HIGH COURT OF AUSTRALIA

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Details of Filing

File Number:	M5/2026
File Title:	Thorpe v. Prothonotary & Ors
Registry:	Melbourne
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Important Information

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IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
PRACTICE COURT

S ECI
S ECI 2024 03142

Case: S EAPCI 2024 0088
Filed on: 02/08/2024 02:07 PM

BETWEEN:

AUNTY ALMA THORPE — First Applicant

and

UNCLE ROBBIE THORPE — Second Applicant

and

ROD RATCLIFFE, PROTHONOTARY — First Respondent

and

ATTORNEY-GENERAL OF VICTORIA — Second Respondent

JUDGE:	O'Meara J
WHERE HELD:	Melbourne
DATE OF HEARING:	On the papers
DATE OF JUDGMENT:	25 June 2024
CASE MAY BE CITED AS:	Thorpe v Prothonotary & Anor
MEDIUM NEUTRAL CITATION:	[2024] VSC 360

PRACTICE AND PROCEDURE – Second applicant sought to commence various proceedings – Several refusals to receive documents for filing – Applicants seek to commence proceedings by originating motion – Identical proposed originating motions – Summons sought to be filed in S ECI 2024 01011 seeking to achieve reception by the Court of first originating motion – Underlying claims vaguely stated and largely political and polemical in nature – Originating motions and summons ignoring and thereby misusing proper procedure – Documents substantially irregular or an abuse of process – *Supreme Court (General Civil Procedure) Rules* 2015 (Vic), r 28A.04(2) and (5) – Originating motions and summons rejected for filing.

APPEARANCES:	Counsel	Solicitors
For the Applicants	N/A	
For the Respondents	N/A	

HIS HONOUR:

1 Rule 28A of the *Supreme Court (General Civil Procedure) Rules 2015* ('**Rules**') concerns electronic filing in RedCrest. In particular, rules 28A.04(2) and (5) provide as follows –

> (2) The Prothonotary or the Registrar may reject a document if the Prothonotary or Registrar considers that—
>
> (a) a document, if it were sealed, would be substantially irregular or constitute an abuse of process; or
>
> (b) there has been a failure to comply with the Rules, an order of the Court or a direction of the Prothonotary or the Registrar after a reasonable opportunity to do so.
>
> …
>
> (5) If the Prothonotary or the Registrar—
>
> (a) fails to seal a document within a reasonable time; or
>
> (b) refuses to seal a document; or
>
> (c) rejects a document—
>
> the Court may—
>
> (d) direct the Prothonotary or the Registrar to seal the document with a filing date, being the date the document was first submitted in RedCrest for filing;
>
> (e) direct the Prothonotary or the Registrar to seal the document with a filing date, being the date the document is so sealed;
>
> (f) make any other order or give any direction that it considers appropriate.

2 In recent times, the second applicant has sought to commence various proceedings in the Court; almost all of which have been refused for filing pursuant to r 28.04(2).

3 Three such refusals were the subject of a judgment by Forbes J on 3 April 2024, in which her Honour confirmed their correctness.[1] Among other things, her Honour observed that –

(a) two of the proposed proceedings impermissibly sought to use a civil

[1] *Robert Thorpe v Charles Windsor* (Supreme Court of Victoria, Forbes J, 3 April 2024). Her Honour considered three refusals of documents assigned following numbers for administrative purposes: S ECI 2024 00627, S ECI 2024 01043 and S ECI 2024 01183.

proceeding as a vehicle to commence a criminal proceeding;

(b) documents not accepted for filing are not proceedings in the Court, albeit that for administrative purposes they are assigned numbers for identification; and

(c) the creation of a specialist body of any kind – including in relation to allegations of genocide – is a matter for Parliament, not the courts.

4 That said, the second plaintiff seems to have also sought to issue a proceeding against King Charles III in the Magistrates' Court of Victoria, which was refused.

5 An application to review that refusal has been received in the Supreme Court.[2] That proceeding is presently listed to be heard in the Trial Division on 19 July 2024. In these reasons, that will be referred to as the '**judicial review proceeding**'.

6 In that general context, on about 25 April 2024, the applicants sought to file a document headed 'Writ' against the State of Victoria. That document sought the following relief –

> 1. A declaration that there is no internationally-supervised agreement between First Peoples and the defendant whereby First Peoples gave free, informed prior consent without coercion or manipulation to the occupation of Our Lands and usurpation of Our Law by the defendant.
>
> 2. A declaration that the defendant conducted a premeditated calculated undeclared war of invasion against First Peoples, Our Lands and Our Laws and that the war involved atrocities by the defendant against First Peoples and acts by the defendant against First Peoples contrary to Our Law and contrary to international law including genocide, crimes of aggression and crimes against humanity.
>
> 3. A declaration that the only basis for the jurisdiction claimed by the State of Victoria is the said genocidal military invasion.
>
> 4. A declaration that First Peoples' Sovereignty was never ceded.
>
> 5. An order that the defendant forthwith declare an end to hostilities and an end to the war against First Peoples.
>
> 6. An order that the defendant forthwith take all necessary steps to obtain an advisory opinion from the International Court of Justice as to whether Our Law governs all people within the purported boundaries asserted by the defendant and as to whether Our Lands belong to Us

[2] *Thorpe v Magistrates' Court of Victoria & Anor* (S ECI 2024 01011).

under Our Law.

7. An order that the defendant take all necessary measures to secure an investigation by the Office of the Prosecutor of the International Criminal Court into genocide by the defendant and officers of the defendant against We First Peoples.

7 Thereafter, the document purported to include a statement sufficient to give notice of the nature of the claim. For the most part, however, that simply repeated various parts of the above, although there were a few elaborations that did not alter the overall character of what was sought to be pursued.

8 On 1 May 2024, pursuant to r 28A.04(2), the Prothonotary rejected the proposed 'Writ' for filing.

9 In careful written reasons, the Prothonotary highlighted and explained various substantive problems in the document and determined to reject it because, if sealed, it would constitute an abuse of process.

10 The second applicant did not subsequently seek, pursuant to r 28A.04(5), that the Prothonotary be directed by the Court to seal the document with a filing date.[3] If that had occurred, such a direction would not have been made, largely for the reasons earlier identified in the written reasons of the Prothonotary.

11 That said, the overwhelming problem with the 'Writ' is that it is laden with vague and tendentious terms and apparent concepts that are essentially political and polemical. In that regard, many terms are assigned capitalised first letters indicative of a wider (and unexplained) meaning.

12 Albeit that the jurisdiction by which the Court might make declarations has long been recognised as attended with a degree of width, such relief may only be exercised for the purpose of settling or determining controversies of a legal character and not for

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3 I note that by email dated 3 June 2024, the second applicant was asked whether, among other things, he wished for his purported writ dated 25 April 2024, the filing of which had been refused by the Prothonotary, to be referred to a Judge for consideration pursuant to r 28.04(5) of the *Supreme Court (General Civil Procedure) Rules 2015*. The second applicant responded by email dated 4 June 2024, but did not answer the question posed.

the answering of abstract and ill-defined questions.

13 In the present instance, for a host of reasons, the document concerned is not in a form appropriate to enable a civil and justiciable controversy to be discerned and determined. That is, of course, not to say that buried within the vague verbiage deployed in the 'Writ' there might not conceivably be some point appropriate for judicial determination. However, the present form of the 'Writ' is such that that cannot be discerned. In short, the 'Writ' is substantially irregular and an abuse of process.

14 Notwithstanding the above, on 5 May 2024 the applicants sought to file a document entitled 'Originating Motion' (**'First Originating Motion'**), in which the Prothonotary of the Supreme Court of Victoria and the Attorney-General of Victoria were named as defendants.

15 The First Originating Motion purports to state the following 'grounds' –

> 1. Whether it is an abuse of process for the chief clerk of the supreme court of the State of Victoria to refuse to issue legal proceedings against the State of Victoria by We Elders, being undisputed victims of the undisputed genocide against Us and Our Peoples and all First Peoples, by the State of Victoria when the said State of Victoria with all our stolen resources is more than capable of defending itself in such a claim and needs no protection from liability by the chief clerk and may indeed admit liability and agree to the terms of the claim once issued and served.
>
> 2. Whether it is an abuse of process for the chief clerk of the supreme court of the State of Victoria, an undisputed genocidal kleptocracy that has stolen Our Lands and usurped Our Laws, to refuse to allow the truth of Our Claims to be established by evidence and law in a court of justice.
>
> 3. Whether it is beyond the power of any clerk of this court so deeply complicit in the genocide of First Peoples here to refuse to issue legal proceedings concerning the ongoing genocide against Us brought by Our Elders seeking to prevent any further genocide and to hold the State of Victoria responsible and accountable.
>
> 4. Whether the chief clerk took into account irrelevant considerations (such as the claimed immunity and impunity and of the State of Victoria for genocide) and failed to take into account relevant considerations (such as the ongoing genocide against First People here and the universal obligation to investigate, stop, prevent and punish such genocide).

5. Whether the chief clerk failed to take into account relevant considerations (such as Our unceded sovereignty and the absence of any document evidencing Our consent to the occupation of Our Lands and the usurpation of Our Law by the State of Victoria) and took into account irrelevant considerations (the exile or extermination of the exterminating State of Victoria).

6. Whether the chief clerk has a duty to stop and prevent the crime of genocide against Us.

7. Whether the chief clerk knowingly and deliberately and with intent to destroy Us failed in his duty to stop and prevent the crime of genocide against Us.

8. Whether the chief clerk is complicit in the crime of genocide against Us and should be so charged forthwith.

9. Whether Our Law governs all people and lands here in the absence of any treaty or agreement or other document evidencing our Consent to the usurpation of our law by anyone of any entity.

10. Whether under Our Law it is even possible for Us to consent to the usurpation of The Ancient Unchangeable Custodial Law Of This Land.

11. Whether the chief clerk can ignore the existence and jurisdiction of the International Court of Justice and the International Criminal Court.

12. Whether the chief clerk understands, accepts and acknowledges that the International Court of Justice can make decisions regarding the true sovereigns and true laws and true ownership of lands.

14. Whether the chief clerk understands, accepts and acknowledges that the International Criminal Court has jurisdiction to prosecute him for genocide since the State of Victoria is manifestly unwilling and unable to do so itself.

15. The chief clerk failed to consider the relevant fact that the State of Victoria had previously admitted that Our Sovereignty has never been ceded as set out in the statement of claim in the writ at paragraphs 4(b) 27 April 2023 (c) 18 April 2024 (d) 31 March 2023. Note that the State of Victoria continues to admit this fact e.g. on 29 April 2024 (elected leader Jacinta Allan representing State of Victoria).

16. The chief clerk deliberately refused to apply the legal significance of this fact to the document before him.

17. The chief clerk deliberately refused to accept that the State of Victoria had made the decision (repeatedly) to surrender and give up its war against Us First Peoples.

18. The chief clerk deliberately decided that the State of Victoria could not be "a nullity" when there are obviously other options for the State of Victoria including by necessity its passive continuance as necessarily authorised by Us First Peoples pending and including ongoing changes ordered by Us First Peoples as We begin to heal and sort out matters

> amongst Ourselves free of any interference or coercive control of any kind by the State of Victoria.[4]

16 In that connection, the applicants claim that the 'Writ' rejected for filing by the Prothonotary should be 'allocated a proceeding number'.

17 It is plain enough that via the First Originating Motion the applicants seek to contend that the Prothonotary erred in refusing to seal the 'Writ' for filing and, consequently it seems, that the 'Writ' should be received for filing.

18 For administrative purposes, the First Originating Motion has been assigned the identifier S ECI 2024 03140.

19 On 22 May 2024, the second applicant sought to file a summons in the judicial review proceeding seeking the following purported relief –

> 1. Upon filing and sealing by Registry, the trial of the judicial review proceedings lodged 5 May 2024 and allocated New Case Request eFile ID 407406 between Aunty Alma Thorpe, first plaintiff, Uncle Robbie Thorpe, second plaintiff, and Rod Ratcliff, Prothonotary, first defendant, and Jaclyn Symes, Attorney-General of Victoria, second defendant (arising out of the decision on 2 May 2024 — but backdated to 1 May 2024— of the Prothonotary that the proposed writ lodged on Anzac Day, Wednesday 25 April 2024, by the said plaintiffs against the State of Victoria would constitute an abuse of process) be listed for one day on 19 July 2024 together with the current proceedings before the Chief Justice.
>
> 2. Upon lodgement and filing, the trial of a proposed judicial review proceedings between Uncle Robbie Thorpe, second plaintiff, and Magistrates' Court of Victoria, first defendant, and Attorney-General of Victoria, second defendant (arising out of the apparent/imminent decision of the Magistrate's Court that the proposed proceeding lodged on 16 April 2024 by Uncle Robbie Thorpe against the State of Israel's official propagandist Mark Regev for incitement to and advocacy of genocide against the Palestinian people would be an abuse of process) be listed for one day on 19 July 2024 together with the current proceedings before the Chief Justice.
>
> 3. The heading of these current proceedings be amended to UNCLE ROBBIE THORPE, plaintiff.
>
> 4. The filed name of these current proceedings be amended to UNCLE ROBBIE THORPE.

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[4] There is no ground 13 stated in the First Originating Motion.

20 In light of paragraph 1 above, the Summons has not yet been received for filing and has been included within the administrative identifier S ECI 2024 03140.

21 On 24 May 2024, the applicants again sought to file the purported originating motion dated 5 May 2024 (**'Second Originating Motion'**). The Second Originating Motion is in every discernible respect identical to the First Originating Motion. The Second Originating Motion has, however, been assigned a different administrative identifier, namely S ECI 2024 03142.

22 As I have noted, the relief relevantly sought in each of the three documents is essentially directed at the Prothonotary of the Court, and, pursuant to r 28A.04(2), it is the Prothonotary who would usually consider and determine whether such a document should be accepted or rejected for filing. In large part, that stands to explain why it is that the question of whether those documents should be sealed and filed has not yet been able to be determined.

23 As those documents have not been sealed for filing, pursuant to r 28A.04(5), the question is whether I should direct the Prothonotary to seal any of them.

24 In that regard, of course, the First and Second Originating Motions are substantively the same and therefore raise substantively the same issues. There are, however, manifold problems with both documents.

25 In one sense, the problem is procedural. However, there are also problems of a substantive kind.

26 In that connection –

(a) the First and Second Originating Motions each seek that the Prothonotary (there referred to as the 'chief clerk') receive the 'Writ' for filing;

(b) no reference is made to the considerations identified in r 28A.04(2) by which the Prothonotary might determine whether or not a document should be rejected;

(c) nor is any reference made to the route – via r 28A.04(5) – by which the Court might direct the Prothonotary to seal and therefore receive such a document for filing;

(d) instead, the First and Second Originating Motions approach the issue as if those specifically stated considerations, and route, do not exist, and as if a range of other concepts and notions might be relevant or determinative; and

(e) practically all of that is misconceived.

27 Merely by way of example, several of the purported 'grounds' apparently seek to contend that the 'chief clerk' has engaged in an 'abuse of process', acted beyond power, taken into account irrelevant considerations, failed to take into account relevant considerations and otherwise had certain duties and ought be charged with the crime of genocide. But, no mention is made of the considerations which the Prothonotary was in fact required to consider and, accordingly, no effort is made to engage with them.

28 The proper route for determining whether the Prothonotary ought to have sealed the 'Writ' for filing was via r 28A.04(5). However, when asked whether he sought that such a route be taken, the second applicant advanced no sensible response.[5]

29 It is no answer for the applicants to endeavour to institute a separate proceeding by originating motion that would seek to create its own legal standards for the purpose of determining whether a 'Writ' should be filed. To seek to do so is almost classically an abuse of process; in that, the proper procedure of the Court is being ignored and so misused.[6]

30 Even if the First and Second Originating Motions were not an abuse of process of that kind, the question in respect of those documents would inevitably be whether the Prothonotary should be directed to seal and file the underlying 'Writ' that they would

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5 See second applicant's email dated 4 June 2024.

6 *Walton v Gardiner* (1993) 177 CLR 378, 393 and *Batistatos v Roads and Traffic Authority of New South Wales* (2006) 226 CLR 256 [15].

seek to have received.

31 However, as I have earlier indicated, the Prothonotary seems to me to have acted correctly in rejecting the underlying 'Writ' for filing.

32 It follows, in my view, that the First and Second Originating Motions, as attempted aids to the reception by the Court of a 'Writ' which is itself substantially irregular and an abuse of process, should be rejected for filing.

33 The final issue concerns the Summons.

34 In that regard, paragraph 1 has broadly the same procedural defect as the First and Second Originating Motions, save that, of course, paragraph 1 of the Summons would seek to effect the filing and subsequent hearing of the First Originating Motion.

35 Whatever might be said about the other paragraphs of the Summons, paragraph 1 is an abuse of process in that it ignores and so misuses the proper procedure of the Court and it follows that, in that form, the Summons should be rejected.

36 For these reasons, I will direct that the First and Second Originating Motions and the Summons each be rejected for filing.

CERTIFICATE

I certify that this and the 9 preceding pages are a true copy of the reasons for judgment of O'Meara J of the Supreme Court of Victoria delivered on 25 June 2024.

DATED this twenty-fifth day of June 2024.

.....
Associate