

IN THE HIGH COURT OF AUSTRALIA

Office of the Registry  
Brisbane No B42 of 2000

Between -

RICHARD STEPHEN GUNTER

Applicant

and

THE QUEEN

Respondent

Application for expedition of special leave hearing

CALLINAN J

(In Chambers)

TRANSCRIPT OF PROCEEDINGS

AT BRISBANE ON THURSDAY, 14 SEPTEMBER 2000, AT 1.08 PM

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**MR R.S. GUNTER:** Yes, your Honour, I am representing myself. I have got Alan Skyring as McKenzie's friend, your Honour.

**MR M.R. GREEN:** I appear on behalf of the Crown in right of the State, on instructions from the Attorney-General, might be the best way to describe it. (instructed by the Crown Solicitor for the State of Queensland)

**HIS HONOUR:** Thank you, Mr Green. Yes, Mr Gunter.

**MR GUNTER:** Concerning the conduct of the application of the hearing itself, your Honour, I have submissions which I would like to make now by way of.....to the matter included at the end of item 1 of the summary. I have a written text which I have in mind to read but it would assist, and as you may no doubt read yourself faster than I can perhaps – so I will hand it up for a start, your Honour.

**HIS HONOUR:** Yes, thank you. Now, let me just understand what you are seeking today. What you want is an expedition of the hearing of your application for special leave, is that right?

**MR GUNTER:** Yes, your Honour.

**HIS HONOUR:** There is nothing further that you want today?

**MR GUNTER:** Well, the problem is, your Honour, I believe there has been contempt of court by the Crown Solicitor.

**HIS HONOUR:** That is not the matter I can deal with today.

**MR GUNTER:** No, no.

**HIS HONOUR:** Now, just attend to what I am asking you, Mr Gunter. You want your application for special leave expedited, is that right?

**MR GUNTER:** Yes, your Honour.

**HIS HONOUR:** Why should it be expedited?

**MR GUNTER:** The situation is I have had abuse of process by the system from 1990. Now, I have come into Court on numerous occasions to try and sort out a mess that was generated

**HIS HONOUR:** How will you be better off if your application for special leave is heard, say, for argument's sake, in December rather than in June next year?

**MR GUNTER:** Well, if I have it in December at least I – at the moment I am basically destitute. I have basically been in a situation where I cannot get employment because of the restraints that were put on to me. I raised with Justice McHugh when I was before McHugh in 1993-94, I think it was, where the problem arose that has risen to what has happened here. Now, I sought – the problem – basically, your Honour, the problem stemmed from a court order that stopped me from going to work in 1990. My tools of trade were tied up by the Family Law Court for 997 days. At the same time the Family Law Court gave me a debt of \$53,000 and no way to pay it because when I came before the Family Law Court there was an allegation of fraud of \$100,000 that stopped a government loan to get employment.

Twenty weeks later the allegation of fraud was – we do not know there was not a fraud. I then got the government loan. I tried to appeal a decision of the Family Law Court which is held in the *Cantrella Case, Cantrella v Cantrella*, that you cannot leave one party where you cannot start again. Now, the problem stems from the fact that I sought prerogative relief. I went certiorari mandamus, I went into the writ of summons which you have been involved with. I then invoked a qui tam. Now, I believe I am the first person since Federation to invoke a qui tam under Supreme Court Rule form 57 and according to the *Schooner Darling Case* of 1828 I have got the same authority as the AttorneyGeneral or the Director of Public Prosecutions. Now, I have got a public interest case

**HIS HONOUR:** Mr Gunter.

**MR GUNTER:** No

**HIS HONOUR:** No, please, Mr Gunter, we need some order here. What I need to know is why – you do not have to argue your case today, do you understand that? You do not even have to argue why you should get special leave to appeal to the High Court, and I am not going to hear argument about all of those matters. Time is too precious for that.

**MR GUNTER:** No, I understand that, your Honour.

**HIS HONOUR:** All I want to know is why you should get your application for special leave heard in priority to all the other applicants who also want their applications for special leave.

**MR GUNTER:** Well, the reason

**HIS HONOUR:** What you need to demonstrate to me is why you need that, so, do not go into the past history.

**MR GUNTER:** All right. Well, the reason why I believe it should be granted, your Honour, is that on numerous occasions on my writ of summons, which is the problem where we had a stay of proceedings from Justice Fryberg and the writ of summons B 112 of 1996 which you have endorsed a few times with Order 58 rule 4(3).

**HIS HONOUR:** Yes.

**MR GUNTER:** I appealed the decision. I put the paper work in to appeal on three occasions. Now, I have never been entitled to appeal the decision of Order 58, 4(3). Now, at the moment – just recently I got - one of the items that we are appealing was I got incarcerated – I had 48 days in prison for my dog walking on the road. Right? Now, I had to serve – I have served 35 days of those 48 days. I have still got to do 40 hours community service. Now, I tried to get a – I have got a fines option order but I also tried to get released on bail pending the determination of the situation. Now, what they did – I was granted bail, I went into the court. Because they knocked me back I was incarcerated again. I applied for bail in the High Court, was told to go back to the State Supreme Court, the Court of Appeal to appeal for bail, meanwhile, I am stuck in prison without legal aid. I tried to get legal aid. I was granted legal

**HIS HONOUR:** But you are not in prison, now.

**MR GUNTER:** No, I understand that, your Honour, but I have still got 40 hours community

**HIS HONOUR:** We have got applications from people in criminal cases from all over Australia who are in prison and who would like to have their applications for special leave heard and these are people who, if their applications succeed and if their appeals succeed might well be released from prison.

**MR GUNTER:** Yes, your Honour.

**HIS HONOUR:** They have got all sorts of urgent claims upon this Court's time.

**MR GUNTER:** Yes, well, basically, what we are trying to establish is what is the fundamental law of the land which would affect everybody else who is coming down the line behind me.

**HIS HONOUR:** Well, they will look after themselves, the other people. You just look after yourself. Why should I give you priority over those people who are in prison and who want to maintain an application to appeal to this Court.

**MR GUNTER:** Well, the thing is, your Honour, I

**HIS HONOUR:** You have got to show why you should be put ahead of all these other people, Mr Gunter.

**MR GUNTER:** At this point in time, your Honour, I have found myself out of work, unemployed, destitute. Now, in the State of Queensland the Crown Solicitor is compelling people to pay a filing fee to come into Court. We sought judicial review. I was not entitled to judicial review. Now, three times I have had to pay fees to come into Court, right? Now, that is a statutory violation. Now, I had a stay on proceedings. Now, if I come into a Federal Court I do not have to pay any fees and, yet, as a pensioner or on unemployment in Queensland you have to pay fees. Now, there is a case *Reg v Lord Chancellor Ex parte Witham Case (1998)*

**HIS HONOUR:** You are arguing your case, now. You are not telling me why you should have

**MR GUNTER:** I know, your Honour. What I am trying to tell you is, your Honour, what I am raising are matters which are matters of public importance which will affect other people, probably nationwide, because I have lived this nightmare, I have gone through the session, I have done it by the numbers. I am trying to fix a system defect. Now, the problem is that

**HIS HONOUR:** Well, that is your argument, you say you should be given priority because you want to fix a system defect, is that right?

**MR GUNTER:** There is a system defect. It is of a public interest case and if it does affect people – like, even this morning, the adjournment that you have given a reserved decision on, now, I am of belief – I will not say any more here, the legislation that you are going to give a reserve decision on, the legislation went beyond its warrant because, under 29 of the *Imperial Act Applications Act* Queensland the guy would have been able to come into Court. As I said, it has nothing to do – what the case was this morning is nothing to do with my case except that this guy did not get his paper work into Court in time. Now, I have put my paper work into Court on numerous occasions. .... Three times I have tried to appeal a decision of a single Judge. I have got to the stage where I tried to file paper work in the State Supreme Court. I took it to the Governor. I referred to the Federal Police.

Now, the thing is, your Honour, I have invoked the *qui tam*, an action on behalf of Queen and country, which makes me the prosecutor. I am entitled to come in here and get my case heard. Since it is an action on behalf of Queen and country, it should be given priority. Now, the thing is, your Honour, if my case will affect the populous of Australia, and it is a public interest case, then it should be deemed to be important and given priority. I mean,

all we are talking about is the fundamental law of this land. The *Imperial Acts Applications Act Queensland* – we are talking about

**HIS HONOUR:** You are repeating yourself, Mr Gunter. You are telling me what your argument will be on the application for special leave and you say it is a very very important matter.

**MR GUNTER:** Yes, your Honour.

**HIS HONOUR:** Does it come down to anything more than that?

**MR SKYRING:** Your Honour, if it might help, may I seek leave to be heard amicus curiae in these matters, because I have a reason to believe that Mr Gunter has got caught up in a fight that I have going, and I have struck similar sort of problems to what he has.

**HIS HONOUR:** You are not a qualified lawyer.

**MR SKYRING:** No, your Honour.

**HIS HONOUR:** Why should I give you leave? Mr Gunter seems to be saying what he wants to say. You do not have an application before the Court, do you, before this Court?

**MR SKYRING:** I do have one of my own, your Honour.

**HIS HONOUR:** But it is not listed for today?

**MR SKYRING:** No, no.

**HIS HONOUR:** So I will not give you leave.

**MR SKYRING:** Okay, hang on.

**HIS HONOUR:** Mr Gunter, your point simply is that your case is a very very important case with a capacity to affect all the other cases and that therefore you should get priority.

**MR GUNTER:** I believe, yes

**HIS HONOUR:** Is there anything more to it than that?

**MR GUNTER:** No, your Honour. The problem is that the Crown Solicitor has gone outside his warrant, and continues to go outside his warrant, and obviously the Crown Solicitor has to be checked post haste.

**HIS HONOUR:** I understand what you say.

**MR GUNTER:** All right. I think basically you have got my

**HIS HONOUR:** Thank you, Mr Gunter. Mr Green.

**MR GREEN:** Your Honour, the respondent will abide the order of the Court in relation to this particular application. I do not know that there is a great deal more I can assist your Honour with. Mr Gunter served yesterday his application book in relation to his special leave application which includes his outline and the respondent's outline and his reply. I think it would be fair to say, though I will not speak to Mr Gunter, that his fundamental defect point comes down to essentially what might be termed the currency question and perhaps the mention of the *Imperial Acts Application Act*.

I believe that may well relate to the argument that Magna Carta is therefore law and can be used in some way as setting up a set of what, in the outline is called, a set of reference statutes by which other statutes can be struck down. I could have done Mr Gunter a disservice, but it may be of assistance to your Honour, that would appear to be the upshot of what is in the application book, as the fundamental defect that creates the problem.



**HIS HONOUR:** All right. Mr Gunter, I am not prepared to grant your application for expedition of your application for special leave. You have not demonstrated to me good reason why your application should be given priority over other applications for special leave. I have listened to what you have said, I understand what your argument is, but no case is made out for any priority to be given to you. So I dismiss your application for expedition of your application for special leave.

Is there anything further?

**MR GREEN:** Your Honour, I would request that costs be reserved in relation to this application which is

**HIS HONOUR:** Were you served, Mr Green.

**MR GREEN:** In relation to this application, your Honour, it is returnable today, yes, although it was, in fact, directed to the Director of Public Prosecutions.

**HIS HONOUR:** Yes, I understand.

**MR GREEN:** It was served on Crown Law, but the main purpose for attending today was that the Registry wrote to Crown Law as the solicitors on the record for the respondent and advised that the matter was down for a hearing today.

**HIS HONOUR:** But it was served upon the Director of Public Prosecutions' State office, is that right?

**MR GREEN:** I do not know that it was, your Honour. The summons was served on Crown Law and the Director of Public Prosecutions has not. Apart from the bail issues, your Honour, essentially Mr Gunter's actions over the years have been dealt with by Crown Law and the Director of Public Prosecutions has requested that

**HIS HONOUR:** Well, there is an application for costs, against you, Mr Gunter; what do you say about that.

**MR GUNTER:** Well the question is, your Honour, it would come back to the *Imperial Acts Applications Act* again, Magna Carta 29. As a pauper, your Honour, there is a problem there of how do you pay it, because I am on a pension. Now, the other thing is, your Honour, we come back to the fundamental question of the discrepancy in the *Currency Act*. Now there is a ruling out of the Full Bench of the Federal Court that 36(2) of the *Reserve Bank Act* is an appealable error. Now, the question I posed to the Court

**HIS HONOUR:** But, Mr Gunter, you are getting away from the point; I am really trying to help you here. You made an application for expedition and the only basis upon which you could get expedition would be to demonstrate that your case had a pressing urgency that entitled it to priority. Now, I am against you on that. Now, why should you not, having lost that application, pay the costs of today. I am not talking about your application for special leave, but of today.

**MR GUNTER:** We cannot pay at all, is the thing that we were talking about.

**HIS HONOUR:** We have a lot of people before this Court who tell us they cannot pay.

**MR GUNTER:** Your Honour, ignorance of the law is no excuse, your Honour. All I am saying to your Honour is that if the *Constitution* tells you one thing and the *Currency Act* is enlivened by the *Constitution* and the *Reserve Bank Act* is interlocutory, the two Acts are interlocutory. Now if the Acts are interlocutory, then it is up the High Court to determine which is the correct rule. Now, according to the Supreme Court Rules in Queensland, when I first started this law, I know this

**HIS HONOUR:** Look, you are arguing your case. You might well turn out to be right, but all I want to know is that why, today, you having failed on your application – I might be wrong about this – but I have decided you are not entitled to priority. You therefore have taken up the time of the Court and a representative of the State in making an application that has turned out to be futile. Now, why should you not pay the cost of that; costs normally follow the event. You have been around the courts often enough to know that if you lose you usually end up paying the costs. You have lost today.

**MR GUNTER:** Your Honour, I have issued a chamber summons against the Crown Solicitor to show cause why – the chamber summons came up, I was given – what I was given – what we have got is the appeal is in. It is a criminal appeal – the argument is in the papers that you have got. So what I gave you if you read my written argument, that is what is involved with it, your Honour.

**HIS HONOUR:** All right. Anything further?

**MR GUNTER:** No, your Honour, because if you are saying to me – I am not trying to argue the case; I am trying to bring to your attention where the problem has arisen. The problem is that the court hit me with a suppressive cost in 1990 that I am still trying to bloody get over.

**HIS HONOUR:** But I cannot do anything about that. You know, Mr Gunter, I cannot do anything about those events in the Family Court of 1990 and their sequence.

**MR GUNTER:** Yes, you can, your Honour, because the thing is that the writ of summons that you very merrily put your Order 58 rule 4(3) on, on

numerous occasions, which I have tried to appeal, was a writ of summons against the Family Law Court to precipitate

**HIS HONOUR:** We are not going to argue that matter today.

**MR GUNTER:** No, I know we are not arguing it, your Honour. I am not trying to argue with your Honour; I am trying to tell you where the problem lies, so

**HIS HONOUR:** I think I understand where you say the problem lies. Is there anything further?

**MR GUNTER:** I cannot pay, your Honour.

**HIS HONOUR:** Well that will be a matter for the Crown, whether the Crown wishes to enforce them.

I propose to dismiss the application with costs. Thank you.

**AT 1.30 PM THE MATTER WAS CONCLUDED**