

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION

Not Restricted

S CI 2006 9997

ATTORNEY-GENERAL FOR THE STATE
OF VICTORIA

Plaintiff

v

BRIAN WILLIAM SHAW

Defendant

JUDGE: J. FORREST J
WHERE HELD: Melbourne
DATE OF HEARING: 18 July 2012
DATE OF JUDGMENT: 10 August 2012
CASE MAY BE CITED AS: Attorney-General for the State of Victoria v Shaw
MEDIUM NEUTRAL CITATION: [2012] VSC 334

PRACTICE AND PROCEDURE - Vexatious litigant - Application to set aside or revoke orders - Whether relevant change in circumstances - Application refused - *Supreme Court Act 1986 (Vic) s 21(5)*.

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the Plaintiff	Ms R J Sharp	Victorian Government Solicitor
For the Defendant	In person	

HIS HONOUR:

Introduction

1 In May 2007, Mr Brian Shaw was declared a vexatious litigant.¹ Consequently, without leave of this Court, he is unable to commence proceedings in any state court or tribunal.² He now seeks to have that order set aside. To have the order set aside, Mr Shaw must persuade the Court there has been a change in the relevant circumstances since the making of the order and that there is no real risk that, in the future, he will engage in the type of conduct which brought about the original order.³

2 This application alone required five separate Court attendances. One hearing was associated with numerous subpoenas issued by Mr Shaw, many of which were directed to persons who had no connection with the consideration of this application.

3 In addition, the written and oral submissions of Mr Shaw demonstrate that it is not only likely, but near certain, that he will continue to engage in the type of conduct which led to him being declared a vexatious litigant if the order was lifted.

4 The application must be dismissed with costs and my reasons for so concluding now follow.

Relevant facts

5 On 17 May 2007, Hansen J (as his Honour then was) declared Mr Shaw a vexatious litigant under s 21 of the *Supreme Court Act 1986 (Vic)*.⁴ Nettle JA, with Dodds-Streton concurring, dismissed Mr Shaw’s application for leave to appeal the judgment of Hansen J.

6 On 17 March 2010, Beach J refused Mr Shaw’s application under s 21(4) of the SCA

¹ *Attorney-General for the State of Victoria v Shaw* [2007] VSC 148.

² *Supreme Court Act 1986 (Vic)* s 21(3).

³ *Attorney-General for the State of Victoria v Kay* [2009] VSC 337 [8].

⁴ (“SCA”).

for leave to commence proceedings against the Electoral Commission of Victoria and others.⁵ The claim related to the 2010 by-election for the seat of Altona, in which Mr Shaw was a candidate. His Honour found that:

[T]here is no evidence before the Court which could indicate an evidentiary foundation for a successful claim by Mr Shaw.⁶

Mr Shaw's application for leave to appeal the decision was refused.⁷

7 On 4 November 2011, Mr Shaw filed a summons seeking "an order that the vexatious judgment placed on Brian Shaw be set aside".

8 The summons was first returned before Cavanough J on 29 November 2011 in the Practice Court. The matter was then referred to Daly AsJ for listing on 13 December 2011. Associate Justice Daly ordered that:

10.1 Mr Shaw file and serve on the Attorney-General (care of the Victorian Government Solicitor) any draft subpoenas he wished to issue to compel witnesses to attend at the hearing of the application.

On 20 February 2012, Daly AsJ refused Mr Shaw's application to file and serve 21 subpoenas.

9 Mr Shaw subsequently appealed the refusal of Daly AsJ to issue the subpoenas and on 27 March 2012, Macaulay J allowed the appeal on the basis that there was nothing to prevent Mr Shaw from asking the Prothonotary to issue the subpoenas without leave.⁸

10 On 12 July 2012, the Victorian Government Solicitor's Office filed a summons to set aside a number of subpoenas issued by Mr Shaw. Ferguson J heard the subpoena recipients' application in the Practice Court on 16 July 2012. Her Honour set aside nine subpoenas issued by Mr Shaw. Her Honour stated:

None of the evidence that Mr Shaw contends the Applicants could give is relevant to the issue of whether there has been a change in circumstances

⁵ *Attorney-General v Shaw (No 2)* [2010] VSC 73.

⁶ *Ibid* [15].

⁷ *Attorney-General for the State of Victoria v Shaw* [2011] VSCA 63.

⁸ *The Attorney-General for the State of Victoria v Brian William Shaw* (Unreported, Supreme Court of Victoria, Macaulay J, 27 March 2012).

such that the vexatious litigant declaration made about him should be varied or revoked. At best, some of the Applicant's evidence contemplated by Mr Shaw may relate to why the declaration was made in the first place. However, such evidence is not relevant to determination of the issue which will be before the Court for determination on this occasion. The matters that Mr Shaw would have the Applicants give evidence about are matters that either he has agitated in other litigation or (with leave) could agitate in separate proceedings.⁹

The order declaring Mr Shaw a vexatious litigant

11 After setting out in considerable detail the various proceedings issued by Mr Shaw prior to 2007, Hansen J summarised the position as follows:

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

⁹ *The Attorney-General for the State of Victoria v Brian William Shaw* (Unreported, Supreme Court of Victoria, Ferguson J, 18 July 2012) [18].

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.

...

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.¹⁰

The relevant principles

12 Section 21(5) of the SCA provides:

The Court may at any time vary, set aside or revoke an order made under subsection (2) if it considers it proper to do so.

13 In *Attorney-General for the State of Victoria v Kay*,¹¹ Cavanough J said of the relevant considerations in such an application:

An application under s 21(5) to set aside an order declaring a person to be a vexatious litigant should not be allowed unless the court is persuaded that there has been such a change in relevant circumstances since the making of the order as to make it appropriate that the order be set aside. The Court must be satisfied that there is no real risk of the applicant engaging further in conduct of the kind which attracted the making of the order. Even if fresh evidence has been found, it has to be directed to the issue of a change of circumstances on the applicant's part; for the question is not whether the vexatious litigant declaration should have been made in the first place but whether the applicant can demonstrate that it should not continue.¹²

His Honour's statement of principle was subsequently endorsed by the Court of

¹⁰ [2007] VSC 148 [59]-[61], [66].

¹¹ [2009] VSC 337.

¹² *Ibid* [8].

Appeal.¹³

The evidence on this application

- 14 Mr Shaw served at least 17 subpoenas on witnesses to attend the trial. While Ferguson J set aside nine of those subpoenas, eight remained extant on the day of hearing. I excluded the evidence of two of the subpoenaed persons as irrelevant. Ms Elizabeth Beal, a former legal officer with News Limited, was subpoenaed to give evidence in relation to an article published in the Herald Sun concerning vexatious litigants, with the substantive allegation of Mr Shaw being that his name was printed beside the name or photograph of Mr Julian Knight.¹⁴ Mr Mark Wilkinson, a pastor in Werribee, was subpoenaed by Mr Shaw to give evidence of his role as chairman of a group of pastors who meet in the Prime Minister's seat of Lalor and who, according to Mr Shaw, have failed to notify the people of Werribee of Mr Shaw's "criminal charge pending grand jury on Julia Gillard".¹⁵
- 15 I permitted three witnesses to give evidence relevant to Mr Shaw's circumstances since the making of the order: Mr Graham Daniels, Mr Oliver Connors and Mr Roland Lloyd. In addition, Mr Shaw relied upon the following material:
- (a) an affidavit sworn by him on 4 November 2011;¹⁶
 - (b) his notice dated 25 June 2012 of a constitutional matter under s 78B of the *Judiciary Act 1903* (Cth) served upon each of the Attorney-Generals of the States;¹⁷
 - (c) handwritten submissions dated 13 March 2012;¹⁸
 - (d) a number of DVDs, including those entitled "How Queensland Democracy was Stolen by the State Government" and "The Masonic Lodge – What Goes

¹³ [2010] VSCA 27 [11]-[12].

¹⁴ T 21.

¹⁵ T 22.

¹⁶ Exhibit BWS-3.

¹⁷ Exhibit BWS-1.

¹⁸ Exhibit BWS-2.

On Behind Closed Doors”;¹⁹ and

- (e) a document prepared by Mr Shaw titled “The Constitution, the Law of Treason and Grand Jury” including a copy of a Charge and Summons against Julia Gillard MP.²⁰

16 In addition, Mr Shaw provided a list of 73 separate documents (including the *Act of Settlement 1700* (UK), a document entitled “Brief of Evidence – Treason and Julia Gillard”, the Articles of the Commonwealth Bank, the farewell speech of Ormiston JA upon his retirement, the R. Hawke Fabian Society Speech of 1984, and the “Paul Coghlan grand jury” applications of 2002 and 2007), which he argued were relevant to his application.

17 Each of the three gentlemen called by Mr Shaw attested that he was a genuine and honest person who had firm views about matters of real concern to the welfare of this country. Mr Daniels told me that he (that is, Mr Daniels) had filed charges against the Honourable Julia Gillard MP, the Chief Magistrate, Mr Ian Gray, and two former Directors of Public Prosecution, Mr Damian Bugg and Mr Paul Coghlan.²¹ Mr Connors gave evidence as to happenings at a polling station in the Altona by-election in 2010 in which Mr Shaw was a candidate. When asked to give evidence as to any changes in Mr Shaw, Mr Connors stated that he had not changed; “I think he’s still the same Brian as he was when I met him 20 years ago”.²² Mr Lloyd, who was also present at the polling station, gave evidence along similar lines.²³

18 I do not propose to set out every matter addressed in oral submissions by Mr Shaw, but will identify some of those that made their mark with me.

- The removal of the oath of allegiance and the oath sworn by Australian lawyers is an act of treason on the part of at least the Attorney-General and possibly the Victorian Parliament. This was also said to be relevant to the

¹⁹ Exhibit BWS-4.

²⁰ Exhibit BWS-5.

²¹ T 32-36.

²² T 42.

²³ T 120-124.

affidavit sworn by Ms English on behalf of the Attorney-General.²⁴

- In a similar way, the *Courts and Tribunals Legislation (Further Amendment) Act 2000* of this State has shattered the whole structure of “our jurisprudence” by removing the oath of allegiance.²⁵ The Attorney-General at the time the Act was introduced, Mr Rob Hulls, had acted in a treasonous way for his involvement in removing the oath of allegiance and subsequently declaring Mr Shaw a vexatious litigant “for exposing it”.²⁶
- The *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 (WA)* had, by omitting references to the Crown, fractured the constitution.²⁷
- Every politician, State or Commonwealth, from Western Australia is not qualified to sit since the passing of the *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 (WA)*.
- The *Public Prosecutions Act 1994 (Vic)*, by s 51(3) which separated the office of the DPP from that of the Crown, was unconstitutional.²⁸
- The lack of qualifications of Mr Andrew McGinty, the Western Australian Attorney-General in the year 2000, who subsequently allowed legislation to be introduced that “turned the whole jurisprudence of Australia upside down”.²⁹
- That charges against 54 defendants (including the former Prime Minister Mr John Howard) are still pending before a grand jury.³⁰
- That two UK judges should sit in Victoria to determine the constitutional points he has raised.

²⁴ T 54-57.

²⁵ T 54.

²⁶ T 55.

²⁷ T 59-66.

²⁸ T 69.

²⁹ T 70.

³⁰ T 58-59.

- There are possibly two Victorian constitutions.³¹
- The *Australia Act 1986* (Cth), at the instigation of the then Prime Minister, Mr Bob Hawke, and six premiers, is totally invalid and fraudulent, as is the sale of the Commonwealth Bank.³²
- Mr Hawke, the Prime Minister responsible for introducing the *Australia Act 1986* (Cth) continues to act illegally, as demonstrated by the front page of the *Weekly Times* of June this year, which showed a photograph of Mr Hawke.³³
- The removal of the grand jury provisions by the *Criminal Procedure Act 2010* (Vic) was, in effect, a scheme devised by the Victorian Attorney-General to avoid being prosecuted by Mr Shaw before a grand jury and amounted to perverting the course of justice.³⁴

19 Mr Shaw also relied upon a number of matters contained in the notice given under s 78(b) of the *Judiciary Act 1903* (Cth) to the Victorian Attorney-General.³⁵ It included the following allegations.

- The existence of a criminal conspiracy to move the people of the Commonwealth into and under the United Nations, with or without the people's knowledge and/or consent.
- That the grand jury proceedings against the former Attorney-General, Mr Hulls, remained pending.
- That in 2008, the then Attorney-General (Mr Hulls) perverted the course of justice when he introduced the *Criminal Procedure Bill 2008* (Vic).
- The decision of the Full Court in *Re Shaw*³⁶ is "nugatory because the five judges entered into evidence and in doing so moved into the exclusive

³¹ T 85.

³² T 85-88.

³³ T89-90.

³⁴ T 92.

³⁵ Exhibit BWS-1.

³⁶ [2001] VSCA 175.

jurisdiction of a Grand Jury (23 electors) thereby voiding any ruling, order or judgment”.

- That all State Governors are “Principal Offenders” and asserted that the Supreme Court, the County Court, the Magistrates’ Court and VCAT had their independent jurisdictions removed under Business Unit 19 of the Justice Department.
- That the passing of the *Western Australian Acts Amendment and Repeal (Courts and Legal Practice) Act 2003* had “broken unlawfully” the *Act of Settlement 1700* (UK) and was an act of treason against both the Queen and the people.
- That Judges of the High Court and the Governor-General were principal offenders and that the Premier, Deputy Premier or Attorney-General, Governor, Chief Justice and President of the Court of Appeal were each involved in a criminal conspiracy against the people.
- That the principal issue in the Supreme Court in issuing a vexatious judgment related to and involved Freemasonry and the oaths and obligations of Freemasonry and the Masonic allegiance, and that the Supreme Court is a Masonic lodge.
- That many lawyers, judges and magistrates are Catholic with no working knowledge either of scripture or the constitution.

20 I do not think it is necessary to itemise any more of the allegations contained in this document, nor is it necessary to repeat the allegations contained in the written submissions which are in a similar vein.

Conclusions

21 Mr Shaw must demonstrate that there has been a change in the relevant circumstances since the making of the order as to make it appropriate that the order be set aside and that there is no real risk of him engaging in the conduct which

attracted the making of the order by Hansen J.³⁷ That order was based upon his conduct in issuing proceedings containing allegations of treason and perversion of the course of justice against numerous public officials – each of which his Honour concluded were doomed to fail. In the proceedings considered by his Honour, Mr Shaw asserted that the *Victorian Constitution Act 1975* (Vic) was invalid and raised allegations of a Freemasons conspiracy; made allegations of an illegal conspiracy commenced in Western Australia by the enactment of the *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003* (WA), designed to fracture the Commonwealth. These matters satisfied Hansen J that he should declare Mr Shaw a vexatious litigant.

22 When given the opportunity to explain why the order should be lifted, Mr Shaw reiterated, in the main, the very complaints he litigated previously and which resulted in him being declared a vexatious litigant.

23 I am comfortably satisfied that if the order was set aside, Mr Shaw would inevitably engage in exactly the type of conduct that he engaged in prior to 2007.

24 The application should be dismissed.

One parting observation

25 The vexatious litigants provisions of the SCA are unsatisfactory. In making this application, Mr Shaw has taken up, on my estimate, at least 20 hours of judicial Court time and I would reasonably surmise another 20 hours at least in the reading of the voluminous material he has provided (virtually all of which was irrelevant to the application). In addition, his unfettered ability to issue subpoenas to all and sundry has caused extraordinary disruption to people who should not have been troubled by this application. A number had to go to the time and expense of having subpoenas set aside. Others attended Court, understandably not knowing why they were required. The whole process was a farce and involved significant time and expense to both the Court and, more importantly, those who were the subject of the subpoenas. The question of vexatious litigant legislation is currently under review.

³⁷ *Attorney-General for the State of Victoria v Kay* [2009] VSC 337, [8].

The ability of a vexatious litigant to bring an application such as this needs to be constrained; this is particularly so as a declared vexatious litigant retains the right to seek the leave of the Court to issue a proceeding.

26 But for the fact that five years had elapsed since the order of Hansen J, I would have dismissed it as an abuse of process.

Orders

27 The application will be dismissed and Mr Shaw should pay the Attorney-General's costs.