

DAN:CAT

IN THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION

5

WILSON J

THURSDAY 4 MAY 2017

10 **2017/00094322 - PROTHONOTARY OF THE SUPREME COURT OF NEW
SOUTH WALES v SHANE DOWLING**

15 **PURSUANT TO SECTION 10 OF THE COURT SUPPRESSION AND
NON-PUBLICATION ORDERS ACT 2010 THE CONTENTS OF THE
AFFIDAVIT OF CLAUDIA PENDLEBURY OF 28 APRIL 2017 ARE
PROHIBITED FROM DISCLOSURE, OTHER THAN TO THE PARTIES,
UNTIL FURTHER ORDER**

20 Mr D Kell SC with Ms A Mitchelmore for the Plaintiff
Defendant appeared in person

25 HER HONOUR: Mr Dowling, is it?

DEFENDANT: Yes, your Honour.

HER HONOUR: You are representing yourself, Mr Dowling?

30 DEFENDANT: Yes, your Honour.

HER HONOUR: All right. Thank you.

35 DEFENDANT: Can I just put your Honour on notice, I picked up a bit of a cold
yesterday, so with your Honour's permission I can drink my orange juice?

HER HONOUR: Yes. Yes you may.

40 Mr Crown.

45 KELL: The matter is listed today for the hearing of contempt proceedings
brought by the Prothonotary against Mr Dowling on three separate charges of
contempt of the Supreme Court, and I will just outline very briefly, and I
understand Mr Dowling has an application that he would like to make.

HER HONOUR: Oh I see. All right. Thank you.

50 KELL: So I will just outline very briefly. The first charge involves what is
sometimes referred to as scandalising the court, which is characterised by the
Prothonotary as a scurrilous, invasive attack on officers of the court. The

DAN:CAT

second and third charges involve what are said to be wilful contumacious breaches of the orders made by this Court, in particular, non-disclosure orders.

5 The proceedings are brought following a referral of the matter, or a direction by Beech-Jones J on 8 February to commence proceedings, and I will take your Honour to the materials dealing with that shortly.

HER HONOUR: All right.

10 KELL: There is a judge's working folder that I can hand up.

HER HONOUR: Thank you.

15 KELL: I might do that now, if I could. A copy has been provided. A document entitled, "Judge's Working Folder of Documents," and there's an index on the front page, and it contains seven tabulated documents.

HER HONOUR: All right. Thanks, Mr Crown.

20 KELL: One practical matter that I might raise at this stage, your Honour, is that your Honour will see, or will have seen or will shortly see that given the nature of the allegations that have made by the defendant and also alleged breaches of court orders, the court has previously made suppression orders in respect of the material filed, in effect so as not to allow the contempt to be aggravated,
25 because the affidavits deal, of course, with the material which is said to be objectionable, and this includes orders that you were made by Beech-Jones J on 3 February and orders made by Adamson J on 6 April.

HER HONOUR: Yes.

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KELL: As a practical matter, in order to allow the present hearing to proceed and to be able to deal properly with the matters arising, to deal with the evidence, to deal with submissions, for Mr Dowling to make such submissions as he wants to, and there is also an audio recording that we've obtained from
35 the court and Mr Dowling has also made an audio recording of the court proceedings in which what's said to be the scandalous remarks occurred. That will be played for your Honour.

40 Because of those practical considerations I would ask that your Honour make a non-publication order in respect of the proceedings today, rather than, for example, closed court, noting that your Honour can later revisit, if needs be, the extent of the non-publication, but it just seems that it's not going to be workable otherwise, and we've got a form of order. I might hand it up if I could.

45 HER HONOUR: Yes, certainly.

KELL: And it's an order "until further order".
I will let your Honour look at that.

50 HER HONOUR: Yes.

DAN:CAT

Well, that's consistent with the orders previously made.

5 KELL: It is, and it would serve to preserve the position the court has taken so far.

HER HONOUR: Yes. All right.

10 Do you want to be heard on the request for a non-publication order, Mr Dowling?

DEFENDANT: Yes, your Honour. I'm just going to take this out of my mouth so I don't come across as rude.

15 HER HONOUR: All right.

20 DEFENDANT: Your Honour, the suppression orders have been put on without an opportunity by me to put any argument forward, originally done by Beech-Jones J and ex parte hearings. Last time we were in here they were done at ex parte hearings, last time it was done by Adamson J.

HER HONOUR: Yes.

25 DEFENDANT: I said to Adamson J, I argued that it shouldn't be put on.

HER HONOUR: So should not?

30 DEFENDANT: Should not. I was basically given no opportunity to really argue it. I asked for it to be set down the following week for argument. She just ignored me.

35 This is a matter of huge public interest. The information they're arguing by and large that should be suppressed is already on the internet, not only this year but last year, as the evidence will show, as we get through into the proceedings, so it's nothing new to the public, or my readership, and it really scandalises the court because you have got judicial officers of this Court in effect putting suppression orders on their own matter, because as I see you've got three applicants, two of them are judges and one's a registrar, in effect, so that in itself's scandalising the court because the public are saying, "Oh, hold on a minute. How can judicial officers put suppression orders on their own case?"

45 HER HONOUR: Well, I suppose that be answered by what the Crown has said about the non-publication orders being revisited, that is, if at the end of the proceedings it appears that this is material which should be in the public domain the order could be vacated at that point.

50 DEFENDANT: Okay, your Honour. I would ask your Honour to keep that in mind because I'm going to be arguing strongly throughout the proceedings that's exactly what's happened.

DAN:CAT

HER HONOUR: All right. Thanks, Mr Dowling.

5 Well, I propose to make the orders in accordance with the short minutes of order. It seems to me that there is some force in what the Crown says, and that is, if this scandalising conduct is simply permitted to be published it aggravate the insult. Should it not appear to be the case, at the end of the proceedings then the order can, of course, be vacated, so I make the following order.

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Pursuant to section 10 of the Court Suppression and Non-Publications Order Act section 10 publication of any part of the proceedings before this Court today, 4 May 2017 is prohibited until further order.

15 Now you understand, Mr Dowling, that applies to everybody, inclusion you?

DEFENDANT: Yes I do, your Honour, but obviously, like I said before, I will be arguing differently throughout the proceedings.

20 HER HONOUR: All right.

DEFENDANT: One thing I would just like to raise. Under the 2010 Non-Publication and Suppression Order Act the applicants have to put forward an exceptional circumstance. I've got a copy of the act right in there. At no stage have they done that.

25

HER HONOUR: Well, whilst the language might not have been used, Mr Dowling, I think the circumstance is the suggestion that publication would simply aggravate the insult already done. That's the exceptional circumstance.

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DEFENDANT: No worries then.

HER HONOUR: All right. Thanks, Mr Dowling.

35 Mr Crown.

KELL: Thank you, your Honour. I might just indicate how I intend to proceed, and then allow Mr Dowling to make an application, as I understand he wants to.

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What I was proposing to do was to take your Honour chronologically through the materials at the same time as tendering the material in the folder, and that will save having to do it later, so it, hopefully, will be more efficient, and it will set out what is involved in the contempts.

45

So there are three affidavits. All of those people are solicitors, and they are essentially the means by which material is put before the court, And to a large extent that would seemingly not be controversial. Then in document 7 there is written submissions, which have been served on Mr Dowling previously, and that's again, intended to assist the Court, and I can deal with the submissions

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DAN:CAT

partly by reference to that, so that's the way I intend to proceed.

As I indicated, I think Mr Dowling has an application that he wishes to make.

5 HER HONOUR: All right. Thank, Mr Crown.

Mr Dowling.

10 DEFENDANT: Yes, your Honour. The application is that you stand down from hearing the matter: Not only perceived bias by yourself but, as my friend over here said last time we were here, if a situation - well if a matter that needs to be determined is also a matter that needs to be determined is in relation to the conduct of a judicial officer the matter needs to have an interstate judge brought in.

15

While looking at it all, there's probably no reason why you have to make a decision unless you're a judicial officer as such, while their conduct's going to be brought up. You certainly will need to make a decision in relation to Registrar Bradford, because my allegation is that he is part of a bullying campaign. A bullying campaign is a criminal offence. Well, not the campaign. Bullying is a criminal offence, in most states that I know of.

20

HER HONOUR: I am not sure that it is here.

25 DEFENDANT: I am not saying. I am saying in most states, that I know. I know that it is here too, at least in this Court. So that is a judgment you're going to have to make, because that's the allegation I'm going to be putting forward, that what happened in February was part of an ongoing battle between me and Registrar Bradford, and there's a lot of evidence there to support that.

30

On that basis maybe, I suppose, he's not considered a judicial officer as such, but he's certainly a quasi-judicial officer, as a registrar, so I think it undermines the public's confidence in the court if the matter is dealt with by a judge of this same Court, and it needs an interstate judge to hear it.

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HER HONOUR: All right.

Mr Crown.

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KELL: The application is opposed, your Honour. The same application was made at the mention, or direction hearing before Adamson J on 6 April, and I will hand up - her Honour delivered a judgment dealing with the matter. I will just hand that up for reference.

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(Handed, and a copy to Mr Dowling also.)

Perhaps if I just allow your Honour to read it. So her Honour deals with it at paragraphs 8 and 9.

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DAN:CAT

HER HONOUR: Yes.

All right, I've read those.

5 KELL: Yes. So there are two substantive points, and they're encapsulated in the discussions, or her Honour's reasons.

10 The first is that whether the conduct is a contempt of the Supreme Court is quintessentially a decision, a determination consistent with the principles of contempt law, which is to be determined by the court in front of which the contempt took place, certainly for contempt in the face of the Court, rather than for some judge to be brought in from another state. And secondly, is that the conduct involved here is principally, or substantively the conduct of
15 Mr Dowling. It's not a case where there's an enquiry, or there's a charge against a former judicial officer, or a judge.

20 What's charged is that on a particular day, 3 February 2017, Mr Dowling engaged in conduct constituting the contempt of this Court by the allegations and remarks he made before Registrar Bradford in open court, on that day, and then his conduct subsequently in breaching orders made by this Court, in effect, not to disclose the content of allegations that he made. It's not a proceeding that involves substantially any enquiry into other matters.

25 Those are my submissions.

HER HONOUR: All right. I just want to look at just one thing, if I can find it. Just give me a moment.

30 KELL: Certainly:

HER HONOUR: All right. I will just give a short judgment. Thank you.

FOR JUDGMENT SEE SEPARATE TRANSCRIPT

35 HER HONOUR: Now, Mr Dowling, I've declined to recuse myself, which means that the proceedings, subject to any other application that either party wishes to make, ought proceed today.

40 Mr Crown.

KELL: Thank you. Your Honour, I propose to proceed, as I indicated, by going through matters chronologically. What I might do is I can tender the Crown material, which is referred to in the judge's working folder, and I will read them out.

45 There's an affidavit of Jillian Caldwell affirmed 5 April 2017, which is at tab 3. That has previously been filed in Court.

50 HER HONOUR: Yes.

DAN:CAT

KELL: I read that affidavit. I tender exhibit JC1, which is a copy behind tab 4 of the working folder.

HER HONOUR: Yes.

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KELL: That's previously been provided to the Court, I think before Adamson J, that exhibit. There's also an affidavit of Richard Keegan, sworn 5 April 2017, at tab 5. I read that affidavit. And at tab 6 there's an affidavit which hasn't yet been - it's certainly been served, but hasn't been filed, and I've got the original here. I hand up the original.

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HER HONOUR: Thank you.

KELL: That's an updating affidavit of Claudia Pendlebury affirmed 28 April 2017, and it's consistent with the orders that have been made by the Court in respect of the other material. I would ask for an order to be made in respect of that affidavit, and I will hand up a copy of the proposed order. That's previously been provided to Mr Dowling.

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20 HER HONOUR: All right.

KELL: There's one further - sorry, your Honour.

HER HONOUR: Sorry. Go on, Mr Crown.

25

KELL: Yes. Sorry. So I would ask that your Honour make that order in respect of the Pendlebury affidavit.

HER HONOUR: All right.

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Mr Dowling, this is on the same sort of basis as we've already discussed. Do you want to be further heard on my making the suppression order.

DEFENDANT: Just the same as what I said before, your Honour.

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HER HONOUR: All right. Thanks, Mr Dowling.

For the reasons that I have earlier noted with respect to an overall suppression order, I propose to make the orders.

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Pursuant to section 10 of the Court Suppression and Non-Publication Orders Act 2010 the contents of the affidavit of Claudia Pendlebury of 28 April 2017 are prohibited from disclosure, other than to the parties, until further order.

45 KELL: Thank you, your Honour.

Your Honour, there's one further affidavit or it's really a disk, a sound recording, and I will just indicate. The material that the Crown has put on includes a recording made by Mr Dowling of the mention before the hearing, and the circumstances in which that recording may be made is not at issue, if I

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DAN:CAT

5 can put it that way, in this proceeding. These are contempt proceedings, so I'm not going to say anything further about that, but because of - we have also obtained, and this morning obtained the CD, from the court reporting people, of the audio. So it's exactly, as one would expect, it's exactly the same, and I intend to play it, as part of the context of the contempt, but it's also relevant, apart from the context of the contempt, because the recording - and I will come to this - is one means by Mr Dowling has alleged to have breached the non-disclosure orders, so he took the recording he made and he put it on a website, so it arises in that context.

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HER HONOUR: All right.

15 KELL: There's an affidavit from a manager of the reporting section called Wendy Moore, which is simply the vehicle to attach the recording, and I hand up the original of that, and a copy for your Honour. The recording is an exhibit, and I've just got it in the computer at the moment, because it's lined up.

HER HONOUR: Yes, all right.

20 KELL: Because the recording itself, when we play it, it's less than three minutes, it's quite short, so if I could hand that up, and I will formally tender the disk, and perhaps hand it up at a later time so your Honour has the actual disk.

HER HONOUR: All right.

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KELL: But as I said, it's identical to Mr Dowling's recording.

HER HONOUR: I grant leave to file the affidavit of Wendy Moore of today's date in court.

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Mr Dowling, I am sure you understood. The affidavit of Ms Moore is essentially procedural, to get the recording before the Court as an exhibit.

DEFENDANT: Yes, your Honour.

35

HER HONOUR: All right.

KELL: So that I do read and rely on that evidence, your Honour.

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HER HONOUR: All right. Thank you. Do you want to play that now?

45 KELL: Yes, if I could. I might also hand up a transcript, so the recording and the transcript is, obviously, an aide-memoire. The recording is the recording, and I might hand up two copies, so your Honour has a working copy and perhaps an MFI or exhibit copy.

HER HONOUR: Yes. It can be admitted as an aide-memoire to the exhibit.

KELL: Yes.

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DAN:CAT

HER HONOUR: Mr Dowling, when something is admitted as an aide-memoire the thing itself is not an exhibit. It's not part of the evidence. It's simply an aid to memory, so that's the basis upon which this transcript has been provided to me, but it's the recording which is the actual evidence.

5

DEFENDANT: Yes, your Honour.

HER HONOUR: All right, thank you.

10 Well we will hear that now if it can be played.

DEFENDANT: Just one. I also have a recording, so I don't know if it would be beneficial to play that at this time as well.

15 HER HONOUR: Well, I think the Crown might have a copy of your recording.

DEFENDANT: No, it's one from September last year.

20 HER HONOUR: Oh, I see. All right. Well, I will come to anything you want to raise in due course.

KELL: I might just add, for completeness, your Honour. The evidence includes a transcript of the recording which was previously known as exhibit 1, and that's referred to at a few places in the material, that I will show your
25 Honour.

The transcript that is the aid memoire has some what are called minor corrections, and again, just simply when they did the recording they've done some corrections. I will hand it to your Honour later, but it's something that
30 sows the changes in there. They're not substantive, but I just thought I would take your Honour to that for completeness. So perhaps we could play the recording?

I might do it this way, your Honour, if I can. There's a short affidavit of
35 Mr Keegan, at tab 5.

HER HONOUR: Yes.

40 KELL: I will just go to that. Mr Keegan is a solicitor from Addison's. He is involved in proceedings in this Court which are known as the Jane Doe proceedings, and on the morning of 3 February 2017 the proceedings were listed in the common law registrar's list. It's the first day of the new law term. Mr Keegan gives evidence, at paragraph 6, that the courtroom was full. There was standing room only. "I estimate there were at least 40 persons present in
45 the courtroom".

Elsewhere in the documents, which I will come to, Mr Dowling indicates it might have been 50 people there. He indicates that, in paragraph 7, that while the registrar was present "typically there's a degree of muffled talking, as
50 practitioners discuss their mattes as the registrar runs through the list". That

DAN:CAT

was also the position when Mr Keegan arrived. He recalls that on that day the defendant approached the bar table and spoke to the registrar "in what I would regard as not normal courtroom behaviour," and your Honour will hear the audio.

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Paragraph 8 will in some respect reflect what your Honour hears, but in paragraph 9 he gives this additional contextual information:

10 "That whilst the defendant and the registrar were speaking I recall there were no longer any muffled sounds and the courtroom otherwise became very quiet."

15 And then there's an impression that the noise died down because people were listening to what the defendant was saying, particularly given the tone and context, and then there's a copy of annexure A. And your Honour will see, and including from the particulars document - and perhaps I will just jump to that.

20 Tab 2, your Honour, has the particulars document, which is subject to a non-publication order, and it provides particulars of the summons.

HER HONOUR: I've got it.

25 KELL: If your Honour's got that.

HER HONOUR: Yes.

30 KELL: And your Honour will see at paragraph 3 there is the substance of the allegations, and your Honour will hear those shortly, but they involve Registrar Bradford, and they also involve Hoeben J.

DEFENDANT: Where is that?

35 KELL: I'm at tab 2 on the first page, paragraph 3. And there's reference to the transcript there as well. Your Honour will hear that shortly, but there's allegations that the registrar was a known bribe taker, that he was a suspected paedophile, that he was a child rapist, that a judge of this court was a paedophile and that a judge of this court had sentenced a paedophile priest to only three months imprisonment because his Honour was a paedophile, so an allegation - well, an allegation of corruption.

40 HER HONOUR: A serious allegation.

45 KELL: Yes. So that's the context. And, your Honour, I will play the recording, if I may?

HER HONOUR: All right. Thank you.

50 DEFENDANT: Can I just say something, your Honour?

DAN:CAT

HER HONOUR: Yes.

5 DEFENDANT: If you look at those allegations and then you listen to that
tape they don't actually say those allegations on there. They've
interpreted that way, which is not really for them to interpret, I think.

HER HONOUR: All right. We will listen, thank you, Mr Dowling.

10 Just go ahead, thank you, Mr Crown.

TAPE PLAYED

15 KELL: Your Honour, in terms of the chronology of events, so that
happened on 3 February, in the 9 o'clock list.

20 Later that same day the Prothonotary was given instructions, or gave
instructions to the Crown solicitor to seek a suppression order in respect
of those allegations, and your Honour will see that's dealt with in, or
referred to in the Caldwell April affidavit, which is tab 3 at paragraph 2,
and it was instructions to seek an urgent suppression order, and also
instructions in connection in connectin with a referral of contempt
proceedings.

25 The matter is then listed before Beech-Jones J at 3 o'clock that same
day. Now, your Honour, there is, an annexure A to Ms Caldwell's
affidavit, her affidavit of 8 February 2017. It's at page 6.

HER HONOUR: Yes, I've got that.

30 KELL: And that is a sort of key document for part of the chronology at
least, and that is the affidavit which annexures exhibit JC1.

If your Honour, within that affidavit, jumps to paragraph 4.

35 HER HONOUR: Yes.

40 KELL: Your Honour will see that at 3pm the same day the matter is listed
before Beech-Jones J, and that's after there's been some attempt to
contact Mr Dowling on his mobile phone, at paragraph 3, but the
proceedings at that stage did proceed ex parte.

45 A copy of the transcript was tendered, marked as exhibit 1, in paragraph
4, and Beech-Jones J made orders, and then the balance of the motion
was stood over until a later time.

Now, those orders, which are the orders of 3 February, are orders which
it is alleged that Mr Dowling has contravened, and those orders are at a
number of places in the material, but if your Honour has exhibit JC 1?

50 HER HONOUR: Yes.

DAN:CAT

KELL: And your Honour jumps to annexure A at page 5.

HER HONOUR: Yes.

5

KELL: There are the sealed orders. I will just take your Honour quickly through them. So order 1, which is an order which Mr Dowling has alleged to have contravened, under section 10 an order was made prohibiting disclosure of exhibit 1, which was the transcript. And I will come this. There is an issue about the term of the order, which I will come to later, but substantively it's an order prohibiting disclosure of the transcript.

10

Then at paragraph 2, order 2, which Mr Dowling is also alleged to have contravened, "Pending further order the publication of the following is suppressed," and then paragraph A, the content of allegations that he made before Registrar Bradford in open court, paragraph B, that Mr Bradford and judges of the Supreme Court were the subject of the allegations, and paragraph C, that the allegations were made.

15

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And then your Honour will see order 3, "Stand over the balance of the motion," which was the contempt aspect of the referral for contempt, And then there were directions about serving Mr Dowling and giving him notice of what was to occur. So those orders were made.

25

They were served on Mr Dowling by email on that same day, and if your Honour looks, still in tab A of exhibit JC1, at page 1, your Honour will see there's an email, hopefully from Jillian Caldwell, so I'm at exhibit JC1, which would be behind tab 4, at annexure--

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HER HONOUR: Annexure A, or it's above A, so the email is behind tab E I think.

KELL: Yes, I think, or maybe a copy is in the bundle, I think. Your Honour has in the materials exhibit JC1, in the court file. I will just see if I can hand up a further copy of exhibit JC1.

35

HER HONOUR: I've got the folder with JC1. That's removed from the court file.

40

KELL: Oh, yes. All right. Your Honour, if I may treat that as the tender of exhibit JC1?

HER HONOUR: Yes.

45

KELL: And I will just see if I can give your Honour a working copy as well.

HER HONOUR: All right. Thank you.

50

DAN:CAT

KELL: Just while that's coming on I will just indicate. So at annexure A, page 1 of JC1 your Honour will see there's an email from Jillian Caldwell, who is a solicitor at the Crown Solicitors Office.

5 HER HONOUR: Yes.

10 KELL: Friday 3 February 6.17pm, and it's an email addressed to Mr Dowling. Then "To Mr Dowling, The further message I left on your voice mail," and then there's reference to, "Please find attached by way of service a notice of motion. Also attached, a sealed copy of the orders made by his Honour," and then Ms Caldwell sets out the orders as well, in the next paragraph, and I think, as I indicated, at page 5 of that same annexure is the orders.

15 HER HONOUR: Yes.

KELL: They're the sealed orders. So that was done on Friday 3 February.

20 The next thing that happens - and I will come back to it - is that Mr Dowling, on 5 February, so on the Sunday, publishes an article that discloses the allegations, and some other things, but as far as the Crown solicitor is aware the next thing that happens is that Monday 6 February, and that's at tab B, annexure B, JC1.

25 HER HONOUR: Yes.

DEFENDANT: Whereabouts?

30 KELL: Page 7.

DEFENDANT: I've lost it.

KELL: Exhibit JC1, at page 7.

35 HER HONOUR: Of tab B?

KELL: Yes, tab B.

40 I'm sorry about that, your Honour

HER HONOUR: That's all right.

45 KELL: Yes. So there's an email from Mr Dowling on 6 February 2017 at 11.28am from an email address to Ms Caldwell. It makes reference to a number of matters which are not germane to the present contempt proceedings, save that on - I start on page 7 at about point 5 - he indicates, "I publish a website--

50 HER HONOUR: Yes.

DAN:CAT

5 KELL: --that has a strong focus," et cetera, and then there are various matters, assertions that are made. Then at the end of the email, the second last paragraph on page 9, Mr Dowling says, on the Monday, "I published further evidence of what a scandal this is on my website n an article titled "Chief Justice Bathurst has journalist charged with contempt for accusing him of corruption," which was published on 5/2/2017, so Mr Dowling refers to an article published on his website. That's how the Crown solicitor and the Prothonotary become aware of that.

10 Now, the article itself, your Honour, is at annexure C, at pages 10 to 19. That's annexures C of exhibit JC1. That's the article by that title, "Chief Justice Bathurst has journalist charged with contempt for accusing him of corruption".

15 Just pausing there. Mr Dowling, in the website, propounds, or puts himself forward as a journalist. And I will just go to the content of that in a moment, which is clearly relevant, but if your Honour goes to annexure D of the same exhibit. It's the home page of the website.

20 HER HONOUR: Yes.

KELL: "Kangaroo Court of Australia".

25 HER HONOUR: Yes.

KELL: And then on page 21, on the home page, there is the link to that article, your Honour.

30 HER HONOUR: Yes.

KELL: And it indicates that the author of the article is Mr Dowling. Your Honour will see it at about point 3 of the page.

35 HER HONOUR: Yes.

KELL: By Shane Dowling.

40 HER HONOUR: Yes.

KELL: So he's indicated as the author. And then also at tab E is another page from the web page, "The Kangaroo Web Page," which is the "contact details about," annexure E at pages 22 and 23.

45 HER HONOUR: Yes, I've got that.

KELL: And if your Honour jumps to page 23, at the top at about points 1 to 2 there are contact details for the website.

50 HER HONOUR: Yes.

DAN:CAT

KELL: And your Honour will see Mr Dowling's name and a PO box address in Sydney, an email address and a mobile phone number.

5 HER HONOUR: Yes, I've got that.

KELL: And pictures of a T-shirt. And I indicate, it appears Mr Dowling is wearing the same T-shirt in Court today.

10 HER HONOUR: Yes.

15 KELL: Just jumping back to the article at annexure C, at page 10 - and again this is relevant for something I will come to later on - the right hand column there is "Follow us on Facebook," above "donate," so there is a call for donations in part throughout the website, but the "Follow us on Facebook" is relevant, at least in part to what I will come to later, where there was a Facebook posting that linked to the article, but turning to the article itself.

20 In the article, firstly at page 13, Mr Dowling indicates - and this is at about point 8 or point 9 of the page, under the heading, "Court hearing and court orders".

25 HER HONOUR: Yes.

30 KELL: He refers to Jillian Caldwell, the Crown solicitor, and then indicates that he received - he refers to the email of 3 February, which is one that I took your Honour to before, where Ms Caldwell gives him notice of the orders, and then refers to a voice mail message, but says, "I assume they received the message because a few minutes later I was emailed the Court orders at 6.17pm," so again a confirmation that the orders of this Court made on 3 February were received by Mr Dowling. And then he goes further, and in fact set out the terms of the order, so from the very bottom of page 13, sets out verbatim, going on to page 14, to about point 2 of the page, the actual terms of the orders made by Beech-Jones J, and he provides a link to a scanned version of the court orders. Your Honour can see it says "click here to read the court orders".

40 HER HONOUR: Yes.

KELL: And then there's reference in the next paragraph to being immediately in breach of the court orders, et cetera, et cetera.

45 Part of the Prothonotary's case, when one comes to the contravention of the orders, is that - and your Honour would be aware - that for contempt purposes it's not every breach of a court order. It has to be wilful or contumacious, but this is a case far removed from any borderline matter. It's not an inadvertent disclosure. Mr Dowling has quite plainly put forward the very terms of the court order which he accepts - sorry, I
50 withdraw that - puts forward the very terms of the court order before, or in

DAN:CAT

the same context as disclosing material.

5 Now, going to the substance of the article, if I may. So it starts at page 10. He refers, in the second paragraph, to "taping the proceedings on Friday," and then there are references to other matters of interest; bribery and what's called paedophiles in the judiciary, a particular priest, and then at page 11 there's a subheading, "Videos," at about point 8 of the page.

10 HER HONOUR: Yes.

15 KELL: Sorry, your Honour, I will just go back one page, to page 10, at about point 8, which also refers to the video. There is a paragraph starting, under the heading, "In court Friday 3/2/2017," "I was in court for the frivolous defamation case". That's the Jane Doe proceedings that are the subject of suppression of the names. The next paragraph, "The mattered was before Registrar Bradford, and after argument was transferred to the duty judge. I gave Bradford a mouthful, and he said he would take it further," et cetera, et cetera "...who I also named as per the video below". And then at page 11, under the subheading, "Videos," he refers to, and links and puts on this website two videos. The first is a video that was filmed in court on 9 September 2016, and that's not the subject of the contempt charges, but it's what's called "the first video" here. And then, your Honour, there's a second video, which is at page 25 12, at about point 3 or 4.

HER HONOUR: Yes.

30 KELL: And I just need to jump around a little bit in this article, but I won't need to do it for many other documents. It says, "The second video below," which is the square with the blank video for 2:

35 "The second video below was filmed on Friday 3 February 2017. A few minutes before the below video was recorded I asked Bradford to transfer the matter to the duty judge, and gave him a mouthful. He threatened to get the court sheriff and have me removed. The other lawyers there backed off, and waited for the other lawyer, and then approached the bench again. About 9.05 there were about 50"

40 - I think that's "solicitors," or "lawyers and barrister".

HER HONOUR: "Lawyers".

45 KELL: "lawyers, and barrister in the room for the directions hearing," so again, context is, of course, important for contempt.

HER HONOUR: Yes.

50 KELL: And just pausing there. And one matter, and I won't repeat myself later, but in terms of context, of course, there's a far different context between

DAN:CAT

a scandalous and scurrilous attack on judicial officers in a crowded courtroom, with people there than in some remote publication or website, so context is important. And Mr Dowling himself's indicating that there were 50 or so persons there.

5

Where it says "video 2," and it appears that there's a gap, what that is - and it's seen in some of the other material, and Ms Caldwell gives evidence about it - is that that's a screen shot where you click the play button and--

10 HER HONOUR: The video plays.

KELL: --the video plays. At page 11, just going back to the bottom, Mr Dowling also indicates, in the very last sentence that, "I've also published the below videos on YouTube," so including the video of the proceedings
15 before Registrar Bradford, so that's linked in this article and it's also placed on YouTube by Mr Dowling.

And then I hand up to your Honour a working copy of exhibit JC1.

20 HER HONOUR: Thank you.

DEFENDANT: This one here?

KELL: I'm just checking that Mr Dowling's got exhibit JC1, your Honour.
25

Yes, it's just the same.

HER HONOUR: Thank you.

30 KELL: In the same article, at page 12, so after having referred to the video there's an allegation about Registrar Bradford having aided and abetted a named person, and then there's a subheading, "What I said in court on the 3/2/17".

35 HER HONOUR: Yes.

KELL: And then, "As Bradford already knew on what basis I wanted the matter transferred". And then the next paragraph and the paragraph at the bottom
40 are important parts of the Prothonotary's case in terms of disclosing the contents as well as by the video.

So Mr Dowling then proceeds to say:

45 "I also said in court that Justice Clifton Hoeben, a few months ago gave a paedophile priest three months gaol. The only person I know who would give a paedophile priest three months gaol is another paedophile. He's an absolute grub."

Consistent with what your Honour heard on the sound recording.
50

DAN:CAT

HER HONOUR: Yes.

5 KELL: And then there's reference to a response from Registrar Bradford, and then at the bottom again, "What they really don't like is that I humiliated them" - "them" presumably being the registrar and judicial officer - "with the truth in front of 50 odd lawyers and barristers who were in court for the directions hearing".

JEF:CAT

KELL: So that article was published, your Honour.

5 The next step chronologically was that the matter was before Justice Beech-Jones on 8 February 2017. And that's in Ms Caldwell's second affidavit, which is the April 2017 affidavit. So that's the affidavit of Jillian Caldwell affirmed 5 April 2017.

HER HONOUR: Tab 3 of the other volume.

10 KELL: Yes. Your Honour will see that that has annexures rather than an exhibit.

HER HONOUR: Yes.

15 KELL: Which are annexures A through to L. And at annexure F is the - paragraphs 12 and 13 refer to the proceedings before Justice Beech-Jones on 8 February, and his Honour delivers an ex tempore judgment, which is at annexure F.

20 HER HONOUR: At page 24.

25 KELL: Yes, at pages 24 to 31, and that includes the referral under part 55 rule 11(1)(c) which is the genesis of these proceedings. So that gave the authority for these proceedings to be brought, and also the framing of those proceedings. In other words, they were, in terms of order 1, which is on page 24, the proceedings were for contempt of those stated matters.

30 In the same judgment your Honour will see, and it's included for ease of reference, but in paragraph 4 at page 27--

HER HONOUR: Yes.

35 KELL: --his Honour sets out the background to the matter, including the listing of the Jane Doe proceedings in paragraph 3 before the Registrar.

And then at paragraph 4 there's reference to the motions.

40 And then his Honour records - the transcript records that when the motions came on before the Registrar at 9.30am, Mr Dowling made scurrilous and groundless allegations against judicial officers. And then there's reference to the orders being made.

45 And then at paragraph 9, on page 28, there's reference to Mr Dowling responding to the email from the Crown Solicitor. And that's the email that I've taken your Honour to. And then there's reference to an article, and Ms Caldwell having searched the website for the article. And that's the article that your Honour's seen annexed to Ms Caldwell's affidavit.

50 HER HONOUR: Yes.

JEF:CAT

KELL: Reference to the suppression order made by the Court. And then towards the bottom of paragraph 9, despite that, despite the suppression order made, the website also displays an audio-visual recording that Mr Dowling had apparently taken of what had occurred before the Registrar.

5

Leaving aside any question about his conduct in making the recording in the first place, and as I said before, I put that to one side as well for the purpose of these proceedings, this appears to be prima facie a breach of the suppression order. The website also recounted the details of what had occurred before the Registrar.

10

And then there's also reference in paragraph 15 before his Honour makes the referral, and this is at page 30: The power conferred by part 55 rule 11 arises where it's alleged or appears to the Court of its own view that a person is guilty of contempt. The conduct of Mr Dowling before the Registrar, as revealed by the transcript certainly answers that test, his Honour took the view.

15

Further, the fact that in full knowledge of the existence of a suppression order, he nevertheless appears to have published on his website the very material that was the subject of the order, again, appears to more than satisfy the requirements of the rules.

20

So that judgment was delivered, that's 8 February.

25

Then there are some further short chronological matters to deal with.

Following that order, in the same affidavit of Ms Caldwell, 5 April, at paragraphs 18 to 19 - does your Honour have those?

30

HER HONOUR: I do.

KELL: Page 4. And I'll just let your Honour read paragraphs 18 and 19 which deal with the Facebook post.

35

HER HONOUR: The Facebook post, yes.

Yes, I've read those.

KELL: And that includes a link to the article. And that Facebook post is at annexures J and K, which is page 56 - if your Honour has that?

40

HER HONOUR: Yes, I've got 56.

KELL: Yes, and that's the Facebook post there. And then there are various comments which are made by readers.

45

Now the evidence is that notwithstanding being on notice of the orders made, Mr Dowling did not take steps to take down the article from his website or the links to the video recording of the mention on 3 February.

50

JEF:CAT

And there are two parts of the evidence which indicate that, your Honour. The first is in the Jillian Caldwell affidavit of 5 April, which your Honour just had, at paragraphs 15 to 17.

5 HER HONOUR: Yes.

KELL: Ms Caldwell does searches on 5 April 2017 which indicate that the article is still there, the audio recordings are still there, notwithstanding the Court's orders, and him having notice of them.

10

Then the affidavit which was filed in Court from Ms Claudia Pendlebury, which is the affidavit of 28 April 2017.

HER HONOUR: Yes.

15

KELL: So it was an updating affidavit done last week, but in time to serve it on Mr Dowling before the hearing. And that affidavit shows at paragraph 4 that as at 27 April, so as at last week, the article was still on the website.

20

At paragraph 5 that the article still has links, still includes the links to the audio-visual recording of the mention on 3 February.

And at paragraphs 7 to 8 that the Facebook post still has the links to the article.

25

And, indeed, I understand that it's common ground, subject to anything that Mr Dowling might say, that the article and the audio recordings, at least as of last night, remain on the website.

30 HER HONOUR: Yes.

KELL: And that's the chronology of events, your Honour, that arises from those materials. And that's the evidence of the Crown.

35

Could I hand up, as I said I would do, the exhibit to the Moore affidavit, which is the sound recording which your Honour had heard - the disk of the sound recording.

HER HONOUR: Yes, thank you. (Handed up.)

40

DEFENDANT: I don't think I have that, your Honour.

KELL: There's only--

45

HER HONOUR: It's the disk that we just heard.

KELL: It's the disk we just heard, and there's just one that the Court's provided or that the Reporting Services people have provided. I--

50

HER HONOUR: So it's what we've just heard, Mr Dowling.

JEF:CAT

DEFENDANT: Yes, but I don't actually have a copy of it. Can I get a copy or? Because there's a bit at the beginning which I don't have at all because - the bit at the beginning when I approached Registrar Bradford, I don't have that.

5

HER HONOUR: Well I don't know. I don't know whether we have facilities to copy disks, but it's what we heard in Court, so you've heard it, as I did.

DEFENDANT: Yes.

10

KELL: So, your Honour, subject to submissions that I've made, that's the evidence and that's an outline and hopefully an understanding of the evidence chronologically.

15

I do indicate that there is a particulars document at tab 2, which sets out - which was served on Mr Dowling back on 6 April, and sets out how the Prothonotary puts the case, the summons itself not containing particulars and the summons itself not being subject to a non-publication order or a suppression order.

20

HER HONOUR: Yes.

KELL: And I'll deal with the submissions, if I may, just in due course, but that's the material on the case for the Crown.

25

HER HONOUR: All right, thank you. What we might do at this point is - it's approaching the usual time for morning tea - I might take the morning tea now and then we'll proceed after morning tea. I'll take twenty minutes.

30

Thank you, the Court will adjourn.

SHORT ADJOURNMENT

JEF:CAT

HER HONOUR: Yes.

5 KELL: Your Honour, just to deal with two administrative matters quickly, the disk that I handed up of the sound recording was the disk which is referred to in the affidavit of Wendy Moore sworn 4 May 2017, which I've filed in Court the original and read that affidavit.

HER HONOUR: Yes.

10 KELL: It's referred to there as "exhibit WM1". Does your Honour wish to identify it as a separate exhibit perhaps?

HER HONOUR: Yes, we'll give it that exhibit I think, WM1.

15 KELL: All right, thank you.

EXHIBIT #WM1 DISK OF SOUND RECORDING REFERRED TO IN
AFFIDAVIT OF WENDY MOORE SWORN 04/05/17 TENDERED, ADMITTED
WITHOUT OBJECTION

20 KELL: And the aide memoire transcript which I handed up, I think your Honour was minded to include that as part of the same exhibit.

HER HONOUR: Yes, just noting it as an aide memoire.

25 KELL: Thank you, your Honour. And then the Judge's working folder of documents I handed up as well. It had a cover page with notes of Court orders that were made. Did your Honour wish to mark the folder in any way? I hadn't asked whether your Honour wanted to mark that as a separate exhibit or an
30 MFI.

HER HONOUR: I think we'll mark it, perhaps if we just mark it exhibit A, and then internally it would be by reference to the tab number.

35 KELL: Thank you.

HER HONOUR: So 8.1, 8.2 and so forth.

40 KELL: And just noting that there was an error with the contents of exhibit JC1 at tab 4.

HER HONOUR: JC1, yes.

45 KELL: And that I'd separately tendered exhibit JC1, which was already in the Court materials. But subject to that correction, the Judge's working folder is correct.

EXHIBIT #A JUDGE'S FOLDER OF WORKING DOCUMENTS TENDERED,
ADMITTED WITHOUT OBJECTION

50

JEF:CAT

HER HONOUR: Yes. Well thank you, Mr Crown.

KELL: Thank you, your Honour.

5 HER HONOUR: All right, now Mr Dowling, you understand that you have been brought before the Court by summons?

DEFENDANT: Yes.

10 HER HONOUR: For a declaration in relation to your guilt of three charges of contempt. And you understand the summons sets out each of those occasions, that is, that the Court is being asked for a declaration that you're guilty of contempt of Court in that on 3 February 2017 in open Court before a Registrar of the Court you made allegations as detailed in the particulars
15 document about a Registrar and a Judge of this Court. That's the first incident against you.

The Court is also being asked to declare that you are guilty of contempt in that on and from 5 February of this year, in contravention of an order made by his
20 Honour Justice Beech-Jones on 3 February this year, you wilfully disclosed the contents of a particular document, exhibit 1 in the proceedings before his Honour, to persons other than parties without the leave of the Court. That's the second incident.

25 The third incident that the Court is asked to declare you guilty of contempt in that on and from 5 February, in contravention of an order made by his Honour Justice Beech-Jones on 3 February 2017, you wilfully published the contents of the allegations made before the Registrar on 3 February 2017, you wilfully published an allegation that a Registrar and a Judge of this Court were the
30 subject of the allegations and that the allegations were made.

So those are the proceedings commenced against you by summons in relation to which the Court is asked to declare you guilty.

35 What did you wish to say in your defence?

DEFENDANT: Not guilty.

40 HER HONOUR: All right. What defence do you wish to make? Do you wish to call any evidence or--

DEFENDANT: I'd like to cross-examine Richard Keegan.

45 HER HONOUR: All right. Well there's no open-ended right to cross-examine a witness in these sorts of proceedings, Mr Dowling.

DEFENDANT: Even though there's no open-ended right, that's the third time Richard Keegan has tendered evidence in contempt proceedings against me. That in itself I think scandalises the Court. It certainly scandalises Richard
50 Keegan, his credibility. You know, this is the third time, not the first or second,

JEF:CAT

it's the third time he's written an affidavit in contempt proceedings against me.

HER HONOUR: All right. So do I take it from what you've said, there are other proceedings against you for contempt?

5

DEFENDANT: There was a previous one and there's another one still afoot.

HER HONOUR: All right. What happened to the previous one?

10 DEFENDANT: Back in 2014, found guilty, fined \$2,000 for breaching a super-injunction. The super-injunction was so dodgy it only lasted two days. Justice Harrison lifted it himself.

HER HONOUR: Right.

15

DEFENDANT: It should never have been issued. But the Court didn't charge me, Kerry Stokes did.

20 HER HONOUR: All right. So you've been dealt with once for contempt and you say there's another one outstanding?

DEFENDANT: Well, but I haven't finished that one. That one I was fined \$2,000, but the New South Wales Justice Department didn't enforce the fine.

25 I wrote to them and I explained the situation, how scandalous it was, the super-injunction should never have been issued in the first place, and they waived the \$2,000 fine.

30 In the second one, and that's where it becomes problematic for yourself if you were to find me guilty of breaching the suppression order, which I'm going to argue you shouldn't, obviously, in another matter, I'll explain that to you, it's Jane Doe 1 and Jane Doe 2, breaching a suppression order there as well. Now, found guilty by Justice Ian Harrison. A consistent pattern.

35 The problem there is that I've asked for a review of the suppression orders. They shouldn't have been issued, again, in the first place. And that's currently a reserved judgment with Justice Lucy McCallum. Now--

40 HER HONOUR: Sorry, when you say "reserved judgment", what have--

DEFENDANT: She's heard argument for review of the special orders.

HER HONOUR: I see.

45 DEFENDANT: And she's reserved. The thing is there I think we've been waiting almost two months. There's a number of proceedings against me with Kerry Stokes or his associated companies for defamation. He can go into Court and get suppression orders in a few hours, but if you try to get them reviewed you're waiting two months for a reserved judgment. You know, that scandalises the Court more than anything I can do or say. The average

50

JEF:CAT

person of the public--

HER HONOUR: But do you understand, Mr Dowling, it's not a matter of--

5 DEFENDANT: Yes.

HER HONOUR: --competing scandalisations, if I can put it that way?

10 DEFENDANT: Yes.

HER HONOUR: It's not a question of being able to say, well, someone else has done something that scandalises the Court.

15 DEFENDANT: Yes.

HER HONOUR: It's a question of what you wish to do, to advance, in relation to proceedings against you.

20 DEFENDANT: No, no, that was just part of my overall argument. I'm going to get into an argument about the suppression orders in a minute.

HER HONOUR: All right. That's the suppression orders in relation to Jane Doe 1 and 2, do you mean?

25 DEFENDANT: No, because that's being dealt with by Justice Lucy McCallum.

HER HONOUR: All right.

30 DEFENDANT: I'm just making a point. We've got companies associated with Kerry Stokes can get suppression orders in a matter of hours, but to get them reviewed it takes months, or - that's why I had this, I've only just seen this judgment by Justice Adamson. At the back of it at paragraph 11 she talks about me asking for a review, and she refuses it. She could have set it down for the following week for a review. That's just the standard pattern.

35 But I don't want to head there. What I'd like to do is do this video first, because we had technical issues--

40 HER HONOUR: All right.

DEFENDANT: --and I'm actually going to use my iPad, because the laptop's not working. So maybe we're better off trying to get this out of the road first in case there's other issues with it.

45 HER HONOUR: All right.

DEFENDANT: I've tested it, so it should be fine.

50 HER HONOUR: So this is the evidence that you wish--

JEF:CAT

DEFENDANT: Yep, this is the evidence.

HER HONOUR: --to tender--

5 DEFENDANT: Yep.

HER HONOUR: --in your defence?

10 DEFENDANT: Yep.

HER HONOUR: All right.

15 DEFENDANT: So on my website in the article "Chief Justice Bathurst has
journalist charged with contempt for accusing him of corruption", I want to
address that. That's the article on 5 February.

20 Now in hindsight that heading's wrong. And I say "in hindsight" because the
original orders for suppression orders, or orders by Justice Beech-Jones, said
"Judges", plural, and there were only two Judges named, so I naturally
assumed that there were going to be charges against me in relation to what I
said in relation to two Judges, one of which was Chief Justice Bathurst, he's
the senior Judge, okay, it's his matter. Now, since the charges have been laid
there's no charges in relation to Chief Justice Bathurst, so in hindsight maybe I
25 should have wrote "Justice Hoeben" or something. So that title's wrong. I just
wanted to address that, why it's wrong.

It's not - I'm just trying to bring up an article to play the video, your Honour.

30 KELL: Could I just briefly mention one matter?

HER HONOUR: Yes.

35 KELL: I'm not sure if there are people in the Court that weren't here earlier, but
that your Honour has made non-publication orders for the proceedings today,
in case anyone new is present.

HER HONOUR: I don't think there is anyone new, Mr Crown.

40 KELL: Thank you, your Honour.

HER HONOUR: But yes, there is a non-publication order.

DEFENDANT: I wonder if this connection is on? It was connected before.

45 HER HONOUR: So is it the audio of this you're wanting me to hear or--

DEFENDANT: Yes, your Honour.

50 HER HONOUR: Just the audio?

JEF:CAT

DEFENDANT: Yep.

HER HONOUR: All right, that's fine. It's just that I can't see it, so--

5 DEFENDANT: I'll explain why I - my learned friend said we're not here dealing
with it. The reason I taped in February and taped in September last year was
because of previous complaints I made of assault against Rebel Kenna and a
Court Sheriff. I was there in Court for a directions hearing, and I wasn't happy
10 with Rebel Kenna because the bias that's been going on for the last three
years is an absolute joke, but the fact is I run an actual corruption website, so
it's contempt of that site, I suppose. But the Court Sheriff came right up close
to me, about 30 centimetres away, spitting on me, I could smell his bad breath,
threatening me, telling me to shut my mouth and what to do. Well, it's not for a
Court Sheriff to do that. And he did that with Justice Rebel - oh, no - Registrar
15 Rebel Kenna's approval. It was her Court. She's in charge. And he's there
threatening me.

And I read on the Judicial Commission of New South Wales website that that's
assault. So I made a complaint of assault to the Court, and they swept it under
20 the carpet, as you'd expect, or as I expect, anyhow.

So that's the purpose of me taping those proceedings, for protection, because I
was getting threatened while I'm at the Bar table trying to represent myself.

25 If Rebel Kenna had an issue with me, she could have told me to leave the
Court or whatever. It's not for a Court Sheriff to threaten anyone while they're
at the Bar table.

So I just wanted to make that point.

30 But it looks like the audio's up - I mean the connection's up.

Now this is from September last year. Once again it's myself in September,
9/9/16.

35 Now hopefully the sound will be okay for everyone. If not, we might have to--

(Audio played.)

40 The point about that, your Honour, that's from 9/9/16. A fair-minded person
who was listening to that would ask: one, why didn't Registrar Bradford stand
down in the first place; two, what was he doing hearing the matter in February
this year?

45 You can't sit there and just push those allegations aside in September last
year, and then in February: "Oh, I'm insulted now, I'll have to charge
Mr Dowling with contempt." No.

50 So the allegations have been before the Court since then, your Honour.

JEF:CAT

HER HONOUR: All right.

DEFENDANT: I've got - that was the video, and I'll just pack that up, it's worth a few dollars.

5

HER HONOUR: Is there an audio? If you're tendering that recording, Mr Dowling, ordinarily there would be a disk or a USB or something.

DEFENDANT: I have got a USB but it's got a number of things on it. I'm happy to have people download it. It's on the website at the moment.

10

HER HONOUR: All right.

DEFENDANT: Can I somehow--

15

HER HONOUR: I don't know.

DEFENDANT: I can't actually copy on that, but they could copy on that. I've probably got to get a spare USB or something, or how about I copy that to your computer and--

20

KELL: I might just indicate, your Honour, that the recording of 9 September is in evidence, for completeness, in the Prothonotary's evidence, and that's at tab G of exhibit JC1.

25

HER HONOUR: All right.

KELL: So it is before your Honour.

30

HER HONOUR: Excellent, thank you.

KELL: And what Mr Dowling has played or sought to play is in evidence.

HER HONOUR: I see. I must say I understood you to mean that what was in evidence was Mr Dowling's recording of the Registrar Bradford incident of 3 February.

35

KELL: Both are in evidence.

40

HER HONOUR: Both, excellent. All right, thank you.

KELL: And it's only evidence because it's part of what appeared on the website and we have put both recordings there.

45

HER HONOUR: Yes, all right. Thank you, Mr Crown.

KELL: But it's not the subject of a charge--

HER HONOUR: No.

50

JEF:CAT

KELL: --in these proceedings.

HER HONOUR: All right, so we don't need to worry about the USB stick, Mr Dowling.

5

DEFENDANT: I want to hand up - I've got a folder. I've just got to try and tidy this up for a second.

10 I'll hand up here, your Honour - I just want to quickly have a look. This is for you. This is for your Honour. That should be right. Relevant documents, submissions and precedents, your Honour. (Handed up.)

HER HONOUR: All right, thank you.

15 DEFENDANT: And I'm just going to - what I think would be beneficial, if I quickly flick through it just explaining what they are, because I don't have the resources of the prosecutor there, so it's not as well indexed. If you want to leave the book aside for a minute.

20 HER HONOUR: Yes.

DEFENDANT: The first one, or document, is Justice Peter McClellan, he's heading up the Royal Commission into Child Sexual Abuse.

25 HER HONOUR: Yes.

DEFENDANT: That's a speech he gave on 17 March: "Seeking justice for victims". Number 2 is part two of that speech on 17 April, Justice Peter McClellan: "Seeking justice for victims".

30

The next page is an index of articles that I've printed out. There's five of them. Child Abuse Royal Commission, Justice Peter McClellan outlines failures of Judges and prosecutors. Pedophile priest gets three months' gaol for raping boys by New South Wales Supreme Court Justice Hoeben. Chief Justice Bathurst has journalist charged with contempt for accusing him of corruption. I've already addressed why that title's not accurate. Free speech and political speech is being suppressed in Australia by the New South Wales Supreme Court. Judicial corruption complaint made to the Federal Police, Crime Commissioner and others.

40

The next page is 30-odd pages, or 20-odd pages, of those articles.

The next one over is an article by itself: Mafia bribe New South Wales Judges 2.2 million. ICAC Deputy Commissioner Hamilton receives formal complaint.

45

The next one is: ICAC investigates complaints against Channel 7's Kerry Stokes.

50 The next one, I'll deal with it now, it's just a list of ex parte hearings and suppression orders that have been issued against me over the last

JEF:CAT

three years.

5 I run a judicial corruption website. When you're investigating judicial
corruption, one of the easiest things - well, not one of the easiest things -
but a real tell-tale sign is when you see continual abuse of processes and
procedures - we'll get into my book in a minute - when you see that continual
abuse of processes and procedures you know you've got corruption on your
hands. If it happens once or twice, well, you might be able to justify it. But
when it's just a continuation, you know you've got massive problems.

10

So in the last three years in the matters of Kerry Stokes versus me, and his
associated companies, 14 April 2014, Monday, Justice Ian Harrison, ex parte,
super-injunction, only lasted two days. And these are all for the benefit of
Kerry Stokes and his associated companies.

15

6 May 2014, Tuesday, Justice Lucy McCallum, ex parte hearing to abridge a
notice of motion. That's scandalous.

20 17 February 2015, Tuesday, Acting Justice Robert Hulme. Ex parte hearing.
From memory he issued a suppression order as well, or non-publication
orders.

25 5 June 2015, Justice David Davies, ex parte, suppression orders issued for
Ryan Stokes, who wasn't even a party in the proceedings at the time. So
someone's gone into Court, got orders issued for their benefit, but they weren't
even a party to the proceedings. That's legendary.

30 7 October 2016, Justice Peter Hall, ex parte, super- injunction issued. He's
now about to be appointed head of the Crime Commission, New South Wales
Crime Commission. I just did an article: Corrupt Judge, corrupt former Judge,
Peter Hall. He's not going to do anything. He won't be suing me for
defamation any time soon. I can give you the mail there.

35 Now, 10 October 2016, Justice David Davies, ex parte, suppression order
issued.

21 December 2016, Justice Stephen Campbell, ex parte, suppression order
issued.

40 23 December, Justice Stephen Campbell, ex parte, suppression order
continued.

Now that's in the Jane Doe, Jane Doe 2 versus Shane Dowling.

45 It was back in I think the beginning of March that Justice McCallum has heard
argument to lift those suppression orders. They have to be lifted because it's
just scandalous. Under the Suppression Order Act there has to be an
exceptional circumstance. And I just pandered away at the hearing: Your
Honour, they haven't even tendered an exceptional circumstance, because
50 there is none. It has to be - they didn't even try and argue there was one,

JEF:CAT

because there was none.

5 So here we've got somebody who can go into Court and get suppression orders in five minutes. And it takes you two months and you still haven't got a judgment. And I know why. Because it has to be lifted. And the lady's alleged to have a sexual relationship with Tim Worner, the CEO of Channel 7. And we know, once it's lifted, he's gone. And so there's no doubt in my mind why Justice Lucy McCallum's dragging her feet.

10 21 February 2016, Justice Walton, ex parte, suppression orders issued. What's that one called? There's so many, I forget what that one was for. But that's the point, your Honour. You've got suppression orders coming out left, right and centre.

15 Now let's go to the suppression orders; and I try and review them, and I'm getting told: No, you can't. Or Justice Adamson: Oh, I'm not going to deal with it now. Well, set it down. No, I can't do that. Well, set it down for the duty judge. No, no.

20 In relation to the suppression orders, I'm just going to read this first paragraph, and I'm sure my learned friend has. Charges against me for contempt of Court and breach of suppression orders are in effect invalid. I put "null and void" there, but it should say "invalid". Because what I said was clearly political communication which as per the High Court of Australia renders a contempt of
25 suppression laws invalid as per Lange v ABC, High Court of Australia, 1997, and Coleman v Power, High Court of Australia, 2004.

30 There's a recent judgment, I haven't - I haven't - I actually haven't finished going through my documents. So how about we get back to that, sorry.

After that judicial bribery ex parte hearing suppression order page, the next one is an email I sent in 2015 to all the Judges of this Court. The next one over is Friday, 19 August 2016, which is before that video was shot.

35 HER HONOUR: Yes.

40 DEFENDANT: To Registrar Bradford. I've also sent it to ICAC, you can see there, the New South Wales Attorney General. What that's saying? It's all political communication. The political communication that's been going on between myself and this Court has been going on for at least three years.

45 The next - last few pages are just for your Honour's benefit, and I might read a part of it. It's Lange v ABC. I've printed out the Wikipedia one, because that's a quick summary. The last one is Lange v ABC. It's about a 30-page summary. It's quite a good one. And the second-last one, I've printed out a few key elements of it, that last summary. I haven't printed out the whole thing because I think there's 130 or more pages or something like that.

50 But we'll get back to the beginning now.

JEF:CAT

Now, the laws that are also being used to prosecute the charges against me and the laws being used to suppress and conceal what is really--

Sorry, I do that all the time.

5

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 is - which in fact - there's a typo there - 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.

10

15

I'll just stick to that for a moment, your Honour.

AXC:CAT

DEFENDANT: I've got a copy of the Court Suppression and Non-Publication Orders Act 2010. In section 10 - I haven't got a copy.

HER HONOUR: I can get it up on an iPad.

5

DEFENDANT: Section 10, your Honour.

HER HONOUR: Go ahead.

10 DEFENDANT: If you read section 10, it says "Interim orders: If an application is made to a court for a suppression order or non-publication order, the Court may, without determining the merits of the application make the order... urgency." There's two points there. My learned friend over here at the end, I don't know her name, when it was before Justice Adamson, she said, "We
15 want a suppression order as per section 10. We don't need a reason." Nowhere does it say you don't need a reason. You just don't have to determine the case at that point. She has deliberately and knowingly misled the Court.

20 Justice Adamson has issued the orders. If you go to section 2, "If the order is made... urgency." I said, "Let's set it down for next week." You can see in the judgment, she just ignored me. That's the same with Justice Beech-Jones. You'll see in the evidence they say, "We rang Mr Dowling on that day" when they had the original ex parte hearing at 2 o'clock. So they try and imply I had
25 plenty of notice. I was at work and they didn't say, "We're going to be in court at 3 o'clock" or, "We're going to court this afternoon." That's it. Voice mail message. I don't believe I spoke to her that day, I could have done, but I don't think so. There was no invitation to come. That's what implied in the evidence.

30

The next week it is set down on the 8th, from memory. I could be wrong. Set down that week for hearing. I emailed and said, "I can't be there that date. How about we do the Friday? I'm going to be in court anyhow before the defamation list judge that day." I believe for a directions hearing or whatever.
35 They said, "No. Tuesday. Can't change." They've given my bugger all notice and once again, it was an ex parte hearing. Of course, it's an ex parte hearing if you're doing it like that. I've played these games before. I get them all the time.

40 In one of those - I'll give you an example, you'll see Justice Peter Hall at 8 o'clock on a Friday afternoon, 7 October, I get an email in my in-box saying there's a suppression order on a matter that they've instituted, "I actually can't tell you that matter because there's a super injunction on that." That's how scandalous it is. It's a super-injunction. There's no way in the world there
45 should be a super injunction on me. That same company is suing someone else and there's no super injunction on there. I got that at 8 o'clock on a Friday night saying, "We've got this matter, super injunction is set down for 2 o'clock on the Monday." You've got to be kidding. As if I can show up at 2 o'clock on the Monday. That's just a joke. They know I'm working. They do it
50 deliberately knowing I can't show up. That's what they've done here in

AXC:CAT

proceedings against me.

5 HER HONOUR: Why don't we try and formalise what you're tendering as
evidence. You're into submissions now. If we go to the blue folder,
your submissions are the first tab, but the balance is what you're relying upon
as evidence. Why don't we do it this way, by tabs. I'll formally note things
unless you've got any objection, Mr Crown. The document in the second
bundle we'll call exhibit SD1, that is, "Sydney NSW, Friday 17 March 2017,
The Hon. Justice Peter McClellan AM" is how it starts

10 EXHIBIT #SD1 DOCUMENT HEADED "THE HON. JUSTICE PETER
MCCLELLAN" PART 1, TENDERED, ADMITTED WITHOUT OBJECTION

15 EXHIBIT #SD2 DOCUMENT HEADED "THE HON. JUSTICE PETER
MCCLELLAN" PART 2, TENDERED, ADMITTED WITHOUT OBJECTION

EXHIBIT #SD3 ARTICLES BEHIND THE NOTICE INDEX, PAGE 1,
TENDERED, ADMITTED WITHOUT OBJECTION

20 EXHIBIT #SD4 ARTICLES BEHIND THE NOTICE INDEX, PAGE 5,
TENDERED, ADMITTED WITHOUT OBJECTION

EXHIBIT #SD5 ARTICLES BEHIND THE NOTICE INDEX, PAGE 10,
TENDERED, ADMITTED WITHOUT OBJECTION

25 EXHIBIT #SD6 ARTICLES BEHIND THE NOTICE INDEX, PAGE 15,
TENDERED, ADMITTED WITHOUT OBJECTION

30 EXHIBIT #SD7 ARTICLES BEHIND THE NOTICE INDEX, PAGE 19,
TENDERED, ADMITTED WITHOUT OBJECTION

EXHIBIT #SD8 DOCUMENT HEADED "MAFIA BRIBE" TENDERED,
ADMITTED WITHOUT OBJECTION

35 EXHIBIT #SD9 DOCUMENT HEADED "ICAC INVESTIGATES 27/10/15"
TENDERED, ADMITTED WITHOUT OBJECTION

40 HER HONOUR: The next document is not really evidence, but headed
"Judicial bribery for ex parte hearing". I'll simply consider that as part of
submissions.

EXHIBIT #SD10 EMAIL OF 26 NOVEMBER AT 11.21 TENDERED,
ADMITTED WITHOUT OBJECTION

45 EXHIBIT #SD11 EMAIL OF 19 AUGUST AT 11.22 TENDERED, ADMITTED
WITHOUT OBJECTION

50 HER HONOUR: The document "Lange v Australian Broadcasting
Corporation", I'll treat that as representative of the judgment and indicate that
I'll go to judgment. I won't formally mark that or the following document "Lange

AXC:CAT

v ABC", that being more properly submissions. I think the same applies to the document "Lange v ABC: The High Court rethinks the Constitutionalisation of Defamation Law", I think that's more properly perhaps a supplement to submissions. What about the book, Mr Dowling, did you want to tender that?

5

DEFENDANT: Yes, your Honour. I'll address the book now.

EXHIBIT #SD12 BOOK TENDERED, ADMITTED WITHOUT OBJECTION

10

KELL: Your Honour, could I raise one matter?

HER HONOUR: Yes.

15

KELL: First of all, I've just received these in court at the same time as your Honour has received them. They largely appear to be articles that are authored by Mr Dowling, as I understand it. They seem to be in the form really of material supporting his submissions or in the form of submissions. I have a general objection as to relevance, but I accept that your Honour, I can deal with that in submissions, but I do have that objection. I'd also ask that your Honour, for example, in the bundle that commences exhibit SD3, it contains allegations made against particular judges, for example, if your Honour jumps to page 8, by way of example.

20

HER HONOUR: Yes.

25

KELL: I wonder if your Honour could make a limiting direction to the effect that - I'm happy to receive them, I can see that they may be relevant to the way that Mr Dowling wants to put his defence, but if they are treated not as being evidence of the facts or the matters asserted, but rather - not as evidence of the contents, but evidence of the fact that Mr Dowling has published articles of this nature, I can see they may be relevant. But I do note those matters that are raised.

30

HER HONOUR: I understand the point, and I don't have any difficulty with giving that limiting direction. I must say, I wasn't considering them to be evidence of the facts asserted, but simply, that they were material raised by the defendant.

35

DEFENDANT: There's an email within that. I haven't gone through and looked at it from that viewpoint. I just printed it out. There's an email within that article which is a section my learned friend was pointing to, which I do regard as evidence.

40

HER HONOUR: That's all right, I've received them into evidence.

45

DEFENDANT: How about we deal with the book? I run a judicial corruption web site, I have since 2011. This book was published in 2009. I had another web site then, but it was--

50

HER HONOUR: This seems to be self-published, is it?

AXC:CAT

DEFENDANT: Yes, your Honour. You can buy it on Amazon if you want to buy another copy.

5 HER HONOUR: This one will do me.

DEFENDANT: The point I want to make about this, dealing with the bribery first, once you understand bribery against any Government official, having in mind Lange v ABC, it's protected. Any law that tries to infringe on your right to political communication in that context is invalid. So your contempt proceedings are invalid because I accused Registrar Bradford of bribery. There's no dispute. I did it in September 2016 in the video. I said, "I've written on my web site that you are a known bribe taker and suspected paedophile." I said that in September 2016. I said it again in February.

15 That's the key point to the email to Registrar Bradford in the SD11. That's Friday, 19 August 2016, "Dear Registrar Christopher Bradford" - sent to ICAC, Attorney General, Supreme Court:

20 "I will be publishing a story on the weekend regarding your bribe taking and corrupt and criminal conduct. An article currently has the working title, "Kerry Stokes and Channel Seven bribes Chief Justice Bathurst, Justice Harrison, Registrar Bradford: Can you confirm your bribe taking from Kerry Stokes and corrupt and criminal
25 conduct?"

I've put him on notice I'm going to be writing an article, I've put him on notice of the content. That falls within - that's why they can't sue me for defamation for the articles I've written. They've never tried, they know it would fail the Lange test. These are Government officials I'm accusing of bribery. I've put them on notice I'm going to be writing an article, they don't refute it, they don't ask for a right of reply, I publish the articles. That is protected by Lange v ABC. It's almost a perfect fit for Coleman v Power. A lot of the elements. So once that was engaged, the whole conversation is protected as political speech. We'll
35 deal with paedophilia in a minute. Let's focus on the bribery.

Once 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. They know it. They know what they are doing. This is a backdoor attempt to get me. I don't know who was there when it was before Justice Beech-Jones, they did send me part of the transcript or it might have been the whole of the transcript, but I notice the person who was arguing that day said, "Mr Dowling uses the sanctity of the Court to defame these people. He wouldn't say it outside." As you can see I've been saying it outside for years. They are using the sanctity of the Court where they are trying to do me over. They won't sue me for defamation.

One argument could be - I'm not going to push that too hard because they are not here to defend themselves - but it could be an admission that it's true. Their argument would probably be, and let's give them the benefit of the doubt,

50

AXC:CAT

5 they can't sue me because of Lange. Even if it's untrue in Lange v ABC, as long as that litigant believes it's true, I suppose the defendant, believes it's true, it's covered. That's in relation to defamation. I don't believe in this sort of scenario I'd need to even prove that. The book on the front cover, "Justice Moore, Federal Court of Australia Takes Bribes". You're not going to read the book - you can read the book if you flick through it.

HER HONOUR: If you don't want me to read it, what are you tendering it for?

10 DEFENDANT: You can read the book, not now, I mean. You'll see a whole heap of pictures of me holding signs on page 171, "Justice Moore Takes Bribes" taken around Sydney. I emailed them into him, got into court, he said, "I don't read your emails." I asked him did, "You read my emails, Justice Moore?" He said, "I don't read your emails Mr Dowling." His associate did
15 because I got the reader receipt. I needed to file a Notice of Motion for something, so I printed out all the pictures and put it in as part of the Notice of Motion, the affidavit.

20 HER HONOUR: What do you say is the relevance of all of this?

DEFENDANT: I write about judicial corruption. I have a true belief that judicial officers take bribes, that's my state of mind.

25 HER HONOUR: Is your true belief founded on any sort of evidence that you can refer to the police?

30 DEFENDANT: As you can see, I have made complaints to ICAC. That's one of the documents. I haven't printed out everything. If you go to my web site there's numerous complaints.

HER HONOUR: So you've referred any information you have to investigative authorities, but no-one has been charged as a consequence of the information you submitted, is that right?

35 DEFENDANT: No. Let's have a look at the scenario. If you go to the authorities, they bounce it around between each other. No-one wants to go after a judge. You go to ICAC - I did an article, Megan Latham, she was a judge, she wasn't going to go after judicial corruption. She is going after her own industry, she is back here now at the Supreme Court. Peter Hall, he is
40 going to become the new Commissioner. Is he going to go after judicial corruption? No way. I've accused him of being corrupt. If you have a look at my web site, that's the underlying theme. We don't have a national body for investigating judicial officers. The State ones, there's only a couple. There's one in New South Wales and I think new bodies in Victoria have the power to
45 investigate judges, but they'll never go near them. No-one is above accountability.

50 That's what I do. That's what my web site does. People might not like it, might not agree with it, but it's protected. Not everything is protected, they can sue me for defamation if they believe they've been defamed. I'm not above the

AXC:CAT

law. But no-one is suing me except for Kerry Stokes. That's no big issue, he has sued pretty well everyone. He has sued 24 companies in the infamous C7 matter. Most of them major media companies. I think we got off track there a bit.

5

HER HONOUR: What further did you want to say?

DEFENDANT: Quite a bit, your Honour. That was in relation to the book.

10

KELL: Sorry to interrupt. Just on the book, exhibit SD12, could I ask for the same limiting order that applies in respect of the other article exhibits, that is to say, it's not tendered for the truth of matters that are referred to.

15

HER HONOUR: No, as I understand it, the purpose is simply to show that Mr Dowling has been making these claims for some time.

20

DEFENDANT: It doesn't matter whether someone else believes it or not, it's whether I believe it. That's in relation to defamation matters. In relation to this type of matter, I don't think I need to show I truly believe it. I just need to show it is political communication and it clearly is, when you look at Lange. That's basically what Lange was accused of.

25

HER HONOUR: Can I try and understand your argument. You say that in relation to the two charges that relate to breaches of court orders, you say the orders were illegitimate to start with, therefore, you can't be in contempt for breaching illegitimate and invalid orders?

DEFENDANT: Yes, your Honour, like *Coleman v Power*.

30

HER HONOUR: In relation to the allegations that were made by you in court on 3 February 2017, you would say that you make those allegations believing them to be true, and you are entitled to make them, and such conduct is not capable of constituting contempt?

35

DEFENDANT: Exactly right, your Honour. I'm entitled to make them because it's political communication, that I've been communicating with Registrar Bradford and with the Court for a number of years.

40

HER HONOUR: I understand your defence.

DEFENDANT: That's in relation to - how about we deal with bribery in full at this point, and then we'll get on to the paedophilia. If we go to the article "Mafia Bribe New South Wales Judges 2.2 million: ICAC Deputy Commissioner Hamilton receives formal complaints."

45

HER HONOUR: Yes, SD8.

50

DEFENDANT: This is one article about making a complaint. I think as part of those articles there's another one making complaint to the Federal Police. The point about this is number one, it shows me making complaints about judicial

5 officers. I named judicial officers in here. But I'm not the only one making the
accusations that judges take bribes. That accusation of New South Wales
judges taking a bribe of 2.2 million was made by Fairfax Media and the ABC
'Four Corners' in 2015. They came about that in the story they did on the
10 Liberal Party. No-one is suing them because it's political communication.
Justice David Davies even confirmed \$2.2 million bribe. I was in court and I
raised it with him and he said, "That happened 30 or 40 years ago", and I said
"No it didn't. One of the judges just recently retired", and he didn't say
anything after that. So I did an article on it, "Justice David Davies confirms
15 \$2.2 million bribe." He is the only Government official of any type that I know
has even spoken about it. None of the politicians. No-one will go near it and
they should do, because that undermines public confidence, a thousand times
more than anything I can do or say.

20 The reason I had the next one is "ICAC Investigates Complaint Against Kerry
Stokes" was two reasons; it names judges. His complaint, if you go to the
second page, it will name Justice Ian Harrison, ex parte hearing; Justice Lucy
McCallum, ex parte hearing; Acting Justice Robert Hulme - I'd better be
careful--

25 HER HONOUR: Acting Justice Hulme you've referred to.

DEFENDANT: Robert Hulme ex parte hearing. Even the corrupt Justice
Clifton Hoeben only took a week. I've accused him of corruption back on
27/10/2015. Obviously that list has got a lot longer since then because there
have been a lot more ex parte hearings, a lot more suppression orders. One
thing you will find that it consistent is they don't give reasons. That's why in
Victoria, they are currently reviewing suppression orders because there's been
an outcry there because the judges are not giving reasons, they are dishing
30 them out. If they dish them out and not giving reasons, one thing they are
going to think is money is changing hands. I have no doubt money is changing
hands.

35 Kerry Stokes goes in the Court and gets them like that. Certainly no
exceptional reason as per the Act requires. You can see on the third page I
get a letter from ICAC saying, "Outline a bit further." What did Kerry Stokes do
in relation to this article I wrote? He ran off to court - I can't remember, I think
it might have been Justice Stephen Campbell, issued an order making me take
it down. There was clear, political communication protected by Lange v ABC.
40 I'm getting told to take this article down. You've got to be kidding.
Justice Campbell was actually at the ICAC for a while, as counsel assisting.
That's the sort of thing we're dealing with. I breach more suppression orders
than I can remember. I've been charged a couple of times, and I don't say that
bragging, people have had a gut full. You've got to take a stand.

45 If suppression orders have been issued for no valid reason, no reason given
and it's infringing on your right to political communication, you've got to take a
stand. It's not me trying to be in contempt of the Court, it's me trying to stand
up for my constitutional rights. If they are issuing orders against me like that, a
50 dozen times, they are issuing orders against other people as well.

I wanted to deal with paedophilia, and how that's a political issue, your Honour. That specifically. I feel I just addressed how bribery is a political issue which it clearly is, because it's almost a perfect fit for Lange v ABC and
5 Coleman v Power. I think there's a recent precedent. The Lange test was a two-step test. I think, McCoy v New South Wales. I think it might be 2016.

HER HONOUR: New South Wales?

10 DEFENDANT: New South Wales, an ICAC issue. I think McCoy got accused of being corrupt and he took it all the way to the High Court and they reinforced the Lange test, but instead of being the two-step, it's now a three-step test. I don't think it changes too much. That's where McCoy wanted the High Court to find that the donations, political donations was political speech. Pretty far-
15 fetched. But me talking about Government officials bribing isn't far-fetched, it's a perfect fit. Let's get on to paedophilia and how that's a political issue. Point 2, I want to deal with how I've already raised it numerous times with various people. If we turn to the original article, Friday, 17 March, Justice Peter McClellan, he has done that recent speech. Two of the key elements
20 that he has raised is the failure of the judiciary and prosecutors to really give victims of paedophilia justice.

If you have a look at the tape I went off in court, I suppose for want of a better description, you'll hear me saying:

25

“Justice Hoeben gave a paedophile priest 3 months gaol. Who gives a paedophile priest 3 months gaol? Only another paedophile, that I know of. He is an absolute grub.”

30 I wasn't actually calling him a paedophile. You might not like my viewpoint, you might totally disagree, but I'm entitled to a political speech. That's one of the key purposes of these. Justice McClellan has been dealing with the exact same topic in the last month or so in these speeches he has been giving. He is heading up Royal Commission into Child Abuse. He obviously doesn't use
35 the same terminology as me, but we're talking about the same thing. Absolute national scandal that a paedophile priest has raped three boys, over an extended period, screwed up their lives and gets a lousy 3 months gaol.

If you have a look at the article I wrote last year, it was actually on appeal. The
40 paedophile priest had originally got minimum 6 months gaol. And the prosecutors obviously felt that was manifestly inadequate, they've appealed it expecting a longer sentence, and it's reduced to 3 months. Unbelievable. That's basically a non-sentence. Really a non-sentence. He screwed up the lives of three boys, and as we all know - I won't mention it - with other
45 paedophiles who are well known, once they get done for one or two or three, all of a sudden, all of the victims come forward. If he has been done for three - possibly - I don't know - raped a lot more than three.

HER HONOUR: So your argument is that the issue of paedophilia is
50 something that is a matter of concern to all right-thinking people, and you are

entitled to comment upon it, and to do so in a courtroom?

5 DEFENDANT: I'm entitled to comment anywhere, if it's political communication. There's no limit on it. If you have a look at Coleman v Power they say that in that judgment that judges also need to be able to deal with it. If judges also need to be deal with it, they are obviously talking within the confines of a courtroom. They wouldn't be saying judges on their weekend away. So I didn't call him a paedophile, I was making a remark in relation to the scandalous sentencing of a paedophile.

10 In this first part, I'll like to read a little bit of it out, but this is what Justice McClellan says, "Seeking justice for victims, part 1: Some of you may be asking why it is that a Royal Commission is considering criminal justice issues. Apart from the many..." Once he says "terms of reference", he is saying this is a political issue, it's a Royal Commission being paid for by the Federal Government unless the State is contributing, even if they are, who cares, it's being paid by the Government, their "terms of reference" say they've got to inquire into this, it's political. As an Australian citizen I'm entitled to comment on it. You don't have to like my comments, you can say they are disgusting.

20 "What institution the Government should do to address or alleviate the impact of past and future sexual abuse... other crimes." That's exactly what I spoke about. We'll get back into the article in relation to, I wrote last year about the three boys, the paedophile priest getting 3 months gaol. I'm talking about exactly what Justice McClellan is talking about, he is talking about how it's a political issue. He has to address it, it's a Royal Commission, I've commented on it last year, I've made the allegations last year. I don't think I need to read any more of that.

30 HER HONOUR: I understand your argument. I will read it.

DEFENDANT: I'm trying to skim through this. I see your Honour is going to reserve judgment.

35 HER HONOUR: I will reserve it, Mr Dowling.

40 DEFENDANT: The next one, your Honour, this is part 2 of Justice McClellan, "Seeking justice for victims". I'll read a little bit of this to your Honour, "In part 1 of this speech which I gave in Sydney last month I focused on issues of... sexual offenders." Once again, that's exactly what I said. I dealt with the sentencing of a sexual offender and how I regarded it as scandalous. I know a lot of people out there would agree the same thing, they'd say, "A paedophile priest who gets 3 months gaol? That sends a signal to other victims 'Why bother?'" Because as you're reading this, some of the victims will say - I believe it's in these documents I've read a lot of material, "The Court proceedings is actually worse than the original abuse." Then so they go through that, and he get a lousy 45 3 months gaol for the perpetrator at the end of it.

5 I'm going to flick through some of these. I wanted to go more extensively into the first article. That's where I've fairly well summarised the two documents. "Child Abuse Royal Commissioner Justice Peter McClellan outlines failures of judges and prosecutors". Under each article, I put the URL. It will have the date there, you can see this one is published on 22nd of the 4th. I want to read some of this out. This is my article:

10 "In a speech on 13 April 2017, the Chairman of the Royal Commission into Institutional Responses into Sexual Abuse, The Honourable Justice Peter McClellan AM... out of control."

15 Then I go on to talk about how widespread child abuse is in Australia. I quote from an article, "Thousands of institutions have been implicated in the... Royal Commission." I go to the next page. I put a picture of George Pell in there. He is currently under investigation for sexual abuse himself. He should have been charged a long, long time ago for concealment of sexual abuse.

20 HER HONOUR: I understand your point, Mr Dowling. You've made it. Your point is that these are matters of political concern and citizens are entitled to comment upon them, and you are entitled to comment upon them. I don't know that it necessarily helps me to go through and touch on actual situations concerning Cardinal Pell.

25 DEFENDANT: I'll keep out of that. I'll try and skim over a bit faster. Some articles have some things I want to reinforce a bit more.

30 HER HONOUR: Bear in mind I will read all of the material you have tendered.

DEFENDANT: I'll try and not get side-tracked.

HER HONOUR: If you do, I might start pulling you up.

35 DEFENDANT: That would be good. If you go under the picture of George Pell, "More child sexual assault... convictions." That's Justice Peter McClellan saying that. It talks about light sentences. This is very important. He said that roughly twice in the document from memory, this paragraph here, "Light sentences for people convicted of historical sexual offences against children could" - here is a quote "undermine community confidence in the administration of justice." He is right.

40 That's what I'm talking about when I say "a paedophile priest has gotten 3 months gaol". That's scandalous. It's undermined the public's confidence in the judicial system. Me and him are on the same page. "The Chairman of the Royal Commission into Institutional Response..." From memory I skimmed through them pretty quickly a couple of times, and I do believe he said words to that effect, twice, that the judge's sentencing is undermining the public's confidence, or could. And it is.

50

Under that paragraph I agree. I said, "Nothing could be truer." One of the most read articles on this web site is, "Paedophile priest gets 3 months gaol". The 10-year minimum sentence, that's important too because that's within Justice McClellan's documents, "Compare the 3 months sentence for a
5 paedophile priest in New South Wales with the precedent in South Australia where the starting point is between 10 and 12 years, as quoted by Justice Peter McClellan and it shows... 3 months sentence." It goes on to talk about the relevant precedents in South Australia, some of the recommendations flagged by Justice Peter McClellan. The sort of things I'm talking about, the
10 articles I'm writing, the potential feedback I've communicated a number of times with the Royal Commission. The potential feedback is Justice McClellan - and he talks about it in those documents, "needs to do up a report that goes to the Governor General by December".

15 I'm going to flick through these quickly. That's the article after that. Page 5, "Paedophile priest gets 3 months gaol for raping boys". They talk about paedophile priest Peter Liddy getting 25 years in South Australia.

20 Page 7 is the start of an email I sent on 6 September, before I did that video last year in September. I sent it to most of the judges of the Supreme Court, fairly well all. I think there might have been one or two email mistakes.

HER HONOUR: I don't think I'm on it.

25 DEFENDANT: I know there was one or two email mistakes.

HER HONOUR: That's probably a good thing.

30 DEFENDANT: Probably. Anyhow the email starts, "Dear Chief Justice Bathurst, Justice Hoeben, Justice Price, Justice Simpson and other judges, I am writing to you in regard to the list of paedophile judges that I intend on making a... below." It goes on to name them. I can read them out, but he'll probably get upset, so I won't bother.

35 HER HONOUR: I can read it.

DEFENDANT: Under that list--

40 HER HONOUR: What's your point about this email is that you've been saying these things for some time and no-one has taken any action?

DEFENDANT: No-one has taken any action. "If you're on the list and you'd like the right of reply to deny that you're a paedophile and argue that you should not be on the list, please email me." I gave them the opportunity. This
45 isn't defamation, so I don't have to meet the criteria in Lange v ABC, but one of the things you need to do to have a defence as far as that, is that you've given the opportunity to the other party, the right of reply. I've clearly done that. You can take it is an admission of guilt which they'll argue differently. One of the things they'd say is Mr Dowling is wrong, they might say, but he has got a
50 defence under qualified privilege because it's political communication. Even

AXC:CAT

though he is wrong, he has still got a defence, so there's no point suing him for defamation. If they are admitting that, they are admitting in relation to the contempt proceedings, the suppression orders. Mr Dowling is wrong, we're not paedophiles, but he has a defence so we're not going to sue him.

5

HER HONOUR: I think I clearly understand your defence, Mr Dowling.

DEFENDANT: I want to read through this stuff. I think they are the articles but I'm not going to dwell on them. I'm a bit hungry. Page 10, if you look at those articles that I'm accused of writing in relation to breaching suppression orders, number 1, I'll say it again, is covered by Lange v ABC. They are political communications. Reading them, you can see they are complaints about the process about Justice Bathurst putting a suppression order on. They are political issues that I'm complaining about, by and large. I'm accusing them of being corrupt and they are putting suppression orders on their own case.

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15

I think that's three of those articles, free speech and political speech is being suppressed, judicial corruption claim made to the Federal Police. Clearly political speech. Wind back to 2014 when I was found guilty of contempt then, and fined \$2,000. I wrote to the Justice Department and said, "This is the situation". It only lasted 2 days. I wrote an article and an email that was used to find me guilty of contempt. That was Kerry Stokes being bastard. He got a super-injunction. I've gone and argued it shouldn't be on. Justice Harrison lifted it. Stokes wanted to be a bastard and charged me with contempt. I got found guilty, \$2,000.

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I wrote an article, I'm sitting at home, running a judicial corruption web site, I get a super-injunction, I can't even tell anyone there's a court case. I say this is stitch up. No justification for it because the article they wanted taken down was written a month before. So I wrote an article and email complaint to the Attorney General, and Chief Justice Bathurst. So when Acting Justice Nicholson found me guilty, he said, "This is why you're guilty; you wrote that article and the article complained about the corruption of the super-injunction and you wrote an email of complaint to the Chief Justice Bathurst and the Attorney General." That was political communication again. That's why I believe the New South Wales Justice Department said, "Bugger that. We aren't going to enforce a \$2,000 fine, it's absolutely scandalous you got fined in the first place." That's the rest of those articles.

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HER HONOUR: Thank you, I understand that.

DEFENDANT: I'm going to flick through the notes. What time do we normally finish, 1 o'clock?

45

HER HONOUR: I was hoping we would. I need to give Mr Kell an opportunity to finish anything he wanted to say.

DEFENDANT: I don't think we'll be finished.

50

HER HONOUR: Go ahead.

5 DEFENDANT: Maybe we could go past that, if he is going to be short. I'll read
this out. I've read it before. I'm up to number 4 in my submissions, "I deny the
charges against me, but even if they were true, they fail the Lange test and this
helps explain to some extent why Chief Justice Bathurst, Justice Hoeben,
Registrar Bradford put the fresh orders on the matter." I want to address in
relation to Registrar Bradford, I never called him a "paedophile" at all. I
certainly called him a "bribe taker". I called him a "suspected paedophile" in
the emails from last year, I wrote to him and said, "I'm going to be calling you a
10 bribe taker, suspected paedophile."

15 In the video in September last year, you can hear me say, "I've written on my
web site you're a suspected bribe taker, a suspected paedophile." In the video
this year, you can hear me saying, "You're a known bribe taker, a suspected
paedophile." Been 100% consistent. I did go on to say, "That means you rape
children" or whatever, but it's taken out of context. It means you potentially or
allegedly rape children. If you put that all in the context of previous materials I
have never accused him of being a paedophile. A "suspected paedophile".
And "known bribe taker".

20 In relation to Justice Hoeben, I didn't call him a grub. I just want to put that if
you look at Richard Keegan's affidavit, a man who has written three affidavits
for three different contempt proceedings, it's almost his full-time job writing
affidavits against me, he trims off the end of it. You need to put that in the
25 context of the whole conversation. He trims off the end when I say, "That's
Justice Hoeben for you, he is an absolute grub." "Grub" falls into the context
that is covered by Coleman v Power, I believe. That's what I think. But I
haven't been charged for calling him a grub, I don't think.

30 It needs to be put in the context - they've got the full video, I've only got the
second part of the video from this year. First part, I've gone in, "Can you
transfer it?" "The other party wasn't there." Stood down. Gone back in again,
"Can you transfer it?" Once again, he should have never been anywhere near
35 the proceedings based on the previous communications last year both in
writing and in court. If he hadn't been there or transferred it straight away
there wouldn't have been an issue. It is continually bullying and bastardisation,
ex parte hearings and injunctions.

40 I asked for a hearing to have the suppression orders listed. It needs to be read
in that context because I've seen on the New South Wales Judicial
Commission web site they, in effect, say that. These people get angry for this
reason, that should be taken into context. If you had have had a word to
Justice Beech-Jones and it was transferred, we went before Justice
Beech-Jones, not a problem, that morning, half an hour or whatever it was, no
45 issue, no problem.

50 Even if it was problem, once again, I'm protected by Lange v ABC. Crimes Act
1914, section 13 enables any person to institute criminal proceedings. If
anyone can institute criminal proceedings and anyone can investigate a crime
and make allegations. People might not like my opinions and the allegations I

make, but I'm entitled to make them.

5 Number 6, "Judges have to expect allegations being made against them in criticism if they are going to hand down scandalous judgments and/or give scandalous sentences." I've gone to town on Judge Garry Neilson. I've called him a paedophile in court too. In 2015, it was before Registrar Rebel Kenna. I said, "I don't want that paedophile Judge Garry Neilson." No-one said boo. No-one said nothing. Why? Because a lot of people have that opinion, given the statements he made in the sanctity of a court while he is sitting on the
10 Bench. No-one said boo. The registrar didn't say anything. Sandy Dawson beside me, barrister, didn't say anything. Someone might have laughed. Because a lot of people have that opinion. He used the Court to defend paedophilia and defend incest. Once again that would be protected by Lange v ABC.

15 I said it, I said it multiple times. At least twice. Could have been three or four times. If Richard Keegan had have been here, that's one of the things I was going to ask him. He would have been there that day. I remember Sandy Dawson saying to me, "He is a District Court Judge, he can't be the judge
20 anyhow." The reason I said that Registrar Rebel Kenna was in the process of setting down a Notice of Motion for hearing, I said, "I don't want that paedophile Judge Garry Neilson."

25 Number 7; this is an ongoing matter or dispute. I've shown the articles and the emails support these facts. If you look at the charges, it says I said this and I said that. Even in the context of the day out of context, and they are not correct, by and large except for the bribery part, it's taken out of context of the day, and it's certainly taken out of context of the communication that I've been
30 having with the various judges and registrars and the Court over the last 3 years which I've shown by the emails and the videos, which shows it's political communication again. That's the point.

35 Section 8, I've dealt with that before. I'll reinforce it quickly. No-one has denied the allegations, even though I sent them the allegations before I publish them. No-one has sued me for defamation which seems to be an admission that they are true or that they cannot admit that I am covered by political communication." I won't push the first issue too much, but I think the second issue is certainly true which I dealt with before.

40 The suppression orders are futile in that the allegations are already on the internet and have been since last year. I said to Justice Adamson, "Suppression orders are futile". She got fired up. Yeah, whatever. I wasn't going to get into an argument with her. The reason I was about to say they are
45 futile, if you look at the article and various articles I've written last year, the allegations are already on there, and they've been on there for a couple of years.

50 I've done everything, I've emailed the Court, I've raised it with Registrar Bradford, I tell people I've done this, and it's on there, and no-one has said nothing. The suppression orders are futile, the allegations are

AXC:CAT

already on the internet, have been since last year. The bribery ones are on there a lot longer. Some of the paedophilia ones, like Judge Garry Neilson, I think, back to 2013. I actually wrote a second story about him because I got a tip - I'm not going to head there because you said let's not get off topic.

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HER HONOUR: Yes, don't head there. Let's go to number 10.

DEFENDANT: This raises a question then why have the suppression orders? There's only two applicants now. There's still three applicants in the context that all three names have been suppressed, but there's only allegations that I allegedly said stuff about too. Registrar Bradford called me a grub and attacked me, but nothing has happened to him. He didn't actually call me a grub, but he implied it. He said "Any grub can have a web site." I think in the transcript I responded, "You must have one too." He has called me a grub. Nothing has happened against him. In 2016, it must have been okay then on the video. The charges against me and the way they have been prosecuted has scandalised the Court more than anything I could do or say.

I just wanted to raise this, they've tried to prosecute the case by denying me natural justice. They had the ex parte hearings back in February, they had a hearing on Tuesday, 4 April that instituted proceedings the week before, but they never told me.

Because I've got a number of defamation matters and that I've had a look on the Court web site where you can see 3 weeks in advance and I seen this matter, The Prothonotary - I can't even pronounce it - versus Shane Dowling. During that week when they instituted proceedings against me - are you Lee? She is here somewhere. I've had communication with them over two issues and they never said boo. They never told me it is set down for a direction on Tuesday 4th. I've emailed the judge, Justice Adamson, she gets the email and it's adjourned. They were trying to be sneaky and have it without me.

HER HONOUR: You haven't got it today.

DEFENDANT: No, but I'm just making the point. Key elements, I'll skim over that quickly. I regard what Registrar Bradford has done is bullying. He continued ongoing. There is clearly animosity between us and you can see that a long time before what happened in February. If he had have taken action, it would have never even happened. Section 4. That's more to deal with broader issues, just quick notes, judge Garry Nielssen.

HER HONOUR: You've already been through that.

DEFENDANT: Senator Bill Heffernan made a paedophile list that he had from a Federal Law Enforcement Agency, listed judges, former Prime Minister apparently. In our submissions too.

HER HONOUR: Can I stop you, you've given me the benefit of written submissions which I can read, I don't need you to read them to me.

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AXC:CAT

5 DEFENDANT: I'm going to flick through this. There's one last thing, that's the Royal Commission itself. I think I might have made that. Huge political issue, \$500 million it's costing and my understanding, I've read previously something like an estimated \$4 billion ultimately going to be spent over X amount of years as compensation. That's \$4.5 billion coming from the Government coffers, a lot of it. Huge political issue. That's pretty well it, your Honour.

10 HER HONOUR: Thanks. You can see the time, Mr Crown, I don't need assistance with the law. I don't need assistance with the evidence, it's fulsome. Is there anything that you would wish to say quickly or shall I adjourn until 2 o'clock?

15 KELL: If your Honour would adjourn until 2. I don't anticipate, including given what your Honour said, being lengthy.

HER HONOUR: Thank you. I will adjourn until 2. I again note there is a non-publication order in this for any matters that have been referred to in this Court this morning.

20 LUNCHEON ADJOURNMENT

PROCEEDINGS TAKEN OVER BY SOUND RECORDING AT 2.00PM

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