

CITATION: *Kerry Leanne Rigby v Conrad Rory and Lauren Ann Mellors*
[2020] NTLC14

PARTIES: Kerry Leanne Rigby

V

Conrad Rory and Lauren Ann Mellors

TITLE OF COURT: LOCAL COURT

JURISDICTION: CRIMINAL

FILE NOs: 21926270 and 21926271

DELIVERED ON: 10 November 2020

DELIVERED AT: DARWIN

HEARING DATES: 19 and 20 October 2020

JUDGMENT OF: Judge Neill

CATCHWORDS:

Limits on common law rights of political expression; application of statutory defences in sections 43BC and 43BD of the Criminal Code Act; application of principle in maxim de minimis non curat lex.

Criminal Code Act sections 43BC, 43BD, 238, 239 and 241

Legislative Assembly (Security) Act section 5

Legislative Assembly (Powers and Privileges) Act section 14

Sally Ann Denise Watson and Vaughan Lewis Williams v Robin Laurence Trenerry (1998) 122 NTR 1

Williams v R [1978] 140 CLR 591

REPRESENTATION:

Counsel:

Complainant: Mr Rowbottom

Defendant: Mr Lawrence SC

Solicitors:

Complainant: DPP

Defendant: Darwin Family Law

Judgment category classification: B

Judgment ID number: 14

Number of paragraphs: 57

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 21926270 and 21926271

BETWEEN

Kerry Leanne Rigby

Complainant

AND

Conrad Rory and Lauren Ann Mellors

Defendant

REASONS FOR JUDGMENT

(Delivered 10 November 2020)

JUDGE NEILL

Introduction

1. The Defendants have been jointly charged with one count as follows:

*"On the 16th April 2019
at Darwin in the Northern Territory of Australia*

1. *did at Parliament House, Mitchell Street intentionally or recklessly cause damage to property, namely front lawn, belonging to another, namely NT Government.*

Contrary to Section 241(1) of the Criminal Code Act (NT)".

2. This charge arises from a political demonstration held in the vicinity of the NT Legislative Assembly building (Parliament House) on 16 April 2019 ("the demonstration"). In the course of the demonstration a small bobcat with a front mounted auger attachment was driven by the Defendant Conrad Rory onto a lawn area where he drilled three holes under directions from various other persons involved in the demonstration, including the Defendant Lauren Ann Mellor. Poles were then loosely mounted over these holes in what was said to symbolise drilling

rigs. There were speeches identifying that the demonstrators were opposed to the ending by the NT Government of its moratorium on the mining practice of hydraulic fracturing ("fracking") and the actual or proposed granting of licences for this practice to commence and/or continue in the Northern Territory. The demonstrators and the bobcat then departed. The drilling of the three holes and the driving of the bobcat on the lawn and its rotation on the lawn had some impact on the surface of the lawn.

The Right to Demonstrate

3. The Northern Territory Court of Appeal considered and acknowledged the common law right of political protest in *Sally Ann Denise Watson and Vaughan Lewis Williams v Robin Laurence Trenerry* (1998) 122 NTR 1. Justice Angel at page 4.8 quoted with approval from McCarthy J of the New Zealand Court of Appeal in *Melser and Others v Police* [1967] NZLR 437 at 445 – 446 as follows:

"Unquestionably, freedom of opinion, including the right to protest against political decisions, is now accepted as a fundamental human right in any modern society which deserves to be called democratic. Its general acceptance is one of the most precious of our individual freedoms. It needed no Charter of the United Nations to make it acceptable to us; it has long been part of our way of life. But a democracy is compounded of many different freedoms, some of which conflict with others, and the right of protest, in particular, if exercised without restraint, may interfere with other people's rights of privacy and freedom from molestation. Freedom of speech, freedom of behaviour, academic freedom, none of these is absolute. The purposes of a democratic society are only made practicable by accepting some limitations on absolute individual freedoms. All this, of course is rather elementary.

"The task of the law is to define the limitations which our society, for its social health, puts on such freedoms. Sometimes the law defines with precision the boundaries of these limitations; often the definition is stated only in general terms. In these latter cases, the Courts must lay down the boundaries themselves, bearing in mind that freedoms are of different qualities and values and that the higher and more important should not be unduly restricted in favour of lower or less important ones".

4. Justice Angel went on at page 5.5 to say as follows:

"The peaceable combination of people in public places for the purposes of expressing opinions and of protest against political decisions is but the exercise of the ordinary civil freedoms of opinion, of speech, of assembly and of association. These freedoms reflect the importance our society places on open discussion and the search for truth, the need for diversified opinions to be known and for the strengths and weaknesses of those opinions to be identified, the right to criticise, the value of tolerance of the opinions of others, and the

*social commitment to the value of individual autonomy, all vital to the health of any democratic system of open government. A peaceful demonstration or protest, whether by assembly or procession in the street is nowadays accepted by members of the community as a safety valve for the community and potentially at least as an agent for change and for the good. An ordinary incident of any assembly or procession through the streets is some inconvenience to others. Protests test tolerance of differences and of inconvenience. There may be some noise. Members of the public may witness and hear messages they did not wish to see and to hear. They may consider such messages to be anathema. There may be a gross affront to some sensibilities. Nonetheless peaceable protests are to be tolerated in the recognition of the freedom of others to hold different opinions, to speak, to assemble and to associate. As Bray CJ said extra-curially on one occasion, "Diversity is the protectress of freedom", (1971) 45 ALJ 586. In short, exercise of freedoms which, whilst necessarily imposing on others, are tolerated **in the absence of associated unlawful acts** (emphasis added). Whilst there is, strictly speaking, no juristic right to demonstrate or to protest, these are residual freedoms **to do that which is not prohibited by law**"(emphasis added).*

5. In other words, where conduct is specifically prohibited by law then this prohibition is a limitation on the otherwise broad right of political protest. The question before me is whether the conduct of the Defendants on 16 April 2019 was prohibited by section 241 of the *Criminal Code Act* ("the Act").

Analysis

6. The conduct prohibited by section 241 of the Act has four elements, namely the identification of a particular property, that that property belongs to someone other than the Defendants and the identification of that someone, that the Defendants directly or indirectly caused damage to that property, and that the Defendants' actions in causing that damage were intentional or reckless as to that outcome. "*Property*", "*person to whom property belongs*", "*causes*" and "*damage to property*" are defined in sections 238, 239 and 240 of the Act.
7. Because these are criminal proceedings the prosecution bears the onus of establishing each of these elements beyond reasonable doubt.
8. Each of the Defendants gave evidence admitting their respective roles in organising the demonstration and attending as part of the demonstration at Parliament House on 16 April 2019 - in the case of the Defendant Rory, additionally by driving the bobcat onto the lawn, digging three holes in the lawn with the auger mounted on the front of the bobcat, causing the bobcat to rotate while on the lawn in order to dig the holes and thereby impacting on the surface of the lawn; in the case of the Defendant Mellor, additionally by organising the rental and transport of the bobcat on the day and paying for that, and being among the demonstrators at Parliament House

providing instructions and guidance to the Defendant Rory as to where to dig the holes.

9. Accordingly, there is no dispute as to the identity of each of the Defendants or as to their presence at the relevant time and place as part of the group of people involved in the demonstration, and I so find. There is no dispute that both Defendants (along with all the other persons who attended that demonstration) intentionally and/or recklessly, and directly or indirectly, caused the three holes to be drilled in the lawn and the attendant impact of the bobcat on the surface of the lawn, and I so find.
10. What remains to be considered is whether the prosecution has established beyond reasonable doubt that the lawn was property, that it belonged to another namely NT Government, whether the impact on the lawn constituted “damage” within the meaning of the section and the law, and even if these matters are proved beyond reasonable doubt, whether there are any statutory defences available to the Defendants in all the circumstances.

The Statutory Defences

11. On 24 June 2020 lawyers for the Defendants and for the prosecution attended a Directions Hearing when the matter was listed for hearing for two days being 19 and 20 October 2020. A Directions Hearing Information Form signed by the lawyer for the Defendants advised the Court that the identity of the Defendants and their presence at that place on that date were not in dispute. It advised the Court that the Defendants disputed that they had committed an offence at law and that they relied on: "*section 43 of the Criminal Code NT 1983*". It further advised that: "*The defendant requires the owner of the property to be called*". This emphasised the prosecution’s need to prove ownership of the property.
12. On the first day of the hearing it was clarified that the Defendants in fact relied on sections 43BC and 43BD of the Act. These provide as follows:

"43BC Sudden or extraordinary emergency

- (1) *A person is not criminally responsible for an offence if the person carries out the conduct constituting the offence in response to circumstances of sudden or extraordinary emergency.*
- (2) *This section applies only if the person carrying out the conduct reasonably believes that:*
 - (a) *circumstances of sudden or extraordinary emergency exist; and*
 - (b) *committing the offence is the only reasonable way to deal with the emergency; and*
 - (c) *the conduct is a reasonable response to the emergency.*

"43BD Self-defence

- (1) *A person is not criminally responsible for an offence if the person carries out the conduct constituting the offence in self-defence.*
- (2) *A person carries out conduct in self-defence only if:*
 - (a) *the person believes the conduct is necessary:*
 - (i) *to defend himself or herself or another person; or*
 - (ii) *to prevent or terminate the unlawful imprisonment of himself or herself or another person; or*
 - (iii) *to protect property from unlawful appropriation, destruction, damage or interference; or*
 - (iv) *to prevent criminal trespass to any land or premises; or*
 - (v) *to remove from any land or premises a person who is committing criminal trespass; and*
 - (b) *the conduct is a reasonable response in the circumstances as he or she perceives them.*
- (3) *However, the person does not carry out conduct in self-defence if:*
 - (a) *the person uses force that involves the intentional infliction of death or serious harm:*
 - (i) *to protect property; or*
 - (ii) *to prevent criminal trespass; or*
 - (iii) *to remove a person who is committing criminal trespass;*
or
 - (b) *the person is responding to lawful conduct that the person knew was lawful.*
- (4) *Conduct is not lawful for subsection (3)(b) merely because the person carrying it out is not criminally responsible for it".*

- 13. The Defendants bear an evidential burden under these two sections. That is, they must lead or point to evidence establishing the relevant requirements of the sections, on the balance of probabilities. However, if they succeed in doing this the burden then shifts to the prosecution. The prosecution must then negative these defences, and it must do so beyond reasonable doubt.
- 14. Subsection 43BC(2) of the Act (sudden or extraordinary emergency) includes both subjective and objective elements. The person seeking to rely on the section must in fact hold each of the three beliefs set out in (a), (b) and (c) of that subparagraph—this is a subjective element. The section applies to remove criminal responsibility for an offence however only if the person carrying out the conduct “reasonably” believes the three matters set out in (a), (b) and (c), which is an objective element. It is not enough for the person to hold all three of those beliefs if any one or more of them is not objectively reasonable – subsection (2).

15. Similarly, subsection 43BD(2)(a)(i) and/or (iii) and (b) of the Act (defensive conduct) includes both subjective and objective elements. The person seeking to rely on any of the matters in paragraph (a) must hold the belief that the conduct is necessary for one of the identified defensive purposes, which is a subjective element. However, separately from this belief, paragraph (b) requires that the conduct must be a “reasonable response” – an objective element – “in the circumstances as he or she perceives them” – once again a subjective element.
16. Each of the Defendants gave evidence in summary that they were deeply concerned about climate change issues generally and about fracking specifically. Each of the Defendants gave evidence that they wanted the NT government not to permit fracking in the NT. They gave evidence that to achieve this, each in their own way had been actively involved in lobbying, including of mining and business organisations and of politicians both federal and local, and in attending and making submissions at public inquiries and at the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory (“the Pepper Inquiry”).
17. The Defendants gave evidence in summary that they engaged in the demonstration outside Parliament House on 16 April 2019 because each of them believed that the whole planet is facing an extraordinary emergency as a consequence of climate change and also the exacerbation of the adverse effects of climate change arising out of the continuing planet-wide extraction and use of fossil fuels, including the process of fracking.
18. Each of the Defendants gave evidence in summary that they engaged in the demonstration on 16 April 2019 outside Parliament House to bring their concerns to the attention of both politicians and the public. Each of them gave evidence in summary that they believed that damaging the lawn as part of the demonstration constituted the only recourse left to them because they had exhausted all other options over a number of years, as set out in their evidence on this subject as summarised in paragraph 16 above.
19. I heard evidence from two expert witnesses called by the Defendants on the issues of climate change generally and fracking specifically. I am satisfied and I find that each witness, Emeritus Professor Will Steffen and Associate Professor Gavin M. Mudd, is an expert in the field of the probable global impacts of these issues. In summary, this evidence was to the effect that current global emissions of carbon dioxide and methane must be phased out from 2021 until net zero emissions are achieved in accordance with the 2015 Paris Peace Accord – *“Failing to do this will present our children and grandchildren with a planet in which many regions could well become uninhabitable. This is the climate emergency, and it is here now”* – per Professor Steffen in Exhibit D10 in the last two sentences on the third last page.
20. Additionally, I heard very detailed evidence from the Defendant Lauren Mellor which established that she had been careful and attentive in educating herself on the

issues of climate change and fracking. Although Ms Mellor was not put forward as an expert witness I was able to compare her understanding of these issues with the relevant expert evidence before me. I formed the view that Ms Mellor had a good understanding of the publicly available scientific evidence in support of global warming and its negative consequences for the planet if ameliorative action is not urgently commenced, and the adverse impact of fossil fuel extraction and use, including fracking, on these consequences.

21. I am satisfied and I find that the Defendant Lauren Mellor believed at all relevant times that there existed circumstances of impending adverse environmental impact to the planet, constituting an extraordinary emergency, as a consequence of global warming and of its exacerbation through continuing fossil fuel extraction and use, including through fracking.
22. Mr Rory had not educated himself on these matters to the same extent as had Ms Mellor. In his evidence, he did not reveal the same level of broad, academic understanding of these issues. He did however give clear and cogent evidence of his first-hand and second-hand experiences as a traditional owner of land in the MacArthur River Basin of the adverse impacts over the past 20 to 30 years of mining activities on the land, waterways and wildlife in that area. He gave evidence of his understanding of the risks of contamination of the water table if fracking were to go ahead in that area. He gave evidence of his understanding of a link between the extraction and use of fossil fuels, including fracking, and the exacerbation of an imminent environmental disaster associated with global warming.
23. I am satisfied and I find that the Defendant Conrad Rory believed at all relevant times that there existed circumstances of impending adverse environmental impact to the planet constituting an extraordinary emergency, as a consequence of global warming and of its exacerbation through continuing fossil fuel extraction and use, including through fracking.
24. In cross examination each Defendant was asked why they could not have raised symbolic drilling rigs on the paved area next to the lawn outside Parliament House and that way avoided any adverse impact to the lawn. Each of them answered to the effect that a symbolic drilling rig without a little actual drilling would not have had the same or a sufficient impact and would not have made their point.
25. It is plain that a wide range of symbolic gestures was available to both Defendants and to the others engaged in the demonstration which would not have involved any damage to the lawn or any unlawful conduct. It is also plain that damaging the lawn was highly unlikely in itself to have any impact on the decision of the NT government to proceed with fracking. I am not satisfied on all the evidence before me that either Defendant in fact subjectively believed that damaging the lawn was the only reasonable way to deal with the emergency or that it was a reasonable response to the emergency, within the meanings of subsections 43BC(2)(b) or (c) of the Act.

26. Additionally and in any event, I am satisfied beyond reasonable doubt and I find that neither Defendant reasonably, when considered objectively, believed the required matters in subsection 43BC(2)(b) and/or (c) of the Act.
27. I rule that the Defendants are not excused from criminal responsibility for damaging the lawn pursuant to subsection 43BC(1) of the Act.
28. Similarly, I am not satisfied on all the evidence before me that either Defendant in fact subjectively believed that damaging the lawn was necessary to defend another person, namely the other inhabitants of planet Earth, or to protect planet Earth or any part of it from “*unlawful appropriation, destruction, damage or interference*”. Even if I am wrong about these specific beliefs of the Defendants, I am satisfied beyond reasonable doubt and I find that damaging the lawn was not an objectively reasonable response in the circumstances as the Defendants, or either of them, perceived them, within the meaning of subsection 43BD(2)(b) of the Act.
29. I rule that the Defendants are not excused from criminal responsibility for damaging the lawn pursuant to subsection 43BD(1) of the Act.

Damage to Property

30. “*Property*” is relevantly defined in section 238 of the Act as follows: “(a) *means any real or personal property of a tangible nature*”. I am satisfied this very broad definition is capable of including plants such as the grass which comprises a lawn, and the layer of earth in real estate from which a lawn grows.
31. “*Damage to property*” is defined, also in section 238 of the Act, to include:
 - (a) *destroying the property; and*
 - (b) *causing the physical loss of the property by interfering with the property (including by removing any restraint over the property or abandoning the property); and*
 - (c) *causing any loss of a use or function of the property by interfering with the property; and*
 - (d) *defacing the property; and*
 - (e) *for a document – obliterating or rendering illegible the whole or any part of the document; and*
 - (f) *for an animal – harming or killing the animal; and*
 - (g) *for a plant or other thing forming part of land – severing it from the land*”.
32. The definitions of “*damage*” in the Act set out above are inclusive rather than exclusive. Nevertheless, I take guidance from those definitions. The only ones of them which in my view might be applicable in this case are (c), (d) and (g).
33. I heard oral evidence as to the extent of the damage to the lawn. I also saw two lots of CCTV footage - Exhibits P1 and 2 - and a video taken on behalf of the demonstrators - Exhibit D8. This visual evidence is the best evidence of the

apparent overall damage to the surface of the lawn. The oral evidence is the best evidence of the dimensions of the three holes drilled into the lawn because these cannot be adequately seen in the visual evidence.

34. Security officer Mr Robert Daffey gave oral evidence before the Court. He said that three holes were drilled into the lawn, one being about 1 foot (30 centimetres) in depth and the other two about 6 inches (15 cm) in depth and all being approximately 6 inches (15 centimetres) in diameter. I received in evidence Mr Daffey's statutory declaration declared 17 May 2019 – Exhibit D4. In paragraph 9. of that statutory declaration Mr Daffey had provided the same estimates of the dimensions of the holes.
35. The visual evidence shows the bobcat driving onto the lawn, which is unmarked in any way. It then drills the three holes and in order to do that it turns on the spot on the lawn, which churns up some of the lawn's surface. A small area of dark earth can be seen, which contrasts with the green of the rest of the surface of the lawn. Additionally, the bobcat left tyre tracks on the lawn. These appear to be quite superficial, in that dark earth is not showing through the green of the lawn in the tyre tracks and it is probable that the grass there was merely temporarily flattened.
36. Mr Daffey gave evidence that a gardener attended after the demonstrators had departed and that the lawn was repaired within one hour. No evidence was provided about what was involved in that repair. In paragraph 16. of Exhibit D4 Mr Daffey states: "*The cost in labour to repair the damage caused to the front lawns of Parliament House has been estimated to be \$100*".
37. No photographs or other visual evidence of the repaired lawn were tendered and I am therefore unable to compare the appearance of the repaired lawn with the visual evidence of the appearance of the lawn before the bobcat drove on it. In the absence of such evidence and noting that the prosecution bears the onus of proof in respect of establishing damage, I proceed on the basis that the lawn was essentially restored to its pre-demonstration appearance and function within about one hour.

De Minimis

38. The foregoing raises the question whether the impact upon the physical integrity of the lawn which I have set out in paragraphs 34, 35 and 36 above, affecting it for a total period of around one hour, and carried out for a symbolic effect within the context of an otherwise lawful demonstration, comes within the definition of "*damage to property*" for the purposes of the Act.
39. I come to consider the legal principle set out in the Latin maxim *de minimis non curat lex*, which translates as "*the law does not concern itself with trifles*". The principle does not exist as a defence in the strict sense - it is more of a guide to interpretation. In *Williams v R* [1978] 140 CLR 591 Justice Murphy of the High Court said in paragraph 6 of his Reasons as follows:

“In my opinion, this is a case for the application of the principle that the law is not concerned with trifles (de minimis non curat lex). This principle has been recognised throughout legal history and is often applied to avoid imposition of punishment after a finding of guilt where an offence is trivial... The de minimis principle is also applied to avoid hysterical or oppressive law enforcement; cases in which a finding of guilt would tend to bring the law or the judicial system into ridicule or contempt because of triviality. This is such a case. Even if there were no other basis for treating the conviction as bad, it should be set aside on this ground”.

40. That was a case in which fragments of cannabis had been found in a defendant’s pockets, in quantities too small to measure. Nevertheless, he was found guilty of possessing the cannabis. The High Court set aside that finding of guilt, applying the *de minimis* principle among other reasons. The case before me of course involves a very different factual background.
41. In this case I note that around 20 people were actively engaged in the demonstration and their respective identities and levels of engagement were clearly recorded on CCTV, yet charges were laid against only two of their number – Lauren Mellor and Conrad Rory. I note the clearly symbolic nature of the conduct of the Defendants, also captured on the CCTV. I note the minor and temporary nature of the damage to the lawn, and the small cost in dollar terms of the repairs necessitated by that damage.
42. Even so, I am not satisfied that this case involves “...*hysterical or oppressive enforcement*”; I am not satisfied it is one where “...*a finding of guilt would tend to bring the law or the judicial system into ridicule or contempt because of triviality*”. I am satisfied that the *de minimis* principle does not apply in this case where real even though minor damage was occasioned to the lawn, as set out in paragraphs 34, 35 and 36 above.
43. I am satisfied beyond reasonable doubt and I find that damage within the meaning of section 241 of the Act was caused to the lawn by each of the Defendants by temporarily causing a loss of its use or function as a lawn, and/or by temporarily defacing it, within the meanings of definitions (c) and (d) in section 238 of the Act. I am not so satisfied that either Defendant severed the lawn or any part of the lawn from the land within the meaning of definition (g) in section 238.

“... Property Belonging to Another Person”

44. A “*person to whom property belongs*” is relevantly defined in subsection 239(1) of the Act as follows:

“For this Division, property belongs to anyone who has:
(a) possession or control of it; or
(b) any proprietary right or interest in it...”.

45. Evidence was called from Mr Robert Daffey who at all relevant times was employed by Wilson Security and permanently based at Parliament House in Darwin as the Senior Security Supervisor. Mr Daffey gave evidence that he is an authorised person within the definition in subsection 5(1) of the *Legislative Assembly (Security) Act* (“the Security Act”). The Security Act permits an authorised person to ask for the name and address of a person entering the Assembly precincts, and/or to state their reason for entering or being on the precincts. The authorised person may require the other person to submit to a search. Subsection 9(1) of the Security Act permits an authorised person who believes that another person on the Assembly precincts is behaving unlawfully or in a disorderly or menacing manner to require the person to leave the precincts. Mr Daffey gave evidence that he advised the demonstrators as a group, which included each Defendant, that they were not allowed to interfere with the lawn in that fashion and that they had no approval to enter the grounds of Parliament House. He gave evidence that he asked them to stop what they were doing and that they did not stop. Each of the Defendants Lauren Mellor and Conrad Rory gave evidence that they did not hear Mr Daffey say anything of that nature.
46. However, I am satisfied that none of the duties or powers assigned to an authorised person under the Security Act, or all of them considered together, go so far as to establish “*control*” of the Assembly or its precincts within the definition in subsection 239(1) of the Act and therefore I am satisfied that neither the Assembly nor its precincts belongs to an authorised person as defined in the Security Act.
47. In any event, the charge faced by the Defendants is that they caused damage to property, namely front lawn, belonging to another, namely NT Government. The charge is not that the Defendants damaged property belonging to a Senior Security Officer employed by a private security firm or belonging to an authorised person within the meaning of the Security Act.
48. The prosecution at the hearing in this matter called no evidence directly relevant to the ownership of the “front lawn” the subject of the charge against each Defendant, even though it had been alerted to this issue at the Directions Hearing on 24 June 2020. I raised this lack in the course of prosecution submissions after both parties had closed their cases and no further evidence could be adduced. Mr Rowbottom, counsel for the prosecution, referred me to the *Legislative Assembly (Powers And Privileges) Act 1992* (“the Privileges Act”).
49. Subsection 14(3) of the Privileges Act provides as follows: “*Subject to the directions, if any, of the Assembly, the Speaker has the control and management of the precincts of the Assembly*”. This definition arguably might establish the Speaker as a “*person to whom property belongs*” within the meaning of subsection 239(1) of the Act because the Speaker is someone who has control of the precincts of the Assembly. However, I received no submissions from either party as to whether the Office of Speaker, or the person who occupies that Office from time to time, is

identical with the NT Government. This is far from a self-evident proposition. As noted above, the charge against both Defendants is that they caused damage to property belonging to another, namely NT Government.

50. The Privileges Act in subsections 14(1) and (2) defines the precincts of the Assembly as follows:

“(1) The precincts of the Assembly is the area of land described in Schedule 1, together with the building erected on the land.

“(2) The Speaker may, by notice in the Gazette, declare that on a date specified in the notice the precincts described in Schedule 1 shall no longer be the precincts of the Assembly and, on and from that date, the precincts of the Assembly shall be the land described and delineated in Schedule 2, together with the building erected on the land and that land and building shall be the precincts accordingly”.

51. There was no evidence before me of any relevant notice in the *Gazette* and so I proceed to consider both Schedule 1 and Schedule 2 to the Privileges Act.

52. Schedule 1 of the Privileges Act provides the following:

“Schedule 1

“ALL THAT parcel of land in Mitchell Street near Bennett Street in the Town of Darwin in the Northern Territory of Australia containing an area of 3990 square metres more or less commencing at a point on the northeastern side of Mitchell Street 24.225 metres southeasterly from the southernmost corner of Lot 4820 Town of Darwin; thence bounded by lines bearing 44 degrees 41 minutes 20 seconds for 60.975 metres, 135 degrees four minutes for 65.885 metres, 224 degrees 46 minutes 20 seconds for 60.48 metres, 314 degrees 38 minutes to 65.8 metres to the point of commencement; together with ALL THAT parcel of land in Smith Street near The Esplanade in the Town of Darwin in the Northern Territory of Australia containing an area of 689 square metres more or less being the Ground Floor of the Leichhardt Building and being more particularly delineated as that area shown hatched on the following plan:”

53. Schedule 2 of the Privileges Act relevantly provides the following:

“Schedule 2 Precincts of Assembly

“The precincts of the Assembly are:

- (a) except for the period specified in paragraph (ab) – the area of land described in Part A;*
- (ab) not relevant*
- (b) not relevant*

Part A

All that parcel of land in the Town of Darwin, Northern Territory of Australia containing an area of 2.41 hectares more or less and bounded by lines described as follows: Commencing at the westernmost corner of Lot 5949 town of Darwin; thence by a line bearing 134 degrees 38 minutes 20 seconds for 103.5 metres; a convex curve of arc 166.75 metres, radius 126.4 metres and chord bearing 276 degrees 56 minutes 20 seconds; a line bearing 314 degrees 44 minutes for 102.15 metres; a concave curve of arc 53.905 metres, radius 84 metres and chord bearing 296 degrees 20 minutes 50 seconds; a convex curve of arc 29.175 metres, radius 153 m and chord bearing 283 degrees 25 minutes 30 seconds; a line bearing 288° 53 minutes for 7 metres; a convex curve of arc 5.975 metres, radius 13.5 metres and chord bearing 301 degrees 34 minutes; a convex curve of arc 9.015 metres, radius 7 metres and chord bearing 351 degrees eight minutes 40 seconds; a convex curve of arc 14.765 metres, radius 51 metres and chord bearing 36 degrees 20 minutes 20 seconds; a line bearing 44° 38 minutes for 29.7 metres; a convex curve of arc 10.995 metres, radius 7 metres and chord bearing 89 degrees 38 minutes; a line bearing 134 degrees 38 minutes for 21 metres; a line bearing 44 degrees 38 minutes for 10.8 metres; a line bearing 134 degrees 38 minutes for 76.74 metres; a line bearing 44 degrees 38 minutes to 81.1 metres; a line bearing 134 degrees 38 minutes to 18.46 metres; a line bearing 44 degrees 38 minutes for 6.4 metres; a line bearing 134 degrees 34 minutes for 47.17 metres; a line bearing 224 degrees 23 minutes 20 seconds for 6.355 metres; a line bearing 134 degrees 38 minutes for 16.7 metres; a line bearing 224 degrees 38 minutes for 3.195 metres; a line bearing 134 all degrees 38 minutes to 30.305 metres; a line bearing 224 degrees 37 minutes 10 seconds for 14.405 metres to the point of commencement”.

54. In the absence of expert evidence from say a surveyor, I am quite unable to make anything of the descriptions by way of metes and bounds set out in the foregoing Schedules 1 and 2. Accordingly, the definitions of “precincts of Assembly” set out in subparagraphs 14(1) and (2) of the Privileges Act do not without further evidence assist me in determining whether the “front lawn” referred to in the charge comes within the precincts of the Assembly.
55. At the hearing I was shown two lots of CCTV footage of the conduct of the demonstration and I was also shown footage of the demonstration taken on behalf of the demonstrators. These all became exhibits before the Court and I can clearly see from these the patch of lawn the subject of the charge against each Defendant. It is a small piece of lawn separated from the main building of Parliament House by a strip of concrete. However, I am unable to infer simply from its proximity to the building that this patch of lawn is in fact part of the precincts of the Assembly. Even if I were, I would need to be satisfied that the precincts of the Assembly were in fact the property of the NT Government.

56. These are criminal proceedings where the prosecution bears the onus of establishing each element of the charge beyond reasonable doubt. The prosecution has failed to establish the element that the property as described in the charge – “front lawn” – belongs to the NT Government.

Conclusion

57. Accordingly, the charge is not made out and I find the Defendant Lauren Ann Mellor and the Defendant Conrad Rory each not guilty of the charge in count 1.

Dated this 10th day of November 2020

JOHN NEILL
LOCAL COURT JUDGE

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FILE NOs: 21926270 and 21926271

DELIVERED ON: 10 November 2020

DELIVERED AT: DARWIN

HEARING DATES: 19 and 20 October 2020

JUDGMENT OF: Judge Neill

CATCHWORDS:

Limits on common law rights of political expression; application of statutory defences in sections 43BC and 43BD of the Criminal Code Act; application of principle in maxim de minimis non curat lex.

Criminal Code Act sections 43BC, 43BD, 238, 239 and 241

Legislative Assembly (Security) Act section 5

Legislative Assembly (Powers and Privileges) Act section 14

Sally Ann Denise Watson and Vaughan Lewis Williams v Robin Laurence Trenerry
(1998) 122 NTR 1

Williams v R [1978] 140 CLR 591

REPRESENTATION:

Counsel:

Complainant: Mr Rowbottom

Defendant: Mr Lawrence SC

Solicitors:

Complainant: DPP

Defendant: Darwin Family Law

Judgment category classification: B

Judgment ID number: 14

Number of paragraphs: 57

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 21926270 and 21926271

BETWEEN

Kerry Leanne Rigby

Complainant

AND

Conrad Rory and Lauren Ann Mellors

Defendant

REASONS FOR JUDGMENT

(Delivered 10 November 2020)

JUDGE NEILL

Introduction

1. The Defendants have been jointly charged with one count as follows:

*"On the 16th April 2019
at Darwin in the Northern Territory of Australia*

1. *did at Parliament House, Mitchell Street intentionally or recklessly cause damage to property, namely front lawn, belonging to another, namely NT Government.*

Contrary to Section 241(1) of the Criminal Code Act (NT)".

2. This charge arises from a political demonstration held in the vicinity of the NT Legislative Assembly building (Parliament House) on 16 April 2019 ("the demonstration"). In the course of the demonstration a small bobcat with a front mounted auger attachment was driven by the Defendant Conrad Rory onto a lawn area where he drilled three holes under directions from various other persons involved in the demonstration, including the Defendant Lauren Ann Mellor. Poles were then loosely mounted over these holes in what was said to symbolise drilling

rigs. There were speeches identifying that the demonstrators were opposed to the ending by the NT Government of its moratorium on the mining practice of hydraulic fracturing ("fracking") and the actual or proposed granting of licences for this practice to commence and/or continue in the Northern Territory. The demonstrators and the bobcat then departed. The drilling of the three holes and the driving of the bobcat on the lawn and its rotation on the lawn had some impact on the surface of the lawn.

The Right to Demonstrate

3. The Northern Territory Court of Appeal considered and acknowledged the common law right of political protest in *Sally Ann Denise Watson and Vaughan Lewis Williams v Robin Laurence Trenerry* (1998) 122 NTR 1. Justice Angel at page 4.8 quoted with approval from McCarthy J of the New Zealand Court of Appeal in *Melser and Others v Police* [1967] NZLR 437 at 445 – 446 as follows:

"Unquestionably, freedom of opinion, including the right to protest against political decisions, is now accepted as a fundamental human right in any modern society which deserves to be called democratic. Its general acceptance is one of the most precious of our individual freedoms. It needed no Charter of the United Nations to make it acceptable to us; it has long been part of our way of life. But a democracy is compounded of many different freedoms, some of which conflict with others, and the right of protest, in particular, if exercised without restraint, may interfere with other people's rights of privacy and freedom from molestation. Freedom of speech, freedom of behaviour, academic freedom, none of these is absolute. The purposes of a democratic society are only made practicable by accepting some limitations on absolute individual freedoms. All this, of course is rather elementary.

"The task of the law is to define the limitations which our society, for its social health, puts on such freedoms. Sometimes the law defines with precision the boundaries of these limitations; often the definition is stated only in general terms. In these latter cases, the Courts must lay down the boundaries themselves, bearing in mind that freedoms are of different qualities and values and that the higher and more important should not be unduly restricted in favour of lower or less important ones".

4. Justice Angel went on at page 5.5 to say as follows:

"The peaceable combination of people in public places for the purposes of expressing opinions and of protest against political decisions is but the exercise of the ordinary civil freedoms of opinion, of speech, of assembly and of association. These freedoms reflect the importance our society places on open discussion and the search for truth, the need for diversified opinions to be known and for the strengths and weaknesses of those opinions to be identified, the right to criticise, the value of tolerance of the opinions of others, and the

*social commitment to the value of individual autonomy, all vital to the health of any democratic system of open government. A peaceful demonstration or protest, whether by assembly or procession in the street is nowadays accepted by members of the community as a safety valve for the community and potentially at least as an agent for change and for the good. An ordinary incident of any assembly or procession through the streets is some inconvenience to others. Protests test tolerance of differences and of inconvenience. There may be some noise. Members of the public may witness and hear messages they did not wish to see and to hear. They may consider such messages to be anathema. There may be a gross affront to some sensibilities. Nonetheless peaceable protests are to be tolerated in the recognition of the freedom of others to hold different opinions, to speak, to assemble and to associate. As Bray CJ said extra-curially on one occasion, "Diversity is the protectress of freedom", (1971) 45 ALJ 586. In short, exercise of freedoms which, whilst necessarily imposing on others, are tolerated **in the absence of associated unlawful acts** (emphasis added). Whilst there is, strictly speaking, no juristic right to demonstrate or to protest, these are residual freedoms **to do that which is not prohibited by law**"(emphasis added).*

5. In other words, where conduct is specifically prohibited by law then this prohibition is a limitation on the otherwise broad right of political protest. The question before me is whether the conduct of the Defendants on 16 April 2019 was prohibited by section 241 of the *Criminal Code Act* ("the Act").

Analysis

6. The conduct prohibited by section 241 of the Act has four elements, namely the identification of a particular property, that that property belongs to someone other than the Defendants and the identification of that someone, that the Defendants directly or indirectly caused damage to that property, and that the Defendants' actions in causing that damage were intentional or reckless as to that outcome. "*Property*", "*person to whom property belongs*", "*causes*" and "*damage to property*" are defined in sections 238, 239 and 240 of the Act.
7. Because these are criminal proceedings the prosecution bears the onus of establishing each of these elements beyond reasonable doubt.
8. Each of the Defendants gave evidence admitting their respective roles in organising the demonstration and attending as part of the demonstration at Parliament House on 16 April 2019 - in the case of the Defendant Rory, additionally by driving the bobcat onto the lawn, digging three holes in the lawn with the auger mounted on the front of the bobcat, causing the bobcat to rotate while on the lawn in order to dig the holes and thereby impacting on the surface of the lawn; in the case of the Defendant Mellor, additionally by organising the rental and transport of the bobcat on the day and paying for that, and being among the demonstrators at Parliament House

providing instructions and guidance to the Defendant Rory as to where to dig the holes.

9. Accordingly, there is no dispute as to the identity of each of the Defendants or as to their presence at the relevant time and place as part of the group of people involved in the demonstration, and I so find. There is no dispute that both Defendants (along with all the other persons who attended that demonstration) intentionally and/or recklessly, and directly or indirectly, caused the three holes to be drilled in the lawn and the attendant impact of the bobcat on the surface of the lawn, and I so find.
10. What remains to be considered is whether the prosecution has established beyond reasonable doubt that the lawn was property, that it belonged to another namely NT Government, whether the impact on the lawn constituted “damage” within the meaning of the section and the law, and even if these matters are proved beyond reasonable doubt, whether there are any statutory defences available to the Defendants in all the circumstances.

The Statutory Defences

11. On 24 June 2020 lawyers for the Defendants and for the prosecution attended a Directions Hearing when the matter was listed for hearing for two days being 19 and 20 October 2020. A Directions Hearing Information Form signed by the lawyer for the Defendants advised the Court that the identity of the Defendants and their presence at that place on that date were not in dispute. It advised the Court that the Defendants disputed that they had committed an offence at law and that they relied on: "*section 43 of the Criminal Code NT 1983*". It further advised that: "*The defendant requires the owner of the property to be called*". This emphasised the prosecution’s need to prove ownership of the property.
12. On the first day of the hearing it was clarified that the Defendants in fact relied on sections 43BC and 43BD of the Act. These provide as follows:

"43BC Sudden or extraordinary emergency

- (1) *A person is not criminally responsible for an offence if the person carries out the conduct constituting the offence in response to circumstances of sudden or extraordinary emergency.*
- (2) *This section applies only if the person carrying out the conduct reasonably believes that:*
 - (a) *circumstances of sudden or extraordinary emergency exist; and*
 - (b) *committing the offence is the only reasonable way to deal with the emergency; and*
 - (c) *the conduct is a reasonable response to the emergency.*

"43BD Self-defence

- (1) *A person is not criminally responsible for an offence if the person carries out the conduct constituting the offence in self-defence.*
- (2) *A person carries out conduct in self-defence only if:*
 - (a) *the person believes the conduct is necessary:*
 - (i) *to defend himself or herself or another person; or*
 - (ii) *to prevent or terminate the unlawful imprisonment of himself or herself or another person; or*
 - (iii) *to protect property from unlawful appropriation, destruction, damage or interference; or*
 - (iv) *to prevent criminal trespass to any land or premises; or*
 - (v) *to remove from any land or premises a person who is committing criminal trespass; and*
 - (b) *the conduct is a reasonable response in the circumstances as he or she perceives them.*
- (3) *However, the person does not carry out conduct in self-defence if:*
 - (a) *the person uses force that involves the intentional infliction of death or serious harm:*
 - (i) *to protect property; or*
 - (ii) *to prevent criminal trespass; or*
 - (iii) *to remove a person who is committing criminal trespass;*
or
 - (b) *the person is responding to lawful conduct that the person knew was lawful.*
- (4) *Conduct is not lawful for subsection (3)(b) merely because the person carrying it out is not criminally responsible for it".*

- 13. The Defendants bear an evidential burden under these two sections. That is, they must lead or point to evidence establishing the relevant requirements of the sections, on the balance of probabilities. However, if they succeed in doing this the burden then shifts to the prosecution. The prosecution must then negative these defences, and it must do so beyond reasonable doubt.
- 14. Subsection 43BC(2) of the Act (sudden or extraordinary emergency) includes both subjective and objective elements. The person seeking to rely on the section must in fact hold each of the three beliefs set out in (a), (b) and (c) of that subparagraph—this is a subjective element. The section applies to remove criminal responsibility for an offence however only if the person carrying out the conduct “reasonably” believes the three matters set out in (a), (b) and (c), which is an objective element. It is not enough for the person to hold all three of those beliefs if any one or more of them is not objectively reasonable – subsection (2).

15. Similarly, subsection 43BD(2)(a)(i) and/or (iii) and (b) of the Act (defensive conduct) includes both subjective and objective elements. The person seeking to rely on any of the matters in paragraph (a) must hold the belief that the conduct is necessary for one of the identified defensive purposes, which is a subjective element. However, separately from this belief, paragraph (b) requires that the conduct must be a “reasonable response” – an objective element – “in the circumstances as he or she perceives them” – once again a subjective element.
16. Each of the Defendants gave evidence in summary that they were deeply concerned about climate change issues generally and about fracking specifically. Each of the Defendants gave evidence that they wanted the NT government not to permit fracking in the NT. They gave evidence that to achieve this, each in their own way had been actively involved in lobbying, including of mining and business organisations and of politicians both federal and local, and in attending and making submissions at public inquiries and at the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory (“the Pepper Inquiry”).
17. The Defendants gave evidence in summary that they engaged in the demonstration outside Parliament House on 16 April 2019 because each of them believed that the whole planet is facing an extraordinary emergency as a consequence of climate change and also the exacerbation of the adverse effects of climate change arising out of the continuing planet-wide extraction and use of fossil fuels, including the process of fracking.
18. Each of the Defendants gave evidence in summary that they engaged in the demonstration on 16 April 2019 outside Parliament House to bring their concerns to the attention of both politicians and the public. Each of them gave evidence in summary that they believed that damaging the lawn as part of the demonstration constituted the only recourse left to them because they had exhausted all other options over a number of years, as set out in their evidence on this subject as summarised in paragraph 16 above.
19. I heard evidence from two expert witnesses called by the Defendants on the issues of climate change generally and fracking specifically. I am satisfied and I find that each witness, Emeritus Professor Will Steffen and Associate Professor Gavin M. Mudd, is an expert in the field of the probable global impacts of these issues. In summary, this evidence was to the effect that current global emissions of carbon dioxide and methane must be phased out from 2021 until net zero emissions are achieved in accordance with the 2015 Paris Peace Accord – *“Failing to do this will present our children and grandchildren with a planet in which many regions could well become uninhabitable. This is the climate emergency, and it is here now”* – per Professor Steffen in Exhibit D10 in the last two sentences on the third last page.
20. Additionally, I heard very detailed evidence from the Defendant Lauren Mellor which established that she had been careful and attentive in educating herself on the

issues of climate change and fracking. Although Ms Mellor was not put forward as an expert witness I was able to compare her understanding of these issues with the relevant expert evidence before me. I formed the view that Ms Mellor had a good understanding of the publicly available scientific evidence in support of global warming and its negative consequences for the planet if ameliorative action is not urgently commenced, and the adverse impact of fossil fuel extraction and use, including fracking, on these consequences.

21. I am satisfied and I find that the Defendant Lauren Mellor believed at all relevant times that there existed circumstances of impending adverse environmental impact to the planet, constituting an extraordinary emergency, as a consequence of global warming and of its exacerbation through continuing fossil fuel extraction and use, including through fracking.
22. Mr Rory had not educated himself on these matters to the same extent as had Ms Mellor. In his evidence, he did not reveal the same level of broad, academic understanding of these issues. He did however give clear and cogent evidence of his first-hand and second-hand experiences as a traditional owner of land in the MacArthur River Basin of the adverse impacts over the past 20 to 30 years of mining activities on the land, waterways and wildlife in that area. He gave evidence of his understanding of the risks of contamination of the water table if fracking were to go ahead in that area. He gave evidence of his understanding of a link between the extraction and use of fossil fuels, including fracking, and the exacerbation of an imminent environmental disaster associated with global warming.
23. I am satisfied and I find that the Defendant Conrad Rory believed at all relevant times that there existed circumstances of impending adverse environmental impact to the planet constituting an extraordinary emergency, as a consequence of global warming and of its exacerbation through continuing fossil fuel extraction and use, including through fracking.
24. In cross examination each Defendant was asked why they could not have raised symbolic drilling rigs on the paved area next to the lawn outside Parliament House and that way avoided any adverse impact to the lawn. Each of them answered to the effect that a symbolic drilling rig without a little actual drilling would not have had the same or a sufficient impact and would not have made their point.
25. It is plain that a wide range of symbolic gestures was available to both Defendants and to the others engaged in the demonstration which would not have involved any damage to the lawn or any unlawful conduct. It is also plain that damaging the lawn was highly unlikely in itself to have any impact on the decision of the NT government to proceed with fracking. I am not satisfied on all the evidence before me that either Defendant in fact subjectively believed that damaging the lawn was the only reasonable way to deal with the emergency or that it was a reasonable response to the emergency, within the meanings of subsections 43BC(2)(b) or (c) of the Act.

26. Additionally and in any event, I am satisfied beyond reasonable doubt and I find that neither Defendant reasonably, when considered objectively, believed the required matters in subsection 43BC(2)(b) and/or (c) of the Act.
27. I rule that the Defendants are not excused from criminal responsibility for damaging the lawn pursuant to subsection 43BC(1) of the Act.
28. Similarly, I am not satisfied on all the evidence before me that either Defendant in fact subjectively believed that damaging the lawn was necessary to defend another person, namely the other inhabitants of planet Earth, or to protect planet Earth or any part of it from “*unlawful appropriation, destruction, damage or interference*”. Even if I am wrong about these specific beliefs of the Defendants, I am satisfied beyond reasonable doubt and I find that damaging the lawn was not an objectively reasonable response in the circumstances as the Defendants, or either of them, perceived them, within the meaning of subsection 43BD(2)(b) of the Act.
29. I rule that the Defendants are not excused from criminal responsibility for damaging the lawn pursuant to subsection 43BD(1) of the Act.

Damage to Property

30. “*Property*” is relevantly defined in section 238 of the Act as follows: “(a) means any real or personal property of a tangible nature”. I am satisfied this very broad definition is capable of including plants such as the grass which comprises a lawn, and the layer of earth in real estate from which a lawn grows.
31. “*Damage to property*” is defined, also in section 238 of the Act, to include:
 - (a) *destroying the property; and*
 - (b) *causing the physical loss of the property by interfering with the property (including by removing any restraint over the property or abandoning the property); and*
 - (c) *causing any loss of a use or function of the property by interfering with the property; and*
 - (d) *defacing the property; and*
 - (e) *for a document – obliterating or rendering illegible the whole or any part of the document; and*
 - (f) *for an animal – harming or killing the animal; and*
 - (g) *for a plant or other thing forming part of land – severing it from the land”.*
32. The definitions of “damage” in the Act set out above are inclusive rather than exclusive. Nevertheless, I take guidance from those definitions. The only ones of them which in my view might be applicable in this case are (c), (d) and (g).
33. I heard oral evidence as to the extent of the damage to the lawn. I also saw two lots of CCTV footage - Exhibits P1 and 2 - and a video taken on behalf of the demonstrators - Exhibit D8. This visual evidence is the best evidence of the

apparent overall damage to the surface of the lawn. The oral evidence is the best evidence of the dimensions of the three holes drilled into the lawn because these cannot be adequately seen in the visual evidence.

34. Security officer Mr Robert Daffey gave oral evidence before the Court. He said that three holes were drilled into the lawn, one being about 1 foot (30 centimetres) in depth and the other two about 6 inches (15 cm) in depth and all being approximately 6 inches (15 centimetres) in diameter. I received in evidence Mr Daffey's statutory declaration declared 17 May 2019 – Exhibit D4. In paragraph 9. of that statutory declaration Mr Daffey had provided the same estimates of the dimensions of the holes.
35. The visual evidence shows the bobcat driving onto the lawn, which is unmarked in any way. It then drills the three holes and in order to do that it turns on the spot on the lawn, which churns up some of the lawn's surface. A small area of dark earth can be seen, which contrasts with the green of the rest of the surface of the lawn. Additionally, the bobcat left tyre tracks on the lawn. These appear to be quite superficial, in that dark earth is not showing through the green of the lawn in the tyre tracks and it is probable that the grass there was merely temporarily flattened.
36. Mr Daffey gave evidence that a gardener attended after the demonstrators had departed and that the lawn was repaired within one hour. No evidence was provided about what was involved in that repair. In paragraph 16. of Exhibit D4 Mr Daffey states: "*The cost in labour to repair the damage caused to the front lawns of Parliament House has been estimated to be \$100*".
37. No photographs or other visual evidence of the repaired lawn were tendered and I am therefore unable to compare the appearance of the repaired lawn with the visual evidence of the appearance of the lawn before the bobcat drove on it. In the absence of such evidence and noting that the prosecution bears the onus of proof in respect of establishing damage, I proceed on the basis that the lawn was essentially restored to its pre-demonstration appearance and function within about one hour.

De Minimis

38. The foregoing raises the question whether the impact upon the physical integrity of the lawn which I have set out in paragraphs 34, 35 and 36 above, affecting it for a total period of around one hour, and carried out for a symbolic effect within the context of an otherwise lawful demonstration, comes within the definition of "*damage to property*" for the purposes of the Act.
39. I come to consider the legal principle set out in the Latin maxim *de minimis non curat lex*, which translates as "*the law does not concern itself with trifles*". The principle does not exist as a defence in the strict sense - it is more of a guide to interpretation. In *Williams v R* [1978] 140 CLR 591 Justice Murphy of the High Court said in paragraph 6 of his Reasons as follows:

“In my opinion, this is a case for the application of the principle that the law is not concerned with trifles (de minimis non curat lex). This principle has been recognised throughout legal history and is often applied to avoid imposition of punishment after a finding of guilt where an offence is trivial... The de minimis principle is also applied to avoid hysterical or oppressive law enforcement; cases in which a finding of guilt would tend to bring the law or the judicial system into ridicule or contempt because of triviality. This is such a case. Even if there were no other basis for treating the conviction as bad, it should be set aside on this ground”.

40. That was a case in which fragments of cannabis had been found in a defendant’s pockets, in quantities too small to measure. Nevertheless, he was found guilty of possessing the cannabis. The High Court set aside that finding of guilt, applying the *de minimis* principle among other reasons. The case before me of course involves a very different factual background.
41. In this case I note that around 20 people were actively engaged in the demonstration and their respective identities and levels of engagement were clearly recorded on CCTV, yet charges were laid against only two of their number – Lauren Mellor and Conrad Rory. I note the clearly symbolic nature of the conduct of the Defendants, also captured on the CCTV. I note the minor and temporary nature of the damage to the lawn, and the small cost in dollar terms of the repairs necessitated by that damage.
42. Even so, I am not satisfied that this case involves “...*hysterical or oppressive enforcement*”; I am not satisfied it is one where “...*a finding of guilt would tend to bring the law or the judicial system into ridicule or contempt because of triviality*”. I am satisfied that the *de minimis* principle does not apply in this case where real even though minor damage was occasioned to the lawn, as set out in paragraphs 34, 35 and 36 above.
43. I am satisfied beyond reasonable doubt and I find that damage within the meaning of section 241 of the Act was caused to the lawn by each of the Defendants by temporarily causing a loss of its use or function as a lawn, and/or by temporarily defacing it, within the meanings of definitions (c) and (d) in section 238 of the Act. I am not so satisfied that either Defendant severed the lawn or any part of the lawn from the land within the meaning of definition (g) in section 238.

“... Property Belonging to Another Person”

44. A “*person to whom property belongs*” is relevantly defined in subsection 239(1) of the Act as follows:

“For this Division, property belongs to anyone who has:
(a) possession or control of it; or
(b) any proprietary right or interest in it...”.

45. Evidence was called from Mr Robert Daffey who at all relevant times was employed by Wilson Security and permanently based at Parliament House in Darwin as the Senior Security Supervisor. Mr Daffey gave evidence that he is an authorised person within the definition in subsection 5(1) of the *Legislative Assembly (Security) Act* (“the Security Act”). The Security Act permits an authorised person to ask for the name and address of a person entering the Assembly precincts, and/or to state their reason for entering or being on the precincts. The authorised person may require the other person to submit to a search. Subsection 9(1) of the Security Act permits an authorised person who believes that another person on the Assembly precincts is behaving unlawfully or in a disorderly or menacing manner to require the person to leave the precincts. Mr Daffey gave evidence that he advised the demonstrators as a group, which included each Defendant, that they were not allowed to interfere with the lawn in that fashion and that they had no approval to enter the grounds of Parliament House. He gave evidence that he asked them to stop what they were doing and that they did not stop. Each of the Defendants Lauren Mellor and Conrad Rory gave evidence that they did not hear Mr Daffey say anything of that nature.
46. However, I am satisfied that none of the duties or powers assigned to an authorised person under the Security Act, or all of them considered together, go so far as to establish “*control*” of the Assembly or its precincts within the definition in subsection 239(1) of the Act and therefore I am satisfied that neither the Assembly nor its precincts belongs to an authorised person as defined in the Security Act.
47. In any event, the charge faced by the Defendants is that they caused damage to property, namely front lawn, belonging to another, namely NT Government. The charge is not that the Defendants damaged property belonging to a Senior Security Officer employed by a private security firm or belonging to an authorised person within the meaning of the Security Act.
48. The prosecution at the hearing in this matter called no evidence directly relevant to the ownership of the “front lawn” the subject of the charge against each Defendant, even though it had been alerted to this issue at the Directions Hearing on 24 June 2020. I raised this lack in the course of prosecution submissions after both parties had closed their cases and no further evidence could be adduced. Mr Rowbottom, counsel for the prosecution, referred me to the *Legislative Assembly (Powers And Privileges) Act 1992* (“the Privileges Act”).
49. Subsection 14(3) of the Privileges Act provides as follows: “*Subject to the directions, if any, of the Assembly, the Speaker has the control and management of the precincts of the Assembly*”. This definition arguably might establish the Speaker as a “*person to whom property belongs*” within the meaning of subsection 239(1) of the Act because the Speaker is someone who has control of the precincts of the Assembly. However, I received no submissions from either party as to whether the Office of Speaker, or the person who occupies that Office from time to time, is

identical with the NT Government. This is far from a self-evident proposition. As noted above, the charge against both Defendants is that they caused damage to property belonging to another, namely NT Government.

50. The Privileges Act in subsections 14(1) and (2) defines the precincts of the Assembly as follows:

“(1) The precincts of the Assembly is the area of land described in Schedule 1, together with the building erected on the land.

“(2) The Speaker may, by notice in the Gazette, declare that on a date specified in the notice the precincts described in Schedule 1 shall no longer be the precincts of the Assembly and, on and from that date, the precincts of the Assembly shall be the land described and delineated in Schedule 2, together with the building erected on the land and that land and building shall be the precincts accordingly”.

51. There was no evidence before me of any relevant notice in the *Gazette* and so I proceed to consider both Schedule 1 and Schedule 2 to the Privileges Act.

52. Schedule 1 of the Privileges Act provides the following:

“Schedule 1

“ALL THAT parcel of land in Mitchell Street near Bennett Street in the Town of Darwin in the Northern Territory of Australia containing an area of 3990 square metres more or less commencing at a point on the northeastern side of Mitchell Street 24.225 metres southeasterly from the southernmost corner of Lot 4820 Town of Darwin; thence bounded by lines bearing 44 degrees 41 minutes 20 seconds for 60.975 metres, 135 degrees four minutes for 65.885 metres, 224 degrees 46 minutes 20 seconds for 60.48 metres, 314 degrees 38 minutes to 65.8 metres to the point of commencement; together with ALL THAT parcel of land in Smith Street near The Esplanade in the Town of Darwin in the Northern Territory of Australia containing an area of 689 square metres more or less being the Ground Floor of the Leichhardt Building and being more particularly delineated as that area shown hatched on the following plan:”

53. Schedule 2 of the Privileges Act relevantly provides the following:

“Schedule 2 Precincts of Assembly

“The precincts of the Assembly are:

- (a) except for the period specified in paragraph (ab) – the area of land described in Part A;*
- (ab) not relevant*
- (b) not relevant*

Part A

All that parcel of land in the Town of Darwin, Northern Territory of Australia containing an area of 2.41 hectares more or less and bounded by lines described as follows: Commencing at the westernmost corner of Lot 5949 town of Darwin; thence by a line bearing 134 degrees 38 minutes 20 seconds for 103.5 metres; a convex curve of arc 166.75 metres, radius 126.4 metres and chord bearing 276 degrees 56 minutes 20 seconds; a line bearing 314 degrees 44 minutes for 102.15 metres; a concave curve of arc 53.905 metres, radius 84 metres and chord bearing 296 degrees 20 minutes 50 seconds; a convex curve of arc 29.175 metres, radius 153 m and chord bearing 283 degrees 25 minutes 30 seconds; a line bearing 288° 53 minutes for 7 metres; a convex curve of arc 5.975 metres, radius 13.5 metres and chord bearing 301 degrees 34 minutes; a convex curve of arc 9.015 metres, radius 7 metres and chord bearing 351 degrees eight minutes 40 seconds; a convex curve of arc 14.765 metres, radius 51 metres and chord bearing 36 degrees 20 minutes 20 seconds; a line bearing 44° 38 minutes for 29.7 metres; a convex curve of arc 10.995 metres, radius 7 metres and chord bearing 89 degrees 38 minutes; a line bearing 134 degrees 38 minutes for 21 metres; a line bearing 44 degrees 38 minutes for 10.8 metres; a line bearing 134 degrees 38 minutes for 76.74 metres; a line bearing 44 degrees 38 minutes to 81.1 metres; a line bearing 134 degrees 38 minutes to 18.46 metres; a line bearing 44 degrees 38 minutes for 6.4 metres; a line bearing 134 degrees 34 minutes for 47.17 metres; a line bearing 224 degrees 23 minutes 20 seconds for 6.355 metres; a line bearing 134 degrees 38 minutes for 16.7 metres; a line bearing 224 degrees 38 minutes for 3.195 metres; a line bearing 134 all degrees 38 minutes to 30.305 metres; a line bearing 224 degrees 37 minutes 10 seconds for 14.405 metres to the point of commencement”.

54. In the absence of expert evidence from say a surveyor, I am quite unable to make anything of the descriptions by way of metes and bounds set out in the foregoing Schedules 1 and 2. Accordingly, the definitions of “precincts of Assembly” set out in subparagraphs 14(1) and (2) of the Privileges Act do not without further evidence assist me in determining whether the “front lawn” referred to in the charge comes within the precincts of the Assembly.
55. At the hearing I was shown two lots of CCTV footage of the conduct of the demonstration and I was also shown footage of the demonstration taken on behalf of the demonstrators. These all became exhibits before the Court and I can clearly see from these the patch of lawn the subject of the charge against each Defendant. It is a small piece of lawn separated from the main building of Parliament House by a strip of concrete. However, I am unable to infer simply from its proximity to the building that this patch of lawn is in fact part of the precincts of the Assembly. Even if I were, I would need to be satisfied that the precincts of the Assembly were in fact the property of the NT Government.

56. These are criminal proceedings where the prosecution bears the onus of establishing each element of the charge beyond reasonable doubt. The prosecution has failed to establish the element that the property as described in the charge – “front lawn” – belongs to the NT Government.

Conclusion

57. Accordingly, the charge is not made out and I find the Defendant Lauren Ann Mellor and the Defendant Conrad Rory each not guilty of the charge in count 1.

Dated this 10th day of November 2020

JOHN NEILL
LOCAL COURT JUDGE

CITATION: *Kerry Leanne Rigby v Conrad Rory and Lauren Ann Mellors*
[2020] NTLC14

PARTIES: Kerry Leanne Rigby

V

Conrad Rory and Lauren Ann Mellors

TITLE OF COURT: LOCAL COURT

JURISDICTION: CRIMINAL

FILE NOs: 21926270 and 21926271

DELIVERED ON: 10 November 2020

DELIVERED AT: DARWIN

HEARING DATES: 19 and 20 October 2020

JUDGMENT OF: Judge Neill

CATCHWORDS:

Limits on common law rights of political expression; application of statutory defences in sections 43BC and 43BD of the Criminal Code Act; application of principle in maxim de minimis non curat lex.

Criminal Code Act sections 43BC, 43BD, 238, 239 and 241

Legislative Assembly (Security) Act section 5

Legislative Assembly (Powers and Privileges) Act section 14

Sally Ann Denise Watson and Vaughan Lewis Williams v Robin Laurence Trenerry
(1998) 122 NTR 1

Williams v R [1978] 140 CLR 591

REPRESENTATION:

Counsel:

Complainant: Mr Rowbottom

Defendant: Mr Lawrence SC

Solicitors:

Complainant: DPP

Defendant: Darwin Family Law

Judgment category classification: B

Judgment ID number: 14

Number of paragraphs: 57

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 21926270 and 21926271

BETWEEN

Kerry Leanne Rigby

Complainant

AND

Conrad Rory and Lauren Ann Mellors

Defendant

REASONS FOR JUDGMENT

(Delivered 10 November 2020)

JUDGE NEILL

Introduction

1. The Defendants have been jointly charged with one count as follows:

*"On the 16th April 2019
at Darwin in the Northern Territory of Australia*

1. *did at Parliament House, Mitchell Street intentionally or recklessly cause damage to property, namely front lawn, belonging to another, namely NT Government.*

Contrary to Section 241(1) of the Criminal Code Act (NT)".

2. This charge arises from a political demonstration held in the vicinity of the NT Legislative Assembly building (Parliament House) on 16 April 2019 ("the demonstration"). In the course of the demonstration a small bobcat with a front mounted auger attachment was driven by the Defendant Conrad Rory onto a lawn area where he drilled three holes under directions from various other persons involved in the demonstration, including the Defendant Lauren Ann Mellor. Poles were then loosely mounted over these holes in what was said to symbolise drilling

rigs. There were speeches identifying that the demonstrators were opposed to the ending by the NT Government of its moratorium on the mining practice of hydraulic fracturing ("fracking") and the actual or proposed granting of licences for this practice to commence and/or continue in the Northern Territory. The demonstrators and the bobcat then departed. The drilling of the three holes and the driving of the bobcat on the lawn and its rotation on the lawn had some impact on the surface of the lawn.

The Right to Demonstrate

3. The Northern Territory Court of Appeal considered and acknowledged the common law right of political protest in *Sally Ann Denise Watson and Vaughan Lewis Williams v Robin Laurence Trenerry* (1998) 122 NTR 1. Justice Angel at page 4.8 quoted with approval from McCarthy J of the New Zealand Court of Appeal in *Melser and Others v Police* [1967] NZLR 437 at 445 – 446 as follows:

"Unquestionably, freedom of opinion, including the right to protest against political decisions, is now accepted as a fundamental human right in any modern society which deserves to be called democratic. Its general acceptance is one of the most precious of our individual freedoms. It needed no Charter of the United Nations to make it acceptable to us; it has long been part of our way of life. But a democracy is compounded of many different freedoms, some of which conflict with others, and the right of protest, in particular, if exercised without restraint, may interfere with other people's rights of privacy and freedom from molestation. Freedom of speech, freedom of behaviour, academic freedom, none of these is absolute. The purposes of a democratic society are only made practicable by accepting some limitations on absolute individual freedoms. All this, of course is rather elementary.

"The task of the law is to define the limitations which our society, for its social health, puts on such freedoms. Sometimes the law defines with precision the boundaries of these limitations; often the definition is stated only in general terms. In these latter cases, the Courts must lay down the boundaries themselves, bearing in mind that freedoms are of different qualities and values and that the higher and more important should not be unduly restricted in favour of lower or less important ones".

4. Justice Angel went on at page 5.5 to say as follows:

"The peaceable combination of people in public places for the purposes of expressing opinions and of protest against political decisions is but the exercise of the ordinary civil freedoms of opinion, of speech, of assembly and of association. These freedoms reflect the importance our society places on open discussion and the search for truth, the need for diversified opinions to be known and for the strengths and weaknesses of those opinions to be identified, the right to criticise, the value of tolerance of the opinions of others, and the

*social commitment to the value of individual autonomy, all vital to the health of any democratic system of open government. A peaceful demonstration or protest, whether by assembly or procession in the street is nowadays accepted by members of the community as a safety valve for the community and potentially at least as an agent for change and for the good. An ordinary incident of any assembly or procession through the streets is some inconvenience to others. Protests test tolerance of differences and of inconvenience. There may be some noise. Members of the public may witness and hear messages they did not wish to see and to hear. They may consider such messages to be anathema. There may be a gross affront to some sensibilities. Nonetheless peaceable protests are to be tolerated in the recognition of the freedom of others to hold different opinions, to speak, to assemble and to associate. As Bray CJ said extra-curially on one occasion, "Diversity is the protectress of freedom", (1971) 45 ALJ 586. In short, exercise of freedoms which, whilst necessarily imposing on others, are tolerated **in the absence of associated unlawful acts** (emphasis added). Whilst there is, strictly speaking, no juristic right to demonstrate or to protest, these are residual freedoms **to do that which is not prohibited by law**"(emphasis added).*

5. In other words, where conduct is specifically prohibited by law then this prohibition is a limitation on the otherwise broad right of political protest. The question before me is whether the conduct of the Defendants on 16 April 2019 was prohibited by section 241 of the *Criminal Code Act* ("the Act").

Analysis

6. The conduct prohibited by section 241 of the Act has four elements, namely the identification of a particular property, that that property belongs to someone other than the Defendants and the identification of that someone, that the Defendants directly or indirectly caused damage to that property, and that the Defendants' actions in causing that damage were intentional or reckless as to that outcome. "*Property*", "*person to whom property belongs*", "*causes*" and "*damage to property*" are defined in sections 238, 239 and 240 of the Act.
7. Because these are criminal proceedings the prosecution bears the onus of establishing each of these elements beyond reasonable doubt.
8. Each of the Defendants gave evidence admitting their respective roles in organising the demonstration and attending as part of the demonstration at Parliament House on 16 April 2019 - in the case of the Defendant Rory, additionally by driving the bobcat onto the lawn, digging three holes in the lawn with the auger mounted on the front of the bobcat, causing the bobcat to rotate while on the lawn in order to dig the holes and thereby impacting on the surface of the lawn; in the case of the Defendant Mellor, additionally by organising the rental and transport of the bobcat on the day and paying for that, and being among the demonstrators at Parliament House

providing instructions and guidance to the Defendant Rory as to where to dig the holes.

9. Accordingly, there is no dispute as to the identity of each of the Defendants or as to their presence at the relevant time and place as part of the group of people involved in the demonstration, and I so find. There is no dispute that both Defendants (along with all the other persons who attended that demonstration) intentionally and/or recklessly, and directly or indirectly, caused the three holes to be drilled in the lawn and the attendant impact of the bobcat on the surface of the lawn, and I so find.
10. What remains to be considered is whether the prosecution has established beyond reasonable doubt that the lawn was property, that it belonged to another namely NT Government, whether the impact on the lawn constituted “damage” within the meaning of the section and the law, and even if these matters are proved beyond reasonable doubt, whether there are any statutory defences available to the Defendants in all the circumstances.

The Statutory Defences

11. On 24 June 2020 lawyers for the Defendants and for the prosecution attended a Directions Hearing when the matter was listed for hearing for two days being 19 and 20 October 2020. A Directions Hearing Information Form signed by the lawyer for the Defendants advised the Court that the identity of the Defendants and their presence at that place on that date were not in dispute. It advised the Court that the Defendants disputed that they had committed an offence at law and that they relied on: "*section 43 of the Criminal Code NT 1983*". It further advised that: "*The defendant requires the owner of the property to be called*". This emphasised the prosecution’s need to prove ownership of the property.
12. On the first day of the hearing it was clarified that the Defendants in fact relied on sections 43BC and 43BD of the Act. These provide as follows:

"43BC Sudden or extraordinary emergency

- (1) *A person is not criminally responsible for an offence if the person carries out the conduct constituting the offence in response to circumstances of sudden or extraordinary emergency.*
- (2) *This section applies only if the person carrying out the conduct reasonably believes that:*
 - (a) *circumstances of sudden or extraordinary emergency exist; and*
 - (b) *committing the offence is the only reasonable way to deal with the emergency; and*
 - (c) *the conduct is a reasonable response to the emergency.*

"43BD Self-defence

- (1) *A person is not criminally responsible for an offence if the person carries out the conduct constituting the offence in self-defence.*
- (2) *A person carries out conduct in self-defence only if:*
 - (a) *the person believes the conduct is necessary:*
 - (i) *to defend himself or herself or another person; or*
 - (ii) *to prevent or terminate the unlawful imprisonment of himself or herself or another person; or*
 - (iii) *to protect property from unlawful appropriation, destruction, damage or interference; or*
 - (iv) *to prevent criminal trespass to any land or premises; or*
 - (v) *to remove from any land or premises a person who is committing criminal trespass; and*
 - (b) *the conduct is a reasonable response in the circumstances as he or she perceives them.*
- (3) *However, the person does not carry out conduct in self-defence if:*
 - (a) *the person uses force that involves the intentional infliction of death or serious harm:*
 - (i) *to protect property; or*
 - (ii) *to prevent criminal trespass; or*
 - (iii) *to remove a person who is committing criminal trespass;*
or
 - (b) *the person is responding to lawful conduct that the person knew was lawful.*
- (4) *Conduct is not lawful for subsection (3)(b) merely because the person carrying it out is not criminally responsible for it".*

- 13. The Defendants bear an evidential burden under these two sections. That is, they must lead or point to evidence establishing the relevant requirements of the sections, on the balance of probabilities. However, if they succeed in doing this the burden then shifts to the prosecution. The prosecution must then negative these defences, and it must do so beyond reasonable doubt.
- 14. Subsection 43BC(2) of the Act (sudden or extraordinary emergency) includes both subjective and objective elements. The person seeking to rely on the section must in fact hold each of the three beliefs set out in (a), (b) and (c) of that subparagraph—this is a subjective element. The section applies to remove criminal responsibility for an offence however only if the person carrying out the conduct “reasonably” believes the three matters set out in (a), (b) and (c), which is an objective element. It is not enough for the person to hold all three of those beliefs if any one or more of them is not objectively reasonable – subsection (2).

15. Similarly, subsection 43BD(2)(a)(i) and/or (iii) and (b) of the Act (defensive conduct) includes both subjective and objective elements. The person seeking to rely on any of the matters in paragraph (a) must hold the belief that the conduct is necessary for one of the identified defensive purposes, which is a subjective element. However, separately from this belief, paragraph (b) requires that the conduct must be a “reasonable response” – an objective element – “in the circumstances as he or she perceives them” – once again a subjective element.
16. Each of the Defendants gave evidence in summary that they were deeply concerned about climate change issues generally and about fracking specifically. Each of the Defendants gave evidence that they wanted the NT government not to permit fracking in the NT. They gave evidence that to achieve this, each in their own way had been actively involved in lobbying, including of mining and business organisations and of politicians both federal and local, and in attending and making submissions at public inquiries and at the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory (“the Pepper Inquiry”).
17. The Defendants gave evidence in summary that they engaged in the demonstration outside Parliament House on 16 April 2019 because each of them believed that the whole planet is facing an extraordinary emergency as a consequence of climate change and also the exacerbation of the adverse effects of climate change arising out of the continuing planet-wide extraction and use of fossil fuels, including the process of fracking.
18. Each of the Defendants gave evidence in summary that they engaged in the demonstration on 16 April 2019 outside Parliament House to bring their concerns to the attention of both politicians and the public. Each of them gave evidence in summary that they believed that damaging the lawn as part of the demonstration constituted the only recourse left to them because they had exhausted all other options over a number of years, as set out in their evidence on this subject as summarised in paragraph 16 above.
19. I heard evidence from two expert witnesses called by the Defendants on the issues of climate change generally and fracking specifically. I am satisfied and I find that each witness, Emeritus Professor Will Steffen and Associate Professor Gavin M. Mudd, is an expert in the field of the probable global impacts of these issues. In summary, this evidence was to the effect that current global emissions of carbon dioxide and methane must be phased out from 2021 until net zero emissions are achieved in accordance with the 2015 Paris Peace Accord – *“Failing to do this will present our children and grandchildren with a planet in which many regions could well become uninhabitable. This is the climate emergency, and it is here now”* – per Professor Steffen in Exhibit D10 in the last two sentences on the third last page.
20. Additionally, I heard very detailed evidence from the Defendant Lauren Mellor which established that she had been careful and attentive in educating herself on the

issues of climate change and fracking. Although Ms Mellor was not put forward as an expert witness I was able to compare her understanding of these issues with the relevant expert evidence before me. I formed the view that Ms Mellor had a good understanding of the publicly available scientific evidence in support of global warming and its negative consequences for the planet if ameliorative action is not urgently commenced, and the adverse impact of fossil fuel extraction and use, including fracking, on these consequences.

21. I am satisfied and I find that the Defendant Lauren Mellor believed at all relevant times that there existed circumstances of impending adverse environmental impact to the planet, constituting an extraordinary emergency, as a consequence of global warming and of its exacerbation through continuing fossil fuel extraction and use, including through fracking.
22. Mr Rory had not educated himself on these matters to the same extent as had Ms Mellor. In his evidence, he did not reveal the same level of broad, academic understanding of these issues. He did however give clear and cogent evidence of his first-hand and second-hand experiences as a traditional owner of land in the MacArthur River Basin of the adverse impacts over the past 20 to 30 years of mining activities on the land, waterways and wildlife in that area. He gave evidence of his understanding of the risks of contamination of the water table if fracking were to go ahead in that area. He gave evidence of his understanding of a link between the extraction and use of fossil fuels, including fracking, and the exacerbation of an imminent environmental disaster associated with global warming.
23. I am satisfied and I find that the Defendant Conrad Rory believed at all relevant times that there existed circumstances of impending adverse environmental impact to the planet constituting an extraordinary emergency, as a consequence of global warming and of its exacerbation through continuing fossil fuel extraction and use, including through fracking.
24. In cross examination each Defendant was asked why they could not have raised symbolic drilling rigs on the paved area next to the lawn outside Parliament House and that way avoided any adverse impact to the lawn. Each of them answered to the effect that a symbolic drilling rig without a little actual drilling would not have had the same or a sufficient impact and would not have made their point.
25. It is plain that a wide range of symbolic gestures was available to both Defendants and to the others engaged in the demonstration which would not have involved any damage to the lawn or any unlawful conduct. It is also plain that damaging the lawn was highly unlikely in itself to have any impact on the decision of the NT government to proceed with fracking. I am not satisfied on all the evidence before me that either Defendant in fact subjectively believed that damaging the lawn was the only reasonable way to deal with the emergency or that it was a reasonable response to the emergency, within the meanings of subsections 43BC(2)(b) or (c) of the Act.

26. Additionally and in any event, I am satisfied beyond reasonable doubt and I find that neither Defendant reasonably, when considered objectively, believed the required matters in subsection 43BC(2)(b) and/or (c) of the Act.
27. I rule that the Defendants are not excused from criminal responsibility for damaging the lawn pursuant to subsection 43BC(1) of the Act.
28. Similarly, I am not satisfied on all the evidence before me that either Defendant in fact subjectively believed that damaging the lawn was necessary to defend another person, namely the other inhabitants of planet Earth, or to protect planet Earth or any part of it from “*unlawful appropriation, destruction, damage or interference*”. Even if I am wrong about these specific beliefs of the Defendants, I am satisfied beyond reasonable doubt and I find that damaging the lawn was not an objectively reasonable response in the circumstances as the Defendants, or either of them, perceived them, within the meaning of subsection 43BD(2)(b) of the Act.
29. I rule that the Defendants are not excused from criminal responsibility for damaging the lawn pursuant to subsection 43BD(1) of the Act.

Damage to Property

30. “*Property*” is relevantly defined in section 238 of the Act as follows: “(a) means any real or personal property of a tangible nature”. I am satisfied this very broad definition is capable of including plants such as the grass which comprises a lawn, and the layer of earth in real estate from which a lawn grows.
31. “*Damage to property*” is defined, also in section 238 of the Act, to include:
 - (a) *destroying the property; and*
 - (b) *causing the physical loss of the property by interfering with the property (including by removing any restraint over the property or abandoning the property); and*
 - (c) *causing any loss of a use or function of the property by interfering with the property; and*
 - (d) *defacing the property; and*
 - (e) *for a document – obliterating or rendering illegible the whole or any part of the document; and*
 - (f) *for an animal – harming or killing the animal; and*
 - (g) *for a plant or other thing forming part of land – severing it from the land”.*
32. The definitions of “damage” in the Act set out above are inclusive rather than exclusive. Nevertheless, I take guidance from those definitions. The only ones of them which in my view might be applicable in this case are (c), (d) and (g).
33. I heard oral evidence as to the extent of the damage to the lawn. I also saw two lots of CCTV footage - Exhibits P1 and 2 - and a video taken on behalf of the demonstrators - Exhibit D8. This visual evidence is the best evidence of the

apparent overall damage to the surface of the lawn. The oral evidence is the best evidence of the dimensions of the three holes drilled into the lawn because these cannot be adequately seen in the visual evidence.

34. Security officer Mr Robert Daffey gave oral evidence before the Court. He said that three holes were drilled into the lawn, one being about 1 foot (30 centimetres) in depth and the other two about 6 inches (15 cm) in depth and all being approximately 6 inches (15 centimetres) in diameter. I received in evidence Mr Daffey's statutory declaration declared 17 May 2019 – Exhibit D4. In paragraph 9. of that statutory declaration Mr Daffey had provided the same estimates of the dimensions of the holes.
35. The visual evidence shows the bobcat driving onto the lawn, which is unmarked in any way. It then drills the three holes and in order to do that it turns on the spot on the lawn, which churns up some of the lawn's surface. A small area of dark earth can be seen, which contrasts with the green of the rest of the surface of the lawn. Additionally, the bobcat left tyre tracks on the lawn. These appear to be quite superficial, in that dark earth is not showing through the green of the lawn in the tyre tracks and it is probable that the grass there was merely temporarily flattened.
36. Mr Daffey gave evidence that a gardener attended after the demonstrators had departed and that the lawn was repaired within one hour. No evidence was provided about what was involved in that repair. In paragraph 16. of Exhibit D4 Mr Daffey states: "*The cost in labour to repair the damage caused to the front lawns of Parliament House has been estimated to be \$100*".
37. No photographs or other visual evidence of the repaired lawn were tendered and I am therefore unable to compare the appearance of the repaired lawn with the visual evidence of the appearance of the lawn before the bobcat drove on it. In the absence of such evidence and noting that the prosecution bears the onus of proof in respect of establishing damage, I proceed on the basis that the lawn was essentially restored to its pre-demonstration appearance and function within about one hour.

De Minimis

38. The foregoing raises the question whether the impact upon the physical integrity of the lawn which I have set out in paragraphs 34, 35 and 36 above, affecting it for a total period of around one hour, and carried out for a symbolic effect within the context of an otherwise lawful demonstration, comes within the definition of "*damage to property*" for the purposes of the Act.
39. I come to consider the legal principle set out in the Latin maxim *de minimis non curat lex*, which translates as "*the law does not concern itself with trifles*". The principle does not exist as a defence in the strict sense - it is more of a guide to interpretation. In *Williams v R* [1978] 140 CLR 591 Justice Murphy of the High Court said in paragraph 6 of his Reasons as follows:

“In my opinion, this is a case for the application of the principle that the law is not concerned with trifles (de minimis non curat lex). This principle has been recognised throughout legal history and is often applied to avoid imposition of punishment after a finding of guilt where an offence is trivial... The de minimis principle is also applied to avoid hysterical or oppressive law enforcement; cases in which a finding of guilt would tend to bring the law or the judicial system into ridicule or contempt because of triviality. This is such a case. Even if there were no other basis for treating the conviction as bad, it should be set aside on this ground”.

40. That was a case in which fragments of cannabis had been found in a defendant’s pockets, in quantities too small to measure. Nevertheless, he was found guilty of possessing the cannabis. The High Court set aside that finding of guilt, applying the *de minimis* principle among other reasons. The case before me of course involves a very different factual background.
41. In this case I note that around 20 people were actively engaged in the demonstration and their respective identities and levels of engagement were clearly recorded on CCTV, yet charges were laid against only two of their number – Lauren Mellor and Conrad Rory. I note the clearly symbolic nature of the conduct of the Defendants, also captured on the CCTV. I note the minor and temporary nature of the damage to the lawn, and the small cost in dollar terms of the repairs necessitated by that damage.
42. Even so, I am not satisfied that this case involves “...*hysterical or oppressive enforcement*”; I am not satisfied it is one where “...*a finding of guilt would tend to bring the law or the judicial system into ridicule or contempt because of triviality*”. I am satisfied that the *de minimis* principle does not apply in this case where real even though minor damage was occasioned to the lawn, as set out in paragraphs 34, 35 and 36 above.
43. I am satisfied beyond reasonable doubt and I find that damage within the meaning of section 241 of the Act was caused to the lawn by each of the Defendants by temporarily causing a loss of its use or function as a lawn, and/or by temporarily defacing it, within the meanings of definitions (c) and (d) in section 238 of the Act. I am not so satisfied that either Defendant severed the lawn or any part of the lawn from the land within the meaning of definition (g) in section 238.

“... Property Belonging to Another Person”

44. A “*person to whom property belongs*” is relevantly defined in subsection 239(1) of the Act as follows:

“For this Division, property belongs to anyone who has:
(a) possession or control of it; or
(b) any proprietary right or interest in it...”.

45. Evidence was called from Mr Robert Daffey who at all relevant times was employed by Wilson Security and permanently based at Parliament House in Darwin as the Senior Security Supervisor. Mr Daffey gave evidence that he is an authorised person within the definition in subsection 5(1) of the *Legislative Assembly (Security) Act* (“the Security Act”). The Security Act permits an authorised person to ask for the name and address of a person entering the Assembly precincts, and/or to state their reason for entering or being on the precincts. The authorised person may require the other person to submit to a search. Subsection 9(1) of the Security Act permits an authorised person who believes that another person on the Assembly precincts is behaving unlawfully or in a disorderly or menacing manner to require the person to leave the precincts. Mr Daffey gave evidence that he advised the demonstrators as a group, which included each Defendant, that they were not allowed to interfere with the lawn in that fashion and that they had no approval to enter the grounds of Parliament House. He gave evidence that he asked them to stop what they were doing and that they did not stop. Each of the Defendants Lauren Mellor and Conrad Rory gave evidence that they did not hear Mr Daffey say anything of that nature.
46. However, I am satisfied that none of the duties or powers assigned to an authorised person under the Security Act, or all of them considered together, go so far as to establish “*control*” of the Assembly or its precincts within the definition in subsection 239(1) of the Act and therefore I am satisfied that neither the Assembly nor its precincts belongs to an authorised person as defined in the Security Act.
47. In any event, the charge faced by the Defendants is that they caused damage to property, namely front lawn, belonging to another, namely NT Government. The charge is not that the Defendants damaged property belonging to a Senior Security Officer employed by a private security firm or belonging to an authorised person within the meaning of the Security Act.
48. The prosecution at the hearing in this matter called no evidence directly relevant to the ownership of the “front lawn” the subject of the charge against each Defendant, even though it had been alerted to this issue at the Directions Hearing on 24 June 2020. I raised this lack in the course of prosecution submissions after both parties had closed their cases and no further evidence could be adduced. Mr Rowbottom, counsel for the prosecution, referred me to the *Legislative Assembly (Powers And Privileges) Act 1992* (“the Privileges Act”).
49. Subsection 14(3) of the Privileges Act provides as follows: “*Subject to the directions, if any, of the Assembly, the Speaker has the control and management of the precincts of the Assembly*”. This definition arguably might establish the Speaker as a “*person to whom property belongs*” within the meaning of subsection 239(1) of the Act because the Speaker is someone who has control of the precincts of the Assembly. However, I received no submissions from either party as to whether the Office of Speaker, or the person who occupies that Office from time to time, is

identical with the NT Government. This is far from a self-evident proposition. As noted above, the charge against both Defendants is that they caused damage to property belonging to another, namely NT Government.

50. The Privileges Act in subsections 14(1) and (2) defines the precincts of the Assembly as follows:

“(1) The precincts of the Assembly is the area of land described in Schedule 1, together with the building erected on the land.

“(2) The Speaker may, by notice in the Gazette, declare that on a date specified in the notice the precincts described in Schedule 1 shall no longer be the precincts of the Assembly and, on and from that date, the precincts of the Assembly shall be the land described and delineated in Schedule 2, together with the building erected on the land and that land and building shall be the precincts accordingly”.

51. There was no evidence before me of any relevant notice in the *Gazette* and so I proceed to consider both Schedule 1 and Schedule 2 to the Privileges Act.

52. Schedule 1 of the Privileges Act provides the following:

“Schedule 1

“ALL THAT parcel of land in Mitchell Street near Bennett Street in the Town of Darwin in the Northern Territory of Australia containing an area of 3990 square metres more or less commencing at a point on the northeastern side of Mitchell Street 24.225 metres southeasterly from the southernmost corner of Lot 4820 Town of Darwin; thence bounded by lines bearing 44 degrees 41 minutes 20 seconds for 60.975 metres, 135 degrees four minutes for 65.885 metres, 224 degrees 46 minutes 20 seconds for 60.48 metres, 314 degrees 38 minutes to 65.8 metres to the point of commencement; together with ALL THAT parcel of land in Smith Street near The Esplanade in the Town of Darwin in the Northern Territory of Australia containing an area of 689 square metres more or less being the Ground Floor of the Leichhardt Building and being more particularly delineated as that area shown hatched on the following plan:”

53. Schedule 2 of the Privileges Act relevantly provides the following:

“Schedule 2 Precincts of Assembly

“The precincts of the Assembly are:

- (a) except for the period specified in paragraph (ab) – the area of land described in Part A;*
- (ab) not relevant*
- (b) not relevant*

Part A

All that parcel of land in the Town of Darwin, Northern Territory of Australia containing an area of 2.41 hectares more or less and bounded by lines described as follows: Commencing at the westernmost corner of Lot 5949 town of Darwin; thence by a line bearing 134 degrees 38 minutes 20 seconds for 103.5 metres; a convex curve of arc 166.75 metres, radius 126.4 metres and chord bearing 276 degrees 56 minutes 20 seconds; a line bearing 314 degrees 44 minutes for 102.15 metres; a concave curve of arc 53.905 metres, radius 84 metres and chord bearing 296 degrees 20 minutes 50 seconds; a convex curve of arc 29.175 metres, radius 153 m and chord bearing 283 degrees 25 minutes 30 seconds; a line bearing 288° 53 minutes for 7 metres; a convex curve of arc 5.975 metres, radius 13.5 metres and chord bearing 301 degrees 34 minutes; a convex curve of arc 9.015 metres, radius 7 metres and chord bearing 351 degrees eight minutes 40 seconds; a convex curve of arc 14.765 metres, radius 51 metres and chord bearing 36 degrees 20 minutes 20 seconds; a line bearing 44° 38 minutes for 29.7 metres; a convex curve of arc 10.995 metres, radius 7 metres and chord bearing 89 degrees 38 minutes; a line bearing 134 degrees 38 minutes for 21 metres; a line bearing 44 degrees 38 minutes for 10.8 metres; a line bearing 134 degrees 38 minutes for 76.74 metres; a line bearing 44 degrees 38 minutes to 81.1 metres; a line bearing 134 degrees 38 minutes to 18.46 metres; a line bearing 44 degrees 38 minutes for 6.4 metres; a line bearing 134 degrees 34 minutes for 47.17 metres; a line bearing 224 degrees 23 minutes 20 seconds for 6.355 metres; a line bearing 134 degrees 38 minutes for 16.7 metres; a line bearing 224 degrees 38 minutes for 3.195 metres; a line bearing 134 all degrees 38 minutes to 30.305 metres; a line bearing 224 degrees 37 minutes 10 seconds for 14.405 metres to the point of commencement”.

54. In the absence of expert evidence from say a surveyor, I am quite unable to make anything of the descriptions by way of metes and bounds set out in the foregoing Schedules 1 and 2. Accordingly, the definitions of “precincts of Assembly” set out in subparagraphs 14(1) and (2) of the Privileges Act do not without further evidence assist me in determining whether the “front lawn” referred to in the charge comes within the precincts of the Assembly.
55. At the hearing I was shown two lots of CCTV footage of the conduct of the demonstration and I was also shown footage of the demonstration taken on behalf of the demonstrators. These all became exhibits before the Court and I can clearly see from these the patch of lawn the subject of the charge against each Defendant. It is a small piece of lawn separated from the main building of Parliament House by a strip of concrete. However, I am unable to infer simply from its proximity to the building that this patch of lawn is in fact part of the precincts of the Assembly. Even if I were, I would need to be satisfied that the precincts of the Assembly were in fact the property of the NT Government.

56. These are criminal proceedings where the prosecution bears the onus of establishing each element of the charge beyond reasonable doubt. The prosecution has failed to establish the element that the property as described in the charge – “front lawn” – belongs to the NT Government.

Conclusion

57. Accordingly, the charge is not made out and I find the Defendant Lauren Ann Mellor and the Defendant Conrad Rory each not guilty of the charge in count 1.

Dated this 10th day of November 2020

JOHN NEILL
LOCAL COURT JUDGE

CITATION: *Kerry Leanne Rigby v Conrad Rory and Lauren Ann Mellors*
[2020] NTLC14

PARTIES: Kerry Leanne Rigby

V

Conrad Rory and Lauren Ann Mellors

TITLE OF COURT: LOCAL COURT

JURISDICTION: CRIMINAL

FILE NOs: 21926270 and 21926271

DELIVERED ON: 10 November 2020

DELIVERED AT: DARWIN

HEARING DATES: 19 and 20 October 2020

JUDGMENT OF: Judge Neill

CATCHWORDS:

Limits on common law rights of political expression; application of statutory defences in sections 43BC and 43BD of the Criminal Code Act; application of principle in maxim de minimis non curat lex.

Criminal Code Act sections 43BC, 43BD, 238, 239 and 241

Legislative Assembly (Security) Act section 5

Legislative Assembly (Powers and Privileges) Act section 14

Sally Ann Denise Watson and Vaughan Lewis Williams v Robin Laurence Trenerry
(1998) 122 NTR 1

Williams v R [1978] 140 CLR 591

REPRESENTATION:

Counsel:

Complainant: Mr Rowbottom

Defendant: Mr Lawrence SC

Solicitors:

Complainant: DPP

Defendant: Darwin Family Law

Judgment category classification: B

Judgment ID number: 14

Number of paragraphs: 57

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 21926270 and 21926271

BETWEEN

Kerry Leanne Rigby

Complainant

AND

Conrad Rory and Lauren Ann Mellors

Defendant

REASONS FOR JUDGMENT

(Delivered 10 November 2020)

JUDGE NEILL

Introduction

1. The Defendants have been jointly charged with one count as follows:

*"On the 16th April 2019
at Darwin in the Northern Territory of Australia*

1. *did at Parliament House, Mitchell Street intentionally or recklessly cause damage to property, namely front lawn, belonging to another, namely NT Government.*

Contrary to Section 241(1) of the Criminal Code Act (NT)".

2. This charge arises from a political demonstration held in the vicinity of the NT Legislative Assembly building (Parliament House) on 16 April 2019 ("the demonstration"). In the course of the demonstration a small bobcat with a front mounted auger attachment was driven by the Defendant Conrad Rory onto a lawn area where he drilled three holes under directions from various other persons involved in the demonstration, including the Defendant Lauren Ann Mellor. Poles were then loosely mounted over these holes in what was said to symbolise drilling

rigs. There were speeches identifying that the demonstrators were opposed to the ending by the NT Government of its moratorium on the mining practice of hydraulic fracturing ("fracking") and the actual or proposed granting of licences for this practice to commence and/or continue in the Northern Territory. The demonstrators and the bobcat then departed. The drilling of the three holes and the driving of the bobcat on the lawn and its rotation on the lawn had some impact on the surface of the lawn.

The Right to Demonstrate

3. The Northern Territory Court of Appeal considered and acknowledged the common law right of political protest in *Sally Ann Denise Watson and Vaughan Lewis Williams v Robin Laurence Trenerry* (1998) 122 NTR 1. Justice Angel at page 4.8 quoted with approval from McCarthy J of the New Zealand Court of Appeal in *Melser and Others v Police* [1967] NZLR 437 at 445 – 446 as follows:

"Unquestionably, freedom of opinion, including the right to protest against political decisions, is now accepted as a fundamental human right in any modern society which deserves to be called democratic. Its general acceptance is one of the most precious of our individual freedoms. It needed no Charter of the United Nations to make it acceptable to us; it has long been part of our way of life. But a democracy is compounded of many different freedoms, some of which conflict with others, and the right of protest, in particular, if exercised without restraint, may interfere with other people's rights of privacy and freedom from molestation. Freedom of speech, freedom of behaviour, academic freedom, none of these is absolute. The purposes of a democratic society are only made practicable by accepting some limitations on absolute individual freedoms. All this, of course is rather elementary.

"The task of the law is to define the limitations which our society, for its social health, puts on such freedoms. Sometimes the law defines with precision the boundaries of these limitations; often the definition is stated only in general terms. In these latter cases, the Courts must lay down the boundaries themselves, bearing in mind that freedoms are of different qualities and values and that the higher and more important should not be unduly restricted in favour of lower or less important ones".

4. Justice Angel went on at page 5.5 to say as follows:

"The peaceable combination of people in public places for the purposes of expressing opinions and of protest against political decisions is but the exercise of the ordinary civil freedoms of opinion, of speech, of assembly and of association. These freedoms reflect the importance our society places on open discussion and the search for truth, the need for diversified opinions to be known and for the strengths and weaknesses of those opinions to be identified, the right to criticise, the value of tolerance of the opinions of others, and the

*social commitment to the value of individual autonomy, all vital to the health of any democratic system of open government. A peaceful demonstration or protest, whether by assembly or procession in the street is nowadays accepted by members of the community as a safety valve for the community and potentially at least as an agent for change and for the good. An ordinary incident of any assembly or procession through the streets is some inconvenience to others. Protests test tolerance of differences and of inconvenience. There may be some noise. Members of the public may witness and hear messages they did not wish to see and to hear. They may consider such messages to be anathema. There may be a gross affront to some sensibilities. Nonetheless peaceable protests are to be tolerated in the recognition of the freedom of others to hold different opinions, to speak, to assemble and to associate. As Bray CJ said extra-curially on one occasion, "Diversity is the protectress of freedom", (1971) 45 ALJ 586. In short, exercise of freedoms which, whilst necessarily imposing on others, are tolerated **in the absence of associated unlawful acts** (emphasis added). Whilst there is, strictly speaking, no juristic right to demonstrate or to protest, these are residual freedoms **to do that which is not prohibited by law**"(emphasis added).*

5. In other words, where conduct is specifically prohibited by law then this prohibition is a limitation on the otherwise broad right of political protest. The question before me is whether the conduct of the Defendants on 16 April 2019 was prohibited by section 241 of the *Criminal Code Act* ("the Act").

Analysis

6. The conduct prohibited by section 241 of the Act has four elements, namely the identification of a particular property, that that property belongs to someone other than the Defendants and the identification of that someone, that the Defendants directly or indirectly caused damage to that property, and that the Defendants' actions in causing that damage were intentional or reckless as to that outcome. "*Property*", "*person to whom property belongs*", "*causes*" and "*damage to property*" are defined in sections 238, 239 and 240 of the Act.
7. Because these are criminal proceedings the prosecution bears the onus of establishing each of these elements beyond reasonable doubt.
8. Each of the Defendants gave evidence admitting their respective roles in organising the demonstration and attending as part of the demonstration at Parliament House on 16 April 2019 - in the case of the Defendant Rory, additionally by driving the bobcat onto the lawn, digging three holes in the lawn with the auger mounted on the front of the bobcat, causing the bobcat to rotate while on the lawn in order to dig the holes and thereby impacting on the surface of the lawn; in the case of the Defendant Mellor, additionally by organising the rental and transport of the bobcat on the day and paying for that, and being among the demonstrators at Parliament House

providing instructions and guidance to the Defendant Rory as to where to dig the holes.

9. Accordingly, there is no dispute as to the identity of each of the Defendants or as to their presence at the relevant time and place as part of the group of people involved in the demonstration, and I so find. There is no dispute that both Defendants (along with all the other persons who attended that demonstration) intentionally and/or recklessly, and directly or indirectly, caused the three holes to be drilled in the lawn and the attendant impact of the bobcat on the surface of the lawn, and I so find.
10. What remains to be considered is whether the prosecution has established beyond reasonable doubt that the lawn was property, that it belonged to another namely NT Government, whether the impact on the lawn constituted “damage” within the meaning of the section and the law, and even if these matters are proved beyond reasonable doubt, whether there are any statutory defences available to the Defendants in all the circumstances.

The Statutory Defences

11. On 24 June 2020 lawyers for the Defendants and for the prosecution attended a Directions Hearing when the matter was listed for hearing for two days being 19 and 20 October 2020. A Directions Hearing Information Form signed by the lawyer for the Defendants advised the Court that the identity of the Defendants and their presence at that place on that date were not in dispute. It advised the Court that the Defendants disputed that they had committed an offence at law and that they relied on: "*section 43 of the Criminal Code NT 1983*". It further advised that: "*The defendant requires the owner of the property to be called*". This emphasised the prosecution’s need to prove ownership of the property.
12. On the first day of the hearing it was clarified that the Defendants in fact relied on sections 43BC and 43BD of the Act. These provide as follows:

"43BC Sudden or extraordinary emergency

- (1) *A person is not criminally responsible for an offence if the person carries out the conduct constituting the offence in response to circumstances of sudden or extraordinary emergency.*
- (2) *This section applies only if the person carrying out the conduct reasonably believes that:*
 - (a) *circumstances of sudden or extraordinary emergency exist; and*
 - (b) *committing the offence is the only reasonable way to deal with the emergency; and*
 - (c) *the conduct is a reasonable response to the emergency.*

"43BD Self-defence

- (1) *A person is not criminally responsible for an offence if the person carries out the conduct constituting the offence in self-defence.*
- (2) *A person carries out conduct in self-defence only if:*
 - (a) *the person believes the conduct is necessary:*
 - (i) *to defend himself or herself or another person; or*
 - (ii) *to prevent or terminate the unlawful imprisonment of himself or herself or another person; or*
 - (iii) *to protect property from unlawful appropriation, destruction, damage or interference; or*
 - (iv) *to prevent criminal trespass to any land or premises; or*
 - (v) *to remove from any land or premises a person who is committing criminal trespass; and*
 - (b) *the conduct is a reasonable response in the circumstances as he or she perceives them.*
- (3) *However, the person does not carry out conduct in self-defence if:*
 - (a) *the person uses force that involves the intentional infliction of death or serious harm:*
 - (i) *to protect property; or*
 - (ii) *to prevent criminal trespass; or*
 - (iii) *to remove a person who is committing criminal trespass;*
or
 - (b) *the person is responding to lawful conduct that the person knew was lawful.*
- (4) *Conduct is not lawful for subsection (3)(b) merely because the person carrying it out is not criminally responsible for it".*

- 13. The Defendants bear an evidential burden under these two sections. That is, they must lead or point to evidence establishing the relevant requirements of the sections, on the balance of probabilities. However, if they succeed in doing this the burden then shifts to the prosecution. The prosecution must then negative these defences, and it must do so beyond reasonable doubt.
- 14. Subsection 43BC(2) of the Act (sudden or extraordinary emergency) includes both subjective and objective elements. The person seeking to rely on the section must in fact hold each of the three beliefs set out in (a), (b) and (c) of that subparagraph—this is a subjective element. The section applies to remove criminal responsibility for an offence however only if the person carrying out the conduct “reasonably” believes the three matters set out in (a), (b) and (c), which is an objective element. It is not enough for the person to hold all three of those beliefs if any one or more of them is not objectively reasonable – subsection (2).

15. Similarly, subsection 43BD(2)(a)(i) and/or (iii) and (b) of the Act (defensive conduct) includes both subjective and objective elements. The person seeking to rely on any of the matters in paragraph (a) must hold the belief that the conduct is necessary for one of the identified defensive purposes, which is a subjective element. However, separately from this belief, paragraph (b) requires that the conduct must be a “reasonable response” – an objective element – “in the circumstances as he or she perceives them” – once again a subjective element.
16. Each of the Defendants gave evidence in summary that they were deeply concerned about climate change issues generally and about fracking specifically. Each of the Defendants gave evidence that they wanted the NT government not to permit fracking in the NT. They gave evidence that to achieve this, each in their own way had been actively involved in lobbying, including of mining and business organisations and of politicians both federal and local, and in attending and making submissions at public inquiries and at the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory (“the Pepper Inquiry”).
17. The Defendants gave evidence in summary that they engaged in the demonstration outside Parliament House on 16 April 2019 because each of them believed that the whole planet is facing an extraordinary emergency as a consequence of climate change and also the exacerbation of the adverse effects of climate change arising out of the continuing planet-wide extraction and use of fossil fuels, including the process of fracking.
18. Each of the Defendants gave evidence in summary that they engaged in the demonstration on 16 April 2019 outside Parliament House to bring their concerns to the attention of both politicians and the public. Each of them gave evidence in summary that they believed that damaging the lawn as part of the demonstration constituted the only recourse left to them because they had exhausted all other options over a number of years, as set out in their evidence on this subject as summarised in paragraph 16 above.
19. I heard evidence from two expert witnesses called by the Defendants on the issues of climate change generally and fracking specifically. I am satisfied and I find that each witness, Emeritus Professor Will Steffen and Associate Professor Gavin M. Mudd, is an expert in the field of the probable global impacts of these issues. In summary, this evidence was to the effect that current global emissions of carbon dioxide and methane must be phased out from 2021 until net zero emissions are achieved in accordance with the 2015 Paris Peace Accord – *“Failing to do this will present our children and grandchildren with a planet in which many regions could well become uninhabitable. This is the climate emergency, and it is here now”* – per Professor Steffen in Exhibit D10 in the last two sentences on the third last page.
20. Additionally, I heard very detailed evidence from the Defendant Lauren Mellor which established that she had been careful and attentive in educating herself on the

issues of climate change and fracking. Although Ms Mellor was not put forward as an expert witness I was able to compare her understanding of these issues with the relevant expert evidence before me. I formed the view that Ms Mellor had a good understanding of the publicly available scientific evidence in support of global warming and its negative consequences for the planet if ameliorative action is not urgently commenced, and the adverse impact of fossil fuel extraction and use, including fracking, on these consequences.

21. I am satisfied and I find that the Defendant Lauren Mellor believed at all relevant times that there existed circumstances of impending adverse environmental impact to the planet, constituting an extraordinary emergency, as a consequence of global warming and of its exacerbation through continuing fossil fuel extraction and use, including through fracking.
22. Mr Rory had not educated himself on these matters to the same extent as had Ms Mellor. In his evidence, he did not reveal the same level of broad, academic understanding of these issues. He did however give clear and cogent evidence of his first-hand and second-hand experiences as a traditional owner of land in the MacArthur River Basin of the adverse impacts over the past 20 to 30 years of mining activities on the land, waterways and wildlife in that area. He gave evidence of his understanding of the risks of contamination of the water table if fracking were to go ahead in that area. He gave evidence of his understanding of a link between the extraction and use of fossil fuels, including fracking, and the exacerbation of an imminent environmental disaster associated with global warming.
23. I am satisfied and I find that the Defendant Conrad Rory believed at all relevant times that there existed circumstances of impending adverse environmental impact to the planet constituting an extraordinary emergency, as a consequence of global warming and of its exacerbation through continuing fossil fuel extraction and use, including through fracking.
24. In cross examination each Defendant was asked why they could not have raised symbolic drilling rigs on the paved area next to the lawn outside Parliament House and that way avoided any adverse impact to the lawn. Each of them answered to the effect that a symbolic drilling rig without a little actual drilling would not have had the same or a sufficient impact and would not have made their point.
25. It is plain that a wide range of symbolic gestures was available to both Defendants and to the others engaged in the demonstration which would not have involved any damage to the lawn or any unlawful conduct. It is also plain that damaging the lawn was highly unlikely in itself to have any impact on the decision of the NT government to proceed with fracking. I am not satisfied on all the evidence before me that either Defendant in fact subjectively believed that damaging the lawn was the only reasonable way to deal with the emergency or that it was a reasonable response to the emergency, within the meanings of subsections 43BC(2)(b) or (c) of the Act.

26. Additionally and in any event, I am satisfied beyond reasonable doubt and I find that neither Defendant reasonably, when considered objectively, believed the required matters in subsection 43BC(2)(b) and/or (c) of the Act.
27. I rule that the Defendants are not excused from criminal responsibility for damaging the lawn pursuant to subsection 43BC(1) of the Act.
28. Similarly, I am not satisfied on all the evidence before me that either Defendant in fact subjectively believed that damaging the lawn was necessary to defend another person, namely the other inhabitants of planet Earth, or to protect planet Earth or any part of it from “*unlawful appropriation, destruction, damage or interference*”. Even if I am wrong about these specific beliefs of the Defendants, I am satisfied beyond reasonable doubt and I find that damaging the lawn was not an objectively reasonable response in the circumstances as the Defendants, or either of them, perceived them, within the meaning of subsection 43BD(2)(b) of the Act.
29. I rule that the Defendants are not excused from criminal responsibility for damaging the lawn pursuant to subsection 43BD(1) of the Act.

Damage to Property

30. “*Property*” is relevantly defined in section 238 of the Act as follows: “(a) means any real or personal property of a tangible nature”. I am satisfied this very broad definition is capable of including plants such as the grass which comprises a lawn, and the layer of earth in real estate from which a lawn grows.
31. “*Damage to property*” is defined, also in section 238 of the Act, to include:
 - (a) *destroying the property; and*
 - (b) *causing the physical loss of the property by interfering with the property (including by removing any restraint over the property or abandoning the property); and*
 - (c) *causing any loss of a use or function of the property by interfering with the property; and*
 - (d) *defacing the property; and*
 - (e) *for a document – obliterating or rendering illegible the whole or any part of the document; and*
 - (f) *for an animal – harming or killing the animal; and*
 - (g) *for a plant or other thing forming part of land – severing it from the land”.*
32. The definitions of “damage” in the Act set out above are inclusive rather than exclusive. Nevertheless, I take guidance from those definitions. The only ones of them which in my view might be applicable in this case are (c), (d) and (g).
33. I heard oral evidence as to the extent of the damage to the lawn. I also saw two lots of CCTV footage - Exhibits P1 and 2 - and a video taken on behalf of the demonstrators - Exhibit D8. This visual evidence is the best evidence of the

apparent overall damage to the surface of the lawn. The oral evidence is the best evidence of the dimensions of the three holes drilled into the lawn because these cannot be adequately seen in the visual evidence.

34. Security officer Mr Robert Daffey gave oral evidence before the Court. He said that three holes were drilled into the lawn, one being about 1 foot (30 centimetres) in depth and the other two about 6 inches (15 cm) in depth and all being approximately 6 inches (15 centimetres) in diameter. I received in evidence Mr Daffey's statutory declaration declared 17 May 2019 – Exhibit D4. In paragraph 9. of that statutory declaration Mr Daffey had provided the same estimates of the dimensions of the holes.
35. The visual evidence shows the bobcat driving onto the lawn, which is unmarked in any way. It then drills the three holes and in order to do that it turns on the spot on the lawn, which churns up some of the lawn's surface. A small area of dark earth can be seen, which contrasts with the green of the rest of the surface of the lawn. Additionally, the bobcat left tyre tracks on the lawn. These appear to be quite superficial, in that dark earth is not showing through the green of the lawn in the tyre tracks and it is probable that the grass there was merely temporarily flattened.
36. Mr Daffey gave evidence that a gardener attended after the demonstrators had departed and that the lawn was repaired within one hour. No evidence was provided about what was involved in that repair. In paragraph 16. of Exhibit D4 Mr Daffey states: "*The cost in labour to repair the damage caused to the front lawns of Parliament House has been estimated to be \$100*".
37. No photographs or other visual evidence of the repaired lawn were tendered and I am therefore unable to compare the appearance of the repaired lawn with the visual evidence of the appearance of the lawn before the bobcat drove on it. In the absence of such evidence and noting that the prosecution bears the onus of proof in respect of establishing damage, I proceed on the basis that the lawn was essentially restored to its pre-demonstration appearance and function within about one hour.

De Minimis

38. The foregoing raises the question whether the impact upon the physical integrity of the lawn which I have set out in paragraphs 34, 35 and 36 above, affecting it for a total period of around one hour, and carried out for a symbolic effect within the context of an otherwise lawful demonstration, comes within the definition of "*damage to property*" for the purposes of the Act.
39. I come to consider the legal principle set out in the Latin maxim *de minimis non curat lex*, which translates as "*the law does not concern itself with trifles*". The principle does not exist as a defence in the strict sense - it is more of a guide to interpretation. In *Williams v R* [1978] 140 CLR 591 Justice Murphy of the High Court said in paragraph 6 of his Reasons as follows:

“In my opinion, this is a case for the application of the principle that the law is not concerned with trifles (de minimis non curat lex). This principle has been recognised throughout legal history and is often applied to avoid imposition of punishment after a finding of guilt where an offence is trivial... The de minimis principle is also applied to avoid hysterical or oppressive law enforcement; cases in which a finding of guilt would tend to bring the law or the judicial system into ridicule or contempt because of triviality. This is such a case. Even if there were no other basis for treating the conviction as bad, it should be set aside on this ground”.

40. That was a case in which fragments of cannabis had been found in a defendant’s pockets, in quantities too small to measure. Nevertheless, he was found guilty of possessing the cannabis. The High Court set aside that finding of guilt, applying the *de minimis* principle among other reasons. The case before me of course involves a very different factual background.
41. In this case I note that around 20 people were actively engaged in the demonstration and their respective identities and levels of engagement were clearly recorded on CCTV, yet charges were laid against only two of their number – Lauren Mellor and Conrad Rory. I note the clearly symbolic nature of the conduct of the Defendants, also captured on the CCTV. I note the minor and temporary nature of the damage to the lawn, and the small cost in dollar terms of the repairs necessitated by that damage.
42. Even so, I am not satisfied that this case involves “...*hysterical or oppressive enforcement*”; I am not satisfied it is one where “...*a finding of guilt would tend to bring the law or the judicial system into ridicule or contempt because of triviality*”. I am satisfied that the *de minimis* principle does not apply in this case where real even though minor damage was occasioned to the lawn, as set out in paragraphs 34, 35 and 36 above.
43. I am satisfied beyond reasonable doubt and I find that damage within the meaning of section 241 of the Act was caused to the lawn by each of the Defendants by temporarily causing a loss of its use or function as a lawn, and/or by temporarily defacing it, within the meanings of definitions (c) and (d) in section 238 of the Act. I am not so satisfied that either Defendant severed the lawn or any part of the lawn from the land within the meaning of definition (g) in section 238.

“... Property Belonging to Another Person”

44. A “*person to whom property belongs*” is relevantly defined in subsection 239(1) of the Act as follows:

“For this Division, property belongs to anyone who has:
(a) possession or control of it; or
(b) any proprietary right or interest in it...”.

45. Evidence was called from Mr Robert Daffey who at all relevant times was employed by Wilson Security and permanently based at Parliament House in Darwin as the Senior Security Supervisor. Mr Daffey gave evidence that he is an authorised person within the definition in subsection 5(1) of the *Legislative Assembly (Security) Act* (“the Security Act”). The Security Act permits an authorised person to ask for the name and address of a person entering the Assembly precincts, and/or to state their reason for entering or being on the precincts. The authorised person may require the other person to submit to a search. Subsection 9(1) of the Security Act permits an authorised person who believes that another person on the Assembly precincts is behaving unlawfully or in a disorderly or menacing manner to require the person to leave the precincts. Mr Daffey gave evidence that he advised the demonstrators as a group, which included each Defendant, that they were not allowed to interfere with the lawn in that fashion and that they had no approval to enter the grounds of Parliament House. He gave evidence that he asked them to stop what they were doing and that they did not stop. Each of the Defendants Lauren Mellor and Conrad Rory gave evidence that they did not hear Mr Daffey say anything of that nature.
46. However, I am satisfied that none of the duties or powers assigned to an authorised person under the Security Act, or all of them considered together, go so far as to establish “*control*” of the Assembly or its precincts within the definition in subsection 239(1) of the Act and therefore I am satisfied that neither the Assembly nor its precincts belongs to an authorised person as defined in the Security Act.
47. In any event, the charge faced by the Defendants is that they caused damage to property, namely front lawn, belonging to another, namely NT Government. The charge is not that the Defendants damaged property belonging to a Senior Security Officer employed by a private security firm or belonging to an authorised person within the meaning of the Security Act.
48. The prosecution at the hearing in this matter called no evidence directly relevant to the ownership of the “front lawn” the subject of the charge against each Defendant, even though it had been alerted to this issue at the Directions Hearing on 24 June 2020. I raised this lack in the course of prosecution submissions after both parties had closed their cases and no further evidence could be adduced. Mr Rowbottom, counsel for the prosecution, referred me to the *Legislative Assembly (Powers And Privileges) Act 1992* (“the Privileges Act”).
49. Subsection 14(3) of the Privileges Act provides as follows: “*Subject to the directions, if any, of the Assembly, the Speaker has the control and management of the precincts of the Assembly*”. This definition arguably might establish the Speaker as a “*person to whom property belongs*” within the meaning of subsection 239(1) of the Act because the Speaker is someone who has control of the precincts of the Assembly. However, I received no submissions from either party as to whether the Office of Speaker, or the person who occupies that Office from time to time, is

identical with the NT Government. This is far from a self-evident proposition. As noted above, the charge against both Defendants is that they caused damage to property belonging to another, namely NT Government.

50. The Privileges Act in subsections 14(1) and (2) defines the precincts of the Assembly as follows:

“(1) The precincts of the Assembly is the area of land described in Schedule 1, together with the building erected on the land.

“(2) The Speaker may, by notice in the Gazette, declare that on a date specified in the notice the precincts described in Schedule 1 shall no longer be the precincts of the Assembly and, on and from that date, the precincts of the Assembly shall be the land described and delineated in Schedule 2, together with the building erected on the land and that land and building shall be the precincts accordingly”.

51. There was no evidence before me of any relevant notice in the *Gazette* and so I proceed to consider both Schedule 1 and Schedule 2 to the Privileges Act.

52. Schedule 1 of the Privileges Act provides the following:

“Schedule 1

“ALL THAT parcel of land in Mitchell Street near Bennett Street in the Town of Darwin in the Northern Territory of Australia containing an area of 3990 square metres more or less commencing at a point on the northeastern side of Mitchell Street 24.225 metres southeasterly from the southernmost corner of Lot 4820 Town of Darwin; thence bounded by lines bearing 44 degrees 41 minutes 20 seconds for 60.975 metres, 135 degrees four minutes for 65.885 metres, 224 degrees 46 minutes 20 seconds for 60.48 metres, 314 degrees 38 minutes to 65.8 metres to the point of commencement; together with ALL THAT parcel of land in Smith Street near The Esplanade in the Town of Darwin in the Northern Territory of Australia containing an area of 689 square metres more or less being the Ground Floor of the Leichhardt Building and being more particularly delineated as that area shown hatched on the following plan:”

53. Schedule 2 of the Privileges Act relevantly provides the following:

“Schedule 2 Precincts of Assembly

“The precincts of the Assembly are:

- (a) except for the period specified in paragraph (ab) – the area of land described in Part A;*
- (ab) not relevant*
- (b) not relevant*

Part A

All that parcel of land in the Town of Darwin, Northern Territory of Australia containing an area of 2.41 hectares more or less and bounded by lines described as follows: Commencing at the westernmost corner of Lot 5949 town of Darwin; thence by a line bearing 134 degrees 38 minutes 20 seconds for 103.5 metres; a convex curve of arc 166.75 metres, radius 126.4 metres and chord bearing 276 degrees 56 minutes 20 seconds; a line bearing 314 degrees 44 minutes for 102.15 metres; a concave curve of arc 53.905 metres, radius 84 metres and chord bearing 296 degrees 20 minutes 50 seconds; a convex curve of arc 29.175 metres, radius 153 m and chord bearing 283 degrees 25 minutes 30 seconds; a line bearing 288° 53 minutes for 7 metres; a convex curve of arc 5.975 metres, radius 13.5 metres and chord bearing 301 degrees 34 minutes; a convex curve of arc 9.015 metres, radius 7 metres and chord bearing 351 degrees eight minutes 40 seconds; a convex curve of arc 14.765 metres, radius 51 metres and chord bearing 36 degrees 20 minutes 20 seconds; a line bearing 44° 38 minutes for 29.7 metres; a convex curve of arc 10.995 metres, radius 7 metres and chord bearing 89 degrees 38 minutes; a line bearing 134 degrees 38 minutes for 21 metres; a line bearing 44 degrees 38 minutes for 10.8 metres; a line bearing 134 degrees 38 minutes for 76.74 metres; a line bearing 44 degrees 38 minutes to 81.1 metres; a line bearing 134 degrees 38 minutes to 18.46 metres; a line bearing 44 degrees 38 minutes for 6.4 metres; a line bearing 134 degrees 34 minutes for 47.17 metres; a line bearing 224 degrees 23 minutes 20 seconds for 6.355 metres; a line bearing 134 degrees 38 minutes for 16.7 metres; a line bearing 224 degrees 38 minutes for 3.195 metres; a line bearing 134 all degrees 38 minutes to 30.305 metres; a line bearing 224 degrees 37 minutes 10 seconds for 14.405 metres to the point of commencement”.

54. In the absence of expert evidence from say a surveyor, I am quite unable to make anything of the descriptions by way of metes and bounds set out in the foregoing Schedules 1 and 2. Accordingly, the definitions of “precincts of Assembly” set out in subparagraphs 14(1) and (2) of the Privileges Act do not without further evidence assist me in determining whether the “front lawn” referred to in the charge comes within the precincts of the Assembly.
55. At the hearing I was shown two lots of CCTV footage of the conduct of the demonstration and I was also shown footage of the demonstration taken on behalf of the demonstrators. These all became exhibits before the Court and I can clearly see from these the patch of lawn the subject of the charge against each Defendant. It is a small piece of lawn separated from the main building of Parliament House by a strip of concrete. However, I am unable to infer simply from its proximity to the building that this patch of lawn is in fact part of the precincts of the Assembly. Even if I were, I would need to be satisfied that the precincts of the Assembly were in fact the property of the NT Government.

56. These are criminal proceedings where the prosecution bears the onus of establishing each element of the charge beyond reasonable doubt. The prosecution has failed to establish the element that the property as described in the charge – “front lawn” – belongs to the NT Government.

Conclusion

57. Accordingly, the charge is not made out and I find the Defendant Lauren Ann Mellor and the Defendant Conrad Rory each not guilty of the charge in count 1.

Dated this 10th day of November 2020

JOHN NEILL
LOCAL COURT JUDGE

CITATION: *Kerry Leanne Rigby v Conrad Rory and Lauren Ann Mellors*
[2020] NTLC14

PARTIES: Kerry Leanne Rigby

V

Conrad Rory and Lauren Ann Mellors

TITLE OF COURT: LOCAL COURT

JURISDICTION: CRIMINAL

FILE NOs: 21926270 and 21926271

DELIVERED ON: 10 November 2020

DELIVERED AT: DARWIN

HEARING DATES: 19 and 20 October 2020

JUDGMENT OF: Judge Neill

CATCHWORDS:

Limits on common law rights of political expression; application of statutory defences in sections 43BC and 43BD of the Criminal Code Act; application of principle in maxim de minimis non curat lex.

Criminal Code Act sections 43BC, 43BD, 238, 239 and 241

Legislative Assembly (Security) Act section 5

Legislative Assembly (Powers and Privileges) Act section 14

Sally Ann Denise Watson and Vaughan Lewis Williams v Robin Laurence Trenerry
(1998) 122 NTR 1

Williams v R [1978] 140 CLR 591

REPRESENTATION:

Counsel:

Complainant: Mr Rowbottom

Defendant: Mr Lawrence SC

Solicitors:

Complainant: DPP

Defendant: Darwin Family Law

Judgment category classification: B

Judgment ID number: 14

Number of paragraphs: 57

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 21926270 and 21926271

BETWEEN

Kerry Leanne Rigby

Complainant

AND

Conrad Rory and Lauren Ann Mellors

Defendant

REASONS FOR JUDGMENT

(Delivered 10 November 2020)

JUDGE NEILL

Introduction

1. The Defendants have been jointly charged with one count as follows:

*"On the 16th April 2019
at Darwin in the Northern Territory of Australia*

1. *did at Parliament House, Mitchell Street intentionally or recklessly cause damage to property, namely front lawn, belonging to another, namely NT Government.*

Contrary to Section 241(1) of the Criminal Code Act (NT)".

2. This charge arises from a political demonstration held in the vicinity of the NT Legislative Assembly building (Parliament House) on 16 April 2019 ("the demonstration"). In the course of the demonstration a small bobcat with a front mounted auger attachment was driven by the Defendant Conrad Rory onto a lawn area where he drilled three holes under directions from various other persons involved in the demonstration, including the Defendant Lauren Ann Mellor. Poles were then loosely mounted over these holes in what was said to symbolise drilling

rigs. There were speeches identifying that the demonstrators were opposed to the ending by the NT Government of its moratorium on the mining practice of hydraulic fracturing ("fracking") and the actual or proposed granting of licences for this practice to commence and/or continue in the Northern Territory. The demonstrators and the bobcat then departed. The drilling of the three holes and the driving of the bobcat on the lawn and its rotation on the lawn had some impact on the surface of the lawn.

The Right to Demonstrate

3. The Northern Territory Court of Appeal considered and acknowledged the common law right of political protest in *Sally Ann Denise Watson and Vaughan Lewis Williams v Robin Laurence Trenerry* (1998) 122 NTR 1. Justice Angel at page 4.8 quoted with approval from McCarthy J of the New Zealand Court of Appeal in *Melser and Others v Police* [1967] NZLR 437 at 445 – 446 as follows:

"Unquestionably, freedom of opinion, including the right to protest against political decisions, is now accepted as a fundamental human right in any modern society which deserves to be called democratic. Its general acceptance is one of the most precious of our individual freedoms. It needed no Charter of the United Nations to make it acceptable to us; it has long been part of our way of life. But a democracy is compounded of many different freedoms, some of which conflict with others, and the right of protest, in particular, if exercised without restraint, may interfere with other people's rights of privacy and freedom from molestation. Freedom of speech, freedom of behaviour, academic freedom, none of these is absolute. The purposes of a democratic society are only made practicable by accepting some limitations on absolute individual freedoms. All this, of course is rather elementary.

"The task of the law is to define the limitations which our society, for its social health, puts on such freedoms. Sometimes the law defines with precision the boundaries of these limitations; often the definition is stated only in general terms. In these latter cases, the Courts must lay down the boundaries themselves, bearing in mind that freedoms are of different qualities and values and that the higher and more important should not be unduly restricted in favour of lower or less important ones".

4. Justice Angel went on at page 5.5 to say as follows:

"The peaceable combination of people in public places for the purposes of expressing opinions and of protest against political decisions is but the exercise of the ordinary civil freedoms of opinion, of speech, of assembly and of association. These freedoms reflect the importance our society places on open discussion and the search for truth, the need for diversified opinions to be known and for the strengths and weaknesses of those opinions to be identified, the right to criticise, the value of tolerance of the opinions of others, and the

*social commitment to the value of individual autonomy, all vital to the health of any democratic system of open government. A peaceful demonstration or protest, whether by assembly or procession in the street is nowadays accepted by members of the community as a safety valve for the community and potentially at least as an agent for change and for the good. An ordinary incident of any assembly or procession through the streets is some inconvenience to others. Protests test tolerance of differences and of inconvenience. There may be some noise. Members of the public may witness and hear messages they did not wish to see and to hear. They may consider such messages to be anathema. There may be a gross affront to some sensibilities. Nonetheless peaceable protests are to be tolerated in the recognition of the freedom of others to hold different opinions, to speak, to assemble and to associate. As Bray CJ said extra-curially on one occasion, "Diversity is the protectress of freedom", (1971) 45 ALJ 586. In short, exercise of freedoms which, whilst necessarily imposing on others, are tolerated **in the absence of associated unlawful acts** (emphasis added). Whilst there is, strictly speaking, no juristic right to demonstrate or to protest, these are residual freedoms **to do that which is not prohibited by law**"(emphasis added).*

5. In other words, where conduct is specifically prohibited by law then this prohibition is a limitation on the otherwise broad right of political protest. The question before me is whether the conduct of the Defendants on 16 April 2019 was prohibited by section 241 of the *Criminal Code Act* ("the Act").

Analysis

6. The conduct prohibited by section 241 of the Act has four elements, namely the identification of a particular property, that that property belongs to someone other than the Defendants and the identification of that someone, that the Defendants directly or indirectly caused damage to that property, and that the Defendants' actions in causing that damage were intentional or reckless as to that outcome. "*Property*", "*person to whom property belongs*", "*causes*" and "*damage to property*" are defined in sections 238, 239 and 240 of the Act.
7. Because these are criminal proceedings the prosecution bears the onus of establishing each of these elements beyond reasonable doubt.
8. Each of the Defendants gave evidence admitting their respective roles in organising the demonstration and attending as part of the demonstration at Parliament House on 16 April 2019 - in the case of the Defendant Rory, additionally by driving the bobcat onto the lawn, digging three holes in the lawn with the auger mounted on the front of the bobcat, causing the bobcat to rotate while on the lawn in order to dig the holes and thereby impacting on the surface of the lawn; in the case of the Defendant Mellor, additionally by organising the rental and transport of the bobcat on the day and paying for that, and being among the demonstrators at Parliament House

providing instructions and guidance to the Defendant Rory as to where to dig the holes.

9. Accordingly, there is no dispute as to the identity of each of the Defendants or as to their presence at the relevant time and place as part of the group of people involved in the demonstration, and I so find. There is no dispute that both Defendants (along with all the other persons who attended that demonstration) intentionally and/or recklessly, and directly or indirectly, caused the three holes to be drilled in the lawn and the attendant impact of the bobcat on the surface of the lawn, and I so find.
10. What remains to be considered is whether the prosecution has established beyond reasonable doubt that the lawn was property, that it belonged to another namely NT Government, whether the impact on the lawn constituted “damage” within the meaning of the section and the law, and even if these matters are proved beyond reasonable doubt, whether there are any statutory defences available to the Defendants in all the circumstances.

The Statutory Defences

11. On 24 June 2020 lawyers for the Defendants and for the prosecution attended a Directions Hearing when the matter was listed for hearing for two days being 19 and 20 October 2020. A Directions Hearing Information Form signed by the lawyer for the Defendants advised the Court that the identity of the Defendants and their presence at that place on that date were not in dispute. It advised the Court that the Defendants disputed that they had committed an offence at law and that they relied on: "*section 43 of the Criminal Code NT 1983*". It further advised that: "*The defendant requires the owner of the property to be called*". This emphasised the prosecution’s need to prove ownership of the property.
12. On the first day of the hearing it was clarified that the Defendants in fact relied on sections 43BC and 43BD of the Act. These provide as follows:

"43BC Sudden or extraordinary emergency

- (1) *A person is not criminally responsible for an offence if the person carries out the conduct constituting the offence in response to circumstances of sudden or extraordinary emergency.*
- (2) *This section applies only if the person carrying out the conduct reasonably believes that:*
 - (a) *circumstances of sudden or extraordinary emergency exist; and*
 - (b) *committing the offence is the only reasonable way to deal with the emergency; and*
 - (c) *the conduct is a reasonable response to the emergency.*

"43BD Self-defence

- (1) *A person is not criminally responsible for an offence if the person carries out the conduct constituting the offence in self-defence.*
- (2) *A person carries out conduct in self-defence only if:*
 - (a) *the person believes the conduct is necessary:*
 - (i) *to defend himself or herself or another person; or*
 - (ii) *to prevent or terminate the unlawful imprisonment of himself or herself or another person; or*
 - (iii) *to protect property from unlawful appropriation, destruction, damage or interference; or*
 - (iv) *to prevent criminal trespass to any land or premises; or*
 - (v) *to remove from any land or premises a person who is committing criminal trespass; and*
 - (b) *the conduct is a reasonable response in the circumstances as he or she perceives them.*
- (3) *However, the person does not carry out conduct in self-defence if:*
 - (a) *the person uses force that involves the intentional infliction of death or serious harm:*
 - (i) *to protect property; or*
 - (ii) *to prevent criminal trespass; or*
 - (iii) *to remove a person who is committing criminal trespass;*
or
 - (b) *the person is responding to lawful conduct that the person knew was lawful.*
- (4) *Conduct is not lawful for subsection (3)(b) merely because the person carrying it out is not criminally responsible for it".*

- 13. The Defendants bear an evidential burden under these two sections. That is, they must lead or point to evidence establishing the relevant requirements of the sections, on the balance of probabilities. However, if they succeed in doing this the burden then shifts to the prosecution. The prosecution must then negative these defences, and it must do so beyond reasonable doubt.
- 14. Subsection 43BC(2) of the Act (sudden or extraordinary emergency) includes both subjective and objective elements. The person seeking to rely on the section must in fact hold each of the three beliefs set out in (a), (b) and (c) of that subparagraph—this is a subjective element. The section applies to remove criminal responsibility for an offence however only if the person carrying out the conduct “reasonably” believes the three matters set out in (a), (b) and (c), which is an objective element. It is not enough for the person to hold all three of those beliefs if any one or more of them is not objectively reasonable – subsection (2).

15. Similarly, subsection 43BD(2)(a)(i) and/or (iii) and (b) of the Act (defensive conduct) includes both subjective and objective elements. The person seeking to rely on any of the matters in paragraph (a) must hold the belief that the conduct is necessary for one of the identified defensive purposes, which is a subjective element. However, separately from this belief, paragraph (b) requires that the conduct must be a “reasonable response” – an objective element – “in the circumstances as he or she perceives them” – once again a subjective element.
16. Each of the Defendants gave evidence in summary that they were deeply concerned about climate change issues generally and about fracking specifically. Each of the Defendants gave evidence that they wanted the NT government not to permit fracking in the NT. They gave evidence that to achieve this, each in their own way had been actively involved in lobbying, including of mining and business organisations and of politicians both federal and local, and in attending and making submissions at public inquiries and at the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory (“the Pepper Inquiry”).
17. The Defendants gave evidence in summary that they engaged in the demonstration outside Parliament House on 16 April 2019 because each of them believed that the whole planet is facing an extraordinary emergency as a consequence of climate change and also the exacerbation of the adverse effects of climate change arising out of the continuing planet-wide extraction and use of fossil fuels, including the process of fracking.
18. Each of the Defendants gave evidence in summary that they engaged in the demonstration on 16 April 2019 outside Parliament House to bring their concerns to the attention of both politicians and the public. Each of them gave evidence in summary that they believed that damaging the lawn as part of the demonstration constituted the only recourse left to them because they had exhausted all other options over a number of years, as set out in their evidence on this subject as summarised in paragraph 16 above.
19. I heard evidence from two expert witnesses called by the Defendants on the issues of climate change generally and fracking specifically. I am satisfied and I find that each witness, Emeritus Professor Will Steffen and Associate Professor Gavin M. Mudd, is an expert in the field of the probable global impacts of these issues. In summary, this evidence was to the effect that current global emissions of carbon dioxide and methane must be phased out from 2021 until net zero emissions are achieved in accordance with the 2015 Paris Peace Accord – *“Failing to do this will present our children and grandchildren with a planet in which many regions could well become uninhabitable. This is the climate emergency, and it is here now”* – per Professor Steffen in Exhibit D10 in the last two sentences on the third last page.
20. Additionally, I heard very detailed evidence from the Defendant Lauren Mellor which established that she had been careful and attentive in educating herself on the

issues of climate change and fracking. Although Ms Mellor was not put forward as an expert witness I was able to compare her understanding of these issues with the relevant expert evidence before me. I formed the view that Ms Mellor had a good understanding of the publicly available scientific evidence in support of global warming and its negative consequences for the planet if ameliorative action is not urgently commenced, and the adverse impact of fossil fuel extraction and use, including fracking, on these consequences.

21. I am satisfied and I find that the Defendant Lauren Mellor believed at all relevant times that there existed circumstances of impending adverse environmental impact to the planet, constituting an extraordinary emergency, as a consequence of global warming and of its exacerbation through continuing fossil fuel extraction and use, including through fracking.
22. Mr Rory had not educated himself on these matters to the same extent as had Ms Mellor. In his evidence, he did not reveal the same level of broad, academic understanding of these issues. He did however give clear and cogent evidence of his first-hand and second-hand experiences as a traditional owner of land in the MacArthur River Basin of the adverse impacts over the past 20 to 30 years of mining activities on the land, waterways and wildlife in that area. He gave evidence of his understanding of the risks of contamination of the water table if fracking were to go ahead in that area. He gave evidence of his understanding of a link between the extraction and use of fossil fuels, including fracking, and the exacerbation of an imminent environmental disaster associated with global warming.
23. I am satisfied and I find that the Defendant Conrad Rory believed at all relevant times that there existed circumstances of impending adverse environmental impact to the planet constituting an extraordinary emergency, as a consequence of global warming and of its exacerbation through continuing fossil fuel extraction and use, including through fracking.
24. In cross examination each Defendant was asked why they could not have raised symbolic drilling rigs on the paved area next to the lawn outside Parliament House and that way avoided any adverse impact to the lawn. Each of them answered to the effect that a symbolic drilling rig without a little actual drilling would not have had the same or a sufficient impact and would not have made their point.
25. It is plain that a wide range of symbolic gestures was available to both Defendants and to the others engaged in the demonstration which would not have involved any damage to the lawn or any unlawful conduct. It is also plain that damaging the lawn was highly unlikely in itself to have any impact on the decision of the NT government to proceed with fracking. I am not satisfied on all the evidence before me that either Defendant in fact subjectively believed that damaging the lawn was the only reasonable way to deal with the emergency or that it was a reasonable response to the emergency, within the meanings of subsections 43BC(2)(b) or (c) of the Act.

26. Additionally and in any event, I am satisfied beyond reasonable doubt and I find that neither Defendant reasonably, when considered objectively, believed the required matters in subsection 43BC(2)(b) and/or (c) of the Act.
27. I rule that the Defendants are not excused from criminal responsibility for damaging the lawn pursuant to subsection 43BC(1) of the Act.
28. Similarly, I am not satisfied on all the evidence before me that either Defendant in fact subjectively believed that damaging the lawn was necessary to defend another person, namely the other inhabitants of planet Earth, or to protect planet Earth or any part of it from “*unlawful appropriation, destruction, damage or interference*”. Even if I am wrong about these specific beliefs of the Defendants, I am satisfied beyond reasonable doubt and I find that damaging the lawn was not an objectively reasonable response in the circumstances as the Defendants, or either of them, perceived them, within the meaning of subsection 43BD(2)(b) of the Act.
29. I rule that the Defendants are not excused from criminal responsibility for damaging the lawn pursuant to subsection 43BD(1) of the Act.

Damage to Property

30. “*Property*” is relevantly defined in section 238 of the Act as follows: “(a) means any real or personal property of a tangible nature”. I am satisfied this very broad definition is capable of including plants such as the grass which comprises a lawn, and the layer of earth in real estate from which a lawn grows.
31. “*Damage to property*” is defined, also in section 238 of the Act, to include:
 - (a) *destroying the property; and*
 - (b) *causing the physical loss of the property by interfering with the property (including by removing any restraint over the property or abandoning the property); and*
 - (c) *causing any loss of a use or function of the property by interfering with the property; and*
 - (d) *defacing the property; and*
 - (e) *for a document – obliterating or rendering illegible the whole or any part of the document; and*
 - (f) *for an animal – harming or killing the animal; and*
 - (g) *for a plant or other thing forming part of land – severing it from the land”.*
32. The definitions of “damage” in the Act set out above are inclusive rather than exclusive. Nevertheless, I take guidance from those definitions. The only ones of them which in my view might be applicable in this case are (c), (d) and (g).
33. I heard oral evidence as to the extent of the damage to the lawn. I also saw two lots of CCTV footage - Exhibits P1 and 2 - and a video taken on behalf of the demonstrators - Exhibit D8. This visual evidence is the best evidence of the

apparent overall damage to the surface of the lawn. The oral evidence is the best evidence of the dimensions of the three holes drilled into the lawn because these cannot be adequately seen in the visual evidence.

34. Security officer Mr Robert Daffey gave oral evidence before the Court. He said that three holes were drilled into the lawn, one being about 1 foot (30 centimetres) in depth and the other two about 6 inches (15 cm) in depth and all being approximately 6 inches (15 centimetres) in diameter. I received in evidence Mr Daffey's statutory declaration declared 17 May 2019 – Exhibit D4. In paragraph 9. of that statutory declaration Mr Daffey had provided the same estimates of the dimensions of the holes.
35. The visual evidence shows the bobcat driving onto the lawn, which is unmarked in any way. It then drills the three holes and in order to do that it turns on the spot on the lawn, which churns up some of the lawn's surface. A small area of dark earth can be seen, which contrasts with the green of the rest of the surface of the lawn. Additionally, the bobcat left tyre tracks on the lawn. These appear to be quite superficial, in that dark earth is not showing through the green of the lawn in the tyre tracks and it is probable that the grass there was merely temporarily flattened.
36. Mr Daffey gave evidence that a gardener attended after the demonstrators had departed and that the lawn was repaired within one hour. No evidence was provided about what was involved in that repair. In paragraph 16. of Exhibit D4 Mr Daffey states: "*The cost in labour to repair the damage caused to the front lawns of Parliament House has been estimated to be \$100*".
37. No photographs or other visual evidence of the repaired lawn were tendered and I am therefore unable to compare the appearance of the repaired lawn with the visual evidence of the appearance of the lawn before the bobcat drove on it. In the absence of such evidence and noting that the prosecution bears the onus of proof in respect of establishing damage, I proceed on the basis that the lawn was essentially restored to its pre-demonstration appearance and function within about one hour.

De Minimis

38. The foregoing raises the question whether the impact upon the physical integrity of the lawn which I have set out in paragraphs 34, 35 and 36 above, affecting it for a total period of around one hour, and carried out for a symbolic effect within the context of an otherwise lawful demonstration, comes within the definition of "*damage to property*" for the purposes of the Act.
39. I come to consider the legal principle set out in the Latin maxim *de minimis non curat lex*, which translates as "*the law does not concern itself with trifles*". The principle does not exist as a defence in the strict sense - it is more of a guide to interpretation. In *Williams v R* [1978] 140 CLR 591 Justice Murphy of the High Court said in paragraph 6 of his Reasons as follows:

“In my opinion, this is a case for the application of the principle that the law is not concerned with trifles (de minimis non curat lex). This principle has been recognised throughout legal history and is often applied to avoid imposition of punishment after a finding of guilt where an offence is trivial... The de minimis principle is also applied to avoid hysterical or oppressive law enforcement; cases in which a finding of guilt would tend to bring the law or the judicial system into ridicule or contempt because of triviality. This is such a case. Even if there were no other basis for treating the conviction as bad, it should be set aside on this ground”.

40. That was a case in which fragments of cannabis had been found in a defendant’s pockets, in quantities too small to measure. Nevertheless, he was found guilty of possessing the cannabis. The High Court set aside that finding of guilt, applying the *de minimis* principle among other reasons. The case before me of course involves a very different factual background.
41. In this case I note that around 20 people were actively engaged in the demonstration and their respective identities and levels of engagement were clearly recorded on CCTV, yet charges were laid against only two of their number – Lauren Mellor and Conrad Rory. I note the clearly symbolic nature of the conduct of the Defendants, also captured on the CCTV. I note the minor and temporary nature of the damage to the lawn, and the small cost in dollar terms of the repairs necessitated by that damage.
42. Even so, I am not satisfied that this case involves “...*hysterical or oppressive enforcement*”; I am not satisfied it is one where “...*a finding of guilt would tend to bring the law or the judicial system into ridicule or contempt because of triviality*”. I am satisfied that the *de minimis* principle does not apply in this case where real even though minor damage was occasioned to the lawn, as set out in paragraphs 34, 35 and 36 above.
43. I am satisfied beyond reasonable doubt and I find that damage within the meaning of section 241 of the Act was caused to the lawn by each of the Defendants by temporarily causing a loss of its use or function as a lawn, and/or by temporarily defacing it, within the meanings of definitions (c) and (d) in section 238 of the Act. I am not so satisfied that either Defendant severed the lawn or any part of the lawn from the land within the meaning of definition (g) in section 238.

“... Property Belonging to Another Person”

44. A “*person to whom property belongs*” is relevantly defined in subsection 239(1) of the Act as follows:

“For this Division, property belongs to anyone who has:
(a) possession or control of it; or
(b) any proprietary right or interest in it...”.

45. Evidence was called from Mr Robert Daffey who at all relevant times was employed by Wilson Security and permanently based at Parliament House in Darwin as the Senior Security Supervisor. Mr Daffey gave evidence that he is an authorised person within the definition in subsection 5(1) of the *Legislative Assembly (Security) Act* (“the Security Act”). The Security Act permits an authorised person to ask for the name and address of a person entering the Assembly precincts, and/or to state their reason for entering or being on the precincts. The authorised person may require the other person to submit to a search. Subsection 9(1) of the Security Act permits an authorised person who believes that another person on the Assembly precincts is behaving unlawfully or in a disorderly or menacing manner to require the person to leave the precincts. Mr Daffey gave evidence that he advised the demonstrators as a group, which included each Defendant, that they were not allowed to interfere with the lawn in that fashion and that they had no approval to enter the grounds of Parliament House. He gave evidence that he asked them to stop what they were doing and that they did not stop. Each of the Defendants Lauren Mellor and Conrad Rory gave evidence that they did not hear Mr Daffey say anything of that nature.
46. However, I am satisfied that none of the duties or powers assigned to an authorised person under the Security Act, or all of them considered together, go so far as to establish “*control*” of the Assembly or its precincts within the definition in subsection 239(1) of the Act and therefore I am satisfied that neither the Assembly nor its precincts belongs to an authorised person as defined in the Security Act.
47. In any event, the charge faced by the Defendants is that they caused damage to property, namely front lawn, belonging to another, namely NT Government. The charge is not that the Defendants damaged property belonging to a Senior Security Officer employed by a private security firm or belonging to an authorised person within the meaning of the Security Act.
48. The prosecution at the hearing in this matter called no evidence directly relevant to the ownership of the “front lawn” the subject of the charge against each Defendant, even though it had been alerted to this issue at the Directions Hearing on 24 June 2020. I raised this lack in the course of prosecution submissions after both parties had closed their cases and no further evidence could be adduced. Mr Rowbottom, counsel for the prosecution, referred me to the *Legislative Assembly (Powers And Privileges) Act 1992* (“the Privileges Act”).
49. Subsection 14(3) of the Privileges Act provides as follows: “*Subject to the directions, if any, of the Assembly, the Speaker has the control and management of the precincts of the Assembly*”. This definition arguably might establish the Speaker as a “*person to whom property belongs*” within the meaning of subsection 239(1) of the Act because the Speaker is someone who has control of the precincts of the Assembly. However, I received no submissions from either party as to whether the Office of Speaker, or the person who occupies that Office from time to time, is

identical with the NT Government. This is far from a self-evident proposition. As noted above, the charge against both Defendants is that they caused damage to property belonging to another, namely NT Government.

50. The Privileges Act in subsections 14(1) and (2) defines the precincts of the Assembly as follows:

“(1) The precincts of the Assembly is the area of land described in Schedule 1, together with the building erected on the land.

“(2) The Speaker may, by notice in the Gazette, declare that on a date specified in the notice the precincts described in Schedule 1 shall no longer be the precincts of the Assembly and, on and from that date, the precincts of the Assembly shall be the land described and delineated in Schedule 2, together with the building erected on the land and that land and building shall be the precincts accordingly”.

51. There was no evidence before me of any relevant notice in the *Gazette* and so I proceed to consider both Schedule 1 and Schedule 2 to the Privileges Act.

52. Schedule 1 of the Privileges Act provides the following:

“Schedule 1

“ALL THAT parcel of land in Mitchell Street near Bennett Street in the Town of Darwin in the Northern Territory of Australia containing an area of 3990 square metres more or less commencing at a point on the northeastern side of Mitchell Street 24.225 metres southeasterly from the southernmost corner of Lot 4820 Town of Darwin; thence bounded by lines bearing 44 degrees 41 minutes 20 seconds for 60.975 metres, 135 degrees four minutes for 65.885 metres, 224 degrees 46 minutes 20 seconds for 60.48 metres, 314 degrees 38 minutes to 65.8 metres to the point of commencement; together with ALL THAT parcel of land in Smith Street near The Esplanade in the Town of Darwin in the Northern Territory of Australia containing an area of 689 square metres more or less being the Ground Floor of the Leichhardt Building and being more particularly delineated as that area shown hatched on the following plan:”

53. Schedule 2 of the Privileges Act relevantly provides the following:

“Schedule 2 Precincts of Assembly

“The precincts of the Assembly are:

- (a) except for the period specified in paragraph (ab) – the area of land described in Part A;*
- (ab) not relevant*
- (b) not relevant*

Part A

All that parcel of land in the Town of Darwin, Northern Territory of Australia containing an area of 2.41 hectares more or less and bounded by lines described as follows: Commencing at the westernmost corner of Lot 5949 town of Darwin; thence by a line bearing 134 degrees 38 minutes 20 seconds for 103.5 metres; a convex curve of arc 166.75 metres, radius 126.4 metres and chord bearing 276 degrees 56 minutes 20 seconds; a line bearing 314 degrees 44 minutes for 102.15 metres; a concave curve of arc 53.905 metres, radius 84 metres and chord bearing 296 degrees 20 minutes 50 seconds; a convex curve of arc 29.175 metres, radius 153 m and chord bearing 283 degrees 25 minutes 30 seconds; a line bearing 288° 53 minutes for 7 metres; a convex curve of arc 5.975 metres, radius 13.5 metres and chord bearing 301 degrees 34 minutes; a convex curve of arc 9.015 metres, radius 7 metres and chord bearing 351 degrees eight minutes 40 seconds; a convex curve of arc 14.765 metres, radius 51 metres and chord bearing 36 degrees 20 minutes 20 seconds; a line bearing 44° 38 minutes for 29.7 metres; a convex curve of arc 10.995 metres, radius 7 metres and chord bearing 89 degrees 38 minutes; a line bearing 134 degrees 38 minutes for 21 metres; a line bearing 44 degrees 38 minutes for 10.8 metres; a line bearing 134 degrees 38 minutes for 76.74 metres; a line bearing 44 degrees 38 minutes to 81.1 metres; a line bearing 134 degrees 38 minutes to 18.46 metres; a line bearing 44 degrees 38 minutes for 6.4 metres; a line bearing 134 degrees 34 minutes for 47.17 metres; a line bearing 224 degrees 23 minutes 20 seconds for 6.355 metres; a line bearing 134 degrees 38 minutes for 16.7 metres; a line bearing 224 degrees 38 minutes for 3.195 metres; a line bearing 134 all degrees 38 minutes to 30.305 metres; a line bearing 224 degrees 37 minutes 10 seconds for 14.405 metres to the point of commencement”.

54. In the absence of expert evidence from say a surveyor, I am quite unable to make anything of the descriptions by way of metes and bounds set out in the foregoing Schedules 1 and 2. Accordingly, the definitions of “precincts of Assembly” set out in subparagraphs 14(1) and (2) of the Privileges Act do not without further evidence assist me in determining whether the “front lawn” referred to in the charge comes within the precincts of the Assembly.
55. At the hearing I was shown two lots of CCTV footage of the conduct of the demonstration and I was also shown footage of the demonstration taken on behalf of the demonstrators. These all became exhibits before the Court and I can clearly see from these the patch of lawn the subject of the charge against each Defendant. It is a small piece of lawn separated from the main building of Parliament House by a strip of concrete. However, I am unable to infer simply from its proximity to the building that this patch of lawn is in fact part of the precincts of the Assembly. Even if I were, I would need to be satisfied that the precincts of the Assembly were in fact the property of the NT Government.

56. These are criminal proceedings where the prosecution bears the onus of establishing each element of the charge beyond reasonable doubt. The prosecution has failed to establish the element that the property as described in the charge – “front lawn” – belongs to the NT Government.

Conclusion

57. Accordingly, the charge is not made out and I find the Defendant Lauren Ann Mellor and the Defendant Conrad Rory each not guilty of the charge in count 1.

Dated this 10th day of November 2020

JOHN NEILL
LOCAL COURT JUDGE