

Jenkins v Todd [2016] NTSC 21

PARTIES: JENKINS, Trevor

v

TODD, Walter

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
NORTHERN TERRITORY
EXERCISING APPELLATE
JURISDICTION

FILE NO: JA 10 of 2015 (21425645)

DELIVERED: 20 APRIL 2016

HEARING DATES: 31 MARCH 2016, 8 APRIL 2016 and
14 APRIL 2016

JUDGMENT OF: KELLY J

CATCHWORDS:

CONTEMPT OF COURT – Criminal proceedings – Contempt in the face of the Court – Failure to adhere to directions of presiding Judge – Continuous interruption, failure to cease speaking and speaking over the presiding Judge – Whether contempt in that such actions interfered or tended to interfere with course of justice - Contempt found

Supreme Court Rules 2013 (NT) r 75.06

Balogh v Crown Court at St Albans [1975] 2 QB 114; *Jenkins v Todd* [2016] NTSC 4; *Kyprianou v Cyprus* (2007) 44 EHRR 27; *Muirhead v Douglas* [1981] Crim LR 781; *R v Jales Brian* [2007] EWCA Civ 393; *Re Dakin* (1887) 13 VLR 522, referred to

Grassby v The Queen (1989) 168 CLR 1; *Witham v Holloway* (1995) 183 CLR 525, applied

Ex Parte Tuckerman Re Nash [1970] 3 NSW 23; *Lewis v Ogden* (1984) 153 CLR 682; *Morris v Crown Office* [1970] 2 QB 114; *Parashuram Detaram Shamdasani v King-Emperor* (1945) AC 264; *R v Clement* (1821) 4 B & Ald 218; 106 ER 918; *R v Davison* (1821) 4 B & Ald 329; 106 ER 958; *R v Dunbabin & Anor, Ex Parte Williams* (1935) 53 CLR 434; *Registrar of Court of Appeal v Collins* [1982] 1 NSWLR 682, cited

REPRESENTATION:

Counsel:

Applicant:	G Macdonald
Respondent:	Self-represented

Solicitors:

Applicant:	Solicitor for the Northern Territory
Respondent:	

Judgment category classification:	B
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Jenkins v Todd [2016] NTSC 21
No. JA 10 of 2015 (21425645)

BETWEEN:

TREVOR JENKINS
Appellant

AND:

WALTER TODD
Respondent

CORAM: KELLY J

REASONS FOR JUDGMENT

(Delivered 20 April 2016)

Part A- Background

- [1] On 29 May 2014 Mr Jenkins forced his way past security guards at Parliament House and into the Northern Territory Literary Awards, a private function to which he had not been invited. Police were called and Mr Jenkins was arrested and charged with trespass (count 1), assaulting a security guard (count 2) and resisting a member of the police force in the execution of his duty (count 3).
- [2] He was found guilty of all charges in the Court of Summary Jurisdiction, convicted and sentenced to 50 hours of community work (with a \$150 victim

assistance levy) for the trespass offence, convicted and sentenced to 50 hours of community work (with \$150 victim assistance levy) for resisting police, and for the assault, he was convicted and sentenced to 26 days imprisonment, backdated by 26 days to reflect time spent in custody on remand.

- [3] Mr Jenkins appealed against his conviction. The appeal was heard by Barr J over an extended period of time on 10, 29, 30 and 31 December 2015 and 15 and 20 January 2016.¹ The decision on the appeal was handed down on 21 January 2016. The appeal was partially successful. Barr J found that as the police officer concerned had arrested Mr Jenkins in purported reliance on s 10 *Trespass Act*, (and not pursuant to s 123 *Police Administration Act*), the arrest was not proven beyond reasonable doubt to have been lawful, because there was no evidence that the arresting police officer first informed Mr Jenkins of the consequences of his not leaving forthwith, and that he *then* failed or refused to leave, prior to his arrest. Hence it was not proven beyond reasonable doubt that Mr Jenkins had resisted a member of the police force in the execution of his duty.² His Honour set aside the conviction on count 3 and confirmed the convictions (and penalties) for counts 1 and 2.

¹ The hearing of Justices Appeals commonly takes half a day or less.

² *Jenkins v Todd* [2016] NTSC 4 at [122]

Part B – The Contempt Proceeding

- [4] On 21 January 2016, in the course of handing down his decision on Mr Jenkins’ appeal, Barr J directed the Registrar to apply by summons for the punishment of Mr Jenkins for contempt of court³ arising out of the conduct of Mr Jenkins in court on 20 January 2016 during the hearing of the appeal.
- [5] On 4 February 2016, in compliance with that direction, the Registrar filed a summons and affidavit and a statement specifying the contempt with which Mr Jenkins is charged. These were served on Mr Jenkins on 5 February 2016. He was also served on that date with a copy of the transcript of proceedings on 20 January 2016 and a disc containing a copy of the recording of the court proceedings on that day. He was later given a copy of the transcript of proceedings on 21 January 2016.
- [6] The particulars of the contempt with which Mr Jenkins is charged are as follows.

1. Shortly after the commencement of the hearing you were forewarned by the presiding Judge, his Honour Barr J, in the following exchange:

HIS HONOUR: Mr Jenkins, if there’s any further evidence that you wish to tender on this appeal could you let me know what it is?

MR JENKINS: Yes.

³ This procedure, under Supreme Court Rule 75.07 is an alternative to the power to deal summarily with a contempt in the face of the court. [Rule 75.05]

HIS HONOUR: I can then decide whether I receive it or not because as the ---

MR JENKINS: Yes. Well, I would like to ---

HIS HONOUR: Excuse me. Excuse me, Mr Jenkins ---

MR JENKINS: I would like to tender this ---

HIS HONOUR: If you stop, please. If you interrupt me again ---

MR JENKINS: I'm not interrupting you. You asked the evidence and I'm just answering the question.

HIS HONOUR: If you interrupt me when I'm speaking and speak over me I will charge you with contempt. I've had enough of this. Now, please listen.

MR JENKINS: I'm not contempting. I'm just saying something. You asked ---⁴

HIS HONOUR: Mr Jenkins, please listen. (Transcript at page 1)

2. Notwithstanding this warning, it is apparent from the face of the transcript of the proceeding that you continued to interrupt the presiding Judge while he was speaking and to speak over the presiding Judge. As a result, the presiding Judge informed you of his intention to charge you with contempt in the following exchange:

HIS HONOUR: Mr Jenkins, just for the record I'll note that the document which has just been marked as MFI 1 with today's date, 20 January, on the appeal comprises a copy letter to Mr Jenkins dated 19 March 2015.

⁴ A certified copy of the transcript was prepared after the summons was served. It contained some minor corrections which do not materially affect the accuracy of the particulars provided. This portion of the certified transcript reads:

MR JENKINS: I'm not contempting.

HIS HONOUR: Mr Jenkins ---

MR JENKINS: I'm just saying something. You asked ---

MR JENKINS: That's incorrect.

HIS HONOUR: Excuse me.

MR JENKINS: That's incorrect. It's not a copied letter. It's an internal document.

HIS HONOUR: Mr Jenkins ---

MR JENKINS: It's not a letter.

HIS HONOUR: --- would you please be quiet?

MR JENKINS: No. You're lying onto the transcript, Mr Barr. It's not a copied letter to Mr Jenkins.

HIS HONOUR: Mr Jenkins, ---

MR JENKINS: It's actually ---

HIS HONOUR: Mr Jenkins, what you've just said amounts to an extreme contempt.

MR JENKINS: No it doesn't.

HIS HONOUR: I intend to charge you with contempt. Please sit down and let me read these documents onto the record.

MR JENKINS: There's no copied letter.

HIS HONOUR: If you don't sit down you will be aggravating the contempt. Sit down, please.

*MR JENKINS: There is no copy of the letter, Mr Barr. There's no letter to me.*⁵

HIS HONOUR: Mr Jenkins, I've got the documents here. Please sit down.

MR JENKINS: Could you tell the truth? On the front there's an internal document there that says whether I accept it and it's not stamped. This is an internal document that I can't even get a hold of, okay? Why don't you tell the truth about that? There's no letter towards me. [Transcript at page 9]

3. Notwithstanding the presiding Judge informing you of his intention to charge you with contempt, and his further warning, it is apparent on the face of the transcript of the proceeding that you continued to interrupt the presiding Judge while he was speaking and to speak over the presiding Judge:

HIS HONOUR: Mr Jenkins, if you interrupt again – I've already told you that I'm intending to charge you with contempt ---

*MR JENKINS: Well, that's fine. I hope you're charging him with contempt as well. Because, he's doing the same thing.*⁶

HIS HONOUR: Mr Jenkins, please sit down. Don't make your contempt worse.

MR JENKINS: You try it, Barr. You go for it. I don't care anymore. You know. I know what's corruption and I know what's the truth. I'm standing here as the only honest person here talking about stuff and he's said he's talked to Patrick Gregory. I've talked to Patrick Gregory. You know. [Transcript at page 16]

...

⁵ See footnote 3. This portion of the certified transcript reads:

MR JENKINS: There is no copy of the letter, Mr Con.

HIS HONOUR: Sit down, Mr Jenkins.

MR JENKINS: There's no letter to me.

⁶ See footnote 3. This portion of the certified transcript reads:

MR JENKINS: Well, that's fine.

HIS HONOUR: There is ---

MR JENKINS: I hope you're charging him with contempt as well. Because, he's doing the same thing.

And further:

HIS HONOUR: Mr Jenkins. Mr Jenkins, you are making your contempt worse. Every time you get up and interrupt, you are making it worse. Do you know that there ---

MR JENKINS: It's not contempt to say that he's trying to get evidence and I'm objecting to that. I object to that. I object to that.

HIS HONOUR: It's contempt to talk over me when I want Mr Murphy to make his address to me so that I can work out what he wants to say. Please sit down.

MR JENKINS: Am I going to be – I'm objecting to his evidence. Can you put that on the file, please.

*HIS HONOUR: Yes. That will be on the transcript, thank you.
[Transcript at page 18]*

- [7] The summons served on Mr Jenkins on 5 February 2016 required him to appear before this Court on 19 February 2016 “on the hearing of an application that you be punished for contempt of court committed in the face of the Court in this proceeding”. He did not appear in answer to the summons and a warrant was issued for his arrest. He was arrested on the same day and brought before me at which time I made directions fixing a timetable for Mr Jenkins to file any evidence he intended to rely on in the form of written statements and any submissions he wished to make in writing. I set the matter down for hearing at 10.00 am on 31 March 2016 and bailed Mr Jenkins to appear before the Court at that time.
- [8] At that directions hearing Mr Jenkins indicated that he believed the contempt proceedings against him were “unlawful” and that only Barr J

could deal with him for the alleged contempt. Accordingly, I included directions for the filing of written submissions on that issue. As Mr Jenkins does not have an address for service, I indicated that material for Mr Jenkins should be left at the Registry for him to collect. While this undoubtedly put a strain on Registry staff and gave them additional work, as a method of passing information to Mr Jenkins, it worked quite well. He attended at the Registry regularly to file and collect material.

[9] At Mr Jenkins' request, the matter was brought back on for mention on 2 March 2016. The reason for the mention was that Mr Jenkins wanted an extension of time for filing submissions and wanted the timetable altered so that he did not have to file any submissions he wished to make or witness statements he intended to rely on in relation to the substantive contempt proceeding until after the question of the "lawfulness" of the proceeding and my jurisdiction to hear it had been determined. On 2 March 2016 I amended the previous directions, allowing Mr Jenkins (and the Registrar) some extensions of time and acceding to his request that the issue of whether or not the present proceedings are unlawful be determined before Mr Jenkins was required to file any evidence he intended to rely on or submissions he wished to make in relation to the substantive contempt proceedings.

[10] During the course of that directions hearing Mr Jenkins interrupted me, spoke over me, objected to being required to stand when he was being spoken to, and failed to do so. I had him removed from the courtroom and gave him the option of participating in the directions hearing via audio-

visual link from the vulnerable witness room⁷ or not at all. He elected not to participate further. However, the directions were amended substantially in accordance with his requests.

[11] In accordance with those directions, on 11 March 2016 Mr Jenkins filed hand written submissions in relation to the legality of the proceedings and Mr Macdonald for the Registrar filed submissions in reply. On 21 March 2016 I handed down my decision - that these proceedings are not “unlawful” and I do have jurisdiction to hear and determine the charge of contempt against Mr Jenkins - and published my reasons.

[12] As I indicated in my reasons for that decision, some of the material filed by Mr Jenkins on 11 March 2016 was not relevant to the question of whether I have jurisdiction to deal with this matter, but rather to the substantive issue of whether Mr Jenkins is guilty of contempt, and I indicated that I would consider those submissions (along with whatever other submissions Mr Jenkins wished to make) when determining the contempt proceeding. Under the directions which I made on 2 March 2016, those further submissions were to be in writing and filed by 24 March 2016 along with any evidence Mr Jenkins intended to rely on in the form of written statements and a list of any witnesses he intended to call from whom he had been unable to obtain a written statement.

⁷ The purpose of this was to ensure that Mr Jenkins could see and hear everything that occurred in the courtroom via the audio-visual link, but would be prevented from interrupting and disrupting proceedings by having his microphone placed on mute if necessary.

[13] Mr Jenkins elected not to file any witness statements or call any witnesses, as is his right. Although he did not comply with the timetable fixed by the directions, he filed further handwritten material accompanied by voluminous photocopied material on the morning of 31 March 2016. I have read all of that material and had regard to it with one caveat. These are proceedings of a criminal nature. The onus is on the Registrar to establish beyond reasonable doubt that Mr Jenkins committed the contempt that is alleged against him. Mr Jenkins is entitled to the presumption of innocence, entitled to the privilege against self-incrimination, and entitled to remain silent. At his own insistence, Mr Jenkins is an unrepresented defendant and he may not have been fully cognisant of his rights. Some of the material filed by Mr Jenkins includes scandalous allegations and very arguably amounts to fresh contempt. I have simply set such material aside and paid regard only to material submitted by Mr Jenkins that is of some relevance to the charge as particularised and has some bearing on whether he is guilty of the contempt so particularised.

[14] Counsel for the Registrar filed written submissions in accordance with the amended directions. I have also had regard to that material.

[15] Although Mr Jenkins was bailed to appear at the hearing of the contempt proceedings at 10.00 am on 31 March, he did not attend. I therefore elected to proceed in his absence and received oral submissions from Mr Macdonald who appeared for the Registrar.

[16] I have determined that Mr Jenkins is guilty of contempt of court as charged. In the reasons which follow I set out the relevant principles and then discuss Mr Jenkins' filed submissions under a number of headings.

Part C - Principles

[17] The Supreme Court of the Northern Territory, as a superior court of record has inherent jurisdiction to punish criminal contempt.⁸

[18] Mr Jenkins has been charged with contempt in the face of the court. This is a species of criminal contempt, that is to say one whose characteristic attribute is an interference with the due administration of justice, for example misconduct in court which undermines or interferes with the authority, performance or dignity of the court.⁹

[19] In order to constitute contempt, words or conduct in the face of the court or in the course of proceedings, "must be such as would interfere, or tend to interfere, with the course of justice".¹⁰

[20] The power to punish contempt is not to be used "to suppress vigorous advocacy which does not constitute a defiance of the authority of the court"¹¹ and "considerable latitude is extended to litigants in person who may be unfamiliar with proper court procedures and courtesies and who may

⁸ *Grassby v The Queen* [1989] HCA 45, (1989) 168 CLR 1 per Deane J at [21]

⁹ *Witham v Holloway* [1995] HCA 3; (1995) 183 CLR 525 per McHugh J at [8]

¹⁰ *Lewis v Ogden* [1984] HCA 28, (1984) 153 CLR 682 per Mason, Murphy, Wilson, Brennan and Dawson JJ at [8] quoting *Parashuram Detaram Shamdasani v King-Emperor* (1945) AC 264, at p 268

¹¹ *Ex Parte Tuckerman Re Nash* [1970] 3 NSW 23 at p 27

be emotionally involved in the proceedings”.¹² However, “the expression ‘interfere with the course of justice’ is not confined to a physical disturbance of particular proceedings in a court which prevents the court from attending to its business according to law”; it includes an interference with the authority of the courts 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”.¹³

[21] It has been held that conduct which has a tendency to obstruct the course of justice may amount to a contempt regardless of whether it was intended to do so.¹⁴

“[A]nything done either for the purpose of obstructing justice or which will have that effect may be punished as a contempt of the court before whom the proceedings are had”.¹⁵ [*emphasis added*]

¹² LexisNexis, *Halsbury’s Laws of Australia*, (at 11 April 2016) at 105 Contempt, ‘Criminal Contempt’ [105-30] (7) and the examples cited there in note 18

¹³ *Ex Parte Tuckerman* at 27; *R v Dunbabin & Anor, Ex Parte Williams* [1935] HCA 34; (1935) 53 CLR 434 per Rich J at p 445

¹⁴ *Re Dakin* (1887) 13 VLR 522 at 540-541; *Ex Parte Tuckerman* [*Ex Parte Tuckerman* is cited in *Halsbury’s Laws of Australia* at [105-25] as authority for the opposite proposition – ie that “to constitute contempt in the face of the court the conduct must be intentional”, but no such proposition appears in the judgment and at p 28, the New South Wales Court of Appeal (Asprey, Holmes and Mason JJ) said: “... whatever in fact the gestures of the applicants were intended by them to represent, in our opinion, acts, words or other forms of behaviour which give the appearance of defying the authority of a Court of law or which by intimidation, ridicule or otherwise tend to lessen the authority of the courts to administer the law and to seek to apply even-handed justice between parties in a calm and orderly manner may be regarded as contempt of Court.” (*emphasis added*)] See also the Scottish case of *Muirhead v Douglas* [1981] Crim LR 781 in which the High Court of Justiciary stated that “deliberate intent to cause prejudice to the administration of justice is not an essential element in contempt”.

¹⁵ *R v Clement* (1821) 4 B & Ald 218; 106 ER 918, quoted and relied upon in *Re Dakin* by Williams and A’Beckett JJ at p 540

“While intention to interfere with the due administration of justice is not a necessary element in the offence, where it does exist, contempt will be more easily found”.¹⁶

[22] In the present case it is alleged that Mr Jenkins’ conduct in persistently interrupting the presiding judge and talking over him after being directed not to do so and warned that his conduct amounted to contempt, was a contempt in the face of the court.

Part D – Discussion of Mr Jenkins’ Submissions

(1) Mr Jenkins’ submissions relating to the summary disposal of contempt in the face of the court

[23] Mr Jenkins relied on an extract from *Borrie & Lowe: The Law of Contempt*¹⁷ Chapter 12, “Contempt in the Face of the Court” in which he highlighted certain passages. The first of these is the opening paragraph to that chapter:¹⁸

“The interruption or disruption of the trial process itself constitutes a serious and direct threat to the administration of justice and the power to punish as contempt such conduct has long been recognised as a necessary incident of courts of record.”

[24] In handwritten notes adjacent to this passage, Mr Jenkins has written “no trial” “case ended”. This appears to be a repetition of his submission on the jurisdictional question to the effect that contempt proceedings cannot be

¹⁶ *Registrar of Court of Appeal v Collins* [1982] 1 NSWLR 682 at 690-691

¹⁷ Ian Cram et al (eds) *Borrie & Lowe: The Law of Contempt* (LexisNexis Butterworths, 4th ed, 2010)

¹⁸ p 449

brought after judgment in the case has been given. I have already ruled on that matter and published written reasons on 21 March 2016.¹⁹ I said:

Nor is it correct that contempt proceedings cannot be brought once judgment has been given in the original proceeding. There is no substance to this contention in either logic or law. Mr Jenkins cited *Halsbury's Laws of Australia*²⁰ as supporting this proposition, but the passage relied upon does not do so. Mr Jenkins referred to this sentence in *Halsbury*: "Conduct does not constitute contempt in the face or hearing of the court if the proceedings in which the contempt is said to have occurred are complete."²¹ This has no bearing on when proceedings to punish a contempt may be heard or who may hear them. In this case Mr Jenkins has been charged with contempt in relation to conduct which did occur while proceedings were on foot. The conduct said to constitute contempt occurred during the hearing of Mr Jenkins' appeal on 20 January 2016. Barr J handed down his decision on that appeal on 21 January 2016.

[25] The next passage highlighted²² by Mr Jenkins was as follows:

The contempt powers are the most extreme means of dealing with those who disrupt court proceedings and should only be exercised as a last resort when other less drastic remedies such as ejecting the offender from the court and adjourning proceedings are thought to be inappropriate and in any event only in exceptional circumstances where the contempt can be clearly proved and cannot wait to be punished. As Stephenson LJ said in *Balogh v Crown Court at St Albans*²³, the contempt power is both salutary and dangerous:

salutary because it gives those who administer justice the protection necessary to secure justice for the public, dangerous because it deprives a citizen of the protection of safeguards considered generally necessary to secure justice for him.

¹⁹ *Jenkins v Todd* ([2016]) NTSC 15 at [10]

²⁰ LexisNexis, *Halsbury's Laws of Australia* (at 20 March 2016)

²¹ at 105 Contempt, 'Contempt in the Face of the Court' [105-25]

²² *Borrie & Lowe* p 449-450

²³ [1975] QB 73 at 91

[26] Mr Jenkins' point appears to be that in this case contempt proceedings were not used "as a last resort", but this submission is misplaced. In context, it is clear that what is being referred to in the extracts from *Borrie & Lowe* relied on by Mr Jenkins is the power of the court to deal summarily with a contempt committed in the face of the court. So much is clear from the passage from Lord Denning's judgment in *Morris v Crown Office*²⁴ which is set out in *Borrie & Lowe*²⁵ between the two passages highlighted by Mr Jenkins:

The phrase "contempt in the face of the court" has a quaint old-fashioned ring about it, but the importance of it is this: of all the places where law and order must be maintained, it is here in these courts. The course of justice must not be deflected or interfered with. Those who strike at it, strike at the very foundations of our society. To maintain law and order, the judges have, and must have, power at once to deal with those who offend against it. It is a great power – a power instantly to imprison a person without a trial – but it is a necessary power.

[27] In the present case, for good reason, his Honour chose not to exercise the power (which should be exercised only as a last resort) to deal with Mr Jenkins summarily, but rather chose to afford him all of the benefits of notification by summons and a trial before a differently constituted court. His Honour said:

Given that the appeal hearing in which the contempt of court occurred has now been completed, there is no immediate need to

²⁴ [1970] 2 QB 114 at 122

²⁵ p 449

uphold the authority of this court by proceeding against you summarily.²⁶

[28] Mr Jenkins also highlighted the following passage from *Borrie & Lowe*:

A court should be slow to punish spontaneous outbursts as a contempt, and particularly where members of the public are concerned, if a warning is insufficient, ejection from the court would seem in most cases to be the appropriate remedy.²⁷

[29] This sentence followed a discussion about contempt cases in which members of the public – often protesters of one kind or another – disrupted proceedings by shouting, singing, cheering or passing out leaflets. It is of less relevance in the case of an allegation of contempt by a party. In the present case, it is true that Barr J had the option of ejecting Mr Jenkins from the court and proceeding with the hearing of his appeal in his absence. However, he was certainly not obliged to do so. His Honour took the view that it was preferable, no doubt in the interests of affording Mr Jenkins the fullest opportunity to present his case on the appeal, to allow him to remain, to warn him of the probable consequences of his conduct and then, when those warnings were of no effect, to give a direction to the Registrar to summons Mr Jenkins to be dealt with for contempt.

[30] Mr Jenkins also referred to a decision of the Grand Chamber of the European Court of Human Rights in *Kyprianou v Cyprus*²⁸ which concerned

²⁶ Transcript of Proceedings, Barr J, 21 January 2016, p 2

²⁷ *Borrie & Lowe* p 467

²⁸ (2007) 44 EHRR 27, in *Borrie & Lowe* p 451

the application of Article 6 of the European *Convention for the Protection of Human Rights and Fundamental Freedoms*,²⁹ and is of no application in this jurisdiction. Beside the reference to that case, Mr Jenkins wrote, “Summary procedure unfair” “denial of natural justice”. As I have already pointed out, Mr Jenkins has not been dealt with for contempt under the summary procedure, but served with a summons under Rule 75.06³⁰ particularising the contempt. He has been given an adequate opportunity to present his case and there has been no denial of natural justice.

(2) Submissions by Mr Jenkins relating to insulting behaviour towards the judge

[31] Mr Jenkins highlighted a footnote in *Borrie & Lowe* which referred to the facts in *Kyprianou v Cyprus*. The highlighted words read:

The judges had appeared highly affronted and clearly regarded the remarks as personal insults on their integrity rather than an abstract attack on the administration of justice, they assumed guilt and merely invited statements in mitigation of penalty and gave inadequate time to the defendant to effectively justify his conduct.³¹

[32] If, by highlighting this footnote, Mr Jenkins intended to imply that the present case has similar characteristics, the analogy fails.

(a) As I have already emphasised, in this case Barr J chose not to deal with Mr Jenkins summarily. Mr Jenkins was served with a summons charging him with contempt and particularising the alleged contempt.

²⁹ opened for signature 4 November 1950, 213 UNTS 221 (entered into force 3 September 1953)

³⁰ *Supreme Court Rules 2013* (NT)

³¹ footnote 15 p 452

- (b) The summons required him to appear before a differently constituted court.
- (c) At the first return date, directions were given affording Mr Jenkins (if he chose to do so) an opportunity to call evidence and make submissions as to jurisdiction and also as to whether he was guilty of contempt.
- (d) At Mr Jenkins' request, a further directions hearing was convened and he was given extensions of time as per his request and the timetable re-arranged so that the issue of whether or not the present proceedings were unlawful would be determined before Mr Jenkins was required to file any evidence or submissions he wished to rely on in relation to the substantive contempt proceedings.
- (e) Mr Jenkins did not apply for any further extensions of time before the hearing on 31 March 2016. Had he done so, his application would have been given due consideration.

[33] In a similar vein, Mr Jenkins highlighted two passages from *Borrie & Lowe* referring to insults directed to the bench.

A judge, however, should be slow to use his contempt powers with respect to insults directed against himself. As Lord Denning MR said in *Balogh v Crown Court at St Albans* ([1975] QB 73 at 86G) 'Insults are best treated with disdain – save when they are gross and scandalous'. In *Balogh's* case itself, no action was taken over

the defendant's uncouth insult addressed to the judge: 'You are a humourless automaton. Why don't you self-destruct?'³²

and

Judges are not so conscious of their own dignity or so afraid of losing it that they have to take action in all such cases.³³ [*This was then contrasted with the need to protect jurors from similar behaviour.*]

[34] The exchanges set out in the particulars of the charge against Mr Jenkins include some disrespectful behaviour directed to the judge – including Mr Jenkins' persistent refusal to address the presiding judge as "your Honour". That kind of conduct is usually better ignored which is precisely the course adopted by Barr J. Such behaviour does not bring the court into disrepute. It simply amounts to rudeness and discourtesy that reflects poorly on Mr Jenkins and his manners.

[35] However, the particulars contain a number of what I consider to be undoubtedly gross and scandalous insults including accusations of dishonesty directed at the presiding judge. The first occurs in the exchange set out under point 2 of the particulars of contempt:

MR JENKINS: No. You're lying onto the transcript, Mr Barr. It's not a copied letter to Mr Jenkins.

.....

³² at p 464

³³ at p 465

*MR JENKINS: Could you tell the truth? On the front there's an internal document there that says whether I accept it and it's not stamped. This is an internal document that I can't even get a hold of. Why don't you tell the truth about that? There's no letter towards me.*³⁴

[36] The next occurs under point 3 of the particulars:

*MR JENKINS: You try it Barr. You go for it. I don't care anymore. You know. I know what's corruption and I know what's the truth. I'm standing here as the only honest person here talking about stuff and he's said he's talked to Patrick Gregory. I've talked to Patrick Gregory. You know?*³⁵

[37] Mr Macdonald for the Registrar submitted that each of these passages undoubtedly amounted to contempt. He contended that making a blatant statement to the effect that there is patent dishonesty occurring from the Bench is contrary to the due administration of justice. It seeks to impugn the judicial system. Mr Macdonald contended that whether or not his Honour may have been offended by those comments from Mr Jenkins, the real mischief lies in the impact which those comments could have in the public arena if they were permitted to stand without any recourse by the Court. I agree. These remarks fall within the category of conduct referred to by Rich J in *R v Dunbabin* as 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”.³⁶ Had the particulars of contempt with which Mr Jenkins has been charged included the making of gross and scandalous

³⁴ extracted from the Transcript of Proceedings, Barr J, 20 January 2016, pp 9, 10

³⁵ extracted from the Transcript of Proceedings, Barr J, 20 January 2016, p 17

³⁶ *R v Dunbabin* see [20] supra

accusations of dishonesty on the bench and of corruption against the presiding judge, I would have had no hesitation in finding that this conduct amounted to contempt for the reasons submitted by Mr Macdonald.

[38] However, that is not the conduct with which Mr Jenkins has been charged.

Barr J was quite specific in his warning to Mr Jenkins and the particulars of contempt drawn up by the Registrar are likewise specific and limited in scope.

- (a) Paragraph 1 of the particulars asserts that Barr J warned Mr Jenkins in these terms: *If you interrupt me when I'm speaking and speak over me I will charge you with contempt.*
- (b) Paragraph 2 of the particulars alleges that notwithstanding this warning, Mr Jenkins continued to interrupt the presiding judge while he was speaking and to speak over the presiding judge and that, as a result, the presiding judge informed Mr Jenkins of his intention to charge him with contempt.
- (c) Paragraph 3 of the particulars alleges that Mr Jenkins continued to interrupt the presiding judge while he was speaking and to speak over the presiding judge.

That is the gravamen of the contempt charge – not any insulting conduct towards the judge, however gross, scandalous and self-evidently contemptuous. Mr Jenkins' submissions to the effect that he ought not have

been charged with contempt for insults directed to the presiding judge miss the point: he has not in fact been charged with contempt as a result of such insults.

(3) Mr Jenkins' submissions on his status as an advocate

[39] Mr Jenkins highlighted extracts and made submissions based on his status as an advocate in the appeal proceeding. He wrote: "I am advocate advocates can't be restricted in style."

[40] He highlighted these extracts from *Borrie & Lowe*:

The importance of advocates being allowed to argue their cases fearlessly and resolutely is reflected by the general reluctance to find such persons guilty of contempt. As Lord Tucker said:

'It is not every act of discourtesy to the court by counsel that amounts to contempt, nor is conduct which involves a breach of his duty to his client necessarily in this category.'

Lord Goddard CJ has gone further, saying that to use the summary power of punishing for contempt 'to suppress methods of advocacy which are merely offensive is to use it for a purpose for which it was never intended'.³⁷

...

In the course of conducting his case an advocate may clash with a judge but again he has considerable freedom to act (and rightly so) without being at risk for contempt. When addressing the court he is free (in the words of Oswald) [*in Balogh v Crown Court at St Albans* ([1975] QB 73 at 86)]:

³⁷ *Borrie & Lowe* at p 481

‘to combat and contest strongly any adverse views of the Judge or Judges expressed on the case during its argument, to object to and protest against any course which the Judge may take and which the advocate thinks irregular or detrimental to the interests of his client, and to caution juries against an interference by the Judge with their functions, or with the advocate addressing them, or against any strong view adverse to his client expressed by the presiding Judge upon the facts of a case before the verdict of the jury thereon.’³⁸

[41] In the margins near these highlighted extracts, Mr Jenkins wrote: “I am an advocate” and “my client is me”.

[42] Mr Jenkins chose not to highlight the following which appears in *Borrie & Lowe* immediately after the last quoted paragraph:³⁹

Despite the undoubted latitude, advocates can commit, and have been punished for, contempt. Although the court will be more lenient towards litigants conducting their own cases, in general all advocates will be expected to respect the dignity and authority of the court and to behave responsibly. As Bayley J said in *R v Davison*: ((1821) 4 B & Ald 329; 106 ER 958)

‘every man who comes into a Court of Justice either as a defendant or otherwise, must know that decency is to be observed there, that respect is to be paid to the Judge, and that, in endeavouring to defend himself from any particular charge, he must not commit a new offence.’

[43] Mr Jenkins has been charged with repeatedly interrupting the presiding judge while he was speaking and speaking over the presiding judge despite warnings that he was committing contempt and would be charged with contempt. There is no doubt that he did so. The question is whether in doing so, Mr Jenkins was engaging in a particularly fearless form of

³⁸ *Borrie & Lowe* at p 482

³⁹ at p 482-3

advocacy or whether his conduct was in defiance of the authority of the Court and such as to interrupt, disrupt and/or obstruct the proceedings. That question is better considered under the following heading.

(4) Mr Jenkins' Submissions re Disruption

[44] Mr Jenkins highlighted a passage of *Borrie & Lowe* under the heading: The meaning of 'contempt in the face of the court'. That section of the text begins:⁴⁰

In general 'contempt in the face of the court' may be said to comprise the unlawful interruption, disruption or obstruction of court proceedings.

[45] The passage highlighted by Mr Jenkins reads:

As with all criminal contempts the offending act must constitute an interference with the administration of justice. It is clear in modern condition [sic] the contempt must be clearly proved to be an attempt to interfere with the administration of justice as was emphasised in *R v Jales Brian* ([2007] EWCA Civ 393)⁴¹ where the mere fact that a party had gone out to talk to the father of the accused who was waiting outside the court to give evidence did not amount without more evidence to contempt. Beyond this, however, unless the contempt jurisdiction is statutorily defined it is difficult to give a comprehensive definition of the type of conduct involved.

[46] Beside this highlighted passage, Mr Jenkins wrote: "Appeal over no disruption". This entirely misses the point. Mr Jenkins has continually focused on the time at which the contempt charge was laid. For the purpose of determining whether the conduct in question constitutes an interference

⁴⁰ at p 456

⁴¹ As referenced in *Borrie v Lowe*, *ibid.*

with the administration of justice, the relevant time can only be the time at which that conduct (ie the conduct said to constitute the contempt) occurred. In this case, the conduct said to constitute the contempt occurred on 20 January 2016, during the last day of the hearing of the appeal – not after the appeal was over.

[47] I have reviewed the entire transcript of 20 January 2016 for the purpose of putting the remarks particularised into context and in order to throw light on Mr Jenkins’ intentions at the relevant time and I have listened to the recording of the proceedings on that day.

[48] His Honour made it clear at the outset that the sole purpose of the hearing on 20 January 2016 was to see whether or not the parties consented to any further evidence from a Mr Gregory being tendered on the appeal.⁴²

[49] The transcript of proceedings in the CSJ on 23 March 2015 (from which Mr Jenkins was appealing) recorded the prosecutor as informing the court that he had provided Mr Jenkins with a statement of the evidence of Mr Patrick Gregory, and that Mr Jenkins had refused to accept it, saying that it was not relevant.⁴³ On the appeal on 15 January 2016 Mr Jenkins disputed that statement by the prosecutor – insisting that the prosecutor had lied. As one of Mr Jenkins’ main complaints in relation to the proceedings below involved the fact that Mr Patrick Gregory had not been called as a witness,

⁴² Transcript of Proceedings, Barr J, 20 January 2016, p 1

⁴³ Transcript of Proceedings, Barr J, 20 January 2016, pp 4-5

his Honour adjourned the further hearing of the appeal to 20 January to see whether or not the parties consented to evidence from Mr Gregory being tendered on the appeal.⁴⁴

[50] Barr J explained to Mr Jenkins something his Honour indicated he had explained earlier:

If I'm not satisfied that the evidence that you wish to tender is determinative of the appeal, in other words, would make out one of the grounds of appeal, then I'm not permitted to receive it on this appeal hearing, unless it's with consent.⁴⁵

[51] His Honour also said:

If there's no consent then it simply won't be tendered and I'll deal with the evidence that is available on appeal. That's all we're here for today.⁴⁶

[52] Mr Jenkins apparently agreed that he had not accepted the statement which the prosecutor had tried to give him,⁴⁷ but said that was because if he had to hand that statement up in court it wouldn't have been accepted,⁴⁸ apparently because it was not signed, or dated. He asserted that the document he was

⁴⁴ Transcript of Proceedings, Barr J, 20 January 2016, p 3

⁴⁵ Transcript of Proceedings, Barr J, 20 January 2016, p 6

⁴⁶ Transcript of Proceedings, Barr J, 20 January 2016, p 3

⁴⁷ Transcript of Proceedings, Barr J, 20 January 2016, p 2 However, on 15 January 2016, when this issue first arose, Mr Jenkins was adamant that the prosecutor had lied when he said on 23 March 2015 that he had provided Mr Jenkins with a statement of the evidence of Mr Patrick Gregory, and that Mr Jenkins had refused to accept it.

⁴⁸ Transcript of Proceedings, Barr J, 20 January 2016, p 2

given was not a statement because a statement “has to be made under a Commissioner of Oaths and to a policeman”.⁴⁹

[53] Mr Jenkins had in his possession several documents that he eventually said he wanted to tender and which were eventually handed to his Honour. They were marked for identification MFI 20.01.16. MFI 20.01.16 was placed into evidence on the hearing of the contempt proceedings on 31 March 2016, to enable some sense to be made of the transcript of 20 January 2016 in which the documents were discussed at length.

[54] Those documents were:

- (a) what appears on the face of it to be a letter dated 19 March 2015 to Mr Jenkins from the office of the Director of Public Prosecutions in the following terms (omitting the formal parts):

Police v Trevor Jenkins

Case Number: 21425645

I confirm that the above matter is listed for Hearing on 23 March 2015.

Further to the defence brief previously served on your offices, please now find enclosed:

Statement of Patrick GREGORY (not dated)

Statement of Sgt Robert Gregory WHITTINGTON 18/03/2015

Please do not hesitate to contact Summary Prosecutions or the nominated Prosecutor, Peter Clayton, regarding any queries that you may have in respect of this hearing.

⁴⁹ Transcript of Proceedings, Barr J, 20 January 2016, pp 2 and 5

- (b) a document accurately described by his Honour as “an administrative document, very likely a document internal to the DPP, a clerk filing document with a blank for the space in which the documents were to be served and ... a handwritten endorsement at the bottom ... by a person unknown saying, ‘Trevor refused documents 20/3’”;⁵⁰ and
- (c) a document expressed to be a statement of Patrick Gregory, Director of Northern Territory Library saying:

“My role in the Northern Territory Literary Awards was as one of the speakers, welcoming the guests to the Library.

I was not involved in the planning or administration of the Awards in any way. The administration of the Awards was undertaken by my Assistant Director, Emma Darby.

I did not see Mr Jenkins on the evening of the Awards. I heard shouting after the Awards, but I was at the other end of the Library, talking to guests, and did not see the incident. By the time I reached the site of the noise Mr Jenkins was no longer in the Library.”

Underneath this is a photocopy of a driver’s license in the name of GREGORY Patrick James with some of the personal details blacked out.

[55] His Honour was attempting to describe these documents for the record when Mr Jenkins interrupted him in the second extract set out in the particulars of the alleged contempt. I have listened to the recording as well as reviewing the transcript and I am satisfied from the words used, and from the tone and volume adopted by Mr Jenkins that by so interrupting and speaking over his Honour, Mr Jenkins was attempting to prevent his Honour from describing

⁵⁰ Transcript of Proceedings, Barr J, 20 January 2016, p 10

the documents for the purposes of the transcript in terms Mr Jenkins did not agree with.

[56] His Honour then asked Mr Jenkins what he wanted to say about the documents and Mr Jenkins embarked on what can only be described as a lengthy tirade in which he accused the prosecutor in the CSJ of duplicity because of what he perceived to be inadequacies in the statement of Mr Gregory.⁵¹

[57] Finally, in answer to his Honour's questions, Mr Jenkins confirmed that he wished to tender the documents contained in MFI 20.01.16 on the appeal because the statement, he submitted, was worthless,⁵² and in order to demonstrate the duplicity of the prosecutor and the fact that the prosecutor had misled the court at p 263 of the transcript of 23 March 2015.⁵³ His Honour rejected the tender.

[58] His Honour then asked counsel for the respondent, Mr Murphy, if there were any other issues he wished to raise. Mr Murphy stated that because of the accusations that Mr Jenkins had made about the prosecutor in the court below, he wanted to put on record that he had spoken to Mr Patrick Gregory and that he had email correspondence from him "confirming the summary of that conversation".

⁵¹ Transcript of Proceedings, Barr J, 20 January 2016, pp 11 - 14

⁵² essentially because it was unsigned, undated and of uncertain authorship

⁵³ Transcript of Proceedings, Barr J, 20 January 2016, pp 13 and 15

[59] At that point he was cut off mid-sentence. Mr Murphy was presumably intending to refer to the conversation recorded in the statement that formed part of MFI 20.01.06 but Mr Jenkins would not allow him to complete a sentence. Mr Jenkins began talking loudly in an agitated manner over Mr Murphy and over his Honour. Immediately before that portion of the transcript set out in paragraph 3 of the particulars, the following occurred:⁵⁴

MR JENKINS: I object to this. I object to this, your Honour. Like, I mean - - -

HIS HONOUR: Mr Jenkins, you can - - -

MR JENKINS: - - - well I had the same statement - - -

HIS HONOUR: Please. Mr Jenkins, please sit - - -

MR JENKINS: I've talked to Mr Gregory also, and he completely rejects the statement.

HIS HONOUR: Mr Jenkins, would you please sit down. Would you - - -
-

MR JENKINS: So, this might be what he's saying to Mr Murphy. I've talked to Patrick. I've talked to Mr Gregory. I know where he lives. I'm a friend of his.

⁵⁴ Transcript of Proceedings, Barr J, 20 January 2016, pp 16-17

HIS HONOUR: You've told us. Mr Jenkins. Mr Murphy didn't interrupt you when you were telling me about your discussions with - - -

MR JENKINS: Am I going to be able to answer this?

HIS HONOUR: Well, I'm not sure. I'm not sure where we're heading here. But, please sit down and let Mr Murphy continue.

MR JENKINS: Mr Murphy is now asserting that this document is correct - - -

[60] This part of the transcript does not form part of the particulars of contempt alleged against Mr Jenkins, but it makes plain that when Mr Jenkins interrupted and spoke over his Honour in the particularised portion of the transcript, he was continuing his efforts to deliberately shut out Mr Murphy and prevent his Honour from hearing what Mr Murphy had to say. I have no doubt at all that this amounted to a deliberate attempt to disrupt the proceeding. If any doubt were possible, that doubt would be removed by what followed immediately after the particularised exchange:⁵⁵

MR JENKINS: Fine. I'm objecting to that, because it's not even a signed document.

MR MURPHY: Your Honour, if the grounds of the only objection by Mr Jenkins in relation to this is that I haven't put this into a form of a statement, I'm happy to take the oath now and testify, just to cover that it - - -

⁵⁵ Transcript of Proceedings, Barr J, 20 January 2016, pp 19-20

MR JENKINS: He has no right to do that. He can't have his own statement that he's taken from a – it has to be an independent Commissioner of Oaths, not him taking a statement that he wants to get and doing that. That's wrong. Okay?

And also, I have an Anti-Discrimination case that's – I'd like to tender it from my side where I talk to Patrick Gregory in an Anti-Discrimination case where he completely refutes this and says that I was allowed to go to there; that Emma Darby had no right to say I couldn't go there, and it was overturned.

That was the statement that you - - -

HIS HONOUR: Well, Mr Jenkins - - -

MR JENKINS: - - - don't want to take. So, you're going to take his evidence and not my evidence? Why is that? Because, he's a QC?

HIS HONOUR: Mr Jenkins, I'm not going to take any evidence. I think I should cut this very short now. I take the view that the evidence of Mr Gregory has not been demonstrated to be material. The magistrate found that he was not a material witness, and I agree with that.

[61] Having achieved his objective of stopping Mr Murphy saying what he wanted to say, Mr Jenkins stopped interrupting and talking over the judge, at least for the time being. I am satisfied beyond reasonable doubt that Mr Jenkins' conduct in interrupting and talking over the judge on 20 January 2016 in the particularised extracts was not the result of momentary loss of control or over-enthusiastic self-advocacy, but a calculated tactic on Mr Jenkins' behalf, aimed at interfering with the presiding judge's ability to

control the proceeding and shutting out what Mr Jenkins did not want heard. That amounts to criminal contempt in the face of the court. It strikes at a fundamentally necessary aspect of securing justice in our courts, the ability of the judge to regulate the proceeding to ensure that justice is done. As Lord Denning said in the passage from *Morris v Crown Office* cited at [26] above:

... [O]f all the places where law and order must be maintained, it is here in these courts. The course of justice must not be deflected or interfered with. Those who strike at it, strike at the very foundations of our society.

[62] The proper administration of justice depends upon the power and practical ability of the presiding judge to control proceedings. Repeated deliberate interruption of the judge, talking over the judge and refusal to comply with the judge's directions ultimately make it impossible for the judge to ensure that justice is done in proceedings before him or her.

(5) Mr Jenkins' Submissions on Mens Rea

[63] Mr Jenkins also highlighted these extracts from *Borrie & Lowe* which appear under the heading "MENS REA".

"Although it seems clear that to sustain at common law a prosecution for contempt in the face of the court it must be proved that the accused intended to do the act in question, it is not yet settled whether it must also be proved that the accused intended to interfere with the course of justice."⁵⁶

⁵⁶ *Borrie & Lowe* p 515

“In a number of jurisdictions for example, statutes vesting contempt powers in lower courts commonly state that the behaviour must be ‘wilful’.”⁵⁷

[64] He followed this extract with handwritten submissions: “mens rea why would I be trying to disrupt justice in my own appeal I was trying to get justice”.

[65] It seems to me that the Australian authorities referred to above support the view that an intention to interfere with the course of justice is not an essential element of contempt. In relation to the second highlighted extract, there is no statutory limitation on the inherent power of the Supreme Court of the Northern Territory to deal with contempt, and no requirement that the conduct in question be shown to be wilful.

[66] If an intention to interfere with the course of justice were an essential element of contempt, my decision would be the same. I am satisfied beyond reasonable doubt that that was Mr Jenkins’ intention in the passages set out in paragraphs 2 and 3 of the particulars. In the passage in paragraph 2, it is clear that Mr Jenkins was deliberately interrupting and talking over Barr J to try to prevent him from placing onto the transcript a description of the documents Mr Jenkins had tendered with which Mr Jenkins disagreed – or which he didn’t like. In the passage in paragraph 3 it is equally clear that he was interrupting and talking over his Honour in a deliberate attempt to prevent his Honour hearing from Mr Murphy. Listening to the recording,

⁵⁷ *Borrie & Lowe* p 515

one gains the distinct impression that Mr Jenkins believed that it was he, and not the presiding judge, who should control what was happening in the courtroom. In that he was mistaken.

(6) Mr Jenkins' submissions that he was goaded by the presiding judge

[67] In his written submissions, Mr Jenkins contended that Barr J had “goaded him into a fight” and that his Honour had ridiculed him, repeatedly put him down, treated him as a child and generally patronised and demeaned him. At the directions hearing on 2 March 2016, I accepted the submission by Mr Macdonald for the Registrar that I should only pay regard to the transcripts of 20 and 21 January 2016 for the purpose of putting the particularised conduct in context as these were the transcripts that had been served on Mr Jenkins. I examined those transcripts and determined that on those days his Honour had not goaded Mr Jenkins, ridiculed him, demeaned him or done any of the other things Mr Jenkins complained of. It occurred to me that Mr Jenkins' submission in relation to his treatment by the presiding judge might have been intended to apply to the appeal as a whole. I therefore called the matter on for mention on Friday 8 April at 9.00 am. I asked for the views of both Mr Macdonald and Mr Jenkins on two issues:

- (a) whether it would be desirable for me to have regard to the transcript of the whole appeal proceeding for the purpose of assessing this submission by Mr Jenkins (in which case both parties would be provided with copies of the transcript); and

(b) whether the submission in question was relevant to the question of whether Mr Jenkins had committed contempt or whether it was relevant only to mitigation of penalty (should he be found guilty of contempt and should the submission be made out).

[68] Mr Macdonald submitted that it would be desirable to pay regard to the whole transcript (and the recording where necessary) and also that this submission by Mr Jenkins might be relevant to both questions – ie whether Mr Jenkins had committed contempt and (if so) the question of penalty, as it might have some bearing on his state of mind.

[69] Mr Jenkins agreed that I should look at the entire transcript. He then attempted to make submissions about the way he said he had been treated. I explained to Mr Jenkins that he would have an opportunity to make those submissions in due course but that that was not the purpose of that morning's mention. I tried to put the second part of the question to him – ie that concerning the relevance of the submission – but he refused to listen and kept talking over me. I therefore ordered that he leave the courtroom but advised him that he could participate from the vulnerable witness room if he wished. I adjourned the mention and Mr Jenkins was forcibly ejected from the courtroom by court security.

[70] In Mr Jenkins' absence I directed that he put any further submissions he wished to make in relation to his contention that Barr J had goaded him into a fight, ridiculed him, repeatedly put him down, treated him as a child and

patronised and demeaned him, along with references to any transcript pages he wished to refer to, in writing and file them by close of business on Wednesday 13 April. I directed that the Registrar file any submissions he had to make on the subject by close of business on Thursday 14 April, and set the matter down for further mention on Friday 15 April, at which time I indicated that I hoped to be in a position to hand down my decision.

[71] On the afternoon of Friday 8 April, after he had been removed from the courtroom, Mr Jenkins was arrested and charged with a number of offences arising out of his behaviour on the front steps of the Court. When that was drawn to my attention I took the view that Mr Jenkins would have been unable to comply with my direction that he file any further submissions he wished to make in relation to his contention that he had been goaded, demeaned etc by Wednesday 13 April. Accordingly I called the matter on for mention again on Thursday 14 April. Mr Jenkins appeared by video-link from the prison. At the mention I was informed by Mr Macdonald that he had delivered a copy of my directions of 8 April along with a copy of the transcript of proceedings on 10 December, 29 December, 30 December, 31 December 2015 and 15 January 2016 to Mr Jenkins at the prison (along with a highlighter which Mr Jenkins rejected). Accordingly, I asked Mr Jenkins if he wanted to make further oral submissions on the issue. Mr Jenkins declined to answer my question but instead said he wanted to apply for bail. I told him I was not hearing a bail application at that moment, but

he persisted in loudly explaining why he needed bail⁵⁸ and why the charges against him were unfounded. Eventually I turned off his microphone. Mr Jenkins' response was to claim (falsely) that he could not hear me. I called the prison guard back in, confirmed that the sound was working and asked him to remain in the room with Mr Jenkins.

[72] After some discussion with Mr Macdonald (with the microphone turned off) I gave Mr Jenkins one further opportunity to identify any portions of the transcript in which he submits Barr J goaded him into a fight, ridiculed him, repeatedly put him down, treated him as a child, patronised and demeaned him, by highlighting the parts of the transcript in which he submitted this had occurred. I directed that he do this by close of business on Friday 15 April 2016. Mr Macdonald advised that he would have a highlighter delivered to Mr Jenkins within 20 minutes.

[73] At close of business on Friday 15 April, I received highlighted portions of the transcript of 10 December 2015 accompanied by written commentary in which Mr Jenkins helpfully noted that he had begun the exercise at 3.15 on Friday afternoon and announced (without seeking an extension of time) that he would continue the exercise in due course.

⁵⁸ As I was informed during the mention on 8 April, Mr Jenkins had a bail application on foot in the CSJ (the court in which he was facing charges) that was due to be heard that same afternoon. He appeared (by video-link from the prison) and was granted bail.

[74] In the material provided on 15 April 2016, Mr Jenkins highlighted some portions of the transcript of 10 December 2015 and made the following submissions in relation to the highlighted parts.

“Right from the start [Barr J] doesn’t take control but lets [Mr Murphy] take control and portray me as out of control.”

[75] The reference appears to be to page 3 of the transcript of 10 December 2015 in which Mr Murphy was correcting a written submission he had made to the effect that no evidence had been heard *ex parte* in the CSJ. Mr Murphy explained to his Honour that he had reviewed the transcript and that Mr Jenkins was in fact outside the courtroom when some of the evidence of the security guard was heard. The following exchange occurred:

HIS HONOUR: I see. And what were the circumstances in which Mr Jenkins was outside at that stage, Mr Murphy?

MR MURPHY: Your Honour, the circumstances were Mr Jenkins was conducting himself in a quite abrupt and disruptive manner. Mr Woodcock has told him to leave the courtroom at that time. And then Mr Woodcock – the learned magistrate has then brought Mr Jenkins back in, and he’s brought him back in at page 84.

[Mr Jenkins selectively highlighted the underlined portion.]

[76] There is nothing in the highlighted portion – or anywhere else in the transcript of the appeal in which his Honour allowed Mr Murphy to take control or in which Mr Murphy attempted to do so. The only person who attempted to wrest control of proceedings from the presiding judge was Mr Jenkins by speaking over the judge and refusing to stop talking, refusing to listen, and refusing to answer questions from the bench whenever something came up that he did not want to hear.

[77] Mr Jenkins has taken great exception to the following remark by his Honour:⁵⁹

HIS HONOUR: You told me earlier that you spent a lot of time in the library reading cases. That is what submissions are expected to do. Now Mr Murphy's submissions are very well done because he is a lawyer. But likewise, you are expected to be able to reduce your arguments to a reasonable volume.

[78] The context in which this remark occurred was that Mr Jenkins had filed 188 pages of submissions just before the appeal was due to be heard and attempted to file another 200 pages of material at the start of the hearing.⁶⁰ Mr Jenkins reads a great deal into this remark. In his submissions filed on Friday 15 April he says:

“Here is the 1st of [Barr J's] put downs ‘your not concise’ Mr Jenkins ‘we just want brief notes’ ‘not extreme detail & lengthy study’ yur wasting our time ‘me and Mr Murphy were together in this’ your on the outer right from the start a total idiot in other words all the extended hours I spent in library stopping my life to perfect and protect my life and living as an artist means nothing Mr Jenkins judges and barristers are important Mr jenkins, not incredibly talented gifted nonetheless artists, you’re an idiot wasting our time and we’re gunna prove it Murphy and I.”

⁵⁹ Transcript 10 December 2015 p 9 In his further submissions of 16 April 2016, Mr Jenkins wrote:

“he [ie Barr J] could easily have said Mr Jenkins it's nice to see you here it is not often a homeless man with no resources takes the time and effort to show himself in court & exercise the mighty priviledge of a just and fair legal apparatus & I know yur have no experience so I am going to take the time and explain some processes my assistant will work with you & show how to make submissions but [Barr J] doesn't do that.”

This seems to me to illustrate Mr Jenkins' desire to control and “script” the entire court process. In fact Barr J went out of his way to try to explain processes to Mr Jenkins and help him to formulate his submissions in a way that was relevant to his appeal but Mr Jenkins refused to listen.

⁶⁰ Transcript 10 December 2015 p 4

[79] His Honour said none of these things. He did not call Mr Jenkins an idiot, and not once did he say Mr Jenkins was wasting his time. He did not side with Mr Murphy against Mr Jenkins. Nor did his Honour reject the 188 page submissions. He read them and made it plain to Mr Jenkins that he had done so. Despite that Mr Jenkins persisted in rudely accusing his Honour of ‘not respecting him enough to read the whole thing’ or saying he ‘couldn’t be bothered to read it’⁶¹.

[80] The 200 additional pages Mr Jenkins tried to file on the morning of the appeal hearing included documents from the brief of evidence from proceedings in the CSJ, some of the exhibits from that court including Mr Jenkins’ criminal history,⁶² as well as, according to Mr Jenkins, evidence that he was not allowed to use in the CSJ and evidence that was produced on subpoena.⁶³ Barr J told Mr Jenkins to put the extra 200 pages aside for the time being⁶⁴. Mr Jenkins objected strenuously and his Honour reassured him in the following terms:

HIS HONOUR: Can I reassure you, Mr Jenkins, that if you had filed the documents as part of your submissions, I would not have read fresh evidence that wasn't before the court until I worked out how relevant it was to your appeal. So reassure yourself, there's been no injustice there. This appeal might take a little time to work through,

⁶¹ Transcript 10 December 2015 p 11, p 21, p 27 and elsewhere

⁶² Transcript 10 December 2015 p 5

⁶³ Transcript 10 December 2015 p 7

⁶⁴ Transcript 10 December 2015 p 8

but believe me, I'm prepared to hear you on every one of your points.⁶⁵

[81] In his further submissions filed on 15 April, Mr Jenkins highlighted the following part of the transcript:⁶⁶

HIS HONOUR: I'll get you to put that to one side for a moment, because that may not be an issue.

[82] In relation to that highlighted portion of transcript Mr Jenkins submitted:

“Here [Barr J] says basically and emphatically I don't want to read your lengthy important submissions that you legally used in [Mr Woodcock's] trial and backed up your appeal with nor will I look at suphennas you legally issued with stamps (ie my copies) (even though they were omitted (erroneously) by CSJ court staff) in the supplied and copied appeal file even though [Barr J] will infuriatingly ask me to see and produce them later on this is the first strategically important put down and affront to me in front of his staff and associates – looked and my submissions dirty and scraggly and thought they were crap and I was a totally irrelevant idiot a time wasting idiot.”

[83] Again, this completely misunderstands or misconstrues Barr J's remark.

Barr J did not say he refused to read Mr Jenkins' "submissions". His Honour was trying to explain that he would not consider evidence on the appeal unless he was convinced it was relevant. After the highlighted remark which apparently offended Mr Jenkins, the exchange continued as follows:

HIS HONOUR: I'll get you to put that to one side for a moment, because that may not be an issue.

⁶⁵ Transcript 10 December 2015 p 10 In his further submissions of 15 April 2016, Mr Jenkins refers to this reassurance as "pointed" and objects that it is patronising. It is neither.

⁶⁶ Transcript 10 December 2015 p 8

MR JENKINS: They're a part of my submissions that I put in. My submissions and my submissions, and you haven't got a copy of my submissions. They're the submissions I put in there.

HIS HONOUR: Mr Jenkins, as you have explained it to me a short while ago, this is evidence that you weren't allowed to introduce in the court below.

MR JENKINS: And they're part of my submissions in how I'm talking about it. You're going to say what it is. You're going to ask me, 'Okay, what about the Legislative Assembly Act, Mr Jenkins?' Okay, well here it is. Then I don't have to - - -

HIS HONOUR: Mr Jenkins, just keep it to one side for now. I'm not saying that I'm not going to have regard to it. I just don't need to read it before we start the appeal.

MR JENKINS: Wouldn't you have need to have read my submission which you haven't even read?

HIS HONOUR: I'll get you to take me through your submissions so that I can make sure that I understand them as we go. But those documents are not submissions as you have indicated. They are evidence that you say you were denied the opportunity to present in the court below.

[84] At no stage did Barr J attempt to put Mr Jenkins down or affront him. He did not refer to Mr Jenkins' submissions as dirty or scraggly. He did not say they were "crap" and he did not refer to Mr Jenkins as "a totally irrelevant idiot" or "a time wasting idiot".⁶⁷

[85] In those further submissions, one of the things Mr Jenkins objects to is that the presiding judge "starts to flat out make decisions about things", a concise description of one of the more important parts of a judge's function.

⁶⁷ Mr Jenkins cites p 9 of the Transcript of 10 December 2015 for the reference to a "time wasting idiot". Barr J does not refer to Mr Jenkins as a "time wasting idiot" on that page – or anywhere else in the transcript. Nor is there anything on that page (or indeed elsewhere) from which one could infer such a suggestion.

[86] Mr Jenkins complains that on p 14 of the transcript Barr J was “talking around in circles” and that he had referred to something Mr Jenkins said as “rubbish” and “irrelevant”. His Honour did no such thing. In fact Mr Jenkins spoke for almost that entire page of the transcript. His Honour only managed to get in two brief utterances:

HIS HONOUR: Alright, Mr Jenkins. Can you answer my question?

and

HIS HONOUR: What did you anticipate you would get as a result of subpoenaing the records of the call made by Wilson Security to the police?

[87] In his further submissions of 15 April, Mr Jenkins makes the submission more than once that Barr J was denying him natural justice by “trying to run the appeal HIS way”, whereas his Honour was actually trying to help Mr Jenkins by isolating the relevant issues on the appeal and encouraging and assisting Mr Jenkins to address them. True, his Honour could have done what Mr Jenkins seems to be suggesting in parts of his submissions – that is to say, sat back and allowed Mr Jenkins to say whatever he wanted for a reasonable period of time and then dismissed his appeal. His Honour cannot be criticised for instead attempting to do justice by trying to isolate the grounds of appeal and assist Mr Jenkins in addressing them.

[88] Mr Jenkins highlighted other parts of the transcript of 10 December 2015 without providing specific commentary. I have read the highlighted parts in

context very carefully and I can discern nothing in them to support Mr Jenkins' allegation that his Honour had patronised him, demeaned him, treated him like a child or tried to pick a fight with him.

[89] In those further submissions of 15 April 2016, Mr Jenkins asserts that Barr J started insulting him 10 minutes into the first day and continued to the last day. That is simply not true.

[90] I have reviewed the transcript of proceedings in Mr Jenkins' appeal for 10 December 2015, 29 December 2015, 30 December 2015, 31 December 2015 and 15 January 2016 and I find that Mr Jenkins' complaints are totally unfounded. Although there are instances of Mr Jenkins complaining that he had been patronised, in no case was the complaint warranted. Throughout, Barr J treated Mr Jenkins with courtesy and patience which treatment was not reciprocated. The following extracts from the transcript give an idea of Mr Jenkins' attitude and the tone of the exchanges. (It is unfortunately necessary for the extracts to be somewhat lengthy to appreciate what occurred.)

Transcript of 10.12.15 – pp 15-16

HIS HONOUR: Yes, alright, I hear what you say. You were hoping that this subpoena [*requiring production of a telephone log*] would indicate that he rang the police and said, 'It's Trevor the trash man.' That's what you were hoping to prove?

MR JENKINS: No, no, that's what he said. I listened to the call. There's no reason, they say - they ask him what am I doing?

HIS HONOUR: Mr Jenkins, if you listened to the call and gave evidence to what you heard, what is this call log going to demonstrate other than what you yourself heard?

MR JENKINS: I don't understand what you're trying to say. Like - - -

HIS HONOUR: Well - - -

MR JENKINS: Barr J, I don't - I can't call any witnesses. Halfway through this, I can't call any witnesses. I ask Clayton to give witnesses, he won't provide witnesses. I don't - I can't go up to Parliament House and go around because they've given me a trespass notice, I can't gather witnesses. I don't have any independent witnesses. So I'm trying to prove that these people are lying about the reason that I'm there.

The actual security guard goes, 'He's going off.' I wasn't going off. He's telling the police that I'm going off, I'm not going off. So he's lying about me. So what am I proving? I'm getting independent witnesses of what they're doing, and then I ask him when I cross-examine him what he said, okay? And then if he lies about what he said, then that gives - I'm discrediting a witness. Doesn't that make any sense to you? It makes sense to me. I know I go there and I'm innocent, I'm not doing anything wrong, so I'm trying to prove the actual cases of me being innocent. That's the point of that.

You get - you're not - you're innocent until proven guilty, they have to provide more than a doubt that something is happening there. And I'm trying to prove to myself and anybody else how this thing keeps happening. This isn't the only case, Mr Barr. What happens - - -

HIS HONOUR: Alright, I understand what you say.

MR JENKINS: The Trespass Act is being misused.

HIS HONOUR: Mr Jenkins, please. We've got to deal with your appeal not your general unhappiness with the whole system.

MR JENKINS: I don't have a general unhappiness with the system, that's patronising. I don't have a general unhappiness with the system. I do a community development degree, I've got a degree.

HIS HONOUR: Mr Jenkins.

MR JENKINS: I've got three degrees.

HIS HONOUR: Mr Jenkins.

MR JENKINS: Don't patronise me. I don't have a general unhappiness with the system, I understand justice, okay?

HIS HONOUR: Would you be - - -

MR JENKINS: That means that when justice isn't being done, I stand here and I tell the truth, okay? And I'm going to be standing here telling the truth on what I do. I'm not mucking around and I don't want to be patronised because, guess what, I'm a genius. I understand what's going on. I'm not stupid. I don't like to be patronised, okay? I don't have a general unhappiness, I don't have a mental illness, I'm not a nutcase. These guys don't need to arrest me.

I understand exactly what I'm doing. I understand exactly what I'm doing, okay? I subpoena evidence because these people are lying about me, and I'm trying to prove that they're lying, okay? Someone rings up and says I'm going off and I'm not going off, then why are the police being called? For example, your Honour, if I left that building - if I left, okay, which you do with a trespasser, I would still be arrested because the police would come, okay? So I've had cases, and Mr Murphy knows about this, where if I stay, I get arrested. If I leave, I get arrested.

So therefore, the police have already been called and someone's lied about me because I'm not doing anything. So you imagine, I walk into the front door of a place, I walk into a place here - - -

HIS HONOUR: (inaudible).

MR JENKINS: No, I want to make out why I'm taking this so seriously and why I'm getting angry. If I walked into - if I walked in - - -

HIS HONOUR: Just need to get the transcript. Ms Associate, have you got the transcript? Thank you.

Mr Jenkins, you may have missed the point here. What you're saying is that you were denied access to this particular document. I want to look at the transcript to see exactly what - - -

[Mr Jenkins interrupted again.]

Transcript 10.12.15 p 27-28

HIS HONOUR: Mr Jenkins, I'm going to stand the matter down, you're obviously getting a bit upset. What I'm going to do is stand the matter down for 15 minutes, and I'm going to direct you to identify the witnesses that you say you were unable to call. All you have to do is - - -
-

MR JENKINS: I have, and you just say they're irrelevant. I don't want to hear that. They're relevant. They're relevant. If you don't want to hear it, I'll go to three justice of appeals. They're relevant. If you don't understand why they're relevant, I'm not going to be told they're not

irrelevant, okay? They're relevant. And I just want to be able to present my case and then he can go, 'They're irrelevant,' okay?

HIS HONOUR: Mr Jenkins - - -

MR JENKINS: I don't want you telling me they're irrelevant, because they're not irrelevant.

HIS HONOUR: Mr Jenkins, I'm asking you questions to try and work out the strength of your appeal grounds.

MR JENKINS: Well, it's all here. Can I just represent - can I just present my case? Can I just present it. I don't want to be going back and forward the way the case you want to have it because you haven't bothered to read it, you know? It's your problem that you haven't bothered to read it, and it's their problem they haven't bothered to read it, it's not my problem, okay? I've done the work and you - why don't you do the work, because it's already here. You know, I don't have to present it ten times.

HIS HONOUR: Please stop, don't be offensive. That's - - -

MR JENKINS: You're being offensive to me because I've done the work, you know? I don't know - I've got more things to do with my time than do a hundred page documents, and then you criticise my hundred page document. I've written it out by hand and then you criticising me still. I don't know how many homeless people would bother to give you guys the respect to do that, and then you're criticising me, okay? I don't know why, that's wrong.

Well, I go out of my way to try and do things, I go to the ombudsman, I go to the anti-discrimination commission, I go to the other people there, and I write letters and no one answers me, okay? I write e-mails and no one answers me. I put in submissions and no one answers me. And then you make fun of me. I don't know what you're trying to do. This is what disgusts me, okay? It disgusts me. I put in a lot of effort for this god damn thing, and I'm just asking for an adjournment to present the thing. It's wrong, okay?

HIS HONOUR: Mr Jenkins - - -

MR JENKINS: No, it's wrong.

HIS HONOUR: I just said - - -

MR JENKINS: You're disrespecting me and you're disrespecting the effort I put in, and it disgusts me. You guys are highly educated and you're just trying to make me look like a fool, and it makes me sick, okay? I put in a god damn effort to do these fucking things and you make fun of me. It's not right, okay?

HIS HONOUR: Mr Jenkins, I said I'd give you - - -

MR JENKINS: No, it's wrong.

HIS HONOUR: I'd said I'd give you the adjournment - - -

MR JENKINS: It is wrong.

HIS HONOUR: I said I would - - -

MR JENKINS: Give me the thing of an adjournment, you know?
Like - - -

HIS HONOUR: Alright. Do you want to continue today or do it some other day?

MR JENKINS: I can do it for 10 minutes, but I'm not going through with this crap. It's all there. It's fricken(?) all there. It's all there.

HIS HONOUR: Mr Jenkins - - -

MR JENKINS: My case is all there. I don't know - like, if I was producing - if I'm an artist and I do something, this would be something that someone would look at for about ten years, the kind of work that I put into this, you know? It's like a book, okay? You don't know how serious I take my life out there when people are getting trespass notices and they get put in gaol and you guys are saying, 'It's the highest incarceration rates in Australia,' and that's the problem.

When you've got laws that people can't defend themselves with because it's the Trespass Act, then it's wrong and I'm trying to represent that, okay? I clearly know what I'm saying, you know? And if you don't like it, fine, but just let me talk and present my case.

HIS HONOUR: Mr Jenkins, your first point of appeal is that you were unable to call witnesses.

MR JENKINS: I would rather have a break and come back and - - -

HIS HONOUR: I just said that, I'm going to give you a break. I'm going to stand it down. I'll stand it down for 20 minutes. What I want you to do is to go through your papers and identify me - identify for me, to help me, the witnesses that you were unable to call. Now, I think you've probably done - - -

[Mr Jenkins interrupted again.]

Transcript 29.12.15 pp 50-52

HIS HONOUR: Well, Mr Jenkins, let me just ask you this. We've now watched this footage as you requested. Do you want to watch this through to the end, or do you want to go back? Because, we're just about to get to the point where you say you didn't assault or push the officer - - -

MR JENKINS: Well, it's better if I present what Mr – he's presenting a case of, 'I'm getting angry. I'm getting upset,' which is a complete fabrication which I've put to him in the – which is why I get upset and have to go outside, because I can't – I can't – I say virtually, very angrily in court, 'He's lying.' Okay. I say that, you know.

Anyway, so I would like to go back to the start and go through the way Mr Clayton has presented the evidence and then don't worry about where I'm being put outside. I just want to go through so that I can - - -

HIS HONOUR: Well, look, I'll let you do that, but it seems to me that for completeness - - -

MR JENKINS: I don't understand why it's such a big deal for me to do it, when Mr Clayton has done it.

HIS HONOUR: I've said I'll let you do it.

MR JENKINS: And, I can't even do it in an appeal.

HIS HONOUR: I said I'll let you do it. But, at your request initially, I have watched this without – with some commentary from you. But, I'm just watching it. You raised, on the last occasion, your contention that there's no evidence that you actually pushed the security guard.

So, I've invited - - -⁶⁸

⁶⁸ A certified copy of the transcript of 29.12.16 has not been produced. The transcript here reads, "So, I'm invited ---"but in context it is clear that his Honour intended to say, "So I've invited ---".

MR JENKINS: But, you're – but what evidence you've got now is that the evidence of Mr Daffy; that I'm getting angry; that I'm getting upset and I want to show you that that's rubbish beforehand, so there'd be no reason for me to push him.

HIS HONOUR: I've said we can do that. Look, I'm asking you now, concentrate, is whether you want to point out - - -

MR JENKINS: When you say that, it really offends me. It's like as if I'm not here present. I'm so – like, I'm in some kind of maze that I don't understand what's going on - - -

HIS HONOUR: Would you please be quiet. Would you please be quiet and let – just stop talking over me.

MR JENKINS: Well, you seem to – you represent me in the court - - -

HIS HONOUR: Mr Jenkins. Would you stop making personal observations and just listen.

MR JENKINS: Well, I am, because you're patronising me, and I don't like it. Okay.

HIS HONOUR: Alright. You think I'm patronising you. I'm not trying to do that.

MR JENKINS: Right.

HIS HONOUR: Do you want to point out to me in this film - - -

MR JENKINS: I said ten times, no. I want to go back to the start.

HIS HONOUR: So, you don't – you – well I just want - - -

MR JENKINS: Well, I can do that later on. It's my – I'm presenting the submission.

HIS HONOUR: Can I please clarify this: you do not want, at this stage, to show me the point in time where you say you push past the security officer where he says you actually pushed him? You don't want to do that at this point in time?

MR JENKINS: Well, it's going to come in what I'm representing here.

HIS HONOUR: Alright. Well - - -

MR JENKINS: It will come to that point eventually. But, I wanted to lead it up to that point to show you how it was a misrepresentation of what he's saying.

HIS HONOUR: I'm just reminding you that when you were in court the last time, you were very insistent that this be played and - - -

MR JENKINS: Well, it's going to be played anyway, isn't it? I mean - - -

HIS HONOUR: Yes. And, I'm just pointing out that we're getting to that point in time where a crucial event is alleged to have occurred and found by the magistrate to have occurred, but you don't want me to look at it just now, is that the case?

MR JENKINS: I'm here doing my own justice appeal as far as I know - - -

HIS HONOUR: Yes, or, no? Do you want me to look at it now? Or, do you just want to go back and start again?

MR JENKINS: Why have you asked me ten times?

HIS HONOUR: Sorry?

MR JENKINS: Why are you asking me ten times? I've said no, I want to go through - - -

HIS HONOUR: Okay. Well, we'll stop looking at it. We'll go back to the start. Is that what you want to do?

MR JENKINS: Yeah. And, we'll get to that point once - we'll get to the truth of that point.

HIS HONOUR: Thank you. That's what we'll do then. Thank you.

Transcript 30.12.15 – pp 134 – 137

HIS HONOUR: Mr Jenkins, what's the point of this exactly? What are you attempting to demonstrate?

MR JENKINS: I said it yesterday and I said it probably the first time I ever came in, but I'll say it again. Do you want me to make an application for apprehension of bias, because - - -

HIS HONOUR: No. No. I want you to tell me exactly where you're going with this this morning.

MR JENKINS: Well, I said it yesterday. Do you want me to get the transcript out and read it to you?

HIS HONOUR: Could you repeat it then? Could you simply – if it's so easy for you to remember, could you please repeat it for me, so I - - -

MR JENKINS: Why do I need to?

HIS HONOUR: Because, I want to make sure - - -

MR JENKINS: It seems obvious to me, and every time you do this, you make me feel like an idiot and it seems like you do it deliberately. Like, 'Repeat yourself ten time, Mr Jenkins,' like I'm an idiot; like I don't exist; like, I'm speaking. That's why I spoke into the microphone. That's why I (inaudible). I'm not stupid, like, isn't it obvious?

HIS HONOUR: Mr Jenkins - - -

MR JENKINS: I'm trying to correlate the evidence towards saying that he's not telling the truth. I said that yesterday and then I said it again today. My evidence is that he wasn't telling the truth and now I'm going to give the evidence as it was presented to me, as he is providing it. I wasn't allowed to use the CCTV footage.

HIS HONOUR: Alright. Understand. So, you'll - - -

MR JENKINS: I said that to you.

HIS HONOUR: Understand. You're attempting - - -

MR JENKINS: Right, now do you want me to say it again?

HIS HONOUR: You are attempting to demonstrate by the replaying the CCTV - - -

MR JENKINS: Is this just so it's for the transcript, so when I appeal, is that right?

HIS HONOUR: - - - would you please not interrupt. Would you please not interrupt and talk over me. If you do that again, I will have you taken out of court. Now, you must stick to the rules.

MR JENKINS: Well, how come you interrupt me then?

HIS HONOUR: Please don't talk over the top of me.

MR JENKINS: But, you interrupt me. I go through things, and you interrupt me.

HIS HONOUR: Alright. Go ahead, Mr Jenkins. Go ahead with what you want to do. I understand now.

MR JENKINS: I find it very difficult if you're going to keep doing this all the time.

HIS HONOUR: Please go ahead, Mr Jenkins. Stop complaining, just go ahead. Off you go, please.

MR JENKINS: Page 77.

HIS HONOUR: Seventy-seven of what, sorry?

MR JENKINS: Page 77. Of the 25th of the 11th 2014.

HIS HONOUR: Yes.

MR JENKINS: This is the transcript I'm referring to. It's probably not the right page, because I haven't been given the right page for my documents. So, I haven't been given the right page, but everybody else gets the right page and I was told when I went to the registry this morning this is the first time it's ever happened. And, it only happens to unrepresented litigants.

I put in a complaint about the fact that my transcript's a different page - - -

HIS HONOUR: Mr Jenkins - - -

MR JENKINS: You know, and that's why I'm being told that I'm an idiot, because I can't even have the right page of the transcript.

HIS HONOUR: Mr Jenkins, you're talking about – you're talking about the transcript of which date, sorry?

MR JENKINS: Page 77.

HIS HONOUR: Of which date, please?

MR JENKINS: I told you, the 25th of the 11th. Why do I have to repeat myself two or three times. I don't understand. I'll be listening to Mr Murphy's testimony. If you don't treat him the same, I'm going to make sure this case gets put again, okay.

HIS HONOUR: Mr Jenkins, please - - -

MR JENKINS: Because, if you don't treat him with the same kind of disrespect you do me - - -

HIS HONOUR: Please stop – stop whinging, please. Just carry on with your case. Come on. We've got to move through this.

MR JENKINS: Do you? It seems like you don't really care at all as far as I can see.

Transcript 30.12.15 – p 194

HIS HONOUR: Mr Jenkins, I really don't know what you're talking about. You'll have to explain it a bit better. I really - - -

MR JENKINS: You have to explain a bit better?

HIS HONOUR: I just don't understand - - -

MR JENKINS: You don't understand what I'm doing?

HIS HONOUR: - - - what you're saying about the connection between s 213 of the Criminal Code that you've referred me to; a case that deals with - - -

MR JENKINS: You want me to explain it because you think I'm stupid and by the time I explain it, I get angry and I sound stupid. Is that the whole point of it or not?

HIS HONOUR: No, I just want to let you know that I'm not getting what you're saying, that's all. I just don't understand it.

MR JENKINS: So, what particularly do you want to explain that you don't understand? What part of it?

HIS HONOUR: What's the relevance of amendments in the past that were made to the Trespass Act?

[91] There are numerous similar examples in which Mr Jenkins complains that he is being made fun of or patronised and in which this demonstrably did not occur. Rather, Barr J was patiently trying to understand the nature of a particular submission, explain something to Mr Jenkins, or get him to focus on his grounds of appeal.⁶⁹

[92] There is no need for me to consider whether the matters complained of by Mr Jenkins would be relevant to the question of whether Mr Jenkins is guilty of contempt. The factual basis of his submission has not been made out.

[93] Late in the afternoon on 19 April 2016, Mr Jenkins filed further pages of the transcript of 10 December 2015 along with some handwritten commentary. I could not decipher much of the handwritten commentary, but I have read the highlighted extracts and am confident that none of them support the initial submission by Mr Jenkins that his Honour had patronised him, demeaned him, treated him like a child or tried to pick a fight with him. The highlighted portions appear to have been picked at random and many of them (perhaps the majority) are utterances made by Mr Jenkins, not his Honour. Logically Mr Jenkins' utterances could not be evidence of patronising or demeaning conduct by his Honour unless, perhaps, Mr Jenkins considers it patronising or demeaning for his Honour not to agree with him.

⁶⁹ His Honour made the odd very mildly exasperated remark after being subjected to prolonged interruptions and tirades from Mr Jenkins but even in those, I could discern nothing patronising, demeaning or otherwise offensive.

[94] In short there is nothing in the further submissions made out of time which would cause me to alter the considered opinion I have formed from a review of the transcript of the appeal as a whole that there is no substance whatsoever to Mr Jenkins' allegation that his Honour patronised him, demeaned him, treated him like a child or tried to pick a fight with him.

[95] Mr Jenkins has left handwritten notes in the Registry claiming (essentially) an entitlement to take whatever time he pleases to make whatever submission he wishes in the present proceedings – while apparently maintaining his submission that they are irregular. I do not think there is any utility in adjourning these proceedings further. Mr Jenkins has had ample opportunity to make submissions. He has made detailed written submissions accompanied by copious photocopied material which are discussed in detail above. He declined the opportunity to make oral submissions on 31 March 2016 by failing to appear at the hearing of these contempt proceedings in breach of his bail. He has had ample opportunity to highlight those portions of the transcript which he submits support his submission that he was treated in a demeaning fashion by the presiding judge⁷⁰ and has been able to point to nothing that would remotely support his contention. Further, I have examined the entire transcript in detail and am satisfied that his contention is unfounded.

⁷⁰ Mr Jenkins helpfully provided references to the times during which he worked on carrying out this exercise. Although he had the transcript from (on or about) Monday 11 April, was provided with a (second) high-lighter on Thursday 14 April, and was released on bail that afternoon, he said he began work highlighting the transcript at 3:11 pm on the afternoon of Friday 15 April. He chose to work in the Supreme Court Library and records that he left at 4:35 pm. (He could, of course, have continued to work elsewhere.) He records in his submission that he resumed highlighting at 2:00 pm on 18 April.

Other miscellaneous submissions

- [96] Mr Jenkins referred to a passage from *Borrie & Lowe* setting out ways in which contempt in the face of the court can be committed and pointed out that he did not assault or threaten anyone in court. That is correct and it has not been alleged against him.
- [97] Elsewhere, he highlighted a passage pointing out that duress is a defence to a charge of contempt.⁷¹ In the margin next to that extract he wrote: “I’ve got 5-6 court cases on foot just to live a free normal artistic life”, but he has not asserted that he was under duress at the relevant time. He also highlighted a passage to the effect that the deliberate evasion of a question is no less contemptuous than an outright refusal to answer, but did not explain the relevance of that to the present case.⁷²

Conclusion

- [98] I am satisfied beyond reasonable doubt that by persistently interrupting and talking over the presiding judge in the manner set out in the particulars, Mr Jenkins was guilty of contempt in the face of the court. I will hear the parties further in relation to penalty.

⁷¹ *Borrie & Lowe* p 503

⁷² *Borrie & Lowe* p 506