

JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA
IN CHAMBERS

CITATION : ATTORNEY GENERAL & ANOR -v- SHAW [2004]
WASC 280

CORAM : COMMISSIONER BRADDOCK SC

HEARD : 5 NOVEMBER 2004

DELIVERED : 23 DECEMBER 2004

FILE NO/S : CIV 2264 of 2004

MATTER : Section 4 of the *Vexatious Proceedings Restriction Act*
2002

BETWEEN : ATTORNEY GENERAL
First Applicant

COMMONWEALTH DIRECTOR OF PUBLIC
PROSECUTIONS
Second Applicant

AND

BRIAN WILLIAM SHAW
Respondent

Catchwords:

Vexatious litigant - *Vexatious Proceedings Restriction Act 2002* - Leave to Director of Public Prosecutions (Cth) to bring proceedings - Extent of orders appropriate

Legislation:

Vexatious Proceedings Restriction Act 2002

Result:

Leave granted to second applicant
Order staying current proceedings including pending appeal
Order prohibiting institution of any further proceedings

Category: B

Representation:

Counsel:

First Applicant : Mr S M Murphy
Second Applicant : Mr D W L Renton
Respondent : In person

Solicitors:

First Applicant : State Solicitor
Second Applicant : Commonwealth Director of Public Prosecutions
Respondent : In person

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

Attorney General v Hunter [2002] WASC 189
Attorney General v Keating [2000] WASC 93
Attorney General v Michael [1999] WASC 181
Commonwealth Bank of Australia v Bride & Ors [2004] WASC 177
Commonwealth Bank of Australia v Ridout Nominees & Ors [2000] WASC 37
Granich Partners v Yap [2003] WASC 206
In re Boaler [1915] 1 KB 21
R v Fingleton (2003) QCA 266
R v Lord Chancellor; ex parte John Witham [1997] EWHC Admin 237
Re Attorney General (Commonwealth); ex parte Skyring (1996) 70 ALJR 321
Ridout Nominees Pty Ltd & Ors v Commonwealth Bank of Australia [2003]
WASC 158
Shaw & Ors v The State of Western Australia, Attorney General Mr Jim
McGinty & Anor [2004] WASC 144

Case(s) also cited:

Attorney-General (NSW) v Bhattacharya [2003] NSWSC 1150

Attorney-General (NSW) v Wentworth (1998) 14 NSWLR 481

Re Shaw & Anor [2001] 4 VR 103

1 **COMMISSIONER BRADDOCK SC:** The respondent Brian William Shaw came to Western Australia approximately two and a half years ago at the request of Mr Peter Ridout to assist him in litigation in which Mr Ridout and others were then involved in against the Commonwealth Bank (CIV 1456 of 1995: *Commonwealth Bank of Australia v Ridout Nominees Pty Ltd & Ors* [2000] WASC 37 and on appeal *Ridout Nominees Pty Ltd & Ors v Commonwealth Bank of Australia* [2003] WASC 158 (hereafter "the Ridout proceedings"). In addition to assisting Mr Ridout, the respondent has been involved in other litigation in Western Australia. He has been a plaintiff in a Supreme Court action, together with Messrs P A and C J Ridout against State of Western Australia, the Attorney General Mr Jim McGinty, the Grand Lodge of Western Australia Ancient and Accepted Freemason Grand Master Mr J Maley: *Shaw & Ors v The State of Western Australia & Anor* [2004] WASC 144 (hereafter "the Civil Proceedings"). The respondent has been the complainant in 14 private prosecutions in the Court of Petty Sessions at Perth. These complaints named as the defendants the Hon Justice Murray of the Supreme Court of Western Australia, Mr Robert Cock QC, Director of Public Prosecutions for the State of Western Australia, the Hon Mr Jim McGinty MLA, Attorney General for the State of Western Australia, Alex McLean (a solicitor involved in the Civil Proceedings) Master Newnes of the Supreme Court of Western Australia and Mr Damien Bugg QC, Commonwealth Director of Public Prosecutions. He has also apparently sought unsuccessfully to lodge an appeal from the decision in the Civil Proceedings in the High Court.

2 By an originating summons filed in this Court on 29 September 2004, the Attorney General and the Commonwealth Director of Public Prosecutions apply for orders against the respondent under the *Vexatious Proceedings Restriction Act 2002*. The originating summons was amended, to add par 3, at the commencement of the hearing of the application on 5 November 2004.

3 The orders now sought are as follows:

- "1. The Commonwealth Director of Public Prosecutions have leave pursuant to section 4(2)(c)(ii) of the *Vexatious Proceedings Restriction Act 2002* to bring this application for orders against Brian William Shaw under section 4(1)(d) of the Act.
2. 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*.

3. The whole of any proceedings that have been instituted by Brian William Shaw in the Supreme Court, or in any inferior court or tribunal in Western Australia, or that part of any current proceedings in the Supreme Court, or in any inferior court or tribunal in Western Australia in which Brian William Shaw is a party, be stayed.
4. Brian William Shaw to pay the Attorney General's and the Commonwealth Director of Public Prosecution's costs of the application to be taxed."

Background

4 The earlier litigation referred to above involving the Commonwealth Bank of Australia and the Ridouts was heard before Justice Wheeler in 1999. On 28 February 2000 she delivered judgment in favour of the Commonwealth Bank of Australia. The Ridouts and their corporate entities appealed to the Full Court, and the matter was heard before a bench comprising their Honours Justices Murray, Roberts-Smith and Pullin. At the hearing Mr P Ridout and Mr C Ridout appeared without legal representation and the respondent was granted leave to address the court on their behalf. The reasons for this are set out in the judgment of Pullin J at [16] to [25] of *Ridout Nominees Pty Ltd & Ors v Commonwealth Bank of Australia* (*supra*) and I will not repeat them here. The significance of this history is that the origins of certain of the subsequent actions of the respondent may be found in his perceptions of what occurred in the context of that appeal.

5 A summary of the litigation of the respondent is set out below:

Date	Description	Parties/defendants as described in the process	Section/cause of action	Outcome
13/02/04	Writ CIV 1162/04 Plaintiffs, Messrs. Ridout and Mr Shaw "the Civil Proceedings"	The State of Western Australia, A-G, Grand Master of WA Ancient and Accepted Freemasons Grand Master Mr J Maley	Unclear - concerns about the Australia Act 1986 and a "Masonic" agenda	Struck out on 02/07/04 by Master Newnes
3/03/04	Summons in Court of Petty Sessions No 15217 - 15219/04	Michael Murray	s 139 <i>Criminal Code</i> WA s 34B <i>Crimes Act (Clth)</i>	Dismissed 5/4/04
19/03/04	Summons in Court of Petty Sessions No 19087 - 89/04	James Maley	<i>Criminal Code</i> s 48(1)g and s 86(1)	"
22/04/04	2 Complaints in Court of Petty Sessions No 20887 - 8/04	Robert Cock	Treason, treachery, conspiracy, 135, 136, 143 <i>Criminal Code</i> WA and <i>Crimes Act</i> 1914 Clth 24(2)(b) and s 24AA(1)(a)(i)	Discontinued 14/06/04
16/06/04	Complaint No 28289 - 92/04	James McGinty	s 48(1)(g) <i>Criminal Code</i> WA	Discontinued 26/06/04
16/06/04	Complaint	James McGinty	s 52(1) of the <i>Criminal Code</i> WA	"
18/08/04	Complaint	Mr Jim McGinty Attorney General for the state of WA	Common law offence of treason	Discontinued 24/09/04
16/08/04	Notice of appeal in CIV 1162/04 filed			

30/09/04	Complaint	James McGinty	s 42(1) of the <i>Crimes Act</i> (Clth)	Discontinued 29/10/04
30/09/04	Complaint	Mr Robert Cock	s 42(1) of the <i>Crimes Act</i> (1914)	"
1/10/04	Summons (indictable offence)	James McGinty	s 42(1) of the <i>Crimes Act</i> (1914)	"
1/10/04	Summons (indictable offence)	Robert Cock	s 42(1) of the <i>Crimes Act</i>	"
1/10/04	Summons (indictable offence)	Attorney General for Western Australia James McGinty	Treason at common law	"
5/10/04	Summons (indictable offence)	Damien Bugg	s 44 of the <i>Crimes Act</i> (Clth)	"
5/10/04	Summons (indictable offence)	Alex McLean	s 48 of the <i>Criminal Code</i>	"
6/10/04	Summons (indictable offence)	David Newnes	s 43(1) of the <i>Crimes Act</i>	"

The Criminal Proceedings

6 As can be seen from the sections of the *Criminal Code* and *Crimes Act* set out in the chronology above, the respondent has made allegations against the various defendants by summons ranging from attempting to pervert the course of justice, exercising jurisdiction in a matter having a personal interest (as a Judge or Magistrate) and doing an act or thing with intent to overthrow the *Constitution* of the Commonwealth by revolution or sabotage or to overthrow by force or by violence the established government of the Commonwealth and treason.

7 In relation to each of the private prosecutions the summons/complaint was referred either to the State Director of Public

Prosecutions or to the Commonwealth Director of Public Prosecutions, for consideration as to whether to assume conduct of the matters pursuant to either the *Director of Public Prosecutions Act 1983* (Clth) s 9 or *Director of Public Prosecutions Act 1991* WA s 11 and s 12. In dealing with referrals, under policies operated by each office, letters were caused to be written to the respondent informing him of the respective Director's intention to conduct the prosecutions and inviting the respondent to provide any materials considered appropriate to support the charge that he had laid. The detailed process by which these matters were handled is set out in the affidavits filed upon this application by Mr Robert Cock QC dated 29 September and 2 November 2004 and Mr Darren Renton dated 27 September and 29 October 2004.

8 The respondent replied to Mr Robert Cock QC by letter dated 5 May 2004, stating, amongst other things:

"Legally you should be prosecuting on our behalf, instead you have made a clear decision to protect, the banking cartel, the Masonic Lodge and their illegal oaths, and the judiciary in clear breach of various law.

The charges laid against yourself emanate from the *Act Amendment and Repeal (Courts and Legal Practice) Act 2003* Western Australia, with consideration to the fact that only a few years back the Australian people voted by referendum to stop you from doing what you have purportedly have done with this Amendment Act.

The Act is an act of treason and treachery against the Australian people and people of Western Australia; clearly you have overstepped your mandate and attempted to set up the office of Director of Public Prosecutions into a totally arbitrary dictatorial office, reaching beyond the law, with no regard to the law, in simple terms above the law."

The letter goes on to provide information concerning the Grand Lodge of Freemasons in Western Australia.

9 In response to letters from the Commonwealth Director of Public Prosecutions Office, the respondent provided materials, which are listed at par 10 of Mr Renton's affidavit of 27 September 2004. They include documents relating to the activities of the Freemasons and their allegedly unlawful oaths, the submissions and various other court documents in the Civil Proceedings and the Ridout proceedings, together with a copy of the

Coronation Service of Her Majesty Queen Elizabeth II and a copy of the decision in the case of *R v Fingleton* (2003) QCA 266.

10 In relation to each complaint/summons the relevant Director formed the conclusion that there were no reasonable prospects of a successful prosecution and assumed the conduct of the prosecutions and discontinued them.

The Civil Proceedings

11 Master Newnes struck out the statement of claim in the Civil Proceedings on 2 July 2004 on the grounds that it was an abuse of the process of the court. The respondent, together with his co-plaintiffs Mr P A Ridout and Mr C J Ridout has appealed this decision, the notice of appeal appearing in the annexures to the affidavit of Mr James George Maley at page 293. The grounds of appeal are extensive. The second ground reads:

"The State of Western Australia by removal of the Crown became a non-legal entity and as such ceased to exist as a State under the Crown after the illegal enactment of the *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003* enacted on 1 January 2004."

And, further, as ground 5:

"By the illegal enactment of the *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003* 1 January 2004 the Government, Parliament and judiciary of the State of Western Australia has committed an act of treason, sedition and treachery against the appellants plus the people of Western Australia and Commonwealth of Australia activating s 80 of the *Commonwealth Constitution*."

And, further, at ground 11:

"Paragraph 10 of the reasons for judgment errs in law and makes a mockery of the evident fact, that, very specifically, various foreign agendas are at work within the legal framework of Western Australia and the Commonwealth of Australia to attack and subvert the existing allegiance to the Monarch and Crown, in particular the agenda of Freemasonry the second respondent."

12 As is demonstrated by these excerpts from the notice of appeal, the foundation of the respondent's grievance appeared to stem from the legislation which removed the title of the Crown in the context of various proceedings in Western Australia and from a perception of a conspiracy by Freemasons to interfere with the lawful administration of oaths, and other practices in the State of Western Australia.

13 Mr Maley has filed an affidavit in support of the present application. He deposes to the actions of the respondent as they have affected him personally or in his capacity as the Grand Master of Freemasons WA. He states that he has been required to instruct solicitors and engage counsel to act on his behalf, has had to commit time and resources to addressing the proceedings. He states that Freemasons WA is a not for profit incorporated association involved largely in the provision of community services. Resources have been diverted from such purposes to attend to the litigation. Mr Maley on his own behalf and his organisation has been embarrassed by the proceedings.

14 Mr Maley deposes to an apparent attempt by the respondent to file an appeal from the civil proceedings in the High Court (pars 29, 30 affidavit November 2004). He says that the documents were rejected for filing. The appeal affidavit and annexures are contained in the documents accompanying Mr Maley's affidavit. They demonstrate the process adopted by the respondent in his litigation, which appears to be that he accumulates his materials from one stage to the next resulting in progressively greater number of volumes. The "High Court" application papers comprise over 1800 pages

Vexatious Proceedings Restriction Act 2002

15 The *Vexatious Proceedings Restriction Act* ("the Act") is relatively new legislation which replaced and repealed the *Vexatious Proceedings Restriction Act 1930*. The Act expanded the circumstances in which an order may be made affecting a vexatious litigant and enlarged the class of applicants who could seek relief. It provides for orders to be made by the court on its own motion or on the application of the Attorney General, the Principal Registrar of the Supreme Court or the Principal Registrar of the District Court or, with the leave of the court, on the application of a person against whom another person has instituted or conducted vexatious proceedings, or by a person who has sufficient interest in the matter (see s 4(2)). The new Act has been considered by EM Heenan J in two recent cases: *Granich Partners v Yap* [2003] WASC 206; *Commonwealth Bank of Australia v Bride & Ors* [2004] WASC 177.

16 The applicants in these proceedings are both the Attorney General of Western Australia, and the Commonwealth Director of Public Prosecutions. In relation to the second applicant, it is apparent that the Commonwealth Director of Public Prosecutions does not fall within the provisions of s 4(2) as the Attorney General of the State of Western Australia does: s4(2)(a). Hence, leave was sought by the originating summons for an order that the Commonwealth Director of Public Prosecutions to bring this application. EM Heenan J has discussed the general considerations for leave in relation to private citizens to bring proceedings under the Act: see *Granich Partners v Yap* (*supra*) at [31].

17 At the outset of the proceedings in argument, the matter was raised as a preliminary point by the respondent, and I indicated that leave would be granted to the second applicant. From the facts which emerge from the materials filed by the applicants, it is apparent that the Commonwealth Director of Public Prosecutions falls potentially within two headings under s 4(2)(c). The first is "a person against whom another person has instituted or conducted vexatious proceedings", and the second is "a person who has a sufficient interest in the matter". Firstly, the respondent has by a summons dated 5 October 2004 alleging an indictable offence against Mr Damian Bugg QC brought the Commonwealth Director of Public Prosecutions within the subsection as "a person against whom another person has instituted the proceedings", the question being whether they may be characterised as vexatious. Secondly, the Commonwealth Director of Public Prosecutions has in relation to some other summonses issued by the respondent, which allege offences against the laws of the Commonwealth, been obliged, by the provisions of s 12 of the *Director of Public Prosecutions Act* (Cth), to consider taking over the private prosecutions and has, in relation to those taken out by the respondent against the Hon Justice Murray and the Hon Jim McGinty, Attorney General, been obliged to take action, including instructing counsel to appear in the Perth Court of Petty Sessions and considering materials relevant to the matters. In my view, it is the public character of the obligations of the Commonwealth Director of Public Prosecutions which renders him a person with sufficient interest in the matter, being that interest raised by the statutory duty placed upon the Director where private prosecutions against laws of the Commonwealth are instituted. Thus, I determined that leave should be granted to the Commonwealth Director of Public Prosecutions, in that right, to bring these proceedings. His position is similar to those officers named in the Act as entitled to bring application and to the law officers who may initiate application for similar relief under the *High Court Rules* and *Federal Court Rules*.

18 The orders which the court may make on an application under the Act are set out in s 4(1) in the following terms:

"4. Restriction of vexatious proceedings

(1) If a Court is satisfied that -

- (a) a person has instituted or conducted vexatious proceedings (whether before or after the commencement of this Act); or
- (b) it is likely that the person will institute or conduct vexatious proceedings,

the Court may make either or both of the following orders -

- (c) an order staying any proceedings, either as to the whole or part of the proceedings, that have been instituted by that person;
- (d) an order prohibiting that person from instituting proceedings, or proceedings of a particular class, without the leave of a court or tribunal, as the case requires under section 6(1)."

19 No order may be made under s 4(1) against any person without that person being given the opportunity of being heard - s 4(3).

20 The matters which may give rise to an order under the Act are defined widely in s 3 of the Act, including:

"3. '**proceedings**' includes -

- (a) any cause, matter, action, suit, proceeding, trial, or inquiry of any kind within the jurisdiction of any court, including a court of summary jurisdiction, or a tribunal;
- (b) any proceedings, including interlocutory proceedings, taken in connection with or incidental to proceedings pending before a court, including a court of summary jurisdiction, or a tribunal; and
- (c) an appeal from a decision or determination, whether or not a final decision or determination, of a court, including a court of summary jurisdiction, or a tribunal;"

21 Further, the Act now defines "vexatious proceedings" to mean proceedings -

- "(a) which are an abuse of the process of the court or a tribunal;
- (b) instituted to harass or annoy, to cause delay or detriment, or for any other wrongful purpose;
- (c) instituted or pursued without reasonable grounds; or
- (d) conducted in a manner so as to harass or annoy, cause delay or detriment, or achieve any other wrongful purpose."

22 This definition has the effect of characterising proceedings as vexatious if, from a subjective point of view the intention of the litigant falls into those categories set out in s 3(b), or, where they objectively constitute an abuse of process of the court or are brought or pursued without reasonable grounds or conducted in the manner set out in subpar (d) of the definition. Thus, proceedings may be vexatious if they have these characteristics regardless of the personal intention, motive or state of mind of the litigant.

23 "Instituting proceedings" is also defined to include:

- "(a) in the case of civil proceedings, the taking of a step or the making of an application which may be necessary in a particular case before proceedings can be commenced against a party;
- (b) in the case of proceedings before a tribunal, the taking of a step or the making of an application which may be necessary in a particular case before proceedings can be commenced before the tribunal;
- (c) in the case of criminal proceedings, the laying of a complaint or the obtaining of a warrant for the arrest of an alleged offender; and
- (d) in the case of civil or criminal proceedings, or proceedings before a tribunal, the taking of a step or the making of an application which may be necessary to commence an appeal in relation to the proceedings or to a

decision or determination made in the course of the proceedings;"

24 In support of the application affidavits were filed setting out the history of the proceedings in Western Australia and exhibiting the complaints against the Hon Justice Murray, Mr James Maley, Mr Robert Cock QC, the Hon Jim McGinty MLA (affidavit of Mr Robert Cock sworn 29 September 2004). Mr Darren Renton, a solicitor employed by the Commonwealth Director of Public Prosecutions, filed an affidavit, sworn 27 September 2004, exhibiting similarly the complaints naming the Hon Michael Murray as the defendant, together with the correspondence passing between the office of the Commonwealth Director of Public Prosecutions and the respondent and the Solicitor General of Western Australia and the Director of Public Prosecutions of Western Australia, together with a reply dated 6 June 2004 from the respondent to Mr Cock QC. Further, the affidavit of Mr Renton details the course adopted in taking over the proceedings, and exhibits the transcript of proceedings in the Court of Petty Sessions at Perth on 14 June 2004 before Mr Cicchini SM. In addition, Mr Maley filed the affidavit referred to above.

25 Prior to the hearing of the originating summons, but after it had been filed, further complaints were laid by the respondent, evidence of which is found in the affidavits of Mr Colin Peter Waite dated 7 October 2004, Mr Darren Renton dated 8 October 2004 and also 29 October 2004.

26 Where a private prosecution is commenced by complaint or summons, the matter may be referred to the respective Director of Public Prosecutions, with a view to consideration being given to the taking over of the prosecution. The Director will cause investigations to be made. The correspondence generated by these necessary interventions is exhibited to the affidavits of the aforementioned deponents. The last summons was filed on 6 October 2004, naming as defendant David Newnes, Master of the Supreme Court of Western Australia, and alleges that the Master attempted to pervert the course of justice in relation to the judicial power of the Commonwealth contrary to s43(1) of the *Crimes Act 1914*.

27 From all of the above, it is apparent that the commencing of the private prosecutions in the circumstances and against the defendants concerned has involved the respective authorities in the obligation to consider, investigate, and invite the submission of relevant evidence from the party taking out the summons.

28 I have already referred to the response of Mr Shaw to the State Director on 6 June 2004.

29 In response to the current application under the Act, the respondent has filed two affidavits, first dated 19 October 2004, with extensive annexures, and second dated 1 November 2004, with equally extensive materials. These include over 15 "Legal Notices" to various public figures, an affidavit filed in the Supreme Court of Victoria relating to the respondents application to summon a grand jury in that jurisdiction, which fills a volume by itself, a larger volume contains an affidavit filed in earlier proceedings involving the Ridouts and its attachments. His second affidavit comes in two large volumes which includes an affidavit by the Ridouts another earlier action, writs of *mandamus* and prohibition, the Articles of Association of the Commonwealth Bank of Australia, the OPC report on Freemasonry, correspondence with the Attorney General of Victoria, and other materials. These are not organised in any logical fashion nor is the particular significance of the documents explained. Neither a reading of the affidavits, nor a perusal of the materials, assist in addressing with any precision the relevant aspects of the evidence which would be required to support the serious charges which the respondent laid in the Criminal Proceedings.

30 In his first affidavit, the respondent commences as follows:

"1. The central facts of this matter concern the existence and function of an international conspiracy to infiltrate, fragment, incorporate and destroy the Christian church using every means possible, but, specifically international freemasonry."

The affidavit then continues to expand upon this assertion, with historical references to the settlement of Australia, the *Constitution* of Australia, and quotes extensively from scripture. The respondent continues:

"11. This current action against myself by the current Attorney General of the State of Western Australia, the author of the overt act of treason committed 1st January 2004 and the Commonwealth Public Prosecutions Office under the title 'Vexatious' is in itself vexatious against a Bible-believing Christian who has retained and affirmed and allegiance with Her Majesty because of the agreed covenant with Almighty God clearly set out and stated in the Coronation Oath, all of which Australian and

international Freemasonry would seek to destroy and replace with their Masonic Republic.

12. In defence of my Christian belief and allegiance I have laid private prosecution charges against various named offenders within the State of Western Australia for attempting to pervert the course of justice by being in agreement and conspiracy to defeat the course of justice and change the law without the knowledge or consent of electorate.
13. The named offenders at present hold high offices in the executive, legislative and judicial capacity within the State of Western Australia, but, have since 1st January 2004 unlawfully and illegally created a legal situation whereby the former State of Western Australia created a federation and legally bound to the *Commonwealth Constitution Act 1900*, no longer exists in such capacity by the overt act of treason committed 1st January 2004."

31 The affidavit refers further to the Constitution of the Commonwealth of Australia and alleges that the State of Western Australia is a "non-legal entity" that the *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003* effectively constitutes an act of treason and continues (in par 20):

"I state that all West Australian politicians who have agreed to this act of treason did commit an act of treason and as such have no parliamentary privilege nor immunity according to Halsbury's Laws of England 2nd edition, volume 9, page 25."

32 In summary, the affidavit material is a blend of history, scripture and various statute laws, from which it is impossible to deduce a coherent argument. The respondent's second affidavit follows similar style, however it is possible to deduce some of Mr Shaw's perception of the proceedings he has brought from his comments:

"11. During the year 2004, I did file private prosecution charges, as my legal right, against various individuals sitting in judicial capacity within the State of Western Australia. On each occasion either or both, the Director of Public Prosecutions WA or Director of Public Prosecutions Commonwealth has intervened, taken over

and discontinued '*without offering any evidence whatsoever*'.

12. The usual tactic to suppress private prosecutions by the Public Prosecutors is to write to the informant/complainant requesting the details/evidence. On the day of the hearing they refused to submit the evidence, thereby concealing the offence and protecting the offender. Such immunity or sanction is not available to the general public."

33 It may be that the respondent believes that the materials which he submitted in response to the Director's request for evidence, do in fact constitute evidence, and that he expected that such materials would be placed before the Magistrate in the Court of Petty Sessions following the Directors' decisions to take over the prosecutions.

34 In relation to Mr Maley, the respondent clearly believes that involvement with Freemasonry in Western Australia involves the administration of "unlawful oaths" and that conduct amounts to an offence against s 48 of the *Criminal Code* of Western Australia. Mr Maley has deposed to his position as the Grandmaster of Freemasonry in Western Australia, and to the activities of that organization, and to the fact that no "oaths" are administered. Nothing in the voluminous materials provided by the respondent constitutes evidence such as would support a breach of s 48 of the *Criminal Code*.

35 More generally, it would appear that Mr Shaw believes in a grand conspiracy, involving the Freemasons and others, in relation to the constitutional position of the State of Western Australia and the Commonwealth of Australia. However, none of the materials he has filed specifically relate to any of the elements of the criminal charges or provide any factual basis to support them with respect to the individuals named as defendants. Accordingly, it would appear that the State and Commonwealth Directors of Public Prosecutions exercised their statutory functions appropriately, sought representations and evidence from the respondent, which only served to elicit the type of material which has been outlined above and repeated on this application. Having considered such materials they correctly deduced that there were no reasonable prospects of succeeding in the prosecution of serious criminal offences due to the lack of evidence.

36 The transcript of the proceedings before Mr Cicchini SM, annexed to the affidavit of Mr Renton and referred to above, is illustrative of the fact that the respondent believes that all judicial officers in Western Australia are continually breaking the law. The respondent suggested that the Court of Petty Sessions consider matters in Victoria, and was met with the response from Mr Cicchini SM that he could not go into that. Mr Shaw replied: "Your Honour, you have to." Upon being asked why, Mr Shaw said this:

"Because I could charge you. I don't want to do that. But, I'm actually saying that if it doesn't to be quite honest, I could charge these people at this Bar and yourself. Because you're actually breaking the law. When the law is not being addressed correctly. Now all that I'm saying is I don't want to keep filling out charge sheets. That's a ludicrous situation for me. And it's ludicrous and messy for every court that hears it."

37 The applicants rely upon this exchange, amongst other things, in support of their application under s 4(1)(b) in that they allege that it evinces an intention on the part of the respondent to institute further proceedings of a like kind.

38 In relation to the complaint against Master Newnes, the allegation is that he attempted to pervert justice in that he "acted outside lawful authority and jurisdiction in an attempt to pervert the course of justice in relation to the judicial power of the Commonwealth contrary to s 43(1) of the *Crimes Act 1914*". On 2 July 2004, Master Newnes struck out the statement of claim in the respondent's action, instituted together with the Ridouts in the Civil Proceedings. It is quite impossible to discern how the respondent says that the learned Master, in exercising his jurisdiction in the State of Western Australia under the Rules of the Supreme Court was, in any way, acting in relation to the judicial power of the Commonwealth.

Has the respondent instituted or conducted vexatious proceedings or is he likely to do so?

39 The private prosecutions commenced by the respondent clearly constitute the instituting of proceedings by the laying of a complaint within the definition provided in the Act.

40 Nothing is served by close analysis of all the complaints which have considerable similarities. The first in time names Hon Justice Murray and appears to originate in the hearing of the appeal in the Ridout proceedings which concerned the enforcement of mortgages by the Commonwealth

Bank against numerous entities linked to Mr P A and Mr C J Ridout. The respondent was then permitted to address the court on their behalf. The appeal was dismissed.

41 The complaint states that the defendant "did breach statute law and the commonwealth law" whilst hearing CIV1456/1995 and refers to the following sections:

"Section 139 of the *Criminal Code* (WA):

'Any person who ... being a justice, wilfully and perversely exercises jurisdiction in any matter in which he has a personal interest is guilty of a misdemeanour ... '

Section 34(1)(b) of the *Crimes Act 1914* (Cth):

'Any person who ... being a judge or magistrate, intentionally and perversely exercises federal jurisdiction in any manner in which he has a personal interest shall be guilty of an offence ... '

Section 43(1) of the *Crimes Act 1914* (Cth):

'Any person who attempts ... to ... pervert [etc] the course of justice in relation to the judicial power of the Commonwealth, shall be guilty of an offence ... '

Section 24AA of the *Crimes Act 1914* (Cth):

'A person shall not do any act or thing with intent to overthrow the Constitution of the Commonwealth by revolution or sabotage; ... or to overthrow by force or by violence the established government of the Commonwealth ... ' "

42 No evidence has ever been produced in support of these allegations. It emerged during the hearing that the respondent considered that as the Court of Appeal had declined to state whether they had taken any oaths other than their judicial oaths or had any interest in the matter before the court that he assume that they were refusing for a reason which would be proof of the facts he alleged. This is obvious and complete nonsense. As to the *Crimes Act* offences, the same applies only more strongly as there are clear issues of jurisdiction also.

43 The second complaint issued, against Mr Maley alleges that he both takes and administers oaths contrary to the *Criminal Code* citing s 48(1)g and s 86(1). The sections provide:

"48. Other unlawful oaths to commit offences

Any person who -

- (1) Administers, or is present at and consents to the administering of, any oath or engagement in the nature of an oath purporting to bind the person who takes it to act in any of the ways following, that is to say -

...

(g) Not to reveal or discover any unlawful association, society, or confederacy, or any illegal act done or to be done, or any illegal oath or engagement that may have been administered or tendered to or taken by himself or any other person, or the import of any such oath or engagement;

... "

and

"86. Administering extra judicial oaths

- (1) Any person who administers an oath or takes a declaration or affirmation without having lawful authority so to do is guilty of a misdemeanour and is liable to imprisonment for 2 years.
- (2) "

44 There was no evidence produced by the respondent either to the DPP or in response to this originating summons that might go to support such assertions. The process of issuing a complaint for these offences is clearly another vehicle which the respondent is seeking to use to ventilate his conspiracy theory involving the Freemasons. The respondent has no concept of what material constitutes evidence of a fact as distinct from an assertion or theory.

45 The first complaint against the present first applicant, the Director of Public Prosecutions for the state of Western Australia, Mr Robert Cock QC alleges "Treason, Treachery and Conspiracy" said to be

occasioned by his conduct in taking over and striking out the complaint against the Hon Justice Michael Murray "because of the evident breach of the *Constitution Act 1899 WA* by the words contained in the *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003*". How that might be so simply defies logical conception.

46 The first complaint against Mr McGinty alleges that he "did not reveal the illegal act" naming the same piece of legislation as in the complaint against Mr Cock QC and goes on "in parts 5 and 8 of the said act contained the import of an illegal oath" said to be contrary to s 48 of the *Criminal Code* of WA which I have already set out above.

47 The second complaint against Mr McGinty refers to the enactment of the same legislation and goes on "such acts inciting Her Majesty's subjects to attempt to procure the alteration of any matter in the state as by law established other than by lawful means" said to be contrary to s 52(1) of the *Criminal Code* WA.

48 The third complaint against Mr McGinty refers to the enactment again of the same legislation and alleges that by such enactment "did commit treason against the electorate by the unlawful removal of 'the Crown' within the State of Western Australia".

49 The complaint against the Commonwealth Director of Public Prosecutions, Mr Damian Bugg QC alleges that "by agreement has concealed an indictable offence committed against a law of the Commonwealth. By agreement the defendant has both concealed and abstained from prosecuting the offender" and refers to the same piece of legislation.

50 As can be seen the Act which is repeatedly referred to in these complaints appears to constitute the underlying theme around which the laying of many of these complaints circles.

51 Mr Alex McLean is a solicitor who had a role in the Ridout proceedings. For his part he also received a summons alleging an offence under s 48 of the *Criminal Code*.

52 The complaint against Master Newnes is differs, in that it alleges he "acted outside of lawful authority and jurisdiction in such a manner as to attempt to pervert the course of justice in relation to the judicial power of the Commonwealth" contrary to s 43(1) of the *Crimes Act 1914*. Quite how a Master of the Supreme Court in exercising his jurisdiction to strike out a statement of claim in proceedings in this court could conceivably be

imagined to be acting in relation to the judicial power of the Commonwealth entirely escapes me.

53 The authorities make it clear that a category of vexatious proceedings is those instituted by a litigant who "sees dark conspiracies and a threat of great harm to himself in real or imagined wrongs of another": see *Attorney General v Hunter* [2002] WASC 189; *Attorney General v Michael* [1999] WASCA 181.

54 None of the complaints have been shown to be supported by evidence relevant to the allegations made. The materials relied upon by the respondent continue to press the same themes that have been apparent in the Civil Proceedings. The majority are also bad for duplicity, lack particularity as to date and place and other technical matters.

55 By reason of the serious nature of the charges laid in the total absence of any coherent factual material to support them, I conclude that the criminal proceedings are vexatious, in the sense that they were an abuse of the process of the court and instituted without reasonable grounds (s 3 definition (a) and (c)).

56 Issuing a writ is obviously constitutes initiating proceedings within the definition provided in the Act.

57 Master Newnes found, in striking out the statement of claim, that the Civil Proceedings were an abuse of the process of the court. He described them as follows:

"There is nothing pleaded which is capable of making out an arguable case for any of the relief sought by the plaintiffs or any other relief. Nor can I discern from the statement of claim anything that might give rise to any arguable cause of action on the part of the plaintiffs. The statement of claim is in essence, simply a catalogue of bare, scandalous allegations accompanied by a mass of irrelevant materials." at [38]

58 Master Newnes concluded that making serious allegations of unlawful conduct without being in possession of a proper factual basis for doing so was a serious abuse of the process of the court which could not be countenanced (at [42]).

59 Thus, in addition to the vexatious criminal proceedings, the respondent, with others, has been party to proceedings which have already been found to be a serious abuse of process of the court. That, in my

view, would of itself satisfy a necessary precondition under the Act, as was accepted by EM Heenan J in *Commonwealth Bank of Australia v Bride & Ors* [2004] WASC 177 at [92].

60 The respondent's conduct would for those reasons alone require consideration of the exercise of the powers provided under the Act to restrain him. However, the factual material goes further and in addition, I am satisfied that the respondent is a person who is likely to institute or conduct vexatious proceedings, pursuant to s4(1)(b) of the Act, based upon:

- (1) the multiplicity of summonses that have already been issued by him, apparently founded upon *inter alia* his idiosyncratic view of the constitutional status of judicial officers in this State following the passing of the *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003*;
- (2) his comments when he appeared in the Court of Petty Sessions before Mr Cicchini SM;
- (3) a series of documents annexed to his affidavit sworn 19 October 2004, entitled "Legal Notice", which are directed to *inter alia* the Hon Kim Beazley MP, Mr Don Randall MP, the Hon Graeme Edwards MP, the Hon Julie Bishop MP, all of which refer to the *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003* and purport to give:

"actual and constructive knowledge that you are about to perpetrate, fraud on the electors of the State of Western Australia by not revealing to the electorate that the State of Western Australia has removed the Crown from the legal structure of the said State ... "

and

"If you choose to conceal and not reveal the evident fact of the overt act (the offending act) from the electorate of Western Australia criminal charges will be filed against yourself after 9th October 2004 for committing or attempting to commit the following offences".

Those notices clearly indicate that Mr Shaw is of the view that all parliamentarians State and Federal stand in the same peril as the former defendants in the criminal proceedings.

What, if any, orders should be made?

61 The relief sought by the applicants under s 4 of the Act is, firstly to prevent the institution of any proceedings in the Supreme Court or any inferior court or tribunal without leave and secondly, to stay such proceedings as have may have been already issued. Taken together these orders amount to the widest form of restraint upon an individual with respect to his ability to seek to bring any matter before a court in this state. The second aspect is of significance, due to the fact that the respondent has filed a notice of appeal in Supreme Court of Western Australia from the decision of Master Newnes of 2 July 2004.

62 One relevant matter which the respondent did raise upon this issue is the seriousness of orders of this kind. He referred to "the Witham principle" which, it appears on investigation, is a reference to *R v Lord Chancellor; ex parte John Witham* [1997] EWHC Admin 237. That case concerned an application for a declaration that an order amending the rates of fees for the issuing of process in the Supreme Court was ultra vires an unlawful. The case is interesting, as the litigant was an impecunious man who wished to sue for defamation. There is no provision for legal aid in such circumstances. Prior to 1996, the order concerning fees had made provision for the remission of fees to those on income support. The new order did not include such waiver but did permit the Lord Chancellor to remit the fee in a particular case. The factual circumstances are very different from the instant application. The discussion concerning the manner in which an individual's right to seek redress in the court could be curtailed, other than by clear words of a statute, is instructive. The application was successful, as their Lordships were not prepared to imply such a restriction. There are general statements contained in the judgment about the right in question, from which the respondent sought to draw aid. However, the significant point relevant to this application is that there was no doubt but that Parliament could, by clear words, affect the rights of citizens to litigate. The court referred to *In re Boaler* [1915] 1 KB 21, and quoted Scrutton J (as he then was) in the majority:

"One of the valuable rights of every subject of the King is to appeal to the King in his Courts if he alleges that a civil wrong has been done to him, or if he alleges that a wrong punishable criminally has been done to him, or has been committed by another subject of the King. This right is sometimes abused and it is, of course, quite competent to Parliament to deprive any subject of the King of it either absolutely or in part. But the

language of any such statute should be jealously watched by the Courts, and should not be extended beyond its least onerous meaning unless clear words are used to justify such extension ...

I approach the consideration of a statute which is said to have this meaning with the feeling that unless its language clearly convinces me that this was the intention of the Legislature I shall be slow to give effect to what is a most serious interference with the liberties of the subject."

63 The Act under which this application is brought is a clear statement of legislative intent relating to specific proceedings and providing specific powers. There is no doubt that the powers so given are not to be exercised lightly. It is necessary to appreciate the seriousness of any restriction upon a citizen's right to resort to the court, as was recently noted by EM Heenan J in *Bride*, cited above, and the observations of Kirby J in *Re Attorney General (Commonwealth); ex parte Skyring* (1996) 70 ALJR 321 at 323. It is necessary to recognise the precise limits of the powers given. But despite the fact that the respondent has expressly cited provisions of the *Federal Crimes Act*, thus involving the courts of this State potentially in the exercise of federal jurisdiction, that does not restrict the powers of this Court to grant orders under this Act. It is clear that any order granted by this Court will only affect the respondent's rights to take action and pursue litigation in the courts or tribunals of this State: *Attorney General v Michael* [1999] WASCA 181 per Anderson J at 124 and *Attorney General v Keating* [2000] WASC 93 at 50.

64 This would appear to be the second occasion under the new Act, where an application has been made in respect of proceedings which will have the effect of staying proceedings already instituted including a pending appeal to the Full Court. As EM Heenan J pointed out in *Bride*, special care and restraint should be exercised by the court in relation to any application under the Act which would have the effect of staying or prohibiting the institution of an appeal, such as the appeal, in this case, from the decision of Master Newnes. The rights of an appeal enjoyed by citizens from decisions of the court are an important and necessary component of the administration of justice in the State. As EM Heenan J stated:

" ... the appellate jurisdiction of this Court reposes in the Full Court, not in a single Judge, and therefore applications under this Act with respect to appeals can only result in stay orders or

other restrictions if the vexatious nature of the proposed or pending appeal is clearly demonstrated. Even then, the court will have a discretion to refrain from making an order under s 4. Nevertheless there will be instances where the institution or pursuance of an appeal will constitute a vexatious proceeding because, in the particular circumstances, the criteria specified in s 3 of the Act produce that conclusion." (*Commonwealth Bank of Australia v Bride & Ors* at [135].)

Some of the grounds of appeal from Master Newnes' decision have been set out earlier in these reasons.

65 Master Newnes gave detailed and comprehensive reasons, which involved him in an attempt to analyse the statement of claim which, of itself, probably defies analysis. The learned Master's description of the statement of claim is telling:

" ... It must be said that at the outset, with all due respect to the plaintiffs, that the statement of claim which is 153 pages long is to say the least, very difficult to understand. So far as I am able to discern, what appears to emerge from it is a concern on the part of the plaintiffs that the second defendant with the assistance or acquiescence of the first defendant, the State of Western Australia, has usurped the constitutional structure of government in Western Australia and has acted unlawfully by administering oaths and introducing, or attempting to introduce, the laws of the second defendant." (*Shaw & Ors v The State of Western Australia* [2004] WASC 144 at [3].)

The learned Master went on to comment (at [5]):

"I accept the submissions of counsel for the defendants that, on its face, the statement of claim is plainly embarrassing. As I have said, it is almost devoid of material facts and in many parts, if not in its entirety, is incomprehensible. There is in no instance any clear connection, if any discernable connection, between the 40 substantive allegations and the particulars provided of those allegations. The various particulars which are in almost all cases voluminous, make up the vast bulk of the statement of claim and consist in each instance of material that is not properly the subject of particulars. The particulars are made up of a large number of extracts from a variety of statutes, including the *Constitution Act 1889* (WA), the *Criminal Code 1913* (WA), the *Supreme Court Act 1935* (WA), the *Justices Act*

1902 (WA), the *Public Interest Disclosure Act 2003* (WA), the *Australia Act 1986* (Cth), the *Crimes Act 1914* (Cth), the *Commonwealth Constitution*, the *Bill of Rights 1688* (UK) and *Magna Carta*, together with the Coronation oath of Her Majesty Queen Elizabeth II, a large number of what are said to be Masonic oaths and extracts from books relating to Freemasonry, an extract from a lecture on *Magna Carta*, passages from sundry other books and a number of passages from the Bible, in particular from the Books of Zechariah, Jeremiah, Isaiah and Lamentations and the gospels of James and Matthew. In no instance do the particulars of any substantive allegation contain assertions of fact."

66 The learned Master made due allowance for the fact that the there plaintiffs were unrepresented. He went on to consider whether the pleading might contain a claim which was not adequately articulated. He did not find that to be an easy task for the reasons set out in the excerpt above. He painstakingly went through the document seeking potential grounds for a possible claim and found that the arguments were misconceived. I do not propose to here set out the detailed analysis of the statement of claim in which the Master patiently engaged. I agree wholeheartedly with the conclusion of the Master for the reasons that he has given. The proceedings were plainly an abuse of process of the court and were rightly struck out.

67 The grounds of appeal from Master Newnes' decision do nothing to elucidate the statement of claim nor do they disclose any proper foundation to criticize the reasoning of Master Newnes. I have attempted to ascertain whether the grounds as expressed by the respondent conceal some valid criticism of the learned Masters decision. This exercise encounters the same difficulties as the assessment undertaken by the learned Master of the statement of claim. The grounds suffer similar defects and canvass the same issues as the statement of claim and in addition make allegations of "treason treachery and conspiracy" which echo the Criminal Proceedings. In brief, they do not make any sense. I am satisfied that the pending appeal brought by the respondent is of itself vexatious and an abuse of process of the court. Together with its annexures the notice is voluminous but not enlightening. In my view, no amount of effort could salvage a meaningful ground of appeal with the slightest prospect of success. It is an attempt, without any rational grounds, to recontest issues raised in the statement of claim. These are the same issues have been repeatedly raised in various guises by the criminal proceedings and other proceedings in which the respondent has been

involved. For these reasons, and being conscious of the seriousness of such a step, I am satisfied that the pursuit of the appeal is doomed to failure and would constitute a vexatious proceeding in itself.

68 The respondent has strongly held views as to the matters which he seeks to raise. However, whilst I accept that these views are genuinely held, they are founded upon a misconceived conspiracy which is perhaps best articulated in the opening paragraph of affidavit of the respondent previously quoted at [30].

Conclusion

69 The applicants have established that the respondent has instituted vexatious proceedings, and that he is likely to institute further such proceedings.

70 In their written submissions counsel for the second applicant referred to the litigation of the respondent in the state of Victoria. It was invoked as further evidence of the respondent's conduct in relation to the pursuit of his theories and litigation generally. The respondent on direct enquiry was of the view that the litigation in Victoria should be considered on this application. I am of the view that in the light of the evidence of the respondents litigation career in this state to date, there is ample evidence to support the proposition that the proceedings are vexatious without recourse to his conduct elsewhere.

71 It is then necessary to consider whether in the exercise of discretion the order that have been sought, or any orders, should be made under the Act. This involves a balancing of competing important considerations. There is the respondent's right as a citizen to litigate, weighed against the effect that is caused to others by his irrational proceedings. These include the costs, in time and money, to those sued or charged with criminal offences, in dealing with the necessary processes to bring them to a conclusion. The effects on Mr Maley have been mentioned earlier in these reasons. The prosecuting authorities were obliged under their statutes to take action to deal with the private prosecutions, involving correspondence and appearances and not least the reading and considering of the extensive and difficult materials filed by the respondent. There have already been a number of individuals drawn into these matters, for no other reason than the fact that they were doing their jobs. The criminal matters have caused embarrassment, indeed one defendant was obliged to enter into a bail undertaking. The judicial officers before whom the matters are brought have themselves to tackle the extensive and rambling materials filed.

72 By s 4(3) of the Act, no order may be made without the respondent being heard. He has been so heard, both in writing and orally. Despite efforts being made at the hearing of the application, the respondent has not addressed the issues rather he has used the opportunity as another platform from which to repeat his theories.

73 I have given consideration as to whether any lesser form of orders than those sought could be adequate. I am unable to find a method of formulation which would be likely to operate effectively to prevent a repetition of the Criminal or Civil proceedings without going as far as the general prohibition sought. I am particularly conscious of the intent evidenced by the "notices" previously sent to various parliamentary office holders referred to above. The respondent's lack of focus and his compendious methods indicate to me that there is no logic in the connexions that he makes and thus the limits of a more precisely formulated order, if one could be designed, would be likely to escape him.

74 By reason of the nature and manner in which the statement of claim and notice of appeal in the Civil Proceedings has been formulated, taken together with the pattern of litigation engaged in by the respondent, I am also satisfied that the orders that I make should include both prospective and existing proceedings as formulated in the orders sought at pars 2 and 3 of the originating motion.

75 In reaching this conclusion, I have been conscious of the significant restriction this places upon the respondent, but I am persuaded by the repeated steps taken in pursuit of his belief in a conspiracy theory by the respondent that such orders are justified. The actions have caused embarrassment, expense and inconvenience to all who have been caught up in this irrational use of the court process. Without such restraint I am satisfied that the respondent will seek to pursue his arguments in other similar process which may involve other members of Parliament, or the judicial officers, public officers or ordinary citizens engaged in their lawful activities. Should the respondent have cause for reasons other than his views set out in his existing affidavit materials to invoke the protection or other jurisdiction of the court, he remains able to do so, upon a proper application for leave under the terms of the Act and the orders.

76 The orders I therefore propose to make are those set out at pars 1, 2, and 3 of the amended originating summons [3] and I will hear the respondent and counsel on costs.