

IN THE HIGH COURT OF AUSTRALIA

Office of the Registry

Brisbane No B35 of 1994

In the matter of -

An application for leave to issue a Writ of Certiorari

Ex parte -

RICHARD STEPHEN GUNTER

TOOHEY J

(In Chambers)

-

TRANSCRIPT OF PROCEEDINGS

AT CANBERRA ON WEDNESDAY, 12 OCTOBER 1994, AT 9.16 AM

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HIS HONOUR: Mr Gunter, you are presenting this application in person, are you?

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

HIS HONOUR: Yes, thank you.

MR GUNTER: Basically, Your Honour, I have a situation that has been generated because of a foul-up in paperwork where a court order and a judgment are at odds with each other generating a catch-22. Now, using the **Constitution** , as itself, under Chapter 12 section 5, Your Honour, the Act states that:

This Act.....shall be binding on the courts, judges and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State -

which means, Your Honour, that an order issued by the Family Law Court I have to abide by.

I have a situation, Your Honour, where a court order was issued by a magistrate that denied me access to my livelihood, it denied me access to my tools of trade to earn my living. I therefore found myself out of work. Now, I applied for a government loan and also legal aid to go into court. Your Honour, if you like to put a piece of paper on the table in front of you with a biro on it, I can explain it to you mechanically as we go along and, basically, what we are looking at, Your Honour, is if you assume that this is a block of dirt and that is my tools of trade - - -

HIS HONOUR: Well, just before we get to that, I am just having some difficulty with the application. You are asking for an order nisi for a writ of certiorari. Now that is a remedy which - - -

MR GUNTER: To sort this remedy out - - -

HIS HONOUR: - - - permits the Court to bring up a record of proceedings in a court below or some tribunal and in certain circumstances, for instance if there has been an error of jurisdiction or something of that sort, this Court can quash the order made below.

MR GUNTER: Yes, Your Honour, this is basically - - -

HIS HONOUR: Just hear me out, Mr Gunter, because I want to ask you a couple of questions about the application. You see, it speaks of certain judgments and orders given in lower courts, and then it identifies what purports to be an order of Justice Hilton in the Family Law Court on 25 March 1992, an

order or judgment of Justice Hilton in the same court on 16 November, 1992 and then an order or decision of Justice Bulley in that court on 2 September 1993.

Now, in order to have something which can be brought up to this Court there has to be an order made by a court below or a decision by a court below. Now, I have read the transcript, I have read the papers which includes transcript of the hearing before Justice Hilton on the two dates that I have mentioned. I cannot see anything in that transcript which really constitutes a decision. It seems to have taken the form of some debate between you and the judge about a possible reference of certain matters to the Attorney-General which, in the end, did not eventuate anyhow, and then so far as Justice Bulley is concerned there is nothing in the papers that I can see that speaks of an order or any decision made by him.

MR GUNTER: Because, basically we cannot get the paperwork that I have got, which is a - there has been a criminal investigation done by the Attorney-General's Department for a suspected breach of the *Income Tax Protection Act*. Now, this paperwork - the letter for that - also a letter where the wife has stated that she photostated my tax returns early in 1990 in case she needed it later, we could not get before the bench. Judge Bulley, Your Honour, would not look at the evidence. Now, I appealed Judge Bulley's decision and got Judge Bulley for a second time, appealing his decision.

HIS HONOUR: Well now, wait a moment, let us take it step by step. What about Justice Hilton?

MR GUNTER: Justice Hilton's order, Your Honour, now, if you go back to the - - -

HIS HONOUR: Well, you say "order", but what order are we speaking of?

MR GUNTER: In the transcript, Your Honour, on page 4 - - -

HIS HONOUR: Wait a moment. You are talking now of the - - -

MR GUNTER: Justice Hilton's transcript.

HIS HONOUR: Of 25 March 1992?

MR GUNTER: The first one, yes, Your Honour, at page 4, line 20, between 20 and 25, where he states - - -

HIS HONOUR: Now, just a moment, the pages are not numbered - yes, they are. Page 4, yes.

MR GUNTER: Page 4, between lines 20 and 25 - - -

HIS HONOUR: Yes, I have read that. All he says is, well, if there has been a fraud - if I think there is a fraud, I will be referring these papers to the Attorney-General. Later on he says, "Well, I had a look at the papers and I decided there was nothing to refer".

MR GUNTER: Twenty weeks later, Your Honour, he indicated that there was not a fraud, but the situation arose - - -

MR GUNTER: But you are not listening to what I am putting to you, Mr Gunter. I am telling you that there has to be some decision or some order made by a court below which this Court, if so advised, would say has been made without jurisdiction or otherwise should be quashed. Now, that first transcript simply contains an expression of opinion - - -

MR GUNTER: By a judge.

HIS HONOUR: - - - by a judge. Well that is not an order or - - -

MR GUNTER: No, Your Honour, we understand that. That is not where the problem arose from.

HIS HONOUR: Well, that is what you identify as one of the orders.

MR GUNTER: No, well - if you understand what I am going to tell you, Your Honour. What has happened is, as I said, I found myself out of work. Now, I applied to the government for a government grant to start a business under the self-employment venture scheme. Now, when the judge made the statement of the fraud, the first thing I did at the first recess was notify my agent, who, in turn, notified the Department of Employment, Education and Training. Now, logically, the Department of Employment, Education and Training are not going to give me \$6000 if I have ripped the Government off for \$100,000.

HIS HONOUR: That may or may not be true, but you are not facing up to what I am putting to you. Where was the order made by Justice Hilton on 25 March? Do you accept that there was no such order, or no decision made on that day?

MR GUNTER: There is the problem there, Your Honour. We could not determine who was fraudulent. The trouble is that the government department needed to clarify - we needed to get back into Court.

Now, I went up to the Attorney-General to get me back into the court to clarify the situation about the fraud. All right? Now, Justice Hilton passed down the judgment which told me that I had to remove my property at my own expense. All right? Now - - -

HIS HONOUR: Well you say that, but where is that in the paper?

MR GUNTER: The judgment? You have not got a copy of the judgment?

HIS HONOUR: Which judgment are you speaking of?

MR GUNTER: Justice Hilton's judgment.

HIS HONOUR: Of what date?

MR GUNTER: The judgment of that - - -

HIS HONOUR: I have got what you have given us; if you have got anything else - - -

MR GUNTER: Well, the judgment of Judge Hilton, Your Honour, states that I have to remove property at my own expense. Now, the restraining order - - -

HIS HONOUR: Just a moment. Look at the papers that you have filed. Where is that said?

MR GUNTER: The judgment.

HIS HONOUR: Yes. I am not saying it does not exist; I am just asking you, where in the material that you filed in this Court can I find some reference to that judgment.

MR GUNTER: We have stated that the judgment does not allow me on the block.

HIS HONOUR: But I thought that was an order made by the magistrate.

MR GUNTER: Yes, Your Honour. No, the order from the magistrate originally denied me access to my tools of trade, which left me destitute and impeded my - - -

HIS HONOUR: No, now listen. Your affidavit says that on 28 February 1990 the Ipswich Magistrates Court issued a restraining order and then you annex a copy of that; that is an order prohibiting you from going on the premises - - -

MR GUNTER: Yes, Your Honour, that is this order here.

HIS HONOUR: Then that was apparently modified later on so as to allow you to remove your tools of trade.

MR GUNTER: Yes, Your Honour. No, if you read the second order, Your Honour, it states that I had to be in the company of my brother between 8am and 1pm on 10 March 1990 and 22 March 1990 till 28 March 1990 inclusively in the company of Geoffrey Gunter. Now the problem stemmed from - - -

HIS HONOUR: Well that was an order made by consent.

MR GUNTER: Your Honour, it was not made by consent basically - - -

HIS HONOUR: Well, it say so. I mean, I can only - - -

MR GUNTER: Well, I know it was. Well, what happened, Your Honours, when I went into court - - **HIS HONOUR:** Just a moment, Mr Gunter, we have got to try and keep this on the rails a bit. I was pointing out to you that the order is expressed to be an order by consent and, in any event, you are not apparently complaining of the magistrate's order.

MR GUNTER: No, Your Honour, no. To be fair on the magistrate, the magistrate had no idea what he had done. Now, Magistrate Pullar, Your Honour, has done the right thing; that is not the problem. The problem arises from the fact that between 22 March and 28 March I was not allowed to get on the block because the party stipulated could not attend, therefore - - -

HIS HONOUR: Well, that may be, but that is not the basis of your application to this Court.

MR GUNTER: No, no, I understand that, Your Honour. So basically what I am saying to you, Your Honour, is that because of the order issued by the Family Law Court, I was not - - -

HIS HONOUR: What do you call the "order" issued by the Family Law Court? Where do I find it in these papers?

MR GUNTER: No, well this application - the court order issued on 7 March 1990, which is Magistrate Pullar's order to me - - -

HIS HONOUR: Yes, I am aware of that order.

MR GUNTER: You are aware of that order. All right, Your Honour. You see where it says that I have got to be in the company of my brother?

HIS HONOUR: Yes, that is the consent order that I just referred you to.

MR GUNTER: Yes, I understand that, Your Honour. The order was issued that I had to get on the block between a period of time. Now, if my brother could not get on the block with me I could not go. Therefore, by using the [Constitution](#) I am bound not to go on the block, therefore I could not get my tools. Now - - -

HIS HONOUR: Just a moment. There was nothing, presumably, that stopped you going back if it was impractical to comply with that condition and ask the magistrate to vary the order.

MR GUNTER: All I had to do, Your Honour, is get back into court, and that is what I have been trying to do, and I can prove this. There is now a magistrate, who was the court registrar, who - I have been going into Ipswich Magistrates Court since 1990, Your Honour, trying to get back before a magistrate. Then it was passed up to the Full Court. Now, the court registrar, who is now a magistrate, can verify this fact, Your Honour.

My problem has been, Your Honour, that I have been denied legal representation. I have been denied my legal rights to come back into court. Now, when I finally did get a solicitor to act to get me into court we found that under - when the wife submitted her Form 7, that she divulge my taxable income. Now, the question arose is where did she get it? Her nephew is an accountant with Taxation. So there was an investigation done by the Internal Investigation Department of Taxation.

Now, because of the investigation and because of the way that the judgment of Judge Hilton and the court order that was issued by Magistrate Pullar and the fact that the government would not loan me

\$6000, I found myself unemployed, out of work, in a situation where I cannot get legal representation because Legal Aid was told - "You've got a property settlement. We want \$12,000 out of you."

HIS HONOUR: Mr Gunter, you are not going to get this application even off the ground unless you can tell me which decisions of which judicial officers you are seeking to have quashed.

MR GUNTER: Judge Hilton's order, Your Honour, has got - in the wife's affidavit, in her Form 7, is perjury - - -

HIS HONOUR: Look, you really must listen to what I am asking you. Are you saying that there was an order made by Justice Hilton - - -

MR GUNTER: The judgment by Judge Hilton, Your Honour.

HIS HONOUR: Where is it?

MR GUNTER: You have not seen the judgment?

HIS HONOUR: I have only seen what you have filed in this Court. The Court does not go off on its own getting information. It relies upon whatever the parties put before it.

MR GUNTER: The judgment of Judge Hilton - - -

HIS HONOUR: But I have a transcript, because you have annexed it to your affidavit, of some exchange between you and Justice Hilton on 25 March 1992, and a further exchange on 16 November.

MR GUNTER: There is a copy of the judgment, Your Honour, by Judge Hilton.

HIS HONOUR: I will not read the judgment so much at the moment; I will just see what the order that was made was. There was an order that you transfer to your wife your interest in the matrimonial home.

MR GUNTER: Yes, Your Honour.

HIS HONOUR: There is nothing in the papers that suggests that that is an order that you are seeking to challenge before this Court.

MR GUNTER: What I am trying to do, Your Honour, is - there has been perjury in affidavit with intent to defraud by the respondent wife. The figures that she divulged in her Form 7, as I have - - -

HIS HONOUR: If there was, or if you claim there was, then your remedy must lie within the Family Court itself.

MR GUNTER: No, Your Honour, because I cannot get into the Family Law Court, because the Family Law Court will not let me get into the court.

HIS HONOUR: Your own application says that you have what you describe as three belated appeals against Justice Hilton on the two occasions that we have spoken of and Justice Bulley in respect of the other occasion. What has happened to those appeals?

MR GUNTER: They have been dismissed, Your Honour, because I - you see, basically what Your Honour, if you look at *Dietrich v The Queen*, I have been denied legal representation to come into Court. Basically, Your Honour, where my problem lies is that there has been a foul-up of the system. Basically it is - - -

HIS HONOUR: You say there has, but at the moment I must confess I am having difficulty in seeing how it occurred.

MR GUNTER: Can I explain to Your Honour how it does - - -

HIS HONOUR: I do not want to be taken into a long history that has nothing to do with the application.

MR GUNTER: No. Basically what happens, Your Honour, is, if Your Honour understands what I am going to say about how this domino effect has got me to this situation now. Basically I have abided by the law to the best of my ability. I have been denied legal representation because the judgment that was passed down by Judge Hilton where he says I have to remove the property at my own expense, the judge has made - - -

HIS HONOUR: Where is that judgment?

MR GUNTER: That is in that judgment you have got there. The judge says that I have to remove the property at my own expense.

HIS HONOUR: I see, yes.

MR GUNTER: All right. Now - - -

HIS HONOUR: It seems to be part of the reasons. It is not clear, depending on whether I have got the complete documents, that it was part of the order. Certainly at the end the judge says, "He", being you, "will, at his own expense, remove from the property" certain things. Then he says, "I make the following orders: (1) that the husband transfer to the wife his interest in the matrimonial home". Then it cuts out. Maybe there is another page somewhere.

MR GUNTER: No, Your Honour, that is basically what it is. But basically the situation is, if you read it there, the court order issued - as I said to you, the restraining order will not let me on the block. Because the restraining order denied me access to my tools of trade, I found myself out of work. I applied to the government for this government grant - - -

HIS HONOUR: Just stopping there. Why did you not go back to the magistrate and ask him to vary the order so that you could go and take these things from the property?

MR GUNTER: Because I could not get legal representation to - - -

HIS HONOUR: You do not need legal representation for something like that, surely?

MR GUNTER: Even to get in before the magistrate - in actual fact, Your Honour, at the end of the day the court registrar helped me fill out the paperwork to get me back into court.

HIS HONOUR: But all you had to do was go back to the magistrate and say, "Look, I could not comply with that condition because my brother was not available on such and such a time. I want a variation of the order to allow me to do that".

MR GUNTER: I understand that, Your Honour, that is all I had to do. It is like now, all I - - -

HIS HONOUR: But that is all water under the bridge, really, is it not?

MR GUNTER: No, Your Honour, because what has happened is the Family Law Court has impeded my ability to earn my living.

HIS HONOUR: You say that but I still ask you, as I have to keep asking you: which orders of the court below are you seeking to have brought up into this Court and quashed because of lack of jurisdiction or something of the sort?

MR GUNTER: Basically what I want to do is I want to get back into court because obviously the judgment that has been passed down is invalid because basically you cannot leave one party where they cannot start again. It has been held that the property settlement that was left to me was the family debt was the business where my wife was a partner, her legal expenses, my legal expenses and my property settlement, which I could not get. Which means that I got nothing out of the property settlement except a debt of \$53,000. It is held in a - - -

HIS HONOUR: Just a moment. It appears that you lodged notice of appeal, or applied to lodge notice of appeal out a time against what you say were three decisions of the Family Court.

MR GUNTER: Yes, Your Honour.

HIS HONOUR: Were you out of time in those matters?

MR GUNTER: Yes, Your Honour, because the reason - - -

HIS HONOUR: I am not so concerned about the reason at the moment, but just to understand what happened. You were out of time, so what did you do? Apply for an extension of time?

MR GUNTER: No, Your Honour, what we did was we applied - under the *Family Law Act* it says, explanation under section 1149 - explanation for delay upon an application. Now, my delay for my application was that there was a criminal investigation done by the Internal Investigation Department of Taxation. We had to establish where the respondent wife got my tax returns from.

HIS HONOUR: I do not think you are answering my question. Did you, in each of these cases, apply to the Full Court of the Family Court for an extension of time in which to appeal.

MR GUNTER: I applied for an application to appeal out of time.

HIS HONOUR: I thought that was what I said.

MR GUNTER: All right, Your Honour, sorry about that.

HIS HONOUR: What happened to those applications?

MR GUNTER: I was granted a hearing. I went into court with that letter there, Your Honour.

HIS HONOUR: It would have been more helpful, Mr Gunter, if some of these papers had been before me and filed in the Court.

MR GUNTER: That letter there - - -

HIS HONOUR: That is a letter from your wife. I do not think I need be worried about that.

MR GUNTER: From the wife. Also, that letter there from the - - -

HIS HONOUR: I do not want that either. I want to know what happened to your application for extension of time.

MR GUNTER: Your Honour, I had both these letters - - -

HIS HONOUR: Can you not just say, "Well, they were granted" or "They were refused" or - - -

MR GUNTER: No, the judge would not look at the evidence. I sat, as I am sitting before you here, now, Your Honour. This is the bar and that is the bench?

HIS HONOUR: Yes.

MR GUNTER: All right. I had my papers here, as I have them laid out on the bar, and I said to His Honour, "I want to give these to you." He did not even look at the evidence. Basically, under section - - -

HIS HONOUR: Mr Gunter, will you please listen to me and tell me - I do not want, at the moment, to know what happened in a sense of what debate took place, but at the end of the day did you get an application for extension of time or was it refused?

MR GUNTER: No.

HIS HONOUR: You say no. Do you mean it was refused?

MR GUNTER: We have not got it. It has been dismissed.

HIS HONOUR: Yes, well that is what I have just put to you.

MR GUNTER: But that actually had to go up to a Full Court hearing.

HIS HONOUR: Did it go to a Full Court hearing?

MR GUNTER: Yes, Your Honour. It went before a magistrate, Fogarty and at the bottom it has got "Application - - -"

HIS HONOUR: Do you mean, Magistrate Fogarty or Judge Fogarty.

MR GUNTER: Judge Fogarty, Your Honour.

HIS HONOUR: And what, two other judges?

MR GUNTER: And two other judges, Your Honour.

HIS HONOUR: What happened to that? This is sort of crucial information that just is not in the file.

MR GUNTER: The outcome of it is that I have to pay a surety of \$3000 before I can even go into court.

HIS HONOUR: Do you have the order made by the Full Court there, which apparently granted you an extension of time?

MR GUNTER: I have not got an extension of time, Your Honour. All I have got is an order telling me that before they will even look at the situation they want me to pay a surety of \$3000.

HIS HONOUR: Have you got some material that shows what the court said.

MR GUNTER: Yes, Your Honour, I have.

HIS HONOUR: This judgment by the Full Court is expressed to relate to an application by you for leave to appeal against an order made by Justice Bulley on 10 January this year - that is 1994 - which is not mentioned in your application but says, in effect, that order required you to provide an amount of \$3000 by way of security in relation to an appeal and until that was paid the appeal was stayed. Then the judgment refers to the long history of this matter, mentions that on 15 April Justice Hilton gave judgment in property proceedings, and says that on 2 August 1993, you applied to the court to extend time within which to appeal. That was heard before Justice Bulley on 2 September 1993, which is the date mentioned in your application, and His Honour dismissed that application which I take to be an application for extension of time.

MR GUNTER: That is right, Your Honour, and that is what I said to you, that he would not even look at - the evidence I had here, Your Honour, where we have got perjury and affidavit with intent to defraud by the respondent wife, the fact that there was a criminal investigation and, under the *Crimes Act*, Your Honour, under section 76, she has used personal papers, Your Honour, I am just - - -

HIS HONOUR: Just a moment. There is reference to certain costs that have been ordered against you that were not paid.

MR GUNTER: I cannot pay them, Your Honour, because the court - - -

HIS HONOUR: Then the amount of security for the appeal was fixed at \$3000 and the judgment says that being an interim order the procedure to challenge is by way of application for leave to appeal, rather than appeal itself, and the court says in the circumstances they are not going to attach too much importance to that distinction so that they can come to the substance of the matter. Then they say that:

Even if it were appropriate to give full effect to what Mr Gunter says there are two sides to these matters. The reality is that the original orders were made over two years ago. His Honour, in my view, correctly apprehended that if the appeal went forward and was unsuccessful it would simply load on to Mrs Gunter further costs which she would have to

bear herself. I do not think that Mr Gunter's prospects of being successful on any appeal that he was granted leave to file enjoy any reasonable prospect of success.

So they dismissed the application. I take it that by dismissing the application what they are doing is dismissing the application for leave - - -

MR GUNTER: To appeal.

HIS HONOUR: Well, I am not sure that that is so, is it, or an order that was made that leave to appeal was conditioned upon you providing some security.

MR GUNTER: No, Your Honour. From talking to Guy Burrige, they have dismissed it. Basically, Your Honour, what has happened is the Family Law Court, with its orders and by me abiding by the law, I find myself in a situation where I am going to go to prison because of incompetence in the system. Basically, Your Honour, I have come into Court, I have used the *Crimes Act 1914*, section 24E, innocent intent, to bring to your attention you have made a mistake all the way through my transcript. And the problem stems from the fact that even when I approached Michael Duffy, the Attorney-General, to come back into court the first time back in 1992 after the - I have got my local member of Parliament, Les Scott I have got paperwork all the way through here where I have been to my local members, both State and Federal. Both Attorneys-General are involved with this, Your Honour. I have letters from the Attorneys-General where they cannot intercede. All I needed to do, Your Honour, was get back into court. Now, what has happened is because the judgment of Judge Hilton states that I have to remove my property at my own expense, the fact that the Family Law Court informed Legal Aid that I got a property settlement - and I said to Legal Aid, Your Honour, "I've been denied legal representation because of the way that the judgment was written because of the situation that has occurred, because of the court impeding my ability to earn my living".

HIS HONOUR: Mr Gunter, just looking at this judgment again of the Full Court, it says that:

In August 1993, that is approximately 16 months later -

and that is a reference to Justice Hilton's judgment -

you applied to the court to extend time within which to appeal. The court says that the court has power to extend the normal period of a month but is cautious in exercising that power. That matter was heard before Justice Bulley. His Honour dismissed that application. Mr Gunter appealed to the Full Court from that decision. The appeal is still pending.

Then your wife applied for an order securing her against any costs which would be involved in an appeal, and it is the order made by Justice Bulley on 10 January in relation to that matter which came before the Full Court. But unless I have misunderstood this judgment, your appeal against the decision of Justice Bulley refusing you an extension of time is still pending. Now, is that right?

MR GUNTER: No, Your Honour. As far as the Family Law - - -

HIS HONOUR: This document is dated 4 July, so what has happened since then?

MR GUNTER: What has happened since then? All I have been doing, Your Honour - - -

HIS HONOUR: No, I mean what has happened since then in relation to your appeal?

MR GUNTER: They told me that I cannot proceed with it.

HIS HONOUR: Just listen to what I read to you:

His Honour dismissed that application -

being an application for an extension of time in which to appeal.

Mr Gunter appealed to the Full Court from that decision. That appeal is still pending.

MR GUNTER: No, Your Honour, what - - -

HIS HONOUR: It is no good saying no. That is what the judgment says.

MR GUNTER: Your Honour, what has happened is that - what they are looking at is, Your Honour, they want me to pay a \$3000 surety. See, Your Honour, can I explain it to you mechanically so that you can understand what is happening, because obviously if - - -

HIS HONOUR: Let me explain something else to you, because I think you are not appreciating the distinction between the application for extension of time, which was refused, is the subject of an

appeal which has not yet been heard by the Full Court, and an application made by your wife for an order by way of security for costs for any appeal and, as this judgment says, what has to be realised is that this is not the appeal against the original 1992 order, nor is it the appeal against the refusal to extend time. It is an application for leave to appeal against the security order.

MR GUNTER: Your Honour, basically what I am trying to unravel is a mess that has been generated in the Family Law Court itself. Now, using section 121 of the *Family Law Act*, Your Honour, I cannot publish the fact that the court has run interference on me earning a living. I cannot do a flaming thing. The court itself has denied me access to legal representation because of the way the judgment is written.

HIS HONOUR: Mr Gunter, this application of yours does not allow this Court to go on some wideranging exercise of looking at what happened at every turn in the litigation that you have been involved in.

MR GUNTER: Your Honour, what I am trying - - -

HIS HONOUR: It really comes down to a fairly definite situation in which you have got an application for an extension of time to appeal against Justice Hilton's order, a refusal by Justice Bulley to grant you an extension, an appeal lodged by you against that refusal, an appeal which has not yet been heard and, on the other hand, there is an application by your wife for security for costs of any appeal, granted by Justice Bulley, appealed by you and that appeal, not the appeal against the refusal of extension of time, that appeal has been rejected by the Full Court. Strictly speaking it is not an appeal, it is an application for leave to appeal.

But your appeal against the refusal to grant you an extension of time, so far as I can ascertain from that judgment, is still on foot.

MR GUNTER: No, Your Honour - - -

HIS HONOUR: Now, there may be practical difficulties in the way of proceeding because you have got this security for costs order against you. I appreciate that.

MR GUNTER: All right, you appreciate the fact we have got the - basically, Your Honour, what we are looking at is I want to take out the certiorari to challenge section 121 of the *Family Law Act*.

HIS HONOUR: You do not say that anywhere in your application, and if that is what you want to do then you are certainly not within the ambit of this application.

MR GUNTER: Your Honour, basically what has happened is the Family Law Court is - as I said, I can explain it to you, and if you go back to *Dietrich v Regina* he was denied legal - - -

HIS HONOUR: Mr Gunter, *Dietrich* has got nothing to do with this. *Dietrich* is a case dealing with the position of an unrepresented person facing a trial on a serious indictable offence. Now, it has got nothing to do with this situation.

MR GUNTER: Your Honour, I have been denied legal representation. I cannot get any legal representation at all. I find myself outside the system. At the moment, Your Honour, I look like I am going to go to prison - - -

HIS HONOUR: Why?

MR GUNTER: Because of this Family Law Court mess.

HIS HONOUR: Well, you say that.

MR GUNTER: Do you want me - I can explain it to you.

HIS HONOUR: No, I do not really because it seems to me that you have drifted a long way from your original application.

MR GUNTER: No, Your Honour, when I went before Judge Bulley, under section 76 of the *Family Law Act*, Your Honour, it states that I can have a retrial if there has been fraud, if there has been suppression of evidence. Now, I had evidence to prove that I had fraud, I have evidence to prove that I had - - -

HIS HONOUR: But, did you apply to set aside any order on the ground of fraud.

MR GUNTER: Yes, Your Honour, it is in my transcript that I put in - - -

HIS HONOUR: Well, it might be but it is not in anything that is before me, Mr Gunter.

MR GUNTER: Because that went before Judge Bulley, Your Honour. In my applications to go to the Full Court, Your Honour, all the way through it I have stated there has been fraud. I have got figures

mathematically, it is impossible to do what the respondent wife says has occurred. Now, the evidence that I have got here in front of me, Your Honour, if you will only look at the way it goes together, I can explain the situation where the court has made a mistake. They have actually generated a catch-22.

HIS HONOUR: Well, I am not prepared to go into that part of it on the basis of the present application because your application seeks an order nisi for writ of certiorari in respect of certain judgments and orders which you identify as - as I have already said more than once - Justice Hilton on two occasions, Justice Bulley on a third occasion. Now, in respect of those matters, so far as appealing against Justice Hilton is concerned, you have an application for extension of time refused by Justice Bulley, subject of an appeal to the Full Court, still waiting to be heard. Now, there is nothing in the papers that tells me when that is likely to be heard.

You have an order for security of costs made against by Justice Bulley.

MR GUNTER: Which I cannot pay - - -

HIS HONOUR: Appealed against or application for leave to appeal against made refused by the Full Court. Those are the orders that we are concerned with.

MR GUNTER: Your Honour, what I am trying to stop is going to prison. In actual fact, to be quite honest with Your Honour, I would be better off in prison at the moment than what I am outside. Now, when a person comes to the High Court of Australia to stop himself from going to prison, Your Honour, because of a foul-up in the paperwork, I believe that you should say, "Look all right, let's listen to what the guy has to say", because obviously, Your Honour, I have got - at the end of this month, Legal Aid is suing me for \$4000 and if I could pay legal aid I could get legal representation. The fact that I could not get my property settlement because of the judgment that was written - all I have done, Your Honour, is abide by the law. Now, to be quite honest with Your Honour, I am becoming overly concerned about the Family Law Court in itself. Now, you turn the television on of a night time, Your Honour, how much death and destruction is caused because of the Family Law Court. Now, I believe -
- -

HIS HONOUR: Now, this is what you are seeking to do; you are seeking to convert this application into some wide-ranging inquiry into the Family Court.

MR GUNTER: No. Your Honour.

HIS HONOUR: Mr Gunter, let me just put the situation to you again as clearly as I can. On the material that is before me, and I have taken into account two judgments which were not part of the original material, the situation is that you have an appeal pending in the Full Court of the Federal Court, you have an order for security for costs which I appreciate - - -

MR GUNTER: Cannot be paid.

HIS HONOUR: - - - you may not be able to do anything about.

MR GUNTER: Your Honour, the judgment - - -

HIS HONOUR: But, until your appeal to the Full Court is disposed of in some way or other, I cannot see anything that could properly be the subject of an application for certiorari in this Court. Now, it seems to me you have two choices: you can either ask me to deal with the application on the material that is here and, as I think you must appreciate, it seems to me that the application would fail. If you want to in some way convert this into an application for certiorari in respect of a judgment of the Full Court of the Family Court or something else, then that is up to you. I am not suggesting that that necessarily has any prospect of success, but I must know what it is that I am being asked to deal with.

MR GUNTER: Your Honour, can I explain to you basically what I am trying to do. Basically, Your Honour, the Family Law Court, Your Honour, has impeded my ability to earn my living. That is a breach of common law. All right? That goes back to - - -

HIS HONOUR: You see, the moment you say that, you are really not talking about certiorari, you are not talking about prerogative relief; you are talking about a complaint - - -

MR GUNTER: No, Your Honour - - -

HIS HONOUR: - - - against the consequences of whatever orders were made by the Family Court.

MR GUNTER: No, Your Honour, what I am trying to do is I find that because of the - using the *Family Law Act* , using the *Constitution* , using the *Crimes Act 1914* , I believe that I should be able to come back into court. All right?

HIS HONOUR: What does that mean, “come back into court”?

MR GUNTER: All right, Your Honour, using the *Crimes Act* - - -

HIS HONOUR: No, I do not want you to take me to provisions of the *Crimes Act* ; I just want to know what you mean when you say that you should be able to get back into court?

MR GUNTER: All right, Your Honour. My interpretation of the *Crimes Act 1914*, section 24, section E, section A, to bring to your attention that you have made a mistake. All right? Now, I believe, Your Honour, and section B of that is to incite a person by lawful means to change the *Constitution*. Now, I believe, Your Honour, that under section 121 of the *Family Law Act*, which states that anything that happens in the Family Law Court cannot be published, it causes problems with the system. Now, in my case alone, Your Honour, I find that the court has made a judgment that has, according to cases that have been held were you cannot leave a person destitute, it has been held under - - -

HIS HONOUR: You started this off by saying you were going to tell me what you meant by not being able to get back into court.

MR GUNTER: The situation is, Your Honour, I cannot get back into court because what the court has done, Your Honour, the court has left me destitute, the court has impeded my ability to earn my living and because of the judgment the court has denied me access to legal representation because of the way the thing is written and because of the court orders. You see, basically, Your Honour, the order that denies me access to my tools of trade, which was issued in the Magistrates Court, which is correct - - -

HIS HONOUR: You are not seriously saying, are you, that you have not been able to get your tools of trade in all that time?

MR GUNTER: 997 days later I got it. That is the problem, Your Honour. 997 days later I got my tools of trade, and that is the problem. The court itself has run interference on me getting employment, because all we needed was to come back in before the judge and ask the judge, "Your Honour, please clarify the piece about the fraud." Now, I went back into court. The judge said, "If you want to get a letter from me you get a solicitor and come back into court." Now, that is dated 20 weeks later.

So I found myself out of work. The government department granted me my \$6000 interest-free loan to start my business. I lost \$51,816 in the 20 weeks. Now, basically, Your Honour, since then I have got the business expenses that were left to me by the court which was \$23,000 to pay. You will notice in the transcripts that they turned around and said that I had to pay \$15,000 for my wife's legal expenses.

How does one pay \$15,000 for my wife's legal expenses if I cannot earn a living, Your Honour? Because the Family Law Court, Your Honour, has generated this catch-22 and as silly as it sounds, Your Honour, this has been a foul-up, where using the Act, if there has been perjury in affidavit with intent to defraud, I should be able to come back into court. If there has been evidence suppressed, which was instructed by the Internal Investigation Department of Taxation, I should be able to come back into court.

The fact that it is held that the court has caused hardship and unnecessary stress and trauma for me - at the moment, Your Honour, I live in a tin shed. It costs me \$45 a week to live in. I could not even get into court to get access to my kids because I cannot get into court. I have not seen my kids since 1990. I have lost my kids courtesy of the Family Law Court. I cannot get legal representation because of the Family Law Court, because of the way that the judgment is written, the fact that I did what was the right thing, I

believe. When the judge made the statement we suspected it was a fraud. I notified my agent who, in turn, notified the government.

Now, the government in its right mind is not going to loan me \$6000 if I have ripped the government off for \$100,000. All we have to do, Your Honour, is come back into court. So I applied to Legal Aid to come back into court to sort this mess out. I go to the Attorney-General to get me back into court to sort this mess out. Four Attorney-Generals later, Your Honour, I still cannot get into court to sort this mess out. Now, obviously, Your Honour, we have got a foul-up monumentally in paperwork.

Now, as silly as it sounds, Your Honour, I go out of this Court and take the law into my own hands. Now, that is not the right thing to do. I have come to this Court to try to get a writ of certiorari to say, "Look, let's fix the problem."

HIS HONOUR: But you do not get writs - this is what I am trying to tell you. You just cannot come along and say, "I want a writ to fix the problem." A writ of certiorari is a writ - - -

MR GUNTER: Is a prerogative - all right, Your Honour.

HIS HONOUR: Let me tell you what it is. It is a form of relief that allows this Court to bring up orders from a court below in certain circumstances, and they are by no means wide-ranging. They relate to jurisdiction and matters of that sort and, if thought appropriate, to quash the orders. But you are really asking this Court to embark upon some general examination of everything that has gone wrong since this litigation began, and that is just not open to us.

MR GUNTER: No, Your Honour, what I am trying to do is to try and rectify a problem that is generated in our [Constitution](#) .

HIS HONOUR: Mr Gunter, there is really not a lot of point in going on about matters that are not directly relevant. It seems to me, as I said, you can do one of two things: you can ask me to deal with the application on the papers, if you feel in the light of this discussion that you want to think about the matter further and reformulate your application. I will consider that, but as I say, it does not seem to me that it would advance you very far.

MR GUNTER: The question I ask - do I just naturally have to go to prison? Is that what - - -

HIS HONOUR: I do not understand what you mean when you say you have to go to prison.

MR GUNTER: At the moment, the Family Law Court, I have got a situation where, obviously, I am going to end up in prison. Because of the situation that has been generated because of this - - -

HIS HONOUR: Why do you say you are going to end up in prison? Is there any order against you that is going to have the effect of committing you to prison?

MR GUNTER: For two reasons, Your Honour. First of all, I have broken the law because I have been trying to survive. At the moment I have got a \$1000 fine which I will not be able to pay, which means I am going to go to prison.

HIS HONOUR: That does not follow, necessarily.

MR GUNTER: The thing is, what has happened, Your Honour is - - -

HIS HONOUR: Is that what you mean when you say that you may have to go to prison.

MR GUNTER: No, Your Honour, basically what is going to happen is - at this point in time I have been before 11 judges to try and get into court to sort this mess out because - if you read this piece of paper where the wife states in paragraph 3, if you would like to read - - -

HIS HONOUR: I do not think it is going to advance the matter at all.

MR GUNTER: I think it will, Your Honour, because where it says that in early 1990 I gathered all the paperwork I could find to help me if I needed it later. At this time I photostated all Richard's tax returns.

They were still at the house in the filing cabinet. The respondent wife has photostated my tax - - -

HIS HONOUR: You may have some complaint about your wife's conduct, but that has got nothing to do with the matter that is before me. Do you want me to deal with this application on the papers as they now stand, or do you want to consider your position, or what?

MR GUNTER: Your Honour, all I want to do is sort this mess out. Basically, all I want to do is get back into court. I want to sort this mess out because there has been perjury in affidavit with intent to defraud. I have stuff that has been stolen. I have got a registered vehicle that has been damaged by the respondent wife. The police cannot do anything about it. I have a letter from the district inspector that says he cannot do anything about it.

I have got the situation where the Family Law Court, has broken the law by impeding my ability to earn my living. Using this section 121 of the *Family Law Act*, I cannot bring up the fact that the court has broken the law and denied me access to legal representation. I cannot bring up the fact that the situation is that I cannot get legal representation because I am being denied natural justice. Even when I have got to go into court in future, I will never be able to get legal aid again because I owe Legal Aid money, and I cannot get legal representation because the judgment that was written states that I have to remove my tools at my own expense.

The court has left me destitute, the court has impeded my ability to earn my living. I cannot pay the bills, I cannot pay the judgment that was passed down by Judge Bulley and Judge Hilton, I cannot pay the payment that was made down by Judge Bulley because the court itself has made a judgment which has caused a catch-22 because of the preceding order by Magistrate Pullar, which means, Your Honour, that I

find myself in the situation, like so many other Australians, and say, "Look, look, you know, stick it up your jumper, I'll take the law into my own hands". Now, I am not going to do that, Your Honour, I am here to try and rectify a problem.

Now, obviously, Your Honour, what I am trying to do is, I have been to the Attorney-General, I said, and this is Michael Duffy, "All I had to do -can you please get me before the judge, just to ask him about this fraud and to clarify this paperwork?". The Attorney-General writes back, Your Honour, and says he cannot do it. I write to the civil law division and ask them under what section of what Act entitles a court to deny me access to my tools of trade, what section of what Act entitles the court to deny me access to - - -

HIS HONOUR: Now, Mr Gunter, I think you have had a pretty fair hearing and, unless you have some application to make by way of which to permit you to reconsider your position, I propose to deal with your application now.

MR GUNTER: Your Honour, I want to get this into court to help sort out an anomaly, I believe, in the Family Law Court and also to try and fix my problem. Now, Your Honour, all I am trying to do to the best of my ability is to try and say, "Look, we have a problem that has been generated, the court has made a mistake which is bad on their face", I believe, and that is what certiorari is about. I can prove - - -

HIS HONOUR: Mr Gunter, I think you have had a pretty fair run. You have told me all that you can usefully tell me in relation to your application and I have got the papers before me. I propose to deal with your application now. Would you sit down, please.

Mr Gunter, your application is for leave to issue a writ of certiorari. Although that is what your affidavit says, in fact the application is for an order nisi for a writ of certiorari. You identify in your application what you say are judgments and orders given in the lower courts and they are identified as a judgment or order by Justice Hilton in the Family Court on 25 March 1992, another order by the same judge on 16 November 1992 and an order made by Justice Bulley in the Family Court on 2 September 1993.

The proceedings on 25 March 1992 do not, so far as the papers before me are concerned, appear to have generated an order. There was an order made by Justice Hilton on 16 November 1992 and as appears from the judgment of the Full Court of the Family Court on 4 July 1994, you sought an extension of time in which to appeal against that judgment.

According to the reasons for judgment of the Full Court, your application for an extension of time was heard by Bulley J on 2 September 1993. His Honour dismissed that application. You appealed to the Full Court from that decision and that appeal is pending. The order made by Justice Bulley on 2 September 1993 referred to in your application must be, on the face of it, that referred to by the Full Court in the judgment to which I am presently referring, that is, an order made securing your wife's costs of any appeal.

As that Full Court judgment points out, what has to be realised is that the matter before that court was not the appeal against the original 1992 order, nor the appeal against the refusal to extend time, but an application for leave to appeal against the security order. That application for leave to appeal was dismissed by the Full Court.

So far as the papers themselves are concerned, the application does not directly relate to that order made by the Full Court on 4 July 1994, but I shall assume for the purposes of dealing with this matter that that is before me. However, I can see no basis at all upon which prerogative relief should issue in respect of the order made by the Full Court on 4 July 1994.

That being the case, the situation is that there is presently before the Full Court of the Family Court an appeal against the refusal of extension of time to appeal against the order of Justice Hilton. In those circumstances there is no foundation upon which this Court could grant a writ of certiorari. I think the situation is compounded when it appears, as it does from what you have told me, that, in effect, you are seeking to get back into court to argue matters that are not the subject of the judgments that you challenge, but rather involve allegations of perjury on the part of your wife or other witnesses, and some general complaint about alleged anomalies in the law or procedures relating to family law. None of those matters conceivably gives rise to justification for an order nisi for a writ of certiorari. In those circumstances I must refuse the application. The application is refused.

AT 10.21 AM THE MATTER WAS ADJOURNED SINE DIE