if you are unsuccessful, I'm expecting a costs application for costs from the - from the defendants.

And if you are successful, you may want to make an application for such legal costs of - you've incurred. And there may be consequential orders. It's up to you, really. You can have liberty to appear by phone. But if you're not here I will probably still deliver my decision.

LAUGHTON, MR: Yes. Is there - half a chance I will be in - actually in the air and I won't have any way of making a phone call.

HER HONOUR: Well, what time is your - you don't - can't even remember what time your flight is, can't you?

LAUGHTON, MR: The flight to Adelaide is at 2.30.

HER HONOUR: Sorry.

LAUGHTON, MR: The flight to Adelaide is at 2.30.

HER HONOUR: Okay. Well, I could - I will deliver a decision this afternoon, but it will be with very - the minimal bare bones reasons. And I won't be providing further and better reasons. The - do you wish that to - occur?

LAUGHTON, MR: Yes. If it's - yes, okay. That's - that's - - -

HER HONOUR: You need to understand that the reasons will be delivered extempore and they will deal with the bare bones of the matter.

LAUGHTON, MR: Yes.

HER HONOUR: Yes.

LAUGHTON, MR: Yes.

HER HONOUR: All right. Not before 5.00 pm. I'm sorry, Madam JSO and Mr Orderly, are you able to be here for 5.00? Okay. Thank you. If you return at 5.00 I will deliver my decision.

(Short adjournment)

JSO: Calling the matter of Andrew Laughton and Sharyl Marsh and James Glynn Marsh.

HER HONOUR: All right. This is a - I'm going to deliver my decision in respect to Magistrates Court general procedure claim, Bunbury 316 of 2015. The parties being Mr Andrew Loughton as claimant, and Mr and Mrs Marsh as defendants. Mr Loughton appeared unrepresented at trial and Mr Ian Morison, of counsel, represented Mr and Mrs Marsh.

The trial has proceeded over two days. Witness evidence has been called from Mr Loughton and from his expert witness, Mr Woodhouse and Mr Alex Dhu of Bunbury Concreting. Mrs Marsh gave evidence on behalf of the defendants. All parties have been present in the court listening to that evidence and I do not intend to reiterate word for word the evidence given at the trial. For the purposes of these extempore reasons it has been deemed prudent to deal with the matter today, due to the commitments of the parties, and I intend to provide my decision with reasons for decision dealing with those particular matters which have borne upon - in which have borne up my decision to - in this matter today.

So the reasons for decision are addressed to those issues only today. Now, Mr Loughton owns a property at 11B Keble Heights in College Grove. Mr and Mrs Marsh own a property at 14 Trinity Rise, College Grove. Those two properties share a common boundary of about five and a half metres in length. Mr Loughton's property lies downhill from, and is on a much lower level than, the Marsh's property. On or about 4 September 2012 the fence between their respective properties fell over. That fence sat atop a retaining wall which supports the higher ground on the common boundary.

At some point that retaining wall between their properties was also damaged, taking on a slight curve and lean into the property of Mr Loughton. Mr Loughton says that the damage to the fence and the retaining wall is due to the actions of the defendants, Mr and Mrs Marsh. Mr Loughton's claim against the Marshes is for the cost of replacing the fence, for reinforcing the - or making good the retaining - damaged area of the retaining wall between their properties. And for certain other heads of consequential damage which he sets out in his affidavit as to damages, which was filed 9 August.

The defendants say they are not liable for the sums he has claimed against them. As I said at the commencement of these reasons Mr Loughton was self-represented at the trial. At the opening of the trial he confirmed that his claim is made in negligence. This not having been clear

from the documents that he had filed to date in the matter. As the claimant Mr Loughton has the onus of proof and he must prove his claim; that being the factual basis of his claim and the fact that the - those facts provide him with a remedy. And the standard of proof which he must exercise is the balance of probabilities. That is that he must prove his claim and the liability of the Marshes is more likely than not being the test.

Now Mr Loughton opened his case. When asked by me on the - at the opening of trial, on the basis that the Marshes were negligent because they had allowed 700 mils of sand to build up against the fence, which was not suitable for retaining it, causing the fence to fail and an increased loading on the retaining wall causing it damage. During closing submissions, when it was suggested that there was actually no evidence in the trial that the Marshes had placed that 700 mils of soil against the fence, Mr Loughton stated that his case was also that they had allowed the sand to remain in place.

This - the Marsh's dispute that they breached any duty of care that may be owed to Mr Loughton. They do not admit that they allowed 700 mils of sand to build up against the fence, which is therefore a matter to be proved by Mr Loughton, and say they cannot be shown to have caused his damage. It is also said that the retaining wall was built by the developer of the Loughton lot, who excavated the boundary between the properties to create a level lot and that that retaining wall was defective in that it was not constructed high enough to retain the land in its natural state.

The additional soil was not a surcharge on the land, but rather the actions of the original developer withdrew the natural support from the property. The issues in dispute for determination by this court today are that, firstly liability, whether the Marshes owe Mr Loughton a duty of care and whether they then breached that duty of care.

Secondly, if it can be shown that they were negligent, the next issue to determine is whether their negligence caused or contributed to any loss or damage suffered by Mr Loughton. And finally, if liability and causation are established, an assessment of an amount of any loss or damage suffered by Mr Loughton must be made. And it is also - there is also some onus on the court to determine damages in any event in - and I will return to that matter later in this decision.

It is important to place Mr Loughton's claim within the proper legal and statutory context. And as the claim raises the issue of negligence, the Civil Liability Act (2000) or CLA, applies to the claim. Pursuant - division 2 of part 1A of the CLA is headed, "Duty of care". And that section - that division sets out the general principles in respect to harm, and these are principally in section 5B of the Act as follows. And that section states, and of course parties can have reference to the actual enactment, but for the purpose of these reasons it's important that those principles be set out:

> A person is not liable for harm caused by that person's fault in failing to take precautions against a risk of harm: (a) unless the risk was foreseeable. That is it is a risk of which the person knew or ought to have known, and (b) the risk was not insignificant, and (c) in the circumstances a reasonable person in the person's position would have taken those precautions.
>
> Subsection 2 says:
>
> That in determining whether a reasonable person would have taken precautions against a risk of harm, the court is to consider the following amongst other relevant things: (a) the probability that the harm would occur if care were not taken, (b) the likely seriousness of the harm, (c) the burden of taking precautions to avoid the risk of harm, and (d) the social utility of the activities that create the risk of harm.

Causation in matters to which the Civil Liability Act apply, must be dealt with according to the general principles set out in section 5C of that Act. The term harm is defined in section 3 of the Civil Liabilities Act and means harm of any kind, and includes damage to property and economic loss. Pursuant to section 5B of the CLA then the Marshes, as neighbours of Mr Loughton, will only be liable for harm caused by the fault in failing to take precautions against a risk of harm in the circumstances set out in that section.

The standard of care which they are required to exercise is, I consider, that of a reasonable neighbour in a suburban area. And I will return to this point again later in these reasons. In a large number of cases, for example the Department of Housing and Works v Smith (2010) WASCA 25. Justice Buss expressed a view that section B of the Civil Liability Act does not modify or supplant common law principles. When considering the general principles

enunciated in section 5B of the CLA, and what a reasonable person in the position of the Marshes would have done, it must be determined prospectively - that is without the benefit of hindsight.

And again there are a number of decisions which are binding on myself, including the Road and Traffic Authority of New South Wales v Dederer 207 - 234 CLR 330 and Adeels Palace Pty Ltd v Najem (2009) HCA 49 at 31. In the case of Regrowth Karri Pty Ltd v Daynite Towing Service (2015) WA DC44. Stavrianou DCJ, again a judicial officer whose determinations are binding on myself, stated the following at paragraphs 32 and on:

> In Kelly v Humanis Group, I identified the following principles from the judgment of Pullin JA in Southern Properties v Executive Director of the Department of Conservation and Land Management (2012) WASCA 79. (1) Whilst harm is defined to include damage to property, section 3, fault is not defined. This expression must include a breach of duty of care imposed by law. (2) Section 5B(1)(c) is directed to the conventional inquiry about what a person is required to do once it is established that a duty of care exists. Precautions must be taken - which must be taken are those, which in the circumstance, a reasonable person in the defendants' position would have taken. (3) Section 5B(2) outlines what must be considered in determining whether a reasonable person in the defendants' position would have taken the precautions under consideration. This is, in effect, a statutory statement of what is sometimes called the shirt calculus with minor adjustments.

And the reference there is to the well-known decision of Wyong Shire Council v Shirt.

> (4) The considerations in section 5B(2)(a) and section 5B(2)(b) are to be weighed against the considerations referred to in 5B(2)(c) and 5B(2)(d). And this construction is confirmed by Ipp, in report 7.9. The higher the probability that the harm would occur and the more serious the harm, the more likely that those factors will outweigh the other factors, and the more likely that the determination will be that a reasonable person would have taken precautions. If the factors in section 5B(2)(c) and 5B(2)(d) exceed the weight given to those in 5(2)(a) and 5(2)(b), then it is likely that a determination will be to the contrary. (5) Section 5B(1) and 5B(2) require an identification of the harm and the precaution which it is alleged the defendants

should have taken and then the balancing of the relevant things referred to in 5B(2).

In Wyong Shire Council v Shirt (1979) 146 CLR 40, Mason J explained the approach to be adopted at common law in deciding whether a defendant has breached a relevant duty of care as follows:

> In deciding whether there has been a breach of the duty of care the tribunal of fact must first ask itself whether a reasonable man in the defendant's position would have foreseen that his conduct involved a risk of injury to the plaintiff or to a class of persons including the plaintiff. If the answer be in the affirmative, it is then for the tribunal of fact to determine what a reasonable man would do by way of response to the risk. The perception of the reasonable man's response calls for a consideration of the magnitude of the risk and the degree of probability of its action, and any other conflicting responsibilities which the defendant may have. It is only when these matters are balanced out that the tribunal of fact can confidently assert what is the standard of response to be ascribed to the reasonable man placed in the defendant's position.

Now, Mr Loughton's case against the Marshes is, in my view, factually weak. He stated that the basis of his claim is that they allowed 700 mils of sand to build up against the common fence, which was not suitable for retaining it. As I said earlier, he also now states that they allowed the sand to remain in place. His own evidence was that the 700 mils of sand was stacked against the fence with no other support. He tendered some photos in proof of this, being exhibit 1, which showed the sand higher than the retaining wall on the Marsh's side of the boundary, after the fence collapsed.

It is common ground that the strip of land between the Loughton and Marsh properties is a sewerage easement containing a sewer and inspection points, and nothing is built on it. There is no evidence that the lay of that strip of land has changed over time. The fact that the level of the land on the sewerage easement has not changed since 1991, is available to be found for a number of reasons. First of all 1991 is the year that the sewerage was installed and that is shown by exhibit 2A. Exhibit 16 is a email from Mr Taylor, the civil team leader of the south-west region of the Water Corporation, dated 11 September 2015.

Mr Taylor says to Mr Loughton:

> We have checked our infrastructure on the easement at 14 Trinity Rise and are confident that it has not moved or been raised since 1991. This also reflects the information on BuilderNet and the fact that there are no updated ascons. When installed the top of the manhole was 39.94 AHD. Should you wish to survey the height you are welcome to do so.

Now, this email is potentially hearsay of a documentary kind. However, it was received into evidence with the mutual consent of both parties. And it is quite clear that the receipt of hearsay evidence to which no objection is taken, is in the ordinary incidents of a regularly conducted trial. And the practice in Western Australia, at least in civil proceedings, is that hearsay evidence which is tendered or adduced at trial, generally and unequivocally, which is the case in this matter, is in evidence for all purposes. In general, inadmissible evidence which is tendered or adduced in civil proceedings without objection may be given such probative value as the court thinks it is worth. And from there I'm quoting Buss JA from Kupang Resources Ltd v International Litigation Partners (2015) WASCA 89.

In my view that email which is not disputed, clearly has a significant weight in establishing certain matters for this trial. The photos tendered in evidence, in fact, by both parties show that the sewerage infrastructure is still in place at ground level. Based on that combination of facts I find as a fact that the ground level of the land on the - in the sewerage easement is as it was in 1991.

Now, there is no evidence at all of when the fence, which fell down, was erected. Indeed, it is in my view impossible to make a finding of fact as to whether the sand that was put against the fence, or in fact the fence - it was always there and the fence was erected to that level of the land. In that respect the contours demonstrated in exhibit 5 show that the Marsh land is an - or obviously always has been - higher placed than Mr Loughton's land. The Marshes became owner of their land in 2003, Mr Loughton became owner of his land in 2011. It is also clear from exhibit 6 that when the common retaining wall was construction in or about 1994, the contours at that point was 10 metres high and the wall was only constructed at 1.7 metres high. It is also common ground that the wall was built too low.

The Marshes erected a new retaining wall on their property in 2012 at some time before the wall - the common boundary fence collapsed and damage was observed to the retaining wall. Now, Mr Loughton called an expert to give evidence in this matter. And in respect to expert evidence, the court is permitted to have regard to expert evidence. In Baynes v MSR Agrimotives (WA) Pty (2013) WADC 85, McCann DJC stated:

> In addition to giving direct evidence of circumstantial facts, a witness is permitted to give evidence of an opinion which would otherwise be hearsay in respect of a factual issue, which requires expert elucidation if he or she is qualified by training or experience or both, to do so. The evidence is admissible for the purposes of assisting the judge to make findings of fact. The judge is entitled to accept all of a particular expert's evidence or none of it, or accept some and reject the rest, or simply put it to one side. In this way, findings can be drawn from evidence and opinions received from more than one expert, irrespective of who adduced the evidence. Opinion evidence must be based upon facts which are properly proven and must be explained in such a way that the judge can understand it and make the necessary findings or at least understand why he or she should adopt it or defer to it.

And in that particular case, his Honour relies on the well-known authority of Pollock v Wellington (1996) 15 WAR 1. So again, those are the principles which the court deals with expert evidence. Now, clearly Mr Woodhouse is an excellently qualified expert witness. He is an experienced engineer and his qualifications are set out in the preamble to his report. And the court accepts his opinion as an expert witness on those matters. However, as I have just said, the - his - his opinion is only as good as the facts upon which it relies - he has relied to - in - arrive at his opinion.

Now, section 5 of that report - I think it's important to read the matter out, because it does encapsulate his opinions which are drawn - extrapolated from his findings earlier in his report. He says:

> It is not within my remit to speculate upon the history of the issues that have arisen in relation to the damage to the retaining wall and fence. I have formed some opinions with regard to the retaining wall and undertaken calculations to demonstrate the significant affect that may be perceived as small changes, can have

on the loams applied to retaining walls. The following points are opinions I have formed: it is unlikely that the wall to 11B Keble Heights was built lower than it should have been. It was most likely built to the pre-existing slope. I am of the opinion that as one of the earlier homes developed in the subdivision, the builder/owner had an opportunity to minimise the costs of the build by keeping the wall to its minimal viable height. The property at 14 Trinity Rise -

And I insert there that's the Marsh's property -

Was built after its neighbours at 16 Trinity Rise and 12 Trinity Rise. And 11B Keble Heights -

And again I insert, that's Mr Loughton's property -

As it is a requirement of the latter building work to take into consideration the surrounding building and structures. The property of 15 Keble Heights appears to have been the most recent house to have been constructed in the vicinity, however its retaining wall which pre-dates those at 14 Trinity Rise is set at a lower level, so as not to surcharge the wall to 11B Keble Heights. The retaining walls at 14 Trinity Rise do not appear to take into consideration the proximity of the neighbouring walls. The cost of retaining walls built at 14 Trinity Rise was minimised by constructing the base level where it is currently. To construct at the most appropriate level would have required two additional courses of blocks equating to eight additional blocks per metre.

And he asked the court to refer to the sketch in the appendix. He says that:

The following statements are based upon engineering, judgment and observation. A fence does not have the structural capacity to act as a retaining wall. The 700 mils of sand would have caused the fence to fail. The load from the vehicles during construction phase may have hastened the failure. The additional height of soil has significantly increased the overturning moments to the retaining wall. I am unaware of when the cracking to the wall first occurred, however that increased in load to the wall with the additional 700 millimetres of soil; could have been a major contributor to the damage seen. The vehicle loading may also be a contributor.

Now, it is noted and it is clear from the sketch of the cross-section which Mr Woodhouse helpfully provided. At the last page of the report is that his opinion, as an expert, is based on the - his assumptions as to the original soil levels being at the same height as the retaining wall as clearly drawn on his diagram. And I found that this is not correct. Further, there is no other evidence of the original soil levels to support the expert's assumptions on that matter. And this also underlines - undermines the conclusion of the first dot point, however, 5.0.

Again, there does not appear to be any factual basis for - in the evidence which was able to be produced at trial, upon which this conclusion could be reached. Or that the soil was in particular the wording used, an additional 700 millimetres of soil, as he has said in the fifth bullet point. There is no factual basis to support any contribution at all by heavy vehicle usage on the Marsh's land. I know that the expert's opinion was based on an assumption, probably correct, that the mechanical means - a mechanical means would have been in - required to lift the blocks in the Marsh's new retaining walls on 14 Trinity.

However, there was no evidence as to how or when the mechanical assistance took place, or that it was from the claimant's side of the Marsh's retaining wall. And this, of course, I - I note, is not the basis of the - Mr Loughton's claim now, in any event. Now, as I have said, I accept that Mr Woodhouse is an expert. I accept and have no issues with the conclusions which he has reached in his report. However, the factual basis underlying that has not been made out. And, in fact, I can - will be not relying on any conclusion that there was additional soil of 700 mils which could have caused or been the major contributor to the damage seen, as Mr Woodhouse has said.

Now, in this matter I also note the submissions made by the Marshes, that the evidence is clear and was agreed. Mr Woodhouse agreed with it, and as did Mr Loughton, that the retaining wall on the common boundary was on the highest point of the block at 11 Keble Heights. And yet the wall is no higher than it is a - along the remaining length of the retaining wall where the natural ground level was lower. And the defendants have submitted that there can be no negligence by the defendant where the build-up of soil is not proven to have raised the natural ground level of the earth, and I do accept that submission on that

particular point. Now, given there is no evidence that the Marshes put extra soil against the fence - and certainly not any evidence that they placed or caused to be placed 700 mils more of soil, then any claim against them must fail on that particular basis because, simply, the factual assertion underpinning that claim is not being proven.

Now, Mr Laughton was - as he was self-represented, I have turned to his other claims, albeit made at the conclusion of the trial, that the Laughtons' failure to remove 700 mils of soil from against the fence was the cause of his loss. He said that they had - or he agreed with me when I asked him whether he was saying that they had a positive duty to remove sand from the sewage easement area where it came against the fence.

Now, there are, in my view, a number of difficulties with this proposition. First, I do not accept that the standard of care that the owners of adjoining properties in a suburban area owe each other includes a duty to assess any potential difficulties in a boundary - on an adjoining boundary in a pre-emptive fashion.

Such a duty would require persons who purchased properties with retaining walls to get engineering reports on fencing and retaining walls at the time of the purchase and then take all steps to remedy any defects, and this is clearly not the standard of a duty of care of a reasonable person - neighbour. Certainly, it is, in my view, not the standard of care of the person in the defendant's position.

Further, the situation no the Marshes' property has been in existence, on my findings, since at least 1991 and has apparently not changed since they purchased the property in 2003. There was no evidence, for example, of any complaints being made to them by Mr Laughton or, indeed, anyone; no evidence that there any problems or evidence with the defence that could be identified before it collapsed, and within the wording of section 5B(1)(a) there was - such risk was not one that they did know about.

There's no evidence that they knew about it, or that they ought to have known about it and, therefore, it was not a foreseeable risk, and in the circumstances no precautions against a risk of harm would have suggested themselves and been in the circumstances precautions that a reasonable person would have taken.

They are in the circumstances of this matter not liable when the principles of 5B are applied to the facts of this matter. Now, for the sake of completeness, my view is that this is not a case of infringement by the Marshes of a right lateral support. I raise this matter because it can potentially, perhaps, have been a matter which may have been raised but, in my view, it does not apply. Now, in - the law says that where an - that an owner of land in its natural state has a right to lateral support of that land by his neighbour's land, and there are a number of authorities there, for example, Byrne v Castrique (1965) VR 171 or Kebewar Proprietary Limited v Harkin (1985) 3 BC or 15 NSW.

The right to natural support is one that arises as an incident of ownership and is a natural right which exists automatically. A neighbour is not entitled to excavate so close to the boundary as to cause subsidence or collapse. However, the duty not to interfere with a right to lateral support is broken by the party who originally made the excavations, and that party is responsible for whatever consequences ensure, and in that respect I refer to the tort text - Salmond on Torts, ninth edition, and also as was approved in the case of Torette House v Berkman (1940) 62 CLR 637 at pages 658 to 659, and at that case - in that matter Dicks and Jay - this is a High Court case - said:

> It seems, however, that the case of interference with the right of support does not, in truth, fall within the same principle. There is here no continuing injury, no continuing duty remaining with the land to supply artificial support for the natural support which has been taken away by the act of a predecessor in title. The easement of support does not amount to a positive duty to support the dominant land. It only amounts to a negative duty not to interfere with the natural support possessed by land. This negative duty is broken once for all by him who originally made the excavation and he alone is an remains responsible for the consequences of his act, whatever those consequences ensure.

Now, in my view, this isn't the case of removal of lateral support from Mr Laughton's land in any event, but even if it was, clearly, the original excavation was on 11 Keble Heights and thus this authority to which I have referred suggests that the Marshes cannot be liable on that (indistinct) now, those back-findings, Mr Laughton, I consider are fatal to your claim, and your claim will be dismissed.

Now, although I found against you on the issue of liability in this matter, I'm nonetheless required to make a provisional assessment of your damages to cover the situation where if, for example, my decision on liability is varied by a higher court, such that it is not necessary for them to be - remit the matter to this court for assessment of damages, and I - there the decision is to occur in the Ministry for Health (2009) WASCA 32 at 10. So I have then proceeded to make a provisional damages assessment. This is as I'm required to do. Just so you understand, this isn't damages being awarded. It's a provisional assessment.

Now, clearly, Mr Laughton set out his damages at some length in that affidavit which was filed on 9 August, and I've had recourse to that. I've had recourse to the tendered matters in support of damages. Now, he has put forward a number of bases for claims for damages, resulting from alleged loss, and I would state at this point that I don't share the claimant's views - sorry - the defendant's views of the unreliability of evidence of Mr Dhu from Bunbury Concrete.

I actually found him to be a honest witness and, in fact, he was quite put out by the fact that someone might suggest that he wasn't, and I did not form the view that his evidence as to his costs and the basis of arriving at his costs was not reasonable, and I have relied upon them. In my view, the allowable costs which are allowable as a direct result would be the sum of $4576 for the WML drawings, the $500 for the survey, the $132.50 for the council building permit, $19,800 for retaining wall repairs and a sum I have allowed by averaging costs of $2000 for the replacement of the boundary fence.

Now, that totals $27,08.50. Now, many of the other costs, in my view, which are contained in that affidavit have not been adequately proved or are too remote to be allowed as damages for the alleged negligence. Some are actually of the nature of party and party costs, in any event. Now, first of all, I turn to the stress claim. Mr Laughton sought $20,000 for all of the stress that these matters have caused him. In that respect, I refer to section 5T of the Civil Liability Act 2002, which says that the liability - deals with the liability for pecuniary loss for consequential mental harm.

A court cannot make an award of damages for personal injuries damages for pecuniary loss for consequential mental harm unless the harm consists of a recognised psychiatric illness. Now, there was no evidence of a

recognised psychiatric illness and, in any event, for a damages for non-pecuniary loss, which this would be, the Civil Liability Act imposes what is commonly called a deductable at section 9 and section 10 of the Act, and, certainly, any such deductable would preclude - by operation of those sections - an award of such in the amount for that head of damage.

As for the other heads of damages, such as the (indistinct) interests, storage costs, rates and taxes, airfares, car hires and the other matter due to - said to be due to the inability to sell 11B Keble Heights, these are all an example of what is known generally as loss of chance damages.

In my view, one would have expected expert evidence from - such as a real estate salesman, etcetera, to establish the factual basis for the claim of those damages. I don't accept that there is again a factual basis made out between the claimed loss and any negligence by the Marshes, and would disallow those claims from any assessment of damages. So the total I would assess damages at provisionally is $27,008.50. Right.

MORISON, MR: Your Honour, an order was made on 15 January 2016 that the defendants pay - for the defendant to pay the claimant's costs of the application to be assessed, if not agreed, and that was the application to set aside the default judgment. So that cost order has already been made. I don't know that there has been any costs reserved. In any event, I would seek the defendant's costs - the defendants have their costs, including any reserved costs.

HER HONOUR: Mr Laughton, sir, if you stand up. In civil matters, the rule is that costs follow the event, so the unsuccessful party is required to pay the successful party's costs. They will be taxed. They have to be taxed. They have to be itemised in a bill which is presented to you for comment and potential objection then is subsequently taxed by a taxing officer of the court. So their claim is dismissed. There is an order that the claimant pay the defendant's costs to be taxed. Is it prudent to include "in default of agreement" or should it proceed straight to taxation?

MORISON, MR: Straight to taxation.

HER HONOUR: To be taxed such costs to include any reserved costs. It may also be that there was no order that the defendants had to meet any allowable court costs in respect to the default judgment.

MORISON, MR: There was no such order, no. No.

HER HONOUR: All right. Okay. Thank you.

MORISON, MR: Thank you, your Honour.

AT 5.52 PM THE MATTER WAS ADJOURNED ACCORDINGLY

Auscript are contracted by the Department of the Attorney General to record and/or transcribe court and tribunal proceedings in Western Australia as specified under a government Contract. This Contract prescribes the recording and transcription production standards that must be adhered to.

The transcript of GCLM 316/2015 Laughton v Marsh heard on 17/8/16:

- Is a written reproduction of the audio record of the proceeding;
- Is a complete transcript except where otherwise stated. Any "indistinct" notations within the transcript refer to those parts of the recording that could not be accurately transcribed due to speech clarity, recording quality or other factors impacting word intelligibility.

Certified on 2/9/2016.