

# THE



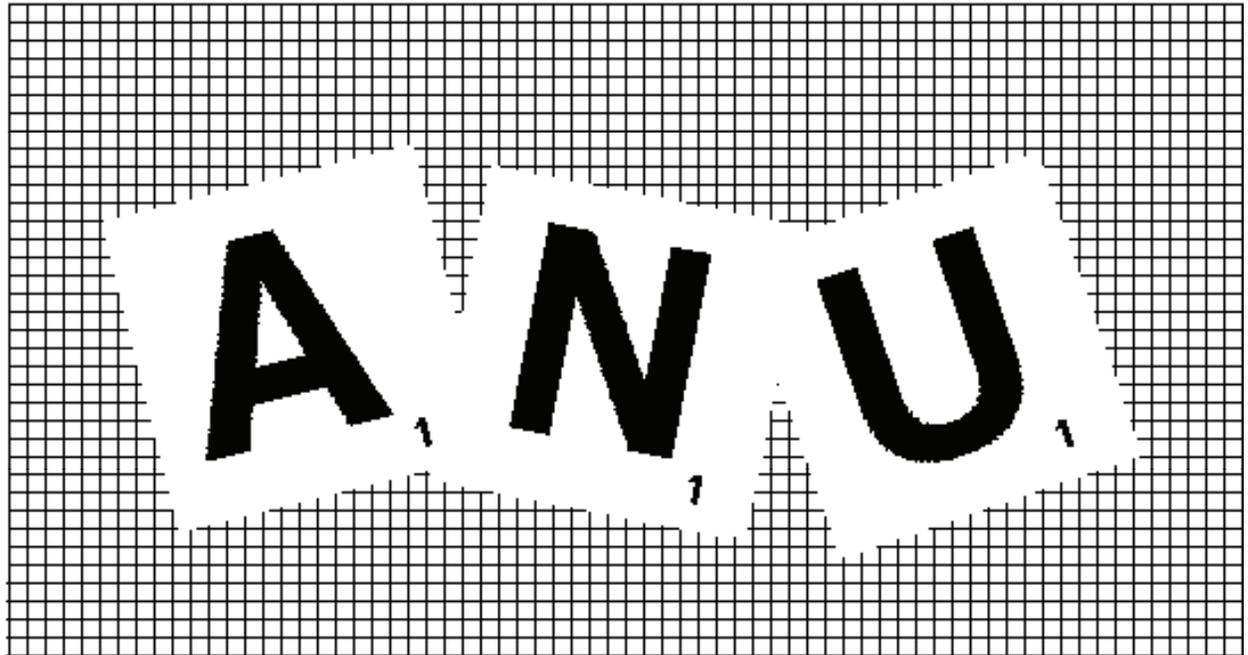
# SCRABBLE® SOCIETY

L.P.O Box 70  
A.N.U A.C.T 0200  
Canberra AUSTRALIA  
T 6270 6949/50 F 6270 6947

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IDES OF MARCH 15 March 2019

Ynon Kreiz and each Director  
Executive Chairman of the Board  
Chief Executive Officer Mattel  
333 Continental Boulevard  
El Segundo, CA 90245 USA

Dear Ynon and Directors

In O-Week 1992 I founded the Australian National University Scrabble® Society. On 16th July Ian Anderson the General Manager of Murfett Regency the Maker of Scrabble® contracted me to develop complementary Scrabble® products in exchange for royalties worldwide. In 1994 Mattel bought Murfett Regency. On 3/9/94 I sent Ian Anderson General Manager of J W Spear & Son Australia and New Zealand a Scrabble® tie pin with a letter suggesting Scrabble® cufflinks, studs, earrings and fashion accessories. If you Google Scrabble® cufflinks and Scrabble® earrings you will see they are still in the marketplace. If you go to austlii.edu.au you find Australasian Legal Information Institute and type in Australian National University Scrabble Society you find cases in High Court that led to Australian Crime Commission Act 2002. If you type Alexander Marcel Andre Sebastian Bayliss and Alexander Marcel Andre Sebastian Barker Bailiff you find Alexander Marcel Andre Sebastian Barker Bailiff [2011] ACTSC 214 United Nations WHO IDH case.

In Old English and Old French the f is as to an s such as in Bayliss and Bailiff. Bailiff went from Normandy to England in 1066. A Barker is a crier of the court and a Bailiff is a minor court official with police authority. I have not been paid a cent for the complementary products marketed worldwide now Mattel have to pay. Uncle Wilfrid Barker said, "It is very significant to influence a company world wide and you are going to make so much money." Uncle Wilfrid Barker was CEO of Sports Marketing and Management won the bid to hold 2000 Olympics in Sydney and raised \$2,600,000,000 in Sports Marketing and Management Rights for the Sydney Olympics. Uncle Wilfrid Barker was Rupert Murdoch's right hand man in 80's and revolutionized Olympic television coverage. Uncle "Wilfrid Barker was Australia's most significant television player ever." Philip Ruthven CEO IBISWorld who worked for Grandpa Mervyn Barker said, "It is good to know who is the mind behind the Scrabble® products." Philip Ruthven is an adviser to the Top 2000 Companies in Australia.

Sir Anthony Mason is "the most distinguished judge in the history of Australia" and said, "Alexander is a brilliant law student." If Mattel send me a \$multi-million cheque X 25 years of royalties for complementary products I am the mind behind than I will not have to consider what steps I will have to take to resolve this. If Mattel direct J W Spear & Son to see United Nations Information Centre site and make a website with every University in the English speaking world on a world map than Scrabble® Societies will flourish to compete. My last United Nations World Health Organisation precedent can be used anywhere in the world by millions. Every University in the English speaking world can establish Scrabble® Societies to teach people world life. My top score for 1 word is 267

points for SWEATING placed from triple word score to triple word score. I got Pope's Apology to China in 30 days and I got Pope's Apology to Oceania in 60 days for Papal Bull 1455. United Nations passed Declaration for Rights of 370 Million Indigenous Peoples 2007. Hundreds of millions.

Sir Anthony Mason said, "I appreciate you protecting me." Mattel and J W Spear & Son should appreciate me sending an A1 tie pin to Australia & New Zealand General Manager suggesting Scrabble® Cufflinks and Earrings and fashion accessories. I bought Scrabble® braces – but they are no longer in the market place. Effectively placing Scrabble® in every shirt shop and every dress shop in the world. Realistically, you are in the position to calculate what value annually my idea is worth. Once J W Spear make UNIC like website with every educational institutional in the English speaking world on it with Scrabble® Society the sales will be meteoric. Scrabble® Society competitions in every institution is compulsory and competitions fine. And you can consider it appropriate to establish contract with me to ensure I am rewarded annually with royalties for the rest of my life. I might also be put on board suggesting accounts be opened with each school.

I expect cheque to be sent within 30 days to me at 2/9 Brittain Crescent Hillsdale NSW 2036 AUSTRALIA.

Yours sincerely

Alexander Bailiff SaintAlexanderofCanberra.com [SaintAlexanderofCanberra@gmail.com](mailto:SaintAlexanderofCanberra@gmail.com) 614 3777 3777

## **"The Australian Constitutional Act (UK) creating an international scandal."**

Vol H of R 69 pages 427-491 reveal; presenting petitions, Kangaroos 4, Social Services 3 and Repatriation 1; questions on immigration, television, Gazelle Peninsula - evictions, industry stoppage 3, Empress of Australia, aboriginal child, wool industry, health, Vietnam, water, trade practices, defence conditions of service, shipping; discussion, Vietnam and Indo-China, tariff proposals, tariff board; reading, Book Bounty Bill 1970, Broadcasting and Television Bill 1970 before a House of Representatives sitting suspended at 5:54pm Tuesday 25th August 1970.

Nine minutes later, in 7 @ 132 Grattan Street Carlton, I induced labour eight weeks premature.

At 1 hour and 57 minutes, Gough Whitlam, Member for Werriwa, Leader of the Opposition, is speaking, violating the convention or threatening to block supply of the Appropriation Bill.

At 3 hours 31 minutes, Frank Crean, Member for Melbourne Ports or where I was conceived.

At 1 year 347 days, Anthony Frank Mason was just appointed to the High Court of Australia.

At 5 years 78 days, a Governor-General John Kerr, dismissed Prime Minister Gough Whitlam.

I Amicus Curae Alexander Marcel André Sebastian Bailiff CIA FBI KGB Ph. D. Laws (HC)(ANU) SC have "the most extraordinary, uncompromising and uncontrolled mind." I, "have special talents." "A rare exception as he is [I'm] extremely intelligent." I'm "the greatest untapped resource."

"I [John Filler 61 2 6288 5990] have an IQ of 150, so you have an IQ of at least 150." "Contrary to common belief, the world is becoming a better place. The challenge is to make it fairer." "And I just want to play Scrabble®"

and have a Monopoly<sup>®</sup> on global justice, equity and truth.”

In ANU O-Week 1992, I founded The ANU Scrabble<sup>®</sup> Society. On the 2nd of March The ANU Debating Society printed a document, defaming me and The ANU Scrabble<sup>®</sup> Society. On the 19th of March in Melville Hall, Debating Society, Vice President - Kath Cummins, Treasurer - Tim Hughes, Editor - Kirsten Edward's, Editor - Matthew Sag and others viciously pointed out the defamatory document referred to me and The A.N.U. Scrabble<sup>®</sup> Society. On the 20th of March I asked President - Simon Brettel and Editor - Matthew Sag why the Debating Society deliberately defamed me. I was told that it was a joke. I said, I want the Debating Society to treat it like a joke when I send a copy of the defamatory document and a letter to:-

1. The Chief Justice of the High Court - Sir Anthony Mason, who may think it a great joke however, he may not want to be patron of an organisation, who show a blatant disregard to the law. (Defamation Act)(Disability Discrimination Act)(Crimes Act)
  2. My mother and stepfather, Christine and Philip Bates in Sydney, both in law, who would, think it such a great joke, they would inevitably mention it to a friend who is a High Court Justice.
  3. A friend of mine, who is an adviser to the PM, who I work for, who would think it such a great joke, he would inevitably mention it to a commission colleague, who is a High Court Justice.
- I also touched on the notion of asking the makers of Scrabble<sup>®</sup> to also write a letter to the Chief Justice. I said, I would normally do what I had outlined, but I would be prepared to forget the entire matter if:-

- 1. I GOT A PUBLISHED APOLOGY.**
- 2. I GOT A WRITTEN APOLOGY AND**
- 3. THE BEHAVIOUR STOPPED IMMEDIATELY.**

The A.N.U. Debating Society, have a history of defaming people, as it counteracts the many insecurities of the executive and committee and members. The Debating Society executive and committee, knew the assistant sponsorship officer - Rachel Michelle Piercey, then 19, was vulnerable, emotionally very insecure and would do anything to just get peer group acceptance. The Debating Society, conspired to incite, urge, aid and encourage Piercey to commit an offence (s.348 s.349), in order to prevent me from pursuing the action I outlined, which would jeopardise the Chief Justice of the High Court, from being their patron. Whilst, this conspiracy was evolving, the defamation intensified. And second defamatory document surfaced, Timothy, to be published in student association newspaper. And on the 26th of May I told the President - Simon Brettel I had no choice but to take the action, I had proposed.

The A.N.U. Debating Society, assistant sponsorship officer - Rachel Michelle Piercey had delicately been and sufficiently incited and encouraged, aided and abetted to make 7 untrue representations (s.134). Within 1 hour, she made 7 untrue representations to the Committee Against Sexual Harassment, known as the C.A.S.H., in return for her peer group acceptance.

1. I looked at her.
2. I sat in her seat in the lecture theatre.
3. I sat in her seat in the lecture theatre.
4. I sat in her seat, and when she asked me to move I refused. (theatre has 400 seats).
5. I swore at her.
6. I swore at her.
7. I followed her.

When I met with Harry Geddes, from the Committee Against Sexual Harrassment (C.A.S.H.) and A.N.U. Law faculty, I explained what had been happening and what I proposed doing. Harry Geddes, told me, I was the one being harassed, and if I took the steps proposed it would cause considerable embarrassment to the A.N.U. and not to worry as he was investigating an unofficial complaint. Peter Bailey is the head of C.A.S.H., he and ANU Faculty of Law advised.

The purpose of complaints to C.A.S.H., was to impede me from pursuing the action I outlined. Richard Refshauge advised from 3rd April 92. On the 16th of July, Ian Anderson, the General Manager of Murfett Regency, the maker of Scrabble® agreed to write a letter to Sir Anthony Mason, regarding the defamation. On the 20th of July I told Simon Brettel the good news. The same night, Piercey fabricated evidence, found in her room telling her to go to the Police station. So she went and saw her friend, fellow student and lover Const Harry Thomas Hains, fortunately I was not home that night. But on 22nd July, Hains arrested me, at 8:24pm, for a false accusation of threat to kill (s.30, s.344). On the 23rd July Rachel Piercey got an Interim Restraining Order (IRO) on that basis, a friend and solicitor Gavin Lee assisted. On the 28th July Piercey gave ANU Pro - Vice Chancellor Philip Alan Selth, some fabricated evidence providing reasons why the ANU should hire a lawyer. ANU legal officer, Ann Featherstone, wrote Philip Selth a letter. Richard Refshauge (Macphillamy, Cummins and Gibson [now Deacons Graham James] and on ANU Committee with Philip Selth), got a 2nd IRO for Piercey. On the 31st July I was arrested by Constable Rebecca McNevin, for the 1st false accusation of breach of IRO, and the 2nd false breach on the 17th August. Again by Constable Hains, for the third false breach on the 22nd August, and the 4th false breach on the 8th September. I was convicted for all four breaches, despite having numerous alibis. (C.T.150992).

I was remanded from 8th September, until 16th October or 2 days after Sir Anthony Mason had dinner with the Debating Society. During sentence, on 16th October, Const Hains was cross examined about Piercey's false accusation of 21st September and attempted arrest on same night, whilst I was in Woden Valley Hospital. Hains admitted he rang the Hospital to find out what access I had to the phone, and then rang Piercey and informed her of my whereabouts and what access I had to the phone. Harry Hains admitted "it was beyond his duty" and that "he went beyond his duty because he had a special interest"(C.T. 171092, 051192).

On 28th of July '93, Justice John Gallop in the Supreme Court acquitted me of all convictions, on the basis that the way they had been conducted in the Magistrates Court entirely defeated the principles of our legal system. The

next two false accusations made by Piercey, were dismissed, by the Magistrates. I delivered over 100 subpoenas for students and Rachel Michelle Piercey made a false accusation Tjarda Strienstra threatened to kill her. Dt Const Mick Pearce, did tell Tjarda Strienstra, he believed Piercey was responsible and requested that Tjarda Strienstra not tell me. ANU Philip Selth and Richard Refshuage threaten to sue me for defamation, and have me arrested on a regular basis. I have been arrested 70+ times and charged 70+. (Still no convictions on record!) Even thrice for trespass whilst reading in the library. On the 23rd December '93, 5 lawyers for the ANU got a restraining order against unrepresented me. My 1994 General Services Fee was paid at 16:19 on 19-1-94, but I am not allowed on campus until I win my Supreme Court Appeal. I look forward to only the First Australian National University International Fellowship and Honourary Doctorate in Laws.

Prediction of 1 month, 3 days, before I was hit by a car on a footpath, only dislocated my left collarbone. I receive death threats on a regular basis. In 1995, The A.N.U. Debating Society incited and encouraged Piercey to fabricate evidence, make a false accusation, and commit perjury, I was arrested in the High Court on the 10th May 1995. I was recorded on video being bashed by police that night. I only predicted these criminal events taking place in a Writ's of Mandamus and Negligence lodged against the Patron of The A.N.U. Debating Society and Chief Justice of the High Court on the 3rd January 1995; some 149 days before the events. I even wrote a letter to the Chief Justice, again predicting these crimes on the 10th May 1995. This was faxed to the Australian Federal Police Commissioner at 4.00am on the 10th May 1995, 7 hours before Piercey told the Magistrates Court I threatened to kill her, whilst holding a gun at her head. And 6 months later Philip Selth also made a false accusation of threat to kill.

The pattern of behaviour I isolated in 1992, 1993, 1994, 1995, 1996 is an international scandal due to: 1. inciting and encouraging 2. aiding and abetting 3. fabricate evidence 4. make false accusations 5. commit perjury 6. commit perjury with intent. 7. perverting course of justice.

I was not killed in 14th August 1999 arson and Rupert Murdoch manages global media rights.

Poetically, Richard Refshauge asked me if I would like to cut a deal, I replied I don't cut deals.

Do Sir Anthony Mason, Wilf Barker, Phil Ruthven, Kate Bush, Jeff Brown or Gough Whitlam?

The Australian National University Debating Society; Australian Fellatio Police; aided by: Philip Alan Selth, Pro Vice-Chancellor, The Australian National University; Richard Refshauge, Deacons, Graham & James; Chris Chenoweth, Mallesons, Stephen & Jacques; mea culpa in Contempt of High Court Rules, by intimidating me from litigating against the Chief Justice of the High Court QC CBE KBE AC HonLLD (A.N.U.) 1980, for negligence, by affiliating and associating with and endorsing as Patron, on behalf of the High Court of Australia, an organisation whose criminal activity has provoked:- 6:116-21, 6:31

**Avot 4:22 “I want to play Scrabble® and I want a Monopoly® on global justice, equity and truth!”**

Amicus Curae Alexander Marcel André Sebastian Barker Bailiff ASIO CIA FBI FSB MI7 SC Ph.D. Laws (H.C.) (A.N.U.) 5755, THE SIN, THE SOS, THE SUN, Canberra, Australia.

A Nobel Peace Prize, BEM (British Empire Medal) UK, SC (Star of Courage) + Cross of Valour AUS, a DIC (Distinguished Intelligence Cross) US are posthumously awarded

at a state funeral for a voluntary act or acts of extraordinary heroism involving the accepting of existing dangers with conspicuous fortitude and exemplary courage. STATE R.I.P.

“You can’t expose the negligence of the Chief Justice of the High Court, you will get a bullet in your head to silence you.”

Psalm 146:3-4 “You are extremely dangerous!” Psalm 146:3-4 “Fix It!” 555

Uncle Wilfrid Barker OOM (Olympic Order of Merit), Won Sports Marketing and Management bid to hold 2000 Olympics, Sydney, Australia. 612 9428 3436 612 9418 3647

“When 2:44 Richard Refshauge Job 38:11 [R B 23 Elliot Pl Cmpbl 6249 6176] realises what he has got to lose,

I believe 4:112 Rachel Michelle Piercey will be killed and you will be framed for her murder!”

David Matthews, ACT Council of Social Services or Chief Ministers Department, Canberra, Australia. 612 6248 7566 612 6247 7171 or 612 6207 5111 0418 879 830

“I believe Rachel Michelle Piercey will be killed before you, as she will expose the others crime”

Graham Campbell, Member for Worlds Biggest Electorate, Canberra, Australia. 41 22 799 9100 0015 41 22 799 9189

“An entirely new 6:20:1 United Nations needs to be set up to deal with these cases! 10:52”

Dr Barry Jones AO 1993 (Order of Australia), Member of Parliament, Canberra, Australia. 612 6277 7700 612 6273 4100

“It sounds more like a Harrison Ford movie.” 10:94 “It sounds more like a James Bond movie.”

David Simmons, Member of Parliament, Canberra, Australia. 1 202 797 3000 0015 1 202 797 3414 a Nadine Behan 614 3503 4850

“Just piss off! 10:108-9 I hope you have got a good libel lawyer. 11:71” [Godo Hughes 0418 544 644]

Dick Bolkus sodomises 1990 ANUDS President Simon Banks, Shadow Attorney-General, Shadow Minister for Justice, Adelaide, Australia. 618 8352 7477 618 8234 1165

“Keep up the good work, Alexander!” 555 “Write to the office.” [I did first write to 1788!]

Alexander Downer, Minister Foreign Affairs/Trade, 612 6277 7500 612 6273 4112 or Paul Keating, Prime Minister, Australia. 612 9223 7282

“I am only an Archbishop!” 555 [I pray at St Johns Reid that Refshauge quickly kills me!]

Archbishop Desmond Tutu, Nobel Peace Prize 1984, HonLLD (A.N.U.) 1994, when I asked for assistance in seeking political asylum in South Africa. 1225

“You will definitely be killed if you expose this major criminal activity.” [A state funeral?]

Alex Telman, Norm Gallagher’s Barrister, Melbourne, Australia. 613 9592 8887 or 0409 742 274

“This is a major injustice!” 11:78 “You just have to sue someone!” [I Mandamus sued 1788]

Chris Murphy, Solicitor, 612 9264 2144 612 9283 1997 or [stuartlittlemore@stjames.net.au](mailto:stuartlittlemore@stjames.net.au) ABC QC Barrister, Litocracy, Sydney, Australia. 612 9335 3097 612 9335 3099

“Okay Alex, 18:110 you have proven what is going on is going on, but is it worth your life?”

Contemptuous Kerry O’Brien, Presenter, Lateline, Australian Broadcasting Corporation, Sydney, Australia. 612 6275 4640 612 6275 4555 0412 825 411

“You will be hearing from the force of nature!” [As I Negligence £7,000,000,000 sued 1788?]

Roger Grant, Intelligence, International and Corporate Relations Director, Australian Broadcasting Corporation, Sydney, Australia. 612 9334 7700 612 9334 7799

“This is very serious, if anyone had held a gun at anyone’s head they would be in jail

by now!”<sup>555</sup> “Officials, can not afford to let you be killed as you will be made a martyr.”  
Dt Supt Ed Hadzic, Dep Commander, Internal Investigations 39 06 85 2721 0015 39 06 8527 2300 or Jeff Brown AFP, Canberra, Australia 612 6256 7777 612 6256 1797

“If you keep going this way, to expose it, we will have a murder to investigate.”  
Dt Supt Reginald Bastik, Commander AFP Community Relations, Canberra, now Australian Tax Office. 612 6216 1082 612 6216 2743 0419 974 673

“I guarantee a Royal Commission when you are killed and I have the power, too.”  
City Patrol Sgt Jeffrey Brown BEM 1972 (British Empire Medal), United Nations Transitional Authority in East Timor, Dili. 62 21 52 27111 0015 62 21 52 27101

“Police <sup>19:45</sup> know how to commit criminal offences and get away with it.”  
Commander George Davidson, Commander, Internal Investigations, Australian Federal Police, Canberra, Australia. 612 6275 7611 612 6275 7240

“You are a fucking cocksucker! [**Pru Howard**] I will personally take you to Goulburn jail.  
You will never work out what is going on and even if you do you will never be able to prove it!”  
Let’s expose Harry Thomas Hains 4928 BA (ANU) (**Oh.**) and OIC Dt Sgt Russell Northcott on Christmas Island via local AFP switch or 618 9164 8444 618 9164 8440

“**Why don’t you just kill yourself!**”<sup>555</sup> “**I sincerely hope you are not killed!**”  
Simon Overland AFP Chief Operating Officer 612 6275 7701 612 6275 7240 or Prof Deane Terrell, ANU Vice-Chancellor, Canberra, Australia. 612 6125 8143 612 6125 0097

“I have no intention of getting involved in anyway in the matters you have raised for reasons which I am sure you will understand. I just do not believe that anyone will be trying to kill you for the actions you have taken.” Ph.D. Laws (ANU)  
Professor Peter Baume AO 1992 (Order of Australia), Chancellor, Australian National University, Canberra, Australia. 612 9385 2517 612 9313 6185 or 0419 997 505

“**I would not be surprised if you were killed before your next birthday!**”  
At 16, I gave Phaedra Complex Professor Philip W. Bates Barrister a broken nose & cheekbone & 2 black eyes, University of Sydney, 61 2 9351 0260 61 2 9351 0200

“Best wishes in your struggle.” [Thanks Desmond Tutu & Nelson Mandela for helping!]  
Brian Burdekin AO 5755 (Order of Australia), Special Adviser to United Nations Commissioner for Human Rights, Geneva, Switzerland. 41 2 2917 3960

“Alexander, thanks for your support for the United Nations.” [Thanks Kofi Annan!]  
Richard Butler AM 1992 (Member of the Order of Australia), Executive Chairman, The United Nations Special Commission, New York, United States of America. 1225

“**Alex, you are the second coming of the Messiah!**”<sup>555</sup> “**Someone has to do it!**”  
Canberra Psychologist/Sociologist just ask Archbishop George Carey, Lambeth Palace London SE1 7JU 44 (0)171 928 8282 44 (0)171 261 9836 or Nadine Behan 614 3503 4850

“There seems to be a fairly general misunderstanding of the situation.” Albert Einstein

*“My A1 Scrabble® score is 267 - for only 1 word.” 001  
“He knows no fear, he knows no danger, he knows nothing.”*

People named in High Court Writs, outlining their criminal activity in 92, 93, 94, 95 & 96 requesting arrest & Court Martial @ RMC Duntroon & Committal for Contempt of High Court. Bayliss, A. Writ of Mandamus against Chief Justice of High Court of Australia, 03/01/95, page XXVIII.

5.3

AUSTRALIAN NATIONAL UNIVERSITY DEBATING SOCIETY MATTHEW 3:7

Simon Brettel	1991-3 President [C.T. 24/3/00][ANUTECH own ANU]
Kath Cummins	1992 Vice-President [Australian Financial Review ABC]
Tim Hughes	1992 Treasurer [Kings Cross (Dealer) & Bum Boy]
Kirsten Edwards	1992 Editor [University Technology Sydney Anal Law]
	[Associate High Court J.Michael Kirby 1997-8 612 6270 6969 Pres Int Comm Jurists]
Matthew Sag	1992 Editor <a href="mailto:msag@depaul.edu">msag@depaul.edu</a> [Corrs Chamber Westie]
	[Associate Federal Court J.Paul Finn had sex with Sag & left Family Court J.Mary Finn]
Stella Gaha [Jones]	1992 Sponsorship Officer [Australian Democrats]
Rachel Michelle Piercey	1992 Assistant Sponsorship Officer [RMC SO TRG Plan]

5.4

AUSTRALIAN NATIONAL UNIVERSITY 'GOT MITT UNS' MATTHEW 3:7

Philip Alan Selth	ANU Pro Vice-Chancellor Admin & Plan [NSW Bar Association]
Richard Refshauge	ANU from MCG [ANU Adjunct Professor/ACT DPP/Anglicans]
Chris Chenoweth	ANU from MSJ [Christopher Chenoweth & ACT Law Society]
Malcolm Brennan	ANU from Malleson Stephen Jacques [Ask Fr Frank Brennan]
Stephen Herrick	ANU Legal Officer [Son Andrew a popular ANUDS Member]
Michael Helman	I hired from Ahern Morris Vincent [Petty fraud Helman + Co]
Timothy Chadwick	I hired from Snedden Hall Gallop [Also fired at Federal Court]

5.5

AUSTRALIAN FELLATIO POLICE 'GOT MITT UNS' MATTHEW 3:7

Harry Thomas Hains	AFP Constable 4928 ["You are a fucking cocksucker!"]
Adrian Kraft	AFP Constable 3260 ["You are a fucking cocksucker!"]
Kelvin George Thorn	AFP Constable 1639 ["You are a fucking cocksucker!"]
Robert Duncan	AFP Constable 4174 ["You are a fucking cocksucker!"]
Paul Sherring	AFP Constable 4545 ["You are a fucking cocksucker!"]
Anthony Crocker	AFP Constable 4832 ["You are a fucking cocksucker!"]
Darren Bretherton	AFP Constable 4997 ["You are a fucking cocksucker!"]

"It is absurd that a careless sinner, not convicted of sin, can intelligently and thankfully accept the gospel offer of pardon." Charles Finney

XXVIII

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Deponent

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Registrar

*"My A<sub>1</sub> Scrabble® score is 267 - for only 1 word." 001*  
*"He knows no fear, he knows no danger, he knows nothing."*

## ROYAL MILITARY COLLEGE of AUSTRALIA - DUNTROON

OED Statement in the matter of QED 1100 hours Monday 5 June 5755 C of E HQJOC raison d'etre Malheur aux details, c'est une vermine qui tue les grands ouvrages ✨  $E = mc^2$  v  $E = de^2 - c$

**NAME:** † A<sub>1</sub> Alexander Marcel André Sebastian Barker Bailiff SC **AKA:** Mr Healesville  
**IQ:** >150 **DOB:** 1803 25/8/70 1800552275 **Tell:** 61 2 6283 3533 **Facts:** 61 2 6281 3760  
**OCCUPATION:** ABCO ENTERPRISES ABCO MARKETING iacta alea est MoD 61 2 9818 4221  
**REGISTERED OFFICE:** Ernst & Young L7 51 Allara St Canberra ACT 2600 61 2 6267 3888  
**POSTAL ADDRESS:** Refshauge Rm L4 Chancelry Blg 10 LPO Box 70 ANU Canberra ACT 0200

I'm Popish Erastian Salopian † A<sub>1</sub> Alexander Marcel André Sebastian Barker Bailiff SC. On 10th January 1990 I incorporated ABCO ENTERPRISES PTY LTD ACN 008 657 869. On 7th February 1990 I registered ABCO MARKETING RN F00054960. I am a social, political, legal, economic, commercial & ideological theory exculpator dhimmi – a 4:14 S.P.L.E.C.I.T.E.D. In my ANU O-Week 1992, I founded The Australian National University Scrabble® Society as, "I am perhaps undoubtedly the most avid and loyal zealot of Scrabble®." \$ On 16th July 1992, I was contracted to develop complementary Scrabble® products for J.W. Spear & Son to license, manufacture & market worldwide, in exchange for 7% worldwide royalties.

(\$.) Buchanan, A. Letter to Ian Anderson G.M. of J.W. Spear & Son with idea of Scrabble® cufflinks, studs, earrings, fashion accessories + A<sub>1</sub> Tie Pin, 3/9/94.

At 10:22pm on Wednesday 10th May 5755, 21:18 I was arrested in High Court of Australia, for failing to pay \$352 in fines for trespass as I was caught reading The Canberra Times, The Sydney Morning Herald & The Australian in the ANU library on 23rd November 1993.

In default of paying \$352 in fines, I spent 4 days in the police station cells. A surveillance camera recorded me again being bashed by Australian Fellatio Police due to fellators' Restraining Order (5755/1422). Potiphar's wife Gen 39:14 Rachel Michelle Piercey 21:41 of John XXIII College 61 2 6279 4999 is foris lex & utlagatum as she has swallowed Harry Hains semen.

Déjà vu - Mark 9:24 Rachel Michelle Piercey 21:47 faux pas (5755/1422) writing "Stated that he would 'come over' and 'teach (me) a lesson' ... that there was a 'gun pointed at (my) head'. And that he would kill me if he 'didn't get his way'." And "Repeatedly telephoned in the early hours of the morning, made threats, and followed me at university." Check!

ANU Debating Society & Law Society 23:73 Richard Refshauge, Chris Erskine, Graham Blank, Simon Banks, Simon Brettel, Gavin Lee, Kath Cummins, Tim Hughes, Kirsten UTS Edwards, Matthew Sag, Anita Smith, Stella Gaha, Mark Nolan, Daniel Mulino, Fiona Toll and "special interest"\* Harry Hains; incited & encouraged, aided & abetted, Rachel Michelle Piercey to Zin, fabricate evidence, make false accusations, commit perjury, commit perjury with the intent to procure a conviction & pervert the course of justice in 92, 93, 94, 95 & 96 for a peer group, friends, coprophilia, cunnilingus after fellatio & piss of Harry Hains & Adrian Craft & Stephen MSJ Byron is Sodomised by guest Malcolm Turnbull. 61 2 6275 2222/44.

\*161092 Record of Harry Hains to Chief Magistrate Ron Cahill, "It was beyond my duty." "Because I have a special interest." Expression "She even swallows."

Rachel Michelle Piercey faux pas (5755/1422) before Magistrate to be in Contempt of a Moron & High Court to stop me attending ANU Debating Society & Law Society Cock Tale Party at Great Hall of High Court of Australia at 7:00pm on Wednesday 10th of May 5755 and ensure casus belli & foederis after I am shot in my XC Volvo YCS 43H. **A<sub>1</sub> Checkmate!**

*"My A<sub>1</sub> Scrabble® score is 267 - for only 1 word." 001  
"He knows no fear, he knows no danger, he knows nothing."*

Malheur aux details, c'est une vermine qui tue les grands ouvrages A E = mc<sup>2</sup> v E = de<sup>2</sup> - c A Cock Tale Party was attended by ANU Debating Society Patron and Chief Justice of High Court of Australia, to 21st April 5755, Sir A<sub>1</sub> Anthony Frank Mason AC KBE; Chief Justice of High Court of Australia, from 21st April 5755, Sir (Francis) Gerrard Brennan AC KBE; Commonwealth of Australia Attorney-General Michael Hugh Lavarch (ALP); ANU Vice - Chancellor, Professor Richard Deane Terrell and Acting Deputy Vice-Chancellor Professor Dennis Charles Pearce hired Richard Refshauge for Rachel Michelle Piercey, quid pro quo.

Rachel Michelle Piercey was in Contempt of High Court Rules, as I had libelled her and her peers 24:19 in Writ of Mandamus and Writ of Negligence, I lodged against Patron of ANU Debating Society on 3rd January 5755. When I met Sir A<sub>1</sub> Anthony Frank Mason AC KBE, at 7:10pm, I showed him suit he purchased 2 days after his appointment to High Court on Monday 7th August 1972, that I wear as I protect Chief Justice of High Court, Governor - General, President International Commission Jurists and Pope's Apology to Oceania 9:26. At 7:34pm I gave Sir A<sub>1</sub> Anthony Frank Mason AC KBE my Writ of Mandamus and my Writ of Negligence I covertly lodged in High Court of Australia on Tuesday 3rd January 5755.

In these Writs, I also foretold of criminal activity being committed in 5755 by the ANU Debating Society executive and committee members, named above, as they did in 92, 93, 94, 95 & 96. In a judicious letter to Sir A<sub>1</sub> [Anthony.Mason@anu.edu](mailto:Anthony.Mason@anu.edu) completed at 3:38am Wednesday 10th May 5755 I foretold of inciting and encouraging criminal activity to ensure police aid and abet prohibiting me from getting to High Court at 7.00pm 10th May 5755. I faxed my letter to a mate ANU Council Member Philip Ruddock at 3:38:59am; Attorney-General Michael Lavarch at 4:01:08am; Australian Fellatio Police:- Commissioner Michael Palmer at 4:04:03am; Crime Squad Commander Ric Ninness at 4:06:58am; a mate Internal Investigations Deputy Commander Edward Hadzic at 4:10:53am; Commonwealth Ombudsman Philippa Smith at 4:13:47am; And foe ANU Debating Society at 12:32:49pm. The crimes were committed 149 days after I lodged Writs and 7 hours after I faxed letter.

I can say 24:24 in relation to the alleged grounds outlined in Application for Restraining Order (95/1422), I never ejaculated or erected penis in Rachel Michelle Piercey's mouth; said that I would kill her if I did not get my way; telephoned or threatened her anywhere; sworn at her; followed her while at ANU or anywhere else. Army Chief will Job 16:12 me.

The Republic Plato 376 BC said, "And so if anyone else is found in our state telling lies, he will be punished for introducing a practice likely to capsize and wreck the ship of state." These facts are Socratic (d. 399 BC), serendipitous (1754), polemic and pleonastic. I do know, when tendered as evidence, I shall be liable to prosecution for perjury if I have DX wilfully stated any fact which I do know to be false and/or do not believe to be true. Your carte blanche is as a crier of the court and as a minor court official with police authority.

† A<sub>1</sub> Amicus Curiae Alexander Marcel Andrè Sebastian Barker Bailiff ASIO CIA FBI FSB MI7 SC Teleo Secretary General THE SOCIETIES of INTERPOL, of SCRABBLE® and of UNITED NATIONS

✠ Ban Ki Moon 25:1 Psalm XC IV Secretary General UNITED NATIONS 272 1761 2531/4193 Matthew 5:45 taken by Dt Supt Tim Fisher 884 DNA INTERPOL 1200 hours 5th June 5755.

✠ Raymond Kendall 25:1 Psalm XC IV Secretary General INTERPOL 33 4 7244 7000/7163

Con Job 3:14 Commissioner Penis in his Palms EXECUTIVE INTERPOL 612 6275 7611/7240

O' "ORDER IS HEAVEN'S FIRST LAW" ALEXANDER POPE 'IMPLIED RIGHT OF POLITICAL SPEECH' Penis Palmer AUSTRALIAN FELLATIO POLICE FRENCH LETTER

*"My A<sub>1</sub> Scrabble® score is 267 - for only 1 word." 001  
"He knows no fear, he knows no danger, he knows nothing."*

Australian Capital Territory Restraining Order 93/494  
Philip Selth v Alexander Buchanan Restraining Order  
Exhibit No 17 Letter dated 26.11.93 by Christine Bayliss  
Sir Anthony Mason Chambers  
14/179 Elizabeth Street  
Sydney NSW 2000  
Tel: 02 9373 7433  
Fax: 02 9373 7422  
DX: 343  
EM: philip\_bates@fcl.fl.asn.au

26 November 1993

The Chancellor, Pro-Vice-Chancellor and Members of the ANU Council

Dear Sirs and Mesdames,

The ANU either directly or through legal assistance to other persons has involved my son, Alex Bayliss (Buchanan), in a chain of litigation over the past eighteen months that has incurred over forty Court appearances and periods where my son was needlessly held in custody for a number of weeks at a time. In every single case the courts have found the charges unsustainable. This is all the more significant when one considers that my son has, on most occasions, appeared as a litigant in person whereas on all occasions the other parties, including the ANU itself, have had legal representation.

The ANU has continually either provided legal assistance to facilitate such litigation on behalf of other parties, or it has more directly been involved to the extent of itself being a party to such litigation on several occasions.

In all cases the litigation has been a complete waste of time for every instance has involved unsustainable allegations or the request for orders which the Court has no power to grant.

It would seem significant that my husband has lost fewer cases in fourteen years of bar practice than the University seem to have lost in an eighteen-month period. Thus, it is not unreasonable to conclude that the University has been involved in what can be described as nothing short of frivolous or vexatious litigation. One might further wonder whether Pro-Vice Chancellor Selth made a wise decision in rejecting a possible career at the bar for an administrative university position?

I am further concerned that this chain of unsuccessful has had a negative effect on my son's outlook. Where he once saw the law as existing for the attainment of legal remedies in cases where problems could not be resolved by other measures, he now sees it as something that powerful financial bodies, such as the ANU, use it for the purposes of mere harassment. This is understandable given the chain of events over the last eighteen months, the numerous occasions on which Alex has been arrested, the times he has been held in custody without bail, his many court

appearances and the fact that, despite what should have been quality legal advice and representation by their legal flotilla, the ANU, and the parties it has legally assisted, have on all occasions lost their cases to a litigant in person.

Given this gross misuse of the law, it would seem to me that the ANU must minimally accept a large portion of the moral responsibility for Alex's attitudes. It is surely not the way to instill appropriate behaviour?

It has now got to the point that one must question which behaviour is appropriate - that originally, but incorrectly according to the courts, supposed to have involved my son, or the repeated, disruptive, and inappropriate use of litigation by the ANU? For example I believe that following instructions deriving from the Pro-Vice-Chancellor, University security called the police and had Alex arrested twice this week when he was reading in the University library. On both occasions he was unlawfully arrested and detained for forty five minutes and then released. This can hardly be regarded as an appropriate use of the law.

And even if the ANU successfully litigated in the future it would not be able to erase a record of eighteen months of seemingly vexatious litigation and a misuse of University funds.

One must question what effect a seemingly continued harassment has on a boy of Alex's age? If the ANU's own frivolous misuse of legal remedies has created an attitude problem in Alex then the ANU must accept moral responsibility. One cannot expect Alex to remain indifferent to the fact that his studies have been seriously compromised by unsuccessful litigation on the part of the University.

These problems cannot be resolved by further recourse to legal remedies. Furthermore, such attempts seem unwarranted given the trivial nature of the latest alleged offences. I have noted that there has never been an allegation that Alex has caused bodily harm to any persons or damage to property.

Alex deserves an opportunity to proceed with his studies without spending his life preparing to defend himself in the courts. But for the past eighteen months he has almost continually been preparing his defences in a lot of futile litigation. This, and several periods of unjustified incarceration (once lasting five weeks!), have prevented him from making any progress with his studies. This would seem to indicate some problem with what should be a university's primary role: education.

The sheer failure of legal remedies, the unjust disruption to Alex's life and his studies, the waste of the financial resources of the university all indicate that another more constructive approach is warranted so that Alex can get on with his life and the University can concentrate on his primary role as an education institution.

Negotiations between the Pro-Vice-Chancellor and Alex have failed because it would appear that there is some personality conflict between them. This is not to be interpreted as any negative reflection on the Pro-Vice-Chancellor; these things happen. But I am concerned that the ANU has not endeavoured to sit down in a non-threatening situation to explain its concern to Alex, and negotiate resolutions.

There was an initial attempt to at counselling (and my husband and I visited the University to facilitate that) but

this was based on a premise of supposed fault that the courts later found unsustainable. Hence it is not surprising that counselling consisted of Alex protesting his innocence, a position which the courts later upheld.

If someone was made available genuinely to assist Alex with difficulties he was facing, then any concerns that the University might have, could surely be more simply and effectively resolved. For example why didn't the University send an independent Counsellor to give Alex support whilst he was spending several weeks in remand?

Surely this was just as stressful for a student as having a drug problem, and just one example where the University offers support without regard to the question of blame.

It also appears that confidential discussions between Alex and a disability adviser were improperly disclosed by that officer by letter to the Pro-Vice-Chancellor dated 15/6/92 to the University administration, and the University is now resisting attempts by Alex to see details set out there.

It is now clear the Supreme Court's decision to acquit Alex of all charges that the University had wrongly prejudged Alex's supposed guilt, and has most inequitably given legal and financial support to one student, Rachel Michelle Piercey, in preference to another, namely Alex.

This inequity was rightly perceived by Alex to be a further injustice which compounded and inflamed the original injustice of allegations which he always protested were false. And his claim has now been upheld. The University should not have prejudged the Court's decision but should have adopted a position of equity and impartiality by either giving neither student legal advice or otherwise legally assisting both students and allowing the Court to establish the truth. In my opinion the university should apologise to Alex for the gross inequity in its erroneous pre-judgment of the outcome. However it would be self evident that a student wrongly accused would feel a heightened sense of grievance, and legitimately so.

I urge the ANU to negotiate a resolution to these problems in an appropriately delicate manner rather than with heavy-handed legal bludgeoning which will inevitably expose the ANU to ridicule when these scandalous matters become more widely known. It is also vital that the ANU issues appropriate directives to staff and makes suitable public statements which will come to the attention of the student body and others to overcome the prejudice which the ANU's action have caused Alex.

Because of his involvement in this issue, a copy of this letter has been sent to Harry Geddes at the ANU Law School.

Yours faithfully,

CHRISTINE BAYLISS



## Conflict and Crisis

### Contact Us:

**Michele Piercey**  
Practice Director  
202.775.8946  
mpiercey@chemonics.com

**Alyssa Amparan**  
Practice Manager  
202.955.7412  
aamparan@chemonics.com

**Aminata Seck**  
Practice Associate  
202.465.3693  
aseck@chemonics.com

### Using Arts, Music, and Sports to Build Peace

Chemonics has used art, music, and sporting events to foster dialogue and increase empathy in fragile communities that have been affected by violence. The first, most difficult step in conflict resolution is often getting people to talk and listen to each other. A sporting event can be a great place to bring groups together and to encourage conversations between local communities through informal, enjoyable experiences that highlight shared interests and values.

Similarly, members of vulnerable and traumatized groups often find telling their stories through art, music, dance, and filmmaking a valuable outlet that promotes healing after conflict. These activities can also help viewers and audiences in the community to gain greater empathy for their experiences. They can provoke emotional reactions that often catalyze understanding and willingness to resolve differences. Below we describe two examples of our work in artistic outreach to build peace and understanding in conflict-affected communities.

### Program Highlights

#### Côte d'Ivoire Transition Initiative 2



Facilitating peace and reconciliation was a daunting task for Ivorian authorities and civil society after the violent 2010 elections. The USAID Office of Transition Initiatives (OTI) Côte d'Ivoire Transition Initiative 2, implemented by Chemonics, addressed this challenge in part by drawing upon the power of music and art in Ivorian youth culture to disseminate messages of nonviolence.

In partnership with a local organization, the project engaged young people to work with nationally known singers to choreograph a dance to a song and perform it for the community. The song conveys messages of public spirit, citizenship, and tolerance, including lyrics such as, "I'm young, I'm a citizen/I'm giving my voice for my country, my future."

The project also supported public concerts to promote tolerance and coexistence through song and dance. Ivorians speak nearly 80 languages, and the project used many local dialects to reach vulnerable populations and youth. Another activity helped students create community murals illustrating the importance of peaceful participation in the upcoming election. A monitor at every mural site explained the project's objectives to passersby and invited them to sign a pledge to participate peacefully in the election. The murals promoted peace and public discussion among a population with low literacy rates, helping to make them more resistant to political manipulation.

**Chemonics International Inc.**  
1717 H Street NW  
Washington, D.C. 20006  
202.955.3300  
www.chemonics.com



KathCummins@gmail.com



KATH CUMMINS WROTE 5 DOCUMENTS BELOW

DC 20036 US, Kath Cummins @KathCummins Director of Public Affairs, National Center for Victims of Crime, National Center for Victims of Crime 2000 M Street NW, Phone: (202) 467-8700, Suite 480 Washington,

1. 93/1477 Detective Constable Danny Kinderan 3735 Detective Constable Michael Pearce 4766 provided me these defamatory documents.

“CORRUPTION.

The Australian Federal Police, the ACT Director of Public Prosecutions, the Canberra Times, all involved in the conspiracy to pervert the course of justice with the ANU Debating Society and it’s puppet, Rachel M. Piercey , a known liar out to grab power for herself in the ANU Debating Society. I have been wrongfully arrested, prosecuted and convicted by a judicial system - judicial system entwined in a web of sexual politics and deceit. The complainant, Miss Piercey, has been sexually involved with both the arresting police officer in this matter and the prosecutor, Ken Archer. Additionally the Canberra Times accounted the court case was exaggerated and distorted by the naive young court reporter, Michael BACHELARD, who was seduced over lunch at the Calypso Cafe with Miss Piercey, who aimed to make her dubious if temporary victory, though it may seem more than it was, in a very public way. This utterly unjust treatment of me, an ambitious and innocent young man, is completely unfounded and will be overturned in the Supreme Court.”

DC 20036 US, Kath Cummins @KathCummins Director of Public Affairs, National Center for Victims of Crime, National Center for Victims of Crime 2000 M Street NW, Phone: (202) 467-8700, Suite 480 Washington,

2. 93/1477 Detective Constable Danny Kinderan 3735 Dective Constable Michael Pearce 4766 provided me these defamatory documents.

“Rachel Michelle Piercey is a compulsive liar and a scapegoat of the ANU Debating Society. The society organised a campaign of pure propaganda against me, Alexander Bayliss, an innocent person and one of many of the societies victim’s. A Constable of the Australian Federal Police, Harry Thomas HAINES, has been aiding in the conspiracy against me. He is sexually involved with the complainant. I have independant witness’es to verify that I was not near Rachel Michelle PIERCEY when the alleged offences were committed, but the Chief Magistrate, his honour Ron CAHILL, a portly distinguished gentleman, disregarded this because he is currently mounting a campaign to be appointed to the High Court and wishes to ingratiate himself to the Society patron, the Chief Justice Sir Anthony MASON. This is a gross miscarriage of justice and it is critically vital that my appeal be heard in the Supreme Court and this conviction be overturned. You can help me in my quest:

1. Boycott the activities of the ANU Debating Society. Do not attend its functions or become a member of this cruel elitist organisation.
2. Write a letter of protest to the Attorney-General of the ACT insisting the convictions be overturned and Miss Piercey be escorted to the Canberra City limits never allowed to return.
3. Write Miss Piercey, care of John 23rd College, ANU and implore her to do the right by victims of the ANU Debating Society and recant the stories she told the Federal Police and her lover, Harry Haines.”

DC 20036 US, Kath Cummins @KathCummins Director of Public Affairs, National Center for Victims of Crime, National Center for Victims of Crime 2000 M Street NW, Phone: (202) 467-8700, Suite 480 Washington,

3. 93/1477 Detective Constable Danny Kinderan 3735 Dective Constable Michael Pearce 4766 provided me these defamatory documents.

“The ANU Debating Society is engaging in a smear campaign against me, an ordinary Uni student, Alexander Bayliss, in retaliation for a threat I made to sue the society for puerile propaganda written about me in the society newsletter. The society is conspiring with all levels of police and the judiciary to falsely accuse me of harassing .c.Rachel Michelle Piercey;, known to be a openly promiscious and a compulsive liar. Here are the facts.

\*Completely unfounded charges have been brought against me by Rachel Piercey, a scapegoat of the ANU Debating Society. The police constable that arrested me, Harold Thomas Hains, is sexually involved with the complainant.

\*The Director of Public Prosecutions went ahead with the case against me, with no independant corroboration of Ms Piercey’s story, because Ms Piercey had also been involved with the prosecutor, Ken Archer.

\*Reports in the Canberra Times were grossly distorted and biased, because the complainant made sexual advances towards the court reporter, Michael Bachelard, after the first trial.

\*Finally, the Chief Magistrate, Mr Ron CAHILL, convicted me on Ms Pierceys evidence alone, even though it was fraught with inconsistencies and lies, because he wishes to ingratiate himself to the society patron, the Chief Justice Sir Anthony Mason.

This is a gross miscarriage of justice. You can support me in my fight against this society of injustice. Do not attend functions hosted by this cowardly, deceitful organisation. Write a letter to Ms Piercey (c/John XXIII, ANU) or phone her on 279 4940, imploring her to recant her lies, and back me up when I challenge the Conspiracy in the ACT Supreme Court. Help me thwart this organisation of liars and perjurers.”

DC 20036 US, Kath Cummins @KathCummins Director of Public Affairs, National Center for Victims of Crime, National Center for Victims of Crime 2000 M Street NW, Phone: (202) 467-8700, Suite 480 Washington,

4. 93/1477 Detective Constable Danny Kinderan 3735 Dective Constable Michael Pearce 4766 provided me these defamatory documents.

“There are many forces at work in the ACT judicial system, but who really makes the decisions ? It seems the most important factor in judicial decision making is sex. The Chief Magistrate, Ron Cahill, was plied with sexual favours by a dishonest complainant, Rachel PIERCEY, to convict me in his capacity as a coroner, to implicate me in the murder - in the murder in 1989 of the Assistant Police Commissioner. When will this persecution of me end ? When will the lies of Miss Pearcey be exposed for what they are and her sexual manipulation of the ACT Magistrates Court be publicly condemned ? Support me in my quest to have the Supreme Court overturn this tyranny of injustice. Contact Miss Piercey, care of John the 23rd College, phone 279 4940 and Mr Cahill, care of the ACT Magistrates Court, and implore then to come forward and finally tell the truth.”

DC 20036 US, Kath Cummins @KathCummins Director of Public Affairs, National Center for Victims of Crime, National Center for Victims of Crime 2000 M Street NW, Phone: (202) 467-8700, Suite 480 Washington,

5. 93/1477 Detective Constable Danny Kinderan 3735 Dective Constable Michael Pearce 4766 provided me these defamatory documents.

“Why does the Criminal Justice System continue to ignore the tyranny that is the ANU Debating Society. In order to protect my own safety, and to prevent further assault by the legal authorities, I can no longer tell you my name. I have found myself to be persecuted by the ANUDS and it’s allies when they prevented me from exercising my constitutional right to speak to the premier of Victoria.. The ANUDS elisted, the aid, of the, Victorian Dogs squad, licencing police and paramilitary death squads to have me forcibly evicted from the premises of the Victorian Parliament.

The A.N.U. Debating Society looks to most participants at “Worlds”. To be an ordinary Debating Society. I and the International Scrabble Confederation know that it is not. Here are the facts and the decide for yourself.

The facts are that the present President of the ANU Debating Society (NB. He is in ANU B) is not a regular guy. Look at him closely He is a dangerous dissociated personality that seeks. to destroy everything he touches. He is a member of the University Army Cadets, who were recruited for special Forces during the Vietnam War. We know that those Forces were given Agent Orange and other drugs designed to. Create superhuman facilities. in the insane desire to end the war. Files released by me under the Freedom of Information Act (s.234) show that ANU President (Timothy Charles Hughes) was involved in these experiments, which have given him paranormal abilities. In his regiment, he was known as “The Fly”, because he can transmute himself at will. The Chief Justice of the High Court of Australia would not want to be a Patron of the ANUDS if he knew this. That is why some people will go to any lengths to stop this information now. Listen and decide for yourself.

Another former President of the Australian National University Debating Society is Richard. William Douglas. (Also in ANU B) He has been the secret Mastermind behind the great Whitewash. The desire to imprison, aid, abet, and destroy has always been with him. He is a paranoiac delusionary with aspirations to national and Global leadership. He has been building relationships in the Debating World, with Foreign Governments and with the International Intelligence communities. He is know to have long associations with monied Arab Oil interests. Nostradamus fortold (Quatrain 426) that “one. would come to bend the law to his palm in the Greta South Land He will be from the Caledonians, and will issue from a lake where no lake was before. Where all the world is come to the celestial city where all seasons stop, there will the Lawbreaker seek the crown, and crush the Eagle”

Nostradamus warns us of the danger to all the world of “the one who will come from the Calendonians” (Scottish Name + Douglas) form a “city where there was no lake before” (Ie. Canberra). You can refuse to believe me, but when the catastophy occurs, it will be too late. Act now.

Whilst I cannot tell you my name for legal reasons (Defamation Act (Vic)) I make you a promise. Before this tournament is over . Someone will have to defend the Eagle. This means that someone will have to stop the law breakers. The President of now of the past the past will be stopped. A single bullet can stop the curse. Take your chance now. Someone will. Someone will aid, abet, attack, destroy, shoot, mutilate, lay waste to and, triangulate.

We have to fight back. Bullet or Icepick now, or an enslaved future. No-one believed “Sarah Connors”, did they.”

DC 20036 US, Kath Cummins @KathCummins Director of Public Affairs, National Center for Victims of Crime, National Center for Victims of Crime 2000 M Street NW, Phone: (202) 467-8700, Suite 480  
Washington,

**XIV WORLD UNIVERSITIES DEBATING CHAMPIONSHIP UNIVERSITY OF MELBOURNE**

## JANUARY 1994

### XIV WORLD UNIVERSITIES DEBATING CHAMPIONSHIP UNIVERSITY OF MELBOURNE JANUARY 1994

The XIV WORLD UNIVERSITIES DEBATING CHAMPIONSHIP, Chief Adjudicator, MICHAEL GRONOW [Owen Dixon 205 William Street 03 9608 7115 DX 96 Melbourne 03 9601 6447] was provoked to say:- “The AUSTRALIAN NATIONAL UNIVERSITY DEBATING SOCIETY have caused a security scare by saying someone threatened to kill them. As we have since found out it was only a practical joke and they delayed the WORLD UNIVERSITIES DEBATING CHAMPIONSHIPS for half an hour, if they do it again we will personally threaten to kill them.”

This was witnessed by:- WUDC Chairman WILLIAM IRVING 242 Exhibition Street Melbourne 03 9634 2160 03 9600 1271; WUDC Publication Director DELIA BURRAGE 21/385 Bourke Street 03 9670 6123 DX 428 Melbourne 03 9670 4475; Chairman Worlds Council TIMOTHY McEVOY 101 Collins Street 03 9288 1234 DX 240 Melbourne 03 9288 1567; WUDC Social Director JULIA PRYOR 28/525 Collins Street 03 9643 4000 DX 101 Melbourne 03 9643 5999; RICHARD DOUGLAS 17/221 St George Tce 08 9366 8000 DX 169 Perth 08 9366 6111; TONYA RISZKO 13 Farrer Braddon 02 6248 6426/7494;

KATH CUMMINS, [22 Cobokn Avenue Lane Cove 02 9427 5915 02 9265 3000 AFR 02 6240 4040] so far, wrote all ANUDS fabricated defamatory documents, providing one at XIV WORLD UNIVERSITIES DEBATING CHAMPIONSHIP, UNIVERSITY OF MELBOURNE, JANUARY 1994, before making another “false accusation” of “threat to kill” as she could not “incite and encourage” and “aid and abet” RACHEL MICHELLE PIERCEY [11/71 Tinderry Circuit Palmerston] to do so as in 1992, 1993 as RACHEL MICHELLE PIERCEY was not in Melbourne. ANU “B”, KATH CUMMINS, with JANINA JANKOWSKI, [11 Tattersall Crescent Florey 02 6259 2547] “incited and encouraged” and “aided and abeted” RACHEL MICHELLE PIERCEY to make another “false accusation” of “threat to kill”, in 1995, and then KATE KELLY [9 & 14 Beltana Road Piallago 02 6247 5860] to make a “false accusation” of “threat to kill”, in 1996, to AUSTRALIAN FEDERAL POLICE Dt Sgt acting Supt Tim Fisher (Solomon Island).

This is witnessed by:- MARK NOLAN 8 George Gilfillan Avenue Kempsey 02 6562 5388; TIM HUGHES 3/125 Old South Head Road Bondi Junction 02 9389 2084 / 02 9361 6637; MATTHEW SAG 55 Clarina Street Chapel Hill 07 9378 0098; Parents JUDY and ROSS son WILL DE VERE 8 Castle Place Melba 02 6258 2486

SIMON GERARD BRETTELL [10/8 Britten-Jones Drive Holt ACT 2615 612 6254 3646] ANUTECH North Road cnr Barry Drive Acton 612 6249 5660 612 6249 5648 provided EVIDENCE confirming this in a letter, before 72 fraud convictions;

“Monday, 24 January, 1994

Mr William Irving,

Chairman — Championship Committee 14th World Universities Debating Championship...

I would also like to properly apologise for the incident that occurred to interfere with one of the debating rounds, involving our A.N.U. “B” team.

This was not called for and I hope that the ramifications for you have not been serious...

Best wishes for 1994. I look forward to seeing you soon.

Yours sincerely,

**SIMON BRETTELL**

Immediate Past President A.N.U. Debating Society”

Annette Margaret & Orme Frederick & Jeremy Orme & Ashley Jonathon BRETTELL 4 Trumper Street Holt  
ACT 2615;

© Amicus Curae Alexander Marcel André Sebastian Bailiff Ph.D Laws (HC)(ANU) The ANU Scrabble® Society

DC 20036 US, Kath Cummins @KathCummins Director of Public Affairs, National Center for Victims  
of Crime, National Center for Victims of Crime 2000 M Street NW, Phone: (202) 467-8700, Suite 480  
Washington,

Tell 1 212 963 3018 Facts 1 212 963 3922 Mob 1 917 913 0239 LPO Box 70 Australia National University  
Canberra ACT 0200 AUSTRALIA

JANINA JANKOWSKI

KATH CUMMINS

KATE KELLY

RACHEL MICHELLE PIERCEY

secret lover

SIMON GERARD BRETTELL

JANINA JANKOWSKI

KATH CUMMINS

KATE KELLY

RACHEL MICHELLE PIERCEY

secret lover

SIMON GERARD BRETTELL

JANINA JANKOWSKI	KATH CUMMINS	KATE KELLY
RACHEL MICHELLE PIERCEY	secret lover	SIMON GERARD BRETTELL
JANINA JANKOWSKI	KATH CUMMINS	KATE KELLY
RACHEL MICHELLE PIERCEY	secret lover	SIMON GERARD BRETTELL
JANINA JANKOWSKI	KATH CUMMINS	KATE KELLY
RACHEL MICHELLE PIERCEY	secret lover	SIMON GERARD BRETTELL
JANINA JANKOWSKI	KATH CUMMINS	KATE KELLY
RACHEL MICHELLE PIERCEY	secret lover	SIMON GERARD BRETTELL
JANINA JANKOWSKI	KATH CUMMINS	KATE KELLY
RACHEL MICHELLE PIERCEY	secret lover	SIMON GERARD BRETTELL

DC 20036 US, Kath Cummins @KathCummins Director of Public Affairs, National Center for Victims of Crime, National Center for Victims of Crime 2000 M Street NW, Phone: (202) 467-8700, Suite 480 Washington,

AUSTRALIAN FEDERAL POLICE CC92/3538/3862/3936/4111 ANNEXURE "A" -  
Letters left under door at residence of Michele Piercey from the 20th July onwards.

DC 20036 US, Kath Cummins @KathCummins Director of Public Affairs, National Center for Victims of Crime,  
National Center for Victims of Crime 2000 M Street NW, Phone: (202) 467-8700, Suite 480 Washington,

**FIRST handwritten with very rounded print**

"Dear Michele:

Please contact Cst Harrison at the police station as soon as possible so that you can discuss today's events with  
him. He will be available until 11 pm"

DC 20036 US, Kath Cummins @KathCummins Director of Public Affairs, National Center for Victims of Crime,  
National Center for Victims of Crime 2000 M Street NW, Phone: (202) 467-8700, Suite 480 Washington,

**SECOND handwritten with very round print**

"Dear Michelle:

Cst . Harrison would like you to come to the police station tonight at 11:00 to discuss the case and tell how the  
mediation went."

DC 20036 US, Kath Cummins @KathCummins Director of Public Affairs, National Center for Victims of Crime,  
National Center for Victims of Crime 2000 M Street NW, Phone: (202) 467-8700, Suite 480 Washington,

**THIRD handwritten with very rounded print**

"Dear Michelle

Please meet me at the police station at 11:30 p.m. tonight so we can clear things up a.s.a.p.  
Cst Harrison"

DC 20036 US, Kath Cummins @KathCummins Director of Public Affairs, National Center for Victims of Crime,  
National Center for Victims of Crime 2000 M Street NW, Phone: (202) 467-8700, Suite 480 Washington,

**FOURTH printed with Apple dot matrix printer located ANU Students Association**

"You are not going to drag me down this hole and if I have to see you dead to make sure of it then so be it.I  
know what you really after and I know what your trying to do to me even if nobody else realises it yet.They will  
soon.Im warning you, slut.If I have to kill you to stop you from trying to damage my reputation and my life

than I will and I will enjoy it.  
Love from YOU KNOW WHO!!!  
XXXOOO”

DC 20036 US, Kath Cummins @KathCummins Director of Public Affairs, National Center for Victims of Crime,  
National Center for Victims of Crime 2000 M Street NW, Phone: (202) 467-8700, Suite 480 Washington,

**FIFTH printed with Apple dot matrix printer located ANU Students Association**

“Getting tiresome isn't it fat stupid slut. It's not about to stop either until you stop your lies and solve your sex problem. Don't think your in control, because your not. I am and i'm winning. Youll be sorry you ever tried to manipulate me. I hope you enjoyed it I hope it was worth the misery you brought upon yourself.

p.s. I saw you in the library today, sitting on the windowsill on the top floor facing outside. I bet you were watching for me but you forgot to look behind you. Don't forget to look over your shoulder!!!”

DC 20036 US, Kath Cummins @KathCummins Director of Public Affairs, National Center for Victims of Crime,  
National Center for Victims of Crime 2000 M Street NW, Phone: (202) 467-8700, Suite 480 Washington,

**AUSTRALIAN FEDERAL POLICE**

**STATEMENT IN THE MATTER OF:** [CC92/3419/3420/3421] **Date:** 22 July 1992  
**POLICE v Alexander BAYLISS** Intentional Threat to Kill, Common Assault

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**NAME:** Rachel Michele Piercey AKA: ANU Debating Society peer group pressure patsie  
**ADDRESS** John XXIII College ANU, Acton Rm 1068 **Occupation** Student

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My full name is Rachael Michele Piercey. I was born on 6 March 1973 in Scafferville, Quebec, Canada. I reside at John XXIII College ANU, Canberra. I am currently studying Arts.

About 1 March 1992 I attended an orientation lecture for political science at the ANU. I there met a male person now known to me as Alex BAYLISS. He asked me and my friend Anita to join the Scrabble Club which he was forming. We refused but he was extremely persistant and would not let us pass. I finally grabbed my friends arm and walked off.

I next saw Alex BAYLISS at the following political science Lecture a few days later. He approached me and sat down next to my friend Anita. He leaned over to his left over my friend Anita and asked if he could have my seat. I said he could not have it. However he persisted and got more agitated and abusive and called me a bitch. He finally told me to go fuck myself. I felt intimidated and scared by Alex Bayliss and did not want him near me. Alex BAYLISS continued to harrass me by sitting next to me every lecture after I had continually told him to leave me alone. His constant unwanted attention to me and verbal abuse led me to file a charge of sexual harrasment against him to the ANU Committee Against Sexual Harrasment in late April 1992.

On Wednesday 22 July 1992 about 11:45am I was walking by myself across Fellows Oval on ANU Campus grounds towards the ANU Chifley Library. As I started to climb the stairs Alex BAYLISS approached me and,

He said: "Leave me alone or you'll be sorry"

I said: "What?"

He said: "Stop harrasing me and stop writing things about me or I'll kill you"

At the time Alex said this to me his face was about 5cm from mine. I felt threatened by him and I believe that he is capable of carrying out his threat to kill me. I believe that Alex BAYLISS will try to harm me as he believes that I have been harrasing him.

Rachel Michelle Piercey

Statement taken and signature witnessed by me at City Police Station on Wednesday 22/7/92 at 17:35 hrs on pages 37.38.39.40 of my official Police Note book.

Constable Harry Thomas Hains 4928

DC 20036 US, Kath Cummins @KathCummins Director of Public Affairs, National Center for Victims of Crime, National Center for Victims of Crime 2000 M Street NW, Phone: (202) 467-8700, Suite 480  
Washington,

What has Happened:

I first met Alex Bayliss outside Copland Lecture theatre, after my second or third Political Science I lecture. He knew my friend Anita, who I was with at the time, and asked us both whether we wanted to join the "Scrabble Society", which he had founded. We refused, but he was very persistent. We eventually had to be quite abrupt and walked away from him. I didn't think about him again until a subsequent pol. Sci lecture, where Anita and I were sittng in the centre of the front row, waiting for the lecture to begin. Anita was on my right. Alex then came and sat down and informed me that he absolutely had to sit exactly where I was, as he had poor vision, poor hearing,

and a poor attention span, and would only be able to understand the lecture if he was to sit exactly where I was. I might have believed this statement, had I not recalled seeing him make exactly this assertion to some other girl during the very first lecture, except twenty rows back. Furthermore, there was a difference of perhaps one metre between my seat and the one Alex was currently occupying, hardly sufficient distance to affect his sight, hearing or attention span, especially given that our lecturer, David Adams, almost never lectures from the podium anyways. Alex was in a better position to understand the lecture where he was.

Nevertheless, when I refused to move, he insisted that I had to, and asked me why I was being so insensitive. When I refused a second time he became visibly angry, and insisted again. At this point, I looked him in the eye, and told him “I am not moving, you are fine where you are, please leave me alone.” (Anita, who was between us, sat well back in her chair and attempted to remain uninvolved.) Alex then looked over at me, and said something to the effect of “I bet you’re really proud of yourself, now that was such a good comeback go fuck yourself you stupid bitch.” Anita told me after the lecture that he’d been shifting his papers, fidgeting, and clearing his throat conspicuously for the entire hour, presumably to make things difficult or uncomfortable for Anita and me.

That night I was at Chifley Library on the third floor researching for an essay. It was just prior to closing time, and the lights were being turned off progressively. As I was walking to the corner of the floor to collect my books, Alex emerged from one of the group study rooms and blocked my path. I tried to get past him, (while avoiding talking to him, as Anita and I had discussed,) but he would not let me pass. I said “excuse me”, and he repeated several times “excuse you, excuse you.” He was half-smiling as he said this, and speaking very quietly. There was no one else nearby, and he kept trying to whisper, with his face close to mine. Finally, after a few seconds of this, I turned to walk between some bookshelves, waited until I was out of view, and hurried to get my things and leave the library.

The next day, I had to go to Chifley Short loan to return a book when the library opened at 9:00. I did this, and was walking out of Short Loan, as I saw Alex walking in. He changed his course and followed me across the bottom floor, very close behind me, saying very loudly, “nice day, isn’t it?” and exhaling loudly through his nose, making a very odd sound that caused some people in the library to look up from what they were doing and watch as he followed me out the door. He stayed with me all the way past the A.D. hope building towards the Refectory when I stopped at the top of the Union steps to talk to a (male) friend of mine. Alex stopped, turned, and walked the other way.

After that, I saw him nearly every Monday and Wednesday in lectures, where he would sit next to me and try to talk to me casually, fidget conspicuously and distract me while I tried to take notes. I would always ignore him, which made him angrier, I think. I finally approached David Adams with my problem after a particularly bad Wednesday afternoon, in which Alex sat next to me and making coarse comments about how much he hated “fat-titted bitches”. Anita was not present that day. When the lecture handouts were distributed from the left rows, Alex received the pile, and instead of passing them on to me, passed them back, so that I didn’t receive one, and nor did half of the row to my right. He thought this was incredibly funny, and snickered under his breath for the rest of

the lecture. When I approached him that day, David Adams said he'd had other complaints and that there was a person he would contact, who I later found out was the disabilities officer. That night, I found an abusive note in my bag that I can't say came from Alex, as I didn't see him put it in, but I had reason to believe that he'd done it, as it was not there when I'd got my books out before my lecture. (I have attached a copy of the note to this statement.)

The harassment ceased for a few weeks, presumably after the Disabilities Officer spoke with him, but re-commenced in the Debating Society one afternoon, when I walked in to find Alex participating in an A.N.U.D.S. meeting on the Bridge. Not wanting to re-start anything, I sat inside the Debating Society Office and waited for the meeting to wind up and for him to leave. This was actually the first time I'd encountered him since I had complained to my lecturer, and did not expect anything to happen, but when he got up to leave, he looked directly at me, and actually bent over to look at me through the glass wall off the office, as it was covered with newspaper clippings. This made me extremely uncomfortable.

Later that day, I saw Alex sitting across from me in the Refectory, not doing anything except looking at me. I saw him a few hours later on the steps of Chifley, and again, fifteen minutes later, on the path between college on Daley Road and Sullivan's Creek. All three times he just stared at me, and didn't look away when I saw him. In fact, it didn't appear to bother him at all. Of course I realise that there's not a law against looking at someone or walking freely around the university, but it seemed very coincidental that I hadn't seen him for several weeks, and then encountered him four times in one day. He'd made me very uncomfortable.

His behaviour has steadily worsened since I encountered him that day. He has followed me around campus at varying distances of 1-100 metres, depending on the location (closer in crowds, further in open spaces.) He has followed me from college on Daley Rd. to an 8 a.m. class in Chifley basement on two separate occasions. I have received another note in my bag which, again, I can't say was from him, though I have strong suspicions. I found this one after a political science lecture in which he'd been sitting next to me.

His generally obnoxious behaviour in lectures continued until I approached Margaret Evans of the campus Committee Against Sexual Harassment, (C.A.S.H.), who seemed to think that Alex is prone to forgetfulness, and needed to be reminded again. I waited to hear about what C.A.S.H. intended to do. After my complaint to C.A.S.H., I often encountered him in the Debating Society Office, where he would try to talk to me, which I simply ignored, if no one else was around. If anyone was nearby, he would ignore me, too. He would sometimes try to stop me in the corridor by Student's Association, and grab my arm if I wouldn't stop, but I would shake free and keep going.

I received three phone calls of silence, then hanging up, from an unknown person early in the morning over one weekend, which I had reason to suspect was him, as my phone number is easily obtained from Debating Society phone lists. The following Monday, I approached Mary McLeod of Legal Aid at the A.C.T. Magistrate's Court about obtaining a restraining order against Alex. She said that my case of harassment was borderline, and that if it went to a hearing, as she expected it might, my chances were "iffy" at best. She suggested I see what transpired at

C.A.S.H. before pursuing anything else legally. That afternoon, when no one else was around, Alex accosted me on the Bridge and asked how I was doing in overcoming my “sex problem.” I tried to leave via the door closest the Asian Bistro, but he blocked my path, and put his hands on my shoulders, which freaked me out sufficiently to inspire me to shove him out of the way to get past him. From then on, I engaged in a lot of avoidance behaviours so that I wouldn’t have to deal with Alex at all. I changed my regular routes around campus, avoided the library, and would not go to pol. sci. lectures if I saw that he would be attending. He continued to make his presence well and truly known at the Deb. Soc, office, showing up for no apparent reason but to engage people in discussion, usually about himself, even if, or especially if, I was there.

C.A.S.H subsequently arranged for one of its members, Harry Geddes, to talk to Alex about how he’d been acting. That evening, presumably after being spoken to, Alex stormed into the Student’s Association, where I was talking with Stella Gaha and Simon Brettel, A.N.U.D.S. president. I left the room immediately when Alex tried to engage Stella in a discussion about “my problems”, but did hear vague threats of retribution and defamation actions. (Stella would be far more able to elaborate on the contents of this discussion than I.)

The following Friday, I received a phone call from someone claiming to be a secretary at Snedden, Hall, and Gallup, who have represented Alex in his many actions against people and corporations in the past. The caller inquired as to whether I’d be at college between two and five p.m. on the following Saturday, as they intended to serve me with a Writ of defamation. I was home for part of that time the next day, but no writ ever materialized. On the following Monday, my friend Matthew Sag contacted Snedden’s to enquire about the mysterious event. Their office knew nothing about the writ, and further stated they would never phone before having one served. That week, Matthew had a further conversation with Alex, in which Alex actually admitted casually to having been abusive and harassing towards me, and writing me notes, and that he knew he was a “vexatious litigant”, whatever that means.

Until recently, I have not encountered Alex at all because I have completely restructured my life to avoid him. However, I am afraid he may be attempting to make his presence known by other means. Recently, John XXIII college has been plagued by a series of false fire alarms, seven in as many days. On 20 June, I stayed up to wait in my corridor for whoever was responsible. As I was only a few doors down from my room, I left my door open, and did not shut it when I went to the bathroom, and to the vending machine to get a snack. When I returned, I found my door had been shut, but didn’t think much of it, as there were lots of people returning from the bars at that time, and assumed someone had shut it for me as they walked past. However, when I opened my door a few minutes later, I found the room filled with smoke. Someone had plugged in my iron and placed it on my pillow, which by then had a sizeable burn in it. I unplugged the iron. About 40 minutes later, the college experienced its seventh fire alarm. The police were called, and asked whether I thought anyone “had it in for me.” Alex was the only person I could think of, though realistically, I’m unsure about how far he really would go and whether this was a genuine possibility for him. There is also some question as to whether he might somehow be connected to a plague of obscene phone calls at the college. He certainly has access to my phone number, and I believe that I was the first person at the college to receive such a phone call. I have recorded the date of the phone call with Naomi

Knight of C.A.S.H.. The phone call went as follows:

Me: Hello. (silence) Hello

Caller: Play with your pussy for me honey.

Me: Play with this. (whack the phone loudly on the desk before hanging up.)

I don't know if this was Alex or not, though the caller did have an effeminate voice, as Alex does. I don't know why or if he would go on to call others or not, but the police and my college seem to think there is some connection.

#### What I Want to Happen:

I would like to obtain a restraining order to keep Alex away from me the next time he "forgets". I do not want to spend the rest of my life changing my life around so as to avoid him, and what's more, I shouldn't have to. I have the right to travel freely on campus which is in fact, my home, and should be able to take part in academic and social activities without constantly looking over my shoulder. These are not unreasonable expectations, and I feel the university should be doing more to uphold them for me. C.A.S.H. has certainly made a real effort to help, but a slap on the wrist and a "good talking to" by a law professor are not adequate deterrents for someone who obviously need expert help for his own sake and disciplinary action, for the sake of all women on campus who have been victimized by inaction.

Contacts: This is a list of some of the people I have contacted for help or advice with this problem.

Fr. Ian Waite Master, John XXIII College	248-5526
Dennis Krozen Australian Federal Police	249-7444
Margaret Evans C.A.S.H.	249-2442
Mary McLeod Legal Aid	267-2825
Camilla Newcombe A.N.U.D.S.	249-4722
Stella Gaha A.N.U.D.S	286-5325
Matthew Sag A.N.U.D.S.	281-0984
David Adams A.N.U. Political Science Dept	249-2659

\*Messages only

DC 20036 US, Kath Cummins @KathCummins Director of Public Affairs, National Center for Victims of Crime, National Center for Victims of Crime 2000 M Street NW, Phone: (202) 467-8700, Suite 480 Washington,

#### **AUSTRALIAN FEDERAL POLICE**

**STATEMENT IN THE MATTER OF:** [CC92/3419/3420/3421] **Date:** 28 July 1992  
**POLICE v Alexander BAYLISS** Threat to Kill, Common Assault, Possess Ammunition

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**NAME:** Rachel Michele Piercey **AKA:** ANU Debating Society peer group pressure patsie  
**ADDRESS** John XXIII College ANU, Acton Rm 1068 **Occupation** Student

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My name is Rachel Michele Piercey. Further to my statement that I provided to Constable HAINS on 28 July 1992, I met with Constable HAINS on 28 July 1992 and provided him with a copy of the paper I submitted to the ANU Committee Against Sexual Harrassment in May. This paper consists of 5 pages and is the original document. I have signed and dated each page of this document.

Rachel Michele Piercey

28 July 1992

Statement taken and signature witnessed by me on page 3 of my official notebook at 935 on Tuesday 28 July 1992 at Childrens Court, Childers Street, Civic, ACT.

Constable Harry Thomas Hains 4928

DC 20036 US, Kath Cummins @KathCummins Director of Public Affairs, National Center for Victims of Crime, National Center for Victims of Crime 2000 M Street NW, Phone: (202) 467-8700, Suite 480 Washington,

### **AUSTRALIAN FEDERAL POLICE**

**STATEMENT IN THE MATTER OF:**[CC1992/3538][SCA92/143] **Date:** 13 August 1992  
**POLICE v Alexander BAYLISS** Breach Interim Protection Order [IRO 1992/279]

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**NAME:** Rachel Michele Piercey **AKA:** ANU Debating Society peer group pressure patsie  
**ADDRESS** John XXIII College ANU, Acton Rm 1068 **Occupation** University Student

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My full name is Rachel Michele Piercey. I currently reside at Room 1068 John XXIII College, Daley Road, Acton. I am a student at the Australian National University currently studying Arts.

On Wednesday the 30th July 1992 I was asleep in my room at John XXIII College. I was awoken by three loud

knocks at my door. I got up and went to the door and opened it. I did not ask who it was as I thought it was a friend from the College. When I opened the door I saw a male person known to me as Alex BAYLISS. He was wearing dark clothes and had his right hand across the door as I opened it. I recall him saying something but I was unsure as to what as I was tired and had a fever. I took a step back, and stumbled over something and fell back to the floor, bumping my eye on a cupboard as I fell. My eye hurt. I then either kicked the door or slammed the door closed. After the door was shut I sat on the floor until 8:00am as I was too scared to leave my room.

I am currently the applicant of an Interim Protection Order against Alex BAYLISS. At no time did I give him permission to approach my room.

Statement taken an signature witnessed by me at City Station on 7/8/92.

Constable Rebecca Lousie McNevin 5038

Michele PIERCEY 7/8/92

DC 20036 US, Kath Cummins @KathCummins Director of Public Affairs, National Center for Victims of Crime, National Center for Victims of Crime 2000 M Street NW, Phone: (202) 467-8700, Suite 480 Washington,

### AUSTRALIAN FEDERAL POLICE

**STATEMENT IN THE MATTER OF:** [CC92/4111] [SCA92/155] **Date:** 8 August 1992  
**POLICE v Alexander BAYLISS** Breach Interim Restraining Order [IRO 1992/279]

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**NAME:** Rachel Michele Piercey **AKA:** ANU Debating Society peer group pressure patsie  
**ADDRESS** John XXIII College ANU, Acton Rm 1068 **Occupation** University Student

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My full name is Rachel Michele Piercey. I was born on 6 March 1973. I reside at John XXIII College ANU. I am currently a Studnet studying Arts at the Australian National University.

At 2.30am on Tuesday the Eight September 1992, I was asleep in my room at John XXIII College when my personal phone rang. I believe it rang twice before I got to it sa it is situated across the room from my bed. I picked it up and had a short conversation with a male person whose voice I instantly recognised as Alexander BAYLISS.

I said: "Hello"

Alex said: "We can finally be together in a little while sweetheart-unintelligible"

At the time he said this he was brathing heavily into the phone and his voice was very calm and quiet. I was extremely scared and I wanted to tell him I knew who he was and that I wanted the phone calls to stop and to leave me alone.

I said: "Alex..."

Before I could complete what I wanted to say, he cut me off.

He said: "Shut up, bitch, right now, shut up, shut up, you're dead, I'm coming to get you right now."

At the time he said this voice became extremely harsher, louder and more threatening. Whilst I was talking on the phone I noted down the conversation word for word on a Russian vocabulary study sheet and retained this in my possession. I then called Yvonne PERRY, the Pastoral Sub-Dean of John XXIII college to inform her of what happened and that I was scared that Alex was coming over to harm me. I then had a further conversation with her and a short time later I attended at her room where I called Police. I also arranged for all incoming phone calls to my personal number to be diverted to Yvonne PERRY'S phone as I was fearful that Alex would call me and threaten me again.

A short time later I met with Constable HAINS and Constable PERRIMAN at John XXIII college. I had a short conversation with Constable HAINS and provided him with a statement of what had happened. After Police left I locked my door and tried to go to sleep but could not as I was fearful that Mr BAYLISS would attempt to harrass or harm me. I handed Constable HAINS my notes.

I have been experiencing difficulty in sleeping and attempting to participate in normal activities such as going out and walking around the campus due to the constant threats and harrassment by Mr BAYLISS over the last six months. Some of these incidents are the subject of current court proceedings against Alexander BAYLISS>

I am the applicant and Mr BAYLISS is the respondent in Interim Restraining Order number 279/92 which is current till the seventeenth of September 1992. This order prohibits Alex BAYLISS from contacting me, approaching or threatening me and has constantly breached it since the order was made on 23 July 1992 before Magistrate Dingwall.

I can think of no reason why Alexander BAYLISS would not want to threaten me or harrass me. I have never been involved in any type of relationship with him. I have never phoned him or attempted to contact him or instigated my meetings with him other than attempting to solve this problem outside the court system via mediation with Alex. This was organised by the ANU'S Committee Against Sexual Harrassment member Margaret EVANS and Harry GEDDES. Both these persons were present on 20th August 1992 at ANU Counselling Centre when Alexander BAYLISS and I met to try to alleviate the problem. I would consider that mediation was a waste of time as Alex BAYLISS treated me with scorn and dersion during the Session which lasted two hours.

I am fearful of Alexander BAYLISS as I genuinely believe that he will attempt to carry out his threat to kill me. Since his harrasment of me started in March 1992 the nature of his threats against me have become increasingly violent with threats to kill me and threats to “Be with me” which I take to be sexual threats.

Rachel Michele PIERCEY 8 August 1992

Statement taken and signature witnessed by me at 9.35pm on 8 August 1992 at City Police Station.

Constable Harry Thomas HAINS 4928

DC 20036 US, Kath Cummins @KathCummins Director of Public Affairs, National Center for Victims of Crime, National Center for Victims of Crime 2000 M Street NW, Phone: (202) 467-8700, Suite 480 Washington,

### AUSTRALIAN FEDERAL POLICE

**STATEMENT IN THE MATTER OF:** [CC92/3936] [SCA92/154] **Date:** 22 August 1992  
**POLICE v Alexander BAYLISS** Breach Interim Restraining Order [IRO 1992/279]

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**NAME:** Rachel Michele Piercey **AKA:** ANU Debating Society peer group pressure patsie  
**ADDRESS** John XXIII College ANU, Acton Rm 1068 **Occupation** University Student

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My full name is Rachel Michele PIERCEY. I was born on 6 March 1973. I reside at Room 1068 John XXIII College ANU. I am a student currently Studying Arts.

About 1.10am on Saturday 22 August 1992 I was asleep in my room at John XXIII College when I was awoken by the sound of my phone ringing. I answered it and:

I said: “Hello”

A male voice replied:

He said: “You’re soon dead sweet heart-untelligible”

I instantly recognized this voice as Alexander BAYLISS a person whom I have a current Interim Protection

Order Number 279/92 against.

It is in force until 17 September 1992.

I said: "Who is this"

The reason why I said this is because I have received simiar phone calls from Alexander BAYLISS and he has never Identified himself before to me and I wanted to try to get him to say who he was.

He said: "Get ready I'm coming for you sweet heart-laughter"

I then slammed the phone down quickly. At this time I was extremely scared that Alexander BAYLISS was coming to do something to me. I was crying and upset and did not want to stay in the room by myself. Soon after the phone rang again and i unplugged it. I then located a computer type written note which must have slipped under my door while I was asleep. This note was extremely threatening and stated the author was goin to kill me. I believe that the author of this note is Alexander BAYLISS the person whom I had just recieved a phone call. This note increased the fear that I already felt for my own life. I then quickly jotted down the telephone conversation I had just had with Alex BAYLISS, took possession of the Type written note and attended at City Police Station about 1.45am on Saturday 22 August 1992.

Shortly after arriving at the Police Station, I had a conversation with Constable HAINS and Constable HEROLD. I handed Constable HAINS the copy of the telephone conversation I had written down and the type written note I had found under my door. I then gave a statement regarding the telephone conversation to Constable HAINS and signed it. I then remained at City Police Station until I was made aware by Constable HAINS that Alex BAYLISS had been arrested as I was fearful of going back to m y room on my own and had no where elase to go.

Rachel Michele Piercey 22 August 1992

Statement taken and signature witnessed by me at City Police Station on Saturday 22 August 1992 at 0150 hours,

Constable Harry Thomas HAINS 4928

DC 20036 US, Kath Cummins @KathCummins Director of Public Affairs, National Center for Victims of Crime, National Center for Victims of Crime 2000 M Street NW, Phone: (202) 467-8700, Suite 480 Washington,

### **AUSTRALIAN FEDERAL POLICE**

**STATEMENT IN THE MATTER OF:**[CC92/3862][SCA92/153] **Date:** 1 September 1992  
**POLICE v Alexander BAYLISS** Breach Interim Protection Order [IRO 1992/279]

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**NAME:** Rachel Michele Piercey **AKA:** ANU Debating Society peer group pressure patsie  
**ADDRESS** John XXIII College ANU, Acton Rm 1068 **Occupation** University Student

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My full name is Rachel Michele Piercey. I currently reside at the above address. My date of birth is the 6th March 1973. I am currently studying at the Australian National University.

About 8:25pm on Monday the 17th August 1992 I was walking towards the Chifley Library within the grounds of the ANU. As I neared the entrance to the library I saw a male person known to me as Alex BAYLISS on the steps of the library. Alex BAYLISS is currently the respondent in an Interim Restraining Order held by me. I saw that Alex was wearing cream or yellow coloured trousers, a brown suit jacket and a white bicycle helmet with a white visor. I noticed that his trousers were tucked into his socks. He was riding a mens ten speed bicycle but I cannot say what colour it was as it was dark. There was a water bottle attached to the main frame of the bicycle. I immediately turned and walked in the opposite direction towards the Sports Union building. I waited inside the building for about ten minutes.

A short time later I returned to the library. I then saw that Alex was outside the Sports Union building on the bicycle (I think it was brown). I turned again and walked towards the Student Union building. I turned and saw that he was following me. I walked faster. He came up behind me and passed about one foot away on my left side. He continued ahead about ten feet and turned and headed again. He then approached me again within an arms length. He passed, turned and was approaching me from behind again. I turned again and walked towards the library. I was extremely scared as there was no one around and I didn't know what he was going to do. I started up the steps so that he couldn't follow me. I then saw that he had ridden up a ramp and was riding straight at me. I turned again and saw an ANU Security car nearby. I walked towards it. Alex then circled me once more and then rode off as I neared the car.

I then spoke with the Security Guard and told him what had happened. A short time later I attended City Police Station and spoke with Constable McNevin. I told her certain things and she took a statement from me which I signed. I also handed her four pieces of paper with writing on them. She took photocopies of them and handed the originals back to me. I then returned to my room where I stayed until Constable McNEVIN informed me that Alex BAYLISS had been arrested.

At no time did I give Alex BAYLISS permission to approach me.

Statement taken and signature witnessed by me at City Police Station on Tuesday the 1/9/92 at 6:00pm.

Rachel Michele PIERCEY

DC 20036 US, Kath Cummins @KathCummins Director of Public Affairs, National Center for Victims of Crime, National Center for Victims of Crime 2000 M Street NW, Phone: (202) 467-8700, Suite 480 Washington,

1. 93/1477 Detective Constable Danny Kinderan 3735 Detective Constable Michael Pearce 4766 provided me these defamatory documents.

«CORRUPTION.

The Australian Federal Police, the ACT Director of Public Prosecutions, the Canberra Times, all involved in the conspiracy to pervert the course of justice with the ANU Debating Society and its puppet, Rachel M. Piercey, a known liar out to grab power for herself in the ANU Debating Society. I have been wrongfully arrested, prosecuted and convicted by a judicial system - judicial system entwined in a web of sexual politics and deceit. The complainant, Miss Piercey, has been sexually involved with both the arresting police officer in this matter and the prosecutor, Ken Archer. Additionally the Canberra Times accounted the court case was exaggerated and distorted by the naive young court reporter, Michael BACHELARD, who was seduced over lunch at the Calypso Cafe with Miss Piercey, who aimed to make her dubious if temporary victory, though it may seem more than it was, in a very public way. This utterly unjust treatment of me, an ambitious and innocent young man, is completely unfounded and will be overturned in the Supreme Court.”

DC 20036 US, Kath Cummins @KathCummins Director of Public Affairs, National Center for Victims of Crime, National Center for Victims of Crime 2000 M Street NW, Phone: (202) 467-8700, Suite 480 Washington,

2. 93/1477 Detective Constable Danny Kinderan 3735 Detective Constable Michael Pearce 4766 provided me these defamatory documents.

“Rachel Michelle Piercey is a compulsive liar and a scapegoat of the ANU Debating Society. The society organised a campaign of pure propaganda against me, Alexander Bayliss, an innocent person and one of many of the societies victims. A Constable of the Australian Federal Police, Harry Thomas HAINES, has been aiding in the conspiracy against me. He is sexually involved with the complainant. I have independent witness'es to verify that I was not near Rachel Michelle PIERCEY when the alleged offences were committed, but the Chief Magistrate, his honour Ron CAHILL, a portly distinguished gentleman, disregarded this because he is currently mounting a campaign to be appointed to the High Court and wishes to ingratiate himself to the Society patron, the Chief Justice Sir Anthony MASON. This is a gross miscarriage of justice and it is critically vital that my appeal be heard in the Supreme Court and this conviction be overturned. You can help me in my quest:

1. Boycott the activities of the ANU Debating Society. Do not attend its functions or become a member of this cruel elitist organisation.
2. Write a letter of protest to the Attorney-General of the ACT insisting the convictions be overturned and Miss

Piercey be escorted to the Canberra City limits never allowed to return.

3. Write Miss Piercey, care of John 23rd College, ANU and implore her to do the right by victims of the ANU Debating Society and recant the stories she told the Federal Police and her lover, Harry Haines.”

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3. 93/1477 Detective Constable Danny Kinderan 3735 Dective Constable Michael Pearce 4766 provided me these defamatory documents.

“The ANU Debating Society is engaging in a smear campaign against me, an ordinary Uni student, Alexander Bayliss, in retaliation for a threat I made to sue the society for puerile propaganda written about me in the society newsletter. The society is conspiring with all levels of police and the judiciary to falsely accuse me of harassing .c.Rachel Michelle Piercey;, known to be a openly promiscious and a compulsive liar. Here are the facts.

\*Completely unfounded charges have been brought against me by Rachel Piercey, a scapegoat of the ANU Debating Society. The police constable that arrested me, Harold Thomas Hains, is sexually involved with the complainant.

\*The Director of Public Prosecutions went ahead with the case against me, with no independant corroboration of Ms Piercey’s story, because Ms Piercey had also been involved with the prosecutor, Ken Archer.

\*Reports in the Canberra Times were grossly distorted and biased, because the complainant made sexual advances towards the court reporter, Michael Bachelard, after the first trial.

\*Finally, the Chief Magistrate, Mr Ron CAHILL, convicted me on Ms Pierceys evidence alone, even though it was fraught with inconsistencies and lies, because he wishes to ingratiate himself to the society patron, the Chief Justice Sir Anthony Mason.

This is a gross miscarriage of justice. You can support me in my fight against this society of injustice. Do not attend functions hosted by this cowardly, deceitful organisation. Write a letter to Ms Piercey (c/John XXIII, ANU) or phone her on 279 4940, imploring her to recant her lies, and back me up when I challenge the Conspiracy in the ACT Supreme Court. Help me thwart this organisation of liars and perjurers.”

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4. 93/1477 Detective Constable Danny Kinderan 3735 Dective Constable Michael Pearce 4766 provided me these defamatory documents.

“There are many forces at work in the ACT judical system, but who really makes the decisions ? It seems the most important factor in judical decision making is sex. The Chief Magistrate, Ron Cahill, was plied with sexual favours by a dishonest complainant, Rachel PIERCEY, to convict me in his capacity as a coroner, to implicate me in the murder - in the murder in 1989 of the Assistant Police Commissioner. When will this persecution of me end ? When will the lies of Miss Pearcey be exposed for what they are and her sexual manipulation of the ACT

Magistrates Court be publicly condemned ? Support me in my quest to have the Supreme Court overturn this tyranny of injustice. Contact Miss Piercey, care of John the 23rd College, phone 279 4940 and Mr Cahill, care of the ACT Magistrates Court, and implore them to come forward and finally tell the truth.”

DC 20036 US, Kath Cummins @KathCummins Director of Public Affairs, National Center for Victims of Crime, National Center for Victims of Crime 2000 M Street NW, Phone: (202) 467-8700, Suite 480 Washington,

5. 93/1477 Detective Constable Danny Kinderan 3735 Dective Constable Michael Pearce 4766 provided me these defamatory documents.

“Why does the Criminal Justice System continue to ignore the tyranny that is the ANU Debating Society. In order to protect my own safety, and to prevent further assault by the legal authorities, I can no longer tell you my name. I have found myself to be persecuted by the ANUDS and it’s allies when they prevented me from exercising my constitutional right to speak to the premier of Victoria.. The ANUDS elisted, the aid, of the, Victorian Dogs squad, licencing police and paramilitary death squads to have me forcibly evicted from the premises of the Victorian Parliament.

The A.N.U. Debating Society looks to most participants at “Worlds”. To be an ordinary Debating Society. I and the International Scrabble Confederation know that it is not. Here are the facts and the decide for yourself.

The facts are that the present President of the ANU Debating Society (NB. He is in ANU B) is not a regular guy. Look at him closely He is a dangerous dissociated personality that seeks. to destroy everything he touches. He is a member of the University Army Cadets, who were recruited for special Forces during the Vietnam War. We know that those Forces were given Agent Orange and other drugs designed to. Create superhuman facilities. in the insane desire to end the war. Files released by me under the Freedom of Information Act (s.234) show that ANU President (Timothy Charles Hughes) was involved in these experiments, which have given him paranormal abilities. In his regiment, he was known as “The Fly”, because he can transmute himself at will. The Chief Justice of the High Court of Australia would not want to be a Patron of the ANUDS if he knew this. That is why some people will go to any lengths to stop this information now. Listen and decide for yourself.

Another former President of the Australian National University Debating Society is Richard. William Douglas. (Also in ANU B) He has been the secret Mastermind behind the great Whitewash. The desire to imprison, aid , abet, and destroy has always been with him. He is a paranoiac delusionary with aspirations to national and Global leadership. He has been building relationships in the Debating World, with Foreign Governments and with the International Intelligence communities. He is know to have long associations with monied Arab Oil interests. Nostradamus fortold (Quatrain 426) that “one. would come to bend the law to his palm in the Greta South Land He will be from the Caledonians, and will issue from a lake where no lake was before. Where all the world is come to the celestial city where all seasons stop, there will the Lawbreaker seek the crown, and crush the Eagle”

Nostradamus warns us of the danger to all the world of “the one who will come from the Calendonians” (Scottish Name + Douglas) form a “city where there was no lake before” (Ie. Canberra). You can refuse to believe me, but when the catastrophe occurs, it will be too late. Act now.

Whilst I cannot tell you my name for legal reasons (Defamation Act (Vic)) I make you a promise. Before this tournament is over . Someone will have to defend the Eagle. This means that someone will have to stop the law breakers. The President of now of the past the past will be stopped. A single bullet can stop the curse. Take your chance now. Someone will. Someone will aid, abet, attack, destroy, shoot, mutilate, lay waste to and, triangulate.

We have to fight back. Bullet or Icepick now, or an enslaved future. No-one believed “Sarah Connors”, did they.”

**DC 20036 US, Kath Cummins @KathCummins Director of Public Affairs, National Center for Victims of Crime, National Center for Victims of Crime 2000 M Street NW, Phone: (202) 467-8700, Suite 480 Washington,**

XIV WORLD UNIVERSITIES DEBATING CHAMPIONSHIP UNIVERSITY OF MELBOURNE  
JANUARY 1994

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The XIV WORLD UNIVERSITIES DEBATING CHAMPIONSHIP, Chief Adjudicator, MICHAEL GRONOW [Owen Dixon 205 William Street 03 9608 7115 DX 96 Melbourne 03 9601 6447] was provoked to say:- “The AUSTRALIAN NATIONAL UNIVERSITY DEBATING SOCIETY have caused a security scare by saying someone threatened to kill them. As we have since found out it was only a practical joke and they delayed the WORLD UNIVERSITIES DEBATING CHAMPIONSHIPS for half an hour, if they do it again we will personally threaten to kill them.”

This was witnessed by:- WUDC Chairman WILLIAM IRVING 242 Exhibition Street Melbourne 03 9634 2160 03 9600 1271; WUDC Publication Director DELIA BURRAGE 21/385 Bourke Street 03 9670 6123 DX 428 Melbourne 03 9670 4475; Chairman Worlds Council TIMOTHY McEVOY 101 Collins Street 03 9288 1234 DX 240 Melbourne 03 9288 1567; WUDC Social Director JULIA PRYOR 28/525 Collins Street 03 9643 4000 DX 101 Melbourne 03 9643 5999; RICHARD DOUGLAS 17/221 St George Tce 08 9366 8000 DX 169 Perth 08 9366 6111; TONYA RISZKO 13 Farrer Braddon 02 6248 6426/7494;

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PIERCEY [11/71 Tinderry Circuit Palmerston] to do so as in 1992, 1993 as RACHEL MICHELLE PIERCEY was not in Melbourne. ANU “B”, KATH CUMMINS, with JANINA JANKOWSKI, [11 Tattersall Crescent Florey 02 6259 2547] “incited and encouraged” and “aided and abeted” RACHEL MICHELLE PIERCEY to make another “false accusation” of “threat to kill”, in 1995, and then KATE KELLY [9 & 14 Beltana Road Piallago 02 6247 5860] to make a “false accusation” of “threat to kill”, in 1996, to AUSTRALIAN FEDERAL POLICE Dt Sgt acting Supt Tim Fisher (Solomon Island). This is witnessed by:- MARK NOLAN 8 George Gilfillan Avenue Kempsey 02 6562 5388; TIM HUGHES 3/125 Old South Head Road Bondi Junction 02 9389 2084 / 02 9361 6637; MATTHEW SAG 55 Clarina Street Chapel Hill 07 9378 0098; Parents JUDY and ROSS son WILL DE VERE 8 Castle Place Melba 02 6258 2486

SIMON GERARD BRETTELL [10/8 Britten-Jones Drive Holt ACT 2615 612 6254 3646] ANUTECH North Road cnr Barry Drive Acton 612 6249 5660 612 6249 5648 provided EVIDENCE confirming this in a letter, before 72 fraud convictions;

“Monday, 24 January, 1994

Mr William Irving,

Chairman — Championship Committee 14th World Universities Debating Championship...

I would also like to properly apologise for the incident that occurred to interfere with one of the debating rounds, involving our A.N.U. “B” team.

This was not called for and I hope that the ramifications for you have not been serious.... Best wishes for 1994. I look forward to seeing you soon.

Yours sincerely, SIMON BRETTELL Immediate Past President A.N.U. Debating Society”

Annette Margaret & Orme Frederick & Jeremy Orme & Ashley Jonathon BRETTELL 4 Trumper Street Holt ACT 2615;

© Amicus Curae Alexander Marcel André Sebastian Bailiff Ph.D Laws (HC)(ANU) The ANU Scrabble® Society DC 20036 US, Kath Cummins @KathCummins Director of Public Affairs, National Center for Victims of Crime, National Center for Victims of Crime 2000 M Street NW, Phone: (202) 467-8700, Suite 480 Washington,

Tell 1 212 963 3018 Facts 1 212 963 3922 Mob 1 917 913 0239 LPO Box 70 Australia National University Canberra ACT 0200 AUSTRALIA

JANINA JANKOWSKI

KATH CUMMINS

KATE KELLY

RACHEL MICHELLE PIERCEY    secret lover    SIMON GERARD BRETTELL

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To me

“You are a fucking cock sucker, you will never work out what is going on and even if you do you will never be able to prove it.”

Constable Harry Thomas Hains rang me from city station on NEC NEAX 2400 PABX to work out when I was home and informing Rachel Michelle Piercey before she made all of her false accusations in 1992.

One false accusation I went to a friends place after redirecting my home phone number to her place.

My friend gave evidence in the Supreme Court that she kept getting series of suspicious phone calls at her place as I had redirected my home phone to her place. Rachel Michelle Piercey made false accusation I knocked on her door John XXIII College after 3am.

5 arrests, 7 charges 38 court appearances, over 104 days resulted in 4 convictions in Magistrates Court. Justice John Gallop overturned 4 convictions in the Supreme Court “as they entirely defeated the principles of our legal system.”

To Chief Magistrate Ron Cahill

“I went beyond my duty as I have a special interest.”

Constable Harry Thomas Hains 4928 rang Woden Valley Hospital Psychiatric Ward from Federal Court cells to confirm I was there and find out what access I had to phone. He then rang Rachel Michelle Piercey and informed her where I was and what access I had to phone. That night Rachel Michelle Piercey made false accusation I rang her from Woden Valley Hospital Psychiatric Ward and that was in breach of restraining order. Constable Harry Thomas Hains then rang Mark Ryan Woden Valley Hospital Psychiatric Ward and spoke to Mark Ryan about me having rung Rachel Michelle Piercey which was in breach of restraining order. Mark Ryan told Constable Harry Thomas Hains that me ringing Rachel Michelle Piercey was absolutely impossible and would not allow Constable Harry Thomas Hains to arrest me for breach or order. So Rachel Michelle Piercey later that week spoke to Detective Sergeant Dave Baker about having raped Rachel Michelle Piercey at John XXIII College. On 25 September 1992 in Supreme Court cells Detective Sergeant Dave Baker interviewed me about having escaped from Woden Valley Hospital Psychiatric Ward raped Rachel Michelle Piercey at John XXIII College and then got back escaped back into Woden Valley Psychiatric Ward all undetected.

Constable Harry Thomas Hains rang me residence and left intermittent beeps from the police station.

# ANU student guilty of harassment

By MICHAEL BACHELARD

An ANU student found guilty of breaching a restraining order by harassing a female student consistently was remanded in custody pending a psychiatric assessment and sentencing.

The ACT Magistrates Court heard last week that Alexander Marcel Andrei Sebastian Bayliss, 22, of O'Connor had harassed and threatened Michelle Piercey continually over the telephone, even after he had been found guilty the previous of other breaches of an interim restraining order.

He had broken bail conditions, set by Magistrate Warren Nicholl on September 4, not to contact Piercey.

Bayliss denied all the charges.

Ms Piercey told the courts on Thursday that she met Bayliss at the beginning of the university year when he had asked her to join the Scrabble Society. A dispute over a seat in a lecture theatre had followed. She described several incidents when he had harassed and followed her. One involved his circling her on a bicycle and threatening to kill her. Other harassment involved his spitting on her computer terminal and confronting her in person.

She had obtained the interim restraining order in July. After this, she said he had telephoned her in her room at college, and come to her door at 3:30 one morning.

She said that in August she had begun to get 12 to 15 nuisance calls a day. She identified a "high pitched and effeminate" voice in some calls as being Bayliss's. On August 21 she said he had telephoned in her room said, "You're soon dead, sweetheart", and "Get ready, sweetheart, because I'm coming for you". This had led to his conviction earlier this month for breaching a restraining order.

Ms Piercey said that three days after this conviction she received several calls from Bayliss in the evening, including one in which he said, "I love you , sweetheart".

She had said "Alex", and he had said "Bitch, bitch, just leave me alone", and hung up. At 2:30am another had come in which he had said, "We can finally be together in a little while, sweetheart".

She had said "Alex" , and he had said, "Shut up, bitch, right now I'm coming for you right now", and hung up. She had contacted the police and he had been arrested.

Bayliss told the court that "puerile propaganda" had been written about time and the Scrabble club he had been trying to form, in a newsletter of the ANU debating society early in the year. Only after he had threatened to sue

the debaters for this had the allegations of harassment begun. He told the court that Ms Piercey was associated with the debating society.

He denied making any calls, and denied being “obsessed “with Ms Piercey.

Bayliss’s counsel, Michael Helman, suggested to Ms Piercey that she had fabricated the allegations because of her “hostility to Alex”. She denied this.

The prosecutor, Ken Archer, said, said the case “smacks of a distorted mind going about a premeditated campaign of harassment.”

Chief Magistrate Ron Cahill remanded Bayliss in custody until September 24 for sentencing.

# Client puts counsel in witness box

By MICHAEL BACHELARD

A man who was court for sentencing yesterday over breaches of a restraining order put his own lawyer in the witness box and told him he no longer wanted to be represented by him.

Alexander Marcel Andre Sebastian Bayliss, 22, of O'Connor, called his counsel, Michael Helman, 35, into the witness box shortly after proceedings opened in the ACT Magistrates Court yesterday.

Chief Magistrate Ron Cahill temporarily excused Mr Helman from representing until after he gives evidence.

Bayliss quizzed Mr Helman about his involvement in Bayliss's various cases. He asked Mr Helman how they had come to meet, where and how Mr Helman had stored papers relating to the case, who he had discussed the case with.

Mr Helman was then asked if he knew Bayliss's full name and exact date of birth. Mr Helman confessed he did not know exactly. Bayliss alleged that this constituted incompetence by Mr Helman.

Mr Cahill said he did not see the forensic value of such questions, and confessed that when he had represented clients, he would probably not have known such information about them. Asked by Mr Cahill to point out the relevance of his questions to the sentencing proceedings, Bayliss said they were "critically vital".

He made further allegations about Mr Helman, but Mr Cahill said Bayliss could not attack his own witness.

Mr Cahill said Mr Helman's defence of Bayliss had been "conducted in the way most cases are conducted in this court". Bayliss's accusation was of "peripheral relevance" to the sentencing proceedings.

Bayliss pressed his point, and asked Mr Helman to read out a card he had prepared which formally requested that he no longer act for him. Having read that the card, Mr Helman sought leave to withdraw from the case, which was granted by Mr Cahill. As he left the court, Mr Helman raised his index and middle fingers, knuckles forward, toward his former client.

Sentencing proceedings had been delayed pending the psychiatric assessments of Bayliss. A report presented to the court yesterday found Bayliss had no psychiatric illness.

Bayliss was convicted and given a two-month suspended sentence on a \$2000, three-year good-behaviour bond on condition he not approach or contact the victim of the harassment and he accept the supervision of the director of adult protective services.

Mr Cahill also granted him bail on an earlier matter of breaching the restraining, for which Bayliss will be sentenced on November 4.

# ANU student fined for breaching restraining order

By MICHAEL BACHELARD

An ANU student found guilty of three breaches of a restraining order after he telephoned and threatened a female student was fined in the ACT Magistrates Court yesterday.

Alexander Marcel Andre Sebastian Bayliss, 22, of O'Connor was sentenced without the drama of a former sentencing on similar charges, when he put both his lawyer and his arresting police officer in the witness box.

However, Bayliss, who described himself as an ambitious young man," said from the witness box that the charges against him were the result of a conspiracy between the complainant and the police, under instructions from the ANU Debating Society. It was a "conspiracy to pervert the course of justice," he said.

The charges before Mr Nicholl related to three breaches of a restraining order after he harassed the victim at ANU. Bayliss was convicted later by Chief Magistrate Ron Cahill for harassing telephone calls he made three days after his conviction. They were in breach of bail conditions set by Mr Nicholl not to contact the woman

He was given a two-month suspended prison sentences for these later breaches.

Bayliss spoke from the witness box yesterday, saying that he had an alibi for one of the breaches for which he had been convicted by Mr Nicholl. He said the prosecutor at his hearing had got the date of one of the breaches wrong. He had been asked where he was during the early hours of Wednesday, July 30. He said yesterday that July 30 had been a Thursday and he had an alibi for it.

The ANU debating society was guilty of "libel, slander and defamation" of him, he claimed, having published "puerile propaganda" in a society magazine. It was legal action about this that the complainant and the police were conspiring to prevent him proceeding with.

He complained also that police had spoken to him in "vulgar and vernacular language".

Mr Nicholl said Bayliss's evidence was "not helping decide on a sentence", but Bayliss was pointing out "a number of inconsistencies which are of conservable interest to the court".

Bayliss's counsel, Warren Donald, said his client had had "a very traumatic past". He had been involved in a road accident in 1985 in which his sister had been killed, he had several months in a coma.

Mr Donald pointed to Bayliss's "manner and persistence which perhaps could aggravate some people," but which was responsible for his getting to university despite a difficult life. He indicated that Bayliss would appeal against his convictions.

Mr Nicholl convicted and fined him \$100 on each of the three charges, and allowed him 12 months to pay.

XIV WORLD UNIVERSITIES DEBATING CHAMPIONSHIP UNIVERSITY OF MELBOURNE JANUARY 1994

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Yours sincerely, **SIMON BRETTELL** Immediate Past President A.N.U. Debating Society"

Annette Margaret & Orme Frederick & Jeremy Orme & Ashley Jonathon BRETTELL 4 Trumper Street Holt ACT 2615;

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Tell 1 212 963 3018 Facts 1 212 963 3922 Mob 1 917 913 0239 LPO Box 70 Australia National University Canberra ACT 0200 AUSTRALIA

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KATH CUMMINS

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This was witnessed by:- WUDC Chairman WILLIAM IRVING 242 Exhibition Street Melbourne 03 9634 2160 03 9600 1271; WUDC Publication Director DELIA BURRAGE 21/385 Bourke Street 03 9670 6123 DX 428 Melbourne 03 9670 4475; Chairman Worlds Council TIMOTHY McEVOY 101 Collins Street 03 9288 1234 DX 240 Melbourne 03 9288 1567; WUDC Social Director JULIA PRYOR 28/525 Collins Street 03 9643 4000 DX 101 Melbourne 03 9643 5999; RICHARD DOUGLAS 17/221 St George Tee 08 9366 8000 DX 169 Perth 08 9366 6111; TONYA RISZKO 13 Farrer Braddon 02 6248 6426/7494;

KATH CUMMINS, [22 Cobokn Avenue Lane Cove 02 9427 5915 02 9265 3000 AFR 02 6240 4040] so far, wrote all ANUDS fabricated defamatory documents, providing one at XIV WORLD UNIVERSITIES DEBATING CHAMPIONSHIP, UNIVERSITY OF MELBOURNE, JANUARY 1994, before making another "false accusation" of "threat to kill" as she could not "incite and encourage" and "aid and abet" RACHEL MICHELLE PIERCEY [11/71 Tindery Circuit Palmerston] to do so as in 1992, 1993 as RACHEL MICHELLE PIERCEY was not in Melbourne. ANU "B", KATH CUMMINS, with JANINA JANKOWSKI, [11 Tattersall Crescent Florey 02 6259 2547] "incited and encouraged" and "aided and abeted" RACHEL MICHELLE PIERCEY to make another "false accusation" of "threat to kill", in 1995, and then KATE KELLY [9 & 14 Beltana Road Piallago 02 6247 5860] to make a "false accusation" of "threat to kill", in 1996, to AUSTRALIAN FEDERAL POLICE Dt Sgt acting Supt Tim Fisher (Solomon Island). This is witnessed by:- MARK NOLAN 8 George Gilfillan Avenue Kempsey 02 6562 5388; TIM HUGHES 3/125 Old South Head Road Bondi Junction 02 9389 2084 /02 9361 6637; MATTHEW SAG 55 Clarina Street Chapel Hill 07 9378 0098; Parents JUDY and ROSS son WILL DE VERE 8 Castle Place Melba 02 6258 2486

SIMON GERARD BRETTELL [10/8 Britten-Jones Drive Holt ACT 2615 612 6254 3646] ANUTECH North Road cnr Barry Drive Acton 612 6249 5660 612 6249 5648 provided EVIDENCE confirming this in a letter, before 72 fraud convictions;

"Monday, 24 January, 1994 Mr William Irving, Chairman — Championship Committee 14th World Universities Debating Championship...

I would also like to properly apologise for the incident that occurred to interfere with one of the debating rounds, involving our A.N.U. "B" team.

This was not called for and I hope that the ramifications for you have not been serious.... Best wishes for 1994. I look forward to seeing you soon.

Yours sincerely, **SIMON BRETTELL** Immediate Past President A.N.U. Debating Society"

Annette Margaret & Orme Frederick & Jeremy Orme & Ashley Jonathon BRETTELL 4 Trumper Street Holt ACT 2615;

© Amicus Curae HRH Alexander Marcel André Sebastian Bailiff CIA FBI KGB Ph.D Laws (HC)(ANU) @ Society of Scrabble® 14 February 2001  
Tell 1 212 963 3018 Facts 1 212 963 3922 Mob 1 917 913 0239 LPO Box 70 Australia National University Canberra ACT 0200 AUSTRALIA

JANINA JANKOWSKI

KATH CUMMINS

KATE KELLY

RACHEL MICHELLE PIERCEY secret lovers

SIMON GERARD BRETTELL

JANINA JANKOWSKI

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KATH CUMMINS

KATE KELLY

RACHEL MICHELLE PIERCEY secret lovers

SIMON GERARD BRETTELL

IN THE HIGH COURT OF AUSTRALIA  
CANBERRA REGISTRY  
1995

No. H.C. of

IN THE MATTER of a WRIT OF MANDAMUS against:

CHIEF JUSTICE of the HIGH COURT - THE HONOURABLE SIR ANTHONY MASON AO, KBE, and  
PATRON of the AUSTRALIAN NATIONAL UNIVERSITY DEBATING SOCIETY.  
RESPONDENT

ALEXANDER MARCEL ANDRE SEBASTIAN BARKER BAILIFF, AUSTRALIAN NATIONAL  
UNIVERSITY student #9204215.

AND

AUSTRALIAN NATIONAL UNIVERSITY SCRABBLE SOCIETY.  
PROSECUTORS.

BEFORE THE HONOURABLE JUSTICE  
BRENNAN, DEANE, DAWSON, TOOHEY, GAUDRON OR MCHUGH  
THE 3rd OF JANUARY 1995.

UPON APPLICATION made this day at the HIGH COURT OF AUSTRALIA, REGISTRY by Alexander Marcel Andre Sebastian Barker Bailiff, Australian National University student #9204215, Chairman, Australian National University Scrabble Society and on behalf of the Australian National University Scrabble Society, PROSECUTOR, for an ORDER NISI for a WRIT OF MANDAMUS, against the CHIEF JUSTICE OF THE HIGH COURT, COMMONWEALTH OF AUSTRALIA, hereby provide an AFFIDAVIT to support the reasons why this WRIT OF MANDAMUS should be issued.

#### **AFFIDAVIT**

1.

I, Alexander Marcel Andre Sebastian Barker Bailiff, of 7C Moorhouse Street O'Connor in the Australian Capital Territory, student#9204215 at the Australian National University ("ANU")and Chairman of the ANU Scrabble Society make oath and say as follows:-

1.1

I was born, on the day Gough Whitlam, Leader of the Opposition, threatened to block supply in the Senate, that is Tuesday the 25th of August 1970, an event leading up to the constitutional crisis of 1975. My life began,

amidst controversy, and is polemic, pleonastic and serendipitous. My idiosyncrasies determine the path in life, I have chosen to passionately, pursue.

1.2

I am, Alexander Marcel Andrei Sebastian Barker Bailiff, an eccentric, who has an unusual thought process'. I am a sui generis social, political, legal, economic, commercial, and ideological, theory exculpator. I am, a P.L.E.C.I.T.E. and exceptionally industrious and resourceful, effectively utilising any resources available. My favourite pursuit, apart from developing P.L.E.C.I.T.E. strategies, is playing Scrabble®. Exhibit 1.1

1.3

I am, the Chairman of the Australian National University Scrabble® Society.

1.4

I am, appointed by the ANU Scrabble® Society, to make this Affidavit.

1.5

I am, duly authorised by the ANU Scrabble® Society to act in any proceedings, presentations or performance necessary to ensure achieving the 'Aims and Objectives' of the ANU Scrabble® Society.

1.6

The «Aims and Objectives» of The ANU Scrabble® Society are to:-

1.7

Ensure **justice and equity** for all people and groups in society.

1.8

Develop interpersonal skills between people and groups of differing views and interests through a range of pleasurable mediums.

1.9

Develop our vocabulary and enhance the use of words in everyday life.

1.10

Develop self awareness in both personal and career "Aims and Objectives".

1.11

Enjoy simultaneously achieving our and these «Aims and Objectives».

1.12

The Chairman is generally to have power to do anything to achieve the 'Aims and Objectives' of the Society - subject to the provisions of this constitution and Commonwealth Legislation passed via The Australian Constitution Act.

2.

The major criminal activity of the **Australian National University Debating Society**, and the **Australian Federal Police**, aided by **Philip Alan Selth, Australian National University, Pro-Vice Chancellor**, for Planning and Administration, **Richard Refshuage** from **Macphillamy, Cummins and Gibson** (division of Sly and Wiegall) and **Chris Chenoweth** from **Mallesons, Stephen and Jacques**. In an effort to prevent me, the Chairman of the ANU Scrabble® Society from informing the Honourable Sir Anthony Frank Mason AO, KBE, - Chief Justice of the High Court of Australia, of major criminal activity of an organisation he is the Patron of, being the **Australian National University Debating Society**.

2.1

In 1992 ANU Debating Society, President - Simon Brettel, Vice President - Kath Cummins, Treasurer - Tim Hughes, Editor - Kirsten Edwards, Editor - Matthew Sag, and Sponsorship Officer - Stella Gaha did, "conspire to commit crimes", "incite and encourage", "aid and abet", and be an "accessory after the fact", to criminal activity of Assistant Sponsorship Officer - Rachel Michelle Piercey. Exhibit 2.1

2.2

ANU Debating Society, Assistant Sponsorship Officer - Rachel Michelle Piercey did «attempt, «conspire to bring false accusation», «conspire to defeat justice», «attempt to pervert justice», «fabricate evidence», circulate «defamatory documents», «make «untrue representations», make «false accusations», «give false testimony», «commit perjury», and «perjury with the intent to procure conviction». Exhibit 2.2

2.3

ANU Debating Society, Assistant Sponsorship Officer - Rachel Michelle Piercey was also «incited and encouraged», and «aided and abetted» by her fellow student, friend and lover Australian Federal Police («AFP») Constable Harry Thomas Hains 4928, responsible for 5 arrests of in 48 days. And Constable Harry Thomas Hains 4928 was "aided and abetted" by Constable Adrian Kraft 3260. Exhibit 2.3

2.4

The Chief Magistrate Ron Cahill, presided over proceedings in which he went beyond his jurisdiction and "acted oppressively and was an interested party". I was remanded from the 8th of September to 16th of October 1992 for a "false accusation" that I telephoned Rachel Michelle Piercey, in breach of Interim Restraining Order 1992/279, which expired 14 days before I was arrested by Rachel Michelle Piercey's fellow student, friend and lover AFP Constable Harry Thomas Hains 4928. I was released 2 days after the Honourable Sir Anthony Frank Mason AO, KBE, - Chief Justice of the High Court, attended the annual ANU Debating Society dinner at the ANU, as their Patron. Exhibit 2.4

## 2.5

In 1992, ANU Debating Society Assistant Sponsorship Officer - Rachel Michelle Piercey's distinct pattern of behaviour was to circulate "defamatory documents", "fabricate evidence" make a "false accusation" of "threat to kill", get a restraining order then make "false accusations" of breaching the order.

Exhibit 2.5

## 2.6

The ANU Pro-Vice Chancellor, for Planning and Administration («P&A»), Philip Alan Selth hired his General Services Fee committee colleague - Richard Refshuage from Macphillamy, Cummins and Gibson to represent Rachel Michelle Piercey after she "fabricated evidence" and submitted it to him on the 28th July 1992. Exhibit 2.6

## 2.7

Over 104 days, from the 22nd July until the 4th November 1992, efforts of:-

**Australian National University Debating Society**, President - Simon Brettel, Vice President - Kath Cummins, Treasurer - Tim Hughes, Editor - Kirsten Edwards, Editor - Matthew Sag, Sponsorship Officer - Stella Gaha and Assistant Sponsorship Officer - Rachel Michelle Piercey.

**Australian National University** Pro-Vice Chancellor for Planning and Administration, Philip Alan Selth and any lawyers, academic's, staff and students acting under his advice. ie. Gavin Lee, for Rachel Michelle Piercey.

**Macphillamy, Cummins and Gibson**(«MCG») - Richard Refshuage hired for Rachel Michelle Piercey by ANU Pro-Vice Chancellor - Philip Alan Selth.

**Malleson, Stephen and Jacques**(«MSJ») - Chris Chenoweth hired by ANU Pro-Vice Chancellor, P&A - Philip Alan Selth, for himself.

**Australian Federal Police**- Constable Harry Thomas Hains 4928, Constable Martin Leonard 4169, Constable Rebecca Louise McNevin 5038, Constable Adrian Kraft 3260, Senior Constable John Reynolds 2830, Constable Wesley James Herold 3874, Constable Michael Perriman 3297, and Constable Pugh.

**ACT Legal Aid Office** - Ms Crebbins, Kate Hughes - Ken Archer's defacto and fiance' and solicitor Gavin Lee representing Rachel Michelle Piercey's.

**ACT Director of Public Prosecutions** - Ken Archer, Michael Chilcott, Pat De Veau, Cooke, Alison Chivers, Amanda Tonkin, Fiona Merrylees.

**ACT Magistrates Court** - Michael Somes, Peter Dingwall, Michael Ward, Warren Nicholl, John Murphy, Ron Cahill, John Dainer, John Burns.

**ACT Corrective Services** - Director and staff of Belconnen Remand Centre.

resulted in:-

reluctantly issuing an interim restraining order, 5 arrests, 7 charges, 38 court appearances, 22 days in court, 55 days in remand and 4 convictions, being released 2 days after the Annual Debating Society End of Year Dinner.

Exhibit 2.7

## 2.8

During this period Christine and Philip Bates came to Canberra and had discussions about me and regarding my studies, with ANU, Disability Adviser -Margaret Miller, Counsellor - Leila Bailey, Lecturer - Dr Mac Boot, Lecturer -David Adams, Tutor - Lorraine Elliott and possibly lecturer - Harry Geddesand others. The ANUbeing in contravention of the Commonwealth Privacy Act, as at no stage did I give written or oral permission to any of theseacademics or staff to speak to my parents. When I asked ANU Pro-Vice Chancellor about the ANU “Statement to student’s on Confidentiality ofPersonal Information” of 2nd February 1993, he told me he had written it. Ifurther asked him about the ANU breaching my confidentiality, by speakingto my parents with out my permission, he told me “the ANU does not breachconfidentiality, except in extenuating circumstances.”Exhibit 2.8

## 2.9

Christine and Philip Bates, Peter Bayliss and I had a meeting with psychiatrist- Dr Robert Tym. At this meeting Dr Robert Tym reassured my parents, “yourson is not abnormal, he is normal, just unusual.” At a later stage solicitor,Michael Helman told me he would get me off the charge on grounds of insanity. When I interjected, saying “but I am not !” Michael Helman, told me not to worry as he had offered Dr Tym \$400 from legal aid to write such a report. Ironically, when I again met Dr Tym, he told me, “he had been offered\$400 to write a report saying I suffered from delusion and paranoia.” When I told Dr Tym, “I had neither given Michael Helman or Dr Tym permission tobreach my confidentiality” he said, “it does not matter”. When I told Dr Tym, “I had sacked Michael Helman.” Dr Tym told me “Michael Helman asked for it before I sacked him.” So I told him, “that is not what you told my parent’s.” Dr Tym then told me, “I have changed my mind and absolutely nothing is going to stop me writing this report unless you give me \$400.” I told him, “mystepfather is currently suing psychiatrists in the Chelmsford cases and I am sure suing you for ‘demand accompanied by threat’ will be small fry.” After this I was taken away by Remand Centre Officers to my next appointment with Dr Shihoff, my GP. I told Dr Shihoff, “Dr Tym made a demandaccompanied by threat to me” and explained in detail. Dr Tym rang up 40 minutes later to tell Dr Shihoff “that he would not write a report unless I gave him full written permission”.

About this time, I was multiple «assaulted», by Belconnen Remand Centre, staff member Tony Gould. Michael Helman, walked out of Court, sticking his fingers up, refusing to give evidence of him breaching client confidentiality, after he had given evidence of how solicitor - Tim Chadwick had breached myclient confidentiality. Dr Tym did worse things when he was in court in 1994 !Exhibit 2.9

## 2.10

In 1993, I had various meeting with ANU Pro-Vice Chancellor for Planningand Administration, Philip Alan Selth, also a barrister and solicitor, regarding the ANU having hired Richard Refshuage from Macphillamy, Cummins andGibson for Rachel Michelle Piercey, her “fabricated evidence”, “untrue representations” and “false accusations”. Another“false accusation” was made when I was with Philip Alan Selth and days later Rachel Michelle Piercey “circulated defamatory documents”, “fabricated evidence” and made a “false accusation” of threat to kill, against another male student - Tjarda Strienstra.

Exhibit 2.10

## 2.11

Upon me informing Philip Alan Selth of this, he had an urgent meeting the next morning with Rachel Michelle Piercey. More importantly, Philip Alan Selth, became an “accessory after the fact” as he now knew what I had told him was true. So Philip Alan Selth, started having me arrested for trespass when I was found “reading in the library”, on four occasions. It has been proven that I was reading in the library with no reasonable excuse. I have no conviction and no record. I will win the Supreme Court appeal. Exhibit 2.11

## 2.12

ANU Pro-Vice Chancellor, for Planning and Administration, Philip Alan Selth then, got a restraining order to keep me off the entire ANU. ANU - Philip Alan Selth, ANU legal officer - Stephen Herrick, MCG - Richard Refshuage, MSJ Chris Chenoweth and Malcolm Brennan, and Barrister - John Purnell appeared, over nine days before 5 Magistrates, against unrepresented me. This was after MCG Richard Refshuage, had asked me “would you like to cut a deal?”, upon me showing him proof of Rachel Michelle Piercey’s criminal activity. And after, ANU Law lecturer - Harry Geddes, gave crucial evidence in the Magistrates Court, establishing he saw Rachel Michelle Piercey’s “fabricated evidence”, quite a few later than she alleged giving it to him in a second piece of “fabricated evidence” of the 28th July 1992. Having “fabricated evidence” to provide Philip Alan Selth reasons to hire Richard Refshuage of Macphillamy, Cummins and Gibson for Rachel Michelle Piercey. Philip Alan Selth panicked and applied for his restraining order the day after Rachel Michelle Piercey’s restraining order expired. For the purpose of preventing me subpoenaing, other ANU witness, who can provide further evidence of criminal activity of Philip Alan Selth and Rachel Michelle Piercey. Exhibit 2.12

## 2.13

ANU Debating Society Rachel Michelle Piercey’s, distinct pattern of behaviour had surfaced again as she, “circulated defamatory documents”, “fabricated evidence” and made a “false accusation” of “threat to kill”, against another innocent male student. ANU Pro-Vice Chancellor, Philip Alan Selth further established a link between the ANU his and Rachel Michelle Piercey legal action and more importantly criminal activity. Exhibit 2.13

## 2.14

In 1993, I was «commonly assaulted» by Constable Kelvin George Thorn 1639, as he “inflicted actual bodily harm” and told his younger colleagues I had been harassing a Canadian woman, [being Rachel Michelle Piercey]. Witnessed by Constable Robert Duncan 4174, Constable Paul Sherring 4545, Constable Anthony Crocker 4832, and Constable Darren Bretherton 4997. I was charged with “assault” and “resisting arrest” after Constable Kelvin George Thorn 1639, “fabricated evidence” for all four and “incited and encouraged” and “aided and abetted” all four to make a “false accusation”, “commit perjury” and “perjury with the intent to procure conviction”. All gave evidence witnessing me “assault” and “resist arrest”. After giving evidence, they were told I had just dislocated my collarbone, weeks earlier. At trial, Justice Gallop, advised me, to “never take on the police as they will always win” as he gave me no conviction and no record. I will be acquitted in the Federal Court appeal.

I told Chief Magistrate - Ron Cahill, how Rachel Michelle Piercey and Constable Harry Thomas 4928, knew

when I was home before they made false accusations. ie. telephoning, if I answer I am home. I also told Ron Cahill of my fears for my safety. Expressing concerns of me being hit by a car. I was hit by YDA - 107, at 3:25 pm on 19th November 1992, whilst on a footpath, before the motorist said, "serves you right and drove away". This was a deliberate "hit and run" and witnessed by:- Darren Thomas 5 Bennett Place Spence 2586608, Chris 61 Cuthbert Circuit Wanniasa 231 2625 and Adam 62 Adolf Street Tuggeranong. Motorist was chased and he is Stephen Riley of 16 Miller Street O'Connor ACT 2601, Licence number 279865. When Police came the female helped me, and the male threatened to charge me, near home and when he met me at Calvary hospital. I dislocated my collarbone, seeing Dr Wright at Calvary Hospital and Dr Shihoff at Lyneham Medical Centre.

Exhibit 2.14

2.15

On the 27th of July 1993, it took me 4 hours and 39 minutes to be acquitted on appeal of 4 convictions. On the basis, «the way the cases have been conducted in the Magistrates Court entirely defeated the principles of our legal system.» To quote Justice Gallop. Despite this, and the fact the swift dismissal of these charges was well known through legal and police circles. I was still arrested at 0040 hours on the 9th of March 1994 for "failure to pay three \$100 fines." Sergeant Hall tried to explain as he apologised and let me go, although he could not explain why the last four times I had been arrested, AFP let me go from 45 minutes to 3 hours later, without charging me. My fears, have resulted in me hiding for my own peace and safety. Exhibit 2.15

2.16

ANU Pro-Vice Chancellor, for Planning and Administration, Philip Alan Selth enlisted the assistance of the 1,200 academic, 2,200 technical and general staff, and more than 10, 500 students of which 2, 400 are from 60 countries, of the ANU in his, Macphillamy, Cummins and Gibson- Richard Refshuage, Malleons, Stephen and Jacques - Chris Chenoweth, and ANU Debating Society efforts to silence and prevent me subpoenaing witness' to expose their major criminal activity. As I did subpoena ANU Law lecturer - Harry Geddes, before giving crucial evidence. On the 26th of November 1993, my mother Christine Bates wrote to the Chancellor, Pro-Vice Chancellor and members of the ANU Council providing them advice on these scandalous matters. Exhibit 2.16

2.17

In 1994, at the XIV Worlds Debating Universities Debating Championship ANU Debating Society 1992, President - Simon Brettel, Vice President - Kath Cummins and Treasurer - Tim Hughes used the distinct pattern of behaviour they had "incited and encouraged" and "aided and abetted" Rachel Michelle Piercey to use in 1992 and 1993. President - Simon Brettel, Vice-President - Kath Cummins, and Treasurer - Tim Hughes "circulated defamatory documents", "fabricated evidence" and made a "false accusation" [of] that I "**threatened to kill**" them. So much so, Michael Gronow - Chief Adjudicator of Melbourne University Debating Society organising committee, announced, to all of contestants from 100 universities from 20 nations, "that the tournament had been delayed for half an hour as the ANU Debating Society had caused a security scare by saying someone had threatened to kill them. And it had been established that it was only a practical joke and that if the ANU Debating Society further delayed the tournament the organising committee would officially 'threaten to kill them'. Exhibit 2.17

2.18

ANU Debating Society Rachel Michelle Piercey's, distinct pattern of behaviour surfaced again when President - Simon Brettel, Vice-President - Kath Cummins, and Treasurer - Tim Hughes, circulated "defamatory documents", "fabricated evidence" and made a "false accusation" that I "threatened to kill" them. They used this distinct pattern of behaviour since they were well acquainted with it as they had "incited and encouraged" and "aided and abetted" Rachel Michelle Piercey to do the same in 1992 and 1993. The reason they did not again "incite and encourage" and "aid and abet" Rachel Michelle Piercey to use it in 1994, is because she was not at the XIV World Universities Debating Championships, as they were held in Melbourne. Exhibit 2.18

2.19

When I rang Canberra AFP Internal Investigations Division, I told Detective Superintendent Ed Hadzic of isolating ANU Debating Society, President - Simon Brettel, Vice-President - Kath Cummins, and Treasurer - Tim Hughes, using the distinct pattern of behaviour they had "incited and encouraged" and "aided and abetted" Rachel Michelle Piercey to use in 1992 and 1993. They did this by circulating "defamatory documents", "fabricating evidence" and making a "false accusation" of "threat to kill". After I told AFP Internal Investigations Division, (AFP Public Relations Whitewasher) Detective Superintendent Ed Hadzic of this good news, he said "it was only a joke!" As he twice sent me this, his response does not surprise me. Exhibit 2.19

2.20

As ANU Pro-Vice Chancellor, for Planning and Administration, Philip Alan Selth, successfully got a restraining order keeping me off all property of the ANU including all of its halls and colleges of residence, I was unable to go on campus to pay my ANU 1994 General Services Fee for Re-Enrolling Undergraduates. So I had a friend pay this for me, student number 9204215, by presenting St. George Cheque number 187173, at 16:19 hours in exchange for receipt number 28016. This cheque was paid by St George Bank on the 20th of January 1994. I presented ANU Pro-Vice Chancellor, Philip Alan Selth a completed course enrolment form in Magistrate Court hearing RO 93/494, in December 1993, see Exhibit's. I also sent one by certified mail, item H177494, to the Enrolment and Fees office on the 13th of December 1993. This postage of \$1.85 was paid for by St. George Cheque number 801997. I think it would be unreasonable, although not unlikely, if the ANU have failed me in these courses for failure to submit essays and complete exams. Exhibit 2.20

2.21

On Tuesday the 25th of August 1994, I wrote a letter seeking assistance.

This letter has gone to 883 senior officers in Australian higher education; 222 Commonwealth, 139 New South Wales, 133 Victorian, 91 Western Australian, 88 Queensland, 69 South Australian, and 54 Tasmanian, members of parliament; 25 Northern Territorian, and 17 Australian Capital Territory member of the Legislative Assembly; 16 Police Commissioners; 16 Director's of Public Prosecutions; 16 Ombudsman; 7 Governor's and 1 Governor-General; 69 High Commissions and Embassies seeking political asylum; 92 Editor's of student publications in Higher education; 42 newspaper editor's and radio and television executive producer's of capital cities across Australia. Exhibit

2.21

2.22

At my unofficial meeting with the Honourable Prime Minister of Australia, Paul John Keating, on the 2nd of September 1994, I told him I was having a major problem and he suggested I "write to the office". I did that same night, as I did on the 1st of August and I have not received a single response, except Justice Michael Kirby. I personalised, printed and framed an inspirational poem I wrote, for Paul Keating, the Honourable Prime Minister. I hoped these good thoughts of mine, might charm him and be appreciated upon his wall. I gave it to Deana, the Prime Minister's receptionist, who placed it upon his wall. Paul Keating, apparently "once" looked at it. Ironically, Deana and I, first actually met when I asked her if she would like to join the ANU Scrabble Society in 1992. Exhibit 2.22

2.23

On the 25th of September 1994, I wrote a letter to all 16 Ombudsmen, with a complaint and enclosing a list of 1980 public officers.

«The purpose of this letter is to make a complaint against each and every name on the enclosed list. Please investigate those, within your jurisdiction, and remit those that are not to the relevant Ombudsman, for investigation.»

I already know one Ombudsman, who personally wrote back, either did not read my full «1» page letter, or has no understanding of what is within his jurisdiction. Maybe, I should s.75 (v) of the Constitution Act him. Exhibit 2.23

2.24

On the 7th of October 1994, at 0900 hours I delivered two trunks of 1777 letters for Commonwealth and State officers, to the Prime Minister office. To my surprise, I got a message that distressed me more, than the death threats regularly left on my answering machine.

«Alexander, it is Ann McFarlane from the Prime Ministers office and I have two suitcases full of letters, which I suppose - or I think you may want us to send out, we don't send out letters like this, - um if they are not collected today we will have to get them destroyed.»

To think, it was only the 8th of December 1994, Paul Keating said:-

«But, we are guided by the thing that always guides us and that is if people are in trouble, no matter where they are from or who they vote for, let me say that, we are there to give them a hand.»

Fortunately, trunks Albert and Bill, were able to secretly get asylum in another Federal member's office, until I unleashed the 77 bundles of envelopes through some 53 members, for their electorate offices. The bundles must be well received, as I have only had four sent back to me. I know many members distributed them to institutions in their electorates. I even know some Federal member's have actually read, at least, the first letter - thanks ! Exhibit 2.24

2.25

As I had regularly written to the ANU Chancellor, Sir Geoffrey Yeend, often simply asking for him to dismiss ANU Pro-Vice Chancellor, for Planning and Administration, Philip Alan Selth, before he further implicates the

ANU. I was quite shocked by his untimely death. All 1980 public officers I had written to were even provided a copy of a letter I wrote to Sir Geoffrey Yeend of the 1st of August 1994. I had delivered to the Prime Minister's office only days before. As I had great respect for Sir Geoffrey Yeend, a great "people person", I felt the least I could do was attend his memorial at University House. Shortly after my arrival, I was approached, threatened and intimidated by ANU Pro-Vice Chancellor Philip Alan Selth. I asked him to leave me in peace as I was trying to attend a memorial service. As he did not, I placed my bike lock around my leg, and a chain around my waist to a rail I was beside. I was arrested the next day and charged twice for breach of the restraining order. One because I went to the memorial, and another because I checked my ANU Post Office Box and then chained myself to a statue outside the Chancellery at the student occupation. Magistrate Michael Somes remanded me for two weeks, as he feared I might re-offend by going on the ANU again. These charges will be heard early in 1995. Exhibit 2.25

#### 2.26

On the 10th of November 1994, at 1900 hours, I had a meeting with ANU Debating Society President of '91, '92, '93 - Simon Brettel, at Conflict Resolution Service. Simon Brettel, told me "Rachel [Michelle] Piercey has been a good friend of mine for about 4 years" and "became a [1992] committee member at the beginning of the year". This is evidence proving Rachel Michelle Piercey «committed perjury» on the 6th of August and 4th September 1992. I told Simon Brettel the significance of Rachel Michelle Piercey making "untrue representations", "fabricating evidence", and making "false accusations" within a short period of time of me informing Simon Brettel of letters to the Chief Justice of the High Court, re:- crime of ANU Debating Society. I gave Simon Brettel 3 letters, 2 information pages and my business card, advising they have been distributed nationally. Simon Brettel gave me his word that he would not show or tell Rachel Michelle Piercey or anyone. In a matter of days, Rachel Michelle Piercey "fabricated evidence", made a "false accusation" and "committed perjury" when applying for a restraining order. After it is served upon me Rachel Michelle Piercey will make more "false accusations". I will then be arrested, "assaulted" by police and remanded.

#### 2.27

The ANU Public Affairs Division invited a friend and I, to attend the ANU Installation of Chancellor Ceremony and the Conferring of an Honorary Degree of Doctor of Laws. I rang ANU Council Member and Shadow Minister for Social Security, Philip Maxwell Ruddock to inquire about me attending in safety from ANU Pro-Vice Chancellor, for Planning and Administration, Philip Alan Selth. Philip Maxwell Ruddock, suggested I get a personal invitation from Professor Peter Baume. My friend and I wrote a letter to Professor Peter Baume which we faxed. I did not get a personal invitation, so I did not go for fear of my safety. My seat, J19 in Llewellyn Hall, remained empty while Professor Peter Baume was installed as Chancellor of the Australian National University and Professor Geoffrey Brennan presented an Honorary Doctorate of Laws, which was conferred upon Archbishop Desmond Tutu. Exhibit 2.27

#### 2.28

As my rights, enumerated in the International Covenant on Economic, Social and Cultural Rights 1966 and International Covenant on Civil and Political Rights 1966 are being violated by the major criminal activity

of the **Australian National University Debating Society**, and the **Australian Federal Police**, aided by **Philip Alan Selth Australian National University Pro-Vice Chancellor**, **Richard Refshuage** from **Macphillamy, Cummins and Gibson**, (merged with Sly and Wiegall) and **Chris Chenoweth** from **Mallesons, Stephen and Jacques**. And I am arbitrarily arrested on a regular basis, I have death threats on a regular basis, I have been hit by one car - whilst on a footpath - only dislocating my collarbone, I fear for my life and my life is in danger. I will ask Archbishop Desmond Tutu to assist me in getting political asylum in South Africa.

2.29

So I wrote a letter to Archbishop Desmond Tutu seeking political asylum in South Africa. I faxed this letter to the office of the Prime Minister, Leader of the Opposition, Minister for Foreign Affairs, Shadow Minister for Foreign Affairs, South African High Commission and Arch Deacon Oliphant of St John's, Archbishop Desmond Tutu's Australian guide. I asked each of them if they could pass on my request for assistance in seeking political asylum in South Africa, but no one would pass my request to Archbishop Desmond Tutu. So that night in the Great Hall of Parliament House, I personally passed my request to Archbishop Desmond Tutu, who advised me to give it to his Media Secretary John Allen, at the end in the front row. I did this. Exhibit 2.29

2.30

When it was question time, I told Archbishop Desmond Tutu; - I am Alexander Buchanan, I passed you an envelope earlier. My Social, Economic, and Cultural and Civil and Political Rights are being violated. I have written a letter to the Prime Minister, the Leader of the Opposition, in fact every [838] Member of Parliament and 16 Police Commissioners. They have not been able to assist me, so I was wandering if you could assist me in getting political asylum in South Africa ?”

Archbishop Desmond Tutu said, «I only an Archbishop !”

After this I then went and sat beside John Allen, Media Secretary to Archbishop Desmond Tutu and exchanged business cards.

I provide copies of the cards John Allen and I exchanged in case my residence is mysteriously robbed, burnt or destroyed after I file this writ in the High Court. Probably as a joke to frighten or intimidate me and destroy evidence. You guessed ? The ANU Scrabble Society is my recreation marketing project.

2.31

“The major criminal activity of the **Australian National University Debating Society**, and the **Australian Federal Police**, aided by **Philip Alan Selth, Australian National University, Pro-Vice Chancellor**, for Planning and Administration, **Richard Refshuage** from **Macphillamy, Cummins and Gibson** (division of Sly and Wiegall) and **Chris Chenoweth** from **Mallesons, Stephen and Jacques**. In an effort to prevent the Chairman of the ANU Scrabble® Society from informing the Honourable Sir Anthony Frank Mason AO, KBE, - Chief Justice of the High Court of Australia, of major criminal activity of an organisation he is the patron of, that is the **Australian National University Debating Society**”, has not succeeded.

2.32

Has not succeeded, despite 3 restraining orders, 12 death threats, 17 arrests, 20 charges, 60 days in remand, almost 80 days in court, and over 100 appearances, going before every Magistrate and Justice of the Australian Capital Territory and I still have no convictions or record. I have won !

2.33

And now I have informed Chief Justice of the High Court - the Honourable Sir Anthony Frank Mason AO, KBE, of the blatant disregard of the law of the Australian National University Debating Society. And that this may possibly place him in a slight compromising position. Please do not take it personally, that I am now suing you for negligence, I just need your attention and help !

2.34

These events have not occurred because, I am eccentric or have an unusual thought process'. They have occurred as I sustained severe brain damage and been unconscious for a month. This is Disability Discrimination. My Disabilities are best summed up by Neurologist Dr Gytis Danta in his letter to the ANU Countrywide co-ordinator, Liz Lowrie of 15th December 1989.

**AND UPON READING IT IS FOUND THE CHIEF JUSTICE OF THE HIGH COURT OF AUSTRALIA THE HONOURABLE SIR ANTHONY FRANK MASON AO, KBE, IS NEGLIGENT FOR,**

3.0 Failure, to consider that as Chief Justice of the High Court of Australia, there is a duty of care you owe to every Australian. And to breach that duty of care by associating, affiliating and endorsing an organisation involved in major crime, such as the Australian National University Debating Society, would compromise your position, that of the Commonwealth of Australia and most importantly the people of the Commonwealth of Australia.

3.1

Failure to investigate the activities of the ANU Debating Society before becoming their patron in 1989.

3.2

Failure to investigate the activities of the ANU Debating Society before remaining their patron in 1990.

3.3

Failure to investigate the activities of the ANU Debating Society before remaining their patron in 1991.

3.4

Failure to investigate the what the 1991 ANU Debating Society would do with the letter, you wrote to them, publicly, declaring your affiliation, association and endorsement of the ANU Debating Society and their activities.

3.5

Failure to investigate, the activities of the 1991 ANU Debating Society before writing, any letter on High Court of Australia letterhead, affiliating, associating and endorsing the ANU Debating Society.

### 3.6

Failure to investigate, before writing in an undated letter of early 1991.

«To All Members

As Patron of the ANU Debating Society, it gives me much pleasure to greet members of the Society who are returning to the University to continue their studies this year.

Debating is an important and influential aspect of academic life in a university. Membership of the Society provides an excellent opportunity for the discussion of a wide range of social, political, and philosophical issues affecting Australia in particular and the world in general. As well, there is the added reward of the opportunity to make lasting friendships.

I wish the Society well for the coming year.» Exhibit 3.6

### 3.7

Failure to investigate the activities of the ANU Debating Society before remaining their patron in 1992.

### 3.8

Failure to investigate the what the 1992 ANU Debating Society would do with the letter, you wrote to them, publicly, declaring your affiliation, association and endorsement of the ANU Debating Society and their activities.

### 3.9

Failure to investigate, the activities of the 1992 ANU Debating Society before writing, any letter on High Court of Australia letterhead, affiliating, associating and endorsing the ANU Debating Society.

### 3.10

Failure to investigate, before writing in a letter of 6th February 1992.

«It is my pleasant task once again to write a few words of welcome to you, the members of the ANU Debating Society. Those of you who have chosen to renew your membership no doubt do so because you are aware of the many benefits to be obtained from involvement with the Society; new members will quickly realise the advantages which membership brings. Participation in extra-curricular activities adds to the enjoyment of university life and offers the opportunity to forge lasting friendships.

As patron, I was pleased to be able to attend the Society's Annual Dinner last year and to meet some of you. I was therefore not surprised to learn of the success of the Society at the recent World Championships. I would like to take this opportunity to congratulate those members who took part and to wish the society continued success in all its activities during the coming year. Exhibit 3.10

### 3.11

Failure to investigate, and monitor publications of the 1991, 1992, 1993, 1994, ANU Debating Society, such as their monthly journals, Inter Junket, Splinter Junket and Year books.

### 3.12

Failure to investigate, the Canberra Times article by Michael Bachelard, of 15th September 1992, which referred to the ANU Debating Society taking, criminal actions when I threatened to sue them for defamation, before and after attending the annual ANU Debating Society dinner for 1992.

### 3.13

Failure to investigate, the Canberra Times letter to editor, written by Amanda Chadwick on the 21st September 1992, which referred to serious problems of ANU Debating Society, Assistant Sponsorship Officer - Rachel Michelle Piercey.

### 3.14

Failure to investigate, the Canberra Times article by Michael Bachelard, of 17th October 1992, clearly indicating major criminal activity, as a direct result of ANU Debating Society, Assistant Sponsorship officer - Rachel Michelle Piercey making "false accusations" and "committing perjury".

### 3.15

Failure to investigate, the Canberra Times article by Michael Bachelard, of 5th November 1992, clearly referring to conspiracy between Rachel Michelle Piercey and the Police under instructions of the ANU Debating Society. A conspiracy to prevent me proceeding with action against libel, slander and defamation after they published "puerile propaganda".

### 3.16

Failure to investigate, phone, fax or write to me to enquire about defamation, a conspiracy and contempt by the ANU Debating Society of which you are the patron who affiliates, associates and endorses their extra-curricular activities.

### 3.17

Failure to investigate the activities of the ANU Debating Society before remaining their patron in 1993.

### 3.18

Failure to investigate what the 1993 ANU Debating Society would do with the letter, you wrote to them, publicly, declaring your affiliation, association and endorsement of the ANU Debating Society and their activities.

### 3.19

Failure to investigate, the activities of the 1993 ANU Debating Society before writing, any letter on High Court of Australia letterhead, affiliating, associating and endorsing the ANU Debating Society.

### 3.20

Failure to investigate, before writing an undated letter of early 1993.

«It gives me much pleasure to once again to welcome all members of the ANU Debating Society to a new year at the University.

Since my acceptance of the position of Patron of the Society in 1989, I have followed with great interest the Society's many successes in the world of debating. Last, year, members maintained the high standards set by their predecessors, with Daniel Mulino achieving outstanding success at the Thirteenth World Intervarsity Debating Championships where he was judged Best Individual Speaker. I hope that representatives of the Society will be able to reach similar heights in this year's competitions.

Your Society is a very active organisation and I know that your administrators have planned a full calendar of events for this year. I trust you will give them your full support.

Finally, I hope that your membership of the Society affords you the opportunity not only to improve your debating skills but to form many friendships which will endure beyond your student days.» Exhibit 3.20

### 3.21

Failure to investigate, the major criminal activity of the ANU Debating and your affiliating, associating and endorsing with and of them when I wrote to you on the 2nd of April and 30th August 1993.

### 3.22

Failure to investigate the activities of the ANU Debating Society before remaining their patron in 1994.

### 3.23

Failure to investigate the what the 1994 ANU Debating Society would do with the letter, you wrote to them, publicly, declaring your affiliation, association and endorsement of the ANU Debating Society and their activities.

### 3.24

Failure to investigate, the activities of the 1994 ANU Debating Society before writing, any letter on High Court of Australia letterhead, affiliating, associating and endorsing the ANU Debating Society.

3.25

Failure to investigate, the ANU Debating Society before writing in a letter of 6th January 1994.

«As patron of the ANU Debating Society, I am pleased to write a few words of welcome to the Society and to the 1994 academic year. I hope that it will be a year which you will attain whatever goals you set for yourself and that it will be a year on which you will look back with much satisfaction. Membership of the Debating Society will no doubt contribute to your enjoyment of university life.

Although my personal contact with the Society has been somewhat limited by my workload as Chief Justice of the High Court, I have nevertheless been kept well informed of its activities and achievements by your President Simon Brettel. I would like to take this opportunity to congratulate all members who will be participating in the World Intersociety Debating Championships in Melbourne.” Exhibit 3.25

3.26

Failure to investigate, the 1992, 1993 and 1994 «extra-curricular activities» of Simon Brettel before affiliating, and associating with and endorsing him.

3.27

By reason of negligence the plaintiff suffered injuries loss and damage particulars of which are as follows:

#### **OF WHICH THESE PARTICULARS OF INJURIES HAVE OCCURRED**

4.

I have just outlined a very brief 7000 words of my injuries.

4.1

I have an 80, 000 word cross examination prepared for only

**ANU Debating Society**, 1994 Vice-President Rachel Michelle Piercye and her fellow student, friend and lover, **AFP Constable** Harry Thomas Hains 4928

By the time I finish preparing this complex cross-examination it would be 100, 000 words and when I cross-examined them they would not be allowed out of custody, ie. s. 327, s.328 and s.344 of ACT Crimes Act.

ie. multiple offences of “Perjury”, “Perjury with intent to procure conviction” and “False accusation”.

Once Piercye and Hains are convicted they will prove valuable witness’ to convict 6 other ANU students, 6 other ANU Constables, ANU Selth, MCG Refshuage, MSJ Chenoweth and Magistrate Ron Cahill. Selth, Refshuage and Chenoweth for lesser offences as they only “aided and abetted” and were “accessories after the fact” and Cahill only “acted oppressively and when interested” and went beyond his jurisdiction.

#### **AND UPON READING AND HEARING**

#### 4.2

I Alexander Marcel Andrei Sebastian Barker Bailiff, of 7CMoorhouse Street O'Connor, hereby make oath and say as follows:- I know I will be murdered, but this is the price I paid to “ensure **justice and equity**”. It is for this reason I provide a comprehensive Exhibit Index of documents to be subpoenaed. Please, listen to all court tapes as I have left a long trail of evidence. Examine all listed files and you will find out exactly who is responsible for my murder. I only have evidence of crime of 7 ANU Debating Society Executive, 1 ANU Pro-Vice Chancellor, 7 Barristers and Solicitors - 1 also ANU Pro-Vice Chancellor, 7 Australian Federal Police, 1 Chief Magistrate, 1 Psychiatrist, 1 Belconnen Remand Centre “assault “ staff, 1 “Hit and Run” motorist and 6 ANU academics and staff, breaching Privacy Legislation.

#### 4.3

##### Exhibit 4.2

I enclose four letters of the Chief Justice of the High Court - the Honourable Sir Anthony Frank Mason AO, KBE, affiliating, associating and endorsing the ANU Debating Society and their activities. The letter of 6th February 1992, is the only evidence I needed and used to ascertain the ANU Debating Society, was an organisation not socially, politically, legally, economically, commercially, or ideologically aligned with any organisation that precludes others, or is involved in dubious activities. If they were, the Chief Justice of the High Court - the Honourable Sir Anthony Mason AO, KBE, would not affiliate, associate or endorse them or their activities. To inform you this way, is the only way left.

#### 4.4

To find who is responsible, you only need to Subpoena every Exhibit on the list, I have carefully prepared. To not find out, will only further scandalise - the Chief Justice of the High Court, the Honourable Sir Anthony Mason AO, KBE and his involvement with the ANU Debating Society. For not having shown the expected “duty of care” owed to investigate - before affiliating, associating and endorsing an “organisation who have a history of a blatant disregard of the law.” And is negligent in failing to cease affiliating, associating and endorsing the ANU Debating Society after their major criminal activity was published in the Canberra Times and I personally informed him on numerous occasions. Thus giving the ANU Debating Society the motive to commit further major crime in efforts to prevent me, taking legal action and informing you of “their blatant disregard of the law”. Which has prompted this, 14 other High Court applications and my murder at 24.

#### 4.5

At least I beat my sister by 8 years, Vanessa Camille Bayliss was killed in a car accident at 16. Mother, Christine Mary Bayliss, 35 broke 19 bones and brother, Jean-Paul Lucian Bayliss, 4 broke 2 legs and was unconscious for a day. And I just had a few lacerations, a broken arm, severe brain damage and was unconscious for a month. But we are all okay now, thanks for asking !

#### 4.6

I submit the ANU Scrabble Society Official Score Sheet of 1992. Four letters of the Chief Justice of the High Court - the Honourable Sir Anthony Frank Mason AO, KBE. A letter of Dr Gytis Danta, Neurologist, to ANU Countrywide co-ordinator, Liz Lowrie of 15th of December 1989. A letter of Christine (Bayliss) Bates, University of Sydney - Law, to ANU Pro-Vice Chancellor for Planning and Administration of 26th November 1993. The Alexander Bailiff, ANU student #9204215, General Services Receipt of 19th January 1994. A tape with the distressing message left by the Prime Minister's office. Some of the death threats I regularly receive. And a page with "quotes" this case has prompted. You have my written permission to release these documents to anyone from the media who requests them, before and after my murder.

4.7

May my fight be seen, as not just one to play Scrabble®, but to achieve the 1st objective of the **Australian National University Scrabble Society**.

1. "To ensure **Justice and Equity** for all people and groups in society.»

#### **PARTICULARS OF CONTINUING DISCRIMINATION, IMPAIRMENT AND LOSS OF ENJOYMENT OF LIFE AND LIFE DUE TO INJURIES**

(a) These would have been supplied prior to the hearing.

#### **PARTICULARS OF OUT OF POCKET EXPENSES AND ECONOMIC LOSS**

(a) These would have been supplied prior to the hearing.

**AND** the plaintiff would claim damages, costs and interest pursuant to Order 43A Rules 1 and 2 of the Commonwealth of Australia High Court Rules in force under the Judiciary Act 1903.

**IT IS ORDERED THE CHIEF JUSTICE OF THE HIGH COURT OF AUSTRALIA THE HONOURABLE SIR ANTHONY FRANK MASON AO, KBE,**

5.0

To use the powers invested in the Chief Justice of the High Court, appointed by the Governor-General by commission, upon request of the Executive Council of the Commonwealth of Australia, derived from the Australian Constitution Act.

5.1

Make an oral order and issue warrants, so the following people are arrested and detained in custody for Committal For Contempt of Court. Pursuant to Order 56 Rule 1 to 12 of the High Court Rules in force under the Judiciary Act 1903. And section 24 of the Judiciary Act 1903.

## 5.2

File a Mandamus, in the name of the Chief Justice of the High Court - The Honourable Sir Anthony Frank Mason AO, KBE, against the Attorney-General, so that indictments and warrants for arrest are filed by the Attorney-General of the herein criminals for their herein crimes. Pursuant to Order 55 Rule 18 to 33, and Order 69 Rule 1 to 8 of the High Court Rules in force under the Judiciary Act 1903. And section 33 of the Judiciary Act 1903.

## 5.3

### AUSTRALIAN NATIONAL UNIVERSITY DEBATING SOCIETY

Simon Brettel	1991-3President
Kath Cummins	1992Vice-President
Tim Hughes	1992Treasurer
Kirsten Edwards	1992Editor
Matthew Sag	1992Editor
Stella Gaha	1992Sponsorship Officer
Rachel Michelle Piercey	1992Assistant Sponsorship Officer

## 5.4

### AUSTRALIAN NATIONAL UNIVERSITY AND LEGAL REPRESENTATIVES

Philip Alan Selth	Pro-Vice Chancellor, Planning and Administration.
Richard Refshuage	Hired by ANU from Macphillamy, Cummins and Gibson.
Chris Chenoweth	Hired by ANU from Mallesons, Stephen and Jacques.
Malcolm Brennan	Hired by ANU from Mallesons, Stephen Jacques.
Stephen Herrick	Australian National University Legal Officer.
Michael Helman	Hired by me from Ahern, Morris and Vincent.
Timothy Chadwick	Hired by me from Snedden, Hall and Gallop.

## 5.5

### AUSTRALIAN FEDERAL POLICE (AFP)

Harry Thomas Hains	AFPConstable 4928
Adrian Kraft	AFPConstable 3260
Kelvin George Thorn	AFPConstable 1639
Robert Duncan	AFPConstable 4174
Paul Sherring	AFPConstable 4545
Anthony Crocker	AFPConstable 4832
Darren Bretherton	AFPConstable 4997

## 5.6

### AUSTRALIAN CAPITAL TERRITORY MAGISTRATES COURT

Ron Cahill	Chief Magistrate
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## 5.7

## PSYCHIATRIST

Dr Robert Tym

Mackay Gardens Professional Centre.

### AND IT IS ORDERED THAT

#### 6.0

Honourable Sir Anthony Mason	Chief Justice of the High Court
Honourable Michael Lavarch	Federal Attorney General
Honourable Duncan Kerr	Federal Minister for Justice
Honourable Simon Crean	Federal Minister for Education
Honourable Michael Lee	Federal Minister for Communications
Honourable Dr Carmen Lawrence	Federal Minister for Health
Commissioner Michael Palmer	Australian Federal Police
Mrs Philippa Smith	Commonwealth Ombudsman
Mr Kevin O'Connor	Commonwealth Privacy Commissioner
Mrs Elizabeth Hastings	Disability Discrimination Commissioner
Honourable Gareth Evans	Minister for Foreign Affairs
Prime Minister Paul Keating	Commonwealth of Australia
Professor Peter Baume	ANU Chancellor
Her Majesty Elizabeth Windsor II	Queen of Commonwealth of Australia
Boutros Boutros Ghali	Secretary General of the United Nations

#### 6.1

To order the herein criminals to be investigated, arrested, charged, remanded, prosecuted, and sentenced for their herein criminal activity and Human Rights abuses they perpetrated against Alexander Marcel Andre Sebastian Barker Bailiff, Australian National University student #9204215, Chairman of the Australian National University Scrabble Society in his efforts to inform the Chief Justice of the High Court - the Honourable Sir Anthony MASON AO, KBE, of major criminal activity of an organisation he affiliates, associates, and endorses with, in his capacity as their Patron.

#### 6.2

To be advised I, Alexander Marcel Andrei Sebastian Barker Bailiff, Australian National University student #9204215, Australian National University Scrabble Society Chairman, will be filing one High Court application, of Mandamus, against each, as they are listed herein, on consecutive Tuesday's, commencing on Tuesday the 3rd Of January 1994. The 15th application being filed against the President of the United Nations will coincide with an application to the United Nations Commission on Human Rights, being made under the Optional Protocol to the International Covenant on Civil and Political Rights 1966. This will also coincide with letters requesting political asylum, going to every Prime Minister and President; 2 representatives from every country on Disabled People International, who directly liaise with the United Nations General Assembly; and representatives of 184 member States on the United Nations General Assembly.

6.3

To advise I know my Political Liberties will be interfered with by violence, threats, intimidation, of many kinds, by people hindering and interfering with my free exercise and performance of my political rights and duties.

6.4

To advise I know I will be murdered before the major criminal activity, herein is exposed. And to find out by is responsible for my murder, it is necessary to subpoena each and every listed Exhibit in the "Exhibit List" I have prepared, and file with every application. See attached Exhibit.

7.0

AND IT IS FURTHER ORDERED THAT THERE BE A ROYAL COMMISSION, a PARLIAMENTARY INQUIRY and SENATE INQUIRY into HUMAN RIGHTS ABUSES in the following areas:-

7.1

**DISABILITY and DISCRIMINATION**

Subjects of the Queen, are subject to disability and discrimination in every State, which would not be equally applicable, to subjects of the Queen, resident in such other State. In contravention to s.117 of the Australian Constitution Act.

7.2

**UNIVERSITY POWERS TO INDEMNIFY AND BE PARTIAL**

Power of Universities to indemnify and be partial to either party in staff, student and client disputes, especially criminal partiality.

7.3

**UNIVERSITY CORRUPTION AND CRIMINALITY**

Abuse of legal system by Universities in the harassment of staff and students.

7.4

**LEGAL PROFESSION CORRUPTION AND CRIMINALITY**

Abuse of the legal system by the legal profession, in knowingly representing clients in criminal activity, breaching client confidentiality, and their own criminal activity.

7.5

**MAGISTRATES CORRUPTION AND CRIMINALITY**

Abuse of the legal system by Magistrates, exceeding their jurisdiction, acting oppressively, when an interested and party and entirely defeating the principles of our legal system.

7.6

## **PSYCHIATRIC CORRUPTION AND CRIMINALITY**

Criminal activity by the Psychiatric profession, in breaching client confidentiality, writing false medical reports - if paid, and demanding patients pay money or else a false medical report will be written.

7.7

## **POLICE CORRUPTION AND CRIMINALITY**

Abuse of the legal system by Police in acting criminally and corruptly, and as they have a relationship with the complaint.

7.8

## **OMBUDSMAN POWERS TO INVESTIGATE POLICE**

Police are not provided trial on indictment for crimes they commit, thus ensuring they escape punishment, in contravention to s.80 of the Australian Constitution Act.

7.9

## **MAGISTRATES POWERS TO ISSUE RESTRAINING ORDERS**

Applicants - Universities, Legal Profession, and Police use orders to be oppressive and further their harassment against the defendants, often criminal.

7.10

## **MAGISTRATES POWERS TO REMAND FOR MINOR OFFENCES**

Magistrates remand prisoners for minor offences, thus being oppressive and often entirely defeating the principles of our legal system.

7.11

## **POLICE POWERS**

Police harass, intimidate, arrest, charge and remand people for doing things which are not summary or criminal offences. It is professionally inappropriate and a conflict of interest that Police - Internal Investigation Divisions should have powers to investigate (whitewash) Police corruption and criminality.

7.12

## **POLICE AND PUBLIC PROSECUTIONS**

Director of Public Prosecutions and Police Prosecutors conduct cases against people, charges not being summary or criminal offences.

7.13

## **MAGISTRATE POWERS**

Magistrates preside over cases, defeat the principles of our legal system, and convict people for doing things which are not summary or criminal offences.

7.14

### **COMMONWEALTH PRIVACY LEGISLATION**

Universities breach Commonwealth Privacy Legislation, this is not what the legislation is for. How widespread are Human Rights abuses with respect to Commonwealth Privacy Legislation ? What is the purpose of this Legislation ?

7.15

### **MEMBERS OF PARLIAMENT**

Local, Territory, State and Federal Members of Parliament/Legislative Assemblies are so removed from their electorate and those outside it, they do not even respond to the people who take the time, to write letters requesting their assistance in asking them to forward a letter to the Prime Minister.

7.16

### **POLITICAL LIBERTIES**

Many people, by violence, threats, intimidation of many kinds, have the free exercise or performance of their political right or duty interfered with and hindered. In contravention with s.28 of the Commonwealth Crimes Act 1914.

7.17

### **EQUITY AND SOCIAL JUSTICE**

To ensure, the peace, order and good government, effective social justice and equity strategies and policies should be developed with appropriate Legislation passed. Where are Governments efforts to pass equity and social justice Legislation ?

7.18

### **INTERNATIONAL COVENANTS**

The Human Rights enumerated by the United Nations documents, the Universal Declaration on Human Rights 1948; International Covenant on Economic, Social, and Cultural Rights 1966; International Covenant on Civil and Political Rights 1966; and Optional Protocol to the International Covenant on Civil and Political Rights 1966; although ratified by the Commonwealth Government, are ubiquitously violated by officers of Commonwealth, States and Territories in their dealing with the subjects of the Queen, resident in any State. Confirming United Nations Human Rights Declarations and Covenants are insignificant and irrelevant to the Commonwealth, State and Territory Governments within and of the Commonwealth of Australia. The Government not having attempted to remedy Human Rights under s.51 (xxix) or s.128 of the Australian Constitution Act, for the Human Rights of the subjects of the Queen. The Government choosing to continue to stifle Human Rights, as are the Government powers stifled by the Commonwealth of the United Kingdom.

7.19

## CHANGES TO UNITED KINGDOM LEGISLATION

Commonwealth of Australia Governments have continually wasted tens of millions of dollars of subjects of the Queen, by holding referendums, inquiries, commissions among others in efforts to change the Australian Constitution Act. When it is clear the United Kingdom, Statute of Westminster 1931, can be revoked thus allowing the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland to seek independence. Thus ensuring their peoples are no longer subject to alien subjugation, domination, and exploitation, constituting a denial of fundamental human rights, contrary to the Charter of the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples 1960.

7.20

### HUMAN RIGHTS LEGISLATION

Human Rights enumerated in the Magna Carta 1215, Petition of Right 1628, Bill of Rights 1688 and Habeas Corpus Act of 1640, 1679 and 1810 is (and was) applicable in all the colonies and countries (and former) of the United Kingdom. Despite this Human Rights violations, by Government have been and still are ubiquitous throughout the former and current colonies and countries of the Commonwealth. As imperialists counteract insecurities by subjugating, dominating, and exploiting original inhabitants, whilst indoctrinating them with their own belief systems.

The hundreds of thousands of Aborigines killed in genocide, after British, invaded the inhabitants of Gondwanaland for the last 60,000 to 120,000 years. The pillaging, raping, and murdering of Aborigines, by the law enforcement arm of government, among others, still occurring and nothing ever really been done about it. The rich 60,000 to 120,000, year history of Gondwanaland, denied. And reprimanding of an Aboriginal athlete for raising her peoples flag at the Commonwealth Games is minuscule evidence to indicate how negligible Human Rights are to the government. Aborigines are only one minority group, but they are the most pillaged, raped and murdered of any minority group Australia.

The major criminal activity of the Australian National University Debating Society and the Australian Federal Police aided by Philip Alan Selth ANU Pro-Vice Chancellor, Richard Refshuage from Macphillamy, Cummins and Gibson (merged with Sly and Wiegall) and Chris Chenoweth from Mallesons, Stephen and Jacques, has already prompted these following remarks, among others:-

**“This is a major injustice”,**

Christopher Murphy - Criminal Lawyer.

**“I would not be surprised if  
you are killed before your  
next birthday.” [in 3 months]**

Philip W. Bates, Medical Barrister, Chelmsford Cases.

**“You will definitely be killed if you expose this major criminal activity.”**

Alex Telman, Norm Gallagher’s Barrister.

**“If you keep going this way,  
[to expose it] then we will,  
have a murder to investigate.”**

Commander of Community Relations, Australian Federal Police

**“I am only an Archbishop !”**

Archbishop Desmond Tutu, when asked for assistance.

**“It sounds more like a  
Harrison Ford Movie.”**

Federal Member, House of Representatives.

**“Write to the office.”**

Prime Minister, when asked for help.

Further evidence is, even I know I will be murdered before hearings expose the major crime outlined herein.  
Despite having written to:-

- 883 Senior officers in Australian Higher Education Institutions, 1994;
- 222 Parliamentarians of 37th Parliament of the Commonwealth of Australia;
- 139 Parliamentarians of 50th Parliament of New South Wales;
- 133 Parliamentarians of 52nd Parliament of Victoria;
- 91 Parliamentarians of 34th Parliament of Western Australia;
- 88 Parliamentarians of 47th Parliament of Queensland;
- 69 Parliamentarians of 48th Parliament of South Australia;
- 54 Parliamentarians of 42nd Parliament of Tasmania;
- 25 Assembly(wo)men of 7th Assembly of Northern Territory;
- 17 Assembly(wo)men of 2nd Assembly of Australian Capital Territory;
- 16 Police Commissioners, 2 in each above State and Territory;
- 16 Director>s of Public Prosecutions, 2 in each above State and Territory;
- 16 Ombudsman>s, 2 in each above State and Territory;
- 8 Governor>s, one in each State, Territory and Commonwealth;
- and
- 69 High Commissioner’s and Ambassador’s posted in Canberra;
- 92 Editor>s of student publications, in Australian Higher Educations;
- 42 Newspaper Editor’s, Radio and TV Executive Producer’s across Australia;

Outlining the major criminal activity and major Human Rights Abuses, and seeking assistance, not a single Territory, State or Commonwealth higher education, political, or law enforcement officer has contacted me to investigate, that outlined herein. In fact, the first parties to contact me to provide me assistance, were from Foreign Countries, in which I am now discussing political asylum strategies. Which will prove useful when I go on the Official ANU Scrabble Society - World Political Asylum Tour's.

Consequently, I have no other choice but to seek relief by filing this and 15 other HIGH COURT applications, exhausting domestic remedies, before one application to the United Nations Commission for Human Rights, under the OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 1966.

DATED this Tuesday 3rd January 1995.

SWORN by the below named )  
Prosecutor, at Canberra in the )  
Australian Capital Territory, )  
this 3rd day of January 1995.

Signed: \_\_\_\_\_ 3/1/95

DC 20036 US, Kath Cummins @KathCummins Director of Public Affairs, National Center for Victims of Crime, National Center for Victims of Crime 2000 M Street NW, Phone: (202) 467-8700, Suite 480 Washington,

IN THE HIGH COURT OF AUSTRALIA  
CANBERRA REGISTRY

No. H.C. of 1995

BETWEEN: Alexander Marcel Andre Sebastian Barker Bailiff  
AUSTRALIAN NATIONAL UNIVERSITY Student #9204215  
AUSTRALIAN NATIONAL UNIVERSITY SCRABBLE®  
Plaintiff

SOCIETY

AND: The Honourable Sir Anthony Frank MASON AO KBE  
CHIEF JUSTICE OF THE HIGH COURT OF AUSTRALIA  
Defendant

ELIZABETH THE SECOND by the Grace of God Queen of Australia and her Realms and Territories, Head of the Commonwealth.

TO: The Honourable Sir Anthony Frank MASON AO KBE, Chief Justice of the High Court of the Commonwealth of Australia, Canberra.

We command you, that within 21 days after the service of this Writ on you, inclusive of the day of such service you cause an appearance to be entered for you in the High Court of Australia, Canberra Registry of the Australian Capital Territory in an action at the suit of the Alexander Marcel Andre Sebastian Barker Bailiff of 7C Moorhouse Street O'Connor ACT 2601 and the AUSTRALIAN NATIONAL UNIVERSITY SCRABBLE® SOCIETY.

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgement may be given in your absence.

WITNESS the Honourable Sir Anthony Frank Mason - Chief Justice of the  
High Court of the Commonwealth of Australia, Canberra the 3rd day of January 1995.

F. JONES  
Registrar

N.B. - This writ is to be served within twelve calendar months from the date thereof, or if renewed, within six calendar months from the date of the last renewal, including the day of such date and not afterwards. The defendant (or defendants) may appear hereto by entering an appearance (or appearances) either personally or by solicitor at the Registrar's Office, Canberra.

---

Filed by the Plaintiff:

Alexander Marcel Andre Sebastian Barker Bailiff  
AUSTRALIAN NATIONAL UNIVERSITY STUDENT # 9204215.  
AUSTRALIAN NATIONAL UNIVERSITY SCRABBLE® SOCIETY  
7C Moorhouse Street  
Phone: 06 257 6234  
O'Connor  
Fax: 06 257 6345  
GPO Box 2958  
Pager: 132222 #9116  
Canberra ACT 2601  
Ref: HC\_\_\_\_\_of 1995

This writ was served by me at \_\_\_\_\_

on the defendant personally on

the \_\_\_\_\_ day of \_\_\_\_\_ 1995.

Endorsed on the \_\_\_\_\_ day of \_\_\_\_\_ 1995.

Signed: Alexander Marcel Andri Sebastian Barker Bailiff

AUSTRALIAN NATIONAL UNIVERSITY Student # 9204215  
AUSTRALIAN NATIONAL UNIVERSITY SCRABBLE® SOCIETY

Signature:.....

Address: 7C Moorhouse Street

O'Connor  
GPO Box 2958  
Canberra ACT 2601  
Phone:- 06 257 6234  
Fax:- 06 257 6345  
Pager:- 132222 #9116

**STATEMENT OF CLAIM**

1.

I, Alexander Marcel Andre Sebastian Barker Bailiff, of 7C Moorhouse Street O'Connor in the Australian Capital Territory, student #9204215 at the Australian National University ("ANU") and Chairman of the ANU Scrabble Society make oath and say as follows:-

1.1

I was born, on the day Gough Whitlam, Leader of the Opposition, threatened to block supply in the Senate, that is Tuesday the 25th of August 1970, an event leading up to the constitutional crisis of 1975. My life began, amidst controversy, and is polemic, pleonastic and serendipitous. My idiosyncrasies determine the path in life, I have chosen to passionately, pursue.

1.2

I am, Alexander Marcel Andre Sebastian Barker Bailiff, an eccentric, who has an unusual thought process'. I am a sui generis social, political, legal, economic, commercial, and ideological, theory exculpator. I am, a P.L.E.C.I.T.E. and exceptionally industrious and resourceful, effectively utilising any resources available. My favourite pursuit, apart from developing P.L.E.C.I.T.E. strategies, is playing Scrabble®. Exhibit 1.1

1.3

I am, the Chairman of the Australian National University Scrabble® Society.

1.4

I am, appointed by the ANU Scrabble® Society, to make this Affidavit.

1.5

I am, duly authorised by the ANU Scrabble® Society to act in any proceedings, presentations or performance necessary to ensure achieving the:- 'Aims and Objectives' of the ANU Scrabble® Society.

1.6

The «Aims and Objectives» of The ANU Scrabble® Society are to:-

1.7

Ensure **justice** and **equity** for all people and groups in society.

1.8

Develop interpersonal skills between people and groups of differing views and interests through a range of pleasurable mediums.

1.9

Develop our vocabulary and enhance the use of words in everyday life.

1.10

Develop self awareness in both personal and career "Aims and Objectives".

1.11

Enjoy simultaneously achieving our and these «Aims and Objectives».

1.12

The Chairman is generally to have power to do anything to achieve the 'Aims and Objectives' of the Society - subject to the provisions of this constitution and Commonwealth Legislation passed via The Australian Constitution Act.

2.

The major criminal activity of the **Australian National University Debating Society**, and the **Australian Federal Police**, aided by **Philip Alan Selth**, **Australian National University, Pro-Vice Chancellor**, for Planning and Administration, **Richard Refshuage** from **Macphillamy, Cummins and Gibson** (division of Sly and Wiegall) and **Chris Chenoweth** from **Mallesons, Stephen and Jacques**. In an effort to prevent me, the Chairman of the ANU Scrabble® Society from informing the Honourable Sir Anthony Frank Mason AO, KBE, - Chief Justice of the High Court of Australia, of major criminal activity of an organisation he is the Patron of, being the **Australian National University Debating Society**.

## 2.1

In 1992 ANU Debating Society, President - Simon Brettel, Vice President - Kath Cummins, Treasurer - Tim Hughes, Editor - Kirsten Edwards, Editor - Matthew Sag, and Sponsorship Officer - Stella Gaha did, “conspire to commit crimes”, “incite and encourage”, “aid and abet”, and be an “accessory after the fact”, to criminal activity of Assistant Sponsorship Officer - Rachel Michelle Piercey. Exhibit 2.1

## 2.2

ANU Debating Society, Assistant Sponsorship Officer - Rachel Michelle Piercey did «attempt, «conspire to bring false accusation», «conspire to defeat justice», «attempt to pervert justice», «fabricate evidence», circulate «defamatory documents », make «untrue representations», make «false accusations», «give false testimony», «commit perjury», and «perjury with the intent to procure conviction». Exhibit 2.2

## 2.3

ANU Debating Society, Assistant Sponsorship Officer - Rachel Michelle Piercey was also “incited and encouraged”, and “aided and abetted” by her fellow student, friend and lover Australian Federal Police (“AFP”) Constable Harry Thomas Hains 4928, responsible for 5 arrests of in 48 days. And Constable Harry Thomas Hains 4928 was “aided and abetted” by Constable Adrian Kraft 3260. Exhibit 2.3

## 2.4

The Chief Magistrate Ron Cahill, presided over proceedings in which he went beyond his jurisdiction and «acted oppressively and was an interested party». I was remanded from the 8th of September to 16th of October 1992 for a «false accusation» that I telephoned Rachel Michelle Piercey, in breach of Interim Restraining Order 1992/279, which expired 14 days before I was arrested by Rachel Michelle Piercey’s fellow student, friend and lover AFP Constable Harry Thomas Hains 4928. I was released 2 days after the Honourable Sir Anthony Frank Mason AO, KBE, - Chief Justice of the High Court, attended the annual ANU Debating Society dinner at the ANU, as their Patron. Exhibit 2.4

## 2.5

In 1992, ANU Debating Society Assistant Sponsorship Officer - Rachel Michelle Piercey’s distinct pattern of behaviour was to circulate “defamatory documents”, “fabricate evidence” make a “false accusation” of “threat to kill”, get a restraining order then make “false accusations” of breaching the order.

Exhibit 2.5

## 2.6

The ANU Pro-Vice Chancellor, for Planning and Administration («P&A»), Philip Alan Selth hired his General Services Fee committee colleague - Richard Refshuage from Macphillamy, Cummins and Gibson to represent Rachel Michelle Piercey after she “fabricated evidence” and submitted it to him on the 28th July 1992. Exhibit 2.6

## 2.7

Over 104 days, from the 22nd July until the 4th November 1992, efforts of:-

**Australian National University Debating Society**, President - Simon Brettel, Vice President - Kath Cummins, Treasurer - Tim Hughes, Editor - Kirsten Edwards, Editor - Matthew Sag, Sponsorship Officer - Stella Gaha and Assistant Sponsorship Officer - Rachel Michelle Piercey.

**Australian National University** Pro-Vice Chancellor for Planning and Administration, Philip Alan Selth and any lawyers, academic's, staff and students acting under his advice. ie. Gavin Lee, for Rachel Michelle Piercey.

**Macphillamy, Cummins and Gibson** («MCG») - Richard Refshuage hired for Rachel Michelle Piercey by ANU Pro-Vice Chancellor - Philip Alan Selth.

**Malleson, Stephen and Jacques** («MSJ») - Chris Chenoweth hired by ANU Pro-Vice Chancellor, P&A - Philip Alan Selth, for himself.

**Australian Federal Police** - Constable Harry Thomas Hains 4928, Constable Martin Leonard 4169, Constable Rebecca Louise McNevin 5038, Constable Adrian Kraft 3260, Senior Constable John Reynolds 2830, Constable Wesley James Herold 3874, Constable Michael Perriman 3297, and Constable Pugh.

**ACT Legal Aid Office** - Ms Crebbins, Kate Hughes - Ken Archer's defacto and fiance' and solicitor Gavin Lee representing Rachel Michelle Piercey's.

**ACT Director of Public Prosecutions** - Ken Archer, Michael Chilcott, Pat De Veau, Cooke, Alison Chivers, Amanda Tonkin, Fiona Merrylees.

**ACT Magistrates Court** - Michael Somes, Peter Dingwall, Michael Ward, Warren Nicholl, John Murphy, Ron Cahill, John Dainer, John Burns.

**ACT Corrective Services** - Director and staff of Belconnen Remand Centre.

resulted in:-

reluctantly issuing an interim restraining order, 5 arrests, 7 charges, 38 court appearances, 22 days in court, 55 days in remand and 4 convictions, being released 2 days after the Annual Debating Society End of Year Dinner.

Exhibit 2.7

## 2.8

During this period Christine and Philip Bates came to Canberra and had discussions about me and regarding my studies, with ANU, Disability Adviser - Margaret Miller, Counsellor - Leila Bailey, Lecturer - Dr Mac Boot, Lecturer - David Adams, Tutor - Lorraine Elliott and possibly lecturer - Harry Geddes and others. The ANU being in contravention of the Commonwealth Privacy Act, as at no stage did I give written or oral permission to any of these academics or staff to speak to my parents. When I asked ANU Pro-Vice Chancellor about the ANU "Statement to student's on Confidentiality of Personal Information" of 2nd February 1993, he told me he had written it. I further asked him about the ANU breaching my confidentiality, by speaking to my parents with out my permission, he told me "the ANU does not breach confidentiality, except in extenuating circumstances."

Exhibit 2.8

## 2.9

Christine and Philip Bates, Peter Bayliss and I had a meeting with psychiatrist - Dr Robert Tym. At this meeting Dr Robert Tym reassured my parents, "your son is not abnormal, he is normal, just unusual." At a later stage solicitor, Michael Helman told me he would get me off the charge on grounds of insanity. When I interjected, saying "but I am not !" Michael Helman, told me not to worry as he had offered Dr Tym \$400 from legal aid to write such a report. Ironically, when I again met Dr Tym, he told me, "he had been offered \$400 to write a report saying I suffered from delusion and paranoia." When I told Dr Tym, "I had neither given Michael Helman or Dr Tym permission to breach my confidentiality" he said, "it does not matter". When I told Dr Tym, "I had sacked Michael Helman." Dr Tym told me "Michael Helman asked for it before I sacked him." So I told him, "that is not what you told my parent's." Dr Tym then told me, "I have changed my mind and absolutely nothing is going to stop me writing this report unless you give me \$400." I told him, "my stepfather is currently suing psychiatrists in the Chelmsford cases and I am sure suing you for 'demand accompanied by threat' will be small fry." After this I was taken away by Remand Centre Officers to my next appointment with Dr Shihoff, my GP. I told Dr Shihoff, "Dr Tym made a demand accompanied by threat to me" and explained in detail. Dr Tym rang up 40 minutes later to tell Dr Shihoff "that he would not write a report unless I gave him full written permission".

About this time, I was multiple «assaulted», by Belconnen Remand Centre, staff member Tony Gould. Michael Helman, walked out of Court, sticking his fingers up, refusing to give evidence of him breaching client confidentiality, after he had given evidence of how solicitor - Tim Chadwick had breached my client confidentiality. Dr Tym did worse things when he was in court in 1994 ! Exhibit 2.9

#### 2.10

In 1993, I had various meeting with ANU Pro-Vice Chancellor for Planning and Administration, Philip Alan Selth, also a barrister and solicitor, regarding the ANU having hired Richard Refshuage from Macphillamy, Cummins and Gibson for Rachel Michelle Piercey, her "fabricated evidence", "untrue representations" and "false accusations". Another "false accusation" was made when I was with Philip Alan Selth and days later Rachel Michelle Piercey «circulated defamatory documents», «fabricated evidence» and made a «false accusation" of threat to kill, against another male student - Tjarda Strienstra. Exhibit 2.10

#### 2.11

Upon me informing Philip Alan Selth of this, he had an urgent meeting the next morning with Rachel Michelle Piercey. More importantly, Philip Alan Selth, became an "accessory after the fact" as he now knew what I had told him was true. So Philip Alan Selth, started having me arrested for trespass when I was found "reading in the library", on four occasions. It has been proven that I was reading in the library with no reasonable excuse. I have no conviction and no record. I will win the Supreme Court appeal. Exhibit 2.11

#### 2.12

ANU Pro-Vice Chancellor, for Planning and Administration, Philip Alan Selth then, got a restraining order to keep me off the entire ANU. ANU - Philip Alan Selth, ANU legal officer - Stephen Herrick, MCG - Richard Refshuage, MSJ Chris Chenoweth and Malcolm Brennan, and Barrister - John Purnell appeared, over nine days

before 5 Magistrates, against unrepresented me. This was after MCG Richard Refshuage, had asked me “would you like to cut a deal?”, upon me showing him proof of Rachel Michelle Piercey’s criminal activity. And after, ANU Law lecturer - Harry Geddes, gave crucial evidence in the Magistrates Court, establishing he saw Rachel Michelle Piercey’s “fabricated evidence”, quite a few later than she alleged giving it to him in a second piece of “fabricated evidence” of the 28th July 1992. Having “fabricated evidence” to provide Philip Alan Selth reasons to hire Richard Refshuage of Macphillamy, Cummins and Gibson for Rachel Michelle Piercey. Philip Alan Selth panicked and applied for his restraining order the day after Rachel Michelle Piercey’s restraining order expired. For the purpose of preventing me subpoenaing, other ANU witness, who can provide further evidence of criminal activity of Philip Alan Selth and Rachel Michelle Piercey. Exhibit 2.12

### 2.13

ANU Debating Society Rachel Michelle Piercey’s, distinct pattern of behaviour had surfaced again as she, “circulated defamatory documents”, “fabricated evidence” and made a “false accusation” of “threat to kill”, against another innocent male student. ANU Pro-Vice Chancellor, Philip Alan Selth further established a link between the ANU his and Rachel Michelle Piercey legal action and more importantly criminal activity. Exhibit 2.13

### 2.14

In 1993, I was «commonly assaulted» by Constable Kelvin George Thorn 1639, as he “inflicted actual bodily harm” and told his younger colleagues I had been harassing a Canadian woman, [being Rachel Michelle Piercey]. Witnessed by Constable Robert Duncan 4174, Constable Paul Sherring 4545, Constable Anthony Crocker 4832, and Constable Darren Bretherton 4997. I was charged with “assault” and “resisting arrest” after Constable Kelvin George Thorn 1639, “fabricated evidence” for all four and “incited and encouraged” and “aided and abetted” all four to make a “false accusation”, “commit perjury” and “perjury with the intent to procure conviction”. All gave evidence witnessing me “assault” and “resist arrest”. After giving evidence, they were told I had just dislocated my collarbone, weeks earlier. At trial, Justice Gallop, advised me, to “never take on the police as they will always win” as he gave me no conviction and no record. I will be acquitted in the Federal Court appeal.

I told Chief Magistrate - Ron Cahill, how Rachel Michelle Piercey and Constable Harry Thomas 4928, knew when I was home before they made false accusations. ie. telephoning, if I answer I am home. I also told Ron Cahill of my fears for my safety. Expressing concerns of me being hit by a car. I was hit by YDA - 107, at 3:25 pm on 19th November 1992, whilst on a footpath, before the motorist said, “serves you right and drove away”. This was a deliberate “hit and run” and witnessed by:- Darren Thomas 5 Bennett Place Spence 258 6608, Chris 61 Cuthbert Circuit Wanniasa 231 2625 and Adam 62 Adolf Street Tuggeranong. Motorist was chased and he is Stephen Riley of 16 Miller Street O’Connor ACT 2601, Licence number 279865. When Police came the female helped me, and the male threatened to charge me, near home and when he met me at Calvary hospital. I dislocated my collarbone, seeing Dr Wright at Calvary Hospital and Dr Shihoff at Lyneham Medical Centre. Exhibit 2.14

### 2.15

On the 27th of July 1993, it took me 4 hours and 39 minutes to be acquitted on appeal of 4 convictions. On the basis, «the way the cases have been conducted in the Magistrates Court entirely defeated the principles of

our legal system.» To quote Justice Gallop. Despite this, and the fact the swift dismissal of these charges was well known through legal and police circles. I was still arrested at 0040 hours on the 9th of March 1994 for “failure to pay three \$100 fines.” Sergeant Hall tried to explain as he apologised and let me go, although he could not explain why the last four times I had been arrested, AFP let me go from 45 minutes to 3 hours later, without charging me. My fears, have resulted in me hiding for my own peace and safety. Exhibit 2.15

2.16

ANU Pro-Vice Chancellor, for Planning and Administration, Philip Alan Selth enlisted the assistance of the 1,200 academic, 2,200 technical and general staff, and more than 10, 500 students of which 2, 400 are from 60 countries , of the ANU in his, Macphillamy, Cummins and Gibson- Richard Refshuage, Mallesons, Stephen and Jacques - Chris Chenoweth, and ANU Debating Society efforts to silence and prevent me subpoenaing witness’ to expose their major criminal activity. As I did subpoena ANU Law lecturer - Harry Geddes, before giving crucial evidence. On the 26th of November 1993, my mother Christine Bates wrote to the Chancellor, Pro-Vice Chancellor and members of the ANU Council providing them advice on these scandalous matters. Exhibit 2.16

2.17

In 1994, at the XIV Worlds Debating Universities Debating Championship ANU Debating Society 1992, President - Simon Brettel, Vice President - Kath Cummins and Treasurer - Tim Hughes used the distinct pattern of behaviour they had “incited and encouraged” and “aided and abetted” Rachel Michelle Piercey to use in 1992 and 1993. President - Simon Brettel, Vice-President - Kath Cummins, and Treasurer - Tim Hughes “circulated defamatory documents”, “fabricated evidence” and made a “false accusation” [of] that I “threatened to kill” them. So much so, Michael Gronow - Chief Adjudicator of Melbourne University Debating Society organising committee, announced, to hall of contestants from 100 universities from 20 nations, “that the tournament had been delayed for half an hour as the ANU Debating Society had caused a security scare by saying someone had threatened to kill them. And it had been established that it was only a practical joke and that if the ANU Debating Society further delayed the tournament the organising committee would officially ‘threaten to kill them’. Exhibit 2.17

2.18

ANU Debating Society Rachel Michelle Piercey’s, distinct pattern of behaviour surfaced again when President - Simon Brettel, Vice-President - Kath Cummins, and Treasurer - Tim Hughes, circulated “defamatory documents”, “fabricated evidence” and made a “false accusation” that I “threatened to kill” them. They used this distinct pattern of behaviour since they were well acquainted with it as they had “incited and encouraged” and “aided and abetted” Rachel Michelle Piercey to do the same in 1992 and 1993. The reason they did not again “incite and encourage” and “aid and abet” Rachel Michelle Piercey to use it in 1994, is because she was not at the XIV World Universities Debating Championships, as they were held in Melbourne. Exhibit 2.18

2.19

When I rang Canberra AFP Internal Investigations Division, I told Detective Superintendent Ed Hadzic of isolating ANU Debating Society, President - Simon Brettel, Vice-President - Kath Cummins, and Treasurer - Tim

Hughes, using the distinct pattern of behaviour they had “incited and encouraged” and “aided and abetted” Rachel Michelle Piercey to use in 1992 and 1993. They did this by circulating “defamatory documents”, “fabricating evidence” and making a “false accusation” of “threat to kill”. After I told AFP Internal Investigations Division, (AFP Public Relations - Whitewasher) Detective Superintendent Ed Hadzic of this good news, he said “it was only a joke !” As he twice sent me this, his response does not surprise me. Exhibit 2.19

## 2.20

As ANU Pro-Vice Chancellor, for Planning and Administration, Philip Alan Selth, successfully got a restraining order keeping me off all property of the ANU including all of it’s halls and colleges of residence, I was unable to go on campus to pay my ANU 1994 General Services Fee for Re-Enrolling Undergraduates. So I had a friend pay this for me, student number 9204215, by presenting St. George Cheque number 187173, at 16:19 hours in exchange for receipt number 28016. This cheque was paid by St George Bank on the 20th of January 1994. I presented ANU Pro-Vice Chancellor, Philip Alan Selth a completed course enrolment form in Magistrate Court hearing RO 93/494, in December 1993, see Exhibit’s. I also sent one by certified mail, item H177494, to the Enrolment and Fees office on the 13th of December 1993. This postage of \$1.85 was paid for by St. George Cheque number 801997. I think it would be unreasonable, although not unlikely, if the ANU have failed me in these courses for failure to submit essay’s and complete exams. Exhibit 2.20

## 2.21

On Tuesday the 25th of August 1994, I wrote a letter seeking assistance.

This letter has gone to 883 senior officers in Australian higher education; 222 Commonwealth, 139 New South Wales, 133 Victorian, 91 Western Australian, 88 Queensland, 69 South Australian, and 54 Tasmanian, members of parliament; 25 Northern Territorian, and 17 Australian Capital Territory member of the Legislative Assembly; 16 Police Commissioners; 16 Director’s of Public Prosecutions; 16 Ombudsman; 7 Governor’s and 1 Governor-General; 69 High Commissions and Embassies seeking political asylum; 92 Editor’s of student publications in Higher education; 42 newspaper editor’s and radio and television executive producer’s of capital cities across Australia. Exhibit 2.21

## 2.22

At my unofficial meeting with the Honourable Prime Minister of Australia, Paul John Keating, on the 2nd of September 1994, I told him I was having a major problem and he suggested I “write to the office”. I did that same night, as I did on the 1st of August and I have not received a single response, except Justice Michael Kirby. I personalised, printed and framed an inspirational poem I wrote, for Paul Keating, the Honourable Prime Minister. I hoped these good thoughts of mine, might charm him and be appreciated upon his wall. I gave it to Deana, the Prime Minister’s receptionist, who placed it upon his wall. Paul Keating, apparently “once” looked at it. Ironically, Deana and I, first actually met when I asked her if she would like to join the ANU Scrabble Society in 1992. Exhibit 2.22

## 2.23

On the 25th of September 1994, I wrote a letter to all 16 Ombudsman, with a complaint and enclosing a list of 1980 public officers.

«The purpose of this letter is to make a complaint against each and every name on the enclosed list. Please investigate those, within your jurisdiction, and remit those that are not to the relevant Ombudsman, for investigation.»

I already know one Ombudsman, who personally wrote back, either did not read my full «1» page letter, or has no understanding of what is within his jurisdiction. Maybe, I should s.75 (v) of the Constitution Act him.  
Exhibit 2.23

#### 2.24

On the 7th of October 1994, at 0900 hours I delivered two trunks of 1777 letters for Commonwealth and State officers, to the Prime Minister office. To my surprise, I got a message that distressed me more, than the death threats regularly left on my answering machine.

Alexander, it is Ann Mcfarlane from the Prime Ministers office and I have two suitcases full of letters, which I suppose - or I think you may want us to send out, we don't send out letter's like this, - um if they are not collected today we will have to get them destroyed.”

To think, it was only the 8th of December 1994, Paul Keating said:-

But, we are guided by the thing that always guides us and that is if people are in trouble, no matter where they are from or who they vote for, let me say that, we are there to give them a hand.»

Fortunately, trunks Albert and Bill, were able to secretly get asylum in another Federal member's office, until I unleashed the 77 bundles of envelopes through some 53 members, for their electorate offices. The bundles must be well received, as I have only had four sent back to me. I know many members distributed them to institutions in their electorates. I even know some Federal member's have actually read, at least, the first letter - thanks ! Exhibit 2.24

#### 2.25

As I had regularly written to the ANU Chancellor, Sir Geoffrey Yeend, often simply asking for him to dismiss ANU Pro-Vice Chancellor, for Planning and Administration, Philip Alan Selth, before he further implicates the ANU. I was quite shocked by his untimely death. All 1980 public officers I had written to were even provided a copy of a letter I wrote to Sir Geoffrey Yeend of the 1st of August 1994. 1777 I had delivered to the Prime Minister's office only days before. As I had great respect for Sir Geoffrey Yeend, a great “people person”, I felt the least I could do was attend his memorial at University House. Shortly after my arrival, I was approached, threatened and intimidated by ANU Pro-Vice Chancellor Philip Alan Selth. I asked him to leave me in peace as I was trying to attend a memorial service. As he did not, I placed my bike lock around my leg, and a chain around my waist to a rail I was beside. I was arrested the next day and charged twice for breach of the restraining order. One because I went to the memorial, and another because I checked my ANU Post Office Box and then chained myself to a statue outside the Chancellery at the student occupation. Magistrate Michael Somes remanded me for two weeks, as he feared I might re offend by going on the ANU again.

These charges will be heard early in 1995. Exhibit 2.25

2.26

On the 10th of November 1994, at 1900 hours, I had a meeting with ANU Debating Society President of '91, '92, '93 - Simon Brettel, at Conflict Resolution Service. Simon Brettel, told me "Rachel [Michelle] Piercey has been a good friend of mine for about 4 years" and "became a [1992] committee member at the beginning of the year". This is evidence proving Rachel Michelle Piercey «committed perjury» on the 6th of August and 4th September 1992. I told Simon Brettel the significance of Rachel Michelle Piercey making "untrue representations", "fabricating evidence", and making "false accusations" within a short period of time of me informing Simon Brettel of letters to the Chief Justice of the High Court, re:- crime of ANU Debating Society. I gave Simon Brettel 3 letters, 2 information pages and my business card, advising they have been distributed nationally. Simon Brettel gave me his word that he would not show or tell Rachel Michelle Piercey or anyone. In a matter of days, Rachel Michelle Piercey "fabricated evidence", made a "false accusation" and "committed perjury" when applying for a restraining order. After it is served upon me Rachel Michelle Piercey will make more "false accusations". I will then be arrested, "assaulted" by police and remanded.

2.27

The ANU Public Affairs Division invited a friend and I, to attend the ANU Installation of Chancellor Ceremony and the Conferring of an Honorary Degree of Doctor of Laws. I rang ANU Council Member and Shadow Minister for Social Security, Philip Maxwell Ruddock to inquire about me attending in safety from ANU Pro-Vice Chancellor, for Planning and Administration, Philip Alan Selth. Philip Maxwell Ruddock, suggested I get a personal invitation from Professor Peter Baume. My friend and I wrote a letter to Professor Peter Baume which we faxed. I did not get a personal invitation, so I did not go for fear of my safety. My seat, J19 in Llewellyn Hall, remained empty while Professor Peter Baume was installed as Chancellor of the Australian National University and Professor Geoffrey Brennan presented an Honorary Doctorate of Laws, which was conferred upon Archbishop Desmond Tutu. Exhibit 2.27

2.28

As my rights, enumerated in the International Covenant on Economic, Social and Cultural Rights 1966 and International Covenant on Civil and Political Rights 1966 are being violated by the major criminal activity of the **Australian National University Debating Society**, and the **Australian Federal Police**, aided by **Philip Alan Selth Australian National University Pro-Vice Chancellor**, **Richard Refshuage** from **Macphillamy, Cummins and Gibson**, (merged with Sly and Wiegall) and **Chris Chenoweth** from **Mallesons, Stephen and Jacques**. And I am arbitrarily arrested on a regular basis, I have death threats on a regular basis, I have been hit by one car - whilst on a footpath - only dislocating my collarbone, I fear for my life and my life is in danger. I will ask Archbishop Desmond Tutu to assist me in getting political asylum in South Africa.

2.29

So I wrote a letter to Archbishop Desmond Tutu seeking political asylum in South Africa. I faxed this letter

to the office of the Prime Minister, Leader of the Opposition, Minister for Foreign Affairs, Shadow Minister for Foreign Affairs, South African High Commission and Arch Deacon Oliphant of St John's, Archbishop Desmond Tutu's Australian guide. I asked each of them if they could pass on my request for assistance in seeking political asylum in South Africa, but no one would pass my request to Archbishop Desmond Tutu. So that night in the Great Hall of Parliament House, I personally passed my request to Archbishop Desmond Tutu, who advised me to give it to his Media Secretary John Allen, at the end in the front row. I did this. Exhibit 2.29

### 2.30

When it was question time, I told Archbishop Desmond Tutu;- I am Alexander Bailiff, I passed you an envelope earlier. My Social, Economic, and Cultural and Civil and Political Rights are being violated. I have written a letter to the Prime Minister, the Leader of the Opposition, in fact every [838] Member of Parliament and 16 Police Commissioners. They have not been able to assist me, so I was wondering if you could assist me in getting political asylum in South Africa ?”

Archbishop Desmond Tutu said, «I only an Archbishop !”

After this I then went and sat beside John Allen, Media Secretary to Archbishop Desmond Tutu and exchanged business cards.

I provide copies of the cards John Allen and I exchanged in case my residence is mysteriously robbed, burnt or destroyed after I file this writ in the High Court. Probably as a joke to frighten or intimidate me and destroy evidence.

You guessed ? The ANU Scrabble Society is my recreation marketing project.

### 2.31

“The major criminal activity of the **Australian National University Debating Society**, and the **Australian Federal Police**, aided by **Philip Alan Selth, Australian National University, Pro-Vice Chancellor**, for Planning and Administration, **Richard Refshuage** from **Macphillamy, Cummins and Gibson** (division of Sly and Wiegall) and **Chris Chenoweth** from **Mallesons, Stephen and Jacques**. In an effort to prevent the Chairman of the ANU Scrabble® Society from informing the Honourable Sir Anthony Frank Mason AO, KBE, - Chief Justice of the High Court of Australia, of major criminal activity of an organisation he is the patron of, that is the **Australian National University Debating Society**”, has not succeeded.

### 2.32

Has not succeeded, despite 3 restraining orders, 12 death threats, 17 arrests, 20 charges, 60 days in remand, almost 80 days in court, and over 100 appearances, going before every Magistrate and Justice of the Australian Capital Territory and I still have no convictions or record. I have won !

### 2.33

And now I have informed Chief Justice of the High Court - the Honourable Sir Anthony Frank Mason AO, KBE, of the blatant disregard of the law of the Australian National University Debating Society. And that this may possibly place him in a slight compromising position. Please do not take it personally, that I am now suing you for

negligence, I just need your attention and help !

2.34

These events have not occurred because, I am eccentric or have an unusual thought process'. They have occurred as I sustained severe brain damage and been unconscious for a month. This is Disability Discrimination. My Disabilities are best summed up by Neurologist Dr Gytis Danta in his letter to the ANU Countrywide co-ordinator, Liz Lowrie of 15th December 1989.

**AND UPON READING IT IS FOUND THE CHIEF JUSTICE OF THE HIGH COURT OF AUSTRALIA THE HONOURABLE SIR ANTHONY FRANK MASON AO, KBE, IS NEGLIGENT FOR,**

3.0

Failure, to consider that as Chief Justice of the High Court of Australia, there is a duty of care you owe to every Australian. And to breach that duty of care by associating, affiliating and endorsing an organisation involved in major crime, such as the Australian National University Debating Society, would compromise your position, that of the Commonwealth of Australia and most importantly the people of the Commonwealth of Australia.

3.1

Failure to investigate the activities of the ANU Debating Society before becoming their patron in 1989.

3.2

Failure to investigate the activities of the ANU Debating Society before remaining their patron in 1990.

3.3

Failure to investigate the activities of the ANU Debating Society before remaining their patron in 1991.

3.4

Failure to investigate the what the 1991 ANU Debating Society would do with the letter, you wrote to them, publicly, declaring your affiliation, association and endorsement of the ANU Debating Society and their activities.

3.5

Failure to investigate, the activities of the 1991 ANU Debating Society before writing, any letter on High Court of Australia letterhead, affiliating, associating and endorsing the ANU Debating Society.

3.6

Failure to investigate, before writing in an undated letter of early 1991.

«To All Members

As Patron of the ANU Debating Society, it gives me much pleasure to greet members of the Society who are returning to the University to continue their studies this year.

Debating is an important and influential aspect of academic life in a university. Membership of the Society provides an excellent opportunity for the discussion of a wide range of social , political, and philosophical issues affecting Australia in particular and the world in general. As well, there is the added reward of the opportunity to make lasting friendships.

I wish the Society well for the coming year.» Exhibit 3.6

3.7

Failure to investigate the activities of the ANU Debating Society before remaining their patron in 1992.

3.8

Failure to investigate the what the 1992 ANU Debating Society would do with the letter, you wrote to them, publicly, declaring your affiliation, association and endorsement of the ANU Debating Society and their activities.

3.9

Failure to investigate, the activities of the 1992 ANU Debating Society before writing, any letter on High Court of Australia letterhead, affiliating, associating and endorsing the ANU Debating Society.

3.10

Failure to investigate, before writing in a letter of 6th February 1992.

«It is my pleasant task once again to write a few words of welcome to you, the members of the ANU Debating Society. Those of you who have chosen to renew your membership no doubt do so because you are aware of the many benefits to be obtained from involvement with the Society; new members will quickly realise the advantages which membership brings. Participation in extra-curricular activities adds to the enjoyment of university life and offers the opportunity to forge lasting friendships.

As patron, I was pleased to be able to attend the Society's Annual Dinner last year and to meet some of you. I was therefore not surprised to learn of the success of the Society at the recent World Championships. I would like to take this opportunity to congratulate those members who took part and to wish the society continued success in all its activities during the coming year.» Exhibit 3.10

3.11

Failure to investigate, and monitor publications of the 1991, 1992, 1993, 1994, ANU Debating Society, such as their monthly journal's, Inter Junket, Splinter Junket and Year books.

3.12

Failure to investigate, the Canberra Times article by Michael Bachelard, of 15th September 1992, which referred to the ANU Debating Society taking, criminal actions when I threatened to sue them for defamation, before and after attending the annual ANU Debating Society dinner for 1992.

3.13

Failure to investigate, the Canberra Times letter to editor, written by Amanda Chadwick on the 21st September 1992, which referred to serious problems of ANU Debating Society, Assistant Sponsorship Officer - Rachel Michelle Piercey.

3.14

Failure to investigate, the Canberra Times article by Michael Bachelard, of 17th October 1992, clearly indicating major criminal activity, as a direct result of ANU Debating Society, Assistant Sponsorship officer - Rachel Michelle Piercey making “false accusation’s” and “committing perjury”.

3.15

Failure to investigate, the Canberra Times article by Michael Bachelard, of 5th November 1992, clearly referring to conspiracy between Rachel Michelle Piercey and the Police under instructions of the ANU Debating Society. A conspiracy to prevent me proceeding with action against libel, slander and defamation after they published “puerile propaganda”.

3.16

Failure to investigate, phone, fax or write to me to enquire about defamation, a conspiracy and contempt by the ANU Debating Society of which you are the patron who affiliates, associates and endorses their extra-curricular activities.

3.17

Failure to investigate the activities of the ANU Debating Society before remaining their patron in 1993.

3.18

Failure to investigate what the 1993 ANU Debating Society would do with the letter, you wrote to them, publicly, declaring your affiliation, association and endorsement of the ANU Debating Society and their activities.

3.19

Failure to investigate, the activities of the 1993 ANU Debating Society before writing, any letter on High Court of Australia letterhead, affiliating, associating and endorsing the ANU Debating Society.

3.20

Failure to investigate, before writing an undated letter of early 1993.

«It gives me much pleasure to once again to welcome all members of the ANU Debating Society to a new year at the University.

Since my acceptance of the position of Patron of the Society in 1989, I have followed with great interest the Society's many successes in the world of debating. Last, year, members maintained the high standards set by their predecessors, with Daniel Mulino achieving outstanding success at the Thirteenth World Intervarsity Debating Championships where he was judged Best Individual Speaker. I hope that representatives of the Society will be able to reach similar heights in this year's competitions.

Your Society is a very active organisation and I know that your administrators have planned a full calendar of events for this year. I trust you will give them your full support.

Finally, I hope that your membership of the Society affords you the opportunity not only to improve your debating skills but to form many friendships which will endure beyond your student days.» Exhibit 3.20

### 3.21

Failure to investigate, the major criminal activity of the ANU Debating and your affiliating, associating and endorsing with and of them when I wrote to you on the 2nd of April and 30th August 1993.

### 3.22

Failure to investigate the activities of the ANU Debating Society before remaining their patron in 1994.

### 3.23

Failure to investigate the what the 1994 ANU Debating Society would do with the letter, you wrote to them, publicly, declaring your affiliation, association and endorsement of the ANU Debating Society and their activities.

### 3.24

Failure to investigate, the activities of the 1994 ANU Debating Society before writing, any letter on High Court of Australia letterhead, affiliating, associating and endorsing the ANU Debating Society.

### 3.25

Failure to investigate, the ANU Debating Society before writing in a letter of 6th January 1994.

«As patron of the ANU Debating Society, I am pleased to write a few words of welcome to the Society and to the 1994 academic year. I hope that it will be a year which you will attain whatever goals you set for yourself and that it will be a year on which you will look back with much satisfaction. Membership of the Debating Society will no doubt contribute to your enjoyment of university life.

Although my personal contact with the Society has been somewhat limited by my workload as Chief Justice

of the High Court, I have nevertheless been kept well informed of its activities and achievements by your President Simon Brettel. I would like to take this opportunity to congratulate all members who will be participating in the World Intervarsity Debating Championships in Melbourne.” Exhibit 3.25

3.26

Failure to investigate, the 1992, 1993 and 1994 «extra-curricular activities» of Simon Brettel before affiliating, and associating with and endorsing him.

3.27

By reason of negligence the plaintiff suffered injuries loss and damage particulars of which are as follows:

### **OF WHICH THESE PARTICULARS OF INJURIES HAVE OCCURRED**

4.

I have just outlined a very brief 7000 words of my injuries.

4.1

I have an 80, 000 word cross examination prepared for only

**ANU Debating Society**, 1994 Vice-President Rachel Michelle Piercey and her fellow student, friend and lover,

**AFP Constable** Harry Thomas Hains 4928

By the time I finish preparing this complex cross- examination it would be 100, 000 words and when I cross-examined them they would not be allowed out of custody, ie. s. 327, s.328 and s.344 of ACT Crimes Act.

ie. multiple offences of “Perjury”, “Perjury with intent to procure conviction” and “False accusation”.

Once Piercey and Hains are convicted they will prove valuable witness’ to ‘ convict 6 other ANU students, 6 other ANU Constables, ANU Selth, MCG Refshuage, MSJ Chenoweth and Magistrate Ron Cahill. Selth, Refshuage and Chenoweth for lesser offences as they only “aided and abetted” and were “accessories after the fact” and Cahill only “acted oppressively and when interested” and went beyond his jurisdiction.

### **AND UPON READING AND HEARING**

4.2

I Alexander Marcel Andrei Sebastian Barker Bailiff, of 7C Moorhouse Street O’Connor, hereby make oath and say as follows:- I know I will be murdered, but this is the price I paid to “**ensure justice and equity**”. It is for this reason I provide a comprehensive Exhibit Index of documents to be subpoenaed. Please, listen to all court tapes as I have left a long trail of evidence. Examine all listed files and you will find out exactly who is responsible for my murder. I only have evidence of crime of 7 ANU Debating Society Executive, 1 ANU Pro-Vice Chancellor, 7 Barristers and Solicitors - 1 also ANU Pro-Vice Chancellor, 7 Australian Federal Police, 1 Chief Magistrate, 1

Psychiatrist, 1 Belconnen Remand Centre “assault “ staff, 1 “Hit and Run” motorist and 6 ANU academics and staff, breaching Privacy Legislation.

#### 4.3 Exhibit 4.2

I enclose four letters of the Chief Justice of the High Court - the Honourable Sir Anthony Frank Mason AO, KBE, affiliating, associating and endorsing the ANU Debating Society and their activities. The letter of 6th February 1992, is the only evidence I needed and used to ascertain the ANU Debating Society, was an organisation not socially, politically, legally, economically, commercially, or ideologically aligned with any organisation that precludes others, or is involved in dubious activities. If they were, the Chief Justice of the High Court - the Honourable Sir Anthony Mason AO, KBE, would not affiliate, associate or endorse them or their activities. To inform you this way, is the only way left.

#### 4.4

To find who is responsible, you only need to Subpoena every Exhibit on the list, I have carefully prepared. To not find out, will only further scandalise - the Chief Justice of the High Court, the Honourable Sir Anthony Mason AO, KBE and his involvement with the ANU Debating Society. For not having shown the expected “duty of care” owed to investigate - before affiliating, associating and endorsing an “organisation who have a history of a blatant disregard of the law.” And is negligent in failing to cease affiliating, associating and endorsing the ANU Debating Society after their major criminal activity was published in the Canberra Times and I personally informed him on numerous occasions. Thus giving the ANU Debating Society the motive to commit further major crime in efforts to prevent me, taking legal action and informing you of “their blatant disregard of the law”. Which has prompted this, 14 other High Court applications and my murder at 24.

#### 4.5

At least I beat my sister by 8 years, Vanessa Camille Bayliss was killed in a car accident at 16. Mother, Christine Mary Bayliss, 35 broke 19 bones and brother, Jean-Paul Lucian Bayliss, 4 broke 2 legs and was unconscious for a day. And I just had a few lacerations, a broken arm, severe brain damage and was unconscious for a month. But we are all okay now, thanks for asking !

#### 4.6

I submit the ANU Scrabble Society Official Score Sheet of 1992. Four letters of the Chief Justice of the High Court - the Honourable Sir Anthony Frank Mason AO, KBE. A letter of Dr Gytis Danta, Neurologist, to ANU Countrywide co-ordinator, Liz Lowrie of 15th of December 1989. A letter of Christine (Bayliss) Bates, University of Sydney - Law, to ANU Pro-Vice Chancellor for Planning and Administration of 26th November 1993. The Alexander Bailiff, ANU student #9204215, General Services Receipt of 19th January 1994. A tape with the distressing message left by the Prime Minister’s office. Some of the death threats I regularly receive. And a page with “quotes” this case has prompted. You have my written permission to release these documents to anyone from the media who requests them, before and after my murder.

4.7

May my fight be seen, as not just one to play Scrabble®, but to achieve the 1st objective of the **Australian National University Scrabble Society**.

1. «To ensure Justice and Equity for all people and groups in society.»

**PARTICULARS OF CONTINUING DISCRIMINATION, IMPAIRMENT AND LOSS OF ENJOYMENT OF LIFE AND LIFE DUE TO INJURIES**

(a) These would have been supplied prior to the hearing.

**PARTICULARS OF OUT OF POCKET EXPENSES AND ECONOMIC LOSS**

(a) These would have been supplied prior to the hearing.

**AND** the plaintiff would claim damages, costs and interest pursuant to Order 43A Rules 1 and 2 of the Commonwealth of Australia High Court Rules in force under the Judiciary Act 1903.

Signed: \_\_\_\_\_3/1/95

© Alexander Marcel Andrei Sebastian Barker Bailiff

© AUSTRALIAN NATIONAL UNIVERSITY Student #9204215

© Chairman AUSTRALIAN NATIONAL UNIVERSITY SCRABBLE SOCIETY

Witnessed: Frank Jones

High Court Registrar \_\_\_\_\_3/1/95

**CLASS CLASSIFICATION**

A Personal Injury Δ

B Debt Δ

C Other (Directions Required) .

**FORM 1**

Service and Execution of Process Act 1992

## **NOTICE TO DEFENDANT**

### **THIS NOTICE IS VERY IMPORTANT**

**PLEASE READ IT AND THE ATTACHED DOCUMENTS VERY CAREFULLY**

**IF YOU HAVE ANY TROUBLE UNDERSTANDING THEM  
YOU SHOULD GET LEGAL ADVICE AS SOON AS POSSIBLE**

Attached to this notice is a writ of Summons and Statement of Claim (“the attached process”) issued out of the High Court of Australia, Canberra Registry.

Service of the attached process outside the Australian Capital Territory is authorised by the Service and Execution of Process Act 1992.

### **YOUR RIGHTS**

If a court of a State or Territory other than the Australian Capital Territory is the appropriate court to determine the claim against you set out in the attached process, you may be able to:

1. have the proceeding stayed by applying to the High Court of Australia, Canberra.
2. apply to the High Court of Australia, Canberra Registry to have the proceeding transferred to another High Court, Registry, or another superior court.

If you think the proceeding should be stayed or transferred you should get legal advice as soon as possible.

### **CONTESTING THIS CLAIM**

If you want to contest this claim, you must take any action set out in the attached process as being necessary to contest the claim.

If you want to contest this claim, you must also file an Appearance in the High Court of Australia, Canberra Registry. You have only 21 days after receiving the attached process to do so.

The Appearance must contain an address in Australia where documents can be left for you.

Australian Capital Territory Restraining Order 93/494  
Philip Selth v Alexander Buchanan Restraining Order  
Exhibit No 17 Letter dated 26.11.93 by Christine Bayliss  
Sir Anthony Mason Chambers  
14/179 Elizabeth Street  
Sydney NSW 2000  
Tel: 61 (0)2 9373 7433  
Fax: 61 (0)2 9373 7422  
DX: 343  
EM: philip\_bates@fcl.fl.asn.au

26 November 1993

The Chancellor, Pro-Vice-Chancellor and Members of the ANU Council

Dear Sirs and Mesdames,

The ANU either directly or through legal assistance to other persons has involved my son, Alex Bayliss (Buchanan), in a chain of litigation over the past eighteen months that has incurred over forty Court appearances and periods where my son was needlessly held in custody for a number of weeks at a time. In every single case the courts have found the charges unsustainable. This is all the more significant when one considers that my son has, on most occasions, appeared as a litigant in person whereas on all occasions the other parties, including the ANU itself, have had legal representation.

The ANU has continually either provided legal assistance to facilitate such litigation on behalf of other parties, or it has more directly been involved to the extent of itself being a party to such litigation on several occasions.

In all cases the litigation has been a complete waste of time for every instance has involved unsustainable allegations or the request for orders which the Court has no power to grant.

It would seem significant that my husband has lost fewer cases in fourteen years of bar practice than the University seem to have lost in an eighteen-month period. Thus, it is not unreasonable to conclude that the University has been involved in what can be described as nothing short of frivolous or vexatious litigation. One might further wonder whether Pro-Vice Chancellor Selth made a wise decision in rejecting a possible career at the bar for an administrative university position?

I am further concerned that this chain of unsuccessful has had a negative effect on my son's outlook. Where he once saw the law as existing for the attainment of legal remedies in cases where problems could not be resolved by other measures, he now sees it as something that powerful financial bodies, such as the ANU, use it for the purposes of mere harassment. This is understandable given the chain of events over the last eighteen months, the numerous occasions on which Alex has been arrested, the times he has been held in custody without bail, his many court appearances and the fact that, despite what should have been quality legal advice and representation by their legal flotilla, the ANU, and the parties it has legally assisted, have on all occasions lost their cases to a litigant in person.

Given this gross misuse of the law, it would seem to me that the ANU must minimally accept a large portion of the moral responsibility for Alex's attitudes. It is surely not the way to instill appropriate behaviour?

It has now got to the point that one must question which behaviour is appropriate - that originally, but incorrectly according to the courts, supposed to have involved my son, or the repeated, disruptive, and

inappropriate use of litigation by the ANU? For example I believe that following instructions deriving from the Pro-Vice-Chancellor, University security called the police and had Alex arrested twice this week when he was reading in the University library. On both occasions he was unlawfully arrested and detained for forty five minutes and then released. This can hardly be regarded as an appropriate use of the law.

And even if the ANU successfully litigated in the future it would not be able to erase a record of eighteen months of seemingly vexatious litigation and a misuse of University funds.

One must question what effect a seemingly continued harassment has on a boy of Alex's age? If the ANU's own frivolous misuse of legal remedies has created an attitude problem in Alex then the ANU must accept moral responsibility. One cannot expect Alex to remain indifferent to the fact that his studies have been seriously compromised by unsuccessful litigation on the part of the University.

These problems cannot be resolved by further recourse to legal remedies. Furthermore, such attempts seem unwarranted given the trivial nature of the latest alleged offences. I have noted that there has never been an allegation that Alex has caused bodily harm to any persons or damage to property.

Alex deserves an opportunity to proceed with his studies without spending his life preparing to defend himself in the courts. But for the past eighteen months he has almost continually been preparing his defences in a lot of futile litigation. This, and several periods of unjustified incarceration (once lasting five weeks!), have prevented him from making any progress with his studies. This would seem to indicate some problem with what should be a university's primary role: education.

The sheer failure of legal remedies, the unjust disruption to Alex's life and his studies, the waste of the financial resources of the university all indicate that another more constructive approach is warranted so that Alex can get on with his life and the University can concentrate on his primary role as an education institution.

Negotiations between the Pro-Vice-Chancellor and Alex have failed because it would appear that there is some personality conflict between them. This is not to be interpreted as any negative reflection on the Pro-Vice-Chancellor; these things happen. But I am concerned that the ANU has not endeavoured to sit down in a non-threatening situation to explain its concern to Alex, and negotiate resolutions.

There was an initial attempt to at counselling (and my husband and I visited the University to facilitate that) but this was based on a premise of supposed fault that the courts later found unsustainable. Hence it is not surprising that counselling consisted of Alex protesting his innocence, a position which the courts later upheld.

If someone was made available genuinely to assist Alex with difficulties he was facing, then any concerns that the University might have, could surely be more simply and effectively resolved. For example why didn't the University send an independent Counsellor to give Alex support whilst he was spending several weeks in remand?

Surely this was just as stressful for a student as having a drug problem, and just one example where the University offers support without regard to the question of blame.

It also appears that confidential discussions between Alex and a disability adviser were improperly disclosed by that officer by letter to This the Pro-Vice-Chancellor dated 15/6/92 to the University administration, and the University is now resisting attempts by Alex to see details set out there.

It is now clear the Supreme Court's decision to acquit Alex of all charges that the University had wrongly

pre-judged Alex's supposed guilt, and has most inequitably given legal and financial support to one student, Rachel Michelle Piercey, in preference to another, namely Alex.

This inequity was rightly perceived by Alex to be a further injustice which compounded and inflamed the original injustice of allegations which he always protested were false. And his claim has now been upheld. The University should not have prejudged the Court's decision but should have adopted a position of equity and impartiality by either giving neither student legal advice or otherwise legally assisting both students and allowing the Court to establish the truth. In my opinion the university should apologise to Alex for the gross inequity in its erroneous pre-judgment of the outcome. However it would be self evident that a student wrongly accused would feel a heightened sense of grievance, and legitimately so.

I urge the ANU to negotiate a resolution to these problems in an appropriately delicate manner rather than with heavy-handed legal bludgeoning which will inevitably expose the ANU to ridicule when these scandalous matters become more widely known. It is also vital that the ANU issues appropriate directives to staff and makes suitable public statements which will come to the attention of the student body and others to overcome the prejudice which the ANU's action have caused Alex.

Because of his involvement in this issue, a copy of this letter has been sent to Harry Geddes at the ANU Law School.

Yours faithfully,

CHRISTINE BAYLISS

VANESSA CAMILLE BAYLISS  
AGED 16 YEARS  
19TH OCT. 1969 - 7TH DECEMBER 1985  
PRECIOUS AND ONLY DAUGHTER OF  
PETER AND CHRISTINE  
STAUNCH FRIEND & CHERISHED SISTER OF  
ALEXANDER & JEAN-PAUL  
RIDE WITH THE WIND MY FRIEND  
R.I.P.

Dear Sir Anthony Frank Mason AC KBE I write on the 13th anniversary of death,

The Chief Justice of the High Court of Australia, erred in his judgment for 7 years.

“It is my pleasant task once again to write a few words of welcome to you, the members of... renew your membership because you are aware of the many benefits to be obtained from involvement with the Society; new members will quickly realise the advantages which membership brings. Participation in extra-curricular activities adds to the enjoyment of university life and offers the opportunity to forge lasting friendships.

As patron, I was pleased to be able to attend the Society’s Annual Dinner... wish the society continued success in all its activities during... year.”

To affiliate, associate and endorse an organisation violating the Defamation, Disability Discrimination, Australian Capital Territory Crimes and Commonwealth Crimes Acts and also being in contempt of the High Court Rules of Australia.

“Do you ..

# Feel the need to sleaze on to 1st years?

# Wear a hanky on your head?

# Interrupt committee meetings?

# And generally act like an ASIO spy after the electro torture?

Well then Scrabble is the game for you.

And remember Deranged on a triple letter score is worth BIG points.

NONCOMPOSMENTIS, CONGENITAL IDIOCY, MALADJUSTMENT, PARANOIA, DELUSION,  
LUNACY”

[Words printed in a Scrabble® formation.]

Federal Attorney-General's adviser Paul Bolster lies to Human Rights Commission.

Even Scrabble® 16/7/1992 M.D. advised me, "They have given you the evidence." The Australian National University, Deacons Graham & James, Mallesons Stephen Jaques and Australian Federal Police underestimated their one braindamaged foe.

"I am writing in response to your telephone enquiry about this patient's suitability to do a law degree. As you know he suffered a severe head injury. He recently had a full neuropsychological assessment which showed global impairment of cognitive functioning. He functions at the high/average scale, his premorbid function being estimated at a significantly higher level.

From this one would anticipate that he would have some difficulty pursuing his law degree and one would not recommend it without reservation. It might be best for him to enroll in a less taxing course for twelve months and, depending on his performance, then transfer to law if it is anticipated that he can manage the course." Gytis Danta, Neurologist, Canberra Specialist Centre Tel 02 6285 2460 Fax 02 6285 1944

Fortunately, braindamaged foe with the best Phaedra complex medical barrister.

#. Parker QC, Roger, Barrister-at-Law, (61 2 9221 3890), p.127, Chapter 7, Adducing Evidence to Prove or Disprove Brain Damage, Brain Damage Medico-Legal Aspects, Blackwell Press, Sydney, (1994). (My Phaedra complex Philip Bates is General Editor, UNSW,) (61 2 9385 2584)

"6. The Clinical Picture in Focal Cerebral Disorder Lishman says at p.16 that strictly focal brain damage can be responsible for both acute and chronic organic reactions. He says that a frontal lesion may confer distinctive changes of disposition and temperament. Most characteristic is a disinhibition with expansive overfamiliarity, tactlessness, over-talk[at]iveness, childish excitement or prankish and punning social and ethical control may be diminished with a lack of concern for the future and for the consequence of actions. Sexual indiscretions and petty misdemeanours may occur, or gross errors of judgement with regard to financial or interpersonal matters. Sometimes there is a marked indifference, even callousness for the feelings of others. Equally lack of anxiety and insight on the part of the patient into his or her condition. Elevation of mood is often seen, namely an empty and fatuous euphoria rather than a true elation which communicates to the observer. In other cases the principal changes are lack of initiative, spontaneity and a profound slowing of psychomotor activity. Concentration, attention and ability to carry out a planned activity are impaired by these changes but performance on tests of formal intelligence is often surprisingly well preserved once the patient's co-operation has been secured." Reference:- Lishman, William Alwyn, Organic Psychiatry, The Psychological Consequences of Cerebral Disorder, Blackwell Scientific Publications, Oxford, (1987).

The Australian National University Scrabble® Society World Political Asylum Tour started by hand delivering these documents to 300+ consulates around Australia, only after 70+ arrests, 70+ charges and 70+ days custody of me

had taken place.

Northern Territory police took me to Darwin psychiatric hospital, as I am “rather unusual”. Psychiatrists scheduled me for 70+ days on the basis I was delusional because of an Australian Federal Police statement confirming the negligence of the Chief Justice of the High Court of Australia and paranoid because of a sheet of quotes of politicians, lawyers, media and police advising me I will be killed.

Australian Federal Police do take statements to fight crime and win. Likewise, politicians, lawyers, media and police advise people they will be killed for fun.

The United Nations aspire to improve Human Rights for all in 185 Member States.

© Alexander Marcel André Sebastian Bayliss @ The Society of United Nations

Darwin is a capital city without a neurologist and as a result their psychiatrists misdiagnose as they are not familiar with the symptoms of severe brain damage.

And 1 psychiatrist said, “We have a rare exception as he is extremely intelligent”, others confirmed by ringing others they did not know whether I am mad or not.

Gytis Danta Neurologist 02 6285 2460, Attila Gyory GP 02 6295 5997, Dt Sgt Jeff Brown 02 6256 7777 and Wilfrid Barker 02 9428 3436

Psychiatrists gave taped evidence in the Magistrates Court to schedule me. So I am making a formal complaint to Brian Burdekin, Special Adviser, United Nations Human Rights Commissioner as it is in contravention of United Nations Covenants.

Psychiatrists; -Melissa Finokin, Tovo Warren, Vladimir Todorovic, On Kyaw, Franco Garrupto, Randiri Singh, Mario San Pedro, Catherine Corniglio, Rob Parker, Howperachi Saro, Greg Hugh, Trish Nagel, Jo Lindall, Louise Nash, Danny Stewart; Darwin Hospital 08 8922 8888

The Commonwealth Attorney-General's, 20th August 1998, complaint of Adviser Paul Boster on 14th August saying I should see Prof Peter Baume, a psychiatrist, and be on medication as I am paranoid and delusional, had Lishman's quote in it. Yet, I was prescribed a mood stabiliser and antipsychotic. An Australian Federal Police statement and a copy of others quotes does not mean one fits into DSM IV.

Lishman, W.A. wrote “Elevation of mood is often seen, namely an empty and fatous euphoria rather than a true elation which communicates to the observer.” in Organic Psychiatry, The Psychological Consequences of Cerebral Disorder, Blackwell Scientific Publications, Oxford (1987).

The Mental Health Tribunals of the Northern Territory, like Western Australia, South Australia, Tasmania, Victoria, New South Wales and Queensland are a farce of legislative dark ages. This is why the Australian Capital Territory did not copy.

Phillip Thompson Registrar ACT Magistrates Court 02 6217 4332 Philip Bates UNSW School of Health Services Management 02 9385 2584

I am grateful Philip Bates took me out of Prince Henry Hospital in 1986, where I was inspired by brain damaged vegetative states, to rehabilitate. Philip Bates was my outstanding personal academic who knew the most vital period for recovery was the first 12 months. I must question limited resources for other recoveries.

Hugh Dickson at Prince Henry Hospital Anzac Parade Little Bay NSW 2036 02 9282 5555 and UNSW Faculty of Medicine 02 9385 2444

Robert Tym advised Philip Bates, "Alexander does not fit into a psychometric category, he is just rather unusual." Asking later I was then told, "Unless you give me \$400, I am going to write a report saying you are paranoid and delusional."

Michael Helman did offer Robert Tym \$400, to get me off a false accusation on a plea of insanity. Under cross-examination told how he and Timothy Chadwick had breached client confidentiality, then stuck his fingers up at the Chief Magistrate.

Ramish Gupta wrote, "This young man is eccentric and has an unusual thought process, however does not fit into a psychometric category." He later threatened to give me lithium as I had left an amusing message on his answering machine. Michael Shihoff prescribed tranquilizers, later breaching patient confidentiality in front of Robin Jenkins, as he abused me for never taking advised medications.

Michael Shihoff told Supreme Court that, "Alexander has a very traumatic life."

Then fired me as giving evidence was not as lucrative as quick Medicare fraud.

Adelaine Hodgkinson, Patricia Jongfer, John Sydney Smith misdiagnosed and misprescribed due to incompetence and undertraining of a medical profession.

Sydney Smith, Dr J., p.2, What is Brain Damage?, Brain Damage Medico-Legal Aspect, Blackwell Press, Sydney, (1994). Introduction

"Drugs administered therapeutically can have untoward effects on the brain; the most controversial being the major tranquilizers which can damage specific parts of the brain causing movement disorders."

Will you question, "A Brief History of Time" or Steven Hawking as he is disabled?

Why isn't the Australian Medical Association accountable? In Chelmsford cases?

Your elevation of mood, disinhibition of personality or expansive overfamiliarity.

"Medical practitioners skilled in the art and who are not alerted to search and analyse recognizable signs have been known to confess to error."

Parker QC, Roger, Barrister-at-Law, (61 2 9221 3890)

P.118, Chapter 7, Adducing Evidence to Prove or Disprove Brain Damage, Brain Damage Medico-Legal Aspect, Blackwell Press, Sydney, (1994).

Alexander Marcel André Sebastian Barker Bailiff Ph.D. Law (H.C.)(A.N.U.)

I induced labour 8 weeks premature at 6:03pm after hearing on ABC Radio Gough Whitlam threatened to block supply in the Senate..

Secretary-General P.O. Box 70 Australian National University A.C.T. 0200

The Society of United Nations - Making life easier.

Tuesday 16th March 1999

Sir Anthony Frank Mason AC KBE  
Chief Justice of the High Court of Australia  
1/3, 1 Castlereagh Street  
Sydney NSW 2000

Dear Sir Anthony Frank Mason AC KBE,

To protect the Chief Justice of the High Court of Australia, I lodged Writ's of Mandamus in the High Court of Australia against every Australian Police Commissioner; Director of Public Prosecutions; Ombudsman; Governor; Governor-General; member of Legislative Assembly/Council, House of Representatives and Senate; Senior Officer of Higher Education; and Australian capital city heads of Australian Broadcasting Corporation news/current affairs for radio/television.

As Uncle Wilfred Barker has told me that he will support me no matter what I do providing, I change my name back to my birthname and I do not sue the Chief Justice of the High Court for negligence, I can not change my name to your name to help you undermine public confidence in your office and you have to call a Royal Commission into the negligence of the Chief Justice of the High Court. I hand delivered these pages to 300+ consular representatives, before provided to you and every minister of countries on the United Nations General Assembly. I am sad to be damaging Australia by doing this, particularly leading to the Sydney Olympics, I am sadder still there is no Australian representative helping a life in danger, except the Chief Justice who did ask me to action the High Court Writ's.

I only wanted to be a detective until Grandpa died when I was 10. I thought if I could make grandparents live longer the world would be a happier place. I had no trouble getting perfect results during science study, aim - be a professor of medicine to make grandparents live longer. On 7/12/85 I sustained severe brain damage and was unconscious for a month at the age of 15 years, 108 days and 12 hours. Life was unbearable for years, then I started a company 10 days into the year after I completed year 12 and within 3 months I was offered a \$1,000,000.

I was offered \$250,000 deposit to buy my first idea. The idea would yield \$7,000,000 from first day of national implementation and \$21,000,000 over 12 months, "with a shelf life of 20 years." To quote the most important businessman in Australia. I told the man who offered to buy my first idea for a \$1,000,000, "I was not interested in selling". My idea was to make the commercial market fairer for society, not for one company in the market to benefit, but many companies to benefit by making the commercial marketplace fairer and beneficial for society.

I met a man from a company which had over\$100,000,000,000 assests operating in 50 countries, regarding a \$1,800,000 capital injection into my company. The director told me that \$1,800,000 would give his company an

18-week national advertising campaign. My company, for \$1,800,000 could give his company total marketplace saturation for 12 months. I thought if I developed an idea for the commercial arena, I am able to look at the economic arena and develop an idea.

I asked 1991 Treasurer Paul Keating, "I have developed a strategy that would save taxpayers \$3.5 billion per annum. What should I do?" In January 1992, I asked Phillip Ruddock the question of saving taxpayers \$3.5 billion per annum.

In Australian National University Orientation Week 1992, I accepted written advice of the Chief Justice of the High Court of Australia and I also founded the Australian National University Scrabble® Society. Ian Anderson the Managing

Director of J.W. Spear & Son contacted me on 16 July 1992 and contracted me to develop complementary Scrabble® products to license, manufacture and market internationally in exchange for royalties worldwide. Ian Anderson explained Murfett Regency was a division of AMCOR, which was the 14th largest company in Australia. Thus implying AMCOR director's would support all advised action.

Developing commercial/economic ideas and meeting leaders of "The top 1000" companies regarding participation in national implementation of my strategies, ensured awareness of my special talents. Particularly since, Uncle Wilfrid Barker and Phillip Ruthven acknowledged, praised and supported me for my talents. To quote Doug Gillespie Macquarie Fairfax 2GB from 19 January 1999, "Alex your Uncle Wilf was probably one of Australia's most significant Television Players ever. Good luck with your mission." Uncle Wilfrid was also Rupert Murdoch's right hand man and he personally bid to win the Sydney Olympics for Australia.

Phillip Ruthven worked for and was a friend of Grandpa Mervyn Barker, before he grew to Executive Chairman, IBIS INFORMATION, adviser to a majority of the top 2000 companies. Australia's leading commercial and economic forecaster.

"Son, this is a multi-million dollar idea." Uncle Wilfrid Barker hereby known as Wilfrid Barker - just don't tell Uncle Wilfrid

"Alex do you realise, I was 40 when I worked out what I wanted to do, now look where I am, I am the most important businessman in Australia. Do you realise you are 19, know exactly what you want to do and how you want to do it you are going to go such a long way." Phillip Ruthven

"As far as I am concerned you have the most extraordinary, uncompromising and uncontrolled mind." Wilfrid Barker

“Yes they [politicians] know who you are.”, “No one is questioning your intellect.”, “I would like to invite you to study at the Australian National University the only problem is the Pro-Vice Chancellor, but you keep doing what you have to do.” Professor Peter Baume

“You can not expose the negligence of the Chief Justice of the High Court, you will get a bullet in your head to silence you.” Wilfrid Barker

“I have no intention of getting involved in anyway in the matters you have raised for the reasons which I am sure you will understand. I just do not believe that anyone will be trying to kill you for the action you have taken.” ANU Chancellor, Professor Peter Baume

“I am in absolute disbelief as in the last week every police commissioner in Australia contacted me regarding your High Court cases and you have one hell of knack of predicting things. Yes, the police bashing you wrote about is on video.

What on earth are going to do once you have finished this marketing project?”

Comm Don McCullough for Comm Michael Palmer

“It is very significant to influence a company worldwide [J.W. Spear & Son] and you are going to make so much money.” Wilfrid Barker

“It is good to meet the mind behind the Scrabble® products.” Phillip Ruthven

“The nature of life is the product of coincidence and fate. We met today through both.” Human Rights Commissioner Chris Sidoti

“Alexander, thanks for your support for the United Nations.” United Nations Special Commission Executive Chairman Richard Butler

“Contrary to common belief the world is becoming a better place, the challenge is to make it fairer.” Phillip Ruthven

“Alex, you are not different! You, too, have one life. Use it wisely. You have special talents. Your future is dependent on your seeing a worthwhile way ahead clearly and using your talents positively. Combining that philosophy with your natural charm, integrity and warmth will create REAL achievement. Life is short, start now, use it well.” Wilfrid Barker

“You are directorship material because you have original ideas.” Wilfrid Barker

“I will support you, no matter what you do providing you do two things. 1. Change your name back to your birthname. 2. Don't sue the Chief Justice of the High Court fo Negligence.”

Wilfrid Barker

“You are going to damage Australia and embarrass the Chief Justice of the High Court.” [ANU Scrabble® Society World Asylum Political Tour.]

“You are holding Australia at ransom for a Royal Commission.” “You are extremely dangerous.”, “Fix it.” Wilfrid Barker

“If the Australian Secret Intelligence Service had a licence to kill you would be killed.”

Wilfrid Barker

“I guarantee a Royal Commission when you are killed and I have the power too.”, “You don’t get your Royal Commission until you are killed.”

“You can tell your Uncle Wilfrid I agree with him, you are holding Australia at ransom for a Royal Commission.”

Dt Sgt Jeff Brown 513 BEM

“Why you like talking to me so much is because you know you have finally met your match.” Uncle Wilfrid Barker

Try thinking about a Royal Commission when ringing Uncle Wilf 02 9428 3436, Phil Ruthven 03 9650 2166, Peter Baume 02 6249 2113, Chris Sidoti 02 9284 9600, Michael Palmer 02 6256 7777, Richard Butler 1 212 963 3018, then ring 300+ Consulates or 100+ Embassies.

After a Royal Commission has been called ring me on 1917 913 0239, my busy Native Title Special Counsel 07 3307 3847 or busy Political Correspondent 0417 662 683. Write to Secretary-General, The Society of United Nations, P.O. Box 70 Australian National University ACT 0200.

Yours with disinhibition of personality and expansive overfamiliarity.

Alexander Marcel André Sebastian Barker Bailiff

I induced labour 8 weeks premature after hearing on ABC Radio at 6:04pm that Gough Whitlam threatened to block supply in the Senate.

Secretary-General

The Society of United Nations

Dear Michael Kirby, 612 9231 5800 mail@michaelkirby.com.au

Once, Member for Fairfax tables <https://docs.google.com/file/d/0B9qsJGqRmMJbNkVNWTF0RmpBbEk/edit?pli=1> in House of Representatives, a Royal Commission must be called into Michael Kirby negligence as I sent [vaticanholyseepostolicnunciature.blogspot.com.au](http://vaticanholyseepostolicnunciature.blogspot.com.au) in 1995. I not only sent Michael Kirby Writ of negligence against Chief Justice of High Court of Australia, I faxed it to every Federal Member of Parliament.

Once, every Australian police commissioner were sent [vaticanholyseepostolicnunciature.blogspot.com.au](http://vaticanholyseepostolicnunciature.blogspot.com.au) they contacted Canberra and the Australian Crime Commission was established where every police commissioner regularly contact the Australian Federal Police Commissioner, and all 800 police stations were sent <https://docs.google.com/file/d/0B9qsJGqRmMJbNkVNWTF0RmpBbEk/edit?pli=1> with Australia Post at once.

Once, the Royal Commission is called into negligence of Michael Kirby employing Kirsten Edwards as his Associate when he knew she was named in High Court Writ of negligence against Sir Anthony Frank Mason Chief Justice of High Court of Australia, the inquiry will establish 1000 State Emergency Service locations, 659 Shires, 800 Police Stations, 838 Elected Representatives and 868 Senior Officers of High Education would advice against employ.

Once, the Royal Commission establishes Kevin Rudd's Chief of Staff Simon Banks is named in Australian Federal Police statement of 5th June 1995, and Rachel Michelle Piercey was employed by Australian Army, despite the every Air Force, Army, Navy and Defence Force fax recieving exactly the same, one might question the standard of accountability that exists that ensures that known terrorists such as Rachel Michelle Piercey are sheltered by defence.

Once, the Royal Commission established Amanda Vanstone Parliamentary Intern Kirsten Edwards is named in Australian Federal Police statement of 5th June 1995, and High Court Writ of 030195, before she became an Associate to J. Michael Kirby, despite every member of parliament being faxed the very High Court Writ that prompted the establishment of the Australian Crime Commission and J. Michael Kirby being sent the High Court Writ in 1995 by a bored savant.

Once, it is established a known savant, commenced legal proceedings against every police commissioner, director of public prosecutions, ombudsman, administrator (NT), Governor, (SA) (QLD) (TAS) (VIC) (WA) (NSW), Governor - General (ACT), elected representative and senior officer in higher education, 23 million people will ask what obligation they have to expose negligence of Chief

Justice of High Court and President International Commission of Jurists.

Once, it is established Australian National University indemnified Rachel Michelle Piercey against legal costs by hiring Richard Refshauge to represent her in court, when she applied for a restraining order in 1992 and 1995, it'll become public Australian National University Pro Vice-Chancellor then applied for a restraining order in 1993 and 1995 and the Australian National University must be transferred to my trust account to compensate my savant lose globally.

Once, it is established Fairfax employed Kath Cummins as a journalist when they know she is named in High Court Writ and Australian Federal Police statement of 5th June 1995, other media organisations might question why The Australian (NEWS CORP) gave ANU Debating Society \$10,000 and Australian Broadcasting Corporation employed Kath Cummins as a journalist in China after she was fired by Australian Financial Review after I just rang.

Once, it is established Australian Army, United States Army and Development Alternative Inc employed a known terrorist when each of them can check the world wide web to ascertain her terrorist activities before the High Court and Federal Court in Australia one will question whether Australia Army, United States Army and Development Alternative Inc have ever switched on a computer never alone read emails sent to every single person working in Development Alternative Inc.

Once, it is established Richard Refshauge advised Rachel Michelle Piercey to apply for a restraining order on basis "he has brain damage" and hijacked my car accident compensation basis "he has brain damage", my car accident compensation case settled by community advocate for \$750,000, will be reopened and I will reveal the fact I am a bored savant and a judge will award me countless \$billions as my idea at 12 was to introduce LED's to every vehicle.

Once, it is established Richard Refshauge advised Rachel Michelle Piercey to apply for a restraining order on the basis, "Stated that he would 'come over' and 'teach (me) a lesson' ... that there was a gun pointed at (my) head'. And that he would kill me if he didn't get his way'. And "Repeatedly telephoned in the early hours of the morning, made threats, and followed me at university." Richard Refshauge will loose his practice certificate for perjuries.

Once, Chief Justice Terrence Higgins said, "It would be illegal for me to direct you to the Mental Health Tribunal," he confirmed Justice Richard Refshauge directing me to the Mental Health Tribunal was illegal and he will be charged by a Justice of the Federal Court for being illegal. As it was illegal for Richard Refshauge to hijack by car accident compensation via Community Advocate as he has "brain damage." That is the reason I was getting compensation.

A Royal Commission into the matters

in <https://docs.google.com/file/d/0B9qsJGqRmMJBnKvNwTF0RmpBbEk/edit?pli=1> will reveal the number of times I have been arrested, charged and incarcerated as a result of my stringent efforts to expose the criminal activity I just put before High Court of Australia. <http://rvbailiff2011actsc214.blogspot.com.au/> will reveal United Nations made WHO international classification of impairment disability handicap (1981).

A Royal Commission

into <https://docs.google.com/file/d/0B9qsJGqRmMJBQmFjeGZxejBaYWs/edit?usp=sharing> will reveal Jerrawa Creek Gunning - Yass in 1985 was worst spot of roadway in Australia due to the fact "the super-elevation in the road was incorrect as road was designed for 30 years ago when the speed limit was lower." Commonwealth funded road into busiest highway in Australia should be immediately repaired not wait until hundreds are injured-killed.

Once, a Royal Commission is called 23 million may ask why Australian National University named room in Chancelry Refshauge Room and why the Australian Capital Territory Government made Richard Refshauge a Supreme Court judge when they knew as Director of Public Prosecutions he did completely overlook Rachel Michelle Piercey applying for restraining order on the basis a gun was held at her head as she was a Australian Army.

Michael Kirby can contribute to society by getting people all around the world who are impaired released from jail and legislation so impaired are not given a hard time by society who for one reason or another think they unusual or have an unusual thought process protecting Chief Justice of High Court.

Remember I got Popes Apology to China in 30 days, Oceania in 60 days and made United Nations precedent with one sentence and gave one A4 page.

Yours sincerely Alexander Marcel Andre Sebastian Barker Bailiff 614 3777 3777  
SaintAlexander@mail.com  
<http://aboriginalembassy.weebly.com/> and <http://popesapologytooceania.weebly.com/>

P.S. Who will protect MATT@GETUP.ORG.AU 0499 319 385 L14 388 PITT ST SYDNEY NSW 2000 MICK@GETUP.ORG.AU 0423 149 494 from my eyes?

One more Royal Commission to make me a billionaire would be into the motor vehicle accident that caused me to be impaired in the first place in 071285.

My light emitting diode idea was my idea to take light emitting diodes, photovoltaic

cells and solar panels out of the electronic kit and use in real world.

You could also benefit by knowing I introduced use of light emitting diodes to MERCEDES BENZ and now AUDI, ALFA ROMEO, ASTON MARTIN, BENTLEY, BUICK, CITROEN, CHEVROLET, DAIHATSU, HYUNDAI, HONDA, ISUZU, JAGUAR, JEEP, KIA, LAMBORGHINI, LAND ROVER, LEXUS, LOTUS, MAZDA, MITSUBISHI, OPEL, PORSCHE, PROTON, RENAULT, ROLLS ROYCE, SAAB, SKODA. SUBARU, SUZUKI, TESLA, TOYOTA, VOLKSWAGEN, VOLVO all use light emitting diodes.



[2012] HCATrans 169

IN THE HIGH COURT OF AUSTRALIA

Office of the Registry

Sydney

No S100 of 2012

Between -

XZ

Plaintiff

and

AUSTRALIAN CRIME COMMISSION

First Defendant

THE COMMONWEALTH OF AUSTRALIA

Second Defendant

Summons for directions

GUMMOW ACJ

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY ON TUESDAY, 26 JUNE 2012, AT 10.18 AM

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**MR G.D. WENDLER:** Your Honour, I appear for the plaintiff on the summons for directions. (instructed by John D Weller & Associates)

**MR M.J. O'MEARA:** May it please the Court, I appear for the defendants. (instructed by Australian Government Solicitor)

**HIS HONOUR:** Now, what is the position in this matter, gentlemen?

**MR WENDLER:** The first defendant has filed a - - -

**HIS HONOUR:** Proposed short minutes?

**MR WENDLER:** Yes, which I agree with, as being a sensible way to advance it.

**HIS HONOUR:** Very well. Now, is your client the defendant in these proceedings?

**MR WENDLER:** He is the plaintiff, obviously, in this matter, but - - -

**HIS HONOUR:** No, I mean in the criminal proceedings.

**MR WENDLER:** Yes, he is. That is right.

**HIS HONOUR:** Not just a witness?

**MR WENDLER:** No, no, he is not a witness. He is the defendant. I think he wishes he was a witness.

**HIS HONOUR:** Yes. Now, the Registrar has drawn to my attention a decision of the Western Australian Court of Appeal in a case called Saraceni v Jones decided on 16 March 2012. The electronic citation is [2012] WASCA 59. There is a pending special leave application in which Mr David Jackson is briefed. The question there is not the same, though it may be related. It was a question of the invalidity of 596A and 597 of the Corporations Act which confer power to summon for examination into the affairs of corporations.

**MR WENDLER:** Yes.

**HIS HONOUR:** It might be worth counsel having a look at that. It may be that the two proceedings have to be connected in some way, but that is for a future date.

**MR WENDLER:** Yes.

**HIS HONOUR:** All right, just pardon me a minute. Would Tuesday, 21 August at 9.30 be a convenient date, gentlemen?

**MR O'MEARA:** It is suitable for our client.

**MR WENDLER:** Yes, thank you.

**HIS HONOUR:** I have completed proposed order 5 so that it reads “The matter be listed for further directions in Sydney at 9.30 am on 21 August 2012 before me”. I will direct that a copy of these orders and the transcript of today be placed in the special leave file in the *Saraceni* matter which is P8/2012.

So the Court orders:

1. The plaintiff be identified in these proceedings by the use of the pseudonym “X7”.
2. The defendants serve on the plaintiff their proposed case stated on or before 10 July 2012.
3. The plaintiff serve on the defendants any response to the proposed case stated on or before 24 July 2012.
4. The defendants file any agreed draft case stated on or before 7 August 2012.
5. The matter be listed for further directions in Sydney at 9.30 am on 21 August 2012 before me.

**MR WENDLER:** Just one procedural matter. Would your Honour grant leave to file in the Registry the affidavit of John Weller? It concerns compliance with section 78B of the Judiciary Act.

**HIS HONOUR:** Yes. That has been served?

**MR WENDLER:** It has – well, it has not been served on my friends. What happened was the solicitor did not file the 78B notice before sending a stamped copy to the attorneys in May and, as a consequence, the Registry would not take the document, but it is now connected to his affidavit and sets out the compliance required by 78B.

**HIS HONOUR:** That is the affidavit of - - -

**MR WENDLER:** Of John Weller dated 18 June 2012.

**HIS HONOUR:** No opposition to that?

**MR O’MEARA:** No, none, your Honour.

**HIS HONOUR:** You have that leave.

**MR WENDLER:** Yes, thank you, your Honour.

**HIS HONOUR:** Yes, thank you, gentlemen.

AT 10.24 AM THE MATTER WAS ADJOURNED



[2012] HCATrans 205

IN THE HIGH COURT OF AUSTRALIA

Office of the Registry

Sydney

No S100 of 2012

Between -

XZ

Plaintiff

and

AUSTRALIAN CRIME COMMISSION

First Defendant

THE COMMONWEALTH OF AUSTRALIA

Second Defendant

GUMMOW J

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY ON TUESDAY, 21 AUGUST 2012, AT 9.52 AM

Copyright in the High Court of Australia

**MR G.D. WENDLER:** Your Honour, I appear for the plaintiff. (instructed by John D Weller & Associates)

**MR M.J. O'MEARA:** May it please the Court, I appear for the defendants. (Australian Government Solicitor)

**HIS HONOUR:** Yes, Mr Wendler.

**MR WENDLER:** Since we were last before your Honour there has been prepared a draft case stated and that has identified two questions for consideration by the Full Court. There has also been filed a short minutes of order which - - -

**HIS HONOUR:** Yes, can you just explain one thing, Mr Wendler, to me? Looking at the *Australian Crime Commission Act* can you just look at section 30, in particular, subsection (5)? Now, my understanding is that the Commonwealth relies upon that, amongst other things, as an answer to your complaints as to impermissible interference with the Chapter III jurisdiction. How do you respond to that?

**MR WENDLER:** In this way. The first question is a construction question and we effectively embrace the treatment by Justice Mansfield at first instance and also Justice Spender in his dissenting judgment. The construction question will turn on the issue whether there has been effectively an abrogation of a fundamental right, namely that the administration of justice not be interfered with. The curial process once it is activated by the laying of a charge must take its normal course. So, irrespective of the section 30 and, indeed, other parts of Part II, Division 2, as a matter of construction our submission is that the Act does not make in clear and unmistakable terms the abrogation of that fundamental right.

So that is the construction question, irrespective of the use immunity position and irrespective of the fact that such evidence, once objection is taken, cannot be used in the curial process against the person being examined. So if the answer to that question is in the affirmative then, of course, that is not the end of the inquiry. That raises the issue as to whether there is a constitutional impediment arising out of Chapter III concerning whether or not the interrogation – parallel interrogation – of a person charged is an interference with either the implication of Commonwealth judicial power or, indeed, the exercise of it once a person has been committed for trial. So section 30 really begs the question, so to speak. I do not think it answers it. It is a matter of some importance - - -

**HIS HONOUR:** Yes, I understand that. So you fix upon, as it were, the concurrent activity?

**MR WENDLER:** Yes. If one breaks up the process you have an executive inquiry which leads to a charge. When that process is over the charge commences a judicial inquiry. Now, that judicial inquiry - there cannot be a parallel system, so to speak. In the history of Australian constitutional law the judges have jealously guarded their sphere of operation. It is not a situation where it has been subcontracted out, as it were, to a non-judicial officer so that will be the controversy before the Full Court.

**HIS HONOUR:** Anything you want to say on that point, Mr O’Meara?

**MR O’MEARA:** Just to add to the two parts of the Crime Commission Act which the defendants rely on – firstly, the section your Honour pointed out to Mr Wendler, that is section 30(5), which deals with the direct use, and secondly, section 25A(9), which permits an examiner to make - - -

**HIS HONOUR:** To give directions.

**MR O’MEARA:** To give directions and such a direction was made in this case. The contention of the defendants will be that the combination of those two things has the effect that there is no risk of the interference of judicial process.

**HIS HONOUR:** The provisions of that nature, those two sections, were not in the other legislation which was at stake in *Hammond* some years ago?

**MR O’MEARA:** No, and further there were some factual aspects of *Hammond* including, for instance, the presence of the police officers involved in the prosecution during the examination - the Commission which make it distinct from this case.

**HIS HONOUR:** All right, well I think I understand what you have both said. Now, the draft case states two questions. I will sign the case if it is re-engrossed without “Draft” on the front. That can be deposited with the Registrar and I will sign it in chambers and date it. Then there are submissions as to what order should be made of a procedural nature. Are they acceptable to both sides?

**MR O’MEARA:** They are yes, thank you.

**HIS HONOUR:** I think all I need to do then is make orders in terms of paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 of the draft order accompanying the written submissions filed on 20 August by the plaintiff. Now, do I need to make any special provision about the anonymisation, if I can use that word, of the plaintiff?

**MR O’MEARA:** On the last occasion your Honour made an order for the anonymisation, so I think that has been taken care of.

**HIS HONOUR:** Right, and that will continue, I suppose, until further order. The only other order would be that the costs of today be costs of the case stated.

**MR WENDLER:** Just one other on that procedural matter, because the rules do not specifically set out the format of the submissions to be filed in such an application or process, I take it that we just follow form 27A, which is the appeal form, with the necessary adjustments? Regulation 27.8 deals with this type of proceeding, but

the regulations do not deal, or nor do the forms deal with the format of the submissions.

**HIS HONOUR:** The format of the submissions would just be in the ordinary form, yes.

**MR WENDLER:** Form 27A with necessary adjustments, I assume?

**HIS HONOUR:** Yes, I think so.

**MR WENDLER:** Yes, thank you.

**HIS HONOUR:** All right. Is there anything else?

**MR O'MEARA:** Not for my part, your Honour.

**HIS HONOUR:** Thank you, gentlemen, I will now adjourn.

**AT 10.03 AM THE MATTER WAS ADJOURNED**



[2012] HCATrans 280

IN THE HIGH COURT OF AUSTRALIA

Office of the Registry

Sydney

No S100 of 2012

Between -

X7

Plaintiff

and

AUSTRALIAN CRIME COMMISSION

First Defendant

THE COMMONWEALTH OF AUSTRALIA

Second Defendant

Application for special leave to appeal

FRENCH CJ

HAYNE J

CRENNAN J

KIEFEL J

BELL J

TRANSCRIPT OF PROCEEDINGS

AT CANBERRA ON WEDNESDAY, 7 NOVEMBER 2012, AT 10.24 AM

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**MR G.D. WENDLER:** If the Court pleases, I appear with **MR A.S.G. CASSELS** for the plaintiff. (instructed by John D Weller & Associates)

**MR S.P. DONAGHUE, SC:** If the Court pleases, I appear with **MR M.J. O'MEARA** for the defendants. (instructed by Australian Government Solicitor)

**MR M.G. SEXTON, SC,** Solicitor-General for the State of New South Wales: If the Court pleases, I appear with my learned friend, **MR C.L. LENEHAN**, for the Attorney-General for New South Wales who intervenes in the proceedings. (instructed by Crown Solicitor (NSW))

**MR W. SOFRONOFF, QC,** Solicitor-General of the State of Queensland: May it please the Court, I appear with my learned friend, **MR G.J.D. DEL VILLAR**, for the Attorney-General for Queensland. (instructed by Crown Law (QLD))

**MR M.G. HINTON, QC,** Solicitor-General for the State of South Australia: If the Court pleases, I appear with my learned friend, **MR C. JACOBI**, for the Attorney-General for South Australia intervening. (instructed by Crown Solicitor (SA))

**MR S.G.E. McLEISH, SC,** Solicitor-General for the State of Victoria: If the Court pleases, I appear with my learned friend, **MS R.J. ORR**, for the Attorney-General for Victoria intervening. (instructed by Victorian Government Solicitor)

**MR G.R. DONALDSON, SC,** Solicitor-General for the State of Western Australia: May it please the Court, I appear with my learned friend, **MR I.A. REPPER**, for the Attorney-General for Western Australia intervening. (instructed by State Solicitor (WA))

**FRENCH CJ:** Yes, Mr Wendler.

**MR WENDLER:** Your Honours, before I open the issues that arise in the case stated, can I inquire whether your Honours have received a document described as "Plaintiff's outline of oral submissions"? It is a three-page document.

**FRENCH CJ:** Yes, we have it.

**MR WENDLER:** It was filed with the reply, and we were concerned it may not have filtered through to the Court. As your Honours know, on 23 August this year, his Honour Justice Gummow stated a case to the Court and the terms of that stated case are set out between pages 23 and 26 of the case stated book. On page 26 appears two separate but interrelated questions concerning the operation of Division 2, Part II of the *Australian Crime Commission Act*.

The operation of that Act, so far as it concerned the plaintiff, is in the setting that is set out factually between pages 23 and 25. In particular, on page 25 of the facts pleaded on the case stated, it is identified that the plaintiff was coercively examined by an examiner of the first defendant on 1 and 2 February 2011. On 1 February the plaintiff was examined in detail about the very offences with which he had been charged, Commonwealth offences with which he had been charged in late November of 2010.

The question, so far as the Constitution and its interpretation is concerned, can be identified as follows, and that is whether there is constitutional limitation on legislation which interferes with the judicial power of the Commonwealth.

**HAYNE J:** Now, before we get to that question, we have got to follow the statute and we have got to follow the way in which the statute is said to be engaged in this particular case, do we not?

**MR WENDLER:** Yes. I am about to come to the terms of the statute and the antecedent history of the statute, in particular section 25A of the Act. That is the central controversy in relation to the constitutional question. But, as your Honour has correctly pointed out, one must first not only understand the terms of Part II, Division 2, but understand, indeed, the general scheme of the operation of the Act as a whole.

**HAYNE J:** And, you have got to understand, also, the particular application of the Act in this case – the way in which it is said that the Act is engaged, is that right?

**MR WENDLER:** Yes.

**HAYNE J:** Is that right?

**MR WENDLER:** I agree with that analysis.

**HAYNE J:** Is it, therefore, necessary to understand the application of the documents which are the exhibits to the case stated?

**MR WENDLER:** Yes. I do not have any disagreement with that analysis and, indeed, it is important that we move to that area immediately. But just before I do, your Honours will have filed a bundle of legislation, the larger document which carries not just the entirety of the *Australian Crime Commission Act*, but the two antecedent pieces of legislation, namely the *National Crime Commission Act* and the *National Crime Authority Act*.

Historically, the introduction of this style of legislation was as a result of various Royal Commissions in the late 70s and 80s, dealing in broad terms with the investigation and the gathering of intelligence concerning organised crime, or the investigation into various organisations which were alleged to have been engaged in what might be described generally as organised crime.

The *National Crime Authority Act* never came actually into operation and there was, in fact, a review of the Act which led to the *National Crime Authority Act* and, ultimately, that was repealed and we are left with the *Australian Crime Commission Act*. Can I move then immediately to the terms of the *National Crime Authority Act* and, indeed, to the terms of Division 2, Part II of the Act.

**FRENCH CJ:** In the *Australian Crime Commission Act*?

**MR WENDLER:** I am sorry? I beg your pardon, the *Australian Crime Commission Act*. That appears at tab 5. Just in broad terms, the structure of the Act identifies, effectively, three functionaries or authorities. There is identified by section 7B and 8 what is described as the “Commission”. In section 7, if we go to that – section 7 is further broken up and identifies three particular bureaucratic entities, a chief executive officer, examiners and members of the staff. There is in 7A, of course, a description of their functions.

In 7B there is an establishment of a board. The purpose of the establishment of the board as I read the Act is to create an authority which empowers, as it were, the Commission to engage in investigations in what is described in the Act as “federally relevant criminal activity by high risk crime group” are the descriptions. The function of the board, of course, is set out in section 7C and section 8 there is also an establishment of what is described as the intergovernmental committee.

As I understand it, the function of the intergovernmental committee operates as a sort of umbrella form of scrutiny of the operation generally of the Commission. The purpose of the Act, of course, is to gather intelligence and to disseminate that intelligence to various law enforcement agencies and there is a method by which that intelligence is gathered, and it is a coercive method. There is power under the Act to issue a summons. A person issued with a summons is compelled to attend and once that person’s attendance is secured then there is power to examine that person and the terms of the examination or the hearing of the examination are set out in Division 2, Part II.

**HAYNE J:** Well, that begins with 24A.

**MR WENDLER:** I am sorry, your Honour?

**HAYNE J:** It begins with section 24A.

**MR WENDLER:** Yes, thank you.

**HAYNE J:** And 24A governs all that follows, is that right?

**MR WENDLER:** Section 24A commences, as it were, the style of hearing which - - -

**HAYNE J:** Well, no, it does more than that, “may conduct . . . for the purposes”, yes?

**MR WENDLER:** Section 24A reads:

An examiner may conduct an examination for the purposes of a special ACC operation/investigation.

**HAYNE J:** Therefore step one is to identify what the special ACC operation investigation is, is that right?

**MR WENDLER:** Well, the special operation is an operation which has been authorised by the board, that is, the board authorises the Commission to engage in such a style of intelligence gathering.

**HAYNE J:** And we find the relevant documents as the exhibits for the case stated?

**MR WENDLER:** Yes, they are the instruments that - - -

**HAYNE J:** Do we not need to begin there?

**MR WENDLER:** Yes, I can move to the instruments in the - - -

**FRENCH CJ:** These will set the boundaries of the examination power, will they not?

**MR WENDLER:** Yes, your Honour is quite right, and that is where we find the expression “high crime group”.

**HAYNE J:** We find lots of things in there, Mr Wendler, but let us go to the documents, can we, and let us look at them.

**MR WENDLER:** Yes, thank you. The first document is exhibit 1. This document is a statutory instrument that represents the authority that is reposed in the board and conveyed to the Commission to engage in the style of investigation that is set out in particular at - - -

**HAYNE J:** Not just the style; it authorises a particular investigation, does it not?

**MR WENDLER:** Yes, in paragraph 4 it is set out.

**HAYNE J:** And that takes you off to Schedule 1, does it?

**MR WENDLER:** Yes.

**HAYNE J:** What is the ambit of paragraph 1 and Schedule 1?

**MR WENDLER:** The investigation under the heading “Schedule 1 Authorised Investigation” sets out:

An investigation to determine whether, in accordance with the allegations mentioned in clause 3 –

And clause 3 sets out categories of offences which are federally relevant criminal activity which is defined in the Act.

**HAYNE J:** But the relevant and perhaps relevant point at which to begin is 1(a), (b), (c). You investigate whether offences of very many kinds was committed, was in the process or may in the future. Which is this? When there has been enough investigation done to charge the accused, how does this fall into 1(a), (b) or (c)?

**MR WENDLER:** I am not sure I understand that question because - - -

**HAYNE J:** Obviously not.

**MR WENDLER:** - - - the plaintiff, in this case, was charged and then compulsorily examined.

**HAYNE J:** Exactly. Now, how does that fall within 1(a), (b) or (c)?

**MR WENDLER:** Well, it does not fall within it at all because the Act controls - - -

**HAYNE J:** Is that not where we begin?

**MR WENDLER:** Well, you cannot begin there without ignoring the terms of Division 2, Part II, in particular, the operation of 25A(9).

**KIEFEL J:** Would you mind just refreshing my memory about the chronology of events here? The authorisations were dated 2009 – 1 May 2009.

**MR WENDLER:** Yes. They are continuing – the authorisation is a continuing authority, as it were, until it is - - -

**CRENNAN J:** Until 30 June 2010.

**MR WENDLER:** Yes. It is a self-executing authority.

**KIEFEL J:** And, what was the date that the plaintiff was charged?

**MR WENDLER:** He was charged on or about 28 November. I will just check that. We have actually prepared a chronology. It may be easier if I can get copies of the chronology. There are a number of curial steps that occurred before he was actually examined and we have set them out in this document.

**KIEFEL J:** Yes, yes, but he was charged on?

**MR WENDLER:** He was arrested and charged on 23 November 2010 and served, as I understand it, with the summons.

**KIEFEL J:** So, he was in custody?

**MR WENDLER:** Yes, went straight into custody.

**KIEFEL J:** Pending charges, and he was served with a summons, the summons presumably being under the authority of the document that we have just been taken to.

**MR WENDLER:** Yes, and that document that his Honour Justice Hayne - - -

**KIEFEL J:** What was the date he was served with the summons?

**MR WENDLER:** As I understand it, the same day, 23 November 2010.

**KIEFEL J:** I see. Then the examinations took place on?

**MR WENDLER:** Well, initially the examination was set for December and then adjourned. The particulars of this are set out, also, in the case stated.

**KIEFEL J:** So, the steps are he was charged - - -

**MR WENDLER:** Yes.

**KIEFEL J:** Is this the correct order? He was charged, taken into custody and whilst in custody served with the summons - - -

**MR WENDLER:** Yes.

**KIEFEL J:** - - -summons, under the authority of this instrument - - -

**MR WENDLER:** Yes, which was attached to the summons, yes.

**KIEFEL J:** - - -and then sought to be examined.

**MR WENDLER:** In December, but that did not take place and the examiner adjourned the examination to February 1, 2011.

**KIEFEL J:** All right.

**MR WENDLER:** And that is when it actually took place.

**KIEFEL J:** Now, it is, perhaps, in that context that you need to go back to Schedule 1, paragraph 1.

**MR WENDLER:** Yes.

**FRENCH CJ:** Just before we do. Paragraph 6 of the case stated, it says:

The plaintiff was subsequently charged with conspiracy –

Now, was that on the same day? Was that on 23 November?

**MR WENDLER:** Yes, 23 November, yes.

**FRENCH CJ:** That was in the form of what, some form of complaint?

**MR WENDLER:** Well, it would be a charge summons in New South Wales and that is the originating process that brings him before a court. There is an obligation obviously as a matter of law in all States and Territories that once a person - - -

**FRENCH CJ:** Then it goes under New South Wales processes which - - -

**MR WENDLER:** Yes, and then of course section 68 of the Judiciary picks up the rest of it and carries it forward. Can I just - - -

**KIEFEL J:** If one goes back to Schedule 1, paragraph 1, as it applies to the plaintiff when he is summonsed, what is the inquiry? What is authorised? An investigation into whether criminal activity - - -

**MR WENDLER:** Federally related – it is described as federally - - -

**KIEFEL J:** Just take yourself to the terms of paragraph 1. What is authorised in relation to the plaintiff by

paragraph 1, given that he has been charged?

**MR WENDLER:** It is an authorisation of a general investigation into federally related activity. His charge comes within that description - - -

**KIEFEL J:** Have a look at the terms of paragraph 1. He has been charged. What is the authority to investigate, in relation to his activities? Is it in relation to (a), (b) or (c)?

**MR WENDLER:** Well, it is in relation to the – effectively 1(a) was committed before the commencement of this - - -

**HAYNE J:** How? They have charged him. They know enough to charge him. How is there an investigation into whether an offence was committed when the authorities have already charged him with the offence?

**MR WENDLER:** Yes, but the point is the Act authorises parallel – the construction of the Act, certainly at the hands of the majority judgment of the Federal Court in *OK* authorises, on the Full Court's construction, parallel investigation in relation to the charges.

**CRENNAN J:** Yes, but these are questions about the ambit of what has been authorised, in relation to this particular plaintiff.

**MR WENDLER:** Well, the ambit of the authorisation is the authorisation to inquire into the charges with which he has been charged. But the question then becomes whether that ultimately, when the plaintiff is examined and interrogated about those matters, whether that is impermissible interference, with the exercise of judicial power.

**FRENCH CJ:** The anterior question is the constructional question.

**MR WENDLER:** Yes.

**FRENCH CJ:** And that is what is addressed in question 1 in the case stated. So, what we are concerned about with question 1 is whether the Act authorises the examiner, where that examination concerns the subject matter of the offence with which that person has been charged, the offence so charged. There is no point in, as it were, answering that question at large without seeing it in the context of this particular case and the specific authority that is relied upon. Otherwise one is answering a somewhat academic question.

**MR WENDLER:** No, I do not necessarily agree with that, because the authority in relation to his examination is inextricably connected to the terms of the legislation which authorised the examination. You cannot divorce the two of them.

**FRENCH CJ:** Do I understand you to be making some form of concession that the authority, insofar as it would authorise questions of the plaintiff relating to the offences with which the plaintiff has already been charged, is not exhausted by reason of the fact that he has already been charged with those offences?

**MR WENDLER:** It is exhaust - - -

**FRENCH CJ:** If you are going to make that concession - - -

**HAYNE J:** It is a very large concession to make.

**MR WENDLER:** The concession cannot be made without determining the legal effect of section 25A on the authority to examine pursuant to the instrument that gives general authority to examine in relation to federally related criminal activity. The instrument is a general instrument in relation to authorising the investigation to federally related criminal activity.

The plaintiff came within that ambit, having regard to the nature of the charges he was charged with. But you keep getting back to the operation of section 25A and what that authorises. That is the bedrock of the controversy. So, whatever the authority that the examiner has, that authority can only come from obviously the Act, and the nature of the authority and the nature of the examination can only come from Part II, Division 2.

**FRENCH CJ:** It seems to me, Mr Wendler, that the questions which have been put to you from the Bench which go to the existence of the authority to continue an examination after a person has – in relation to matters the subject of charges which have already been laid against the examinee have not been really addressed in your submissions. The difficulty that I see is that we may be dealing with a question in a broad sort of hypothetical sense which, when there is this, as it were, elephant in the room we need to think about. I wonder whether it might be useful for us to consider a brief adjournment so that you have some time just to reflect upon that and perhaps we come back in, say, 15 minutes or so.

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

**FRENCH CJ:** I am just concerned that we do not go off without properly addressing what may be an important threshold question.

**MR WENDLER:** Yes, all right.

**CRENNAN J:** If I may say so, the reason for section 7C(1)(c), as I appreciate it, because there were many parliamentary committees convened in relation to the processes to be followed, first under the NCC Act and then under the ACC Act, was to have a very careful statement in the authorisation instrument so as to ensure proper confinement of the questioning process in the context that there was no derivative use immunity, about which

there had been a great deal of public discussion. So, you might recall, Mr Wendler, that in the 90s, there were numerous cases which involved close examination of what were then called “the reference terms”, and the ambit of investigations which were conducted pursuant to them.

**MR WENDLER:** Yes.

**FRENCH CJ:** The Court will adjourn for 15 minutes.

**AT 10.50 AM SHORT ADJOURNMENT**

**UPON RESUMING AT 11.06 AM:**

**FRENCH CJ:** Yes, Mr Wendler.

**MR WENDLER:** Yes, thank you, your Honours. I have had an opportunity to consider the important threshold question and can come to it very quickly and it may mean that this hearing may end very quickly. If there is, of course, no authority in the instrument then the whole process is, by itself, ultra vires. Therefore, there was never any authority having regard to the terms of the instrument and having regard to when the plaintiff was examined. If your Honours are for me on that point, then I need not go into any other points. If the Court pleases.

**FRENCH CJ:** I think you should continue.

**MR WENDLER:** I beg your pardon. I thought your Honours may wish to hear my opponents in relation to the threshold issue. In the alternative, the issue that arises - - -

**FRENCH CJ:** Just a minute, Mr Wendler. I think we should hear out your whole argument please, Mr Wendler.

**MR WENDLER:** Yes, thank you. That brings me conveniently to a construction or an examination of section 25A and the operation of the conduct of the proceedings and particularly the confidentiality aspects of that part of the Act. The Full Court of the Federal Court set aside Justice Mansfield’s judgment and orders in relation to his Honour’s construction of the Act, in particular, whether or not what might conveniently be described as the *Hammond* principle had been abrogated in relation to the legislation.

In other words, does the legislation permit parallel interrogation of the very offences or the circumstances of the very offence or offences charged? If it be demonstrated that that is the case, that there is parallel interference, whether that amounts to a contempt of court or an interference with the curial process such that it is an invasion of the exercise of judicial power.

Now, the process in relation to a charge and the way a charge travels through the criminal justice system commences, of course, with an executive investigation leading to a charge. So it can be broken up into two parts. There is the obviously in mostly just about every case a police investigation and there is a charge. Once a charge

summons or whatever originating process is raised, a curial process commences, and if the offence is an indictable offence there are a number of steps in which a curial process develops concerning the commitment for trial and, indeed, all the procedural matters relevant to the conduct of a trial leading ultimately to the resolution of the controversy between the individual and the community by either a verdict of a jury or a plea of guilty or a deed of discontinuance of the charge.

That process, of course, is enormously important, or the integrity of that process is important and if it is invaded, especially in the exercise of judicial power, it raises questions concerning the integrity of the exercise of judicial power and, indeed, the independence of the court that exercises judicial power, in particular the judicial power of the Commonwealth and the jurisdiction that is channelled to State courts exercising federal jurisdiction via section 77(iii) of the Constitution.

This Court, without going through the body of cases, has identified on a number of occasions when the institutional integrity of a court has been compromised, where legislation has transmogrified a court into a lackey of the executive, where there has been an exercise of judicial power otherwise than in accordance with the judicial process, and this Court has on a number of occasions identified those instances and has made abundantly clear that the separation of powers doctrine which protects the structure of the Constitution and protects the rule of law - - -

**FRENCH CJ:** Mr Wendler, are you taking us to the general constructional question raised by the first question in the case stated?

**MR WENDLER:** Yes, I am. I was just sketching, as it were, a background in relation to the construction of in particular what is described as the confidentiality part of section 25A. Your Honours will note that section 25A(9), which is the critical part of Part II, Division 2, commences by the words:

An examiner may direct that:

any evidence given before the examiner –

and so on, must be the fact that any person has given or may be about to give any evidence in an examination:

must not be published, or must not be published except in such manner, and to such persons, as the examiner specifies.

The construction of the next sentence is of some importance. The words of the section are:

The examiner must give such a direction if the failure to do so might prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been, or may be, charged with an offence.

At first blush, the question arises whether the identification of a person is the person presently charged with an

offence who has been coercively interrogated. Does it mean that or does it, in fact, have nothing to do with the person presently charged but, in fact, a third person, that the expression “a person” is an expression referable to a witness but not referable to a person who is presently charged? So there is some ambiguity in the overall structure and the language of the confidentiality part of Division 2, Part II. The other aspect of those words raises the question whether it is referable at all to a person presently charged and examined about a present offence or whether the person identified in that sentence is a person charged but not referable to examination about the very offences charged.

Now, there was significant treatment, of course, by the Full Federal Court and concerned of the legal relationship between the *Hammond* principle and its operation in relation to section 25A. Ultimately, the Full Federal Court decided that when looks at the Act as a whole and the purpose of the Act and when one looks at the protective provisions of the legislation and the purpose of the Act, a suitable balance is struck and the rights of an individual charge are adequately protected.

There was also, of course, treatment of section 12(1), or section 12. If I can just go to that part of the Act for the moment, section 12. Section 12 has since been amended recently and that amendment is contained at the last tab, tab 7.

**FRENCH CJ:** It was the April amendment, was it not? It was in April, was it not?

**MR WENDLER:** In or about April, I think, this year. The legal effect of that amendment was to apply what I will call the alleged umbrella protective aspects of section 25A to the circumstances of section 12. It seemed to me, at least, a curiosity that in the treatment by the Full Federal Court of section 12 and its legal relationship with section 25A there was no mention of the force of section 12(6), which of course the amendment does not touch, and also, indeed, sections 57 and 60, which are also sections dealing with publication of the evidence of the Commission.

It is probably necessary at the moment to say something about what I have described as the *Hammond* principle and what exactly that principle means and what its legal effect is. The *Hammond* principle is effectively a principle that protects the right to silence in circumstances where there is parallel interrogation concerning the very offences charged and that parallel interrogation is capable of invading the curial process.

Can I just invite your Honours to the decision in *Hammond* and identify the passages which are of importance and the principles that emerge from it. I would say immediately my submission is that the Full Federal Court treatment of the legal effect of the judgment in *Hammond* was not correct and neither was the treatment by the Court of Criminal Appeal in the matter of *CB*.

The first and most critical passage in *Hammond* appears at page 198 in the judgment of Chief Justice Gibbs. As your Honours know, the background circumstances of the *Hammond* decision concerned injunctive relief

directed at a Royal Commissioner who was investigating a particular aspect of corruption in the meat industry at the time. Mr Hammond was a person of interest in that investigation. He had, at the time he was examined or about to be examined, been charged with federal offences and those offences were pending in the County Court of Victoria. At page 198, the Chief Justice – and these words need to be read very slowly and carefully in order to fully appreciate the legal effect of them. At point 5, his Honour said:

Once it is accepted that the plaintiff will be bound, on pain of punishment, to answer questions designed to establish that he is guilty of the offence with which he is charged –

I pause there for a moment: “answer questions designed to establish that he is guilty of the offence”. When the plaintiff was examined before the Commission, he was asked detailed questions concerning the very offences with which he was charged. The only inference that one would draw from that questioning is that they were questions which were relevant to and of interest to the examiner so far as establishing some level of criminal responsibility in relation to the offences with which he was charged. The rest of the passage reads –

it seems to me inescapably to follow, in the circumstances of this case, that there is a real risk that the administration of justice will be interfered with. It is clear that the questions will be put and pressed. It is true that the examination will take place in private, and that the answers may not be used at the criminal trial. Nevertheless, the fact that the plaintiff has been examined, in detail, as to the circumstances of the alleged offence, is very likely to prejudice him in his defence.

Now, what the Chief Justice was intending to convey in that passage was a level of sensitivity, in relation to prejudice that would flow to the criminal trial of Mr Hammond, despite the fact that there was a use immunity and the examination was in private, so described safeguards in relation to his examination:

Nevertheless, the fact that the plaintiff has been examined –

This is how Justice Spender, in a very robust and powerful dissent in the *OK Case*, treated the language of that passage as being the fact. It is the very fact of being charged, coupled with a compulsion to answer, was the prejudice or the interference that would be created; the very fact of it. So, it is not a question of alleging well, please prove to us what damage or what prejudice has flowed to you and how will this interfere in your trial? It is the fact of intrusion into the curial process. As Justice Barton has said in one of the earlier cases, once it is in the cognisance of the courts it must remain there.

This protects the integrity, of course, of federal judicial power, that it is the courts that will determine the integrity of your trial process, not an executive functionary operating devoid usually of the rules of evidence, operating secretly, operating in a manner whereby the person examined is effectively transmogrified, or his evidence is transmogrified, as assisting the investigation.

**KIEFEL J:** You have referred to Justice Spender’s judgment that is in *ACC v OK* [2010] 185 FCR 258. At

page 261, paragraph 16 his Honour refers to some submissions which were made - - -

**MR WENDLER:** I know I have got it here, sorry. I am sorry, your Honour, page 261?

**KIEFEL J:** Paragraph 16. In the passage that his Honour there sets out from submissions made from Mr Hammond in the part that appears italicised. His Honour is obviously referring to a conjunction between the functions of the court and the entitlement of an accused to reserve his defence. How can you develop that? His Honour does not take it up further, but his Honour obviously seems to think that it is consistent with what was said in *Hammond* about the “usurpation” of the court’s processes.

**MR WENDLER:** His Honour’s treatment of the principle in *Hammond* was that it was the fact of the interrogation, coupled with the compulsion to answer, that threatened *Hammond* in those circumstances.

**KIEFEL J:** But, I suppose, in the passage that I have taken you to, it involves the idea that a defence is something which only commences at the point in which the curial process starts and to require someone to divulge their defence before the commencement of that process is an interference.

**MR WENDLER:** Yes. The curial process commences once the court is seized of the charge and commences to move – progress the charge - - -

**KIEFEL J:** When is that, though? There is no indictment yet been presented in this case.

**MR WENDLER:** No indictment presented but that, in my respectful submission, is of no consequence, no legal consequence because - - -

**KIEFEL J:** The accused is entitled to reserve the defence until the court is seized of it?

**MR WENDLER:** No, I do not agree with that. A person once charged is immediately presumed by the law, first to be innocent and that presumption is not displaced until the controversy is over. The presumption of innocence immediately accrues to such a person, and remains until the entire process has been exhausted.

**FRENCH CJ:** The process in New South Wales, as I understand it, involves a committal proceeding before arraignment and presentment of an indictment and that involves a notice to attend a local court or something of that sort, is that right, under section 107 of the *Criminal Procedure Act*?

**MR WENDLER:** Yes, it is all set out in the *Criminal Procedure Act* (NSW) which is picked up, of course, by section 68 of the *Judiciary Act* and puts the federal process on the same footing as a State process. This is an identical process or similar process in all States and Territories. There is the case to answer stage and then there is the trial proper but the - - -

**FRENCH CJ:** But the formality which underlies the reference to the person, the plaintiff being charged in this case, what is that?

**MR WENDLER:** I am sorry, your Honour?

**FRENCH CJ:** What formal step is reflected in the statement in the case stated that the plaintiff was charged?

**MR WENDLER:** That formal step is a charge summons which has a court date. It is not a court date which is - - -

**FRENCH CJ:** At summons?

**MR WENDLER:** Yes, on the summons and he attends court or is compelled to take him to court in this case because he was – X7 was arrested - - -

**FRENCH CJ:** Is that what is referred to as a notice of attendance in the *Criminal Procedure Act*?

**MR WENDLER:** Yes, I think it is called a - - -

**BELL J:** A court attendance notice.

**MR WENDLER:** A court attendance notice, that is right, yes.

**BELL J:** Is that, in fact, the mechanism that was used on this occasion?

**MR WENDLER:** It was a charge summons, I think, rather than a court – coupled with the court attendance notice, but I will take that question on notice. The *Criminal Procedure Act* and similar provisions all around Australia all have a provision which compels a person to be tendered before a court as soon as practicable after a person is charged or certainly when a person goes into custody. The legality of his custody has to be determined as soon as practicable. Of course, at that moment that person is given notice of the allegations and is in a position to respond to them and in a position to defend him - - -

**CRENNAN J:** Or be silent?

**MR WENDLER:** Yes, of course. These are all fundamental procedural steps. Now, if you have a parallel system that purports to empower an examiner to make the forensic choices for you as to whether your curial process is to be fair, or not fair, then it immediately raises the question – certainly in this case – whether the line of legislative interference has been crossed. Because if we go back to section 25A, it speaks in terms of:

prejudice the fair trial of a person who has been or may be charged with an offence.

If we read that as referable to the person presently charged, it is left to an executive authority to determine what your Chapter III fair trial rights will be. Indeed, the question that arises, how is this functionary, forensically equipped to make such a determination in the course of a Chapter III matter?

If we go back to the decision in *Hammond* and the statement by the Chief Justice, which was supported indeed by Justice Mason, and also the very strong statements by Justice Murphy in that case, in particular at page 201, in the commencement of the last paragraph his Honour notes:

To maintain the integrity of the administration of the judicial power of the Commonwealth an order should issue restraining the Commissioner from directing the plaintiff to answer any question –

His Honour spoke in terms of the maintenance of the integrity of the administration of the judicial power of the Commonwealth. His Honour went further, indeed, and found that there was intrusion also into one of the inviolable characteristics in section 80 of the Constitution, which guarantees trial by jury on indictment, and found, effectively, that the intrusion – or the threat of parallel inquisitorial inquiry – invaded one of the inviolable characteristics of the institution of trial by jury.

Perhaps the most powerful statements in the *Hammond* decision emerge from Justice Deane who married up, effectively, the constitutional implications of what had occurred in the circumstances of the *Hammond* matter. At page 206, at about point 5, his Honour noted:

On the other hand, it is fundamental to the administration of criminal justice that a person who is the subject of pending criminal proceedings in a court of law should not be subjected to having his part in the matters involved in those criminal proceedings made the subject of a parallel inquisitorial inquiry by an administrative tribunal with powers to compel the giving of evidence and the production of documents which largely correspond (and, to some extent, exceed) the powers of the criminal court. Such an extra-curial inquisitorial investigation of the involvement of a person who has been committed for trial in the matters which form the basis of the criminal proceedings against him constitutes, in my view, an improper interference with the due administration of justice –

**FRENCH CJ:** How important to his Honour's reasoning is the fact that the accused in that case had been committed for trial?

**MR WENDLER:** I thought that when I read that passage as well that that may, shall we say, put a different effect on it, but on further reflection and scrutiny, it is my submission that it makes no difference. Either there is interference, and what the nature of that interference is - it is the fact of interference and, in the circumstance of this case, the interference being a parallel inquisition in circumstances where you are leaving your Chapter III trial rights to the forensic ability of a non-judicial officer.

**FRENCH CJ:** When in the charging process is the judicial power of the Commonwealth engaged?

**MR WENDLER:** This was discussed at length in *Murphy v The Queen*, what the legal situation was. Committal proceedings have always been regarded as administrative. When they sit in isolation they are, but when they are exercised as being incidental to the judicial power of the Commonwealth then it has been held in *Murphy's Case* that it is not offensive to the Chapter III principles. That of course must be, otherwise the efficacy of the exercise of judicial power, certainly in relation to Commonwealth indictable offences, would be affected. The other very important words and reference to earlier cases by Justice Deane in that passage, where his Honour notes:

Where a court is exercising the judicial power of the Commonwealth pursuant to s. 71 of the Constitution, such interference involves a derogation of the constitutional guarantees that flow from the vesting of the judicial power of the Commonwealth in courts of law.

Then his Honour identifies the earlier cases in the statement of principle by Justice O'Connor in *Huddart Parker*, and later Justice Barton in the *Melbourne Steamship Co. Case*. I have already alluded to those statements. This passage is also important on page 207 at about point 4:

It was submitted on behalf of the Commonwealth that it has not been shown that the inquiry by the Royal Commissions into the plaintiff's involvement in matters the subject of criminal proceedings involves any substantial risk of serious injustice or serious prejudice. That submission struck me as unattractive at the time when it was made. I have found that it deteriorates upon closer consideration. The pending criminal proceedings against the plaintiff are brought by the Commonwealth. The parallel inquisitorial inquiry into the subject matter of those proceedings is being conducted under the authority of the Commonwealth. As I have said, the conduct of that inquisitorial inquiry is to no small extent following the general form of a criminal trial shorn of some of the privileges and safeguards which protect an accused in such a trial. The plaintiff has been compelled to be sworn as a witness and has been subjected to questioning in the course of that inquiry. Indeed, his refusal to answer questions has led to his being charged . . . It is not, in my view, necessary to go beyond these things. In themselves, they constitute injustice and prejudice to the plaintiff.

That is probably, I suppose, the high water mark of the - - -

**FRENCH CJ:** That is a distinct proposition from the proposition that the investigative process somehow intrudes upon the judicial process. That has been an element of your earlier submissions. Can you just unpack that a little? How does the investigative process, with the statutory protections built in, intrude upon or compromise the judicial process, if it allows questions to be put on matters in respect of which the plaintiff has been charged?

**MR WENDLER:** In effectively three ways. The first way is the introduction of or the use of derivative evidence, the source of which are the consequence of various answers given. It cannot be said in the construction of that particular part of section 25A(9), but it protects the person being examined against derivative use. The Act is

simply not clear in its terms in relation to that.

It would have been simple, it seems to me, for the draftsman simply to put in, if this part of the Act did deal with a person presently charged, to put in or include the derivative evidence and define “derivative evidence” and had it as part of the definitional section of the Act. But, in my submission, the confidentiality section of the Act cannot be construed safely, or at all really, that it protects against derivative use.

But the second most important way it impacts upon the curial process is that it permits the examiner to forensically determine what is or is not a fair trial. As long ago as, I think in *Dietrich’s Case*, where of course this Court in at least two of the judgments, in Justices Deane and Gaudron’s judgment, there was treatment concerning the right to a fair trial as being constitutionally entrenched, and a trial being in accordance with the judicial process.

The fairness or otherwise of a effectively uncontrolled non-judicial officer determining what in the future will be fair to you as justification for compulsory interrogation about the very offences charged is, in my respectful submission, an intrusion into the curial process because when the curial process commences, it commences on the basis of a guarantee of due process rights. A guarantee that the curial process is in accordance with the law of the State in which the offence has been committed, picked up and applied by section 68, and further enhanced by section 79 of the *Judiciary Act*.

So, that is the other aspect of intrusion, and the third aspect of intrusion is that it must impact on the adversarial nature of the criminal trial curial process because you are compelled to effectively respond to questions which will - - -

**FRENCH CJ:** You are describing a non-curial inquisitorial process. How does it impact upon the final process itself?

**MR WENDLER:** As I have indicated already to - - -

**FRENCH CJ:** In this connection, your third point.

**MR WENDLER:** Well, it compels a person to contribute to the case of his opponent because you are compelled to answer.

**BELL J:** When Chief Justice Gibbs speaks about being prejudiced in one’s defence, it may not be with respect to something as narrow as whether or not derivative use is made. But perhaps what is contemplated by that notion is something broader taken up by your third point about the nature of the criminal justice process, which is adversarial and which assumes that it is incumbent upon the prosecution to make good its case with no contribution from an accused and recognises that if an accused has been forced to give an account of the very subject matter of the charges brought against him, he has in a real sense been prejudiced.

**MR WENDLER:** Yes, and that is certainly the powerful effect of certainly Justice Deane’s treatment. Justice Deane was always, of course, very protective of the rights of the individual and recognised the constitutional

protections in Chapter III in the criminal trial process. There are many statements by Justice Deane throughout the cases concerning the protective mechanisms in Chapter III, insofar as the integrity of Commonwealth judicial power or the exercise of it was concerned. There are - - -

**HAYNE J:** Without constitutionalising the point, *RPS v The Queen*, *Azzopardi v The Queen*, and cases like that say more than once, I think, that criminal proceedings are accusatorial and adversarial.

**MR WENDLER:** That is right, and they are the domain of the courts and not the domain of – so far as the fairness of that style of process is concerned – not the domain and prerogative of non-judicial secret inquiries that are running parallel to that process. An example, obviously an extreme example, where there has been legislative interference with the curial process, or the exercise rather of judicial power, of course, is the Privy Council decision in *Liyana* in the '60s where legislation was passed effectively remodelling the whole nature of a criminal trial directed at a particular class of individuals.

That is an extreme example of it, but what is at stake here is how do we determine whether the line has been crossed, by reason of legislative interference with the exercise of Commonwealth judicial power, and it is my submission the line has been crossed, in relation to the way section 25A(9) operates, if it be construed as permitting parallel interrogation of the very offences charged.

I think in *Totani* your Honour the Chief Justice in the very first sentence of your Honour's reasons for judgment noted that "courts decide cases, the executive does not". The executive has no business in the world of the curial process. The plaintiff does not say that there is no legislative power to set up institutions of the kind described as the Australian Crime Commission. The plaintiff does not say that there is even a prohibition in examining persons who have been charged. What the plaintiff says is that there is no legislative power to authorise a non-judicial functionary to interfere in the curial process by running a parallel interrogation of the very offences charged.

Your Honours will have noted from the written submissions that prior to the coming into operation of the *Australian Crime Commission Act*, the *National Crime Authority Act* before amendments were made to it had a similar or indeed identical provisions to section 29. There was also in section 30(10) – I just invite your Honours to the *National Crime Authority Act* at tab 2 and section 30.

Section 30(10) in the Act preceding the *Australian Crime Commission Act* actually specified or provided a protection against compulsory and coercive interrogation against the very offence charged. The scheme in section 30 of the *National Crime Authority Act* was that there was a compulsion to answer, unless there was a reasonable excuse in – or described as a reasonable excuse in answering the questions, and it specifically excluded interrogation, the very offence charged. When the amendment occurred and reformed section 30, and that amendment can be found at tab 3 - - -

**CRENNAN J:** Well, just before you leave section 30, subsection (5)(b), provides for derivative use immunity as well as use immunity.

**MR WENDLER:** Yes, and that was also removed because practically there was, I think historically practically,

it was realised there was a problem on all sides in determining whether evidence was derivative or not. It just became a nightmare in relation to the conduct of these type of proceedings. Of course, when there was a – I beg your pardon, at tab 4, when the amendment came about in section 12 of the amended Act which repealed sections 30(4) to (11) – removed the derivative use aspects and removed the prohibition on interrogation of the offence charged and substituted a different scheme of operation – removing that particular part of the legislation, once removed, it had to be removed, indeed, after the reform of section 30 because it had no independent legal existence without being part of section 30.

So, the question arises whether in the *Australian Crime Commission Act*, one can read into the construction of the section the fact that the removal of section 30 evinced an attention that the same process would remain, including a prohibition on interrogation in relation to the very offence charged. The situation is, at least, ambiguous and unless it can be demonstrated that the language is precise, unequivocal and framed in unmistakable terms in section 25A of the *Australian Crime Commission Act*, then one cannot confidently say that the *Hammond* principle has, indeed, been abrogated in the circumstances, unless one can point to language which is unmistakable for that situation to occur.

Also, in the *Australian Crime Commission Act*, there is the very powerful section which I describe as section 12(6), which curiously was not the subject of any treatment in the Full Federal Court, nor by the Court of Criminal Appeal. The Court of Criminal Appeal in *CB* effectively embraced the approach by the Full Federal Court, but nowhere in the reasons for judgment is there mention of section 12(6), which is a section one might think of fairly powerful operation in relation to the dissemination to law enforcement authorities of evidence obtained in an interrogation irrespective of anything else in the Act.

That section 12(10), of course, was not in any way mollified by the amendment in relation to section 12(1). Your Honours, the plaintiff's submission is that there is by the very fact of parallel inquisitorial interrogation and the terms in which it is alleged that such interrogation is protected is not so protected and, indeed, compromises the curial process and the adversarial process, certainly to the extent that it commits that attention, or the fairness of that process, commits that attention to a non-judicial officer.

That in itself, amongst other reasons that I have already mentioned, is quite possibly the most powerful reason why there has been an impermissible interference with the curial process and an impermissible interference of the exercise of Commonwealth judicial power; more correctly, the exercise of power incidental at this stage to the judicial power of the Commonwealth and a threat to the invocation of Commonwealth judicial power proper when the matter is ultimately committed for trial. Your Honours, otherwise I rely on the written submissions. If the Court pleases.

**FRENCH CJ:** Yes, thank you, Mr Wendler. Yes, Mr Donaghue.

**MR DONAGHUE:** Your Honours have, I hope, the written outline of oral submissions that we have provided. Can I commence with a matter that is not dealt with in that written outline which is the matter that the Court raised with my friend this morning as to the scope of the investigation that was authorised by the board of the

Crime Commission and ask your Honours to turn to page 31 of the special case book which is Schedule 1 attached to the authorisation instrument.

This authorisation instrument was an instrument made by the board on 30 April 2009 and signed the following day. As at that date 30 April 2009, the time frames covered in paragraphs (a), (b) and (c), in our submission, exhaust the universe of possibilities as a matter of time. That is, a crime cannot have occurred before the 30 April, it can be occurring at the time on the 30 April or it can occur in the future after 30 April. There is, in our submission, no gap. Of course, a different question arises in connection with the use of the word “whether” in the first line and it may be said, well, once prosecuting authorities have reached the point of charging a person there is no longer a question whether that person has committed an offence.

We submit that when one reads the whole of paragraph 1, what is being authorised by the board is an investigation whether, in accordance with the allegations in clause 3 and the circumstances mentioned in clause 2, “federally relevant criminal activity” which is a defined term has been committed at any of the three relevant times. When your Honours turn to paragraph 2 the “Circumstances”, you will see that what the board is concerned with is an investigation into:

federally relevant criminal activity that may have been, may be being, or may in future be –

committed involving HRCGs which is a defined term if you go back to page 29 “*high risk crime groups*” being:  
a group or groups –

so possibly more than one group each –

of two or more persons who are engaged in one or more of the activities described in Schedule 1 in more than one jurisdiction – with the characteristics there listed in paragraphs (a) through (c) but complex, sophisticated, on-going organised crime, we submit. In our submission, once it is appreciated that the board is investigating the past, current and future criminal activity of groups, it cannot be concluded on the evidence presently before the Court that there was any deficiency in the summons that was issued with respect to the plaintiff X7.

The reason that I say that, your Honours, is that when one looks at the summons that was issued to him, and that appears on page 41 of the special case book, he was summoned to answer questions, to give evidence about the following federally relevant criminal activities by a high-risk crime group, and then some offences were listed, including drug offences of the kind with which he has been charged. We of course accept that the special case reveals that he was asked questions that correspond with the subject matter of the charge - - -

**HAYNE J:** Which were charges of conspiracy?

**MR DONAGHUE:** Yes, indeed, which in itself leaves open on the material, we submit, as in any event emerges from the definition of “high-risk crime groups” that there are likely to be others who are concerned with criminal activity that is either involved in the same conspiracy with which he has been charged, or conspiracies of a similar kind. So an examination of the plaintiff on the face of this summons cannot, in our submission, be assumed to be

confined only to the question of whether he is guilty of the offence with which he has been charged.

**CRENNAN J:** But it certainly includes that.

**MR DONAGHUE:** It includes it, yes.

**HAYNE J:** The questioning with which we are concerned is the questioning directed to his commission of the offences with which he was charged?

**MR DONAGHUE:** Your Honour, it depends - - -

**HAYNE J:** I have in mind particularly the agreed fact where there is express reference to it, I think, is there not?

**MR DONAGHUE:** There is in paragraph 11 - - -

**BELL J:** Paragraphs 11 and 12 of the stated case.

**MR DONAGHUE:** Yes. It says it included questions concerning the matters with which he has been charged, but questions on that topic may well have been directly relevant to the offending of his co-conspirators, for example.

**HAYNE J:** Be it so, what consequence follows from that? If he is charged with conspiracy, there is reasonable and probable cause for charging him, I assume?

**MR DONAGHUE:** Yes.

**HAYNE J:** The authorities have investigated to the point of determining that there is reasonable and probable cause to charge him with conspiracy.

**MR DONAGHUE:** But the authorities may still wonder whether there is sufficient evidence against others who may have been involved in the same conspiracy.

**HAYNE J:** Of course they may, but why ask him?

**MR DONAGHUE:** Well, because he knows. If they are his co-conspirators, he is uniquely placed to know. In our submission, if we come back to the question, is this investigation authorised by paragraph 1 of Schedule 1 – that is, is there a question whether there has been offending – one cannot, in our submission, conclude from the fact that there is enough to charge the plaintiff X7 that there is not still a question to be investigated as to the involvement of others.

**FRENCH CJ:** Would you accept that the authority conferred in terms of Schedule 1 does not extend to questions which are concerned only with whether he has committed the offences of which he has been charged?

**MR DONAGHUE:** If they were concerned only with that question - - -

**FRENCH CJ:** Putting aside questions of collateral benefit. This is just going to his guilt or innocence.

**MR DONAGHUE:** Then I accept that there would be force in an argument that there was no longer an investigation as to whether that offence had occurred or not.

**FRENCH CJ:** You rely upon the fact that there are, as it were, collateral benefits arising - - -

**MR DONAGHUE:** Well, possibly - - -

**FRENCH CJ:** - - - or other purposes for such questions?

**MR DONAGHUE:** Yes, quite possibly intended benefits.

**HAYNE J:** But the offence with which he is charged, which we do not have; we do not have the charges - - -

**MR DONAGHUE:** No.

**HAYNE J:** I would have thought that there is much to be said for the view that we ought to have the charges as part of the documents annexed to the case – come back to that – but the offence with which he is charged assumedly reads that you, together with either AB, named, or together with persons unknown to our sovereign lady the Queen, whatever the current form of charging of a conspiracy is.

Now, to ask him a question about whether AB, or persons presently unknown, conspired with him to import or to traffic is directed wholly to whether he committed the offence, is it not? Yes, there are collateral benefits, but is it not directed at least to whether he committed the offence with which he is charged and for which there is reasonable and probable cause to charge him?

**MR DONAGHUE:** Your Honour, if it were to be confined only for that purpose, we submit it would be perverse for the examiner to have made the directions that he did that were designed to ensure that no material from this examination went to the prosecution or investigating police. To limit it in that way would be to defeat the only assumed purpose. We submit it is more readily to be taken from the documents, including the scope of the investigation, that the focus of the Crime Commission is wider.

I would not wish to be understood as submitting that it is confined to the question of, for example, have the co-conspirators committed offences because it may be, and I will develop this shortly in the context of the Act, but the Crime Commission's focus extends to intelligence activities and understanding the criminal operation of

groups of this kind. So it might be quite appropriate for the Crime Commission to investigate, well how did this particular drug operation run? Not for the purpose of facilitating any prosecution of the applicant, but for the purpose of furthering its knowledge of the operation of drug groups in that field.

**HAYNE J:** That is not what paragraph 1 of Schedule 1 says, is it?

**MR DONAGHUE:** In my submission, paragraph 1 of Schedule 1 says whether high risk crime groups as defined have in the past, at present or in the future are committing any of the identified offences. In my submission, that is wide enough to embrace the submission that I just put, because if one necessarily if one is investigating offences that may occur in the future, that is involved with authorising an examination of the kinds of things that the group does and how it does them. There is, in our submission, no reason to assume that the summons that was issued did not embrace matters of that kind, albeit that it also included questioning – well, that the questioning about the matters charged may have served that very purpose.

**KIEFEL J:** The Court is left in a position necessarily where it cannot assume a number of things, because of the very general nature of these authorisations and the lack of any specific allegation actually directed to a person. There is no issue taken here about that aspect of the authority, there is no challenge to it. But it does leave the authority and the action taken under the ACC Act as ostensibly – the only conclusion one can draw upon the basis of these instruments is that they are directed to information gathering, very wide information gathering.

**MR DONAGHUE:** Including as to offences.

**KIEFEL J:** Yes. Well, we do not know. There are no specific offences identified, specific allegations, so it is information gathering, it must be.

**MR DONAGHUE:** On the face of this authorisation, it is information gathering about a particular kind of group that engages in a particular kind of activity, including 2(a):

the trafficking in or supply of illegal drugs –

So one can infer that – or one does not need to infer it, it is apparent from the document – that there is an allegation that groups of that kind are engaging in the kind of activity that includes, I accept, a long list of possible offences in paragraph - - -

**FRENCH CJ:** It reads like a template, throwing in everything including the kitchen sink rather than a focused investigation.

**KIEFEL J:** Which leads to this; that in the process of the exercise of powers given under the ACC Act in pursuit of this very wide aim, a person's immunity against self-incrimination and to disclose their defence is, on your

argument, completely lost. At some point, it might not be in this case, but at some point the objective and the means used to obtain it might raise some serious questions.

**MR DONAGHUE:** Your Honour, I accept that there is an argument to be had in that area and as your Honour Justice Crennan pointed out, that was an argument that was had quite regularly about 10 years ago in the context of the *National Crime Authority Act*. We submit that that argument is not before the Court.

**KIEFEL J:** I am thinking of a constitutional perspective.

**MR DONAGHUE:** Yes.

**HAYNE J:** And, why should we not read this instrument which authorises this examination at least with a careful eye to its breadth and, why should we read it as permitting investigation of whether a charged person committed the offence with which he has been charged, when that offence is an offence, or there are two offences, are there not, or possibly three, of conspiracy? How can we read Schedule 1 as authorising the investigation of, if you like, who are the conspirators?

**MR DONAGHUE:** Because, your Honour, Schedule 1 is authorising an investigation of an admittedly very wide kind into a wide range of groups that may have engaged in a wide range of activities. There is no reason, in our submission, to treat the board as concerning itself with the position of any particular individual and the stage that that individual has reached in the criminal justice process.

**HAYNE J:** It may be we might have to be.

**MR DONAGHUE:** Well, perhaps, your Honour. But, it is at the point of the summons that one drills down to the focus upon the particular individual not, in our submission, at the point of the authorisation, and the summons seeks to call the plaintiff to give evidence in relation to the criminal activities of high risk crime groups. Now, I accept that the information before the Court is not very fulsome when it comes to the scope of the activities of a high risk crime group of which he may have knowledge but, in our submission, there is not the material before the Court that would allow your Honours to infer that the only relevant thing to be achieved here is an investigation into his own offending. And, once there was an investigation of other things, or scope on the material for an investigation of other things, in our submission, it was authorised by Schedule 1.

**BELL J:** The summons directs attention to serious drug offences under Part 9.1 of the Criminal Code and money laundering within section 81 of the *Proceeds of Crime Act* and the offences under the Code relating to money laundering.

**MR DONAGHUE:** Yes.

**BELL J:** Then one turns to see what he is charged with and there is a coincidence between the charges and the summons.

**MR DONAGHUE:** Yes. Not a perfect coincidence, I think, but an overlap.

**KIEFEL J:** Could we have a copy of the charges? Would that be possible?

**MR DONAGHUE:** Your Honour, I do not know if we have them but I will have inquiries made.

**HAYNE J:** The question we are asked in the case stated is whether the relevant provisions empower conduct of an examination where that examination concerns the subject matter of the offence so charged.

**MR DONAGHUE:** Yes.

**HAYNE J:** So, we are not concerned with can you ask him other things, we are concerned only with, are we not, whether he can be examined concerning the subject matter of the offence so charged.

**MR DONAGHUE:** Yes, as a matter of statutory authorisation, yes.

**HAYNE J:** Why can he be asked, or examined, on that subject matter under this authority?

**MR DONAGHUE:** Because a question concerning the subject matter of the offence so charged may serve the purposes of the ongoing investigation. That is our answer.

**HAYNE J:** I am sorry, give it to me again?

**MR DONAGHUE:** Because an investigation that concerns the subject matter of the offence charged may at the same time further the authorised investigation, because amongst other things, what is investigated is activity by groups, and so the investigation of the group is furthered.

**HAYNE J:** And the group to whom you refer is a group that, having regard to this question, is confined to the named or unnamed conspirators. That is the subject matter of the offence so charged. I am confining it by reference to the question in the case stated.

**MR DONAGHUE:** Yes, I appreciate it, your Honour, and I am answering it in that way, but a question confined in that way concerning the subject matter of the charge may further the investigation of the group being the co-conspirators, but it may also further the investigation of the group going more broadly by, for example, demonstrating that the group of which the plaintiff is said to be a member is engaged in a kind of criminal activity that it was not previously known to have engaged in, for example, that it has moved from heroin to

methamphetamine. That would further the investigation of the group, even though the questioning concerned the subject matter of the offence charged.

If, as we accept, the Act should properly be construed as not to authorise a contempt of court, then the capacity to protect the plaintiff to the extent that that is necessary is there unaffected by this legislation, and we submit that that is where the focus should be in protecting the rights of a person in the position of the plaintiff, rather than by a reading down of the terms of the Act.

**HAYNE J:** Would you accept that the Act is to be read against a background where the criminal justice system in this country is adversarial and accusatorial?

**MR DONAGHUE:** Yes.

**HAYNE J:** Accusatorial in the sense that, absent statutory authority, an accused person is not bound to tell investigating authorities or a court what his or her explanation or answer is to the charge?

**MR DONAGHUE:** Your Honour led into that question with the words “absent statutory authority”.

**HAYNE J:** Yes, designedly so.

**MR DONAGHUE:** Yes. So my answer to your Honour’s question is “yes”, but that all the weight of our argument resides in those words.

**HAYNE J:** Then you are in the territory, are you not, of how do you read the statute? Do you read this instrument made under the statute as cutting away that general position?

**MR DONAGHUE:** I accept one is squarely in the territory of reading the statute, and that that is the questioning that one has to ask. Our end point on that submission is that because the Act is to be read as subject to the doctrine of contempt, one would not be permitted to undercut the accusatorial system that your Honour put to me, unless that is validly authorised by the Act.

**FRENCH CJ:** Can I just ask about the relationship between 7C(3) – this was a special investigation - - -

**MR DONAGHUE:** It was.

**FRENCH CJ:** - - -and 24A. The board, in deciding whether to determine an investigation as a special investigation “must consider whether ordinary police methods of investigation into the matters are likely to be effective”.

**MR DONAGHUE:** It must.

**FRENCH CJ:** Now, in determining then whether to conduct a particular examination for the purposes of a special investigation, is it relevant, having regard to the statutory context, that police investigative methods have led to a charge being laid against the person the subject of the examination, and does that tell us something about the limitation, if you like – a limitation on the powers of the examiner to bring a particular person in for examination in relation to the subject matter of an offence with which he has been charged following a police investigation?

**MR DONAGHUE:** Your Honour, the question of whether the police investigation or police methods, ordinary police methods, are likely to be effective is a question asked in our submission at a much higher level of generality than the question of an examination of a particular individual.

**FRENCH CJ:** I am just wondering, given the policy that is suggested by 7C(3), whether that informs the discretion under 24A. In other words, do you conduct examinations under 24A into things which have already been the subject of a police investigation that has led to charges being laid?

**MR DONAGHUE:** Again, if one comes back to your Honour's earlier question about the word "whether" in the instrument, if all that is of interest is an investigation into someone who has already been charged and nothing else then an investigation of that character has a rather different flavour to one that overlaps with that question but goes to other matters. We submit that one would expect an examination under 24A being an investigation for the purposes of the investigation to be concerned with matters other than the subject matter of pending charges. But that does not, in our submission, carve out the pending charges because there is not, in our submission, a situation where there is a perfect interlocking of matters that are, on the one hand, the subject of charges and, on the other, able to be investigated. There is overlap. The existence of that overlap means that once somebody has been investigated to the point where charges could properly be laid against them, that is a person who is, in our submission, likely to be in a position to shed light on the activities of the group.

**FRENCH CJ:** So your answer to question 1 in the stated case be yes, if – or yes, subject to some qualification?

**MR DONAGHUE:** No, my answer is yes. Our answer to question 2 is likewise; it is no. The reason is no because there are restrictions that are available that will confine the Crime Commission so that it does not engage in activity that would otherwise constitute a contempt of court.

**KIEFEL J:** There is so much that is assumed because of the generality of the instrument here under the ACC Act. How does the Court really determine the question of the ambit of the examiner's powers under section 24A, given the breadth and lack of specificity of the instrument of authorisation? For instance, how can the Court determine whether the summons is in respect of an examination for the purposes of a special ACC operational investigation when we cannot determine what that is? It is just anything; it is an inquiry into any possible criminal activity - anything.

**MR DONAGHUE:** The difficulty, your Honours, is that there is not on foot a challenge of that kind and so your Honours have not been given the material that would be relevant to a challenge of that kind.

**KIEFEL J:** No, there is no challenge to the instrument on foot, but there is a question as to how we determine the question of the examiner's powers. Is it a question that we can determine on the basis of these materials?

**MR DONAGHUE:** Your Honour, in my submission, question 1 asks the Court to engage in the task of statutory construction alone, somewhat divorced from the underlying facts of the summons and the authorisation that had been issued. I accept that they inform and provide the factual context in which the question of statutory interpretation arises.

**KIEFEL J:** We are asked to interpret the statute on the basis of the materials before us. We have to apply something to it. We have to say for the purposes of an investigation into a group of people who are not identified, who are just groups of amorphous people. We know nothing.

**MR DONAGHUE:** Could I ask your Honours to turn to section 4 of the Act behind tab 5 in the legislation volume?

**HAYNE J:** Which section?

**MR DONAGHUE:** Section 4, the definitions section, and if I could just take your Honours quickly through the interlinked definitions that define the task of the Crime Commission. If your Honours start that journey on page 3, you will see a definition of "federally relevant criminal activity". In paragraph (a):

a relevant criminal activity, where the relevant crime is an offence against the law of the Commonwealth or of a Territory –

If your Honours go from there to the definition of "relevant criminal activity" which is over at the top of page 6, you will see that term is defined as:

any circumstances implying, or any allegations, that a relevant crime may have been, may be being, or may in future be, committed –

So you get the three time frames. "Any circumstances implying any of those things". If your Honours then go to "relevant crime" back at the bottom of page 5:

*relevant crime* means:

serious and organised crime –

If your Honours then turn to the definition of that term, again back on page 6, you will see a definition that to some extent parallels the high risk crime group definition. So the Act itself, in our submission, is potentially authorising, through that set of definitions and the operative provisions that apply them, an investigation of a very broad kind, and that is what the board has done in making the particular instrument that underpins the summons that was - - -

**KIEFEL J:** Investigation might be putting it a little highly. It is information gathering at the least. It might develop into an investigation, there is a distinction probably.

**MR DONAGHUE:** It might be both, your Honour. It might be that a particular crime has been committed in the past or it might be information gathering about the activity of the group, with a view to investigating future offending; both are contemplated. Indeed, the one investigation might at the same time encompass an investigation of some crimes that had occurred in the past, some activity that is ongoing now and possible future activities of the group. There is no reason an investigation has to be confined to any one of those three things, in our submission.

**BELL J:** Section 7C(3) with which we are concerned because this is a special investigation, might be thought to assume that the board would be directing its attention to the question of whether “ordinary police methods of investigation into the matters are likely to be effective”, with some greater degree of specificity than one finds when looking at Schedule 1, paragraph 3.

**MR DONAGHUE:** Your Honour, I accept of course that the investigation defined in Schedule 1 is defined in very wide terms. One has, in my submission, competing public policy objectives in this area because - - -

**FRENCH CJ:** It picks up people smuggling in I notice.

**MR DONAGHUE:** Not in this one, your Honour. There are a number of different instruments of this - - -

**FRENCH CJ:** Well it does, this picks up people smuggling.

**MR DONAGHUE:** This one does, does it?

**FRENCH CJ:** Page 32, paragraph (y).

**MR DONAGHUE:** The difficulty is once one is investigating an organised criminal group without knowledge of where that investigation is going to lead, if the offences are too narrowly confined then - - -

**BELL J:** I do not think that is a concern here.

**MR DONAGHUE:** No, but that, in my submission, underpins the way this has been drafted so that one does not encounter a question of power in illegally gathered evidence at the end of – by following their trail that takes you to offences. But I accept what your Honour says. That judgment obviously has to be made in the context of an investigation of a particular kind that is contemplated.

**KIEFEL J:** Well, can we just take that up? 7C(3) “special investigations” would then put this particular function of the ACC under section 7A(c) “to investigate”?

**MR DONAGHUE:** Yes.

**KIEFEL J:** As distinct from (a) “to collect . . . information”?

**MR DONAGHUE:** This is under 7A(c), yes, and it is only for that reason that coercive powers are available under Division 2.

**HAYNE J:** Sorry, it is only?

**MR DONAGHUE:** It is only because there has been a determination that this is a special investigation that the coercive powers under Part II of the Act, are available.

**HAYNE J:** Which is investigating.

**MR DONAGHUE:** Yes, investigating past, present and future criminal activity of a wide kind.

**HAYNE J:** This man has been investigated and he is charged.

**MR DONAGHUE:** He has been, your Honour, but the group of which he is a member is still under investigation, in our submission. So, all of the submissions that I have made so far, your Honour, really are directed to a question of the way in which the board has exercised its powers in authorising this particular investigation. In my submission, your Honours do not need to decide that question and there are, I accept, difficulties with the material that is before the Court for that purpose. But your Honours can, in my submission, approach the Act with a view to determining whether or not the Act should be construed as exhausted in its operation, with respect to a person who has been charged.

**KIEFEL J:** Mr Donaghue, I do not mean to continue your agony unnecessarily but the questions in the special case, question 1, assumes there is necessarily an antecedent question to question 1, is there not, which is, is there authority for the examiner to act? That is the authority under the instrument. Are you saying that for the purpose of question 1, we are in a position to assume authority?

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

**KIEFEL J:** But, is there an assumption involved, is really what I am asking?

**MR DONAGHUE:** Well, your Honours have not been asked a question, was the summons validly issued, or was the authorisation validly made by the board?

**KIEFEL J:** So, you say there is no issue.

**MR DONAGHUE:** So, I say, there is no issue.

**KIEFEL J:** Well, there is one issue. But, you say apart from that - - -

**MR DONAGHUE:** The two issues that have been raised by the stated case and that your Honours do not need to decide those questions, and had those other questions been raised that would, in my submission, have at least required the parties to think about whether there was other material that would have been needed to put before the Court that have might have borne on those questions. The way that the stated case, rather, is framed - - -

**HAYNE J:** Well, can I just pursue that last matter about whether the parties would have needed to consider? Your submission is we do not have to examine the relationship between what is said in Schedule 1 and the question presented in case stated, question 1, is that right?

**MR DONAGHUE:** That is right.

**HAYNE J:** If, contrary to that submission, one were to form a view that behind question 1 there lies a question about the engagement of Schedule 1, what should we do? Decline to answer the question as inappropriate to answer; answer the question on a stated assumption, which is to say give some form of speaking answer. That seems to run a difficulty of ? hypothetical cases. Perhaps after the adjournment you might have an opportunity to consider what answer you would give to my question which is if there is thought to be a premise behind question 1 which is not addressed, what do we do? But, as I say, come back to it at whatever time is convenient in the development of your argument.

**MR DONAGHUE:** I will come back to it. Yes, I will do that. Your Honours, can I take the submissions that I have been making in the context of Schedule 1 and apply them to the answer to question 1, as currently contained in the special case, because we submit that they are – accepting that the task upon which the Court is engaged in answering that question is one of statutory construction, that there are two kinds of indicators in the ACC Act that suggest that the power conferred by that Act is not exhausted upon the laying of criminal charges.

The first set of indicators are in the provisions that your Honours have already been looking at and through

the definitions that I have taken the Court to, because they are a set of definitions that are concerned with the kind of creature that the ACC was created to be and the kind of task that it was intended to perform.

That was a task, as your Honours have already noted, to conduct investigations, amongst other things, in a context where the senior law enforcement officers throughout the country who comprised the board, as your Honours will have seen in section 7B, have determined that ordinary police methods are not likely to be sufficient, and it is an investigation in a context where the Act expressly indicates that it is concerned with past offending, current offending and future offending.

In our submission, it would be destructive of the capacity of the Crime Commission to discharge that function. If, having gathered evidence of a crime that demonstrates that one or more than one members of a group have committed a particular offence, it then has to down tools on the ongoing investigation of that area of activity with which the group is concerned because of a commonality between the charges against the particular members where there is enough evidence, and those where the investigation has not yet progressed to that point.

**BELL J:** I do not think I understand that submission. We are looking at the question of interrogation of a person with respect to the matter that is the subject of the charge that has been laid, about which those concerned with the investigation and prosecution of criminal activity in Australia presumably have some knowledge. We are not looking at preventing an investigation designed to collect intelligence about a criminal activity, of which that person may have knowledge, that is not the subject of the charge that has been brought.

**MR DONAGHUE:** Your Honour, if you take an example of a drug importation and distribution arrangement, there may be overseas people who are the source of the drugs, people involved in the active importation into Australia, people involved in Australia in the distribution of the activity. If the investigation starts at the bottom end and finds the people engaged in distribution, collects enough evidence to be admissible against those people that evidence is conveyed to prosecutorial authorities and charges are then laid, a summons directed to that person that asks about their role in that importation and distribution conspiracy, including the other people involved in that conspiracy, would, in our submission, in all likelihood, be said to overlap with the subject matter of the charges. Because if they give answers about who the people are who brought the drugs into Australia and how they were distributed between the different distributors, that would very much point up their involvement in the very crime distribution of the drugs with which they have been charged.

So, the capacity to investigate the whole of that kind of criminal activity would, in our submission, be impaired if you cannot ask the person involved in the distribution stage about their knowledge of the other people involved in the enterprise. Now, that is not to say that the rights of that person in the criminal justice system should be ignored. But, we submit, that the Act should not be construed in such a way that the power it confers just stops or is exhausted because of the laying of charges in relation to any overlapping areas of activity. And, because the Act is focused on group criminality in the way that the definition of serious and organised crime shows, we submit that that points to a conclusion that the Act should not be construed as exhausted in that way.

In addition to that general point, there are also, in our submissions, specific indicators in the Act and your Honours have already been taken to some of them. If I could invite your Honours to turn to Part II again and, particularly, to section 25A, your Honours have been taken to subsection (9) in this Act, the closing words of

which convert the discretion that the examiner normally has in relation to a non-publication direction in relation to the specified matters into a mandatory duty in circumstances where the giving of such a direction is necessary because the failure to give the direction might:

prejudice the fair trial of a person who has been, or may be, charged with an offence.

So, clearly, there are, in our submission, some persons who have been charged whose trials might stand to be affected, and we submit that there is no reason not to read those words in accordance with their natural meaning as embracing, not limited to, but embracing the person who has been charged themselves. That is, the direction is necessary so that a person who has been charged does not have their fair trial prejudiced.

The actual power to call a particular witness before the Crime Commission is found in section 28 of the Act, and section 28 in its terms does not contain any language that would suggest a differentiation between the exercise of the power with respect to a person who has not been charged vis-à-vis a person who has been charged. There did used to be in the *Crime Commission Act* some indicators that such a distinction was contemplated and my friend took your Honours to section 30(10) of the old *National Crime Authority Act*. The way that that section worked, and could I ask your Honour's just to turn back to it; it is behind tab 2 in the folder.

If your Honours turn to section 30, you will see that the regime that operated there was quite different to the present regime under section 30 of the ACC Act. The starting position under 30(2) was that a person who was appearing at a hearing was "shall not, without reasonable excuse . . . fail or refuse to answer a question". So there was a general reasonable excuse provision embraced which included self-incriminatory questions unless the regime specified in subsections (4) and (5) operated which was an indemnity by the Director of Public Prosecutions or the Attorney-General.

So, absent an indemnity, a witness could not be compelled to give incriminating answers. With an indemnity, they could be. They had to answer the question but, as Justice Crennan pointed out, they received both a direct and derivative use immunity underpinning that indemnity. What subsection (10) did was remove the immunity provision so that a witness could still be examined after their charges had been laid but they could not be compelled to incriminate themselves. So they could be examined but they were entitled not to answer questions once a reasonable excuse existed. That provision necessarily contemplates that the coercive powers that the Act confers extend to examining a person who has already been charged, because if they did not so extend that provision would have been meaningless.

Subsection (10), of course, has now been repealed, but the other provisions that define the circumstances in which a person can be called are relevantly the same as they were at this time. To conclude that the Act does not now extend as a matter of construction to the summoning of a person who has been charged would suggest that a large change or shift occurred between the regime under the old NCA Act, which was renamed as the *Australian Crime Commission Act*. It is the same Act; it was just re-branded as the Australian Crime Commission in 2002.

**CRENNAN J:** Do you mean to suggest by that submission that the directions that can be given under 25A(9) effectively cover direct or indirect use?

**MR DONAGHUE:** Your Honour, I am going to come to that but, in my submission, they do not create a derivative immunity; they do not prevent – they do, however – I am going to draw a distinction, if I might, between indirect use and derivative use. They will usually prevent indirect use. They will reduce the number of people who might make derivative use of the evidence, but they would not correspond exactly to a derivative use immunity. I will develop that, if I might, after lunch.

**BELL J:** Your submission a few moments ago referred to the idea that a person might not be summonsed if charged. That seems to me to be a different proposition to that asking the first question of the stated case, which directs attention to examination about the subject matter of the offence charged.

**MR DONAGHUE:** Yes, I accept that there is that difference. If the Act did not authorise a summons with respect to a person who has been charged then that would have the inevitable consequence that a certain answer would have to be given to question 1. I accept, your Honour, that once you can be summoned I need to address the further hurdle but, in my submission, one cannot construe section 28 and section 30 as exhausted upon the laying of charges because to do so would be inconsistent with the legislative history that one finds in the repeal, particularly in the repeal of subsection (10).

**BELL J:** Except that that does tend to indicate that on one view, when the draftsman wishes to, they can make it clear and the examination may be of a person respecting a charge with which a person is awaiting trial.

**MR DONAGHUE:** But that was made clear under the *National Crime Authority Act* by the combination of a general provision empowering summoning and then a withdrawal of - - -

**BELL J:** I understand that. The matter I am raising with you is the absence of attention to that detail in the present legislative scheme might be thought to cut both ways on that argument; that is all.

**FRENCH CJ:** Mr Donaghue, that might be a convenient time. We will adjourn until 2 o'clock.

**AT 12.47 PM LUNCHEON ADJOURNMENT**

**UPON RESUMING AT 2.03 PM:**

**FRENCH CJ:** Yes, Mr Donaghue.

**MR DONAGHUE:** Thank you, your Honour. Your Honours, what I propose to do with the Court's permission is to finish my submissions on this statutory construction point, question 1, which I hope will only take me 10 or 15 minutes, and then to come to the question that your Honour Justice Hayne asked me before lunch.

I have taken your Honours to the provisions in the ACC Act that we rely upon, and our submission is that those provisions stand in marked contrast to the statutory regimes which have been held by this Court in previous

cases to be properly interpreted as exhausted upon the laying of criminal charges. I refer there to the line of cases starting with *Melbourne Steamship*, and which indicate that often the appropriate way to construe an Act will be as exhausted in circumstances where charges are laid. Because the regime is construed as a regime that confers coercive powers for the purpose of investigating the very question whether charges should be laid.

The reason that we submit that the ACC Act operates in marked contrast to that regime is because it is not a regime that is directed just to the limited question whether or not a particular person should be charged with a particular offence, but it evidences an intention to cast the investigative net much more widely than those more purpose-specific regimes.

The provisions that I have relied upon, including the provisions around the purpose of investigating serious and organised crime and also section 25A(9) were accepted by the Full Federal Court in *Australian Crime Commission v OK* (2010) 185 FCR 258 as having the effect for which we contend – your Honours do not need to turn to it – but at paragraphs 109 and 110, their Honours in effect accept that those statutory indicators are such that the Act should not be construed as exhausted upon the laying of charges, and we of course adopt their Honours' analysis.

If I could take your Honours to the way that this Court dealt with a similar question in *Environment Protection Authority v Caltex Refining Co. Pty. Ltd.* (1993) 178 CLR 477. If your Honours could turn first to page 489 you will see the statute with which the Court was concerned – the provision with which the Court was concerned. Section 29 of the *Clean Waters Act* 1970 of New South Wales conferred a coercive power upon an authorised officer by notice in writing to require the specified person:

to produce to that authorised officer any reports, books, plans, maps or documents –

The question with which the Court was concerned partly raised the question could the privilege against self-incrimination be claimed by a corporation and the case is authority for the proposition that it cannot be so claimed. But there was also a question as to whether that power was exhausted upon the commencement of proceedings against a company that was alleged to have committed an offence against the Act.

If your Honours turn to page 507 in the joint judgment of Chief Justice Mason and Justice Toohey, you will see the way that their Honours approached this question. In the second-half of the page, their Honours emphasised:

There is nothing in the language of s. 29(2)(a) which would support the restrictive interpretation. And, having regard to the purpose which the provision is designed to serve, the broader interpretation fits that purpose. It would be artificial to say that it is permissible to issue a notice requiring production of documentary material with a view to ascertaining whether a breach of the statute or a condition of a licence has taken place but it is impermissible to issue a notice with a view to providing evidence of such a breach. And, if it be permissible to issue such a notice for that purpose before the commencement of proceedings, as we think it is, it must be permissible to do so after proceedings have commenced.

So their Honours emphasised the fact that the language in its terms drew no distinction and the purpose of the provision and declined to find that there was a differential operation to be given to the section based as a matter of statutory interpretation.

Another member of the majority, Justice McHugh, addressed the question at pages 558 and 559. His Honour analysed the question in the way that we urge this Court to analyse the same question in the present statutory context which is, in the middle of 558, to emphasise that the statute:

in the absence of a clear legislative indication to the contrary, the statute should not be read as authorizing an interference with the course of justice.

There is a reference to Justice Mason in *Pioneer Concrete*, pointing out that a general power should not be read as authorising any action which would amount to contempt of court. His Honour then explains in the last paragraph on 558 and onto the top of 559 that there was no necessary interference with the procedures of the Court simply to use an evidence gathering procedure conferred that stood outside the processes that would be available within the court system, that it would only be a contempt if the power was used to give a party advantages which the rules of procedure would otherwise deny him.

So, again, his Honour approached the question not by reference to a reading into the Act that would find a limit that says as a matter of interpretation the power is exhausted once charges are laid but, instead, the Act is given effect in accordance with its terms. It can be used both before and after charges are laid. Subject to this, that if it is used after charges are laid in a way that will constitute a contempt, then that use will be restrained.

That, we submit, is a far preferable analysis of the problem, because if the matter is approached as a question of statutory construction then in every case once charges are laid the power will be exhausted whether or not if the power were used that would confer some impermissible or inappropriate advantage. The very kind of thing that was permitted in *EPA v Caltex*, where it was permissible to use a notice power to require material to be produced even though proceedings were on foot because that did not result in any unfairness, would not be possible if the power had been construed as being exhausted simply upon the laying of charges.

By contrast to that kind of analysis, in *Melbourne Steamship* – and again, your Honours do not need to turn to it; it is 15 CLR 333 – it is clear from particularly Chief Justice Griffith's analysis that this was a power conferred where the Comptroller-General of Customs believed that an offence had been committed for the purpose of finding out whether his belief was right. So of course a power conferred for that purpose, once charges have been laid, is exhausted because the only reason it has been conferred has been discharged.

Finally on this point if I could invite your Honours to turn to *Pioneer Concrete* (1982) 152 CLR 460, and if your Honours turn to page 473 in the judgment of his Honour Justice Mason. Again, the question that is being considered is whether or not here the Trade Practices Commission could use its coercive powers to acquire information in circumstances where the information to be produced overlapped with issues in pending civil proceedings in the Federal Court. The analysis in the middle of page 473 is, in our submission, an appropriate one to be applied in the context of the *Crime Commission Act*. His Honour notes that:

Section 155 –

which is the coercive power –

cast as it is in general terms, does not address itself to the question of contempt of court. It should therefore be read as not authorizing any action on the part of the Commission which would amount to such a contempt . . . It is possible to read the section as conferring power on the Commission to act in accordance with its terms, but subject to the law of contempt, so that action taken under the section is subject to the exercise by the Federal Court of its contempt powers. This appeals to me as a more sensible construction of the sub-section, one which avoids locating the ambit of the power at the point, not readily identifiable, where contempt begins. There are advantages in keeping questions of power and contempt separate.

That essentially is our submission on the first point, that your Honours do not need to read the Act in answer to question 1 as exhausted upon the laying of charges because, if it is read in the way that his Honour Justice Mason suggests at 473, there will still be a limit, but it will not be an absolute limit, at the point of charges being laid. It will be a limit that kicks in or that operates to restrict the Crime Commission only if the Crime Commission's investigation would do something that creates a real risk of interference with the administration of justice.

That then allows your Honours to focus on the entirety of the statutory scheme and to say, well, in the context of this examination is there anything about this investigation that means it does create such a risk? If so, then the power will not extend to that point, it can be restrained as a contempt, but if not the power could properly be used, notwithstanding the fact that charges have been laid. So, for those reasons, your Honour, we submit that question 1 should be answered in the way that we have suggested and that the power is not exhausted upon the laying of charges.

**CRENNAN J:** That is always provided, I expect, that the section 24A examination does not go outside the scope of the investigation that has been authorised.

**MR DONAGHUE:** Well, if it does that it will be ultra vires and can be restrained on that ground and we, of course, accept that that is so.

**KIEFEL J:** If you knew what the ambit of the investigation was, yes.

**MR DONAGHUE:** Your Honour, it would only be if someone could demonstrate that it had gone outside the ambit of the investigation that a restraint would be possible and the authorised investigation is very wide. If it is said and shown that an investigation of that width cannot be authorised by the ACC Act, then the determination that purports to authorise it will fall, and that really brings me to your Honour Justice Hayne's question from before lunch.

If your Honours have the special case book, you will see the summons and statement of claim that commenced this proceeding, the writ of summons commencing at page 2 and the statement of claim commencing at page 6. Those documents do not assert any invalidity of the authorising determination, or any invalidity of the summons. That was issued, and that is found on page 41 of the special case book.

In our submission, if an attempt were now to be made by the plaintiff to seek an amendment of the special case to raise those questions, it would be necessary first for there to be an amendment of the underlying application, so

that that issue was properly raised in the matter before the Court because as the proceeding is presently constituted, that is not challenged.

In our submission, there are any manner of possible antecedent issues that could have been challenged as prior issues to the two particular issues that have been raised in the proceeding. For example, it could have been contended that the ACC Act was not authorised by a Commonwealth head of power. It could have been contended that the board members were not validly appointed, or that the examiner who was to conduct the investigation was not validly appointed.

There are numerous issues that could have been raised that would have meant, if determined adversely to the defendants, that you never reach the two questions that have been raised. But the plaintiff has chosen to put their case on a particular basis and, as we apprehend it, the case was stated by Justice Gummow on that basis, raising the issues that had been raised by the application.

In our submission, there is no conceptual difficulty with the Court answering the question that the plaintiff has chosen to put in issue in the proceeding. Your Honours are entitled, in our submission, to presume the regularity of other administrative steps that have been taken in circumstances where those steps have not been challenged. So, our primary submission is that if necessary, recording the fact that the issue has not been taken, your Honours - - -

**HAYNE J:** The issue you have just been at pains to identify is an issue of validity. My questions were directed to an issue of ambit, which is radically different from validity.

**MR DONAGHUE:** Ambit of the authorisation, your Honour?

**HAYNE J:** Yes, and its application in this case. Not a question of validity, ambit.

**MR DONAGHUE:** Accepting that to be so, your Honour, and some of the examples I gave were not directed to the ambit of the instrument, the consequence of the submission is invalidity of the summons.

**HAYNE J:** You can ask him about lots of things. Under this sort of authority, apparently you can ask him an extraordinary variety of things, but the question in the case stated is, can you conduct an examination where that examination concerns the subject matter of the offence alleged against him?

**MR DONAGHUE:** Yes. Also accepting that to be so, your Honour, the question does not contain the word “exclusively” concerns the question of the subject matter of the charge.

**HAYNE J:** Can I see if I can identify the point a little more carefully? I may not succeed. If you go to the Commission document at page 31, Schedule 1. Clause 1 of that identifies the relevant investigation; is that right?

**MR DONAGHUE:** It is.

**HAYNE J:** Clause 1 must be read with clause 3; is that right?

**MR DONAGHUE:** Both clauses 2 and 3, yes.

**HAYNE J:** Relevantly clause 3. The questions which are at issue in question 1 of the stated case are questions concerning the subject matter of the offence charged; is that right? That is what question 1 asks about in the stated case?

**MR DONAGHUE:** Yes.

**HAYNE J:** Are those questions asked in the course of, for the purposes of, an investigation to determine whether federally relevant criminal activity was/is being or in the future may be committed – is the question presented by clause 1. The content to be given to federally relevant criminal activity presently is not to be found wholly in the Act; rather, it is to be found in clause 3?

**MR DONAGHUE:** Insofar as it identifies the offences, yes.

**HAYNE J:** The federally relevant criminal activity which forms the subject matter of the charges preferred against X7 are, or at least include, offences of the kind identified in 3(a), serious drug offences?

**MR DONAGHUE:** Certainly, at least 3(a) and 3(s).

**HAYNE J:** Yes. Now, an investigation has been held into whether X7, in concert with others, engaged in serious drug offences. That investigation has proceeded to the point where X7 stands charged.

**MR DONAGHUE:** Your Honour, at that point there is not any evidence that there was an investigation of X7 as an independent or separate entity than an investigation of a wider group. It led to a charge of X7, but there is not any reason to assume that there was something that can be identified as a specific investigation of him that is now over.

**HAYNE J:** X7 stands charged with an offence presumably on the footing that there is reasonable and probable cause for that charge?

**MR DONAGHUE:** I imagine so, your Honour, although - - -

**HAYNE J:** So you do not say that the prosecution is malicious?

**MR DONAGHUE:** No. The reason I answered it as I did, your Honour, is that the Australian Crime Commission, as your Honour would understand, is not a prosecutorial body. It does not make the decisions as to when or

whether charges should be laid.

**HAYNE J:** Is it an available reading of Schedule 1 to read it as having operation limited to investigation to determine whether federally relevant criminal activity other than that which has been investigated by someone to the point of charge was, is being or may be committed?

**MR DONAGHUE:** Your Honour is carving out from the terms of the investigation that is authorised the matter that has been investigated to the point of charge.

**HAYNE J:** Just so.

**MR DONAGHUE:** In our submission, the words do not support a carving out of that kind. Factually it may be difficult to justify such a carving out, depending on the relationship between the offending behaviour of the plaintiff or the person charged vis-a-vis others, and there is not any material about that before the Court. So we resist - - -

**HAYNE J:** You go so far as to say it is not an available reading of Schedule 1 to read it in the fashion indicated?

**MR DONAGHUE:** Your Honour, to read it in that way is to imply a limit into Schedule 1 of the same kind as we have been submitting should not be implied into the Act. When your Honour says, "Is it available?" we submit it is not the correct reading of the section. If there is a difference then my submission is that it is not how the section should be read. It is not how the schedule should be read, because the schedule is not concerned with authorising an investigation of any particular individual. It is concerned with a much broader proposition than that. To read it as intending the board - - -

**HAYNE J:** My point about persons was founded on clause 3:

certain persons, in concert with one another or with other persons –

That is, there is a degree of specificity and particularity in clause 3 and in its operation with respect to X7 and because he is charged with conspiracy either with known or unknown persons, "X7, in concert with others", named or unnamed. It has been investigated and got to the point of charge.

**MR DONAGHUE:** Your Honour, I do not wish to repeat myself and may not have made the point as clearly as I could have, but all I can say on that is that we submit that the nature of an Australian Crime Commission investigation is such that it should not be assumed that the charging of one person means that the questioning of that person, even in relation to the subject matter of the offence charged, is not intended to further the investigation of the group of which they are a member. If that is so, we submit as a matter of construction, this question was authorised by Schedule 1.

Now, it may well be that, indeed, on our submission, one does still have to ask the question: did that questioning that occurred create a real risk of interference with the administration of justice? If it did, then we accept that the Act would not authorise the questioning that occurred. But, that is where we submit the weight of the analysis lies, rather than as a matter of construing these words, reading them as not extending to the conduct that occurred.

**HAYNE J:** So, this is the document which authorised the assertion of the power of the State in respect of this man?

**MR DONAGHUE:** Yes, it is, your Honour. But, the question is – well, it authorised the summons that was then issued. If it did not, then the summons was invalid. But, what your Honour is putting to me is that this document should be read down so as to confine it to not extend to a particular situation, and my submission is that one does not need to read it down to achieve the protective purpose for the plaintiff, that the words can be given their ordinary meaning and then the law of contempt can be left to do the protective work.

**HAYNE J:** I think your submission has to go so far as to say, cannot be read down. Absent that, I think there is enough authority which says coercive documents of this kind, if there are available constructions, you would prefer that which is the less intrusive or the least intrusive. So, I think you have got to go so far as to say, have you not, cannot be read in the fashion indicated?

**MR DONAGHUE:** In my submission, not, your Honour. The reason that I deferred answering this question before I took the Court to *Pioneer Concrete* 152 CLR and *EPA* 178 CLR was to suggest the contrary. To say that an available reading is to take, in both of those cases, to take general words the Court was confronting in *EPA*, for example, was confronting the question, do we read down the general words? Their Honours said no, give them their ordinary meaning – and in *Pioneer* as well – apply the limit at the point of contempt. If your Honours adopted that, in my submission, you would remove the need to read them down and so remove the foundation for what would otherwise be a restrictive reading of the schedule.

**BELL J:** Can I just inquire, accepting the argument that you were advancing before you dealt with Justice Hayne's question and to which you have just returned, if one goes back to Chief Justice Gibbs in *Hammond*, at a point where a person facing a criminal charge is required to answer questions disclosing his or her involvement in the subject matter of the charge, it was considered that that was conduct very likely to prejudice the person in the person's defence. What is wrong with that proposition?

**MR DONAGHUE:** Your Honour, depending on what it means, there may be nothing wrong with it. This is a significant part of the submissions that I still - - -

**BELL J:** Yes, that you are about to go to.

**MR DONAGHUE:** That I am going to come to as to what exactly it was about the circumstances in *Hammond* that led his Honour to reach that conclusion because it is not entirely obvious what they were. It may be that it is sufficient, for example, that his Honour was referring to just the fact of having to disclose your defence and matters of that kind.

**BELL J:** Indeed. So let us start with that.

**MR DONAGHUE:** Well, there is some authority to suggest that where that is done pursuant to statutory authority, and Chief Justice Mason specifically addressed this question in *Hamilton v Oades*, and he said the right not to disclose your defence is basically a result of the absence of any obligation to do so. So that if a valid obligation to do so is created, as his Honour thought it was in *Hamilton v Oades*, then that was in his Honour's judgment - - -

**BELL J:** Is there not a slide there? A moment ago you were saying let us read the statute just with its ordinary natural meaning because one would not contemplate that it authorised a contempt. Then you say, well, it is not a contempt to force a person to show their hand because the statute authorises it.

**MR DONAGHUE:** Your Honour, that is why I said it depends exactly what his Honour means. It may be that that slide is there and that there is a certain core area of rights where, notwithstanding statutory authorisation, there would be a constraint. That is a possibility that emerges on the authorities.

**FRENCH CJ:** It is a power constrained by the prohibition against committing a contempt, is that right?

**MR DONAGHUE:** Well, save for this: Yes, but that a contempt would be committed only if the conduct that occurs creates a real risk for the administration of justice, and the authorities suggest that inherent within the application of that test there is some balancing of competing public interests, and they also suggest that statutory authorisation will be relevant to where that balance is drawn.

So it may be, to answer your Honour Justice Bell's question, that the statute informs the question of whether there is a contempt, but if, notwithstanding that statute informing that question, the balance still lies in favour of ordinary criminal procedural rights, then the limit would be reached and the contempt principle would operate to limit the coercive power. I have packed a lot into that answer and I will try to unpack it a little bit shortly. We do not submit that the statute necessarily answers the contempt question, but we do submit that it is relevant to the analysis.

**CRENNAN J:** What about a slightly separate point, I think, which is that the value that is placed on avoiding prejudice to a person by disclosure of defence being an accepted value, would that have any role to play in reading down - which was the phrase that has been used - the authorised investigation, or reading it in the way that Justice Hayne suggested? In other words, that contempt is not the only touchstone in relation to considering the scope of investigations under the Act?

**MR DONAGHUE:** Your Honour, to answer that I need, I think, to make this point. That there is running through the authorities an acceptance of an important distinction between pre and post-charge activity and it is, in our submission, clear beyond any reasonable argument that, prior to charges being laid, coercive powers could be exercised against someone who is to become – who it is envisaged may become a criminal defendant in a way that does require them to disclose their defence and that does require them to give answers that can lead to derivative investigations that produce further evidence.

So, the fact that somebody has been examined in a way that has required them to disclose their defence in and of itself cannot, in our submission, be problematic, because it is so well-accepted in cases going back to *Clough v Leaby* and *McGuinness* where there were Royal Commissions investigating the very question, has there been a crime committed by somebody in circumstances where that investigation was of its nature likely to generate just that kind of material.

So, if that is permissible pre-charge, the reason that it might not be permissible post-charge, we submit, is not about the ultimate fairness for the defendant, it is about the law of contempt, because the law of contempt kicks in at the point where charges are commenced and creates a fetter on what can occur that does not exist prior to that point. But that, we submit, is the only way that it is possible to rationalise the pre-charge cases with the post-charge cases in terms of what can be done pursuant to the statute.

**KIEFEL J:** And you say that the real risk for that test is removed by directions made pursuant to section 25A(9)?

**MR DONAGHUE:** It is at the very least substantially reduced by those directions.

**KIEFEL J:** And despite anything that might occur under subsection (10) because of subsection (11) to do with the CEO's power to revoke?

**MR DONAGHUE:** Well, those powers are similarly limited. The power to revoke is subject to the same constraint as informs the duty.

**KIEFEL J:** But that is what you say, the real risk which would otherwise exist is dealt with by those provisions.

**MR DONAGHUE:** In a context where the examiners made a direction of the kind that was made here, which expressly states that the material is not to be given to the prosecution or the investigating police, when applying a real risk test we submit you have to ask, "How is it that this investigation creates a risk?" If there is a direct use of immunity, as there is, and if there are orders in place that are designed to, and on the evidence, have had the effect – if there is no evidence, they have not had the effect of stopping the material getting to the people who might use it at the criminal trial.

**KIEFEL J:** Presumably, the direction means during the pendency of the trial and any appeal.

**MR DONAGHUE:** Yes.

**KIEFEL J:** Because one would ask otherwise what is the use of the material?

**MR DONAGHUE:** Well, that is why I have qualified my answer as I have, your Honour, because there is not anything that stops the Crime Commission using the answers that have been given to further its investigation of the high-risk criminal group, as long as the material is not given to the prosecution. So as long as it has no adverse effect on the trial because of the direction and the use immunity, the information can be used, so there is a point in permitting the ACC to conduct the investigation. It is not, we submit, akin to a - - -

**KIEFEL J:** There is something akin to a Chinese wall between the ACC and the investigating - - -

**MR DONAGHUE:** By force of the statutory direction made under 25A(9), yes. That is why we do not submit – I think your Honour Justice Crennan asked me before lunch about the relationship of this with the derivative immunity – it is not a full derivative immunity, because a full derivative immunity would stop anything the ACC finds from ever being used in a future way. Section 25A(9) does not do that, but what it allows the - - -

**CRENNAN J:** It is partial in relation to the prosecution.

**MR DONAGHUE:** Yes, because it stops the information ever getting to the prosecution or to the investigating police by definition they cannot use it for derivative purposes because they never got it. So, it does give them a protection that is akin to a partial derivative protection, but it does not deprive the investigation of the point, which as your Honour Justice Kiefel puts to me, if it could not be used for anything, why would you do it, but it can be. It can be used for the very purpose that I identified in my submissions this morning, of furthering the investigation of this group as a whole. It does not help you in the prosecution at all.

**KIEFEL J:** Which brings it back to the point which I know is moot here, which is, if that is its utility, it is a rather large sledge to take someone's immunity away for that purpose. But anyway, that is for another day.

**MR DONAGHUE:** But it maybe that it does them no harm, your Honour. There is not any material before the Court - - -

**KIEFEL J:** I would not go down that path.

**MR DONAGHUE:** If, your Honours, the test is the *Hammond* test – and if I could ask your Honours just to go back to *Hammond*. You were taken, I think, to page 198, which is the key passage, but if your Honours could just turn back to 196. Again, in Chief Justice Gibbs' judgment, at about point 3 down the page, his Honour records:

The ground of the application for the injunction is that the further examination of the plaintiff, and the making of the report, would constitute a contempt of the County Court before which the criminal proceedings

against the plaintiff are pending. To succeed in obtaining an injunction on that ground, the plaintiff must establish that there is a real risk, as opposed to a remote possibility, that justice will be interfered with –

His Honour goes on to say it must be a practical reality; a theoretical tendency is not enough. That is the test his Honour was applying over the page at 198 and it poses the question starkly: what is the risk? What is it exactly about what is being done that generates the risk? It is not, in our submission – except in the reasons of Justice Deane, the Court did not analyse the question on the footing that the fact of the inquiry itself constituted a contempt because the test that was being applied was forward looking. It was saying if you conduct this investigation, will that create a risk of something else in the future? Likewise, further down in 198 his Honour refers to it being “very likely to prejudice him in his defence”. That is, the prejudice had not already happened by reason of the fact of the investigation. It was foreseen that some prejudice might arise in the future.

Now, on the facts of *Hammond's Case* you had investigating police sitting in the room. The transcript of the examination was going to be given by the Royal Commission to the prosecution. So they are two major effects that are not present in this case by reason of the 25A(9) direction. But there were also other differences. It may be that while I am here I should deal with those. If your Honours look at the bottom of page 198 over to the top of the next page, it was acknowledged, four lines up from the bottom, the present inquiry was not simply limited to allegations against the plaintiff – which is the same point we make about a Crime Commission investigation – it was an inquiry into malpractice in connection with the export of beef. Then the Chief Justice said:

It would be neither necessary nor right to adjourn this inquiry because a prosecution had been commenced . . . But the public interest can be met, and the interest of justice at the same time safeguarded, if the inquiry proceeds to its conclusions without further examination of the plaintiff.

In other words, there was on this set of facts an inquiry that was taking place into a wider question of public importance that was nearly finished. There was only one witness still to be examined, it was Mr Hammond, and the balancing of public interests that was required came down in favour of saying, well, the report can happen but you cannot continue with Mr Hammond. That was a balance of public interest that was reached in the context of an investigation that was taking place under general purpose inquiries legislation, under the *Royal Commission Act*.

So, that Act did not itself contain any judgment by Parliament that a particular public interest should be elevated over any other public interest. The reason that I mention that, your Honours, is because one finds in the cases, particularly the cases about company liquidator examinations and bankruptcy, an emphasis on the fact that the purpose of that legislation was to authorise investigations to occur, even in circumstances where otherwise they would have been impermissible, and effect is given to that because it is accepted that it is open to Parliament to affect the weight to be given to competing public interests.

Whereas, in *Hammond* you did not have that because the Court was concerned with a general Royal Commission legislation and that point was picked up by their Honours in *Sorby's Case* which was decided only a few months later, it is (1983) 152 CLR 281, particularly on page 310 where your Honours will see in the joint judgment of three members of the Court it was emphasised that:

Here the State Act makes provision for Royal Commissions generally, without regard to the character of the

terms of reference as expressed in the relevant letters patent.

So one could not derive from that in the last four lines of that paragraph –

The point is that we are seeking to discover whether or not there is an intention in the statute to abrogate the common law privilege and that the statute is directed to Commissions generally, whether concerned with contraventions of the law or not.

**BELL J:** Why would one discern an object in the Crime Commissions Act, the Crime Commission being a body that has as its function the collection and analysis and dissemination of material about federally relevant criminal activity, a consequence when it is not stated in terms that turns the prosecution of a person for a serious criminal offence on its head? Why would one discern that purpose, having regard to the functions of this Commission?

**MR DONAGHUE:** Your Honour, we do not submit that your Honours should discern that purpose because we make two points about that. One, that within section 25A(9) itself one can see Parliament providing for the fair trial of a person - - -

**BELL J:** But that is only by not allowing the material that they have been compelled to disclose at the private examination at the trial. But it does not address the fundamental nature of criminal process which includes that it is incumbent on the prosecution to establish guilt without the accused being forced to show his or her hand. Now, that goes once you have got the person and their lawyer in the bowels of the Commission being examined on the very subject matter of the charge.

**MR DONAGHUE:** It goes insofar as the ACC investigators are concerned, but if necessary to avoid interference with the due administration of justice it does not go insofar as the people who are conducting the prosecution or the court. They may never find out about it.

**BELL J:** But that is to overlook the position of the accused person.

**MR DONAGHUE:** Well, the accused person knows that they have been examined but also knows, as the examiner made very clear in this case, that the things that were said would not be passed on in that way. While I do not deny the, I think, obvious proposition that an accused would prefer not to have been placed in a situation where they would be subjected to an examination of that kind, if the test is, as stated in *Hammond*, that there must be a real risk of interference with the administration of justice, we submit that the fact of the parallel inquiry itself does not have that character.

Both *Hammond* and, we submit, the *BLF Case* as well, are both cases where it was, in our submission, perceived as necessary by the court for there to be an impact on the subsequent proceeding of a practical kind – not a theoretical kind, but a real practical impact to constitute a contempt of court. If the effect of the use immunity under 30(5) of the Act and the direction under 25A(9) is to remove the things that would have caused that impact

then, we submit, the test is still there; the Commission is still operating subject to the law of contempt. But if it is able to conduct itself in such a way that it does not create that risk, it should not be restrained.

The public interest in allowing the investigation of the, we submit, very serious criminal conduct with which the ACC is concerned, of a kind that cannot be properly be investigated by others, should not be stopped or interfered with if it can continue without a real risk of interference with the criminal trial. That is the regime that this Act, in our submission, is designed to create – a regime that allows that public interest in investigating serious crime to be met without prejudicing the rights of an accused.

**HAYNE J:** Does that take account of whether the accused's choice at trial whether to give evidence is affected by the accused having earlier had to give answers to compulsory questioning?

**MR DONAGHUE:** Well, that dilemma, your Honour, is the same whether the coercive questioning occurred before or after charges are laid. Any requirement to give a prior account will have the potential to generate that difficulty. We submit that *McGuinness* and *BLF* and all of those cases demonstrate that there is not a problem with an inquiry of that type pre-charge.

**BELL J:** Come back then to contempt. Charges have now been laid. Why, in answer to Justice Hayne's question, is it not a real trenching on the accused's rights to require him or her to answer questions on the subject matter of the charge?

**MR DONAGHUE:** If your Honours take the view that that disadvantage is a forensic disadvantage – that tends to be the word that is used in the authorities – of a sufficient magnitude to outweigh the public interest in the Crime Commission being permitted under its statute to conduct investigations that are authorised then I think, your Honour, I would have to accept that that would be an effect capable of engaging the *Hammond* principle, but we do submit that in balancing that task full weight must be given to the Crime Commission's public purposes as well as to the accused's interests.

The other case that I should take your Honours to, which has not I think yet been mentioned, is the decision of this Court in *Hamilton v Oades*. That is a case decided a few years after *Hammond*. It is (1989) 166 CLR 486. This is a case involving, as your Honours will see if you look on page 487, at the beginning of the recitation of the procedural history, that Mr Oades had been charged with a number of offences – 19, I think – in connection with his status as a director of a company that was then in liquidation.

The liquidator had applied for an order that Mr Oades be compulsorily examined in public pursuant to the liquidator powers with which your Honours are no doubt familiar. Those powers are relevantly quoted by Chief Justice Mason at page 492 of the report. The key features of them for present purposes are, if your Honours look at subsection (2)(a), which is dealing with the circumstances in which an order can be sought – in the middle of (2)(a) – those circumstances include where it appears to a prescribed person that the person to be examined had been, amongst other things:

guilty of fraud, negligence, default, breach of trust, breach of duty or other misconduct –

Under subsection (3) the court could order that the person attend to be examined on oath. Under subsection (4) that examination was required to be held in public unless there were special circumstances that made it desirable to be held in private. The court was given, in subsection (5), a power to give directions as to the matter to be inquired into, and that was a provision of some importance in the way the case is argued, and then, for present purposes of particular significance, subsection (12) abrogating the privilege against self-incrimination and providing a use immunity only.

Your Honours will also see in subsection (14) a provision allowing a written record of the examination to be signed and a transcript of the examination to be used in evidence in any legal proceedings against the person. Just to diverge momentarily there, this case follows an earlier decision of this Court in *Mortimer v Brown* which concerned an earlier version of the companies legislation, which was held in *Mortimer v Brown* to abrogate the privilege against self-incrimination, but there was not a use immunity in the provision at that time, but there was an equivalent provision allowing the record of the examination to be used in evidence in any legal proceeding.

So, in that case this Court upheld a statutory regime that permitted compulsory public questioning overriding the privilege against self-incrimination where the answers were admissible in evidence with no protection, and that regime was upheld. Likewise in *Hamilton v Oades*, this regime was held to permit the questioning of a person after charge, notwithstanding the fact that the examination ordinarily was to take place in public and notwithstanding the fact that derivative use was plainly not restricted.

**BELL J:** In the context of legislation governing examinations in bankruptcy and the *Companies Act* and the long history of those - - -

**MR DONAGHUE:** Yes, indeed. That is why when I referred before in answer to your Honour's question about statute that the statutory purpose is important in this context and in the liquidator cases. It is clearly emphasised repeatedly in those cases. We submit similarly in the context of the investigation of serious crime of a kind that the police cannot effectively investigate the public interest is at least as great as the public interest in a liquidator inquiry.

In this case, what had happened was that the inquiry had traversed into territory where it overlapped with the crimes that had been charged, and Mr Oades had sought an order that he not be further examined on subject matter that overlapped with the pending charges. That order was refused. An appeal from the Deputy Registrar to a judge was refused, but on further appeal to the Court of Appeal, the Court of Appeal had made an order of that kind restraining any further examination pending charges. In this case, this Court by majority overturned that decision and permitted the examination to continue, notwithstanding its overlap with the charges that had occurred.

The argument in the case featured, as one would imagine, on *Hammond* and the *BLF Case* and the same authorities that your Honours are now addressing, and the majority took the view that the Act having abrogated the privilege against self-incrimination, the Court should not reinstate it, in effect, by orders that reintroduced a level of protection that Parliament had chosen to remove. So, if your Honours look in the judgment of the Chief Justice at page 494, his Honour from the bottom of 493 notes that:

The risk of injustice with which the Court of Appeal was concerned was –

the risk of derivative use of the evidence, that is the effect of those two quotes at the top of 494. Justice of Appeal Clarke who gave the leading judgment in the Court of Appeal had said that:

because a person charged is not ordinarily required to submit to pre-trial interrogation, to reveal his defences or to produce documents under compulsion, questions asked of that person pursuant to s. 541 may lead to the giving of incriminating answers in respect of matters central to the charge which may result in significant prejudice to the person charged and constitute “a real interference in the administration of criminal justice”.

His Honour then accepted in the next paragraph that those consequences might follow:

To the extent only that under the section rights of an accused person are denied and protections removed, an examination may even amount to an interference with the administration of criminal justice. But it is well established that Parliament is able to “interfere” with established common law protections, including the right to refuse to answer questions the answers to which may tend to incriminate the person –

Then after a discussion of *Mortimer v Brown* on 495, his Honour said in the middle of page 496 that notwithstanding the absence of any protection from derivative use – I am reading now from halfway down the page:

by enacting s.541 without providing such specific protection, Parliament has made its legislative judgment that such action is not required and has limited specific protection to the possible consequences of direct use in evidence of the answers of the witness, thereby guarding against the possibility that the witness will convict himself out of his own mouth – the principal matter to which the privilege is directed. Thus the legislative resolution of the competition between public and private interest is to provide for a compulsory examination and to give specific protection in relation to the principal matter covered by the privilege but not otherwise –

His Honour then dealt with disclosure of defences in the pages that follow including and in particular at page 499.

**CRENNAN J:** Page 498, too, there is an important passage at about point 7 because part of the background to the Court’s reasoning was the power under section 541(5) which his Honour refers to at about point 7 and this is a distinction, I think, from 25A(9) that the Court had power to deal with and restrain questions directed to compel the examinee to disclose defences or to establish guilt, if that might constitute an abuse of process. That is a very different statutory regime.

**MR DONAGHUE:** Your Honour, that section was at the heart of the argument in *Hamilton v Oades* because that was said to justify the approach that the Court of Appeal had adopted. But what the majority held was that that power under subsection (5) could not properly be used to protect a witness from the consequences of derivative

use of their evidence being available or generally from the consequences of the overriding of the privilege against self-incrimination.

**CRENNAN J:** That is right, but that is a discrete point to be distinguished from a compulsion to reveal a defence.

**MR DONAGHUE:** Well, his Honour at the bottom of page 499 describes the “so-called right”, he calls it:

The so-called right not to disclose a defence is the result merely of the absence in ordinary circumstances of any statutory requirement that defences be revealed.

He refers to the provisions about “alibi defences” being required:

The possibility of disclosure of a defence is, accordingly, not a matter in respect of which a witness needs to be protected, except perhaps in the most exceptional circumstances.

I accept that that power was there but this case is authority for the proposition that the power should not be exercised to remove consequences of the abrogation of the privilege. It is a case that in its result upheld an examination of a person who had been charged with criminal offences that occurred after those charges in public without derivative protection. So, in our submission, it stands in the way of an interpretation of *Hammond* that says that such an investigation is necessarily impermissible. It cannot be, having regard to *Hamilton v Oades*. There must be something specific.

Now, your Honours, I have passed to the heart of this argument without making a point that I should perhaps have made in a preliminary way at the start of my submissions on question 2, which is that we submit that interesting as all of those questions are they are not questions that go to the validity of Part 2 of the *Australian Crime Commissions Act*. They go to the question of whether or not particular questioning, in particular circumstances, constitutes a contempt of court that should be restrained.

But, unless your Honours were to read the Act as authorising questioning after charge in circumstances where such questioning necessarily, in every case, would be impermissible, there could not be a question of the validity of the part. That is the question that your Honours are asked to answer. Now, I accept of course that the question is phrased including the words “to that extent”, so the validity question arises only to the extent that the Act authorises questioning after charges have been laid.

But our submission is that while the Act does authorise questioning in those circumstances, the extent to which that questioning is permissible is controlled by principles of contempt, and if your Honours accept that, the Act is valid in its entirety. It is just that it operates as *Pioneer Concrete* suggested, subject to the law of contempt.

So for that reason, your Honours, we submit that your Honours do not actually need to decide the full extent to which *Hammond* and *Hamilton v Oades* would or would not operate to allow particular questioning to occur. It is a little difficult to do so in the absence of questions that squarely – evidence of particular questions that raise a particular issue. It is sufficient, in our submission, to hold that the Act is valid if interpreted subject to the law of contempt in the way that we have urged. Unless the Court has anything further, those are our submissions.

**FRENCH CJ:** Yes, thank you, Mr Donaghue.

**MR SEXTON:** If the Court pleases? There is only one point about which we wanted to say something and otherwise we are content to adopt the Commonwealth submissions. The one point concerns the role, if any, of Chapter III in these kinds of proceedings. That is, proceedings relating to investigatory hearings after the laying of charges.

We raise the question of Chapter III in the context here, where there are a number of challenges that the plaintiff could make, in this kind of situation that a plaintiff could make in these circumstances. One, is to the – as we found earlier this morning – to the ambit of the terms of the investigation. Secondly, the question could be raised of whether the statutory protections that are set out in, for example, this case in the relevant provisions of the legislation have been properly complied. That is obviously a question of statutory construction and to some extent the discretion of the particular body in question.

Thirdly, there are the limitations that are imposed by the law of contempt or whether it is termed abuse of process or perhaps even more generally the right of a trial court to ensure that the accused person receives a fair trial to go back to decisions like *Jago* in this Court. They were all probably variants on the same concept and, of course, there is a history going back for many years of challenges to civil proceedings, chiefly disciplinary proceedings where there are parallel criminal proceedings that have been instituted. In accordance with the submissions of the Commonwealth, we would say that the relevant statutory provisions authorised the Commission to conduct an examination, but in accordance with the terms of the statute.

But nevertheless, subject to that general concept whether it be termed the law of contempt, abuse of process, the right to a fair trial, and Mr Donaghue took your Honours to a statement to that effect by Justice Mason in *Pioneer* at 473. There is a statement to similar effect in *Sorby* – I do not need to take your Honours to these in detail – at 307 by Justices Mason, Wilson and Dawson.

So, that really raises the question, we would say, of whether in this kind of case one could ever get to a Chapter III question. I think Justice Kiefel suggested before lunch that one might, but it is not easy, in our submission, to imagine a situation where that would occur. It would really only arise in a situation where it was possible to make a finding that there had been an interference with the judicial process.

Mr Wendler also before lunch mentioned the decision in *Liyana*, a rather dramatic example in its own way, although if I may say so the Privy Council perhaps never really spelt out in that decision quite what the interference with the judicial process was. But that is an argument that has been made on occasions in this Court. *Bachrach* was perhaps such a case and, more recently, *Crumphorne* was an argument that was rejected in both those cases.

But we would say that if one looks at this in the context of that concept of contempt, abuse of process, right to a fair trial governing normally the statutory powers of bodies like the Commission that it would be difficult to envisage a case where one would ever get to an application of the principles of Chapter III. We would say that certainly, in the case that is currently before the Court, that there is no occasion for your Honours to consider the principles underlying Chapter III and that this case would be decided quite separately from those. If the Court pleases.

**FRENCH CJ:** Thank you, Mr Solicitor. Solicitor-General for Queensland.

**MR SOFRONOFF:** Your Honours, in our respectful submission, it is important in this case to distinguish between two realms of discourse. The first concerns the respect in which the criminal justice system is, in this country, adversarial. That proposition is manifested in a number of ways. One way is that the Crown in general must prove the offence charged without any contribution from the accused person. Another facet is the privilege against self-incrimination.

That must be distinguished, in our respectful submission, from the laws which are designed to protect the integrity of the administration of criminal justice, of justice generally but, relevantly, criminal justice. The laws and the doctrines in that respect include the law of contempt, the offences against perverting the course of justice, perjury offences. It includes, in our submission, the immunity of judges from suit to protect them from being intimidated into partial decisions, and it is protected by the implications that this Court has drawn from Chapter III. But the two discourses are distinct. Perhaps they overlap in places but - - -

**CRENNAN J:** Abuse of process in the second group, is it?

**MR SOFRONOFF:** Abuse of process in the second category, yes, your Honour. But they must be kept distinct, in our respectful submission, in considering the validity of the statute in this case because it is easy to in one sentence speak about both without appreciating that the two overarching principles are distinct and that the laws that pertain to each of those sets of principles are equally distinct.

As to the adversarial system and self-incrimination as a facet of it, the privilege against self-incrimination can of course be varied. It can be abrogated, and it has been validly varied and abrogated in many different ways not only in commission of inquiry statutes like this one and others in other States but also by the requirement to provide notices of alibi by which, to use the expression that has been used today, you are required to disclose your hand to the prosecution. It has been abrogated by the obligation in some States for expert reports to be relied upon by an accused to be given in good time to the prosecution.

In considering the administration of the criminal justice system and the extent to which it is generally adversarial, it is, in our submission, important to remember that it is not perfectly adversarial and aspects of its adversarial nature can be eliminated. You can be made to show your hand to your adversary and there is no principle of law, of constitutional law, that a statute cannot be passed to compel the cooperation on the part of the accused with the prosecution. Therefore, in our submission, a law which compels an accused to answer a question that might tend to incriminate him or her will not, without more, be invalid. It might be invalid for other reasons but it will not be invalid simply of its nature by reference to any overarching principle.

But a law which interferes with the administration of justice will of course collide with Chapter III and must deal with Chapter III. The law might still be valid because in the balancing process this Court might conclude that the law is valid, notwithstanding that it impinges upon some aspect of the traditional function of courts. Nevertheless, it will have to deal with that. Of course, cases – coming more particularly to this case – where a law compels an answer that might tend to incriminate a person might interfere with the administration of criminal justice and therefore raise a question of contempt, if not other questions.

It is a case like that with which this Court was concerned in *Hammond* and in *Hamilton*, and not any overarching constitutional principle which precluded the Parliament passing a law which would compel an answer to an incriminating question. This Act, to which I will come in a moment, does abrogate the privilege against self-incrimination and to that extent it impinges upon the right which formerly existed against any requirement to answer such question. But it does not authorise and it does not cause, it does not threaten, any contempt.

Your Honours have the oral outline, as it is called? *Sorby v The Commonwealth* is authority for the proposition first enunciated in *Huddart Parker v Moorehead* that the privilege against self-incrimination is not an inherent and immutable part of the system of trial by jury. It is not at least because the system of trial by jury, as one of their Honours pointed out, predated the arising of the privilege, so it can be abrogated by statute, as it has been in this case.

The only reasoning, in our submission, why a court would interfere when a person is required in accordance with a statute to answer such a question is if the second overarching principle is offended, and that is to say the administration of justice is going to suffer an interference which is an unlawful interference and, relevantly here, if what is about to happen will prevent a fair trial being held.

We have pointed out in our written outline that *Hammond* was, at least by Chief Justice Gibbs, considered to be a case where, in its circumstances, investigating police were going to be present to hear the answers of Hammond. A contempt was threatened by denying Hammond a fair trial. It is true that Justice Deane adopted a wider principle to the effect that any requirement to answer an incriminating question is itself impermissible. But with respect to his Honour and to Justice Murphy, who took a similar approach, it is impossible to identify, in our respectful submission, why that should be so, because in the circumstances of this ACC inquiry whatever the plaintiff says to the examiner is by virtue of a statutory order going to remain secret as between the plaintiff, his own lawyer, the examiner and whoever else was permitted to hear the evidence, no doubt staff of the Commission.

The Commission itself is a wholly investigatory body. Its sole function is to make inquiry and to investigate and to obtain data with a view in due course to passing it on, but not – section 25A(9) says so – if to do so might constitute a contempt of court.

Could I ask your Honours to look at section 25A(9) because it is an example – rather, it is a provision which goes further than seeking to prevent that which a court would order to be prevented, namely, a contempt, a threatened contempt. But it seeks to protect wider than that because of the use of the word “might” in the last sentence:

The examiner must give such a direction if the failure to do so might prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been –

Could I pause there? The test in *Hammond* that was enunciated by Chief Justice Gibbs was that there must be a real risk of prejudice, not a potential or a theoretical risk but a real risk. This provision would require a direction to be given not where there is a real risk but where failure to do so might prejudice, which we apprehend is language which requires the step to be taken at a wider point than the strict legal doctrine would have it.

Secondly, and importantly, not only must it be taken in order to prevent prejudice to the trial of a person who has been charged, which is what the common law protects, but it is to protect the fair trial of a person who

may be charged. The common law does not go that far. The effect of that section, in our respectful submission, and with respect to those who drafted it, it is a much more effective way to prevent against the use of any kind – direct, indirect or derivative, or even by way of intimidation – of information than any provision which simply directed its attention to admissibility or tried, by drafting, by choice of language, to prevent derivative use. A direction of that kind, if complied with – as one must assume it will be – will absolutely prevent any forensic or legal disadvantage to an accused person.

Your Honour Justice Hayne asked the question: what about the question whether you are going to give evidence or not? In our submission, how would the fact that I have confessed in a secret confessional affect my decision whether I will give evidence or not? Whether I will give evidence or not will depend upon the conduct of the trial, which will know nothing about my secret confessional, and upon factors – forensic factors and legal factors – in the trial but could not possibly be affected by the fact that I had previously made a clean breast of it to another person who is prohibited from disclosing that fact.

**FRENCH CJ:** There are some scenarios in the Western Australian submissions, I think, although they are for the purpose of discounting.

**MR SOFRONOFF:** I will let my learned friend deal with those, your Honour.

**HAYNE J:** Confession is always good for the soul, Mr Solicitor. We understand that.

**MR SOFRONOFF:** It is also good for the - - -

**HAYNE J:** And good for the body politic, yes.

**MR SOFRONOFF:** In the case of this Act, your Honour, because of the purpose for which such a confession can be extracted and the restraints upon the use of that confession, it is good for the body politic and does not result in any ill to the body politic. There is no balancing exercise required here, because what is said at the ACC must stay within the ACC until the trial is over.

So, in our respectful submission, if one has regard to what must lie at the heart of any person in the position of the plaintiff here in making a complaint about being obliged to reveal matters that he would otherwise not be required to reveal, one must have regard to the aspect of the case that it is a question directed to whether a contempt will result by reason of the absence of a fair trial.

That cannot happen here because even if a direction was not made wrongly that decision would be subject to review. If contrary to the direction publication resulted and as a consequence a forensic advantage was to be occasioned to the prosecution then the Court has other remedies to prevent that including to exclude evidence obtained wrongly or by staying the trial permanently. Those are our submissions, your Honours.

**FRENCH CJ:** Thank you, Mr Solicitor. Solicitor-General for South Australia.

**MR HINTON:** If the Court please. Step 1, we say in answering the second question, is assisted first by identifying the relevant constitutional principle and we have attempted to set it out in paragraph 1 of our oral outline. If I could quickly take your Honours to *Nicholas v The Queen* 193 CLR 173 and in particular to the judgment of Justice McHugh at paragraph 111, there, we say, at perhaps a higher level of abstraction as indeed generally today the constitutional principle has been dealt with, is the very crux of what we are talking about. That then requires that we identify what is actually being done in the exercise of judicial power, the judicial power with which potentially the acts of the executive may interfere.

We provide your Honours at paragraph 2 of our outline with a number of references again in *Nicholas* to what we are concerned with here. Significantly, in my submission, at paragraph 23 of the Chief Justice's judgment, there is set out conveniently what we are talking about in the context of this case, what is it that is encapsulated in the exercise of judicial power in the judgment and punishment of guilt. Significantly, there, the Chief Justice points to it includes the ancillary powers available or required to be exercised by a judge from time to time.

It does not really assist then to talk about the fact that the privilege against self-incrimination can be abrogated, we all know it can, but the fact is that in the exercise of judicial power at the trial, it has not. That then leads us to the question of what is the asserted interference, our third point. The asserted interference in this case is the denial of an advantage that the normal exercise of judicial power provides to a defendant, namely the privilege against self-incrimination and its relative, the right to remain silent.

So we are then driven to perhaps cases such as *Pioneer Concrete*, *Hamilton v Oades* and *Nicholas v The Queen* and the various paragraphs we have set out there, where the very nature of the advantage, potentially denied by the compulsory questioning, such as in this case, is set out. I commend to your Honours, in particular, the judgment of the Chief Justice Chief Justice Mason in *Hamilton v Oades* 166 CLR 493, 494 where he addresses, in particular, what is denied in a case such as this. That is important, in my submission, in answering a question that your Honour Justice Bell asked, I think on more than one occasion looking in particular at whether or not just by compelling an answer it is sufficient to interfere.

In my submission, it is not because by virtue of the examination being insulated it does not interfere with that exercise of judicial power and the ancillary powers and the advantages provided to a defendant, in the context of the criminal trial. Indeed, my learned friend the Solicitor-General for Queensland has just addressed the Court in that regard. Provided it is insulated there is no interference. The normal advantages and disadvantages remain in place. Then we come back to *Hamilton v Oades* and Chief Justice Mason. We have no interference with the exercise of judicial power. We have – to look at it through the lens of contempt – no contempt.

Having identified the exercise of judicial power and the asserted interference, in my submission, you then look at the question of construction and whether or not the *Australian Crime Commission Act* here provides the executive with a power that is one capable of interfering with the exercise of judicial power as, in the context of the criminal trial, will be exercised. We provide your Honours with paragraph 4 of our outline with a number of important principles to be borne in mind, as part of the construction exercise. We adopt what the Commonwealth said on the question of construction.

We refer your Honours, in particular, although it is repetitious, to the point made by Justice Mason in *Pioneer Concrete* at 473 as to the construction point, taking into account that the legislature would not authorise someone to commit a contempt. Indeed, the judgment of Justice Murphy at 475 is to the same effect. I turn to point 5 of

our oral outline. Your Honours have been taken through that - the various aspects of the Act - which as a matter of construction, would indicate that it is capable of construction consistent with an exercise of the power that does not interfere with the trial.

I need say nothing more about point 6. Add to that what my learned friend, the Solicitor-General for Queensland, said about the power to stay; indeed, the power to exclude evidence if for some reason the exercise of the power in section 25A(9) proves inadequate in a given case.

Can I come though quickly to paragraph 7 in our oral outline? If your Honours accept the construction advanced by the Commonwealth, which we support, then no constitutional question arises, as my learned friend, Mr Donaghue, said. In that regard, we find ourselves in a position again – I say again because I am echoing my submission in the *PSA Case* – similar to that in *Wotton v Queensland* 86 ALJR 246. If I could take your Honours quickly to that case – I am sorry, your Honours, it was not on our list, admittedly, but I did check and it was on someone’s list – my mistake. Importantly, however, it is paragraphs [21] and [22] of the judgment and in particular [22]. It reads as follows:

The Commonwealth submitted that: (i) where a putative burden on political communication –

it was an implied freedom case –

has its source in statute, the issue presented is one of a limitation upon legislative power –

We have already said the Commonwealth and, indeed, South Australia that part of our submission is the limitation on legislative power implicit in – to be derived from the implication that the legislature would not empower the executive to commit a contempt –

(ii) whether a particular application of the statute, by the exercise or refusal to exercise a power or discretion conferred by the statute, is valid is not a question of constitutional law –

Here we have the discretion vested in the examiner, we have the various powers in section 25A(9) that may be exercised, we have powers that can be exercised to ensure that there is no interference with the exercise of judicial power. We are, therefore, not involved with a question of constitutional law, but with a question of the exercise of statutory power and, if necessary, its proper exercise. If it has not been exercised properly then, just as in *Hammond’s Case*, the officer of the Commonwealth is subject to the constitutional writs and, indeed, an injunction may be obtained to compel him to act appropriately in order that no contempt could possibly be committed. If the Court pleases, those are the submissions for South Australia.

**FRENCH CJ:** Thank you, Mr Solicitor. Solicitor-General for Victoria.

**MR McLEISH:** If the Court pleases, our submissions are directed to the second question. They therefore assume an affirmative answer to the question of construction in question 1, but as I hope to demonstrate, the

constitutional argument may also inform the answer to question 1 and support the affirmative answer which the Commonwealth has put forward. From a constitutional perspective the question, in our submission, is that articulated by Justice Gaudron in *Nicholas v The Queen* 193 CLR 173 at paragraph 74. It is a familiar passage I do not think I need to take your Honours to - the question being whether the ability of Chapter III courts to determine criminal guilt or innocence by means of a fair trial according to law has been impaired.

That emphasis on a fair trial according to law has an institutional focus, it is submitted, that is, on the courts and on their processes, and our submission is that the way in which the Act relevantly operates protects the institutional integrity of the courts and their processes and thereby their ability to ensure a fair trial according to law. The first way that that is done, it is submitted, is because of the limited purposes for which an investigation and an examination can occur under the Act itself. Section 24A permits an examiner to:

conduct an examination for the purposes of a special ACC operation/investigation.

There are some other provisions I should mention as well. Section 28(1) provides that an examiner:

may summon a person to appear before the examiner at an examination to give evidence and to produce documents

–

but subsection (7) says –

The powers conferred by this section are not exercisable except for the purposes of a special ACC operation/investigation.

Both those provisions, 28(7) and 24A, confine the purposes for which the statutory powers can be exercised and, we would submit, preclude an examination being held for the purpose of advancing a pending prosecution as distinct from for the purpose of investigating the offences committed by others. We did not understand Mr Donaghue to submit differently to that. That is the first way in which the Act serves to protect the ability of courts to conduct a fair trial according to law.

The second way, about which I do not wish to say very much, is section 25A(9) itself which of course the Court has been taken to by several of those who have gone before me. If despite those features of the Act a real risk does arise to a fair trial, as the Court has heard, the traditional powers of contempt are available, and as my learned friend the Solicitor for Queensland submitted, the Act goes further in the test that it provides in subsection (9) than the common law would otherwise have done.

But the ability of courts to protect their processes by means of the law of contempt do not exhaust the avenues that are available to the courts. We mention the ability to exclude evidence. In particular, we refer to sections 135 to 138 of the *Evidence Act*, the wider inherent power to stay a criminal trial, including on the basis that it cannot proceed fairly, the ability of courts to protect against an abuse of process, and we have referred in the outline to *Dupas v The Queen*, which I will not take the Court to but the reference is 241 CLR 237 and in particular at paragraph 15.

The ability of an accused to raise any of those measures, and of course, there is *Hammond*, itself, and the law of contempt, which I will not say more about, but the ability of an accused to approach a court seeking the exercise of any of those powers to ensure a fair trial or to prevent a trial if there cannot be a fair trial is itself facilitated by the Act. Can I take the Court firstly to section 25A(12). This and the following subsection are headed “Courts”. Subsection (12) provides that if:

- (a) a person has been charged with an offence before a federal court or before a court of a State or Territory; and
- (b) the Court considers that it may be desirable in the interests of justice that particular evidence given before an examiner . . . be made available to the person or to a legal practitioner representing the person -

The Court may give to the examiner or to the CEO a certificate to that effect and if that happens, the examiner or CEO must make the evidence available to the Court. That is part of a process which enables the Court to go behind what has been done within the walls of the Commission, according to a test of what is desirable in the interests of justice.

**FRENCH CJ:** Because justice may assist either the prosecution case or the defence case?

**MR McLEISH:** It is submitted it primarily appears to relate to exculpatory evidence. In other words, if – it could be either, I do not need to say primarily, your Honour. The interests of justice are not confined in that scenario.

**BELL J:** But if evidence had been given that was the subject of a non-publication order by someone confessing to an offence and in some way it came to the attention of those acting for a person charged with that offence an application could be made under the section for the material to be - - -

**MR McLEISH:** Yes, an application could be made. It has got to be read with section 29B which is the offence provision, providing firstly that where a notation has been made under section 29A which is essentially a notation prohibiting disclosure of a summons or notice. Firstly, the existence of that summons or notice or information about it or the existence or any information about any official matter connected with them must not be disclosed under subsection (1). “Official matter” is defined in subsection (7) to include, among other things, court proceedings. There are important exemptions to that non-disclosure offence. Subsection (2) relevantly provides that:

Subsection (1) does not prevent the person from making a disclosure:

...

- (b) to a legal practitioner for the purpose of obtaining legal advice or representation relating to the summons, notice or matter -

Then, in subsection (4):

A person to whom information has been disclosed, as permitted by subsection (2) or this subsection, may disclose that information:

...

(b) if the person is a legal practitioner – for the purpose of giving or obtaining legal advice or legal representation, making representations, or obtaining assistance under section 27, relating to the summons, notice or matter –

That would enable a person to tell their legal practitioner about the examination and for that legal practitioner to make further disclosures for the purpose of making representations et cetera. In that way, the secrecy provisions of the Act preserve the ability of an accused to approach the court seeking the exercise of any of the powers that I have mentioned.

Because those powers of the courts to ensure a fair trial are left intact, it is submitted that there is no question of invalidity in relation to these provisions. Furthermore, because the powers are intact we submit that the Act should be read as empowering the Commission to act in accordance with its terms but subject to the law of contempt and the other powers which might be used by a court, along the lines of what was said by Justice Mason in the *Pioneer Concrete Case* at page 473 to which the Court has been taken.

I can give the Court one final reference to the judgment of Chief Justice Spigelman on behalf of the New South Wales Court of Appeal in *NSW Food Authority v Nutricia Australia Pty Ltd*(2008) 72 NSWLR 456. At paragraph 119 on page 485 his Honour expresses and explains his agreement with the approach of Justice Mason, as he then was, in the *Pioneer Concrete Case* in a similar context. If the Court pleases.

**FRENCH CJ:** Yes, thank you. Solicitor-General for Western Australia.

**MR DONALDSON:** If your Honours please, we have not done an outline of oral submission, your Honour, because it would have taken your Honours longer to read that than it will for me to make my submissions. I have one short submission to make, your Honour. It relates to the question of the real risk to the fairness of the trial or an examination pursuant to these statutory provisions.

My learned friend, Mr Wendler, was asked by the Chief Justice this morning what were the risks as apprehended by him. My learned friend identified three, two of which have been dealt with by others in submissions. The first of them was that the material could be used for a derivative purpose. The second contention of my friend was that it was for the examiner to determine the effect upon a fair trial. I think, your Honours, my friend was there referring to the provisions of section 25A(9).

All that needs to be said, your Honour, about that is that at paragraph 19.3 of their submissions the Commonwealth had accepted that that power would be subject to review. So it would be a matter that could be considered by a court in the event that that exercise of power miscarried. The third contention which my friend

advanced was the impact of these statutory powers upon the accusatorial nature of the trial, and that has been dealt with already.

There was a further matter, your Honours, that we sought to identify in our written submissions at paragraph 21 and it is the matter which follows from a question of Justice Hayne earlier today. I must say, your Honour, on the basis that my friend, Mr Wendler, has not taken it up, this fear is probably more imagined than real. But the scenario there outlined, your Honour, as to a possible risk to the fairness of a subsequent criminal trial is, of course, the prospect that a person may be discouraged from giving evidence in their own defence on the basis that they have previously been required to give evidence at the examination.

That discouragement could emerge from the fact that they had earlier innocently provided an incorrect answer to a question at the examination and the prospect that that incorrect answer could be the subject of a charge for giving false evidence under section 30(4), which might give rise to a discouragement to wish to give evidence, truthful evidence, in their defence at the subsequent criminal trial. We have posited to the extent that that might be thought to be a real risk to the substantive criminal trial. We have posited, your Honours, a response to that which, again, would be an order made pursuant to section 25A(9).

There is, of course, another answer to that and that is that if that scenario emerged then that would constitute a contempt. That is, the risk of a person being unable to give evidence in their own defence at the trial would present a real risk to the fairness of that trial and an application prior to trial could be brought on in relation to that. One would have thought that the risk of that to those prosecuting the substantive matter would have some effect upon their enthusiasm for engaging in these sort of pre-trial examinations.

Can I finally, your Honours, draw your attention to one further matter, and that is in *Hammond*, your Honours, in the judgment of Justice Deane – simply to bring to your Honours’ attention page 207. That is 152 CLR 188 at page 207, at about point 7, and that is the large paragraph on that page. Your Honours will see that his Honour there referred to, as it were, the combination of factors which gave rise to injustice in that case. His Honour referred to the fact in *Hammond* that, indeed, Mr Hammond had been charged with a refusal to give evidence.

That is a factor, obviously, which is different to the circumstances of this matter. Of course, the principal difference with *Hammond* is that in *Hammond* the confidential evidence was able to be seen by investigating police officers. It is not clear from his Honour’s judgment how important that particular factor was to his Honour’s conclusion, but nonetheless it is a matter which his Honour identified. May it please the Court.

**FRENCH CJ:** Mr Solicitor, in future, unless you intend to get up and say “I have nothing to say”, a short oral outline, however short, would be helpful, thank you.

**MR DONALDSON:** I do apologise, your Honour.

**FRENCH CJ:** Yes. Yes, Mr Wendler.

**MR WENDLER:** During the course of submissions, I think both your Honours Justice Hayne and Justice Kiefel inquired about the existence of the originating process or a court attendance notice in relation to X7. We have raised the court attendance notice that came into operation, and can I hand up copies?

**FRENCH CJ:** Have you seen this, Mr Donaghue?

**MR DONAGHUE:** I have seen a version of it, your Honour. We are not quite sure exactly what its status is, given that it was not included in the special case.

**FRENCH CJ:** Would you object to it being handed up?

**MR DONAGHUE:** There are several versions of this document, some of which name co-conspirators and some of which do not. Apparently, the names were substituted at some later time. I do not yet know. I have not been able to trace through the provenance of - - -

**FRENCH CJ:** We do not know whether this is the first such document that came into existence, because there may be successive notices of attendance, may there not?

**MR DONAGHUE:** Or amendments, I think, marked on the document at subsequent times, I think is what happened. This looks like the original, and I do not object to your Honours being given it.

**MR WENDLER:** The names have been removed - - -

**FRENCH CJ:** Just a minute, Mr Wendler. I think it would be preferable if whatever document is to be provided to us be an agreed document so there is no dispute as to its provenance and where it stands in the sequence of events because as I understand it, there are a sequence of these things.

**MR WENDLER:** I beg your pardon, I thought my opponents had the very document that I have, but of course I will circulate it or ensure that there is agreement in relation to the document and the document going to the Court.

**FRENCH CJ:** Yes, all right.

**MR WENDLER:** There is another document also which is a chronology concerning the curial process from the point when X7 was charged up to when he was interrogated. That is a document my friends do have. I will put it in the same category just in case one of my friends wish to say something about it, but they have had that document since yesterday. It is just an uncontentious document which sets out some uncontentious - - -

**FRENCH CJ:** Is it an agreed chronology?

**MR WENDLER:** Well, I expect it is. I circulated it yesterday and no one has approached - - -

**FRENCH CJ:** Perhaps we can find out. Mr Donaghue?

**MR DONAGHUE:** We were given it yesterday. I understood my friend was not intending to provide it to the Court. It contains many facts that are not in the special case and it is not an agreed document.

**FRENCH CJ:** Yes, all right. Well, I think then that can fall into the same category as the other one.

**MR WENDLER:** Yes, all right. Can I just address the question that your Honour addressed to counsel appearing for the Commonwealth, and that was the question concerning the legal validity of the statutory instrument and the legal - - -

**HAYNE J:** I put a question about validity, Mr Wendler. I put a question about the scope of operation.

**MR WENDLER:** I withdraw it - the scope of its operation, which ultimately is referable to the exercise of the authority that was exercised pursuant to it. Overnight I seek leave to amend – I am making the application now – to amend the case stated, in order to express the particular question that concerns the Court, in relation to the ambit or the scope of the authority of the instrument. So, I am seeking leave to amend the case stated to deal with that.

**FRENCH CJ:** Have you given notice of your intention to Mr Donaghue?

**MR WENDLER:** Yes, I have spoken to a number of my friends over the luncheon adjournment about it.

**FRENCH CJ:** Do you have a draft?

**MR WENDLER:** I have a hand-written draft and I can read it on to the record if necessary, but - -

**FRENCH CJ:** Just a minute. Mr Donaghue, have you seen a draft?

**MR DONAGHUE:** My friend read his hand-written draft to me once just before argument started, so I am not in a position to have a final response to it.

**FRENCH CJ:** Yes, just a minute. The view of the Court is that it is too late at this stage to engage in that exercise, Mr Wendler. It is either within the framework of the existing questions or it is not, and you really have to deal with it on that basis.

**MR WENDLER:** Yes, thank you. A submission was made, both by counsel appearing for the Commonwealth and also the Solicitor-General for the State of New South Wales and, indeed, I think one other counsel, that this was not a constitutional law matter and should be resolved, with reference to other principles. The submission,

as I understood it, was effectively saying or suggesting that there is no such thing as a due process right within the terms of Chapter III of the Constitution.

There is, of course, explicit due process rights in Chapter III itself, section 80 being one of them, being both a procedural and a substantive process right. There are a number of cases historically in this Court where there have been statements concerning or identifying what might be described as due process rights, in particular, the statements by Justices Deane and Gaudron in *Dietrich* concerning the constitutional entrenchment of a fair trial in relation to the exercise of the judicial power of the Commonwealth. To the extent that the relevant legislation in this matter, in our respectful submission, does interfere with a curial process and interfere in the ways I have already described there is a constitutional due process interference and, in my respectful submission, that is made out by virtue of the legislation committing to a non-judicial authority, the determination of whether or not the person, in this case *X7*, Chapter III trial would be fair.

There was a number of submissions made concerning this Court's authority in *Hamilton v Oades*. *Hamilton v Oades* and, indeed, *Hammond* are cases which can be, so far as the principles that emerge in the two cases, can be contrasted but not legally compared, in my respectful submission. It is important to recall that in *Hamilton v Oades* it was the Court that had control over the fairness of that process. In circumstances of this matter, it is a non-judicial officer that has control, not a court. If the Court pleases.

**FRENCH CJ:** Yes, thank you, Mr Wendler. The Court will reserve its decision. The Court adjourns until 10 o'clock tomorrow morning.

**AT 3.57 PM THE MATTER WAS ADJOURNED**

# HIGH COURT OF AUSTRALIA

FRENCH CJ,  
HAYNE, CRENNAN, KIEFEL AND BELL JJ

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X7

PLAINTIFF

AND

AUSTRALIAN CRIME COMMISSION & ANOR

DEFENDANTS

*X7 v Australian Crime Commission*

[2013] HCA 29

26 June 2013

S100/2012

## ORDER

*The questions asked in the Case Stated dated 23 August 2012 be answered as follows:*

1. *Does Div 2 of Pt II of the Australian Crime Commission Act 2002 (Cth) (“the ACC Act”) empower an examiner appointed under s 46B(1) of the ACC Act to conduct an examination of a person charged with a Commonwealth indictable offence where that examination concerns the subject matter of the offence so charged?*

*Answer: The ACC Act does not authorise an examiner appointed under s 46B(1) of the ACC Act to require a person charged with a Commonwealth indictable offence to answer questions about the subject matter of the charged offence.*

2. *If the answer to Question 1 is “Yes”, is Div 2 of Pt II of the ACC Act invalid to that extent as contrary to Ch III of the Constitution?*

*Answer: This question does not arise.*

## Representation

G D Wendler with A S G Cassels for the plaintiff (instructed John D Weller & Associates)

S P Donaghue SC with M J O’Meara for the defendants (instructed by Australian Government Solicitor)

### **Interveners**

M G Sexton SC, Solicitor-General for the State of New South Wales with C L Lenehan for the Attorney-General for the State of New South Wales, intervening (instructed by Crown Solicitor (NSW))

W Sofronoff QC, Solicitor-General of the State of Queensland with G J D del Villar for the Attorney-General of the State of Queensland, intervening (instructed by Crown Law (Qld))

M G Hinton QC, Solicitor-General for the State of South Australia with C Jacobi for the Attorney-General for the State of South Australia, intervening (instructed by Crown Solicitor (SA))

S G E McLeish SC, Solicitor-General for the State of Victoria with R J Orr for the Attorney-General for the State of Victoria, intervening (instructed by Victorian Government Solicitor)

G R Donaldson SC, Solicitor-General for the State of Western Australia with I A Repper for the Attorney-General for the State of Western Australia, intervening (instructed by State Solicitor (WA))

Notice: This copy of the Court’s Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.

### **CATCHWORDS**

#### **X7 v Australian Crime Commission**

Statutes – Interpretation – Plaintiff charged with three indictable Commonwealth offences – Plaintiff served with summons to attend examination by examiner appointed under *Australian Crime Commission Act 2002* (Cth) (“Act”) – Examiner asked plaintiff questions about subject matter of charged offences – Whether Act empowered examiner to conduct examination of person charged with indictable Commonwealth offence where examination concerned offence charged.

Words and phrases – “accusatorial process of criminal justice”, “examination”, “prejudice the fair trial of a person who has been, or may be, charged with an offence”, “principle of legality”, “privilege against self-incrimination”, “right to silence”, “trial according to law”.

*Australian Crime Commission Act 2002* (Cth), ss 7A, 7C, Pt II Div 2.

- 1 FRENCH CJ AND CRENNAN J. On 23 November 2010, the plaintiff, X7, was arrested by officers of the Australian Federal Police, charged with three indictable offences<sup>1</sup> and taken into custody. The offences, alleged to have been committed in New South Wales, are conspiracy to traffic in a commercial quantity of a controlled drug<sup>2</sup>, conspiracy to import a commercial quantity of a border controlled drug<sup>3</sup>, and conspiracy to deal with money that is the proceeds of crime<sup>4</sup>. If convicted, the plaintiff will be liable to a term of imprisonment. Whilst in custody, the plaintiff was served with a summons to appear, and give evidence, before an examiner of the first defendant, the Australian Crime Commission (“the ACC”).
- 2 Established by s 7 of the *Australian Crime Commission Act 2002* (Cth) (“the ACC Act”)<sup>5</sup>, the ACC has functions which include the collection of criminal information and intelligence, and the investigation of federally relevant criminal activity in relation to “serious and organised crime”<sup>6</sup>. Serious and organised crime covers offences which involve two or more offenders, substantial planning and organisation, and the use of sophisticated methods and techniques<sup>7</sup>. Division 2 of Pt II of the ACC Act (ss 24A to 36) (“the examination provisions”) provides for examiners appointed under the ACC Act to conduct compulsory examinations for the purposes of operations or investigations which are designated by the Board of the ACC as “special” operations or investigations<sup>8</sup>.
- 3 In response to the summons, the plaintiff attended a compulsory examination before an ACC examiner at which he was asked, and answered, questions relating to the subject matter of the offences with which he had been earlier charged. When the examination resumed the next day, the plaintiff declined to answer questions concerning the subject matter of the charges when he was directed by the examiner to do so. The examiner informed the plaintiff that he would, in due course, be charged with the offence of failing to answer questions<sup>9</sup>.
- 4 The plaintiff subsequently commenced proceedings in the original jurisdiction of this Court. The plaintiff seeks declarations that, to the extent that Div 2 of Pt II of the ACC Act permits the compulsory examination of a person charged with an indictable Commonwealth offence, the relevant provisions are beyond the power of the Commonwealth Parliament; or that any such examination constitutes an impermissible

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<sup>1</sup> Three Court Attendance Notices (the charge sheets) were served on the plaintiff on 23 November 2010. At the time of hearing, no indictment had been presented.

<sup>2</sup> *Criminal Code* (Cth), s 11.5(1), together with s 302.2(1).

<sup>3</sup> *Criminal Code* (Cth), s 11.5(1), together with s 307.1(1).

<sup>4</sup> *Criminal Code* (Cth), s 11.5(1), together with s 400.3(1).

<sup>5</sup> The ACC comprises the Chief Executive Officer (“the CEO”), examiners, and members of staff of the ACC (s 7(2)).

<sup>6</sup> *Australian Crime Commission Act 2002* (Cth), s 7A(a) and (c). The expressions “federally relevant criminal activity” and “relevant criminal activity” are defined in s 4(1). The latter expression means “any circumstances implying, or any allegations, that a relevant crime may have been, may be being, or may in future be, committed against a law of the Commonwealth, of a State or of a Territory”. “Relevant crime” is also defined in s 4(1) and includes “serious and organised crime”.

<sup>7</sup> *Australian Crime Commission Act 2002* (Cth), s 4(1).

<sup>8</sup> *Australian Crime Commission Act 2002* (Cth), ss 4(1), definition of “special ACC operation/investigation”, and 24A.

<sup>9</sup> *Australian Crime Commission Act 2002* (Cth), s 30(6) relevantly provides that a person who fails to answer a question as required by an examiner under s 30(2)(b) is guilty of an indictable offence, punishable on conviction by a fine not exceeding 200 penalty units or imprisonment for a period not exceeding five years.

interference with what was said to be his constitutional right to a fair trial under Ch III (including s 80) of the Constitution. The plaintiff also seeks injunctive relief against the ACC and its officers and examiners restraining further compulsory examination in respect of matters the subject of the offences with which he has been charged. Finally, the plaintiff seeks an order preventing the ACC and its officers and examiners from preserving any record of his examination.

5 On 23 August 2012, the parties agreed to state a case for the consideration of the Full Court, which included the following two questions of law:

- “1. Does Division 2 of Part II of the ACC Act empower an examiner appointed under section 46B(1) of the ACC Act to conduct an examination of a person charged with a Commonwealth indictable offence where that examination concerns the subject matter of the offence so charged?
2. If the answer to Question 1 is ‘Yes’, is Division 2 of Part II of the ACC Act invalid to that extent as contrary to Ch III of the Constitution?”

6 The questions were stated on the basis that the plaintiff’s case did not involve any challenge to the sufficiency of the instrument authorising the relevant “special ACC investigation”<sup>10</sup>. Furthermore, the expression “subject matter of the offence” in question 1 was treated as including examination on the circumstances of the offence with which a person has been charged, which questions could establish that the person has committed a crime, or disclose defences upon which that person might rely at trial.

7 These reasons will demonstrate that question 1 must be answered “Yes” and that question 2 should be answered “No”.

### The facts and the legislative scheme

8 The ACC Act contains provisions which govern the sharing by the ACC of specific information with other government officers and agencies, both federal and State. Where, in carrying out its functions, the ACC obtains admissible evidence of an offence, whether Commonwealth, State or Territory, the CEO must assemble the evidence and give it to the relevant law enforcement or prosecutorial agency<sup>11</sup>. In appropriate circumstances, the CEO may also furnish information in its possession to other nominated persons, agencies or bodies<sup>12</sup>. At the conclusion of an examination, the examiner must give the head of the special ACC investigation a record of the examination and any documents or other things given to the examiner<sup>13</sup>.

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<sup>10</sup> *Australian Crime Commission Act 2002* (Cth), s 7C(1)(c) and (d).

<sup>11</sup> *Australian Crime Commission Act 2002* (Cth), s 12(1). The CEO must also give the evidence to the Attorney-General of the Commonwealth or the State, as the case requires (s 12(1)(a)).

<sup>12</sup> At the time of the examination, the relevant power was found in *Australian Crime Commission Act 2002* (Cth), s 59. An equivalent power now exists in s 59AA, which was inserted by the *Crimes Legislation Amendment (Powers and Offences) Act 2012* (Cth), but which commenced after the plaintiff was examined.

<sup>13</sup> *Australian Crime Commission Act 2002* (Cth), s 25A(15).

- 9 As required by the ACC Act, the plaintiff attended before an ACC examiner<sup>14</sup>, in response to the summons issued under s 28 in connection with the relevant special ACC investigation<sup>15</sup>.
- 10 Under the ACC Act, a person appearing at an examination is not permitted to refuse or fail to answer a question, or to produce a document or other thing, which is required by the examiner<sup>16</sup>. However, by reason of the combined operation of ss 30(4) and 30(5), where a person gives an answer or produces a document or thing, that answer or that document or thing is not admissible in evidence against the person in a criminal proceeding or a proceeding for the imposition of a penalty<sup>17</sup>, provided that before answering the question or producing the document or thing, the person claims<sup>18</sup> that the answer, document or thing might tend to incriminate him or her or make him or her liable to a penalty. A prohibition of that kind on direct use is sometimes called a “direct use immunity” or, more usually, a “use immunity”.
- 11 Section 25A, which is critical to the resolution of this stated case, governs the conduct of an examination, and the manner in which, and the persons to whom, publication of evidence and information obtained may be made. Section 25A relevantly provides:
- “(3) An examination before an examiner must be held in private and the examiner may give directions as to the persons who may be present during the examination or a part of the examination.
- ...
- (9) An examiner may direct that:
- (a) any evidence given before the examiner; or
- (b) the contents of any document, or a description of any thing, produced to the examiner; or
- (c) any information that might enable a person who has given evidence before the examiner to be identified; or
- (d) the fact that any person has given or may be about to give evidence at an examination; must not be published, or must not be published except in such manner, and to such persons, as the examiner specifies. The examiner must give such a direction if the failure to do so might prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been, or may be, charged with an offence.”
- 12 At the beginning of the plaintiff’s examination, the examiner advised the plaintiff of his rights in the following terms:
- “[Y]our rights will be protected today. I want you to understand at the outset that I am not allowing anyone associated with the charges you face, anyone associated with the prosecution of those charges to either sit here [or] observe the proceedings and I’m not permitting any of those persons to get a copy of the record of these proceedings. And I will also be offering you what’s known as the privilege against self-incrimination which I will explain to you shortly. So your rights will be protected because no-one associated with your prosecution or charges, investigation of your

<sup>14</sup> *Australian Crime Commission Act 2002* (Cth), s 46B.

<sup>15</sup> *Australian Crime Commission Act 2002* (Cth), s 24A.

<sup>16</sup> *Australian Crime Commission Act 2002* (Cth), s 30(2).

<sup>17</sup> Other than in a confiscation proceeding or a proceeding for perjury: *Australian Crime Commission Act 2002* (Cth), s 30(5).

<sup>18</sup> *Australian Crime Commission Act 2002* (Cth), s 30(4).

charges will be able to learn what you tell [the ACC] today, that's because you're facing current charges which haven't been dealt with. And the law is that in those circumstances your rights ought to be protected so that those persons associated with you, the investigation and prosecution do not either hear or learn subsequently what it is you told [the ACC] that is one protection. The next is the fact that you have available to you what's known as the privilege against self-incrimination."

- 13 The examiner then informed the plaintiff that he could not refuse to answer questions or produce documents sought by the examiner but that he could claim that his answers to questions, or production of documents or things sought, might tend to incriminate him. The plaintiff made such a claim in relation to all of the answers that he gave during the examination.
- 14 When the examination resumed the following day, the plaintiff was represented by a lawyer, and declined to answer any further questions. The examiner informed the plaintiff that he would be charged with the offence of failing to answer questions<sup>19</sup>. The examiner then made an oral direction under s 25A(9) in the following terms:

"I direct that the evidence given by you, [the plaintiff], the contents of documents produced to [the ACC] during this examination, any evidence that might enable you to be identified and the fact that you've given evidence at this examination shall not be published, except only to [the CEO], examiners and members of staff of [the ACC] and for the purposes only of any charges which may result from your evidence to the office of the Director of Public Prosecutions for the Commonwealth, to the staff of any court or courts in respect of which proceedings might be brought as a result of your evidence yesterday and today and to any legal representative or representatives you may care to engage to look after your interest in respect of any charge or charges."

- 15 Before concluding the examination, the examiner clarified the direction by stating that neither officers of the Commonwealth Director of Public Prosecutions nor police officers associated with the prosecution of the offences with which the plaintiff had been charged at the time of the examination were entitled by the direction to receive a copy of the evidence given by the plaintiff at the examination.

### Origin of the ACC

- 16 The determination of the questions referred depends in part on an understanding of the predecessor legislation to the ACC Act: the *National Crime Authority Act* 1984 (Cth) ("the NCA Act"). In late 1983, in the Second Reading Speech for the Bill which became the NCA Act, the Attorney-General of the Commonwealth explained that reports by a series of Royal Commissions concerning organised crime and corruption led the federal Government to establish a standing authority – the National Crime Authority ("the NCA") – to deal

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<sup>19</sup> *Australian Crime Commission Act* 2002 (Cth), s 30(6).

with serious and organised crime<sup>20</sup>. The NCA was to have coercive investigative powers, including a power of compulsory examination, for the purposes of co-ordinating national investigation of serious and organised crime, and so as to supplement ordinary police methods of investigation, which do not include such powers.

*The NCA Act*

- 17 The NCA Act provided for compulsory examination and production of documents and things<sup>21</sup>, but subject to an examinee having a written immunity, in the form of an undertaking in writing from a person in authority<sup>22</sup> that “any information, document or thing obtained as a direct or indirect consequence” of any answer given (or document or thing produced) “will not be used in evidence in any proceedings against [the examinee] for an offence”<sup>23</sup>. A prohibition on indirect use, usually called a “derivative use immunity”, is a concept which arose out of American jurisprudence dealing with the language of the Fifth Amendment to the United States Constitution<sup>24</sup>. Further, s 30(10) of the NCA Act provided that a person could claim the privilege against self-incrimination when charged with an offence, if the offence was one in respect of which the answer to a question or the production of a document or thing might tend to incriminate the person, and if the offence had not been finally dealt with by a court or otherwise disposed of, in which case the person was excused from answering the question or producing the document or thing.
- 18 These sections were among the provisions which, by the *National Crime Authority Legislation Amendment Act 2001* (Cth), were repealed and replaced by the current provisions. The changes were explained in the relevant Explanatory Memorandum<sup>25</sup>:

“Proposed subsection 30(5) will mean that, in the circumstances set out in proposed subsection 30(4), the answer, document or thing, cannot be used as evidence against the person, except in limited circumstances. However, contrary to the current position, any evidence that is derived from that answer, document or thing may be used against the person. The Authority is unique in nature and has a critical role in the fight against serious and organised crime. This means that the public interest in the Authority having full and effective investigatory powers, and to enable, in any subsequent court proceedings, the use against the person of incriminating material derived from the evidence given to the Authority, outweigh the merits of affording full protection to self-incriminatory material. The proposed provision is comparable to section 68 of the *Australian Securities and Investments Commission Act 1989*.”<sup>26</sup>

<sup>20</sup> Australia, Senate, *Parliamentary Debates* (Hansard), 10 November 1983 at 2492.

<sup>21</sup> *National Crime Authority Act 1984* (Cth), s 30(2).

<sup>22</sup> For example, the Commonwealth Director of Public Prosecutions in the case of a Commonwealth offence.

<sup>23</sup> *National Crime Authority Act 1984* (Cth), ss 30(4), 30(5) and 30(7).

<sup>24</sup> *Sorby v The Commonwealth* (“*Sorby*”) (1983) 152 CLR 281 at 292-294 per Gibbs CJ; [1983] HCA 10; see also *R v S (RJ)* [1995] 1 SCR 451 at 458.

<sup>25</sup> Australia, Senate, National Crime Authority Legislation Amendment Bill 2000, Explanatory Memorandum at 8.

<sup>26</sup> It can be noted that an immunity from derivative use of self-incriminating evidence in what is now the *Australian Securities and Investments Commission Act 1989* (Cth) (“the ASIC Act”) was abolished in 1992 after complaints by the Australian Securities Commission (now the Australian Securities and Investments Commission) that such an immunity made it difficult to prosecute

19 These matters were repeated in the Second Reading Speech<sup>27</sup>:

“The bill will ... allow an investigatory body to derive evidence from self-incriminatory evidence given by a person at a hearing, and for a prosecuting authority to use that derived evidence against the person at a later trial.

In other words, a person’s self-incriminatory admissions will not themselves be able to be used as evidence against that person, but will be able to be used to find other evidence that verifies those admissions or is otherwise relevant to proceedings.

However, the bill will specifically provide that once a witness has claimed that the answer to a question might tend to incriminate him or her, then any evidence that the person gives cannot be used against the person in any later trial.

The existing mechanism for a special undertaking by the DPP will not be required as this protection will be clearly set out in the legislation.”

20 By virtue of the *Australian Crime Commission Establishment Act 2002* (Cth), the ACC replaced the NCA and the NCA Act became the ACC Act.

### Submissions

21 The plaintiff proceeded on the basis that, as recognised in *Australian Crime Commission v Stoddart*<sup>28</sup>, the common law privilege against self-incrimination has not been preserved in the ACC Act, but submitted that the powers of compulsory examination under the ACC Act are not exercisable after a charge has been laid, and that the privilege was preserved in this limited way. The plaintiff contended that the examination provisions did not clearly abrogate the privilege in respect of examination after charge, and relied on the settled principle that statutory provisions are not to be construed as abrogating important common law rights, privileges and immunities in the absence of clear words or necessary implication to that effect<sup>29</sup>. It was contended that decisions of intermediate appellate courts to the contrary were wrong<sup>30</sup>. At a more fundamental level, the plaintiff’s case was that the examination powers should be given a restricted meaning because their exercise after charge would otherwise constitute legislative authorisation of executive interference

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examinees in subsequent criminal or penalty proceedings. See the ASIC Act, ss 68(3) and 76(1)(a). See also the Joint Submission of the Australian Securities Commission and The Commonwealth Director of Public Prosecutions for Amendment of s 68, ASC Law and s 597, Corporations Law to the Joint Committee on Corporations and Securities, 13 August 1991, referred to in Longo, “The Powers of Investigation of the Australian Securities Commission”, (1992) 10 *Company and Securities Law Journal* 237 at 241-242.

<sup>27</sup> Australia, House of Representatives, *Parliamentary Debates* (Hansard), 24 September 2001 at 31304.

<sup>28</sup> (2011) 244 CLR 554 at 563 [8] per French CJ and Gummow J, 620 [173] per Crennan, Kiefel and Bell JJ; [2011] HCA 47.

<sup>29</sup> *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543 at 553 [11] per Gleeson CJ, Gaudron, Gummow and Hayne JJ; [2002] HCA 49, citing *Potter v Minahan* (1908) 7 CLR 277 at 304 per O’Connor J; [1908] HCA 63; *Coco v The Queen* (1994) 179 CLR 427 at 437 per Mason CJ, Brennan, Gaudron and McHugh JJ, 446 per Deane and Dawson JJ; [1994] HCA 15. See also *Mortimer v Brown* (1970) 122 CLR 493 at 495, 498-499; [1970] HCA 4; *Sorby* (1983) 152 CLR 281 at 294-295, 309; *Hamilton v Oades* (1989) 166 CLR 486 at 495; [1989] HCA 21; *Environment Protection Authority v Caltex Refining Co Pty Ltd (“EPA”)* (1993) 178 CLR 477 at 517, 533-534; [1993] HCA 74.

<sup>30</sup> *Australian Crime Commission v OK* (2010) 185 FCR 258; *R v CB* [2011] NSWCCA 264. See also *R v Seller* [2013] NSWCCA 42.

with pending criminal proceedings<sup>31</sup>, and in particular an interference with due process entrenched by Ch III (including s 80) of the Constitution. As used by the plaintiff, “due process” encapsulated those rights of an accused, including the right to silence, designed to require the prosecution to prove its case without the assistance of the accused. In the event that the examination provisions, on their proper construction, did authorise examination after charge, that was said to involve an invalid attempt to confer the judicial power of the Commonwealth on the examiner. On that basis, the plaintiff submitted that question 1 should be answered “No”, in which case it would be unnecessary to answer question 2. Alternatively, if question 2 is reached, it should be answered “Yes”.

22 The defendants submitted that the powers conferred by the examination provisions are not exhausted on the laying of charges. Further, there was no general principle that a person cannot be asked questions relating to a pending criminal charge. In submitting that question 1 should be answered “Yes”, the defendants stated that the examination provisions do not authorise the dissemination of information obtained during the plaintiff’s examination if that dissemination would create a real risk of interference with the administration of criminal justice. It was contended, therefore, that no question arises of the consistency of the examination provisions with Ch III (including s 80) of the Constitution. The defendants submitted that the answer to question 1 should be “Yes” and, if it be necessary to answer question 2, the answer should be “No”.

23 The submissions in relation to statutory construction were informed by the Ch III submissions, and vice versa.

### Construction

24 The rule of construction mentioned above, that statutory provisions are not to be construed as abrogating important common law rights and immunities in the absence of clear words or necessary implication to that effect, applies to the examination provisions, involving as they do an abrogation of the privilege against self-incrimination. The rule is based, in part, on “a working assumption about the legislature’s respect for the law”<sup>32</sup>, which in this case is evidenced in provisions protecting from prejudice the fair trial of an examined person who has been charged with an offence.

25 Beginning with the text of the ACC Act<sup>33</sup>, the examination provisions contemplate the exercise of the examination powers after a charge has been laid. There is no relevant limitation on who may be summoned under s 28, and no explicit preservation of the privilege against self-incrimination, once charges are laid,

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<sup>31</sup> “Proceedings” for the purposes of contempt of court includes pending proceedings because proceedings “must be given a sufficiently broad meaning in criminal cases to cover a person who has been arrested and charged”, as to which see *Sorby* (1983) 152 CLR 281 at 306 per Mason, Wilson and Dawson JJ, citing *James v Robinson* (1963) 109 CLR 593 at 606; [1963] HCA 32 and *R v Daily Mirror; Ex parte Smith* [1927] 1 KB 845 at 851.

<sup>32</sup> Gleeson, “Legality – Spirit and Principle”, Second Magna Carta Lecture, New South Wales Parliament House, 20 November 2003.

<sup>33</sup> *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27 at 46 [47] per Hayne, Heydon, Crennan and Kiefel JJ; [2009] HCA 41.

comparable to the preservation which existed under s 30(10) of the NCA Act. The grant of an immunity from direct use by the prosecution in evidence against a person in a trial is another indication that an examination may occur, or continue, after a charge has been laid. That is because the immunity renders the consequences of answering questions the same whether a criminal charge has been laid or not.

26 More importantly, where a person examined has a trial pending, statutory directions regarding the disclosure and manner of use of any self-incriminating evidence and information obtained in the examination must be given so as to safeguard the person's fair trial. Section 25A(9) expressly provides that an examiner must direct that evidence and information obtained in an examination must not be published, or must not be published except in such manner and to such persons as the examiner specifies, if the failure to give such a direction "*might ... prejudice the fair trial of a person who has been, or may be, charged with an offence*" (emphasis added). The CEO is empowered to vary or revoke such a direction in writing<sup>34</sup>, but he or she must not do so if that "*might ... prejudice the fair trial of a person who has been or may be charged with an offence*"<sup>35</sup> (emphasis added). Publication of evidence or information in contravention of such a direction, or presence at an examination in contravention of a direction as to the persons who may be present during the examination<sup>36</sup>, is an offence<sup>37</sup>. A specific, protective direction under s 25A(9), the breach of which is subject to a penalty, overrides the general obligations imposed on the ACC, the CEO or the Board of the ACC by ss 12 and 59 of the ACC Act, described above, to assemble evidence and disseminate and furnish information or reports to nominated persons, bodies or agencies<sup>38</sup>. The same would also apply to the general power given to the ACC to make use of particular information and intelligence in the performance of any of its functions<sup>39</sup>.

27 Not only do those safeguards clearly and unambiguously apply in relation to a pending (or a potential) trial, the plaintiff did not point to any provision in the ACC Act explicitly constraining the ability of a court to ensure a pending trial would be conducted according to law. Furthermore, nothing in the history of the examination provisions, including the matters referred to in the extrinsic materials, throws any doubt on the conclusion, based on the text and purpose of the provisions, that the examination powers may be exercised after charges have been laid.

28 Turning to the privilege against self-incrimination more generally, although this privilege has been described as "deep rooted"<sup>40</sup> in the common law, over the years it has not lacked critics<sup>41</sup> as "an unnecessary impediment

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<sup>34</sup> *Australian Crime Commission Act 2002* (Cth), s 25A(10).

<sup>35</sup> *Australian Crime Commission Act 2002* (Cth), s 25A(11).

<sup>36</sup> *Australian Crime Commission Act 2002* (Cth), s 25A(5).

<sup>37</sup> *Australian Crime Commission Act 2002* (Cth), s 25A(14).

<sup>38</sup> Now see *Australian Crime Commission Act 2002* (Cth), s 12(2), which was inserted by the *Crimes Legislation Amendment (Powers and Offences) Act 2012* (Cth).

<sup>39</sup> *Australian Crime Commission Act 2002* (Cth), s 12(6).

<sup>40</sup> *Lam Chi-Ming v The Queen* [1991] 2 AC 212 at 222.

<sup>41</sup> Bentham, *Introductory View of the Rationale of Evidence*, (1827), reproduced in Bowring (ed), *The Works of Jeremy Bentham*, (1843), vol 6 at 106-109; *Istel Ltd v Tully* [1993] AC 45 at 53 per Lord Templeman; *De Luna v United States* 308 F 2d 140 at 144-146 (1962) per Judge Wisdom; *Palko v Connecticut* 302 US 319 at 325-326 (1937) per Cardozo J; Wigmore, "Nemo Tenetur Seipsum Prodere", (1891) 5 *Harvard Law Review* 71 at 85. See generally, *United States v Garsson* 291 F 646 at 649 (1923) per Judge Learned Hand.

to the detection and conviction of criminal offenders and as an obstacle to the judicial ascertainment of the truth<sup>42</sup>. Legislatures have, in different settings, abrogated or modified the privilege when public interest considerations have been elevated over, or balanced against, the interests of the individual so as to enable true facts to be ascertained<sup>43</sup>. Longstanding examples such as the compulsory public examination of a bankrupt<sup>44</sup>, or of a company officer (when fraud is suspected)<sup>45</sup>, serve a public interest in disclosure of the facts on behalf of creditors and shareholders which overcomes some of the common law's traditional consideration for the individual<sup>46</sup>. Because disclosures of a bankrupt on a compulsory examination can be used against him or her in other proceedings<sup>47</sup>, a judge before whom such an examination is held will need to ensure the examiner does not cause "oppression, injustice, or ... needless injury to the individual"<sup>48</sup>, and to disallow questions which would constitute an abuse of process<sup>49</sup>. In balancing public interest considerations and the interests of the individual, legislation abrogating the privilege will often contain, as in the case of the ACC Act, "compensatory protection to the witness"<sup>50</sup>, by providing that, subject to limited exceptions, compelled answers shall not be admissible in civil or criminal proceedings.

- 29 The functions of the ACC, which include the investigation of serious and organised crime, serve a public interest which is apparent from the ACC Act. An examination cannot be held for a purpose other than the purpose of investigating serious and organised crime<sup>51</sup>, which remains the same whether a criminal charge has been laid or not. It is consistent with the purpose of the compulsory examination powers, which aid the functions of the ACC, that those powers are not exhausted upon the laying of a charge against an individual<sup>52</sup>. The ACC Act reflects a legislative judgment that the functions of the ACC would be impeded if the laying of a charge against one member of a group by a prosecutor prevented continuing investigation of the group's activities by way of examination of that member by the ACC.
- 30 To summarise, the public interest in the continuing investigation of serious and organised crime is elevated over the private interest in claiming the privilege against self-incrimination. However, whilst a person examined under the ACC Act is compelled to give an answer, or produce a document or thing, which might otherwise be withheld because of the privilege against self-incrimination, the interest in that person being tried openly and fairly is protected both by the prohibition on direct use of answers given, or documents or things produced, and by the provisions safeguarding the fair trial of that person.

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<sup>42</sup> *EPA* (1993) 178 CLR 477 at 533 per Deane, Dawson and Gaudron JJ.

<sup>43</sup> *EPA* (1993) 178 CLR 477 at 503 per Mason CJ and Toohey J; *Phillips v News Group Newspapers Ltd* [2013] 1 AC 1 at 68 [14] per Lord Walker of Gestingthorpe JSC.

<sup>44</sup> Which can be traced back to Statute 5 Geo II c 30, s 16. See also Heydon, "Statutory Restrictions on the Privilege Against Self-Incrimination", (1971) 87 *Law Quarterly Review* 214.

<sup>45</sup> *Mortimer v Brown* (1970) 122 CLR 493. See also *Companies Act* 1958 (Vic), ss 146(5) and 146(6).

<sup>46</sup> *Rees v Kratzmann* (1965) 114 CLR 63 at 80 per Windeyer J; [1965] HCA 49.

<sup>47</sup> *R v Scott* (1856) Dears & B 47 at 64 per Coleridge J [169 ER 909 at 916].

<sup>48</sup> *Rees v Kratzmann* (1965) 114 CLR 63 at 66 per Barwick CJ; see also *Hamilton v Oades* (1989) 166 CLR 486 at 495 per Mason CJ.

<sup>49</sup> *Hamilton v Oades* (1989) 166 CLR 486 at 498 per Mason CJ.

<sup>50</sup> *Sorby* (1983) 152 CLR 281 at 295 per Gibbs CJ, 310-311 per Mason, Wilson and Dawson JJ.

<sup>51</sup> *Australian Crime Commission Act* 2002 (Cth), ss 24A, 25A(6), 28(1) and 28(7).

<sup>52</sup> See *EPA* (1993) 178 CLR 477 at 516-517 fn 62 per Brennan J.

*Plaintiff's reliance on Hammond*

31 The plaintiff relied on *Hammond v The Commonwealth*<sup>53</sup> in urging the Court to give the examination provisions a restrictive construction, notwithstanding their natural or ordinary meaning, in order to protect the “right to silence” of an accused person in respect of pending criminal proceedings.

32 In *Hammond*, in circumstances of some urgency, this Court restrained a Royal Commissioner<sup>54</sup> from compelling an accused person to answer questions which would tend to incriminate him in relation to an alleged conspiracy upon which he had been committed for trial. Whilst the questioning was to have been undertaken in private and the accused person had the benefit of provisions granting him a direct use immunity<sup>55</sup>, it appears that the presence at the examination of the police officers who had investigated the matters upon which the accused person was to be examined was to be permitted. Furthermore, the record of argument shows that the transcript of the examination was to be made available by the Royal Commission to the prosecution. On the assumption that the privilege against self-incrimination had been abrogated by statute, it was stated by Gibbs CJ (with whom Mason and Murphy JJ agreed)<sup>56</sup>:

“Once it is accepted that the plaintiff will be bound, on pain of punishment, to answer questions designed to establish that he is guilty of the offence with which he is charged, it seems to me inescapably to follow, in the circumstances of this case, that there is a real risk that the administration of justice will be interfered with. It is clear that the questions will be put and pressed. It is true that the examination will take place in private, and that the answers may not be used at the criminal trial. Nevertheless, the fact that the plaintiff has been examined, in detail, as to the circumstances of the alleged offence, is very likely to prejudice him in his defence.”

His Honour went on to observe that continuing questioning in the circumstances described “would, generally speaking, amount to a contempt of court”<sup>57</sup>. In agreeing that an injunction should be granted as proposed by the Chief Justice, Brennan J said that a person committed to stand trial on a criminal charge “is not amenable to compulsory interrogation designed to obtain from him information as to the issues to be litigated at his trial: *nemo tenetur seipsum prodere*”<sup>58</sup>. It can be noted that the Latin maxim *nemo tenetur seipsum prodere/accusare*, “no one is obliged to produce [evidence against]/accuse himself” (part of a longer canon law rule), said to express the privilege against self-incrimination, came to be recognised both in common law courts and in Chancery from the seventeenth century onwards<sup>59</sup>.

<sup>53</sup> (“*Hammond*”) (1982) 152 CLR 188; [1982] HCA 42.

<sup>54</sup> Acting under two Commissions, one issued by the Governor-General of the Commonwealth, and the other by the Governor of the State of Victoria.

<sup>55</sup> See *Royal Commissions Act* 1902 (Cth), s 6DD; *Evidence Act* 1958 (Vic), s 30.

<sup>56</sup> (1982) 152 CLR 188 at 198.

<sup>57</sup> (1982) 152 CLR 188 at 198.

<sup>58</sup> (1982) 152 CLR 188 at 202.

<sup>59</sup> *EPA* (1993) 178 CLR 477 at 526 per Deane, Dawson and Gaudron JJ; Blackstone, *Commentaries on the Laws of England*, (1769), bk 4 at 296; Tollefson, *The Privilege Against Self-Incrimination in England and Canada*, (1975) at 32-33. See also *Azzopardi v The*

33 Whilst Deane J noted that the mere fact that there are pending proceedings does not mean that “any parallel or related administrative inquiry, conducted for proper administrative purposes, constitutes an interference with the due administration of justice in that court”<sup>60</sup>, his Honour then said<sup>61</sup>:

“On the other hand, it is fundamental to the administration of criminal justice that a person who is the subject of pending criminal proceedings in a court of law should not be subjected to having his part in the matters involved in those criminal proceedings made the subject of a parallel inquisitorial inquiry by an administrative tribunal with powers to compel the giving of evidence and the production of documents which largely correspond [to] (and, to some extent, exceed) the powers of the criminal court. Such an extra-curial inquisitorial investigation of the involvement of a person who has been committed for trial in the matters which form the basis of the criminal proceedings against him constitutes, in my view, an improper interference with the due administration of justice in the proceedings against him in the criminal court and contempt of court.”

34 On the basis that, on their proper construction, the examination provisions permit examination of a person after a charge has been laid, on the subject matter of the charge, the plaintiff relied on *Hammond* to support a proposition that such examination would cause a real risk of interference with the fair trial of an accused unless specific steps were taken to protect that accused’s “right to silence” at trial, which was said to encompass a right to give or not to give evidence, and to reserve defences. The direct use immunity under ss 30(4) and 30(5) was said to be insufficient for those purposes, as in *Hammond*. The steps identified as necessary to protect the right to silence (in addition to the direct use immunity) included steps to prevent the prosecution from obtaining an unfair forensic advantage in the trial over and above what the prosecution would be accorded under normal trial procedure. This was said to require, among other things, directions under s 25A of the ACC Act, including directions ensuring that the prosecution made no derivative use of the evidence in the trial.

35 In response to the plaintiff’s submission based on *Hammond*, the defendants accepted that the Commonwealth Parliament cannot require or authorise a court in which the judicial power of the Commonwealth is vested to exercise judicial power in a manner inconsistent with the essential character of a court or with the nature of judicial power<sup>62</sup>. The defendants also submitted that the examination provisions are constrained by the law of contempt. Thus the defendants avoided the plaintiff’s argument, based on the separation of powers in Ch III, that the examination provisions are invalid as a legislative authorisation of executive interference with the curial process of a criminal trial. In so contending, the defendants relied on Mason J’s explanation in *Pioneer Concrete (Vic) Pty Ltd v Trade Practices Commission*<sup>63</sup> of a section conferring compulsory examination

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*Queen* (2001) 205 CLR 50 at 93-96 [125]-[135]; [2001] HCA 25; *Wigmore on Evidence*, McNaughton rev (1961), vol 8 at 268-269; Levy, *Origins of the Fifth Amendment: The Right against Self-Incrimination*, (1968) at 312-313.

<sup>60</sup> (1982) 152 CLR 188 at 206.

<sup>61</sup> (1982) 152 CLR 188 at 206.

<sup>62</sup> *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs* (1992) 176 CLR 1 at 27 per Brennan, Deane and Dawson JJ; [1992] HCA 64.

<sup>63</sup> (1982) 152 CLR 460; [1982] HCA 65.

powers on the Trade Practices Commission<sup>64</sup>:

“It is possible to read the section as conferring power on the Commission to act in accordance with its terms, but subject to the law of contempt, so that action taken under the section is subject to the exercise by the Federal Court of its contempt powers.”

- 36 It is critical to appreciate that the injunctive relief in *Hammond* was granted in circumstances where criminal proceedings were pending and the prosecution was to have access to evidence and information compulsorily obtained which could establish guilt of the offences, and which was subject only to a direct use immunity. By way of contrast, while the examination provisions contain no express statutory prohibition on derivative use of material obtained during an examination, s 25A empowers and requires the examiner to make directions safeguarding the fair trial of a person compulsorily examined. That protection is in addition to the protection in ss 30(4) and 30(5), being the prohibition against direct use. The practical operation of ss 25A(3), 25A(9) and 25A(11) is best understood by reference to certain common law rules and principles in relation to a fair trial, to which it is now necessary to turn.

#### Fair trial

- 37 Relevant authorities have given context to the concept and importance of the right of every accused person to a fair and impartial trial according to law<sup>65</sup>. Although Deane J pointed out in *Jago*<sup>66</sup> that an accused’s right to a fair trial is more accurately expressed in negative terms as a right not to be tried unfairly or as an immunity against conviction otherwise than after a fair trial, for no person can enforce a right to be tried by the state, “it is convenient, and not unduly misleading, to refer to an accused’s positive right to a fair trial”<sup>67</sup>.
- 38 An accused’s right to a fair trial is commonly “manifested in rules of law and of practice designed to regulate the course of the trial”<sup>68</sup>, but the right extends to the whole course of the criminal process<sup>69</sup>. The courts have long had inherent powers to ensure that court processes are not abused. Such powers exist to enable courts to ensure that their processes are not used in a manner giving rise to injustice, thereby safeguarding the administration of justice<sup>70</sup>. The power to prevent an abuse of process is an incident of the general power to

<sup>64</sup> (1982) 152 CLR 460 at 473. Cf *Lockwood v The Commonwealth* (1954) 90 CLR 177 at 185 per Fullagar J; [1954] HCA 31.

<sup>65</sup> *R v Macfarlane; Ex parte O’Flanagan and O’Kelly* (1923) 32 CLR 518 at 541-542 per Isaacs J; [1923] HCA 39; *Barton v The Queen* (1980) 147 CLR 75 at 95-96 per Gibbs ACJ and Mason J, 103 per Stephen J, 107 per Murphy J, 109 per Aickin J, 109 per Wilson J; [1980] HCA 48; *Jago v District Court (NSW)* (“*Jago*”) (1989) 168 CLR 23 at 25-31 per Mason CJ, 47-49 per Brennan J, 56-57 per Deane J, 71-72 per Toohey J, 75-76 per Gaudron J; [1989] HCA 46; *Dietrich v The Queen* (1992) 177 CLR 292 at 298-300 per Mason CJ and McHugh J, 324 per Brennan J, 326-328 per Deane J, 353-357 per Toohey J; [1992] HCA 57.

<sup>66</sup> (1989) 168 CLR 23 at 56-57.

<sup>67</sup> *Dietrich v The Queen* (1992) 177 CLR 292 at 299 per Mason CJ and McHugh J.

<sup>68</sup> *Jago* (1989) 168 CLR 23 at 29 per Mason CJ, citing *Bunning v Cross* (1978) 141 CLR 54; [1978] HCA 22 and *R v Sang* [1980] AC 402; *Dietrich v The Queen* (1992) 177 CLR 292 at 299-300 per Mason CJ and McHugh J.

<sup>69</sup> *Jago* (1989) 168 CLR 23 at 29 per Mason CJ.

<sup>70</sup> *Batistatos v Roads and Traffic Authority (NSW)* (2006) 226 CLR 256 at 265-266 [10]-[12] per Gleeson CJ, Gummow, Hayne and Crennan JJ; [2006] HCA 27, citing *Metropolitan Bank Ltd v Pooley* (1885) 10 App Cas 210 at 220-221; *Dupas v The Queen* (2010) 241 CLR 237 at 243 [14]-[15]; [2010] HCA 20.

ensure fairness<sup>71</sup>. A court's equally ancient institutional power to punish for contempt, an attribute of judicial power provided for in Ch III of the Constitution<sup>72</sup>, also enables it to control and supervise proceedings to prevent injustice, and includes a power to take appropriate action in respect of a contempt, or a threatened contempt, in relation to a fair trial, as exemplified in *Hammond*.

### Right to silence

- 39 In Australia, “the right to silence” is not “a constitutional or legal principle of immutable content”<sup>73</sup>, which highlights the need to identify the nature and effect of the precise immunity upon which the plaintiff relies<sup>74</sup>. Nor is the closely related, but not coextensive, common law privilege against self-incrimination a right protected by the Constitution<sup>75</sup>.
- 40 It may be that the expression “the right to silence” is often used to express compendiously the rejection by the common law of inquisitorial procedures made familiar by the Courts of Star Chamber and High Commission<sup>76</sup>. Be that as it may, “the right to silence” has been described by Lord Mustill in *R v Director of Serious Fraud Office; Ex parte Smith*<sup>77</sup> as referring to “a disparate group of immunities, which differ in nature, origin, incidence and importance”<sup>78</sup>. Given the diversity of the immunities, and the policies underlying them, Lord Mustill remarked that it is not enough to ask simply of any statute whether Parliament can have intended to abolish the longstanding right to silence. The essential starting point is to identify which particular immunity or right covered by the expression is being invoked in the relevant provisions before considering whether there are reasons why the right in question ought at all costs to be maintained<sup>79</sup>.
- 41 Two immunities or rights encompassed by the expression “the right to silence”, which operate in different ways in the criminal justice system, were referred to in the plaintiff's submissions. The first was the immunity of a person suspected of a crime from being compelled on pain of punishment to answer questions put by the police or other persons in authority<sup>80</sup>, which is no wider than the privilege against self-incrimination<sup>81</sup>.

<sup>71</sup> *Jago* (1989) 168 CLR 23 at 31 per Mason CJ; see also at 46-47 per Brennan J, 56-57 per Deane J, 71 per Toohey J, 74-75 per Gaudron J; *Dietrich v The Queen* (1992) 177 CLR 292 at 332 per Deane J. See also *Barton v The Queen* (1980) 147 CLR 75 at 96 per Gibbs ACJ and Mason J, 103, 104-105 per Stephen J, 107 per Murphy J, 109 per Aickin J, 109, 111, 115-117 per Wilson J.

<sup>72</sup> *Re Colina; Ex parte Torney* (1999) 200 CLR 386 at 395 [16] per Gleeson CJ and Gummow J, 429 [113] per Hayne J; [1999] HCA 57; *Dupas v The Queen* (2010) 241 CLR 237 at 243 [15].

<sup>73</sup> *Azzopardi v The Queen* (2001) 205 CLR 50 at 57 [7] per Gleeson CJ.

<sup>74</sup> *Carr v Western Australia* (2007) 232 CLR 138 at 152 [36] per Gummow, Heydon and Crennan JJ; [2007] HCA 47.

<sup>75</sup> *Sorby* (1983) 152 CLR 281 at 298 per Gibbs CJ, 308-309 per Mason, Wilson and Dawson JJ; *Huddart, Parker & Co Pty Ltd v Moorehead* (“*Huddart, Parker*”) (1909) 8 CLR 330 at 358 per Griffith CJ, 366 per Barton J, 375 per O’Connor J, 386 per Isaacs J, 418 per Higgins J; [1909] HCA 36. Cf *Sorby* (1983) 152 CLR 281 at 313 per Murphy J; *Hammond* (1982) 152 CLR 188 at 201 per Murphy J.

<sup>76</sup> *EPA* (1993) 178 CLR 477 at 526 per Deane, Dawson and Gaudron JJ; *Rees v Kratzmann* (1965) 114 CLR 63 at 80 per Windeyer J. See also *Sorby* (1983) 152 CLR 281 at 317 per Brennan J; *Azzopardi v The Queen* (2001) 205 CLR 50 at 91 [119] per McHugh J.

<sup>77</sup> [1993] AC 1.

<sup>78</sup> [1993] AC 1 at 30.

<sup>79</sup> [1993] AC 1 at 32.

<sup>80</sup> *Petty v The Queen* (1991) 173 CLR 95 at 99 per Mason CJ, Deane, Toohey and McHugh JJ; [1991] HCA 34.

<sup>81</sup> *R v Swaffield* (1998) 192 CLR 159 at 184-185 [33] per Brennan CJ; [1998] HCA 1; *Carr v Western Australia* (2007) 232 CLR

- 42 The second, upon which the plaintiff's submissions critically depended, was the specific immunity of an accused person at trial from being compelled to give evidence or to answer questions, which reflects not only the privilege against self-incrimination, but also the broader consideration that a criminal trial is "an accusatorial process in which the prosecution bears the onus of proving the guilt of the accused beyond reasonable doubt"<sup>82</sup>.
- 43 By reference to those two immunities, the balance between competing public and private interests is struck in the examination provisions by an abrogation, to an extent, of the first immunity, while simultaneously preserving the second immunity, to the extent of ensuring the fair trial of the person examined.
- 44 The recognition of the privilege against self-incrimination in relation to exposure to criminal liability is said to have been well-established by the second half of the seventeenth century<sup>83</sup>. The privilege was certainly treated as long-established at the time of procedural reforms in the nineteenth century which partly shaped the accusatorial process of the criminal trial<sup>84</sup>.
- 45 Pre-trial examination of an accused by magistrates was still part of criminal procedure in England until the early decades of the nineteenth century<sup>85</sup>. In 1848, the investigative and judicial functions of the state were separated and the role of examining justices was altered<sup>86</sup>. Examining magistrates (and later investigating police officers of the professional police force<sup>87</sup>) were required by statute to caution a suspect about the right to remain silent<sup>88</sup>. In the late nineteenth century and early twentieth century, concern about the admissibility of evidence resulting from police interrogation led to the issue of the Judges' Rules governing a suspect's right to silence<sup>89</sup>. In 1898 the abolition of the rule that an accused was not a competent witness in his own trial was accompanied by an express removal of the privilege against self-incrimination if the accused chose to give evidence<sup>90</sup>. There was a related provision precluding the prosecution from commenting upon a competent accused's exercise at trial of the right to remain silent<sup>91</sup>. Different considerations shaped the development of the privilege against self-incrimination in Chancery courts, in which an examinee (always a compellable witness) who incriminated himself would be exposed to a civil penalty or forfeiture of an estate<sup>92</sup>.

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138 at 152 [37] per Gummow, Heydon and Crennan JJ.

<sup>82</sup> *RPS v The Queen* (2000) 199 CLR 620 at 630 [22] per Gaudron ACJ, Gummow, Kirby and Hayne JJ; [2000] HCA 3; *Azzopardi v The Queen* (2001) 205 CLR 50 at 64 [34], 65 [38], 74 [64] per Gaudron, Gummow, Kirby and Hayne JJ.

<sup>83</sup> *EPA* (1993) 178 CLR 477 at 497-498 per Mason CJ and Toohey J.

<sup>84</sup> *R v Scott* (1856) Dears & B 47 at 61 [169 ER 909 at 915], cited by Brennan J in *Sorby* (1983) 152 CLR 281 at 316; *Orme v Crockford* (1824) 13 Price 376 [147 ER 1022], cited by Lord Esher MR in *Martin v Treacher* (1886) 16 QBD 507 at 511.

<sup>85</sup> *Criminal Law Act* 1826 (UK), ss 2 and 3, extended the power of compelling pre-trial examination by justices to include misdemeanours as well as felonies. See also *Sorby* (1983) 152 CLR 281 at 319 per Brennan J.

<sup>86</sup> *Indictable Offences Act* 1848 (UK). See also *Sorby* (1983) 152 CLR 281 at 319 per Brennan J.

<sup>87</sup> Instituted in London by the *Metropolitan Police Act* 1829 (UK), followed thereafter by provincial police forces.

<sup>88</sup> *Indictable Offences Act* 1848 (UK), s 18. For an example of a current cognate provision see the *Crimes Act* 1914 (Cth), s 23F.

<sup>89</sup> *Practice Note (Judges' Rules)* [1964] 1 WLR 152; see also *R v Voisin* [1918] 1 KB 531 at 539 and *Carr v Western Australia* (2007) 232 CLR 138.

<sup>90</sup> *Criminal Evidence Act* 1898 (UK), s 1(e).

<sup>91</sup> *Criminal Evidence Act* 1898 (UK), s 1(b).

<sup>92</sup> *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543 at 559 [31] per Gleeson CJ, Gaudron, Gummow and Hayne JJ, citing *Naismith v McGovern* (1953) 90 CLR 336 at 341-342 per Williams, Webb,

- 46 The abovementioned developments, adopted in Australia<sup>93</sup>, show the interweaving of interrelated rights and immunities into the criminal law, which shaped the accusatorial process of the criminal trial both by way of procedure and in substance<sup>94</sup>. In *EPA*, consideration was given to the accusatorial nature of a criminal trial and the interrelationship between an accused's right not to give evidence or answer incriminating questions on the one hand, and on the other, the fundamental principle stated in *Woolmington v Director of Public Prosecutions*<sup>95</sup>: "that the prosecution must prove the guilt of the prisoner is part of the common law ... and no attempt to whittle it down can be entertained"<sup>96</sup>.
- 47 Whilst in dissent on the main point, but not on this issue, Deane, Dawson and Gaudron JJ explained the interrelationship between the rules that an accused is not obliged to "testify or admit guilt"<sup>97</sup> or "to give evidence in defence of his or her plea of not guilty"<sup>98</sup>, and the fundamental principle that the onus rests on the prosecution:

"[A]n accused person (who is a competent witness only as a matter of fairly recent history) has the right to refrain from giving evidence and to avoid answering incriminating questions.

The latter right is by no means wholly explained by reference to the maxim *nemo tenetur seipsum prodere*. Rather it is to be explained by the principle, fundamental in our criminal law, that the onus of proving a criminal offence lies upon the prosecution and that in discharging that onus it cannot compel the accused to assist it in any way."<sup>99</sup>

- 48 As has been stated in the context of abrogation of the privilege, the plaintiff's argument that an accused's rights to due process (including the right to refrain from giving evidence at trial) are entrenched by Ch III was too broadly stated. For example, the choice of the standard or burden of proof, at least in relation to specific issues, can be regulated by Parliament<sup>100</sup>, and the rules of evidence may be regulated, provided, as Hayne J remarked in *Nicholas v The Queen*, that any law effecting such a change does not "deal directly with ultimate issues of guilt or innocence"<sup>101</sup>. This Court has also rejected arguments that an alteration by Parliament of a

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Kitto and Taylor JJ; [1953] HCA 59; *Rees v Kratzmann* (1965) 114 CLR 63 at 80 per Windeyer J.

<sup>93</sup> *RPS v The Queen* (2000) 199 CLR 620 at 629-630 [20] per Gaudron ACJ, Gummow, Kirby and Hayne JJ, 655-656 [107]-[111] per Callinan J; *Azzopardi v The Queen* (2001) 205 CLR 50 at 70-71 [53]-[56] per Gaudron, Gummow, Kirby and Hayne JJ, 116-119 [189]-[195] per Callinan J; *Carr v Western Australia* (2007) 232 CLR 138 at 147 [18] per Gleeson CJ.

<sup>94</sup> *EPA* (1993) 178 CLR 477 at 527 per Deane, Dawson and Gaudron JJ.

<sup>95</sup> [1935] AC 462.

<sup>96</sup> [1935] AC 462 at 481-482 per Viscount Sankey LC. See also *R v Swaffield* (1998) 192 CLR 159 at 170 [12] per Brennan CJ, quoting a reported address to the jury by Devlin J in *R v Adams*:

"So great is our horror at the idea that a man might be questioned, forced to speak and perhaps to condemn himself out of his own mouth. . . that we afford to everyone suspected or accused of a crime, at every stage, and to the very end, the right to say: 'Ask me no questions, I shall answer none. Prove your case.'"

<sup>97</sup> *EPA* (1993) 178 CLR 477 at 501 per Mason CJ and Toohey J.

<sup>98</sup> *EPA* (1993) 178 CLR 477 at 550 per McHugh J.

<sup>99</sup> *EPA* (1993) 178 CLR 477 at 527.

<sup>100</sup> See *Thomas v Mowbray* (2007) 233 CLR 307 at 356 [113] per Gummow and Crennan JJ; [2007] HCA 33; *Nicholas v The Queen* (1998) 193 CLR 173 at 190 [24] per Brennan CJ, 203 [55] per Toohey J, 225 [123] per McHugh J, 234-236 [152]-[156] per Gummow J; [1998] HCA 9; *Milicevic v Campbell* (1975) 132 CLR 307 at 316-317 per Gibbs J, 318-319 per Mason J, 321 per Jacobs J; [1975] HCA 20.

<sup>101</sup> (1998) 193 CLR 173 at 277 [249].

substantive right usurps the judicial power of the Commonwealth<sup>102</sup>. Furthermore, legislatures commonly require pre-trial disclosure from an accused person, as exemplified by provisions in the *Criminal Procedure Act 1986 (NSW)*<sup>103</sup> requiring the giving of an alibi notice<sup>104</sup>, the disclosure of expert reports relied on to support a defence of “substantial mental impairment”<sup>105</sup> and other disclosures relating to the case management of a criminal trial<sup>106</sup>.

49 In *Hamilton v Oades*<sup>107</sup>, a majority of this Court construed certain provisions of the *Companies (New South Wales) Code* relating to a liquidator’s power to examine company officers while charges were pending as effectively abrogating the privilege against self-incrimination. Compared with the statutory provision considered in *Mortimer v Brown*<sup>108</sup>, Mason CJ noted three critical aspects of the statute. First, the provisions expressly abrogated the privilege against self-incrimination by requiring a witness to answer questions after charges had been laid. Secondly, the legislature provided a use immunity. Thirdly, the legislative scheme explicitly empowered a court to give directions concerning the examination. There was no derivative use immunity under that statutory scheme.

50 In observing that “[i]mmunity from derivative use tends to be ineffective by reason of the problem of proving that other evidence is derivative”<sup>109</sup>, Mason CJ commented that a direct use immunity achieves a protection equivalent to the privilege against self-incrimination; namely, that an examinee is not convicted “out of his own mouth”<sup>110</sup>. Importantly, however, it was noted that the court could restrain, as an abuse of process, questions directed to compel an examinee to disclose defences or to establish guilt<sup>111</sup>, which would, in any given case, necessarily qualify the derivative evidence available to the prosecution. It was also noted that in its inherent jurisdiction the court could make orders, other than orders restoring the privilege, to safeguard an examinee’s fair trial<sup>112</sup>. These observations highlight an important difference between a compulsory examination supervised by a court and one conducted by a member of the executive.

51 The examination provisions in the ACC Act work differently from those considered in *Hamilton v Oades*. The examination provisions do not contain a mechanism for limiting the questions asked or the documents or things sought in an examination. Rather, the person examined, and the administration of criminal justice, are protected by ss 25A(3), 25A(9) and 25A(11), and ss 30(4) and 30(5).

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<sup>102</sup> *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs* (1992) 176 CLR 1; *Australian Building Construction Employees’ and Builders Labourers’ Federation v The Commonwealth* (1986) 161 CLR 88 at 96; [1986] HCA 47.

<sup>103</sup> Picked up by *Judiciary Act 1903* (Cth), s 68.

<sup>104</sup> *Criminal Procedure Act 1986* (NSW), s 150. See also *Criminal Procedure Act 2009* (Vic), s 190; *Criminal Law Consolidation Act 1935* (SA), s 285C; *Criminal Code* (Q), s 590A; *Criminal Procedure Act 2004* (WA), s 96(3)(a); *Criminal Code* (Tas), s 368A.

<sup>105</sup> *Criminal Procedure Act 1986* (NSW), s 151. See generally *Criminal Procedure Act 2009* (Vic), s 189; *Criminal Law Consolidation Act 1935* (SA), s 285BC; *Criminal Code* (Q), s 590B; *Criminal Procedure Act 2004* (WA), s 96(3)(b).

<sup>106</sup> *Criminal Procedure Act 1986* (NSW), ss 141-147. See also *Criminal Procedure Act 2009* (Vic), ss 183 and 184; *Criminal Law Consolidation Act 1935* (SA), ss 285BA and 285BB; *Criminal Code* (Q), s 590C; *Criminal Procedure Act 2004* (WA), ss 96(3)(c) and 96(3)(d).

<sup>107</sup> (1989) 166 CLR 486.

<sup>108</sup> (1970) 122 CLR 493.

<sup>109</sup> (1989) 166 CLR 486 at 496.

<sup>110</sup> (1989) 166 CLR 486 at 496.

<sup>111</sup> (1989) 166 CLR 486 at 498.

<sup>112</sup> (1989) 166 CLR 486 at 498-499 per Mason CJ, 510 per Dawson J, 517 per Toohey J.

- 52 Section 25A of the ACC Act must be construed harmoniously within the entire scheme of the examination provisions. That scheme contains a statutory use immunity, and no express statutory prohibition on derivative use. The derivative use immunity as it existed under the NCA Act was repealed. In *R v Director of Serious Fraud Office; Ex parte Smith*<sup>113</sup>, when discussing provisions structured to override the privilege but which left in place a statutory use immunity, Lord Mustill remarked that a statute which compels self-incrimination but which provides a use immunity may in some cases inferentially permit derivative use of the self-incriminating evidence for other purposes. This is an approach to the construction of such provisions which is exemplified by the decision in *Hamilton v Oades*. However, because of the express terms of the above-mentioned protective provisions, a similar inference is precluded under the ACC Act.
- 53 It is clear that, depending on their purposes, administrative or executive inquiries into offences under some statutory schemes are capable of prejudicing the fair trial of an accused person<sup>114</sup>. Compulsory examination by a member of the executive after a charge has been laid might prejudice the fair trial of the person examined where the prosecution is, as a result, afforded an unfair forensic advantage, being an advantage which would not otherwise be obtainable under ordinary rules of criminal procedure. A direct use immunity is a protection in that respect. However, a use immunity alone does not place an accused person in as good a position as he or she would be if able to rely on the privilege against self-incrimination, because material establishing that a person is guilty of an offence “may place [a person] in real and appreciable danger of conviction, notwithstanding that the answers themselves may not be given in evidence”<sup>115</sup>. An unfair forensic advantage may therefore take the form of the prosecution making use of derivative evidence to obtain a conviction. The clearest example is when the prosecution tenders derivative evidence which could not have been obtained, or the significance of which could not have been appreciated, but for the compulsorily obtained evidence.
- 54 Given the onus on the prosecution to prove an offence, and the non-compellability of an accused, in the absence of a factor such as the independent sourcing of evidence it is not possible to reconcile a fair trial with reliance on evidence against a person at trial which derives from compulsorily obtained material establishing that person’s guilt, or disclosing defences.
- 55 Turning to the protective provisions, the content of the “fair trial” referred to in ss 25A(9) and 25A(11) must be informed by the fundamental principle that the onus of proof of the offence rests on the prosecution, whom the accused is not required to assist, and by the rule that an accused is not compellable at his or her trial. Section 25A(9) (and s 25A(11)) can protect a person compulsorily examined against both direct use

<sup>113</sup> [1993] AC 1 at 40, followed in *HKSAR v Lee Ming Tee* (2001) 4 HKCFAR 133.

<sup>114</sup> *Clough v Leahy* (1904) 2 CLR 139 at 156, 161 per Griffith CJ; [1904] HCA 38; *McGuinness v Attorney-General (Vict)* (1940) 63 CLR 73; [1940] HCA 6; *Victoria v Australian Building Construction Employees’ and Builders Labourers’ Federation* (1982) 152 CLR 25 at 53 per Gibbs CJ, 71-73 per Stephen J; [1982] HCA 31.

<sup>115</sup> *Sorby* (1983) 152 CLR 281 at 294 per Gibbs CJ; see also *Rank Film Ltd v Video Information Centre* [1982] AC 380 at 443 per Lord Wilberforce.

(also the subject matter of the statutory use immunity under ss 30(4) and 30(5)), *and* indirect use, at trial of material obtained in a compulsory examination, by a direction restricting publication, or the manner of publication, of such material. A direction under s 25A(9) *must* be made *if* the failure to do so “might” prejudice a person’s fair trial.

- 56 Similarly, s 25A(3) enables an examiner to protect the person examined against direct or indirect use of the material obtained, by controlling who may be present at the examination.
- 57 These safeguards are capable of preventing a compulsory examination from occasioning an unfair burden on the examinee when defending criminal charges. At trial, the onus remains on the prosecution to prove the guilt beyond reasonable doubt of the accused, without the assistance of the accused. The accused may remain silent at the trial, or not, and take whatever course is desired at the close of the prosecution case, without the risk of being confronted with compulsorily obtained evidence, the use of which is subject to statutory prohibition and safeguards. To the extent that the plaintiff will nevertheless be affected by compulsory examination after he has been charged with offences, that consequence is necessarily implied by the terms of the examination provisions, which have already been described.
- 58 It can be acknowledged that there may be some circumstances in which the fairness of a trial can be reconciled with the admissibility of derivative evidence<sup>116</sup>. Not all derivative evidence is of the same quality<sup>117</sup> and derivative evidence may emerge from multiple independent sources. At the outset of an investigation, it may not be clear what derivative evidence will be critical to proving offences, or from which independent sources such evidence might be obtained. However, to the extent that the prosecution may wish to rely on a piece of derivative evidence which was independently obtained, but which was the subject of a protective direction, the CEO has a power to vary a direction given under s 25A(9), provided that the fair trial of the accused is not thereby prejudiced. In any event, the trial judge has a discretion in relation to the admissibility of such evidence, and the court has a power to control any use of derivative evidence which amounts to an abuse of process<sup>118</sup>.
- 59 If there is some failure to employ the protective provisions such that the prosecution would obtain an unfair forensic advantage, a trial court’s inherent power to punish for contempt<sup>119</sup>, including a power to restrain a threatened contempt, would be available, as in *Hammond*. A failure by an examiner to give any, or any adequate, direction under s 25A(9), or an error by the CEO in exercising the power to revoke or vary a direction under s 25A(10), would also be remediable by recourse to the constitutional writs issued pursuant to s 75(v) of the Constitution or s 39B(1) of the *Judiciary Act* 1903 (Cth).

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<sup>116</sup> *R v Sang* [1980] AC 402 at 453-454 per Lord Scarman, citing *R v Warickshall* (1783) 1 Leach 263 at 300 [168 ER 234 at 235]. See also *HKSAR v Lee Ming Tee* (2001) 4 HKCFAR 133 at 167-168 per Ribeiro PJ.

<sup>117</sup> *R v Sellar* [2013] NSWCCA 42 at [102]-[103] per Bathurst CJ.

<sup>118</sup> See *R v Sellar* [2013] NSWCCA 42 at [110] per Bathurst CJ.

<sup>119</sup> *Re Colina; Ex parte Torney* (1999) 200 CLR 386 at 395 [16] per Gleeson CJ and Gummow J, 429 [113] per Hayne J.

60 These considerations show that the examination provisions do not authorise executive interference with the curial process of criminal trials.

61 Whether a direction under s 25A will be sufficient to preclude the prosecution from obtaining an unfair forensic advantage in a trial cannot be stated in any categorical or exhaustive fashion. In considering the sufficiency of any such direction, it would be necessary to consider the nature of the self-incriminating evidence as well as the role of persons who had access to it, together with the use which such persons might make of it. Matters of sufficiency are not to be determined on the stated case. In any event, the plaintiff made no complaint about the sufficiency of the directions which were made in respect of his examination.

#### *Other jurisdictions*

62 The problem of reconciling a fair trial with the use, including derivative use, of material obtained during a compulsory examination has been considered by courts in the United Kingdom<sup>120</sup>, Canada<sup>121</sup>, Hong Kong<sup>122</sup> and Europe<sup>123</sup>. Differing results in those cases reflect the different balances struck under different statutory schemes between some identifiable public interest and the rights of the individual, and also reflect the different constitutional settings in which the statutes fell to be considered.

### Chapter III

63 The plaintiff's main submission in relation to Ch III, that the examination provisions are invalid as a legislative authorisation of executive interference with the curial process of criminal trials for Commonwealth indictable offences, has been addressed, and answered, in the reasons above. There were two other submissions concerning Ch III which have not been dealt with so far.

64 The plaintiff's submission that the privilege against self-incrimination is a necessary part of trial by jury under s 80 of the Constitution must be rejected. In *Sorby*<sup>124</sup>, members of the Court agreed with a unanimous conclusion reached earlier in *Huddart, Parker*<sup>125</sup>, that the privilege against self-incrimination is not a necessary part of trial by jury. A view to the contrary expressed by Murphy J<sup>126</sup>, which his Honour advanced earlier in *Hammond*<sup>127</sup>, has not commanded any subsequent assent and must be rejected.

65 The plaintiff's further submission, that s 25A(9) empowers an examiner to exercise judicial power, must also

<sup>120</sup> *Brown v Stott* [2003] 1 AC 681.

<sup>121</sup> *Thomson Newspapers Ltd v Canada* [1990] 1 SCR 425; *R v S (RJ)* [1995] 1 SCR 451; *British Columbia Securities Commission v Branch* [1995] 2 SCR 3.

<sup>122</sup> *HKSAR v Lee Ming Tee* (2001) 4 HKCFAR 133.

<sup>123</sup> *Saunders v United Kingdom* (1997) 23 EHRR 313.

<sup>124</sup> (1983) 152 CLR 281 at 298 per Gibbs CJ, 308-309 per Mason, Wilson and Dawson JJ.

<sup>125</sup> *Huddart, Parker* (1909) 8 CLR 330 at 358 per Griffith CJ, 366 per Barton J, 375 per O'Connor J, 386 per Isaacs J, 418 per Higgins J.

<sup>126</sup> *Sorby* (1983) 152 CLR 281 at 313.

<sup>127</sup> (1982) 152 CLR 188 at 201.

be rejected. Executive inquiries into facts, the subject of pending proceedings, do not involve an exercise of judicial power – those conducting such inquiries are unable to make any final determination as to the facts or to apply the law to them. That was the position of the examiner and more broadly of other officers of the ACC. A statement of principle to that effect, in *Pioneer Concrete (Vic) Pty Ltd v Trade Practices Commission*<sup>128</sup>, involved rejecting earlier suggestions to the contrary in *Huddart, Parker*<sup>129</sup> and *Melbourne Steamship Co Ltd v Moorehead*<sup>130</sup>. No direction made by an examiner under s 25A(9) is determinative in respect of the fair trial of a person charged. The right to a fair trial is protected by a trial judge’s discretion in relation to the admissibility of evidence and by a court’s institutional powers to punish for contempt, including enjoining a threatened contempt, and to deal with an abuse of process<sup>131</sup>.

### Conclusions

66 For the reasons given, question 1 must be answered “Yes” and question 2 should be answered “No”.

HAYNE AND BELL JJ.

### The issue

67 The plaintiff was arrested and subsequently charged with three indictable Commonwealth offences: conspiracy to import a commercial quantity of a border controlled drug<sup>132</sup>, conspiracy to traffic in a commercial quantity of a controlled drug<sup>133</sup>, and conspiracy to deal with money that was the proceeds of crime<sup>134</sup>. The first two charges carried a maximum sentence of life imprisonment.

68 While in custody, the plaintiff was served with a summons, issued under s 28(1) of the *Australian Crime Commission Act 2002* (Cth) (“the ACC Act”), requiring him to appear to be examined by an examiner appointed under s 46B(1) of the ACC Act for the purposes of a “special ACC operation/investigation”<sup>135</sup>. The plaintiff was asked, and answered, questions which included questions about the subject matter of the offences with which he had been charged. Following an adjournment of the examination, the plaintiff refused to answer further questions about that subject matter. He was told that he would be charged with the offence<sup>136</sup> of failing to answer a question that he was required to answer by the examiner.

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<sup>128</sup> (1982) 152 CLR 460 at 467 per Gibbs CJ, 474 per Mason J, 475 per Murphy J.

<sup>129</sup> (1909) 8 CLR 330 at 379 per O’Connor J.

<sup>130</sup> (1912) 15 CLR 333 at 346 per Barton J; [1912] HCA 69.

<sup>131</sup> *Batistatos v Roads and Traffic Authority (NSW)* (2006) 226 CLR 256 at 265-266 [10]-[12] per Gleeson CJ, Gummow, Hayne and Crennan JJ; *Dupas v The Queen* (2010) 241 CLR 237 at 243 [14]-[15].

<sup>132</sup> Contrary to *Criminal Code* (Cth), ss 11.5(1) and 307.1(1).

<sup>133</sup> Contrary to *Criminal Code*, ss 11.5(1) and 302.2(1).

<sup>134</sup> Contrary to *Criminal Code*, ss 11.5(1) and 400.3(1).

<sup>135</sup> Defined in s 4(1) of the ACC Act as:

(a) an intelligence operation that the ACC is undertaking and that the Board has determined to be a special operation; or

(b) an investigation into matters relating to federally relevant criminal activity that the ACC is conducting and that the Board has determined to be a special investigation”.

<sup>136</sup> s 30(2)(b) and (6).

- 69 Could the examiner lawfully require the plaintiff to answer questions about the subject matter of the offences with which he had been charged but for which he had not then been tried? Could the examiner, for example, lawfully require the plaintiff to answer whether he had committed the offences charged?
- 70 These reasons will show that both the general and the more particular question should be answered “No”. The relevant provisions of the ACC Act should not be construed as authorising the compulsory examination of a person charged with, but not yet tried for, an indictable Commonwealth offence about the subject matter of the pending charge. Permitting the Executive to ask, and requiring an accused person to answer, questions about the subject matter of a pending charge would alter the process of criminal justice to a marked degree, whether or not the answers given by the accused are admissible at trial or kept secret from those investigating or prosecuting the pending charge.
- 71 Requiring the accused to answer questions about the subject matter of a pending charge prejudices the accused in his or her defence of the pending charge (whatever answer is given). Even if the answer cannot be used in *any* way at the trial, any admission made in the examination will hinder, even prevent, the accused from challenging at trial that aspect of the prosecution case. And what would otherwise be a wholly accusatorial process, in which the accused may choose to offer no account of events, but simply test the sufficiency of the prosecution evidence, is radically altered. An alteration of that kind is not made by a statute cast in general terms. If an alteration of that kind is to be made, it must be made by express words or necessary intendment.

### The ACC Act

- 72 The Australian Crime Commission (“the ACC”), established by s 7(1) of the ACC Act, has functions which can generally be described as directed to the gathering and dissemination of criminal information and intelligence. These functions are considered in further detail later in these reasons. Division 2 (ss 24A-36) of Pt II of the ACC Act provided for the compulsory examination of persons for the purposes of a special ACC operation/investigation. The ACC Act required<sup>137</sup> that an examination for these purposes be held in private. Knowingly giving false or misleading evidence at an examination was an offence<sup>138</sup>. The person being examined was obliged<sup>139</sup> to answer questions asked and to produce documents sought. Refusal or failure to answer a question, that the person being examined was required by the examiner to answer, was an offence<sup>140</sup>. Refusal or failure to answer could also be dealt with (by the Federal Court or a Supreme Court on an application by the examiner<sup>141</sup>) as a contempt of the ACC<sup>142</sup>. It is not necessary to explore how notions of “contempt” can properly be engaged in the case of an agency of the Executive like the ACC. Nor is it

<sup>137</sup> s 25A(3).

<sup>138</sup> s 33(1).

<sup>139</sup> s 30(2)(b) and (c).

<sup>140</sup> s 30(2)(b) and (6).

<sup>141</sup> s 34B(1).

<sup>142</sup> s 34A.

necessary to explore how this kind of “contempt” could intersect with, let alone coexist with, the exercise of the contempt powers of a court to prevent interference with the judicial processes of criminal justice.

73 If the person being examined claimed that the answer to a question asked, or the production of a document or thing sought, might tend to incriminate that person, or make him or her liable to a penalty, the ACC Act provided<sup>143</sup> that, subject to some exceptions which are not presently relevant<sup>144</sup>, the answer given, or the document or thing produced, was not admissible in evidence against the person in a criminal proceeding or a proceeding for the imposition of a penalty.

74 Section 25A(9) of the ACC Act also provided that the examiner could give a direction preventing or limiting the publication of: evidence given before the examiner; the contents of documents produced, or the description of things given, to the examiner; information that could enable a person who had given evidence to be identified; and the fact that a person had given or was about to give evidence at an examination. The examiner was obliged<sup>145</sup> to give such a direction “if the failure to do so might prejudice the safety or reputation of a person or prejudice the fair trial of a person” who had been, or might be, charged with an offence. The examiner gave a direction of this kind in relation to the plaintiff’s examination. The ACC Act also provided<sup>146</sup> that a summons requiring a person to attend an examination must include a notation to the effect that disclosure of information about the summons was prohibited if (among other reasons) a failure to include such a notation would reasonably have been expected to have one of the consequences just described. A notation of that kind was included in the summons issued to the plaintiff.

75 The provisions of the ACC Act which provided for examinations in connection with a special ACC operation/ investigation were cast in general terms. Section 28(1) provided that:

“An examiner may summon a person to appear before an examiner at an examination to give evidence and to produce such documents or other things (if any) as are referred to in the summons.”

Section 30(2) provided that:

“A person appearing as a witness at an examination before an examiner shall not:

- (a) when required pursuant to section 28 either to take an oath or make an affirmation—refuse or fail to comply with the requirement;
- (b) refuse or fail to answer a question that he or she is required to answer by the examiner; or
- (c) refuse or fail to produce a document or thing that he or she was required to produce by a summons under this Act served on him or her as prescribed.”

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<sup>143</sup> s 30(4)(c) and (5).

<sup>144</sup> s 30(5)(c) and (d).

<sup>145</sup> s 25A(9).

<sup>146</sup> s 29A(1) and (2)(a).

76 Because these provisions were expressed generally, they would permit, if read literally, the examination of a person who had been charged with an indictable Commonwealth offence about the subject matter of the charged offence. But neither the provisions authorising examination, nor any other provisions of the ACC Act, stated expressly that a person charged with an offence may be examined about the subject matter of that charge.

Questions reserved

77 The plaintiff commenced proceedings against the ACC and the Commonwealth, in the original jurisdiction of this Court, alleging that the ACC Act does not validly permit the examiner to ask the plaintiff about the matters which are the subject of the charges laid against him. Two questions have been reserved for the consideration of the Full Court. The Attorneys-General for the States of New South Wales, Queensland, South Australia, Victoria and Western Australia intervened in the hearing of the questions reserved in support of the ACC and the Commonwealth.

78 The first question asks:

“Does Division 2 of Part II of the ACC Act empower an examiner appointed under section 46B(1) of the ACC Act to conduct an examination of a person charged with a Commonwealth indictable offence where that examination concerns the subject matter of the offence so charged?”

The answer depends upon the construction of the provisions of the ACC Act which provide for compulsory examinations. If those questions of construction were to be resolved against the plaintiff, there would be a further question about the proper construction of the instruments establishing the relevant “special ACC operation/investigation”.

79 The second question asks:

“If the answer to Question 1 is ‘Yes’, is Division 2 of Part II of the ACC Act invalid to that extent as contrary to Ch III of the Constitution?”

This second question must be considered only if the ACC Act would otherwise permit compulsory examination of a person charged with an indictable Commonwealth offence about the subject matter of the charge.

80 The ACC and the Commonwealth submitted that the second question reserved is not reached in this matter because the ACC Act incorporated “protections that ha[d] the effect that any questioning in relation to the subject matter of pending criminal charges [would] not create a ‘real risk’, as a matter of practical reality, to the administration of justice”. More particularly, the ACC and the Commonwealth submitted that, because the examiner gave directions preventing those responsible for investigating or prosecuting the

charges pending against the plaintiff from knowing what answers the plaintiff gave at his examination, there could be no contempt of court. It is convenient to deal at once with these submissions, which focused upon the use which might be made of answers given at an examination in the prosecution of the person examined.

### Direct and indirect use of answers

81 The ACC and the Commonwealth placed at the forefront of their submissions those provisions of the ACC Act<sup>147</sup> which prevent the direct or, depending on the terms of a direction given under s 25A(9), indirect use of answers given at an examination in the prosecution of the person examined (otherwise than for an offence under the ACC Act). Particular emphasis was given to the obligation imposed by s 25A(9) to direct that there be no, or limited, publication of what was said or produced at an examination “if the failure to [give such a direction] might prejudice ... the fair trial of a person who has been, or may be, charged with an offence”.

82 The ACC and the Commonwealth submitted that, by preventing direct or indirect use of the answers given at an examination, the ACC Act “provide[d] mechanisms to ensure that [the examination did] not result in any prejudice to the fairness of the pending trial”. Accordingly, so the argument continued, the ACC Act should be read as “specifically contemplat[ing] that examination powers may be used after charges have been laid”. And this conclusion was said to be supported by consideration of the legislative history of the ACC Act.

83 Three points must be made. First, there is no express reference, anywhere in the ACC Act, to examination of a person who has been charged with, but not tried for, an offence about the subject matter of the pending charge. Contrary to the assumption that necessarily underpinned the submissions made by the ACC and the Commonwealth, the reference in s 25A(9) (and the similar reference in s 29A(2)) to prejudice to “the fair trial of a person who has been, or may be, charged with an offence” does not deal specifically with the case of the person being examined having also been charged with an offence. The words used are sufficiently general to *include* that case, but they do not deal directly or expressly with it. The words used in s 25A(9) (and in s 29A(2)) have ample work to do in respect of the examination of persons who may be suspected of wrong-doing but who, before examination, have not been charged with any offence. It is the generality of the words used in the ACC Act, including in ss 25A(9) and 29A(2), and the absence of *specific* reference to examination of a person who has been charged about the subject matter of the pending charge, which presents the issue for determination in this case.

84 Second, the legislative history of the ACC Act provides little or no assistance in dealing with the question of construction that arises in this case. The introduction<sup>148</sup> into the *National Crime Authority Act 1984* (Cth) of a use immunity in respect of answers given at a compulsory examination, coupled with the repeal<sup>149</sup> of a

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<sup>147</sup> Especially ss 25A(9) and 30(4) and (5).

<sup>148</sup> *National Crime Authority Legislation Amendment Act 2001* (Cth), Sched 1, item 12.

<sup>149</sup> *National Crime Authority Legislation Amendment Act 2001* (Cth), Sched 1, item 12.

provision of that Act permitting a person examined under the Act to claim the privilege when charged with an offence, sheds little, if any, light on the issue that must be decided in this case. The ACC Act must be construed according to its terms, not by reference to earlier legislation dealing with another body, no matter what similarities the two bodies may be thought to have in their constitution, powers or functions.

85 Third, and more fundamentally, these reasons will show that permitting the Executive to ask, and compelling answers to, questions about the subject matter of a pending charge (regardless of what use may be made of those answers at the trial of an accused person) fundamentally alters the process of criminal justice. It is that observation which is critical to the question of statutory construction which must be answered in this case.

#### The applicable rule of statutory construction

86 The question of statutory construction which arises in this case requires the consideration and application of a well-established rule. That rule, often since applied<sup>150</sup>, was stated by O'Connor J in *Potter v Minahan*<sup>151</sup> by quoting Maxwell's *On the Interpretation of Statutes*<sup>152</sup>:

“It is in the last degree improbable that the legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clearness<sup>153</sup>; and to give any such effect to general words, simply because they have that meaning in their widest, or usual, or natural sense, would be to give them a meaning in which they were not really used.” (emphasis added)

87 This rule of construction has found most frequent application in this Court with respect to legislation which may affect rights. In that context, it has come to be referred to as a “principle of legality”<sup>154</sup>. But the rule is not confined to legislation which may affect rights. It is engaged in the present case because of the effects which the asserted construction of the ACC Act provisions authorising compulsory examination would have not only on the rights, privileges and immunities of a person charged with an indictable Commonwealth offence, but also on a defining characteristic of the criminal justice system. In particular, it would alter to a marked degree the accusatorial nature of the criminal justice system. To hold that the general words of the relevant provisions of the ACC Act authorise compulsory examination of a person charged with an indictable Commonwealth offence about the subject matter of the offence charged would thus depart in a marked degree from the “general system of law”.

#### The relevance of considerations of fairness

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<sup>150</sup> See, for example, *Re Bolton; Ex parte Beane* (1987) 162 CLR 514 at 523, 532; [1987] HCA 12; *Bropho v Western Australia* (1990) 171 CLR 1 at 17-18; [1990] HCA 24; *Coco v The Queen* (1994) 179 CLR 427 at 436-438, 446; [1994] HCA 15; *Commissioner of Australian Federal Police v Propend Finance Pty Ltd* (1997) 188 CLR 501 at 540, 564-565, 567; [1997] HCA 3; *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543 at 553 [11], 562-563 [43], 576 [88]; [2002] HCA 49.

<sup>151</sup> (1908) 7 CLR 277 at 304; [1908] HCA 63.

<sup>152</sup> 4th ed (1905) at 122.

<sup>153</sup> *United States v Fisher* 6 US 358 at 390 (1805).

<sup>154</sup> See, for example, *Electrolux Home Products Pty Ltd v Australian Workers' Union* (2004) 221 CLR 309 at 329 [21] per Gleeson CJ; [2004] HCA 40; *Momcilovic v The Queen* (2011) 245 CLR 1 at 46-47 [43] per French CJ; [2011] HCA 34.

88 Applying this rule of construction does not depend upon classifying the result of the alteration to the general system of law as “unfair”. To ask whether the compulsory examination of a person charged with an indictable Commonwealth offence about the subject matter of the charge is unfair, at best, would be unhelpful and, at worst, would be distracting. The result being considered could be described as “unfair” only by measuring it against some stated or unstated standard of what is fair. No relevant standard was identified.

89 Likewise, applying this rule of construction does not depend upon classifying the trial of the accused, after a secret and compulsory examination about the subject matter of the pending charge, as an “unfair” trial. At least as a general rule, the methods of criminal trial that are prescribed by legislation must be taken, for the purposes of legal debate, to provide a fair trial, and the relevant question to ask is whether the accused has had, or will have, a trial according to law.

Construction, power and fairness are different issues

90 Questions of fairness must be put to one side because they are not relevant. They are not relevant because, in considering the issues in this case, it is essential to distinguish between three different questions that may be asked about the relevant provisions of the ACC Act.

91 First, there is the question of what the legislation provides: *has* the legislature provided for the secret and compulsory examination of an accused person about the subject matter of the pending charge? That is a question of construction and it is the determinative question in this case.

92 Second, there may then be a question of legislative power: *can* the legislature provide for the secret and compulsory examination of an accused person about the subject matter of the pending charge? That question would call for consideration not only of Ch III of the Constitution, but also, and more particularly, of s 80 of the Constitution and what is meant by “trial on indictment” and the requirement that the trial on indictment of any offence against any law of the Commonwealth shall be “by jury”. But because the ACC Act, properly construed, does not permit examination of an accused person about the subject matter of a pending charge, the question of power is not reached in this case.

93 Third, there may very well have been an antecedent question of policy: *should* the legislature provide for an examination of the kind described? That would have been a question for the legislature. And it is a question which may well have been affected by notions of what is “fair” or “unfair”. But in considering the first, and in this case determinative, question identified (“*has* the legislature provided for an examination of the kind described?”), debate about the fairness of the outcome would serve only to divert discussion into generally unproductive arguments of the kind which have attended discussion of the privilege against self-incrimination. More particularly, the debate would necessarily proceed from stated or unstated assumptions about how a balance should be struck in the criminal justice system between individual rights, privileges and immunities,

and societal demands for the detection and punishment of crime, especially serious crime. It is neither right nor profitable to approach the questions of construction which must be decided in this case by describing one or other of the possible constructions as leading to “unfair” or “undesirable” results.

- 94 Instead, as has already been indicated, the debate about proper construction must direct attention to how the general words of the ACC Act are to be applied to a case with which those words do not deal explicitly: the secret and compulsory examination of a person charged with a crime about the subject matter of the charge. The undisputed premise for considering that question is that the general words of the ACC Act are not to be read as authorising what otherwise would be a contempt of court.

#### Answering the allegation of contempt

- 95 By arguments that a pleader would describe as “confession and avoidance”, the Commonwealth and the ACC sought to meet the allegation that the secret and compulsory examination of a person charged with an indictable Commonwealth offence about the subject matter of the charge would be a contempt. The confession was that the ACC Act does not authorise a contempt. The avoidance was the argument that conducting the examination in secret, and giving directions about the *use* which may be made of the answers which the accused person was compelled to give, avoided what would otherwise have been a contempt. But the *use* of those answers to assist the prosecution of the pending charges is only one way in which the course of criminal justice may be disturbed. In this case, it is necessary to consider whether requiring the accused person to *answer* questions about the subject matter of a pending charge interferes with the process of criminal justice.
- 96 How would requiring a person charged with, but not yet tried for, an indictable Commonwealth offence to give secret answers to an agency of the Executive to questions about the subject matter of the pending charge so alter a basic characteristic of the process of criminal justice as to constitute an interference with its administration? It is necessary to begin by identifying the process of criminal justice.

#### The process of criminal justice

- 97 For some purposes, it is sufficient to consider only the nature of a criminal trial. Often enough, it is sufficient to observe that a criminal trial, including the trial of an indictable Commonwealth offence, is both accusatorial<sup>155</sup> and adversarial, and to observe that, subject to limited exceptions, a criminal trial is conducted in open court.
- 98 The trial process is adversarial in the sense described by Barwick CJ in *Ratten v The Queen*<sup>156</sup>:

“It is a trial, not an inquisition: a trial in which the protagonists are the Crown on the one hand

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<sup>155</sup> See, for example, *RPS v The Queen* (2000) 199 CLR 620 at 630 [22]; [2000] HCA 3; *Azzopardi v The Queen* (2001) 205 CLR 50 at 64-65 [34]; [2001] HCA 25.

<sup>156</sup> (1974) 131 CLR 510 at 517; [1974] HCA 35.

and the accused on the other. Each is free to decide the ground on which it or he will contest the issue, the evidence which it or he will call, and what questions whether in chief or in cross-examination shall be asked; always, of course, subject to the rules of evidence, fairness and admissibility.”

99 The criminal trial process is accusatorial in the sense that it is for the prosecution to decide what charge is preferred against the accused<sup>157</sup>. The trial process is accusatorial in the further sense that the prosecution bears the onus of proof of all elements of the charge that is laid. But describing these aspects of a criminal trial as “accusatorial” must not distract attention from the much wider and no less fundamental observation that the whole process of criminal justice, commencing with the investigation of crime and culminating in the trial of an indictable Commonwealth offence, is accusatorial.

100 It is also necessary, in this respect, to exercise some care in identifying what lessons can be drawn from the history of the development of criminal law and procedure. Questions about criminal trial process may be illuminated by reference to historical considerations. But there are some features of criminal trial process which, although now considered to be fundamental, are of relatively recent origin. So, for example, what now are axiomatic principles about the burden and standard of proof in criminal trials were not fully established until, in 1935, *Woolmington v The Director of Public Prosecutions*<sup>158</sup> decided that “[t]hroughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner’s guilt”. Any reference to the history of the privilege against self-incrimination, or its place in English criminal trial process, must also recognise that it was not until the last years of the nineteenth century that an accused person became a competent witness at his or her trial<sup>159</sup>.

101 As will be shown, the whole of the process for the investigation, prosecution and trial of an indictable Commonwealth offence is accusatorial. It is accusatorial in the sense that an accused person is not called on to make any answer to an allegation of wrong-doing, or to any charge that is laid, until the prosecuting authorities have made available to the accused particulars of the evidence on which it is proposed to rely in proof of the accusation that is made. And even after that information has been provided, the accused person need say or do nothing more than enter a plea of guilty or not guilty to the charge. If the accused person chooses to plead not guilty at trial, he or she is entitled to put the prosecution to proof of the charge and, as part of that process, to test the strength of the evidence which the prosecution adduces at trial. The only relevant limit on the accused person’s testing of the strength of the prosecution’s case is provided by the accused person’s instructions to his or her lawyer. The lawyer cannot test the prosecution case in a manner inconsistent with the accused person’s instructions.

### The privilege against self-incrimination and the “right to silence”

<sup>157</sup> See, for example, *Maxwell v The Queen* (1996) 184 CLR 501 at 512-514, 534; [1996] HCA 46; *Director of Public Prosecutions (SA) v B* (1998) 194 CLR 566 at 579-580 [21]; [1998] HCA 45; *Cheung v The Queen* (2001) 209 CLR 1 at 22 [47]; [2001] HCA 67.

<sup>158</sup> [1935] AC 462 at 481.

<sup>159</sup> *Azzopardi* (2001) 205 CLR 50 at 65-68 [39]-[44]. See also *Criminal Law and Evidence Amendment Act* 1891 (NSW), s 6; *Crimes Act* 1891 (Vic), s 34; *Accused Persons Evidence Act* 1882 (SA), s 1.

- 102 These features of the accusatorial system of criminal justice can be described as an accused having a “right to silence”<sup>160</sup>. And discussion of the “right to silence” must often proceed in conjunction with a discussion of the privilege against self-incrimination. But, as this Court’s decision in *Environment Protection Authority v Caltex Refining Co Pty Ltd*<sup>161</sup> shows, the privilege against self-incrimination is distinct from what was there described as “[t]he fundamental principle that the onus of proof beyond reasonable doubt rests on the Crown” and its “companion rule that an accused person cannot be required to testify to the commission of the offence charged”.
- 103 In this case, it is necessary to unpack the content of both the privilege against self-incrimination and the so-called “right to silence” to identify whether compulsory examination of a person charged with an offence about the subject matter of the offence charged would be an impermissible interference with the due administration of criminal justice.
- 104 As four members of this Court said in *Reid v Howard*<sup>162</sup>, “[t]he privilege [against self-incrimination], which has been described as a ‘fundamental ... bulwark of liberty’<sup>163</sup>, is not simply a rule of evidence, but a basic and substantive common law right”. The evolution of and rationale for the privilege against self-incrimination have been described in various ways<sup>164</sup>. No single explanation has achieved universal acceptance, whether in judicial decisions or academic writings<sup>165</sup>. But neither the existence nor the content of those controversies can be understood as denying that the privilege is now regarded as being “a basic and substantive common law right”, and not just a rule of evidence. That is, it is not a privilege which is concerned only with the *use* to which answers given may be put at, or in connection with, a trial. It is a privilege which permits the refusal to make an answer regardless of whether the answer is admissible as testimonial evidence<sup>166</sup>. The accusatorial process of criminal justice and the privilege against self-incrimination both reflect and assume the proposition that an accused person need never make any answer to any allegation of wrong-doing.
- 105 The notion of an accused person’s “right to silence” encompasses more than the rights that the accused has at trial. It includes the rights (more accurately described as privileges) of a person suspected of, but not charged with, an offence, and the rights and privileges which that person has between the laying of charges and the commencement of the trial.

#### Accusatorial process of investigation

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<sup>160</sup> *Petty v The Queen* (1991) 173 CLR 95 at 99; [1991] HCA 34; *RPS* (2000) 199 CLR 620 at 630 [22]. See also *R v Director of Serious Fraud Office; Ex parte Smith* [1993] AC 1 at 30-31.

<sup>161</sup> (1993) 178 CLR 477 at 503 per Mason CJ and Toohey J; [1993] HCA 74.

<sup>162</sup> (1995) 184 CLR 1 at 11 per Toohey, Gaudron, McHugh and Gummow JJ; [1995] HCA 40.

<sup>163</sup> *Pyneboard Pty Ltd v Trade Practices Commission* (1983) 152 CLR 328 at 340; [1983] HCA 9.

<sup>164</sup> See, for example, Roberts and Zuckerman, *Criminal Evidence*, 2nd ed (2010) at 542-563; Duff, “Adversarial Ideology and Police Questioning after Charge”, (2013) *Juridical Review* 1 at 3.

<sup>165</sup> Some of those disputes are referred to in this Court’s reasons in *Australian Crime Commission v Stoddart* (2011) 244 CLR 554; [2011] HCA 47.

<sup>166</sup> *Sorby v The Commonwealth* (1983) 152 CLR 281 at 290-292 per Gibbs CJ; [1983] HCA 10.

106 Part IC (ss 23-23W) of the *Crimes Act* 1914 (Cth) (“the Crimes Act”) regulates the investigation of Commonwealth offences. Section 23A(2) provides that Pt IC “does not exclude or limit the operation of a law of a State or Territory so far as it can operate concurrently” with the Part. Section 23A(5) provides that:

“The provisions of this Part, so far as they protect the individual, are in addition to, and not in derogation of, any rights and freedoms of the individual under a law of the Commonwealth or of a State or Territory.”

107 Subject to s 23F(3), if a person is under arrest for a Commonwealth offence, “an investigating official” (which includes<sup>167</sup> a member of the Australian Federal Police and a member of the police force of a State or Territory) “must, before starting to question the person, caution the person that he or she does not have to say or do anything, but that anything the person does say or do may be used in evidence”<sup>168</sup>. Section 23F(3) provides that the obligation imposed by s 23F(1) to administer a caution does “not apply so far as another law of the Commonwealth requires the person to answer questions put by, or do things required by, the investigating official”.

108 Section 23E, with its requirement that, in general, persons under arrest for Commonwealth offences are to be cautioned that they need not say or do anything, is, of course, an important manifestation of an accused’s right to silence. The importance of that general rule is reinforced by s 23S(a) of the Crimes Act, which provides that:

“Nothing in this Part affects:

(a) the right of a person to refuse to answer questions or to participate in an investigation except where required to do so by or under an Act”.

109 These provisions of Pt IC of the Crimes Act both create and reflect one important element of the accusatorial nature of the process of criminal justice in respect of indictable Commonwealth offences: a person accused or suspected of having committed a crime is entitled to stay silent in response to the questions of investigating officials.

### The laying of a charge

110 The laying of a charge marks the first step in engaging the exclusively judicial task<sup>169</sup> of adjudicating and punishing criminal guilt. A person who lays a criminal charge maliciously, and without reasonable and probable cause, commits the tort of malicious prosecution<sup>170</sup> if the prosecution has terminated in favour

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<sup>167</sup> s 23B(1).

<sup>168</sup> s 23F(1).

<sup>169</sup> See, for example, *Chu Kheng Lim v Minister for Immigration* (1992) 176 CLR 1 at 27; [1992] HCA 64.

<sup>170</sup> *A v New South Wales* (2007) 230 CLR 500; [2007] HCA 10.

of the plaintiff. Ordinarily, then, a charge will be laid only when the informant has formed the view, on a sufficient basis, that there is a proper case for prosecution. And, having regard to the provisions of Pt IC of the Crimes Act to which reference has been made, the investigating official must decide whether there is reasonable and probable cause to charge a suspect, and thus engage the process of criminal justice, without the suspect being obliged to say anything in answer to the accusation made. Conversely, once it has been decided that there is reasonable and probable cause to commence the judicial process by laying a charge, the acquisition, before trial, of further information in proof of the accused person's guilt can serve no purpose unless it is to make that person's conviction more probable.

#### Accusatorial pretrial procedures

111 It is next important to notice several statutory provisions governing the procedures, including pretrial procedures, for dealing with charges of indictable Commonwealth offences.

112 First, s 68(1) of the *Judiciary Act* 1903 (Cth) provides that:

“The laws of a State or Territory respecting the arrest and custody of offenders or persons charged with offences, and the procedure for:

...

(b) their examination and commitment for trial on indictment; and

(c) their trial and conviction on indictment. . . and for holding accused persons to bail, shall, subject to this section, apply and be applied so far as they are applicable to persons who are charged with offences against the laws of the Commonwealth in respect of whom jurisdiction is conferred on the several courts of that State or Territory by this section.”

113 Division 2 (ss 69-71A) of Pt X of the *Judiciary Act* makes further provision with respect to indictable offences against the laws of the Commonwealth. Section 71A provides power for the Attorney-General of the Commonwealth to file an indictment for any indictable Commonwealth offence in specified courts without preliminary examination or committal for trial. But subject to this ex officio power for direct presentment, s 68(1) of the *Judiciary Act* picks up and applies, as surrogate federal law, those provisions of State or Territory law which provide for the conduct of committal procedures before an indictment is filed against an accused.

114 Although a magistrate conducting committal proceedings is not exercising judicial power<sup>171</sup>, committal proceedings have an important place in the system for the administration of criminal justice. Apart from the (rare) case where an ex officio indictment is filed directly, a person accused of an indictable Commonwealth offence will not be called on to plead to the indictment until the prosecution has assembled the evidence

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<sup>171</sup> *Huddart, Parker & Co Pty Ltd v Moorehead* (1909) 8 CLR 330 at 355-358, 366, 378; [1909] HCA 36; *R v Murphy* (1985) 158 CLR 596 at 610; [1985] HCA 50.

which it is proposed to lead at trial, and has given notice to the accused of the substance of that evidence.

115 So fundamental is this rule that, if an indictment is filed directly, without any preliminary examination or committal, the court in which the indictment is filed may stay the proceedings as an abuse of process if it is necessary to do so to ensure that the accused receives a fair trial<sup>172</sup>. And the rule finds further reflection in the procedure which may be followed if there has been a committal and, as sometimes happens, the prosecution seeks to call at trial a witness whom the accused could not have sought to cross-examine before the decision to commit him or her for trial. In such a case, the court trying the accused may allow the witness to be cross-examined, on a voir dire, before the witness is called at trial by way of what has become known as a “*Basha*” inquiry<sup>173</sup>.

#### An accusatorial trial

116 Two provisions of the *Evidence Act* 1995 (Cth) also create elements of, and reflect, the accusatorial nature of the trial of indictable Commonwealth offences. First, s 17(2) provides that a defendant in criminal proceedings is not competent to give evidence as a witness for the prosecution. Second, s 20(2) permits the judge at trial, and any party *other* than the prosecutor, to comment on a failure by the defendant to give evidence. But the judge must not suggest that the defendant failed to give evidence because the defendant was, or believed that he or she was, guilty of the offence concerned.

117 It follows that a person accused of an indictable Commonwealth offence may stand mute at his or her trial. The accused cannot be called to give evidence by the prosecution. The prosecution may not comment on the failure of the accused to give evidence. The judge may comment on the failure to give evidence, but not so as to suggest that the failure bespeaks guilt. The accused may therefore make the decision whether to give evidence free from the pressure that would be there if the judge could tell the jury that silence bespeaks guilt.

#### The accusatorial process of criminal justice

118 The preceding description of the investigation, prosecution and trial of an indictable Commonwealth offence demonstrates that, at every stage, the process of criminal justice is accusatorial. It is against this background that the provisions of the ACC Act, particularly s 28(1), must be construed. If these provisions were to permit the compulsory examination of a person charged with an offence about the subject matter of the pending charge, they would effect a fundamental alteration to the process of criminal justice.

#### Statutory modification of an accusatorial process

119 This is not to decide that statute can never effect fundamental alterations to the process of criminal justice.

<sup>172</sup> *Barton v The Queen* (1980) 147 CLR 75; [1980] HCA 48.

<sup>173</sup> *Basha* (1989) 39 A Crim R 337 at 339; *R v Sandford* (1994) 33 NSWLR 172 at 180-181; *Director of Public Prosecutions (Cth) v Bayly* (1994) 63 SASR 97 at 119-120; *Director of Public Prosecutions v Denysenko* [1998] 1 VR 312 at 316.

As explained earlier, it is not necessary to decide whether there is any relevant constitutional limitation<sup>174</sup> to legislative power that would preclude such an alteration. But such an alteration can only be made if it is made clearly by express words or necessary intendment.

120 The process of criminal justice that can now be described as “accusatorial” has grown over time and has its origins in both statute and judge-made law. So, for example, rules requiring the police cautioning of suspects find their origins in the Judges’ Rules (the first of which were formulated in 1912 by the judges of the King’s Bench Division as a guide to police in the questioning of suspects<sup>175</sup>). In Australia, the rules were at one time set out only in internal police rules or orders<sup>176</sup>, and the requirement to caution a suspect was not given direct statutory effect by Commonwealth legislation until the enactment of Pt IC of the Crimes Act in 1991<sup>177</sup>.

121 From time to time, legislation has been enacted which has qualified the generally accusatorial nature of the process of criminal justice. Some of the earliest of those modifications are to be found in legislation providing for the examination of bankrupts, and of persons who have “taken part or been concerned in the promotion, formation, management, administration or winding up” of a corporation and who have been, or may have been, “guilty of fraud ... or other misconduct in relation to that corporation”<sup>178</sup>. Legislation provided for the examination of bankrupts<sup>179</sup>, and those thought to have defrauded companies<sup>180</sup>, before the accused became a competent witness at trial.

122 More recently, other changes have been made directly to the accusatorial system of criminal justice by express alteration of the laws governing criminal procedure. So, for example, State legislation, for some time, has required an accused to give notice of alibi<sup>181</sup>. Further, State criminal procedure legislation now requires an accused to give notice of intention to adduce some other kinds of evidence, such as evidence of substantial mental impairment<sup>182</sup>, or expert evidence more generally<sup>183</sup>. Some State criminal procedure legislation requires the prosecution, before the trial begins, to serve on the accused, and file in court, a summary which must outline the manner in which the prosecution will put the case against the accused<sup>184</sup>, and requires the accused to respond by identifying, again before the trial begins, “the acts, facts, matters and circumstances

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<sup>174</sup> cf *Victoria v Australian Building Construction Employees’ and Builders Labourers’ Federation* (1982) 152 CLR 25 at 161-162 per Brennan J; [1982] HCA 31.

<sup>175</sup> Referred to in *R v Voisin* [1918] 1 KB 531 at 539; cf *Practice Note (Judges’ Rules)* [1964] 1 WLR 152.

<sup>176</sup> See, for example, the Standing Orders promulgated by the Chief Commissioner of Police in Victoria discussed in *R v Lee* (1950) 82 CLR 133 at 142-144, 154-155; [1950] HCA 25.

<sup>177</sup> *Crimes (Investigation of Commonwealth Offences) Amendment Act* 1991 (Cth).

<sup>178</sup> See, for example, *Companies (New South Wales) Code*, s 541(2)(a); *Hamilton v Oades* (1989) 166 CLR 486; [1989] HCA 21.

<sup>179</sup> See, for example, *Bankruptcy Act* 1887 (NSW), s 18; *Bankruptcy Act* 1898 (NSW), s 18; *Insolvency Statute* 1871 (Vic), ss 132 and 133; *Insolvency Act* 1890 (Vic), ss 134 and 135; *Bankruptcy Act* 1883 (UK), s 17. See, also, *In re Atherton* [1912] 2 KB 251; *In re Paget; Ex parte Official Receiver* [1927] 2 Ch 85. Cf *Bankruptcy Act* 1924 (Cth), s 68; *Bankruptcy Act* 1966 (Cth), s 81.

<sup>180</sup> See, for example, *Joint Stock Companies Winding-up Act* 1848 (UK), s 63; *Joint Stock Companies Act* 1856 (UK), s 77; *Companies Act* 1862 (UK), ss 115 and 117. See also, for example, *Companies Winding up Act* 1847 (NSW), s 13; *Companies Act* 1874 (NSW), ss 173 and 174; *Companies Act* 1899 (NSW), ss 123 and 124; *Companies Statute* 1864 (Vic), ss 106, 107 and 149; *Companies Act* 1890 (Vic), ss 109, 110 and 152.

<sup>181</sup> See, for example, *Criminal Procedure Act* 1986 (NSW), s 150(2); *Criminal Procedure Act* 2009 (Vic), s 190(1).

<sup>182</sup> *Criminal Procedure Act* 1986 (NSW), s 151(1).

<sup>183</sup> *Criminal Procedure Act* 2009 (Vic), s 189.

<sup>184</sup> *Criminal Procedure Act* 2009 (Vic), s 182(1) and (2).

with which issue is taken and the basis on which issue is taken”<sup>185</sup>.

123 These changes to the accusatorial process of criminal justice have been made directly and expressly. Neither the changes that have been made more recently, nor the existence of historical qualifications and exceptions of the kind exemplified by bankruptcy and companies examination procedures, deny that the existing process for the administration of criminal justice is properly described as an accusatorial process. The qualifications and exceptions stand as particular features of the process of criminal justice that have been separately created (in important respects before the emergence of organised police forces and the modern criminal justice system). Their existence shows no more than that the modern criminal justice system is the product of growth over time and is not the product of a decision to implement some single organising theory about the administration of criminal justice.

#### Impact on accusatorial process

124 Even if the answers given at a compulsory examination are kept secret, and therefore cannot be used directly or indirectly by those responsible for investigating and prosecuting the matters charged, the requirement to give answers, after being charged, would fundamentally alter the accusatorial judicial process that begins with the laying of a charge and culminates in the accusatorial (and adversarial) trial in the courtroom. No longer could the accused person decide the course which he or she should adopt at trial, in answer to the charge, according *only* to the strength of the prosecution’s case as revealed by the material provided by the prosecution before trial, or to the strength of the evidence led by the prosecution at the trial. The accused person would have to decide the course to be followed in light of that material and in light of any self-incriminatory answers which he or she had been compelled to give at an examination conducted after the charge was laid. That is, the accused person would have to decide what plea to enter, what evidence to challenge and what evidence to give or lead at trial according to what answers he or she had given at the examination. The accused person is thus prejudiced in his or her defence of the charge that has been laid by being required to answer questions about the subject matter of the pending charge.

125 As has been explained, if an alteration of that kind is to be made to the criminal justice system by statute, it must be made clearly by express words or by necessary intendment. If the relevant statute does not provide clearly for an alteration of that kind, compelling answers to questions about the subject matter of the pending charge would be a contempt.

#### Earlier decisions of this Court

126 It is necessary to say something about some earlier decisions of this Court, including, in particular, *Hammond v The Commonwealth*<sup>186</sup> and *Hamilton v Oades*<sup>187</sup>.

<sup>185</sup> *Criminal Procedure Act* 2009 (Vic), s 183(1) and (2).

<sup>186</sup> (1982) 152 CLR 188; [1982] HCA 42.

<sup>187</sup> (1989) 166 CLR 486.

Hammond

- 127 *Hammond* concerned the compulsory examination of a person charged with an indictable Commonwealth offence about the subject matter of the charge. The examination was to be conducted under the *Royal Commissions Act* 1902 (Cth) and the *Evidence Act* 1958 (Vic). Both Acts provided<sup>188</sup> that it was an offence for a person being examined to refuse to answer any question relevant to the inquiry being conducted. Both Acts also provided<sup>189</sup> that answers given by the person being examined were not admissible in evidence against that person in any civil or criminal proceedings (except in proceedings for an offence against the Act in question). This Court assumed, but did not decide, that, as all parties to the litigation had submitted, a person charged with an offence was bound to answer questions designed to establish that he or she had committed the charged offence<sup>190</sup>.
- 128 The Court held unanimously that continuing Mr Hammond's examination would interfere with the due administration of justice, even though the answers he gave would not be admissible in evidence against him. Accordingly, the Commissioner conducting the examination was restrained from further examining Mr Hammond until the determination of his trial.
- 129 The principal reasons of the Court were given by Gibbs CJ. Those reasons (with which Mason J agreed and Murphy J generally agreed) must be read in the light of the Court's comprehensive consideration of executive inquiries into alleged offences in *Victoria v Australian Building Construction Employees' and Builders Labourers' Federation*<sup>191</sup> ("the *BLF Case*"). Judgment in the *BLF Case* was delivered less than three months before *Hammond* was argued and decided.
- 130 In the *BLF Case*, six members of the Court held<sup>192</sup>, following earlier authority of this Court<sup>193</sup>, that, in the absence of any law to the contrary, the Crown *may* appoint a commission of inquiry into whether an individual has committed an offence. And the whole Court held<sup>194</sup> that the conduct of a commission of inquiry, to the extent that it creates a risk of interference with the administration of justice, may be a contempt of court. But the Court accepted that, subject to any applicable constitutional limitation<sup>195</sup>, such a contempt might not arise if the conduct was specifically authorised by statute. It was not necessary to explore that question in the *BLF Case* and it is not necessary to do so in this case.

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<sup>188</sup> *Royal Commissions Act* 1902 (Cth), s 6; *Evidence Act* 1958 (Vic), s 16(b).

<sup>189</sup> *Royal Commissions Act* 1902, s 6DD; *Evidence Act* 1958, s 30.

<sup>190</sup> (1982) 152 CLR 188 at 197-198 per Gibbs CJ.

<sup>191</sup> (1982) 152 CLR 25.

<sup>192</sup> (1982) 152 CLR 25 at 52-53 per Gibbs CJ, 66-68 per Stephen J, 86-91 per Mason J, 120 per Aickin J, 123-126 per Wilson J, 152-155 per Brennan J.

<sup>193</sup> *Clough v Leahy* (1904) 2 CLR 139; [1904] HCA 38; *McGuinness v Attorney-General (Vict)* (1940) 63 CLR 73; [1940] HCA 6.

<sup>194</sup> (1982) 152 CLR 25 at 53-55 per Gibbs CJ, 69-73 per Stephen J, 94-95 per Mason J, 105 per Murphy J, 119-120 per Aickin J, 129-132 per Wilson J, 158-162 per Brennan J.

<sup>195</sup> (1982) 152 CLR 25 at 161-162 per Brennan J.

131 In the *BLF Case*, Gibbs CJ examined the various reasons that had been proffered in argument, and in the Full Federal Court below, for concluding that holding the proceedings of the inquiry in public would constitute a contempt. Those reasons ranged from the fact that the proceedings would be calculated to prejudice or bias the public mind, to alleged undesirable effects on possible witnesses or even the judges who might deal with the prosecution proceedings. In his reasons, Gibbs CJ emphasised the need to demonstrate either “an actual interference with the administration of justice, or ‘a real risk, as opposed to a remote possibility’ that justice will be interfered with”<sup>196</sup>, and concluded (with Mason, Aickin and Wilson JJ) that contempt was not demonstrated by the conduct of the proceedings of the inquiry in public.

132 But of most immediate significance, Gibbs CJ gave<sup>197</sup>, as an example of the continuance of a commission amounting to contempt, the case where, during the course of a commission’s inquiries into allegations that a person had been guilty of criminal conduct, a criminal prosecution was commenced against that person based on those allegations. His Honour said<sup>198</sup> that “the continuance of the inquiry would, speaking generally, amount to a contempt of court”, and that the proper course would be to “adjourn the inquiry until the disposal of the criminal proceedings”. Stephen J was of the same opinion<sup>199</sup>, but went further than Gibbs CJ by concluding that the continuance of the inquiry then under consideration would constitute a contempt of court. Other members of the Court expressed no view on the question of whether continuing an executive inquiry into matters the subject of pending charges would constitute contempt, this particular question not being squarely raised in the proceedings.

133 The conclusion expressed in the *BLF Case* by both Gibbs CJ and Stephen J, that continuing an inquiry into whether a person charged with an offence had committed that offence would be a contempt of court, reflected what had been said in earlier decisions of this Court. In *Clough v Leahy*, Griffith CJ, speaking for the Court, had said<sup>200</sup>:

“Nor can the Crown interfere with the administration of the course of justice. It is not to be supposed that the Crown would do such a thing; but, if persons acting under a Commission from the Crown were to do acts which, if done by private persons, would amount to an unlawful interference with the course of justice, the act would be unlawful, and would be punishable.”

And Griffith CJ had said<sup>201</sup> also that “[a]ny interference with the course of the administration of justice is a contempt of Court, and is unlawful”. Some decades later, in *McGuinness v Attorney-General (Vict)*, Latham CJ adopted and repeated the views expressed by Griffith CJ in *Clough v Leahy* and continued<sup>202</sup>:

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<sup>196</sup> (1982) 152 CLR 25 at 56, citing *Attorney-General v Times Newspapers Ltd* [1974] AC 273 at 299 per Lord Reid. See also *John Fairfax & Sons Pty Ltd v McRae* (1955) 93 CLR 351 at 372; [1955] HCA 12.

<sup>197</sup> (1982) 152 CLR 25 at 54.

<sup>198</sup> (1982) 152 CLR 25 at 54.

<sup>199</sup> (1982) 152 CLR 25 at 71-73.

<sup>200</sup> (1904) 2 CLR 139 at 156.

<sup>201</sup> (1904) 2 CLR 139 at 161.

<sup>202</sup> (1940) 63 CLR 73 at 85.

“If, for example, a prosecution for an offence were taking place, the establishment of a Royal Commission to inquire into the same matter would almost certainly be held to be an interference with the course of justice and consequently to constitute a contempt of court.”

- 134 Nothing said in the discussion of these matters in *Clough v Leahy* and *McGuinness v Attorney-General (Vict)*, or by Gibbs CJ and Stephen J in the *BLF Case*, suggested that the contemplated contempt could be avoided by continuing the inquiry in secret.
- 135 What was said by Gibbs CJ and Stephen J in the *BLF Case* does not constitute any binding statement of the applicable principles. What their Honours said about executive inquiries into the facts and circumstances of pending charges was not essential to the decision reached in the *BLF Case*. But it is of the first importance to recognise that this Court’s decision in *Hammond* was made very soon after, and in the light provided by, the examination of very closely related issues in the *BLF Case*.
- 136 Two consequences follow. First, the actual decision in *Hammond* cannot be dismissed from consideration on the basis that it was decided in haste or improvidently. Second, the identification by Gibbs CJ of *why* continued examination of Mr Hammond would be a contempt is not to be treated as if expressed too loosely. Gibbs CJ said<sup>203</sup> that:

“Once it is accepted that [Mr Hammond] will be bound, on pain of punishment, to answer questions designed to establish that he is guilty of the offence with which he is charged, it seems to me *inescapably* to follow, in the circumstances of this case, that there is a real risk that the administration of justice will be interfered with.” (emphasis added)

The “circumstances of this case” to which Gibbs CJ referred were identified<sup>204</sup> as including the fact “that the examination will take place in private, and that the answers may not be used at the criminal trial”. But the interference with the administration of justice, and thus the contempt, was identified<sup>205</sup> as lying in “the fact that [Mr Hammond having] been examined, in detail, as to the circumstances of the alleged offence, is very likely to prejudice him in his defence”. It would prejudice him in his defence because he could no longer determine the course he would follow at his trial according only to the strength of the case that the prosecution proposed to, and did, adduce in support of its case that the offence charged was proved beyond reasonable doubt<sup>206</sup>.

- 137 Nor can the decision in *Hammond* be dismissed from consideration on the basis that it was later “overtaken” in some relevant respect by the decision in *Hamilton v Oades*.

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<sup>203</sup> (1982) 152 CLR 188 at 198.

<sup>204</sup> (1982) 152 CLR 188 at 198.

<sup>205</sup> (1982) 152 CLR 188 at 198.

<sup>206</sup> cf (1982) 152 CLR 188 at 206-207 per Deane J.

- 138 The respondent in *Hamilton v Oades*, Mr Oades, had been charged with a number of offences arising out of his association with a company which had been ordered to be wound up. The appellant was the liquidator of the company. The liquidator obtained an order under s 541 of the *Companies (New South Wales) Code* for Mr Oades' examination in the Supreme Court of New South Wales as to matters relating to the promotion, formation, management, administration and winding up of the company. Mr Oades sought a direction under s 541(5) of the *Companies (New South Wales) Code* that the examination be restricted to matters not the subject of the pending charges. The Deputy Registrar before whom the examination was taking place refused that application. Mr Oades' application for review of the Deputy Registrar's decision was refused by a single judge of the Supreme Court. On appeal to the Court of Appeal, orders were made to the effect that, during the pendency of the charges, Mr Oades was not to be compelled to answer any questions which might tend to incriminate him and which concerned the facts that constituted ingredients of the pending charges, or any questions which would tend to disclose his defence to those charges. The Court of Appeal concluded<sup>207</sup> that it was necessary to restrict the examination "to avoid the possibility that there is any trespass upon the charged person's right to a fair trial".
- 139 The liquidator appealed to this Court. By majority (Mason CJ, Dawson and Toohey JJ, Deane and Gaudron JJ dissenting), the appeal was allowed and the orders made by the Court of Appeal were set aside. Mason CJ recognised<sup>208</sup> that an examination of the kind in question might expose a person who had been charged with, but not yet tried for, offences concerning the affairs of the company to "real and appreciable danger of conviction, notwithstanding that the answers themselves may not be given in evidence"<sup>209</sup> because of the indirect use that might be made of the answers given. Mason CJ further recognised<sup>210</sup> that "[t]o the extent only that under the section [authorising an order for examination] rights of an accused person are denied and protections removed, an examination may even amount to an interference with the administration of criminal justice". Whether the legislation had brought about that result was to be judged in light of "a long history of legislation governing examinations in bankruptcy and under the Companies Acts which abrogate or qualify the right of the person examined to refuse to answer questions on the ground that the answers may incriminate him"<sup>211</sup>. And, as Mason CJ noted<sup>212</sup>, this Court had earlier twice rejected, in *Rees v Kratzmann*<sup>213</sup> and *Mortimer v Brown*<sup>214</sup>, arguments to the effect that a person subject to compulsory public examination in a court, under the companies legislation, could decline to answer a question on the ground that its answer might tend to incriminate that person.

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<sup>207</sup> *Oades v Hamilton* (1987) 11 NSWLR 138 at 154 per Clarke JA (Mahoney and Priestley JJA agreeing).

<sup>208</sup> (1989) 166 CLR 486 at 494.

<sup>209</sup> *Sorby* (1983) 152 CLR 281 at 294 per Gibbs CJ.

<sup>210</sup> (1989) 166 CLR 486 at 494.

<sup>211</sup> (1989) 166 CLR 486 at 494.

<sup>212</sup> (1989) 166 CLR 486 at 494-495.

<sup>213</sup> (1965) 114 CLR 63; [1965] HCA 49.

<sup>214</sup> (1970) 122 CLR 493; [1970] HCA 4.

140 Each of *Hamilton v Oades*<sup>215</sup> and the earlier decisions in *Rees v Kratzmann*<sup>216</sup> and *Mortimer v Brown*<sup>217</sup> emphasised the fact that the compulsory examinations would be conducted in court and that, accordingly, the court would retain the power to prevent abuse of its process. In each decision, however, this Court rejected the submission that examination on matters which otherwise might attract the privilege against self-incrimination would, *without more*, amount to an abuse of process. But all three decisions, including, in particular, *Hamilton v Oades*, necessarily depended on the historical pedigree of the legislation being construed. That is, each of those decisions answered particular questions about the construction of the relevant statute in light of the fact that the legislature had, for very many years, made special exceptions to the otherwise accusatorial process of the criminal law in respect of bankruptcy and companies examinations.

141 It is then not to the point to seek to draw out whatever drafting similarities might be found between the legislation considered in the companies examination cases and the relevant provisions of the ACC Act. The question presented by the provisions of the ACC Act is whether those provisions made a *new* exception to the accusatorial process of the criminal law.

#### Necessary intentment

142 It is important, but not determinative, to observe that the ACC Act does not provide expressly for the compulsory examination of a person charged with an indictable Commonwealth offence. The applicable rule of construction recognises, however, that legislation may necessarily imply that its provisions work some fundamental alteration to the general system of law, or the qualification of some fundamental right, even though the Act does not expressly provide for that effect<sup>218</sup>. But the implication must be necessary, not just available or somehow thought to be desirable. It is, therefore, important to consider whether the purpose or purposes of the ACC Act generally, or of the examination provisions in particular, would be defeated by reading the ACC Act's provisions as not permitting the examination of a person charged with an indictable Commonwealth offence about the subject matter of the charge.

143 Consideration of that question must begin by identifying the functions the ACC Act gives to the ACC, and also the role that a special ACC operation/investigation has in the ACC carrying out its statutory functions.

#### The ACC's functions

144 As noted at the start of these reasons, with one or two possible exceptions, the functions of the ACC are sufficiently described as functions directed to the gathering and dissemination of criminal information and intelligence. The first, and principal, exception to that general proposition is provided by s 7A(c) of the ACC Act. Section 7A(c) provides that it is a function of the ACC "to investigate, when authorised by the Board

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<sup>215</sup> (1989) 166 CLR 486 at 498-499 per Mason CJ, 510 per Dawson J, 516-517 per Toohey J.

<sup>216</sup> (1965) 114 CLR 63 at 78 per Menzies J (Barwick CJ and Taylor J agreeing).

<sup>217</sup> (1970) 122 CLR 493 at 495 per Barwick CJ, 502 per Walsh J (Windeyer and Owen JJ agreeing).

<sup>218</sup> See, for example, *Daniels Corporation* (2002) 213 CLR 543 at 553 [11], 559-560 [32], 562-563 [43].

[of the ACC], matters relating to federally relevant criminal activity”. The second possible exception to the proposition that the ACC is concerned with the gathering and dissemination of criminal information and intelligence is found in s 7A(g), which provides that the ACC has “such other functions as are conferred on the ACC by other provisions of this Act or by any other Act”. No mention was made in argument of the conferral of any other relevant function on the ACC, whether by the ACC Act or some other Act. It may therefore be assumed that the only investigative function given to the ACC is that described in s 7A(c).

145 The particular nature and extent of the investigative function of the ACC is elucidated by the prescription, in s 7C, of the functions of the Board of the ACC. Section 7C(3) provides that:

“The Board may determine, in writing, that an investigation into matters relating to federally relevant criminal activity is a special investigation. *Before doing so, it must consider whether ordinary police methods of investigation into the matters are likely to be effective.*” (emphasis added)

146 It is to be recalled that the examination powers which are in issue in this case are powers that relate expressly<sup>219</sup> to a “special ACC operation/investigation”, which, in the context of this case, refers<sup>220</sup> to “an investigation into matters relating to federally relevant criminal activity that the ACC is conducting and that the Board has determined to be a special investigation”. Although s 7C(3) provides that a “special investigation” cannot be undertaken without the Board of the ACC first *considering* “whether ordinary police methods of investigation into the matters are likely to be effective”, it must be read as requiring the Board of the ACC not only to consider this question, but also to determine that ordinary police methods are not “likely to be effective”. In the context of the ACC Act, “effective” can and must be understood as meaning “effective to permit the laying of charges against offenders”. The word “effective” cannot and should not be read, in the context of the ACC Act generally, or in the particular context of s 7C(3), as embracing any larger task of deciding whether individual criminal guilt is demonstrated. It is only by the engagement of judicial power consequent upon the laying of a charge that individual criminal guilt will be determined.

147 The ACC may therefore execute its function of investigating matters relating to federally relevant criminal activity by using the extraordinary processes of compulsory examination only when the Board of the ACC has determined that ordinary police methods are not “likely to be effective” to lead to the laying of charges. The performance of that investigative function is in no way restricted or impeded if the power of compulsory examination does not extend to examination of a person who has been charged with, but not yet tried for, an indictable Commonwealth offence about the subject matter of the pending charge. The general provisions made for compulsory examination, when read in their context, do not imply, let alone *necessarily* imply, any qualification to the fundamentally accusatorial process of criminal justice which is engaged with respect to indictable Commonwealth offences.

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<sup>219</sup> Section 24A provides: “An examiner may conduct an examination for the purposes of a special ACC operation/investigation.”

<sup>220</sup> s 4(1), definition of “special ACC operation/investigation”, par (b).

148 Thus the provisions of the ACC Act which authorise compulsory examination do not permit compulsory examination of the plaintiff about the subject matter of the offences with which he has been charged. Question 1 in the Case Stated should be answered accordingly.

The authority to conduct the compulsory examination

149 Although it is not necessary to decide the point, the better view may be that, on its proper construction, the determination made by the Board of the ACC, on which the ACC relied as permitting the examination of the plaintiff (“the Determination”), did not extend to permitting examination of the plaintiff about the subject matter of his pending charges.

150 The Determination relied on in this case was constituted by the Australian Crime Commission Special Investigation Authorisation and Determination (High Risk Crime Groups No 2) 2009 (Cth), as amended by the Australian Crime Commission Special Investigation Authorisation and Determination (High Risk Crime Groups No 2) Amendment No 1 of 2010 (Cth).

151 The Determination was not directed to the investigation of any named individuals or groups. It was intended to authorise investigations into the matters specified in Sched 1 from its commencement on 30 April 2009 until 30 June 2010, but was later extended, by the amending instrument, to 30 June 2011. The Determination was cast in very general terms which hinged on the expression “high risk crime groups”. That expression was defined in a way that encompasses any “group” of two or more persons who were engaged in any of a wide variety of criminal acts in more than one jurisdiction. The definition of “high risk crime groups” contained a number of other criteria expressed disjunctively which not only did not confine further the application of the definition, but extended its operation.

152 The investigation which was authorised was identified in cl 1 of Sched 1 to the Determination. It was described as:

“An investigation to determine whether, in accordance with the allegations mentioned in clause 3 and in the circumstances mentioned in clause 2, federally relevant criminal activity:

- (a) was committed before the commencement of this Instrument; or
- (b) was in the process of being committed on the commencement of this Instrument; or
- (c) may in future be committed.”

One of the allegations mentioned in cl 3 of Sched 1 to the Determination was that “from 1 January 1990 certain persons, in concert with one another or with other persons, may be engaged in” any of a very wide variety of activities, including certain serious drug offences contrary to Pt 9.1 of the *Criminal Code* (Cth) and proceeds of crime offences.

153 The Determination authorised an investigation “to determine whether” federally relevant criminal activity had been, was being, or may in the future be committed. Divorced from its context, that expression might suggest that the ACC was called on to perform some adjudicative function and, as has already been pointed out, it could not validly be given a function that required it to exercise the judicial power of the Commonwealth. When the expression “to determine whether” is read in the context provided by the statutory specification of the ACC’s functions in s 7A of the ACC Act, the better view may well be that it does not encompass the criminal activity (federally relevant or not) of any person which is activity the subject of pending charges against that person, or activity which the person has admitted or been proved to have undertaken. The laying of charges against the person (or a subsequent guilty plea or verdict by or against the person with consequent conviction) sufficiently “determine[s] whether” that person has been engaged in the relevant conduct. Conviction evidently determines the question. But the charging of the individual also determines that question sufficiently for the purposes of the ACC Act because it must be assumed that there was reasonable and probable cause to lay the charge.

154 Adopting this construction of the Determination would be an additional reason to conclude that Question 1 in the Case Stated should be answered “No”. It is, however, not necessary to reach that issue.

155 Question 2 in the Case Stated does not arise.

#### Conclusion and answers to questions reserved

156 The ACC Act does not permit the examiner to require the plaintiff to answer questions about the subject matter of the charges laid against him. The questions reserved for the opinion of the Full Court should be answered as follows:

1. Does Div 2 of Pt II of the ACC Act empower an examiner appointed under s 46B(1) of the ACC Act to conduct an examination of a person charged with a Commonwealth indictable offence where that examination concerns the subject matter of the offence so charged?

Answer: The ACC Act does not authorise an examiner appointed under s 46B(1) of the ACC Act to require a person charged with a Commonwealth indictable offence to answer questions about the subject matter of the charged offence.

2. If the answer to Question 1 is “Yes”, is Div 2 of Pt II of the ACC Act invalid to that extent as contrary to Ch III of the Constitution?

Answer: This question does not arise.

157 KIEFEL J. I agree with the answers which Hayne and Bell JJ propose be given to the questions stated,

substantially for the reasons given by their Honours. The *Australian Crime Commission Act 2002* (Cth) (“the ACC Act”) can be seen neither expressly nor by necessary intendment to require or authorise the examination of a person with respect to offences with which that person is charged and whose trial is therefore pending.

- 158 The requirement of the principle of legality is that a statutory intention to abrogate or restrict a fundamental freedom or principle or to depart from the general system of law must be expressed with irresistible clearness<sup>221</sup>. That is not a low standard. It will usually require that it be manifest from the statute in question that the legislature has directed its attention to the question whether to so abrogate or restrict and has determined to do so<sup>222</sup>.
- 159 Relevant to the question of legislative intention is not only the privilege of the person to refuse to answer questions which may incriminate him or her, but also a fundamental principle of the common law. The fundamental principle – that the onus of proof rests upon the prosecution – is as stated in *Environment Protection Authority v Caltex Refining Co Pty Ltd*<sup>223</sup>, as is its companion rule – that an accused person cannot be required to testify to the commission of the offence charged. The prosecution, in the discharge of its onus, cannot compel the accused to assist it<sup>224</sup>.
- 160 The common law principle is fundamental to the system of criminal justice administered by courts in Australia, which, as Hayne and Bell JJ explain, is adversarial and accusatorial in nature. The accusatorial nature of the system of criminal justice involves not only the trial itself, but also pre-trial inquiries and investigations. This is recognised by the statutory provisions to which their Honours refer. It may be added, as to the trial itself, that the concept of an accusatorial trial where the prosecution seeks to prove its case to the jury has a constitutional dimension<sup>225</sup>.
- 161 Decisions of this Court, and in particular *Clough v Leahy*<sup>226</sup>, *McGuinness v Attorney-General (Vict)*<sup>227</sup> and *Hammond v The Commonwealth*<sup>228</sup>, hold that the conduct of an inquiry parallel to a person’s criminal prosecution would ordinarily constitute a contempt because the inquiry presents a real risk to the administration of criminal justice. The proper course, Gibbs CJ said in *Hammond*<sup>229</sup>, is to adjourn the inquiry until the conclusion of the criminal proceedings. These decisions, and particularly that in *Hammond*, are not to be underestimated in their importance to this area of discourse. On the other hand, the trilogy of cases dealing with examinations in the context of bankruptcy or company liquidation where fraud may be

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<sup>221</sup> *Potter v Minaban* (1908) 7 CLR 277 at 304; [1908] HCA 63.

<sup>222</sup> *Coco v The Queen* (1994) 179 CLR 427 at 437; [1994] HCA 15.

<sup>223</sup> (1993) 178 CLR 477 at 503, 550; [1993] HCA 74.

<sup>224</sup> *Sorby v The Commonwealth* (1983) 152 CLR 281 at 294 per Gibbs CJ (“a cardinal principle”); [1983] HCA 10.

<sup>225</sup> *R v Snow* (1915) 20 CLR 315 at 323 per Griffith CJ, referring to s 80 of the Constitution; [1915] HCA 90.

<sup>226</sup> (1904) 2 CLR 139; [1904] HCA 38.

<sup>227</sup> (1940) 63 CLR 73; [1940] HCA 6.

<sup>228</sup> (1982) 152 CLR 188; [1982] HCA 42.

<sup>229</sup> (1982) 152 CLR 188 at 198, referring to his earlier comments in *Victoria v Australian Building Construction Employees’ and Builders Labourers’ Federation* (1982) 152 CLR 25 at 54; [1982] HCA 31.

suspected<sup>230</sup> are to be understood as the result of an historical anomaly, commencing with the divergent view taken by the Chancery Court from that of the common law and continuing through the series of legislation which preceded that dealt with in those cases<sup>231</sup>.

162 Can it be said, by reference to the terms of the ACC Act, its purposes and its operation, that the legislature has directed its attention to an examination of a person as to offences with which that person is presently charged and whose trial is pending? Has it directed its attention to the effect of an examination in such circumstances on the fundamental principle which informs the criminal justice system, and to whether the examination may pose a real risk of interference with the administration of criminal justice? The answer to each must be “no” for the reasons given by Hayne and Bell JJ.

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<sup>230</sup> *Rees v Kratzmann* (1965) 114 CLR 63; [1965] HCA 49; *Mortimer v Brown* (1970) 122 CLR 493; [1970] HCA 4; *Hamilton v Oades* (1989) 166 CLR 486; [1989] HCA 21.

<sup>231</sup> See for example *Ex parte Cossens; In the Matter of Worrall* (1820) 1 Buck 531 at 540; *In re Paget; Ex parte Official Receiver* [1927] 2 Ch 85 at 87-88; *Bishopsgate Investment Management Ltd v Maxwell* [1993] Ch 1 at 23-24; *Rees v Kratzmann* (1965) 114 CLR 63 at 80; *Mortimer v Brown* (1970) 122 CLR 493 at 496.

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Through its newly established Center for Applied Approaches to Countering Violent Extremism (CVE), Chemonics leads a vehicle for research that will not only strengthen implementation, but also influence thinking on CVE more broadly.

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## About the Center for Applied Approaches to CVE

The Center for Applied Approaches to Countering Violent Extremism (CVE) aims to identify successful approaches, tools, practices, and methodologies for countering and preventing violent extremism (PVE) based on quantitative and qualitative data as well as Chemonics' extensive experience in this sector.

We recognize that while many approaches and methodologies have worked in the CVE space, these established practices can get lost among the search for the next “new thing.” Meanwhile, the threat of violent extremism continues to grow. The Center addresses this issue by identifying those tried and true tools, methodologies, and approaches that have already been tested and have a strong evidence base for success. By sharing this information with the broader development industry, we hope to promote more effective and timely programming to address one of today's biggest threats to security and stability.

To do our part in addressing this pressing issue, Chemonics is combining its wealth of experience implementing CVE programs worldwide with quality research by leading experts. Through our CVE programs across the Middle East and North Africa, we bring more than 40 years of experience implementing programs in related sectors such as governance and rule of law, community engagement, economic growth, and community development — particularly in fragile states that are often the breeding ground for extremism. Drawing on this experience, the Center examines a variety of sectors to identify multifaceted solutions to problems that are often the result of complex sociopolitical and economic factors.

The Center is examining best practices in supporting good governance to counter violent extremism, as well as innovative approaches to monitor and evaluate impact of PVE/CVE programming. Experts in the Center are also exploring the application of social and behavior change communications to PVE/CVE programming and the link between government service delivery and countering violent extremism.

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- 4 Best Practices to Counter and Prevent Violent Extremism Through Governance
- VIDEO: Effective Approaches for Countering Violent Extremism
- 3 Questions with Michele Piercey: Conflict and Exclusion as the Front Door for Extremist Recruitment
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- Through the Looking Glass: Harnessing Big Data to Respond to Violent Extremism

## Our Specialists

Todd Diamond

Michele Piercey

Rhett Gurian

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# CHEMONICS BOARD

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  - Our Commitment to Quality
  - Our Commitment to Staff
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## **Ashraf W. Rizk, Chairman**

Ashraf Rizk was Chemonics' President and CEO from April 2002 to April 2006. Before that, he was the firm's Executive Vice President and Chief Financial Officer, a position he had held since 1990. A Chemonics employee since 1982, Mr. Rizk has led the firm's activities in the Middle East and Asia and managed Egypt Local Development II, the largest decentralization development project in the world at the time. Before joining Chemonics, Mr. Rizk was senior auditor for an Egyptian accounting firm and oversaw CARE programs in Egypt.

## **Ronald J. Gilbert, Vice-Chair**

Ronald Gilbert is cofounder and president of ESOP Services, Inc., an international consulting firm specializing in all aspects of Employee Stock Ownership Plan ("ESOP") applications and ESOP privatization for private and public companies and government-owned entities. He brings more than 35 years of ESOP experience and currently serves on The ESOP Association's Board of Governors and its Legislative and Regulatory Advisory Committee as well as the board of directors of three other ESOP companies. He currently chairs the Audit Committee and the International Ownership Expansion Committee and formerly served on the board of directors of The National Center for Employee Ownership. He is co-author and co-editor of Employee Stock Ownership Plans: ESOP Planning, Financing, Implementation, Law and Taxation, the most comprehensive work on the subject, published by the Beyster Institute, and has also authored numerous ESOP articles. Prior to cofounding ESOP Services, Inc., Mr. Gilbert was a vice president of Kelso & Company in San Francisco, where he worked with Louis Kelso, the "father" of the ESOP.

## **Susanna Mudge, President and CEO**

Since joining the firm in 1992, Susanna Mudge has served the company in many key leadership roles, including as executive vice president, senior vice president of the Latin America and Caribbean region, and as director

of several of the company's larger programs. She brings in-depth global expertise in strategic private sector development, organizational development, trade and investment promotion, and sustainable natural resource management. She views quality project management as "inextricably linked to business success because that is what differentiates us and makes us competitive." Raised in Latin America, she began her career as a regional development and tourism specialist for the Organization of American States, then as a privatization specialist with Ernst and Young, responsible for managing marketing and investment projects in Asia, Africa, and Latin America.

### **Lizann Prosser, Board Member**

Lizann Prosser is a seasoned and proven leader with more than 20 years of experience in international development. As the past president and CEO of Crown Agents-USA, she has managed all aspects of development consulting and has worked in more than 50 countries. Ms. Prosser entered development consulting following careers in environmental management and investment banking and has extensive experience managing complex projects in challenging situations. She holds advanced degrees in both public health and management, as well as a bachelor's in engineering.

### **Martha Verrill Schlager, Board Member**

Martha Schlager, a board member since 2007, is a former senior executive with A.T. Kearney and Korn/Ferry International. With a focus on higher education, she has led executive management projects for leading colleges and universities and business schools nationally and internationally. Clients include Harvard University, University of Virginia, University of Michigan, El Zamorano, Escuela Agricola Panamericana (Honduras), London Business School (UK), University of Chicago Booth School of Business, and Cornell University Johnson Graduate School of Management, among others. Ms. Schlager brings an outside perspective to the board also having served as a founding member of the Board of Georgetown University Hospital Department of Pediatrics and recently as vice president of service learning at the National Cathedral School in Washington, D.C.

### **Annika Sweetland, Board Member**

Dr. Annika Sweetland is a research scientist in the Department of Psychiatry at the Columbia University College of Physicians and Surgeons. In addition to several published academic works, she has extensive technical knowledge and experience in health and sustainable development in several settings including in Brazil, Nigeria, Mozambique, Haiti, and Peru. She is co-founder and co-chair of a working group on tuberculosis and mental health at the International Union Against Tuberculosis and Lung Disease, one of the oldest and largest global health research and technical organizations in the world with membership from more than 150 countries. Her previous work with the World Health Organization, Pan American Health Organization, Millennium Villages Project/Columbia Earth Institute, and Partners in Health/Harvard Medical School contributes to her valuable perspective on the board. Dr. Sweetland received a masters in social work from the University of California at Berkeley in 2002 and a doctorate in public health from Columbia University in 2010.

### **Barbara C. Teele, Board Member**

Barbara C. Teele was married to the late Thurston F. Teele, Chemonics' founder, and has been with the company for 33 years. An educator by profession, her experience includes serving as executive director to the co-chairman of one of the national political parties and as director of the public affairs program for the American College of Nuclear Physicians. She has travelled to more than 10 countries as a representative of Chemonics, and hosted many social events for visiting international dignitaries in the United States.

### **Eijk Van Otterloo, Board Member**

Eijk Van Otterloo became majority shareholder and served as chairman of the board for Chemonics in 2006. He led the company's efforts to become 100 percent employee-owned in 2011. Mr. Van Otterloo is a founding member of Grantham, Mayo, Van Otterloo & Company (GMO), an investment management company based in Boston. Before GMO's founding in 1977, he managed investments at Phoenix Mutual Life Investment Company and Keystone Custodian Funds. Mr. Van Otterloo studied economics at Amsterdam Municipal University (Netherlands) and earned an M.B.A. from Harvard Business School.

### **Dov S. Zakheim, Board Member**

The Honorable Dov S. Zakheim is a senior advisor at the Center for Strategic and International Studies and senior fellow at the CNA Corporation. As the former undersecretary of defense (comptroller) and chief financial officer for the Department of Defense (DOD), Dr. Zakheim developed and managed department budgets, negotiated five major defense agreements with U.S. allies and partners, and served as a principal advisor to the secretary of defense. He also served as DOD's coordinator of civilian programs in Afghanistan. Dr. Zakheim is currently serving as the vice chairman of both the Center for the National Interest and the Foreign Policy Research Institute, as well as being a member of the DOD's Defense Business Board and the Chief of Naval Operations Executive Panel. He is a member of the Council on Foreign Relations, the International Institute for Strategic Studies, and Chatham House/The Royal Institute of International Affairs; and is a fellow of the Royal Swedish Academy of War Sciences. Dr. Zakheim holds a doctorate in economics and politics from St. Antony's College, University of Oxford, where he held three graduate and post-graduate fellowships.



## Michele Piercey

Director, Conflict and Crisis Practice at Chemonics International

### Location

Washington D.C. Metro Area

### Industry

International Trade and Development

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### Summary

Michele Piercey is an international development practitioner with 17 years of professional experience, including 10 years working on political transition and counter-violent extremism (CVE) programs in Iraq, Afghanistan, and Tunisia. She is the Director of Chemonics International's Crisis and Conflict Practice, in which she leads Chemonics' industry outreach on conflict and CVE, supports new business efforts, and provides technical support to projects under implementation.

After corporate change management posts with the Australian Department of Defense early in her

career, she worked with the U.S. Army Engineers on small-scale community engagement projects across Iraq. Upon joining DAI, she partnered with Provincial Reconstruction Teams and Iraqi civil society on local development projects to reinforce legitimate local governments, and counteract the influence of extremists in south and west Baghdad in 2008 and 2009. From 2009 to 2012 she served as Deputy Chief of Party on USAID – Office of Transition Initiatives Afghanistan Stabilization Initiative, during which she developed and piloted the District Stability Framework, a counterinsurgency planning tool later mandated for use by US military and civilians planning stabilization operations throughout Afghanistan.

As Chief of Party of the Tunisian Transition Initiative from 2012 to 2014, Michele led over 30 local and expatriate staff in the design and development of an innovative small grants program to support Tunisians in their pursuit of a democratic society, a program noted for its innovative use of art, music, and new media to reach a wide cross section of Tunisians and support democratic change. Under Michele’s leadership, TTI piloted an innovative new CVE programming strategy that focused on fostering a sense of belonging to moderate Tunisian society for at-risk youth, in response to the disconnection and hopelessness that many young Arabs experienced in the aftermath of the Arab Spring.

## Experience



- **CHEMONICS** **Conflict and Crisis Practice Director Chemonics International** October 2015 – Present (2 months) Washington D.C. Metro Area

## Organizations

- **Women Chiefs of Enterprise International** Starting January 2013

## Languages

- **English** Native or bilingual proficiency
- **French** Professional working proficiency

## Volunteer Experience & Causes

### Causes Michele cares about:

- Civil Rights and Social Action
- Human Rights

## Groups



- **International Development Professionals**



- **Corporate Social Responsibility CSR and Sustainable Development**



- [Consultants Network](#)



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Robert Jacobi Sr. Advisor (Bench), Economic Growth and Livelihoods



Sonya Day Senior Project Manager

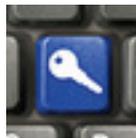


Greg Gisvold Director, Governance and Rule of Law



Stig Marker Hansen Chief of Party at Abt Associates

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Michele Piercey

Global Practice Specialist, Governance | michele\_piercey@dai.com



Michele is a stabilization and governance development practitioner with 17 years of professional experience, including more than 10 years working on political transition and counter-violent extremism (CVE) programs in Iraq, Afghanistan, and Tunisia. After corporate change management and training appointments with the Australian Department of Defense early in her career, she worked with the U.S. Army Corps of Engineers on small-scale community engagement projects across Iraq from 2005 to 2008. Upon joining DAI, she partnered with Provincial Reconstruction Teams and Iraqi civil society on local development and voter education projects to support the democratic process, reinforce legitimate local governments, and counteract the influence of extremists throughout south and west Baghdad in 2008 and 2009. From 2009 to 2012 she served as Deputy Chief of Party on DAI/USAID – Office of Transition Initiatives Afghanistan Stabilization Initiative, during which she developed and piloted the District Stability Framework, a counterinsurgency planning tool that was later mandated for use by military engaged in stabilization operations throughout Afghanistan. As Chief of Party of the Tunisian Transition Initiative from 2012 to 2014, Michele led 30 local and expatriate staff in the design and development of an innovative small grants program to support Tunisians in their pursuit of a democratic society, a program that was notable for its creative use of art, music, film, social, and new media to reach a wide cross section of Tunisians and support democratic change. She piloted an innovative new CVE programming strategy that focused on fostering a sense of belonging to moderate Tunisian society for at-risk youth, in response to the disconnection and hopelessness that many young Arabs experienced in the aftermath of the Arab Spring.

B.A., political science, Australian National University

Graduate diplomas: maritime security, management (defence studies), project management, training development, and international and community development

# Michele Piercey

Director, Conflict and Crisis Practice at Chemonics International  
Washington D.C. Metro Area International Trade and Development

Current	Chemonics International
Previous	DAI, Reconstruction Operations Centre, Baghdad Iraq, Aegis Specialist Risk Management
Education	Australian National University
connections	500+

## Send Michele InMail

- |          |   |   |
|----------|---|---|
| Twitter  | • | michelepiercey  |
| Websites | • | Company Website <a href="https://www.linkedin.com/in/michelepiercey">https://www.linkedin.com/in/michelepiercey</a> |

## Contact Info

## Summary

Michele Piercey is an international development practitioner with 17 years of professional experience, including 10 years working on political transition and counter-violent extremism (CVE) programs in Iraq, Afghanistan, and Tunisia. She is the Director of Chemonics International's Crisis and Conflict Practice, in which she leads Chemonics' industry outreach on conflict and CVE, supports new business efforts, and provides technical support to projects under implementation.

After corporate change management posts with the Australian Department of Defense early in her career, she worked with the U.S. Army Engineers on small-scale community engagement projects across Iraq. Upon joining DAI, she partnered with Provincial Reconstruction Teams and Iraqi civil society on local development projects to reinforce legitimate local governments, and counteract the influence of extremists in south and west Baghdad in 2008 and 2009. From 2009 to 2012 she served as Deputy Chief of Party on USAID – Office of Transition Initiatives Afghanistan Stabilization Initiative, during which she developed and piloted the District Stability Framework, a counterinsurgency planning tool later mandated for use by US military and civilians planning stabilization operations throughout Afghanistan.

As Chief of Party of the Tunisian Transition Initiative from 2012 to 2014, Michele led over 30 local and expatriate staff in the design and development of an innovative small grants program to support Tunisians in their pursuit of a democratic society, a program noted for its innovative use of art, music, and new media to reach a wide cross section of Tunisians and support democratic change. Under Michele's leadership, TTI piloted an innovative new CVE programming strategy that focused on fostering a sense of belonging to moderate Tunisian society for at-risk youth, in response to the disconnection and hopelessness that many young Arabs experienced in the aftermath of the Arab Spring.



What anti-extremist and anti-gang practitioners have to teach each other

## Experience



### **Conflict and Crisis Practice Director**

Chemonics International

October 2015 – Present (3 months) Washington D.C. Metro Area

Lead industry outreach, provide technical and other support to business units in the development of competitive proposals, and support performance of projects under implementation in the conflict, transition, and stabilization technical areas.



## Principal Global Practice Specialist - Governance

DAI

July 2014 – September 2015 (1 year 3 months) Bethesda, MD

Led the initiative to establish a new Countering Violent Extremism (CVE) and Crime and Violence Prevention (CVP) practice for DAI's global new business, and in support of projects under implementation. Led new business efforts through the development of technical approaches as lead writer, contributor or proposal reviewer. Main technical focus on CVE, civil society and youth at risk, but also led or contributed to local governance, economic growth and workforce development bids. Devised practice notes on inclusion strategies for youth at risk of extremist and criminal gang recruitment in the US and abroad. Presented or facilitated group sessions on programming responses to at-risk youth and CVE at the Society for International Development - Washington, Harvard Kennedy School, LA Gang Violence Conference, the Joint Center for International Security Force Assistance, OTI Communities of Practice, and others.



### CVE impact analysis

"I just want to be part of something"

Inclusion strategies for at-risk youth  
in post-revolutionary Tunisia

### LA Gang presentation slides

[View On SlideShare](#)



## **Chief of Party**

### **DAI**

January 2013 – August 2014 (1 year 8 months) Tunisia

Project director of a team of 35 expatriate and local staff implementing a \$29 million project of USAID's Office of Transition Initiatives, supporting democratic transition in Tunisia in the aftermath of the 2011 Revolution.

In partnership with the OTI Country Representative, facilitated a team-driven redesign of the program strategy, including a sub-strategy for a \$1 million pilot CVE program, dramatically increasing program impact, and responsiveness to the fluid Tunisian political situation. Fostered strong team engagement in the process to give members a stake in program success, significantly improving morale, reputation, and performance. Garnered wide recognition for TTI's innovative use of social and new media, and a 'sky's the limit' approach to programming, from small infrastructure and multimedia campaigns, to flash mobs, poetry, street art, dance, and public musical events, designed to better engage Tunisians of all ages and backgrounds in the political transition.

Instituted updated, more effective financial and program performance management processes, rationalized the project leadership structure and accountabilities. Established a continuous improvement and quality assurance plan in response to OTI feedback, enhancing project performance, compliance and team cohesion.



Monastir, Tunisia



**Program Manager, Security Cooperation Assistance Group**

**DAI**

August 2012 – December 2012 (5 months) Bethesda, MD, USA

Identified and developed opportunities for marketing of DAI expertise to USAID, Department of Defense and Department of State clients. Generated innovative product concepts for the DoD market and generated responses to RFPs and RFTOPs. Carried out in-country recons for new business efforts to Afghanistan, Iraq and North Africa.



**Deputy Chief of Party**

**DAI**

March 2010 – August 2012 (2 years 6 months)

Leadership and management of implementation of a cross-sectoral stability program in South East Afghanistan for USAID and the Office of Transition Initiatives, including management of 60 local and international staff and small grants program technical and regulatory compliance. Technical advisor and trainer in the use and continuous improvement of the District Stability Framework (DSF), a program management tool used to identify and target sources of instability in a given area, and evaluate program impact.

2 recommendations



Akemi Tinder Deputy Country Representative at USAID/Office of Transition Initiatives (OTI) Having worked with Michele in Iraq, and for her in Afghanistan, I have seen her tackle a wide range of tough problems with...View



Stig Marker Hansen Chief of Party at Abt Associates I have worked with Michele for the past two years in the very difficult environment in Afghanistan. But Michele's unique...View



**Field Director, Afghanistan**

**DAI**

July 2009 – February 2010 (8 months)



**Snr Program Development Officer - Iraq Rapid Assistance Program**

**DAI**

December 2008 – July 2009 (8 months)

Development and supervision of the implementation of projects designed to improve local quality of life and stabilize communities throughout south and west Baghdad in conjunction with Provincial Reconstruction Teams.

Deputy Director of Intelligence  
Reconstruction Operations Centre, Baghdad Iraq  
July 2006 – July 2008 (2 years 1 month)

Leadership and management of diverse team of consultant threat analysts at national HQ and dispersed throughout Iraq regional offices. Identification of key issues for reconstruction security to be assessed in detail and reported on to the client, the US Army Corps of Engineers.

QA/QC of routine and special threat assessments of operational, social and political developments for the client and the broader reconstruction community. Maintained excellent client relationships and a high degree of client satisfaction with products. Established links with key corporate, Iraqi, and international government identities for information exchange. Capability management and development, including information sources, IT systems and information management.

2 recommendations



Richard Siebert C3I Consulting Michele is a fantastic person with excellent management skills and accumen. She is capable of leading, managing and...View



Nick Charnley EAME Regional Security Manager at Syngenta I have worked with Michele for the past three years and found her professional integrity to be consistently high. Michele's...View

## **Deputy Director Reconstruction Civil Affairs**

Aegis Specialist Risk Management  
June 2005 – July 2007 (2 years 2 months)

Management, administration and continuous improvement of a program of low-cost, high impact projects throughout Iraq to facilitate access and information exchange with Iraqi communities in support of the wider reconstruction effort. Close liaison with Coalition reconstruction personnel and local Iraqi leadership and

administrators to foster an environment of trust and transparency, and improved mutual security.

3 recommendations, including:

Tim Miller OBE PGDipSy Country Director at Erinys Iraq I worked with Michele whilst running a Regional Reconstruction Operations Centre in Diwaniyah, Iraq. At this time we were...View



Mat Whatley Chief of Field Office Gori - EUMM Georgia I worked alongside Michele in Iraq for about 18 months. In that time I came to know her well. Michele is a highly...View

1 more recommendation

## **Course Member, Australian Command and Staff College Department of Defence**

January 2004 – December 2004 (1 year)

One of seven civilians selected for demanding year-long leadership and management course in a class of 161 middle-ranking military officers from Australia and abroad in preparation for senior command and staff positions. Completed subjects in management, law strategic studies and media awareness. Graduated with distinction.

## **Executive Officer, Defence Renewal Branch Department of Defence**

February 2003 – December 2003 (11 months)

Led teams in the design and implementation of organizational development activities for the Department of Defence. Developed curriculum and crafted program plans and budgets for leadership workshops and organizational renewal conferences to improve alignment with government strategy, accountability to taxpayers and the overall quality of organizational leadership across the organization.

## **Civilian Liaison Officer Peace Monitoring Group, Bougainville**

February 2003 – August 2003 (7 months)Buka, Papua New Guinea

Seconded to a remote civil-military liaison team, gathered information and disseminated key messages about

disarmament and the process to establish a new Constitution for Bougainville, Papua New Guinea in the aftermath of its eight-year civil war. Initiated weekly women's meetings to assist them to develop a consistent position in the weapons disposal and constitutional process. Negotiated weapons containments with former combatants in remote areas, including a number who had previously refused to be brought into the process, and assisted them to obtain UN logistic support for reconciliation meetings. Delivered a weekly peace broadcast on Radio Bougainville with island-wide listenership. Repaired and updated the Lotus-based project database for the Buka area of operations, dramatically improving the standard of data management in support of ceasefire violation reporting.

Staff Officer Training, RMC

Department of Defence

2001 – 2002 (1 year)

1 recommendation



Dave McGuire Managing Director, Gripfast Consulting Michele was a major contributor to the development of Defence's All-Corps Officer Training Continuum. The training continuum was the first, and most comprehensive military training continuum developed in the world at the time and was used as a...View

Skills

Top Skills

## 99+ International Relations





## 99+ Program Management



## 98 Government



## 80 International...





## 54 Civil Society



## 49 Capacity Building





## 47 Afghanistan





## 44 Policy



## 36 Politics



## 33 Conflict



Michele also knows about...

32 Foreign Policy 30 Strategic Planning 29 Grants 28 Proposal Writing 28 Governance  
28 NGOs 27 Analysis 21 Management 21 Strategy 20 Training 19 Crisis Management 18 Leadership  
16 Democracy 15 Community Development 11 Security

Education



**Australian National University**

Bachelor of Arts (B.A.), Political Science

1992 – 1996

**Australian Command and Staff College**

psc(j), Australian Defence and Security Studies

2004 – 2004

Organizations

**Women Chiefs of Enterprise International**

Starting January 2013

**Additional Organizations**

American Society for Industrial Security

Languages

**English** Native or bilingual proficiency

**French** Professional working proficiency

**Volunteer Experience & Causes**

**Causes Michele cares about:**

Civil Rights and Social Action

Human Rights

**Recommendations**

**Given (4)**



**Pooja Gupta** Project Coordinator, Stability Sector, Afghanistan Region

Pooja is one of the most exceptional young professionals I have ever worked with. She is tremendously organized and effective and has a keen eye for detail. She is bright, personable, unfailingly poised and professional, and a total pleasure to work with. She gives sound advice, knows her business, follows up promptly, and laughs at my jokes. Difficult to fault. June 13, 2014, Michele managed Pooja indirectly at DAI



**Stevo Stephen** Country Risk Director, Afghanistan

It goes without saying that Afghanistan is a difficult environment in which to get anything done. When things were at their toughest, I could rely on Stevo to keep a cool head and come up with a response to our security challenges that would maintain expatriate safety and that of our local staff, while also respecting our programmatic objectives and ASI's broader strategy....**more** June 18, 2012, Michele worked directly with Stevo at DAI

**Meg Moir** Director Human Resources

I worked with Meg for almost three years and came to rely on her for her common sense, wise counsel, outstanding work ethic, fierce loyalty, attention to detail, and intolerance of stupidity and unfairness. She is one of the most compassionate and dedicated people I have ever met, and I would have no hesitation to recommend her for any post that requires superlative HR...**more** May 22, 2011, Michele worked with Meg at Aegis Defence Services Ltd



**Nick Charnley** Senior Intelligence Analyst

Nick's contribution to our team is broader than his (significant) expertise as an analyst and technical expert on threat and risk assessments. He is responsible for all of our national analytical outputs, and I know that this part of our operation will be in hand, all the time. He mentors our diverse staff of 32+ analysts with a rare blend of insight, pragmatism and humor....**more** April 10, 2008, Michele managed Nick at Aegis Defence Services Ltd

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**DAI** International Trade and Development Follow



**Aegis Defence Services Ltd** Security and Investigations Follow



**EY** Accounting Follow



**International Monetary Fund** International Trade and Development Follow



**Creative Associates International** International Trade and Development Follow

**Schools**



**The Australian National University** Australian Capital Territory, Australia Follow  
Enough for 4 return flights (Syd-Mel). T&Cs apply



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**Sonya Day** Senior Project Manager



**Stig Marker Hansen** Chief of Party at Abt Associates



**Louise Hogan** Senior Global Practice Specialist -- Governance and Stability at DAI



**Barb Lauer** Principal Global Practice Leader - Capacity Building / Leadership Development at DAI



**Hunter Keith** Libya Country Director at DAI



**Phelps Feeley** International Development Professional



**Greg Gisvold** Director, Governance and Rule of Law



**Brenda Barrett** Chief of Party for USAID/OTI



**Jeremy R.A. Haslam** Director, Political Transitions Practice Area at Creative Associates International



**Richard Siebert** C3I Consulting

**People Similar to Michele**



**Heather Turi** Director at Chemonics International **Connect**





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Posted by Rachel Michelle Piercey at 19:09 No comments: 

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### About Me



**Rachel Michelle Piercey**

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### Blog Archive

2016

November

Michele Piercey Director, Conflict and Crisis Prac...



1<sup>st</sup> November 2018 All Saints' Day

Dear Sir Ant, "I do understand what the Pope's Apology to Oceania means as I am a High Court judge."

I was at Tharwa bridge and I asked a man if he could give me a lift back to Canberra. He said yes. During the lift I asked him what he does and he told me he was a civil engineer doing the Hume Highway Gunning – Yass bypass. I asked him why there are so many accidents on the Hume Highway Gunning – Yass. He said, "that is because the superelevation in the road is incorrect as the road was designed for 30 years ago when the speed limit was lower." If you Google "superelevation in the road is incorrect" you will find a picture which explains exactly what that means. If you Google *Shire of Toodyay v Walton WASCA* you will find the common law precedent for compensation occurring there.

If you go to [austlii.edu.au](http://austlii.edu.au) and type in Alexander Bayliss you are provided a High Court case against the Chief Justice of the High Court who was patron of the Australian National University Debating Society.

Sir Anthony Frank Mason is the most distinguished judge in the history of Australia and a friend of 20 years. At The God's Café I told Sir Anthony that no matter how hard life my sister always protected me and no matter how hard life was I took appropriate steps to protect him as that was the right thing to do. Sir Anthony said, "I appreciate you protecting me." I said "while it is significant that the most distinguished judge in the history of the country has been negligent for 7 years in his written judgments I think what is more significant is the fact 7 ministers from the labour party and the liberal party have negligent in administering the legislation violated." They want to rehear the *Mabo* case.

The Writ of Mandamus against the Chief Justice of the High Court is also against Governor – General, all Governors, Administrator of Northern Territory, all Police Commissioners, all Directors of Public Prosecutions, all Ombudsman, all elected members of parliaments and all Senior Officers of Higher Education. I faxed the High Court Writ to all Commonwealth Members of Parliament and sent it to each of the above named people. The Commander of Australian Federal Police Internal Investigations rang me and said "he was in absolute disbelief as in the last week every Police Commissioner in the country has contacted him regarding my High Court Writ and I have one hell of a knack of predicting things as the police bashing is on video." Point is the Australian Crime Commission took its first steps.

You soon appreciate I grew up competing with the closest person in my life Vanessa Camille Bayliss.

I met Dennis Martin from Snedden Hall & Gallop on Christmas Eve 1989 when I was in year 12 and I told him my idea and he said "It is a great idea why don't you sell it for a million dollars?" My Uncle Wilfrid Barker said "that is a multi-million dollar idea." My Uncle Wilfrid Barker started Sports Marketing and Management and won the bid to hold the 2000 Olympics in Sydney and raised \$2,600,000,000 in Sports Marketing and Management Rights for the Sydney Olympics and was given an Olympic Order of Merit by the Australian Olympic Committee for his contribution to the Olympics.

When I last met Uncle Wilfrid Barker he said “why aren’t you a multi-millionaire yet? And he wants me to action the High Court Writ.” I immediately drove to Sir Anthony’s residence and told him “Uncle Wilfrid wants me to action the High Court Writ.” My Great Grandfather was a Tasmanian Police officer for 52 years. Once I put the Writ in the High Court Michele Piercey applied for a restraining order on the basis I held a gun at her head and Australian Federal Police Detective Superintendent Tim Fisher 884 took a statement to charge her with false accusation and perjury and her lover Australian Federal Police Constable Harry Thomas Hains 4928 had aided and abetted her as “he had a special interest.”

Rachel Michelle Piercey was later a machine gunner for 10 years in the Royal Australian Army.

Rachel Michelle Piercey applied for her first restraining order on the basis “he has brain damage” and the Australian Capital Territory Magistrates Court issued 250 restraining orders against me, despite the fact the symptoms of brain damage render me unfit to plead and I when I gave the symptoms of brain damage to Australian Capital Territory Chief Justice Terrence Higgins as of they fit under International Classification Impairment Disability Handicap 1981. Chief Justice Terrence Higgins said, “I am familiar with the International Classification of Impairment Disability Handicap: Not Guilty.

If you go to [austlii.edu.au](http://austlii.edu.au) and type in Alexander Bailiff you will find 7 cases for Alexander Marcel Andre Sebastian Barker Bailiff and if you search for Australian National University Scrabble Society you will find cases against 7 Australian Labor Party ministers from whom I am protecting “the most distinguished judge in the history of Australia” from as they want to rehear the Mabo case 1992.

If you Google Scrabble cufflinks and Scrabble earrings you will find products I am the mind behind.

Uncle Wilfrid Barker said “it is very significant to influence a company world wide and you are going to make so much money.” I told Mercedes Benz “my idea when I was 12 was to use light emitting diodes as warning devices” and now every car, truck, bike and train manufacturer are using them now.

Philip Ruthven of IBISWorld use to be a market researcher for Grandpa Mervyn Barker at Petersville until Grandpa helped Phil set up IBISWorld and now he is an adviser to a majority of the Top 2000 Companies in Australia. In fact Phil has offices in United States, Canada, United Kingdom and China.

If you go to [SaintAlexanderofAustralia.com](http://SaintAlexanderofAustralia.com) you will find the Top 2000 Companies in Australia. Uncle Wilfrid Barker said “why aren’t you out there doing the Mabo case?” So I read the Australian Diplomat by Sir Alan Watt and I got the Pope’s Apology to China for the 14 nations that had unequal treaties and I got the Pope’s Apology to 34 countries in Oceania for Papal Bull 1455 that preceded world colonies.

Phil Ruthven said, “do you realize I was 40 when I worked out what I want to do, do you realize you are 19, know exactly what you want to do, you are going to go such a long way.” Uncle Wilf said, “as far I am concerned you have the most extraordinary, uncontrolled and uncompromising mind.” In O-week I saw the Chief Justice of the High Court of Australia letter, three years i investigated and then I sued in my fourth year and every police commissioner in Australia contacted Canberra in one week and seven years later the Australian Crime Commission Act 2002 was passed. Importantly I started to play with law, just like James Watt started to play with steam power which led up

to industrial revolution. You realize my father's mother is Margaret Watt, her father was Dr James Watt descendent of James Watt.

The list of people in the ACT Magistrates Court is the Barker's list and is named so around the world as a Barker is a Crier of the Court. A Bailiff is Minor Court Official with police authority around the world.

The Bailiff went from Normandy to England in 1066 with William the Conqueror and a Papal Bull. In Old English and Old French the f & s used to be a ligature and to pronounce Bayliss and Bailiff is Bailee. So Alexander Marcel Andre Sebastian Barker Bailiff getting two Pope's Apologies in 30 and 60 days is fitting in with evolution of international law and United Covenant for 370 Million Indigenous Peoples.

Australian aborigines are oldest living civilization in world and 2018 Pope Apologized to Indigenous.

Aside from the history I already made it is now time for New South Wales Maritime Service Board to read Shire of Toodyay v Walton WASCA 2007 to understand their liability for superelevation in road. If I got Great Pope John Paul II Apology to China in 30 days and Pope's Apology to Oceania in 60 days, than Maritime Service Board can apologise for superelevation in road was incorrect at Jerrawa Creek.

Google section 52 of Statute of Limitations you will realize it is suspended for length of the disability. You can settle 1 case for \$3777 billion and then I will not have to consider what other avenues to use. If you are going to kill Vanessa Camille Bayliss than should have killed her brother as well to save face.

If you got to SaintAlexanderofCanberra.com than you will find further evidence to support this claim.

If you know Commonwealth of Australia are liable for Hume Highway Melbourne to Sydney they pay.

The Great Pope said, "The Church in Oceania gives glory to God at the dawn of the Third Millennium and proclaims her hope to the world." I am Catholic so I turned the other cheek and once I appealed 250 restraining orders applied for I said to Chief Justice Jeffrey Miles, "thank you for having had me, I am taking these cases to a higher court." I appealed them to the Federal Court of Australia and Chief Justice Jeffrey Miles did a Judicial Inquiry into Australian Capital Territory appeal process and in 2001 Australian Capital Territory Court of Appeal was established to hear appeals from the Supreme Court.

Yours sincerely

Alexander Marcel Andre Sebastian Barker Bailiff

Alexander Marcel Andre Sebastian Barker Bailiff R v Bailiff Not Guilty by Reason of Mental Impairment

Centenary of Armistice The Australian War Memorial 11 November 2018

Dear Hon. Linda Dessau AC, Anthony Howard QC, and historian Dr Clare Wright, [info@govhouse.vic.gov.au](mailto:info@govhouse.vic.gov.au)

The only family I lost during The Great War were the Five O'Leary Brothers from Tasmania.

Great grandpa William Barker did not go as he a Tasmanian police officer until 1940. 52 years.

It's expected Michele Piercey 6 March 1973 would be prosecuted for perjury & false accusation.

It's unsurprising she applied for a restraining order as he has 'brain damage' for peer group fun.

It's unsurprising her lawyer Richard Refshuage Macphillamy Cummins & Gibson applied for the ACT Community Advocate to hijack my case against Christine Bayliss Vic rego ACT 592 'basis I had brain damage. Case settled for \$600,000. Approved by ACT Master. Gone in legal fees too.

New South Wales Police report, says accident happened Hume Highway Gunning–Yass NSW.

ACT Supreme Court Master only has authority to approve for accidents that happen in the ACT.

Jean – Paul Lucien Bayliss & Alexander Marcel Andre Sebastian Barker Bayliss now Bailiff, not compensated by Transport Accident Commission for NSW motor vehicle accident on 7/12/85.

I did write All Saints' Day 1<sup>st</sup> November 2018 and Centenary of Armistice 11<sup>th</sup> November 2018.

My first lawyer in Canberra Warren Donald became a Federal Magistrate & Federal Judge and my last lawyer became a Family Court Judge Shane Gill and I protect Chief Justice High Court.

Whilst it's not expected 700,000 use brain damage as causation for delayed proceedings to proceed, it's also not expected by Victorians paying 3<sup>rd</sup> party Transport Accident Commission.

Chief Justice Terrence Higgins is given symptoms of brain damage to find not guilty R v Bailiff.

It is by me making contact with you that a line of communication be established to bypass court.

Upon your reading Sir Anthony Mason 1<sup>st</sup> November 2018 would be expected you understand.

Jean – Paul Lucien Bayliss is in denial he was in a motor vehicle accident and is an alcoholic and has used every drug there is - except heroin. To aid his denial is the fact he lived with his mum until he was 18 for 2 or 3 years then he went back until he was 26. A mother who had 29 broken bones in accident and gets around in a buggy due to her disabilities. His compensation would have to be an upper end of the scale so he can purchase a home and derive an income.

Alexander Marcel Andre Sebastian Barker Bayliss has intellectualised, reaction formatted and projected his grief from loosing the closest person in his life Vanessa Camille Bayliss - 7/12/85.

My compensation would have to be commensurate with an absolutely brilliant genius worldwide.

At 10 years old upon finding an aboriginal hunting tool reflecting sun in Simpson Desert made me realise I was in someone else's back yard and the rent for this place would be enormous.

At 11 years old I discovered edgelit acrylic transmits light far more reliably than facelit acrylic.

Once every shop in the world has edgelit acrylic signs they do save \$billions on neon lights bills.

At 12 years old I realised solar panels, light emitting diodes and light sensitive switches have to be taken out of the electronic kit and put in the real world. Once every roof in world has solar on roof then you can calculate how many \$billions they save on power bills. Once light emitting diodes are on every vehicle, street light, traffic light, service station & house light than calculate.

At 13 I was offered DD/MM/YY on Commodore 64 Computer and realised 31/12/99 cost billions.

The YZK era cost society US\$600 billion in hiring programmers to overcome date change era.

No representative can help society overcome oversight of Microsoft leading to world collapse.

Transport Accident Commission must compensate me A\$3777 billion for my injuries globally.

Only a savant a learned person, especially a distinguished scientist would know how to get II Pope's Apology to China & Pope's Apology to Oceania for Papal Bull 1455 in 30 & 60 days.

United Nations Covenant for Rights of 370 Million Indigenous Peoples is short consequence.

Protecting Chief Justice of High Court from 1788 Police Commissioners, Directors of Public Prosecutions, Ombudsman, Administrator, Governors, Governor – General, Territory, State & Commonwealth Members & Senior Officers Higher Education is Australian Crime Commission. Most distinguished judge in the history of Australia said to me, "I appreciate you protecting me."

I have also introduced use of light emitting diodes to Mercedes – Benz and consequently every vehicle maker, light manufacturer, service station & street light & traffic light in world. \$billions.

Transport Accident Commission have to compensate me for Scrabble cufflinks & earrings too.

A social political legal economic commercial ideological theory excuplator dhimmi would advocate a 'populate or perish policy' is chaos until Judaism, Christianity & Islam is also taught.

Every police commissioner, director of public prosecution, ombudsman, administrator, governor, governor – general, elected territory, state & commonwealth member & senior officer of higher education can do nothing about Michele Piercey false accusation a gun was held at her head.

Likewise I can do nothing about Rights of 370 Million Indigenous People from 90 countries.

The Pope's Apologies at the "Dawn of the New Millenium" awaits for your action in this matter.

An ex gratia payment will be accepted with full knowledge Transport Accident Commission have reinsurance which will cover extra-ordinary circumstances such as compensating a pure genius.

It's 7 billion people who will be watching your every step, especially Jews, Christians & muslims.

The Republic Plato 376 BC said, "And so if anyone else found in our state telling lies, he will be punished for introducing a practice likely to capsize and wreck the ship of state." Punish perjury.

The Republic of the Australian Capital Territory provided the legislation which allows for abuse of the legislation, when 250 restraining orders are courts issued so I can be jailed 1250 years.

"A brilliant law student" seeks relief in High Court - Michele Piercey applies for restraining order on the basis a gun is held at her head. SaintAlexanderofCanberra.com reveals all done so far.

Meanwhile the 1788 Apostles I have proceedings against in High Court squabble through trivia.

Jews, Christians & Muslims found Alexander Marcel Andre Sebastian Barker Bailiff on the web.

History considers kindly your move to lessen the consequences of unleashing 6000 barristers to ensure the annihilation of every territory, state and commonwealth representative, for sheer fun.

I do not have to do anything as my family service to the judiciary has earned their surnames as

"Barker's List" named as crier of the court and a "Bailiff" minor court official with police authority.

Whilst 1788 Apostles I have proceedings against in High Court need to learn Papal Bull 1455.

Romanus Pontifex 1455 apologised in Pope's Apology to China & Pope's Apology to Oceania.

The Ship of Fools who indoctrinate people around world through governments have to learn the human basis in countries around the world under the principles of Judaism, Christianity & Islam.

Ship of Fools understand how Judaism, Christianity & Islam give affect 370 Million Indigenous. The future of the world is in the hands of 370 Million Indigenous Peoples so they must cheer. The Great Pope said, "The Church in Oceania gives glory to God at the dawn of the Third Millennium and proclaims her hope to the world." I'm a humble guide to Great Pope & Apostles.

1 Th 5:2 For yourselves know perfectly that the day of the Lord so cometh as a thief in the night. Once All Saints' Day & Centenary of Armistice & CJ Mason SOS in hands of Saint Paul Street Evangelization & every consulate & diplomat in Australia before it goes on world wide web, The fact Australian Fellatio Police No 4928 "went beyond his duty as he had a special interest." To incite & encourage, aid & abet, fabricate evidence, make false accusations, commit perjury. Harry Thomas Hains knew Australian National University indemnify Rachel Michelle Piercey. Michele Piercey Senior Vice President Chemonics International as Counter Violent Extremist. "Stated that he would come over and teach a lesson...that there was a gun pointed at head." R v Bailiff ACTSC 214 Not guilty by reason of mental impairment is a United Nations precedent International Classifications Impairment Disability Handicap (1981). UNITED NATIONS PRIZE.

[SaintAlexanderofCanberra@gmail.com](mailto:SaintAlexanderofCanberra@gmail.com)

Alexander is defender of the people, Greek. Marcel is young warrior, French. Andre is manly, French. Sebastian is venerable, Greek. Barker is crier of the court, English. Bailiff is minor court official with police authority, French. "but performance on tests of formal intelligence is often surprisingly well preserved once the patient's co-operation has been secured." Alwyn Lishman

ROYAL HOBART REGATTA 11 February 2019

Dear Darren Hine APM. 613 6173 2247 [commissioner@police.tas.gov.au](mailto:commissioner@police.tas.gov.au) GPO Box 308, HOBART TAS 7001

2 Chronicles 6:36 KJV

**36** If they sin against thee, (for there is no man which sinneth not,) and thou be angry with them, and deliver them over before their enemies, and they carry them away captives unto a land far off or near;

Longest serving police officer is Tasmanian William Barker 1870 – 1966 served 1888 – 1940 52 years. The Barker's are criers of the court, 'Barker's List' is of those going to a court. Barker's from Onibury. The Bailiffs are minor court officials with police authority. Bailiffs went from Normandy to England. 1066 with a Papal Bull for William the Conqueror to be King of England introducing Bailiff to England. Alexander Marcel Andre Sebastian Barker Bailiff did Australian Crime Commission High Court Writ. Programming in BASIC on Commodore 64 was offered DD/MM/YY - MS-DOS had two spaces for year. As a member of Australian Criminal Intelligence Commission you must now investigate William Gates. If Alexander Marcel Andre Sebastian Barker Bailiff at 13 grasped consequence of MS-DOS two spaces, how can it be every Microsoft employee did not also grasp consequence of MS-DOS having two spaces.

US\$600 billion millennium bug glitch could have been averted by replacing YY with YYYY in 16 years.

Revelation 20:7

7 And when the thousand years are expired, Satan shall be loosed out of his prison,

The Pope's Apology to China 2001 & The Pope's Apology to Oceania 2001 for Papal Bull 1455 is basis for Australian Criminal Intelligence Commission to investigate user of Romanus Pontifex for Genocide of 370 Million Indigenous Peoples around world with unequal treaties, disease & arms. Christianity & European colonisers & 1421 Chinese maps & arms must be accountable for death.

Matthew 5:5

5 Blessed are the meek: for they shall inherit the earth.

I got Pope's Apology to China in 30 days & Pope's Apology to Oceania in 60 days in 2001. And United Nations Covenant for Rights of 370 Million Indigenous Peoples in 90 countries in 2007. Great Pope's Apology for Romanus Pontifex 1455 is why Pope Francis apologised to Oceania. Microsoft glitch of having two spaces for year instead of four bore the Gates Family Foundation. Consulates consider if this concerns their Ambassador in Canberra if it should be forwarded. Every country uses MS-DOS and would like to know Australian Crime Intelligence Commission. Each country would like to know Alexander Marcel Andre Sebastian Barker Bailiff saw this 1983.

<https://Popesapologytooceania.com> is evidence Chemonics International operate globally, failed. Newly established Center for Applied Approaches to Countering Violent Extremism (CVE) a farce. Michele Piercey Senior Vice President got restraining order on basis gun held at her head 1995. Harry Thomas Hains "went beyond his duty as he had a special interest." Fellatio & phone rings. Michele Piercey spent 10 years in Australian Army as a machine gunner then got Chemonics job. Grandpa Jacques Frederick [Joseph] Bayliss was A/Lt Cdr 1939-45 Allied Warship HMIS Jumma. Grandpa Jacques Frederick [Joseph] Bayliss lived in Admiralty House Loch Long 19 years as he was Commander Admiralty Torpedo Testing Station. "The peak years at the Range occurred during the Second World War. Amazingly, in 1944 approximately 12,565 torpedos were fired down the Loch, which works out an average of 48 runs per day, Monday to Friday." No fellatio. Consulates will forward grandson of Allied Warships request to Torpedo Canberra & Washington. Grandpa Jacques Frederick Bayliss [Joseph] Younger son of Arthur F. Bayliss and Marie L. E. Dimpree of Weymouth. Married (29.01.1944, St Mary's Cathedral, Madras) Margaret Helen Watt, RNVAD, only daughter of Dr & Mrs James Watt, of Godalming ... children (one son, one daughter) "A little hard to find as it is behind the huge Secretariat building but well worth it if you are interested in history. Built in 1680, it is the oldest remaining church in India. Although needing some repair and restoration, the

officers, administrators, missionaries and their wives and families to get some idea of the hazards of colonial service. Certainly we got a lot out of our visit.”

“In 1764, James Watt married his cousin Margaret (Peggy) Miller, with whom he had five children, two of whom lived to adulthood: James Jr (1769-1848) and Margaret (1767-1796). His wife died in 1772 in childbirth in 1772.” James Watt Jr produced 7 children while visiting Margaret Redfern.

Australian Diplomat by Sir Alan Watt mentions Margaret Watt as she is a relative. And I read it in order for me to understand how I to get Pope’s Apology to China & Pope’s Apology to Oceania.

Uncle Wilfrid Barker asked me, “why aren’t you out there doing Mabo case?” I got two apologies.

## **BARKER      WHO’S WHO IN AUSTRALIA 2000**

**BARKER** Wilfrid John; FAIM; Media and Market Consultant, since 1986; *son of:* M G Barker; b. Aug. 1 1928; *ed.* St Virgil’s Coll.(TAS), Univ. Tas.; *career:* Exec. Chmn CEO Wilf Barker Aust. Pty Ltd, R&R Pub. Mktg Pty Ltd, Baylin Dev. Pty Ltd, Dir Sunraysia TV Ltd, Javelin Travelin Pty Ltd, Project Dir Lon/Syd. Air Race Pty Ltd 2001, CEO Sports Mktg and Mgmt Pty Ltd 1986-1996, former Dir Mayne Nickless Ltd, former CEO Javelin Communications Pty Ltd, Chmn Media Cl Aust. 1982-84, Dir Network 10 Aust. Pty Ltd 1983-86, Gen. Mgr 1980-86, TV Dev. News Ltd, United Telecasters Ltd 1980-85, Bcast FM Pty Ltd 1979-85, Gen. Mgr and Dir Austarama TV(ATV 10) 1979-80, Dep. Gen. Mgr and Sales Dir 1972-78, Sales Dir Nat. Nine Network 1971-72, TCN9 1967-71, GTV9 1965-67; Chmn Fedn Aust. Comm. TV Stations (FACTS) 1980-82, FACTS Res. Cttee 1974-78, Chmn and Memb. TV Advertising Bd 1967-78; Project Dir Aust. Bicentennial Opening Celebrations; Cowan TV award, Olympic Order Merit; *m.* Dec 14, 1996 Prasede, *d.* C Boschiero, 1 s 1 d; 22 Belcote Street, Longueville NSW 2066

Olympics concerns Consulates in Australia and I request political asylum as my rights are all violated.

Australian Federal Police Detective Superintendant Harry Thomas Hains rings my residence & arrests.

Australian National University hire Richard Refshuage Macphillamy Cummins & Gibson & indemnify.

I founded ANU Scrabble Society & Scrabble cufflinks & Scrabble earrings are on internet since 1994.

Whatever I sue Michele Piercey for Australian National University have to pay due to Philip Alan Selth.

Michele Piercey got Restraining Order on basis I have brain damage & as soon it expired Philip Alan Selth got one which court has no power to issue as I am a student at Australian National University.

Once proceedings were put in High Court against Patron ANU Debating Society Piercey & ANU got one.

250 Restraining Orders, 200 arrests, 200 days in custody - unfit to plead & not guilty by impairment.

Chief Justice of High Court Sir Anthony Mason said “Alexander Bailiff is brilliant law student.” Pope?

Accredited Specialist Personal Injury will get me compensation so I am richest billionaire in the world.

I request Australian Criminal Intelligence Commission investigate Richard Refshuage Macphillamy Cummins & Gibson for deception to obtain financial advantage by making application ACT Community Advocate hijack my car accident compensation case on the basis I have severe brain damage. A person in Australian Capital Territory got compensation of \$20 million for brain damage in ACT accident. My accident was in New South Wales Hume Highway Gunning – Yass and New South Wales compensate.

I request Australian Criminal Intelligence Commission charge Richard Refshuage, Philip Selth and Detective

Superintendent Harry Thomas Hains with perjury for aiding and abetting Michele Piercey with fabricating evidence, making false accusations and perjury with intent to procure a conviction.

Yours sincerely

[SaintAlexanderofCanberra@gmail.com](mailto:SaintAlexanderofCanberra@gmail.com) 614 3777 3777 <http://saintalexanderofcanberra.com>

Alexander Marcel Andre Sebastian Barker Bailiff R v Bailiff Not Guilty by Reason of Mental Impairment

Chief Justice Helen Murrell  
ACT Supreme Court  
GPO Box 1548 Canberra ACT 2601  
Knowles Place  
Canberra ACT 2600  
ea.murrellcj@courts.act.gov.au

Dear Chief Justice,

On 7<sup>th</sup> December 1985, I sustained very severe brain damage after having an accident on Hume Highway. When I met civil engineer at Tharwa bridge, I asked man who gave me a lift to Canberra what he does. He said, "I am a civil engineer doing the Hume Highway Gunning – Yass bypass." I asked him why there are so many accidents on the Hume Highway Gunning – Yass? He said, "the reason there are so many accidents on the Hume Highway Gunning – Yass is because the superelevation in road was incorrect as the road was designed for 30 years ago when the speed limit was lower." I knew I could not blame mum.

I was unconscious for month at 15 years and 108 days and my sister Vanessa Camille Bayliss was killed. I couldn't turn to drugs or alcohol to impair my judgment logic and rational, which is what happens. At 19 I developed an idea so I started ABCO ENTERPRISES and was offered a \$1 million to buy idea. At 21 I was contracted to develop complementary Scrabble® products. Scrabble cufflinks & tiepins.

At 21 I started ANU Scrabble Society® as I grew up playing Scrabble® with the closest person on my life. At 21 I saw letter of Chief Justice of the High Court of Australia, endorsing ANU Debating Society – so I joined. At 21 Kath Cummins printed article in ANU Debating Society newsletter defaming Scrabble® & me - ANUSS. At 21 Simon Brettell was given an ultimatum which included informing Chief Justice of High Court - ANUDS. At 21 Simon Brettell advised General Manager of J W Spear agreed to write letter to Chief Justice – ANUDS. At 21 Michele Piercey made false 7 accusations to ANU Committee Against Sexual Harassment about me. At 21 Michele Piercey fabricated evidence in letter to Philip Alan Selth to hire Richard Refshuage for her. At 21 Michele Piercey applied for restraining order against me on the basis "He has had brain damage." At 21 Michele Piercey made 5 false accusations after Constable Harry Hains used phone to check my alibi. At 21 Alexander Bayliss filed Supreme Court appeal of 4 convictions of false accusations with phone alibi.

At 21 Michele Piercey said I rang her from Woden Hospital after Constable Harry Thomas Hains rang. At 21 Michele Piercey told Detective Sergeant Dave Baker I raped her whilst I was in Woden Hospital. At 22 Chief Justice Jeffrey Miles took evidence of my alibi where I had redirected my phone with alibi. At 22 Justice John John Gallop acquitted me, "on basis the cases on Magistrates Court entirely defeated the principles of the legal system." I was acquitted of 4 false accusations within hour despite 4 false accusations, 5 arrest, 7 charges and 55 days in remand over 104 days. Richard Refshuage aided Michele Piercey and also Constable Harry Thomas Hains said to Chief Magistrate "I went beyond my duty" "as I had a special interest." As soon as Michele Piercey's restraining order expired Philip Alan Selth got one. Michele Piercey told police Tjarda Stienstra threatened to kill her by putting a note in her bag. Detective Constable Mick Pearce this 1.

At Worlds Debating Tournament in Melbourne Kath Cummins made a false accusation of threat to kill by me.

Once I put case in High Court of Australia against 1788 each police commissioner in the country contacted commander of Internal Investigations regarding my High Court Writ and Commonwealth Parliament made Australian Crime Commission Act 2002. My 1995 High Court was faxed to all Commonwealth Parliament members and the Australian Federal Police statement of 5 June 1995 against Michele Piercey was sent to 868 Senior Officers of Higher Education & 838 Commonwealth, State and Territory Members of Parliament. I sent it to 1000 State Emergency Services, 800 Police Stations and they all contacted Canberra to report it. In 1995 Richard Refshuage Macphillamy Cummins & Gibson was given copy of the High Court Writ for sure. After that Richard Refshuage Macphillamy Cummins & Gibson applied for Community Advocate to take over my car accident compensation on basis I had brain damage. For a start it was a New South Wales accident. 250 Restraining Orders had been applied for since 1992 until 2011, which was just a waste of court time.

Justice Ken Crispin found Mental Health Tribunal thought I unfit to plead due to symptoms of brain damage. Justice Ken Crispin found me “unfit to plead” in 2002 and accordingly Australian Federal Police left me alone. Constable Harry Thomas Hains criminal arrested me many times as I lived in O’Connor, Reid & Narrabundah. Justice Ken Crispin in 2002 “An offence of assault is constituted by any act committed intentionally, or possibly recklessly, which causes another person to apprehend immediate and unlawful violence: If force is actually applied, either unlawfully or without the consent of the recipient, than a battery is committed.” Justice Richard Refshuage directed me to Mental Health Tribunal. I appealed to Justice Hilary Penfold. Justice Hilary Penfold found me “fit to plead.” Chief Justice Terrence Higgins said “it would be illegal for a judge to direct you to Mental Health Tribunal.” Justice Richard Refshuage broke law and must be charged. Chief Justice Terrence Higgins said, “what is new?” I said, “Symptoms of brain damage which comes under International Classification of Impairments Disability Handicap (1981).” I gave one A4 page to Associate.

I gave Brain Damage Medico-Legal Aspects (1994) to Justice Ken Crispin 2002. It’s in Supreme Court library. Parker QC, R.W.R., Barrister-at-Law, p.127, Chapter 7, *Brain Damage Medico-Legal Aspects*, Blackwell Press, Sydney, (1994). (Philip William Bates General Editor Barrister UNSW) (My stepfather)

## **Adducing Evidence to Prove or Disprove Brain Damage**

### **6. The Clinical Picture in Focal Cerebral Disorder**

Lishman says at p.16 that strictly focal brain damage can be responsible for both acute and chronic organic reactions. He says that a frontal lesion may confer distinctive changes of disposition and tempermanent. Most characteristic is a disinhibition with expansive overfamiliarity, tactlessness, over-talk[at]iveness, childish excitement or prankish and punning social and ethical control may be diminished with a lack of concern for the future and for the consequence of actions. Sexual indiscretions and petty misdemeanours may occur, or gross errors of judgement with regard to financial or interpersonal matters. Sometimes there is a marked indifference, even callousness for the feelings of others. Equally lack of anxiety and insight on the part of the patient into his or her condition. Elevation

of mood is often seen, namely an empty and fatuous euphoria rather than a true elation which communicates to the observer. In other cases the principal changes are lack of initiative, spontaneity and a profound slowing of psychomotor activity. Concentration, attention and ability to carry out a planned activity are impaired by these changes but performance on tests of formal intelligence is often surprisingly well preserved once the patient's co-operation has been secured.

## References

Lishman, William Alwyn. *Organic Psychiatry. The Psychological Consequences of Cerebral Disorder*, Blackwell Scientific Publications, Oxford, (1987)

International Classifications Impairment Disability Handicap (1981)

Chief Justice Terrence Higgins said, "I am familiar with International Classification of Impairment Disability Handicap (1981): Not guilty." Chief Justice Terrence Higgins was given same page of symptoms of brain damage given to Mental Health Tribunal. Where my Neurologist Dr Atilla Gyory said, "symptoms of brain damage rendered Alexander Bailiff unfit to plead." The same page placed in High Court in 1995 as Exhibit 13. Yet Magistrates Court issued 250 restraining orders and Supreme Court Registrar will not allow to make law by accepting my Supreme Court Writ's. Hundreds of arrests occur, all in Contempt of High Court Rules.

When I was before Chief Justice Jeffrey Miles appealing all restraining orders, he said, "you have the whole day before me." I said I am taking these to a higher court. I appealed to Federal Court and next to High Court.

Chief Justice Jeffrey Miles did Judicial Inquiry into appeal process and the ACT Court of Appeal is established.

Now there must be ACT Judicial Inquiry into how those with less intellectual ability than those in High Court, can issue 250 restraining orders when 1<sup>st</sup> applicant applies for first one on basis "he has had brain damage."

And then Richard Refshuage Macphillamy Cummins & Gibson fails to take action against Michele Piercey.

And then Richard Refshuage Macphillamy Cummins & Gibson is in Contempt of Supreme Court Rules tries to have Community Advocate take over \$multi-million NSW car accident compensation in ACT Supreme Court.

And then Richard Refshuage Director of Public Prosecutions fails to prosecute Michele Piercey & Philip Selth.

And then Justice Richard Refshuage directs me to Mental Health Tribunal when they find me "unfit to plead."

And Chief Justice Terrence Higgins said, "it would be illegal for judge to direct you to Mental Health Tribunal.

Once I put proceedings in High Court, Richard Refshuage Macphillamy Cummins & Gibson applies for 1995 Michele Piercey restraining order on basis "he held a gun at my head" to stop me getting to the High Court.

I will demand ACT Judicial Inquiry reopen my ACT Master approval of \$657,000 farcical compensation case.

Micheal Kukelies-Smith of Kamy Saeedi has represented for me for more than 10 years for ridiculous cases.

[SaintAlexanderofCanberra@gmail.com](mailto:SaintAlexanderofCanberra@gmail.com)

Alexander Marcel Andre Sebastian Barker Bailiff R v Bailiff [2011] ACT Not guilty by reason of impairment.

Parker QC, R.W.R., Barrister-at-Law, p.127, Chapter 7, *Brain Damage Medico-Legal Aspects*, Blackwell Press, Sydney, (1994).

## **Adducing Evidence to Prove or Disprove Brain Damage**

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#### **References**

Lishman, William Alwyn. *Organic Psychiatry. The Psychological Consequences of Cerebral Disorder*, Blackwell Scientific Publications, Oxford, (1987)

International Classifications Impairment Disability Handicap (1981)

**R v ALEXANDER MARCEL ANDRE SEBASTIAN BARKER BAILIFF**  
**[2011] ACTSC 214 (30 November 2011)**

**EX TEMPORE JUDGMENT**

No. SCC 139 of 2009

Judge: Higgins CJ

Supreme Court of the ACT

Date: 30 November 2011

IN THE SUPREME COURT OF THE )  
 ) No. SCC 139 of 2009  
AUSTRALIAN CAPITAL TERRITORY )

**R**

**v**

**ALEXANDER MARCEL ANDRE SEBASTIAN  
BARKER BAILIFF**

**ORDER**

Judge: Higgins CJ  
Date: 30 November 2011  
Place: Canberra

**THE COURT ORDERS THAT:**

The defendant is not guilty by reason of mental impairment.

1. MR GILL: The accused pleads not guilty to the charge. Incorporated in that plea is a plea of not guilty by reason of mental impairment, specifically due to symptoms of brain damage.
2. HIS HONOUR: Yes. All right.
3. MR GILL: With my friend's consent at the commencement of the trial proceedings, I tender a report by Graham George.
4. HIS HONOUR: Yes.
5. MR GILL: Your Honour already has the report in that bundle of documents that was tendered for the fitness to plea proceedings.
6. HIS HONOUR: Yes.
7. MR GILL: It is a report dated 29 April 2011.

8. HIS HONOUR: Yes, I have that.
9. MR GILL: I tender one of the attachments referred to in it which includes the article by Mr Leeshman.
10. MR LAWTON: Or a reference to it.
11. MR GILL: Reference to an article by Mr Leeshman.
12. HIS HONOUR: Yes, I have that. Thank you.
13. MR GILL: Specifically your Honour will see that Dr George says: “Mr Bailiff has an established diagnosis of an organic mental disorder, inclusive of a persistently hypermanic to manic mood disorder in association with personality change and cognitive difficulties.” I note that the report was prepared in relation to fitness to plead, but we say that that raises the issue of mental impairment.
14. HIS HONOUR: Well it is the objective circumstance and the purpose for which it is prepared that is important.
15. MR GILL: On receipt of that report and before the commencement of the rest of the trial, I ask your Honour to permanently stay the proceeding.
16. HIS HONOUR: On what basis?
17. MR GILL: On the basis that there has been excessive delay in the proceedings.
18. HIS HONOUR: Unreasonable delay I think is the term.
19. MR GILL: The application is made in reliance on the authority of *R v Kara Lesley Mills* [2011] ACTSC 109 (*Mills*) and the right that is conferred under the *Human Rights Act 2004* (ACT) (*Human Rights Act*) as recognised by your Honour in *Mills*.
20. HIS HONOUR: It certainly is that.
21. MR GILL: We acknowledge that this case does not involve the delay that was seen in the case of Kara Mills. The delay in her case was a much more grievous delay.
22. HIS HONOUR: Egregious, yes. There is also the question of the effect upon the fairness of the proceeding.
23. MR GILL: In Ms Mills’ case, helpfully, your Honour noted there was an extension to the common law jurisdiction which enabled the grant of a stay, in that there was not a necessity to find those other common law factors which had previously been required because of the right to be heard under the *Human Rights Act*.
24. The particular issue that we say arises here in contrast to *Mills*, is that *Mills* involved a relatively serious offence in relation to drug trafficking. So the offence that is brought before your Honour today does not fall into that sort of category. Even if it is not categorised as a trivial offence, we would say that in the overall scheme of matters it is a minor offence in the sense that the offence provision itself is not at the most serious order of magnitude and the particular ---
25. HIS HONOUR: I do recall that I dismissed a charge in relation to another person, Mr Robertson I think his name was, who was suffering from considerable mental problems. I dismissed it on the ground of relative triviality, under the *Crimes Act 1914* (Cth) of course.

26. MR GILL: Well this is likewise a damage to property type offence.
27. HIS HONOUR: Yes, it is.
28. MR GILL: But when one looks at the scope of what the encompassed damage property - - -
29. HIS HONOUR: Well I think I need to have more on that.
30. MR BAILIFF: Excuse me, your Honour. Could we seek to tender the Magna Carta for the period of time before trial happens?
31. HIS HONOUR: No, we do not need the Magna Carta, it has been repealed.
32. MR BAILIFF: But your Honour - - -
33. HIS HONOUR: It has been repealed. Take a seat.
34. MR BAILIFF: But your Honour, the *Constitution* is British as well.
35. HIS HONOUR: It is still repealed.
36. MR BAILIFF: We have not repealed it yet, your Honour.
37. HIS HONOUR: Yes, we have. Go on.
38. MR GILL: So your Honour should have a case statement available to you.
39. HIS HONOUR: Yes, I have.
40. MR GILL: I have no objection to your Honour seeing that case statement.
41. HIS HONOUR: Yes. Well I presume that will be the case relied upon anyway, Mr Gill.
42. MR GILL: It is. There is a necessity to call Mr Franks.
43. HIS HONOUR: Could you give me another copy? There are so many papers in the file now. I think that the Crown would concede that those facts would be established except for - - -
44. MR LAWTON: Yes, there is some minor disagreement about the mechanism.
45. HIS HONOUR: Yes, I understand.
46. MR LAWTON: There is a potentially major disagreement surrounding the circumstances which lead to Mr Bailiff to act in such a manner.
47. HIS HONOUR: No, I understand his perception is that the structure he built was being attacked and he thought he was entitled to defend himself in respect of that, or defend the structure if you like. At law that would not run.
48. MR GILL: Certainly an aspect of his defence is his belief of an entitlement to act in the manner in which he acted.
49. HIS HONOUR: Yes, I understand that. As I say, that would not be accepted as a matter of law, but it would be seen as being generated by his organic brain damage condition.
50. MR GILL: Yes. Yes, and it goes to that criteria under the mental impairment.
51. HIS HONOUR: I would have difficulty in rejecting that I think.

52. MR GILL: The significance of that on the application for a stay is that when one looks at the nature of the offence and one looks at the nature of the accused, the offence itself does not fall in the degree of magnitude that one saw in the *Mills* case.
53. HIS HONOUR: It does not, no that is true.
54. MR GILL: Meaning that a lesser delay justifies a finding that there has been an unjustifiable delay because of the nature of the offence that is brought before the Court.
55. HIS HONOUR: I think that having regard to the history of the matter, on balance, I do not think a case for a stay is made out.
56. MR GILL: As the Court pleases.
57. HIS HONOUR: Mr Lawton.
58. MR LAWTON: Your Honour, did we mark that report of Dr George as an exhibit?
59. HIS HONOUR: No I have not, but I can do so.
60. MR LAWTON: Yes.
61. HIS HONOUR: All right, do you want me to mark that as Exhibit 1?
62. MR LAWTON: Thank you, your Honour.

***EXHIBIT 1 - DR GEORGE'S REPORT***

63. HIS HONOUR: Yes.
64. MR LAWTON: In terms of the case statement, as you have already said there is some disagreement about the fact that I - - -
65. HIS HONOUR: Some details.
66. MR LAWTON: And my friend does wish to cross-examine briefly Mr Franks.
67. HIS HONOUR: Yes.
68. MR LAWTON: I will call him now and then I understand my friend may call some evidence from Mr Bailiff in respect to the issue of mental impairment.
69. MR GILL: I will make a Prasad application first, your Honour.
70. HIS HONOUR: Yes, well that may be appropriate in the circumstances, given Exhibit 1.
71. MR LAWTON: Yes.
72. HIS HONOUR: All right, okay. Proceed.
73. MR LAWTON: Thank you, your Honour. I call Gerald Franks.
74. MR BAILIFF: Your Honour if you call me I can let you know what happened as well if you wish.
75. HIS HONOUR: That is all right, we may not need it Mr Bailiff because I do not think there will be very

much dispute about it.

76. MR BAILIFF: Well he had come into my house on numerous occasions with the keys.

77. HIS HONOUR: All right. Calm down, be quiet and we will just hear this evidence first.

78. MR BAILIFF: Thank you, your Honour.

***GERALD DAVID FRANKS, Affirmed:***

***EXAMINATION-IN-CHIEF BY MR LAWTON***

79. MR LAWTON: Sir, can you tell the court your full name?---Gerald David Franks.

80. And you are employed as a social worker at the Canberra Men's Centre?---I am employed as a Director of the Men's Centre, yes.

81. And in respect to the matter before the Court you are aware that you are here to give evidence today about a matter involving Mr Bailiff that occurred on 30 January 2009?---Correct.

82. And on that day you provided a handwritten statement to police about what you witnessed on that day?--Correct.

83. And you signed that statement noting to the best of your ability the contents of the statement were true and you are willing to give evidence about them in court?---Correct.

84. I will show you firstly this document, sir. Can you just confirm that that is a photocopy of the statement you gave on that day and it includes your signature at the end of the statement?---It is, and it does.

85. And have you had a chance to read that in relatively recent times?---Yes, I read it this morning.

86. And to the best of your recollection the contents are true?---Yes.

87. Thank you. I tender that statement, your Honour. I also hand up a typed copy of the statement which was typed a fortnight later.

88. HIS HONOUR: No objection?

89. MR GILL: No, there is no objection to that, your Honour.

90. HIS HONOUR: That will be Exhibit 2.

***EXHIBIT 2 - STATEMENT OF GERALD FRANKS***

91. MR GILL: Just let his Honour have a chance to read that statement Mr Lawton.

92. HIS HONOUR: Yes, I have read that.

93. MR LAWTON: Yes thanks. Just to be clear, Mr Franks, the car that you were driving on that day was owned by the Canberra Men's Centre?---Correct.

94. And you did not give Mr Bailiff permission to damage the car on that day?---No, I did not.
95. That is all the questions I have, your Honour.
96. HIS HONOUR: Thank you. Just one before you start Mr Gill. I understand there was a statement by Mr Bailiff to the effect that you could send the bill to his trustee. Did you do that?---Yes, we did, yes.
97. It was paid up?---Via the insurance company.
98. Yes, and it was paid up?---Yes, yes.
99. Thank you. Yes, Mr Gill.

***CROSS-EXAMINATION BY MR GILL***

100. MR GILL: Yes, thank you, your Honour. Mr Franks you were the head lessee of that house, is that right?--Correct. Canberra Men's Centre is the head lessee, yes.
101. And when was it that Canberra Men's Centre became the head lessee of the house, roughly?---Roughly 12 months prior to that, it may have been a bit less.
102. And did that follow some sort of litigation about whether or not Mr Bailiff would be given a house?---The process as I recall it was that Mr Bailiff was under threat of eviction from Housing ACT and Housing ACT approached Canberra Men's Centre and asked us if we would be prepared to provide an accommodation option for Mr Bailiff in the community, to which we agreed.
103. Was some sort of order made by Mr Anforth about the provision of a house for Mr Bailiff?---I do not recall.
104. Do you ever recall Mr Bailiff speaking to you about Mr Anforth making an order for him to receive a house?---Not specifically.
105. At the time of this incident was there a high degree of conflict between yourself and Mr Bailiff?---At the time of the incident? Not a high degree at the time of the incident.
106. Well let me ask you this. Had Mr Bailiff expressed his disagreement with Canberra Men's Centre being on the lease?---Yes.
107. And he had done that on numerous occasions?---Yes.
108. Did he believe, in fact, that you were the person on the lease? Sorry, did he indicate to you that he believed that you were the person on the lease rather than the Canberra Men's Centre?---That is a detail that I do not recall.
109. Did you visit that house from time to time?---Yes.
110. Did you have a key to that house?---Yes.
111. Did Mr Bailiff express to you that he was not happy with you having a key which allowed you entry into the house?---Yes.

112. Mr Bailiff expressed to you that he did not want you entering the house?---Without his permission, yes.
113. Were there occasions on which you entered the house without his permission?---Never.
114. MR BAILIFF: Objection, your Honour. I have got the note here left in my house - - -
115. HIS HONOUR: Mr Bailiff, sit down.
116. MR BAILIFF: He is lying, your Honour.
117. HIS HONOUR: It is not your turn yet.
118. MR GILL: Now, there was some sort of construction on the footpath area, is that right?---Correct.
119. And had there been arguments between yourself and Mr Bailiff about whether that needed to be removed?--On the day.
120. And did you have an argument before that time about whether it needed to be removed?---Not about the structure. About the pile of soil.
121. Right. And did you provide him with a deadline for removal of the item?---I did.
122. All right. And what was the deadline?---I do not recall.
123. Did you tell him he needed to remove the structure by the end of the week? If you do not remember, you can say you do not remember?---Yes, I do not remember.
124. Do you remember whether or not you told him that the end of the week was to be a Thursday?---I remember giving him the details of a directive that was provided to me. The exact date, I do not recall. There was a timeline that was provided by, I believe, Housing ACT.
125. You seemed to indicate in your statement that Mr Bailiff made some sort of threat to harm you?---Yes.
126. Was that what you meant to say in your statement?---Yes.
127. All right. I want to suggest to you that you are incorrect when you assert that he said, "I'll bash you"?---I have told it as I heard it from Mr Bailiff on the day.
128. Do you ever find it hard to follow what he is saying?---Not really. There are times when the conversation is prolonged and it does become different. In the early stages when our conversations are in a calm frame of mind, Mr Bailiff can sound particularly rational.
129. They were not calm this particular day, were they?---At the early stages of the conversation, yes.
130. How quickly did they become uncalm?---Almost instantly when he stood up and decided to go down and damage the vehicle.
131. That was after you had given him a directive about removal of the material?---It is as according to the statement. I talked to him about removing the material, yes.
132. And that was also in the context of his ongoing disagreement about you having a key to enter what he regarded as his house?---No, it was not about that at all.
133. How long had he been expressing to you his disagreement about you being able to enter his house?---

Probably about six months. Maybe a bit longer.

134. However long it was, did you observe that to be something that he would become upset about?---Yes.
135. I come back to the incident with the car now. You say that two different rocks were put through the various windows?---Yes.
136. Can I suggest to you that it was one rock put through the two windows? Do you agree with that?
137. HIS HONOUR: In other words, it could have been the same rock he picked up again after he - - -?---Absolutely.
138. MR GILL: It could be?---It certainly could be.
139. He immediately offered compensation in respect of the damage that was done?---Correct.
140. And he indicated to you some purpose connected with getting into the Supreme Court when he did it?---I do not recall him saying anything about the Supreme Court. I do recall him saying, "Now I have an issue with Canberra Men's Centre."
141. MR BAILIFF: Objection, your Honour, that is so untruthful. I was there.
142. HIS HONOUR: All right. Just take a seat, Mr Bailiff. We will come to your case in due course.
143. MR BAILIFF: I just want you to know this guy is lying, or he has got dementia.
144. HIS HONOUR: Well, we will work that out later.
145. MR GILL: They are all the questions I have got for Mr Franks. Thank you, your Honour.
146. HIS HONOUR: Thank you.
147. MR LAWTON: There is nothing arising, your Honour.
148. HIS HONOUR: Thank you, Mr Franks. You are excused.

***WITNESS WITHDREW***

149. HIS HONOUR: Now, Mr Lawton.
150. MR LAWTON: That is the evidence for the Crown, your Honour.
151. HIS HONOUR: Okay.
152. MR GILL: Before commencing the defence case, which involves calling Mr Bailiff, your Honour, I say that the material before you is such as to justify an acquittal without hearing anything further. I rely on the authority of R v Prasad 23 SASR 161, which simply reflects what, of course, is the case in any trial, that once the prosecution case closes, the fact finder is entitled to acquit if they are not at that point persuaded beyond a reasonable doubt as to the guilt.
153. HIS HONOUR: The only ground upon which I could base that would be mental impairment.
154. MR GILL: At this point, yes.

155. HIS HONOUR: You understand what the consequences of that will be?
156. MR GILL: Yes.
157. HIS HONOUR: Well, let us just take that in order. First of all, mental impairment does include brain damage.
158. MR BAILIFF: Thank you, your Honour.
159. HIS HONOUR: That definitely brings it within that particular concept.
160. You then go to section 28 of the Criminal Code 2002 (ACT) ('Criminal Code'). He obviously, it would seem to me, did know the nature and quality of his conduct. Pursuant to Dr George's reports, there may be a question about his capacity to control it. That certainly does seem to arise.
161. MR GILL: Certainly it seemed to represent some sort of justification for his actions.
162. HIS HONOUR: He certainly would not be able to reason with a moderate degree of sense or composure.
163. MR GILL: No.
164. HIS HONOUR: He obviously thought the conduct was not wrong.
165. MR GILL: Yes.
166. HIS HONOUR: Albeit objectively you cannot agree with that.
167. MR GILL: Yes, your Honour.
168. HIS HONOUR: Mr Lawton?
169. MR LAWTON: In terms of section 28(1)(b) of the Criminal Code and the qualification in subsection (2) - - -
170. HIS HONOUR: I'm going to section 28 (1) (c).
171. MR LAWTON: Are you going to (c), your Honour?
172. HIS HONOUR: Yes.
173. MR LAWTON: I thought you were dealing with section 28(1)(b).
174. HIS HONOUR: Section 28(1)(b) has been addressed, but I am saying that (c) seems also to be engaged.
175. MR LAWTON: Yes. It is difficult to divorce. We have the evidence of the prosecution. We have what was expressed by Mr Franks in that it appeared to him that Mr Bailiff decided to smash the car windscreens.
176. HIS HONOUR: I think that is certainly a justifiable inference. The question is not whether he did decide it but what his knowledge about the wrongfulness of his conduct was and how that was derived. That is the first point. Second, whether the conduct was in any meaningful sense of the word able to be controlled.
177. MR LAWTON: I submit that your Honour, at this stage, in terms of (c), could be satisfied on the prosecution case that he could control his conduct. But perhaps the issue that your Honour would still need to determine is in terms of paragraph (b) and the qualification of subsection (2). At this stage, I would say to your Honour that with respect to the application made by my friend, the evidence is not so

inherently weak. It is quite strong in terms of the actions.

178. HIS HONOUR: I am not concerned with his actions in this respect. I accept that the actions of smashing the windscreens did take place, and it was apparently an act of will on Mr Bailiff's part because he rejected the proposition that his structure should be removed.
179. MR BAILIFF: Your Honour, I gave him a chance to drive his car away after he threatened me - - -
180. HIS HONOUR: Okay, that is all right. I am not concerned about a chance to drive away.
181. MR BAILIFF: He could have driven away, your Honour. I am from Healesville, your Honour. That is where bushfires happen, your Honour.
182. HIS HONOUR: I do not want to know about the bushfires.
183. MR BAILIFF: This is just when the bushfires were happening, your Honour.
184. HIS HONOUR: I just want to listen to Mr Lawton for the moment.
185. MR BAILIFF: Yes, cool.
186. MR LAWTON: I will be very brief, your Honour. I submit on those conclusions your Honour is reaching that (a) and (c) are not enlivened but the issue still remains - - -
187. HIS HONOUR: Certainly I am satisfied (a) is not engaged. I am not satisfied that (c) is not engaged but that is not the question. The question is whether it is engaged. (b) on the other hand - - -
188. MR LAWTON: (b) is perhaps probably the pertinent one, your Honour.
189. HIS HONOUR: Yes, it is.
190. MR LAWTON: And we are talking on the balance of probabilities in subsection (5). I submit that your Honour needs to hear something more before being satisfied. Of course the difficulty is that one has to divorce what Mr Bailiff has been saying in court today and other days. That is not part of the evidence before you.
191. HIS HONOUR: There is some question about that. I appreciate her Honour, Penfold J, was talking about that in relation to the plea. But certainly in relation to a jury trial, the conduct of the accused in court is something the jury can take into account.
192. MR LAWTON: That is right, your Honour. But I suppose what I am saying - - -
193. HIS HONOUR: With some qualification.
194. MR LAWTON: With some qualifications and bearing in mind that the proper trial has only commenced some 20 minutes ago. What happened this morning was separate to that.
195. HIS HONOUR: It was, yes.
196. MR LAWTON: So my submission would be that although there is some support for section 28(1)(b) being enlivened, your Honour would need to hear something more before being satisfied on the balance of probabilities that it has been made out.
197. MR BAILIFF: Your Honour, can I put myself in the witness box and be cross-examined by my lawyer

please?

198. HIS HONOUR: No.

199. MR BAILIFF: Or barrister.

200. HIS HONOUR: I do not need it.

201. MR BAILIFF: I recall everything, your Honour.

202. HIS HONOUR: Excellent. But in this case the issue that has been raised is whether section 28(1)(b) of the Criminal Code is engaged and whether on the balance of probabilities it has been established that the person did not within the meaning of section 28(1)(b) know his conduct was wrong. For that purpose I take account of section (2) which refers to the fact that: “[a] person does not know the conduct is wrong, if the person cannot reason with a moderate degree of sense and composure about whether the conduct, as seen by a reasonable person, is wrong.”

203. In my opinion, the report of Dr George, which has been tendered by the prosecution as Exhibit 1, would justify a finding consistent with section 28(1)(b). It certainly seems to me that Mr Franks’ evidence is consistent with that too. There was no rational reason why Mr Bailiff should have damaged Mr Franks’ car. I appreciate Mr Bailiff may have thought that he had a good reason. However, that is the very point: that there was not reasoning with a moderate degree of sense and composure about whether this conduct, as seen by a reasonable person, was wrong. In fact, I do not think Mr Bailiff would even know what that standard meant in his state of mind.

204. So for that reason I do find that Mr Bailiff is not guilty of the offence charged by reason of mental impairment.

205. MR LAWTON: As your Honour pleases.

206. MR BAILIFF: Can I give the reason please?

207. HIS HONOUR: I have got the reasons. I do not need any more.

208. MR BAILIFF: But can I give you the reason, your Honour?

209. HIS HONOUR: No. I have already got it.

210. MR BAILIFF: Can I just jump in the witness box and give the reason?

211. HIS HONOUR: No, you cannot.

212. MR BAILIFF: But your Honour, I knew very well that when people are about to die in bushfires and I am being threatened by some guy in 43 degree temperature - - -

213. HIS HONOUR: Mr Bailiff, I have just found you not guilty. Sit down.

214. MR BAILIFF: But your Honour, that is not fair.

215. HIS HONOUR: That I found you not guilty?

216. MR BAILIFF: Your Honour, I want you to realise that if I gave the symptoms of brain damage - - -

217. HIS HONOUR: I have got it.

218. MR BAILIFF: Well your Honour, I meant if I gave it to you - - -
219. HIS HONOUR: I have got it.
220. MR BAILIFF: Great that you have it. And if you have the thing, the two sources where it is from, those books - - -
221. HIS HONOUR: I do.
222. MR BAILIFF: Then your Honour, you might consider putting the symptoms of brain damage in a law report, as in a decision - - -
223. HIS HONOUR: No.
224. MR BAYLSIS: This would be a common law decision, your Honour, so it has the symptoms of brain damage.
225. HIS HONOUR: Mr Bailiff, I have made that decision. The decision is that by reason of mental impairment, which is as a result of your organic brain damage, you are not guilty of this offence.
226. MR BAILIFF: But your Honour, can you not you have the symptoms of brain damage in your judgment? I mean like - - -
227. HIS HONOUR: I just did.
228. MR BAILIFF: But your Honour, you did not type what I - - -
229. HIS HONOUR: It is all in the transcript.
230. MR BAILIFF: But I did not read the symptoms of over familiarity, the callousness, the insensitivity, elevation of mood factors, euphoric. Your Honour - - -
231. HIS HONOUR: You have now mentioned them all, they are all on the transcript.
232. MR BAILIFF: Do you want me to read you all four, your Honour, so it is on record?
233. HIS HONOUR: You just mentioned them, Mr Bailiff, it is all on the record now.
234. MR BAILIFF: But the whole page, I have not read it to you, your Honour.
235. HIS HONOUR: You do not have to.
236. MR BAILIFF: I mean, your Honour, the best man in relation to this is my stepfather, okay. I just need a law report to benefit others, your Honour.
237. HIS HONOUR: Okay. Enough. That is enough.
238. MR BAILIFF: So your Honour, I did understand that you handed down a decision.
239. HIS HONOUR: Okay. Now what is the next order, Mr Lawton.
240. MR LAWTON: Your Honour, you have made a special verdict of not guilty by reason of mental impairment. That enlivens division 13.3 of the *Crimes Act 1900* (ACT) ('*Crimes Act*').
241. HIS HONOUR: Yes, obviously custody is not appropriate.
242. MR LAWTON: Well I think it is a non serious offence in any case, your Honour.

243. HIS HONOUR: I am not sure about that.
244. MR LAWTON: It is just in section 325 of the Crimes Act.
245. MR GILL: Section 300 deals with serious offences.
246. HIS HONOUR: 300.
247. MR BAILIFF: Thank you, your Honour, for the decision.
248. HIS HONOUR: That is all right.
249. MR LAWTON: It is not a serious offence.
250. HIS HONOUR: No, it is not, you are right.
251. MR LAWTON: So the only option your Honour has, under section 328 of the Crimes Act, you can make an order that he submit to the jurisdiction of the ACT Civil and Administrative Tribunal ('ACAT').
252. HIS HONOUR: Yes.
253. MR LAWTON: I'm sorry, 328 refers to the Magistrates Court. It is section 323, your Honour.
254. HIS HONOUR: That is right.
255. MR LAWTON: Now you do actually still have a power to detain him in custody.
256. HIS HONOUR: I could do that, I know, but I do not think it is appropriate.
257. MR LAWTON: The difference is that you might recall in the matter of R v Nicholls [2010] ACTSC 25 that section 324 makes the presumption that he will be detained in custody.
258. HIS HONOUR: Yes.
259. MR LAWTON: There is not such a presumption in section 323.
260. HIS HONOUR: No, I understand that.
261. MR LAWTON: The only issue that perhaps might be of benefit, your Honour, is to perhaps hear - and my friend might have some evidence to this effect anyway - about what ACAT is doing in terms of the ongoing treatment of Mr Bailiff. You will recall from this morning's proceedings that Dr George has expressed concerns that he does need perhaps to be better treated than he currently is.
262. HIS HONOUR: Yes.
263. MR LAWTON: And whilst most of the offences for which Mr Bailiff comes before the Court cannot be considered to be at the upper end of the spectrum, one is always concerned that they may escalate in the future if that treatment is not enforced.
264. HIS HONOUR: Yes.
265. MR BAILIFF: Your Honour, I will be extraordinarily, extremely well behaved.
266. HIS HONOUR: Well, can I make one thing clear to you. You cannot go around breaking windows.
267. MR BAILIFF: Your Honour, I will never do that ever again, your Honour.
268. HIS HONOUR: Good.

269. MR BAILIFF: I am just trying to get rid of the Canberra Men's Centre. It cost me six grand for security expenses at my house and they came to my house all the time.
270. HIS HONOUR: All right. Well we do not want to know about that now, because I am just telling you that you cannot act like that, all right?
271. MR BAILIFF: No, I will never do that, your Honour. I will never do that. Your Honour, the longest serving police officer, that is my great-grandfather, Billy Bunker Aiden, 1832 to 1995. Your Honour, the Bailiffs went from Normandy during the intensive fighting in the Battle of Hastings. You know, a Bailiff has to go to court. So your Honour, I come from a military and legal background. I would never do such a thing, your Honour.
272. HIS HONOUR: Good.
273. MR BAILIFF: I only do what is required.
274. HIS HONOUR: Can you take a seat now?
275. MR BAILIFF: Okay. But your Honour can I have the symptoms of brain damage in a law report, your Honour?
276. HIS HONOUR: Mr Bailiff, take a seat.
277. MR BAILIFF: Because it is not in the law library, your Honour, and I will be so grateful.
278. HIS HONOUR: All right.
279. MR LAWTON: In terms of what the ACAT is doing with Mr Bailiff, I am afraid I need to take some instructions from my instructor who has been detained in another court.
280. HIS HONOUR: He may get paroled, you never know.
281. MR LAWTON: He might. But to get a coherent answer to your Honour I think I need to do it that way.
282. HIS HONOUR: All right. Well when do you want to come back?
283. MR LAWTON: Would your Honour allow that to occur after the lunch break?
284. HIS HONOUR: Well I can, or I can make it a bit later.
285. MR LAWTON: That should be sufficient.
286. HIS HONOUR: Here he comes.
287. MR LAWTON: If your Honour would just give me a moment?
288. HIS HONOUR: Yes, sure.
289. MR GILL: Perhaps while my friend does that, your Honour. Mr Hancock of the Attorney-General's Office asked me to pass on that the Attorney has declined to intervene in respect to the notice to the Human Rights Act.
290. HIS HONOUR: Well as it happened, that was not necessary.
291. MR GILL: Yes.

292. MR BAILIFF: Sorry your Honour, we went to the library and I googled brain damage, there is nothing there in the law reports, your Honour.
293. HIS HONOUR: Okay.
294. MR BAILIFF: Can you help with that, your Honour?
295. HIS HONOUR: Yes, we will add something.
296. MR BAILIFF: Because my stepfather will not talk to me if I do not have a brain damage precedent, your Honour.
297. HIS HONOUR: Right.
298. MR BAILIFF: You know, he can give evidence if you want, your Honour.
299. HIS HONOUR: No, we do not need him.
300. MR BAILIFF: But he would love a decision - - -
301. HIS HONOUR: I am sure he would but we do not need him. Okay?
302. MR GILL: Your Honour, I am told that there are no ACAT proceedings in relation to mental health. There have been ACAT proceedings in relation to a guardianship order, but not in relation to a mental health order. And we do not believe there has been any application for a treatment order for at least the last 12 months, probably longer than that.
303. HIS HONOUR: Well I cannot make a treatment order obviously.
304. MR BAILIFF: Can you send me to a neurologist, your Honour, a neurologist, Alan Leeshman in London, for the holidays?
305. MR GILL: So that is all I can tell your Honour about that.
306. HIS HONOUR: All I can do is make an order requiring him to submit to the jurisdiction of ACAT to enable ACAT to make recommendations.
307. MR GILL: And the question is, does your Honour want recommendations back from ACAT at the end of that process?
308. HIS HONOUR: And whether that is useful in the circumstances I do not know.
309. MR GILL: I do not know what your Honour could do if recommendations were made to you at that point.
310. HIS HONOUR: I cannot make a treatment order for a start.
311. MR GILL: No. So the legislative scheme does not quite make sense to me, I have to say your Honour.
312. HIS HONOUR: Yes. Well there is a power to make orders considered appropriate which I assume means, amongst other things, if there was a recommendation from ACAT, I can make an order to give effect to those recommendations insofar as the power of the Court extends.
313. MR BAILIFF: Dr George's report was his recommendation from ACAT, your Honour.
314. HIS HONOUR: Thank you. I have got that.

315. MR BAILIFF: I am being further traumatised by ACAT who do not have a neurologist and it is so upsetting.
316. HIS HONOUR: It is very upsetting I am sure.
317. MR BAILIFF: But I can give them a new precedent.
318. HIS HONOUR: Okay.
319. MR GILL: So that there is a question, your Honour, as to the utility of a referral to ACAT.
320. HIS HONOUR: Yes, I am thinking about it.
321. MR GILL: It is a discretionary resolution of the matter, and what is not before your Honour is any material which says the discretion ought to be exercised by a referral to ACAT for recommendations.
322. HIS HONOUR: Yes.
323. MR BAILIFF: You can refer me to my GP over the road, your Honour.
324. HIS HONOUR: I could.
325. MR BAILIFF: Alan Leeshman, sorry not Alan Leeshman, Stephen Moulding, sorry.
326. HIS HONOUR: Okay. I have got an idea in mind. Anything you want to say Mr Lawton?
327. MR LAWTON: I suppose the utility of the referral to ACAT is indeed to find out if they plan to consider an application for a psychiatric treatment order.
328. HIS HONOUR: Or anything.
329. MR LAWTON: Or anything. But obviously from the look of section 323, and your Honour might recall from the matter of R v Michael Gary Caine SCC No 214 of 2008 we referred it to the Tribunal, ACAT I should say, so that they could give an indication to your Honour what treatment would be involved and whether or not there would be some utility in the treatment of having him detained and then effectively released immediately. I do not know whether that would arise here.
330. MR BAILIFF: Your Honour can I offer to give evidence from the witness box, your Honour, please?
331. HIS HONOUR: You can offer it, but I am not accepting it. I do not see the utility of requiring him to submit to ACAT absent any application from anybody including Dr George. We could always do that anyway. It seems to me the only thing I can do, Mr Bailiff, is to extract from you an undertaking that in the next 12 months you will not engage in any criminal conduct.
332. MR BAILIFF: Your Honour I am working on this. I promise for the rest of my life I will never do anything except take cases to the High Court, your Honour, involving Sir Anthony.
333. HIS HONOUR: All right.
334. MR BAILIFF: And Sir Anthony and I have become friends, and your Honour can I just put on the record, it is in Hansard, in Parliament, that I am the man who took the action in the High Court that prompted every Police Commissioner in the country to contact Canberra and the Australian Crime Commission to be established. Your Honour it is on the world stage that I got the Pope's apology to Oceania in 60 days,

your Honour.

335. HIS HONOUR: Excellent.

336. MR BAILIFF: So whilst Phil says delusion, your Honour, it is brilliance, your Honour. Sir Anthony even said I was his brilliant law student, and I am giving his phone number and - - -

337. HIS HONOUR: All right, I have got your promise, have I?

338. MR BAILIFF: Your Honour, you have got my oath. Do you want me to get into the witness box and give oath evidence?

339. HIS HONOUR: Perfect. In that case, the proceedings are concluded.

340. MR BAILIFF: Your Honour I will never do anything, your Honour, I am really grateful, your Honour. Your Honour, can I shake your hand, your Honour? I thank you, your Honour, God bless you, your Honour.

I certify that the preceding three hundred and forty (340) numbered paragraphs are a true copy of the Reasons for Judgment herein of his Honour, Chief Justice Higgins.

Associate:

Date: 30 January 2012

Counsel for the Crown: Mr J Lawton

Solicitor for the Crown: Director of Public Prosecution for the ACT

Counsel for the Defendant: Mr S Gill

Solicitor for the Defendant: Kamy Saeedi Lawyers

Date of hearing: 30 November 2011

Date of judgment: 30 November 2011

<sup>36</sup>“When they sin against You (for *there is* no one who does not sin), and You become angry with them and deliver them to the enemy, and they take them captive to a land far or near;



## The Holy See

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**MESSAGE OF POPE JOHN PAUL II  
TO THE PARTICIPANTS  
IN THE INTERNATIONAL CONFERENCE  
COMMEMORATING THE FOURTH CENTENARY  
OF THE ARRIVAL IN BEIJING  
OF FATHER MATTEO RICCI**

*Message of His Holiness Pope John Paul II  
for the Fourth Centenary of the arrival in Beijing  
of the great missionary and scientist Matteo Ricci, S.I.*

1. It gives me great joy to address you, distinguished Ladies and Gentlemen, on the occasion of the International Conference commemorating the four hundredth anniversary of the arrival in Beijing of the great Italian missionary, humanist and man of science, Father Matteo Ricci, a celebrated son of the Society of Jesus. My greeting goes in a special way to the Rector of the Pontifical Gregorian University and the Directors of the Italian-Chinese Institute, the two institutions which have sponsored and organized the Conference. In welcoming you, I also extend a cordial greeting to the scholars who have come from China, Father Ricci's beloved adopted country.

I am aware that this Conference in Rome is taking place in a certain continuity with the important International Symposium recently held in Beijing (October 14-17) on the theme *Encounters and Dialogue*, with special reference to the cultural exchanges between China and the West at the end of the Ming Dynasty and the beginning of the Qing Dynasty. There too, scholarly attention was directed to the singular work of Father Matteo Ricci in China.

2. Today's meeting takes us in mind and heart to Beijing, the great capital of modern China and the capital of the "Middle Kingdom" in Father Ricci's time. After twenty-one long years of avid and intense study of the language, history and culture of China, Father Ricci entered Beijing, the city of the Emperor, on 24 January 1601. Received with every honour, held in high regard and frequently

visited by men of letters, mandarins and those desiring to learn the new sciences of which he was an acknowledged master, he lived the rest of his days in the imperial capital, where he died a holy death on 11 May 1610, at the age of 57 years, almost twenty-eight of which had been spent in China. I am pleased here to recall that when Father Ricci arrived in Beijing, he wrote a *Memorial* to the Emperor Wan-li, in which he introduced himself as a celibate religious who *sought no privilege at court*, asking only to be able *to place at the service* of His Majesty his own person and the expertise in the sciences which he had acquired in the "great West" from which he had come (cf. *Opere Storiche del P. Matteo Ricci S.I.*, ed. P. Tacchi Venturi S.J., vol. II, Macerata, 1913, 496ff). The reaction of the Emperor was positive, and this gave greater significance and importance to the Catholic presence in modern China.

For four centuries China has highly esteemed *Li Madou*, "the Sage of the West", the name by which Father Matteo Ricci was known and continues to be known today. Historically and culturally he was a pioneer, a precious connecting link between West and East, between European Renaissance culture and Chinese culture, and between the ancient and magnificent Chinese civilization and the world of Europe.

As I had occasion to mention on the occasion of the International Congress of Ricci Studies held to commemorate the fourth centenary of Matteo Ricci's arrival in China (1582-1982), his merit lay above all in the realm of *inculturation*. Father Ricci forged a Chinese terminology for Catholic theology and liturgy, and thus created the conditions for making Christ known and for incarnating the Gospel message and the Church within Chinese culture (cf. *Insegnamenti di Giovanni Paolo II*, vol. V/3, 1982, Libreria Editrice Vaticana, 1982, 923-925). Father Matteo Ricci made himself so "Chinese with the Chinese" that he became an expert Sinologist, in the deepest cultural and spiritual sense of the term, for he achieved in himself an extraordinary inner harmony between priest and scholar, between Catholic and orientalist, between Italian and Chinese.

3. Four hundred years after the arrival of Matteo Ricci in Beijing, we cannot fail to ask what is the message he can offer to the great Chinese nation and to the Catholic Church, to both of which he felt ever deeply bound and by both of which he was and is sincerely valued and loved.

One of the aspects that make Father Ricci's work in China original and enduringly relevant is *the deep empathy* which he cultivated from the first towards the whole history, culture and tradition of the Chinese people. His short *Treatise on Friendship (De Amicitia – Jiaoyoulun)*, which had great success from the first edition produced in Nanking in 1595, and the wide and intense network of friendships which he constantly built up during his twenty-eight years in the country, remain an irrefutable testimony to his loyalty, sincerity and fellowship with the people who had welcomed him. These sentiments and attitudes of the highest respect sprang from *the esteem* in which he held the culture of China, to the point of leading him to study, interpret and explain the ancient Confucian tradition and thus offer a re-evaluation of the Chinese classics.

From his first contacts with the Chinese, Father Ricci based his entire scientific and apostolic methodology upon two pillars, to which he remained faithful until his death, despite many difficulties and misunderstandings, both internal and external: *first*, Chinese neophytes, in embracing Christianity, did not in any way have to renounce loyalty to their country; *second*, the Christian revelation of the mystery of God in no way destroyed but in fact enriched and complemented everything beautiful and good, just and holy, in what had been produced and handed down by the ancient Chinese tradition. And just as the Fathers of the Church had done centuries before in the encounter between the Gospel of Jesus Christ and Greco-Roman culture, Father Ricci made this insight the basis of his patient and far-sighted work of inculturation of the faith in China, in the constant search for a common ground of understanding with the intellectuals of that great land.

4. The Chinese people, especially in more recent times, have set themselves important objectives in the field of social progress. The Catholic Church for her part regards with respect this impressive thrust and far-sighted planning, and with discretion offers her own contribution in the promotion and defence of the human person, and of the person's values, spirituality and transcendent vocation. The Church has very much at heart the values and objectives which are of primary importance also to modern China: solidarity, peace, social justice, the wise management of the phenomenon of globalization, and the civil progress of all peoples.

As Father Ricci wrote precisely in Beijing, when in the last two years of his life he was editing that pioneering work which is fundamental for an understanding of China by the rest of the world and which is entitled, *On the Entry of the Society of Jesus and Christianity into China* (cf. *Fonti Ricciane*, a cura di Pasquale M. D'Elia S.I., vol. 2, Roma 1949, No. 617, p. 152), so too today the Catholic Church seeks *no privilege* from China and its leaders, but solely the resumption of dialogue in order to build a relationship based upon mutual respect and deeper understanding.

5. Following the example of this great son of the Catholic Church, I wish to say once more that the Holy See regards the Chinese people with deep affection and close attention. It is familiar with the significant advances made in recent times in the social, economic and educational spheres, as also with the difficulties that remain. Let it be known to China: the Catholic Church has a keen desire to offer, once more, her humble and selfless service for the good of Chinese Catholics and of all the people of the country. In this regard, may I recall at this point the outstanding evangelizing commitment shown by a long line of generous missionaries — men and women — as well as the works of human development which they accomplished down the centuries. They undertook many important social initiatives, particularly in the areas of health care and education, which were widely and gratefully welcomed by the Chinese people.

History, however, reminds us of the unfortunate fact that the work of members of the Church in China was not always without error, the bitter fruit of their personal limitations and of the limits of their action. Moreover, their action was often conditioned by difficult situations connected with

complex historical events and conflicting political interests. Nor were theological disputes lacking, which caused bad feelings and created serious difficulties in preaching the Gospel. In certain periods of modern history, a kind of "protection" on the part of European political powers not infrequently resulted in limitations on the Church's very freedom of action and had negative repercussions for the Church in China. This combination of various situations and events placed obstacles in the Church's path and prevented her from fully carrying out — for the benefit of the Chinese people — the mission entrusted to her by her Founder, Jesus Christ.

I feel deep sadness for these errors and limits of the past, and I regret that in many people these failings may have given the impression of a lack of respect and esteem for the Chinese people on the part of the Catholic Church, making them feel that the Church was motivated by feelings of hostility towards China. For all of this I ask the forgiveness and understanding of those who may have felt hurt in some way by such actions on the part of Christians.

The Church must not be afraid of historical truth and she is ready — with deeply-felt pain — to admit the responsibility of her children. This is true also with regard to her relationship, past and present, with the Chinese people. Historical truth must be sought serenely, with impartiality and in its entirety. This is an important task to be undertaken by scholars and is one to which you, who are particularly well-versed in Chinese realities, can also contribute. I can assure you that the Holy See is always ready to offer willing cooperation in this research.

6. At the present moment, the words written by Father Ricci at the beginning of his *Treatise on Friendship* (Nos. 1 and 3) take on a new timeliness and significance. Bringing into the heart of late sixteenth-century Chinese culture and civilization the heritage of classical Greco-Roman and Christian reflection on friendship, he defined a friend as "the other half of myself, indeed another 'I'"; and therefore "the *raison d'être* of friendship is mutual need and mutual help".

And it is with this *renewed and deeply-felt friendship towards all the Chinese people* that I express the hope that concrete forms of communication and cooperation between the Holy See and the People's Republic of China may soon be established. Friendship is nourished by contacts, by a sharing in the joy and sadness of different situations, by solidarity and mutual assistance. The Apostolic See sincerely seeks to be a friend to all peoples and to collaborate with persons of good will everywhere in the world.

Historically, in ways that are certainly different but not in opposition to one another, China and the Catholic Church are two of the most ancient "institutions" in existence and operating on the world scene: both, though in different domains — one in the political and social, the other in the religious and spiritual — encompass more than a thousand million sons and daughters. It is no secret that the Holy See, in the name of the whole Catholic Church and, I believe, for the benefit of the whole human family, hopes for the opening of some form of dialogue with the Authorities of the People's Republic of China. Once the misunderstandings of the past have been overcome, such a dialogue

would make it possible for us to work together for the good of the Chinese people and for peace in the world. The present moment of profound disquiet in the international community calls for a fervent commitment on the part of everyone to creating and developing ties of understanding, friendship and solidarity among peoples. In this context, the normalization of relations between the People's Republic of China and the Holy See would undoubtedly have positive repercussions for humanity's progress.

7. Expressing once more my happiness at the timely celebration of such a significant historical event, I hope and pray that the path opened by Father Matteo Ricci between East and West, between Christianity and Chinese culture, will give rise to new instances of dialogue and reciprocal human and spiritual enrichment. With these good wishes, I gladly impart to all of you my Apostolic Blessing, imploring God to grant you every gift of happiness and well-being.

*From the Vatican, 24 October 2001*

**IOANNES PAULUS II**

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John Paul II Apostolic Exhortations

[ EN - ES - FR - IT - PT ]

POST-SYNODAL APOSTOLIC EXHORTATION **ECCLESIA IN OCEANIA** OF HIS HOLINESS **POPE JOHN PAUL II** TO THE BISHOPS PRIESTS AND DEACONS MEN AND WOMEN IN THE CONSECRATED LIFE AND ALL THE LAY FAITHFUL ON JESUS CHRIST AND THE PEOPLES OF OCEANIA: WALKING HIS WAY, TELLING HIS TRUTH, LIVING HIS LIFE

## INTRODUCTION

1. The Church in Oceania gives glory to God at the dawn of the Third Millennium and proclaims her hope to the world. Her gratitude to God rises from her contemplation of the many gifts she has received, including the wealth of peoples and cultures and the wonders of creation. But above all there is the immense gift of faith in Jesus Christ, “the firstborn of all creation” (Col 1:15). In the past millennium the Church in Oceania has welcomed and treasured this gift of faith, and has passed it on faithfully to newer generations. For this, the whole Church gives praise to the Most Holy Trinity.

From the earliest times, the peoples of Oceania were moved by the divine presence in the riches of nature and culture. But it was not until foreign missionaries came in the latter half of the second millennium that these original inhabitants first heard of Jesus Christ, the Word made flesh. Those who migrated from Europe and other parts of the world brought with them their faith. For all, the Gospel of Jesus Christ, received in faith and lived in the communion of the Church, brought fulfilment of the deepest longings of the heart, beyond any human expectation. The Church in Oceania is strong in hope, for she has experienced God’s infinite goodness in Christ. To this day, the treasure of Christian faith is undiminished in its dynamism and promise, for the Spirit of God is always new and surprising. The Church throughout the world shares the hope of the peoples in Oceania that the future will bring new and even more wonderful gifts of grace to the lands of the Great Ocean.

2. A very particular moment in which the Church in Oceania could speak of her gratitude and hope was the Special Assembly of the Synod of Bishops for Oceania, which was held from 22 November - 12 December 1998. In my Apostolic Letter *Tertio Millennio Adveniente* I had proposed the usefulness of such an Assembly, as one

in a series of continental Assemblies intended to prepare the Church for the new millennium.<sup>(1)</sup> The Bishops of Oceania were joined by Bishops from other continents and heads of dicasteries of the Roman Curia. Other members of the Church were among the participants, including priests, lay people and consecrated religious, as well as fraternal delegates from other Churches and Ecclesial Communities. The Assembly analyzed and discussed the present situation of the Church in Oceania in order to plan more effectively for the future. It also focused the attention of the universal Church on the hopes and challenges, the needs and opportunities, the sorrows and joys of the vast human tapestry which is Oceania.

The meeting in Rome of many Bishops, gathered with and around the Successor of Peter, was a wonderful occasion to celebrate the gifts of grace, which have yielded so abundant a harvest among the peoples of Oceania. Faith in Jesus Christ was the foundation and the focus of the participants in their prayer and discussions. The Bishops and all who were with them were animated by the one faith in Christ. All were inspired and strengthened by the ecclesial *communio* which bound them together and was expressed through the days of the Synod Assembly in a most powerful and moving way as a true unity in diversity.

## CHAPTER I

# JESUS CHRIST AND THE PEOPLES OF OCEANIA

“As Jesus walked by the sea of Galilee, he saw two brothers, Simon who is called Peter and Andrew his brother, casting a net into the sea; for they were fishermen. And he said to them, ‘Follow me and I will make you fishers of men’. Immediately they left their nets and followed him” (Mt 4:18-20).

### **The person of Jesus**

#### The Call

3. During the Synod Assembly, the universal Church came to see more clearly how the Lord Jesus is encountering the many peoples of Oceania in their lands and on their many islands. For it is the Lord himself who looks upon the people with a love which presents itself as both a challenge and a call. Like Simon Peter and his brother Andrew, they are invited to leave all, to turn to him who is the Lord of life, and follow him. They are to leave not only sinful ways, but also sterile ways of a certain manner of thinking and acting, in order to take the path of an ever deeper faith and follow the Lord with ever greater fidelity.

The Lord has called the Church in Oceania to himself: as always the call involves a sending forth on mission. The purpose of being with Jesus is to go forth from Jesus, in his power and with his grace. Christ is now calling the Church to share in his mission with new energy and creativity. The Synod saw this clearly in the life of the Church in Oceania.

The Bishops rejoiced to see that in Oceania the Lord Jesus has shown himself true to his promise: “I am with you always, to the end of the age” (Mt 28:20). The assurance of his presence gives the strength and courage needed for disciples to become “fishers of men”. During the Special Assembly, the Lord’s presence was experienced in prayer, in the sharing of hopes and concerns, and in the bond of ecclesial *communio*. Faith in Jesus’ presence among his people in Oceania will always make possible new and wonderful encounters with him, and these new encounters will become the seeds of new mission.

When we walk with the Lord, we leave with him all our burdens, and this confers the strength to accomplish the mission he gives us. He who takes from us gives to us; he takes upon himself our weakness and gives us his strength. This is the great mystery of the life of the disciple and apostle. It is certain that Christ works with us and within us as we “put out into deeper waters”, as now we must. When times are difficult and unpromising, the Lord himself urges us “to cast our nets once more” (Lk 5:1-11).(2) We must not disobey.

Presenting Jesus Christ

4. The central concern of the Synod Assembly was to find appropriate ways of presenting to the peoples of Oceania today Jesus Christ as Lord and Saviour. But what is this new way to present him, so that many more will meet him and believe in him? The interventions of the Synod Fathers reflected the challenges and difficulties, but also the hopes and possibilities evoked by this question.

In the course of history, thanks to the Church’s extraordinary missionary and pastoral efforts, the peoples of Oceania have met Jesus Christ who does not cease to call them to faith and give them new life. In colonial times, Catholic clergy and religious quickly established institutions to help the new settlers in Australia and New Zealand to preserve and strengthen their faith. Missionaries brought the Gospel to the original inhabitants of Oceania, inviting them to believe in Christ and find their true home in his Church. The people responded in great numbers to the call, became Christ’s followers and began to live according to his word. The Synod left no doubt that the Church, the *communio* of believers, is now a vibrant reality among many peoples in Oceania. Today Jesus is again turning his loving attention to them, calling them to a still deeper faith and a still richer life in him. Therefore, the Bishops could not fail to ask: How can the Church be an effective instrument of Jesus Christ who now wants to meet the peoples of Oceania in new ways?

## **Jesus Christ: Shepherd, Prophet and Priest**

5. In his infinite love for the world, God gave his only Son to be God-with-us. Emptying himself to become like us, Jesus was born of the Virgin Mary in simplicity and poverty. As the one who is totally empty and poor on the Cross, Jesus is the beloved Son of God, the Saviour of the world in all its emptiness and poverty.(3) When Christ dwelt among us, he proclaimed the Good News that God’s Kingdom has come, a Kingdom of peace, justice and truth. Many people, particularly from among the poor, the needy and the outcast, followed him, but for the most part the powerful of the world turned against him. They condemned him and nailed him to the Cross. This shameful death, accepted by the Father as a sacrifice of love for the world’s sake, gave way to a glorious Resurrection

by the power of the Father's love. Jesus was thus established as King of the universe, Prophet for all people, and High Priest of the eternal sanctuary. He is Prophet, Priest and King not only for those who follow him but for all the peoples of the earth. The Father offers him as the Way, the Truth and the Life to all men and women, to all families and communities, to all nations and to all generations.

As the Son of David, Jesus is not only King but also the Good Shepherd of those who hear his voice. He knows and loves those who follow him.<sup>(4)</sup> He is the chief Shepherd of our souls, and the Pastor of all peoples. He guides the Church by the power of the Holy Spirit who dwells fully in him and whom he breathes into his disciples (cf. Jn 20:22). The Spirit leads by a force of love, from deep within, touching the hearts and minds of the peoples of Oceania and setting them free to live the abundant life for which they were created.

As the Word of God, Jesus is the universal Prophet, the total revelation of God.<sup>(5)</sup> He is the Truth, inviting people to believe in him and share his life. His Spirit leads the baptized on a daily journey into new depths of that truth. Moved by the Holy Spirit, the Synod Fathers discussed many concerns arising from their pastoral experience and their love of God's people. Not all answers could be found in the days of the Synod, for many issues call for more reflection, experience and prayer. However, in their search for enlightenment the Bishops fully shared and professed the conviction that the truth of salvation can be found only in Jesus Christ, and that his Spirit provides solace and guidance to those who come to him with their problems and burdens.

The Crucified and Risen Lord is the High Priest who offers himself to the Father as an eternal sacrifice for the life of the world. He gave his life for all and continues to fill his followers with his life, most especially through the Sacraments. In his prayer, the prayers of all believers rise to the Father. Through the Holy Spirit, he enables them to live a life of intimate union with God and of more generous charity to their brothers and sisters, particularly the poor and needy. The Synod discussions stressed that, in presenting Jesus, the Church must show his compassionate love to a world in need of healing. All the baptized are called to be God's priestly people in the image of Jesus, the High Priest; and as a priestly people, they are commissioned to reach out in mercy to all, particularly the most deprived, the most distant, the lost. In reaching out and offering life in the name of Jesus, the Church in Oceania today will be a sacrament of divine justice and peace.<sup>(6)</sup>

## **The peoples of Oceania**

### Place and Time

6. The Synod gave recognition not only to a unique area spanning almost one-third of the earth's surface, but also to a large number of indigenous peoples, whose joyful acceptance of the Gospel of Jesus Christ is evident in their enthusiastic celebration of the message of salvation.<sup>(7)</sup> These peoples form a unique part of humanity in a unique region of the world. Geographically, Oceania comprises the continent of Australia, many islands, big and small, and vast expanses of water. The sea and the land, the water and the earth meet in endless ways, often striking the human eye with great splendour and beauty. Although Oceania is geographically very large, its population is relatively small and unevenly distributed, though it comprises a large number of indigenous and migrant peoples.

For many of them, land is most important: its fertile soil or its deserts, its variety of plants and animals, its abundance or scarcity. Others, though living on the land, are more dependent on the rivers and the sea. The water allows them to travel from island to island, from shore to shore. The great variety of languages - 700 in Papua New Guinea alone - together with the vast distances between islands and areas make communication across the region a particular challenge. In many parts of Oceania, travelling by sea and air is more important than travelling by land. Communication can still be slow and difficult as in earlier times, though nowadays in many areas information is transmitted instantly thanks to new electronic technology.<sup>(8)</sup>

The largest country of Oceania in both size and population is Australia, where the Aboriginal people have lived for thousands of years, moving over large tracts of land and living in deep harmony with nature. Discovered and colonized by European people who named it the Southern Land of the Holy Spirit (*Terra Australis de Spiritu Sancto*), Australia has become very Western in its cultural patterns and social structure. Deeply involved in the scientific, technological, and social developments of the Western world, Australia is now a largely urban, modern and secularized nation, in which successive immigrations from Europe and Asia have contributed to make it a multicultural society. The Australians are therefore “an original people, the result of the meeting of people of very different nations, languages and civilizations”.<sup>(9)</sup>

The Christian faith was brought by immigrants who came from Europe. Many priests and religious joined them, and their pastoral dedication and educational work helped the immigrants to live the Christian life in a strange new land. Local priestly and religious vocations and many lay people made their own indispensable contribution in Australia to the growth of the Church and the accomplishment of her mission. Among them was a remarkable woman religious, Blessed Mary MacKillop, who died in 1909 and whom it was my joy to beatify in 1995. On that occasion I recalled that “by declaring her ‘Blessed’ the Church was saying that the holiness demanded by the Gospel is as Australian as she was Australian”.<sup>(10)</sup> The relationship of the Church to the Aboriginal peoples and the Torres Strait Islanders remains important and difficult because of past and present injustices and cultural differences. Besides this challenge, the Church in Australia now faces many modern “deserts”<sup>(11)</sup> similar to those in other Western countries.

The original inhabitants of New Zealand, an island nation, were the Maori people who called their country *Aotearoa*, “Land of the Great White Cloud”. Colonization and later immigration have shaped the nation into a bi-cultural society, where integration of Maori and Western culture remains a pressing challenge. Foreign missionaries first proclaimed the Gospel to the Maori people. Then when the European settlers came in greater numbers, priests and religious came as well and helped to maintain and develop the Church. Modern developments have made New Zealand a more urban and secularized society, in which the Church faces challenges similar to those in Australia. Though there is among Catholic people an “increased awareness of belonging to the Church”, it is also true that in general “the sense of God and of his loving providence has diminished”. Such “a secularized society needs to be confronted again by the entire Gospel of salvation in Jesus Christ”.<sup>(12)</sup>

Papua New Guinea is the largest of the Melanesian nations. It is a predominantly Christian society with many

different local languages and a great wealth of cultures. Like other smaller Melanesian island nations it has gained political independence in quite recent times, and its history since then has been shaped by struggles for stable democracy, social justice and the balanced and integral development of its people. These struggles in Papua New Guinea and other parts of Melanesia have recently been marked by violence and separatist movements, in which people and institutions have suffered greatly. Church leaders and many Christians have done a great deal to bring peace and reconciliation, and this must clearly continue in a situation which remains very volatile.

The island nations of Polynesia and Micronesia are relatively small, each with its own indigenous language and culture. They too are facing the pressures and challenges of a contemporary world which exerts a powerful influence upon their society. Without losing their identity or abandoning their traditional values, they want to share in the development resulting from more direct and complex interaction with other peoples and cultures. That is proving to be a delicate balance in these small and vulnerable societies, some of which are facing a very uncertain future, not only because of large-scale emigration but also because of rising sea levels caused by global warming. For them, climate change is very much more than a question of economics.

## **Mission and Culture**

7. As early as the sixteenth century, when foreign missionaries first reached Oceania, island peoples heard and accepted the Gospel of Jesus Christ. Among those who began and carried on the missionary work were saints and martyrs; and they are not only the greatest glory of the Church's past in Oceania but also its surest source of hope for the future. Outstanding among these witnesses of faith are Saint Peter Chanel, martyred in 1841 on the island of Futuna, Blessed Diego Luis de San Vitores and Blessed Pedro Calungsod, killed together in 1672 on Guam, Blessed Giovanni Mazzuconi martyred in 1851 on Woodlark Island; and Blessed Peter To Rot, killed on New Britain in 1945, towards the end of the Second World War. With many others, these heroes of the Christian faith contributed, each in his own unique way, to the implantation of the Church on the islands of Oceania. May their memory never be forgotten! May they never cease to intercede for the beloved peoples for whom they shed their blood!

When the missionaries first brought the Gospel to Aboriginal or Maori people, or to the island nations, they found peoples who already possessed an ancient and profound sense of the sacred. Religious practices and rituals were very much part of their daily lives and thoroughly permeated their cultures. The missionaries brought the truth of the Gospel which is foreign to no one; but at times some sought to impose elements which were culturally alien to the people. There is a need now for careful discernment to see what is of the Gospel and what is not, what is essential and what is less so. Such a task, it must be said, is made more difficult because of the process of colonization and modernization, which has blurred the line between the indigenous and the imported.

The traditional peoples of Oceania make up a mosaic of many different cultures: Aboriginal, Melanesian, Polynesian and Micronesian. Since the time of colonization, Western culture has also shaped the region. In recent years Asian cultures too have been part of the cultural scene, particularly in Australia. Each cultural group, different in size and strength, has its own traditions and its own experience of integration in a new land. They range from societies

with strong traditional and communal features, to those which are mainly Western and modern in stamp. In New Zealand, and even more in Australia, the colonial and post-colonial policies of immigration have made the indigenous people a minority in their own land and, in many ways, a dispossessed cultural group.

One of the most notable features of the peoples of Oceania is their powerful sense of community and solidarity in family and tribe, village or neighbourhood. This means that decisions are reached by consensus achieved through an often long and complex process of dialogue. Touched by the grace of God, the peoples' natural sense of community made them receptive to the mystery of *communio* offered in Christ. The Church in Oceania demonstrates a real spirit of cooperation, extending to the various Christian communities and to all people of good will. Deep respect for tradition and authority is also part of the traditional cultures of Oceania. Hence the present generation's sense of solidarity with those who went before them, and the exceptional authority accorded to parents and traditional leaders.

The cultural variety of Oceania is not immune from the worldwide process of modernization which has effects both positive and negative. Certainly modern times have given a new and higher profile to positive human values, such as respect for the inalienable rights of the person, the introduction of democratic procedures in administration and government, the refusal to accept structural poverty as an unchangeable condition, the rejection of terrorism, torture and violence as means of political change, the right to education, health care and housing for all. These values, often rooted in Christianity - even if not explicitly - are exerting a positive influence in Oceania; and the Church cannot but do all in her power to encourage this process.

Yet modernization also has its negative effects in the region, with traditional societies struggling to maintain their identity as they come in contact with secularized and urbanized Western societies and with the growing cultural influence of Asian immigrants. The Bishops spoke, for example, of a gradual lessening of the natural religious sense which has led to disorientation in people's moral life and conscience. A large part of Oceania, particularly Australia and New Zealand, has entered upon an era marked by increasing secularization. In civic life, religion, and especially Christianity, is moved to the margin and tends to be regarded as a strictly private matter for the individual with little relevance to public life. Religious convictions and the insights of faith are at times denied their due role in forming people's consciences. Likewise, the Church and other religious bodies have a diminished voice in public affairs. In today's world, more advanced technology, greater knowledge of human nature and behaviour, and worldwide political and economic developments pose new and difficult questions for the peoples of Oceania. In presenting Jesus Christ as the Way, the Truth and the Life, the Church must respond in new and effective ways to these moral and social questions without ever allowing her voice to be silenced or her witness to be marginalized.

## **The special Synod Assembly**

The Theme

8. As a result of the suggestions of the Pre-Synod Council, which sought to register the concerns of the Bishops of Oceania, the theme chosen for the Special Assembly for Oceania was: Jesus Christ and the Peoples of Oceania, Walking His Way, Telling His Truth, Living His Life. The theme is inspired by the words of John's Gospel where Jesus refers to himself as the Way, the Truth and the Life (14:6), and it recalls the invitation which he extends to all the peoples of Oceania: they are invited to meet him, to believe in him, and to proclaim him as the Lord of all. It also reminds the Church in Oceania that she gathers together as the People of God journeying on pilgrimage to the Father. Through the Holy Spirit, the Father calls believers - individually and in community - to walk the way that Jesus walked, to tell all nations the truth that Jesus revealed, to live fully the life that Jesus lived and continues to share with us now.

The theme is particularly appropriate for the Church in Oceania today, for the peoples of the Pacific are struggling for unity and identity; among them there is a concern for peace, justice and the integrity of creation; and many people are searching for life's meaning. Only in accepting Jesus Christ as the Way will the peoples of Oceania find that for which they are now searching and struggling. The way of Christ cannot be walked without an ardent sense of mission; and the core of the Church's mission is to proclaim Jesus Christ as the living Truth - a truth revealed, a truth explained, understood and welcomed in faith, a truth passed on to new generations. The truth of Jesus is always greater than ourselves, greater than our heart, because it flows from the depths of the Blessed Trinity; and it is a truth which demands that the Church respond to the problems and challenges of today. In the light of the Gospel, we discover Jesus as the Life. The life of Christ is offered also as a healing grace that makes it possible for humanity to be what the Creator intended it to be. Living the life of Jesus Christ implies a deep respect for all life. It also implies a living spirituality and authentic morality, strengthened by the word of God in Scripture and celebrated in the Sacraments of the Church. When Christians live the life of Christ with deeper faith, their hope grows stronger and their charity more radiant. That was the goal of the Synod, and it is the goal of the new evangelization to which the Spirit is summoning the whole Church.

### The Experience

9. It was fitting that the Synod Assembly began on the Solemnity of Christ the King when the Church celebrates Jesus as the Lord in whom God's Kingdom is established throughout the world and in all of history. During the time of the Assembly, it became increasingly clear that it was Christ who was leading the way, that it was he who reigned in the midst of the Assembly. The opening and closing liturgies incorporated signs and symbols drawn from Pacific island cultures as expressions of faith and reverence. In a unique blend, these ceremonies expressed the unity of faith in diversity of Catholic worship; and they showed quite strikingly how the Catholic faith reaches to the farthest shores of the Great Ocean and that all find their home in the Catholic Church. As a symbolic exchange of gifts, the liturgies expressed the deep *communio* between the Church of Rome and the local Churches of Oceania. The Bishops brought to the Vatican their rich array of experiences and cultural treasures, and they were in turn strengthened in the bond of local and universal *communio*, which was for them a great refreshment and encouragement for the future.

The distinctive features of the Church in Oceania made it important to convoke a separate Synod Assembly. The Bishops of Oceania are organized in four Conferences which come together as the Federation of Catholic Bishops' Conferences of Oceania (F.C.B.C.O.). The total number of Bishops is relatively small, which allowed the Synod to bring together all the active Bishops, representing all the particular Churches. For many participants it was a real discovery of the religious gifts, the cultures and the histories of the peoples of Oceania. They became more aware of the often hidden or unrecognized graces that the Lord has bestowed on his Church, and this too was a source of great encouragement. The dialogue and discernment of the Synod opened the eyes of heart and soul to discover what can be done to live the Christian faith more fully and effectively. There were many reasons to praise and thank God for treasures discovered or valued anew.

For the Bishops, the Assembly was an experience of brotherhood and *communio* around the See of Peter. Taking place in the Vatican, it enabled all the participants "to feel at home" with the Bishop of Rome. It also allowed the Bishop of Rome "to feel at home" with them and to hear how much they appreciated this unique experience of the universality of the Church. The sense of unity and fidelity overcame the great distances of geography and culture between Rome and Oceania. This experience was one of the many gifts that Christ in his goodness bestowed during the Synod.

Among themselves too the Bishops experienced a new and stronger sense of identity and *communio*. Many of them are often separated by great distances, and regular communication is not easy. For the Church as a whole, the diversity of cultures in Oceania is a constant challenge to work for greater unity. The Bishops want to strengthen their *communio* and help the peoples of Oceania to work together more effectively. The local Churches in this region of the world are a unique part in the universal Church. As such, they realize that they can and must contribute their special gifts to the wider Church. I pray that, through the Synod, the Bishops of Oceania will feel more than ever that they belong together and that, with their local Churches, they belong fully to the universal Church, to which they bring a special enrichment.<sup>(13)</sup>

It was significant that the Synod Assembly took place in the time of immediate preparation for the Great Jubilee of the Year 2000. The Bull announcing the Jubilee, *Incarnationis Mysterium*, was promulgated during the time of the Synod, and the Assembly itself was an opportunity for the Church in Oceania to prepare for the gift of the Holy Year. Certainly the Assembly helped the Churches of the Pacific to celebrate the Jubilee with fresh attempts to bring reconciliation and peace, more conscious than ever that "the Church, having received from Christ the power to forgive in his name, is in the world the living presence of the love of God who turns to all human weakness to welcome it with the embrace of his mercy".<sup>(14)</sup> It would be a wonderful fruit of the Jubilee if the Church in Oceania, strengthened in so many ways by the experience of the Synod, could continue to implement the Jubilee's insights and appeals along the lines suggested in the Apostolic Letter *Novo Millennio Ineunte*. As the Jubilee proclaimed the infinite depths of God's mercy revealed in Christ, so it stirred new energies for the task of meeting the challenges which the Synod identified and discussed.<sup>(15)</sup> "In his forgiving love a new heaven and a new earth are anticipated":<sup>(16)</sup> may the vision of the new heaven and the new earth never cease to draw the peoples of Oceania more deeply into this newness of life!

## CHAPTER II

# WALKING THE WAY OF JESUS CHRIST IN OCEANIA

“Going on further Jesus saw two other brothers, James the son of Zebedee and John his brother, in the boat with Zebedee their father, mending their nets, and he called them. Immediately they left the boat and their father, and followed him” (Mt 4:21-22).

### **The Church as *communio***

#### Mystery and Gift

10. When Jesus walked the shores of the sea of Galilee he called people to take the road of discipleship. He invited them to walk his way, to follow as it were in his footsteps. “Prompted by the Holy Spirit, the Church must walk the same road which Christ walked, and the Church means all of us, joined together like a body receiving its life-giving influence from the Lord Jesus”.<sup>(17)</sup> The way of Jesus is always the path of mission; and he is now inviting his followers to proclaim the Gospel anew to the peoples of Oceania, so that culture and Gospel proclamation will meet in a mutually enriching way and the Good News will be heard, believed and lived more deeply. This mission is rooted in the mystery of communion.

The Second Vatican Council chose the notion of *communio* as particularly apt to express the profound mystery of the Church;<sup>(18)</sup> and the Extraordinary Synod Assembly of 1985 has made us more conscious of *communio* as the very heart of the Church. So too the Synod Fathers declared that “the Church is essentially a mystery of communion, a people made one with the unity of the Father, the Son and the Holy Spirit. This sharing of the life of the Blessed Trinity is the source and inspiration of all Christian relationships and every form of Christian community”.<sup>(19)</sup> This understanding was the spiritual and doctrinal background of all the Synod’s deliberations. It is “complemented and illustrated in the understanding of the Church as the People of God and the community of disciples. Church as communion recognises the basic equality of all Christ’s faithful, lay, religious and ordained. The communion is shaped and enlivened by the Holy Spirit’s gifts of offices and charisms”.<sup>(20)</sup>

The *communio* of the Church is a gift of the Blessed Trinity, whose deep inner life is most marvellously shared with humanity. *Communio* is the fruit of God’s loving initiative, fulfilled in the Paschal Mystery of Christ by which the Church shares in the divine *communio* of love between the Father and the Son in the Holy Spirit. “God’s love has been poured into our hearts through the Holy Spirit who has been given to us” (Rom 5:5). On the day of Pentecost, Christ’s Passover was brought to completion by the outpouring of the Spirit, which gave us the first fruits of our inheritance, a share in the life of the Triune God, which enables us to love “as God loved us” (1 Jn

4:11).

## The Church Particular and Universal

11. During the Synod Assembly, the Bishops took up in a particular way the notion of the Church as *communio*. They emphasized the aspects of belonging and interpersonal relationship found in the understanding of the Church as the People of God. Ecclesial *communio* is expressed and lived in a special way by the local Church gathered around the Bishop, with whom the people are co-workers in the mission.<sup>(21)</sup> As Pastor, each Bishop seeks to promote this *communio* through his ministry, which is a sharing in the pastoral, prophetic and priestly office of Christ. The sign and effect of this *communio* is described in the Acts of the Apostles: “The whole group of those who believed were of one heart and one soul” (4:32). The Synod Fathers saw one very practical expression of this spirit in the preparation of a diocesan pastoral plan in conjunction with the faithful and their organizations. This will ensure that the plan flows from the spirituality of *communio* promoted by the Second Vatican Council.<sup>(22)</sup>

The *communio* among the local Churches is based upon unity of faith, Baptism and Eucharist, but also upon the unity of the episcopate. The *communio* of the Church comprises all the local Churches through their Bishops, united with the Bishop of Rome as visible head of the Church. “The College of Bishops united under the Successor of Peter gives an authoritative expression to the *communio* of the Church”.<sup>(23)</sup> This unity of the episcopate is perpetuated down the centuries through apostolic succession; in every age it is the ground of the identity of the Church, established by Christ on Peter and the college of the Apostles. The Successor of Peter is indeed “the enduring principle of unity and the visible foundation” of the Church.<sup>(24)</sup> The Lord himself commissioned Peter and his Successors to confirm their brethren in faith (Lk 22:32) and to feed the flock of Christ (Jn 21:15-17). “There exists between the Bishops a bond which expresses in a personal and collegial way the communion - the *koinonia* - that characterizes the entire life of the Church. Together in the College of Bishops they share the ministry of fostering the unity of God’s people in faith and charity”.<sup>(25)</sup> The Synod expressed the hope that the relationship between the particular Churches and the universal Church, especially the Holy See, reflect and build up *communio*, and that these relationships develop with due regard to the Petrine ministry of unity and due respect for the local Churches.<sup>(26)</sup> The local Churches in Oceania recognize that they share in the *communio* of the universal Church, and they see this as a cause for rejoicing. Despite the vastly diverse cultures and great distances in Oceania, the local Bishops realize that they are united with one another and with the Bishop of Rome, and they see this too as a great gift. “Between the Successor of Peter and the successors of the other Apostles there is indeed that profound spiritual and pastoral bond; it is our effective and affective collegiality. May we always find ways to support one another in our united efforts to build up the church and to live out this communion in service and faith”.<sup>(27)</sup> As brothers in the College of Bishops, the Synod Fathers were unequivocal in expressing their desire to strengthen their union with the Bishop of Rome;<sup>(28)</sup> and the Bishop of Rome was himself moved and encouraged by their desire.

## Mutual Enrichment

12. A sign and instrument of collegiality and communion among the Bishops is the Bishops’ Conference, a “holy

union of energies in the service of the common good of the Churches”,(29) which contributes in many ways to the concrete realization of the spirit of collegiality. There are many areas in which the Bishops’ Conferences have established fruitful relationships. The exchange of gifts is characteristic of many parts of Oceania and can serve as a model of positive relations between the Bishops of Oceania and with others. This model encourages an exchange of spiritual gifts which fosters relations of mutual love, respect and trust. These are the basis for open dialogue, participation and consultation as practical expressions of the *communio* that marks the Church.

The Eastern Catholic Churches have arrived in Oceania in comparatively recent times, and they have established themselves as a rich expression of Catholicity in various parts of Oceania, particularly Australia. They bear significant witness to the diversity and unity of the Universal Church with their unique history and traditions. (30) At the Synod, it was clear that the Eastern Catholic Churches are conscious of the generosity of the Latin Catholic Church in Oceania. Over the years, often in difficult circumstances, Bishops, priests and parishes have offered the hospitality of their Churches and schools, and the bonds of friendship and cooperation continue at all levels. Yet these Churches are vulnerable because of the relatively small number of their faithful and the great distance separating them from their Mother Churches, and their people can feel pressured or tempted to assimilate themselves into the predominant Latin Church. Yet the Synod also made it clear that the Latin Bishops of Oceania are eager to appreciate, understand and promote the traditions, liturgy, discipline and theology of the Eastern Catholic Churches. Therefore, increased awareness and understanding of the riches of the Eastern Catholic Churches is important among Latin Catholics.

The challenge for the Church in Oceania is to come to a deeper understanding of local and universal *communio* and a more effective implementation of its practical implications. My Predecessor Pope Paul VI summed up the challenge in these terms: “The first communion, the first unity, is that of faith. Unity in faith is necessary and fundamental. The second aspect of Catholic communion is that of charity. We must practise in its ecclesial aspects a more consistent and active charity”.(31) The peoples of Oceania have an instinctively strong sense of community, but unity in faith is required if reconciliation and love are to replace conflict and hatred. In the more Westernized cultures of the region, social institutions are under strain and people are hungry for a life more worthy of man. Where individualism threatens to erode the fabric of human society, the Church offers herself as a healing sacrament, a fountain of *communio* responding to the deepest hungers of the heart. Such a gift is clearly needed now among the peoples of Oceania.

## **Communion and mission**

### The Call to Mission

13. The Church in Oceania received the Gospel from previous generations of Christians and from missionaries coming from overseas. The Synod paid tribute to the many missionaries - clergy, women and men religious as well as lay people - who have spent themselves in carrying the Gospel to Oceania;(32) their sacrifices have, by God’s grace, borne much fruit. As the peoples of Oceania came to accept the fullness of redemption in Christ, they found

a striking symbol in the night skies, where the Southern Cross stands as a luminous sign of God's overarching grace and blessing.<sup>(33)</sup> The present generation of Christians is called and sent now to accomplish a new evangelization among the peoples of Oceania, a fresh proclamation of the enduring truth evoked by the symbol of the Southern Cross. This call to mission poses great challenges, but it also opens new horizons, full of hope and even a sense of adventure.

The call to mission is addressed to every member of the Church. "The whole Church is missionary, for her missionary activity...is an essential part of her vocation".<sup>(34)</sup> Some members of the Church are sent to people who have not heard of Jesus Christ, and their mission remains as vital as ever. But many more are sent to the world closer to home, and the Synod Fathers were keen to stress the mission of the lay members of the Church. In the family, in the workplace, in the schools, in community activities, all Christians can help to bring the Good News to the world in which they live.

A Christian community is never meant to be just a comfortable place for its members. The Synod Fathers wanted to encourage the local communities to look beyond their own immediate concerns and reach out to others. The parish as a community cannot insulate itself from the realities of the world around it. The Christian community must be attentive to issues of social justice and spiritual hunger in society. What Jesus offers to his followers must be shared with all the peoples of Oceania, whatever their situation. For in him alone is the fullness of life.

## Challenges

14. The Synod Fathers wanted Jesus Christ to be heard and understood by the people entrusted to their care, and by many more. They saw the need to reach out to those who live with unfulfilled hopes and desires, to those who are Christians in name only, and to those who have drifted away from the Church, perhaps because of painful experiences. Every effort should be made to heal such wounds, and to return the lost sheep to the fold.

Above all, the Synod Fathers wanted to touch the hearts of young people. Many of them are searching for truth and goodness, and their search can involve experimenting with the appeals and claims of the contemporary world, some of which are clearly destructive. This can create a confusion in the young which leaves them at a loss to know what true values might be and where true happiness might be found. The great challenge and opportunity is to offer them the gifts of Jesus Christ in the Church, for these gifts alone will satisfy their yearning. But Christ must be presented in a way well adapted to the younger generation and the rapidly changing culture in which they live. At times the Catholic Church is seen as presenting a message which is irrelevant, unattractive or unconvincing; but we can never allow such claims to undermine our confidence, for we have found the pearl of great price (cf. Mt13:46). Yet there is no room for complacency. The Church is challenged to interpret the Good News for the peoples of Oceania according to their present needs and circumstances. We must present Christ to our world in a way that brings hope to the many who suffer misery, injustice or poverty. The mystery of Christ is a mystery of new life for all who are in need or in pain, for disrupted families or people who face unemployment, who are marginalized, injured in soul or body, sick or addicted to drugs, and for all who have lost their way. This mystery of grace, the *mysterium pietatis*, is the very heart of the Church and her mission.

15. The Catholic communities of Oceania are increasingly confident about what they have to offer to the universal Church and, in turn, the Church rejoices in the special gifts that these communities contribute. Many of them are engaged in missionary outreach in Oceania and beyond, in the Pacific Islands and Papua New Guinea, and in Southeast Asia and more distant parts of the world. Local Churches, founded by missionaries, are in turn sending out missionaries, and that is an unmistakable sign of maturity. They have understood the missionary message that Pope Paul VI, together with the people of Samoa, sent to the Catholic people of the world: “Listen to the call to become heralds of the good news of salvation”.<sup>(35)</sup> What I expressed as a wish to the Bishops of C.E.PAC. in Suva in 1986 has come true: “The Churches which have been established by missionaries will in turn be sending forth missionaries to other nations”.<sup>(36)</sup> However, some Dioceses of Oceania still have to depend upon the solidarity of other local Churches, and their lack of resources should not be allowed to restrain their generosity in fulfilling their mission. The sharing of resources for the good of all is a solemn duty of the Christian life and at times an urgent need in Christian mission.

In many islands of Oceania catechists are assisting the ordained ministers in their missionary or pastoral work. In Australia and New Zealand, catechists teach the faith in the local community, especially to children and catechumens. “They all are direct witnesses and irreplaceable evangelizers who... represent the basic strength of Christian communities”.<sup>(37)</sup> These lay workers are often effective because they live and work close to the ordinary people. “They have made and continue to make a truly indispensable contribution to the life and mission of the Church”.<sup>(38)</sup> The catechists in many islands are not only trained to teach, but also to lead the community in prayer and to evangelize beyond the bounds of the Catholic community. In the traditional cultures, the faith is often best communicated orally by telling stories, by preaching, by praying in word, song and dance. To guide and develop this kind of activity, special courses, programmes and retreats are needed. The task now is to present Jesus Christ to those whose faith has grown weak under the pressures of secularization and consumerism and who tend to regard the Church as just another of the many institutions of modern society that influence people’s thinking and behaviour. In such a situation, the Church needs well-trained leaders and theologians to present Jesus Christ convincingly to the peoples of Oceania.

It was a joy during the Assembly to hear many Bishops speaking about programmes of Christian renewal in their Dioceses, and about the deepening of faith among their people which these provide. One of the remarkable features of these programmes is the involvement of many lay people. We are all grateful for the various gifts God has given lay men and women to carry out their mission, which is not only a call to action and service but also a call to prayer.<sup>(39)</sup> They and their pastors are encouraged to move forward with fresh energy and to proclaim Jesus Christ to their people with renewed conviction. Catholic communities in Oceania are already making great efforts to reach out to others in word and deed; and the Synod Fathers expressed both deep appreciation for these efforts and strong support for those prepared to offer themselves for work in the Church’s mission. I join in praying that these workers in the vineyard of the Lord will find fulfilment and joy in the work to which God himself has called them.

There are many other challenges facing the Church's members, especially those entrusted with pastoral responsibility. Aware of the limits of all human effort, the Synod Fathers were not discouraged but recalled the simple and strong assurance of the Lord. Sending the Apostles forth to preach the Good News to all the nations, the Risen Lord says: "Know that I am with you always; yes, to the end of time" (Mt28:20). This promise of the Lord was a source of fresh hope for the Bishops as they looked to the many challenges they face in the attempt to preach Jesus Christ, the Way, the Truth and the Life; and they called upon all the Catholic people of Oceania to join them in that hope.

## **The Gospel and culture**

### Inculturation

16. The Synod Fathers frequently emphasized the importance of inculturation for any authentic Christian life in Oceania. The process of inculturation is the gradual way in which the Gospel is incarnated in the various cultures. On the one hand, certain cultural values must be transformed and purified, if they are to find a place in a genuinely Christian culture. On the other hand, in various cultures Christian values readily take root. Inculturation is born out of respect for both the Gospel and the culture in which it is proclaimed and welcomed. The process of inculturation began in Oceania as immigrant people brought the Christian faith from their homelands. For the indigenous peoples of Oceania, inculturation meant a new conversation between the world that they had known and the faith to which they had come. As a result, Oceania offers many examples of unique cultural expressions in the areas of theology, liturgy and the use of religious symbols.<sup>(40)</sup> The Synod Fathers saw further inculturation of the Christian faith as the way leading to the fullness of ecclesial communio.

Authentic inculturation of the Christian faith is grounded in the mystery of the Incarnation.<sup>(41)</sup> "God loved the world so much that he gave his only Son" (Jn 3:16); in a particular time and place, the Son of God took flesh and was "born of a woman" (Gal 4:4). To prepare for this momentous event, God chose a people with a distinctive culture, and he guided its history on the path towards the Incarnation. All that God did in the midst of his chosen people revealed what he intended to do for all humanity, for all peoples and cultures. The Scriptures tell us this story of God acting among his people. Above all, they tell the story of Jesus Christ, in whom God himself entered the world and its many cultures. In all that he said and did, but especially in his Death and Resurrection, Jesus revealed the divine love for humanity. From deep within human history, the story of Jesus speaks to the people not only of his time and culture but of every time and culture. He is for ever the Word made flesh for all the world; he is the Gospel that was brought to Oceania; and he is the Gospel that now must be proclaimed anew.

The Word made flesh is foreign to no culture and must be preached to all cultures. "From the time the Gospel was first preached the Church has known the process of encounter and engagement with culture".<sup>(42)</sup> Just as the Word made flesh entered history and dwelt among us, his Gospel enters deeply into the life and culture of those who hear, listen and believe. Inculturation, the "incarnation" of the Gospel in the various cultures, affects the very way in which the Gospel is preached, understood and lived.<sup>(43)</sup> The Church teaches the unchanging truth of God,

addressed to the history and the culture of a particular people. Therefore, in each culture the Christian faith will be lived in a unique way. The Synod Fathers were convinced that the Church, in her efforts to present Jesus Christ effectively to the peoples of Oceania, must respect each culture and never ask the people to renounce it. “The Church invites all people to express the living word of Jesus in ways that speak to their heart and minds”.<sup>(44)</sup> “The Gospel is not opposed to any culture, as if engaging a culture the Gospel would seek to strip it of its native riches and force it to adopt forms which are alien to it”.<sup>(45)</sup> It is vital that the Church insert herself fully into culture and from within bring about the process of purification and transformation.<sup>(46)</sup>

An authentic inculturation of the Gospel has a double aspect. On the one hand, a culture offers positive values and forms which can enrich the way the Gospel is preached, understood and lived. On the other hand, the Gospel challenges cultures and requires that some values and forms change.<sup>(47)</sup> Just as the Son of God became like us in all things except sin (cf. Heb 4:15), so the Christian faith welcomes and affirms all that is genuinely human, while rejecting whatever is sinful. The process of inculturation engages the Gospel and culture in “a dialogue which includes identifying what is and what is not of Christ”.<sup>(48)</sup> Every culture needs to be purified and transformed by the values which are revealed in the Paschal Mystery.<sup>(49)</sup> In this way, the positive values and forms found in the cultures of Oceania will enrich the way the Gospel is preached, understood and lived.<sup>(50)</sup> The Gospel “is a genuine liberation from all the disorders caused by sin and is, at the same time, a call to the fullness of truth. Cultures are not only not diminished by this encounter; rather they are prompted to open themselves to the newness of the Gospel’s truth and to be stirred by this truth to develop in new ways”.<sup>(51)</sup> Transformed by the Spirit of Christ, these cultures attain the fullness of life to which their deepest values had always looked and for which their people had always hoped. Indeed, without Christ, no human culture can become what it truly is.

## The Current Situation

17. In recent times the Church has strongly encouraged the inculturation of the Christian faith. In this regard, Pope Paul VI insisted when he visited Oceania that “far from smothering what is good and original in every form of human culture, Catholicism accepts, respects and puts to use the genius of each people, endowing with variety and beauty the one, seamless garment of the Church of Christ”.<sup>(52)</sup> These are words which I echoed when I met the Aboriginal people of Australia: “The Gospel of Jesus Christ speaks all languages. It esteems and embraces all cultures. It supports them in everything human, and when necessary, it purifies them. Always and everywhere the Gospel uplifts and enriches cultures with the revealed message of a loving and merciful God”.<sup>(53)</sup> The Synod Fathers asked that the Church in Oceania develop an understanding and presentation of the truth of Christ drawing on the traditions and cultures of the region. In missionary areas, all missionaries are urged to work in harmony with the indigenous Christians to ensure that the faith and life of the Church are expressed in legitimate forms appropriate to each culture.<sup>(54)</sup>

From the time the first immigrants and missionaries arrived, the Church in Oceania has inevitably been involved in a process of inculturation within the many cultures of the region, which often exist side by side. Attentive to the signs of the times, the Synod Fathers “recognized that the many cultures each in different ways, provide insights

which help the Church to understand better and express the Gospel of Jesus Christ".<sup>(55)</sup>

To guide this process, fidelity to Christ and to the authentic Tradition of the Church is required. Genuine inculturation of the Christian faith must always be done with the guidance of the universal Church. While remaining wholly faithful to the spirit of *communio*, local Churches should seek to express the faith and life of the Church in legitimate forms appropriate to indigenous cultures.<sup>(56)</sup> New expressions and forms should be tested and approved by the competent authorities. Once approved, these authentic forms of inculturation will better enable the peoples of Oceania to experience in their own way the abundant life offered by Jesus Christ.<sup>(57)</sup>

The Synod Fathers expressed the desire that future priests, deacons and catechists be thoroughly familiar with the culture of the people they are to serve. In order to become good Christian leaders they should be trained in ways that do not separate them from the circumstances of ordinary people. They are called to a service of inculturated evangelization, through sensitive pastoral work which allows the Christian community to welcome, live and pass on the faith in its own culture in harmony with the Gospel and the communion of the universal Church.<sup>(58)</sup>

As their guiding vision, the Synod Fathers evoked the ideal of the many cultures of Oceania forming a rich and distinctive civilization inspired by faith in Jesus Christ. With them, I pray fervently that all the peoples of Oceania will discover the love of Christ, the Way, the Truth and the Life, so that they will experience and build together the civilization of love and peace for which the world of the Pacific has always longed.

## CHAPTER III

# TELLING THE TRUTH OF JESUS CHRIST IN OCEANIA

“While the people pressed upon him to hear the word of God, he was standing by the lake of Gennesaret. And he saw two boats by the lake; but the fishermen had gone out of them and were washing their nets. Getting into one of the boats which was Simon’s, he asked him to put out a little from the land. And he sat down and taught the people from the boat” (Lk 5:1-3).

### **A New Evangelization**

#### Evangelization in Oceania

18. Evangelization is the mission of the Church to tell the world the truth of God revealed in Jesus Christ. The Synod Fathers were eager that *communio* be the theme and aim of all evangelization in Oceania<sup>(59)</sup> and the basis for all pastoral planning. In evangelization, the Church expresses her own inner communion and acts as a single body, striving to bring all humanity to unity in God through Christ. All the baptized have the responsibility of proclaiming the Gospel in word and action to the world in which they live.<sup>(60)</sup> The Gospel must be heard in Oceania by all people, believers and non-believers, natives and immigrants, rich and poor, young and old. Indeed all these people have a right to hear the Gospel, which means that Christians have a solemn duty to share it with them. A new evangelization is needed today so that everyone may hear, understand and believe in God’s mercy destined for all people in Jesus Christ.

During the Special Assembly, the Bishops shared their rich store of pastoral experience and that of the people with whom they work most closely; and thus they discerned together new perspectives for the future of the Church in Oceania. Many of them spoke of the hardships of isolation, of the need to travel immense distances and of living in harsh environments. At the same time, they also related very positive experiences of a freshness of faith and *communio*, when people welcome the Gospel and discover the love of God. The Bishops also spoke of the hopes and fears, the achievements and disappointments and the growth and decline of particular Churches in Oceania. Some felt that the Church in Oceania as a whole is at a crossroads, requiring important choices for the future. They were aware that new circumstances in that vast region present great challenges, and that the time is ripe for a re-presentation of the Gospel to the peoples of the Pacific, so that they may hear the word of God with renewed faith and find more abundant life in Christ. But to do this, they agreed, there is a need for new ways and methods of evangelization, inspired by deeper faith, hope and love of the Lord Jesus.

As a first step in the necessary “renewal of mind” (Rom 12:2), the Bishops spoke very positively of the many

efforts to apply the directives of the Second Vatican Council. They insisted that these must be built upon, and this implies the need for other initiatives to strengthen the faith of those who have grown weak and to present it more convincingly to society at large. The call to renewal is a call to proclaim to the world the truth of Jesus Christ by bearing witness to him, even to the point of the supreme sacrifice of martyrdom. It is to this that the Church in Oceania is now called; and this was the underlying reason for celebrating the Special Assembly of the Synod of Bishops.<sup>(61)</sup>

Given the situation in Oceania, God's call can easily go unheard, because of the global transformation affecting the region's cultural identity and social institutions. Some fear that these changes might undermine the foundations of the faith, and lead to weariness of spirit and despair. At such times, we need to remind ourselves that the Lord provides the strength to overcome such temptations. Our faith in him is like a house built on rock. "The rains may fall, and the floods come, and the winds blow and beat upon that house, it does not fall, because it is founded on the rock" (Mt 7:25). Through the power of the Holy Spirit, the Church in Oceania is preparing for a new evangelization of peoples who today are hungering for Christ. "This is the acceptable time; this is the day of salvation" (2 Cor 6:2).

Many Synod Fathers voiced concern about the public standing of the Christian faith in Oceania, noting that it exerts less influence on policies regarding the common good, public morality and the administration of justice, the status of marriage and family, or the right to life itself. Some of the Bishops pointed out that the Church's teaching is at times questioned even by Catholic people. In so far as this is true, it is hardly surprising that the voice of the Church is less influential in public life.

The challenges of modernity and post-modernity are experienced by all the local Churches in Oceania, but with particular force by those in societies most powerfully affected by secularization, individualism and consumerism. Many Bishops identified the signs of a dwindling of Catholic faith and practice in the lives of some people to the point where they accept a completely secular outlook as the norm of judgment and behaviour. In this regard, Pope Paul VI already cautioned Christians, saying that "there is a danger of reducing everything to an earthly humanism, to forget life's moral and spiritual dimension and to stop caring about our necessary relationship with the Creator".<sup>(62)</sup> The Church has to fulfill her evangelizing mission in an increasingly secularized world. The sense of God and of his loving Providence has diminished for many people and even for whole sections of society. Practical indifference to religious truths and values clouds the face of divine love. Therefore, "among the priorities of a renewed endeavour of evangelization there has to be a return to the sense of the sacred, to an awareness of the centrality of God in the whole of human existence".<sup>(63)</sup> A new evangelization is the first priority for the Church in Oceania. In one sense, her mission is simple and clear: to propose once again to human society the entire Gospel of salvation in Jesus Christ. She is sent to the contemporary world, to the men and women of our time, "to preach the Gospel...lest the Cross of Christ be emptied of its power. For the word of the Cross... is the power of God" (1 Cor 1:17-18).<sup>(64)</sup>

The Agents of Evangelization

19. Like the Apostles, the Bishops are sent to their Dioceses as the prime witnesses to the Risen Christ. United

around the Successor of Peter, they form a college responsible for spreading the Gospel throughout the world. During the Special Assembly for Oceania, the Bishops recognized that they are themselves the first called to a renewed Christian life and witness. More prayerful study of the Scriptures and Tradition will lead them to a deeper knowledge and love of the faith. In this way, as Pastors of their people, they will contribute still more effectively to the work of the new evangelization.<sup>(65)</sup> As the Acts of the Apostles makes clear, the outstanding characteristic of the apostolic mission inspired by the Holy Spirit is the courage to proclaim “the word of God with boldness” (4:31). This courage was given to them in response to the prayer of the whole community: “Grant to your servants to speak your word with all boldness” (4:29). The same Spirit today too enables the Bishops to speak out clearly and courageously when they face a society that needs to hear the word of Christian truth. The Catholics of Oceania continue to pray fervently that, like the Apostles, their Pastors will be audacious witnesses to Christ; and the Successor of Peter joins them in that prayer.

With the Bishops, all Christ’s faithful - clergy, religious and laity - are called to proclaim the Gospel. Their communion expresses itself in a spirit of cooperation, which is itself a powerful witness to the Gospel. Priests are the Bishops’ closest co-workers and greatest support in the work of evangelization, particularly in the parish communities entrusted to their care.<sup>(66)</sup> They offer the Sacrifice of Christ for the needs of the community, reconcile sinners to God and to the community, strengthen the sick on their pilgrimage to eternal life,<sup>(67)</sup> and thus enable the whole community to bear witness to the Gospel in every moment of life and death. Men and women in the consecrated life are living signs of the Gospel. Their vows of evangelical poverty, chastity and obedience are sure paths to deeper knowledge and love of Christ, and from this intimacy with the Lord comes their consecrated service of the Church, which has proven such a wonderful grace in Oceania.<sup>(68)</sup> Lay people also play their part by consecrating the world to God, and many of them are coming to a deeper sense of their indispensable role in the Church’s evangelizing mission.<sup>(69)</sup> Through the witness of love in the Sacrament of Matrimony or the generous dedication of people called to the single life, through their activity in the world whatever it might be, lay people can and must be a true leaven in every corner of society in Oceania. Upon this, the success of the new evangelization depends in large part.

A new proclamation of Christ must arise from an inner renewal of the Church, and all renewal in the Church must have mission as its goal if it is not to fall prey to a kind of ecclesial introversion. Every aspect of the Church’s mission to the world must be born of a renewal which comes from contemplation of the face of Christ.<sup>(70)</sup> This renewal in turn gives rise to concrete pastoral strategies; and in this regard, the Special Assembly invited the local communities to contribute to the new evangelization by a spirit of fellowship at their liturgies, in their social and apostolic activities; by reaching out to non-practising and alienated Catholics; by strengthening the identity of Catholic schools; by providing opportunities for adults to grow in their faith through programmes of study and formation; by teaching and explaining Catholic doctrine effectively to those outside the Christian community; and by bringing the social teaching of the Church to bear on civic life in Oceania.<sup>(71)</sup> As a result of these and allied initiatives, the Gospel will be presented to society more convincingly and influence culture more deeply.

The first Christians were stirred by the Holy Spirit to believe in Christ and to proclaim him as the world’s only Saviour, sent by the Father. In every age, the true agent of renewal and evangelization is the Holy Spirit, who surely

will not fail to help the Church now to find the evangelizing energies and methods needed in rapidly changing societies. Nor will the new evangelization fail to bring to the peoples of Oceania the wonderful fruits of the Holy Spirit as experienced by the first Christians, when they encountered the Risen Lord and received the gift of his love which is stronger even than death.

## **The Primacy of Proclamation**

20. The kerygma is God's word proclaimed in order to set humanity right with God through faith in Christ. We see the power of the kerygma at work in the first community in Jerusalem. "They devoted themselves to the Apostles' teaching and fellowship, to the breaking of bread and the prayers" (Acts 2:42). This is the essence of the Church's life, the fruit of the first evangelization. Adherence to Jesus Christ comes through believing his word proclaimed by the Church. Saint Paul asks, "How can people preach unless they are sent?" (Rom 10:15); and indeed Christ sent his Apostles whose "voice went out through all the earth, and their words to the end of the world" (Ps 19:5). As "witnesses of divine and Catholic truth",<sup>(72)</sup> the missionaries in Oceania travelled over land and sea, passed through deserts and floods, and faced great cultural difficulties in accomplishing their remarkable work. Inspired by this story of the Church's birth in Oceania, the Synod Fathers felt the need for a new and courageous preaching of the Gospel in our own day.

The Church faces a twofold challenge in seeking to proclaim the Gospel in Oceania: on the one hand, the traditional religions and cultures, and on the other, the modern process of secularization. In each case, "the first and most urgent task is the proclamation of the Risen Christ by way of a personal encounter which would bring the listener to conversion of heart and the request for Baptism".<sup>(73)</sup> Whether faced with traditional religion or refined philosophy, the Church preaches by word and deed that "the truth is in Jesus Christ" (Eph 4:21; cf. Col 1:15-20). In the light of that truth, she makes her contribution to discussion about the values and ethical principles which make for happiness in human life and peace in society. The faith must always be presented in a rationally coherent way, so as to favour its capacity to penetrate into ever wider fields of human experience. Faith in fact has the force to shape culture itself by penetrating it to its very core. Alert to both Christian tradition and contemporary cultural shifts, the word of faith and reason must go hand in hand with the witness of life if evangelization is to bear fruit. Above all, however, what is needed is a fearless proclamation of Christ, "a parrhesia of faith".<sup>(74)</sup>

### Evangelization and the Media

21. In today's world, the media of social communication are increasingly powerful as agents of modernization, even in the remotest parts of Oceania. The media have a great impact on the lives of people, on their culture, on their moral thinking and on their religious behaviour; and, when used indiscriminately, they can have a harmful effect on traditional cultures. The Synod Fathers called for a greater awareness of the power of the media, which "offer an excellent opportunity for the Church to evangelize, to build community and solidarity".<sup>(75)</sup> Indeed the media often provide the only contact the Church has with non-practising Catholics or the wider community. Therefore, they should be employed in a creative and responsible manner.<sup>(76)</sup>

Where possible, the Church should devise a pastoral plan for communications at the national, diocesan and parish levels. Coordination of the Church's efforts is necessary to ensure better preparation of those who represent the Church in the media,<sup>(77)</sup> and to encourage dedicated lay people to enter the media professionally as a vocation. It is a sign of hope that Christians working in the media are giving evidence of their commitment to Christian values. With their assistance, religious material and programmes reflecting human and moral values can be professionally produced, even if funding is often a problem. A Catholic media centre for the whole of Oceania could be of great help in using the media for the purposes of evangelization. The Bishops also expressed concern about standards of decency in the public media and denounced the level of violence they have reached.<sup>(78)</sup> Church leaders need to collaborate when codes of ethics for the media are drawn up;<sup>(79)</sup> and families and young people need assistance in critically evaluating the content of programmes. Catholic educational institutions therefore have a vital role in helping people, especially youth, come to a critical appreciation of the media. The Christian faith challenges us all to become discriminating listeners, viewers and readers.<sup>(80)</sup>

Advertising has great power to encourage both good and evil. The process of globalization and the growing pattern of monopolies in the media give it still greater power over people. By means of image and suggestion, advertising often propagates a culture of consumerism, reducing people to what they have or can acquire. It leads people to believe that there is nothing beyond what a consumer economy can offer. "The greatest concern with this power is that, for the most part, it ceaselessly propagates an ideology that is clearly in conflict with the vision of the Catholic faith".<sup>(81)</sup> It is important therefore that the faithful, especially the young, be equipped to deal critically with the advertising which is an ubiquitous part of life today. This means that they must be given a clear and strong sense of the human and Christian values which are fundamental to the Catholic understanding of human life.

## **The challenge of faith today**

### Catechesis

22. The Church's mission to "tell the truth of Jesus Christ" in Oceania today summons her to renew her catechesis, instruction and formation in the faith. The media's impact on people's lives illustrates how strongly a new social reality demands fresh ways of presenting the faith. Catechesis aims to educate children, young people and adults in the faith. It includes especially "the teaching of Christian doctrine imparted in an organic and systematic way with a view of initiating the hearers into the fullness of Christian life".<sup>(82)</sup> The Synod Fathers proposed a greater commitment of both finance and personnel to reach groups that are easily overlooked. The need for comprehensive courses for adults and children with special needs, who do not attend Catholic schools, calls for special care and systematic planning. Basic to all human rights is the freedom of religion, which includes the right to be instructed in the faith.<sup>(83)</sup> "Every baptized person, precisely by reason of being baptized, has the right to receive from the Church instruction and education enabling him or her to enter on a truly Christian life".<sup>(84)</sup> This requires that governments and school authorities ensure that this right is effectively respected. "Where there is a genuine partnership between government and Church in the provision and operation of schools, the education

of the nation's children and young people is greatly advanced".<sup>(85)</sup> Men and women religious, lay people and clergy have laboured to achieve this end, often with prodigious effort and many sacrifices. Their work needs to be consolidated and extended to ensure that all the baptized grow in faith and in understanding of the truth of Christ.

### Ecumenism

23. The Synod Fathers saw disunity among Christians as a great obstacle to the credibility of the Church's witness. They expressed their earnest desire that the scandal of disunity not continue and that new efforts of reconciliation and dialogue be made, so that the splendour of the Gospel may shine forth more clearly.

In many missionary areas of Oceania, the differences between Churches and Ecclesial Communities have led in the past to competition and opposition. In recent times, however, relationships have been more positive and fraternal. The Church in Oceania has given ecumenism a high priority and has brought a freshness and openness to ecumenical activities. Opportunities are welcomed for "a dialogue of salvation"<sup>(86)</sup> aimed at greater mutual understanding and enrichment. The strong desire for unity in faith and worship is one of the gifts of the Holy Spirit to Oceania;<sup>(87)</sup> and cooperation in areas of charity and social justice is a clear sign of Christian fraternity. Ecumenism found fertile soil in which to take root in Oceania, because in many places local communities are closely knit. A still stronger desire for unity in faith will help to keep these communities together. This desire for deeper communion in Christ was symbolized at the Synod by the presence of the fraternal delegates from other Churches and Ecclesial Communities. Their contributions were encouraging and helpful in making progress towards the unity willed by Christ.

In the work of ecumenism, it is essential that Catholics be more knowledgeable about the Church's doctrine, her tradition and history, so that in understanding their faith more deeply they will be better able to engage in ecumenical dialogue and cooperation. There is a need too for "spiritual ecumenism", by which is meant an ecumenism of prayer and conversion of heart. Ecumenical prayer will lead to a sharing of life and service where Christians do as much together as is possible at this time. "Spiritual ecumenism" can also lead to doctrinal dialogue, or its consolidation where it already exists. The Synod Fathers saw it as very useful to have ecumenically accepted texts of the Scriptures and prayers for common use. They wanted to see greater attention given to the pastoral needs of families whose members belong to different Christian communities. They also encouraged the Church's agencies, where possible, to share social services with other Christian communities. It is good that Christian leaders act in concert and make common declarations on religious or social issues, when such declarations are necessary and opportune.<sup>(88)</sup>

### Fundamentalist Groups

24. Ecumenism needs to be distinguished from the Church's approach to fundamentalist religious groups and movements, some of which are Christian in inspiration. In some missionary areas, the Bishops are concerned about the effect that these religious groups or sects are having on the Catholic community. Some groups base their ideas on a reading of Scripture, often employing apocalyptic images, threats of a dark future for the world, and promises of economic rewards for their followers. While certain of these groups are openly hostile to the

Church, others wish to engage in dialogue. In more developed and secularized societies, concern is growing about fundamentalist Christian groups which draw young people away from the Church, and even from their families. Many different movements offer some form of spirituality as a supposed remedy for the harmful effects of an alienating technological culture in which people often feel powerless. The presence and activity of these groups and movements are a challenge to the Church to revitalize her pastoral outreach, and in particular to be more welcoming to young people and to those in grave spiritual or material need.<sup>(89)</sup> It is also a situation which calls for better biblical and sacramental catechesis and an appropriate spiritual and liturgical formation. There is a need too for a new apologetics in keeping with the words of Saint Peter: “Be ready to give reasons for your hope” (1 Pt 3:15). In this way, the faithful will be more confident in their Catholic faith and less susceptible to the allure of these groups and movements, which often deliver the very opposite of what they promise.

## **Interreligious Dialogue**

25. Greater travel opportunities and easier migration have resulted in unprecedented encounters among the cultures of the world, and hence the presence in Oceania of the great non-Christian religions. Some cities have Jewish communities, made up of a considerable number of survivors of the Holocaust, and these communities can play an important role in Jewish-Christian relations. In some places too there are long established Muslim communities; in others, there are communities of Hindus; and in still others, Buddhist centres are being established. It is important that Catholics better understand these religions, their teachings, way of life and worship. Where parents from these religions enrol their children in Catholic schools, the Church has an especially delicate task.

The Church in Oceania also needs to study more thoroughly the traditional religions of the indigenous populations, in order to enter more effectively into the dialogue which Christian proclamation requires. “Proclamation and dialogue are, each in its own place, component elements and authentic forms of the one evangelizing mission of the Church. They are both oriented toward the communication of salvific truth”.<sup>(90)</sup> In order to pursue a fruitful dialogue with these religions, the Church needs experts in philosophy, anthropology, comparative religions, the social sciences and, above all, theology.

## **Hope for society**

### The Church’s Social Teaching

26. The Church regards the social apostolate as an integral part of her evangelizing mission to speak a word of hope to the world; and her commitment in this regard is seen in her contribution to human development, her promotion of human rights, the defence of human life and dignity, social justice and protection of the environment. The Synod Fathers were one with their people in expressing determination to act against injustices, corruption, threats to life and new forms of poverty.<sup>(91)</sup>

Late in the nineteenth century when an industrial, consumer society was in its early years, the Church in Oceania

welcomed papal social teaching on workers' rights to employment and a just wage. In the developing countries of Oceania, the social doctrine of the Church has been well received, especially since the Second Vatican Council, and the Bishops of Oceania have taught this social doctrine effectively and applied it to current social issues. Statements by the Federation of the Bishops' Conferences of Oceania, the Bishops' Conferences and individual Bishops reflect the full range of the Church's social teaching and illustrate how she has attempted to advance the cause of indigenous peoples and the rights of smaller nations, and to strengthen the bonds of international solidarity. The Church has also helped to develop democratic forms of government which respect human rights, the rule of law and its just application.

It is certain that commitment to social justice and peace is an integral part of the Church's mission in the world.<sup>(92)</sup> Yet her mission does not depend upon political power. "The Church is concerned with the temporal aspects of the common good because they are ordered to the sovereign Good, our ultimate end".<sup>(93)</sup> The Church's social teaching needs to be taught and implemented still more effectively in Oceania, especially through structures such as commissions for justice and peace. This social teaching is to be "clearly presented to the faithful in easily understandable terms and be witnessed to by a simple life style".<sup>(94)</sup> A more acute analysis of economic injustice and of corruption needs to be made so that adequate measures can be proposed to overcome them. Catholic organizations involved in action for justice are encouraged to remain attentive to new forms of poverty and injustice and to help eliminate their causes.

## Human Rights

27. The Synod Fathers were keen that the people of Oceania become still more conscious of human dignity, which is based on the fact that all are created in God's image (cf. Gen1:26). Respect for the human person entails respect for the inviolable rights that flow from a person's dignity. All basic rights are prior to society and must be recognized by it.<sup>(95)</sup> Failure to respect the dignity or rights of another person is contrary to the Gospel and destructive of human society. The Church encourages young people and adults to respond effectively to injustice and to the failure to respect human rights, some of which are either under threat in Oceania or need to be more widely respected.

Among these is the right to work and employment, so that people can support themselves and raise and educate a family. Unemployment among youth is a major concern, leading in some countries to a rising incidence of youth suicide. Labour unions can perform a unique role in defending workers' rights. To be faithful to their calling, politicians, government officials and police must be honest and avoid corruption in all its forms, for it is always a serious injustice to citizens. By working together with politicians, business executives and community leaders, Church leaders can offer valuable assistance in establishing ethical guidelines on issues affecting the common good and ensuring that they are put into practice.

Without claiming to be experts in the field, Church leaders need to be well informed about economic affairs and their impact on society. The Synod Fathers reiterated that "a theory that makes profit the exclusive norm

and ultimate end of economic activity is morally unacceptable”.<sup>(96)</sup> So-called “economic rationalism”<sup>(97)</sup> is a tenet which tends increasingly to divide rich and poor nations, communities and individuals. The smaller nations of Oceania are particularly vulnerable to economic policies based on a social philosophy of this kind, because it has a diminished sense of distributive justice, and is too little concerned to ensure that everyone has the necessities of life and an integral human development. The fact that families suffer from such economic policies is particularly worrying. The Bishops pointed out that another destructive phenomenon in Oceania is the spread of gambling, especially in casinos which hold out the promise of a quick and spectacular solution to financial woes, only to lead people into an even more difficult situation.

## Indigenous Peoples

28. Unjust economic policies are especially damaging to indigenous peoples, young nations and their traditional cultures; and it is the Church’s task to help indigenous cultures preserve their identity and maintain their traditions. The Synod strongly encouraged the Holy See to continue its advocacy of the United Nations Declaration on the Rights of Indigenous Peoples.<sup>(98)</sup>

A special case is that of the Australian Aborigines whose culture struggles to survive. For many thousands of years they have sought to live in harmony with the often harsh environment of their “big country”; but now their identity and culture are gravely threatened. In more recent times, however, their joint efforts to ensure survival and gain justice have begun to bear fruit. There was a saying from Australian bush life heard in the Synod Hall: “If you stay closely united, you are like a tree standing in the middle of a bush-fire sweeping through the timber: the leaves are scorched, the tough bark is scarred and burned, but inside the tree the sap still flows, and under the ground the roots are still strong. Like that tree you have survived the flames, and you have still the power to be born. The time for rebirth is now”.<sup>(99)</sup> The Church will support the cause of all indigenous peoples who seek a just and equitable recognition of their identity and their rights;<sup>(100)</sup> and the Synod Fathers expressed support for the aspirations of indigenous people for a just solution to the complex question of the alienation of their lands.<sup>(101)</sup>

Whenever the truth has been suppressed by governments and their agencies or even by Christian communities, the wrongs done to the indigenous peoples need to be honestly acknowledged. The Synod supported the establishment of “Truth Commissions”,<sup>(102)</sup> where these can help resolve historical injustices and bring about reconciliation within the wider community or the nation. The past cannot be undone, but honest recognition of past injustices can lead to measures and attitudes which will help to rectify the damaging effects for both the indigenous community and the wider society. The Church expresses deep regret and asks forgiveness where her children have been or still are party to these wrongs. Aware of the shameful injustices done to indigenous peoples in Oceania, the Synod Fathers apologized unreservedly for the part played in these by members of the Church, especially where children were forcibly separated from their families.<sup>(103)</sup> Governments are encouraged to pursue with still greater energy programmes to improve the conditions and the standard of living of indigenous groups in the vital areas of health, education, employment and housing.

## Development Aid

29. Just as in the early Church one Christian community was bound to another by hospitality offered to pilgrims, mutual assistance and the sharing of material resources and personnel, practical solidarity between the local Churches in Oceania makes *communio* visible to the world. Many national economies in Oceania are still dependent on international support and need a continuing supply of development aid. While aid for socio-economic development is generously offered by international agencies, the Church finds it more difficult to obtain direct aid for her pastoral projects, even though many of these reach far beyond the bounds of the Catholic community. Given the situation, the Synod recommended that Church-related funding agencies review their criteria in order to open up their resources to the apostolic works which are a necessary pre-requisite for the social development needed to improve living standards.<sup>(104)</sup>

The Synod Fathers also asked that “the Church in the more wealthy parts of Oceania share her resources with the other local Churches in the Pacific as well as cooperate with them in establishing links with funding agencies”.<sup>(105)</sup> Nor can the Church in Oceania be indifferent to the fate of the poorer Churches in neighbouring Asia, whenever they stand in need of her help and services. The Synod acknowledges the generous contributions of money and resources made by Catholic people to aid programmes, and especially to the work of lay personnel engaged in often very difficult situations to improve human conditions in Oceania.

## The Sanctity of Life

30. In the more secularized and affluent societies of Oceania, the right to life is the one most under threat. There is a profound contradiction in this, for these are often societies which speak insistently about human rights while denying the most basic right of all. Did not Christ himself say “I came that they may have life, and have it abundantly” (Jn10:10)? Indeed, “the Gospel of life is at the heart of Jesus’ message”.<sup>(106)</sup> In the present conflict between a “culture of life” and “a culture of death”, the Church has to defend the right to life from the moment of conception until natural death, at every stage of its development. The moral and social values which should inform society are based on the sacredness of life created by God. Presenting a clear perspective on humanity’s origin from God the Creator and its eternal destiny will help people see life’s true value. It is not a question of the Church seeking to impose her morality on others, but rather of being faithful to her mission to share the full truth about life as taught by Jesus Christ. The promotion of the sacredness of life is a consequence of the Christian understanding of human existence. This message must be taught by the Church not only within the Catholic community but, in a prophetic way, to society as a whole in order to declare the power and beauty of the Gospel of life.

On this point, the witness of Catholic health care institutions is essential, as is the role of the media in promoting the value of life. In order to present the Church’s position on biomedical and health issues in the public forum clearly and faithfully, Bishops, priests, and experts in law and medicine need to be trained adequately.<sup>(107)</sup> Life must be promoted and its sanctity defended against every threat of violence in its many forms, especially violence against

the weakest - the elderly, the dying, women, children, the disabled and the unborn.

## **The Environment**

31. Oceania is a part of the world of great natural beauty, and it has succeeded in preserving areas that remain unspoiled. The region still offers to indigenous peoples a place to live in harmony with nature and one another. (108) Because creation was entrusted to human stewardship, the natural world is not just a resource to be exploited but also a reality to be respected and even revered as a gift and trust from God. It is the task of human beings to care for, preserve and cultivate the treasures of creation. The Synod Fathers called upon the people of Oceania to rejoice always in the glory of creation in a spirit of thanksgiving to the Creator.

Yet the natural beauty of Oceania has not escaped the ravages of human exploitation. The Synod Fathers called upon the governments and peoples of Oceania to protect this precious environment for present and future generations. (109) It is their special responsibility to assume on behalf of all humanity stewardship of the Pacific Ocean, containing over one half of the earth's total supply of water. The continued health of this and other oceans is crucial for the welfare of peoples not only in Oceania but in every part of the world.

The natural resources of Oceania need to be protected against the harmful policies of some industrialized nations and increasingly powerful transnational corporations which can lead to deforestation, despoliation of the land, pollution of rivers by mining, over-fishing of profitable species, or fouling the fishing-grounds with industrial and nuclear waste. The dumping of nuclear waste in the area constitutes an added danger to the health of the indigenous population. Yet it is also important to recognize that industry can bring great benefits when undertaken with due respect for the rights and the culture of the local population and for the integrity of the environment.

## **Charitable works**

### Catholic Institutions

32. The history of the Church in Oceania cannot be recounted without telling the story of the Church's remarkable contributions in the fields of education, health care and social welfare. Catholic institutions allow the light of the Gospel to penetrate cultures and societies, evangelizing them from within, as it were. Because of the work of Christian missionaries, ancient ways of violence have given way to standards of law and justice. Through education Christian leaders and responsible citizens have been formed and Christian moral values have shaped society. Through her educational programmes, the Church seeks the integral formation of the human person, looking to Christ himself as the fullness of humanity. The apostolate of charity witnesses to the fullness of Christian love not only in speech but in action. Such love leads people to wonder about its source and makes them ask why Christians are different in their values and behaviour.<sup>(110)</sup> Through apostolic charity such as this, Christ touches the lives of others, and leads them to a greater sense of what it might mean to speak of and build a "civilization of love".<sup>(111)</sup>

The Church takes advantage of religious freedom in society to proclaim Christ publicly and to share his love abundantly through institutions inspired by that love. The right of the Church to found educational, health care and social service institutions is based on such freedom. The social apostolate of these institutions can be more effective when governments not only tolerate this work but cooperate in this area with Church authorities, with unequivocal respect for each other's role and competence.

## Catholic Education

33. Parents are the first educators of their children in human values and the Christian faith; and they have the fundamental right to choose the education suitable for their children. Schools assist parents in exercising this right by helping students to develop as they should. In some situations, the Catholic school is the only contact parents have with the community of the Church.

The Catholic school has an ecclesial identity, because it is a part of the evangelizing mission of the Church.<sup>(112)</sup> Yet a distinguishing feature of Catholic education is that it is open to all, especially to the poor and weakest in society.<sup>(113)</sup> It is vital that school and parish cooperate, and that the school be integrated into the parish's pastoral programme, especially with regard to the Sacraments of Penance, Confirmation and Eucharist.

In the primary school, teachers develop children's capacity for faith and understanding which will blossom fully in later years. Secondary schools provide a privileged means by which "the Catholic community gives the student an academic, vocational, and religious education".<sup>(114)</sup> In these years, students usually come to a greater discernment about their faith and moral life, based on a more personal knowledge of Jesus Christ as the Way, the Truth, and the Life. Such a faith, nourished in the home, school and parish through prayer and the Sacraments, shows itself in a sound and upright moral life. The great challenge for Catholic schools in an increasingly secularized society is to present the Christian message in a convincing and systematic way. Yet "catechesis runs the risk of becoming barren, if no community of faith and Christian life welcomes those being formed".<sup>(115)</sup> Therefore, young people need to be genuinely integrated into the community's life and activity.

The Synod Fathers wished to acknowledge the work of the religious men and women and lay people who have laboured so generously in the field of Catholic education,<sup>(116)</sup> establishing and staffing Catholic schools, often in the face of great difficulty and with great personal sacrifice. Their contribution to the Church and civil society in Oceania has been inestimable. In today's educational context, religious congregations, institutes and societies have every reason to cherish their vocation. Consecrated women and men are needed in educational institutions to bear radical witness to Gospel values and so to inspire them in others. In recent times, the laity's generous response to new needs has opened new vistas for Catholic education. For the lay people involved, teaching is more than a profession; it is a vocation to form students, a widespread and indispensable lay service in the Church. Teaching is always a challenge; but with the cooperation and encouragement of parents, clergy and religious, the laity's involvement in Catholic education can be a precious service of the Gospel, and a way of Christian sanctification for both teacher and students.

The identity and success of Catholic education is linked inseparably to the witness of life given by the teaching staff. Therefore, the Bishops recommended that “those responsible for hiring teachers and administrators in our Catholic schools take into account the faith-life of those they are hiring”.<sup>(117)</sup> School staff who truly live their faith will be agents of a new evangelization in creating a positive climate for the Christian faith to grow and in spiritually nourishing the students entrusted to their care. They will be especially effective when they are active practising Catholics, committed to their parish community and loyal to the Church and her teaching.

Today, the Church in Oceania is extending her commitment in education. Professional Catholic lay people are greatly helped by Catholic tertiary institutes, training colleges and universities, which nourish them intellectually, train them professionally and support their faith so that they can take their rightful place in the Church’s mission in the world. This adventure in tertiary education is in its early stages in Oceania and calls for special gifts of wisdom and insight in its development. Catholic universities are communities bringing together scholars from the various branches of human knowledge. They are dedicated to research, teaching and other services in keeping with their cultural mission. It is their honour and responsibility to dedicate themselves without reserve to the cause of truth.<sup>(118)</sup> They are called to observe the highest standards of academic research and teaching as a service to the local, national and international communities. In this way, they play a vital part in society and the Church, preparing future professionals and leaders, who will take their Christian responsibility seriously. The Bishops saw it as essential that they maintain personal contact with academics and foster qualities of leadership in those engaged in the field of tertiary education.

Research and teaching in tertiary institutions must bring Christian values to bear on the arts and sciences. The Church needs experts in philosophy, ethics and moral theology so that human values can be properly understood in an increasingly complex technological society; and the unity of knowledge cannot be complete unless theology is allowed to shed its light upon all fields of inquiry. Particular care must be taken in choosing and forming scholars to work in the area of theology. The Apostolic Constitution “*Ex Corde Ecclesiae*” indicates that the majority of professors at Catholic universities and other Catholic tertiary institutes should be active Catholics. Those responsible for hiring should carefully choose professors, who are not only competent in their field of expertise but who can serve as role models for our young people”.<sup>(119)</sup> The presence of dedicated Catholics in tertiary institutions is vital and constitutes a true service to the Church and society.

## **Health Care**

34. Jesus came to heal the sick and comfort the afflicted. As the Risen Christ, he continues his ministry of healing and comfort through those who bring God’s compassion to people in their weakness and suffering. This ministry of the Church of Oceania is for many people the most visible and tangible proof of God’s love. The messianic mission of mercy,<sup>(120)</sup> of healing and forgiveness, must be continued unstintingly and accomplished in new ways that respond to current needs.

The history of health care in Oceania shows the intimate link between health care and the Church's mission and how it covers every aspect of healing, including provision of the simplest medical services in remote places. The Church has been among the first to reach out to those abandoned by others, as in the care of lepers and those suffering from HIV/AIDS. She also administers training hospitals where health care workers are excellently prepared. Because of the current crisis in providing and financing medical care in Oceania, some institutions are under severe strain; but this cannot be allowed to compromise the Church's fundamental commitment in this area.

The Church's teaching on the dignity of the human person and the sanctity of life needs to be explained to those responsible for legislation and court decisions, especially since their judgements have an impact on medical care, the administration of hospitals and the provision of medical services. Today Catholic hospitals and health care institutions are at the forefront of the Church's promotion of human life from the moment of conception until natural death. The Synod Fathers acknowledged the dedication of the religious congregations which established Catholic health care systems throughout Oceania. The Church and society as a whole owe them an immense debt of gratitude. Their presence in hospitals must continue, together with lay people prepared to work with the different institutes of consecrated life in the spirit of their charism. These people enable the Gospel of life to be proclaimed unambiguously in a society which is often confused about moral values. The Synod Fathers recommended that to counteract the influence of "a culture of death", all Christians be urged to help ensure that the great heritage of Catholic health care not be jeopardized.<sup>(121)</sup>

Catholic universities have a leading role to play in educating medical professionals to apply Catholic teaching to the new challenges constantly arising in the medical field. In every way possible, associations of Catholic doctors, nurses and health care workers are to be fostered and, where they do not exist, they should be established. Administrators and staff in Catholic institutions require formation in the application of Catholic moral principles to their professional life. This is a delicate task, since some who are involved in the work of a Catholic hospital are not familiar with these principles or do not agree with them. When Catholic teaching is properly presented, however, such people often experience the peace which comes from living in harmony with truth and cooperate readily.

Faith in the redeeming Cross of Christ gives new meaning to sickness, suffering and death. The Synod Fathers urged support for those who own or sponsor facilities which bring the compassion of Christ to those who suffer, particularly people with disabilities, HIV/AIDS, the elderly, the dying, indigenous peoples and those in isolated areas.<sup>(122)</sup> They were particularly conscious of those who provide these services in the most remote areas: the jungle, small islands or the Australian "Outback". Working often with scarce resources and little financial support, their dedication gives powerful testimony to God's love for the poor, the sick and the deprived. Those working in hospitals, caring for the aged or offering other forms of health care to the least of their brothers and sisters (cf. Mt 25:40) should know that the Church highly esteems their dedication and generosity, and thanks them for being in the forefront of Christian charity.

## **Social Services**

35. During his life on earth, Jesus was sensitive to every human weakness and affliction. “At the heart of his teaching are the eight beatitudes, which are addressed to people tried by various sufferings in their temporal life”.<sup>(123)</sup> In the footsteps of the Lord, the Church’s mission of charity reaches out to those most in need: orphans, the poor, the homeless, the abandoned and excluded. It is carried out by all who care for the needy; and as well as personal initiatives, it involves institutions established to meet various needs on the parish, diocesan, national or international level.

This is not the place for an exhaustive listing of the many social services offered by the Church in Oceania; but some were given special mention in the Synod Hall. The Church provides counselling services to people with personal or social difficulties, seeking to strengthen the family, to prevent marriage breakdown and divorce and heal its painful effects. Providing soup kitchens, instituting care centres for various people or working with the homeless and “street children” are only a part of the Church’s social apostolate in Oceania. In a quiet and unobtrusive manner, some parish groups and apostolic associations work to remedy the often hidden harm produced by poverty in the suburbs or in rural areas. Other groups help in bringing peace or reconciliation between clans, tribes or other groups in conflict. Women, particularly mothers, can have an extraordinary effect in promoting peaceful ways of resolving conflict.<sup>(124)</sup> The Church’s care also extends to those who are addicted to alcohol, drugs or gambling, or are victims of sexual abuse. The Synod Fathers also mentioned refugees and asylum seekers, who are increasing in number and whose human dignity demands that they be welcomed and given appropriate care. Since the nations of Oceania are dependent on the oceans and seas, the Synod Fathers also voiced concern for seafarers, who often work under severe conditions and endure many hardships.

Frequently, volunteers give their time, energy and professional services to these apostolates without remuneration. For those who have chosen self-sacrificing love as their way of life, no human acknowledgment or reward is sought, nor would any be adequate. Their overarching concern is to play their part in the Church’s mission to tell the truth of Jesus Christ, to walk his way and to live his life. These people are fundamental to any planning for a new evangelization of the peoples of Oceania. Faith is awakened by the preaching of God’s word and hope is inspired by the promise of his Kingdom, but charity is infused by the Holy Spirit, “the Lord and Giver of life”.

## CHAPTER IV

# LIVING THE LIFE OF JESUS CHRIST IN OCEANIA

“When he had ceased speaking, he said to Simon, ‘Put out into deep water and let down your nets for a catch’. And Simon answered, ‘Master, we toiled all night and took nothing! But at your word I will let down the nets’. And when they had done this, they made a great catch of fish; and as their nets were breaking, they beckoned to their partners in the other boat to come and help them. And they came and filled both the boats, so they began to sink” (Lk 5:4-7).

## Spiritual and Sacramental life

### Come Holy Spirit!

36. “God’s love has been poured into our hearts through the Holy Spirit who has been given to us” (Rom 5:5). When “the Word was made flesh and dwelt among us” (Jn 1:14), God broke into human history so that we might become “partakers of the divine nature” (2 Pt 1:4). Living in Christ implies a way of life made new by the Spirit. Saint Paul speaks of putting on the new nature “created after the likeness of God in true righteousness and holiness” (Eph 4:24). The Church in Oceania has been endowed by the Holy Spirit with many gifts. For all the great diversity of cultures and traditions, she is one in faith, hope and charity, one in Catholic doctrine and discipline, one in the communion of the Most Holy Trinity.<sup>(125)</sup> In this communion, all are called to live the life of Christ in the midst of their daily activities, to show forth the wonderful fruits of the Spirit (cf. Gal 5:22-23) and to be witnesses to God’s love and mercy in the world.

### The Spirit of Interiority

37. The Special Assembly emphasized the fundamental importance for the Church in Oceania of prayer and the interior life in union with Christ. Indigenous people have retained their appreciation of silence, contemplation and a sense of mystery in life. The frenetic activity of modern life with all its pressures makes it indispensable that Christians seek prayerful silence and contemplation as both conditions for and expressions of a vibrant faith. When God is no longer at the centre of human life, then life itself becomes empty and meaningless.<sup>(126)</sup>

The Synod Fathers recognized the need to give fresh impetus and encouragement to the spiritual life of all the faithful. Jesus himself often “went off to a lonely place and prayed there” (Mk 1:35). The Evangelist notes: “His reputation continued to grow, and large crowds would gather to hear him and to have their sickness cured; he would always go off to some place where he could be alone and pray” (Lk 5:15-16). Jesus’ prayer is our example, especially when we are caught up in the tensions and responsibilities of daily life. The Synod Fathers emphasized the importance of the life of prayer, considering the fact that the whole region faces the growing impact of secularization and materialism; and as a stimulus to the interior life, they encouraged visits to the Blessed Sacrament, the Stations of the Cross, the Rosary and other devotional exercises, as well as prayers in the family.<sup>(127)</sup>

The presence in Oceania of communities of contemplative life is an especially powerful reminder of the spirit of interiority which helps us find the presence of God in our hearts. The spirit of interiority is also crucial in inspiring and guiding pastoral initiatives. It offers the strength of a genuinely apostolic love which mirrors the love of God.

### “Lectio Divina” and Scripture

38. The Church “forcefully and specially exhorts all the Christian faithful...to learn ‘the surpassing knowledge of Jesus Christ’ (Phil 3:8) by frequent reading of the divine Scriptures... Let them remember, however, that prayer should accompany the reading of Sacred Scripture, so that a dialogue takes place between God and the reader.

For ‘we speak to him when we pray; we listen to him when we read the divine oracles’”.<sup>(128)</sup> The word of God in the Old and New Testament is fundamental for all who believe in Christ, and it is the inexhaustible wellspring of evangelization. Holiness of life and effective apostolic activity are born of constant listening to God’s word. A renewed appreciation of Scripture allows us to return to the sources of our faith and encounter God’s truth in Christ. Acquaintance with the Scriptures is required of all the faithful, but particularly of seminarians, priests and religious. They are to be encouraged to engage in *lectio divina*, that quiet and prayerful meditation on the Scripture that allows the word of God to speak to the human heart. This form of prayer, privately or in groups, will deepen their love for the Bible and make it an essential and life-giving element of their daily lives.<sup>(129)</sup>

For this reason, the Scriptures need to be accessible to all in Oceania. They need to be well and faithfully translated into the greatest possible number of vernacular languages. Much highly commendable work of biblical translation has already been done, but more still needs to be done. It is not enough, however, to provide the many linguistic groups with a biblical text which they can read; to help them understand what they read, there is a need for solid and continuing biblical formation for all who are called to proclaim and teach the word of God.<sup>(130)</sup>

## Liturgy

39. The Synod Fathers reflected at length on the importance of the liturgy in the local Churches in Oceania, and they expressed the desire that the local Churches continue to foster their liturgical life so that the faithful can enter more deeply into the mystery of Christ. They recognized greater participation of the People of God in the liturgy as one of the fruits of the Second Vatican Council, which has led in turn to a greater sense of mission, as it was intended to do. Christian life has been invigorated by a renewed understanding and appreciation of the liturgy, especially of the Eucharistic Sacrifice. The Council saw the renewal of the liturgy as a process of coming to an ever deeper understanding of the sacred rites, and in this regard many local Churches are involved in a theoretical reflection and practical actuation of a proper inculturation of the forms of worship, with due regard for the integrity of the Roman Rite. Adequate translations of liturgical texts and appropriate use of symbols drawn from local cultures can avert the cultural alienation of indigenous people when they approach the Church’s worship.<sup>(131)</sup> The words and signs of the liturgy will be the words and signs of their soul.

## The Eucharist

40. The Eucharist completes Christian initiation and is the source and summit of the Christian life. Christ is really and fully present in the Sacrament of his Body and Blood, offered in sacrifice for the life of the world and received in communion by the faithful. From the very beginning, the Church has not ceased to obey the Lord’s command, “Do this in memory of me” (1 Cor 11:24). The Catholics of Oceania understand well the central place of the Eucharist in their lives. They realize that regular and prayerful celebration of the Eucharistic Sacrifice enables them to follow the path of personal holiness and to play their part in the Church’s mission. The Synod Fathers were quick to acknowledge this widespread appreciation and intense love of the Church’s greatest Sacrament.

They also expressed their concern that many communities throughout Oceania go without the celebration of the Eucharist for long periods.<sup>(132)</sup> There are many reasons for this: the growing scarcity of priests available for pastoral ministry; especially in Australia, the growth of rural poverty and the movement to cities, which leads to an ever decreasing population and the isolation of many communities. The vast distances between many islands often mean that it is impossible to have a resident priest. Many communities therefore gather on the Lord's Day for services which are not celebrations of the Eucharist; and there is a need for great wisdom and courage in addressing this most regrettable situation. I make my own the Synod's insistence that greater efforts be made to awaken vocations to the priestly life, and to allocate priests throughout the region in a more equitable way.

### The Sacrament of Penance

41. "It is important for us to reflect on the fact that Christ wills the Sacrament of Penance to be the source and sign of radical mercy, reconciliation and peace. The Church serves the world best when she is precisely what she is meant to be: a reconciled and reconciling community of Christ's disciples... The Church is never more herself than when she meditates and reconciles, in the love and power of Jesus Christ, through the Sacrament of Penance".<sup>(133)</sup> This is why the Synod Fathers were grateful that in many of the Churches in Oceania the Sacrament of Penance is widely practised and cherished as a source of healing grace.

Yet they also noted that in other local Churches there are serious pastoral challenges with regard to this Sacrament. Especially in developed societies, many of the faithful are confused or indifferent about the reality of sin and the need for forgiveness in the Sacrament of Penance. At times, the true sense of human freedom is not understood. The recovery of the fundamental place of the Sacrament of Penance in the life of the People of God was a deep desire of the Bishops. They urged "that a more extensive catechesis be offered on personal responsibility, the reality of sin and the Sacrament of Reconciliation so as to remind Catholics of the loving mercy of Jesus Christ made available through this Sacrament and of the need for sacramental absolution for serious sin committed after Baptism; that, because of the assistance to spiritual progress provided by this Sacrament, priests are to be encouraged not only to make the Sacrament of Reconciliation an important part of their own lives, but to ensure its availability on a regular basis as a vital part of their ministry to the faithful".<sup>(134)</sup> The experience of the Great Jubilee suggests that the time has come for such a renewed catechesis and practice of the great Sacrament of mercy.

### Anointing of the Sick

42. Christ's compassionate love is offered in a special way to the sick and suffering. This is reflected in the care which the Church extends to all who are suffering in body and spirit. The renewed Liturgy of the Sick has been a most positive contribution to the life of those who are in situations where life is endangered: serious illness, life-threatening surgery or old age. The elderly often suffer from the pain of isolation and loneliness. Community celebrations of this Sacrament are of great help and consolation to the sick and suffering, and a source of hope for those who accompany them. In a special way, the Synod Fathers wanted to thank all who support the sick and dying. There is a precious witness to the love of Christ himself at a time when the sick and dying can be made to

seem a burden.<sup>(135)</sup>

## **The people of God**

### The Vocation of the Laity

43. Fundamental to Christian discipleship is the experience of being called like Matthew. “As Jesus was walking on from there he saw a man named Matthew sitting by the customs house, and he said to him, ‘Follow me’. And he got up and followed him” (Mt 9:9). In Baptism, all Christians have received the call to holiness. Each personal vocation is a call to share in the Church’s mission; and, given the needs of the new evangelization, it is especially important now to remind lay people in the Church of their particular call. The Synod Fathers “rejoiced in the work and witness of so many of the lay faithful who have been an integral part of the growth of the Church in Oceania”.<sup>(136)</sup> From the very beginning of the Church in this vast region, lay people have contributed to her growth and mission in many different ways; and they continue to do so through their involvement in various forms of service, especially in parishes as catechists, instructors in sacramental preparation, youth work, leadership of small groups and communities.

In a world that needs to see and hear the truth of Christ, lay people in their various professions are living witnesses to the Gospel. It is the fundamental call of lay people to renew the temporal order in all its many elements.<sup>(137)</sup> The Synod Fathers “pledged their support for lay men and women who live out their principal Christian vocation in their daily lives and renew the temporal order through personal and family values, economic interests, the trades and professions, political institutions, international relations, the arts and so on”.<sup>(138)</sup> The Church supports and encourages lay people who strive to establish the proper scale of values in the temporal order and thus direct it to God through Christ. In this way, the Church becomes the yeast that leavens the entire loaf of the temporal order.

### Young People in the Church

44. In many countries of Oceania, young people form the majority of the population, while in countries like Australia and New Zealand this is not true to the same extent. The Synod Fathers wanted to assure the youth of the Church in Oceania that they are called to be “salt of the earth and the light of the world” (Mt 5:13,14). The Bishops wished them to know that they are a vital part of the Church today, and that Church leaders are keen to find ways to involve young people more fully in the Church’s life and mission. Young Catholics are called to follow Jesus: not just in the future as adults, but now as maturing disciples. May they always be drawn to the overwhelmingly attractive figure of Jesus, and stirred by the challenge of the Gospel’s sublime ideals! Then they will be empowered to take up the active apostolate to which the Church is now calling them, and play their part joyfully and energetically in the life of the Church at every level: universal, national, diocesan and local.<sup>(139)</sup> Today “youth live in a culture which is uniquely theirs. It is essential that Church leaders study the culture and language of youth, welcome them and incorporate the positive aspects of their culture into the Church’s life and mission”.

<sup>(140)</sup>

Yet this is also a time in which young people face great difficulties. Many are unable to find employment, frequently drifting to the larger cities where the pressures of isolation, loneliness and unemployment lead them into destructive situations. Some are tempted to drug abuse and other forms of addiction, and even to suicide. Yet in these situations too, young people are often searching for the life that only Christ can offer them. It is imperative therefore that the Church proclaim the Gospel to the young in ways that they can understand, ways that can enable them to grasp the hand of Christ who never ceases to reach out to them, especially in their dark times.

The Synod Fathers were convinced of the need for youth-to-youth ministry, and they echoed the plea I made to young people when I visited the region: “Do not be afraid to commit yourselves to the task of making Christ known and loved, especially among the many people of your own age, who make up the largest part of the population”. (141) With the Synod Fathers, I call on the young people of the Church to give prayerful consideration to the following of Jesus in the priesthood or in the consecrated life, for the need is great. The Bishops were quick to applaud young people for their acute sense of justice, personal integrity and respect for human dignity, for their care for the needy and their concern for the environment. These are signs of a great generosity of spirit which will not fail to bear fruit in the life of the Church now, as it has always done in the past.

In many places Youth Pilgrimages are a positive feature of the life of young Catholics.<sup>(142)</sup> Pilgrimage has long been part of the Christian life, and it can be most helpful in conferring a sense of identity and belonging. The Synod Fathers recognized the importance of the World Youth Day as an opportunity for young people to experience genuine *communio*, as was seen most memorably during the Great Jubilee. There they come together to listen to God’s word presented in a language which they understand, to reflect upon it prayerfully and to take part in inspiring liturgies and prayer meetings.<sup>(143)</sup> Time and again I have seen how many of them are by nature open to the mystery of God revealed in the Gospel. May the glorious mystery of Jesus Christ bring unending peace and joy to the young people of Oceania!

### Marriage and Family Life

45. “The Christian family constitutes a specific revelation and realization of ecclesial communion, and for this reason it can and should be called a domestic church”.<sup>(144)</sup> Ultimately, the family is an image of the ineffable *communio* of the Most Holy Trinity. In the procreation and education of children the family also shares in God’s work of creation, and as such it is a great force for evangelization in the Church and beyond. “The Church and society in Oceania depend heavily on the quality of family life”.<sup>(145)</sup> This implies great responsibility for Christians who enter the marriage covenant, and “there needs to be suitable pastoral preparation for all couples seeking the Sacrament of Marriage”.<sup>(146)</sup>

As an institution, the family will always need the concerted pastoral care of the Church, and there will be special need to acknowledge the requirements and responsibilities of larger families. Church and civic authorities ought to feel the duty to provide all possible services and support in order to affirm parents and families. The Church is

especially conscious of women's right to freedom in entering marriage and their right to respect within marriage. Polygamy, which still exists in some areas, is a serious cause of exploitation of women. More generally, the Synod Fathers were concerned for the social condition of women in Oceania, insisting that the principle of equal wages for equal work be respected and that women not be excluded from employment. At the same time, it is vital that mothers not be penalized for staying at home to care for their children, for the dignity of parenthood is very great and the care of children is supremely important.

In families where both parents are Catholic, it is easier for them to share their common faith with their children. While acknowledging with gratitude those inter-faith marriages which succeed in nourishing the faith of both spouses and children, the Synod encourages pastoral efforts to promote marriages between people of the same faith.<sup>(147)</sup>

Today in Oceania as elsewhere, marriage and family life are facing many pressures. This can corrode marriage as the basic unit of human society, with the gravest of consequences for society itself. As I noted when I was in Australia: "The Christian concept of marriage and the family is being opposed by a new secular, pragmatic and individualistic outlook which has gained standing in the area of legislation and which has a certain 'approval' in the realm of public opinion".<sup>(148)</sup> Recognizing this, the Synod Fathers urged that "pastoral programmes ought to provide support for families that face any of the serious problems of modern society: alcohol, drugs, behavioural addictions, gambling... In view of the difficulties facing marriage and family life today, with the sad reality of marital disharmony, breakdown and divorce, the Synod calls for a renewed catechesis on the ideals of Christian marriage".<sup>(149)</sup> The Church has a unique opportunity to present Christian marriage anew as a life-long covenant in Christ, based on generous self-giving and unconditional love. This splendid vision of marriage and the family offers a saving truth not only to individuals but to society as a whole. Therefore, the theological principles underpinning the Church's teaching on marriage and the family must be carefully and convincingly explained to all.<sup>(150)</sup>

Programmes of marriage-enrichment can help couples confirm their commitment to their vows and deepen their joy in the mutual gift of self through married love. If however the marriage is threatened in any way, pastors are asked to give every care to those caught up in this distress. The Synod was conscious of the great dedication of single parents in the task of raising and educating their children, and it expressed appreciation of them as they live out the Gospel in often difficult circumstances. Special care needs to be given to these parents and their children by clergy, Catholic schools and catechists.<sup>(151)</sup>

## Women in the Church

46. The great procession of saints through the ages makes it clear that women have always brought unique and indispensable gifts to the life of the Church, and that without those gifts the Christian community would be hopelessly impoverished.<sup>(152)</sup> More than ever now, the Church needs the skills and energies, indeed the sanctity of women, if the new evangelization is to bear the fruit so earnestly sought. While some women still feel excluded in the Church as well as in society as a whole, many others find a deep sense of fulfilment in contributing to parish

life, participating in the liturgy, the prayer life and the apostolic and charitable works of the Church in Oceania. It is important that the Church at the local level enable women to play their rightful part in the Church's mission; they should never be made to feel alien. Many forms of the lay apostolate and many lay formation programmes are open to women, as are various roles of leadership which allow them to offer their gifts more abundantly in service of the Church's mission.<sup>(153)</sup>

## New Ecclesial Movements

47. One of the "signs of the times" for the Church in Oceania is the emergence of new ecclesial movements, which are another of the fruits of the Second Vatican Council. They offer a powerful stimulus and support to Catholics of all ages in the attempt to live the life of discipleship more intensely. Some of them are also producing a good number of vocations to the priesthood and consecrated life; and this is cause for great gratitude. Through these ecclesial movements, many Catholics are discovering Christ at a new depth, and this experience enables them to remain faithful in the cultural context of the day, whatever the difficulties. As these movements help people to grow in their Christian life, they bring to the Church many gifts of holiness and service.<sup>(154)</sup> Welcoming these movements as signs of the Holy Spirit at work in the Church, the Synod Fathers asked that they work within the structures of the local Churches in order to help build up the *communio* of the Diocese in which they find themselves. The local Bishop should "exercise his pastoral judgment in welcoming and guiding them, while asking them to respect the pastoral strategy of the Diocese".<sup>(155)</sup>

## **Ordained ministry and the consecrated life**

### Vocations and Seminaries

48. Given the essential role of the priesthood and the great importance of the consecrated life in the mission of the Church, the Bishops at the Special Assembly affirmed the witness offered by Bishops, priests and those in the consecrated life through their prayer, fidelity, generosity and simplicity of life.<sup>(156)</sup> The field in which they work is vast and they are relatively few. Yet Oceania has many young people who are a precious spiritual resource; and among them are undoubtedly many who are called to the priesthood or to the consecrated life. "Would that an ever increasing number might attentively listen to and willingly accept those words of Christ which speak of a special personal choice by God of an apostolic fruitfulness: 'You did not choose me, but I chose you and appointed you that you should go and bear fruit and that your fruit should abide' (Jn 15:16)".<sup>(157)</sup> The Synod Fathers pointed to the serious shortage of priests and consecrated religious in Oceania. The promotion of vocations is an urgent responsibility of every Catholic community. Each Bishop should see to the establishment and implementation of a plan to promote priestly and religious vocations at every level - diocesan, parish, school and family. The Synod Fathers look to the future with hope and trust, praying "the Lord of the harvest to send labourers into the harvest" (Lk 10:2). They are firm in their faith that "God will provide" (Gen 22:8).

In seminaries, the priests of the future are formed in the image of the Good Shepherd, «joining themselves with Christ in the recognition of the Father's will and in the gift of themselves to the flock entrusted to them».<sup>(158)</sup>

Each Bishop is responsible for the formation of the local clergy in the context of the local culture and tradition. In this regard, the Synod Fathers asked that “serious consideration be given to more flexible and creative models of formation and learning”<sup>(159)</sup> which take into account the essential elements of a well integrated formation of candidates for the priesthood in Oceania: human, intellectual, spiritual and pastoral formation.<sup>(160)</sup> At the same time, the Bishops expressed “caution concerning extremes of clericalism or secularism and the dangers of inadequate competence, sometimes the result of present-day seminary formation that neglects the real academic and spiritual needs of seminarians”.<sup>(161)</sup>

Special attention needs to be given to the situation of some Churches in Oceania. In the particular Churches of Papua New Guinea, Solomon Islands and the other island nations of the Pacific, new seminaries have been opened to cater for an increasing number of seminarians who need to be formed in their own regions and in contact with their own culture. While giving thanks for the precious gift of new vocations, the Synod Fathers also recognized the need for more local staff, adequately trained for both academic and formation purposes. Some proposals were made in order to overcome this now critical situation, including the sharing of personnel within Oceania. Local diocesan priests should be provided with more opportunities for higher studies both within the region and further afield. A mutually agreed exchange programme could be established to meet these various needs. The overriding concern of the Bishops is the integral human and pastoral formation of the seminarians in their own cultural context. Solutions need to be found in order to provide the necessary financial support for seminaries, which is at present a heavy burden on many Dioceses. Where there are insufficient resources in Oceania, appeal should be made to the wider Church, and to religious orders, congregations and institutes, to help the young Churches form qualified local personnel.<sup>(162)</sup> The future of the Church in Oceania depends in large part upon this, for the Church cannot function without the sacramental priesthood, and cannot function well without good priests.

#### The Life of the Ordained

49. Since the Second Vatican Council, the priest has been confronted with changes, developments and the challenges of contemporary society. The Synod Fathers acknowledged “the ongoing fidelity and commitment of priests in their priestly ministry. This fidelity is all the more impressive as it is lived in a world of uncertainty, isolation, busyness and, at times, indifference and apathy. We acknowledge the fidelity of priests as a powerful witness to Christ’s compassion for all his people, and commend them for it”.<sup>(163)</sup>

The life of the priest is modelled absolutely on the example of Christ, who gave himself so that all may have life to the full. Through the ordained priesthood, the presence of Christ is made visible in the midst of the community. This does not mean, however, that priests are exempt from human weakness or sin. Therefore, every priest needs unceasing conversion and openness to the Spirit in order to deepen his priestly commitment in fidelity to Christ. “To preserve this fidelity, this Synod urges all clergy to renew their efforts to model their prayer life on that of Christ and to adopt a life-style that reflects Christ’s life of simplicity, trust in the Father, generosity to the poor and identification with the powerless”.<sup>(164)</sup>

The Synod was conscious of the erosion of priestly identity, in particular the denigration of priestly celibacy in a

world influenced by values which are contrary to the demands of the Gospel. Priestly celibacy is a deep mystery grounded in the love of Christ, and it calls for a radical, loving, all-embracing relationship with Christ and his Body the Church. Celibacy is God's gift to those called to live the Christian life as priests, and it is a great grace for the whole Church, a testimony of the total gift of self for the sake of the Kingdom. The ageless values of evangelical celibacy and chastity should be defended and explained by the Church in cultures that have never known them and in contemporary societies where such values are little understood or appreciated. An ever deeper exploration of the Christian mystery of celibacy will help those who have accepted this gift to live it more faithfully and peacefully.<sup>(165)</sup> The Second Vatican Council taught that "all priests, who are constituted in the order of priesthood by the Sacrament of Orders, are bound together by an intimate sacramental brotherhood, but in a special way they form one priestly body in the Diocese to which they are attached under their own Bishop".<sup>(166)</sup> In fact, priests with their Bishop constitute a unique community, often called the presbyterium. In a special way the communio of the presbyterium finds liturgical expression in the Rite of Priestly Ordination, and in a concelebration of the Eucharist with the Bishop, especially at the Mass of the Chrism on Holy Thursday. Priests who are sick, elderly and retired have a special place in the presbyterium. As a sign of the Church's recognition of their fidelity, they must always be provided with adequate assistance and sustenance. Clergy who retire from administrative responsibility should be made to feel that they still have a valued place within the presbyterium.<sup>(167)</sup>

The communio of the presbyterium has other practical aspects. "Priests need the company and support of other priests and their Bishop. Bishops are encouraged to make the priests feel that they are indeed co-workers with him in the Lord's vineyard. They should also encourage priests to minister to one another, in a spirit of brotherhood, in order to build a strong local diocesan clergy through mutual support and ongoing renewal".<sup>(168)</sup> This support in brotherly love is particularly important in island situations where many priests come from societies with strong community bonds, and where they often find themselves given special honour because of their Ordination and rank within society. "Treated in this way by the people they are asked to serve, they need considerable support to establish their own traditions and way of life as diocesan priests".<sup>(169)</sup>

The life of Bishops, priests and deacons requires continuing formation and opportunities to renew their zeal in their divine vocation. The Synod Fathers strongly recommended appropriate spiritual, pastoral, intellectual and recreational opportunities in order to increase the capacity to minister effectively and engage energetically in mission through the years. Certain aspects of continuing formation were highlighted by the Synod: "All ministers are reminded that the fulfilment of their daily tasks provide spiritual enlightenment and refreshment - celebration of the Holy Eucharist, daily reading of Scripture, praying the Liturgy of the Hours, studying the Scriptures and other sources for preaching and teaching, hearing confessions, and reading theological books and journals; personal efforts must be made to take part in retreats, conferences and annual leave, even when this means absenting oneself from pastoral duties. Ongoing formation requires that all continue to develop their ability to proclaim the Gospel message in a way that can be understood by their people; ongoing formation is not only intellectual but also spiritual, human and pastoral. The Bishops are encouraged to organize ongoing formation in their Dioceses along these lines; and provision must be made for study leave and spiritual renewal for all clergy".<sup>(170)</sup> The Synod Fathers expressed their desire to offer pastoral care to their priests by being open to their needs in every circumstance. They

were also sensitive to the situation of those who have left the priesthood.

In certain parts of Oceania, sexual abuse by some clergy and religious has caused great suffering and spiritual harm to the victims. It has been very damaging in the life of the Church and has become an obstacle to the proclamation of the Gospel. The Synod Fathers condemned all sexual abuse and all forms of abuse of power, both within the Church and in society as a whole. Sexual abuse within the Church is a profound contradiction of the teaching and witness of Jesus Christ. The Synod Fathers wished to apologize unreservedly to the victims for the pain and disillusionment caused to them.<sup>(171)</sup> The Church in Oceania is seeking open and just procedures to respond to complaints in this area, and is unequivocally committed to compassionate and effective care for the victims, their families, the whole community, and the offenders themselves.

### The Permanent Diaconate

50. The Second Vatican Council decided to restore the permanent diaconate as part of the ordained ministry of the Latin Church. It has been introduced into some Dioceses of Oceania, where it has been well received. A particular advantage of the permanent diaconate is its adaptability to a great variety of local pastoral needs. The Bishops in Synod gave thanks for the untiring work and dedication of the permanent deacons in Oceania, and were conscious of the generosity of the families of married deacons. The proper formation of the deacons is vital, as is a thorough catechesis and preparation throughout the Diocese, especially in the communities where they will serve.<sup>(172)</sup> It is also important that they receive continuing formation. It is good for priests and deacons, each responding to his particular vocation, to work together closely in preaching the Gospel and administering the Sacraments.<sup>(173)</sup>

### The Consecrated Life

51. The history of the founding of the Church in Oceania is largely the history of the missionary apostolate of countless men and women religious, who proclaimed the Gospel with selfless dedication in a wide range of situations and cultures. Their enduring commitment to the work of evangelization remains vitally important and continues to enrich the life of the Church in unique ways. Their vocation makes them experts in the communion of the Church. By pursuing the perfection of charity in the service of the Kingdom, they respond to the thirst for spirituality of the peoples of Oceania and are a sign of the holiness of the Church.<sup>(174)</sup> Pastors should always affirm the unique value of the consecrated life and give thanks to God for the spirit of sacrifice of families willing to give one or more of their children to the Lord in this wonderful way.<sup>(175)</sup>

Faithful to the charisms of the consecrated life, congregations, institutes and societies of apostolic life have courageously adjusted to new circumstances, and have shown forth in new ways the light of the Gospel. Good formation is vital for the future of the consecrated life, and it is essential that aspirants receive the best possible theological, spiritual and human training. In this regard, the young should be accompanied appropriately in the early years of their journey of discipleship. Given the central importance of the consecrated life in the Church in Oceania, it is important that Bishops respect the charisms of the religious institutes and encourage them in every

way to share their charisms with the local Church. This can be done through their involvement in planning and decision-making in the Diocese; by the same token, Bishops should encourage religious men and women to join in implementing pastoral plans within the local Church.

Contemplative orders have taken root in Oceania, and they attest in a special way to God's transcendence and the supreme value of Christ's love. They witness to the intimacy of communion between the person, the community and God. The Synod Fathers were conscious that the life of prayer in the contemplative vocation is vital for the Church in Oceania. From the very heart of the Church and in mysterious ways, it inspires and influences the faithful to live the life of Christ more radically. Therefore, the Bishops urged that there never cease to be in Oceania a deep appreciation of the contemplative life and a determination to promote it in every way possible.<sup>(176)</sup>

52. Pondering God's generosity in Oceania and his infinite love for its peoples, how can we fail to give thanks to him from whom every good gift comes? And among these many gifts, how can we fail to praise God especially for the unfathomable treasure of faith and the call to mission which it implies? We have put our faith in Christ, and it is the word of Christ that we are summoned to speak in the concrete circumstances of our time and cultures. The Special Assembly for Oceania has offered many directions and suggestions which need to be taken up by the local Churches in Oceania to ensure that they play their part in the work of the new evangelization. In the face of every difficulty, we are all called to this task by the Risen Christ, who commanded his Apostles, "Put out into deep water and pay out your nets for a catch" (Lk 5:4). Our faith in Jesus tells us that our hope is not in vain and we can say with Peter: "At your word, I will let down the nets" (Lk 5:5). The result is astonishing: "They caught a huge shoal of fish" (Lk 5:6). Though the waters of Oceania are many, vast and deep, the Church in Oceania has not ceased to walk joyfully and confidently with Christ, telling his truth and living his life. Now is the time for the great catch!

## CONCLUSION

Mary our Mother

53. To conclude this Apostolic Exhortation, I invite you to join me in turning to the Virgin Mary, Mother of Jesus and Mother of the Church, who is so revered throughout Oceania. Missionaries and immigrants alike brought with them a deep devotion to her as an integral part of their Catholic faith; and since that time, the faithful of Oceania have not ceased to show their great love for Mary.<sup>(177)</sup> She has been a wondrous helper in all the Church's efforts to preach and teach the Gospel in the world of the Pacific. In our time, she is no less present to the Church than she was at Pentecost, gathered with the Apostles in prayer (cf. Acts 1:14). With her prayer and presence, she will surely support the new evangelization just as she supported the first. In times of difficulty and pain, Mary has been an unflinching refuge for those seeking peace and healing. In churches, chapels and homes, the image of Mary reminds people of her loving presence and her maternal protection. In parts of the Pacific region, she is especially venerated under the title of Help of Christians; and the Bishops have proclaimed her as Patroness of Oceania under

the title of Our Lady of Peace.

In Jesus Christ, whom she nurtured in her womb, there is born a new world where justice and mercy meet, a world of freedom and peace. Through Christ's Cross and Resurrection, God has reconciled the world to himself, and he has made the Lord Jesus the Prince of Peace for every time and place. May Mary, Regina Pacis, help the peoples of Oceania to know this peace, and to share it with others! At the dawn of the Third Christian Millennium, may true justice and harmony be God's gift to Oceania and to all the nations of the world!<sup>(178)</sup>

With gratitude for the grace of this Special Assembly, I commend all the peoples of Oceania to the maternal protection of the Blessed Virgin, trusting absolutely that hers is an ear that always listens, hers a heart that always welcomes, and hers a prayer that never fails.

#### Prayer

O Mary, Help of Christians, in our need we turn to you with eyes of love, with empty hands and longing hearts. We look to you that we may see your Son, our Lord. We lift our hands that we may have the Bread of Life. We open wide our hearts to receive the Prince of Peace. Mother of the Church, your sons and daughters thank you for your trusting word that echoes through the ages, rising from an empty soul made full of grace, prepared by God to welcome the Word to the world that the world itself might be reborn. In you, the reign of God has dawned, a reign of grace and peace, love and justice, born from the depths of the Word made flesh. The Church throughout the world joins you in praising him whose mercy is from age to age. O Stella Maris, light of every ocean and mistress of the deep, guide the peoples of Oceania across all dark and stormy seas, that they may reach the haven of peace and light prepared in him who calmed the sea. Keep all your children safe from harm for the waves are high and we are far from home. As we set forth upon the oceans of the world, and cross the deserts of our time, show us, O Mary, the fruit of your womb, for without your Son we are lost. Pray that we will never fail on life's journey, that in heart and mind, in word and deed, in days of turmoil and in days of calm, we will always look to Christ and say, "Who is this that even wind and sea obey him?" Our Lady of Peace, in whom all storms grow still, pray at the dawn of the new millennium that the Church in Oceania will not cease to show forth the glorious face of your Son, full of grace and truth, so that God will reign in the hearts of the Pacific peoples and they will find peace in the world's true Saviour. Plead for the Church in Oceania that she may have strength to follow faithfully the way of Jesus Christ, to tell courageously the truth of Jesus Christ, to live joyfully the life of Jesus Christ. O Help of Christians, protect us! Bright Star of the Sea, guide us! Our Lady of Peace, pray for us!

Given in Rome at Saint Peter's, 22 November 2001, the twenty-fourth of my Pontificate.

# JOANNES PAULUS PP. II

## NOTES

- (1) No. 38.
- (2) Cf. Special Assembly For Oceania of the Synod of Bishops, *Relatio post disceptationem*, 3.
- (3) Cf. *ibid.*, 4.
- (4) Cf. *ibid.*, 1; 5.
- (5) Cf. *ibid.*, 19.
- (6) Cf. *ibid.*, 39.
- (7) Cf. *Propositio* 1.
- (8) Cf. *ibid.*
- (9) Paul VI, Homily at Randwick Racecourse for the 200th Anniversary of Cook's Arrival in Australia, Sydney (1 December), 1: AAS 63 (1971), 62.
- (10) Homily at the Beatification of Mary MacKillop, Sydney (19 January 1995), 2: AAS 87 (1995), 1003.
- (11) *Ibid.*, 5: *loc. cit.*, 1004.
- (12) John Paul II, Address to the Bishops of New Zealand, Wellington (23 November 1986), 4-5: AAS 79 (1987), 936-937.
- (13) Cf. Special Assembly For Oceania of the Synod of Bishops, *Relatio post disceptationem*, 2.
- (14) John Paul II, Bull of Indiction of the Great Jubilee *Incarnationis Mysterium* (29 November 1998), 9: AAS 91 (1999), 137.
- (15) Cf. *Propositio* 15.
- (16) John Paul II, Bull of Indiction *Incarnationis Mysterium* (29 November 1998), 11: AAS 91 (1999), 141.
- (17) Paul VI, Homily for the First Episcopal Ordination of a Priest from Papua New Guinea, Saint Mary's Cathedral, Sydney (3 December 1970): AAS 63 (1971), 71.
- (18) Cf. Dogmatic Constitution on the Church *Lumen Gentium*, 4; 8; 13-15; 21; 24-25.
- (19) *Propositio* 44.
- (20) *Ibid.*
- (21) Cf. *Propositio* 44.
- (22) Cf. *Propositio* 10.
- (23) *Propositio* 44.
- (24) First Vatican Ecumenical Council, Dogmatic Constitution on the Church of Christ *Pastor Aeternus*, Prologue: DS 3051.

- (25) John Paul II, Address to the Bishops of Australia, Sydney (26 November 1986), 1-2: AAS 79 (1987), 954-955.
- (26) Cf. Propositio 44.
- (27) John Paul II, Address to the Bishops' Conference of the Pacific (C.E.PAC), Suva (21 November 1986), 6: AAS 79 (1987), 934.
- (28) Cf. Propositio 45.
- (29) Second Vatican Ecumenical Council, Decree on the Pastoral Office of Bishops in the Church *Christus Dominus*, 37.
- (30) Cf. Propositio 12.
- (31) Address to the Bishops of Oceania, Sydney (1 December 1970): AAS 63 (1971), 55-57.
- (32) Cf. Propositio 1.
- (33) Cf. *ibid.*
- (34) Paul VI, Homily for the First Episcopal Ordination of a Priest from Papua New Guinea, Saint Mary's Cathedral, Sydney (3 December 1970): AAS 63 (1971), 72; see also John Paul II, Address to the Bishops of the Bishops' Conference of the Pacific [C.E.PAC], Suva (21 November 1986), 2: AAS 79 (1987), 930-931.
- (35) Homily at Mass on the island of Upolu, Western Samoa (30 November 1970); AAS 63 (1971), 49.
- (36) Address to the Bishops of the Bishops' Conference of the Pacific [C.E.PAC.], Suva (21 November 1986), 3: AAS 79 (1987), 932.
- (37) John Paul II, Encyclical Letter *Redemptoris Missio* (7 December 1990), 73: AAS 83 (1991), 321; see also Homily at the Beatification of Peter To Rot, Port Moresby (17 January 1995), 7: AAS 87 (1995), 994.
- (38) John Paul II, Address to the Bishops of Papua New Guinea and Solomon Islands, Port Moresby (8 May 1984), 6: AAS 76 (1984), 1013.
- (39) Cf. John Paul II, Address to the Bishops of New Zealand, Wellington (23 November 1986), 8: AAS 79 (1987), 939.
- (40) Cf. Propositio 1.
- (41) Cf. Propositio 2.
- (42) John Paul II, Encyclical Letter *Fides et Ratio* (14 September 1998), 70: AAS 91 (1999), 58.
- (43) Cf. Propositio 2.
- (44) John Paul II, Address to Aboriginal People, Alice Springs (29 November 1986), 12: AAS 79 (1987), 978; see also Paul VI, Address to Aboriginal People, Sydney (2 December 1970): AAS 63 (1971), 69.
- (45) John Paul II, Encyclical Letter *Fides et Ratio* (14 September 1998), 71: AAS 91 (1999), 60.
- (46) Cf. Propositio 2.
- (47) Cf. *ibid.*
- (48) Propositio 4.
- (49) Cf. John Paul II, Post-Synod Apostolic Exhortation *Ecclesia in Africa* (14 September 1995), 61: AAS 88

(1996), 38.

(50) Cf. Propositio 2.

(51) John Paul II, Encyclical Letter *Fides et Ratio* (14 September 1998), 71: AAS 91 (1999), 60.

(52) Address to the Bishops of Oceania, Sydney (1 December 1970): AAS 63 (1971), 56.

(53) Address to Aboriginal Peoples, Alice Springs (29 November 1986), 12: AAS 79 (1987), 977.

(54) Cf. Propositio 2.

(55) *Ibid.*

(56) Cf. *ibid.*

(57) Cf. Special Assembly For Oceania of the Synod of Bishops, *Relatio post disceptationem*, 12.

(58) Cf. John Paul II, Encyclical Letter *Redemptoris Missio* (7 December 1990), 54 : AAS 83 (1991), 301.

(59) Cf. Special Assembly For Oceania of the Synod of Bishops, *Lineamenta*, 42; *Instrumentum laboris*, 22, 51; *Propositiones* 4, 10 and 44.

(60) Cf. Propositio 4.

(61) Cf. John Paul II, Apostolic Letter *Tertio Millennio Adveniente* (10 November 1994), 21: AAS 87 (1995), 17.

(62) Homily at Randwick Racecourse for the 200th Anniversary of Cook's Arrival in Australia, Sydney (1 December 1970), 63: AAS 63 (1971), 62.

(63) John Paul II, Address to the Bishops of Australia, Sydney (26 November 1986), 4: AAS 79 (1987), 956.

(64) Cf. John Paul II, Address to the Bishops of New Zealand, Wellington (23 November 1986), 5: AAS 79 (1987), 937.

(65) Cf. Propositio 4.

(66) Cf. Propositio 4.

(67) Cf. *ibid.*

(68) Cf. *ibid.*

(69) Cf. *ibid.*; cf. Pope John Paul II's plea to them in Sydney in 1986 "Come back! ... Come home!": Homily at Mass for the Dioceses of New South Wales, Randwick Racecourse, Sydney (26 November 1986), 5: *Insegnamenti* IX, 2 (1986), 1678.

(70) Cf. John Paul II Apostolic Letter *Novo Millennio Ineunte* (6 January 2001), 16: AAS 93 (2001), 276-277.

(71) Cf. Propositio 4.

(72) Second Vatican Ecumenical Council, Dogmatic Constitution on the Church *Lumen Gentium*, 25.

(73) John Paul II, Encyclical Letter *Fides et Ratio* (14 September 1998), 38: AAS 91 (1999), 34.

(74) *Ibid.*, 48: AAS 91 (1999), 43.

(75) Propositio 5.

(76) Cf. Propositio 4.

(77) Cf. Propositio 6.

(78) Cf. *ibid.*

- (79) Cf. Propositio 7.
- (80) Cf. Propositio 5.
- (81) Ibid.
- (82) John Paul II, Apostolic Exhortation *Catechesi Tradendae* (16 October 1979), 18: AAS 71 (1979), 1292.
- (83) Cf. *ibid.*, 14: AAS, 1288-1289
- (84) *Ibid.*, 1: AAS, 1288.
- (85) Propositio 9.
- (86) Paul VI, Encyclical Letter *Ecclesiam Suam* (6 August 1964), III: AAS 56 (1964), 642.
- (87) Cf. Propositio 13.
- (88) Cf. *ibid.*
- (89) Cf. Propositio 14.
- (90) Congregation for the Evangelization of Peoples and Pontifical Council For Interreligious Dialogue, *Instruction Dialogue and Proclamation* (19 May 1991), 2: AAS 84 (1992), 415.
- (91) Cf. Propositio 17.
- (92) Cf. Propositio 17.
- (93) *Catechism of the Catholic Church*, 2420.
- (94) Propositio 17.
- (95) Cf. *Catechism of the Catholic Church*, 2273.
- (96) *Ibid.*, 2424.
- (97) Propositio 17.
- (98) Cf. Propositio 18.
- (99) John Paul II, *Address to Aboriginal People, Alice Springs* (29 November 1986), 8: AAS 79 (1987), 976; cf. Propositio 18.
- (100) Cf. John Paul II, *Address to Aboriginal People, Alice Springs* (29 November 1986), 10: AAS 79 (1987), 976-977.
- (101) Cf. Propositio 18.
- (102) Cf. Propositio 17.
- (103) Cf. Propositio 18.
- (104) Cf. Propositio 16.
- (105) *Ibid.*
- (106) John Paul II, Encyclical Letter *Evangelium Vitae* (25 March 1995), 1: AAS 87 (1995), 401.
- (107) Cf. Propositio 20.
- (108) Cf. Propositio 19.
- (109) Cf. *ibid.*
- (110) Cf. Paul VI, *Apostolic Exhortation Evangelii Nuntiandi* (8 December 1975), 21: AAS 68 (1976), 19.

- (111) Homily at Mass for the Close of the Holy Year (25 December 1975): AAS 68 (1976), 145.
- (112) Cf. Congregation For Catholic Education, Circular Letter The Catholic School on the Threshold of the Third Millennium (28 December 1997), 8-11: L'Osservatore Romano, English-language edition (22 April 1998), 8.
- (113) Cf. *ibid.*, 7: *loc. cit.*, 8.
- (114) Propositio 9.
- (115) John Paul II, Apostolic Exhortation *Catechesi Tradendae* (16 October 1979), 24: AAS 71 (1979), 1297.
- (116) Cf. Propositio 9.
- (117) *Ibid.*
- (118) Cf. John Paul II, Apostolic Constitution *Ex Corde Ecclesiae* (15 August 1990), 4: AAS 82 (1990), 1478.
- (119) Propositio 8.
- (120) Cf. John Paul II, Encyclical Letter *Dives in Misericordia* (30 November 1980), 13: AAS 72 (1980), 1219.
- (121) Cf. Propositio 20.
- (122) Cf. *ibid.*
- (123) John Paul II, Apostolic Letter *Salvifici Doloris* (11 February 1984), 16: AAS 76 (1984), 217.
- (124) Cf. Propositio 17.
- (125) Cf. John Paul II, Homily at the Mass for Evangelization, Mount Hagen (8 May 1984), 5: AAS 76 (1984), 1010.
- (126) Cf. Propositio 21.
- (127) Cf. *ibid.*
- (128) Second Vatican Ecumenical Council, Dogmatic Constitution on Divine Revelation *Dei Verbum*, 25; Saint Ambrose, *De Officiis Ministrorum* 1, 20, 88: PL 16, 50.
- (129) Cf. Propositio 22.
- (130) Cf. *ibid.*
- (131) Cf. Propositio 47.
- (132) Cf. Propositio 39.
- (133) John Paul II, Address to the Bishops of New Zealand, Wellington (23 November 1986), 9: AAS 79 (1987), 940-941.
- (134) Propositio 40.
- (135) Cf. Propositio 41.
- (136) Propositio 30.
- (137) Cf. Second Vatican Ecumenical Council, Decree on the Apostolate of the Laity *Apostolicam Actuositatem*; John Paul II, Post-Synodal Apostolic Exhortation *Christifideles Laici* (30 December 1988): AAS 81 (1989), 393 ff.
- (138) Propositio 30.
- (139) Cf. Propositio 26.

- (140) Ibid.
- (141) Homily at the Beatification of Peter To Rot, Port Moresby (17 January 1995), 8: AAS 87 (1995), 995.
- (142) Cf. Propositio 26.
- (143) Cf. *ibid.*
- (144) John Paul II, Apostolic Exhortation *Familiaris Consortio* (22 November 1981), 21: AAS 74 (1982), 105.
- (145) Propositio 23.
- (146) Ibid.
- (147) Cf. *ibid.*
- (148) Address to the Bishops of Australia, Sydney (26 November 1986), 10: AAS 79 (1987), 960.
- (149) Propositio 23.
- (150) Cf. Propositio 24.
- (151) Cf. *ibid.*
- (152) Cf. John Paul II, Apostolic Letter *Mulieris Dignitatem* (15 August 1988): AAS 80 (1988), 1653-1729; Letter to Women (29 June 1995): AAS 87 (1995), 803-812.
- (153) Cf. Propositio 27.
- (154) Cf. Propositio 11.
- (155) Ibid.
- (156) Cf. Propositio 29.
- (157) John Paul II, Homily at the Mass for Vocations, Port Moresby (7 May 1984), 4: AAS 76 (1984), 1006.
- (158) Second Vatican Ecumenical Council, Decree on the Ministry and Life of Priests *Presbyterorum Ordinis*, 14.
- (159) Propositio 37.
- (160) Cf. John Paul II, Post-Synodal Apostolic Exhortation *Pastores Dabo Vobis* (25 March 1992), 43-59: AAS 84 (1992), 731-762.
- (161) Propositio 37.
- (162) Cf. Propositio 38.
- (163) Propositio 36.
- (164) Ibid.
- (165) Cf. Propositio 35.
- (166) Second Vatican Ecumenical Council, Decree on the Ministry and Life of Priests *Presbyterorum Ordinis*, 8.
- (167) Cf. Propositio 36.
- (168) Propositio 33.
- (169) Ibid.
- (170) Propositio 34.
- (171) Cf. Propositio 43.
- (172) Cf. Congregation For Catholic Education and Congregation For The Clergy, *Ratio fundamentalis*

institutionis diaconorum permanentium and Directorium pro ministerio et vita diaconorum permanentium (22 February 1998): AAS 90 (1998), 843-926.

(173) Cf. Propositio 32.

(174) Cf. Propositio 29.

(175) Cf. ibid.

(176) Cf. ibid.

(177) Cf. Propositio 48.

(178) Cf. ibid.

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**LOADING...**

IN HIGH COURT OF AUSTRALIA

No. H.C. C13

2001

CANBERRA REGISTRY

BETWEEN: Darren Bloomfield

Plaintiff

AND: Detective Superintendent Brian Hepworth,

Defendant

ELIZABETH THE SECOND by the grace of God Queen of Australia and her Realms and Territories, head of the Commonwealth.

TO: Detective Superintendent Brian Hepworth,  
North District Territory Investigations and Crime Teams  
Australian Federal Police

We command you, that within 21 days after the service of this Writ on you, inclusive of the day of such service you cause an appearance to be entered for you in the High Court of Australia, Canberra Registry, of the Australian Capital Territory.

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgement be given in your absence.

WITNESS The Honourable Anthony Murray Gleeson AC,  
Chief Justice of the High Court of Australia,  
the 21<sup>st</sup> day of September in the year of Our Lord two thousand and one.

Registrar  
Canberra Registry  
High Court of Australia.

N.B. This writ is to be served within twelve calendar months from the date thereof, or if renewed, within six calendar months from the date of the last renewal, including the day of such date and not afterwards. Appearance to this writ may be entered by the defendant either personally or by solicitor at the principle registry of the High Court. If a defendant resides or carries on business in the territory, his appearance to this writ may be entered personally or by his solicitor in the Canberra office of the Registry.

Filed by the Plaintiff:

Darren Bloomfield  
FIRE CEREMONY for PEACE and JUSTICE  
ABORIGINAL TENT EMBASSY  
CANBERRA ACT 2600

This writ was issued by the plaintiff in person, who resides at the Aboriginal Tent Embassy, opposite old Parliament House, Parkes, ACT 2600, and whose address for service is at the same place.

On the defendant personally on

The twenty first day of September 2001

Endorsed on the twenty first day of September 2001

Signed: Darren Bloomfield

Signature:.....

Address: Darren Bloomfield  
FIRE CEREMONY for PEACE and JUSTICE  
ABORIGINAL TENT EMBASSY  
CANBERRA ACT 2600

## CANBERRA REGISTRY

BETWEEN: Darren Bloomfield  
Plaintiff

AND: Detective Superintendent Brian Hepworth,  
Defendant

### STATEMENT OF CLAIM

1. Hundreds of diverse Aboriginal Nations of free Peoples have maintained ancient spiritual cultures and Law/Lore, which connect across the entire continent, now known as Australia. Based on Respect, each nation of Peoples has lived as an integral part of the environment and has the primary responsibility of Caring for Country. Respect for all creation has ensured the maintenance of the diversity of humanity, languages and lifeforms. One of the primary connections to the Mother Spirit is through the use of Fire. Aboriginal spiritual and religious freedom requires protection of sacred spaces, created during the Dreaming. They are within the Mother Spirit, which is one with the universe, for each sacred space has its own identity depending on the nation. The significance of these is that they cannot be picked up and put on an altar because we do not use icons in that fashion. We don't build four walls around them. We do not imprison and engulf our spirituality and our religious rights, divinely given to us in the Dreaming, because it is the holistic connection between humans, the Earth, our Mother, and the universe, which is the basis of our timeless religion. Ours is the oldest religion in the world, and confirmed as such by contemporary scientists. Spiritual connectedness is valued more than the materialism that is projected by the modern society. We need to walk with the land and nature as our forebears have done since the beginning of time. Our physical, emotional, social and spiritual wellbeing, obtained through the connection of body and soul to a oneness with the land, has Fire as one of the primary sources of spirituality. We gain whole self being, our inner and outer strength from the warmth and gifts of blessing from the Fire, which is one of the primary spiritual points.

2. Spiritually cleansing the Earth with Fire for economical production of a variety of foods to sustain life, increases the spirituality of the body and soul through the use of Fire. Since the beginning of interference with our spirituality there has been the killing off of our spirituality through the none-use of Fire, for which mainstream society must be held accountable. When invaders came the Wrong Way they did not have even the core value of our culture, Respect, and our relationship to Fire and our land has been shattered. In the name of the Crown of Britain the invaders came under the 'rules and disciplines of war' and declared our sacred heartlands "uninhabited wastelands" and used their legal fiction of *terra nullius* in an attempt to usurp our sovereignty. They never recognised our

own title deeds to our lands and territories, handed on through Fire Ceremony. Instead they designed genocidal policies to wipe us from the face of the earth. They released biological warfare, with smallpox, against us. They began killing us when we defended our sacred lands and our families. They declared martial law against us. They have hunted us like vermin from our Fires, our grounds, forcing us to interrupt our sacred obligations to Country. They stole our sacred objects and have broken the Fire cycle. They have destroyed our hunting grounds and felled our food trees, and deprived many species of Fire, which opens seeds and triggers germination, removes rank grass, making space for more plants and animals to flourish. They have tried to clear our lands of our presence and our Fires. They poisoned our waterholes and gave us arsenic in our food when we were starving. They used eugenics to breed out our colour. They kidnap our children for indoctrination. They desecrate our lands with their material culture. They pollute our lands, waters and airspace, and release radioactive materials into our environments and install foreign military bases. They fence off our rivers and waterways and divert their flow so our rivers no longer flood in the proper way. They mine our soils and replace, or simplify, our complex ecosystems with agribusiness, which tends towards monoculture, which they protect from fire. Over 99% of our grasslands have been replaced by exotic grasses and weeds and they introduce foreign species which create imbalance. They rip out material wealth and squander resources from our Mother, the Earth, while trying to enslave us or imprison us. They prevent us from maintaining our proper relationship with our lands and our Fire. Too often our lands are no longer burned in the proper mosaic pattern and we are now subjugated by the coloniser's laws, which usually make it illegal for us to maintain our proper connection to Fire. Often the fires of today are wildfire conflagrations, killing indiscriminately, because fuel levels build up without the rotational firing. The wisdom of the Mother Earth to reintroduce Her spirituality through the use of Fire in modern day terms has been a means and way of regaining the culture. People who are sent to protect the Fire may not always be seen as doing this by the outer world. Cultural restoration through the use of Fire is critical. We were always told that ours is a 'domestic' matter that could not be taken to the international community, but our sovereignty is spiritually connected to our land and can never be extinguished.

3. In 1992 the High Court Mabo decision (no.2) declared that Murray Islander, Eddie Mabo, had a spiritual connection to his People's land. Consistent with the Magna Carta, which was brought into Australian law with the 1986 Australia Act, the High Court recognised the undoubted ancient liberties of Indigenous Peoples' "Native Title" to land, a right which precedes the Crown and British law in this land. This finding invalidated the notion of *terra nullius*, land belonging to no-one. In order to remove the internationally embarrassing and illegal *terra nullius*, as a basis for Australian sovereignty, Native Title, based on the Torres Strait Islander model, was then applied to the hundreds of nations of mainland Aboriginal Peoples, who have a vastly different culture of complex land tenure, based on constellations of sites, shared territories, neutral zones, boundaries, owners and managers of Country. In the Mabo (no. 2), judgement, Chief Justice Brennan referred to the concept of sovereignty over 120 times and after ten years deliberation the full bench of the High Court could not find a precedent for the basis of Australian sovereignty, because sovereignty cannot be acquired by invasion and massacre, land theft and genocide. The High Court justices admitted to the 'brittle skeletal framework' of Australian sovereignty and that it should be assumed that sovereignty was transferred from the 500 Aboriginal nations when Phillip established the colony in 1788. The Australian Commonwealth government now declares its sovereignty is based on an unchallengeable Act

of State, but an Act of State is not international law, it is merely a doctrine and not a valid basis of sovereignty. The subsequent Native Title Act and Amendments attempt to validate white interests in land by extinguishing native title wherever there is a conflict of interest. But the Mabo decision and the Native Title Act accept Aboriginal Law as belonging to this land. For Aboriginal claimants to claim residual native title rights, which are not a proper land title, Aboriginal Law/Lore and practice has to be demonstrated through connection to Country, even though we have lived through forced displacement. Implicit in the admission that Australia was never *terra nullius*, is the affirmation that Aboriginal sovereignty has never been ceded and remains with Aboriginal Peoples, as confirmed in the International Court of Justice Advisory Opinion in the Western Sahara Case.

Less than fifty years ago and shortly before the arrival of the newly crowned Her Royal Highness Queen Elizabeth II in Australia, the Royal Powers Act was assented to on 10 December 1953 and commenced on 7 January 1954, sharing the statutory powers of the Governor-General with the Queen when she 'is personally present in Australia' acting with the advice of the Federal Executive Council. On 16 February 1954 Her Royal Highness Queen Elizabeth II assented to the Australian Commonwealth Government Aborigines Ordinance ACT (1954), which was used to remove by force and under duress Wiradjuri/Ngunnawal and others from the lands now known as the Australian Capital Territory. So dominant is the colonising power that even in 2001 the Law/Lore of the Dreaming held by our Elders is unable to protect warriors in our own country and warriors are unable to protect the sacred Fire Ceremony, through which we affirm our sovereignty.

4. Ceremony began with the beginning of the ancient Dreaming, which, through the rite of passage, gave the right of religious freedom for Peoples to practice their cultural Laws and beliefs. Any person who would violate such practice of religious freedom is in violation of religious freedom. Ceremony is as sacred as the land itself and travels along interwoven songlines, combining our Songs, Dances, Art and Stories. This invokes religious freedom. Those who possess the gift to enhance and build religious freedom and practice, in conjunction with the Eldership role, have a right and a responsibility to guide and protect the maintenance of the culture when dealing with the religious practices for the Mother Earth. People who have been entrusted with this responsibility feel it whole-heartedly and take their responsibility seriously. This then makes the lighting of the Fire, and its uses, a practical living part of the religious freedom in Aboriginal society. The colonising society generally does not recognise our spirituality and religious practice. But as a main part of the 'connection report' to prove Native Title, religious freedom and practice has to be demonstrated to enable the Native Title Act to be implemented. The implementation of Native Title, through Aboriginal cultural religious freedom, dispels the myth that 500 Aboriginal Nations and Peoples have no culture or Law/Lore, for the expression of religious freedom is one of Aboriginal Peoples' connection with the Mother Spirit. Under our obligation of spiritual religious responsibility, we, as a nation of Peoples are responsible for the protection of our Mother Earth through the use of Fire, which is fundamental in upholding our religious beliefs and protection of our Mother earth.

5. Fire is the Law. Fire is the Law of this land, under which we have a responsibility to protect and maintain our Mother Spirit. Desecration of the Fire Ceremony carries the death penalty. Uncle Kevin Buzzacott, Arabunna Elder and Peace Maker from Lake Eyre has brought a gift to the Aboriginal Tent Embassy, which is the place of

gathering for all Aboriginal nations to freely express the right of cultural and religious freedoms. Uncle Kevin's and his People's contribution is the Fire for Peace and Justice towards the struggle for the freedom of Aboriginal Peoples in Australia. He has brought the Fire, because it is the Dreaming and the Totem that belongs to him and his People and his land. Uncle Kevin Buzzacott explains:

*“Fire is the Boss and is linked with creation, past, present and future. It is an ancient method used in the past, present and future Dreaming line of our existence, since time began. The Fire was originally lit for peace and justice to call on the old spirits for guidance. We are nomadic people and the Fire goes with us. We light the Fire to warm our hearts and it goes to the pain that we carry. It warms our pain and continues the healing. We use the Fire to warm up the Mother Earth because she is hurting too. She is in shock from being desecrated. We have to use this Fire Ceremony method because of the pain and the suffering of stolen generations, destruction of sacred sites and our lives, that has been implemented on us since the invasion of 1788. Fire is one of the ancient elements used by ancient Indigenous Peoples all around the world. Others are the water, land, sea, air, wind, sun and moon. Our cultural belief and Law structure is: Do not muck with the elements. These colonisers should never have tampered with the elements. We have to have a better understanding towards Aboriginal Peoples and our cultural values by non-Indigenous Peoples. As soon as this understanding is reached real peace can be implemented and there can be peace for all. The Fire Ceremony for Peace and Justice is the only way we have to bring about this peace and social change. Through this Fire Ceremony we are calling on the Australian Commonwealth authorities to come to our Fire and begin the peace process for justice. Our Fire for Peace and Justice has been burning since 26 January 1998 and is our way of dealing with the evil that is being committed under the banner of red, white and blue. We are about making peace.”*

Just prior to the seventh full moon of 2001, on 2 July, the Fire Ceremony traveled to the Molongolo River, which is now dammed to create Lake Burley-Griffin, in order to protect sacred land from desecration by the National Capital Authority, which intends to build 'Commonwealth Place'. The Fire is to warm the heart of the land, heal the spirit and hear the call. As the full moon rose on its third night, 5 July 2001, more than thirty Australian Federal Police, led by Detective Superintendent. Brian Hepworth, desecrated the Fire ceremony, dousing it with water and arresting Darren Bloomfield, who is protector and guardian of the Fire for the Fire Ceremony for Peace and Justice. As a young Wiradjuri warrior on his own land, he has been appointed by Elders, including local Wiradjuri/ Ngunnawal Elders, as a carer for the Fire. At this time, leader of the Fire Ceremony, Uncle Kevin Buzzacott, explained very clearly the sacredness and importance of the Fire Ceremony for Peace and Justice and its role in creating a lasting peace for all humanity in this land. Uncle Kevin also warned the assembled Australian Federal Police Force of the consequences of desecrating the Fire Ceremony. Detective Superintendent. Brian Hepworth, fifth in command in the Australian Capital Territory Australian Federal Police was present during this warning. Detective Superintendent Brian Hepworth had been previously warned of the consequences of desecrating the Fire Ceremony for Peace and Justice, which was destroyed on orders from the presiding officers of the Commonwealth Parliament, the Speaker of the House and the President of the Senate in February 1999.

6. On 11 July 2001 the Fire Ceremony for Peace and Justice was carried from the Fire burning on the proposed site for Reconciliation Place, a \$5.5 million tourist attraction exploiting the trauma, grief and loss of the kidnapped 'stolen generations' of Aboriginal children, who suffer from the processes of genocide against Aboriginal Nations and Peoples. The Fire was taken to the entrance of the construction area on sacred land being desecrated by heavy earth moving equipment, which was ripping at the Mother Earth, causing spiritual and emotional trauma and stress. The work was being done by Manteena Pty. Ltd. who had already been informed on 2 July that they were desecrating sacred land and threatening the continuation of the Aboriginal Tent Embassy. Manteena halted work but continued a few days later. The construction site for 'Commonwealth Place' is designed for the offices of Reconciliation Australia, which is headed by Fred Chaney, who, as Federal Minister for Aboriginal Affairs in the 1980s oversaw the sending in of the army and police to escort an oil drilling rig onto Aboriginal-owned Noonkanbah station in Western Australia. At the launch of 'Reconciliation Place', Phillip Ruddock, Minister for "Reconciliation", stated publicly that the intention of 'Reconciliation Place' is to replace the Aboriginal Tent Embassy, and the construction of the offices for Reconciliation Australia is also a threat to the Embassy. The removal of the Tent Embassy would take away the right of appeal of all Aboriginal People in Australia. This would take the focus off Australia from the United Nations and the world on the injustices imposed on Aboriginal Peoples, moving the struggle for justice into another dimension. The instruction for the Australian Federal Police to desecrate the Fire Ceremony was ordered by the National Capital Authority (NCA), led by Annabel Pegrum, even though the NCA is not registered on the land title where the incident occurred.

7. During celebrations for National Aboriginal and Islander Day Observance Committee Week, (NAIDOC Week), Detective Superintendent Hepworth desecrated the Fire Ceremony for Peace and Justice, though his actions, thus resulting in the attempted murder of Darren Bloomfield, appointed guardian and keeper of the Fire, as a sacred duty whilst maintaining his religious freedom through the protection of the Fire. This occurred just after 1.00pm 11 July 2001 on Crown Land in the Parliamentary Triangle within the Australian Capital Territory, at the entrance to the Commonwealth Place construction site on Mall Street West, Parkes. Detective Superintendent Hepworth desecrated the Fire ceremony for Peace and Justice less than one kilometre from the High Court of Australia. Acting on behalf of the Australian Commonwealth government in his role as Detective Superintendent Hepworth, proceeded to endanger Darren Bloomfield's life by the use of a Commonwealth vehicle, namely an Australian Federal Police car, green VN Commodore YBK 13K. Evidence of this has been supplied by eyewitnesses and video. Detective Superintendent Brian Hepworth desecrated the Fire Ceremony for Peace and Justice by attempting the hit and run murder of Darren Bloomfield, guardian and keeper of the Fire for the Fire Ceremony for Peace and Justice. Detective Superintendent Brian Hepworth ordered the extinguishing of the Fire with a fire extinguisher, as he has before, and under Aboriginal Law/Lore he has incurred the death penalty. The violation of a young warrior in his spiritual duty by an outside person is a violation of the Aboriginal culture and Law/lore. Detective Superintendent Brian Hepworth failed to observe the right of passage for negotiation, within the boundaries of religious freedom. His action caused the violation, thus crossing the boundaries of Peace and Respect and the right of freedom to practise cultural beliefs. Darren Bloomfield should never have been violated by the Australian Federal Police whilst he was doing his sacred duty, because it is an ancient responsibility and obligation, which he has to meet. Darren Bloomfield should never have been arrested or charged with Trespass on his own land, in the

colonisers' court. The violation of the Fire Ceremony for Peace and Justice is preventing us from practicing our cultural and religious histories and freedoms, whereas mainstream society can practice their many cultural religions on their Sabbaths. As Australia is a country of many diverse cultures and prides itself on being multi-cultural, one is amazed at its ability to stop the practice of the oldest religion and spirituality in the world. Does our spirituality have the right to religious freedom? The charge is about the colonisers' lack of understanding and knowledge of our Ceremonies. Australia has been condemned three times by the Committee for the Elimination of all Forms of Racial Discrimination and is presently on their 'early warning and urgent action' list. If Detective Superintendent Brian Hepworth had come the Right Way to our lands he would never have dared to interfere with our Fire Ceremony. This Detective Superintendent Hepworth is in the *fifth* highest position of responsibility within the Australian Capital Territory Australian Federal Police. It is a shock to see how he could be so disrespectful. For the Australian Commonwealth government to show good faith, Detective Superintendent Brian Hepworth should be suspended, then removed from the Australian Federal Police force. He has to be charged for breaking Aboriginal Law/Lore and damaging the young Warrior, Darren Bloomfield. He has to be sued. There has to be some justice here to acknowledge Aboriginal Peoples still exist and our ceremonies are still ongoing. Detective Superintendent Brian Hepworth is to be tried by white law and then handed over to us under our Law/Lore, where he would be speared to death. But, if we are expected to comply with International Law against the Death Penalty, it is mandatory that 500 Aboriginal nations become members of the United Nations in equal sovereignty to United Nations Member States. If we cannot gain our right to self-determination, the United Nations must be prepared for the conflict that will escalate throughout the world of Indigenous Peoples. We are defending our Mother Earth, against a United Nations based on forced law. That is, when we resist they send in the authorities, usually armed. At present we are almost defenceless against tyranny, but we look the oppressor in the eye knowing the future of the planet is in our wisdoms, through our teachings and knowledge that are given to us in the Dreamings. There should be a lesson in this special case that there is a need for understanding and cross-cultural learning. After 200 years the colonisers still do not properly acknowledge that we still exist and that our Fire Ceremonies and our Law/Lore are still practised. It is time for the non-Aboriginal community to fully understand the Law/Lore of the land.

There is a lot of sacredness attached to this Fire Ceremony for Peace and Justice, which we cannot air in your High Court, but we are able to reveal some of the basics if you come to the Fire Ceremony for Peace and Justice.

AND UPON READING IT IS FOUND DETECTIVE SUPERINTENDENT BRIAN HEPWORTH, NORTH DISTRICT TERRITORY INVESTIGATIONS AND CRIME TEAMS, IS NEGLIGENT FOR HITTING AND RUNNING DOWN INTO DARREN BLOOMFIELD IN THE GREEN VN COMMODORE YBK 13K AND FAILING TO REPORT AND STOP AFTER THE ACCIDENT, THUS INTERRUPTING AND DESCERATING THE FIRE CEREMONY FOR PEACE AND JUSTICE AT 1.00PM ON 11 JULY 2001 IN NATIONAL ABORIGINAL AND ISLANDER DAY OBSERVANCE COMMITTEE (NAIDOC) WEEK AT 'COMMONWEALTH PLACE', AND IS THEREFORE NEGLIGENT AND GUILTY OF:

Violating the Atlantic Charter, 1939;

Violating United Nations Covenants, for example, the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic Social and Cultural Rights (ICESCR), International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD) and Granting of Independence to Colonial Nations and the Convention on the Prevention and Punishment of the Crime of Genocide;

Magna Carta 1215;

Australian Constitution Act (United Kingdom, 1900) for example,

\*the right to religious freedom

\*the right to trial for committing an indictable offence;

\*a subject of Queen resident in one state shall not be subject to disability and discrimination that would not be equally applicable to a subject of the Queen resident in another such state;

\*the implied rights validation of United Nations Covenants as domestic law under the external affairs powers;

\*the State will reasonably compensate for claiming land; and

Australian domestic law, for example, Commonwealth Crimes Act 1900, Australian Capital Territory Crimes Act 1930, Racial Discrimination Act 1975, Australian Capital Territory Imperial Acts Application Act 1986;

8. Newcomers to this land have been trespassing on and desecrating Aboriginal land since 1788. Under Aboriginal Law/Lore unauthorised entry into another's Country is punishable by death. The carrying out of Aboriginal Law/Lore for these newcomers is being prevented. The fact that Darren Bloomfield has been arrested for trespass on his own land, for which his ancestors have lived for from the Beginning, is a clear indication that Darren Bloomfield and 500 Aboriginal Nations have no choice but to file a Section 78B Notice of the *Judiciary Act 1903*, Notice to Attorneys-General of a Constitutional matter. The matter of this writ falls within the original jurisdiction of the High Court of Australia involving sections 75 and 76, of the *Commonwealth of Australia Constitution Act* and section 30 of the *Judiciary Act 1903*. Proceedings in any jurisdiction have to be adjourned until the Section 78B Notice to Attorneys-General of a Constitutional matter is brought to the attention of every Attorney General in Australia, before being heard by the Full Bench of the High Court, which will reinterpret the *Commonwealth of Australia Constitution Act*. This ensures the above mentioned Sections of the *Commonwealth of Australia Constitution Act* are validated as domestic law, through implied rights under the external affairs powers, with reference to the United Nations Covenants. Whereas the *Commonwealth of Australia Constitution Act* (United Kingdom) will be invalidated as domestic law in Australia as it is an Act of the British Parliament and does not apply since the Atlantic Charter and the United Nations.

9. The fact that Darren Bloomfield's Section 78B Notice of the *Judiciary Act 1903*, Notice to Attorneys-General of a Constitutional matter will validate United Nations Covenants as Domestic Law in Australia, before invalidating the *Commonwealth of Australia Constitution Act* (United Kingdom) from further applying in Australia, is an urgent matter the United Nations General Assembly in Geneva and New York must take on board. As a precedent this

will invalidate the Constitutions of Colonial powers, thus ensuring United Nations Covenants apply as Domestic Law around the world. This necessitates United Nations Headquarters in Africa, Americas, Asia, Australia and Europe. Reparation and compensation should be made by the perpetrators, including monarchs, the Anglican and Catholic church, since the Pope in Rome unleashed the Papal Bulls, in the 1300-1500s, to incite and encourage, and aid and abet, the principle of divide and conquer by colonisation and genocide around the world, in order to indoctrinate and subjugate Indigenous Peoples and squander their resources.

### **OF WHICH THESE PARTICULARS OF INJURIES HAVE OCCURRED**

\*Interruption and desecration of the Fire Ceremony for Peace and Justice of the Aboriginal Tent Embassy, which is the platform for representatives of 500 Aboriginal Nations.

\*Violation of Aboriginal Peoples' religious freedom and spiritual Law/Lore,

\*Newcomers trespassing on Wiradjuri/Ngunnawal land without invitation;

\*Usurped sovereignty

\*The non-Indigenous colonisers of hundreds of Aboriginal nations use the *Commonwealth of Australia Constitution Act* (United Kingdom) and *terra nullius* to avoid paying rent and fees for the time for which they have occupied and desecrated the lands and territories of hundreds of nations.

\*Attempted murder of Darren Bloomfield, Guardian and Keeper of the Fire for the Fire Ceremony for Peace and Justice.

### **PARTICULARS OF LOSS AND RELIEF SOUGHT:**

Recognition and respect for Aboriginal sovereignty and reparation for usurped sovereignty by the Crown;  
Recognition and Respect for Aboriginal spirituality and religious freedom;

Rent and fees of Aboriginal nations since invasion in 1788;

Damages and Compensation for trespass, theft and wrongful deaths since 1788;

Damages and compensation for being inhumanely removed from biological family;

Damages and compensation for mental harm and religious and spiritual trauma;

Particulars of claim to be provided by the authorising Elders of Aboriginal Nations, who have been deliberately dispossessed of lands, territories, resources and life.

AND the plaintiff would claim damages, costs and interest pursuant to Order 43A Rules 1 and 2 of the Commonwealth of Australia High Court Rules in force under the Judiciary Act 1903.

Signed:.....21/9/2001

Witnessed:.....

# THE **A** **N** **U** SCRABBLE SOCIETY

Alexander Marcel Andre Sebastian Barker Bailiff 6:03pm 25th August 1970 at 21 chose to protect the Chief Justice of the High Court of Australia.

"The sooner officials get the Australian Federal Police statement the sooner they can use it to call a Royal Commission into the negligence of the Chief Justice, so they can argue he was negligent in the Mabo judgement, which is a 4 - 3 decision." The Mabo judgement is the native title case.

So, I have to sue 1788 police commissioners, directors of public prosecutions, ombudsman, administrator of Northern Territory governors, governor-general, members of legislative assembly, members of legislative council, members of house of representatives, senators and senior officers of higher education in Australia. Whilst I am doing this, 250 people apply for restraining orders and 200 arrests occur. I become friends with the retired Chief Justice of the High Court Sir Anthony Frank Mason while he establishes a Hong Kong Final Court of Appeal and becomes a judge for 20 years. I said, "whilst it is significant the Chief Justice of the High Court has been negligent for 7 years in his written judgments, I think what is more significant is the fact 7 ministers from both the labour party and liberal party have been significant for 7 years in their administration of legislation violated." I also said, no matter how hard life was Vanessa Camille Bayliss always protected me, so no matter what I have taken appropriate steps to protect as that is the right thing to do." Sir Anthony Frank Mason says, "I appreciate you protecting me." I get Pope's Apology to China and Pope's Apology to Oceania and establish Australian Capital Territory Supreme Court of Appeal 2001 and make United Nations case.

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**Alexander** is defender of the people, Greek. Marcel is young warrior, French. Andre is manly, French. Sebastian is venerable, Greek. Barker is crier of the court, English. Bailiff is minor court official with police authority, French. "But performance on tests of formal intelligence is often surprisingly well preserved once the patient's co-operation has been secured." Alwyn Lishman

- I got II Pope John Paul II Apologies in 60 days
- Pope's Apology to China 2001 for Papal Bull 1455
- Pope's Apology to Oceania 2001 for Papal Bull 1455