

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION

S ECI 2024 02123

IN THE MATTER of a proposed proceeding

B E T W E E N:

Aunty Alma Thorpe and Uncle Robbie Thorpe

Proposed
Applicants

- and -

State of Victoria

REFUSAL

OFFICER: R Ratcliffe
Prothonotary

DATE MADE: 1 May 2024

SUBJECT: Application by the proposed plaintiffs filed on 26 April 2024 and reviewed pursuant to Rule 28A.04(2) of the Supreme Court (General Civil Procedure) Rules 2015.

Upon reading and assessing the proposed document/s of the applicants, the Prothonotary has rejected the documents and refused to seal them because, if sealed, they would constitute an abuse of process

Reasons for refusal

1. The proposed plaintiffs filed a writ in Form 5A dated 25 April 2024 naming the State of Victoria as the proposed defendant.
2. Page 2 commences with the heading, "Relief Sought" and what follows are seven numbered claims seeking orders of this court.
3. The first four reliefs sought are each declaratory that could be summarised as;
 - a. A declaration that there is no agreement between First Peoples and the defendant.
 - b. A declaration that the defendant conducted a premeditated calculated undeclared war of invasion against First Peoples including genocide



- c. A declaration that the only basis for the jurisdiction claimed by the State of Victoria is the said genocidal military invasion
 - d. A declaration that the First Peoples' Sovereignty was never ceded.
4. Presumably on the basis of the above declarations, the proposed plaintiffs go on to seek the following:
 - a. "5. An order that the defendant forthwith declare an end to hostilities and an end to the war against First Peoples"
 - b. "6. An order that the defendant forthwith take all necessary steps to obtain an advisory opinion from the International Court of Justice as to whether Our Law governs all people within the purported boundaries asserted by the defendant and as to whether Our Lands belong to Us under Our Law."
 - c. "7. An order that the defendant take all necessary measures to secure an investigation by the Office of the Prosecutor of the International Criminal Court into genocide by the defendant and officers of the defendant against We First Peoples."
5. Relief 5 is vague and lacks clarity. What 'hostilities' need to come to an end and what power does the court have to order the government to take the applicable actions? The proposed plaintiffs have asserted that the 'undeclared war of invasion' continues but have provided no detail as to the nature or activity of that war. There is no legal basis asserted that would give the court power to end that war, if indeed that war could be described with any certainty.
6. Relief 6 is particularly oppressive in that it effectively asks the court to order that the government of Victoria plan its own demise. It asks that the State of Victoria get advice from 'the International Court of Justice' as to whether all Victorians should be now subject to First Nations law and presumably, therefore, not subject to the laws introduced by the Victorian government. Further, that the land within the boundaries of Victoria should henceforth 'belong' to First Nations people. The court is an essential arm of the branches of government along with the executive and the legislature. Despite the separation of those powers, the court does not have power to order the demise of the other branches of government. If so, the court itself would become a nullity.
7. Relief 7 seeks an order of the court to force the State of Victoria to 'take all necessary measures to secure an investigation' into claims of genocide against First Nations people. It is unclear from the writ, what power the court may have to force the government to take such measures or whether the State of Victoria would be subject to any findings of such an investigation.
8. This proceeding, as drafted, would be doomed to fail because what the claim asks of this court is not, and could never be, a power that a state court could wield. None of the detail in the remainder of the proposed writ provides any further guidance as to how, and on what basis, this court could make such orders. In such circumstances, it would be unnecessarily oppressive to ask the proposed defendant to respond to these claims.
9. For the reasons stated above, if sealed, this proposed writ would constitute an abuse of process and is accordingly refused pursuant to rule 28A.04(2).

