IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION

Not Restricted

No. 9997 of 2006

THE ATTORNEY-GENERAL FOR THE STATE OF VICTORIA — Plaintiff

v

BRIAN WILLIAM SHAW — Defendant

JUDGE:	HANSEN J
WHERE HELD:	Melbourne
DATE OF HEARING:	28 March 2007
DATE OF JUDGMENT:	17 May 2007
CASE MAY BE CITED AS:	The Attorney-General for the State of Victoria v Shaw
MEDIUM NEUTRAL CITATION:	[2007] VSC 148

Practice and Procedure – Application for order that defendant be declared a vexatious litigant and that he not, without leave, commence or continue legal proceedings – Whether defendant habitually and persistently instituted vexatious legal proceedings – Whether defendant's unsuccessful application to join defendants to a proceeding can be characterised as institution of a proceeding – Exercise of discretion – *Supreme Court Act 1986*, s 21.

APPEARANCES:	Counsel	Solicitors
For the Plaintiff	Mr R M Niall	Victorian Government Solicitor
For the Defendant	Dr J Walsh of Brannagh	Legal Rite Solicitors

HIS HONOUR:

1 In this proceeding commenced by originating motion filed on 28 November 2006, the Attorney-General for the State of Victoria ("the plaintiff") seeks an order pursuant to s 21 of the *Supreme Court Act 1986* declaring Brian William Shaw ("the defendant") to be a vexatious litigant, and further orders that the defendant not, without the leave of the Court, commence or continue any legal proceeding (whether civil or criminal) in the Court, an inferior court or any tribunal constituted or presided over by a person who is a barrister and solicitor of the Court. As the result of an amendment to s 21(3)(c) the reference to a barrister and solicitor should be to an Australian Lawyer. The originating motion states that the orders are sought on the grounds that the defendant has habitually, persistently, and without any reasonable ground, instituted vexatious legal proceedings against different persons in the Court and other courts and tribunals, as described in a table attached to the originating motion.

2 The defendant, who was represented by counsel in the hearing before me, opposed the application. The defendant also sought, by summons filed 12 February 2007, an order that the whole of the plaintiff's proceeding be struck out as it may prejudice, embarrass or delay the fair trial of grand jury applications lodged by the defendant, and is an abuse of process. In the course of argument, counsel for the defendant said initially that the summons had been filed to emphasise the point that the defendant was not just resisting the plaintiff's application but was seeking to have it struck out. He then agreed, however, that the defendant did not seek to have the plaintiff's proceeding struck out but, rather, sought that it be dismissed on the merits. In these circumstances, the defendant's summons serves no purpose and I say nothing more about it.

3 The Court's power to declare a person to be a vexatious litigant is found in s 21 of the *Supreme Court Act 1986* which relevantly provides as follows:

> "(1) The Attorney-General may apply to the Court for an order declaring a person to be a vexatious litigant.
>
> (2) The Court may, after hearing or giving the person an opportunity to be heard, make an order declaring the person to be a vexatious litigant if it is satisfied that the person has –

(a) habitually; and

(b) persistently; and

(c) without any reasonable ground –

instituted vexatious legal proceedings (whether civil or criminal) in the Court, an inferior court or a tribunal against the same person or different persons."

4 In short, the Court may only make an order under s 21 if it is satisfied that the defendant has habitually, persistently and without any reasonable ground instituted vexatious legal proceedings. As to the meaning of these terms, I respectfully adopt[1] the view expressed by Roden J in *Attorney-General v Wentworth*[2] that:

> "'Habitually' suggests that the institution of such proceedings occurs as a matter of course, or almost automatically, when the appropriate conditions (whatever they may be) exist; 'persistently' suggests determination, and continuing in the face of difficulty or opposition, with a degree of stubbornness".

5 As to the other criteria in s 21(2), whether legal proceedings are 'vexatious' and instituted 'without any reasonable ground' are matters which must be considered objectively, in light of all relevant facts and circumstances. In this regard, I agree with Whelan J that a proceeding will necessarily be held to be without reasonable ground if it is utterly hopeless[3]. There are numerous authorities which discuss the principles relevant to an application under s 21, but for present purposes it is sufficient to set out the following summary of the relevant principles (omitting references to the authorities relied on) provided by Ashley J in *The Attorney General for the State of Victoria v Horvath, Senior*[4]:

> "[T]he following matters are, according to the authorities, relevant: first, where an order has been made dismissing an action as frivolous or vexatious, or striking a pleading out, it is not for a court considering a s 21 application to go behind the order and go into the

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1 As did Kellam J in *The Attorney-Genera for the State of Victoria v Lindsey* (Unreported, Supreme Court of Victoria, 16 July 1998), Eames J in *Attorney-General for the State of Victoria v Kay* [1999] VSC 30, Ashley J in *The Attorney General for the State of Victoria v Horvath Senior* [2001] VSC 269, and Whelan J in *Attorney-General for the State of Victoria v Weston* [2004] VSC 314.

2 (1988) 14 NSWLR 481 at 492.

3 *Attorney-General for the State of Victoria v Weston* [2004] VSC 314 at [22].

4 [2001] VSC 269 at [28].

> merits of the argument as a court of appeal would do[5]. Second, findings which are required do not depend on viva voce evidence or credibility of witnesses. The critical evidence is to be found in court files – documents, judgments, orders and reasons. For that reason, any hearsay material contained in an affidavit in support of an application, even though objectionable, should be treated simply as distraction, and ignored. Third, the question is not whether the manner in which a proceeding is conducted is vexatious; it is whether, having regard to its nature and substance, it should be so characterised. Fourth, and this is a more general proposition with respect to s 21, in determining whether the Attorney-General has made out a case, the court is not concerned with a minute individual examination of each proceeding. It must consider the overall impression created by the number of proceedings, their general character and their results."

The legal proceedings instituted by the defendant

6 Although I am not concerned with a minute individual examination of each proceeding, it is nevertheless necessary to describe the proceedings brought by the defendant in sufficient detail to allow an objective assessment of their character and results to be made.

7 The proceedings relied on by the plaintiff are conveniently set out in Tables A and B annexed to the affidavits of the plaintiff's solicitor affirmed 28 November 2006 and 23 January 2007 respectively. Table B was subsequently updated to reflect the fact that several proceedings referred to in Table B (and pending at the time of the earlier affidavits) were resolved, in that the proceedings were struck out. This was explained in a further supplementary affidavit of the plaintiff's solicitor affirmed 29 March 2007, which annexed an updated Table B. For the sake of convenience and reference, I have annexed Table A and the updated Table B to this judgment.

8 In short, the tables provide as follows. Table A lists 35 separate criminal charges brought by the defendant in the Magistrates' Court of Victoria between September 2002 and August 2006, against 20 persons including the Governor-General, Justices of the High Court, Judges and Masters of the Supreme Court of Victoria, the Director

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5 His Honour referred to *Kay v Attorney-General* (2000) 2 VR 436 in support of this principle. In *Kay* Ormiston JA made observations (at 437) to the effect that it was not necessary to re-examine the circumstances of each proceeding upon which the Attorney-General may seek to rely to support an order under s 21.

of Public Prosecutions for the State of Victoria ("the Victorian Director"), the Commonwealth Director of Public Prosecutions ("the Commonwealth Director"), and the Attorney-General for the State of Victoria. The charges included taking and administering unlawful oaths, attempting to pervert the course of justice, conspiracy to pervert the course of justice, treason, and a range of other offences under Victorian and Commonwealth law. Each proceeding was ultimately struck out by the Magistrates' Court on the basis that the relevant Director of Public Prosecutions, who had taken over the prosecution, withdrew the charge. Table A then lists 19 other applications and appeals brought by the defendant in the Magistrates' Court, County Court, Supreme Court/Court of Appeal between 1996 and about August 2005, all of which were dismissed or struck out.

9 Table B lists 35 persons against whom the defendant instituted criminal charges in the Magistrates' Court of Victoria in November and December 2006. Those persons included the Governor-General, State and Federal politicians (including the Prime Minister, the former Leader of the Federal Opposition, and various State Attorneys-General), judicial officers (including Justices of the High Court and Victorian judicial officers) and State and Commonwealth Directors of Public Prosecutions. The charges include treason and misprision of treason at common law, and offences under the *Crimes Act 1914* (Cth) and *Criminal Code Act 1995* (Cth). Each charge was ultimately struck out by the Magistrates' Court on the basis that the Commonwealth Director, who had taken over the prosecution, withdrew the charges. Table B also lists an appeal instituted by the defendant in January 2007 in which he sought to challenge a decision of the Magistrates' Court to strike out the criminal charges brought by the defendant against the Commonwealth Director. A supplementary affidavit of the plaintiff's solicitor states that, on 13 February 2007, Master Daly dismissed the appeal.

10 In effect, counsel for the plaintiff sought to place the legal proceedings instituted by the defendant in four categories. First, there were criminal proceedings in which the defendant filed charges against numerous people in the Magistrates' Court.

Secondly, there were "civil proceedings", which fell into three separate categories[6]:

(a) cases in which the defendant was fined (with or without a conviction being recorded) in the Magistrates' Court for traffic offences and then sought to appeal from those decisions to the Country Court or Supreme Court;

(b) cases in which the defendant sought to summon a grand jury pursuant to s 354 of the *Crimes Act 1958* (Vic); and

(c) the civil proceeding *Shaw & ors v G Fragapane Nominees Pty Ltd* ("*Shaw v Fragapane*") commenced by writ by the defendant and his sons in the Supreme Court in 1999.

11 I interpolate that counsel for the plaintiff mentioned in passing – though he said it was "not germane" to his submissions – that on 23 December 2004 Commissioner Braddock SC of the Supreme Court of Western Australia ordered that:

> "No legal proceeding shall be instituted by Brian William Shaw or any person acting on behalf of Brian William Shaw in the State of Western Australia in the Supreme Court or in any inferior court or tribunal, unless Brian William Shaw shall first obtain the leave of the Supreme Court, or inferior court or tribunal (as the case may be) pursuant to section 6 of the Vexatious Proceedings Restriction Act 2002."

That order was made in circumstances where Mr Shaw had been the complainant in 14 private prosecutions in the Court of Petty Sessions (brought against numerous people including a Supreme Court judge, the West Australian Attorney-General and the Commonwealth and State Directors for Public Prosecutions) and a co-plaintiff in a civil proceeding in the Supreme Court of Western Australia against the State of Western Australia, the Attorney-General and the Grand Lodge of Western Australia Ancient. As to the relevance of the Western Australian order and the proceedings brought by Mr Shaw which led to its making, I note that in *The Attorney General for the State of Victoria v Horvath Senior* Ashley J said, after referring to *Re Cameron*[7] and *Attorney-General (SA) v Burke*[8], that there was "much to commend" the plaintiff's

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6 Strictly speaking, the first and second categories of "civil proceedings" were criminal (or quasi criminal) in nature, but it is nevertheless convenient to refer to them under the heading of civil proceedings to distinguish them from the criminal proceedings by which the defendant has actually brought criminal charges against people.

7 [1996] 2 Qd R 218 at 224.

8 Unreported, Supreme Court of South Australia, Cox J, 20 February 1997)

submission that "the correct approach should permit recourse to proceedings issued in a non-state jurisdiction upon the question whether proceedings instituted within the jurisdiction should be characterised as vexatious; to aid a conclusion that proceedings instituted within the State jurisdiction had been instituted habitually and/or persistently; and upon an exercise of discretion under s 21(2)". Ultimately, however, his Honour found it unnecessary to decide the point. In the present case, counsel for the plaintiff did not seek to rely on the Western Australian order or the events leading up to it in aid of his submission that the defendant had instituted vexatious legal proceedings in Victoria. On that basis, I do not take the Western Australian order into account in arriving at my decision, but merely mention it for completeness.

12 With this brief overview of the proceedings, it is now convenient to set out further details of a relatively small sample of these proceedings, both criminal and civil, in order to appreciate the nature and results of the legal proceedings. I begin with the criminal proceedings.

Criminal proceedings instituted by the defendant

13 On 19 September 2002, the defendant issued a charge and summons out of the Magistrates' Court at Melbourne against Mr Charles Wheeler, then a Master of the Supreme Court. The Master was charged with, in the period between 24 May 2001 and 26 August 2002, taking and administering unlawful oaths, attempting to pervert the course of justice, and conspiracy to pervert the course of justice (conspiracy to defraud), these various charges being described as indictable offences under s 316 and s 321 of the *Crimes Act 1958* (Vic). By letter to the Victorian Director of Public Prosecutions dated 19 September 2002, the Victorian Government Solicitor, on behalf of the Master, requested that the Director take over the charges under s 22 of the *Public Prosecutions Act 1994* (Vic) on the basis that the offences could not be made out, that in any event the Master was immune from criminal process in respect of his judicial functions, and that the charges were brought for an improper purpose. On 2 October 2002, the Associate to the Director advised the Victorian Government

Solicitor and Mr Shaw that he had taken over the prosecutions for the purpose of discontinuing each of them. The Associate to the Director advised Mr Shaw that "the Director is not satisfied that the alleged offences are made out, but in any event he would regard Master Wheeler as having judicial immunity from prosecution". On 8 October the Magistrates' Court ordered that the charges be struck out, on the basis that the Director had taken over the charges pursuant to s 22 of the *Public Prosecutions Act 1994* and applied to strike out the proceedings.

14 On 15 March 2004, the defendant issued a charge and summons out of the Magistrates' Court at Melbourne against John Spence Winneke, then President of the Court of Appeal, supported by an affidavit affirmed by the defendant on 16 March 2004. The charge against Winneke P was that "On October 2 2001 [he] did act oppressively by refusing relevant disclosure, additionally entered into evidence involving his father without disclosure", being an indictable offence under s 34(1)(b) of the *Crimes Act 1914* (Cth)[9]. The affidavit in support alleged that:

> "1. On October 2, 2001 John Spence Winneke (President Winneke) with four fellow Judges heard a Grand Jury Application by myself and Carmen Walter against a number of Freemasons in Victoria for taking and administering unlawful oaths in breach of Section 316 of the *Crimes Act 1958* Victoria.
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> 2. President Winneke speaking for himself and the other four Judges refused outright when asked to disclose any interest in the subject matter.
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> 3. A large number of exhibits had been placed before the Court some of which involved and concerned the Victorian Constitution in addition to the exhibits concerning Freemasonry, in particular the oaths of Freemasonry.
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> 4. My knowledge of Grand Jury procedure and rule was limited but I have discovered that the sitting Judges in this type of application cannot enter into the evidence only the offence. The evidence is the role and function exclusively of the 23 men chosen for Grand Jury.
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> 5. President Winneke did not disclose that the Governor who

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9 Section 34(1)(b) provides that any person who, being a judge or magistrate, intentionally and perversely exercises federal jurisdiction in any matter in which he has a personal interest shall be guilty of an offence punishable by imprisonment for up to 2 years.

illegally repealed the Victorian Constitution Act, 1855 and unlawfully assented to the Victorian Constitution Act, 1975 was his father, Henry Winneke.

6. President Winneke did not disclose any Masonic involvement by the sitting Judges or himself, his father, his brother or any family member.

7. President Winneke protected the other four Judges from the disclosure issue. Accordingly, this charge is laid against John Spence Winneke."

I interpolate that on 16 April 2004, the defendant also charged the other members of the Court of Appeal who sat with Winneke P on 2 October 2001, namely Brooking, Charles, Buchanan and Chernov JJA, with "intentionally and perversely exercising federal jurisdiction in a matter containing a personal interest", contrary to s 34(1)(b) of the *Crimes Act 1914* (Cth). That is to say, the defendant charged the President and four other judges of the Court of Appeal who had, on 2 October 2001, heard his application to summon a grand jury pursuant to s 354 of the *Crimes Act 1958* (Vic) and, on 12 October 2001, dismissed the application on the basis that there was a failure to show that unlawful oaths were taken, and that the application was hopeless. I refer further to this decision below.

15 On 15 March 2004, the defendant issued a charge and summons out of the Magistrates' Court at Melbourne against Master Cain, Registrar of the Court of Appeal, supported by an affidavit affirmed by the defendant on 16 March 2004. The Master was charged with "attempting to pervert the course of justice by refusing to file application for grand jury charges against Mr Charles Wheeler Nov 2002, Feb 2003, March 2003, Sept 2003", being an indictable offence under s 43 of the *Crimes Act 1914* (Cth). The affidavit in support alleged that:

"1. Mr Phillip Cain is the current Registrar of the Court of Appeal, Supreme Court of Victoria.

2. Under section 354, Crimes Act 1958, Victoria any person is permitted to file for Grand Jury after a Court has declined or refused to hold an offender to bail.

3. Section 354, Crimes Act Victoria, 1958 is a legal right.

4. On October 8, 2002 the Melbourne Magistrate's Court refused/declined to hold an offender (Mr Charles Wheeler, Master of the Victorian Supreme Court) to bail after intervention by the Director and Office of Public Prosecutions.

5. The procedure should be a simple one. Lodge the application at the Office of the Supreme Court of Appeal 450 Little Bourke Street, Melbourne and have a date set for the application to be heard by the Full Court of the Supreme Court comprised of Judges not Masters.

6. On a number of occasions that the application has been lodged concerning Mr Wheeler either Master Cain or Master Dowler [sic] have refused and returned the Application by mail.

7. Accordingly, I have laid the charge of attempting to pervert the course of justice against Master Phillip Cain, current Registrar Court of Appeal, Supreme Court of Victoria."

16 On 15 March 2004, the defendant also filed a charge and summons against the Victorian Director of Public Prosecutions, charging him with "treachery" and attempting to pervert the course of justice contrary to the *Crimes Act 1914* (Cth). The defendant's affidavit in support stated that these charges arose from the Director "deliberately blocking application process for private prosecution of the unlawful oaths".

17 On 16 April 2004, the defendant filed a charge and summons against the Governor-General Michael Jeffery, charging him with a range of offences under the Victorian and Commonwealth *Crimes Act* relating to the taking and administering of unlawful oaths, attempting to pervert the course of justice, and that "by permitting and consenting to an unlawful and alternative set of law, oaths, rules and allegiances [he] has by intent and sabotage attempted to overthrow the Constitution of the Commonwealth".

18 By letters to the Commonwealth Director of Public Prosecutions dated 29 March, 31 March and 28 April 2004, the Victorian Government Solicitor, on behalf of the various persons charged above[10], requested that the Commonwealth Director take

[10] With the exception of the Governor-General, who was not mentioned, however it is apparent from the orders of the Magistrates' Court, referred to below, that the charges against the Governor-General were also dismissed.

over the conduct of the proceedings under s 9(5) of the *Director of Public Prosecutions Act 1983* (Cth) on the basis that the charges were without substance and were misconceived in law. On 7 May 2004, the Commonwealth Director advised the Victorian Government Solicitor that he had decided to take over and discontinue the prosecutions. On 17 May 2004 a Magistrate ordered that the charges be struck out, on the basis that the Commonwealth Director had withdrawn the charges and, in the case of the Governor General, on the basis that the Victorian Director had withdrawn the charges. The Magistrate refused the application by the Victorian Government Solicitor for costs, on the basis that there was no evidence before the Magistrate as to the reason for the Directors' decisions to withdraw the charges, thus she could not conclude whether the original informant Mr Shaw, or the Commonwealth or Victorian Director would be an appropriate party against whom costs orders might be made.

19 On 2 June 2004, the defendant issued a charge and summons out of the Magistrates' Court against the Commonwealth Director, charging him with numerous indictable offences under the *Crimes Act 1914* (Cth) including attempting to pervert the course of justice by failing to prosecute the indictable offences against the Governor-General and others, protecting and defending indictable offences committed by the Governor-General, and compounding offences by agreeing to abstain from and discontinue prosecuting indictable offences. There were also charges of treason and being "an accessory to the fact in that the current Governor General Michael Jeffrey has breached his Oath of Allegiance, by taking an additional, Secret Oath of Allegiance to serve Freemasonry". There were also similar charges under the *Crimes Act 1958* (Vic). On 13 July 2004 the Magistrates' Court struck out the charges on the basis that the charges had been withdrawn.

20 On 14 October 2004, the defendant issued separate charges and summonses out of the Magistrates' Court against Justice Smith and Master Kings, charging the former with, on 20 September 2004, intentionally and perversely exercising federal jurisdiction in a matter in which he had a personal interest, and the latter with, on 7

September 2004, attempting to defeat, and conspiring with other Masters to defeat, the course of justice in relation to the judicial power of the Commonwealth. On 15 December 2004 the Magistrates' Court struck out the charges on the basis that they had been withdrawn.

21 I now consider some of the criminal proceedings set out in Table B mentioned above.

22 On 15 November 2006, the defendant issued a charge and summons out of the Magistrates' Court at Melbourne against the Attorney-General for the State of Western Australia, laying 18 separate charges, including common law treason and offences under the *Crimes Act 1914* (Cth) and *Criminal Code Act 1995* (Cth). It appears that the charges were mainly alleged to have arisen from the Attorney-General's role in enacting the *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003* (WA) the purpose of which Mr Shaw alleged was "to remove and replace Her Majesty Queen Elizabeth II, Her Heirs, Her Successors and Her Subjects without lawful consent of the People nor the knowledge of the People"[11]. Then, between 10 and 17 November 2006, the defendant issued charges and summonses against other Western Australian persons including judges of the Supreme Court, the Minister for Resources, the Director of Public Prosecutions and some other persons, in essence being similar charges to those against the Attorney-General. At around the same time, the defendant filed charges against the Attorneys-General of the Commonwealth, Victoria, South Australia, New South Wales, the ACT, Queensland, and Tasmania, alleging misprision of treason at common law. He filed a further 19 charges of offences at common law and under the *Crimes Act 1914* (Cth) and *Criminal Code Act 1995* (Cth) against the Commonwealth Director, and also charged the Governor-General, Prime Minister, and former Leader of the Federal Opposition with treason and misprision of treason at common law.

23 On 15 December 2006, the Chief Magistrate struck out all of the above charges, on the basis that the Commonwealth Director had taken over and withdrawn each of

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11 Counsel for the defendant took me to some of the provisions of the Act which, in short, amended various pieces of Western Australian legislation by deleting the words "Crown", "Queen" and "Her Majesty" and inserting in lieu thereof words such as "State" and "State of Western Australia".

the charges.

24 Then, between 18 and 22 December 2006, the defendant issued further charges and summonses against the Victorian Attorney-General, the Commonwealth Director, the Victorian Director, the Chief Magistrate, five Justices of the High Court, two church representatives, and a member of Federal Parliament, charging each with misprision of treason at common law. On 29 January 2007, the Magistrates' Court struck out all of these charges on the basis that the Commonwealth Director had taken over and withdrawn the prosecutions.

25 Meanwhile, on 11 January 2007 the defendant had filed a "Notice of Appeal on a Question of Law" in the Supreme Court, naming the Commonwealth Director as respondent and seeking to appeal against the earlier decision of the Chief Magistrate on 15 December to strike out the proceedings. The notice of appeal alleged that 32 questions of law arose, including for example question 32 which read "In the Melbourne Magistrates' Court 15th December 2006, did the Chief Magistrate Ian Gray legally discharge the 27 named offenders or was the purported legal process a sham to conceal discovered Treason". Then followed eight grounds of appeal, including that:

> "4. All Senators and House of Representatives sitting in either Commonwealth House from the former State of Western Australia after the illegal removal of both Crown and Monarch are sitting illegally
>
> 5. The current Governor General is in agreement with the illegal removal of both Crown and Monarch from Western Australia creating an inconsistency with section 109 of the Commonwealth of Australia Constitution Act 1900"

The notice of appeal sought orders that the decision of the Chief Magistrate was void and "that all matters of Treason and Misprision of Treason must be reserved for Grand Jury exclusively in accordance with Law". The defendant filed an affidavit in support which alleged, among other things, "That a plot to sabotage the Constitution of the original States in addition to the Commonwealth has been uncovered. Such plot involves Collusion between the Various State Parliaments, inclusive of the

Commonwealth Parliament" and that the Chief Magistrate acted unlawfully and illegally in striking out the charges against the 27 named conspirators and "was clearly and evidently in agreement with the concealment of the discovered conspiracy". On 13 February 2007, Master Daly dismissed the appeal pursuant to r 23.01 with no order as to costs, noting that the defendant did not have standing to appeal against the decision of the Chief Magistrate, and further that the decision of the Chief Magistrate was made on committal and was thus not appealable under s 92 of the *Magistrates' Court Act 1989*.

Civil proceedings instituted by the defendant

26 I now consider a sample of what counsel for the plaintiff described as civil proceedings instituted by the defendant.

Challenges to determinations in respect of traffic offences

27 Beginning with the first category, Table A indicates that the defendant has appealed or sought leave to appeal from 12 determinations of the Magistrates' Court in relation to traffic offences. I mention only a few of these in order to convey the nature of these proceedings.

28 On 29 March 1996 the defendant made an application by affidavit in the Magistrates' Court to revoke enforcement orders made against him in relation to three traffic offences (exceeding the speed limit). The application was refused and an appeal from that order was also refused on 19 September 1996. On 21 October 1996, the defendant filed a notice of appeal against that decision in the County Court supported by a document entitled "Submission for Appeal" which stated, among other things, his ground of appeal as "the convictions are nugatory because the Magistrate's Court at Werribee was never legally Constituted, because Victoria does not have a valid Constitution". His Honour Judge Howse dismissed the appeal on 5 December 1996, stating that the Court had no jurisdiction.

29 On 14 July 1998, a Magistrate convicted and fined the defendant for exceeding the speed limit. The defendant sought to appeal from that decision to the Supreme

Court on a question of law, filing an affidavit for that purpose. On 13 August 1998, Master Kings dismissed the appeal, not being satisfied that the material in the appellant's affidavit raised a question of law.

30 On 29 July 1999, the Magistrates' Court fined the defendant $50.00, without recording a conviction, for exceeding the speed limit. The defendant sought to appeal from that decision to the Supreme Court on a question of law, filing an affidavit which stated, among other things, that "The Queen of England has abdicated her role as DEFENDER OF THE FAITH, that faith being Christian, by abdicating to the foreign power of Freemasonry" and that "The real question of law in all of this revolves around the issue of a determination of the law of God and Freemasonry"[12]. On 21 October 1999, Master Evans dismissed the appeal.

31 On 29 April 2002, the defendant filed an affidavit by which he sought to appeal to the Supreme Court from a conviction and fine imposed by the Magistrates' Court on 3 April 2002 for exceeding the speed limit. The affidavit did not identify any questions of law as such, but alleged, among other things, that the Victorian Constitution of 1975 was invalid, that "fraud vitiates everything" and "constitutional fraud leads into treason". On 1 May 2002, Master Evans dismissed the appeal. The defendant appealed from that decision to the Judge in the Practice Court. On 7 May 2002, Ashley J dismissed the appeal[13] observing that the defendant had raised two defences to the speeding offence in the Magistrates' Court - (a) that the Victorian Constitution was invalid and hence the *Road Safety Act 1986* under which he was charged was also invalid, and (b) that the judicial process in Victoria was subverted by the involvement of Freemasonry – and had again raised those defences on the appeal. His Honour found the defendant's argument "unintelligible" despite "close consideration of his affidavit and his oral exposition". His Honour concluded that "there is absolutely nothing to this appeal. The Master was right to refuse to grant an order under Rule 58.09".

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12 See paras 11 and 18.

13 *Shaw v Gilsenan* [2002] VSC 169.

32 As I have said, the above is merely a sample of the various appeals and applications for leave to appeal brought by the defendant against orders of the Magistrates' Court in relation to traffic offences. In none of these cases was the defendant successful.

Applications to summon a grand jury

33 On 7 and 8 June 2001 the defendant attempted to file a writ in the Supreme Court against the Masonic Lodge. The Prothonotary did not accept the writ. It appears that the question of whether to accept the writ was referred to, or reviewed by, Beach J in the Practice Court. As to that, Mr Shaw deposed in an affidavit in *Shaw v Fragapane* that at 6.30pm on Saturday 9 June 2001 he phoned the Supreme Court seeking an injunction and was referred to the Associate to Beach J, who stated that the matter had been before Beach J on the Friday afternoon and that they were not going to entertain the application to lodge the writ or seek an injunction.

34 It appears that on or about 18 July 2001, the defendant and Ms Carmen Walter (who has also made allegations as to a Freemason conspiracy corrupting the judiciary) attempted to file an application in the Court of Appeal for the purpose of summoning a grand jury "to hear indictment charges" against the organisation of Freemasonry, Beach J, and his Honour's Associate. The affidavit in support stated, among other things, that the refusal of Beach J (with the involvement of his Associate) to allow the issuing of the writ was an attempt to pervert the course of justice and was conspiracy to conceal the indictable offences revealed in the writ. It appears from an undated document that the Registrar of the Court of Appeal refused to accept the application and affidavit, in essence on the basis that the requirements of s 354 were not made out.

35 On 12 September 2001, Mr Shaw and Ms Walter filed an application in the Court of Appeal, supported by an affidavit of Mr Shaw and Ms Walter, seeking to summon a Grand Jury. The affidavit stated that "the cause of this action is the breach of section 316 and 321 of the Crimes Act 1958 inter alia by corporations specified in the application". The corporations included Grand Lodge Holding Ltd and Freemason's Victoria Pty Ltd. The affidavit went on to refer to the previous attempts to file grand

jury applications, the involvement of Beach J, and then alleged that indictable offences had been disclosed to the Court but the Court had refused to commit the alleged offender by refusing to issue the writ and present the matter. The affidavit also alleged that various Judges and Masters were involved in Freemasonry and unlawful oaths.

36 On 12 October 2001 the Court of Appeal[14] dismissed the application[15]. The Court said[16]:

> "The material fails to show that Freemasons administer or take oaths proscribed by s 316 of the Crimes Act.
>
> There are several reasons why this application must fail. One or two of the defects are, or may be, capable of being cured, but we should make it clear that in our view there is no reason for supposing that the papers ever would or ever could be put in a state which would warrant the summoning of a grand jury.
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> [after setting out some of the defects in the application, their Honours continued]
>
> We gave the applicants great latitude in arguing their application – more than we should have. They have made it plain that they regard every part of the legal system as infested – that is the kind of word they would use – with Freemasons and that they are convinced that the courts in general and we in particular will never give them the justice to which they are entitled. Many of the expressions were offensive. ("You break the law by the week." "The courts cannot be trusted. You bend the statute law at the whim of whatever decision you want to make. But God's law will win." These are only examples of repeated imputations of bad faith. The applicants have said to us that, each time their application is dismissed, "We will be back tomorrow." We realise that nothing we say will deflect them from their course. We have, however, during the argument, tried to convey to them a little about abuse of process.
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> The application is hopeless and it must be, and is, dismissed."

37 On about 19 July 2002 the defendant and Ms Walter applied to the Court of Appeal for a rehearing of the grand jury application. The application was not accepted by the Registry on the basis that Master Dowling came to the view that there were no

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14 Winneke P, Brooking, Charles, Buchanan & Chernov JJA.

15 *Re Shaw & anor* (2001) 4 VR 79.

16 At 112-113.

significant differences between the present material and the material previously relied on.

38 On 14 August 2002 the defendant and Ms Walter attempted to file an application in the High Court Registry for a Writ of Mandamus, naming the "Supreme Court of Victoria, Full Court" as the respondent. Alternatively, the applicants sought special leave to appeal from the decision of the Court of Appeal. The application was not accepted by the Registry, the Senior Registrar stating that the matter was not within the High Court's jurisdiction as the Justices of the Court of Appeal were not officers of the Commonwealth and were not exercising federal jurisdiction in considering the grand jury application.

39 In March 2004 the defendant attempted to file a further application for a grand jury against Master Wheeler. Master Cain, Registrar of the Court of Appeal, refused to accept the application on the basis that the prerequisites in s 354 were not satisfied. Then, in May 2004 the defendant sought to file a further eight applications to summon a grand jury, against five Justices of Appeal, Master Cain, the Victorian Director and the Governor-General. In his affidavit attached to the applications but apparently only in support of the application against Master Cain, the defendant stated in essence that the charge of attempting to pervert the course of justice emanated from Master Cain's repeated refusals to accept for filing applications for a grand jury hearing. He added "I have stated on a number of occasions that the common sense solution concerning this issue is a 'Trial of the issue', but, common sense has not prevailed, accordingly the charges have been laid".

40 Counsel for the defendant told me during argument that the defendant had issued over 40 grand jury applications which were not deposed to in the affidavit of the plaintiff's solicitor. Counsel stated that the applications were filed in January 2007 - following the orders of the Chief Magistrate on 15 December 2006 striking out the criminal charges referred to earlier – although some may have been filed earlier. These applications include three applications against the plaintiff.

Shaw v Fragapane

41 Mr Shaw and his sons commenced this proceeding by writ and indorsement of claim filed in the Supreme Court on 16 September 1999. I refer to Mr Shaw and his sons as "the plaintiffs" in the context of discussing this proceeding. On the day of filing the writ, the plaintiffs also filed a summons with an affidavit of Mr Shaw in support, seeking orders similar to those sought in the writ. In essence, the plaintiffs sought permanent and interlocutory injunctions restraining the defendant from commencing work, placing padlocks on, or doing any act which would interfere with the plaintiffs' access and right to quiet enjoyment of a farming property known as Bambra Park. The defendant was purchaser of the land under a contract yet to be completed, and was purporting to exercise rights against the plaintiffs under a sharefarming agreement between the plaintiffs and the vendor, pursuant to a power of attorney granted to the purchaser by the vendor. In his affidavit, after referring to having received a letter from the defendant's solicitors, Harwood Andrews, making specific demands in relation to the sharefarming agreement, Mr Shaw deposed that:

> "My reply to this letter was immediate, but, at no time did I acknowledge the purchase of the property to be legal. On that basis I ignored the demands of the letter.
>
> My first reply to Harwood Andrews of Geelong was based on two specific backgrounds, these being Biblical and Constitutional."

The remaining five pages of the affidavit provided details of these biblical and constitutional matters, alleging the influence of Freemasonry on the judiciary and that "Our Victorian Parliament has broken the law since its birth and continues to break the law today" with the result that the transfer of Bambra Park to the defendant was invalid. The defendant filed a summons seeking judgment or a permanent stay under r 23.01 as the proceeding was an abuse of process, did not disclose a cause of action, and was scandalous, frivolous or vexatious.

42 On 8 October 1999, Warren J (as her Honour then was) refused the injunction sought by the plaintiffs, stating that she could not be satisfied on the evidence that there was a serious question to be tried, and that in any event the discretion would not be exercised in the plaintiffs' favour as they were "arguably in default of the terms of

the sharefarming agreement and which default has led it appears to the agreement being properly terminated". As to the defendant's summons, her Honour said that the plaintiffs' case appeared extremely weak but "could not be described at this point as hopeless, an abuse of process or vexatious", thus her Honour adjourned the summons to be heard by a Master on a date to be fixed.

43 The plaintiffs sought leave to appeal from the decision of Warren J. On 29 October 1999, Brooking and Buchanan JJA stated that as the proposed appeal was from an order refusing an injunction, leave to appeal was not required, but as the time for filing a notice of appeal had expired, the plaintiffs required an extension of time to file a notice of appeal. Their Honours refused to extend time, stating that:

> "We need not summarise the unusual basis of the proposed appeal. It appears from the draft notice of appeal and from the affidavits of Mr Shaw and the numerous exhibits. We have in the course of argument tried to explain to him that the matters which he wishes to agitate are really contrary to a large body of cases which are binding upon us, and that in those circumstances we cannot form the view that the appeal which he wishes to bring would have some prospect of success."

44 The proceeding is yet to go to trial, but there have been numerous interlocutory hearings and orders, and applications for leave to appeal therefrom, between 2000 and 2007. Without going into all the details, I note the following. The plaintiffs filed a statement of claim, which was struck out with orders that a further statement of claim not be filed without leave. The plaintiffs have sought such leave, on more than one occasion, with affidavits in support referring to matters of Freemasonry, religion and constitutional validity. On 7 September 2004, Master Kings dismissed with indemnity costs the plaintiffs' application for leave to file and serve an amended statement of claim, which amendments included the joining of Harwood Andrews and the State of Victoria as defendants. The Master concluded that the proposed amended statement of claim contained "narrative and assertions" and did not disclose a cause of action against the defendant or Harwood Andrews. Further, the application to join the State of Victoria, on the basis that it had "created a tort against the Plaintiffs by permitting Masonic corruption of Commonwealth Judicial Officers

and Courts", was unrelated to the underlying dispute about the sharefarming agreement and power of attorney.

45 On 20 September 2004 Smith J dismissed the plaintiffs' appeal from the decision of Master Kings. His Honour said that the proposed amended statement of claim "falls well short of what is needed before any leave could be given" and that "on the last occasion the Master explained the sorts of problems that existed and some specific ones as well, but nothing has been done to address them. The appeal, in my view, had to fail and therefore costs orders should be on an indemnity basis". On 19 November 2004, the Court of Appeal (Phillips JA with Gillard AJA agreeing) refused the plaintiffs' application for leave to appeal out of time from the order of Smith J, but refused to award costs against the plaintiffs on an indemnity basis. Phillips JA observed that:

> "[I]n none of the material that I have seen did the applicants attempt to canvass the matters that were described by Master Kings as possible justification for the action taken by the new owner leading to the ejection of the applicants from Bambra Park. In the circumstances, one can have no confidence at all that, even in relation to the share farming agreement, the applicants have a case fit for trial. That is subject to any case that may hereafter be raised in relation to the powers of attorney because, as I have said, no case has yet been articulated – or articulated sufficiently – in relation to those powers."

46 On 22 July 2005, the plaintiffs filed a summons returnable in the Practice Court to stay four costs orders made in favour of the defendant at earlier hearings. When the matter came before Mandie J on 1 August 2005, his Honour ordered that Mr Shaw's affidavit be removed from the file as it was argumentative and did not comply with the rules. His Honour adjourned the matter to allow Mr Shaw to file an affidavit in proper form, and the matter returned to court on 23 August 2005, when Whelan J dismissed the Plaintiffs' summons. In the meantime, on 9 August 2005 Master Bruce had taxed and allowed the defendant's costs from the earlier hearings at $26,466.60. Also, on 15 August 2005 the plaintiffs sought leave to appeal from the order of Mandie J, stating, among other things, in a document entitled "draft grounds of appeal" that "The serious indictable issues discovered and involve relating to the

Laws of the State of Victoria were unlawfully ignored by Justice Mandie". On 9 September 2005 the Court of Appeal (Maxwell P and Nettle JA) refused leave to appeal from the order of Mandie J and ordered costs on a solicitor-client basis.

47 On 7 October 2005, the plaintiffs sought special leave to appeal from the decision of the Court of Appeal to the High Court. The "Application for Special Leave" document contains 44 grounds of appeal, running over 16 pages. The grounds are not limited to the Court of Appeal decision, but include that "All cost orders in this matter have been obtained by ***fraud***, in particular Master Evans (Freemason) and Master Kings" and numerous allegations as to unlawful oaths, Freemasonry and constitutional matters. On 3 August 2006, Kirby J dismissed the application for special leave, noting that the proposed appeal was "premised on the notion that the judges involved in the applicants' litigation acted illegally by virtue of some Masonic oath or obligation. There was no foundation for such assertion or complaint". His Honour concluded that "there are no prospects of success of any appeal to this Court".

48 Meanwhile, on 17 November 2005 the defendant had filed a summons seeking an order permanently staying the proceeding. It appears that the summons was adjourned, pending the determination of the plaintiffs' application for special leave, and was subsequently adjourned again. The summons remains alive, the last step being that, on 29 March 2007 (the day after I heard argument in the present application) Master Efthim decided, in light of the present application by the Attorney-General, to adjourn the summons to 11 September 2007, reserving costs and granting liberty to apply.

Submissions

Plaintiff

49 Counsel for the plaintiff submitted that the defendant had brought a large number of criminal prosecutions in which he made essentially the same allegations of treason or misprision of treason against numerous public officials, and in all cases the charges were struck out on the basis that the relevant Director had taken over and

discontinued the charges. By reason of that fact, the nature of the charges, the circumstances in which they were laid, and the material provided by the defendant in support of them, it can be inferred that each and every charge was plainly untenable and doomed to fail.

50 As to *Shaw v Fragapane*, counsel conceded that the proceeding was not vexatious when it was before Warren J in 1999, but contended that the subsequent history of the case demonstrated that it had been infected by the defendant's contentions as to a Masonic conspiracy and illegality of the constitution, such that the Court could have no confidence that the case would be pursued in a way which did not involve an abuse of process. Counsel further submitted that Mr Shaw's unsuccessful application to join Harwood Andrews and the State of Victoria as defendants to the action is correctly characterised as the institution of a proceeding (against those parties) for the purposes of s 21, and that such proceeding was vexatious.

51 After referring to the authorities, counsel submitted that the defendant had habitually and persistently instituted vexatious legal proceedings. Each was doomed to fail and without any proper legal foundation. It was clear from the evidence that the defendant "has issued proceedings automatically and regardless of the fate that his earlier proceedings had met". The defendant has done this "whenever he comes across a person, judicial officer or public official who makes an adverse finding or decision and it is his knee jerk response to matters". The stubborn persistence of the defendant was apparent from the fact that he continued to institute proceedings making the same basic allegations even after a bench of five judges of the Court of Appeal concluded that his contentions were untenable. And he persisted in instituting criminal proceedings even after the plaintiff filed the originating motion on 28 November 2006 seeking the present relief.

Defendant

52 Counsel for the defendant did not dispute the factual matters deposed to in the plaintiff's affidavits. Rather, he focused on the conclusions and inferences that should be drawn from that material. He referred to the fact that the defendant was

self-represented, and had largely prepared his own paperwork, until two months before this hearing. Noting that, having taken over the criminal proceedings instituted by the defendant, the relevant Director had not lead any evidence, he said that Mr Shaw is concerned that the person deciding not to prosecute the charges is, in some cases, the very person charged, namely the Director of Public Prosecutions. Counsel said that when a Magistrate will not proceed with a charge which is serious, the defendant had proceeded to issue a grand jury application and that it is then the function of the Court to call a grand jury, not to go into the evidence of it, but to have the matter before a grand jury. If the grand jury did not indict, that would be the end of the matter. If the grand jury did indict, then the matter would go before a jury of 12 who would decide the matter. Counsel stated:

> "What Mr Shaw wants to do is to have these matters aired and the simplest way to get rid of this man who is a farmer is to have the matters heard before a jury and if the charges have no substance, if they are hopeless, if they lack merit as my learned friend puts it, the jury will see this quite clearly. Charges will be dismissed, the defendants will be free to go and Mr Shaw will go back to his farming activities, but until that day happens he is concerned."

53 Counsel next addressed the Western Australian legislation, referred to at [22] above, and Mr Shaw's argument in his affidavit that Western Australia has either been turned into a republic or, to use the words of counsel, has become a "non-entity land mass that is not a monarchy, not a republic, and by purporting to change the Constitution of Australia, no longer part of Australia". Counsel said that Mr Shaw's submission is that, following the rejection of an Australian Republic in 1999, "those who were determined to have a Republic said, well, what we'll do is we'll become a republic anyway but we won't tell anyone what we're doing. What we will do is, we'll just slowly delete the Queen and we'll remove coats of arms from buildings. We might even change the flag somewhere along the way, and one of these days people will wake up and, lo and behold, they will have a French style republic and without a single shot being fired. That is why Mr Shaw wants these matters to go to a grand jury". Counsel said that Mr Shaw's submission is that this republic agenda is driven by the Masonic order – although not all republicans are masons – and the

legislation passed in Western Australia is a manifestation of that agenda. Essentially, Western Australia is the forerunner in this movement, but the State and Commonwealth Attorneys-General have gone along with it.

54 Counsel then submitted that the present case was an inter se matter within the meaning of the *Judiciary Act 1903* (Cth). He referred to ss 17, 18 and 22 of that Act, and submitted that in light of those provisions, and the nature of the matters raised, the case should, indeed must, be referred to the High Court.

55 Section 17 provides that:

> "(1) In any matter pending in the High Court, not being a matter in which the High Court has exclusive jurisdiction, the Supreme Court of a State shall be invested with federal jurisdiction to hear and determine any applications which may be made to a Justice of the High Court sitting in Chambers.
>
> (2) Such jurisdiction may be exercised by a single Judge of the Supreme Court sitting in Chambers, and the order of the Judge shall have the effect of an order of a Justice of the High Court sitting in Chambers."

Section 18 provides that:

> "Any Justice of the High Court sitting alone, whether in Court or in Chambers, may state any case or reserve any question for the consideration of a Full Court, or may direct any case or question to be argued before a Full Court, and a Full Court shall thereupon have power to hear and determine the case or question."

Section 22 provides that:

> "Applications to the High Court for a certificate that a question as to the limits inter se of the Constitutional powers of the Commonwealth and those of any State or States, or as to the limits inter se of the Constitutional powers of any two or more States, which has been decided by the High Court, is one which ought to be determined by the Queen in Council, shall be heard and determined by a Full Court consisting of not less than three Justices."

56 In essence, the matter which counsel submitted should go before the High Court is the allegation that Western Australia has fractured, or attempted to fracture, the Commonwealth Constitution, and that the Commonwealth and Victorian Attorneys-

General have concurred in that course.

57 Finally, counsel emphasised that there are in effect two sets of proceedings before the Court. First, the constitutional issues which should go before the High Court, and secondly, the question of a grand jury, in respect of which it was inappropriate that the Attorney-General, himself a respondent to three applications for a grand jury, had brought an application to have Mr Shaw declared a vexatious litigant. By doing so, the plaintiff had effectively thwarted the grand jury process the defendant had brought against him. Further, on a grand jury application the Attorney-General should not have put forward evidence through the affidavits of his solicitor, as to do so was to enter into the evidence, whereas in a grand jury application factual matters are entirely for the grand jury.

Decision

58 I have already referred to the relevant legal principles and do not repeat them. I have regard to all the authorities referred to me, and all of the submissions of counsel. I am conscious of the fact, emphasised by both counsel, that the order sought by the plaintiff is of a most serious nature, and one not lightly to be made, as the effect is to prevent the defendant from bringing legal proceedings without first obtaining leave to do so. That said, however, the jurisdiction to so order is conferred by s 21, the requirements of which are said by the plaintiff to be satisfied.

59 I make the following observations concerning the legal proceedings brought by the defendant. The defendant has brought a large number of criminal prosecutions in which he has made a range of the most serious allegations, including treason and perverting the course of justice, against numerous public officials. In all cases the charges have been struck out on the basis that the relevant Director of Public Prosecutions took over and withdrew the charges. I accept that by the nature of the charges, the circumstances in which they were laid, and the material provided by the defendant in support of them, it can be inferred that each charge was untenable and doomed to fail. In this sense, the proceedings were vexatious legal proceedings instituted without any reasonable ground. As to whether they were instituted

habitually and persistently, I note that while not an invariable rule, there does emerge from the material a pattern whereby the defendant has brought criminal proceedings against those persons who have made decisions adverse to him. For example, upon taking over and discontinuing criminal prosecutions, both the Victorian and Commonwealth Directors of Public Prosecutions were themselves charged. After refusing the defendant's grand jury application, the five members of the Court of Appeal were charged with criminal offences. And, after refusing to accept for filing an application for a grand jury, Master Cain was charged with criminal offences. These are just a few examples. And although there was some variation in the wording of the defendant's allegations against those he charged, the substance of his allegations remained the same, namely their complicity in indictable offences relating to a Freemason conspiracy and/or constitutional improprieties.

60 I turn now to the proceedings in which the defendant sought to challenge determinations of the Magistrates' Court in relation to traffic offences. In essence the defendant alleged that the law under which he was charged was invalid because the Victorian constitution was invalid. He also raised allegations of a Freemason conspiracy. In each case the defendant's proceeding was dismissed or struck out. The material demonstrates that these proceedings, instituted over at least six years, were vexatious and had no prospect of success.

61 I now turn to the applications to summon a grand jury. This category is particularly significant, as it is apparent, both from an overview of the legal proceedings instituted by the defendant generally, and from what his counsel said during argument, that the defendant ultimately seeks to place before a grand jury his allegations that:

(a) a Freemason conspiracy has corrupted the judiciary and the court process in Victoria;

(b) there is currently an illegal conspiracy, already commenced in Western Australia, to fracture the Commonwealth of Australia and create a republic in its place; and

(c) the Victorian Constitution is invalid and enacted without legal

authority.

62 Relevantly, s 354 of the *Crimes Act 1958* (Vic) gives the Full Court a discretion to order that a grand jury be summoned "Upon the application of any person supported by an affidavit disclosing an indictable offence and either that the same has been committed by some body corporate or that a court has declined or refused to commit or hold to bail the alleged offender or that no presentment was made against him at the court at which the trial would in due course have taken place, or upon the application of the Director of Public Prosecutions". The defendant has relied on this provision to seek to summon a grand jury on numerous occasions and against numerous individuals. However, as the Court of Appeal found in 2001, the defendant's material failed to show that Freemasons administer or take oaths proscribed by s 316 of the Crimes Act. Further, their Honours considered that there was no reason for supposing that the papers ever would or ever could be put in a state which would warrant the summoning of a grand jury. In my view, although the form of some of the allegations may have changed since 2001, the substance of the allegations remains the same. And while the defendant has repeatedly asserted that a whole range of indictable offences have been committed by all manner of people, he has not adduced any cogent evidence to substantiate such claims. In short, he has not provided an affidavit disclosing any indictable offence, which means that he has repeatedly failed to satisfy s 354 at the threshold. In my view, the allegations he wishes to place before a grand jury are untenable. Even so, and after being told of that position by the Court of Appeal in 2001, the defendant has habitually and persistently sought to file grand jury applications.

63 I now turn to consider *Shaw v Fragapane*. As counsel for the plaintiff correctly conceded, the proceeding was not vexatious when commenced. Although Warren J described the plaintiffs' prospects of success as "extremely weak", her Honour considered that the case was not so hopeless as to warrant summary dismissal. Has the proceeding, however, since become vexatious in the sense that it has been infected, as counsel submitted, with the allegations of a Freemason conspiracy? It is clear that the plaintiffs in *Shaw v Fragapane* have made a range of untenable

allegations in their pleadings. Indeed, eight years after commencing the proceeding, and despite being afforded many opportunities to file a statement of claim, the plaintiffs have not yet delivered a pleading that identifies the real issues in the case - that is to say the sharefarming agreement and, as Phillips JA pointed out, the question of the power of attorney, if the plaintiffs are minded to pursue that matter, which has not yet been developed at all. Rather, the plaintiffs' pleadings have contained little more than assertion. They are unintelligible and untenable. The history of the matter set out above illustrates that, rather than make a concerted effort to address the shortcomings of their pleadings by repleading their case in a way which identifies the real issues, the plaintiffs have persisted in making the same, or similar, allegations in their pleadings. Further, they have wasted years trying to appeal from adverse interlocutory decisions – on incidental matters such as the staying of costs orders, and an order that a clearly inadmissible affidavit be removed from the file but without prejudice to the plaintiffs' right to file a proper affidavit – and in doing so have raised grounds of appeal that clearly have no prospect of success. And even if they were successful in their appeals, they would still have to go back to the start and replead their case. In short, the plaintiffs have conducted the proceeding in a vexatious manner. However, the fact remains that the plaintiffs require leave to file further pleadings. While it may be doubted whether appropriate pleadings will ever be filed, and the defendant may well be successful in its adjourned application to have the proceeding permanently stayed, it nevertheless cannot be said at the moment that the plaintiffs' case, assuming it be properly pleaded, is hopeless. In my view, it cannot be said then that *Shaw v Fragapane* is a vexatious proceeding instituted without any reasonable ground.

64 That raises the question of whether the plaintiffs' unsuccessful attempt to join Harwood Andrews and the State of Victoria as defendants can be characterised as the plaintiffs having instituted a vexatious legal proceeding for the purpose of s 21. In my view, although the plaintiffs' application to join the parties was doomed to fail and put the proposed defendants to unnecessary trouble and expense, it cannot be said that the plaintiffs thereby instituted a vexatious legal proceeding. Rule

9.11(3)(a) of the *Supreme Court (General Civil Procedure) Rules 2005* provides that when an order is made adding or substituting a persons as a defendant, the proceeding against the new defendant commences upon the amendment of the filed originating process, required by r 9.11(1) and 9.11(2), which is taken to occur when a copy of the amended originating process is filed. In this case, as the application to join the defendants was rejected, there was never any filing of an amended originating process, and thus no proceeding was commenced against Harwood Andrews and the State of Victoria. It might be said that the word "instituted" is wider in scope than "commenced", but I am nevertheless of the view that the plaintiffs' unsuccessful attempt to institute a proceeding is not the institution of a proceeding for the purposes of s 21.

65 I should also say that I reject the submission by counsel for the defendant that Mr Shaw's allegation as to a conspiracy to fracture the Commonwealth is a matter which should be referred to the High Court. The allegation is barely intelligible. There is no evidence to support it at all, but even if there was there was no properly identified inter se question nor an identification as to what matter was pending in the High Court such as would invest this Court with the jurisdiction of the High Court. I also reject counsel's submission that the Attorney-General, being a respondent to a grand jury application, acted improperly in bringing the present application and having evidence lead through his solicitor's affidavits. That was entirely appropriate. The evidence led in the affidavit went to the nature of the legal proceedings brought by the defendant, for the purpose of demonstrating that they were vexatious proceedings. It was not led as evidence to rebut the defendant's grand jury case against the plaintiff himself. Further, there is nothing to suggest that the plaintiff has brought the present application for an improper purpose such as thwarting the defendant's grand jury application against him, rather than properly pursuing the remedy available to him under s 21. The same applies to the defendant's complaint that it is inappropriate that the Victorian and Commonwealth Directors of Public Prosecutions take over and withdraw charges brought against themselves. That is to say, there is no suggestion that they withdrew the charges for

an improper purpose unrelated to their statutory discretion to take over and conduct proceedings.

66 Viewing the matter overall, I am of the opinion that the defendant has habitually and persistently instituted vexatious legal proceedings, without any reasonable ground. The allegations made by the defendant are of the most serious nature, yet completely lacking in substance. In all the circumstances, I am satisfied that it is appropriate to declare that the defendant is a vexatious litigant and, subject to one exception, to order that he not commence or continue any legal proceeding (whether civil or criminal) in the Court, an inferior court or any tribunal constituted or presided over by a person who is an Australian lawyer, without leave of the Court. The exception is that, subject to further order, the defendant may continue the *Shaw v Fragapane* proceeding which I have not characterised as a vexatious proceeding.

Table "A": Table of Proceedings alleged to be vexatious instituted by Brian William Shaw in Victoria

Criminal Proceedings instituted in the Magistrates' Court

Para No.**	No.	Defendant	Charge Date	Offence	Outcome	Court Date	Exhibit No.***
59	1	Master Charles Wheeler, Master of the Supreme Court	10/9/02	*Crimes Act 1958* (Vic) s316(2)(a)(ii), (iv), (v), (vi), (vii) (b) and (c)	Struck out*	8/10/02	NJB-67 – NJB-70
		Master Charles Wheeler, Master of the Supreme Court	10/9/02	*Crimes Act 1958* (Vic) s321M	Struck out*	8/10/02	
		Master Charles Wheeler, Master of the Supreme Court	10/9/02	*Crimes Act 1958* (Vic) s321(1)	Struck out*	8/10/02	
65	2	John Spence Winneke, President of the Court of Appeal	15/3/04	*Crimes Act 1914* (Cth) s34(1)B	Struck out*	17/5/04	NJB-72 – NJB-73
66	3	Master Philip Cain, Master of the Supreme Court	15/3/04	*Crimes Act 1914* (Cth) s93	Struck out*	17/5/04	NJB-74 – NJB-75
67	4	Paul Coghlan QC, Vic. DPP	15/3/04	*Crimes Act 1914* (Cth) s24AA(1)(A)(i)	Struck out*	17/5/04	NJB-76 – NJB-77
		Paul Coghlan QC, Vic. DPP	15/3/04	*Crimes Act 1914* (Cth) s43	Struck out*	17/5/04	
68	5	Justice Robert Brooking, Justice of Appeal of the Supreme Court	16/4/04	*Crimes Act 1914* (Cth) s34(1)(B)	Struck out*	17/5/04	NJB-78, NJB-87 – NJB-88
69	6	Justice Stephen Pendrill Charles, Justice of Appeal of the Supreme Court	16/4/04	*Crimes Act 1914* (Cth) s34(1)(B)	Struck out*	17/5/04	NJB-79, NJB-87 – NJB-88
70	7	Justice Peter Buchanan, Justice of Appeal of the Supreme Court	16/4/04	*Crimes Act 1914* (Cth) s34(1)(B)	Struck out*	17/5/04	NJB-80, NJB-87 – NJB-88
71	8	Justice Alex Chernov, Justice of Appeal of the Supreme Court	16/4/04	*Crimes Act 1914* (Cth) s34(1)(B)	Struck out*	17/5/04	NJB-81, NJB-87 – NJB-88
72	9	Michael Jeffery, Governor-General of Australia	16/4/04	*Crimes Act 1958* (Vic) s316(1)(A)	Struck out*	17/5/04	NJB-82, NJB-87 – NJB-88
		Michael Jeffery, Governor-General of Australia	16/4/04	*Crimes Act 1958* (Vic) s316(2)(A)(ii)	Struck out*	17/5/04	

Para No.**	No.	Defendant	Charge Date	Offence	Outcome	Court Date	Exhibit No.***
		Michael Jeffery, Governor-General of Australia	16/4/04	*Crimes Act 1914* (Cth) s43(1)	Struck out*	17/5/04	
		Michael Jeffery, Governor-General of Australia	16/4/04	*Crimes Act 1958* (Vic) 321M	Struck out*	17/5/04	
		Michael Jeffery, Governor-General of Australia	16/4/04	*Crimes Act 1914* (Cth) s24AA(1)(A)(i)	Struck out*	17/5/04	
98	10	Damian Bugg, Commonwealth DPP	2/6/04	*Crimes Act 1914* (Cth) s43(1)	Struck out*	13/7/04	NJB-114 – NJB-115
		Damian Bugg, Commonwealth DPP	2/6/04	*Crimes Act 1914* (Cth) s43(1)	Struck out*	13/7/04	
		Damian Bugg, Commonwealth DPP	2/6/04	*Crimes Act 1914* (Cth) s44	Struck out*	13/7/04	
		Damian Bugg, Commonwealth DPP	2/6/04	Treason (common law)	Struck out*	13/7/04	
		Damian Bugg, Commonwealth DPP	2/6/04	Crimes Act 1958 (Vic) 326(1)	Struck out*	13/7/04	
101	11	Master Ewan Evans, Master of Supreme Court	7/6/04	*Crimes Act 1914* (Cth) s42(1)	Struck out*	13/7/04	NJB-116, NJB-120
102	12	Master Charles Wheeler, Master of Supreme Court	7/6/04	*Crimes Act 1914* (Cth) s42(1)	Struck out*	13/7/04	NJB-117, NJB-120
105	13	John Evans, stated to be Grand Master of the United Grand Lodge of Victoria, Freemasonry Victoria	7/6/04	*Crimes Act 1958* (Vic) s316(2)(a)(vii)	Struck out*	13/7/04	NJB-121 – NJB-122
107	14	Rob Hulls, Attorney General	2/8/04	*Crimes Act 1914* (Cth) s43(1)	Struck out*	12/10/04	NJB-123 – NJB-127
		Rob Hulls, Attorney General	2/8/04	*Crimes Act 1914* (Cth) s42(1)	Struck out*	12/10/04	
		Rob Hulls, Attorney General	2/8/04	Treason (common law)	Struck out*	6/9/04	
112	15	Justice Thomas Smith, Justice of the Supreme Court	14/10/04	*Crimes Act 1914* (Cth) s34(1)(b)	Struck out*	15/12/04	NJB-128, NJB-131
113	16	Master Kathryn Kings, Master of Supreme Court	14/10/04	*Crimes Act 1914* (Cth) s43(1)	Struck out*	15/12/04	NJB-129, NJB-131
		Master Kathryn Kings, Master of Supreme Court	14/10/04	*Crimes Act 1914* (Cth) s44	Struck out*	15/12/04	

Para No.**	No.	Defendant	Charge Date	Offence	Outcome	Court Date	Exhibit No.***
		Master Kathryn Kings, Master of Supreme Court	14/10/04	*Crimes Act 1914* (Cth) s42(1)	Struck out*	15/12/04	
127	17	David Ward	May or June 2005	Financial advantage by deception	Struck out*	6/6/2005	NJB-144 – NJB-145
129	18	James Rutherford	May or June 2005	various charges under *Crimes Act 1958* (Vic)	Struck out*	6/6/2005	NJB-146
130	19	Justice Michael Kirby	23/8/06	Various charges under *Crimes Act 1914* (Cth)	Struck out*	25/9/06	NJB-147
131	20	Justice Ian Callinan, Justice of the High Court of Australia	23/8/06	Various charges under Crimes Act 1914 (Cth)	Struck out*	25/9/06	NJB-148

*Struck out: each charge ordered to be 'struck out' on the basis that the relevant Director of Public Prosecutions had taken over the prosecution and withdrawn the charge.

** Paragraph numbers refer to the paragraphs in the affidavit affirmed by Natalie Joanna Blok on 28 November 2006.

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Civil Proceedings instituted in the Magistrates' Court

Para No**	Parties	Commencement Date	Process/Description	Judicial Officer	Outcome/ Date	Exhibit Nos***
15	*Brian William Shaw v Victoria Police*	29/3/96	Application to appeal decisions of Magistrates' Court refusing to revoke orders	Magistrate Mealy	Application refused 19/9/96	NJB-3

Proceedings instituted in the County Court

Para No**	Parties	Commencement Date	Process/Description	Judicial Officer	Outcome/ Date	Exhibit Nos***
16	*Brian William Shaw v Victoria Police*	21/10/96	appeal of decision of Magistrates' Court refusing to revoke enforcement orders	Judge Howse	dismissed 5/12/96	NJB-4- NJB-6
39	*Shaw v Hunter-Evans*	13/7/01	appeal application for leave to appeal out of time	Judge O'Shea	application for leave to appeal out of time refused; appeal dismissed 29/8/01	NJB-40 – NJB-41
57	*Shaw v Quinn*	in or about October 2004	appeal from order of the Magistrates' Court	Judge Barnett	order of Magistrates' Court confirmed	NJB-64
127	*Shaw*	in or about August 2005	Appeal from order striking out charges against David Ward	Judge Rizkalla	Struck out	NJB-144

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Proceedings instituted in the Supreme Court/Court of Appeal

Para No**	Parties	Case No.	Commencement Date	Process/Description	Judicial Officer	Outcome/ Date	Exhibit Nos***
18	*Brian William Shaw v Power*	6824 of 1998	13/8/98	Appeal of decision of Magistrates' Court under s92 of the *Magistrates' Court Act 1989* (Vic)	Master Kings	dismissed 13/8/98	NJB-8 – NJB-9
21	*Brian William Shaw v Ivan Bosnjak*	6641 of 1999	27/8/99	Appeal under s92 of the *Magistrates' Court Act 1989* (Vic)	Master Evans	dismissed 21/10/99	NJB-11 – NJB-12
41	*Brian William Shaw v Hunter-Evans*	7768 of 2001	28/9/01	Appeal out of time/application for leave to appeal decision Magistrates' Court under s92 of the *Magistrates' Court Act 1989* (Vic)	Master Wheeler	Application for leave to appeal dismissed; applicant pay the respondent's costs of the proceeding 22/10/01	NJB-42 – NJB-44
51	*Brian William Shaw v C Gilsenan*	5350 of 2002	30/4/02	Appeal from Magistrates' Court decision under s92 of the *Magistrates' Court Act 1989* (Vic)	Master Evans	dismissed 1/5/02	NJB-55 – NJB-56
52	*Brian William Shaw v C Gilsenan*	5350 of 2002	6/5/02	Appeal from orders made by Master Evans on 1 May 2002	Justice Ashley	dismissed 7/5/02	NJB-57 – NJB-59
54	*Brian William Shaw v B Quinn*	6811 of 2002	15/8/02	Application for leave to appeal an order of the Magistrates' Court or application for rehearing	Master Wheeler	dismissed 26/8/02	NJB-60 – NJB-61
	56	6811 of 2002	28/8/02	appeal	Justice Harper	No orders made as proceeding not initiated in proper form	NJB-62 – NJB-63

Para No**	Parties	Case No.	Commencement Date	Process/Description	Judicial Officer	Outcome/ Date	Exhibit Nos***
23	*Shaw v Fragapane*	6890 of 1999	16/9/99	Application by writ for interlocutory and permanent injunctions in relation to a farming agreement	various	No trial date set. Multiple interlocutory proceedings including applications for leave to appeal to Court of Appeal and application for Special Leave to Appeal to the High Court.	NJB-13
46	*Re Shaw & Anor*		12/9/01	Application to summons grand jury	Winneke P, Brooking, Charles, Buchanan & Chernov JJ	Dismissed 12/10/99	NJB-49 – NJB-51
49	*Re Shaw*		19/7/02	Application for re-hearing of application for grand jury	Master Dowling	Refused 29/7/06	NJB-52 – NJB-53
84	*Shaw v Fragapane*	6890 of 1999	16/6/04	application to join Harwood Andrews Lawyers and State of Victoria as defendants	Master Kings	Dismissed 7/9/04	NJB-96 – NJB-103
90	*Shaw v Fragapane*	6890 of 1999	13/9/04	Appeal from order of Master Kings	Smith J	Dismissed 20/9/04	NJB-104 – NJB-106
95	*Shaw v Fragapane*	6890 of 1999	21/10/04	Leave to Appeal from Smith J	Phillips JA and Gillard AJA	Dismissed 19/11/04	NJB-110 – NJB-113
119	*Shaw v Fragapane*	6890 of 1999	15/8/05	Application for leave to Appeal Order of Mandie J made 1/8/05 (NJB- 133)	Maxwell, P and Nettle JA	Refused 9/9/2005	NJB-136

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AMENDED – Table "B": Table of Proceedings alleged to be vexatious instituted by Brian William Shaw in Victoria

Criminal Proceedings instituted in the Magistrates' Court in November and December 2006

No.	Para. No.**	Defendant	Charge Date	Offences	Outcome	Court Date	Exhibit No.***
1	4	Mr McGinty (Attorney-General for the State of Western Australia)	15/11/06	18 charges: offences at common law and under the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth)	Struck out*	15/12/06	NJB-150-1
2	7	Mr Bowler (Minister for Resources for the State of Western Australia)	17/11/06	4 charges: offences at common law and under the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth)	Struck out*	15/12/06	NJB-152-3
3	9	Mr Cock, QC, (Director of Public Prosecutions for the State of Western Australia)	15/11/06	2 charges: treason and misprison of treason at common law	Struck out*	15/12/06	NJB-154-5
4	11	Chief Justice Martin (Chief Justice of the Supreme Court of Western Australia)	15/11/06	18 charges: offences at common law and under the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth)	Struck out*	15/12/06	NJB-156-7
5	13	Justice Wheeler (Justice of the Supreme Court of Western Australia)	10/11/06	18 charges: offences at common law and under the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth)	Struck out*	15/12/06	NJB-158-9
6	15	Justice McKetchnie (Justice of the Supreme Court of Western Australia)	14/11/06	18 charges: offences at common law and under the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth)	Struck out*	15/12/06	NJB-160-1
7`	17	Justice Pullin (Justice of the Supreme Court of Western Australia)	14/11/06	18 charges: offences at common law and under the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth)	Struck out*	15/12/06	NJB-162-3

No.	Para. No.**	Defendant	Charge Date	Offences	Outcome	Court Date	Exhibit No.***
8	19	Justice Buss (Justice of the Supreme Court of Western Australia)	10/11/06	18 charges: offences at common law and under the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth)	Struck out*	15/12/06	NJB-164-5
9	21	Commissioner Audrey Braddock SC,	10/11/06	18 charges: offences at common law and under the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth)	Struck out*	15/12/06	NJB-166-7
10	23	Ms Rayney (Registrar of the Supreme Court of Western Australia)	15/11/06	18 charges: offences at common law and under the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth)	Struck out*	15/12/06	NJB-168-9
11	25	Mr Mitchell (of the State Solicitor's Office, Western Australia)	15/11/06	8 charges: offences at common law and under the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth)	Struck out*	15/12/06	NJB-170-1
12	27	Mr Atkinson (Attorney-General for the State of South Australia)	17/11/07	1 charge – misprison of treason at common law	Struck out*	15/12/06	NJB-172-3
13	29	Mr Rob Hulls (Attorney-General for the State of Victoria)	17/11/06	1 charge – misprison of treason at common law	Struck out*	15/12/06	NJB-174-5
14	31	Mr Rob Hulls (Attorney-General for the State of Victoria)	22/12/06	1 charge - misprison of treason at common law	struck out*	29/1/07	NJB-215 (to supplementary affidavit dated 28/3/07)
15	32	Mr Simon Corbell (Attorney-General for the Australian Capital Territory)	17/11/06	1 charge – misprison of treason at common law	Struck out*	15/12/06	NJB-177-8
16	34	Mr Kerry Shine (Attorney-General for the State of Queensland)	17/11/06	1 charge – misprison of treason at common law	Struck out*	15/12/06	NJB-179-180

No.	Para. No.**	Defendant	Charge Date	Offences	Outcome	Court Date	Exhibit No.***
17	36 ~~39~~	Mr Damian Bugg QC (Commonwealth DPP)	14/11/06; 15/11/06	19 charges: offences at common law and under the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth)	Struck out*	15/12/06	NJB-181-2, & NJB-185
18	39	Mr Damian Bugg QC (Commonwealth DPP)	20/12/06	1 charge – misprison of treason at common law	struck out*	29/1/07	NJB-215 (to supplementary affidavit dated 28/3/07)
19	40	Mr John Howard (Prime Minister)	15/11/06	2 charges: offences of treason and misprison of treason at common law	Struck out*	15/12/06	NJB-186-7
20	43	Mr Kim Beazley (former leader of the Australian Labor Party)	15/11/06	2 charges: offences of treason and misprison of treason at common law	Struck out*	15/12/06	NJB-188-9
21	46	Mr Michael Jeffrey (Governor-General)	15/1/06	2 charges: offences of treason and misprison of treason at common law	Struck out*	15/12/06	NJB-190-1
22	49	Mr Steve Kons (Attorney-General for the State of Tasmania)	17/11/06	1 charge – misprison of treason at common law	Struck out*	15/12/06	NJB-192-3
23	51	Mr Robert Debus (Attorney-General for the State of New South Wales)	17/11/06	1 charge – misprison of treason at common law	Struck out*	15/12/06	NJB-194-5
24	53	Magistrate Randazzo	10/11/06	7 charges: offences under the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth)	Struck out*	15/12/06	NJB-196-7
25	55	Mr J Maley, Grand Master	15/11/06	8 charges – misprison of treason at common law and offences under the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth)	Struck out*	15/12/06	NJB-198-9
26	57	Mr Darren Renton (of the Office of the Commonwealth DPP)	15/11/06	8 charges – misprison of treason at common law and offences under the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth)	Struck out*	15/12/06	NJB-200-1

No.	Para. No.**	Defendant	Charge Date	Offences	Outcome	Court Date	Exhibit No.***
27	59	Mr Phillip Ruddock (Attorney-General for the Commonwealth of Australia)	17/11/06	1 charge – misprison of treason at common law	Struck out*	15/12/06	NJB-202-3
28	61	Justice Crennan (Justice of the High Court of Australia)	18/12/06	1 charge – misprison of treason at common law	struck out*	29/1/07	NJB-215 (to supplementary affidavit dated 28/3/07)
29	62	Justice Gummow (Justice of the High Court of Australia)	18/12/06	1 charge – misprison of treason at common law	struck out*	29/1/07	NJB-215 (to supplementary affidavit dated 28/3/07)
30	63	Justice Heydon (Justice of the High Court of Australia)	18/12/06	1 charge – misprison of treason at common law	struck out*	29/1/07	NJB-215 (to supplementary affidavit dated 28/3/07)
31	64	Chief Justice Gleeson (Chief Justice of the High Court of Australia)	18/12/06	1 charge – misprison of treason at common law	struck out*	29/1/07	NJB-215 (to supplementary affidavit dated 28/3/07)
32	65	Justice Hayne (Justice of the High Court of Australia)	18/12/06	1 charge – misprison of treason at common law	struck out*	29/1/07	NJB-215 (to supplementary affidavit dated 28/3/07)
33	66	Ms Julia Gillard, MP	18/12/06	1 charge – misprison of treason at common law	struck out*	29/1/07	NJB-215 (to supplementary affidavit dated 28/3/07)
34	67	Chief Magistrate Ian Gray (Chief Magistrate of the Magistrates' Court at Melbourne)	18/12/06	1 charge – misprison of treason at common law	struck out*	29/1/07	NJB-215 (to supplementary affidavit dated 28/3/07)
35	68	Mr Paul Coghlan (Victorian DPP)	18/12/06	1 charge – misprison of treason at common law	struck out*	29/1/07	NJB-215 (to supplementary affidavit dated 28/3/07)
36	69	Mr Malcolm Macleod (of the Southwest Christian Church at Hoppers Crossing, Victoria)	18/12/06	1 charge – misprison of treason at common law	struck out*	29/1/07	NJB-215 (to supplementary affidavit dated 28/3/07)

No.	Para. No.**	Defendant	Charge Date	Offences	Outcome	Court Date	Exhibit No.***
37	70	Mr Max Bower (of the Anglican Church, Werribee, Victoria)	18/12/06	1 charge – misprison of treason at common law	struck out*	29/1/07	NJB-215 (to supplementary affidavit dated 28/3/07)

*Struck out: each charge ordered to be 'struck out' on the basis that the Commonwealth Director of Public Prosecutions had taken over the prosecution and withdrawn the charge.
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***Exhibit numbers refer to the exhibits exhibited to the affidavit affirmed by Natalie Joanna Blok on 23 January 2007.

Appeal instituted in the Supreme Court of Victoria in January 2007

Para No**	Parties	Case No.	Date filed	Process/Description	Exhibit Nos***	Outcome
38	*Brian William Shaw v Damian Bugg*	4114 of 2007	11/01/07	Appeal of decision of Magistrates' Court decision of 15 December 2006 striking out charges against Mr Bugg	NJB-183-4	dismissed (13/02/07) (see paragraph 6 (and Exhibit No 216) of supplementary affidavit dated 28/3/07)

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