

BETWEEN:



GARRY BURNS
Appellant

and

BERNARD GAYNOR
First Respondent

CIVIL AND ADMINISTRATIVE TRIBUNAL OF NEW SOUTH WALES
Second Respondent

STATE OF NEW SOUTH WALES
Third Respondent

20 **ATTORNEY GENERAL FOR NEW SOUTH WALES**
Fourth Respondent

ATTORNEY-GENERAL FOR COMMONWEALTH
Fifth Respondent

APPELLANT'S CHRONOLOGY

30 **Part I:**

I certify that this chronology is in a form suitable for publication on the internet.

Part II:

Date	Event
12 February 2014	Mr Gaynor publishes an article entitled " <i>Defence to March Down Oxford Street Again in 2014</i> " on his blog and Facebook page.
28 March 2014	Mr Gaynor publishes an article entitled " <i>Facebook says Toronto's Pride Parade breached community standards</i> " on his blog and Facebook page.
10 April 2014	Mr Gaynor publishes an article entitled " <i>Crack SS Gay Brigade storms America</i> " on his blog and Facebook page.
5 May 2014	Mr Burns files a complaint with the Anti-Discrimination Board of NSW (ADB) alleging homosexual vilification by reason of the matters in Mr Gaynor's article published 10 April 2014.

Date	Event
	This complaint was assigned ADB reference no 2014/373. (First Complaint)
7 May 2014	Mr Burns files a further complaint with the ADB alleging homosexual vilification by Mr Gaynor, by reason of the matters in Mr Gaynor's article published on 12 February 2014. This complaint was assigned ADB reference no 2014/374. (Second Complaint)
27 May 2014	ADB writes to Mr Gaynor notifying him of the complaints.
24 June 2014	Mr Gaynor provides a response to the complaints to the ADB.
30 June 2014	The ADB refers the First, Second and Third Complaints to the NSW Civil and Administrative Tribunal (NCAT). The First, Second and Third Complaints are assigned NCAT file no 1410372 (Initial NCAT Proceeding).
September to October 2014	Mr Burns files four further complaints with the ADB, alleging: (a) homosexual vilification by reason of the publication of a comment by Luke McKee on Mr Gaynor's webpage (ADB reference no 2014/766); (b) homosexual vilification by reason of the publication of statements on a Facebook page regarding Victoria legislation that would expunge criminal records of homosexuality (ADB reference no 2014/834); and (c) victimisation (ADB reference nos 2014/7 16 and 2017/842), together, the Fourth to Seventh Complaints .
28 November 2014	Mr Gaynor provides a response to the ADB in relation to the Fourth to Seventh Complaints.
8 December 2014	In the Initial NCAT Proceeding Mr Gaynor files an application to strike out the Initial NCAT Proceeding (NCAT Strike Out Application) supported by an affidavit of Robert Balzola, Mr Gaynor's solicitor, sworn 8 December 2014 (Balzola Affidavit), annexing Mr Gaynor's response to the Fourth to Seventh Complaints dated 28 November 2014.
20 January 2015	At the hearing of the NCAT Strike Out Application before DP Hennessy: Mr Gaynor reads the following : (a) Balzola Affidavit; and (b) Affidavit of Bernard Gaynor sworn 20 January 2015 (First Gaynor Affidavit). DP Hennessy advises that, given the late service of the First Gaynor Affidavit, she would only take into account those matters to

Date	Event
	<p>which she was taken.</p> <p>During the hearing, Mr Balzola asserts that the proceedings were frivolous, vexatious, misconceived or lacking in substance by reference only to the Fourth to Seventh Complaints.</p> <p>DP Hennessy hands down an ex tempore decision: <i>Gaynor v Burns</i> [2015] NSWCATAD 24, refusing the NCAT Strike Out Application.</p>
30 January 2015	<p>Mr Gaynor files with NCAT a notice of appeal alleging decision of DP Hennessy was wrong in fact and law. The appeal is supported by an affidavit of Bernard Gaynor sworn 30 January 2015 (Second Gaynor Affidavit).</p> <p>The Notice of Appeal is assigned NCAT file no AP15/051235 (First NCAT Appeal).</p>
3 February 2015	<p>The NCAT Appeal Panel, among other things:</p> <p>(a) notes Mr Gaynor would seek to rely on the First and Second Gaynor Affidavits in the First NCAT Appeal; and</p> <p>(b) lists the First NCAT Appeal for hearing on 27 April 2015.</p>
26 March 2015	<p>Mr Gaynor files an Affidavit of Bernard Gaynor sworn 26 March 2015 (with approximately 850 pages of attachments, seeking leave to adduce that as fresh evidence on the appeal) (Third Gaynor Affidavit) in the First NCAT Appeal.</p>
27 April 2015	<p>At the hearing of First NCAT Appeal, Mr Gaynor proceeds on his application for leave and appeal. During opening submissions, Senior Counsel for Mr Burns identified that the decision of DP Hennessy had erroneously dealt with the Fourth to Seventh Complaints and not the First to Third Complaints and therefore the appeal should be allowed. It was submitted that DP Hennessy had been led into that "mistake" by the conduct of Mr Gaynor and, in particular, Mr Balzola.</p> <p>The Appeal Panel makes orders allowing the appeal and remitting the NCAT Strike Out Application for reconsideration.</p>
23 July 2015	<p>The Appeal Panel orders Mr Gaynor to pay Mr Burns' costs of and incidental to the NCAT Appeal Panel Matter: <i>Gaynor v Burns</i> [2015] NSWCATAP 150 (Costs Decision).</p>
11 August 2015	<p>Mr Gaynor files a summons in the NSW Supreme Court seeking leave to appeal and an order setting aside the Costs Decision (Leave to Appeal Application).</p> <p>The Leave to Appeal Application is assigned case no 2015/234876 and listed in the Common Law Division.</p>
21 August 2015	<p>The Appeal Panel publishes reasons for its decision in respect of the orders made on 27 April 2015 in the First NCAT Appeal: <i>Gaynor v Burns</i> [2015] NSWCATAP 184.</p>

Date	Event
24 August 2015	The Registrar of the Common Law Division directs that the Leave to Appeal Application be transferred to the Registrar's List in the Court of Appeal.
26 August 2015	The Registrar of the Court of Appeal makes an order transferring the Leave to Appeal Application to the Court of Appeal. The Leave to Appeal Application is then assigned case no 2015/251109 (the Costs Appeal).
4 September 2015	The NCAT Strike Out Application is heard at first instance for the second time by Principal Member Patten in NCAT, having been remitted for reconsideration by order of the Appeal Panel on 27 April 2015.
14 October 2015	Principal Member Patten makes orders in the NCAT Strike Out Application on 4 September 2015: <i>Burns v Gaynor</i> [2015] NSWCATAD 211, determining that: (a) the complaints were not vexatious and should not be dismissed for this reason; (b) however, no relevant "public act" had occurred in NSW and the proceedings should be dismissed for this reason.
28 October 2015	The Registrar in the Court of Appeal sends an email to Mr Gaynor's solicitor seeking clarification about whether Mr Gaynor was seeking judicial review.
11 November 2015	Mr Burns filed a Notice of Appeal with the Appeal Panel of NCAT in respect of the Patten Decision. This Notice of Appeal was allocated NCAT file no AP 15/62110 (Second NCAT Appeal).
16 November 2015	At a directions hearing, the Registrar in the Court of Appeal seeks confirmation as to whether Mr Gaynor is pursuing judicial review or leave to appeal. Counsel for Mr Gaynor says he is unsure but submits both aspects could be heard together. The Registrar makes orders for Mr Gaynor to file and serve any Amended Summons and any additional initiating process by 23 November 2015. The Registrar notes Mr Gaynor is out of time to commence proceedings and directs Mr Gaynor to file the appropriate document for an application for an extension of time. Mr Gaynor files a draft notice of appeal.
23 November 2015	Mr Gaynor's solicitor sends a letter to the Registrar in the Court of Appeal advising that Mr Gaynor is not pursuing any orders under the supervisory jurisdiction of the Court of Appeal. Mr Gaynor files and serves an amended draft notice of appeal.

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24 February 2016	McCull JA and Emmett AJA hear the Leave to Appeal Application and reserve their decision.
16 March 2016	McCull JA and Emmett AJA grant leave to appeal to Mr Gaynor: <i>Gaynor v Burns</i> [2006] NSWCA 44.
16 March 2016	Mr Gaynor files a notice of appeal in the Court of Appeal for the Costs Appeal (Notice of Appeal).
24 March 2016	NCAT sends a letter to Mr Burns raising issues as to whether NCAT has jurisdiction to hear the Second NCAT Appeal in light of, among other things, Chapter III of the Constitution (Constitutional Issue).
13 April 2016	Mr Burns files a notice of contention with the Court of Appeal (Notice of Contention).
4 May 2016	NCAT notifies the Attorney-General of NSW of the Constitutional Issue so the Attorney-General may consider intervening in the in the Second NCAT Appeal.
18 May 2016	The Attorney-General of NSW files submissions and a List of Authorities on the Constitutional Issue with NCAT. President Justice Wright of NCAT makes orders joining the Attorney General of NSW to the Second NCAT Appeal.
8 June 2016	Mr Gaynor files a summons in the Equity Division of the NSW Supreme Court, seeking, among other things, a declaration that NCAT has no jurisdiction to hear matters pertaining to residents of a State other than NSW (the Summons). The Summons is assigned case no 2016/175930 (Constitutional Proceeding).
10 June 2016	Mr Gaynor files a motion to amend the Notice of Appeal filed on 18 March 2016, pursuant to the orders of Meagher J on 6 June 2016 (Motion to Amend).
4 July 2016	The Registrar in the Court of Appeal makes orders by consent , which include orders : (a) transferring the Constitutional Proceeding into the Court of Appeal (case no 2016/204768) to be heard at the same time as the Costs Appeal; (b) granting leave to Mr Burns to file in Court a motion and supporting affidavit seeking to strike out prayers in the Summons (Motion to Strike Out); (c) the Motion to Amend is listed for hearing at the same time as the Costs Appeal; (d) Mr Gaynor to serve an amended summons by 18 July 2016 in both the Costs Appeal and Constitutional Proceeding.

Date	Event
18 July 2016	Mr Gaynor serves an amended summons in the Costs Appeal and Constitutional Proceeding.
28 July 2016	Mr Gaynor files a motion in the Costs Appeal and Constitutional Proceeding seeking to amend the Summons in accordance with the amended summons served on 18 July 2016.
8 August 2016	Mr Burns files and serves the Combined White Folder.
12 August 2016	The Commonwealth gives notice of its intervention in the Constitutional Proceeding and files an appearance.
17 August 2016	The Registrar in the Court of Appeal grants leave to Mr Gaynor to amend the Summons.
30 August 2016	The Commonwealth intervenes in the Costs Appeal and the Constitutional Proceedings and files its submissions. Mr Gaynor files his submissions in the Costs Appeal and the Constitutional Proceedings.
31 August 2016	The Registrar in the Court of Appeal orders that the Constitutional Proceeding and the Costs Appeal were to be heard concurrently with the matter of <i>Burns v Corbett</i> , case no 2016/224875 (Burns v Corbett Proceeding).
30 November 2016	The Constitutional Proceeding, the Costs Appeal and the Burns v Corbett Proceeding were heard by Bathurst CJ, Beazley P and Leeming JA of the Court of Appeal.
3 February 2017	Judgment handed down in the Constitutional Proceeding, the Costs Appeal and the Burns v Corbett Proceeding (<i>Burns v Corbett; Gaynor v Burns</i> [2017] NSWCA 3).
10 February 2017	Mr Gaynor filed a Notice of Motion in the Costs Appeal proceedings seeking an order for costs against Mr Burns and the State of NSW.
13 February 2017	Mr Gaynor filed a Notice of Motion in the Constitutional Proceeding seeking an order for costs against Mr Burns and the State of NSW.
2 March 2017	Special leave application S41 filed by Mr Burns in the High Court of Australia in respect of the Constitutional Proceeding in <i>Burns v Corbett; Gaynor v Burns</i> [2017] NSWCA 3.
3 March 2017	Special leave application S45 filed by the State of NSW in the High Court of Australia in respect of the Constitutional Proceeding in <i>Burns v Corbett; Gaynor v Burns</i> [2017] NSWCA 3. Special leave application S44 filed by the State of NSW in the High Court of Australia in respect of the Cost Appeal in <i>Burns v Corbett; Gaynor v Burns</i> [2017] NSWCA 3.

Date	Event
7 March 2017	Costs orders handed down in relation to the Notices of Motion filed by Mr Gaynor in the Costs Appeal and Constitutional Proceeding (<i>Burns v Corbett; Gaynor v Burns (No 2)</i> [2017] NSWCA 36).
22 June 2017	Special leave granted by the High Court in respect of special leave applications S41, S44 and S45.
5 July 2017	Notice of Appeal filed in the High Court of Australia by Mr Burns in respect of special leave application S41 (S185).
6 July 2017	Notice of Appeal filed in the High Court of Australia by the State of NSW in respect of special leave application S44 (S187). Notice of Appeal filed in the High Court of Australia by the State of NSW in respect of special leave application S45 (S188).

Dated 27 July 2017


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