

JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA
IN CHAMBERS

CITATION : SHAW & ORS -v- THE STATE OF WESTERN
AUSTRALIA ATTORNEY GENERAL MR JIM
McGINTY & ANOR [2004] WASC 144

CORAM : MASTER NEWNES

HEARD : 18 JUNE 2004

DELIVERED : 2 JULY 2004

FILE NO/S : CIV 1162 of 2004

BETWEEN : BRIAN WILLIAM SHAW
PETER ALLAN RIDOUT
CHRISTOPHER JOHN RIDOUT
Plaintiffs

AND

THE STATE OF WESTERN AUSTRALIA
ATTORNEY GENERAL MR JIM McGINTY
First Defendant

GRAND LODGE OF WESTERN AUSTRALIA
ANCIENT & ACCEPTED FREEMASONS GRAND
MASTER MR J MALEY
Second Defendant

Catchwords:

Practice and procedure - Application to strike out statement of claim and dismiss
action - Plaintiffs acting in person - Approach to be taken to the pleading -
Whether statement of claim an abuse of process - Turns on own facts

Legislation:

Commonwealth Constitution
Constitution Act 1889 (WA)
Crimes Act 1914 (Cth)
Criminal Code 1913 (WA)
Crown Suits Act 1947 (WA), s 6
Supreme Court Act 1935 (WA)

Result:

Statement of claim struck out
Action dismissed

Category: B

Representation:

Counsel:

First-named Plaintiff : In person
Second-named Plaintiff : In person
Third-named Plaintiff : No appearance
First Defendant : Ms J C Pritchard
Second Defendant : Mr G R Donaldson

Solicitors:

First-named Plaintiff : In person
Second-named Plaintiff : In person
Third-named Plaintiff : No appearance
First Defendant : State Solicitor for Western Australia
Second Defendant : Godfrey Virtue & Co

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

Ainsworth v Criminal Justice Commission (1992) 175 CLR 564
Attorney General for Western Australia & Anor v Marquet [2003] HCA 67
Australian Conservation Foundation Inc v Commonwealth (1980) 146 CLR 493
Bateman's Bay Local Aboriginal Land Council & Anor v Aboriginal
Community Benefit Fund Pty Ltd & Anor (1998) 194 CLR 247
Bropho v Western Australia (1991) 71 CLR 1
Cain v Doyle (1946) 72 CLR 409
Eastgate v Rozzoli (1990) 20 NSWLR 188
Holloake v WA Cricket Association (1994) 11 WAR 423
In re the Judiciary & Navigation Act 1903-1920 and In re the Navigation Act
1912-1920 (1921) 29 CLR 257
Jacobsen v Rogers (1995) 182 CLR 572
Judamia v State of Western Australia, unreported; FCt SCt of WA;
Library No 960114; 1 March 1996
Lall v 53-55 Hall Street Pty Ltd [1978] 1 NSWLR 310
Marquet, Clerk of the Parliaments (WA) v Attorney General (WA) & Anor
(2002) 26 WAR 201
Onus v Alcoa of Australia Ltd (1981) 149 CLR 27
Rajski v Seitec, unreported; NSWSC; Court of Appeal; 16 June 1986
Re Shaw (2001) 4 VR 103
Ridout Nominees Pty Ltd v Commonwealth Bank of Australia [2003]
WASCA 158
Shaw v Gilesman [2002] VSC 1
Telstra Corporation v Worthing & Anor (1999) 197 CLR 61
The State Authority Superannuation Board v Commissioner of State Taxation
for Western Australia (1997) 189 CLR 253
Vincent v Ah Yeng (1906) 8 WAR 145
Yougarla v State of Western Australia (1999) 21 WAR 488

Case(s) also cited:

Attorney General (WA) v Marquet [2003] HCA 67
Blake v Albion Life Assurance Society (1876) 45 LJQB 663
Bropho v State of Western Australia (1990) 171 CLR 1
Bruce v Odhams Press Ltd [1936] 1 KB 697
Burton v Shire of Bairnsdale (1908) 7 CLR 76
Carnes v Essenberg [1999] QCA

Chia Gee v Martin (1906) 3 CLR 649
Christie v Christie (1873) LR 8 Ch App 499
Commonwealth of Australia v Mewett (1997) 191 CLR 471
Cusack v Australian Electoral Commission, unreported; Fed Ct; 6 November 1984
Dalgety Australia Ltd v Rubin, unreported; FCt SCt of WA; Library No 5485; 24 August 1984
Essenburg v R (2000) 21(13) LR C3e
Essenburg v R [2002] QCA 4
General Steel Industries Inc v Commissioner for Railways (NSW) (1964) 112 CLR 125
Hart-Roach v Public Trustee, unreported; SCt of WA; Library No 980044; 11 February 1998
Holloioake v Western Australian Cricket Association (1994) 11 WAR 423
In re The Judiciary Act 1903-1920 and In re The Navigation Act 1912-1920 (1921) 29 CLR 257
Jago v District Court of New South Wales (1989) 168 CLR 23
Jingellic Minerals NL v Abigroup Ltd (1992) 7 WAR 566
Kimberley Downs Pty Ltd v Western Australia, unreported; SCt of WA; Library No 6414; 25 August 1986
Knowles v Roberts (1888) 38 Ch D 263
Legal Practice Board v Said, unreported; SCt of WA; Library No 940003; 12 January 1994
Marquet v Attorney General of Western Australia (2002) 26 WAR 201
McCawley v R (1920) 28 CLR 106
McKechnie v Campbell (1996) 17 WAR 62
Mutual Life and Citizens Assurance Co Ltd v Evatt (1970) 122 CLR 628
Niven v Grant (1903) 29 VLR 102
Oldfield Knott Architects Pty Ltd v Ortiz Investments Pty Ltd [2000] WASC 255
Packhard v Transport Trading & Agency Co Ltd (1912) 14 WALR 191
Pancontinental Mining Ltd v Posgold Investments Pty Ltd (1994) 121 ALR 405
Peruvian Guano Co v Bockwoldt (1883) 23 Ch D 225
Philipps v Philipps (1878) 4 QBD 127
Port Kennedy Golf Country Club Pty Ltd v Port Kennedy Resorts Pty Ltd [1999] WASC 253
Port Kennedy Golf Country Club Pty Ltd v Port Kennedy Resorts Pty Ltd [2000] WASC 136
R v Richards; Ex parte Fitzpatrick and Browne (1955) 92 CLR 171
Rajski v Powell (1987) 11 NSWLR 522
Re Cusack (1985) 60 ALJR 302
Re Loubie [1986] 1 Qd R 272

Re Shaw (2001) 127 A Crim R 440

Re Skyring (1994) 68 ALJR 618

Ron Hodgson (Trading) Pty Ltd v Belvedere Motors (Hurstville) Pty Ltd [1971]
1 NSWLR 472

Smith v Australian National Line Ltd (1998) 20 WAR 219

State Authorities Superannuation Board v Commissioner of State Taxation for
Western Australia (1996) 189 CLR 253

State of Queensland v Pioneer Concrete (Qld) Pty Ltd (1999) ATPR 41-691

Telstra Corporation Ltd v Worthing (1999) 197 CLR 61

1 **MASTER NEWNES:** In this action the plaintiffs seek declarations as to
certain matters and damages. I understand that the plaintiffs do not now
seek relief against the second-named first defendant but only against the
State of Western Australia and the second defendant.

2 The defendants have each applied to strike out the statement of claim
on the ground that it discloses no reasonable cause of action and is an
abuse of the process of the Court, alternatively that it is embarrassing, and
for an order dismissing the plaintiffs' claim as an abuse of the process of
the Court.

3 The plaintiffs are unrepresented and have prepared the statement of
claim apparently without the benefit of legal advice. It must be said at the
outset, with all due respect to the plaintiffs, that the statement of claim,
which is 153 pages long, is, to say the least, very difficult to understand.
So far as I am able to discern, what appears to emerge from it is a concern
on the part of the plaintiffs that the second defendant, with the assistance
or acquiescence of the first defendant, the State of Western Australia, has
usurped the constitutional structure of government in Western Australia
and has acted unlawfully by administering oaths and introducing, or
attempting to introduce, laws of the second defendant.

4 It is not apparent what has given rise to this concern or how the
plaintiffs perceive that they are affected by the matters of which they
complain. Nor is it apparent from the statement of claim in what manner
it is alleged that either of the defendants has been, or is, so acting.
Although the statement of claim is very lengthy, and clearly the result of
prodigious industry on the part of the plaintiffs, it is largely devoid of any
allegations of material fact that might make explicable the basis and
nature of the plaintiffs' claim.

5 I accept the submissions of counsel for the defendants that, on its
face, the statement of claim is plainly embarrassing. As I have said, it is
almost devoid of material facts and in many parts, if not in its entirety, is
incomprehensible. There is in no instance any clear connection, if any
discernible connection, between the 40 substantive allegations and the
particulars provided of those allegations. The various particulars, which
are in almost all cases voluminous, make up the vast bulk of the statement
of claim and consist in each instance of material that is not properly the
subject of particulars. The particulars are made up of a large number of
extracts from a variety of statutes, including the *Constitution Act 1889*
(WA), the *Criminal Code 1913* (WA), the *Supreme Court Act 1935* (WA),
the *Justices Act 1902* (WA), the *Public Interest Disclosure Act 2003*

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

6 As I have said, the plaintiffs are unrepresented and due allowance must be made for that. A court will be slow to dismiss a claim by reason of a defective pleading prepared by an unrepresented litigant where there is reason to believe that the pleading is capable of being put in order and that once it is put in order it will disclose an arguable cause of action. As Mahoney JA said in *Rajski v Seitec*, unreported; NSWSC; Court of Appeal; 16 June 1986 at 22, "the court will, I think, be careful to examine what is put to it by a party in person to ensure that he has not, because of the lack of legal skill, failed to claim rights or to put forward arguments which otherwise he might have done." The Court of Appeal of New South Wales observed in *Lall v 53-55 Hall Street Pty Ltd* [1978] 1 NSWLR 310, at 314, that "courts always have been alert to the possibility that under irrelevancy there may be merit". See also *Wentworth v Rogers* (No 5) (1986) 6 NSWLR 534 at 536 - 537.

7 It is therefore necessary to consider whether within the present pleading there may be a claim which is just not sufficiently or adequately articulated.

8 It must be said at the outset that the form and nature of the current statement of claim makes that task particularly difficult and, inevitably, involves an element of guesswork in trying to ascertain precisely what it is that lies within the labyrinth of the present statement of claim.

9 The first fundamental proposition on which the plaintiffs rely is that the *Constitution Act 1889* (WA) constitutes a contract. In par 1 of the statement of claim the *Constitution Act* is described as "a written agreement ... [by which] the first defendant agreed to set up a system of law ... " which, it is alleged, the defendants have colluded to breach. The plaintiffs go on to plead in par 2 that the second defendant has "broken the contract" by introducing a different set of laws, rules and oaths not known or agreed to by the plaintiffs. They allege in par 3 that the first defendant

has agreed to "run, maintain and protect" that set of laws, rules and oaths "in breach of the contract" and in par 5 that the defendants have colluded to alter "the original content and intent" of the *Constitution Act*. The plaintiffs allege that "this unlawful practice has caused the plaintiffs considerable and extensive injury in tort, and damage". No particulars of the alleged injury or damage are given and there is nothing pleaded which would indicate why the alleged "unlawful practice" would cause the plaintiffs to suffer injury or damage.

10 The plaintiffs also go on to allege that the defendants have colluded to "alter the original structure" of s 42 of the *Commonwealth Constitution*.

11 I must confess, with all due respect to the plaintiffs, that I have no idea what is intended by these pleas. The assertion that the *Constitution Act* constitutes a contract is plainly not intended to be understood in the sense that the concept of a social contract between rulers and ruled was used by the 17th century philosopher John Locke and the other social contract theorists. It is clearly intended to plead a contract enforceable by law in the courts, presumably by any member of the public, although the parties to the contract are not identified in the pleading.

12 The plea is plainly misconceived. The *Constitution Act* is a statute and has effect as such. It does not give rise to contractual rights or obligations on the part of the first defendant or anyone else. It is also manifestly plain that the "content and intent" of the *Constitution Act* could not be altered through the actions of the defendants, whether in alleged collusion or otherwise.

13 Even if the proposition that the *Constitution Act* is a contract is put to one side, the allegation in par 5 of the statement of claim that the defendants have, by collusion, altered the written content and intent of the *Constitution Act* is, once again, fundamentally misconceived. It is self-evidently the case that the Act could not be so altered. The Act can only be altered by the legislature. It is also plain that s 42 of the *Commonwealth Constitution* could not be altered by the defendants, but only in accordance with the provisions of s 128 of the *Constitution*.

14 It is pleaded in par 12 that the defendants are in breach of various provisions of the *Commonwealth Constitution* by permitting the alleged oaths and laws of the second defendant. A number of provisions of the *Commonwealth Constitution* are then set out by way of particulars, together with some provisions of the *Constitution Act* (WA). The reason for the inclusion of the latter is not apparent. The provisions of the

Commonwealth Constitution apparently relied on by the plaintiffs are first, s 51 which sets out the matters in respect of which the Commonwealth Parliament has legislative power; secondly, ss 61, 64, 65 and 67 which deal with the powers and personnel of the executive government of the Commonwealth; and thirdly, s 70 which operated upon the establishment of the Commonwealth to effect a transfer to the Governor-General of the powers and functions previously vested in the governors of the colonies which related to matters vested in the executive government of the Commonwealth under the *Commonwealth Constitution*.

15 It is plain that the provisions of the *Commonwealth Constitution* referred to are simply not capable of being breached by the defendants as alleged.

16 There are various allegations that the defendants have breached the criminal law of Western Australia and the Commonwealth. The alleged breach, in essence, is in allegedly permitting, and in colluding to permit, the existence of the second set of oaths and laws of the second defendant and in failing to disclose the existence of those oaths and laws. No basis in fact is set out in the pleading for any of those allegations in respect of either defendant. The allegations are simply bald assertions that, so far as appears from the pleading, have no basis in law.

17 I should add that, in respect of the first defendant, there is, in any event, a strong presumption that statutes do not impose criminal liability on the Crown. Only a clear statement of legislative intent to the contrary will overcome that presumption: *Cain v Doyle* (1946) 72 CLR 409, *Bropho v Western Australia* (1991) 171 CLR 1 at 23, *Jacobsen v Rogers* (1995) 182 CLR 572 at 587, *The State Authority Superannuation Board v Commissioner of State Taxation for Western Australia* (1997) 189 CLR 253 at 270 and 294, *Telstra Corporation v Worthing & Anor* (1999) 197 CLR 61 at 75. It follows that where a statute is silent as to its application to the Crown, it will be presumed that the law does not impose criminal liability on the Crown. In that respect, the various allegations in the statement of claim that the first defendant has breached provisions of the *Criminal Code* are not maintainable. The *Criminal Code* is silent as to its application to the Crown and there is nothing in it to suggest that Parliament intended to impose criminal liability on the Crown in right of the State. Similarly, in respect of the various allegations that the first defendant has breached the *Crimes Act 1914* (Cth), there is nothing in that statute which suggests an intention to impose criminal liability on the Crown in the right of the State. The allegations of breaches of the

Criminal Code and *Crimes Act* by the first defendant are, for that reason alone, not maintainable.

18 The plaintiffs allege in par 22 of the statement of claim that the defendants have breached *Magna Carta* "by taking Masonic control of the Court structure of Western Australia, charging Court Fees for Filing and Lodgement of proceedings, Writs, Motions etc, contrary to chapter 29 of *Magna Carta*".

19 The written outline of submissions filed on behalf of the first defendant helpfully contained detailed references to the relevant law and literature on the application of *Magna Carta* in Australia. It is sufficient for present purposes to say that Ch 29 of *Magna Carta* (Edward I, 1297) appears to have been part of the law of the United Kingdom which was received in Western Australia on the State's foundation, but it was not a statute which applied by paramount force: *Vincent v Ah Yeng* (1906) 8 WAR 145 at 146 Parker CJ. It is therefore within the legislative power of the Western Australian Parliament to enact legislation which amends or repeals it in whole or in part.

20 Apart from the fact that it is not at all clear that Ch 29 of *Magna Carta* has any relevance at all to the levying of fees for filing documents in courts, there is no impediment to the enactment of legislation to levy such fees. Such legislation exists in the form of the *Supreme Court Act 1935* (WA), which permits regulations to be made prescribing fees payable in respect of any cause or matter in the Supreme Court. The relevant fees are and were the subject of regulations made in the exercise of that power.

21 It is pleaded in par 28 of the statement of claim that the first defendant has acted unlawfully in introducing into the Parliament the *Oaths, Affidavits and Statutory Declarations Bill 2003*. The plaintiffs' contention appears to be that such legislation could not validly be enacted unless approved in a referendum. It appears from the particulars that the same assertion is made in relation to the *Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Bill 2003*.

22 It was not in issue that both Bills are presently before the Western Australian Parliament. It follows, in my view, that the question of the validity of the enactment of such legislation, if passed and sought to be enacted, is not a matter for determination by this Court for at least two reasons. First, as the Bills have not been passed by both Houses of Parliament, the question is hypothetical and therefore does not raise an

issue for determination by the Court: *In re the Judiciary & Navigation Act 1903-1920 and In re the Navigation Act 1912-1920* (1921) 29 CLR 257 at 265 - 266. Secondly, while the Bills are still the subject of deliberation in the Parliament, the Court would not determine the question of whether the Bills would be valid if they are passed: *Marquet, Clerk of the Parliaments (WA) v Attorney General (WA) & Anor* (2002) 26 WAR 201 at 210 and *Attorney General for Western Australia & Anor v Marquet* (2003) 202 ALR 233, per Kirby J at 257 - 8, *Eastgate v Rozzoli* (1990) 20 NSWLR 188.

23 The plea in par 29 asserts that the defendants have sought to subvert ss 80, 116 and 128 of the *Commonwealth Constitution*. It appears to be alleged that such subversion consists of causing and permitting allegiances and oaths not known or sanctioned by "the People". I must say, with respect, that I am unable to make any sense of that allegation. However, in my view, whatever it is intended to mean, the plea is fundamentally misconceived. Section 80 makes provision for the conduct of the trial on indictment of offences against the laws of the Commonwealth. It does not apply to the trial of persons charged with offences against the laws of Western Australia, or any other State. Moreover, although persons charged with offences against the laws of the Commonwealth may be prosecuted in a State court exercising federal jurisdiction, the laws concerning criminal procedure which are then applicable are determined by s 68 of the *Judiciary Act 1903* (Cth). That provides that the laws of the State concerned regarding the procedure for trial and conviction on indictment are applicable to persons charged with Commonwealth offences tried in the courts of that State. Section 116 prohibits the Commonwealth Parliament from legislating in various respects in relation to religion. It has no application to the powers of the State of Western Australia. Section 128 deals with the manner in which the *Commonwealth Constitution* may be altered. It is not conceivable how the defendants could subvert those provisions.

24 There is a plea in par 30 of the statement of claim by which it is alleged that, in some undefined way, the first defendant was involved in the introduction of the *Australia Act 1986* for the purpose of implementing a republic in accordance with the "Masonic Agenda". I do not think any sensible meaning can be given to that plea.

25 In par 31 it is alleged that the defendants have "reversed the content and intent of the Commonwealth of Australia Constitution Act". It is, of course, simply not within the capacity of either defendant to do so, whether in the manner alleged or in any other way.

26 There are further allegations of allegedly unlawful conduct of the defendants in pars 26, 32 and 33 of the statement of claim. The (bald) allegations made are of such a nature that they are plainly an abuse of the process of the Court.

27 Paragraphs 34 and 36 of the statement of claim make allegations of some allegedly unlawful involvement of the first defendant in the sale of shares in the Commonwealth Bank. I must say, with respect to the plaintiffs, that those pleas too have defied my comprehension. I do not think any sensible meaning can be given to them.

28 The pleas in pars 34, 35 and 36 of the statement of claim occupy some 34 pages, most of which are taken up by particulars of the kind to which I have referred previously; that is, particulars of no apparent relevance to what appears to be asserted in the substantive allegations to which they are supposed to relate - the substantive plea itself in each case being largely incomprehensible - and consisting of material of the sort to which I have referred previously.

29 It is apparently alleged in par 37 that the first defendant unlawfully agreed to the enactment of the *Australia Act 1986*. It appears to be contended that, in the absence of a referendum, the Parliament of Western Australia could not do so in light of s 73 of the *Constitution Act*. There is no substance in that.

30 It is alleged in par 38 that the first defendant and the State of Victoria agreed together to enact the *Australia Act*, contrary to the provisions of the Victorian Constitution. I do not think, with respect, it is possible to give any sensible meaning to that allegation. In any event, whatever it might be intended to mean, questions arising in respect of the Constitution of Victoria are not a matter for this Court.

31 There is, finally, a plea in par 39 that the "Legal Practitioners Board" [*sic*] and the first defendant have agreed to permit the second defendant to introduce unlawful oaths and allegiances into what is called the "Legal Fraternity". Needless to say, there is once again no factual basis pleaded for that allegation.

32 Two further general submissions were made on behalf of the defendants. First, it was said that the plaintiffs have in any event no standing to bring this action. I accept that submission. Declaratory relief must be directed to the determination of legal controversies and not to answering abstract or hypothetical questions. The person seeking relief must have a real interest in the matter *Ainsworth v Criminal Justice*

Commission (1992) 175 CLR 564 at 581 - 2, *Hollioake v WA Cricket Association* (1994) 11 WAR 423 at 426, *Australian Conservation Foundation Inc v Commonwealth* (1980) 146 CLR 493, *Onus v Alcoa of Australia Ltd* (1981) 149 CLR 27, *Bateman's Bay Local Aboriginal Land Council & Anor v Aboriginal Community Benefit Fund Pty Ltd & Anor* (1998) 194 CLR 247 at 267, 275 - 6 and 281 - 283.

33 To the extent the plaintiffs' claims for declaratory relief are in relation to the performance of some public duty by the first defendant, then the plaintiffs have no standing to bring the claim. It is well established that a member of the public who has no interest other than that which any member of the public has in upholding the law has no standing to sue to prevent the violation of a public right or to enforce the performance of a public duty: *Australian Conservation Foundation Inc v Commonwealth* (*supra*) per Gibbs J at 526.

34 A plaintiff may have a sufficient interest to bring an action where the violation of a public right is such that some private right of his or hers is interfered with or if the plaintiff otherwise has a "special" interest in the subject matter of the action, but a belief, however strongly felt, that conduct of a particular kind should be prevented does not suffice to give standing to the possessor of that belief: *Australian Conservation Foundation Inc v Commonwealth* (*supra*) per Gibb J at 526 - 531, Stephen J at 537 - 539 and Mason J at 547 - 548, *Onus v Alcoa of Australia Ltd* (*supra*), *Bateman's Bay Local Aboriginal Land Council & Anor v Aboriginal Community Benefit Fund Pty Ltd & Anor* (*supra*) per Gaudron, Gummow and Kirby JJ at 267 and McHugh J at 275 and 281 - 283, *Yougarla v State of Western Australia* (1999) 21 WAR 488 per Anderson J at 509.

35 There is nothing, in my view, in the statement of claim to suggest that any private interest of the plaintiffs is at issue or that the plaintiffs have a sufficient interest in the subject matter of this action to give them standing to seek the declaratory relief claimed.

36 The second general ground, relied upon by the first defendant, was that the plaintiffs have not complied with s 6 of the *Crown Suits Act 1947* (WA) which requires notice to be give to the State Solicitor prior to the commencement of an action against the State. That provision is not merely procedural, but compliance with it is necessary to establish the plaintiffs' cause of action: *Judamia v State of Western Australia*, unreported; FCt SCt of WA; Library No 960114; 1 March 1996, *Yougarla v State of Western Australia* (*supra*) per Anderson J at 523.

37 It was not contended by the plaintiffs that such notice was given and the first defendant has filed affidavit evidence that no such notice was given. In those circumstances, the claim against the first defendant is liable to be struck out on this ground also.

38 Generally, I accept the defendants' submissions that the statement of claim discloses no arguable cause of action and is embarrassing. There is nothing pleaded which is capable of making out an arguable case for any of the relief sought by the plaintiffs or any other relief. Nor can I discern from the statement of claim anything that might give rise to any arguable cause of action on the part of the plaintiffs. The statement of claim is, in essence, simply a catalogue of bare, scandalous allegations accompanied by a mass of irrelevant material.

39 In my view, the proceedings are plainly an abuse of the process of the court and should be struck out.

40 I should add that this is not the first occasion on which one or other of the defendants has sought to ventilate issues of a similar nature to those sought to be raised in these proceedings and in a similar form. In that respect, I refer to *Re Shaw* (2001) 4VR 103, *Shaw v Gilesman* [2002] VSC 1 and *Ridout Nominees Pty Ltd v Commonwealth Bank of Australia* [2003] WASC 158 at [21] and [24].

41 It should therefore already have been plain to the plaintiffs that the current action could not succeed. The plaintiffs have, nevertheless, instituted and persisted with it. They have seen fit to include in the statement of claim a number of serious allegations of unlawful conduct by the defendants without any attempt to plead a factual basis for those allegations. Given the extraordinary nature of the allegations, it is not at all surprising that the plaintiffs have not been able to plead any factual basis for them. In the course of argument, Mr Shaw acknowledged that the plaintiffs were not in a position to do so. The plaintiffs apparently hoped that by commencing the action they would be able to avail themselves of the procedure of discovery to find material to support their assertions, the existence of which material, Mr Shaw assured me, they were in no doubt. It was evident they do not accept the possibility that such material does not exist.

42 While I am conscious that the plaintiffs do not have the benefit of legal representation, it should have been apparent to them that that is not a course open to them. The processes of the court do not exist to enable litigants to undertake speculative fishing expeditions of such a nature.

Moreover, to make serious allegations of unlawful conduct without being in possession of a proper factual basis for doing so is a serious abuse of the process of this Court. It simply cannot be countenanced.

43 The plaintiffs' claim will be dismissed with costs.