The Queen v Hampton [2006] NTSC 48

PARTIES:	THE QUEEN
	v
	HAMPTON, Wayne Andrew
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NOS:	20508002 and 20508008
DELIVERED:	16 June 2006
HEARING DATES:	13 June 2006
EDITED:	Edited in accordance with Suppression Orders made on 19 June 2006
JUDGMENT OF:	SOUTHWOOD J

CATCHWORDS:

Criminal Code: Division 3 of Part IIA

Heffernan v R (2005) 194 FLR 370; *R v Mailes* (2001) 53 NSWLR 251; *R v Presser* [1958] VR 45, applied

REPRESENTATION:

Counsel:

Plaintiff:	E Armitage
Defendant:	P Maley

Solicitors:

Plaintiff:	Office of the Director of Public Prosecution
Appellant:	Maleys

Judgment category classification:	C
Judgment ID Number:	Sou0627
Number of pages:	21

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

The Queen v Hampton [2006] NTSC 48
Nos. 20508002 and 20508008

BETWEEN:

THE QUEEN

AND:

HAMPTON, Wayne Andrew

CORAM: SOUTHWOOD J

REASONS FOR JUDGMENT

(Delivered 16 June 2006)
(Edited in accordance with Suppression Orders made 19 June 2006)

Introduction

[1] There are three applications before the court. First, an application by the accused for bail. Secondly, an application by the accused to withdraw an application that raised his fitness to stand trial. Thirdly, an application by the prosecution for an order that the prosecution is to be given access to the reports of a psychiatrist and a psychologist that have been given to the court in accordance with an order made by the court under s 43O(d) of the Criminal Code.

[2] The background to the applications before the court is as follows. The accused is charged with 13 counts in an indictment dated 21 October 2005. He has been remanded in custody since 6 April 2005. On 23 May 2006 the

accused appeared before the court in person. He asked to be bailed until the start of his trial on 12 September 2006. Bail is sought so that the accused can obtain medical treatment which he says he is unable to obtain in prison. Bail is opposed by the prosecution. During the course of the accused's application for bail, Ms Armitage, who appeared on behalf of the Crown, submitted that the accused's application for bail must be considered in the context of an existing order of the court that there is to be an investigation into the accused's fitness to stand trial. On 13 February 2006 Mildren J made orders that under s 43N(2) of the Criminal Code there is to be an investigation into the accused's fitness to stand trial; and, under s 43O(d) of the Criminal Code the accused shall be examined by a psychiatrist and a psychologist appointed by the court and the reports of the results of their examinations are to be given to the court. The medical treatment for which the accused seeks bail is for medical conditions that are unrelated to the question of his fitness to stand trial.

[3] As the accused is represented by counsel on the question of his fitness to stand trial I adjourned the accused's application for bail to 7 June 2006 to enable his counsel to appear and make whatever submissions counsel considered appropriate in the light of the prosecution's submissions. I also requested Ms Armitage to write to Dr Wake and ask him to provide a report to the court about the accused's medical conditions which are the basis of his application for bail. I informed the parties that I would ask my associate to write to counsel for the accused and request him to appear on the

adjourned date. I subsequently also asked my associate to provide counsel for the accused with a copy of the reports of the psychiatrist and the psychologist which had been given to the court in accordance with the orders of Mildren J; and, to request counsel for the accused to advise the court whether the accused objected to the reports being given to the Crown.

[4] On 7 June 2006 the accused appeared in person to argue his application for bail, Ms Armitage appeared for the Crown and Mr Bradley appeared for the accused on the question of accused's fitness to stand trial. Mr Bradley told the court that the accused objected to the reports of the psychiatrist and the psychologist being given to the prosecution and he applied to withdraw the application of the accused that raised the question of his fitness to stand trial. The prosecution opposed the course proposed by Mr Bradley. Ms Armitage submitted that as Mildren J had ordered that there is to be an investigation into the accused's fitness to stand trial the accused could not discontinue that process. She argued that the statutory regime that is established by Division 3 of Part IIA of the Criminal Code is such that once the court has made an order that there is to be an investigation into an accused person's fitness to stand trial the question of an accused person's fitness to stand trial must be resolved by a verdict of a jury that the accused is either fit or unfit to stand trial or an agreement between the parties that the accused was unfit to stand trial. As neither counsel was in a position to make full submissions to the court about the nature of an order under s 43N(2) of the Criminal Code I further adjourned the proceeding to 13 June

2006 to enable counsel to prepare for legal argument about whether an order under s 43N(2) of the Criminal Code was a final order or an order that could be set aside by the court without the necessity of a jury verdict.

[5] On 13 June 2006 the accused appeared in person to argue his application for bail, Ms Armitage appeared for the Crown and Mr Maley appeared on behalf of the accused to argue the issues concerning the investigation into his fitness to stand trial. Mr Maley applied to withdraw the application that raised the accused's fitness to stand trial and he objected to the reports of the psychiatrist and the psychologist being given to the Crown … . Ms Armitage formally applied to the court for an order that the prosecution is to be given access to the reports of the psychiatrist and the psychologist that have been given to the court and she again submitted that the statutory regime was such that it was necessary for a jury to determine if the accused was fit to stand trial.

Issues

[6] There are three principal questions for determination by the court. First, in what, if any, circumstances can the court set aside an order of the court that there is to be an investigation into the fitness of an accused person to stand trial? Secondly, is the prosecution entitled to be given access to the reports of the psychiatrist and the psychologist that have been given to the court under s 43O(d) of the Criminal Code? Thirdly, …

[7] In my opinion for the reasons given below an order of the court made under s 43N(2) of the Criminal Code is not a final order. Such an order may be set aside if the evidence before the court demonstrates that there are no reasonable grounds on which to question the accused person's fitness to stand trial or if there is no evidence which is capable of satisfying a judge that there are reasonable grounds on which to question the accused person's fitness to stand trial. There are no reasonable grounds on which to question the accused person's fitness to stand trial if a reasonable jury properly directed could not reasonably conclude the accused was unfit to stand trial. The prosecution is to be given access to the reports of the psychiatrist and the psychologist on conditions …

Background to the order that there is to be an investigation into the fitness of the accused to stand trial

[8] On 13 February 2006 Mr Maley appeared on behalf of the accused on instructions from the Northern Territory Legal Aid Commission. He made an application to the court under s 43O(d) of the Criminal Code for an interim order that the accused undergo an examination by a psychiatrist or other appropriate expert and that a report of the results of the examination is to be given to the court. Such an order may be made by the court and the report of results of the examination given to the court before the court makes an order under s 43N(2) of the Criminal Code that there is to be an investigation into the fitness of an accused person to stand trial. Section 43O of the Criminal Code provides that before or at the time the court

makes an order under s 43N(2) of the Criminal Code for an investigation, the court may also make the interim orders it considers just.

[9] The basis of Mr Maley's application was as follows. He was instructed by the Northern Territory Legal Aid Commission on 19 January 2006. He had seen the accused on two occasions. On the first occasion he only saw the accused for a short time. The second occasion he saw the accused was on 12 February 2006 at which time he spoke to the accused at length and he sought instructions in relation to a considerable amount of material. During the process of taking instructions Mr Maley formed a grave reservation that the accused may be unfit to stand trial. Mr Maley frankly told the court that as he only had an opportunity to take instructions from the accused on two occasions his application was not based on anything more than a gut reaction to the circumstances in which he found the accused. During his submissions in support of the application that the accused be examined by a psychiatrist Mr Maley referred to s 43J of the Criminal Code and said that it was his belief that the accused clearly did not understand the substantial effect of any evidence that may be given in support of the prosecution's case and that he may be unable to give appropriate instructions to Mr Maley as his counsel. He said that when he consulted the accused he constantly said that he was confused, he did not understand what was going on and he was flipping out. Mr Maley told the court that it was difficult to take instructions and properly prepare when his instructions were in a constant

state of flux. In Mr Maley's opinion it was in the interests of justice and fairness to the accused that a psychiatrist should examine the accused.

[10] Shortly after Mr Maley told the court about the application that he wished to make on behalf of the accused, Mildren J asked Mr Maley two questions, "Before you can make an order under s 43O [of the Criminal Code] you need to consider s 43N too, don't you?" and, "Are you raising the possibility of fitness to stand trial?" Mr Maley answered his Honour's second question in the affirmative. It seems that his Honour may have been under a misapprehension that before making an order under s 43O(d) of the Criminal Code the court had to make an order under s 43N(2) of the Criminal Code.

[11] When asked by Mildren J if the prosecution supported the application, Ms Armitage stated:

> I have very little material on which to base such an application. I can advise the Court that the matter proceeded with great difficulty through the committal process because of the apparent inability of two separately briefed defence counsels to obtain appropriate instructions and both defence counsel were ultimately sacked, for want of a better word, during the course of the committal proceedings and the committal proceeded with an unrepresented accused or defendant at that time.
>
> The only thing that I can advise is that on each occasion I was advised by defence counsel that they were unable to obtain instructions and they had concerns about the accused's ability to either provide instructions or to fully understand the nature of the proceedings that he was involved in. I don't have any psychiatric reports to support that. However, I can only say that it was a difficult process and there has been great vacillation with respect to the advice that has been given to the Crown as to how the matter is to be resolved.

[12] Interestingly none of the previous defence counsel asked the Court of Summary Jurisdiction to reserve the question of the accused's fitness to stand trial nor did the presiding magistrate of his own motion raise any such concerns.

[13] After hearing from Ms Armitage, Mildren J asked Mr Maley to expand his submissions. He did so and his Honour then stated, "now that you have explained it properly I think I will make the order that you seek". The order sought by Mr Maley was an order that the accused be examined by a psychiatrist and that a report of the results of the examination is to be given to the Court. There was then the following exchange between Mildren J and Ms Armitage:

> His Honour: Now, I think I should actually make an order [that there is to be an investigation into] the fitness of the accused to stand trial.
>
> Ms Armitage: Yes
>
> His Honour: Is that right, Ms Armitage?
>
> Ms Armitage: Yes, an indictment has been presented …

And later after some discussion about the effect of the requirement in s 43N(1) of the Criminal Code for an indictment to have been presented before the court can order that there is to be an investigation into an accused person's fitness to stand trial -

> His Honour: So I should then make an order under s 43N(2), order [that there is to be] an investigation into the fitness of the accused to stand trial, is that right?
>
> Ms Armitage: Yes, thank you your Honour.

[14] At no stage did Ms Armitage advise Mildren J that the examination being sought by counsel for the accused could be ordered under s 43O(d) of the Criminal Code before the court made an order under s 43N(2) of the Criminal Code. As I have stated above it is unclear whether his Honour was under a misapprehension that before he could make an order under s 43O(d) of the Criminal Code he had to consider s 43N(2) of the Criminal Code.

[15] Mildren J made the following orders:

1. Under s 43N(2) of the Criminal Code there is to be an inquiry into the fitness of the accused to stand trial.

2. The accused is to undergo an examination by a psychiatrist and a report of the results of the examination is to be given to the court.

3. The accused is to be examined by a forensic psychologist and the report of the results of the examination by the psychologist is to be given to the psychiatrist who is to examine the accused and to the court.

[16] The basis of the above orders appears to have been that in reliance on the statements of counsel from the bar table that they were concerned about the fitness of the accused to stand trial Mildren J was satisfied that there were

reasonable grounds on which to question the accused person's fitness to stand trial namely, that the accused was unable to understand the substantial effect of any evidence that may be given in support of the prosecution and the accused was unable to give instructions to his legal counsel. There was no evidence before the Court about any of the matters about which counsel had expressed concern.

[17] In view of the confined nature of the application made on behalf of the accused by Mr Maley and the nature of the submissions made by Ms Armitage to Mildren J there is a real question as to whether the Crown has assumed the onus of rebutting the presumption of fitness. At the very least it would seem that the prosecution should have the carriage of the matter if an investigation into the fitness of the accused is commenced before a jury. It is apparent that the defence does not wish to assume the burden of proving that the accused is unfit to stand trial.

Division 3 of Part IIA of the Criminal Code

[18] It is a well established principle of the criminal law that an accused person must be mentally fit to stand trial before an accused person can be tried in a court of law. The principle is part of the broader principle that the trial of an accused person must be fair. At common law the minimum standards with which an accused person must comply before an accused person can be tried without unfairness or injustice required the accused person to have ability - to understand the nature of the charge; to plead to the charge and to

exercise the right of challenge; to understand the nature of the proceeding, namely, that it is an inquiry as to whether the accused committed the offence charged; to follow the course of the proceeding; to understand the substantial effect of any evidence that may be given in support of the prosecution; and to make a defence or answer the charge: *R v Presser* [1958] VR 45 at 48.

[19] Division 3 of Part IIA of the Criminal Code establishes a statutory regime for investigating and determining if an accused person is fit to stand trial in the Northern Territory. The provisions of the Criminal Code cover the field. The standards of fitness with which an accused person must comply before an accused can be tried are almost identical to those established by the common law. Section 43J of the Criminal Code Provides as follows:

> 43J. When is a person unfit to stand trial?
>
> (1) A person charged with an offence is unfit to stand trial if the person is –
>
> (a) unable to understand the nature of the charge against him or her;
>
> (b) unable to plead to the charge and to exercise the right of challenge;
>
> (c) unable to understand the nature of the trial (that is that a trial is an inquiry as to whether the person committed the offence);
>
> (d) unable to follow the course of the proceedings;
>
> (e) unable to understand the substantial effect of any evidence that may be given in support of the prosecution; or

(f) unable to give instructions to his or her legal counsel.

(2) A person is not unfit to stand trial only because he or she suffers from memory loss.

[20] The statutory regime established by the Criminal Code is as follows. An accused person is presumed to be fit to stand trial: s 43K(1) of the Criminal Code. The issue of an accused person's fitness to stand trial may be raised by the prosecution or the accused or the Court: s 43N(1) of the Criminal Code. The presumption of fitness to stand trial is rebutted only if it is established by an investigation by a jury under s 43P of the Criminal Code that the accused person is unfit to stand trial: s 43K(2) of the Criminal Code, or the parties to the prosecution of the offence agree that the accused person is unfit to stand trial: s 43T of the Criminal Code. The court must order an investigation into the fitness of an accused person to stand trial if the question was reserved by the Court of Summary Jurisdiction during the committal proceeding or the judge is satisfied that there are reasonable grounds on which to question the accused person's fitness to stand trial: s 43N(2) of the Criminal Code. The investigation into an accused person's fitness to stand trial is to be conducted before a jury and the question of a person's fitness to stand trial is a question of fact to be determined by a jury on the balance of probabilities: s 43L of the Criminal Code. If a person's fitness to stand trial is raised by the prosecution or the accused, the party raising the question bears the onus of rebutting the presumption of fitness: s 43K(3) of the Criminal Code. If the question of a person's fitness to stand

trial is raised by the court, the prosecution has carriage of the matter and no party bears the onus of rebutting the presumption of fitness. The question of the fitness of an accused person to stand trial may be raised more than once in the same proceeding: s 43N(4) of the Criminal Code.

The argument of the prosecution

[21] The prosecution argues that the provisions of s 43N(2) of the Criminal Code are mandatory. Ms Armitage submits that once the Court makes an order under s 43N(2) of the Criminal Code the order is final and cannot be set aside by the court and the question of an accused person's fitness to stand trial must be determined by a jury unless it is agreed between the parties that the accused person is unfit to stand trial. In support of this argument the prosecution relies on the use of the word "must" in the first line in s 43N(2) of the Criminal Code and the fundamental responsibility of a trial judge to ensure that an accused person receives a fair trial: *Heffernan v R* (2005) 194 FLR 370 at par [108]. Ms Armitage submitted that in light of the purpose of the statutory regime and the approach which the common law has consistently taken concerning the fundamental right of a person placed on trial to have a sufficient understanding of the proceeding the court should hold that the legislative intention is that an order made under s 43N(2) of the Criminal Code is a final order: *R v Mailes* (2001) 53 NSWLR 251. Only if the accused's fitness to stand trial was not raised in good faith may consideration be given to setting aside an order made under s 43N(2) of the

Criminal Code of the Criminal Code: *Mailes* (supra). For the reasons set out below I do not accept the prosecution's submissions.

[22] The prosecution's argument that an order of the court under s 43N (2) of the Criminal Code is a final order creates some problems for the application of the statutory regime. It will not be unusual for applications for an order under s 43N(2) of the Criminal Code to be based on information that is incomplete or incorrect. On rare occasions the information that is the basis of an application for an order under s 43N(2) of the Criminal Code may even be false. The question arises should a jury be empanelled if evidence emerges, before an investigation has commenced, which demonstrates that there are no reasonable grounds on which to question the accused person's fitness to stand trial? Likewise, should a jury be empanelled if there is no evidence which is capable of satisfying a judge that there are reasonable grounds on which to question the accused person's fitness to stand trial?

The argument on behalf of the accused

[23] Mr Maley submits that there is no evidence on which the accused can rely to discharge the standard of proof specified under the statutory scheme and that being the case there is no point in the accused assuming the burden of proof. In the circumstances it would be unfair … to the accused for the question of the accused's fitness to stand trial to be investigated before a jury.

[24] There is some sense in Mr Maley's argument. The accused did not seek an order that there be an investigation into the fitness of the accused to stand

trial. The accused only asked for an order that the accused be examined by a psychiatrist and that a report of the results of the psychiatrist's examination be given to the court. It is apparent that counsel for the accused intended to take an incremental approach to assessing the question of the fitness of the accused to stand trial. If evidence that the accused was unfit to stand trial became available after the accused was examined by a psychiatrist the accused would make an application for an order that there is to be an investigation into the fitness of the accused's to stand trial. If no such evidence became available after the accused was examined by a psychiatrist no such application would be made. If evidence that the accused was unfit to stand trial was subsequently obtained, s 43N(4) of the Criminal Code enabled the accused to raise the question of the fitness of the accused to stand trial again at a later time.

[25] The difficulty with Mr Maley's argument is that the order the accused originally applied for was made by the court and has been executed. The reports of the psychiatrist and the psychologist have been given to the court. There is no existing application by the accused that is capable of being withdrawn. Rather, the question is, should the order made by Mildren J on 13 February 2006 be set aside?

Section 43N(2) of the Criminal Code

[26] Section 43N(2) of the Criminal Code provides as follows:

> The court must order an investigation into the fitness of the accused person to stand trial if –
>
> (a) the question of fitness was reserved during the committal proceedings; or
>
> (b) the Judge is satisfied that there are reasonable grounds on which to question the accused person's fitness to stand trial.

[27] In order to determine whether an order of the court under s 43N(2) of the Criminal Code is final it is necessary to construe the section in its statutory context. The relevant context includes the following. A condition precedent to the commencement of an investigation into the fitness of an accused person to stand trial is a determination by a judge that the judge is satisfied there are reasonable grounds on which to question the accused's fitness to stand trial: s 43N(2)(b) of the Criminal Code. There is a threshold question which must be determined by the court before an investigation into an accused person's fitness to stand trial may be commenced before a jury. Unless the question of fitness has been reserved by the Court of Summary Jurisdiction at committal or there are reasonable grounds on which to question an accused's fitness to stand trial there is to be no investigation before a jury. The court may make interim orders including orders that are made for the purpose of obtaining evidence about the question of an accused person's fitness to stand trial: s 43O(c) and (d) of the Criminal Code. The investigation into an accused person's fitness to stand trial does not commence until the jury is empanelled: s 43P(1) of the Criminal Code. The question of whether a person is fit to stand trial is a question of fact to be

determined by the jury on the balance of probabilities: s 43L of the Criminal Code. The question of the accused person's fitness to stand trial may be raised more than once in the same proceeding: s 43N(4) of the Criminal Code.

[28] The purpose of the requirement of the statutory regime that, before a jury may commence an investigation, a judge must be satisfied that there are reasonable grounds on which to question an accused person's fitness to stand trial and the purpose of giving the court the power to make interim orders for the purpose of obtaining reports of the results of the examination of an accused person by appropriate experts is to ensure that the question of an accused's fitness to stand trial is properly investigated and that a jury is not bothered by trifling or insubstantial investigations into the question of an accused person's fitness to stand trial. It would be odd for the legislature to have intended that a court should have the benefit of considering a report of the results of a psychiatric examination in determining if there are reasonable grounds on which to question an accused's person's fitness to stand trial if the examination was ordered and the report obtained under s 43O(d) of the Criminal Code before an order was made under s 43N(2) of the Criminal Code but not if such a report were obtained after an order was made under s 43N(2) of the Criminal Code and before the jury was empanelled.

[29] In my opinion, so long as an order under s 43N(2) of the Criminal Code has not been executed and an investigation into an accused person's fitness to

stand trial has not commenced before a jury, an order of the court under s 43N(2) of the Criminal Code is not a final order. Such an order maybe set aside by the court if evidence emerges that demonstrates there are no reasonable grounds on which to question an accused person's fitness to stand trial. There is no point in the question of an accused person's fitness to stand trial being investigated by a jury if on the evidence obtained pursuant to the interim orders there are no reasonable grounds on which to question the accused person's fitness to stand trial. In those circumstances the order of the court that there is to be an investigation into the accused's fitness to stand trial may be set aside. The fact that an order under s 43N(2) of the Criminal Code is set aside does not mean that the fitness of an accused person to stand trial cannot be subsequently raised by the prosecution or the accused or the court: s 43N(4) of the Criminal Code

[30] There are no reasonable grounds on which to question the accused person's fitness to stand trial if a reasonable jury properly directed could not reasonably conclude the accused was unfit to stand trial. In *Heffernan v R* (2005) 194 FLR 370 the Court of Criminal Appeal the Court of Appeal stated at par [124]:

> Section 43N of the Code requires that an investigation into fitness to stand trial "must" be ordered if the Judge is satisfied that there are "reasonable grounds on which to question the accused person's fitness to stand trial." The essence of the decision required of the trial Judge is whether there are "reasonable grounds" on which to "question" fitness to stand trial. While it might be thought that this is a less stringent test than requiring a trial Judge to be satisfied that there is a "real and substantial question to be tried" with respect to fitness, unless the Judge was satisfied that a reasonable jury properly

> directed could not reasonably conclude the accused was not fit to stand trial, there would necessarily exist "reasonable grounds" on which to "question" fitness to stand trial. In that context, however, it remains true that the existence of a mental disorder, even a severe mental disorder, does not of itself necessarily mean that there are reasonable grounds on which to question fitness to stand trial. Similarly, the fact that an accused suffering from a mental illness conducts a defence contrary to the accused's best interests does not, of itself, necessarily mean that there are reasonable grounds on which to question fitness. The court must have regard to all the circumstances and to the criteria set out in s 43J in deciding whether such reasonable grounds exist.

[31] Having considered the criteria set out in s 43J of the Criminal Code, the reports of the psychiatrist and the psychologist and having reviewed the submissions that were made by counsel to Mildren J, it is my preliminary opinion that the order of Mildren J made on 13 February 2006 that there is to be an investigation into the accused's fitness to stand trial should be set aside. On the available evidence my preliminary opinion is that a reasonable jury properly directed could not reasonably conclude the accused was unfit to stand trial. It is the opinion of both the psychiatrist and the psychologist that the accused is fit to stand trial. I propose to hear the parties further about this issue once the Crown has had the opportunity to peruse the reports that have been given to the court.

[32] As there is no existing application which may be withdrawn by the accused the application made by Mr Bradley and Mr Maley on behalf of the accused to withdraw the application that raised the question of the accused's fitness to stand trial should be dismissed.

Access to the reports of the psychiatrist and the psychologist

[33] Both the Crown and an accused person have an interest in the accused person receiving a fair trial and in being heard on any question of the accused person's fitness to stand trial. In this proceeding the Crown joined in the application for an order that the accused be examined by a psychiatrist and a psychologist and that reports of the results of the examinations be given to the Court. In the circumstances it is just that the Crown is given access to each of the reports. The examinations and reports were sought by counsel for the accused in circumstances where it ought to have been anticipated that copies of the reports may be given to the Crown. There is nothing in the Criminal Code or any other Act which prevents access to the reports being given to the Crown. It is difficult to see how the question of the accused's fitness to stand trial could be agitated without the Crown being given access to the reports of the psychiatrist and the psychologist. …

[34] However, the reports of the psychiatrist and the psychologist are reports that are given to the court. Once received they are in the custody of the court. In the circumstances the court has the power to impose conditions of access to the reports for the purpose of ensuring that the accused receives a fair trial. … access to the reports of the psychiatrist and the psychologist should be granted to the Crown on the following conditions:

1. …

2. …

3. …

4. …

Orders

[35] I make the following order:

> The application of the accused to withdraw the application that raised the question of the accused's fitness to stand trial is dismissed.

[36] I will hear the parties further as to the conditions that are to be imposed on the prosecution's access to the reports of the psychiatrist and the psychologist and as to whether the order of Mildren J made on 13 February 2006 that there is to be an investigation into the fitness of the accused to stand trial should be set aside. Once those questions have been resolved I will continue to hear the accused's application for bail.
