

**TRANSCRIPT
OF PROCEEDINGS
AUSCRIPT**

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IN THE HIGH COURT OF AUSTRALIA

Office of the Registry

Brisbane No B108 of 1996

In the matter of -

**An application for writs of Mandamus and Certiorari against
HIS HONOUR MR JUSTICE J. TOOHEY of the High Court
of Australia**

Respondent

Ex parte -

RICHARD STEPHEN GUNTER

Applicant

Office of the Registry

Brisbane

No B100 of 1995

In the matter of -

An application for writs of Certiorari and Mandamus against

ATTORNEY-GENERAL OF THE COMMONWEALTH OF

AUSTRALIA, HON. M.

LAVARCH

First Respondent

The Judges of the Family Court of Australia, held at Brisbane.

HIS HONOUR MR JUSTICE HILTON

Second Respondent

HIS HONOUR MR JUSTICE BULLEY

Third Respondent

HIS HONOUR MR JUSTICE FOGARTY

Fourth Respondent

HIS HONOUR MR JUSTICE FINN

Fifth Respondent

HIS HONOUR MR JUSTICE McGOVERN

Sixth Respondent

HIS HONOUR MR JUSTICE ELLIS

Seventh Respondent

HIS HONOUR MR JUSTICE BAKER

Eighth Respondent

HIS HONOUR MR JUSTICE PURDY

Ninth Respondent

Ex parte -

RICHARD STEPHEN GUNTER

Applicant

McHUGH J

(In Chambers)

TRANSCRIPT OF PROCEEDINGS

AT BRISBANE ON TUESDAY, 18 JUNE 1996, AT 10.35AM

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HIS HONOUR: You are Mr Gunter?

MR R.S. GUNTER: Yes, I am, your Honour.

HIS HONOUR: And you appear on your own? You are not represented?

MR GUNTER: No, your Honour, I cannot get representation, but can I ask that Alan Skyring help, to come up to the bench, to decipher some of this paperwork, please.

HIS HONOUR: You are the applicant and you present the case yourself.

MR GUNTER: All right, your Honour.

HIS HONOUR: Now, Mr Gunter, in accordance with the usual practice, you have 10 minutes on each of these matters, so that is a total of 20 minutes.

MR GUNTER: All right, your Honour. Your Honour, how would you like - you have documentation

HIS HONOUR: The first

MR GUNTER: All right. I read to you an application B

HIS HONOUR: Well, you should start with B108, I think.

MR GUNTER: Yes. B108. I cannot read the writing here, your Honour. Could I have Alan decipher the writing. He has told me which ones I have got to write - I know what I want to say but I just cannot

HIS HONOUR: Well, look, Mr Gunter

MR GUNTER: All right, your Honour. Basically, the documentation I have got is before you. I find myself in a peculiar situation where I have got a Catch-22. To date I have been before 16 judges, I have had five Attorney-Generals, I have been approached by the Federal police, I have been approached by the state police SIB. I have been trying to get into court. Now I am going round and round and round and round in circles. I do not believe I have got an abuse of process. It is held that the Family Law Court of Australia cannot do what they have done. Their judgment is nothing short of incompetent. The fact that I tried to appeal the decision and got the same judge again, and why I got this judge the second time, he put a surety of \$5000 on me. The property settlement

HIS HONOUR: Was it five or three? The security, what was the

MR GUNTER: It was initially \$5000. Now, you will be aware of the fact that I did go before Toohey J to apply for a Certiorari. I actually went to Canberra, was told to go back to the lower court. The lower court would not let me into the lower court. As far as I am concerned, your Honour, the judges concerned should be charged under the Crimes Act

HIS HONOUR: Well, look, you are here to make submissions.

MR GUNTER: All right, your Honour.

HIS HONOUR: Just hold on a moment, Mr Gunter. Now, there are jurisdictional problems. It does not merely apply in your case; it applies to other cases in the list this morning. What jurisdiction has this court got to issue prerogative writs of Mandamus or Certiorari to any justice of this court? It has none. And all of these applications are doomed on that ground alone.

MR GUNTER: Your Honour, I have been trying to do it by lawful means to get into court. I am entitled to an appeal.

HIS HONOUR: Well, you are not entitled to an appeal. You are entitled to make an application for special leave to appeal.

MR GUNTER: Which I did - which I tried, your Honour. There was a criminal investigation being done which took me - which had to be completed before I came into court. The court - the Family Law Court of Australia - has stopped me from making a living twice which is a breach of Magna Carta, which falls within the guidelines of the Imperial Acts Applications Act of Queensland. Now, I have got the situation, your Honour, where I - I will put it to your Honour: what have I got to do? Have I got to take the law into my own hands, come into a trial by jury and say, "Hang on a minute. I've been to the High Court twice to try and sort this bloody mess out."

Now, I am not threatening anybody, but I am asking the question, because, obviously, your Honour, if I have got to the situation where I cannot come into court - it is held that the court cannot do what it has done. It is also under section 76 of the Family Law Court Act, if there is perjury in an affidavit, I am entitled to a re-trial. The fact that there was a criminal investigation done by the Internal Investigation Department of Taxation for a suspected breach of the Income Tax Protection Act was a legitimate excuse to have an application for a late stay, and then when I come into court, I try to do the paperwork to the best of my ability, and then I find that, oh, no, the paperwork is not done right.

Now, you are turning round and telling me that my paperwork is not done right now because I have applied for a Certiorari and Mandamus to try and sort this mess out. Now, I have not seen my kids since 1991 because I cannot get into court. I am not allowed to talk to my children because the respondent turns around and says to me I am harassing her. Silly as this sounds, your Honour, this bloody whole mess stems from a bloody argument over a rider mower.

HIS HONOUR: Well, Mr

MR GUNTER: Now, it is simple, your Honour. The dumb part about this is I have obeyed the laws to the degree where I have issued subpoenas with what I am saying to you, your Honour, is counterfeit currency. The \$1 and \$2 coins are not in the Currency Act. Now, if these coins are not in the Currency Act, these subpoenas were not issued correctly. Every time I come into court, as you are saying to me now, the paperwork is not done right.

HIS HONOUR: It is not a question of paperwork; it is a question of jurisdiction. And this court has to act within its own jurisdiction as with other courts. Now, as I understand it, your appeal was dismissed because

MR GUNTER: I could not pay the money.

HIS HONOUR: You could not pay the money.

MR GUNTER: And the reason I could not pay the money is the property settlement that has been handed down to me is a debt of \$53,000. Now, how do you pay the \$53,000 if my tools of trade are located on the premises I cannot get onto. 996 days later, I got my tools of trade. I had a stupid comment made by Hilton J. He says that, in the opening speech in the Family Law Court, if a certain thing is proved to be correct, there has quite obviously been a fraud against the Social Security Department and Tax Department something in excess of \$100,000.

Now, this stopped me from getting a government loan which put me in the position I could not get employment. I could not get back into court because his judgment is bloody invalid. It is held in the *Cantallo* case you cannot do what you have done. I have tried to appeal the decision. It went before Bulley J. Bulley J says, "I am not going to look at your

affidavit because it is not laid out in the affidavit properly." I appealed the decision, got Bulley again. Bulley puts a surety of \$5000 on me and also signs over the assets which I am disputing, leaves me destitute. I appeal the decision, go before Warnick J. Warnick J sends me up to the first Full Court sitting. The first Full Court sitting says, "You have not got enough paperwork done; you have to do a draft notice of appeal." I do a draft notice of appeal, come before the second Full Court hearing, and they turn round and say to me, "Hang on a minute. You've got to pay a surety," but I cannot pay a surety so I got down to the High Court

HIS HONOUR: Mr Gunter, please. Look, this court is not a forum for airing grievances. You have two applications before the court: one is for leave to be granted to allow proceedings for Mandamus and Certiorari against Toohey J, and you seek to take or to set aside or to utilise the direction of Gaudron J given on 11 June; and the other one is in the matter of re Lavarch, B100, and you are seeking leave to proceed in that matter after Toohey J gave a direction last year.

MR GUNTER: There is another one also.

HIS HONOUR: There are only two matters that I am aware of. B100 of 1995 and

MR GUNTER: There is the one from the Supreme Court that was set up by Toohey J. That is there, your Honour. That is to do with

HIS HONOUR: There are two files and two files only here, Mr Gunter.

MR GUNTER: There is the one here, your Honour, to do with the Transport Department Act which is to do with the \$1 and \$2 coins. The other one is to do with the Family Law Court dispute that has been going on since 1991.

HIS HONOUR: Well, the only files that are before me are applications in which you have sought to issue

MR GUNTER: Writs of Certiorari and Mandamus.

HIS HONOUR: Against Toohey J and then there are

MR GUNTER: Toohey J put me down the line of this order 58 rule 4. Now, I have never been able to get into court to be declared a vexacious litigant.

HIS HONOUR: You do not have to be declared a vexacious litigant. Your process has been

MR GUNTER: It has been fouled up by the judiciary because the judiciary are the incompetent idiots that

HIS HONOUR: You will not make statements - now, one thing

MR GUNTER: All right. All right.

HIS HONOUR: Mr Gunter, one thing that you will have to realise is that abuse of process is also a contempt of court and

MR GUNTER: Abuse of process is what we have got.

HIS HONOUR: Yes.

MR GUNTER: Look, your Honour, silly as it sounds, I will explain it to you. Assume this desk here is the property that I used to own, and these things here are my business. Now, the restraining order will not let me go onto the property, therefore I cannot go to work. I found myself out of work. That order that was issued by Hilton ...(indistinct)... that I could have my tools of trade as long as I paid for them and removed them at my own expense. I am out of work, unemployed and destitute. I cannot get on the property because the restraining order will not let me get on the property. All I have got to do is get back into Court to try and sort this mess out, all right? The judgment that is handed down by Hilton says that I have got the wife's legal expenses of 15,000, my legal expenses, plus the family debt in joint names, and the whole total debt was \$53,000.

Now, because of the statement by Hilton where he came out and made this allegation of fraud of \$100,000, I was unable to get a government loan - it was held up for 20 weeks - to go back to get employment. I came in before Hilton, and Hilton says, "Well, if you want to fix this mess, get a solicitor and come back into Court." I cannot get Legal Aid. I applied for Legal Aid out of - at State level. I went to - I even applied for a test case against the Family Law Court to sort this mess out, and was told that - by the Director of Legal Aid - that Magna Carta and United Nations Charter are not relevant in Australian law.

Now, under Queensland law, your Honour, we have got a small thing called the Imperial Acts Applications Act of Queensland, which gives me Magna Carta 29. Now, I put it to your Honour that there has been an abuse of process by the judiciary who have denied me access to my tools of trade to earn a living the first time; the second time, the Judge turns round and interferes with my getting employment; then they turned round and stopped me from coming back into Court because of this bloody mess that has been generated, which I believe are three breaches of Magna Carta.

Now, Magna Carta exists in Australian law. It was raised here yesterday in this Court. One of the Judges here said, "Yes, Magna Carta does exist." Now, if the Court has stopped me from earning a living, I put it to your Honour: how do I pay the \$53,000 which is the Court - which is the statement that the Judge made, and there is perjury in affidavit with intent to defraud, which the wife has done. I am entitled to a re-trial. It is held in the *Cantallo* case they cannot do what they have done, but they have done it.

The fact that I have been before 16 Judges - there has been five Attorney-Generals. I have been told that there is nothing they can do about the Family Law Court, because the Family Law Court is an autonomous body. I put it to your Honour that the Family Law Court is constitutionally invalid, because the **Constitution** states that the Court and Judges must abide by the laws passed by Parliament, but yet section 121 of the Family Law Court Act allows the Family Law Court to break the law. It was never put there to allow the Judges to stuff up the way that they have.

Now, I put it to your Honour I have done nothing wrong. I maintain, your Honour, that under section 43 of the Crimes Act, that there has been perversion of justice. Now, it is held in the *Murphy* case, and I can pass it to your Honour, that if it has a tendency to pervert, there is a problem. Now, I can pass you

HIS HONOUR: I am well aware of *Murphy's* case

MR GUNTER: You are well aware of ...(indistinct)...

HIS HONOUR: and this Court has recently ruled on conspiracy in *Rogerson*.

MR GUNTER: Well, it is held in the *Murphy* case that if there has a tendency to pervert

HIS HONOUR: Well, that comes from *Vrionnes*. It is well-established law.

MR GUNTER: But the thing is, your Honour - you see, all I am trying to do, your Honour, is get into Court. Now, I have been - I cannot get Legal Aid. I am unemployed, out of work, and I cannot get Legal Aid.

HIS HONOUR: Mr Gunter

MR GUNTER: I put it to you

HIS HONOUR: Mr Gunter

MR GUNTER: do the laws apply to me, yes or no? This is the question I ask.

HIS HONOUR: Mr Gunter, of course the laws apply to you, and they apply to everybody. But you had an appeal, which was dismissed because you failed to comply with a condition. That is the beginning and end of the case. Now

MR GUNTER: But then I cannot - I could not comply by it because the Court made it impossible for me to apply for it because I was unemployed, out of work. The Court has stopped me from earning a living, your Honour.

HIS HONOUR: Well

MR GUNTER: Now, you are going to tell me that because I cannot get Legal Aid and I cannot get legal representation - I applied for a Certiorari and Mandamus

HIS HONOUR: The very fact that you cannot get Legal Aid is itself

MR GUNTER: All right, your Honour. I put

HIS HONOUR: a strong indication that there is no substance in your application. The Legal Aid Office, in my experience, is staffed by idealistic people who are only too willing to allow people access to the Courts of Justice, who are prepared to provide public funds for it.

MR GUNTER: No, your Honour. Legal Aid was refused in Queensland because you were given a property settlement, all right? I could not get a property settlement because I could not get the property settlement. It is held in the *Cantallo* case you cannot leave one party where they cannot start again. Now, if you can tell me how I pay a \$53,000 debt off if the Court has got my tools of trade tied up and stop me from getting employment - you know, it has got me stuffed, your Honour; I really do not know. And, as I said to you, what has a man got to do?

I put it to your Honour that the way I look at this at the moment, I have got two months' imprisonment hanging over my head at this point in time because I have done - I have applied by the way the law is written. Now, I have got to sort that mess out, or do I just go to prison and cop it - take the law into my own hands - and I ask you, what do I have to do? Do I have to - I want a ruling from this High Court: do I have to take the law into my own hands, go before a trial by jury, then come before a jury and say, "But hang on a minute. I've been before 16 Judges, and I can't get into Court because my paperwork is wrong." I mean, think about it, your Honour. I am

HIS HONOUR: It is not your paperwork that is wrong, it is - if there was just mere error in paperwork

MR GUNTER: It is an abuse of due process, your Honour. The fact that I cannot have - I have not been able to get an appeal because of the way the judgment is written by Hilton, and the fact that I went before Bulley twice is an abuse of process, and the fact that when I went before Hilton the second - before Bulley - the second time put a surety on me and then signed over my assets is wrong. The

barrister that looked at this mess said, "I know it is an abuse of due process. It's nothing short of blatant criminal action on behalf of the Court." And that is what the barrister told me. Now

HIS HONOUR: Well, he should be appearing for you, then.

MR GUNTER: No, your Honour, he will not touch the thing because it is too bloody political, to be honest with you.

HIS HONOUR: Oh, yes.

MR GUNTER: Now, look, your Honour, I want to - I would like to run a test case against the Family Law Court to try and sort this mess out. I believe that under ...(indistinct)... law I am entitled to bloody run a test case, and I believe, your Honour, I have got these prerogative writs that you are - that are in train now should proceed, because I believe for justice to be seen to be done, it has to be sorted out. Now, obviously, your Honour, I - look, which -look, even in Sydney and in Melbourne two days ago there was some stupid bugger saying, "Oh, but it's a Family Law Court dispute," so he races round the countryside with a bloody gun.

It is all over the place. There are big gun laws - the commotion now with guns - it is way out of bloody perspective. Now, look, your Honour, I do not want to use a gun. I do not want to do - I do not want to threaten anybody. But look, all I want to do is come before a Court and sort out the bloody mess I have got; or do I have to go to prison because I cannot get into Court? And - simple, your Honour - the dumb part about it is the way that the paperwork was written by Hilton was wrong. Now, as I said, it is held in the *Cantello* case you cannot leave one party where they cannot start again.

The fact that I have tried - gone to the degree of going down before Toohey J in the High Court and had the direction to come back to the lower Court - I came back before the lower Court and said, "But hang on a minute. The High Court Judge instructed me to come back." I cannot do - I cannot

HIS HONOUR: He did not instruct you. The transcript does not support

MR GUNTER: The transcript said - told me to go back to the lower Court.

HIS HONOUR: No, the transcript did not say that at all. It just said that there was no decision made.

MR GUNTER: No, the transcript states that I had to go back to the lower Court to sort this mess out. Now, I tried to go back to the lower Court. The lower Court would not let me in because I could not pay the surety. Why could I not pay the surety? Because I am unemployed and out of work. Now, the fact that I have got this \$53,000 debt which I cannot pay

HIS HONOUR: Did you make a special leave application to the High Court against the Family Court order dismissing your appeal?

MR GUNTER: That is what this is, your Honour.

HIS HONOUR: No, it is not a special leave application at all.

MR GUNTER: It is a Certiorari and Mandamus to try

HIS HONOUR: Well, that is a very different thing altogether. It has got nothing to do with a special leave application.

MR GUNTER: Your Honour, as far - the fact - look, the thing is that the fact that I have been - this is no longer a Mickey Mouse bloody Family Law Court dispute, your Honour. This is blatant criminal action on behalf of these Judges who I believe have conspired with each other to stop this bloody thing from coming to Court. I mean, let us face it

HIS HONOUR: That is nonsense, Mr Gunter, and you want to get that sort of thinking out of your head. Now, look, I have been very patient with you. What you have put is, with great respect, legal nonsense, what you have been putting to me here today. Now, I understand that you feel aggrieved at what has happened. Many people who go before the Family Court and other Courts are aggrieved

MR GUNTER: Your Honour, this is not - this has got

HIS HONOUR: at the result of the process. Now

MR GUNTER: Your Honour, this has got nothing to do with the Family Law Court

HIS HONOUR: you had an appeal dismissed.

MR GUNTER: Your Honour

HIS HONOUR: You have still the right, if you have not already done so, to make a special leave application to this Court. Whether you - I am not suggesting for a moment that you would succeed in any way, but this is not the way to go.

MR GUNTER: Your Honour, this has got nothing to do - I am not - this has got nothing to do with the Family Law Court dispute. What I am - what I am telling - what I am trying to get up now, is, your Honour, is the Family Law Court stopped me from earning a living, twice. They have stopped me from coming back into court: breach of Magna Carta.

HIS HONOUR: Yes, but they cannot stop

MR GUNTER: Which is the Imperial Acts Applications Act of '29 - which is under the Imperial Acts Applications Act of Queensland '29. Now, your Honour, the fact that the Family Law Court issues a - issues a - a restraining order that stops me from going to work is a breach of Magna Carta. The fact that the judge stops me from - says to me that I can have my tools of trade, as long as I remove them at my own expense, how do I remove my tools of trade off the premises if I am not allowed on the premises and I have got no money? Then how do I get into court to get a order - a court order to get onto the property? I could not even get into court to get a court order to get my property. I had to learn the law to write - to do a bloody - to get into court to get my - to get my - my tools.

As I said, 997 days later, your Honour, I got my tools of trade. I got some vehicles. I now find that there is a registered vehicle there that has been damaged while on that premises. I want to know who is going to pay for that, or is that just, "Oh, well, just - well, let's just pick up the corner of the carpet and sweep it under the carpet," because that is what I feel that is being done here, your Honour. What I am challenging your Honour is the fact that the Family Law Court stopped me from earning a living twice, the Family Law Court has stopped me from coming into court because they made - they put such a suppressive bloody order on me that could not be - could not be done.

You - there is no way in the world that a man can pay \$53,000 if he is out of work and you have got his tools of trade tied up. It is nothing short of bloody stupidity. And that is what I am saying, your Honour. The judgment that was written by Hilton was stupid. It is held you cannot leave one party where he cannot start again. Now, I do not know about you, your Honour, but I am bloody certain that you could not pay \$53,000 if you were out of work, and that is what I am stuck with. The court - the way the judgment is written is wrong. So I have to appeal the decision of that. The fact that I have tried to appeal that decision, that I had to wait for a criminal investigation to be done, which was the internal investigation from the Tax Department for a suspected breach of the Income Tax Protection Act, why is that not a good enough excuse for a delay for coming back into the Family Law Court?

I put it to you that I think that a criminal investigation is definitely a good reason for a delay in a court case. But when I did come before the - before Bulley, he says, "Oh, your paperwork's not done right." So I appeal the decision, get Bulley again, and he puts the surety of \$5000 on me. Now, that is an abuse of process. You cannot get the same judge twice. Now, if that is not abuse of process, you know, I do not know what is, your Honour. So the fact that I appeal the decision and go before Warnick J, and Warnick J, he says, "Oh, look, I can't do anything about this. It has to go up to a Full Court." I go up to the Full Court. "Not enough paperwork done." Well, I can live with not enough paperwork being done, because this is what this mess is all about. The paperwork is stuffed.

So I go before the second Full Court hearing and they said "But hang on a minute. Bulley put a surety of 5 grand on you, but we've dropped it back to 3." But I have still got no money. I still cannot get legal representation, because the court stopped me from earning a living. They have got my tools of trade tied up. Breach of Magna Carta. Breach of United Nations Charter Resolution 2200, political and civil rights. They are out the bloody window. So what do you do? I am not running around with a gun threatening anybody, your Honour. I am trying to come into court to sort out a bloody mess that has been generated because of bloody stupidity of judiciary and nothing short of it.

I am sorry, your Honour, the fact that the paperwork is wrong, it is held in Cantallo case you cannot do it. Gives me a right to appeal. If there is perjury in affidavit with intent to do fraud, reason for re-trial. Perjury is there. It is in the documentation you have got in front of me. So I am entitled to come in for a re-trial. But I cannot come in for a re-trial because I cannot pay the surety, because you stopped me from earning a living. I am entitled to Legal Aid. Now, I put it to you this way, that I have actually - when I - when the State Police came up - and this is the Anti-Terrorist Squad, by the way - I turned around - and I - I believe that section 121 allows the Family Law Court to break the law and hide behind their own legislation to protect their arse - and that is to be honest with your Honour. Sorry about the language, but that is what I believe.

HIS HONOUR: Well, Mr Gunter, if the law

MR GUNTER: Now, your Honour, hang on

HIS HONOUR: if 121 authorised the Act, then Parliament has authorised the Family Court to do it. Now, Mr Gunter

MR GUNTER: To break the law.

HIS HONOUR: Not to break the law; it is the law.

MR GUNTER: But if the law - all right, your Honour. If the Family Law Court has broken the law, the public should be aware of the fact that they are breaking the law. Now, your Honour

HIS HONOUR: Well, there are other - if that is so, there are other forums for it, but that

MR GUNTER: So - so have we

HIS HONOUR: Now, Mr Gunter, I said at the outset, I would give you ten minutes in each matter, which is the usual practice in these matters. You have got about two minutes to go. You have not addressed a single word to me as to why or how this court could issue Certiorari or Mandamus to Toohey J in B108.

MR GUNTER: Toohey J put me down the line for being a vexatious litigant. I have never been declared a vexatious litigant.

HIS HONOUR: But he did not declare you a vexatious litigant; he - he

MR GUNTER: It is - you are telling me that my

HIS HONOUR: He said it is the process - the process

MR GUNTER: my process is an abuse of process. All right. Is my - all right, your Honour. Is my - is the fact that I am trying to get into court to sort this mess out - look, your Honour, you are a judge. You sit up there to decide - to make decisions so - to - for justice, so-called justice. I mean, that is what you sit there for. Now, if I put in a prerogative writ, I want to take him to the Full Court to sort this bloody mess out. Now, the prerogative writs are put there for these disputes to be put out there. Now, as I said, I would like to run a - that test case against the Family Law Court. I am entitled to legal - to legal - competent legal representation. I cannot get it, because of this mess that has been generated by the Family Law Court.

Now, as I said, I have got two months imprisonment hanging over my head because of abuse of bloody process. Now

HIS HONOUR: Yes. Well, now, Mr Gunter, your time is up. I am sorry. I have listened to you, and your time is up. Would you please resume your seat, please.

MR GUNTER: Well, what about your second matter about

HIS HONOUR: I have given you ten - there are two matters before us: B108 and B100 of 1995, and I have to deal with them.

MR GUNTER: Your Honour, well, what - what do I - so I go to prison now, do I?

HIS HONOUR: Well, Mr - I do not know what is the consequence or what other matters, but you have the

MR GUNTER: Your Honour, you see there is a thing there where Fryberg J has sent up to this court to be determined.

HIS HONOUR: There are two matters before me: B108 and B100. Now, if you have - there is any other matter

MR GUNTER: No, your Honour, there is - there is still - there is still the discrepancy that you have not - that has not even been touched to that is in that - that is in that B100, which is to do with the bloody counterfeit currency.

HIS HONOUR: Well, of course. That is all part of it, but that matter has been before the court again and again in the last 10 or 12 years

MR GUNTER: No, your Honour. No, your Honour. It has never been before this court at all.

HIS HONOUR: Oh, Mr - this court

MR GUNTER: No, your Honour. Your Honour, there is the current - look, your Honour. There is the current - there is the current - there is the current Currency Act. There it is there. Can you - Mr Pople, would you like to pass that up to the judge, please?

HIS HONOUR: No, Mr - please sit down. No, time - your time is up. Please

MR GUNTER: Your Honour, no, look, I - what I am raising is something totally new. It has never been before a court before. Your Honour

HIS HONOUR: Well, Mr - these currency points are

MR GUNTER: No, your Honour, this is something totally

HIS HONOUR: They have got no substance whatever. I have read your material

MR GUNTER: Your Honour

HIS HONOUR: and there is no substance. Now, please resume your seat, Mr Gunter.

MR GUNTER: Your Honour

HIS HONOUR: I am going to give judgment in both these applications.

MR GUNTER: Well, your Honour, can you have a look at this, please?

HIS HONOUR: Mr Gunter, your time is up. Sit down, please.

This is matter B108 of 1995. The applicant, Mr Gunter, has taken out a summons for leave to be granted, pursuant to order 58 rule 4 sub-rule 3, to issue process in the nature of Mandamus and Certiorari against Toohey J, a member of this Court. On 11 June this year, Gaudron J directed that the process not issue without the leave of a Justice. The grounds relied on are set out in paragraph 1 of Mr Gunter's affidavit:

1 As a consequence of having brought a matter involving a major miscarriage of process that has been of great personal concern to myself, as but a particular case of a more general problem that is of major social moment, properly before this 'ultimate' Court of the Commonwealth of Australia, the High Court of Australia for remedy, and effectively been denied the prompt relief to which I am plainly properly entitled constitutionally, on what can now only be regarded as completely spurious grounds legally, it is now becoming increasingly clear to me by the day, in the light of the recent trend of developments on the national political scene, that I continue to fall victim to what may be fairly regarded as quite improper 'political interference' still being manifested from by-gone days, in the judicial processes of this High Court of Australia, of the type referred to in the latter part of 1995 by our then recently appointed Chief Justice of the Commonwealth, Sir Gerard Brennan in an address to the Deakin University Law School. Accordingly, I respectfully request that, to effectively remedy this appalling situation, this Honourable Court makes the following orders:

a) That the abovenamed Respondent show cause WHY A WRIT OF MANDAMUS should not be issued out of this Court directed to His Honour, compelling him to perform his public duty and bring before this ultimate Court of this Commonwealth of Australia, the *High Court*

Rules, for which His Honour, as one member of the Bench, is administratively responsible, so that *ultra vires* provisions in same may be pointed up and corrected.

b) That the abovenamed Respondent show cause WHY A WRIT OF CERTIORARI should not be issued out of this Court to remove into this Court to be quashed, the direction given by His Honour to the Registrar of this High Court of Australia in Canberra on 15th September 1995 on the said matters, on the grounds that the direction, since it was ultimately based on these *ultra vires* statutory provisions/Court Rules, necessarily contains errors of law of such major proportions as to render it null and void. The *Rules* brought into this question by these determinations and which contain these *ultra vires* provisions include O.58 r.4(3) and the associated O.63 r.6.

2. The particulars of these errors of law and the statutory provisions which are clearly *ultra vires* the *Constitution* are given in my principal affidavits on the matter sworn on 28th September 1995 and 17th May 1996.

However, at the outset there is a fundamental defect in the process. Mandamus and Certiorari do not go to Justices of this Court when exercising the jurisdiction of the Court.

The prerogative writs goes to inferior tribunals and courts and public officials exercising administrative jurisdiction. A superior court of unlimited jurisdiction cannot commit an excess of jurisdiction. This Court and its Justices are the sole arbiter of what falls within its jurisdiction. This Court therefore has unlimited jurisdiction to determine its jurisdiction. The High Court, sitting as a Full Court, is obviously not amenable to the prerogative writs because it is the nation's final Court and has unlimited jurisdiction to determine its own jurisdiction. A Justice of the Court, when sitting alone, is exercising the jurisdiction of the Court under section 15 of the *Judiciary Act*. It follows that that Justice is also not amenable to the prerogative writs.

If a Justice of the Court errs, appeal is the remedy. Indeed, in *Federal Engine Drivers Association v The Colonial Sugar Refining Company Limited* (1916) 22 CLR 103 at 107 Griffiths CJ, the first Chief Justice of this Court and one of the founders of the *Constitution*, said that prohibition which is referred to section 75(v) of the *Constitution* does not go to the High Court itself. More recently that passage was cited by Sir Anthony Mason in *Ex Parte Muldowney re Brennan* (1993) 116 ALR 619 at 622. If an order of a Justice of the Court is set aside, the appellate order merely corrects an erroneous exercise of jurisdiction.

In any event, there are other difficulties in the way of this application. Quite apart from the impossibility of the prerogative writs going to a Justice exercising the jurisdiction of this Court, section 75(v) does not extend to the issue of certiorari as such, as Dawson J pointed out in the *Queen v Gray ex parte Marsh* 157 CLR at 395. There are, of course, decisions of this Court where certiorari has gone to officers of the Commonwealth in conjunction with prohibition and Mandamus and the other remedies referred to in section 75(v) , but certiorari itself is not mentioned in section 75(v) of the Constitution .

Another difficulty in the way of the present application is that Mandamus is a discretionary remedy that is not ordinarily granted when there is a right of appeal, and section 34(1)(a) of the *Judiciary Act* does confer a right of appeal against a Justice of this Court sitting alone. However, by itself that would not be a matter which would be sufficient to regard the process in this case as frivolous or vexatious, or otherwise coming within order 58 rule 4 subrule 3.

If the correct conclusion is that a Justice, in giving a direction under order 58 rule 4, is not exercising the incidental jurisdiction of the Court but is acting in some other capacity, there is not a scintilla of evidence that Gaudron J misconceived the jurisdiction that was conferred on her by order 58 rule 4, or has failed to exercise jurisdiction. Accordingly, the summons in B 108 of 1995 is dismissed.

The next matter which was argued was B 100 of 1995. On 15 September last year Toohey J made a direction that the process sought to be filed in that matter not issue without the leave of a Justice. The process seeks Certiorari and Mandamus against various people, including the then Attorney-General of the Commonwealth and various Judges of the Family Court who sit at Brisbane.

The application is totally misconceived. It appears to be based on a claim that the order of the Full Court of the Family Court which dismissed the appeal of the applicant because he had failed to provide security for costs of \$3000 is invalid. If there are any other grounds relied on in addition to that ground, they are not grounds that make any sense at all. Certainly, nothing in the supporting material provides any basis for the grant of leave. In my view the order that was made by Toohey J on 15 September 1995 was correctly made and there are no grounds whatever for permitting this process to issue. Accordingly the summons in B 100 of 1995 is dismissed.

AT 11.11 AM THE MATTER WAS ADJOURNED