Supreme Court
New South Wales

Case Name:	**Prothonotary of the Supreme Court of New South Wales v Shane Dowling**
Medium Neutral Citation:	**[2017] NSWSC 664**
Hearing Date(s):	4 May 2017
Date of Decision:	3 August 2017
Jurisdiction:	Common Law – Civil
Before:	Wilson J
Decision:	(1) It is declared that the defendant is guilty of contempt of the Supreme Court of New South Wales in that on 3 February 2017, the defendant, in open court before a Registrar, made allegations (which are detailed in the Particulars Document) about the Registrar and a judge of the Supreme Court of New South Wales. (2) It is declared that the defendant is guilty of contempt of the Supreme Court of New South Wales in that on and from 5 February 2017, the defendant, in contravention of order 1 made by his Honour Justice Beech-Jones on 3 February 2017, wilfully disclosed the contents of Exhibit 1, as marked by his Honour on 3 February 2017, to persons other than parties without leave of the Court. (3) It is declared that the defendant is guilty of contempt of the Supreme Court of New South Wales in that on and from 5 February 2017, the defendant, in contravention of order 2 made by his Honour Justice Beech-Jones on 3 February 2017, wilfully published: (a) the content of the allegations that the defendant made before a Registrar in open court on 3 February 2017; (b) that a Registrar and a judge of the Supreme Court of New South Wales were the subject of the allegations; and (c) that the allegations were made.

Catchwords:	CIVIL LAW – contempt – contempt in the face of the court – contumacious contempt – question of whether a freedom of political comment provides a defence – no such defence held to exist – defendant found guilty of contempt
Legislation Cited:	*Vagrants, Gaming and Other Offences Act 1931* (QLD)
Cases Cited:	*Australasian Meat Industry Employees' Union and Others v Mudginberri Station Proprietary Limited* (1986) 161 CLR 98 *Coleman v Power* (2004) 220 CLR 1; [2004] HCA 39 *Hogan v Hinch* (2011) 243 CLR 506 *John Fairfax Publications Pty Ltd v Attorney-General (NSW)* (2000) 181 ALR 694 *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 *Levy v Victoria* (1997) 189 CLR 579 *Lewis v Ogden* (1984) 153 CLR 682; [1984] HCA 26 *Mahaffy v Mahaffy* [2013] NSWSC 245 *McCloy v New South Wales* (2015) 257 CLR 178 *Rumble v Liverpool Plains Shire Council* (2015) 90 NSWLR 506 *State of NSW v Kable* (2013) 252 CLR 118 *Unions NSW v New South Wales* (2013) 252 CLR 530 *Witham v Holloway* (1995) 183 CLR 525
Category:	Principal judgment
Parties:	Prothonotary of the Supreme Court of New South Wales – Plaintiff Shane Dowling – Defendant
Representation:	Counsel: Mr D Kell SC with Ms A Mitchelmore – Plaintiff Shane Dowling – in person – Defendant Solicitors: Crown Solicitor of NSW – Plaintiff
File Number(s):	2017/94322
Publication Restriction:	Restricted to the parties. Pursuant to the orders of Beech-Jones J of 3 February 2017, this judgment is subject to a suppression order and may not be published.

JUDGMENT

1 **WILSON J:** The Prothonotary of the Supreme Court of New South Wales seeks declarations that the defendant, Shane Francis Dowling, is guilty of three counts of contempt of court. The summons filed on 27 March 2017 claims the following relief:

(1) A declaration that the defendant is guilty of contempt of the Supreme Court of New South Wales in that on 3 February 2017, the defendant, in open court before [a Registrar] made allegations (which are detailed in the Particulars Document) about [a Registrar] and a judge of the Supreme Court of New South Wales.

(2) A declaration that the defendant is guilty of contempt of the Supreme Court of New South Wales in that on and from 5 February 2017, the defendant, in contravention of order 1 made by his Honour Justice Beech-Jones on 3 February 2017, wilfully disclosed the contents of Exhibit 1, as marked by his Honour on 3 February 2017, to persons other than parties without leave of the Court.

(3) A declaration that the defendant is guilty of contempt of the Supreme Court of New South Wales in that on and from 5 February 2017, the defendant, in contravention of order 2 made by his Honour Justice Beech-Jones on 3 February 2017, wilfully published:

(a) the content of the allegations that the defendant made before [a Registrar] in open court on 3 February 2017;

(b) that [the Registrar] and a judge of the Supreme Court of New South Wales were the subject of the allegations; and

(c) that the allegations were made.

(4) An order that the defendant be punished or otherwise dealt with for such contempt of court.

(5) An order that the defendant pay the plaintiff's costs of the proceedings.

(6) Any such order as the Court deems fit.

2 At a hearing before me on 4 May 2017 the defendant pleaded that he is not guilty of contempt of the Supreme Court.

3 This judgment concerns the relief claimed at prayers (1) to (3) of the summons.

The Case for the Prothonotary

4 On 3 February 2017 the defendant appeared before a Registrar of this Court in a Directions List of the Common Law Division in the matter of *Jane Doe 1 & Anor v Shane Dowling*. These are proceedings in defamation taken against the defendant, in which he is representing himself.

5 An audio recording of what occurred at the directions hearing that day is before the Court as Ex. WM1. The defendant does not dispute that his is the voice that can be heard making a number of assertions which the Crown describes as scurrilous. The comments, directed to the Registrar presiding over the list, are as follows:

> "[…] you are a known bribe taker a suspected paedophile on my website.
> …..
> So you're admitting being a bribe taker, you admit being a paedophile do you, child rapist. […] I've written it on my website.
> …..
> I've written on my website that you are known bribe taker suspected paedophile. Now that means you rape children. That means you rape children.
> …….
> As I said on my website I'm making a formal complaint to the relevant authorities in relation to you and other judges here, number of other judges including [named judicial officer of the Supreme Court], [second named judicial officer of the Supreme Court]. [Second named judicial officer] gave a paedophile priest three months gaol a few months ago […] who gives the paedophile priest three months gaol, only another paedophile, that's [second named judicial officer] for you."

6 The defendant does not dispute saying these words. The recording captures the tone and manner in which the words were spoken, and that can best be described as loud and aggressive.

7 At the time of the mention of the matter, and the utterance of these words, at a little after the commencement of the 9am list, there were at least 40 persons present in the courtroom (Ex. A.5 [6]; Ex. A.2, p.47). A hush fell over the courtroom as the defendant spoke, as those present paused to listen to what was said (Ex. A.5 [9]).

8 The Registrar warned the defendant that "steps would be taken" against him as a consequence of what had been said by him in Court.

9 During the afternoon of 3 February 2017 the defamation proceedings involving the defendant were mentioned before Beech-Jones J, sitting as the Common Law Duty Judge. At the mention the Prothonotary filed a Notice of Motion seeking suppression orders with respect to the earlier mention before the Registrar. A copy of the transcript of the mention was tendered and marked as Exhibit 1 in proceedings on the Motion before his Honour.

10 Whilst the defendant had been notified of the Prothonotary's intention to file the Motion, he did not appear before the Court.

11 His Honour made the suppression order in the terms sought, as follows:

> "Under s 10 of the *Court Suppression and Non-Publication Orders Act 2010* the contents of Exhibit 1 be prohibited from disclosure other than from the parties, except without the leave of the Court, until further order."

12 His Honour also made a second order, as follows:

> "Pending further order, pursuant to the Court's inherent power, publication of the following is supressed (save for the proper purposes of the proceedings and any related contempt proceedings):
>
> (a) the content of the allegations made by Shane Dowling ('the defendant') before [a Registrar] of the Supreme Court in open court on 3 February 2017 ('the allegations');
> (b) That [a Registrar] and judges of the Supreme Court of New South Wales were the subject of the allegations; and
>
> (c) that the allegations were made."

13 The Motion was stood over until 8 February 2017 for further mention.

14 The defendant was notified that evening of the orders made by the Court, and a sealed copy of the orders was supplied to him.

15 On 5 February 2017 an article, which the defendant acknowledges having written and published, appeared on his website, a website bearing the domain name https://kangaroocourtofaustralia.com. The article was headlined "[Named judicial officer of the Supreme Court] has journalist charged with contempt for accusing him of corruption". The "journalist" referred to in the article was the defendant.

16 The article had embedded into it a link which took readers to an audio-visual recording that the defendant had made of the mention before the Registrar on 3 February 2017. The defendant acknowledges that he made the recording in court, and uploaded it to his website, and also to another site, youtube.com.

17 In the article, next to a prominent call for donations, the defendant accused the named judicial officer of the Supreme Court of being "a bribe taker and paedophile which I have previously written on my website" (Ex. A.3, p.45). He wrote,

> "I taped the proceedings on Friday [before the Registrar], which is below […]."

18 The link to the recording followed.

19 In his article the defendant acknowledged having given the Registrar "a mouthful" (ibid) on 3 February 2017, and referred to the claims he then made about the Registrar and the second named judicial officer of the Supreme Court. The claims that the second named judicial officer of the Supreme Court was a paedophile were repeated and other allegations against judicial officers, including an allegation of paedophilia against a named judge of the District Court, were made. The defendant wrote,

> "What they really don't like is that I humiliated them with the truth in front of fifty odd lawyers and barristers who were in court for the directions hearing." (ibid, p.48)

20 The defendant went on in the article to acknowledge receipt of a copy of the orders made by Beech-Jones J on 3 February 2017, and to publish them in full. He wrote,

> "If they had checked my website like I said in the video they would know I was immediately in breach of the court orders because I have been writing about judicial corruption for a number of years […] [t]his includes what I said in court on Friday which automatically puts me in contempt of the court orders." (ibid, p.49)

21 He noted, "[t]hey are also going to charge me with contempt".

22 At the end of the article another prominent call for donations appears.

23 Similar posts appear on the Facebook page of an organisation styled "Kangaroo Court of Australia", and operated by the defendant. The post has numerous comments, apparently from other Facebook users who read the post.

24 It was common ground at the hearing before me that the defendant had written the relevant article, had published the material knowing that to do so would breach orders made by the Court, and continued to maintain the material on his website (at least) to the date of the hearing.

25 The Prothonotary argues that the defendant's conduct in making the allegations he made in court on 3 February 2017 was an act calculated to impair public confidence in the Court and the administration of justice, and constitutes contempt of the Supreme Court. Further, in publishing the recording of the allegations made in court on 3 February 2017 it is argued that the defendant deliberately defied an order of the Court, being the first of the orders made by Beech-Jones J, and is thus in contempt of the Supreme Court. Finally, the Prothonotary contends that, in publishing the detail of the allegations made on 3 February 2017 and nominating the officials against whom they were made, the defendant deliberately breached the second of the orders made by Beech-Jones J, and is guilty of contumacious contempt of the Supreme Court.

The Case for the Defendant

26 As noted above, the defendant does not deny making the statements in court of which the Prothonotary complains, or publishing suppressed material on his website and on other websites.

27 He tendered and relies upon the following material in his defence to the charges:

> "Seeking Justice for Victims (part 1), a speech by The Hon Justice Peter McClellan AM given on 17 March 2017 to the Annual NSW State Conference of the Australian Lawyers Alliance (Ex. SD1)
>
> Seeking Justice for Victims (part 2), a speech by The Hon Justice Peter McClellan AM given on 13 April 2017 to the Modern Prosecutor Conference (Ex. SD2)
>
> Audio recording of 9 September 2016 (Ex. JC1.G)
>
> Article: Child Abuse Royal Commissioner Justice Peter McClellan outlines failures of Judges and Prosecutors – 22 April 2017 (Ex. SD3)
>
> Article: Paedophile Priest gets 3 Months Jail [sic] for Raping Boys by NSW Supreme Court's [second named judicial officer]– 8 September 2016 (Ex. SD4)
>
> Article: [Named judicial officer] has Journalist Charged with Contempt for Accusing him of Corruption – 5 February 2017 (Ex. SD5)
>
> Article: Free Speech and Political Speech is being Supressed in Australia by the NSW Supreme Court – 8 April 2017 (Ex. SD6)
>
> Article: Judicial Corruption Complaint Made to the Federal Police, Crime Commission & Others – 15 April 2017 (Ex. SD7)
>
> Article: Mafia Bribed NSW Judges $2.2Mill. ICAC Deputy Commissioner Hamilton Receives Formal Complaint – 11 May 2016 (Ex. SD8)
>
> Article: ICAC Investigates Complaint against Channel 7's Kerry Stokes – 27 October 2015 (Ex. SD9)
>
> Email dated 26.11.2015 from Shane Dowling subject: "Criminal Investigation – Paedophile judges and judges taking bribes" (Ex. SD10)
>
> Email dated 19.08.2016 from Shane Dowling subject: "Media request – RE: [Plaintiff] v Dowling – Corrupt conduct by the NSW Supreme Court staff" (Ex. SD11)
>
> Book: Love Letters from the Bar Table written by Shane Dowling (Ex. SD12)."

28 Excluding Exhibits SD1 and SD2, the evidence tendered by the defendant consists of material apparently published by him on his website and in book form. Much of it refers to the work of the Royal Commission into Institutional Responses to Child Sexual Abuse, and complains of "light sentences" for persons convicted of child abuse (Ex. SD3, p.2 for example), or complains of corruption in the judiciary, law enforcement agencies, and prosecuting authorities.

29 Some of the material, such as Ex. SD4 and Ex. SD9, makes the same or similar claims to those made by the defendant in open court on 3 February 2017.

30 Exhibits SD10 and SD11 contain copies of correspondence to various judicial officers in which the defendant warns the individuals to whom he wrote that he intended to publish allegations against each, of bribe taking, corruption, and paedophilia.

31 The defendant relies upon the decisions of *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 and *Coleman v Power* (2004) 220 CLR 1; [2004] HCA 39 and argues that neither his oral allegations of corruption and paedophilia, nor his written and published material can constitute a contempt of court because it represents political communication. He submitted,

> "The laws that are being used to prosecute the charges against me and the laws being used to suppress and conceal what is really happening in the matter are all invalid as they failed the Lange test, as per High Court of Australia judgment in *Lange v ABC*, […] which in fact makes any law that infringes political communication to be invalid. The suppression orders are null and void, anyhow, as no exceptional circumstance has been put forward by the applicants justifying the suppression orders." (T33:06 - 13 of 4 May 2017)

Consideration

32 There was no issue at the hearing before me that the defendant did the acts complained of by the Prothonotary. That is, the defendant

(1) made allegations of corruption and paedophilia against a Registrar and a named judicial officer of the Supreme Court in the face of the court on 3 February 2017;

(2) published an article and uploaded an audio-visual recording on 5 February 2017 which disclosed the contents of Ex. 1 in the proceedings that were before Beech-Jones J on the afternoon of 3 February 2017, contrary to a court non-publication order; and

(3) published that material containing the detail of the allegations and the names of those against whom they were made on 3 February 2017 in breach of the second of the non-publication orders made by Beech-Jones J.

33 Although the defendant raised a semantic argument to the effect that he had not directly alleged that the second named judicial officer of the Supreme Court was a paedophile, his argument was about the meaning that might be taken from the words, rather than to deny that he spoke them.

34 The question for the Court is not whether the acts were carried out by the defendant as alleged, since he - somewhat proudly - acknowledges his conduct, but rather whether the acts amount to contempt and whether there is a defence available to the defendant of the nature he claims.

35 All contempt proceedings are criminal in nature and the three charges brought by the Prothonotary must be proved beyond reasonable doubt if he is to be declared guilty of them: *Witham v Holloway* (1995) 183 CLR 525 at 529 per Brennan, Deane, Toohey and Gaudron JJ.

36 Historically, contempts were classified as criminal or civil contempts, with criminal contempts being those committed in the face of the court or involving deliberate defiance of a court order, whilst civil contempts involved disobedience to a court order or breach of an undertaking in civil proceedings: *Witham* at 530. The distinction is no longer material: *Australasian Meat Industry Employees' Union and Others v Mudginberri Station Proprietary Limited* (1986) 161 CLR 98, at 106 – 107.

37 Since the defendant takes no issue with the case brought against him by the Prothonotary, raising only a defence of "political speech", it is convenient to turn immediately to the claimed defence.

38 As noted above, the defendant submits that he has available to him a defence of political speech by virtue of the principles set out in *Lange v Australian Broadcasting Commission* ("*Lange*"), and *Coleman v Power*.

39 *Lange* is a case about defamation and the question of a defence of qualified privilege in actions of libel and slander.

40 The Court held that there was a qualified privilege at common law that applied to statements made in the course of discussion or debate about political matters. It is based upon the conclusion that the public has a legitimate interest in receiving information concerning the exercise of public functions by public officials, with the dissemination of such information the correlative of receiving it. The qualified privilege is subject to malice, and the publisher acting reasonably.

41 In Australia the common law categories of qualified privilege have generally protected only those communications made to a limited audience, rather than those to a wide audience, unless the whole of the audience have an interest in knowing the information. Publication beyond what was reasonably sufficient for the publication is not protected. The defendant to the defamation action must establish that the publication was reasonable.

42 As I understand the defendant's argument, he submits that his assertions in the face of the court on 3 February 2017 (the first charge) were political communications and protected under the Constitution, on the *Lange* principle.

43 *Coleman v Power* is raised by the defendant with respect to the second and third charges. It is a case that arose from Mr Coleman's conviction for using insulting words in a public place, an offence contrary to s 7(1)(d) of the Queensland *Vagrants, Gaming and Other Offences Act 1931* ("the *Vagrant's Act*). The insulting words relied upon as constituting the offence, "[t]his is

Constable Brendan Power, a corrupt police officer", were uttered in the context of a demonstration in a public street.

44 Mr Coleman contended that his conviction was inconsistent with the right to freedom of political communication implicitly conferred by the Constitution and that the legislation under which he had been charged was invalid as wrongly burdening that constitutional right.

45 There was no issue before the High Court that,

> "A public accusation of corruption made about a police officer to his face, even in the context of a political protest or demonstration, is a form of conduct that a magistrate is entitled to regard as a serious contravention of public order by contemporary standards of behaviour" (at [16] of *Coleman v Power*).

46 It was common ground that Mr Coleman's contentions were to be considered by reference to the principles stated in *Lange*, and that a law would infringe the claimed constitutional freedom where it burdened communication about governmental or political matters, and either the object of the law is incompatible with the maintenance of the constitutional system of representative and responsible government, or the law is not appropriate to achieving its object (at [26]).

47 Ultimately, the High Court set aside Mr Coleman's conviction, having concluded that the relevant provision in the *Vagrant's Act* could not validly apply to insulting words uttered in the course of making statements concerning political or governmental matters.

48 Here, the defendant argues that the orders made by Beech-Jones J on 3 February 2017 were invalid and thus, like Mr Coleman, he cannot be held to have breached something that was invalid. He contends that the orders were invalid because the principles enunciated in *Lange* protected his comments as political speech, and political speech cannot validly be the subject of suppression orders. In submission the defendant said that political speech was,

> "[…] protected by *Lange v ABC* […] [o]nce that's engaged, *Lange v ABC*, you can't be charged with contempt, you can't put suppression orders on it, the suppression orders are invalid." (T37:33-38 of 4 May 2017)

49 In that the defence advanced by the defendant may have raised a constitutional question, following the completion of the hearing of the matter on 4 May 2017, the Court made orders in these terms:

> "(i) On or before 7 June 2017 the defendant serve a notice pursuant to s 78B of the *Judiciary Act 1903* (Cth) on the Attorneys-General of the Commonwealth, the States, the Australian Capital Territory, the Northern Territory and on the plaintiff.
> (ii) On or before 19 June 2017, the defendant file with the Court, and serve on the plaintiff, an affidavit of service of each notice required to be served under order 1.
> (iii) Any Attorney General seeking to intervene in the proceeding is to file and serve written submissions on or before 30 June 2017.
> (iv) If any written submissions are received by 30 June 2017 from any Attorney General seeking to intervene in the proceedings, the defendant is to file and serve submissions in response on or before 17 July 2017.
> (v) Liberty to apply on two days' notice."

50 No Attorney-General of a state, territory, or the Commonwealth has sought to intervene in the proceedings, and nor have any submissions on this point been received from any person other than the Prothonotary and the defendant.

51 As the lack of interest in the argument by the Attorneys-General may suggest, the defendant's confidence in the availability of a constitutional defence is misplaced. The implied constitutional right of freedom of political speech to which he refers does not provide a defence to a charge of contempt of court relevant to conduct in the face of the court, and nor does it provide a defence to contempt based upon deliberate and intentional breaches of court orders. A defence of freedom of political speech has no application in the present context.

52 There is no doubt that the Constitution protects the freedom of "the people of the Commonwealth" to communicate with each other concerning those political and government matters that are relevant to the system of representative and responsible government provided for by the Constitution.

53 This implied freedom of political communication upon which the defendant relies operates as a constraint on legislative power and is required by ss 7, 24, and 128 of the Constitution: *Lange* at 557 and 560; *Hogan v Hinch* (2011) 243 CLR 506 at [92]; *Unions NSW v New South Wales* (2013) 252 CLR 530 at [36], [103] and [112]; *McCloy v New South Wales* (2015) 257 CLR 178 at [2] and [30].

54 The implied freedom is not, however, one which is at large and akin to a broad freedom of the nature of that guaranteed in the United States of America by the Fifth Amendment to the Constitution of that country. It is limited to what is necessary for the effective operation of the system of representative and responsible government provided for by the Constitution: *Lange* at 561.

55 As McHugh J observed in *Levy v Victoria* (1997) 189 CLR 579 at 622:

> "The freedom protected by the Constitution is not, however, a freedom to communicate. It is a freedom *from* laws that effectively prevent the members of the Australian community from communicating with each other about political and government matters relevant to the system of representative and responsible government provided for by the Constitution. Unlike the *Constitution of the United States*, our Constitution does not create rights of communication. It gives immunity from the operation of laws that inhibit a right or privilege to communicate political and government matters" (italicisation in original).

56 There is no legitimate basis to extend that freedom, confined as it is to communications concerning political and government matters relevant to the constitutional system of government, to the operation of the courts and the functions of judges. In *John Fairfax Publications Pty Ltd v Attorney-General (NSW)* (2000) 181 ALR 694 Spigelman CJ said (at [83])

> "The inclusion of courts and judges in the scope of the subject matter with respect to which the public as a whole can be identified to have an interest, for purposes of applying the traditional rules of reciprocity in the context of qualified privilege for a defamatory statement, is not coextensive with the constitutional protection of freedom of communication. That protection, as *Lange* made clear, is an implication to be derived from the text and structure of the Constitution insofar as it makes provision for representative government. The conduct of courts is not, of itself, a manifestation of any of the provisions relating to representative government upon which the freedom is based."

57 Judicial officers perform a public role, but that role is not one which is part of or connected to the operation of constitutional representative government. Discussion of or comment upon the role of judges or the work that an individual judge has undertaken could not be regarded as communication concerning political or government matters relevant to constitutional government, so as to attract Constitutional protection.

58 The statements made by the defendant in court on 3 February 2017 (relevant to the first charge) and the content of the article published by him on 5 February 2017 (relevant to the second and third charges) cannot be characterised as communications which come within the scope of the implied freedom. The "defence" raised by the defendant is wholly illusory and nothing in *Lange* or *Coleman v Powers* provides for such a defence in the present context.

59 It is necessary then to determine whether the defendant's admitted conduct constitutes contempt of court.

60 The principles applicable to the determination of a charge of contempt have been helpfully summarised by Garling J in *Mahaffy v Mahaffy* [2013] NSWSC 245 at [27], as follows:

> "(a) if a matter constitutes a baseless attack on the integrity or impartiality of courts and judges, it may constitute a contempt warranting a remedy of a fine or imprisonment: *R v Fletcher*; *ex parte Kisch* (1935) 52 CLR 248 at 257 per Evatt J; *Gallagher v Durack* (1983) 152 CLR 238 at 243 per Gibbs CJ, Mason, Wilson and Brennan JJ;
>
> (b) if a matter casts adverse imputations upon courts of justice, which if continued, are likely to impair their authority, then that is capable of constituting a contempt because it is necessary to maintain public confidence in the administration of the law: *R v Dunbabin; ex parte Williams* (1935) 53 CLR 434 at 447 per Dixon J; *Gallagher* at 243;
>
> (c) words used, or conduct engaged in, in the face of the Court, or in the course of proceedings, which are such as would interfere, or tend to interfere with the course of justice, may constitute a contempt: *Parashuram Detaram Shamdasani v King-Emperor* [1945] AC 264 at 268; *Lewis v Ogden* (1984) 153 CLR 682 at 688;
>
> (d) the wilful insult of a Judge in the course of proceedings necessarily interferes, or tends to interfere with the course of justice, however, mere discourtesy falls short of wilfully insulting conduct which is the hallmark of contempt: *Lewis* at 688-689;

(e) disobedience of Court orders may constitute a contempt because the effective administration of justice is protected by a demonstration that court orders will be enforced. If Court orders could be disobeyed with impunity, individual litigants may suffer, and the whole administration of justice would be brought into disrepute: *Australian Meat Industry Employees Union v Mudginberri Station Pty Ltd* (1986) 161 CLR 98 at 106, 107 per Gibbs CJ, Mason, Wilson and Deane JJ;

(f) all contempt proceedings, whether brought for civil or criminal contempt, as those terms were used historically, are criminal in nature, and all charges must be proved beyond reasonable doubt: *Witham v Holloway* (1995) 183 CLR 525 at 529 per Brennan, Deane, Toohey and Gaudron JJ;

(g) the summary power of punishing contempt, that is by the Judge, himself or herself, formulating the charge, citing the contemnor and then hearing and disposing of the charge, should be sparingly used: *Lewis* at 693. It follows that a more deliberate procedure of bringing proceedings on due notice, which proceedings are properly formulated and particularised, is to be preferred;

(h) a charge of contempt should specify the nature of contempt: *Lewis* at 693. It follows therefore, that proper particulars of the charge ought be provided. It also follows that a charge of contempt should not be duplicitous."

The first alleged contempt

61 This relates to the defendant's loudly uttered allegations of corruption and paedophilia against a Registrar and a named judicial officer of this Court in the face of the Court, and in the presence of some 40 or 50 people, over whom silence fell during the course of the relevant comments. It is said by the Prothonotary to be an act of scandalising the Court, a particular category of contempt.

62 An allegation made to any person that he or she took bribes, or was a paedophile is obviously grossly insulting (and no doubt hurtful to the individual). Such gratuitous comments made to a judicial officer who was presiding over proceedings in a court do a more significant, public harm. The words said by Mr Dowling and the hostile and aggressive manner in which they were said necessarily interrupted the course of the proceedings before the Registrar, and diverted the court's attention from the business before it. Baseless insults of this grave nature can also call into question the integrity of the court or of individual judicial officers. The defendant's conduct thereby interfered with the course of justice and constituted an unwarranted

obstruction to the administration of justice in the face of the Court (*Lewis v Ogden* (1984) 153 CLR 682 at 689; [1984] HCA 26).

63 Having considered the evidence, and particularly noting the defendant's oft stated admission that he uttered the words in the face of the court, I am satisfied beyond reasonable doubt that he committed the contempt charged.

The second and third alleged contempts

64 These allegations deal with the defendant's acts in publishing on 5 February 2017 the contents of Exhibit 1 (of 3 February 2017 before Beech-Jones J) and the fact of the making of the allegations before the Registrar on 3 February 2017, their content, and the persons the subject of the allegations. The defendant concedes that he published this material, despite being well aware of the orders of the Court as to its non-publication.

65 Whilst the defendant asserts that the orders were invalid and therefore his conduct is incapable of constituting a breach of the orders, the orders were in fact valid and extant orders of the Court. There is no basis to conclude otherwise. The orders had been made by a judge of the Supreme Court, and they had not been set aside, or spent: *State of NSW v Kable* (2013) 252 CLR 118 at [32].

66 Once an order such as those made by Beech-Jones J is made the liability of the person subject to the order depends on the judicial order itself and not upon the legal basis for the order. To allow persons subject to the orders of superior courts to simply disregard the orders, despite the absence of a stay, on the basis that, if the orders are later set aside, they will not have been in contempt of court, would be entirely subversive of the place of court orders in the rule of law: *Rumble v Liverpool Plains Shire Council* (2015) 90 NSWLR 506 at [116].

67 Wilful disobedience to an order of a court both challenges and diminishes the authority of the court. In wilfully defying the Court's orders the defendant interfered with the administration of justice and frustrated the work of the Court.

68 I am satisfied beyond reasonable doubt that the defendant is guilty of the second and third charges of contempt of court.

ORDERS

(1) It is declared that the defendant is guilty of contempt of the Supreme Court of New South Wales in that on 3 February 2017, the defendant, in open court before a Registrar, made allegations (which are detailed in the Particulars Document) about a Registrar and a judge of the Supreme Court of New South Wales.

(2) It is declared that the defendant is guilty of contempt of the Supreme Court of New South Wales in that on and from 5 February 2017, the defendant, in contravention of order 1 made by his Honour Justice Beech-Jones on 3 February 2017, wilfully disclosed the contents of Exhibit 1, as marked by his Honour on 3 February 2017, to persons other than parties without leave of the Court.

(3) It is declared that the defendant is guilty of contempt of the Supreme Court of New South Wales in that on and from 5 February 2017, the defendant, in contravention of order 2 made by his Honour Justice Beech-Jones on 3 February 2017, wilfully published:

(a) the content of the allegations that the defendant made before [a Registrar] in open court on 3 February 2017;

(b) that [the Registrar] and a judge of the Supreme Court of New South Wales were the subject of the allegations; and

(c) that the allegations were made.

****

Associates Stamp: I certify that this page and the 17 preceding pages are a true copy of the reasons for judgment herein of the Honourable Justice Wilson. Dated: 3 August 2017. Associate: *C Scholfield*