SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General for the State of Queensland v Di Carlo* [2017] QSC 171
PARTIES:	**ATTORNEY-GENERAL FOR STATE OF QUEENSLAND** (applicant) **v** **SALVATORE (SAM) DI CARLO** (respondent)
FILE NO/S:	SC No. 5003 of 2016
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	Delivered ex tempore on 2 August 2017
DELIVERED AT:	Brisbane
HEARING DATE:	2 August 2017
JUDGE:	Holmes CJ
ORDER:	**1. Fine the respondent the sum of $4000 to be paid within three months of order.** **2. Respondent to pay applicant's costs of the application.**
CATCHWORDS:	PROCEDURE – CONTEMPT, ATTACHMENT AND SEQUESTRATION – POWER OF THE COURT TO PUNISH FOR CONTEMPT – SUPREME COURT – scandalising the court - where Counsel said to magistrate in court "and that's why you don't do things according to law"
COUNSEL:	P Dunning QC, with A D Keyes for the applicant S Doyle QC, with A Braithwaite for the respondent
SOLICITORS:	Crown Law for the applicant Gilshenan and Luton for the respondent

[1] **HOLMES CJ:** The Attorney-General applies to this court for the punishment of the respondent for contempt of court for a statement made in the Magistrates Court on 25 January 2016. On that day, the respondent was representing a client on a bail application. It is relevant, though, to note that there had been a previous instance in which the respondent had represented the same client in a bail application before the same magistrate. On that occasion, he had been distinctly uncivil to the Magistrate.

[2] The circumstances of the January 2016 bail application were that the client, having been released on Supreme Court bail, was charged with some more offences but granted watch house bail. He failed to appear on the date set, and that, it appears, was the respondent's fault; he did not give his client the correct information. When that was appreciated, he went with his client to the Magistrates Court, a couple of days after the due date for the appearance. His client surrendered on a warrant issued for his arrest and there was an appearance that day before the magistrate who had previously dealt with the matter and to whom the contempt was offered.

[3] In the discussion that day before the magistrate, the respondent sought to have the magistrate disqualify himself on the grounds of apprehended bias, suggesting that his Honour's dislike of him and some communication with a court staff member were such as to warrant the magistrate's stepping aside. The magistrate acceded to the application to recuse himself, but adjourned the matter to be dealt with by another magistrate some two days later, a public holiday intervening. That led to the exchange which amounts to the contempt. The respondent preceded it by accusing the magistrate of being cranky and then proceeded to say, "And that's why you don't do things according to law." And that is the alleged contempt.

[4] I find that that was a contempt. There is a clear imputation that the magistrate did not apply the law and generally did not apply the law in accordance with his judicial oath.

[5] There was a further appearance in an unrelated matter in which the respondent was again uncivil to the same magistrate. The conflict is of some relevance, that context of rudeness before and after this incident of contempt, because while I accept that the respondent was largely motivated by his indignation at the perceived unfairness that his client should be detained in custody, and his personal angst at having brought that about, that background shows that there is also an element of an unprofessional animus to this magistrate.

[6] All lawyers experience frustration from time to time at judicial decisions. But their obligation is to behave with courtesy and respect. That is not inconsistent with powerful and determined advocacy. And the excuse of an emotional response is less compelling in the case of a barrister of the respondent's length of experience, which should have brought him the capacity to resist the temptation to react in such a way.

[7] The significance of this contempt is not just that it was an unseemly insult to the individual judicial officer. It was an affront to the court which he represents. It is not well enough understood, in my view, that the courts are a democratic institution.

[8] They are an arm of government and to play their role in democracy, in our democracy, they need to receive the respect which is due to them in that capacity. There is an important distinction to be drawn between fearless advocacy, between criticism of particular judicial decisions, on the one hand, and, on the other, attacks on judicial officers and the courts.

[9] Attacks contemptuous in nature are often made by uninformed individuals; sometimes they are cynically made by those who should know better for advantage in promoting their positions. But most certainly, they should never be made by members of the legal profession, whose obligation as lawyers is to uphold the rule of law.

[10] The particularly reprehensible aspect of this contempt is that it came from an officer of the court and one of very considerable experience. It requires deterrence. The suggestion that an actual fine might produce deterrence of fearless advocacy, I find unconvincing, I must say, because there is such a clear line between behaviour of this kind and proper advocacy, however powerful that advocacy might have to be.

[11] The obvious comparison is with the case of Lovett, to which I have been referred. I accept that there are features of this case which are less serious. This comment was not made in a context where the respondent sought to garner any publicity or attention to what he was saying. In Lovett there was an actual consequence. The trial was aborted, which was something that the court found the barrister should have foreseen. Some of that respondent's evidence about the sequence of events was rejected by the court. On the other hand, it must be said that Lovett involved a reflection on the magistrate's intellectual capacity, which is not as serious as effectively accusing him of betraying his judicial oath of impartiality and independence.

[12] In the respondent's favour, I note his apology, which was not as prompt as it should have been, and his cooperation, which is very significant, by the admission of the contempt, which has saved of course the applicant having to prove the contempt. I accept there is genuine contrition. It is pointed out to me that the respondent is now 60 years of age and has been 26 years at the bar. Of course, that cuts both ways. It means that, of all people, he should certainly, with that level of experience, have known much better than this.

[13] He has character references from two clients whom he has helped in his difficulties and from a senior silk. He has shown a willingness to do pro bono work. The references speak of his passion to help his clients, which may, one would think from the circumstances of this case, suggest that occasionally there may be over-identification with his clients' interests.

[14] As I have said, in my view, there is an importance to deterrence of such conduct, both by this respondent and generally. And also it warrants denouncing by an actual sanction. Consequently, I will fine the respondent the sum of $4000. He has three months in which to pay that amount.

[15] I order that the respondent pay the applicant's costs of the application.