
TRANSCRIPT OF PROCEEDINGS

S ECI 2024 01011

SUPREME COURT OF VICTORIA

COMMON LAW DIVISION - TRIAL DIVISION

MELBOURNE

FRIDAY 19 JULY 2024

BEFORE THE HONOURABLE JUSTICE RICHARDS

ROBERT ALAN THORPE

v

MAGISTRATES COURT OF VICTORIA & ORS.

THE PLAINTIFF was not represented by Counsel.

MR L. BROWN SC with MR S. CROCK appeared on behalf of the
Attorney-General for the State of Victoria.

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4 or otherwise) be reproduced, stored in a retrieval system or
5 transmitted without prior written permission of the Authorised
6 Officer.

7 HER HONOUR: I'll take appearances.

8 MR THORPE: Yeah. Robbie Thorpe, Uncle Robbie.

9 HER HONOUR: Uncle Robbie, good morning.

10 MR THORPE: Also known as Djiran Bunjileenee.

11 HER HONOUR: Good morning to you.

12 MR BROWN: If the court pleases, I appear with Mr Crock on
13 behalf of the Attorney-General.

14 HER HONOUR: Mr Brown, good morning. Now, we have a number of
15 matters to work through before we can get to the substance
16 of the proceeding. I've received this morning some draft
17 minutes of order from you, Uncle Robbie, that list
18 comprehensively, I think, the matters to work through. I
19 propose to work through with them in a slightly different
20 order.

21 The first matter that I think we might address is
22 the matter raised in your summons that was filed on
23 13 July about the way we address you and the title of the
24 proceeding. I understand from the material that you filed
25 that it's your very clear preference to be referred to as
26 Uncle Robbie and you'd like the proceeding to be retitled
27 as 'Uncle Robbie Thorpe v Magistrates' Court of Victoria'.

28 MR THORPE: Thank you for that.

29 HER HONOUR: All right. Is there any objection to that from
30 the Attorney's end?

31 MR BROWN: No, Your Honour.

32 HER HONOUR: All right. Well, I'll make those orders.

33 MR THORPE: But I can't hear you, I'm sorry.

1 HER HONOUR: All right. I'll do my best to speak into the
2 microphone.

3 MR THORPE: It would help, yeah. Thank you.

4 HER HONOUR: If you continue to have problems please let my
5 associate know and we'll see if we can - we'll see if we
6 can fix up a hearing loop for you. All right. So that's
7 the first matter. The second matter, I think, that we
8 need to deal with is the application that I disqualify
9 myself from hearing the matter before I proceed any
10 further. Now, an application like this was made on the
11 last occasion when we had the directions hearing, and
12 I declined to do that on that occasion. Are the grounds
13 on which you seek my disqualification any different from
14 the grounds last time?

15 MR THORPE: Basically, no.

16 HER HONOUR: No.

17 MR THORPE: But the - the court needs to demonstrate how it has
18 jurisdiction here.

19 HER HONOUR: Yes. Well, the difficulty with that,
20 Uncle Robbie, is that this is a proceeding that you have
21 brought to the court. You've invoked the court's
22 jurisdiction to review the decision of the
23 Magistrates' Court, and I accept that the court has
24 jurisdiction to do that, and the Attorney-General doesn't
25 say any different.

26 So if you want me to exercise the jurisdiction or
27 you want any judge of the court to exercise the
28 jurisdiction, the only people who can exercise that
29 jurisdiction and make the decision that you ask is a judge
30 of this court, and all judges of this court have pledged
31 allegiance to the Crown. It's a fundamental aspect of the

1 office.

2 MR THORPE: And the - the Crown being - - -

3 HER HONOUR: Well, the Crown being the monarch of Australia for
4 the time being.

5 MR THORPE: The monarch of Australia.

6 HER HONOUR: Yes. Yes.

7 MR THORPE: It's not - are we talking about Charles the Third?

8 HER HONOUR: Yes, who is the King of Australia now. Yes. Yes.

9 MR THORPE: But that's the dilemma, Your Honour. Thanks for -
10 thanks for that opportunity. I think it's incumbent on
11 this court to - to correct the erring of the magistrate's
12 ruling when they said that genocide is not known as a - as
13 a - as a crime, yeah, where it is. And if you - and if
14 you look at since 2000 - 2002, the - I think it's the
15 Commonwealth Criminal Code 268. The Commonwealth Criminal
16 Code clearly identifies genocide being a crime. So
17 they've obviously erred, and as I feel it's a
18 responsibility of this court here to correct that, that
19 err.

20 HER HONOUR: All right.

21 MR THORPE: And the dilemma of the jurisdiction, we - we
22 haven't got a - - -

23 HER HONOUR: Well, if I might just interrupt, Uncle Robbie.

24 MR THORPE: We haven't got a treaty in this country.

25 HER HONOUR: If I might just interrupt.

26 MR THORPE: There's no consent.

27 HER HONOUR: I want to deal with your application that
28 I disqualify myself first. If I don't do that then we'll
29 get to the substance of what you're talking about.

30 MR THORPE: Okay. Yeah.

31 HER HONOUR: You will find that if you stand up the microphones

1 will pick up your voice.

2 MR THORPE: Oh, okay. Yes.

3 HER HONOUR: And the people at the back of the courtroom will
4 be able to hear you.

5 MR THORPE: Can do that.

6 HER HONOUR: So is there anything you wish to add to the
7 material that you filed about the reasons why you say
8 I should disqualify myself?

9 MR THORPE: Well, obviously the - the country hasn't got
10 jurisdiction over Aboriginal people. There's evidence
11 below the - the truth commission's recent finding that we
12 had never ceded our sovereignty over these lands. That
13 creates a bit of a dilemma. I don't know how that plays
14 out, but that's what they found at the - the truth
15 commission just recently last year.

16 It's no - it's well-known that there's no consent
17 was ever given by our people for the occupation or the
18 application of your law to our people here in this
19 country, and there's no - no treaties. No treaties, no
20 consent, and obviously no jurisdiction. But that doesn't
21 stop us coming to your court and asking for, you know, an
22 attempt to resolve these long-standing issues which we say
23 is a - an intentional genocide that's been going on since
24 Cook arrived here on the Ninety Mile Beach, my country,
25 Krauatungalong country. It was around about
26 14 April 1770. The issue of jurisdiction, customs, and
27 things like that were - were pretty clear then.

28 So it's a long-term issue here, and - and ever since
29 1948 Australia's failed miserably surrounding the issues
30 of genocide. They failed to legislate it being a crime to
31 begin with. So, you know, where do we go as Aboriginal

1 people? You know, our - our population was reduced from
2 100 per cent of the population only 200 years ago to less
3 than 0.01 per cent of the population here in Victoria.

4 So, you know, it's out of new necessity and also an
5 attempt to exhaust a domestic remedy in this country and
6 demonstrate that in the International Criminal Court,
7 where we intend to go at some stage, unless we can talk
8 about how we can resolve this here, and which would
9 probably be a lot better way to do things rather than rely
10 on the International Criminal Court. I think we're
11 grown-up enough as a - as a nation, a people, to take this
12 step.

13 You know, in 1999 the Federal Court Judge Crispin,
14 Ken Crispin, said clearly that there's plenty of evidence
15 that suggests that genocide occurred here. It was a
16 matter of proving the intent. Now, how do we do that?
17 But the way that the courts act, they - they demonstrate
18 that themselves. They're unwilling and they're unable to
19 carry out these pretty fundamental issues of law here.
20 You know, fundamental. Well, they call them peremptory
21 norms of international law. Australia's got an issue with
22 international law, it seems, so it's time I bring it into
23 the fold, you know.

24 And we're dealing with a - a - a Crown which has no
25 proper jurisdiction over our people, despite the - the
26 issues of the Cook to get consent. It never happened. So
27 from that point on, Australia remains a crime scene until
28 there is consent. Otherwise, I'm - I'm misunderstanding
29 what the - the meaning of the law is. And where do we go
30 as Aboriginal people? We haven't got resources. We can't
31 rely on the corporate bodies that misrepresent us and

1 totally unaccountable to us. That's not happening.

2 And the evidence - and the - the proof of the
3 genocide is continuing. You know, our - our removal of
4 our children is worse than it ever was. The rates of our
5 incarceration without jurisdiction are phenomenal, not
6 just for men; women and children. It's a shameful
7 situation. And, you know, we don't expect anything other
8 than a denial, you know, and a claim that we're vexatious
9 and frivolous all the time. Well, we're not.

10 I would ask any Aboriginal person on this continent
11 to say that our claims are frivolous and vexatious, and
12 I don't think you'll get one Aboriginal person to agree.
13 They would say, 'No, they're not.' These are real claims
14 here and we want them addressed. And we're hoping that a
15 court like this, the Supreme Court of Victoria - the first
16 constitution on this continent. The first constitution.
17 The leader of them all, the premier State, the one that
18 built it all. This is where it all began here.

19 So it's - it's only right that they should start
20 unwinding it, and that could be you. Show some leadership
21 on this issue. It's a real issue, genocide in this
22 country, and I don't think there's any doubt about that.
23 And if we get to the International Criminal Court, which,
24 you know, the - we need to exhaust the domestic remedy,
25 and that's why we're here. So what - what you do say and
26 how you do rule on us here, you know, should be
27 considered, because that will be - you know, and the times
28 are changing.

29 Look at the international community at the moment.
30 They're talking about genocide. Surely the eyes of the
31 world are going to turn on this place sooner or later.

1 And how do they justify themselves? So, you know, it's an
2 opportunity here, I - I believe. You know, it's a lot of
3 hard work for our people without resources. We don't get
4 support. I've got a couple of friends who help me, and
5 it's - it's been very difficult. I've been at this since
6 1997 with Howard and, you know, would've done it earlier
7 if I had resources.

8 But, to me, everything is genocide in this country,
9 everything. Everything about it. Every piece of law they
10 ever made for our people, every time they legislated for
11 our people. You know, it wasn't terra nullius, but they
12 still made a lot of laws for our people. And you'll see
13 that everyone has got a genocidal case. Not one of them
14 that you could tell me that are any good.

15 They can keep on continuing to apply these laws to
16 our people knowing full well we have a law that precedes
17 non-Aboriginal people in this country. Sustainable, fair,
18 stood the test of time. Where is the recognition of that
19 law? And, you know, surely we - we can be talking and
20 starting to look where we're going as a country here. You
21 know, our people have suffered enough. So do we wait for
22 that? Do we need to go to the International Criminal
23 Courts? I'm pretty sure that's where it's going to go.

24 HER HONOUR: Okay. Now, I'm just going to ask you to pause
25 there. A number of people have come into the courtroom.
26 Could the people who are sitting on the ends please move
27 in or at least make way so that everybody can sit down.
28 And I'd also ask everybody who has a mobile phone to just
29 check that it's turned to silent. All right. Thank you.
30 Now, Mr Brown, is there anything that the Attorney wishes
31 to say on the application that I disqualify myself?

1 MR BROWN: No, Your Honour. I infer that it's on the basis of
2 a reasonable apprehension of bias, and we say in the
3 circumstances that doesn't arise. The test isn't
4 satisfied, and we oppose the application.

5 HER HONOUR: All right. Thank you. Uncle Robbie, I consider
6 that the grounds aren't made out for me to disqualify
7 myself from hearing this case that you've brought to this
8 court. I'll give full reasons for that decision when I
9 publish my judgment.

10 MR THORPE: Okay.

11 HER HONOUR: Okay. So can we move to the next matter, which is
12 your request that I appoint three individuals as friends
13 of the court and adjourn the proceeding so that they can
14 be briefed and provide submissions. Would you like to say
15 anything further in support of that application?

16 MR THORPE: Yes. I think it - we've got some friends of the
17 court that we'd like to, you know, intervene in this case
18 here. I think it's totally relevant. People who are
19 knowledgeable in this area of law. Doesn't seem Australia
20 has that capacity. Now, I don't know Australia's history
21 of dealing with criminal genocide and crimes against
22 humanity. Seems pretty inept.

23 So we - we're talking about a - a practiced -
24 practitioners elsewhere who have a history of this, and
25 we'd like to have them intervene in our case or make our
26 case properly. And I know that's stepping into the
27 international arena straight away, but that's what it
28 takes. Australia's not a true jurisdiction. They can't
29 demonstrate how they got - where they get their authority
30 from. Like I said, there's no consent. There's no
31 treaties. It's obviously no jurisdiction here. So what

1 do we do as Aboriginal people? We - we need all the
2 support we can get.

3 HER HONOUR: Now, can I ask you - I think I've read all of the
4 material that you've filed in the proceeding. I didn't
5 see any evidence that any of the three people who you name
6 has been approached or has expressed any preparedness to
7 act as a friend of the court. Is there anything I've
8 missed?

9 MR THORPE: Well, maybe at this point, you know, we haven't
10 made clear approaches to these people. I just tentatively
11 - but it - it needs a little bit of movement and a bit of
12 acknowledgement here to - to make that work. You know,
13 Australia's an isolated, insulated country, and it had its
14 own way with the - the court system. Out of sight, out of
15 mind, been able to get away with whatever. I don't really
16 see a proper legal system. It needs to be corrected. No,
17 we're - we're going to continue to project downwards as a
18 society if we don't do something about it.

19 Like I'm saying, it's very clear. You know, like,
20 you - you don't have to be a - more than a first-year law
21 student to understand that there's criminal genocide going
22 on here, and that's been going on for a long time. Sooner
23 or later that's going to be exposed at the international
24 level. And what's Australia going to say for itself? So
25 whatever gets said in these situations is important in
26 terms of that - you know, how that develops. So, yeah, we
27 need - we need the support, but it's not going - doesn't
28 seem like it's forthcoming from this country. And - - -

29 HER HONOUR: All right. I will hear from Mr Brown on the
30 application that I appoint friends of the court and
31 adjourn the proceeding to enable them to participate.

1 MR BROWN: Your Honour, it couldn't be doubted that those three
2 eminent jurists could assist the court on the content of
3 crimes against humanity, and in particular, genocide. The
4 difficulty is, in this proceeding, the question is whether
5 the registrar of the Magistrates' Court exceeded his power
6 by making the decision that he did.

7 The content of those laws don't bear upon the
8 question of whether the registrar exceeded his powers, so
9 in my submission, there is nothing that could be added, or
10 there is not going to be (indistinct) in the material
11 before this court in order for Your Honour to determine
12 the question that Your Honour is asked, which is whether
13 the registrar of the Magistrates' Court exceeded his
14 powers. It is for that reason that we oppose the
15 adjournment of the proceeding to allow these people to be
16 approached.

17 HER HONOUR: All right. Is there anything you would like to
18 say in reply to that, Uncle Robbie?

19 MR THORPE: Yeah. I think - yeah. That they - the - the
20 Magistrates' Court failed in their duty there, because
21 they did - genocide is a known crime, like I said. Two
22 six eight of the Commonwealth Criminal Code. So it's not
23 upon a - a - a minor bureaucrat to be determining such an
24 important issue like that. I think it's very unfair.

25 And also, the - the authority of the - the Attorney
26 General, and what they call a fiat - they'd be the only
27 person to decide whether these cases can be proceeded
28 with. Now, how's that fair, in anyone's sense of - and I
29 think - and is - is Australia the only country in the
30 world that does that sort of thing? Is this the only
31 place?

1 You know - so - and I just think it's - it's - it's
2 a travesty, what they do here. They prevent Aboriginal
3 people from accessing these issues, by way of bias, racism
4 - institutionalised racism, which makes it very difficult
5 for Aboriginal people to proceed. And I think it's wrong,
6 at law, according to the International - the - what is it?
7 The CPPG.

8 The Convention for the Prevention and the Punishment
9 of the Crime of Genocide 1948. Nobody's immune, and
10 nobody has that authority to prevent it. You know, if you
11 imagine if Hitler's Attorney just said, 'No. No. No.
12 There's no - no case to answer, here.' What would have
13 happened? You know.

14 So is that what - is that what we're saying? That
15 some - some - some individual can take it upon themselves
16 to prevent these sort of heinous crimes being committed.
17 And - and the whole idea of the Convention was the spirit
18 of preventing the crime. And no one could say Australia
19 has prevented the crime of genocide here.

20 It's hard - I don't think there's anyone being
21 punished for the crime. And they've failed to protect our
22 people. And the - the - the worst thing about genocide
23 for our people is that what follows is ecocide, because
24 the people who are responsible - people looking after the
25 country have been removed. The caretakers, the custodians
26 and the guardians of what we call something sacred, our -
27 our land - our homeland - our mother - we're being
28 prevented from stopping that from happening.

29 Now, sooner or later, this is going to unravel, and
30 I think - you know, it's the perfect opportunity for this
31 court here today to step up to the mark. You can't be

1 hiding behind the - the idea of terra nullius any longer.
2 The act of unlaughable shame. Isn't it the foundation of
3 this court? The basis of the - the occupation and their
4 jurisdiction is a monumental lie. And where do we do from
5 here.

6 That's why we - we desperately need international
7 support, because it's not forthcoming. And the evidence
8 is there. Look at our gaol rates. Look at what's
9 happened to our children. Look what's happened to every
10 piece of law in this country. They're creating the
11 conditions of (indistinct). It's only getting worse. We
12 don't need people from the Northern Hemisphere to manage
13 our affairs. Where do they get that authority? It's a
14 joke.

15 And Australia's basically a crime against all
16 humanity, as far as I can see. And it's got to stop. We
17 want it to stop. Not when you're ready. We want it to
18 stop today. And this is a serious crime. There can't be
19 any more heinous types of crimes. And we know that
20 genocide is, in the main, created by states - caused by
21 states. Individuals can't do it. It's got to be
22 calculated, plotted, planned, schemed, and scanned. And
23 that's the whole basis of this country, unless you can
24 tell me any different.

25 And it hasn't. It's - it's still an unsettled
26 country. It's not a settled country. There's no proper
27 recognition of our precedent law, which precedes all of
28 your laws. And it was proven to be sustainable,
29 effective, fair, and just. And we're not going to go
30 anywhere until we get justice in our country. We
31 understand law.

1 I ask you, Your Honour, how much do you understand
2 about the - the law of this land? The law of the land?
3 Not the law of England. The law of this land. It's well
4 established. Just not recognised. So we find ourselves
5 in these situations, having to argue about some minor
6 bureaucrat standing in the way of us getting justice for
7 our people.

8 So whether it's me that does - does this - it'll be
9 the generations that follow. And Australia's changing.
10 You know, the British Crown's irrelevant - without
11 jurisdiction. You know, most colonial countries actually
12 celebrate the day they removed the British Crown from
13 their country. Their day of independence. We haven't had
14 that.

15 We're still celebrating the day they invaded
16 militarily, with their fleet of military ships. It wasn't
17 just convicts. There was military on that ship, as well.
18 There was Lieutenant Cook. There was Lieutenant Collins.
19 It was all military. It's never been anything different.
20 It's always been the force of arms. So to say, you know,
21 that these people have - that this is - that this - this
22 is not a charge that can be applied - you know, there's
23 something seriously wrong with this society.

24 And we're not going to go away. We're keep
25 persisting, and we'll get our - our arguments right. And
26 then how will people be seen in that light, down the
27 track? Including all the judgment and the judiciary and
28 everything else in this country. The governments, the
29 churches - they're all the - the beneficiaries of the most
30 heinous of all known crimes. That's the fact of the
31 matter, you know.

1 Genocide is a crime. I was told by Michael Kirby
2 that it's not a crime in this country. That was 1997.
3 How could that possibly be? Why? Because they haven't
4 legislated for it. You know. And what are they saying
5 now? 'You've got - it's up to the Attorney General, with
6 his fiat, to decide that.' You know. They're hardly our
7 peer group, these people. They don't represent us.

8 We have elders that represent our people. We have a
9 law here. So, you know, that should be taken into
10 consideration, and if people are fair dinkum about doing
11 something about this - this continuing problem of
12 Aboriginal people, you'd better close the gap. You -
13 you've heard about the - the Stolen Generations and the -
14 and the deaths in custody here. You know, it's a - it's a
15 real issue. The conditions of life. We're saying that
16 your law perpetuates that; maintains that.

17 And by - you know, there's an old saying that came
18 out of 1948 - I think it was in the Nuremburg Trials -
19 that said, 'Evil reigns when good people do nothing.'
20 Australia is a very clear example of that. 'Doing
21 nothing.' You know. And this - this crime is real, for
22 our people. We've gone through everything you can
23 describe as genocide.

24 Australia's clearly guilty of it. In fact, there's
25 nothing in that act - 1948 - that Australia's not guilty
26 of. Not one part of it. And it's continuing. So have -
27 have magistrates not apply these charges - you know, these
28 - these are important to our people. We want access to
29 the law here. We understand the law. We're lawful
30 people. We always have been. What came here 200 years
31 ago wasn't law; it was piracy; it was terrorism and

1 intentional genocide from the get-go. So we're sort of
2 asking the court here today, superior than the magistrate,
3 got a duty of care and an obligation to do the right thing
4 here. Correct that. And that may make a difference. But
5 regardless, we'll be going - you know, we want to exhaust
6 the domestic (indistinct).

7 We've been to the High Courts. We've been to every
8 court in this court attempting to apply or have access to
9 do these things in a court of law. And Australia's
10 looking pretty sad on that front. So we're going to
11 continue to do that, and - but who knows? Who knows how
12 you're going to see this situation. It's a real - it's a
13 real care regardless of what my learned friend says: they
14 have no case to answer. Yeah, I think they have and
15 I think the international community would agree.

16 And I don't think there's any aboriginal person out
17 there on this continent who will say that our claims are
18 frivolous and vexatious. You haven't seen nothing yet in
19 terms of being - now, we should be here every day of the
20 week arguing this case. We're losing our people. I lost
21 my nephew two weeks ago, a 21 year old. Not long before
22 that, my brother's son died in gaol. He just went through
23 a coroner's inquest. It's traumatic. It's happening all
24 the time and I want it to end.

25 And I want this court to at least establish how
26 they've got jurisdiction over Aboriginal people when the
27 State says we never ceded our sovereignty. 'You haven't
28 got treaties, consent or jurisdiction', and then refer to
29 some sort of magistrate's opinion and relying on the
30 Attorney-General's fiat, which is a rare - it's a rare
31 thing in - in international law. I don't know what other

1 countries have this Attorney-General which can decide 'yay
2 or nay' where there's a case to be answered to. So
3 I don't know where we're at.

4 HER HONOUR: All right. Well, we'll come to the notice of
5 constitutional matter in a while. But in relation to your
6 application that I appoint three eminent humans rights
7 jurists as friends of the court, as Mr Brown said, there
8 is no doubt that those three people are likely sources of
9 learning in the area of law that sits behind this case,
10 the crime of genocide. But in circumstances where there's
11 no indication at all that those three people are willing
12 to act as friends of court, and where the proceeding's
13 been listed for trial now since April, I'm not going to
14 pause the proceeding to appoint them.

15 And I do note that I am simply a trial judge in the
16 Supreme Court of Victoria, and it seems unlikely that I
17 will be the final judge who pronounces on this matter.
18 And if you wish to make approaches to those people to
19 assist in some way at latest stages of this litigation,
20 you are free to do that.

21 MR THORPE: Well, maybe hearing what you just said, they may be
22 interested in supporting.

23 HER HONOUR: All right. Can we move, please, to your
24 application to add the Commonwealth Attorney-General as a
25 third defendant to the proceeding. Now, I've seen an
26 unaffirmed affidavit of this morning, I think, exhibiting
27 some correspondence from the Australian Government
28 Solicitor indicating that the Commonwealth Attorney-
29 General won't be intervening on the constitutional matter
30 that you've identified, and does not consent to being
31 joined as a defendant.

1 The submissions made in that letter is that the
2 questions in the proceeding can be determined between the
3 current parties, of course, who include the Victorian
4 Attorney-General, and joining the Commonwealth Attorney
5 would not alter the nature of the questions or make it any
6 more likely that they would be resolved one way rather
7 than another. And so the Commonwealth Attorney opposes
8 your application. What would you like to say in support
9 of the application to join the Commonwealth's Attorney?
10 What's the issue in the proceeding that you say
11 particularly interests him?

12 MR THORPE: Well, there's - there's currently a Senate Inquiry
13 of a bill before the Senate asking the question about the
14 Attorney-General's fiat, and so that may be of interest.
15 This case may be of interest to those people. That's one
16 thing. I think he has a duty to be here in this court
17 today, not just the State Attorney-General but the Federal
18 one as well, considering the nature of what we're saying
19 here, if they're - if they're fair-dinkum about law and
20 order in this country.

21 But, you know, it's - it's totally predictable what
22 they're going to say. The country is in complete denial
23 of, you know, the history of this - this country and its
24 foundations, it's legal foundation in particular; in
25 complete denial of - of our rights, and that's evidenced
26 in their idea of terra nullius. That's still being played
27 out. It hasn't - it hasn't stopped being that. They're
28 treating us like we don't exist, basically, but we're
29 alive. We're - we're not only a precedent law, we're a
30 superior law.

31 And that's that law here, which is totemic, the

1 totem Laws, which are global, ancient and we adhere to,
2 and we understand. But this colonialism doesn't. Now,
3 it's pretty predictable that the Attorney-General is not
4 going to turn up. They're the gatekeepers preventing
5 things like this from happening, and that's why I think
6 it's - it's disgraceful that Australia can hide behind
7 that. Because we know, as soon as we get Australia into
8 the international court, they're done. They're done.

9 So this is what you're relying on. That protection
10 protects all of this. So we're going to keep working
11 until we get through there despite that, some individual.
12 You know, like I said, what do they understand about the
13 law of the land? Nothing. Mark Dreyfus, yourself, what
14 do you understand about the law of this land? Which is a
15 precedent law. You understand precedents. We were here
16 first. This is our land and our law applies regardless
17 what you think, say or do.

18 It's a - it's a falsehood; it's a façade; it's a
19 deception and it needs to stop. So, well, I think it's -
20 it's important that we do - do our best in trying to
21 present this - this case, because we're doing it for our
22 ancestors who died on battlefield Victoria. No
23 recognition of those people. They spilled their blood
24 here defending it from foreign invasion. They spent their
25 - their lives in concentration camps, smoothed the dying
26 pillow, final solutions.

27 There's been quite a number of those final solutions
28 here, and Victoria's the worst of them all. Like I said,
29 this is the premiere state. The rest of them states
30 followed this one. The rest of them states followed this
31 one. This is where they got their foot in the door. The

1 Victorian Constitution is the original terra nullius
2 document. And so keeping that in mind, you know,
3 regardless of what your law says and what you think it is,
4 we're going to have that examined.

5 We don't believe it. Now, I believe in the law, but
6 I've got nothing but contempt for this one because I don't
7 really see it as a law. Now, why are we the most gaoled
8 people on Earth in our own country? Why are they removing
9 our children when we've been looking after our children
10 for 100,000 years and our country and removed off our
11 country, the source of our - well, they know exactly what
12 they're doing.

13 It's totally meditated criminal genocide going on
14 here, and the role that this court plays is part of that,
15 part of that machine. It's all a part of it, whether it's
16 the magistrate, they're all the same. They're falsely
17 premised and that needs to be resolved hopefully. You
18 know, it's 2024, some 250 years since Cook was instructed
19 to get consent.

20 You understand the meaning of the word consent,
21 don't you, Your Honour? Well, it's important to us too,
22 and it starts from there. Without that, there's nothing.
23 It's a crime scene, a continuing crime scene regardless of
24 all this; you know, it's a pretence. It needs to change.
25 Time to acknowledge the real law of this land.

26 HER HONOUR: All right. Now, Uncle Robbie, I'm going to hear
27 from Mr Brown on this question of whether the Commonwealth
28 Attorney should be joined. I think my associates just
29 asking people to move into the courtroom. There are
30 actually still plenty of seats available over here and
31 some over here. Anyone who needs to sit down can sit

1 down. Mr Brown.

2 MR BROWN: If Your Honour pleases. The Attorney's submission
3 on the application to join the Commonwealth Attorney-
4 General is that it should be refused because the
5 Commonwealth Attorney-General is not a necessary for the
6 party for the resolution of the issues that are presented
7 by Uncle Robbie's originating motion and with which this
8 court's dealing. All of those issues concern Uncle Robbie
9 and the State of Victoria and we're here to deal with
10 those, and we don't need the Commonwealth to be a part of
11 that.

12 HER HONOUR: Well, can I ask you, there is a notice of
13 constitutional matter that raises the validity of
14 division 268 of the Criminal Code.

15 MR BROWN: Yes.

16 HER HONOUR: And in particular the provision requiring what
17 Uncle Robbie's referred to as the Attorney-General's fiat.

18 MR BROWN: Yes.

19 HER HONOUR: So that any prosecution under that division must
20 be brought in the name of the Commonwealth Attorney-
21 General.

22 MR BROWN: Yes.

23 HER HONOUR: Does that question arise in the proceeding?

24 MR BROWN: We say it doesn't, so we don't think anything needs
25 to be done under 78B of the Judiciary Act simply on the
26 basis that there's an insufficient prospect of that
27 argument being successful for it to rise to the level of
28 requiring notices to be given to other Attorney-General
29 and for this proceeding to be stayed pending an
30 opportunity for the Attorney-General to become joined to
31 the proceeding.

1 But I accept perhaps what might be the premise of
2 this exchange is that is, if there were validity to that
3 argument, then of course the Attorney-General or the
4 Commonwealth might want to intervene. Of course, the
5 Attorney-General for the Commonwealth has indicated
6 through the correspondence that he doesn't seek to be
7 heard on that point.

8 HER HONOUR: Yes. Yes.

9 MR BROWN: So at some point, I suspect, Your Honour, we will be
10 dealing with the 78B notice and that argument.

11 HER HONOUR: Yes.

12 MR BROWN: It's simply an entrée for the argument that I'll be
13 making about that.

14 HER HONOUR: All right. Thank you.

15 MR BROWN: If Your Honour pleases.

16 HER HONOUR: Thank you. All right. For the reasons set out in
17 the letter from the Australian Government Solicitor of
18 18 July - so yesterday - I refuse the application to join
19 the Commonwealth Attorney-General as a third defendant to
20 the proceeding. I do not consider that his participation
21 is necessary to determine the questions that arise in the
22 proceeding. I do note that the Commonwealth's Attorney-
23 General was given notice of the constitutional matter that
24 Uncle Robbie seeks to agitate in the proceeding and has
25 declined to intervene. So, for those reasons, I refuse
26 that application.

27 All right. Moving through your list, Uncle Robbie,
28 there's a much more minor question that you have raised at
29 your fourth point: seeking a direction that an affirmed
30 affidavit be sealed in substitution for a previously-
31 unaffirmed affidavit that was accepted for filing earlier

1 this week. We might be able to deal with this one quite
2 shortly. My associates have been in touch with the
3 registry who advised that all you need to do is to file
4 the affirmed affidavit and it will be accepted for filing,
5 and I will just disregard the unaffirmed one. Okay?

6 MR THORPE: Thank you.

7 HER HONOUR: All right. So we'll deal with that one. Next,
8 there's a matter that is raised in your summons that was
9 filed on 13 July requesting a direction that the Victorian
10 Government Solicitor's Office provide some information
11 about the Aboriginal acknowledgement that appears on the
12 foot of many emails that come from that office. Could you
13 tell me what that's about, please?

14 MR THORPE: Could you just repeat that? Sorry.

15 HER HONOUR: Could you tell me what that application is about
16 and why it relates to the questions in this proceeding?

17 MR THORPE: What point are we talking about?

18 HER HONOUR: This is your sixth point in your draft minutes of
19 order.

20 MR THORPE: What are we looking at? The idea of acknowledging
21 Aboriginal people, you know, is - how real is it? So what
22 that's saying there is - what do they mean by it when they
23 say that we never ceded our sovereignty, that they respect
24 our elders? How is that being played out in reality? So
25 that's why we're requesting that. Does that make any
26 sense?

27 HER HONOUR: All right. I understand that you've made that
28 request to VGSO to provide that explanation, I'm just not
29 sure how I can make that direction in this proceeding
30 given that the proceeding relates to a decision of the
31 Magistrates' Court to refuse to accept your chargesheet

1 and summons for filing.

2 MR THORPE: It's just that all these acknowledgments and - and
3 recognition goes - it's just - is it just talk or was
4 there something real about how that could be played out?
5 I don't say - I don't say I've got the - your skills or
6 your abilities, because I'm not - not trained in law, but
7 we have people of high degree in our society. And is that
8 really true they want to acknowledge them in a real way?
9 So is it just talk? You know, elders: they say they
10 recognise elders. No, they don't. They don't respect
11 them, either, not while there's genocide going on.

12 There can hardly - hardly be any respect going on
13 here while these crimes are being committed. So
14 (indistinct words) making any sense, but the whole idea of
15 acknowledgment is rubbish in this country while there's a
16 way going on. It's never been ended. We know when it
17 began, but when did it end? What day did the war end in
18 this country? Has it ever been recognised? Has there
19 ever been an end of hostilities? You'd - you'd agree that
20 there's been a war in this country. Would you believe
21 that? Do you say that? Do you think that?

22 That there was a war. When a - when a fleet of
23 military ship turns up in your territorial waters and
24 disrespects your customary law, that's an act of war and
25 aggression. So you can say that's when that war began.
26 What day did that end? So is there any real
27 acknowledgment here? No, there's not really. It's just
28 all talk. You know, there hasn't been proper law done
29 here. So I don't know if that's answering that question.

30 HER HONOUR: All right. Well, you make that point very

31 clearly. I'm not going to give a direction to VGSO to

1 answer that question. I'll leave that to the Victorian
2 Government Solicitor to decide whether to respond to your
3 request for that information.

4 MR THORPE: Okay.

5 HER HONOUR: All right.

6 MR THORPE: Yep.

7 HER HONOUR: Okay. Now, I think that deals with the matters in
8 the summonses. Your summons that was filed on 15 July
9 also sought an order that the Chief Justice have conduct
10 of the proceeding. Now, we already discussed that at the
11 first directions hearing and I explained to you that the
12 proceeding's been allocated to me, that I'm the senior
13 judge in charge of the judicial review and appeals list,
14 and that no litigant is able to choose the judge who hears
15 their case, not you, not the King, not the
16 Attorney-General. So on that basis, I'll retain conduct
17 of the proceeding.

18 MR THORPE: Okay.

19 HER HONOUR: All right.

20 MR THORPE: Move on.

21 HER HONOUR: That leaves, I think, two matters that need to be
22 dealt with. One is in view of the fact that you have
23 filed and, I understand, served a notice of constitutional
24 matter, whether I can proceed to hear the case today.
25 I thought I might hear from Mr Brown about that first.
26 This arises out of s78B of the Commonwealth Judiciary Act.
27 That puts some limits on the court proceeding to hear and
28 determine a matter where a notice of constitutional matter
29 has been served.

30 MR BROWN: Yes. So the argument that's made by Uncle Robbie is
31 that the relevant - what's been described as the Fiat

1 provision - this is in the joint book of authorities.

2 UNIDENTIFIED SPEAKER: It's hard to hear.

3 MR BROWN: It's in the Commonwealth Criminal Code. The
4 provision is s268.121.

5 HER HONOUR: If you just want to move that mic. There's a
6 microphone pointing at Uncle Robbie. If you could just
7 move it. Yes, that will help.

8 MR BROWN: Section 268.121 is said to be invalid.

9 HER HONOUR: Yes.

10 MR BROWN: That provision creates a procedural limitation upon
11 the bringing of charges under the relevant division,
12 that's Division 268 of the Criminal Code. So it would
13 follow that if there was no legislative authority in the
14 Commonwealth Parliament to make that law, the argument
15 must follow then therefore it is invalid, therefore that
16 limitation doesn't exist, therefore Uncle Robbie could
17 issue charges under Division 268.

18 Now, so far as we can tell, there's not doctrinal or
19 other basis that's been suggested as to why that provision
20 would be invalid as being within the foreign affairs power
21 of the Commonwealth Parliament; that is, the Commonwealth
22 Parliament has, plainly, through Division 268, sought to
23 bring into Australian law - - -

24 HER HONOUR: I'm sorry, Mr Brown.

25 MR BROWN: Yes, I'm sorry, Your Honour.

26 HER HONOUR: Just forgive me.

27 MR BROWN: Yes, Your Honour.

28 HER HONOUR: Really sorry. I had no idea we'd have
29 construction work happening outside the courtroom today.

30 MR BROWN: The conditions under which we need to work, Your
31 Honour, so Division 268 of the Criminal Code seeks to

1 bring into Australia law - incorporate into Australian law
2 obligations that Australia has undertaken at international
3 law. That is through an exercise of the Commonwealth's
4 legislative power in relation to the foreign affairs
5 power. There's no constraint on that power in the way in
6 which it introduces those laws or places limits on those
7 laws within the Australian domestic law.

8 HER HONOUR: I think you might be going a little wider than my
9 initial concern, which is s78B of the Judiciary Act says
10 that if there's a constitutional matter that arises, that
11 the court shouldn't proceed to hear and determine it until
12 the Attorneys-General have been given notice and a
13 reasonable time to proceed.

14 MR BROWN: Yes.

15 HER HONOUR: Now, notice has been given about a week ago.

16 MR BROWN: Yes.

17 HER HONOUR: The Commonwealth Attorney, who's the most
18 interested of the attorneys, has indicated quite clearly
19 that he does not wish to intervene.

20 MR BROWN: Yes.

21 HER HONOUR: In those circumstances, can I proceed to hear and
22 determine?

23 MR BROWN: That is a much shorter way home than dealing with
24 the actual argument about the - - -

25 HER HONOUR: Yes. I'll still have the argument to deal with,
26 but I want to know if I can proceed to deal with it.

27 MR BROWN: Yes. On the basis of that correspondence, Your
28 Honour, entirely correct, the proceeding can continue
29 because not only has sufficient time elapsed, but the
30 relevant Attorney-General has responded.

31 HER HONOUR: All right.

1 MR BROWN: And doesn't seek to intervene.

2 HER HONOUR: Sure. And in the event that another attorney, so
3 one of the attorneys of the other states, wishes to be
4 heard, then I'll deal with that if it happens.

5 MR BROWN: Yes.

6 HER HONOUR: But I think it rather unlikely.

7 MR BROWN: Yes.

8 HER HONOUR: Okay.

9 MR BROWN: I accept that, Your Honour.

10 HER HONOUR: All right. Thank you. And then the final thing
11 I want to deal with before we get into the substance of
12 the proceeding is your invitation, Uncle Robbie, that we
13 conduct a visit to Camp Sovereignty. You did raise this
14 at the end of the directions hearing that we had in April,
15 and my response then was that I appreciated the
16 invitation.

17 I couldn't see that a visit to Camp Sovereignty
18 would help me to understand the issues in the case, but
19 that I would ask you to raise it at this hearing and
20 I would hear from the Attorney-General about her views.
21 Is there anything that you'd like to say to explain why
22 you think it would help the court to visit Camp
23 Sovereignty?

24 MR THORPE: Yes, I think it'd be very beneficial to yourself.
25 Most people in this country don't accept the fact that
26 Aboriginal people had a law. You know, it's - it's been
27 occupied and - and ruled on the basis that it was an empty
28 land. And, like, it wasn't empty of people and it wasn't
29 empty of law. Ken Crispin of the Federal Court in
30 Canberra thought it was a good idea to come down and
31 acknowledge that and had a sitting at the court - at our -

1 at our fire in Canberra.

2 And I thought that was - you know, it was a step in
3 the right direction. Because our law emanates from our
4 Country, from our land, and that's where we do our
5 business. That's where we have always done our business,
6 is around our fire. It's the first council, is the
7 fireplace. The campfire. That's where the first council
8 ever came from. I don't know about your law, but that's
9 where it came from our law. It goes back a long time. So
10 that's a place where we do business.

11 So it may be in your interests to do something and
12 actually acknowledge that there's a law existing that we
13 need to take notice of. That's what never happened from -
14 from the time of Cook. Never bothered with the idea of
15 consent, treaties, which has affected this whole
16 jurisdiction right now. It's - there's a problem there.

17 So I think it'd be beneficial for someone like
18 yourself to come down there. It doesn't have to be a
19 major part of a court case, but something symbolic will
20 occur there. Because it's only the - the beginning. It's
21 only the early steps in terms of actually recognising our
22 law in this country.

23 So these are the steps that probably need to be
24 taken to actually acknowledge by coming there and seeing
25 how our law works. At least have that explained to you.
26 And then in the context of that, we can continue. But it
27 acknowledges at least our people's law and the weightage
28 of law for our people in this country. It's never
29 acknowledged, not in these places. It's totally biased in
30 your favour and it's intimidating, you're up above
31 everyone.

1 You know, it's like a - like a boat. It's like a -
2 it's - it's maritime law, where come and step onto the
3 land. Come and see what the law of the land is about, and
4 a lot of the problems that we've got in this country today
5 in regard to our people and their rights might be finally
6 dealt with, because acting - they're acknowledging us and
7 acting on a bit of good faith. And that's what it's going
8 to take, you know.

9 We're beyond law here, I think. We're talking
10 politics. And, you know, it's failed us, the legal
11 system. So there needs to be some other way. Your legal
12 system has failed. The evidence is there. In particular,
13 in regards to our people whose land this is. So it may be
14 just a good idea to come down there and hold a portion of
15 the case there or - that was the idea in that.

16 HER HONOUR: Okay.

17 MR THORPE: Okay.

18 HER HONOUR: Thank you. Mr Brown.

19 MR BROWN: Your Honour, we don't (indistinct) Your Honour. We
20 don't think it's necessary in order for Your Honour to
21 adjudicate on the case, but obviously if Your Honour felt
22 there was some benefit then we wouldn't oppose that with
23 any vigour. It's simply we don't see - given the issues
24 that Your Honour is grappling with under the (indistinct)
25 motion, it doesn't seem that it needs to be on Country or
26 at a place outside this courtroom. But as I said, Your
27 Honour, we don't have any firm view one way or the other.

28 HER HONOUR: All right. Thank you.

29 MR THORPE: Can I just add something to that?

30 HER HONOUR: Of course.

31 MR THORPE: On the ground where our fire is, we're - we're

1 evoking our Ancestors' spirits. This is really important
2 witness in our processes of law here. Like, we've got a
3 highly sophisticated law. People have got no idea,
4 really. But that's the heart of our business. You know,
5 we - we don't have this huge industry of punishment and
6 things like that. It's - it's been refined to the point
7 where it's merely a fire and Elders in council. That's
8 our law. It is important to understand that.

9 But the fact that our - our evidence or our witness
10 is there as well. So that's one of the reasons why we'd
11 like you to at least acknowledge the law of our land in
12 that way. And it does - if you - if you, a Supreme Court
13 judge, turned up to Camp Sovereignty, it'd go a long way
14 in recognising us in a real way. So that's part of the
15 idea of that as well. So I just thought I'd add that.

16 HER HONOUR: All right. Thank you. I really do appreciate the
17 generosity of the invitation to visit Camp Sovereignty.
18 However, this is a case that you have brought to this
19 court, and for that reason I think it's appropriate that
20 I hear your case in this court. It's not a case that is
21 going to turn on the evidence. It's going to turn on
22 matters of law.

23 I understand that you make submissions about the
24 legitimacy of the law that I apply as a judge of the
25 Supreme Court of Victoria, but that is a constraint on the
26 jurisdiction that I exercise. So I decline your
27 invitation to visit in order to decide this case. When
28 this case is over, perhaps on another occasion, I'd be
29 very happy to visit.

30 MR THORPE: Okay. There'll be another time.

31 HER HONOUR: So shall we proceed to hear the substance of the

1 case now? I've received written submissions from both
2 sides, and I've read all of that material. And today's
3 really an opportunity to go into more detail about some
4 aspects of it, to emphasise the aspects that you really
5 would like me to take most notice of, and to add to what
6 you've said in writing. So Uncle Robbie, would you like
7 to go first?

8 MR THORPE: I think the reason why we're here today is because
9 the magistrate erred in their - in that direction where
10 they said that genocide was an unknown crime, where it
11 was. We're talking about 268 of the Commonwealth Criminal
12 Code. It's well known. It's been around for 20 years.
13 So they've erred there. And we're here today for you to
14 correct that problem and see where you stand on that and
15 if you also see that as the issues here as well. That's
16 basically it.

17 The magistrate has a duty to apply these laws, we
18 see, and - and because it's claiming that they - they
19 don't - the law is unknown is false. So we're here to
20 correct that in your court, basically, the - the gist of
21 what we're trying to say here. And to build the - the
22 body of evidence, put the meat on the bones in terms of
23 the - the skeletal remains that was left after Mabo, after
24 the removal of terra nullius. This is actually putting
25 the meat on those bones.

26 And I think it's - it'd be beneficial if this court
27 would take the obvious step in correcting that falsehood,
28 that lie, that deception. And that - that system of
29 gatekeeping has prevented us, as Aboriginal people, from
30 accessing the - you know, the - the legal system here in
31 the way that we want to. And the questions that we want

1 to ask have always been prevented. Every time we come
2 here, we're frivolous and vexatious.

3 Like I said, I don't think there's any Aboriginal
4 person on this continent that would agree with that. You
5 know, I'm prepared to put everything on that. I - you'd
6 be hard pressed to find any person to disagree with what
7 we're saying in terms of these - these claims. So where
8 do we go, you know. That's - we're looking for direction.
9 We're looking for some good faith from this court here.
10 You know, they've benefited greatly from denying our
11 existence. Everyone's grown up here on the idea that, you
12 know, we're irrelevant, that we're not worthy of having
13 protection from genocide and things like that.

14 And if you have a look at the - you know, the
15 ratification debate of the 1948 Genocide Convention,
16 Australia, it's pretty woeful. You know, it's disgusting
17 actually. And it's further and continuing evidence of
18 Australia's unwillingness or inability to act on these
19 sort of matters. And it's - you know, the evidence is
20 growing. So we're here to seek your understanding and -
21 and - and position on that as well.

22 And - and knowing full well that sooner or later,
23 what gets said in this court here will be used in an
24 international court, a real court of law. Because
25 Australia's a fake. It's based on terra nullius, lies,
26 falsehood. So we want to correct all that for the
27 betterment of all of us. Not just Aboriginal people, but
28 everybody in this country today, you deserve a law, a
29 proper law, not one that discriminates against certain
30 people. What's that about?

31 So potentially, there's an opportunity to correct

1 these issues. We only need to - all we want to do is ask
2 the question about these things in a relevant court that's
3 prepared to hear what we've got to say. I'm pretty sure
4 that most people in this country would acknowledge that
5 there's - the crimes have been - have been committed and
6 are continuing, including removal of children, killing us
7 - killing members of the group, creating the conditions of
8 life, you know, preventing us from - from births.

9 In fact, everything, it's defined as genocide
10 according to that 1948 convention Australia's guilty of,
11 and there's no doubt about it. So where do we go? You
12 know, where - this is the highest court in this - this
13 state. You know, we've been to the other courts. Very
14 similar. But we're working towards getting there.
15 Doesn't - it might not be me who sees that, but, you know,
16 we're building the - the foundation for this case.

17 I'm not the - you know, the best exponent of the
18 law. I find it very difficult, convoluted and, you know,
19 very hard to follow. It's not honest. It's not a true
20 law, not like our people had. We could deal with justice
21 instantly, because we had our act together. We knew. And
22 each and every person of an - Aboriginal person in our
23 society - the time they're 15, 16 years old, they knew the
24 law. Everyone knew the law in our society, whereas this
25 place who does? Who knows the law here.

26 You know, it's for some privileged group of people
27 to administer. That's not how it works for our people,
28 and that's why we've got these problems. If you know the
29 law, you're less likely to break it, and that was taught
30 to us when our people were initiated into our law, and we
31 had a successful system.

1 We want it back. We want our peace restored. We
2 want restitution for all the damage that you've done, and
3 we want acknowledgement that everyone here is living on
4 the proceeds of this most heinous of all known crimes,
5 pre-meditated criminal genocide. It's not very healthy.

6 But that's just true. This is the truth and sooner
7 or later that's going to keep - that's going to be
8 resolved or it's going to get worse, because our people
9 deal with the truth. We are truthful people, and our
10 society was evidence of that. We lived in harmony with
11 each other across this continent. We had a pristine
12 environment. That means we had a law there, and there had
13 to be something going on there. So there's an established
14 law that this country doesn't want to take any notice of.

15 You know, we've got a right to that law, and we've
16 got a right to our land, our homeland, and we're not going
17 anywhere. Sooner or later our day will come. Everyone
18 here has played a role in our oppression. This denying us
19 justice. They need to be made accountable at some stage.

20 So there's an opportunity here. I think people are
21 aware, much more aware these days about the true nature of
22 Australia. It's not empty. It's not terra nullius. You
23 know the idea of making it, that's acts of genocide in
24 itself, by declaring us empty, or just saying it's a
25 white-only policy constitution or creating that is another
26 intentional act. Failing to prevent and (indistinct
27 words) for the crime of genocide it's all very clear acts
28 of genocide for our people.

29 Like, sooner or later the weight of the war will
30 catch up to you. You know, you can hide for so long, this
31 lie. That's what it is. So we'll continue along our

1 journey, and like I said I'm just one person in the whole
2 scheme of things trying to create this body of evidence,
3 under duress, without resources in a very hostile society.
4 Even our own so-called organisations are hostile towards
5 us. So we're up against it.

6 We don't expect the state to say anything different
7 than, you know, be in denial and state that our claims are
8 meaningless. Of course they're going to say that. That's
9 what a murdering, lying thief would do. We need to take
10 this place to a proper court of law and deal with it
11 there. It's totally unbiased. It's impartial. It's
12 partial. And we got no chance in the (indistinct).

13 That's why we're looking at you, Your Honour.
14 You're the one who can make the change here. You're sort
15 of duty bound as well, you know, in the name of the law
16 and justice you can clearly see that Australia's one hell
17 of a crime scene. Victoria in particular is the worse of
18 these states. This is the premier state and look at what
19 happened to our people. Like I said, we went from 100 per
20 cent of the population to .01 per cent of the population
21 in a very short space of time.

22 A lot of resources have been stolen. Something like
23 two million kilograms of gold was stolen from this place
24 in over a 40-year period, and that was the beginning of it
25 in the gold rush. This has been tearing this place apart
26 the whole time, and it's convenient that they don't want
27 to recognise the true law of this place, because that
28 would put a halt to that stolen wealth.

29 So we're looking to you. You're in the position of
30 the supreme part of this law in this country. Just
31 acknowledge what we're saying here and really start doing

1 something about changing where we're going as Aboriginal
2 people, and that's extinction. You know, the rate we're
3 going there's not going to be any of our people left
4 alive, 50, 70 years' time, and that has achieved their
5 objectives of terra nullius. Their final solutions.
6 (Indistinct) the dying tribe.

7 All the institutions are very much a part of it
8 including the judiciary, the education system, the
9 government and all parts of churches, all are very much
10 part of this conspiracy to destroy aboriginal people.
11 It's so very clear to me and many other people around the
12 world.

13 The ones who can't see, the blinkered ones are the
14 ones here and don't want to see that. They don't want to
15 question their own authority, their so-called authority.
16 It's assumed. It's got no real basis. So sooner or later
17 that's going to catch up to you. That's how the world
18 works as far as I understand it. Now you've got to be
19 truthful. Now, I naively thought like my friend over
20 there, behind me there, we both agreed that we thought
21 truth had something to do with the legal process in the
22 country, but that's hardly the case is it.

23 So you know, I always thought that's what it had
24 something to do with, is the truth was going to be found
25 out in a court of law. But that's not how it's work.
26 It's not - that's the way - it's - they're protecting
27 something. They don't want it to be exposed.

28 What is our role in it. You know, I don't know if
29 you've ever read the Nuremberg trials. It was the state
30 who just blindly went along. Their judiciary. All those
31 things happened and evil reigned because those good people

1 did nothing, and they all got caught up with this.
2 Australia's - everything you can - everything that's
3 defined as genocide according to that, Australia's guilty
4 of. So that's a pretty shameful state of affairs if you
5 ask me. It's hardly a way to grow a society, you know,
6 based on monumental lies, terra nullius, a secret war,
7 illegal invasion.

8 You know it's just the weight of all of that, you
9 know they haven't got a leg to stand on. So when are we
10 going to something about that. Our people are dying
11 miserably in this country, and yet we were the kings and
12 the queens here. We were the royalty. We still are.

13 It's a right that aren't acknowledged and we don't
14 believe that anybody on this planet is immune from crimes
15 like genocide, and that's stated in that 1948 Act. No
16 one's immune whether you're a head of state or a
17 constitutional ruler, and I think it still needs to be
18 played out, the 1948 genocide convention and what that
19 meant. You know it was a new world order basically at
20 that time.

21 What is Australia's role in all of that. What was
22 their pathway that they took. That needs to be examined
23 and it brings you to where we are today. Lawless and
24 mindless and a farce and not a true law. And the people
25 are waking up. It's not a convict people colony no more.
26 People are much more aware. It's crimes against the non-
27 Aboriginal people which can be seen as genocide too. We
28 want an Act to prevent it. We want it in place and
29 there's no immunity. There's no statute of limitation.
30 Nobody's immune.

31 So basically that's what we're saying here today,

1 and we'd like for you being in the position you are in
2 this court, in this country, in this state to make the
3 ride steps in the right direction and how we can work
4 together. And we don't really have to take this to the
5 International Criminal Court. We can avoid all that. We
6 just want to act morally, ethically and legally at some
7 stage in the history of the state. That could happen.
8 We're talking about treaties. You know I'm not -
9 I believe in treaty. I believe in peace, but you know
10 there's still a lot of work to do on that stuff as well.

11 But the potential's there. It's right here right
12 now, and, Your Honour, you could play a role in that,
13 because you can see we've got a lot of support for what
14 we're doing and we're not going to go away. So, I think
15 we could possibly make some steps in the right direction
16 here if we do the right thing as - I'm not vexatious and
17 I don't think that my claims are frivolous either.

18 You know, I believe in the law. I do believe in the
19 law. I just want to see where it is. Where's this law.
20 What's its foundations. How does it apply here. So, you
21 know there is room to do something and it's despite what's
22 happened to our people. You know we're big enough to get
23 on top of that, because we all understand what a peaceful
24 society is, a lawful and peaceful society. It's such a
25 beautiful thing, and that's what we're trying to do, get
26 back to that. Because we're thinking about our children's
27 children's children.

28 We want to pay respect to our ancestors and our
29 esteemed elders who have kept us going through this, you
30 know, tough period. So that's what we're doing here, and
31 we owe it to them. We owe it to this land and all of the

1 things on this land. All of our totemic animals that
2 we're responsible for. We see it disappearing on a daily
3 basis. It's very distressing for our people to see, you
4 know what has been created over hundreds of thousands of
5 years to be destroyed the way it is. Which is – you know
6 clearly another part of the act of genocide is causing
7 ecocide, erasing the culture, destroying the environment.

8 You know the time has come and I think that's the
9 change that could be (indistinct) you know people didn't
10 really care about genocide of our people. That's very
11 clear the last 200 years. What's changed is the idea of
12 ecocide because that's where they see – the colonisers –
13 see their own mortality and that's why there may be a
14 change and I think they're – it's timely. We have a
15 blueprint for survival, our people, embedded in our
16 genetic makeup. We have that still. You know, we're
17 talking about survival not just for our own people but for
18 the wider community as well and everything on this land.

19 The time has come. You know, you'd be – you'd have
20 to agree that there's an environmental crisis going on
21 globally. I don't know if you agree with that or not, but
22 I see that. I've seen it every day since – well I grew up
23 in the 70s. I've seen so much change in the environment.
24 It's really sad. I hate to think about what it'll be like
25 in 20 years. There'll be nothing left.

26 You know while I'm alive I'm going to try and do
27 something about preventing it and stopping that scenario.
28 So if this learned court could assist in any way and see
29 the errors of that magistrate's judgment there. He erred.
30 Genocide is a crime according to 268 of the Commonwealth
31 Criminal Code, and we know that because we've been taking

1 out court cases prior to the International Criminal Court
2 (indistinct) statute in 97 against the Commonwealth, and
3 told we had to exhaust a domestic remedy, and you know, we
4 had no standing. All those sorts of things.

5 But we're here now, and in fact the very first day
6 the International Criminal Court opened its doors, we
7 applied. I think we were the first people to knock on the
8 door of the International Criminal Court back in 2002.
9 Lewis Romano was the current prosecutor at that time.
10 I remember it clearly.

11 So we've been at this for a long time, and we know
12 it's time. I think you know it's time. I think everybody
13 does too. You can't continue this pretence. It's not
14 terra nullius. It can't you know continue to play out
15 like it is. You know, and having proper court cases and
16 hopefully civilised discussion, we can prevent things that
17 may happen in the future because we want our rights
18 recognised. Our basic and fundamental human rights. We
19 want them recognised today. You know, we're haemorrhaging
20 in terms of our lives. We want to stop it. There's no
21 need for it and it's perpetuated by the institutions in
22 the main.

23 Some of it's individuals but it's the institutions
24 that are responsible and that will be borne out at some
25 stage if it gets to the International Criminal Court. I
26 think if a country hasn't got a means to prevent genocide
27 it could hardly call itself a civilised society. If you
28 can't prevent the acts of genocide in your country, you're
29 hardly civilised.

30 So it's in the interests of this country to actually
31 allow these sort of cases to go ahead, you know. Not

1 here, I don't want to be wasting my time in a court all my
2 life and I know we have to do it, and you know I'm not
3 trained as a lawyer. I wish I was. But we're not going
4 away. We'll be here until the end of the day, and we'll
5 maintain our sovereign rights over this land and we'll be
6 asking questions about how come this country's allowed to
7 get away with criminal genocide the way it has. So, yes,
8 that's my little spiel. Thanks.

9 HER HONOUR: Thank you, Uncle Robbie. Mr Brown.

10 MR BROWN: Your Honour, we've filed some rather lengthy written
11 submissions and of course we rely on those. I don't
12 intend to take Your Honour through all aspects of the
13 written submissions. We've extensively addressed
14 (indistinct).

15 HER HONOUR: Yes, you can assume that I've read them.

16 MR BROWN: Yes. This case is about the legality of the
17 decision that was made by the registrar of the
18 magistrate's court. It's not about whether genocide was
19 ever committed or is still being committed. It's about
20 whether the crimes that are alleged can be prosecuted
21 within the magistrate's court in accordance with the
22 charge sheet and summons that were filed by Uncle Robbie.

23 So it's actually a very narrow case for Your Honour,
24 is whether the power that was exercised by the registrar
25 under s12(4) of the Criminal Procedure Act on the state of
26 satisfaction or absence of state of satisfaction reached
27 by the registrar was lawfully reached.

28 So really the question for this court and as we set
29 out in our written submissions is the scope of the powers
30 under s12(4), and really it turns on this question of what
31 is meant in s12(4) by an offence known to law. Because of

1 course in the broad genocide and Uncle Robbie has
2 eloquently elaborated on it is an offence known to law.

3 The offence of genocide is in the Commonwealth
4 Criminal Code, it's at international law, there's an
5 extensive history. But the question is whether for the
6 purpose of the powers that's been exercised by the
7 registrar, it was an offence known to law because it
8 couldn't be prosecuted in the manner that was being sought
9 by Uncle Robbie. Not that it couldn't be prosecuted at
10 all, but rather is this the vehicle through which the
11 offence can be prosecuted.

12 So, Your Honour, I'll briefly step through the way
13 we say these questions should be answered. They are
14 already in the written submissions, and there's nothing
15 additional I need to say, but I think it might be helpful
16 if I at least just step through the way we say the
17 argument should be made. So Your Honour, the place to
18 start is s12 of the Criminal Procedure Act, which is in
19 the joint bundle of authorities. I don't know if Your
20 Honour using the electronic version (indistinct).

21 HER HONOUR: Yes.

22 MR BROWN: So p1403 of the joint bundle of authorities, where
23 s12 is found. Section 12 comes after s6, and s6 is where
24 a charge sheet can be filed, and at the same time a
25 summons is issued, which is what commences the criminal
26 proceeding. And Your Honour will see under sub-s(1), 'On
27 the filing of a charge-sheet under s6, an application may
28 be made to a registrar of the Magistrates' Court for the
29 issue of a summons to answer those charges'. And then the
30 relevant power that's at issue in this proceeding is sub-
31 s(4), 'On an application under sub-s(1), the registrar

1 must' - it's a statutory command to the registrar, 'must,
2 if satisfied that the charge discloses an offence known to
3 law, issue a summons'.

4 And so that's why, as I already said to Your Honour,
5 the question here is, it's plain on the material that the
6 registrar wasn't subjectively satisfied. The question is
7 whether, having obtained that state of mind, that state of
8 mind was obtained lawfully, because the registrar
9 understood properly what was meant by that term, 'offence
10 known to law'.

11 As I've already said to Your Honour, that's not
12 whether - so the question, we say, is, whether, 'offence
13 known to law' means an offence that can be prosecuted
14 within the Magistrates' Court. So skipping ahead, Your
15 Honour, the nub of our submission is, where the offence
16 alleged is incapable of enlivening the court's
17 jurisdiction, it's not an offence known to law for the
18 purpose of that provision. That's the summary of our
19 argument.

20 We say that there necessarily is a connection
21 between the offence that's alleged and the jurisdiction of
22 the court to determine it, that is, it must be capable of
23 being tried and determined in the Magistrates' Court,
24 because the purpose of these provisions is the orderly
25 conduct of criminal proceedings within the Magistrates'
26 Court.

27 And so if that term, 'offence known at law', was a
28 term at large, then, obviously, anybody could come along
29 and seek to prosecute offences within the Magistrates'
30 Court, without the rigour of the registrar containing it
31 to those offences that can properly be determined by the

1 court.

2 And we so say the purpose of this statutory regime,
3 the purpose of the Criminal Procedure Act and s12 and s9
4 is to regulate the circumstances in which a criminal
5 proceeding can be commenced, and that, for the purpose of
6 the question that Your Honour is grappling with, in terms
7 of regulating the criminal jurisdiction of the
8 Magistrates' Court, it must be that, 'known to law' must
9 equate with a law that can be within the jurisdiction of
10 the Magistrates' Court.

11 Because, as I've already said, Your Honour, there
12 are significant impracticalities if the term was to mean
13 something along the lines of, theoretically recognised by
14 some body of law somewhere, because that would have the
15 consequence that a private litigant could commence a
16 proceeding in the Magistrates' Court for an offence that
17 was simply incapable of being determined by the
18 Magistrates' Court.

19 So if that's accepted, the purpose of the Criminal
20 Procedure Act and the meaning of, 'offence known to law',
21 the question that the registrar was required to grapple
22 with, and that Your Honour now, on judicial review, is
23 required to grapple with, is whether the proposed
24 offences, or the proposed charges disclose an offence
25 known to law. And there were three sources of law that
26 were outlined in the proposed charge sheet, and it's those
27 sources of law that need to be grappled with in order
28 determine whether these charges disclose an offence known
29 to law.

30 And so in the charge sheet, what Uncle Robbie has
31 identified as sources of law is the sovereign law of

1 Australia's first people, Division 268 of the Commonwealth
2 Criminal Code, and the common law, insofar as it
3 incorporates international law and the offence of genocide
4 in international law.

5 So commencing with the first source of law
6 identified by Uncle Robbie, that is, the sovereign law of
7 Australia's first people, we say Your Honour doesn't need
8 to grapple with the metes and bounds of what that concept
9 involves, for the simple reason that the jurisdiction of
10 the Magistrates' Court is limited by the statute that
11 establishes the Magistrates' Court. And in terms of the
12 criminal jurisdiction of the Magistrates' Court, that's
13 found in s25 of the Magistrates' Court Act, which is also
14 in the joint bundle of authorities, which I'll try and
15 find for Your Honour. Tab 48, I'm usefully told by my
16 instructor, PDF 1464.

17 And what s25 of the Magistrates' Court Act discloses
18 is that the jurisdiction of the Magistrates' Court is
19 summary offences, indictable offences that may be heard
20 and determined summarily, committal proceedings for all
21 indictable offences, and the enforcement and payment of
22 fines. And then of course there's a cognate provision in
23 the Judiciary Act for Commonwealth offences that picks up
24 that jurisdiction of the Magistrates' Court. W

25 hat we say is that within that limitation of
26 jurisdiction, there's no place for - it just doesn't fit
27 within those sources of jurisdiction to find a home for
28 the sovereign law of Australia's first people, that is,
29 that would be to expand the jurisdiction beyond that which
30 Parliament has provided.

31 So for this purpose, Your Honour, for grappling with

1 this part of the question, it's entirely appropriate for
2 the court, and I think, as Your Honour has already
3 indicated on a previous occasion, to proceed on the basis
4 that sovereignty was never ceded by the First Peoples of
5 Victoria, and that there were criminal offences of
6 genocide and ecocide that existed under that law. That
7 can all be accepted. The question is whether the
8 jurisdiction of the Magistrates' Court found in s25 of the
9 Magistrates' Court Act can expand to embrace those
10 concepts, and we say there's no room in the statutory
11 language to do that.

12 And then it follows that that the offense under that
13 law, being incapable of being prosecuted within the
14 criminal jurisdiction of the Magistrates' Court couldn't
15 found the necessary satisfaction in the mind of the
16 registrar. The second source of law identified by Uncle
17 Robbie was the Commonwealth Criminal Code, division 268.

18 HER HONOUR: Yes.

19 MR BROWN: Which is at the joint bundle of authorities at p265,
20 pdf 270. And Your Honour will see that division 268 of
21 the Commonwealth Criminal Code creates five species of
22 genocide in 268.3 through to 268.7 - - -

23 HER HONOUR: Mm'mm.

24 MR BROWN: I don't need to take Your Honour through the
25 statutory elements of those defences save to observe that
26 each was identified separately in the plaintiff's - in
27 Uncle Robbie's charge sheet and that they align with the
28 defences of genocide that are recognised under
29 international law, which is relevant to the third source
30 of law which is the common law and where the international
31 law has been brought from common law, or whether there's -

1 sorry, I withdraw that. Where the common law has evolved
2 to embrace that international law.

3 So it is plain, Your Honour, that division 268 in a
4 general sense creates an offensive genocide known to law.
5 So that general sense of course there is an offence and
6 it's an offence known to law. As I said earlier to Your
7 Honour, we say it's for the purpose of s12.4 of the
8 Criminal Procedure Act, it's not an offence known to law
9 because of the limitation that's imposed through s268.12 -
10 sorry, point s268.121 which is at the joint book of
11 authorities 346 or pdf 351.

12 HER HONOUR: Yes.

13 MR BROWN: Your Honour will see, so it's headed 'Bring
14 proceedings under this division'. Sub-s1, 'proceedings
15 for an offence under this division must not be commenced
16 without the Attorney-General's written consent', and
17 that's the Commonwealth Attorney-General's consent, that's
18 not my client's written consent.

19 HER HONOUR: Mm'mm.

20 MR BROWN: 'An offence against this division may only be
21 prosecuted in the name of the Attorney-General', sub-s3 is
22 not relevant. So the limitation that's - the
23 jurisdictional limitations are that first there needs to
24 be consent of the Commonwealth Attorney-General, written
25 consent and the proceeding needs to be prosecuted in the
26 name of the Commonwealth Attorney-General. In the joint
27 bundle of authorities, and I won't take Your Honour there,
28 but to simply note, this provision actually has been the
29 subject of litigation in the High Court.

30 And so there is an exegesis of the operation of
31 provision by that - through that proceeding which is

1 Taylor v Attorney-General [2019] 268 CLR 224, that's at
2 tab 42 of the joint bundle of authorities.

3 HER HONOUR: Mm'mm.

4 MR BROWN: Perhaps I will just briefly avert to it. So in
5 Taylor, Taylor was an attempt by a private litigant to
6 file a charge sheet and summons in the Magistrates' Court
7 of Victoria so it has some similarity to present
8 proceeding. It alleged an offence of crime against
9 humanity under 268.11 with the proposed defendant being
10 Hungsun Suu Kyi. Mr Taylor sought the written consent of
11 the Commonwealth Attorney-General, the Commonwealth
12 Attorney-General refused to give consent and so Mr Taylor
13 sought judicial review of the Attorney-General's refusal
14 of consent in the High Court and its original
15 jurisdiction.

16 And so the question at the issue that was live for
17 the High Court to determine was whether 268.12 excluded
18 the right of private - to bring a private prosecution
19 under division 268. And what the court helped by - or in
20 other, sorry, I withdraw that Your Honour. So the
21 question was whether 268.12 exhibited a contrary intention
22 to the purpose of s13(a) of the Crimes Act which allowed a
23 person to institute a private prosecution of an indictable
24 Commonwealth common law offence.

25 HER HONOUR: Mm'mm.

26 MR BROWN: So the question was how these two provisions
27 interacted - - -

28 HER HONOUR: Yes.

29 MR BROWN: And what the majority held is that 268.121 did have
30 the effect of preventing the private prosecutions of these
31 offences and Your Honour can see as some - what the

1 majority, the majority view at paragraph 36 of that
2 judgment.

3 HER HONOUR: Was there any issue in that case about the
4 validity of s268.121?

5 MR BROWN: No. No, no, no, it wasn't raised.

6 HER HONOUR: Mm'mm.

7 MR BROWN: So simply, the court just had to determine the
8 interaction between the Crimes Act and - - -

9 HER HONOUR: Yes.

10 MR BROWN: - - -This provision and determine this provision
11 wasn't a necessary - didn't exhibit the necessary contrary
12 intention and so therefore had the effect that it has on
13 us base. The paragraph 36 is whether Chief Justice Keifel
14 or Justice Gageler came together, excluded the capacity of
15 any other persons commencing prosecution and then in
16 section - paragraph 43, an additional aspect of the
17 operation of 368.121 is, it excludes private prosecution
18 but the only way in which prosecutions can be conducted is
19 in the name of the Attorney-General.

20 So therefore the only - the actual decision that was
21 only open to the Attorney-General was to refuse. But
22 that's not relevant to this proceeding. So for our
23 purposes, obviously reverting to s12 sub-s4 of the
24 Criminal Procedure Act, and on the basis of Taylor and for
25 present purposes presuming that s268.121 is valid, the
26 only way in which this charge could be brought would be in
27 the name of the Commonwealth Attorney-General and with the
28 consent of the Commonwealth Attorney-General.

29 And that that is - that's a mandatory jurisdictional
30 precondition for the prosecution or defence that is absent
31 in this case and is therefore the satisfaction reached by

1 the registrar was lawfully reached. Now in what Uncle
2 Robbie says, particularly in his 78(b) notice, is that
3 s268.121 is invalid and if it's invalid, of course, it's
4 as if it isn't even there or isn't - doesn't provide a
5 jurisdictional barrier because it's not a jurisdictional
6 pre-condition.

7 HER HONOUR: Yes.

8 MR BROWN: We say there's no doctrinal authority - doctrinal
9 basis or authority that would suggest that 268.121 was
10 beyond the legislative competence of the Commonwealth
11 Parliament that the whole provision is an exercise of the
12 Commonwealth Government's legislative power in relation to
13 external affairs and it has determined to bring into
14 Australian law the offences that are set out in that
15 division subject to a procedural constraint which is that
16 that's found in 268.121.

17 So that is - that the offences are known to
18 Australian law that there in the division but there is a
19 procedural limitation that is the only way they can be
20 prosecuted is by the - in the name of the Commonwealth
21 Attorney-General and subject to the Commonwealth Attorney-
22 General's commission and we say there's nothing to suggest
23 that that would be beyond the power of the Commonwealth
24 Government, to pass that law. If that's accepted then we
25 return to the jurisdictional constraint existing, meaning
26 that this isn't an offence known to law for the purpose of
27 s12(4).

28 Now, we as Uncle Robbie has adverted to, acknowledge
29 that there is presently before the Commonwealth Parliament
30 a bill - a private bill - seeking to repeal s268.121 but
31 of course Your Honour is required to deal with the law as

1 it is now and so we don't know what will happen with that
2 bill and whether in fact it will be repealed. But as it
3 presently stands, that's the law. So that deals with the
4 Commonwealth criminal code division 268. The third source
5 of law that was identified by Uncle Robbie was the common
6 law. That is it's said that the common law of Australia
7 imports the prohibition on genocide that's found in the
8 Genocide Convention of 1949, the Rome Statute of 2002 and
9 is contrary to customary international law.

10 The simple reason that we give in our written
11 outline as to why that argument must fail - putting aside
12 whether the Commonwealth has in fact adapted in that way -
13 is there is now the statutory offence of genocide and what
14 is plain from division 268 is that is a complete
15 codification of any pre-existing common law or
16 international law offences of genocide and so the reason
17 for that is - and we've set this out in our written
18 submissions is - division 268 on its face is a complete
19 codification.

20 It embraces the five offences that are found in
21 article 2 of the Genocide Convention and article 6 of the
22 Rome Statute. That was confirmed in the explanatory
23 memorandum to the bill that become division 268 and it is
24 expressly stated the purpose was to incorporate the
25 offences of genocide into Australia's law so the
26 international law offences.

27 And more importantly, s268.121, the division we're
28 grappling with, represents a statutory limitation on the
29 manner in which prosecution for the offences of genocide
30 might be brought and that statute of limitation then
31 leaves no room for operation of a relevantly identical

1 common law offence. That's plain that on its face that
2 there is to be this limitation and the Parliament has
3 expressly turned its mind to that limitation.

4 That argument, the argument that we make about the
5 common law means that Your Honour in grappling with this
6 question can assume that there was at some point an
7 offence of genocide recognized by the common law in
8 Australia as Justice Merkel identified in descent in
9 *Nulyarimma v Thompson*.

10 So obviously Uncle Robbie has asked Your Honour to
11 revisit that case and agree with Justice Merkel. We say
12 Your Honour doesn't need to do that because after that
13 case was decided, in 2002, the Commonwealth exercised its
14 legislative power, introduced division 268 and in
15 particular introduced these constraints through 268.121.

16 So whether Justice Merkel was right or wrong,
17 doesn't much matter. Your Honour can proceed on the basis
18 that His Honour was correct. It doesn't matter because
19 that's been overtaken by the subsequent exercise of
20 legislative power by the Parliament and Commonwealth of
21 Australia. So, Your Honour, we say the limitations or the
22 conditions that attach to prosecuting offences under
23 division 268 reflect a deliberate legislative intention to
24 codify the common law, embracing international law in a
25 very specific way.

26 The corollary of that is they do not reflect an
27 intention to preserve the common law outside these tight
28 codified boundaries. So that deals with the third source
29 of law, the common law, the third source of law identified
30 by Uncle Robbie, and so that means in those circumstances,
31 the three sources of law are incapable of identifying an

1 offence known to law for the purpose of s12(4) and so we
2 say therefore it follows that the state of mind that was
3 reached by the registrar was lawful and so there was no
4 jurisdictional error in the decision that was made.

5 Uncle Robbie raises two other arguments in his
6 originating motion. One is that he was denied procedural
7 fairness when the registrar made his decision. We say
8 what's relevant here is that the nature of the decision,
9 the public nature of the decision that's being made under
10 s12(4) - so it's been made before there is a criminal
11 proceeding and so it's being made before there is any
12 power in a magistrate to amend a charge sheet or at least
13 a matter for mention or for trial or for committal.

14 The purpose of the power is to facilitate the
15 efficient operation of the court's registry and the
16 orderly conduct of criminal prosecutions in the court. In
17 substance, it's defensive, to prevent the court's
18 processes from being overwhelmed by proceedings that are
19 defective and cannot be prosecuted within the court.

20 In summary, being to ensure the proper application
21 of the criminal law in the public interest, it's not
22 directed towards - 12(4) is not directed towards rights
23 and interests of private individuals that might be seeking
24 to bring prosecution. It's actually - it's got a public
25 purpose and so the two things that follow from that are
26 (1), there's no obligation on the registrar to refer the
27 charge sheet to a magistrate for any exercise of power by
28 a magistrate.

29 Also there was no obligation on the registrar to
30 give Uncle Robbie an opportunity to be heard on what was
31 then in the mind of the registrar; that is that a state of

1 - in the absence of satisfaction and that to require
2 otherwise would be contrary to the plain intention of the
3 statute. In our written submissions, we referred to some
4 authorities from the Cognate provision under the Federal
5 Court Rules in relation to the Federal Court.

6 So there's two decisions that have been made in the
7 Federal Court about whether a registrar of the Federal
8 Court is required to give someone an opportunity to be
9 heard before refusing to file documents that are defective
10 and are incapable of invoking the Federal Court's
11 jurisdiction.

12 So I won't take Your Honour to them, I'll just
13 mention them. It is a case of Somasundaram v Lackston
14 [2020] Federal Court of Australia 1076. It's a decision
15 of Justice Murphy. It's at joint book of authorities 41.
16 And the relevant paragraphs are paragraphs 1, 41 and 44.
17 Then there is Rahman v Hedge [2012] FCA 68. It's a
18 decision of Justice Perram. It's at joint book of
19 authorities tab 40, and paragraph 8 is the relevant part
20 of His Honour's judgment.

21 So we say there was no obligation in procedural
22 fairness. In any event, of course, one matter that is of
23 some significance is, even if there were some rights of
24 Uncle Robbie's that were being attenuated through this
25 decision, Uncle Robbie retains the right to file charge
26 sheets that were within the jurisdiction of the
27 Magistrates' Court. So it could re-do it if Uncle Robbie
28 could identify a charge that was capable of being
29 determined by the Magistrates' Court.

30 So there's been no loss of opportunity. That
31 opportunity to exercise that right exists, save for the

1 jurisdictional limitations. There's also an argument
2 that's made by Uncle Robbie that there the registrar
3 failed to take into account relevant considerations.

4 What we say about that is simply that the only
5 mandatory relevant consideration on the face of the
6 statute is whether the charge disclosed an offence known
7 to law, and that was plainly taken into account by the
8 registrar when making his decision. So for that reason,
9 we say - for those reasons, for the reasons that the state
10 of mind that was obtained by the registrar was lawfully
11 obtained, we say the originating motion should be
12 dismissed.

13 We make some arguments about the discretionary
14 relief and the nature of relief. I don't think I need to
15 elaborate on those. They follow from the other arguments
16 we've already made. So unless Your Honour has any
17 questions for the Attorney, they are the submissions on
18 behalf of the Attorney.

19 HER HONOUR: Thank you, Mr Brown.

20 MR BROWN: As Your Honour pleases.

21 HER HONOUR: Now, Uncle Robbie, would you like to reply to
22 anything that's just been said by Mr Brown?

23 MR R. THORPE: I think the fact of the matter is that
24 Aboriginal genocide is continuing right here, right now.
25 I think it's fundamentally wrong. The magistrate failed
26 to issue these proceedings. And (indistinct) clearly
27 stated that it was an offence not known, which was untrue.
28 They stated that aspect of it.

29 I remember back in 97, Justice Kirby's judgment said
30 something about s26 of Magistrates' Act. I think it's the
31 act of murder - would suffice in terms of preventing

1 genocide in this country. So it's come a long way since
2 then. And that's not that long ago. And it's hardly a
3 settled law. Is it a phenomenon that Australia is the
4 only one that has an individual (indistinct) to determine
5 whether these cases can be applied or not?

6 I think that's criminal in itself, and detracts from
7 the original genocide convention, the spirit of that being
8 the idea preventing things. It's hardly a means to
9 prevent these heinous crimes. All very clear that it's
10 happened. Crispin said that genocide is obviously
11 happening. It's a matter of demonstrating the intent.
12 From what I just heard there, it's the intent to prevent
13 us accessing these courts.

14 So it's predictable that the court would say that.
15 I don't think it's a true jurisdiction, like I mentioned
16 before. It needs to be brought into gear, into line with
17 international rule of law, which it's not. So regardless
18 of what's being said in regards to whether it's a criminal
19 offence that the registrar has committed here, we need to
20 get on to the bigger picture urgently.

21 I think it's very unhealthy. The whole thing is
22 relied on the decision of a magistrate registrar. I think
23 that's inappropriate, and it needs to change, and it needs
24 to go the level it needs to be. We're talking about a
25 race of people. I'm not an individual. I'm talking about
26 a whole race of people, a nation, nations of people.

27 It's not like those laws would apply to us, in the
28 way that it's said that it'd open the floodgate in terms
29 of claims being made. I don't think so. In fact, how
30 many cases of genocide have been heard in this country in
31 recent times, to justify any of that? It's untrue. It's

1 just a mechanism to stop people from actually accessing or
2 obtaining justice in their own country.

3 So I just want to add that. It was all very clear
4 back in 1948. There's a universal jurisdiction that
5 applies here. Nobody is immune. There's no statute of
6 limitations. Australia has tried to wriggle its way
7 through this, like they did back then. Now, why didn't
8 they actually legislate for the crime of genocide back in
9 1949? That was the idea of the ratification debate. What
10 happened there? So all that's adding weight to the
11 unwillingness and inability of this country and its courts
12 and its judiciary to act legally, morally and ethically.

13 So I don't know where we go from here. I think that
14 argument, according to your common law, which is - what
15 was left after that, after Mabo, after the issue of terra
16 nullius, where's the authority here? I don't think it'll
17 stand up in an international court if we did take it
18 there. Potentially, we've got an opportunity to - it'd be
19 preferable to deal with the issue here.

20 This assumed jurisdiction, authority here in this
21 country, it's not a real law, like I said. I think you
22 need to make access for the people, regardless of what
23 they think, whether they assume it's vexatious or
24 frivolous. I don't think that's - it's such a big issue.
25 That can be sorted out very quickly, and determined by
26 anybody, really.

27 It's got real substance, what we're talking about.
28 I'm going back, 97, prior to that. That's nearly 30
29 years. That's more than 30 years that we've been involved
30 with doing these cases. I've seen a lot of my people die,
31 because there's no protection. There's no one preventing

1 genocide here, and no one being punished for it. So it
2 says to us that Australia is totally unwilling and unable
3 to deal with the matter in a real way. They hide behind
4 that sort of defence there. It's not good enough.
5 According to the international law, Convention 48, even
6 the most smallest claims by a person regarding genocide
7 should be taken seriously. That's part of that law.

8 So where is that? Where is that option and
9 opportunity to do that in these courts? It doesn't sound
10 like it to me. Every option - every - at every turn,
11 they're trying to prevent actual people or anybody
12 accessing their courts because they know full - full well
13 that they're guilty of all these things as described in
14 the - you know, what's defined as genocide, according to
15 that Act.

16 You know, it's very unfair, and, you know, I'm
17 interested to - resolving the issues. We say genocide's a
18 real issue for Aboriginal people. We say genocide,
19 sovereignty and lack of treaty are the issue. It's called
20 the Black GST. Genocide, sovereignty, treaty.
21 Fundamental legal questions that remain unresolved in this
22 country in regards to our rights, and so come what may,
23 you know, you make your decision on what you think's right
24 here. According to that, it just seems like gatekeeping
25 to me and preventing our people from actually getting
26 justice. So I just want to, I suppose, add that to it.

27 You have - always remember that they said that s26
28 of the Magistrates' Act which is the Act of murder was
29 sufficient to cover the issue of genocide in Australia.
30 Always remember that. So is that still the case? No.

31 It's not. So why we're even messing around with these -

1 these - these magistrates - you know, we have to find -
2 try to exhaust every remedy that we can possibly go to.
3 That's why we're here, you know, and it's just - time and
4 time again, you've been able to deflect what we're saying
5 here, but that - I think that the weight of evidence will
6 continue to grow around these issues.

7 They're unresolved, and it'll come a time when
8 you're going to have to face up to these - these issues,
9 and I don't expect it's ceded in this country, not the way
10 it's - you know, it's heading. We say that's in a total
11 state of denial, and that's reflected in all institutions
12 and - and how that plays out and - and - for Aboriginal
13 people that we don't see any justice.

14 Got no rights other than what determined by this
15 criminal outfit you call the Crown, what's granted to you
16 then - granted to us by them. That's not - that's not the
17 way it works here. You know, we're - like I said, we're a
18 superior law, and when I say you really haven't any
19 jurisdiction over our - our people or our land, and sooner
20 or later, you know, we're going to - we're going to get
21 justice around that by whatever means necessary.

22 HER HONOUR: All right. Thank you, Uncle Robbie. You've given
23 me a great deal to think about on both sides. I'm going
24 to reserve my decision and take some time to think about
25 the issues that you've raised. I'm very grateful to
26 everyone at the Bar table for the way in which this
27 hearing's been conducted.

28 My particular gratitude to the Victorian Government
29 Solicitors Office for putting together all of the material
30 in a form that I can follow. I'll reserve my decision,
31 and in a moment, I'll ask my associates to adjourn the

1 court. If I can just say to everybody who's attended
2 today thank you for the respect that you've shown the
3 court during the hearing.

4 I do ask you as you leave this courtroom to remember
5 that there are other cases going on in other courts in the
6 building and just to be quiet as you leave the building.

7 Thank you. Thank you, Uncle Robbie.

8 MR THORPE: Thank you. You're all good.

9 HER HONOUR: Thank you, counsel. Adjourn the court, please.

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