IN THE HIGH COURT OF AUSTRALIA

PERTH REGISTRY No. P22 of 2019

BETWEEN: Jerrod James Conomy

Appellant

and

Respondent

APPELLANT'S CHRONOLOGY

Part I: Certification for publication on the internet

1. I certify that this chronology is in a form suitable for publication on the internet.

Part II:

[*List of principal events leading to the litigation, with appropriate references to the appeal book in respect of findings of fact and evidence relating to those events.*]

2. **September – December 2012 -** The appellant and Ms Cole, both residing in Western Australia, were in a brief romantic, but non-sexual, relationship which included six dates. In mid-December 2012 the dating stopped and they both agreed to stay just friends.

3. **December 2012 – February 2013 -** In the weeks following the ending of the relationship, communication continued between the appellant and complainant in what can best be described as harmless emotional fallout. The communication was not angry, nor abusive, nor threatening. The appellant and complainant were still on amicable terms on 6 January 2013 in which the appellant had sent the complainant a friendly email explaining why he felt they had been romantically compatible including a reference to a published astrology compatibility analysis which supported his belief. Later that day, the complainant replied to the email in friendly terms thanking him for the email

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which included the smiley face emoticon. The appellant then attempted to re-ignite the romantic relationship. On 19 January 2013 the complainant was still in contact with the appellant via a phone call in which the complainant reaffirmed that she did not want to pursue a romantic relationship. No further communication transpired between the two until 1 February 2013 when the appellant pursued a friendship with the complainant via several text messages to which the complainant did not ever respond despite one of those text messages asking if she wanted him to stop communicating with her. On 13 February 2019, the complainant applied for a restraining order against the appellant. The restraining order application did not ever progress to a final order hearing due to the complainant later withdrawing the application.

4. **5-11 August 2013 -** The complainant received 9 emails from a social website named Meetup informing her of several messages sent to her social profile from another social profile purporting to be the appellant. The content of the messages purported to begin as merely asking the complainant if she was ok with the appellant attending a social function organised by the website which he had realised she was attending. The content of the following messages then purported to attempt to clear up any misunderstandings from the past in attempts to try and be on amicable terms. On several occasions the messages purported to ask if she wanted him to stop contacting her and that he would pull out of attending the event if she was not ok with him being there at the same time. The complainant did not respond.

5. **15 August 2013: Charges laid -** Appellant charged by WA Police alleging that, during the period 23 December 2012 to 12 August 2013, the appellant had allegedly pursued the complainant in a manner that could reasonably be expected to intimidate, and that did in fact intimidate, the complainant contrary to section 338E(2) of the Criminal Code 1913 (WA). See the Prosecution Notice at CAB 107 and the offence definition at CAB 54.

6. **26 August 2013:** The complainant (Ms Cole) calls the appellant on his mobile. The screenshots of the appellants mobile which prove this were later tendered as evidence at trial and are included at CAB 355-356.

7. **23 June 2014 – 7 August 2014: Trial MH3334/2013 -** The prosecution went to trial on 23-25 June 2014 and 4-7 August 2014 in the Perth Magistrates

Court before Magistrate Wheeler. The appellant maintained a plea of not guilty and despite the prosecution notice claiming that the offence was committed from December 2012 to August 2013, and despite the only conduct found to have satisfied the definition of the offence being the alleged correspondence in August 2013, and despite the prosecution failing to produce any subjective evidence of the complainant's reaction to the alleged August 2013 correspondence, the appellant was found guilty. The transcript of the reasons for judgement is at CAB 114.

8. **2 September 2014 – 29 May 2015: SJA 1065 of 2014, WASC -** The appellant applied for leave to appeal against the abovementioned conviction in the WA Supreme Court (WASC) which was initially before Justice Corboy before being heard by Justice Martino. The appellant was denied leave to appeal on all grounds. The appeal notice is at CAB 171 and the finalised grounds are at CAB 175. The reasons for judgement are at CAB 90 with citation Conomy v Maden [2015] WASC 179.

9. **22 June 2015 – 18 February 2016: CACR113 of 2015, WASCA -** The appellant applied to the WA Supreme Court of Appeal (WASCA) for leave to appeal against the abovementioned decision of Justice Martino. *'The court'* refused leave to appeal on all grounds after an ex-parte hearing. The Respondent was never required to participate in the proceeding in any way. The appeal notice is at CAB 136 and the finalised grounds are at CAB 138. The reasons for judgement are at CAB 60 with citation Conomy v Maden [2016] WASCA 30.

10. **8 March 2016 – 12 October 2016: P19 of 2016, HCA -** The appellant's first attempt at obtaining special leave to appeal from the abovementioned decision of the WASCA was lodged on approximately 8 March 2016 and accepted for filing on 29 April 2016—see CAB 413-421. In relation to the majority of the secondary appeal grounds (WASCA grounds), the appellant contended grounds that the WASCA resorted to measures over and above the normal scope for determining the question of leave to appeal in a way that resulted in injustice and contended that the reasons were insufficient in a way that resulted in injustice in that it was impractical to pinpoint where the

WASCA had erred when considering the 10 page limit for the summary of argument.

11. The appellant also attempted to file an interlocutory application in P19 of 2016 on 11 May 2016. The proposed application was refused to be filed by Gordon J (rule 6.07) without any reasons being issued. The appellant subsequently filed an application for leave to file the said documents—see FMB 21-33. The proposed interlocutory application requested, amongst other things, an increase in the page limit of the summary of argument from 10 – 20 pages due to the abnormally large amount of errors to raise. The application also requested exemption from having to file an affidavit in support of the summons on the basis that the grounds for the appellant requesting the interlocutory applications did not rely on any further evidence and rather only relied on the rules and documents already on file in the matter. On 3 June 2016 Nettle J refused to allow the said interlocutory application to be filed—see FMB 34-42[1]. Nettle J claimed that the reasons for judgement of the lower courts did not show any reason to increase the page limit of the summary of argument (see FMB 39). At this point, the appellant was unaware that he could have applied for leave to appeal from Nettle J's said judgement mainly because it was not documented anywhere in the High Court Rules or the Judiciary Act that the refusal to file a document was considered an exercise of the original jurisdiction of the High Court. Jumping ahead in time briefly, this was explained by the appellant in paras 11-12 of an 'Affidavit-D' sworn 13 December 2017—see FMB 46.

12. Due to the said denied application for an extension of the page limit for the summary of argument, the appellant did not define any special leave questions and the argument was limited and focused on the insufficiency of reasons given by the WASCA—see paras 1 and 23 of the summary of argument at CAB 422, 427. The appellant also contended that the inadequacy of reasons left too much ambiguity to be able to define the root cause of

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[1] For future context, the reasons for judgment were not released publicly and the published reasons for judgement issued to the appellant was improperly certified (no date and improper signature position) See FMB 41.

errors—see para 18 of the summary of argument at CAB 426.The appellants application for special leave to appeal and supporting grounds are at CAB 413, 415. Justices Bell and Gageler refused special leave on 12 October 2016 on the basis that *"the application does not raise any questions of law suitable for the grant of special leave"*—see [2016] HCASL 242 which is at CAB 432.

13. **7 November 2017 – 14 March 2018: P67 of 2017, HCA** - On 7 November 2017 the appellant attempted to lodge an application by summons in the abovementioned determined special leave application—see FMB 68. The proposed summons, amongst other things, sought relief from a significant procedural related injustice as a result of the determination. On direction via prior correspondence with Deputy Registrar Musolino, the proposed application included wording requesting the 'reinstatement' of the said special leave application. Amongst other points raised, the pertinent point raised by the appellant was that he had rationally interpreted the relevant rules at that time to prescribe that the document considered by the Justices in terms of defined grounds for the special leave application was the draft notice of appeal and that ironically, the form 23 application for special leave was understood to be irrelevant and hence was never sought to be amended. This and the contended miscarriage of justice and a proposed solution was presented in great detail—see for example paras 12-15 and 29 of 'Affidavit C' sworn 7 December 2017—FMB 71, 72, 75—in support of the proposed summons. The proposed summons was refused to be filed initially by Justice Edelman (rule 6.07), without any reasons being given, which the appellant acted on by filing an ex parte application for leave to file the proposed summons on 13 December 2017 which is at FMB 43-66.

14. The ex parte application for leave to file was refused by Gordon J on 14 March 2018—see FMB 95-98—claiming firstly that the appellant had sought to file a summons already previously refused leave to file[2] which was not the case which is covered later in this document, and secondly claiming that the proposed summons was an abuse of process merely because it sought to

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[2] Addressed above under P23 of 2016

reopen the abovementioned special leave application but no explanation was given as to why it was considered an abuse of process.

15. **12 April 2018 to 15 August 2018: P20 of 2018, HCA** - On 12 April 2018, the appellant filed an application for leave to appeal from the judgement of Gordon J for P67 of 2017. The application for leave to appeal and associated documents are at FMB 99-179. The appellant contended that a miscarriage had resulted cumulatively, if not independently, as a result of Gordon J: failing to take into account relevant considerations; or misconstruing the facts; or making a finding not open to be made; or relying on a rule not open to be relied on; or giving a decision which could be inferred as unjust.

16. The appellant also lodged 2 separate interlocutory applications within the said application for leave to appeal. The first was by summons and supporting 'Affidavit-G' filed on 20 April 2018—see FMB 180-190. The second was by summons and supporting 'Affidavit-J' filed 3 August 2018—see FMB 191-193. Regarding the first summons, as a result of Registrar Musolino claiming that the abovementioned application for leave was lodged one day late, the appellant sought an order that, for all intents and purposes of the relevant rules, it was filed on time and should be treated as filed on time since the reasons for judgement in the matter relief was sought from was not available to the appellant until the day after the judgement was made which the Registrar failed to take into consideration despite this point being made aware to her. The first summons was never determined nor acknowledged in any way in the judgment which came later. Regarding the second summons, it sought sufficient reasons clarifying whether the determination of the appellant's application for special leave P19 of 2016 was based on a test of the grounds in the draft notice of appeal form or the application for special leave form. No such clarifications were provided in the reasons later produced.

17. On 15 August 2018, Keifel CJ and Gageler J refused the appellants application for leave to appeal P20 of 2018 on the basis that *"the decision of Gordon J was plainly correct"*—see FMB 194. No findings were made in the reasons in relation to the appellant's grounds and arguments. No vexatious proceedings orders were made and no comment in relation to such was made by the Justices in their reasons. No orders were made in relation to the two

summonses—see FMB 195—which remains the case today, despite the appellant alerting the Deputy Registrar to this shortcoming.

18. **27 April – 12 September 2018: P33 of 2018, HCA** - Appellant attempts to file a summons and supporting 'Affidavit-H' in the abovementioned proceeding P23 of 2016—see FMB 199-212. By the summons the appellant merely sought to be issued with properly certified reasons for judgement for P23 of 2016[3] and argued that it would be pertinent in any potential future investigation by the Human Rights Committee for the reasons for judgement to be a valid legal document for evidentiary reasons and that it is in the best interests of Justices being held accountable for their decisions and that it was standard procedure for a Justice to provide a party with validly certified reasons for judgement if the reasons are not released to the public. Despite the fact that it was Nettle J who determined P23 of 2016 and failed to properly certify the reasons, it was Nettle J who now refused the summons to be filed (rule 6.07) but no reasons were issued to the appellant. The appellant subsequently filed an ex parte application for leave to file the said summons—see FMB 196-212. In the application, the appellant further supported his position by arguing that he was only being diligent in ensuring that the reasons for judgment document cannot be the subject of some question as to invalidity in a future Human Rights Committee argument.

19. On 12 September 2018 Justice Edelman refused the said ex parte application for leave to file the said proposed summons—see FMB 215-219. Despite the fact that Justice Edelman acknowledged that the reasons for judgement had been improperly certified, and that the appellant had exhausted other means of having this rectified, the proposed summons was deemed to be frivolous and vexatious.

20. **5 October - 14 December 2018: P52 of 2018, HCA** – Appellant's application for leave to appeal from the abovementioned judgement of Edelman in P33 of 2018—see FMB 232-271. In summary, the appellant contended that he had a properly substantiated basis for applying to the court for Nettle J to cause the

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[3] Justice Nettle had signed in the incorrect location and not dated the certification as already covered above.

appellant to be issued with validly certified reasons for judgement and that it was not open for Edelman J to obstruct the appellant from filing such an application in the circumstances.

21. On 14 December 2018, Justices Bell and Gageler refused the application for leave to appeal—see FMB 272-273. The basis being that the Justices found that Edelman J's decision was correct but refrained from any further comment. No vexatious proceedings orders were made nor did the reasons suggest any vexatious or similar behaviour of the appellant.

22. **30 August - 17 October 2018: P48 of 2018, HCA -** The appellant attempted to file a summons and supporting 'Affidavit-K'—see FMB 224-228—in the previously determined application for special leave to appeal (P19 of 2016). The summons merely sought directions clarifying "whether the determination of the application for special leave to appeal in P19 of 2016 was based on a test of the grounds in the draft notice of appeal form or the application for special leave form" and to clarify one other ambiguity resulting from the disposition. The affidavit in support of the summons clearly explained that the appellant was considering making a new application for special leave to appeal from the relevant decision of the WASCA and therefore needed to be sure as to which grounds had been tested already so as to avoid contending grounds which had already been tested in the P19 of 2016 special leave application—paras 5-8 of the said affidavit addressed this which is at FMB 226-227. Justice Bell refused to file the documents (rule 6.07) but no reasons were issued. The appellant subsequently filed an ex parte application for leave to file the documents—see FMB 220-228.

23. On 17 October 2018, Justice Keane refused the said ex parte application for leave to file—see FMB 229-231. The basis being that *"...no good reason has been shown to allow the summons and supporting affidavit to be filed"*. Justice Keane also claimed that the appellant's proposed summons sought to re-agitate contentions already determined by the abovementioned determination of the appellant's special leave application P19 of 2016 when, in fact, the polar opposite was the case in that the entire point of the proposed summons was to avoid contending things in a future special leave application which had

already been tested by the Justices in the determination of special leave in P19 of 2016.

24. **2 November 2018 – 6 February 2019: P56 of 2018, HCA** – The appellant filed an application for leave to appeal from the aforementioned judgement of Keane J in P48 of 2018—see FMB 274-301. The appellant contended, amongst other things, that Keane J had erred in finding that the appellant had sought to re-agitate issues already resolved in the determination of the appellants application for special leave to appeal P19 of 2016 and contended with supporting evidence that the exact opposite was the case in that the appellant's incontrovertible intentions was to avoid contending grounds already tested by the High Court, when lodging a future application for special leave.

25. On 6 February 2019, Justices Nettle and Gordon refused the said application for leave to appeal—see FMB 302-303. The only basis given for the decision was that *'an appeal to this court would enjoy no prospect of success.'* No vexatious proceedings orders were made and no suggestion of vexatious behaviour was evident in the reasons.

P3 and P11 of 2019, HCA: Second attempt at obtaining special leave to appeal from the judgement of the WASCA; [2016] WASCA 30

26. **January 2019:** Having exhausted the avenue of attempting to resolve the abovementioned procedural injustices associated with his first attempt at obtaining special leave (P19 of 2016), and having exhausted all avenues in attempting to clarify the abovementioned uncertainty as to which document was tested as far as grounds were concerned in the determination of the said prior special leave application (P19 of 2016), the appellant lodged two new applications for special leave to appeal from [2016] WASCA 30 which were accepted for filing. The cross-reference to those filed documents follow:

P3.19: *-Unamended first further special leave app.—see CAB 43*
-Associated 'Affidavit-O' (supporting docs)—see CAB 55
-Associated 'Affidavit-P' (Re. extension of time)—see CAB 189

P11.19: *-Unamended second further special leave app.—see CAB 193*
-Associated 'Affidavit-Q' (supporting docs)—see CAB 207
-Associated 'Affidavit-R' (Re. extension of time)—see CAB 357

27. Having exhausted all avenues which would have removed any doubt, the appellant was left with no other option than to presume that the grounds tested in the prior determination of special leave were those in the form 23 application for special leave as opposed to those in the draft notice of appeal. The logic being that the said prior determination never progressed any further than a consideration of the special leave questions said to arise as is evident by the words used in the relevant disposition (see CAB 432).

28. In the new special leave applications, the appellant was careful to only raise grounds and special leave questions which had not been contended in the previous special leave application. For evidence of this point, see the special leave grounds and special leave questions contended in the two new special leave applications (CAB 43-45, 193-194) and compare that with the special leave grounds and special leave questions contended in the prior attempt (CAB 415-419, 422).

29. **13 February 2019:** Appellant received letter from Deputy Registrar Gesini (see CAB 317) informing him that the two special leave applications, P3 and P11 of 2019, had been listed for hearing before a Full Court for 6 March 2019. The same letter also mentioned the possibility of vexatious proceedings orders being made following the hearing of the said applications. It was stated that the reason was due to an alleged history of applications by the appellant in relation to matters the subject of the P3 and P11 of 2019 applications for special leave and that the appellant had until 1 March 2019 in which to make written submissions, not more than 10 pages, in defence of vexatious proceedings orders. No direction was made as to any specific form to use for the written submissions.

30. **14 February 2019:** Appellant contacts various registrars by email (see CAB 406-407) to express his concerns as to being uncertain of the scope of the vexatious proceedings allegations and uncertain as to whether the purpose of the hearing was that anticipated by rule 41.08 (normal determination of special leave application) or purely to determine if vexatious proceedings orders would be made.

31. **22 February 2019:** In alignment with rule 3.01 (amendment) the Appellant filed and served interlocutory applications (see CAB 360-378, 379-317) to amend both new special leave applications which were both accepted for filing, but not determined on the papers, and instead listed for hearing at the abovementioned already scheduled hearing for 6 March 2019 (see CAB 409). The proposed amendments did not raise any new special leave grounds, nor make any significant change to any of the defined special leave grounds. The said proposed amended special leave applications are at CAB 364-378, 383-396.

32. **27 February 2019:** The appellant files interim submissions in response to vexatious proceedings allegations (CAB 398-400) and an associated further interlocutory application (CAB 401-405). The appellant requested directions clarifying the situation, and an extension of time to lodge the written submissions and requesting free access to copies of specific documents filed by different applicants in past matters that would assist the appellant in preparing submissions in defence of vexatious proceedings orders and requesting a certificate in relation to one of those different applicants as prescribed in section 77RO(1) of the Judiciary Act 1903.

33. **1 March 2019:** Appellant receives email from Senior Registrar Rogers (CAB 410) clarifying that the appellant would have the opportunity to verbally argue his case for special leave being granted as normal. The same email now advised that the appellant would also have an opportunity to verbally argue in defence of vexatious proceedings orders in relation to the applications for special leave P3 and P11 of 2019 and *'related proceedings'* of which were not identified any further. All of this was to happen at the hearing on 6 March 2019.

34. **6 March 2019: Hearing P3 and P11 of 2019 before Keane and Edelman J -** The transcript is at CAB 37-41. At CAB 38, appellant asks Justices to accept the abovementioned proposed amendments to the special leave applications and contends that the correct judicial process required that to be first considered since it would obviously affect the appellant's case significantly and explains that the Respondent had no objection to the proposed amendments. The Justices neither granted or denied the said amendments. At

CAB 39-40, the appellant requests adjournment to allow more time to prepare his argument in support of special leave being granted and reaffirms his application made by summons for, amongst other things, more time and information to prepare. Appellant is cut off from explaining the situation twice at lines 75 and 87 of the transcript (CAB 39) and denied an extension of time. Appellant argues his right to have adequate time to prepare before being cut off again at line 110. Appellant prompted to make verbal submissions by Justice to which appellant responds on several occasions that he is unable to due to needing more time. Appellant prompted to make verbal submissions in defence of vexatious proceedings orders to which he reaffirms that he does not know which proceedings or behaviour the court believed to have satisfied the alleged frequent vexatious proceedings as was set out in the aforementioned summons. Appellant reaffirms he wants to make written submissions in defence of the vexatious proceedings orders but needed more time and information as set out in the aforementioned interim submissions. Justices neither grant or deny the appellants aforementioned interlocutory applications, nor acknowledge the appellant's aforementioned interim submissions filed before the due date.

35. **18-19 March 2019** - The appellant was notified by letter from Deputy Registrar Gesini that the special leave applications would be determined on 20 March 2019. In response the appellant sent a letter by fax, post and by email to the Registry (see CAB 411-412). The appellant pointed out that the interlocutory applications had yet to be determined and again contended that the proposed amended applications for special leave needed to be granted, with supporting reference to a prior High Court case establishing relevant precedent.

36. **20 March 2019: Determination of P3 and P11 of 2019** - The reasons for judgement are at CAB 3. It is incontrovertibly the case that the Justices, Keane and Edelman J, applied no test as to whether special leave should be granted for P3 or P11 of 2019 (lines 352-356 of the reasons) and instead, dismissed the special leave applications, and associated interlocutory applications, under section 77RN of the Judiciary Act (Vexatious Proceedings), and therefore all orders made were made exercising the original jurisdiction of the High Court. The orders published by the Justices also reflect

this in that the applications were dismissed as opposed to refused leave. See CAB 16.

P22 of 2019: The applicants current appeal before the High Court

37. **3 April 2019 (Due date for appeal notice)** – The appellant, discovered by chance on this day that he had an avenue of seeking relief (CAB 439, para 11) from the abovementioned exercise of the original jurisdiction in P3 and P11 of 2019 via appeal to the High Court in alignment with section 34(1) of the Judiciary Act 1903 and discovered that this same day was the due date for the appeal notice (CAB 439, para 11). In alignment with prior orders made in 2016 by Justice Gordon, the franticly rushed proposed appeal notice was lodged by post in the exact same manner as every single application above was lodged and accepted for filing. Suspecting foul play, the appellant also lodged the same appeal notice in person at the Perth Office that same day. Despite these two different methods of lodgement, Deputy Registrar Musolino refused to accept the proposed appeal notice claiming now that it could not be accepted by post and claiming that the in person lodgement was after 4pm and directed the appellant to lodge the proposed appeal notice again in person to the Perth Office with a summons requesting an extension of time.

38. **12-18 April 2019 -** The appellant lodges a summons seeking orders, amongst others, that the appellant's appeal notice lodged on 3 April 2019 was lodged on time and therefore be accepted for filing and seeking orders allowing the appellant to lodge an amended appeal notice due to the highly rushed circumstances (CAB 439, para 11). The said summons was lodged in person via courier in the Perth Office and processed in Perth by court staff that same day and as per the standard procedure, the summons and associated documents were sent by court staff to Deputy Registrar Musolino via overnight courier the following business day and received by Deputy Registrar Musolino another business day later. Despite this, Deputy Registrar Musolino again refused to accept the documents for filing claiming that the courier had lodged the documents after 4pm which was disputed by the courier when the appellant contacted him about it. The appellant patiently informed the Deputy Registrar that she was mistaken as to the time of the courier's delivery, but that he would cause the courier to lodge the documents again anyway.

39. **23-30 April 2019** – The appellant re-lodges the abovementioned documents via courier in person at the Perth Registry. The said documents being the summons seeking orders, amongst others, that the appellant's appeal notice lodged on 3 April 2019 was lodged on time and therefore should be accepted for filing. A week later, Deputy Registrar Musolino informed the applicant that his appeal notice and associated summons had been accepted for filing and designated P22 of 2019. The said documents are at CAB 433-441.

40. **21 May 2019** – Despite repeated correspondence with Deputy Registrar Musolino and Senior Registrar Rogers following up the abovementioned interlocutory application by summons on 12 April 2019 for directions and orders to be made in P22 of 2019, the summons is yet to be determined and yet to be listed for hearing as at this date. The appellant is currently unable to finish preparation of the written submissions at this stage as the content of the submissions is dependent on whether the appellant is granted orders allowing him to lodge an amended appeal notice when lodging the written submissions.

Dated: 21 May 2019

.....(signed).....

Appellant

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