



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 14 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: C4/2024
File Title: His Honour Judge Salvatore Paul Vasta v. Mr Stradford (a pseu
Registry: Canberra
Document filed: Form 27F - Appellant's (Judge Vasta) Outline of oral argume
Filing party: Applicant
Date filed: 14 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 C4 of 2024

BETWEEN: **HIS HONOUR JUDGE SALVATORE PAUL VASTA**
Appellant

and

MR STRADFORD (A PSEUDONYM)

First Respondent

and

10

COMMONWEALTH OF AUSTRALIA

Second Respondent

and

STATE OF QUEENSLAND

Third Respondent

APPELLANT'S OUTLINE OF ORAL SUBMISSIONS

Part I: Certification

1. These submissions are in a form suitable for publication on the internet.

20 **Part II: Propositions to be advanced in oral argument**

Coherence

2. An 'inferior court' judge exercising the judicial power of the Commonwealth has, or should have, no lesser judicial immunity than that afforded to a superior court judge.
3. Immunity from civil liability is conferred by the common law, not as a perquisite of judicial office for the private advantage of judges, but for the protection of judicial independence in the public interest [**VS 22**].
4. This underlying principle applies equally to a judge of the FCCA.
5. The value of judicial independence does not depend upon the status of the judge.

6. The same principle should not result in different rules, absent some compelling justification.

The Role of the High Court

7. The High Court has an important role in developing or clarifying the common law and remedying incoherence between legal principle and legal rules [VS 13 – 16].
8. This is not a case where clarification or development of the common law would require this Court to depart from one of its earlier decisions (VS [17]; VR [6]).
9. Even if it were, the relevant considerations are met (VS [15]-[16]).

No Sound Justification for Different Rules

- 10 10. There is no compelling justification for different rules for different judges, at least within the integrated federal judicial system:
 - (a) the structure of the contemporary federal Australian legal system is materially different from the historic circumstances in which the confined immunity was first suggested (VS [17] – [19], [31] – [35];
 - (b) relatedly, there are now direct and appropriate mechanisms to correct error in decisions made by inferior court judges: particularly appeal (VR [9]);
 - (c) a confined immunity is incoherent with other immunities under the common law (VS [36] – [43]);
 - (d) the existing law is uncertain (VS [27] – [29]);
- 20 (e) at that time that the FCCA was established the confined immunity had been expressly doubted judicially and academically (VS [44] – [45]; VR [10] - [11]).

Disposition

11. The necessary premise of the first respondent's case at trial was that the appellant was *not* protected by the same immunity as that conferred on a judge of a superior court (**unconfined immunity**) (ASOC [38], JCAB 31). The first respondent did not plead or prove: malice or bad faith or knowing or wilful misconduct. Nor, critically, did he

contend that any of the 'jurisdictional errors' found by the trial judge would have taken case outside of the unconfined immunity. In the premises, ground 5 of the Notice of Appeal is not pressed.

12. If the proposition in paragraph [2] is accepted the appeal must be allowed.

Dated: 14 August 2024



S J Wood KC

Ben W Jellis SC

T Katz