IN THE HIGH COURT OF AUSTRALIA
PERTH REGISTRY

No. P22 of 2019

BETWEEN:

In the matter of
Jerrod James Conomy

APPELLANT'S SUBMISSIONS

Part I: Certification for internet publication

1. I certify that this submission is in a form, to the best of my knowledge, suitable for publication on the internet.

Part II: Statement of issues

2. This appeal is brought from the determination of Justices Keane and Edelman in the proceedings P3 and P11 of 2019 given on 20 March 2019. Although the original scope of the said proceedings involved the appellant's applications for special leave to appeal, the High Court, by way of section 77RN(3) of the Judiciary Act, initiated a vexatious proceedings related scope of consideration pursuant to Part XAB of the Judiciary Act 1903. By the High Court engaging that part of the Judiciary Act, the original jurisdiction[1] of the High Court was engaged and resulted in orders dismissing the appellant's special leave applications pursuant to section 77RN(2a) of the Judiciary Act and resulted in restrictive orders being made against the appellant pursuant with section 77RN(2b). This appeal will consider if error or miscarriage of justice (or both) contaminated the judgement of Justice's Keane and Edelman.

3. As at 11 June 2019, the amended grounds of appeal include:

   Ground 2.1 – In the event that the Judiciary in this appeal conclude that the appellant's proposed amendments to his special leave applications in P3 and P11 of 2019 were never officially granted and therefore, despite the purported considerations and purported findings in relation to such, cannot be said to have

[1] or equivalent to orginal jurisdiction in the context of interpreting section 34 of the Judiciary Act

Jerrod Conomy
Email/Service: jjconomy@gmail.com
Telephone: 0407 479 697
Ref: Jerrod Conomy

in any way officially impacted the Justice's decision to deem the special leave applications vexatious, then the Justice's failure to grant the said proposed amendments occasioned: **(a)** error (inferably if not definably) or **(b)** substantial miscarriage of justice or **(c)** both a and b.

Ground 2.2 – In relation to the Justice's deeming that one or both of the proceedings P3 and P11 of 2019 were vexatious, the judgment occasioned: **(a)** error (inferably if not definably) or **(b)** substantial miscarriage of justice or **(c)** both a and b.

Ground 2.3 – In relation to the Justice's, in effect, deeming that the appellant had been afforded a reasonable opportunity to prepare his argument in defence of the vexatious proceedings orders, the judgment occasioned: **(a)** error (inferably if not definably) or **(b)** substantial miscarriage of justice or **(c)** both a and b.

Part III: Considerations regarding s78B of the Judiciary Act

4. The appellant makes the necessary consideration but is unsure as to whether notice is required to be given in relation to section 78B of the Judiciary Act 1903.

Part IV: Reasons for judgment below (P3 and P11 of 2019)

5. The judgement of Justice's Keane and Edelman is reported as [2019] HCATrans 049; 20 March 2019 (see CAB 3-14).

Part V: The pertinent factual findings of the Justices

6. As directed in the standard form, this part only presents some of the facts found by the justices in the proceeding directly below. For the record, the facts found by the justices in the proceeding below, and all related proceedings, are partially disputed by the appellant.

7. At CAB 4, lines 35-43, the Justices implied that the appellant had been notified on the 13 February 2019 that the potential vexatious proceedings orders were in relation to all history of High Court applications by the appellant. The finding is disputed.

8. At CAB 12, line 359, the Justices state:

"Mr Conomy's persistence in refusing to accept that the litigation relating to this matter has been concluded since 12 October 2016 is clearly vexatious. For that reason, his applications in P3/2019 and P11/2019 must be dismissed."

The appellant dispute's that finding and disputes the related findings which led to that finding.

9. At CAB 12, line 366-372, it is clear that the Justices clearly commissioned the dismissal of the said special leave applications as an exercise of section 77RN (Vexatious Proceedings) of the Judiciary Act 1903. This was also the case for all summonses filed in P3 and P11 of 2019.[2]

10. The orders published by the Justices were therefore all in exercise of section 77RN(2) of the Judiciary Act 1903. The orders published by the Justices are at CAB 16 and state:

"Matters Nos P3/2019 and P11/2019

1. *The application for special leave to appeal be dismissed*
2. *The summons filed 22 February 2019 be dismissed*
3. *The summons filed 27 February 2019 be dismissed*
4. *The applicant be prohibited from instituting any further proceedings in this court relating to the convictions the subject of Conomy v Maden [2016] WASCA 30 and Conomy v Maden [2016] WASCA 31"*

11. It is important to note that the orders prepared by Deputy Registrar Gesini are significantly different from those published by the Justices which the appellant addressed with Ms Gesini via emails on 27 and 31 March 2019 (FMB 310-311) which were completely ignored by Ms Gesini for five weeks and as at this date remain uncorrected..

Part VI: Argument

12. Some preliminary and common matters are best dealt with now which follow.

Legal precedent regarding grounds of sought relief from discretionary decisions

13. In relation to the aspects of the Judge's decision that were discretionary, the *'House'* [3] rules provide that 'if the judge acts upon a wrong principle, if he

---

[2] CAB 14 lines 456-461. Note also that the appellants latest special leave applications were not implied in any way to have been dismissed in a normal manner pursuant to any rule in Part 41 of the High Court Rules.

[3] House v The King, HCA 1936

allows extraneous or irrelevant matters to guide or affect him, if he mistakes the facts, if he does not take into account some material consideration, then his determination should be reviewed' and alternatively, 'it may not appear how the primary judge has reached the result embodied in his order, but, if upon the facts it is unreasonable or plainly unjust, the appellate court may infer that there has been a failure to properly exercise the discretion which the law reposes in the court of first instant'. These rules generally apply as relevant below.

Definition of vexatious

14. Any use of the word vexatious in this document is intended in similar terms to that of the definition of vexatious proceeding at section 77RL of the Judiciary Act unless otherwise indicated.

Multiple contentions must be considered cumulatively

15. With respect to the Judiciary, where the argument for a parent ground presents multiple contentions, the Judiciary must treat the contentions as being a cumulative arrangement and therefore if one or more individual contentions are rejected, that must not render the parent ground a failure unless all contentions under that ground are rejected.

Context of argument

16. As already covered in Part V above, all orders as published by the Justices in the determination of P3 and P11 of 2019 on 20 March 2019 were pursuant to section 77RN(2) of the Judiciary Act 1903 and therefore all arguments raised must be understood to be raised in the overall context of section 77RN unless otherwise indicated.

Right to appeal

17. Given all orders as published by the Justices were made in exercise of section 77RN(2), it follows that all orders made: (a) were exercising the original jurisdiction[4] and (b) were final orders[5] in the context of interpreting section 34 of the Judiciary Act 1903. Section 34(2) of that act is therefore rendered irrelevant

---

[4] or equivalent to the original jurisdiction in the context of interpreting section 34 of the Judiciary Act 1903. The said section 77RN scope was initiated by the High Court and therefore originated in the High Court.

[5] See section 77RN(5) of the Judiciary Act 1903

leaving the appellant with a legal avenue of appealing (without needing leave) to the appellate jurisdiction pursuant with section 34(1) of the Judiciary Act 1903. If this was or is in doubt, the Judgment in '*Jones v Skyring*'[6] removes any doubt.

definition

18. The appellant's applications for special leave to appeal in P3 and P11 of 2019 are from here on defined as the 'latest special leave applications'.

Argument for ground 2.1 (amendments not granted)

19. This ground is contended with a necessary presumption allowing for a circumstance in which the Judiciary in this appeal conclude that the appellant's proposed amendments to his latest special leave applications were never officially granted and therefore, despite the purported considerations and purported findings in relation to such, cannot be said to have in any way officially impacted the Justice's decision to deem the appellants latest special leave applications vexatious. It will be shown that, the Justice's failure to grant the said proposed amendments occasioned: **(a)** error (inferably if not definably) or **(b)** substantial miscarriage of justice or **(c)** both a and b.

20. ***Facts*** – Firstly, the appellant's latest special leave applications were at all relevant times legally active and open to be sought to be amended right up until the completion of the special leave hearing on 6 March 2019 and were never found by any Justice to be vexatious prior to the Judgement given on 20 March 2019.[7]

– Secondly, there was evidence in the appellant's summonses and supporting documents filed 22 February 2019 pointing out that the respondent had not yet been directed to file a response to the special leave applications and had no objection to such amendments (CAB 362, 381). The relevant amendment legislation was also pointed out as being rules 3.01.1 and 3.01.3 (CAB 360, 362, 379, 381). Also pointed out was the fact that the requested amendments

---

[6] Jones v Skyring [1992] HCA 39; (1992) 109 ALR 303; (1992) 66 ALJR 810 (27 August 1992); the orders made were on that occasion generous enough to reveal that it was open for the party to appeal the vexatious proceeding order if they so wished.

[7] See the directions in the letter from Deputy Registrar Gesini dated 13 February 2019 (CAB 397, *"Your applications for special leave to appeal...listed for hearing...6 March 2019" and "possibility...vexatious proceedings order")*

did not raise any new special leave grounds and did not significantly, alter the definition of each special leave ground (CAB 362, para 4 and CAB 364)(CAB 381, para 4 and CAB 383)

– Thirdly, at the hearing, the appellant brought the applications for amendment to the Justices attention (CAB 38).

– Fourthly, on news of the pending judgment, the appellant reacted to what he thought was a situation in which a Judgment was going to be made without the appellant's summonses being determined. A letter was lodged by post, fax and email on 19 March 2019 (CAB 411, FMB 321-327), which was the same day of the said news. The letter sought to remind the court of the undetermined summonses and the letter included some supporting legal contentions referencing the High Court's decision in Crocker v Smith regarding the principal that amendments must be granted if the amendments are reasonably open to be made.

21. ***Contention*** – With these facts in mind[8], and considering the abovementioned presumption which applies to this ground, the Justice's should have granted the amendments prior to any determination of the appellant's latest special leave applications. The Justices were: (a) in error not to have done so or (b) caused a substantial miscarriage of justice in not doing so or (c) both a and b. The contended miscarriage is addressed later.

Argument for ground 2.2 (proceedings P3 & P11.2019 deemed vexatious)

22. This ground is contended with a necessary presumption allowing for the contrary to the presumption adopted in relation to the previous ground. The presumption in this ground is therefore that the appellant's proposed amendments to his latest special leave applications in P3 and P11 of 2019 were, in effect, fully applied by the Justice's at least in the context of their considerations and determinations of the question whether the proceedings P3 and P11 of 2019 were vexatious. It will be shown that in relation to the Justice's deeming that one or both of the proceedings P3 and P11 of 2019 were vexatious, the judgment occasioned: **(a)** error (inferably if not definably) or **(b)** substantial miscarriage of justice or **(c)** both a and b.

---

[8] not to be confused with: because of one or more of these facts...

23. Due to several ambiguities and unknowns which arise from the reasons (or lack thereof) for Judgement, multiple contentions are presented in the context of the parent ground.

24. It also seems important to note that, given the presumption which applies to this ground, the scope will be limited to the Justice's considerations and determinations relating to the appellants proposed amended special leave applications. This helps by reducing the ambiguity and subsequent volume of argument required by half.

Failing to make any findings in relation to the appellant's explanations for the second attempt at obtaining special leave from the relevant decision of the WASCA (CAB 3-14)

25. **Facts** - Firstly, the amended latest special leave applications directed the Judiciary to refer to the appellant's affidavit in support of an extension of time which relevantly included a general explanation for raising his latest special leave applications (CAB 367-368, preliminary matter 4 and CAB 189-191); (CAB 386, preliminary matter 5 and CAB 357-359). The said affidavit(s) included the following content:

> *"3. This will be [my] further attempt at obtaining special leave to appeal from the decision by the WASCA in matter CACR 113 of 2015 given on 18 February 2016. My first attempt was denied special leave on the 12th of October 2016 in P19 of 2016 on the basis that "The application does not raise any question of law suitable for the grant of special leave". I was unable to define the special leave questions given it was my understanding at the time that I had only one shot at gaining special leave which led me to contending far too many grounds, of which would have raised too many questions to be practical to list and I also could not argue many of my grounds due to the 10 page limit. I applied for an extension which was denied by Nettle J in the matter P23 of 2016. At that time I did not understand that I could have applied for leave to appeal and it was not until after the matter P19 of 2016 had been dismissed that I discovered this right which was too late.*
>
> *4. As a result, I was only able to argue the grounds relating to inadequacy of reasons and I hoped the High Court would send the matter back to the WASCA. In the time since then, I have taken many steps to re-open that matter and my other matter relating to a different decision in the WASCA. There are various reasons I have taken those steps in relation to my belief that there has been a denial of natural justice or just a substantial wrong with relation to the rules which applied to unrepresented parties and which documents needed to be considered or amended and it was hoped that the High Court would allow me to make amendments and further submissions. I obviously needed to take those steps as far as I could before*

lodging any new applications for special leave to appeal from the WASCA decisions and I certainly could not reasonably have known that those endeavours would fail.

5. To the inevitable question of whether this new application for special leave raises issues already dealt with in the first one. The answer is no because none of the grounds raised and questions asked contended in this new application were raised in the first attempt [footnote: *See the application for special leave lodged 8 March 2016 (filed 29 April 2016)*[CAB 413-421] *and the summary of argument filed 29 July 2016* [CAB 423-431]...

8. I finish by noting that the state of the law with regard to multiple applications for special leave from one decision of a state court is that it is not disallowed and has been allowed many times in the past on the basis that a prior application dismissed by disposition has no bearing on the correctness of the decision from which it was brought. The cases that have been allowed a second application for special leave raise different grounds or questions than the prior one which is exactly the case in this new application for special leave. "

26. **Contention** – The Justices should have made factual findings in relation, at least, to the objectively provable components of the said affidavits which: (a) would have led to the Justices concluding that the appellant had, by way of all proceedings prior to his latest special leave applications, taken the prior attempt as far as he legally could and (b) would have led to the Justices concluding that the grounds and special leave questions asked in the latest special leave applications did not seek to challenge the decision in his prior special leave application P19 of 2016 nor were they even remotely the same grounds and special leave questions rejected in the first prior special leave application P19 of 2016. The Justices were in error not to have made such important factual findings. The contended miscarriage of justice is addressed later.

Finding that one or both of the appellant's proposed amended latest special leave applications were, in some capacity, vexatious by allegedly defining ground(s) that had already been rejected via the disposition in the prior special leave application P19 of 2016 (CAB 11 line 345 - 348)

27. ***Facts*** – Firstly, on 12 October 2016, the appellant's prior special leave application P19 of 2016 was disposed of via a special leave disposition by Justice's Bell and Gageler on the basis that *"the application does not raise any question of law suitable for the grant of special leave"* (CAB 432). The application therefore did not progress any further than a consideration, in effect, as to whether the special leave grounds raised and special leave questions

asked were worthy of further consideration. When the answer to this question is no, which it was, there is no consideration of appeal related documents and the only finalising aspect of the disposition is that the grounds defined in the said special leave application form and questions raised in the summary of argument form could not be taken any further—nothing more.

- Secondly, the only special leave grounds rejected by the special leave disposition in the appellant's prior special leave application P19 of 2016 were the grounds defined in the applicant's application for special leave filed 29 April 2016 (CAB 413-419) which has never been amended. No other ground was officially rejected.

– Thirdly, he appellant's special leave grounds rejected in his prior special leave application contended: (a) that the WASCA had erred by resorting to measures beyond the limits required to determine the question of reasonable prospects [CAB 415]; and (b) that the WASCA gave inadequate reasons [CAB 416]; and (c) that errors of fact were made by the WASCA without identifying any in particular [CAB 418] ; and (d) that the WASCA deprived the appellant his right to a speedy resolution [CAB 418]; and (e) that the factual background created by the WASCA was bias towards the complainant [CAB 418]; and (f) that an error was made in relation to the WASCA's rejection of ground 15 which related to a subpoena not being properly executed.

– Fourthly, the appellant's proposed amended latest special leave application grounds (CAB 364,383), which incidentally were the same in the unamended version, are reproduced below:

> ***"Special leave ground 1*** *– The WASCA erred (inferably) in failing to deem that the trial magistrate fell into error by failing to afford the applicant any opportunity to explain the purpose of a question*[footnote omitted] *to the complainant before rejecting it on grounds of irrelevance. A substantial miscarriage of justice resulted.*
>
> ***Special leave ground 2*** *– In the alternative, in relation to an instance(s) during the cross-examination of the complainant in which the trial magistrate proactively obstructed the applicant from explaining the purpose of a question, the WASCA erred in holding that the rejected question was correctly deemed irrelevant by the trial magistrate. A substantial miscarriage of justice resulted.*
>
> ***Special leave ground 3*** *– The WASCA erred (inferably, if not definably) in failing to deem that the trial magistrate's findings failed to properly make out the offence. A substantial miscarriage of justice resulted.*

Note: Any additional proposed grounds for the potential appeal proper would be provided in the draft notice of appeal furnished to the court in the potential hearing of this application as described in the current rules[9] [footnote number changed only]."

28. ***Contention*** – With these facts in mind, the appellant's latest special leave application grounds are not even remotely similar to the rejected prior special leave grounds and the Justice's were in error to find otherwise. The contended miscarriage of justice is addressed later.

Finding that one or both of [10] *the appellant's proposed amended latest special leave applications were, in some capacity, vexatious by allegedly defining ground(s) that were raised in the WASCA, or could and should have been raised in the WASCA (CAB 11 lines 345 - 348)*

29. The general nature of all three of the grounds in the latest special leave applications contended that the WASCA: erred in failing to deem something which the WASCA was required to do; or erred in holding that a decision below the WASCA was correct (see the unamended and amended grounds at CAB 364, 383, 43, 193). All three grounds were therefore in response to something the WASCA did or did not do in its judgement.

30. In these circumstances, the only way in which the appellant could have contended a ground(s) in the WASCA which addressed errors made by the WASCA is if the appellant had access to a time machine and travelled, from the point in time when preparing the WASCA grounds, into the future, to a point in time after the WASCA judgment had been made, and then travel back in time to the starting point. It is therefore safe to say that it is an incontravertible fact that the appellant, did not and could not have, raised a ground in the WASCA proceeding which contended that the WASCA erred in some way and the Justices were in error to deem otherwise. The contended miscarriage of justice is addressed later.

Finding that one or both of the appellant's proposed amended latest special leave applications were, in some capacity, vexatious by allegedly defining ground(s) that 'could

---

[9] *"...draft notice of appeal furnished to the Court on the hearing of the application for leave or special leave to appeal..."*

[10] It is not possible to determine if one or both of the latest special leave applications were suggested to be implicated in this context.

and should' have been defined in the prior special leave application P19 of 2016 (CAB 11 line 345-348)

31. **Facts** – Firstly, by High Court's own precedence, it is completely open for an applicant to make a second special leave application from the same lower court decision in the event that a prior special leave application is dismissed as long as the grounds and special leave questions defined are different than those previously rejected. The appellant had clearly noted this in the affidavit explaining the latest applications (CAB 190, paras 5, 8) which the latest special leave applications made directions for the Justices to consider as already addressed above.

- Secondly, the appellant's prior and latest special leave applications relate to a criminal offence which the Justices were alive to by the reasons given.

– Thirdly, the respondent was never required to participate in the WASCA proceeding and has never since been required to participate in the High Court proceedings.

– Fourthly, it was evident in the appellant's affidavit explaining the latest special leave applications that he had applied for an extension of the page limit in the prior application which was denied and at that time had been interpreted by him to be a final decision (CAB 189 para 3). The same affidavit pointed out that the latest special leave applications did not seek to challenge the decision for his prior special leave applications (CAB para 8) which was also evident in the defined scope in the introductory paragraph of the latest applications for special leave (CAB 364 and 383 lines 13-16).

– Fifthly, the latest special applications addressed three grounds and consumed approximately 20 pages. For argument say 7 pages for each ground (CAB 364-375 and CAB 383-393).

– Sixthly, the prior special leave summary of argument used all 10 pages allocated (CAB 431).

- Seventhly, it is evident in the summary of argument in the prior special leave attempt[11] that the appellant was, at the time of the prior applications, under the

---

[11] A copy of which was included in the documents supporting the latest special leave applications

impression that the High Court supported the fundamental principles regarding the sufficiency of reasons and its links to natural justice and the proper intended function of the appellate system[12] (CAB 422-431).

32. **Contention** – The appellant had not sought to re-open or challenge the decision for his prior special leave application, nor was he required to since he raised grounds and special leave questions different to those previously rejected. Further the appellant had, at least in his understanding at the time, taken all reasonable steps to request an increase in the page limit. It was unreasonable or unjust (or both), if not erroneous for the Justices to claim that the latest special leave applications were in some way vexatious by raising grounds which 'could, and should have' been raised in the prior special leave application. The contended miscarriage is addressed later.

Applying a test which considered whether 'the reasons for the Court of Appeal's decision' gave 'any reason to doubt its correctness' (CAB 11, lines 340 - 342)

33. The test was irrelevant or not open (or both) in that the grounds contended by the appellant via his latest special leave applications raised questions which cannot properly and justly be answered by a mere consideration of the reasons for decision.[13]

Applying a test which considered whether the reasons given for the rejection of the appellant's prior application for special leave (P19 of 2016) gave 'any reason to doubt its correctness' (CAB 11, lines 340 - 342)

34. The test was irrelevant or not open (or both) since the appellant's latest special leave applications did not seek to challenge the correctness of the disposition in the prior special leave application[14]. See for example (CAB 48 para 11)

Applying a test which included a consideration as to whether the latest special leave applications had raised 'any ground' that 'would justify a reconsideration of whether

---

[12] Not to be taken in any way to be a further contention of that argument.

[13] See the appellant's latest special leave applications and the associated documents in support of each (CAB 43-192 and CAB 193-356). Also, consider the appellant's draft notice of appeal (CAB 305) filed in P3 and P11 of 2019 which forecasted the contention of fact related problems on appeal regarding the WASCA reasons. This was also forecasted in the appellant's latest special leave applications (see for example CAB 364, Para 3,)

[14] Not to be confused as a contention that the determination in the prior special leave application P19 of 2016 did or did not occasion error or injustice.

special leave' should have been granted in the appellant's prior special leave application P19 of 2016 (CAB 11-12, lines 351- 357)

35. The test was irrelevant given that the latest special leave applications: did not seek to re-open the prior special leave application P19 of 2016; and did not seek to contend that that the determination in the prior special leave application P19 of 2016 was flawed or resulted in injustice[15].

At CAB 12, lines 359-362, finding that the appellant's latest special leave applications demonstrated a refusal to accept the legal effect of the disposition for his prior special leave application P19 of 2016 and were vexatious on that basis.

36. Firstly it will be shown below that there is no evidence to support the finding or alternatively it is just a factually flawed finding. Secondly it will be shown below that the finding demonstrated a reliance on a flawed legal principal.

Conclusion for Ground 2.2

37. If not by independent means, the cumulative effect of the above contentions demonstrates that the justices were unreasonabe or unjust (or both), if not in error in finding that the appellants latest special leave applications were vexatious. A substantial miscarriage of justice resulted which will be addressed in the appeal hearing.

Argument for ground 2.3 – unreasonable opportunity to argue in defence

38. It will be shown that, in relation to the Justice's, in effect, deeming that the appellant had been afforded a reasonable opportunity to prepare his argument in defence of the vexatious proceedings orders, the judgment occasioned: **(a)** error (inferably if not definably) or **(b)** substantial miscarriage of justice or **(c)** both a and b.

39. Due to several ambiguities and unknowns which arise from the reasons (or lack thereof) for Judgement, multiple contentions are presented in the context of the parent ground.

40. Section 77RN(3) of the Judiciary Act 1903 prescribes that the High Court must not make a vexatious proceedings order without giving the person an opportunity of being heard. The obvious intention of the legislation is that the

---

[15] Not to be confused as a contention that the determination in the prior special leave application P19 of 2016 did or did not occasion error or injustice.

opportunity to be heard must be a reasonable opportunity. For the appellant to have had a reasonable opportunity of being heard in defence of vexatious proceedings orders he needed two fundamental things. Firstly, the appellant needed to be provided with sufficient information setting out unambiguous particulars of the scope of the allegations[16]. Secondly, once the particulars of the scope of allegations are clear, the appellant then needed sufficient time to prepare for obvious reasons.

41. It will be shown that the appellant was not afforded a reasonable opportunity to argue in defence of the vexatious proceedings allegations.

10 *Failing to find that the correspondence sent to the appellant on 13 February 2019 had limited the scope of vexatious proceedings allegations only to those proceedings relevant to matters the subject of the P3 and P11 of 2019 applications (CAB 4 lines 37-40)*

42. The Justices found that the letter had *'informed Mr Conomy that, given the history of applications by him, a vexatious proceeding order'* may be made. The finding failed to note that the actual letter (CAB 397) had limited the scope of the vexatious proceedings orders only to the appellant's *'history of applications in relation to the matters the subject of your [the appellant's] present Application [P3 and P11 of 2019]'*. The Justice's were in error not to have noted this important detail. The contended miscarriage is addressed later.

20 *Finding that, at some point prior to the hearing, the appellant was undoubtedly aware that the scope of the vexatious proceedings allegations included all High Court proceedings relating to his breach of restraining order conviction (CAB 13, lines 431-436)*

43. ***Facts*** – Firstly, the Justices were alive to the fact that the appellants latest special leave applications only related to the stalking conviction (CAB 12, lines 374-375).

- Secondly, the Justices were alive to the fact that the breach of VRO conviction was the result of a different trial than the stalking conviction and that at every appellate level, including the High Court, it had been a separate proceeding (CAB 5, lines 86-330).

---

[16] The appellant relies on the principles of a criminal trial in which the particulars of the offence must at least define an unambigous scope in the prosecution notice for reasons all too obvious to High Court Justice's.

- Thirdly, the correspondence referred to by the Justices at line 436 was referring to an email (CAB 410) sent[17] to the appellant on 1 March 2019 (4 days before the hearing date) which only mentioned proceedings in relation to the appellant's latest special leave applications as being the scope of the vexatious proceedings allegations.

44. ***Contention*** – In these circumstances, and taking into consideration the erroneous finding the subject of the previous contention, the Justices were in error to find that the appellant, at some point prior to the hearing, was undoubtedly aware that the scope of the vexatious proceedings orders included proceedings relating to the breach of VRO conviction. The contended miscarriage is addressed later.

Finding that, at some point prior to the hearing, the appellant was undoubtedly aware that the scope of the vexatious proceedings allegations included all High Court proceedings relating to his stalking conviction (CAB 13, lines 431-436)

45. ***Facts*** – Firstly, the Justices had before them an affidavit (CAB 403, para 7) in which the appellant, at lines 12-18, had given evidence that the abovementioned letter of Ms Gesini dated 13 February 2019 was interpreted by him as only including his latest special leave applications and the P19 of 2016 proceeding, which was never suggested by any Justice to be vexatious,[18] and contended that there was nothing put on the table suggesting that section 77RN(1a) had been made out.

- Secondly, in para 4 of the same affidavit (CAB 402) included evidence quoting the words used by Ms Gesini in her letter dated 13 February 2019 in which she stated that the scope of the vexatious proceedings allegations was the appellants applications in relation to the matters the subject of his latest special leave applications.

- Thirdly, back to para 7 of the affidavit (CAB 403), the appellant directed the Justices to consider the appellant's amended latest special leave applications,

---

[17] The email was suggested by the Justice's to have been sent by the Deputy Registrar but in fact it was sent by Senior Registrar Carolyn Rogers but it was an irrelevant imperfection in this context.

[18] See CAB 432 which is the special leave dispostion

which the Justice's confirmed they did do.[19] Included in those amendments was a direction for the Justices to consider an affidavit contending, with supporting evidence, that the appellant had, by way of the latest special leave applications, raised different grounds and special leave questions than that which were tested via his prior attempt at obtaining special leave.[20]

- Fourthly, the correspondence referred to by the Justices at line 436 was referring to an email (CAB 410) sent[21] to the appellant on 1 March 2019 (4 days before the hearing date) which only mentioned proceedings relating to the appellant's latest special leave applications as being the scope of the vexatious proceedings allegations.

46. ***Contention*** - In these circumstances, the Justices were in error to find that the appellant, at some point prior to the hearing, was undoubtedly aware that the scope of the vexatious proceedings allegations included all High Court proceedings relating to the stalking conviction. The contended miscarriage is addressed later.

Failing to ensure that the appellant had enough time

47. For the sake of arguing this contention only, it will be assumed (incorrectly) that the appellant had been adequately informed that the scope of the vexatious proceedings allegations was to include all proceedings of the applicant in the High Court. It will be shown that the time allocated was insufficient.

48. ***Facts*** – Firstly, the Respondent had entered an appearance for the appellant's latest special leave applications.[22]

- Secondly, as per the letter of Ms Gesini 23/2/2019 (CAB 397), the appellant was notified that the Respondent had not yet been directed to respond to the appellant's latest special leave applications and was given 15 days in which to prepare 10 pages of written submissions in defence of the potential vexatious

---

[19] See CAB 11, lines 344-348 and CAB 14, lines 456-457

[20] See CAB 367-368, 'Preliminary matter 4'; and see CAB 190, para 5

[21] The email was suggested by the Justice's to have been sent by the Deputy Registrar but in fact it was sent by Senior Registrar Carolyn Rogers but it was an irrelevant imperfection in this context.

[22] See the Respondent's notice's of appearance for P3, P11 of 2019 filed 22 Jan 2019 and 6 February 2019.

proceedings orders and, in that same time frame[23], he was also required to prepare his verbal argument in support of special leave being granted (CAB 397).

- Thirdly, in normal circumstances in which an unrepresented special leave application is met[24] by the respondent, and had progressed to a hearing to determine special leave, the unrepresented party would have 21 extra days[25] on top of the 15 days[26] hearing notice to prepare for a special leave hearing since they would know that the hearing is going to happen when the directions for the respondent to respond are sent out.

- Fourthly, it was evident that the appellant intended to use the 10 page written submissions to argue in defence of vexatious proceedings orders (CAB 399, para 6 and CAB 39, lines 82-84)

- Fifthly, the High Court, by rule 41.05, sees fit that 21 days be given to a party who only has to prepare a 10 page document in relation to one proceeding.

- Sixthly, the Justices considered approximately 22 different proceedings which spanned three years as part of the vexatious proceedings considerations (CAB 6-11).

- Seventhly, the Justices had before them the appellant's application for more time (CAB 401-403 para 8 specifically) which was filed on 27 February 2019 (before the due date of the written submissions) and listed for hearing with the latest special leave applications (CAB 410). At the hearing, the appellant was twice cut-off from completing further submissions in relation to the request for more time (CAB 39, lines 75, 89).

Contention – The Justices gave the appellant a measly 15 days to prepare a 10 page document in relation to 20 proceedings, approximately half of which took place 1-2 years in the past, and on top of that, to also prepare verbal submissions for his latest special leave applications (say 5 - 10 pages) during the same period which in itself was one of the most important things he would

---

[23] plus an additional 4 days since there were four days between the due date for the vexatious scope due date and the hearing date.

[24] Met as in the Respondent has entered an appearance

[25] See rule 41.05.2.

[26] Assuming for the sake of argument the same duration for a hearing to be booked applied.

have to do in his life[27]. This, when the High Court's own rules set a benchmark of 21 days for a party to prepare one 10 page document in relation to one proceeding. In these circumstances, the Justices failure to grant the appellant more time was unreasonable or unjust or both. Further, the Justices were in error by not allowing the appellant to finish arguing his case further in relation to the request for more time. The contended miscarriage is addressed later.

Finding that the appellant had not taken up the opportunity to provide written submissions in relation to the directions the subject of the correspondence on 13 February 2019 (CAB 13, lines 419-421)

49. ***Facts*** – Firstly, on 27 February 2019 (within the due date)[28], the appellant filed a document titled *'Applicant's interim response regarding potential vexatious proceedings order'* (CAB 398-400) which made interim submissions in defence of vexatious proceedings orders with regard only to proceeding P19 of 2016 and the appellants latest special leave applications, which were the only proceedings he had understood to be captured within the wording of the direction *'in relation to the matters the subject of your [his] present application'* (CAB 398-399).[29]

50. ***Contention*** – In these circumstances, the appellant had filed interim submissions which addressed what he had interpreted to be the scope of the directions. The Justice was therefore in error to find that the appellant had not taken up the opportunity to make written submissions in relation to the directions the subject of the correspondence on 13 February 2019. The contended miscarriage is addressed later.

Conclusion for Ground 2.3

51. If not by independent means, the cumulative effect of the above contentions resulted in the appellant being denied a reasonable chance to: (a) prepare his argument in defence of vexatious proceedings orders or (b) prepare his argument in support of special leave being granted or (c) both a and b. The

---

[27] See CAB 403, last few lines of para 8

[28] The due date was 1 March 2019 as per the directions in Ms Gesini's letter 13 Feb 2019 (CAB 397)

[29] which was backed up with an affidavit in similar terms (CAB 403 paras 3-4, 7)

justices decision was therefore unreasonable or unjust, if not erroneous. The contended miscarriage and further argument are left to the hearing.

Part VII: Legal References

52. House v The King, HCA 1936

53. Jones v Skyring [1992] HCA 39; (1992) 109 ALR 303; (1992) 66 ALJR 810 (27 August 1992)

Part VIII: Orders sought

54. In relation to this proceeding: (a) the appellant's interlocutory applications raised by summons (or otherwise sought) be granted in full and (b) the appeal allowed and (c) all orders and directions made in the proceeding P3 and P11 of 2019 be set aside and (d) the appellant's proposed amendments to his special leave applications in the proceedings P3 and P11 of 2019 be granted in the terms filed on 22 February 2019 with his summonses of the same date[30]. The remaining orders will depend on how the appeal is managed.

Part VIII: Estimated time required to present oral argument

55. The appellant would need at least 1.5 hours.

Dated: 11 June 2019

.....(signed).....

Name: Jerrod Conomy
Email: jjconomy@gmail.com
Mobile: 0407 476 697

[30] See the appellant's summonses and associated proposed amended special leave applications at CAB 360-380 and CAB 380