

CITATION: *The Queen v McRoberts (No 2)*  
[2018] NTSC 42

PARTIES: THE QUEEN

v

McROBERTS, JOHN RINGLAND

TITLE OF COURT: SUPREME COURT OF THE  
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT exercising Territory  
jurisdiction

FILE NO: 21616999

DELIVERED: 25 June 2018

HEARING DATES: 23 April 2018 to 31 May 2018

JUDGMENT OF: Mildren AJ

**CATCHWORDS:**

CRIMINAL LAW - submission of no case to answer - circumstantial case - charge of attempting to pervert the course of justice - whether there was evidence fit to go to the jury - whether the Crown case as presented to the jury materially differed from the particulars provided.

*Criminal Code* (NT) ss 23, 26, 109.

*Police Administration Act* (NT) ss. 5(2), 6, 7, 14.

*R v Morex Meat Australia Pty Ltd v Doube* [1996] 1 Qd R 418 at 437-441; (1995) 129 ALR 546 at 564-568; *R v Rogerson* (1992) 174 CLR 268; *R v Kellett* [1976] 1 QB 373; *R v Tovey* (1993) 1 WLR 364; *R v Vreones* [1891] 1 QB 360; *R v Machin* [1980] 1 WLR 763; *R v Mark Grosvenor Clark* [2003] EWCA Crim 991; *Parker v The Queen* [2007] NTCCA 11; applied.

**REPRESENTATION:**

*Counsel:*

Crown: M McHugh SC and M Chalmers

Accused: A Elliott and S Ramdhas

*Solicitors:*

Crown: Director of Public Prosecutions

Accused: Ramdhas Poli

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IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA  
AT DARWIN

*The Queen v McRoberts (No 2)* [2018] NTSC 42  
No. 21616999

BETWEEN:

**THE QUEEN**

AND:

**JOHN RINGLAND MCROBERTS**

CORAM: MILDREN AJ

REASONS FOR JUDGMENT

(Delivered 25 June 2018)

- [1] The accused, John Ringland McRoberts is charged that between 2 May 2014 and 17 November 2014 he attempted to pervert the course of justice, to which charge he pleaded not guilty. At the end of the Crown case, counsel for the accused submitted there was no case to answer. I ruled that there was a case to answer, and at the time I gave brief reasons. I said then that I would later provide detailed reasons if required. These are those reasons.
- [2] This was a very unusual case. At the time of the alleged offending, the accused was the Commissioner of Police for the Northern Territory. The police were engaged in investigating a number of travel agents in

the Northern Territory whom the police suspected were engaged in fraudulently claiming travel concessions payable by the Northern Territory Government, which had established a scheme called the PenCon Travel Scheme. One of the agents so suspected was a person called Xana Kamitsis who operated under the business names of Winnellie Travel and Latitude Travel. The Crown case was that between the relevant dates, the accused engaged in a course of conduct which had the tendency to frustrate or deflect an imminent, probable or possible prosecution which the accused contemplated may be instituted against Ms Kamitsis. The acts relied upon each related to engaging in conduct which had the purpose of preventing a search warrant being taken out on Ms Kamitsis' business premises. Although none of the accused's acts were in themselves unlawful, it was the Crown case that the accused intended to deflect or frustrate that possible prosecution for an improper purpose, namely to prevent Ms Kamitsis' business records, and in particular, her mobile phone, from being searched during the course of a police investigation into probable charges being contemplated against her for, at that time, stealing. The Crown submitted that the motive for this conduct was because the accused did not want his personal relationship with Ms Kamitsis to become known.

[3] Much of the background evidence was not in contest.

[4] Some years ago, the government, in order to encourage retirees to remain in the Territory, established a Pensioner Concession Scheme for

eligible Territorians in order to encourage them to stay in the Territory upon retirement. One aspect of this scheme was the PenCon Travel Scheme, which entitled eligible pensioners to claim a return economy airfare from the Territory to a capital city of their choice in Australia once every four years. Alternatively, a claim could be made for half of the economy airfare every two years. The entitlement could be put towards international travel expenses. The claim could be made either by the pensioner personally or through a travel agent. If made personally, the payment was made after the travel was taken. The scheme was administered by the Department of Health. There were 27 licensed travel agents which were approved by the Department to provide booking services to members who wished to make a claim for their concession at the time of making the booking. Each agent had entered into a contract with the Department relating to their participation in the making of claims under the scheme. Under the provisions of the contracts, the agents were entitled to charges for fees and charges which would also be reimbursed by the Department. For various reasons, the scheme had a number of weaknesses which enabled a dishonest agent to make a false claim. Because the agent would be paid the amount of the airfare claimed at the time of the booking, one way to make a false claim was if the pensioner at the time of travel was supplied with a cheaper fare than the airfare paid for, with the agent keeping the difference. Another way was to make a false

claim for travel that was never taken. A big weakness in the system was that there was no requirement for the agent to produce a receipt from the carrier to prove how much had in fact been paid for the travel.

[5] In October 2012, a pensioner called Walter Fuller tried to make a claim but found out that someone else had used his entitlement through an agent called Value Travel. His complaint to the Department led the Department into making some enquiries. In October 2012, Det Sergeant Blake (“Blake”) from the Fraud Squad met with some members of the team within the Department administering the scheme. He advised them to make a formal complaint to the Commissioner of Police, but instead of doing that, the Department commissioned a report from its auditors, Ernst and Young, which produced two reports, one on 24 May 2013 and another on 4 October 2013. The first of these reports is not in evidence. It allegedly differs from the second report only in relation to some references to the Government and the Department which have been omitted. The second report, hereinafter called the E&Y Report, is part of an agreed bundle of documents which became Exhibit P1 at the trial.<sup>1</sup> No audit was conducted. This report’s major findings were that the average concession paid direct to members during the period 1 January 2011 to 1 January 2013 was \$631, whereas the average paid to travel agents exceeded this sum substantially. In the case of Winnellie Travel, there were 39 transactions averaging \$1,720. This

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**1** See pps 77-124.

was the highest average amongst the 27 agents involved.<sup>2</sup> The report also found that there were eight travel agents which were in the category of “Higher Risk” in claiming on the basis of the maximum concession available rather than the underlying actual fare. Winnellie Travel was at the top of this list.<sup>3</sup> Whilst the E&Y Report did not provide any evidence, other than statistical evidence, that Winnellie Travel (or any other agent) had committed fraud, their report was certainly enough to make both the Department and Blake suspicious. Shortly thereafter the E&Y Report was referred to the Auditor General who reported the matter to the accused by letter dated 6 November 2013.<sup>4</sup>

[6] On 3 December 2013, the Department made an official complaint to the accused.<sup>5</sup> The names Winnellie Travel, Latitude Travel and Kamitsis were not mentioned. The accused referred the matter to the Fraud Squad. In January 2014, Blake began to make enquiries with the Department to obtain the necessary records to see if criminality could be proved against any of the agents. Initially the plan was to investigate all 27 agents, even those the E&Y Report reported as “Lower Risk Agents” and those which were “Not Rated”. Over the next few months the main focus changed to only one agent, Winnellie

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2 P1 p 103.

3 P1 p 104.

4 P1 p 125.

5 P1 p 137.

Travel, although it was still envisaged that all of the agents would eventually be investigated. Blake was having difficulty getting documentation from the Department. Their records were not easily retrievable so as to identify which individual claimant made a claim at a particular time for a particular amount in relation to a particular travel agent. Furthermore, he was experiencing difficulties getting information from the airlines. Blake decided to prepare a “test case” in relation to one transaction involving Winnellie Travel for the opinion of the DPP. Blake’s evidence was that he chose Winnellie Travel because it was listed in the top eight in the E&Y Report, the number of transactions reported in the E&Y Report was small (only 39), so it was a small sample size and the average claim was higher than the benchmark average of \$1,200.<sup>6</sup> On Friday 21 March 2014 he went to interview a Ms Da Silva whom he had randomly selected as the person he was going to build the test case around. When he went to interview her, Ms Kamitsis was present as her interpreter so the interview did not proceed.<sup>7</sup>

[7] On or about 31 March 2014, Blake changed the focus to a claim by a Ms Martha Swart.<sup>8</sup> He had been provided documentation in relation to her claim by the Department which showed an application for concession signed by Ms Swart and witnessed apparently by

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**6** Tr pps 259-260.

**7** Tr pps 230, 262-263, 408. In fact, Ms. Da Silva was Ms. Kamitsis’ mother.

**8** See emails at P1 p 238.



Ms Kamitsis for travel to Sydney/Hobart between 20 December 2011 and 10 January 2012. A concession of \$3,214 was paid by the Department representing 100% of the concession available. The payment was approved and paid by credit card to Winnellie Travel on 20 September 2011. There was an itinerary showing the travel and a tax invoice for the amount of \$3,214 referenced to Ms Swart. There was also an email from Qantas showing that the travel took place between 10 January 2011 and 22 January 2011. The cost of the travel was only \$1,111.79.<sup>9</sup> These documents were part of the brief of evidence sent to Mr Morters, a senior prosecutor with the DPP, on 15 April 2014.<sup>10</sup>

[8] On 2 May 2014, there was a briefing of the accused by Assistant Commissioner Crime Command Kershaw (“Kershaw”), Superintendent Crime O’Brien (“O’Brien”) and Acting Deputy Commissioner Payne (“Payne”).<sup>11</sup> It is not clear who called this meeting or why it was thought necessary to brief the accused. O’Brien’s evidence was that he came back from leave to attend this meeting and that he took the test brief with him as an aide memoire to explain what was going on. He said that when the name Kamitsis came up, the accused said that she was known to him and was a friend of his.<sup>12</sup> Kershaw said that the

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**9** P1 pps 239-241.

**10** P1, p 261-263.

**11** P1 268.

**12** Tr 68-69.

accused said that he knew her through social circles,<sup>13</sup> although in cross-examination he conceded that the accused may have said that she was a friend of his.<sup>14</sup> Kershaw said that he told the accused that she was likely to be charged. O'Brien said that the accused also asked for the brief, and after reading it, he said words to the effect that "she can't be this stupid." Payne said that the accused said that he knew her socially and through Crime Stoppers, but that if she was to be prosecuted, then she was to be prosecuted.<sup>15</sup> O'Brien said that the accused said words to the effect that "whatever it will be, will be."<sup>16</sup> In fact, Ms Kamitsis was the Chairperson of the Board of Crime Stoppers (NT). The accused was also a member of the Board.

[9] On the evidence, this is the first time that the accused was aware that the police were conducting a criminal investigation into Ms Kamitsis. The evidence at this stage related to a single count of fraud of some kind involving potentially an amount of a little over \$2,000.

[10] A major plank of the prosecution case is that the accused failed to reveal the full extent of his relationship with Ms Kamitsis. At trial,

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13 Tr 567.

14 Tr 632.

15 Tr 751.

16 Tr 68.

certain admitted facts were read by counsel for the accused to the jury relating to this relationship. This included the following:<sup>17</sup>

Between 2010 and 2015 I had a personal relationship with Alexandra Kamitsis which at some stage prior to 2014 had included sexual intimacy. The nature of the relationship was (a) an intimate one and that of close friends and confidantes during all material times; (b) one in which we exchanged gifts (c) one in which her business made my travel arrangements and I would sometimes refer others to her business; and (d) one in which we communicated regularly by telephone and various messaging services.

- [11] The prosecution also tendered as admitted facts large bundles of text and Viber messages which the Crown submitted showed that throughout 2012-2014 the accused and Ms Kamitsis arranged to meet personally and were in regular personal contact with each other, sometimes in the early hours of the morning. This included the period between May 2014 and November 2014 when Ms Kamitsis was ultimately arrested. The Crown submitted that the messages indicated that the relationship continued to be a sexual one, even after May 2014.
- [12] There was evidence that the accused was required not to continue to be involved in an investigation once a conflict of interest, or an apparent conflict of interest, arose.<sup>18</sup> Furthermore, the accused was required by the terms of his appointment to disclose any conflict of interest in writing to his employer, in this case the responsible Minister, which he

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<sup>17</sup> Tr 41; Exhibit D1.

<sup>18</sup> Exhibit P1, pp 7-8 clauses 33, 34, 36 and 43.

did not do.<sup>19</sup> There was evidence which a jury could find that the accused was in a position of actual conflict, and should not have continued to have anything to do with any investigation into any possible charges against Ms Kamitsis.

[13] The Crown case was that the accused, after he knew that possible charges were about to be laid against Ms Kamitsis, continued to become personally involved in the investigation, and acted in a way that was designed to prevent her business premises from being searched by the police. The acts relied upon by the Crown were particularised (as at the time of the no-case submission)<sup>20</sup> as follows:

1. **Meeting with Notaras on 7 May 14**

The accused met with Notaras 7 May 2014 and discussed an investigation into suspected fraud by travel agents including Kamitsis (“Operation Subutai”).

Knowing that it was improper for him to be involved in Operation Subutai, the accused proposed an approach to Notaras that involved an initial civil phase of issuing a debit notice to all of the travel agents including Kamitsis (“the alternative approach”).

2. **Frustrating the execution of the search warrant for Winnellie Travel**

On 4 June 2014 the accused called a meeting for 3.00pm between himself, Payne and Kershaw after becoming aware that investigators were preparing to execute a search warrant on the business premises of Winnellie Travel. At the meeting, without disclosing the true extent of his relationship with Kamitsis and knowing that it was improper for him to be involved with Operation Subutai, the accused said words to the effect “this is not ready to an

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<sup>19</sup> Exhibit P1, pp 24, clauses 64 and 65. P1, p 467.

<sup>20</sup> There were earlier versions of these allegations which I will discuss later. Counsel for the accused submitted that the Crown had “changed the goal-posts”. I found that it had not.

overt investigation” and raised a number of issues that he said needed to be addressed first “the six questions”). As a result of the accused’s interceding, the search warrant approved by the JMC and planned for execution on Winnellie Travel on 5 June 2014 was not executed.

3. **Second meeting with Notaras 16 June 2014**

On or about 16 June 2014, knowing that it was improper for him to be involved with Operation Subutai, the accused met with Notaras and suggested that they jointly brief their respective Ministers as to the concerns the accused had about Operation Subutai and the alternative approach.

4. **Taking possession of the investigation file**

On or about 19 June 2014, without disclosing the true extent of his relationship with Kamitsis and knowing that it was improper for him to be involved with Operation Subutai, the accused took possession of the Operation Subutai investigation file (exhibit P3) which included the test brief relating to Kamitsis, and reviewed the file over a period of days.

5. **Undermining the criminal investigation**

Notwithstanding that the six questions were answered by investigators on 5 June 2014 and that he had reviewed P3, the accused asked, on or about 20 June 2014, “surely after all this time we have more evidence on other travel agents rather than the one” referring to Kamitsis.

On 23 June 2014 the accused met with his staff (Payne, Fuller and Sims) and received a briefing including a recommendation that the Kamitsis matter proceed to overt action. IN this meeting, the accused, without disclosing to his staff the true extent of his relationship with Kamitsis and knowing it was improper to be involved in Operation Subutai said words to the effect that “this file does not appear to me to represent 2 years of investigative work”. In the same meeting, the accused, also said words to the effect of “why do we start here?” referring to the Kamitsis matter.

6. **Proposing the alternative approach to his staff**

On 25 June 2014, the accused, without disclosing to his staff the true extent of his relationship with Kamitsis and knowing it was improper to be involved in Operation Subutai, met with his staff to discuss Operation Subutai. The meeting was attended by the accused, Chalker, Payne, Fuller, Sims and Blake. The accused told the meeting

words to the effect that after reviewing the file he was of the view that the matter was “more of a civil nature than a criminal nature” in support of the alternative approach. He told them he was going to speak with the Ministers about the matter.

7. **Obtaining Ministerial sanction for the alternative approach**

On June 26 2014 a meeting was held between himself, Notaras, the Minister for Health (Lambley), and Chief Minister/Minister for Police (Giles). Without disclosing the true extent of his relationship with Kamitsis and knowing it was improper to be involved in Operation Subutai, the accused briefed the Ministers on Operation Subutai including putting forward the alternative approach. During the meeting the Ministers sanctioned the alternative approach and the formation of an inter-agency Taskforce (“the Taskforce”) to deal with the suspected fraud by travel agents including Kamitsis.

8. **Promoting the alternative approach to stakeholders**

On 30 June 2014, the accused attended a meeting with Notaras, the Under-Treasurer (Ryan) and the Chief Executive of the Department of Attorney General and Justice (Shanahan). Without disclosing the true extent of his relationship with Kamitsis and knowing it was improper to be involved in Operation Subutai, the accused promoted the alternative approach to those present, stating words to the effect that he would like to “established a level playing field” and “didn’t think there would be enough evidence” for criminal prosecution.

9. **Directing the strategy of the taskforce**

On or about 2 July 2014, the accused, without disclosing to his staff the true extent of his relationship with Kamitsis and knowing it was improper to be involved in Operation Subutai, informed Payne that a joint taskforce would be formed. He said that civil matters would be dealt with through repayment and that any criminal offending would be referred to NT Police in the event of non-repayment. The accused directed Payne to design a strategy reflecting the alternative approach for the Taskforce.

On or about 14 July 2014 Payne presented a strategy for approval. The accused approved the strategy and described

it as “ingenious”. The strategy was subsequently adopted by the Taskforce.

In accordance with the strategy, on or about 1 September 2014, as a result of the accused’s actions and in keeping the alternative approach, letters were sent to travel agents including Kamitsis signed by the CEO of Health.

10. **Monitoring and involvement with the Taskforce/August-November 2014**

Knowing that it was improper to be involved in Operation Subutai, the accused monitored and was involved to some degree with the Taskforce’s activities.

On 6 August, the Taskforce met. Following the meeting the accused requested a briefing from Commander Proctor (relayed through the acting Deputy Mr Chalker) about the Taskforce,

On 12 August the accused participated in a meeting with AFTA representatives on 12 August 2014 to discuss the Taskforce and Operation Subutai.

On 10 October 2014 Mr Ray Murphy on behalf of Kamitsis emailed the interagency taskforce members including Notaras, attaching a response to the letter of demand. Notaras forwarded the email to the accused for information. The accused emailed back on 13 October “Thanks Len. Encouraging.”

[14] In my opinion there was some evidence to support a finding in favour of the Crown in respect of each of the factual allegations alleged in the particulars. Counsel for the accused, Mr Elliott, did not take issue with most of the facts alleged except those alleged in relation to two particulars.

[15] First, it was put that there was no evidence upon which a conclusion could be drawn that the accused had frustrated the execution of the search warrant on Ms Kamitsis’ premises as alleged in paragraph 2 of the particulars. The Crown case was that the accused, having found out

that the police were investigating Ms Kamitsis and had obtained a search warrant for her premises, called a meeting on 4 June 2014 intending to frustrate the execution of the search warrant. The evidence was that on 30 May 2014, a major crime declaration was made by Kershaw.<sup>21</sup> The effect of this was that more resources would be made available, and also that the investigation was now probably going to go overt, although the documents do not say so in so many words.<sup>22</sup> By “going overt”, this expression is used to convey the meaning that it would become public knowledge that there was a police investigation into the activities the subject of Operation Subutai, the code name for the investigation into all 27 of the travel agents. The decision to apply for a search warrant on Winnellie Travel was made by the Joint Management Committee on 4 June 2014.<sup>23</sup> That meeting was held between 12 noon and 12.20 pm. Blake sought and obtained the warrant from Registrar Rischbieth the same day.<sup>24</sup> Blake emailed Superintendent Morgan (“Morgan”) for approval of the “warrant brief”.<sup>25</sup> The warrant brief indicated that it was intended that the warrant would be executed on the following day, 5 June 2014. Morgan emailed Blake back at 2.31 pm approving the warrant brief. At 3 pm a

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**21** P1 pp 302-303; 334-336; Kershaw, tr 570-572.

**22** Except for P1 p 312.

**23** This comprised Assistant Commissioner Kershaw, Commander Fuller, Det Sgt Blake and Det Senior Constable Larsen-Smith: see P1 p 332-333. Although the record of the meeting is dated 4 May 2014, it was proven that the meeting was held on 4 June 2014.

**24** P1 343-345.

**25** This is a document which sets out how it is proposed to execute the warrant. It required Morgan’s approval before the warrant could be executed. See P1 pp 348-358.



meeting was held in the accused's office which was attended by the accused, Kershaw and Payne. The document which called the meeting was an email which was sent from the accused's office.<sup>26</sup> Although the email was sent from the accused's office, the evidence from the accused's then Executive Assistant, Ms Benaim, was that she did not know who called that meeting. She was unable to say whether or not the accused ever sent out meeting invitations from his calendar. She did say that the accused would from time to time put meetings in his (electronic) calendar, but it was not uncommon for persons wishing to make an appointment with the Commissioner to approach her, in which case she would enter the appointment in his diary and send out the email invitation. The evidence of Kershaw<sup>27</sup> was that he did not and had no reason to call it. He said that the accused called the meeting. Payne said that he did not call the meeting or ask for it to be called and that the first he knew of the warrant was when he attended the meeting.<sup>28</sup> The Crown submitted that the accused "somehow" found out about the warrant and it was he who called the meeting. Kershaw admitted that he may have told the accused about the warrant.<sup>29</sup> Mr Elliott submitted that no inference could be drawn that it was the accused who called the meeting. In my opinion it was open to the jury to infer that he called that meeting given the timing of the events

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**26** See P1 p 361.

**27** Tr p 574-575.

**28** Tr 755.

**29** Tr 576.

leading up to the meeting and the fact that the evidence of Kershaw and Payne was to deny that either of them had called it.

[16] The evidence of Kershaw as to what happened at the meeting on 4 June was that there was a discussion about where the investigation had got to at that stage and what evidence had been collected, that the accused expressed a view that the police had not reached the threshold for a search warrant, and that there were a number of other considerations that had not been taken into account. In particular, the accused said that this would have serious implications for the travel industry, and implications resource wise for the police and the Northern Territory Government. He said that the accused raised a number of questions which he could not answer and which he thought were reasonable.<sup>30</sup> At the end of the meeting Kershaw sent an email to Fuller, Blake, Morgan and others setting out questions which needed to be answered before a proposed briefing of the CEO of Health and the Minister scheduled for 16 June which he and the accused would be attending.<sup>31</sup>

[17] The evidence of Payne was that Kershaw told the accused that the investigation was about to go overt, and that the plan was to execute a search warrant on Winnellie Travel's premises. Kershaw outlined the intent of the investigation, and a number of issues that had been canvassed in the initiating documentation. He said that the accused

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**30** Tr pps 576-578; 582; 657-658.

**31** See P1 367.

said: “This is not ready to go to an overt investigation.” He said that the accused said that there were a number of defences that could be left open, because of the nature of the scheme and because of the governance arrangements that sat around the pensioner scheme. He was concerned that more groundwork needed to be done and had a number of questions which needed to be answered, which Kershaw wrote down. He asked for those questions to be answered before the matter should progress to an overt investigation or execution of a warrant. He stated that the circumstances as presented to him were very much in a civil nature as opposed to a criminal nature; it was more of an overpayment situation and that would make it a civil matter. He said that if they got this wrong, it could be very embarrassing not only for the Northern Territory Police but also for the Department of Health which was administering the scheme. He indicated that he wanted answers to the questions he raised because he intended to speak to the Ministers on the 16 June and he wanted the answers before then.<sup>32</sup> Payne agreed that he thought that the questions the accused asked were reasonable. Both Payne and Kershaw said that they had no experience of a Commissioner being involved in stopping a warrant being executed before. Blake and Morgan said the same thing. All were very experienced police officers.

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32 Tr pps 756-758; 657-658.

[18] It was put by Mr Elliott that nothing the accused said or did amounted to an order not to execute the warrant. It is true that he did not give a direct order, but in all the circumstances I think it was open to be inferred that he made it clear that the warrant was not to be executed until at least after the accused had received answers to the questions he had raised or until he had spoken with the Ministers on 16 June.

Having regard to the fact that the accused was the Commissioner with overall control of the Police Force, and he was speaking in this manner to Senior Officers who were two ranks below him, it was open to the inference that he expected them to do as he wanted. When regard is had to the evidence as a whole, including what happened later, and the fact that at the time of this meeting on 4 June the accused had very little knowledge of the extent to which the investigation had progressed, it was open to the inference that the accused intended to stop the execution of the warrant and effectively did stop the warrant from being executed. Having regard to his relationship with Ms Kamitsis, it was also open to the inference that he was either trying to protect her, or, that he knew that if the warrant were to be executed, it was likely that the police would seize and interrogate Ms Kamitsis' mobile phone, which is something he wanted to avoid at all costs, because that would reveal the extent of his relationship with her, the fact that he was conflicted, and expose him to possible disciplinary measures.

Alternatively, his motive may have been that he did not want his

partner “L” to find out about his continuing relationship with Ms Kamitsis.<sup>33</sup>

[19] The second matter which Mr Elliott raised related to the evidence relating to the meeting with the Ministers which occurred on 26 June, and not 16 June as originally foreshadowed. Before getting to that meeting it is necessary to briefly canvas the evidence relating to other matters which preceded it. The first of these matters is that advice was received from Mr Morters, a senior prosecutor with the DPP, which arrived on 6 May. The effect of the advice was that, subject to the collection of certain evidence from Qantas and evidence of dishonesty, which might be in the form of proving a course of conduct, there were reasonable prospects of successfully prosecuting Ms Kamitsis with stealing. That advice was not known to the accused until after the 4 June meeting.

[20] Next, there was a meeting which the accused had with Dr Len Notaras on 7 May 2014. Dr Notaras was then the newly installed CEO of the Department of Health. He gave evidence of a meeting with the accused at the Ducks Nuts café on that morning to discuss a number of matters including the PenCon Scheme. At this stage Dr Notaras knew about this problem only peripherally as he had not had much of a briefing about it at the handover from his predecessors. He was told by the

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**33** As to the relationship with “L” see Agreed Facts Ext P 10 para 11 and text messages, Red Tab, 32-39 6/5/2012; Red Tab 837-848 23/9/12. Evidence of Assistant Commissioner Murphy, the accused’s Chief of Staff tr 527-528.

accused that there was an investigation going on, and that there were two ways of progressing the matter, either criminally or civilly.<sup>34</sup> He said that one of the agents involved was Ms Kamitsis. He said that a civil approach in the initial phase with the issue of debit notices to the travel agents was the preference, at least until the matter was more formally investigated. He said that the accused suggested that the Department could assess what was outstanding and enable the travel agents to repay what was owing and keep the matter as a civil matter. He also expressed concerns about the travel industry, the pensioners themselves and political embarrassment. In relation to Ms Kamitsis, he indicated that she would be treated on a level playing field like the others.<sup>35</sup> In cross-examination Dr Notaras agreed that it had not been suggested that any special consideration be given to Ms Kamitsis to get her out of trouble, and that any agents who had defrauded the Department would still be pursued by the police. It was not suggested that any of the agents could pay their way out of trouble just by paying back what was an overcharge.<sup>36</sup> The significance of this was, on the Crown case, that the accused was already planning a mechanism which would avoid the necessity for search warrants.

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**34** Tr 1026-1027.

**35** Tr 1061.

**36** Tr 1062, 1066.

[21] On 5 June 2014, Blake sent an email response to the questions raised by the accused.<sup>37</sup> The email was sent to Kershaw, Fuller and Morgan. There is no evidence that the accused saw that email until sometime around 19 June when it became part of the investigation file Exhibit P3. (at Tab 13).

[22] On 16 June 2014, Blake prepared a memorandum addressed to the Commissioner. That note was not regarded as sufficient, and on 17 June Acting Superintendent Sims (“Sims”) requested more information be included in the brief.<sup>38</sup> That resulted in a more extensive briefing note to which were attached a number of other documents. This document became Exhibit P3. That document became part of Exhibit D14 which was the investigation file for Winnellie Travel. Exhibit D14 contained a variety of documents relating to the investigation procedures undertaken and the decisions made, the brief that was submitted to Mr Morters and his opinion, the documents upon which that opinion was based including the E&Y Report and a statement from Ms Swart, and some additional statements from Mr Gardiner from the Department of Health attaching the contract between Ms Kamitsis and the Department, and Michael Kalimnios the Chief Financial Officer of the Department of Health attaching the manual which under the agreement sets out the parameters of the

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**37** P1 p 369.

**38** P1 375 and P1 384.

scheme, as well as an email from Qantas relating to the actual travel and travel costs for Ms Swart's travel. The documentation in Exhibit D14 indicated a *prima facie* case of fraud by Ms Kamitsis in relation to the Swart travel only.

[23] On 16 June, the accused had another meeting with Dr Notaras in the latter's office. On this occasion the accused suggested that it was time to brief the Ministers and the concerns that he held, to which he agreed.<sup>39</sup> The only significance of this meeting was that it was a step towards putting a plan to the ministers to approve a joint task force to approve of "the alternative approach" as that expression was used in the Schedule referred to in paragraph [13] above (see Item 1 on the Schedule).

[24] On or about 19 June, Kershaw had another meeting with the accused. The file (Exhibit P3) had been in Kershaw's office and at around the time of that meeting it had made its way to the accused's office. Sometime during that week the accused spoke to Kershaw and said "Surely, after this time, there's more evidence on other travel agents than this one". Kershaw sent an email to Fuller repeating this comment and asking for his advice.<sup>40</sup> This was consistent with the accused's intention that all agents should be dealt with simultaneously. Kershaw

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**39** Tr 1028.

**40** See tr 584 and P1 p 391.



said that it was not common for a Commissioner to keep a file of that nature.

[25] On 23 June there was another meeting with the accused at his office, this time with Payne and Sims, who had taken over from Morgan. According to Payne, Sims gave a briefing which outlined the answers to the questions previously raised by the Commissioner and recommended overt action in the form of executing the warrant on Winnellie Travel.<sup>41</sup> Although the evidence was far from clear, it was open to the inference that what Sims spoke about included what Sims had written in an email dated the same day and sent at 11.18am to Fuller, Kershaw and Payne. The email detailed the primary delays the investigators were experiencing:

The attachment document<sup>42</sup> provides a brief overview of the enquiries undertaken in respect of this fraud investigation to date. The greatest delay being experienced has been with the obtaining of timely information from QANTAS. Major Fraud Squad are liaising with QANTAS in an attempt to expedite this information.

The primary delays can be explained as follows;

The Department of Health (DoH) were requested to provide all 1491 suspicious transaction to us some months ago - they are working steadily at this and have nearly completed the task (they are not holding us up in any way and have been cooperative since they finally handed over the audit in February this year);

The holdup in terms of gathering information to continue the investigation is QANTAS - they refused to provide all of the info to DoH on request (without warrant) so we needed to obtain that via warrant;

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41 Tr 759.

42 P1 385.

QANTAS have provided the documents for the 21 transactions that are confirmed as suspicious;

QANTAS are likely to give us the docs for Winnellie Travel this week (so 3 months roughly to provide 39 transactions requests);

We have not asked QANTAS for the remaining 1452 (we were anticipating executing warrants on each Agency first so that we can narrow down the requests for info with names, dates, booking numbers etc that would assist greatly in streamlining the process);

Our preference is still to execute one warrant at a time on each travel agent (our capacity to execute them simultaneously is limited and we could not follow up/ process the info all at once afterwards in any event.

[26] Payne's evidence was that the accused was not happy to go overt, and made the stinging comment that "this file does not represent two years of investigative work."<sup>43</sup> He said that the accused said that there were defences available that had not been negated. The evidence was that the accused had the file (Exhibit P3) with him at the meeting, and the accused asked, "Why do we start here?" After the meeting was over Payne said that the accused took the file (Exhibit P3) with him. The Crown's submission was that all the matters in that brief were matters which positively favoured the execution of a warrant on Winnellie Travel first, and this was evidence of the accused's motive, and of his being involved for an improper purpose.

[27] Sims' evidence about that meeting was along similar lines.<sup>44</sup> He said that he explained to the accused that the reason for starting with Winnellie Travel was because there were a smaller number of transactions, and that the average value was higher than any other

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43 Tr 761.

44 Tr pp 1290-1291.

identified in the E&Y Report. Sims said that a request came out of the meeting which resulted in an email which he sent to Fuller on 24 June, attaching spreadsheets which identified 57 suspicious transactions.<sup>45</sup> The spreadsheets identified three transactions involving Winnellie Travel.<sup>46</sup> Two of these related to variances with the actual travel and the third related to travel where no booking was found. Fuller had no recollection of this meeting.

[28] On 25 June there was a meeting between the accused, Blake, Payne, Fuller, Sims and Chalker.<sup>47</sup> Blake's evidence<sup>48</sup> was that he gave a presentation at the commencement of the meeting. He had prepared a "Proposed Target Operation Plan" and spoke to it at the meeting. The Plan recommended that the police should "investigate Travel Agents in order of likely offending (one after the other and starting with Winnellie Travel) and initiate Overt Police Action in the traditional course of the Police Investigation." After his presentation he said that there was general discussion between those present. Concerns were raised about governance issues; how the Department administered the scheme and what affect this might have on the investigation. He could not remember much of that discussion. The accused said that he would be meeting with the Minister and the CEO of the Department of Health.

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**45** P1 394. The spreadsheets are at P1 395-397.

**46** P1 395.

**47** See minutes P1 117-118.

**48** Tr 309- 313; 458-461.

He was asked by the accused to provide the listing details of the top eight agents which he did the following day. Blake had little recollection of the meeting, other than what was in the minutes. He agreed that the matter of civil remedies was raised and discussed. He said that he was satisfied with the outcome of the meeting because criminal remedies were still to be pursued.

[29] Payne's evidence was that the execution of the warrant was supported at the meeting by him and others present. He said that the accused said that these were matters more of a civil than a criminal nature<sup>49</sup> and that he intended to raise these matters with the Minister as the next step. He said the decision was made not to take any further action until the accused had spoken to the Minister for Health and that no-one raised any objections to that course.<sup>50</sup>

[30] Sims' evidence<sup>51</sup> was that the accused said that he preferred that warrants be executed simultaneously upon all the travel agents and that he had come up with the idea of a joint task force, and would be speaking to the relevant ministers about that. He said that the accused expressed the view that civil remedies would be pursued and that if the agents did not cooperate, they would be pursued with criminal action.

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**49** Tr 774.

**50** Tr 774-776.

**51** Tr 1292-1296.

[31] Chalker was not called as a witness. Fuller had virtually no memory of the meeting at all.

[32] The meeting with the Ministers was held at the office of the Chief Minister, Mr Giles on 26 June 2014. Present were Mr Giles, who was also Minister for Police etc., the Minister for Health, Mrs Lambley, Dr Notaras and the accused. Although Kershaw had been expected to go to this meeting, he was not invited. Giles' evidence was to the effect that the accused presented the E&Y Report and spoke to it. He recalled the accused saying that there was a major fraud involving up to 27 travel agents and more than 800 Territorians. There were eight travel agents with a high level of fraud. He told the accused the "we should go hard on them". The accused said that they should be seeking to get the money back and if there was criminal wrong-doing they should be pursued criminally. He said that no particular travel agents, other than Flight Centre as one of the top eight, were mentioned and there was no discussion about political implications or tourism. He said that the accused mentioned letters of demand to 19 of the travel agents at lower risk to get the money back and to see if there was any criminality involved with them.<sup>52</sup> No mention was made of any potential conflict of interest. In cross-examination he agreed that a number of options were put to the meeting, but he could not remember the details.<sup>53</sup>

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52 Tr 213-214.

53 Tr 222.

[33] The evidence of Dr Notaras was that the accused clearly articulated what the problem was and suggested that there were two ways of going about this, one being to proceed with civil action and the other to proceed with criminal action. He said that the accused expressed concern about the negativity criminal action would have on the travel industry and the stress this would cause to pensioners, but that Chief Minister Giles had said the he was not concerned with the travel industry and he wanted him to go hard. He said that the accused spoke about issuing debit notices. He said that the decision was made to set up a joint task force, and that this suggestion came from Chief Minister Giles. He said that he told the meeting that the task force would have the full support of the Department of Health.<sup>54</sup>

[34] Mrs Lambley's evidence was that the accused shared information with them about travel agents rorting the system, that there were 27 agents involved, with eight agents of particular concern. She remembered Flight Centre being mentioned as one of those agents. She said that the purpose of the meeting was to discuss planning a strategy from that point on. She said that the accused advised that it would be better not to proceed with a criminal investigation. He suggested that in the first instance it would be better to send out letters to all of the travel agents, giving notice that there had been an overpayment, and giving the agents the option of making repayments. The accused said that to go

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54 Tr 1029-1030.

straight to a criminal investigation would be resource intensive. Her understanding was that the criminal investigation would come after that. She recalled that the Chief Minister said that he wanted to go hard on the top eight travel agents. According to her evidence the letters were to go out to all 27 agents.<sup>55</sup>

[35] It was submitted by Mr Elliott that there was no evidence that the accused at this meeting proposed the civil recovery of debt as an alternative to criminal proceedings, in the sense that if the agents repaid the money, there would be no criminal proceedings even if criminality were discovered. It was also put that there was no evidence that criminal investigations would not continue simultaneously with the sending out of the letters. I accept that, but this was not the point. The inference is open that the accused promoted to the meeting a process whereby search warrants on the premises of the agents would not become necessary if they cooperated with the letters of demand. Although investigations would continue, the police would not have the ability to gain valuable evidence in this fashion.

[36] The next meeting which took place occurred on 30 June 2014 at the offices of Greg Shanahan, who was the Chief Executive Officer of the Department of the Attorney General and Justice (“Shanahan”). The meeting was attended by Shanahan, Dr Notaras, Jodie Ryan (the Under-Treasurer) and the accused. Dr Notaras’ evidence was that the accused

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55 Tr 1164-5; 1184, 1186.

outlined the two options, either going criminal or civil. He said that the accused said that although some police favoured “going in a more overt manner” his own preference was to “go civil” by sending out letters seeking explanations from the agents asking them to reconcile their accounts, seeking explanations from the agents, and to ensure that there was “a level playing field” and that all agents were given “a fair go.”<sup>56</sup> In “the second instance, it would proceed, if necessary, to an overt criminal investigation.”<sup>57</sup> He said that he nominated Jan Currie to be the chair of the task force.

[37] The evidence of Jodie Ryan was that she was unaware of the alleged travel rorts before attending this meeting. She recalled being informed of instances of how the scheme was being manipulated. The matters discussed included setting up of an interagency task force. She was told that the Department’s records were not that good, and that she was asked to nominate a person good with numbers to look at the records and reconcile them with the people who had claimed. She said that the accused had said that it was unlikely that the police could conduct a successful prosecution due to lack of evidence and faulty record keeping by the Department of Health, and that he suggested as one option, writing to the agents and that they would have a moratorium

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**56** Tr 1031-1033.

**57** Tr 1032.



period to hand back the money and no further action would be taken.<sup>58</sup>

Later she qualified that by saying that she was not sure who raised that option and further, she said that this was an option if there was no criminal case.<sup>59</sup>

[38] The evidence of Shanahan was that the accused “provided a verbal brief regarding the alleged frauds being committed by NT travel agents against the scheme. The accused stated that he wanted to establish a multi-agency task force, the task force to investigate the matter with staff from each agency at the meeting to be seconded to the taskforce.”<sup>60</sup> Shanahan said “I provided advice to the meeting in relation to investigation options” which were “proceeding via a criminal investigation/prosecution of the travel agents, which would be unlikely to result in any financial recovery of fraudulently obtained funds; or initiating a civil process against travel agents in an attempt to recover the fraudulently obtained funds; or both options. No decision was made at the meeting on which way to proceed.”<sup>61</sup> Subsequently Shanahan nominated Greg Macdonald, a senior lawyer in the Department, to the task force.

[39] According to Payne, the accused had a meeting with him on 2 July 2014 and told him that the result of the meeting with the Ministers was

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**58** Tr 1097.

**59** Tr 1098.

**60** Tr 1224.

**61** Tr 1224-1225.

that a joint task force would be formed to progress the investigations. The task force would concentrate on two elements. In the first instance, “a resolution of the matters through civil process and that flowing from that any matters that were of a criminal nature would be then referred over to police to continue prosecutorial action”.<sup>62</sup> He said that he was told that he would be the police representative on the task force and that it would be led by the Department of Health. He said that, as he understood it, the plan was to seek cooperation from the travel agents to provide records of the transactions to be compared with the records of the Department of Health, and he was asked to develop a strategy to achieve this. The effect of his evidence was that only if criminality was discovered after this occurred would the Department refer a matter to the police for criminal action.<sup>63</sup> The consequence of this was that there would be no overt action in the meantime.

[40] The strategy which Payne actually developed on 14 July 2014 was in keeping with the general thrust of the instruction given to him by the accused on 2 July. The strategy envisaged three stages. First, the cooperation of the travel agents would be sought to reconcile their records with those of the Department. During this stage, the extent of the overpayment could be identified and the monies recovered. If in this process, any criminality was discovered the matter would be

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<sup>62</sup> Tr 776. See also tr 777; 782-783.

<sup>63</sup> Tr 782-783.

referred to the police for criminal action. Stage 2 envisaged that if there was no cooperation, the Department's records would be reconciled against service providers' records to see if a *prima facie* case could be established. This would be done by the police arm of the task force. Stage 3 provided "Without the cooperation of the travel agent and in the light of the investigative outcomes of Stage 2, the matter is then elevated to the collection of evidence by Search Warrant and statements of witnesses (Seniors) with a view to a criminal prosecution."<sup>64</sup> Payne's evidence was that when he showed the plan to the Commissioner on or about the same date, the accused said it was ingenious and he was to be commended for it.<sup>65</sup> It is plain that according to this plan, there were to be no search warrants issued against any of the travel agents' businesses until Stage 3 had been reached.

[41] Over the ensuing months, the task force met and eventually approved of a form of letter which was sent out to all agents. The letter which was sent to Latitude Travel is dated 1 September 2014.<sup>66</sup> It is signed by Dr Notaras. In short, the letter attaches a schedule of all claims made by Latitude Travel for the scheme between 1 January 2011 and 30 January 2014 and requests the recipient to "provide the Department with copies of both the Tax Invoices (eg weekly Billing and Settlement

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**64** See P1 497.

**65** Tr 788.

**66** P1 p 666.

Plan (BSP) settlement report or weekly report from your consolidator or evidence of the relevant ticketing information/eticket) from the relevant carrier in respect of each claim, together with the relevant Tax Invoice you rendered on the client in each case. In the event that the Department concludes that any obvious overpayments of subsidies under the PCCS has occurred, I will then make a formal request to you for repayment.” The letter goes on to indicate that alternative possible action may be indicated in some cases and stated that “it is therefore important that you do not destroy any records ...”; it also indicates that “it is also possible that NT Police may decide to further investigate claims ...” Latitude Travel (which is another name for Winnellie Travel) was given 30 days within which to comply.

[42] There is no evidence that the accused did anything of significance during the period after 14 July except to attend a meeting with representatives of the Australian Federation of Travel Agents on 12 August, the purpose of which was to receive an offer of assistance concerning the methodology employed by travel agents when making bookings and the manner in which their records were generally kept. It was not suggested that the accused did anything on that occasion to prevent the execution of any of the warrants or otherwise interfere with the work of the police or the task force. Otherwise, the accused received briefs on the progress of the investigation. He received an email from Dr Notaras on 13 October 2013 relating to Latitude Travel

which indicated, according to the attachments, that Latitude Travel's solicitor had received instructions to provide the documents requested. The accused replied by email: "Thanks Len. Encouraging!"<sup>67</sup> During this period he maintained close contact with Ms Kamitsis in both a professional and personal capacity. There is no evidence that he tipped her off either about the original warrant, or that she was the subject of special attention by a police investigation.

### **The elements of the offence**

[43] The accused was charged with attempting to pervert the course of justice between 2 May 2014 and 17 November 2014, contrary to s 109 of the *Criminal Code*. It was clear that the Crown case depended upon a course of conduct constituted by a number of acts alleged to have been committed by him during that period. That an offence of this kind can be committed by a course of conduct is well established: see the decision of the Queensland Court of Appeal in *R v Morex Meat Australia Pty Ltd v Doube*.<sup>68</sup>

[44] It is also well established that the offence can be committed even though no proceedings have been brought and the matter is only in the course of police investigations. In *R v Rogerson*<sup>69</sup> the High Court

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<sup>67</sup> P1 pps 730-731.

<sup>68</sup> [1996] 1 Qd R 418 at 437-441; (1995) 129 ALR 546 at 565-568.

<sup>69</sup> (1992) 174 CLR 268.

discussed the circumstances under which such an offence can be proved. Mason CJ said:<sup>70</sup>

It is well established at common law and under cognate statutory provisions that the offence of attempting or conspiring to pervert the course of justice at a time when no curial proceedings are on foot can be committed. That is because action taken before curial or tribunal proceedings commence may have a tendency and be intended to frustrate the course of curial or tribunal proceedings which are imminent, probable or even possible. In other words, it is enough that an act has a tendency to frustrate or deflect a prosecution or disciplinary proceedings before a judicial tribunal which the accused contemplates may possibly be instituted, even though the possibility of instituting that prosecution or proceeding has not been considered by the police or the relevant law enforcement agency.

Accordingly, I agree with Brennan and Toohey JJ that an act which has a tendency to deflect the police from prosecuting a criminal offence or instituting criminal proceedings before a judicial tribunal, or from adducing evidence of the true facts, is an act which tends to pervert the course of justice, and if done with intent to achieve that result, constitutes an attempt to pervert the course of justice and can ground the offence of conspiring to pervert the course of justice.

[45] Brennan and Toohey JJ said:<sup>71</sup>

Although police investigations into possible offences against the criminal law or a disciplinary code do not form part of the course of justice, an act calculated to mislead the police during the investigations may amount to an attempt to pervert the course of justice. An act which has a tendency to deflect the police from prosecuting a criminal offence or instituting disciplinary proceedings before a judicial tribunal or from adducing evidence of the true facts is an act which tends to pervert the course of justice and, if done with intent to achieve that result, amounts to an attempt to pervert the course of justice.

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**70** At p 277-278.

**71** (1992) 174 CLR 268 at 283.

[46] The present case is unusual in that it might be said that anything the accused did was within his authority as the Commissioner of Police. The office of Commissioner is established by s 7 of the *Police Administration Act* (NT). Section 6 of that Act provides that the Police Force “shall consist of a Commissioner and other members appointed and holding office under and in accordance with this Act.” Section 5(2) provides that the core functions of the Police Force are:

- (a) to uphold the law and maintain social order;
- (b) to protect life and property; and
- (c) to prevent, detect, investigate and prosecute offences; and
- (d) to manage road safety education and enforcement measures; and
- (e) to manage the provision of services in emergencies.

[47] Section 14 of the Act provides that, subject to the Act, “the Commissioner shall be charged and invested with the general control and management of the Police Force and may, in addition to those powers, exercise any powers conferred on a Superintendent or other officer of the Police Force.”

[48] In *R v Rogerson* Brennan and Toohey JJ observed that “subject to a limited discretion not to prosecute, it is the duty of the police to prosecute when offences are committed.”<sup>72</sup> In this respect, the accused

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72 (1992) 174 CLR 268 at 284.

was in no different position than any other member of the police force. But, as Mr Elliott submitted, as Commissioner the accused had to consider all of the implications of what was an extremely large investigation involving 27 travel agencies' conducted over a lengthy period of time in circumstances where the Department of Health was struggling to provide the investigators with the documentation required to bring proceedings. He had to consider the effect of such an investigation in respect of police resources, budgetary controls imposed by the Government, as well as a broad range of factors relevant as to how best to go about this task. One of the decisions that he made was that it was not a good idea to go "overt" in relation to one agent only because this would tip off the others and risk the possibility of records being lost and destroyed. Just because all of the other police involved in the investigation thought otherwise, did not mean that his approach was wrong. It is perfectly possible for different minds to reach different conclusions about the best solution to the same problem. Perhaps another way of saying this was that the accused's actions were authorised under ss 23 and 26 of the *Criminal Code* (NT).

[49] It was for this reason that I considered that before the accused could be found guilty, it was necessary to prove that the accused's acts were performed for an improper purpose. In *R v Kellett*<sup>73</sup> the accused was the defendant in divorce proceedings. He discovered that certain

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73 [1976] 1 QB 373.



neighbours who were to be witnesses in those proceedings had made disparaging comments about him. He sent an inquiry agent to speak to the neighbours under the pretence that the agent was considering letting a property from him, and asking them what they thought of him as a prospective landlord. The conversation was recorded by the agent who reported what was said to the accused. The accused wrote a letter to the neighbours threatening to bring an action against them for slander. The accused was later charged with attempting to pervert the course of justice and convicted. The jury had been instructed by the trial judge to decide whether the accused intended by threatening slander proceedings to use those proceedings as a lever to stop the neighbours from giving evidence in the divorce proceedings. The Court of Appeal held that “where the attempt is to restrain a witness from giving evidence it may be necessary to indict for the offence charged in this case. Where it is made with threats - or promises - it is committed, notwithstanding that the threat is a threat to do a lawful act, provided that one of the motives which activates the accused in making the threat is to intimidate the witness into altering or withdrawing evidence.”<sup>74</sup> The Court went on to use the expression ‘improper pressure’: “there may be cases of interference with a witness in which it would be for the jury to decide whether what was done or said to the witness amounted to improper pressure, and so wrongfully interfered

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74 At 391-392.

with the course of justice”.<sup>75</sup> I think that this case is some authority for the following proposition: that conduct which is otherwise lawful may still amount to this offence if it motivated, or one of its motivations, is to act for an improper purpose.

[50] The other matter of peculiarity with this case is that the conduct did not involve threatening witnesses or attempting to bribe them. Could the offence be committed by other means? In *R v Tovey*<sup>76</sup> the Court of Appeal held that the offence can be committed even if there is no evidence of any bribe, threat, undue pressure or other unlawful means. At p 369 the Court observed that interfering with a witness, where the end in view was assumed to be proper, would not necessarily constitute an offence. “But it would constitute an offence if the means of interference were improper.”

[51] Can the offence be committed in ways other than with witness tampering? Of significance in this context is *R v Vreones*<sup>77</sup> where the accused was convicted because he had tampered with wheat samples taken for submission to arbitrate to be appointed to determine any dispute that might arise as to the quality of the consignment. In that case, Pollock B said, at p 369: “The real offence here is the doing of some act which has a tendency and is intended to pervert the

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75 At 392-393.

76 (1993) 1 WLR 364.

77 [1891] 1 QB 360.

administration of public justice.” In *R v Machin*<sup>78</sup> the Court of Appeal observed that “the common law recognizes a wide general offence variously referred to as preventing or obstructing the course of justice, obstructing or interfering with the administration of justice, and defeating the due course or the ends of justice. The particular acts or conduct in question may take many different forms including conduct that amounts in itself to some other criminal offence or attempt thereat in the strict sense of an inchoate offence. The gist of the offence is conduct which may lead and is intended to lead to a miscarriage of justice whether or not a miscarriage actually occurs ... The word [attempt] is convenient for use in the case where it cannot be proved that the course of justice was actually perverted but it does no more than describe a substantive offence which consists of conduct which has the tendency and is intended to pervert the course of justice.”

[52] In my opinion the offence of attempting to pervert the course of justice can be committed in a variety of ways. There are no closed categories.

In *The Queen v Rogerson* Brennan and Toohey JJ said:<sup>79</sup>

The course of justice is perverted (or obstructed) by impairing or preventing the exercise of the capacity of a court or competent judicial authority to do justice. The ways in which a court or competent judicial authority may be impaired in (or prevented from exercising) its capacity are various. Those ways comprehend, in our opinion, erosion of the integrity of the court or competent judicial authority, hindering access to it, deflecting applications

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78 [1980] 1 WLR 763 at 766-767.

79 (1992) 174 CLR 268 at 280.

that would be made to it, denying it knowledge of the relevant law or of the true circumstances of the case, and impeding the free exercise of its jurisdiction and powers including the powers of executing its decisions.

[53] At the end of the trial, I provided written instructions to the jury in the form of an aide memoire as to the elements of the offence in the following terms:

1. The accused is charged with a single count of attempting to pervert the course of justice between 2 May 2014 and 17 November 2014. The offence consists of a number of elements. In order to find that the accused is guilty, the prosecution must prove each of these elements beyond reasonable doubt.
2. The elements of the offence are as follows:
  - 2.1 That between 2 May 2014 and 17 November 2014, the accused engaged in conduct, that is, he did one or more of the acts specified in the schedule below.
  - 2.2 That the conduct engaged in by the accused had the tendency to frustrate or deflect an imminent, probable or possible prosecution which the accused contemplated may be instituted against Xana Kamitsis.
  - 2.3 That the accused intended that his conduct would frustrate or deflect that possible prosecution.
3. It is not necessary for the prosecution to prove that the police had formed a belief that Xana Kamitsis had committed a specific identifiable crime, the subject of a possible prosecution. It is enough that the police investigation into a number of travel agents including Xana Kamitsis could lead to a prosecution for some offence.
4. Before you can convict you must be unanimous in finding beyond reasonable doubt that one or more of the acts specified in the Schedule have been proved meet each of the criteria specified in paragraph 2 above, and you must be unanimous about which one or more of those acts.
5. In relation to element 2.3 above, if you find that the accused engaged in the conduct for an improper purpose, that will be sufficient even if you consider that he may have additionally engaged in the conduct for a lawful or proper purpose. What

must be shown is that one of the purposes for the accused to engage in that conduct was an improper purpose.

6. Whether or not the conduct relied upon succeeded in its aim is irrelevant. The question is whether it had the tendency referred to in paragraph 2.2 above when the conduct was engaged in.
7. When considering whether the Crown has proved element 2.2, it is necessary to consider the objective tendency of the conduct.
8. In considering paragraphs 2.2, a mere tendency to delay an imminent, probable or possible prosecution is not, by itself, enough to convict. Similarly, a mere intention to delay a possible prosecution is not by itself enough.
9. The conduct alleged must have the objective tendency to deflect or frustrate an imminent, possible or probable prosecution. This requires proof that without further action by the accused, there is a real possibility or risk that what he said or did had the relevant objective tendency without more, in the sense that the accused's actions alone had that tendency. The tendency of the conduct is not to be judged on the particular circumstances of this case, but by the risk that his conduct posed in the ordinary course. So, what you need to consider is whether, the Crown has proved beyond reasonable doubt that in the ordinary course, what the accused did, had the relevant tendency to frustrate or deflect a possible, probable or imminent prosecution of Kamitsis. There are many ways in which conduct may have the tendency to pervert the course of justice. In cases of this kind, frustrating or deflecting a police investigation can give rise to the risk of that tendency if the accused hindered the ability of the police to invoke the court's jurisdiction or hindered its ability to ascertain the truth of facts to be presented to a court.

[54] The instruction relating to mere delay was based on the decision of the Court of Appeal in *R v Mark Grosvernor Clark*.<sup>80</sup> In that case, the accused was charged with attempting to pervert the course of justice. The facts were that the accused had been involved in a fatal road

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80 [2003] EWCA Crim 991.

accident with a cyclist. He had left the scene knowing he had hit the cyclist and knowing that he had excess alcohol in his blood. He did not report the accident until the following morning when he knew that he was not at risk from the breathalyser. The Crown case was that he acted in this manner to deliberately conceal his offence. Had he remained at the scene he would have been breathalysed with a view to prosecution for serious road traffic offences and his car would have been forensically examined at that time. The court held that the offence required some positive act. Simply not stopping after the accident and driving home was not enough. By removing himself he had not concealed the evidence as to the damage to his car or as to his intoxicated state. They were still there to be seen. The alcohol in his blood diminished naturally over the following hours and that process could not be relied upon as some qualifying act or course of conduct. The Crown was right not to rely on the failure to report the accident as soon as reasonably practicable because that was self-evidently an omission and not an act. When dealing with the offence generally, the court said that the offence covers a wide variety of situations; there are no closed list of acts which may give rise to the offence and it would be wrong to confine it to the specific instances or categories which have so far appeared in the reported cases:

The offence undoubtedly covers fabricating, concealing, or destroying evidence with intent to influence the outcome of criminal proceedings, which include criminal

investigations. Fabrication and destruction of evidence are likely to involve positive acts which will obviously fall within the ambit of the offence. Concealment is more difficult. It may involve a positive act such as hiding a body or a weapon (as in *R v Rafique* (1993) QB 843) but will not necessarily do so. There is authority however that some positive act is required.<sup>81</sup>

[55] Mr Elliott's principal argument was that the acts relied upon by the Crown, even if proved, could not amount to conduct which had the tendency to frustrate or deflect an imminent, possible or probable prosecution which the accused contemplated may be taken against Ms Kamitsis. His argument was that whatever else the accused did, he did not "frustrate or deflect" a possible prosecution. He referred me to the Macquarie Dictionary which says that "frustrate" means "to make of no avail; defeat; baffle; nullify". In relation to "deflect" he referred to the same dictionary for the meaning "to bend or turn aside; to swerve; to cause to turn from a true course or right line."

[56] The Crown case against the accused was a circumstantial one, where in my view none of the individual facts considered alone, (with the possible exception of the facts alleged in item 2 of the schedule) could lead to an inference that the Crown had proven each of the elements of the offence. In those circumstances, the approach to be adopted is as

---

**81** At para 10.

explained in *Parker v The Queen*,<sup>82</sup> (a decision which is binding on me), that:

It follows from the principles as formulated in *Bilick* ... in connection with circumstantial cases, that it is not the function of the judge in considering a submission of no case to choose between inferences were are reasonably open to the jury. He must decide upon the basis that the jury will draw such of the inferences which are reasonably open, as are most favourable to the prosecution. It is not his concern that any verdict of guilty might be set aside by the Court of Criminal Appeal as unsafe. Neither is it any part of his function to decide whether any possible hypotheses consistent with innocence are reasonably open on the evidence ... . He is concerned only with whether a reasonable mind could reach a conclusion of guilty beyond reasonable doubt and therefore exclude any competing hypothesis as not reasonably open on the evidence.

[57] Applying that test, I considered that looking at the accused's conduct as a whole, it was open to the jury to find that the facts in relation to the conduct particularised had been proven, and that it was also open to the jury to conclude that the accused had by that conduct, intended to prevent the police from executing a search warrant on Ms Kamitsis' business premises, as one of the purposes of that conduct, and that his motive for doing so, and one of his purposes in doing so, was to prevent the police from seizing the accused's business records including her mobile phone, so as to keep secret the extent of his relationship with her, and that therefore, at least one of his purposes was an improper purpose.

---

82 [2007] NTCCA 11 at [40].



[58] I also considered that it was open to the jury to find that the accused's conduct frustrated or deflected an imminent prosecution of Ms Kamitsis. The purpose of a search warrant in the ordinary course is to gather evidence. Looked at objectively, the conduct had the tendency to prevent the police from gathering evidence by executing a search warrant which was essential to a prosecution for an offence of dishonesty, namely the accused's business records, including her mobile phone, which in the ordinary course would likely to be necessary to prove that she was personally responsible for the fraud, and that her conduct was dishonest.

[59] However, I did not consider that the facts alleged in relation to item 10 on the schedule consisted of any relevant acts for the purposes of establishing the accused's conduct, although it may have had some relevance as to his motive or intention.

[60] The defence case was that he was approached by Kershaw and Payne for their guidance on 4 June. He did not call the meeting that day. Because in the past the accused had been criticized for inaction in relation to another matter which had received publicity, he would have felt compelled to provide guidance. He had partly revealed the nature of his relationship with Ms Kamitsis. No one had suggested to him he should step aside. If he had stepped aside this would have inevitably led to the execution of the search warrant which would have tipped off the other 26 agents, risking the destruction or loss of evidence. The

accused was in a difficult situation and he acted honestly and professionally in the execution of his office. I think it was open to the jury, notwithstanding this submission, to find the Crown case proved beyond reasonable doubt and therefore exclude this as an innocent competing hypothesis. In my opinion the jury would be entitled to find that had he revealed the true nature of his relationship with Ms Kamitsis to Kershaw or Payne, he would have been forced to step aside. In any case, the jury would be entitled to find that he should not have had anything to do with the investigation so far as it was directed at Winnellie Travel, and there was no good reason for him to become and remain involved.

[61] For these reasons, I rejected the submission of no case to answer and let the trial proceed to determination by the jury.

[62] As a separate matter, Mr Elliott complained that the prosecution had advanced a different case at trial than that which had been particularized. He submitted that, “had I been told that this was a case about delaying some overt action, then I would have explored that uphill and down dale, and would have asked questions not about whether the investigation continued, but about the reasons for delays in a very, very different context.” The particulars and case openings which had been provided by the Crown to the accused’s solicitors and counsel were tendered as Exhibit P1 on the submission, and are annexed to the end of this judgment. I found against Mr Elliott’s submission because

it seemed to me that it had been plain throughout, that the Crown case was all about preventing the police from executing a warrant on Ms Kamitsis' premises, the reasons for that, that Mr Elliott was well aware of that, and that he cross-examined the witnesses in order to justify the course which the accused had taken. It was plain to me that the accused's case was that there were good reasons for not going overt by executing a warrant on her business. It was put to the witnesses that it was better to gather the evidence from the Department, take statements from the pensioners, and get the Qantas records before executing a warrant; that executing the warrant would signal to the other travel agents that they were all under suspicion and risk the possibility of those agents or some of them, destroying their records. It was put to the witnesses that the accused had to consider the bigger picture and take into account the investigation of all of the agents as a whole and that fairness required that he treat all of the agents on a level playing field. The question of whether or not the accused had a reasonable belief, based on the information that had been presented to him by the investigators, that police did not have enough information to justify a warrant was also thoroughly explored. It was put that, given that the police were having difficulty getting the Qantas records and the records from the Department, that the plan adopted and promoted by the accused to implement a joint task force so as to obtain the records from the travel agents was in the circumstances a successful

one. Mr Elliott's cross-examination of the witnesses was extremely thorough. No stone was left unturned. I do not accept that he was deprived of the opportunity of meeting the Crown case, or that the Crown case altered in any material way.

**EXHIBIT 1**

**From:** Mary Chalmers  
**Sent:** Monday, 9 April 2018 11:59 AM  
**To:** 'Anthony Elliott'; Sharleena Ramdhas  
**Subject:** RE: R v McRoberts

Tony

Noted re Giles.

We will attend to providing the requested advice unless redacted material is the subject of some claim (have you previously received a redacted copy?)

I look forward to receiving your list of witnesses required - my ability to do a list has been overtaken by recent events not helped by having to take 2 days off sick in bed.

We will be making our application but your response leads me to believe that only the trial judge can realistically hear it.

We have engaged Michael McHugh SC and he will be eager to speak with your leader as soon as he has read the brief.

The case outline is likely to be refined. It is only an outline and, as you know is based on the case as it stood at committal.

Rgds

**From:** Anthony Elliott [mailto:anthony.elliott@francisburt.com.au]  
**Sent:** Monday, 9 April 2018 11:38 AM  
**To:** Mary Chalmers <Mary.Chalmers@nt.gov.au>; Sharleena Ramdhas <sharleena@ramdhaspoli.com.au>  
**Subject:** RE: R v McRoberts

Dear Mary,

Thank you for your two messages sent this morning, the first addressed to me posing the following questions, and the second addressed to the Sheriff of the Supreme Court.

- "1. Whether defence will consent to our application
2. Whether defence will confirm on record that the trial will be completed by Friday 1st June [that is, within the current allocated dates] - our silk can only take the brief on this basis as he has another trial commencing the following Monday."

The defence will neither consent nor oppose. Our position is that there is still a wealth of disclosure to consider by the defence, and we consider that the trial should be adjourned to allow us to consider that material. You are well aware of the history of that side of things, namely that we requested this material as long ago as January 2017, and some of it we have only received in the last few weeks.

The defence cannot give the guarantee which you seek. To be frank, as we delve further and further into the disclosed materials, it is my view that the trial is likely to run longer rather than shorter. Day by day we discover documentary evidence which it will be necessary to put to a host of witnesses. This impacts on the manner of giving evidence. It would be unworkable for Mr Giles to give evidence otherwise than in person. If it were otherwise, then the duration of his evidence would be lengthened considerably.

At this point (and I appreciate that we are yet to present a notice to admit to the Crown) we have no idea whether particular issues which we wish to raise are in contest, or not. There is also the factor that when the matter was initially listed (with no consideration of our availability), the Crown estimated that the matter would take six weeks.

In my view, the risk of not completing in time is too great for the parties to take that chance. I have another matter which is dependent on this matter being completed. Don't forget that we lose one day for the Labour Day holiday on 7 May.

I will, as soon as we possibly can, deliver to you a list of the witnesses whom we say it is essential for the prosecution to call. That may assist you in assessing the likely length of the trial. That will, nevertheless, take a couple of days, and will distract us from our main task of preparing our case for trial.

I am not available either today or tomorrow. I have an 8:45am meeting on Wednesday, and am a witness in the Court of Appeal on Thursday (I cannot say at what time, and for how long, I will be required). I am available all day on Friday and after 11am on Wednesday (local time).

To ensure that we understand the issues in the trial, please confirm that the Crown case is as set out in the document titled "Case Outline" which was annexed to the Respondent's Submissions in the Supreme Court in January 2018.

The witness statements contain a wealth of inadmissible opinion evidence (from almost every witness). Please confirm that it is not intended to lead such evidence. This includes, just to give two examples, opinions about what is the effect of certain contractual terms and general orders. There could be a lot of legal argument just on this issue alone.

Please provide an unredacted copy of the advice from Mr Morters dated 6 April 2014.

I await your further advices.

Regards

## **Anthony Elliott**

**Barrister**

Francis Burt Chambers

12th Floor Allendale Square 77 St. Georges Terrace PERTH WA 6000

Ph. (08) 9220 0452 Mob. 0422 961170

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[anthonv.elliott\(S\)francisburt.com.au](mailto:anthonv.elliott(S)francisburt.com.au)

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**From:** Mary Chalmers <[Marv.Chalmers@nt.gov.au](mailto:Marv.Chalmers@nt.gov.au)>

**Sent:** Monday, 9 April 2018 7:33 AM

**To:** Anthony Elliott <[anthonv.elliott@francisburt.com.au](mailto:anthonv.elliott@francisburt.com.au)>; 'sharleena\_ramdhas@iinet.net.au' <[sharleena\\_ramdhas@iinet.net.au](mailto:sharleena_ramdhas@iinet.net.au)>

**Subject:** R v McRoberts

Dear Tony

As discussed last week I am without a leader.

Somewhat miraculously I have managed to find someone suitable after getting a tip off that they had something resolve. However before I confirm the brief I need to make an application to the court to delay the start of the trial by one week - that is, to commence on 30 April 2018.

Can you please urgently advise your availability in the coming days (including today).

Can you please also advise:-

1. Whether defence will consent to our application
2. Whether defence will confirm on record that the trial will be completed by Friday 1<sup>st</sup> June [that is, within the current allocated dates] - our silk can only take the brief on this basis as he has another trial commencing the following Monday.

I will also be seeking confirmation at the mention that the trial can properly commence on 30 April and will not be delayed by legal argument. If there is to be legal argument then that can take place in the preceding week.

**Mary Chalmers Snr Crown Prosecutor**

**Director of Public Prosecutions | Department of the Attorney-General and Justice**

**Level 5, Old Admiralty Tower, 68 The Esplanade, DARWIN NT 0800 | GPO Box 3321, DARWIN NT 0801**

**Phone: +61 8 8935 7500 | Direct: +61 8 8935 7503 | Fax: +61 8 8935 7552**

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**From:** Michael McHugh <mgm@wardellchambers.com.au>  
**Sent:** Tuesday, 17 April 2018 2:35 PM  
**To:** Mary Chalmers  
**Cc:** 'Anthony Elliott'; sharleena\_ramdhas@iinet.net.au  
**Subject:** Re: R v McRoberts

Dear Tony,  
Dear colleagues,

As far as particulars go we will send a fuller note shortly, consistent with the Crown case already provided. However, here is the beginning of that note:

1. Between the 2nd of May 2014 and 17th November 2014, the accused engaged in conduct that had the tendency to pervert the course of justice in that he intentionally sought to frustrate and deflect a criminal investigation into suspected fraudulent activity in the conduct of the travel business Winnellie Travel by his intimate friend Alexandra Kamitsis ("Kamitsis")("the criminal investigation"), and thereby attempted to pervert the course of justice. He did this principally by:-
  - i. Between 2 May 2014 and 17 November 2014, after being advised that Kamitsis was the major target of the criminal investigation, failing to disclose the true nature of his relationship with Kamitsis and thereafter involving himself in the conduct of the criminal investigation knowing that it was improper for him to do so.
  - ii. On 4 June 2014, frustrating the execution of a search warrant that had been issued and approved for execution on the business premises of Winnellie Travel in furtherance of the criminal investigation.
  - iii. Between 2 May 2014 and 17 November 2014, undermining the criminal investigation by devising, implementing and championing an alternative to criminal prosecution for travel agents suspected of fraud (including Winnellie Travel and Kamitsis), namely the civil recovery of debt.
2. The prosecution allege that since 2010, the accused and Kamitsis had a personal relationship which had progressed to a sexual relationship, at some stage prior to 2014. The nature of the relationship during all material times was an intimate one and that of close friends and confidantes; during the relationship, Kamitsis gave the accused gifts and other benefits; and the accused improperly shared information with Kamitsis about Police matters (together "the intimate relationship"). The intimate relationship was a secret that the accused intended to keep covert. The accused knew the intimate relationship was evidenced by communications between Kamitsis and the accused and that such communications may be discovered during the criminal investigation.
3. On 2 May the accused was present at a meeting with his acting Deputy Commissioner Mark Payne where Kershaw and O'Brien provided a detailed update on the progress of an investigation into Winnellie Travel and Kamitsis . When the extent of the suspected fraud on the part of Kamitsis was revealed the accused was heard to remark "she can't be this stupid". The accused advised the meeting (words to the effect), that he knew Kamitsis socially and that if she had committed offences, then she should be charged.
4. The prosecution allege that from this point on, the accused knew he should have nothing to do with the criminal investigation as it related to Kamitsis, and further, should have formally declared his conflict of interest and the extent of the intimate relationship to his employer.



We have added 'frustrate' in addition to 'deflect' and which better covers the totality of the conduct alleged and is consistent with the language of Rogerson (174 CLR) as cited in R v Beckett [2014] NSWCCA 305 at [81]:

The majority of the Court also distinguished between the substantive offence of pervert the course of justice and the offence of attempt.

Their Honours accepted that, unlike the position where the substantive offence was charged, it was well established that the offence of attempt to pervert the course of justice could be committed at a time when no curial proceedings were on foot. Nor was it necessary that any particular curial proceedings be in the accused person's contemplation for the purpose of the offence of attempt to pervert the course of

justice: Deane J at 294; McHugh J at 305. It was enough for the offence of attempt to pervert the course of justice if there was conduct that had a tendency and was intended to frustrate or deflect the course of curial or tribunal proceedings that were "imminent, probable or even

possible": Mason CJ at 277; see also Brennan and Toohey JJ at 280; 283; Deane J at 293-294; McHugh J at 301.

I can confirm our discussions that I will not be leading evidence of what people concluded. I will be adducing evidence of factual circumstances and from which conclusions may be drawn and on which you and I can address. I'm not across the detail of the contractual docs you refer to but again I do not see any need to adduce evidence of the effect of documents.

More generally, I intend to discuss with you, and expect you to let me know, about any potential difficulties with any particular witnesses' evidence.

We are of course obliged to call and are happy to do so any witness that can give relevant evidence for both our cases. Other than relevance my only request is you tell us asap -1 will not be ending the Crown case with a last minute witness for the defence..

Our bundle is progressing well and we expect to have one to you tomorrow when you arrive here - what time will that be? as we ought meet to go over it. As discussed please bring any docs you want included.

I expect to provide his Honour with his bench copy on Friday.

talk soon

Michael

On 2018-04-16 17:36, Mary Chalmers wrote:

- > Dear Tony
- >
- > We are settling particulars as a priority and will send to you just as
- > soon as we can. Today is the first time I have been able to sit down
- > with new senior counsel so I expect you are tolerant of at least a
- > little further delay.
- >
- > I will let Michael talk further with you on the topic of opinion
- > evidence.
- >
- > Regarding Ms Kamitsis we do not propose to call her. Do you say we
- > should produce her for cross? If you do not then that is the end of
- > that. Her unsigned statement is the best indication you have of what
- > she would say if she gave evidence. We would not object to a basha
- > inquiry in the circumstances.

>  
> Regarding the bundle, it is our intention to have the proposed bundle  
> ready for your inspection when you arrive. If there are difficulties  
> over particular documents we will discuss those at the time. What  
> would be useful is if you were able to identify any documents you say  
> should be included - particularly from disclosure material as opposed  
> to the BOE itself. We note your concern about original documents -  
> the reality is much business is done on email these days. 'Original'  
> documents have been sourced where possible.  
>  
> I will get back to you about Eldridge and Gates. If we do call  
> Eldridge please advise your position re video link. Mr Eldridge  
> resides in Brisbane and has an autistic child for whom he cares and he  
> is anxious not to have to travel to Darwin.  
>  
> Regarding the witness Giles, you have previously said you will not  
> agree to a video link on the basis that you need to put certain  
> documents to him - we will therefore arrange for the witness to attend  
> in person and will no longer press our video link application for this  
> particular witness.  
>  
> I will email you shortly with a draft order of witnesses for trial and  
> some remaining disclosure matters.  
>  
> Rgds  
>  
> FROM: Anthony Elliott [mailto:anthony.elliott@francisburt.com.au]  
> SENT: Monday, 16 April 2018 4:55 PM  
> TO: mgm@wardellchambers.com.au  
> CC: sharleena\_ramdhas@inet.net.au; Mary Chalmers  
> <Mary.Chalmers@nt.gov.au>  
> SUBJECT: RE: R v McRoberts  
>  
> Dear Michael,  
>  
> PARTICULARS OF THE PROSECUTION CASE  
>  
> Please confirm that the Crown case is as set out in the document  
> titled "Case Outline" which was annexed to the Respondent's  
> Submissions in the Supreme Court in January 2018. Our preparations  
> have been undertaken on the basis of that outline. Formulated in the  
> most summary way, we understand that your case is that between 2 May  
> and 17 November 2014, Mr McRoberts is said to have "intentionally  
> deflected a major criminal investigation into suspected fraudulent  
> activity in the conduct of the travel business Winnellie Travel" in  
> that he:  
>  
> • Failed to disclose the true nature of  
> relationship with Xana Kamitsis  
>  
> ■ Stopped a search warrant that had already been  
> issued and approved for execution  
>  
> • Devised, implemented and championed an  
> alternative to criminal prosecution for travel agents suspected of  
> fraud.

> Please let me know if there are any material changes to that case.  
>  
> OPINION EVIDENCE FROM WITNESSES  
>  
> I had previously complained to Ms Chalmers that the witness statements  
> contain a wealth of inadmissible opinion evidence (from almost every  
> witness), and had sought an assurance from her that it is not intended  
> to lead such evidence. Examples which I gave included evidence about  
> the effect of certain contractual terms and general orders. Another  
> is whether particular conduct by Mr McRoberts was "unusual".  
>  
> I had understood from my conversation with you last week that you do  
> not intend to lead that last category, and I inferred that you would  
> not be leading the other categories either. I would be grateful if  
> you could confirm this.  
>  
> XANA KAMITSIS  
>  
> Ms Chalmers has replied to a question I posed about whether the  
> prosecution is calling Ms Kamitsis (who has not signed a witness  
> statement) saying:  
>  
> \_Tony - the statement of KAMITSIS is unsigned annexure to statement of  
> Ivana YOUNG. We will confirm our position with respect to this  
> witness early next week.\_  
>  
> Was there any recording made of the interview with her? It would be  
> helpful to know if she is to be called, and what she might say.  
>  
> ORIGINAL DOCUMENTS & THE CONTENT OF THE DOCUMENT BUNDLE  
>  
> There are numerous instances (regrettably I have not compiled a  
> convenient list) where the original of a document has not been  
> produced in the investigation. There are several consequence of this.  
> One obvious one is that in some instances different witnesses have  
> produced different versions of the same document (albeit that the  
> differences do not appear in any case to be significant). In cases  
> where it is a document which they say was for the scrutiny of Mr  
> McRoberts, we would expect the copy which reached him to be endorsed BY  
> HIM IF HE SAW IT. Plainly, such a version is preferable over a mere  
> office copy.  
>  
> This is particularly relevant now that you are compiling a document  
> bundle, The best evidence is to be preferred.  
>  
> OTHER WITNESSES  
>  
> Is it possible for the Crown to arrange for Jason Gates, the Police  
> Media Liaison Officer and Simon Eldridge, the Media Director to be  
> available to be called as witnesses? Whether they are needed will  
> depend on the answers which other witnesses give on certain issues.  
>  
> Regards  
>  
> ANTHONY ELLIOTT  
>

- > BARRISTER
- >
- > FRANCIS BURT CHAMBERS
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- >
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- > STANDARDS LEGISLATION

**From:** Mary Chalmers  
**Sent:** Thursday, 19 April 2018 6:59 PM  
**To:** 'Anthony Elliott'; sharleena\_ramdhas@iinet.net.au  
**Cc:** Kylie Smith; 'Michael McHugh'  
**Subject:** R v McRoberts - amended case outline Case Outline amended  
**Attachments:** (final).docx

Dear defence team

Amended case outline attached.

Mary Chalmers Snr Crown Prosecutor  
Director of Public Prosecutions | Department of the Attorney-General and Justice  
Level 5, Old Admiralty Tower, 68 The Esplanade, DARWIN NT 0800 | GPO Box 3321,  
DARWIN NT 0801  
Phone: +61 8 8935 7500 | Direct: +61 8 8935 7503 | Fax: +61 8 8935 7552  
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**From:** Michael McHugh <mgm@w3rdellchambers.com.au>  
**Sent:** Friday, 20 April 2018 3:05 PM  
**To:** Anthony Elliott  
**Cc:** Mary Chalmers: sharleena\_ramdhas@iinet.net.au  
**Subject:** Re: R v McRoberts

Hi Tony,

I'll let Mary get back to you on that document ID for 174-618.

On particulars of para [I](ii) of the Amended Case Outline, we do not agree that "Frustrating the execution of the search warrant" is only an outcome - it is also, or at least intended by the Crown to be, relevant conduct. For the avoidance of doubt, please see para [38](c) of that document.

In response to the second query below concerning your assumption, para [I](ii) is both a stand-alone and particular example of part of the conduct alleged against your client that had a tendency to pervert the course of justice and further particularised in para [38] of the Amended Case Outline as a relevant circumstance.

Please do not hesitate to respond if there are any further queries.

kind regards  
Michael

On 2018-04-20 14:30, Anthony Elliott wrote:

Dear Michael & Mary,

>

I have reviewed the second volume of the proposed jury bundle. The only issue I have is a question: who is the author of the written notes at 174-618?

>

The most recent Case Outline records three principal methods by which Mr McRoberts is said to have attempted to pervert the course of justice:

>

i. Between 2 May 2014 and 17 November 2014, after being advised that Kamitsis was the major target of the criminal investigation, failing to disclose the true nature of his relationship with Kamitsis and thereafter involving himself in the conduct of the criminal investigation knowing that it was improper for him to do so.

—

>>\_

>

ii. On 4 June 2014, frustrating the execution of a search warrant that had been issued and approved for execution on the business premises of Winnellie Travel in furtherance of the criminal investigation.

>

—

> iii. Between 2 May 2014 and 17 November 2014, undermining the criminal investigation by devising, implementing and championing an alternative to the criminal prosecution for travel agents suspected of fraud (including Winnellie Travel and Kamitsis), namely the civil recovery of debt.\_

>  
> "Frustrating the execution of the search warrant" is an outcome, rather than an act. Can you please provide particulars of the act or conduct said to have occasioned this outcome. Am I right in assuming that the prosecution case is that step (ii) is said to have the necessary tendency insofar as it "bought time" for the "undermining [of] the criminal investigation" set out in step (iii).

>  
> I await your further advices.

>  
> Regards

> ANTHONY ELLIOTT

> BARRISTER

> FRANCIS BURT CHAMBERS

> 12th Floor

> Allendale Square

> 77 St. Georges Terrace

> Ph. (08)9220 0452

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> anthony.elliott@francisburt.com.au

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>  
> FROM: Mary Chalmers [mailto:Mary.Chalmers@nt.gov.au]  
> SENT: Friday, 20 April 2018 11:30 AM  
> TO: Anthony Elliott <anthony.elliott@francisburt.com.au>;  
> sharleena\_ramdhas@inet.net.au  
> SUBJECT: FW: Commander David Proctor Diary Entry (TYPED) Wednesday 6  
> August 2014

> FYI

>  
> FROM: David Proctor  
> SENT: Friday, 20 April 2018 12:31 PM  
> TO: Mary Chalmers <Mary.Chalmers@nt.gov.au>  
> SUBJECT: Commander David Proctor Diary Entry (TYPED) Wednesday 6  
> August 2014

>  
> Mary >

Please find attached the typed (transcribed) copy of my diary entry for Wednesday 6 August.

>

I have checked in relation to your question around did I have notes in relation to the handover with Mark Payne, and I did not take any my apologies . However I do have an entry on 12 August, which is the day I handed back over to mark which is as follows

>

Briefing with AC Payne on issues occurring in his absence. Briefed on Pencon TF and concerns about slow progress by the COP. Expressed my view that Sgt Blake was finding it difficult to manage being the lead investigator and at the same time having to manage the overall direction and partnerships of the T/F. Recommended that Clint Sims be seconded due to his extensive accounting / fraud experience and experience in managing complex investigations of this nature.

>

Please let me know if you need or require anything further

>

Kind Regards

>

David

>

DAVID

>

DAVID PROCTOR

>

COMMANDER |

>

SPECIALIST SERVICES COMMAND | NORTHERN TERRITORY POLICE

>

p... (08)89223990 | m... 0407 717 041 | e...

david.proctor@nt.gov.au | www.nt.gov.au/pfes [1]

>

WORKING IN PARTNERSHIP WITH THE COMMUNITY TO ENSURE A SAFE AND RESILIENT NORTHERN TERRITORY.

>

>

>

Links:

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> [1] <http://www.nt.gov.au/pfes>



**From:** Mary Chalmers  
**Sent:** Friday, 20 April 2018 11:37 AM associate mildrenj  
**To:** 'Michael McHugh'; 'Anthony Elliott'; Kylie Smith;  
**Cc:** sharleena\_ramdhas@inet.net.au; Kaylyn Norton; Madia Solien  
**Subject:** R v McRoberts - amended case outline  
**Attachments:** Case Outline amended (final).docx

For His Honour please Hope.  
Rgs,

**From:** Hope Holborow On Behalf Of associate mildrenj  
**Sent:** Friday, 20 April 2018 9:37 AM  
**To:** Mary Chalmers <Mary.Chalmers@nt.gov.au>  
**Cc:** 'Michael McHugh' <mgm@wardellchambers.com.au>; 'Anthony Elliott' <anthony.elliott@francisburt.com.au>; Kylie Smith <Kylie.Smith@nt.gov.au>; sharleena\_ramdhas@inet.net.au; associate mildrenj <associate.mildrenj@nt.gov.au>; Kaylyn Norton <Kaylyn.Norton@nt.gov.au>; Madia Solien <Madia.Solien@nt.gov.au>  
**Subject:** RE: R v McRoberts

Dear Ms Chalmers

Thank you for your email and attached witness list.

I will pass on the information to the relevant parties and put your courtroom request to the Sherriff's Office.

Kind regards

**Hope Holborow**

Acting Associate to the Honourable Acting Justice Anthony Graham  
Supreme Court of the Northern Territory  
Level 6, Supreme Court Building, State Square, Darwin  
GPO Box 3946 Darwin NT 0801  
t| (08)8999 6341  
e| [Associate.GrahamJ@nt.gov.au](mailto:Associate.GrahamJ@nt.gov.au)  
w| [www.supremecourt.nt.gov.au](http://www.supremecourt.nt.gov.au)

**From:** Mary Chalmers  
**Sent:** Thursday, 19 April 2018 5:53 PM  
**To:** associate mildrenj [Associate.mildreni@nt.gov.au](mailto:Associate.mildreni@nt.gov.au)  
**Cc:** 'Michael McHugh' <mgm@wardellchambers.com.au>; 'Anthony Elliott' <anthonyv.elliott@francisburt.com.au>; Kylie Smith <Kylie.Smith@nt.gov.au>; sharleena\_ramdhas@inet.net.au  
**Subject:** Rv McRoberts

Dear Associate

Please find attached the latest draft witness list which may be of interest to His Honour in terms of length of trial etc. We anticipate this document will be further refined tomorrow and will send an updated version. I recommend you do not provide to the transcription team until we have a more settled version on Monday morning.

Counsel for both parties are in favour of utilising court 6 for the trial if that is possible - could you make inquiries with the Sherriff? It is a document heavy trial with 5 lawyers and lots of folders to accommodate.

In terms of IT there may be some video link evidence including the need for witnesses to view documents over the video link. Please make sure we are in a court where this can be facilitated. It is possible that the document viewer might be used in the trial although the parties are working to have an agreed bundle of material for the jury. There is no recorded evidence to be played as far as the Crown is aware.

I do not know if there is media liaison arranged for the trial but if there is the following information may be provided:-

Trial by jury of John Ringland McRoberts on one count of Attempting to Pervert the Course of Justice contrary to s 109 of the Criminal Code.

Prosecution team:-

Lead counsel: Michael McHugh SC

Junior counsel: Snr Crown Prosecutor Mary Chalmers

Solicitor: Kylie Smith, DPP

Defence team:-

Lead counsel: Anthony (Tony) Elliott Solicitor: Sharleena Ramdhas

Mary Chalmers Snr Crown Prosecutor

Director of Public Prosecutions 1 Department of the Attorney-General and Justice

Level 5, Old Admiralty Tower, 68 The Esplanade, DARWIN NT 0800 | GPO Box 3321, DARWIN NT 0801

Phone: +61 8 8935 7500 | Direct: +61 8 8935 7503 | Fax: +61 8 8935 7552

E-mail: [marv.chalmers@nt.qov.au](mailto:marv.chalmers@nt.qov.au) | Web: [www.dpp.nt.qov.au](http://www.dpp.nt.qov.au)

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**Our Values: Integrity | Courage | Respect | Professional Excellence | Commitment**

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**From:** Michael McHugh <mgm@wardellchambers.com.au>  
**Sent:** Saturday, 21 April 2018 4:48 PM  
**To:** Anthony Elliott  
**Cc:** Mary Chalmers; 'sharleena\_ramdhas@inet.net.au' (sharleena\_ramdhas@inet.net.au)  
**Subject:** Re: Crown Case - McRoberts

Hi Tony,

In respect of the first query - apologies for not being clear - "the criminal investigation" is the whole investigation.

I will need to revert fully on the second query, likely tomorrow am.

That said I understand they are evidenced in the SMS / Viber material.

kind regards

Michael

On 2018-04-21 15:50, Anthony Elliott wrote:

Dear Michael,  
>  
> The opening paragraph of your case outline reads as follows:  
>  
> \_Between the 2nd of May 2014 and 17th November 2014, the accused engaged in conduct that had the tendency to pervert the course of justice in that he intentionally sought to frustrate and deflect a criminal investigation into suspected fraudulent activity on the part of Northern Territory travel agents including by his intimate friend Alexandra (Xana) Kamitsis ("KAMITSIS"), the owner and operator of Winnellie Travel ("THE CRIMINAL INVESTIGATION"), and thereby attempted to pervert the course of justice. \_  
>  
> There are later references to "the criminal investigation" in subpoints (i), (ii) and (iii).  
>  
> Can you please clarify for me whether references to "the criminal investigation" are references to:  
>  
> 1. a criminal investigation into suspected fraudulent activity on the part of Northern Territory travel agents including Kamitsis; or  
>  
> 2. the criminal investigation into Kamitsis / Winnellie Travel alone.  
>  
> I was initially of the view that it was the former (because of the words indicating that she was "the major target of the criminal investigation"), but then became unsure that my initial view was correct, as it could easily refer to someone else at Winnellie Travel, meaning that the term is confined as per the second option.  
>  
> On another note, would you kindly provide particulars of the occasions when the accused improperly shared information with Kamitsis about Police matters, and indicate how they were improper and which

witnesses or evidence in the brief support that proposition.

>  
> Regards  
>  
> ANTHONY ELLIOTT  
>  
> BARRISTER  
>  
> FRANCIS BURT CHAMBERS  
>  
> 12th Floor  
>  
> Allendale Square  
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> LIABILITY LIMITED BY A SCHEME APPROVED UNDER THE PROFESSIONAL  
> STANDARDS LEGISLATION

WITNESS	PARA NO	STATEMENT
Jason BLAKE (5 May 2015)	73	On 14 July 2014, I attended a meeting with AC PAYNE, Cmdr FULLER, Supt MORGAN, and S/Sgt WINDEBANK. During this meeting I was advised that the <u>investigation was now going to follow civil proceedings rather than criminal</u> . I was further requested to draft a strategic plan detailing the <u>proposed civil remedv option and sideline criminal investigations</u> .
	76	On 15 July 2014, I provided AC PAYNE with the final Operation SUBUTAI strategic plan and identified issues with <u>police being involved in a civil investigation and identified a way forward for a Criminal prosecution</u> .
	77	About 3:00pm on 15 July 2014, I attended a meeting with AC PAYNE, Mrs CURRIE, Cmdr FULLER and Mrs GODDEN. During this meeting I was advised by AC PAYNE that COP McROBERTS had met with DoH Chief Executive Len NOTARAS and Minister for Health Robyn LAMBLEY during the time that I was on leave in June/July and that at this meeting
Clinton SIMS (7 May 2015)	19(v)	COP McROBERTS stated that the primary goal for the Northern Territory was to recover funds which had been misspent, with the <u>purpose of establishing a Taskforce to pursue travel agents to pay money back. If funds were not paid back, travel agents would be investigated from a criminal perspective</u>
Lee MORGAN (11 May 2015)	13	On 7 July 2014, I attended a meeting with Cmdr FULLER, Sgt Blake and Detective Acting Senior Sergeant Craig WINDEBANK. It was at this meeting that Commander FULLER advised us that <u>CoP McROBERTS had issued an</u>

		<p><u>instruction that any and all criminal investigations into the Scheme were to cease immediately.</u> He further directed that a multiagency Taskforce consisting of Police, Health and a Government Legal Officer was to be established.</p>
	14	<p>We were instructed that any travel agencies that had <u>unlawfully obtained money</u> through the Scheme were to be <u>provided with the opportunity to repay the money, before any criminal action is taken.</u></p>
	16	<p>I disagreed with this position, stating that I supported a criminal investigation where offending had been identified, noting that NTPol was not a debt collection agency. I recall, AC PAYNE advised that the <u>decision to proceed with civil action in the first instance had already been made and this would be the direction that the Taskforce would take.</u> This meeting re-enforced the message that had been delivered by Commander FULLER on 7 July.</p>
	17	<p>It was my opinion that the <u>decision to proceed with civil action</u> had been forced upon AC PAYNE, and AC PAYNE was attempting to sell a process that he didn't necessarily support. I</p>
Michael MURPHY (12 August 2015)	16	<p>If travel agents failed to respond to requests for Taskforce information, further assessment would be undertaken to examine if they were to be subject to criminal investigation and the execution of search warrants. The <u>reason for the civil approach was to allow an opportunity for identified agents to return funds, if anomalies were detected. If action was taken criminally and immediately it may have had a crippling effect on the tourism industry.</u></p>
Mark PAYNE	22	<p>During the meeting, McROBERTS questioned if the DoH had made a criminal complaint to the NTPol and stated that a <u>civil</u></p>

(12 May 2015)		<u>remedy for travel agents involved in the Scheme may be a better option than a criminal investigation and prosecution.</u>
	44	At this time McROBERTS stated that it had been agreed at the meeting that <u>matters which are civil will be dealt with through the repayment of unlawfully obtained funds and that criminal offending was to be referred to NTPol Taskforce members.</u> I took it that the reference of the meeting by McROBERTS to be the meeting that he had with the Minister and CEO of DoH.
Reece KERSHAW (30 June 2015)	35	This <u>strategy involved the recently created inter-agency Taskforce (the Taskforce) utilising a civil process to recover money from travel agents involved in the Scheme in the first instance,</u> including Winnellie Travel and KAMITSIS. I was firmly of the belief that KAMITSIS in particular, had committed criminal offences and should be the subject of a criminal investigation and prosecution however I understand this was a decision made by the Taskforce who had access to all of the facts.
Leonard NOTARAS (29 June 2015)	7	McROBERTS advised that although the NTPol investigation was ongoing, he was <u>not sure if the matter should proceed as a criminal investigation or via a civil matter.</u> McROBERTS stated that he was considering issuing 'Debit Notices' to Travel Agents involved, asking them to show cause as to why they should not have to repay funds that had been illegitimately received. <u>McROBERTS preferred the option of travel agents repaying funds as a way of resolving the matter, stating that he was concerned that a criminal investigation would attract unwanted media attention,</u> which could affect the reputation of the NT travel industry and NT Government.
	18	During the meeting, McROBERTS suggested that each travel agent be issued with a Debit Letter, seeking information from travel agents regarding their involvement in claims for

		<p>payments made under the Scheme, <u>McROBERTS suggested that if the travel agent responded to the Debit Letter and repaid any Scheme payments which had been illegitimately obtained, no further action would be taken.</u> This approach was agreed to by all parties at the meeting.</p>
<p>Jan CURRIE (29 June 2015)</p>	13	<p><u>If travel agents complied with the request for information, the Taskforce would seek to reconcile payments and seek to recover the funds through a civil process.</u> If they were unable to provide sufficient information to enable reconciliation, the Taskforce would refer the matter to NTPol.</p>
<p>Jodie RYAN (7 May 2015)</p>	10	<p>I recall <u>McROBERTS advised that if sufficient data could be obtained, the Taskforce would take civil action against the Travel Agents.</u> The civil action would entail the repayment of funds which had been inappropriately claimed by the Travel Agent in question.</p>
	11	<p>I recall <u>McROBERTS advised it was unlikely NT Police could successfully conduct a criminal prosecution</u> due to lack of evidence and insufficient DoH record keeping.</p>
	13	<p>At the conclusion of the meeting, I was left with the impression <u>McROBERTS was directing how the investigation would be progressed. I felt McROBERTS believed a civil remedy, via the repayment of funds, was the most likely course of action as he said there was a lack of evidence for a criminal prosecution.</u></p>



original version

21616999

**R v John Ringland McRoberts**

CASE OUTLINE

1. In brief, it is the prosecution case is that between the 2nd of May 2014 and 17th November 2014, the accused intentionally deflected a major criminal investigation into suspected fraudulent activity in the conduct of the travel business Winnellie Travel (aka Latitude Travel) owned and operated by his intimate friend Alexandra Kamitsis (“Kamitsis”). He did this principally by:-
  - i. Between 2 May 2014 and 17 November 2014, after being advised that Kamitsis was the major target of Operation Subutai, failing to disclose the true nature of his relationship with Kamitsis and thereafter involving himself in the conduct of the investigation into her travel agency, knowing that it was improper for him to do so.
  - ii. On 4 June 2014, stopping a search warrant that had already been issued and approved for execution on the business premises of Winnellie Travel in furtherance of the Major Crime investigation.
  - iii. Between 2 May 2014 and 17 November 2014, devising, implementing and championing an alternative to criminal prosecution for travel agents suspected of fraud (including Winnellie Travel), namely the civil recovery of debt.
2. At all material times the accused was the Commissioner of the Northern Territory Police and the Chief Executive of the Department of Police, Fire and Emergency Services<sup>1</sup>.
3. At all material times the accused was bound by the terms and conditions of his office including a specific condition that he disclose any potential conflict of interest, real or apparent, in writing. Clause 74 of his Schedule of terms and Conditions stated:-

*“Conflict of Interest*

*74. The Commissioner must disclose in writing to the Employer where a potential conflict between his personal interest and official duty, whether real or apparent, has arisen or is likely to arise.”<sup>2</sup>*

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<sup>1</sup> Statement Peter BRAVOS dated 12 May 2015 AnnexPBRA-02 letter of appointment. PBRA-04 Determination of Terms and Conditions of Office where similar provision is at par 66-67 and PBRA-11 being the terms applicable from 12 May 14 onwards; PBRA-06 Commission, PBRA-10 Commission on renewal of contact 12 May 2014; PBRA-11 Determination of Terms and Conditions of Office on renewal dated 12 May 2014;

<sup>2</sup> Supra particularly PBRA-02 and PBRA-11 both at clause 74.

4. At no time did the accused declare any relevant potential conflict to the employer<sup>3</sup>.

### **Relationship between the accused and Xana Kamitsis**

5. The prosecution allege that since 2010, the accused and Kamitsis had a personal relationship which had progressed to sexual relationship at some stage prior to 2014. The relationship is primarily proved by a large volume of SMS and Viber messages exchanged between the accused and Kamitsis throughout the period May 2012-November 2014 and retrieved from the mobile telephone of Kamitsis<sup>4</sup>.
6. The nature of the relationship during all material times was an intimate one - intermittently sexual in 2014 (inferentially), and at least that of close friends and confidantes. During the relationship, Kamitsis gave the accused numerous gifts and other benefits<sup>5</sup>. They also shared information about Police matters including on one occasion, the accused sending Kamitsis copies of a complaint made to him as Commissioner by a member of the public<sup>6</sup>. On another occasion the accused, after telling Kamitsis about a pending Coronial decision relation to a death in custody, and speculating that he would be sacked as a result, texted Kamitsis (whom he knew was in communication with the then Chief Minister Terry Mills), *I wish he could get rid of Cavenagh*<sup>7</sup>.
7. In or about 2010, the accused asked his executive assistant Pauline Benaim to include Kamitsis' travel business Latitude Travel (trading as Winnellie Travel) as an option when she was booking his official travel. On the basis of that request, Ms Benaim booked work related travel and accommodation for the accused through Latitude on 4 occasions between 24 November 2010 and 22 October 2014<sup>8</sup>. This conduct alone triggered a requirement for the accused to declare a conflict of interest because of his friendship with

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<sup>3</sup> Statement of Adam Giles dated 12 May 2015 at [17] and statement of Peter Chandler dated 7 August 2015 at par 12

<sup>4</sup> See extracted data spreadsheets annexed to the statements of Stephen Cook dated 15 September 2016 and 19 September 2016- SCOO-01 to, SC00-07- as to the historical sexual relationship there are many messages that allude to it. An example is at SCOO-01 message 38 where Kamitsis slates (inter alia) "I still don't know why you and I couldn't work"; message 95 "Remember making that bed a few times with you"; see also the messages set out in these submissions at par's 23, 24, 50(p) though note that the prosecution rely on the body of messages as a whole. Kamitsis' iPhone message and Viber message continuity is evidenced through the following witness statements: Clint SIMS statement of 28 February 2015 (seizure of phone at execution of warrant); Syndee GALATI statement of 8 December 2014 (exhibits officer records iPhone as CS/005); George CIOLKA statement of 7 January 2015 (records exhibited items into PROMIS); GALATI statement of 4 March 2015 (confirms item CS/005 was logged in PROMIS as exhibit 426720/004); Craig WINDEBANK statement of 2 March 2015 (download of data from item 426720/004); Anthony LAWRENCE statement of 6 April 2017 (copies extracted data from item 426720/004 onto portable hard drive); Stephen COOK statements of 15 September 2016 and 19 September 2016 (receipt of portable hard drive and extraction of relevant data to produce SCOO-02-07

<sup>5</sup> SC00-01 message 165 the accused tells Kamitsis "I have so many lovely things u have given me". See also message 403 from Kamitsis to accused regarding overseas work-related travel "Enjoy your upgrades" and accused's response at 405 saying thank you. Message 442 "I got you an upgrade on the way home"; Message 554-556 regarding a hotel suite and wine arranged by Kamitsis when the accused was on official travel to Alice Springs; see also additional references in the substantive submissions eg at par [21]

<sup>6</sup> SCOO-01 messages 143-147

<sup>7</sup> SCOO-01 messages 230-238

<sup>8</sup> Statement of Pauline Benaim dated 30 June 2015.

Kamitsis, a requirement that was ongoing as he continued to use Kamitsis' travel services<sup>9</sup>. Kamitsis would often arrange, and the accused would often accept, upgrades or other special treatment for the accused including when he was engaged in work related travel, whether booked through Latitude or not<sup>10</sup>. On 7 March 2014 the accused sent a message to Kamitsis stating "I'm doing my best to direct my business to U!"<sup>11</sup>.

## **Operation Subutai**

8. Operation Subutai<sup>12</sup> was an NTPol investigation into suspected fraudulent activity by NT travel agents with respect to the Department of Health (DoH) administered Pensioner Carer Travel Concession Scheme (PCTCS). The police officer with early carriage of the investigation was Detective Sgt Jason Blake of the NTPol Fraud Squad ("Blake").
9. Blake was consulted by DoH from October 2012 about suspected rorting of the PCTCS by travel agents following receipt of a complaint from a pensioner. Blake provided preliminary advice to DoH in accordance with the Treasurer's Directions Pt 5 relating to financial loss, including reporting the matter to the Auditor General and taking steps to mitigate further loss.
10. As a result, DoH commissioned Ernst & Young to conduct an audit process<sup>13</sup>. Ernst & Young produced an audit report dated 4 October 2013<sup>14</sup>. It identified eight NT travel agents as being "higher risk agents" with respect to fraudulent activity. Winnellie Travel was nominated as one of the eight "higher risk agents"<sup>15</sup>.
11. Both the Auditor-General and DoH formally referred the PCTCS suspected fraud matter to NTPol for criminal investigation on 6 November 2013<sup>16</sup> and 13 December 2013<sup>17</sup> respectively.
12. The accused received the referrals<sup>18</sup> and the matter was allocated to the Fraud Squad with Blake appointed officer in charge of the investigation. Neither referral specifically mentioned Kamitsis or Winnellie Travel. The accused did not direct that the referral be dealt with in any way other than by referral to the Fraud Squad for investigation.

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<sup>9</sup> See in this regard annexed to statement of Bravos supra. PBRA-19 being a general broadcast message to all members of NTPol reminding them of the Conflict of Interest requirements of the Code of Conduct and Ethics and annexing the relevant form (for the latter see 2<sup>nd</sup> statement of Bravos, dated 7 August 2015 at par 5-6 and annexure PBRA-23

<sup>10</sup> Refer footnote 8 above

<sup>11</sup> SCOO-0I message 575

<sup>12</sup> Initially named Operation Holden.

<sup>13</sup> Statement of Jeffrey Moffet dated 5 Nov 15 at par 5

<sup>14</sup> Statement of Jason Blake dated 5 May 2015 at par 9 and see Annexure JBLA-01

<sup>15</sup> Annexure .IBLA-01 supra at p25

<sup>16</sup> Annexure JBLA-02

<sup>17</sup> Annexure JBLA-03 and statement of Jeffrey Moffet dated

<sup>18</sup> The referrals are both annotated with a handwritten date and initials "JRM"

13. By 6 January 2014, a criminal investigation (initially named Operation Holden) was underway into suspected fraud against the PCTCS.
14. There were early concerns within Crime command about the likely scale of the PCTCS investigation as well as the possible sensitivities surrounding it<sup>19</sup>. The then Assistant Commissioner Crime Command Reece Kershaw initially proposed that the investigation focus on the transactions related to a single pensioner who had referred the matter to DoH, and which had prompted the initial inquiries<sup>20</sup>.
15. However, by 19 March 2014, Kamitsis and her travel agency, Winnellie Travel (aka Latitude Travel) were identified by the investigators as a major target for covert investigation on the basis of the trend analysis (from the Ernst & Young report) indicting the highest discrepancy in travel versus reimbursement<sup>21</sup>. Blake was directed to prepare a test brief for DPP opinion specifically in relation to Winnellie Travel<sup>22</sup>.
16. Blake identified Fernanda Da Silva as a senior citizen who had lodged a relevant travel request with Winnellie Travel. Unknown to the police, Ms Da Silva was the mother of Kamitsis. Kamitsis was present as Ms Da Silva's interpreter on Friday 21 March 2014 when Blake went to interview Ms Da Silva as part of his investigation. Although Blake did not proceed with his enquiries of Ms Da Silva, the investigation into Winnellie Travel then ceased to be covert.
17. On 23 March the accused was away on a work trip with travel and accommodation having been organised by Winnellie Travel<sup>23</sup>. That afternoon he sent a message to Kamitsis in response to her inquiry about the flight and accommodation saying *"All perfect thanks. Superb service and red carpet treatment at hotel thanks to U! Really appreciated!"*<sup>24</sup>
18. On 31 March the accused called for a Ministerial Briefing on the PCTCS investigation. The briefing was to address cost recovery from DoH if police provided a forensic accountant<sup>25</sup>.
19. On 4 April 2014<sup>26</sup>, the accused was back in Darwin and sent a series of messages to Kamitsis in response to an inquiry as to whether he wanted to catch up saying *"I'm at home!"*; *"Welcome to come here if U want?"*. Later that day Kamitsis sent him a message saying *"I really thought you would be*

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<sup>19</sup> For example possible embarrassment to NTG due to inadequate systems within DoH, and possible damage to the reputation of the NT travel industry - see annexure to statement of Jason Blake dated 5 May 2015 JRLA-06 "Talking points for Supt O'Brien"

<sup>20</sup> Supra, annexure JBLA-06

<sup>21</sup> Annexure JBLA-07 at 3.2 "focus of in (sic) initial enquiries to undertake a covert investigation targeting one count involving Winnellie Travel" and see the identified action items all related to Winnellie Travel

<sup>22</sup> Statement of James .I O'Brien dated 13 April 2015 par 13; statement of Jason Blake 5 May 2015 par 23

<sup>23</sup> Statement of Pauline Benaim PBEN-04 Latitude Travel Itinerary

<sup>24</sup> See SCOO-02 annexed to the statement of Stephen Cook dated 15 Sept 2015 message 4767

<sup>25</sup> The Briefing was drafted but did not end up being submitted as there was no progress on the issue of DoH funding: a forensic accountant - see statement of Michael Murphy par 9-11

<sup>26</sup> SCOO-02 messages 4788-4823

*my life long BB...And a life member of my raft boat !!!*" The accused replied "Am I not???" The accused and Kamitsis then entered into a message discussion about their friendship during which Kamitsis was apparently emotionally upset. The accused sent her a message saying "Come over!". Kamitsis responded "I so wish I could...I don't have a car I so want to make love to you".

20. The next day, 5 April 2014<sup>27</sup>, Kamitsis sent the accused a message asking if his "window of leave" was still available, in response to his inquiry "want to call by". The accused replied "At a push can do 12-1!". Kamitsis joked about the tight schedule and messaged "you might have to make me a coffee". The accused responded "Won't have time!" and in response to a query whether the champagne is icy and the coffee hot, the accused responds "I was but no drama. Another time".
21. On 17 April 2014 Blake submitted a "test brief concerning Kamitsis to the DPP after having obtained the statement of Martha Swart as an alternative to that of Ms Da Silva.
22. On 21 April 2014<sup>28</sup>, Kamitsis asked (by message) if the accused was available to have dinner "this evening". The accused declined but asked who was going. Kamitsis replied "I was going to invite you to raffles for bacalao...Gk and JJ are out at some do" (referring to her husband and son). The accused replied "what a shame. That would have been great". A short time later he messaged "U at Raffles now?" "Want to call by here?" "Can U come over now?" "Or can I go to Raffles?". Hours later Kamitsis messaged the accused:-

*"Just sent SM a message wishing him well for tomorrow.. I am glad you chose to see me today.. The last 4 months have been very difficult lots went on that I never had the opportunity to share with you.. I have truly missed us hanging out.. Drinking wine on your balcony and just being there for each other.. I have reflected a lot and I was so so hurt you forgot my birthday .. You have no idea how that upset me.. But we have turned a new leaf ..and I ask you please not to allow it to ever get like that.. I really do believe our friendship is too important to let it go.. We have so so much to conquer and we are such a great team.. We have so many genuine reasons to do things together, legitimately .. we should take advantage of these things .. We have been through so many lane changes .. We always seem to surface.. That in itself shows friendship .. Bond .. And resilience.. Please don't hurt me anymore.. I am your number one supporter and your most loyal friend.. I want the same back please.. I want to know you will always defend me.. And fight for me.. Like I have for you.. Good night sweet dreams .. I will always love you trillions .. take great care., you will be missedxxxxxxxx"*

23. On 2 May the accused was present at a meeting with his acting Deputy Commissioner Mark Payne where Kershaw and O'Brien provided a

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<sup>27</sup> SCOO-02 messages 4878-4896

<sup>28</sup> SCOO-02 messages 4932-4953

detailed update on the progress of investigation into Winnellie Travel and Kamitsis<sup>29</sup>. When the extent of the suspected fraud on the part of Kamitsis was revealed the accused was heard to remark “*she can’t be this stupid*”<sup>30</sup>. The accused advised the meeting (words to the effect) that he knew Kamitsis socially but that if she had committed offences, then she should be charged<sup>31</sup>.

24. The prosecution allege that from at least this point on, the accused knew he should have nothing to do with Operation Subutai as it related to Kamitsis, and further, should have formally declared his conflict of interest and the extent of it.
25. On 5 May 2014, the Fraud Squad received the written advice of Mr Morters of the DPP (dated 4 May) that, subject to the collection of certain evidence, there were reasonable prospects of conviction against Kamitsis based on the sample transaction contained in the mini-brief (the transaction relating to Martha Swart)<sup>32</sup>. The advice sets out a basis for the opinion that a charge of stealing contrary to s210 of the *Criminal Code* would be made out and advises that demonstrating a course of conduct would assist in proving the element of dishonesty, referring to “*records (that) indicate a course of conduct on the part of the accused with respect to the Scheme*”<sup>33</sup>.
26. On 6 May 2014, an Operation Holden meeting record noted that both AC Kershaw and the accused had been briefed and were “*keen to see matter progressed*”<sup>34</sup> and that the investigation into Kamitsis was to be finalised prior to October 2014 because of the National Crime Stoppers conference in Darwin (Kamitsis was on the board of Crime Stoppers and was in fact Chairperson in 2014).
27. On 27 May 2014 Operation Holden was renamed Operation Subutai.
28. On 30 May 2014 Operation Subutai was declared a Major Crime by AC Kershaw<sup>35</sup> on the recommendation of the investigators and with the accused's apparent support. This allowed it to become a priority criminal investigation for NTPol and ensured both appropriate resourcing and a high level of internal governance<sup>36</sup>.
29. In accordance with the now Major Crime investigation plan, on 4 June 2014 Blake completed the internal NTPol protocols to obtain a search warrant and, at about 10am, attended at the Supreme Court to swear the information before a JP. At midday he attended an Operation Subutai meeting at which

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<sup>29</sup> Statement of Reece Kershaw dated 30 June 2015 at par 10; statement of Mark Payne dated 12 May 15 at pars -13;

Statement of James O’Brien dated 13 April 2015 pars 19-23

<sup>30</sup> Statement of James O’Brien dated 13 April 2015 par 20

<sup>31</sup> Statement of Reece Kershaw dated 30 June 2015 at par 11; statement of Mark Payne dated 12 May 15 at par 10; Statement of James O’Brien dated 13 April 2015 par 21

<sup>32</sup> Statement of Blake but see in addition Statement of David Morters dated 29 June 2015 and annexure DMOR- 01

<sup>33</sup> Supra DMOR-01 p3

<sup>34</sup> Minutes annexed to statement of Blake supra JBLA-10

<sup>35</sup> Major Crime declaration dated 30 May 2014 annexed to statement of Kershaw RKER-02

<sup>36</sup> Statement of Kershaw supra at par 14

a “Crime Command Critical Decision” was made by AC Kershaw authorising the warrant to be executed<sup>37</sup>:

30. On 4 June 2014, the accused first indicated to his staff that he no longer supported a criminal investigation into Kamitsis<sup>38</sup>. The prosecution allege that he had commenced his attempt to pervert the course of justice, a course directed to the preferring of criminal charges against Kamitsis, from as early as 7 May 2014.
31. The accused knew that Kamitsis and her business were a primary target of Operation Subutai by at least 2 May 2014, and possibly earlier.
32. Notwithstanding his statement to senior NTPol officers on 2 May that Kamitsis should be criminally prosecuted if she had committed offences, the accused was, within days of that meeting and external to police, beginning to advocate civil remedies for all travel agent suspects (including Kamitsis) instead of criminal prosecution.
33. The accused continued to communicate with Kamitsis via personal messages throughout this period. However the accused chose to describe the relationship to his staff on 2 May, his conflict of interest was direct and substantial. It was unmistakably improper for the accused to have any involvement in Operation Subutai from this time on. The accused knew this<sup>39</sup> yet between 2 May 2014 and 17 November 2014 the accused became and remained heavily involved in Operation Subutai.
34. During that time Operation Subutai went from being declared a Major Crime by Assistant Commissioner Kershaw on 30 May 2014<sup>40</sup> with a search warrant issued and about to be executed (on 4 June 2014<sup>41</sup>), to being the subject of a civil debt recovery process managed by an interagency taskforce from 26 June 2014<sup>42</sup>.
35. Between 2 May 2014 and 26 June 2014, the accused did a number of things to instigate a civil debt-recovery process as an alternative to the ongoing criminal investigation into Kamitsis, without informing his senior officers

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<sup>37</sup> Statement of Kershaw supra par 16

<sup>38</sup> Refer to submissions on 'Attempt to pervert the course of justice' below

<sup>39</sup> This is a matter of inference to be drawn from various sources but including that he must have known, by virtue of his position and experience in law enforcement, that he should not have had any role at all in Operation Subutai because of the relationship: he was not truthful with his staff or the witness Gary Barnes as to the true nature of his relationship with Kamitsis and/or the existence of a conflict of interest (see statement Gary Barnes dated 13 May 2015 folder 1); Far from ensuring he was outside of the chain of command as regards any investigation involving Kamitsis, the accused effectively took over Operation Subutai; During the continued investigation into Kamitsis he privately communicated with her including trying to ensure that their communications were covert by instructing her to use 'Viber for example on 16 Oct 14 "Use Viber much safer way to communicate" SCOO- 02 message 5868 and 5383. See further these submissions at par [50]

<sup>40</sup> Statement of Reece Kershaw dated 30 June 2015 at par 14 and annexure RKBR-02

<sup>41</sup> Statement of Reece Kershaw dated 4 June 2014 at par 16; statement of Jason Blake dated 5 May 2015 pars 38 -39 and annexure JBLA-14

<sup>42</sup> Statement of Jason Blake dated 5 May 2015 pars 57-61

or the investigation team. In doing so, the prosecution allege, he intentionally deflected his officers from pursuing their criminal investigation into suspected fraud on the part of Kamitsis. The conduct alleged as tending to pervert the course of the criminal investigation into Kamitsis comprises (inclusive of circumstantial facts going to method and timing of interference, and relationship between the investigative target Kamitsis and the accused)

- (a) **Meeting with Notaras 7 May 2014:** In the context of the intimate relationship with Kamitsis and the clear criminal focus of the investigation into her suspected fraud, on 7 May 2014 the accused met for coffee with Len Notaras the then Chief Executive of DoH. He raised with Notaras the possibility that the PCTCS investigation should proceed as a civil matter whereby travel agents would be issued with debit notices and asked to show cause as to why they should not repay funds. The accused stated that a criminal investigation would attract unwanted media attention and could affect the reputation of the NT travel industry and NT Government. The accused told Notaras that Kamitsis (known socially to Notaras) was one of the suspect travel agents<sup>43</sup>.
- (b) **2<sup>nd</sup> meeting with Notaras 16 May 14:** On 16 May 2014, having been overseas between 8 and 12 May, the accused had a second informal and unscheduled meeting with Notaras to suggest that they jointly brief the Chief Minister and Health Minister regarding Operation Subutai<sup>44</sup>.
- (c) **Stopping the Winnellie Travel search warrant 4 June 2014:** On 4 June 2014 at 2.17pm, Pauline Benaim, Executive Assistant to the accused, organised a meeting for 3pm between the accused, Payne and Kershaw. This was after Operation Subutai had been declared a Major Crime and a search warrant had been authorised and issued for execution at Winnellie Travel business premises on 5 June. At that meeting the accused stated that he was not satisfied that the threshold for the execution of the Winnellie Travel search warrant had been reached and raised a number of issues quering both the criminal investigation and the DPP advice. He told the meeting *“this matter is not ready to go to an overt investigation. We need to pursue an alternative course of action”*<sup>45</sup>. As a result, the approval for the warrant was withdrawn. The accused first proposed a civil remedy to his staff at this meeting and told them that he intended to brief the Chief Minister and the Minister for Health<sup>46</sup>. The accused’s purported concerns were conveyed to Blake to address in the form of 6 questions to be answered<sup>47</sup>, as if the criminal investigation would proceed once the matters were addressed. These were addressed by Blake in a return email on 5 June 2014<sup>48</sup>. As a result of the accused’s action on 4 June, Kershaw tasked Fuller on 10 June to seek a review of the DPP advice

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<sup>43</sup> See statement of Leonard Notaras dated 29 May 2015

<sup>44</sup> supra

<sup>45</sup> Statement of Mark Payne dated 7 May 2015 at par 25

<sup>46</sup> Statement of Reece Kershaw dated 30 June 2015 pars 18-20

<sup>47</sup> See Annexure JBLA-16 annexed to statement of Jason Blake

<sup>48</sup> RKER-04 and par 5 of his statement



by approaching Mr Morters' superior, the Director of Public Prosecutions, Mr Jack Karczewski OC<sup>49</sup>. Fuller was also to provide a briefing paper to address some of the other concerns stated by the accused on 4 June.

(d) **Removing Operation Subutai from the investigators and seeking to engage external agencies to further the civil remedy proposal:**

The accused arranged to brief the Minister and CEO DoH during the week 16 June, in furtherance of his proposed civil remedy<sup>50</sup> (although this did not occur until 26 June).

(e) **Possession of the investigation file from 19 June 14:** At a meeting on 19 June 2014 the accused took possession of the Operation Subutai investigation file which primarily comprised the test brief relating to Kamitsis<sup>51</sup>. The accused's examination and retention of the file was considered inappropriate by his staff<sup>52</sup> even on the basis of his limited disclosure at the 2 May meeting regarding his relationship with Kamitsis. Kershaw reassured staff by reminding them that the accused had assured them that Kamitsis should be charged if she had committed offences<sup>53</sup>. The file was accompanied by a briefing paper prepared by Blake. The accused held on to the file and referred to it at the meeting on 23 June.

(f) **Quervig the focus on Winnellie Travel, 20 June:** On 20 June 2014, the accused, after improperly examining the Operation Subutai file, stated to Kershaw *"surely after all this time we have more evidence on other travel agents rather than the one"*<sup>54</sup> (referring to Kamitsis/Winnellie Travel). This was disingenuous, given the way that the matter had progressed throughout 2014, and the legitimate reasoning behind compiling the test brief for Kamitsis focussing the investigation on her travel agency, since at least 2 May with the accused's express sanction, and additionally the DPP opinion which related solely to Kamitsis.

(g) **Continuing to undermine the criminal investigation after all previous stated concerns addressed. 23 June:** On 23 June 2014, the accused called an Operation Subutai meeting with Payne, Kershaw, Fuller and Sims at which he displayed detailed knowledge of the investigation and was critical of it, including of the single focus on Winnellie Travel<sup>55</sup>. At the meeting Sims provided a briefing in an attempt to justify resuming overt criminal action with respect to Winnellie Travel and Kamitsis<sup>56</sup> but was unsuccessful. The accused kept possession of the file and wanted a further meeting on 25 June,

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<sup>49</sup> The DPP refused to review the advice of his in-house fraud Snr Crown Prosecutor - see statement of Jack Karczewski QC dated 27 April 2015 at par 14 and annexure WKAR-01. Both the DPP and Morters considered the request for review unusual.

<sup>50</sup> Statement of Reece Kershaw dated 30 June 2015 annexure RKF.R-03

<sup>51</sup> Statement of Fuller supra at par 26-27; statement of Kershaw dated 30 June 2015 at par

<sup>52</sup> See statements of Blake at par 54; O'Brien at par 30. Payne at par 28. Sims at pars 7 and 9

<sup>53</sup> Statement of Kershaw dated 30 June 2015 at par 13

<sup>54</sup> Statement of Reece Kershaw dated 30 June 2015 par 31

<sup>55</sup> Statement of Clinton Sims dated 7 May 2015 par 12-14

<sup>56</sup> Statement of Mark Payne dated 7 May 2015 par 33

being the day before he was due to speak to Chief Minister about the matter.<sup>57</sup> On 24 June, further spreadsheets and information were supplied to the accused.

- (h) **Taking control of Operation Subutai and proposing the inter-agency taskforce, meeting 25 June:** On 25 June 2014, the accused called a meeting to discuss Operation Subutai<sup>58</sup>. The meeting was attended by the accused, Chalker (incoming Acting Deputy Commissioner) Payne, Fuller, Sims and Blake. The accused told the meeting that he knew Kamitsis but did not have a conflict of interest. This was a lie. He asked Blake for a list of all the travel agents involved. The accused indicated to those present that he had effectively taken control of Operation Subutai, telling them that he had considered how best to progress the investigation (including the investigation into Kamitsis) and had come up with the idea of an interagency taskforce and that he was intending to talk to the Chief Minister/ Minister for Police and the Health Minister about forming such a taskforce. The accused told the meeting that the primary goal was to recover the misspent funds. The accused stated that criminal investigation would only follow if funds were not repaid under the recovery process and that simultaneous warrants on all agents was preferred in that event.
- (i) **Obtaining Ministerial sanction for civil remedy through inter-agency taskforce, meeting 26 June:** On 26 June 2014, at the accused's request<sup>59</sup>, a meeting was held between himself, Notaras, the Minister for Health Robyn Lambley, and Chief Minister/Minister for Police Adam Giles. At this meeting the accused briefed those present on Operation Subutai, mentioning that there were a group of eight who were more serious<sup>60</sup>. Adam Giles recalls the accused specifically mentioning Flight Centre as one of the eight. The accused did not take any of the Operation Subutai investigators or senior staff with him to the meeting. At the meeting, the accused proposed that letters of demand be sent to the travel agents and said he was concerned about the impact on the travel industry<sup>61</sup>. The Chief Minister told the accused to "go hard" on the eight travel agents in pursuing a criminal investigation and prosecution as he did not believe there would be any impact upon the tourism industry<sup>62</sup>. Notaras advised that there was no issue if the investigation immediately entered an overt phase or if time was to be taken to obtain further information. However at the end of the meeting, a decision was made to form a Taskforce to investigate with heads of DoH, Attorney-General's Department and Treasury to meet to discuss a multi-agency approach.
- (j) **Promoting the inter-agency taskforce to stakeholders, 30 June:** On 30 June 2014, the accused organised and attended a meeting with Notaras and public servants from the Departments of Justice and of Treasury<sup>63</sup>.

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<sup>57</sup> The date noted in the documents was originally 16 June, but no meeting occurred on that date.

<sup>58</sup> Statement of Clinton Sims dated 7 May 2015 par 19-20

<sup>59</sup> Statement of Adam Giles dated 12 May 2015 par 6. statement of Leonard Notaras

<sup>60</sup> Supra Giles at par 7

<sup>61</sup> Supra Notaras par 11

<sup>62</sup> Supra Notaras par 12

<sup>63</sup> Notaras pas 14-16

The accused was not accompanied by any Operation Subutai investigator or member of his executive. He outlined his scheme for civil recovery to the meeting stating that to minimise potential damage to the NT government there was a need for a "softly, softly" approach. Jodie Ryan the then UnderTreasurer, recalls the accused specifically mentioning Flight Centre as one of a group of more serious suspects and states that the accused told the meeting it was unlikely that NTPol could conduct a successful criminal prosecution due to lack of evidence and insufficient DoH record keeping<sup>64</sup>. This was contrary to the DPP advice and the advice of his Fraud Squad and senior staff.

- (k) **Ordering a stop to criminal investigation of Kamitsis, 2 July:** On 2 July 2007, the accused informed Payne that a joint taskforce would be formed between NTPol and the Departments of Health, Treasury and Justice, with the DoH taking the lead. He said that civil matters would be dealt with through repayment and that any criminal offending would be referred to NTPol taskforce members in the event of non-payment. Blake and another officer were to represent NTPol on the taskforce. On 7 July 2007 Blake and other NTPol investigators were told by Fuller that accused had issued an instruction that any and all criminal investigations into the PCTCS (including Kamitsis) were to cease immediately.
- (l) **Directing the investigation strategy for the inter-agency taskforce, July 2014:** The accused sent and received personal messages to/from Kamitsis while she was overseas on 11, 12, 13, 14, 16, 17, 18, 19, and 20 July 2014. In a message on 12 July Kamitsis referred to the accused as her "*wing man*"<sup>65</sup>. She also told him she has purchased an apartment in Lisbon and that he would see it one day. The accused responded "*OK!;*" (signifying a wink). These messages were exchanged on an application called "Viber" which the accused considered was a "*safer*"<sup>66</sup> way of communicating with Kamitsis. On 26 July, after Kamitsis had returned to Darwin, the accused sent messages to Kamitsis to arrange to meet at his house including sending her another 'wink' message. The next day the messages demonstrate that Kamitsis delivered the accused some curry. During this same time period, Operation Subutai meetings (both taskforce and within NT Pol) were occurring from 8 July 2014, during which Blake and others voiced the opinion that NTPol should institute criminal proceedings where criminal offending had been identified, and concern that proposed civil debt notices would compromise criminal action. Notwithstanding these objections, the accused directed Payne to draw up a strategy for a civil based remedy for the taskforce which Payne did. In accordance with that direction, on 14 July 2014, Payne introduced the investigation strategy to obtain records from travel agents with view to identifying and reconciling overpayments and the recovery of funds through civil debt notices, with

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<sup>64</sup> Statement of Jodie Ryan dated 5 May 2015 at par 11

<sup>65</sup> SCOO-02 message 5493-5496

<sup>66</sup> SCOO-02 message 5868

criminal investigation relegated to a back-up remedy with respect to agents who failed to respond to notices, or provided misleading information.

- (m) **Closely monitoring the taskforce including an attempt to remove Blake from the taskforce. 12 August:** The accused and Kamitsis continued to communicate on Viber on 27, 28, and 29 July<sup>67</sup>, and throughout August by SMS messages<sup>68</sup>. On 6 August, the interagency taskforce met. Attendees included Blake and the new A/AC Crime David Proctor from NTPol, Jan Currie from DoH and Greg MacDonald from AGD. At the meeting there was confusion about the role and responsibilities of the taskforce and concerns over criminal vs civil action<sup>69</sup>. After the meeting Proctor was summoned by the accused for an “*urgent verbal briefing*”<sup>70</sup>. Proctor briefed the accused<sup>71</sup> including the concerns over criminal vs civil action. He observed that the accused appeared frustrated over the issue. On 7 August 2014, Blake sent an email to taskforce members and Proctor. In it Blake outlined his concerns with the process including that by combining the civil and criminal approach, the success of both were placed in jeopardy, that if proof was obtained to the criminal standard the civil standard was also, by definition satisfied and that the frauds were serious and the prospects of success were good. Proctor brought the email to the attention of the accused<sup>72</sup> and on 12 August 2014 briefed Payne about it on Payne's return from leave (and resumption of the AC role)<sup>73</sup>. On 12 August 2014, the accused queried with Payne whether Blake should be removed from the Operation Subutai team altogether as he was not “*the right man for the job*”<sup>74</sup>. Also on 12 August 2014, the accused had a meeting with representatives of the Australian Association of Travel Agents, during which he revealed his knowledge that the matter under investigation involved 3,848 transactions and about \$4.6 million.
- (n) **Effecting the civil remedy - letter of demand sent to Kamitsis, 1 September:** As a result of the accused's actions, letters of demand to the travel agents, including Kamitsis, were sent on 1 September 2014<sup>75</sup>.
- (o) **Directing the taskforce investigation, directing Kamitsis to communicate by Viber as taskforce focussed on her non-compliance with letter of demand, September-October 2014:** The accused and Kamitsis continued to communicate via personal messages during September 2014. On 10 September, Kershaw became the Acting Deputy Commissioner and was updated on Operation

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<sup>67</sup> SCOO-02 messages 5644-5705

<sup>68</sup> From 4 August message 5046 -5081

<sup>69</sup> Statement of David Proctor dated 9 April 2015 par 13

<sup>70</sup> Supra par 15

<sup>71</sup> Statement of David Proctor dated 9 April 2015 par 16

<sup>72</sup> Statement of David Proctor dated 9 April 2015 annexure DPRO-02

<sup>73</sup> Statement of Mark Payne dated 7 May 2015

<sup>74</sup> *ibid*

<sup>75</sup> There is conflicting evidence regarding the dates, the date of 1 September is taken from the taskforce Minutes of a meeting held on 5/11/14 annexed to the statement of Clint Sims - annexure CS1M-13, at 2.2 - and appears to be the correct date.

Subutai. He observed that the accused had taken control of the taskforce's investigation<sup>76</sup> which he considered unusual. On 30 September Kamitsis messaged the accused to tell him she had bought him some bottles of wine that he liked<sup>77</sup>. By 3 October 2014, Kamitsis had engaged a lawyer (Ray Murphy) to assist in responding to her civil demand letter from the taskforce. On 4 October<sup>78</sup> Kamitsis messaged the accused asking about his upcoming travel. The accused advised he was travelling "to Adelaide next month". Kamitsis responded "*I have that booking :) What about the 16<sup>th</sup>?*" The accused replied "*Not sure yet? Will know next week*" (this was in apparent to response about him attending something arranged by Kamitsis for that date). Later the accused asked "*in office?*" Kamitsis responded later "*were you going to visit?*" and the accused replied "*maybe later, need a nana nap now. Getting old!*" They continued to exchange messages including a reminder of their sexual liaison in Sydney "*Iceburg lunch Park Hyatt drinks China doll dinner via water taxi??*" Kamitsis joked in a later text "*did that put you to sleep..Lol*" to which the accused responded "*No. Quick shower and now for a sleep*". The next day 5 October 2014<sup>79</sup>, the accused messaged Kamitsis "*ur Viber not working?* He told her he had sent 2 messages that morning. When Kamitsis asked him to resent the accused responded "*Lol I delete everything as I go*". They continued to use Viber to communicate about catching up. The accused sent a Viber message "*shall I call by?*" then "*Shall I go to the bottle shop*". A later message from Kamitsis demonstrates that they had met saying "*So fabulous to see you. Bring on Glasgow xx*".

On 6 October the accused and Kamitsis continued to communicate on Viber. Kamitsis was upset about matters relating to the Crimestoppers Board - the accused messaged "*stand down at AGM & let them get on with it*". Kamitsis was upset and messaged "*I just thought you would fight for me that was all ..??"*<sup>80</sup> On 7 October Sims obtained call charge records for Kamitsis' phone as part of the investigation. He noted the frequent contact and lateness of some of the messages and suspected that there was an intimate relationship.

- (p) **Monitoring Kamitsis' compliance with civil recovery process whilst urging her to use Viber for their communications. 13 October:** During this same time period the taskforce were monitoring Kamitsis' noncompliance with the civil notice. On 1 October 2014 Sims notified the taskforce that the 30 day compliance period for the demand letters was now up<sup>81</sup>. This update included that Winnellie Travel had provided "nil response". On 3 October Kamitsis

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<sup>76</sup> Statement of Recce Kershaw dated 30 June 2015 par 36

<sup>77</sup> SCOO-02 messages 5180-5183

<sup>78</sup> SCOO-02 messages 5215-5255

<sup>79</sup> SCOO-02 messages 5257-5771

<sup>80</sup> SCOO-02 messages 5788-5796 - the inference the prosecution assert may be drawn is that the accused was aware that investigators were closing in on Kamitsis and he wanted her off the Crimestoppers Board to ensure NTPol, including himself, were not embarrassed when the inevitable occurred.

<sup>81</sup> Statement of Greg MacDonald dated 28 June 2015 annexure GMAC-04(h) email from Sims to Jan Currie cc Vicki Godden

communicated with the taskforce staff to advise that lawyer Ray Murphy was assisting her<sup>82</sup>. On 6 October the taskforce staff contacted Ray Murphy<sup>83</sup>. On 8 October<sup>84</sup>, Kamitsis messaged the accused “*are you home??*” and he responded “*yes, what are u up to?*” She replied “*on my way to you fora glass of wine?*” and the accused said “*No. here isn’t a good idea*” When she asked why he replied it was “*too hard to explain on text*” and that he would “*walk over (to Raffles) via bottle shop*”. She later messaged “*thanks for a lovely evening soooo nice to see you*”.

At 6:16pm Friday 10 October 2014 Mr Murphy on behalf of Kamitsis emailed the interagency taskforce members including Notaras, attaching a response to the civil notice. Notaras forwarded the email it to the accused at 7:47am Monday morning saying “*For information....have passed to the team*”. The accused emailed back “*Thanks Len. Encouraging!*”<sup>85</sup>. The accused continued to communicate with Kamitsis and on 16 October messaged her “*Use Viber. Much safer way to communicate*”. On 19 October when Kamitsis continued to use messaging he texted “*Use Viber!*”. They continued to communicate on Viber during the last part of October until the accused left on an overseas trip at the end of that month.

36. By 5 November Kamitsis had failed to respond satisfactorily to her letter of demand and the taskforce resolved to refer the matter back to NTPol for criminal investigation if she had not done so by 11 November<sup>86</sup>. On 12 November 2014 that referral was made, with the express expectation that a search warrant would be executed at Winnellie Travel on Saturday 15 November 2014.
37. The accused remained overseas, continuing in his personal communication with Kamitsis. Sims decided to execute the warrant a day early specifically on the basis that the accused would be in transit at the time<sup>87</sup>.
38. The warrant was executed at 11.25am. Kamitsis was arrested and transported to the watch house at 11,40am.
39. Examination of the phone data seized under warrant over the weekend of 15 and 16 November 2014 revealed the true nature of the relationship between McRoberts and Kamitsis to investigators.
40. Kershaw raised the matter with the accused on 17 November 2014, acting on the information of Payne. The accused denied a sexual relationship with Kamitsis but said that he would remove himself from Operation Subutai and the joint taskforce. The accused also removed Payne from the Operation Subutai chain of command.

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<sup>82</sup> GMAC-04(j) emails to and from Kamitsis

<sup>83</sup> GMAC-04(j) emails to and from Greg MacDonald finalising correspondence to go to Ray Murphy

<sup>84</sup> SCOO-02 messages 5264-5284

<sup>85</sup> GMAC-04(k) and additionally see statement of Brian Coe annexing email's from the accused's work computer contained on disc accompanying the brief (extracted email annexed hereto and marked "A")

<sup>86</sup> Statement of Mark Payne at par 66

<sup>87</sup> Statement of Sims par 39

41. On 14 January 2015, the accused resigned as the Commissioner of the Northern Territory Police after he was told that his Minister had lost confidence in him. That loss of confidence arose from a review by the Minister for Police, Fire and Emergency Services<sup>88</sup>, on the advice of the Solicitor General, of the conduct of the accused during Operation Subutai<sup>89</sup>.

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<sup>88</sup> And, at the time. Acting Chief Minister.

<sup>89</sup> See statements of Gary Barnes dated 13 May 2015 (entire statement); Craig Allen dated 11 May 2015 (entire statement); Michael Grant (now Chief Justice Grant) dated 2 July 2015; and Peter Chandler dated 30 June 2015,

*Jural version sent to  
defence 19.4.18 & COURT 20.4.18.*

**21616999**

**R v John Ringland McRoberts**

AMENDED CASE OUTLINE

1. Between the 2nd of May 2014 and 17th November 2014, the accused engaged in conduct that had the tendency to pervert the course of justice in that he intentionally sought to frustrate and deflect a criminal investigation into suspected fraudulent activity on the part of Northern Territory travel agents including by his intimate friend Alexandra (Xana) Kamitsis (“**Kamitsis**”), the owner and operator of Winnellie Travel (“**the criminal investigation**”), and thereby attempted to pervert the course of justice. He did this principally by:-
  - i. Between 2 May 2014 and 17 November 2014, after being advised that Kamitsis was the major target of the criminal investigation, failing to disclose the true nature of his relationship with Kamitsis and thereafter involving himself in the conduct of the criminal investigation knowing that it was improper for him to do so.
  - ii. On 4 June 2014, frustrating the execution of a search warrant that had been issued and approved for execution on the business premises of Winnellie Travel in furtherance of the criminal investigation.
  - iii. Between 2 May 2014 and 17 November 2014, undermining the criminal investigation by devising, implementing and championing an alternative to the criminal prosecution for travel agents suspected of fraud (including Winnellie Travel and Kamitsis), namely the civil recovery of debt.

**The relationship between the accused and Kamitsis**

2. The prosecution allege that since 2010, the accused and Kamitsis had a personal relationship which had progressed to a sexual relationship, at some stage prior to 2014. The nature of the relationship during all material times was:
  - i. an intimate one and that of close friends and confidantes;
  - ii. one in which the accused accepted gifts and other benefits from Kamitsis;
  - iii. one in which the accused made efforts to promote Kamitsis’ business;



and

- iv. the accused improperly shared information with Kamitsis about Police matters (together “**the intimate relationship**”).
3. The extent of the intimate relationship was a secret that the accused intended to keep covert. The accused knew the intimate relationship was evidenced by various telecommunications between Kamitsis and the accused and that such communications might be discovered during the criminal investigation.
4. The relationship is primarily proved by a large volume of SMS, iMessage and Viber messages exchanged between the accused and Kamitsis throughout the period May 2012-November 2014 and retrieved from the mobile telephone of Kamitsis<sup>1</sup>.
5. On 2 May the accused was present at a meeting with his acting Deputy Commissioner Mark Payne where AC Kershaw and Supt O'Brien provided a detailed update on the progress of an investigation into Winnellie Travel and Kamitsis. When the extent of the suspected fraud on the part of Kamitsis was revealed the accused was heard to remark “*she can't be this stupid*”. The accused advised the meeting (words to the effect), that he knew Kamitsis socially and that if she had committed offences, then she should be charged.
6. The prosecution allege that from this point on, the accused knew he should have nothing to do with the criminal investigation as it related to Kamitsis, and further, should have declared his conflict of interest to his immediate subordinate/s involved in the criminal investigation, and formally advised the extent of the intimate relationship to his employer.
7. At all material times the accused was the Commissioner of the Northern Territory Police and the Chief Executive of the Department of Police, Fire and Emergency Services<sup>2</sup>.

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<sup>1</sup> See extracted data spreadsheets annexed to the statements of Stephen Cook dated 15 September 2016 and 19 September 2016- SCOO-01 to. SCOO-07- as to the historical sexual relationship there are many messages that allude to it. An example is at SCOO-01 message 38 where Kamitsis states (inter alia) "I still don't know why you and I couldn't work"; message 95 "Remember making that bed a few times with you"; see also the messages set out in these submissions at par's 23, 24. 50(p) though note that the prosecution rely on the body of messages as a whole. Kamitsis' iPhone message and Viber message continuity is evidenced through the following witness statements: Clint SIMS statement of 28 February 2015 (seizure of phone at execution of warrant); Syndee GALATI statement of 8 December 2014 (exhibits officer records iPhone as CS/005); George CIOLKA statement of 7 January 2015 (records exhibited items into PROMIS); GALATI statement of 4 March 2015 (confirms item CS/005 was logged in PROMIS as exhibit 426720/004); Craig WINDEBANK statement of 2 March 2015 (download of data from item 426720/004); Anthony LAWRENCE statement of 6 April 2017 (copies extracted data from item 426720/004 onto portable hard drive); Stephen COOK statements of 15 September 2016 and 19 September 2016 (receipt of portable hard drive and extraction of relevant data to produce SCOO-02-07

<sup>2</sup> Statement Peter BRAVOS dated 12 May 2015 AnnexPBRA-02 letter of appointment, PBRA-04 Determination of Terms and Conditions of Office where similar provision is at par 66-67 and PBRA-11 being the terms applicable from 12 May 14 onwards; PBRA-06 Commission, PBRA-10 Commission on renewal of contact 12 May 2014; PBRA-11 Determination of Terms and Conditions of Office on renewal dated 12 May 2014;

8. At all material times the accused was bound by the terms and conditions of his office including:
- i. a specific contractual condition that he disclose in writing to his Employer where a potential conflict between his personal interest and official duty, whether real or apparent, has arisen or is likely to arise<sup>3</sup>;
  - ii. a requirement to arrange his private affairs in a manner that would prevent any conflict of interest from arising<sup>4</sup>
  - iii. a requirement to ensure there is no incompatibility or perceived incompatibility between his personal interests, activities or beliefs that interfere with the impartial fulfilment of his official duties and responsibilities<sup>5</sup>
  - iv. a requirement to cease or minimise any contact or interaction with persons who have or continue to have adverse dealings with NT Police<sup>6</sup>
  - v. a requirement to resolve any conflict of interest in favour of the public interest and the Northern Territory Police Force<sup>7</sup>
  - vi. a requirement to, wherever practicable, avoid becoming involved in police matters involving his friends<sup>8</sup>
  - vii. a requirement to not disclose any official information without proper authorisation or in circumstances that amount to a misuse of the information<sup>9</sup>
  - viii. a requirement that he not accept any gift or benefit for himself where that gift or benefit was or may be perceived to be, a payment for an act or omission which if done or not done would compromise, or may be perceived as compromising, their duty as a member of the police force<sup>10</sup>
  - ix. declare any gift or benefit that could be in breach of the Police General Order - Code of Conduct and Ethics<sup>11</sup>
  - x. a requirement not to accept any gift or benefit offered by a person or business that has tendered or supplies goods and services to the NT Police<sup>12</sup>.
9. At no time did the accused declare to his employer any relevant actual or potential conflict of interest and nor did he declare any gift or benefit received

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<sup>3</sup> PBRA-04 page 8 (clause 64); PBRA-11 page 9 (clause 74)

<sup>4</sup> PBRA-14 page 6 (clause 33.1)

<sup>5</sup> PBRA-14 page 6 (clause 33.2)

<sup>6</sup> PBRA-14 page 6 (clause 33.3)

<sup>7</sup> PBRA-14 page 6 (clause 34)

<sup>8</sup> PBRA-14 page 7 (clause 43)

<sup>9</sup> PBRA-14 page 8 (clause 49)

<sup>10</sup> PBRA-14 page 9 (clause 60)

<sup>11</sup> PBRA-14 page 9 (clause 62)

<sup>12</sup> PBRA-14 page 9 (clause 63)

from Ms Kamitsis<sup>13</sup>. Nor did the accused expand on his disclosure to police that he knew Kamitsis ‘socially’.

10. In or about 2010, the accused asked his executive assistant Pauline Benaim to include Kamitsis’ travel business Latitude Travel (trading as Winnellie Travel) as an option when she was booking his official travel. On the basis of that request, Ms Benaim booked work related travel and accommodation for the accused through Latitude on 4 occasions between 24 November 2010 and 22 October 2014<sup>14</sup>. This conduct triggered a requirement for the accused to declare a conflict of interest owing to the intimate relationship with Kamitsis, a requirement that was ongoing as he continued to use Kamitsis’ travel services<sup>15</sup>. Kamitsis would from time to time arrange, and the accused would accept, upgrades or other special treatment for the accused including when he was engaged in work related travel, whether booked through Latitude or not<sup>16</sup>. On 7 March 2014 the accused sent a message to Kamitsis stating *‘I’m doing my best to direct my business to U!’*<sup>17</sup>.

### **Operation Subutai**

11. Operation Subutai<sup>18</sup> was an NTPol investigation into suspected fraudulent activity by NT travel agents with respect to the Department of Health (DoH) administered Pensioner Carer Travel Concession Scheme (PCTCS). The police officer with early carriage of the investigation was Detective Sgt Jason Blake of the NTPol Fraud Squad (“Blake”).
12. Blake was consulted by DoH from October 2012 about suspected rorting of the PCTCS by travel agents following receipt of a complaint from a pensioner. Blake provided preliminary advice to DoH in accordance with the Treasurer’s Directions Pt 5 relating to financial loss, including reporting the matter to the Auditor General and taking steps to mitigate further loss.
13. As a result, DoH commissioned Ernst & Young to conduct an audit process<sup>19</sup>. Ernst & Young produced an audit report dated 4 October 2013<sup>20</sup>. It identified eight NT travel agents as being “higher risk agents” with respect to fraudulent activity. Winnellie Travel was nominated as one of the eight “higher risk agents”<sup>21</sup>.

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<sup>13</sup> Statement of Adam Giles dated 12 May 2015 at [ 17] and statement of Peter Chandler dated 7 August 2015 at par 12

<sup>14</sup> Statement of Pauline Benaim dated 30 June 2015.

<sup>15</sup> See in this regard annexed to statement of Bravos supra. PBRA-19 being a general broadcast message to all members of NTPol reminding them of the Conflict of Interest requirements of the Code of Conduct and Ethics and annexing the relevant form (for the latter see 2<sup>nd</sup> statement of Bravos, dated 7 August 2015 at par 5-6 and annexure PBRA-23

<sup>16</sup> Refer footnote 8 above

<sup>17</sup> SCOO-01 message 575

<sup>18</sup> Initially named Operation I [olden.

<sup>19</sup> Statement of Jeffrey Moffet dated 5 Nov 15 at par 5

<sup>20</sup> Statement of Jason Blake dated 5 May 2015 at par 9 and sec Annexure JBLA-01

<sup>21</sup> Annexure JBLA-01 supra at p25

14. Both the Auditor-General and DoH formally referred the PCTCS suspected fraud matter to NTPol for criminal investigation on 6 November 2013<sup>22</sup> and 13 December 2013<sup>23</sup> respectively.
15. The accused received the referrals<sup>24</sup> and the matter was allocated to the Fraud Squad with Blake appointed officer in charge of the investigation. Neither referral specifically mentioned Kamitsis or Winnellie Travel. The accused did not direct that the referral be dealt with in any way other than by referral to the Fraud Squad for investigation.
16. By 6 January 2014, the criminal investigation (initially named Operation Holden) was underway into suspected fraud against the PCTCS.
17. There were early concerns within Crime command about the likely scale of the PCTCS investigation as well as the possible sensitivities surrounding it<sup>25</sup>. The then Assistant Commissioner Crime Command Reece Kershaw initially proposed that the investigation focus on the transactions related to a single pensioner who had referred the matter to DoH, and which had prompted the initial inquiries<sup>26</sup>.
18. However, by 19 March 2014, Kamitsis and her travel agency, Winnellie Travel (aka Latitude Travel) were identified by the investigators as a major target for covert investigation on the basis of the trend analysis (from the Ernst & Young report) indicating the highest discrepancy in travel versus reimbursement<sup>27</sup>. Blake was directed to prepare a test brief for DPP opinion specifically in relation to Winnellie Travel<sup>28</sup>.
19. Blake identified Fernanda Da Silva as a senior citizen who had lodged a relevant travel request with Winnellie Travel. Unknown to the police, Ms Da Silva was the mother of Kamitsis. Kamitsis was present as Ms Da Silva's interpreter on Friday 21 March 2014 when Blake went to interview Ms Da Silva as part of his investigation. Although Blake did not proceed with his enquiries of Ms Da Silva, the investigation into Winnellie Travel then ceased to be covert.
20. On 23 March the accused was away on a work trip with travel and accommodation having been organised by Winnellie Travel<sup>29</sup>. That afternoon he sent a message to Kamitsis in response to her inquiry about

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<sup>22</sup> Annexure JBLA-02

<sup>23</sup> Annexure JBLA-03 and statement of Jeffrey MotTet dated

<sup>24</sup> The referrals are both annotated with a handwritten date and initials ".IRM"

<sup>25</sup> For example possible embarrassment to NTG due to inadequate systems within Dol 1, and possible damage to the reputation of the NT travel industry - see annexure to statement of Jason Blake dated 5 May 2015 JBLA-06 "Talking points for Supt O'Brien"

<sup>26</sup> Supra, annexure JBLA-06

<sup>27</sup> Annexure JBLA-07 at 3.2 "focus of in (sic) initial enquiries to undertake a covert investigation targeting one count involving Winnellie Travel" and see the identified action items all related to Winnellie Travel

<sup>28</sup> Statement of James .1 O'Brien dated 13 April 2015 par 13; statement of Jason Blake 5 May 2015 par 23

<sup>29</sup> Statement of Pauline Benaim PBEN-04 Latitude Travel Itinerary

the flight and accommodation saying *“All perfect thanks. Superb service and red carpet treatment at hotel thanks to U! Really appreciated!”*<sup>30</sup>

21. On 31 March the accused called for a Ministerial Briefing on the PCTCS investigation. The briefing was to address cost recovery from DoH if police provided a forensic accountant<sup>31</sup>.
22. On 4 April 2014<sup>32</sup>, the accused was back in Darwin and sent a series of messages to Kamitsis in response to an inquiry as to whether he wanted to catch up saying *“I’m at home!”*; *“Welcome to come here if U want?”*. Later that day Kamitsis sent him a message saying *“I really thought you would be my life long BB...And a life member of my raft boat!!”* The accused replied *“Am I not???”* The accused and Kamitsis then entered into a message discussion about their friendship during which Kamitsis was apparently emotionally upset. The accused sent her a message saying *“Come over!”*. Kamitsis responded *“I so wish I could...I don’t have a car “ “I so want to make love to you”*.
23. The next day, 5 April 2014<sup>33</sup>, Kamitsis sent the accused a message asking if his *“window of leave”* was still available, in response to his inquiry *“want to call by”*. The accused replied *“At a push can do”* Kamitsis joked about the tight schedule and messaged *“you might have to make me a coffee”*. The accused responded *“Won’t have time!”* and in response to a query whether the champagne is icy and the coffee hot, the accused responds *“I was but no drama. Another time”*.
24. On 17 April 2014 Blake submitted a “test brief” concerning Kamitsis to the DPP after having obtained the statement of Martha Swart as an alternative to that of Ms Da Silva.
25. On 21 April 2014<sup>34</sup>, Kamitsis asked (by message) if the accused was available to have dinner *“this evening”*. The accused declined but asked who was going. Kamitsis replied *“I was going to invite you to raffles for bacalao...Gk and JJ are out at some do”* (referring to her husband and son). The accused replied *“what a shame. That would have been great”*. A short time later he messaged *“U at Raffles now?” “Want to call by here?” “Can U come over now?” “Or can I go to Raffles?”*. Hours later Kamitsis messaged the accused:-

*“Just sent SM a message wishing him well for tomorrow.. I am glad you chose to see me today.. The last 4 months have been very difficult lots went on that I never had the opportunity to share with you.. I have truly missed us hanging out.. Drinking wine on your balcony and just being there for each other.. I have reflected a lot and I was so so hurt you forgot my birthday .. You have no idea how that upset me.. But we have turned a new leaf ..and*

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<sup>30</sup> See SC00-02 annexed to the statement of Stephen Cook dated 15 Sept 2015 message 4767

<sup>31</sup> The Briefing was drafted but did not end up being submitted as there was no progress on the issue of DoH funding a forensic accountant - see statement of Michael Murphy par 9-11

<sup>32</sup> SC00-02 messages 4758-4823

<sup>33</sup> SC00-02 messages 4878-4896

<sup>34</sup> Sc00-02 messages 4932-4953

*I ask you please not to allow It to ever get like that.. I really do believe our friendship is too important to let it go.. We have so so much to conquer and we are such a great team.. We have so many genuine reasons to do things together, legitimately .. we should take advantage of these things .. We have been through so many lane changes .. We always seem to surface.. That in itself shows friendship .. Bond .. And resilience.. Please don't hurt me anymore.. I am your number one supporter and your most loyal friend.. I want the same back please.. I want to know you will always defend me.. And fight for me.. Like I have for you.. Good night sweet dreams .. I will always love you trillions .. take great care., you will be missed xxxxxxxx”*

26. As referred to above, on 2 May the accused was present at a meeting with his acting Deputy Commissioner Mark Payne where Kershaw and O'Brien provided a detailed update on the progress of investigation into Winnellie Travel and Kamitsis<sup>35</sup>. The prosecution allege that from at least this point on, the accused knew he should have nothing to do with Operation Subutai as it related to Kamitsis, and further, should have declared his conflict of interest and the extent of it.
27. On 5 May 2014, the Fraud Squad received the written advice of Mr Morters of the DPP (dated 4 May) that, subject to the collection of certain evidence, there were reasonable prospects of conviction against Kamitsis based on the sample transaction contained in the test-brief (the transaction relating to Martha Swart)<sup>36</sup>. The advice sets out a basis for the opinion that a charge of stealing contrary to s210 of the *Criminal Code* would be made out and advises that demonstrating a course of conduct would assist in proving the element of dishonesty, referring to “*records (that) indicate a course of conduct on the part of the accused with respect to the Scheme*”<sup>37</sup>.
28. On 6 May 2014, an Operation Holden meeting record noted that both AC Kershaw and the accused had been briefed and were “*keen to see matter progressed*”<sup>38</sup> and that the investigation into Kamitsis was to be finalised prior to October 2014 because of the National Crime Stoppers conference in Darwin (Kamitsis was on the board of Crime Stoppers and was in fact Chairperson in 2014).
29. On 27 May 2014 Operation Holden was renamed Operation Subutai.
30. On 30 May 2014 Operation Subutai was declared a Major Crime by AC Kershaw<sup>39</sup> on the recommendation of the investigators and with the accused's apparent support. This allowed it to become a priority criminal

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<sup>35</sup> Statement of Reece Kershaw dated 30 June 2015 at par 10; statement of Mark Payne dated 12 May 15 at pars 5-13; Statement of James O'Brien dated 13 April 2015 pars 19-23

<sup>36</sup> Statement of Blake but see in addition Statement of David Morters dated 29 June 2015 and annexure DMOR- 01

<sup>37</sup> Supra DMOR-01 p3

<sup>38</sup> Minutes annexed to statement of Blake supra JBLA-10

<sup>39</sup> Major Crime declaration dated 30 May 2014 annexed to statement of Kershaw- RKER-02

investigation for NTPol and ensured both appropriate resourcing and a high level of internal governance<sup>40</sup>.

31. In accordance with the now Major Crime investigation plan, on 4 June 2014 Blake completed the internal NTPol protocols to obtain a search warrant and, at about 10am, attended at the Supreme Court to swear the information before a JP. At midday Blake attended an Operation Subutai meeting at which a “Crime Command Critical Decision” was made by the Joint Management Committee headed by AC Kershaw authorising the warrant to be executed<sup>41</sup>:

### **The attempt to pervert the course of justice**

32. On 4 June 2014, the accused first indicated to his staff that he no longer supported a criminal investigation into Kamitsis<sup>42</sup>. The prosecution allege that he had commenced his attempt to pervert the course of justice, a course directed to the preferring of criminal charges against Kamitsis, from as early as 7 May 2014.
33. The accused knew that Kamitsis and her business were a primary target of Operation Subutai by at least 2 May 2014, and possibly earlier.
34. Notwithstanding his statement to senior NTPol officers on 2 May that Kamitsis should be criminally prosecuted if she had committed offences, the accused was, within days of that meeting and external to police, beginning to advocate civil remedies for all travel agent suspects (including Kamitsis), ahead of criminal prosecution.
35. The accused continued to communicate with Kamitsis via personal messages throughout this time. However the accused chose to describe the relationship to his staff on 2 May, his conflict of interest was direct and substantial. It was improper for the accused to have any involvement in Operation Subutai from 2 May on. The accused knew this<sup>43</sup> yet between 2 May 2014 and 17 November 2014 the accused became and remained involved in Operation Subutai.
36. During that time Operation Subutai went from being declared a Major Crime by Assistant Commissioner Kershaw on 30 May 2014<sup>44</sup> with a search

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<sup>40</sup> Statement of Kershaw supra at par 14

<sup>41</sup> Statement of Kershaw supra par 16

<sup>42</sup> Refer to submissions on ‘Attempt to pervert the course of justice’ below

<sup>43</sup> This is a matter of inference to be drawn from various sources but including that he must have known, by virtue of his position and experience in law enforcement, that he should not have had any role at all in Operation Subutai because of the relationship; he was not truthful with his staff or the witness Gary Barnes as to the true nature of his relationship with Kamitsis and/or the existence of a conflict of interest (see statement Gary Barnes dated 13 May 2015 folder I); Far from ensuring he was outside of the chain of command as regards any investigation involving Kamitsis, the accused effectively took over Operation Subutai; During the continued investigation into Kamitsis he privately communicated with her including trying to ensure that their communications were covert by instructing her to use ‘Viber’ for example on 16 Oct 14 “Use Viber much safer way to communicate” SCOO- 02 message 5868 and 5383. See further these submissions at par [50]

<sup>44</sup> Statement of Reece Kershaw dated 30 June 2015 at par 14 and annexure RKER-02

warrant issued and about to be executed on 4 June 2014<sup>45</sup>, to being the subject of an interagency taskforce looking at a civil debt recovery process from 26 June 2014<sup>46</sup>.

37. Between 2 May 2014 and 17 November 2014, the accused did a number of things to devise, implement and champion a civil debt-recovery process in respect of all suspect travel agents (including Kamitsis), as an alternative to the criminal investigation. Further, the prosecution allege, he intended to frustrate and deflect his officers from pursuing the criminal investigation into suspected fraud on the part of Kamitsis.
38. The conduct alleged as tending to pervert the course of the criminal investigation into Kamitsis comprises (inclusive of circumstantial facts going to method and timing of frustration and deflection, and relationship between the investigative target Kamitsis and the accused) :-
  - a. **Meeting with Notaras 7 May 2014:** In the context of the intimate relationship with Kamitsis and his knowledge of the criminal investigation into her suspected fraud, on 7 May 2014 the accused met for coffee with Len Notaras, the then Chief Executive of DoH. He raised with Notaras the possibility that the PCTCS investigation should proceed as a civil matter whereby travel agents would be issued with debt notices and asked to show cause as to why they should not repay funds. The accused stated that a criminal investigation would attract unwanted media attention and could affect the reputation of the NT travel industry and NT Government. The accused told Notaras that Kamitsis (known socially to Notaras) was one of the suspect travel agents<sup>47</sup>.
  - b. **2<sup>nd</sup> meeting with Notaras 16 May 14:** On 16 May 2014, having been overseas between 8 and 12 May, the accused had a second informal and unscheduled meeting with Notaras to suggest that they jointly brief the Chief Minister and Health Minister regarding Operation Subutai<sup>48</sup>.
  - c. **Frustrating the Winnellie Travel search warrant 4 June 2014:** Shortly before June 4 it came to the accused's attention that Operation Subutai had been declared a Major Crime and that a search warrant had been authorised and issued for execution at Winnellie Travel business premises on 5 June. Pauline Benaim, Executive Assistant to the accused, organised a meeting for 3.30pm between the accused, Payne and Kershaw. At that meeting the accused stated that he was not satisfied that the threshold for the execution of the Winnellie Travel search warrant had been reached and raised a number of issues querying both the criminal investigation and the DPP advice. He told

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<sup>45</sup> Statement of Reece Kershaw dated 4 June 2014 at par I6; statement of Jason Blake dated 5 May 2015 pars 38 -39 and annexure JBLA-14

<sup>46</sup> Statement of Jason Blake dated 5 May 2015 pars 57-61

<sup>47</sup> See statement of Leonard Notaras dated 29 May 2015

<sup>48</sup> supra



the meeting words to the effect of “*this matter is not ready to go to an overt investigation. We need to pursue an alternative course of action*”<sup>49</sup>. As a result of the accused’s interceding, the approval for the warrant was withdrawn. The accused first proposed a civil remedy to his staff at this meeting and told them that he intended to brief the Chief Minister and the Minister for Health.<sup>50</sup> The accused’s purported concerns were conveyed via Kershaw to Blake to address in the form of 6 questions to be answered<sup>51</sup>. These were addressed by Blake in a return email on 5 June 2014<sup>52</sup>.

As a result of the accused’s action on 4 June, Kershaw tasked Fuller on 10 June to seek a review of a DPP advice recommending prosecution by approaching the author Mr Morters’ superior, the Director of Public Prosecutions, Mr Jack Karczewski QC<sup>53</sup>. Fuller was also to provide a briefing paper to address some of the other concerns stated by the accused on 4 June.

- d. **Possession of the investigation file from 19 June 14:** At a meeting on 19 June 2014 the accused took possession of the Operation Subutai investigation file which included the test brief relating to Kamitsis<sup>54</sup>. The file was accompanied by a briefing paper prepared by Blake. The accused held on to the file and referred to it at a meeting on 23 June.
- e. **Undermining the criminal investigation:** On 20 June 2014, the accused, after examining the Operation Subutai file, stated to Kershaw “*surely after all this time we have more evidence on other travel agents rather than the one*”<sup>55</sup> (referring to Kamitsis/ Winnellie Travel).

On 23 June 2014, the accused called an Operation Subutai meeting with Payne, Kershaw, Fuller and Sims at which he displayed detailed knowledge of the investigation and was critical of it, including of the single focus on Winnellie Travel<sup>56</sup>. At the meeting Sims provided a briefing in an attempt to justify resuming overt criminal action with respect to Winnellie Travel and Kamitsis<sup>57</sup> but was unsuccessful. The accused kept possession of the file and wanted a further meeting on 25 June, being the day before he was due to speak to the Chief Minister about the matter.<sup>58</sup> On 24 June, further spreadsheets and information were supplied to the accused.

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<sup>49</sup> Statement of Mark Payne dated 7 May 2015 at par 25

<sup>50</sup> Statement of Reece Kershaw dated 30 June 2015 pars 18-20

<sup>51</sup> See Annexure JBLA-16 annexed to statement of Jason Blake

<sup>52</sup> RKF.R-04 and par 5 of his statement

<sup>53</sup> The DPP refused to review the advice of his in-house fraud Snr Crown Prosecutor - see statement of Jack Karczewski QC dated 27 April 2015 at par 14 and annexure WKAR-01. Both the DPP and Morters considered the request for review unusual,

<sup>54</sup> Statement of Fuller supra at par 26-27; statement of Kershaw dated 30 June 2015 at par

<sup>55</sup> Statement of Reece Kershaw dated 30 June 2015 par 31

<sup>56</sup> Statement of Clinton Sims dated 7 May 2015 par 12-14

<sup>57</sup> Statement of Mark Payne dated 7 May 2015 par 33

<sup>58</sup> The date noted in the documents was originally 16 June, but no meeting occurred on that date.

- f. **Proposing the inter-agency taskforce to his staff, meeting 25 June:**  
On 25 June 2014, the accused called a meeting of his staff to discuss Operation Subutai<sup>59</sup>. The meeting was attended by the accused, Chalker (incoming Acting Deputy Commissioner) Payne, Fuller, Sims and Blake. The accused told the meeting that he knew Kamitsis but did not have a conflict of interest. He asked Blake for a list of all the travel agents involved. The accused told the meeting that he had considered how best to progress the investigation (including the investigation into Kamitsis) and had come up with the idea of an inter-agency taskforce and that he was intending to talk to the Chief Minister/ Minister for Police and the Health Minister about forming such a taskforce. The accused told the meeting that the primary goal was to recover the misspent funds. The accused stated that criminal investigation would only follow if funds were not repaid under the recovery process and that simultaneous warrants on all agents was preferred in that event.
- g. **Obtaining Ministerial sanction for civil remedy through inter-agency taskforce, meeting 26 June:** The accused intended to brief the Minister and CEO DoH during the week 16 June, in furtherance of a proposed civil remedy<sup>60</sup> (although this did not occur until 26 June). On 26 June 2014, at the accused's request<sup>61</sup>, a meeting was held between himself, Notaras, the Minister for Health Robyn Lambley, and Chief Minister/Minister for Police Adam Giles. The accused did not take any of the Operation Subutai investigators or senior staff with him to the meeting. At this meeting the accused briefed those present on Operation Subutai, mentioning that there were a group of eight who were more serious<sup>62</sup>. Adam Giles recalls the accused specifically mentioning Flight Centre as one of the eight. The accused proposed that letters of demand be sent to the travel agents and said he was concerned about the impact on the travel industry<sup>63</sup>. The accused did not inform his Minister (Giles) of the intimate relationship with Kamitsis. Giles told the accused to "go hard" on the eight travel agents in pursuing a criminal investigation and prosecution as he did not believe there would be any impact upon the tourism industry<sup>64</sup>. Notaras advised that there was no issue if the investigation immediately entered an overt phase or if time was to be taken to obtain further information. During the meeting the Ministers sanctioned the formation of an inter-agency Taskforce to deal with the suspected fraud of the part of travel agents including Kamitsis.
- h. **Promoting the civil-remedy to stakeholders. 30 June:** On 30 June 2014, the accused organised and attended a meeting with Notaras and public servants from the Departments of Justice and of

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<sup>59</sup> Statement of Clinton Sims dated 7 May 2015 par 19-20

<sup>60</sup> Statement of Reece Kershaw dated 30 June 2015 annexure RKER-03

<sup>61</sup> Statement of Adam Giles dated 12 May 2015 par 6. statement of Leonard Notaras

<sup>62</sup> Supra Giles at par 7

<sup>63</sup> Supra Notaras par 11

<sup>64</sup> Supra Notaras par 12

Treasury<sup>65</sup>. The accused was not accompanied by any Operation Subutai investigator

or member of his executive. He outlined his scheme for civil recovery to the meeting stating that to minimise potential damage to the NT government there was a need for a “softly, softly” approach. Jodie Ryan the then Under-Treasurer, recalls the accused specifically mentioning Flight Centre as one of a group of more serious suspects and states that the accused told the meeting it was unlikely that NTPol could conduct a successful criminal prosecution due to lack of evidence and insufficient DoH record keeping<sup>66</sup>.

- i. **Directing strategy of the taskforce** As a result of the accused’s conduct since the 25 June meeting, Blake and other NTPol investigators were told by Fuller on 7 July 2014 that accused had issued an instruction that any and all criminal investigations into the PCTCS (including Kamitsis) were to cease immediately.

On or about 2 July 2014, the accused informed Payne that a joint taskforce would be formed between NTPol and the Departments of Health, Treasury and Justice, with the DoH taking the lead. He said that civil matters would be dealt with through repayment and that any criminal offending would be referred to NTPol in the event of non-payment.

The accused directed Payne to design a strategy for a civil based remedy for the taskforce which Payne did and the accused told him it was “ingenious”. In accordance with the accused’s direction, on 14 July 2014, Payne introduced the investigation strategy to the Operation Subutai investigators which included:-

Stage 1 - With the cooperation of travel agents, reconcile DoH and travel agent records to identify overpayments, and recover monies.

Stage 2 - if travel agents do not cooperate then DoH records to be reconciled with carrier (airline) records.

Stage 3 - if travel agents do not cooperate and stage 2 outcomes provide support then elevate to collection of evidence by search warrant/ witness statements (seniors) with a view to prosecution.

- j. **Monitoring the taskforce:** On 6 August, the interagency taskforce met. Attendees included Blake and the new A/AC Crime David Proctor from NTPol, Jan Currie from DoH and Greg MacDonald from AGD. At the meeting there was confusion about the role and responsibilities of the taskforce and concerns over criminal vs civil action<sup>67</sup>. After the meeting Proctor was summoned by the accused for

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<sup>65</sup> Notaras pas 14-16

<sup>66</sup> Statement of Jodie Ryan dated 5 May 2015 at par 11

<sup>67</sup> Statement of David Proctor dated 9 April 2015 par 13

an “urgent verbal briefing”<sup>68</sup>. Proctor briefed the accused<sup>69</sup> including the concerns over criminal vs civil action.

- k. **Querying whether Blake should be removed from the taskforce, 12 August:** On 7 August 2014, Blake sent an email to taskforce members and Proctor. In it Blake outlined his concerns with the process including that by combining the civil and criminal approach, the success of both were placed in jeopardy, that if proof was obtained to the criminal standard the civil standard was also, by definition satisfied and that the frauds were serious and the prospects of success were good. Proctor and Notaras brought the email to the attention of the accused<sup>70</sup> and on 12 August 2014 briefed Payne about it on Payne’s return from leave (and resumption of the AC role)<sup>71</sup>. On 12 August 2014, the accused queried with Payne whether Blake should be removed from the Operation Subutai team altogether as he was not “*the right man for the job*”<sup>72</sup>.
- l. **Causing a letter of demand to be sent to Kamitsis, 1-3 September:**  
As a result of the accused’s actions, letters of demand to the travel agents, including Kamitsis, were signed by the CE DoH on 1 September 2014<sup>73</sup> and sent out on 3 September.
- m. **Monitoring Kamitsis’ compliance with civil recovery process while urging her to use Viber for their communications, 13 October:**

At 6:16pm Friday 10 October 2014 Mr Murphy on behalf of Kamitsis emailed the interagency taskforce members including Notaras, attaching a response to the civil notice. Notaras forwarded the email it to the accused at 7:47am Monday morning saying “*For information....have passed to the team*”. The accused emailed back “*Thanks Len. Encouraging!*”<sup>74</sup>. The accused continued to communicate with Kamitsis and on 16 October messaged her “*Use Viber. Much safer way to communicate*”. On 19 October when Kamitsis continued to use messaging he texted “*Use Viber!*”. They continued to communicate on Viber during the last part of October. The accused left on an overseas trip at the end of that month.

On 1 October 2014 Sims notified the taskforce that the 30 day compliance period for the demand letters was now up<sup>75</sup>. This update included that Winnellie Travel had provided “nil response”. On 3

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<sup>68</sup> Supra par 15

<sup>69</sup> Statement of David Proctor dated 9 April 2015 par 16

<sup>70</sup> Statement of David Proctor dated 9 April 2015 annexure DPRO-02

<sup>71</sup> Statement of Mark Payne dated 7 May 2015

<sup>72</sup> *ibid*

<sup>73</sup> There is conflicting evidence regarding the dates, the date of 1 September is taken from the taskforce Minutes of a meeting held on 5/11/14 annexed to the statement of Clint Sims - annexure CS1M-13. at 2.2 - and appears to be the correct date.

<sup>74</sup> GMAC-04(k) and additionally see statement of Brian Coe annexing emails from the accused’s work computer contained on disc accompanying the brief (extracted email annexed hereto and marked "A")

<sup>75</sup> Statement of Greg MacDonald dated 28 June 2015 annexure GMAC-04(h) email from Sims to Jan Currie cc Vicki Godden

October Kamitsis communicated with the taskforce staff to advise that lawyer Ray Murphy was assisting her<sup>76</sup>. On 6 October the taskforce staff contacted *Ray Murphy*<sup>77</sup>. On 8 October<sup>78</sup>, Kamitsis messaged the accused “are you home?? and he responded “yes, what are u up to? She replied “on my way to you for a glass of wine?” and the accused said “No. here isn’t a good idea”. When she asked why he replied it was “too hard to explain on text” and that he would “walk over (to Raffles) via bottle shop”. She later messaged “thanks for a lovely evening soooo nice to see you”.

### **NT Police resume carriage of the criminal investigation**

39. By 5 November Kamitsis had failed to respond satisfactorily to her letter of demand and the taskforce resolved to refer the matter back to NTPol for criminal investigation if she had not done so by 11 November<sup>79</sup>. On 12 November 2014 that referral was made, with the expectation that a search warrant would be executed at Winnellie Travel on Saturday 15 November 2014.
40. The accused remained overseas, continuing in his personal communication with Kamitsis. On 7 October Sims obtained call charge records for Kamitsis’ mobile phone.
41. Sims decided to execute the warrant a day early specifically on the basis that the accused would be in transit at the time<sup>80</sup>.
42. The warrant was executed at 11.25am. Kamitsis was arrested and transported to the watch house at 11.40am.
43. Examination of the phone data seized under warrant over the weekend of 15 and 16 November 2014 revealed the nature of the relationship between McRoberts and Kamitsis to investigators.
44. Kershaw raised with the accused the relationship he had with Kamitsis on 17 November 2014, acting on the information of Payne. The accused denied a sexual relationship with Kamitsis and said that he would remove himself from Operation Subutai and the joint taskforce. The accused removed Payne from the Operation Subutai chain of command<sup>81</sup>.
45. On 14 January 2015, the accused resigned as the Commissioner of the Northern Territory Police after he was told that his Minister had lost confidence in him as a result of his conduct during Operation Subutai.

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<sup>76</sup> GMAC-04(j) emails to and from Kamitsis

<sup>77</sup> GMAC-04(j) emails to and from Greg MacDonald finalising correspondence to go to Ray Murphy

<sup>78</sup> SCOO-02 messages 5264-5284

<sup>79</sup> Statement of Mark Payne at par 66

<sup>80</sup> Statement of Sims par 39

<sup>81</sup> Statement of Kershaw par 46

**DRAFT Aide memoire to jury**

The accused is charged on indictment with a single count that between 2 May 2014 and 17 November 2014 he attempted to pervert the course of justice.

A person is guilty of attempting to pervert the course of justice when that person engages in conduct that has the tendency to pervert the course of justice and does so with the intention of perverting the course of justice.

Whether or not the conduct succeeds in perverting the course of justice is irrelevant. It is the tendency of the conduct that is decisive.

In the context of a police investigation, conduct has a *tendency to pervert the course of justice* if it has a tendency to affect a Court's capacity to do justice arising out of that investigation. The tendency of the conduct is to be judged on the risk it poses to the course of justice in the ordinary course. This is so even if, in the particular case, there was no actual risk of perverting the course of justice.

In the present case, in order to prove the accused guilty of the charge, the prosecution must prove beyond reasonable doubt that:

1. The accused engaged in conduct, that is, that he did one or more of the acts specified in the Schedule below; and
2. That the conduct engaged in by the accused had a tendency to frustrate or deflect the police from fully and freely pursuing the criminal investigation into suspected fraud on the part of Northern Territory travel agents including Xana Kamitsis; and
3. That, in engaging in such conduct, the accused intended to frustrate or deflect the police from fully and freely pursuing the criminal investigation into suspected fraud on the part of Northern Territory travel agents including Xana Kamitsis.

A number of discrete acts are relied upon by the prosecution, as proof of the offence charged. You must be *unanimously* satisfied beyond reasonable doubt as to 2. and 3. above with respect to *at least one of the acts specified in the Schedule* before you are able to find the accused guilty of the count charged.

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