

# SUPREME COURT OF QUEENSLAND

CITATION: *Emmanuel College v Rowe* [2014] QSC 238

PARTIES: **EMMANUEL COLLEGE, ACN 010 563 256**  
**(applicant)**

**AND**

**CHAD EVERETT ROWE**  
**(respondent)**

FILE NO/S: 5646 of 2014

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 29 September 2014

DELIVERED AT: Brisbane

HEARING DATE: 22 August 2014

JUDGE: Atkinson J

- 1. The respondent has committed contempt of court by breaching:**
  - a. the order of Dalton J made on 21 November 2013 in proceeding No. BS 5853 of 2013 ("the principal proceeding") as extended by order of Byrne SJA on 26 November 2013 and further extended on 27 November 2013; and**
  - b. the undertakings recorded in the order entered by the Registrar on 17 December 2013 in the principal proceeding pursuant to the order of Byrne SJA of 27 November 2013.**
- 2. The respondent is sentenced to 12 months imprisonment wholly suspended for a period of three years.**
- 3. The respondent is ordered to pay the applicant's costs on an indemnity basis.**

CATCHWORDS: PROCEDURE – CONTEMPT, ATTACHMENT & SEQUESTRATION – CONTEMPT – DISOBEDIENCE OF COURT ORDERS – BREACH OF UNDERTAKINGS TO THE COURT – where the applicant applied to have the respondent committed for contempt of court for breaching court orders and undertakings – where the respondent was the father of a pupil at the applicant school – where the alleged contempt involved the publication on numerous websites of

articles and videos about the applicant – where the respondent admitted that the offending publications did occur – whether the respondent was responsible for the offending publications

*Uniform Civil Procedure Rules 1999 (Qld)* r 900, r 925, r 926, r 930, r 931

*Australasian Meat Industry Employees' Union v Mudginberri Station Pty Ltd* (1986) 161 CLR 98, cited

*Bakir v Doueihi* [2001] QSC 414, considered

*Camm v ASI Development Company Pty Ltd* [2007] QCA 317, considered

*Chiltern District Council v Keane* [1985] 1 WLR 619, cited

*City Hall Albury Wodonga Pty Ltd & Ors v Chicago*

*Investments Pty Ltd & Ors* [2006] QSC 031, cited

*Consolidated Press Ltd v McRae* (1955) 93 CLR 325, considered

*Davis's Case* (1461) 2 Dyer 188; 73 ER 415, cited

*Evenco P/L v Aust Bldg Cons Employees & Builders*

*Labourers Federation (Qld Branch) & Ors* [2000] QCA 108, cited

*Hinch v Attorney-General (Vict)* (1987) 164 CLR 15, considered

*Iberian Trust, Ltd v Founders Trust and Investment Co* [1932] 2 KB 87, cited

*Jennison v Baker* [1972] 2 QB 52, considered

*Madeira v Roggette Pty Ltd* [1990] 2 Qd R 357, cited

*Nexus Mortgage Securities Pty Ltd v Ecto Pty Ltd* [1998] 4 VR 220, cited

*Phonographic Performance Ltd v Amusement Caterers (Peckham) Ltd* (1964) Ch 195, considered

*Shepherd v The Queen* (1990) 170 CLR 573 at 578, cited

*Stewart v Gymboree Pty Ltd* [2001] QCA 307, cited

*Witham v Holloway* (1995) 183 CLR 525, considered

COUNSEL: A J H Morris QC for the applicant  
D C Shepherd for the respondent

SOLICITORS: Corney & Lind Lawyers for the applicant  
Legal Aid Queensland for the respondent

[1] On 18 June 2014 the applicant, Emmanuel College, made an application to the court pursuant to rules 900, 930 and 931 of the *Uniform Civil Procedure Rules 1999* (UCPR) and further, and alternatively, in the inherent jurisdiction of the court, that the respondent, Chad Everett Rowe, be committed to a correctional facility to be determined by the Director General of the Department of Corrective Services, for such period as the court may specify, or otherwise punished for his contempts of court in breaching:

(1) the order of Dalton J made on 21 November 2013 in proceeding No. BS 5853 of 2013 ("the principal proceeding") as extended by order of Byrne SJA on 26 November 2013 and further extended on 27 November 2013; and

(2) the undertakings recorded in the order entered by the Registrar on 17 December 2013 in the principal proceeding pursuant to the order of Byrne SJA of 27 November 2013.

[2] The particulars given of the alleged contempts were said to be particulars of breaches of each of the orders and undertakings. Those particulars were as follows:

- "1. publishing, causing to be published, enabling to publish, or failing to remove the publication of videos published by 'simon said' on www.youtube.com;
2. publishing or causing to be published at or about 12.28am on 13 June 2014 a certain Internet posting entitled, 'Mr Patrick Innes Hill of Emmanuel College Gold Coast has been convicted of child sex crimes in the United Kingdom' which was later amended to 'The Principal of Emmanuel College Gold Coast is a Sexual Predator';
3. publishing or causing to be published at or about 11.57pm on 14 June 2014 a certain Internet posting entitled, 'What is it with Emmanuel College Principals and Exclusive Waterfront Properties?';
4. publishing or causing to be published at or about 10.39am on 12 June 2014 a certain Internet posting entitled, 'Emmanuel College Gold Coast School Canteen Poisons Students';
5. publishing or causing to be published at or about 7.04pm on 11 June 2014 a certain Internet posting entitled 'Emmanuel College Gold Coast Students are Fucking Retarded';
6. publishing or causing to be published at or about 4.52pm on 11 June 2014 a certain Internet posting entitled 'Emmanuel College Gold Coast - Teacher accused of sex with student';
7. publishing or causing to be published a certain Internet posting entitled 'A Haven for Paedophiles - Emmanuel College Gold Coast';
  - (a) at or about 11.20pm on 6 May 2014; and
  - (b) again, at or about 6.53am on 8 June 2014;
8. publishing or causing to be published at or about 10.39pm on 12 May 2014 a certain Internet posting entitled 'Emmanuel College Gold Coast — Drug Capital of the Gold Coast';
9. publishing or causing to be published on or about 20 May 2014 a certain Internet posting entitled 'Bankrupted Parents by Emmanuel College Gold Coast';
10. publishing or causing to be published on or about 10 May 2014 a certain Internet posting entitled 'Parents Arrested for Trespass at Emmanuel College Gold Coast Australia';
11. publishing or causing to be published on or about 4 May 2014 a certain Internet posting entitled 'Australian Securities and Investment Commission (ASIC) Investigates Emmanuel College Gold Coast and directors'; and
12. publishing or causing to be published the contents of the following websites; namely —

- (a) a website with the following Uniform Resource Locator (URL):  
<http://www.rowevenmanuelcollege.info>
  - (b) a website created on or about 28 January 2014 with the following Uniform Resource Locator (URL):  
<http://www.emmanuelcollegesucks.info>
  - (c) a website created on or about 29 January 2014 with the following Uniform Resource Locator (URL):  
<http://www.shutdownemmanuelcollegegoldcoast.info>
  - (d) a website created on or about 3 February 2014 with the following Uniform Resource Locator (URL):  
<http://www.thedumbschool.info>
  - (e) a website created on or about 3 February 2014 with the following Uniform Resource Locator (URL):  
<http://www.theevilschool.info>
  - (f) a website with the following Uniform Resource Locator (URL):  
<http://www.australiasworstschool.info>
13. publishing or causing or enabling to be published videos at [www.youtube.com](http://www.youtube.com)."
- [3] In order to understand the application it is necessary to set out some of the history of this unhappy litigation. The respondent Mr Rowe is the father of a child who is a pupil at the school conducted by the applicant. The child's parents separated and divorced and relations between Mr Rowe and Emmanuel College became very acrimonious. On 26 June 2013 Emmanuel College commenced proceedings against Mr Rowe claiming many different kinds of relief. An amended originating application was filed on 10 July 2013.
- [4] On 21 November 2013 Emmanuel College filed by leave an application seeking interim relief against Mr Rowe. On that date Dalton J granted an interim injunction in the following terms:
- "That the respondent be restrained, and an injunction issue to restrain the respondent, until 4.00pm on 26 November 2013, from:
- (a) publishing; or
  - (b) causing to be published; or
  - (c) encouraging, requesting or enabling to be published (including by responding to questions or requests for comment from others),
- by any means whatsoever any comment about Emmanuel College, or any of its officers, employees or agents (past, present or future)."
- [5] The order made by Dalton J also required the solicitors for the applicant, Emmanuel College, to file and serve an application by 10.00am on 22 November 2013 seeking orders to enforce a Deed of Settlement dated 13 November 2013 and that that application be listed for hearing in the civil list on 26 November 2013.
- [6] On 27 November 2013 Byrne SJA made orders both on the application filed by Emmanuel College and on an oral application made by Mr Rowe. The orders in the oral application made by Mr Rowe were as follows:

- "1. That the claim by the Respondent in the principal proceeding (Chad Everett Rowe), to set aside the Deed of Settlement signed on 13 November 2013 by the First Applicant, the Second Applicant and the Respondent, is dismissed.
2. That the Respondent in the principal proceeding (Chad Everett Rowe) pay the costs of the Applicants in the principal proceeding (Emmanuel College, ACN 010 563 256, and Alison Schultz) of and incidental to the trial on 26 and 27 November 2013."

[7] The orders in the application made by Emmanuel College were as follows:

- "1. That the Deed of Settlement signed on 13 November 2013 by the First Applicant, the Second Applicant and the Respondent in the principal proceeding (herein called 'the Deed') be specifically performed and carried into effect.
2. That the Respondent (Chad Everett Rowe), within 7 days from the date hereof, duly execute and furnish to the solicitors for the First Applicant:
  - (a) a form of consent in the terms contemplated and specified in clauses 3.3(a) and (b) and Schedule A to the Deed; and
  - (b) a form of consent to the dismissal of the application in relation to Anti-Discrimination matters which is currently before the Queensland Civil and Administrative Tribunal, file number ADL088/2013.
3. That, in the event that the Respondent fails to comply with paragraph 2 of this judgment, the Registrar is authorised, empowered and directed to make and execute, and to furnish to the solicitors for the First Applicant, on behalf of and in the name of the Respondent, all such documents as the Respondent has failed duly to execute and furnish to the solicitors for the First Applicant.
4. That the orders made and injunctions granted by the Honourable Justice Dalton on 21 November 2013, and extended by the Honourable Justice Byrne on 26 November 2013, are further extended until such time as the Respondent has complied with paragraph 2 of this judgment
5. That the parties have liberty to apply on two clear days' notice, for which purpose a communication by email addressed to the Respondent (Chad Everett Rowe) at the following email address shall be taken to be sufficient notice to him for all purposes; namely —  
   gosonicaustralia@gmail.com
6. That the Respondent pay:
  - (a) the reserved costs of the First Applicant, of and incidental to the hearing on 21 November 2013; and
  - (b) the Applicants' costs of and incidental to the trial on 26 and 27 November 2013."

[8] Mr Rowe did not comply with paragraph 2 of the judgment of Byrne SJA. Accordingly paragraphs 3 and 4 became operative.

- [9] The Deed of Settlement referred to in the order of Byrne SJA was exhibited to an affidavit filed on behalf of Emmanuel College.<sup>1</sup> The parts of that settlement deed which are relevant for this application are found in paragraph 3 and Schedule A.
- [10] Paragraph 3 provides:
- "3.1 Mr Rowe, by signing this deed, gives a permanent and irrevocable undertaking in the following terms:
- (a) To do all acts and things necessary to immediately remove and procure that internet service providers remove all content (including cached content), relating to Emmanuel College, any of its officers, employees or agents (past, present or future) from any source whatsoever; and
  - (b) To never again at any time publish, cause to be published, encourage, request or enable to be published, including without limitation by response to questions or request for comment from others including journalists, by any means whatsoever any comment about Emmanuel College or any of its officers, employees or agents (past, present or future).
- 3.2 The terms of the undertakings set out in Clause 3.1 of this deed are also covenants in this deed.
- 3.3 Mr Rowe must, within 7 days of the date of this deed:
- (a) Give a permanent and irrevocable undertaking, to be filed in the Supreme Court of Queensland (Proceeding Number BS5853 of 2013), in the terms set out in the draft Consent Order contained in Schedule A to this deed;
  - (b) Do all acts and things necessary to seek a Consent Order in the Supreme Court of Queensland, matter number BS 5853/2013 on terms set out in Schedule A to this Deed;
  - (c) Do all acts and things necessary to seek to withdraw all other applications made in the Supreme Court of Queensland and Queensland Court of Appeal against Emmanuel College or its employees, officers or agents;
  - (d) Do all acts and things necessary to seek to withdraw any applications already filed with the High Court of Australia against Emmanuel College or its employees, officers or agents;
  - (e) Do all acts and things necessary to withdraw the application seeking damages for Defamation, filed in the Pine Rivers Magistrates Court file number M82/2013;
  - (f) Do all acts and things necessary to withdraw the application in relation to Anti-Discrimination matters which is currently before the Queensland Civil and Administrative Tribunal, file number ADL088/2013;
  - (g) Do all acts and things necessary to withdraw any ongoing applications filed with the Federal Court of Australia against Emmanuel College, its employees, officers or agents; and
  - (h) Withdraw any and all complaints made to statutory bodies, or government departments in relation to Emmanuel College, including in particular ASIC."

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<sup>1</sup> Affidavit of Fiona Gaye Manderson filed 18 June 2014.

[11] Schedule A provides for the following consent order:

"Upon the Respondent

1. Giving to this Honourable Court a permanent undertaking not to institute any proceeding in Queensland against the First Applicant (being Emmanuel College) or any past, present or future officer, employee of or agent of the first applicant in that person's capacity as such, without bringing an application for leave to the Supreme Court of Queensland to institute the proceeding, as if the Respondent were subject to a vexatious proceedings order under the *Vexatious Proceedings Act 2005* prohibiting him from instituting proceedings in Queensland against the first applicant or any past, present or future officer, employee or agent of the first applicant; and
2. Giving to this Honourable Court further permanent undertakings in the following terms:
  1. To do all acts and things necessary or appropriate forthwith to remove all material published by or at the behest of Respondent on the Internet which relates to Emmanuel College or its past, present or future directors, employees or agents, including but not limited to material published by or at the behest of Respondent on any of the following websites; namely –
    - a. [www.roweemmanuelcollege.info](http://www.roweemmanuelcollege.info);
    - b. <http://users.tpg.com.au/chadrowe/emmanuel/>;
    - c. YouTube;
    - d. Twitter;
    - e. Google;
    - f. Wikipedia;
    - g. [ireport.cnn.com](http://ireport.cnn.com); and
    - h. Facebook.
  2. To take all steps and to do all acts and things necessary or appropriate, and to use his best endeavours to ensure that internet service providers and search engine providers remove all content (including cached content) referred to in the preceding undertaking, including but not limited to providing internet search engine providers with a copy of this order.
  3. To refrain from making, publishing, causing or procuring to be published, or encouraging or enabling to be published, including without limitation by response to any question or request for comment from another person, any matter which relates to Emmanuel College or its past, present or future directors, employees or agents.
  4. To refrain from making, altering, amending, or otherwise affecting any posting to any Internet site or web page containing any matter which relates to Emmanuel College or its past, present or future

directors, employees or agents, including without limitation the entry on the Wikipedia website relating to Emmanuel College.

THE COURT ORDERS BY CONSENT:

1. That the Originating Application be dismissed; and
2. That there be no order as to costs."

[12] When Mr Rowe did not sign the consent orders as required, the Registrar signed a consent order containing the following undertakings on behalf of Mr Rowe:

- "1. UPON the permanent undertaking of the Respondent not to institute any proceeding in Queensland against the First Applicant (being Emmanuel College) or any past, present or future officer, employee of or agent of the first applicant in that person's capacity as such, without bringing an application for leave to the Supreme Court of Queensland to institute the proceeding, as if the Respondent were subject to a vexatious proceedings order under the *Vexatious Proceedings Act 2005* prohibiting him from instituting proceedings in Queensland against the first applicant or any past, present or future officer, employee or agent of the first applicant; and
2. UPON the permanent undertakings of the Respondent in the following terms:
  - a. To do all acts and things necessary or appropriate forthwith to remove all material published by or at the behest of the Respondent on the Internet which relates to Emmanuel College or its past, present or future directors, employees or agents, including but not limited to material published by or at the behest of the Respondent on any of the following websites; namely –
    - i. [www.rowevenmanuelcollege.info](http://www.rowevenmanuelcollege.info);
    - ii. <http://users.tpg.com.au/chadrowe/emmanuel/>;
    - iii. YouTube;
    - iv. Twitter;
    - v. Google;
    - vi. Wikipedia;
    - vii. [ireport.cnn.com](http://ireport.cnn.com);
    - viii. Facebook.
  - b. UPON the permanent undertaking of the Respondent to take all steps and to do all acts and things necessary or appropriate, and to use his best endeavours to ensure that internet service providers and search engine providers remove all content (including cached content) referred to in the preceding undertaking, including but not limited to providing internet search engine providers with a copy of this order; and
  - c. UPON the permanent undertaking of the Respondent to refrain from making, publishing, causing or procuring to be published, or encouraging or



enabling to be published, including without limitation by response to any question or request for comment from another person, any matter which relates to Emmanuel College or its past, present or future directors, employees or agents; and

- d. UPON the permanent undertaking of the Respondent to refrain from making, altering, amending, or otherwise affecting any posting to any Internet site or web page containing any matter which relates to Emmanuel College or its past, present or future directors, employees or agents, including without limitation the entry on the Wikipedia website relating to Emmanuel College."

[13] The applicant alleges that Mr Rowe has been in breach of those orders and undertakings and has therefore brought the application referred to at the beginning of these reasons.

[14] In his affidavit filed on 20 August 2014 in this proceeding, Mr Rowe conceded that having reviewed the affidavit material that had been filed it could be demonstrated that he was in contravention of the orders made by Byrne SJA on 26 November 2013 insofar as his conduct was accepted up and until his bankruptcy which occurred on 5 February 2014. He set out the reasons why he had engaged in that activity and apologised to the applicant and the court for those actions. In his oral evidence his concession was restricted to his publishing material on the website [www.rowevemmanuelcollege.info](http://www.rowevemmanuelcollege.info). In submissions on his behalf this concession extended to publishing videos to a YouTube channel under his own name.

[15] Accordingly the conduct specified in paragraphs 12(a) and 13 of the particulars has been admitted for the period from 21 November 2013 until 5 February 2014. It was further admitted by the respondent that the offending publications did occur on the internet. The issue was therefore whether or not Mr Rowe was responsible for the behaviour set out in the particulars other than to the extent he has admitted.

### **Civil contempt**

[16] As I held in *Bakir v Doueih*<sup>2</sup> and *City Hall Albury Wodonga Pty Ltd & Ors v Chicago Investments Pty Ltd & Ors*<sup>3</sup> the power of courts to fine or imprison for contempt of court has long been part of the coercive power of courts. In its original form, the coercive power of contempt was used to ensure order in the court and matters immediately affecting its business. So it was that as early as the 13<sup>th</sup> and 14<sup>th</sup> century,<sup>4</sup> it was held to be contempt of court to assault a judge,<sup>5</sup> a juror,<sup>6</sup> a witness,<sup>7</sup> an opposing party,<sup>8</sup> a litigant,<sup>9</sup> or an officer of the court.<sup>10</sup> It was also a

<sup>2</sup> [2001] QSC 414 at [5]-[8].

<sup>3</sup> [2006] QSC 031.

<sup>4</sup> See Arlidge, Eady & Smith *On Contempt* 2nd Edition, 1999, Sweet and Maxwell at [1-2].  
<sup>5</sup> (1348) YB 22 Edward III, p 13, pl 26.

<sup>6</sup> Coram Rege roll, H. 22 Edward III, m 103.

<sup>7</sup> *Davis's Case* (1461) 2 Dyer 188; 73 ER 415.

<sup>8</sup> Coram Rege roll, T 30 Edward I, m 9d.

<sup>9</sup> (1323) Coram Rege roll, M. 17 Edward II, m 16d; (1398) Cal Pat Rolls, 22 Richard II, 427.

<sup>10</sup> (1317) Coram Rege roll, T. 11 Edward II, m 48.

contempt to use words, for example, to insult a judge in open court.<sup>11</sup> Fine and imprisonment were early common law remedies for such contempt of court.

- [17] In the Courts of Chancery, two types of contempts were commonly recognised. These included criminal contempt and the type of civil contempt which is in issue in this case. This type of civil contempt concerns the power which was vested in the Court of Chancery to deal with a party's contempt in disobeying a court order or failing to comply with an undertaking.<sup>12</sup>
- [18] An application for a person to be dealt with for civil contempt has two main aspects. Firstly, it is for the benefit of the party who has the benefit of a court order which has been breached. Secondly, however, it is designed to punish disobedience of orders of the court. There is both a private and a public interest in compliance with court orders. As Salmon LJ said in *Jennison v Baker*:<sup>13</sup>
- “The public at large, no less than the individual litigant, have an interest, and a very real interest, in justice being effectively administered.”
- [19] Edmund-Davies LJ<sup>14</sup> quoted with approval from the judgment of Cross J in *Phonographic Performance Ltd v Amusement Caterers (Peckham) Ltd*:<sup>15</sup>
- “Where there has been wilful disobedience to an order of the court and a measure of contumacy on the part of the defendants, then civil contempt, what is called ‘contempt of procedure’, bears a two-fold character, implying as between the parties to proceedings merely a right to exercise and a liability to submit to a form of civil execution, but as between the party in default and the state, a penal disciplinary jurisdiction to be exercised by the court in the public interest.”
- [20] As the High Court held in *Witham v Holloway*,<sup>16</sup> proceedings for breach of an order or undertaking have the effect of vindicating judicial authority as well as a remedial or coercive effect.
- [21] This was reiterated by Keane JA in *Camm v ASI Development Company Pty Ltd*<sup>17</sup> where his Honour observed at p 8:
- "the purpose of punishment for contempt of court is to vindicate the authority of the court, and to protect the interests of the party who has the benefit of an order of the court by coercing the recalcitrant party into performing his or her obligations."
- [22] These two aspects of a civil contempt constituted by the failure to abide by an order of a court or an undertaking given to a court, have an inevitable impact on the procedure and standard of proof to be followed in such a case. In *Witham v Holloway*,<sup>18</sup> the court held that the differences between civil and criminal contempt are illusory. The fact that the usual outcome of successful proceedings is

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<sup>11</sup> (1293) Coram Rege roll, P. 21 Edward I, par i, m 95 (Solly-Flood), William de Bereford J.

<sup>12</sup> Arlidge, Eady & Smith [supra] at [1-47] – [1-50].

<sup>13</sup> [1972] 2 QB 52 at 61.

<sup>14</sup> *Jennison v Baker* (supra) at 69.

<sup>15</sup> (1964) Ch 195.

<sup>16</sup> (1995) 183 CLR 525 at 533.

<sup>17</sup> [2007] QCA 317.

<sup>18</sup> (supra) at 530.

punishment, makes it clear, as Deane J said in *Hinch v Attorney-General (Vict)*,<sup>19</sup> that all proceedings for contempt “must realistically be seen as essentially criminal in nature”. The consequence is that all charges of contempt must be proved beyond reasonable doubt. The judgment of the High Court in *Consolidated Press Ltd v McRae*,<sup>20</sup> a case of criminal contempt, is therefore apposite, where it held:

“Like every other offence the facts by which it is made out must be proved by admissible evidence to the satisfaction beyond reasonable doubt of the tribunal. Uncertain inferences from inexact proofs will not support such a charge.”

- [23] If a failure to comply with orders of the court may lead to punishment by imprisonment, then the orders must be worded in clear and unambiguous terms so that the party affected knows what he or she must do or refrain from doing.<sup>21</sup> That the liberty of the citizen is at stake also means that the court must insist on strict compliance with the prescribed procedure.<sup>22</sup>
- [24] The breach of a court order or undertaking will not constitute contempt unless it is wilful and not casual, accidental or unintentional.<sup>23</sup>
- [25] There are, nevertheless, procedural differences between criminal and civil contempts. In particular, there is no trial by jury and an application for punishment for contempt is brought in the civil jurisdiction of the court.

### Contemporary practice in Queensland

- [26] Enforcement of particular orders is found in Chapter 20 of the UCPR. Rule 900(1)(a) provides that an undertaking, other than for the payment of monies, may be enforced, *inter alia*, by punishment for contempt of the person liable under the undertaking.
- [27] The procedure for bringing an application for punishment for contempt of court in Queensland is found in Chapter 20, Part 7, Division 3 of the UCPR. Rule 925 provides that Division 3 applies to specified contempts. Subparagraph (1)(a) of r 925 provides that this Division applies to “contempt constituted by failure to comply with an order of the court or an undertaking given to the court”.
- [28] Rule 926 of the UCPR specifies the procedure that must be followed by a person applying for punishment of a contempt. It provides:
- “(1) A person applying for punishment of a contempt must file an application specifying the alleged contempt.
  - (2) The application may be filed in the proceeding in which the contempt was committed or to start a new proceeding.
  - (3) The application and any affidavit in support of it must be served on the respondent personally.

<sup>19</sup> (1987) 164 CLR 15 at 49.

<sup>20</sup> (1955) 93 CLR 325 at 333.

<sup>21</sup> *Nexus Mortgage Securities Pty Ltd v Ecto Pty Ltd* [1998] 4 VR 220 at 222; *Iberian Trust, Ltd v Founders Trust and Investment Co* [1932] 2 KB 87 at 95.

<sup>22</sup> *Camm v ASI Development Company Pty Ltd* [2007] QCA 317 at 10.

<sup>23</sup> *Australasian Meat Industry Employees' Union v Mudginberri Station Pty Ltd* (1986) 161 CLR 98 at 111; *Madeira v Roggette Pty Ltd* [1990] 2 Qd R 357 at 363, 366; *Stewart v Gymboree Pty Ltd* [2001] QCA 307 at [35]; *Evenco P/L v Aust Bldg Cons Employees & Builders Labourers Federation (Qld Branch) & Ors* [2000] QCA 108 at [32].

- (4) An affidavit in support of or opposing the application must not contain evidence which the person making it could not give if giving evidence orally.”

[29] Rule 926(1) requires particularisation of the charges. Adequate particulars have been given in this case. The charges are confined to the particulars given.<sup>24</sup>

[30] Rules 930 and 931 provide for punishment for contempt as follows:

**"930 Punishment**

- (1) This rule applies if the court decides that the respondent has committed a contempt.
- (2) If the respondent is an individual, the court may punish the individual by making an order that may be made under the *Penalties and Sentences Act 1992*.
- (3) If the respondent is a corporation, the court may punish the respondent by seizing corporation property or a fine or both.
- (4) The court may make an order for punishment on conditions, including, for example, a suspension of punishment during good behaviour, with or without the respondent giving security satisfactory to the court for good behaviour.

**931 Imprisonment**

- (1) An order for imprisonment of the respondent may specify the prison in which the respondent is to be imprisoned.
- (2) If a respondent is imprisoned for a term, the court may order the respondent's discharge from prison before the end of the term."

**Evidence of contempt**

[31] The principal evidence for the applicant was provided by Fiona Manderson, a solicitor in the employ of the lawyers who act for the applicant, who filed four affidavits. Affidavits were also filed on behalf of the applicant by Alison Schultz, Mr Rowe's ex-wife, and Phillip O'Connor, business manager of the applicant. Ms Manderson was cross-examined by counsel for the respondent. Mr Rowe filed two affidavits and was cross-examined at the hearing. Although he made some admissions, I concluded after reviewing the evidence that he was frankly dishonest about his involvement in continued and persistent postings to the internet of offensive articles about the applicant and its employees.

[32] Much of the evidence relied upon by the applicant was circumstantial. It was common ground that the appropriate test to be applied where such evidence is relied upon is that articulated in *Shepherd v The Queen* that "guilt should not only be a rational inference but should be the only rational inference that could be drawn from the circumstances."<sup>25</sup>

**Particular 1: publishing, causing to be published, enabling to publish, or failing to remove the publication of videos published by "simon said" on [www.youtube.com](http://www.youtube.com)**

<sup>24</sup> *Chiltern District Council v Keane* [1985] 1 WLR 619.

<sup>25</sup> (1990) 170 CLR 573 at 578.

- [33] As to particular 1, Ms Manderson deposed that there was a YouTube channel posted by a user named "chadowe". As at 7 February 2014 the videos available on that YouTube channel were entitled "The Half a Million Dollar Report Card", "Mr Graham Leo is an absolute idiot", "Emmanuel College Gold Coast is an absolute joke", "The Dysfunctional School - Emmanuel College Gold Coast" and "Emmanuel College is the Worst school in Australia". Each of those videos, according to the website, was apparently published on either 16 or 17 December 2013. These were the videos which Mr Rowe conceded publishing on his YouTube channel.
- [34] Ms Manderson searched YouTube again on 14 July 2014 and found the same five videos under the user name "simon said". The date on which those videos had been posted was unchanged from 16 or 17 December 2013. Ms Manderson exhibited to her affidavit a copy of the transcript of each of those videos.
- [35] Ms Manderson was cross-examined about this particular. She referred to the fact that the email address for the "simon said" username was rowevemmanuelcollege@gmail.com. She conceded that Mr Rowe had denied any contact with that email. She said her conclusion that Mr Rowe was responsible for this YouTube channel under the username 'simon said' was based on the fact that the videos were the same as those admittedly published earlier by Mr Rowe and showed the date on which he had first published them. She conceded that anyone can open a YouTube account or channel, call it whatever they like and upload any material available on the internet to that site.
- [36] However, the material on that account was posted by the person who was responsible for the email address rowevemmanuelcollege@gmail.com. I am satisfied for the reasons set out with regard to particular 12 later in this judgment that person was Mr Rowe. Accordingly, the only rational inference open is that Mr Rowe published and failed to remove the publication of videos by "simon said" on www.youtube.com. I am satisfied that this particular of contempt has been proved beyond reasonable doubt.

**Particular 2: publishing or causing to be published at or about 12.28am on 13 June 2014 a certain Internet posting entitled, "Mr Patrick Innes Hill of Emmanuel College Gold Coast has been convicted of child sex crimes in the United Kingdom" which was later amended to "The Principal of Emmanuel College Gold Coast is a Sexual Predator"**

- [37] The evidence said to be in support of particular 2 is found at paragraph 44 of Ms Manderson's affidavit filed 15 July 2014 which refers to that material being published by the respondent on 13 June 2014 at 12.28am. She exhibited a copy of the website under the heading "EMMANUEL COLLEGE::CHRISTIAN SCHOOL GOLD COAST::AGENTS OF SATAN AND SERVANTS OF THE ANTICHRIST::THE SO CALLED 'CHRISTIAN SCHOOL' THAT DISCRIMINATES AGAINST SEPARATED AND DIVORCED PARENTS; BANS SEPARATED-DIVORCED PARENTS FROM THE SCHOOL; BANKRUPTS PARENTS WHEN THEY COMPLAIN, AND OPERATES OUTSIDE OF THE LAW (WHICH MEANS YOU ARE NOT PROTECTED)." In the body of the page on the website it is said:

"It is has been confirmed that Mr Patrick Innes Hill of Emmanuel College Gold Coast has been convicted of child sex crimes in the United Kingdom.

He has escaped to the Gold Coast to become the new Principal of Emmanuel College Gold Coast.

All children at Emmanuel College Gold Coast are at risk under Mr Innes Hill care."

- [38] The footer on the pages printed out from the website shows that it was from the website [www.rowevemmanuelcollege.info](http://www.rowevemmanuelcollege.info) and printed out on 13 June 2014. The excerpt about Mr Hill has the time and date "June 13, 2014, 12.28AM" on it.<sup>26</sup>
- [39] Ms Manderson deposed that on 18 June 2014 she caused searches to be conducted in relation to [www.rowevemmanuelcollege.info](http://www.rowevemmanuelcollege.info). She says that searches on the IP address history and name server history of the website on 18 June 2014 show that on 14 November 2013 (the day after the date of the settlement deed) the IP address was deregistered and the name server was deleted, but reregistered on 20 December 2013.<sup>27</sup> A Domain History Search conducted on 18 June 2014<sup>28</sup> reveals that the website was registered to Sonic Networks Pty Ltd and that the registrant, admin, billing and tech details are identical to the respondent's details. An ASIC search conducted on Sonic Network Pty Ltd on 12 June 2014<sup>29</sup> shows that its only director and shareholder is the respondent, Chad Rowe, whose address is the same as the registered address of the company. The contact email address for the registrant of the website referred to in particular 2 is [chad\\_rowe@hotmail.com](mailto:chad_rowe@hotmail.com), an email address that the respondent had used to communicate with the solicitors for the applicant. No changes have been made to ASIC records for this company since 4 November 2013 despite Mr Rowe's bankruptcy on 5 February 2014. During cross-examination Mr Rowe conceded that he did not tell anyone else how to access the host server so as to change the contents of the website. His trustee in bankruptcy did not make any changes to, or have any control over, the website.
- [40] I am satisfied beyond reasonable doubt that the only rational inference open on this evidence is that Mr Rowe was responsible for this website and published or caused this posting to be published to the website which he controlled.

**Particular 3: publishing or causing to be published at about 11.57pm on 14 June 2014 a certain Internet posting entitled, "What is it with Emmanuel College Principals and Exclusive Waterfront Properties"**

- [41] With regard to particular 3 the applicant relied upon searches conducted by Ms Manderson. She exhibited a print out from the website [www.rowevemmanuelcollege.info](http://www.rowevemmanuelcollege.info) which was published under the heading "EMMANUEL COLLEGE::CHRISTIAN SCHOOL GOLD COAST::ONE FATHER'S HORRIBLE NIGHTMARE WHICH LEFT HIM BROKE, BANKRUPT AND HIS LIFE DESTROYED OVER ACCESS TO HIS DAUGHTER'S REPORT CARD AND FAILURE OF THE SCHOOL TO

<sup>26</sup> Affidavit of Fiona Gaye Manderson filed 15 July 2014 Exhibit FGM 18.

<sup>27</sup> Affidavit of Fiona Gaye Manderson filed 15 July 2014 Exhibit FGM 39.

<sup>28</sup> Affidavit of Fiona Gaye Manderson filed 15 July 2014 Exhibit FGM 40.

<sup>29</sup> Affidavit of Fiona Gaye Manderson filed 15 July 2014 Exhibit FGM 41.

RELEASE HIM FROM THE SCHOOL FEES ENROLMENT CONTRACT."<sup>30</sup> Page 4 of the website refers to the matter quoted in particular 3. However that print out from the website shows that it was published on 29 January 2014 at 12.08pm. A print out from the website [www.rowevemmanuelcollege.info](http://www.rowevemmanuelcollege.info) dated 12 June 2014<sup>31</sup> shows that this post was published to that website at 12.05pm on 13 May 2014, which is not the time set out in this particular. A print out dated 14 July 2014 from the website [www.emmanuelcollegegoldcoast.info](http://www.emmanuelcollegegoldcoast.info) shows that this post was published to that site at 11.57pm on 14 June 2014.<sup>32</sup> This is the time set out in the particular. However, the applicant has not shown that Mr Rowe published that website.

- [42] The applicant has failed to prove beyond reasonable doubt that Mr Rowe published or caused to be published the posting set out in particular 3 at the time and date set out in particular 3.

**Particular 4: publishing or causing to be published at or about 10.39pm on 12 June 2014 a certain Internet posting entitled, "Emmanuel College Gold Coast School Canteen Poisons Students"**

- [43] With regard to this particular, Ms Manderson deposed that she had exhibited a list of the publication titles of the respondent's websites and the date and time each of these publications was made. Amongst that list is found an item which alleges that on 12 June 2014 at 10.39pm the article "Emmanuel College Gold Coast School Canteen Poisons Students" was published. However, it appears on the face of this "list" that the list was created by Ms Manderson. It is not itself evidence that the publication was made on that time and date merely being a compilation by Ms Manderson and so, while its admission as evidence was not objected to, it can be afforded little weight.

- [44] However, a print out dated 13 June 2014 from the website [www.rowevemmanuelcollege.info](http://www.rowevemmanuelcollege.info)<sup>33</sup> shows that this post was published at 10.39pm on 12 June 2014. For the reasons already given with regard to particular 2<sup>34</sup> I am satisfied that this website continued to be controlled by Mr Rowe. I am therefore satisfied beyond reasonable doubt that this particular has been proved.

**Particular 5: publishing or causing to be published at or about 7.04pm on 11 June 2014 a certain Internet posting entitled "Emmanuel College Gold Coast Students are Fucking Retarded"**

- [45] Ms Manderson deposed in her affidavit that her client believed that Mr Rowe was operating or had operated a post which said "Emmanuel College Gold Coast Students are Fucking Retarded" and that this was published at 7.04pm on 11 June 2014. This evidence was not objected to but is hardly compelling. Ms Manderson exhibited a copy of that post on the [www.rowevemmanuelcollege.info](http://www.rowevemmanuelcollege.info) website from a search conducted on 12 June 2014.<sup>35</sup> There was however nothing on the face of that website which showed when this particular posting was published. However

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<sup>30</sup> Affidavit of Fiona Gaye Manderson filed 15 July 2014 Exhibit FGM 35.

<sup>31</sup> Affidavit of Fiona Gaye Manderson filed 18 June 2014 Exhibit FGM 19.

<sup>32</sup> Affidavit of Fiona Gaye Manderson filed 15 July 2014 Exhibit FGM 36.

<sup>33</sup> Affidavit of Fiona Gaye Manderson filed 15 July 2014 Exhibit FGM 18.

<sup>34</sup> See [39].

<sup>35</sup> Affidavit of Fiona Gaye Manderson filed 15 July 2014 Exhibit FGM 14.

she also exhibited another copy of a print out of a search of that website conducted on 13 June 2014.<sup>36</sup> That showed that this post was first published on 7.04pm on 11 June 2014. For the reasons already given I am satisfied that this website continued to be controlled by Mr Rowe. I am therefore satisfied that this particular has been proved beyond reasonable doubt.

**Particular 6: publishing or causing to be published at or about 4.52pm on 11 June 2014 a certain Internet posting entitled "Emmanuel College Gold Coast - Teacher accused of sex with student"**

- [46] This was said by Ms Manderson to be another example of her client's belief that this post had been placed on a website by Mr Rowe at 4.52pm on 11 June 2014. She exhibited the post on the website [www.rowevemmanuelcollege.info](http://www.rowevemmanuelcollege.info) from a search done on 12 June 2014.<sup>37</sup> That does not show when the post was published. A print out of a search of that website conducted on 13 June 2014<sup>38</sup> shows that the post was published at 4.52pm on 11 June 2014. I am satisfied, for the reasons already given, that the website [www.rowevemmanuelcollege.info](http://www.rowevemmanuelcollege.info) continued to be under Mr Rowe's control. I am therefore satisfied that this particular has been proved beyond reasonable doubt.

**Particular 7: publishing or causing to be published a certain Internet posting entitled "A Haven for Paedophiles - Emmanuel College Gold Coast";**

- (a) at or about 11.20pm on 6 May 2014; and  
 (b) again, at or about 6.53am on 8 June 2014

- [47] Another example of a post which Ms Manderson said her client believed was published by Mr Rowe was a post entitled "A Haven for Peaodophiles" [*sic*]. She deposed in her affidavit that the post was published on 6 May 2014 at 11.20pm and again on 8 June 2014 at 6.53am. She exhibited a copy of a post on the website [www.rowevemmanuelcollege.info](http://www.rowevemmanuelcollege.info) which was searched on 12 June 2014 with the heading "A Haven for Peaodophiles" - Emmanuel College Gold Coast".<sup>39</sup>

- [48] Another print out of the website [www.rowevemmanuelcollege.info](http://www.rowevemmanuelcollege.info) was exhibited.<sup>40</sup> Although the print out is not dated it is apparent from it that the post "A Haven for Peaodophiles" was published at 11.20pm on 6 May 2014. A further print out from the same website conducted on 12 June 2014<sup>41</sup> shows that the post was again published at 6.53am on 8 June 2014. I am satisfied that this website continued to be operated and controlled by Mr Rowe. I am therefore satisfied that this particular has been proved beyond reasonable doubt.

**Particular 8: publishing or causing to be published at or about 10.39pm on 12 May 2014 a certain Internet posting entitled "Emmanuel College Gold Coast — Drug Capital of the Gold Coast"**

- [49] This is another example deposed to by Ms Manderson of a post on a website that Emmanuel College believed that Mr Rowe was operating or had operated. It was a post entitled "Emmanuel College Gold Coast - Drug Capital of the Gold Coast". A

<sup>36</sup> Affidavit of Fiona Gaye Manderson filed 15 July 2014 Exhibit FGM 18.

<sup>37</sup> Affidavit of Fiona Gaye Manderson filed 15 July 2014 Exhibit FGM 15.

<sup>38</sup> Affidavit of Fiona Gaye Manderson filed 15 July 2014 Exhibit FGM 18.

<sup>39</sup> Affidavit of Fiona Gaye Manderson filed 15 July 2014 Exhibit FGM 16.

<sup>40</sup> Affidavit of Fiona Gaye Manderson filed 15 July 2014 Exhibit FGM 35.

<sup>41</sup> Affidavit of Fiona Gaye Manderson filed 15 July 2014 Exhibit FGM 34.



search of the www.rowevemmanuelcollege.info site was conducted on 12 June 2014<sup>42</sup> but does not show the time this post was published. However, a print out of a further search conducted on that website on 12 June 2014 shows that this post was published at 10.39am on 12 May 2014.<sup>43</sup> As I have previously observed I am satisfied to the requisite standard that this website continued to be operated and controlled by Mr Rowe. I am therefore satisfied that this particular has been proved beyond reasonable doubt.

**Particular 9: publishing or causing to be published on or about 20 May 2014 a certain Internet posting entitled "Bankrupted Parents by Emmanuel College Gold Coast"**

- [50] Ms Manderson deposed that this was posted on the website www.rowevemmanuelcollege.info and published on 20 May 2014. She exhibited a copy of the article from the website<sup>44</sup> which contained correspondence to the respondent from her law firm. That correspondence was dated 15 August 2013 requesting payment of \$29,988.49 for Emmanuel College's legal costs in a Federal Circuit Court matter and saying that if payment was not received within 14 days the solicitors held instructions to immediately commence bankruptcy proceedings against Mr Rowe. A scanned copy of that letter was attached to the website. A print out of a further search of that website on 12 June 2014 was exhibited to her affidavit.<sup>45</sup> It shows that the post was published on the website www.rowevemmanuelcollege.info, the website controlled by Mr Rowe, at 12.50pm on 20 May 2014. Accordingly I am satisfied beyond reasonable doubt that this particular has been proved.

**Particular 10: publishing or causing to be published on or about 10 May 2014 a certain Internet posting entitled "Parents Arrested for Trespass at Emmanuel College Gold Coast Australia"**

- [51] Ms Manderson also referred to another post published on the website www.rowevemmanuelcollege.info which included correspondence that only the respondent would have received and been privy to. The post was entitled "Parents Arrested for Trespass at Emmanuel College Gold Coast Australia". On that post was a scanned copy of a letter from Ms Manderson's firm to Mr Rowe dated 19 August 2013.<sup>46</sup> She exhibited a print out of a further search of that website on 12 June 2014<sup>47</sup> which showed that the post was published on 1.50pm on 10 May 2014. Accordingly I am satisfied this particular has been proved beyond reasonable doubt.

**Particular 11: publishing or causing to be published on or about 4 May 2014 a certain Internet posting entitled "Australian Securities and Investment Commission (ASIC) Investigates Emmanuel College Gold Coast and directors"**

- [52] This article was said by Ms Manderson to have been published on 4 May 2014. A website search on 12 June 2014 discloses the article together with a scanned copy of a letter from ASIC to Mr Rowe.<sup>48</sup> She exhibited a print out of a further search of

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<sup>42</sup> Affidavit of Fiona Gaye Manderson filed 15 July 2014 Exhibit FGM 17.

<sup>43</sup> Affidavit of Fiona Gaye Manderson filed 15 July 2014 Exhibit FGM 34.

<sup>44</sup> Affidavit of Fiona Gaye Manderson filed 15 July 2014 Exhibit FGM 19.

<sup>45</sup> Affidavit of Fiona Gaye Manderson filed 15 July 2014 Exhibit FGM 34.

<sup>46</sup> Affidavit of Fiona Gaye Manderson filed 15 July 2014 Exhibit FGM 20.

<sup>47</sup> Affidavit of Fiona Gaye Manderson filed 15 July 2014 Exhibit FGM 34.

<sup>48</sup> Affidavit of Fiona Gaye Manderson filed 15 July 2014 Exhibit FGM 21.

that website conducted on 12 June 2014<sup>49</sup> which showed that the post was published at 6.25pm on 4 May 2014. I am satisfied for the reasons already given that at that time the website remained under the control of Mr Rowe. Accordingly I am satisfied that this particular has been proved beyond reasonable doubt.

**Particular 12: publishing or causing to be published the contents of the following websites; namely —**

- (a) a website with the following Uniform Resource Locator (URL):  
**<http://www.rowevemmanuelcollege.info>**
- (b) a website created on or about 28 January 2014 with the following Uniform Resource Locator (URL):  
**<http://www.emmanuelcollegesucks.info>**
- (c) a website created on or about 29 January 2014 with the following Uniform Resource Locator (URL):  
**<http://www.shutdownemmanuelcollegegoldcoast.info>**
- (d) a website created on or about 3 February 2014 with the following Uniform Resource Locator (URL):  
**<http://www.thedumbschool.info>**
- (e) a website created on or about 3 February 2014 with the following Uniform Resource Locator (URL):  
**<http://www.theevilschool.info>**
- (f) a website with the following Uniform Resource Locator (URL):  
**<http://www.australiasworstschool.info>**

[53] This particular refers to the publication of six different websites between 21 November 2013 and 18 June 2014.

[54] As I have already observed, I am satisfied beyond reasonable doubt that Mr Rowe operated, and notwithstanding bankruptcy, continued to operate the website [www.rowevemmanuelcollege.info](http://www.rowevemmanuelcollege.info). Particular 12(a) has been proved beyond reasonable doubt.

[55] I shall now deal with each of the websites referred to in particular 12(b)-(f). With regard to the site [www.emmanulecollegesucks.info](http://www.emmanulecollegesucks.info) Ms Manderson deposed that she personally checked that website and noted that its content was identical to that of [www.rowevemmanuelcollege.info](http://www.rowevemmanuelcollege.info) and [www.roweemmanuelcollege.sonic.org.au](http://www.roweemmanuelcollege.sonic.org.au). She deposed that they also seemed to have the same material updated at precisely the same time. She deposed that the who.is record on 18 June 2014 from [emmanuelcollegesucks.info](http://emmanuelcollegesucks.info) revealed that its creation date was 28 January 2014, that the name of the registrant was Joseph Bloggs of 10 Haven Avenue, Newport 4988 with a phone number of +61.422345676 was given and the registrant's email was given as [rowevemmanuelcollege@gmail.com](mailto:rowevemmanuelcollege@gmail.com). She further deposed that a search of the online postcode facility provided by Australia Post showed there was no locality

<sup>49</sup>

Affidavit of Fiona Gaye Manderson filed 15 July 2014 Exhibit FGM 35.

in Queensland with the postcode 4988 and there is no street in New South Wales with the name "Haven Avenue". She searched the online White Pages and ascertained that nobody with the surname Bloggs is listed as residing in Queensland. She telephoned the telephone number given and spoke to a woman who advised her there was no "Joseph" on the phone number and that she did not have a website.

- [56] With regard to the website with the URL [www.shutdownemmanuelcollegegoldcoast.info](http://www.shutdownemmanuelcollegegoldcoast.info) Ms Manderson deposed the content of that website and the content of the website [www.thedumbschool.info](http://www.thedumbschool.info) were identical to that of [www.rowevemmanuelcollege.info](http://www.rowevemmanuelcollege.info), [www.rowevemmanuelcollege.sonic.org.au](http://www.rowevemmanuelcollege.sonic.org.au) and [www.emmanuelcollegesucks.info](http://www.emmanuelcollegesucks.info). She deposed that they also seemed to have the same material updated at precisely the same time. The who.is record on 18 June 2014 for the website [www.shutdownemmanuelcollegegoldcoast.info](http://www.shutdownemmanuelcollegegoldcoast.info) revealed that it was created on 29 January 2014. The registrant's name was Natalie Harper and the address 78 Green Drive, Laklands, New South Wales with a postcode of 2005. The phone number was given as +61.432666878. The registrant's email was given as [rowevemmanuelcollege@gmail.com](mailto:rowevemmanuelcollege@gmail.com). Ms Manderson's searches revealed that there is no locality listed in New South Wales with the name Laklands. There is no locality in New South Wales with the postcode 2005. There is no street in New South Wales with the name Green Drive and nobody with the surname Harper and the initial "N" is listed as residing at a place called Laklands or Lakelands. She telephoned the telephone number given on 27 June 2014 and 3 July 2014 but the number was not connected.
- [57] Ms Manderson deposed that the who.is record of the website [www.thedumbschool.info](http://www.thedumbschool.info) on 18 June 2014 revealed that the site was created on 3 February 2014. The registrant's name was given as Simone Canning of 450 Broadwater Drive, Auburn, New South Wales with a postcode of 2050. The registrant's phone number given was +61.423777654 and the email [rowevemmanuelcollege@gmail.com](mailto:rowevemmanuelcollege@gmail.com). Ms Manderson's searches revealed that the only locality in New South Wales with the name Auburn had a postcode 2144. There is only one street in New South Wales with the name Broadwater Drive. It is situated in Saratoga which is nowhere near Auburn and there is no property known as 450 Broadwater Drive as the highest street number in Broadwater Drive, Saratoga is 154. Nobody with the surname Canning is listed as residing in Auburn or any place with the postcode 2050 or in a street named Broadwater Drive in any locality. On 27 June 2014 Ms Manderson telephoned the telephone number given. It was answered by a man who identified himself as Michael who confirmed that the phone number did not belong to Simone. He also denied knowledge of the website.
- [58] Ms Manderson also checked the websites [www.theevilschool.info](http://www.theevilschool.info) and [www.australiasworstschool.info](http://www.australiasworstschool.info) and found that their contents were identical to that of [www.rowevemmanuelcollege.info](http://www.rowevemmanuelcollege.info) and [www.rowevemmanuelcollege.sonic.org.au](http://www.rowevemmanuelcollege.sonic.org.au), [www.emmanuelcollegesucks.info](http://www.emmanuelcollegesucks.info), [www.shutdownemmanuelcollegegoldcoast.info](http://www.shutdownemmanuelcollegegoldcoast.info) and [www.thedumbschool.info](http://www.thedumbschool.info). They also seemed to have the same material updated at the same time.
- [59] The who.is record on 18 June 2014 for [www.theevilschool.info](http://www.theevilschool.info) revealed that it was created on 3 February 2014. Its registrant's name was given as Donna Parsons of 45 Short Avenue, Broadwaters in Victoria with a postcode of 3460. The phone number was said to be +61.455888767. The registrant's email was given as

rowevemmanuelcollege@gmail.com. Ms Manderson's searches had revealed that there is no locality in Victoria with the name Broadwaters, that the locality Broadwater has the postcode 3301, there is only one street in Victoria with the name Short Avenue which is in a northern suburb of Melbourne however there is no number 45 Short Avenue. No one with the surname Parsons with the initial "D" is listed as residing in Broadwater or at any place with the postcode 3460 or in a street named Short Avenue in any locality. Ms Manderson telephoned the phone number given on two occasions 27 June 2014 and 3 July 2014. There was no answer and no capacity to leave a message.

- [60] The who.is record for [www.australiasworstschool.info](http://www.australiasworstschool.info) on 18 June 2014 revealed that it was created on 18 February 2014. The registrant's name was given as Fred Sayers of PO Box 8 Cresthill New South Wales with a postcode of 2560. The phone number was given as +61.456888998 and the email as [rowevemmanuelcollege@gmail.com](mailto:rowevemmanuelcollege@gmail.com). Searches by Ms Manderson revealed that there is no locality in New South Wales or indeed in Australia with the name Cresthill and no post office of that name. Nobody with the surname Sayers and the initial "F" is listed as residing within postcode area 2560 or elsewhere in New South Wales. Ms Manderson telephoned the phone number given on 27 June 2014 and 3 July 2014. There was no answer and no capacity to leave a message.
- [61] The evidence which leads me to conclude that the only rational inference open upon the evidence is that Mr Rowe was responsible for and therefore published or caused to be published the contents of the websites particularised is as follows.
- [62] Each of the websites referred to in particular 12(b)-(f) was registered under a false name. This obviously leads one to consider that Mr Rowe might have been the true registrant who operated and controlled the website. The evidence that it was Mr Rowe is shown by his creation of mirror websites to [www.rowevemmanuelcollege.info](http://www.rowevemmanuelcollege.info) with the same IP addresses to which he simultaneously posted the same material and that it was Mr Rowe who was able to remove the websites.
- [63] It can be seen by reviewing the exhibits to Ms Manderson's affidavits that material posted to the [www.rowevemmanuelcollege.info](http://www.rowevemmanuelcollege.info) website was simultaneously published on the other websites. Some examples suffice to demonstrate what was happening.
- [64] With regard to the post "Emmanuel College Gold Coast Students are Fucking Retarded" referred to in particular 5, I have already set out in these reasons why I am satisfied beyond reasonable doubt that Mr Rowe published this on the website [www.rowevemmanuelcollege.info](http://www.rowevemmanuelcollege.info) at 7.04pm on 11 June 2014. With regard to the post "Emmanuel College Gold Coast – Teacher accused of sex with student" referred to in particular 6, I have already set out in these reasons why I am satisfied beyond reasonable doubt that Mr Rowe published this on the website [www.rowevemmanuelcollege.info](http://www.rowevemmanuelcollege.info) at 4.52pm on 11 June 2014. These articles were also published to the following websites at precisely the same time and date as their publication to [www.rowevemmanuelcollege.info](http://www.rowevemmanuelcollege.info):

[www.emmanuelcollegecollegesucks.info](http://www.emmanuelcollegecollegesucks.info);<sup>50</sup>

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<sup>50</sup> Affidavit of Fiona Gaye Manderson filed 11 June 2014 Exhibit FGM 22 at p.308.

www.shutdownemmanuelcollegegoldcoast.info;<sup>51</sup>

www.thedumbschool.info;<sup>52</sup>

www.theevilschool.info;<sup>53</sup> and

www.australiasworstschool.info.<sup>54</sup>

[65] The inevitable inference is that the person who was responsible for posting on each website simultaneously was one person. That person was the person who was responsible for publishing to rowevemmanuelcollege.info. That person was Mr Rowe.

[66] Each of the websites referred to in particular 12(a) to (f) had at various times and very often simultaneously the same IP or Internet Protocol address. This can be seen from a comparison of the IP address history of each website and the use by each of them of the IP addresses 27.54.88.98 and 66.147.244.107 as demonstrated by searches conducted by Ms Manderson on 18 June 2014.<sup>55</sup> As an IP address is a unique identifier, this further suggests that the websites were not independent of one another, contrary to Mr Rowe's evidence, but were mirror websites updated simultaneously.

[67] Mr Rowe gave an entirely unsatisfactory explanation under cross-examination as to how he sent an email to the person who has the email address rowevemmanuelcollege@gmail.com and had the sites almost instantaneously removed from the internet. Mr Rowe deposed in his affidavit filed 14 August 2014 that on 22 July 2014 he sent an email to rowevemmanuelcollege@gmail.com asking that the websites be shut down. He exhibited a copy of that email which confirms that it was sent at 9:39pm on 22 July 2014. It can be seen by reviewing the exhibits to Ms Manderson's affidavit filed 31 July 2014 that the websites were last updated on 22 July 2014 at the following times:

www.emmanuelcollegesucks.info was last updated at 9:39pm;<sup>56</sup>

www.shutdownemmanuelcollegegoldcoast.info was last updated at 9:40pm;<sup>57</sup>

www.thedumbschool.info was last updated at 9:41pm;<sup>58</sup>

www.australiasworstschool.info was last updated at 9:43pm;<sup>59</sup> and

www.theevilschool.info was last updated at 9:58pm.<sup>60</sup>

[68] All searches after the last update on 22 July 2014 showed that the websites were deleted. Ms Manderson gave evidence to that effect. During cross-examination, Mr

<sup>51</sup> Affidavit of Fiona Gaye Manderson filed 15 July 2014 Exhibit FGM 22 at p.284.

<sup>52</sup> Affidavit of Fiona Gaye Manderson filed 15 July 2014 Exhibit FGM 22 at p.290.

<sup>53</sup> Affidavit of Fiona Gaye Manderson filed 15 July 2014 Exhibit FGM 22 at p.296.

<sup>54</sup> Affidavit of Fiona Gaye Manderson filed 15 July 2014 Exhibit FGM 22 at p.302.

<sup>55</sup> Affidavit of Fiona Gaye Manderson filed 15 July 2014 Exhibit FGM 39 and Exhibit FGM 42.

<sup>56</sup> Affidavit of Fiona Gaye Manderson filed 31 July 2014 Exhibit FGM 70.

<sup>57</sup> Affidavit of Fiona Gaye Manderson filed 31 July 2014 Exhibit FGM 67.

<sup>58</sup> Affidavit of Fiona Gaye Manderson filed 31 July 2014 Exhibit FGM 73.

<sup>59</sup> Affidavit of Fiona Gaye Manderson filed 31 July 2014 Exhibit FGM 75.

<sup>60</sup> Affidavit of Fiona Gaye Manderson filed 31 July 2014 Exhibit FGM 64.

Rowe confirmed that the websites were gone when he checked on the morning of 23 July 2014. The last update to these websites was their removal. The removal of these websites was finally achieved after the first date for the hearing of the contempt application on 22 July 2014 when Daubney J said to the respondent:

"On Mr Morris's case, I'll be sending you to jail today."

The hearing was adjourned to allow him to obtain legal representation.

[69] Mr Rowe contended that the almost instantaneous deletion of the websites following his email must have been a coincidence. This unlikely explanation strains credulity and must be rejected. The only rational inference from the circumstances is that his email to rowevemmanuelcollege@gmail.com was a ruse to make it appear that he was not the recipient of the email. He was in fact both the sender and recipient. The recipient of the email sent to rowevemmanuelcollege@gmail.com was immediately able to remove the websites from the internet. That person was Mr Rowe.

[70] I am satisfied beyond reasonable doubt that each website was under the control of Mr Rowe and that the only rational inference open on the evidence is that Mr Rowe published or caused to be published the contents of the websites particularised in particular 12 on the dates particularised.

**Particular 13: publishing or causing or enabling to be published videos at www.youtube.com.**

[71] This particular was admitted by Mr Rowe at least until the date of his bankruptcy and need not be further considered.

**Conclusion**

[72] I am satisfied beyond reasonable doubt that Mr Rowe committed contempt by breaching:

(1) the order of Dalton J made on 21 November 2013 in proceeding No. BS 5853 of 2013 ("the principal proceeding") as extended by order of Byrne SJA on 26 November 2013 and further extended on 27 November 2013; and

(2) the undertakings recorded in the order entered by the Registrar on 17 December 2013 in the principal proceeding pursuant to the order of Byrne SJA of 27 November 2013.

[73] I am satisfied that he committed those contempts as particularised in particulars 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13.

**Punishment**

[74] Having been satisfied that Mr Rowe has committed contempt of court, I turn now to the question of punishment.

[75] Notwithstanding the obvious emotional turmoil brought about by the end of his marriage<sup>61</sup> and his bitter disputes with his daughter's school, Mr Rowe was in a position to know that he ought not do what he was doing. He was a practising

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<sup>61</sup> See the report of Dr. Larder dated 26 March 2013.

solicitor with expertise in information technology which enabled him to post the material and hide to a certain extent what he was doing. As a solicitor he was more than ordinarily aware of the need to comply with orders made by and undertakings given to the court. His explanation of why he initially formed the opinion that he did not have to comply with court orders lacked any credibility.

- [76] All of the posts were damaging to the applicant but some were particularly offensive and the offensiveness of the posts appeared to escalate. Mr Rowe was extremely persistent in his behaviour and continued to post to the internet despite orders made to the contrary. It appears that only the fear of imprisonment as a result of remarks made by Daubney J on the day this contempt application was first set down for hearing on 22 July 2014 caused him to remove those postings from the internet. The breach of court orders and undertakings was wilful and deliberate and not casual, incidental or unintentional.
- [77] The purpose of penalty in a case such as this is both to punish the contemnor and to deter him from future offending behaviour. In order to achieve these objectives, I sentence Chad Everett Rowe to 12 months imprisonment wholly suspended for a period of three years. Any further publications by Mr Rowe in breach of the orders and undertakings during the period of suspension would lead to his having to serve the 12 months period of imprisonment in actual custody.
- [78] He should be ordered to pay the applicant's costs on an indemnity basis.