

CITATION: AUSTRALIAN FEDERAL POLICE V PARTAP SINGH [2022] NTL001

PARTIES: AUSTRALIAN FEDERAL POLICE

v

Partap SINGH

TITLE OF COURT: LOCAL COURT

JURISDICTION: CRIMINAL

FILE NO: 22030273

DELIVERED ON: 14 January 2022

DELIVERED AT: Darwin

HEARING DATE: 11 August 2021

DECISION OF: Acting Judge John Neill

CATCHWORDS:

Implied powers of statutory courts; power of Local Court to order costs in committal proceedings.

Local Court Act sections 3, 14, 18, 19, 48 and 49

Local Court (Criminal Procedure) Act sections 4, 77 to 79 and Part V Divisions 1A to 5

Local Court (Civil Procedure) Act sections 3, 14, 19 and 31

Local Court (Civil Jurisdiction) Rules 1.03

Local Court (Criminal Jurisdiction) Rules

Local Court (General) Rules

Local Court (Criminal Procedure) Regulations

Local Court Regulations

Local Court (Criminal Division) Practice Directions 13.24 and 13.25

Affleck v The King (1906) 3 CLR 608

O'Connell v Short (1985) 20 A Crim R 111

Grassby v The Queen [1989] 168 CLR 2

Latoudis v Casey (1990) 170 CLR 534

State Pollution Control Commission v Australian Iron & Steel Pty Ltd (1992) 29 NSW LR 487

Consolidated Press Holdings v Wheeler [1992] NTSC 102

Alice Springs Town Council v Mpweteyerre Aboriginal Corporation & Ors [1997] NTCA 78

Pelechowski v Registrar, Court of Appeal [1999] 198 CLR 435

DJL v The Central Authority (2000) 201 CLR 226

Walker v Fong [2002] NTMC 19

Markisic v Vizza [2002] NSWCCA 53

Application by John Fairfax Publications Pty Ltd re MSK & Ors [2006] NSWCCA 386

R v JS (No 2) (2007) 179 A Crim R 10

BUSB v The Queen [2011] NSWCCA 39

REPRESENTATION:

Counsel:

Complainant: Ms M Chalmers SC

Defendant: Ms L Nguyen

Solicitors:

Complainant: Commonwealth DPP

Defendant: Jude Lawyers

Decision category classification: B

Decision ID number: NTLC001

Number of paragraphs: 64

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

No. 22030273

BETWEEN:

Australian Federal Police

Complainant

AND

Partap Singh

Defendant

REASONS FOR DECISION

(Delivered 14 January 2022)

ACTING JUDGE NEILL:

Background

1. This proceeding comes before the Local Court pursuant to Part V of the *Local Court (Criminal Procedure) Act* ("the Act") which deals with indictable offences. It is a committal proceeding.
2. A dispute arose between the parties as to the manner of performance of the prosecutor's obligation to give the defendant reasonable opportunity before the committal date to view some recorded statements of a listed witness, namely the complainant. This obligation is provided for in subsection 105F(5)(a) of the Act. The prosecution wished to limit the defendant's lawyers' access to these. It wanted the Defendant's lawyers to attend at the premises of the Australian Federal Police in Darwin to view the many hours of recorded statements of that listed witness, but not to have their own copies to take away. The defendant's lawyers wished to be provided with copies of those recorded statements to take them away and view them and analyse them, at their convenience.
3. This dispute was specially listed for argument, written submissions were provided and the issue was fully argued before me on 11 August 2021. At the conclusion of submissions I gave an *ex tempore* Decision and made orders requiring the prosecution to provide copies of the recorded statements to the defendant's lawyers, while at the same

time imposing some restrictions on the use to be made of those recordings by those lawyers. Counsel for the defendant then sought an order for the costs of and incidental to that interlocutory argument, which was opposed by counsel for the prosecution. A preliminary discussion of the issues relevant to costs led me to seek written submissions from both counsel. I subsequently received written submissions from counsel for the prosecution on 18 November 2021. By email dated 30 November 2021, counsel for the defendant advised that she had determined not to make any submissions in reply.

The Committal Costs Issue

4. The preliminary issue is whether the Northern Territory Local Court has power to make costs orders in proceedings pursuant to Part V of the Act - that is, in committal proceedings. If it does, a further issue is whether costs should be ordered in favour of the defendant against the prosecution in the circumstances of this particular case.
5. In *Grassby v The Queen* [1989] 168 C.L.R. 2 ("*Grassby*") Justice Dawson of the High Court of Australia noted at page 11.4 as follows: "*It has consistently been held that committal proceedings do not constitute a judicial enquiry but are conducted in the exercise of an executive or ministerial function*". At page 15.6 Justice Dawson went on to say as follows: "*As Gibbs J. pointed out in Ammann v Wegener, it does not follow that because a magistrate is not exercising judicial functions he cannot be said to sit as a court. It is common enough for courts which are not subject to constitutional restraints to exercise administrative functions. Moreover, whilst not required to make a judicial decision, the magistrate was no doubt bound to act judicially in arriving at a result, that is to say, he was bound to act justly and fairly*".
6. In the Northern Territory of Australia it is the Local Court constituted by a judge of that Court which conducts committal proceedings, pursuant to subsections 18(1)(b) and 18(3) of the *Local Court Act*, in accordance with the *Local Court (Criminal Procedure) Act*. As with magistrates in other Australian jurisdictions, a committal proceeding conducted by a judge of the Local Court in the Northern Territory of Australia involves the exercise of an executive or ministerial function, but it is still a proceeding in which that Local Court judge sits as a court. The Local Court of the Northern Territory when conducting a committal proceeding in its criminal jurisdiction remains a court of summary jurisdiction.
7. The Local Court has power to make costs orders in limited circumstances in summary criminal proceedings, as specifically provided for in sections 77 to 79 inclusive in Division 5 of the Act. That Division bears the heading "**Costs**". Those sections by their language are limited in their application to matters on complaint.
8. "*Complaint*" is defined in section 4 of the Act to mean charges on complaint, and it also means a charge of an indictable offence that is dealt with summarily. It therefore does not include a charge of an indictable offence that is not dealt with summarily, as is the case with any offence being dealt with by committal.
9. Section 77B of the Act which deals with the costs of an adjournment is an apparent exception. It does not by its language limit its application to matters on complaint. The reach and applicability of section 77B was considered by Magistrate Luppino (as he then

was) in *Walker v Fong* [2002] NTMC 19 in paragraphs 11 to 19 inclusive. Magistrate Luppino was considering section 77B of the *Justices Act*, which was the predecessor to the Act. His Honour concluded that the then Court of Summary Jurisdiction had no power to make an order for costs in committal proceedings, on the basis of section 77B of the *Justices Act*. He did not ultimately decide whether the Court had power to order costs in committal proceedings on any other basis. I respectfully agree with his Honour's reasoning and conclusion, and I conclude that section 77B of the Act, which is in the same terms as previously in the *Justices Act*, provides no basis for any power in the Local Court to make an order for costs in committal proceedings.

Other Statutory Sources

10. Section 31 of the *Local Court (Civil Procedure) Act* provides an unfettered discretion and "full power" to the Local Court to make costs orders in "proceedings in the Court". "Proceedings" is defined in section 3 of this Act to mean "civil proceedings as defined in section 3 of the Local Court Act".
11. Section 3 of the *Local Court Act* defines "civil proceedings" to mean "the jurisdiction of the Court under Part 3, Division 2".
12. Part 3, Division 2 of the *Local Court Act* bears the heading "Civil jurisdiction". It contains sections 12 to 17 inclusive. Section 14 provides:

"14 Civil jurisdiction under other laws

The Court's civil jurisdiction also includes any other jurisdiction that:

(a) is conferred on the Court by another Act; and

(b) is not part of the Court's criminal jurisdiction under section 19".
13. Section 19 of the *Local Court Act* provides:

"19 Criminal jurisdiction under other laws

(1) The Court also has jurisdiction to deal with any other proceedings that another Act provides are to be dealt with by a court of summary jurisdiction.

(2) The Court also has any other jurisdiction that:

(a) is conferred on the Court by another Act; and

(b) is expressed to be part of the Court's criminal or summary jurisdiction (however described)".
14. I am satisfied and I rule that section 31 of the *Local Court (Civil Procedure) Act* has no application to the Local Court in the exercise of its criminal jurisdiction.

15. Section 48 of the *Local Court Act* empowers the Chief Judge of the Local Court together with at least four other judges of the Court to make rules of court under the *Local Court Act*. This power is not limited in its applicability to either the civil or the criminal jurisdiction of the Local Court. There are also regulations which have been made pursuant to the *Local Court Act*. At present, there are five separate pieces of subordinate legislation relevant to the Local Court.
16. The first of these is the *Local Court (Civil Jurisdiction) Rules*. Part 38 of these Rules deals with the question of costs, and provides the Local Court with a broad power in respect of costs. However, rule 1.03 in Division 2 of the Rules under the heading “**Application of Rules**” provides that “*These Rules apply in relation to all civil proceedings*”. I am satisfied that the *Local Court (Civil Jurisdiction) Rules* are limited in their application to civil proceedings, and have no application to criminal proceedings generally, or to committal proceeding specifically, before the Local Court.
17. The second of these is the *Local Court (Criminal Jurisdiction) Rules*. These Rules provide for some Forms to be used in the criminal jurisdiction of the Local Court. These Rules do not touch on the question of costs.
18. The third of these is the *Local Court (Criminal Procedure) Regulations*. Regulation 5 in these Regulations deals with the prescribed scale of costs which may be ordered in summary criminal matters pursuant to section 77C of the *Local Court Act*. I have observed above that the sections of the Act dealing with costs, including section 77C, are limited in their application to matters on complaint, including indictable matters dealt with summarily. Those sections and therefore these Regulations do not otherwise deal with costs in criminal proceedings generally or in committal proceeding specifically.
19. The fourth of these is the *Local Court (General) Rules*. These Rules do not touch on the question of costs.
20. The fifth of these is the *Local Court Regulations*. These Regulations do not touch on the question of costs.
21. Section 49 of the *Local Court Act* is entitled “**Practice directions**”. It provides as follows:

“(1) *The Chief Judge may issue directions (to be called practice directions) about the following:*

(a) *the practice and procedure of the Court in the exercise of any of its jurisdiction, whether conferred by this or another Act;*

(b) *the practice and procedure of the Court’s registries and other offices.*

“(2) *If a practice direction is inconsistent with the Rules, the Rules prevail to the extent of the inconsistency*”.
22. The Chief Judge has issued Practice Directions relevant to the Criminal Division of the Local Court. These are Practice Directions 7 to 16 inclusive. None of these touches

directly on the question of costs. Practice Direction 13 is entitled “*During and Following Preliminary Examination (Committal)*”. I shall return to Practice Direction 13 later in these Reasons.

Costs in the Absence of Statutory Provision

23. I am satisfied that there are no statutory provisions in the *Local Court Act* or in the Act or elsewhere in legislation, including subordinate legislation, in the Northern Territory which provide a power for the Local Court to make costs orders in criminal proceedings other than in respect of matters dealt with summarily. There are no statutory provisions which provide a power for the Local Court to make costs orders in respect of committal proceedings specifically.

24. Historically, the common law rule was that the Crown neither receives nor pays costs. This rule could be excluded by necessary implication. In *Affleck v The King* (1906) 3 CLR 608, Griffith CJ said at page 630:

“There is no doubt that at common law the Crown is by its prerogative exempt from the payment of costs in any judicial proceeding, and that this right cannot be taken away except by Statute. The words of the Statute need not, however, be express: it is sufficient if the abolition of the privilege appears by necessary implication. The reason formerly given for the rule was that it was beneath the dignity of the Crown either to receive or pay costs. In the case of Attorney-General v Corporation of London, Lord Cottenham L.C. put the rule on the ground of reciprocity of right and obligation, and said that in cases in which the Attorney-General sued for the Crown he ought not to receive costs unless he could if unsuccessful have been ordered to pay them”.

25. The various Australian jurisdictions have by statute fettered the right of the Crown to be exempt from the payment of costs. In *Latoudis v Casey* (1990) 170 CLR 534 (“*Latoudis*”) the High Court of Australia considered some of these statutes and the principles relevant to awarding costs in summary criminal matters where such statutes applied. Chief Justice Mason gave the leading judgement of the majority. At paragraph 11 his Honour said:

“By conferring on courts of summary jurisdiction a power to award costs when proceedings terminate in favour of the defendant, the legislature must be taken to have intended to abrogate the traditional rule that costs are not awarded against the Crown... Once that position is accepted, as in my view it must be (emphasis added), there is no sound basis for drawing a distinction in relation to the award of costs against an unsuccessful informant between summary proceedings instituted by a police or other public officer and those instituted by a private citizen”.

26. Although *Latoudis* was dealing with specific statutory provisions permitting courts of summary jurisdiction to award some costs only, and then limited to summary offences, the abrogation of the traditional rule found by Chief Justice Mason must include courts of summary jurisdiction generally, including in committal proceedings. It is unlikely that Chief Justice Mason in his remarks quoted in the preceding paragraph intended to leave open the scenario whereby the traditional rule continued to operate in a fragmented

fashion, limited to the gaps not covered by the differing statutory powers to award costs in the various courts of summary jurisdiction throughout Australia.

Implied Powers

27. The Northern Territory Local Court is a creature of statute and it has no inherent powers. In *Grassby* (above) in 1989 Justice Dawson said that whilst a court of summary jurisdiction does not have inherent powers, it does have implied powers. Specifically, at page 16.8 he said:

“However, notwithstanding that its powers may be defined, every court undoubtedly possesses jurisdiction arising by implication upon the principle that a grant of power carries with it everything necessary for its exercise... Those implied powers may in many instances serve a function similar to that served by the inherent powers exercised by a superior courts but they are derived from a different source and are limited in their extent”.

28. Justice Dawson concluded that recognition of the existence of the powers which an inferior court must possess by way of necessary implication will be called for:

“...whenever they are required for the effective exercise of the jurisdiction which is expressly conferred but will be confined to so much as can be ‘derived by implication from statutory provisions conferring particular jurisdiction”.

29. Justice Dawson went on at page 17.8 in *Grassby* to hold that:

“The fact that in the conduct of committal proceedings a magistrate is performing a ministerial or administrative function is, of course, no bar to the existence of implied powers, if such are necessary for the effective exercise of the powers which are expressly conferred upon him”.

30. In *State Pollution Control Commission v Australian Iron & Steel Pty Ltd* (1992) 29 NSW LR 487 the New South Wales Court of Criminal Appeal considered a case stated from the New South Wales Land and Environment Court (“the LE Court”). The LE Court had been hearing summary criminal proceedings for an offence against the New South Wales *Clean Air Act* and it was in those circumstances a court of summary jurisdiction. The defendant in that case sought to adduce evidence contrary to directions previously made by the LE Court. The LE Court determined not to admit that evidence in those circumstances, even though it had no express power to refuse to do so.

31. At pages 492.9 to 493.2 Chief Justice Gleeson of the Court of Criminal Appeal delivering the unanimous Decision of the Court held:

“The power to give directions necessarily carries with it a power to refuse to countenance non-compliance (emphasis added). A power to direct that certain steps be taken in relation to adducing evidence necessarily carries with it a power to refuse to permit a party to adduce evidence otherwise than in accordance with those steps. Furthermore, the court has an inherent power to control and supervise the conduct of proceedings so as to prevent unfairness. This power is not restricted to defined and closed categories and, in an appropriate

case, extends to refusing to permit a prosecutor in criminal proceedings to lead evidence that is otherwise relevant and admissible”.

32. The reference by Chief Justice Gleeson in that case to “an inherent power” was more correctly a reference to implied power, because the LE Court was a Court of summary jurisdiction without any inherent power in the strict sense.
33. In *Consolidated Press Holdings Ltd v Wheeler* [1992] NTSC 102 Justice Mildren of the Northern Territory Supreme Court held that even though the Northern Territory Work Health Court did not have any express power at that time to entertain an application for summary dismissal of a proceeding, it did have an implied power to do so.
34. In *Alice Springs Town Council v Mpweteyerre Aboriginal Corporation & Ors* [1997] NTCA 78 at page 21.8 Justice Mildren of the Northern Territory Court of Appeal delivering a unanimous decision of the Court said:

“Where, by an Act of Parliament, a right or power is created, there must by implication carry with it the power to do everything which is indispensable for the purpose of exercising the right or power, or fairly incidental or consequential to the power itself”.
35. In *Pelechowski v Registrar, Court of Appeal* (“Pelechowski”) [1999] 198 CLR 435 in paragraph 51 a later High Court considered the above observations by Justice Dawson in *Grassby* and the import of the word “necessary”. The majority said:

“The term “necessary” in such a setting as this is to be understood in the sense given it by Pollock CB in *The Attorney-General v Walker* (citation omitted), namely as identifying a power to make orders which are reasonably required or legally ancillary to the accomplishment of the specific remedies for enforcement provided in Division 4 of Part 3 of the District Court Act. In this setting, the term “necessary” does not have the meaning of “essential”; rather it is to be “subjected to the touchstone of reasonableness”.
36. In *DJL v The Central Authority* (2000) 201 CLR 226 at [27] the plurality of the High Court said that implied powers are limited by the scope of the statutes from which the court and its jurisdiction are derived.
37. In *Markisic v Vizza* [2002] NSWCCA 53 (“Markisic”) the Court of Criminal Appeal determined that an appeal to it was not competent. The New South Wales Court of Criminal Appeal is a statutory court. In dealing with costs of the dismissed appeal, the Court said this:

“The Court of Criminal Appeal has implied power to control abuse of its processes. This purported appeal from McClellan J is an abuse of process. It is an incident to such a power to control abuses of its processes that the court has implied (or inherent) power to order the applicant to pay the respondents’ costs... The dichotomy between implied and inherent powers matters not in this context”.
38. The decision in *Markisic* was referred to with approval by Chief Justice Spigelman (with

whom the other two Justices agreed) in *Application by John Fairfax Publications Pty Ltd re MSK & Ors* [2006] NSWCCA 386. His Honour said, speaking of the respondents' application for costs, that "*the submissions did not identify in any respect what it was that could have constituted an abuse of process sufficient to invoke the implied power affirmed by this Court in Markisic*".

39. Chief Justice Spigelman of the New South Wales Court of Criminal Appeal returned to this issue in *R v JS (No 2)* (2007) 179 A Crim R 10. His Honour rejected an argument that the Court's power to award costs was "*generally at large*", confirming the need to "*identify an express or implied statutory power to make such an order*". His Honour then continued:

"The Respondent has failed to identify any relevant statutory provision.

"As part of its implied jurisdiction this Court has power to control abuse of process and, as an incident of that power, may order a person who has abused that process to pay the other party's costs... The Appellant's conduct could not be said to constitute an abuse of process".

40. In *BUSB v The Queen* [2011] NSWCCA 39 at [27] CJ Spigelman said that to be implied, a power must "*relate either to the exercise of the court's jurisdiction or to the exercise of its powers*".

41. *Grassby* was decided in 1989. It is undoubtedly the best known of the cases which have discussed the implied powers of statutory courts, but it was not the first case to do so.

42. In 1985 in *O'Connell v Short* (1985) 20 A Crim R 111 ("*O'Connell*") Justice Zelling of the Supreme Court of South Australia considered the implied powers of statutory courts generally and determined specifically that a magistrate conducting a preliminary examination (committal) had the implied power when adjourning a preliminary examination to order that a party pay the other party's costs occasioned by the adjournment. Justice Zelling described these as "*inherent*" powers, but nothing turns on this language.

43. Starting at page 113.3, Justice Zelling said as follows:

"... The magistrate exercised the discretion and in my opinion he had the power to exercise it, because it was a power implied by law for the proper functioning of courts of summary jurisdiction.

"Ralph's case, on which the appellant relied, says that the court of summary jurisdiction has no powers other than those given by the statute. Assuming that to be correct as I must, I am not dealing here with the existence of a power going to jurisdiction, I am dealing with the inherent powers and discretions which must necessarily repose in and be from time to time exercised by courts of summary jurisdiction in the exercise of their admitted powers and jurisdictions. The power to reopen a case is one such power.

"The general rule is stated by Lord Morris of Borth-y-Gest in his speech in Connolly v The Director of Public Prosecutions (citation omitted) as follows:

'There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. I would regard them as powers which are inherent in its jurisdiction'.

"There are a number of such discretionary powers in relation to courts of summary jurisdiction recognised in various decided cases..."

"Accordingly, in one of two ways, the magistrate had power to order the costs complained of. Either the authority given by section 113 to adjourn a preliminary examination includes an implied discretion as to the terms upon which such relief or indulgence may be granted; or alternatively the magistrate, who had an inherent discretion to allow the informant to reopen his case and to obtain an adjournment for the purpose of reopening his case, likewise had an inherent power to grant that indulgence on terms as to costs".

Express Powers in NT Committals

44. The question I now turn to consider is whether the Local Court in the exercise of its express powers in the conduct of committal proceedings has the implied power where necessary to make costs orders for the effective exercise of those express powers.
45. Those express powers are to be found in subsections 18(1)(b) and (3) of the *Local Court Act*, in Part V Divisions 1A to 5 inclusive of the Act, and in Practice Direction 13 of the *Local Court (Criminal Division) Practice Directions*.
46. Section 105A of the Act makes it generally mandatory for the Local Court to conduct a preliminary examination (committal) for an indictable offence.
47. Section 105C of the Act makes it mandatory for the prosecutor to serve a brief on the defendant at least 28 days before the committal date, and that brief must comply with section 105D.
48. Section 105D of the Act identifies what must be included in the brief. Section 105E creates an ongoing obligation on the prosecutor to update the brief and serve the updated materials on the defendant.
49. Section 105F of the Act identifies what brief materials must be provided to the defendant and in what form, by way of witness statements both written and recorded, and exhibits to statements. Where the witness statement is recorded then a transcript must be provided – subsection 105F(1)(b).
50. Subsection 105F(5) is of particular importance in this matter. It also deals with recorded witness statements. It provides that the prosecutor must give defendants and their legal practitioners:

"...reasonable opportunity before the committal date to:

(a) listen to, and for an audio-visual recording, view, any recorded statements of listed witnesses; and

(b) inspect any listed exhibits”.

51. This subsection does not give defendants a specific statutory right to be provided with their own copy of a recorded statement to take away with them. However, it does mandate they be given “*a reasonable opportunity*” before the committal date to listen to and where relevant, to view such a recording. Often, and especially where the recording is particularly long, a reasonable opportunity might only be given by providing defendants with their own copy of the recording to take away and listen to or view at their convenience.

52. Section 112A of the Act provides for the powers of the Local Court in committal proceedings as follows:

“(1) Except as provided in this or any other Act, a preliminary examination must be conducted in the way determined by the Court.

“(2) Unless this or any other Act provides otherwise, for controlling and managing the conduct of a preliminary examination, the Court may do any of the following:

(a) adjourn the preliminary examination from time to time;

(b) order the prosecutor and defendant to attend before the Justice to deal with procedural or case-management issues;

(c) order the prosecutor or defendant to do anything the Court considers will or may facilitate the preliminary examination being conducted fairly, efficiently, economically and expeditiously.

“(3) This section does not limit any other power the Court may have for dealing with the conduct of a preliminary examination”.

53. Practice Directions 13.24 and 13.25 of the *Local Court (Criminal Division) Practice Directions* provide as follows:

“13.24 Subject to the interests of justice, committal proceedings are to be completed as expeditiously as possible to enable the transfer, if appropriate, of the cases to the Supreme Court”.

“13.25 No variations of the above procedural timetable will be granted unless compelling circumstances exist in the interest of justice”.

Conclusion – Implied Power to Make Costs Orders

54. The Orders I made on 11 August 2021 were made pursuant to section 112A of the Act generally and subsection 112A(2)(c) specifically.

55. Section 112A of the Act provides the Court with power to make directions generally for the fair, efficient, economic and expeditious conduct of the committal proceeding.

Practice Directions 13.24 and 13.25 emphasise the Court's interest in completing committal proceedings as expeditiously as possible, subject to the interests of justice.

56. *"The power to give directions necessarily carries with it a power to refuse to countenance non-compliance"* – see *State Pollution Control Commission v Australian Iron & Steel Pty Ltd* above. A statutory court necessarily has implied power to control abuse of its processes – see *Markisic* above. A court which has a particular jurisdiction has the implied powers necessary to enable it to act effectively within such jurisdiction – see *O'Connell* above.
57. Although the case law makes it clear that powers will be implied only where necessary for the exercise by a court of a grant of power, "necessary" in this context does not mean "essential" and it is to be "subjected to the touchstone of reasonableness" – see *Pelechowski* above.
58. I am satisfied on the basis of the case law considered above, and the legislative framework identified above, that the Northern Territory Local Court may in appropriate circumstances when conducting a preliminary examination (committal) have the implied power to make orders requiring either prosecution or defendants to pay costs, and I so rule.
59. These appropriate circumstances will be limited, usually involving some act or omission akin to an abuse of process by a party. One example of such circumstances might be where the Court has made clear directions as to delivery of brief material and these directions have not been complied with, in the absence of any adequate explanation and with the result that the expeditious completion of the committal is significantly hampered.

Conclusion – Costs Order in the Circumstances of this Matter

60. This matter came before the Local Court for an interlocutory ruling in a committal proceeding to resolve a dispute between prosecution and defence. The defendant did not have a statutory right automatically to be provided with copies of the lengthy audio-visual recording of the evidence of the complainant. He did have the statutory right to a reasonable opportunity before the committal date to view this material. The question to be resolved was what constituted a "reasonable opportunity" in the circumstances.
61. The parties could not agree to resolve this question and the Court was required to hear argument and resolve it for them. I made Orders essentially resolving the dispute in favour of the defendant. If I was dealing with standard costs principles pursuant to a grant of power to award costs then I would have no hesitation in awarding costs of the dispute in the cause - that is, in favour of the defendant.
62. However, this was not the case. There is no grant of power to award costs in committal proceedings. There was an arguable question of statutory interpretation to be heard, in the context of the circumstances of this proceeding. There was no question of any blatantly unreasonable act or omission by the prosecution hampering the expeditious

progress of the committal, akin to an abuse of process.

63. The circumstances of this proceeding do not make it necessary or even "*fairly incidental or consequential for the purpose of exercising the right or power*" to make a costs order to enable the Court to act effectively within its committal jurisdiction. I am satisfied and I rule that no implied power to order costs arises in the circumstances of this proceeding.
64. The defendant's application for an order for costs is dismissed.

Dated the 14th day of January 2022



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John Neill
ACTING LOCAL COURT JUDGE