TRANSCRIPT OF PROCEEDINGS

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SUPREME COURT OF VICTORIA

COMMON LAW DIVISION - TRIAL DIVISION

MELBOURNE

MONDAY 22 APRIL 2024

BEFORE THE HONOURABLE JUSTICE RICHARDS

ROBERT ALAN THORPE

v

MAGISTRATES COURT OF VICTORIA

APPLICATION

THE PLAINTIFF was not represented by Counsel.

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HER HONOUR: Good morning. I'm Justice Richards. I understand that's Mr Thorpe with Mr Lindon on the call.

MR THORPE: Yes, that's right.

HER HONOUR: Now, Mr Thorpe, are you appearing for yourself today or is Mr Lindon speaking on your behalf?

MR THORPE: My friend, Len, is gonna do most of the talking.

HER HONOUR: Okay.

MR LINDON: 'Cause what we normally do, Your Honour - we've done that to - before Justice Kirby and in the Federal Court and in the Supreme Court of South Australia, and, in fact, before Justice Warren in this court. We - we sort of do it together in the spirit of shared sovereignty, and so when it gets legalese, I sort of help Robbie and when he wants to speak, he'll quite certainly speak.

HER HONOUR: All right. I have no doubt he will. All right. I'm happy to proceed on that basis. Now, I understand that you can see and hear me adequately. I can certainly see and hear you, although, Mr Lindon, when you're speaking if you could, yes, get yourself more into view that would be great. At the moment I can just see your right ear. Yes, that's much better. That's much better. All right. So Mr Thorpe has brought a judicial review proceeding against a decision of the Magistrates' Court of Victoria to refuse to accept his summons and charge sheet seeking to prosecute the King for genocide.

The reason given by the Magistrates' Court was that

the law was not properly particularised, and it would, therefore, be an abuse of process to issue the summons. So Mr Thorpe has properly brought judicial review proceedings in relation to that decision, and he has had three summonses issued in the proceeding, all of which are listed before me today. So I thought I would just take those one by one and work through them, and then, as indicated in an email to Mr Thorpe from my associate on Friday there are three other matters that I would like to hear from you about.

The first is whether an extension of time should be granted to commence the proceeding. My understanding is that the critical decision of the Magistrates' Court was made on 29 December. The proceeding was filed on 7 March, so that's just a little over a week outside the 60-day time limit for commencing a judicial review proceeding, so I want to hear from you about what the explanation for the delay is and whether I should extend time today. Then I understand that there are a number of other summonses that Mr Thorpe has been seeking to have issued by the court.

The court's practice is not to issue a summons unless there is an identified return date for the summons, so a judicial officer who can hear it, and I thought it might be useful to work through each of those summonses and work out if there's anything remaining in them given the decisions that I will have made by that time, and whether there should be a listing date. And then, finally, I would like to talk about identifying a hearing date for the actual proceeding quite soon.

MR LINDON: And, Your Honour, there's a - if you've seen the draft order that was sent to your chambers this morning, you'll see there's a couple of preliminary matters we sought to raise. Just taking them in order, the first one was about transcript to Robbie and Alma and Marj, and the second one was transcripts to the integrity bodies. The third one was whether a video and audio recording be permitted from our end, the fourth was the Chief Justice to hear, and the sixth one was the - an application for disqualification for bias on the basis that you've sworn allegiance to King Charles and his predecessors in title on several occasions once upon admission as a lawyer and then subsequently upon taking silk and then upon becoming a Crown law officer, and then finally your appointment as a judge of this court.

On each occasion we understand there's a - an oath of allegiance to the Windsor family in one form or another, so as you can see, we've laid out the grounds for that that most ordinary Victorians would perceive bias, and every Aboriginal person would, and probably every member of every international body would perceive bias. So it's - a matter for you to rule on, Your Honour.

HER HONOUR: Yes. Well, it is a telling point that you make. Like every other judge of this court, I have made - well, in my case, an affirmation of office, affirming my allegiance to the sovereign who, when I was appointed, was the Queen, but it - the affirmation of allegiance includes her heirs and successors. So hence the King. But that is something you're going to run into with every judge of this court. So if, as Mr Thorpe has done, he

wishes to invoke the jurisdiction of this court, any judge who - - -

MR THORPE: (Indistinct words.)

HER HONOUR: - - - hears the proceeding will have that allegiance, and I really can't see a way forward.

MR LINDON: Well, perhaps a solution is - Mr Thorpe's just written a note, that this is the dilemma, but perhaps in line with the Minister for Treaty and First Person - First Peoples last Thursday, and Yoorrook Justice Commission, and also previously Ministers Carbines and Edgington, and also on 27 April last year, the senior counsel representing the State of Victoria have all acknowledged that sovereignty has been ceded.

So perhaps if Your Honour can balance those two concepts, that whilst you swore an allegiance to the sovereign - who we say is a foreign, genocidal invader - you - you - you will know that the government or the day - the State of Victora, has ceded sovereignty, has acknowledged that sovereignty of Mr Thorpe's people has never been ceded, so that there are - at least to the court's mind - there are two sovereignties.

We say there's only one. We say that Aboriginal law is the law of the land and always has been, and so - and that your law is the foreign law and has no jurisdiction. But it may be that if the court's prepared to acknowledge in line with the State of Victoria's admissions already, that sovereignty has never been ceded, then that's the way to progress.

That - the - the final decision as to what that all means can await the trial date, or as you said, we - we've also suggested there be a second series of

proceedings, basically on the question of genocide charges against the King, to be decided by a more full Bench than just yourself. And we'll come to that, no doubt, later on this morning. So I guess pro tem, we have a dilemma. Technically, you're disqualified on the face of it because of obvious bias and - and - - -

HER HONOUR: Well, I don't think I am disqualified for this simple reason: the King is not a party to this proceeding. It's a matter between Mr Thorpe and the Magistrates Court. The Magistrates Court has, as I'm sure you're aware, indicated that it will be taking a Hardiman position in the proceeding, which means that it will not be taking an active role in the proceeding, but will abide the decision of the court.

MR LINDON: But it's hard to say that the King is not a party, Your Honour, when, in fact, the original proceedings, the charge sheet is Mr Thorpe v Charles Windsor. So the - the origin of this whole case is, in fact, the King as a party. And it was - it was because the Magistrates' Court declined to make him a party that we're here.

HER HONOUR: Well, the question before me, before this court at the moment, is whether the Magistrates' Court's decision to reject the filing was a lawful decision. The King's not a party, and so the dilemma that you identify does not arise in this case, and even if it did, the doctrine of necessity would require that a judge of this court sit to determine the issue that arises in the proceeding, and that judge, for the time being at least, is me.

MR LINDON: Well, look, see, we have asked for the Chief Justice to be that judge, Your Honour, for that very

reason. Because that - that - that is the most senior position in - of - of - a - a judge in the State of Victora. And it seems appropriate that leadership should be provided, rather than you being the poor solitary judge that's sort of stuck with it.

The other thing is the doctrine of necessity works both ways, Your Honour, and, therefore, we would - we would say that it's - the doctrine of necessity requires that the court acknowledge that sovereignty's never been ceded, for the same reason that - that - that you say it's necessary for you to continue sitting.

HER HONOUR: All right. Well, that's - - -

MR LINDON: We say as - as - as plain - - -

HER HONOUR: That's an issue that you'll be able to agitate at the hearing of the proceeding. In relation to the numerous requests that Mr Thorpe has made for the Chief Justice to hear not only these summonses but the proceeding as a whole, no litigant is able to choose the judge who hears their proceeding, not Mr Thorpe, and the King either. The proceeding, or the summonses have been referred to me as the senior judge in charge of the judicial review and appeals list, and I propose to deal with them today, so.

MR LINDON: Okay. As for the other matters, Your Honour, the - - -

HER HONOUR: That deals, I think, with matters for five and six on the draft order.

MR LINDON: Thank you.

HER HONOUR: In relation to transcript, I must say, I had anticipated that Mr Thorpe would not be in a position to pay for transcript, so I accept that the court will bear

that expense in this instance. The transcript will be made available to Mr Thorpe via his email address, and he will be free to pass that on to anybody who he thinks should have it.

MR LINDON: And the video and audio recording, Your Honour?

HER HONOUR: Well, we video and audio record it for our own internal purposes, principally to ensure that the transcript is an accurate one.

MR LINDON: So in terms of a general interest, both here and interstate, and world-wide in Indigenous circles, is it possible that the recording of this hearing today can be made available to other Indigenous groups around the world?

HER HONOUR: Today's hearing's going to be a very dry and dull procedural hearing, Mr Lindon.

MR LINDON: Maybe to you but not to Indigenous people, Your Honour.

HER HONOUR: Today's hearing is being livestreamed to anybody who wishes to watch it. The livestream link was provided to Mr Thorpe with the hearing arrangements email last week, and the hearing of - the final hearing of the proceeding will also be livestreamed, and I will give consideration to whether that livestream link should be a public livestream, or one like you have today. All right.

So shall we proceed with the summonses that are before me? The first summons was a summons filed on 12 March, seeking orders that the Chief Magistrate is to make an appointment time and date for Mr Thorpe to appear and seek leave to initiate cases through the eDocs portal, and to be provided with login access to the

portal as per Mr Thorpe's written request in the letter dated 20 October 2023, with the subject: 'Exclusion of self-represented parties from the implementation of eDocs.'

And in the alternative, leave is granted to Mr Thorpe to initiate cases through the eDocs portal, and to be provided with login access to the portal. And the Chief Magistrate is to exercise the powers of a registrar to receive the charge sheet attached to the letter and arrange for it to be filed and listed for a committal hearing. So I'm a bit mystified by that one. Do you want to tell me what that's about, Mr Lindon?

MR LINDON: Well, we understood that this was a - that that was a summons normally filed for the first directions hearing, and so it was unclear what exactly was required to go in that summons. So we just reiterated the relief that we were seeking in - in the actual originating motion. So that's - - -

HER HONOUR: All right.

MR LINDON: There's no mystery. Simply that it was listed for a first directions hearing, and we weren't sure what to put in the summons.

HER HONOUR: Okay. So it does look to me a lot like relief that I would not be able to grant, even if Mr Thorpe succeeds in the proceeding. So the best outcome that he will achieve in this proceeding is an order quashing the Magistrates' Court's decision not to accept his summons and charge sheet for filing, and an order in the nature of mandamus directing it to accept it for filing, or at least directing it to reconsider the decision.

Now, it's never going to be up to me to dictate to

the Chief Magistrate how she runs her court. And in particular, the Supreme Court's very broad powers do not extend to how the eDocs portal is configured.

I understand that it's a universal feature of that portal that self-represented litigants are not given access to it, no matter who they are, and there's really nothing that I can order that will change that. So on that basis, I'm going to dismiss that summons, and then move to summons 2, which is a more - - -

MR LINDON: Just on that point, Your Honour, if we wanted to have that decision you've just made reviewed, what is the procedure for reviewing, for example, your dismissal of that summons for the reasons you've just given?

HER HONOUR: Well, you could apply for leave to appeal to the Court of Appeal.

MR LINDON: And we can apply to you for leave, can't we, on that basis? We can apply to the - - -

HER HONOUR: No. It's the Court of Appeal that decides whether to grant leave to appeal from a decision of a judge of the trial division. And it's very rare that the Court of Appeal grants leave to appeal from an interlocutory decision dismissing a summons. But that's a matter for you and Mr Thorpe to do that.

MR LINDON: Yes. Thank you.

HER HONOUR: All right. But why don't we work our way through the rest of this summons, and you can see what you end up with at the end of today's hearing.

MR LINDON: Yes.

HER HONOUR: So the second summons is, first is leave to issue some subpoenas to produce documents and give evidence in accordance with Mr Thorpe's affidavit of 7 March. He

then seeks to add a number of defendants, and I understand that that list has rather grown. The defendants who he seeks to add in the second summons are the Attorney-General for Victoria, the Premier of Victoria, the Governor of Victoria, and the State of Victoria. And I understand that there's now a longer list of potential defendants, including the Chief Magistrate, the Deputy Chief Magistrates, both of them, and a number of identified Registry staff within the Magistrates' Court.

MR LINDON: Well, there's the Deputy Chief Magistrate, two of them, Wakeling and Bourke. There's the Chief Executive, Simon Hollingworth. There's Senior Registrar Dalton, Acting Senior Registrar Sim, and senior manager, Alyson Neilson. They were the original seven that appeared on the originating motion that was required by the Prothonotary. And I think they're actually listed in the - either explicitly or implicitly, in the summons you're referring to. So those seven people were always to be reinstated as defendants. The only other additions are - we'll come to in a minute, but it's not - - -

HER HONOUR: All right. Perhaps it would help if I tell you that in a judicial review proceeding seeking judicial review remedies in respect of a decision of the Magistrates' Court, the usual defendant is the Magistrates' Court of Victoria. And if there's another party to the proceeding before the Magistrates' Court, then that party as well. But in this case, there is no other party, because the proceeding was never commenced. So the only necessary defendant is the Magistrates' Court of Victoria. It's not necessary to identify every single

person who was or may have been involved in the decision under review.

MR LINDON: But they're still individually responsible for their decisions. It may be that their individual decisions may be the subject of findings of unlawfulness, ultra vires, all those sorts of things, in the course of a ruling.

HER HONOUR: Well, there's really only one decision that's the subject matter of the proceeding, which is the decision made on 29 December not to accept the summons and charge sheet for filing.

MR LINDON: Well, there's the decision of the Chief Magistrate not to hear the matter in the first place. There's the decision of the Deputy Chief Magistrates not to hear it. And that's obviously crucial, because had the Chief Magistrate heard the matter, there might have been a different outcome.

HER HONOUR: That's all something that might be dealt with at the final hearing.

MR LINDON: Yes.

HER HONOUR: But the primary question is, was it an abuse of process? Was the Magistrates' Court correct to reject the filing, on the basis that it was an abuse of process, or was that decision affected by error? Now, if it was affected by a material error, then the decision is liable to be set aside, and the Magistrates' Court may be directed to reconsider the decision, or it may be directed to accept the matter for filing. And then you can take the matter up from there in the Magistrates' Court.

MR LINDON: However, there is this huge delay between

20 October, when the charge sheet is filed, and then the decision of Registrar Sim.

HER HONOUR: Yes.

MR LINDON: And there's no explanation as to why it took three weeks for that matter to reach that registrar. And we suspect, of course, that that was actually considered by the Chief Magistrate and fobbed off to a lowly registrar. And subsequent to that, there's, as you know, Mr Thorpe's racial discrimination complaint, and the way in which that's dealt with also raises serious questions of bias. And then there's the actual reasoning of Mr Dalton, because he gives two different reasons for why he's rejected the summons.

And then we come to his refusal to provide an order in relation to the 4 March proceedings, where we sought to review that decision, and the court refused to hear it. And then finally, there's the decision just last week, of Director Clark from the Legal Policy Unit, basically saying that they won't provide any documents or admit any facts, because they have to maintain a semblance of impartiality. Whereas we say that clearly shows against us, because they won't even produce the documents. It's got nothing to do with maintaining impartiality, quite the contrary. So all of those matters, we say each of those individually are administrative decisions that cumulatively have the effect of a grave injustice to Mr Thorpe.

HER HONOUR: I do understand that the decision that he seeks to have reviewed in this proceeding is the decision to reject his summons that he attempted to file on 20 October. Now, it appears to me, subject to anything

that you might say, that that really involves questions of law. I'm quite aware that Mr Thorpe, with your assistance, Mr Lindon, has litigated issues like this over many years, and on each occasion the answer has been that genocide is not a crime at common law. And to the extent that the genocide treaty has been enacted in Australia, there are quite stringent restrictions on the commencement of a prosecution, which have not been satisfied in this case. Now, that's the background.

There may be other arguments that are available that have escaped me to date, but that's really what the case is about, and my initial view is that no amount of evidence is going to elucidate that issue. And so the Magistrates' Court, as an institution, having taken a Hardiman position, my view is that there's nothing to be gained by seeking to add any individual who is involved in the administration of the Magistrates' Court. So to put it another way, were Mr Thorpe to be successful in this proceeding, and order against the Magistrates' Court would be sufficient to give him the relief that he seeks.

MR LINDON: I think Mr Thorpe has a question for the court.

MR THORPE: How does the court get jurisdiction over (indistinct) is the question we're asking here. We're only coming here as a favour to you and your system, to explain to you, you're not the law here. Our law precedes your law. Just recently - last year - lawyers for the State Government acknowledged that we never ceded our sovereignty over these lands. What do you say about that?

HER HONOUR: Well, Mr Thorpe, I'm here to decide a case that you have commenced, so the jurisdiction of the court has

been invoked by you.

MR THORPE: And we're required to use these - 'cause there are - we need to exhaust the domestic - so-called domestic remedies, which is not - there's no such thing as a domestic remedy for Aboriginal people here under this jurisdiction. That's why we're here today to go through this process.

HER HONOUR: All right. I understand that, but the jurisdiction that the court has is - - -

MR THORPE: So maybe what you say in this court may be used in a real court of law against you at some stage. Just want to make you aware of that.

HER HONOUR: All right, thank you. Thank you. That will be a matter for you.

MR LINDON: Well, actually, it's a matter for you, really, Your Honour, because the International Criminal Court has jurisdiction to charge Australians.

MR THORPE: (Indistinct.)

MR LINDON: It's not really funny. It's actually deadly serious that - - -

HER HONOUR: No. No, no. I don't think it's funny.

MR LINDON: Well, you - you smiled, so - - -

HER HONOUR: And I accept that there are very serious issues that Mr Thorpe is seeking to agitate, but there is a limit to what I can do, and this proceeding raises a - - -

MR THORPE: According to the 1948 Convention for the Prevention and - and the Punishment of the Crime of Genocide, it's universal jurisdiction application. No one's immune and there's no statute of limitation. That's the point we're trying to - we're trying to make here.

HER HONOUR: All right. When we get to the final hearing, those arguments can all be put, but returning to the second summons, I've given you my decision about the application to join various individuals at the Magistrates' Court. Can we return to the other group of defendants that Mr Thorpe seeks to add: the Attorney-General, the Premier, the Governor, and the State of Victoria?

MR LINDON: And there's a couple more in the - in the draft orders forwarded in the - - -

HER HONOUR: All right. Well, I have to say, I'm going on the summons, Mr Lindon. That's what's listed before me today, so let's just talk about that to begin with, those four. On what basis do you seek to add those four defendants?

MR LINDON: Well, let's start with the State of Victoria. The State of Victoria's clearly an appropriate defendant, where the very issues that Your Honour has identified in terms of the applicable law are in question. It may be that the Magistrates' Court of Victoria is not in a position to recognise that the correct law of the land here is Aboriginal law, and maybe the Magistrates' Court of Victoria is not in a position to recognise that the common law of Victoria has now changed - certainly, since 27 April last year - such that genocide is now a crime.

For example, we say that the State of Victoria could not now pass an Act saying, 'genocide's no longer a crime in Victoria', because the judicial power of this court would prevent that because, clearly, genocide, as Mr Thorpe's pointed out, is a universal crime. There's no immunity and there's no statute of limitations.

So the State of Victoria really is the - is the legal entity that - that has the bottom line of responsibility in this matter. There - there's no genocide legislation in Victoria. There's no legislation recognising Aboriginal people as the sovereigns of Victoria, although, as we said, there have been - there's admissions by ministers.

There's never been any prosecution of any White person for genocide in Victoria in the entire history of the occupation of Charles Windsor and his crime family. There's never been any attempt to prevent or punish anyone for genocide in this state. And that, we say, is clear evidence of an attempt to destroy, which is a requisite intent required to show a - to - to show the crime of genocide has been committed.

So it's fairly fundamental that the State of Victoria be a party. Whatever we say about the Governor and the Premier and the Attorney-General, they're ultimately just individuals holding positions in - in the - in the State of Victoria, as is the Chief Justice. Ultimately, the State of Victoria is the sort of kleptocratic entity that's responsible for all this. It's failed to prevent, failed to punish within the meaning of the Genocide Convention, which we say is now part of the law of every civilised country.

HER HONOUR: All right. So the other individuals you identify are named as representatives of the State, not for any other purpose.

MR LINDON: Well, for two reasons. First of all, the Premier and the Attorney-General and the Governor are people in positions of power - probably the most powerful people

who are in a position to do something about this and have not done so.

So that - to take Mr Thorpe's point that, in fact, we're just exhausting domestic remedies, we would say that if the - this court makes a decision that, in fact, the King is not to be charged with genocide, then the questions becomes whether the International Criminal Court has jurisdiction to then charge the Governor and the Premier and the Attorney-General with complicity in General. So it's quite important that they have a chance - an opportunity - to make their position very clear.

Do they concede that sovereignty's never been ceded and that no one's ever been punished for genocide and that genocide's not even against the statutory law of Victoria, and do they concede that that shows that they have an intent to destroy? There's been no declaration of an end to hostilities, all the things you'd normally expect at the end of a war. All we have is this admission that sovereignty's never been ceded.

So it's particularly important for the Governor, who is the delegate of the King and is notionally the head of the State of Victoria, and we say, looking at the Coat of Arms behind you, which shows a mythical creature, the unicorn; and a creature, the lion - neither of which are totems of this country - and, in fact, the lion's not even a totem in England as far as we know - that, clearly, there's a foreign court sitting here.

The - the Chief Justice herself is only the twelfth Chief Justice of Victoria, whereas Mr Thorpe's family and law go back thousands and thousands of generations. This is clearly known by everyone, and there's this continuing

state of denial which we say the court is a part of for the very reason you set out in your earlier decision that, you know, we've come to the jurisdiction of the court and it is what it is.

But we say, no, now that there's a treaty authority legislation; now there's a pathway to treaty legislation; now that there's a Yoorrook Justice Commission looking into injustices back to colonisation suffered by Indigenous people, including the word 'genocide', we say all those things radically change the legal environment in Victoria such that genocide is now part of the common law. We say that that is what distinguishes the cases you've referred to from 30 years ago.

HER HONOUR: Yes, yes, I follow that. All right. Well, I've listened to what you've said there, and I do consider that it is necessary to have a representative of the State before the court to ensure that all questions in the proceeding are effectually and completely determined. In my view, that officer is the Attorney-General who should be joined as a defendant to the proceeding.

And so I'll make an order under Rule 9.06(b)(i) of the Supreme Court (General Civil Procedure) Rules that the Attorney-General for Victoria is joined as the second defendant to the proceeding, and the court will attend to notifying the Attorney-General through the Victorian Government Solicitor's Office of that order. And when I do that, I will propose a timetable for the hearing of the proceeding and the exchange of written submissions. All right.

So that then takes us back to the application for leave to issue a range of summons to produce documents

and to give evidence. Now, as I indicated at the outset, my preliminary view is that this is a proceeding that involves questions of law, not questions of fact. You've just identified the basis on which you say the law is now different from the law explained in cases like - - -

MR LINDON: Thorpe v Kennett?

HER HONOUR: Yes. And, well, Thorpe v Commonwealth, not so much, but Nulyarimma v Thompson, for example.

MR LINDON: And Mr Thorpe was also a plaintiff in that case.

HER HONOUR: Yes, yes, I'm aware he was involved in that proceeding, too. But that appears to me to be a legal submission based on matters of public record, not something that's going to require evidence, so tell me why Mr Thorpe takes a different view?

MR LINDON: Well, if Your Honour's had a chance to look at the three subpoenas that we sought to issue last week, one against the - the Secretary of the Department of Premier and Cabinet, and one against the Secretary to the Governor, and one against the - a chap called - his name escapes me for a second, but those - those three people, we say, ought to produce certain documents, namely any document evidencing the consent of any Aboriginal people to the jurisdiction of the State of Victoria or of the jurisdiction claimed by the King of England.

We say there is no such document, and therefore it's important that a formal admission that there is no document of consent that be considered by the court. We also ask that the - those gentlemen produce copies of what's called letters patent, which are held by the Secretary of the Department of Premier and Cabinet and, we believe, also by the Secretary of the - the Governor,

which contain formal documents from the current King and the previous Queen and previous monarch before them appointing every justice of this court, every member of every Cabinet of the Government of Victoria, Queen's Counsel and King's Counsel, and various other office holders.

And we say that this demonstrates conclusively that every person holding any position of power and responsibility in the State of Victoria is an agent, clearly, of the King of England or the Queen of England. And that - in - in - in our submission, when you pair that up with the fact that there's no evidence of any consent of any Aboriginal tribe, group, mob, nation - whatever you want to call different people in different countries - there's no such - there's no such document.

And what there is is a series of documents by which the King of England asserts that he has the power to authorise certain people - non-Aboriginal people, mainly - to hold office under a legal system that he, the King, and others maintain governs the State of Victoria. Whereas Mr Thorpe and others say, 'That's just silly. Clearly, the original law of the land that's been here for thousands of years still continues.'

It may well have been under an attack by the attempted occupation of Aboriginal land and the attempted usurpation of Aboriginal law, but the law still survives and it's been recognised more - more and more recently that, in fact, sovereignty's never been ceded. And when you say, 'sovereignty's never been ceded', that's like if you went to France and you tried to say that you were occupying France, and they said, 'No, French law applies

here', or if you went to Italy or if you went to somewhere in South America.

Every country has their own sovereign law, and Aboriginal people have always had their own sovereign law. And so to attempt to usurp that law and to attempt to occupy the - those lands is - is - you know, firstly, it's genocidal. Clearly, it shows an intent to destroy within the meaning of the Genocide Convention of 1949 and the Rome Statute of 2000. But also, in the relation to the facts of this particular case, unless you have that kind of evidence before the court, you - you - you're - you're incapable of making a fair and true decision as to the state of the law. So - - -

HER HONOUR: Yes. Well, I perhaps take a different view that, for the purposes of deciding whether the Magistrates' Court was wrong to reject the filing, I'm prepared to proceed on the basis that sovereignty was never ceded and that every judge of this court since it was established has sworn or affirmed allegiance to the Sovereign.

I'm prepared to proceed on that basis without any need to engage in an elaborate evidence-gathering exercise to prove what I regard as some fundamental constitutional facts. Whether or not that changes the law to be applied is really the question that will be for determination at the final hearing.

MR LINDON: You don't think, Your Honour, that that suggesting ruling you've just outlined demonstrates incredible bias to - if - to Aboriginal people, because if - if - if you were saying there's no need to have any evidential admission that there was never any consent by any Aboriginal tribe, nation, mob to the jurisdiction of the

State of Victoria then - and - and if - and if you say that there's no need to demonstrate that every office holder in the State of Victoria has sworn allegiance to a foreign invading Crown from England, then it seems to me that it's impossible for Aboriginal people and, indeed, for any Indigenous people around the world and for most civilised countries that are members of the United Nations to - to perceive that as anything other than incredibly biased.

What has the State got to hide? Why can't you just require a formal admission that there's never been any consent of any Aboriginal people to the jurisdiction claimed by the King of England? And why can't you just admit that every office holder - not just in the court - not just in the Supreme Court, but in every branch of the so-called three branches of government - the executive, the legislature, and the court - have all sworn allegiance to a foreign power, the Kings and Queens of England, when in fact all along everyone that lives here has known that there is a law of this land. Every Aboriginal nation, mob, tribe, or group has a distinct law, just like the French and the Italians and the Germans and the South American countries have, just like any country in the United Nations has. But - but - - -

HER HONOUR: Mr Lindon, you're straying well outside the bounds of the matters for decision in this proceeding. In relation to those matters, I've indicated that my intention is to proceed on the basis as an assumed fact, if you like, that sovereignty has never been ceded and that the judges of this - - -

MR LINDON: That there is no document of consent to any - to

the jurisdiction of - by any Aboriginal person or tribe?

HER HONOUR: Well, no. You heard what I said, Mr Lindon.

MR THORPE: (Indistinct words.)

HER HONOUR: And that the judges of this court, now and previously, are judges of the Supreme Court of Victoria and have taken the oath or affirmation of allegiance that is part and parcel of that office. So, on that basis, I'm not going to grant leave to issue the subpoenas and nor are we going to engage in a notice to produce or notice to admit facts process.

MR LINDON: And, once again, that decision of yours is - is appealable under a leave to appeal application to the - - -

HER HONOUR: Yes, you would have to obtain leave to appeal from the Court of Appeal.

MR LINDON: Right. Just on that, Your Honour, my understanding is that the - that the judge, at first instance, can also grant leave, that leave can be sought both - both from the Court of Appeal and from the judge. That's incorrect?

HER HONOUR: No. No. I would not presume to grant leave to appeal from my own decision. Having just made it, I believe it to be the correct decision.

MR LINDON: Right.

HER HONOUR: And you would have to persuade a judge of appeal or more than one of them that there is a real prospect of success on an appeal in order to be granted leave to appeal. But that's a matter that - - -

MR LINDON: Well, it - it - on my specific question, Your Honour, you do have power to grant that leave, should you decide to so. I hear that you say you're not going to.

HER HONOUR: No, I don't. I don't believe that I do.
MR LINDON: I - I believe that you do, but we'll come back to that.
HER HONOUR: All right. Well, you believe my powers are more extensive than I do, clearly.
MR LINDON: Well, I just - I - just read the - the Acts, but anyway.
HER HONOUR: All right. Now, that takes us, I think, to the third summons.
MR LINDON: So, in relation to the other people mentioned in the draft order from this morning, you're rejecting all those people as well. The Minister for Treaty and First Peoples and the Parliament of Victoria and Lisa Marsicovetere and Louise Anderson and Kate Clark, all people that we named as being relevant. You're saying - just to clarify matters, you're saying none of those people are to be - - -
HER HONOUR: I've made an - - -
MR LINDON: - - - joined as defendants apart from the State of Victoria - apart from the Attorney-General?
HER HONOUR: I've made an order joining the Attorney-General for Victoria as a representative of the state in order to - well, really to provide a contradictor to enable me to decide the issues because I'm not here to argue with you; I'm here to decide the case that's been brought, and in order to do that as impartially as I can, it's not for me to run the arguments one way or the other.
MR LINDON: Precisely. But shouldn't that include the State of Victoria, though, as an entity? Shouldn't they be joined as well as the Attorney-General?
HER HONOUR: Well, the Attorney-General will do. Now, the

others who you seek to have joined either fall into the category of someone associated with the administration of the Magistrates' Court, and I've given you my ruling that it's sufficient that the Magistrates' Court of Victoria is the first defendant or their other representatives of the executive government.

MR LINDON: And the legislature, the Parliament.

HER HONOUR: Well, it's really not possible to join the Parliament of Victoria as a defendant to a judicial review proceeding, and I'm certainly not persuaded that that's necessary to ensure that all the questions in the proceeding are effectually and completely determined and adjudicated upon. So - - -

MR LINDON: May I make one submission on that point?

HER HONOUR: Yes.

MR LINDON: Thank you for Your Honour's patience. It's just that the Parliament of Victoria has the legislative power to enact a Recognition of Aboriginal of Sovereignty Act, a Genocide Convention Act, a Recognition of the Rights of Indigenous People, Universal Declaration Rights of Indigenous People. It has the power to pass legislation so that unlike the court, which can't legislate apart from, you know, on a case-by-case basis, an executive - - -

HER HONOUR: No, not at all we can't.

MR LINDON: Okay. And apart from the executive, which has no legislative power, the Parliament of Victoria actually has the power to be a game changer. They can enact legislation which would settle the matter of whether or not Aboriginal sovereignty not only survives but overrules the Parliament of Victoria, and we say that

they're a necessary party because of that power. They have the power and therefore - - -

HER HONOUR: Well, there is no question in this proceeding of whether the Parliament of Victoria should or should not enact particular laws. That is absolutely a matter in the political realm and well beyond the jurisdiction of this court in any proceeding, and certainly in this proceeding. So the Parliament of Victoria will not be a defendant to the proceeding. Now, I want to turn now to the third summons in which Mr Thorpe sought to have Alma Thorpe added as a plaintiff. Now, I have noted that she was not the proposed informant in the proceeding that Mr Thorpe sought to commence in the Magistrates' Court, but perhaps you could outline to me on what basis it's sought to join her as a plaintiff.

MR LINDON: Does Your Honour have the charge sheet before you?

HER HONOUR: I can in a moment. Yes. So this is at p38 of Mr Thorpe's affidavit of 7 March; is that the one?

MR LINDON: Can you see there are two signatures on that page?

HER HONOUR: Yes.

MR LINDON: And you see that one is Robert Thorpe and the other signature is A. Thorpe.

HER HONOUR: Yes, as a witness, I had understood.

MR LINDON: That's Alma Thorpe. Right. But you have on the original charge sheet that was filed on the 20th of - - -

HER HONOUR: October.

MR LINDON: - - - October of last year. Alma Thorpe and Robert Thorpe and cosignatories, and if you understand a little about the Aboriginal legal system, you understand that Elders have paramount power and that Elders authorise certain action, so that the charging by Robert Thorpe,

also known as Uncle Robbie Thorpe because of his age and standing in his community, was authorised by his Elder, Alma Thorpe. And whether one recognises the Aboriginal law implications of that, that an Elder be - Elder Elder has authorised the bringing of these charges against Charles Windsor, or whether one just looks at it as in Western eyes that you have two signatories to the charge sheet, either way Alma Thorpe has been involved in this matter from the beginning.

And you'll hear more about Alma Thorpe's history in the matter, but we've given you a reference to the - to Alma Thorpe's evidence at the Yoorrook Justice Commission which is a royal commission looking into injustices against Aboriginal people including genocide back to colonial days, and you will see that Alma Thorpe has been a leading voice in many Aboriginal organisations including the Aboriginal Health Service and is well respected by most Aboriginal people in Victoria.

I would say all Aboriginal people in Victoria. And it's no small thing for an Elder of her stature to bring these charges against the foreign invader, the King of England in the northern hemisphere. We say that it's fitting and proper that Alma Thorpe be accorded the respect due to her and made first plaintiff in these proceedings, and you'll see that there are other documents that Alma Thorpe has signed. I can take you to them, but one concerns a declaration on 27 April last year where the counsel for State of Victoria conceded that sovereignty had never been ceded at the first public hearing of the Yoorrook Justice Commission.

So, on that date Alma Thorpe and another Elder, who

you'll hear more about, Marjorie Thorpe, declared that sovereignty had never been ceded and that certain legislation should be enacted, including a Sovereign Recognition Act, and further declared that there ought to be a meeting of all Aboriginal people for as long as it took, and that there should be a procedure whereby non-Aboriginal people can sign a document at the old convention centre - at the old exhibition building, the former - the place of the formation of the Commonwealth of Australia in 1901.

They can sign a document admitting that Aboriginal law is the law that applies here, apologising for the genocide that occurred and agreeing to pay the rent that's due for the occupation of these lands. So that's one reference to Auntie Alma Thorpe. And the other one is in relation to documents to the State of Victoria and the King of England in relation to providing a budget for specialist lawyers to bring a case in the International Court of Justice concerning the legality or otherwise of your occupation of this land and, we say, vindicating the fact that International Court of Justice will declare that Aboriginal people are the true owners of this land, the true occupiers of this land, and that their law applies.

So these are big issues and Alma Thorpe is heavily involved as a distinguished and senior elder of the Aboriginal community in Victoria. And we say he's entitled to the respect and indeed the appreciation of this court to the fact that she is becoming involved in this matter. Do you have anything to say, Rob?

MR THORPE: Yeah, it is quite a big thing to do for my mother.

She's almost 90 years of age. Spent her whole life struggling against this system. She was born here in Melbourne during the Depression years in Victoria at a time when there were no rights for Aboriginal people. My mother's been involved in this struggle, when I was born she was struggling and her mother. It just goes on. We've never accepted the occupation of this land as being legal in any sense of the word.

There's no treaties. There's no consent. There's obviously no jurisdiction here. One of the reasons why we want this clarified is where is the law here. You know, we want people to understand we're lawful people. What turned up here in 1770 was not law, it was piracy. It was terrorism. So where do they get their law from in this state. Not just my mother who argued these points, but all of my elders and I've grown up and said the same thing.

It is impossible to access the system here. Blockages, obstruction laws and you know, it's constant. So to be here today is something new. We're exhausted by the time we get to the courts in this place. We need to go to a place where we can, you know, put our concerns there. It is not here. It is not in this place it seems. It's been going on for a long time. It's unsettled. Why are they talking about a treaty 250 years down the track, you know.

The other thing is without treaties how do you get consent. How do you get law without treaties or consent. So you know, that's just not my mother saying this. It's just about Aboriginal person I know. That says enough.

HER HONOUR: Thank you. Thank you, Mr Thorpe. I accept

everything that both of you say about the seniority of Alma Thorpe and her interest in the outcome of this proceeding. Nevertheless, there was a sole informant in the charge that Mr Thorpe sought to file in the Magistrates' Court which is Mr Thorpe himself and he is the person who has commenced this proceeding quite properly, and I don't consider that it is necessary to join Alma Thorpe in order to ensure that all of the questions in the proceeding are effectually and completely determined and adjudicated upon.

So on that basis, the third summons filed 25 March is dismissed.

MR THORPE: Your Honour, I just want to say that my mother sees me as her warrior.

HER HONOUR: Yes.

MR THORPE: Okay. I'm doing things for my mother, the other way around. I'm at her service. Aboriginal people don't understand nothing about the law of this land. Do you? I'm not talking about the colonial war here, I'm talking about the law of this land. Do you know anything about this law?

HER HONOUR: Mr Thorpe - - -

MR THORPE: I'm working. I'm at my mother's service.

HER HONOUR: Good.

MR THORPE: Not anybody - I don't recognise your law here by the way.

HER HONOUR: The summons and the charge sheet were not rejected on the basis that you did not have authority to commence the prosecution. That was not the issue. So can we move on now to the question of an extension of time? As I indicated at the beginning, my assessment is that this

proceeding was filed a little over a week outside the 60 day time limit. I understand that Mr Thorpe attempted at an earlier time to file an appeal under section - I can't remember which section. It was under, I think, 272 of the Criminal Procedure Act on a question of law, and that this court's registry rejected that on the basis that there'd been no final order of the Magistrates' Court.

And having been knocked back on that basis, Mr Thorpe then sought to commence this proceeding which was accepted for filing. Is that the explanation for the delay in filing this proceeding?

MR LINDON: I think you'll find that there was a proceeding filed on 26 January. I'm just trying to dig that out.

HER HONOUR: This is one of the ones that was not accepted for filing?

MR LINDON: No, no, no. This is - I'm just trying to find the - - -

HER HONOUR: 24 January, I believe it was. Which would have been within time.

MR LINDON: Yes, that's right. I'm just looking to see what happened to that.

HER HONOUR: Well, it was rejected I'm aware by the Prothonotary on the basis that there was no final order of the Magistrates' Court because there was no proceeding before the Magistrates' Court.

MR LINDON: Yes.

HER HONOUR: I'm also aware that that decision has been reviewed by another judge of the court, Justice Forbes, who has declined to direct the Prothonotary to accept that notice of appeal for filing and Her Honour has given reasons for the view that she's come to.

MR LINDON: Your Honour, on the - yes, on 24 January as Your Honour says, there was a filing which was given the number of 383906 which was a notice of appeal, and as you say that was refused by the Prothonotary on 15 February. And then two days later on 26 - sorry, that was on 26 February. Yes.

HER HONOUR: I might be able to short circuit this, Mr Lindon and Mr Thorpe. My preliminary view is that there is an acceptable explanation for the delay in that Mr Thorpe tried to commence an appeal which was after some weeks rejected, and when that was rejected he then commenced a judicial review proceeding which is the correct procedure. I accept that that is an explanation for the delay and given the importance of the question that Mr Thorpe seeks to agitate in this proceeding, my provisional view is that there are special circumstances that would justify extending time to commence this proceeding to 7 March. Now, have I missed anything or misunderstood anything?

MR LINDON: Yes, so on 26 February, proceedings were attempted to be filed, on 26 February. What date are you referring to, Your Honour?

HER HONOUR: Well, Mr Thorpe attempted to file the appeal on 24 January, and the process for rejecting that took some weeks, I understand.

MR LINDON: Yes.

HER HONOUR: And it really wasn't until 3 April, when Justice Forbes gave her reasons for declining to direct the Prothonotary to accept that initial appeal for filing, that it became clear that it would not proceed as an appeal. And in the meantime, Mr Thorpe had commenced

this judicial review proceeding.

MR LINDON: Yes.

HER HONOUR: So in short, I accept that there was a good reason for the delay, and that in circumstances where nobody claims to be prejudiced by the delay, and the issue that Mr Thorpe seeks to raise is an important one, I'm inclined to grant the necessary extension of time. So I don't think - - -

MR LINDON: I think the point I'm trying to make, Your Honour - - -

HER HONOUR: I don't think you want to talk me out of that, do you?

MR LINDON: No. But by way of further support, Your Honour, on 26 February, in eFiling No.391180, Mr Thorpe filed proceedings against the seven people we've already discussed, namely the Chief Magistrate, the Deputy Chief Magistrates, et cetera, on 26 February. And that filing was refused by the Prothonotary on 1 March, and he directed that he would accept it for filing if we made the defendant only the Magistrates Court of Victoria.

HER HONOUR: Yes.

MR LINDON: So on 26 February, I think we're still within time. Anyhow - - -

HER HONOUR: All right. So that's a further explanation for the delay.

MR LINDON: Yes.

HER HONOUR: Yes. All right.

MR LINDON: And in fact, it was only the requirement of the Prothonotary that it be amended from the Chief Magistrate, Deputy Magistrates, et cetera, to solely the Magistrates' Court of Victoria, that caused the delay.

He made that ruling on 1 March, and then subsequently, the proceedings we have today, which is just Robert Thorpe v Magistrates' Court of Victoria, and the pleadings on foot. But originally, Mr Thorpe attempted to, as I say, name eight defendants, including the State of Victoria, and that was on the date I've already given you, which was well within time, in our submission.

HER HONOUR: All right.

MR LINDON: So there may be no requirement for your judicial dispensation.

HER HONOUR: All right. Well, for the avoidance of doubt, I will make an order under Rule 56.02(3) of the Supreme Court (General Civil Procedure) Rules, extending time to file this proceeding to 7 March 2024. So we are working through the matters for this morning. The next matter that I wanted to discuss with you are the other seven summonses that Mr Thorpe has sought to file, none which have been issued, because there is no listing date that's been allocated for them. So I'm here to decide whether I should allocate a listing date for any of them, in light of the rulings that I have already made. So just be patient with me; I'll get each of them in front of me. So summons No.4 - - -

MR LINDON: Yes.

HER HONOUR: - - - is a summons dated 17 March, directed to the Magistrates' Court, seeking orders that the court forthwith accept for filing and listing an urgent application of Mr Thorpe, delivered to the court on Monday, 4 March, and that it be listed for hearing by the Chief Magistrate by a specified date, which has now passed.

MR LINDON: Yes.

HER HONOUR: Now, what's that about, Mr Lindon?

MR LINDON: Just by way of reference, this summons for – at p11 of Mr Thorpe's affidavit No.13, which was filed in this court – does Your Honour have access to that document? It appears in the Supreme Court's electronic - - -

HER HONOUR: Was it filed in this proceeding?

MR LINDON: Yes. Well, it wasn't accepted for filing, but it appears in the list of filings on the electronic filing system, on RedCrest. The reason it's worth taking some time to find it is because there are four sections to that affidavit, and each of the proceedings we're about to deal with are set out in that document. So it may be worth Your Honour having it before you. Anyhow - - -

HER HONOUR: Well, there is only one proceeding before this court, which is the judicial review proceeding concerning the decision that the Magistrates' Court made on 29 December not to accept the summons and the charge sheet.

MR LINDON: Yes.

HER HONOUR: Now, it seems to me that this summons relates to another proceeding that Mr Thorpe is seeking to commence in the Magistrates' Court. Have I understood that correctly?

MR LINDON: Yes. What happens, it emerges that there's a rather little-known piece of legislation about electronic filing in the Magistrates' Court. And in that legislation, it provides that there can be a review of a registrar's decision. And Mr Thorpe, on 4 March, sought to file in the Magistrates' Court a document within the appropriate form, seeking guidance as to how to activate

that particular power, as to say, how is it that one engages the attention of a magistrate to review a registrar's decision. And that's what the matter of 4 March is all about. And you'll note, Your Honour, that that appears at the very end of Mr Thorpe's initial affidavit on – it appears at the very end of his affidavit. He sets out that complete application. And I don't know if Your Honour has that before you, but - - -

HER HONOUR: I'm still struggling to lay my hands on it.

MR LINDON: Right.

HER HONOUR: You would appreciate, I think the affidavit Mr Thorpe sent through on Friday is no.15 since we started receiving material from Mr Thorpe early this year. And I have been focusing mainly on the ones that have been accepted for filing in this proceeding, and they don't include no.13.

MR LINDON: Indeed.

HER HONOUR: In any event, you have the attention of a Supreme Court judge. What's to be gained by agitating this issue about electronic filing within the Magistrates' Court, in circumstances where the big question of whether it would be an abuse of process for the Magistrates' Court to accept the filing is before this court, and will be determined in due course?

MR LINDON: Well, simply that the question becomes what – Mr Thorpe has attempted to engage the attention of a magistrate to review the decision of Registrar Dalton, the one that you say the court is mainly concerned with, the decision rejecting the information Mr Thorpe sought to file. And in this particular one, which we call

summons no.4, Mr Thorpe sought to have a ruling from the Magistrates' Court itself as to how to bring to the attention of a magistrate to have reviewed the decision of a registrar. It matters not much, really, in the scheme of things, because it may well be that a magistrate would have made the same decision as the registrar.

HER HONOUR: And that is the issue that is for decision in this proceeding, is it not?

MR LINDON: Right. But it may be that when Your Honour comes to make a decision that perhaps the appropriate decision - Mr Thorpe might be criticised for not taking that step - an apparent step in the Magistrates' Court procedure that before coming to the Supreme Court to seek judicial review or, indeed, before seeking to file a notice of appeal, he ought have made an application under the Magistrates' Court's procedures to have a magistrate review the decision of the Registrar. And that's what the application on 4 March was all about and - and that then became an application to this court on 17 March.

HER HONOUR: All right.

MR LINDON: So the - that's - the question is - is - - -

HER HONOUR: Well, I follow the logic of that.

MR LINDON: Yeah.

HER HONOUR: But, as I indicated, the Magistrates' Court is certainly not here agitating that point. I would be astonished if the Attorney-General sought to agitate that point. That will, of course, be a matter for her and those who advise her, but as I sit here now, I really can't see what's to be gained by giving that summons a return date. The question for decision will be whether

the Magistrates' Court was correct or wrong to reject the filing as an abuse of process, and that will turn very much on legal submissions about the law of genocide. So I'm not going to - - -

MR LINDON: And additionally we're - we're - we're fortunate to have a Supreme Court justice deciding this issue and not - and - and - and not going from a registrar to a magistrate, so we should be lucky.

HER HONOUR: Well, that's not what I said.

MR LINDON: No.

HER HONOUR: But I think that the subject matter of that summons has well and truly been superseded by this proceeding.

MR LINDON: Right.

HER HONOUR: All right. So the next summons is one that was dated 8 March 2024 at 8.30 am, seeking review of a decision of the Prothonotary to - what was it about? It's a bit unclear to me what the subject matter of this was, but you're seeking a stay of this proceeding pending a new case that Mr Thorpe was seeking to file in the criminal division of the court in the matter of an information against Charles Windsor. All right.

MR LINDON: Well - - -

HER HONOUR: Well, once again, that proceeding was rejected by the Prothonotary today, I understand, or by the Deputy Prothonotary, rather. And as you're both aware, the procedure to be followed in relation to that rejection is to seek a review. It's not necessary to issue a summons. You can just request a review of that decision, and I anticipate that that's what you will do.

MR LINDON: Which - which deputy registrar are you referring

to?
HER HONOUR: So you may not have seen these decisions.
MR LINDON: Or deputy prothonotary?
HER HONOUR: I think there were three originating motions that were pending, and the self-represented litigants coordinator has emailed to Mr Thorpe this morning refusals in relation to each of them.
MR LINDON: What time this morning was that done?
HER HONOUR: About shortly before half-past 9.
MR LINDON: Well, we just take a minute to look at those, Your Honour, as - as it's the first we've heard of it?
HER HONOUR: Sure.
MR LINDON: 'Cause, essentially, we've been - so we'll just - there's a signature. Do you - do you know the name of the Deputy Prothonotary?
HER HONOUR: It's Deputy Prothonotary Warren, as I understand it.
MR LINDON: Right, okay. So there's a - so we have a document signed by Deputy - I - I see, right. Is it 'I. Warren'? Right. And it - this is dated the - - -
HER HONOUR: In any event, the summons seeking a stay of this proceeding pending the issue of that proceeding - I mean, is that even something that you press? That proceeding's been rejected. There'll be a process that you can, if you wish, follow to review that rejection, but in the meantime, this is the only proceeding that is live before the court. Do you really want to stay it?
MR LINDON: Do we really want to?
HER HONOUR: Stay this proceeding.
MR LINDON: Right. Well, I - I - I mean, I think, in fairness, this has taken us by surprise. We've - we - we've -

we've not had any notice of this, and it's - it's really - I mean, to think that we were - were focused on checking emails from the Deputy Prothonotary at - at 9.30 when, in fact, we were getting ready to - to - to sit before the court here and - and be ready by quarter to 10 to do microphone checks and so on, I think it's just - it - well, it's - I - I mean, all sorts of comments one could make about the - the - um, the way this has been done.

I mean, I - I appreciate it's probably better to get it - those to us at some point now rather than down the track, but it's unfortunate that it happens 30 minutes before a - - -

MR THORPE: Fifteen.

MR LINDON: Yeah, fifteen minutes, really, before the hearing. And - and, as I say, this is the first we've ever had notice of it when you bring it to our attention during this hearing.

HER HONOUR: All right.

MR LINDON: So I don't know if Your Honour thinks that it's fair.

HER HONOUR: Well, none of these summonses were listed today. I'm just trying to find out from you, really, a bit more about the subject matter of each of them to decide whether I should give a listing date for any of them.

MR LINDON: Yes.

HER HONOUR: And, look, at the moment, I really can't see what the point in hearing that summons would be - - -

MR LINDON: Right.

HER HONOUR: - - - because I apprehend that Mr Thorpe does wish to continue with this proceeding and doesn't want it

stayed, no matter what the status of the proceedings that he's sought to file; is that correct?

MR LINDON: Yes and no. No because, as you are aware, I'm sure, Your Honour, we have concerns about the decisions of the judge who, as far as we were concerned, was a - a secret until we - until the judge's decision was announced. And we have concerns about registry staff, listing staff, the Practice Court coordinator, and the self-represented litigants coordinators in concert or individually, but seemingly coordinated by the Prothonotary in a way that prevented our application - repeated applications - for a stay of the Prothonotary's review and, in fact, the judge's review on the papers.

And we, as you know, have made a complaint to the Broad-based Anti-corruption Commission and to the relevant authority in Victoria - the - I'm having trouble with the name of it.

HER HONOUR: I think I've seen some correspondence with the Victorian Equal Opportunity and Human Rights Commission. Is that the one?

MR LINDON: Thank you, Your Honour. I appreciate that. And also with the - we've - we've also made a notification to the Yoorrook Justice Commission, which is, Your Honour - Your Honour knows is a Royal Commission - has the powers of a Royal Commission.

HER HONOUR: I do, yes.

MR LINDON: And those three bodies which we are calling independent bodies with a power to review certain decisions, we - we've - we've made, as you - you may have seen, an application to the Broad-based Anti-corruption Commission that the actions of the Prothonotary and of

the judge that made that review were outside the acceptable levels of activity and constituted a failure of - of judicial administration and of administration generally that falls within the powers of IBAC.

And we've asked for an investigation into those matters, and we refer to the way in which the court failed to halt or stay the investigation by a judge whose name we now know and the apparent coordination of registry staff and court staff in allowing that to continue. And we are as disturbed as Your Honour that there are so many applications and affidavits that Mr Thorpe has had to take in order to, well, I suppose draw this to the attention of the court in an appropriate way. But that's - so that - - -

HER HONOUR: Well, if I may say, Mr Lindon, I take a rather different view.

MR LINDON: Yes. Yes.

HER HONOUR: All of this activity of seeking to stay this and summons the other and add, you know, a large number of defendants is really adding nothing to the essential point that Mr Thorpe wishes to agitate on which he will be heard, but this constant blizzard of correspondence directed to a range of staff within the court is really not shedding any light on the issue that he wants to bring to the fore. Now, I - - -

MR LINDON: Your Honour, I accept all that - what you say, but at the same time, the very way that you express it minimises it and makes it seem that Mr Thorpe and myself as well are, in fact, spraying the court with sort of ill-advised and ill-judged communications when, in fact, from our point of view, we - see, we - you - you perhaps

smile and - with some acknowledgement that could be the case.

Whereas we say that, in fact, this is an example of what happens when Aboriginal people go to any government department, including the courts, that there's this stone-walling, that there's - there's this failure to - to communicate, but Mr Thorpe - here is a clear example of Mr Thorpe going along with the proceedings of the court and, in fact, the court combines to exclude Mr Thorpe.

Clearly, the appropriate thing to do would've been for the proceedings to have been stayed while Mr Thorpe's summonses were heard, and clearly, various court officers ought to have known and have done something about it. And, in fact, what happened, we say, is - is - is activity that should be scrutinised by the Independent Broad-based Corruption Commission [sic] and by - - -

HER HONOUR: Well, if what you're referring to is the decision of Justice Forbes not to direct the Prothonotary to accept those three proceedings for filings, that is a decision of a judge of the trial division of this court in relation to which Mr Thorpe may, if he wishes, seek leave to appeal to the Court of Appeal.

MR LINDON: I understand all that, Your Honour, but this goes - this point goes beyond that, because we say that the appropriate thing would have been for the judge to have stayed those proceedings, and we say that there was a - - -

HER HONOUR: All right. Well, I take a very different view, and I must confess I am now a little confused. Mr Thorpe has a properly constituted proceeding before the court.

I am here to give directions for its future conduct. Does he really press to have a summons seeking to stay this proceeding heard and determined, yes or no?

MR LINDON: It's not a 'yes' or 'no' question, Your Honour, because it depends on whether the court is prepared to institute the proceeding that he's asked for, which is that there be a proceeding in the criminal division of the court in the matter of a genocide charge against Charles Windsor and - and - and we - - -

HER HONOUR: Well, as we sit here today - - -

MR LINDON: Pardon?

HER HONOUR: As we sit here today, the answer to that question is 'no'. Now - - -

MR LINDON: And the reason?

HER HONOUR: Well, the reasons have been sent to Mr Thorpe this morning, and if they're not satisfactory, then he can follow the same procedure in relation to that refusal that he followed in relation to the other three proceedings, which is to seek to have a judge of the trial division review those refusals.

MR LINDON: Thank you. And Your Honour expresses no concern about the fact that Mr Thorpe has seen fit to make a complaint to the Independent Broad-based Anti-corruption Commission about the - about the actions of certain court staff in this matter?

HER HONOUR: Well, that is not a matter for me.

MR LINDON: And in fact - and a Supreme Court judge?

HER HONOUR: That is not a matter for me. Now, I'm not going to list summons no.5 for reasons I've outlined. I do apprehend that Mr Thorpe wishes to proceed with this proceeding and doesn't, in fact, wish to have it stayed,

and so I'm not going to list that fifth summons for a hearing. And the same, I think, applies in relation to summons no.6, if I'm not much mistaken.

This is a summons that Mr Thorpe sought to file on 19 March, seeking to have a judge in the Practice Court review the Prothonotary's refusal of the 15 February to seal a notice of appeal submitted on 24 January. Well, that's in fact what Justice Forbes did. Justice Forbes has decided that question, so I'm certainly not going to list summons no.6 for hearing, because the question it seeks to agitate has already been decided. Now, summons no.7 is the summons that was sought to be filed on 21 March.

MR LINDON: Your Honour, I'm just thinking, in light of the fact that we have had, we say, no notice of the matters that have come to attention this morning - I don't know when Your Honour was aware of the fact that there was going to be these matters decided and - and whether - when Your Honour first became aware of the documents that you've referred us to on - at 9.30 this morning.

But I think the fair thing on this regard is for this aspect of the case to at least be adjourned for at least a week or so, so that Mr Thorpe and others have a chance to consider what the documents are that you've referred to, not - not on the hop in the middle of the proceeding. I think that's clearly unfair.

And it - I - I understand Your Honour's indication that you've given, and - and it will probably be the same for each of the other matters, but I think, in - in fairness, this aspect of the case has to be adjourned off for - for Mr Thorpe and his advisors to consider the

noticed that you say have been sent to us and that it's just - it's clearly unfair.

It may well be that, at the end of the day, Mr Thorpe agrees with Your Honour's ruling and doesn't seek to - to - to - or Your Honour's indications and doesn't seek to challenge them, but I think, in all fairness, Mr Thorpe has to be given an opportunity to sit down with his legal advisors and his - - -

MR THORPE: Elders.

MR LINDON: - - - his elders and to consider this aspect, because it clearly is ambush at, you know, half an hour before this proceeding. I mean, the - Your Honour smiles at that, but clearly, you know, the - the fair thing to have done would've been to do this last week. Why has it suddenly emerged this morning right before the case? And did Your Honour have notice of this before 9.30 yourself?

HER HONOUR: Mr Lindon, there's no ambush. There's not been any change in the proceeding. There were no other proceedings before the court until today. I did make some enquiries last week to find out what had happened in relation to the three matters that were pending - - -

MR LINDON: Thank you.

HER HONOUR: - - - and it appears that those enquiries may have prompted a decision, so Mr Thorpe now has those decisions. But, look, there are four remaining summonses that the court has declined to seal because a number of them are, if I might say, self-referential, trying to hurry up this proceeding. You've now had the first summonses heard and determined with some success. You've got your extension of time.

What I'd like to do is to discuss directions for the

future conduct of the proceeding and to list it for hearing sometime within the next few months. Now that, on Mr Thorpe's application, the Attorney-General has been joined as a second defendant, I'll need to take into account some time that the Attorney will need to consider the matters and prepare for a hearing, but that's what I'd like to do.

So unless there's anything that you want to say in relation to the other summonses, those summonses will remained unsealed and will not be given a hearing date, and we'll just proceed straight to hear the substance of the proceeding.

MR LINDON: So what's the procedure for appealing that decision about the - the refusal to see all summonses? Once - once again, is that an application for leave to the Court of Appeal?

HER HONOUR: Well, I'm not sure what you want me to do. Do you want me to make a decision about the summons' or do you just want to leave that - I mean, I've not made any decision beyond, I think, the sixth summons. So there are four remaining where I'd understood you to be asking for more time to consider Mr Thorpe's position.

MR LINDON: I just want to clarify - in a - in addition to - to the summons, is there are - there are two outstanding pieces of originating process. Does Your Honour have those before you. There - there's one seeking to review - a judicial review of three decisions of the prothonotary. The three decisions that have been and made and documented. And there's one seeking to initiate a new proceeding in the criminal division of the Supreme Court in the matter of Charles Windsor. And the genocide

- and question of genocide. So - - -

HER HONOUR: My understanding is that all three of those proceedings have been refused.

MR LINDON: Right.

HER HONOUR: For reasons that have been communicated to Mr Thorpe.

MR LINDON: Half-an-hour before this hearing. And I'm - and - and - - -

HER HONOUR: It's no ambush. It's no ambush. He sought a decision. He has a decision. Now - - -

MR LINDON: But Your Honour, clearly, he - in fairness, he should have had those decisions a week or two ago. There's no reason why half-an-hour before the case - - -

HER HONOUR: Well, he has a decision now. And he is well aware, I think, of the avenues that are available to take those matters further if he disputes them. Now, this proceeding, the one that he does have on foot, is there anything more that you wish to say to me in relation to the remaining four summons'. Summons' 7, 8, 9, and 10?

MR LINDON: Well, Your Honour. Wherein Mr Thorpe's inclined to ask for an adjournment of the matter while we consider what's - what - what has happened. You may not say it's a trial by ambush, but where we sit, we've clearly been ambushed by the (indistinct) that we've had no notice of until half-way through this proceeding. I think in fairness, it probably - the matter has to be adjourned for us to at least consider position.

And if, in fact, Your Honour's not inclined to adjourn it, then we have to separate out the matters of the ambush, and - and come back to - to deal with those at a later date. Your Honour may well be correct in

everything you say, and that they make no - no difference to the essential question. But Your Honour may not. And it may be that there are other considerations in relation to - as we've explained, the complaints we're having to eye back and to the VHRC and - and - and - and to the (indistinct) Justice Commission that we need to consider.

So if - if Your Honour's not inclined to adjourn the whole proceeding today, at least I think we need to separate out those matters that we - that we - have taken us by surprise. You may say well, big deal, there's no surprise and it doesn't really matter because as you explained our central point remains. The - the central case we're trying to pursue.

But in - in order for justice to be seen to be done, I think it's only fair that those matters are separated out. That - that those matters are adjourned for a week or two for Mr Thorpe to properly consider his position. I think that's a - you know, a question based on absolute fairness. So I'll leave Your Honour to consider that.

HER HONOUR: Mr Lindon, I've heard everything you've said there.

MR LINDON: Yes.

HER HONOUR: None of those matters are listed before me today, so there's no question of adjourning them. I was aware that they were - they have not been sealed by the registry because nobody's persuaded that there is any point in giving them a return date. So you had an opportunity today to address me about whether there was anything to be gained by giving any of them a return date. Now, I understand you to say that you don't wish to say any more about that right now.

MR LINDON: I don't think we've been given an opportunity, Your Honour, because we haven't been given notice. It's really not fair to say you've only had - - -

HER HONOUR: I disagree with you about that, Mr Lindon.

MR LINDON: All right.

HER HONOUR: These were all summons' that were sought to be filed, apart from no. 10 back in March.

MR LINDON: Exactly.

HER HONOUR: Now, it may be that events have moved on and the reasons why Mr Thorpe sought to file those summons' are now moot. That's a matter that he can consider, but nothing that you've said to me this morning has persuaded me that any of those summons' should be listed for hearing. All right. Can we turn now to the question of the future conduct of the hearing. As I've indicated, this is not a matter on which evidence is going to be necessary.

There's not going to be a trial with witnesses. There will be legal argument. So what I'm hoping to do is to allocate a hearing date, probably in June or July. Are there any availability considerations for you, Mr Thorpe, or you Mr Lindon, or for any of the people who - excuse me - you know will be interested in observing the proceeding?

MR LINDON: No.

HER HONOUR: No.

MR LINDON: No.

HER HONOUR: How long do you think it would take for you to prepare written submissions in relation to the question of whether the charge that you sought to file in the Magistrates' Court was an abuse of process. How long

will you need to prepare written submissions.

MR LINDON: So the procedure will be, Your Honour, that we will prepare written submissions. The - the - - -

HER HONOUR: The attorney will prepare written submissions in response.

MR LINDON: (Indistinct.)

HER HONOUR: Assuming she chooses to do that.

MR LINDON: Yes. Yes.

HER HONOUR: And you will have an opportunity to file submissions in reply. And then we'll proceed to hearing.

MR LINDON: (Indistinct.) And then there'll be an oral hearing?

HER HONOUR: Yes.

MR LINDON: Right. And so any other re-trial matters such as notices to produce, interrogatories, anything of that sort it - - -

HER HONOUR: It's not that kind of proceeding.

MR LINDON: Well, you say there's - is not - nothing evidential is required.

HER HONOUR: No. It's a judicial review proceeding. And Mr Thorpe has well and truly put before the court the material that he placed before the Magistrates' Court. I'm confident that he's filed what the court needs to understand the issue that the Magistrates' Court had to decide. And as I say, it will be a matter of legal argument. Whether it was an abuse of process or not.

MR LINDON: Yes. Do you - - -

HER HONOUR: So I'm looking, I must say - - -

MR LINDON: Does Your Honour have a suggestion for a timetable?

HER HONOUR: I'm looking either at late June or mid-July. So would a month be sufficient, do you think?

MR LINDON: I think it would have to be, wouldn't it.
HER HONOUR: Yes. For you to file.
MR LINDON: I think - I think that's fair, yes.
HER HONOUR: All right. Well, why don't I make that direction.
MR LINDON: Yes.
HER HONOUR: So today is 22 April. So if I direct that your submissions, Mr Thorpe, are to be filed and served by 22 May. And the attorneys by 21 June. And then you can have another fortnight to reply. So 5 July, and then I'll look at listing it the week commencing 15 July for a one-day hearing.
MR LINDON: Thank you.
HER HONOUR: All right. Are there any other matters this morning?
MR LINDON: Just to run through our shopping list. You'll see that Item no. 8 was that Auntie Marj Thorpe be added as an intervener. That - that if the process appears to be an interlocutory summons, an affidavit, Marj Thorpe has expertise in a serious mental harm aspect of genocide. Internationally recognised (indistinct) expert. She's got litigation with Supreme Court and Federal Court about the safety of trees of being destroyed, and she's involved in monitoring the destruction of Totem's Forest, et cetera and the current fire issues down at Lake Tyers.

And she's also - we've referred to the transcript of her testimony last Monday in the Yoorrook Justice Commission. And she's seeking to intervene in support of Mr Thorpe to make submissions and present arguments. And I should indicate, Your Honour, that we anticipate that this application will be made by Aboriginal people throughout Victoria and, indeed, throughout Australia,

that there will be - if Your Honour's familiar with the case of Nulyarimma and you've - you've referred to it, you will see that that case involved perhaps 20 or 30 different Aboriginal nations intervening before a justice of the Supreme Court, and each of them filed written submissions and - and made short oral submissions in relation to the issue which, once again, was genocide.

So we'd be asking the court to allow interventions of that kind, and we would anticipate that, at the hearing, it - the 1-day hearing in July - that the Bar table would consist of perhaps 20 or 30 Aboriginal nations from around the country seeking to - - -

HER HONOUR: We would have to proceed by way of a virtual hearing then. We don't have a courtroom that's able to accommodate that many people. But before we get to that the court will, of course, consider any application by any person to intervene on its merits, but at the moment there is no such application, so I'm not going to rule on it one way or another.

MR LINDON: Well, in fact, there is an application, but I s'pose the pending filing of - - -

HER HONOUR: Well, no, there was - there's an application by Mr Thorpe, but I have nothing from anybody saying that they want to intervene or why, or what their intervention may add. Now, there's a reasonably confined set of principles that would apply to an intervention application. From my point of view, this is still a straightforward judicial review proceeding. That does raise a difficult question of law. Now, as I sit here now, I don't see that it's going to be a matter on which I need to hear from anyone other than Mr Thorpe and the

attorney. Other people may have a different view. If they make an application to intervene then I will consider it and decide it then.

MR LINDON: Obviously, we don't want to waste anyone's time, including the court's, but it seems to me that every Aboriginal nation has a very strong view about the fact that no one has ever been prosecuted for genocide in this country, and the fact that there's never been any document of consent by any Aboriginal nation to the jurisdiction of this court and of this state, and of the Commonwealth and Australian State of Victoria. So in all fairness, those people who have never had a voice in the past 200 years ought to be allowed to have a voice in this proceeding. If ever there was a case in which they ought to be heard, this is it.

HER HONOUR: Well, Mr Lindon, if they want to make that application, as I've said to you, I will consider it and decide it.

MR LINDON: Thank you, Your Honour. And that would be, we understand, by way of summons with affidavit? It would be by way of interlocutory summons with affidavit?

HER HONOUR: It would.

MR LINDON: So that's item no.8. Just running through the rest of the matters. Your Honour, item no.10 was for an extension of time - - -

HER HONOUR: Which you've been given.

MR LINDON: I beg your pardon? This is item no.10 in our shopping list for this morning. The - we - we sought to add Senior Registrar Dalton's decision on 7 March and Director Clark's decision on 18 April as part of the - the matters to be considered by the court. I think

you've probably already dealt with it in a way because you - - -

HER HONOUR: I have. I have.

MR LINDON: Okay. Whether we - we may disagree, but you've certainly mentioned them. Item no.11 of the shopping list, Your Honour, is an injunction to make the Magistrates' Court procedural application, and I think you've dealt with that. You said that - - -

HER HONOUR: I have.

MR LINDON: Yes. And the question of whether summons 10 be sealed and - and (indistinct words) to be dealt with. I think - I think you've dealt with that too, in your view.

HER HONOUR: I've dealt with it in a couple of ways. I've explained that I will be hearing this proceeding, not the Chief Justice, and I have explained, to the extent that I've made rulings on summonses 1 through to 6, why I've either dismissed the first three summonses with the exception of adding the Attorney-General as a defendant, and why I've not listed for hearing summonses 4 through to 6.

MR LINDON: Yes. Right.

HER HONOUR: And I've not ruled on summonses 7 through to 10, but, as I sit here now, I don't really see any point in giving any of them a hearing day.

MR LINDON: Thank you. And does Your Honour propose to publish any more detailed reasons for those decisions?

HER HONOUR: No. No.

MR LINDON: All right. Okay. Then no.12 is a - no.12 on our list involves subpoenas to produce documents and give - and - and give evidence, and you - I think you've dealt

with those - - -

HER HONOUR: And I've already ruled on that.

MR LINDON: Yep.

HER HONOUR: Yes.

MR LINDON: And then item no.13 is the order to the Magistrates' Court to produce documents and omit facts, and I think you've said that you don't believe any evidence is required.

HER HONOUR: Yes.

MR LINDON: And the last item is no.14, that the - the court to go on a view of Camp Sovereignty as soon as possible to help understand the evidence, and we refer to the precedential judge Ken Crispin going to the Aboriginal Tent Embassy in Canberra. And, as I've noted, we remember Isabel Coe, Billy Cravy, Kevin Buzzacott, and Wadjularbinna Nulyarimma who have now passed on who were there at that original case. We wonder if Your Honour would consider the idea of going to the campfire at Camp Sovereignty. It's just opposite the art gallery just to - to - to help you understand the evidence, and if Your Honour hasn't actually experienced a smoking ceremony or the feeling of being at the fire. Robbie, anything you want to say about that?

MR THORPE: Just the - the fire is symbolic of Aboriginal law, and it - it'd be good for you to come to, and then just acknowledge that. That our - we've never ceded our signing over this land, we never will, and maybe it's time to be recognising our law in a real way. Justice Crispin (indistinct) then said - demonstrated how that - how that can work, and that - engage in us in a real way, acknowledging that there is a law that exists here prior

to what we're talking about (indistinct). So if that - - -

HER HONOUR: Well, I appreciate the invitation. I think that that is a matter that will best be discussed at the trial of the proceeding when the Attorney-General is present and, well, represented. As I've indicated, this is a proceeding that's not going to turn on evidence, it's going to turn on questions of law, so there's not really an issue about going on a view to help me understand the evidence because the evidence is really confined to Mr Thorpe's attempts to file the proceeding in the Magistrates' Court, but please do raise that issue again when we come to the trial, and I'll hear from both sides about whether a view would be a useful exercise. All right. Are there any other matters before we adjourn?

MR LINDON: Anything you want to say?

MR THORPE: No, just appreciate the fact that, you know, we're able to have some sort of access. This is significant, this process for me that we're at this stage. We're not gonna stop here, and just - we know with (indistinct) - we - we can't get a fair hearing. It's - there's - it's biased and - and partial in regards to our affairs in this country, and we need to step into a - a court that can see that difference here. Australia seems to be stuck in a - a state of denial, and that's just not just a systemic and - and it takes in, like, the court as well, you know, there - everything is, you know - it's important that we - we've made this first step in the process of, you know - we're not going to go away. And, you know, we'll - we'll be heard at the end of the day to see where this war goes, so - so thank you.

HER HONOUR: All right. Thank you, Mr Thorpe. Thank you, Mr Lindon.

MR THORPE: (Indistinct.)

HER HONOUR: We'll adjourn the court now. The orders that I've made today together with a number of matters that I'll note in other matters including the facts that I will assume to be the case for the final hearing will be put in writing and sent to you and the Attorney-General in the course of today or possibly tomorrow, but they will come through. All right. Thank you very much for your attendance this morning. Adjourn the court.

MR LINDON: Thank you, Your Honour. (Indistinct.)

ADJOURNED TO A DATE TO BE FIXED