

ANNEXURE E

Report of an Inquiry by a Conduct Division
of the Judicial Commission of NSW
in relation to
Magistrate Jennifer Betts

21 April 2011

IN THE MATTER OF
JUDICIAL OFFICERS ACT 1986

IN THE CONDUCT DIVISION OF
THE JUDICIAL COMMISSION OF NSW

IN THE MATTER OF JENNIFER BETTS
MAGISTRATE OF THE LOCAL COURT OF NSW

PARTICULARS OF COMPLAINT

A. MR CASTLE

The following complaint is made about the behaviour of the Judicial Officer, Ms Betts while acting in the course of her duties at Ryde Local Court on 26 June 2009.

Pre judgement

1. The Judicial Officer pre-judged the matter in which Mr Castle was solicitor for the defendant.

Particulars:

- a. At the commencement of the hearing and prior to hearing any evidence or submissions, the Judicial Officer prejudged the nature of that evidence and submissions:

MR CASTLE: *Ah, Madam, my client does have fairly pressing reasons - reasons for a licence.*

THE MAGISTRATE: *Won't do it - where she does a traffic attendance in the program 15 times. Won't get it. Okay. It makes a mockery of the demerit point system if young people especially (indistinct) think because they need to get to university or school, or whatever; public transport is here, available.*

MR CASTLE: *University and work, your Honour.*

THE MAGISTRATE: *So what? We all do. Okay. (T2:34-46)*

- b. During an early exchange with Mr Castle, the Judicial Officer prejudged the nature of that evidence and submissions:

THE MAGISTRATE: *Don't talk to me when I'm talking to you, okay? Double demerit points are well advertised. But two times your client has been caught exceeding the speed limit on a provisional 2 licence. Does she want to kill somebody?*

MR CASTLE: *Um --*

THE MAGISTRATE: *The two (indistinct) one of those is a double demerit points period. "So what" is what I am going to say to her when she gets in the witness box.*

MR CASTLE: *She heard --*

THE MAGISTRATE: *She will need to explain to me why she blatantly committed those two offences and disregarded her need for a licence, because that's exactly what she has done. (T3:23-40)*

- c. When questioning the defendant, the Judicial Officer revealed she had formed a view of the defendant's evidence, prior to hearing all the evidence.

THE MAGISTRATE: *97 in an 80 is what the camera got you at, okay. Those signs clearly say 80. Did you see the signs?*

DEFENDANT: *I don't know.*

THE MAGISTRATE: *Of course you didn't. You don't know that you saw the signs? You have to establish evidence to my satisfaction that you are a fit and proper person to have a licence. The explanation for this does not cut it, okay?*

DEFENDANT: *Okay. (T5:30-38)*

...

THE MAGISTRATE: *You are the one who has lodged an appeal. You have to establish that you are a fit and proper person to have your licence restored to you.*

DEFENDANT: *I am a fit and proper person.*

THE MAGISTRATE: *No, you're not. I'm saying (Indistinct) on one offence, okay. You've got two speeding offences within a month of one another.*

DEFENDANT: *Okay.*

THE MAGISTRATE: *That's very poor, isn't it? Okay.*

DEFENDANT: *I don't believe so. (T6:17-28)*

- d. The Judicial Officer did not accept the tender of testimonials and decided the matter without giving the defendant a reasonable opportunity at a later time to tender those documents (see T4:8-14)

Use of intemperate language

2. The Judicial Officer used intemperate language to the defendant while questioning her.

Particulars

- a. THE MAGISTRATE: *That's half a kilometre. You've got no idea about the road rules, do you, ma'am? You've got no idea that your*

responsibility is to ensure that you and only you comply with the road rules when you are behind the wheel of your car. (T7:33-37)

...

- b. THE MAGISTRATE: *They are there, ma'am, okay, and you are the one who has got the speedometer right in front of you. You don't seem to want to look at it. You've got every excuse under the sun. You're responsible for these two – two offences; nobody else. (T8:3-7)*

...

- c. DEFENDANT: *I do spend a lot of time in the Hills district. That's where my fiance lives. We're planning on getting married. (T9:16-18)*

...

THE MAGISTRATE: *Big deal, is what I'm going to say to you, okay. I'm playing the devil's advocate here, because the community have a right just as much as you do in relation to your appeal. They want me to consider carefully what you are saying to me, not have somebody who willingly, knowingly commit two speeding offences within a month to be back on the streets driving because she lives at Linley Point and works at Gladesville. No, sorry. That may be a bit inconvenient to get a bus early in the morning; make other alternative arrangements. Boyfriend can then come over to see you.*

DEFENDANT: *I also have –*

THE MAGISTRATE: *Big deal. It's three months. (T9:43 - T10:9)*

- d. Particulars 1(b) are repeated.

Bullying

3. The Judicial Officer was rude, offensive and bullied the defendant while she was giving evidence.

Particulars:

- a. THE MAGISTRATE: *Once again it's another difficulty you have created for yourself. Why do we have a demerit point system, ma'am? You tell me.*

DEFENDANT: *To ensure - well, I think first of all most - it's a revenue raising thing, but to make sure –*

THE MAGISTRATE: *No, no, no. Exactly. Mr Castle has put his head in his hand. That's a disgusting response. That is the newspaper response, okay. You've committed two offences. Why shouldn't you pay a fine for committing those two offences –*

DEFENDANT: *I agree –*

THE MAGISTRATE: *Shut-up, please, ma'am. I'm going to talk to you now and you listen hard. That response is another black mark against you, okay - "Revenue raising". That is the most ridiculous thing any person can say to anybody else. All right? ... I will tell you. It's pretty simple. To act as some sort of checking mechanism for all of us to ensure that we keep to the road rules when we are behind the wheel of a car, to make sure we're going to be safe drivers, and if we're not safe drivers, if we inadvertently are not concentrating and have one offence, we'll have three points deducted, or whatever the points are. And then we know "Okay, for me I've got nine more to go. I must make sure - my licence is very important to me. I must make sure I do not lose it. But more importantly, I don't want to kill somebody out there on the road." That's the reason why we have demerit points, okay. Do you understand now? Forget about revenue raising; that's a disgusting response. Gee, if I had the power to increase it, I would. Three months' inconvenience, and you think you're god's gift, do you?*

DEFENDANT: *No, I don't.*

THE MAGISTRATE: *Why are you here wasting my time, because that's exactly what you are doing. You've got no idea. You have clearly demonstrated that by your own answers you've got no idea why we have road rules. You seem to think you're exceptional. You're not.*

DEFENDANT: *I don't.*

THE MAGISTRATE: *Your explanations are pitiful. I don't mean to embarrass you, but they are pitiful, and that answer there, I think everybody was thinking "My god, what is this young lady doing? Putting herself deeper and deeper in a ditch?" Exactly you dont. Okay, So you work at Gladesville. You live at Linley Point, so that's not a massive journey. Okay, church commitments; unfortunately other people are going to have to help you out there. You don't deserve to be on the road. And hopefully you are going to learn how important your licence is to you, which obviously you didn't think about on 14 March when you had your cruise control on going through the Eastern Distributor, or did you, on Victoria Road at Rydalmere, think about the consequences of the possibility of losing your licence? Double demerit points. You were aware of that. It was Easter time.*

DEFENDANT: *(Indistinct).*

THE MAGISTRATE: *You are a very, very foolish young lady. If you don't get the message now, after today, you never will. Do you understand where I'm' coming from?*

DEFENDANT: *I do. Yes, I do. (T10:17 – T11:32)*

- b. THE MAGISTRATE: *Shut your mouth because I don't think it's going to do any good. Mr Castle is really aiming for you to be quiet.*

You have your own views on that. The speed cameras are there. They do pick up people who offend who breach the law. (T12:34-38)

- c. The following exchange occurred between the Judicial Officer and the defendant in which the Judicial Officer bullied the defendant by implying that she could not be trusted not to drive her car.

THE MAGISTRATE: *Ms Cooper, where did you park your car? We'll escort you to make sure you don't drive it. (T15:13-14)*

Not permitting an adequate opportunity to make submissions

4. The Judicial Officer did not permit the defendant's solicitor an adequate opportunity to make submissions.

Particulars:

- a. MR CASTLE: *-- I'd like you to take into account, your Honour, that my client has held a licence for two years. She's had two offences. They were both committed --*

THE MAGISTRATE: *In a month. Within a month.*

MR CASTLE: *-- committed in close proximity of each other -- and --*

THE MAGISTRATE: *And the explanation is given.*

MR CASTLE: *-- I'd ask you to accept they are an aberration.*

THE MAGISTRATE: *No, they weren't.*

MR CASTLE: *Your Honour, you've --*

THE MAGISTRATE: *Oh, Mr Castle, really. I know you are doing your job. They are not an aberration. You heard your client's own evidence in relation to them. "Cruise control"; "didn't even notice it was an 80 zone".*

MR CASTLE: *Your Honour has come to the conclusion that my client is not a fit and responsible person to hold a licence, your Honour. My client did - has offered and sought to participate in the traffic re-offenders program. (T13:21 - T14: 1)*

The hearing was not conducted fairly

5. The Judicial Officer did not conduct the hearing fairly.

The following particulars are repeated:

- 1(a), (b), (c), (d)
- 2(a), (b), (c)
- 3(a), (b), (c)
- 4(a)

B. MR MARESCH

The following complaint is made about the behaviour of the Judicial Officer while acting in the course of her duties at Ryde Local Court on 9 October 2009.

Pre judgement

1. Prior to viewing the evidence and after hearing of the existence of photographs from the police prosecutor, the Judicial Officer pre-judged the evidence:

- a. THE MAGISTRATE: *I know, but there's no trailer there. Let's not go to the trailer excuse for being in a loading zone.*

MR MARESCH: *I object to the actual condition of the photos on the basis that they don't –*

THE MAGISTRATE: *But that photograph clearly shows there's no trailer, okay, so your defence using trailer is not going to go - take you very far, okay? So really, I wanted you to come to court to tell me what is your defence. You've done that, and it appears that the prosecution evidence is there was no trailer attached to it, okay?*

MR MARESCH: *Okay.*

THE MAGISTRATE: *So if your vehicle is parked there as a sedan in the loading zone, you will be found guilty, okay?*

MR MARESCH: *Yeah.*

THE MAGISTRATE: *So what do you want to do? Plead guilty now with an explanation as to why you blatantly parked your sedan in that loading zone or what? (T4:21-37)*

- b. THE MAGISTRATE: *And I've had a gutful of people such as yourself coming to this court pleading not guilty, having hearings and getting found guilty as soon as they open their mouth. That incurs costs on the community having the officers here, court time taken up, so that's why I wanted you to come today to give me your explanation as to why you are pleading not guilty. (T5:4-10)*

- c. THE MAGISTRATE: *Shut - be quiet, please. I need to manage court time because we are listing matters into end of February, many months down the track and I'm trying to bring that back and ensure that those matters listed for hearing are genuine pleas of guilty, pleas of not guilty after people have had appropriate legal advice. A lot of people such as yourself come before the court thinking –*

MR MARESCH: *Such as myself?*

THE MAGISTRATE: *-- pleading not guilty.*

MR MARESCH: *Such as myself?*

THE MAGISTRATE: *It's all a question - don't interrupt me.*

MR MARESCH: *You don't know me. You don't know me. (T6:18-34)*

Use of intemperate language

2. The Judicial Officer used intemperate language to the defendant.
 - a. Particulars 1(b) and 1(c) are repeated.
3. Without justification, the Judicial Officer threatened the defendant with, firstly, having to wait for his matter to be heard, and secondly, with contempt.

- a. THE MAGISTRATE: *Don't interrupt me, otherwise you will wait until after I do the other hearing, okay? Do not interrupt me again, thank you.*

MR MARESCH: *Well, I –*

THE MAGISTRATE: *I'm trying to assist you. You can wait.*

MR MARESCH: *(Indistinct) With respect –*

THE MAGISTRATE: *You can wait. You can wait. You are showing no respect to me. I'm trying to assist, sir, and get you out of here instead of incurring further costs for yourself –*

MR MARESCH: *Yes.*

THE MAGISTRATE: *-- if you are subsequently found guilty after pleading not guilty.*

MR MARESCH: *In the process you insult me without even knowing me, okay.*

THE MAGISTRATE: *Sir, you show respect to the court, otherwise you will be held in contempt.*

MR MARESCH: *I'm here and I'm showing respect –*

THE MAGISTRATE: *No, you're not.*

MR MARESCH: *-- but I'm being told you've had a gutful of people like me, all right. That's what you're saying - you've had a gutful of people like me without even knowing me. (T6:36 – T7:22)*

The hearing was not conducted fairly

4. The Judicial Officer did not conduct the hearing fairly.

The following particulars are repeated:

1(a), (b), (c)

2(a)

3(a)

C. MS PASSAS/MR O'REGAN

The following complaint is made about the behaviour of the Judicial Officer while acting in the course of her duties at the Burwood Local Court on 15 August 2003.

Use of intemperate language

1. During the hearing, the Judicial Officer made intemperate comments to the parties.

a. MS PASSAS: *What is happening here, your Worship? I do not understand this. Why have the police washed their hands of the issue? They initially –*

THE MAGISTRATE: *Probably because they've got better things to do, Mrs Passas. (T5:32-37)*

b. THE MAGISTRATE: *Look, I'm not here to answer your questions. This is not a government forum; okay? (T5:47 – T6:1)*

c. THE MAGISTRATE: *Look, there's no votes to be gained by making your little speech from your platform there, ma'am.*

THE DEFENDANT: *Your Worship, I'm not given the opportunity to show what I have. I'm led to believe the police took out the AVO. Now, I have legal representatives here –*

THE MAGISTRATE: *I have not dealt with the matter, ma'am. Do you wish to hear me further or do you wish to make another political statement?*

THE DEFENDANT: *It's not a political statement, your Worship. I have –*

THE MAGISTRATE: *If you want to whinge, you whinge outside. I've got many people here I have to deal with –*

THE DEFENDANT: *Well, this is why I –*

THE MAGISTRATE: *I resent spending one more second on your matter. You have not outlined sufficient grounds, no change of circumstances.*

THE DEFENDANT: *I'm not an experienced legal person –*

THE MAGISTRATE: *The application is revoked.*

THE DEFENDANT: *Thank you, your Worship.*

THE MAGISTRATE: *The application is dismissed to revoke. I'm not satisfied there's any change of circumstances being outlined.*

THE DEFENDANT: *Thank you, your Worship, but you will not give me the chance to ask why it was taken out or to show you proof that this woman has no fear?*

THE MAGISTRATE: *Ma'am, get out of this courtroom, ma'am, please. It's not my function to do all that; okay? (T7:2-41)*

d. MR O'REGAN: *You've been denied justice.*

THE MAGISTRATE: *Sir, you just come back here, thank you, sir.*

MR O'REGAN: *Yeah, I'll come back.*

THE MAGISTRATE: *Who are you? Who are you, sir?*

MR O'REGAN: *My name is Jack O'Regan.*

THE MAGISTRATE: *And what did you just say to me?*

MR O'REGAN: *And I'm disgusted to see the way that lady has been treated. She came here to present a case on her own. She got no help and she (indistinct) --*

THE MAGISTRATE: *Sir, I suggest that before anybody comes to this court, they get appropriate legal advice in relation to what they're doing.*

MR O'REGAN: *I beg your pardon?*

THE MAGISTRATE: *You have no legal training, I take it?*

MR O'REGAN: *No which?*

THE MAGISTRATE: *You have no legal training?*

MR O'REGAN: *No, that's true, but I have a good sense of justice.*

THE MAGISTRATE: *Well, make sure you get your facts right in relation to it. The matter has been determined because there's no proper ground as in accordance with the legislation. Your friend --*

THE DEFENDANT: *You haven't allowed the grounds to be submitted.*

MR O'REGAN: *But may I just say this: please give me one --*

THE MAGISTRATE: *Go downstairs. Get somebody downstairs to --*

MR O'REGAN: *I apologise, just give me one minute.*

THE MAGISTRATE: *-- try and explain to these people who are holding up this court. Otherwise I'll have you both charged with contempt of this court. Ian, take them downstairs, get - get somebody downstairs to explain it to them. (T8:1 - T9:5)*

D. MR FARAGO

The following complaint is made about the behaviour of the Judicial Officer while acting in the course of her duties at the Ryde Local Court on 22 June 2007.

Discourtesy

1. The Judicial Officer was discourteous to the defendant in relation to the provision of authorities.

Particulars

- a. THE MAGISTRATE: *The matter was adjourned for today. Legal argument was foreshadowed in relation to the question of "road-related area". I requested that any submission to be*

relied upon to be forwarded to the court well before today. I don't consider 1.34 yesterday being well before today.

MR FARAGO: *I don't remember you saying "well before today", your Honour. You asked for –*

THE MAGISTRATE: *Well, let's (indistinct) I sat till quarter past 5 yesterday.*

MR FARAGO: *Yeah.*

THE MAGISTRATE: *Okay?*

MR FARAGO: *Well, in fact the reason it wasn't sent earlier was that I mistakenly –*

THE MAGISTRATE: *And nothing was sent to the prosecution at all?*

MR FARAGO: *No, that's correct.*

THE MAGISTRATE: *Well, why not?*

MR FARAGO: *Well, I've got copies for the prosecutor.*

THE MAGISTRATE: *Yeah, I know, but do you expect her to spend time today when she's got another hearing as well? It's just general courtesy. This has been foreshadowed since 1 June. It's been from the outset "road-related area", being the car park at the vet's shop allegedly. I don't know. I haven't seen any facts, but, you know, that's been foreshadowed, and I get this when I leave last night, took it home, read it in my own time. The prosecutor was handed a copy by me at 11.30, because she hadn't heard anything, and no doubt you're going to expect me to make a ruling on it. Buckley's and none, I can tell you now. It's not good enough - professional courtesies. (T1:1 -42)*

...

MR FARAGO: *But, the authorities would normally get handed up at the hearing, your Honour. You asked for them earlier than that.*

THE MAGISTRATE: *Yes, I know. I asked for them so we could try and save time today because I am not a machine. I work every day. 9.30, I started today. When am I supposed to consider this if you fax it through yesterday at 1.30? And I sat to quarter past 5 last night? When is the prosecution going to have time to consider what you've written if you're going to throw it in front of her face at 12 o'clock today? Not at all. So I'm asking any practitioner, if they're going to rely on law, to give the courtesy to the court and to the other side, whoever it is; likewise the prosecution, if they're relying on any legal argument, to provide the court with a copy and the other side well before the hearing date so court time does not need to be taken up with being off the bench in my chambers for five hours; okay? That's the point I was making.*

MR FARAGO: *I was trying to explain to you that –*

THE MAGISTRATE: *This matter will be stood down until I can deal with the other matter.*

MR FARAGO: *Can I just explain why it was as late as it was? I did try to explain that to you.*

THE MAGISTRATE: *No, there's no need. I'm going to start the other matter because it has priority. It's an earlier offence. We will get to your case whenever we can, Mr Farago.*

MR FARAGO: *Not before 2 o'clock.*

THE MAGISTRATE: *Not before, I can safely say, 2 o'clock, thank you.*

MR FARAGO: *Thank you. (T3:2-40)*

2. The Judicial Officer was discourteous to the defendant's solicitor when he made submissions.

Particulars:

- a. THE MAGISTRATE: *That's not what I'm worried about here, "public place" in the Motor Traffic Act down in the ACT. It's talking about "public place" means "an off-street parking area", blah, blah, blah. It's a completely different conversation, completely different.*

MR FARAGO: *Well, I don't think it's completely different, but –*

THE MAGISTRATE: *It is.*

MR FARAGO: *-- if you're of that view, I –*

THE MAGISTRATE: *It is. We're talking about "road-related area meaning", meaning that: It is not a road that is open to or used by the public for driving, riding or parking vehicles.*

MR FARAGO: *Parking vehicles.*

THE MAGISTRATE: *Isn't that what the carpark to the vet's is, a carpark used by the public for parking vehicles? Are they exclusive persons that are parking in the carpark of the Riverview vet hospital? That's really what you should be focusing on, Mr Farago, because that's what the authorities are tending to suggest.*

MR FARAGO: *The case that does deal with that very section is the Court of Appeal case Ryan v the Nominal Defendant, and that deals with this issue at some length.*

THE MAGISTRATE: *Once again it's not looking at the same authority; it's looking at the civil - the Compensation Act or something.*

MR FARAGO: *The wording, as far as I can see, is --*

THE MAGISTRATE: *The Motor Accidents Compensation Act and the Motor Accidents Act, one of them is identical and one of them is not. Under the Motor Accidents Act "road" is the same definition. It means: An area that is opened to or used by the public and is developed for, and has as one of its main uses the driving or riding of motor vehicles. And really it's "road-related area" that we're concerned with here and the definition under that Act is in identical terms to section 3 of the Road Transport (General) Act, which is the law that I need to worry about.*

MR FARAGO: *Yes. What I think that that case shows is that these cases need to be determined on their particular facts and the particular facts are different. Perhaps if I could read from "Traffic Offences and Accidents", which is --*

THE MAGISTRATE: *A textbook?*

MR FARAGO: *Yes. This is what it has to say about this question of carparks. It says: In ordinary parlance, few motorists --*

THE MAGISTRATE: *Well, let's get on to that. When was it written? Who is it written by and what is it talking about, because I understand that that's talking about legislation in other states as well as New South Wales?*

MR FARAGO: *It's dealing with the issue that in circumstances where the legislation in other states --*

THE MAGISTRATE: *You're quoting fourth edition, University of Sydney library. When was it printed? It doesn't say, on what you provided to me.*

MR FARAGO: *It's the most current edition that's available.*

THE MAGISTRATE: *Fourth edition; I don't know when it was printed. It may have been printed in 1910.*

MR FARAGO: *I can't say the exact date of its publication but it's the current edition that's available.*

THE MAGISTRATE: *It may be a current edition, but is it current in relation to the current law? That's the problem.*

MR FARAGO: *Well, I think, yeah, it is by implication.*

THE MAGISTRATE: *No, not - no, it is not a question of saying "I think it is" --*

MR FARAGO: *I can't prove that, your Honour. You seem to be so against me with this that I'm --*

THE MAGISTRATE: *No, I'm not. I'm suggesting if you're going to make submissions to the court, you make sure, if you're going to quote stuff, you get it right. Number 2, if you're going to send up copies of textbooks, to ensure that it is valid for today's law.*

MR FARAGO: Yeah.

THE MAGISTRATE: *Not just hand up photocopies of the front page and then the pages in between; okay?*

MR FARAGO: Yeah, yeah.

THE MAGISTRATE: *I'm not going to do the homework for you sir. I don't have the time.*

DATED: