

# HIGH COURT OF AUSTRALIA

GLEESON J

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IN THE MATTER OF AN APPLICATION BY  
JOHN MURPHY FOR LEAVE TO ISSUE OR FILE

[2024] HCASJ 25  
*Date of Judgment: 21 June 2024*  
C7 of 2024

## ORDER

- The application dated 15 May 2024 for leave to issue or file the proposed writ is refused.*

## Representation

The applicant is unrepresented



1 GLEESON J. This is an ex parte application dated 15 May 2024 for leave to issue or file an application for a constitutional or other writ dated 5 May 2024 ("the proposed application"). On 10 May 2024, Steward J directed that, pursuant to r 6.07.2 of the *High Court Rules 2004* (Cth), the proposed application was not to be issued or filed without the leave of a Justice first had and obtained by the applicant.

2 The proposed application seeks relief in relation to the decision of a Deputy Registrar of the Court to refuse to accept for filing a writ of summons dated 8 March 2024. That proposed writ of summons named the Commonwealth of Australia as the defendant and sought a declaration that the *Migration Act 1958* (Cth) is invalid and that s 51(xxvii) of the Constitution is "spent" in specified respects.

3 On 7 February 2024, Gordon J refused the applicant leave to issue or file another writ of summons which was dated 22 November 2023, and which also named the Commonwealth of Australia as the defendant. In the November 2023 proposed writ, the applicant sought relief in what was said to be a matter arising under s 51(xxvii) of the Court's original jurisdiction. Gordon J found that the 22 November 2023 proposed writ did not disclose any arguable basis for the relief sought and that the claims described in the proposed writ and supporting affidavit would be an abuse of process if filed.

4 In the proposed writ dated 8 March 2024, the applicant again seeks relief in what is said to be a matter arising under s 51(xxvii) of the Constitution and is therefore in the Court's original jurisdiction. The applicant complains about allegedly impermissible exercises of the power by "[t]he Immigration Minister and past Ministers who occupied the office of Immigration".<sup>1</sup> Although the relief sought is different from that sought in the 22 November 2023 proposed writ, the matters upon which the applicant relies are substantially the same. The questions of law in the 8 March 2024 proposed writ are identical to questions of law in the 22 November 2023 proposed writ.

5 The 8 March 2024 proposed writ discloses no arguable basis for the relief sought. If filed, the 8 March 2024 proposed writ would be an abuse of process. That proposed abuse of process would be enabled by granting leave to issue or file the proposed application.

6 Under r 13.03.1 of the *High Court Rules 2004* (Cth), the application will be dismissed without listing it for a hearing. The application dated 15 May 2024 for leave to issue or file the proposed writ is refused.

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<sup>1</sup> Writ of Summons at [1].