SUPREME COURT OF QUEENSLAND

CITATION:	*Mathews v Cooper & Ors* [2017] QCA 322
PARTIES:	**RUSSELL GORDON HAIG MATHEWS** (appellant) **v** **GREGORY RICHARD COOPER** (first respondent) **THE CORP OF THE SYNOD OF THE DIOCESE OF BRISBANE** ABN 90 006 976 186 (second respondent) **JOHN LESLIE MORGAN** (third respondent) **DOUGLAS PORTER** (fourth respondent) **HENRI ELIAS RANTALA** (fifth respondent) **STATE OF QUEENSLAND** (sixth respondent) **THE UNIVERSITY OF QUEENSLAND** (seventh respondent) **ST JOHN'S COLLEGE COUNCIL** (eighth respondent) **PHILLIP ASPINALL** (ninth respondent)
FILE NO/S:	Appeal No 5112 of 2017 SC No 3025 of 2017 SC No 5449 of 2016
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Supreme Court at Brisbane - [2017] QSC 64 (Jackson J)
DELIVERED ON:	22 December 2017
DELIVERED AT:	Brisbane
HEARING DATE:	Heard on the papers
JUDGES:	Gotterson and Morrison JJA and Bond J
ORDERS:	**1. The appeal is dismissed.** **2. The appellant is to pay the respondents' costs of the appeal, to be assessed on the standard basis.**
CATCHWORDS:	PROCEDURE – STATE AND TERRITORY COURTS: JURISDICTION, POWERS AND GENERALLY – VEXATIOUS LITIGANTS, PROCEEDINGS AND RELATED MATTERS – VEXATIOUS LITIGANT – where the appellant was the plaintiff in four Supreme Court proceedings

– where the first respondent brought an application for orders preventing the appellant from commencing proceedings without leave of the Court – where the learned primary judge granted that application and stayed the proceedings on foot – where the learned primary judge declared the appellant to be a vexatious litigant – where the learned primary judge considered relevant procedural history and determined that the claims were vexatious because of the nature of the claims, number of defendants and relief claimed – whether the proceedings were vexatious – whether the appellant is a vexatious litigant according to the *Vexatious Litigants Act* 1981 (Qld) – whether the primary judge correctly exercised his discretion when ordering that the proceedings be stayed and the appellant be prevented from bringing further claims without leave of the court

Vexatious Proceedings Act 2005 (Qld), s 6

Batistatos v Roads and Traffic Authority (NSW) v Newcastle City Council (2006) 226 CLR 256; [2006] HCA 27, followed
Brisbane City Council v Mathews [2006] QSC 25, related
House v The King (1936) 55 CLR 499; [1936] HCA 40, cited
Mathews v Morgan & Ors [2005] QSC 222, related
Mathews v State of Queensland [2015] FCA 1488, related
R v Mathews [2010] QCA 196, related
Re Cameron [1996] 2 Qd R 218; [1996] QCA 37, followed
Ridgeway v The Queen (1995) 184 CLR 19; [1995] HCA 66, considered
Rowe v Schultz [2016] QCA 59, cited

COUNSEL: No appearance by the appellant, the appellant's submissions were heard on the papers
No appearance by the respondents, the respondents' submissions were heard on the papers

SOLICITORS: The appellant appeared on his own behalf
Crown Solicitor (Brisbane) for the first, fifth and sixth respondents
K&L Gates for the second, third, eighth and ninth respondents
Minter Ellison for the fourth and seventh respondents

[1] **GOTTERSON JA:** I agree with the orders proposed by Morrison JA and with the reasons given by his Honour.

[2] **MORRISON JA:** **Mr Mathews' acquired brain injury did not dampen his enthusiasm** for instituting proceedings to vindicate perceived attacks upon him. He commenced proceedings in many courts over the years. So

much so that he was declared a vexatious litigant in the Federal Court[1] and Supreme Court,[2] but on a limited basis.

Eventually a number of respondents in a number of his cases applied for relief under the *Vexatious Proceedings Act* 2005 (Qld).[3] Orders were made prohibiting him from instituting proceedings in any Queensland court or tribunal without leave, with some limited exceptions.[4] As well, the existing proceedings against those respondents were stayed.

Mr Mathews appeals against those orders.

The grounds of appeal are framed to encompass all four of the proceedings the subject of the order. They are outlined below:

(a) grounds (a) and (b): that none of the four proceedings was a vexatious proceeding;

(b) ground (c): no respondent to this appeal honoured Part 8 of the *Uniform Civil Procedure Rules* 1999 (Qld) (***UCPR***), in particular r 444 and r 447 and the Court did not direct in accord with r 448;

(c) ground (d): a breach of the rules of natural justice occurred in connection with the making of the decision;

(d) ground (e): any defect in any of the four proceedings to the stage that they had reached was a consequence of disability discrimination by the lawyers, officers of the Court, and the defendants in the four proceedings towards the appellant;

(e) ground (f): the decision was adversely induced or affected by fraud or criminality;

(f) ground (g): there was no evidence or other material to justify the making of the decision; and

(g) ground (h): the decision was otherwise contrary to law.

At the request of Mr Mathews, and with all respondents' agreement, the appeal was heard on the papers.

For reasons which follow I would dismiss the appeal.

Legal principles – vexatious proceedings

In *Re Cameron*[5] this Court considered, in the context of the *Vexatious Litigants Act* 1981 (Repealed), the characteristics which would lead to a finding that legal proceedings were vexatious:

> "It is also necessary to decide what makes legal proceedings vexatious. Although there are sometimes statutory indications, the broad test potentially concerns such factors as the legitimacy or

1 *Mathews v State of Queensland* [2015] FCA 1488.

2 *Brisbane City Council* v *Mathews* [2006] QSC 25.

3 Which I intend to refer to as the *VPA*.

4 *GRC Crown Law v Mathews; Mathews v Corporation of the Synod of the Diocese of Brisbane & Ors* [2017] QSC 64.

5 [1996] QCA 37; [1996] 2 Qd R 218 at 220.

> otherwise of the motives of the person against whom the order is sought, the existence or lack of reasonable grounds for the claims sought to be made, repetition of similar allegations or arguments to those which have already been rejected, compliance with or disregard of the court's practices, procedures and rulings, persistent attempts to use the court's processes to circumvent its decisions or other abuse of process, the wastage of public resources and funds, and the harassment of those who are the subject of the litigation which lacks reasonable basis: see, for example, *Attorney-General v Wentworth* (1988) 14 NSWLR 481; *Jones v Skyring* (1992) 66 ALJR 810; *Jones v Cusack* (1992) 66 ALJR 815, and *Attorney-General (NSW) v West* (NSW Common Law Division No. 16208 of 1992, 19 November 1992, unreported)."

The order which was made by the learned primary judge was under s 6 of the *VPA* and was the exercise of the discretion conferred by that provision. Therefore, in order to impugn the exercise of the discretion on appeal, it is necessary for Mr Mathews to demonstrate that it was tainted by legal error. The relevant legal error is that described by the High Court in *House v The King*:[6]

> "The manner in which an appeal against an exercise of discretion should be determined is governed by established principles. It is not enough that the judges comprising the appellate court consider that, if they had been in the position of the primary judge, they would have taken a different course. It must appear that some error has been made in exercising the discretion. If the judge acts upon a wrong principle, if he allows extraneous or irrelevant matters to guide or affect him, if he mistakes the facts, if he does not take into account some material consideration, then his determination should be reviewed and the appellate court may exercise its own discretion in substitution for his if it has the materials for doing so. It may not appear how the primary judge has reached the result embodied in his order, but, if upon the facts it is unreasonable or plainly unjust, the appellate court may infer that in some way there has been a failure properly to exercise the discretion which the law reposes in the court of first instance. In such a case, although the nature of the error may not be discoverable, the exercise of the discretion is reviewed on the ground that a substantial wrong has in fact occurred."

The same approach was taken by this Court in *Rowe v Schultz*.[7]

In *Batistatos v Roads and Traffic Authority*[8] the High Court made some observations in relation to abuse of court process.[9] It was observed that there were no hard and fast definitions as to what amounted to abuse of court process, but some examples are: where proceedings are instituted in a second forum while there are pending

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6 [1936] HCA 40; (1936) 55 CLR 499, at 504-505.

7 [2016] QCA 59, per Gotterson JA (with whom McMurdo P and Fraser JA concurred) at [13]-[14].

8 *Batistatos v Roads and Traffic Authority (NSW) v Newcastle City Council* (2006) 226 CLR 256; [2006] HCA 27.

9 Gleeson CJ, Gummow, Hayne and Crennan JJ at [9]-[15].

proceedings in another; proceedings without reasonable grounds so as to be vexatious and harassing; proceedings invoked for an illegitimate purpose; the use of court procedures in a way unjustifiably oppressive to one of the parties; the use of court procedures in a way which would bring the administration of justice into disrepute; proceedings that are frivolous, vexatious or oppressive. The plurality adopted what was said by Gaudron J in *Ridgeway v The Queen*:[10]

> "The powers to prevent an abuse of process have traditionally been seen as including a power to stay proceedings instituted for an improper purpose, as well as proceedings that are 'frivolous, vexatious or oppressive'. This notwithstanding, there is no very precise notion of what is vexatious or oppressive or what otherwise constitutes an abuse of process. Indeed, the courts have resisted, and even warned against, laying down hard and fast definitions in that regard. That is necessarily so. Abuse of process cannot be restricted to 'defined and closed categories' because notions of justice and injustice, as well as other considerations that bear on public confidence in the administration of justice, must reflect contemporary values and, as well, take account of the circumstances of the case. That is not to say that the concept of 'abuse of process' is at large or, indeed, without meaning. As already indicated, it extends to proceedings that are instituted for an improper purpose and it is clear that it extends to proceedings that are 'seriously and unfairly burdensome, prejudicial or damaging' or 'productive of serious and unjustified trouble and harassment'."

Submissions by Mr Mathews

Mr Mathews' written submissions extend to 19 pages and 118 paragraphs. There are various topics dealt with:

(a) the application heard by the learned primary judge was "a means for the State of Queensland and, after liaising with Tim Foley for the Commonwealth, for the Commonwealth of Australia … to defeat my four claims arising out of abuse of myself by the [State of Queensland] and the [Commonwealth of Australia]": paragraph 27;

(h) the effect of the decision below is to "continue to keep a lid on the scandal of the State of Qld performing a criminal armed robbery, home invasion, and break and enter against a disabled citizen", which was what the State of Queensland desired: paragraphs 37-38;

(i) each of the four proceedings "involves an extended period when I have been repeatedly and consistently attacked and had my Fundamental Human Rights as a vulnerable disabled person abused mainly by the [State of Queensland]": paragraph 52;

(j) the responses of the lawyers in each of the four claims "are a continuation in this systemic attack and abuse of me initiated and continued by the [State of Queensland]": paragraph 52;

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10 [1995] HCA 66; (1995) 184 CLR 19 at 74-75. Internal citations omitted.

(k) the 11 charges brought against him, and resolved in his favour, were not isolated, but part of a "continuation of these attacks on me as are the actions of Crown Law": paragraphs 53-56;

(l) his impoverished circumstances: paragraph 100-102;

(m) he has a disability which affects his ability to prepare a statement of claim: paragraphs 1-3, 12, 29, 30, 45-46, 59, 100, 101, 102;

(n) as a consequence of his disability he has been "abused and ripped off", over 46 years: paragraphs 4, 12, 28, 30, 105;

(o) his abusers have included the State of Queensland, the Commonwealth of Australia, Queensland and Commonwealth public servants, the Synod, the police, some courts, Crown Law, some judges, Mr Porter of the University of Queensland, and Translink: paragraphs 4, 5, 6, 8, 10, 11, 12, 30, 43, 59, 60, 66, 105;

(p) any defect in his pleadings in the four proceedings was a consequence of his disability: paragraphs 7;

(q) the "Optional Protocol to the International Covenant on Civil Rights and Political Rights" had to be taken into account when determining whether Mr Mathews had been given fair treatment of his "universal Human rights": paragraphs 21-25; and

(r) the only reason he has had to take court action "is because government authorities including [Queensland] police have not only refused to protect my rights but have wrongly acted against me so abusing my human rights": paragraph 65.

Parts of the outline by Mr Mathews went into matters that seem to have little to do with the four proceedings in question. For example:

(a) the circumstances surrounding the treatment of Mr Mathews in October 1996 before a magistrate (Smith SM), when he was convicted of contempt of court, are set out at some length; these matters included allegations that the magistrate "spirited [evidence] out of court" to prevent a fair trial, was corrupt, and involved in corruption "orchestrated by one Fran Douglas in Qld Crown Law" and designed to "protect a former … employee when that employee had stolen legal documents from another of my companies;[11] and

(s) that he had been attacked by unknown persons in his home in early 1996 and sustained severe injuries; the police "trampled all over the crime scene" and lied about what happened in the attack, saying that Mr Mathews had fallen down the stairs; the police then refused to investigate the crime.[12]

Mr Mathews addressed the threshold question ????? identified by the learned primary judge, namely whether Mr Mathews was a person who had frequently instituted or conducted vexatious proceedings in Australia.[13] He made these points:[14]

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11 Respondent's outline, paragraphs 73-81, 84-89, 93-96; see *Mathews v Smith* [1997] QCA 365.

12 Respondent's outline paragraphs 81-83, 90.

13 Reasons [6].

14 Respondent's outline, paragraphs 7, 21-25, 35, 39-42, 44-45, 52-56, 110 and 113.

(a) the courts have been his last resort to try to end the attacks and abuse against him;

(t) the cause of each of the claims has been the abuse of his Fundamental Human Rights as a disabled person;

(u) the "Optional Protocol to the International Covenant on Civil Rights and Political Rights" had to be taken into account when determining whether Mr Mathews had been given fair treatment of his "universal Human rights";

(v) the lawyers of the State of Queensland and the Synod owed duties, as officers of the Court, to honour his "fundamental Human rights";

(w) the Courts owed him that duty also;

(x) "all lawyers should have applied reasonable adjustments, to overcome the defects in my Statement of Claim … even if that involved hardship up to the point where that hardship became unjustifiable";

(y) the lawyers should have done so by the use of *UCPR* r 444 letters, but did not do so;

(z) because of his disabilities he had "not been able to put as much time into preparing" the Statements of Claim; the proceedings are not vexatious but, at best, defective as a consequence of his disabilities;

(aa) he chose to represent himself but that is not an invitation to take advantage of his disability;

(ab) the courts have been his last resort to try to end the attacks and abuse he has received because of his disabilities; and

(ac) the responses of the lawyers in each of the four claims "are a continuation in this systemic attack and abuse of me initiated and continued by the [State of Queensland]".

As to the claims in the four proceedings, Mr Mathews said that "included in each [of the affidavits he has filed] has been some evidence supporting my principal claim in each action".[15] Further, each of the four claims must be considered individually to assess if they are vexatious, and once that is done the most that can be said is that they are "to some degree defective".[16] He submitted that all the necessary elements were pleaded in the Synod proceedings.[17]

Mr Mathews submitted that the appeal "is about my Fundamental Human Rights as a disabled person … about the persistently repeated abuse of my Fundamental Human Rights as a disabled person when no government authorities will act to protect my Fundamental Human Rights as a disabled person … If government authorities had not repeatedly abused my human right or failed to act then to protect them, I would not have needed to bring any of these matters to court…".[18]

Mr Mathews also submitted that the only reason he has had to take court action "is because government authorities including [Queensland] police have not only

15 Respondent's outline, paragraph 57.

16 Respondent's outline, paragraph 97.

17 Respondent's outline, paragraph 15.

18 Respondent's outline, paragraph 61.

refused to protect my rights but have wrongly acted against me so abusing my human rights".[19]

In some cases the submissions made assertions against various parties which, without an evidentiary basis, would be scandalous. Mr Mathews footnoted most assertions to his various affidavits. Therefore one needs to go to those affidavits to resolve the nature and worth of the allegation. Thus, he said:

(a) that a policemen had committed an "armed robbery of [his] possessions in the course of robbing [him] of his beneficially owned home"; paragraphs 10 and 43;

(ad) that the State of Queensland was guilty of a planned armed robbery against him, and "Crown Law and its lawyers" knew of that crime: paragraphs 14 and 16;

(ae) the armed robbery was at the behest of the Synod: paragraph 17 and 20;

(af) the State of Queensland, Brisbane City Council and Queensland Police have committed crimes against him: paragraph 47;

(ag) the State of Queensland has acted to "continue the coverup of the crimes": paragraphs 18 and 47;

(ah) the Queensland Police ignored his complaints about the robbery by the State of Queensland and the Brisbane City Council, and blocked his emails: paragraph 32, 47 and 69;

(ai) the CMC replied to his complaint with "legal rubbish": paragraph 33;

(aj) the Legal Services Commissioner and the Office of the Information Commissioner "confirmed" the "criminal actions of the [Brisbane City Council] and the [State of Queensland]": paragraph 34; and

(ak) it was "well known in legal circles in Brisbane" that the Queensland Police and the Brisbane City Council had committed an armed robbery of him: paragraph 43.

In so far as Mr Mathews' submissions said anything about the individual proceedings, they were largely to restate that he had good claims, and assert that all necessary elements were pleaded, though no attempt was made to justify the pleading.[20]

There was no attempt to identify any error on the part of the learned primary judge, be it of fact or law. Mr Mathews merely submitted that he should have reached a different conclusion.

The respondent's submissions

All respondents submitted that no error had been demonstrated in the exercise of the discretion by the learned primary judge. Additionally each respondent submits, for those grounds that concern them, that neither the grounds of appeal, nor the outline by Mr Mathews, identifies any relevant error. Further, many grounds do not contain discernible particulars of any error.

The first respondent submits that Mr Mathews has merely challenged the finding on "the threshold question" required by s 6(1) of the *VPA*, namely that he is "a person who has frequently instituted and conducted vexatious proceedings in Australia". It

19 Respondent's outline, paragraph 65.

20 The Synod proceedings, paragraphs 13-19.

is further submitted that the basis for that finding was amply justified by a consideration of the four proceedings, as providing what is required by s 6(1), namely that the person has instituted and conducted vexatious proceedings "in the context of the current proceedings".

In respect of each of the four proceedings, the first respondent submits that they display those features that would bring them within the definition of the "vexatious proceeding", namely:

the claims for damages are unjustifiable;

the alleged conspiracy or conspiracies are unsupported by any allegation of fact as to their making or from which they might be inferred;

the allegations of malicious or fraudulent intent are similarly unsupported;

some of the named defendants are immune from civil liability;

the pleading is disorganised and contains irrelevant allegations;

there are scandalous allegations made against various parties including judicial officers and public bodies, without apparent basis;

claims for damages for personal injuries **[there were NONE]** were likely statute barred;

specific allegations were not made out, such as the allegation of express trust, any claim to defeat the Synod's indefeasible title, the constructive trust and beneficial interest alleged; and

the allegations reprise some made in earlier proceedings which were resolved **[NONE HAVE BEEN]** or stayed.

Further, the first respondent points to the scandalous nature of the allegations **[refer affidavits]** made in the Outline in support of the appeal.

The first, eighth and ninth respondents also submit that the action concerning them reprises allegations made in proceedings BD 10350 of 2005 which was stayed.

The third and seventh respondents additionally submit that no coherent basis for the joinder of the University of Queensland or Porter was demonstrated at first instance, nor on appeal. They contend that the case in support of the declaration against Mr Mathews was overwhelming, and his conduct of the appeal serves to confirm the appropriateness of the orders made.

Discussion

I intend to group the grounds of appeal where that is possible, and deal with the approach of the learned primary judge as part of the consideration of the appeal.

Grounds (a), (b), (e) and (g): none of the proceedings was a vexatious proceeding

These grounds can conveniently be grouped together. Each in their own way contends that the proceedings were not such as to warrant the orders made below. In considering that issue one must bear in mind that the threshold question under s 6(1) of the *VPA* is whether Mr Mathews is "a person who has frequently instituted or conducted vexatious proceedings in Australia". **[NO]**

The start point for the learned primary judge was the findings by Fryberg J **[I was refused right of Appeal to CA but do now to HC]** in the Supreme Court in **2006**[21] and that of Reeves J in the Federal Court in 2015.[22] The order in the Supreme Court prohibited Mr Mathews from instituting, without leave, proceedings against the Brisbane City Council and its employees in Queensland. The order in the Federal Court did the same in respect of the State of Queensland, its agencies, statutory bodies and employees.

In my respectful view, his Honour was correct to consider those decisions relevant to take into account.[23]

There were four proceedings the subject of the applications, namely BS8514/15 (**Websites proceeding**), BS12511/15 (**Harrycroll.com proceeding**), BS5449/16 (**Synod proceeding**), and BS5450/16 (**Bus station proceeding**).

The four proceedings were summarised by the learned primary judge in a way that was not criticised on appeal, and thus it is convenient to adopt what his Honour said.

Websites proceedings – BS8514/15

The Websites proceeding had its source in an arrest of Mr Mathews in 2009. He was charged with using a carriage service to menace, harass or cause offence. Eventually, in 2014, no evidence was offered in support of the charges and they were dismissed. The summary is:[24]

> "20. Proceeding BS8514/15 stems from an arrest, four charges and the resultant criminal proceeding brought against [Mr Mathews] in relation to a number of websites, including those with the uniform resource locator ("URL") ending in "HaigReport.com", "selfhelpJustice.com" and "AustlawPublish.com". The following description is gleaned from the statement of claim and uncontested evidence.
>
> 21. On 28 August 2009, police officers, including the first and second defendants in that proceeding, executed a search warrant at [Mr Mathews'] then residence.
>
> 22. On that day, [Mr Mathews] was arrested without warrant, taken to the Roma Street Police Station and charged with four offences of using a carriage service to menace, harass or cause offence in relation to four websites, contrary to s 474.17 of the *Criminal Code* 1995 (Cth).
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> 23. On 10 January 2014, the Commonwealth Director of Public Prosecutions did not offer any evidence in support of the charges and they were dismissed in the Magistrate's Court.

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21 *Brisbane City Council v Mathews* [2006] QSC 25.

22 *Mathews v State of Queensland* [2015] FCA 1488.

23 Reasons [12]-[17].

24 Reasons below [20]-[26]. Internal citations omitted.

24. [Mr Mathews] alleges that all of the actions against him were unlawful and malicious. Many other persons are alleged to have been party to a conspiracy to harm him.

25. [Mr Mathews] claims $2,600,700 damages and $10 million aggravated and exemplary damages.

26. The claims are made against the State, the Commonwealth, the Commonwealth Director of Public Prosecutions (as an alleged separate legal entity), an individual employee of the CDPP's office and individual police officers. The causes of actions asserted are assault, trespass to the person, false imprisonment and malicious prosecution. It is appropriate to mention, without elaboration, the complexities of pleading and proof that inhere in a claim for malicious prosecution."

Harrycroll.com proceeding

The second proceeding was the Harrycroll.com proceeding. Its source was an arrest of Mr Mathews in 2010 by a Sergeant Cabrera of the Queensland Police Service. He was charged with contravening a direction given in 2009. About one month after the arrest, the charges were dismissed. The summary by the learned primary judge was:[25]

"27. Proceeding BS12511/15 stems from two arrests, a charge and the subsequent criminal proceeding relating to another website, this time with the URL ending "harrycroll.com". The following description is gleaned from the statement of claim and uncontested evidence.

28. The allegation against [Mr Mathews] was that he owned the website and that information and references on the website breached confidentiality in relation to a domestic violence protection order by naming a woman.

29. On 22 December 2009, Sgt Cabrera of the Queensland Police Service, the first defendant in this proceeding, issued a notice as a formal direction to [Mr Mathews] to remove any reference or information containing the woman's name from the website. On the same day, [Mr Mathews] alleges he was arrested without warrant unlawfully by Sgt Cabrera.

30. On 5 April 2010, [Mr Mathews] was arrested without warrant by one of three other police officers, who are also defendants in this proceeding. He was taken to the Pine Rivers Police Station where he was charged with an offence of contravening a direction or requirement, being the notice given by Sgt Cabrera on 22 December 2009.

31. On 10 May 2010, the criminal proceeding for the charge of contravening a direction or requirement was dismissed.

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25 Reasons [27]-[33]. Internal citations omitted.

32. There is an adumbration in the statement of claim in this proceeding of some of the allegations later made by [Mr Mathews] in the Synod proceeding (which were also raised in part years before in two 2005 proceedings), but that seems to have been a detour or flourish, because they do not relate to the acts or omissions of the defendants in this proceeding, except to the extent that those allegations may be intended to inform the allegations of conspiracy or malicious intent made in this proceeding.

33. The claim in this proceeding is for $400,045 as compensatory damages and $400,000 for aggravated damages. The claim is made against the State, four police officers and (a little curiously) an employee of the Public Trustee of Queensland. The alleged causes of action are again assault, trespass to the person and malicious prosecution. There is also a claim of the tort of collateral abuse of process. Again it is appropriate to mention, without elaboration, the complexities of pleading and proof that attach to the tort of abuse of process."

Synod proceeding

The third proceeding was the Synod proceeding. Its source lay in a suggestion that notwithstanding that Mr Mathews had not contributed anything towards the purchase price or improvement][but I did and included] of a house bought by the Synod from persons called McVean, he had a beneficial interest in it. The summary below was:[26]

"34. This proceeding involves more than one set of factual scenarios. Most of them are connected in some way to the respondent's residence in a house at 254 Hawken Drive St Lucia ("the house"). The following description is gleaned from the statement of claim (and other related pleadings by the respondent) and uncontested evidence.

35. The central theme and claim is that [Mr Mathews] alleges that the sale of the house, in late 2007, by Mr and Mrs McVean, as vendors, to the Corporation of the Synod of the Diocese of Brisbane, as purchaser, for the price of $485,000 was made in breach of trust by Mr and Mrs McVean.

36. On the face of it, the house was the McVeans' property. It appears to have been purchased by them in 1994, over a decade beforehand, using funds from their superannuation trust. [Mr Mathews] went into possession. **At the same time, he executed a lease or tenancy agreement, although he alleges he did so under pressure from Mr McVean. [no lease**

26 Reasons [34]-[56]. Internal citations omitted.

of TA as I was forced to sign a BLANK FORM]. He alleges that before the McVeans bought the house and before he went into occupation he had agreed to purchase the property from them at an undefined future time. He does not allege that he paid any of the actual purchase price, either when they bought the house or under the arrangement he had with them immediately before he went into possession. He does not allege that he contributed funds to improve the property. **[CHECK AFFIDAVITS]** He does not allege that the alleged arrangement with the McVeans was ever carried into effect. He does not allege that the McVeans made a declaration of trust in his favour.

37. On 27 May 2005, [Mr Mathews] started proceeding BS4337/05 against, inter alia, the McVeans, alleging that they held the house on trust for him.

38. On 12 August 2005, **White J struck out the statement of claim, with leave to re-plead against the McVeans.**

39. **On 1 November 2005, Douglas J struck out the whole proceeding, in substance for want of prosecution. On 5 May 2006, an appeal from that order was dismissed.**

40. On 6 December 2005, [Mr Mathews] started a second proceeding in this court, BS10350/05, again alleging that the McVeans held the house on trust for him, based on the same or a similar agreement as alleged in BS4337/15.

41. **On 9 February 2006, that proceeding was stayed by Fryberg J's 2006 vexatious proceedings order as against other defendants, [WRONG]** but [Mr Mathews] took no step after that against the McVeans. It became stayed, against them, in effect, for want of prosecution by failure to take a step for more than two years.

42. In late 2007 or early 2008, the Synod purchased the house from the McVeans. The Synod is registered as the proprietor and has the benefit of an indefeasible title. [Mr Mathews] does not in terms allege an exception to the Synod's indefeasible title in the amended statement of claim.

43. [Mr Mathews] does, however, allege a number of things against the Synod, Archbishop Aspinall, the Council of St John's College (for whose benefit the Synod purchased the house), and Dr Morgan of St John's College, who are all defendants.

44. He alleges that they were guilty of conspiracies or a conspiracy in relation to the Synod's purchase to deprive him of his alleged interest in the house.

45. There are so many facts alleged that are not material facts for any cause of action that it is almost impossible to analyse the pleading meaningfully.

46. Even so, there are also insufficient facts alleged to support the beneficial interest claimed by [Mr Mathews]. And, critically, there are no facts alleged from which a tortious agreement amounting to any alleged conspiracy might be proved.

47. There are other parties to the proceeding. Mr Porter, then the Registrar of the University of Queensland and the University of Queensland (as a person alleged to be vicariously liable for the registrar's wrongs) are defendants in respect of the central theme or claim and another or other claims. There are other distinct areas or subject matters of claim concerning the university parties.

48. One area relates to an internet web page that [Mr Mathews] alleges on 30 September 2007 was created or maintained by a then college student, the tenth defendant, or other students and was directed against him. The page was up for about a month. The basis of the responsibility in law of the registrar or the university for the activities alleged against the students does not appear clearly. The vicarious claim against the university for the alleged conspiracy or conspiracies relating to the purchase of the house by the Synod is the only basis for the joinder of this claim in the same proceeding as the central theme or claim.

49. Another area relates to an episode on campus on 22 November 2004, where [Mr Mathews] was involved in an incident with the university security staff about the management of his dogs when they were tied up outside one of the libraries. The university security staff alleged that he broke or damaged a car aerial on a university vehicle. Again the basis of the joinder of this claim is the alleged conspiracy or conspiracies relating to the house.

50. Another pair of defendants comprises Sgt Rantala of the Queensland Police Service and the State of Queensland as a party vicariously liable for Sgt Rantala's alleged actions. [Mr Mathews] alleges that Sgt Rantala was a party to the alleged overall conspiracy or conspiracies to dispossess him of his residence at and interest in the house.

51. On 25 November 2004, Sgt Rantala charged [Mr Mathews] with wilful damage relating to the car aerial.

52. On 29 and 30 November 2004, officers from the Brisbane City Council entered the house claiming to be authorised to do so.

53. On 29 November 2004, Sgt Rantala arrested [Mr Mathews] and charged him with an offence of public nuisance.

54. On 16 May 2005, [Mr Mathews] alleges, the wilful damage charge was dismissed by the Magistrate's Court.

55. On 1 June 2005, the criminal proceeding on the charge of the public nuisance offence, was purportedly finalised by an order made by the Magistrate's Court.

56. The order was purportedly made under s 19 of the *Penalties and Sentences Act* 1992, to "discharge" [Mr Mathews], in circumstances where [Mr Mathews] had not entered a plea and no evidence had been taken. In 2010, the order was set aside by the Court of Appeal and the charge was dismissed."

Bus station proceeding

The fourth proceeding was the Bus station proceeding. Its genesis was when Mr Mathews was put off a Translink bus at Mt Gravatt or Griffith University. Mr Mathews said he was unlawfully put off and assaulted, and then there was a conspiracy against him based on a view about his dogs travelling with him or the correctness of his claim. The summary was:[27]

"62. Proceeding BS5450/16 stems from an incident that occurred at a bus station at Mt Gravatt or Griffith University.

63. On 5 March 2013, [Mr Mathews] was put off a Clark's bus by three Translink Senior Network Officers - the first, third and fourth defendants. The claim begins with [Mr Mathews'] allegation that they acted unlawfully in doing so and one or more of them assaulted [him].

64. From that point [Mr Mathews] alleges that all the other defendants were involved in a conspiracy against him. In all, there are twenty two individual defendants, ranging from a Minister of the Crown down to other Translink employees, and including the lawyers who have acted for parties against [Mr Mathews]. Their wrongs or involvement in the conspiracy have arisen either from some pre-existing dispute with [Mr Mathews] over the same general question of his entitlement to travel with his dogs on the bus before the events on 5 March 2013, or from their failure to accept the correctness of [his] claim that he was wronged on 5 March 2013.

65. The claim is for $400,045 damages, another $400,000 aggravated damages and another $10 million for punitive damages. Both the State and (as if it were a separate legal entity) the Department of Transport and Main Roads are alleged to be vicariously responsible. The causes of action asserted are assault, false imprisonment and conspiracy. Again it is appropriate to mention, without elaboration, the complexities of pleading and proof that may attach to the tort of conspiracy."

The learned primary judge reviewed earlier proceedings instituted by Mr Mathews where the substance of the claims was the same as in the Synod proceedings and the

27 Reasons [62]-[65]. Internal citations omitted.

Bus station proceedings.[28] His Honour concluded the Synod proceeding was the third claim based substantially on Mr Mathews' alleged beneficial interest in the house, and the Bus station proceeding was the second or third claim for damages arising from the bus station incident on 5 March 2013.[29]

The previous vexatious litigant orders

The learned primary judge analysed the findings behind the orders made by Reeves J in the Federal Court in 2015 and Fryberg J in the Supreme Court in 2006.

In the Federal Court, Mr Mathews had brought proceedings against the State alleging unlawful discrimination over the bus station incident. He had also instituted three other proceedings relating to the same subject matter. Reeves J not only examined the path of the existing claim, but also 15 other proceedings instituted by Mr Mathews over time in different courts. They were summarised by the learned primary judge as follows:[30]

> "(a) Case 1 – *R v Mathews* [1995] QCA 336;
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> (b) Case 2 – *Mathews v Thompson* [1998] QCA 407;
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> (c) Case 3 – *Mathews v Smith* [1997] QCA 365;
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> (d) Case 4 – *Mathews v Telstra Corporation Ltd* [1998] QCA 407;
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> (e) Case 5 – *Mathews v Telstra Corporation Ltd* [1999] HCA Trans 505;
>
> (f) Case 6 – *Brisbane City Council v Mathews* [2006] QSC 25 (the 2006 vexatious proceedings order);
>
> (g) Case 7 – *Mathews v Morgan* [2006] QCA 143 (otherwise mentioned in these reasons);
>
> (h) Case 8 – *R v Mathews* [2010] QCA 196 (otherwise mentioned in these reasons);
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> (i) Case 9 – *Mathews v Cabrera* [2010] QCA 300;
>
> (j) Case 10 - *Mathews v MacDonnell* [2011] FCA 825 (this was not a State case);
>
> (k) Case 11 – *Mathews v Commissioner of Police* [2011] QCA 341;
>
> (l) Case 12 – *Mathews v Commissioner of Police* [2011] QCA 368;
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> (m) Case 13 – *R v Mathews* [2012] QCA 298;
>
> (n) Case 14 – *R v Mathews* [2013] QCA 203;
>
> (o) Case 15 – *Newton v Brisbane City Council* [2014] QCA 242."

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28 Reasons [66]–[70] and [72].

29 Reasons [71] and [73].

30 Reasons [84].

Like the learned primary judge, I have read the underlying analysis of those cases by Reeves J.[31] There was no challenge to those findings on appeal. In the circumstances I am able to adopt that analysis and Reeves J's conclusions, as set out below:[32]

(a) six of the fifteen cases and the various applications made within them were instituted without reasonable grounds;

(al) [Mr Matthew's] conduct of the originating application under s 46PO of the *Australian Human Rights Commission Act* 1986 (Cth) was an abuse of the process of the court and pursued without reasonable grounds;

(am) proceeding QUD 178 of 2014 was instituted without reasonable grounds and to achieve a wrongful purpose, to make scandalous and spurious accusations;

(an) two of the applications that had been brought in proceeding BRG 363 of 2014 were instituted without reasonable grounds; and

(ao) proceeding QUD 532 of 2014 has been conducted to achieve a wrongful purpose to make scandalous and spurious accusations against a range of persons.

Approach of the learned primary judge

The learned primary judge reviewed each of the proceedings the subject of the application to have Mr Mathews declared a vexatious litigant. Mr Mathews took the approach on this appeal of contending that those proceedings were not vexatious, but at most defective as a consequence of his inability to plead in the best fashion, caused by his acquired brain injury. In my respectful view, his Honour was correct to assess each of the proceedings to see whether they could be classified as vexatious or not. Because of the way the appeal was conducted by Mr Mathews, I have done the same. The conclusions I have reached are set out below.

The Websites proceeding

This proceeding claimed two components of damages, namely $2,600,700 "being compensatory damages, including vindicatory damages", and $10m being "aggravated and exemplary damages". The amended statement of claim attempted to plead a case against eight defendants. The first two were serving police officers who searched Mr Mathews' house and arrested him on 28 August 2009. It was contended that the fourth defendant (the Queensland Police Service), was vicariously liable for their conduct, as was the sixth defendant, the State of Queensland. The third and eighth defendants were members of the staff of the Commonwealth Director of Public Prosecutions at the relevant time. They were alleged to have participated in concocting the charges laid against Mr Mathews (in the case of the third defendant), and prosecuting false charges (in the case of the eighth defendant). Because they were employed by the Commonwealth Director of Public Prosecutions, it was said to be vicariously liable for their conduct, as was the Commonwealth of Australia, the seventh defendant.

The allegations in the amended statement of claim were that on 28 August 2009 two police officers raided Mr Mathews' home (exercising a search warrant), removed certain items of his property, and arrested him in the process. He was taken to the

31 *Mathews v State of Queensland* [2015] FCA 1488, at [96]-[124].

32 Reasons [86].

watch-house and held there for some hours. Four charges under the *Commonwealth Criminal Code* were preferred, all to do with using a carriage service to menace, harass or cause offence. Ultimately in January 2014, having been actively prosecuted for those charges in the interim, the Commonwealth Director of Public Prosecutions discontinued them.

The allegations included that the police officers' conduct was an abuse of process in its entirety and Mr Mathews was falsely arrested and imprisoned, and maliciously prosecuted. The charges were said to have been concocted for the purpose of censuring the content of several websites operated by Mr Mathews. Those websites were alleged to have contained "conclusive evidence" of corruption by the Queensland Police Service, the State of Queensland and the Commonwealth. The entire process, being the false imprisonment and malicious prosecution, were said to be "a continuation of the mistreatment" of Mr Mathews by the State of Queensland, the Queensland Police Service and the Commonwealth of Australia. As some sort of particularisation of that claim, the pleading included allegations relating to activities by the Queensland Police Service in 2004 when they entered the then residence of Mr Mathews. Those activities, carried out by two police officers, were said to constitute armed robbery, break and enter and stealing of Mr Mathews possessions. Further, it was said that the Queensland Police and the State of Queensland "undertook repeated acts to conceal the … crimes", and those attempts to conceal the crimes were joined in by the Crime and Misconduct Commission, the Legal Services Commission, the Information Commissioner and the State of Queensland. **I will not attempt to set out the full discursive nature of the pleading, [because he cannot]** but it suffices to say that (as will be seen) it replicates many of the allegations in the Synod proceedings.

The pleading concluded by alleging that all defendants "were motivated in making the said charges and subsequent actions by revenge against, and malice towards the plaintiff, and desire to continue to conceal the corruption exposed on the websites …". So framed, every single defendant, including the two police officers and the two staff members of the Commonwealth Director of Public Prosecutions were said to be motivated by revenge, malice and a corrupt desire to conceal the conclusively proved corruption on the part of the Queensland Police Service, the State of Queensland and the Commonwealth.

That review is sufficient to demonstrate that the proceedings, as framed in the amended statement of claim, were vexatious. As the learned primary judge pointed out,[33] no attempt was made to allege a proper basis for the claimed damages of $2.6m "vindicatory damages", let alone the $10m for aggravated and exemplary damages. Furthermore, the allegations of conspiracy were not accompanied by any allegation of fact from which one could infer the making of an agreement, or an agreement stemming from conduct, to concoct the charges, falsely charge and then falsely prosecute Mr Mathews. Next, the pleading ignored the fact that the third and eighth defendants were members of the staff of the office of the Commonwealth Director of Public Prosecutions. As such they had statutory immunity from suit.[34] That immunity applied if their acts were done in good faith. **Of course,** Mr Mathews pleaded that they were motivated by malice, and therefore a lack of good faith, but there was

33 Reasons [97].

34 *Director of Public Prosecutions Act* 1983 (Cth), s 32A.

no particularisation to support that claim. Lastly, the pleading ignored the fact that the two individual police officers also had statutory immunity, and any liability in respect of their conduct attached not them, but to the State of Queensland.[35]

Finally, the pleading eloquently demonstrated its vexatious nature when one considers part of the particulars supposedly supporting a claim for aggravated damages:[36]

> "The defendants were motivated in making the said charges and subsequent actions by revenge against, and malice towards the plaintiff, and desire to continue to conceal the corruption exposed on the websites, because the defendants believe that the plaintiff had detailed on websites, the criminal and corrupt actions of the QpS, (*sic*) police officer (*sic*) and others that the QpS and Queensland government were protecting."

That assertion was made against all defendants **with not the slightest attempt to properly plead a basis for that allegation**, let alone particularise it. As the learned primary judge said, in the context of the conspiracy allegations in the Synod proceedings:

> "The point is not that it is impermissible for a party to make serious allegations of impropriety against any person. It is that the absolute privilege from the law of defamation that attaches to an allegation made in court proceedings is balanced by the prohibitions that exist against making scandalous allegations or allegations of fraud or other serious misconduct that are not supported by the required material facts, particulars or evidence. A party who makes such allegations must back them up at the pleading stage by pleading material facts to sustain the alleged conspiracy[37] or fraud or serious misconduct.[38] These are longstanding requirements expressly maintained in the current rules of court."

The pleading does not meet those requirements in any respect. As will be seen, neither do the others.

In my respectful view, the learned primary judge cannot be demonstrated to have erred in his conclusion that the Websites proceeding was vexatious.

The Harrycroll.com proceeding

The Harrycroll.com proceeding concerns an allegation that police officers raided Mr Mathews home on 22 December 2009. Of the defendants, four were police officers,[39] one was an employee of the State of Queensland,[40] and the last was the

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35 *Police Service Administration Act* 1990 (Qld), s 10.5.

36 Paragraph 5 on AB 1163.

37 *Adsteam Building Industries Pty Ltd v Queensland Cement & Lime Co Ltd (No 4)* [1985] 1 Qd R 127; *Smith v Smith* [2015] NSWSC 484, [62].

38 *Banque Commerciale SA (in liq) v Akhil Holdings Ltd* (1990) 169 CLR 279, 285.

39 The first, third, fourth and fifth defendants.

40 The sixth defendant.

State of Queensland itself, said to be vicariously liable for the conduct of all other defendants. The pleading alleged that a police officer (Cabrera) arrested Mr Mathews on 22 December 2009 when he and others raided Mr Mathews' house. That was said to be instigated by a complaint laid by the sixth defendant (a State of Queensland employee) about the contents of the website, Harrycroll.com. It was alleged that the sixth defendant "encouraged Queensland police and [Cabrera] to pursue, attack and charge" Mr Mathews. Cabrera advised Mr Matthews that the contents of the website was in breach of a domestic violence order, and arrested him unlawfully. He was taken to a police station where he was issued with a directive to remove references to a particular woman from the website. He was released three hours later. It was alleged that all of the conduct involved in his arrest constituted an assault and battery, false imprisonment, malicious prosecution and an abuse of process.

It was also alleged that all defendants "attacked the plaintiff because he is disabled with a publicly known disability".

It is then alleged that more than three months later, on 5 April 2010, Cabrera and two other police officers (Grillo and Engledow) arrested Mr Mathews, handcuffing him and taking him into custody. In doing so it was alleged that the three police officers applied force to Mr Mathews, including using handcuffs tightly fitted such as to cause severe pain. He was escorted to six different watch-houses, each of which was closed, and then to the Pine Rivers watch-house. There he was charged with having contravened the direction to remove the information about the woman from the website. The allegation was that the directive was *ultra vires* and a nullity and the arrest unlawful.

Mr Mathews appeared in the Magistrates Court in respect of the charge. The Prosecutor was the fifth defendant. It was alleged that she admitted that the charge could not be substantiated, but sought an adjournment which was granted. It was alleged that "the whole exercise by the Queensland police and all other defendants", namely composing the charges, charging Mr Mathews and prosecuting, was an abuse of process. As with the Websites proceeding, the Harrycroll.com proceeding contended that the charges were laid in reckless disregard of Mr Mathews' rights, and for "an ulterior improper purpose", which was that the Queensland Police Service wished to censure the website, which contained conclusive evidence of corruption on the part of the Queensland Police Service, the State of Queensland and the Commonwealth. It was said that the websites contained evidence showing that the Queensland Police Service, in company with others, had committed crimes of armed robbery, break and enter and stealing in respect of Mr Mathews house at St Lucia. It was also alleged that a particular Detective Superintendent had "attempted secretly to close down websites exposing police corruption and attributed to [Mr Mathews]".

The pleading then, in the guise of giving particulars of the conclusive evidence on the websites, set out a large part of the allegations in the Synod proceedings. The statement of claim went on to allege that the "improper purpose of the charges and prosecution was to close down the websites attributed to [Mr Mathews], so as to censure the published facts of police corruption". The pleading then continued with allegations that were made in the Websites proceeding. Finally it pleaded that the aggravated and exemplary damages were justified because all defendants were motivated by revenge and malice, and a desire to conceal corruption exposed on the

websites. The terms of this allegation were as in paragraph Finally, the pleading eloquently demonstrated its vexatious nature when one considers part of the particulars supposedly supporting a claim for aggravated damages:36 above.

That review of the pleading is sufficient to conclude that the proceeding is vexatious. First, no justification whatsoever was pleaded for the amounts claimed by way of damages, the first being $400,045 for compensatory damages including vindicatory damages, and the second being $400,000 for aggravated damages. Secondly, as with the Websites proceeding, no facts were alleged to support the conspiracy which was said to infect all defendants, and nothing alleged by way of conduct from which such an agreement or conspiracy might be inferred. That deficiency renders a substantive part of the pleading immaterial. Thirdly, as mentioned above, the pleading brings in slabs of allegations from the Synod proceedings and the Websites proceeding, which are irrelevant to the claim made, unless its purpose was to continue to allege some overarching conspiracy to conceal corruption. That may be Mr Mathews' contention and desire, but the absence of any relevant particularity is fatal. Fourthly, given that four of the defendants were serving police officers, and therefore entitled to the immunity under the *Police Service Administration Act* 1990 (Qld), the proceeding makes no attempt to properly plead a case where liability for their actions attaches to the correct defendant. The same is the case in respect of the sixth defendant who was an employee of the State of Queensland. Finally, because of the way in which large parts of the Synod proceeding and the Websites proceeding was simply brought into this particular proceeding, allegations of theft and corruption were almost certainly scandalous.

In my respectful view, the learned primary judge cannot be shown to be in error in having found that this proceeding was vexatious.

The Synod proceedings

This is a complicated proceeding in terms of the way in which it is pleaded, though relatively simple in its general concept. As summarised by the learned primary judge, the central theme is that Mr Mathews alleges that his sister and her husband purchased a house at St Lucia in 1994, on trust for him. He went in to occupation, agreeing to purchase the property at an undefined future time. However, there is no suggestion that he paid any of the actual purchase price, either when it was purchased or when he went into possession. There is no allegation of a declaration of trust, nor any document in writing to evidence such a trust. Mr Mathews' complaint is that a number of parties including the Synod, the Council of St John's College, the University of Queensland and various representatives of those entities, conspired to have Mr Mathews evicted so that the registered proprietors of the house could sell it to the Synod. The sale was achieved in late 2007, and Mr Mathews was removed from possession. In simple terms, he contends that a vast and complicated conspiracy over a period of years brought about that situation by unlawful means.

The first extraordinary matter to note is the nature of the claim made in the Synod proceedings. The first relief sought is a declaration that Mr Mathews is the beneficial owner of the premises, notwithstanding that the Synod holds indefeasible title as a consequence of the transfer. Secondly, the sum of $500,000 is claimed for "loss of use of facilities of home residence". That sum is greater than the sale price in 2007, namely $485,000. Thirdly, $12,600,700 is claimed as "compensatory damages,

including vindicatory damages" on the basis of a number of torts, including nuisance, negligence and intentional infliction of emotional distress. Fourthly, the sum of $100m is claimed for "aggravated and exemplary damages".

The defendants can be grouped according to their pleaded alliances. In one group is the Synod and St John's College Council, St John's College being alleged to have been operated by the Synod. In that group also are the Warden of St John's College (Morgan), the Registrar of the University of Queensland (Porter) who was said to be secretly a representative on the St John's College Council and Archbishop Aspinall, a member of the St John's College Council from early 2002. The second group of defendants consists of a police officer (Rantala) who arrested Mr Mathews, and the two entities vicariously responsible for his conduct, the State of Queensland and the Queensland Police Service. The next group consists of the University of Queensland, the Registrar (Porter) and the tenth defendant, Ireland. Ireland was a student in Cromwell College who set up a hate website targeted at Mr Mathews and it is contended that Porter (for whom the University is vicariously liable) should have shut it down earlier.

In setting up the relationship of the various defendants, the pleading has a couple of difficulties. One of them is that it is alleged that that the University of Queensland and the State of Queensland were both vicariously liable for the conduct of the St John's College Council. The pleading is utterly bare in terms of any factual allegation which would warrant that assertion. The fact that members of the Council might have also been employees or representatives of the University does not establish the necessary link. Secondly, Porter and Aspinall are said to have been members of the St John's College Council only from early 2002. If it were to be alleged that they had knowledge of events prior to that time, some particularised basis would have to be shown for it, but there is none.

The pleading alleges that Mr Mathews' sister (Mrs McVean) and her husband agreed that she would purchase a property for Mr Mathews and hold it for him "until such time as [Mr Mathews] could acquire it". Mr McVean was not alleged to be a party to that agreement. It is then alleged that in February 1994, the house was purchased "by entities associated with Coral McVean, including her husband, but unknown to the plaintiff, in fulfilment of the agreement". Given that it is not alleged that the husband was party to the agreement, one difficulty is how it is said that **his** purchase of the property could be in fulfilment of the agreement.

However, it is pleaded that the purchase and Mr Mathews' moving in and occupying the house constituted an express trust. However, there is no writing that would satisfy s 11 of the *Property Law Act* 1974 (Qld). Perhaps aware of that problem, the pleading then alleges that there was a constructive trust in favour of Mr Mathews. However, the pleading is deficient in terms of alleging any relevant basis for a constructing trust. Indeed, the pleading alleges a fact which would be contrary to that conclusion, namely that about the time he moved in, Mr Mathews was "forced under duress, with threats from Hugh McVean to put his signature on blank REIQ Tenancy Agreement forms". Though it is said that Mr McVean wanted to protect himself against any investigation by the Superannuation Commission because the house was an investment of the super fund with the funds from his superannuation fund, nonetheless the facts tell against a constructive trust.

I pause in the narrative to note one matter that is of concern. In the first edition of proceedings where Mr Mathews contended that he had a beneficial interest in the

house purchased by his sister and her husband (the McVeans), contrary to his current case, and contrary to what he has sworn in support of that case, Mr Mathews alleged a different form of agreement. As appears from the decision of White J in *Mathews v Morgan & Ors*[41] the agreement Mr Mathews propounded was one whereby his sister and her husband would purchase the house and he would move in, paying what he described as a "weekly stipend equivalent to the amount short-term student tenants had been paying in rent for that house". It was for that reason, Mr Mathews contended in that case, that he signed the standard REIQ Tenancy Agreement to pay $210 per week to Mr and Mrs McVean. That is to be contrasted with what Mr Mathews pleads in the Synod proceedings, namely that:

(a) he intended to reside in part of the house while he extended, fit out and sublet all the other parts of the house to five students, in order to finance his acquisition of the property;[42]

(ap) at the time he moved in, Hugh McVean forced him, under duress and with threats, to put his signature on a blank REIQ Tenancy Agreement form, threatening that if he did not sign the blank form then the he (McVean) would sell the property;[43] considering the very serious nature of the allegations being made in the current Synod proceedings, that is a departure which gives no comfort that the proceedings are being conducted other than in a vexatious manner.

{HOW???}

The pleading does not allege that Mr Mathews paid anything towards the purchase price, either then or later. All that is said about his possible contribution is that in 2000 he was forced to pay $180 as a contribution to the construction of a common boundary fence. Even that was said to be the product of fraud, in that Mr Mathews was presented with a false invoice pretending that the contractor had been paid $360 for his work when he had only been paid $180.

The pleading then attempts to set up a conspiracy between a number of parties which include Morgan (the Warden of St John's College and an employee of the Synod), Porter (the Registrar of the University), Archbishop Aspinall (a member of the St John's College Council), the St John's College Council, the Brisbane City Council, the Synod and various un-named St John's College Council students selected by Morgan to be resident in a neighbouring house. The conspiracy is alleged to be engaging in a process to cause Mr Mathews to vacate the property. The process consisted of the students making complaints to the Brisbane City Council about Mr Mathews and the noise created by his ducks. It is alleged that Morgan organised for the students to make those complaints, and other complaints, over a seven year period. No further facts are pleaded in support of the conspiracy, nor particular conduct from which it might be inferred. The quality of the pleading in this respect is indicated by paragraph 48 which pleads that Morgan and the Synod "were playing real life Monopoly".

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41 [2005] QSC 222, at paragraphs [4]-[5].

42 Paragraph 9, AB 1223.

43 Paragraph 17, AB 1224.

One difficulty which appears in the pleading, and there is no attempt to account for its effect, is that the registered proprietors of the property were the McVean's in their capacity as trustees for the superannuation fund.[44] **[not my doing]**

The pleading then embarks upon another conspiracy allegation. This is that in about 2002, or perhaps earlier, various parties which include Morgan (the Warden of St John's College), St John's College itself, the St John's College Council, Porter (the Registrar of the University of Queensland), the University itself, Archbishop Aspinall, and the Synod decided to acquire properties adjacent to the one owned by St John's College, next door to the property in which Mr Matthews resided. It is alleged that those parties "concocted and invoked a clandestine scheme and campaign to make those adjacent properties available". The pleading is utterly bare as to any factual allegation that might support that allegation. Likewise, there is no support for the added allegation that although the property in which Mr Mathews resided "was to be owned by [the Synod], it was intended by Porter, Morgan, [the St John's College Council], [the Synod] and UQ to be operated at the direction of [the St John's College Council]". **Morrison stated just that previously.**

The breadth of the contended conspiracy can be seen by the fact that the pleading alleges that the "campaign" was to have students who resided next door to make quite excessive noise late at night including having "loud late night parties", then to have those students make complaints to the City Council about Mr Mathews, and then to enlist the City Council as an agent for St John's College, the St John's College Council, the Synod, Porter and Morgan "to remove [Mr Mathews] from the premises". There is no factual allegation made to support that claim.

The pleading continues with an allegation that Morgan, Porter, the Synod, the St John's College Council and Mr McVean "had clandestine discussions and communications with [the Brisbane City Council]". Once again, there is no factual allegation to support that contention.

The pleading then makes an excursion to allege similar fact evidence in the form of the conspiring parties applying similar tactics to acquire a different property, and to allege that Porter repeatedly acted against Mr Mathews' interests while he was a member of the University and a member of the convocation of the University. These acts involved interfering in the academic process, in preventing Mr Mathews from tutoring in mathematics, and various forms of discrimination. Those allegations go on for several pages of the pleading. They are irrelevant to the causes of action.

The extremity of the pleading is demonstrated by paragraphs 129 through to 139, which proceed to particularise a case that Mr McVean "is an emotional cripple". This section of the pleading delves back into history, examining the physical, emotional and sexual abuse allegedly suffered by Mr McVean throughout his life. A number of these matters are pleaded to have been "known by St John's College and the University of Queensland, to be in their records, and known 'by word of mouth'".

The pleading then alleges a third conspiracy, namely that in about 2002 to 2004, the Brisbane City Council, Brisbane City Council Legal Practice, Morgan, St John's College, St John's College Council, Porter and the Synod entered into a scheme of

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44 The pleading alleges merely that they were trustees under a particular nomination of trustees, but since the superannuation fund made the money available, it can be safely inferred that they were trustees of the superannuation fund.

"pressuring the Trustee[45] to sell [the property] to [the Synod] and to gain a Court Order evicting the plaintiff". Once again, the pleading is utterly bare of any actual allegation which would support that assertion. This conspiracy then involves the Brisbane City Council advising the police officer, Rantala, and his superior of the plan. There are no factual allegations to support that assertion.

Then the pleading goes on to allege that the Brisbane City Council Legal Practice obtained a false opinion from a Barrister (named) so that they could claim that they were unaware that they were breaching the *Health Act* 1937 (Qld). Once again, the pleading is utterly bare of any factual support.

[73]Then the pleading alleges that in November 2004 or December 2004, a Contract of Sale for the premises was entered into. It contends that on 29 November 2004, the Brisbane City Council had police officer Rantala force entry into the premises for himself and Brisbane City Council employees and contractors, and in so doing Rantala acted as an agent for the Brisbane City Council, which itself was an agent for the Synod, the St John's College Council, Archbishop Aspinall, Porter, the University and the State of Queensland. The pleading is utterly bare of any factual support for those contentions. It was then alleged that the Brisbane City Council "and other trespassers" removed Mr Mathews' possessions and he was evicted. Subsequently Rantala purported to arrest Mr Mathews on a charge of public nuisance, handcuffing him and taking him to the watch-house. Then, by way of excursion, the pleading alleges that the Police Commissioner ignored complaints about that conduct, as did the Crime and Misconduct Commission, a member of which "corruptly and wrongly advised that he, on behalf of [the Crime and Misconduct Commission] considered the crimes were not crimes and anyway refused to act". The State of Queensland was said to be vicariously liable for that conduct and when it was reported to the Information Commissioner, the Commissioner "approved the trespass by the police and the Brisbane City Council and the crimes". It goes on to contend that when the crimes were reported to the Legal Services Commission, it "wrongly approved the trespass and crimes". None of those matters are supported by factual allegations, beyond the mere assertion. Then, it is alleged **[CORRECTLY, because]** that a magistrate wrongly convicted Mr Mathews when the charge was heard. **That conviction was overturned** in the Court of Appeal on 20 July 2010.

Finally, the pleading makes allegations about the tenth defendant, Ireland, who created a Facebook hate and murder site called "Fuck Off Duckman", directed at Mr Mathews. The contentions include that the website was "encouragement" to the Synod, the St John's College Council, Porter, Archbishop Aspinall, Morgan and the University of Queensland, "to continue with their tortious actions against [Mr Mathews]". No facts are alleged to support that assertion, nor that anything was done on that basis. The essential allegation in this part is that Porter, on behalf of the University, knew about the website set up by Ireland, endorsed that site and failed to have it closed down. By doing so, he was said to have endorsed the site not only for himself, but for the University, the St John's College Council and the Synod. In return, it is alleged, the Synod and Archbishop Aspinall "have rewarded Porter for his actions … by appointing him to a sinecure as board member of Anfin an associate of Aspinall and [the Synod]".

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45 Referring to Mr and Mrs McVean.

The sale to the Synod is pleaded and that legal title passed to the Synod. There is no pleading at all that the Synod or anybody connected with the Synod was aware of the arrangements alleged between Mr Mathews and the McVean's, nor that the Synod was guilty of fraud in the sense required to disturb indefeasible title.

That review of the Synod proceedings demonstrates eloquently, in my respectful view, that the learned primary judge was correct to find that the proceeding was vexatious. His Honour's findings were expressed in the following paragraph:[46]

> "In my view, the Synod proceeding is a vexatious proceeding. First, the amount of the damages claimed is unjustifiable. The claim of $500,000 being for loss of use of the facilities of the house is not supported by any pleaded facts. The claim for $12,600,700 for compensatory damages is not supported by any pleaded facts. The claim for $100 million dollars for aggravated and exemplary damages is perhaps the high water mark in a sea of absurdity of unjustifiable claims. Second, the alleged conspiracy or conspiracies are unsupported by any allegation of facts as to making any agreement or acts from which any alleged agreement may be inferred. Once that is accepted there can be no proper basis to join the claim against the police officers and the State for the alleged unlawful trespass or actions in connection with the claim against the Synod and others over the acquisition of the land. The same applies to the claim against the registrar of the University and the University. Third, the alleged malicious or fraudulent intentions are not supported by particulars or facts from which they might be inferred. Fourth, the express trust alleged as the basis of the respondent's beneficial interest in the house is not alleged to be or evidenced in writing.[47] Fifth, the respondent does not allege a recognised basis for the alleged constructive trust or beneficial interest, such as the provision of purchase monies or improvement of the property. The respondent's claim of breach of trust against the McVeans was earlier made in BS4337/05 and BS10305/05 and was struck out and not proceeded with against the McVeans. Sixth, the respondent does not allege that the Synod did not pay market value for the house to the McVeans or that the Synod's indefeasible title was obtained by fraud or some other recognised exception. Instead, he makes generalised allegations of overarching conspiracies involving many parties most of whom do not seem to have had any possible interest in whether the Synod might purchase the house for its market value. Seventh, the pleading is disorganised and contains many irrelevant allegations. Eighth, the alleged tortious conduct and any cause of action that arose from it are likely statute barred.[48] Ninth, the proceeding is a reprise of the same or similar allegations made against most of the defendants in other proceedings after those proceeding were resolved or stayed many years ago. Tenth, there are

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46 Reasons at [99]. Internal footnotes omitted.

47 *Property Law Act* 1974 (Qld), s 11.

48 *Limitation of Actions Act* 1974 (Qld), s 10.

a number of scandalous allegations made against judicial officers and public bodies without any apparent basis."

It suffices for me to say that I am in complete agreement with what his Honour said in that respect.

The Bus station proceeding

The Bus station proceeding, like others commenced by Mr Mathews, claims an extraordinary amount by way of damages. In this case it is $400,045 for compensatory damages and "vindicatory" damages, $400,000 for aggravated damages, and $10m for punitive damages. The proceedings themselves concern an event on 5 March 2013, when Mr Mathews was put off a bus because he did not have the **authorisation required by Translink for his assistance animals (two small dogs).** [*apro pos* "authorisation": Those translink parasites cannot restrict the rights given to me by Commonwealth law: That law includes the Disability Discrimination Act 1992(Cth)[DDA]. That was fully pleaded in my Statement of Claim. That was a CRIMINAL ASSAULT by the Qld Government APPROVED OF BY Court of Appeal Judge Philip Michael Hugh Morrison, and before him Judge David Jackson. To protect their CORRUPT paymaster, Morrison, and before him Judge David Jackson, had to espouse judicial crap in legalese.] He alleges that he suffered tendon damage when his arms were twisted and that his ejection from the bus was carried out by "Translink thugs". Ever since he alleges there has been a conspiracy or layers of conspiracies, designed to prevent the police from investigating the crime committed when he was ejected, and covering up the events. Those conspiracies extend to some 24 defendants, and more. The defendants include a Government Minister, the Director of the Ethical Standards of the Department of Transport, police, numerous Translink employees and the State of Queensland itself.

The flavour of the proceeding can be gathered from the start of the Statement of Claim which alleges that it is "about the Queensland government sector out of control", "a major cover up by very many public officers of the Queensland public sector, including police", and the fact that "the assault and false imprisonment of a disabled old man [Mr Mathews] was planned punishment of [Mr Mathews] because he would not "kowtow to the unlawful demands of employees of the Queensland government". That much is alleged in the first two paragraphs of the Statement of Claim.

The pleading is complicated by the fact that in paragraph 5 it is intended that **each paragraph** "is pleaded additionally or in the alternative". From a practical point of view, the permutations are enormous, given that there are over 300 paragraphs in the pleading.

At the centre of the ejection from the bus are four defendants. Parker (the sixth defendant) is alleged to be a Translink employee who, "had been on [Mr Mathews'] case trying to bully the disabled [Mr Mathews] into kowtowing to her and Translink and applying for registration of his assistance animals with her and Translink and obtaining Translink assistance animals cards". That allegation points to what is at the heart of this entire litigation. It is that Mr Mathews refused to obtain a Translink assistance animals card because, as he pleads in paragraph 22, such a card was unnecessary as he has "his Human Rights as a Disabled Person guaranteed by the *Disability*

Discrimination Act 1992 (Cth) … and the Common Law arising from Australia's ratification of the UN Human Rights Treaties". There is no suggestion [there does not have to be,] that if Mr Mathews had applied for an assistance animal card, that it would have been denied to him. This relatively simple stand of principle, if principle it be, has given rise to what follows in this proceeding. [These parasites should realise that this is the LAW.]

The others at the heart of the eviction are the first, third and fourth defendants, Brown, Atkinson and Robinson. They are alleged to be the ones who physically ejected Mr Mathews from the bus. Mr Mathews' complaint in the pleading is that the particular bus was a Clarks Logan City bus service and Clarks had agreed to carry him with his dogs, notwithstanding that he did not have the relevant Translink assistance animal card. However, Translink insisted on that card being carried, and because Mr Mathews did not have it, Brown, Atkinson and Robinson physically ejected him from the bus. **[It is unlawful for Translink to insist on that. Morrison is corrupt and an idiot. So you sue me you corrupt parasite Morrison, and you too parasite Jackson. You both show the Qld judiciary is corrupt, as is the whole Qld government.]**

Mr Mathews alleges a number of levels of conspiracies, but none of them are accompanied by the necessary factual pleading that would support them. As with his other proceedings, this one is utterly bare of that which is required to support such a pleading.

One conspiracy alleged is between "Translink including Translink Senior Network Officers [SNOs] and a Clarks driver, to violently and unlawfully assault the plaintiff because he would not kowtow to Translink and Parker".

Throughout the pleading, every act of every employee of Translink, the police or the State of Queensland is said to be one for which the State of Queensland is vicariously liable, or depending on the employee, the Department of Transport and Main Roads which is a defendant in its own right. The conspiracies which are contended include all defendants.

The activities of Parker are said to arise earlier than the ejection when, in February 2013, she "attempted to induce a Clarks Logan City Bus Service … driver to not carry [Mr Mathews] accompanied by his assistance dogs". That is pleaded to be conduct in an attempt to "punish [Mr Mathews] for not kowtowing to her illegal demands that the plaintiff should have and carry a Translink assistance animal pass". It is pleaded that she was refuted in her stand on 15 February 2013, as a consequence of which she "and Translink division hatched the scheme that resulted in the reprisal and [Mr Mathews] being assaulted". This conspiracy is said to involve another Translink employee, Montague, who "acted, and conspired and agreed with others including Queensland police, to conceal and cover up the crime and torts of all defendants to this proceeding, and acted to prevent [Mr Mathews] gaining justice". This is said to be because he "pressured and agreed with senior Queensland police officers and others that [Mr Mathews] should be denied justice". The pleading is utterly bare of any factual allegation that would support that contention. The co-conspirators of Montague include all defendants as well as "inspectors of Queensland Police Service … Queensland Police and State of Queensland". The pleading alleges that "all were known to each other to be fulfilling that role". The pleading alleges that all of the co-conspirators "contributed additionally to the conspiracy by the principle of Group Think, of adding size and a sense of substantiation through increased number of co-conspirators, to the

conspiracy, as though it was the proper action to follow". Then the pleading alleges that all of the co-conspirators were known to each other to be fulfilling that role. Once again, the pleading is utterly bare of any supporting factual allegation.

The pleading goes on to allege a course of conduct which involves the Queensland Police and the Queensland Police Service blocking communications between Mr Mathews and the police, to be considered in the light that the Queensland police had "previously committed crimes against the plaintiff". This is probably a reference to the matters pleaded in the other proceedings, but that is not clear.

The pleading includes allegations that the Minister responsible for the administration of the Department of Transport and Main Roads, and his employees, perpetuated the fallacy that Mr Mathews had boarded the bus with "two unauthorised animals", and part of that conduct was to threaten Mr Mathews and engage in "torts of conspiracy", reprisals, and misfeasance in public office. These allegations include a police officer (the tenth defendant, Holmes) agreeing "with Translink employee or employees and others … that he and they would and should hold and agree that no assault had occurred by Translink staff on the plaintiff". Once again, this is an allegation unburdened by the requisite factual support.

The next conspiracy is between Montague and police, conspiring with and pressuring the police to cease their investigation of the assault upon Mr Mathews. In this case some particulars are given by way of an email said to be sent to Mr Montague's "co-conspirators". The email does not support the allegation.

The next level of conspiracy involved the eleventh defendant, Dando, and the twentieth defendant, Healey, who were involved in making decisions on Mr Mathews' applications for information under information privacy processes. Those two are said to have failed to release the relevant information and that involved a conspiracy to pervert the course of justice, which conspiracy involved all defendants in the proceeding. Once again, there is no factual support pleaded.

The pleading expands its scope by about paragraph 272 where it is pleaded that each defendant individually exercised their power knowing it was in excessive of power, recklessly indifferent to whether it was in excess of power, and with the intention to cause Mr Mathews harm. Then the pleading goes even further to allege that a Barrister and lawyer, who represented the State of Queensland in the Federal Circuit Court in relation to Mr Mathews' claim for breach of human rights, were themselves party to a conspiracy to benefit the State of Queensland. This is because they "breached their paramount duty to the court" and prevented the court from considering the appropriate evidence. This is said to be because they were aware that Mr Mathews was permitted to travel on a Clarks bus with his dogs, and that they were aware that Montague and others had engaged in a conspiracy to pervert the course of justice. Therefore, this is an allegation that two officers of the court have knowingly perpetuated a conspiracy to pervert the course of justice. Such a serious allegation should be accompanied by appropriate particularisation, and this one is not.

The pleading goes even further, to allege that there was an additional conspiracy which existed prior to the date of the eviction from the bus. This allegation is that at least two of Brown, Atkinson and Robinson "agreed between themselves, without just cause or excuse, to wilfully cause harm to [Mr Mathews] by unlawfully removing him from the bus". There are no particulars given to justify that pleading. But the

pleading takes one more egregious step, by alleging that "all defendants engaged in that conspiracy".

The overreaching nature of the pleading becomes apparent when one gets to paragraph 297. There, and in the following paragraphs, the various layers of conspiracy alleged are pleaded. Each is described as "one conspiracy of a group of conspiracies", and they are:

(i) to prevent Mr Mathews from experiencing his human rights;

to prevent the evidence and/or reality of that conspiracy from becoming public;

to prevent Mr Mathews from gaining legal redress; this conspiracy being said to extend for ten years;

to conceal the reality of the assault so as to protect those who carried it out and the State of Queensland; and

to conceal the criminal assault.

Once again, as with the other proceedings, the damages are particularised by alleging that all defendants were motivated by revenge and malice and the desire to conceal the corruption exposed on Mr Mathews' websites. No facts are alleged which would support that contention.

That review is sufficient to demonstrate why, in my respectful view, this proceeding is vexatious and the learned primary judge was correct to find so. His Honour's conclusion in respect of this proceeding was stated in the following terms:[49]

> "In my view, the bus station proceeding is a vexatious proceeding. First, the amount of damages claimed is unjustifiable. There is no basis on the facts alleged for the amount of $400,000 as damages. The respondent was put off the bus on 5 March 2013. He alleges that he suffered some tendon damage when his arm was twisted, but there is no real allegation of any significant personal injuries being suffered. Otherwise, his allegations of conspiracies are directed towards others who he accuses of covering up or causing the end of any police investigation into the incident. There is no basis on the facts for the claimed $400,000 of aggravated damages or the claimed punitive damages of $10 million. Second, the many allegations of conspiracy or conspiracies are unsupported by any allegation of facts as to making any agreement or acts from which any alleged agreement may be inferred. Once that is accepted, there is no apparent basis for the joinder of many of the defendants. Third, "authorised persons" under the *Transport Operations (Passenger Transport) Act* 1994 (Qld) do not incur civil liability for an act done, or omission made, honestly and without negligence. Instead any such liability attaches to the State. In passing, I note that the fifth defendant, named as the Department of Transport and Main Roads, is not a legal entity that can be sued. Fourth, the barrister and possibly the solicitor who are the eighth and ninth defendants may be expected to have the benefit of advocates' immunity for work done in court or in preparation for court. Fifth, the pleading is disorganised and contains many irrelevant allegations. Sixth,

49 Reasons [100]. Internal citations omitted.

> damage was first suffered on or about the day of the incident. The cause of action arose when damage was first suffered. That was more than three years before the proceeding was started. If the damages claimed include damages in respect of personal injury,**[IT DOES NOT CLAIM FOR PERSONAL INJURIES]** then the proceeding may be out of time. Seventh, the respondent has sought in a number of previous proceedings to pursue the subject matter of this proceeding against a number of the same defendants, without success. There is no doubt that this successive proceeding vexes them again."

My own analysis of the pleading accords with what his Honour has said, which I adopt without reservation.

Supporting affidavits by Mr Mathews

An assessment of the affidavits filed by Mr Mathews does not give any comfort that any of the four proceedings were or could be conducted other than in a vexatious manner. The principal affidavit for the purpose of these reasons is that filed in the Synod proceedings on 25 January 2017.[50] The affidavit makes no effort to restrict itself to admissible fact, or to shy away from unsupported allegations, no matter how scandalous. A constant theme through the affidavit is the existence and nature of the disabilities which Mr Mathews has suffered. As the learned primary judge found, there is no doubt that Mr Mathews is affected by his acquired brain injury in ways which impact upon his ability to respond in court proceedings. In this area, as with others in the affidavit, the content consists largely of mere assertion, and only in some respects is it supported by **objective evidence**. [BUT PLEADINGS ARE TO CONTAIN FACTS NOT EVIDENCE.

A second and repetitive theme is the extent of oppression which Mr Mathews said he has suffered, not just in respect of these proceedings, but for decades. As will be seen, this is but one example of the extent to which Mr Mathews brings in irrelevant material supposedly in support of, or directly relevant as to, the current proceedings.

There are a number of serious deficiencies in this particular affidavit, namely:

(a) there is an extensive degree of repetition, particularly insofar as Mr Mathews' disabilities are concerned;[51]

(aq) wild and unsubstantiated assertions of the corruption of the State of Queensland, going back over time, are made;[52]

(ar) some paragraphs are simply repeated, almost verbatim;[53]

(as) a large proportion of the affidavit is simply argumentative in nature;[54] it could be argued that this is not surprising given that Mr Mathews is self-represented and his difficulties with dealing with an oral hearing; however, time and again

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50 AB 130.

51 Paragraphs 2, 5-13, 15, 36, 43, 55, 65, 70-71, 84-85, 93-95, 97, 131, 135-137, 156-158, 163-167, 183 and 190-191.

52 Paragraphs 39-40, 48 and 66,

53 Paragraphs 1 and 51, paragraphs 27, 196 and 215 and paragraphs 189 and 198.

Mr Mathews professes more sophisticated knowledge of the rules and procedures, particularly when unimpeded by the stress of an oral hearing, so that there is no reason to think that the argumentative nature of the affidavit is by misunderstanding; simply dealing with that material is vexatious in itself;

(at) unsupported allegations are made against lawyers who act for his opponents in the proceedings, alleging that they are guilty of criminal conduct or are corrupt;[55]

(au) the allegations in it are not confined to the particular proceedings, but roam over past events; and

(av) one worrying aspect of the affidavit is that it announces a desire to expand the proceedings even further, to encompass a number of allegations, largely under an overarching conspiracy allegation, about matters irrelevant to the particular cause of action;[56] that foreshadowed intention, in my respectful opinion, epitomises the fact that there is no control evident over the nature of the proceedings or the allegations made in it, and demonstrates its vexatious nature.

The second affidavit is one filed in the Synod proceedings on 22 March 2017.[57] It follows the same pattern as the previous affidavit, with extensive references to Mr Mathews' disabilities, and a considerable volume of argumentative material.[58] Again, there are allegations of corruption and conspiracy between various parties, this time including the University of Queensland, the Synod and the St John's College Council.[59] The vexatious nature of the material, and the proceedings it intends to support, can be seen in the breadth of the allegations which include that Mr Porter[60] somehow owed Mr Mathews a fiduciary duty,[61] that the University obtained a "bogus opinion" from a "corrupt barrister", and a "bogus opinion from a 'compliant' barrister",[62] and that the lawyers acting on various sides were themselves corrupt.[63]

Finally, one of the more serious allegations made is that a magistrate who dealt with a charge (of public nuisance brought against Mr Mathews), dealt with it on a corrupt basis because he "wanted to get rid of it, without hearing any evidence, to please someone else, because the evidence would have shown that the Qld police and BCC as agent for [the Synod], had committed … the crimes of break and enter, assault, armed robbery and the torts of assault, trespass and conversion".[64] There is no doubt that the magistrate was guilty of serious error in the way in which he dealt

54 Paragraphs 3-5, 16-18, 22, 28, 32, 36, 39-42, 44, 47-48, 53, 55-59, 63-89, 98, 133-162, 178-188, 192 and 199-214.

55 Paragraphs 57-60 and 67.

56 Paragraph 62 and 83.

57 AB 204.

58 Paragraphs 3-25, 36-45, 48, 54-55, 61-64, 67, 70-73, 82-88, 90-97 and 113-116.

59 Paragraph 14 and following.

60 The Registrar of the University of Queensland and a member of the St John's College Council from 2002.

61 Paragraph 21.

62 Paragraphs 85-86.

63 Paragraph 87.

with that charge, as was demonstrated by the decision on appeal,[65] but nothing said in that decision would give the slightest support to an allegation of corruption.

The third affidavit was also filed in the Synod proceedings, on 27 March 2017.[66] It follows the argumentative pattern, in paragraph 7. One notable feature is that Exhibit RGHM-102[67] consists of a letter purportedly written under *UCPR* r 444. Mr Mathews' use of letters purportedly written under *UCPR* r 444 is a feature much criticised.[68] This particular letter demonstrates why as it repeats many of the allegations of conspiracy or corruption. It is plainly an abuse of the r 444 procedure.

The fourth affidavit is one filed in proceedings 3025/17, on 3 April 2017.[69] Once again, a large part of the affidavit focuses on Mr Mathews' disabilities,[70] and is argumentative in nature.[71]

The fifth affidavit was filed in the Bus station proceeding, on 19 July 2016.[72] This affidavit largely replicates the affidavit filed in the Synod proceedings at AB 130. Not only does it replicate the body of the affidavit, but the exhibits as well. Thus it bears all the same criticisms.

The sixth affidavit was also filed in the Bus station proceedings, on 25 January 2017.[73] Large parts of it replicate the Synod affidavit at AB 130. Its hallmarks are its argumentative nature[74] as well as wide ranging allegations of corruption and conspiracy, including as against various lawyers and the police.[75] This particular affidavit also contains two exhibits[76] which were letters written by Mr Mathews purportedly under *UCPR* r 444. They bear out the complaints made about the way in which r 444 was abused by Mr Mathews, as they are argumentative and allege corruption and a cover-up against Crown Law, bad faith on the part of the parties and their lawyers in bringing the application for orders that Mr Mathews is a vexatious litigant, misconduct by Crown Law lawyers, and criminal conduct.[77] More than that, the letters also reiterate an intention to amend the pleadings to raise all of the alleged corruption on the part of the State of Queensland, going back in time.[78] In my view,

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64 Paragraphs 101-106.

65 *R v Mathews* [2010] QCA 196.

66 AB 239.

67 AB 243.

68 Not just in this proceeding.

69 AB 255.

70 Paragraphs 1-7 and 9-11.

71 Paragraphs 12-30.

72 AB 258.

73 AB 325.

74 Paragraphs 4-7, 14-21, 23-25, 44 and 45-57.

75 Paragraphs 6-7, 16-17, 45, 47-57, 65-67 and 90.

76 Exhibit RGHM-89 and Exhibit RGHM-90.

77 Exhibit RGHM-89, AB 339-346; Exhibit RGHM-90, AB 352-353.

that demonstrates the vexatious way in which the proceedings are framed and conducted.

The seventh affidavit was filed in the Websites proceeding and the eighth affidavit was filed in the Harrycroll.com proceedings, each on 25 January 2017.[79] Each of those affidavits largely replicates that filed in the Synod proceedings at AB 130. Plainly the affidavits were simply copied from one another, as evident from the repeated typographical and formatting errors. Each contains the same exhibits as the first affidavit. For these reasons, each suffers in the same way.

The abuse of the r 444 procedure is also evident from other letters by Mr Mathews, exhibited to the respondents' material below. The letters of complaint were that there had not been proper service, but were used to make wild allegations about the "criminal action of parasites in the … employ of S of Q".[80]

The lack of control over the proceedings, so that they are framed and conducted in an appropriate way rather than vexatiously, can be seen from the fact that some of the correspondence sent by Mr Mathews is substantially if not totally in the same terms as the pleading.[81] For this purpose it does not matter whether the pleading or the letter came first, as it simply demonstrates, in my view, an inability to conduct the proceedings in an appropriate way.

The defects in the proceedings are fundamental. I do not consider that they can be laid at the feet of the various defendants or their lawyers, as appeal ground (e) suggests. Mr Mathews has instituted proceedings which make serious allegations against a raft of parties. Most of those assertions have no properly pleaded foundation. That is not the fault of the parties or lawyers on the opposite side. Those parties are entitled to defend themselves, and take whatever steps the *UCPR* permits. The defects cannot be said to be "the consequence of disability discrimination by the lawyers, officers of the court, and the defendants". As the learned primary judge said, the subject matter of the applications was the "litigation activities" of Mr Mathews, and nothing else.[82] The decision below was based upon the deficient pleadings, including the irrational claims to quantum and other relief.

For present purposes, it is unnecessary to review any of the 32 proceedings instituted by Mr Mathews in the Supreme Court and District Court or the 36 proceedings instituted by him in the Federal Court.[83] There are some observations, however, worthy of being noted. Previously Mr Mathews sued parties who are some of the present defendants in the Synod proceedings.[84] Those proceedings were eventually

78 AB 347.

79 Respectively, AB 389 and AB 461.

80 AB 845.

81 AB 908-912.

82 Reasons [5].

83 Affidavit of Mr Sivyer, paragraphs 5 and 6; AB 536.

84 Notably Morgan, the Brisbane City Council, Hugh McVean and Coral McVean.

struck out, largely as an abuse of process.[85] An appeal from the decision to strike the proceedings out was dismissed.[86]

A subsequent proceeding was commenced in which, once again, a number of the defendants currently in the Synod proceedings were sued.[87] Those defendants included the Brisbane City Council, Hugh McVean, the policeman Rantala, Porter, Morgan, the Queensland Police Service, the University of Queensland and the State of Queensland. One need only state the identity of those defendants to realise that the allegations were similar to those in the Synod proceedings.

In my respectful judgment, the four proceedings instituted by Mr Mathews plainly come within the scope of an abuse of process on the principles referred to in *Batistatos*.[88] Their nature has been comprehensively and accurately analysed and set out by the learned primary judge, and in what I have said earlier in my view, they plainly enlivened the exercise of the discretion under s 6 of the *VPA*. No substantive challenge has been demonstrated to the exercise of that discretion. No specific error has been shown by Mr Mathews, and it cannot be said that the learned primary judge acted on a wrong principle, allowed extraneous or irrelevant matters to guide or affect him, mistook the facts or failed to take into account some material consideration. The result is not "unreasonable or plainly unjust", quite the contrary.

Grounds (a), (b), (e) and (g) lack merit.

Ground (c) – non-compliance with *UCPR*

This ground contended that no respondent to the appeal "honoured" Part 8 of the *UCPR*, and in particular r 444 and r 447, and the Court "did not direct in accord with r 448". This was a complaint raised below, though most of the debate on r 444 was concerned with Mr Mathews' improper use of such letters as a weapon in his litigation.

UCPR Part 8 deals with the correspondence required prior to making an application. Rule 444 requires an applicant to write before making the application, specifying various matters. Rule 445 governs the response that a respondent must make to a r 444 letter. Then r 448 provides as follows:

> "(1) The court may hear an application that does not comply with this part if the court directs.
>
> (2) The court may decide an application to which this part applies on the basis of, or partly on the basis of, the contents of the letters between the applicant and the respondent.
>
> (3) The court may receive affidavit evidence in relation to the application only if the court directs.
>
> (4) Subrule (3) applies despite rule 390."

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85 Initially the Statement of Claim was struck out, with leave to re-plead: *Mathews v Morgan & Ors* [2005] QSC 222. Then, when the pleading was not re-pleaded, the entire proceedings was struck out.

86 *Russell Mathews v Rev Canon Professor Dr John Morgan & Ors* [2006] QCA 143.

87 Proceeding 10350 of 2005.

88 *Batistatos v Roads and Traffic Authority (NSW) v Newcastle City Council* (2006) 226 CLR 256; [2006] HCA 27

The first problem with Mr Mathews' contention is that Part 8 does not apply to an application for orders under the *VPA*. Rule 443 specifies that it applies to applications for particulars of a pleading, applications under Chap 10 Part 1 (directions) and Chap 10 Part 2 (failure to comply with rules or orders), and applications relating to failure to comply with orders or directions of the court.

The second problem is that, in any event, failure to comply with a rule is an irregularity which does not render the proceeding or order a nullity, and the court has power to make any order that could have been made: *UCPR* r 371.

The third problem is that Mr Mathews does not suggest how any such failure to comply adversely affected him, or what he could have done that he did not do. All that was said below was that it was "unfair that [the respondents] should heap all this material upon me at short notice, even if I were not disabled".[89]

The ground lacks merit.

Ground (d) – denial of natural justice

This ground is difficult to follow. Mr Mathews' outline does not elucidate the complaint any further, but does make a submission that he had difficulty with the portion of the hearing when oral argument was heard. Mr Mathews seems to accept that the learned primary judge made provision for him:[90]

> "The provisions made for me by Jackson J. as indicated in paragraph 1), is the first time that a special measure has been made for me by a Court. I still had problems responding to the oral argument coram Jackson J. I had requested that all argument be in writing but that did not occur. But for that provision by Jackson J., I think the mountainous task before me would have been too much for me to contemplate. This has been the reason that when the crown law and lawyers complicate past claims, I have not been able to appear."

The "paragraph 1)" mentioned in that submission quotes paragraph [5] of the reasons below, where the special arrangements, made to assist Mr Mathews' disabilities, were referred to:[91]

> "The respondent is undoubtedly a person who suffers a disability or impairment, from an acquired brain injury or injuries. He submitted that his condition impairs his ability to represent himself on these applications. Accordingly, I directed that the applicants make their submissions available in the week before the hearing and afforded him the opportunity to make written submissions in response and a further written submission in reply after the oral hearing. Nevertheless, the subject matter of the evidence which is at the

89 Response to submissions by Crown Solicitor, University of Queensland and Porter, paragraph 20, AB 1278, 1281.

90 Appellant's outline, paragraph 111. The paragraph 1 that is mentioned quotes paragraph [5] of the reasons below.

91 *GRC Crown Law v Mathews; Mathews v Corp of the Synod of the Diocese of Brisbane & Ors* [2017] QSC 64 at [5].

centre of the applicants' contentions is no surprise to the respondent. It is a collection of his litigation activities and nothing else."

Whilst the submission was that Mr Mathews had some difficulty with oral portion of the hearing it does not establish a lack of natural justice.

Mr Mathews' disabilities were accommodated to the extent possible in the course of the hearing. For example:

(a) the learned primary judge directed that the applications proceed as one, and that points not be repeated from party to party, but made once;[92] that was the course taken by the three sets of applicants; and

(aw) those appearing for the applicants largely limited oral submissions to reflect what was in the written submissions.

It is true that Mr Mathews submitted, at the commencement of his oral submissions, that he was unable to respond to all of what had been said by the applicants, and he could not recall all that he wanted to oppose during the course of the applicants' oral submissions.[93] However, as the applicants' oral submission largely reflected what was in the written submissions, and otherwise responded to the learned primary judge's questions, there is no denial of natural justice that flows from that.

Mr Mathews also sought an adjournment to give him time to respond,[94] but the learned primary judge took a different course, in the absence of a transcript, which was to take him through the points raised, giving a chance to respond to each.[95] In the course of that process his Honour told Mr Mathews that he would be given another opportunity to submit a written response.[96] That occurred, with Mr Mathews being given another four days to put in a response.[97]

Nothing in the record suggests that there was a denial of natural justice.

Ground (f): the decision was adversely induced or affected by fraud or criminality

This ground seems to be that the learned primary judge's findings were influenced or affected by fraud or criminality. If that is meant to suggest that his Honour was, himself, influenced or affected by fraud or criminality, the contention must be rejected. There is not the slightest suggestion of such a thing.

However, it may be that the ground is intended to mean that the respondents' applications were influenced or affected by fraud or criminality, in the sense that the underlying conduct that prompted Mr Mathews to sue in each case was conduct that

92 AB 35 lines 1-5.

93 AB 85 lines 26-34.

94 AB 88-89.

95 AB 89-127.

96 AB 120 line 45 to AB 121 line 2.

97 AB 128 line 41.

was fraudulent or criminal, and the applications perpetuated that conduct or protected it from scrutiny in the proceedings.

For example, one of Mr Mathews' complaints was that a magistrate's decision-making process was improperly affected by being directed to get rid of the proceedings against Mr Mathews, and that the police would not investigate Mr Mathews' complaints in that respect.[98] Mr Mathews agreed it was an allegation of corrupt conduct on the part of the magistrate.[99]

Another example was that Ms Clarke (a lawyer acting for the University and Mr Porter) had acted improperly by refusing to give Mr Mathews a legal opinion obtained by Mr Porter (for the University), in circumstances where Mr Porter had promised to give it to Mr Mathews but then changed his mind.[100]

Yet another was that the unlawful behaviour of Council employees in removing Mr Mathews goods was "protected" by the orders of Fryberg J and White J.[101]

Certainly one point that was common to all Mr Mathews' responses to the applications was that the "government parties" had "dishonoured [or] breached their common law duty … of fairness and honesty in treating me with the model litigant obligations".[102] Further, in a reference to what might be the same point, that the parties had "have not treated [him] with … their common law duty of fairness and honesty".[103]

If that be the way to characterise this ground it does not avail Mr Mathews, for the reasons set out above in respect of grounds (a), (b), (e) and (g).

This ground lacks merit.

Ground (h) – decision otherwise contrary to law

No separate contention was developed in respect of this ground, and it need not be dealt with further.

Conclusion

In *Mathews v State of Queensland*,[104] Reeves J described what he termed "Mr Mathews' unfortunate litigious history":[105]

> "It can be seen from these conclusions and the above review of Mr Mathews' litigious history over the past two decades that he has repeatedly instituted proceedings against the State and others, raising a variety of claims which either have no prospect of success, or have

98 AB 12 lines 1-22.

99 AB 108 lines 30-34.

100 AB 17 line 3 to AB 18 line 37.

101 AB 93 line 27 to AB 94 line 6.

102 AB 11 line 36.

103 AB 16 line 3.

104 [2015] FCA 1488.

105 [2015] FCA 1488, at [134].

> been conducted in abuse of the processes of the courts concerned, or both. In the process, as is often the case with impecunious litigants in person, he has escaped the discipline that usually flows from the costs orders that have been made against him and, perversely, been exempted from any liability to pay court fees for the numerous applications he has filed. In addition, most of this litigation has been littered with spurious allegations of bias against the judicial officers who have had the misfortune to have to deal with an aspect of it, and scandalous and baseless accusations against judges of this Court and many others. The invective contained in Mr Mathews' supporting affidavit in this proceeding (see paras 40–45 of [28] above), the observations of Fryberg J in the penultimate paragraph of his decision (at [103] above), the observations of Logan J in his decision (at paragraph 6 of [113] above) and those of McMurdo P in her decision (at [112] above) all provide examples of this propensity. This sorry history lends support to Perram J's observations that "frequently enough, the vexatious are betrayed out of their own mouths": see *Gargan* at [9]. Having regard to this litigious history, I consider the orders sought by the State are well justified. They will serve to protect it from a continuation of Mr Mathews' litigious harassment, avoid the public expense and resources that have to be devoted to defending his litigation, and, at the same time, ensure that the limited resources of this Court and other Australian courts are not further wasted having to deal with it."

Those remarks mirror those made by Fryberg J in 2006, in respect of Mr Mathews' proceedings against the Brisbane City Council:[106]

> "The features of the proceedings to which I have been referred generally are in my view accurately summarised by Mr Peden. There is a joinder of multiple defendants without any basis for joinder; there are allegations of bias against judges which are completely unsubstantiated (and I should add that the allegations made orally before me today included allegations of bias against the lady who is now the Chief Judge of the District Court and also against the lady who is the Governor); there is the making of hopeless claims; there are unparticularised allegations of deceit and fraud; there are exaggerated damages claims; there is non-compliance with Court proceedings and in particular a failure to deliver complying pleadings; and finally, there is bringing of claims in respect of which it is not possible to demonstrate the suffering of any loss.
>
> It might be thought that this is in some way related to Mr Mathews' disability, but as he himself asserts, that is not the case. He has placed before the Court evidence from a psychologist indicating that he is quite capable of managing his own affairs."

They are an apt description of the four proceedings which the learned primary judge considered.

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106 *Brisbane City Council v Mathews* [2006] QSC 25, at 8-9.

In my respectful view, it has not been demonstrated that his Honour was in error in any respect.

Disposition of the appeal

I would make the following orders:

1. The appeal is dismissed.

2. The appellant is to pay the respondents' costs of the appeal, to be assessed on the standard basis.

[3] **BOND J:** I have had the benefit of reading in draft the reasons for judgment of Morrison JA.

[4] As his Honour has explained, in order to succeed on this appeal, the appellant had to demonstrate that the learned primary judge:

1. erred in making the finding required by s 6(1)(a) of the *Vexatious Proceedings Act* 2005 (Qld) that the appellant was "a person who has frequently instituted and conducted vexatious proceedings in Australia"; or

2. having made that finding, erred in in exercising the discretion conferred to make orders of the nature of those referred to in s 6(2) of that Act.

[5] The argument presented by the appellant did not contain any real attempt to identify reviewable error on either of those bases.

[6] As Morrison JA has demonstrated, the evidence in favour of the finding made by the learned primary judge was overwhelming. The appellant has not demonstrated error. As the finding was properly made, the exercise of discretion was unremarkable.

[7] I agree with the orders proposed by Morrison JA.