

MAGISTRATES COURTS OF QUEENSLAND

CITATION: *WH v CK* [2023] QMC 19

PARTIES: WH (Complainant)
v
CK (Defendant)

FILE NO/S: MAG-000691007/23(1)

DIVISION: Magistrates Courts

PROCEEDING: Application for strike out or dismissal
Application for leave to amend complaint

ORIGINATING COURT: Proserpine Magistrates Court

DELIVERED ON: 22 December 2023

DELIVERED AT: Proserpine Magistrates Court

HEARING DATE: 6 October 2023

MAGISTRATE: Magistrate Howard

ORDER:

- 1. The Complainant's applications filed on 3 July 2023 and 5 September 2023 are dismissed.**
- 2. The complaint is struck out pursuant to section 102B(3) of the *Justices Act* 1886 (Qld).**
- 3. The Complainant must pay the Defendant's costs of and incidental to the proceeding in the sum of \$ 3047.20.**

CATCHWORDS: CRIMINAL PROCEDURE—PRE-TRIAL PROCEDURE—APPLICATION FOR STRIKE OUT OR DISMISSAL OF PRIVATE COMPLAINT PURSUANT TO *JUSTICES ACT* 1886 (QLD) PART 5 DIVISION 2— where private complaint— whether Part 5 Division 2 applicable— whether sufficient particulars provided— where application for leave to amend complaint made in response to application— whether complaint should be struck out pursuant to s 102B— in the alternative, whether complaint should be dismissed pursuant to s 102C – whether complaint is an abuse of process or frivolous or vexatious— further in the alternative, whether complaint should be permanently stayed or dismissed pursuant to the implied powers of the Magistrates Court

CRIMINAL PROCEDURE—PRE-TRIAL PROCEDURE—
APPLICATION FOR LEAVE TO AMEND

COMPLAINT—where application brought in response to application for strike out or dismissal—whether complaint within or beyond reach of power of amendment—whether amendment necessary or desirable in the interests of justice

CRIMINAL PROCEDURE—SUMMARY

PROCEEDINGS—COSTS—where costs sought pursuant to 102B(3) of the JUSTICES ACT 1886 (QLD)—whether ‘just’ to make an order for costs

Justices Act 1886 (Qld) s 48, Part 5 Division 2, ss 102A, 102B, 102B(3), 102C

Re Cameron [1996] 2 Qd R 218

Harrison v President of the Industrial Court of Queensland (2017) 1 Qd R 515

Grassby v the Queen (1989) 1 CLR 1

Higgins v Comans (2005) 153 Crim R 565

J Hutchinson Pty Ltd v Guilfoyle [2022] QCA 186

Jeffery & Katauskas Pty Ltd v SST Consulting Pty Ltd (2009) 239 CLR 75

John L Pty Ltd v Attorney-General (NSW) (1987) 163 CLR 508

Kirk v Industrial Court of New South Wales (2010) 239 CLR 531

Landsal Pty Ltd (in liq) v REI Building Society (1993) 41 FCR 421

NK Collins Industries Pty Ltd v President, Industrial Court of Queensland (2014) 2 Qd R 304

P v H [2015] QSC 351.

Power v Heyward [2007] 2 Qd R 6

S Kidman & Co Ltd v Lowndes CM (2016) 314 FLR 358

Walton v Gardiner (1993) 177 CLR 378

APPEARANCES: Ms WH appears in person as the Complainant/Respondent to the application

Mr Pemberton JP of Counsel instructed by QPS Legal Unit appears for the Defendant/Applicant

- [1] The Defendant (CK) is a sworn police officer. In her application filed on 26 June 2023 (as amended on 4 July 2023 and as further amended by leave on 6 October 2023), she applies for strike out of a private prosecution brought against her by WH (a private citizen), or alternatively, dismissal or permanent stay of the proceeding.¹

¹ The strike out application is brought in the alternative under s 102C of the JA. Pursuant to s 102C(3) of the JA, the application must be heard in camera. Accordingly, these reasons for judgement are published in a de-identified format.

The prosecution against the Defendant is brought by HW by way of complaint and summons under the *Justices Act* 1886 (Qld) (JA).

- [2] For her part, by applications filed 3 July 2023 and 5 September 2023, the Complainant seeks, among other things, leave to amend the complaint. CK argues that her application, being first in time, should be determined based on the original complaint made.

The complaint against the Defendant in the private prosecution

- [3] The complaint is brought against CK in the following terms:

On 22 November 2023 at approximately 6.30pm at 4 Wallace Drive in the State (CK) UNLAWFULLY assaulted (WH) and Instructed Constable (MW #403XXX) which resulted in an assault of (WB), without the Consent of (WH) or (WB), rendering multiple injuries to (WH) and (WB) to loose (sic) consciousness, resulting in loss of bowel movements and a broken rib.

Contrary to the Acts in such case made and provided.

The applications before me for determination

- [4] The Defendant's application seeks orders in the alternative which may be summarised as follows:

- (a) For strike out of the complaint pursuant to s 102B(3) of the JA on the basis that the particulars provided are not sufficient, as well as costs of the proceeding in accordance with schedule 2 of the Justice Regulation 2014 (JR);
- (b) In the alternative, for dismissal of the complaint pursuant to s 102C(1) of the JA on the grounds that it is an abuse of process; frivolous; or vexatious, as well as costs of the proceeding and the application pursuant to s 102C(5) in accordance with schedule 2 of the JR;
- (c) In the alternative, pursuant to s 83A of the JA and the court's implied powers an order permanently staying or dismissing the complaint on the basis that it is an abuse of process; frivolous; or vexatious, as well as costs pursuant to s 158 of the JA in accordance with schedule 2 of the JR.

- [5] The Complainant's application filed 3 July 2023 seeks leave to amend the complaint pursuant to s 48 of the JA so that it is in the following terms:

On the 22nd November 2022 in the State of Queensland, CK unlawfully assaulted another by the name of WH and committed bodily harm.

These are criminal allegations which by virtue of 339 of the Criminal Code 1899 – Assaults occasioning bodily harm

Contrary to the Acts in such case made Provided:

- [6] It also seeks a variety of other orders as discussed later.
- [7] The Complainant's application filed 5 September 2023 seeks orders for strike out of the Defendant's reply submissions, list of documents and an affidavit of Ms Gordon

and for all applications for costs to be struck out. She also filed a draft order as well as submissions in support of the application on 22 September 2023.

The evidence and submissions of the parties

- [8] A considerable volume of affidavit material has been filed, as have multiple and extensive written submissions. I scheduled an oral hearing and directed lists of documents be filed by both parties to provide clarity about the documents relied upon. List of documents were filed by the Complainant on 5 September 2023 and the Defendant on 18 September 2023.
- [9] Some of the documents on the Complainant's list of documents were not in fact filed by her (and the list refers not only to this proceeding but also another (private prosecution brought by the Complainant against another person). Clarification was sought at the oral hearing to ascertain the documents she had filed and were before the Court in respect of the applications for consideration at the oral hearing. Also, despite the nomenclature on the submissions and draft order filed by the Complainant in support of her application filed on 5 September 2023 referring to both this proceeding and another (private prosecution brought by the Complainant), she confirmed at the oral hearing that the application filed on 5 September 2023 and associated submissions are relevant only to this proceeding against this Defendant. Although in the oral hearing she appeared to concede that the 'application' of 5 September 2023 was in fact intended to be a submission in respect of the Defendant's application, her later oral submissions were not consistent with that being so. Accordingly, I have considered it as a separate application.
- [10] Leave was granted at the oral hearing for the Defendant to file a further amended application and further affidavit of Alexander Rose Gordon affirmed 4 October 2023.
- [11] I observe also that the Defendant expresses difficulty in following and understanding the submissions of the Complainant and submits that they do not assist the Court in deciding the Defendant's application.²
- [12] In my view the Complainant's submissions are often difficult to follow. They contain assertions made in reliance upon general legal concepts and precedents in a manner that strongly suggests a misunderstanding of the concepts and authorities themselves, as she asserts often unrelated, and in the circumstances, largely or wholly irrelevant legal principles into submissions in support of her position. Further, in some circumstances, to the extent a general principle relied upon has any application or relevance, it appears that the manner in which it might apply is not understood by the Complainant. Further, in some submissions, there is also a recitation of irrelevant and unrelated sections from various statutes, both State and Commonwealth. These are relied upon to support submissions that often lack clarity.
- [13] That said, and despite this, I have sought to understand and consider fully the Complainant's submissions to the extent that is possible. I have set out some of the submissions, even when they lack clarity or apparent relevance. In my view, their content is relevant in a more general sense in considering the applications before

² Defendant's submissions in reply filed 4 September 2023, [32].

me. In particular, concerning whether the Court could be satisfied that the prosecution would be fairly conducted if it proceeds; in considering whether the complaint constitutes an abuse of process and should be dismissed pursuant to s 102C(1) of the JA; and whether leave to amend the complaint is necessary or desirable in the interests of justice.

- [14] The Complainant's submissions suggest that she contends that her self-representation as prosecutor is relevant, and that because of it she should be afforded a degree of lenience or indulgence in complying with requirements. The fact of her self-representation is of no relevance or consequence. She has brought a serious criminal proceeding against the Defendant, and she bears the full burden of the role of prosecutor. Her lack of legal representation and any lack of knowledge of her prosecutorial responsibilities does not diminish her obligations to act in accordance with them. Further, the Complainant in error asserts in oral submissions that the Defendant must act as a model litigant towards her. It is her duty as prosecutor to do so towards the Defendant in this proceeding.

- [15] I make the observation that on 16 October 2023, that is, after the hearing had concluded and while my decision was reserved, the Complainant filed in the registry a further affidavit. It was placed with the file more recently. It refers to filing an application on that same day, but the Registrar advises that application was not accepted for filing. The Registrar advises that the affidavit was filed based upon the Complainant's assertion that she had provided it to the Defendant's legal representatives.

- [16] In the affidavit, the Complainant says, among other things, that at the hearing she should have had the opportunity to show the Court the 'authentic prima facie evidence' she relies upon (being body worn camera (BWC) footage of the Defendant and two other police officers provided to her in criminal proceedings against her)³ to 'prove' the complaint is not an abuse of process, frivolous or vexatious. A USB is attached and presumably contains copies of the BWC footage. The basis upon which she might assert that this was not addressed in her copious written submissions and other applications that were before the Court is not addressed. She now asserts it will be a 'major element' in her appeal to the Supreme Court if the complaint is dismissed or struck out.

- [17] There is no application before me for leave to reopen the hearing in order that the Defendant might as a matter of fairness have the opportunity to respond to the assertions now made about whether the further affidavit evidence sought to be relied upon by the Complainant should be admitted, and if so, the Defendant's evidence and submissions in response. Nor am I satisfied that it in the interests of justice to reopen the hearing on my own initiative, and thereby delay the disposition of the applications before me.

I have not watched the BWC footage. In my view, it is not necessary that I do so in order to decide the applications before me. Having regard to the alternative bases upon which the Defendant's application is brought and the submissions made in respect of each of them, it is not relevant to my decision. It cannot assist me to decide whether the Complainant provided sufficient particulars; or whether the complaint brought against the Defendant is an abuse of process, frivolous or

³ The BWC is discussed later in these reasons for decision.

vexatious having regard to alleged deficiencies in the complaint;; and/or whether the prosecution will not be fairly conducted.

Relevant background

- [18] At the outset, it is useful to observe that the Complainant faces a number of concomitant criminal charges brought against her in respect of events that occurred on 22 November 2022 after police were called to attend at a nearby home. She has received the brief of evidence from the police in those proceedings in relation to those charges. The Brief of evidence contained the BWC footage referred to earlier.
- [19] I made orders on 29 May 2023, requiring the Complainant to furnish written particulars of the charge against the Defendant and further that she furnish a brief of evidence (the Brief) and index of material to be relied upon to the Defendant within 14 days.
- [20] On 6 June 2023, the Complainant provided the Defendant with the Brief, including a document entitled 'Court Brief (Full)'. The Defendant sought clarification from the Complainant about whether the document entitled 'Court Brief (Full)' was said to be the written particulars. On 16 and 17 June 2023, the Complainant provided, it appears in response, but without an explanation, a further but amended version of the 'Court Brief (Full)'. By those dates, the time for compliance with the orders made on 29 May 2023 has expired. I observe that on 23 June 2023 the Defendant's legal representatives informed the Complainant that they 'have taken' the 'Court Brief (Full)' document to represent the written particulars.⁴ The Complainant's subsequent email to them on 24 June 2023 merely states the original Brief was in compliance with the order, and the 'second one was to clarify your questions...'⁵

Following the oral hearing on 6 October 2023, I made an order on 13 October 2023 pursuant to s102C of the JA for security of costs. I gave oral reasons for my decision. The Registrar has confirmed that the Complainant paid the amount ordered to the Proserpine Magistrates Court.

Preliminary issues

- [21] The application filed by WH on 5 September 2023
- [22] The Complainant's application together with written submissions and a draft order were filed on 5 September 2023.⁶ The relationship between the application and the draft orders is not entirely clear and the application itself largely takes the form of written submissions.
- [23] In part, the application seeks 'strike out' of the Defendant's List of Documents, reply submissions and Ms Gordon's affidavit both filed 4 September 2023, as well as, the strike out of all costs applications made by the Defendant. In effect, as I understand it, the Complainant seeks orders that the Defendant not be permitted to rely upon the documents filed on 4 September 2023 and for the dismissal of all costs applications.

⁴ Affidavit of Alexandra rose Gordon filed 26 June 2023, paragraphs [9]-[13] and ARG-04 – ARG-08.

⁵ Affidavit of Alexandra rose Gordon filed 26 June 2023, paragraph, [13] and ARG 8.

⁶ Exhibit 1.

- [24] In the application, the Complainant asserts the Defendant's said documents were filed by a police officer other than the Defendant. She asserts this allegedly raises 'legal ethical issues', as far as I can understand the arguments, because the documents are confidential as between the parties to the proceedings and because the Court ordered the Defendant to file and serve the submissions in reply, not the 'Defendant an(sic) Annor'. Further, she submits it is not allowed under the Uniform Civil Procedure Rules 1999 (Qld). (UCPR)
- [25] The Defendant has legal representatives on the record in the proceeding. The Defendant's legal representatives are entitled to make such arrangements for the filing of Defendant's confidential documents as they see fit in accordance with the lawyers' own obligations. The legal system would grind to a halt (and costs would be exorbitant) if parties in court proceedings or their legal representatives were required to file all documents in person in proceedings, irrespective of where they are located. Here, the Defendant's lawyers are in Brisbane. There is no evidence as to how the documents were actually filed or by whom. Further, this is not a civil proceeding, and so the UCPR has no application. In my view, the Complainant's application does not raise a legitimate issue.
- [26] Further, and although it is not clear, it appears the Complainant also seeks strike out of the documents because she disagrees with the submissions made on the Defendant's behalf (about copyright and inadmissibility of evidence she seeks to rely upon in the Brief). I say this because the Complainant asserts that 'they cannot ask for Prima facie evidence to be inadmissible'. In context, she refers to 'the authentic body worn cameras and statements of the Defendant themselves to be adduced to the court proceedings.' I understand the Complainant's argument to be that the Defendant is not entitled to raise issues concerning the admissibility of documents which the Complainant has included in the Brief. She quotes a variety of sections of the *Copyright Act* 1968 (Cth) and the *Evidence Act* 1962 (jurisdiction unspecified), as well as the *Evidence Act* 1977 (Qld) but without making any submissions as to how she contends these are applicable or relevant.
- [27] The essence of the Complainant's submission seems to be that she brings the complaint 'in the interest of Justice and the Community'⁷ and that she is performing a public service in seeking to protect the public from young, minimally trained police officers who have extensive powers as police officers and 'the statute of limitations must be upheld, particularly in a case where by (sic) the complainant alleges there has been gross misconduct and no act of good faith'.⁸ Therefore, she contends that because she has 'prima facie' evidence, the complaint should proceed to trial⁹, asserting among other things that 'There must be equity at law,'¹⁰ the requirement that justice be administered without bias and impartiality, and that the

⁷ Submissions of Complainant filed 22 September 2023, [11].

⁸ Submissions of Complainant filed 22 September 2023, [15].

⁹ Submissions of Complainant filed 22 September 2023, [16].

¹⁰ Submissions of Complainant filed 22 September 2023, [19]. Although that may be an argument raised discretely against costs orders sought on the basis that as she has not sought costs and therefore neither should the Defendant be awarded them, the various arguments seem to be raised more generally in regard to the various issues raised before the Court in the applications having regard to [30].

‘Fitzgerald Inquiry is a prime example that corruption and disobedience happens in the Police Service.’¹¹

- [28] The Complainant submits that if the evidence included in the Brief, which was provided in the brief of evidence she as defendant was provided in criminal proceedings against her, is copyright to QPS, then the question to be considered is whether the Defendant is charged as an individual or ‘an officer of the State of Queensland’ or whether the copyright is owned by the State of Queensland, asserting that this is Parliament, and that ‘through the separation of powers the Court should act with impartiality.’ She suggests that ‘This brings in a conflict of interest and would appear to pervert the course of justice’. She then cites High Court authority about the requirement for justice be administered with impartiality and without bias, so the public can have confidence in the integrity of impartiality. How this is said to be relevant to the issue she raises is not apparent.
- [29] As far as I can understand them the Complainant’s application and submissions, as set out, raise a variety of general concepts that appear to me to be unconnected and entirely irrelevant in the circumstances. As I understand it, the Complainant disagrees with the submissions made against her. She has had the opportunity to respond to those submissions, as procedural fairness requires. Both parties having an opportunity to make submissions and the Court considering the submissions of both parties in determining the applications accords with providing procedural fairness. To the extent, that the Complainant may seek to argue otherwise, I do not accept that doing so constitutes bias, lack of impartiality, or alleged conflict of interest.
- [30] The Complainant’s application in respect of the Defendant’s documents filed on 4 September 2023 must fail.
- [31] Finally, the Complainant seeks the striking out of all applications for costs, on the basis that ‘Queensland Police Service have a certificate of currency underwritten by the Queensland Government Insurance fund..’ and the Defendant has indemnity as a union member. I do not understand this submission. However, every costs application must each be considered on its own merits. I deal with the costs application/s before me in respect of the application of the Complainant later in these reasons for decision.
- [32] The Complainant’s application filed 5 September 2023 should be dismissed.
- [33] The Complainant’s application for leave to amend the complaint and other orders filed 3 July 2023
- [34] The Defendant submits that the Complainant’s application to amend the complaint should not proceed until a decision is made on her application for strike out or dismissal or permanent stay of the proceedings.
- [35] The Defendant submits that the application for leave to amend was filed in response to her application and brought in an attempt to defeat it after she raised legitimate issues about the complaint. She concedes that if the application for amendment succeeds it would defeat the applications pursuant to Part 5 Division 5 of the JA.

¹¹ Submissions of Complainant filed 22 September 2023, [26].

The Complainant's submissions confirm that her application was filed as a consequence of the Defendant's application.

- [36] The Defendant submits that it would be an absurdity if those provisions were excluded by the filing of the Complainant's application for leave to amend. Further, she submits that the deficiencies in the complaint are so profound that they strike at the heart of the Court's jurisdiction, and either cannot, or ought not be cured by amendment¹² pursuant to the JA.
- [37] For her part, the Complainant submits that the offence was disclosed and she provided 'sufficient factual ingredients', and she ought be allowed to 'right' the charge in the 'interest of justice and public interests as a crime is alleged' and in effect that failing to allow amendment would allow 'an alleged crime to not be lawfully dealt with.'¹³ Further in oral submissions she submitted, as I understand it, in effect that she has 'locus standi' and invokes her 'human rights', and the that Defendant's submissions were about the administration of justice, whereas she was talking about 'real justice.'
- [38] Many deficiencies may be cured by amendment under s 48 of the JA, or by the provision of sufficient particulars. Section 48 contains a broad amendment power, extending to defects of substance or form¹⁴ and may extend to cases where it does not disclose an offence known to law.¹⁵
- [39] Section 48 provides as follows:

48 Amendment of complaint

(1) If at the hearing of a complaint, it appears to the justices that—

(a) there is a defect therein, in substance or in form, other than a noncompliance with the provisions of section 43; or

(b) there is a defect in any summons or warrant to apprehend a defendant issued upon such complaint; or

(c) there is a variance between such complaint, summons or warrant and the evidence adduced at the hearing in support thereof;

then—

(d) if an objection is taken for any such defect or variance—the justices shall; or

(e) if no such objection is taken—the justices may;

make such order for the amendment of the complaint, summons or warrant as appears to them to be necessary or desirable in the interests of justice.

¹² Reliance is placed on *John L Pty Ltd v Attorney-General (NSW)* (1987) 163 CLR 508, esp. 527-528.

¹³ Complainant's submissions filed 3 July 2023, [40].

¹⁴ *Harrison v President of the Industrial Court of Queensland* (2017) 1 Qd R 515, [101].

¹⁵ *J Hutchinson Pty Ltd v Guilfoyle* [2022] QCA 186, [36] to [40] (per Bowskill CJ, Morrison and Dalton JJ).

(2) Without limiting subsection (1), if the justices consider the offence charged in the complaint is also a domestic violence offence but the complaint does not include a statement to that effect, the court may order that the complaint be amended to state the offence is also a domestic violence offence.

- [40] The law as to when a complaint is amenable to amendment pursuant to s 48, as opposed to when it is so deficient as not to engage the jurisdiction of the court (and is a nullity), is not settled.¹⁶
- [41] At common law, the absence of the necessary ingredients or the absence of the essential factual ingredients rendered a complaint a nullity.¹⁷
- [42] The Queensland Court of Appeal in *Harrison v President of the Industrial Court*,¹⁸ (*Harrison*) held that ‘not every failure to allege a necessary ingredient of a charge is beyond the power of amendment’¹⁹, and a court should be slow to accept that a complaint is so defective as to be incapable of amendment not because it fails to allege required elements, but because it alleges too many other facts.²⁰ That said, it held that the reach of s 48 is informed by the fundamental principle that an indictment must disclose an offence punishable at law; an indictment or complaint is to confer jurisdiction on the court; and that a complaint for a simple offence or breach of duty must be made within one year of its alleged occurrence.²¹ The complaint in that case was held capable of amendment.
- [43] The Queensland Court of Appeal recently reviewed relevant authorities in deciding *J Hutchinson Pty Ltd v Guilfoyle*.²² (*Hutchinson*). The Court of Appeal held ‘that the validity of a complaint was a matter to be determined in conjunction with the power of amendment.’²³ *Hutchinson* involved an appeal from a District Court decision overturning a Magistrate’s decision to strike out a complaint as being a nullity beyond the reach of amendment. There, the complaint was absent the essential factual ingredients of the charge. However, the factual particulars had been provided separately before the strike out application was heard and there was no deficiency raised about the particulars. The Court cited with approval a decision of the Northern Territory (NT) Court of appeal in *S Kidman & Co Ltd v Lowndes CM*,²⁴ (*Kidman*).
- [44] In *Kidman*, the complaint was defective in that it omitted an essential element of the offence and also did not include the particulars (the essential factual ingredients) required at common law. The NT Court of Appeal held the defects in the complaint did not lead to the conclusion that it was a nullity if the irregularity could be cured

¹⁶ For example, see *John L Pty Ltd v Attorney-General (NSW)* (1987) 163 CLR 508; *Kirk v Industrial Court of New South Wales* (2010) 239 CLR 531; *Karimbla Construction Services Pty Ltd v President of Industrial Court of Qld & Ors* [2014] QSC 56; *Harrison v President of the Industrial Court of Queensland* (2017) 1 Qd R 515.

¹⁷ *John L Pty Ltd v Attorney-General (NSW)* (1987) 163 CLR 508; *Kirk v Industrial Court of New South Wales* (2010) 239 CLR 531

¹⁸ (2017) 1 Qd R 515 (per Jackson J, McMurdo P and McMurdo JA agreeing).

¹⁹ (2017) 1 Qd R 515, [132].

²⁰ (2017) 1 Qd R 515, [156].

²¹ (2017) 1 Qd R 515, [144].

²² [2022] QCA 186 (per Bowskill CJ, Morrison and Dalton JJ).

²³ [2022] QCA 186, [30] (per Bowskill CJ, Morrison and Dalton JJ).

²⁴ (2016) 314 FLR 358.

by amendment.²⁵ The NT Court of appeal considered whether the complaint was capable of amendment under the relevant equivalent (although not identical) legislative provision, deciding that it was, in circumstances that it ‘unquestionably’ disclosed an offence known to law.

- [45] In obiter comments, the Northern Territory Court of Appeal in *Kidman* referred to considerations applying in deciding whether the power of amendment may reach the irregularity, having observed that the power of amendment is to ensure that justice is not defeated where errors and omissions do not cause injustice.²⁶ In particular, it said that an amendment should not be permitted if it would have the effect of charging a different offence out of time,²⁷ or where the amendment would otherwise give rise to some material injustice or prejudice in the circumstances of the case.²⁸
- [46] The authorities leave open the question of when a complaint may be a nullity and beyond the reach of the power of amendment of s 48, in determining validity of a complaint in conjunction with the power of amendment. *Harrison* suggests that relevant considerations include the fundamental principle that an indictment must disclose an offence punishable at law; that an indictment or complaint is to confer jurisdiction on the court; and that a complaint for a simple offence or breach of duty must be made within one year of its alleged occurrence.²⁹ *Kidman* refers to the purpose of the power of amendment being to ensure justice is not defeated by errors where it does not cause injustice. The Court there considered amendment should not be permitted if it would give rise to a material injustice in the circumstances of the case.
- [47] The Complainant’s application for leave to amend here seeks a number of orders in addition to leave for amendment. The application is in confusing terms. It recites part of s 48. It seeks leave for the amendment proposed ‘in the interests of justice and the public interest,’³⁰ referring to public interest as arising because of s 204 of the CC; asserting that the Defendant has submitted to the Court’s jurisdiction; and for the amendment to Form 192 from a Form 187.
- [48] The application traverses a variety of topics, some of which appear to amount to submissions, rather than orders sought. Paragraph 2 appears to be a submission – no order is sought. Paragraph 3 refers to ‘a second matter of Trespass’; paragraph 4 to an application to have the 2 complaints heard together. That appears to refer to a complaint of trespass which was dismissed when the Complainant offered no evidence in respect of it. These applications are therefore no longer relevant.
- [49] Paragraph 5 ‘seeks the discretion of the court to allow the complainants medical records... to the brief amendment.’ This seems to be a direction sought to enable a supplementary brief of evidence to be provided. I understand this application to be made in anticipation of being granted leave to amend the complaint. The Complainant states that the medical records were requested on 30 June 2023.

²⁵ (2016) 314 FLR 358, [104].

²⁶ (2016) 314 FLR 358, [115].

²⁷ (2016) 314 FLR 358, [117].

²⁸ (2016) 314 FLR 358, [118].

²⁹ (2017) 1 Qd R 515, [144].

³⁰ Application of Complainant filed 3 July 2023, para 1.

- [50] As the Defendant submits, as prosecutor, the Complainant has an ongoing obligation of full and early disclosure pursuant to s 590AB of the CC. Her application suggests she does not understand those obligations. Further, I note the medical records were not requested until 30 June 2023. This tends to suggest that the original charge was not intended to be a charge of AOBH: it is reasonable to infer they would have been requested earlier if injury was an element of the complaint.
- [51] Paragraph 6 seeks a direction to the effect that the evidence she seeks to rely upon is admissible against the Defendant, contending ‘if the Defendant knows something to be truthful it should be admissible if there was nothing to hide’ as well as the often repeated argument that not allowing it would be an abuse of process and ‘would abuse the interest of justice and Public Interest.’ This application is misguided, seeking a general ruling on evidence, rather than in the usual course the trial court being asked to rule on the admissibility of individual pieces of evidence as objections are raised. Further, the argument appears to be to the effect that the rules of evidence should not apply in the proceeding. This is also misguided.
- [52] Paragraph 7 seeks an order that costs not be granted, in light of the Defendant having indemnity from the State and ‘the Dietrich’s Principle.’ Neither of those submissions is relevant in my view. Each costs application must be considered on its merits.
- [53] In her submissions filed on 3 July 2023 (in response to the Defendant’s application for strike out), the Complainant confirms that she filed her application for leave to amend the complaint in response to the issues raised by the Defendant in its submissions filed in support of her strike out application.³¹ She submits that her application should be allowed, among other reasons, ‘as a self-represented litigant;’ because the Defendant is relying on technicalities rather than the interests of justice; and because the Queensland Government website is difficult to navigate.³² The arguments also seem to include that ‘the fundamental elements’ were provided and she now seeks to right the charge. Because a crime is alleged, she says it’s in the interest of justice and public interest to allow her to do so.³³ The public interest alleged appears to be said to result from s 204 of the CC, with the alleged consequence that it has merit and substance.³⁴
- [54] The Defendant submits the application should be refused for reasons including the following. First, that the complaint is beyond rectification pursuant to s 48 of the JA because it does not disclose an offence known to law;³⁵ or alternatively, the proposed amendment is not to address a ‘defect therein , in substance or in form’ but rather to replace the present charge (if one is disclosed, she says it is common assault), with a different charge of AOBH, which is beyond the powers provided in s 48. ³⁶ Further, it is not necessary or desirable to do so in the interests of justice

³¹ Application of Complainant filed 3 July 2023, para 37-38.

³² Application of Complainant filed 3 July 2023, para 39.

³³ Application of Complainant filed 3 July 2023, para 40.

³⁴ Application of Complainant filed 3 July 2023, para 51.

³⁵ Submissions of Defendant filed 4 September 2023, para 113 (a) and 114.

³⁶ Submissions of Defendant filed 4 September 2023, para 113(b), 115-116.

because of the issues raised by the Defendant's strike out application.³⁷ Further, the proposed wording of the complaint is deficient.³⁸

- [55] In my view, I do not need to decide whether the complaint is a nullity, and beyond the reach of the power of amendment because of the conclusions I reach on the applications before me.
- [56] At the outset, I accept that the Defendant's application should be decided before the Complainant's application for leave to amend. Part 5 Division 2 of the JA was introduced with the aim of preventing, at an early stage, private complaints which are an abuse of process from proceeding.³⁹ As a matter of statutory construction, its purpose, where it applies, is plain through provision for a range of mechanisms to bring an early end to private complaints on the basis of non-compliance and/or deficiency or where the complaint is an abuse of process.⁴⁰ In view of Parliament's intent, at least the first two limbs of the Defendant's application must be determined before consideration is given to the application to amend. For the reasons set out in the paragraphs below, I conclude that the complaint should be dismissed under Part 5 Division 2.
- [57] That being so it follows that I do not need to decide the application for leave to amend. It should be dismissed. However, if I was wrong about that and I should decide the application first, I would conclude that an order for amendment of the complaint should not be made as it would not be necessary or desirable in the interests of justice to make an order.
- [58] My reasons for reaching this conclusion are similar to reasons I set out below in considering the Defendant's applications. I do not restate them in full here. Suffice it to say, the complaint as brought is fundamentally deficient. The charge against the Defendant, if there is one, is not clear as discussed below. To the extent it discloses an offence known to law, it could only be a charge of common assault. However, it is so fundamentally deficient in that it asserts a charge on a date that had not arrived at the date it was sworn; and the charge and the transaction alleged to constitute it are not provided. Therefore, the essential factual ingredients are not specified. Particulars were ordered but sufficient particulars were not provided, if any particulars were provided in compliance with the Court's order for particulars. In any event, if it was necessary I would find that the 'amendment' sought by the Complainant does not concern a defect in substance or in form but rather an entirely different charge. Further, the prosecution has been conducted to date without due regard for and evident misunderstanding of the Complainant with respect to her prosecutorial obligations, and inconsistently with them.
- [59] In the circumstances, I would conclude that it would be manifestly unfair and oppressive to the Defendant and therefore not necessary or desirable in the interests of justice to make an order for amendment.
- [60] Therefore, I would refuse the application for leave to amend the complaint. The other orders sought in the application should also be refused.

³⁷ Submissions of Defendant filed 4 September 2023, para 113, 118.

³⁸ Submissions of Defendant filed 4 September 2023, para 113(c)(ii) and 119.

³⁹ *P v H* [2018] 2 Qd R 32 at [12] per (Applegarth J).

⁴⁰ JA s 102B, s 102C, s 102E, and 102G.

The threshold issue concerning the applicability of Part 5 Division 2 of the JA

- [61] The first of the two alternative applications made by the Defendant rely upon the applicability of Part 5 Division 2 of the JA. In deciding the application for security of costs, I determined that Part 5 Division 2 is applicable, and I ordered that the Complainant pay security pursuant to s 102C(2). It has been paid and the decision made was not appealed. That said, here, I again briefly deal with the issue before considering those applications of the Defendant respectively for strike out or dismissal of the complaint.
- [62] Part 5 of the JA is entitled ‘Proceedings in case of indictable offences’. Part 5 Division 2 of the JA is entitled, ‘Procedure for private complaint’. Section 102A provides that (Division 2 consisting of) ss102A to s 102G apply to and in relation to only some private complaints. It is in the following terms:
- 102A Application of provisions
Sections 102A to 102G apply to and in relation to a private complaint charging a person with an indictable offence, including an indictable offence a charge of which may be dealt with summarily, other than a private complaint charging a person with an offence of which injury to the person or property of the complainant is an element, and do not apply to or in relation to any other private complaint.
- [63] That is, Part 5 Division 2 applies only in respect of a private complaint charging a person with an indictable offence, that does not contain an element of injury to the person or property of the complainant. Specifically, it does not apply to or in relation to any other private complaint. Accordingly, I must determine what charge is brought and whether it contains an element of injury to her or her property, in order to determine whether Division 2 applies.
- [64] I observe that if the Complainant was given leave for the proposed amendment, the charge would become a charge of which injury to the Complainant is an element, and Part 5 Division 2 would not then apply. However, the Complainant brought the charge in its current form. Her application for leave to amend was prompted only by the Defendant’s application.
- [65] In its terms, I have concluded that as far as it is ascertainable the intended charge, if a charge at all, is a charge of common assault. The reasons for my conclusion are set out in the paragraphs that follow.
- [66] Relevantly, the JA provides for proceedings to be commenced by a complaint in writing: s 42. The JA provides for the formal requirements of complaints in ss 43 to 47. Among other things, pursuant to s 43(1), a complaint may generally be for one matter only, except as provided for in particular circumstances which are not relevant here. Section 46 specifies that a description of persons or things as would be sufficient on indictment shall be sufficient for complaints. Section 47 is entitled ‘What is sufficient description of offence’. It provides that the description of an offence in the words of the Act, order, by-law, regulation or other instrument creating the offence, or similar words, shall be sufficient in law.
- [67] Requirements as to the form of indictments are provided for in s 564 of the Criminal Code 1899 (Qld). Relevantly, it provides that the indictment must set out the offence charged in such a manner and with such particulars as to the time and place

of the alleged offence, and the person alleged to be aggrieved, as necessary to inform the accused person of the nature of the charge. It is sufficient to describe an offence in the words of the Criminal Code or the statute defining it: s 564(3).

[68] The Criminal Practice Rules 1999 (Qld) (CPR) also relevantly provide for the statement of offences in section 15. In particular, it provides that the statement of an offence on indictment or complaint may be in the words of the schedule form for the offence with necessary changes consistent with the particular circumstances of the alleged offence.

[69] Schedule 3 of the CPR in Form 187 provides a schedule form for a charge of Common Assault in the following terms:

(Section 335. Common assault)

Unlawfully assaulted EF.

[70] Schedule 3 of the CPR in Form 192 provides a schedule form for a charge of ‘Assault occasioning bodily harm’ in the following terms (together with the addition of other circumstances of aggravation which I do not need to include here):

(Section 339. Assaults occasioning bodily harm)

Unlawfully assaulted EF and did him (or her) bodily harm.

[71] Criminal proceedings are accusatorial. The underlying requirement is that no person should be convicted without being afforded procedural fairness and should only be convicted of an offence known to law. A sufficient complaint must disclose an offence punishable by law;⁴¹ inform both the court and the Defendant of the identity of the offence to be dealt with and the Defendant the substance of the charge called upon to meet;⁴² contain the identifying ‘essential factual ingredients’ of the actual offence;⁴³ and specify the time, place and manner of the defendant’s acts or omissions.⁴⁴ At common law, these fundamental requirements are essential to engage the jurisdiction of the Court.⁴⁵

[72] The essential factual ingredients may be distinguished from particulars of the type that may be obtained upon application by the Defendant. The essential factual ingredients must be disclosed to the Court and the defendant irrespective of any application for them. Failure to provide them denies the Court the power to fairly hear and determine the charge. In *R v BDJ*,⁴⁶ the Court of appeal held that there must, at a minimum, be a degree of particularity that demonstrates a single identifiable transaction constituting the description of the charge, and which can be distinguished from other similar incidents in the evidence.

[73] Without the essential factual ingredients, a Defendant cannot know the case they are to meet, depriving them from properly preparing for trial. This may result in an abuse of the Court’s processes.

[74] What charge does the Complainant bring against CK?

⁴¹ *Harrison v President of the Industrial Court of Queensland* (2017) 1 Qd R 515, [144].

⁴² *NK Collins Industries Pty Ltd v President, Industrial Court of Queensland* (2014) 2 Qd R 304, [59].

⁴³ *Kirk v Industrial Court of New South Wales* (2010) 239 CLR 531, [26].

⁴⁴ *Kirk v Industrial Court of New South Wales* (2010) 239 CLR 531, [26].

⁴⁵ *John L Pty Ltd v Attorney-General (NSW)* (1987) 163 CLR 508, 519- 520.

⁴⁶ [2020] QCA 27, [98].

- [75] The alleged charge contains at least the following separate components:
- (a) On 22 November 2023;
 - (b) At approximately 6.30pm;
 - (c) At 4 Wallace Drive in the State;
 - (d) CK
 - (e) unlawfully
 - (f) assaulted
 - (g) WH
 - (h) And instructed (another person), Constable MW #403XXXX
 - (i) Which resulted in an assault
 - (j) of WB
 - (k) without the consent of WH
 - (l) Or (the consent) of WB
 - (m) rendering multiple injuries to
 - (n) WH
 - (o) And WB
 - (p) To loose (sic) consciousness
 - (q) Resulting in loss of bowel movements and a broken rib
- [76] On its face, the charge raises a variety of issues and uncertainties.
- [77] First, as at the date of swearing of the complaint (that is, 14 April 2023), the date of the alleged offence had not arrived – that is, it was a date in the future. The Complainant submits that the Court ‘corrected the 2023 to 2022’ on 29 May 2023. This is not so. Leave has not been granted for amendment of any aspect of the complaint.
- [78] Secondly, there is no offence provision referred to in the charge. Section 335 of the CC provides for the offence of common assault: any person who unlawfully assaults another is guilty of a misdemeanour. It is an indictable offence, but pursuant to s 552BA of the CC it must be decided summarily. Injury to a complainant is not an element of a charge of common assault. If the charge brought against the Defendant is one of common assault, then Part 5 Division 2 will apply.
- [79] Section 339 of the CC provides for an offence of assault occasioning bodily harm (AOBH): A person who unlawfully assaults another and thereby does them bodily harm is guilty of a crime. Bodily harm, being injury to the other person, is an element of the charge. If the charge is one of AOBH, then Part 5 Division 2 of the JA does not apply to the complaint.
- [80] The Defendant submits that to the extent an offence is ascertainable, it appears to be, if an offence at all, an offence of common assault. The Complainant’s submissions are difficult to follow and not helpful. She contends that ‘the complaint was always meant to reflect on occasioning bodily harm’ as referred to in the Brief⁴⁷ and that a ‘right-thinking person can see an offense (sic) is alleged’.⁴⁸ Further, she submitted during the oral hearing at some point that there are no deficiencies in the charge,⁴⁹ but despite that, since the Defendant’s application was filed, has applied for leave to amend the charge to more closely reflect s 339 of the CC and include

⁴⁷ Complainant’s submissions filed 3 July 2023, [9].

⁴⁸ Complainant’s submissions filed 3 July 2023.

⁴⁹ Although this is inconsistent with some admitted deficiency in the Complainant’s submissions filed 3 July 2023, [39] 3.

the words bodily harm. In my view, this is acknowledgement by the Complainant of deficiencies in the charge as brought. In any event, her written submissions acknowledge deficiencies. Her submissions otherwise recite a variety of provisions from statute, for example, including ss 204, s 268, and 270 of the CC, entitled ‘Disobedience to statute law’, ‘Provocation’ and ‘Prevention of repetitive insult’ respectively and the *Police Powers and Responsibilities Act 2000* (Qld) (PPR Act) as somehow supporting her position.

- [81] What the Complainant now submits she intended does not assist to ascertain the charge as brought.
- [82] To the extent the charge refers to the ‘rendering of multiple injuries,’ it is not consistent with either a charge of common assault or a charge of AOBH. In my view, the use of those words is not sufficient to render a charge that otherwise appears to allege common assault, to be a more serious charge, of AOBH.
- [83] Thirdly, the allegation that the Defendant ‘instructed’ another constable which resulted in, it appears, potentially other alleged assaults by MW on WB and perhaps WH is problematic in a variety of ways. Section 43 of the JA specifies that a complaint shall generally be for one matter only (the exceptions provided for are not relevant here). Putting aside for the moment the duplicity of the charge, it is not apparent what offence, if any, is sought to be charged against the Defendant as a consequence of those allegations.
- [84] It is not apparent whether the alleged ‘assault’ or the alleged ‘instruction’ is alleged to have been done without the consent of the Complainant or WB. Nor is it apparent whether the ‘rendering of injuries’ is alleged to result from the alleged ‘assault’ or alleged ‘instruction’. Further, nor is it clear who is alleged to have suffered from a loss consciousness, loss of bowel movement or a broken rib, although it appears more likely to have been WB.
- [85] The words used in the charge include an allegation that the Defendant ‘unlawfully assaulted’ the Complainant. The words ‘rendering of multiple injuries’ do not appear in the provisions of the CC relating to assault or AOBH. In my view, this suggests the charge is one of common assault.
- [86] Other than the use of the words ‘unlawfully assaults,’ there is no wording in the charge which suggests a charge known to law. The only sensible construction open in my view is that the charge as brought, as far as it can be ascertained, is a charge of common assault. I find accordingly.
- [87] Therefore, Part 5 Division 2 of the JA applies.
- [88] Accordingly, I turn to consider the Defendant’s applications brought pursuant to that division.

Should the complaint be struck out pursuant to s 102B of the JA?

- [89] Section 102B(2) of the JA provides for the Court to order the provision of particulars of the charge on a private complaint. Further, s 102B(3) provides as follows:

(3) If, forthwith upon the making of an order under subsection (2) or within 14 days of the day on which the order is made or within such further time as may be allowed by justices in a particular case, the complainant does not furnish in writing to the defendant particulars that in the justices' opinion are sufficient, the justices shall order that the private complaint be struck out and may award to the defendant such costs as to them seem just.

[90] As discussed earlier, I made an order on 29 May 2023 (being the first mention of the proceeding) for the Complainant to provide particulars within 14 days, as well as an order for the provision of a brief of evidence.

[91] On 6 June 2023, the brief of evidence and a document entitled 'Court Brief (Full)' were provided to the Defendant. The latter document, in a format similar to a QP9 document, begins as follows:

'Charge 1 of 1 Criminal Code (CC) – [339] – Assault occasioning bodily harm'

That on 22 November 2022 at Woodwark in the State of Queensland one CK assaulted Heid Ward whilst in her own home.

[92] It goes on to outline facts said to be made up of the evidence. Some of the content is set out below where relevant.

[93] As explained earlier, when the Defendant enquired whether the 'Court Brief (Full)' document was said to be the written particulars, the Complainant responded by providing after the date particulars were due and without explanation, on the 16 and 17th of June 2023, an amended version of the 'Court Brief (Full)' document. The amended version contains additional paragraphs.

[94] At no time did the Complainant expressly confirm that the document 'Court Brief (Full)' was supplied as the particulars ordered by the Court.

[95] The Defendant submits that the document provided is not written particulars of the charge as required that would permit the Court and the Defendant to know the case alleged by the Complainant and afford procedural fairness to the Defendant. Further, she submits that the Complainant has failed to provide any written particulars as required to do by the Court's order of 29 May 2023.

[96] Alternatively, she submits that even if the Court accepts the 'Court Brief (Full)' is a form of written particulars, it is not sufficient. The Defendant contends it is not sufficient because it entirely fails to particularise the charge in such a way as to permit the Defendant to know the case she must meet. In support of the submission the Defendant raises a number of arguments.

[97] First, she contends that in light of the fact that she is a sworn police officer who assisted in an arrest of the Complainant in the performance of her duties, particulars must minimally explain how the defences in ss 31(1)(a) and 254 of the CC are to be disproved in order to prove the element of unlawfulness. Instead, bare assertions are made as follows:

The harm was caused recklessly and intentionally outside the responsibilities as a public officer the [PPRA] [PSSA] [OPM] and acted with gross misconduct and not in good faith....

The defendant has no lawful excuse for causing harm to the Victim, and the Victim acted in self-defence.

The harm caused was not justified, or can it be excused and not justified under the law.

The Defendant assaulted the victim outside her official duties and statute of limitations and acted with gross misconduct and not in good faith.

[98] The Defendant argues that these general statements do not disclose how the defences open to her a sworn officer performing her duties are to be excluded by the Complainant, so that she has notice of the case she is to meet.

[99] Secondly, the Defendant submits that the act or acts alleged to constitute the ‘assault’ are not specified. The document states merely that:

- (a) The Defendantassaulted the Victim multiple times.
- (b) In the assault the Defendant has tripped the Victim and landed on the Victims (sic) back claiming it was the Victim that tipped (sic) her, although (MW) clearly stated it was he who tripped (CK).
- (c) ...
- (d) The Victim was further personally harmed when watching her husband walk out of the room to the noise of the assault and thrown to the ground and knocked unconscious to the point, he lost his bowel movement....

[100] The Defendant submits she does not know what act the Complainant says she is to be held responsible for, leaving her unable to know the case she faces, assess the evidence that would be admissible, and mount a defence.

[101] Thirdly, the Defendant submits that to the extent the charge is now alleged to be a charge of AOBH, there is no identification of the specific bodily harm said to be suffered. The document refers to the following:

The Victim suffered physical harm which caused a high level of pain and injury.

The assault caused the Victim bodily harm.

[102] The Complainant appears to respond to the Defendant’s three submissions above by submitting that she ‘can prove with prima facie evidence the assault was unlawful beyond reasonable doubt’⁵⁰ She does then under a heading of ‘IT WAS UNLAWFUL’ recite some ten points, and then under a heading of ‘THE MEDICAL RECORDS WILL SHOW’ refer, it seems, to nine alleged injuries. Although not clearly so, it appears this may be a belated attempt or further attempt to provide particulars. (It was not done within the required time frame and in any event does not provide sufficient particulars in my view.) More generally, her written submissions contend that she provided a Brief with the particulars,⁵¹ and that the written particulars were established.⁵²

[103] In her oral submissions, the Complainant asserted for example that she has ‘locus standi’; that if a sworn officer acts outside of the requirements of the PPR Act, the officer acts in their individual capacity; that there are ‘many different types of facts’; and further that the officer took the BWC footage. How these arguments are

⁵⁰ Complainant’s submissions filed 3 July 2023, [62].

⁵¹ Complainant’s submissions filed 3 July 2023, [12].

⁵² Complainant’s submissions filed 3 July 2023, [18].

relevant and said to overcome the issues raised is not apparent. At this point, the Complainant conceded some particulars are missing but argued there is ‘sufficient in the brief of evidence to go to trial.’

- [104] The Complainant did not provide to the Defendant (or file in the Court) any document purporting to be the particulars ordered within the time frame allowed by my order. She did not then at any time confirm to the Defendant that the document entitled ‘Court Brief (Full)’ is in fact said to be the particulars. The Complainant’s submissions made in response to the Defendant’s application, are not, and could not be taken to be, such confirmation. In any event, it is not entirely apparent that this is the Complainant’s submission, because her submissions themselves seem to seek to add additional details that are not themselves included in the ‘Court Brief ‘Full’ and may be intended to be advanced in a belated attempt to provide particulars. I find that the Complainant did not provide particulars as required by the Court’s order of 29 May 2023.
- [105] If I am wrong in concluding that no particulars were provided and the ‘Court Brief (Full)’ ought properly be found to be a form particulars, in my view the document entitled ‘Court Brief (Full)’ does not itself provide sufficient particulars of the alleged charge, as opposed to containing vague general assertions about facts alleged by the Complainant are made out on the evidence. In any event, in my view, the ‘Court Brief (Full)’ seeks to amend the charge brought to a charge of AOBH in the absence of any application for leave to amend the charge. Amendment cannot be achieved through these means.
- [106] Further, the Complainant then purported to further amend the ‘Court Brief (Full)’ document after the due date for particulars, by providing another different version of the document on 16 and 17 June 2023. There was no order of the Court extending the time for particulars to be provided or allowing her to amend or provide additional particulars after the due date. Even if an extension had been given (which it was not), the amended ‘Court Brief (Full)’ does not in any event disclose sufficient particulars.
- [107] At the outset, if the Court Brief (Full) provided with the Brief properly constitutes particulars, I would not be satisfied they are sufficient for the reasons that follow.
- [108] In my view, the Complainant’s submissions do not assist her. They are no more than further vague and sometimes irrelevant assertions and that do not address the issues raised. It appears the Complainant submits that the BWC footage contains the particulars. The submission is misguided and strongly suggest the Complainant misapprehends not only her duty as prosecutor, but also the accusatorial nature of the criminal prosecution she has brought. The evidence contained in a brief of evidence is not particulars of the charge.
- [109] The Defendant does not, and cannot, know from the document entitled ‘Court Brief (Full)’ (or to the extent it is relevant, the amended version of it) what case she faces and must prepare for. Further to the extent that the Complainant may have purported to provide yet some further particulars in her submissions, this is not in accordance with her obligations under the order made requiring her to provide them within 14 days of 29 May 2023. In any event, even if that is what was intended, they are still not sufficient.

- [110] The charge contains references to multiple acts and transactions. In my view, even if the Court Brief (Full) is taken to be the particulars, the essential factual ingredients constituting the offence are not disclosed. The particulars are not sufficient. At the date of swearing the complaint, the date on which the events are alleged to have occurred had not arrived. The Defendant is not aware of the particular acts she is said to have committed that are alleged to amount to an assault of the Complainant (nor to the extent it is relevant, what may be alleged against her in respect WB). To the extent it is relevant (although in my view it is not because the charge brought, if it is a charge, is one of common assault), neither the charge, nor the 'Court Brief (Full)' (any version of it) does contain details of any alleged injuries. The Defendant is unaware of the basis upon which it is alleged defences available to her as a sworn police officer participating in an arrest are said to be negated.
- [111] In the absence of the requisite particularity, the Defendant is unable to know and cannot prepare for the case against her. She is entitled to be afforded procedural fairness but in the circumstances she is not because of the absence of sufficient particulars.
- [112] I return to s 102B(3). I have found that the Complainant did not provide sufficient particulars within the time allowed (and no further time has been sought or allowed). In any event, I would not allow further time for the provision of the particulars because I am satisfied, having regard to the conduct of the proceeding by the Complainant to date (as discussed throughout these reasons for my decision), that it would not be in the interests of justice to afford more time for particulars to be provided by the Complainant.
- [113] Section 102B(3) provides in effect that in the absence of sufficient particulars within the allowed time frame, the Court 'shall' order the private complaint be struck out and may award costs as seem just.
- [114] For the reasons explained, I am satisfied that the Defendant's application should succeed. The complaint should be struck out pursuant to s102B(3).
- [115] **The costs application**
- [116] The Defendant seeks costs of and incidental to the proceeding pursuant to s 102B(3) of the JA in accordance with the Schedule 2 of the scale of costs in the JR. Section 102B(3) provides that the Court may award costs to the Defendant as seem just.
- [117] Costs of the application of \$4297.20 are sought as follows:
- | | |
|--|-----------|
| Legal professional costs: | |
| For review on 29/5/23; 3/7/23; 7/8/23 and 16/8/23
(at \$250.00 each review) | \$1000.00 |
| For hearing on 6/10/23
(at \$1500 for 1 day of hearing) | \$1500.00 |
| Disbursements: | |
| 28/5/23 Travelling--return airfare Counsel | \$982.53 |
| Accommodation for Counsel | \$143.74 |
| 5/10/23 Travelling – return airfare for Counsel | \$569.43 |

Accommodation for Counsel

\$155.50

- [118] The scale in Schedule 2 Part 2 provides for legal professional costs of up to \$1500 for work for hearing the complaint up to and including day 1 of the hearing. Other court attendances, other than the hearing of the complaint may be allowed up to \$250.
- [119] The hearing of the complaint was not listed for 6 October, only the hearing of the applications set out earlier. In my view, \$1500 cannot be allowed for legal professional costs for the hearing on 6 October. Rather \$250.00 is the allowable amount under the scale for the item.
- [120] I am otherwise satisfied that the costs claimed are just and in accordance with Schedule 2 of the JR.
- [121] Accordingly, the Complainant should pay the Defendant's costs in the proceeding of \$ 3047.20.

Orders

- [122] Having regard to my conclusions, I make orders striking out the complaint and for the Complainant to pay the Defendant's costs in the amount of \$ 3047.20.
- [123] I also order that the Complainants applications are dismissed.

Observations

- [124] In case I am wrong in deciding to strike out the complaint under s 102B(3) of the JA, I make the following observations about the Defendant's applications in the alternative.

Should the complaint be dismissed pursuant to s 102C(1) of the JA?

- [125] Section 102C(1) relevantly provides as follows:

(1) At any time before evidence is led as to the facts of a charge contained in a private complaint the defendant may make application for an order of a magistrate that the complaint be dismissed on the ground that it is—

- (a) an abuse of process; or
- (b) frivolous; or
- (c) vexatious.

.....

(5) If upon an application made under subsection (1) the magistrate dismisses a private complaint or orders that a private complaint be struck out pursuant to subsection (2A) the magistrate may award to the defendant such costs as to the magistrate seem just and reasonable but, if the magistrate does not dismiss the complaint or order it to be struck out as aforesaid, the magistrate may award to the complainant such costs as to the magistrate seem just.

- [126] The Defendant submits that the complaint should be dismissed because it is patently deficient on its face and foredoomed to fail;⁵³ it is frivolous and vexatious in that it

⁵³ *P v H* [2015] QSC 351, [61] (Applegarth J).

lacks any reasonable grounds of success having regard to the deficiencies and the evidence disclosed; and it is an abuse of process because it is manifestly groundless and without foundation,⁵⁴ manifestly unfair to the Defendant⁵⁵ and doomed to fail.⁵⁶

- [127] In particular, the Defendant argues it is fundamentally deficient and doomed to fail because it is said to occur on a date that was yet to occur, and is an impossibility;⁵⁷ and further, the complaint fails to disclose an offence punishable by law on its face by failing to identify the CC provision alleged to be contravened, leaving the Court and Defendant to guess what charge is asserted despite the charge being the source of the Court's jurisdiction. The Defendant argues these defects are beyond the amendment power in s 48. Further, the Defendant submits the charge is duplicitous, appearing to refer to multiple separate alleged offences in contravention of the requirements of s 43 of the JA. Although the latter could be dealt with by the Court, with the other deficiencies, she contends the complaint is 'so obviously untenable'⁵⁸ it must fail – permitting it to continue is an abuse of the Courts processes.
- [128] The Complainant submits that there is no 'fundamental detail as the year 2023 was rectified in court and cannot be taken as November 2023, as is not a time that has elapsed'; (erroneously that) Magistrate Howard 'made this right on 29 May 2023 (which is not the case); and was followed by a 'full breath of evidence ordered by the court'.⁵⁹ In relation to the allegation that the complaint is duplicitous, the Complaint contends that amending the application and 'bringing on the second charge ... will make the complaint right'.⁶⁰ Finally she submits that 'the complaint is not foredoomed to fail because there is prima facie evidence,' but rather that if it is not allowed in evidence, that 'will be an abuse of court process and perverting the course of justice...'.⁶¹ I understand the submission to refer to the BWC footage as the prima facie evidence.
- [129] In *P v H*,⁶² in determining a security of costs application (under an analogous provision) on appeal from a decision of a Magistrate to dismiss a complaint pursuant to s 102C(1), Applegarth J considered relevant matters. He found that where the Division 2 applies, Parliament intended to provide an opportunity at an early stage to prevent an abuse of process, or frivolous or vexatious private complaint from proceeding. He observed that there is a public interest in police officers not being subject to private prosecutions which constitute an abuse of process or are frivolous or vexatious and that the public has a legitimate interest in the conduct of the police force.⁶³

⁵⁴ *Jeffery & Katauskas Pty Ltd v SST Consulting Pty Ltd* (2009)239 CLR 75, [27] (French CJ, Gummow, Hayne and Crennan JJ).

⁵⁵ *Walton v Gardiner* (1993) 177 CLR 378, 393 (Mason CJ, Deane and Dawson JJ).

⁵⁶ *P v H* [2015] QSC 351, [61] (Applegarth J).

⁵⁷ The Defendant argues that time, date and manner of an offence is so fundamental to the charge that the date of the alleged charge is beyond the power to amend in s 48 of the JA, or alternatively the interests of justice would require not granting leave to amend it.

⁵⁸ *Re Cameron* [1996] 2 Qd R 218, 220 (Fitzgerald P).

⁵⁹ Complainant's submissions filed 3 July 2023, [66-67].

⁶⁰ Complainant's submissions filed 3 July 2023, [68].

⁶¹ Complainant's submissions filed 3 July 2023, [71].

⁶² [2018] 2 Qd R 32.

⁶³ [2018] 2 Qd R 32, [51].

- [130] Applegarth J identified matters that might indicate when a complaint is likely to be an abuse of process, frivolous or vexatious, saying that a narrow view should not be taken.⁶⁴ These include when the complaint is foredoomed to fail; if the manner in which it is prosecuted is itself an abuse of process; if the proceeding is instituted and prosecuted in the absence of a proper purpose; if it is a hopeless prosecution and so lacking in prospects of securing a conviction that no prosecutor acting in accordance with prosecutorial duties would persist; because the prosecution will not be fairly conducted it is an abuse of process. He observes that the sincerity and belief of a private prosecutor as to the ‘correctness of the cause’ pursued ‘does not prevent the prosecution constituting an abuse of process or being vexatious.’⁶⁵
- [131] The Complainant’s arguments are misconceived. At no time have I allowed an amendment to the alleged date in the charge. It is reasonable to infer from her submissions that she does not apprehend the accusatorial nature of the criminal proceeding she has initiated. The Complainant’s submission about the bringing of the second charge appears to relate to the Complainant’s actions on 7 August 2023 when she swore two additional complaints against the Defendant. One (it later transpired as explained below) was the draft amended complaint relevant to her application for leave to amend the complaint which is before me. The other was for a new charge of alleged trespass. Both were endorsed with return dates on the summons of 7 August 2023. She later advised the Defendant that the trespass charge was a separate charge ‘as I understand you are trying to bring these matters in to a civil realm.’⁶⁶ When this matter was next mentioned before the Court on 16 August 2023, the Complainant indicated the first was the draft amended complaint in this proceeding. The other complaint (for trespass) was dismissed when the Complainant offered no evidence on it.
- [132] Swearing of a criminal complaint is a serious matter. A prosecutor must proceed with diligence and proper consideration and act according to her prosecutorial obligations and duties. The Complainant submits in effect that if the Defendant successfully challenges the admissibility of evidence in her brief of evidence, and the court orders, that any of the ‘prima facie’ evidence she relies upon is inadmissible, that will constitute an abuse of court process and a perversion of the course of justice. A Defendant may make such challenges as it sees fit, and the Court will consider the challenge/s on their merits and according to law at the time the challenge is made. To contend in effect that if evidence is challenged or excluded in the ordinary course that this will be an abuse of process is misguided.
- [133] The complaint was sworn many months before the date of the alleged offence set out therein. It does not on its face disclose an offence known to law. As the reasons earlier discussed, to the extent that it is possible to ascertain any charge from its wording, it is only by acknowledging that the words ‘unlawfully assaulted’ appear in s 335 of the CC. The balance is unrecognisable as a charge at law. Further, the Complainant failed to provide sufficient particulars when ordered to do so for the reasons discussed earlier. I am satisfied that the charge is fundamentally deficient.
- [134] Although it is open to me to order the amendment of the complaint on the Complainant’s application, as explained earlier, I would not make an order because

⁶⁴ [2018] 2 Qd R 32, [61- 64]

⁶⁵ [2018] 2 Qd R 32, [64].

⁶⁶ Affidavit of Alexandra Rose Gordon filed 4 September 2023, ARG-18.

I would not be satisfied it was necessary or desirable in the interests of justice to do so. The complaint is so fundamentally deficient that allowing it to proceed would be an abuse of the Court's process. Accordingly, if it was necessary to do so, I would order that the complaint be dismissed as an abuse of process on this basis.

- [135] In the alternative, the Defendant submits that the complaint is frivolous and vexatious because it lacks any reasonable grounds for success. She argues that because of the issues discussed about the drafting of the complaint; and because no evidence can be led to prove an offence on a future date; and in any event, because the evidence disclosed by the Complainant even taken at its highest could not satisfy the elements of either common assault or AOBH beyond reasonable doubt. The Brief, putting aside the Court Brief (Full), consists of signed statements of the Complainant and WB, together with material disclosed to the Complainant in respect of criminal charges against her in respect of 22 November 2022 -- consisting of statements and BWC footage (together with s 95 Evidence Act certificates) from sworn police officers including the Defendant. There is no independent medical assessment of injuries.
- [136] In the Court Brief (Full), the Complainant asserts that she intends to rely upon the BWC footage and statements of the Defendant; and those of officers MW and another officer, as well as photographs of alleged injuries. The Defendant is not a compellable witness. Assuming that the Complainant intends to summons the other officers, there are issues the Defendant will raise about the admissibility of much of the other evidence intended to be relied upon by the Complainant. First, she argues that the Complainant is likely to offend either the implied undertaking that binds her in her criminal proceedings⁶⁷ or that the use of the material disclosed to her in her criminal proceedings is limited to the proceedings in which it was disclosed.⁶⁸
- [137] Even if the evidence was admitted, the Defendant argues that taken at its highest, the prosecution case does not presently establish evidence that could negative, beyond reasonable doubt, the defence open pursuant to ss31(1)(a) and s 254 of the CC that the Defendant was a police officer assisting in the arrest of the Complainant. According, the 'unlawful' element could not be established of common assault (or AOBH) because no evidence disclosed proves the Defendant acted beyond her powers and duties or that she used excessive force (s 283 of the CC) in assisting to arrest the Complainant.
- [138] To avoid any further costs and any further unfairness, the Defendant contends that the complaint should be dismissed in accordance with s 102C(1).
- [139] In response the Complainant submits that 'the prima facie evidence' is the evidence taken by the Defendant on her BWC and therefore, there 'can be no argument to legitimacy' and 'no reason to hide it.'⁶⁹ Further, she is awaiting independent medical reports.⁷⁰ Further, 'the complainant assumes the defendant would naturally be cross-examined in the court proceedings' however, she 'will summons the officers for cross-examination at trial.'⁷¹ In response to the submissions that the Complainant has the material supplied in her criminal proceedings for limited

⁶⁷ *Hearne v Street* (2008) 235 CLR 152 [96] (per Hayne, Heydon and Crennan JJ)

⁶⁸ *Johns v Australian Securities Commission* (1993) 178 CLR 408, 423-424 (per Brennan J)

⁶⁹ Complainant's submissions filed 3 July 2023, [72].

⁷⁰ Complainant's submissions filed 3 July 2023, [73].

⁷¹ Complainant's submissions filed 3 July 2023, [75].

purposes, the Complainant seems to argue that both the Complainant and Defendant have the evidence which is ‘also being used in another civil matter’ and that ‘if evidence of any type exists it should be admissible to the court in public interest and in the interest of justice’. The Complainant asserts that she will subpoena the evidence if necessary if the Defendant ‘refuses it’.⁷² How this is said could affect any ruling of the Court about admissibility of is not contemplated by the Complainant’s submission. Further, she asserts objecting to the evidence would not be in the public interest of giving ‘the complainant a fair trial;’⁷³ and that if it ‘is not admissible it would pervert the course of justice.’⁷⁴

- [140] In relation to the submissions of the Defendant that at its highest the evidence does not negative the defence open to the Defendant, the Complainant submits that ‘Prima Facie evidence contains disobedience of statute role pursuant to 204 of the CC, which led to trespassing and occasioning bodily harm.’⁷⁵ As the argument goes, the Complainant contends that the Defendant had no grounds to approach her regarding domestic violence under the DFVP Act and there was a ‘trespass notice’ on her door, and the Defendant did not have a warrant, despite allegedly saying she did.⁷⁶ She claims that if the prosecution is not allowed to go ahead, ‘it would make an example to the public that the complainant hasn’t been given an opportunity at law to complain about a police officer acting outside the statute and above the law...’.⁷⁷
- [141] Further, the Complainant submits that if the evidence of the police officers including the Defendant is not allowed in, it would be ‘capricious, corrupt or biased in the failure to allow the evidence to be adduced with the Queensland Parliament acting in the public interest by refusing problem facing evidence in court. (Remembering the separation of powers.’⁷⁸ Further, the court should in essence, ‘put technicalities aside’ and allow the evidence, ⁷⁹ as ‘...the complaint (sic) has rights at law.’⁸⁰
- [142] The Defendant further submits that the complaint is an abuse of process because it is manifestly groundless and without foundation, manifestly unfair to the Defendant, and foredoomed to fail for the same reasons advanced regarding the drafting deficiencies and the evidence disclosed. Further, she contends it is an abuse of process because the manner in which the Complainant is conduct the prosecution is beginning to proceed is manifestly unfair to the Defendant, and the Court cannot be satisfied it will be conducted fairly by the Complainant. So much, the Defendant says is clear from the Complainant’s failure to properly particularise; her stated intention to attempt to tender the signed statement of the Defendant without properly considering its admissibility in the proceeding and, more generally, her failure to consider admissibility of evidence to prove the charge; by the ‘scandalous

⁷² Complainant’s submissions filed 3 July 2023, [76].

⁷³ Complainant’s submissions filed 3 July 2023, [76].

⁷⁴ Complainant’s submissions filed 3 July 2023, [76].

⁷⁵ Complainant’s submissions filed 3 July 2023, [77].

⁷⁶ Complainant’s submissions filed 3 July 2023, [77].

⁷⁷ Complainant’s submissions filed 3 July 2023, [77].

⁷⁸ Complainant’s submissions filed 3 July 2023, [78].

⁷⁹ Complainant’s submissions filed 3 July 2023, [79].

⁸⁰ Complainant’s submissions filed 3 July 2023, [79].

and inflammatory⁸¹ inclusion by the Complainant of allegations of uncharged acts included in the 'Court Brief (Full)' regarding the fabrication of evidence by the Defendant; failing or refusing on various occasions in correspondence to confirm simple matters such as whether documents have been filed; her belief that the Defendant's statement would be tendered and the Defendant would be cross-examined; and bringing charges without sufficient evidence to sustain them. Additionally, the Defendant submits that the Complainant's own submissions strongly indicate the proceedings were brought for the improper purpose of a way of have the criminal charges against her dismissed or struck out.⁸²

- [143] The Complainant denies that the statements she makes in the Court Brief (Full) are scandalous or inflammatory appearing to suggest that this highlights the desire of the Defendant to want to hide 'prima facie evidence' of police statements from the courts....⁸³ asserting that amendment of the charge will 'allow all parties a fair trial'⁸⁴ and that it can not be presumed the proceedings are heading down a particular path.⁸⁵
- [144] Finally, she submits that if the complaint and matters are to be struck out on the Defendant's application on the bases argued then the police prosecution against her should 'follow suit....'⁸⁶ and no costs should be awarded 'given the nature of the issues to which (sic) have arisen in the course of both prosecutions.'⁸⁷
- [145] The Complainant's arguments are once again misconceived. In particular, the submission that if the evidence of the police officers is not allowed in, it would be 'capricious, corrupt or biased...' and that the Defendant wants to hide evidence. As discussed earlier, parties to proceedings, including the Defendant, are entitled to make objections as to the admissibility of evidence and courts are entitled to decide them on their merits according to law. The making of the submission highlights the Complainant's evident misapprehensions and misconceptions about her role as prosecutor; the requirements of procedural fairness; and the content and application of relevant law.
- [146] Further, the Complainant's submits in effect that if the complaint is dismissed the Complainant would not have been afforded a proper opportunity at law to complain about the actions of a police officer allegedly acting above the law. This submission ignores that her actions in bringing a deficient complaint and by her conduct in progressing it. The Complainant has taken on the role and burdens of prosecutor in criminal court proceedings and as any prosecutor is obliged to act accordingly.
- [147] Further, the Complainant's submissions demonstrate a lack of regard and understanding of the requirement for application of and adherence to the established rules of evidence and procedure. The Complainant cannot require the Defendant for cross-examination contrary to her assertions. The Defendant cannot be compelled by the Complainant to give evidence. It is entirely a matter for the Defendant, if the matter were to proceed to trial, whether to give or call any evidence. That is because

⁸¹ Submissions of Defendant filed 4 September 2023, [94].

⁸² Submissions of Defendant filed 4 September 2023, [94].

⁸³ Complainant's submissions filed 3 July 2023, [81].

⁸⁴ Complainant's submissions filed 3 July 2023, [83].

⁸⁵ Complainant's submissions filed 3 July 2023, [82].

⁸⁶ Complainant's submissions filed 3 July 2023, [84, 88(e)].

⁸⁷ Complainant's submissions filed 3 July 2023, [84, 88].

the onus of establishing a criminal charge brought against a Defendant lies with the prosecution. It is not for me to decide the admissibility issues raised, but they are issues the Defendant is entitled to raise and have decided by a Court if the complaint proceeds.

- [148] As inappropriate as the Complainant's submissions is in contending her criminal charges should be dismissed on the basis asserted, I do not consider the Complainant brought the charge against the Defendant in order to achieve a dismissal of the charges against her. Rather, the submission reflects a lack of understanding of fundamental principles.

- [149] There were indications before the hearing of the applications before me that the prosecution would not be conducted fairly. These emerge from the patent deficiencies in the complaint; and the failure of the Complainant to provide sufficient particulars as ordered by the court; and in providing a brief of evidence which in large part contains material supplied in relation to the criminal charges brought against the Complainant which in large part at least may likely be the subject of successful objection if the matter proceeded. The Defendant also points to a statement of the Complainant made in Court on 3 July 2023 to the effect that if she cannot rely upon the Defendant's own BWC footage and statement, then there is no case.⁸⁸

- [150] In my view, the Complainant's submissions in respect of the applications before me for determination make it patently clear that if the prosecution is allowed to proceed it will not be conducted fairly by the Complainant. By way of example, the Complainant disclosed recently that she had additional video evidence of relevant alleged events that she had not disclosed to the Defendant in the Brief, and did not later disclose when requested by the Defendant to do so. She asserted this was because the Complainant considered it 'exactly the same' and she thought she would only use it if she needed to do so. Her actions in failing to disclose it are contrary to her obligations of early and ongoing disclosure as prosecutor. Also, it is apparent she has proceeded on the basis that she can cross-examine the Defendant and relies upon the Defendant's evidence to prove the charge, when the Defendant has no obligation to give evidence in it, and she cannot be compelled to do so.

- [151] Further, it is apparent that the Complainant's submissions focus on her alleged interests in prosecuting the matter (for her community, in the public interest and interests of justice) and in an exercise of her human rights. She contends that these are to be placed above the Defendant's fundamental entitlement to fairness. This is particularly evident in her submissions to the effect that the court should intervene and allow the complaint to be amended, and put 'technicalities' aside and deal with the 'prima facie evidence' in the public interest because the Complainant has rights at law and that she is not a conventional prosecutor. Further, the Complainant's submissions rely heavily upon vague assertions of 'public interest' and 'the interests of justice' to justify whatever position she takes. Further, it is evident in her submissions if the complaint is struck out, then so should her criminal charges be struck out. This is inconsistent with her obligations as the prosecutor to afford a fair trial for the Defendant.

- [152] At the oral hearing, the Complainant produced a copy of the report from the Fitzgerald Inquiry as a reason why the prosecution should proceed (it seems because police corruption was found to have occurred by that Inquiry and more recent inquiries). That vague assertion does not provide any basis for contending that this particular complaint has merit. She submitted that she ‘trying to make the world a better place’ and ‘wants to see justice done’. The Complainant may be acting for what she perceives to be legitimate reasons, but her reliance upon her personal notions of justice demonstrates her misapprehension in respect of fundamental and important aspects of procedure and the law relevant to the prosecution she has brought.
- [153] Having regard to the matters outlined, if it was necessary for me to decide whether the complaint is an abuse of process, frivolous or vexatious, I would find that it is. In particular, I would be satisfied that the manner in which it is likely to be prosecuted based on what has occurred to date, that it would be manifestly unfair and oppressive to allow the prosecution to continue.
- [154] Accordingly, if it was necessary to do so, I would be satisfied that the application should be dismissed pursuant to s 102C(1) on this basis.
- [155] Permanent stay or Dismissal on the basis of s83A of the JA and implied powers
- [156] Finally, the Defendant applies under s 83A of the JA and the Court’s implied powers for permanent stay or dismissal of the complaint if Part5 Division 2 of the JA does not apply. I have found Part5 Division 2 of the JA applies to the complaint. However, in case I am wrong, I make the following observations.
- [157] In effect, the Defendant submits that the Court has the implied powers reasonably necessary to enable it to act effectively in its jurisdiction.⁸⁹ Further, she submits that the Court’s implied powers here include in effect the power, subject to legislation and rules of Court, to regulate its procedures in ensuring fairness in investigative and trial procedures,⁹⁰ and to prevent an abuse of its process.⁹¹ If a matter is regulated by a provision of statute or rules of court, a court may nevertheless exercise its implied powers in respect of the matter, so long as this does not contravene a provision.⁹²
- [158] Otherwise, the Defendant relies on the same arguments that the complaint is an abuse of process, frivolous or vexatious (as made for dismissal under s 102C(1)), in support of her application for a permanent stay or dismissal of the proceedings under s 83A and in the exercise of the Court’s implied powers.
- [159] The Complainant’s submissions seem to be that the court should use its implied powers for ensuring fairness in the investigative and trial procedures ‘to prevent bias and to see the ‘prima facie evidence’ (I understand this to be the BWC footage earlier discussed) that she relies upon, to provide what she refers to as the principles

⁸⁹ *Power v Heyward* [2007] 2 Qd.R 6, [16]; *Higgins v Comans* (2005) 153 Crim R 565, [15-16, 22, 28].

⁹⁰ *Power v Heyward* [2007] 2 Qd.R 6, [16].

⁹¹ *Power v Heyward* [2007] 2 Qd.R 6, [16]; *Grassby v Queen* (1989) 1CLR 1, 17.

⁹² *Landsal Pty Ltd (in liq) v REI Building Society* (1993) 41 FCR 421, 427.

of justice with foundations of the meaning of the rule of law being equity.’⁹³ These submissions are similar in effect to the Complainant’s submissions already discussed.

- [160] I do not need to further discuss the parties’ submissions. If it was necessary to do so, for the reasons I have already explained in considering the application for dismissal pursuant to s 102C(1), I would be satisfied that the proceeding is an abuse of process.

- [161] Section 83A of the JA provides for a direction hearing to be held in a criminal proceeding at which a magistrate may give any direction the magistrate is entitled to ‘make at law about any aspect of the conduct of the proceeding,’ including any of the matters specified in s 83A(5) (aa) to (h). The matters specified include, for example, disclosure; joining complaints; issuing a summons or warrant; changing the usual practice in a way that helps an alleged victim of the offence to give evidence. They encompass relevantly matters concerning the preparation of a proceeding for trial and the hearing process. A direction given by a magistrate is binding unless leave is given to reopen it for special reason: s 83A(6).

- [162] If it was necessary to do so, I would accept that as a matter of statutory construction, s 83A of the JA provides for Court broad powers to control its own processes for the fair and efficient exercise of its criminal jurisdiction. I would be satisfied that by way of necessary implication the Court has the power to direct that a proceeding be permanently stayed under s 83A.

- [163] I would be satisfied that an order should be made that the proceeding be permanently stayed.

⁹³ Complainant’s submissions filed 3 July 2023, [86].

