SUPREME COURT OF QUEENSLAND

CITATION:	*GRC Crown Law v Mathews*; *Mathews v Corp of the Synod of the Diocese of Brisbane & Ors* [2017] QSC 64
PARTIES:	**In File No 3025 of 2017:** **GREGORY RICHARD COOPER** (applicant) **v** **RUSSELL GORDON HAIG MATHEWS** (respondent) **In File No 5449/16:** **RUSSELL GORDON HAIG MATHEWS** (plaintiff) **v** **CORPORATION OF THE SYNOD OF THE DIOCESE OF BRISBANE & ors** (first defendant) AND **JOHN LESLIE MORGAN** (second defendant) AND **DOUGLAS PORTER** (third defendant) AND **QUEENSLAND POLICE SERVICE** (fourth defendant) AND **HENRI ELIAS RANTALA** (fifth defendant) AND **STATE OF QUEENSLAND** (sixth defendant) AND **THE UNIVERSITY OF QUEENSLAND** (seventh defendant) AND **ST JOHNS COLLEGE COUNCIL** (eight defendant) AND **PHILLIP ASPINALL** (ninth defendant) AND **REGAN IRELAND** (tenth defendant)
FILE NO/S:	BS3025/17 & BS5449/16

DIVISION: Trial Division

PROCEEDING: Applications filed 3 March 2017, 23 March 2017 and 24 March 2017

DELIVERED ON: 26 April 2017

DELIVERED AT: Brisbane

HEARING DATE: 3 April 2017

JUDGE: Jackson J

ORDER: **The order of the court is that:**

1. **Russell Gordon Haigh Mathews is prohibited from instituting proceedings, including interlocutory proceedings, in any Queensland court or tribunal, except:**
    a. **in criminal proceedings brought against him;**
    b. **an appeal by him to the Court of Appeal against this order;**
    c. **to seek relief in the nature of habeas corpus;**

    without leave of the Court.
2. **Proceeding BS8514 of 2015 is stayed.**
3. **Proceeding BS12511 of 2015 is stayed.**
4. **Proceeding BS5450 of 2016 is stayed.**
5. **Proceeding BS5449 of 2016 is stayed.**

CATCHWORDS: PROCEEDURE – STATE AND TERRITORY COURTS: JURISDICTION, POWERS AND GENERALLY – VEXATIOUS LITIGANTS, PROCEEDINGS AND RELATED MATTERS – VEXATIOUS LITIGANT – where the respondent had been involved in previous proceedings in which he had been declared to be a person who had frequently instituted and conducted vexatious proceedings in Australia – where the respondent as plaintiff brought several proceedings against a large number of defendants – where the respondent was conducting four proceedings in this court as plaintiff – where the defendants applied for orders staying the proceedings and prohibiting the respondent from instituting proceedings against particular parties – where the crown solicitor separately applied for orders preventing the respondent from commencing any proceedings without leave of the Court – whether the proceedings instituted by the respondent should be stayed and the respondent prohibited

from instituting proceedings without the leave of the Court under s 6(2) of the *Vexatious Proceedings Act* 2005 (Qld)

Vexatious Proceedings Act 2005 (Qld), s 6

COUNSEL: B McMillian for the applicant in BS3025/17 and the sixth defendant in BS5449/16
D P de Jersey for the first, eighth and ninth defendants in BS5449/16
A I O'Brien for the third and seventh defendants in BS5449/16
The respondent in BS3025/17 and plaintiff in BS5449/16 appeared on his own behalf

SOLICITORS: The Crown Solicitor for the applicant in BS3025/17 and the sixth defendant in BS5449/16
K&L Gates for the first, eighth and ninth defendants in BS5449/16
Minter Ellison for the third and seventh defendants in BS5449/16
The respondent in BS3025/17 and plaintiff in BS5449/16 appeared on his own behalf

1. **Jackson J:** These three applications seek similar relief. In originating application BS3025/17, the crown solicitor applies for orders under s 6(2) of the *Vexatious Proceedings Act* 2005 (Qld) ("the Act") prohibiting Mr Mathews, the respondent, from instituting proceedings (including interlocutory proceedings) in Queensland without the leave of the Court and staying four current proceedings he has started in this court. In one of those proceedings BS5449/16 (which I call the "Synod proceeding"), two groups of the defendants apply for similar orders. There are alternative orders sought by the applicants in the Synod proceeding, to stay the proceeding or to strike out the statement of claim. But it is appropriate to consider the vexatious proceedings applications first.

2. The three separate vexatious proceedings applications were heard together, because of the overlap of issues and common interests of the parties on each side of the record. Not only did that course decrease the time and cost to the parties and use of the court's resources, it minimised pressure upon the respondent in responding to multiple applications of the same kind, where the respondent said that he was unable to manage a long oral hearing effectively.

3. The current proceedings in this court that are identified in the crown solicitor's application are as follows:
   (a) BS8514/15 ("Websites proceeding");
   (b) BS12511/15 ("Harrycroll.com proceeding");
   (c) BS5449/16 ("Synod proceeding");
   (d) BS5450/16 ("Bus station proceeding").

4. The affidavits read in support of and opposing the applications are voluminous. As well, in each application, there is a set of written submissions by the applicant or applicants and a written submission by the respondent. The time period that the material covers is long, more than a decade in some respects. The events called into

question are numerous, because of the many proceedings instituted or conducted by the respondent raised for consideration and the many relevant steps in those proceedings. It is not practicable or useful in these reasons to detail all the relevant events.

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

Prior vexatious proceedings orders and the current application

6. The threshold question under s 6(1) of the Act is whether the respondent is "a person who has frequently instituted or conducted vexatious proceedings in Australia".

7. There are two previous findings of that kind in evidence. One was made in 2006 by Fryberg J in this court.[1] The other was made in 2015 by Reeves J in the Federal Court of Australia.[2] The relevant legislation in that case was s 37AO of the *Federal Court of Australia Act* 1976 (Cth). The threshold question under that Act, like the question under s 6(1) of the Act, was whether the respondent was "a person who has frequently instituted or conducted vexatious proceedings in Australian courts or tribunals."

8. The result of the 2006 finding in this court was an order prohibiting the respondent from instituting proceedings against the Brisbane City Council and its employees in Queensland. As well, an order was made staying some then relevant proceedings. But the order did not prohibit the respondent from instituting other proceedings in Queensland.

9. The result of the 2015 finding in the Federal Court was an order prohibiting the respondent from bringing proceedings in that court against the State of Queensland, it agencies, statutory bodies and their employees.

10. Neither of the vexatious proceedings orders made in 2006 and 2015 operates as an absolute prohibition. First, each order is restricted to a type of proceedings, being those against a named party and their agencies or employees. Second, each order is restricted in the courts or tribunals to which it applies. But more fundamentally, in any event, that is not how vexatious proceedings legislation in this State (or country) works. Instead, a person against whom an order prohibiting institution of proceedings is made may not institute proceedings or proceedings of a particular type without the leave of the Court.[3] As well, at any time, the Court (exercising original not appellate jurisdiction) may by order vary or set aside a vexatious

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1 *Mathews v Brisbane City Council* [2006] QSC 025.
2 *Mathews v State of Queensland* [2015] FCA 1488.
3 *Vexatious Proceedings Act* 2005 (Qld), s 10.

proceedings order.[4] In that sense, a vexatious proceedings order is interlocutory in character.

11. The orders sought on the crown solicitor's application would prevent the respondent either from prosecuting any of the current proceedings and from starting any new proceedings in Queensland unless he obtained leave to do so under the provisions of the Act.[5] Whether any order should be made on the present applications only arises if the threshold finding is first made that, as at today's date, the respondent is a person who has frequently instituted or conducted vexatious proceedings in Australia.

Status of the 2006 and 2015 findings

12. The 2006 and 2015 findings do not foreclose the answer to that question in any way. However, in my view, they are relevant matters to take into account in considering whether to make the threshold finding. There is more than one reason for that view.

13. The nature of a vexatious proceeding order is not the same as a final judgment on a claim on a cause of action upon a claim for damages or other relief in civil law. It is neither final, nor are rights or liabilities established inter parties. No res judicata arises. Because the order made is interlocutory in nature, no issue estoppel arises either.

14. The purpose of the Act is to restrict vexatious proceedings, not to punish or establish a permanent state of affairs affecting the person who is made subject to a vexatious proceedings order. The mischief is that a person who frequently institutes or conducts vexatious proceedings imposes unreasonable burdens upon the opposite parties and the courts. A vexatious proceedings order curbs the person in a way intended to decrease those burdens, but is not intended to deny the person from being able to litigate a reasonable claim. However, before being able to do so, the person will have to show the Court, in the language of the Act, that the claim they wish to bring is "not […] vexatious"[6] or, in positive language, that there is a reasonable claim.

15. It is significant that under both the Act and s 37AO of the *Federal Court of Australia Act* 1976 (Cth), the threshold question is whether the person has instituted or conducted vexatious proceedings "in" Australia, meaning (under the Act) not just in this State, and (under the federal legislation) not just in Federal courts as such. The Act replaced the *Vexatious Litigants Act* 1981 (Qld). In the explanatory notes for the 2005 Bill leading to the Act it was said that:

> "The major improvement upon the existing legislation is that orders made, and legal actions brought in courts and tribunals outside Queensland can be taken into consideration by the Supreme Court in determining whether an appropriate order should be made."[7]

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4 *Vexatious Proceedings Act* 2005 (Qld), s 7.
5 *Vexatious Proceedings Act* 2005 (Qld), ss 11, 12 and 13.
6 *Vexatious Proceedings Act* 2005 (Qld), s 13(4).
7 Explanatory Notes, *Vexatious Proceedings Bill* 2005 (Qld), 1-2.

16. Consistently with those factors, s 6(5) of the Act provides that the Court may have regard to proceedings and orders in or made by any Australian court or tribunal.

17. Accordingly, in my view, the 2006 and 2015 findings may be taken into account in answering the threshold question in the present applications.

18. There are other sources or categories of relevant evidence:

    (a) first, there is evidence as to the proceedings that lay behind the earlier findings made for the purposes of the 2006 and 2015 vexatious proceedings orders;
    (b) second, there is evidence as to proceedings started by the respondent other than the current proceedings. That evidence extends to the outcomes of those proceedings where they have been concluded or their current state or progress where they have not; and
    (c) third, there is evidence in relation to each of the current proceedings.

19. Within the universe of proceedings that have been instituted by the respondent, there are specific findings which the applicants contend inform the conclusion whether or not the respondent has instituted or conducted vexatious proceedings to the required extent. In order to consider the findings that are sought, it is necessary to identify and describe the current proceedings and their central features.

Websites proceeding

20. Proceeding BS8514/15 stems from an arrest, four charges and the resultant criminal proceeding brought against the respondent 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 the respondent's then residence.

22. On that day, the respondent 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).

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.

24. The respondent 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. The respondent 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. [8]

Harrycroll.com proceeding

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 the respondent was that he owned the website and that information and references on the website breached confidentiality in relation to a domestic violence protection order[9] 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[10] to the respondent to remove any reference or information containing the woman's name from the website. On the same day, the respondent alleges he was arrested without warrant unlawfully by Sgt Cabrera.

30. On 5 April 2010, the respondent 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,[11] 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.

32. There is an adumbration in the statement of claim in this proceeding of some of the allegations later made by the respondent 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.[12]

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8 *A v State of New South Wales* (2007) 230 CLR 500, 502 [1] and 517-532 [51]-[95].

9 See *Domestic Violence and Family Protection Act* 1989 (Qld), s 82(1)(b).

10 Possibly intended to be given under *Police Powers and Responsibilities Act* 2000 (Qld), s 48.

11 *Police Powers and Responsibilities Act* 2000 (Qld), s 791(1).

12 *Williams v Spautz* (1992) 174 CLR 509, 522-526.

Synod proceeding

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 the respondent 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. The respondent 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. 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. 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, the respondent 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.[13]

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.[14]

40. On 6 December 2005, the respondent 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[15] as against other defendants, but the respondent 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.[16]

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.[17]

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13 *Mathews v Morgan & ors* [2005] QSC 222.
14 *Mathews v Morgan & anor* [2006] QCA 143.
15 *Mathews v Brisbane City Council* [2006] QSC 025.
16 *Uniform Civil Procedure Rules* 1999 (Qld), r 389(2).
17 *Land Title Act* 1994 (Qld), s 184.

The respondent does not in terms allege an exception to the Synod's indefeasible title[18] in the amended statement of claim.

43. The respondent 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 the respondent. 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 the respondent 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 the respondent 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. The respondent 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 the respondent with wilful damage[19] relating to the car aerial.

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18 *Land Title Act* 1994 (Qld), s 185.

19 *Criminal Code* (Qld), s 469.

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 the respondent and charged him with an offence of public nuisance.[20]

54. On 16 May 2005, the respondent 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" the respondent, in circumstances where the respondent 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.[21]

57. This summary of the Synod proceeding is an understatement of the extent to which it is beset and besieged with defects and difficulties that would make any trial of it as presently constituted impossible.

58. These defects and difficulties can be illustrated by summarising the alleged conspiracies or conspiracy involving just the church parties as follows:

    (a) par 33 alleges that more than six parties agreed to engage (together with students to be selected) to cause the respondent to vacate the house;
    (b) par 59 alleges that more than seven parties concocted and invoked a clandestine scheme to make properties including the house available, in effect to St John's College;
    (c) par 162 alleges that seven parties entered into a scheme to pressure the McVeans to sell the house to the Synod and to evict the respondent;
    (d) para 222 alleges that on 1 June 2005 lawyers representing the Synod actively agreed with the Magistrate in the order that was made (even though such lawyers and the Synod were not parties to the prosecution of the public nuisance offence);
    (e) para 254 alleges that six parties demanded and obtained possession of the house (even though the Synod purchased the house later with vacant possession from the McVeans).

59. None of these allegations is supported by any material statement of fact.

60. The claims and causes of actions asserted in this proceeding are for a declaration of the plaintiff's beneficial ownership of the house (presumably against the Synod as trustee), $500,000 damages for loss of use of the house (it is not clear against whom), $12,600,700 damages for nuisance, negligence, "intentional infliction of emotional distress" and abuse of process and $100 million aggravated and exemplary damages for those torts.

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20 *Vagrants Gaming and Other Offences Act* 1931 (Qld), s 7AA.
21 *R v Mathews* [2010] QCA 196.

61. By his cross-application, the respondent applies for an order for the production of the university's legal advice in relation to the incident with security staff. That application was adjourned pending the resolution of the vexatious proceedings applications. Without purporting to express any concluded view, but against the possibility that if produced the advice might assist the respondent on the vexatious proceedings applications, I comment that there are potential difficulties in the way of such an order. First, the university's duty of disclosure under UCPR 224 may not have arisen yet. No basis for any earlier order for disclosure has been raised. Second, the legal advice may be privileged from production because of legal professional privilege unless privilege was waived. The respondent has made previous unsuccessful attempts to challenge the claim of privilege in other proceedings. The background is that although the registrar said to the respondent many years ago that he would show the advice to the respondent, he did not do so and withdrew the offer a short time later, at least arguably without having waived the privilege. In any event, the respondent does not raise a claim over this incident in the amended statement of claim. It is an interlocutory application for a document that is only disclosable on the grounds of direct relevance to a fact in issue.

Bus station proceeding

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, the respondent was put off a Clark's bus by three Translink Senior Network Officers - the first, third and fourth defendants. The claim begins with the respondent's allegation that they acted unlawfully in doing so and one or more of them assaulted the respondent.

64. From that point the respondent 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 the respondent. Their wrongs or involvement in the conspiracy have arisen either from some pre-existing dispute with the respondent 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 the respondent's 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.[22]

Earlier proceedings relating to the Synod proceeding and the Bus station proceeding

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22 *Lee v Abedian* [2016] QSC 092.

66. As previously mentioned, the respondent brought proceeding BS4337/05 over some of the subject matter of the central claim or theme of the Synod proceeding. Dr Morgan was among the defendants. The statement of claim was struck out.[23] After that, the proceeding was struck out and an appeal from that order was dismissed.[24]

67. Further, as previously mentioned, the respondent started proceeding BS10350/05 over some of the same subject matter of the central claim or theme in the Synod proceeding. Mr Porter, the university, Dr Morgan, Sgt Rantala, the State and the "Queensland Police Service" (which is not a legal entity) were among the defendants.

68. On 9 February 2006, that proceeding was ordered to be stayed by the 2006 vexatious proceedings order as against other defendants.[25]

69. On 21 February 2006, that proceeding was by consent ordered to be permanently stayed as against the university.

70. It was not stayed as against Mr Porter, Dr Morgan, Sgt Rantala, the State and the "Queensland Police Service" (incorrectly named as a defendant), but as with the McVeans, it became stayed, against them, in effect, for want of prosecution by failure to take a step for more than two years.

71. The Synod proceeding is thus the third claim based substantially on the respondent's alleged beneficial interest in the house.

72. As will appear in more detail later, the respondent brought proceedings in the Federal Court and Federal Circuit Court related to the subject of the Bus station proceeding in proceedings QUD 839 of 2013, QUD 178 of 2014, BRG 363 of 2014 and QUD 532 of 2014.

73. The Bus station proceeding is the second or third claim for damages arising from the bus station incident on 5 March 2013.

Interlocutory steps

74. The respondent has sent the opposite parties in the current proceedings (except the Synod proceeding) numerous letters under UCPR r 444.

75. However, they have been misconceived. In the overall context of these vexatious proceedings applications, their significance is that they show, at the least, that the respondent has been unable to progress any reasonable cause of action that might otherwise be submerged in the statements of claim towards trial.

Model litigant duties

76. In a number of places, and in a number of ways, the respondent relies on the model litigant duties of the governmental adversary parties as promoting his rights or

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23 *Mathews v Morgan & ors* [2005] QSC 222.
24 *Mathews v Morgan & anor* [2006] QCA 143.
25 *Mathews v Brisbane City Council* [2006] QSC 025.

claims as justifiable and as affecting whether the current proceedings are vexatious proceedings.

77. The concept of the crown acting as a model litigant is perhaps as old as the courts of this country themselves.[26] However, the label "model litigant" enters the lexicon later, perhaps in substance as recently as the 1990s.[27]

78. The instability that would attach to attempts to weave the so-called duties of a model litigant into the evidentiary and procedural obligations of curial decision making has been recognised.[28] In my view, the correct view was put thus:

> "The Solicitor-General of the Commonwealth correctly submitted that the duty to act as a model litigant requires the Commonwealth and its agencies, as parties to litigation, to act fairly, with complete propriety and in accordance with the highest professional standards, but within the same procedural rules as govern all litigants. But the procedural rules are not modified against model litigants – they apply uniformly."[29]

79. In my view, nothing is added to the analysis of the questions for decision in the present case by viewing those questions through some form of prism based on the duties of a model litigant.

The 2015 vexatious proceedings order

80. On 24 December 2015, Reeves J made the 2015 vexatious proceedings order.

81. The application for that order was made by the State. An originating proceeding, QUD 839 of 2013, had been instituted by the respondent in the Federal Court made under s 46PO of the *Australian Human Rights Commission Act* 1986 (Cth), after the President of the AHRC terminated a complaint brought by him. He had claimed that the bus station incident was unlawful discrimination and sought $200,000 damages and $100,000 punitive damages.

82. The respondent instituted a number of other proceedings relating to the same subject matter:

(a) QUD 178 of 2014 – Federal Court of Australia;
(b) BRG 363 of 2014 – Federal Circuit Court of Australia; and
(c) QUD 532 of 2014 – Federal Court of Australia.

83. Reeves J's reasons detail the tortuous path of the respondent's proceedings in the Federal Court and Federal Circuit Court. The result was a grant of summary judgment against the respondent on his then claim in the Federal Court. Reeves J proceeded to consider the vexatious proceedings application by the State.

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26 *Melbourne Steamship Co Ltd v Moorehead* (1912) 15 CLR 333, 342.

27 *Law Officer Act* 1992 (ACT), s 5AA; *SCI Operations Pty Ltd v Commonwealth of Australia* (1996) 139 ALR 595, 613.

28 *Australian Securities and Investments Commission v Hellicar* (2012) 247 CLR 345, 406-409 [147]-[155].

29 *Australian Securities and Investments Commission v Hellicar* (2012) 247 CLR 345, 435 [240].

84. The material considered by Reeves J included the then current proceedings in Federal courts. As well his Honour considered fifteen cases instituted by the respondent in State courts (with one exception), being:

(a) Case 1 – *R v Mathews* [1995] QCA 336;
(b) Case 2 – *Mathews v Thompson* [1998] QCA 407;
(c) Case 3 – *Mathews v Smith* [1997] QCA 365;
(d) Case 4 – *Mathews v Telstra Corporation Ltd* [1998] QCA 407;
(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);
(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;
(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.

85. Having read the underlying decisions to which Reeves J refers, I respectfully adopt his Honour's concise summary of their nature and outcomes,[30] without repeating it.

86. Reeves J concluded that:

(a) six of the fifteen cases and the various applications made within them were instituted without reasonable grounds;
(b) the respondent's conduct of the originating application under s 46PO of the AHRC Act was an abuse of the process of the court and pursued without reasonable grounds;
(c) proceeding QUD 178 of 2014 was instituted without reasonable grounds and to achieve a wrongful purpose, to make scandalous and spurious accusations;
(d) two of the applications that had been brought in proceeding BRG 363 of 2014 were instituted without reasonable grounds;
(e) proceeding QUD 532 of 2014 has been conducted to achieve a wrongful purpose to make scandalous and spurious accusations against a range of persons.

87. The overall result was that Reeves J found that 11 proceedings instituted or conducted by the respondent in Australian courts or tribunals were vexatious proceedings and that the respondent had therefore instituted such proceedings frequently. The resultant vexatious proceedings order was that the respondent is prohibited from instituting any proceedings in the Federal Court of Australia against the State of Queensland, its agencies, statutory bodies and their employees.

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

The 2006 vexations proceedings order

88. On 9 February 2006, Fryberg J made the 2006 vexatious proceedings order.

89. His Honour considered more than 30 proceedings brought by the respondent. They are set out in a schedule in the evidence.[31]

90. Fryberg J summarised the effect of the evidence before him as follows:

> "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."[32]

91. The result was that Fryberg J found that that the respondent was a person who had frequently instituted and conducted vexatious proceedings in Australia. The resultant order was:

> "1. It is declared that the respondent is a person who has frequently instituted and conducted vexatious proceedings in Australia.
>
> 2. It is ordered that proceedings numbered BD10350 of 2005 be stayed as against the second, seventh, eighth, sixteenth, seventeenth and twentieth defendants therein.
>
> 3. It is ordered that the respondent be prohibited from instituting any proceedings in any Court of the State of Queensland against the Brisbane City Council and/or any employee of the Brisbane City Council."[33]

Other proceedings

92. The respondent has commenced other proceedings against the University of Queensland and Mr Porter. In *Mathews v University of Queensland*,[34] he claimed damages in excess of $400M, pleaded unparticularised allegations of deceit and

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31 See schedule referred to at p 6 of the reasons of Fryberg J at p 6; Ex 52 to the affidavit of T Havas filed on 16 March 2017 (vol 5 pp 1056-1058).

32 *Brisbane City Council v Russell Gordon Haig Mathews* [2006] QSC 025, 8-9.

33 *Brisbane City Council v Russell Gordon Haig Mathews* [2006] QSC 025, 10.

34 [2002] FCA 414.

made allegations of defamation against staff members of UQ, liability for which he sought to sheet home to the university. In *Mathews v The Senate of UQ & Porter*,[35] he sought to judicially review a decision of the Senate to refuse to provide him with access to a mailing list. Additionally, the university was the subject of an application by him for non-party discovery, which was dismissed by Rangiah J.[36]

The nature of vexatious proceedings

93. The definition of "vexatious proceedings" in the Dictionary to the Act[37] is inclusive. Apart from the definition, there are many cases that deal with vexatious proceedings either under the rules of court that were modelled on the general orders under the *Judicature Acts* or in the inherent jurisdiction. But the definition in the Act is quite extensive and covers much of the relevant ground. It includes a proceeding that is an abuse of process, or instituted or pursued without reasonable ground, or instituted or conducted to harass or annoy, or to cause delay or detriment or for a wrongful purpose.

94. In particular, the concept of an abuse of process is quite broad. The point was thoroughly made in *Batistatos v Road Traffic Authority*:[38]

> "What amounts to abuse of court process is insusceptible of a formulation comprising closed categories. Development continues. One example is the line of authority dealing with the stay of proceedings instituted in a second forum where there are pending proceedings in another forum and the continuance of the second proceedings would be an abuse of the process of the first forum. Again… in *CSR Ltd v Cigna* Insurance Australia Ltd … it was said of the grant of an anti-suit injunction that the counterpart of the power of a court to prevent the abuse of its processes was the power of the court to protect the integrity of those processes once set in motion…
>
> A convenient starting point for consideration of the development that has occurred is the statement made by Lord Blackburn in 1885, in a case frequently cited in Australian courts. The causes of action at stake in *Metropolitan Bank Ltd v Pooley* were in tort. Lord Blackburn said:
>
> > '[F]rom early times (I rather think, though I have not looked at it enough to say, from the earliest times) the Court had inherently in its power the right to see that its process was not abused by a proceeding without reasonable grounds, so as to be vexatious and harassing — the Court had the right to protect itself against such an abuse; but that was not done upon demurrer, or upon the record, or upon the verdict of a jury or evidence taken in that way, but it was done by the Court informing its conscience upon affidavits, and by a summary order to stay the action which was brought under such circumstances as to be an abuse of the process of the Court; and in a proper case they did stay the action.'

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35 BS607 of 1997.
36 *Mathews v State of Queensland* [2015] FCA 1488, [13]-[14].
37 *Vexatious Proceedings Act* 2005 (Qld), s 3 and Schedule.
38 (2006) 226 CLR 256, 265 - 267 [9]-[15].

…Several other points are to be made respecting that statement in *Metropolitan Bank*. The first is that Lord Blackburn treated vexatious process as synonymous with, or at least an instance of, abuse of process. Secondly, the issues to be considered go beyond a question as to whether the claim or defence in question is bad in law; the demurrer was developed to deal with that situation. Thirdly, and as later emphasised in this court in authorities to which reference has already been made in these reasons, Lord Blackburn indicated that the power existed to enable the court to protect itself from abuse of its process thereby safeguarding the administration of justice. That purpose may transcend the interest of any particular party to the litigation.

…In *Ridgeway v R* , Gaudron J explained:

> "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'.

Earlier, in *Rogers v R* , McHugh J observed:

> 'Although the categories of abuse of procedure remain open, abuses of procedure usually fall into one of three categories: (1) the court's procedures are invoked for an illegitimate purpose; (2) the use of the court's procedures is unjustifiably oppressive to one of the parties; or (3) the use of the court's procedures would bring the administration of justice into disrepute.'

His Honour added:

> 'Many, perhaps the majority of, cases of abuse of procedure arise from the institution of proceedings. But any procedural step in the course of proceedings that have been properly instituted is capable of being an abuse of the court's process.'

To that it should be added that the power to deal with procedural abuse extends to the exclusion of particular issues which are frivolous and vexatious. Further, the failure to take, as well as the taking of, procedural steps and other delay in the conduct of proceedings are capable of constituting an abuse of the process of the court." (footnotes omitted)

Are the current proceedings vexatious proceedings?

95. In my view, it is appropriate to focus primarily on the current proceedings.

The Websites proceeding

96. In my view, the Websites proceeding is a vexatious proceeding.

97. First, the amounts of damages claimed are unjustifiable. The plaintiff alleges that he was arrested on a single day and detained for several hours and that after almost five years the charges against him were dismissed before they were heard. He does not allege any basis for the claimed compensatory damages of $2,600,700 or for an aggravated or exemplary damages award of $10 million. Second, the alleged conspiracy or conspiracies are unsupported by any allegation of fact as to making any agreement or acts from which any alleged agreement might be inferred. Third, two of the defendants were members of the staff of the office of the Commonwealth Director of Public Prosecutions at the relevant time. They are immune from a civil claim for any relevant done or omission made in good faith.[39] Fourth, the individual police officers did not incur civil liability for their conduct in an official capacity. Any liability attaches instead to the State.[40]

The Harrycroll.com proceeding

98. In my view, the Harrycroll.com proceeding is a vexatious proceeding. First, although the amount claimed is much less than the amount claimed in any of the other current proceedings, it is still unjustifiable. The plaintiff alleges that he was arrested on two occasions for a period of a few hours on each occasion and that after one month the charge against him in relation to the alleged offence was dismissed before it was heard. He does not allege any basis for the claimed compensatory damages of $400,000. He does not allege facts to support the conclusions that might justify the claim for aggravated damages. Second, the alleged conspiracy or conspiracies are unsupported by any allegation of fact as to making any agreement or acts from which any alleged agreement might be inferred. Once that is accepted, much of the pleading is plainly irrelevant and immaterial. Third, the pleading is disorganised and on any view contains many irrelevant allegations. Fourth, if the respondent claims damages for personal injuries the proceeding is likely statute barred.[41] Fifth, there are scandalous allegations of theft.[42]

The Synod proceeding

99. 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

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39 *Director of Public Prosecutions Act* 1983 (Cth), s 32A.
40 *Police Service Administration Act* 1990 (Qld), s 10.5.
41 *Limitation of Actions Act* 1974 (Qld), s 10.
42 *Uniform Civil Procedure Rules* 1999 (Qld), r 171.

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.[43] 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.[44] 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 a number of scandalous allegations made against judicial officers and public bodies without any apparent basis.

The Bus station proceeding

100. 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.[45] 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.[46] 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

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

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

45 There is no suggestion that the respondent engaged or complied with the provisions of the *Personal Injuries Proceedings Act* 2002 (Qld).

46 *Transport Operations (Passenger Transport) Act* 1994 (Qld), s 115.

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.[47] Fifth, the pleading is disorganised and contains many irrelevant allegations. Sixth, 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, then the proceeding may be out of time.[48] 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.

Conclusion on the threshold question

101. The summaries of the current proceedings set out above show that each one is a vexatious proceeding as presently constituted. This finding can and should be made without making any finding as to the respondent's purpose in bringing the proceedings individually or collectively.

102. In addition, there are the two prior findings that the respondent has frequently instituted or conducted vexatious proceedings and consequential orders made against the respondent under vexatious proceedings legislation.

103. Further, the history of other proceedings shows that there are many other unsuccessful proceedings that the respondent has instituted or conducted.

104. Lastly, the noticeable patterns of conduct are such that it must reasonably be expected that the respondent will repeat them or some of them in conducting the current proceedings and in instituting any future proceedings.

105. These facts are overwhelming. The respondent is a person who has frequently instituted and conducted vexatious proceedings in the context of the current proceedings. To a significant extent, the subjects of the current proceedings reprise or stem from the same or similar allegations that he has made in earlier proceedings that have been struck out or stayed or not proceeded with.

106. The respondent submits that his capacity to conduct litigation is affected by his disability. If that is accepted (and in my view it should be) it does not affect the finding that should be made on the threshold question. It is one thing to make procedural allowances to permit a party with a disability or impairment to start or prosecute a proceeding. It is another thing to permit vexatious proceedings to be instituted or conducted. The facts and reasoning that in my view inexorably lead to the conclusion that the respondent is a person who has frequently instituted and conducted vexatious proceedings are not displaced by the respondent's disabilities or impairments. However, because of them, I do not make findings as to whether the respondent instituted or conducted any of the proceedings to harass or annoy, or cause delay or detriment or for a wrongful purpose.

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47 *Kendirjian v Lepore* [2017] HCA 13, [28]-[33].

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

107. It has also not been necessary to make findings about the respondent's purpose in his consistent and continuing behaviours of accusing the lawyers who appear for the parties that he sues of unprofessional conduct or worse or his consistent and continuing behaviours of alleging that judges who have heard his cases have been biased or corrupt.

Orders to be made

108. It is in the context of the orders to be made that, in my view, the evidence as to the 2006 vexatious proceedings order, the 2015 vexatious proceedings order, and the state or progress of proceedings other than the current proceedings is most relevant.

109. Overall, there are noticeable patterns of conduct by the respondent that should not be ignored, even though general adverse findings against the respondent about his conduct of proceedings are best kept to a minimum, as with any other litigant.

110. First, the respondent has repeatedly made overreaching and unjustifiable claims for damages without any pleaded basis of fact.[49] The total amounts claimed do not appear to have any rational basis.

111. Second, the respondent consistently alleges conspiracies, involving many parties. The State's employees or agents are a standout target of such allegations, but they are also regularly made against others, including lawyers, senior clergy and university office holders. 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[50] or fraud or serious misconduct.[51] These are longstanding requirements expressly maintained in the current rules of court.[52] The respondent consistently makes such allegations without the backup. The opposite party in the proceeding must bear the additional burden caused by this pattern of behaviour on the respondent's part.

112. Third, the respondent does not take kindly to lack of success. In a number of earlier proceedings, including those in the Federal Court, he has made repeated appeals against adverse decisions, nearly always without success. By this pattern he regularly subjects the opposite party in a proceeding to a burden that exceeds simply defending the originating proceeding.

113. Fourth, the respondent consistently (although not always) challenges the authority of the court charged with the responsibility of hearing and deciding his case. Sometimes the allegation is of actual or apparent bias. Other times it is of discrimination on the ground of his disability. Again, the opposite party in the

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49 *Uniform Civil Procedure Rules* 1999 (Qld), rr 150(1)(b) and (2) and 155.

50 *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].

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

52 *Uniform Civil Procedure Rules* 1999 (Qld), rr 149 and 150(1) and (2).

proceeding must bear the additional burden caused by this pattern of behaviour on the respondent's part.

114. Fifth, the respondent consistently challenges the professional conduct of the lawyers who act for the opposite party or parties. He may do so in the proceeding as it goes, as he has done in the current proceedings he brings against the State. Or he may do so by joining the lawyer as a party, as he has done in the Bus station proceeding and against lawyers for opposite parties in earlier cases. Again, the opposite party in the proceeding must bear the additional burden caused by this pattern of behaviour on the respondent's part.

115. These noticeable patterns are of some importance, in my view. They are entrenched over time. It is likely they will be continued. It cannot be expected that the respondent will be able to gain insight to enable him to avoid repeating them in the future. Individual orders made in individual cases are not likely to cause him to stop them.

116. The overall picture is consistent. The respondent persists in making claims for the wrongs he believes were done to him over the loss of the house, his websites and being put off the bus at the bus station. The respondent's complaints and allegations in the current proceedings are made no less excessively now than in earlier proceedings.

Conclusion

117. In my view, the appropriate order in the present case is one that extends the prohibition made by the order of Fryberg J, so that the respondent is prohibited from instituting any proceeding in Queensland, subject to three relevant exceptions.

118. Two of the exceptions are proposed by the Crown solicitor and not opposed by any party. The first is intended to make it clear that if the Act applies to a criminal proceeding, it is not intended to prevent an application by the respondent in any such proceeding.

119. The second is to except an application for the prerogative writ of habeas corpus from the orders to be made. Whether it is necessary and why need not be discussed in this case. I am prepared to except the writ from the orders to be made.

120. The third exception is that the respondent should be permitted an appeal against this order, because of the extent of its operation and the severe curbing effect it has on his ability to prosecute the current proceedings or start new proceedings.

121. It might have been tidier not to leave Fryberg's order in place at the same time as the order I am proposing to make, so that only one order restraining the institution of all types of proceedings in Queensland remains in place. However, the Brisbane City Council is not a party to these applications and the respondent has applied for and been refused leave to start an appeal against Fryberg J's order previously. Accordingly, I do not propose to set aside Fryberg J's order.