[2014] WASC 107

JURISDICTION	**:**	SUPREME COURT OF WESTERN AUSTRALIA IN CIVIL
CITATION	**:**	RE GLEW; EX PARTE THE HON MICHAEL MISCHIN MLC, ATTORNEY GENERAL (WA) [2014] WASC 107
CORAM	**:**	EM HEENAN J
HEARD	**:**	14 FEBRUARY 2014
DELIVERED	**:**	28 MARCH 2014
FILE NO/S	**:**	CIV 2177 of 2013
MATTER	**:**	In the matter of an application under O 55 of the *Rules of the Supreme Court 1971* (WA) EX PARTE THE HON MICHAEL MISCHIN MLC, ATTORNEY GENERAL (WA) Applicant WAYNE KENNETH GLEW Contemnor

Catchwords:

Contempt of court - Disrespectful conduct by litigant in person - Appearance by litigant before Court of Appeal on application for leave to appeal - Inappropriate behaviour - Challenge to authority and legitimacy of court and judges - No impact on conduct of proceedings - Whether a tendency to interfere with or obstruct the course of justice

Legislation:

Bushfires Act 1954 (WA)
Children's Court of Western Australia Act 1988 (WA)
Constitution 1901 (Cth)
Criminal Code (WA)
District Court Act 1967 (Qld)
Judiciary Act 1903 (Cth)
Justices Act 1902 (WA) (repealed)
Justices Act 1921 (SA)
Magistrates Court Act 2004 (WA)
Rules of the Supreme Court 1971 (WA), O 50 r 3, O 50 r 4
Sentencing Act 1995 (WA)
Supreme Court Act 1935 (WA), s 16
Vexatious Proceedings Restriction Act 2002 (WA)

Result:

Application refused

Category: B

Representation:

Counsel:

Applicant	:	Mr A J Sefton
Contemnor	:	In person

Solicitors:

Applicant	:	State Solicitor for Western Australia
Contemnor	:	In person

Case(s) referred to in judgment(s):

Agtrack (NT) Pty Ltd v Hatfield (2005) 223 CLR 251
Allbeury v Corruption and Crime Commission [2012] WASCA 84; (2012) 42 WAR 425
Attorney General (WA) v Glew [2014] WASC 100

Attorney-General for The State of Victoria v Rich [1998] VSC 41
Boath v Wyvill (1989) 85 ALR 621
Corruption and Crime Commission v Allbeury, Silvestro, Chikonga, Smith [No 2] [2011] WASC 26
Ex parte Tuckerman; Re Nash (1970) 3 NSWR 23
Gallagher v Durack (1983) 152 CLR 238
Glew v White [2012] WASC 100
Glew v White [2012] WASCA 138
Izoura v The Queen [1953] AC 327
Kennedy v Lovell [2002] WASCA 226
Krysiak v McDonagh [2012] WASC 270
Krysiak v McDonagh [2013] WASCA 100
Lewis v Judge Ogden (1984) 153 CLR 682
MacGroarty v Clauson (1989) 167 CLR 251
Mansell v Mignacca-Randazzo [2013] WASC 66
Marriner v Smorgon [1989] VR 485
Moorgate Tobacco Co Ltd v Philip Morris Ltd (1980) 145 CLR 457
Morris v Crown Office [1970] 2 QB 114
O'Connell v The State of Western Australia [2012] WASCA 96
O'Hair v Wright [1971] SASR 436
Parashuram Detaram Shamdasani v King-Emperor [1945] AC 264
R v Dunbabin; Ex parte Williams (1935) 53 CLR 434
R v Eades (No 2) (1991) 6 WAR 532
R v MacDonald [1994] 1 VR 414
R v Pearce (1992) 7 WAR 395
Re Coroners Court of Western Australia; Ex parte Porteous [2002] WASCA 144; (2002) 26 WAR 483
Re Finlayson; Ex parte Finlayson (1997) 72 ALJR 73
Re Perkins; Mesto v Galpin [1998] 4 VR 505
Registrar of Supreme Court (SA) v Moore-McQuillan [2007] SASC 447
Registrar of the Court of Appeal v Maniam [No 2] (1992) 26 NSWLR 309
Registrar of The Supreme Court of South Australia v Moore-McQuillan [2007] SASC 447
Resolute Ltd v Warnes [2000] WASCA 359
Resolute Ltd v Warnes [2001] WASCA 4
Rich v Attorney-General (Vic) (1999) 103 A Crim R 261; [1999] VSCA 104
Shaw v McGinty [2006] WASCA 231
Stuart v Brown (1996) 17 WAR 525
Temwood Holdings Pty Ltd v Western Australian Planning Commission [2001] WASCA 298
Wilson v Prothonotary [2000] NSWCA 23

1 **EM HEENAN J**: By notice of originating motion filed 30 July 2013 the Attorney General for Western Australia, by counsel, has applied to the court for an order that:

> The Contemnor, Wayne Kenneth Glew, be committed to prison and/or required to pay a fine for contempt of court in the face of the Court of Appeal during and upon the conclusion of an appeal hearing on 5 July 2012

and for an order that the contemnor should bear the costs of and incidental to this application.

2 In O 55 the term 'contemnor' is defined as meaning a person guilty or alleged to be guilty of contempt of court. In the present proceedings, so far, its use and reference to Mr Glew connotes a reference to a person alleged to be guilty of contempt of court.

3 The application is made under O 55 of the *Rules of the Supreme Court 1971* (WA). Certain provisions of that order are material to the disposition of this case:

> **Order 55 - Committal and attachment**
>
> **2. Committal for contempt of court**
>
> Subject to the Act, the power of the Court to punish for contempt of court may be exercised by an order of committal made by a judge, or a judge of appeal, sitting alone.
>
> **3. Contempt in face of Court**
>
> (1) When it is alleged or appears to the Court on its own view that a person is guilty of contempt of court committed in the face of the Court or in the hearing of the Court, the presiding judge may, by oral order, direct that the contemnor be arrested and brought before the Court as soon thereafter as the business of the Court permits, or may issue a warrant under his hand for the arrest of the contemnor.
>
> (2) When the contemnor is brought before the Court, the Court shall –
>
> (a) cause him to be informed orally of the contempt with which he is charged; and
>
> (b) require him to make his defence to the charge; and

(c) after hearing him proceed, either forthwith or after adjournment, to determine the matter of the charge; and

(d) make an order for the punishment or discharge of the contemnor.

(3) The Court may, pending disposal of the charge –

(a) direct that the contemnor be detained in such custody as the Court directs; or

(b) direct that the contemnor be released on bail

(4) The powers given by this rule are exercisable, mutatis mutandis, by a judge sitting in chambers except that the contemnor must be brought before the Court sitting in court and the Court shall hear and determine the charge and make the order.

4. Other cases of contempt

(1) In a case to which rule 3 does not apply, and subject to subrule (2), application for punishment for contempt of court must be made by motion on notice to the contemnor, for an order that he be committed to prison for his contempt.

(2) Applications for committal for contempt of court consisting of disobedience to judgment or orders of the Court made by a judge, or orders of the Court made by the master, may be made by summons to a judge in chambers.

4 The court has an inherent power to deal with contempt which is vested in the court by s 16(1)(a) of the *Supreme Court Act 1935* (WA). This confers on the court all jurisdiction, and powers within the State as the Courts of Queen's Bench, Common Pleas, and Exchequer, or either of them, and the judges thereof had and exercised in England at the commencement of the *Supreme Court Ordinance 1861*. There is no doubt that this includes the power to deal summarily or otherwise with contempts of court. The rules set out in O 55 are but formulations of the manner of the exercise of this power.

5 This power cannot be diminished except by very clear and express legislation: ***R v Eades (No 2)*** (1991) 6 WAR 532, 535 - 536 where the court held that the provisions of the *Children's Court of Western Australia Act 1988* s 19(1) and (9) were not intended to, and did not in any way,

affect the power of the court to punish for contempt of court persons who were children as defined by that Act but who were alleged to have committed a contempt of this court.

6 Nevertheless, a real question can arise as to whether a single judge has jurisdiction to deal with contempts outside the confines of O 55 r 4 - ***Temwood Holdings Pty Ltd v Western Australian Planning Commission*** [2001] WASCA 298 [22], [26] (Wheeler JA) where her Honour questioned whether there was jurisdiction for a judge to deal with a matter of contempt other than in accordance with the rule, or in that case, in accordance with the terms of O 55 r 2(2) which at that time provided that, subject to par 3(3), an order for committal may only be made by the Full Court. That has since been amended and the power by the rule is now clearly conferred upon either a single judge or a judge of appeal. It is significant to note that at [11] in ***Temwood Holdings*** Wheeler JA observed that, as a matter of first impression, it appeared that the better view is that O 55 does not exhaustively prescribe the manner in which the court's contempt jurisdiction may be exercised and does not purport exhaustively to define the court's powers in cases of contempt: ***Marriner v Smorgon*** [1989] VR 485 and ***Resolute Ltd v Warnes*** [2001] WASCA 4.

7 This consideration is relevant because the contempt alleged against the contemnor is a contempt in the face of the Court of Appeal of July 2012. There is no doubt that the contemnor was not then charged with contempt by the Court of Appeal and that he is now, in these separate proceedings, charged by motion before a single judge pursuant to O 55 r 4. This rule by its terms, relates to a case not involving O 55 r 3 dealing with contempt in the face of the court (r 4(1)). Glew, appeared to be ignorant of this possible point. Counsel for the Attorney General did not refer to the possibility that, by a very strict reading of the rule, such a case of contempt, as is now being alleged, could only be dealt with by the court before which the contempt was alleged to have been committed. Such a conclusion might be open from a close construction of the terms of O 55 r 3 and 4 when read together, but it was not raised or argued. In these circumstances, I am inclined, with respect, to adopt and apply the view taken by Wheeler JA in ***Temwood*** that O 55 is not an exhaustive exposition of the power of this court when dealing with contempt. I am satisfied that the principal issues can be determined without resolving this apparently novel question. It is obviously preferable now to leave that for consideration on some future occasion if it ever becomes essential to do so.

The circumstances of alleged contempt

8 On 23 December 2011 Mr Glew was convicted in the Geraldton Magistrates Court of one offence of assaulting a public officer, contrary to s 318(1)(d) of the *Criminal Code* (WA) and one offence of obstructing an officer in the execution of his duty contrary to s 57 of the *Bushfires Act 1954* (WA). He was fined $1,000 for the first offence, $400 for the second offence and ordered to pay costs. The details of the offences and the facts leading to them are set out by Hall J in ***Glew v White*** [2012] WASC 100 when Glew unsuccessfully sought leave to appeal against those two convictions. As Hall J sets out, Glew raised 12 proposed grounds of appeal upon which he sought to rely when seeking leave to appeal, but his Honour concluded that none of the proposed grounds was reasonably arguable, nor did any of them have any rational prospect of succeeding. His Honour therefore refused leave to appeal and dismissed the appeal.

9 Mr Glew then sought leave to appeal to the Court of Appeal from the decision of Hall J refusing leave to appeal from those convictions. That application for leave to appeal came on for hearing before the Court of Appeal (Pullin, Buss and Mazza JJA) on 5 July 2012. The actual time spent in hearing the application was only nine minutes and at the end of the oral submissions the court reserved its decision. Later, on 10 July 2012, the Court of Appeal delivered its decision and published unanimous reasons for refusing leave to appeal: ***Glew v White*** [2012] WASCA 138. In the course of those reasons their Honours said:

> [11] This appeal is an abuse of process. The appellant is well aware that his idiosyncratic contentions have been repeatedly rejected in other cases. The appellant has invoked the court's process and procedures for an illegitimate or collateral purpose, namely, as a platform for advancing his nonsensical theories. He appeared at the hearing with the support of a large retinue who appeared to share or sympathise with his views. The appellant is not interested in securing justice according to law (either in relation to the convictions in question or otherwise) in accordance with the system to justice administered by the courts of this State. At the hearing on 5 July 2012 he advanced arguments in language which was often disparaging and derisory of this court and the functions it performs.
>
> [12] The grounds of appeal consist of a pronouncement of the appellant's eccentric theories about the judicial power of the Commonwealth, the *Constitution*, the right to trial by jury and the status of courts in this State. None of the grounds had any reasonable prospect of succeeding …

> [13] This appellant is wasting the time of the courts by repeatedly advancing his theories or variations of them, even though they have been dealt with and disposed of in other cases: see, for example, ***Glew v Shire of Greenough*** [2006] WASCA 260; ***Glew Technologies Pty Ltd v Department of Planning and Infrastructure*** [2007] WASCA 289; ***Glew v The Governor of Western Australia*** [2009] WASCA 123; ***Glew v Frank Jasper Pty Ltd*** [2010] WASCA 87; ***Frank Jasper Pty Ltd v Glew [No 2]*** [2010] WASC 24; and ***Glew v City of Greater Geraldton*** [2012] WASCA 94.

10 The Court of Appeal concluded by directing the Registrar to refer its reasons for decision, together with the reasons for decision of Hall J and associated papers, the transcript and a list of other similar decisions in the General Division involving the appellant, to the Attorney General with a request that the Attorney General consider making an application under s 4 of the *Vexatious Proceedings Restriction Act 2002* (WA).

11 On 12 February 2014 Glew was declared to be a vexatious litigant by order of Master Sanderson on the application of the Attorney General: ***Attorney General (WA) v Glew*** [2014] WASC 100 and orders were made restraining him from commencing any legal proceedings in any court of this State without first obtaining leave of this court to do so.

12 From this it will be apparent that Mr Glew has, over a long time, been pursuing untenable, groundless and eccentric theories consistent with his idiosyncratic view that the courts and judges, and many of the legislative Acts of the Parliament of Western Australia, are without authority and invalid and that he has no obligation to comply with those laws or to defer to the authority of the courts or judges. The many manifestations of these views are apparent from the decisions cited but their constant rejection by the courts has done little or nothing to persuade Mr Glew that his approaches are baseless or that he should defer to the authority of the laws and the courts of this State.

13 Regardless of how baseless or ill-conceived Mr Glew's opinions or convictions may be, it is not an offence for him to hold them but if, in espousing or promoting those views, or asserting them before a court, judge or judicial officer, he does, through speech or action, commit a contempt of court, that would constitute a criminal offence and render him liable to punishment accordingly.

14 The Attorney General contends that in his appearance and demeanour before the Court of Appeal during those brief nine minutes on 5 July 2012 he did commit a contempt and that he 'crossed the dividing

line separating maladroit incompetence and discourtesy from contempt' - ***Re Perkins; Mesto v Galpin*** [1998] 4 VR 505, 511 (Brooking JA).

15 The notice of motion, issued a little over 12 months after the alleged contempt, identifies and specifies the following grounds for the application.

1. On the morning of 5 July 2012, the Contemnor attended Court room 3 of the Supreme Court of Western Australia for the hearing of his appeal in the matter of *Glew v White*, CACR 92 of 2012.

2. At all material times, the Court of Appeal was open to the public and there was an audience of approximately 10 people watching the proceedings from the public gallery.

3. At approximately 10:46 am (Transcript 2), Pullin JA advised the Contemnor:

   --- and you're here to have the opportunity of making additional submissions. We formed the view that on the papers it's not likely that leave will be granted but we have this procedure which gives people the opportunity to make further submissions, oral submissions, and we limit time, so in other words there's a 15-minute time limit.

4. The Contemnor responded:

   That's fine. What I have got to say will fit in 15 minutes.

5. At approximately 10:46 am Pullin JA stated (Transcript 2):

   Just address the grounds of appeal.

6. The Contemnor replied:

   I am addressing the grounds, sir. On 6 November 2006 I formally charged you and Mr Buss with treason, Ms President with treason, and that has been filed in the Supreme Court of Victoria and as yet hasn't been dealt with, so you have no right to sit on this case.

7. At approximately 10:48 am, the following exchange occurred (Transcript 3):

   Pullin JA: Mr Glew, if you're not going to address ---

   Glew, Mr: I am addressing it, sir.

   Pullin JA: --- the grounds of appeal, we will adjourn the court on the assumption that you don't wish to make any submissions about the grounds.

8. The Contemnor replied:

I am making a submission on your ability to sit in this court, which is part of the appeal. If you look at the appeal notice you will find that I have filed an objection and a challenge to the authority of this court, sir. I'm well aware that you would like to just dump this and get rid of it out of your court. Unfortunately that isn't going to happen.

What you have before you is an application that states that I have applied for leave to appeal. That is not the case. Would you like to see the actual document here? It states it's an application for an appeal, because I am not subject to all your rules. I'm subject to the common law and the constitution. Would you like to see it?

9. The following exchange then occurred (Transcript 3):

Pullin JA: Mr Glew ---

Glew Mr: The document says, "Application for an appeal," sir. You're saying "if you have an application for leave to appeal". There is no such document before you.

Pullin JA: Mr Glew, there's an appeal ---

Glew, Mr: I'm not Mr Glew, sir.

Pullin JA: There's an appeal notice. There are draft grounds of appeal. You need leave in relation to each ground of appeal and this is your opportunity to make submissions. If you don't address the grounds of appeal, we are going to adjourn and deal with the matter by reasons of the court which will be delivered in due course.

Glew, Mr: Sir, if you do that and you totally ignore the law, I will formally charge you, which I am entitled to do as a Commonwealth public official …

10. The Contemnor made further submissions (Transcript 4).

11. Mazza JA intervened and the following exchange occurred:

Mazza JA: You're not addressing ---

Glew, Mr: ---we have two houses of parliament and a judiciary.

Mazza JA: You're not addressing the grounds of appeal. What you have said is ---

Glew, Mr: That is part of it.

Mazza JA: What you have said i[s] nonsense. Do you want to address the grounds ---

12. After Mazza JA made this statement, the Contemnor raised his voice and spoke in an angry and aggressive manner towards Mazza JA (Audio Recording at 5:34) and stated *'I beg your pardon. I beg your pardon.'*. There was an outburst from the public gallery, with members of the public gallery making comments and laughing and speaking loudly (Affidavit, Rita Ruggiero at [12]; Audio Recording 5:48).

13. The exchange continued (Transcript 4 – 5):

Mazza JA: Do you want to address the grounds of appeal?

Glew, Mr: I am addressing the grounds of appeal.

Mazza JA: Which one?

Glew, Mr: The one that states the Magistrates Court Act, section 35, is repugnant to the constitution. You're not going to deal with that? You're bound by the constitution to declare it invalid because it's repugnant.

Pullin JA: Mr Glew, you're here to deal with errors that are alleged to have been made by Hall J.

Glew, Mr: Why who? Hall J? I raised the issue with Hall J into the validity of the Magistrates Court Act and he never dealt with it, because he couldn't, because if he did he would find himself in the same position as the magistrate, committing treachery to alter the constitution. If you do nothing about it, you're in the same boat, sir.

Pullin JA: Mr Glew, do you want to address the grounds of appeal or not?

Glew, Mr: That is a ground of appeal, sir. You said to address it. I'm addressing it.

…

Mazza JA: So we're addressing which ground? Ground 5 now?

Glew, Mr: Yes. The Magistrates Court Act is invalid. Magistrate DeVries sat in the court unlawfully. He knew it, Mr Hall knew it, and now you know it. What are you going to do about it? If you don't do it, I will charge you and you will end up in the Magistrates Court charged. That's not a threat, it's a promise of an exercise of authority granted to me by the queen.

Mazza JA: All right, so they're your submissions in relation to ground 5, are they?

Glew, Mr: It's not a submission, sir. It's a statement of fact of law and you have to deal with it, sir, right now.

Mazza JA: We hear arguments and then we consider your arguments.

Glew, Mr: Not outside this court, you do not.

Mazza JA: You're just having an argument, Mr Glew. There's no point ---

Glew, Mr: It's not an argument, sir.

Pullin JA: There's no point continuing with this if you're going to ---

Glew, Mr: Well, deal with the issue before the court, the invalidity of the Magistrates Court Act. Are you going to deal with it?

Pullin JA: Are you going to deal with the grounds of appeal?

Glew, Mr: No, I'm asking you. Are you going to deal with the submission I have just put to you which is a fact of law, sir?

Pullin JA: I'm giving you one more opportunity. Will you address the grounds of appeal?

Glew, Mr: I have just done it. Are you going to address the fact that the Magistrates Court Act is invalid?

14. At approximately 10:54 am Pullin JA stated (Transcript 6):

Thank you, Mr Glew, for your submission. We will reserve our decision and the decision will be published in due course.

15. The Contemnor then stated:

Because you haven't dealt ---

16. There was a further outburst from the public gallery (Rita Ruggiero Affidavit [13]; Audio Recording 8:47; Transcript 6).

17 The Contemnor, apparently directing his statement to the members of the public gallery, stated (Transcript 6; Rita Ruggiero Affidavit [14]:

Hey. Hey. Show some respect, thank you.

18. The members of the public gallery stopped laughing and speaking (Rita Ruggiero Affidavit at [14].

19. As the Justices of the Court of Appeal then began to exit the Court room the Contemnor stated, with a raised voice (Rita Ruggiero Affidavit at [15]:

    So, in relation to what you have just done I formally charge you, Mr Mazza, you, Mr Pullin, and you, Mr Buss, with treachery to alter the constitution. Turn your back on them, they're criminals. I will let you deal with that. You can laugh, Mr Pullin. You are going to pay. You only think you can get away with it, you fraud.

20. The Contemnor made those statements in an aggressive an intimidating manner and gestured and pointed at the Justices when he made the statements (Rita Ruggiero Affidavit at [16]).

21. After the Contemnor made those statements, members of the public gallery applauded (Rita Ruggiero Affidavit at [17]).

22. Throughout the hearing, the Contemnor had an aggressive and intimidating demeanour (Rita Ruggiero Affidavit at [11]). The tone of his voice was aggressive, he spoke loudly, he was argumentative when asked questions by members of the court and repeatedly interrupted or spoke over the top of the Justices when they were addressing him (Rita Ruggiero affidavit at [11]).

23. The statements and demeanour of the Contemnor complained of in paragraphs 6 to 9, 11 to 13, 17, 19, 20 and 23 above ("the conduct") constitute contempt in the face of the court, being conduct that amounts to an interference with or obstruction to, or has the tendency to interfere with or obstruct, the due administration of justice.

16 There can be no doubt that the grounds of the motion accurately record the facts of what took place at the hearing before the Court of Appeal on 5 July 2012. These are established by the affidavits of Ms R M Ruggiero, sworn 28 May 2013, to which a transcript of the hearing is annexed, and the affidavit of Mr D J Carey, sworn 17 May 2013, which verifies the system of recording and then transcribing events in the courtroom and the software which leads to a recording being made on a CD disc of the proceedings in the course of a court hearing. Mr Carey's affidavit explains the source and reliability of the CD disc of this hearing which he had prepared and delivered to Ms Ruggiero and which was produced in evidence on this application.

17 With one tendentious exception, Mr Glew accepted the accuracy of the transcript and the CD recording or, at the very least, did not challenge

it or dispute its contents. The single exception relates to the last paragraph of the transcript in which the record shows Mr Glew speaking the words:

> *Hey. Hey. Show some respect, thank you. So in relation to what you have just done I formally charge you, Mr Mazza, you Mr Pullin, and you, Mr Buss, with treachery to alter the constitution. Turn your back on them, they're criminals. I will let you deal with that. You can laugh, Mr Pullin. You are going to pay. You only think you can get away with it, you fraud.*

18 The record shows that these words by Mr Glew were spoken after the presiding judge announced that the court would reserve its decision and would publish it in due course. At that point, the judges of the Court of Appeal were rising and were about to leave, or were in the process of leaving, the bench. The words spoken by Mr Glew were, at least initially, addressed partly to his retinue of supporters in the public gallery and, latterly, to the judges of the court. The incident is described in pars 13 to 17 of the affidavit of Ms Ruggiero. At the time Mr Glew spoke those words he was speaking in an aggressive and intimidating manner and gestured and pointed at the judges when he made those statements. After he made them, some people in the public gallery applauded.

19 The objection which Mr Glew makes to any reliance upon the last paragraph of the transcript, which has just been set out, is that he contends that these words were not spoken in the face of the court but were statements which he made after the presiding judge had announced that the decision of the court would be reserved, thus ending the hearing, and that, consequently, the words and conduct did not occur in the face of the court. This is entirely spurious. The evidence is, and I find, that the three judges of the Court of Appeal were rising and in the process of withdrawing from the court when the words were spoken and that, as the words themselves clearly convey, the latter part of the address was spoken by Mr Glew to the court and certainly in the hearing of the court. The distinction which Mr Glew attempts to raise is entirely artificial and false and I proceed on the basis that all the words recorded in the transcript were spoken while the three judges were still in the courtroom.

Preliminary procedures in this application

20 At a directions hearing before McKechnie J on 16 August 2013 a series of orders and directions was made relating to preparation for the hearing of this motion. Those directions included an order that Mr Glew have liberty to file and serve any affidavits by 6 September 2013 and that the applicant file and serve any affidavits shortly afterwards. There were

other conventional directions in preparation for the hearing, including directions for filing of written submissions on both sides before the hearing. As already noted, the applicant has filed and read two affidavits on the application. Another affidavit of service need not be further mentioned. Written submissions dated 7 February 2014 were filed and served by the applicant but no written submissions have been filed or delivered by the contemnor.

Judiciary Act 1903 **(Cth) s 78B notice**

21 The only affidavit filed by Mr Glew is sworn 3 September 2013. In it, at some length, he recites his long discredited accounts of why: the Acts and statutes of Western Australia are irregular or invalid; that the judges and magistrates of the State have not been lawfully appointed and have no authority; and that these and other associated contentions give rise to matters involving the *Commonwealth Constitution* and requiring notice to be given to the Attorneys General of the Commonwealth, the States and Territories, pursuant to s 78B of the *Judiciary Act*. Annexed to that affidavit is a copy of the notice by Mr Glew addressed to the Attorneys General of each State and Commonwealth giving notice that this particular proceeding involves matters arising out of the *Constitution*, including that the courts of Western Australia and the justices and magistrates that sit in these courts are not lawfully established under the Commonwealth Constitution of 1901 and various other related contentions.

22 There is no evidence that Mr Glew's notice has actually been served upon any of the Attorneys General - other than the Attorney for the State of Western Australia. Certainly, there has been no notice of any intention to intervene in these proceedings by any other Attorney General, nor any application by such an Attorney to remove the whole, or any part, of this matter into the High Court of Australia.

23 Unjustified attempts to assert that proceedings involve constitutional issues requiring notices to be given under s 78B of the *Judiciary Act* have become a common feature of a number of cases in which proponents of Mr Glew's discredited views about constitutional law, or the adherents of similar views, have been raised: see, for example, ***Krysiak v McDonagh*** [2012] WASC 270, affirmed on appeal in ***Krysiak v McDonagh*** [2013] WASCA 100.

24 It is by now well-established that a constitutional issue does not arise for the purposes of s 78B of the *Judiciary Act* merely because a party asserts that it does. If an alleged constitutional issue is unarguable or

frivolous and vexatious, there is in truth no constitutional issue at all: ***Shaw v McGinty*** [2006] WASCA 231 [42]; ***O'Connell v The State of Western Australia*** [2012] WASCA 96 [90]. See also ***Re Finlayson; Ex parte Finlayson*** (1997) 72 ALJR 73, 74 (Toohey J); ***Boath v Wyvill*** (1989) 85 ALR 621, 634.

25 In the present case, I am satisfied that there is no arguable basis for any of the so-called constitutional questions asserted by Mr Glew to arise. The points he seeks to raise have been authoritatively determined against him on numerous previous occasions as the authorities already cited record.

26 There can be no doubt about the jurisdiction of this court to entertain applications for punishment for alleged contempt of court and to impose punishments if a contempt is proved. The alleged contempt relates to matters which occurred in the course of a hearing before the face of the Court of Appeal of this court and in a matter dealing with an application for leave to appeal from a conviction in a State court involving the application of State laws. I, of course, realise that merely by invoking the potential application of the *Constitution* or a law of the Commonwealth such as the *Judiciary Act 1903* (Cth) federal jurisdiction is thereby attracted: ***Moorgate Tobacco Co Ltd v Philip Morris Ltd*** (1980) 145 CLR 457 and ***Agtrack (NT) Pty Ltd v Hatfield*** (2005) 223 CLR 251. However, the fact that federal jurisdiction is involved does not mean that a constitutional issue requiring compliance with the s 78B procedure additionally arises.

Applicable law

27 The nature of, and distinctions between, the categorisations of a criminal contempt and a civil contempt of court were fully discussed and explained in ***Allbeury v Corruption and Crime Commission*** [2012] WASCA 84; (2012) 42 WAR 425, especially by McLure P at [5] - [12] and by Buss JA at [61] - [79].

28 In ***Corruption and Crime Commission v Allbeury, Silvestro, Chikonga, Smith [No 2]*** [2011] WASC 26 (which was affirmed on the appeal) Martin CJ outlined the nature of a common law offence of contempt of court as it applies in this State at [7] - [21]. In those passages the learned Chief Justice noted that contempt of court is the only common law offence preserved under the laws of this State because s 7 of the *Criminal Code Compilation Act 1913* (WA) provides that nothing in that Act or in the *Criminal Code* affects the authority of courts to punish persons summarily for the offence of contempt of court. Furthermore,

there is no maximum penalty for the offence: ***Kennedy v Lovell*** [2002] WASCA 226 [5], the punishment to be imposed following conviction is entirely within the discretion of the court; ***R v Pearce*** (1992) 7 WAR 395, 431 and the *Sentencing Act 1995* (WA) does not apply which means, among other things, that there is no power to make an order for eligibility for parole and that the Prisoners Review Board has no power to grant parole to a prisoner sentenced to imprisonment for contempt of court. Nevertheless, there is the possibility of early discharge of a contemnor under *RSC* O 55 r 9, which permits the court to discharge the contemnor notwithstanding that the term for which he was committed has not expired. Martin CJ also cited, with approval, the observations of Kirby P in ***Registrar of the Court of Appeal v Maniam [No 2]*** (1992) 26 NSWLR 309, 313 - 314, where the learned President said:

> Contempt law has been fashioned by the courts to protect the administration of justice. This is an activity, self-evidently of the greatest importance to society. It represents a vital part of the peaceful government of a community such as ours. In ***Ditford v Calcraft*** (1989) 98 FLR 158 at 160, I said:
>
> > '… These well known features of our legal system make the faithful compliance with subpoenas issued by the courts essential to the proper administration of justice …'
>
> A conviction of contempt of court is a conviction of an offence, criminal in nature. Punishment of the convicted contemnor must therefore take into account the considerations normally applicable to the punishment of crime and apt to uphold the purpose of this jurisdiction, viz, the undisturbed and orderly administration of justice and the courts according to law. Thus, in determining the punishment which is apt to the circumstances which have led to a conviction of contempt, it is appropriate to bear in mind the purposes of punishing the contemnor; deterring the contemnor and others in the future from committing like contempts; and denouncing the conduct concerned in an [sic appropriately] emphatic way: see ***Director of Public Prosecutions v John Fairfax & Sons Ltd*** (1987) 8 NSWLR 732 at 741.

29 The contempt being alleged by the Attorney General in the present case is clearly a criminal contempt and proof of the alleged contempt must be established beyond reasonable doubt. Proof of an alleged contempt would require proof, to the requisite degree, of words or conduct in the face of the court, or in the course of, or immediately after, proceedings such as would interfere or tend to interfere with the course of justice or obstruct or tend to obstruct the administration of justice: ***Lewis v Judge Ogden*** (1984) 153 CLR 682, 688; ***Parashuram Detaram Shamdasani v King-Emperor*** [1945] AC 264, 268; and ***Stuart v Brown*** (1996) 17 WAR 525, 531.

30 A wide variety of conduct or behaviour may constitute a contempt of court, including misbehaving in court, wilfully insulting a judge or a jury at trial or an interference with the authority of the courts in the sense that by doing so may detract from the influence of judicial decisions and cause an impairment of confidence and respect for the courts and their judgment. Hence, gestures and statements of defiance to the authority of a court have been held to amount to contempt: ***Ex parte Tuckerman; Re Nash*** (1970) 3 NSWR 23, 27; and ***Registrar of The Supreme Court of South Australia v Moore-McQuillan*** [2007] SASC 447 [21] - [22]. In ***R v Dunbabin; Ex parte Williams*** (1935) 53 CLR 434 there was occasion to address the nature of a contempt which threatened or challenged the authority of a court. In that case, at 447, Dixon J observed:

> It is necessary for the purpose of maintaining public confidence in the administration of law that there shall be some certain and immediate method of repressing imputations upon the Courts of justice which, if continued, are likely to impair their authority … The question is whether, if permitted and repeated, it will have a tendency to lower the authority of the Court and weaken the spirit of obedience to the law …

31 See also ***Gallagher v Durack*** (1983) 152 CLR 238, 243 - 245. In the latter case, after expressly approving the observations of Dixon J in ***Dunbabin***, Gibbs CJ, Mason, Wilson & Brennan JJ went on to observe at 243:

> The authority of the law rests on public confidence, and it is important to the stability of society that the confidence of the public should not be shaken by baseless attacks on the integrity or impartiality of courts or judges. However, in many cases, the good sense of the community will be a sufficient safeguard against the scandalous disparagement of a court or a judge, and the summary remedy of fine or imprisonment 'is applied only where the Court is satisfied that it is necessary in the interests of the ordered and fearless administration of justice and where the attacks are unwarrantable': ***R v Fletcher; Ex parte Kisch***, per Evatt J (1935) 52 CLR at 257.

32 These authorities are instructive in the present case because, I am satisfied, there has certainly been scandalous disparagement of the Court of Appeal and the justices who sat in it by Mr Glew on the occasion alleged. The importance of these observations, of the highest authority, is whether or not the invocation of the contempt power is necessary to avoid interference with or obstruction of the due course of justice either on the particular occasion or generally. That latter issue seems to be at the nub of the present case.

33 It is not necessary to show that the contemnor intended to interfere with the administration of justice: ***Resolute Ltd v Warnes*** [2000] WASCA 359 [13]; ***Re Coroners Court of Western Australia; Ex parte Porteous*** [2002] WASCA 144; (2002) 26 WAR 483 [13]; and ***Mansell v Mignacca-Randazzo*** [2013] WASC 66 [86] (Hall J). In cases involving a contemnor addressing a court in terms which were abusive and offensive, it has been held that so long as the acts themselves tend to interfere with the course of justice it is sufficient that the court be satisfied that they were performed consciously and voluntarily - ***Attorney-General for The State of Victoria v Rich*** [1998] VSC 41 [18] (Byrne J).

Mr Glew's impugned conduct

34 The applicant identifies the following aspects of Mr Glew's conduct as significant demonstrations, either alone or in combination, of conduct amounting to contempt:

(a) Mr Glew threatening to charge members of the Court of Appeal with treason, accusing them of 'treachery' and purporting to charge them with 'treachery to alter the constitution'.

(b) Mr Glew stating that members of the Court of Appeal were 'criminals' and that Pullin JA was a 'fraud'.

(c) Mr Glew repeatedly interrupting members of the Court of appeal.

(d) Mr Glew addressing comments to the public gallery.

(e) Mr Glew asserting that he was not subject to the court's rules.

(f) Mr Glew's aggressive and intimidating demeanour and gesturing.

35 The particular words and conduct identified by these particulars have already been set out in the notice of motion and which, as I have already found, are established by the evidence of the transcript.

36 Counsel for the Attorney General submitted that Mr Glew's conduct improperly challenged the authority and integrity of the Court of Appeal, interrupted its proceedings and detracted from its capacity to conduct proceedings which are dispassionate and rational both in fact and appearance and so amounts to a contempt in the face of the court. Furthermore, it was submitted for the Attorney General that Mr Glew's impugned conduct involved a deliberate, intended refusal to acknowledge, and defiance of, the authority of the court, with an intent to undermine that authority and to encourage others to adopt that view. This, so it was

submitted, was reflective of his misguided view that the Supreme Court has no lawful authority.

The effect of the contemnor's conduct

37 In the particular circumstances of this case the due administration of justice was not obstructed or interfered with by Mr Glew's crass and objectionable conduct. The judges of the Court of Appeal heard his application for leave to appeal with attention, dignity and patience, even if possibly mixed with controlled resignation. The brief hearing began, continued and was completed without physical interruption and, Mr Glew's submissions having been heard, the court reserved its decision. As already noted, the decision of the court was given with detailed reasons five days later and the application for leave to appeal was refused, resulting in dismissal of the appeal.

38 It is clear that their Honours concluded that Mr Glew's conduct was an abuse of process and that he used 'language which was often disparaging and derisory of this court and the functions it performs' - ***Glew v White*** [2012] WASCA 138 [11]. Nevertheless, their Honours did not themselves exercise the power which they indisputably possessed to charge Mr Glew then and there with contempt in the face of the court and to have him brought before the court to answer that charge - *RSC* O 55 r 3(1). It is evident that their Honours were unanimously of the view that some form of powerful sanction was needed to restrain Mr Glew's behaviour in the future and, for that reason, recommended that the papers be referred to the Attorney General with a view to an application being made against Mr Glew under the *Vexatious Proceedings Restriction Act.*

39 As earlier observed, in the absence of any submissions to the contrary which might have required attention had they been raised, I am proceeding on the basis that a single judge of this court does have jurisdiction to entertain an application for punishment for a contempt of court alleged to have been committed in the face of another judge or judges of the court on some different occasion in another cause. Accordingly, on this basis, I do not see the absence of any charge of contempt being made against Mr Glew by the Court of Appeal on 5 July 2012 as an impediment to the hearing and determination of this present application.

40 The disposition of the leave application by the Court of Appeal is to some degree instructive of the view which their Honours took of the occasion and of the deplorable conduct of Mr Glew. One gets the

impression that their Honours were, quite rightly and justifiably, affronted by Mr Glew's behaviour and language and regarded it as offensive, disrespectful and pursued for some collateral personal motive. That view of Glew's conduct was, with respect, amply justified but it also seems that their Honours regarded Mr Glew as a troublesome and misguided eccentric whose present and past conduct was prompted by views which were quite erroneous and obsessive but which had consumed him and his outlook for a long time. This approach is consistent with treating Mr Glew as being a person who, although misguided and offensive, did not, on balance, represent any credible threat to the standing or reputation of the court and one who, if his conduct were limited and controlled by an order made under the *Vexatious Proceedings Restriction Act*, would be sufficiently prevented from causing a nuisance to others or to the court without warranting utilisation of the special powers of punishment for criminal contempt.

41 Of course, it is not possible to conclude affirmatively that that was the position adopted by the Court of Appeal because no allegation of contempt was made or argued and these matters of balance and the degree of any threat to the due administration of justice were not expressly addressed or measured. Now that the allegation has been made and the charge laid, the obligation of dealing with them directly now arises. The question which I now have to address can be put in metaphorical terms - was Mr Glew's conduct and behaviour before the Court of Appeal on 5 July 2012 of a nature which represents a direct threat to the due administration of justice by impairing the authority and integrity of this court or was it, however scandalous and offensive, akin to the behaviour of an obnoxious guest at a wedding who, late in the evening, makes a spectacle of himself and insults other guests and family without doing or threatening any real harm and, accordingly, is best dealt with by something less than the most serious form of corrective.

42 At this point it is helpful to consider the observations of the highest courts and some of the most eminent judges when dealing with comparable issues. There are passages in ***Lewis v Judge Ogden*** (1984) 153 CLR 682 which bear on these questions. In that case, at 689, Mason, Murphy, Wilson, Brennan and Dawson JJ said in a joint judgment:

> However, mere discourtesy falls well short of insulting conduct, let alone wilfully insulting conduct which is the hallmark of contempt. The freedom and the responsibility which counsel has to present his client's case are so important to the administration of justice, that a court should be slow to hold that remarks made during the course of counsel's address to the jury amount to a wilful insult to the judge, when the remarks may be

> seen to be relevant to the case which counsel is presenting to the jury on behalf of his client. That is not to say that comments made in counsel's address, apparently relevant to the client's case, may not constitute a contempt.

43 In that case, at 692, the justices identified the critical question to be determined as being whether or not the way in which counsel addressed the jury trespassed beyond the bounds of legitimate advocacy and wilfully insulted the judge and observed that that was a question by no means easy to answer but which, in the end, the court resolved in the negative. Their Honours observed at 693:

> In conclusion three comments should be made. The first is to recall that the contempt power is exercised to vindicate the integrity of the court and of its proceedings; it is rarely, if ever, exercised to vindicate the personal dignity of a judge: ***Ex parte Hernandez*** (1861) LJCP 321 at 332; ***Reg v Castro; Skipworth's case*** (1873) LR 9 QB 219 at 232 and ***Bellanto*** (1962) 63 SR (NSW) at 200, 202. The second is that the summary power of punishing for contempt should be used sparingly and only in serious cases (***Shamdasani*** [1945] AC at 270; ***Izuora v The Queen*** [1953] AC 327 at 336. The final comment is that the charge of contempt should specify the nature of the contempt, ie, that it consists of a wilful insult to the judge, and identify the alleged insult.

44 Another case dealing with an alleged contempt arising from the conduct of counsel in the face of the court is ***MacGroarty v Clauson*** (1989) 167 CLR 251 which resulted in a conviction for statutory contempt of court said to have been committed by counsel contrary to s 105(1) of the *District Courts Act 1967* (Qld) being set aside. In that case Mason CJ, Deane, Dawson, Toohey and McHugh JJ unanimously reversed a decision of the Full Court of the Supreme Court of Queensland which had dismissed an appeal from the contempt conviction and, in doing so, cited and approved the passages in ***Lewis v Judge Ogden*** (688). The reason for quashing the conviction in ***MacGroarty*** lay in the failure of the judge of the District Court to identify, either expressly or by necessary implication, the particular statutory offence with which the accused was charged in circumstances where the conduct leading to the charge was capable of constituting one or more of several possible offences. This meant that the failure of the learned trial judge to identify the particular offence alleged against that appellant had the result that he was not properly charged with a particular identified offence and was not therefore accorded an adequate opportunity of defending himself. That was a defect in procedure which led to the quashing of the conviction. This was important not only because of the need to accord procedural fairness but because the statutory offence then applicable in Queensland created a number of offences

containing elements which would have been unnecessary for conduct of the kind to which they refer to constitute a common law contempt because of their introduction of elements of wilfulness. Their Honours repeated the observations in ***Lewis v Ogden*** to the effect that at common law words or conduct in the face of the court or in the course of proceedings, in order to constitute contempt, must be such as would interfere or tend to interfere with the course of justice.

45 Similarly, in ***Stuart v Brown***, a case dealing with an alleged statutory contempt under s 41 of the *Justices Act 1902* (WA) (since repealed) of wilfully insulting a magistrate in the course of a hearing for a restraining order, the Full Court (Murray, Owen & Parker JJ) dismissed an appeal from the ensuing conviction for reasons principally given by Owen J, with whom Parker J agreed, and with which, on this particular proposition, Murray J specifically associated himself. A passage in the reasons of Owen J at 533 records that his Honour said:

> In my opinion, the appeal should be dismissed. I wish to add one comment. The power to deal with a person summarily for contempt is Draconian in nature. As the High Court said in ***Lewis v Ogden***, the summary power of punishing for contempt should be used sparingly and in serious cases. The power is not there to make an example of an individual litigant. I would hope that it is reserved for blatant breaches and in circumstances where there are no other means by which the integrity of the process can be protected.

46 The kind of behaviour which will give rise to a contempt in the face of a court is variable and may depend on the context of a particular case, and even on some nuances in the behaviour alleged to constitute the contempt. This makes a determination of whether or not a particular occasion gives rise to a contempt a matter for careful judgment. In some instances, the contempt will be clear and unequivocal, in others it may be less so or even ambiguous. It is not surprising, therefore, that there are examples in the authorities of instances which vary in potential impact and gravity. As was said in ***Izoura v The Queen*** [1953] AC 327, 336 a decision of the Privy Council:

> It is not possible to particularise the acts which can or cannot constitute contempt in the face of the court.

47 However, shouting and chanting slogans in court or insulting the presiding judicial officer have been held to constitute contempts in ***Wilson v Prothonotary*** [2000] NSWCA 23; ***Morris v Crown Office*** [1970] 2 QB 114; and ***Rich v Attorney-General (Vic)*** (1999) 103 A Crim R 261; [1999] VSCA 104 and ***Registrar of Supreme Court (SA) v***

Moore-McQuillan [2007] SASC 447 - for more examples see, generally; *The Laws of Australia*, vol 10 [10-11-370] to [10-11-460].

48 Actual interruption or disruption of a hearing before the court need not be established in such cases. In ***Ex parte Tuckerman; Re Nash*** the Court of Appeal of New South Wales dismissed an appeal from a conviction of contempt of court in circumstances where the appellant had appeared before a magistrate in a Court of Petty Sessions to answer a charge of trespass. When he, and other co-accused, entered the court each made a gesture by raising his left arm with the hand or fist clenched. This behaviour was pre-arranged and was regarded by the magistrate as asserting an opposition to the authority of the court and as manifesting a studied disregard of the jurisdiction conferred upon the court by law. Each was convicted and the convictions were confirmed. In that case, the court, comprising Asprey, Holmes and Mason JJA, observed at 27:

> Words or acts which interfere or tend to interfere with the course of justice, constitute contempt of court

and that the expression

> 'interference with the course of justice' is not confined to a physical disturbance of particular proceedings in a court which prevents the court from attending to its business according to law; it comprehends as well an interference with the authority of the courts in the sense that there may be a detraction from the influence of judicial decisions and an impairment of confidence and respect in the courts and their judgments.

49 The court held that, in that case, the gestures of the accused were of the kind that has been in the past and, perhaps, is now, associated with the philosophies and attitudes which have consistently denied the rule which forms the basis of a truly democratic society and that the magistrate was entitled to regard them as having a tendency to lower the authority of the courts and to weaken the spirit of obedience to the law.

50 By contrast, however, ***O'Hair v Wright*** [1971] SASR 436 was a conviction for statutory contempt of court by a defendant who when appearing in a court of summary jurisdiction and asked for his plea said, 'I refuse to recognise the authority of this court', whereupon he was charged and convicted of contempt of court under s 46 of the *Justices Act 1921* (SA). After examining authority, Mitchell J (at 441) concluded that the words spoken could not in themselves be regarded as calculated to scandalise the court or to bring it into contempt or lower its authority. Her Honour then referred to the power to punish for contempt, by repeating the observations of the Privy Council:

> 'It is a power which a court must of necessity possess; its usefulness depends on the wisdom and restraint with which it is exercised, and to use it to suppress methods of advocacy which are merely offensive is to use it for a purpose for which it was never intended' - citing from ***Parashuram*** [1945] AC 264 at 270.

51 Her Honour then observed (at 441) that:

> Similarly, it seems to me that the power given to the Court under s 46(1)(b) should be sparingly used, and not used to punish people who may not have acceptable views, however extraordinary such views may be. I would not wish to think that an anarchist could not safely appear before the court and receive a hearing, even though he chose to say that he had no belief whatsoever in law or order.

52 Further statements had been made by the appellant in ***O'Hair*** to the magistrate which suggested political corruptibility by the court. However, he was not charged in respect of those matters but Mitchell J did observe that those subsequent statements might have amounted to conduct disrespectful to the court and capable of supporting a different charge under the section, but that that had not occurred.

53 A detailed discussion of the special and unique procedures which apply to the exercise of the summary power to commit for contempt in the face of the court is to be found in ***Re Perkins; Mesto v Galpin***. A Judge of the Supreme Court presiding over a trial issued a warrant for the arrest of a barrister appearing before him because of repeated disobedience to the Judge's requests and directions. The proceedings were adjourned, and enforcement of the warrant stayed, until the next day, when the barrister again appeared before the court by counsel and apologised, whereupon the Judge did not proceed to record a conviction but ordered the barrister to pay the costs for the contempt proceedings. The matter went to the Victorian Court of Appeal by the barrister appealing from the order that he pay the costs and in respect of the recital by the Judge that his Honour had found that the barrister had committed a contempt in the face of the court but above the Judge did not proceed to impose a conviction.

54 The appeal was allowed but only to correct a minor error in the record. Judgment was given by Brooking JA, with whom Phillips and Batt JJA agreed.

55 At 513 Brooking JA said:

> Because of the unique position of contempt as a criminal offence that may be dealt with summarily at common law, where the summary jurisdiction to punish for contempt is invoked there is, it seems, no statutory provision

> empowering a court to find the offence proved without proceeding to a conviction … If the court chooses formally to adjudge that the respondent has been guilty of contempt, this finding is itself a conviction: there being no jury which has found a verdict of guilty and no plea of guilty, it is not a matter of considering whether some act subsequent to the verdict or plea is necessary for there to be a conviction, a question discussed in cases like ***Griffiths v R*** (1977) 137 CLR 293 …

56 And, at 514:

> But when called upon to exercise the summary jurisdiction in contempt the judge does have what appears to be a unique discretion at common law: he may in his discretion decline to adjudge the respondent guilty of contempt, that is, decline to convict, notwithstanding that, as judge of the facts and the law, he is satisfied that a contempt has been committed.

57 In his reasons Brooking JA had earlier explained that in the case of ***R v MacDonald*** [1994] 1 VR 414, 423 - 424 Hampel J had expressly refused to proceed to the stage of conviction and that this was his Honour's way of saying that, notwithstanding what he had found had occurred, he declined formally to adjudge either of the defendants guilty of contempt.

The present case

58 Mr Glew's behaviour before the Court of Appeal was singularly inappropriate and disrespectful. His references to having charged the Presiding Judge and Buss JA with treason in the Supreme Court of Victoria were not explained and there is no evidence to determine whether or not he made any such attempts. His reference to this matter, even if there was any truth in it, was quite absurd and ridiculous and was not pursued, yet Mr Glew seems to have been suggesting that it was a reason why those judges should not sit on the application then before the court. He did say that in his appeal notice that he filed an objection challenging the authority of the court.

59 Any pursuit of an application that some of the judges ought to have disqualified themselves from the hearing was lost in the encounters which followed, which led to the judges pointing out to Mr Glew that, contrary to the position which he was adopting that there was an appeal before the court, there was only an application for leave to appeal and that he had to demonstrate grounds upon which leave should be granted. Mr Glew did not accept that. When told that if he did not address the proposed grounds of appeal the court would adjourn and decide the matter on the papers, he responded by saying that if the court did that he would formally charge the judges as he claimed to be entitled to do as a Commonwealth public

official. This was absurd histrionics. He is not, and was not, a Commonwealth official; there was no basis for charging anyone and his remarks were nothing less than preposterous. The incongruity of Mr Glew's contentions, and of his claims, was plainly obvious to their Honours and must have been obvious to any fair-minded, reasonable observer. No such observer could attach any credit or plausibility to Mr Glew's behaviour, which was that of an ignorant man disastrously pursuing his own obsession.

60 From there the situation did not improve. Mr Glew reverted to his idiosyncratic theme that there was no lawful governor for the State of Western Australia; that certain legislation was not valid; and that the constitutional arrangements for executive and legislative power in Western Australia were defective. This led Mr Glew to contend that the *Magistrates Court Act 2004* (WA) was invalid, that the magistrate sat unlawfully, and that the Court of Appeal was bound to declare that when dealing with the application for leave to appeal. When those positions were rightly but politely rejected by him being directed by the court to address the proposed grounds of appeal, he expostulated that he was not making submissions but stating matters of fact and law. The presiding Judge explained that he should move on. Mr Glew refused to do so and kept on with his contentions about the invalidity of that legislation and the unlawfulness of the conduct of the magistrate. At that point, with patience, the court gave Mr Glew one further opportunity to address the grounds of appeal, but when he declined the presiding judge stated that the court would reserve its decision. Thereupon, the judges began to rise in order to leave the court.

61 It was at this point that Mr Glew's conduct became most offensive. He said, among other things,

> I formally charge you, Mr Mazza, you, Mr Pullin, and you, Mr Buss, with treachery to alter the Constitution. Turn your back on them. They're criminals. I will let you deal with that. You can laugh, Mr Pullin. You are going to pay. You only think you can get away with it, you fraud.

62 On any view, this constituted gross disrespect to the judges and to the court. In addition, the behaviour and the language was offensive and insulting. The reference to the judges as criminals and the description of one or more of the judges as a fraud constitutes not only a gross insult to the judges or judge but it also constitutes a denigration of the dignity and authority of the court and has the capacity to diminish the respect for the court, judges and the administration of justice, which is an essential

foundation for the administration of justice according to law in our common law system.

63 What effect this had or might have had in the circumstances of this particular occasion is another matter altogether. In the context, this was, unmistakably, vulgar personal abuse by a person with absurd and discredited notions, vainly trying to pass off as serious argument what, to any fair-minded and reasonable observer, must have been regarded as complete nonsense. By this point the contemnor had shown himself to be uninformed, stubborn, prejudiced and uncomprehending. It is plain that the three judges of appeal regarded his contentions and behaviour as unworthy of response and he himself as being unreceptive to rebuke.

64 The course taken by the court was entirely in accordance with the due administration of justice, that is, of terminating the submissions once the point had been reached where the hearing was not being continued constructively and then to decide the case with due consideration and to give a reasoned decision at a later time, as was done. The actual course of justice was not impeded and, despite his bad behaviour, Mr Glew was not actually an obstacle or an impediment to the administration of justice in his own case or generally. Significantly, however, the implications of his remarks about the court and the judges being criminals or a fraud elevates the seriousness of his conduct considerably, because that does have the potential to cause the authority of the court to be questioned or doubted or its integrity aspersed. I have no doubt that this is conduct which can amount to a contempt of court but the question is whether in the context of this case it should be regarded as bearing that character. The judges of the Court of Appeal, although they had the power to do so, did not choose to charge Mr Glew with contempt there and then, although they might have done.

65 This is by no means an easy question to resolve but, in all the circumstances, I do not see how any reasonable observer present and seeing, or reading of, Mr Glew's deplorable conduct, could for a moment attach any degree of doubt or lack of confidence in the court or any of the judges because of this man's railings. It was certainly an occasion for steps to be taken to control Mr Glew's behaviour in the future and the recommendation that attention be directed to applying for him to be declared a vexatious litigant was, in my respectful view, an appropriate, measured and proportionate response. Despite how Mr Glew behaved, there is no reason to suppose that the dignity, reputation, authority or integrity of the court was in any way endangered by what occurred. Rather, to the contrary, the dignified, restrained manner in which the court

dealt with Mr Glew can be regarded as a demonstration of even-handedness and dispassionate attention to matters in hand, however unmeritorious they might be.

66 Although this is an occasion in which a finding of contempt in the face of the court could be made, I do not consider that one should be made. Mr Glew's misconduct was certainly blatant but, to revert to the words of Owen J in ***Stuart v Brown***, these were not 'circumstances where there are no other means by which the integrity of the process can be protected' and 'the good sense of the community will be a sufficient safeguard': ***Gallagher v Durack*** at 243.

67 The evidence in this case has revealed that there were certainly circumstances which have justified the Attorney General in making this application to the court and which might have justified a finding of contempt of court, but, having done so, I consider that this is an occasion when the court, in its discretion, should withhold the imposition of that ultimate sanction.

68 This does not mean that repetition of this or any similar conduct by Mr Glew on some future occasion, whether in this court or in any other court, would not merit or require resort to the summary procedure of punishment for contempt of court. Should he be foolish enough to engage in this or similar behaviour on any future occasion, quite a different outcome might result, but that would be for that court to decide in all the circumstances of the particular case.