

IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMON LAW DIVISION  
JUDICIAL REVIEW AND APPEALS LIST

S ECI 2024 01011

**BETWEEN:**

**ROBERT THORPE**

Plaintiff

- and -

**MAGISTRATE'S COURT OF VICTORIA**

Defendant

**ORDER**

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**JUDGE:** The Honourable Justice Richards

**DATE MADE:** 22 April 2024

**ORIGINATING PROCESS:** Originating motion filed 7 March 2024

**HOW OBTAINED:** At the hearing of the plaintiff's summonses filed 12 March 2024, 25 March 2024, and 26 March 2024

**ATTENDANCE:** The plaintiff appeared in person with Mr L Lindon  
No appearance for the defendant

**OTHER MATTERS:**

- A. On 20 October 2023, the plaintiff sought to file in the **Magistrates' Court** of Victoria a summons and charge sheet against Charles Phillip Arthur George Windsor for the offence of genocide, contrary to First Peoples Sovereign Laws, the common law of the State of Victoria, and s 268 of the *Criminal Code Act 1995* (Cth) (**proposed proceeding**).
- B. On 29 December 2023, the Magistrates' Court refused to issue the proposed proceeding. The reason given was that 'The proper source of law has not been particularised and the proposed accused may be misled or otherwise prejudiced by this omission' and in the circumstances the issue of the proposed proceeding would be an abuse of process.
- C. On 24 January 2024, the plaintiff sought to appeal that decision to this Court under s 272 of the *Criminal Procedure Act 2009* (Vic). The plaintiff's proposed notice of appeal was rejected as irregular. On or about 26 February 2024, the plaintiff sought to commence this proceeding. His initial filing was rejected because it named a number of defendants who the Prothonotary considered to be unnecessary. The plaintiff refiled his originating motion on 7 March 2024, naming only the Magistrates' Court as a defendant, and it was accepted for filing.

- D. The Court was satisfied that there is an adequate explanation for the delay in commencing the proceeding and there are special circumstances that justify extending the time for commencement of the proceeding to 7 March 2024.
- E. On 19 March 2024, the Magistrates' Court filed a submitting appearance in this proceeding, in accordance with the principles enunciated in *R v Australian Broadcasting Tribunal, ex parte Hardiman* (1980) 144 CLR 13.
- F. The Court was satisfied that the Attorney-General of Victoria should be joined as a defendant to the proceeding, on the basis that, as the first law officer of the State of Victoria, her presence is necessary to ensure that all questions in the proceeding are effectually and completely determined and adjudicated upon.
- G. For the purposes of this proceeding, the Court will assume that:
- i. the sovereignty of the First Peoples in Victoria was never ceded; and
  - ii. all Judges of this Court, past and present, have pledged allegiance to the Crown.
- H. Accordingly, the Court will not grant leave to issue any subpoena or require responses to any notice to produce or notice to admit directed to establishing those matters.
- I. The Court was satisfied that the technical requirements in s 42G of the *Evidence (Miscellaneous Provisions) Act 1958* (Vic) were met and that it was appropriate to conduct the hearing on 22 April 2024 by audio-visual link.



**THE COURT ORDERS THAT:**

1. Pursuant to r 9.06(b)(i) of the *Supreme Court (General Civil Procedure) Rules 2015*, the Attorney-General of Victoria is joined as second defendant to the proceeding.
2. The plaintiff's summonses filed 12 March 2024, 25 March 2024, and 26 March 2024 are otherwise dismissed.
3. Pursuant to r 56.02(3) of the Rules, the time for commencement of the proceeding is extended to 7 March 2024.
4. The trial of the proceeding is listed for one day on **19 July 2024** before the Honourable Justice Richards.
5. By **4:00pm** on **22 May 2024**, the plaintiff is to file and serve written submissions addressing:
  - (a) the legal basis for the proposed proceeding in the Magistrates' Court;
  - (b) whether the decision of the Magistrates' Court that the proposed proceeding would be an abuse of process was affected by jurisdictional error; and
  - (c) the relief sought in this proceeding.

6. By **4:00pm** on **21 June 2024**, the second defendant is to file and serve written submissions in response.
7. By **4:00pm** on **5 July 2024**, the plaintiff is to file and serve any written submissions in reply.
8. There is no order as to costs.

**DATE AUTHENTICATED:** 22 April 2024



*MR. Richards*

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**THE HONOURABLE JUSTICE RICHARDS**