court Registry Manager or the Registry Manager. She had general administrative responsibility for the Supreme Court Registry in Darwin, including the care and control of all documents filed with the Registry. As Acting Registry Manager and Registry Manager, Ms Holmes had lawful access to the Northern Territory government's Integrated Justice Information System ('IJIS') which holds records of all proceedings commenced in Northern Territory courts. Her affidavits address the respondent's activities in the Supreme Court and Court of Appeal since 1 January 2015.

[20] In her affidavit made on 3 August 2017 Ms Holmes deposed that she:

(a) searched IJIS and identified all proceedings the respondent had commenced in the Supreme Court since 1 January 2015;

(b) found that the respondent had commenced 11 proceedings in the Supreme Court, 10 of which had been finalised and one was still on foot; and

(c) inspected the Supreme Court files identified on IJIS. Ms Holmes provided a brief description of each of the proceedings in the files and stated the outcome of each completed proceeding.

[21] Ms Holmes annexed the following documents to the affidavit she made on 3 August 2017:

(a) the Notices of Appeal in files numbered: 21425645 – JA 10 of 2015, 21425645 – AP 5 of 2016, 21457818 – LCA 3 of 2016, 21425645 AP 7 of 2016, 21425645 – AP 7 of 2016, 21425645 – AP 8 of 2016, 21615229 – LCA 18 of 2016, 21618385 – LCA 27 of 2016, 21556341 – LCA 28 of 2016, 21653047 – SC 119 of 2016, 21653047 – AP 13 of 2016, and 21617016 – LCA 20 of 2017;

(b) the reasons for decision in files numbered: 21425645 – JA 10 of 2015, 21425645 – AP 5 of 2016, 21457818 – LCA 3 of 2016, 21425645 – AP 7 of 2016, 21425645 – AP 7 of 2016, 21425645 – AP 8 of 2016, 21615229 – LCA 18 of 2016, 21556341 – LCA 28 of 2016, and 21653047 – AP 13 of 2016;

(c) the order dismissing the appeal in file no. 21618385 – LCA 27 of 2016.

(d) the Originating Motion and report of listing which notes that the proceeding in file no. 21653047 – SC 119 of 2016 was dismissed.

[22] In her affidavit made on 22 September 2017 Ms Holmes deposed that:

(a) she kept a record of the interactions between the respondent and the members of staff in the Supreme Court Registry;

(b) there were extensive interactions between the respondent and Registry staff;

(c) the respondent frequently left extensive bundles of soiled, untidy and disorganised documents without a correct court header at the Registry;

(d) the contents of the documents the respondent left at the Registry were frequently illegible and incoherent;

(e) it was taking staff in the Registry an inordinate length of time to try and process the respondent's documents;

(f) the respondent left various documents at the Registry on 5, 6 and 21 September 2017;

(g) the documents left by the respondent at the Registry on 5 and 6 September were returned to him and not accepted by staff in the Registry because the documents did not comply with the *Supreme Court Rules*, the handwriting on the documents was in large part indecipherable, illegible and incoherent, the respondent's 'affidavits'

were unsworn, the respondent's applications for leave to appeal and Notices of Appeal did not disclose any grounds of appeal, and some of the documents consisted of soiled papers.

[23] Ms Holmes annexed the following documents to her affidavit dated 22 September 2017: (i) letters to the respondent from the member of staff in the Registry who returned the respondent's documents; (ii) copies of various documents left at the Registry by the respondent; (iii) the reasons for decision in *Jenkins v Whittington* [2017] NTSC 65; (iv) the reasons for decision in *Jenkins v Todd* [2016] NTSC 15; (v) the reasons for decision in *Jenkins v Todd* [2016] NTSC 21; (vi) the sentencing remarks of her Honour Kelly J in Trevor Jenkins and Walter Todd dated 10 May 2016; (vii) and the reasons for decision in *Jenkins v Todd* [2016] NTSC 26.

[24] In her affidavit made on 29 January 2018 Ms Holmes deposed that:

(a) On 27 March 2017 the Chief Justice of the Supreme Court made an order and directions concerning the respondent's lodgement and collection of documents at the civil and criminal registries and access to the Supreme Court Library. The order stated that, "Mr Jenkins is refused access to the Supreme Court Library."

(b) On 11 January 2018 the respondent purported to serve summonses and informations for an indictable offence signed by the respondent charging: (i) the applicant with contempt of court; (ii) the applicant with attempting to pervert the course of justice; (iii) the Sheriff of the

Supreme Court, Mr Daniel McGregor, with attempting to pervert the course of justice and; (iv) the Probate and Civil Appeals Officer, Mr Nelson Cu, with contempt of court. The documents were handed to security personnel at the Supreme Court.

(c) The informations for indictable offences commenced private prosecutions in the Local Court against the applicant, Mr McGregor, and Mr Cu. They were stamped with the stamp of the Local Court.

(d) On 16 January 2018 Ms Holmes, the applicant, Mr McGregor, and Mr Cu appeared in the Local Court. Mr Kevin Rabbe and Mr Mike Cox from the Darwin Correctional Centre were also present in court, having been served with similar documents by the respondent.

(e) The respondent failed to appear in the Local Court on 16 January 2018 and the presiding judge dismissed all matters in default of his appearance.

(f) The respondent had one matter in the Supreme Court, *Trevor Jenkins v Justin Firth* LCA 57/17 (21556341) which had not been completed.

(g) On 21 August 2017 his Honour Grant CJ handed down his reasons for decision in *Jenkins v Whittington* [2017] NTSC 65 No. LCA 20/17 (21617016).

(h) Since 21 August 2017 the respondent had attempted to file documents on numerous occasions seeking to refer the Chief Justice's decision in

Jenkins v Whittington to the Court of Appeal. All of the documents were rejected because they did not comply with the *Supreme Court Rules*.

[25] Ms Holmes annexed the following documents to her affidavit dated 29 January 2018: (i) the order and direction of the Chief Justice dated 27 March 2017; (ii) the information for an indictable offence charging the applicant with contempt; (ii) the information for an indictable offence charging the applicant with attempt to pervert the course of justice; (iii) the summons to a person charged with an indictable offence addressed to the applicant; (iv) the information for an indictable offence charging Mr McGregor with attempt to pervert the course of justice; (v) the summons to a person charged with an indictable offence addressed to Mr McGregor; (vi) the information for an indictable offence charging Mr Cu with contempt; and (vii) the summons to a person charged with an indictable offence addressed to Mr Cu.

[26] At all material times Mr Lachlan Sebastian Peattie was a solicitor. He appeared in this proceeding as Ms Brebner's co-counsel. He obtained and annexed to his affidavit the transcripts of hearings in the following proceedings: the justices appeal in the Supreme Court before his Honour Barr J in *Jenkins v Todd* [2016] NTSC 4JA 10 of 2015 (21425645); the interlocutory proceeding brought by the respondent in the Supreme Court before her Honour Kelly J in *Jenkins v Todd* [2016] NTSC 15; the contempt proceeding in the Supreme Court before her Honour Kelly J in *Jenkins v*

Todd [2016] NTSC 21 JA 10 of 2015 (21425645); the breach proceedings against the respondent in the Supreme Court before her Honour Kelly J in *Jenkins v Todd* [2017] NTSC 21 JA 10 of 2015 (21425645); the Local Court proceeding *Trevor Jenkins v The Screening Authority* LCA 21457818; the Local Court proceeding *Police v Trevor Jenkins* LCA 21556341; the Local Court proceeding *Police v Trevor Jenkins* LCA 21617016; the contempt proceeding in the Local Court in *Police v Trevor Jenkins* LCA 21617016; the Local Court proceeding *Trevor Jenkins v Daniel McGregor* LCA 21618385; and the Supreme Court proceeding *Trevor Jenkins v Daniel McGregor* LCA 27 of 2016 (21618385). The transcripts include transcripts of interlocutory proceedings against the respondent instituted orally and contain evidence of the general nature of his conduct.

[27] At all material times Mr Demetrios Laouris was the Director of the Local Court North and Principal Registrar of the Local Court. He had the general administrative responsibility for managing the Local Court Registry at Darwin including the care and control of all documents filed in the Registry. He was authorised to access and inspect all documents held on Local Court files. Mr Laouris's affidavit contains evidence of the respondent's activities in the Court of Summary Jurisdiction and Local Court since 1 January 2014.

[28] In his affidavit Mr Laouris deposed the following and annexed the documents referred to in his depositions:

(a) He caused Registry staff to undertake a search of IJIS to identify all Local Court proceedings involving the respondent which commenced after 1 January 2014.

(b) The search found that since 1 January 2014 the respondent had been a party to 19 proceedings in the Local Court. 16 of those proceedings were criminal proceedings and three were civil proceedings.

(c) Two criminal proceedings that commenced before 29 September 2017 were instituted by the respondent.

(d) The respondent had instituted the three civil proceedings.

(e) In the matter of *Jenkins v The Screening Authority* LCA 21451437: (i) on 5 November 2014 the respondent filed a Notice of Appeal against a decision of the Screening Authority not to issue him with an 'ochre card'[29]; (ii) the respondent failed to appear at a pre-hearing conference on 24 November 2014 and the Notice of Appeal was dismissed; (iii) on 22 June 2015 the respondent refiled the Notice of Appeal filed in proceeding LCA 21451437, and that appeal was re-constituted LCA 21457818; (iv) on 11 September 2015 a pre-hearing conference was held by the Registrar of the Local Court and the matter was adjourned to a directions hearing on 21 September 2015; (v) the respondent failed to appear on 21 September 2015 and the Notice of

29 "Ochre Card" is the common name for a clearance notice for working with children issued under s 189 of the *Care and Protection of Children Act 2007* (NT).

Appeal filed on 22 June 2015 was dismissed; (vi) on 28 September 2015 the respondent filed an application seeking to have the order setting aside the Notice of Appeal dismissed and a rehearing of the directions hearing; (vii) on 26 October 2015 another magistrate granted the respondent's application; (viii) on 6 January 2016 the respondent issued nine summonses to give evidence and eight summonses for the production of documents in the proceeding; (ix) on 25 January 2016 Lowndes CM set aside all but one of the summonses; (x) the proceeding was again mentioned on 12 February 2016, 4 March 2016 and 11 March 2016; (xi) on 17 March 2016 the proceedings was further adjourned to 18 April 2016 for hearing; (xii) on 18 April 2016 the respondent did not appear at the hearing and the Notice of Appeal filed on 22 June 2015 was dismissed; (xiii) on 22 April 2016 the respondent filed an application to set aside the decision of Lowndes CM made on 18 April 2016. The application was not served on the Screening Authority until 9 September 2016; (xiv) on 19 September 2016 Judge Armitage set aside the decision of Lowndes CM and listed the matter for hearing on 12 December 2016; (xv) on 1 December 2016 the respondent filed an application to vacate the hearing listed for 12 December 2016. The application was heard before Judge Woodcock and was refused; (xvi) on 8 December 2016 the respondent lodged a Notice of Appeal against Judge Woodcock's decision; (xvii) on 9 December 2016 the respondent filed a further application to vacate the hearing date of 12 December

2016; (xviii) on 12 December 2016 the matter was adjourned to 19 December 2016 and on 19 December 2016 the matter was adjourned to 23 January 2017 because the respondent had been remanded in custody by her Honour Kelly J; (ixx) on 15 and 20 March 2017 the respondent filed two applications respectively seeking orders that the proceedings be relisted before Judge Neill and that he recuse himself from hearing the matter; (xx) on 30 March 2017 Judge Neill struck out the Notice of Appeal dated 22 June 2015 and shortly after leaving Court the respondent lodged a Notice of Discontinuance or Withdrawal; (xxi) on 3 April 2017 the respondent filed an application seeking to set aside the order of Judge Neill made on 30 March 2017. The application was heard by Judge Woodcock on 10 April 2017, the respondent did not appear, and the application was dismissed; (xxii) on 10 April 2017 the respondent filed an application to set aside the order of Judge Woodcock made on 10 April 2017. The application was dismissed by Judge Neill in chambers on 29 May 2017; (xxiii) in total, LCA proceeding 21457818 was listed and heard 27 times in the Local Court.

(f) Having been unsuccessful in the proceeding against the Screening Authority, the respondent commenced similar proceedings in the Local Court against the Commissioner of Police. However, the documents that he filed were not processed by the Local Court Registry.

(g) The respondent engaged in similar conduct in: *Darwin City Council v Jenkins* LCA 21615529; the criminal proceeding of *Jenkins v McGregor*

LCA 21618385; and the criminal proceeding of *Jenkins v O'Neill* LCA 21604674.

(h) In the criminal proceeding of *Police v Trevor Jenkins* LCA 21617016, the respondent was convicted of a number of criminal offences and during the course of the proceeding he was found guilty of contempt. Following his convictions, the respondent filed three Notices of Appeal and three applications to set aside his convictions.

(i) In the criminal proceeding of *Police v Jenkins* LCA 21556341, the respondent was found not guilty of one count and convicted of the remaining counts. Once again he filed a number of Notices of Appeal and applications to set aside conviction or order. All of the proceedings commenced by the respondent were unsuccessful.

(j) On 3 August 2017 the Local Court Registry received a number of criminal originating processes from the respondent.

(k) On 5 September 2017 the Local Court Registry received a number of informations for indictable offences charging the Probate and Appeals Clerk of the Supreme Court, Mr Nelson Cu, the applicant, Mr Daniel McGregor, and Mr Ian Rowbottam with various criminal offences.

(l) On 15 September 2017 the Local Court Registry received a criminal complaint and a number of informations for an indictable offence

charging Mr Kevin Rabbe, Mr Mick Caldwell, Mr Alex "Skipprious" (sic), Mr Mark Daffey, Mr Robert Daffey and Deputy Superintendent Mike Cox with various criminal offences.

Section 91 of the *Evidence (National Uniform Legislation) Act 2011* (NT)

[29] As is apparent from the applicant's case, evidence of the decisions or findings of fact in other proceedings involving a respondent may constitute critical evidence in proceedings under vexatious proceedings legislation.[30] The admissibility of such evidence is arguably subject to s 91 of the *Evidence (National Uniform Legislation) Act 2011* (NT) which provides:

> (1) Evidence of the decision, or of a finding of fact, in an Australian or overseas proceeding is not admissible to prove the existence of a fact that was in issue in that proceeding.
>
> (2) Evidence that, under this Part, is not admissible to prove the existence of a fact may not be used to prove that fact even if it is relevant for another purpose.

[30] The respondent did not raise s 91 of the *Evidence (National Uniform Legislation) Act 2011* (NT). However, as the respondent was unrepresented, I asked counsel for the applicant to make submissions about this issue. For the following reasons, I ruled that all of the reasons for judgment and orders annexed to the affidavits of Ms Holmes and Mr Laouris, and the transcripts of proceedings annexed to the affidavit of Mr Peattie, were admissible.

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30 *Attorney-General (Vic) v Horvath, Senior* [2001] VSC 269 at [28]. See also *Attorney-General (Vic) v Knight* [2014] VSC 549 at [39]–[40]; *Attorney-General (Vic) v Pham* [2014] VSC 311 at [18]; *Slaveski v Attorney-General (Vic)* [2013] VSCA 165 at [14], [27]; *Attorney-General (Vic) v Bahonko* [2011] VSC 352 at [80]; *Attorney-General (Vic) v Shaw* [2007] VSC 148 at [5].

[31] Equivalent provisions to s 91 of the *Evidence (National Uniform Legislation) Act 2011* (NT) have been considered and applied in vexatious litigant proceedings in other jurisdictions. In *Attorney-General (NSW) v Martin*[31] her Honour Simpson J observed that:

> Section 91 constitutes a considerable fetter on proof of the matters necessary to be proved in order to establish that proceedings are vexatious. Given that the *Vexatious Proceedings Act* [NSW] has three important objectives – (i) to protect potential defendants against unwarranted litigation; (ii) to protect courts against abuse of their processes; and (iii) to ensure that valuable court time is available for litigation and resolution of genuine disputes – applications thereunder should not be impeded by fetters on the admissible evidence. In its application to the *Vexatious Proceedings Act*, s 91 is antithetical to those objects.[32]

[32] Her Honour Simpson J observed that the admissibility of records of judgment depended upon "an analysis of the facts that were in issue in the proceedings giving rise to each judgment and the findings of fact made in the judgments."[33] Her Honour held that where a party seeks to use records of judgment to establish the nature of the proceeding and the nature of a proceeding was a fact in issue, the records are inadmissible. Accordingly, her Honour concluded that certain judgments relied on by the applicant in that case were inadmissible by reason of s 91. For example, in reference to a judgment of the New South Wales Land and Environment Court where proceedings had been struck out as an abuse of process, her Honour stated:

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31 [2015] NSWSC 1372 at [132].

32 Ibid.

33 Ibid at [20].

> The Attorney General relied upon this judgment to establish that the principal proceedings were vexatious within the definition of "vexatious proceedings" in ss 6(a) and 6(c) of the *Vexatious Proceedings Act* [NSW] — that is, that the proceedings were an abuse of process of the Land and Environment Court, and that they were instituted or pursued without reasonable ground.
>
> That is, in substance, precisely what Commissioner Dixon found. In other words, the Attorney General seeks to rely upon the factual findings of Commissioner Dixon to establish the existence of the relevant facts for the purposes of s 6. That the proceeding before Commissioner Dixon disclosed "no reasonable cause of action" is a finding of fact that the proceedings were instituted "without reasonable ground". That is the very fact that the Attorney General seeks to prove in order to establish that the proceedings were vexatious within the meaning of s 6(c). Commissioner Dixon also found that the proceedings were an abuse of process. That is the very fact that the Attorney General seeks to prove in order to establish that the proceedings were vexatious within the meaning of s 6(a).
>
> Accordingly, s 91 of the *Evidence Act* [NSW] precludes reliance upon Commissioner Dixon's findings of fact for the purpose of proving that the proceedings were vexatious.[34]

[33] However, in *Attorney-General (NSW) v Mohareb*[35] Schmidt J expressly disagreed with such an approach. Her Honour stated:

> I find myself in disagreement with Simpson J's approach to the construction of s 91.
>
> The term "finding of fact" is not defined in the *Evidence Act* [NSW]. While issues which arise for resolution in particular proceedings will very frequently depend on findings of fact made on the evidence, not every finding made, or conclusion reached on matters in issue involves a finding of fact. In some cases they involve the resolution of questions of law and often, the resolution of questions of mixed fact and law.
>
> […]
>
> As found in *Teoh*, decisions of that kind are admissible in proceedings brought under the *Vexatious Proceedings Act* [NSW]. Views expressed in such decisions are not binding, but they are relevant to what arises to be decided in proceedings under that Act, not because they are tendered

34 Ibid at [37]–[39]; see also [65]–[67].

35 [2016] NSWSC 1823.

in order to prove the existence of a fact that was in issue in the earlier proceedings, but rather, to establish the fact that the earlier proceedings existed, that the defendant was a party to them, how they were resolved and in some cases, the views the presiding judge expressed on matters which also fall within the definition of "vexatious proceedings". That term is defined in s 6 of the *Vexatious Proceedings Act* to include:

> (a) proceedings that are an abuse of the process of a court or tribunal; and
>
> (b) proceedings instituted to harass or annoy, to cause delay or detriment, or for another wrongful purpose; and
>
> (c) proceedings instituted or pursued without reasonable ground; and
>
> (d) proceedings conducted in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose.

All of those matters also involve questions of law. They must certainly be decided on facts found, but conclusions reached in the earlier proceedings on those questions are not themselves "findings of fact". Nowadays, given obligations such as those imposed by s 56 of the *Civil Procedure Act 2005* (NSW), conclusions that particular proceedings, or an aspect of them, involve an abuse of process; were instituted or conducted in a way so as to harass or annoy, to cause delay or detriment, or for another wrongful purpose; or were instituted or pursued without reasonable ground, are not infrequently reached in judgments given both at interlocutory and final stages of the proceedings.

That does not render such judgments inadmissible under s 91 of the *Evidence Act*, in later proceedings, including those brought under the *Vexatious Proceedings Act*, unless the judgment is sought to be tendered to prove the existence of a fact that was in issue in the earlier proceeding. If tendered to establish the existence of the proceedings, who the parties were and how a question of law, or a question of mixed fact and law, was resolved in those proceedings, s 91 does not render the judgment inadmissible.[36]

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36 Ibid at [25]–[26], [30]–[32].

[34] In *Attorney-General for the State of Victoria v Andrew Garrett*[37] his Honour McDonald J considered the conflicting approaches. His Honour provided the following reasons:[38]

> I have concluded that the judgments of Ormiston JA in *Kay* and Ashley J in *Attorney-General (Vic) v Horvath, Senior*, although preceding the enactment of s 91 of the *Evidence Act*, correctly state the test for the admissibility of evidence to be relied upon in an application for a general litigation restraint order. A judge hearing a general litigation restraint order application must make an independent determination of whether an individual has commenced and/or conducted vexatious proceedings. *In doing so, a judge is entitled to have regard to court orders and reasons for judgment and proceedings which are relied upon by the applicant for the order. Insofar as the judgments and court orders record findings as to the nature of the proceedings (such as whether the proceedings should be dismissed as an abuse of process), this is a finding of mixed fact and law. Section 91 does not operate to preclude reasons for judgment and orders in respect of such proceedings from being admitted into evidence in support of an application for a general litigation restraint order* [which is a similar order to the order being sought by the applicant in this case].
>
> Section 91(1) of the *Evidence Act* codifies a long-standing common law principle that findings of fact in one judgment are inadmissible in a subsequent proceeding against a non-party to the prior proceeding, except, where relevant, to ascertain the parties to those proceedings and the issues raised in the litigation as disclosed in the reasons for judgment. The judgments in *Kay* and *Horvath* preceded the enactment of s 91 of the *Evidence Act*. However, the admissibility of the judgments and orders relied upon for those proceedings was subject to a common law principle relevantly indistinguishable from the terms of s 91(1). Further, there is a substantial body of authority in respect of s 21(2) of the *Supreme Court Act 1986* which has applied the reasoning of Ashley J in *Horvath* subsequent to the enactment of s 91 in the *Evidence Act 2008*. These judgments include the judgment of the Court of Appeal in *Slaveski v Attorney-General (Vic)*.
>
> Further, when the *Vexatious Proceedings Act 2014* was enacted, s 21(2) of the *Supreme Court Act 1986* was of long standing. There is nothing in the terms of the *Vexatious Proceedings Act*, nor the parliamentary materials accompanying its enactment, which supports the conclusion

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37 (2017) 51 VR 777.

38 (2017) 51 VR 777 at 785–7 [22]–[27].

that Parliament intended that the threshold for declaring an individual a vexatious litigant would be more onerous under the *Vexatious Proceedings Act* than under s 21 of the *Supreme Court Act 1986*. To the contrary, s 29(2) broadens the range of matters to which the court may have regard for the purpose of being satisfied whether a general litigation restraint order should be made. The court may take into account any matter it considers relevant. The legislative intention to broaden the material which may be taken into account by the court is reflected in the second reading speech […]

My conclusion that:

- s 91(1) codified a longstanding common law principle;
- There was a long history of the Supreme Court having regard to judgments and orders when determining vexatious litigation applications, including the applications heard subsequent to the enactment of s 91(1); and
- The *Vexatious Proceedings Act* and the materials accompanying its passage through Parliament manifest a clear, legislative intention to expand the range of matters which can be taken into account by a court informing the requisite satisfaction that an individual has commenced and/or conducted vexatious proceedings

supports a finding that the court is not precluded by s 91(1) of the Evidence Act from admitting into evidence, judgments and orders relevant to the question of whether a person has persistently and without reasonable grounds conducted vexatious proceedings.

[35] I agree with his Honour McDonald J's reasons for decision. This approach is further supported in the Territory by the existence of s 7(2)(b) of the Act. That subsection expressly provides that the Court may have regard to orders made by any court or tribunal.

Use of the information obtained from IJIS

[36] The respondent objected to the tender of all information that had been obtained by Ms Holmes and Mr Laouris from IJIS. In his closing address the respondent made the following submission:

> […] what I wanted to bring up was just how the submissions and the affidavits were gained and worked on. I say that there was illegal access to the IJIS… And so if a person is going to be accessing IJIS and searching what we're opening up is a can of worms of data theft, of data privacy where people can search through - - -
>
> [I then asked the respondent to go to the law on this issue and he stated]
>
> It's just it's a basic thing. I don't have that kind of knowledge. It's a basic thing whenever I've gone into the anything the only person (sic) that can access IJIS are the police. And even when you go down to the courts and you ask for IJIS things on your own IJIS you can't IJIS things.
>
> I went yesterday to the police about IJIS. Anybody has to give a reason for that. It's regularly in and out of the courts about that kind of data theft and those sort of things. And what we're opening up there is like a police state where police can be searching like East Germany during the 80s where a person can look through and trawl through something and decide what's bad, what's good
>
> […]
>
> The Judicial Registrar is accessing private information via a solicitor for the NT to get IJIS without my permission […] I actually rung up as soon as I found out about it. In September I talked to Jim Laouris. I said – and I also talked to Alexis Schubert. I said, "I've heard that they're going to go through and list all my cases." He said, "Well, I don't know if they could do that." Okay, the words were, "Well, I'll only do what I can be instructed." So, in other words, they knew that they couldn't. I said they couldn't. They told me they couldn't. […] Lachlan Peattie then instructed them and then said that was all right. He doesn't have the official power to do that. Only the police have the power to do that […]
>
> […] <u>I don't have Ross on Crime, but one of the major cases was John Elliott was taken to the I think the National Crimes Commission and he was asked – they were using private information on him that the Crimes Commission was searching him to try to get him for fraud and criminal activity and they said – that was brought up I think in – I don't know, the Court of Appeal, said that he was – they couldn't do that.</u>

[37] In essence, the respondent submitted that:

(a) Ms Holmes and Mr Laouris accessed his private information which had been recorded on IJIS when they were not authorised to do so.

(b) The evidence contained in their affidavits was obtained through unlawful or improper means.

(c) The evidence should either be excluded or the proceeding stayed.

[38] I overruled the respondent's objection. It could not be sustained. IJIS is a computer information system established by the courts and a number of government agencies including the Department of Attorney-General, Police, and Corrections. It is the main information system of the courts in the Territory. The information on IJIS does not contain private information about the respondent. IJIS is used by the courts and the participating government agencies to record and access information about court proceedings and other matters. For example, after a court sentences an offender and commits him or her to prison, the committal order is entered into IJIS by court staff and may be accessed by Corrections staff.

[39] Both Ms Holmes and Mr Laouris were authorised to access IJIS by virtue of their positions as senior court officers. There was nothing improper or unlawful in them using IJIS in the manner and for the purpose deposed to in their affidavits. The information they accessed was entered into IJIS by court staff. The same information can be obtained from the hard copies of court files. However, it is more efficient and less time consuming to obtain the information from IJIS where the data can be electronically searched.

[40] The respondent's reference to Ross on Crime[39] and to Mr John Elliott was most likely a reference to the cases of *Jarrett v Seymour & Ors*[40] and *Elliott v Seymour & Ors*,[41] which are discussed in Ross on Crime. The applicants in the cases were Mr Elliott, Mr Jarratt and Mr Camm. All of the applicants were directors or officers of Elders IXL Ltd. The respondents were Sergeant Douglas Seymour (a police officer), the National Crime Authority ('NCA'), Mr Thomas Sherman (the head of the NCA), and the Director of Public Prosecutions for Victoria. The applicants obtained an interim ex parte injunction from Olney J in the Federal Court restraining the respondents from charging the applicants or any other person with any offence in relation to the "foreign exchange matter". Their application to have the injunction extended was refused by Foster J[42] and their appeal against his Honour's decision was dismissed by the Full Court of the Federal Court[43]. Likewise, a similar application, which was made to the High Court pending an application for special leave to appeal from the decision of the Full Court of the Federal Court, was refused by Gaudron J.[44] The applications were dismissed largely on grounds to do with the balance of convenience and the adequacy of the criminal process to deal with the issues raised by the applicants.

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39 Mirko Bagaric, *Ross on Crime* (Lawbook Co, 8th ed. 2018) at 562–3 [4.3020].

40 (1993) 46 FCR 521 (Foster J); and (1993) 46 FCR 557 (Full Court of the Federal Court).

41 [1993] HCA 70; 68 ALJR 173.

42 *Jarrett v Seymour* (1993) 46 FCR 521.

43 *Jarrett v Seymour* (1993) 46 FCR 557.

44 *Elliott v Seymour* [1993] HCA 70; 68 ALJR 173.

[41] The facts in *Jarrett v Seymour* and *Elliott v Seymour* were as follows. The NCA investigated certain transactions which Elders IXL Ltd entered into. These transactions became known as the "foreign exchange matter". The investigation had been conducted by the NCA purportedly pursuant to references given to the NCA under s 13 and s 14 of the *National Crime Authority Act 1984* (Cth). Sergeant Seymour was a member of Australian Federal Police who was seconded to the NCA and had access to the information obtained by the NCA during its investigation into the foreign exchange matter. He formed the view that the NCA had obtained sufficient information to justify charging the applicants with criminal offences arising out of the relevant transactions. Sergeant Seymour was subsequently sworn in as a Special Constable of the Victorian Police Force. The NCA had no express power to lay or prosecute criminal charges. Instead, if it obtained evidence that is admissible in the prosecution of an offence, the NCA's obligation under s 12(1) of the *National Crime Authority Act 1984* (Cth) was to assemble the evidence and give it to a relevant enforcement agency or any person who is authorised under a law of the Commonwealth or a State or Territory to prosecute the offence. It was understood that: (i) the Director of Public Prosecutions (who was a relevant enforcement agency under s 12(1)) did not intend to lay any charges but would take over any prosecution initiated by another party; and (ii) Sergeant Seymour intended to lay criminal charges against the applicants.

[42] Among other things, the applicants in *Jarrett v Seymour* and *Elliott v Seymour* contended that the references relied upon by the NCA under s 13 and s 14 of the *National Crime Authority Act 1984* (Cth) were not valid references in so far as the necessary consultation and approval required by the sections had not be obtained and therefore any information obtained by the NCA was illegally obtained. As a result, the evidence would be inadmissible in any prosecution commenced against the applicants. Further, rather than referring the matter to a relevant enforcement agency, the NCA had adopted a 'device' of handing the prosecution of the matter to a sergeant of police who was a member of its staff. Therefore any prosecution was an abuse of process which was doomed to fail and should not be commenced.

[43] The cases of *Jarrett v Seymour* and *Elliott v Seymour* are clearly distinguishable from this proceeding for the reasons stated at [38] to [39] above. For the same reasons, s 138 of the *Evidence (National Uniform Legislation) Act 2011* (NT) has no application in this proceeding.

The respondent's evidence

[44] When this proceeding commenced the respondent was a prisoner in Darwin Correctional Centre. On 3 August 2017 he was served in prison with the Originating Motion by Mr Peattie. The respondent told Mr Peattie that he did not accept the documents and they were left with him.

[45] On 21 August 2017 a call up order was made for the respondent to appear in court on 1 September 2017. On that day the respondent informed the Court

that he had applied for legal aid and the proceeding was adjourned to 11 September 2017 pending the outcome of his application for legal aid. On 11 September 2017, Mr Mark Thomas of counsel appeared as amicus. Subsequently, the respondent retained Mr Thomas to act for him. It is unclear whether Mr Thomas's representation of the respondent was obtained through legal aid or whether there was simply a grant of aid limited to investigating the respondent's prospects of success. The Court directed the applicant file and serve all the material the applicant intended to rely on by the close of business on 22 September 2017 and the proceeding was adjourned to 9 October 2017.

[46] On 11 September 2017 the respondent filed his written submissions. The document is a handwritten document that is about one centimetre thick. Some of the pages are upside down and the contents of the document are comprised of incoherent and irrelevant ramblings.

[47] On 9 October 2017 the proceeding was listed for hearing on 18 and 19 January 2018 and the proceeding was adjourned to 19 October 2017. On 19 October 2017 the applicant was ordered to file the applicant's written submissions by 24 November 2017 and the respondent was ordered to file any further written submissions by 4 January 2018. The respondent did not comply with this direction and no further written submissions were filed by him.

[48] On 21 December 2017 the hearing dates of 18 and 19 January were vacated and the matter was listed for a two day hearing commencing on 31 January 2018.

[49] On 15 January 2018 the respondent informed the Supreme Court Registry that he was seeking an adjournment because he was self-represented. He had been released from prison by this date. However, no interlocutory application seeking an order vacating the hearing dates was filed. On 16 January 2018 my Associate sent an email to the parties confirming the hearing dates of 31 January and 1 February 2018. On 17 January 2018 my Associate sent an email confirming the hearing dates to Mr Thomas who had up until 15 January 2015 been appearing on behalf of the respondent. On the same date, Mr Thomas replied by email stating that, "My position regarding whether I am instructed in this case is utterly uncertain and needs to be clarified as soon as possible."

[50] On 22 January 2018 Mr Thomas sent an email to my Associate advising the Court that he was no longer acting for the respondent.

[51] On 30 January 2018 the respondent received a letter from the Northern Territory Legal Aid Commission advising him that legal aid had been refused and that he may appeal against the refusal of legal aid.

[52] On 31 January 2018 Mr Thomas sought and was granted leave to cease acting for the respondent. He told the Court that he no longer proposed to act for the respondent. Why this was so was never made entirely clear.

Mr Thomas told the Court that despite the respondent's communication with the Registry on 15 January 2018, he had not informed Mr Thomas that he had withdrawn his retainer. At all times Mr Thomas understood that the respondent wanted him to act for him. It seems that Mr Thomas may have been experiencing difficulties arising out of another matter in which he had appeared as counsel.

[53] The respondent was then asked to tell the court his position. Contrary to what he had stated on 15 January 2015, the respondent stated:

> I'm not representing myself even at the moment because I asked for legal aid. I was granted legal aid […]. Mr Thomas also said during that time that if he ever ceased that I could make a grant (sic) for another legal aid lawyer and I have done that. I have put in an appeal for my legal aid grant. I have talked to grants and then they've given say three weeks to look at that. I also put in a pro bono situation (sic) to the Law Society.

[54] The respondent informed the Court that he wished to appeal against the refusal of legal aid. In order to save time and to accord the maximum assistance to the respondent I made the following directions on 31 January 2018:

1. The applicant's case was to be heard in full on 31 January 2018.

2. The applicant's evidence is to be received *de bene esse*.

3. The respondent's rights (either as a litigant in person or through his counsel if is ultimately successful in obtaining legal aid) to object to any of the applicant's evidence, cross-examine the deponents of the

applicants affidavits, tender evidence, and make submissions are preserved.

4. The full transcript of today's proceedings is to be made available to the respondent.

5. The time for filing and serving the following affidavits is extended:

   (a) The affidavit of Tracey Holmes sworn 29 January 2018.

   (b) The affidavit of Dimitrios Laouris sworn 25 September 2017.

   (c) The affidavit of Lachlan Sebastian Peattie sworn 22 September 2017.

7. Leave is granted for the applicant to amend the order sought in the Originating Motion and the summons on Originating Motion in the same terms set out in paragraph 2 of the applicant's written submissions. The documents, amended accordingly, are to be filed and served by 7 February 2018.

8. The matter is adjourned for mention or directions to 9 am on 14 February 2018.

[55] The above orders enabled the respondent to be as fully informed as possible about the applicant's case and to be accorded more than adequate time to prepare his case. A similar course was adopted by Adamson J in *Attorney*

General (NSW) v Chan.[45] Nonetheless, the orders I made were resisted by the respondent.

[56] After the orders were made, the respondent left the court. However, after Ms Brebner started presenting the applicant's case, he reappeared and interrupted the hearing. The matter was then stood down until 12 pm to enable the respondent to have a lawyer from the Northern Territory Legal Aid Commission appear on his behalf. At 12 pm Ms Fu appeared to assist the Court. She did not appear on behalf of the respondent. Ms Fu told the Court that she was the Managing Practitioner of the Grants and Assignments Section of the Northern Territory Legal Aid Commission. Ms Fu was informed of the basis on which the Court was proceeding. She then left. Ms Brebner then continued to present the applicant's case. After that Mr Peattie addressed the Court on the criminal proceedings involving the respondent. The respondent was absent during Ms Brebner's presentation of the applicant's case but returned during Mr Peattie's address. When he returned I informed him that he had waived his right to be present during his absence and that the case was proceeding as I had ordered. The respondent continued to interrupt the proceeding and was ultimately physically removed from the courtroom for a period of time to enable counsel to complete the applicant's case. At the conclusion of the presentation of the applicant's case the basis on which the court was proceeding was again explained to the respondent.

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45 [2011] NSWSC 1315 at [3] to [18].

[57] The respondent was subsequently provided with the transcript of the hearing on 31 January 2018, copies of the Act and the authorities on which the applicant relied, and a document containing a list of proceedings relied on by the applicant which identified whether the proceeding was a substantive or interlocutory proceeding, stated the basis on which it was alleged that the proceeding was vexatious, and identified the affidavit in which the relevant evidence could be found. He was also provided with further copies of the applicant's written submissions and the affidavits on which the applicant relied.

[58] Before 14 February 2018 the Court was advised that the respondent had been refused legal aid and that he had 14 days to further appeal. On 14 February the proceeding was adjourned to 28 February 2018. On 28 February 2018 the matter was adjourned to 22 March 2018. On 22 March 2018 the matter was adjourned to 14 May 2018. On 14 May 2018 the matter was adjourned to 15 May 2018. The purpose of these adjournments was to enable the respondent to exhaust the legal aid appeal process and to see if he could obtain pro bono assistance. He was unsuccessful in obtaining legal aid. However, it appeared that he may be able to obtain assistance from Ms Felicity Gerry QC. On 15 May Ms Gerry appeared by telephone. At that stage she had not been able to formulate a concrete plan to assist the respondent and was unavailable for an extended period of time. In the circumstances, it appeared as though all potential avenues of assistance for the respondent had been exhausted and I made the following orders.

1. The respondent's written submissions are to be filed and served by 11 June 2018.

2. The applicant's reply is to be filed and served by 25 June 2018.

3. The matter is listed for hearing for one day on 16 July 2018.

4. Ms Gerry QC and the respondent are granted liberty to apply to bring the matter back at short notice if they are able to formulate a concrete plan for assisting the respondent and a timeline for that assistance [They were unable to do so.].

[59] On 12 June 2018 the time for filing the respondent's written submissions was extended to the close of business on 13 June 2018. The respondent did not comply with this direction. Ultimately, he was granted leave to: (i) give oral evidence; (ii) call witnesses by way of telephone link; and (iii) make oral submissions.

[60] On 16 July 2018 I informed the respondent that the Court would be proceeding in the following manner: (i) I would hear his objections to the applicant's affidavits; (ii) the court would receive his evidence; and (iii) he could make any submissions that he wished to make. He was then asked if he had any objections to the applicant's affidavits. His primary objection was that the applicant could only rely on civil cases not criminal cases. As I have stated at [30] above, I determined that civil and criminal proceedings instituted by the respondent could be relied on and I had no regard to the

criminal cases in which the respondent was the defendant. For the remainder, his objections consisted of incoherent and discursive rambling and agitated and vituperative gabbling.

[61] After the respondent's objections were dealt with the respondent gave evidence. His evidence was incoherent and largely irrelevant. At no stage did he attempt to address the matters set out at [8] above. For example, he stated the following.

> Hello, my name is Trevor Jenkins and I'm here defending myself in a vexation litigation. I don't use computers because they hurt my eyes and destroy my retinas and they create cancer, so I won't use computers, so I want that taken into account when you're saying I am vexatious and handwrite documents, because I – you know, that's the way it is.
>
> […]
>
> My personality and behaviour is that I'm a devout Christian and artistic zeal and they aren't supported as vexatious by any legal definition currently at play of 2018, so I don't see anything about being an artist or being an activist or being what (inaudible) an unreasonable man. The reasonable man fits into the system. The unreasonable man makes the system fit into his ideas. There wouldn't be any progress without the unreasonable man and then there is a situation also, Murphy J quoted in his High Court case, "We couldn't have any change unless people were actually standing up for the system, especially for poor people." That's been my life. That's the life that I live and in all the cases that I've had with Kelly J and Grant J (sic) and the people that are quoted extensively and I go through those statements about how I'm wasting time. There's no – I have never been able to give evidence on being an artist. Kelly J said, "I don't want him talking about being an artist. I want him to shut up."[46] Grant J (sic) will go, "He just talks gibberish." I don't speak – I don't speak gibberish. I stand for government, I talk on the radio, I talk at festivals. People say I speak very well and I do speak very well and you can hear me here and I get a chance to talk and when I get a chance to speak, people understand me and I speak very well.

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46 The respondent's statement that Kelly J told him to shut up is a false statement. This allegation is dealt with by her Honour in *Jenkins v Todd* [2017] NTSC 26 at [6]c.

I'm well known in the Northern Territory and I'm a Northern Territory legend.

[…]

I've gone down to mediation here even with the Registrar themself. They don't want to talk to me. They don't want to sit down and go through those things. They don't want to mediate. The situation of being a vexatious litigant is because it's the only way for me to meet these people – and I email them, they don't answer me. When I write a letter, they don't answer me, unless I go to antidiscrimination…

I went to antidiscrimination about this particular case of filing documents and being able to use the library on things. I went to the antidiscrimination, the new yourself Southwood J, there was – there is machinations involved with Daniel McGregor to go, "Oh well, Mr Jenkins can't even use the antidiscrimination system." So a system outside the court, a system where you can mediate, I wasn't allowed to use that. An order was issued, so then I have to challenge that order just to get my rights, just to be the person that I am.

[…]

I started talking about *Jenkins v Screening Authority* and I gave you a background on that. And then there was cases with the ochre card that I became aware that the ochre card screening was under the police situation and I was aware because I will make a lot of complaints to the ombudsman and the ombudsman has – completes complaints, so I was aware that I was being targeted by people making me apply and not get an ochre card simply because I'd given evidence under the - to the ombudsman and there was a retaliation aspect of that.

[…]

I feel extensively that, administratively, through the Supreme Court and through the Registry and also through cases that I've taken primarily against Daniel McGregor and also towards people in the prosecution, the DPP, I feel that when cases have been brought against me as a retaliation because those people haven't been set aside. When I took the case, the case that I was going to talk about with – just before, Jenkins v McGregor which I have as 21618385, after that case, Daniel McGregor should have been stood aside until that happened, but then he was in power to be able to exercise things that happened, which then I believe led me to be arrested and exercised things where he was having the jurisdiction over me he shouldn't of had when I was the complainant. And that's – so I have taken those matters up with what you call the blow the whistle, the PID, which then all of those things will eventually become ICAC cases. So that's what I – I believe in justice in those situations. It's certainly not – a vexatious thing is about trying to hurt people and bring them into things where you don't have a

case. I definitely have a case. I'm not trying to waste the court's time because I have tried and tried and tried to go through every avenue from the health complaints commission to getting the matter reviewed to going to the Justice – I don't know what you call it. It's like the community Justice Centre. People don't want to mediate. People don't want to talk. Even in this situation, there should have been a mediation, but you didn't – he didn't hand it to a mediation. I'm that kind of person. I mean, I go to church every week. I'm for change within the system.

[…]

Ruth Brebner will say, "There's a different ways of doing this, Mr Jenkins." Well, I go through all those recommendations and I go through that, that the people themselves have to be held to account to those things, because my experience, when I was in gaol, even the evidence that I've given on just or – tapes and things like that of the recordings of the – my phone calls to the court, I was told I couldn't appeal when I was in gaol because I was sentenced. You can appeal when you're sentenced. I can put in the forms to do that. When I get told that Daniel McGregor told me that I couldn't actually cross-examine staff. Witnesses aren't – property, so he is not able to tell me that.

[…]

There was a situation where I went up to the – I was using the Supreme – because I was a self-represented litigant. I was using the Supreme Court Library. I sat up there with Frieda and two other women up there. I got on famously with them and I got cases done, organising me to be able to do forms and organise that, to understand the system, to watch things, to do that. I understand all that. And when a situation – I can't – there's only one other legal library in Darwin that a person can use and that's out at the Charles Darwin. They don't keep books on the shelf. They don't. They don't even keep up their records correctly. You go to get legislation, this thing is missing. That doesn't happen up there. I mean if I want to get a full representation using my mind and like I – I have – a genius IQ of over 220. So I write, I paint, I sing, I play guitar. I do all those things at a rate that other people don't.

[…]

People have opinions. People have reasons for doing things. They want to stop me because I represent poor people representing those things and I think that you've got a lesser full robust justice system when you are not listening to the poor people. And in the situation over in Old Bailey, on the front, it says "Defend the poor." That's the whole chamber of the Westminster system. They were not killing people, they're not sending people to jail that are get a fair justice system. In the history – I mean, I was reading about the history of the courts,

however ended up with legalism and people just saying, "Well because you did this, this and this, Mr Jenkins, your forms are not right. Because you do this, and this and this, Mr Jenkins you are vexatious. Because you did this, this and this, Mr Jenkins you are trespassing." That was – that was never the case.

[…]

So when Kelly J said something like, "He is the lowest of the low", I am not. I am the highest of the high. I understand what I'm doing. I going to those places to live like that Francis of Assisi or artists to be able to understand the system and work at that level to see what the problems are. That is what I do. I'm a bonus to the system, if you can understand it, you know.

[…]

… the original one … It was when I was arrested at the literary awards. Now people are telling me that I couldn't come there when I come every year to the literary awards. I'm a writer. I couldn't even present that I was a writer. I couldn't even present that I was a writer and Alan Woodcock goes, "You're not even a writer." I presented that I was a writer, and I was told in court that lie. These particular people lied in court and that's why took a case here… The *Whittington* case, 21617016 as the case I'm talking about. And that was just before I went to goal, that was going to a three court appeal. So there was submission evidence for that to go to a three court appeal and the only reason I couldn't prosecute that was because when I was put into goal, which is why I took the *Attorney-General* justice case and I talked about it at my – the Holtze hotel thing, you can't get legal documents out in prison.

[…]

When I was outside, I had access to lawyers that I know. I'm smart enough to be able to go to lawyers and get advice, work within the law – the Law library to understand what I'm doing and then get advice and work with that. Then the situation that Daniel McGregor instituted, then I feel you should have been recused, Southwood J because you issued an order without even knowing me about a basis I can't use the library, it went through a thing. These are natural injustices without me being able to talk and we've been able to just say why those situation is happening and all I can see is an attack on poor people, especially being able to represent themself.

I did not know what a vexatious litigant was, so I got the only books that's available in Australia by Simon Smith. This covers 1930 to 2008. They call it Maverick Litigants. And he basically covers a lot of people who are basically – they are reformers. They are people – there was a woman in there who actually organises herself to be with the RSPCA in the 60s and the 70s when they were covering for a lost dog.

[…]

So one of the issues of the problem in a small jurisdiction, which makes me look like I'm vexatious as opposed to the people who have taken maybe 300 or 400 cases over an extensive time in here is the Supreme Court in Darwin in the Northern Territory, everything comes to the Supreme Court. If I want to file a case at antidiscrimination, that has to come to the Supreme Court on appeal. If I want to get witnesses in the lower court and the prosecution says they don't want to, I have to come and appeal, and I've done, to be able to get witnesses to appear by that. If you had a District Court here and that, you wouldn't have those same situations and there would be a situation around that.

[…]

… The amount of emails I sent to Greg Shanahan, the amount of things that are doing that, to get reforms, to get reforms on the *Trespass Act*, to get reforms on things that make it easier for people who are homeless to just access normal services and to be able to access the quality of things to get the education that I do. Imagine homeless people in this day and age turning up to the University, okay. Security comes out and asked them why they're there. They can't read and write. They don't know where anything is. They can get asked to leave because they're coming up to ask someone for a cigarette because they – they just want to find their way around. They could be asked to leave before they even get to the chance of going to somewhere to organise where they're at, okay. So that's what you're dealing with and are not happy with that and I won't live with that. So that if I'm smart enough to stand and talk and do something, that's why I'm here. So I take cases for example, in the McGregor case 21618385, was particularly about being able to contempt and the contempt case within that was – was with Justice Barr after I was actually defending and I – and I tried and I tried and I tried to present that case to the infuriation of myself to be able to understand – to be heard because I couldn't believe that people would be able to give evidence and lie against me and stand there and I'm not gonna be – stand there and told that, on a CCTV footage, that I was screaming out of the top of my voice and yelling when I wasn't screaming out at the top of my voice and yelling, and I was walking around. I said over and over again – and this is after nine months goal, after all those things. I'm not gonna be told that it was doing something that I wasn't and people to be still living in a job there, doing that. It is not right. It is not moral. I can't live with that. So that's the situation of being able to stand up for yourself and do that.

The other cases that I have was, as an artist and as a person, is the City of Darwin case where the City of Darwin, which was the council, was telling me about – they came up to me and I was – I was doing sculpture on the side of the road in Smith Street. So build a sculpture, so I am well-known as – the tourist channel plays a video of me, where

people come and see me doing sculptures. So people come to Darwin, take my photo, organise myself. That's how get paid and that's how I live and that's my personality, who I am, okay. So the council knows that. The council benefits from that. I work for them for free to do Homeless Connect. They use me on all those things. Then they come around and the rangers and the people who are working within the security system are then being told, "Go out there. He is doing this. He's building this. Take a photo. Okay, he's putting – he took rubbish out of a bin and he made that, so therefore it was a littering thing." Now, other people would go, "Okay, don't worry about that. Just pay a fine dah, dah, dah." The problem is with that that if I'm trying to have a career and I'm trying to do things and trying to do things for art and freedom of speech, which I feel strongly about that has to have a voice.

[…]

Toohey J specially worked towards the justice system – and this is quoted in *Dietrich* as well, talking about that the whole justice system and the courts have a defined role, more in America than in England but I don't see why it shouldn't be in Australia, especially without our Bill of Rights and changes to the Constitution. If it can be, and this is why I fight my cases and why I'm fighting this case and why I'm talking about – the court can be an avenue to talk about people's – in tune with the community, listening to the community, and if people – myself, when I did this show, people are crying out for art because art gives them the freedom to be able to – it's a community development voice. My feeling is that community development can lead to major changes. So I stepped into the justice system to stand up because I have a sense of justice and that is why I live with that and that's a calling that comes from a depth. Not out of – there seems to be this thing that, "You're just taking people to court. You're making it last for months and months and therefore you are just trying to drag people through. You are destroying your own reputation, Trevor." […] The other people just – it's annoying them, et cetera. […] It's more and more important for poor people with a mind and with a sense of justice and a sense of strength to be able to stand up and cover those things in a real way and quoting legislation. I'm not trying to annoy anyone. It's my calling to stand there as a kind of prophet within the church for poor people and to be able to say those things that are important and I feel from the heart. […]

I live with that and I do it in the best way I can, from letters to emails and if people don't wanna (sic) talk and people don't wanna (sic) come to the party people don't wanna (sic) do things, then situationally more and more it becomes, "You said this. You are not allowed to do that." […] Well, I just don't believe in that sort of organisation of how things are. I believe that also within – I'll go back to these – the original - the cases that I had that were the private prosecutions, I can't see how they

can possibly be vexatious within the – within the original – *Jenkins v Cox*, *Jenkins v Emmett Darby*, *Jenkins v Todd*, *Jenkins v Caldwell*, *Jenkins v Kyprios*, *Mark Daffy*, *Jenkins v Rowbottam*, *Jenkins v Rabbe* and some cases that I had within the goal system, at the end I didn't get – at that time, just after I got to goal, my mother had died when I was in gaol, I was trying to organise about going back down and doing things with the funeral, so didn't even – those cases didn't even get off the ground. I can't see how you can be vexatious. I can't also see cases about situationally where I filed, especially in those other cases, often I have filed and then those filings are seen as not being seen to be done.

So when I was in gaol over that time from April through to thing, I sent letters. I sent in things and it takes like a month, two months, to get those cases to get those cases thing, to do that. I don't – didn't have a situation of being able to send someone in and put in forms and do that sort of thing. So it wasn't vexatious. I could have put those things in. I asked for those things to be emailed. I was working with the PSO for things to be emailed and organised in. I was told by Rabbe, which is why I took a case, to say I couldn't do that. That's just a denial of natural justice.

There's (sic) plenty of people who are able to take those cases and represent themselves and there's not – there's not because of the cutbacks in legal aid and because of the cutbacks in the NAAJA system things are having to be put on hold. You look at the administrative with the - I just talk to you about, with legal aid. I don't think - they are not - the thing of merit has much more to do with "we don't have the resources and the time to be able to do the case, not that you couldn't win," you know. It's not that they don't have merit. It's just that they can't afford - it's an economic decision because they can't - legal aid lawyers now have 200 clients. It'd be the same for NAJAA.

So don't really want to be in their even doing that resources because I'm fighting from an artistic point of view and from the view of community development. That's - I chip away at my cases. So that I come in and I say, "Right oh, I need these witnesses to be able to - the case I fought with - versus Todd, in the case of the Supreme Court - not the Supreme Court, the Parliament House, there were independent witnesses which needed to be called under the DPP Act. They are supposed to call all available witnesses. I showed them on the CCTV footage. I sent them to the police. I sent to show - nobody even did that but there were statements made by the prosecutor at that stage, a young man who since been - gone away, Peter Clayton. He then said that, "We have made every effort to get every witness." I said, "That is wrong." And then I said in court, "That is wrong." That wasn't even picked up by Barr in the appeal. I objected to that. He then says, "Did you object?" I said, "Yes." I showed the page where I objected. "You believe that?" "No we don't think that was an objection Mr Jenkins."

That's why I appealed it to three court judges because I objected to the fact that the -all the witnesses and all the CCTV…

The same in my case with - it was the - when I was charged with contempt and leaving the court, in Kelly's court, in the start of -it was the end of -the start of February 2016, I didn't get to deliver all the evidence and so when Justice Neill did that and all the evidence wasn't provided, so all the CCTV wasn't provided, people were witnesses who worked in the court won't there. It's a natural thing in any appeal to be able to do that and people… It'd on for me, with my mind, not to do that and to take every available opportunity and I'll go back to the fact of with the ochre card and with things, if I'm -if I have a criminal conviction in doing that, if you feel that the system is just bureaucratically going -I walk somewhere…

[…]

… People tell me that I was in contempt of court because I took off my clothes. I was never charged with taking of my clothes in a vulnerable witness [room].

[…]

I think you got the spelling wrong, okay. C-o-u-r-a-g-o-s (sic) is what I am, not v-e-x-a-t-i-o-s (sic), you know. You've got the wrong situation. You've got the wrong person, you know. […]

My situation's simple administrative things that people are bundled up and because of the lack of money and because of the lack of administrative skill, because of the lack of legal training, they are making wrong decisions. Daniel McGregor is making wrong decisions because he's not legally trained and is giving poor advice. The same as Kaylyn Norton is giving wrong legal advice. Sarah Milligan is okay but she's being influenced by Daniel McGregor. I don't see that's right and I won't put up with that kind of culture because there are people out in goal that is spending years and years there that don't need to, that are suffering, that will commit suicide, and I don't put up with that. I don't. I don't. As a Christian, I am prepared even to go to gaol to be able to understand that, as you know what I mean? I live for that. So it's not that I mentally ill. It's not that I'm crazy. I'm an artist and I really care about people and I'm a Christian. That is why I live my cases. Now, that's got nothing to do - I've read right through this. I've read it, I read it back to front. No, I'm not vexatious. It's got nothing to do with vexatious. I'm not trying to hurt anybody. I'm trying to make the world a better place and I can't see how I'm dragging people through things. So vexatious, as I read it, is that, there is no basis for your case. Well there's been a basis for everything I've had, including getting witnesses, getting appeals, getting those things. There's been a basis and I've written them out on that basis.

Probably, maybe in the way I write, people can't understand it but when I stand there and a justice is able to go, "What are you trying to say Mr Jenkins?" And I explain it, these things are quite clear in what I'm doing, which is trying to get a better access to CCTV footage, better access to witnesses, so you have a full case, see have something to represent, so that you have a full hearing and if I feel that there is any better way for it to be done, I do that. […] So, I don't see it in a small light. Like, "I am Mr Jenkins. I don't know what's going on. I'm just trying to get…" That's a false representation of who I am. I get angry about that because I'm not some kind of little angry person trying to get my way and make the system bad. I'm not that person. […] That's not me. And I'm going to be giving evidence from different priests and different people who know me outside of this, and artists and people who know me and understand who I am and understand what I live for. You can't see it with a high-class, refined, legalistic nature of something that is channelling people. But there is an effect on that. There's a judgement there that they can't get out of. There's effect on poor people. I'm fighting against it so that gives them the confidence to fight against it because they're not what people say and if we are wanting people to get out of goal and get out of that system and that system has got to be reformed… Then that's important that someone like me exists and if I don't exist and you just throw me out and give me a label and go, "Hey his vexatious,"… People are gonna believe less in the system unless you want to say, "Okay, Mr Jenkins, this is the way we can work in towards you doing these things. You are not vexatious. These cases have a real value in those things because you've got situations where you're talking about people who are lying in evidence,"…

[…]

But there's legislation and people don't want to listen and people don't want to talk. So you then have to take a case to say there's something wrong with that and that's -all over history. That's the way it's been with reformers having to take a case which shows up the problems. The Salvation Army, William Bramble, in the 1870s I think, he took a young girl and said -procured her as, like a sexual slave and then got arrested to show that there was child prostitution because no one believed child prostitution exists. So he was prepared to do that to show the system. Is that an abuse of the system? No, I don't think so, you know. And Trevor Jenkins is the same. He is taking cases to show the problems with the system and wanting to look at that, you know. It's different, you know. The thing about being angry and hard and all those sort of things that you -it's wrong. So that's kind of- that's my overview of that but I'm quite prepared for cross examination or whatever they want to do now.

[62] The applicant's case was based on proceedings that were instigated or conducted by the respondent in the Supreme Court since 1 January 2015 and in the Local Court since 1 January 2014. The respondent subsequently applied for leave to give evidence about cases that he had instigated or conducted prior to those dates on the basis that he had been successful in his conduct of them. Although such evidence was irrelevant, he was nonetheless given leave to give further evidence. Contrary to what was asserted, it emerged through the respondent's further evidence that he was largely unsuccessful in those earlier cases also.

[63] Mr Jenkins also led oral evidence via a telephone link from Father Dan Bernedetti and Mr Ron Strachan. Father Bernedetti gave evidence that he had known the respondent for over 10 years. The respondent was a regular visitor to his church and had displayed a lot of desire to help homeless people who are on the margins of society. The respondent had helped a lot of Indigenous men in prison who have struggled with the system. He also gave the following evidence.

Witness:	Trevor does display, at times, behaviour that is unique in the sense that he does have a passion about his ideas and about his sense of the injustices that are in the world. I have had a number of conversations with him about strategies about how to support and help people.
Respondent:	Could you talk briefly just about the prophetic side as you see it?
Witness:	Well, this is an interesting concept about in the Biblical sense we have what people might term prophets and people who perhaps have a public message to give to stand up for what they believe in. Now, there – in a sense, Trevor seems to have

something of a prophetic nature about him in that he has a message that he wants to bring and bring it in perhaps public ways and so I do, in a sense, see a positive but also a challenging side of that because in one way it does bring attention but in other ways it can be quite confronting. But I do believe in society today we do need people, in appropriate ways, to stand up and to speak what they believe is true. And at our church, Trevor has sought to encourage us in that sort of way as well, but I do think that it's a challenging thing to do because when you are in the public eye you have to be as discerning as you can be as to how you deliver a message. Because that can be done in a number of different ways and to try and keep people's dignity in mind is, I think, an important aspect of that as well. Yes, so I do believe in that prophetic sort of expression, but it needs to be done in a very respectful way.

Respondent: Do you see that as part of the body of Christ and a society in general that a person can do those sort of things?

Witness: Well, as I say, I think that my faith encourages me to look at the person and Jesus and how he, in his words, and in his actions was, in a sense, prophetic. He spoke about and he did what he felt God was asking him to do. Now, that needs to be done in, as I say, a respectful way and in a way that is seeking to build up society and help particularly the marginalised.

[64] Mr Strachan gave evidence that about eight years ago the respondent was a guest speaker at a Rotary Club that he belonged to. He spoke about homeless people. He had seen the respondent do some rubbish artwork around town which some people admire and others do not.

[65] In addition the respondent tendered in evidence: (i) a disc containing recordings of conversations between the appellant and staff in the Supreme Court Registry for the purpose of demonstrating that on a number of occasions the respondent had behaved in a courteous manner towards staff in

the Registry; (ii) a number of character references; and (iii) three bundles of documents. The disc showed that the respondent behaved in a courteous manner towards Registry staff on a number of occasions.

[66] The character references established the following. Between 2010 and 2015 the respondent was the chaplain of St Martin de Porres Catholic Aboriginal Community. Between 2010 and 2017 he was the Catholic prison chaplain at Darwin Correctional Centre. He had been a frequent visitor of a Catholic Church in Darwin and had displayed compassion and concern for those struggling to survive. The respondent had applied for an Ochre Card because it was a requirement of the AFLNT and other Northern Territory sporting organisations that all employees and volunteers hold a current Ochre Card. The lack of an Ochre Card was the only requirement preventing the respondent from participating in paid part-time work as a boundary umpire for the AFLNT. In 2016 and 2018 the respondent presented work as part of the Darwin Fringe Festival for free for members of the Darwin community. He was scheduled to create a sequel to his 2016 work Black Plastic Theatre in 2017, but was incarcerated and was unable to participate. In 2018 he created a work about his time in Holtze prison which was titled “Holtze Hotel”.

[67] The two bundles of documents, which were in total about four centimetres thick, contained a variety of documents which were largely incoherent, indecipherable and irrelevant.

The respondent's conduct of his defence

[68] Despite the best endeavours of the Court and both counsel for the applicant to assist the respondent, he conducted his defence of these proceedings in a scandalous and vexatious manner. He deliberately interrupted the proceeding by shouting and speaking over counsel and myself, accusing various people and the court of being corrupt, by complaining that he had not been provided with or had lost documents when he had been provided with all of the documents on a number of occasions, by making groundless applications and by speaking about irrelevant matters for extended periods of time. He deliberately engaged in such tactics in order to delay the proceeding and to try and avoid hearing about matters he did not wish to hear about.

Consideration of the applicant's case

[69] Counsel for the applicant prepared a very useful document which listed and summarised all of the 72 substantive and interlocutory proceedings which were said to be vexatious. The document: (i) identified the substantive proceedings; (ii) identified the interlocutory proceedings; (iii) grouped the proceedings according to the substantive proceedings; and (iv) provided particulars of the basis on which it was said that each proceeding was vexatious. Four of these were criminal proceedings in which the respondent was the defendant.[47] I found it unnecessary to consider those four proceedings.

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47 *Darwin City Council v Jenkins* (21615529); *Whittington v Jenkins* (21617016); *Firth v Jenkins* (21556341).

[70] The proceedings relied on by the applicant were grouped as follows: (i) *Screening Authority* proceedings; (ii) *Darwin City Council* proceedings (iii) *Whittington* proceedings; (iv) *McGregor* proceedings (v) *Jenkins v O'Neill* proceeding (v) *Firth* proceedings; (vi) *Library* proceedings; (vii) *Private* prosecutions; and (viii) *Todd* proceedings.

***Screening Authority proceedings*[48]**

[71] The Screening Authority proceedings concern 15 proceedings which were instituted by the respondent. They comprise six substantive proceedings and eight interlocutory proceedings in the Local Court and one substantive proceeding in the Supreme Court.[49] The proceedings arose out of the respondent's unsuccessful application for a clearance notice (Ochre Card) for child-related employment under s 188 of the *Care and Protection of Children Act 2007* (NT). It seems that the respondent applied for the clearance notice in 2012 so he could work as a boundary umpire with AFLNT. His application was refused by members of the Screening Authority on 11 August 2014.

[72] The Screening Authority is established under s 196 of the *Care and Protection of Children Act 2007*. It consists of one or more members appointed by the responsible Minister. Under that legislation, any individual who is engaged in child-related employment must hold a current clearance

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48 *Jenkins v Screening Authority* [2016] NTSC 64; *Jenkins v Screening Authority* (21451437); *Jenkins v Screening Authority* (21457818); *Jenkins v Screening Authority* LCA 3 of 2016 (21457818); *Jenkins v Commissioner of Police* (no file number assigned).

49 *Jenkins v Screening Authority* [2016] NTSC 64.

notice.[50] The Screening Authority is responsible for determining applications for the issue of clearance notices.[51] The Screening Authority must not issue a clearance notice if the applicant or candidate has been convicted of an offence, or has a criminal history, which is prescribed by regulation; or if the Screening Authority decides, having regard to the administrative guidelines, that the candidate poses an unacceptable risk of harm or exploitation to children.[52] The prescribed offences are set out in Schedule 3 of the Care and Protection of Children (Screening) Regulations 2010. The prescribed offences are made up of sexual and other offences, including drug offences, involving children. There is no evidence before this Court about why the respondent's application was refused. The Screening Authority seemed to have given weight to the respondent's criminal history and his mental state. It was not suggested that he had committed any offences involving children.

[73] Under s 194 of *Care and Protection of Children Act 2007* an unsuccessful applicant for a clearance notice may apply to the Local Court for a review of the decision of the Screening Authority not to issue him or her with a clearance notice. A review is a hearing de novo and the Local Court is not limited by the material before the Screening Authority.[53]

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50 *Care and Protection of Children Act*, s 187.

51 Ibid s 189.

52 Ibid.

53 Ibid, s 194(7); *Jenkins v Screening Authority* [2016] NTSC 64 at [10] and [15].

[74] On 5 November 2014 the respondent filed (out of time) a handwritten Notice of Appeal (constituting Local Court file no. 21451437) seeking to review the decision of the Screening Authority refusing his application for a clearance notice.[54] The respondent incorrectly named the "Screening Authority Police Members" as the respondent to his appeal. He should have named the individual members of the Screening Authority who made the decision to refuse his application for a clearance notice. The Screening Authority has no legal personality. The pleading in the Notice of Appeal did not identify with any particularity the decision which was the subject of the appeal. The relevant decision was only identified as a decision dated the "3rd"; no month or year was stated. The grounds of review were largely incoherent but appear to state, among other indecipherable grounds, the following grounds of appeal: (i) the respondent is "not a paedophile" and there were "no allegations of criminal charges"; (ii) the "complaint children [and] police colluded", (iii) the police colluded in accessing private information; (iv) the conduct of the Screening Authority was harassing and defamatory; and (v) the Screening Authority engaged in professional misconduct under the "Federal *Public Servant Misconduct Act*" (which was never enacted and did not exist).[55] The grounds of appeal were scandalous and had no reasonable prospects of success because the appeal to the Local Court was a hearing de novo and the prior consideration of the respondent's application by the members of the Screening Authority was irrelevant. It may be inferred from

54 Affidavit of Demetrious Laouris made 25 September 2017 at [10], 1–2 ("DL 1").

55 Affidavit of Demetrious Laouris made 25 September 2017 at 1–2 ("DL 1").

the contents of the respondent's Notice of Appeal that the respondent deliberately chose not to try to establish that he was a suitable candidate for a clearance notice. Instead, he chose to pursue a false conspiracy theory against the police and the Screening Assessment for Employment – Northern Territory (SAFE NT) because he believed that as a result of his homeless status he had been mistreated by: (i) the Screening Authority as they had taken what he considered to be an inordinate amount of time to decide his application for a clearance notice; and (ii) the police and SAFE NT when he was removed from SAFE NT's offices on 17 October 2012.

[75] On 24 November 2014 the respondent failed to appear at a prehearing conference and the Notice of Appeal was dismissed.[56]

[76] On 22 June 2015, almost seven months later, the respondent re-filed the original Notice of Appeal (constituting Local Court file No. 21457818).[57] This proceeding was ultimately struck out on 30 March 2017.

[77] On 21 September 2015 the respondent failed to attend a directions hearing and the proceeding constituting Local Court file No. 21457818 was dismissed.[58] On 28 September 2015 the respondent filed an Application for Order to be Set Aside and Re-Hearing regarding that decision (with

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56 Affidavit of Demetrious Laouris made 25 September 2017 at [11].

57 Affidavit of Demetrious Laouris made 25 September 2017 at [12], 1–2 ("DL 1").

58 Affidavit of Demetrious Laouris made 25 September 2017 at [14], 3–4 ("DL 2"). The applicant's submissions at p 18.5 appear to misstate the date of the Directions Hearing and the date on which the order was made, though nothing turns on this.

accompanying affidavit).[59] The application was granted on 26 October 2015 and the proceeding was reinstated.[60]

[78] On 6 January 2016 the respondent issued nine Summonses to Give Evidence and eight Summonses for the Production of Evidence.[61] The summonses *to give evidence* were addressed to:[62]

- Donna Quong who is the Assistant Director of SAFE NT, an office which assists the Screening Authority in processing applications for clearance notices.

- Ray Curran who was formerly a Senior Policy Officer with SAFE NT who was acting as Assistant Director when the respondent first lodged an application for a clearance notice. He was present when the respondent was removed by police from the SAFE NT offices on 17 October 2012. The respondent's purpose for requiring Mr Curran to give evidence was to establish in the first instance that his removal from the SAFE NT offices was unwarranted and unlawful, and ultimately to establish that police exerted an undue influence over the activities of SAFE NT and over the determinations of the Screening Authority.

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59 Affidavit of Demetrious Laouris made 25 September 2017 at [15], 6–11 ("DL 3").

60 Affidavit of Demetrious Laouris made 25 September 2017 at [15], 12–13 ("DL 4").

61 Affidavit of Demetrious Laouris made 25 September 2017 at [16], 14–31 ("DL 5").

62 *Jenkins v Screening Authority [*2016] NTSC 64 at [19].

- Ian Forrest who was a Customer Services Officer with SAFE NT and was also present when the respondent was removed by police from the SAFE NT offices on 17 October 2012. The respondent's purpose for requiring Mr Forrest to give evidence was the same as for Mr Curran.

- Kristina Charles who was one of the police officers who removed the respondent from the SAFE NT offices on 17 October 2012. The respondent's purpose for requiring Ms Charles to give evidence was the same as for Mr Curran.

- Kassandra Dunser who was one of the police officers who removed the respondent from the SAFE NT offices on 17 October 2012. The respondent's purpose for requiring Ms Dunser to give evidence was the same as for Mr Curran.

- Tanith Blair who was one of the police officers who removed the respondent from the SAFE NT offices on 17 October 2012. The respondent's purpose for requiring this person to give evidence was the same as for Mr Curran.

- Paul Faustmann who was one of the police officers who removed the respondent from the SAFE NT offices on 17 October 2012. The respondent's purpose for requiring Mr Faustmann to give evidence was the same as for Mr Curran.

- To “all members [of the] Screening Authority that screened [the] application [by] Trevor Jenkins from January 2013 — first screening”. This summons was defective as it failed to identify the individual or other entity over whom it was intended to operate. The respondent’s purpose for issuing this summons was the same as for Mr Curran, and to challenge the basis on which the respondent’s application for the clearance notice was refused.

- To “all members [of the] second screening authority that screened [the application by] Trevor Jenkins from 1st June 2013”. This summons was also defective for the same reason as stated above. The respondent’s purpose for issuing this summons was also the same as for Mr Curran, and to challenge the basis on which the respondent’s application for a clearance notice was refused.

[79] Seven of the summonses *to produce documents* were directed to SAFE NT which has no legal personality. That agency assists the Screening Authority in processing applications for clearance notices. The administrative assistance includes managing the operation of the Screening Authority, providing criminal history checks, making recommendations on clearance notices, and recording steps taken in the assessment of applications. The summonses seek: (i) the names of all members of the Screening Authority at the relevant times; (ii) all documents “concerning police witnesses and dealings”; (iii) all correspondence between Ray Curran, police and the

Screening Authority; and (iv) all documents explaining the delays in the assessment of the applicant's application. The purpose of the respondent seeking these documents was to try and verify his belief that the police had exerted undue influence over the Screening Authority; and to establish a conspiracy between the police and the Screening Authority to unlawfully delay and refuse the respondent's application for a clearance notice.[63]

[80] The other summons to produce documents was directed to Ray Curran and sought all documents held by SAFE NT relating to the respondent from 1 June 2013 to the present time. At all material times Mr Curran had ceased to be employed by SAFE NT. He did not have possession, custody or control of the documents which were the subject of the summons.[64]

[81] On 11 January 2016 the substantive proceeding was mentioned in the Local Court and there was some discussion about the summonses that the respondent had issued. The presiding Judge gave a preliminary indication that the summons directed to Ms Quong would not be set aside but the other summonses would be, and the Judge directed the Screening Authority to file all of the material on which it sought to rely by the close of business on that day.

[82] On 25 January 2016 the proceeding was mentioned in the Local Court. The respondent did not appear. Chief Judge Lowndes set aside 16 of the

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63 *Jenkins v Screening Authority* [2016] NTSC 64 at [21] and [22].

64 *Jenkins v Screening Authority* [2016] NTSC 64 at [23].

summonses as an abuse of process.[65] His Honour did not set aside the summons addressed to Ms Quong. The Screening Authority filed two affidavits made by Ms Quong in the review proceeding. Ms Quong annexed to her affidavits the materials that the Screening Authority relied on to demonstrate the respondent's ineligibility for a clearance notice.[66]

[83] On or before 12 February 2016 the Screening Authority filed all the material it relied on at that time for the purposes of the proceeding in the Local Court. On 12 February 2016 the matter was mentioned in the Local Court and counsel appearing for the Screening Authority asked that the substantive proceeding be set down for hearing. The respondent opposed the matter being allocated hearing dates on the basis that he could not present his case without the production of the documents which were the subject of the summonses he had caused to be issued. Chief Judge Lowndes explained to the respondent that the review proceeding in the Local Court was a de novo hearing and that everything would start all over again. The Local Court stands in the shoes of the Screening Authority and the Local Court must decide if the respondent should get a clearance notice or not. The respondent's approach was stopping the Local Court dealing with the real issue which was whether the respondent should get an ochre card. 16 of the summonses were set aside because they had nothing to do with the proceeding in the Local Court.

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65 Affidavit of Demetrious Laouris made 25 September 2017 at [17], 32–33 ("DL 6"); Affidavit of Lachlan Sebastian Peattie made 22 September 2017 at 662 ("LSP 13").

66 *Jenkins v Screening Authority* [2017] NTSC 64 at [19].

[84] On 18 March 2016 the respondent filed an Application for Leave to Appeal in the Supreme Court against Chief Judge Lowndes's ruling setting aside the summonses (*Jenkins v The Screening Authority* No. 21457818). He did so despite having been served with copies of all the material on which the Screening Authority relied on at that time, and despite the clear and simple explanation of the nature of the proceeding he had received from Chief Judge Lowndes. The Application for Leave to Appeal was filed out of time.

[85] On 18 April 2016 the respondent again failed to appear and the proceeding in the Local Court was dismissed.[67] On 22 April 2016 the respondent filed a further Application for Conviction or Order to be Set Aside and Re-Hearing (with an accompanying affidavit),[68] but did not serve the application until 9 September 2016.[69] The respondent's explanation for his failure to attend to matters was that he been serving time in prison. On 19 September 2016 the respondent's application was granted and the substantive proceeding was set down for hearing on 12 December 2016.[70]

[86] On 21 November 2016 in the Supreme Court his Honour Grant CJ heard the respondent's Application for Leave to Appeal against the order of the Local Court dismissing the respondent's summonses.

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67 Affidavit of Demetrious Laouris made 25 September 2017 at [20], 34–5 ("DL 7").

68 Affidavit of Demetrious Laouris made 25 September 2017 at [21], 36–42 ("DL 8").

69 Affidavit of Demetrious Laouris made 25 September 2017 at [21], 43–4 ("DL 9").

70 Affidavit of Demetrious Laouris made 25 September 2017 at [21].

[87] On 1 December 2016, the respondent filed an application (with an accompanying affidavit) to vacate the hearing date of the substantive proceeding in the Local Court.[71] The basis of the application was that his Honour Grant CJ had not decided the respondent's Application for Leave to Appeal and the respondent needed the evidence which was the subject of the summonses which had been dismissed to conduct his case. The interlocutory application was returnable on 9 December 2016 but seems to have been heard on 8 December 2016 which was the same day that his Honour Grant CJ delivered his reasons for decision in *Jenkins v Screening Authority*.[72] His Honour dismissed the respondent's Application for Leave to Appeal and Judge Woodcock dismissed the respondent's application to vacate the hearing dates in the Local Court.

[88] The applicant submits that the respondent's interlocutory application filed in the Local Court on 1 December 2016 was instituted by the respondent without reasonable ground[73] and to cause delay and detriment.[74] I accept the applicant's submission on the basis that the interlocutory application was instituted to cause delay and detriment. By 1 December 2016 the respondent must have known that his Application for Leave to Appeal to the Supreme Court was doomed to fail and that he could conduct the proceeding in the Local Court without the evidence that was the subject of the summonses. It

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71 Affidavit of Demetrious Laouris made 25 September 2017 at [22], 45–51 ("DL 10").

72 [2016] NTSC 64.

73 *Vexatious Proceedings Act 2007*, s 3(c).

74 Ibid, s 3(b).

cannot be said that the interlocutory application was instituted without reasonable ground on 1 December 2016. At that time it would not have been unreasonable for a Judge of the Local Court to vacate or adjourn the hearing dates of the review proceeding pending the decision of the Supreme Court. However, I also find that the interlocutory application was pursued without reasonable ground on 8 December 2016 and was conducted in a way to harass and annoy and cause delay.

[89] It is unclear whether the interlocutory application filed on 1 December 2016 was heard in the Local Court before or after his Honour Grant CJ delivered his decision in *Jenkins v Screening Authority* [2017] NTSC 64. However, as at 8 December 2016 the respondent must have known that his Honour Grant CJ was going to deliver his reasons for decision on that day. In the circumstances, the respondent should have either: (i) informed Judge Woodcock of the result in the Supreme Court, or (ii) requested the application to be stood down until after the decision was delivered in the Supreme Court. To pursue the interlocutory application on 8 December 2016 was without reasonable ground and the application was being conducted in a way so as to harass or annoy and cause delay.

[90] I find that the respondent's appeal to the Supreme Court against the order dismissing 16 of the summonses he filed in the Local Court was brought without reasonable ground. He obdurately refused to accept the advice he had received about the nature of an appeal under s 194(7) of the *Care and Protection of Children Act*. His Honour Grant CJ's principal reasons for

dismissing the respondent's Application for Leave to Appeal in *Jenkins v Screening Authority* were as follows.[75]

> It may be noticed […] that s 194(7) of the *Care and Protection of Children Act* provides:
>
> The review:
>
> (a) Must be conducted as a new hearing; and
>
> (b) Is not limited by the material before the Authority.
>
> … As has already been seen, the provisions of s 194(7) of the *Care and Protection of Children Act* make it plain that the review conducted by the Local Court must be conducted as a new hearing and is not limited to the material which was before the Screening Authority at the time of the decision in August 2014.

[91] On 8 December 2016 the respondent filed a Notice of Appeal in the Local Court against Judge Woodcock's decision refusing to vacate the hearing dates. The Notice of Appeal was defective for the following reasons: (i) the "NT Police", who were named as one of the respondents, do not have a legal personality and were not a party to the substantive proceeding; and (ii) an appeal against a decision of a Judge of the Local Court cannot not be made in the Local Court. The appeal was clearly instigated without reasonable ground.

[92] On 9 December 2016 the respondent filed a further application with an accompanying affidavit to vacate the hearing date.[76] The application misnames the respondent as 'SAFE NT' and 'police (indecipherable)'. Neither of these 'entities' were parties to the substantive proceeding. The

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75 *Jenkins v Screening Authority* [2016] NTSC 64, [10] and [15].

76 Affidavit of Demetrious Laouris made 25 September 2017 at [24], 63–5 ("DL 13").

contents of both documents is largely indecipherable. So far as can be ascertained, the documents contain the following assertions.

> Appeal Supreme Court pending
>
> SAFE NT police withheld evidence
>
> Woodcock apprehended bias
>
> need adjournment
>
> witness availability
>
> holiday
>
> self rep litigant
>
> natural justice due

[93] I accept the applicant's submission that the interlocutory application filed on 9 December 2016 was instituted by the respondent without reasonable ground and to cause delay or detriment. Neither the application nor the respondent's affidavit stated a valid basis for an adjournment of the proceeding. The statements that: (i) and appeal was pending in the Supreme Court; and (ii) SAFE NT and the police withheld evidence, are false. There was no basis for the assertions that (i) Judge Woodcock's decision was tainted by apprehended bias; and (ii) there was a problem with the availability of witnesses. Judge Woodcock's refusal to vacate the hearing dates on 8 December 2016 does not constitute a basis for concluding that there would be an apprehension of bias if he heard the substantive

application on 12 December 2016. The witnesses who are alleged to be unavailable because they are on holidays were not identified.

[94] On 12 December 2016 the substantive proceeding came on for hearing before Judge Woodcock. There was no appearance by the respondent and the Local Court was informed that the respondent had been remanded in custody in an unrelated proceeding in the Supreme Court before her Honour Kelly J. The substantive proceeding in the Local Court was adjourned to 19 December 2016.[77] On that day the proceeding was adjourned to 23 January 2017 at which time it was set down for hearing before Judge Neill on 30 March 2017.[78]

[95] On 13 February 2017 the matter was mentioned in the Local Court and adjourned to 10 March 2017. On the latter date the respondent did not appear.

[96] On 14 February 2017 the respondent attended at the offices of the Solicitor for the Northern Territory. He was given further documents which the Screening Authority wished to rely upon by Mr Cameron Retallick, counsel for the Screening Authority. The respondent refused to accept the documents.

[97] On 15 March 2017 the respondent filed an interlocutory application which was made returnable on 30 March 2017. The application was defective in a

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77 Affidavit of Demetrious Laouris made 25 September 2017 at [25].

78 Affidavit of Demetrious Laouris made 25 September 2017 at [25]–[26].

number of ways. It incorrectly named "Police" as the respondent and was largely indecipherable and illegible. The Police were not a party to the substantive proceeding. The application appears to complain that an application (which was not identified or particularised) had been heard ex parte, presumably without the respondent being present, and appears to seek an order that Judge Neill recuse himself. It is impossible to ascertain from the document the basis on which it was alleged that Judge Neill should recuse himself.

[98] On 20 March 2017 the respondent filed a further interlocutory application along with a hand written note and an affidavit.[79] The application is defective in a number of ways. It incorrectly names the respondent as "Police SAFE NT" and is once again largely unintelligible and incoherent. The interlocutory application again seeks an order that Judge Neill recuse himself but it is impossible to determine the basis of this application because of the manner in which the documents have been handwritten. The application also appears to seek a stay on the basis that an appellant has a right under the civil rules to a stay and may restart the proceeding at any time. This latter assertion is wrong in law. One of the bases on which the stay is sought is that the Screening Authority, SAFE NT, or the police have failed to provide discovery of relevant material.

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79 Affidavit of Demetrious Laouris made 25 September 2017 at [27]–[28], 67–8 ("DL 14"), 69–73 ("DL 15"). The applications each contain a further application for Judge Neill to recuse himself, which is not relied on by the applicant.

[99] On 30 March 2017, which was the date allocated for the hearing of the substantive appeal, the applications filed on 15 and 20 March 2017 respectively also came on for hearing before Judge Neill. During the course of the hearing the respondent made the following oral submissions as to why Judge Neill should recuse himself and why there should be a stay of the proceeding: (i) on 29 March 2017 he had made an application for legal aid and it would take three or four weeks for the application to be processed; (ii) counsel for the Screening Authority had not provided him with any documents; (iii) Mr Cameron Retallick, who was counsel for the Screening Authority, had lied to the Local Court by telling the court the respondent had been provided with the documents; (iv) the respondent had filed an application in the Supreme Court seeking that Judge Neill recuse himself; (v) he was not ready to proceed as he had not been able to organise witnesses because he had been fighting a matter in the Supreme Court; (vi) he wanted Judge Neill to recuse himself because (a) his Honour had refused him bail in 2012 and 2013 in the criminal matters which the Screening Authority was relying on to establish that the respondent was an unsuitable candidate for a clearance notice (the respondent had pleaded guilty to the charges in those matters); and (b) in the past Judge Neill had said that anyone with a criminal conviction should not be granted an Ochre Card. The respondent stated that he was going to withdraw his appeal to have the decision of the Screening Authority reviewed if Judge Neill did not recuse himself and he was not granted a stay.

[100] The respondent's application for a stay was refused and the respondent left the courtroom. Judge Neill then struck out the respondent's Notice of Appeal in proceeding 21457818. After leaving the court the respondent filed a Notice of Discontinuance or Withdrawal of the Notice of Appeal.

[101] I accept the applicant's submissions that the two interlocutory applications filed on 15 and 20 March respectively were instituted without reasonable ground. Submissions (i), (ii), (iii) and (iv) at [99] above were false, and the respondent failed to place any proper material before the Local Court to establish that: (i) there was a basis for Judge Neill to recuse himself; and (ii) he had taken steps to organise his witnesses but was unable to do so. During the hearing in the Local Court, the respondent conceded from the bar table that he had refused to accept the documents that Mr Retallick had tried to give him. The interlocutory applications were also conducted in a way so as to cause delay or detriment.

[102] On 3 April 2017 the respondent filed an Application for Order to be Set Aside and Re-Hearing in regard to the order of Judge Neill made on 30 March 2017.[80] The application was returnable on 10 April 2017. The application was defective. The respondent incorrectly named the respondent to the application as the "police". The application falsely stated that the respondent "withdrew from [the] proceeding before [it] started".[81] In the accompanying affidavit the respondent deposed that Judge Neill was biased,

80 Affidavit of Demetrious Laouris made 25 September 2017 at [31], 80–6 ("DL 19").

81 Affidavit of Demetrious Laouris made 25 September 2017, 81 ("DL 19").

"hates my guts and works with police" and had "illegally… refused to listen" to the respondent. He again stated that he needed time to obtain legal aid (this time deposing that he had applied for legal aid on 24 March 2017).[82]

[103] On 3 April 2017 the respondent filed a Statement of Claim naming the "Police" as the respondent. In it the respondent claimed $25,000 damages and an apology. The statement of claim is defective in the following ways: (i) the "police" are not a legal personality capable of being sued; and (ii) the statement of claim did not plead a valid cause of action.

[104] On 10 April 2017 the respondent failed to appear in court and Judge Woodcock dismissed the application for an Order to be Set Aside and Re-Hearing.[83] Later on the same day, the respondent filed a further Application for Order to be Set Aside and Re-Hearing regarding that decision. The accompanying affidavit discloses no reason for the respondent's failure to attend and groundlessly alleges that Judge Woodcock was biased.[84] That application was dismissed by Judge Neill on 29 May 2017.[85]

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82 Affidavit of Demetrious Laouris made 25 September 2017 at 82–4 ("DL 19").

83 Affidavit of Demetrious Laouris made 25 September 2017 at [31], 87–8 ("DL 20").

84 Affidavit of Demetrious Laouris made 25 September 2017 at [32], 89– 92 ("DL 21").

85 Affidavit of Demetrious Laouris made 25 September 2017 at [32], 93–94 ("DL 22").

[105] I accept the applicant's submissions that the interlocutory applications filed on 3 and 10 April 2017 were instituted without reasonable ground and were conducted and pursued so as to cause delay and detriment.

[106] On 18 April 2017 the respondent filed an Originating Application between Parties (and accompanying affidavit) naming the Commissioner of Police as the respondent. The Originating Application pleads the following.

> FULLY EXPLAINED DOCUMENTED REASON 2012 OCHRE CARD APPLICATION NOT EVEN ATTENDED TO SCREWED FOR 2 YEARS REASONS GIVEN OR CONTACT MADE PLUS FULLY UNREDACTED FILE RELEASED DETAILING ALL REASONS (see attached) PUBLIC SERVICE ACT NT WORKING WITH CHILDREN REVIEW DECISIONS FOI ACT NATURAL JUSTICE.

[107] In the affidavit filed in support of the Originating Application filed on 18 April 2017 the respondent deposes as follows.

> MY FULL UNREDCATED (sic) FILE NEVER PRODUCED THOUGH SUBPEANED (sic) SENIOR POLICE LEGAL COUNSEL AND POLICE UNDER NOW DISGRACED McROBERTS COMMAND THREATENED AND INFLUENCED RAY SENIOR STAFF STAFF REMOVED (indecipherable) TRANSFERRED CASE NEVER DEALT WITH CHILD APPEAL LITERRALY (sic) 2 YEARS AS NO SCREENING DECISION WITHELD DENIAL NATURAL JUSTICE (indecipherable)
>
> PUT IN OCHRE CARD APPLICATION LATE 2011 EARLY 2012 NEVER (indecipherable) SCREWED FOR 2 YEARS WITHOUT REASON CONTACT AT ALL RAY SENIOR STAFF ASSAULTED ME NOTHING DONE NO REPORT NO INCIDENT SENIOR POLICE INFLUENCED DECISION AND ACTIONS REFUSE TO EXPLAIN RELEASE FILE ALL FUTURE OCHRE CARD
>
> Put in application ochre CARD 2011 late 2012 early no response interaction screening for 2 years WHY? (Indecipherable) has affected all future applications Denied natural justice seek full explanation senior police interference corruption is deliberately bureaucratically harassing (incoherent) WHY? Full file please explanation GOD BLESS

[108] The Originating Application filed on 18 April 2017 is grossly defective. I accept the applicant's submission that it was instituted without reasonable ground. Rather than seeking a review under the provisions of the *Care and Protection of Children Act 2007*, the respondent appears to have been seeking an explanation from the Commissioner of Police as to: (i) why his application for an ochre card was refused; and (ii) why it took so long to process his application. The explanations appear to be sought on the basis of a false and scandalous assertion that the senior police corruptly influenced the decision of the Screening Authority rejecting the respondent's application for a clearance notice. There is no legal basis for such a claim and there was no factual basis for the respondent's scandalous assertions. The respondent was continuing to steadfastly refuse to deal with his application for an Ochre Card on the merits of his application. The Originating Application was clearly an abuse of process because it was not brought in order to pursue a valid claim but to express the respondent's anger about the manner in which his application for a clearance notice had been dealt with.

[109] On 5 September 2017 the respondent filed a further application.[86] The form which the respondent used is Form 25A which is the form used for an interlocutory application. The respondent names "PFES safe nt Reece Kershaw" as the respondent to his application. Reece Kershaw is the Commissioner of Police. The order sought in the application is: "hearing for

86 Affidavit of Demetrious Laouris made 25 September 2017 at [35]–[36], 100–4 ("DL 24"), 105–6 ("DL 25").

Ochre Card and a mention". The respondent does not plead any grounds for the orders he seeks. The respondent was granted an opportunity to be heard in relation to his application for an Ochre Card on 30 March 2017 and he walked out of the courtroom.

[110] The Local Court Registry did not process the statement of claim filed on 3 April 2017, the Originating Application filed on 18 April 2017 and the Application filed on 5 September 2017. The Registry was correct not to.

[111] I am satisfied that the substantive proceeding *Jenkins v Screening Authority* 21457818 which the respondent instituted and conducted in the Local Court was brought without reasonable ground and was conducted in a way so as to harass or annoy and cause delay or detriment. The manner in which the respondent conducted the proceeding establishes that he was not interested in having a review on the merits of the decision refusing to grant him a clearance notice.

[112] Each of the proceedings involving the Screening Authority's rejection of the respondent's application for a clearance notice is a vexatious proceeding.

***Darwin City Council proceedings*[87]**

[113] The Darwin City Council proceedings concern a prosecution of the respondent for littering, four interlocutory applications instituted by

87 *Darwin City Council v Jenkins* (21615529); *Jenkins v City of Darwin* [2017] NTSC 58 LCA 18 of 2016 (21615229).

respondent to set aside his convictions of the littering charges, and an appeal against his conviction which he instituted in the Supreme Court.

[114] By complaint taken 22 March 2016, the respondent was charged with the following offences:[88]

(1) on 26 September 2015 he did deposit litter on land or allowed litter to remain on land, by placing or otherwise causing a pile of rubbish to be left on the footpath of Mitchell Street in Darwin contrary to by-laws 30(1) and 20 of the *Darwin City Council By-laws*; and

(2) on 26 September 2015 he did deposit garbage or other refuse on a public place or other land under the control of the Council (otherwise than in a container for collection by the Council) by placing or otherwise causing a pile of rubbish to be left on the footpath of Mitchell Street in Darwin contrary to by-law 47(2)(c) of the *Darwin City Council By-laws*.

[115] The matter was listed at 9 am on 26 April 2016. The respondent did not appear at Court at 9 am. At 9.47am he telephoned the Local Court Registry and left message to say, "Running late. Can make it around 10.30 am but would prefer to change time to 2 o'clock. Bus is late. Been campaigning around Casuarina."[89] The matter was stood down to 2 pm but the respondent again failed to appear at that time and the matter was heard *ex parte*. The

88 Affidavit of Demetrious Laouris made 25 September 2017 at [38] ("DL 26"). Contrary to Darwin City Council By-laws (NT) by-law 20 and by-law 47(2)(c), such conduct constituting an offence per by-law 30(1).

89 Affidavit of Demetrious Laouris made 25 September 2017 at [39] ("DL 27").

Court found the charges proven, convicted the respondent of both counts, and imposed an aggregate fine of $100.[90]

[116] On 26 April 2016, the respondent filed an Application to Set Aside Conviction or Order under s 63A of the *Justices Act 1996* (NT) which has been renamed the *Local Court (Criminal Procedure) Act 1928* (NT) seeking to set aside his convictions for the charges of littering. The handwritten grounds on which the respondent relied were that he failed to attend because the bus was late and the prosecution was malicious and not in the public interest.[91] That application was listed at 9.30 am on 3 June 2016. The respondent did not appear on that day and the respondent's application was dismissed.

[117] On 3 June 2016, the respondent filed a second Application to Set Aside Conviction or Order. The second application was directed to setting aside the order made on 3 June 2016 dismissing the first application. The handwritten grounds on which the respondent relied in support of the second application were that: (i) he was not aware of the return date and time for the first application, (ii) the first application was not in the Criminal List for the Local Court on 3 June 2016; and (iii) the respondent was not otherwise informed of the return date and time.[92] The second application was listed for

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90 Affidavit of Demetrious Laouris made 25 September 2017 at [39]; *Jenkins v City of Darwin* [2017] NTSC 58 at [2].

91 *Jenkins v The City of Darwin* [2017] NTSC 58 at [7].

92 Ibid at [9].

hearing at 10 am on 16 June 2016. The respondent did not appear on 16 June 2016 and the application was dismissed.

[118] The grounds the respondent relied on in support of the second application filed were false. It was the respondent's application and when he filed the first application on 26 April 2016 the listing of the matter for hearing at 9.30 am on 3 June 2016 was endorsed on the document, and the first application was in the Local Court Criminal List for Friday, 3 June 2016. Further, the respondent attended at the Local Court on 3 June 2016 to file his second application.

[119] On 20 June 2016 the respondent filed a third application to Set Aside a Conviction or Order. The application was directed to the order dismissing the second application. The handwritten grounds for the third application also falsely stated that: (i) the second application was not listed in the Local Court Criminal List for 16 June 2016; and (ii) the respondent was not otherwise aware of the hearing date for the second application. The third application was listed for hearing at 10 am on 4 July 2016. The respondent did not appear on 4 July 2016 and the application was dismissed.

[120] On 4 July 2016 the respondent filed a fourth Application to Set Aside a Conviction or Order. The fourth application was made by the same document which was used for the third application, with a refreshed listing time of 10 am on 8 August 2016. On that day the respondent appeared and the matter was adjourned to 26 August 2016. On 26 August 2013 the

application was heard by her Honour Judge Fong-Lim. Her Honour dismissed the respondent's application, and ordered the respondent not to file any further applications to set aside a conviction or order.

[121] Her Honour Judge Fong-Lim's reasons for dismissing the respondent's fourth application were summarised by his Honour Grant CJ in *Jenkins v City of Darwin*[93] as follows.[94]

> On 26 August 2016 the presiding judge determined that there was no power in the Local Court to set aside the orders by which the [respondent's] previous applications to set aside conviction or order had been dismissed in default of appearance; and that the [respondent] was out of time to make an application to set aside the findings of guilt pursuant to s 63A of the *Local Court (Criminal Procedure) Act*.
>
> As is apparent from those findings, the judge treated the fourth application made by the appellant on 4 July 2016 as an application to set aside the order dismissing the second (or perhaps third) application. On its face, that is what the application indicates. The fourth application was made in the standard form provided for applications under s 63A of the *Local Court (Criminal Procedure) Act*, with the handwritten inclusions made by the appellant which have been described above.

[122] As is stated below at [124] her Honour Judge Fong-Lim correctly decided the matter. The four interlocutory matters instituted by the respondent were instituted without reasonable ground and were conducted in such away so as to harass or annoy and cause delay or detriment. In total the Darwin City Council proceedings were listed and heard seven times in the Local Court. On six of those occasions, the respondent did not appear.

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93 *Jenkins v City of Darwin* [2017] NTSC 58.

94 Ibid at [15] – [16].

[123] On 30 August 2016 a Notice of Appeal was filed in the Supreme Court.

[124] In his Reasons for Judgment in *Jenkins v City of Darwin* his Honour Grant CJ listed the following "insurmountable" barriers to the successful prosecution of the appeal:[95]

1) The appeal was brought out of time.[96]
2) There was no merit to the grounds of appeal relied on by the respondent.[97] The Notice of Appeal filed is indecipherable in parts and contains scandalous accusations.[98] The respondent's oral submissions were irrelevant and "attended by allegations of harassment, legal and political corruption, persecution and malicious prosecution… unsupported by even a scintilla of evidence".[99]
3) The second, third and fourth applications made in the Local Court were brought to set aside the orders dismissing the previous application, in circumstances when they could not be brought to do so.
4) The second, third and fourth applications were brought out of time.
5) The original ex parte convictions, and the dismissal of each application in default of appearance, were dispositions open to the court below in the circumstances. The respondent had failed to provide a reasonable excuse for failure to attend on each occasion and exhibited a "pattern of serial disregard of court orders and schedules".[100] Having failed to appear, the respondent was nonetheless able to file three of the applications and the Notice of Appeal on the same day that the order which they were brought against was made.

[125] I am satisfied of the following.

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95 *Jenkins v City of Darwin* [2017] NTSC 58.

96 Ibid at [31], [35].

97 Ibid at [36].

98 Affidavit of Tracey Jane Holmes 176–8 ("TJH 11"). See also *Jenkins v City of Darwin* [2017] NTSC 58 at [19].

99 *Jenkins v City of Darwin* [2017] NTSC 58 at [36].

100 Ibid at [27]–[34].

1) Each of the respondent's four applications in the Local Court were instituted without reasonable ground and in a way so as to cause delay and detriment.

2) The appeal proceeding was instituted without reasonable ground.

[126] Each of these proceedings is a vexatious proceeding.

***Whittington proceedings*[101]**

[127] On 8 and 13 April 2016 the respondent was charged with the following offences:

1) Behaving in a disorderly manner in a public place, namely the Supreme Court at Darwin, contrary to s 47(a) of the *Summary Offences Act 1923* (NT).

2) Failing to cease to loiter when required by member of the police force contrary to s 47A(2) of the *Summary Offences Act* (NT).

3) Resisting a member of the police force in the execution of his duty contrary to s 158 of the *Police Administration Act 1978* (NT).

4) Behaving in a disorderly manner at a police station, namely Darwin police station contrary to s 47(c) of the *Summary Offences Act* (NT).

101 *Whittington v Jenkins* (21617016); *Jenkins v Whittington* [2017] NTSC 65 LCA 20 of 2017 (21617016); *Jenkins v Whittington* LCA 20 of 2017 (21617016) – Application for Leave to Appeal.

5) Failing to comply with the requirements of the security officer at the Supreme Court, namely failing to leave the court premises, contrary to s 13(2) of the *Court Security Act 1998* (NT).

6) Resisting a court security officer in the execution of his duty contrary to s 15 of the *Court Security Act* (NT).

[128] The charges proceeded in the Local Court as *Whittington v Jenkins* No. 21617016. During the course of the prosecution the respondent instituted seven interlocutory proceedings and five appeals in the Local Court, and one appeal in the Supreme Court which the applicant said were all vexatious.

[129] The six charges arose out of the respondent's behaviour in the Supreme Court during the proceeding of *Jenkins v Todd*[102] on the morning 8 April 2016 and following. That proceeding involved a prosecution of the respondent for contempt of the Supreme Court. The facts giving rise to the six charges were summarised by his Honour Grant CJ in *Jenkins v Whittington*[103] as follows.

> As a result of the [respondent's] behaviour in [the Supreme Court on 8 April 2016], the presiding judge had directed that the [respondent] was to leave the courtroom and would only be permitted to participate in the proceedings by audio-visual link from the vulnerable witness room if he chose to do so. Alternatively, the matter would proceed in his absence. That advice was provided to the Sheriff by the Deputy Sheriff, and had in turn been provided by the presiding Judge's Associate.

102 [2016] NTSC 21.

103 [2017] NTSC 65 at [111] to [115].

After receiving that advice the Sheriff proceeded to the courtroom. He had a conversation with the presiding Judge's Associate in which she confirmed the orders that had been made. The legal practitioner representing the other party in the proceedings was attempting to persuade the [respondent] to leave the courtroom. The [respondent] refused to leave. The Sheriff directed the [respondent] to leave the courtroom. The [respondent] refused to leave and remained seated at the bar table. The Sheriff then said, "This is your last opportunity to stand on your own and remove yourself." The [respondent] refused to leave.

The Sheriff then directed three court security guards who were in attendance to remove the [respondent] from the courtroom. Each of the security contractors employed as a security guard at the Supreme Court was also appointed a Deputy Sheriff. As the court security guards were removing the [respondent] from the courtroom he wrapped his legs around a chair in order to impede their progress. He also went limp to constitute himself as a "dead weight" in order to impede their progress. Despite that passive resistance, the [respondent] was taken out of the courtroom into the foyer of the court building. The [respondent] was yelling and screaming as this took place.

The [respondent] continued yelling and screaming in the foyer. The Sheriff directed him to desist or he would be removed from the court building. The [respondent] refused to comply with that direction. The Sheriff then directed the security guards to remove the [respondent] from the court building. The [respondent] again constituted himself as a dead weight but pressed his heels against the floor in an attempt to stop his progress towards the exit. The Sheriff then took the [respondent] by the legs and he was carried bodily outside. He was placed on the ground outside the court building. The [respondent] continued yelling during this process.

The [respondent] was told that he would not be permitted to return to the court building until he calmed down and was prepared to behave himself. He would then appear to have calmed himself to a degree and convinced the security supervisor to readmit him to the court. The Sheriff approached the [respondent] and advised him that the proceedings in which he was involved had concluded. The [respondent] became aggressive. Police then attended.

[…]

[…] On arrival at the Supreme Court [a police officer who was tasked to attend the Supreme Court] saw the [respondent] standing outside. The [respondent] was yelling at a person wearing robes who the witness assumed was a legal practitioner. The police officer watched this for a period of approximately five minutes before intervening. The [respondent] said: "Fuck off. It's none of your business."

> The [police officer] was then joined by another two police officers. The [respondent] then went into the Supreme Court building to the Registry and started aggressively demanding documents. In doing so he was swearing at the court staff behind the counter. The security guard then requested police to escort the [respondent] from the court building. The [respondent] then walked without assistance to the front steps of the court building and sat on the ground.
>
> One of the police officers in attendance then notified the [respondent] to cease to loiter and that he had 30 minutes to leave the area. The [police officer] then went inside to speak to the court security staff. While inside he heard the [respondent] shouting […].
>
> A police wagon arrived approximately 25 to 30 minutes later. At that time [one of the police officers] gave the [respondent] one final warning and direction to cease to loiter. The [respondent] again failed to comply and was arrested. The [respondent] then began screaming: "I've done nothing wrong. I've done nothing wrong." The [respondent] was then… placed in the back of the police vehicle. The [respondent] provided a degree of passive resistance during that process which [one of the police officers] said made it hard to secure him in the rear of the vehicle.
>
> The [respondent] was then taken to the Darwin watch house. […]
>
> […]
>
> When the vehicle arrived at the Darwin watch house the [respondent] was placed in the holding cell. A health assessment was conducted, during which the [respondent] continued yelling and refused to answer any of the assessment questions. He was then placed in the observation cell where he started doing push-ups and continued yelling. At various times thereafter the respondent was observed to be praying. He asked for several cups of tea which were provided to him.

[130] The prosecution of the charges in *Whittington v Jenkins* No. 21617016 was listed for hearing in the Local Court on 11 January 2017 and 7 March 2017. It was adjourned on both occasions. On 19 April 2017 the proceeding was mentioned before Judge Neill in the Local Court and the respondent applied for an adjournment and for his Honour to recuse himself. The application to adjourn was based on: (i) the respondent's wish to ensure that Daniel McGregor, Kaylyn Norton, Gregory McDonald, Matt Platt and her Honour

Kelly J would be called as witnesses at the hearing; and (ii) he had applied for legal aid on 19 April 2017. The application for the judge to recuse himself was based on the following grounds: (i) a statement by Judge Neill that the court was trying to fit in with his peculiarities; (ii) that in 2011 or 2012 in an unrelated matter, Judge Neill had refused to grant him bail; and (iii) Judge Neill had made decisions that were not in favour of the respondent in other unrelated matters. Judge Neill dismissed both applications. He acted correctly in doing so.

[131] The applications were made without good reason and to cause delay and detriment. Except for her Honour Kelly J and Ms Norton, each of the persons who the respondent wanted to give evidence at that time were on the prosecution's list of witnesses. The prosecution agreed to call Ms Norton by way of video link. Kelly J was not a compellable witness and it was most unlikely her Honour saw anything that occurred inside the courtroom or in the foyer of the Supreme Court building after she had adjourned the proceeding and left the bench, and the respondent had unreasonably made a very late application for legal aid without any valid explanation for the lateness. The bare grounds asserted by the respondent did not establish a basis for Judge Neill to recuse himself and no evidence was placed before the Local Court which required Judge Neill to recuse himself.

[132] On 26 April 2017 the proceeding came on for hearing before Judge Neill. Before coming on for hearing the proceeding had been subject to mention or preliminary hearing on 18 occasions. At the start of the hearing the

respondent once again asked Judge Neill to recuse himself. The application was made on the basis that his Honour had a personal relationship with Mr Daniel McGregor, the Sheriff of the Supreme Court, who was to be called as a witness. The interlocutory application was made in the following terms:

> The respondent: I'd like to make an application, your Honour, for you to be recused from this case because you have a personal relationship with Daniel McGregor.
>
> […]
>
> The respondent: And just to establish the recuse (sic) I'm asking about, I've written a letter. You have a personal relationship with Daniel McGregor and you've recused yourself before in a case, *McGregor v Jenkins*, and it's on tape where Carey J had said:
>
> > Justice Neill is recusing himself from this case because he has a personal relationship with Daniel McGregor who is a witness in this case. He's had personal dealings with him; professionally, in this court and personal dealings with him; and mowed lawns and things.
>
> And Justice Carey said that, so I'm asking you to be recused because you're friends with the man; you're personal friends with the man and I'm asking you to be recused from the case.

[133] In *Jenkins v Whittington* his Honour Grant CJ found that the respondent's recounting of the observations made by Judge Carey on 8 November 2016 were somewhat inaccurate and misleading.[104] I agree. Judge Carey's comment was that simply Judge Neill was "not comfortable dealing with the

104 [2017] NTSC 65 at [20].

matter" of *Jenkins v McGregor* which was a private prosecution against Mr McGregor which had been instituted by the respondent.

[134] There was then the following exchange between the respondent and Judge Neill.

The respondent:	Well, I'd like my application heard first, so that I can get another judge, because it's obvious that you have a personal relationship with Daniel McGregor, obviously. I've seen you having coffee with him up and down the street. So, you have a personal relationship with the man.
His Honour:	Mr Jenkins, that is not correct.
The respondent:	It is correct.
His Honour:	You have not seen that because it has never happened.
The respondent:	Really? Is that right?
His Honour:	That is right.

[135] Judge Neill then ruled on the application in the following terms.

His Honour:	Mr Jenkins, one thing at a time. At the moment, Mr Rowbottam, we're going to deal with Mr Jenkins' application that I recuse myself. Then, I will hear your application; because I do not allow the application that I recuse myself. I state for the record that its basis is no basis whatsoever that because as judge…
The respondent:	Explain…
His Honour:	Because a judge might know a witness, that is no basis in and of itself, the judge must recuse himself or herself from hearing the case…
The respondent:	So, you're admitting that you have a personal relationship with him…
His Honour:	And, therefore, I deny your application.

[136] For the reasons given by his Honour Grant CJ in *Jenkins v Whittington*,[105] which are discussed at [156] to [162] below, with which I agree, I find that the respondent's application for Judge Neill to recuse himself was made without reasonable ground and to cause delay and detriment.

[137] On 27 April 2017 Judge Neill found the respondent not guilty of behaving in a disorderly manner in a public place contrary to s 47(a) of the *Summary Offences Act* (NT) and guilty of: failing to cease to loiter when required by member of the police force contrary to s 47A(2) of the *Summary Offences Act* (NT); resisting a member of the police force in the execution of his duty contrary to s 158 of the *Police Administration Act* (NT); behaving in a disorderly manner in Darwin police station, contrary to s 47(c) of the *Summary Offences Act* (NT); failing to comply with a requirement of a security officer at the Supreme Court, namely failing to leave the court premises, contrary to s 13(2) of the *Court Security Act* (NT); and resisting a court security officer in the execution of his duty contrary to s 15 of the *Court Security Act* (NT). The matter was then adjourned for submissions on sentence.

[138] During the hearing on 26 and 27 April 2017 the respondent was also charged and found guilty of contempt in the face of the Local Court by Judge Neill and sentenced to two months imprisonment, and it was necessary for Judge

105 [2017] NTSC 65 at [15] – [29].

Neill to conduct part of the proceeding in the respondent's absence because he behaved so badly by continually interrupting the proceeding.

[139] On 10 May 2017 Judge Neill described the respondent's behaviour on 26 and 27 April 2017 in court before him as follows.

> On 26 April 2017 we attempted to proceed with the hearing, but were unable to do so because Mr Jenkins continued to speak over the court and over Mr Rowbottam. He declined to plead to the charges as a consequence of which I took him to be pleading not guilty to each charge. Mr Rowbottam then attempted to provide particulars for each charge. Mr Jenkins refused to allow that to happen and continued to talk over Mr Rowbottam at all stages.
>
> I made every effort to explain to Mr Jenkins that we had not yet got to the stage of evidence and it was not yet appropriate for him to be challenging the particularisation of the charges and I tried to explain to him what that process involved. Mr Jenkins would not permit me to do so and continued to speak over me and over Mr Rowbottam. He was warned repeatedly that if he continued to behave this way he would be charged with contempt of court.
>
> Eventually on 26 April that is what happened. I charged him with contempt in the face of the court. I had him taken down to the cells. I had your colleague, Ms MacCarron speak with him and then I had Mr Jenkins brought back up from the cells with Ms MacCarron. Ms MacCarron informed me that Mr Jenkins did not seek legal aid to represent him. But merely to inform the court of two things. One was his apology and the second were his personal circumstances the night before and in the morning of the day which made it more difficult for him.
>
> I noted both those things but informed Mr Jenkins and Ms MacCarron that I did not regard the apology as a genuine or legitimate apology because I'd formed the view, which I read onto the record, that Mr Jenkins' behaviour on 26 April was deliberate and designed to prevent the hearing before the court from proceeding and that it was contumelious. That led Mr Jenkins to once again launch into a tirade against the court, myself and Mr Rowbottam. Rather undoing the effects of the apology which Ms MacCarron had presented on his behalf.
>
> Mr Jenkins then demanded that there be a whole process for a contested hearing of the contempt of court charge which I declined on the basis that where there is a contempt in the face of the court, the court may

deal with the matter there and then and I proceeded to do so. Mr Jenkins was given the opportunity to make submissions on sentence. He declined to do so. Instead he continued to talk over the court and to talk about matters irrelevant to the process of the sentence for contempt of court.

I then convicted him and sentenced him to 2 months prison for contempt of court. He was then taken out to Holtze prison and processed and brought back by AVL at 2 o'clock. I informed Mr Jenkins that we would proceed with the hearing on the file that we had started on that morning and that he would have the opportunity to engage by AVL. Mr Jenkins declined that opportunity. Instead, he talked incessantly, he disrobed and stood naked in the interview room and he was eventually taken away by the guards. I had him declared at risk and I proceeded with the hearing in his absence.

On the next morning we were part heard on 27 April. Mr Jenkins again appeared by video at 10:00 in the morning and behaved in a similar way. He didn't disrobe on this occasion, but he declined by his actions and incessant speaking to engage in the ongoing process of the hearing before the court. Once again, having given him every opportunity, he was taken out of the AVL room back to his cell by the guards and the hearing continued in his absence. At the end of that day the hearing was completed.

I found offence 1 not proven and found Mr Jenkins not guilty of the offence of disorderly behaviour in a public place, which is on the front steps of the Supreme Court. However I found the other offences proven, that is counts 2 to 6 inclusive, and I adjourned the matter to today for sentence.

[140] Prior to finding the respondent guilty of contempt Judge Neill stated the following.

The decision to proceed to charge for contempt of court is a power to be used sparingly and only in serious cases. It is the duty of the court to protect the public against every attempt to [inaudible] or intimidate the courts by insult or defamation.

Mr Jenkin's behaviour is not merely scurrilous abuse. It was deliberate, designed in advance and contumelious. It was intended to and did prevent the court from hearing the charges against Mr Jenkins from proceeding.

The powers to punish for contempt are of great importance to society because it is by [their application] that law and order prevail.

> Proceedings for contempt of court are not used to prevent free-speech. They are to preserve the administration of justice. They are not to protect the individual person.
>
> Trevor Jenkins, you are convicted. You are sentenced to 2 months prison today. Take him down.

[141] Having perused the transcript of the proceeding on 26 and 27 April 2016, I agree with Judge Neill's description of the respondent's conduct which constituted the contempt.

[142] On 10 May 2017 the matter came before Judge Neill for sentence. The respondent appeared by way of audio-visual link. Judge Neill attempted to explain to him the stage that the proceeding had reached. However, the respondent behaved as he did during the hearing on 26 and 27 April 2017 and he continued to speak over Judge Neill and say nothing of any assistance whatsoever. Arrangements were made for the respondent to speak to a lawyer from the Northern Territory Legal Aid Commission but the respondent declined assistance and stated through the legal aid lawyer that he wished to remain as a self-represented litigant. Once again, the respondent made an application for Judge Neill to recuse himself. The application for recusal was made on the same grounds as it was on 26 April 2017 and was declined. I find that this recusal application was also made without reasonable ground and to cause delay and detriment.

[143] During the course of the hearing before Judge Neill on 10 May 2017 his Honour was informed that her Honour Kelly J had found the respondent had breached the suspended sentence of three months' imprisonment her Honour

Kelly J had imposed on the appellant for contempt of the Supreme Court. Her Honour restored the balance of the sentence being two months and two weeks imprisonment and ordered that one month and two weeks of the sentence was to be served cumulatively on the sentence of imprisonment imposed by Judge Neill for contempt in the face of the Local Court. That gave a total sentence of three months and two weeks imprisonment commencing on 26 April 2017 for the two counts of contempt. Judge Neill was also informed that before sentencing the respondent her Honour Kelly J had received a report from a psychologist about the respondent's mental state and the respondent wanted to call character evidence in the plea on sentence. His Honour adjourned the matter to 12 May 2017. The matter was then adjourned to 26 May 2017.

[144] On 10 May 2017 the respondent filed a Notice of Appeal in the Local Court. It seems that this Notice of Appeal was not filed in the Supreme Court. The Notice of Appeal is very badly drafted. It is partly indecipherable. The document appears to complain; (i) that the hearing of the six charges proceeded ex parte and the respondent was denied an opportunity to be heard; (ii) Judge Neill had a relationship with Daniel McGregor and failed to recuse himself; and (iii) Judge Neill failed to allow 17 witnesses to be subpoenaed. I find that the Notice of Appeal was filed without reasonable ground. The hearing only partly proceeded in the respondent's absence and the reason for his absence was the disruptive manner in which he had deliberately conducted himself. He effectively waived his right to be

present in court. No evidence was led by the respondent about any relationship Judge Neill was alleged to have had with Mr McGregor and the prosecutor called all relevant witnesses, none of whom were cross-examined by the respondent. The filing of the Notice of Appeal was vexatious.

[145] On 14 May 2017 the respondent filed a further Notice of Appeal in the Local Court. The Notice of Appeal had 5 pages of handwritten grounds of appeal attached to it. This Notice of Appeal was emailed to the Supreme Court on 15 May 2017.[106]. The Notice of Appeal and the attached pages were pleaded in a relatively coherent manner. As best as can be discerned, they plead as follows:

- Ex parte unable to defend
- Impossible to cross-examine use CCTV and audio via custody video
- Unable to access talk to witnesses
- Order made unable to issue subpoenas
- [Judge Neill] fail to recuse (indecipherable) personal relationship Daniel McGregor chief witness instigator call police CMI 26 August Jenkins v McGregor. Attempt to pervert the course of justice. [Judge Carey] says [Judge Neill] recuse from case as McGregor did [Judge Neill's] lawns had personal relationship (see transcript 2016 first [Judge Carey] (indecipherable)).
- Matt Platt head of security not called.
- Greg McDonald head defence in civil case JA 10 of 15 (21425645) I was prosecuting at bar table at time not called.
- CCTV of Registry area where I returned allowed back inside filing legal papers and talking peaceably not shown even though available and subpoenaed.

106 *Jenkins v Whittington* [2017] NTSC 65 at [9].

- Registry staff illegally ordered not to talk to me by McGregor issuing order two weeks before hearing witnesses are nobody's property.
- Police inside court outside on CCTV witnesses not called.
- ABC cameraman Sam (indecipherable) and presenter Rebecca West seen easily on CCTV not called in court 26 and 27 requested specifically named but not called by Rowbottam.
- Rowbottam calls me pig animal and knowingly illegally accuses spitting (indecipherable) heard on tape.
- Police and security guard called for demanded deliberately threatening escalating not calming proceedings.
- Illegal to have private security guard in public court.
- Touching grabbing harassing me assaulting me was Muslim didn't like me had dealings before I was (indecipherable) character.
- [Judge Neill] sentencing on contempt and sending to jail directly made joke of later sentencing no chance submissions bail my own self-rep legal research act illegal act etc. as obviously usually do (indecipherable).
- There were two DPP witnesses one black woman 32 and one indigenous white male witnesses I could call hearing in court and/or support submissions no opportunity call.
- Rowbottam should have been charged contempt as well as McGregor recalled for intervention harassment bureaucratic not done. I have personally as well as assault McGregor.
- CCTV provided on morning after a year still no security records. Call showing Matt Platt in control then sacked ordered by [Judge Neill] but never provided or played a crucial prejudicial evidence.
- All incidents Supreme Court rules (indecipherable) legislative Sheriff Daniel McGregor ugly power Supreme Court can't be charged by Local Court legislation. I was self-represented litigant legal right court had to be there under Supreme Court Rules.
- Assaulted by McGregor Supreme Court that day heard on tape.
- Seek ex parte rehearing and charges dropped and set aside and quashed.

[146] For the reasons given by his Honour Grant CJ in *Jenkins v Whittington*,[107] which are discussed at [153] and [155] to [175] below, with which I agree, I find that the respondent's appeal which was instituted by Notice of Appeal emailed to the Supreme Court on 15 May 2017 was instituted without reasonable ground and to harass and annoy.

[147] On 2 June 2017 the respondent filed an Application to Set Aside Conviction or Order under s 63A of the *Local Court (Criminal Procedure) Act*. The document pleads:

> (I was mentally ill at risk Darwin DC) [The respondent then set out a very rough description of the convictions he wished to set aside.]
> [The respondent then pleaded the ground of the application as follows.]
> I was held in custody at risk without pad & pens & legal papers & CCTV footage access to my (indecipherable) & other witnesses against my will without opportunity for bail food water or legal access & (indecipherable) via video link tv to cross examine witnesses and use CCTV & audio footage.

[148] The application was instituted without reasonable ground. It was a totally misconceived application. The Local Court did not have power to set aside the respondent's convictions for the counts referred to at [137] above under s 63A of *Local Court (Criminal Procedure) Act*. The exercise of the power of the Local Court under s 63A of *Local Court (Criminal Procedure) Act* is predicated upon circumstances in which the court proceeds ex parte under s 62(b), s 62A(b) or s 191 of the Act and adjudicates upon a complaint and finds the defendant guilty. Subsection 62(b) of the Act grants the Local

107 [2017] NTSC 65.

Court the power to proceed ex parte where a defendant fails to appear in obedience to a summons. Subsection 62A(b) of the Act grants the Court the power to proceed ex parte where a defendant fails to appear in accordance with a bail undertaking. Section 191 of the Act grants the court the power to proceed ex parte where a person fails to appear as required by a notice to appear. None of those sections were applicable in *Jenkins v Whittington* as the applicant appeared at the hearing, but by his bad behaviour waived his right to be present for part of the hearing.

[149] On 16 June 2017 Judge Neill heard the plea on sentence in the Local Court.[108] His Honour sentenced the respondent to a total sentence of five months' imprisonment. The sentence was to commence on 9 August 2017 which was at the end of the restored sentence of imprisonment for contempt of the Supreme Court.

[150] On 3 July 2017 the respondent filed an Application to Set Aside Conviction or Order and a Notice of Appeal against sentence in the Local Court. The application to set aside conviction or order suffers from the same difficulties as the Application to Set Aside Conviction or Order that was filed on 2 June 2017. It was filed without reasonable grounds. The Notice of Appeal against sentence pleaded the following grounds of appeal:

> Mentally incapacitated at risk schizophrenic episode
> Unable to mount defence
> Video link unable to cross examine

108 Affidavit of Demetrious Laouris at [48], [51]; *Jenkins v Whittington* [2017] NTSC 65 at [1], [2], [11].

No legal or personal notes evidence resources pens witnesses etc. at jail

No adjournment given or bail opportunity to regather thought get legal advice

Mental health (indecipherable)

Training in mental illness techniques leadership and (indecipherable) training completely ignored

Stressful panic circumstances and mental illness and creative sensitivities artistic issues completely misunderstood ignored

Generational abuse and father sexual abuse and mothers abuse sexual of me (indecipherable)

Ian Rowbottam's behaviour aggressive ugly language threats and stress and (indecipherable) contempt given no (indecipherable) at all

Summary offences no violence aggression just justified angry (indecipherable)

(Indecipherable)

[151] There was no documentation before the Court to establish that the Notice of Appeal dated 3 July 2017 was filed in the Supreme Court. However, it may be presumed that it was because his Honour Grant CJ considered both an appeal against conviction and an appeal against sentence in the proceeding of *Jenkins v Whittington*.[109]

[152] On 11 and 20 July 2017 the respondent's appeals against conviction and against sentence were mentioned in the Supreme Court and the appellant's grounds of appeal were clarified. On 25 July 2017 his Honour Grant CJ heard the respondent's appeals against conviction and against sentence in the Supreme Court. In his reasons for decision in *Jenkins v Whittington*[110] his Honour Grant CJ noted that the appeal documents were grossly defective

109 [2017] NTSC 65.

110 Ibid at [13].

but found that it was tolerably clear from what was said by the respondent on 11 and 20 July 2017 that he sought to appeal on the following grounds:

- that the trial Judge erred in failing to recuse himself on the basis that there was a reasonable apprehension of bias arising from a personal relationship between the trial judge and one of the witnesses in the matter;
- that the trial Judge erred in convicting the [respondent] of contempt on 26 April 2017, and in imposing a penalty in respect of that conviction;
- that the [respondent] was denied natural justice by reason of the fact that part of the hearing was conducted in his absence; and
- that the sentence imposed by the trial Judge on the convictions for counts 2, 3, 4, 5 and 6 was manifestly excessive.

[153] On 25 July 2017 the respondent made the following submissions to the Supreme Court.[111]

> First, the [respondent] asserted that at no stage had the Supreme Court directed that he was to leave the courtroom on the morning of 8 April 2016. That assertion was plainly untrue.
>
> Secondly, the [respondent] asserted that the prosecution had failed to call relevant witnesses in the conduct of the prosecution. In particular, the [respondent] suggested that material evidence could have been called from the security guard who had permitted him to enter the Supreme Court building after he was initially ejected, and from two journalists who were present in the court precincts at that time. The [respondent] was unable to identify the basis on which he asserted those witnesses may have had some different account to give, or in the manner in which that evidence may have led to a different result.
>
> Thirdly, the [respondent] suggested the charges were unsustainable because it is illegal to have a private security guard in a public courthouse. That assertion is without legal foundation.
>
> Fourthly, the [respondent] asserted that the charges were not properly made out because police and security guards attending the incident were deliberately threatening to the [respondent] and escalated the incident in breach of their obligations under the legislation.

111 *Jenkins v Whittington* [2017] NTSC 65 at [140] – [144].

His Honour Grant CJ found that last assertion was entirely inconsistent with all the evidence in the matter and was patently untrue.

[154] On 4 August 2017 the Supreme Court Registry received the following documents by email from the respondent regarding the appeal in the proceeding of *Jenkins v Whittington*: (a) subpoena addressed to Mr Ian Rowbottam; (b) subpoena addressed to Mr Jim Laouris; (c) summons to Ian Rowbottam; (d) summons to Mr Matt Platt; and (e) summons to person to appear or appear and produce documents addressed to Mr Jim Laouris. All of the documents were returned to the respondent by letter on 9 August 2017 as they did not comply with the *Supreme Court Rules*.

[155] On 21 August 2017 his Honour Grant CJ dismissed the respondent's appeals and published his Reasons for Judgment.[112] During the course of his reasons his Honour held that a number of the respondent's submissions were fabrications or inventions, which were unsupported by the evidence or patently untrue.

[156] As to the respondent's first ground of appeal, that Judge Neill erred in failing to recuse himself, his Honour Grant CJ held as follows.[113]

[157] First, the sole basis of the respondent's assertion of an apprehension of bias was confined to the following comments of Judge Carey in *Jenkins v McGregor*, which is an unrelated proceeding.

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112 *Jenkins v Whittington* [2017] NTSC 65.

113 Ibid at [15] – [29].

The respondent:	This is supposed to be before Neill J.
Judge Carey:	No, it is not. It is now before me.
The respondent:	It is supposed to be – how come there's five different people…
Judge Carey:	Because Mr Neill doesn't want to hear it because he's had an association where Mr McGregor did some work for him over a period of time. So, he is not comfortable dealing with the matter. That is why I have it.

[158] Second, no further information about the work done by Mr McGregor was provided to Judge Neill by the respondent. Third, the assertion by the respondent that Judge Neill had a personal relationship with Mr McGregor was not compelling. The respondent's statements about seeing Judge Neill and Mr McGregor together having coffee on a number of occasions "had the distinct air of fabrication or invention".

[159] Fourth,

> The mere fact that the decision-maker may know a witness in the proceedings does not ground a reasonable perception that the decision may be influenced by that association or acquaintance. That depends in every case on the closeness of the association, the time for which it has subsisted, and the incidents of that connection. The [respondent] tendered no evidence about to those matters in the face of the; Judge's indication that there was no personal or social relationship of a degree which disqualified him from hearing the matter.

[160] Fifth,

> The fact that the judge had previously indicated a disinclination to preside over the private prosecution which had been brought against Mr McGregor by the appellant did not operate as any concession that there were grounds for a reasonable perception that his decision in the matter might be influenced by some relevant association. Judge Carey's comment was "that Judge Neill was not comfortable dealing with the

> matter". Even in the absence of grounds for some reasonable perception of bias, one can well understand why the judge might have felt uncomfortable dealing with proceedings which had as a possible consequence the conviction of Mr McGregor and the imposition of some criminal sanction. One might also understand why there was no similar discomfort in the context of proceedings in which Mr McGregor was simply one of the number of witnesses to a series of transactions involving the respondent.

[161] Sixth,

> [While] there are references by Judge Carey to Mr McGregor doing "some work for [Judge Neill]", and by the [respondent] to the fact that Mr McGregor "mowed lawns and things", there was no evidence or elaboration concerning those references either during the course of the application for recusal or during the conduct of the appeal.

[162] I agree with his Honour Grant CJ's reasons for dismissing the first ground of appeal, and I find that the respondent had no reasonable ground for maintaining this ground of appeal.

[163] As to the second ground of appeal, that Judge Neill erred in convicting the respondent of contempt, his Honour Grant CJ held that Judge Neill had complied with all the procedural requirements for dealing with a contemnor in the face of the court and went on to state as follows.[114]

> The judge in this case had observed the conduct said to constitute the contempt over the hours leading up to his determination. He was in a unique position to determine whether the contempt was established beyond reasonable doubt, and a reading of the transcript gives rise to no doubt concerning the judge's determination in that respect.

114 *Jenkins v Whittington* [2017] NTSC 65 at [67].

[164] I find that there was no reasonable ground to pursue the second ground of appeal. There is no doubt that the respondent committed contempt in the face of the Local Court.

[165] As to the third ground of appeal, that the appellant was denied natural justice by reason of the fact that part of the hearing was conducted in his absence, his Honour Grant CJ held as follows.[115]

[166] First, there is no doubt that an offender's mental illness may have a very significant bearing on: (i) any decision to proceed to determine criminal charges on an ex parte basis; (ii) on criminal responsibility generally; (iii) and on the question of punishment and sentence.[116]

[167] Second,

> There is nothing in that material to suggest that the [respondent] does not properly bear criminal responsibility for his conduct, either at the time he committed the public disorder offences for which he was found guilty or at the time he committed the contempt in the face of the court. While the material might provide something in the way of explanation for the [respondent's] conduct, it does not provide any excuse or exculpation. The material also suggests positively that the [respondent's] assertions of mental illness and suicidal ideation made before the Local Court on 26 and 27 April 2017 were a ruse directed to derailing the conduct of the proceedings. A reading of the relevant part of the transcript and the progression of the [respondent's] behaviours at the time bears out that suggestion.[117]

[168] Third,

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115 Ibid at [78], [86], [88], [92], [93], [94], [99] – [102].

116 Ibid at [78].

117 Ibid at [86].

> [Judge Neill's] reference to the [respondent's] peculiarities did not demonstrate either actual or apprehended bias against him. It was only to acknowledge the fact that the conduct of a trial in which the [respondent] was to represent himself gave rise to particular challenges, and required particular accommodations, not least because of the matters disclosed in the medical assessments traversed above.[118]

[169] Fourth, there are established exceptions to the principle that a trial of a criminal offence should be conducted in the presence of the accused. One such exception is where a defendant misbehaves in such a way as to make his or her removal from the court necessary, there will be a waiver of the right to be present.[119] Further, there is no "essential principle" that any part of a summary proceeding must be conducted in the presence of the accused.[120]

[170] Fifth,

> The governing statutes and the implication of powers regulate the circumstances in which a court exercising summary jurisdiction may conduct proceedings in the absence of the accused.
>
> The *Local Court Act* provides for the exercise of summary criminal jurisdiction in the Northern Territory, subject to the operation of any statute dealing with the specific subject matter. Section 38 of the *Local Court Act* provides expressly that the court may order a party be excluded from the courtroom during the whole or any part of the proceedings if it appears that the person's conduct makes it impracticable to continue the proceedings in the person's presence. Similarly, ss 62, 62A and 62AB of the *Local Court (Criminal Procedure) Act* provide for the court to proceed *ex parte* in circumstances where a defendant fails to appear in obedience to a summons or in accordance with a bail undertaking.[121]

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118 Ibid at [88].

119 Ibid at [90].

120 Ibid at [92].

121 Ibid at [92] – [93]

[171] Sixth,

> Although there is no provision dealing expressly with the conduct of proceedings in a defendant's absence in other circumstances, the Local Court has an implied power to regulate its own proceedings and to take such steps as are necessary for the exercise of its jurisdiction. Those implied powers must permit it also to proceed where a defendant in custody absents himself during the course of the trial, or where a defendant in custody appearing by way of audio-visual link misbehaves in such a way as to make his or her removal necessary, or where a defendant in custody declines to participate in proceedings.[122]

[172] As to this ground of appeal his Honour Grant CJ concluded the following.[123]

> The [respondent's] behaviour was deliberate, voluntary and such as to plainly waive his right to appear at the trial of the charges. Given the persistence of his behaviour and his antecedents, the court was correct to consider that an adjournment would not have cured the [respondent's] disruptive behaviours.
>
> The [respondent] expressed no genuine wish to be legally represented at the trial. To the extent he sought an adjournment to make application for legal aid, that application was properly considered as another ruse designed to delay the conduct of the proceeding. It must be noted in this respect that the [respondent] had not taken up the opportunity for legal representation during the conduct of the contempt proceedings beyond providing instructions for an apology to be conveyed to the court. The [respondent's] serial appearances as a self-represented litigant before the various courts in this jurisdiction also suggests a disinclination on his part to avail himself of qualified legal advice and representation.
>
> In any event, it might be considered unlikely that the [respondent] would have provided instructions to solicitors in a manner which would have enabled them to present a defence. That conclusion may be drawn from the various matters in his defence to which the [respondent] made advertence prior to the finding of contempt and during the sentencing proceedings […]. Those matters were founded on a series of untruths, misrepresentations and misapprehensions, and provided nothing by way of defence known to the law. It is also apparent from the evidence given by the witnesses called during the trial that the factual basis for

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122 Ibid at [94].

123 Ibid at [99] – [102].

> many of the assertions made by the [respondent] were simply not correct.
>
> […]. Finally, given the nature of the charges and their relationship to the administration of justice it was in the public interest that they be determined within a reasonable time.

[173] I find that there was no reasonable ground for the respondent to institute and pursue the third ground of appeal. By his appalling behaviour the respondent clearly waived his right to be present throughout the trial of the charges against him.

[174] As to ground four of the appeal, his Honour Grant CJ found that both individually and in total the sentences that were imposed on the respondent were not manifestly excessive. I agree. To succeed on this ground:

> […] the excess must be obvious, plain, apparent, easily perceived or understood and unmistakeable. It must be so outside the range of a reasonable discretionary judgment as to itself bespeak error.[124]

[175] His Honour Grant CJ made the following remarks about the sentences imposed on the respondent.[125]

> The [respondent's] submissions on sentence were discursive. They run for approximately 13 pages of transcript. They are directed in large part to the findings of guilt rather than to the question of sentence. They are not recognisably directed to orthodox sentencing considerations at all.
>
> […]
>
> The [respondent's] prior and recent history of relevant offending elevated the weight to be attached to considerations of deterrence and protection of the community; told against his prospects of rehabilitation; and bore upon the assessment of his moral culpability

124 *Hanks v the Queen* [2011] VSCA 7 per Bongiorno JA at [22].

125 *Jenkins v Whittington* [2017] NTSC 65 at [110], [153], [158], [159], [169].

> given that history could be said to demonstrate an attitude of continuing and flagrant disobedience to the law.
>
> […]
>
> As already addressed, there was nothing before the Local Court to suggest remorse for or acknowledgement by the [respondent] of his wrongdoings. This attitude persisted during the course of this appeal. The [respondent] represented himself at all times as a person entirely without blame who had been purposefully and unjustly aggrieved, harassed, persecuted and traduced by corrupt or incompetent authorities. It might be considered highly unlikely that an order suspending the sentence in whole or in part would have encouraged any form of rehabilitation or change in attitude. It may even have operated to entrench the [respondent's] belief that he has at all times been in the right.
>
> Leaving aside the question of rehabilitation, the [respondent's] recent criminal history, his previous breaches of bail and orders suspending sentence, his otherwise poor character, his age, his long-term disengagement from employment activity, and his disordered personality all militated against an order suspending sentence.
>
> […]
>
> [T]he sentences for the two episodes of contempt of court were imposed to serve the interests of the public in maintaining the due administration of justice, the authority of the courts, and the interests of litigants. These are specific and crucial purposes. Any casual description of the [respondent's] conduct as that of a harmless eccentric flouting convention would belie its serious criminality. By his conduct in that respect the appellant imposes a very substantial drain on the resources of the courts with a deleterious impact on the claims of deserving litigants to the courts' time. That effect is in diametric opposition to the result which the [respondent] is claiming to pursue – which is to further the interests of litigants, and particularly self-represented litigants. By his mindless, tedious and anarchic conduct he achieves nothing but to distract attention from those interests.

[176] I am satisfied that the fourth ground of appeal in *Jenkins v Whittington* was instigated and pursued without reasonable ground. I am also satisfied that the appeal overall was brought without reasonable ground and was instituted to harass and annoy.

McGregor proceedings

[177] On 7 April 2016 the respondent filed a complaint against the Sheriff of the Supreme Court, Daniel McGregor, alleging that on 30 March 2016 Daniel McGregor attempted to pervert the course of justice, contrary to s 109 of the *Criminal Code 1983* (NT). The complaint pleads as follows.

> Daniel McGregor of Darwin on the 30th day of March 2016 at 10.55 am in the Northern Territory of Australia did attempt to pervert the course of justice contrary to section 109 of the *Criminal Code Act 2013*.

[178] An offence contrary to s 109 of the *Criminal Code* (NT) is an indictable offence. It is a very serious offence to allege against a person. The maximum penalty for such an offence is imprisonment for 15 years. A prosecution for an indictable offence must be instituted by information not by complaint.

[179] On 19 October 2016 the respondent filed particulars of the charge of attempt to pervert the course of justice. The particulars plead as follows.

> My issues with Daniel McGregor started in or around 20 January 2016 at 2:23 pm when my civil Supreme Court Justices appeal ended before Justice Barr in Darwin Supreme Court precincts.
>
> I was a self-representing litigant in a freely my own prosecuted civil case. As such McGregor as sheriff had no dealings with me and no legal advice direction in jurisdiction to affect my case. On the 21st January Barr erroneously illegally directed Julian Johnson…
>
> After my case was finished (it is illegal unlawful to start a contempt criminal prosecution after a case is ended see Halsbury's Laws of Australia notes included) the civil registrar to look into and make a legal personal judgement as to whether a contempt had occurred. There are 2 – 3 significant problems with this legally morally artistically and otherwise.

1. Johnson was the civil registrar and had no legal criminal training or even reading or expertise in this area
2. he should have and illegally didn't told Barr that criminal registrar Kaylynn Norton was the correct legally trained (even though she is not trained at all) and competent and legally responsible person to:
    i. assess charges
    ii. write & enact bail

Barr says in the transcript I was on bail as at 20th January. This is erroneous illegal not factual and leads Johnson to believe he is rubberstamping and already formed charge. He isn't. There was and is no bail. I was free and walked free at Jan 21. (Indecipherable), the filing appellant left the court the case ended no bail no charges. If I drop a civil appeal it ends. I control the outcome in all circumstances i.e. I am the prosecutor and as such have to be told informed at all situations in case papers et cetera. Basically I'm running the case and can't prosecute myself legally. It's impossible.

Sure thing (indecipherable) of McGregor Johnson and others following Milligan Bregnar ritalic et al.

On the 4 February 2016 nearly 2 weeks after my civil case ended Johnson issues a summons allegedly and illegally served on me in the laneway by Mark Bates (bailiff local court) (why was he involved) and McGregor (McGregor was a witness direct in my contempt case as well as my Barr appeal so legally should withdraw from any contact with me a direct witness in case.

As such all of his activities for that time physically verbally and otherwise can be and should be interpreted as an attempt to pervert the course of justice. In that alleged illegal laneway service on a Friday afternoon miles away from my mailing address I was not identified in person and incorrectly illegally served i.e. there is still no proof of service anywhere certainly never provided to me as of 4th Feb and Friday 12th feb alleged service

I was not and still aren't on bail

Once I receive the Julian Johnson documents I intended to appeal directly as is my legal obligation and right in the Supreme Court

all interim academic administrative and natural justice decisions of any court or jurisdiction in Australia can be appealed

I am a legally i.e. Australian citizen and this is my free inalienable birth given right

as a free man and recognised and fully respected practising artist in Australia

this is where (indecipherable) this (indecipherable) McGregor's behaviour became aggressive over the top manipulative and legally and morally problematic and a literal attempt to pervert the course of justice coinciding and ultimately fulfilling on 30 March 2016.

It was on this day after much to-ing and fro-ing and misleading statements and harassment that Sarah Milligan told me after much solicitation and agitation by McGregor that she wasn't even going to file my appeal that is not even put it in file to force Kelly to adjourn my case I enclose appeal it is on time correctly written and legal there is no reason it wasn't filed except McGregor's attempt to pervert the course of justice agitation (indecipherable) included

getting me illegally arrested for no legal reason at all on 7 April when I was legally representing myself in the Supreme Court

Misled Kelly said I was again on bail I was not again no bail papers you signed them you know they don't and still don't exist

During this time 12 feb – 30th March was a lengthy easy time to file extensive well-documented appeals against Johnson

During this time and right in the middle 7th March 8th March Julian Johnson just as civil registrar and as early as the New Year was back at the local Court full-time (indecipherable) was never at the Supreme Court to (indecipherable) talk to assess asked questions he was one to two days a week if all all he'd quit as at December 2015

Milligan didn't start till 8th March and when I met her didn't understand that I was appealing her decision since she was now the registrar (again she wasn't criminally legally trained she was (indecipherable) new out of her depth without sufficient (indecipherable) without jurisdiction training or support ethically legally morally or otherwise)

McGregor unwisely illegally and perverting the course of justice filled the gap - hundreds of times during that time as I attempted to legally file my currently written on time currently filed appeal was this refrain I have to ask Daniel, I have to check with Daniel, Daniel is the boss, Daniel knows everything, Daniel knows what needs to be done, Daniel has to pass this off. McGregor held the power of all decisions and employees in the ball of his hand security sheriff bailiff local Court admin they all bowed down and still (indecipherable) down to his call. His power is and remains abusive and immense

he is not legally trained and either (sic) is Norton he lies stretches the truth e.g. he said to me "I am the criminal registrar" he isn't it is Kaylynn Norton when it became obvious he was the be all and end all (indecipherable) everything to file (indecipherable). I filed legal criminal appeal against Johnson now Milligan he rejected it he also disallowed me from even talking to Norton or indeed any sheriff staff

during this appeal lodging time all of his staff and himself were primary witnesses in the contempt I was and remain not on bail I was and never was a security issue. McGregor's statements verbally and to staff and Louise Rule to this effect are slanderous and defamatory to my character and legal status. McGregor misunderstands an unrepresented and self-represented legal practitioners, states –

I am fully free I act with full legal rights

I was well respected practising free artist (indecipherable)

I was a full Australian citizen

the role of sheriff is as follows see sheet attached

nowhere does it say you provide legal direction and tell people directly you can't file documents and then use staff and security to threaten cajole and influence

Milligan not to file McGregor stated openly to me "that may be your opinion Mr Jenkins (that you have a case) but I have discussed it with judges (upstairs) and nobody will accept your appeal (i.e. verbal threat) and if you continue to hang around all day to lodge appeal i.e. to see Milligan and Norton while McGregor was away or on lunch then he'd have me arrested he said this I'm swearing this as an affidavit today

McGregor bullying belligerent attitude and that equally of Louise Rule is totally illegal and perversion of the course of justice and totally outrageous

On the day in question security guards were told over the intercom me as a security threat see CCTV I was legally standing filing a document

Rule Southwood Luppino and McGregor all act in concert illegally and harass me

as of still today McGregor stops me using Supreme Court library because of his influence over Frieda (indecipherable) she told him I was accessing sheriff rule documents cases law and references, the very next day a security guard followed me into the library no reason recording my act was, and what I wrote and read (indecipherable) friction which McGregor and (indecipherable) used to tell Southwood to illegally bar me from library rule (indecipherable) instigated this

the Chief Justice has ordered Luppino to talk to me in chambers Rule McGregor and Southwood are to this day rule said I had to sign a document to library I refused harassment continues McGregor refuses access to the following guards on duty 30th that day (indecipherable) 2016

Sajel Pradhan Eric Nasa visa revoked Matt Platt sacked Ruth Sypien Louise Rule Nelson Cu other female court officers during Barr appeal currently getting names Kaylynn Norton

this is the full thrust of my attempt to pervert the course of justice charge against Daniel McGregor

Justice Fong Lim has said best way forward is pen oral the Chief Justice Grant is already involved and the Attorney-General should be to stand McGregor aside pending total exoneration or sentencing I will explain in detail all facts and expect to call and cross-examine witnesses orally that day considering especially the undue influence of McGregor on everyone involved

I am an unrepresented litigant in this proceeding and in my bar appeal and during all my actions. As soon as I enter Supreme Court precints I expect all court officers admin and otherwise as well as security to be fully ready to be trained (indecipherable) and give ready reference to the Supreme Court bench (indecipherable) for fair and just legal treatment and self-represented litigants I intend to fully use this in cross examination of all staff and witnesses of all involved in the McGregor attempt to pervert the course of justice 30 March 2016

Pen oral exam hearing

Sworn by Trevor Jenkins on the 19 October 2016

[180] The material set out above clearly does not establish that Daniel McGregor attempted to pervert the course of justice in any way whatsoever. He was and remains totally innocent of any such charge. All the material establishes, is that the respondent felt aggrieved by the facts that because of his appalling behaviour in the Supreme Court, various procedures were put in place to manage his attendance at the Supreme Court and, in accordance with the *Supreme Court Rules*, the variety of documents he attempted to file at the Supreme Court Registry. As a result the respondent maliciously and falsely charged Daniel McGregor with the very serious offence of attempting to pervert the course of justice. The complaint was instituted without reasonable ground and was instituted to harass and cause detriment to Daniel McGregor. The complaint was instituted for a wrongful purpose. It was a gross abuse of process.

[181] On 8 November 2016 Judge Carey made orders regarding the examination of witnesses by the respondent in a preliminary examination. It is understood that the orders were to the effect that the respondent was unable to issue certain summonses and was not permitted to cross-examine certain witnesses. This was because the respondent was the prosecutor of the charge against Daniel McGregor and there are rules which restrict what a prosecutor may do at a preliminary examination.

[182] On 8 November 2016 the respondent filed a Notice of Appeal in the Local Court and the Supreme Court seeking to appeal the interlocutory orders made by Judge Carey on that same day. Particulars of the grounds of appeal were set out on three pages of handwritten notes accompanying the Notice of Appeal. The handwritten notes state the following.

> I wish to formally appeal to the Supreme Court the interim decision of Michael Carey court 4 10:15 am that "in the interests of justice" "open and fair" I wouldn't be granted leave at appeal pursuant to section 6 and 7 part 5 div 1 of the prosecution evidence 105J of the Local Court (Criminal Procedure) Act.
>
> Magistrate Neill took carriage of had made special copies of statements and took copious time to read brief of evidence which is over 300 pages in detail. Carey hadn't read any of submitted evidence questioned me belligerently crudely concerning already voluminous (indecipherable) submitted facts and had obviously been brought in by machinations internal by Bregnar & ODP
>
> (indecipherable) Steve Ledek to change magistrate this case interesting and amazing (indecipherable) had six magistrates all who have never had all case notes provided it is obvious Carey hadn't read a thing I seek to appeal this result urgently before Feb 3 2016 please thank you

[183] Plainly the above particulars do not provide reasonable grounds for appealing against the orders made by Judge Carey. The allegations are scandalous and insulting.

[184] On 16 December 2016 the respondent's appeal was heard by his Honour Grant CJ. In his Reasons for Judgment in *Jenkins v McGregor*[126] his Honour held as follows.

> This is an appeal purportedly brought pursuant to s 163 of the *Local Court (Criminal Procedure) Act* in respect of a procedural determination made by a Judge of the Local Court in the course of committal proceedings. Section 163 of the *Local Court (Criminal Procedure) Act* provides relevantly that a party to proceedings before the Local Court may appeal to this court from a "conviction, order, or adjudication" of the Local Court on a ground which involves sentence or an error or mistake on the part of the Local Court. The operation of that provision was considered by the Northern Territory Court of Appeal in *Step v Atkins* [2008] NTCA 5 (at a time before the *Justices Act* was renamed). Thomas JA (with whom Martin (BR) CJ and Southwood J concurred), made reference to a long line of Northern Territory and South Australian authority in concluding that an interlocutory order was not a "conviction, order or adjudication" of the Local Court in the relevant sense. The avenue of appeal is limited to final orders.
>
> The rationale for this provision in s 163 of the *Local Court (Criminal Procedure) Act* is that parties to criminal proceedings should not be allowed to disrupt the ultimate disposition of criminal charges by challenging interlocutory orders prior to a conviction, order or adjudication of the court. Although I harbour some doubt as to whether the avenue of appeal in s 163 of the *Local Court (Criminal Procedure) Act* extends to determinations in committal proceedings, the appeal is in any event not brought to this court from a final "conviction, order, or adjudication" of the Local Court in the relevant sense.
>
> For those reasons, the appeal is incompetent and I order that it be dismissed summarily.

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126 LCA 27 of 2016 (21618385) (unreported Supreme Court Northern Territory 16 December 2016).

[185] I find that the appeal to the Supreme Court in *Jenkins v McGregor* LCA 27 of 2016 (21618385) was utterly misconceived. It was brought without reasonable ground and was instituted to harass or annoy and cause delay and detriment.

[186] On 6 February 2017 the matter was listed for preliminary examination and Judge Carey dismissed the charge against Daniel McGregor. In total, the proceeding was listed and heard 19 times in the Local Court. On each occasion, Daniel McGregor was represented by a legal practitioner from the Solicitor for the Northern Territory.

Jenkins v O'Neill

[187] On 25 January 2016, the respondent filed an Information for an Indictable Offence charging Father Roy O'Neill, the victim in the Local Court proceeding *Police v Jenkins* (21556341), with unlawfully assaulting the respondent, together with a Summons to a Person Charged with an Indictable Offence. By notice dated 19 February 2016, the Director of Public Prosecutions exercised his powers under s 13 of the *Director of Public Prosecutions Act* and took over the prosecution from the respondent. On 16 August 2017 the charge was withdrawn. The matter was listed and heard in the Local Court on 14 occasions.

[188] The proceedings arises out of the prosecution of the respondent for unlawfully assaulting Father O'Neill, which was considered by the Supreme Court on appeal in *Jenkins v Firth* [2017] NTSC 52. In laying the complaint

against Father O'Neill, the respondent was motivated by vindictiveness. On 19 February 2016, during a mention in the Court of Summary Jurisdiction of the *Police v Trevor Jenkins* file No. 21556341 and *Jenkins v O'Neill*, the respondent stated, 'I went to do an RCIA course with a catholic priest, I pushed past [Father O'Neill], and now he's charging me with assault. So I charged him with assault.'[127]

[189] I find that this matter was instituted without reasonable ground. The institution of the proceeding was a gross abuse of process. It was instituted for a wrongful purpose namely, to harass and cause detriment to Father Roy O'Neill. The proceeding was a vexatious proceeding.

Firth Proceedings

[190] Much of the relevant history of these proceedings is summarised by his Honour Grant CJ in *Jenkins v Firth* [2017] NTSC 52.

[191] By information laid on 7 December 2015 the appellant was charged with unlawfully assaulting Roy O'Neill contrary to s 188(1) of the *Criminal Code* (NT). By complaint made on 7 December 2015 the appellant was charged with the following offences: (i) trespassing on St Paul's Church, contrary to s 5 of the *Trespass Act 1987* (NT); and (ii) behaving in a disorderly manner in St Paul's Church contrary to s 47(a) of the *Summary Offences Act* (NT). By complaint made on 10 February 2016 the appellant was charged with the following offences: (i) unlawfully assaulting Roy O'Neill contrary to

127 Affidavit of Lachlan Sebastian Peattie made 22 September 2017 at 717 ("LSP 15").

s 188(1) of the *Criminal Code* (NT); (ii) trespassing on St Paul's Church after being directed to leave by Roy O'Neill contrary to s 7(1) of the *Trespass Act* (NT); and (iii) unreasonably causing substantial annoyance to Roy O'Neill contrary to s 47(e) of the *Summary Offences Act* (NT).

[192] The incident out of which the prosecutions arose occurred on 14 September 2015.

[193] On 14 April 2016 Judge Cavanagh made the following orders and directions: (i) the proceeding is set down for hearing for one day on 9 June 2016; (ii) it is listed for a case management inquiry on 20 May 2016; and (iii) the respondent is directed to file an application to issue summonses by the close of business on 6 May 2016. At 9 am on 9 June 2016 the matter was mentioned before Judge Carey and two of the counts charged against the respondent were set aside. The proceeding was then adjourned to 31 August 2016. On the evidence before the Court, it is unclear what happened on that day. It is possible that the hearing of the remaining charges against the respondent commenced.

[194] On 21 October 2016 the hearing of the charges against the respondent in the Local Court resumed before Judge Smith. A number of witnesses were called and the proceeding was then adjourned to 15 December 2016. On that day the proceeding was adjourned to 12 March 2017. Subsequently, the proceeding was further adjourned.

[195] On 11 November 2016 the respondent filed a Notice of Appeal in the Local Court which was dated 8 November 2016. At some time the Notice of Appeal was also filed in the Supreme Court. The Notice is badly pleaded. It is largely incoherent. However, the respondent seems to be complaining about being placed on bail by Judge Carey in a proceeding that was commenced by a Notice to Appear and he had not been arrested.

[196] The appeal instituted by the Notice of Appeal dated 8 November 2016 came on for hearing in the Supreme Court before his Honour Grant CJ on 11 July 2017. On that date the prosecution against the respondent in the Local Court had not been resolved. On 20 July 2017 his Honour delivered his Reasons for Judgement in *Jenkins v Firth* [2017] NTSC 52 and dismissed the appeal on the following grounds: (i) the Notice of Appeal does not disclose the nature and grounds of appeal; and (ii) the appeal is not brought to the Supreme Court from a "conviction, order or adjudication" of the Local Court in the relevant sense.

[197] I find that the appeal in Supreme Court proceeding LCA 28 of 2016 (21556341) was incompetent and was instituted without reasonable ground. It was a vexatious proceeding.

[198] The proceeding continued in the Local Court and was brought on for mention before Judge Smith on 11 August 2017. Later that day the respondent filed a further Notice of Appeal. The contents of the Notice of Appeal are indecipherable. However, as the prosecution of the respondent in

the Local Court had not been finally resolved it may be inferred that the appeal was against an interlocutory decision or order and was therefore incompetent in accordance with his Honour Grant CJ's decision in *Jenkins v Firth* [2017] NTSC 52. That Notice had not been processed by staff in the Registry.[128] The staff were correct not to. The appeal was instituted without reasonable ground.

[199] On 31 August 2017 Judge Smith found the respondent guilty and convicted him of trespassing on premises and unreasonably causing substantial annoyance. On the same day the respondent filed a further Notice of Appeal in the Local Court. The Notice of Appeal states that it is an appeal against conviction for "assault, substantial annoyance, disorderly, trespass". It pleads the following grounds of appeal.

> original arrest
>
> notice to appear
>
> no charge
>
> police evidence tampered coerced & fabricated
>
> intent none
>
> mens rea not guilty (indecipherable)
>
> fail to call any police witnesses

128 Affidavit of Demetrious Laouris at [60], 166–7 ("DL 39").

failure to prosecute 4 months

perverted course of justice

Roy Neil (sic) only pressed charges cause I made immediate assault charge to police about him September 2015 & to Bishop Hurley

Acted to protect own reputation

Please file immediately

[200] That Notice had not been processed by staff in the Registry as at 25 September 2017.[129] They were correct not to. The Notice of Appeal is scandalous and does not plead a recognisable ground of appeal. The appeal was instituted without reasonable ground.

[201] Sometime prior to 5 September 2017 the respondent purported to file an Application for Leave to Appeal Grant CJ's decision in *Jenkins v Firth* [2017] NTSC 52.[130] The documents were not accepted by the Registry and were returned to the respondent because they were incomplete, illegible and in an unhygienic state. The documents did not conform to the *Supreme Court Rules* and the fee waiver provided was not completed correctly.

[202] I am satisfied of the following.

1) The Appeal constituted by the Notice of Appeal dated 8 November 2016 was instituted without reasonable grounds.

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129 Affidavit of Demetrious Laouris at [61], 168–170 ("DL 40").

130 Supplementary Affidavit of Tracey Jane Holmes made 22 September 2017 at [11](a)(v), 1–3 ("TJH 1").

2) The proceedings instituted by the Notices of Appeal filed 11 August 2017 and 31 August 2017 were instituted without reasonable grounds.

3) There were no reasonable grounds for seeking leave to appeal Grant CJ's decision, and the proceeding instituted by the purported filing of the Application for Leave to Appeal was instituted without reasonable grounds.

***Library Proceedings*[131]**

[203] Much of the relevant background to these proceedings has been summarised by his Honour Grant CJ *in Jenkins v Department of the Attorney-General and Justice* [2017] NTCA 3 at [14] and by her Honour Kelly J in *Jenkins v Todd* [2017] NTSC 26 at [19].

[204] In April 2016, as Acting Chief Justice, I made a direction restricting the respondent's use of the Supreme Court Library ('the direction'). A condition of the direction was that the respondent be allowed access to the library on such terms as specified by a Judge of this Court or the Master (as Luppino ASJ then was). The applicant submits that the six unsuccessful proceedings subsequently instituted by the respondent about his access to the library were vexatious.

[205] On 16 November 2016 the respondent filed an Originating Motion seeking to challenge the direction on grounds of natural justice.[132] That document

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131 *Jenkins v Department of the Attorney-General and Justice* 119 of 2016 (21653047); *Jenkins v Department of the Attorney-General and Justice* AP 13 of 2016 (21653047); *Jenkins v Department of the Attorney-General and Justice* AP 13 of 2016 (21653047) – leave to appeal; *Trevor Jenkins v Attorney-General* (21712124)

constituted Supreme Court proceeding No. 119 of 2016 (21653047). In the accompanying pages, the respondent claims that the direction is "illegal… invalid and useless". He states that the subsequent refusal to allow him access to the Supreme Court Library resulted in a "perversion of the course of justice", describing it as "total bullshit". The respondent claimed that he was "denied natural justice" as a result of the direction and that "friends and allies of Daniel McGregor [were] using the situation to personally harass [him]." The respondent sought unrestricted access to the library, a "full apology", and that I be "struck off" by a "3 court judge appeal" because I am "chronically biased".[133]

[206] On 1 December 2016, the Master summarily dismissed the respondent's Originating Motion.[134] for the reasons detailed by Grant CJ in *Jenkins v Department of the Attorney-General and Justice* [2017] NTCA 3 at [14]–[16] and by Kelly J in *Jenkins v Todd* [2017] NTSC 26 at [19]. The direction I made permitted the respondent access to the library on conditions specified by a Judge or the Master in proceedings before the Court in which the respondent was a party. As her Honour Kelly J stated, there is no automatic right for members of the public to use the Judge's library. The Supreme Court Library is for the use of and within the exclusive control of the Judges of the Supreme Court. It is located on a restricted access floor which also houses the chambers of the Judges and the Associate Supreme Court Justice.

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132 Affidavit of Tracey Jane Holmes made 03 August 2017 at [22], 223–33 ("TJH 17").

133 Affidavit of Tracey Jane Holmes made 03 August 2017 at 223–33 ("TJH 17").

134 Affidavit of Tracey Jane Holmes made 03 August 2017 at [23], 234–5 ("TJH 18").

The respondent had no right, entitlement or legitimate expectation that could ground a challenge to the direction I made as Acting Chief Justice concerning his access to the Supreme Court Library. The Originating Motion was filed without reasonable ground.

[207] On 2 December 2016 the respondent filed a Notice of Appeal regarding the decision of the Master (constituting AP 13 of 2016 (21653047)).[135] The appeal document nominates as the respondent "AG dept, 4th flr, parliament house".[136] The Department of the Attorney-General and Justice has no juridical personality and is not amendable to suit.[137] The document was never served.[138] So far as may be discerned the document pleaded the following grounds of appeal.

> Luppino intimately involved with case mentioned by Sthwood (sic) should have struck off didn't listen argument (indecipherable) broke protocol sit down judge speak speaks you stand after you he says arrogant stand up all the time rubbish argumentative abusive arrogant treats indep (sic) litigants like trash ridicule (indecipherable)

[208] The Notice of Appeal was accompanied by a handwritten document headed "Affidavit". So far as can be discerned the document states

> Luppino rude abusive didn't listen was intimately involved in case shouldn't of heard matter failed to let me speak flesh out the truth and […] litigant stood over humiliated ridiculed protocol Judge talks you sit down supposedly Luppino upends that to treat me like a child piece of shit tone abusive ridiculous filed all (indecipherable)…

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135 Affidavit of Tracey Jane Holmes made 03 August 2017 at [24], 236–43 ("TJH 19").

136 Affidavit of Tracey Jane Holmes made 03 August 2017 at [24], 237 ("TJH 19"). The Originating Motion is similarly defective.

137 *Jenkins v Department of the Attorney-General and Justice* [2017] NTCA 3 at [2].

138 Ibid at [9].

[209] The respondent failed to attend the directions hearings and left the matter to languish.[139] However, as a matter of courtesy legal practitioners representing the Northern Territory of Australia appeared at the directions hearings and the subsequent hearing conducted by his Honour Grant CJ on 11 July 2017. On 20 July 2017 his Honour Grant CJ delivered his Reasons for Judgment in *Jenkins v Department of the Attorney-General and Justice* [2017] NTCA 3 and dismissed the appeal. In his Reasons for Judgment his Honour stated the following.[140]

> The [respondent] is a frequent and querulant litigant in this Court, the Supreme Court and the Local Court. [His Honour then set out certain observations of her Honour Kelly J in *Jenkins v Todd* [2017] NTSC 26.]
>
> Those observations are temperate in nature and, if anything, understate the grossly defective nature of the materials which the [respondent] seeks to file in this Court and in the Supreme Court; and certainly understate the level of disordered thought, misapprehension of the law, aggression, discourtesy, narcissism, paranoia, and bizarre and obsessional behaviours which characterise the [respondent's] appearances in this and other matters before the Supreme Court. That presentation notwithstanding, the [respondent] has been medically assessed on a number of occasions and those assessments have concluded that he has a personality disorder rather than a diagnosable mental illness.
>
> In those same Reasons for Judgment in *Jenkins v Todd* at [19], Kelly J described in the following terms the circumstances surrounding the direction made by the Acting Chief Justice in April 2016 to place restrictions on the [respondent's] access to the Supreme Court Library:
>
> > In the "affidavit" of 27 January 2017 Mr Jenkins complains of lack of access to the Supreme Court Library. There is no automatic right for members of the public to use the judge's library. The Supreme Court Library is for the use of and within the exclusive control of the judges of the Supreme Court. It is located on a restricted private access floor which also houses the chambers of the judges and Master of the Supreme Court, and the judges of the

139 Ibid at [9] and [11].

140 *Jenkins v Department of the Attorney-General and Justice* [2017] NTCA 3 at [12].

> Federal Court and the Federal Circuit Court. The judges of the Supreme Court have extended conditional use privileges to certain limited classes of people (including legal practitioners) as specified in the Access & Loans Policy. Prior to the hearing of the breach proceedings, Mr Jenkins was given the opportunity to use the Supreme Court Library on reasonable conditions on application to the Master but he refused to comply with those conditions. He stated elsewhere that he has access to the Charles Darwin University library. In any case, this is not a reason to stay the breach proceedings. The breach proceedings do not require resort to a library. The issues are factual and discretionary: did Mr Jenkins breach the conditions of the suspended sentence and, if so, what should the consequences be?
>
> The position concerning the location, control and use of the Supreme Court Library described in that passage is indubitably correct. The reference to the [respondent] having opportunity to use the library on reasonable conditions stipulated by the Master reflects the fact that the direction made by the Acting Chief Justice provided expressly for access on terms specified by the Master. In pursuance of that mechanism, the Master has on a number of occasions authorised access to the library by the [respondent], subject to appropriate conditions. The [respondent] has invariably failed to attend on the appointed day.
>
> The [respondent] asserts an entitlement to access the library because "it is publicly funded" and because the "Supreme Court Orders provide an entitlement to access". As to the first contention, the fact that the library is publicly funded does not carry with it a public access entitlement. As to the second contention, there is no order, rule or policy providing for the entitlement the [respondent] asserts. The [respondent] has no right, entitlement or legitimate expectation that would ground a challenge to the direction made by the Acting Chief Justice concerning access to the Supreme Court Library.

[210] The respondent later purported to file an Application for Leave to Appeal his Honour Grant CJ's decision (constituting AP 13 of 2016 (21653047) – leave to appeal). The filing of that Application was rejected by the Supreme Court Registry because the form of the document did not comply with the *Supreme Court Rules* and was incoherent and indecipherable.[141]

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141 Supplementary Affidavit of Tracey Jane Holmes made 22 September 2017 at [11], 1–3 ("TJH 1").

[211] On 17 February 2017, the respondent filed a Statement of Claim in the Local Court naming the "Department of the Attorney-General", "Court Admin" and "Chris Cox" as defendants and seeking an order that he be able to access the Supreme Court Library. The Statement of Claim constituted file 21712124[142] and sought to re-litigate the matter constituted by file 21653047.[143] As of 25 September 2017, the proceeding had not been heard.[144]

[212] On 5 September 2017, the respondent filed an Application for Order for Default Judgment dated 25 August 2017 in the Local Court on file 21712124. The Application names the "AG & Justice NT" as the defendant.[145] By way of relief, the respondent seeks an order for access to the Supreme Court Library (at all times, without security), an apology on the front page of the NT News and $5,000 in damages. The relief sought was unjustifiable, outside the jurisdiction of the Local Court and not supported by any pleaded facts. The Application was instituted without reasonable ground and to harass and annoy.

[213] The respondent filed a further application in the Local Court on 9 January 2018, which was served on the Solicitor for the Northern Territory on 30 January 2018.[146] The document names "A.G. & Justice Natasha Fyles

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142 Affidavit of Demetrious Laouris made 25 September 2017 at [68], 177–8 "DL 43".

143 The issue of access was also considered by Kelly J in *Jenkins v Todd* [2017] NTSC 26.

144 Affidavit of Demetrious Laouris made 25 September 2017 at [72].

145 Affidavit of Demetrious Laouris made 25 September 2017 at [71], 186–9 "DL 46".

146 This Application is not detailed in or annexed to any of the affidavits filed. It is listed in the aide memoir handed up by counsel for the applicant, 'List of proceedings', item 27 (substantive). A copy was of the Application was received as exhibit A1.

Depts at Local Court Admin DCC correctional services Supreme Court Sheriff, & Forensic mental health & at risk services, TEMH & Sheriffs & clerks & service officer Dept Legal Advice Services" as the respondent. It pleads nothing of relevance in relation to the Supreme Court Library other than a denial of natural justice. It seeks to re-litigate these proceedings and was instituted without reasonable ground.

[214] I am satisfied of the following.

1) The proceeding instituted by the respondent filing an Originating Motion on 16 November 2016 was instituted without reasonable ground.

2) The proceeding instituted by the respondent filing a Notice of Appeal on 2 December 2016 was instituted without reasonable ground and so as to harass and annoy.

3) The proceeding instituted by the purported filing of the Application for Leave to Appeal was instituted without reasonable ground.

4) The proceeding instituted by the respondent filing the Statement of Claim on 17 February 2017 was instituted without reasonable ground.

5) The proceeding instituted by the respondent filing the Application for Default Judgment dated 5 September 2017 was instituted without reasonable ground.

6) The further Application filed 9 January 2018 constitutes a proceeding instituted without reasonable ground.

[215] Each of these six proceedings are vexatious proceedings.

Private Prosecutions (and related appeal proceedings)

[216] In addition to filing the Complaint charging Daniel McGregor with attempt to pervert the course of justice on 7 April 2017, and the Information for an Indictable Offence charging Roy O'Neill with unlawful assault, the respondent instituted the following private prosecutions which the applicant submits are vexatious.

[217] On 8 June 2017 the respondent filed an Information for an Indictable Offence in the Local Court charging Nelson Cu with contempt of the Supreme Court. On 8 June 2017 the respondent filed an Information for an Indictable Offence in the Local Court charging Sarah Milligan with contempt of the Supreme Court. On 5 September 2017 the respondent filed an Information for an Indictable Offence in the Local Court charging Sarah Milligan with attempt to pervert the course of justice. On 5 September 2017 the respondent filed an Information for an Indictable Offence charging Daniel McGregor with attempt to pervert the course of justice. On 5 September 2017 the respondent filed an Information for an Indictable Offence charging Ian Rowbottam with the offences of offensive behaviour, contempt in the face of the court and obstructing justice and various other matters which do not constitute an offence known to the law. On

15 September 2017 the respondent filed a Complaint dated 7 September 2017 charging Kevin Rabbe with use offensive language and offensive behaviour. On 15 September 2017 the offender filed an Information for an Indictable Offence dated 7 September 2016 charging Mick Caldwell with attempt to pervert the course of justice, obstruct justice and an offence not known to the law of deliberately lie. On 15 September 2017 the respondent filed an Information for Indictable Offence dated 7 September 2017 charging Alex “Skipprious” (sic) with attempt to pervert the course of justice and obstruct justice and an offence not known to the law of deliberately lie. On 15 September 2017 the respondent filed an Information for an Indictable Offence dated 7 September 2017 charging Mark Daffey with attempt to pervert the course of justice and obstruct justice and an offence not known to the law of deliberately lie. On 15 September 2017 the respondent filed an Information for an Indictable Offence dated 7 September 2017 charging Robert Daffey with attempt to pervert the course of justice. On 15 September 2017 the respondent filed an Information for an Indictable Offence dated 8 September 2017 charging Deputy Superintendent Cox with attempt to pervert the course of justice and obstruct justice and an offence not known to the law of ‘hinder interfere deprive natural justice’. On 15 September 2017 the respondent filed a Summons to a Person Charged with an Indictable Offence dated 8 September 2017 addressed to Emma Derby. The summons was not accompanied by an Information for an Indictable Offence.

[218] Daniel McGregor is the Sheriff of the Supreme Court. Sarah Milligan is the Registrar of the Supreme Court who has been involved in the management of the proceedings the respondent has instituted in the Supreme Court. Nelson Cu is the Probate and Appeals Clerk of the Supreme Court and rejected a number of documents filed by the respondent. Roy O'Neill is a Catholic priest who was the complainant in an assault and others charges laid against Mr Jenkins for which he was prosecuted in the Local Court. Mark Daffey is the security guard who directed the respondent to leave Parliament House on 29 May 2015 and the complainant in an assault charge against the respondent. Emma Derby was the Assistant Director of the Northern Territory Library and the organiser of the Northern Territory Literary Awards on 29 May 2014. The respondent's entry for those literary awards was rejected by the organisers and he did not receive an invitation to attend the award ceremony. Ian Rowbottam is a prosecutor who had conducted a prosecution against the respondent. Mr Caldwell was the Director of Security for Parliament House. Robert Daffey was the site supervisor for Parliament of the Northern Territory's contracted security providers. Alex Skopellos was a security guard who was on duty in Parliament House on 29 May 2014.

[219] On 16 January 2018, in default of the respondent's appearance, Judge Cavanagh dismissed the charges against Mick Caldwell, Michael Cox, Nelson Cu, Mark Daffey, Robert Daffey, Emma Derby, Sarah Milligan, Kevin Rabbe, Ian Rowbottam and Alex Skopellos, and the second private

prosecution against Daniel McGregor.[147] His Honour indicated that if the respondent had appeared he would have adjourned the proceedings on the basis that the summonses were likely vexatious.[148]

[220] In the course of the current proceedings, the respondent came tantamount to admitting that he viewed the laying of criminal charges as a legitimate method of punishing and bullying those who did not give him what he wanted. I find that the respondent maliciously laid false criminal charges against all of the above persons. He did so out of spite and to punish them because they did not behave according to his wishes or because he felt they had slighted him.

[221] I am satisfied that none of the private prosecutions instituted by the respondent were instituted with reasonable ground. Each of the prosecutions constituted a gross abuse of process. They were instituted for a wrongful purpose namely to harass and cause detriment to each of the defendants who were completely innocent of all of the matters alleged against them. The respondent deliberately and knowingly falsely laid very serious criminal charges to harass and cause detriment to the above named persons who were all utterly blameless and were performing their duties to the best of their ability with the utmost integrity and decency. The mere laying of such charges had the potential to cause serious harm to the reputations, livelihoods and emotional wellbeing of the named defendants.

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147 Supplementary Affidavit of Tracey Jane Holmes made 29 January 2018 at [13].

148 Supplementary Affidavit of Tracey Jane Holmes made 29 January 2018 at [12].

[222] Each of these proceedings is a vexatious proceeding.

Todd proceedings

[223] On 27 March 2015 the respondent was found guilty by the Court of Summary Jurisdiction of three charges; two on complaint and one on information. The charges were: (i) on 29 May 2014 the respondent trespassed on Parliament House and refused to leave after being directed to do so by a security officer (count 1);[149] (ii) unlawfully assaulted a security guard, Mr Mark Daffey, in the performance of his duties (count 2);[150] and (iii) resisted a member of the police force in the execution of his duties (count 3).[151]

[224] The charges stemmed from the respondent seeking to attend the Northern Territory Literary Awards held at the Northern Territory Library in Parliament House on the evening of 29 May 2014. Attendance at the event was by invitation only and the respondent attempted to attend the event uninvited and after Parliament House was closed to the public. The respondent refused to leave Parliament House despite being requested to do so by a security guard, assaulted the security guard, and was ultimately arrested by police and removed from the building.

[225] The applicant submits that the nine proceedings instituted by the respondent following his convictions for these charges were vexatious. I found it

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149 Contrary to s 7(1) of the *Trespass Act 1987* (NT).

150 Contrary to s 188A(1) and (2)(b) of the *Criminal Code 1983* (NT).

151 Contrary to s 158 of the *Police Administration Act 1978* (NT).

unnecessary to consider whether the respondent's conduct in defending the charges in the Court of Summary Jurisdiction was vexatious.

[226] On 27 March 2015 the respondent filed a Notice of Appeal against the convictions, constituting *Jenkins v Todd* JA 10 of 2015 (21425645).[152] The Notice and accompanying handwritten pages are largely incoherent. Nonetheless, the appeal proceeded to hearing and on 21 January 2016, his Honour Barr J delivered his reasons for decision in *Jenkins v Todd* [2016] NTSC 4. The respondent's appeal against his conviction for count 3 (the charge of resisting a member of the police force in the execution of his duties) was allowed. The finding of guilt and consequent conviction of the respondent of count 3 was quashed.[153] The respondent's appeal against count 3 was successful because the prosecution failed to prove that his arrest by the police on 29 May 2014 complied with s 10 of the *Trespass Act* (NT). There was no proof that: (i) the police officers who arrested the respondent informed him of the consequences of not leaving Parliament House forthwith; and (ii) that he still failed or refused to leave, prior to his arrest. I find that the respondent's appeals against his convictions for counts 1 and 2 were without reasonable ground. The prosecution case against him on those counts was overwhelming.

[227] As the respondent succeeded in his appeal against his conviction for count 3, I do not find that the appeal was instituted without reasonable ground.

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152 Affidavit of Tracey Holmes made 3 August 2017 at [6], 1–6 ("TJH 1").

153 *Jenkins v Todd* [2016] NTSC 4 at [5], [7].

However, I find that the respondent conducted his appeal in a way so as to harass and annoy and cause delay. During the hearing of his appeal the respondent: (i) told lies from the bar table (for example, the respondent told his Honour Barr J that his mother had died, he had to go to her funeral and therefore he could not appear in court the next day); (ii) accused his Honour Barr J of lying, shouted at and spoke over his Honour, and threatened appeals and an application for apprehension of bias.

[228] As a result of the respondent's disruptive behaviour during the hearing of the appeal, his Honour Barr J directed the Registrar of the Supreme Court to apply by Summons on Originating Motion for punishment of the respondent for contempt of court. Contempt proceedings were instituted against the respondent and he was found guilty of contempt of court. In finding the respondent guilty of contempt of court, her Honour Kelly J found that the respondent had deliberately attempted to disrupt the proceedings before his Honour Barr J and that his interjections were a 'calculated tactic… aimed at interfering with the presiding Judge's ability to control the proceeding and shutting out what [the respondent] did not want heard.'[154]

[229] On 10 May 2016, her Honour Kelly J convicted the respondent of contempt of court and sentenced him to imprisonment for three months suspended after two weeks on the following conditions:

> For the next 12 months after you are released, when appearing before any court:

154 *Jenkins v Todd* [2016] NTSC 21 at [61], [66].

1) You are not to engage in any behaviour that is intended to disrupt any court proceedings or which has the effect of disrupting any court proceedings. This includes, without limiting the generality of this condition, interrupting or talking over the judge.
2) You are to address the presiding judge correctly as "your Honour".
3) You are to conduct yourself courteously and avoid abusive and offensive language.
4) You are to comply with all directions of the presiding judge.

[230] I found it unnecessary to consider whether the appellant conducted his defence of the contempt proceeding in a vexatious manner.

[231] On 2 February 2016 the respondent filed the Notice of Appeal in proceeding AP 5 of 2016 (21425645) against of his Honour Barr J's decision in *Jenkins v Todd* [2016] NTSC 4.[155] The Notice of Appeal names "todd" as the respondent and pleads that "the appellant appeals from the whole (or if from a part, specify part) of the judgement given on 21st Jan 2016". The Notice of Appeal had attached to it nine handwritten pages which purport to be the grounds of appeal. Those nine pages largely consist of incoherent ramblings in which the respondent, among other things, again asserts that the Northern Territory Literary Awards were open to the public which was proven not to be the case.

[232] On 20 July 2017 his Honour Grant CJ published his Reasons for Judgement in *Jenkins v Todd* [2017] NTCA 6. His Honour found that the Notice of Appeal in proceeding AP 5 of 2016 (21425645) was indecipherable, grossly

155 Affidavit of Tracey Jane Holmes, 66–82 ("TJH 3").

defective and could properly be characterised as incompetent[156] and his Honour dismissed the appeal for want of prosecution.[157] Despite being reluctant to dismiss the appeal on that ground, his Honour held the circumstances were 'exceptional.'[158] In conducting this appeal,[159] the respondent failed to comply with directions made by the Master, and made no attempt to comply.[160] The respondent indicated that he expected the Court to prepare appeal books for him.[161] At the respondent's request, the original hearing dates were vacated to allow him a second chance to prepare for the appeal. Despite this, the respondent did nothing to prosecute the appeal.[162]

[233] I find that the appeal in *Jenkins v Todd* AP 5 of 2016 (21425645) was instituted without reasonable ground and conducted so as to annoy and cause delay.

[234] On 30 March 2016 the respondent filed the Notice of Appeal in Supreme Court proceeding AP 7 of 2016 (21425645). The Notice of Appeal named "Kelly" as the respondent and purported to challenge to the jurisdiction of her Honour Kelly J to hear the contempt proceeding commenced by the

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156 *Jenkins v Todd* [2017] NTCA 6 at [1], [2], [19].

157 *Jenkins v* Todd [2017] NTCA 6 at [19] and [25].

158 *Jenkins v Todd* [2017] NTCA 6 at [21].

159 See also the conduct set out in *Jenkins v Registrar of the Supreme Court (No. 2*) [2017] NTCA 5 at [17]-[20].

160 *Jenkins v Todd* [2017] NTCA 6 at [15].

161 Ibid at [16].

162 Ibid at [18].

Registrar against the respondent.[163] The Notice of Appeal pleaded the following grounds of appeal.

> That Kelly's decision didn't take into account case law and precedent which clearly states no separate contempt proceedings can be taken once normal proceedings ended.
>
> That Barr erred legally by saying contempt proceedings could be given to Julian Johnson to make decision. Julian Johnson is not a legal authority to do so.
>
> Julian Johnson erred and provided denial of natural justice breaches by not telling me anything (indecipherable).
>
> The Registry itself has denied me natural justice by not allowing me to appeal its decision.
>
> Daniel McGregor has perverted the course of justice by disallowing me to approach witnesses and interview them security guards and Kaylynn Norton and people in the Sheriff's office.

[235] On 20 July 2017 his Honour Grant CJ delivered his Reasons for Judgment in *Jenkins v Registrar of the Supreme Court (No 1)* [2017] NTCA 4. His Honour dismissed the appeal for want of prosecution.[164] In dismissing this appeal his Honour Grant CJ made the following observations:[165]

> There are grounds on which it might comfortably be concluded that this appeal is incompetent. The Notice of Appeal and accompanying documents are grossly defective. There is no avenue of appeal in respect of the administrative action by the Registrar, upon direction by a Judge, to apply by summons or Originating Motion for punishment of a contempt pursuant to Order 75 of the *Supreme Court Rules* (NT). The contention that such an application may only be heard by the judge before whom the contempt was allegedly committed is so entirely without merit as to draw characterisation as frivolous, vexatious or without cause. Even if there was cause, the decisions which the appeal purports to challenge are interlocutory in nature, appeal may only be brought by leave, and this appeal is purportedly brought as of right and

163 Affidavit of Tracey Holmes made 3 August 2017 at [12], 135–138 ("TJH 7").

164 *Jenkins v Registrar of the Supreme Court* [2017] NTCA 4 at [25].

165 Ibid at [20], [23]–[24].

> in the form adapted to the institution of an appeal as of right. Finally, the actions and determinations which the appeal purports to challenge are preliminary or interlocutory in nature and have now merged in the final judgment (which is itself subject to appeal in AP8 of 2016).
>
> […]
>
> This Court would ordinarily be slow to dismiss an appeal brought by an unrepresented litigant [as incompetent], and would only do so in exceptional circumstances. The circumstances in the present case are exceptional..., there is no real prospect that the [respondent] will be able to take the steps necessary in the prosecution of this appeal. He is, by his own admission, incapable of preparing the necessary appeal books. *Past experience also demonstrates that he is incapable of producing anything in the nature of written or oral submissions that might in any way assist in the prosecution of his appeal, or that might be rational and comprehensible.*
>
> That situation might be capable of amelioration if the [respondent] was to secure professional and qualified legal representation. Unfortunately, that is not possible… [the respondent] would not have availed himself of that assistance even if legal aid had been forthcoming (or if pro bono assistance was offered). The reasons he gives for that position are that he is better equipped than a legal practitioner to run this proceeding (and the related appeals) due to his intimate knowledge of the surrounding circumstances; and the various legal practitioners with whom he has discussed these proceedings are not prepared to conduct the proceedings in the manner he requires.

[236] I find that proceeding AP 7 of 2016 (21425645) was instituted without reasonable ground and was conducted in such a way as to annoy and cause delay.

[237] On 27 May 2016 the respondent instituted an appeal against his conviction for contempt by her Honour Kelly J by filing a Notice of Appeal in proceeding AP 8 of 2016 (21425645).[166] The Notice of Appeal names "TODD" as the respondent. The grounds of appeal were contained in an attached handwritten document which pleaded the following.

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166 Affidavit of Tracey Jane Holmes at [14], 155–161 ("TJH 9").

Grounds against Kelly sentence

unable to Lodge appeal

no hearing no witnesses in sufficient time

hearing illegal unlawful

inadequate heard ex parte request rehearing

standing accepted appeal ignored

placed in vulnerable witness box

denies natural justice

humiliates demeans

(indecipherable) stop appeals

[238] The order sought by the respondent in the Notice of Appeal was pleaded as follows.

Struck out

falsely brought

(indecipherable) constructed

illegal practices

deny natural justice

[239] On 20 July 2017 his Honour Grant CJ published his Reasons for Judgment in *Jenkins v Registrar of the Supreme Court (No. 2)* [2017] NTCA 5 and dismissed the respondent's appeal in proceeding AP 8 of 2016 (212425645) for want of prosecution. His Honour also found that the Notice of Appeal was grossly defective and might properly be characterised as incompetent. During the course of the proceeding the respondent failed to comply with orders made by the Master to file a corrected copy of the settled appeal index, to file three copies of the Appeal Books, to serve one copy of the Appeal Book on the Registrar of the Supreme Court, to file a list of authorities, to file written submissions, and to file a set of legible and comprehensible court documents.

[240] I find that the respondent instituted proceeding AP 8 of 2016 (212425645) without reasonable ground and conducted the proceeding so as to cause delay.

[241] On 15 March 2017 her Honour Kelly J heard an application that the respondent be dealt with for breach of the conditions of the suspended sentence of imprisonment that her Honour imposed on him for contempt of court on 11 May 2016.[167] The alleged breaches were that on 21 October 2016 during the hearing of the prosecution of the respondent in *Police v Jenkins* (21556341) before Judge Smith in the Local Court the respondent: (i) engaged in conduct that was intended to disrupt proceedings or which had

167 *Jenkins v Todd* [2017] NTSC 26.

the effect of disrupting proceedings; and (ii) did not comply with the directions of the Judge.

[242] At the start of the hearing before her Honour Kelly J the respondent made two interlocutory applications. The first application was that her Honour recuse herself from hearing the breach application for apprehended bias. The second application was an application that the breach proceedings be stayed.

[243] The main grounds of the respondent's application for her Honour Kelly J to recuse herself for apprehended bias were her Honour: (i) was the judge who found the respondent guilty of contempt and imposed the suspended sentence; (ii) dismissed a bail application in 2010 or 2011 without letting the respondent out of the dock; and (iii) in the contempt proceeding did not give him an opportunity to make submissions on sentencing. There were other allegations made by the respondent which were utterly fanciful and don't bear consideration. For example, the respondent stated that he "feels Kelly J has a bias towards him because of previous cases."

[244] Ground (i) is clearly not a basis which gives rise to an apprehension of bias. It was pursued without reasonable ground. It is the practice of the Supreme Court for the sentencing Judge to hear breach applications. The issues on the breach application were different from those on the substantive trial and there was no question of prejudging those issues.

[245] The factual circumstances in relation to ground (ii) were as follows. There were two bail applications made by the respondent before her Honour

Kelly J. In her Reasons for Judgment in *Jenkins v Todd* [2017] NTSC 26 at [6] (a) her Honour Kelly J described what occurred during those applications as follows.

> […] When the case was finally called on, Mr Jenkins was standing in the dock. He refused to sit down or to wait his turn to speak while I asked the prosecutor whether the application [for bail] was opposed. He kept talking, continuously, in a loud and agitated voice. One of the things he said was, "I don't even know why I'm here!" At that point I said words to the effect of, "You don't know why you're here? Mr Jenkins, this is your application. All right – application dismissed."
>
> Not long afterwards (on a different date) Mr Jenkins again came before me seeking bail. This time he was calm and behaving appropriately. I made sure he had a copy of the *Bail Act 1982* (NT) and asked him to explain why he should get bail by reference to the criteria set out in s 24. He did so; we went through the relevant considerations one by one; and I granted Mr Jenkins bail.

[246] As her Honour Kelly J correctly found, ground (ii) of the respondent's application did not give rise to an apprehension of bias. I find that it was pursued without reasonable ground, to harass and annoy and cause delay and detriment.

[247] As to the respondent's submissions on sentence in the contempt proceedings, ground (iii), her Honour Kelly J stated the following.

> I have checked the relevant transcripts and what actually happened is this. Mr Jenkins did not appear in Court when I handed down the decision finding him guilty of contempt and I issued a warrant for his arrest. He was arrested on the weekend and brought into court on Monday 9 May 2016. He threw a tantrum in the cells and took his clothes off. (He then put them back on.) I arranged for an audio visual link into the cells. I then invited Mr Jenkins to make submissions on sentencing. He responded by screaming and yelling. I asked if he agreed to the provision of a previously ordered psychological report to Mr McDonald. Mr Jenkins responded (in part) "… I would like to see my solicitor. I (inaudible) report. You're not providing (inaudible)

> justice. Leave me the fuck alone (inaudible)". I took this as an application for an adjournment to seek legal advice. I adjourned and legal aid was contacted. When Court resumed at 2.00 pm, a legal aid lawyer appeared and advised that Mr Jenkins wished to continue representing himself. I again asked Mr Jenkins whether he consented to my providing a copy of the psychological report to Mr McDonald. Mr Jenkins said that he would need to read it first and that he had not committed any contempt. I adjourned again so Mr Jenkins could be given a copy of the report. During the adjournment, security guards tried to give Mr Jenkins a copy of the report but he refused to accept it. When court resumed Mr McDonald made submissions on sentencing. I again invited Mr Jenkins to make submissions on sentencing. He said he had to bend over to a grate to talk into the microphone. I said that if he undertook to behave I would have him taken to the vulnerable witness room where he could make his submissions in more comfort. Mr Jenkins said, "That's fine. Yeah." I adjourned again, Mr Jenkins was taken to the vulnerable witness room and he made submissions to the effect that a community service order would be appropriate. He applied for and was granted bail to get an assessment for suitability for a community work order. The matter was adjourned to the next day at 1.30 pm for sentencing. (It was during sentencing the next day and not as I had originally recalled during sentencing submissions that Mr Jenkins took his clothes off. He insisted on talking and shouting while I was sentencing him so I turned off the microphone in the vulnerable witness room and he responded by taking off his clothes.)

[248] Ground (iii) involved a false allegation and was pursued without reasonable ground.

[249] The main grounds of the respondent's application for a stay were: (i) the application for breach of the conditions of the suspended sentence were filed out of time and should have been filed within three months of the alleged breaches; (ii) the prosecutor in *Police v Jenkins* (21556341) could not be a witness in the breach proceeding; and (iii) the prosecutor had an ulterior motive for bringing the breach proceeding, namely she wanted to stop him from "winning" in the Local Court proceeding in which the respondent was being prosecuted for the offences involving Father Roy O'Neill. There were

a number of other grounds relied on by the respondent which do not bear consideration.

[250] Ground (i) was pursued without reasonable ground. The application for breach of the suspended sentence imposed on the respondent for contempt was made on 5 December 2016 which was within 21 days of the alleged breaches and there is no time limit for instituting proceedings for breach of a condition of a suspended sentence under s 43(2) of the *Sentencing Act 1995* (NT).

[251] Ground (ii) was pursued without reasonable ground. There is no basis in law for such a contention.

[252] Ground (iii) was pursued without reasonable ground. The application for breach was brought by the Registrar of the Supreme Court not the prosecutor and the application for breach was conducted by Mr McDonald not Ms Lau. Further, as her Honour Kelly J found,[168] there was not the slightest basis in evidence for such a contention.

[253] Her Honour's Reasons for Judgment were delivered on 3 April 2017.[169] Her Honour refused both applications. In my opinion, she was correct in doing so. Both applications were instituted without reasonable ground and to harass and cause delay and detriment.

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168 *Jenkins v Todd* [2017] NTSC 26 at [31].

169 *Jenkins v Todd* [2017] NTSC 26.

[254] On 5 September 2017 the respondent left at the Registry of the Supreme Court handwritten documents which purported to be applications for leave to appeal the decisions of the Court in proceedings AP 5 of 2016 (21425645), AP 7 of 2016 (21425645), and AP 8 of 2016 (21425645). The documents were not accepted by the Registry because they did not comply with the *Supreme Court Rules* and were largely incoherent. On the same day Mr Nelson Cu wrote to Mr Jenkins and returned the documents to him.

[255] I am satisfied of the following.

1) The Justices Appeal before his Honour Barr J was deliberately conducted by the respondent so as to harass, annoy and cause delay.

2) The further appeal to the Court of Appeal was instituted without reasonable ground.

3) The appeal concerning the preliminary issue of whether the Supreme Court had jurisdiction to hear contempt proceedings after the substantive appeal (in which the contempt was committed) had concluded was instituted without reasonable ground.

4) The substantive appeal against the finding of guilt of contempt in the face of the court was also instituted without reasonable ground.

5) The two interlocutory applications which were heard at the start of the hearing of the breach proceeding were instituted without reasonable ground and were an abuse of process.

6) The purported filing of the three further Applications for Leave to Appeal each constituted the respondent instituting proceedings without reasonable ground.

[256] Each of these proceedings were vexatious proceedings.

Conclusion

[257] The proceedings instituted by the respondent and considered at [70] to [256] above show a lengthy, entrenched and enduring pattern of vexatious behaviour on the part of the respondent. The pattern is comprised of the following elements.

[258] First, if the respondent perceives that he has been slighted or wronged by somebody he will institute legal proceedings, including criminal proceedings, against those involved. He does so with the knowledge that he does not have a valid cause of action against the persons named as defendants in civil proceedings; and with knowledge that the persons he has named as defendants in the criminal proceedings he has instituted have not committed the criminal offences alleged against them. Each proceeding instituted by the respondent is simply used as a vehicle to air and agitate a litany of spurious complaints made by the respondent. It may be said that the respondent is motivated by a bizarre and querulous quest for a personal vision of justice to which all else is subordinated.[170] In the civil jurisdiction this is demonstrated by the respondent's conduct in instituting the

170 Paul Mullen and Grant Lester, 'Vexatious Litigants and Unusually Persistent Complainants and Petitioners: From Querulous Paranoia to Querulous Behaviour' (2006) 24 Behavioural Sciences and the Law 333 at 338.

proceeding in the Local Court in *Jenkins v The Screening Authority* (2145137) and by the civil proceedings he instituted in the course of the Library proceedings. In the criminal jurisdiction it is demonstrated by all of the private prosecutions the respondent instituted falsely charging the defendants with criminal offences. In the appellate jurisdiction it is demonstrated by all of the appeals he instituted. That the respondent may see himself on a quest is supported by the evidence the respondent attempted to lead from Father Dan Bernedetti about the respondent's prophetic nature at [63] above, and the respondent's evidence in chief at [61] above.

[259] The respondent commenced all of the proceedings he instituted for a wrongful purpose, namely to punish and scandalise those who he feels have slighted or wronged him or interfered with or opposed his "artistic" or other endeavours. This purpose is confirmed by the form and contents of the documents the respondent filed in the Supreme Court and Local Court registries and the utter disrespect the respondent shows for the courts from whom he purports to seek assistance.

[260] Second, the respondent conducts the proceedings he has instituted in such a way so as to harass, delay and cause maximum inconvenience, cost and detriment to those involved in the proceeding. During the course of the hearings of the proceedings he has instituted the respondent has filed soiled, indecipherable and incoherent documents, failed to file documents on time or at all, taken meaningless and groundless interlocutory and procedural points, deliberately shouted at and spoken over the judicial officers, accused

judicial officers of telling lies and of being corrupt, deliberately refused to comply with the directions of the judicial officers, attempted to threaten judicial officers by asserting he will be appealing their decisions, accused counsel for the other party of being corrupt, interrupted and spoken over counsel appearing for the other party, interrupted and spoken over witnesses, walked out of the courtroom when it suited him, persisted in interrupting the proceedings to such an extent that he has had to be physically removed from the courtroom, made untruthful statements from the bar table, been unreliable and selective in his submissions, and engaged in vituperative outbursts when questions were asked of him which exposed flaws in his arguments, instituted groundless appeals in relation to interlocutory orders and decisions before the substantive proceedings had concluded, and failed to prosecute the appeals he instituted.

[261] In addition, the respondent has displayed a serial disregard for court orders and schedules. He has repeatedly and deliberately made spurious applications which are instituted as a tactic to frustrate and delay the conduct of proceedings. He is evasive and dissembling during such applications. He has deliberately failed to appear in court on listing and hearing dates resulting in the proceeding being dismissed and the respondent instituting numerous applications to set aside the order and reinstate the proceedings (often filing such applications the same day as the original listing). As a result of his conduct before the courts, the respondent has been convicted of contempt in the face of the court on two occasions and of

breaching the conditions of a suspended sentence of imprisonment for contempt. Spending significant time in prison for contempt of court has not changed the respondent's behaviour. Immediately upon release from prison he has continued to behave in the same vexatious manner. At no stage during any proceeding has the respondent genuinely attempted to grapple with the merits of the proceeding.

[262] Third, the respondent has a propensity to appeal decisions as a matter of course. If a judicial officer endeavours to conduct a proceeding in such a way as to bring the proceeding to a resolution, or stop the respondent from pursuing groundless and irrelevant points and conducting himself in the appalling manner he chooses to conduct himself, or finds against him, the respondent will institute appeals and related applications of various kinds for the purpose of harassing, scandalising and abusing the judicial process. He does so knowing full well that he is behaving in a most unreasonable manner and that the applications and appeals that he has instituted have been instituted without reasonable ground. The appeal documents he deposits at the Registries are invariably largely incoherent and indecipherable, often soiled, and plead no recognisable grounds of appeal. They also frequently contain scandalous and untruthful allegations against the judicial officers whose decisions are subject to the appeal or against opposing counsel and defendants.

[263] Even in this proceeding, the respondent obdurately persisted with his vexatious behaviour. Despite being extended considerable leniency and

assistance by the Court and both counsel for the applicant, he conducted his defence in the same manner that he has conducted himself throughout all of the other proceedings. During the course of the hearing the respondent deliberately failed to comply with my directions, shouted over the top of me and opposing counsel, interrupted me and opposing counsel, arrived late from time to time, walked out of the court when it suited him, had to be physically removed from the court when he persisted in interrupting counsel for the applicant during their submissions, applied to cross-examine people who were not called as witnesses by the applicant and had not made any affidavits that were tendered in evidence, claimed not to have been provided with material when he had been provided with a number of copies of all of the materials, accused myself and counsel of corruption, hurled racial abuse at court security staff and sexist, islamophobic abuse at a graduate clerk with the Solicitor for the Northern Territory and tossed a book across the Bar table and broke Ms Brebner's glasses.

[264] The respondent told the following lies during the proceeding.

1) On the first day of the hearing he stated "I have been granted legal aid". He had not been granted legal aid.

2) On 14 May 2018 he indicated he had not been advised of the outcome of his Pro Bono Clearing House application. He had been advised that his application had been rejected.

3) The respondent claimed that he had succeeded in the case of *Jenkins v Screening Authority*. He did not succeed, as set out above.

4) By way of explanation for failing to provide typed submissions, the respondent stated he did not use computers for moral and health reasons. Yet he continued to frequently send frivolous emails to the Court.

5) The respondent claimed that the applicant had intentionally provided him with a version of documents which were different to the versions before the Court, in order to make him "look like a complete idiot" when he referred to them. He complained that "this happens over and over again."[171] The respondent was served several times with all of the documents relied on by the applicant.

6) The respondent stated that the only reason that he had not prosecuted the private prosecutions which were dismissed in his absence on 16 January 2018 was that he could not deal with them when/while he was in prison. In fact, he dealt with them when he was out of prison.

7) The respondent claimed that he needed an adjournment because his mother had died, but was evasive and dissembling when questioned. The respondent had previously made the same application before Barr J and eventually confirmed "as far as I know she's still alive."

171 Transcript of Proceedings, 16 July 2018, T39.

8) The respondent repeatedly made spurious allegations of corruption against most of the people involved in the proceedings, and many people who were entirely unconnected.

[265] The respondent's conduct has taken up an enormous amount of this Court's and the Local Court's time with what has been proven to be meritless and scurrilous nonsense. His conduct in frequently instituting vexatious proceedings has imposed a considerable burden on the other parties to the proceedings, Judges of both the Supreme Court and the Local Court, the staff in the Supreme Court and Local Court Registries, the legal practitioners representing the other parties to the proceedings, and security staff. Defending the baseless criminal charges the respondent laid against court staff and others has had a detrimental impact on those he chose to pursue.

[266] The disproportionate amount time and other resources expended on the respondent has delayed the functioning of the courts and the administration of justice. His conduct has also been of considerable cost to the community. For example, as I have stated, *Jenkins v McGregor* was heard 19 times in the Local Court and on each occasion Mr McGregor was represented by a legal practitioner from the Solicitor for the Northern Territory. In addition, hearings which should have been concluded in a day have taken days to complete.

[267] For the above reasons I held that the respondent had frequently instituted and conducted vexatious proceedings. The respondent's conduct in instituting and conducting proceedings has been found to be calculated to "shake the confidence of litigants and the public in the decisions of the Court and weaken the spirit of obedience to the law."[172] Everyone who appears before the courts in the Territory is to be treated equally. The respondent is no exception. He is not an exceptional person. He is a person with a personality disorder who deliberately and of his own choosing made a very serious nuisance of himself for far too long. The proper administration of justice requires the respondent to seek appropriate leave before instituting proceedings in this Court and the Local Court. If such an order was not made it was almost certain that the respondent's vexatious conduct would have continued.

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172 *Jenkins v Todd* [2016] NTSC 21 at [37].