David Barrow CPA JD

63 / 135 Cardigan Street, Carlton VIC 3053

10 February 2016

The Hon JUDGE JUDITH GIBSON
c/- Dr Ricky Lee *PhD LLM BA(IntSt)(Hons) LLB(Hons) GradDipCBL GDLP FCLA FANZCN ATIA MAICD*
Managing Partner, Globalex Tax & Legal via email: ricky.lee@globalexlegal.com

Dear Ricky [solicitor for Judge Gibson],

As I have previously written, **The Hon. Judge Judith Gibson** of the NSW District Court delivered a paper to the March 2015 NSW State Legal Conference titled:

> ***"From McLibel to eLibel: Recent issues and recurrent problems in defamation law"***

In that paper, her Honour **wrote falsely that I was bankrupt** – even though Judge Gibson may not have been aware of this falsity at that time.

I must say clearly: **I am not now, nor have I ever been bankrupt. Nor have bankruptcy proceedings ever been issued against me; nor do I expect that any will be.**

I am a CPA Accountant. Understandably, it is a requirement of my membership of CPA Australia that I must not be bankrupt.

By your letter dated 21 December 2015, I was advised:

> "Our client [**JUDGE JUDITH GIBSON**] **accepts that you were not a bankrupt** at the time our client's conference paper titled *"From McLibel to eLibel: Recent Issues and Recurrent Problems in Defamation Law"* (the *Publication*) was presented at the NSW State Legal Conference in March 2015, and that **you are not presently bankrupt**."

On 16 December 2015 and again on 18 January 2016, I invited Judge Gibson to come to Melbourne for an in person **mediation** with me to make this all right.

I proposed that we prepare for, attend and conclude a **mediation** on or before **10 February 2016**.

I wrote:

> *"We should be using our best endeavours to find alternatives to litigation – and a truly reasonable offer of amends is central to this, as is the proper,* ***neutral forum of a mediation*** *to craft and bind a joint solution."*

I heard nothing from Judge Gibson until receiving a letter via email today – **10 February 2016** – wherein Judge Gibson responded:

> Your use of the term "mediation" is a misnomer. In effect, you have demanded a lengthy private meeting with our client, without her legal representatives or a mediator present, at an undisclosed location, without identifying what you want to discuss. This is both inappropriate and disturbing.
>
> We note further that you have published these demands for a meeting under the guise of a "mediation", not only on your own website, but to the District Court of New South Wales where our client sits as a Judge, and warned of legal proceedings against the Court if our client refuses to meet you as demanded.
>
> Our client will rely on these matters in opposing any application by you to any court for an order for mediation in any proceeding brought by you against our client in connection with the Publications. Further, if you commence proceedings, your repeated demands for a private meeting will be brought to the Court's attention at the earliest opportunity, so that the Court may take appropriate action. We are of the view that a court would view such conduct seriously, for no litigant, no female individual litigant, and no judge, ought to be pressured unduly in such a manner.

ME: Wow.

My invitation for a **mediation** in Melbourne should not be construed as anything other than my intention as, well, a **mediation** in the usual way where parties come together in person with their legal representatives and/or a support person to try and resolve the issues in a non-litigious way with the assistance of a professional mediator.

ME: To the 10 FEBRUARY 2016 LETTER that was emailed to me on behalf of Judge Gibson, I make the following interleaved comments and responses:

< LETTER BEGINS >

Dear Mr Barrow

Defamation Claim

We refer to previous communications with you in this matter, in particular our letter of 21 December 2015 and your letter of 18 January 2016 as received by email.

1. Defamation Claim

1.1. Your letter dated 18 January 2016, to the extent that it purports to be a concerns notice for the purposes of section 15 of the *Defamation Act 2005* (Vic) (the ***Act***), is addressed to seven separate parties (together the ***Recipients***) of which our client is one, and relates to a number of alleged publications (together the ***Publications***).

1.2. Accordingly, you have sent us a fresh concerns notice which is separate from that purportedly constituted by your earlier letter dated 16 December 2015, to which an offer to make amends was made by our corresponding letter of 21 December 2015.

ME: My 16 December 2015 concerns notice was with respect to the publications identified in that letter for which Judge Gibson was directly responsible. The 18 January 2016 concerns notice is with respect to all the further publications and republications that were foreseeable and accessory to her Honour's original 30 March 2015 conference paper, for which Judge Gibson is a joint-tortfeasor.[1]

1.3. It is unknown to us whether you were aware of each of the Publications at the time of your letter dated 16 December 2015 and were merely withholding references to them in that letter for some reason, or if you were unaware of the Publications at the time.

[1] See the principles in *Webb v Block* (1928) 41 CLR 331 at 363-5.

ME: My 16 December 2015 concerns notice was only dealing with the publications indentified in that letter for which Judge Gibson was directly responsible.

1.4. In any event, we request that you send to us copies of all previous communications with each and all of the Recipients concerning each and all of the Publications prior to your common letter of 18 January 2016 to all of the Recipients.

ME: I would be pleased to prepare this information, among other things, for a **mediation**.

As I wrote to Judge Gibson in my letter dated 18 January 2016:

> *"I am optimistic that Judge Gibson and I could find sensible non-litigious amends through mediation – in a reasonable way, comprehensively covering all of the publications, republications and the grapevine effect which have flowed from her Honour's conference paper."*

ME: Has Judge Gibson not had any communications with the parties to whom I addressed my letter dated 18 January 2016? Please kindly provide copies of all previous communications between Judge Gibson and those parties.

2. The Publications

2.1. Your letter of 18 January 2016 referred to the following Publications:

2.1.1. two "retweets" of our client's "tweet" of 2 April 2015 on Twitter;

2.1.2. the uploading of our client's paper at the NSW State Legal Conference presented on 30 March 2015 (the ***Paper***) to the website of the District Court of New South Wales;

2.1.3. reference by hyperlink to the Paper as uploaded online by the NSW Department of Justice on Twitter on 22 June 2015;

2.1.4. reference by hyperlink to the Paper as uploaded online by the Gazette of Law and Journalism on a date unspecified by you;

2.1.5. reference by hyperlink to the Paper as uploaded online by the International Forum for Responsible Media, contained in another discussion paper published by the said Recipient on 17 July 2015; and

2.1.6. reference by hyperlink to the Paper by Crikey.com.au in a short article commenting on your letter of 16 December 2015.

2.2. It appears to us that the only "imputation of concern" identifiable in your letter of 18 January 2016 from all of the Publications, for the purposes of the Act, is that you are bankrupt. In response to this, we repeat and adopt the substance and contents of our letter dated 21 December 2015. The Publications identified by you in your letter of 18 January 2016 are not actionable.

ME: Whilst I do not accept that the Publications are not actionable, I note again that in your letter dated 21 December 2015, I was advised:

> "Our client [**JUDGE GIBSON**] **accepts that you were not a bankrupt** at the time our client's conference paper titled *"From McLibel to eLibel: Recent Issues and Recurrent Problems in Defamation Law"* (the *Publication*) was presented at the NSW State Legal Conference in March 2015, and that **you are not presently bankrupt**."

2.3. Further and in any event, as you have noted in part in your letter of 18 January 2016, our client has already carried out the following steps in mitigation as set out in the offer to make amends in our letter of 21 December 2015 (the ***Previous Offer***), specifically:

2.3.1. the item in paragraph 2.1.1 of our letter of 21 December 2015;

2.3.2. the item in paragraph 2.1.2 of our letter of 21 December 2015 (albeit with the wrong date being referenced as the date of the presentation of the Paper);

2.3.3. deleted the post made on Twitter on or about 2 April 2015; and

2.3.4. on 19 January 2016, sent a printed copy of the Paper as revised following our letter of 21 December 2015 to each of the attendees of the defamation session of the NSW State Legal Conference on 30 March 2015 for whom a

> postal address was provided or obtained from the Law Society of New South Wales or the New South Wales Bar Association.

ME: I note that at no time prior to your 10 February 2016 letter, have I been informed that a printed copy of the Paper as revised by Judge Gibson was sent to each of the identified attendees of the defamation session of the March 2015 NSW State Legal Conference. Nor have I been informed that any such step was contemplated.

This unilateral action is a further (unsatisfactory) attempted public correction in publishing the following updated version of the conference paper by Judge Gibson:

> *[Correction: In an earlier version of this article, I said that David Barrow was bankrupt. Mr Barrow has been quoted publicly as stating that he would have to declare bankruptcy as a result of costs orders made against him in his unsuccessful proceedings against Andrew Bolt and the Herald & Weekly Times Pty Ltd. I accept that Mr Barrow has not in fact been made bankrupt.]*

As I have previously notified Judge Gibson, I do not agree to this form of the wording.

I also ask that Judge Gibson provide me with a copy any further materials (such as a covering letter) that accompanied the revised Paper said to have been sent to the attendees.

> 2.4. The Previous Offer, which expired without being accepted or, for that matter, formally responded to by you, will be relied on in any proceedings by our client as a complete defence under section 18 of the Act to all defamation claims in relation to any and/or all of the Publications.

ME: there is no time specified in the 21 December 2015 offer of amends during which the offer is open to be accepted. Section 18(1)(b) of the *Defamation Act 2005* (Vic) prescribes that for an offer of amends to be reasonable, Judge Gibson must at any time *"before the trial"* be ready and willing, on acceptance of the offer by the aggrieved person, to carry out the terms of the offer.

Notwithstanding that *"before the trial"* need not necessarily mean all the way up until the final hearing of the matter, it must include a good way along that journey, including at least until any proceeding was commenced and the pleadings closed.[2]

[2] *Pingel v Toowoomba Newspapers Pty Ltd* [2010] QCA 175 at [101] and [102] per Applegarth J. *Bushara v Nobananbas Pty Ltd* [2012] NSWSC 63 at [5]–[13] per Nicholas J. See also *Zoef v Nationwide News Pty Ltd* [2015] NSWDC 232 per Levy DCJ.

In any event, pursuant to section 14 of the Act, the offer of amends defence that may have been open to Judge Gibson in relation to the publications identified in my 16 December 2015 concerns notice cannot be modified beyond those terms offered by Judge Gibson on 21 December 2015 because 28 days have now passed since the 16 December 2015 concerns notice.

2.5. Further and without limitation to the generality and effect of the statement in paragraph 2.4 above, our client will rely in any proceedings on all of the steps set out in paragraph 2.3 above as mitigation in full of any damages that may be claimed or claimable by you as arising from the imputation of concern and/or the Publications.

3. Allegation of Falsity

3.1. We refer to the statements made in your letter of 18 January 2016 alleging that our client *"wrote falsely that I am bankrupt"* and that our client *"accepts making a false statement that I was bankrupt"*. These statements imply that our client knowingly made a false statement in the Paper, which is vehemently denied by our client.

ME: to make known that "a statement" is false does not imply that the person who made that statement positively knew it to be false at the time of making it.

What can be said quite clearly, however, is that from at least the time of reading my 16 December 2015 concerns notice, and simply confirming the content of this, Judge Gibson has known that her Honour's March 2015 conference paper contains a **false statement that I was bankrupt**.

3.2. As stated in our letter of 21 December 2015, we are instructed that the principal basis for the statement in the Paper referring to bankruptcy arose from the article published on Crikey.com.au (the ***Crikey Article***) under the headline *"Bolt defamation litigant loses case, will declare bankruptcy"*, and accessible on the Internet. As you are aware, our client included a hyperlink to the Crikey Article in the Paper.

3.3. In the Crikey Article, you were quoted by its author, Myriam Robyn [sic Robin], that you were not in a financial position to pay the costs order, fixed at $500,000.00, in favour of the successful defendants in that proceeding and *"would have to declare*

bankruptcy" and make a fresh start in life as you would be *"able to earn a living albeit with a number of restrictions and a blighted credit history".*

3.4. The statements about bankruptcy in the Crikey Article were widely disseminated and commented upon. For instance, Marque Lawyers published a newsletter on 9 December 2014 under the headline "This is why you should worry about defamation", which described your claims of "moral victory" in your proceeding against Andrew Bolt as *"pyrrhic", "since it's been reported that the judgment will send him bankrupt".*

3.5. Our client's reliance on these statements is not evidence of her knowledge of their falsity; on the contrary, they show that our client reasonably relied on those statements. In any event, we are instructed that she was not aware of their falsity.

ME: If Judge Gibson seeks to rely on a defence of honest opinion or fair comment then this must be based on the proper materials of factual statements. Whereas the statements that are referred to by Judge Gibson are extracts from the online publications of others, this does not make them factual statements – and indeed none of them are factual statements that I was bankrupt at the time that Judge Gibson's publications were made.[3]

As I wrote in my 18 January 2016 letter:

1. Nowhere in Myriam Robin's Crikey article does it say that I was bankrupt (which I am not nor have I ever been). There is simply no proper basis in the article for Judge Gibson to refer to me as a plaintiff "who is now" bankrupt.

2. There is no indication that Judge Gibson took any proper steps to determine if I was bankrupt, such as checking the National Personal Insolvency Index or an online search of Federal Circuit Court bankruptcy proceedings – or contacting me directly.

3. On 3 December 2014 (same day article published), I emailed Myriam Robin to notify her that I had posted some comments and corrections on my website concerning her Crikey article. Myriam then caused a link to be published to this response at the end of her article (which is still there today) and wrote to me on 4 December 2014 as follows:

[3] A defendant must prove truth of every fact which is the basis of a comment or opinion: *Peter Walker & Son Ltd v Hodgson* [1909] 1 KB 239 at 250, 254; 256-7; *Digby Financial News Ltd* [1907] 1 KB 502 at 508.

Hi David, I've added a link to your response to the bottom of the article. Sorry it's taken me so long to do so I've been flat out since yesterday and haven't had a proper chance until now. Sorry about any errors in the piece they weren't intentional. But I'm not a lawyer and find it hard sometimes when just going off a verdict transcript. Best of luck, and thanks for keeping me informed. Myriam

Among other things, my response posted on my own website emphasised that I only faced bankruptcy *IF* my appeals to the 2 December 2014 decision of the trial judge Justice Terry Forrest were unsuccessful.

Those appeals were on foot all the way up until settlement with Andrew Bolt and the Herald and Weekly Times Pty Ltd (Herald Sun) defendants – and acted as an effective bankruptcy shield.

Inexplicably, Judge Gibson was also aware of my appeal application to the Court of Appeal during this time, writing about this in the LexisNexis Australian Defamation Law and Practice publication around May 2015 – and still not correcting her Honour's conference paper.

I have an archive copy of my response to Myriam's Crikey article, however I took it offline when my defamation case settlement with Andrew Bolt and the Herald Sun in December 2015. This was well after Judge Gibson first published the false statement that I was bankrupt in March 2015.

4. Further, on 3 December 2014, I tweeted about my comments and corrections, which Myriam kindly retweeted.

https://twitter.com/BoltTrial2014/status/540016745541431297

4. Consent

4.1. By reason of the statements made publicly by you, such as those that were attributed to you in the Crikey Article as well as the repeated references to bankruptcy in your own posts on Twitter in February 2015 and on your own website, you invited the world at large to comment upon the consequences of your loss in the proceedings brought unsuccessfully by you, including the consequence that by reason of having failed in the proceedings, you were bankrupt in the ordinary meaning of that term; that is, an insolvent debtor who was unable to pay his debts when they fell due. In those circumstances, by your own publications to the world at large, you consented to the publication of the imputation of concern, including by our client.

4.2. In addition to the defences referred to in our letter of 21 December 2015, we put you on notice that our client will rely on the defence of consent in any proceeding brought by you in connection with the Publications.

ME: Wow.

Judge Gibson now says that I actually consented to her Honour making a false statement that I was bankrupt?

Because (in part) I was "bankrupt in the ordinary meaning of that term"?

Again, Wow.

The natural and ordinary meaning of the word "bankrupt" in Judge Gibson's conference paper, expressed as *"the unsuccessful (and now bankrupt) plaintiff who sued Andrew Bolt"* – is of a person who has been declared (adjudicated) bankrupt or insolvent and who has not been discharged from that condition.[4]

Further, does Judge Gibson seriously say that her Honour had in mind anything other than this intended meaning when writing the word "bankrupt" in relation to me in Judge Gibson's March 2015 conference paper? Notwithstanding that the intention of the publisher is irrelevant as to whether the meaning of a publication is defamatory.[5]

I must say clearly: I did not and do not consent to Judge Gibson's **false statement that I was bankrupt**.

5. Further Offer to Make Amends

5.1. As stated above, the Previous Offer expired without any acceptance, rejection, or formal response from you.

ME: as I state above, there is no time specified in the 21 December 2015 offer of amends during which the offer is open to be accepted (or by which time the offer will close).

5.2. Notwithstanding the matters adumbrated above, our client makes the following new offer to make amends (the ***New Offer***) for the purposes of section 15(1) of the Act in response to your letter of 18 January 2016 (to the extent that it purports to be a concerns notice for the purposes of the Act):

ME: I have never heretofore heard of the word "**adumbrated**" – but having looked it up on the Free Online Dictionary I now know it has the meaning *"to give a sketchy outline"*.

[4] See Nile v Wood [1987] HCA 62; (1987) 76 ALR 91; (1987) 62 ALJR 52.
[5] *Slim v Daily Telegraph Ltd* [1968] 2 QB 157 at 172; *Morgan v John Fairfax & Sons Pty Ltd (No 2)* (1991) 23 NSWLR 374 at 392.

5.2.1. our client by her solicitor will write to each of the Parties to notify them of the revised version of the Paper as has been uploaded on the website of the District Court of New South Wales;

ME: As I have previously notified Judge Gibson, I do not agree to the form of the wording in the revised version of her Honour's conference paper. To continue publishing the Paper in its current form aggravates the situation, as does notifying persons of the URL address where that inadequate version of the Paper is available for viewing on the Internet.

On 22 December 2015, I also wrote on my website:

> *"Most inexplicable of all is that Judge Gibson quite frankly accepts her conference paper is incorrect – and yet her Honour has not taken the simple steps to immediately remove that paper from publication on the NSW District Court website until such time as an appropriate correction can hopefully be agreed."*

And in my letter dated 18 January 2016, I added:

> *"I envisage that if the successful part of the corrections to an updated conference paper can be successfully crafted by Judge Gibson and myself through a **mediation**, then a new final link to this conference paper could be enabled. After which time we could all go peaceably our own ways."*

<ME ends>

5.2.2. our client by her solicitor will forward to each of the Parties a copy of your letter of 16 December 2015;

ME: I imagine they already have a copy but one can be sent. Let's be sure to agree on the wording of any cover letter.

5.2.3. our client by her solicitor will forward to each of the Parties a copy of our letter of 21 December 2015;

ME: Again, one can be sent. But let's agree on the wording of any cover letter.

5.2.4. our client by her solicitor will forward to each of the Parties a copy of this letter; and

5.2.5. our client will pay any expense reasonably incurred by you before this New Offer was made and in consideration of this New Offer, with such expense to be set out in a proper and itemised Bill of Costs and, in default of agreement, taxed by the Costs Court of the Supreme Court of Victoria.

5.3. For the avoidance of doubt, our client does not offer an apology as part of the New Offer.

ME: I am disappointed to note again that Judge Gibson offers no **apology**.

5.4. Without limiting the generality and effect of section 13(4) of the Act, this New Offer is made without prejudice.

5.5. We put you on notice that if you do not accept the New Offer, our client will rely on it as a complete defence under section 18 of the Act in any defamation proceedings brought by you.

ME: To the extent that it is a reasonable offer at all, the "New Offer" dated 10 February 2016 is confined to the publications identified in my 18 January 2016 concerns notice. The "New Offer" cannot be relied on for the publications identified in my 16 December 2015 concerns notice, as more than 28 days have elapsed after that earlier concerns notice.

6. Requests for "Mediation"

6.1. We note that you have made repeated requests for our client to attend a "mediation" with you in Melbourne.

ME: I have made the following invitations for Judge Gibson to attend a Mediation:

16 December 2015

"I note it is your Honour's view in the Hunt v Radio 2SM *defamation proceeding that in every case where a defence of an offer of amends is pleaded that mediation ought to be compulsory.*

I agree this is a good idea, and I invite your Honour to fly down to Melbourne so that we may have a mediation to search for agreement as to ***how your Honour is going to make this all right****."*

18 January 2016

"I hope that we can all achieve non-litigious amends in these related matters.

I believe this can best be achieved by ***The Hon. Judge Judith Gibson*** *of the NSW District Court making the effort to come to Melbourne for an in person mediation with me to make this all right.*

This seems consistent with her Honour's own views in the Hunt v Radio 2SM Pty Ltd (No. 4)[6] *defamation proceeding:*

> One order I do propose to make is that the parties should go to mediation. Indeed that is a matter that, in my view, ought to be compulsory in every case where a defence of offer of amends is pleaded."

AND

"It is disappointing that Judge Gibson has not as yet satisfactorily joined with me to find a suitable wording for the corrections – or even inform me that her Honour's attempted public corrections would be or had been published to the world at large.

It is further disappointing that her Honour has not offered any apology.

Clearly, Judge Gibson's efforts so far have fallen short of a Defamation Act 2005 *(Vic) section 15 and section 18 offer of amends defence to defamation liability.*

But talk of defences to liability is the wrong way of going about making this all right.

We should be using our best endeavours to find alternatives to litigation – and a truly reasonable offer of amends is central to this, as is the proper, neutral forum of a mediation to craft and bind a joint solution.

[6] [2010] NSWDC 67 at [66] (per Judge Judith Gibson).

Judge Gibson accepts making a false statement that I was bankrupt. Let's focus on fixing this – which is the right thing to do.

Following the principles in Webb v Block[7]*, Judge Gibson is a joint-tortfeasor in all the publications and republications that were foreseeable and accessory to her Honour's original 30 March 2015 conference paper. As such, it is natural and essential that Judge Gibson should be involved in making all of these matters right.*

I propose that ***Judge Gibson come to Melbourne*** *and we prepare for, attend and conclude a* ***mediation*** *on or before* ***Wednesday 10 February 2016****.*

I am optimistic that Judge Gibson and I could find sensible non-litigious amends through ***mediation*** *– in a reasonable way, comprehensively covering all of the publications, republications and the grapevine effect which have flowed from her Honour's conference paper.*

If Judge Gibson will join me in person at this ***mediation*** *then I would be pleased to* ***enliven the timing cover of a reasonable offer of amends defence****, that has now expired under the 28 day rule pursuant to section 14 of the* Defamation Act 2005 *(Vic) – with such an extension in timing to make amends to run right up until the conclusion of the mediation.*

6.2. Your use of the term "mediation" is a misnomer. In effect, you have demanded a lengthy private meeting with our client, without her legal representatives or a mediator present, at an undisclosed location, without identifying what you want to discuss. This is both inappropriate and disturbing.

ME: I have not *"demanded"* or requested *"a lengthy private meeting with our client, without her legal representatives or a mediator present, at an undisclosed location, without identifying what you want to discuss"*.

And as I wrote previously:

My invitation for a **mediation** in Melbourne should not be construed as anything other than my intention as, well, a **mediation** in the usual way where parties come together in person with their

[7] (1928) 41 CLR 331 at 363-5.

legal representatives and/or a support person to try and resolve the issues in a non-litigious way with the assistance of a professional mediator.

I also note that Judge Gibson has made no effort to clarify or agree any aspect of a **mediation**, including which professional mediator to appoint, who else should attend, where it is to be conducted, and what is to be discussed. As for my view: simply ask me.

> 6.3. We note further that you have published these demands for a meeting under the guise of a "mediation", not only on your own website, but to the District Court of New South Wales where our client sits as a Judge, and warned of legal proceedings against the Court if our client refuses to meet you as demanded.

ME: I have not made any *"demands"* for a meeting or a mediation. I have posted my invitations for a mediation to my website and also in my 18 January 2016 concerns notice, which was addressed to the NSW District Court and the NSW Department of Justice, among other parties who had published or republished links to Judge Gibson's conference paper.

> 6.4. Our client will rely on these matters in opposing any application by you to any court for an order for mediation in any proceeding brought by you against our client in connection with the Publications. Further, if you commence proceedings, your repeated demands for a private meeting will be brought to the Court's attention at the earliest opportunity, so that the Court may take appropriate action. We are of the view that a court would view such conduct seriously, for no litigant, no female individual litigant, and no judge, ought to be pressured unduly in such a manner.

ME: Again, I have not made any *"demands"* for a meeting or a mediation. And no-one has been *"pressured unduly"*. I have invited Judge Gibson to make amends with the assistance of a **mediation** in the usual way – which means the parties come together in person with their legal representatives and/or a support person to try and resolve the issues in a non-litigious way with the assistance of a professional mediator.

> 6.5. Further, we note that you have published the terms of the Previous Offer on your website to the world at large, even though it was clearly marked "without prejudice" and made explicit reference to section 13(4) of the Act. Our client will rely on your disclosure and/or publication of without prejudice material as one of the grounds on which any Court ought to deny any request by you for mediation in the event that

you commence proceedings against our client, and reserves the right to refer that conduct to the Court or any relevant authorities.

< LETTER ENDS >

From the outset of my 16 December 2015 concerns notice, it has been my position:

> *"Given that your Honour has caused a false statement that I am **'now bankrupt'** to be published to the world at large, and your Honour's standing as a defamation expert, I believe the outcome of our situation should be made public. And as I opened to you in this letter, we have the potential to be a showcase of how non-litigious amends can be achieved."*

I have been surprised by Judge Gibson's conduct in response to the concerns and correspondence I have sent her Honour.

In my view, it is in the public interest to document this publicly – albeit that the details of any actual **mediation** event itself would not be published.

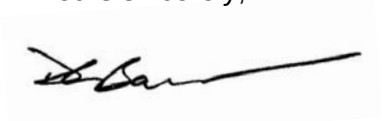
I also remain of the view that the whole situation remains one where Judge Gibson and I still have the potential to be a showcase of how non-litigious amends can be achieved in Australia.

As I wrote in my letter to Judge Gibson of 18 January 2016:

> *"I am optimistic that Judge Gibson and I could find sensible non-litigious amends through mediation – in a reasonable way, comprehensively covering all of the publications, republications and the grapevine effect which have flowed from her Honour's conference paper."*

I hope this present letter will help.

Yours sincerely,



David C. Barrow