GOLDSMITH COLLINS: FOOTBALLER, FENCER, MAVERICK LITIGATOR

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The surge in 'litigants in person' is a challenge for contemporary courts. At the extreme end are a small group of vexatious litigants or querulents who persistently and unsuccessfully pursue litigation until banned by the court. But who are they and what motivates them? This article traces the story of one of this small band of persistent litigants, Goldsmith 'Goldie' Collins (1901–1982). As a young man Collins was a champion Australian Rules Footballer with the Fitzroy Football Club. He found later notoriety through his provocative legal proceedings as a self-represented litigant against the Northcote City Council that rapidly escalated into a legal assault against all persons and institutions drawn into that web. In 1952 Collins was the fourth Australian to be declared a vexatious litigant. As the first person declared by the High Court, his declaration the next year by the Victorian Supreme Court (its third) made him the first person to be declared in two jurisdictions. Despite his declarations and being gaoled a number of times for contempt of court, Collins continued as a legal 'maverick' into the 1970s. In providing context for Collins' litigation this article will demonstrate the difficulties faced by other litigants, the profession and the judiciary when dealing with an unpredictable, even aggressive, litigant who determinedly challenges authority. Drawing on recent psychiatric literature it will also demonstrate that the vexatious litigant sanction is an inadequate response to the challenge a litigant, such as Collins, presents to the courts.

I INTRODUCTION AND THE RISE OF THE QUERULENT

Unquestionably, Rupert Frederick Millane (1887–1969) was the pioneer of the Australian 'vexatious bar'. It was his extraordinary flood of unsuccessful litigation in the 1920s, mainly against the Melbourne and Heidelberg Councils, that led to the enactment in 1928 of the vexatious litigant sanction in Victoria. That provision empowered the Supreme Court to prohibit the issue of proceedings by such litigants without the Court's prior leave. It provided the model for similar

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provisions in all superior court jurisdictions in Australia.[1] In 1930, Millane became the first person in Australia to be declared a vexatious litigant.[2] If Millane was the leader of Melbourne's 'vexatious litigants' bar' then his associate (for a time), Goldsmith 'Goldie' Collins (1901–1982) was his natural successor.[3] Indeed, as one commentator has noted:

> The 'fifties, the era of Dixon and Fullagar, is often regarded by Victorians as the golden age of the High Court. It was, even more certainly, the golden age of the great vexatious litigants – Millane and Collins.[4]

As a young man Collins was a champion Australian Rules Footballer with the Fitzroy Football Club. However, he found later notoriety through his provocative legal proceedings as a litigant in person and then as legal 'advisor' to others. His litigation started in the 1940s over a grievance with the Northcote City Council and rapidly escalated into a legal assault against all persons and institutions drawn into that web. In 1952 Collins was the fourth Australian[5] to be declared a vexatious litigant. As the first person declared by the High Court, his declaration the next year by the Victorian Supreme Court (its third) made him the first person to be declared in two jurisdictions. Despite his declarations and being gaoled a number of times for contempt of court, Collins continued as a legal 'maverick' into the 1970s inserting himself 'pro bono' into the cases of other self-represented litigants in Victoria and interstate.

But who are vexatious litigants and what motivates them? How do courts deal with them and is the vexatious litigant sanction effective? There has been little scholarly attention given to these and related questions. Accordingly, at a time when contemporary courts are experiencing a surge in 'litigants in person' and

1 Originally s 33 *Supreme Court Act 1928* (Vic) read as follows:

(1) If on application made by the Attorney-General under this section the Court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings whether it is in the Court or any inferior Court and whether against different persons the Court may after hearing that person or giving him an opportunity to be heard order that no legal proceedings shall without the leave of the Court or a Judge therof be instituted by him in any Court and such leave shall not be given unless the Court or Judge is satisfied that the proceedings are not an abuse of the process of the court.

(2) If the person against whom an order is sought under this section is unable on account of poverty to retain counsel the Court shall assign Counsel to him.

(3) A copy of any order made under this section shall be published in the *Government Gazette*.

The sanction, substantially unchanged, is now s 21 of the *Supreme Court Act 1986* (Vic).

2 Grant Lester and Simon Smith, 'Inventor, Entrepreneur, Rascal, Crank or Querulent: Australia's Vexatious Litigant Sanction 75 years on' (2006) 13 *Psychiatry, Psychology and Law* 1.

3 Charles Francis QC penned the description of Millane as the 'leader of the vexatious bar' in a 1982 obituary he wrote for Collins. See Charles Francis, 'Valete Goldie' [1982] (Winter) *Victorian Bar News* 20.

4 Ibid 21.

5 The first three were Rupert Millane (Vic) in 1930; Ellen Barlow (WA) in 1931; and Edna Isaacs, also known as Elsa Davis (Vic) in 1941. As at 31 December 2007 there had been 14 persons declared in Victoria as vexatious litigants. The most recent was Brian Shaw (2007). See *Attorney-General (Vic) v Shaw* [2007] VSC 148 (Unreported, Hansen J, 17 May 2007). Nationally, there have been 45 persons declared by the Australian superior courts combined (omitting the Family Court) in the period 1930–2007. For further background see Lester and Smith, above n 2, 17–9.

a perceived rise in persistent/vexatious litigants, this article explores these issues through the story of one vexatious litigant, Goldsmith Collins. It will trace his life using material not previously accessed and gathered together and will provide a context for his persistent litigation. In seeking to explain his extraordinary litigation it will suggest that the underlying explanation for the behaviour that led to his being declared a vexatious litigant was an abnormality of his mental functioning. In doing so it will draw on the recent work of Australian psychiatrists Paul Mullen and Grant Lester who have been at the forefront of renewed attention being given to the challenge of managing vexatious litigants – or in medical parlance – 'querulents'. These are broadly defined as individuals who exhibit:

> [A] pattern of behaviour involving the persistent pursuit of a personal grievance in a manner seriously damaging to the individual's economic, social, and personal interests, and disruptive to the functioning of the courts and/or other agencies attempting to resolve the claims.[6]

They suggest querulousness is foremost a disorder of behaviour and only secondarily an abnormality of mental function and that personality traits, social situation, contemporary sources of distress and disturbance, even the dispute resolution systems themselves only contribute to querulous behaviour. They are positive on the potential of modern anti-psychotic medication alongside psychotherapy, to normalise the behaviour and thinking of the patient/litigant over a period of months.[7] This of course assumes a level of patient/litigant insight and co-operation that may be difficult, if not impossible, to engender.

Of particular interest is the profile of the querulent that Lester and Mullen derive from the psychiatric literature and their own research. Querulousness is said to most commonly develop in the middle-aged adult between 30 and 50. There is a preponderance of men (4:1) and prior to onset the individual is said to have functioned competently, had a sound secondary education and fair work history. Relationships are more problematic with only 30 per cent having ever married, 18 per cent having divorced and 50 per cent having never married.[8]

Of further interest are the identifying characteristics that Lester and Mullen draw from the written communications of querulents that they examined as part of their 2003 research. They are:

6 Paul Mullen and Grant Lester, 'Vexatious Litigants and Unusually Persistent Complainers and Petitioners: from Querulous Paranoia to Querulous Behaviour' (2006) *24 Behavioural Sciences and the Law* 333, 334. This interest has been stimulated by the emergence over the last two decades of Alternative Dispute Resolution schemes, such as industry Ombudsmen, to promote accessible, speedy and informal dispute resolution for consumers. This access, free of fees, expensive lawyers and procedural formality, has given access to dispute resolution on a large scale but has also increased the numbers of persistent complainants. Even so, Mullen and Lester suggest the actual numbers are small with research and complaint agencies suggesting a frequency as low as 0.2–0.3 per cent of all clients. The issue is that these complainants absorb between 15–30 per cent of scheme resources, out of all proportion to their number.

7 Mullen and Lester, above n 6, 346–8 and Grant Lester, 'The Vexatious Litigant' (2005) 17 *Judicial Officers Bulletin* 17, 19.

8 Mullen and Lester, above n 6, 338 and Lester and Smith, above n 2, 14–5.

Form

- Curious formatting.
- Many, many pages.
- Odd or irrelevant attachments – eg copies of letters from others and legal decisions, United Nations human rights instruments etc, all usually, extensively annotated.
- Multiple methods of emphasis including
  - Highlighting (various colours)
  - Underlining
  - Capitalisation.
- Repeated use of "", ???, !!!.
- Numerous foot and marginal notes.

Content

- Rambling discourse characterised by repetition and a pedantic failure to clarify.
- Rhetorical questions.
- Repeated misuse of legal, medical and other technical terms.
- Referring to self in third person.
- Inappropriately ingratiating statements.
- Ultimatums.
- Threats of violence to self or others.
- Threats of violence directed at individuals or organizations.[9]

This article will draw on this research to demonstrate that the litigious behaviour of Collins departs from the general proposition of Mullen and Lester that posits querulousness is foremost a disorder of behaviour and only secondarily an abnormality of mental function. In the case of Collins it will be suggested that it was a mental disorder that was the major contributor and that unlike with other vexatious litigants where personality traits, social situation, contemporary sources of distress and disturbance, even the dispute resolution systems themselves only contribute to querulous behaviour, with Collins, they aggravated his condition.[10]

Further, the article will canvass the dispute resolution approach of a local government authority to by-law enforcement and argue that the availability of Alternate Dispute Resolution (ADR) mechanisms (had they existed) may have forestalled the litigation that resulted from its persistent enforcement. Instead,

9 Mullen and Lester, above n 6, 336.

10 Ibid 348.

the subsequent reliance by the Council and judiciary on the legal system with its emphasis on forms, rules, procedures, professional advocacy and sanctions such as costs and even gaol contributed to the escalation, indeed became, the dispute. This will bring into focus the difficulty that the small and intimate 1950s Melbourne judiciary faced in dealing with an unpredictable, mentally disordered and aggressive litigant, who determinedly challenged their authority. Here, it will be argued that the vexatious litigant sanction was an inadequate response to the challenge which a litigant such as Collins presents to the courts and that a multidisciplinary approach involving the medical profession may have been more effective.

II EARLY LIFE AND FOOTBALL

The origin of the Collins family is somewhat obscure. What is known has been drawn from official records and the determined research efforts of football historians. Considerable attempts to locate and engage with direct descendants have failed, as did earlier attempts by football historians. Most likely this reflects the rawness that still attaches to the sensational nature of the litigation and the subsequent breakdown of family relationships.

Born in 1901, in the Melbourne suburb of Malvern, Collins was the third of five children of John and Selina (Curtis) Collins. At the time his father was a dairyman.[11] Soon thereafter the family moved to 588 Nicholson Street, Carlton, where Collins attended Lee Street Primary School.[12] However, it was in Australian Rules football that the Collins family rose to prominence with three of the four sons playing at the highest level. An older brother, Harold, played for Fitzroy in the period 1912–1915 but his career was interrupted by service in the Great War. He was killed in action late in 1918.[13] The youngest brother, Norman, played 92 games with Fitzroy, Carlton and Hawthorn in the period 1924–1933.[14] Tragically, he took his own life in August 1933.[15] It is suggested, even from a lay perspective, that the loss of two brothers in such tragic circumstances must have had some impact on the mental health and subsequent behaviour of Goldsmith Collins.

11 See Victorian Department of Justice, Register of Births, Deaths and Marriages, registered death 17817/1982.

12 Elizabeth Loughlin, *Among the Terraces: A Carlton Street* (1988) Ch 3, also available at <http://www.unimelb.edu.au/infoserv/lee/htm/slates.htm> at 7 August 2007.

13 Harold Collins DCM was killed in action in France on 10 August 1918. See Jim Main and David Allen, *Fallen: The Ultimate Heroes: Footballers who never Returned from the War* (2002) 37–8.

14 Ibid 38.

15 Public Record Office of Victoria, VPRS 24/P0, Unit 1249, Coroners Inquisition, 29 August 1933. Further reference to material from this archival source will be in the short form of 'PROV'.

However, on the football field Goldsmith Collins shone, winning high honours. He debuted for Fitzroy in 1922 as a 'burly' ruckman and was a force in that team's 1922 premiership win. A measure of the impact he made was his recognition as the best player of the year with the award by Melbourne journalists of the prestigious title 'Champion of the Colony'.[16] The following season brought further success with selection in the Victorian state team and the award of his club's 'best and fairest' trophy. However, in the 1923 Grand Final, Essendon defeated Fitzroy. Collins was well held and 'took a tremendous battering and was awarded eight free kicks'.[17] One legal commentator would later suggest that the head injuries Collins suffered in that and subsequent matches partly explained the aggressive and confused behaviour he exhibited in his litigation.[18]

Certainly the following year, Collins' aggressive on-field behaviour saw him in conflict, perhaps for the first time, with the 'law'. He was suspended for a total of 10 matches from two separate incidents and as a result he missed the entire 1925 season. Upon his return in 1926 he was again involved in a violent on-field incident and was suspended for a further eight games. Over the next two years, he played only seven more games and retired at the end of the 1928 season aged 27, having played a total of 64 games.[19] His public persona thereafter was commonly introduced by the words 'ex-footballer'.[20]

With his playing days behind him, Collins appears to have concentrated on building a successful electroplating,[21] used car and second-hand metal business in Carlton and later Northcote. Although he does not appear to have completed a formal course he often described himself as an 'engineer'. By 1936 he was sufficiently established to buy outright a double fronted house at 29 Andrew Street, Northcote[22] and to get married. He was 35 and his bride, Beryl Ada Storey, 22.[23] Later that year they would celebrate the arrival of the first of four children, a son.[24] For the next 10 years, life for Collins appears to have been a comfortable mix of

16 This award was presented annually between 1858 and 1945 based on the votes of leading football journalists. The Brownlow Medal, established in 1924, gradually overtook its pre-eminent position. See Chris Donald, *Fitzroy: For the Love of the Jumper* (2002) 78–9.

17 Ibid.

18 Interview with Charles Francis (17 March 2005).

19 Donald, above n 16, 79.

20 See, eg, 'Move Against Ex-footballer', *Herald* (Melbourne), 20 March 1953 and 'Ex-Footballer's Tackles Require Judge's Permit', *Truth* (Melbourne), 4 April 1953, 4.

21 In the late 1930s Collins ran the electroplating business from a large galvanised shed at the rear of his parents' property at 588 Nicholson Street, Carlton. He employed six men, a number of whom were ex-footballers. The business made sports trophies, silver trays etc: Interview with Jack Campbell (1 October 2007). Campbell was apprenticed to Collins between 1934–39.

22 See Victorian Department of Sustainability and Environment, Certificate of Title Volume 5100 Folio 934. The Transfer was registered on 10 June 1936 and shows Collins bought the property without need for a mortgage. His occupation was Electroplater.

23 Possibly he met her at O'Shea's Dancing School in Swanston Street, Melbourne. It was at the Saturday night classes in 1934 that he met Jack Campbell whom he later offered a job as an apprentice in his electroplating business. Campbell had the distinct impression that Collins was 'looking for a wife'. Campbell, above n 21.

24 Victoria registered death 17817/1982, above n 11. The certificate lists the names of the children as John, Janice, Harold and Irene.

business, membership of the Fitzroy Football Club Committee,[25] socialising with mates from his football days[26] and life with a young family. Dark clouds, however, loomed on the horizon and Collins' life would start to disintegrate.

III WHEN IS A FENCE NOT A FENCE AND THE BIRTH OF A GRIEVANCE

In 1947, aged 46, Collins had leased a narrow vacant block of land at 404 High Street, Northcote, on which to store used vehicles. Opposite a local cinema, it was also bordered by a laneway and went through to the street behind.[27] The collection of old cars and trucks that rapidly built up on the site was an irritation to other local businesses[28] but it was Collins' own fencing of the site that brought him into major conflict with the Northcote Council. Relations between the Council and Collins had started to deteriorate in July 1947 after complaints that Collins was storing business materials at his home, 29 Andrew Street. It had brought a visit from the local Health Inspector followed by a written rebuke from the long serving and influential Town Clerk, John Thomson.[29] By November 1947 Thomson had become aware that Collins had fenced the High Street property without obtaining a permit. In a helpful tone he wrote:

> I have to inform you that under the Uniform building regulations, which are now in operation, you should have obtained a permit before proceeding with the erection of the fence.
>
> It is desired that you will submit a detailed specification to the Building Surveyor, and if he is satisfied with the specification a permit will be issued.[30]

Collins responded claiming that he had only erected gates and that an Inspector had informed him that a permit was not needed for gates.[31] In reply Thomson declined to comment on the Inspectors' statement and noted in any event 'it certainly does

25 Donald, above n 16, 79.

26 Wal Reid was a Fitzroy team-mate. He provided Collins with financial advice. His daughter recalls Collins as a mild-mannered man who was 'clever'. He came regularly to see her father: Interview with Val (Reid) Brooks (20 September 2006).

27 The site, owned by Johnson and McMillan Pty Ltd, was rented to Collins through a local real estate firm F W Stott and Son. According to a staff member of the time, Collins only ever paid one rental payment for use of the land and was eventually evicted: Interview with Jack Parks (6 April 2005).

28 PROV, above n 15, VPRS 3202/P0, Unit 65, Letter from Town Clerk to Collins, 12 March 1948. This was the start of a direct correspondence with Collins that would last until 1951 and number 31 letters. Further reference to letters from this source will be in short form of 'NCC Letters'.

29 NCC Letters, above n 28, Letter from Town Clerk to Collins, 2 July 1947. Thomson was a long time Council employee being first employed in 1906. He died in 1956. See Andrew Lemon, *The Northcote Side of the River* (1983) 255.

30 NCC Letters, above n 28, Letter from Town Clerk to Collins, 12 November 1947.

31 NCC Letters, above n 28, Letter from Town Clerk to Collins, 13 November 1948. This letter appears to have been misdated. The correct date would appear to be 13 December 1947.

not cover the iron fence you have erected on the lane'.[32] He went on to quote part of the 1945 Victorian Uniform Building Regulations:

> No fence on or within 10 feet of any street alignment (Street includes a lane) shall be constructed except in accordance with a plan and specification submitted to and approved by the Surveyor.[33]

Collins was given seven days to comply or face legal action.[34]

By March 1948 Collins had not complied. Instead, he had written an omnibus response to Thomson requesting a concrete crossing outside 29 Andrew Street, complaining about road conditions for trucks in Northcote and asserting that a Councillor had agreed that a permit was not necessary. Thomson sent a full but firm letter in reply and in a spirit of conciliation concluded: 'If you would care to see me I will be in the office on Monday morning and will be glad to discuss all your difficulties with you'.[35] Collins did not so care and later that month the Council authorised the Building Surveyor to prosecute him for erecting a fence without a permit.[36] The precise legal basis for the prosecution was somewhat confused and became a major grievance for Collins. In fact, the 1945 implementation of state-wide Uniform Building Regulations (UBR) had overtaken many of the provisions of earlier local by-laws upon which the Council relied, particularly by-law 34 as amended by by-law 72.[37] Collins would argue that these were invalid, having been superseded by the UBRs.[38] It also sowed the seeds of a grievance that would later be characterised by one appeal judge as 'genuine'.[39]

The prosecution reached the Northcote Petty Sessions Court on 4 May 1948. Francis Lonie prosecuted. His firm of Maddock, Lonie and Chisholm (Maddocks), local government specialists, were the Council's solicitors. Council Engineer Alan Hill and Building Inspector Alexander McKinnon gave evidence that the fence was not only constructed without a permit but part of it was corrugated iron and second-hand timber and was 'jerry built'.[40] All these parties found themselves embroiled in the subsequent litigation.

Collins conducted his own defence. Not only had he used new timber, 'he had not constructed a fence at all, but gates, which swung open to allow for trucks

32 Ibid.

33 Ibid.

34 Ibid.

35 NCC Letters, above n 28, Letter from Town Clerk to Collins, 12 March 1948.

36 Darebin City Council, 'Minutes of Northcote City Council', 51. This source is located with Darebin City Council at Preston. Further reference to these Minutes will be in the short form of 'NCC Minutes'.

37 NCC Letters, above n 28, Letter from Town Clerk to Collins, 10 August 1950. See also NCC Minutes, above n 36, 354.

38 Supreme Court of Victoria, File M2072, Affidavit of Goldsmith Collins (20 March 1953) [3]. Further reference to material from this file will be short form of 'Supreme Court file'.

39 *R* v *Collins* [1954] VLR 46, 58 (Scholl J). See also Graham Fricke, 'The Injustice Collectors' (1978) 58 *Australian Law Journal* 316.

40 'Contravention of Building By-Laws', *The Leader* (Melbourne), 12 May 1948, 14.

to be driven out'. He told the court that the entire frontage was made of gates.[41] The Court did not agree. It was a fence and it did not have a permit. Collins was fined £5 and £3/10/6 in costs.[42] The local paper introduced its story on the case with the opening lines: 'When is a fence not a fence? "When it is a gate", said Goldsmith Collins'.[43]

Collins did not accept the decision and had it reviewed in the Supreme Court. Subsequent interventions suggest that a young barrister, Murray McInerney,[44] represented him and that another barrister, John Norris,[45] was on the other side. Although McInerney does not appear to have played an active role thereafter, Collins came to see Norris as an arch enemy. In any event, it was probably the last time Collins was represented. The case came before Fullagar J on 21 July 1948 but was dismissed.[46] An aggrieved Collins promptly mailed his own Notice of Appeal to the Melbourne Registry of the High Court foreshadowing an appeal, a practice that he would follow for the next 25 years.[47] He also posted a copy to the Council, although for some reason he did not pursue the appeal.[48] In the meantime, he sought to have the Council withdraw the enforcement of the fine but was unsuccessful. Thomson replied to the request saying that it 'was not within the Council's authority' and suggested Collins have McInerney contact the police.[49] For the next year things were quiet but by June 1949 the continued presence of the fence had become too much for the Council. On 6 June 1949 they ordered its demolition.[50]

The demolition a few days later caught the interest of the local community. The local paper recorded the event:

> Residents are speculating on the story 'behind the fence'. Last Thursday morning a fence around a vacant High Street block on which there were a

41 Ibid. Collins argued that each gate was independently affixed in front of each car and was thus not a fence. See also 'Damages Action Fails', *The Leader* (Melbourne), 21 June 1950, 16.

42 'Damages Action Fails', *The Leader* (Melbourne), 21 June 1950, 16.

43 Ibid. The case would later be used by author Frank Hardy as the basis for the central character in a book. See Frank Hardy, *Warrant of Distress by Oscar Oswald* (1983) 6–7.

44 Although McInerney does not appear to have played an active part in the Collins litigation hereafter, for Collins, he remained 'one of the few gentlemen I have met in my hectic course in the law'. See Supreme Court File, above n 38, Affidavit of Goldsmith Collins (20 March 1953) [3]. Murray Vincent McInerney (1911–1988) was a Supreme Court Justice from 1965 to 1983. He was knighted in 1977.

45 Supreme Court File, above n 38, Affidavit of Goldsmith Collins (20 March 1953) [3]. John Norris (1903–1990) served on the Supreme Court from 1968 to 1975. He was knighted in 1981. His daughter Rosemary Balmford also served on the Supreme Court from 1996 to 2003.

46 The decision was unreported but is referred to in a memorandum of the then Principal Registrar of the High Court. See High Court of Australia, Canberra, File 80/0452, Memorandum of Principal Registrar Hardman (13 May 1952) [1]; hereafter 'Hardman Memorandum'. Further reference to this source will be in short form of 'High Court file'.

47 Commonly, Collins would push his papers across the Registry counter with the filing fee and promptly leave. Interview with Frank Jones (High Court Registrar 1980–95) (26 February 2005).

48 High Court file, above n 46, Hardman Memorandum (13 May 1952) [1]. See also NCC Letters, above n 28, Letter from Town Clerk to Collins, 4 August 1948.

49 NCC Letters, above n 28, Letter from Town Clerk to Collins, 20 May 1948.

50 NCC Minutes, above n 36, 354. The fence was demolished on 9 June 1949. See further NCC Letters, above n 28, Letter from Town Clerk to Maddock, Lonie and Chisholm, 31 July 1950.

> number of old cars etc, was removed by a council gang. Parked nearby was a truck covered with placards and slogans. The workmen, after demolishing the fence, loaded it onto a lorry and drove off. The placard truck was seen around the streets for some time. On Friday morning, the fence was back around the allotment. It seems likely that there will be some legal reverberations over the matter.[51]

Reverberations there were. Once more the Council directed a prosecution, again based on by-law 'No 34 of the City of Northcote as amended by By-law 72'.[52] When the prosecution reached the Northcote Court in July 1949 it was a rerun of the issues argued 12 months earlier and with the same players. Francis Lonie prosecuted saying that the Council took a serious view of the matter as they considered Collins was 'defying them'.[53] Building Inspector McKinnon again told the court of a 'weird contraption' made partly of rusty iron wired to vehicles and partly of wired netting with the High street frontage consisting of folding concertinaed steel. It was 'dilapidated and dangerous, and an eyesore'.[54] City Engineer Hill gave evidence that the fence did not comply with the Council's regulations, it did not have a permit and Collins had constructed the fence without first submitting plans. Collins, again representing himself, said he had not erected a fence, as it was 'a gate, or series of gates'.[55] The Bench thought otherwise and again convicted and fined Collins £30 and £3.6s costs. Once more and ominously, Collins wrote to Thomson indicating he would take action to 'restrain' the Council.[56] He did, commencing three Supreme Court actions. The first sought a further review of the convictions and the second an order that the Council allow him to fence his property and otherwise not interfere in his business. These did not come before that court until June 1950.[57] The third, a damages action, would lapse in 1951.[58]

IV FURTHER COURT BATTLES AND THE DESCENT INTO LITIGATION

By 1950, Collins' life had become complicated. Under eviction pressure at 404 High Street for non-payment of rent,[59] he was also in trouble with the Council on two new fronts. First, he had flagged his intention to carry out his own electrical works at 18 Walker Street, Northcote, a property he had recently purchased abutting the Merri Creek. He required the Council, as the relevant electrical authority, to

51 'Story of a Fence', *The Leader* (Melbourne), 15 June 1949, 13.

52 NCC Minutes, above n 36, 365.

53 'Fence was an Eye-sore', *Leader* (Melbourne), 3 August 1949, 3.

54 Ibid.

55 Ibid.

56 Ibid. See also NCC Letters, above n 28, Letter from Town Clerk to Collins, 27 July 1949.

57 High Court file, above n 46, Hardman Memorandum, [2].

58 Supreme Court file, above n 38, Affidavit of Francis Hay Lonie (March 1953) [6].

59 The landlords Arthur Adamson and Co would obtain a formal possession order in June 1951 but Collins would appeal it through to the High Court. See High Court file, above n 46, Hardman Memorandum, [3]. See also NCC Letters, above n 28, Letter from Town Clerk to Collins, 4 August 1948.

connect the premises. They hesitated, as it was a condemned property under s 10 *Slum Reclamation and Housing Act 1938* (Vic).[60] Collins not only rejected the invitation of Thomson to come and discuss it, he also irrelevantly complained about the use of the Council's bulldozer for carrying a piano from the town hall.[61] More significantly, he had erected another fence, this time at Walker Street and Thomson wrote requesting an explanation 'why you should not be prosecuted for carrying out the work without a permit and contrary to the regulations'.[62] Collins wrote two letters in response and accused Thomson of libelling him in his letters.[63] On 19 June 1950 the Council resolved to once more bring a prosecution.[64]

Collins was also busy in court. On 8 June 1950, Herring CJ in the Supreme Court had dismissed, with costs, Collins' further attempt to review his convictions, particularly his infringement of by-law 72. An application in the High Court for special leave to appeal that decision, made later that day, was also dismissed. Kitto and McTiernan JJ did, however, rule that a fresh application could be made if Collins was 'advised by counsel that there were other grounds open in addition to whether the structure was a fence'.[65] The following week, on 15 June 1950, back in the Supreme Court, Dean J dismissed the earlier applications for orders compelling the Council 'to permit him to erect fences and gates' and an injunction restraining the 'Council from interfering with his business'.[66] To Dean J they were 'frivolous and an abuse of the processes of the court'. Again costs were awarded against Collins.[67]

Collins now went further on the attack and commenced multiple proceedings against the Council, its officers and legal representatives. It is probable that by this time he had linked up with Rupert Millane and was receiving tactical advice from him. Certainly, in this period they were regularly seen together in and around the Supreme Court. Millane was the courteous one, often with a flower in his lapel, while Collins, head down and carrying a suitcase bulging with papers, wore a full-length dustcoat and radiated hostility.[68] Further, the legal 'modus operandi' of Millane is evident in the Collins litigation. Millane repeatedly turned prosecutions by Council officers back on them by taking them to court. He also became fixated on a particular legal point as if it was a 'silver bullet'. Notably, in his case it was that the *Carriage Act 1915* (Vic) had not been repealed by the passage of the *Omnibus*

60 NCC Letters, above n 28, Letter from Town Clerk to Collins, 14 April 1950. In 1958, the Housing Commission would eventually take over the site and build low-income housing (flats). See also NCC Letters, above n 28, Letter from Town Clerk to Maddock, Lonie and Chisholm, 14 July 1950 and Victorian Department of Sustainability and Environment, Certificate of Title Volume 1619 Folio 716.

61 NCC Letters, above n 28, Letter from Town Clerk to Collins, 20 and 26 April 1950.

62 NCC Letters, above n 28, Letter from Town Clerk to Collins, 18 May 1950.

63 NCC Letters, above n 28, Letter from Town Clerk to Collins, 26 May 1950.

64 NCC Minutes, above n 36, 590.

65 High Court file, above n 46, Hardman Memorandum, [3].

66 'Damages Action Fails', *The Leader* (Melbourne), 21 June 1950, 16.

67 Ibid.

68 Interview with Barney Cooney (25 February 2005); Gordon Spence (9 March 2005); Philip Opas (16 and 21 March 2005); Charles Francis (17 March 2005); Edward Woodward (1 February 2006). See also Francis, above n 3, 20.

Act 1924 (Vic).[69] Both these approaches are evident in the Collins litigation from this point onwards.

On 3 July 1950 the Council was advised that Collins had issued further Supreme Court proceedings against them and Maddocks, claiming £10,000 damages for 'alleged malicious and fraudulent proceedings' relating to the prosecutions for breaches of the building regulations.[70] Later that month, Maddocks applied in the Practice Court for an order that the action be stayed as 'frivolous, vexatious and an abuse of the court'.[71] When the applications came before Barry J he quickly showed his impatience with Collins, further entrenching Collins' sense of grievance:

> His Honour: I am not interested in what you have done at the court of petty sessions. This endorsement on your writ is sheer rubbish. You are merely bringing trouble on yourself and no good to anyone the way you are going on. On the endorsement you have a lot of gibberish.
>
> Collins: I resent that your Honour.
>
> His Honour: Look, you will be dealt with in a minute. You are making yourself a vexatious litigant and you have been shown great consideration by the Judges.
>
> Collins: You said that before your Honour.
>
> Mr Justice Barry then sent for the sheriff, who sat in the court until the proceedings concluded.[72]

Barry J then proceeded to stay the action as not disclosing a cause of action, with costs against Collins.[73] A week later Collins identified a new opportunity. He realised that the solicitors for the Northcote Council had failed to file a formal notice of appearance[74] and promptly applied to Barry J to have him set aside his earlier decision and then to enter a default judgement against the Council for half the claim, £5000. Barry J would have none of it. He allowed the Council to enter an appearance and then confirmed his earlier order. He told Collins that he might end up in the Bankruptcy Court if he persisted in litigation without consulting a solicitor.[75] In reply, Collins told him that he was a man of 'independent means' and anyway, a leading firm of solicitors 'had told him he needed no legal assistance'.[76]

69 See Lester and Smith, above n 2.

70 NCC Minutes, above n 36, 603.

71 'Judge Tells Litigant he is Vexatious', *Age* (Melbourne), 19 July 1950, 4.

72 Ibid.

73 'Writ Dismissed as Being Frivolous', *The Leader* (Melbourne), 2 August 1950.

74 At the time, Gordon (later Judge) Spence was an Articled Clerk with Maddock Lonie and Chisholm. When the writ was served he was sent to file the formal Notices of Appearance. In error he filed two for Maddocks and none for Northcote Council. Francis Lonie identified the error: Interview with Gordon Spence (9 March 2005).

75 'Footballer Litigant Told of Bankruptcy Danger', *The Sun* (Melbourne), 25 July 1950, 23.

76 Ibid.

This is a contrast to Rupert Millane who was not adverse to representation when he could either afford or obtain it.[77]

Earlier, on 12 July 1950, Collins had called on Thomson and served him with local court information.[78] Two days later he returned and served three more summonses.[79] One summons related to Collins' view that the Council (and Engineer Hill) had, as the supplier, failed in their statutory duty to supply electricity to Walker Street. Another alleged that the High street 'fence' prosecutions were invalid. The remaining summons claimed a breach of statutory duty by the Council in failing to supply him with copies of by-laws 34 and 72.[80] Supply of the by-laws was a problem for the Council as they were out of print. This followed the passage of the UBRs that had overtaken most, but not all, of their provisions. All through August, Collins embarked on an aggressive exchange of letters with Thomson, insisting on supply of a copy of by-law 72.[81] In response the Council arranged a reprint but also foreshadowed a consolidation of the by-laws.[82] When the summonses came to court in September 1950 three were dismissed but the Council was found to have breached its statutory duty to provide a copy of by-law 34 (as amended by by-law 72). Even then the Court dismissed that breach as a 'triviality'. It would be the only case that Collins would 'win' of the 15 he brought in this period in the Northcote Court.[83]

Collins was, however, not finished. He took the dismissals on review to the Supreme Court only to have them again dismissed in March 1951.[84] Whilst they were pending, he complained to Thomson about uncovered rubbish at the local tip,[85] issued four more local court summonses against Council employees Hill and McKinnon for alleged offences[86] and issued three more writs against Maddocks and barristers such as Philip Opas who had appeared on behalf of the Council. All would lapse or be struck out in 1951.[87]

For its part, the Council was also busy. Almost fearlessly, given what had occurred to date, they had informed Collins that his keeping of 12–14 used cars at the Walker Street premises was in breach of by-law 90 prohibiting the operation of a

77 See, eg, *Millane v Shire of Heidelberg* [1936] VLR 8.

78 NCC Letters, above n 28, Letter from Town Clerk to Maddock, Lonie and Chisholm, 12 July 1950. An 'information' was the normal method of instituting criminal proceedings in the Magistrates Court. Commonly, they were issued on oath.

79 NCC Letters, above n 28, Letter from Town Clerk to Maddock, Lonie and Chisholm, 14 July 1950.

80 Ibid.

81 In the period 8 August 1950 to 12 September 1950 he wrote 12 letters.

82 NCC Letters, above n 28, Letters from Town Clerk to Collins, 10 August 1950 and 6 September 1950.

83 NCC Minutes, above n 36, 294. See also 'Ex-Footballer's Legal Tackles Require Judge's Permit', *Truth* (Melbourne), 4 April 1953, 4.

84 The decision was not reported in the law reports. See also 'Ex-Footballer's Legal Tackles Require Judge's Permit', *Truth* (Melbourne), 4 April 1953, 4.

85 NCC Letters, above n 28, Letter from Town Clerk to Collins, 15 August 1950.

86 NCC Minutes, above n 36, 294.

87 Supreme Court file, above n 38, Affidavit of Francis Hay Lonie (March 1953) [8]–[9]. Interviews with Philip Opas (16 and 21 March 2005).

business in a residential area.[88] More significantly, they accepted Francis Lonie's advice that all the Collins papers be submitted to the legal department 'with a view of obtaining an order to prevent Mr Collins continuing his actions'.[89] They had in mind an application by the Attorney-General to the Supreme Court under s 33 of the *Supreme Court Act 1928* (Vic) to have Collins declared a vexatious litigant. This would ban him from issuing new legal proceedings without obtaining prior judicial permission. Barry J had first raised this prospect publicly in 1950. It would take a further two years before the state Attorney-General would act. In the meantime Collins was busy on other legal fronts.

V JUNGLE LAW IN VICTORIA

By June 1951, Collins' was giving less attention to his business and it declined as he became consumed by litigation. The volume and range of his output across the Northcote Petty Sessions and Supreme and High Courts was extraordinary as evidenced by the large number of rough, self-typed foolscap size affidavits, notices of motion and various appellate documents contained in the files of those courts. For a self-taught litigant, his take-up of legal jargon and procedures, albeit defective, was impressive. Again it appears likely that Millane was a tutor and both used the Supreme Court Library extensively in search of legal precedents to support their cases. Millane placed great store on English legislation that had survived in Victoria after the passage of the *Imperial Acts Application Act 1922* (Vic)[90] while Collins favoured the *Magna Carta*.[91] Unlike the courteous Millane, Collins was a rude, even hostile, library user, so much so that, on 1 October 1951, the Library Committee (made up mainly of Supreme Court Judges) banned self-represented litigants from using the library facilities. The new rule made it clear that if litigants needed books for use in court 'they may apply to the Library staff who will send into court for them'.[92] Though it was still possible for Collins to roam round the corridors of the court seeking assistance from court officials, judges' associates and sympathetic barristers, it was the start of a further grievance. Collins also tried the patience of the small establishment of Supreme Court Judges.[93] Some were more patient that others as a former associate to Herring CJ recalled:

> The Chief Justice listened at length to Collins' hopeless argument and, as we came out of court, I asked him why he'd been so patient. He said, 'I think it's

88 NCC Letters, above n 28, Letter from Town Clerk to Collins, 6 September 1950.

89 NCC Minutes, above n 36, 294; NCC Minutes, above n 36, 301.

90 Lester and Smith, above n 2, 5–6.

91 See eg High Court file, above n 46, Affidavit of Goldsmith Collins (12 December 1951) [3].

92 *Collins v The Supreme Court Library Committee* [1953] VLR 161, 166 (Gavan Duffy J). See also 'Claim on Judge Rejected', *Herald* (Melbourne), 13 October 1952. There is no record of the ban having ever been rescinded.

93 At that time, statute limited the number of judges to nine. In 1952–3 they were: Herring CJ, Lowe J, Gavan Duffy J, Martin J, O'Bryan J, Barry J, Dean J, Sholl J and Smith J. There were two acting appointments whilst permanent judges were on leave. They were Coppel AJ and Hudson AJ.

> very important that everyone who comes to the courts should go away feeling that they've had a fair hearing, and that applies even to Goldy Collins'.[94]

By December 1951, however, the patience of the Supreme Court had started to run out. The catalyst was the filing of an affidavit by Collins expressing dissatisfaction at the recent dismissal by Dean J in the Practice Court of a number of his applications.[95] Over seven paragraphs Collins vented his frustration with the court. He had no doubt 'that British Justice and *Magna Charta* [sic] were almost forgotten and a lost cause in this Court as far as I and other litigants in person were concerned'.[96] Further, it was his considered opinion that 'the judges of this court have shown deliberate undisguised biased hostility and prejudice against me as a litigant in person'.[97] He went on to conclude with passion:

> That by reason of the above and many more serious actions by judges to be fully set out in my book on my experiences in litigation Jungle Law in Victoria including numerous unwarranted and unsustainable untrue personal attacks on me, I have for some time now abandoned almost all hope of being properly heard and of getting fearless and impartial justice in the Court and verily believe that in a number of cases the behaviour and methods of conducting the proceedings by some of the said Judges amounts to nothing less than a biased judicial condonation of perjury, fraud, and actual felonies on the part of the Council of the City of Northcote, its officers Thomson, Hill, McKinnon and Solicitor F H Lonie of Maddock Lonie and Chisholm and I verily believe one leading Barrister.[98]

This was too much for the court. Collins was reflecting 'on the integrity propriety and impartiality of the Justices' and lowering 'the authority of this Honourable Court'.[99] Specifically, he was 'scandalising' them.[100] In January 1952, under instructions from Crown Solicitor Frank Menzies, 'Mr Nelson of Counsel for His Majesty the King' obtained an *Order Nisi* from Coppel AJ that Collins show cause why he should not stand committed for contempt.[101] Before the matter returned to the Court, however, Collins lodged a notice of appeal[102] with the High Court forcing

94 Herring was Chief Justice from 1944 to 1964. See Edward Woodward, *One Brief Interval* (2005) 39 and Interview with Sir Edward Woodward (1 February 2006). See also Robert Coleman, *Above Renown: Biography of Sir Henry Winneke* (1988) 240–1.

95 High Court file, above n 46, Affidavit of William Harkness McLorinan (22 January 1952).

96 High Court file, above n 46, Affidavit of Goldsmith Collins (12 December 1951) [3].

97 High Court file, above n 46, Affidavit of Goldsmith Collins (12 December 1951) [4].

98 High Court file, above n 46, Affidavit of Goldsmith Collins (12 December 1951) [6]. There is no record of Collins ever having completed or published 'Jungle Law in Victoria'.

99 High Court File, above n 46, Affidavit of Albert George Booth (5 May 1952) [2].

100 Historically, the little-known offence of contempt of court by scandalising is the way the judiciary dealt with publications that they believed undermined public confidence in the administration of justice. In recent years the 'offence' has been subject to academic and practitioner critique as being inconsistent with a system of open justice and principles of freedom of speech. See Henry Burmester, 'Scandalising the Judges' (1985) 15 *Mebourne University Law Review* 313; Oyiela Litaba, 'Does the "Offence" of Contempt by Scandalising the Court Have a Valid Place in the Law of Modern Day Australia?' (2003) 8 *Deakin Law Review* 113. See also *Gallagher v Durack* (1983) 152 CLR 238.

101 High Court file, above n 46, *R v Collins,* Order of Coppel AJ (24 January 1952).

102 High Court file, above n 46, *R v Collins,* Notice of Appeal (11 February 1952).

Solicitor-General Menzies to seek dismissal of the appeal as incompetent.[103] This caused delay,[104] and when the contempt proceedings came before Herring CJ, Collins escaped gaol, receiving a formal a conviction and costs order.[105]

It was now the turn of the High Court to respond to the activity of Collins.

A *A High Court First and Collins Responds*

In the 1950s, the Principal Registry of the High Court was in Melbourne's Little Bourke Street, immediately adjacent to the Supreme Court. Installation of electronic security was still half a century away and it was possible to enter and leave the Supreme Court through its many side doors. Accordingly, for self-represented litigants such as Millane and Collins, it was a simple matter to stroll out of the Supreme Court and through the front door of the High Court to file papers or make an ex parte application. This was particularly so on a Friday, 'Motions Day'.[106] For his part, Collins had been filing applications and affidavits with the High Court Registry since 1948, although his only (unsuccessful) court hearing had been in that year. Principal Registrar James Hardman,[107] however, had watched with increasing concern the growing frequency of Collins' filings. Between October 1951 and April 1952 he had filed 10 separate appeal applications. Closely typed and increasingly strident, all had stalled because of a failure to lodge supporting documentation such as appeal books.[108] In two cases, however, his opponents brought their matters before the court. One was Solicitor-General Menzies' application to strike out the appeal against the order of Coppel AJ as incompetent and the other, an application on behalf of Arthur Adamson Pty Ltd to strike out an appeal 'for want of prosecution'. Adamson's case related to their attempts to repossess land in Northcote on which Collins had parked a truck.[109] Conveniently, Hardman listed both matters before the court on the same day in June 1952. Collins lost both and they were dismissed with costs.[110]

Hardman then acted. He was aware that the High Court Rules had been specifically amended in 1943 to give the Court power to ban litigants bringing unsuccessful proceedings 'frequently and without any reasonable ground'. Once an order was made, a litigant needed judicial leave before instituting new proceedings.

103 High Court file, above n 46, *R v Collins,* Notice of Motion (5 May 1952).

104 The appeal was struck out with costs on 2 June 1952. See High Court of Australia, Canberra, Full Court Minute Book, Volume 11.

105 *R v Collins* [1954] VLR 46, 56 (Sholl J) and 'Four Months' Gaol for Contempt', *Herald* (Melbourne), 20 October 1953.

106 Interview with Frank Jones, High Court Registrar 1980–95 (24 February 2005). The ability to make ex parte oral applications for special leave was restricted in 2004 with changes to the High Court rules of procedure. This saw applications from litigants in person (mainly immigration matters) being considered 'on the papers' from 1 January 2005. See *High Court Rules 2004* (Cth) 41.10. The High Court Principal Registry moved to Canberra in 1980.

107 Principal Registrar 1943–57.

108 High Court file, above n 46, Hardman Memorandum.

109 Ibid.

110 High Court of Australia, Canberra, Full Court Minute Book, Volume 11 (2 June 1952).

Significantly, the rule gave the Principal Registrar standing to initiate the proceedings.[111] Although it had never been used, Hardman had been preparing to activate it. This is evidenced by a full memorandum on Collins he prepared in May 1952, headed 'In the Matter of a Proposed Application by the Principal Registrar of the High Court Under Order XLIVA of the Rules of Court'. Thus, on 13 June 1952, 11 days after the Full Court had dismissed the two appeals, Mr R L Gilbert of counsel moved an application to declare Collins a vexatious litigant. A newspaper report of the time indicates the unusual nature of the hearing:

> Collins came to the Bar Table to conduct his case and placed a suitcase on a chair. He refused to move the suitcase when Mr Justice Williams asked him to put it on the floor. When ordered to move it he left the court but reappeared in the public benches and said he would take notes. Mr Justice Williams said that if he did not wish to conduct his case at the Bar Table, he could leave the court. Collins replied that he was exercising his right as a private citizen to be in court. He left when Mr Justice Williams warned: 'If you proceed in this way I will have you arrested for contempt of court. Now don't be foolish.'[112]

Nonetheless, Williams J was convinced and on 13 June 1952 Goldsmith Collins became the fourth Australian to be declared a vexatious litigant and the first by the High Court.[113] He was 51 years old. The basis of the order, although it did not make the law reports despite its legal significance, was three dismissed actions and nine incomplete actions since 1948.[114] It was not, however, the end of Collins' involvement with the Court. Within days he was back at the Registry seeking to file further appeal documents particularly in the Adamson matter. He had formed a view, backed by recent obiter of Gavan Duffy J in the Supreme Court, that an appeal was not 'proceedings'.[115] Nonetheless, Deputy Registrar Doherty refused to accept the documents based on the order of Williams J. As a result, Collins left the papers and the filing fee on the counter and left.[116] This became a common 'filing'

111 Order 44A was introduced on 9 March 1943. The relevant rule is now *High Court Rules 2004* (Cth) reg 6.06. The insertion of the original rule was prompted by a series of writs issued by a group of Tasmanians in 1942 against Latham CJ, McTiernan, and Starke JJ. The group believed, inter alia, that there should be reform of the monetary system and that War Loans were unnecessary. Their activities also led to a special wartime Board of Enquiry. Despite the introduction of the provision vexatious litigant proceedings were not brought against any members of the group. See Frank Jones and James Popple, 'Vexatious Litigants' in T Blackshield, M Coper and G Williams (eds), *The Oxford Companion to the High Court* (2002) 698–9; 'Vexatious Litigation' (1943) 17 *Australian Law Journal* 9.

112 'Ex-Fitzroy player ordered from court', *Sun* (Melbourne), 14 June 1952, 11; 'Made Attacks on Judges', *Herald* (Melbourne), 13 June 1952.

113 High Court file, above n 46, Order of Williams J (13 June 1952). On 7 July and 29 August 1952 Collins sought to file documents launching an appeal against the order of Williams J. On both occasions the Registry refused to accept them. An irony here is that the original Order 44A had been inserted when Sir John Latham was Chief Justice. After he retired in 1952 he sold parts of his private law library. An 'enthusiastic Fitzroy supporter', he 'knocked down' a considerable part of it to Goldie Collins for a reasonable price. See Francis, above n 3, 21.

114 'Ex-Fitzroy player ordered from court', *Sun* (Melbourne), 14 June 1952.

115 *Arthur Adamson Pty Ltd v Collins* (Unreported, Gavan Duffy J, 18 June 1952).

116 High Court file, above n 46, Memorandum of Deputy Registrar Doherty (19 June 1952).

practice of Collins over the next 20 years.[117] In the meantime his dissatisfaction mounted at the way he had been treated.

By October 1952, his displeasure had converted to action. He wrote a handwritten and rambling letter of complaint to Dixon CJ referring to the 'vicious action of Hardman against me' and the observation that his treatment is because 'you think my name is Millane who has been treated so badly in his litigation'.[118] Dixon did not reply. The Supreme Court writ Collins had issued earlier in that month, however, brought a swift response from the High Court. It named as defendants all the principle participants in his declaration, namely Hardman, Gilbert, Commonwealth Crown Solicitor Bell and Mr Justice Williams. The endorsement on the writ claimed £50,000 damages for 'conspiracy, trespass and fraud'.[119] The resultant contempt proceedings brought by the Commonwealth Attorney-General saw Taylor J describe the allegations in the writ as 'truly scandalous and an unwarranted attack on the integrity, propriety and impartiality' of the High Court. He sentenced Collins, in his absence, to one month's gaol for contempt.[120] He further ordered that the warrant of committal lie in the Principal Registry until 10.30am the following day.[121] Presumably this was to satisfy natural justice and allow Collins the opportunity to respond. The next morning, Collins apologised unreservedly and undertook to discontinue the Supreme Court proceedings. Taylor J was satisfied that Collins had purged his contempt and stayed his earlier order, although he reserved liberty to the Attorney-General to apply for reinstatement of the committal warrant should Collins not comply with his undertakings.[122] Collins had narrowly escaped gaol again.

B *A Library Grievance Gathers Momentum*

The 1951 decision by the Supreme Court Library Committee to ban 'litigants in person' clearly targeted Collins.[123] It made it difficult for him to prepare his cases and became a further source of grievance. His response in August 1952 had been to issue a writ against the Committee in general and Sir Charles Lowe

117 Interview with Frank Jones, High Court Registrar 1980–95 (24 February 2005).

118 High Court file, above n 46, Letter from Collins to Dixon, 21 October 1952.

119 'Apology on Allegations in Writ', *Herald* (Melbourne), 30 November 1952.

120 Ibid.

121 High Court file, above n 46, Order of Taylor J (29 October 1952). The decision was not reported and there is no surviving transcript.

122 High Court file, above n 46, Order of Taylor J (30 October 1952). The file also contains copies of correspondence between the Principal Registrar and the Crown Solicitor's Office that makes it clear that Collins never formally discontinued the Supreme Court Action (No 2001 of 1952). The Attorney-General appears not to have pursued enforcement of the Warrant of Committal.

123 Collins was not the first vexatious litigant to fall into dispute with library authorities. In England the persistent and unsuccessful litigation of Alexander Chaffers led to the enactment of the first vexatious litigant sanction in the world, the *Vexatious Actions Act 1896*, 59 & 60 Vict, c 51. His litigation against the Trustees of the British Museum relating to his use of the reading room was cited as one of the prompts for the legislation. See Michael Taggart, 'Alexander Chaffers and the Genesis of the *Vexatious Actions Act 1896*' (2004) 63 *Cambridge Law Journal* 656.

specifically.[124] He alleged a fraudulent conspiracy between certain members of the Library Committee to exclude him and claimed a right to admission and use of the library.[125] Both the depth of his feeling against Sir Charles and his growing comfort with legal jargon is evident in his language claiming conspiracy:

> To purport and pretend to pass a resolution in breach of the statutory powers to exclude plaintiff particularly from the said Library and in further pursuance of the said conspiracy the said Sir Charles Lowe procured and induced and directed the said Librarian, the said Mr Coghill, to wrongfully and arbitrarily, on the authority of the said resolution, without notice on or about 30/7/51 in full view of the persons therein, order plaintiff to forthwith and immediately leave the said Library and further inform plaintiff that plaintiff thereafter, by reason of the said resolution, would have no further access to or use of the said Library and the contents thereof at the time when the plaintiff was preparing for the hearing of his action No. 745 of 2/8/51.[126]

Similarly, his claim of a right of access also displayed a level of comfort with legal concepts and the influence of Millane. One paragraph in his writ suggests that. To him the right was:

(a) An elementary and constitutional right being public property.

(b) An absolute right being provided for litigation and litigants and the administration of justice.

(c) A right by custom.

(d) An implied right.

(e) A right by licence with an interest.

(f) A right by licence.

(g) The elementary right of natural justice and impartiality.[127]

Sir Charles Lowe, no doubt uncomfortable by the presence of an action impugning the fairness of the court's officers, moved quickly to have it struck out as 'frivolous, vexatious and an abuse of the process of the court'.[128] The application came before fellow judge Gavan Duffy J on 28 August 1952 and, although himself a member of the Library Committee, no question of ostensible or actual bias appears to have arisen. He did, however, reserve his judgement until October 1952 when he provided a comprehensive review of the history of the Library and its source of power to exclude. He then referred to 'the extravagant and absurd nature of this pleading and the confused and misconceived claims therein'. Exercising

124 *Collins v The Supreme Court Library Committee* [1953] VLR 161.

125 Ibid.

126 *Collins v The Supreme Court Library Committee* [1953] VLR 161, 166–7 (Gavan Duffy J).

127 Ibid 162.

128 Ibid 161.

the court's inherent jurisdiction[129] he then 'forever stayed' the action.[130] Collins did not accept the decision and continued to assert a right to use the Library until 1953 when he shifted his major research efforts to the legal section of the State Library. There he would meet other self-represented litigants and provide assistance. One, Constance Bienvenu, in 1972 became the second person declared a vexatious litigant in the High Court.[131] Meanwhile, Collins was about to become a defendant again.

C *Victoria Acts, that 'Felon' Norris and a Declaration*

Since early 1951, Solicitors for the Northcote Council had been pressing the Victorian Attorney-General to seek an order declaring Collins a vexatious litigant. Despite the involvement of the local member and former Premier, Jack Cain MLA, the response had been that the 'Council's application is receiving attention'.[132] In early 1953, however, despite the failure of his action against the Library Committee, Collins returned to the Supreme Court Library. This triggered action. The statement that Librarian Eustace Coghill prepared for the Library Committee about the incident captured the moment:

> [A]t about 10am, Goldsmith Collins came into the Library, entered my room, and said to me 'Are you a public servant?' I said – 'That is a question of definition. I am not appointed or paid by the government, but I try to serve the public.' He then entered into a discussion of the Privy Council case (whose name he could not recall) on the effect of a court sitting behind a door marked 'Private', and suggested that it applied in Victoria because the Library door is marked 'Private'. We agreed as to the validity of Court Orders made in the conference room, but differed as to the last point. He then said – 'I have considered my position. I have a right to use this building. It is provided for the public. I will not leave until put out by the police".[133]

Later that day two policemen ejected Collins after the sheriff declined to assist in the absence of a formal court order.[134] Coghill immediately consulted the Crown Solicitor for advice and the next day reported to the Acting Chief Justice, Sir Charles Lowe about his discussions. It had been suggested that his Honour

129 *Cox v Journeaux (No 2)* (1935) 52 CLR 713.

130 *Collins v The Supreme Court Library Committee* [1953] VLR 161, 167 (Gavan Duffy J). See also 'Claim on Judge Rejected', *Herald* (Melbourne), 17 October 1952.

131 See Simon Smith, 'Constance May Bienvenu: Animal Welfare Activist to Vexatious Litigant', (2007) 11 *Legal History* 31, 56–7.

132 NCC Minutes, above n 36, 382. John 'Jack' Cain was a Member of the Legislative Assembly 1917–57 and Premier on three occasions: 1943, 1945–47 and 1952–55.

133 Supreme Court of Victoria, Librarians' File on Goldsmith Collins, Statement of E H Coghill (10 March 1953). The Supreme Court Library also holds the diary of Eustace Coghill but it adds no further information.

134 Ibid.

should formally request that Attorney-General Slater take action.[135] Two days later, the Library Committee met, and with eight of the nine permanent judges in attendance, endorsed that course of action.[136]

Events then proceeded swiftly. The following week, a barrister all too familiar to Collins, John Norris QC, appearing with John Young,[137] urged Hudson AJ to declare Collins a vexatious litigant under s 33 of the *Supreme Court Act 1928* (Vic).[138] Hudson was the only judge who had not sat on the Library Committee or on a Collins matter and was presumably viewed as unbiased. Relying principally on affidavits of Prothonotary McFarlane[139] and the Clerk of the Northcote Petty Sessions,[140] Norris outlined the facts. Collins had launched 31 actions in the Supreme Court since 1948. They had resulted in 71 hearings. Collins was successful only in one. In addition, he had issued nine writs that had not come before the court. Defendants had included High Court judges, Supreme Court judges, the Attorney-General, the Principal Registrar of the High Court, the Northcote City Council, lawyers, newspapers and public servants. Further, in the Northcote Petty Sessions, Collins had commenced 15 prosecutions and had only been successful in one. Defendants had principally been the participants in the 'fence case'.

Ever combative, by the time the application came before Hudson AJ, Collins had issued seven further writs. They included a claim for £10,000 damages from the publishers of 'Truth' newspaper for publishing 'malicious libels'; £10,000 from Sir Charles Lowe 'for intimidation assault and battery unlawful arrest of the Plaintiff in the Supreme Court Library on the tenth day of March 1953' and £100,000 from the Attorney-General, Crown Solicitor and the Library Committee for conspiracy and 'Ku Klux Klan tactics'.[141] This provocation was mild compared to what happened during the rest of the case:

> When Collins appeared in the Practice Court he asked for an adjournment saying that he was 'dopey' from drugs he took to fit him to contest the action. He walked to the back of the court and flung himself on a seat as though he had collapsed. Mr Justice Hudson adjourned the case until Monday. Collins then rolled onto the floor. The court crier went for a doctor, but when he came back Collins had disappeared. Court officials and reporters searched for

135 Supreme Court of Victoria, Librarians' File on Goldsmith Collins, Coghill to Lowe (11 March 1953). Ironically, the Attorney-General was again William Slater. In that role in 1927 he had introduced the original Vexatious Actions Bill designed to curb the litigation of Rupert Millane. It eventually became *Supreme Court Act 1928* (Cth) s 33. See Lester and Smith, above n 2, 8–9.

136 Supreme Court of Victoria, Minutes of Supreme Court Library Committee (13 March 1953). The Chief Justice, Sir Edmund Herring, was on leave at this time.

137 Young was Chief Justice 1974–91. He was knighted in 1975.

138 Supreme Court file, above n 38, Notice of Motion (16 March 1953).

139 Supreme Court file, above n 38, Affidavits of Rupert Duncan McFarlane (13 and 18 March 1953).

140 Supreme Court file, above n 38, Affidavit of Kevin Aloysius McDonald (12 March 1953).

141 Supreme Court file, above n 38, Affidavit of Rupert Duncan McFarlane (20 March 1953). See also 'Move Against Ex-footballer', *Herald* (Melbourne), 20 March 1953.

> Collins and found him in half an hour later in a small tower in the south west corner of the building. He left the building unattended.[142]

When the application resumed on the Monday, Collins persistently interjected. He was not impressed that his former 'opponent' Norris was now appearing for the Attorney-General and repeatedly called him a 'felon'. He also foreshadowed the issuing of an information against Hudson AJ for 'occasioning grievous bodily harm' and claimed he was biased and incompetent to deal with case. The response of Norris indicated awareness that Collins had mental health issues: 'This man should be confined either in a mental asylum or Her Majesty's gaol'.[143] Hudson AJ, however, had heard enough and on 27 March 1953, Collins, aged 52, became the third person to be declared a vexatious litigant by the Supreme Court and the first to be declared so in two jurisdictions. Although the law reports did not publish the decision, despite its unusual character, the newspapers did and with predictable headlines: 'Ex-ruckman barred from legal action',[144] 'Ex-Ruckman in historic court ructions'[145] and 'Ex-Footballer's Legal Tackles Require Judge's Permit'.[146] That said, the matter still had some distance to go.

D *Publication, More Contempt and Gaol*

During the course of the vexatious hearing, Collins produced three affidavits that he delivered either in open court or, through the court attendant, to the judge's associate. Although never read aloud, they offended Hudson AJ. At the end of the application he referred them to the Attorney-General for consideration.[147] Two weeks later, the Attorney-General successfully applied for an *Order Nisi* that Collins show cause why he should not be dealt with for contempt. His counsel argued that the two of the affidavits contained matter likely and calculated to lower the authority of the court and reflect on the judge's integrity and impartiality.[148]

When read together, the affidavits also show the increasing frustration of Collins with the legal system, his view that a conspiracy existed and his descent into 'litigant rage'. They also reflect indicators of both form and substance that Mullens and Lester regard as atypical of the court documentation of querulents.[149] His first affidavit was double-spaced and relatively respectful. It focused on the 'conduct of Mr J G Norris' in opposing him since 1948 and that Collins had observed him

142 'Court Flurry When Man Disappears', *Sun* (Melbourne), 21 March 1953, 5. There is some confusion over when and how Collins left the court. Another account suggests that he went to sleep on a bench in one of the courts only to awaken shortly before midnight. Only with some difficulty did he extract himself from the locked court buildings. See Francis, above n 3, 21.

143 '"Lock Up This Man", QC Urges', *Herald* (Melbourne), 23 March 1953, 3 and '"Ex-Footballer Should be Locked Up" – QC', *Sun* (Melbourne), 24 March 1953, 7.

144 *Argus* (Melbourne), 28 March 1953.

145 *Truth* (Melbourne), 28 March 1953, 21.

146 *Truth* (Melbourne), 4 April 1953, 4.

147 'Ex-Footballer's Legal Tackles Require Judge's Permit', *Truth* (Melbourne), 4 April 1953, 4.

148 *R v Collins* [1954] VLR 46; 'Contempt Order on Ex-Fitzroy Star', *Sun* (Melbourne), 11 April 1953, 5.

149 Mullen and Lester, above n 6, 336.

'speaking in an exuberant manner to a tall fair man whom I understand to be the press reporter for the Herald and the said reporter was taking notes on a writing pad'. It went on to canvass the 'fence case' and the library dispute before giving an indication of the mental turmoil in his life. He wrote 'I have been to [sic] ill to properly concentrate on my work and to do ordinary which should have been done weeks ago'.[150] However, it was the other two affidavits that raised the ire of the court and led to further contempt proceedings. One was sworn on 23 March and passed, but not read aloud, to Hudson AJ during that day's proceeding. Closely typed, rambling and with liberal use of capitals and epithets over two foolscap pages, it reflects Collins' growing rage. The heading indicated the nature of its contents:

> IN THE SUPREME COURT OF VICTORIA
>
> IN THE MATTER OF
>
> G COLLINS
>
> AND
>
> THE PENTRIDGE OFFICERS OUTSIDE THE COURT
>
> IN THE MATTER OF THE FAKED APPLICATION BY THE CROWN LAW DEPARTMENT AND
>
> J G NORRIS AND ONE YOUNG WITHOUT THE KNOWLEDGE OF THE ATTORNEY
>
> GENERAL AND WITHOUT ANY AUTHORISATION WHATEVER WITHOUT JURISDICTION
>
> I Goldsmith Collins of 29 Andrew St N'cote make oath and say:[151]

The body of the affidavit canvassed, in a confused way, the litigation over the 'fence case' and noted:

> The illustrious Crown law Department can only get a felon Mr Norris to make the application on the affidavit of another felon and the ordernisi [sic] referred to are generally about the failure to carry out the statutory duties of the Uniform Building regulations by the admitted felons Hill McKinnon and Thomson all of whom have knowingly put off to me knowing that they were wholly or partially invalid fraudulent bylaws and TEN informations (from memory) were dismissed in my enforced absence by Mr O'Connor S M at Northcote one day until I stated one day 'IT IS MY CONSIDERED

150 Supreme Court file, above n 38, Affidavit of Goldsmith Collins (20 March 1953).

151 Supreme Court file, above n 38, Affidavit of Goldsmith Collins (23 March 1953). The reference to the 'faked application' picks up on the unusual nature of the original passage of *Supreme Court Act 1928* (Vic) s 33, which fuelled the conspiracy theories of more than one vexatious litigant. First introduced by Attorney General Slater as the Supreme Court (Vexatious Actions) Bill 1927 (Vic) to counter the litigation of Rupert Millane, it was withdrawn that same year to allow further comment. This was at the suggestion of the Shadow Attorney-General, Maurice Blackburn. Then, in a hurry to enact the provision, rather than reintroduce the Bill, the government simply adopted in total the equivalent English legislation into the 1928 consolidation. See Smith, above n 131, 54–5.

> OPINION THAT YOU ARE ACTING IN COLLUSION WITH MR LONIE TO AVOID NORTHCOTE OFFICERS FROM BEING CONVICTED. HE DID NOT DENY IT'.[152]

Similarly, the third affidavit, sworn 27 March, was in the same format as the second and was even more strident. Passed to the judge through his associate, it canvassed similar territory. It concluded with Collins' view of the proceedings:

> I have been up practically all night composing this material despite my medical certificate and do not intend to further endanger my health or liberty by attending court to be made a further 'AUNT SALLY' for THE DELIGHTFUL MR JUSTICE HUDSON and the FELON NORRIS and the GESTAPO awaiting the order to DEAL WITH ME and the criminal press who are now more vitally concerned that I be prevented from taking action against them AND NOTHING CAN STOP ME MOVING THAT THEY BE ATTACHED FOR CONTEMPT OF COURT IN RESPECT OF THIS MATTER AND ALL MY ACTIONS IN THIS COURT (16 NOT 40) none of which have yet been tried or properly heard.[153]

The contempt hearing ran for five days before Sholl J.[154] Collins was not represented. Although the full background facts have been omitted from the law report, Sholl J concluded that there had been contempt but only after dealing at length with establishing that there had been 'publication' of the affidavits even though they had not been read aloud in court.[155] In his judgment Sholl J went on to suggest that there was some underlying medical explanation. Possibly this had been the evidence of a Dr Wilson, but the judgment does not elaborate as to who called the doctor and what his particular expertise was.[156] His Honour said of Collins: 'having observed him over a long period in the Courts, I regard him as a man with some sort of a persecution complex'.[157] He further noted:

> Collins' resentment at those [Northcote Petty Sessions] decisions lies at the root of all his subsequent offensive and eccentric behaviour in the courts. He also has a habit of imagining all kinds of slights which are not intended, and is prone to impute the worst motives to those who are opposed to him or have to adjudicate upon his cases. I take into account also the medical evidence of Dr Wilson, to which I have already referred, as to his nervous state, and also I take into account the circumstances of excitement and haste, principally

152 Ibid.

153 Supreme Court file, above n 38, Affidavit of Goldsmith Collins (27 March 1953).

154 The start of the contempt case was adjourned for a week as the Crown had difficulty in finding Collins to serve him with the papers. At one stage thought to be living at Kangaroo Ground near Eltham, he was not located there. See 'Crown had Trouble in Finding "Goldie" Collins', *Sun* (Melbourne), 22 March 1952.

155 *R v Collins* [1954] VLR 46, 52 (Sholl J).

156 Ibid 58.

157 Ibid. At that period the expression 'persecution complex' was understood by psychiatry to relate to the mental illness of paranoia. See Michael Gelder, Dennis Gath and Richard Mayou, *Oxford Textbook of Psychiatry* (2nd ed, 1989), 341 – 3.

> self-induced, under which apparently he prepared the affidavits of the 23rd and 27th March.[158]

And further

> He has in the past been treated with very great indulgence, because he has obviously been a litigant endeavouring to conduct his own cases under what I believe to be a genuine sense of injustice inflicted upon him in the original convictions of 1948 and 1949. It is apparent that he is a self-indulgent type of individual who seeks to justify his own failures by attributing them not to his own faults, but to the alleged wicked conspiracies and malice of other persons. He referred before me to his having been previously an athlete. If he was such, he has apparently lost the habit of accepting in good spirit decisions against him. In my opinion he will continue the behaviour of which the Crown complains unless he is on this occasion given a sharp lesson.[159]

On 17 July 1953, he sentenced him 'to be imprisoned in Her Majesties gaol at Pentridge for one month'. The order was stayed for a month while Collins considered an appeal to the High Court.[160]

E *More Gaol*

Collins' family life had now begun to disintegrate. As fines and costs mounted, so had Police attendances at 29 Andrew Street to enforce them.[161] One commentator noted the circumstances around one, possibly apocryphal, incident:

> On another occasion when the police arrived at his home one night to obtain Council fines, he instructed his wife to 'stop them'. Whilst Mrs Collins, Horatio-like and armed with a broom, held the bridge, Goldie went out the back door and over the fence.[162]

In early August 1953, as gaol loomed, Collins returned to the Supreme Court Library but refused to leave when requested. A frustrated Coghill brought the matter immediately before the Library Committee, this time including Hudson AJ. Somewhat indignantly, they resolved that a letter be written to the Attorney-General seeking assistance emphasising that 'the duty of regulating the Library falls on the Committee, and it is necessary that it should be supported in its decisions'.[163] Before the Attorney-General could respond to this mild rebuke, Collins was taken into custody but only after a struggle. In that incident he struck

158 *R v Collins* [1954] VLR 46, 57–8 (Sholl J).

159 Ibid 58.

160 Ibid 59. See also 'Ex-Football Star gets Month's Gaol: Contempt', *Sun* (Melbourne), 18 July 1953, 10.

161 One creditor was Arthur Adamson Pty Ltd which had evicted him from some land in Northcote. Trying to enforce their costs order they lodged a Writ of Fieri Facias against the title of 29 Andrew Street in 1954. It did not result in the sale of the property. See Victorian Department of Sustainability and Environment, Certificate of Title Volume 5100 Folio 934.

162 Francis, above n 3, 20.

163 Supreme Court of Victoria, Minutes of Supreme Court Library Committee (4 August 1953) and Librarians' File on Goldsmith Collins, Coghill to Attorney General (5 August 1953).

Detective Wilby, the arresting officer, and told him the arrest was 'unlawful' and that the Supreme Court Warrant of Commitment 'was not worth the paper it was written on'.[164] Even before he was released, the Crown had commenced further contempt proceedings based on Collins' 'interference with the administration of Justice'.[165]

When the case came before Dean J on 21 September, it continued to embroil others and test the patience of the court. Collins, now free,[166] did not appear. Instead, he sent a message to McInerney to tell him of the proceedings. This led to a robust exchange between McInerney and Dean J:

> Mr Justice Dean: Do you now appear for him?
>
> Mr McInerney: I have not had time to receive instructions.
>
> Either you appear for him or you do not – If you will take note, sir...
>
> No, I will not take note.
>
> After further exchanges in which Mr McInerney persisted in his attempts to be heard, Mr Justice Dean said:
>
> 'You have no right to be here. You are offending against the rules of the Bar. I will not hear you further.'
>
> When Mr McInerney protested at the charge that he was offending against the Bar, Mr Justice Dean replied:
>
> 'I did not mean to be offensive to you personally.'
>
> Mr McInerney then left the court.[167]

Dean J then sentenced Collins, in his absence, to a further four months' gaol for contempt.[168] There is no record of any subsequent intercession by McInerney.

It was almost predictable what happened next. When the Police went to Collins' home to execute the imprisonment warrant there was a further altercation. He kicked and resisted and was taken to Pentridge Prison where, surprisingly given the preceding circumstances, there is no indication of any mental health assessment having taken place.

When the resulting contempt proceedings came before Martin J in April 1954, Collins immediately harangued him. He said he had been 'knocked about by the warders at Pentridge since last Friday'.[169] He further alleged that the warders

164 'Collins in Court on Sept. 21', *Herald* (Melbourne), 8 September 1953, 11.

165 Ibid.

166 *Victoria Police Gazette* (Melbourne), 1953, 356. He was released on 23 September 1953. It appears likely that this was a separate sentence to the one imposed by Sholl J on 17 July 1953 that had been stayed for one month. Most likely it related to unpaid fines.

167 'Four Months Gaol for Contempt', *Herald* (Melbourne), 20 October 1953.

168 Ibid.

169 The case was not reported and there is no available transcript. See also 'Judge Ill as Man Talks him Down', *Sun* (Melbourne), 14 April 1954, 12.

seized his two suitcases of papers relating to the case. As a result he had to write his case notes on 'sanitary paper with a burnt match'.[170] From there the hearing deteriorated. Every time Martin J sought to say something Collins interjected in a raised voice leading the judge to observe: 'Every time you open your mouth you commit a contempt of court. You are the rudest man who has ever appeared before this court.'[171]

After a few more exchanges Martin J suddenly collapsed and had to be helped from the court. Herring CJ took over the hearing to adjourn it. As Collins was handcuffed and bundled from the court, his wife, Beryl Collins, said: 'The man's not well. He should not be here.' Collins replied as if to prove the point, 'The man's not well'.[172] Collins was released the next month[173] and the contempt proceedings adjourned *sine die* when he gave an undertaking to keep away from the Supreme Court building.[174]

By 1955, the combination of deteriorating mental health and absences in gaol and had resulted in Collins' business deteriorating further and he being unable to pay the rent for his Robbs Parade, Northcote, junk yard.[175] He was evicted. That was no easy task as the evening paper reported:

> By noon, six workmen had stacked six wrecked cars, a donkey engine, half a dozen car and truck engines and hundreds of tyres on the footpath. They used the loader, a crane and a truck for the job.[176]

In 1956 he was again in trouble with the law, this time for negligent driving. He was fined £20 and his licence cancelled at the Carlton Petty Sessions.[177] However, by March 1958 he was active across a number of jurisdictions and in a matter that represented a significant change of direction. His focus had moved from his own grievances to those of another, namely William John O'Meally. O'Meally, a convicted murderer, was awaiting a flogging sentence, coincidentally ordered by Hudson J (as he now was), for having escaped from custody.[178] Possibly identifying

170 Ibid.

171 Ibid.

172 Ibid. Martin J was seen by a doctor and after resting, went home.

173 *Victoria Police Gazette* (Melbourne), 1954, 356. He was released on 24 May 1954.

174 'Ex-Football Star gets 18 Months', *Sun* (Melbourne), 22 April 1958, 11.

175 Robbs Parade is located behind and across the road from the original yard at 404 High Street, Northcote.

176 'Goldie Collins Evicted', *Herald* (Melbourne), 19 September 1955. The following month an almost identical scenario was repeated with Rupert Millane when he was evicted from his Brighton tenancy. His property was also filled with used motor cars and old machinery. See Lester and Smith, above n 2, 11–12.

177 *Victoria Police Gazette* (Melbourne), 1956, 157. Later that year, after he failed to pay the fine and costs, a 'show cause' summons was issued and served in 1957 but it too appears to have lapsed. See *Victoria Police Gazette* (Melbourne), 1956, 237 and *Victoria Police Gazette* (Melbourne), 1957, 111.

178 O'Meally had been convicted in 1952 of the murder of Constable George Howell. His death sentence had been commuted to life imprisonment. In 1957 he escaped from prison only to be recaptured. Hudson J sentenced him to a further ten years' gaol and ordered twelve strokes of the 'cat'. He is the last person to have been flogged in Victoria. An appeal to the High Court was unsuccessful. See *O'Meally v R* (1958) 98 CLR 13.

with a fellow 'Hudson victim', Collins sought to intervene on his behalf. However, his attempt to issue a Supreme Court writ in the name of O'Meally against Hudson J and others, alleging a conspiracy to inflict grievous bodily harm on O'Meally, was unsuccessful. Similarly, his efforts to issue mandamus proceedings next door in the High Court to compel the Prothonotary to issue the writ also failed when Principal Registrar Doherty refused to accept the documents. Doherty knew him as a declared litigant.[179]

Collins then proceeded to Sydney by car to make similar applications. It led to a flurry of written exchanges between the Melbourne High Court registry and the New South Wales Supreme Court that enclosed copies of documents left in Melbourne by Collins 'on the Bench in No 1 Court'.[180] In Sydney, Collins actually issued a writ out of the Supreme Court, a jurisdiction where he had not been declared vexatious.[181] The NSW writ named as defendants, Chief Justice Herring of Victoria, the Attorney-General, the Solicitor General and Judges of the High Court. Collins next proceeded to post copies to the various defendants. Earlier, he had sent a similar one to 'Mr A F Lewis Private Secretary to the Chief Secretary and Attorney-General, Mr Rylah'.[182]

The Victorian Government was not amused. It immediately commenced more contempt proceedings. In its view, Collins had not only breached his 1954 undertaking not to enter the Supreme Court but had committed a further contempt by serving a 'bogus' writ on Lewis.[183] When the matter came before the court on 21 April 1958, Collins did not appear. Nonetheless, Pape J was in no mood for leniency. He said: 'I can see no prospect of leniency having any effect other than to make Collins think it is easy to flout the authority of this court.'[184]

He then sentenced him to eighteen months' gaol on the two charges.[185] Meanwhile, the proceedings in the New South Wales Supreme Court were quietly extinguished over the course of the next few months. In Victoria, lawyers for the Commonwealth advised Doherty that Sydney counsel had been briefed 'to advise of the best procedure to be followed to have the writ struck out with the least embarrassment to all concerned'.[186]

179 High Court file, above n 46, Doherty to District Registrar (Sydney) (19 April 1958).

180 Ibid. See also 'Ex-Footballer gets Gaol for Contempt', *Herald* (Melbourne), 21 April 1958, 1.

181 In fact, the New South Wales Supreme Court did not obtain the statutory vexatious litigant sanction until 1970. See *Supreme Court Act 1970* (NSW) s 84.

182 High Court file, above n 46, Order of O'Bryan J (31 March 1958). See also 'Ex-Footballer gets Gaol for Contempt', *Herald* (Melbourne), 21 April 1958, 1 and 'Ex-Football Star gets 18 Months', *Sun* (Melbourne), 22 April 1958, 11.

183 Ibid.

184 Ibid.

185 Ibid.

186 High Court file, above n 46, Renfrey (A/Secretary Commonwealth Attorney General's Department) to Doherty (6 November 1958).

VI A LEGAL MAVERICK IN THE BANKRUPTCY COURT

By April 1959, Collins, released from gaol, his financial affairs crumbling[187] and his marriage over,[188] was living in Sydney. With his fascination for things legal undiminished by his periods of imprisonment, he had continued to help, 'pro bono', other litigants. Styling himself as a 'Bankruptcy Agent' and 'Legal Technician', his next clients were brothers Thomas Clement Murray and John Charles Murray who had been declared bankrupt in 1956 following the collapse of their butchers business.[189] He met them in the Sydney Bankruptcy Court in April 1959 as they awaited oral examination. Collins had approached the brothers and said: 'There is a matter for conspiracy going on here and I will take your case up.'[190] Being unrepresented, they agreed and in April 1959 he unsuccessfully tried to issue a High Court writ for damages on behalf of John Murray. Defendants were bankruptcy judge Clyne J, Attorney-General Sir Garfield Barwick and the Commonwealth of Australia. Grounds, although confused, included 'Slander, Injurious falsehoods, Fraud and Intimidation'.[191] Then on 25 May 1959, he lodged two Notices of Appeal on their behalf in the High Court. Although Registrar Gamble again took the view that the papers were an abuse on their face and declined to accept them, Collins had already left his office and regarded them as issued.[192] Two days later they surfaced in the Bankruptcy Court when Mr Robert (Bob) Ellicott,[193] counsel for the Official Receiver, told Clyne J that 'strange things have been happening' and that there were 'curious documents' in circulation.[194] He then referred to a document prepared by Collins on behalf of the Murrays that combined elements of a writ, an affidavit and a Notice of Motion. Closely typed, with various headings such as 'In the matter of the manifest and notorious felonious GESTAPO intimidation by *Judiciary & Crown*',[195] it listed 23 grounds of appeal that ranged widely. Early paragraphs gave the flavour and clearly drew on the 'fence case' experience:

187 In 1956 a major creditor was the Commissioner of Land Tax. He lodged charges against two properties held by Collins. One was against 588 Nicholson Street, Carlton, which he had acquired from his parents in 1953. See Victorian Department of Sustainability and Environment, Certificate of Title Volume 3468 Folio 525. The other was the Walker Street property in Northcote. See Victorian Department of Sustainability and Environment, Certificate of Title Volume 1619 Folio 716. The Housing Commission for low-income housing eventually cleared both properties as slum redevelopment.

188 Supreme Court of Victoria, *Collins v Collins*, Divorce File 1806 of 1962, Divorce Petition of Beryl Ada Collins sworn 20 November 1962; hereafter the 'Divorce file'.

189 NAA: SP448, 1. File 100 of 1956, Report of Official Receiver (21 May 1956); hereafter the 'Murray file'.

190 Murray file, above n 189, Evidence of John Charles Murray, Transcript of Proceedings before Clyne J (4 August 1959).

191 High Court file, above n 46, Gamble to Chief Justice (13 April 1959). Dixon CJ directed under O 58 r 4(3) that the document not be issued, as it was 'on its face' an abuse of process and a vexatious proceeding.

192 High Court file, above n 46, Gamble to Principal Registrar (26 May 1959).

193 Ellicott would later serve as Commonwealth Attorney-General in the Fraser Government 1975–1977.

194 Murray file, above n 189, Transcript of Proceedings before Clyne J (27 May 1959).

195 Murray file, above n 189, Annexure 'A' referred to in report of McCombie (26 May 1959).

2. That the Bankruptcy Rules are not available for purchase at the Commonwealth Office Sydney

3. That the purported 'Court' is not an open or any Court according to law & persons interested are intimidated from entering the building and the 'Court' therein by 'Dixons' Commonwealth Police therein and there is nothing to indicate that a court is being held there for Public

4. That the bankruptcy Act the 'Court' & jurisdiction thereof are in issue F E Kemp Appeal 329/56.

5. That Sect 76 of Bank Act is ultra vires Plmt & void and is otherwise invalid and inapplicable.[196]

Clyne J indicated that he had seen Collins' 'handiwork' before but appeared more bemused than concerned.[197] He should have been concerned as Collins was at that moment paying 50 guineas of his own money to a solicitor, George Kenyon, to brief counsel.[198] Two days later, W G (Bill) Kloster of Counsel successfully applied to Clyne J for a stay of the Murray imprisonment warrant for contempt issued two days earlier, on the basis that there was an appeal lodged in the High Court.[199] Clyne J does not appear to have made the connection with the Collins paperwork. It took just over a week for the Official Receiver to confirm that the 'appeal' filed by Collins had no validity and a further three weeks before the matter came back before Clyne J.[200] He was not amused. He ordered that the Warrant of Committal for John Murray take effect 'forthwith': 'I think he is the victim of his own folly. He has been misled by this man Collins and has been his dupe.'[201] He sentenced Collins, in his absence, to six months in Long Bay Gaol. 'His offensive comments about this court and his motion to the High Court constitute an abuse of the process of this court intended to mislead the court and to bring it into disrepute and contempt.'[202]

Nor did Kenyon or Kloster escape censure:

> I think the Solicitor who gave these instructions failed in his duty. He was guilty of improper conduct, and a lack of fair appreciation of his duty. I do not altogether absolve Counsel from a charge of neglect. Had he seen the Notice of Appeal he should have realised that he was playing with fire in making such an application as this on behalf of a man such as Collins.[203]

In comparison to the penalty given to Collins, this was a light response given that it was only their participation in events that had led to the adjournment.

196 Ibid.

197 Murray file, above n 189, Transcript of Proceedings before Clyne J (27 May 1959).

198 Murray file, above n 189, Transcript of Proceedings before Clyne J (26 June 1959).

199 Murray file, above n 189, Transcript of Proceedings before Clyne J (29 May 1959).

200 Murray file, above n 189, Transcript of Proceedings before Clyne J (26 June 1959); High Court file, above n 46, Gamble to Principal Registrar (29 June 1959).

201 Murray file, above n 189, Transcript of Proceedings before Clyne J (26 June 1959).

202 Ibid.

203 Ibid.

Neither practitioner appears to have faced disciplinary proceedings as a result of their involvement.[204] Predictably, the case prompted a few headlines in the next morning's papers: 'Contempt of Court: Judge orders jail for man with complex'[205] and 'Man Gaoled for Contempt'.[206]

Despite the events before Clyne J, the Murrays continued to show faith in Collins, much to their disadvantage. Collins also continued to involve himself in the case by sending letters and self-typed court applications and affidavits. However, the High Court and Bankruptcy Registries were now on their guard and they had no impact beyond nuisance value. By the early 1960s he had dropped out of the case.[207] There is no record that he was ever gaoled in New South Wales as a result of Clyne J's order.[208]

VII A RUN FOR PARLIAMENT, TROUBLE AT HOME AND FRIENDS FALL OUT

In 1961, having had no success in the legal arena, Collins briefly flirted with the prospect of being a federal parliamentarian. He stood in the 1961 election as an independent candidate in the seat of Kooyong, then held by the Prime Minister, Mr Robert Menzies. His candidacy was predictably described in the press as 'Ex-Footballer v. Menzies'.[209] Possibly, he had been encouraged to run by his colleague Rupert Millane, who had stood for the Senate in 1943.[210] Like Millane, he lost, receiving only 192 votes.[211] The Menzies government was narrowly returned.

By the end of 1962 Beryl Collins had seen enough from her 25 years of marriage to Collins. Her only regular source of income was as a domestic aid and she had become alarmed at Collins' attempts to raise money by trying to mortgage the family home at 29 Andrew Street. With three of her four children now adults she petitioned for divorce on the ground of three years' continuous desertion. She had not cohabited with him since March 1958, when he last went to gaol.[212] After delay caused by difficulty in locating Collins, the divorce was granted in November 1963. Beryl Collins was awarded 29 Andrew Street, valued at £3500, and £1 per week maintenance. Collins was to keep the Walker Street property notionally

204 Subsequently, the professional careers of George Kenyon and Bill Kloster changed direction. In 1962, after 10 years as a Barrister, Kloster left the Bar at his own request and was admitted to practise as a Solicitor. See (1962) 35 ALJ 412. In 1965 Kenyon was struck off for trust account irregularities. See *Ex parte Law Society of NSW: Re Kenyon* [1970] 3 NSWLR 343.

205 *Daily Telegraph* (Sydney), 27 June 1959.

206 *Sydney Morning Herald* (Sydney), 27 June 1959, 10.

207 John Murray would not be discharged from gaol until September 1959. He was discharged from bankruptcy in 1970. See generally Murray file, above n 189.

208 Letter from Caroline Ritchie (NSW Department of Corrective Services) to Simon Smith, 13 April 2007.

209 *Sun* (Melbourne), 15 November 1961, 13.

210 Lester and Smith, above n 2, 11.

211 'Kooyong', *Sun* (Melbourne), 10 December 1961, 18. The unsuccessful ALP candidate was Dr Moses (Moss) Henry Cass who later became the federal member for Maribyrnong 1969–1983.

212 Divorce file, above n 188, Petition of Beryl Ada Collins (20 November 1962).

valued at £3175, and 90 acres at Kangaroo Ground valued at £2000.[213] It was one piece of litigation in which he took no active part and filed no papers.

In 1963, aged 62, events continued to move against Collins. First, the Housing Commission of Victoria moved to compulsorily acquire 18 Walker Street for a low-income housing development.[214] Then, Rupert Millane, his mentor for over a decade, turned against him when he named Collins as a defendant in some confused High Court writs. This reflected how closely Millane and Collins monitored each other's activities. The writs also joined the Housing Commission as a co-defendant and, amongst a number of rambling particulars of demand, sought 'ORDERS for Peaceful Possession and or Re-possession' of 18 Walker Street.[215] The plaintiff was Highway Motors, a flashback to the company name used by Millane in the 1920s when engaged in his litigious 'Bus Wars' with the Melbourne City Council that had contributed to his own declaration as a vexatious litigant.[216] For Millane to be able to link all these themes together, albeit disjointedly, shows a close association with Collins although possibly it was some bizarre legal manoeuvre designed to help Collins keep the Walker Street property. Most likely it was an indicator of Millane's physical and mental decline as he was then aged 76. That the writs were not taken seriously by the High Court is indicated by the fact that they were simply added to a pile of unissued Millane material even though he had never been declared a vexatious litigant by the High Court. In any event, whatever friendship existed with Collins was near the end. Millane died in 1969.[217]

VIII HELPING IN THE HIGH COURT

As the 1970s arrived Collins was a familiar figure moving round barristers chambers, sitting in court and suggesting legal strategies to lawyers who would listen and those who wouldn't.[218] Almost always wearing a dustcoat and carrying a suitcase of legal papers, he no longer sought to issue proceedings in his own name but was content to actively assist other self-represented litigants. He appears to have lived for some of the time at his Kangaroo Flats property and used Box 1353-L at the Melbourne GPO as his principal contact point. One person he assisted in 1970 was Constance May Bienvenu. He befriended her in the legal book section of the Public Library of Victoria and advised that he had an expert knowledge of constitutional law, having purchased former High Court Chief Justice and Fitzroy supporter, Sir John Latham's law books. He introduced himself as 'Mr G Collins

213 Ibid. Beryl Collins sold the property in 1974.

214 Victorian Department of Sustainability and Environment, Certificate of Title Volume 1619 Folio 716.

215 See eg High Court file, above n 46, Writ (20 December 1963).

216 Lester and Smith, above n 2, 4–7.

217 Ibid.

218 Interviews with Frank Jones (24 February 2005); Barney Cooney (25 February 2005); Gordon Spence (9 March 2005); Philip Opas (21 March 2005); Charles Francis (20 April 2005) and John Young (29 April 2005).

(alias Mr George)' and offered to help her draw up legal documents.[219] Bienvenu was an animal welfare activist who had been engaged in a struggle for reform of the conservative RSPCA (Victoria) since the late 1950s. She had become consumed by litigation after Starke J somewhat harshly awarded costs against her in a 1968 Supreme Court case.[220] In 1970 she was running a number of actions in the High Court as a litigant in person having been declared a vexatious litigant in Victoria in 1969.[221] Her compassion for the animal welfare cause and sense of legal grievance made her a willing recipient of Collins' offer of assistance. He made numerous visits to her Malvern home and spent 'long periods explaining legal matters to my husband and myself and in drawing up legal documents'.[222] She then issued them.

An indicator of Collins' involvement was the Bienvenu writ issued by Frank Jones, then Deputy Registrar of the Principal Registry, on the direction of Barwick CJ, naming Jones and the Principal Registrar, Neil Gamble, as defendants. The cause of action was that Gamble and Jones had conspired to deny Bienvenu her constitutional rights by refusing to supply her free of charge with a copy of the Constitution. Although dismissed by the Full Court it was modelled on Collins' 1950 'success' against the Northcote Council when it had failed in its statutory duty to supply him with a copy of Council By-Law 72.[223]

For the next few months Collins actively inserted himself into Bienvenu's litigation. Certainly there is an abrupt shift in the language used in the documents she filed that is entirely consistent with Collins' style of closely typed documents liberally strewn with emphasis and epithets bordering on invective. The sudden change to 'scurrilous and intemperate language' was even noticed by the judiciary.[224] For example the heading of a Notice filed in her Bankruptcy proceedings initiated by the RSPCA was worded:

IN THE FEDERAL COURT OF BANKRUPTCY

BANKRUPTCY DISTRICT OF THE STATE OF VICTORIA — BOGUS No. "945" 1968

219 NAA: A10074, 1970/8, Affidavit of Constance May Bienvenu (13 May 1970) [4], hereafter the 'Bienvenu file'.

220 The 1967 decision of Starke J accepted the submission of Bienvenu's lawyers that the RSPCA Society had been without valid by-laws since 1895. As a result there were no office bearers or contributors, including Bienevenu. Therefore, she had no *locus standi* to bring the action. Further, she was estopped from succeeding as having relied on the by-laws in earlier proceedings, she could not now seek advantage by saying they did not exist. He then awarded costs against her. See generally *Bienvenu v Royal Society for Protection of Animals* [1967] VR 665.

221 See generally Smith, above n 131, 31.

222 Bienvenu file, above n 219, Affidavit of Constance May Bienvenu (13 May 1970) [6].

223 Interview with Phil Opas (21 March 2005). See also Jones and Popple, above n 111, 698–9 and Bienvenu file.

224 *Hutchison v Bienvenu* (Unreported, Supreme Court of Victoria, Walsh J, 19 October 1971); see especially his Honour's comments under 'Reasons for Judgment'.

IN THE MATTER OF THE MANIFEST CRIMINALITY FRAUDULENT MALPRACTICE INFLICTED ON ME, CONSTANCE MAY BIENVENU, PARTICULARY RE THE TREACHEROUSLY FRAUDULENT BOGUS "BANKRUPTCY NOTICE" AND ALL OTHER NECESSARILY CORRUPT ENSUING MALICIOUS ATROCITY ACTS THERON THERAFTER

RE: BOGUS NONENTITY "ROYAL SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS' AND THE MANIFESTLY FICTITIOUS NONENTITY "OFFICE BEARERS" FRAUDULENTLY PURPORTING MALICIOUSLY SCURRIOUSLY CRIMINALLY LIBEL AND TO DEFAME ME AND TREACHEROUSLY INJURE ME IN THE SAID "BANKRUPTCY NOTICE" DATED 4TH DECEMBER 1968

NOTICE

TAKE VERY PARTICULAR NOTICE that I am now fully satisfied after ...[225]

Suddenly 'Mr George' was gone and not to be found. Attempts to adjourn cases he was involved in failed.[226] Eventually, desperate telegrams to Collins' post office box generated a response. Bienvenu told the court in an affidavit that 'I have received two abusive and threatening letters from this person and am now of the view that he may be mentally unbalanced'.[227] Rather surprisingly, it appears that Bienvenu never made the connection that Collins was a declared vexatious litigant.[228] In a perverse irony, in 1972 Bienvenu was also declared a vexatious litigant by the High Court.[229] She joined Collins in an exclusive club of litigants declared in two jurisdictions.

225 NAA: B160/0, 327/1969 Part 2, Notice (10 March 1970); hereafter the 'Bienvenu Bankruptcy file'.

226 Bienvenu file, above n 219, Affidavit of Constance May Bienvenu (13 May 1970).

227 Bienvenu file, above n 219, Affidavit of Constance May Bienvenu (13 May 1970) [7].

228 Interviews with Nance Simonds, Sister of Constance Bienvenu (4 May and 28 July 2006).

229 *Hutchison v Bienvenu* (Unreported, Supreme Court of Victoria, Walsh J, 19 October 1971). See also 'No More Actions, Judge Rules', *Herald* (Melbourne), 19 October 1971.

IX MORE HELP, A LOCAL COUNCIL, FENCES AND A SAD END

Whilst helping Bienvenu, Collins was also helping Eduards and Melita Vizibulis, two immigrants from Latvia. They were resisting attempts by the rapidly urbanising City of Ringwood to compulsorily acquire their modest farm for a municipal golf course. Having survived the excesses of Nazism and then Communism, they were not easily cowed by a local council.[230] Most probably, Collins learnt of their fight from newspaper reports.[231] Certainly, he would have identified with a legal struggle involving a local council. In any event, his assistance appears to have been limited to drafting up an avalanche of writs and summonses for the couple and posting them to the Supreme Court. In a neat turn of the circle he addressed them to Murray McInerney, now a judge of that court. At the court, in a reflection of a more relaxed approach to Collins' activities, the documents were quietly placed in a manila file kept by Prothonotary Malbon and never actioned.[232]

Nonetheless, the documents reflect both Collins' continuing obsessions and his declining mental health. Closely typed with hardly any spare space up and down the margins, they combine nonsensical legal jargon with unabashed rage. In one summons, against the Mayor and Councillors of Ringwood, the Police, the bulldozer driver, the Attorney-General, the Prothonotary and others he alleges, in a stream of invective:

> The said defendants on the seventh day of December 1970 and before and after up to "bulldozer' 18.12.70 feloniously at Ringwood (and other places) in Victoria did treacherously/ and maliciously conspire to put off Melita Vizbulis and her family a bogus forged title to her property herein and a forged bogus "warrant" (forged by D B Johnston stamp of the Sheriff 29.5.70) with intent to make a breach of the peace thereon and to maliciously assault personally and by paranoid megalomaniacal gestapo threats ...[233]

In another, his writ against a similar group of defendants claimed:

> For Eduards Vizbulis $200,000,000, Mrs Melita Vizbulis $200,000,000 and for Miss Zaiga Vizbulis $100,000 multi aggravated (9.12.70) cumulative punitive vindicative [sic] disciplinary damages against the defendants and each of them for 'Murderous judge and co (Bentham) judas conspiracy whilst acting in treacherous judasical [sic] concert as joint tort feasors with a murderous common design and with a potential (natural) murderous paranoid megalomaniacal outrageous demonical sadistic intent ...[234]

Then at the end politely stated:

230 Interview with Richard Carter, President, Ringwood Historical Society (30 April 2007).

231 See eg 'Bid to Resolve Row Over Land', *Sun* (Melbourne), 8 October 1971.

232 The Author has inspected this file at the Supreme Court of Victoria, Melbourne; hereafter the 'Goldsmith Collins file'.

233 Goldsmith Collins file, above n 232, Summons headed "'Cattle Battle" down on the farm' (23 December 1970).

234 Goldsmith Collins file, above n 232, Supreme Court Writ (10 December 1970).

> Take Notice that plaintiffs require pleadings.[235]

Although the Vizbulis' eventually conceded the inevitable and moved away, they maintained their practical resistance well into 1971. After one incident the Town Clerk wrote to them in a manner eerily reminiscent of the Northcote Clerk's letters to Collins in 1948 that had set him on his litigious path. It said:

> Council officers have today reported that Mrs Vizbulis interfered with survey pegs being placed by them also mentioning fencing the land at the rear on which to put your cattle.
>
> The Council will not let you do this. By law, it is now Council property and any fencing you erect without council authority will be demolished.
>
> The land has been ploughed and if cattle enter, it will have to be ploughed again. This will cost money and as well as action being taken for trespass, action will be taken against you to recover damages.[236]

Possibly, Collins was aware of the irony. Certainly he knew of the letter as his handwriting is all over the copy in the Supreme Court file.[237] It was, however, his last known legal foray. Although he was seen once around this time leaving documents on the counter of the High Court registry and quickly exiting, he was not seen in the courts again.[238] In 1982, an invalid and a diabetic, he was living in a caravan behind his son Harold's farmhouse in Panton Hill. In May of that year he died tragically when the caravan caught fire. The Coroner's inquest could not determine the cause. It was the last court case involving Collins and a sad end. He was 81 years old.[239]

X CONCLUSION

Central to the Collins story is his inability to resolve his 'fence' dispute with the Northcote Council. Indeed, it was the Council's subsequent resort to the legal system to enforce their position that set in train the extraordinary flood of litigation that ran for the next two decades. Town Clerk Thomson made early attempts to personally mediate a solution but unlike in modern times he had no access to alternative dispute resolution mechanisms such as trained mediators or the Neighbourhood Justice Centre (Victoria). Once the matter moved to the lawyers, it rapidly escalated into an adversarial theatre, positions hardened and the capacity for compromise disappeared. A revealing insight is the concession by lawyer Francis Lonie, in a 1949 prosecution, that the Council's approach had hardened

235 Ibid.

236 Goldsmith Collins file, above n 232, Webster (Town Clerk) to Mr and Mrs Vizbulis (11 June 1971).

237 Ibid.

238 Interview with Frank Jones, High Court Registrar 1980–1995 (24 February 2005). Collins did continue to post material. In 1974 he sent the High Court a heavily annotated telegram form addressed to Prime Mister Gough Whitlam. It contained a jumble of allegations about conspiracy and breaches of the *Crimes Act*. It was quietly filed in a Collins file. See also High Court file, above n 46.

239 PROV, above n 15, VPRS 24/P1, Item 418. See also 'Exit Goldie, Fighter', *Age* (Melbourne), 1 May 1982; Francis, above n 3, 20.

because Collins was 'defying them'.[240] Had the Council been open to negotiating a compromise, possibly things may have been different. Certainly, Sholl J hinted as much when he suggested in *R v Collins* that the original grievance had been 'genuine'.[241]

In one sense it is not surprising that there is potential for local government to fall into dispute with its residents. It is after all the level of government that intersects most often with daily life whether it is over home renovations, rubbish collections, school crossings or parking controls. The potential for dispute is significant. That is what makes it all the more surprising that in the early twenty-first century, let alone the 1950s, local government has not fully embraced alternate dispute resolution mechanisms and still relies on the legal system to resolve disputes. Were they to adopt, for example, explicit service standards backed by penalties for failure and have an in-house ombudsman with the power to intervene and settle disputes earlier, it seems clear that standards would rise and dispute levels fall. Certainly, this is the recognised experience in sectors such as banking and insurance where such initiatives are now standard.

Once the dispute entered the legal arena the focus changed. It became about the form of the documentation, time limits, case law and the skills and courtesies of professional advocacy that for the initiated, make the system work. A maverick like Collins, whose loud and aggressive persona and free-wheeling use of legal jargon cut across those accepted norms, created difficulties for court officials, counsel and judges who are more comfortable in that familiar environment. As the Collins dispute spectacularly turned back in on itself, as indicated by his 1952 litigation over access to the Supreme Court Library, the judges themselves became the focus. It was inevitable that in the 1950s, when the court was small, it would be difficult for the judges to keep a distance between their own sense of grievance and their judicial responsibilities. Certainly they were too sensitive to the provocative nature of Collins' documentation. Given that most of the affidavits were not read in open court, Collins' activities only received the 'oxygen of publicity' because the court itself felt scandalised and pursued contempt proceedings. It was these contempt proceedings, usually conducted in Collins' absence, which generated the greatest press coverage and thus allowed the court to argue that Collins' activities were undermining public confidence in the administration of justice. The larger and more robust modern courts are likely to have been more tolerant of Collins.

For his part, although articulated in a confused manner, Collins had a point in his objections about the 'justice' he was receiving. For example, it is hard to argue confidently that the appointment of Hudson AJ as the judge in charge of the vexatious hearing was truly one at arm's length from the subject matter. That said, at that time there was no alternative, as even had it been contemplated, the then rigid structure of judicial appointments did not allow for the use of an interstate judge.

240 'Fence was an Eye-sore', *Leader* (Melbourne), 3 August 1949, 3.

241 [1954] VLR 46, 58.

The Collins case also demonstrates the lack of formal options the court has in dealing with an unpredictable, aggressive, self-represented litigant who determinedly challenges its authority. The two key legal sanctions employed against him in two jurisdictions, namely gaol for 'scandalising' contempt and the vexatious litigant provision, both failed. Gaol clearly did not embarrass, intimidate or deter. He was always comfortable appearing in the public arena, possibly a legacy of his time in the public eye as a famous footballer. He simply continued to pursue his legal activity, although as the Murray and Bienvenu cases illustrate, he developed a degree of guile, making sure documentation was lodged in their names. It is a further limitation of the sanction, as it then was, that the courts did not readily identify this was happening.[242]

All of this misses the essential point that there was clearly an underlying medical explanation for Collins' behaviour. In terms of the Mullens and Lester definition of querulousness, Collins would appear to be at the hard edge with his querulous behaviour, most likely reflecting an abnormality of mental function. Certainly his behaviour fits the broader querulent definition almost classically. He is in the age range, had a sound education and more than fair work history. His ability to maintain relationships also crumbled as his litigation took hold. The form and content of his legal documentation is typical in format and substance. It is voluminous, used multiple methods of emphasis and increasingly displayed incoherent marginalia. It regularly quoted the Magna Carta in support and used threats, ingratiating statements and ultimatums with a repeated misuse of legal and technical terms. However, in the 1950s the legal system did not easily identify the challenge by Collins to its authority as having a medical explanation. This is despite the frustrated cry of Norris in the 1953 case, '[t]his man should be confined either in a mental asylum or Her Majesty's gaol',[243] or the anguished court cry of his wife Beryl Collins in 1954, '[t]he man's not well'.[244] The inability of the legal system to directly identify and address such an underlying cause is a further limitation of the sanction. In the end it was court officials who showed the most insight into the management of Collins increasingly disjointed litigation attempts. They simply filed them away.

242 In 2005 a move by the states towards a model uniform vexatious litigant sanction enabled the sanction to apply to persons 'acting in concert' with a vexatious litigant. See *Vexatious Proceedings Act* 2005 (Qld) s 6(1)(b).

243 '"Lock Up this Man" QC Urges', *Herald* (Melbourne), 23 March 1953, 3.

244 'Judge Ill as Man Talks him Down', *Sun* (Melbourne), 14 April 1954, 12.