



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 15 Aug 2024 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number: C3/2024
File Title: Commonwealth of Australia v. Mr Stradford (a pseudonym) &
Registry: Canberra
Document filed: Form 27F - 1st Resp's Outline of Oral Argument (Stradford)
Filing party: Defendant
Date filed: 15 Aug 2024

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

**IN THE HIGH COURT OF AUSTRALIA
CANBERRA REGISTRY**

NO C3 OF 2024

BETWEEN:

COMMONWEALTH OF AUSTRALIA
Appellant

AND:

MR STRADFORD (A PSEUDONYM)
First Respondent

HIS HONOUR JUDGE SALVATORE PAUL VASTA
Second Respondent

STATE OF QUEENSLAND
Third Respondent

NO C4 OF 2024

BETWEEN:

HIS HONOUR JUDGE SALVATORE PAUL VASTA
Appellant

AND:

MR STRADFORD (A PSEUDONYM)
First Respondent

COMMONWEALTH OF AUSTRALIA
Second Respondent

STATE OF QUEENSLAND
Third Respondent

**IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY**

NO S24 OF 2024

BETWEEN:

STATE OF QUEENSLAND
Appellant

AND:

MR STRADFORD (A PSEUDONYM)
First Respondent

HIS HONOUR JUDGE SALVATORE PAUL VASTA
Second Respondent

COMMONWEALTH OF AUSTRALIA
Third Respondent

OUTLINE OF ORAL ARGUMENT OF THE FIRST RESPONDENT

PART I INTERNET PUBLICATION

This outline of oral submissions is in a form suitable for publication on the internet.

PART II PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

1. Judge Vasta's order was not valid until set aside (RS [24]–[42])

- (1) An order of an inferior court affected by jurisdictional error is void *ab initio*.
- (2) Section 17(1) of the FCCA Act was not directed to the interim validity of orders subsequently set aside for jurisdictional error. It was directed to the ambit of the Court's power to punish contempts, including by maximising the range of contempts with which the Federal Circuit Court could deal.
 - *Judiciary Act 1903* (Cth), s 24 (**JBA Vol 2 Tab 14**); *Family Law Act 1975* (Cth) s 35 (**JBA Vol 1 Tab 3**)
 - Quick and Groom, *The Judicial Power of the Commonwealth* (1904), 75–78
 - *Day v The Queen* (1984) 153 CLR 475 (**JBA Vol 3 Tab 26**); *District Court of Western Australia Act 1969* (WA), ss 42, 44
- (3) Pts XIII A and XIII B of the *Family Law Act* were an exhaustive statement of Judge Vasta's power to impose sanctions for failure to comply with orders made under that Act, which displaced s 17(1) consistently with s 17(2) and the Note to s 17.

2. Judge Vasta did not have the protection of judicial immunity in the circumstances of this case (RS [43]–[91]).

- (1) For over 400 years, it has been established that inferior court judges do not enjoy judicial immunity in some categories of case. There have been many cases in which inferior court judges have in fact been held liable and ordered to pay damages.
 - *Groome v Forrester* (1816) 105 ER 1066 (**JBA Vol 6 Tab 59**)
 - *Calder v Halket* (1840) 13 ER 12 (**JBA Vol 6 Tab 46**)
 - *Raven v Burnett* (1894) 6 QLJ 166 (**JBA Vol 7 Tab 84**)
 - *Wood v Fetherson* (1901) 27 VLR 492 (**JBA Vol 8 Tab 106**)
 - *M'Creadie v Thomson* 1907 SC 1176 (**JBA Vol 6 Tab 69**)
 - *Re McC (A Minor)* [1985] AC 528 (**JBA Vol 6 Tab 64**)

- (2) Judge Vasta's conduct fell squarely within the categories recognised by these cases.
- (3) The Appellants' reliance on cases from other contexts where there was no issue as to the immunity of any inferior court judge involves a wrong approach to precedent.
- *Sirroos v Moore* [1975] 1 QB 118 (**JBA Vol 7 Tab 94**)
 - *Nakhla v McCarthy* [1978] 1 NZLR 291 (**JBA Vol 7 Tab 74**)
 - *Gallo v Dawson* (1988) 63 ALJR 121 (**JBA Vol 6 Tab 55**)
 - *Re East; Ex parte Nguyen* (1998) 196 CLR 354 (**JBA Vol 5 Tab 39**)
 - *Fingleton v The Queen* (2005) 227 CLR 166 (**JBA Vol 3 Tab 29**)
 - *Rajski v Powell* (1987) 11 NSWLR 522 (**JBA Vol 7 Tab 89**)
 - *Yeldham v Rajski* (1989) 18 NSWLR 488 (**JBA Vol 8 Tab 107**)
- (4) The invitation for this Court to expand the immunity of inferior court judges should be rejected. There are various legislative models that have built upon the established position. Given the range of potential ways in which the interests of individuals, judges and governments might be balanced, this field is quintessentially one best left to parliaments. Moreover, there remain differences between superior and inferior courts that continue to justify a greater incentive for restraint in the latter.

3. There is no common law defence to false imprisonment for officers executing an apparently valid order of an inferior court later held invalid (RS [92]–[128]).

- (1) An order of an inferior court affected by jurisdictional error is void *ab initio*. Such an order can be impeached collaterally in any proceeding in which it is sought to be relied upon to support or deny a claim for relief, and for that reason cannot supply a common law defence of lawful authority to a claim in tort, as the lawfulness of that authority is itself susceptible to collateral challenge within the tort claim. Any general defence must be statutory.
- *Stanley v DPP (NSW)* (2023) 97 ALJR 107 (**JBA Vol 7 Tab 99**)
 - *Constables Protection Act*, 24 Geo II c 44 (**JBA Vol 2 Tab 11**)

- (2) Authority establishes the inapplicability of any general defence of reliance on an order or warrant which is valid on its face.
- *Morrell v Martin* (1841) 133 ER 1273 (**JBA Vol 6 Tab 72**)
 - *Feather v Rogers* (1909) 9 SR (NSW) 192 (**JBA Vol 6 Tab 54**)
 - *Corbett v The King* (1932) 47 CLR 317 (**JBA Vol 3 Tab 25**)
- (3) The authorities on which the appellants rely do not support their claimed common law defence.
- *Webb v Batcheler* (1675) 89 ER 294 (**JBA Vol 7 Tab 102**)
 - *Oliet v Bessey* (1682) 84 ER 1223; 89 ER 851; 89 ER 892 (**JBA Vol 7 Tabs 76-78**)
 - *Hill v Bateman* (1726) 2 Str 711 (**JBA Vol 6 Tab 62**)
 - *Smith v Collis* (1910) 10 SR (NSW) 800 (**JBA Vol 7 Tab 96**).
 - *Dr Drury's Case* (1610) 77 ER 688 (**JBA Vol 6 Tab 51**).
 - *Moravia v Sloper* (1737) 125 ER 1039 (**JBA Vol 6 Tab 71**).
 - *Andrews v Marris* (1841) 113 ER 1030 (**JBA Vol 6 Tab 44**)
 - *Mayor of London v Cox* (1867) LR 2 HL 239 (**JBA Vol 6 Tab 70**)
 - *Commissioner for Railways (NSW) v Cavanough* (1935) 53 CLR 220 (**JBA Vol 3 Tab 22 p 438**)
 - *Posner v Collector for Inter-State Destitute Persons* (1946) 74 CLR 461 (**JBA Vol 4 Tab 37 p 1204**)
 - *Robertson v The Queen* (1997) 92 A Crim R 115 (**JBA Vol 7 Tab 90**)

4. Section 249 of the *Criminal Code* (Qld) does not apply (RS [129]–[150]).

- (1) Subject to contrary intention, s 35(1) of the AIA requires that “any court” in s 249 of the *Criminal Code* be read as “any court” “in and for” or “in and of” Queensland.
- (2) There is no contrary intention manifested by the *Criminal Code*.

Dated 15 August 2024

Perry Herzfeld

Daniel Reynolds