



Common Law Division Supreme Court New South Wales

Case Name: Beckett v State of New South Wales

Medium Neutral Citation: [2015] NSWSC 1017

Hearing Date(s): 28-31 July; 4-8, 12-15, 18-22, 27-29 August; 27, 28, 30, 31 October; 3-7, 10, 11, 13 November; 11, 12, 15, 17 December 2014

Date of Orders: 24 August 2015

Date of Decision: 24 August 2015

Jurisdiction: Common Law

Before: Harrison J

Decision:

- (1) Verdict for the plaintiff in the sum of \$2,310,350 plus interest.
- (2) Direct the parties within 7 days to provide me either with an agreed sum for interest on the verdict or in the absence of agreement written submissions not exceeding two pages setting out the amount (if any) for which the parties respectively contend.
- (3) Order that unless either party makes an application within 7 days for a different order the defendant is to pay the plaintiff's costs of and incidental to the proceedings.

Catchwords: TORTS - malicious prosecution - whether prosecutor acted without reasonable and probable cause – where plaintiff's convictions quashed and new trial ordered on counts 1, 2, 5, 6 and 7 and verdict of acquittal ordered on count 9 – where nolle prosequi subsequently filed - where prosecutor had no personal knowledge of the facts underlying the charges - whether prosecutor did not honestly form the view that there were proper cases for prosecution or whether the prosecutor formed that view on an insufficient basis.

TORTS - malicious prosecution - whether prosecutor acted maliciously - whether the sole or dominant

purpose of the prosecutor was other than the proper invocation of the criminal law.

Legislation Cited:

Crimes Act 1900
Criminal Appeal Act 1912
Criminal Code (Qld)
Evidence Act 1995
Firearms and Dangerous Weapons Act 1973
Justices Act 1902

Cases Cited:

A v New South Wales [2007] HCA 10; (2007) 230 CLR 500
Abbott v Refuge Assurance Company [1962] 1 QB 432
Adams v Kennedy & Ors [2000] NSWCA 152; (2000) 49 NSWLR 78
AW & Ors v State of New South Wales [2005] NSWSC 543
Beckett v New South Wales [2014] NSWSC 1164
Beckett v New South Wales [2013] HCA 17; (2013) 248 CLR 432
Berry v British Transport Commission [1962] 1 QB 306
Bhattacharya v New South Wales [2003] NSWSC 261
Blatch v Archer (1774) 1 Cowp 63; 98 ER 969
Briginshaw v Briginshaw [1938] HCA 38; (1938) 60 CLR 336
Brown v Hawkes (1891) 2 QB 718
Cassell & Co Limited v Broome & Anor [1972] AC 1027
Coyle v State of New South Wales [2006] NSWCA 95
Dent v Standard Life Assurance Ltd (1904) 4 SR (NSW) 560
G v H [1994] HCA 48; 181 CLR 387
George v Rockett [1990] HCA 26; (1990) 170 CLR 104
Gilinski v McIver [1962] AC 726
Helton v Allen [1940] HCA 20; (1940) 63 CLR 691
Houda v State of New South Wales [2005] NSWSC 1053
Jones v Dunkel [1959] HCA 8; (1959) 101 CLR 298
Kuddus v Chief Constable of Leicestershire Constabulary [2002] 2 AC 122
Kuhl v Zurich Financial Services Australia Limited [2011] HCA 11; (2011) 243 CLR 361
Lamb v Cotogno [1987] HCA 47; (1987) 164 CLR 1
Lee v Kennedy [2000] NSWCA 153
Leibo v Buckman [1952] 2 All ER 1057
McDonald v Coles Myer Limited (trading as "K-mart Chatswood") [1995] NSWSC 67; (1995) AustTorts R 81-361

Molinara v Perre Bros Lock 4 Pty Ltd [2014] SASCFC 115
 Morro, N & Ahadizad v Australian Capital Territory [2009] ACTSC 118; (2009) 4 ACTLR 78
 Moses v State of New South Wales [2010] NSWDC 243
 Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd [1992] HCA 66; (1992) 67 ALJR 170
 Noye v Robbins & Anor [2007] WASC 98
 Nye v The State of New South Wales [2003] NSWSC 1212; (2004) AustTorts R 81-725
 Proulx v Quebec (Attorney General) [2001] 3 SCR 9
 R v Roseanne Catt (1993) 68 A Crim R 189
 Regina v Catt [2005] NSWCCA 279
 Savile v Roberts (1698) 1 Ld Raym 374
 Sharp v Biggs [1932] HCA 54; (1932) 48 CLR 81
 Slaveski v Victoria [2010] VSC 441
 Spautz v Butterworth & Anor [1996] NSWSC 614; (1996) 41 NSWLR 1
 State of New South Wales v Delly [2007] NSWCA 303; (2007) AustTorts R 81-816
 State of New South Wales v Hunt [2014] NSWCA 47, (2014) 86 NSWLR 226
 State of New South Wales v Ibbett [2006] HCA 57; (2006) 229 CLR 638
 State of New South Wales v Koumdjiev [2005] NSWCA 247; (2005) 63 NSWLR 353
 State of New South Wales & Or v Landini [2010] NSWCA 157
 State of New South Wales v Riley [2003] NSWCA 208; (2003) 57 NSWLR 496
 Thompson v Commissioner of Police of the Metropolis [1998] QB 498
 Triggell v Pheeney [1951] HCA 23; (1951) 82 CLR 497
 Trobridge v Hardy [1955] HCA 68; (1955) 94 CLR 147
 Walter v Alltools (1944) 61 TLR 39
 XL Petroleum (NSW) Pty Ltd v Caltex Oil (Australia) Pty Ltd [1985] HCA 12; (1985) 155 CLR 448
 Zreika v State of New South Wales [2011] NSWDC 67

Texts Cited: Ancius Boethius, *The Consolation of Philosophy*, (Revised Ed, Book II)

Category: Principal judgment

Parties: Roseanne Beckett (Plaintiff)
 State of New South Wales (Defendant)

Representation: Counsel:

P E Blacket SC, K Nomchong SC & N Broadbent
(Plaintiff)
J E Maconachie QC, P Saidi & A N Williams
(Defendant)

Solicitors:
Turner Freeman (Plaintiff)
Lea Armstrong, Crown Solicitor (Defendant)

File Number(s): 2008/20334

Publication Restriction: Nil

“If I have fully diagnosed the cause and nature of your condition, you are wasting away in pining and longing for your former good fortune. It is the loss of this which, as your imaginations works upon you, has so corrupted your mind. I know the many disguises of the monster, Fortune, and the extent to which she seduces with friendship the very people she is striving to cheat, until she overwhelms them with unbearable grief at the suddenness of her desertion. If you can recall to mind, her character, her methods, and the kind of favour she proffers, you will see that in her you did not have and did not lose anything of value. But I am sure it will require no hard work on my part to bring all this back to your memory. It used to be your way whenever she came near with her flattery to attack her with manly arguments and hound her with pronouncements taken from the oracle of my shrine. However, no sudden change of circumstances ever occurs without some upheaval in the mind; and that is why you, too, have deserted for a while your usual calm.”

Boethius, *“The Consolation of Philosophy”*, Revised Ed, Book II page 22

JUDGMENT

- 1 **HIS HONOUR:** The brief procedural history of this matter was concisely described by the High Court when Ms Beckett successfully challenged the proposition that a *nolle prosequi* did not relieve her of the obligation to prove her innocence: *Beckett v New South Wales* [2013] HCA 17; 248 CLR 432 . That summary was as follows:

"[19] The appellant was arrested by members of the New South Wales Police Force and charged with a number of offences against her husband. She was committed to stand trial in the Supreme Court of New South Wales. A bill of indictment charging the appellant with nine counts was found and she was arraigned upon it. The eighth count was preferred *ex officio*. At the conclusion of the appellant's trial on 11 September 1991 the jury returned verdicts of guilty on counts 1, 2, 3, 4, 6, 7 and 9, and on an alternative charge to the offence charged in count 5. A verdict of not guilty was returned respecting the offence charged in count 8.

[20] In October 1991, the appellant was sentenced to a term of imprisonment of twelve years and three months with a non-parole period of ten years and three months. She appealed unsuccessfully against her convictions and sentence to the New South Wales Court of Criminal Appeal.

[21] In 2001, the appellant petitioned the Governor seeking a review of her convictions. The Attorney General referred the application to the Court of Criminal Appeal. The Court of Criminal Appeal remitted the determination of a number of factual questions to Acting Judge Davidson. Following the delivery of Davidson ADCJ's findings, on 17 August 2005 the Court of Criminal Appeal allowed the appeal in relation to counts 1, 2, 5, 6, 7 and 9 and quashed each conviction. The Court entered a verdict of acquittal on count 9. A new trial was ordered on counts 1, 2, 5, 6 and 7. The appellant's appeal against her convictions for the offences charged in counts 3 and 4 was dismissed.

[22] On 22 September 2005, the Director directed that there be no further proceedings against the appellant on the outstanding charges that were the subject of the Court of Criminal Appeal's order for a new trial. On 26 September 2005, a document communicating the Director's determination was forwarded to the Registry of the Court of Criminal Appeal.

...

[23] On 15 August 2008, the appellant instituted proceedings against the respondent in the Common Law Division of the Supreme Court claiming damages for malicious prosecution on the basis that the respondent was vicariously liable for the conduct of the police officers who instigated the prosecution.

[24] The respondent filed a notice of motion on 16 May 2011 seeking a separate determination in relation to two questions:

'A. With respect to each of the counts 1, 2, 5, 6 and 7 for which the plaintiff was tried:

Accepting that the proceedings terminated in favour of the plaintiff, to the extent that the plaintiff's claim for malicious prosecution is based upon each of these counts, does the plaintiff need to prove her innocence in relation to each count to succeed?

B. With respect to count 9 for which the plaintiff was tried:

To the extent that plaintiff's the claim [*sic*] for malicious prosecution is based upon this count does the plaintiff need to prove her innocence of the charge?'

[25] The primary judge (Davies J) agreed to the separate determination of the two questions. His Honour said that the order quashing the appellant's convictions and directing a new trial on the specified counts meant that the issues 'raised by the indictment upon which those counts were tried will remain justiciable'. He held that the indictment on which the appellant had been tried was extant. His Honour concluded that the notification to the Registry of the Court of Criminal Appeal of the Director's decision to take no further proceedings against the appellant was the equivalent of the entry of a *nolle prosequi*. He held that he was bound to apply the *Davis* exception. He answered the questions as follows:

'A. Yes.

B. No.'

[26] The appellant appealed to the Court of Appeal of the Supreme Court of New South Wales (Beazley and McColl JJA and Tobias AJA) against the answer to question A and the respondent cross-appealed against the answer to question B. The Court of Appeal agreed with the primary judge that the direction under s 7(2)(b) of the *DPP Act* constituted the entry of a *nolle prosequi*. It followed that the primary judge had been right to conclude that the *Davis* exception applied. The appeal and the cross-appeal were dismissed.

[27] The appellant applied for special leave to appeal. On 5 October 2012, Gummow, Hayne and Heydon JJ referred the application into an enlarged Full Court for hearing as on appeal..."

- 2 On 8 May 2013 French CJ, Hayne, Crennan, Kiefel, Bell and Gageler JJ granted special leave and allowed the appeal, thereby removing the last of any legal or procedural impediments to the prosecution of her case. These reasons therefore deal with Ms Beckett's substantive claim for damages for malicious prosecution. The hearing of that claim commenced before me on 28 July 2014. I reserved my decision on 17 December 2014 after a hearing occupying several broken periods totalling 37 days.

- 3 The principles appear to be well settled. They were authoritatively discussed by the High Court in *A v New South Wales* [2007] HCA 10; (2007) 230 CLR 500. The following passages are of importance:

[57] There are three features of the present law to which attention should be drawn. First, because questions of malicious prosecution can arise only where the prosecution has ended in the plaintiff's favour, the paradigm case to consider is where the plaintiff has been acquitted of the offence charged. (It is convenient to leave aside what other circumstances suffice to show that the prosecution has ended in the plaintiff's favour, and focus on the paradigm case of acquittal.) That acquittal is not to be controverted. The hypothesis for a subsequent action for malicious prosecution arising from such a case is, therefore, that the plaintiff was not guilty of the offence charged. But that alone does not entitle the plaintiff to a remedy against the prosecutor.

[58] Secondly, the inquiry about reasonable and probable cause has two aspects. That is, to decide whether the prosecutor did not have reasonable and probable cause for commencing or maintaining the prosecution, the material available to the prosecutor must be assessed in two ways. What did the prosecutor make of it? What should the prosecutor have made of it? To ask only whether there was material available to the prosecutor which, assessed objectively, would have warranted commencement or maintenance of the prosecution would deny relief to the person acquitted of a crime prosecuted by a person who not only acted maliciously, but who is shown to have acted without forming the view that the material warranted prosecution of the offences. Conversely, to ask only what the prosecutor made of the material that he or she had available when deciding to commence or maintain the prosecution would favour the incompetent or careless prosecutor over the competent and careful.

[59] Thirdly, the action for malicious prosecution has a temporal dimension. To ask whether a prosecution was commenced or maintained without reasonable and probable cause directs attention to the state of affairs when the prosecution was commenced, or when the prosecutor (the defendant in the subsequent civil claim) is alleged to have maintained that prosecution. Moreover, it necessarily directs attention to what material the prosecutor had available for consideration when deciding whether to commence or maintain the prosecution, not whatever material may later have come to light."

- 4 It will obviously be necessary to review these principles in the context of the wealth of factual material that has emerged since at least Ms Beckett's arrest on 24 August 1989 and in some respects in the years leading up to that event.

The charges

- 5 Central to an understanding of these proceedings is an appreciation of the charges laid against Ms Beckett and the results of her several prosecutions. On 24 August 1989 Detective Thomas charged Ms Beckett with 14 separate

Counts. On 17 October 1989 he laid a further two Counts. Ms Beckett therefore proceeded to committal on the following 16 charges:

- (1) That on 2 May 1988 at Taree, in the State of New South Wales, she did assault Barry Catt, and did then beat and otherwise ill-treat him, thereby then occasioning to him actual bodily harm (Count 1: "The Rock Incident").
- (2) That Ms Beckett, Peter Bridge and Shane Golds, between 1 May 1988 and 24 August 1989 at Taree in the State of New South Wales did conspire together amongst themselves, falsely to accuse Barry Catt of the crime of assault (Count 2: "The Perjury Count").
- (3) That between 1 January 1989 and 9 August 1989, at Swans Crossing via Kendall in the State of New South Wales she maliciously did wound Barry Catt (Count 3: "The Swan's Crossing Incident").
- (4) That on 5 May 1989 at Taree in the State of New South Wales she did assault Barry Catt and did then beat and otherwise ill-treat him, thereby then occasioning to him actual bodily harm (Count 4: "The Cricket Bat/Eucalyptus Oil Incident").
- (5) That on or about 30 July 1989 at Taree in the State of New South Wales, she did maliciously cause to be taken by Barry Catt a certain poison lithium with intent to injure, aggrieve and annoy him (Count 5: "The Lithium Incident").
- (6) That on or about 28 July 1989 at Taree in the State of New South Wales she did solicit James Henry Morris to murder Barry Catt (Count 6: "Soliciting James Morris").
- (7) That between 1 July 1989 and 20 August 1989 at Taree in the State of New South Wales, she did solicit Vernon James Taylor to murder Barry Catt (Count 7: "Soliciting Vernon Taylor").

- (8) That between 1 May 1989 and 23 August 1989 at Taree in the State of New South Wales she did solicit Lesley O'Brien to murder Barry Catt (Count 8: "Encouraging Lesley O'Brien").
- (9) That on 24 August 1989 at Taree in the State of New South Wales she did have in her possession a pistol not being an antique pistol to wit a Hopkins and Allen .32 calibre revolver, she not being the holder of a pistol licence in respect of such pistol (Count 9: "Possession of a Pistol").
- (10) That on 24 August 1989 at Taree in the State of New South she did have a firearm in her possession to wit, a .22 calibre Gevarm carbine she not being the holder of Shooters Licence in respect of that firearm.
- (11) That on 24 August 1989 at Taree in the State of New South Wales she did have in her possession a prohibited drug, to wit, cannabis leaf.
- (12) That on 24 August 1989 at Taree in the State of New South Wales she did have in her possession an item of equipment to wit, one bong, for use in the administration of a prohibited drug.
- (13) That between 14 August 1987 and 24 August 1989 at Taree in the State of New South Wales she did assault Barry Catt and did then beat and otherwise ill-treat him thereby then occasioning actual bodily harm.
- (14) That between 1 April 1989 and 21 August 1989 at Taree in the State of New South Wales she did assault Barry Catt and did then beat and otherwise ill-treat him thereby occasioning actual bodily harm.
- (15) That on 2 May 1989 at Taree in the State of New South Wales she did assault Mary Warwick and did then beat and otherwise ill-treat her.
- (16) That between 1 September 1986 and 30 July 1989 at Taree in the State of New South Wales she did maliciously cause to be taken by

Barry Catt a certain poison, that is to say, lithium, with intent to injure, aggrieve and annoy him.

6 On 27 July 1990, following committal proceedings at the Taree Local Court, Ms Beckett was committed to stand trial in the Supreme Court of New South Wales on the following charges:

- (1) Count 1: Rock Incident: That Roseanne Catt on 2 May 1988 at Taree in the State of New South Wales maliciously did wound Barry Catt (s 35 *Crimes Act*).
- (2) Count 2: Perjury Count: That Roseanne Catt on 3 July 1989 at Taree in the State of New South Wales in the Local Court before Magistrate O'Keefe on an occasion when truth of the same was material did knowingly and willingly falsely swear in substance, as follows, that is to say, that she, Roseanne Catt, at no time struck Barry Catt with a rock: (s 327 *Crimes Act*).
- (3) Count 3: Swan's Crossing Incident: That Roseanne Catt between 2 March 1989 and 30 March 1989 at Swan's Crossing in the State of New South Wales maliciously did wound Barry Catt (s 35 *Crimes Act*).
- (4) Count 4: Cricket Bat/Eucalyptus Oil Incident: That Roseanne Catt on 5 May 1989 at Taree in the State of New South Wales did assault Barry Catt thereby occasioning to him actual bodily harm (s 59 *Crimes Act*).
- (5) Count 5: Lithium Incident: That Roseanne Catt between 1 May 1989 and 31 July 1989 at Taree in the State of New South Wales maliciously did cause to be taken by Barry Catt a noxious thing namely lithium and thereby did endanger the life of Barry Catt (s 39 *Crimes Act*).
- (6) Count 6: Soliciting James Morris: That Roseanne Catt on 28 July 1989 at Taree in the State of New South Wales did solicit James Morris to murder Barry Catt (s 26 *Crimes Act*).

- (7) Count 7: Soliciting Vernon Taylor: That Roseanne Catt between 15 July 1989 and 16 August 1989 at Taree in the State of New South Wales did solicit Vernon Taylor to murder Barry Catt (s 26 *Crimes Act*).
- (8) Count 8: Encouraging Lesley O'Brien: That Roseanne Catt on or about 24 June 1989 at Taree in the State of New South Wales did encourage Lesley O'Brien to murder Barry Catt (s 26 *Crimes Act*).
- (9) Count 9: Possession of a Pistol: That Roseanne Catt on or about 24 August 1989 at Taree in the State of New South Wales did have in her possession a pistol, namely a Hopkins and Alan .32 calibre revolver, she then not being a holder of a licence for such pistol (s 25(1) *Firearms and Dangerous Weapons Act 1973*).

7 The charges which are the subject of these proceedings are counts 1, 2, 5, 6, 7 and 9. Ms Beckett was convicted of counts 3 and 4. She was acquitted of Count 8 at the trial but any claim for malicious prosecution in relation to that charge was statute barred at the time these proceedings were commenced.

Factual summary

8 The facts that give rise to and explain the remarkable events that are involved in this case, and the charges and prosecutions that they have spawned, are broad and deep. They have been the subject of judicial consideration on multiple occasions. That includes the Court of Criminal Appeal in *R v Roseanne Catt* (1993) 68 A Crim R 189, an inquiry on remitter by the Court of Criminal Appeal under s 12(2) of the *Criminal Appeal Act 1912* for Determination of Factual Issues to Davidson ADCJ in 2003 ("the Davidson Inquiry") and a review of Ms Beckett's conviction conducted by the Court of Criminal Appeal on Ms Beckett's application petitioning the Governor for a review of her conviction pursuant to s 474B of the *Crimes Act* in *Regina v Catt* [2005] NSWCCA 279. There have been judgments of single judges of this Court and of the Court of Appeal, as well as the High Court of Australia on more than one occasion. These considerations have necessarily and helpfully produced hundreds of pages of material and information that is helpful for

present purposes. That material obviates the need to some extent for me to revisit in this judgment the myriad background facts between the early 1980s and the present time in the way that might be required in other circumstances. I propose to proceed upon the basis that all that has been written by the courts in the past will be within the knowledge of the parties to this litigation and can be referred to by others in construing my reasons for judgment should the need arise. In particular, but without limitation, the judgment of McClellan CJ at CL in the Court of Criminal Appeal decision in 2005 is a very useful and helpful source of information that is central to my current deliberations.

- 9 A preliminary and necessarily incomplete recital of the factual framework is as follows.
- 10 In 1987 Ms Beckett married Barry Catt. She had two children from a previous marriage and Mr Catt had four children from his previous marriage. By 1989, all of Mr Catt's children resided with Ms Beckett in their home at 1 Cornwall Street, Taree. However, in that year the youngest child, Tony Catt, was sent to Queensland. Mr Catt and Ms Beckett were the owners and operators of a motor vehicle repair business known as Cattys Body Repairs located at 2-8 Cornwall St, Taree.
- 11 Mr Catt had a long history of mental illness and had been scheduled on several occasions. He was diagnosed with bipolar disorder and was hospitalised on several occasions in 1987. He also had a history of erratic behaviour going back to 1983 and of domestic violence involving Ms Beckett. Mr Catt had been prescribed lithium and had been taking that medication since coming under the supervision of his psychiatrist Dr Sandfield. In addition, Mr Catt was taking Rivotril, although his prescription history from Owen's Pharmacy in Taree shows that only one bottle of Rivotril was ever dispensed to him from that pharmacy on 29 October 1987.
- 12 Prior to her marriage to Mr Catt, Ms Beckett had owned a delicatessen in Taree with her then partner Douglas Annetts. That delicatessen was severely

damaged by fire in December 1983. Detective Thomas was the police officer who investigated the cause of the fire. He charged Ms Beckett with arson arising out of those events but the charges were ultimately no-billed. As a consequence of those events, Ms Beckett lodged a number of complaints with the NSW Police Force Internal Affairs unit and the Ombudsman, including in particular complaints against Detective Thomas. The investigation of those complaints extended until 1987.

- 13 On 2 May 1988, an altercation took place at Mary Warwick's house involving at least Ms Beckett and Mr Catt. Mary Warwick is Mr Catt's sister. Ms Beckett alleged that in the course of the fracas Mr Catt assaulted her. Another version of the same incident suggests that Ms Beckett was the assailant. Ms Beckett's son Peter Bridge and Shane Golds, an apprentice employed at Cattys Body Repairs, were present at the time, as well as Christopher Catt and Julie Catt. Ms Beckett maintained that Mary Warwick tried to hit Mr Golds with a rock, but he avoided the rock and it hit Mr Catt. Mr Catt laid a complaint at Taree police station which was investigated by Constables Brown, Miller and Dean, who took no action. Statements were also taken from Ms Beckett, Peter Bridge and Shane Golds.
- 14 On or about 8 May 1988, Ms Beckett obtained an AVO against Mr Catt. He moved out of the family home and took up residence in Cattys Body Repairs at 2-8 Cornwall Street, Taree. He was not living with Ms Beckett at the time of her arrest on 24 August 1989, and maintained that he had been out of the house since 23 May 1988.
- 15 On 12 March 1989 Ms Beckett and Mr Catt were involved in what came to be called the Swan's Crossing incident. A few days later, Mr Catt had a conversation with a Dr Goddard, who was one of his customers. Dr Goddard said Mr Catt showed him his abdomen in the course of that conversation revealing a wound that he estimated was a few days old. No statement or information was given to the police by Mr Catt at that time in respect of the alleged incident but later, when Detective Thomas became involved in the

investigation, Mr Catt alleged that Ms Beckett had stabbed him with an oyster knife while they were at Swan's Crossing.

- 16 On 6 May 1989, Ms Beckett called the police. She reported that the two Catt boys had gone across the road to Cattys Body Repairs to get some office supplies for a school project and that Mr Catt had grabbed and threatened them. Ms Beckett reported that when she arrived at the shop, Mr Catt threw a bottle of eucalyptus oil towards her and the children. On arrival, the police looked through the door and saw Mr Catt who was uninjured. After a short delay, Mr Catt opened the door. He had a small cut about his right eyebrow that was bleeding. Mr Catt was taken to Manning Base Hospital where he received three sutures. According to Constable Adam, Mr Catt was well affected by intoxicating liquor, unsteady on his feet, dishevelled and with slurred speech. A half-full bottle of beer was observed on the table. Mr Catt was arrested. His explanation for his demeanour was that he had been stunned from a blow by a cricket bat wielded by Ms Beckett. The police laid no charges against Ms Beckett and Mr Catt did not seek any.
- 17 Ms Beckett later commenced a private prosecution in Taree Local Court in relation to the assault that she alleged occurred on 2 May 1988. The hearing of those proceedings commenced on 3 July 1989. Mr Bridge, Mr Golds and two of the Catt children gave evidence in support of her case. The matter was stood over part-heard to September 1989. The proceedings were ultimately never concluded or finalised by judgment.
- 18 Earlier that same year, on 10 February 1989, Mr Catt was charged with a number of counts of the indecent and sexual assault of his four children based upon information from officers at the Taree section of the NSW Department of Family and Community Services. He was committed to stand trial on those charges commencing on 31 July 1989. Three of the Catt children remained living with Ms Beckett but the youngest child went to Queensland to live with relatives.

- 19 Detective Thomas knew Mr Catt prior to the investigation. They had had previous dealings concerning a speedboat.
- 20 Adrian Newell was a life long friend of Mr Catt. On or about 25 July 1989 he made a complaint to ICAC alleging a number of things, including favouritism on the part of the Taree police, that Ms Beckett had imposed upon the Attorney General to no bill the Taree arson charge, that she had an automatic rifle and a pistol "in her handbag", that she "split [Mr Catt's] head open with a rock", and had been involved in illicit drugs, including possibly cocaine. Mr Newell made no mention of lithium poisoning.
- 21 Marie Whalen had known Mr Catt for many years and in 1989 she also became acquainted with Ms Beckett. On 27 July 1989 Ms Whalen signed a statement that she had witnessed the sexual abuse of the Catt children by their father. The statement had been typed by Noel Jago and witnessed by Frank Farrer JP.
- 22 In late July 1989, Detective Thomas commenced an investigation into Ms Beckett. At that time he was a detective assigned to the Newcastle Regional Crime Squad. As at July 1989, no information or statements had been made to the police by Mr Catt in respect of any possible criminal activities concerning Ms Beckett.
- 23 In 1989 James Morris was an Aboriginal Liaison Officer attached to Taree police station. Mr Morris and his sister Sandra Ridgeway went to the Taree RSL Club on Friday 28 July 1989. Ms Beckett and her friend Lucy Parkinson (later Cooper) and several other women had also gone to the club on that night. By his own account Mr Morris had consumed five schooners of beer. That was confirmed by his sister. Ms Beckett was later charged with having solicited Mr Morris to kill Mr Catt during an approach to him that evening at the club. Neither Mr Morris nor Ms Ridgeway made any report to the police in respect of any alleged conversation with Ms Beckett. The first time that the conversation was reported to the police was on 25 August 1989.

- 24 Dr Sandfield was Mr Catt's psychiatrist. He filled out a pathology request form listing Mr Catt as the patient and the date of collection as 30 July 1989. It is suggested in the clinical notes that Mr Catt might have been suffering from lithium toxicity plus or minus Clonazepam, possibly administered by a third party. The request related to the presence of lithium and Clonazepam and their possible concentrations within samples of orange juice and milk. On the same day it is alleged that Mr Newell had a meeting with Detective Thomas who was advised of a conversation with Dr Sandfield. Detective Thomas was told by Mr Newell that he intended to go to Mr Catt's business premises and obtain samples of drinks kept in the refrigerator. Mr Newell alleged that he went to the repair shop and removed three containers containing orange juice and milk. Mr Newell took those containers to his home.
- 25 On Monday 31 July 1989, Detective Thomas went to Mr Newell's house and allegedly decanted juice and milk from each large container into sample containers that had been provided by Dr Sandfield. Mr Newell took the sample containers to Dr Sandfield who at some time sent them for testing at Royal Newcastle Hospital. Detective Thomas allegedly took the original containers and drove to Newcastle police station where he put them in the refrigerator in the physical evidence locker.
- 26 Ms Beckett commenced proceedings in the Family Court of Australia against Mr Catt. A hearing in the Family Court took place on 4 and 7 August 1989. No evidence was given by Mr Catt in those proceedings of any attempted poisoning by Ms Beckett, or the rock incident or the Swan's Crossing Incident.
- 27 On 3 August 1989 Ms Whalen obtained an apprehended violence order against Mr Catt.
- 28 On 7 August 1989 Dr Dickeson, a clinical chemist at Royal Newcastle Hospital, advised Dr Sandfield that he had tested one sample (orange juice) and had found that it contained lithium. Dr Dickeson did not perform any other tests.

- 29 On 10 August 1989 Detectives Thomas and Paget travelled to Newcastle and obtained the original containers of orange juice and milk from the police station. They then went to the Royal Newcastle Hospital and obtained the sample containers. Detectives Thomas and Paget then drove to Sydney and provided the containers to the Government Analytical Laboratories.
- 30 Vernon Taylor had known Mr Catt since they were teenagers. On 20 August 1989 Mr Newell, Mr Taylor and Detective Paget went to Mr Taylor's home. It is alleged that during that interview Mr Taylor said that earlier that month Ms Beckett had suggested to him that he "bump off" Mr Catt for \$20,000.00. Mr Taylor did not report the matter to the police at the time of the alleged conversation.
- 31 Sometime after 20 August 1989 Mr Taylor visited Lucy Parkinson. Mr Taylor said that Detective Thomas had sent him and he invited Ms Parkinson to make a statement against Ms Beckett. No explanation was provided by Detective Thomas for this alleged use of a private citizen to make these inquiries on his behalf. Mr Taylor phoned Ms Parkinson on another occasion and visited her again making the same request. Ms Parkinson said that she was willing to make a statement but not "in [Mr Taylor's] favour".
- 32 On 23 August 1989, Detectives Thomas and Paget went to Ms Whalen's house and conveyed her to an unoccupied house owned by Mr Newell at 27 Milligan Street, Chatham where they spent three and a half hours "interviewing" her and typing statements which she then signed. These included a statement explaining her withdrawal of the summons seeking an apprehended violence order against Mr Catt, a second statement alleging a conversation with Ms Beckett in which Ms Beckett said that she was going to go to Sydney to get a gun to protect herself, and a third statement withdrawing her prior statement about witnessing Mr Catt abusing his children.
- 33 Subsequent to the "interview", Ms Whalen told at least four people that she had been taken away by the police, that she had been terrified and that she

had signed statements even though they were untrue. The people to whom Ms Whalen told this story included Chris Warne, a FACS officer, Greg Baggs, George Baird and a solicitor, Michael Jones. Mr Baggs and Mr Jones both made written records of what had been said to them by Ms Whalen shortly after their conversations with her. The conversations and the recording of them were independent of each other.

- 34 On 23 August 1989 Detective Thomas made an application for a search warrant to the Chamber Magistrate at Taree Local Court to search certain premises. The address was altered. Ms Beckett contends that the evidence strongly suggests that the alterations to the address on the application were made after they had been issued. Detectives Thomas and Paget maintained that the alteration was made prior to the execution of the warrant and that Detective Thomas somehow managed to tear the warrant and also create a hole, obliterating the street number on the warrant.
- 35 The search warrant was executed at Ms Beckett's home and she was simultaneously arrested on 24 August 1989. In a pre-search briefing that morning at which a large number of police officers were present, Detective Thomas instructed them to look for firearms and documents which may assist in other matters which were being investigated.
- 36 The police descended upon the house at 1 Cowan Road, Taree at about 7.30 that morning. Ms Beckett, who was still in night attire, was immediately handcuffed on the instructions of Detective Thomas and a search commenced. Constable Cottee, the only female police officer in attendance, conveyed the Catt children to the police station. Estimates of how long Constable Cottee was away vary between half an hour to over an hour. Ms Beckett was then taken into the bedroom by Constable Cottee where she alleges she was strip searched. At all times Ms Beckett contends that the door was open. Constable Cottee was instructed by Detective Thomas to search the ensuite area adjacent to Ms Beckett's bedroom. A .32 calibre Hopkins and Allen pistol was located by Constable Cottee in a drawer.

37 Ms Beckett was subsequently taken from the house to Taree police station. It was evident that the press had been alerted and she was filmed as she was escorted in handcuffs from her home to the police car.

38 Mr Jones had been acting for Ms Beckett in her matrimonial proceedings against Mr Catt. Mr Jones was at the Taree Local Court conducting a trial on that day and was told of Ms Beckett's arrest. He was denied permission to be present during an interview with her that was being conducted by Detective Thomas. Detective Thomas threatened to arrest Mr Jones for the offence of hindering police.

39 Peter Bridge was also arrested by police and interviewed by Detectives Thomas and Paget. He alleges that he was threatened by them suggesting that if he did not tell the truth concerning the rock incident he would also be charged. Mr Bridge adhered to the account that he had given at the private prosecution and protested his innocence. He was charged by Detective Thomas who further threatened him that he would lose his apprenticeship and would be subject to close police attention unless he co-operated.

40 Ms Beckett was brought before the court on 25 August 1989 and was charged with the following:

- (1) Solicit to murder (2 counts).
- (2) Conspiracy falsely to accuse another of a crime.
- (3) Maliciously administer poison with intent to cause injury.
- (4) Malicious wounding.
- (5) Assault occasion actual bodily harm (3 counts).
- (6) Assault.
- (7) Possess prohibited drug (marijuana).

- (8) Possess equipment to administer prohibited drug (a bong).
- (9) Possess unlicensed pistol.
- (10) Possess firearms not being the holder of a shooter's licence.

41 Detective Thomas opposed bail and it was refused. On 30 August 1989 an application for bail was made to this Court and was refused. Ms Beckett remained in custody until 13 September 1989 when Allen J heard a further successful application for bail. Detective Thomas gave evidence that he had no detailed knowledge of the Family Court matters or sexual assault matters and claimed to bear Ms Beckett no personal animosity. He denied he was Mr Catt's friend and claimed the allegations against Ms Beckett were made by an "independent person". He said that he spoke to Mr Taylor following information given to him by Mr Newell.

42 Ms Beckett was rearrested for supposed breach of bail conditions in Dapto on 22 September 1989. George Baird was also briefly detained and interviewed for allegedly interfering with Crown witnesses on that day. Ms Beckett was released on 25 September 1989 following an urgent ex parte application for a writ of habeas corpus which was granted by Maxwell J. Ms Beckett remained on bail pending her committal which took place at Taree between 24 and 27 July 1990.

43 Ms Beckett says that on 28 July 1990, whilst she was in the women's cells at Taree police station, she was threatened by Detective Thomas. She experienced chest pain and was admitted to Manning Base Hospital where she remained for approximately three days.

44 On 12 October 1990 Wood CJ at CL sentenced Ms Whalen to five years imprisonment for the manslaughter of her husband on 30 October 1989. Ms Whalen had been charged with murder on 31 October 1989 but her plea to manslaughter was accepted by the Crown.

- 45 Mr Catt had been committed for trial on multiple charges of sexually abusing his four children following a two day committal hearing on 31 July 1989 and 1 August 1989. His nephew Robert Tisdell had also been committed. Mr Catt's trial was heard in this Court sitting at Taree commencing on 26 November 1990, six days after Detective Thomas submitted his written resignation from the police force. Detective Thomas attended Taree Supreme Court over several days during the trial and conferred with Mr Catt's barrister and solicitor during that time. Detectives Thomas and Paget and Ms Whalen, amongst others, gave evidence for Mr Catt. Mr Newell gave evidence as to Ms Whalen's character on sentence. Mr Catt was acquitted on 11 December 1990.
- 46 Ms Beckett's trial commenced before Mathews J on 7 May 1991. She was found guilty on 11 September 1991 of all counts except count 8 involving a charge that she encouraged Lesley O'Brien to murder Mr Catt. On 18 October 1991 Ms Beckett was sentenced to terms of imprisonment for the offences consisting of a non-parole period of 10 years and 3 months expiring on 10 December 2001.
- 47 On 10 June 1993 Ms Beckett's appeal against her conviction and her sentence was dismissed.
- 48 On 6 August 2001 Ms Beckett was released on bail pending a review of her conviction by the Court of Criminal Appeal pursuant to s 474B of the *Criminal Appeal Act 1912*. On 17 August 2005, following the factual inquiry conducted by Davidson ADCJ pursuant to s 12(2) of the Act, the Court of Criminal Appeal upheld the appeal in relation to counts 1, 2, 5, 6, 7 and 9 and quashed each conviction. The Court entered a verdict of acquittal on count 9. The Court ordered a new trial in respect of counts 1, 2, 5, 6 and 7. The Court dismissed the appeal in relation to counts 3 and 4.
- 49 On 26 February 2005 the Director of Public Prosecutions advised Ms Beckett that he did not wish to proceed further on the above charges. *A nolle*

prosequi was filed later that year. These proceedings were commenced on 15 August 2008.

EVIDENCE

50 Several witnesses were called to give evidence in these proceedings. Many of them are referred to in the course of these reasons in the context of the counts to which their evidence is particularly referable. Two witnesses, however, for reasons that will be obvious, warrant specific mention.

Ms Beckett's evidence in these proceedings

51 Ms Beckett was born in 1946. She married Kevin Bridge in 1963. She has two children. She worked in several different occupations throughout her working life including hairdressing and the sale of cosmetics. She later formed a relationship with Douglas Annetts and they ultimately moved to Taree. She became involved in the local community there including the local chamber of commerce, the Manning Rescue Squad and the local council. She opened a delicatessen in Taree.

52 In the early morning hours of Christmas Day in 1983 Ms Beckett received a telephone call from Detective Thomas. He told her that her shop was on fire and that she should meet him there. Ms Beckett went to the shop and while standing in Victoria Street, Taree, Detective Thomas approached her and introduced himself. She said he was in an inebriated state at the time he did so.

53 The following day Ms Beckett went to the Taree police station at Detective Thomas' request. She said that he made her feel very uncomfortable at the time because he made suggestive remarks to her. She came back to the police station the following day with Mr Annetts. She saw Mr Thomas punch Mr Annetts in the chest. Ms Beckett subsequently made a statement to the police Internal Affairs Branch complaining about Detective Thomas' conduct at that time.

54 There was a coronial inquiry into the fire at the delicatessen. The day before the inquiry commenced, Detective Thomas went to Ms Beckett's home and charged her with arson. The charges were later no-billed. Ms Beckett complained about Detective Thomas to the Ombudsman. She alleged that he had sexually harassed her at the Taree police station. Ms Beckett said that Detective Thomas had telephoned her at home:

"Q. Do you remember what he said?

A. He said, 'I want you to come down here to the police station and grace' something to the effect of 'grace this place with your beauty' or making reference the place was drab or something 'and you come down here'. I felt threatened and intimidated. I was scared of this man, and I said I wasn't coming down to the police station. He said, 'If you don't, I will arrest you'. I hung up. I then rang Maurie Stack, who was a solicitor whom I had known, and was terrified and asked him what I should do and did I have to go down to the police station and how scared I was and Maurie Stack said to me, 'Don't you worry about it, you leave it with me'. A short time after that Peter Thomas phoned me back and was very angry at me, he was very angry and said that...

...

Q. Tell us what he said.

A. He said that I had caused now a problem between him and his mate Maurie Stack and he was not happy about it."

55 Detective Thomas later visited Ms Beckett at her home:

"Q. How long after this phone call was it?

A. I can't be sure but I can give a rough idea. As I say, I think it was all within close proximity, and I can recall him sitting in a lounge chair in my lounge room which overlooked the Manning River, and he said words to the effect that he could he asked me if I had a phone in my bedroom, and I said I did. He said, 'Whereabouts is it?' I said, 'Next to my bed'. He asked me to show him. I felt very uncomfortable. I couldn't see why I needed to do that.

He then made a very strange comment I thought. Looking out from my lounge room, he said, 'I could live here very comfortably.' And then he looked at me with a very strange look on his face and said something that I've never understood to this day, 'Your horse doesn't love you anymore'. I don't know what that meant. But he did scare me."

56 In due course the Ombudsman produced a report dealing with Ms Beckett's complaints against Detective Thomas.

57 Ms Beckett later met Barry Catt and they formed a relationship. They were married in August 1987. She became a proprietor with him of his smash repair business and began to work in that business. Their marriage ultimately came to the attention of the Family Court in ways that are referred to elsewhere in these reasons.

58 Ms Beckett and Mr Catt ceased cohabiting on 2 May 1988. Shortly thereafter she obtained an apprehended violence order against him. They continued to associate in the workplace.

59 Mr Catt had received psychiatric treatment before he married Ms Beckett but this was never revealed to her before the marriage. A short time after they were married, Mr Catt was admitted to hospital for psychiatric treatment following an altercation with his sons in the family home. Mr Catt was scheduled by Dr Richardson. He remained in hospital for some periods in August, September and October 1987. Mr Catt was discharged on 10 October 1987. His children were placed in temporary foster care.

60 Following Mr Catt's discharge from hospital, Ms Beckett discovered that he had been prescribed lithium. She used to pick up his scripts from the chemist. Mr Catt attended a doctor every two weeks to have his lithium levels checked.

61 Ms Beckett confirmed that she had been involved in what has come to be referred to as the rock incident. She gave the following evidence about it:

"Q. I don't want to take a lot of time, there's an incident that is known as the rock incident?

A. Yes.

Q. That occurred on 2 May 1988 you have made statements and given evidence in relation to those events, have you not?

A. Yes, I have.

Q. On the day of the incident did you speak to a police officer named Brown?

A. Yes, I did at Taree Police Station, yes.

Q. And was that man known to you before this time or not?

A. I don't have a memory of knowing him.

Q. In any event, you gave an account of what had transpired to him, is that right?

A. Yes, that is correct.

Q. You had attended, I think, Dr Wallman for some medical treatment?

A. By his request.

Q. Whose request?

A. By the police officer's request.

Q. He advised you to

A. To go across the road to Dr Wallman.

Q. And did you do that?

A. Yes.

Q. Did you have any injuries?

A. Yes, I had severe swelling and bruising to my face.

Q. What was that caused by?

A. Barry Catt repeatedly hitting me in the face with a closed fist.

Q. You were at his sister's place, but where were you at the time that you were struck by Barry Catt?

A. I was seated in my car. I had the car turned on ready to leave and he came along, parked parallel, and proceeded to pull the keys from the ignition and started hitting me."

62 Ms Beckett sought advice about this incident from Mr Hooke and later commenced civil proceedings for assault against Mr Catt in the Taree Local Court. She denied in evidence that she ever concocted a story about what happened in the course of the rock incident. She did not tell her son or Shane Golds what to say.

63 Mr Catt was admitted to the Northside Clinic between 8 and 17 June 1988. The civil proceedings commenced before Magistrate O'Keefe on 3 July 1989. The proceedings were adjourned for further hearing on 22 September 1989. (Ms Beckett was unable to attend court on that day as she was arrested by Detective Thomas for breach of her bail conditions).

64 Mr Catt had been charged with the sexual assault of his children on 10 February 1989. There was a committal hearing commencing on 31 July 1989 at which Ms Beckett gave evidence.

65 Ms Beckett gave evidence of her arrest on 24 August 1989. She was at home in her night attire on the morning when the police arrived. She was not shown a warrant by Detective Thomas when he arrived. She was handcuffed. She said that Detective Thomas then directed his female officer to take her into the bedroom and strip her naked. That was done in a way that "was visible by all that were there." The children were there at the time and became very distressed.

66 Ms Beckett said that prior to 24 August 1989 she had never owned a gun of any kind. She said this:

"Q. Now in terms of the house we see a number of items on the floor in the photographs, did you remain sitting on that stool during most of the time when the search took place?

A. Only when Peter Thomas dragged me to the bathroom.

Q. When was that?

A. After Joanne Coltee came back from taking the children away.

Q. Yes.

A. Then she said, 'Look what I have found.' He didn't go to look and he couldn't see from where I was sitting. He just grabbed me by the arm very brutally, he kept saying, he wanted to punch me with a closed fist and he dragged me to the door and said to me, 'What have you got to say about that?'

Q. Have you ever seen the pistol that you were shown before?

A. No, I had not."

67 She was taken to the police station in Taree. She was not permitted to call her solicitor. Ms Beckett said that the media were in attendance outside her home with cameras as she was led from it by police to a waiting car in handcuffs and clothes chosen by Detective Thomas.

68 Mr Jones eventually arrived at the police station. He gave her advice about how to conduct herself if interviewed by the police. She was told not to answer any questions. Detective Thomas asked her to hold a pistol:

"Q. Did you have a conversation with him about holding the gun?

A. Yes.

Q. What did he say?

A. He asked me to take the gun and he said, 'Your eyes are better than mine, can you read that number that's on there?' And I didn't take it."

69 Ms Beckett was kept in custody at the Taree police station overnight. She was completely terrified. The media were there the next morning when she was taken before the court. She later became aware that her son Peter Bridge had also been arrested. Mr Jones made a bail application on her behalf.

70 One of her bail applications came before Allen J on 13 September 1989. Detective Thomas gave evidence on that occasion and was extensively cross-examined. A statement of facts was also tendered.

71 Ms Beckett gave evidence about what happened at the Taree RSL club on 28 July 1989. She went there with Lucy Parkinson and her own sister Joy McGregor. There was a very large crowd at the club when they arrived. Ms Beckett said that she did not know James Morris before she went that night, although she did know of his sister Sandra Ridgeway, as she was a former girlfriend of Mr Catt.

72 Ms Beckett said that she also met Errol Taylor at her home one day when he came to visit Mr Catt. This occurred on a day when Mr Catt said that Sharon Clare poisoned him and he collapsed on the lounge. Mr Taylor was present when this allegation was made. Mr Taylor used to visit them from time to time after she moved from 1 Cornwall Street Taree.

73 On 16 September 1989 Ms Beckett appeared at the Taree Local Court represented by Mr Jones. She later went to George Baird's house at Old Bar where she met Marie Whalen. When she returned to Dapto and reported to the police on 22 September 1989 as part of her bail conditions she was arrested. She was kept in the cells there until her successful bail application before Maxwell J on 25 September 1989.

74 On 27 July 1990 Ms Beckett was again locked up in the Taree police station. This followed a refusal to continue her bail following her committal to stand

trial on that day. Ms Beckett said that Detective Thomas came to her cell on that Saturday morning:

"Q. You were in the cells at the Taree Police Station?

A. Yes.

Q. Saturday afternoon?

A. Yes.

Q. What did you see or hear?

A. Peter Thomas came to the cell door. He was holding onto the bars and he called my name and he told me what he was going to do to me.

Q. What did he say?

A. When they found me next morning

Q. Just tell us, what did he say as best you can. I know it is difficult.

A. He said he was going to do some physical harm to me and they wouldn't recognise me.

HIS HONOUR

Q. Do you remember the words he used?

A. I can't recall the exact words now."

75 Ms Beckett's own trial commenced on 7 May 1991 and concluded on 11 September 1991. She was sentenced to a long term of imprisonment. While there she was bashed by a Maori woman and sustained severe bruising, black eyes and a leg injury. This happened more than once.

76 Ms Beckett was released from prison on bail on 6 August 2001 pending a hearing in the Court of Criminal Appeal. Her earliest date for release on parole fixed by Mathews J would have been 10 December 2001. The Davidson Inquiry commenced on 3 February 2003. His conclusions were published on 27 July 2004. Following a decision of the Court of Criminal Appeal on 17 August 2005 Ms Beckett was advised by the Director of Public Prosecutions on 26 September 2005 that he did not intend to proceed further with counts 1, 2, 5, 6 or 7. She had been acquitted on count 9.

77 Ms Beckett agreed in cross-examination that she made many complaints about Detective Thomas over the years to Internal Affairs and the Ombudsman.

78 Ms Beckett denied that she was the source of Bill Ferguson's information that Mr Catt was sexually assaulting or abusing his children. She gave the following evidence:

"Q. You knew, didn't you, Mrs Beckett in a community of the size of Taree in the mid-1980s that allegations of sexual abuse by a father against his own children would cause someone to become and treated as a pariah, you knew that didn't you?

A. I have no idea what you are inferring.

Q. You knew in 1988 and 1989 that in a town the size of Taree at that time, allegations that a man had sexually abused his four children, would cause that person to be reviled, you knew that didn't you?

A. That was not a concern of mine. I didn't make this happen. I was unfortunate enough to come across it.

Q. You knew?

A. What it caused for him, I have no idea. But obviously everyone knew anyway what he was. The whole town knew.

Q. You knew that in a town the size of Taree in 1988 and 1989 that allegations that a man had sexually abused his four children would cause that person to be hated, you knew that?

A. Did not cross my mind.

HIS HONOUR

Q. I think you are missing the point, Ms Beckett. It is not a question of whether you said things with a view to that happening; it is a question of whether or not at the first level you recognised that allegations of that sort, if they became alive in the community, would have that effect. That is the only purpose of the question and the two preceding it. Did you know that is what would happen if those allegations became public?

A. I would expect so."

79 Ms Beckett said that she had no recollection of sitting at her kitchen bench with Beverly Lyons in the way that appears to be depicted in a photograph that became exhibit LLL at her trial. She also said at her trial in evidence that she had not met Ms Lyons at the Taree RSL club and had never had a conversation or a meal with her there. Ms Beckett said in answer to questions asked in this Court that she could not say whether the photograph even depicted Ms Lyons. She said this as well:

"Q. What I'm putting to you is that on your oath on your trial for very serious offences you acknowledged that the photograph presently in your hands, exhibit LLL, in the trial presided over by Justice Mathews contained the images of you and Mrs Bev Lyons, that's what you said, isn't it?

A. I said, it appears. I've been shown photos of people that have been in a photo that weren't there, they were superimposed. Looking at that it appears that way, but I have no memory of it, I do not recognise this lady.

Q. She had given evidence just a few days beforehand, hadn't she?

A. I can't recall that either.

Q. I've read to you 10 minutes ago questions put to you by Mr Power

A. Yes.

Q. ...that you had seen her in the witness box?

A. Yes.

Q. The very lady held out as Bev Lyons?

A. I don't have a memory of this woman, there were many."

80 Ms Beckett also said this:

"Q. I want to put to you in about May 1987 you said to her 'I carry a gun now for my own protection'. Did you ever say that?

A. No, I did not.

Q. To Beverley Marie Lyons?

A. No, I did not. I never had a gun, ever.

Q. Did you ever say to Beverley Lyons, 'I am real glad now that I've got a gun because that frightens him off'?

A. No, I did not.

Q. I want to put to you that you said that on a telephone call at some time in 1987 which was had between that you made to Mrs Lyons?

A. No.

Q. Never made a telephone call to Mrs Lyons?

A. I have never spoken to these people."

81 Ms Beckett was cross-examined extensively about photographs taken at her house on 24 August 1989 when she was arrested. She also said that Constable Cottee had been in the ensuite bathroom for five or ten minutes when she said "Look what I've got here" or words to that effect. Detective Thomas then grabbed Ms Beckett by her arm, dragged her up from the stool on which she was seated and said to her even before they got to the ensuite, "What have you got to say about this?"

82 Ms Beckett was asked why, when Mr Jones made submissions to the magistrate on 25 August 1989 on a bail application, he did not complain about any police mistreatment of her during the search of her premises or at the

police station thereafter. Ms Beckett said that she simply had no memory one way or the other about that.

83 Ms Beckett was cross-examined about the rock incident. She agreed that she went to Mary Warwick's house and onto the veranda to speak to her about an allegation that Ms Warwick's son Robert Tisdell had made. She denied that she struck Ms Warwick in the face. She said this:

"Q. Was there an argument between you and Barry Catt?

A. I had started my car; I had put my seatbelt on. Barry Catt stopped this vehicle, got out of his that vehicle. Mary by that stage had come out of the door screaming out at Barry Catt. He came and put his hand in, pulled the keys out of the ignition and started punching me in the head.

Q. Did he slap you across the face?

A. No, he punched me repeatedly.

Q. Did you yell out, 'Come on, Peter and Shane, get out.'

A. No, I didn't.

Q. Did you hit Barry Catt across the face?

A. No.

Q. Did Barry Catt hit you across the face once or twice?

A. He punched me repeatedly with a closed fist.

Q. Did Peter Bridge engage Barry Catt and did they throw punches at one another?

A. From memory Peter and Shane got out of the car and went around to stop him from hitting me."

84 Ms Beckett denied that she picked up a rock or that she struck Mr Catt on the head with it. She went to the police station and reported what had happened. She denied that she said to Peter Bridge, Shane Golds or the Catt children, "If ever you are asked what happened tell them that it was Mary that hit Barry over the head with the rock and that I never went inside the screen door and got the keys."

85 Ms Beckett also denied that she saw James Morris at the Taree RSL club on 28 July 1989. She denied that she ever asked him to kill or injure her husband. She also denied that she spoke to him at the K-Mart store in early August 1989.

86 Ms Beckett denied that she asked Vernon Taylor in June or July 1989 to "bump off" her husband for \$20,000 or in August 1989 if he knew where she could get a handgun.

87 Ms Beckett denied that she put lithium in Mr Catt's food and drink.

88 Ms Beckett also denied that she falsely represented to Mr Farrar JP that the woman who executed a document in front of him and which he witnessed was Marie Whalen.

Assessment

89 Despite the fact that these proceedings revolve around Ms Beckett, and despite the fact that she has made statements, written letters, lodged complaints and given evidence in several sets of proceedings in the Local Court and the Supreme Court, as well as in the Davidson Inquiry and ultimately in these proceedings before me, in which her credit was almost always central or in issue, the State has not contended that Ms Beckett's truthfulness or reliability or credit are important now. Having regard to the issues joined in these proceedings, and the matters that Ms Beckett must prove to succeed, that fact is unremarkable. On one view, Ms Beckett need not have given evidence before me at all, although the requirement that she establish her loss and damage places that generalisation under a small cloud.

90 I have elsewhere in these reasons made some general comments about Ms Beckett and the predicaments that life has sent her way. For present purposes, however, I wish only to indicate that whatever view I may have formed about her reliability as a witness, or in any other respect, that impression has not, with one exception concerning what happened at her house during the execution of the search warrant, affected the conclusions that I have reached. Put a different way, none of my conclusions or findings in these proceedings on liability issues is predicated upon an absolute or comparative assessment of Ms Beckett's credit or the need to make findings on credit that are favourable to her.

91 I am aware that many views about Ms Beckett have been expressed in judicial and extra-judicial contexts. I note that Smart AJ in *Regina v Catt* at [361] said this:

"[361] ...The jury rejected her evidence. This is not surprising as much of her evidence was hard to accept and she emerged from the evidence given at the trial as highly manipulative and a manipulator of evidence. No subsequent tribunal was as well placed as the jury at her trial to assess her credibility. From her remarks on sentence the trial judge thought little of Mrs Catt's credibility. It is important not to overstate the effect of Sgt Thomas' regrettable conduct and to attribute to Mrs Catt a potential credibility which she does not have."

92 For my purposes, apart from Ms Beckett's accounts of her direct face to face dealings with Detective Thomas, her credibility or lack of it does not reliably or relevantly inform what was in the mind of Detective Thomas or what a reasonable prosecutor should have made of the material that was before him.

Detective Paget's evidence in these proceedings

93 Detective Paget is a retired plain clothes detective who worked with Detective Thomas from time to time. He considered Detective Thomas to have been a very thorough investigator. He did not observe anything about him that was improper or unprofessional. He became aware that Ms Beckett made a number of allegations to the Ombudsman concerning Detective Thomas' work as a detective in Taree. He thought that the origin of those complaints was a suspicious fire at Roseanne's Deli in Taree.

94 Detective Paget assisted Detective Thomas to prosecute Ms Beckett. Patrick Power was the barrister appearing for the Crown. Detective Paget gave this evidence before me:

"Q. During the course of the trial, did Mr Power tell you his view about the strength or otherwise of the case that he was presenting?

A. He did.

Q. What did he tell you?

A. He believed that Mrs Catt was guilty."

95 Detective Paget was involved in taking statements from a number of witnesses who gave evidence against Ms Beckett at her trial. They included Vernon Taylor, James Morris, Sandra Ridgeway and Marie Whalen. Some of these statements were taken at Adrian Newell's unoccupied premises in Milligan Street, Taree. He said he did not observe any pressure to have been placed on Ms Whalen to give her statement.

96 Detective Paget was asked about statements taken from James Morris and Sandra Ridgeway:

"Q. Is that the statement you took from Mr Morris on 5 September 1989?

A. Yes.

Q. Did you believe what is contained in it to be true?

A. Yes.

Q. Would you look, please, at 1564.

A. Yes.

Q. Were you involved in the taking of that statement?

A. I think I organised for Sandra Ridgeway to attend the police station but as - I didn't obtain the statement from her.

Q. Did you see it after it had been obtained?

A. Yes.

Q. Did you read it?

A. I would have, yes.

Q. Having regard to its contents and other materials of which you were aware, did you form a view of the effect, if any, that it had upon the case that you were investigating?

A. Yes.

Q. What view did you form?

A. That the allegation that she solicited James Morris to kill Barry Catt was corroborated by Sandra Ridgeway."

97 I asked Detective Paget about his impression of James Morris:

"Q. Mr Morris was an honest and quiet type of chap, you thought?

A. Yes.

Q. Was he a big fellow?

A. No. Obviously, he looked a fit young fellow and he was trained in Taekwondo, I believe, or something to that effect but a very humble person.

- Q. Was there anything obvious about him that made him look like somebody who would be willing to murder somebody if you asked him?
A. No."

98 Detective Paget also interviewed Shane Golds as the following evidence reveals:

"Q. Did you have any interaction with Mr Shane Golds during this individual into Roseanne Catt?

A. Yes.

Q. Was any threat made to him at any time?

A. No.

Q. Did you take statements from him from time to time?

A. I know we interviewed and I probably did. I can't recall exactly but I most likely did.

Q. Was any threat of any kind ever made to him in your presence?

A. No.

Q. Did you see him intimidated to change his story?

A. No. He was quite willing.

Q. When you spoke to him, did he appear to you to be telling the truth?

A. Yes, he did."

99 Detective Paget was also involved in the search of Ms Beckett's premises on 24 August 1989.

100 Detective Paget was asked about the relationship between the number of complaints that Ms Beckett had made against or about Detective Thomas and his continuing role in the investigation:

"Q. What I am suggesting to you, that it was obvious, in view of the number of complaints and the nature of the prior relationship that existed between Mrs Catt and Mr Thomas that it was undesirable for Mr Thomas to act as an investigator for her.

A. Well, I don't know whether undesirable is the right word, but I was just concerned about the prospect of losing the trial down the track because of these past complaints that had been made by Mrs Catt to him - about him in the past, which they had done in previous trials, from my experience, and that's all I expressed to Sergeant Daffy. I said, 'Look, that's all I'm thinking of', I said, 'I'm not worried about the committal, but the trial, we could lose it, because of these - the previous allegations and that', even though they weren't sustained."

101 He gave evidence about the lithium charge:

Q. If you'll assume that that is the case, sir, I suggest to you whatever the counts was based on lithium on either of the three versions that were proffered, I suggest to you that an essential ingredient of that charge would be establishing that Mr Catt was suffering from lithium toxicity caused by the administration of the substance by Mrs Catt. Do you agree with that?

A. Yes.

Q. You were aware that people who are prescribed lithium have to have their blood levels monitored to ensure that lithium toxicity does not occur. You knew that, didn't you, in 1989?

A. I can't remember whether I knew it then or not. I'm not - I can't recall that but I would assume that they would have to have their blood tested.

Q. And an important part of your fact finding inquiry was to determine what was Mr Catt's dose of lithium that he took, was it not, on a daily basis?

A. Yes, it would have been.

Q. You and Mr Thomas satisfied yourselves at the first interview with Mr Catt in August 1989 what dosage of lithium Mr Catt said he was taking on a daily basis, didn't you?

A. Well, I don't recall. I wasn't present at the interview anyway but I did read the document later and ...

Q. Yes. So you knew the importance of it?

HIS HONOUR: Sorry. I think he was still...

BLACKET: Please go on if you have more to say.

A. I was aware that there was a certain limit to the amount of lithium to be taken.

Q. Sir, did you obtain any expert toxicological advice as to what the half-life of lithium was?

A. I don't recall whether I did or not.

Q. It would have been important to know what the rate of dispersal of lithium was in somebody's blood, would it not?

A. It would and I - I don't reckon - I'm not sure now whether Dr Sandfield prepared a report in relation to that or not now.

Q. Dr Sandfield was not an expert toxicologist. He was a psychiatrist, wasn't he?

A. Yes."

102 He continued:

"HIS HONOUR In the course of your investigation, Mr Paget, did you make any inquiries of Dr Sandfield about whether or not those Lithium levels were high, low, ordinary, normal, abnormal, or anything?

A. Well, we would have, your Honour. We would have but I can't recollect it today.

Q. No, I appreciate that.

A. Because we would have wanted to establish, okay, how much Lithium should he have had in a blood test, in his blood level and to work out whether it was excessive or otherwise.

Q. Well, that's what we're talking about, I think.

BLACKET: Yes, and at no stage were you able to demonstrate there was any abnormality based on the materials that were provided to you by Dr Sandfield. Isn't that right?

A. Well, I don't know. I can't answer that. If I knew now the - if it was 08, for example, if it was 02. It could be high if it was 08. It's normal to me now, but I don't know whether Dr Sandfield could take it anywhere to show that it was excessive. I can't remember.

Q. I suggest to you that at no stage were you ever told Mr Catt's levels were excessive.

A. I don't remember. I can't recall that.

Q. Sir, whatever be the position about your knowledge now, the fact is that it was important to your investigation to establish that Ms Catt had access to Lithium, wasn't it?

A. Yes. It would have been.

Q. The principal reason that you went to Taree on 8 August 1989 was for the purposes of the lithium investigation, wasn't it?

A. No, I think that was the first day that I met Adrian Newell and spent some time, quite some time with him. It wasn't about the - it was virtually I think him getting to know me, vice versa.

Q. But what was the crime, sir, that you were investigating?

A. Well, the poisoning. The overall alleged poisoning.

Q. Which offence had you gone to Taree to investigate?

A. The alleged poisoning of Barry Catt.

Q. Nothing else at that stage?

A. Not at that stage, no, until we interviewed Barry Catt and I don't recall what's in his interview with Thomas now on the Sunday, the seventh, whether he outlined any other further allegations but I've got no memory of it today. But certainly afterwards, on the ninth, I think we interviewed him, I got statements and he made other allegations which were then further investigated. But the initial one, yes, the poisoning.

Q. At that stage, having spoken to Mr Newell, were you present with Detective Thomas when he suggested to Mr Newell that he might go to Barry Catt's smash repair business and obtain samples of milk?

A. No. I believe that was done beforehand.

Q. Before you arrived?

A. Yes.

- Q. Did you know when you got to Taree that lithium had been discovered in the milk samples that had been sent to Newcastle?
- A. I'm not sure if I knew that day but I did become aware. Thomas told me that Adrian Newell had obtained some from some samples from Barry Catt's workshop and I think he took them to - I'm not sure now whether he took them to Sandfield or otherwise or - but that was prior to me being involved with Adrian Newell and whatnot.
- Q. Is this the position so far as you understand it that Mr Thomas told you that he had arranged for Mr Newell to obtain the samples from Barry Catt's premises and that he met him in Taree subsequently and decanted some parts of each of the samples taken. Mr Newell took smaller samples, provided them to Dr Sandfield and Mr Thomas brought the balance of the material back to Newcastle and retained it at the police station?
- A. Well, not at the police - I think I picked them up from the hospital but I don't know whether Thomas instructed Newell to get them or whether Adrian just got them on his own volition and then rang Thomas and told him, 'I've got these.' I'm not sure whether Thomas had instructed him to get them or whether Adrian got those samples of his own volition but he obviously rang Peter - they obviously spoke about it and Thomas probably told him what to do with them then. I don't know but that's what - all I was told.
- Q. In any event, by 10 August when you saw the industrial chemist at Newcastle Hospital, you were aware at that stage, on 10 August, that there was lithium in one of the samples?
- A. I can't recall that whether there was any in there then. All I can recall is them placing them in this foam container and taping it up and we took them to the Analytical Laboratories at Lidcombe."

103 Before the search of the premises Detective Paget had been told by Mr Catt that there was a semi-automatic rifle and a Derringer in the premises. He agreed that that was the only evidence he had that there were any weapons on the premises. He went on:

- "Q. There was no other person who had that information than Mr Catt, was there?
- A. I don't think so. I think Mr Catt alone, from memory.
- Q. Yes. And did you inquire how Mr Catt knew that?
- A. Yeah, he said he saw a pistol there. He said he'd seen Roseanne with a pistol.
- Q. I see. And were you aware that Mr Catt had been excluded from those premises since May 1988?
- A. I knew it was some time beforehand."

104 He was asked about lithium:

"Q. All right. And it was your evidence at the trial that lithium was found in a bedroom in a drawer on the dressing table about one hour after the commencement of the search by you. Is that right?

A. That's correct.

...

Q. Now, that was a vital piece of evidence for you to have found, wasn't it?

A. Yes.

Q. This was your confirmation that Mrs Catt had in her possession Lithicarb or lithium tablets?

A. Yes.

Q. You didn't record it in the exhibit book later that day, did you?

A. I'm sure he recorded the bottles in the exhibit book.

Q. Sir, would you have a look at the exhibit book, which is plaintiff's tender bundle 2, page 594 through to 599.

A. What was the page numbers again, sorry?

BLACKET: 594 to 599. Take your time sir, you let me know if you find it.

Q. Do you see any reference there, sir?

A. I'm still looking.

....

WITNESS: There doesn't appear to be.

...

Q. And you didn't have any trouble writing up the gun and the rifle, did you?

A. No. I think Cynthia wrote that up - probably - no, it was entered there.

Q. Well, they were about the first things you wrote up?

A. Yes.

Q. A matter of tremendous significance to you, I suggest, was the fact that you'd got the lithium but yet you didn't write it up in the book.

A. I would agree with that.

Q. It was a shocking omission on your part, wasn't it?

A. Yes."

105 The cross-examiner returned to the lithium issue and to Detective Paget's references to it in different settings:

"Q. The evidence that you gave at both the committal and the trial that you found tablets in a black purse in the drawer in the main bedroom was a complete fabrication, sir, wasn't it?

A. No, sir.

- Q. Do you accept that there is a complete inconsistency between what you told the internal affairs prior to the committal and what you said at the committal on this subject?
- A. Yes, I do.
- Q. And you repeated the lie, sir, at the trial, did you not, when you said again you searched the bedroom?
- A. I did not search the bedroom per se.
- Q. You didn't search it at all according to what you told
- A. No.
- Q. Inspector Chapman. You entered it.
- A. Yes, I did enter it.
- Q. And there's a distinction, sir, between entering a room and searching a room, isn't there?
- A. Yes, there is.
- Q. You were very clear to Inspector Chapman that you weren't searching it, but you had merely entered it, weren't you?
- A. Yes, I - that's what I've answered there.
- Q. Yes, and in your statement, the first statement that you made, you made no reference to finding Lithium, did you?
- A. No, sir."

106 At a point in the trial I sought clarification on a point concerning the cross-examination of Detective Paget about the Rivotril:

"HIS HONOUR: Mr Blacket, call me old fashioned, but it seems apparent at one level, from Mr Paget's evidence, that there was a dissimilarity between what he told Mr Chapman during his interview about the finding of either a black purse and/or the lithium, and the evidence that he gave both at the committal and the trial. I don't know whether or not you intend to return to it, and I don't know whether if you do you intend to ask him how he explains the difference, but he hasn't been asked to explain it and I would, for one, like to know the answer. I'm not suggesting you necessarily have to ask him that, but it's arguably at the centre of some of this case and it seems to have been passed over."

107 Detective Paget was later cross-examined as follows:

- "Q. Do you accept that there is an inconsistency between Mr Newell's evidence of finding the Rivotril and your evidence?
- A. I don't know if that's the same Rivotril as I found or he found. I don't know.
- Q. A prudent and sensible police officer finding an exhibit would have noted on the exhibit what was in the bottle, what the date of dispensing was on the label, and the origin of the dispenser, would they not?

A. Well, I would have expected a bottle, a brown bottle containing tablets marked lithium or something but there's not.

Q. Sir, when you find an item when conducting a search warrant that is vital to the prosecution, such as a gun or a knife or an object of some kind, you would normally write that up straightaway, wouldn't you?

A. Yes.

Q. If you were trying to prove poisoning by Roseanne Catt, the finding of the very substance that you thought might be being used in the house was a matter that any probationary constable, let alone a detective, would realise was significant. Isn't that so?

A. Yes, I would agree with that.

Q. And the fact that you didn't note it up, strongly suggests, sir, that you didn't find it as you have subsequently deposed and that you made it up?

A. Well, it doesn't strongly suggest it.

Q. It strongly suggests, sir, that you were determined to load up Mrs Catt with these pills with a view to bringing false charges against her that she was poisoning her husband?

A. That's not true.

Q. Because Mr Thomas and Mr Catt were very closely aligned, weren't they?

A. No.

Q. The only evidence that you had concerning lithium poisoning was Mr Catt's complaints, was it not?

A. No.

Q. As at 24 August, the only evidence you had was Mr Catt's complaints?

A. Yeah, I don't know whether it - I can't recall now whether we had interviewed Barry - his workers - before then or after but I'm not sure now.

Q. Assuming that you did interview one or two of his close associates, their information about whether or not this man was suffering from lithium toxicity, having regard to their occupations as panel beaters and motor mechanics, would have been, I suggest, of no value whatsoever.

A. No, I don't agree with that."

108 Detective Paget agreed that Mr Catt did not approach the police complaining that he was suffering from symptoms of lithium poisoning. He agreed that it was Mr Newell who made the initial complaint to the police.

109 Detective Paget was cross-examined about whether or not Shane Golds had been pressured to change his statement:

"Q. Did you say to him, 'you could be charged with perjury'?

A. I can't remember.

Q. At the time you took him out to the house at Chatham, you were aware that he had given a statement to the magistrate that was favourable to Ms Catt and unfavourable to Mr Catt, concerning the rock incident, didn't you?

A. Yes.

Q. You were also aware that he had given a statement to a solicitor, a Mr Hooke, at Taree, that was unfavourable to Mr Catt, weren't you?

A. I don't know. I can't - I don't know.

Q. I suggest to you, sir, that you had a discussion with him - this is 1165 of the current trial transcript of 27 August, your Honour - did you not suggest to him that if he didn't retract his statement, he could go to gaol for six years for perjury?

A. I don't recall saying that. The only thing I recall about Shane Golds is that he seemed very relieved when he told us that he'd told lies for Roseanne.

Q. I suggest, sir, he might have been pretty relieved not to be charged by you with any offence because he acceded to your wishes.

A. No.

Q. Sir, you threatened Mr Peter Bridge at the police station on 24 August that unless he told the truth, he'd be charged, didn't you?

A. I think I told him he was going to be charged with conspiring with his mother to pervert the course of justice.

Q. In what way, sir, was he conspiring to pervert the course of justice?

A. Well, that was in relation to the evidence of the - concerning the rock incident.

Q. So did you ask him to retract his statement or he'd be charged?

A. I think I asked him to think about it and I left him sitting there.

Q. What was he meant to be thinking about? Retracting his statement?

A. Well, to think about the situation.

Q. Which was that he would be charged unless he retracted his statement. Is that right?

A. Yes, virtually, yes.

HIS HONOUR: I'm just a bit confused. That necessarily means that you formed a view, having taken statements from competing witnesses about which ones were to be preferred. Is that correct?

A. Sorry, your Honour?

Q. If you were indicating to Mr Bridge that he should consider his position because he'd be in strife if he told lies - to use the vernacular - does that suggest that when you said that to him, you had formed a view about where the truth lay in the competing versions about the rock incident?

A. Yes, well, it did, your Honour, yes.

Q. Even before it had been adjudicated on by the magistrate?

A. That's as best as my memory can allow me, your Honour, yes."

110 The evidence about this concluded a little later:

"HIS HONOUR: Can I just get this clear. Mr Paget, do you accept or not accept that in speaking to Mr Golds, you said to him that he could be charged with perjury?

A. I may have said something to that effect, your Honour.

Q. What were the circumstances or facts upon which you relied to lead you to form the view that that was a possibility?

A. Only most likely going from what Barry Catt told us, his allegation, your Honour.

...

BLACKET: And sir, I put it to you that in fact Mr Golds changed his evidence because you threatened him with charging him with perjury unless he complied with your wishes?

A. No. He told me he done it because Roseanne told him to or he'd lose his apprenticeship."

111 Detective Paget gave the following evidence about steps taken by him and Detective Thomas before charging Ms Beckett following the rock incident:

"Q. Mr Paget, in order to form a view that Barry Catt's version of the rock incident was to be preferred, did you have regard to what the allegations were that were contained in the transcript of the private prosecution?

A. I'm sorry, could you repeat the question, sir.

Q. Did you have regard when preferring Mr Catt's version to the evidence that had been given in the transcript of proceedings before Mr O'Keefe, by Mr Golds?

A. Well, after Shane told us that he told lies under oath, it sort of corroborated Barry Catt's version of events.

Q. Yes. Did you have regard to the other statements of witnesses that gave evidence?

A. I think there was only Ms Catt and one of the children, I think from memory.

Q. At least one of the children. Ms Sharon Catt, Peter Bridge and Ms Catt.

A. Peter Bridge, mm hmm.

HIS HONOUR: Do you recall whether their evidence was consistent or inconsistent with the evidence given by Mr Golds before the magistrate?

A. I don't recall, your Honour.

BLACKET: Did you look at the transcript?

A. I can't recall that either, sir, now.

Q. Do you accept that it would have been a reasonable course of conduct to embark upon before launching into charges for perjury?

A. Yes."

112 Other portions of Detective Paget's evidence before me are referred to elsewhere in these reasons.

Assessment

113 Detective Paget is no longer in the police service. I have continued throughout these reasons to refer to him in that way for reasons of consistency only.

114 Detective Paget was an impressive witness. That is not to say that I formed the view that he was or was not at all times telling the truth but it is a comment upon what was obviously his considerable experience in the witness box. Whether intentionally or otherwise, Detective Paget left me with absolutely no doubt about where he stood in the scheme of this case.

115 First, although he may not have been altogether happy about it, Detective Paget was likely to have become used to playing second fiddle to Detective Thomas. Detective Paget appeared to be a calm and laconic individual, slow to anger, and probably someone who managed to remain patient in the face of disappointment. I doubt that Detective Thomas would have been his first choice of professional partner or even colleague.

116 Secondly, in a way vaguely redolent of the old police culture, Detective Paget was not comfortably prepared to denigrate the actions of Detective Thomas. He was certainly not prepared to accept suggestions that he did anything wrong. That may have been as much a concern for his own position, and borne of a desire not to be tainted by association, but it was clear enough in any event.

117 Thirdly, Detective Paget was prepared to make concessions where appropriate. I have extracted the evidence of some of them. Detective Paget made no secret during his time as a detective that he did not hold Ms Beckett in high regard. He appears not to have altered his view even now, although he was not outspoken about such matters in the climate of the courtroom.

118 Detective Paget had seen and heard a lot of things that Detective Thomas had been involved with, albeit very often from a respectable distance. Detective Paget impressed me as someone who knew more than he was telling, but probably only because he was not asked.

119 Significantly for present purposes was Detective Paget's agreement with the proposition that it would have been a reasonable course of action to follow to read the evidence in the civil proceedings commenced against Mr Catt before launching criminal proceedings against Ms Beckett for perjury. He also conceded that he had proceeded to form a view about who was telling the truth somewhat prematurely. Those concessions assisted me to describe Detective Paget as impressive. Given the balance of issues in this case, it also probably means that he was truthful.

120 Furthermore, Detective Paget quite openly conceded that Detective Thomas' close and troubled history with Ms Beckett was a matter of concern. He was of the view that it could have led to the trial being aborted. I take that opinion to be an insider's view of the frailty of a prosecution commenced or maintained by Detective Thomas given his manifest personal dislike for Ms Beckett and the complaints that she had made about him.

121 Detective Paget's role in all of the events of which Ms Beckett complains appears to me to have been secondary and subordinate to that played by Detective Thomas.

MALICIOUS PROSECUTION

Legal principles

122 In *A v State of New South Wales* at [45] the following is said:

"[45] In *Johnstone v Sutton*, Lord Mansfield and Lord Loughborough said '[t]he essential ground of this action is, that a legal prosecution was carried on without a probable cause'. But as their Lordships went on to say, '[a] man, from a malicious motive, may take up a prosecution for real guilt, or he may, from circumstances which he really believes, proceed upon apparent guilt; and in neither case is he liable to this kind of action'. Much of the development of the law concerning malicious prosecution reflects the

attempts to balance the provision of a remedy where criminal processes have been wrongly set in train with the need not to deter the proper invocation of those processes. The two requirements of absence of reasonable and probable cause, and malice, represent the particular balance that is struck.”

123 For a plaintiff to succeed in an action for damages for malicious prosecution the plaintiff must establish:

- (1) that proceedings of the kind to which the tort applies (generally, as in this case, criminal proceedings) were initiated against a plaintiff by a defendant;
- (2) that the proceedings terminated in favour of that plaintiff;
- (3) that the defendant, in initiating or maintaining the proceedings acted maliciously; and
- (4) that the defendant acted without reasonable and probable cause.

Onus of proof

124 Ms Beckett bears the onus of proving each of the elements of the tort of malicious prosecution on a balance of probabilities. In determining whether the onus of proof has been satisfied, regard should be had to s 140 of the *Evidence Act 1995*. Whilst there is little (if any) contest concerning the first and second elements of the tort, being the institution of the charges by the State and the termination of those charges favourably to Ms Beckett, the third and fourth elements remain in dispute. Even though the allegations concerning malice are very serious, including the misuse of the legal system for a collateral purpose, the standard to be applied is still the civil standard: *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* [1992] HCA 66; 67 ALJR 170 at [2].

125 Proof of the negative proposition of the absence of reasonable and probable cause is notoriously difficult. Ms Beckett is required to meet the two-limb test set down in *A v New South Wales*. First, she must satisfy the subjective

element that the prosecutor lacked an honest belief in her guilt. Secondly, if the court finds that the prosecutor held an honest belief, she must establish it was not formed on reasonable grounds. Clearly, if the court determines that the prosecutor held no honest belief in the guilt of the accused, it is not required to go further.

126 The proof of a negative proposition in relation to the absence of reasonable and probable cause usually means that inferences have to be drawn in relation to the subjective views of the prosecutor at the time the charges were instituted and/or maintained. In *A v New South Wales* at [61], the High Court said:

"[61] Because the absence of reasonable and probable cause is understood as containing both subjective and objective elements, one of the chief forensic difficulties confronting a plaintiff is how to establish what the prosecutor (the defendant in the civil proceeding) had in his or her mind when instituting or maintaining the prosecution. Absent some admission by the defendant, the plaintiff must make the case by inference and, if the defendant gives evidence, by cross-examination. The shape of the forensic contest in the particular case will inevitably dictate the way in which the plaintiff puts the argument that absence of reasonable and probable cause is established. In particular, what, if anything, the defendant prosecutor says in court, or has said out of court, about why he or she launched the prosecution, will loom very large in the plaintiff's contentions about absence of reasonable and probable cause. It must be recognised that much of what is said in the decided cases about want of reasonable and probable cause is moulded by the nature of the forensic contest in the particular case."

127 In this matter, there has been limited evidence tendered by the State. It did not call evidence from Detective Thomas and, after his death, I rejected an application to adduce evidence of representations made by him. After that decision, the State elected not to call any evidence from two other potentially significant witnesses, Mr Catt and Mr Newell. No explanation was given for the failure to call them and given their critical roles in all of the events giving rise to the charges and beyond, I am required to take the State's forensic decision into account. This is referred to later in these reasons.

Termination of the Charges in Favour of the Plaintiff

128 On 11 September 1991, the jury returned verdicts of guilty in respect of counts 1, 2, 3, 4, 6, 7 and 9. In respect of count 5, Ms Beckett was found not guilty but was found guilty on an alternate charge of attempting to cause to be taken by Mr Catt a noxious thing namely lithium with intent to injure (ss 40, 41, 344A and 427 of the *Crimes Act*). She was found not guilty on count 8. As already discussed, following the Davidson Inquiry, the Court of Criminal Appeal made orders on 17 August 2005 and a *nolle prosequi* was subsequently returned. Accordingly, on Ms Beckett's case, counts 1, 2, 5, 6, 7 and 9 were terminated in her favour. Notwithstanding the decision in the High Court, as far as I can discern, the defendant has at least formally refused to admit that the charges were terminated in Ms Beckett's favour and has put her to proof of this element. However, in the absence of any submissions from the State on that issue to the contrary, and from the way the proceedings were conducted before me, I propose to proceed upon the basis that the proceedings terminated in favour of Ms Beckett on these counts.

REASONABLE AND PROBABLE CAUSE

Legal principles

129 Put simply, the element of absence of reasonable and probable cause may be proved by showing that the prosecutor, at the time of instituting or maintaining the charge, either did not believe in the guilt of the accused (the subjective element), or did not have reasonable grounds for so believing (the objective element).

The subjective element

130 In *A v State of New South Wales*, the High Court recognised that the precise nature of the subjective element will depend on the facts alleged. In the case "where the defendant prosecutor may be supposed to know where the truth lies", it might be proven "that the defendant did not believe the [plaintiff] to be guilty": at [69]. In the case where the prosecutor acts on material provided by others;

"[80] ... a relevant question in an action for malicious prosecution will be whether the prosecutor is shown not to have honestly concluded that the material was such as to warrant setting the processes of the criminal law in motion. (There may also be a real and lively question about the objective sufficiency of the material, but that may be left to one side for the moment.) In deciding the subjective question, the various checks and balances for which the processes of the criminal law provide are important. In particular, if the prosecutor was shown to be of the view that the charge would likely fail at committal, or would likely be abandoned by the Director of Public Prosecutions, if or when that officer became involved in the prosecution, absence of reasonable and probable cause would be demonstrated. But unless the prosecutor is shown either not to have honestly formed the view that there was a proper case for prosecution, or to have formed that view on an insufficient basis, the element of absence of reasonable and probable cause is not established."

The objective element

131 The objective element has received various formulations. Ultimately, the question is one of fact as to the reasonable sufficiency of the evidence. The objective element must be tested by facts and matters known to the defendant at or before the institution of the proceedings, not on the basis of material that came to light afterwards. As such it is an issue of fact in determining whether an objective person with reasonably sound judgment would have regarded the facts and materials then available as sufficient for establishing a reasonable and probable cause to institute the charges. Reasonable steps should be taken by the prosecutor to inform himself or herself of the true state of the case, not acting upon mere speculation. In addition, there is authority to suggest that in all but very simple cases, a prosecutor is required to obtain legal advice as to whether a prosecution is justified: *Abbott v Refuge Assurance Company* [1962] 1 QB 432. However, in *A v New South Wales*, the High Court held that advice of counsel is not always an impenetrable shield and that it may therefore be prudent to seek more than one legal opinion in complex cases. Where several charges have been laid against a plaintiff and some of them have been shown to lack reasonable and probable cause, there ought to be a verdict for the plaintiff: *Leibo v Buckman* [1952] 2 All ER 1057; *Dent v Standard Life Assurance Ltd* (1904) 4 SR (NSW) 560.

Material that was before the prosecutor

132 Despite the fact that much has happened since Ms Beckett's trial before Mathews J and a jury in 1991, I take the uncontroversial position to be that the starting point for my inquiry must be, or at least should be, an examination of the material that was before the prosecutor for the purposes of determining, in lay terms, what he made of it or what he should have made of it. It is Ms Beckett's case in these proceedings that Detective Thomas as the prosecutor lacked an honest belief in her guilt for the reason that he manufactured the charges against her and that he knew subjectively that they were not and could not have been charges of which she could in truth possibly have been guilty. Whether or not Ms Beckett is able in these proceedings to establish that Detective Thomas lacked an honest belief in her guilt for that reason remains to be seen. In accordance with authority, if I were to find that Detective Thomas held no honest belief in Ms Beckett's guilt I would not be required on this element of the tort to go further. However, if Ms Beckett failed to satisfy me on that point and I were to find that Detective Thomas held an honest belief in Ms Beckett's guilt, it would remain for Ms Beckett to establish that it was not formed on reasonable grounds.

133 Central to each of those inquiries, albeit for obvious reasons with a differential emphasis, is an understanding of, and the making of findings about, precisely what material or information was available to be considered and evaluated by Detective Thomas at the relevant times. This has been consistently referred to throughout these proceedings as an inquiry into what was *before* the prosecutor. I have been provided with eight volumes of what has come to be described as the Crown Court Book which on one view contains this material or most of it. The retrospective compilation of what was before the prosecutor in a case of this size and so many years after the event has proved to be a challenging task. Although there is general agreement that the significant majority of what is contained in the Crown Court Book was material that was before the prosecutor, there remains some controversy that it either contains all or only the material available to Detective Thomas in that capacity at the relevant time.

134 It will also be apparent that these proceedings before me have included the taking of evidence in the form of oral testimony from witnesses on both sides and the tender of physical exhibits in various forms. The Crown Court Book itself consists of statements taken by the police from, or provided to them by, witnesses who gave evidence at Ms Beckett's trial, some of whom gave evidence before me. In making my determination of whether or not Detective Thomas lacked an honest belief in Ms Beckett's guilt or whether it was formed on reasonable grounds if he did, the oral evidence heard and the documentary evidence received by me can only be utilised to the extent that it informs or clarifies the material that was before the prosecutor. My task is unlike the one that confronted the Court of Criminal Appeal in its s 474B examination, or Davidson ADCJ's anterior inquiry on remitter from that Court into the then available evidence in aid of it. I am not permitted, and I do not propose, to examine the evidence presented to me in 2015 in order to decide the issues concerned with Detective Thomas' beliefs almost a quarter of a century ago unless that evidence was itself either available to Detective Thomas at the time, or the evidence enables or assists or permits me better to understand the evidence that was.

135 Some simple examples may assist to explain the approach I intend, and that I consider I am bound, to take. A great deal of fresh evidence was uncovered or discovered during the Davidson Inquiry. That material, or some of it, was instrumental in leading the Court of Criminal Appeal to arrive at its conclusions that certain of Ms Beckett's convictions should be set aside. It is conceivable that such evidence, or some of it, if accepted, could indicate that Detective Thomas had a particular state of knowledge when he instituted or maintained the relevant prosecution. For example, an admission by Detective Thomas to a witness some years after the event that he planted the revolver in Ms Beckett's ensuite would be evidence relevant to the determination of what was before him as the prosecutor in 1991. (The acceptance or reliability of any evidence of such an admission is an entirely different matter.) Similarly, evidence available in 2015 that Detective Thomas threatened or pressured a particular witness or witnesses to make or change a statement would be available for use by me because by definition it would have been material

known to Detective Thomas, and therefore notionally before him, at the relevant time.

136 By way of contrast, the recanting in 2015 by a witness of the evidence that he or she gave in a statement to Detective Thomas for use at Ms Beckett's trial would not be material to which I could permissibly have regard unless it could be demonstrated that Detective Thomas knew in fact or ought reasonably to have known that the original evidence in question was false. By way of further example, the discovery of a new witness, not previously known to or heard of by Detective Thomas, who was able in exculpation of Ms Beckett to say in 2015 that he or she was present at one or other of the occasions from which Ms Beckett's convictions flowed, would not be evidence from a person that I could use to determine what Detective Thomas knew or ought to have known at the time. In summary, the assessment of Detective Thomas' belief in Ms Beckett's guilt or, if necessary, whether it was formed on reasonable grounds, must be assessed contemporaneously having regard to evidence that was available at the time for consideration by Detective Thomas or actually within his knowledge and not retrospectively having regard to matters that have come to light since.

137 Even though the several judgments and decisions of other courts and tribunals to which I have referred offer up considerable efficiencies in the recording of the background to these proceedings, there is no simple or short way of assessing and deciding what was in fact the material that was before Detective Thomas as the prosecutor during the time that he instituted and maintained the several charges against Ms Beckett. What follows therefore is an analysis of that question, separated and divided as far as possible by reference to the discrete and individual charges that were preferred.

138 In examining the individual charges and the circumstances out of which they arose I observe that there is often some overlap between the facts of a particular incident, the charge that it generated and the facts referable to some of the other charges. Most significantly, Ms Beckett contends throughout that the continuously reoccurring theme in every case is the

insidiously dishonest presence of, and role played by, Detective Thomas. One of the ways in which Ms Beckett puts her case is that Detective Thomas was not the mere recipient of information about the details or believability of which he should have been merely sceptical or otherwise indifferently concerned, but rather that he was the instigator of the circumstances and the effective creator of the allegations and charges. In short, Ms Beckett maintains throughout that Detective Thomas could not have had a reasonable belief about her guilt or otherwise because he knew for a fact that she was not guilty at all. That is undoubtedly a high standard for Ms Beckett to achieve in her prosecution of this case. As will be apparent later, a failure to establish that allegation is not necessarily the end of the matter.

139 The way in which Ms Beckett puts her case in respect of each charge is considered in turn in what follows. There are factual differences between Ms Beckett and the State concerning what happened in each incident. Those differences cannot be resolved by me with any confidence so many years later, especially without seeing and hearing all of the witnesses concerned. It becomes necessary therefore to compare the competing versions and to identify the irreconcilable differences where they appear and where they are relevant.

140 This case is very unusual if only for the reason that it arises out of a very long history of civil and criminal litigation of a quite extraordinary kind. From as far back as 1983 Ms Beckett has been involved with the police and the court system in a way that relatively few people apart from career criminals or vexatious litigants would have experienced. Ms Beckett would appear at all times up until the fire in her delicatessen in Taree in 1983 to have been an ordinary citizen going about her business in an unremarkable way. From 25 December that year, however, things changed dramatically and for the worse. It is difficult to understand either why or how these things happened. The only thing that is clear is that the consequences for Ms Beckett and her family were nothing short of disastrous.

- 141 The wealth of relevant and associated documentary material that has been produced over all of these years is correspondingly large. Any adequate review of all of it in these reasons is simply not possible without the need to be particularly selective. I acknowledge that there is a risk in attempting to discern what is and what is not the most significant material of producing a result about the appropriateness of which minds might reasonably differ. That is an unfortunate but inevitable consequence of the fact that every single dispute or issue cannot be considered and resolved by me. It will be apparent that many of these disputes remain festering today, many years after they first saw the light of day. I have a very strong sense that they will continue to fester in some form or another even after these present proceedings have been finally concluded in whatever forum that occurs.
- 142 Part of the process of expiating these long held enmities and conflicts and more importantly of resolving these proceedings required me to hear evidence from several witnesses on both sides, in most cases not for the first time in a court or similar forum, about the ancient events that filled the last twenty five turbulent years. Ms Beckett's task in these proceedings is a difficult one, and the significance or relevance of her witnesses is often just as difficult to understand. That notwithstanding, it remains for me to form and to express views about them, and to extract if I can from their evidence the grains of insight that might illuminate the dark and fading past that holds the answer to this litigation.
- 143 The principal protagonists are Ms Beckett and Detective Thomas. Detective Thomas died while these proceedings were in full swing. I have no way of knowing whether or not Detective Thomas would have given evidence had he survived to do so. It is unprofitable to speculate about that now. There is no doubt that he would have been a most important witness in the proceedings if he had been called, having regard to the things that Ms Beckett is required to establish before she can succeed. I have little doubt that my task has been made more difficult by the absence of an opportunity to compare Ms Beckett and Detective Thomas in a contemporary setting with my own eyes and ears, rather than through the cracked and blurred prism of hindsight.

Counts 1 and 2 - The Rock Incident and Perjury charges

144 Detective Thomas had the following statements before him on these counts.

Shane Anthony Golds

145 Mr Golds first gave a statement to the solicitor Mr Hooke on 21 May 1988, which was the day of the rock incident. It is handwritten. It supported Ms Beckett's version of what happened. Part of it was as follows:

"Peter and I got out [of the car] to get [Barry Catt] away from Roseanne and he started swinging at us and we swung back and managed to get a hold of him when Mrs [Warwick] came with a rock in her hand which she swung at me. I ducked and she hit Barry in the side of the head. We let him go and drove to police station to report incident, then to Dr Wallman's, then back to the police station, then back to work, then Peter and I went home."

146 Mr Golds later gave a statement to Detective Thomas on 23 August 1989 in which he said the following things:

"5. The statement I made to Roseanne's solicitor Ted Hooke is an incorrect version of the incident.

6. I lied about what I had seen and done because I was told to do so by Roseanne.

7. On our return to the workshop that day, she said, 'He's mad, he's dangerous, we've got to get him put away. I will tell you what to say.' She said, 'I want you to say Mary went to hit you but hit Barry instead.' And that's what I told the solicitor. Roseanne's son, Peter Bridge was present and agreed to make a statement too, telling lies I mean.

8. I told lies because I wanted to keep my job."

147 Mr Golds provided another more detailed statement to the police on 8 November 1989. That statement is generally supportive of Mr Catt and unsupportive of Ms Beckett. Part of it is in these terms:

"16. ...I saw Ted Hooke, Roseanne was sitting outside in the waiting room. I told Mr Hooke what Roseanne had told me to say. That wasn't the truth what I saw happen. I was frightened of loosing [sic] my job.

...

20. ...I told lies to the court because I was frightened of Roseanne.

21. When the court finished and I was outside Roseanne came up to me and said, 'I'm proud of you, stick to your story and everything will be ok.' After that I never had anything to do with Roseanne Catt. I might have seen her down the street a couple of times and just spoke to her.

22. I didn't tell anyone the truth about what happened that day at Mary Warwick's that date as I was scared of Roseanne and I was worried what would have happened to me for telling lies to the court."

148 Mr Golds gave an undated statement to the police in which he referred to events at Cattys Body Repairs where he worked on 14 July 1988. The statement does not appear to relate to the rock incident at all, but deals instead with an allegation that Mr Catt was threatening to get rid of Mr Golds as an employee in the course of an overheard telephone conversation between Mr Catt and Ms Beckett.

149 Mr Golds' final statement was given to the police on 30 November 1989. In general this statement is corroborative of the 8 November 1989 statement, although it contains more detail of what occurred during the events at Ms Warwick's house. It was supportive of Mr Catt and substantially inimical to the interests of Ms Beckett. For present purposes, however, the following parts of the statement should be noted:

"9. The next day, Roseanne took me down to a solicitor named Teddy Hooke, and I put in a statement to him, what Roseanne told me to say.

10. I went to court at Taree and gave evidence in the assault case against Barry Catt. The evidence was under oath, and it was the same as the evidence that I had put in my statement. I didn't stay for all of the court case because I had to go back to work.

11. Earlier this year, Detective Sergeant Peter Thomas and Detective Karl Paget came to see me at work. They said that they wanted to talk to me. They took me from work, up to a white weatherboard house in Chatem [*sic*]. Neither Detective Thomas or [*sic*] Paget threatened me at any stage, and Detective Thomas asked me questions about the assault. He said to me, 'If you don't tell the truth you could go to gaol for perjury.' Because I was working at Paul Walton's then, I decided to tell the truth about what really happened. I made a statement completely of my own freewill.

12. It didn't matter what Detective Thomas said to me in any case, because it was on my conscience, and I had decided to tell the truth, and from the time Detective Thomas told me who he was I had decided to tell the truth. There was no inducement, threat, promise, or intimidation, made or held out to me, at any time, to talk to Detective Thomas, or make a statement to them, about

the truth of what really happened. The police officers did nothing to upset or worry me at any stage.

13. I now intend to give evidence in court and tell the truth."

Mary Warwick

150 Ms Warwick provided a long statement to police dated 19 September 1989. It was supportive of her brother Mr Catt and in direct conflict with the version originally given by Mr Golds. The statement is interesting in the sense that it contains references to Ms Warwick's views and opinions about Ms Beckett, which are universally unfavourable. Her statement suggests that Ms Beckett turned up at her house in a frenzy and proceeded to abuse and berate her in strong and offensive language. Ms Warwick said that Ms Beckett proceeded to strike Mr Catt with a rock that she retrieved from the garden while Peter Bridge and Shane Golds held him down.

151 Ms Warwick also provided an undated handwritten statement that was entirely consistent with the events described by her in the 19 September 1989 statement. She also would appear to have provided another typed statement that is neither dated nor signed by her but which in terms makes it clear that it is a version of the rock incident events in her words. It is to the same effect as her other statements.

Brian Warwick

152 Mr Warwick is Ms Warwick's husband. He is the father of Robert Tisdell. He gave a statement to the police on 5 October 1989. That statement did not refer at all to the rock incident as Mr Warwick was not present at the time of those events. He said that on one occasion Ms Beckett spoke to him and said to his wife that she might be Mr Catt's next of kin but that Ms Beckett would be his next of kin when she marries him next week "and I will have him committed."

Barry Catt

153 Mr Catt provided three statements. The first was given to the police on 2 May 1988, the day of the rock incident. Paragraph 2 of the statement is as follows:

"2. On Monday 2 May, 1988 I went to my sisters place look for my apprentices who I thought may have been with my wife, Roseanne at my sister's place at 41 High Street Taree. When I arrived I saw that they were there. I saw my wife walking away from my sister and my sister was holding her jaw. When my sister saw me pull up she yelled out to me 'Roseanne hit me'. Roseanne was getting into her car with the apprentice and three of my children. I went to the car and said to her 'You are nothing but a bitch'. She said, 'This is not the end of it, you've seen nothing yet'. I said, 'What you're trying to do is to try and make me hit you. Do you think I'm that silly?' She then hit me in the face with an open hand and I hit her the same way. Then I walked away and she came after me yelling to the boys to get out of the car and get me. The apprentice approached me and one grabbed me from behind, his name is Shane Golds and the other one whose name is Peter Bridge started to hit me. The three of us struggled and then fell over and then Roseanne picked up a rock out of the rockery in the garden and started to hit me with it all up and down the left side of my back. As I was trying to dodge the rock she hit me on the right side of my head with it. The three of them then just left. I stayed at my sister's place till the Police arrived. They took me to the MRD Hospital where I had 2 [quaere 4] stitches put in my head."

154 A second statement dated 26 May 1988 was also made by Mr Catt, although not on a police statement form. It corroborates his earlier statement in relevant respects. It also included an admission that he struck Ms Beckett in the course of what occurred, in the following terms:

"14. During the whole incident I only gave Roseanne two hits to the head and both of them were with the back of my hand and both were in retaliation to the assault she had done on me."

155 Finally Mr Catt provided a long statement to the police on 1 November 1989. It is far more extensive and informative than his previous statements that were effectively limited to the specific events of the rock incident and sets out material relevant to other counts. To the extent that it refers at all to the rock incident it confirms or repeats the versions previously provided.

Dr Michael McGrath

156 Dr McGrath is a medical practitioner. He confirmed that on 2 May 1988 he treated Mr Catt who he found on examination to be suffering from a small

laceration to the scalp which he sutured. Mr Catt was discharged in the company of the police.

Detective Thomas

157 Detective Thomas made a statement on 20 September 1989. It was relevantly as follows:

“3. On Thursday 24 August 1989, I was in the company of Detective Paget when he spoke to the defendant Peter Kevin Bridge, at the Taree Police Station.

4. Paget said, ‘Are you Peter Bridge?’ He said, ‘Yes.’ Paget said, ‘I am Detective Paget and this is Detective Sergeant Thomas. I want to speak to you about an incident that occurred at Mary Warwick’s place, in May last year when Barry Catt received a head injury as a result of being struck with a rock. I want you to understand that you are not obliged to say anything about the matter unless you wish. Whatever you say may be used in evidence at Court. Do you understand that?’ The defendant said, ‘Yes, that’s when Mary Warwick went to hit mum with the rock and hit Barry Catt’.

5. Paget said, ‘Are you sure that Mary Warwick did that?’ He said, ‘Yes, you can ask Shane Golds and the kids they were there. That’s what happened.’

6. Paget said, ‘Is that what you told the Police before?’ He said, ‘Yes.’ Paget said, ‘Will you tell me now what you say happened.’ He said, ‘Mum and Barry Catt were on the ground. I got out and got stuck into Barry. Shane gave me a hand. Mary went to hit mum with the rock and hit Barry. Then we left.’

7. Paget said, ‘Mary Warwick told Police then and still maintains that your mother struck Barry Catt with the rock. Do you wish to say anything about that?’ The defendant said, ‘No she is wrong.’

8. Paget said, ‘Barry Catt told Police at the time and made a statement then that your mother hit him with the rock. Do you wish to say anything about that?’ He said, ‘No Mary hit him.’

9. Paget said, ‘Shane Golds has made a statement to Police to the effect that your mother, in fact assaulted Barry Catt with the rock. Do you wish to say anything about that?’ He said, ‘No’.

10. Paget said, ‘further, he says that your mother instructed him, yourself and the Catt children to say Mary went to hit your mother, if you were asked by Police what happened. Do you wish to say anything about that?’ He did not answer – and commenced to cry. (Paget asked the same question again – the defendant, still crying, shook his head.)

11. Detective Paget then said, ‘Shane Golds has also told us that he told lies about what happened that day, under threat of losing his job. Do you wish to say anything about that?’ The defendant did not answer – still crying, shook his head.

12. Paget said, "In light of what we have been told you will be charged with conspiring with your mother to wrongful accuse Barry Catt of assault. Do you understand that?" He said, 'Yes'. Detective Paget said, 'Do you wish to make a hand written statement about the matter?' He said, 'No'."

Detective Paget

158 Detective Paget also made a statement on 20 September 1989. It was relevantly as follows:

"3. On Thursday afternoon 24 August 1989, in a room at the Taree Police Station, I saw the defendant Peter Kevin Bridge. Detective Sergeant Thomas was present when I had a conversation with him.

4. I said to the defendant, 'Are you Peter Bridge?' He said, 'Yes.' I said, 'I'm Detective Paget and this is Detective Sergeant Thomas. I want to speak to you about an incident that occurred at Mary Warwick's place in May last year in which Barry Catt received a head injury as the result of being struck with a rock. I want you to understand that you are not obliged to say anything about the matter, unless you wish, but whatever you say may be used in evidence at Court. Do you understand that?' He said, 'Yes, that's when Mary Warwick went to hit mum with the rock and hit Barry Catt.'

5. I said, 'Are you sure that Mary Warwick did that?' He said, 'Yes, you can ask Shane Golds and the kids, they were there. That's what happened.' I said, 'Is that what you told the Police before?' He said, 'Yes.' I said, 'Will you tell me now what you say happened.' He said, 'Mum and Barry Catt were on the ground. I got out and got stuck into Barry. Shane give me a hand. Mary went to hit mum with the rock and it hit Barry and then we left.'

6. I said, 'Mary Warwick told Police then and still maintains that your mother struck Barry Catt with the rock. Do you wish to say anything about that?' He said, 'No, she's wrong.' I said, 'Barry Catt told Police at the time and made a statement then that your mother hit him with the rock. Do you wish to say anything about that?' He said, 'No, Mary hit him.' I said, 'Shane Golds has made a statement to Police, to the effect, that your mother, in fact, assaulted Barry Catt with the rock. Do you wish to say anything about that?' He said, 'No.' I said, 'Further, he says that your mother instructed him, yourself and the Catt children to say Mary went to hit your mother, if you were asked by Police what happened. Do you wish to say anything about that?'

7. The defendant did not answer that question becoming visibly upset and cried. I repeated the question and he shook his head negatively but did not verbally reply.

8. I said, 'Shane Golds has also told us that he told lies as to what happened that day under threat of losing his job. Do you wish to say anything about that?' The defendant again did not answer the question, shaking his head negatively.

9. I said, 'In light of what we have been told you will be charged with conspiring with your mother to wrongfully accuse Barry Catt of assault. Do you understand that?' He said, 'Yes'. I said, 'You will also be charged with assaulting Barry Catt. Do you understand that?' He said, 'Yes'. I said, 'Do you wish to make a handwritten statement about the matter?' He said, 'No.'

10. The defendant was charged with the present matters."

Philip Lucas

159 Dr Lucas said he was a resident medical officer at the Manning Base Hospital on 2 May 1989 [*sic* 1988] and provided a statement dated 26 April 1990 that on that day he sutured a laceration above Mr Catt's right eye. He said that on that occasion Mr Catt was slightly intoxicated and had a two centimetre laceration just below his right eyebrow. There was no evidence of bony injury, double vision or eye trauma.

Constable Brown

160 Constable Geoffrey Brown was on roster at the Taree police station on 2 May 1988 when he was called to 41 High Street Taree in response to a complaint. He provided a statement dated 20 September 1990. Constable Brown said that when he arrived he spoke to Mr Catt who he observed was bleeding from a gash on the right side of his head. He took Mr Catt to the Manning Base Hospital for treatment. He then returned to the police station with Mr Catt where he took a statement from him in relation to the incident.

161 At 12.45pm that same day, Ms Beckett attended the police station and he took a statement from her with respect to the same incident. He recorded that in his notebook. A short time later Ms Warwick also attended the station and he recorded a statement from her in the same way.

162 Constable Brown made an occurrence pad entry with respect to these matters. The entry is in the following relevant terms:

"At 9.30am in company with Constables Miller and Dean I attended 41 High St Taree re a violent domestic. On arrival I saw and spoke to Mr Barry Robert Catt who was suffering from a head wound. He briefly stated that he had been assaulted by his wife Roseanne who had hit him with a rock. Catt was

conveyed to the MRD Hospital where two stitches were inserted in the wound. He then attended Taree Police Station and made a statement. A short time later Roseanne Catt attended the Taree Police Station and also made a statement in relation to the matter. Roseanne Catt also stated that she had taken out a restraining order against her husband. No further Police action is contemplated in this matter as there are conflicting statements as to what actually occurred and how Mr Catt actually received his injury. He was informed that he may take civil action against his wife if he desired. Mr Catt has a history of mental illness and has been escorted by Police to Watt St, Clinic at Newcastle in the past. Mr Catt's doctor, Dr Wallman also contacted the Police Station to say he was trying to make arrangements to have Mr Catt scheduled."

- 163 It is axiomatic that Detective Thomas also had the "conflicting statements" to which Constable Brown's occurrence pad entry refers. This is because the perjury charge is based upon the proposition that the evidence given by Ms Beckett in the Local Court before Magistrate O'Keefe in her civil proceedings against Mr Catt for assault was consistent with the version of events given by her to Constable Brown on 2 May 1988. I take that conclusion to require no further examination by me upon the basis of the obvious assumption that all or any versions of the events at 41 High Street Taree on that day proffered by Ms Beckett and her witnesses in court or in statements beforehand were available to Detective Thomas for examination and comparison by him.

Consideration – the Rock Incident and Perjury charges

- 164 The first thing to note, if it is not otherwise apparent, is that the circumstances that generated this incident are quite extraordinary. For example, they did not arise because the parties involved in it were already all present together for some innocent reason when a dispute happened to break out among them. On the contrary, the uncontested facts include the fact that Ms Beckett journeyed from her house with a number of children and two employees of the smash repair business in tow in order to confront Ms Warwick at her house. To the extent that any clue to the truth behind the incident can be drawn from this fact, I consider that it indicates that Ms Beckett was clearly the instigator and to that extent also the aggressor. Put in different words, none of what occurred would ever have happened if Ms Beckett had simply stayed home. I accept that on one version of the events that occurred, Ms Warwick had

herself previously visited Mr Catt with respect to some concerns that she had with her son and Peter Bridge and Shane Golds. There was no physical altercation on that occasion and Ms Beckett would not appear to have become involved.

165 Secondly, it is curious that Ms Beckett should have gone to Ms Warwick's premises accompanied not only by Mr Catt's children but also by her son Peter Bridge and Shane Golds. The children would presumably have ordinarily been at school on the day, and the other two were taken from their work in the business. Once again it may be that this was related to the concerns that Ms Warwick had apparently conveyed to her brother concerning her son and Peter Bridge and Shane Golds. The truth remains elusive.

166 Thirdly, I find it difficult to believe that either Peter Bridge or Shane Golds would have proceeded physically to restrain Mr Catt in the way suggested by the State. It is said that they "grabbed him and forced him to the ground." They were both working for him as apprentices at the time, so that the prospect that either young man in a relationship of that nature would take steps on the command of his wife to "get" him seems remote.

167 Fourthly, it was Mr Catt who called the police. That fact is not wholly unambiguous but on balance suggests to me at least that he had nothing to fear from a police investigation into what had occurred. In addition, the only person injured in this amazing incident was in fact Mr Catt. Ms Beckett was not apparently injured despite one version of the incident suggesting that she had been punched several times.

168 Fifthly, I find it very difficult to accept that Ms Warwick hit her brother on the head with the rock. The evidence does not reveal any dispute between them, even if it does suggest a dispute between her son and her brother's apprentices. The other inference, that Ms Warwick somehow intended to hit Shane Golds, but hit Mr Catt by mistake or in error, is not explained in any detail and seems unlikely in the absence of more evidence about it.

- 169 Ms Beckett applied for an AVO at Taree police station later that day. Constable Brown took no further action as the statements provided to him were in conflict. His advice to Mr Catt that he could commence civil proceedings against Ms Beckett went unheeded, but she commenced proceedings a few days later.
- 170 Ms Beckett bears the onus of negating the existence of a reasonable and probable cause for the institution of the proceedings. Her case is necessarily based entirely upon inference. Detective Thomas died before the proceedings concluded and he was never called to give evidence before that happened. It is not therefore possible to evaluate Ms Beckett's case with the benefit of seeing him in the witness box. Detective Paget gave evidence and was cross-examined. He made no relevant admissions on behalf of himself or Detective Thomas.
- 171 It is important in respect of all charges upon which Ms Beckett's case in these proceedings is based not to conflate the elements of absence of reasonable and probable cause on the one hand and malice on the other hand. Much if not most of the parties' attention on these charges has been directed to the evidence of Peter Bridge and Shane Golds in the context of whether or not either one or both of them had been overborne or threatened by Detectives Thomas or Paget to change his story. Clearly enough, the acceptance of any suggestion that Detectives Thomas or Paget did so is highly supportive of the proposition that they did so maliciously. It does not however automatically dispose of the anterior question of absence of reasonable and probable cause.
- 172 In my opinion Detective Thomas revisited this incident some fifteen months after it occurred in the context of a vengeful crusade to harm Ms Beckett. I consider that he inappropriately placed pressure on both Peter Bridge and Shane Golds to alter their stories. He succeeded in doing so with Shane Golds but not Peter Bridge. Some further reference to these men and their evidence before me becomes necessary.

173 I was very impressed with Peter Bridge in the witness box. Peter Bridge is Ms Beckett's son. He was born in August 1968. He had only just turned 21 years of age shortly before his mother was arrested. He left school at the age of 16 and obtained an apprenticeship with Mr Catt's smash repair business. Shane Golds also worked there.

174 Mr Bridge gave me the distinct impression of an honest and decent man who has lived with the intolerable burden of his mother's extraordinary travails for the whole of his life. He struck me as a man understandably wearied by the whole process, including the present proceedings, but who remained intensely and consistently loyal to his mother notwithstanding. I accept his evidence when he says that he was pressured by Detective Thomas to change his story and threatened with being charged if he did not do so. That is what occurred but his support for his mother never wavered.

175 He was present at Ms Warwick's house during the rock incident. He gave this evidence:

"Q. When you arrived there, did, to put it neutrally, a fracas occur involving yourself, Mr Golds, your mother and Barry Catt in particular?

A. Yes.

Q. And did it also involve Mary Warwick?

A. Yes.

Q. When Mr Catt arrived, did you observe him do something to your mother?

A. Yes. He pulled up in a customer's car, he always drove customers' cars instead of his own, and pulled up alongside mum's car, which is right beside (indicated). He said, 'I knew you would be here, you bitch' and leaned in or opened the door I think from memory and took the keys from the ignition and proceeded to punch mum in the side of the face, and we were all sitting in the car at that stage.

Q. Did you and Mr Golds get out of the car?

A. Yes.

...

Q. Did you subsequently go with your mother to a solicitor, Mr Hooke?

A. Yes.

Q. Within a reasonably short period of time?

A. I think the next day or next morning.

Q. Did Mr Hooke interview you separately from other people?

A. Yes.

Q. While you were there did Mr Golds go in and see Mr Hooke?

A. Yes.

Q. Did your mother participate in that interview with Mr Golds and Mr Hooke?

A. Mum didn't go in with Shane, no.

Q. Your mother made a statement as well?

A. I think so, yes.

Q. Prior to going to see Mr Hooke, did your mother ever say to you in the presence of Mr Golds what you have to put in your statement to Mr Hooke?

A. We said how it was, how it happened.

Q. I am asking you whether your mother said this, while you were all in the car, going back to your place:

'If you are asked what happened tell them it was Mary that hit Barry over the head with the rock and that I never went inside the screen door and got the keys.'

Was that said?

A. No.

Q. You were to tell them that it was Mary that was getting abusive, is that correct?

A. No.

Q. Did you ever hear your mother say, turning to Shane Golds, 'Shane you won't have a job if you say anything different'?

A. No.

Q. Was Shane Golds in your presence ever told by your mother what to tell Mr Hooke prior to that attendance?

A. No."

176 Mr Bridge also gave evidence about his arrest on 24 August 1989:

"Q. You were taken back to Taree Police Station, is that right?

A. Yeah in a paddy van. I asked if I could drive my car and they wouldn't let me.

Q. What happened at the police station?

A. I was in the back of the paddy van and the police were all drinking alcohol, partying up the back of the police station, plain clothes and uniform.

Q. Where were you placed?

A. I was led into the detectives' office in Taree Police Station.

- Q. About what time of day was this?
 A. I am thinking it I am guessing here, possibly 5 o'clock ish, 4 or 5 o'clock.
- Q. Did he see Detective Thomas at any stage?
 A. Eventually, I had to sit and wait for a while. I never I knew of Peter Thomas but I had never actually seen him before that day. And when he came in he didn't introduce himself but I soon worked out who he was.
- Q. Was he alone or with anyone else?
 A. With another officer there, Carl Paget.
- Q. Had you known him before?
 A. No.
- Q. And did you have a conversation with Mr Thomas?
 A. He accused me as soon as he set eyes on me he accused me of harassing Adrian Newell at Muldoon Street, which I never did. I denied that, of course, because I didn't do it. He was angry. And said with other things he accused he said your father is in a mental institution and all this. I said what do you mean by that. He said your mother has placed your father in a mental institution, did you know that. And I said I just acted dumb to that and said no I didn't. But I keep in frequent contact with my father and that's not the case. He proceeded to bring up the rock incident.
- Q. What did he say about that?
 A. He said tell me what happened about the rock incident. I told him the right version and then he became aggressive.
- Q. What did he say?
 A. He sat on the edge of the desk. I was sitting in a chair. He was screwing his mouth up, glaring his eyes and poking me in the chest and he said, 'Listen here, I've placed enough charges on your mother to put her away for life'. Sorry."

177 He continued after the interposition of Mr Madden's evidence as follows:

- "Q. Just take it slowly and as best you can give us the essential details that you recollect?
 A. As I say, it was his version so it is kind of hard to remember. So it was along the lines of it wasn't Mary that had the rock, it was my mother. That she had hit Barry on the head, and all that, with the rock. That it was all I don't know, it was basically that my mother did it. I can't remember the full detail.
- Q. Was the name Shane Golds mentioned in your discussion?
 A. Yes, it was, yes.
- Q. What did he say concerning Mr Golds?
 A. He said, 'Shane Golds has told the truth.' Something like, 'That little bastard told the truth.' And he said also, 'You wait till I get hold of that Christopher, that little bastard will be telling the truth too.'

- Q. What happened then or what did he say then?
- A. He said 'So, what's the truth?' And I said, 'I've already told you the truth.' And with that he gets upset and he said, 'Listen, if you don't tell Jules what I say, you're going to be you like your apprenticeship, do you?' I said, 'Yes I do.' He said, 'You can kiss that goodbye.' He said, 'You won't be able to work in this town again. I'll find something each week to charge you with. I'll make your life hell.' He said, 'All you need to do is you do this, write this and you can walk out of here tonight. If you don't, you are going to be charged' and he said, 'Your mother's fucked, but we can save you.' And he said, 'If you don't write this statement I'm going to lock you up tonight and you won't be able to live in this town,' basically.

And I still stuck with the truth and he got angry and he said, 'Look, I'm going to give you five minutes to think about it.' And with that he went out and Paget was still in the room standing at the back of the room and he said, 'I'll give you five minutes to think about it', and he said 'I'm going to get another beer.' He was drinking beer while he was talking to me. And off they both went and that's when I sat down and I seen all my mother's belongings on another table in the room and some of which was mum's and some I hadn't seen before.

And within probably five, ten minutes later they came back in, both of them, and they said, 'What's it going to be?' I said, 'I've told you the truth.' And oh, I can't remember what was said then.

- Q. Just take it slowly?
- A. He got angry. He said, 'You know you are going to get charged and spend the night in the cells.' I said, 'But I'm telling the truth,' and with that Carl Paget had his little two dollars' worth at the back. I can't remember what he was saying, but he was muttering words like bullying me or putting the heavies on me, which was pretty intimidating. I stuck with my story, which I did. With that he said, 'Fuck this, I'm out of here. We're going to the bowling club' or 'the sailing club' or something like that and he said, 'You're going to get charged and that's it.'

BLACKET: What state were you in at this stage?

- A. I was a wreck. I'd only just turned 21. And here I am in a police station, supposedly a safe house getting treated like this. I was in shock.

Q. Were you tearful?

- A. Yes.

Q. Did you have any legal advice at that stage?

- A. No.

Q. What happened to you then?

- A. Well, I think when he actually when he walked out there were other police officers there, a female and a male officer, I don't know these people. I heard the words commented, 'Should have shot the bitch' and they all laughed and thought that was funny. But with that, then I was taken out to the front of the police station by another police officer and then I was fingerprinted and charged.

Q. Did you remain in custody or were you bailed?

A. I was bailed and then my orders were not to speak to Shane Golds and Mary Warwick."

178 Mr Bridge was committed for trial on the same day as his mother. He did not give evidence at her trial. His trial was heard in 1995. He remained on bail until then. He was charged with assault, conspiring falsely to accuse of a crime and conspiring to pervert the course of justice. These latter charges became perjury and were no-billed by the Director of Public Prosecutions on 23 May 1995. He only went to trial on the assault charge and was acquitted. Detective Thomas attended the trial and gave evidence.

179 Mr Bridge denied consistently and in the face of several suggested formulations of what occurred that he had been told by Ms Beckett what to say happened in the rock incident or that she coached him and Shane Golds and the Catt children in what they should say.

180 Mr Bridge agreed that Detective Thomas pressed him to tell "the truth" following a recantation by Shane Golds about what happened. However, Mr Bridge insisted that Detective Thomas' truth was different to his and that he was being intimidated to change his story.

181 It seems probable to me that Mr Bridge was indeed treated by Detective Thomas in precisely the way that he says he was. I have little doubt that he was threatened and intimidated by Detective Thomas. It is a testament to Mr Bridge's loyalty to his mother that he did not change his version and ultimately rendered himself liable to the awful personal consequences that followed for him. However, I am not prepared to accept that what Mr Bridge insisted was the truth in his struggle with Detective Thomas was in fact an accurate account of what occurred. I am constantly forced in my consideration of this matter back to the question of why Ms Beckett would have loaded up her car with the Catt children and Mr Bridge and Mr Golds and have attended 41 High Street on that day if she were not fired up with some kind of anger or passion, whether well founded or otherwise, with which she had the uncontrollable urge to confront Mary Warwick. On any view of the matter, what took place there that day was an unseemly and shabby domestic confrontation that

should never have taken place. It is profoundly regrettable that cooler heads did not prevail. The fact remains that Ms Beckett went to the premises with a coterie of young and innocent supporters and seems clearly to have instigated the whole affair.

182 I also find the statements of Ms Warwick and Mr Catt, to which I have referred, as inherently convincing and truthful. They read as though their authors are responding to what occurred and are attempting accurately to record it rather than as if they are providing a version of events that they were hopeful would or might one day stand up in court or lead to a particular result. I appreciate that neither Mr Catt nor his sister was called to give evidence before me and that Ms Beckett submits that that is forensically significant but in my view the strength of any suggested inference that anything that they might have said would not have assisted the Crown's case seems perfunctory at best and unlikely at worst.

183 Mr Golds gave evidence before me. He said that he had worked as an apprentice alongside Mr Bridge at Cattys Body Repairs. They became friends. He regarded Peter Bridge as a reliable and honest young man. He also got on well with Ms Beckett. He said that Mr Catt could suddenly lose his temper and was unpredictable. There were clashes from time to time between Mr Catt and his wife.

184 According to his version of what occurred, Mr Golds was present at Mary Warwick's premises during the rock incident. He saw Mr Catt arrive and proceed to go to the driver's side of Ms Beckett's car and punch her in the face. They all got out of the car. Peter Bridge started fighting with Mr Catt. A struggle ensued between Peter Bridge and Mr Golds and Mr Catt. Ms Beckett then drove all of them straight to the police station. He later went with her to the doctor's surgery. From there he went back to Ms Beckett's house. He went to Mr Hooke's office the next day in order to provide a statement. The statement supported Ms Beckett's version of what happened at Ms Warwick's premises during the rock incident.

185 Mr Golds confirmed that on 23 August 1989 he was visited by Detective Thomas who told him that he could be charged with perjury and that he could go to gaol. That was said to be because when Mr Golds gave evidence before Magistrate O'Keefe in support of Ms Beckett in her private prosecution proceedings against Mr Catt for assault he had told lies. He subsequently provided a statement to that effect after he had been taken by Detective Thomas to a house in Chatham. Detective Thomas spoke about perjury on the way to the house and after they arrived there. In the later statement Mr Golds said that he told lies in support of Ms Beckett because she had told him to do so. Mr Golds denied that he changed his statement because Detective Thomas threatened to charge him with perjury if he did not do so. He agreed that he had originally said that Detective Thomas told him he could be charged with perjury but he did not consider that to be a threat. That was so even though Detective Thomas had reminded him at the time that the penalty for perjury was six years in gaol. He ultimately changed his story and gave evidence for the prosecution against Ms Beckett and contrary to the evidence he gave in the private prosecution proceedings commenced by Ms Beckett arising out of the rock incident.

186 Mr Golds was cross-examined before me as follows:

"Q. Something happened, sir, at that house that caused you to change your mind about what the truth was of this case; didn't it?

A. Yeah, the truth is I had enough of bottling it up inside me and I wanted to tell the truth.

Q. The truth was you had been taken by two detectives from your place of work, two men you didn't know, to a strange house and told that you would be charged with perjury unless you told the truth; is that right?

A. That's correct.

Q. And the truth was that you had to agree with the Barry Catt version of events about the rock incident?

A. The truth was it was Roseanne Catt.

Q. Sir, that is just a lie and you have been lying about this for years and years and years; haven't you?

A. No, I have not.

...

Q. You lied to the magistrate repeatedly about those events; didn't you?

A. The first magistrate, yes.

Q. Yes you have continued to lie till the present time; haven't you?

A. Incorrect."

187 Mr Golds did not impress me as a witness. He was outwardly surly and gave every impression that he did not want to be in court talking about these matters again. I am of the view, however, that even though he was pressured by Detectives Thomas and Paget, his altered version of events is ultimately a truthful account. I find that part of his last statement, in which he goes to somewhat comical lengths to exonerate Detectives Thomas and Paget from any accusation that he was pressured by them, to be frankly unbelievable and in all likelihood, if not as a matter of certainty, was included in his statement at the insistence of the detectives. Other matters, exposed in his cross-examination before me, tend to indicate that he would adopt what was put in front of him by Detective Thomas without carefully reading or checking the things that were attributed to him. In particular, Mr Golds' curiously favourable protestations of the detectives' innocence is in my view a transparent and uncharacteristically naïve attempt by Detective Thomas at least to protect himself from further allegations of wrongdoing. Be that as it may, it does not mean that the exertion of pressure upon Mr Golds, however intolerable or wrongful, also means that the version that Mr Golds then provided is untrue. His evidence that he was tired of bottling up a series of lies seems quite reasonable in the circumstances of this case.

188 With respect only to the assault charge it seems to me that Detective Thomas did hold an honest belief in Ms Beckett's guilt. I hasten to add two comments about that conclusion however. First, it is my general view of Detective Thomas that he acted dishonestly in relation to Ms Beckett in several respects throughout his dealings with her. This is covered by me in these reasons in the section dealing with malice. There is therefore at first blush a tension between a finding that Detective Thomas held an honest belief in her guilt of this charge and a finding of generalised dishonesty otherwise. Secondly, I consider that it suited Detective Thomas to believe that Ms Beckett was guilty because it was consistent with his obsessively unfavourable view about her.

189 The circumstances that gave rise to the assault charge were effectively handed to Detective Thomas on a platter. He did not create or engineer the event. He did not produce witnesses who were not there. The relevant players had all given statements by the time the matters at 41 High Street attracted his retrospective attention. The fact that he obtained further statements from some of them in or to the same effect of their original statements is beside the point. Ms Beckett has not in these proceedings produced evidence that impels a conclusion that Detective Thomas knew or must have known that she could not on any view have been guilty of the offence. Whereas there may have been some doubt about it, the existence of any such doubt was not inconsistent with Detective Thomas honestly believing that one available conclusion was that Ms Beckett was guilty of the offence charged.

190 It is for Ms Beckett to establish that Detective Thomas lacked an honest belief in her guilt. I do not consider that she has done so.

191 I am also not satisfied that Ms Beckett has established that his view was not formed on reasonable grounds. Some helpful insight into this can be gleaned from the approach taken by Constable Brown who, for relevant purposes, can be taken to have thrown up his hands in the face of competing versions of what occurred. However, Mr Catt was the more seriously injured. Ms Beckett was the aggressor in the sense, already discussed, that she went to Ms Warwick's premises and not the other way around. Ms Beckett and Mr Catt both complained to the police, thereby eliminating the suggestion that the absence of indignation was a pointer to culpability.

192 The existence of two apparently inconsistent and irreconcilable stories is not necessarily or in all cases an automatic indicator of the absence of reasonable grounds to believe that a person may be guilty. Competing and irreconcilable versions of events are the daily fare of criminal charges and their adjudication. Constable Brown's understandable disinclination to want to become involved in a shabby backyard dispute should not be confused with

the question of whether or not there were reasonable grounds for another officer to form an honest belief in the guilt of one of the participants.

- 193 The fact that Detectives Thomas and Paget did not interview Constable Brown or his colleagues Dean and Miller about what they saw and what they were told does not seem to me to be significant. When they attended the scene on 2 May 1988 the event had concluded. Mr Catt provided a statement on the day and another within weeks. Any contribution to the debate by the attending officers is likely to have been no more than a repetition of what the occurrence pad and notebook contain.
- 194 The question of whether or not there was an inconsistency between the 2 May 1988 statement given by Mr Catt and the occurrence pad entry concerning the severity of Mr Catt's head injury is also largely beside the point. The possibility of variations between or among the witnesses does not foreclose the prospect that one or some of them may have been telling the truth. Adjudication of that issue is not a matter for investigating police.
- 195 The fact that Detective Thomas did not take a statement from Ms Beckett concerning this event prior to her arrest and charge is unremarkable. First, she maintained her silence when arrested and it is likely that she would have taken a similar approach to the allegations if approached beforehand. Secondly, Detective Thomas already had Ms Beckett's version of what occurred in the sense that she had given it in evidence in her civil proceedings against Mr Catt.
- 196 It is also not accurate to say that no statement was taken from Mr Catt on this issue prior to 24 August 1989. Mr Catt's statement of 2 May 1988 may have been short but it contained his version of what occurred.
- 197 Finally, I do not consider it to be important, as Ms Beckett submits, that Detective Thomas did not seek legal advice about the assault. That submission may have some merit in relation to the perjury charge but is irrelevant to the assault charge in my view.

198 Ms Beckett's contentions with respect to whether Detective Thomas held an honest belief in her guilt on the perjury charge followed a different and more technical course. It is convenient to set out the way in which it was argued before me.

199 The rock incident led directly to Ms Beckett's private prosecution evidence which in turn gave rise to the perjury charge. The charge was laid on 24 August 1989. The date of the alleged crime was 3 July 1989, the first day of the civil proceedings in the Local Court.

200 As at July 1989, s 340(1) of the *Crimes Act* provided, relevantly:

"Where any statement on oath has been made by any person in any suit, proceeding, or matter, pending in the Supreme Court, or District Court, or before any Judge of any such Court or any magistrate, the Judge or magistrate before whom the same was so made, may, if reasonable cause appears for so doing, direct such person to be prosecuted for perjury in respect thereof, and may, subject to the *Bail Act 1978*, commit him to take his trial at the proper court ..."

201 There is no evidence that Magistrate O'Keefe made such a direction.

202 As at 3 July 1989, s 341(1) of the *Crimes Act* further provided that:

"[n]o prosecution in respect of any such statement on oath, as in section 340 mentioned, shall be instituted without such direction as in the said section provided, or without the leave of the Court, or Judge, or magistrate, therein mentioned."

203 There is no evidence that Magistrate O'Keefe gave leave for the prosecution of the perjury charge.

204 Amendments to the *Crimes Act* on 25 November 1990 removed the requirement for the judicial officer to give consent for the laying of perjury charges. These could not have been retrospective, as they would have removed the substantive right of the accused not to be prosecuted for an offence where an essential ingredient was the leave of the court.

205 During the part-heard private prosecution proceedings, Ms Beckett's complaint was supported by evidence from Mr Bridge, Mr Golds and Mr Catt's children Christopher and Julie. Detective Paget accepted that as at the time of the charge there were still conflicting statements about the rock incident. Mr Golds was the only witness who had changed his evidence and that occurred in the circumstances outlined above. Further, neither Mr Catt nor Ms Warwick had given evidence at the private prosecution proceedings, which had been stood over part heard on 3 July 1989 to 22 September 1989.

206 Ms Beckett contended that the institution of any charge dealing with the veracity of evidence in part-heard proceedings was unwarranted, or at the very least, highly unorthodox. Detective Paget gave evidence that he could not remember whether he had even seen the transcript of the evidence from the private prosecution proceedings. There is no evidence that either he or Detective Thomas in fact ever looked at it. The transcript would have been a critical document in the context of establishing if the "false evidence" charge had any merit. Instead, all that was relied on was a bare belief that Mr Catt's version was to be preferred because Mr Golds had recanted the version he gave at the hearing.

207 More significantly, the evidence of Detective Paget in these proceedings is that he and Detective Thomas knew at the time they instituted the charge that in order to lay a charge of perjury from the outset they would have needed to seek the approval of the Attorney General. It was for that reason that they chose instead to lay the conspiracy to make false accusations charge.

208 In fact, it was not the Attorney General's permission that was required for a perjury charge but that of Magistrate O'Keefe. Nonetheless, Ms Beckett argued this is arguably powerful evidence demonstrating that the choice of charge was informed by a desire to avoid interference or oversight. If Detectives Thomas or Paget had genuinely believed that Ms Beckett had committed perjury, the appropriate course would have been to seek the necessary permissions to charge her. However, the charge originally laid did not require anybody's permission. Ms Beckett submitted that this approach

was taken because Detectives Thomas and Paget knew that they would not have obtained such an approval in the circumstances.

209 This was a very serious charge and yet the material supporting it was wholly insufficient. Moreover, whilst the provision of legal advice may not be deemed by the Court to have been warranted in relation to charges for minor assaults and the like, a charge of conspiracy and false evidence is a different matter. As noted above, not only would a reasonable prosecutor obtain legal advice as to whether the prosecution of a serious charge was justified, but it would have been prudent to seek more than one legal opinion in complex cases. Detectives Thomas and Paget sought no legal advice about the sufficiency of the evidence for the charge and selected a charge that avoided oversight. (Ms Beckett also noted that Detective Thomas arranged to have Ms Beckett arrested in Dapto for breach of bail on the very day that the private prosecution was due to resume with the convenient result that the private prosecution never concluded.)

210 Ms Beckett also submitted that the perjury charge was in any event bad at law. Section 341(1) of the *Crimes Act* in 1989 employed the mandatory words “[n]o prosecution ... shall be instituted.” Accordingly, obtaining the leave of the Magistrate was a mandatory component of the charge, not merely a procedural exhortation. Moreover, the purpose of s 341 was a restraint on the commencement of proceedings. This is evidenced by the heading of the section, “For restraining vexatious prosecutions”. The intended effect of s 341(1) was to render invalid prosecutions for perjury commenced other than by direction of or without leave of the relevant court, judge or magistrate.

211 Ms Beckett contended that the relevance of this to the absence of reasonable and probable cause is as follows. Whilst the original charge instituted against Ms Beckett laid by Detective Thomas was a conspiracy to make false accusations, the core feature of that charge was the false testimony allegedly given by her in her private prosecution against Mr Catt in relation to the rock incident. Given that Detective Thomas maintained the charge, insofar as he persisted with the view that there was sufficient material on which to support

the charge of giving false testimony, he remained a prosecutor for the perjury charge. Neither Detectives Thomas and Paget nor the DPP had any evidence or information that leave had been given under s 341(1) by Magistrate O'Keefe to lay the charge when it was converted into the perjury charge. Accordingly, the charge itself was bad in law.

212 Detectives Thomas and Paget knew that permission was needed to lay a perjury charge, even though they erroneously believed it was from the Attorney General. There is no evidence to show that anything had changed as to their belief about that requirement by the time the charge was converted to a perjury charge. Ms Beckett submitted that they could not therefore have formed a reasonable belief that she was guilty of perjury as it was known to the law on 3 July 1989.

213 The State did not separately respond to these submissions, preferring instead to treat the rock incident and perjury counts as "inextricably interwoven."

214 As far as I can determine, the technical legal argument concerning the perjury count was not raised at Ms Beckett's trial. It does not seem to be important in any event. In my opinion Ms Beckett's concerns are more accurately directed at the question of malice than at the question of absence of reasonable and probable cause.

215 The maintenance of a mistaken belief is not necessarily inconsistent with simultaneously holding an honest belief. I have found that Detective Thomas held an honest belief in Ms Beckett's guilt on the assault charge. He appears clearly to have reasoned that the giving of evidence in court by Ms Beckett under oath in contradiction of facts and matters contained in statements from witnesses he proposed to use in prosecuting her for the assault matter amounted to a criminal offence of some description, whether it be perjury or false swearing or a criminal conspiracy of some kind. His decision to charge Ms Beckett was in the circumstances an unusual if not somewhat extraordinary decision given that the proceedings had not concluded before the magistrate, no result in the proceedings had yet been produced, no

evidence from the defendant's side had been called and in all cases no opinion about the truthfulness or reliability of Ms Beckett's evidence had been expressed or determined. Far less had the magistrate made any recommendation that Ms Beckett be considered for prosecution as the result of any evidence that she may have given before him.

216 It is apparent that Detective Thomas tended to take a monochromatic view of Ms Beckett's culpability in all things. His view of her guilt on the perjury count was no exception to this approach. I am not however able to conclude that he did not honestly believe that she was guilty of the offence with which he charged her. The fact that it may or may not have been an offence known to the law, as Ms Beckett contends, is beside the point. That fact was relevant to whether his view was mistaken but not about whether it was not honestly held.

217 I have a different opinion with respect to whether Detective Thomas' view was formed on reasonable grounds. The question of what Detective Thomas in fact made of the material does not dispose of the question of what he should have made of it. It seems to me that it is one thing to prosecute a defendant in the face of irreconcilable and competing views of the facts that will ultimately determine the outcome. The rock incident assault charge is, as I have attempted to explain, a case in point. It is quite another thing in my view to commence and maintain a prosecution for perjury, or any cognate legal characterisation of the offence, where the putative criminal act remains executory, and where the circumstances out of which the offence is said to spring are still unfolding or emerging. The issue of whether Ms Beckett told lies on oath before Magistrate O'Keefe on 3 July 1989 could not have been consummated before the conclusion of the civil proceedings at the earliest. It is not without immediate significance in my view that the legislative brake on perjury prosecutions includes the words "if reasonable cause appears for so doing." Control over that issue is reposed in the judicial officer concerned with the proceedings. That would appear at least to be in order that the presiding judicial officer would be armed with the whole of the context in which the allegedly false evidence had been given. In no lesser respect in my opinion

would a prosecutor, on the assumption that he or she were free to make the decision, be required to wait until reasonable cause appeared for commencing a prosecution, or at the very least until the evidence in the relevant proceedings had been concluded. In a litigious contest where conflicting versions are recounted on oath, the question of what is true and what is not becomes a relative concept. No reasonable decision about it could be made until the competing evidence had been heard and tested.

218 In this case Detective Thomas took it upon himself to decide, unreasonably in my view, or at least in the absence of reasonable grounds for doing so, that Ms Beckett's evidence in uncompleted proceedings was false. Detective Thomas formed a view that Ms Beckett was guilty of perjury. He could not in my view have formed that opinion or continued to hold that view on reasonable grounds. I am satisfied that even though Ms Beckett has not established that Detective Thomas lacked an honest belief that Ms Beckett was guilty of perjury, I am satisfied that she has established that it was not reasonable for him to have done so.

219 The question of whether Detective Thomas acted maliciously is dealt with later in these reasons.

220 I should for abundant caution before moving from these charges refer to one matter that will undoubtedly energise the minds of others in their consideration of and deliberations about my conclusions. I wish to make it clear that I have not overlooked the fact that on one view there may appear to be an inconsistency or a tension between my rejection of Ms Beckett's case on the assault charge and my acceptance of her claim on the perjury charge.

221 In *Regina v Catt* at [172], McClellan AJA said this:

"[172] A finding that the appellant was guilty of count 1 would lead inevitably to a finding that she was guilty of count 2."

222 That conclusion appears to me to be unexceptionable. However, the reference to findings or conclusions about guilt on either count presupposes

the availability and consideration of all of the evidence relevant to those counts. At the time when Detective Thomas was considering the institution of the criminal proceedings that became Count 2, he did not have all of that evidence and proceeded to make assumptions about what was available based upon his unfavourable predisposition against Ms Beckett.

223 I remain of the view that Detective Thomas could have formed an honest and reasonable belief in Ms Beckett's guilt on the assault charge but that even if he formed an honest belief on the perjury charge he could not have formed it on reasonable grounds. As I have attempted to make plain, the events that generated the assault charge were complete at the time that an assessment of what was before Detective Thomas as the prosecutor fell to be made. On the contrary, the events from which the perjury charge is alleged to have sprung were incomplete and unfolding. No reasonable prosecutor could have formed a view about Ms Beckett's guilt on the perjury charge until all of the circumstances possibly touching or concerning an objective assessment of that charge had emerged. In my view no prosecutor acting reasonably could have preferred charges based upon the alleged or perceived untruthfulness of Ms Beckett's evidence in her civil proceedings against Mr Catt until at the very least the evidence in those proceedings had been completed.

Count 5 - the lithium charge

224 Detective Thomas had statements from the following witnesses, among others, before him on this count.

Adrian Clifford Newell

225 Mr Newell provided the police with a total of four statements. He described himself as "a personal life long friend" of Mr Catt, having known him in 1989 for some 38 years. The statements provided by Mr Newell are quite long. Only the critical parts that relate to this count are reproduced here.

226 Mr Newell is without doubt a most interesting and curious character in the mountain of facts that have generated these proceedings. He played an

instrumental role in the provision of information and the gathering of evidence marshalled by the Crown in the prosecution of Ms Beckett in 1991. It is a significant part of Ms Beckett's case that Mr Newell should be characterised as in league with Detective Thomas or at least energetically concerned with establishing her guilt. It is apparent that Mr Newell did not like Ms Beckett for a number of reasons and was inspired to assist Mr Catt as the combined result of his admitted friendship with and fondness for him on the one hand and his complete and utter disregard for Ms Beckett on the other hand.

227 For example, Mr Newell's 21 August 1989 statement contains the following:

"3. I have known Barry Catt most of my life. I make no apologies for the fact that I am a very personal friend of and I have the greatest respect for him.

4. I have become involved in this matter because I suspect that what Roseanne Catt has achieved has been planned. That in that Barry Catt has been charged with sexual assault of his children is part of a plan to have him discredited and incarcerated [*sic*] so she could take control of his business and investments.

5. I can support my suspicions by observations and conversations with Roseanne Catt and Barry.

6. My first contact with Roseanne Catt, of any minute, was in September 1987. On that occasion I was aware that she and Barry had been having marital problems – that he had spent time in Watt Street. During our conversation she said to me, words to the effect, 'He is mad you know, if he doesn't improve I can't see anything else for it but to have him committed to an institution'. I said, 'Roseanne he has been any different, he is a workaholic, he just needs to slow down'. There was other general talk and I left having serious reservations about the future of their marriage.

7. In such a short period of time the marriage became doomed. I observed an almost embarrassing conflict between Barry and Roseanne, I felt for the children but I was loathe to get involved, because it is not my nature.

8. However, as the result of the initial conversation I had with Roseanne, described on page one, and further conversations, I did become involved as I suspected Roseanne had a plan.

9. Early in 1988 I was informed that Roseanne, rather I was informed by Roseanne that Barry and another person, had been having sex with all the children for many years. I was at Cattys, in the office and Roseanne said to me, words to the effect, 'Adrian, it's hard to believe, but Barry has been having sex with the children, he has been doing it for years'. I said, 'I don't believe it, I know Barry and the kids and I find that hard to believe'. She said, 'Well, they say he has and they have given details'. I said, 'I don't believe it could be true, but I certainly would not support him if it turns out that it is'.

10. I went on from there and there was a lot of talk from Roseanne and Barry and I made a lot of my own inquiries. Things I observed and things I was told confirmed my suspicions that Roseanne had a plan. I have made notes of my inquiries and observations and I am prepared to produce them to the appropriate authorities.

...

14. On many occasions I have observed Barry in what I would describe as a 'drugged' condition. I say that very definitely, because even though there was some systems similar to a person being intoxicated, he was most certainly not intoxicated. I have had conversations with him about his state and he has expressed some opinion to me. (I have made a statement about some action I took concerning my concern over this issue.)

15. I recall on one occasion the following conversation with Roseanne, (July, August, 1988) she said, 'You must do everything possible to assist me and the children to get Barry put "away", so he can't cause any more problems'. I said, 'Roseanne, what do you mean, its Barry we are talking about'. She said, 'I have had him examined by psychiatrists and they say that he has a brain disorder, the front part of his brain is missing'. I said, 'He is a bit of a handful at times, but there is nothing wrong with his brain'.

16. There are so many things that Roseanne has said to me to cause me to suspect that this whole thing has been her plan.

...

20. Something that has become very obvious to me is somebody must have been 'drugging' Barry. I have observed him, as I said before, being slow in his thinking and speech, unsteady on his feet, side to side type of movement, fighting against tiredness. He'd say to me 'I went to bed alright last night, how can a man wake up like this, she must be drugging me'.

...

23. If the authorities look at the entire situation that is, that in a very short period after marrying Barry, Roseanne set about to absolutely and systematically discredit him. She had him committed to institutions where his family and friends were responsible for his release. She has continually discredited him verbally saying to any person who went near the place 'He's mad. He's unreliable. He's a child molester. He's a drug addict.' I know that hundreds, and I say hundreds of people can corroborate this. I am prepared to name names of people who have approached me and reiterated conversations with Roseanne about similar things I have outlined.

24. I have watched her again, systematically embezzle money from Barry. I have evidence with me now that support this allegation. I have receipt books that she has collected rent from a house at No.2 Cornwall Street, which Barry owns, totally independent of the business, and converted the money to her own use. I can show an amount in excess of eight thousand dollars. I know that she opened a bank account in the name of 'Catty's Body Repair' with Barry's authority or consent, with the National Australia Bank, Taree, and diverted monies from that business into that account again without Barry's authority or consent.

...

28. Another thing I think is important is that Roseanne has threatened me if I continued supporting Barry and not her.

29. On the 31 July 1989, at the front of the Taree Court House, at Barry's committal hearing, she approached me that is Roseanne, and said, 'when are you going to stop listening to all the crap that comes out of Barry Catt's mouth. You could talk to him all day and you would hear nothing. Everything he says is crap and lies. I know that you have been trying to help him in some way, and it's not going to do you any good taking his side, you'll only go down too. It's about time you joined the winning side because we're going to put him away and he's never coming back. If you don't stop helping him, you will go away and never come back too.' I said, 'Is that a threat'. She said, 'You're smarter enough to know what I mean and you'd better take my advice.'

30. That statement upset me. I discussed it with my wife and we were both concerned for our safety and that of our children, because I believe this woman is capable of anything."

228 Mr Newell's 9 November 1989 statement is in the following relevant terms:

"27 [sic] On Saturday 29 July 1989, I met with Detective Sergeant Thomas in Taree. I didn't know Detective Sergeant Thomas prior to that date. I had never met him before and at that time he was with another Police Officer named Sam Courcoulos. I had a lengthy conversation with these Police and told them certain things.

25. I have spoken to a number of other persons and Dr Sandfield and told them certain things.

26. Following my conversation with Detective Sergeant Thomas, on Saturday 29 July 1989, I went to Barry Catt's office on the Sunday 30 July 1989. I went with my wife, however she remained in our motor vehicle. I did take possession of clothing belonging to Barry Catt.

27. It was about 10pm on the Sunday night when I went to the premises and I went to the refrigerator in the office section which is in a little room at the back of the office. I found a 2 litre container of chocolate milk which was partially consumed. I also found a 2 litre container of white milk which was also partially consumed and I took a 2 litre container of orange juice which was also partially consumed. I examined each of the containers that night by holding them up to the light and I could see a sediment on the bottom of the white milk container which was a gray (sic) opaque colour, and I could see sediment, or what appeared to me to be sediment, on the bottom of the orange juice container. I didn't see any sediment on the bottom of the chocolate milk as the chocolate was too thick. As I tilted the orange juice and the plain milk, I could see sediment flow down the inside of the respective containers.

...

29. I took the three containers to my vehicle where I had a conversation with my wife. Later that same evening I spoke to Detective Sergeant Thomas on the telephone and I told him something.

30. On Monday 31 July 1989, Detective Sergeant Thomas came to my home and I indicated to him the three containers, ie the two milk containers and the orange juice container, with the liquid still in each of them. I told him something.

31. On the Friday prior to this I had a conversation with Doctor Sandfield, and I told him something. I called at his surgery and he handed to me a number of sterile containers. When Detective Sergeant Thomas called at my home I emptied small portions from each of the drink containers into the sterile containers, three separate amounts in respective containers. I gave each of these containers ie the original containers, to Detective Sergeant Thomas and I later took the sterile containers with the samples in each, to Doctor Sandfield where I had a further conversation with him. It was on the Tuesday that I took the three sterile containers back to Doctor Sandfield and handed them to him."

229 The statements from other witnesses that were before Detective Thomas are referred to, as far as is necessary, in the consideration of the parties' respective submissions on this count.

230 Ms Beckett's case on this count is based upon the following propositions.

231 Mr Newell approached Detective Thomas and advised him that he suspected that Ms Beckett was poisoning her husband with lithium and/or Rivotril. Detective Thomas and Mr Newell made an agreement to "frame" her for attempting to do this. On or about 31 July 1989 at Mr Newell's house, these men contaminated some milk and juice containers with lithium and Rivotril. During the search of Ms Beckett's house on 24 August 1989, no lithium or Rivotril was found or logged as an exhibit. Either Detectives Thomas and/or Paget obtained two medication containers, one labelled Rivotril and the other lithium and placed them in a black handbag and falsely claimed that they had taken that black handbag and its contents from the premises during the search. There was no evidence of Ms Beckett having gone to Mr Catt's office premises between 28 July and 30 July 1989. The only container of Rivotril likely to have been dispensed to Mr Catt in existence as at 24 August 1989 was that produced pursuant to a prescription dated 3 September 1987. Ms Beckett denied the allegation. There were no other witnesses who corroborated the allegation that Ms Beckett had been attempting to poison her husband using lithium or Rivotril.

- 232 Ms Beckett always denied that she put lithium into Mr Catt's food or drink. She said she and the children occasionally picked up his scripts but at no time did she administer lithium to her husband in the circumstances alleged.
- 233 Some further background is required.
- 234 Mr Catt's psychiatric history was lengthy. As he said at the bail application, Detective Thomas knew that Mr Catt had spent time in a psychiatric hospital. There is evidence that Mr Catt had been admitted on 5 September 1987 on a schedule from Dr Sandfield and was also seen by Dr Steele in December 1987. Dr Steele noted in 1987 that treatment commenced following hospitalisation in the Hunter Hospital with a diagnosis of bipolar affective disorder. Lithium carbonate and Rivotril had been prescribed. Detective Thomas also knew that Mr Catt was taking lithium, but maintained in effect that his knowledge of the details concerning it was scant.
- 235 The Crown Court Book contains a letter to Dr Wallman from Dr Sandfield dated 1 October 1987 as well as the health summaries prepared by Dr Richardson. That material illustrates that Mr Catt was taking lithium and Clonazepam for his psychiatric condition, on prescription from Dr Sandfield, a treating psychiatrist who had himself scheduled Mr Catt on 3 September 1988. Dr Sandfield conducted regular blood tests for Mr Catt's lithium levels. The results of those tests showed that Mr Catt's usual results were in the range between 0.4 and 1.2. Relevantly, between 16 June 1989 and 30 August 1989, the results of lithium tests ordered by Dr Sandfield were 0.8 and 0.7 respectively and well within that range. There were no indications for any increased lithium uptake.
- 236 On 18 September 1989, in a statement witnessed by Detective Thomas, Dr Sandfield noted that until making the statement he had continued to see Mr Catt and that "in [his] opinion his condition is stable and the lithium is having the desired effect."

- 237 Ms Beckett insists that the roles played by Mr Catt and Mr Newell are particularly relevant to a proper understanding of the lithium count. They were both highly significant in relation to the somewhat curious events leading to the laying of this charge. It was of course Mr Catt who was allegedly poisoned and Mr Newell was alleged to have spoken with Detective Thomas about it and collected the samples from Mr Catt's refrigerator.
- 238 Mr Frakes, a solicitor, gave evidence in these proceedings that Mr Catt apparently signed a document and provided it to the Crown Solicitor's Office, waiving privilege over matters relating to advice he gave to Mr Catt. Despite this, Mr Catt was not called. Nor was Mr Newell, who supposedly collected the containers of milk and juice from Mr Catt's residence and then decanted them with Detective Thomas to be sent for testing. Mr Newell asserted that he was present during the interview with Mr Catt on 7 August 1989.
- 239 Mr Newell collected the samples on 30 July 1989. The refrigerator was located in the office of Mr Catt's repair business at 2-8 Cornwall Street. There was a meal room and a kitchen of sorts. Mr Golds gave evidence that in 1988 all of the employees, as well as Mr Catt, Ms Beckett and even customers took milk from it. Ms Beckett said that "everyone used the fridge".
- 240 Mr Newell asserted at the trial that after contacting various people, he received a phone call from Detective Thomas arranging a meeting for 29 July 1989. Mr Newell says he told Detective Thomas about certain things which then led to him going to Mr Catt's office to get him some clothes. While he was there he removed some containers of milk and orange juice from the refrigerator.
- 241 Allegedly, Mr Newell had spoken to Dr Sandfield and obtained some containers which he described as "small sterile containers" about two inches high and about two inches in diameter. The next day he and Detective Thomas decanted some of the contents into those small containers. Mr Newell then gave them to Dr Sandfield to be sent for testing and Detective Thomas took the original containers.

- 242 A pathology request form was filled in by Dr Sandfield. That document lists Mr Catt as the patient, care of Mr Newell's address at 225 Old Bar Road, Taree. The date of collection is 30 July 1989. It is suggested in the clinical notes that the patient Mr Catt was possibly suffering lithium toxicity plus or minus Clonazepam and possibly administered by a third party. The request is one to check for the presence of lithium and Clonazepam to obtain the concentrations of orange juice, chocolate milk and plain milk.
- 243 It is notable that neither Dr Sandfield, Mr Catt's treating psychiatrist, nor Mr Newell, Mr Catt's long-time friend, gave any warning to Mr Catt about what they were doing. There is no explanation for keeping the plan secret. Indeed, one would have thought that if either of them believed that Mr Catt was in any danger of lithium poisoning from the drinks in his fridge, they would have raised the issue with him as a matter of urgency. Instead, it was Mr Catt's evidence in his statement of 7 August 1989 that more than a week had elapsed before he became aware that the samples had been removed and tested.
- 244 Mr Newell said it was his idea to collect the samples from the refrigerator at the workshop. This should be contrasted with Detective Thomas who said at committal that he suggested Mr Newell "might do something and he did it."
- 245 Mr Frakes gave evidence in these proceedings regarding the origins of the lithium charge. That evidence included the following:
- "A. ...I was told of the allegation by Adrian Newell that he feared that there was a practice where Roseanne would organise for - or would deliver milk to Barry's premises and he feared that there was something being put in the milk and he was going to organise for it to be analysed.
- Q. This was information that you received or were given by Mr Newell, was it?
- A. Yes, by Mr Newell and it wasn't my place to pursue that because--
- Q. Don't worry about that. I was just wondering about what the source of this was and it was Mr Newell.
- A. It was purely Mr Newell."

246 Mr Frakes had a discussion with both Mr Newell and Mr Catt about the milk. Mr Frakes gave the following evidence:

“Q. Do you recall him discussing the milk at your office or in
A. It was at my office.

Q. Do you remember when that was?
A. No.

Q. Did you discuss it with Mr Catt?
A. I think he was present.

Q. At that stage had there been any to your knowledge analysis of the milk?
A. Not to my knowledge.”

247 Mr Frakes was shown orders made by Mullane J in the Family Court proceedings. Mr Frakes accepted that the orders were made on 7 August 1989. Mr Frakes then made the following concession:

“Q. So it's likely that any conversation that you had with Mr Catt and Mr Newell occurred prior to those orders being made, isn't it?
A. This is the conversation about the allegation about the milk?

Q. Yes.
A. Yes.”

248 This shows that Mr Catt's statement of 7 August 1989 to the effect that he was unaware of the samples being taken or to the effect that Ms Beckett may have been lacing his drinks with lithium was false. The available inference from Mr Frakes' evidence and the apparent lack of any warning to Mr Catt is that Mr Newell, Mr Catt and Detective Thomas had contrived to take the drinks and the samples. There was no need to warn Mr Catt not to drink any further liquids because they all knew that the only drinks that had any lithium in them were the ones procured by Mr Newell and decanted by him and Detective Thomas.

249 Mr Catt's first interview with Detective Thomas allegedly took place on 7 August 1989. Based on Detective Thomas' duty book entry of that date, it appears that this conversation occurred after a meal break at some time after 2:30pm. Given that Mr Catt was in the Family Court that day, it must have happened after court hours. It is apparent that a conversation between

Detective Thomas and Mr Catt precipitated the question and answer interview that is recorded. The transcript contained in that statement is plainly not complete, as there are references to "earlier" discussions. There is no evidence of what was said during that conversation, or indeed what else might have been said but was not typed.

250 Questions and answers 40 - 45 and 55 of Mr Catt's interview are relevant. They contain at least the following assertions. First, Mr Newell removed the containers on 30 July 1989. Secondly, Detective Thomas alleged that lithium was found in "each" of the samples by Dr Dickeson. Detective Thomas makes three separate statements about "each" container containing lithium (despite the fact that Dr Dickeson only tested one container of orange juice). Thirdly, the finding of lithium was "very much" to Mr Catt's "surprise".

251 At answer 55 Mr Catt alleged that he has been saying for six months or longer that his wife had been drugging him. He said that he had previously told Mr Newell of this. However, that was never raised by Mr Catt in the Family Court proceedings, nor was there any evidence of increased lithium in his blood or any evidence of him having conveyed that suspicion to Dr Sandfield. Further, despite the widespread allegations of criminal behaviour made by Mr Newell against Ms Beckett in his complaint to ICAC, there was no reference whatsoever to possible poisoning or drugging by lithium or anything of the sort. An allegation of poisoning or drugging is a serious matter and there is no explanation as to why Mr Newell did not discuss it with Inspector Matthews at ICAC. It is particularly curious given the discursive nature of Mr Newell's account and the fact that he raised an allegation that Ms Beckett was involved with cocaine.

252 At Ms Beckett's trial, Mr Catt gave evidence about how sick he was feeling during the Family Court proceedings. This was not a matter raised by Mr Frakes or Mr Errington of counsel in the Family Court, or for that matter in the statement given to Detective Thomas on 7 August 1989. Mr Frakes did not believe that Mr Catt was anything other than his normal self on that day.

- 253 Mr Catt claimed that he had previously contacted Dr Sandfield to talk about the fact that he was feeling "wonky". He claimed that Dr Sandfield told him to continue to take lithium. However, there is no mention in any of Dr Sandfield's contemporaneous notes, statements or observation letters that this is the case. In his evidence at trial Dr Sandfield did not give any evidence of observing wonkiness or anything similar prior to the pathology request of 29 July 1989. If the evidence of Mr Frakes set out above is accepted, the assertion by Mr Catt that he was not aware of the lithium in the milk must be a charade.
- 254 The things said by Detective Thomas at the bail application and set forth in Mr Catt's 7 August 1989 statement suggest that he believed that the tests conducted revealed excessive amounts of lithium in each of the samples. Detective Thomas stated this three times in the course of five questions in the 7 August 1989 interview, as well as referring to multiple samples. At the bail application on 13 September 1989, Detective Thomas also claimed that each of the samples was tested on 30 July 1989. In fact, the analysis of each of the containers was not provided until 29 September 1989 from the Government Analyst in Lidcombe.
- 255 Dr Dickeson's evidence on 22 November 1989 was that he only received the samples from Dr Sandfield on 7 August 1989. He said that "I subsequently tested one of the containers of orange juice for lithium and found it to contain greater than 200mg/litre of that substance." He said that as a result of that examination no further tests were carried out on any other container or contents and that he spoke to Detective Thomas. Detective Thomas could not have known that there was lithium found in each of the samples unless he was already aware that the lithium had been put there by either Mr Newell or he had done so himself.
- 256 Detective Thomas and Detective Paget's representations on finding lithium during the search deserve consideration.

257 Their responses to this line of questioning, both at trial and in the present proceedings (in the case of Detective Paget), are relevant to subjective belief in the guilt of Ms Beckett. If Detective Paget and/or Detective Thomas lied in relation to whether lithium was found in the house, the following inferences are clearly available. Detectives Thomas and Paget had no evidence to link Ms Beckett with the allegation that she was putting lithium in Mr Catt's drinks. The claim that lithium was found at Cornwall Street during the search was a concoction designed to give the impression that there was a link between Ms Beckett and the lithium in the drinks. The claim was concocted because Detectives Thomas and Paget lacked any honest belief in her guilt.

258 The entry in the Exhibit Book was made at the police station following the search. The evidence of Detective Paget was that each of the items appears to have been marked on the entry as being recorded on 24 August 1989. Mr Ayoub, who was a police officer on duty on the day, said that he checked the exhibits against what was contained in the Exhibit Book list before placing the seized items in the Exhibit Room. He signed pages of the Exhibit Book after checking them. Mr Ayoub made no record of lithium being found as part of the exhibits from the search. Constable Cottee noted that if an item related to an offence it would be recorded in the Exhibit Book. She said all exhibits would be verified by another person.

259 By the time of the search, lithium poisoning was well and truly in the air. Detective Paget agreed that lithium was an item of "tremendous significance" at the time of the search. As such, had lithium been found in the house, it would presumably have been specifically recorded in the Exhibit Book. It was not. Generic references to "tablets" are unlikely to be references to lithium or Lithicarb given its significance at the time. Had lithium been located at the house, Detective Parkes would have taken a photograph of it or fingerprinted the bottle, just as he had done with the pistol. There is no evidence of that occurring. No lithium was found in the house during the search.

260 Detective Paget claimed at Ms Beckett's trial in 1991 that he took possession of certain documents from a briefcase and that he also found a black purse in

the dressing table drawer in the bedroom containing lithium tablets in a bottle. He said that the container was labelled "lithium". Leaving aside the fact that the label would have read "Lithicarb", being the name of the drug, Detective Paget gave evidence in these proceedings about an account he gave to Inspector Chapman on 12 March 1990 as follows:

"Q. You say now, do you, that you did, in fact, find lithium in a drawer in the bedroom?

A. I did, in a little black purse under some clothing.

Q. Do you remember being asked this question by Mr Chapman, question 132, 'Did you take possession of either a black handbag, a white Glomesh handbag, a black clutch bag, and a beauty case, and jewellery?' Your answer to that question was 'No,' was it not?

A. I don't know but there, I would agree with it.

Q. Sir, can you have a look at this document which is a copy of the record of interview you made on 12 March 1990. Have you found question 132?

A. Yes.

Q. Have a look at the next question, 133. 'Did you take possession of any medication including Ventolin'?

A. Yes.

Q. Lithium is medication, wasn't it?

A. It was, yes.

Q. And your answer to that question was 'No,' wasn't it?

A. Yes, sir.

Q. And that's consistent with what is in the exhibit book, isn't it?

A. Yes.

Q. And you didn't tell a lie to Inspector Chapman, did you?

A. No, not deliberately, no. I may not have thought of it then, I don't know, but I didn't lie to the man."

261 The answer given by Detective Paget to Inspector Chapman on 12 March 1990, prior to the trial and the committal in May 1990 was a response to an unambiguous question. Ms Beckett submitted that the inference should be drawn that he lied at committal and at trial about finding a black purse and about the presence of Lithicarb in the house.

262 Detective Thomas gave evidence at the committal and said the following:

"Q. Now you spoke to the Defendant, Mrs Catt, in relation to the drug Lithium?

A. Yes.

Q. Did you find any Lithium in the house when -

A. There was Lithium located in the house, yes.

Q. Was that taken away or -

A. Yes.

...

Q. Now as far as other articles that were taken possession of from the house what did you do with those?

A. Over a number of days, time permitting, myself and Detective Paget went through each of them carefully, some were retained and others were returned but Mr Barry Catt and others were returned to the Defendant."

263 Detective Thomas said that as many as three bottles of lithium were taken from the house. He said that Constable Parkes saw them. Constable Parkes made no mention of that in his evidence and he was not called in these proceedings.

264 In these proceedings, during re-examination by Senior Counsel for the defendant, Detective Paget gave the following evidence:

"Q. Do you then remember being asked, 'Q You didn't record it in the exhibit book later that day, did you?' A. I'm sure he recorded the bottles in the exhibit book.' I want to ask you about that. First, did you record anything in the exhibit book?

A. No, I don't believe I did.

Q. Who did make a record in the exhibit book that day?

A. Cynthia Mound."

265 This appears to be an attempt by Detective Paget to distance himself from the Exhibit Book recording process. When one considers the response of Detective Thomas about how the exhibits were carefully reviewed, it suggests that one of these men is lying.

266 The fact that a reference to a "black purse containing assorted tablets" appears in the letter drafted by Detective Thomas on 15 November 1989 does not solve the riddle. First, there is no evidence from him as to what tablets were contained in the purse. Secondly, the Exhibit Book entry contained no

such recording and the letter was drafted much later. Thirdly, the list annexed to Detective Thomas' letter contains items that were returned: had the purse contained "tablets" such as Lithicarb, given the importance of locating that material, it would surely have been seized and retained and not returned. Finally, Detective Paget would have recalled a finding as significant as that in his interview with Inspector Chapman.

267 Lithium was not found in the house during the search and Ms Beckett maintained that the detectives told lies in this regard. Nor in her submission was there any reasonable basis for a belief in her guilt with respect to the lithium charge.

268 Notwithstanding the subjective matters which Ms Beckett says establish a lack of reasonable and probable cause, there are a number of reasons why objectively Detective Thomas could not have held a reasonable belief in her guilt. Detective Thomas asserted at the bail application that he had not had much regard to Mr Catt's medical history and had relied on his assertions that he was not suffering mental illness. Detective Thomas made very little investigation of the history and status of drugs prescribed and the quantum of the supply available to either Mr Catt or his wife. There is no evidence of any expert assistance in this regard. The evidence of Mr Owens, a pharmacist, extends only to what was dispensed. There is no other evidence of any more rigorous analysis.

269 No inquiry was made with Dr Richardson about Mr Catt's medical history or lithium intake. Rather, Dr Richardson recalled a visit to him on 30 March 1990 by Detective Thomas at which time Detective Thomas threatened him that criminal charges would be pressed against him for changing his medical records in relation to Mr Catt.

270 If it was Mr Newell who was responsible for making the request for the testing, it is unexplained why, as a treating psychiatrist with all of the responsibilities attached, Dr Sandfield would provide any information to Mr Newell about his patient's condition in the absence of any authority to do so in July 1989, at

least a week before Mr Catt was informed of the allegation. If the request was one that was directed by Detective Thomas, as he had asserted at committal, it is unclear why a police officer would not take steps to collect the samples himself, preserve the chain of custody, retain control of the samples and evidence of how he did so, or indeed arrange for them to be tested in accordance with proper procedures, rather than asking Mr Newell to obtain a pathology request from Dr Sandfield. The evidence of Detective Thomas at the committal was that he suggested during a conversation in late July 1989 that Mr Newell "might do something and he did it." "Something" in this context was to tell Mr Newell to enter the workshop at Cornwall Street and collect samples from the fridge. The evidence at trial was that the samples then remained with Mr Newell for a period of time before Detective Thomas collected them and apparently, in the presence of Mr Newell, decanted them into containers and sent them for analysis. This clearly gives rise to a significant issue with the chain of custody. Moreover, given the close relationship between Mr Newell and Mr Catt, the potential bias held by Mr Newell and the risk that the samples might be tampered with in some way must surely have been at the forefront of Detective Thomas' mind if he was not already by then aware of the fact that some tampering had occurred.

271 Given the way events took place, it is wholly unlikely that Detective Thomas could have excluded the possibility that Mr Newell had tampered with the liquids himself. Further, the process of decanting the liquids at Mr Newell's home was definitively irregular.

272 Finally, lithium was not the subject of the search warrant. It was not found in the house during the search. The decision to involve a treating psychiatrist in this process, especially in the absence of any apparent knowledge by the patient himself, is also highly irregular. There appears to have been no attempt made by Detective Thomas to exclude the possibility that anyone other than Ms Beckett might have been putting lithium in the milk prior to her arrest and charging.

273 Ms Beckett submitted in these circumstances that there was sufficient evidence to establish that there was an absence of reasonable and probable cause in the institution and maintenance of the lithium charge.

274 The State's response to Ms Beckett's submissions on this count was detailed and thorough. It is necessary to consider it at some length. Some repetition of significant matters is inevitable.

275 The State submitted that the evidence available to Detectives Thomas and Paget when they charged Ms Beckett was more than sufficient for them to do so. It included the following:

(1) Mr Newell provided statements to Detectives Thomas and Paget on 9 August 1989 and 21 August 1989.

(2) Mr Catt provided statements on 7 August 1989.

(3) Barry O'Brien provided a statement on 20 August 1989.

(4) Cynthia Mound provided a statement on 23 August 1989.

(5) Brian Cross provided a statement on 23 August 1989.

276 Detectives Thomas and Paget were aware of the results of Dr Dickeson's 7 August 1989 analysis prior to interviewing Mr Catt. They were on one view also aware that bottles of Lithicarb and Rivotril were found at Ms Beckett's premises by Detective Paget during the execution of the search warrant on 24 August 2014.

277 Mr Newell's 9 August 1989 statement gave Detectives Thomas and Paget the following information. He met Detective Thomas for the first time on 29 July 1989. They had a lengthy conversation in the company of another officer in which he outlined a number of observations concerning Ms Beckett's behaviour. He also provided documents. Mr Newell spoke to Detective Thomas about his concern over the possibility that Mr Catt was being

poisoned. He indicated that he had also spoken to a number of other people, including Mr Catt's friends, his doctor and his solicitor about the matter.

278 Following this conversation Mr Newell went to Mr Catt's Cornwell Street premises the next day in order to get some clothes for Mr Catt for a court appearance and secondly to investigate the possibility that there was anything there to indicate that he was being poisoned. Mr Newell was aware that Mr Catt drank a lot of liquid and always took his medication with milk.

279 Mr Newell went to the fridge and located a used two litre container of chocolate milk, partially consumed, a two litre container of plain milk, also partially consumed, and a partially empty container of orange juice. He examined each container by holding it to the light. He could see sediment on the bottom of the milk or the orange juice. He did not see any sediment at the bottom of the chocolate milk.

280 Later that evening, he contacted Detective Thomas on the telephone. On 31 July 1989, Detective Thomas came to Mr Newell's home. He showed him the three containers and they had a conversation about them. Mr Newell then emptied a small portion from each of the drink containers into smaller plastic containers supplied to him by Dr Sandfield. He gave those containers to Detective Thomas and took the remaining containers to Dr Sandfield as he had arranged.

281 On 7 August 1989, Mr Newell was in Newcastle with Mr Catt. He went to the Newcastle police station and had a conversation with Detective Thomas. He went back again at about 6.00pm and had a further conversation with Detective Thomas relating to the sample that he had supplied to Dr Sandfield. Mr Newell then went to an area at the front of the police station, spoke to Mr Catt and then took him to see Detective Thomas. Mr Newell said that he was present when Detective Thomas informed Mr Catt for the first time that Mr Newell had been in contact with police and about the samples that Mr Newell had taken from his office. Mr Newell maintained that he had not confided in Mr Catt about any investigations he had made on his behalf, about his contact

with police or about the samples that he had taken from the fridge because Mr Newell did not want to give Mr Catt false hope.

282 Mr Newell gave evidence at Ms Beckett's committal proceedings. He said that he spoke to Detective Thomas on 29 July 1989 but while he told him of his suspicions, he did not tell him specifically that he was going to take anything from the office. He gave evidence that Detective Thomas did not tell him how to collect evidence. He said that he was initially searching the premises for solid food stuff in the fridge because he had been suspicious for some time that Mr Catt may have been poisoned in that way.

283 Mr Newell also gave evidence in Ms Beckett's criminal trial. He was extensively cross-examined on each occasion and gave evidence that was consistent with the statements he provided to Detectives Thomas and Paget.

284 Mr Catt's statement included the following material. Mr Catt informed Detective Thomas that he was then currently taking the drug Lithicarb, which he had commenced taking shortly after he was married. Dr Sandfield had prescribed it and Mr Catt stated he had been taking it ever since. At first he was taking two tablets in the mornings and two in the evenings but at some stage that was increased to four in the morning and four in the evening. He always took the drug in tablet form. He always used milk to wash it down. One of the symptoms he experienced from taking the drug was that he was continually thirsty.

285 As far as Mr Catt recalled, Dr Sandfield prescribed one bottle of 100 tablets and a similar repeat on each visit. He would fill the prescriptions at Owens Pharmacy at Taree. Sometimes Ms Beckett collected this medicine for him if he did not have time to do so. However, in the previous month or so she did not fill any prescriptions for him because of marital problems. Mr Catt said that he had been living apart from Ms Beckett since 23 May 1988 and was living by himself in the office at work. His wife continued to reside at 1 Cornwall Street. She would take tablets to the office when he ran out. Mr Catt believed that Ms Beckett also obtained prescriptions from Dr Sandfield on his

behalf, at least in the early days. Mr Catt kept the tablets in a room of the office which was used as a kitchen. They were kept in a cupboard. The cupboard could not be locked. Ms Beckett knew where he kept the tablets.

286 Milk was delivered daily. Mr Catt would normally buy a two litre plastic container of chocolate milk for himself about every two days, and two litres of plain milk every day. However, for the previous three months he had not really had any staff coming into the office for morning tea so he was only getting two litres of plain milk every two days. At that time, he was the only person who used the milk.

287 The office could be locked and was locked after hours every night. He and Ms Beckett had keys. No other person had access to a key. Mr Catt was not aware that Mr Newell had removed the containers of milk and orange juice from the fridge on 30 July 1989.

288 Detective Thomas advised that a signed analysis had been carried out on the portion of the contents of each of the containers by Dr Dickeson at the Royal Newcastle Hospital. Traces of lithium were located in each of the samples. Mr Catt was surprised by this.

289 Ms Beckett was at the office on 28 July and 29 July 1989. Mr Catt believed that she had placed the lithium in the milk. He had been saying for six months or longer that she must be drugging him. This is because on numerous occasions he felt wonky, drowsy, experienced a loss of balance and felt like he had been drugged. He also suffered bad diarrhoea and vomiting and had felt squeamish. He spoke to Mr Newell, Dr Sandfield, Barry O'Brien, Brian Cross and Max French about it.

290 Mr Catt never took more than the prescribed quantity. He said he thought he had at one stage and went to his doctor about it but tests showed that he had not. He also took his tablets to Brian Owen and asked him to check them out to see if they were the right ones because of the way he was feeling. Mr Owen checked them out and said that they were okay.

- 291 Other people who had access to his refrigerator included his family and his employees during work hours. Outside that, it was only he and his wife. She was the only one who had access to his tablets.
- 292 Ms Beckett and Peter Bridge never drank the milk. She drank her own ginger beer and he would go to the shop and buy his own.
- 293 The State submitted that having regard to all of this material when Ms Beckett was charged, Detectives Thomas and Paget were entitled to rely on the information provided to them by Mr Newell and Mr Catt as credible and reliable information to support this count. However, they gathered further evidence following the laying of the initial charge that strengthened the case against her.
- 294 For example, Amanda Marlin (nee Taylor) gave a statement in March 1988 that she saw Ms Beckett pour a glass of wine to which she added two white tablets taken from her handbag. She placed the glass on a table in the lounge room of the family home and said "I hope it kills him." Ms Marlin gave evidence at the trial consistent with this version of events. Ms Beckett has consistently denied that this conversation took place.
- 295 Indeed, Ms Beckett has suggested in these proceedings that Ms Marlin was coerced or threatened by Detectives Thomas and/or Paget into providing false statements against Ms Beckett as they were aware that she had a criminal history and was facing further criminal charges. However, no evidence has been adduced in these proceedings to support a finding that either Detective Thomas or Paget was aware of any such criminal charges or that the evidence given by Ms Marlin was false.
- 296 Further, and despite the issue being expressly raised by the Court with counsel, it was never put to Detective Paget that he pressured Ms Marlin into giving her evidence at all. It was not suggested to him that he knew of her criminal history or that he knew or came to know of any further criminal charges brought against her. Ms Marlin's statement dated 14 November 1989

was witnessed by Detective Brown, not by either Detectives Thomas or Paget.

297 Julie Banks gave a statement on 4 October 1989. She stated that in June that year she had a conversation with Ms Beckett in which she was told that Mr Catt had molested the Catt children and had also fathered Mary Warwick's son Robert Tisdell. During a later conversation Ms Banks said that her former husband, a schizophrenic, had committed suicide by taking the poison "Lucy Jet". According to Ms Banks, Ms Beckett replied, "That's probably what I need". When Ms Banks told her that it had a powerful smell, Ms Beckett said, "I could put it in a bottle of coke in the fridge". Ms Banks said that Ms Beckett then asked her to get her some of this product, but she refused to do so.

298 Ms Beckett then had two further conversations with Ms Banks in which she again raised the matter of this poisonous substance. Ms Banks gave evidence at the committal proceedings in Taree Local Court on two occasions. She also gave evidence at the trial.

299 Ms Banks' statement was not typed or witnessed by either Detective Thomas or Paget. There is no evidence of any kind that her evidence was fabricated or unreliable. No evidence has been adduced in these proceedings to challenge its reliability or truthfulness.

300 Brian Cross, a long term employee of Mr Catt, provided a statement to Detectives Thomas and Paget on 23 August 1989. He stated that since Mr Catt's marriage, he had witnessed him "gradually going downhill". He stated that he often displayed signs of having been drinking heavily when he knew he had not been. He indicated that he would ask Mr Catt "What's wrong with you?" to which he would reply, "Stuffed if I know. I haven't had a drink". Mr Cross stated that Mr Catt would sometimes say jokingly, "I think she's drugging me", referring to his wife. Mr Cross indicated that he had seen Mr Catt take his tablets with milk and that he would drink the milk straight from the container.

- 301 Mr Cross gave evidence in the committal and was cross-examined. He also gave evidence at the trial and was cross-examined. His evidence on both occasions was consistent with the statement he provided to police on 23 August 1989.
- 302 Mr Cross was also called to give evidence in the current civil proceedings on 10 November 2014 and was cross-examined. He confirmed that the contents of his police statements and the evidence he gave in the various court proceedings was true and correct. He also denied that Detectives Thomas and Paget or Mr Newell had suggested the contents of his statements to him. Mr Cross indicated that he had never seen anyone other than staff access the office fridge. He also stated that he had seen Mr Catt drinking milk straight from the container in the fridge. Mr Cross indicated that he occasionally used milk to add to his coffee at morning tea time. He gave evidence at the committal proceedings that Ms Beckett would tell him that the milk in the office fridge was "off" and to "go over to the house and get another carton".
- 303 The State submitted that Mr Cross was an impressive and truthful witness. His version of events has remained consistent (having regard to the passage of time) since 23 August 1989. There is no evidence to support a contention that his evidence was either fabricated or that Detective Thomas or any other person threatened him or suggested to him what evidence he should give.
- 304 Dr Goddard provided a statement that in July or August 1989 he saw Mr Catt in Manning Arcade at Taree when he looked dishevelled, hyperactive, with slurred speech. There was no smell of alcohol on him.
- 305 Cynthia Mound provided a statement to police on 23 August 1989. She was a civilian employee of the NSW Police Service at Taree and had a conversation with Mr Catt in June 1988. She said that he appeared to be affected by alcohol, although she could not smell anything on his breath. During that conversation, Mr Catt suggested that his wife may have been drugging him.

- 306 Maxwell French, a friend of Mr Catt, provided a statement to police on 5 September 1989. He stated that he had spoken to Mr Catt on numerous occasions where he appeared to be drunk but he was unable to smell liquor on his breath. Mr Catt denied being drunk and suggested that his wife may have been drugging him.
- 307 Philip Davey provided two statements to police on 5 September 1989. Mr Davey stated that he was present on an occasion when Ms Beckett supplied Mr Catt with milk and a sandwich or fruit for morning tea. Approximately an hour after this, Mr Davey stated that Mr Catt appeared to be drunk. When he asked him about his condition as he had "been alright an hour ago", Mr Catt replied, "I don't know mate. She must be drugging me or something".
- 308 Barry O'Brien, an employee of Barry Catt, also stated that on a number of occasions, he saw Barry Catt in what appeared to be a drunken state, although he could not smell alcohol on him. He stated that he asked him: "What's the matter mate, have you been drinking?" Mr Catt replied: "No, I think Roseanne's drugging me". Mr O'Brien also provided evidence that only staff members had access to the office refrigerator and that he never drank milk or orange juice from it. He also stated that Peter Bridge did not drink milk or orange juice from the office fridge because "that filthy bastard drinks out of the bottles", referring to Mr Catt.
- 309 In these proceedings, and in her criminal trial, Ms Beckett argued that numerous people had access to the refrigerator in the office where the poisoned milk and orange juice were found by Mr Newell.
- 310 The State submitted that relying on the matters set out below, Detectives Thomas and/or Paget formed a reasonable view that from approximately May 1989 until 30 July 1989, when Mr Newell removed the contaminated milk and orange juice from the office, only Mr Catt was drinking milk or orange juice from the refrigerator and that Ms Beckett had warned at least one employee not to do so.

- 311 Mr Catt said that only staff members had access to the refrigerator in the office and used to drink milk from it at morning tea. From approximately May 1989, staff members had not been using it at morning tea time, and to his knowledge, he was the only person using it. He noted to Detective Thomas that as a result of staff no longer using the refrigerator, he only purchased a two litre container of plain milk every two days instead of daily.
- 312 Tracy Taylor said she never saw anyone, either employees or customers, drink anything out of the fridge in the office. She stated that on occasions when she wanted a drink, Ms Beckett told her to "go over to the house and get a drink". Ms Taylor stated that on occasion, she had seen Ms Beckett place a two litre container of orange juice in the office fridge.
- 313 Mr Catt's statement indicated that Ms Beckett had her own key to the office area and had been at work between 27 July 1989 and 30 July 1989.
- 314 The State submitted that there was sufficient evidence for Detectives Thomas and Paget to form a reasonable view that Ms Beckett had access and opportunity to contaminate the juice and milk containers in the office fridge during the relevant period.
- 315 In her amended statement of claim, Ms Beckett alleges that either Detective Thomas and/or Paget obtained two medication containers, one labelled Rivotril and the other labelled lithium and placed them in a black handbag and falsely claimed that they had taken the handbag and its contents from her premises during the search on 24 August 1989.
- 316 Detective Paget gave evidence at the committal and at the trial that he had found bottles of Lithicarb and Rivotril in a purse in a drawer in Ms Beckett's bedroom when her home was searched. In these proceedings, Detective Paget confirmed that his previous evidence was true and correct. He was cross-examined extensively about the circumstances in which he located the bottles of Rivotril and Lithicarb. He vehemently maintained that he had found

them both in the bedroom drawer despite repeated suggestions to the contrary:

"Q. You say now, do you, that you did, in fact, find lithium in a drawer in the bedroom?

A. I did, in a little black purse under some clothing."

317 It is apparent that a black purse was among the things found during the search, described in a list of items as "one black coloured purse containing assorted tablets".

318 Detective Paget was also cross-examined extensively about the absence of any reference to the finding of the Lithicarb or Rivotril in his first police statement dated 17 September 1989. He was re-examined about this as follows:

"Q. I want to take you to that part of the transcript in which it was put to you by my learned friend that you had not listed the things that you had found or which had come to your attention in the search of 24 August or, as my friend would have it, the raid of 24 August. In your statement of 17 September 1989, do you list any of the things that you searched for and/or found?

A. No, sir."

319 The State submitted that in light of this evidence, no significance could be attached to any alleged failure by Detective Paget specifically to list the Lithicarb or Rivotril as items he had located during the course of the execution of the search warrant.

320 Ms Beckett has emphasised the alleged failure by Detective Paget to list the black purse containing the lithium and Lithicarb bottles found by him during the search in the Exhibit Book. He gave evidence in these proceedings that Cynthia Mound wrote down the entries in the Exhibit Book with either he or Detective Thomas going through the exhibits describing them. He gave evidence that he was uncertain whether he was there for the entire time as the exhibits were being recorded. He also accepted that a record of finding the black purse and the lithium bottles on the exhibit list was a matter of

significance. He maintained that he found the bottles of Lithicarb and Rivotril in accordance with his previous evidence.

321 The State submitted that significant evidence had been adduced in these proceedings that supported Detective Paget's evidence that a black purse containing bottles of Lithicarb and Rivotril was seized. Exhibit 6 in these proceedings lists items taken by police during the execution of the search warrant, which were available to be collected by Ms Beckett. Page 3 of "Annexure A" to that exhibit refers to "one black coloured purse containing assorted tablets". Page 4 also makes reference to "1 black coloured handbag containing business cards and assorted tablets".

322 The State contended that the evidence given by Detective Paget on this issue should be accepted. His evidence at the committal, the trial, the Davidson Inquiry and in these proceedings has been consistent as to the manner in which he located the Lithicarb and Rivotril.

323 According to the State's submissions, the very fact of the omission of any reference to the Lithicarb and Rivotril in the Exhibit Book (although there is reference to tablets being seized) is evidence of the absence rather than existence of a broad conspiracy between various players including Detectives Thomas and Paget to fabricate the evidence in respect of this count. Detective Paget's evidence in these proceedings clearly indicates that he was aware of the significance of finding Lithicarb and Rivotril during the search. Having such awareness, it would be extraordinary that a conspirator intent upon fitting up a suspect would not have ensured that these items were not only found but were also properly recorded.

324 It is also significant to note that at no time during his lengthy cross-examination was it ever squarely put to Detective Paget that he had placed the bottles of Lithicarb and Rivotril in the black handbag. Nor was it ever put to him that he falsely claimed that they had taken the black handbag and its contents from Ms Beckett's premises during the search as pleaded in the amended statement of claim.

- 325 The request for analysis made by Dr Sandfield to the Royal Newcastle Hospital also indicates that Clonazepam was the subject of a request as early as 1 August 1989 and no inferences can be drawn from the fact that when Detective Thomas sent the samples for testing at the Division of Analytical Laboratories on 10 August 1989, the request only related to the lithium.
- 326 A series of statements taken by employees of the Division of Analytical Laboratories are contained in the Crown Court Book setting out the chain of possession of the samples once they arrive there. On 21 September 1989, Garth Sheehy tested seven samples for both lithium and Clonazepam. The documents produced under subpoena by DAL in these proceedings include the Request for Analysis from Dr Sandfield to the Royal Newcastle Hospital, which requested that the samples be tested for both lithium and Clonazepam.
- 327 On 26 September 1989, Mr Sheehy found that the seven samples contained the following:
- (1) Milk container found to contain 3.3mg/litre of Clonazepam; 310mg /litre lithium.
 - (2) Moove container found to contain 1.3mg/litre Clonazepam; 510mg/litre lithium.
 - (3) Orange juice container found to contain 18mg/litre Clonazepam; 390mg/litre lithium.
 - (4) 50 ml specimen jar (white liquid) contained 1mg/litre Clonazepam; 230mg/litre lithium.
 - (5) 50 ml specimen jar (brown liquid) contained 1.5mg/litre Clonazepam; 310mg/litre lithium.
 - (6) 50 ml specimen jar (orange liquid) contained 14mg/litre Clonazepam; 230mg/litre lithium.

- (7) 50ml specimen jar (orange liquid) contained 15mg/litre Clonazepam; 220mg/litre lithium.
- 328 The State submitted that any reference by Ms Beckett to the absence of reasonable and probable cause relating to the contamination of the containers of juice and milk with Rivotril or Clonazepam is not relevant to any matter that is to be determined by me. She was never charged with any offences relating to these substances.
- 329 At the heart of Ms Beckett's allegations regarding this Count is that she was the innocent victim of the conspiracy described in her amended statement of claim. The State maintained that there is no evidence that is capable of forming a proper basis for such a grave set of allegations: *Helton v Allen* [1940] HCA 20; 63 CLR 691; *Briginshaw v Briginshaw* [1938] HCA 38; 60 CLR 336; s 140 *Evidence Act*.
- 330 There is no evidence to prove that Detective Thomas and Mr Newell made an agreement to frame Ms Beckett. They first met each other on 29 July 1989. This is supported by the evidence of Detective Courcoulos. He was a young Detective Senior Constable who attended Mr Newell's premises on 29 July 1989 with Detective Thomas. He was present during the entire meeting between Mr Newell and Detective Thomas on that date and did not give any evidence that any agreement to frame Ms Beckett was made that day. Indeed, his evidence was that he and Detective Thomas went to Mr Newell's premises to meet an "informant" about some allegation that Ms Beckett was poisoning her husband.
- 331 Mr Newell gave evidence at committal that he spoke to Detective Thomas on 29 July 1989, but while he told him of his suspicions, he did not tell him that he was going to take anything from the office. There is no evidence that Mr Newell contaminated the juice and milk containers with lithium and Clonazepam, or if he did, that Detective Thomas was, or should have been, aware of it.

332 The manner in which the evidence of poisoning came to the attention of Detectives Thomas and Paget in this case may have been unusual, but that did not make it an improper case to put before the Court.

333 The State maintained, somewhat dramatically, that the allegations of conspiracy are no more than the baseless speculations of a fevered imagination. The common law does not permit what is inadequately asserted by a plaintiff to be a gap or ambiguity in evidence to be filled with a malicious conspiracy without some evidence to support it. One would need specific persuasion that the explanation for a situation was a malicious conspiracy rather than something more mundane. The State submitted that the more obviously available mundane explanation was Ms Beckett's guilt.

334 Detectives Thomas and Paget were entitled to rely on the information provided to them by Mr Newell and Mr Catt in forming their view as to the likelihood of guilt. It is significant to note that while the jury acquitted Ms Beckett of the offence as charged, they found her guilty of an alternative charge, namely of attempting to cause Mr Catt to take a noxious thing with intent to injure him. In her remarks on sentence Mathews J said:

"It follows that the jury must have been satisfied beyond reasonable doubt that it was Roseanne Catt who placed the lithium in the liquids which Adrian Newell removed. However, they were not satisfied that she had actually caused Barry Catt to take lithium outside his normal medication at any other time. Furthermore they were not satisfied that her motivation in attempting to poison him on this occasion was anything other than to cause him injury."

335 The State maintained in these circumstances that it can hardly be said that the matter was not a proper one to be put to a jury.

336 It is unfortunate, to use as neutral a term as I think I can employ, that I did not have the advantage of seeing or hearing the redoubtable Mr Newell. It may be that he did not want to become involved "because it [was] not [his] nature."

337 In *G v H* [1994] HCA 48; 181 CLR 387, Brennan and McHugh JJ said:

"... when a court is deciding whether a party on whom rests the burden of proving an issue on the balance of probabilities has discharged that burden, regard must be had to that party's ability to adduce evidence relevant to the issue and any failure on the part of the other party to adduce available evidence in response."

338 In *Blatch v Archer* (1774) 1 Cowp 63; 98 ER 969, Lord Mansfield CJ said:

"It is certainly a maxim that all evidence is to be weighed according to the proof which it was in the power of one side to have produced and in the power of the other to have contradicted."

339 In discussing the rule in *Blatch*, the Full Court of the South Australian Supreme Court in *Molinara v Perre Bros Lock 4 Pty Ltd* [2014] SASCFC 115, remarked in these terms:

"[90] Comprehensive discussions of this principle [in *Blatch v Archer*] and illustrations of its application in civil trials are to be found in *Jones v Dunkel*, *O'Donnell v Reichard*, and *Payne v Parker*. A leading discussion in South Australia still would appear to be that by Cox J in *Spence v Demasi*. Another helpful discussion can be found in *Frederick v State of South Australia* (White J).

[91] For present purposes, I set out and adopt, with respect, a number of the propositions arrived at, following a review of the then available authorities, by Glass JA in *Payne v Parker*.

1. The rule [known in Australia as the rule in *Jones v Dunkel*] is a principle of the law of evidence whereby a particular form of reasoning is authorized.

2. The reasoning which is permissible involves the treatment of a failure to adduce evidence as a reason for increasing the weight of the proofs of the opposite party or reducing the weight of the proofs of the party in default. The principle may be invoked for a deficiency in the evidence either of a party bearing a legal onus of proving an issue, or of a party bearing the evidentiary burden only. If the failure is of the latter kind, the direct evidence of the party with the onus of proof can be more readily accepted, and inferences in his favour may be more confidently drawn. If the failure is of the former kind, a consonant formulation would be that the direct evidence of the party carrying the onus may be more readily rejected, and the inferences for which he contends may be treated with greater reserve. The default 'brings a great slur on his cause'.

3. The failure to call a particular witness is merely one instance of evidentiary deficiency which brings the principle into operation. Other instances are the failure to adduce any evidence at all... the failure to produce a particular document, and the failure to prove a particular fact.

4. [I]t is for the judge to determine whether the principle could be applied, and for [the trier of fact] to decide whether it should be applied. The determination has the same legal status as a decision whether the *res ipsa* principle can or should be applied.

5. Whether the principle can be applied is a question of law, which admits of only one answer. No exercise of discretion is involved...

6. Whether the principle can or should be applied depends upon whether the conditions for its operation exist. These conditions are three in number:

(a) the missing witness would be expected to be called by one party rather than the other,

(b) his evidence would elucidate a particular matter,

(c) his absence is unexplained."

340 Ms Beckett contended that both Mr Catt and Mr Newell were witnesses in the State's camp. It was the information allegedly provided by them that was supposed to have informed Detective Thomas' belief in Ms Beckett's guilt warranting the institution of the charges against her. Evidence from these two men might have been expected. In the absence of direct evidence from them about what they said to Detective Thomas, when they said it and the circumstances that prevailed when the information was allegedly given, there is a clear inference that their evidence would not have assisted the State's case in relation to all of those matters. Ms Beckett submitted that the failure to call them increases the weight of Ms Beckett's case in respect of both the elements of malice and of the absence of reasonable and probable cause.

341 There is no doubt that Mr Newell would have been in the State's camp. His evidence elsewhere makes it clear that he would have nothing to do with any case that supported Ms Beckett. His absence from the witness box is unexplained, beyond the assumption that a forensic decision not to call him has been taken. It also seems clear that Mr Newell's ability to elucidate a number of matters is beyond question.

342 However, as with Mr Morris, Mr Newell gave evidence at Ms Beckett's trial. His evidence is recorded and the transcript is in evidence before me.

Although almost nothing about this case is any longer surprising to me, it would be surprising if Mr Newell were to change his evidence in these proceedings if he had been called and had been offered the opportunity to do so. With respect to counsel for Ms Beckett in this case, I am also of the view that the rigours of cross-examination before me would be unlikely to have produced any different result.

343 Mr Catt is in a different category. Without in detail elaborating upon the matter, having regard only to his well-documented history of mental illness, and the probable enmity between him and Ms Beckett that the years of struggle between them is likely to have produced, I do not feel able to infer that Mr Catt's evidence would have been of significant assistance to me. I do not consider that Ms Beckett is the significant practical beneficiary of an inference that anything Mr Catt could have said would not have assisted the State's case.

344 In considering Ms Beckett's case on this Count, I consider that it is very important not to conflate Mr Newell's supercharged enthusiasm for exposing Ms Beckett's plan, to which he consistently referred, with Detective Thomas' lack of an entitlement to treat what he turned up as useful or more particularly as reliable. Senior counsel for Ms Beckett made clear in his submissions what his case theory was:

"BLACKET: Your Honour, I made some introductory submissions yesterday. I should make it very clear, your Honour, that we do not suggest that our case is based around a proposition that Thomas engaged in sloppy police work. Our case is that Thomas contrived to construct a case against the plaintiff on the basis of the material that was either inherently self-sufficient [*sic*, insufficient] or manufactured. It's critical to our submissions, and we have said it, that there is no direct evidence anywhere of what Thomas believed."

345 The investigation into Mr Newell's concerns that Mr Catt was being poisoned with lithium was on one view very sloppy. Enough has been said about that, or it is reasonably apparent from the evidence, to require no further comment from me. The sanctity of the chain of custody of the milk samples leaves much to be desired.

346 That evidence was however not the end of the story. All of this has been referred to above. The case that was mounted against Ms Beckett on this Count was circumstantial. On one view of the matter it could have proceeded without the evidence from Mr Newell and others concerning the taking and analysing of the milk and juice samples. I agree with the State's submission that there is no evidence that Mr Newell contaminated the juice and milk containers with lithium and Clonazepam, or if he did, that Detective Thomas was, or should have been, aware of it.

347 It is not in my view reasonable to conclude that Detective Thomas lacked an honest belief in Ms Beckett's guilt. Even though I am of the view, referred to later in my consideration of the elements of malice, that Detective Thomas would have jumped at any and every available opportunity to vex Ms Beckett, that should not be permitted to disguise the fact that he remained entitled, in a proper case, to make what he could of material that came his way. If Ms Beckett has sought to establish that Detective Thomas was on this Count a participant in a nefarious conspiracy to create and mount a criminal case against her, I do not consider that she has succeeded.

348 Upon all of the available material, Ms Beckett has not satisfied me that Detective Thomas lacked either an honest belief in her guilt or that he did not form or maintain it on reasonable grounds.

Count 6 – the solicit to murder charge: James Morris

349 Detective Thomas had the following statements before him on this Count.

James Henry Morris

350 Mr Morris's evidence was brief. He gave a statement to the police dated 5 September 1989. He relevantly said the following:

"3. About Friday 28 July 1989 I was at the Taree RSL club with my sister Sandra. About ten to ten thirty that night I was standing near the corner of the bar in the auditorium with Sandra when Roseanne Catt approached us. She introduced a female friend of hers to us and her friend left.

4. Roseanne then said to me (words to the effect) 'do you want to make some money'. I said, 'what for'. She said, 'if you do a good job on my husband, break his arms and legs, there'll be ten thousand dollars in it for you. If you kill him, you'll get a bonus.' She sounded fair dinkum to me and I went along with her. I recall that she went on to tell me about Barry sexually assaulting the children.

5. Roseanne repeated about getting a good job done on Barry. I believed she wanted him killed and I thought it was strange in that I had never met the woman personally before that night.

6. I recall that she was wearing a white leather long sleeved jacket, a white short waist line with white leather pants and white high heeled shoes.

7. About a week later I again saw Roseanne in K-Mart. I was doing some patrolling. She approached me with her daughter. I don't know her name but she has long dark hair, about 14 years old and I know she attends St Clair's High School. Roseanne said to me words to the effect, 'Look at this beautiful young girl here. Fancy him doing things like that to her' (when she said that I believed she was referring to Barry sexually assaulting the child).

8. Roseanne then said, 'have you thought about what we spoke of before'. I believe she was referring to the conversation we had at the RSL club. I said 'yes I have'. She said, 'when can you do it' I'd like it done as soon as possible.' I just went along with her again with disbelief, I believed that she wanted the job done. I became concerned and I reported the matter to Mr Ferguson of Family and Community Services who I was aware had dealings with the family situation."

Sandra Dawn Ridgeway

351 Ms Ridgeway is Mr Morris's sister. She gave a statement to the police on 20 September 1989 as follows:

"3. On a Friday night a couple of months ago, I can't be sure of the date, I was with my brother Jim Morris at Taree RSL club. It would have been about 10pm, or after because darts had finished, and Jim and I were standing at the bar. Roseanne came up to Jim and started to talk to him about the kids, how Barry had sexually assaulted them.

4. Roseanne then said to Jim, 'Would you do a job on Barry, give him a good bashing, break his arms and legs. I'll give you \$10,000.' Words something like that, I can't remember exactly. Jim said, 'Yeah, alright then.' Something like that. She then said, 'I'll chuck in a bonus if you go a bit further.' I didn't think that she was serious when she made the offer to Jim, I thought she was just talking drunk.

5. After she had left to go back to her friends, Jim and I talked about it and had a bit of a laugh. I had met Roseanne once before and I knew that she was married to Barry Catt. I had seen her in the street to say hello, and I was just getting to know her. I haven't spoken to Roseanne since that night at the RSL club."

352 No statements were given to Detective Thomas by any other witness and none was sought by him. No further or other investigations would appear to have been undertaken with respect to this Count.

Consideration – the solicit to murder charge: James Morris

353 This charge related to events alleged to have occurred on 28 July 1989, shortly before the alleged lithium collection, and a little less than one month before Ms Beckett's arrest. Ms Beckett is alleged to have approached James Morris at Taree RSL club and offered him a sum of money to kill her husband. At that time, Mr Morris was an Aboriginal Community Liaison Officer at Taree police station. There is no issue that Mr Morris and Ms Beckett were both at the club on the night in question. Every other aspect of the allegation is in doubt.

354 Neither Mr Morris nor Ms Ridgeway made any report to the police or anyone in authority about the alleged conversation at the time it occurred. There was no police investigation until 25 August 1989.

355 Ms Beckett contended that an honest and reasonable police officer would have regarded the failure to report the matter as casting doubt on whether the conversation occurred at all or, if it did, whether it was a genuine or credible offer. The delay would certainly have indicated that a thorough investigation was required. It was a very serious allegation.

356 In these proceedings, evidence was called from Lucy Cooper, who attended the club with Ms Beckett that evening. Ms Cooper gave evidence at Ms Beckett's trial. She was known as Lucy Parkinson in 1989. Ms Cooper gave evidence that she was at the club on the night with the Ms Beckett and a number of other women. Consistently with the evidence she gave at the trial, she said that there were about six people altogether celebrating Leanne Hooley's birthday. She said that other people in the group included Georgina McNaughton, Joy McGregor, Marie Coleman and a person by the name of

- Marge. Ms Cooper was not a drinker at the time and had not consumed any alcohol.
- 357 Ms Cooper gave evidence that she saw a group of aboriginal people at the club sitting at a table with Bradley French. She said that they were drunk and some were lurching around making a nuisance of themselves. Mr Morris himself accepted when he gave evidence at the trial that he was suffering a level of intoxication by the end of the night.
- 358 Ms Cooper's evidence was that she did not see Ms Beckett speaking to any aboriginal man or woman in the bar area that evening.
- 359 Ms Beckett contended that in circumstances where she denied any conversation with Mr Morris, a reasonable and honest police officer would have sought other evidence to establish that she and Mr Morris had actually spoken. However, the investigation conducted by Detectives Thomas and Paget was cursory at best.
- 360 A band called The Screaming Jets was playing. It had been a busy night at the club. There were presumably numerous patrons who may have witnessed Ms Beckett and Mr Morris conversing. However, the only people who were interviewed appear to be Mr Morris himself and his sister Ms Ridgeway. No statements were taken from any of the women who were with Ms Beckett. Similarly, no statements were taken from any person in Mr Morris's company even though he stated that there were people all around the bar at the time. No inquiries were made of those potential witnesses by Detectives Thomas or Paget.
- 361 In his evidence before me in these proceedings, Detective Paget accepted that he and Detective Thomas had simply relied on what they were "told by Jim and Sandra". No other people were interviewed. They made no other inquiries as to who was at the club that night. Detective Paget accepted that it would have been easy to obtain a sign-in book from the club and talk to others

present. That did not happen. His evidence revealed that few (if any) other inquiries were made.

362 Detective Paget said that he did not know Mr Morris before he interviewed him. That was contrary to Mr Morris' suggestion at trial that he had been in contact with Detectives Thomas and Paget from time to time in his role as a Police Community Liaison Officer. Detective Paget said that Mr Morris was an honest and "quiet type of chap" and "humble". As such, it appeared to Mr Paget that there was nothing to suggest that he was the kind of man who would have been willing to murder somebody if asked. That contention is relied upon by Ms Beckett in this case to suggest that something more sinister than a failure to investigate was at play.

363 Ms Cooper later gave a statement to Michael Jones, solicitor, in relation to the matter, concerning what had occurred at the club on that night. She said she went there with her boarder, Clarrie French, who was known to Vernon Taylor. Mr Taylor said he was sent by Detectives Thomas and Paget to see Ms Cooper. He knew of her through his aunt Ella. In contrast, Detective Paget said that he could not even recall a person by the name of Lucy Parkinson, or Lucyeen Parkinson, or Lucyeen Cooper. Detective Paget denied sending Mr Taylor to talk to her.

364 Detective Paget gave evidence about how the detectives came upon Mr Morris. He thought he might have sought out Mr Morris. He was asked:

Q. You were asked this question [at the Davidson Inquiry], 'What led you to James Henry Morris?' and your answer was, 'Someone would have told me something about Morris having had a conversation with Mrs Catt so I went and asked him if it was fact or not.'

A. Yes.

Q. And that someone, do you recall who that someone was?

A. No.

Q. And then you were asked, 'Was it just a rumour?' and your answer was, 'No, it would have been - I don't know if it was Thomas or Adrian Newell. I don't know who told me now. That's the reason I interviewed Mr Morris.' Is that still your evidence?

A. Yes."

365 Mr Taylor said that the detectives "asked me if I could find out where Lucy Cooper moved to and just ask her if she was prepared to make a statement". He said that he had quite a lengthy conversation with Ms Parkinson, but that he did not tell her he was there on behalf of the police. He said he asked her if she wanted to see them, but he did not know what it was about. He said the reason he was there for a long time was because Ms Cooper asked him what his involvement was.

366 In these proceedings, Mr Taylor was asked:

"Q. You see, you had a discussion with Lucy Parkinson on that first meeting, in which you indicated to her that you knew of the material that she had put in her statement, didn't you?

A. I didn't know that. She just - I went there to ask her what she knew about it, and she asked me what my involvement was, and we talked about that."

367 Mr Taylor was then asked:

"Q. You wanted - she told you information - she indicated to you that she was not on your side. Is that right?

A. Yes. That's probably why I can't remember anything, because I just walked away from it.

...

Q. Your side was Barry Catt's side, wasn't it?

A. Yeah. If you want to put it that way."

368 In view of the evidence of Ms Cooper and Mr Taylor, Ms Beckett submitted that it was plain that the detectives knew that Ms Cooper was a witness who did not assist their case against Ms Beckett. They sent Vernon Taylor to talk to her. Detective Paget could not explain why they did not interview her themselves. Mr Taylor said that he reported back to the detectives, and when pressed about what he reported to them he gave this evidence:

"Q. You were asked this question at 1068, line 4:

'Q. So you didn't tell the police because it would not help them?

A. No. I remember I told the police that she said she was prepared to make make a statement, but not on our behalf, not in our favour.'

Do you remember giving that answer to that question?

A. Yeah.

- Q. And 'our favour' was Barry Catt's favour, wasn't it?
A. Possibly, yeah."

- 369 Ms Beckett submitted that use of the expression "not in our favour" puts Mr Taylor firmly in Mr Catt's camp. Given that he was reporting to police, that "camp" must have included Detectives Thomas and Paget. She submitted that he was clearly partisan so that using him to do their bidding was highly improper.
- 370 Detectives Thomas and Paget took no statement from Ms Cooper. There is no statement from her in the Crown Court Book. There is no evidence of any notes made by Detectives Thomas or Paget about what they had been told by Mr Taylor about Ms Cooper's evidence. Ms Beckett submitted that the inference should be that they did not do so because her version did not suit them or the "Catt interests".
- 371 Ms Beckett contended that the failure to interview Ms Cooper or to take a statement from her, given that the detectives must have known that her evidence did not support the prosecution case, goes to the heart of both malice and an absence of reasonable and probable cause. The inference to be drawn is that the detectives pursued a very serious charge, wilfully blind to exculpatory evidence from a key witness. It goes beyond sloppy investigation. In their own bizarre way, the detectives did investigate through the cipher who was Mr Taylor. When that evidence was unfavourable, no documentation was made, no statement was taken from Ms Cooper, and her evidence was cast aside. This was done intentionally. It might be inferred that it was done so that the detectives could "test" the evidence of Ms Cooper and, if not helpful, encourage her covertly to change her evidence.
- 372 Neither Mr Morris nor Ms Ridgeway was called. No s 67 notice has been issued with respect to either of them. They are clearly witnesses in the State's camp and its failure to call them to clarify or explain what information they told Detectives Thomas and Paget, in the absence of any evidence from Detective Thomas about it, must give rise to an inference that their evidence

would not have assisted the State's case. Given their critical importance in this charge, Ms Beckett submitted that the inference may rise as high as a *Blatch v Archer* inference.

373 I am required to make an assessment both as to whether Detectives Thomas and Paget held an honest belief in Ms Beckett's guilt and whether the evidence was objectively sufficient to justify the laying of such a serious charge. Ms Beckett therefore argued that it was worthwhile to examine Mr Morris's conduct and his relationship with them. At the committal, Mr Morris said that he knew both detectives. At the trial, Mr Morris agreed that he had been in contact with both men from time to time in his role as a Police Community Liaison Officer at Taree police station. However, Mr Morris later said that the first time he met them was when he made his statement on 5 September 1989. Mr Morris said he could not recall meeting them at any other time. These versions cannot be easily reconciled. It is likely that the committal evidence is the truth as it is common ground that Detective Thomas had visited Taree on prior occasions. The reason for Mr Morris's denial of any prior contact with Detective Thomas is likely to have been to create an impression of independence, thus rendering him less likely to have conspired with Detective Thomas in relation to the charge.

374 Ms Beckett submitted that there is therefore an available inference that Detectives Thomas and Paget had motivated Mr Morris to make this allegation. If that is established, they could not be said to have held an honest belief that Ms Beckett actually solicited Mr Morris to murder her husband. That inference is arguably strengthened if taken together with both the reluctance on the part of Detectives Thomas and Paget to make any proper inquiries and the significant lack of objectively sufficient evidence to support such a serious charge.

375 In summary, Ms Beckett submitted that Detectives Thomas and Paget lacked reasonable and probable cause in respect of this Count.

- 376 The State emphasised that Ms Ridgeway's statement was not witnessed by either Detective Thomas or Detective Paget. Standing alone that fact appears to me to be of no relevance or probative value in these proceedings. The statements were before the prosecutor in the applicable sense. Indeed, the statements were in effect all that was before the prosecutor.
- 377 The State also submitted that there is no evidence that Ms Ridgeway was suborned, or that Officer Evans was part of a conspiracy to create false evidence. That submission does not seem to me, however, to be directed to the point in issue, being whether Detective Thomas had formed an honest belief in the guilt of Ms Beckett and whether it was formed on reasonable grounds if he had. Certainly an acceptance of the proposition that Ms Ridgeway had been suborned by Detective Thomas would dispose of the first part of that equation but rejection of the proposition does not conclude the matter. Mr Morris gave sworn evidence at the committal where he adopted the truth of his police statement. He also gave evidence at the trial. Ms Ridgeway gave sworn evidence at the committal.
- 378 The State emphasised how the matter came to the attention of the police authorities at the time. Mr Morris confided in Mr Ferguson from FACS about the solicitation who in turn confided in the District Manager, Mr Baggs. He advised Mr Ferguson to report the matter to the police. Mr Baggs gave evidence at the trial. Mr Baggs himself went to see Detective Thomas and provided him with the information relating to the solicitation.
- 379 Ms Beckett said in her evidence in chief with respect to this Count, when asked whether at about 10pm she was at the RSL on the Friday night and spoke to a man called James Henry Morris, "I don't know". She denied the conversation with him. She agreed that she was at the Taree RSL club with Ms Parkinson and others, and remembered her talking to someone called Sandra, but she herself did not talk to Sandra Ridgeway, nor did she leave the table at all to speak to anyone at the bar, let alone Mr Morris. She also denied that she owned the sort of clothing which was described by Mr Morris and his sister.

380 Ms Parkinson gave evidence for the defence at Ms Beckett's trial. She said she was present at the club and, as far as she knew, there was no conversation between Ms Beckett and Mr Morris. She also described Mr Morris as being very drunk. She said that she was picked up by Ms Beckett at her home and they drove to the club. They sat at a table and waited for other girlfriends to arrive. She saw Ms Ridgeway at the bar but they did not speak. At no time did she ever go to the bar area when Ms Ridgeway or Mr Morris were there. Ms Parkinson denied going to the bar or talking to Ms Ridgeway, but Ms Beckett's evidence was that she remembered Ms Parkinson talking to someone called Sandra. Other people in the group who were there included Leanne Hooley, Georgina McNaughton, Marie Coleman and Marge (whose surname Ms Parkinson could not recall). The significance of Ms Parkinson's evidence about who was with them that evening arises because in these proceedings it has been alleged that Joy McGregor (Ms Beckett's sister) was also at the club that night.

381 Mr Morris said that he knew of Mr Catt prior to the incident at the club, but did not personally know him. Detectives Thomas and Paget were not well known to him, and the first time he met them was when he provided his police statement. When Mr Morris gave evidence at the criminal trial, he had never personally met Mr Catt. For her part, Ms Ridgeway did not know any of Detectives Thomas or Paget or Mr Newell before she provided her police statement. She first met Detective Thomas at the committal hearing. Mr Catt was a friend of her mother, but Ms Ridgeway did not know him sufficiently to have a conversation beyond saying hello.

382 It was part of Ms Beckett's case that as at July or August 1989 Mr Morris was being investigated by FACS for alleged sexual conduct with a number of Aboriginal girls and that he knew Detective Thomas and Mr Catt prior to 28th July 1989. Mr Baggs made a note on 22 September 1989 about rumours concerning Aboriginal girls allegedly involved in sexual intercourse with Mr Morris and other Taree police officers. The Purfleet community had allegedly known of these rumours and disclosures which had been made to the Biripi

Medical Service and others. This material was admitted not for all purposes, but as information that had come to the FACS officers in relation to Mr Morris.

383 For presently relevant purposes the State emphasised that there is no evidence that such allegations were in fact made against Mr Morris, or that they were true. Nor is there any evidence that there was a formal FACS investigation into the allegations. There is no evidence that there was a police investigation. There is also no evidence to suggest that Mr Morris was aware of any such rumours or that either Detective Thomas or Paget was aware of them. Mr Morris came forward, not as a result of any direct approach by these detectives, but as a result of information made known to the FACS officers. They conveyed that information to Detectives Thomas and Paget. It follows that there is no evidence to suggest that these detectives sought improperly to influence Mr Morris.

384 The State contends that Ms Beckett has failed to adduce any evidence to support the suggestion that what Mr Morris said in his police statement should have been treated by the investigating police officers as either untruthful or unreliable. She has correspondingly failed to establish an absence of reasonable and probable cause or malice in relation to the Morris allegations.

385 Ms Cooper's evidence before me should be compared with her evidence at Ms Beckett's trial. The State contended that her evidence in these proceedings was "extraordinary".

386 Ms Beckett gave this evidence before me:

"Q. With whom were you at the Taree RSL Club that night?

A. From memory, it was Lucy Cooper, my sister Joy McGregor, the others were friends of Lucy's, but I can't remember their names."

387 At no time during the course of her trial did Ms Beckett allege that her sister was at the club that night. At no time was it put to any prosecution witness in the course of cross-examination at the trial that Ms McGregor was there. No witness said that Ms McGregor witnessed the events of that night until these proceedings many years later. An additional matter never put to Ms

Ridgeway or any other witness, was Ms Beckett's allegation that Mr Catt had been involved in a prior relationship with Ms Ridgeway or that he at one time showed her a photograph of Ms Ridgeway. These are all matters of recent invention.

388 Ms Cooper gave evidence that she was picked up by Ms Beckett at her home and they drove to the club to celebrate Leanne Hooley's birthday. She was cross-examined in these proceedings as to the prior evidence given by her. At trial, her evidence was as follows:-

"Q. Was that a special occasion when you saw James Morris?

A. Yes

Q. That was a birthday?

A. Yes

Q. How many people were at the birthday?

A. About six of us altogether

Q. Whose birthday was it?

A. It was Leanne's birthday

Q. That is Leanne who?

A. Leanne Hooley

Q. She was a friend of Roseanne too?

A. No, she was a friend of mine, they were my friends.

Q. Had you planned to meet Roseanne at the Club that particular night, or was it coincidence that she happened to be there?

A. I asked her if she would like to come out with us.

Q. Did she come alone?

A. No, she came with me.

Q. Were other people there as well?

A. No, I had arranged to meet the other girls there in the Auditorium, around about half past eight.

Q. Who else was in the group that was there?

A. Leanne Hooley, Georgina McNaughton, Marie Coleman and Marge.

Q. What's her surname?

A. I can't recall."

389 Ms Cooper inconsistently with her trial evidence, provided the following information before me:

"Q. And who did you go to that Club with?

A. I went with Roseanne, her sister Joy, Leanne Hooley, another friend of ours, Georgina McNaughton.

Q. Was there anyone else apart from those persons in your group?

A. Yes, there are Marj. I can't - and Marie Coleman. I can't remember what Marj's last name was.

Q. And Maria Coleman?

A. Yes, Marie Coleman.

Q. Marie Coleman?

A. Yep.

Q. And do you remember what the occasion was, apart from the fact that the Screaming Jets were playing?

A. We were celebrating Leanne's birthday."

390 Further, and contrary to her trial evidence, in these proceedings Ms Parkinson alleged that, when they left the club to go home, she went with Ms Beckett and her sister Ms McGregor.

391 The evidence would appear to indicate that Ms McGregor was a regular attendee at the trial. The State therefore contended that it was extraordinary that a possible exculpatory witness to the events that occurred at the club was never called in the case for the accused at her trial. It is equally extraordinary that not the slightest suggestion was made at trial that Ms McGregor was present. Such evidence, given its significance, could not have been overlooked by Ms Beckett's legal advisers at trial. Far less likely would Ms Beckett herself have overlooked it.

392 The State submitted that neither Ms Beckett nor Ms Cooper could be believed about this event and that Ms Beckett's evidence was tarnished by recent invention and was indicative of the extent to which she was prepared to fabricate events to support her case. Serious issues arise as to how, and why, Ms Cooper has now come to present such a starkly inconsistent or contradictory version of events in these proceedings. Ms McGregor was not called to give evidence in these proceedings, and no explanation has been provided for her absence. Given the nature of the proceedings and the central allegation of a pervading conspiracy, necessarily criminal, to suborn witnesses and fabricate evidence, the principles in *Jones v Dunkel* [1959]

HCA 8; 101 CLR 298 and s140 of the *Evidence Act* combine to require that an inference adverse to Ms Beckett should be drawn.

393 The evidence given by Ms Cooper relating to the visit to her premises by Vernon Taylor is also important. During the course of the criminal trial, Mr Taylor was cross-examined in relation to his visits to Ms Cooper's home since August 1989. He said that he was talking to the detectives on the telephone and they asked him whether he knew Ms Cooper (as she then was). The police, he said, asked him if he could find out where she was and "just ask her if she was prepared to make a statement". He believed the police officer was Detective Thomas. The effect of Mr Taylor's evidence at the criminal trial was that he was merely endeavouring to find out whether Ms Cooper was prepared to talk to the police and provide a statement. The version of events given by Mr Taylor at the trial, and in these proceedings, is clearly inconsistent with the version of events given by Ms Cooper.

394 Ms Cooper's evidence lacks credibility for a number of reasons. First, she gave no formal statement to the police. Any statement made by her was provided to Mr Jones, the solicitor for Ms Beckett at her trial. Ms Cooper maintains that Vernon Taylor "asked me if I would change my statement that I gave to Michael Jones". She further gave evidence that Mr Taylor represented to her that he had been sent by Mr Newell to see if "you would change your statement concerning James Morris". Ms Cooper stated, "I must admit I was quite surprised, how did he know about the statement?"

395 It is clear from the evidence that Ms Cooper's statement to Mr Jones was provided in private and on a confidential basis. The only people who were made aware of the fact that she had done so was Clarrie French, who drove her out to see Mr Jones, Ms Beckett herself and possibly a friend called Jill. She did not tell Jill what she had said in her statement but she told Ms Beckett. As far as Ms Cooper was concerned, it was no-one else's business that she had made such a statement and, she put it, "I didn't tell anyone else".

396 The State contended that none of this evidence or information suggested that Vernon Taylor, Adrian Newell, Detectives Thomas or Paget, or any other allegedly relevant person, was aware that Ms Cooper had made a statement to Mr Jones. In those circumstances, how could it be said that Mr Taylor, whether of his own volition or at the alleged request of any other person, was first, aware that such a statement had been provided, or secondly was aware of what it contained. Ms Cooper's version of events is illogical and unreliable, and contradicted by the evidence given by Mr Taylor in these proceedings.

397 The need for allegations to be put clearly to a witness as a matter of fairness was emphasised in *State of New South Wales v Hunt* [2014] NSWCA 47; 86 NSWLR 226. The most serious allegations are made against Detectives Thomas and Paget including fraud, perverting the course of justice, fabricating evidence and associated matters. The State contended that these matters should have been put squarely to Detective Paget in support of Ms Beckett's allegations relating to the existence of malice and the absence of reasonable and probable cause. Matters of significance that were not put, or that were not put clearly include the following:

- (1) That Detective Paget or Detective Thomas to his knowledge was aware of the rumours surrounding the allegations involving Mr Morris.
- (2) That Detective Paget or Detective Thomas to his knowledge ever used such information to put pressure on Mr Morris to provide a false statement.
- (3) That Detective Paget knew that the information provided by James Morris and Sandra Ridgeway in their statements was false.
- (4) That Detective Paget or Detective Thomas to his knowledge had ever intimidated, threatened or otherwise placed undue pressure on Mr Morris or Ms Ridgeway to give a fabricated version of events.

398 In summary the State contended that there is no evidence to support any inference that either Mr Morris or Ms Ridgeway was imposed upon by any person to come forward to the police. The information came to the police by an indirect route through Messrs Ferguson and Baggs, who then in turn advised Detective Thomas. The information provided by Mr Morris and Ms Ridgeway was affirmed in sworn evidence at committal, as well as during the course of the trial. In these circumstances, it could not be found that there was an absence of reasonable and probable cause or malice on the part of anyone, let alone the informant police officer who was acting on third party information provided to him. The court is precluded from making findings in favour of Ms Beckett on the allegations set out in her amended statement of claim in the absence of evidence and a substantial failure to comply with the fairness principles referred to in *Hunt*.

399 In my opinion a considerable amount of the parties' time and energy in approaching this charge, and the question of whether or not Detective Thomas lacked an honest belief in Ms Beckett's guilt or if he did not whether he formed his belief on reasonable grounds, has been misdirected. I mean by that remark to suggest that I do not consider the references to the roles allegedly or even apparently played by anyone other than Mr Morris and Ms Ridgeway to have been of any importance in the overall scheme of things. The starting point, and to my mind the end point, are both to be found located within the evidence given by these two witnesses.

400 The reason for what has occurred seems to me to be as follows. Mr Morris and Ms Ridgeway said what they said. Ms Beckett denied that she said what they allege and denied other matters such as that she ever owned or was wearing the clothes Mr Morris described her to be wearing on the night. At the point when Detective Thomas' position needs to be considered, Ms Beckett's response to the allegations was neither available to Detective Thomas nor relevant even if it were.

401 The evidentiary and forensic excursion into such things as the relationship, if any, between Detective Thomas or Detective Paget and Mr Morris or Ms

Ridgeway, the involvement of Lucy Cooper, the circumstances in which Lucy Cooper became involved, or the role or significance of any of Leanne Hooley, Georgina McNaughton, Marie Coleman, Marj or Joy McGregor is in reality only relevant to establishing or refuting the proposition that Mr Morris and his sister ever spoke to Ms Beckett on the night. They are in no way directed to the content of the statements given by Mr Morris and Ms Ridgeway.

402 Great play is made by the State of the fact that Ms Cooper's evidence was internally inconsistent, contradictory and unreliable. I am unable to understand the significance of that contention in the present context. Ms Cooper said at Ms Beckett's trial that both Mr Morris and Ms Ridgeway were present at the RSL club on the night in question. She also said that she did not see Ms Beckett speaking to Mr Morris on the night. Ms Cooper agreed with the prosecutor at the trial that she was not in Ms Beckett's company for the whole of the evening at the club as follows:

"Q. You aren't suggesting you were in Roseanne's company the whole of the evening, are you?

A. No, not the whole of the evening.

Q. I suggest there was one occasion when Roseanne spoke to James Morris on that particular Friday evening, 28 July; what do you say to that?

A. No, I wouldn't know.

Q. You just would not know, because you were not necessarily in her company for the whole evening?

A. I was quite close, keeping an eye on them. Did go and say 'Hello' to the people."

403 Ms Cooper confirmed in her evidence before me that both Mr Morris and Ms Ridgeway were present at the RSL club on the night in question. It seems that there is little room for doubt that it was so.

404 In my opinion the significance of Ms Cooper has been blown out of all proportion to her role in the events that occurred. At its highest for Ms Beckett in these proceedings is the fact that Ms Cooper said that she never saw Mr Morris talking to Ms Beckett. As a matter of simple logic, that does not mean that it did not happen when she was not observing them. At all events Ms

Cooper's evidence was never that Mr Morris did not on any occasion or at any time speak to Ms Beckett. It is in the circumstances difficult to follow precisely what changes she might have been induced to make to her evidence when visited by Mr Taylor, allegedly as an emissary for the police, that would have improved the Crown case against Ms Beckett at the trial. Even Mr Morris did not say that Ms Cooper was present or that she could have overheard what he said to Ms Beckett, which in the scheme of things was the only important material in the case against Ms Beckett at her trial.

405 It does not seem to me to be helpful in the slightest to know the precise make up and identity of the group of friends who were present on the night at the RSL club and who could have been called in these proceedings. It might have been different if there were a series of witnesses who were close enough to overhear what Mr Morris says was said to him by Ms Beckett. No suggestion of that type appears anywhere.

406 Ms Cooper was a witness with some extravagant characteristics. The content and delivery of her answers before me were slightly idiosyncratic. However, neither side has attempted to suggest that when she gave evidence at Ms Beckett's trial she was doing anything other than telling the truth. I am therefore not troubled by the fact that her recollections and evidence at the trial were accurate. She confirmed them before me in any event.

407 Detective Thomas was provided with two statements. I have set out what they said. It is clear from Detective Paget's evidence that he and Detective Thomas made no other or further inquiries and proceeded to charge Ms Beckett relying entirely upon what the statements contained. In summary, the evidence that they contained was as follows:

- (1) Ms Beckett asked Mr Morris to "do a job on [her] husband" for \$10,000 and "if you kill him, you'll get a bonus."
- (2) Mr Morris thought Ms Beckett was fair dinkum and he went along with her.

- (3) Ms Beckett went on to tell him that Mr Catt was sexually assaulting the children.
- (4) Ms Beckett repeated the part about getting a good job done on Mr Catt.
- (5) Mr Morris had never met Ms Beckett personally before that night.
- (6) Mr Morris believed that Ms Beckett wanted her husband killed. Mr Morris thought it was strange as he had never met Ms Beckett personally before that night.
- (7) Mr Morris recalled what Ms Beckett was wearing.
- (8) About a week later Mr Morris met Ms Beckett at the supermarket when she reiterated the offer and said that she wanted it done as soon as possible.
- (9) Mr Morris just went along with her again in disbelief.
- (10) Mr Morris believed that Ms Beckett wanted the job done.
- (11) Mr Morris became concerned and reported the matter to his employer.
- (12) Ms Ridgeway said that Ms Beckett came up to her brother at the RSL club and started to talk to him about how Mr Catt had been sexually assaulting the kids.
- (13) Ms Ridgeway did not think that Ms Beckett was serious when she asked her brother about doing a job on her husband.
- (14) Ms Ridgeway just thought that Ms Beckett was talking drunk.
- (15) After Ms Beckett left, Ms Ridgeway and Mr Morris talked about it and had a bit of a laugh.

(16) Neither Mr Morris nor Ms Ridgeway reported this incident to the police.

408 In my opinion, having regard to these matters, Detective Thomas could not have formed and therefore lacked an honest belief in Ms Beckett's guilt. The evidence at its highest indicated in terms that the only two witnesses to the allegation did not themselves think that Ms Beckett was serious. Ms Ridgeway thought Ms Beckett was drunk. Mr Morris had never even met Ms Beckett before. Ms Ridgeway introduced Ms Beckett to Mr Morris on that night. He went along with her in disbelief. Mr Morris and Ms Ridgeway had a bit of a laugh about it after Ms Beckett left. In her evidence at the trial Ms Ridgeway even went as far as to say that "we thought it was funny" and that she "didn't think she was serious." In response to a suggestion by Ms Beckett's counsel at her trial that she thought it was "quite hilarious" Ms Ridgeway responded, "Yes, not many people walks up and offers my brother money like that." Ms Ridgeway agreed that she had had about six middies of beer by that stage of the evening. Mr Morris had drunk five schooners.

409 At the time when these matters came to the notice of Detective Thomas, he was an experienced detective and investigator with the New South Wales police. I am prepared to assume that he had investigated a large number of allegations of criminal conduct in that time. I am however, unable to accept that in 1989 in this State of Australia Detective Thomas could have formed an honest belief in Ms Beckett's guilt of soliciting Mr Morris, a complete stranger to whom she had only been introduced that evening, to murder her husband in the course of a drunken conversation in a noisy RSL club in which neither Mr Morris nor his sister thought the offer was serious and said so, and which neither felt constrained to report to the police. It would surprise me to the point of astonishment if Detective Thomas had ever been presented with a more absurd complaint in the whole of his policing career to that point. It is difficult from my perspective to imagine a less credible or more unlikely set of facts upon which to base an honest belief in the guilt of anyone.

410 The most obvious and fundamental reason for this to my mind is to be found in the terms of the provision that creates the offence concerned. Section 26

of the *Crimes Act 1900* provided relevantly in July 1989, that “Whosoever...solicits, encourages, persuades, or endeavours, or proposes to, any person to commit...murder, shall be liable, to penal servitude for life.” It is inherent or implicit in the offence that the person charged intended to solicit and so forth, and was not merely speaking hollow words. Detective Thomas has in front of him material from the only two witnesses to the allegation that they did not think Ms Beckett was serious. I cannot accept that Detective Thomas could honestly have come to any different view on the basis of the material before him.

411 Even if I am wrong about that, I do not accept that any belief that Detective Thomas might in fact have formed honestly was, or could have been, formed on reasonable grounds. The so-called evidence before him was woefully inadequate to support the charge. Even if it amounted on its face to a case worthy of investigation, which I hasten to confirm was not the case, Detective Thomas conducted absolutely no further or other investigation of inquiry about the reported events. Fundamentally, Detective Thomas did not even speak to Mr Morris or Ms Ridgeway concerning their statements, a fact that is rendered all the more extraordinary having regard to their own expressed views that Ms Beckett could not have been serious. It is patently and in my view egregiously unreasonable, having regard to the serious consequences flowing from a conviction on this charge, that Detective Thomas, acting as one might have expected a sworn police officer to act, failed to interview Mr Morris and Ms Ridgeway or did not in some other fashion seek to verify the truth or substance of their evidence.

412 Ms Beckett understandably made much in submissions of the fact that neither Mr Morris nor Ms Ridgeway was called as a witness before me and that no explanation for their absence has been provided. Having regard to the incredible nature of the allegations concerning this Count, I would personally have been very pleased to have had an opportunity to see and hear these witnesses in person. It may be a fair inference in the circumstances of their unexplained absence that nothing that they could have said would have assisted the State's case. On the other hand, each witness gave evidence

and was cross-examined by experienced senior counsel at the trial, and the transcript of that evidence is before me. I wish to make it clear that the conclusions to which I have come are not based in any respect upon the availability or strength of the inference for which Ms Beckett contends.

413 It is timely to recall the remarks of Bell J in *AW & Ors v State of New South Wales* [2005] NSWSC 543 at [78] as follows:

"[78] The plaintiffs are required to prove that there was an absence of reasonable and probable cause in instituting the prosecution of the charges against them. It is necessary for the plaintiff in each case to prove that the officer who instigated the prosecution did not have a belief in his or her probable guilt such that upon general grounds of justice the charge against him or her was warranted or, if he did have that belief, that on the materials of which he was aware a person of ordinary prudence and judgment would not have so concluded: *Brain* per Dixon J at 382 citing his earlier judgment in *Sharp v Biggs* (1932) 48 CLR 81 at 106."

414 Implicit in her Honour's remarks, it seems to me, is that it remains important, if not essential, at all times not to lose sight of the real world and to approach matters with a healthy scepticism and the application of common sense. There is an important link between general grounds of justice and the decision or conclusion of the person of ordinary prudence and judgment. It was far from reasonable in my opinion for Detective Thomas blithely and in a perfunctory way simply to put in train a prosecution based on words that, whilst literally appearing to evidence the commission of an offence, were on the contrary, nothing less than utterly flimsy. When taken in their proper context and objectively considered, the statements from Mr Morris and Ms Ridgeway were either glaringly improbable on their face, or at the very least, warranted significant further investigation.

415 In my opinion Ms Beckett has established both that Detective Thomas did not possess an honest belief in her guilt on this charge and, even if he did, that he did not form that belief on reasonable grounds.

Count 7 – the solicit to murder charge: Vernon Taylor

416 Detective Thomas had the following statements before him on this Count.

417 Mr Taylor gave a statement to Detective Thomas on 20 August 1989 in which he alleges that about four weeks beforehand he was at Cattys Body Repairs, talking with Ms Beckett in the office, when she solicited him to kill her husband and offered to pay him \$20,000 to do so. He said that he was at the shop the following week when the offer was repeated. Mr Taylor said that he believed she was serious.

418 Mr Taylor said that he was a member of the Assembly of God church where he met Ms Beckett. Sometime after he learned that she and her husband were "having troubles", Mr Taylor used to go around to Cattys Body Repairs as he was "initially interested in photographing [Ms Beckett's] Corvette. He said that as he "learnt more and more about the rift between the two of them" he started going around more regularly. Mr Taylor's statement then contained the following paragraphs:

"8. On every occasion I went there, Roseanne talked about nothing else what a bastard Barry was and what he has been. She made so many accusations that I became very intrigued and even though I thought to myself he couldn't do all this at the same time I thought he must have because she was so determined and convincing. In the end, it became so bizarre, it was hard to believe any of it. It got to a stage where I believed she was overdoing it.

9. On one occasion when I was there, it would have been in the last six months, but I don't remember exactly when, I remember having a conversation with Roseanne about 'guns'. She said words to the effect 'do you have guns'. I said, 'yes'. She said, 'Are you any good with them'. I said, 'yes, I suppose'. 'I've used them all my life'. There was other conversation that time, but that's what I remember about the guns.

10. About four weeks ago, I was over at Catty's, talking with Roseanne in the office. Again, she was talking about what a bastard Barry was, namely hassling the kids, hiding in the garden, tapping on the windows, threatening her and the kids, just the usual things she spoke of when she said words to the effect, 'will you do a job for me'. I said, 'what is that.' She said, 'I want you to bump him off. If he's out of the road, it's all finished, there'll be no more problems.' (I thought she was serious and I went along with it just to see how far she would go.) I said, 'I'll have to think about it'. She said, 'It'll be worth twenty thousand to you.' I said, 'I'd like to have the money'.

11. She said, 'The offer's there. Do you know anybody who would do it. You might be able to arrange somebody to do it and still make money.' I said, 'I'll have to find out about it'. There was other talk about the same things concerning Barry and then I left.

12. The next week, I was around at Catty's again talking to Roseanne. Speaking again about the things involving Barry. It would have been about two to three weeks ago and it would or it gave me the impression it was just after a court case because she was talking about how much money it was costing her at court and that she could not understand how or where Barry could get his money from when she said words to the effect 'Have you thought about bumping him off for me'. 'I've got to get him out of the way'. I said, 'I don't know'. She said, 'I'll pay you. You can have the twenty thousand. I've got to get him out of the way. He comes around hassling the kids, making threats, it's just going to go on and on'. I said, 'I'll see what I can do'.

13. I left it at that and then I left. I believe she was serious and I did not want to talk about it anymore. I was very concerned about it and I wanted to go to the Police but I didn't know who I could go to because I am aware that Roseanne rather, Roseanne claims to have control of some of the Police at Taree as she has told me a number of things about them. It worried me to the extent that when I ran into a friend of mine, Andy Connolly, I told him the whole story. As a result of that I am here today.

14. By this stage, the whole thing seemed to be unreal to me but I was intrigued and concerned for everybody involved. When in town, I continued to call in and see how things were going. Last Wednesday, I called around there before I went to gym. I had a short talk to her and she said 'can you come back after gym'. (How it came about was she was saying that she'd have to come to gym with me to get fit and I asked her 'why don't you come tonight'. She said she couldn't so I suggested that we take the kids and we all go for a run in the park.)

15. When I got back after gym, about 6.45pm, I went to the house at 1 Cornwall Street and was invited in. Roseanne was there dressed in her 'nightie' she said she was too tired to go for a run. Barry's two girls and his oldest boy were at home and we were all in the lounge room together. Actually, I was playing 'norts (sic) and crosses' with Sharon, Roseanne was there with her 'nightie' on and make-up on, when she said to me, 'Do you know where I can get a hand gun'. I said, 'yes'. (I thought to myself where will this conversation take me and went along with her.) She said, 'I want one that fits into my handbag'. I said, 'What do you want. Do you want one that'll do the job in one go or one that'll wing him'. She said, 'I don't want to wing him, I want to blow him away. If he comes to the house or if he comes near me, I'll blow him away'.

16. I've forgotten to tell you, but after the second conversation about me blowing him away for her and this night (above) she did say to me 'Have you talked to anybody about what we've talked about.' (I believed those words related to those two conversations about blowing Barry away) and I said, 'No. I don't want to get involved. I haven't even told my wife about it. I don't want to get involved'."

419 Mr Taylor gave another statement to the police dated 18 July 1991. That statement was not in terms concerned with the allegation that supports this Count.

420 Finally, Mr Taylor gave a statement to the police dated 2 December 1989. That statement is relevantly as follows:

"2. On two occasions this year Roseanne Catt approached me and asked me to kill her husband Barry Catt. I wanted to go to someone at the time about Roseanne Catt wanting to kill her husband. On three or four occasions Roseanne Catt asked me to spend the weekend with her in Port Macquarie, and on one occasion she even asked me to take out Sharon Catt, who is Barry Catt's 14 year old daughter.

3. From what Roseanne had told me about her knowledge and association with police in Taree, I did not know who to go to. For two months I wanted to see someone, but I didn't know who to go to.

4. About 18 August 1989 I spoke to Andy Connolly who used to go to the same church as I did, and he wanted to know what I knew about Roseanne Catt wanting to kill her husband. He thought that I was involved with them. I told him what I knew, and that I was scared and did not know who to go to.

5. On Saturday 19 August 1989, Adrian Newell spoke to me about the matter, and then on Sunday morning 20 August 1989, Detective Sergeant Thomas rang me and then later came to my home.

6. I told Detective Thomas everything about Roseanne asking me to kill Barry Catt, and I made a statement to him which I signed that day. On 2 December 1989 I identified to you a four page statement I made to Detective Sergeant Thomas. I made that statement freely and voluntarily. No inducement, threat, promise, or intimidation was held out to me to make that statement. The statement is true and correct in its contents, and I fully adhere to what is contained in that statement.

7. At no time have I been threatened, induced, intimidated, in any manner or form to make any statement or to talk to any police officer in relation to any inquiry being conducted by police, concerning either Roseanne or Barry Catt."

Andrew Bede Connolly

421 Mr Connolly gave a statement to the police dated 20 August 1989. That statement was in the following relevant terms:

"3. Last Tuesday, I think it was, I was in Manning Street, Taree, I met with a person I know as Vern Taylor. I have known him for about four years. We were just talking in general ... During the time I was with him, Vern mentioned the troubles Barry Catt had been having and we talked about them for a while.

4. During the conversation, Vern told me about a conversation he had allegedly had with Roseanne Catt concerning a proposal she put to him for the payment of money.

5. As the result of that conversation, and because Vern had seemed so concerned about it, I went to Barry Catt and reiterated the conversation to him.

6. Vern also told me that he thought about reporting what he had told me to the Taree police, but because of certain things Roseanne told him, he did not know who he could approach there.

7. (Vern basically told me that Roseanne had offered him twenty thousand dollars to kill Barry Catt and that is what I told Barry Catt).”

Consideration – the solicit to murder charge: Vernon Taylor

422 In a manner not dissimilar to the approach taken by her with respect to the James Morris allegation, Ms Beckett has attempted in a complicated and convoluted way to establish that Detective Thomas was actively and knowingly concerned in a conspiracy to fit her up with a charge of soliciting Mr Taylor to murder her husband. Ms Beckett’s approach was to establish that Detective Thomas could not have formed an honest belief in her guilt on this charge because he was actively and knowingly concerned in the fabrication of material to establish or support it.

423 In contrast to the Morris allegation, however, where Mr Morris did not give evidence, Mr Taylor did appear and was exposed to the forensic process at some length in open court. His evidence is therefore a convenient starting point in considering this part of the case.

424 Mr Taylor effectively confirmed everything that he had said in previous statements and at Ms Beckett’s trial. He was cross-examined at some length about a visit that he paid to Lucy Parkinson, on one view at the request of Detectives Thomas and Paget, to ask her about her evidence in the Morris case. Even though a great deal of time was spent in relation to that visit during the cross-examination, and even though it was arguably relevant to Detective Thomas’ belief concerning Ms Beckett’s guilt on that charge, it is not particularly helpful in the resolution of the current issue and I do not propose further to deal with or refer to it.

425 In his evidence before me, Mr Taylor was asked about why he did not take Ms Beckett's requests of him to commit murder to the police. The following passage of evidence reveals what he said about that:

“Q. If you did know, it would've been a simple matter for you to go and see Mr Catt and tell him, wouldn't it?

A. (No verbal reply)

Q. 'Your wife wants you knocked off, Barry. She's just offered me \$20,000.' It would have been a pretty simple thing to have said to him, wouldn't it?

A. I didn't think about it.

Q. It never crossed your mind.

HIS HONOUR: Look, please let him answer. It's a good question, I'd like the answer.

WITNESS: Well, I don't know why I didn't.

BLACKET: Can I suggest to you, sir, that the reason you didn't is because the offer was never made.

A. It was made.

Q. And sir, it's the sort of thing that you would immediately go and tell a life long friend about.

A. Well, why did I go to the police? Why did I want to go to the police? She made that offer.

Q. Sir, you didn't go to the police. You didn't go to the police until you were seen by Mr Newell.

A. I was wanting to go to the police before that, but I knew that she had connections there.

Q. How did you know she had connections there, sir?

A. Because she told me.

Q. That she knew police officers. You knew that.

A. Hey?

...

Q. The fact that somebody knows police officers is a matter of little moment.

A. She told me that they would do anything for her.

Q. Which police officers would do anything for her?

A. I don't know. That's why I didn't go to the Taree police, because I didn't know who I could trust up there.

Q. Were you scared of Mr Catt too?

A. No. I'm not scared of no one. I'm not scared of you neither.

Q. Was there any reason you couldn't have gone to Mr Catt and told him?

A. I didn't think about that.”

426 Even though Mr Taylor protested that he was not scared of anyone, counsel reminded him of some other evidence he had given at Ms Beckett's trial as follows:

"Q. Remember giving that evidence?

A. Yeah.

Q. Page 610.

'Q. Roseanne was involved?

A. Yes.

Q. And Barry Catt the person who you had known all your life was involved, wasn't he?

A. Yes.

Q. Well, in that interval, in that period of time, did you ever go and speak to Barry Catt?

A. No.

Q. Why not?

A. I was afraid to.'

Do you remember giving that evidence?

A. Yeah.

Q. What were you afraid of?

A. I'm afraid of Roseanne really.

Q. No. Why you didn't speak to Barry. And you were afraid to. Why were you afraid to speak to Barry?

A. I don't know."

427 Mr Taylor's evidence later included this:

"Q. You say you were scared to go to Taree Police. Why didn't you go to another police station instead?

A. (No verbal reply)

Q. You live at Wingham. There's a police station there.

A. But it's not manned.

Q. In 1989, sir, that's simply not true.

A. Well, I don't know.

Q. You didn't go and look, did you?

A. No.

Q. You could have.

A. If I thought about it, yeah.

Q. You could've gone to Kempsey.

A. Yeah.

Q. There's a lot of police stations apart from Taree, aren't there? You could've gone to Foster, couldn't you?

A. Mm.

Q. Could've gone to Gloucester.

HIS HONOUR: Well, you could ring Crime Stoppers.

BLACKET: Yes.

HIS HONOUR: The burden of the - please go on.

BLACKET: If it was playing so heavily on your mind, surely you would have gone and done something, rather than waiting two months or a month.

A. I don't know if it was two months or a month or what it was.

Q. You don't know now, but in 1989 you did, didn't you?

A. Could've done.

Q. If you were going to Crowdy Head you could have gone to a police station up that way, couldn't you?

A. There's no police station out that way.

HIS HONOUR: I think the burden of what you're being asked though, Mr Taylor, I mean you've been asked more than once but you're still being asked it; why, in respect of something that was such a serious allegation, didn't you just go straight to the police or almost straight to the police with it, if not in Taree then through some anonymous complaint or report? I think that's what you're being asked.

A. Well, I don't know why I didn't. The job I had was pretty full on, doing 12 hour shifts a day and then rotating shifts. Which meant - like - you did a day - a week of day shifts and then a week of afternoon shifts and we were working six days a week as it was. So you don't get much time to do anything. And if you're not working, you're trying to sleep.

Q. I think it's being suggested to you that you were being armed with information that could be important to whether or not somebody was seriously injured or killed.

A. Well, at the time, I didn't know there was anyone else involved: it was just me, and that was it. I didn't know if there was any other people out there that she offered money to or not. So

Q. Just out of interest

A. I knew I wasn't going to do it.

Q. By asking you to do these things, it's obvious that, on your account, Mrs Catt exposed herself to the prospect that it might be reported to the police by you. You understand that.

A. Yes.

Q. And, in due course, we know that that's what happened, and she was charged and convicted. You know that.

A. Yes.

Q. You can't say what was in her mind, but from anything that you know yourself, are you able to say why it was that she confided in you about something that was so dangerous to her if it escaped?

A. Several times she used to stop in mid-conversation, and it didn't matter what the conversation was about - and she'd stop and she'd look at me, and she'd just say, 'You're a dark horse.' And I don't know what she meant by it, or didn't know what she meant by that, but I sort of got a bit of an idea. But, well

Q. I don't know the answer, but I'm just intrigued

A. No, well, I don't know what

Q. Hold on. I'm just intrigued to know if you have any idea why she would confide in you about something that was so potentially dangerous to her.

A. I don't know neither, but that happens to me all the time. I have strangers come up to me and spill their guts to me. They tell me their whole life story, and I don't even know them. I've had that happen time and time again. So I don't know what it is. I just don't know what it is, but that's how it happens. It's not uncommon for me."

428 Penultimately in this respect Mr Taylor's evidence included this:

"Q. You're a man who told the Court yesterday you're not afraid of anyone that you went under some strange act of compulsion to her place. Is that right, even though you didn't want to go?

SAIDI: I object to the 'strange act of compulsion' your Honour.

HIS HONOUR: I think it's fair enough. The question is capable of being understood.

BLACKET: Is that right?

A. This was after I reneged on accepting the \$20,000 to shoot Barry.

Q. Yes.

A. And she was threatening me with my children, that she'd get harm done to my children. And she rang me, she threatened me that if I didn't go and see her, she'd do something.

Q. Sir, that's just rubbish.

A. (No verbal reply)

HIS HONOUR: Did you not find it strange that a woman you hardly knew would be threatening your children?

A. She knew that that was the only way she could get through to me.

BLACKET: You didn't put that in your statement, did you? You didn't tell the police anything about that?

A. (No verbal reply)

Q. Isn't that right?

A. Don't know."

429 Finally Mr Taylor's evidence was as follows:

"Q. Mr Taylor, you are unable to offer any explanation as to - any credible explanation, I suggest to you - why you would not have told Barry Catt, immediately after one of - each of these conversations, of the approaches that you say my client made to you. Isn't that right?

A. I don't know what I was thinking at the time. Maybe I didn't want to scare him.

Q. Well, is that the best you can do, sir?

HIS HONOUR: Well, I reject that question. You are entitled to explore it, but I think that question is inapt.

BLACKET: You said you hadn't refreshed your recollection yesterday, sir, because your bag was on the plane in the luggage. Is that right?

A. Yes. I haven't looked at any of it. I had a brief look at it last weekend and that was it.

Q. And that enabled you to give evidence yesterday. Is that right? Because you refreshed your recollection.

A. The evidence I want to give is what - the truth is, it happened, we had two - at least two conversations of guns and on two occasions she asked me to shoot Barry, she offered me \$20,000 to do it, and after that she asked me about getting a handgun to do it herself, and that's the truth, and that's the truth and that's all I'm interested in."

430 Mr Taylor said that he had known Barry Catt since he was a teenager. In other evidence he agreed that he had known him all his life. They were acquaintances. He knew where Mr Catt lived. Even so, Mr Taylor did not tell Mr Catt that his wife had allegedly asked him to murder him for a fee.

431 Mr Taylor did not take his allegations to the police until he was contacted by Adrian Newell. At Ms Beckett's trial Mr Taylor said that Mr Newell was present on the Saturday when he was visited by Detectives Thomas and Paget and gave his statement inculcating Ms Beckett. In his evidence before me he said that he could not remember Mr Newell being present even though the transcript of his evidence from the trial was put to him in detail. Mr Taylor's explanation for not reporting all of this to the police was that Ms

Beckett had allegedly told him that she had control of the Taree police. Even if that were true, Ms Beckett submitted that it was implausible that Mr Taylor did not reveal the murder plot to Mr Catt himself, particularly considering their longstanding friendship, and that the failure remains unexplained. Mr Taylor also agreed that at no stage did he try to dissuade Ms Beckett from pursuing her plan to have her husband killed.

432 Ms Beckett's case on this Count is that Vernon Taylor had been a long-time friend of Mr Catt, having known him since childhood. He visited him regularly and was aware of the dispute between Mr Catt and his wife. On 20 August 1989 Detectives Thomas and Paget took Mr Taylor to Mr Newell's house, with a typewriter for the purposes of preparing a statement. Mr Newell was also present. Detectives Thomas and Paget, Mr Newell and/or Mr Taylor drafted and typed a statement which contained false allegations of approaches allegedly made to Mr Taylor by Ms Beckett to solicit him to murder Mr Catt. Detectives Thomas and Paget knew that Mr Taylor's statement was false.

433 Further, on 20 August 1989 Detective Thomas approached Andrew Connolly and took him to Mr Newell's house. Detectives Thomas and/or Paget then drafted and typed a statement that contained false allegations about an alleged conversation in which Mr Taylor told Mr Connolly of the alleged proposal put to him by Ms Beckett. Detective Thomas then directed or requested Mr Taylor to visit Ms Cooper in order to elicit information from her and place pressure on her to confirm that an approach had been made to Mr Taylor by Ms Beckett similar to her approach to Mr Morris at the club on 28 July 1989.

434 Ms Beckett's allegations suggest serious criminal conduct by Detectives Thomas and Paget, as well as Messrs Newell, Taylor and Connolly amounting to a conspiracy to pervert the course of justice, perjury, as well as other possible serious criminal offences. The State complains that there is no evidence to support these allegations. Furthermore, the State contends that Ms Beckett has failed, as a matter of procedural fairness, properly to put these serious allegations to Detective Paget or Mr Taylor so as to provide an

opportunity of rebutting them: *Kuhl v Zurich Financial Services Australia Limited* [2011] HCA 11, 243 CLR 361 at [67]; *Hunt*. It is not in these circumstances possible to make adverse findings against either man, or to find facts supportive of this aspect of Ms Beckett's case.

435 Mr Taylor was a rutile miner and semi-professional kangaroo shooter who began associating with Ms Beckett in late 1988 or early 1989 and began visiting her at the car yard to photograph her Chevrolet Corvette. He was also a member of the Assembly of God Church in Taree. He became aware of a rift in her marriage to Mr Catt and started to visit her at Cornwall Street on two or three afternoons a week. On every occasion that he did so, Ms Beckett would talk about nothing else but what a bastard her husband was. On one occasion she asked Mr Taylor whether or not he had any guns. About four weeks prior to 20 August 1989, she asked him whether he would "do a job" for her. She then indicated that she wished him to "bump him off", referring to Mr Catt. It was indicated that it would be worth \$20,000 to him if he were to take up the offer. He was also asked whether he might be able to arrange somebody else to do the job. The following week, after that conversation, Mr Taylor visited Ms Beckett again, and during the course of that conversation she again indicated that she was prepared to pay him \$20,000 to get her husband "out of the way". After having been propositioned by her a couple of times, Mr Taylor eventually told her that he was not interested in making money that way. She told him that he was not to tell anyone about her proposition, and mentioned that if he did "tell anyone [she] would find out about it, or if he went to the police she would know because she had friends there who would do anything for her". Mr Taylor's statement was dated prior to her arrest and charging. Detective Thomas witnessed it.

436 Mr Taylor gave evidence at the committal and adhered to his statement.

437 Andrew Connolly also gave a statement to Detective Thomas on 20 August 1989. He there refers to the previous Tuesday when he met Mr Taylor in Manning Street, Taree. He had known Mr Taylor for about four years beforehand. Whilst talking in general, and "lining up a game of golf together",

Mr Taylor mentioned to him the troubles that Mr Catt had been having. During that conversation, Mr Taylor mentioned his conversation with Ms Beckett about her husband. As a result, in his own statement Mr Connolly refers to having gone to see Mr Catt and advising him of the terms of his conversation with Mr Taylor. Mr Taylor also advised Mr Connolly that he had thought of reporting the matter to the Taree police, but because of things Ms Beckett had told him, he did not know who he could approach there. Mr Taylor told Mr Connolly that Ms Beckett had offered him \$20,000 to kill her husband. It was that information that Mr Connolly related to Mr Catt, according to his police statement. (At the Davidson Inquiry, Mr Connolly stated that he had made an error in his statement and that in fact he had told the solicitor Barry Frakes about the conversation, as well as having seen Mr Catt. It was after he related that conversation to Mr Frakes that Detective Thomas came to see him).

438 After her arrest, and in the interview commencing at 12.07 pm, Ms Beckett was asked whether she knew Mr Taylor:

"Q6 Do you know a man named Vern Taylor?
A. No."

439 Notwithstanding that denial, at her trial Ms Beckett alleged that Mr Taylor was "sweet on her" and that was why he visited her workshop so often. Her case at her criminal trial was that he was motivated to lie about the alleged conversations because he was in fact a spurned lover. She maintained in her evidence at her trial that at no stage did she have a conversation with Mr Taylor, let alone the conversation alleged. She would only say hello to him in the driveway whenever he came, as she did with all people.

440 Ms Beckett was also cross-examined by counsel for Mr Catt at his trial, regarding the Vernon Taylor allegations. She maintained that she did not know Mr Taylor, and denied having many conversations with him.

441 Detective Thomas had the above information. Ms Beckett has to establish an absence of reasonable and probable cause. In the way that Ms Beckett puts

her case in relation to this Court, she must prove by clear and compelling evidence that there was a conspiracy to fabricate evidence. Prior to giving his police statement, Mr Taylor did not know Detective Thomas, and Mr Connolly had told Mr Frakes about the critical conversation before he spoke to Detective Thomas.

442 Mr Taylor was re-interviewed by Detective Chief Inspector Murray on 2 December 1989. He confirmed what he told Detective Thomas and that the statement was made freely and voluntarily. Mr Taylor also described how he came to provide a statement to Detective Thomas. He said that, on about 18 August 1989, he spoke to Mr Connolly who used to attend his church. The following day Mr Newell spoke to him about the matter, and the day after that Detective Thomas came to his home.

443 In his evidence at trial, Mr Taylor confirmed that he had never met Mr Newell prior to 19 August 1989. In his evidence in these proceedings, Mr Taylor again confirmed that he did not know Mr Newell prior to 20 August 1989. The substance of his evidence in these proceedings was that, even after he had provided his statement, he had very little contact with Detectives Thomas or Paget before the committal, and before he gave evidence in the trial. He confirmed that the information provided by him to the investigating police officers was true and correct, and was given freely and voluntarily. He had virtually no contact with Detectives Thomas or Paget prior to giving evidence at the trial. Further, during his evidence in these proceedings, Mr Taylor made it clear that he did not know James Morris or close members of his family.

444 Significantly, when he was at her house Mr Taylor was solicited by Ms Beckett. His evidence was as follows:

"Q. Mr Taylor, the first time you gave evidence about this matter was at Barry Catt's trial, and you suggested that the first conversation you had, where an offer of \$20,000 was made, was on 6 August, and then about a week later, the conversation which you said on the 6th that you regarded as a joke, by the second occasion, a week or so later, you satisfied yourself that Roseanne was deadly serious. Is that right?

A. Yes.”

445 The State reiterated that I could not make a finding favourable to Ms Beckett on this Count for want of evidence. It was not put to Mr Taylor in these proceedings that his statement was false to his knowledge or that it contained allegations against Ms Beckett that were concocted by Detectives Thomas and/or Paget and/or Messrs Newell and Catt or by him. It was never suggested to him that he was part of a large-scale conspiracy to pervert the course of justice, or to fabricate evidence against Ms Beckett. It was never put to him in clear terms that he was motivated to make a false allegation against her, or that he was motivated to assist in the making of false allegations by Mr Morris as part of this overall conspiracy. It was never suggested to him why he might have been so motivated.

446 The closest the cross-examiner came to confronting Mr Taylor with the allegation that he conspired with, or was overborne by, Detectives Thomas or Paget and/or Mr Newell to give false evidence detrimental to Ms Beckett was that he had been sent by them to see Ms Cooper and reported back about what had occurred. It was put to him that he was never solicited by Ms Beckett to kill her husband. It was put to him, and he denied, that Mr Newell was present when the police interviewed him. He also denied that he had ever been threatened by the police or that he was aligned with Mr Catt. On day 27 of the hearing before me, the attack upon Mr Taylor became not that he conspired with Detective Thomas and others but that he was making evidence up as he went along and could not be believed.

447 The State submitted that the evidence available to Detective Thomas and the prosecution, with respect to this Count at the time of charge and at all times thereafter, was overwhelming. There is no evidence that Mr Taylor or Mr Connolly provided a fabricated or falsified version of events in order to get at Ms Beckett. There is no evidence that Detective Thomas was involved in any falsification of the allegations, or that if the instigators of the false allegations were Messrs Taylor and Connolly, that he was aware of this. The first time

that Mr Taylor spoke to Detective Thomas was the day he came to take his statement.

448 Ms Beckett insisted that, taken at face value, an honest and reasonable police officer would have treated what Mr Taylor told him with scepticism. At the very least, it is inherently implausible that Ms Beckett, or anyone in her position, would approach her husband's long-time associate or friend to solicit him to murder him. Further, Mr Taylor's explanation for not reporting the proposals at the time they were allegedly made was incredible. Moreover, the fact that Mr Taylor only came to the attention of the police through the further involvement of Mr Newell, rather than by any direct approach, suggests collusion.

449 Mr Taylor's statement was taken on 20 August 1989 by Detectives Thomas and Paget at Mr Taylor's home but in the presence of Mr Newell. There is no valid explanation for Mr Newell's presence at the time, save for the fact that he had allegedly approached Mr Taylor the previous day about making a statement. It appears that thereafter Detectives Thomas and Paget simply relied on Mr Taylor's statement as the basis for the charge.

450 In these proceedings, Detective Paget accepted that the normal way that police obtained evidence of an alleged solicitation to murder would be to place a wiretap on the person to whom the proposal was made, arrange a meeting and then record the transaction. That was not done in this case or with respect to the Morris charge.

451 Detective Paget could not recall if any steps were taken, independently of anything that flowed directly from Mr Taylor, to verify what Mr Taylor had told the detectives as part of their investigation. He said that he did not think anything else was done. There is no evidence that either detective sought legal advice despite the seriousness of the charge.

452 These detectives then inveigled Mr Taylor to become involved in other aspects of the prosecution against Ms Beckett. For example, they

approached Ms Parkinson about her evidence. The involvement of a witness whom the detectives must have known would become a critical figure in the prosecution case against Ms Beckett was unexplained. In these proceedings, Detective Paget could not explain why they involved Mr Taylor in the way that they did. Despite the alleged solicitation, Mr Taylor continued to attend at Ms Beckett's premises. In the circumstances, this is more than just an unorthodox police practice. The strong inference is that Detectives Thomas and Paget exploited Mr Taylor, who was obviously biased in favour of Mr Catt and against Ms Beckett.

453 In order to justify his role, Mr Taylor attempted to portray Ms Beckett as a dangerous woman. He asserted that he was afraid of her. At committal he said that he believed that Ms Beckett was "trying to get something on him." In these proceedings, he suggested that she had been threatening his family, a new claim which is probably fictional. Mr Taylor went as far as to say that Ms Beckett had phoned him in 1989 at his gym on his mobile phone and threatened him.

454 Ms Beckett has submitted that these assertions are hardly believable in the face of Mr Taylor's evidence at the trial that he had been somewhat attracted to her and that he had continued to go around to her house right up to "a few weeks before" he gave his statement. According to Ms Beckett, the obvious explanation is that the allegation was a fabrication. The first time Mr Taylor raised it with anyone was when he ran into his friend Andy Connolly on or about 18 August 1989 and told him something about the matter. Mr Connolly then allegedly passed the information on to Mr Newell, who then spoke of it to Detective Thomas.

455 In my view Ms Beckett has no acceptable response to the State's submissions. The principles discussed by Barrett JA in *Hunt* at [32] to [45] are important. Even though Ms Beckett's case was conducted in respect of this Count upon the basis that Detective Thomas could be shown to have in effect fabricated evidence or conspired to do so in consultation or with the

assistance and connivance of others, including Mr Taylor, I am not satisfied that there is evidence before me capable of establishing it.

456 I have set out what I consider to be the evidence of Mr Taylor from which in my view Ms Beckett has the strongest basis to argue that Mr Taylor's allegations were false. In summary, that is the suggestion that his failure to go to the police in Taree or anywhere with such serious allegations is inimical to the acceptance of the truth of the allegations without more. Related to this is the notion that a fit kangaroo shooter who was familiar with guns would not be scared of or intimidated by Ms Beckett, and in that sense her alleged threats of harm to him or his children must be false. Moreover, Mr Taylor was a long time acquaintance of Mr Catt, and Mr Taylor's failure to warn or advise him about what Ms Beckett had asked him to do seriously undermines the credibility of his allegations.

457 As was conceded by senior counsel for Ms Beckett in submissions, there is no direct evidence anywhere of what Detective Thomas believed. That does not mean that his beliefs cannot otherwise be established by appropriate evidence. In the case of the Morris allegations, I have concluded that the state of the evidence was such that Detective Thomas did not possess an honest belief in Ms Beckett's guilt. The evidence in respect of this Count is different. Mr Taylor did think Ms Beckett was serious. Mr Taylor was not drunk when the alleged offer was made. Mr Taylor also gave evidence before me and stuck to his story. Having regard to the heavy burden facing Ms Beckett in the proof of the absence of Detective Thomas' honest belief in her guilt on this charge, I cannot be satisfied that she has discharged it.

458 The question remains as to whether Detective Thomas formed his belief on reasonable grounds. In this respect Ms Beckett enumerated a series of reasons why, objectively, Detectives Thomas and Paget could not have held a reasonable belief in her guilt. First, they knew that Mr Taylor was Mr Catt's life long friend and hardly likely to be a person who would be willing to kill him for money. Secondly, there were no statements taken from supporting or corroborating witnesses despite the conversation having taken place in front

of Sharon Catt. Thirdly, there was no evidence of any contemporaneous report or account by Mr Taylor to another witness of what would have been a shocking proposal. Fourthly, there was on one view no satisfactory explanation as to why Mr Taylor delayed so long in reporting the matter. Fifthly, there was no evidence that Detectives Thomas or Paget conducted any financial investigation into Ms Beckett's affairs to support the prospect that she would have had \$20,000 to pay Mr Taylor in any event. Finally, the suggestion that Ms Beckett was threatening Mr Taylor was highly unlikely if not fanciful.

459 Furthermore, these matters must then be weighed in the context that Mr Taylor came forward through Mr Newell, a man whose bias in favour of Mr Catt and against his wife meant that there was a risk that any evidence originating through him was likely to be similarly infected. Mr Newell seemed to obtain the information from a man named Andy Connolly. Mr Taylor agreed during his evidence in the Davidson Inquiry that he had told Inspector Murray that on about 18 August 1989 he spoke to Mr Connolly who had had asked him "what he knew about Roseanne Catt wanting to kill her husband". This is different to the version he gave at Mr Catt's trial, where he said that he was asked by Connolly "what my association was with Roseanne because he said that, you know, he knows I was hanging around there a lot and he is a friend of mine so I told him the whole story". The differing explanations are significant because they imply an entirely different account of what occurred in the street between Mr Taylor and Mr Connolly. Such details would not be easily forgotten.

460 The State submitted in this respect that Ms Beckett has not proved her case with respect to this Count having regard to the remarks of her Honour Bell J in *AW & Ors v State of New South Wales* at [78] and of Gavan Duffy CJ and Starke J in *Sharp v Biggs* [1932] HCA 54; 48 CLR 81 at 90:

"The question is not whether the prosecution was wise or foolish, well considered or hasty, but whether the facts within the knowledge of a party himself or deduced by him from credible information afforded a reasonable and probable ground of belief that the person accused of the offence was

guilty. One cannot conclude that a belief is without reasonable grounds, without considering the facts on which it is founded."

461 Mr Taylor was in my estimation a somewhat taciturn, slightly defensive person of little obvious humour. He came across as rather blunt and gruff. Ms Beckett sought to characterise him as "a strange man". It was submitted on her behalf that his evidence in these proceedings was given in a manner that appeared evasive and irritated. Whatever other motivations Detective Thomas may have had for embracing the truth of Mr Taylor's account to him, he would, and a reasonable investigator in his position would, have been entitled to believe it. In short, Mr Taylor's allegations were credible. Despite Ms Beckett's apparent denial that she knew Mr Taylor, it is clear that she did. The inherent unlikelihood that Ms Beckett would have asked a complete stranger such as Mr Morris to kill her husband does not afflict the equation in the case of Mr Taylor. If Mr Taylor had a motive to harm Ms Beckett as a spurned lover or for any other reason, it was not comprehensively revealed before me and Mr Taylor's allegations have not been shown to flow from ill-will towards her.

462 In short, I am not satisfied that any honest belief that Detective Thomas formed about Ms Beckett's guilt on this charge was not formed on reasonable grounds.

Count 9 – the pistol charge

463 Detective Thomas had the following statements before him on this Count.

Barry Thomas O'Brien

464 Mr O'Brien's first statement is dated 20 August 1989. He worked for Mr Catt as a panel beater. His statement is very detailed and gives a familiar history of the tortured and violent relationship between Mr Catt and Ms Beckett. His statement is replete with details of incidents and events in which arguments and fights took place between them. Mr O'Brien also spoke in detail about access to the refrigerator in the office and statements by Ms Beckett that she

was going to have Mr Catt locked up or put away. Mr O'Brien also alleged that Ms Beckett threatened him as well.

465 Detective Thomas asked Mr O'Brien whether he had ever had a conversation with Ms Beckett concerning guns. He replied that she had told him she owned a Derringer and a semi-automatic rifle. He also said, "Barry told me that he had seen them."

466 Mr O'Brien's 1 November 1989 statement is similarly detailed and contains reference to matters going beyond the pistol charge. Paragraph 17 says this:

"17 I can also recall on one occasion perhaps mid-term during my employment with Barry. I was having morning tea in the morning tea room at the panel shop, it's in a part of the office. Barry and Roseanne were also present with me at the time. We were talking about shooting rabbits. I recall Roseanne saying, 'I'm a good shot, I've got an automatic twenty two.' We further discussed firearms and Roseanne said, 'I've got a Derringer.' There was other discussion about the Derringer that she had but I'm not sure if it was Roseanne or Barry talking. Barry certainly took part in the discussion about the Derringer."

Julie Benjamin-Goldie

467 Ms Benjamin-Goldie provided a statement dated 18 September 1989. She had an altercation with Ms Beckett at the workshop concerning repairs to her car with which she was not satisfied. According to her, at the conclusion of the transaction, Ms Beckett said to her, "Don't set foot back on my property." Ms Benjamin-Goldie replied, "You can get fucked. If the rust comes back in the next few months I'll be back in." Ms Beckett then said, "If you set foot back on my property I'll shoot you where you stand."

468 Ms Benjamin-Goldie did not refer to a pistol or anything related to it.

Wayne Thomas Parkes

469 Mr Parkes was a Detective Senior Constable of police. He attended Ms Beckett's premises on the day of her arrest. He said that during the search of the premises numerous items were located including a .32 calibre H & A

brand pistol located in the fourth drawer of a vanity unit in the main bedroom ensuite. He was not present in the ensuite bedroom when Constable Cottee located the pistol in the drawer.

Beverley Marie Lyons

470 Ms Lyons provided two statements to the police, each dated 24 May 1990. In one of them she said she went to the toilet with Ms Beckett and had a conversation with her there. Ms Lyons said, "Roseanne went on to say 'I carry a gun now for my own protection'."

471 Ms Lyons said that Ms Beckett called her on the telephone sometime later and said, "I'm real glad now that I've got a gun because that frightens him off."

Suzanne Beverley Miller

472 Ms Miller gave a statement to the police dated 23 May 1990. Ms Miller is Mr Catt's sister. Part of what she said in paragraph 4 of her statement is as follows:

"4...When she arrived, we spoke about the horse meeting she had been to. I said, 'How's my silly brother going?' She said, 'Alright.' Roseanne went on to say 'I frightened him the other day with a gun'. I said, 'Did you?' She said, 'Yes, he was that frightened he went and locked himself in the bedroom. He stayed there for a few hours'."

Jo-Ann Patricia Cottee

473 Constable Cottee was formerly a constable of police and attended the search of Ms Beckett's premises on 24 August 1989. She gave a statement dated 21 September 1989. Constable Cottee said that when searching the vanity in the ensuite she located a small handgun. She heard Detective Thomas say to Ms Beckett, "Do you care to say anything about this?" to which Ms Beckett replied, "What is it a toy one? I've never seen it before."

Barry Robert Catt

474 Mr Catt provided the police with several statements at great length and in great detail. In a short statement dated 21 August 1989 he said this:

"4. I know Roseanne has a small gun or pistol with ammunition for it. She has showed it to me. She keeps in a black briefcase when she carries it in the car. If it's not there, it'll be in the bedroom, her bedroom. I would describe it as a Derringer type pistol, silver in colour.

5. I've seen an automatic '22 rifle with the magazine and the ammunition and it's usually hidden in the bedroom too."

475 Paragraph 61 of Mr Catt's 1 November 1989 statement is as follows:

"61. Roseanne was living at No. 2 Cowan Road and I can recall on one occasion whilst she was still at that address seeing a pistol. She had it in her possession and her de facto at that stage, Doug Annetts, was there. She said 'it's a cute little thing isn't it, you wouldn't think they could make a pistol so small'. I said 'Where do you carry it' and she said 'it is just a lady's handbag pistol' and that is where she kept it. Roseanne also had an automatic rifle which she kept in the wardrobe. This had a magazine and ammunition with it. I have seen this on a number of occasions. Roseanne, on many occasions, has used the phrase to me 'You won't be around long, you will be locked up'."

Marie Dawn Whalen

476 Ms Whalen gave a statement to the police on 23 August 1989 that dealt with the pistol Count. She gave an account of a visit to her house by Ms Beckett. Paragraph 4 of her statement is as follows:

"4. I raised the subject about Barry and about me taking the summons out against him saying, 'I'll have to go on with it, I'll have to stand my ground, to show him that I've had enough of this shit.' She said, 'Yes, you've got to. That's how I feel. I'm going to Sydney to get a gun to protect myself.' I commented by saying, 'It would be useless me having one because I might shoot some poor innocent bugger'."

Lindsay James Collits

477 Constable Collits was present at the search and heard Ms Beckett deny ownership of the pistol when it was located.

Ean Scott Heaney

478 Constable Heaney was present at the search and heard Ms Beckett deny ownership of the .22 rifle. He said he began to search a large wardrobe which was next to a double bed in the main bedroom. When he opened the sliding door, he found a .22 calibre semi-automatic rifle. He removed the magazine and found a number of live projectiles inside. He thereupon handed the rifle to Detective Thomas who showed it to Ms Beckett and asked, "Who owns this?" to which she replied, "I don't know, I've never seen it before".

Consideration – the pistol charge

479 It is convenient to refer to some of the witnesses who gave evidence in the proceedings before me.

480 Peter Caesar originally gave evidence in the Davidson Inquiry on 12 March 2003. He entered into a business relationship with Detective Thomas as a loss assessor some years after Detective Thomas left the police.

481 Mr Caesar and Detective Thomas had a falling out in February 2000. Before that happened Mr Caesar said he was told by Detective Thomas "that he planted a gun on Roseanne Catt." He also said "It's not a crime for a policeman to commit perjury in court." Detective Thomas referred to Ms Beckett on two occasions as "the lowest form of slut."

482 Detective Thomas reported Mr Caesar to the police alleging that he had committed an insurance fraud. The matters were ultimately dismissed. Mr Caesar later appeared before the Davidson Inquiry and gave evidence. He was cross-examined about some of what he said as follows:

"Q. Mr Roser then put this to you, 'You see you will do anything to get back at Thomas, won't you' and you said, 'It is no worse than what Thomas has written around about my details so fair is fair'?

A. Correct.

Q. And you were then asked, 'So the answer to that question is yes' and you said 'yes', that is right?

A. Yes.

- Q. You were then asked, 'You will do anything to get back at him'. You were asked that question?
- A. Yes.
- Q. And you said, 'No, I could have done more but I am not a vindictive man', did you say that?
- A. Correct.
- Q. One last matter?
- A. Yes.
- Q. Your evidence is, as I understand it, broadly this, in 1991 you became aware of material that might have indicated that Peter Thomas had done things wrong with respect to Mrs Beckett and as a result of which she was sentenced to 12 years in prison. You knew that in 1991?
- A. Yes.
- Q. You knew that right up to and including early 2000?
- A. Yes.
- Q. If that is so, you sat by and for ten years or so, allowed someone to be imprisoned when you tell us you had information that compelled the conclusion that she was wrongly imprisoned, is that right?
- A. That's right.
- Q. And you said nothing until 2000, is that right?
- A. That's right.
- Q. When you said it, that is things had been done that were wrong, you said it as a get square to Mr Thomas, is that right?
- A. Correct."

483 As already noted, Constable Cottee was part of the team of police that executed the search warrant at Ms Beckett's premises on 24 August 1989. She took her into her bedroom where she handcuffed Ms Beckett from behind. She did not hear Detective Thomas say to Ms Beckett, "I vowed and declared I would get you. How dare you humiliate me, and as a result of the inquiry you instituted against me I have been transferred and demoted" or "No one will get you out of this one. You can go to the Attorney General, Terry Sheahan, the police commissioner; no one will get you out of this. You will be in Silverwater by Monday."

484 Constable Cottee searched Ms Beckett while still handcuffed and fully dressed. She was not strip searched or stripped naked. Constable Cottee later took the children from the home and returned 30 minutes later. She went back to the bedroom when she returned and was directed to search the

ensuite. She discovered a small firearm located under a toiletry bag in the third drawer of the bathroom cupboard under the hand basin. She called Detective Thomas and he came in. He asked Ms Beckett about the firearm. Ms Beckett said that she had not seen it and asked if it was a toy.

485 Ms Beckett said that prior to 24 August 1989 she had never owned a gun of any kind. She said that in fact she had an aversion to firearms. She had never before seen the pistol in the drawer in the ensuite bathroom.

486 Ms Beckett's unchallenged evidence is that at the police station during the interview, Detective Thomas asked her to take the pistol and said "Your eyes are better than mine. Can you read that number that's on there?" She refused to do so. Given the findings that there were no fingerprints whatsoever on the pistol when it was tested, the available inference is that Detective Thomas was attempting to have Ms Beckett take hold of the gun for an insidious purpose.

487 Ms Beckett maintained at her trial that she did not own the pistol and that she neither had it in her possession, nor had she ever seen it, prior to 24 August 1989. Her evidence at trial was that she had been "loaded up" in respect of the pistol charge. Further, she denied that she had had a conversation with anyone about weapons or about frightening her husband with a gun. At her trial, Ms Beckett denied that when Mr Catt visited her at Cowan Road in 1986, she had showed him a small pistol.

488 In these proceedings, Ms Beckett gave evidence that at no stage did she carry a gun for her own protection or ever say anything to anybody to that effect.

489 Detective Paget gave the following evidence in these proceedings:

"Q. You had been told by Mr Barry Catt that in the premises there was a semi-automatic rifle and a Derringer. Is that right?

A. Yes.

Q. And that was the only evidence that there were any weapons in the premises?

A. I think so.

Q. There was no other person who had that information than Mr Catt, was there?

A. I don't think so. I think Mr Catt alone, from memory.

Q. Yes. And did you inquire how Mr Catt knew that?

A. Yeah, he said he saw a pistol there. He said he'd seen Roseanne with a pistol.

Q. I see. And were you aware that Mr Catt had been excluded from those premises since May 1988?

A. I knew it was some time beforehand.

Q. Over 15 months earlier?

A. I don't know whether it was that long, but I knew he had been because of the apprehended violence orders against him that Mrs Catt took out.

Q. Did his knowledge suggest to you that he had been attending the premises?

A. He's been over there, he told us he'd been in there.

Q. Notwithstanding the court order?

A. Yes."

490 It is not in issue that the "premises" referred to by Detective Paget in that exchange was Ms Beckett's then residence at 1 Cornwall Street, Taree.

491 The first and only time Detective Thomas recorded any information from Mr Catt about weapons prior to the institution of the charge was in Mr Catt's statement of 21 August 1989, witnessed by Detective Thomas, at a time when Ms Beckett lived at Cornwall Street.

492 During the committal on 18 May 1990, Mr Catt gave evidence that the information in his statement about the rifle had come from Mr Newell. He also gave evidence that he had never seen a rifle at the house at 1 Cornwall Street, Taree. He said that he had only seen the pistol at 2 Cowan Road. The questioning continued:

"Foley... Now Mr Catt you did have knowledge at some stage that a pistol was in your wife's bedroom is that true or not -

Bench: That's at 2 Cornwall

Foley: Number 1 -

Bench: Number 1 Cornwall.

Foley: Yes?

Catt: The knowledge...

Bench: Did you or not?

Catt: I had no knowledge.

Foley: You had no knowledge?

Catt: No knowledge."

493 Mr Catt then stated that he had actually been referring to 2 Cowan Road, Taree in his statement, and that he was only guessing. Detective Thomas was present in court throughout the committal.

494 In cross-examination in these proceedings, Detective Paget gave evidence that he understood that Mr Catt's knowledge about the gun was in relation to 1 Cornwall Street. Detective Paget made no reference to Cowan Road.

495 Neither Detective Thomas nor Mr Catt was called to explain the discrepancy between the version allegedly proffered by Mr Catt on 21 August 1989 to Detective Thomas or Mr Catt's evidence at the committal. Similarly, the State elected not to call Mr Catt in these proceedings to give evidence of what he told Detective Thomas and/or Detective Paget in August 1989.

496 Mr Catt gave evidence regarding the pistol on 1 November 1989, with a fresh statement. In that statement, and at Ms Beckett's trial, he asserted that Douglas Annetts had been present at the time he had first been shown the pistol. However, no statement was obtained from Mr Annetts, nor was he called to give evidence at the trial. Detectives Thomas and Paget travelled to Wagga Wagga together and Detective Paget spoke with Mr Annetts. Detective Paget said that the reason for this visit was:

"...just to get a background of his lifestyle with Ms Catt prior to being Ms Catt, the same as we'd interviewed Ms Catt's first husband, and I do recall asking

him whether he did receive any insurance money from the fire at the delicatessen during that interview".

497 Ms Beckett submitted that the plain inference is that Mr Catt had no actual knowledge of guns hidden in the bedroom at Ms Beckett's house at 1 Cornwall Street but that it was an allegation formulated by Detective Thomas and inserted into Mr Catt's statement.

498 Mr Catt's evidence should be compared with further evidence from Marie Whalen, who was also not called by the State in these proceedings. Ms Whalen's statement is not admissible for its hearsay purpose. However, Ms Beckett submitted that the burden of the allegation is that at some stage between her conversation with Ms Whalen on 23 August 1989 and the raid on her house at about 7.00 am the following day, even though she had the three Catt children living with her at the time, she travelled some 300 kilometres from Taree to Sydney where she purchased a gun and returned prior to the morning raid, having by then secreted the gun in the drawer in her ensuite bathroom.

499 Ms Whalen's 23 August 1989 statement was taken at the Milligan Street house. The duty book records that she was conveyed there by Detectives Thomas and Paget.

500 In his synopsis for the Ombudsman, Mr Baggs recounted a meeting that he had with Ms Whalen on 19 September 1989. Although that evidence is also not admissible for its hearsay purpose, Mr Baggs described the person identifying herself as Marie Whalen was very nervous and that she:

"...then went into a non-stop disclosure about her treatment at the hands of Det. Sgt. Peter Thomas and Det. Carl Paget (bulldog growler). Before she could be stopped talking Marie Whalen disclosed that the Detectives had stormed into her home and forced her to go with them. She was not taken to the police station but to a house at Milligan Street, Taree. This was to give a statement about the Catt case. She protested that her husband would miss her and the detectives indicated that they would arrest him as well. Marie Whalen alleged that she was held for five hours and interrogated by Det. Thomas while the Det. Paget was introduced as 'bulldog growler' and sat spinning the chamber of his revolver while she was questioned. She appeared to be pro-Roseanne Catt and the children. She maintained that she

had signed a statement under duress... Mrs Whalen expressed her fear of Det. Thomas and would not give her address as she stated she was in hiding and sent her children to Sydney with relatives."

501 This account mirrors that given by her to the solicitor Mr Jones. Ms Beckett submitted that Mr Jones was a forthright and honest witness who gave evidence of his visit to Ms Whalen and of her story being taken to the Milligan Street house and intimidated into making a statement that she knew to be untrue. Mr Jones was sufficiently impressed by her account to make a record of their conversation on return to his office and then later to make a statement. That statement was tendered in these proceedings.

502 Ms Beckett denied having any conversation with Mr Taylor in July 1989 to the effect that she wanted a pistol that could fit into her handbag. She also denied saying to him "I don't want to wing him, I want to blow him away." Mr Taylor said in these proceedings that less than a week before he approached police on 20 August 1989, he went to Ms Beckett's house where she allegedly asked him if he could get her a handgun, saying she "didn't want a peashooter or a small one, she wanted a big one [with which] she could blow him away".

503 Mr Taylor asserted that he had been at the gym and that Ms Beckett

"rang me and wanted me to come there straight after the class and I didn't want to but I went - ended up going there because she, sort of, threatened me."

504 During his evidence about that conversation, in contrast to his original statement, Mr Taylor asserted that Ms Beckett had probably contacted him via a mobile telephone. The issue of whether or not he might have had a mobile phone in 1989 was explored with him and remains doubtful.

505 Ms Beckett reiterated in the present context some of her previous submissions that an approach to Mr Taylor, or even a discussion with him about purchasing a gun to kill her husband, was wholly implausible in the circumstances. It is also unlikely to be true because asking Mr Taylor to purchase a gun for her appears somewhat at odds with the solicitation to murder

allegations. Moreover, if such a proposition had been advanced and Mr Taylor had regarded it seriously, he would surely have warned Mr Catt and/or contacted the police. He did neither.

506 As already noted, the State elected not to call Mr Catt or Mr Newell. Detective Thomas died during the proceedings and was never called. Instead, minor or secondary witnesses were called. Ms Beckett argued that that served to emphasise even more the missing evidence of Mr Catt and Mr Newell, particularly in relation to the pistol charge.

507 In her statement of 24 May 1990, nine months after Ms Beckett was charged, Beverley Lyons alleged that they had had a conversation in the ladies' toilet while she and her husband were having dinner with Ms Beckett and Mr Catt. Ms Lyons alleged in her statement that Ms Beckett went on to say "I carry a gun now for my own protection." In these proceedings, Ms Lyons added a detail that she saw Ms Beckett patting a little clutch bag when she said those words.

508 That exchange had allegedly occurred in May 1987. Ms Lyons' reference to patting the clutch bag was a significant detail that had never previously been mentioned. Ms Beckett relied upon this to submit that it demonstrated an absence of any real memory of the event, a feature said to be inherent in all fabricated evidence, particularly in circumstances where the fiction is restated many years after the event.

509 Ms Lyons said that she and her husband Ian Lyons, who was not called in these proceedings, had discussed the meeting many times before she made her statement. She said that her husband had been friends with Mr Newell all his life. She agreed that she knew in general terms that there were a number of allegations made against Ms Beckett, having seen it in the newspaper in 1989. Ms Lyons stated that Mr Newell had "suggested that [her] evidence ...might be handy."

- 510 It was clear that Ms Lyons held a strong allegiance to her husband's view of the world, describing him as a person who was a great judge of character and that she relied on that judgment in forming her own view about the charges. When she was asked whether she was biased against Ms Beckett, she curiously responded by saying, "it doesn't make it not true."
- 511 If not disbelieved entirely, Ms Lyons' evidence must be considered with some caution, particularly in view of the fact that Mr Newell was not called. Had he been called, some explanation would have been available as to why there was such a significant lapse in time between the charges being laid and Ms Lyons giving evidence. Further, Ms Lyons' assertion that Ms Beckett had patted her clutch bag was an embellishment casting significant doubt on her reliability as a witness, particularly in view of her self-professed partiality.
- 512 Ms Beckett submitted that the information that Suzanne Miller provided, as well as that given by Julie Benjamin-Goldie, in the context of what has transpired in these proceedings, should be afforded no weight. Like Ms Lyons, they were close associates of Mr Catt: Ms Miller is his sister and Ms Benjamin-Goldie had known him for 17 years. Neither of these women was called.
- 513 The evidence of Ms Miller was not obtained until 23 May 1990, one day before the evidence was taken from Ms Lyons. Given the relationship between Ms Miller and Mr Catt, there is no explanation as to why it took so long to take a statement. These matters could easily have been explained by calling these witnesses, or by calling Mr Newell to explain the flurry of new evidence from people who probably had been apprised of the situation given their closeness to Mr Catt.
- 514 In cross-examination it was put to Ms Beckett that while Constable Cottee was away, she was in a position to see if anyone came into her bedroom. Given that the photos taken during the search show Ms Beckett in other parts of the house, she submitted that no such contention can be sustained. Indeed, Ms Beckett was outside the bedroom at the point where the police

were searching it. This can be seen in the photograph showing the officer with his back turned searching the wardrobe. Ms Beckett is in her red dressing gown outside the door.

515 Constable Cottee said that Detective Parkes was not wearing gloves when handling the pistol. Constable Cottee was asked if the non-use of gloves was consistent with training as a police officer and the need to avoid contaminating evidence. Her answer in that regard was that the training "wasn't as scientific as it could have been."

516 Detective Parkes conducted a fingerprint examination on the pistol. No fingerprints at all were found. There are discrepancies between the version given by him at trial as to his handling of the weapon and that given by Constable Cottee. Detective Parkes had said at trial that he only picked up the pistol by the finger guard using a pen.

517 While there is no issue that the pistol was located in the vanity of Ms Beckett's ensuite, that matter alone is not sufficient. Ms Beckett submitted that its seemingly serendipitous discovery by a junior officer, immediately on return from her 30 minute absence to deliver the children to Mr Newell, is difficult to accept. The other police officers had been scouring the small home all morning and it is highly unlikely that such an item would have escaped their notice given that a gun was the very object of their search.

518 Ms Beckett has at all times asserted that the gun was planted. This is corroborated by Mr Caesar's evidence that Detective Thomas said words to the effect of "it is common knowledge I planted the gun on Roseanne Catt." He told Mr Caesar that "if you get three or four good guys around you, basically plan your attack in court, everyone sticks to their story and the person's charged and gaoled." The evidence of Ms Cheers suggests that she too was threatened, and that Detective Thomas would "set you up like I did that bitch", referring to Ms Beckett. There was no evidence called to contradict Mr Caesar, including from Mr Wyatt, who was alluded to in Mr Caesar's cross examination. Mr Caesar agreed he was present.

- 519 Ms Beckett submitted that on this evidence, there is a sufficient basis to find that Detective Thomas did in fact plant the gun. If that is accepted, then it is apparent that he could not have held an honest belief in Ms Beckett's guilt on this charge.
- 520 The State submissions were strongly to the contrary. Although it may seem excessively tedious to do so, these submissions need to be referred to in detail.
- 521 After Ms Beckett's arrest on 24 August 1989, Mr Catt attended the Taree police station to identify what may have been his own goods. He identified the pistol. It appears that the gun that was seized during the course of the search was the gun that Mr Catt had seen prior to his wife's arrest.
- 522 Mr Catt also gave evidence about the pistol at the committal hearing. He said that it looked like a "miniature cap gun, like a silver, black handled type of thing it was". He said he also saw the rifle at the house. Mr Catt said "I had heard my wife's conversation when I was there talk about she had a handbag pistol, pistol that fitted into the handbag". He had also seen ammunition for the pistol.
- 523 When Mr Newell was interviewed by Gary Matthews at ICAC on 25th July 1989, he said that Mr Catt had told him that he had seen Ms Beckett in possession of a pistol in her handbag. He also advised Mr Matthews that she had an automatic rifle. Mr Newell had not seen the firearms for himself. He also told Mr Matthews that he believed Barry O'Brien, a long-term employee of the panel-beating business, had also seen the firearm. That evidence, however, was not correct, as Mr O'Brien had never seen it at all. Mr O'Brien only ever told the police in his 20 August 1989 statement, witnessed by Detective Thomas, that Ms Beckett had told him that she "had a Derringer and a semi-automatic rifle". Mr O'Brien said that Mr Catt had told him that he had seen the weapons.

- 524 The search warrant itself referred to firearms. Detective Thomas gave evidence at committal to the effect that he had information prior to the execution of the warrant that there may have been firearms at the premises.
- 525 The State referred to the evidence of Constable Cottee, Detective Parkes and Constable Heaney.
- 526 When interviewed following her arrest Ms Beckett was asked about the pistol. She was asked questions such as, "Is that pistol yours?", "Do you have a licence appropriate to your possession of that pistol?", "Do you agree that at the time that the pistol was located you were in the bedroom, off the ensuite at the time?" Ms Beckett responded saying, "I don't wish to answer". At no point during her interview did Ms Beckett suggest that the gun had been planted by Detective Thomas or anyone else.
- 527 In his 20 August 1989 statement, Vernon Taylor related a conversation that he had with Ms Beckett in which she asked him whether he knew where she could get a handgun that would fit into her handbag.
- 528 Mr Catt gave evidence of an occasion when, a couple of months before they were married, Ms Beckett had first shown him the pistol. The Crown also had evidence from Mr O'Brien and Ms Lyons of their conversations with her when she talked about her gun. However, the evidence in support of Count 9 was not restricted merely to Mr Catt or Ms Lyons. Evidence was forthcoming from a number of others to support the proposition that Ms Beckett was in fact in possession of a gun of some sort prior to her arrest.
- 529 With respect to the issue of reasonable and probable cause, Ms Beckett's case, at least since the committal, has always been that the pistol was planted within her premises. Thus, in order to succeed, she needs to show that either Detective Thomas, by himself or with others, arranged for the pistol to be placed in the drawer of the vanity unit in the ensuite to be found by police officers during the course of their search. It is for this reason that evidence relating to Ms Beckett's prior possession, ownership or use of pistols or guns

becomes relevant. Some of the evidence supportive of reasonable and probable cause is therefore considered in what follows.

530 Suzanne Miller and Marie Whalen have already been mentioned. Beverley Lyons warrants further discussion. Her statements have been referred to already. Ms Lyons did not give evidence at committal, but was called as a prosecution witness at the trial. She confirmed the terms of the conversation in the ladies' toilet relating to Ms Beckett carrying a gun. However, Ms Lyons also gave evidence before me.

531 Ms Lyons knew Mr Newell, who was a friend of her husband. She said that she recalled her conversation with Ms Beckett in the toilet at the RSL club "very vividly". She said she recalled it in that way "because it was strange". She gave this evidence:

"Q. And you've set out the details of the conversation in your statement, but let me ask you this, your memory today, what was said and by whom during the course of the conversation? And, indeed, where?

A. We went to the Club for dinner and during the process of dinner I had occasion to go to the bathroom. Roseanne followed me in and we each went into various - into cubicles. Then I was out washing my hands when she came out of the cubicle and started telling me that - all about her relationship with Barry, that she wanted to get rid of his riff-raff friends, that she had some enemies in the police force up there, but she had them under control now because she carried a gun for protection and started talking about the various people that she knew in high places. And to someone that I had met only a few hours before, I just found that quite strange and was just quite anxious to get out of there and go back to the table and continue with our meal.

Q. All right. Let me take you specifically to the people in high places, when she was talking about that. Did she mention any names to you?

A. Well, the only name that really stuck in my mind was Terry Sheahan. She mentioned that it was a relative of hers. There were a couple of others, but because the names weren't familiar to me, I have no idea, no recall of what they were. But just people in high places that she knew, that she could get anything done. Anything I wanted done, she could get done.

Q. Are they the words?

A. Pretty much, yeah, that's pretty much what she said, and it sounded quite odd to me.

Q. I want to take you specifically to the conversation relating to a gun.

A. Yep.

- Q. Again, as best you can, tell us your memory now of what was said about the gun?
- A. Just the fact that she had - she said she'd been accused of setting fire to her café, I think it was, in Taree and that she now - but that had been dismissed, I think she said, and that now she carried a gun for her protection because she had some of the police up there on side, but not all of them. So she - and she patted the little bag that - she had a clutch bag and she patted the bag and indicated that, 'I carry a gun now for my own protection'.
- Q. All right. And when she said she carries a gun now for her own protection, when did she say that in relation to patting her bag?
- A. As she was saying about carrying a gun, she was patting the bag, which indicated to me that there was a gun in that bag that she was carrying, and that was when I thought, I think I want to get out of here."

532 Ms Lyons identified the picture showing her and Ms Beckett in the kitchen to have been taken that same evening after dinner at Ms Beckett's house. She confirmed that she had met Ms Beckett on a number of occasions. Ms Beckett had also telephoned her a number of times.

533 Ms Lyons was cross-examined:

- "Q. And a casual conversation that you had with somebody in 1987 in a ladies' bathroom at a club, three years later, let alone 27 years later, is pretty hard to recollect, is it not?
- A. Not when it's that strange.
...
- Q. Mrs Lyons, nowhere in your statement do you refer to any patting of the bag as indicated by you took place in the ladies at the RSL club on that night.
- A. I don't recall whether I did or didn't at the time but that's my memory of it.
- Q. But it's not a memory today that you had apparently in 1989 or at the trial.
- A. Well, I mean I'd been specific.
- Q. Or at the trial.
- A. What did I say about it - about the bag at the trial?
- Q. You didn't say that my client made any patting motion with the bag indicating that she had a gun on her.
- A. That's my recollection of it.
...
- Q. At the time that you spoke to Ms Catt in the ladies lavatory, you didn't take her conversation at all seriously because you regarded her as simply big noting herself. Is that right?
- A. Pretty much."

- 534 At her trial Ms Beckett denied having ever met Beverley Lyons. She also denied ever having gone out for dinner to the RSL club with the Lyons. She maintained that she did not know Mr Lyons, but said that she had heard "Barry mention his name". Ms Beckett maintained that denial even when the Crown Prosecutor showed her a picture taken in Ms Beckett's kitchen with Ms Beckett sitting beside Ms Lyons. Ms Beckett maintained that denial before me. It was indeed a curious thing for her to do and to have done previously as the photograph was uncontroversially identified by Ms Lyons and it undoubtedly depicts Ms Beckett and Ms Lyons together. Other photographs tendered in the proceedings also appear clearly to confirm the location as Ms Beckett's kitchen.
- 535 Stephen Foster, the husband of Julie Foster, gave a statement dated 23 January 2003 saying that, on one occasion, on a date he was unable to specify, but prior to 24 August 1989, Ms Beckett had taken a small calibre pistol from her handbag or shoulder bag. He said it was somewhere in the region of .25 to .32 calibre and of a silvery colour. It was semi-automatic and not a revolver.
- 536 Ms Beckett denied in cross-examination at her trial that she had conversations about a gun with a number of specified people.
- 537 A consistent theme in the prosecution case in relation to the pistol was Ms Beckett's statements to different witnesses that she had a pistol or that they had seen her with it. The statements vary from one witness to the next. The State submitted that if these witnesses had either been coached by the police, or forced to give a fabricated or falsified version of events relating to the gun, it is more likely that there would have been a greater degree of consistency among them. The inconsistencies on the contrary would appear to militate against any suggestion that there was a widespread conspiracy, requiring a large number of people, allegedly suborned to remain influenced through the cauldron of the courtroom at the committal as well as the trial.

538 Given Ms Beckett's history of making multiple complaints against Detective Thomas, as well as other police officers prior to her arrest, one would have expected her to have alleged at the first available opportunity that the gun had been planted. The matter was of such significance that, when Sergeant MacLachlan had her adopt her records of interview, it appears curious that she made no such complaint. Ms Beckett was not a woman who was backward in coming forward, or not a shrinking violet as the State preferred to describe her. She was advised by a solicitor to say nothing. The State submitted that it was "inconceivable" that either at the time of her arrest without advice or after receiving advice from Mr Jones at the police station, Ms Beckett would not have complained about this if it were the fact. If any such complaint had been made, Sergeant MacLachlan would have recorded it and would have requested Ms Beckett to verify it with her signature. This seems apparent from the fact that he recorded his interaction with Mr Jones and Nick Loder in his notebook on the day. Ms Beckett did make a complaint in relation to missing money but not about anything else at that time. This is in circumstances in which she saw and spoke with a number of other people when in custody and prior to seeing Mr Jones.

539 Not only did Ms Beckett not then complain that the gun had been planted, but it was not ever mentioned in court appearances prior to the committal. The first time it was mentioned was when Ms Beckett complained to Mr Leonard on 9 March 1990. In her comprehensive 49 page letter, Ms Beckett indicated the following:

"12. When Constable Cottee returned to the house I saw her coming up the hallway. At that time I was sitting outside the bedroom on the stool. She was wearing a white track suit sort of outfit on, something similar to that, a white coloured top and white pants. I saw that she appeared to have something down the front of her tracksuit which I thought were handcuffs. I then remembered that she was the police officer that actually handcuffed me and I still had those handcuffs on.

13. When she got back I saw Thomas greet at the bedroom door and I heard him say, 'You go in there' (indicating the en-suite bathroom). You know what to do.' He was directly in front of me when he said this. Constable Cottee walked through the bedroom and into the en-suite which is to the right of the bedroom door. Detective Thomas then told me to sit inside the bedroom.

14. When Constable Cottee went into the en-suite, the door was half open and she disappeared from my view. She appeared to be in there for some time and I then heard Constable Cottee call out from inside the en-suite, 'Look what I have found? Look at what's here'. Thomas was standing near me and said, 'Go and look', or words to that effect, and he pushed me towards the en-suite. I walked to the en-suite doorway, Thomas remained where he was."

540 The words allegedly spoken by and attributed to Detective Thomas ("You go in there. You know what to do") were not put to Constable Cottee in cross-examination before me.

541 The State contended that Ms Beckett was in that correspondence attempting to set up a version of events implicating Detective Thomas and Constable Cottee. Not insignificantly, this version was abandoned at the trial, with it no longer being suggested that Constable Cottee was involved. The police officers, particularly Detective Thomas, were entitled to conclude, upon seeing the 9 March 1990 letter, that Ms Beckett was a liar, because they knew Constable Cottee had not returned with a pistol. Moreover, Ms Beckett was likely, at a trial, to be caught out on one lie or another and when she abandoned her allegation at trial, their belief in her guilt was confirmed.

542 Ms Beckett's evidence in these proceedings is of critical importance. Some extracts from the transcript are as follows:

"Q. So you could see who was coming in and who was going out, is that right?

A. Of the bedroom?

Q. Of the bedroom?

A. Yes.

Q. You sure you weren't sitting over near the ensuite?

A. Over near the bathroom, you mean?

Q. Yes.

A. No I was not.

Q. So, near the door?

A. I was near the door, yes.

...

Q. And you remained seated at Point E, if I can call it that, until she returned?

A. I remained seated there the whole time, yes.

Q. Until she returned?

A. Yes.

Q. Then you remained seated whilst she was in the room?

A. In the ensuite, yes.

...

Q. Between the time Ms Cottee left to deal with the children and her return, you had a full view, did you not, of the ensuite?

A. No, I did not.

Q. The entrance to the ensuite?

A. From where I was seated, there were two large windows in the bedroom; one was on that side of the room; one was on that side where I was sitting (witness indicated). I could see the window, I could see the workman sitting or standing outside the workshop. I can only see where the entrance goes to the ensuite.

HIS HONOUR: I think that is obvious from looking across the door of the ensuite.

MACHONACHIE: Yes.

Q. You agree with what His Honour has just said, that it is obvious from where you were sitting at Point E on Exhibit 3 --

A. Yes.

Q. -- you had a clear and unrestricted view to the entrance to the ensuite, didn't you?

A. I could see where the doorway was, yes.

Q. And nobody went into that ensuite in the absence of Detective Cottee.

A. I don't believe so, no.

Q. Upon her return, Constable Cottee came into the bedroom, did she not?

A. Yes.

Q. Did she say anything to you?

A. No, she did not.

Q. Just went about her business, did she?

A. Peter Thomas said to her, 'You search the ensuite'.

Q. And she went into the ensuite, is that right?

A. Yes.

...

Q. You want His Honour to understand from that that he knew what it was to which Cottee was referring before he could see what it was --

A. Absolutely.

Q. -- to which Cottee was referring?

A. Yes, that is right.

- Q. Let's go back a step or two. As I understand what you have told us this morning, nobody entered your bedroom, your main bedroom, after the police arrived, before you entered it in the company of Cottee, is that correct?
- A. I believe so, yes.
- Q. Well, it's not a question of belief, it's a question of what you have told us, isn't it?
- A. Well, I have no knowledge of anyone else going in there before they took me back to the bedroom?
- Q. You were in a position to see if anybody went into the bedroom or not, weren't you?
- A. Not necessarily because most times there was either this man in the blue clothes or Thomas standing in front of me (witness indicating the photograph) which obstructed my view to all that was going on in the room.
- Q. Mrs Beckett, when you were handcuffed at Point C in Exhibit 3, nobody - no-one - no police officer had gone past you and into the bedroom, that's right, isn't it?
- A. When I was sitting on the stool that is.
- Q. Please, Mrs Beckett, I want to ask you a question about the point in time that you were handcuffed at Point C, as marked by you on Exhibit 3. Do you have that point in time in your mind?
- A. Yes.
- Q. Before you were first handcuffed, no police officer went into the bedroom, that's so, isn't it?
- A. I don't know, I don't know.
- Q. You don't know. You told us, didn't you that you were in the bedroom or walking from the bedroom when the police came to the door?
- A. Yes, that's right, yes.
- Q. You were handcuffed by Detective Sergeant Thomas at Point 3?
- A. That's right, yes.
- Q. No police officer entered into the bedroom before you were handcuffed at Point C, that's right, isn't it?
- A. I don't believe so, that's right.
- Q. But you know so, don't you?
- A. I don't know, I don't think so.
- Q. No police officer could have entered that bedroom without passing you at or beyond Point C, that's so isn't it?
- A. I guess they couldn't, I don't know.
- Q. You don't know?
- A. No, I don't.
- ...

Q. I know you didn't say it. What I want you to tell His Honour is this. Do you say that whilst you were seated at Point E Thomas, the man in the blue overalls or one, two perhaps, even three other male police officers had the opportunity to go into the ensuite without you seeing them?

A. I don't believe any other police officer other than Peter Thomas would have went into that ensuite."

543 What emerges clearly from that evidence is the fact that Ms Beckett was unable to give any first-hand evidence of having observed any police officer entering the ensuite before Constable Cottee found the pistol. There is no evidence capable of supporting the suggestion that Detective Thomas entered the ensuite before Constable Cottee arrived. The State contended that that was fatal to the claim that Detective Thomas planted the weapon.

544 The State contended that during the course of these proceedings, it appeared that Ms Beckett was again attempting to change her case as to how the pistol came to be planted in her ensuite before it was found. The suggestion arising from cross-examination by her counsel of a later witness appeared to revolve around the suggestion that it may have been Mr Catt, who knew in advance about the police search.

545 The State characterised the complicated factual background of so many witnesses who gave a version of events relating to their conversations with Ms Beckett, and their interaction with her, as so "extraordinary" that the evidence must be true. Either that or they all engaged in a substantial conspiracy. The suggestion of a conspiracy was never put to important witnesses such as Mr Taylor.

546 It was made clear by her counsel at her trial that it was not being suggested that the police came into the house with a rifle. Mr O'Loughlin stated that the rifle had been brought into the house by the Catt children. There was no suggestion that the police planted the rifle or that Constable Cottee planted the gun.

547 Ms Beckett also gave evidence at Mr Catt's trial. She indicated that she had never seen the rifle before, and that it was his rifle. Sharon Catt had brought it across from the office on 9 August 1989 and had shown it to her at that

time. This evidence appears to be partly inconsistent with her evidence at trial that the police could have brought the rifle in with them.

548 On 15 September 1989 Detective Thomas made a Duty Book entry indicating that he was trying to ascertain the origin of the pistol. Further, attempts were made to test the firearms for fingerprints but these were unsuccessful. The State contended that these actions by Detective Thomas were supportive of him and inimical to Ms Beckett. In my opinion that contention, in the context of the whole of this case, is uncharacteristically naïve.

549 Ms Beckett gave no evidence at her trial of having seen Detective Thomas in or near the ensuite prior to the gun being found. This can be seen from the following evidence:

"Q. After Const. Cottee returned, were you subsequently shown something? Can you tell us the sequence after she returned and Thomas said, 'You know what to do'?

A. Yes. Constable Cottee went into the ensuite. She was in there for a short time and said, 'Oh, look what I have found?' Detective Thomas walked over to me, grabbed hold of me and he pushed me towards the ensuite and told me to go and have a look and he said, 'What have you got to say?' At that stage and at that stage Thomas had not been near the ensuite."

550 The State suggested that in support of her case that she did not have a pistol, Ms Beckett relied in addition to her own evidence upon that of her son Peter Bridge. I am unable to understand that submission. As already indicated, Mr Bridge did not give evidence at her trial. Furthermore, although Mr Bridge gave evidence before me, I am unable to recall, and I have been unable to locate, any reference by him in his evidence to a pistol or a gun or to a rifle.

551 Ms Beckett did not call evidence from Fay Watson or Norma Graham, her housekeepers at the time, to rebut evidence of a gun being in the premises. Their absence remains unexplained.

552 Significant emphasis was placed upon the evidence of Peter Caesar and Leanne Cheers. Detective Thomas allegedly admitted to Mr Caesar, soon after he gave evidence at Ms Beckett's trial, that he had "planted a gun" on

her. Neither witness gave evidence at the trial. Their evidence did not emerge until some 10 years after that trial, and some 10 years after the events they refer to.

553 Mr Caesar said he first met Detective Thomas in 1991. It is clear that, together with their families, they had a great deal to do with each other socially. They also developed a close working relationship and joined forces through the Australian Pacific Claims Group. Initially from 1991 both men worked for Peter White of S W White (Toplis & Harding) as salaried employees. At some point thereafter, Mr Caesar left that organisation and started his own business in the name of Peter Caesar & Associates Pty Ltd. Detective Thomas later incorporated Peter Thomas & Associates Pty Ltd and they commenced to operate through Peter Caesar Pty Ltd in about 1994. John Capper joined them, and a business known as Australian Pacific Claims Group was formed in about 1998 or 1999. Each man had his own private company, with each of them purchasing a one-third interest in a house from which the businesses independently operated. Staff and some work were shared. The Australian Pacific Claims Group operated a separate bank account and work done by Detective Thomas or his company would result in fees being rendered under its banner. The group had three directors, being Mr Caesar, Detective Thomas and a silent partner Dennis Meadows.

554 The business and working relationship between Mr Caesar and Detective Thomas proceeded harmoniously until 2000 or thereabouts. It broke down over fraudulent insurance claims made by Mr Caesar. This came to the attention of Detective Thomas who reported the circumstances to the police. Mr Caesar was prosecuted. Four charges were laid, two of which related to Mr Caesar dishonestly applying to his own use the funds received from an insurance company in the name of the Australian Pacific Claims Group Pty Ltd. Mr Caesar was required to attend court in May 2001.

555 It is apparent from his evidence in these proceedings that Mr Caesar retained considerable ill feeling towards Detective Thomas, arguably motivated to bring as much discredit and damage to his reputation as possible. His actions in

obtaining access to and copying Detective Thomas' personal papers, including his diaries, and providing them to Ms Beckett, demonstrate this clearly. The State cautioned that I should treat his evidence as wholly unreliable. He appears also to have remained silent for a period of many years in the knowledge that an (apparently) innocent person was languishing in gaol.

556 According to Mr Caesar, his secretary Leanne Cheers sat close to the offices occupied by Detective Thomas. She was prone to using "the foulest of language". She was spoken to about it by Detective Thomas. This led to her termination. She brought proceedings for wrongful dismissal and the matter was determined on the basis that she was paid four weeks' annual leave. No finding of sexual harassment by Detective Thomas was made, although the settlement involved her receiving the sum of \$5,000. Ms Cheers was identified by Mr Caesar as a person who could give direct evidence of the alleged admission made by Detective Thomas that he had planted the gun. She was not called by Ms Beckett on this very vital issue, but did give evidence at the Davidson Inquiry. Her evidence included among other things an admission that Ms Beckett had never been mentioned to her, and that she knew nothing about her other than that she was in prison in New South Wales. It seems doubtful that Ms Cheers had ever heard Detective Thomas say to Mr Caesar or anyone else in her presence that he had planted a gun on Ms Beckett.

557 It will be apparent that a considerable number of witnesses were arranged to give evidence about this Count at Ms Beckett's trial. Presumably the Crown case proceeded upon the basis that evidence that Ms Beckett had claimed to have had a gun, or that she had threatened people that she would use it, or that she had had conversations with people suggesting that she carried a gun for protection and so forth would enhance the prospect or render more likely the jury's acceptance of the evidence that she had been responsible for the original placement of the pistol found in her ensuite vanity.

558 The relevance of this evidence in the present proceedings, however, is quite different. To start with, it has nothing to do with the case propounded by Ms Beckett. Her fundamental proposition is that she knew nothing of the existence of the weapon and that it was planted by Detective Thomas. This Count more than any of the others focusses upon the allegation that Detective Thomas could have held no honest belief in her guilt because he manufactured the evidence upon which the charge wholly depended. The question of his reasonable belief as a prosecutor on this analysis is correspondingly irrelevant.

559 For the same reason, evidence at her trial that may have assisted the Crown to prove her guilt assumes an entirely different significance now. The State undoubtedly relies upon collateral evidence from others with whom Ms Beckett is said to have conversed, on the question of whether she admitted or suggested that she owned a gun. That evidence is led in response to the suggestion that the gun was planted. It does not however confront the allegation directly. Clearly enough, evidence from others that Ms Beckett claimed to have owned a gun are not inconsistent with her contention that Detective Thomas put the gun in her bathroom. Ms Beckett has denied the claims made by others.

560 Ms Beckett accepts that in order to succeed on this Count she must establish that Detective Thomas planted the gun in her bathroom. Detective Thomas has obviously not denied that he did so in these proceedings, even though he has done so elsewhere. The fact and circumstances of his absence from the witness box in these proceedings was for a short time looming as a matter of significance. That was because Ms Beckett's legal team made rumblings about why his medical condition and dire prognosis were not made apparent to them in time to arrange for his evidence to be taken before he was too ill to provide it and by definition before his apparently imminent death. As likely as that argument seemed at one stage to become important, it ultimately retreated and no submissions about it were made. The result of that must be that no inference arises favourable to Ms Beckett from the State's failure to call Detective Thomas.

561 The State did call Constable Cottee. There was in my perception a faint suggestion from Ms Beckett at one stage that Constable Cottee may have been complicit in Detective Thomas' scheme to fabricate the pistol evidence. That perception flows from Ms Beckett's evidence that when Constable Cottee returned to the house after she had taken the children away she appeared to have something down the front of her pants that could not have been her handcuffs because Ms Beckett was wearing them. If that suggestion was made it was never followed through. In any event I should indicate that Constable Cottee impressed me as a reliable and honest witness. It was never put to her in terms that she knew that Detective Thomas had placed the gun in the drawer where she found it, or that she had herself brought it to the house, and I am satisfied that she had no knowledge of how the gun got there from whatever source it came. Constable Cottee denied that she was ever told by Detective Thomas to go into the ensuite or that he said "you know what to do". I accept her evidence in that regard. Moreover, whatever can be said about Detective Thomas, I have never gained the impression that he would have been so incautious, if he were about to plant a gun on a suspect, as to have a conversation in the presence of the suspect that could later be used to demonstrate his corrupt behaviour.

562 On 12 March 1990, when interviewed by Internal Affairs, Detective Paget was asked about the content of the search warrant that had been issued and he said this:

"Q. Why did you include that information on the application for a search warrant?

A. Sergeant Thomas instructed me to nominate the pistol and the automatic rifle in the information and the search warrant because we had been told the rifle had been seen there and information from a witness that Roseanne Catt had in her possession a pistol. The other matters were not included because we had only been informed of certain allegations and evidence to substantiate that information had not been sighted by any person."

563 Detective Paget was cross-examined about what they had been told by Mr Catt before the warrant was executed:

"Q. And he told you there was a Derringer there. Is that right?

A. Yeah, a small--

Q. Small pistol, silvery pistol like a Derringer?

A. Very similar to a Derringer.

Q. Yes, a Derringer. And that was the only evidence. Is that right.

A. Yes. "

564 It was never suggested to Detective Paget during his cross-examination that he was complicit, or had any knowledge of, or involvement, in Detective Thomas planting the pistol in the drawer.

565 In the events that occurred, the gun that was found was not a Derringer or anything like it, and it was not silver but black.

566 Ms Beckett's reaction when the gun was discovered was curious. Constable Cottee said that she denied that she had ever seen it before and asked if it was a toy. In circumstances where Ms Beckett's house was being searched and she was handcuffed and restrained, and on her own account subjected to a series of indignities into the bargain, it seems strange that her response was not considerably more indignant. That lack of indignation may well be explicable upon the basis that she did not appreciate the significance of the discovery in the scheme of what it meant for her at the time. Whilst I doubt that that was true, Ms Beckett's indignation was even so still not apparent shortly thereafter when one might have expected it to emerge. By the time that she had been charged and asked about the gun at the police station she would have been completely aware of its significance. So much is clear from her own evidence that she was sufficiently alert, on her account, to refuse to take the weapon from Detective Thomas when he asked her to read something that was stamped on it. Ms Beckett promotes that incident as an attempt by Detective Thomas to put her fingerprints upon the gun, suggesting that she was alive to his wiles and able to avoid his trap. Ms Beckett has never suggested that she complained to Detective Thomas that she had been set up and there is no evidence that she complained to anyone else either.

567 By the time the matter came to court in the early stages and on her bail applications, complaints of corrupt conduct concerning the pistol were not

raised even then. Mr Jones was Ms Beckett's solicitor. He was cross-examined about the pistol:

"Q. And can you tell his Honour when was the first occasion in a public courtroom that it was ever made known to anyone that the plaintiff claimed that a pistol had been found of which she had no knowledge, the inference being that it was planted by the police? When was the first time that was mentioned in a courtroom?

A. I can't say when the issue of Ms Catt's knowledge was raised. The best I can say is that part of the document you asked me to look at over the luncheon period, namely the submissions by the police while I didn't read those in detail, I did see a reference to a pistol in the prosecutor's submissions on the question of bail."

568 Although I raised with counsel the question of whether or not the transcript of the bail applications was available and, by inference, whether or not it advanced the present inquiry, the matter was never revisited. I am left with the impression that fabrication of the pistol was never mentioned at an early time, or when one might have expected it to be.

569 The reliability of Ms Beckett's account of the events on 24 August 1989 is also important. She gave evidence that she was forced to undress in full view of police and was strip searched. Constable Cottee denied that that occurred and I believe her. The significance for present purposes, however, is that Ms Beckett's denial that she knew the gun was in her drawer is placed in some doubt if other aspects of her recollection about what happened on the day cannot be believed. Given that Ms Beckett bears the onus of establishing that the gun was planted, that doubt is important.

570 The State emphasised that Ms Beckett's case was that, so far as all of the lay witnesses were concerned, Ms Beckett's case must be characterised as a conspiracy, and that they were never confronted with the opportunity to deny the suggestion. I do not think that this is an accurate characterisation of the way in which Ms Beckett puts her case. Whether or not Ms Beckett is either happy or prepared to concede it, she has a very well documented history of saying offensive things, of attacking folk with whom she came into contact and of threatening and abusing people on a regular basis. She said extravagant things and made extravagant claims. She regularly offended people by doing

so. Whatever dark part of her background generated this behaviour is never likely to be known. The fact that she went to Mary Warwick's house on 2 May 1988 is a classic example of it. The evidence given by Ms Benjamin-Goldie is another. Ms Beckett's tendency to suggest that numerous people were or may have been engaging in suspect conduct or activities, however well or ill-founded, is adequately documented. Her use of unsavoury language is also manifest throughout the material I have been asked to consider. I hasten to say that I intend to pass no judgment upon any of it. However, it seems to me that Ms Beckett's *braggadocio* is not inconsistent with her innocently talking about owning or possessing a gun, much in the way that Mr O'Brien referred to in his statement that was originally provided to the police.

571 I am mindful that Mr Caesar gave evidence that Detective Thomas himself bragged to him about loading up Ms Beckett with a gun. That evidence is on its face powerful and the consequences that flow from its acceptance are significant. My difficulty is that I cannot believe Mr Caesar or accept what he says. There are a number of reasons for this. First, he was clearly a man who despised Detective Thomas for what happened between them. He made no secret of that fact before me. Secondly, and perhaps more importantly, he sat mute on information that may have exculpated an innocent woman then in prison for a crime that she did not commit. The likelihood that any reasonable person would act in that way seems remote in the absence of a compelling reason to explain it. Mr Caesar's reason was revealed as follows:

"Q. Why did you wait for 10 years before coming forward, sir?

A. Well, it wasn't my business and a lot of other people knew the facts as well and no one rung the police. If I rung the Taree Police Station and said, 'Peter Thomas planted a gun', what would have happened? Nothing. People didn't believe me then; some people don't believe me now."

572 I am disinclined to be too quick to criticise people about the things that influenced or motivated them when surrounded by forceful and no doubt intimidating personalities such as Detective Thomas and Ms Beckett. Even so I find it difficult to comprehend why any person with such important and useful information would not act upon it at the first opportunity if it had been

true. The only reasonable, or in my opinion the most compelling, conclusion is that it was not true.

573 I confess to being troubled by the fact that the pistol did not reveal the presence of Ms Beckett's fingerprints. Indeed, the evidence suggests that it did not have any fingerprints on it at all. At one level that does not sit well with it having been Ms Beckett's gun, and rather suggests that someone at some time took steps as far as possible to disguise or conceal its provenance. Unfortunately for Ms Beckett, there would appear to be only two possibilities in that respect and they are equally probable.

574 I am ultimately not satisfied that Ms Beckett has established that Detective Thomas planted the revolver in her ensuite vanity drawer. As her case on the absence of an honest belief in her guilt is shackled to that proposition, that case must fail.

575 Ms Beckett did not make submissions in the alternative that Detective Thomas could not have held an honest belief in her guilt on reasonable grounds. Her case was in effect all or nothing. However, for more abundant caution I should observe that *if* Detective Thomas found the pistol where he says he found it, it would not be unreasonable for him to have formed a view about her probable guilt.

Summary of conclusions and findings – reasonable and probable cause

576 It follows that I am satisfied on the absence of reasonable and probable cause aspect of her claim that Ms Beckett has succeeded in two respects. First, I am satisfied that that Detective Thomas, at the time of instituting or maintaining the perjury charge, either did not believe in Ms Beckett's guilt or did not have reasonable grounds for so believing. Secondly, I am also satisfied that at the time of instituting or maintaining the solicit James Morris charge, Detective Thomas either did not believe in Ms Beckett's guilt or if he did he did not have reasonable grounds for so believing.

MALICE

Malice and Reasonable and Probable Cause

577 The High Court has warned against conflating malice and reasonable and probable cause. Although proof of particular facts may supply evidence of both elements, it cannot be said that proof of one logically leads to the proof of the other. Reasonable and probable cause is more concerned with whether there is a proper basis to initiate and/or maintain proceedings, whereas malice arises when there is a motive to use the legal system in an improper way other than to secure justice. One seemingly precedes the next.

Legal principles

578 Malice can be proved either by establishing that the motive of the defendant was for purposes other than the proper prosecution of possible criminal conduct, or by showing that the circumstances were such that the prosecution can only be accounted for by imputing some wrong or indirect motive to the prosecutor. In *Brown v Hawkes* (1891) 2 QB 718 at 723, Cave J said:

"Of course, there may be such plain want of reasonable and probable cause that the jury may come to the conclusion that the prosecutor could not honestly have believed in the charge he made, and in that case want of reasonable and probable cause is evidence of malice."

579 In *A v New South Wales*, malice was said to be established where some collateral purpose had driven the prosecution. In that case it was found to be giving into pressure from senior officers of the Child Protection Agency because the plaintiff was a member of the Police Service. In *Nye v The State of New South Wales* [2003] NSWSC 1212; (2004) Aust Torts Reports 81-725, the improper purpose was found to be where the prosecution was continued in order to maintain the credibility of a police informant.

580 The High Court has held that to constitute malice, the dominant purpose of the prosecutor must be a purpose other than the proper invocation of the law; an illegitimate or oblique motive. Further, the improper purpose must be the dominant purpose actuating the prosecutor.

581 The term "malice" includes spite, ill-will or a spirit of vengeance and also any other improper purpose such as to gain a collateral advantage. An improper conflation of public and private interests may be evidence of malice. In *Proulx v Quebec (Attorney General)* [2001] 3 SCR 9, the court held that the reliance upon or use by a prosecutor of a person in the investigation was evidence of malice because that person had been the defendant in a prior defamation suit brought by the accused.

582 If the motive of vengeance can be established, as Ms Beckett asserts to be the case in the present proceedings, it is a proper basis for establishing malice: *Gilinski v McIver* [1962] AC 726.

583 The burden of proving malice lies on the plaintiff. It may be discharged by showing what the motive was and that it was improper, or that the circumstances were such that the prosecution can only be accounted for by imputing some wrong and indirect motive: *Trobridge v Hardy* [1955] HCA 68; 94 CLR 147 at 163-5, 174. The question of malice is a question of fact and proof will often be a matter of inference.

584 In *A v New South Wales*, the High Court said this at [91]:

"[91] What is clear is that, to constitute malice, the dominant purpose of the prosecutor must be a purpose other than the proper invocation of the criminal law - an 'illegitimate or oblique motive'. That improper purpose must be the sole or dominant purpose actuating the prosecutor."

585 The State submitted that malice must be established separately and with respect to each and every count, as should reasonable and probable cause and that it would not be sufficient or correct to point only to a generalised malice. There must be a malice that amounts to an improper purpose for each and every separate invocation of the processes of the court. Malice must be found on each count and with respect to the facts for each count for the plaintiff to succeed. No authority for these propositions was cited.

586 Ms Beckett's case is that Detective Thomas improperly became involved in the investigation of her and thereafter instituted the several charges against

her as retribution for the Internal Affairs complaints that she had made against him. That revenge took two forms. First, to humiliate and punish her. Secondly, to assist Mr Catt so that claims against him in which Ms Beckett had an interest were all resolved in favour of Mr Catt. Ms Beckett submitted that Detective Thomas' hatred of her, and his motive for revenge, can be inferred from each or a combination of some or all of the following:

- (1) The failed arson charges he laid against her.
- (2) The numerous complaints lodged by Ms Beckett with Police Internal Affairs and the Ombudsman, the investigations into which persisted until 1987. Detective Thomas agreed at trial that he had "spent the last six years of [his] life ducking the Internal Security police and justifying [his] existence".
- (3) The lack of any official explanation from Detective Thomas' supervising officers at Regional Crime Squad, as to how or why he was appointed to or commenced the investigations into Ms Beckett.
- (4) Notwithstanding the self-evident apprehension of bias arising from Detective Thomas having been the subject of multiple and prolonged complaints by Ms Beckett, he not only became involved in the investigation, but was the lead officer and the informant on all of the charges.
- (5) The manner in which Detective Thomas undertook the investigations. It seems apparent on one view that he would go to any lengths and engage in improper practices in order to secure the charges against Ms Beckett. This included the following:
 - (a) Inviting or allowing Mr Newell, a private citizen, to become an integral part of the police investigation (including being present during witness interviews) when Mr Newell was not only Mr

- Catt's life long friend but also a person who had made an ICAC complaint against Ms Beckett;
- (b) Using Mr Newell's house at 27 Milligan Street, Chatham so that Detectives Thomas and Paget could avoid the usual supervision and scrutiny at the police station;
 - (c) The intimidation of witnesses including Ms Whalen, Mr Golds, Mr Bridge, Mr Baird, Dr Richardson, Ms Mairinger and Ms Beckett;
 - (d) Fabrication of evidence from Mr Morris and Mr Taylor or, in the alternative, reliance on flimsy, untested allegations where neither Mr Morris nor Mr Taylor took the alleged conversations seriously enough immediately to report them;
 - (e) The search of Ms Beckett's home and the planting of the pistol;
 - (f) The fabrication of the lithium samples and/or lack of any chain of custody;
 - (g) Dredging up old events like the rock incident, the Swan's Crossing and the eucalyptus oil incident that were never taken seriously enough at the time they occurred to warrant the laying of any charges;
 - (h) Re-investigating the arson charge, including travelling with Detective Paget to Wagga Wagga to interview Mr Annetts and speaking with Mr Hislop of Mercantile Mutual.
- (6) The manner in which Detective Thomas described Ms Beckett to others in pejorative terms, such as "the lowest form of slut", "bitch" and "vexatious".

- (7) The manner in which Detective Thomas treated Ms Beckett, such as during the search, illustrating his desire to humiliate her, and parading her in front of the media on leaving the premises.
- (8) Detective Thomas' admissions to Mr Caesar and Ms Cheers about fabricating the charges against Ms Beckett.

587 Ms Beckett characterised Detective Thomas' motive for revenge and retribution as "strong, clearly available and highly likely". For example, he railed against the directive from Inspector Rankin to have no further role in the investigation. She submitted that an ordinary, reasonable and honest police officer would not have become similarly involved suggesting that Detective Thomas was clearly driven by a purpose other than the honest pursuit of justice.

588 Detective Thomas' concurrent motive to assist Mr Catt can be drawn from each or a combination of some or all of the following:

- (1) Detective Thomas' involvement in the FACS investigation concerning the Catt children when he had no mandate or brief to do so.
- (2) The bullying and harassment by Detective Thomas of FACS staff in relation to the Catt children (Baggs, Warne and Madden).
- (3) Obtaining property and documents during the search for Mr Catt's benefit.
- (4) The highly unusual step of Detectives Thomas and Paget giving evidence in support of Mr Catt, who was the accused in criminal proceedings, and conferring with his counsel.
- (5) Detective Thomas' failure to consult or co-operate with Frank Burgess.
- (6) Detective Thomas' false representations that he had a brief to investigate the Catt sexual assault allegations.

(7) Detective Thomas' false representations that his brief was from high sources such as the Assistant Police Commissioner.

589 The State did not call evidence in these proceedings with respect to any proper motive that Detective Thomas may have had.

590 Ms Beckett referred in detail to the following matters as evidence of malice.

591 In 1983, Ms Beckett was living with Douglas Annetts. They moved to Taree where Peter Bridge commenced high school. She bought a delicatessen in Victoria Street, Taree and involved herself in Taree community life, joining the local chamber of commerce, the tourist association and the Manning Rescue Squad.

592 In the early hours of the morning of 25 December 1983, Ms Beckett received a call from Detective Thomas, telling her that her shop was on fire. The following day she was interviewed by him at Taree police station during which he made her feel "very uncomfortable". As a result, Ms Beckett made a written complaint to Detective McCusker alleging that Detective Thomas physically assaulted her and Mr Annetts. The complaint was then investigated.

593 In response to the complaint, Detective Thomas wrote to the officer in charge of the Regional Crime Squad on 16 July 1985 alleging that the complaints were "an obvious attempt to interfere with the pending criminal trials of Errol Robin Taylor and Roseanne and Douglas Annetts". The charges against Ms Beckett and Mr Annetts were no-billed on 29 January 1986. Notwithstanding that, Ms Beckett and Mr Taylor persisted with their complaints against Detective Thomas. In one complaint, Ms Beckett alleged corruption by the Taree police and that Detective Thomas was being "protected".

594 Investigation of the complaints would undoubtedly have been personally and professionally unpleasant for Detective Thomas. He was required to respond

to them. The trial transcript records that Detective Thomas was well aware of the lengthy period of time he had had the complaints hanging over his head:

"Since I met Roseanne Catt in 1983, as I have said, I have spent the last six years of my life ducking the Internal Security police and justifying my existence."

595 Detective Thomas was clearly enraged and insulted by the complaints. So much is clear from his letter to the Commander of the Regional Crime Squad dated 28 November 1989, in which he said:

"This woman is a vexatious complainant, motivated by another vexatious complainant both of whom use, rather MISUSE, political influence to pervert the course of justice".

596 Ms Beckett contends that those comments indicate that Detective Thomas clearly wanted to turn the tables on her so that her complaints would be regarded as baseless and she would be branded as vexatious, corrupt and criminal.

597 Ms Beckett contends in these proceedings that the failed arson charge and the subsequent multiple complaints (and their investigation by Internal Affairs and the Ombudsman) over a period of years gave rise to an apprehension of bias: a fair minded observer might reasonably have apprehended that Detective Thomas might not bring an impartial mind to the relevant decisions in the investigation. He was never an appropriate police officer to investigate Ms Beckett, let alone institute criminal charges against her.

598 In *Proulx* the Court found that the use of an individual who held actual or ostensible animosity against the accused was so improper as to constitute malice. In this matter, Ms Beckett maintained that not only was there a manifest apprehension of bias (probably actual bias) on the part of Detective Thomas, but his use of the services of Mr Newell in an intimate way in the investigation suggests that he adopted a partisan approach from the start. Mr Newell's antipathy towards Ms Beckett is readily seen from the content of his ICAC complaint and particularly from his statement to the police. A reasonable and honest police officer may have taken the information from Mr

Newell but then, having identified his antagonism towards Ms Beckett, would never have allowed Mr Newell to participate in the investigation in the way in which Detective Thomas did. Further, an honest police officer would have been cautious in relying on information provided by Mr Newell.

599 In addition, Detective Thomas also used and relied upon others, such as Vernon Taylor, Mr and Ms Lyons, Mary Warwick, Brian Cross and Barry O'Brien, who clearly held a strong allegiance to Mr Catt. Ms Beckett insisted that this cast serious doubt upon his objectivity.

600 Ms Beckett's private prosecution arising out of the events at 41 High Street Taree on 2 May 1988 had not concluded by 24 August 1989 when she was arrested. Shane Golds and Peter Bridge gave evidence in support of her case together with two Catt children. In these proceedings, Detective Paget gave evidence that the only reason that he and Detective Thomas determined to charge Ms Beckett with giving false evidence was because they believed Mr Catt's version of the rock incident and that Mr Golds had retracted his statement. Ms Beckett rejects that contention. On the contrary, she submits that the more likely motive was vengeance and to deprive her of her claim in the private prosecution. This is made good by the fact that charging Peter Bridge and Shane Golds with conspiracy to give false evidence took them out of the equation in those proceedings.

601 In *George v Rockett* [1990] HCA 26, 170 CLR 104, the High Court, in considering the validity of a search warrant issued under s 679(b) of the *Criminal Code* (Qld), made the following general observations about search warrants:

"A search warrant thus authorizes an invasion of premises without the consent of persons in lawful possession or occupation thereof. The validity of such a warrant is necessarily dependent upon the fulfilment of the conditions governing its issue. In prescribing conditions governing the issue of search warrants, the legislature has sought to balance the need for an effective criminal justice system against the need to protect the individual from arbitrary invasions of his privacy and property. Search warrants facilitate the gathering of evidence against, and the apprehension and conviction of, those who have broken the criminal law. In enacting s.679, the legislature has given primacy to the public interest in the effective administration of criminal justice over the

private right of the individual to enjoy his privacy and property. The common law has long been jealous of the prima facie immunity from seizure of papers and possessions: see Holdsworth, *A History of English Law*, vol.10, (1938), pp 668-672. Except in the case of a warrant issued for the purpose of searching a place for stolen goods, the common law refused to countenance the issue of search warrants at all and refused to permit a constable or government official to enter private property without the permission of the occupier: *Leach v. Money* (1765) 19 State Tr.1001; *Entick v. Carrington* (1765) 19 State Tr.1029. Historically, the justification for these limitations on the power of entry and search was based on the rights of private property: *Entick*, at p 1066. In modern times, the justification has shifted increasingly to the protection of privacy: see Feldman, *The Law Relating to Entry, Search and Seizure*, (1986), pp 1-2.

State and Commonwealth statutes have made many exceptions to the common law position, and s.679 is a far-reaching one. Nevertheless, in construing and applying such statutes, it needs to be kept in mind that they authorize the invasion of interests which the common law has always valued highly and which, through the writ of trespass, it went to great lengths to protect. Against that background, the enactment of conditions which must be fulfilled before a search warrant can be lawfully issued and executed is to be seen as a reflection of the legislature's concern to give a measure of protection to these interests. To insist on strict compliance with the statutory conditions governing the issue of search warrants is simply to give effect to the purpose of the legislation..."

602 That statement demonstrates the courts' insistence upon strict adherence to the terms of a warrant and its legislative authorisation. Search warrants must be executed strictly in accordance with their terms. The "reasonable belief" that the items seized fall within the powers of the warrant must exist at every point at which lawfulness is claimed for taking and keeping another's property. It must exist contemporaneously with the act of seizure. Police officers are required to act reasonably in executing a search warrant, at least in relation to the force used to effect the entry, search and seizure, and the extent of the search and seizure. The scope of the search is defined by the items listed on it. Even if other things can be seized that turn up during the search, the search is only legal so long as it is reasonably confined to looking for what is named in the warrant.

603 In *Slaveski v Victoria* [2010] VSC 441, Kyrou J set out a summary of the authorities on what constitutes a reasonable search:

"[175] What constitutes a reasonable search will depend on the circumstances of each case. The method used to search for drugs or cash at

the home of a suspected drug trafficker would not necessarily be appropriate in a search for a client's documents at the office of a reputable solicitor, who is not personally suspected of having committed any offence.

[176] The factors that will inform the reasonableness of the manner in which a search is conducted are likely to include - but are not limited to - the following:

- (a) the nature and quantity of the items described in the warrant;
- (b) the nature of the conduct under investigation;
- (c) the size, layout, physical features and nature of the use of the premises being searched;
- (d) the likely location of the items described in the warrant;
- (e) in the case of a search for documents in an office area, whether the office area appears to have an orderly filing system;
- (f) in the case of a search for bulky or uniquely identifiable items, whether there are any obvious places where such items are likely to be located;
- (g) the time required to secure the premises and to set up an exhibits kit to enable the search to be conducted;
- (h) the number of officers conducting the search;
- (i) the number of people on the premises when the search is conducted and whether they are hindering the search;
- (j) whether the occupier of the premises is a suspect or a third party;
- (k) the history of police dealings with the occupier of the premises, including whether he or she is considered to be trustworthy or dangerous;
- (l) whether the occupier of the premises is cooperative;
- (m) whether any information that the occupier initially provides about the location of the items described in the warrant proves to be accurate and reliable; and
- (n) any prior intelligence that the police obtained lawfully about the premises, the items described in the warrant, the occupier and any other matters that are relevant to the search.

[177] In order to be reasonable, a search must be 'targeted' in the sense that it is focused on finding and seizing the items described in the search warrant. The method that is used to conduct the search must also be appropriate to the circumstances of the particular case. Common sense will often be a useful guide in this respect. In some cases, a search from one end of the premises to the other with minimal engagement with the occupier may be appropriate. In other cases, a responsive approach, involving dialogue with

the occupier about the location of the items described in the warrant, will be appropriate.

[178] A targeted and responsive approach does not require the police to accept at face value any information that the occupier provides to them about the location of particular items or to relax their control of the premises. Rather, where the premises have been secured, the occupier is cooperating and the locations that he or she nominates appear to be genuine, in many cases it would be sensible to check those locations first. If this approach is adopted and the police are not satisfied that all of the items described in the warrant have been seized, they can continue their search for any outstanding items."

604 Ms Beckett contended that the manner in which Detective Thomas directed the search is indicative of his desire to humiliate, intimidate and damage her. This included:

- (1) Arresting her at the commencement of the search.
- (2) Arresting her without providing any explanation to her as to the reasons for her arrest.
- (3) Unnecessarily handcuffing her.
- (4) Removing the children contrary to Court orders and placing them with Mr Newell (who by this stage was allegedly a key witness).
- (5) Refusing to give a correct address for the whereabouts of the children and directing Christine Warne to the wrong address.
- (6) Ransacking the house when the sole object of the warrant was a gun and a rifle.
- (7) Acting upon a request from Mr Catt to remove items for his benefit.
- (8) Removing and later failing to account for money.
- (9) Deploying an excessive number of officers given the modest proportions of the residence.

(10) Taking items (such as jewellery and documents) that had nothing to do with any indictable offence or the warrant.

605 Detective Thomas also became involved in the investigation of the sexual assault charges against Mr Catt. The precise circumstances in which he came to do so are not explained.

606 Terry Madden was the regional director at FACS in Taree. Mr Madden gave evidence in these proceedings of his dealings with Detective Thomas. Detective Thomas told Mr Madden that he had statements which would back up his allegations against Mr Madden's staff. He further represented that he had a copy of a letter sent to the Minister complaining of the way in which the FACS staff at Taree had mishandled the case. That was a letter identified by Mr Madden as a letter from Mr Catt's solicitor. Finally, Detective Thomas told Mr Madden that he felt some of the staff at Taree FACS may have been involved in a conspiracy to prevent him from completing his inquiries and that this could lead to them being charged.

607 Ms Beckett submitted that the statements by Detective Thomas were clearly part of an intimidation tactic designed to have FACS withdraw the charges against Mr Catt. This conduct is a further illustration of Detective Thomas' bias in favour of Mr Catt.

608 Detective Thomas also misrepresented things to Christine Warne, the District Officer at Taree FACS about the nature and scope of his role in the investigation into Mr Catt's sexual assault charges. Ms Warne gave evidence in these proceedings. According to her, on 24 August 1989, when she attended Taree police station to ascertain the whereabouts of the Catt children, Detective Thomas (in the presence of Detective Paget) made the following quite remarkable statements:

(1) He had been investigating the case against Ms Beckett (undercover) for four and a half months (prior to 24 August 1989).

- (2) He had gathered evidence that Ms Beckett had brainwashed the children, putting ideas into their heads about the sexual assaults.
- (3) He had interviewed 120 people.
- (4) He had evidence that Ms Beckett was giving Mr Catt nine times the amount of lithium required and placing it in his food and drink.
- (5) Since Mr Catt had been living apart from Ms Beckett, he had found Mr Catt "nowhere near as incompetent [*sic*] as she has suggested."
- (6) If the children were given a few days in a safe place they would be changing their statements regarding the sexual assault.
- (7) He had been previously involved with the arson charge against Ms Beckett and he would now be applying to have the matter reopened.
- (8) He said "leave them [the children] for 3 days, and when I talk to those children, they will be changing their statements."

609 Detective Thomas was seen by Ms Warne to dial Mr Newell's telephone number without any reference to a book or other documents. He then made thinly veiled threats to her that "a number of professionals with regard to the Catt case have been negligent in their management of the case" suggesting her department, the local police, Frank Burgess and the local magistrate. He then provided Ms Warne with an incorrect address for the location of the children, being 27 Milligan St, Chatham, which was in fact Mr Newell's vacant house. Ms Warne travelled there only to find it unoccupied. On her return to the police station the next day with Mr Baggs, Detective Thomas said to Mr Baggs:

"If you were upfront with me, I would have been upfront with you. The whole case from the beginning and against Barry Cat has been sloopy [*sic*] by investigations by your department and Frank Burgess. There are accusations about Bill Ferguson and Adrian Newell is my chief witness. I was given the power to investigate this case by the Assistant Commissioner, and the ICAC... I have been involved in the arson case and I will be reopening that.

Barry Catt will be out on a no bill. The children will change their story within 3 days."

610 Ms Beckett contended that these representations are remarkable for a variety of reasons. First, the disclosure of such information to a member of the public was contrary to any normal standard police procedure. What proper purpose could there be in giving this level of detail to a stranger to the matter? Secondly, the representations as to the length of time Detective Thomas had been involved in the investigation and the number of witnesses he had interviewed are not supported by any other evidence but were fabrications designed to exaggerate the weight of the case against Ms Beckett, in order to influence Ms Warne to form a bad opinion of her. Thirdly, in combination with the other representations about the arson case and the alleged brainwashing of the children, these representations illustrate the link between the arson charge, the new charges and the desire to assist Mr Catt to avoid the sexual assault charges. The matters were all linked in Detective Thomas' mind. Finally, it was clear that part of Detective Thomas' purpose in removing the children during the search was to have them taken away in order to have them change their evidence against their father.

611 Mr Baggs was the District Manager at FACS. He gave evidence in these proceedings of a number of encounters with Detective Thomas in the days following Ms Beckett's arrest. He kept contemporaneous notes which are relevantly contained in an exhibit. In those notes Mr Baggs records a series of encounters with Detective Thomas commencing on 25 August 1989, the day following the search, where he described Detective Thomas' behaviour as "overly aggressive", threatening and intimidating. It is apparent that Detective Thomas did not disclose the location of the children while they were staying with Mr Newell. He did disclose that he did not trust Taree FACS and he also said that the Juvenile Services Bureau and the magistrate had been sloppy in their handling of this case. He stated that there would be a no-bill entered in the case against Mr Catt.

612 Shortly after that conversation, the Newells arrived. Mr Newell advised Mr Baggs that he did not believe Mr Catt could be capable of sexual abuse. At

11:15 that morning Mr Baggs said he received an abusive phone call from Detective Thomas who alleged a "big cover up", asserting that "the Department's involvement in this case is questionable." He raged at Mr Baggs regarding an assertion allegedly made by him to Mr Newell that Detective Thomas and Mr Catt were "in together". He advised Mr Baggs that Mr Newell was a witness.

613 At noon on 25 August 1989 Mr Baggs went to the police station with Ms Warne and was abused by Detective Thomas who alleged sloppy investigation by Mr Burgess, sloppy work by the Department, power vested by the Assistant Commissioner and involvement of the ICAC. He apparently said:

"I've got politicians and police at Taree station, Frank Burgess, Bill Ferguson, FACS Taree. I was on an arson case and will re-open that case, Barry Catt will be out on a No-Bill. Once the children are out of this situation, they will change their story within 3 days if I'm not mistaken".

614 Once Mr Baggs had advised Detective Thomas that Mr Newell was not a suitable guardian for the children, it is apparent that Mr Baggs was visited by Mr Newell who abused him. On 7 and 8 September 1989 there was further contact from Detective Thomas seeking access to the children. Detective Thomas once again abused Mr Baggs, particularly in relation to alleged intimidation of the children by Peter Bridge. He threatened to obtain court orders.

615 Mr Baggs made a statement in a similar vein which is also contained at Exhibit JJ. Mr Baggs asserted that Detective Thomas said in an abusive tone "you had better be sure the kids ask for contact, Greg, you had better be sure of everything, because we have got information about a lot of people." Detective Thomas threatened Mr Baggs that he should have Christopher Catt at the police station at noon that day saying:

"I'll have you in contempt. I'll get you before the court... You are involved in a conspiracy and so is your department."

616 These representations by Detective Thomas to Mr Baggs should be contrasted with his disavowal of any involvement in the Catt brief at the bail application:

"Q. Was it 31st July Mr Catt was committed to trial on the sexual charges?

A. 1st August. As I say I am not specifically dealing with those."

617 Aside from the threats and abuse which are a recurrent theme in Detective Thomas' methods, there are a number of inferences that can be drawn from this evidence that provides an insight into his improper motivations in the case:

- (1) Detective Thomas took an immense interest in Mr Catt's prosecution, in particular the prospect of a no-bill in the case. This should be compared to the evidence of Frank Burgess who stated that Detective Thomas did not hold any brief at all in the Catt prosecution, did not consult him in relation to the matter and did not have access to the file. Mr Baggs also noted a telephone conversation with Mr Burgess where he said Mr Burgess "could throw no light on the situation". Detective Thomas sought to hide his interest in the case with lies, including the one he told at the bail application.
- (2) It is unexplained how Detective Thomas developed such an acute belief in Mr Catt's innocence regarding the sexual assault charges or indeed why he believed the children would change their stories.
- (3) The sequence of events suggests that there was extremely close contact between Mr Newell and Detective Thomas and sharing of information which was subsequently relayed by way of abuse to Mr Baggs.
- (4) There was collusion not just between Detective Thomas and Mr Newell but also with Mr Catt. The representations made by Mr Catt, recorded at paragraph 78 of Mr Baggs' typed memo, were:

- (a) to the effect that the charges against him would be withdrawn;
- (b) "he was working with the Crime Squad and they were working with him";
- (c) to the effect that Mr Catt himself had approached Shane Golds who had changed his story,
- (d) very similar to the representations made by Detective Thomas himself.

618 Ms Beckett maintains that the evidence of the FACS officers provides insight into Detective Thomas' malicious state of mind. The arson charge, Mr Catt's prosecution and Mr Catt's business problems were all matters that influenced his approach.

619 On 30 March 1990, Dr Richardson was threatened with criminal charges and physically intimidated by Detective Thomas because he had updated his health summaries concerning Mr Catt. The strong inference is that Detective Thomas did so to assist Mr Catt in his custody and property matters and to ensure that the charges against Ms Beckett would not be diluted by a suggestion that Mr Catt, who was clearly a key witness, was not of sound mind.

620 Michael Jones swore an affidavit before Detective Murray on 8 November 1989 in which he alleged that Detective Thomas had told him that his brief came from the "Independent Commission Against Crime". He told Mr Jones "just between you and me you want to be careful because you are implicated in this". When Mr Jones asked him to explain this, Detective Thomas said "we have got a statement from someone who said that you spoke to them and said words to the effect of 'I want to get this bastard out of business'."

621 The suggestion by Detective Thomas that Mr Jones would be "implicated" merely because he wanted Mr Catt out of the business reveals a motive to

protect Mr Catt's business interests. Clearly, Detective Thomas saw the preservation of Mr Catt's business interests as a reason to threaten an officer of the court. When considered alongside the accounts of the FACS officers, there is a clear inference available that Detective Thomas had Mr Catt's interests at the forefront of his mind.

622 Detective Paget first began working with Detective Thomas in 1985. There is no evidence of him having any dealings with Ms Beckett prior to 8 August 1989. Ms Beckett contended that Detective Thomas' manifest ill-will towards her would appear to have infected Detective Paget in relation to the prosecution of the case. Detective Thomas told Detective Paget that he had been the subject of a multitude of complaints emanating from Ms Beckett. He believed that there were "44" such complaints. Prior to commencing the investigation of the matters which were the subject of the 1989 charges against Ms Beckett, Detective Paget said that when Detective Thomas first came to the crime squad, he had given him the "Roseanne's Deli" arson brief to read. Detective Paget said that Detective Thomas "wasn't very happy" with the no-bill result, and had told him that the then Attorney General "may have had something to do with it because he was a cousin of Doug Annetts, who was the partner of Mrs Catt".

623 There is no cogent explanation for Detective Thomas providing Detective Paget with the arson brief. At the time, both officers were members of the Regional Crime Squad, not the Arson Squad.

624 Detective Paget gave evidence that he had consulted with both Detective Thomas and Mr Daffy, who was one of his superiors at the Regional Crime Squad, in relation to the involvement of Detective Thomas in light of Ms Beckett's previous complaints. However, Ms Beckett insists that this does not absolve Detective Paget in relation to any of the actions taken by him or Detective Thomas at a later time. There is no evidence, other than a hearsay assertion, that Detective Paget had any such discussion. He did not put anything in writing expressing his concern. Moreover, when the letter was sent by Detective Thomas on 28 November 1989 protesting the direction by

Detective Murray to remove him from the case and asserting that Ms Beckett was "a vexatious complainant, motivated by another vexatious complainant both of whom use, rather MISUSE political influence to pervert the course of justice", there was no evidence from Detective Paget that he advised Detective Thomas to refrain from continuing in the investigation at that later time. Indeed, his evidence was that Detectives Thomas and Rankin discussed the validity of the direction given and he was aware that Detective Thomas sought legal advice from the head prosecutor at Newcastle.

625 The inference must therefore be that Detective Paget was content to participate in the investigation notwithstanding Detective Thomas' evident animus towards Ms Beckett. An honest and reasonable police officer would not have done so.

626 The suggestion that Detectives Thomas and Paget obtained advice or consulted with superiors in relation to Ms Beckett's case is of little consequence in circumstances first, where these people were not called to give evidence about any of those conversations in these proceedings and secondly, where there is no evidence that they were aware of any lack of honest belief held by the detectives regarding Ms Beckett's guilt. Similarly, as the investigation proceeded, Detective Paget acquiesced in the involvement of Mr Newell in the investigation despite his obvious intense dislike for Ms Beckett. He also acquiesced in the adoption of unorthodox and improper investigation techniques, such as interviewing witnesses at Chatham.

627 Detective Paget denied that he held personal malice towards Ms Beckett. However, when pressed he responded as follows:

"Q. Yes, you didn't like her.
A. No.

Q. You're agreeing with me, are you, when you say no? You didn't like her.
A. No, I didn't like what I'd heard about. No."

628 Further, his dealings in the case suggest actual malice. There are a number of possible examples of this.

- 629 First, Detective Paget typed and witnessed a statement by Amanda Taylor, including inferentially an allegation against Ms Beckett that she was engaging in prostitution. That was never officially pursued, and there is no other evidence anywhere from the police officers that this was a matter of any relevance. Detective Paget said that he did not know why he put it in the statement.
- 630 Secondly, Detective Paget was shown his occurrence pad concerning an allegation of missing money raised by Mr Jones. The heading to that entry was "Vexatious Complaint Made by Roseanne Catt". Detective Paget acknowledged that he had characterised the complaint as "vexatious", even before it was investigated and even before he knew that money had been found. The entry was made independently of Detective Thomas, to whom he had not spoken when he wrote it. Detective Paget agreed he had written those words to influence other police to have the same view.
- 631 Thirdly, Detective Paget stated that "a lot of police" thought the way he did about Ms Beckett. However, this is inconsistent with his assertion that the reason he and Detective Thomas used Mr Newell's Chatham premises to conduct aspects of the investigation was because Ms Beckett "had various relations with police at Taree."
- 632 Fourthly, Tracy Mairinger gave evidence that she was threatened by officers in Ingham on 21 March 1990. Although her evidence at this trial asserted that Detective Thomas was there, her evidence in 1991 was that it was Detective Paget who was present. He witnessed her statement.
- 633 Fifthly, Detective Paget travelled to Sydney and Wagga Wagga with Detective Thomas for the purpose of reinvestigating the arson charge that had been no-billed.
- 634 Ms Beckett submitted in these circumstances that there is a sufficient basis to find that Detective Paget, as the junior officer, was infected by and/or

condoned Detective Thomas' ill-will against her in relation to the investigation and institution of the charges.

635 Senior counsel for the State properly disavowed any suggestion that former Justice Allen or the Rt Hon Terry Sheahan QC, a former NSW Attorney General, had ever done anything corrupt, unbecoming or wrong. Allen J was appointed as a Master of this Court in 1979 and a judge from 1 August 1986. The Crown Court Book is littered with references by witnesses, all post-bail application, to Ms Beckett's alleged connection with him. It is plain, having regard to his appointment in 1979, that he was never Ms Beckett's barrister and the inference is available that any statement from a witness that suggests this was clearly factitious and possibly drafted by Detective Thomas.

636 However, Ms Beckett complained that it was one thing for the State now to disavow any such claim from the bar table. That view is markedly different from the approach taken by Detectives Thomas and Paget. Detective Thomas gave evidence of his suspicion of an "association". He claimed he had "documentation" to support it and that Allen J was Ms Beckett's "legal man" in Sydney who could "fix" things. The fact that his Honour had been a judicial officer for 10 years at that point was overlooked.

637 There was no complaint at the bail application that Allen J should disqualify himself. Notwithstanding the above, both Detectives Thomas and Paget approached ICAC on 8 May 1990 regarding Ms Beckett, Mr Sheahan and Allen J.

638 The allegations against Mr Sheahan were similarly scurrilous. Detective Bromhead referred to a similar suggestion in his statement and said someone by the name of "Thomson" told him to write it. Mr Bromhead must be incorrect. No statement was ever taken from that person. Mr Bromhead could not remember why he wrote the statement.

639 Ms Beckett urged me to find in these proceedings that Detectives Thomas and Paget fabricated the spectre of corruption to increase the overall

perception of Ms Beckett's criminality, and encouraged witnesses to include the detail in their statements. The State submitted that the allegation was baseless.

Malice - consideration

- 640 Detective Thomas did not survive long enough to respond to Ms Beckett's allegations that his sole or dominant purpose in prosecuting her was other than the proper invocation of the criminal law. It is therefore important to limit or restrict any comments or findings about him that I may feel inclined to make to those that are necessary to support my reasoning on this issue. I also propose to restrict my consideration of Detective Thomas' malice to his prosecution of Counts 2 and 6.
- 641 In my opinion Detective Thomas prosecuted Ms Beckett on Counts 2 and 6 for an illegitimate or oblique motive. Some background to my reasoning is necessary.
- 642 Ms Beckett and Detective Thomas came into the life of each other on Christmas Day 1983. Detective Thomas accused Ms Beckett of setting fire to her delicatessen and she accused him of improper behaviour in the course of his investigation. Detective Thomas incurred Ms Beckett's not inconsiderable wrath in doing so and she incurred his not inconsiderable resentment by complaining about him. This was the cauldron out of which the later monumental events would develop.
- 643 Detective Thomas some years later conceded that he had spent the last six years of his life ducking internal security and justifying his existence. That was directly and solely related to Ms Beckett's complaints against him. However, Detective Thomas did not in my view set out upon a course of conduct conspiratorially to invent or fabricate evidence by way of revenge. Detective Thomas did not in my opinion create facts or circumstances that he could mould or craft into charges against her. On the contrary, Ms Beckett managed somewhat naively to do that all by herself.

644 It must be said that Ms Beckett was fearless in her dealings with people. Her complaints about Detective Thomas are an example of that. She was however more generally abrasive and forthright, a characteristic that undoubtedly created enemies. It almost goes without saying that her visit to 41 High Street Taree on 2 May 1988 and the allegations of sexual misconduct against her husband would have irreparably alienated Ms Warwick and Mr Catt. But there were others as well. In due course they came back to haunt her. Ms Beckett incautiously disregarded the possible consequences of her actions. She struck me as an intelligent woman and her conspicuous lack of any practical sense of self-preservation is one of the most significant imponderables at large in this case.

645 Mr Newell managed to form very negative views about Ms Beckett. It is irrelevant for present purposes whether his views were well founded or not. His detailed statements evince a predisposition against Ms Beckett and the conviction on his part that she was the author of an evil plan. Mr Catt, who was Mr Newell's life long friend, was thought by Mr Newell to be the object of that plan. Mr Newell was, or became, the engine that drove attempts, ultimately successful, to collect negative material about Ms Beckett. It was in that atmosphere that Detective Thomas came to be presented with what he was happy to treat as evidence of criminal conduct on her part.

646 Detective Thomas did not make up the rock incident, even if he placed improper pressure on Peter Bridge and Shane Golds. Detective Thomas did not commence the civil proceedings against Mr Catt for assault arising out of the rock incident. Detective Thomas did not in my view contaminate milk or juice samples with lithium, or conspire with others to do so. Nor did he suborn James Morris or Vernon Taylor to allege that Ms Beckett had solicited them to murder her husband. If Detective Thomas planted a pistol in her bedroom it has not been proved.

647 With the exception of the last mentioned incident, all of these circumstances fell into Detective Thomas' hands without too much effort on his part. The circumstances giving rise to Counts 3 and 4 can be included. Ms Beckett's

account of the circumstances surrounding the Swan's Crossing incident is literally incredible. It is unsurprising that the jury rejected it. Detective Thomas did not manufacture these events.

648 A significant amount of the material referred to in submissions on malice went to motive. Proof of a malicious motive is not automatically proof of malice. I am however satisfied that the evidence establishes that Detective Thomas harboured an intense dislike for Ms Beckett and that the fallout from the delicatessen fire was the cause of it. I am equally satisfied that Detective Thomas did not give practical vent to his feelings until shortly before 22 August 1989 when information started to come his way. That was facilitated by his friendship with Mr Catt and Mr Newell.

649 I am satisfied that Detective Thomas did not believe, and could not reasonably have believed, that Ms Beckett was guilty of the charges that became Count 2 and Count 6. As I have already noted, Detective Thomas was an investigator of some considerable experience. He was clearly no fool.

650 The laying of the perjury charge was patently improper in my opinion. It was a charge formulated when the events that gave rise to it were incomplete and when no honest or reasonable belief in the charge could have been formed. The very ingenuity of the case bespeaks an attempt to formulate a charge that was not warranted and for an improper purpose, and in my view as an act of vengeance.

651 The same can be said of Count 6. Mr Morris was on his own admission well affected by alcohol on the night of Ms Beckett's alleged approach to him at the RSL club. Although probably, but not certainly, in reference to his state of intoxication later in the evening, Mr Morris conceded at Ms Beckett's trial that his consumption of alcohol adversely affected his memory. Detective Thomas ran with Mr Morris's extraordinary allegation. He never once sought to verify it or test it. He proceeded at full throttle to prefer a serious charge for the wrongful purpose of getting back at Ms Beckett for the mischief he felt she had caused him.

652 I am not satisfied that Detective Thomas somehow pressured Mr Morris, in the face of rumours about his conduct in the Purfleet community where he worked, to fabricate the story against Ms Beckett. I am however satisfied that the allegation reached Detective Thomas through the back door of Mr Morris' superiors. The fact that Detective Thomas did not scotch it immediately, but instead parlayed it into a sequence of other charges against Ms Beckett, evidences the use of the criminal justice system for an improper purpose. Detective Thomas utilised the legal system in a way that did not secure justice but perverted it.

653 It is no answer to say that each of the charges survived committal and later satisfied a jury. There may have been several reasons for that about which it is unprofitable to speculate. Detective Thomas took Ms Beckett's complaint file about him as part of the material seized in the execution of the warrant. He also persisted with his role in Ms Beckett's prosecution long after he should have ceased to have even the slightest connection with it. Counts 2 and 6 were commenced and continued by Detective Thomas for a wrongful and malicious purpose: his sole or dominant purpose was other than the proper invocation of the criminal law.

Conclusions on malice

654 I am satisfied that Ms Beckett has established the malice component of the tort of malicious prosecution.

The Bracamonte evidence

655 An inordinate and to some extent unproductive amount of time and effort was directed to what for ease of reference became known as the Bracamonte evidence. It was in my view something of a side wind when compared with all of the other significant matters fomenting over the last three decades and more.

656 The Bracamonte evidence came into play as the result of a tendency notice served by Ms Beckett. In short compass, Ms Beckett contended that I could

usefully be informed about Detective Thomas' relevant tendencies by a comparison of what passed between him and Ms Bracamonte at the Byron Bay police station on 31 May 1989. I considered Ms Beckett's application to adduce the tendency evidence in question in *Beckett v State of New South Wales* [2014] NSWSC 1164. In that decision I expressed views about the potential probative value of the Bracamonte evidence at [35] and [37].

657 Ms Beckett was concerned to promote this evidence as demonstrating or supporting a conclusion that Detective Thomas had a tendency to institute proceedings without cause. Having now heard all of the evidence in the case I am not satisfied that the Bracamonte evidence supports the existence of that tendency. The proof of a tendency to act in a particular way cannot operate to establish by implication that the person in question in fact acted in that way if there is credible evidence that he or she did not act in that way.

658 As will be apparent from my findings in respect of each count, I am not satisfied on the balance of probabilities that Detective Thomas instituted the proceedings on Counts 1, 5, 7 or 9 without cause. That is because even after taking account of the possibility that Detective Thomas may have misstated the strength of evidence against Ms Beckett, or put pressure on some witnesses to give evidence against her, or threatened witnesses with the improper exercise of police powers or intimidated witnesses, there was in the case of each of these counts sufficient other available material to warrant or justify the commencement and maintenance of the proceedings. In the case of Counts 2 and 6 I am satisfied independently of, and entirely without regard to, anything that could be derived from the Bracamonte evidence that Detective Thomas either did not have or could not reasonably have had the requisite degree of persuasion to commence or maintain those prosecutions.

659 Ms Beckett did not attempt to harness the Bracamonte tendency evidence in support of the proof of her case on malice for obvious reasons.

DAMAGES

Ms Beckett's claimed heads of damage

660 Ms Beckett claimed damages in the following categories:

- (1) General damages, including damages for deprivation of liberty.
- (2) Aggravated damages.
- (3) Exemplary damages.
- (4) Damage to reputation.
- (5) (Past) economic loss.
- (6) Legal fees incurred 1989 - 1990 and paid by Ms Beckett.
- (7) Loss of opportunity to obtain a property settlement and loss of contributions to the Cattys Body Repairs business.
- (8) Interest on all the above from 26 September 2005 to date.

Sentences served by Ms Beckett

661 Ms Beckett's sentences were as follows:

- (1) In respect of Count 1 ("the rock incident"); Count 3 ("the Swan's Crossing incident"); and Count 4 ("the cricket bat/ eucalyptus oil incident"): concurrent sentences comprising a fixed term of 15 months to commence on 11 September 1991 (the date of verdict) and expiring on 10 December 1992.
- (2) On Count 2 ("the perjury count"): a fixed term of 3 years commencing on 11 December 1992 and expiring on 10 December 1995.
- (3) On Count 5 ("the lithium incident"): a fixed term of 3 years commencing on 11 December 1995 and expiring on 10 December 1998.

- (4) On Count 6 ("Soliciting James Morris"): a fixed term of 3 years and 6 months commencing on 11 December 1995 and expiring on 10 June 1999.
- (5) On Count 7 ("Soliciting Vernon Taylor"): a minimum term of 6 years commencing on 11 December 1995 and expiring on 10 December 2001 with an additional term of 2 years from 11 December 2001 expiring on 10 December 2003.
- (6) On Count 9 ("possessing a pistol"): a fixed term of 12 months commencing on 11 September 1991 and expiring on 10 September 1992.

Admissions on the pleadings

662 The following paragraphs from the amended statement of claim relevant to loss of liberty damages, general damages, loss of reputation damages, and economic loss have been admitted by the State:

"9. The Plaintiff was brought before a Magistrate on 25 August 1989. Bail was refused.

10. The Plaintiff was held in custody between 24 August 1989 and 13 September 1989.

13. On 22 September 1989, in purported performance of his duties as a police officer, Thomas secured the arrest of the Plaintiff on the basis of her alleged breach of bail conditions by having another person make contact with Marie Whalen.

18. On 18 October 1991 the Plaintiff was sentenced to terms of imprisonment as follows ...

20. Between 11 September 1991 and 6 August 2001, the Plaintiff was imprisoned in consequence of the verdicts issued on 11 September 1991 and sentences imposed on 18 October 1991.

28. On 17 August 2005 the Court of Criminal Appeal gave judgment and made orders as follows:

Uphold the appeal in relation to counts 1, 2, 5, 6, 7 and 9 and quash each conviction.

Enter a verdict of acquittal on count 9.

Order that there be a new trial in relation to counts 1, 2, 5, 6 and 7.

Dismiss the appeal in relation to counts 3 and 4; and

The appellant's bail is to continue."

Relevant Legal Principles for the Assessment of Damages in Intentional Torts

663 The categories of damages recoverable in a malicious prosecution claim have long been accepted to be those identified by Holt CJ in *Savile v Roberts* (1698) 1 Ld Raym 374:

- (a) damage to the plaintiff's fame or reputation;
- (b) damage to the plaintiff's person; and
- (c) damage to the plaintiff's property.

664 Once damage under any one or more of the three heads is proven, the award of damages is at large, subject only to the condition that the damages must not be grossly disproportionate to the losses or injuries sustained.

665 In relatively more recent times Diplock LJ in *Cassell & Co Limited v Broome & Anor* [1972] AC 1027 observed:

"The three heads under which damages are recoverable for those torts for which damages are at large are classified under three heads: (1) compensation for harm caused to the plaintiff by the wrongful physical act of the defendant in respect of which the action is brought. In addition to any pecuniary loss specifically proved the assessment of this compensation may itself involve putting a money value upon physical hurt, as in assault, upon curtailment of liberty, as in false imprisonment or malicious prosecution, upon injury to reputation, as in defamation, false imprisonment and malicious prosecution, upon inconvenience or disturbance of the event tenor of life, as in many torts, including intimidation. (2) Additional compensation for the injured feelings of the plaintiff where his sense of injury resulting from the wrongful physical act is justifiably heightened by the manner in which or the motive for which the defendant did it. This Lord Devlin calls 'aggravated damages'. (3) Punishment of the defendant for his anti-social behaviour to the plaintiff. This Lord Devlin calls 'exemplary damages'..."

666 This statement was approved by Clarke JA in the New South Wales Court of Appeal in *Spautz v Butterworth & Anor* [1996] NSWSC 614; 41 NSWLR 1.

667 In *Noye v Robbins & Anor* [2007] WASC 98, Heenan J noted:

"The reflection upon his integrity and the disgrace associated with a charge for these offences, if wrongly brought and maintained, would also undoubtedly tend to cause injury to the plaintiff's reputation and good name."

668 Heenan J further held that at paragraph [756]:

"[756] The charges laid against Noye plainly involved a potential risk of imprisonment if convicted, and this is sufficient to provide a basis for an award of damages under the second category: *Houghton v Oakley* (1900) 21 LR (NSW) 26. In fact Noye's liberty was curtailed by these charges. Having been charged on complaint, when he came before the Magistrate's Court he was placed on bail in respect of all the charges in an amount of \$10,000. That bail was renewed from time to time but the fact that he was subject to bail is itself a restriction upon his liberty."

669 In England, an attempt was made by the Court of Appeal in *Thompson v Commissioner of Police of the Metropolis* [1998] QB 498 to issue some guidelines for damages in wrongful imprisonment and malicious prosecution cases. The Court held :

"In a straight forward case of wrongful arrest and imprisonment the starting point is likely to be about 500 pounds for the first hour during which the plaintiff has been deprived of his or her liberty. After the first hour an additional sum is to be awarded, but that sum should be on a reducing scale so as to keep the damages proportionate with those in personal injury cases and because the plaintiff is entitled to have a higher rate of compensation for the initial shock of being arrested as a guideline, we consider, for example that a plaintiff who has been kept wrongly in custody for 24 hours should for this alone normally be regarded as entitled to an award of about 3,000 pounds. For subsequent days the daily rate will be under a progressively reducing scale.

...

In the case of malicious prosecution the figure should start at about 2,000 pounds and for prosecution continuing for as long as 2 years, the case being taken to the Crown Court, and award of about 10,000 pounds could be appropriate. If a malicious prosecution results in a conviction which is only set aside on appeal this will justify a larger award to reflect the longer period during which the plaintiff has been in peril and is being caused distress."

670 In Australia, there is no authoritative guideline on how to calculate damages in wrongful imprisonment or malicious prosecution cases by reference to the period of time the plaintiff was detained. There is no clear arithmetical symmetry. Each case appears to have been decided on its facts and the reasoning behind the quantum of damages is usually short. The only Australian case where a Court calculated the damages for wrongful detention in an arithmetical way was at first instance in *Spautz v Butterworth*, where a daily rate was applied. However, this was overturned on appeal, and a lump sum was substituted.

671 Ms Beckett indicated that she has been unable to locate any malicious prosecution cases that have involved a similarly prolonged period of detention. A similar inquiry was made in the New Zealand Royal Commission into the matter of Allan Arthur Thomas.

Authorities: General Damages for Unlawful Arrest, False Imprisonment and Malicious Prosecution

672 In some of the cases discussed below, aggravated and/or exemplary damages were also awarded. In *State of New South Wales & Or v Landini* [2010] NSWCA157, the plaintiff was detained for approximately 24 hours. The Court of Appeal made a \$10,000 award for general or compensatory damages. In *Coyle v State of New South Wales* [2006] NSWCA 95, the Court of Appeal awarded \$10,000 in general damages where the plaintiff was in custody for only 2.5 hours. In *Moses v State of New South Wales* [2010] NSWDC 243, the District Court awarded the plaintiff \$35,000 in general damages for false imprisonment spanning 8 to 9 hours. In *Zreika v State of New South Wales* [2011] NSWDC 67, general damages of \$50,000 were awarded for a two-month period of false imprisonment. In *A v State of New South Wales* the plaintiff was awarded \$20,000 in compensatory damages for malicious prosecution. This was increased to \$25,000 by way of aggravated compensatory damages. In *Noye v Robbins*, although the action for damages for malicious prosecution against the first defendant was dismissed, Heenan J said that he would have awarded the plaintiff \$50,000 for injury to person,

health and restriction of liberty. The plaintiff tendered evidence that he had developed depression which required both medical attention and supervision.

673 In *Houda v State of New South Wales* [2005] NSWSC 1053 the plaintiff, a solicitor, was present in the lobby of the Burwood Local Court awaiting arrival of clients when he was arrested and escorted down the street to Burwood police station in full view of the public. He was held in custody for less than an hour. However, he had to report the charge to the Law Society and appear before the Local Court. Six months after the charge was made, the proceedings were withdrawn. In addition to the compensatory damages of \$100,000, the plaintiff was awarded \$20,000 for aggravated damages because of the way in which the defence conducted the claim. The court held that an award for damages for assault, which was also pleaded by the plaintiff, was included in the award for damages for false imprisonment and unlawful arrest.

674 In *State of New South Wales v Delly* [2007] NSWCA 303; AustTorts R 81-816, the plaintiff was present in an apartment when a man was murdered. When Police entered the apartment with a search warrant the following day she was arrested and taken into custody. She was not informed that she was under arrest or of the reason for her arrest. She was never cautioned or charged and was eventually released. At 11:00am the police formed the view that she could not be charged with any offence but did not inform her of this fact until her release at 12.30pm. She was awarded \$25,000 by way of general compensatory damages by the District Court of New South Wales which was held to be in the upper range by the Court of Appeal, but not excessive under the circumstances.

675 In *Bhattacharya v New South Wales* [2003] NSWSC 261, Mr Bhattacharya allegedly threatened to kill a member of the Court of Appeal registry. This was not reported to police at the time. Four days later, he was observed acting suspiciously and the police were called and informed of the threat. A confrontation then took place between him and police officers which resulted in him being taken to St Vincent's Hospital. Mr Bhattacharya was deemed not

to suffer from mental illness and was permitted to leave. He received \$15,000 for false imprisonment.

676 In *McDonald v Coles Myer Limited (trading as "K-mart Chatswood")* [1995] NSWSC 67; AustTorts R 81-361, the Court of Appeal increased the trial judge's verdict in the District Court from \$12,500 to \$25,000 for general damages for false imprisonment. The Court of Appeal quoted the decision of the trial judge:

"The plaintiff's evidence was that she was a retired public servant with no criminal record whatsoever. I accept her evidence that she was greatly distressed, humiliated and embarrassed by the arrest outside a major store in a local area in the middle of the day in a public area with a lot of other people about; was then required to go back into the store, was detained in the store security office, was questioned by the security officer and other employees of the defendant and then by the Police, was further formerly arrested by the Police and was taken out of the store again by two Police officers and taken to the local Police Station and was charged, finger printed and photographed, then released on bail, then required to go back to the Local Court for an extension of the bail and then attend at the Local Court some months later for the actual hearing. Her evidence was that over a long period of time she 'felt awful, ashamed, worried about herself and what other people would think' and that her sleep had been greatly interfered with for a long period of time, and I accept that evidence and find that the plaintiff is entitled to significant damages."

677 Clarke JA added:

"The case then is one of a spinster of impeccable character who had worked in the public service until 1978, having been falsely arrested and wrongly imprisoned in 1984 following which she was charged with false pretences, tried and acquitted. In her claim for damages she was met with the defence of justification, that is, that she was in fact guilty of the offence for which she had been acquitted."

678 In *Morro, N & Ahadizad v Australian Capital Territory* [2009] ACTSC 118; 4 ACTLR 78, three different plaintiffs were wrongfully imprisoned by the Australian Capital Territory. Mr Morro was taken into custody for breach of a bail condition while he was serving a sentence of periodic detention. The Sentence Administration Board of the Australian Capital Territory wrongfully cancelled the periodic detention order and made an order that he be taken into custody again. It later admitted that the order was invalid.

- 679 Mr Morro was imprisoned for 72 days and released after an application for habeas corpus. His claim for damages included claims based on evidence of psychiatric stress induced by his imprisonment. Mr Morro was awarded \$95,000 for general damages.
- 680 N was imprisoned after his periodic detention order was cancelled following an assault in prison. Procedural fairness was not accorded to N, rendering the order invalid. N was wrongfully imprisoned for 20 days and released after a writ of habeas corpus was sought on his behalf. N was awarded \$40,000 in general damages, which included damages for economic loss and \$3,000 for the assault.
- 681 Mr Ahadizad was wrongfully imprisoned for a period of 68 days after his periodic detention order was cancelled by the Sentence Administration Board. Again, there was a lack of procedural fairness which was later admitted. Consent orders quashing the Board's decision were issued. At all times Mr Ahadizad was mentally ill. Mr Ahadizad was awarded \$55,000 in general damages (including any economic loss sustained). The court found that the period of wrongful imprisonment had had a deleterious effect on his mental well-being.
- 682 In *Nye v State of New South Wales*, Mr Nye was arrested and charged with murder and conspiracy to supply cannabis resin based almost entirely on the evidence of a police informant. Mr Nye remained in custody from the time of his arrest on 24 July 1991 until his acquittal on 10 November 1992, a period of approximately 16 months. Mr Nye sued for malicious prosecution and false imprisonment.
- 683 The Supreme Court awarded a total of \$1,335,000 to Mr Nye. This included two sets of damages. For malicious prosecution against Gordon (a police officer), the DPP and the State of NSW, Mr Nye was awarded:
- (a) \$100,000 for economic loss;

- (b) \$60,000 as interest on the economic loss;
- (c) \$100,000 compensatory damages for imprisonment;
- (d) \$100,000 for aggravated damages;
- (e) \$25,000 compensatory damages for psychiatric injury;
- (f) \$562,500 for exemplary damages.

684 For wrongful arrest and false imprisonment against Gordon and the DPP, Mr Nye was awarded:

- (a) \$25,000 for arrest and period of detention on 24 July 1991;
- (b) \$75,000 as compensation for psychiatric injury;
- (c) \$100,000 for aggravated damages;
- (d) \$187,500 for exemplary damages.

685 The court accepted the medical opinion that the events of the day of arrest, which included tauntings by police who suggested that the friends of the plaintiff's alleged victim were waiting for him at Long Bay, was a trigger for his depression and that the period in prison contributed to the development of his psychiatric disorders. In awarding Mr Nye \$100,000 for the deprivation of his liberty for a period of 16 months, the court stated:

"Liberty is one of mankind's most important rights. To deprive a man of his liberty is very serious. In one sense the right to liberty is priceless."

686 In *Spautz v Butterworth* following an unsuccessful criminal defamation charge, the appellant was ordered to pay costs of \$5,000 within three months or in default, serve 200 days imprisonment with hard labour. He did not pay the amount owing and a magistrate issued a warrant of committal in respect of the costs order. The appellant was arrested and taken to gaol. He

commenced proceedings in the Supreme Court to declare his imprisonment illegal. Lee J found there was no statutory authority for the issue and execution of the warrant and ordered it to be quashed. The appellant then commenced proceedings claiming damages for false imprisonment and damages were assessed by Young J as follows:

- (a) general damages of \$5,600 (calculated on the basis of \$100 a day damages allowed for 56 days imprisonment);
- (b) aggravated damages of \$5,000;
- (c) economic loss of \$200;
- (d) a deduction in respect of the costs owing (\$1,400).

687 In making his award, Young J had taken into account the following matters:

- (a) a peremptory arrest without warning or opportunity to set the plaintiff's/appellant's affairs in order;
- (b) false information in the warrant branding the plaintiff as a criminal convicted of criminal defamation;
- (c) fingerprinting, handcuffing and the taking of the plaintiff's personal possessions;
- (d) incarceration within a police lockup at Wallsend;
- (e) temporary loss of ability to speak or otherwise communicate;
- (f) being put in a police paddy wagon and being delivered to a maximum security prison;
- (g) solitary confinement at Maitland prison for 7 days;

- (h) visual and sensory deprivation for all but a few hours of each day;
- (i) general humiliation; and
- (j) treating the plaintiff without distinction from convicted felons.

688 However, the verdict at trial was reduced to 2 cents in purported reliance on s 144 of the *Justices Act 1902*.

689 Dr Spautz appealed. On appeal he was awarded \$75,000 for general compensatory damages (which included the sum of \$200 for economic loss). He submitted on appeal that there were a number of other matters which Young J should have taken into account when assessing general damages. They were:

- (a) opposition, through their legal representatives, to the release sought by the appellant in the declaratory proceedings ultimately decided by Lee J;
- (b) subjection of Dr Spautz's liberty to the constraints of a bail order;
- (c) lodging an appeal from Lee J's decision and persevering with it until 14 November 1985, some few days before an appeal was due to be heard;
- (d) reserving any right to appeal from Lee J's decision during the compensation proceedings;
- (e) pleading s 144 of the *Justices Act* as a defence and as an amended defence served in July 1992.

690 Dr Spautz also relied on unequivocal assertions made by the first defendant's counsel at the trial that he was a convict and a person who deserved to be imprisoned.

691 In the Report of the Royal Commission to Inquire into the Circumstances of the Convictions of Arthur Allan Thomas, the New Zealand Royal Commission was asked by way of term of reference 6 to make a recommendation in respect of a sum to be paid by way of compensation to Mr Thomas, who had spent 9 years in prison.

692 The Royal Commission found (at 482) that:

"The pardon alone makes it clear that Mr Thomas should never have been convicted of the crimes, since there was a real doubt as to his guilt. He should have accordingly been found not guilty by the jury. Our own findings go further. They make it clear that he should never even have been charged by the Police. He was charged and convicted because the Police manufactured evidence against him, and withheld evidence of value to his defence."

693 The Royal Commission found or accepted that:

- (1) His formerly happy marriage was destroyed.
- (2) There were various indignities and loss of civil rights associated with his deprivation of liberty.
- (3) He would for the rest of his life suffer some residual social disabilities attributable to the events of the last 10 years.

694 A submission was made that he should be entitled to compensation for the damage, suffering and anguish he sustained mentally and physically as a consequence of his wrongful convictions and subsequent years in prison. His counsel had listed those as:

- (1) Loss of reputation.
- (2) Humiliation.
- (3) Pain and suffering.
- (4) Loss of his wife.

- (5) Physical assaults while in prison and degradation.
- (6) Loss of enjoyment of life.
- (7) Loss of a potential family (the Thomas couple had commenced the procedures for adopting a child).
- (8) Deprivation of liberty.
- (9) Loss of civil rights such as voting rights.
- (10) Loss of social intercourse with his friends and neighbours in particular at Pukekawa.
- (11) The indignation of being in prison for an offence of which he was innocent.
- (12) The harm and pain caused to him in the destruction of his reputation by press coverage and any other media broadcasting and disseminating false and incorrect information about his alleged involvement in the said homicides.
- (13) The anguish of judicial proceedings and in particular hearing wrong verdicts being announced.
- (14) The ignominy of prison visitation and all matters relating to being a prisoner, including prison dress, prison diet, maximum security conditions, and all matters relating to his life in prison. It should be borne in mind that Arthur Thomas had always been an outdoor man and his first 7 years was spent in Paramoremo where he was never outside on any occasion except to attend court proceedings.
- (15) Adverse effects on future advancement, employment, marriage, social status and social relations generally.

695 For these matters, a recommendation was made that he be awarded \$950,000 New Zealand dollars. Included in the amount recommended to be awarded to Mr Thomas the court also made some comments about what were matters going to exemplary damages and these included:

"The fact that he is imprisoned on the basis of evidence which is false to the knowledge of Police Officers, whose duty it is to uphold the law, is an unspeakable outrage.

...

In a civil claim exemplary damages may be awarded where there has been oppressive, arbitrary or unconstitutional action by the servants of the government. If ever there was a situation where such an award was warranted, it is this case."

696 The Royal Commission adopted common law principles of assessment of damages in making its recommendation. The Royal Commission report was in 1980.

Authorities: Damages for Trespass and Assault

697 In *State of New South Wales v Ibbett* [2006] HCA 57; 229 CLR 638, two police officers, both senior constables in plain clothes, followed the plaintiff's son into the garage of his house. The house had a remote control operated roller door. One of the constables dived under the roller door, drew his gun and pointed it at the plaintiff's son. When the plaintiff came down to see what the commotion was about, the senior constable pointed the gun at her. The roller door was raised and the other constable came in.

698 The trial judge awarded:

- (a) \$50,000 for trespass which comprised \$10,000 for general damages for the offence and indignity caused by the unlawful entry, aggravated damages of \$20,000 and exemplary damages of \$20,000;

- (b) \$25,000 for assault by the first Police Officer, which represented \$15,000 as general damages and exemplary damages of \$10,000.

699 The Court of Appeal increased the award of exemplary damages for the assault from \$10,000 to \$25,000 as well as awarding \$10,000 aggravated damages for the assault. An appeal by the State of New South Wales in respect of these awards was dismissed in the High Court.

Claim for General Damages: Injury to the Person and Loss of Liberty

700 Ms Beckett was arrested on 24 August 1989. Her house was searched. The police seized a number of items of her property. These items included jewellery, photo albums and other personal effects which were never returned. Important documents, including legal records were also taken.

701 At the time of the arrest Ms Beckett was in her night attire. No reason for the arrest was given, and the search warrant was not shown to her. Local television stations watched as Ms Beckett was escorted, in handcuffs, into a police vehicle outside her home. She was taken to Taree police station and interviewed. She was detained in custody overnight.

702 The following morning Ms Beckett was taken before a Magistrate at the Taree Local Court. She was deliberately taken out of the police cell and out of the court through the front door in full view of the media and subjected to further humiliation by such public scrutiny. Bail was opposed by Detective Thomas and the prosecutor and she was remanded in custody. Ms Beckett was taken to Silverwater Women's Prison. She remained in custody until 13 September 1989 when an application was made to the Supreme Court for bail. The bail application was heard by Allen J and was successful. Her first period of detention was therefore 21 days, inclusive of the days of arrest and release.

703 Bail conditions were imposed. Ms Beckett had to reside with her mother at Dapto and was not allowed to go into Taree. A \$50,000 surety was provided. Ms Beckett had to report to the Dapto police station. When she did so on 22

September 1989 she was rearrested by Detective Thomas for an alleged breach of her bail conditions. She was detained in the cells at Dapto. On 25 September Maxwell J heard her bail application. She was released and granted continuing bail for another week while Allen J was on leave. On 3 October 1989 Ms Beckett appeared before Allen J and her application for bail was successful.

- 704 Her second period of detention was therefore four days, inclusive of the days of arrest and release. This arrest also made it impossible for her to attend court in the proceedings heard by Magistrate O'Keefe in the Local Court on Friday 22 September 1989.
- 705 Ms Beckett was committed for trial at Taree Local Court on 27 July 1990. At the conclusion of the committal she was refused bail. She was held overnight at Taree police station. At 2pm the following day Detective Thomas visited her and threatened her with physical harm. She developed very bad chest pains. An ambulance was called and Ms Beckett was taken to the Manning Base Hospital. She was discharged from hospital Monday 30 July 1990. She was granted bail that same day. Ms Beckett completed a statement in respect of this incident for Detective Sergeant Leonard on 31 July 1990.
- 706 Ms Beckett's trial commenced 7 May 1991 and concluded 11 September 1991. She was present throughout the trial except for one day when she was sick. During the trial intimate photographs of Ms Beckett and Mr Catt, which were seized by Detective Thomas at the time of her arrest, were published in The Daily Telegraph and the Sunday Telegraph. This was done without her knowledge or consent.
- 707 On 11 September 1991, following the guilty verdict, Ms Beckett was taken to Mulawa Prison. She remained at Mulawa prison until 1995.
- 708 Ms Beckett was bashed on several occasions at Mulawa prison. She was treated at the prison clinic for all the assaults but would not name the

assailant for fear of retribution. She said that gaol was horrendous and that words could never describe it.

709 Ms Beckett was later moved to Emu Plains Prison. Whilst at Emu Plains she had an anaphylactic reaction to a wasp sting. She received treatment at the Nepean high dependency unit. Ms Beckett was provided with an EpiPen to manage her allergies. As this was deemed a “drug use device”, if she did not have it on her person or if it was taken by another prisoner, she was liable to be charged. Ms Beckett had a subsequent anaphylactic reaction. She went into cardiac arrest and was taken to Westmead Hospital.

710 Ms Beckett was released on bail on 6 August 2001 pending the hearing of her appeal in the Court of Criminal Appeal. An inquiry before Judge Davidson commenced on 3 February 2003. It concluded on 27 July 2004. In the period between her release and the delivery of Judge Davidson's report, Ms Beckett dedicated her time to preparing her application for the review of her case. She remained on bail until 26 September 2005. On or shortly after this date, Ms Beckett received a letter from the DPP advising that there would be no further proceedings on the counts that had been quashed.

711 Ms Beckett was deprived of her liberty from 24 August 1989 to 26 September 2005. She was gaoled on four separate occasions. In respect of her sentence she was gaoled from 11 September 1991 until 6 August 2001, almost 10 years. She was otherwise on bail for an additional five years. She spent the period 24 August 1989 to 13 September 1989 in the police cells in Taree and then at Silverwater (20 days). She spent the period from 22 to 25 September 1989 in the police cells at Dapto (4 days). She was in custody at Taree and then in the hospital at Taree between 27 July 1990 and 30 July 1990 (4 days). She was gaoled from 11 September 1991 until 6 August 2001 (9 years and 340 days).

712 In respect of Counts 1, 3, 4 and 9, the sentences were served concurrently. Ms Beckett makes no claim in respect of Counts 3 and 4.

- 713 However, Ms Beckett submitted that in the event that she had been charged with and found guilty solely on Counts 3 and 4, she would not have been gaoled and would likely have received a good behaviour bond. This is because had only those charges been laid against her the Court would have been likely to determine a non-custodial sentence based upon factors including that they were domestic offences, the nature of the injuries to Mr Catt were not significant, she had no criminal record, she had parenting responsibilities and a good behaviour bond would have been consistent with sentencing practices at that time.
- 714 In the ten years of her incarceration, Ms Beckett was denied the basic human right of liberty and she was separated from her family, her friends and her community. She was deprived of her role as a mother. She lost the opportunity to engage in social and romantic relationships. She was denied a valuable working life that may have brought with it not only pecuniary profits but also the intangible benefits of doing well in one's occupation. The enormity of this loss is made still more staggering by the significant period of time for which that loss was suffered.
- 715 Although the courts caution against arithmetical calculations, there must be some relativity or equivalence. As the courts have consistently determined that significant awards of general damages are appropriate for periods of incarceration that represent only a fraction of the time that Ms Beckett spent in gaol, then it compels a finding for a very substantial award in this case. For example, in *Spautz v Butterworth* the plaintiff received \$75,000 for the period of wrongful imprisonment of only 56 days. This equates to just under \$1,335.71 per day. Ms Beckett spent close to 3,650 days in gaol.
- 716 The decision of the Court of Appeal in *Spautz v Butterworth* was delivered 17 years ago. Using it as a guide, allowing for an additional amount in respect of the periods on bail, but not for the lapse of time since the decision, Ms Beckett submitted that a proportionate and reasonable award for general damages could be in the order of \$3,000,000.

Authorities: Aggravated Damages

717 In *Triggell v Pheeny* [1951] HCA 23; 82 CLR 497, the High Court held that for the award of aggravated damages to be made, the conduct of the defendant must lack bona fides, or be improper or unjustifiable. In *Walter v Alltools* (1944) 61 TLR 39, the court held that aggravated damages may also be awarded in circumstances when the defendants do not express regret for past wrongs. In *Lamb v Cotogno* [1987] HCA 47; 164 CLR 1, the High Court opined that aggravated damages can also be compensatory in nature and can be awarded for injury to the plaintiff's feelings caused by insult or humiliation. In *Nye v State of New South Wales* the plaintiff received \$100,000 in aggravated damages and the court held that "all the circumstances of the particular case must be taken into account." The court also referred to aggravated damages which might be claimed on the basis of injury to reputation.

718 In *Houda v State of New South Wales* the plaintiff was also awarded a separate amount for aggravated damages of \$20,000. The court held that the plaintiff's damages had been aggravated:

"... by the way in which the present case was conducted with its totally unjustified persistence in allegations of misconduct on the part of the plaintiff."

719 In *Noye v Robbins & Anor*, had the plaintiff succeeded in his malicious prosecution claim, the court would have awarded him \$50,000 for injury to person, health and restriction of liberty, but would not have awarded aggravated damages. The Court said that:

"The consequences of the prosecutions for Noye have indeed been very profound and the effect of them upon his health and self-confidence are conspicuous. This would provide a basis for aggravated damages, but the allowance which I have made in the heads of damages for injury to person takes this into account and no additional allowance under this heading would therefore have been necessary."

720 In *State of New South Wales v Ibbett* aggravated damages were held to be apt as a form of general damages for injury to the plaintiff which may be intangible or which may result from the circumstances or the manner of the

wrongdoing. The High Court has held that it is not double counting. In *State of New South Wales v Ibbett*, the High Court quoted the judgment of Spigelman CJ in the Court of Appeal in the same case:

"In this regard it is relevant to note that the matters to which I have referred as justifying an award of exemplary damages are also pertinent, as is often the case, to an award of aggravated damages. The difference is that in the case of aggravated damages the assessment is made from the point of view of the Plaintiff and in the case of exemplary damages the focus is on the conduct of the Defendant. Nevertheless, it is necessary, as I have noted above, to determine both heads of compensatory damages before deciding whether or not the quantum is such that a further award is necessary to serve the objectives of punishment or deterrence or, if it be a separate purpose, condemnation."

721 In *State of New South Wales v Ibbett*, the High Court also said that as an alternative, the court may choose to award one sum which represents both heads of damages, saying:

"In cases where the same circumstances increase the hurt to the plaintiff and also make it desirable for a court to mark its disapprobation of that conduct, the court may choose to award one sum which represents both heads of damages and no element more than once. Such an approach was adopted by Bray CJ in *Johnstone v Stewart*. In the present case, Basten JA favoured a variation of this approach, with a global award of exemplary damages in respect of the causes of action in trespass and in assault. However, in the event, nothing turned on the different approaches in this regard because the global award of \$45,000 was equal to the distinct awards of \$25,000 and \$20,000 favoured by Spigelman CJ."

722 On this basis, the court may elect, for example, to increase the amount of compensatory damages to account for aggravating circumstances.

Aggravated Damages Claim

723 Ms Beckett submitted that she should have her award of damages increased because her arrest and subsequent deprivation of liberty was aggravated by the manner and motive of Detective Thomas, which caused her great ignominy and hurt. She submitted that her general compensatory damages should also be increased for aggravation to account for the way the State conducted itself through its police officers, and for the way this trial has been conducted.

- 724 Ms Beckett submitted that the calling of Julie Catt by the State ought to increase her award of general damages.
- 725 The State was the Respondent to the appeal to the High Court in *Beckett v State of New South Wales*. The High Court held that she was not required to prove her innocence and therefore, analogously, that evidence from someone such as Julie Catt was irrelevant because it only went to the question of innocence. Despite the High Court's decision, the State persisted in calling Julie Catt. It demonstrated a flagrant disregard by the State for judicial authority in its defence of this claim.
- 726 At paragraph 76 of the amended statement of claim, Ms Beckett pleads improper procurement of the search warrant as a factor in support of her claim of lack of reasonable and probable cause and malice. A photocopy of the search warrant is contained in the Crown Court Book. Ms Beckett sought to tender the original search warrant which was available and contained in the Court of Criminal Appeal file. The State opposed the admission of the original search warrant for reasons that are still unclear. Ms Beckett submitted that this evidences a lack of bona fides on its part.
- 727 Notwithstanding the High Court's decision in *Beckett v State of New South Wales*, the State at paragraph 27 of its amended defence refused to admit that the charges the subject of this claim were terminated in Ms Beckett's favour. In view of the High Court's decision, this is not an issue.
- 728 Ms Beckett submitted that a reasonable figure for aggravated damages, or alternatively, for an increase in compensatory damages, is \$200,000.

Authorities: Exemplary Damages

- 729 In *State of New South Wales v Riley* [2003] NSWCA 208; 57 NSWLR 496, the Court of Appeal held that "something more than human fallibility" is required for an award of exemplary damages.

730 In *Houda v State of New South Wales* in addition to the award of \$100,000 compensatory damages and \$20,000 aggravated damages, the plaintiff was awarded \$25,000 for exemplary damages on the basis that the constable's conduct amounted to "high handed conduct in contumelious disregard of the plaintiff's rights."

731 In *XL Petroleum (NSW) Pty Ltd v Caltex Oil (Australia) Pty Ltd* [1985] HCA 12; 155 CLR 448 at page 471 Justice Brennan said:

"As an award of exemplary damages is intended to punish the defendant for conduct showing a conscious and contumelious disregard for the plaintiff's rights and to deter him from committing like conduct again, the considerations that enter into the assessment of exemplary damages are quite different from the considerations that govern the assessment of compensatory damages. There is no necessary proportionality between the assessment of the two categories..."

732 In *Adams v Kennedy & Ors* [2000] NSWCA 152; 49 NSWLR 78, a police officer sought to question Mr Adams at his home regarding a car accident, but Mr Adams refused and requested the police officer leave. The policeman left and returned later with two other police officers. The police informed Mr Adams that they were there to arrest him, but did not tell him what for. Mr Adams resisted arrest, and in the process of being handcuffed his arm was twisted and seriously injured. Mr Adams sued in trespass, assault, battery and false imprisonment. The Court of Appeal awarded Mr Adams \$100,000 in exemplary damages. The Court said:

"[35] I do not think I need go further for the main part of this consideration than to the decision of the High Court in *Lamb v Cotogno* [1987] HCA 47; (1987) 164 CLR 1...

'...There is little guidance from the reported decisions on what appropriate amounts of exemplary damages in the present case would be... the question of damages has to be left to the good sense of the court, with the only assistance to the court in its decision being the somewhat opaque rule that the damages must not be out of all proportion in the circumstances.'

[36] In the present case, although strictly it would be proper to award a separate amount for each cause of action, it seems to me that since the different causes of action arose out of the one series of closely connected events, it is appropriate to award one aggregate figure in respect of all the causes of action. That figure should indicate my view that the conduct of the

defendants was reprehensible and mark the court's disapproval of it. The amount should also be such as to bring home to those officials of the State who are responsible for the overseeing of the police force that police officers must be trained and disciplined so that abuses of the kind that occurred in the present case do not happen. In my assessment the appropriate assessment should be fixed at the aggregate sum of \$100,000."

733 Similar facts arose in *Lee v Kennedy* [2000] NSWCA 153. However prior to her false imprisonment, Ms Lee was also assaulted and beaten. Ms Lee was awarded \$170,000 by the NSW Court of Appeal. This included:

- (a) \$25,000 for general damages;
- (b) \$25,000 for aggravated damages;
- (c) \$120,000 for exemplary damages.

734 The court commented that the treatment of the plaintiff, which had involved the exposure of her undergarments and body, was in serious breach of fundamental rights.

735 In awarding exemplary damages in *Nye* (at 303), O'Keefe J said:

"What is needed is the award of a sum that will sting, a sum that will cause notice to be taken as to what has occurred, of the wrongs that have been done to the plaintiff and of the disapprobation of the Court."

736 His Honour awarded \$750,000 for exemplary damages, apportioning 75 percent to the claim based on malicious prosecution and 25 percent to the claim based on wrongful arrest.

737 In *State of New South Wales & Or v Landini*, in addition to the award of \$10,000 for compensatory damages, the Court of Appeal allowed \$50,000 as exemplary damages. At first instance, Hall J held:

"The fabrication or manufacture of evidence against any citizen with a view to charging that person with an extremely serious offence involving the prohibited drug, heroin, amounts in itself to an extremely grave criminal offence. Such conduct is calculated to undermine the rule of law and is inimical to the administration of criminal justice."

738 At paragraph [528] he added:

"Conduct of police that seeks to undermine the rule of law by orchestrating the basis for criminal proceedings by fabricating evidence constitutes a species of criminality at the extreme end of the spectrum of official corruption."

739 Hall J had awarded Mr Landini \$160,000 for exemplary damages. Whilst that award was reduced to \$50,000 by the Court of Appeal, His Honour's remarks were not criticised by the court.

740 In *State of New South Wales v Ibbett* in respect of the assault, the Court of Appeal increased the award of exemplary damages from \$10,000 to \$25,000. The trial judge's award of \$20,000 for exemplary damages in respect of the trespass was not disturbed by the Court of Appeal or the High Court. After discussing the principle that exemplary damages focus on the conduct of the defendant and not the effect on the plaintiff, the court quoted the decision of the House of Lords in *Kuddus v Chief Constable of Leicestershire Constabulary* [2002] 2 AC 122:

"... an individual soldier or police officer or prison officer may, on occasion, act in gross breach of discipline and commit an unlawful act which is oppressive or arbitrary and in such cases exemplary damages have been awarded.

In my opinion to award exemplary damages in such cases serves to uphold and vindicate the rule of law because it makes clear that the Courts will not tolerate such conduct. It serves to deter such actions in the future as such awards will bring home to officers in command of individual units that discipline must be maintained at all times."

Exemplary Damages Claim

741 Taking into account the above authorities, Ms Beckett submitted that an appropriate award for exemplary damages in this case is \$1,750,000. In particular she noted that in 1985, in *XL Petroleum*, a final award of \$150,000 in exemplary damages was made. Whilst this is significantly less than Ms Beckett's claim, that case was decided 29 years ago and involved the vandalism of fuel tanks which were repaired and operational in three weeks. In *Nye*, O'Keefe J made an award of \$750,000 for exemplary damages. It

ought to be noted that this decision, although more recent than *XL Petroleum*, is still over a decade old. By reference to these decisions, Ms Beckett therefore urged that an award of \$1,000,000 is not disproportionate in the circumstances.

Authorities: Reputational Damages

742 Reputational damages have been held to be recoverable in a malicious prosecution claim as a separate head of damage. In *Noye v Robbins & Anor*, Heenan J held that had he found for the plaintiff, he would have awarded \$50,000 for injury to reputation.

743 In *Berry v British Transport Commission* [1962] 1 QB 306, the court held that the financial consequences of the destruction or damage to reputation are recoverable. Devlin and Danckwerts LJJ held that reputational damages were recoverable where the imputed criminal offence would cause a reasonable observer to form the view that it was a damaging reflection on the "fair fame" of the plaintiff.

744 In *McDonald v Coles Myer Limited (trading as "K-mart Chatswood")* at paragraph 15, on increasing the compensatory damages Clarke JA said:

"In the present case His Honour failed to take into account, as relevant to the solatium, the fact that the appellant had, following the arrest, suffered the hurtful experience of the trial which fired almost inevitably from the respondents reporting of the incident to the Police, the subsequent Civil trial, the absence of any apology, the persistence in the false and hurtful allegations which were found not to be made out and, in my respectful opinion, overlooked the damage to the appellant's reputation."

Reputational Damages Claim

745 The damage to Ms Beckett's reputation is manifest from the material published about her over the years. A cogent example is at exhibit QQ, page 1258, where an article published about her is titled "Lust for Sex and Money".

746 Ms Beckett gave evidence that her arrest was filmed by the local TV channel and shown on TV. Constable Cottee confirmed that a television film crew was

at the end of the street in a park at some stage during the day. The State cross-examined Ms Beckett about her participation in a Channel 9 program. She also voluntarily appeared on 2GB and spoke to Alan Jones. The evidence is that she participated voluntarily, on the advice of her legal representative.

747 The State's apprehended criticism of Ms Beckett for participating voluntarily in the program misses the point. There would not have been a program but for her arrest, subsequent charging, trial and gaoling.

748 Ms Beckett submitted that her reputation has been destroyed. She submitted that a reasonable award of damages separately to those set out above, for reputational loss, is \$350,000.

Claim for Economic and Pecuniary Loss

749 Ms Beckett attended secondary school until the end of third form, graduating with an Intermediate Certificate. She married Kevin Bridge in 1963. She thereafter obtained a job in the Dapto Hotel doing office work and supervising domestic staff. Kevin Bridge was a fitter and turner.

750 She then began selling Nutrimerics brand cosmetics, paid on a commission basis. After some time, she became a district director. As a district director, Ms Beckett managed a sales team of 20 people. Ms Beckett does not have any documents relating to her involvement with Nutrimerics. She did similar work for another company called Grace Cosmetics. Ms Beckett also lectured occasionally at local high schools in the Dapto area on health and nutrition.

751 Ms Beckett commenced work in hairdressing salons in the Dapto area shortly after she left secondary school, although she did not take a formal apprenticeship. Whilst she had aspirations to be a qualified hairdresser, this was postponed following the birth of her first child. In her twenties, she opened a hairdressing and beauty salon in Fairy Meadow. At one stage she owned a second shop in Dapto. She worked in both salons. Ms Beckett had

two senior employees and one junior employee in those salons. She does not recall their names.

752 Ms Beckett does not possess the relevant ownership documentation. She claims that they were taken by Detective Thomas. She believes that the salons would have been registered at the time. Ms Beckett submitted that she would have deducted income tax from her employees' wages, which would have been handled by her accountant Mr Smythe.

753 While married to Kevin Bridge, Ms Beckett leased a rural property in Reddalls Road, Dapto where she ran a small pastoral operation. This was a side income rather than a major source of income. She and Mr Bridge saved enough money to buy a small weatherboard property on the Princes Highway in Dapto. Later, they bought a larger five-bedroom house with a swimming pool. They separated in June 1980.

754 After separating, Ms Beckett moved to Batlow where she commenced living with the Annetts family. At this stage, her daughter Julianne was working and independent, but her son, Peter Bridge, was still a dependent child, aged twelve. They lived in Batlow for twelve months where Ms Beckett continued to work for Nutrimetics and Grace Cosmetics. Ms Beckett commenced a relationship with Mr Annetts.

755 Ms Beckett then moved to Taree where she bought and ran Roseanne's Deli on the main street of Taree. She worked there six days a week and employed a number of permanent and casual staff. Ms Beckett contends that documentation relating to Roseanne's Deli was also taken by Detective Thomas. She and Mr Annetts jointly leased the three-bedroom home above the delicatessen from a landlord named Dorothy Lyndon. A year later, they purchased a house at 2 Cowan Road, Bays Hill (a suburb of Taree).

756 Ms Beckett continued to do some work for Nutrimetics and Grace Cosmetics, selling cosmetics for her sister Faye Klarenbeek. She managed a number of her sister's casual staff. Whilst in Taree, Ms Beckett became involved in the

local chamber of commerce, the tourist association, Manning Rescue Squad (as co-ordinator) and the local council.

- 757 Shortly before 25 December 1983 Ms Beckett had negotiated to sell the delicatessen. A purchaser had paid a deposit. On 25 December 1983 the delicatessen burned down.
- 758 Shortly before the fire, Ms Beckett had cancelled her loss of rent and loss of earnings insurance policies. She had plant and equipment insurance. The processing of the insurance claim was delayed whilst the arson charges were pending. The insurance payment was in excess of \$80,000.
- 759 Ms Beckett and her former staff worked to clean up the premises. After returning from a visit to Wagga to see family, she re-opened the delicatessen. It closed in 1986 and the equipment was sold. Thereafter, Ms Beckett continued working for Nutrimecs and Grace Cosmetics.
- 760 Ms Beckett later invested \$100,000 in Barry Catt's business. In August 1986, before making the investment, she engaged Mr Smythe, her accountant, to conduct a review of the business' books. She arranged to run the business as a partnership. Whilst there was no written partnership agreement, there was an agreement on tax returns.
- 761 Ms Beckett ran the business' office and also gave occasional quotes. She became a business partner. Ms Beckett contended that the account books for Cattys Body Repairs were also taken by Detective Thomas.
- 762 Ms Beckett later commenced a de facto relationship with Mr Catt. She repainted and renovated his home at 1 Cornwall Street, and purchased a large number of new appliances and furniture. She also looked after Mr Catt's four children.
- 763 Ms Beckett ceased cohabiting with Mr Catt on 2 May 1988. She took out an AVO against him at this time.

- 764 Ms Beckett sought interim orders for preservation of property. These proceedings came before Mullane J in the Family Court at Newcastle. In her affidavits, she detailed her financial arrangements with Mr Catt. Mullane J granted her an interim order over Mr Catt's business and family home. However these orders did not go forward. Following her arrest, the orders were vacated.
- 765 Ms Beckett says that if she had not been prosecuted by Detective Thomas, tried and imprisoned for over ten years, her future might have been "like any other normal woman, mother, or member of a community."
- 766 Peter Bridge gave evidence as to the state of Mr Catt's business premises when he started work. He said that his mother commenced working in the business about twelve months after she first met Mr Catt. Mr Bridge gave evidence that the business was "tidied up" in a number of significant respects by his mother.
- 767 Ms Beckett tendered two expert reports from Mark Thompson of Vincents Chartered Accountants. Mr Thompson hypothesises Ms Beckett's economic losses upon the basis that she had continued in her various pre-arrest employments:
- (1) Beauty therapist - \$242,509 together with superannuation of \$14,435, making a total of \$256,944.
 - (2) Hairdresser - \$223,938 together with superannuation of \$12,721, making a total of \$236, 659.
 - (3) Sales - \$305,077 together with superannuation of \$18,765, making a total of \$323,842.
 - (4) Administrative role - \$289,505 together with superannuation of \$17,719 making a total of \$307,224.

- (5) Cafe worker - \$251,060 together with superannuation of \$14,918, making a total of \$265,978.

768 These losses are calculated upon the assumptions set out in the letter of instruction to Mr Thompson attached to his first report. Mr Thompson was not required for cross-examination.

769 In *Noye v Robbins & Anor*, Heenan J considered that had the malicious prosecution claim been successful, he would have awarded an amount of \$187,676 for economic loss, including, what he described as pecuniary and consequential loss. This included a claim for loss of earning capacity (after a discount for contingencies) and a loss of superannuation contributions, and pecuniary losses, being the legal costs incurred in defending the charges, which have long been held to be recoverable.

770 In *State of New South Wales v Koumdjiev* [2005] NSWCA 247; 63 NSWLR 353, the plaintiff was awarded \$8,490.75 in costs for defending criminal charges brought against him. Hodgson JA said at [67]:

"In my opinion, there is no general rule to the effect that a plaintiff cannot recover in civil proceedings the amount of costs incurred in defending criminal proceedings. In civil cases where malicious prosecution is proved, damages routinely include the cost of defending the proceedings."

771 Ms Beckett's claim for pecuniary loss is divided into three sub-categories:

- (a) Economic loss/ loss of wages or earning capacity from 24 August 1989 to 27 July 2004;
- (b) Legal fees and costs incurred in defending the charges;
- (c) Loss of opportunity to obtain a property settlement with Mr Catt.

Past Economic Loss

772 Ms Beckett's evidence was to the effect that she had been a talented sales representative and manager for Grace Cosmetics and Nutrimerics, was a

competent businesswoman who had run a successful delicatessen and two salons and immediately prior to her arrest, was the effective manager of Cattys Body Repairs.

773 Her evidence regarding economic loss was not subject to significant challenges by the State. All documentation in support of her pre-arrest occupations was taken by Detective Thomas. The précis of physical evidence made by the police confirms this, recording that "assorted papers and photographs and other documents from drawers in various cupboards" were seized by Detective Thomas. Ms Beckett's evidence regarding economic loss was not subject to significant challenge. Material in support of her pre-prison occupations was taken by Detective Thomas. Detective Paget acknowledged that in his evidence.

774 Ms Beckett contended that the most likely future earnings prospect would have been for her to be working in an administrative role in which her past economic loss and loss of superannuation amounted to \$307,224.00.

775 In addition to that Ms Beckett said that she did not work between her release on bail on 6 August 2001 and 27 July 2004, as all her time was taken up preparing and dealing with her application for review of her case. This adds an additional 65 weeks and 4 days of after tax earnings at \$563.41 per week as per Mark Thompson's first report Schedule B, page 14. The additional amount is \$36,621.65 plus four extra days being \$450.72 making an additional amount of \$37,072.37 for lost earnings.

Legal Fees

776 A schedule of Ms Beckett's legal fees together with attachments was tendered and admitted without objection. Michael Jones was cross-examined on the accounts to the effect that they were restricted to fees that were charged to Ms Beckett while he was acting for her. Ms Beckett claims the amount of \$20,940.50 in legal fees and costs which she paid in respect of the criminal charges brought against her. A schedule of the legal fees and costs is at exhibit N. Ms Beckett submitted that these fees were incurred by virtue of the

institution and maintenance of the criminal charges brought against her and were incurred because she was required to appear in court in respect of the charges to which the present claim relates. There appears to be no dispute that Ms Beckett incurred these fees and costs. She was not cross-examined about them and they were verified by Mr Jones.

Loss of opportunity to obtain a property settlement with Mr Catt

777 Ms Beckett was not cross-examined in any detail regarding her contributions to Cattys Body Repairs or the fact that her Family Court application for property settlement did not proceed. Ms Beckett received nothing from Mr Catt and was unable to pursue him further due to her arrest. She claimed an amount for loss of opportunity by reference to her \$100,000 investment in the business.

Interest

778 Finally Ms Beckett claimed interest on damages awarded from the date when the cause of action arose until the date of judgment. The rate to be applied depends on the head of damage.

779 In respect of general damages, aggravated and exemplary damages, Ms Beckett says that a rate of 4 percent for the entire period is appropriate as these damages are in the past.

780 In respect of the damages for the pecuniary losses, including economic loss, loss of the opportunity and legal expenses and costs incurred by her, Ms Beckett submitted that the rate to be applied should be the prescribed Court rate up to judgment.

Submissions for Defendant on Quantum and Damages

781 Ms Beckett remains convicted of two serious criminal offences. Count 3 carried a maximum penalty of 7 years imprisonment at the time and Count 4 carried a maximum penalty of 5 years imprisonment at the time. Ms Beckett must prove that her good fame and character has been traduced and that she

has been deprived of her liberty wrongly. The State submitted that because Ms Beckett committed serious offences of violence she must be unable to suggest that she is in any meaningful sense a person of good fame, character and reputation, or that she ought not to have been sentenced for these offences. This action cannot be used as an attack on the conviction or sentences for Counts 3 and 4. Each matter was separately sentenced to reflect the particular criminality. Ms Beckett remains convicted of stabbing her husband and of beating him around the head with a cricket bat.

782 The State contended that Ms Beckett was the subject of a single prosecution and was and remains convicted. If she fails to establish absence of reasonable and probable cause or malice in the case of some, but not all, of the counts in the one indictment, a judgment is required to be made to determine whether as a matter of fact Ms Beckett has suffered any loss and if so what. If for example she fails to establish absence of reasonable and probable cause and malice in respect of one or more of the solicit or encourage to murder counts, it is difficult to see how she would be entitled to any damages at all. The position might be substantially more complicated given other findings.

783 The State submitted that if I were to conclude that the proper approach was to consider each count separately, and reject the one prosecution argument, then considerable difficulties must be confronted. An assessment of "pro-rata" damage must be undertaken and the periods of custody referable only to each count made out by Ms Beckett as a malicious prosecution would need to be identified. In particular, it would need to be kept in mind that there was no additional custody served arising from Count 9, the term of imprisonment for which was wholly concurrent with that for Counts 3 and 4. The overwhelming majority of the sentence was comprised in the cumulative sentences imposed for Count 2 (11 December 1992 to 10 December 1995) and for Count 7 (10 December 1995 to 10 December 2001 with an additional term of 2 years). The entire sentence for Count 7 was not actually served as Ms Beckett was bailed pending her appeal. The sentences for Counts 5 and 6 were wholly concurrent with other sentences. The State submitted that if Ms Beckett did

not succeed with respect to Counts 2 and 7 she would not be entitled to damages referable only to loss of liberty, because those Counts, when combined with Counts 3 and 4, accounted for the whole of the term actually served.

784 The State submitted that the evidence in support of Ms Beckett's claim for economic loss is almost non-existent. Pyramid selling schemes such as Nutrimetics and Grace Cosmetics notoriously came and went in the 1970s, 1980s and 1990s. No documents have been produced to demonstrate success at any level or the possibility, let alone the probability, of any such success continuing. She could not have run the smash repair business and simultaneously raised six children. Family members such as her sister Faye and others were said to have been involved in the pyramid selling scheme organisations and none was called in support of Ms Beckett's claim. There are no independent witnesses concerning Ms Beckett's involvement in any of the selling schemes.

785 Ms Beckett's claim with respect to her work as a hairdresser with salons at Dapto and Fairy Meadow are not supported by any documentary material and no witnesses have been called to support them.

786 Ms Beckett's claim with respect to her work in the business of raising cattle is not supported by any documentary material and no witnesses have been called to support them.

787 Ms Beckett was cross-examined at some length about her lack of records or proper independent evidence going to her employment and work experience. In all cases she blamed Detective Thomas. The State submitted that this was just another baseless attempt to demonise him. The State submitted that he would not have had a desire to deprive her of all the paperwork of the whole of her life.

788 Not only must a plaintiff prove a diminution in capacity to earn, but she must prove that such diminution sounds in economic loss. Accordingly, it is

insufficient for Ms Beckett to say, "If I had not been convicted and imprisoned, and if I had not been besmirched in my good fame and character, I would have had a capacity to earn". She has to establish that she would have been successful in obtaining employment or undertaking entrepreneurial activity and would have received economic reward for doing so. There is no evidence of any kind to establish any of those essential facts.

789 The State submitted that there was no independent evidence of the experience or suitability of the plaintiff to have engaged in any of the roles identified by Mr Thompson. He made no allowance for vicissitudes, and he appears to have assumed that Ms Beckett would have been engaged in permanent full time work at the appropriate rate for every day that she is said to have been prevented from working by her imprisonment or her participation in proceedings. No allowance is made for the sentences that Ms Beckett would have had to serve in any event for Counts 3 and 4.

790 The periods in which Ms Beckett is said to have been unable to work include:

- (1) Two periods on remand in 1989 in circumstances where she may well have been refused bail on the strength even of Counts 3 and 4, as well as any periods upheld in this trial as not the product of a malicious prosecution.
- (2) The whole of her period of the trial and incarceration as well as a period to the end of the evidence in the Davidson Inquiry which takes no account of either the sentences for Counts 3 and 4 or of the fact that she was released on bail on 6 August 2001.

791 Mr Thompson made no allowance for restrictions to earnings that may have been caused by the fact that Ms Beckett had been convicted of serious offences of violence and had been imprisoned. No account is taken of any income derived while imprisoned, including prison allowances and earnings.

- 792 Where Mr Thompson applies an “earnings series” he chooses that which is age appropriate to Ms Beckett, but he makes no allowance for the fact that in the areas identified Ms Beckett cannot claim to have the years of continuous (or in some cases, any) experience that would permit her to be compared with the general population of equivalent workers in that industry. Mr Thompson also does not take into account the likelihood that a person convicted of and imprisoned for serious offences of violence may suffer in the open labour market.
- 793 Mr Thompson proceeded upon the basis that Ms Beckett’s earnings in the 1989 tax year were between \$17,985 and \$22,327, depending upon the work she was assumed to be doing. However, this ignores the fact that her actual tax return earnings in that year were \$13,985, derived from the claimed partnership in Mr Catt’s smash repair shop.
- 794 Mr Thompson concedes appropriately at 5.12 of his report that he has taken no account of any adverse impact on Ms Beckett’s employability between periods of incarceration or subsequently as a result of having been incarcerated.
- 795 The State submitted that this is not a matter for the awarding of aggravated or exemplary damages. As with all issues of damages, Ms Beckett remains convicted of two offences of violence for which she was imprisoned. Those convictions were products of the same investigation and prosecution.
- 796 With respect to Ms Beckett’s claim for legal fees, exhibit N was not Mr Jones’ document. He was able to say very little about the position except that there were legal fees involved. The underlying invoices were not tendered. There is no evidence that the document accurately reflects the underlying matters referred to, and there is no evidence that all of the legal expenses listed in that schedule are those of Ms Beckett, as opposed to Peter Bridge, or that they relate to any particular one or the other of the counts involved. The State counselled me to approach the issue with a degree of circumspection before any conclusions from that document could be drawn.

Consideration - damages

797 It is necessary to make some general preliminary observations.

798 First, as will be apparent, it is not possible to know what would have been the life that Ms Beckett would have led if she had not faced any of the charges for which she was put on trial that are the subject of these proceedings. These reasons are by coincidence published on the twenty sixth anniversary of Ms Beckett's arrest. The benefit of hindsight over such a long period does not improve the view of what might have been but for those events. It is in these circumstances unrealistic to approach the calculation of damages that are appropriate to compensate Ms Beckett for her losses on the assumption or in the expectation that arithmetical correctness or mathematical precision has much, if anything at all, to do with the final result. Some intellectual comfort can be found in factoring various apparently reliable integers into what passes for a calculation, but just as in sentencing there is not one proper sentence, so with minor exceptions is there never only one true or correct result in a damages calculation.

799 Secondly, but in a related sense, it is also slightly unrealistic to expect Ms Beckett to have available for production and use in these proceedings a full and precise collection of supporting documents or financial records proving or supporting her work history up until her trial. Clearly enough she bears the onus of proving her case in an acceptable way, and the State cannot be expected either to be liable for damages that Ms Beckett would like but has not proved, or to make concessions about things that are beyond the scope or reasonable assumption. In the final analysis, Ms Beckett was at all times leading up to 1991 a woman of considerable energy and independence. The prospect that she would have harnessed these qualities, even if only at the inferential rate of the average worker, cannot easily be disregarded.

800 Thirdly, the absence from these proceedings of witnesses to her economic achievements, in the form of customers, superiors, former work colleagues or friends is not particularly remarkable. Even before she became involved in

criminal proceedings or was convicted and gaoled, Ms Beckett had an ability to put people with whom she came into contact off side, if she did not alienate them completely. The fact that there would not appear to be a queue of people waiting to assist her with this case, especially now, as the State emphasises in a different context, that she is a convicted criminal, is hardly surprising. Mr Caesar failed to materialise even on his account with evidence that might have secured Ms Beckett's earlier release from gaol. The prospect that Ms Beckett could have located or encouraged customers of her Dapto salon to tell me about her perming and highlighting skills or anything of equal moment also seems rather remote.

801 Fourthly, I do not think it is correct to refer, as the State has chosen repeatedly to do, to the facts underpinning Counts 1, 3 and 4 as serious assaults or serious criminal offences. Ms Beckett was sentenced to a total term of 15 months for these three offences as well as a term of twelve months for the Count 9 pistol charge that was to be served wholly concurrently. Those sentences were imposed in the context of her assumed criminality for several other much more serious offences. Ms Beckett had no criminal record of any type when sentenced and was otherwise a person of good character. What might be the indicative separate sentences for Counts 3 and 4 alone are not easily discernible having regard to the simultaneously served sentences for Counts 1 and 9. There is in my view a very real prospect that non-custodial sentences for Counts 3 and 4 might have been imposed if considered alone. In considering whether or not Ms Beckett might have had a reputation capable of being damaged in any presently relevant sense, the prospect that she may have been dealt with by way of the imposition of a fine or a suspended sentence are matters of significance in my opinion.

802 Fifthly it is absolutely clear that Ms Beckett received a sentence of three years imprisonment for Count 2 that was served wholly independently of any other sentences. Between 11 December 1995 and 10 December 1998 Ms Beckett was incarcerated for no other offence by way of partial accumulation or aggregation. That fact clearly serves to mark out Mathews J's view of the seriousness of that offence.

803 Sixthly, even though the Count 6 solicit James Morris to murder charge carried with it a potential sentence of life imprisonment at the time, Ms Beckett's sentence of three years and six months for this Count was served wholly concurrently with the three years imposed for the Count 5 lithium charge and the first six months of the six years imposed for the Count 7 solicit Vernon Taylor to murder charge. If judges can be assumed to have indicated a view about the criminality of a particular offence by the discrete period of imprisonment imposed for it, then some indication of Mathews J's view of the need for punishment for the Count 6 offence is clearly available in the circumstances.

Damages for non-economic loss

804 Ms Beckett was imprisoned for three years or what equates to 1,095 days between 11 December 1992 and 10 December 1995 for the Count 2 perjury offence. She was also imprisoned for three years and six months between 11 December 1995 and 10 June 1999 for the Count 6 solicit James Morris to murder charge, albeit concurrently for sentences imposed on other counts. It is trite to observe that, but for the first of those periods, all other things being equal, Ms Beckett would have been released three years earlier. That is a significant period in gaol in my opinion. It is not diminished in significance by the fact that Ms Beckett was otherwise in gaol for offences, some of which on my assessment have not rendered the State liable to her in damages. Loss of liberty and imprisonment in the correctional facilities of New South Wales is no picnic, despite the sentiment sometimes publicly echoed by proponents of longer sentences. One day wrongfully in gaol is one day too many.

805 Ms Beckett's experiences in gaol have been described. I do not get a sense that her custodial experience was any better or any worse than the general prison population. For what it may be worth, Ms Beckett struck me as a woman whose ability to adapt to prison life would have been as good as might be expected for someone imprisoned for so long for the first time. However, I hasten to add that in my view it is irrelevant. The level of difference between the best and worst experience of any one in fulltime custody must by definition

be far less than the difference between anyone in gaol and anyone free in society. My view about the quantum of damages necessary or sufficient to compensate a person for time spent in custody that should not have been imposed cannot be diminished or increased by reference to their particular experience.

806 I am also not attracted to the proposition that there should be some reduction in the amount of damages to be awarded with the passing of time in gaol in the sense that the first days are the worst and the last days are better, or that there is some kind of progressive linear diminution in or reduction of the significance of days in a sentence as they pass. Proponents of this view appear to do so in order to shield themselves from the comparative consequences of cases in which plaintiffs have been awarded large sums for hours or days wrongfully imprisoned, arguing that such damages should not indicate a reasonable hourly or daily rate or tariff where many years of wrongful imprisonment are in question. If a day in custody generates a calculable sum by way of damages for the losses associated with it, there can in my view, bearing in mind what the authorities say about the fundamental importance and significance of any loss of liberty, be no principled moral or legal basis for not applying that sum to every day that is lost.

807 Ms Beckett served her sentence for Count 6 concurrently with other sentences. The State has submitted that she has therefore lost nothing as a result of her imprisonment for three years and six months on this count. If there were any sound logic in this analysis, it could alternatively be argued that Ms Beckett has not served any time for Count 5, and only approximately half of her sentence for Count 7, because she was incarcerated for the Count 6 offence in any event.

808 In my opinion the proper approach is to value the loss of liberty for the Count 6 offence having regard to the fact that she served concurrent sentences for other offences but always remained liable for a term of imprisonment for the Count 6 offence if, for example, the Count 5 and 7 sentences had been set aside or varied, or the underpinning convictions had been quashed.

809 It is and remains erroneous in the calculation of damages to pose a hypothetical question about the price that an individual in the community might reasonably expect to demand as compensation before agreeing to undergo or be subject to the injury or loss in respect of which the calculation is being considered. One of the reasons for that is that it would lead to highly inflated and unreasonable awards of damages with attendant disruptive social consequences. The price that a reasonable but innocent man or woman might demand for an unprotected day in gaol would presumably be very high if it were calculable at all. A very much more modest approach ought to be taken and I propose to do so.

810 In my opinion Ms Beckett should be awarded the sum of \$1,825,200 under this head of damages. That sum is made up of the sum of \$1,314,000 for her deprivation of liberty on Count 2 during the three years of her incarceration between 11 December 1992 and 10 December 1995 and the sum of \$511,200 for her deprivation of liberty on Count 6 during the three years and six months of her incarceration between 11 December 1995 and 10 June 1999. I have discounted the latter sum in order to take account of the concurrence of that sentence with those being served for Counts 5 and 7.

Aggravated damages

811 Ms Beckett was arrested following the execution of a search warrant in her home on 24 August 1989. She was at that time a woman with no previous convictions of any sort and was definitively a person of good character. She was handcuffed during the search of her premises even though her house was full of policemen and she was accompanied by at least one of them at all times. It is worthy of note that Ms Beckett is a woman of slight build and would not in my opinion have posed any realistic threat. There was in my opinion no need to handcuff her.

812 I do not accept that Ms Beckett was stripped naked or searched in that condition. Her evidence to that effect is in conflict with the evidence of

Constable Cottee who I accept was truthful in her denials of the allegation made by Ms Beckett.

813 Ms Beckett was conveyed to a waiting police car. News may travel fast in small towns but covert police searches are never news unless someone in the media is tipped off. I have no doubt that the waiting media scrum that confronted Ms Beckett when she left her house on 24 August 1989 was the result of Detective Thomas having forewarned them of what was likely to occur. The presence of the media on later occasions was in all probability the inevitable consequence of the original arrest.

814 Ms Beckett was held in custody and her applications for bail were opposed. Whereas the State cannot be criticised for opposing bail in a proper case, it is difficult to imagine what the concerns of the police could have been. The fact that Ms Beckett was always ultimately successful in her bail applications clearly reflects the reality that she posed neither a threat of failing to appear nor of committing further offences. All of that notwithstanding, I have some difficulty with the proposition that the police could ever be liable for damages for opposing bail unless some super added characteristic of the opposition could be identified.

815 I have a different view of the revocation of Ms Beckett's bail on the occasion that she was in Dapto. The intersection of that decision with her civil proceedings against Mr Catt raises considerable doubt in my mind that it was not intended to cause her the greatest amount of distress and inconvenience. It was also a trivial circumstance that should never have led to what occurred.

816 All of these things were distressing for Ms Beckett. They were unnecessary. Having regard to the partial success achieved by Ms Beckett in these proceedings, I consider that an award of aggravated damages of \$100,000 is appropriate.

Exemplary damages

817 Detective Thomas remained in charge of the investigation and prosecution of Ms Beckett long after his partiality had been identified and commented upon by judges and police Internal Affairs investigators. Detective Thomas' own written words demonstrated that he saw Ms Beckett as his nemesis and that it has adversely affected his career. This was, or should have been, apparent from as early as, and certainly by no later than, Ms Beckett's complaints about him following the delicatessen fire in 1983. The fact that he was permitted to remain connected in any way with the charges preferred against Ms Beckett after that represents an egregious failure in policing and an institutional failure of remarkable proportions. The fact that the State has managed successfully to defend a substantial proportion of Ms Beckett's claims in these proceedings ought not be permitted to disguise the fact that Detective Thomas' determination to get square sullied his objectivity. I have no doubt that the events that confronted Ms Beckett on and after 24 August 1989 would not have occurred, or would have been significantly different, if Detective Thomas had been completely removed from any official involvement with Ms Beckett.

818 Consideration of an award of exemplary damages directs attention to the conduct of a defendant. I consider that Ms Beckett is entitled to the sum of \$200,000 under this head.

819 I hasten to add that no part of those damages has been generated by the way in which the State conducted its defence of these proceedings. As my deliberations following a very long trial will bear witness, nothing in this case has been particularly easy, and the running of the trial has been a reflection of the highest standards of professional conduct on both sides throughout.

Damage to reputation

820 By reason of the conclusions to which I have come, Ms Beckett's reputation for practical purposes is that of a woman whose convictions on Counts 3 and 4 still stand but whose convictions on Counts 1, 5, 7 and 9 have been quashed with either new trials ordered on the first three of those counts or in the case of Count 9 where a verdict of acquittal has been directed. Ms

Beckett had no cause of action in respect of Counts 3 and 4 and her reputation as the result of what has happened on the other counts is not compensable by reason of my conclusion in these proceedings. The question remains as to whether her malicious prosecution on Counts 2 and 6 has added to the damage to her reputation or made it worse than it otherwise was following the non-compensable results of her experiences on Counts 1, 3, 4, 5, 7 and 9. In fairness to Ms Beckett, the Crown appears only to argue that her reputation as the result of Counts 3 and 4 is relevant, the implication being that her reputational damage, if any, flowing from the circumstances surrounding Counts 1, 5, 7 and 9 remains effectively unsettled and correspondingly inconclusive.

821 Drawing upon terms, but not the principles, more commonly found in the law of defamation, it may be argued that the damage to Ms Beckett's reputation flowing from Counts 2 and 6 is either contextually insignificant or is otherwise swamped by the effect upon her of the counts upon which she was either convicted or unsuccessful before me. However, in my opinion there are at least two reasons why that is not so.

822 First, perjury is a very serious offence. Mathews J thought so and with good reason. None of the other counts was concerned with allegations of dishonesty or a disregard for the sanctity of the judicial process. Ms Beckett would be entitled to feel aggrieved by her wrongful prosecution upon a charge that would translate in the perception of the reasonable person in the community into intentionally telling lies to a judge.

823 Secondly, the probably never to be resolved question concerning Ms Beckett's conviction on Count 7, and the heavily pregnant atmosphere of unfavourable suspicion that attends it, is highly likely to be ameliorated by success in these proceedings upon a Count charging that Ms Beckett solicited someone else to kill her husband. Put another way, the reputational damage to Ms Beckett from two similar charges, in circumstances where assumptions are often made on numerical rather than substantive grounds, is likely to be greater than the reputational damage from the circumstances surrounding

Count 7 alone, having regard to my conclusions about Count 6. In the language of causation, Ms Beckett's reputation would have been better but for her prosecution and conviction on Count 6.

824 The State argued that Ms Beckett had participated in a television programme that publicised her crimes and therefore had contributed to the publication of material inimical to her reputation. She argued that the programme was the result of her malicious prosecution by the State in the first place and that, in effect, she was entitled to utilise it to expose what she said was the truth and restore her reputation accordingly. It is highly doubtful that anyone exposed to this programme would have had more than a passing interest in what it portrayed, and even less likely that it would have been treated as a prime source of credible information. Ms Beckett has maintained her innocence at all times and her reputational damage is not increased even by misguided attempts to reduce it.

825 It is pretentious not to acknowledge that assessment of a proper sum to compensate Ms Beckett for the consequent loss and damage to her reputation is anything other than a wholly subjective and arbitrary exercise. Doing the best I can I consider that a proper sum is \$120,000. Soliciting to murder is a serious charge. It carries a serious maximum penalty. Ms Beckett is entitled to be compensated for the damage caused to her by the malicious prosecution of Counts 2 and 6.

Past economic loss

826 Ms Beckett lost income as a result of her incarceration for the three year period she was imprisoned on Count 2 and notionally for the three years and six months for which she was imprisoned on Count 6. The detailed and expansive financial reports of Mr Thompson upon which she relies are predicated upon Ms Beckett's success in recovering economic loss for the whole of her period of incarceration. In the light of my conclusions, Ms Beckett's claims for past economic loss are necessarily less significant than Mr Thompson has calculated.

- 827 Mr Thompson prepared two reports dated 8 May 2014 and 18 July 2014. He was instructed to make calculations of claimed loss during certain specified periods. The only significant period is from 7 May 1991 to 22 April 2003. The only two periods during which Ms Beckett's claim remains viable is between 11 December 1992 and 10 December 1995 and 11 December 1995 and 10 June 1999.
- 828 Schedule "A" to Mr Thompson's first report sets out various calculations of income loss based upon the hypothetical work that Ms Beckett suggests she could have performed. Mr Thompson was not required for cross-examination and in my view his assumptions were realistically based. Ms Beckett was not cross-examined to suggest that the assumptions were unattainable. That was no more and no less than an appropriate forensic choice having regard to the overriding purpose and the imperative that litigation should be conducted having regard to the real issues in dispute.
- 829 Whatever else can be said about Ms Beckett, I do not think she could ever be described as a woman who lacked energy or motivation. The absence of records to confirm the extent of her participation in various forms of work does not lead to a conclusion that Ms Beckett did not work as she said she did. The fact that she was a self-employed shop proprietor in Taree in the early 1980s suggests a level of independence, ingenuity and determination. I consider that Ms Beckett would have been employed in some capacity doing work of the type that she had performed in the past, and that her responsibilities for the care of children would not have interfered with her ability to do so. It is apparent that her separation from Mr Catt following the 2 May 1988 events was likely to be permanent, as the Family Court materials to which I have been referred appear clearly to suggest. Even without that material, the prospect that the marriage could have survived the allegations of sexual abuse made by Ms Beckett is non-existent. The result of the position in which Ms Beckett was placed in the circumstances leads me confidently to assume that she would have been forced to work, and would have worked, full time in some occupation for which she was suited. I am not attracted to the argument that she could not have worked given her child care obligations

and responsibilities as it is not borne out by the experiences of single parent households in Australia at the end of the second millennium.

830 I have carefully reviewed Mr Thompson's calculations. In my view Ms Beckett would have had the capacity to earn something in the order of \$400 net per week on average during her periods in detention between December 1992 and December 1995 and between December 1995 and June 1999. I am satisfied that she would have exploited her income earning capacity during the whole of both of those periods if she had not been incarcerated. With respect to the earlier period she would therefore have sustained an economic loss of \$62,400. With respect to the second period Ms Beckett was serving her sentence on Count 6 concurrently with her sentences for Count 5 and Count 7 in part. Even though I am of the opinion that Ms Beckett is entitled to non-economic loss for this second period referable to Count 6, it is clear that she was in custody serving concurrent sentences on other counts during that time so that her claimed loss for this period was not caused by the State.

Legal fees incurred between August 1989 and June 1990

831 Ms Beckett made a claim for legal costs incurred during a short period when she retained private legal services. A schedule of those costs and invoices has been tendered. The total costs of \$20,940.50 are modest even by the standards of the day.

832 Some of the costs relate to Family Court matters and are not compensable in these proceedings. Others presumably relate to counts upon which Ms Beckett has not succeeded before me.

833 Having regard to these matters it seems to me that I should allow \$2,750 as a proportion of the costs notionally referable to Ms Beckett's need for legal services with respect to her defence of Counts 2 and 6.

Loss of opportunity

834 Ms Beckett makes a claim for the loss of an opportunity to finalise a property settlement with Mr Catt characterised in practical terms as the loss of an opportunity to recover her investment in Cattys Body Repairs. I take this claim to proceed upon the basis that she had invested \$100,000 in that business and would but for her incarceration have enjoyed a return on that investment in some unspecified way following orders for the distribution of property in the Family Court.

835 The difficulty with this claim is that it is wholly unsupported by any evidence upon which it could succeed. The business in question is referred to throughout the evidence in these proceedings. A significant allegation is that Ms Beckett was improperly seeking to wrest control of the business from Mr Catt and that her allegations of sexual misconduct for which he was tried and acquitted were at the heart of her attempts to sideline Mr Catt as her competitor. The value of the parties' matrimonial property is otherwise unknown.

836 Be that as it may, I have no idea what the business was worth, whether it was profitable, whether it had a secure capital base or was vulnerable to financial or trade creditors. I do not know what its balance sheet and profit and loss statements revealed about its viability or its value as a going concern.

837 I have no choice but to dismiss this aspect of Ms Beckett's claim.

Interest

838 Ms Beckett is entitled to interest. I will require the parties to agree upon the proper amount under this head of claim or to provide me with their respective contentions about it.

FINAL COMMENTS

839 One of the strands running through Ms Beckett's case has been that Detective Thomas was a corrupt bully who intimidated witnesses with a view to getting them to give evidence or not as the case may be, or to change their

story if it did not suit Detective Thomas' aims or interests. Evidence before me included the testimony of Ms Beckett, her son Peter Bridge, Christa Bracamonte, Peter Caesar, Terrence Madden, Greg Baggs, Tracy Mairinger, Lucynne Cooper, George Baird, Dr Michael Richardson and others. Each of the people had a story to tell about Detective Thomas and the often extraordinary and overbearing methods he used when dealing with people. Detective Thomas clearly treated many people with an arrogant contempt that was intimidating and frightening for them. On some occasions Detective Thomas would interview people away from the police station and at Mr Newell's vacant house.

840 I am satisfied on the preponderance of evidence that Detective Thomas acted in this way. I have no difficulty at all in accepting the evidence of the FACS officers, including Mr Madden and Mr Baggs, and Dr Richardson whose experience at the hands of Detective Thomas was simply remarkable. I also accept the evidence of Ms Bracamonte, particularly in the light of her recorded conversation with Detective Thomas. I am completely satisfied that Detective Thomas threatened and bullied Mr Bridge who was at the time a young man loyal to his mother but frighteningly confronted with the intimidating antics of Detective Thomas. I am less confident that I can place any reliance upon the evidence of Ms Mairinger, who I consider was unable to provide an accurate account of the events she alleges she witnessed.

841 Smart AJ in *Regina v Catt* at [361] described Detective Thomas' behaviour as "regrettable". I agree with that description, even if it is unduly favourable to him. In the end result I have formed my conclusions without proceeding to a finding that Detective Thomas' behaviour was instrumental in the production or the fabrication of evidence that was not, or would not have been, otherwise available for use in the prosecution of Ms Beckett.

ORDERS

842 I make the following orders:

- (1) Verdict for the plaintiff in the sum of \$2,310,350 plus interest.
- (2) Direct the parties within 7 days to provide me either with an agreed sum for interest on the verdict or in the absence of agreement written submissions not exceeding two pages setting out the amount (if any) for which the parties respectively contend.
- (3) Order that unless either party makes an application within 7 days for a different order the defendant is to pay the plaintiff's costs of and incidental to the proceedings.

I CERTIFY THAT THIS AND
THE 262 PRECEDING PAGES ARE
A TRUE COPY OF THE REASONS FOR
JUDGMENT/SUMMING UP HEREIN
OF THE HONOURABLE JUSTICE
HARRISON

P. Hayward
Associate

Date: 24.8.15

