

NOTICE OF FILING

Details of Filing

Document Lodged:	Submissions
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	26/08/2024 6:29:27 PM AEST
Date Accepted for Filing:	27/08/2024 8:30:35 AM AEST
File Number:	VID735/2024
File Title:	JAN MAREK KANT v PRINCIPAL REGISTRAR, FEDERAL COURT OF AUSTRALIA
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. 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.

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No. VID735/2024

JAN MAREK KANT

Applicant

PRINCIPAL REGISTRAR, FEDERAL COURT OF AUSTRALIA

Respondent

Date: 26 August 2024

APPLICANT'S SUBMISSIONS

Timeline

1. On 22 July 2024, the Applicant sought to commence a proceeding in the Federal Court, against the *Chief Justice, Supreme Court of Victoria*, with the lodgement of his originating application via *eLodgement*¹.
2. On 24 July 2024, the Federal Court informed the Applicant of having refused to file the originating application for his proceeding against the *Chief Justice, Supreme Court of Victoria*².
3. On 25 July 2024, the Applicant sought to commence a proceeding in the Federal Court, against the *Principal Registrar, Federal Court of Australia*, with the lodgement of his originating application via *eLodgement*.
4. On 29 July 2024, the Federal Court informed the Applicant of having filed the originating application for his proceeding against the *Principal Registrar, Federal Court of Australia*.
5. Also on 29 July 2024, the Applicant sought to commence a proceeding in the Federal Court, against the *Director, United States Central Intelligence Agency* (and another), with the (re-)lodgement of his originating application via *eLodgement*³.
6. Also on 29 July 2024, the Applicant sought to commence a proceeding in the Federal Court, against the *Attorney-General of the Commonwealth*, with the lodgement of his originating application via *eLodgement*⁴.
7. On 06 August 2024, the Applicant sought to commence a proceeding in the Federal Court, against the *National Anti-Corruption Commissioner*, with the lodgement of his originating application via *eLodgement*⁵.
8. On 13 August 2024, the Federal Court informed the Applicant of:

¹ see: "JMK-2"

² see: "JMK-1"

³ see: "JMK-5"

⁴ see: "JMK-6"

⁵ see: "JMK-7"

- a. having filed the originating application for his proceeding against the *National Anti-Corruption Commissioner*⁶; and,
- b. having refused to file the originating application for his proceeding against the *Director, United States Central Intelligence Agency* (and another)⁷; and,
- c. having refused to file the originating application for his proceeding against the *Attorney-General of the Commonwealth*⁸.

Respondent & Proceeding

9. The *Principal Registrar of the Federal Court of Australia*, as officer and not a natural person with that description or job title, is the Respondent.
10. The *Public Service Act 1999* and the *Legal Services Directions* made under s. 55ZF *Judiciary Act 1903* bind the Respondent⁹ in this proceeding; distinction between the Federal Court and its *Principal Registrar* is otherwise arbitrary.
11. This proceeding is not *ex parte*; this fact remains unchanged by the Federal Court having filed a *submitting notice*.
12. The Applicant has no duty of “*utmost disclosure*”¹⁰ in this proceeding; he is not required to disclose, or bring to the notice of the Court, anything that may be prejudicial to his case.
13. Laws as were in force on 25 July 2024, at the time of the Applicant lodging his originating process, apply in this proceeding.

Imperial Statutes

14. *Liberty of Subject Act 1354*¹¹ provides:

ITEM, That no Man of what Estate or Condition that he be, shall be put out of Land or Tenement, nor taken, nor imprisoned, nor disinherited, nor put to Death, without being brought in Answer by due Process of the Law.

15. *Observance of due Process of Law Act 1368*¹² provides:

ITEM, At the Request of the Commons by their Petitions put forth in this Parliament, to eschew the Mischiefs and Damages done to divers of his Commons by false Accusers, which oftentimes have made their Accusations more for Revenge and singular Benefit, than for the Profit of the King, or of his People, which accused Persons, some have been taken, and others caused to come before the King's Council by Writ, and otherwise upon grievous Pain against the Law: It is assented and accorded, for the good Governance of the Commons, that no Man be put to answer without Presentment before Justices, or Matter of Record, or by due Process and Writ original, according to the old Law of the Land: And if any Thing from henceforth be done to the contrary, it shall be void in the Law, and holden for Error

⁶ see: “JMK-3”; note reference to *Lodgement ID 1352927*

⁷ see: “JMK-4” pp. 5-6

⁸ see: “JMK-4” pp. 7-8

⁹ see: 18N(1), 18N(4) & s.18ZB *Federal Court of Australia Act 1976*; 4.1 *Legal Services Directions 2017*

¹⁰ see: *Jadewest 2024 Pty Ltd v BTFMS Pty Ltd (No 3)* [2024] WASC 244 at [25 – 27]

¹¹ see: *Liberty of Subject (1354)* at legislation.gov.uk/aep/Edw3/28/3

¹² see: *Observance of due Process of Law (1368)* at legislation.gov.uk/aep/Edw3/42/3

16. *Habeas Corpus Act 1640*¹³, Section 3 provides (punctuation added):

Be it likewise declared and Enacted by Authoritie of this present Parliament: That neither his Majestie nor his Privie Councill have, or ought to have, any Jurisdiction, power or authority, by English Bill, Petition, Articles, Libell or any other arbitrary way whatsoever, to examine or drawe into question, determine or dispose of the Lands, Tenements, Hereditaments, Goods or Chattels of any the subjects of this Kingdome; But that the same ought to be tried and determined in the ordinary Courts of Justice, and by the ordinary course of the Law.

17. *Colonial Laws Validity Act 1865*¹⁴, Section 1 provides, *inter alia*:

An Act of Parliament, or any provision thereof, shall, in construing this Act, be said to extend to any colony when it is made applicable to such colony by the express words or necessary intendment of any Act of Parliament:

18. *Colonial Laws Validity Act 1865*, Section 2 provides:

Any colonial law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the colony to which such law may relate, or repugnant to any order or regulation made under authority of such Act of Parliament, or having in the colony the force and effect of such Act, shall be read subject to such Act, order, or regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative.

19. *Liberty of Subject Act 1354* is *lex specialis* in *Observance of due Process of Law Act 1368*; to have a legal claim disposed of is to be “put to answer” in the meaning of *Observance of due Process of Law Act 1368*.

Statutes of the Commonwealth

20. Each of *Liberty of Subject Act 1354*, *Observance of due Process of Law Act 1368*, and *Habeas Corpus Act 1640*, as stood at establishment of the Commonwealth, extend to the Commonwealth by necessary intendment of *Commonwealth of Australia Constitution Act 1900*¹⁵; and,

21. Any absence of the said statutes from the law of the Commonwealth, being repugnant to the law of England at establishment of the Commonwealth, was and remains absolutely void and inoperative by force of s.2 *Colonial Laws Validity Act 1865*; therefore,

22. Insofar as the Imperial Acts have not otherwise become statutes of the Commonwealth, *Liberty of Subject Act 1354*, *Observance of due Process of Law Act 1368* and *Habeas Corpus Act 1640* became statutes of the Commonwealth at establishment of the Commonwealth by effect of *Colonial Laws Validity Act 1865*. The Commonwealth statutes are unaffected by amendment or repeal of their Imperial counterparts made since the adoption of *Statute of Westminster, 1931* took effect on 01 September 1939¹⁶.

¹³ see: *Charles I, 1640: An Act for the Regulating the Privie Councill and for taking away the Court commonly called the Star Chamber* at british-history.ac.uk/statutes-realm/vol5/pp110-112

¹⁴ see: *Colonial Laws Validity Act 1865* at legislation.gov.uk/ukpga/Vict/28-29/63

¹⁵ see: *Commonwealth of Australia Constitution Act 1900* at legislation.gov.uk/ukpga/Vict/63-64/12/enacted

¹⁶ see: s.3 *Statute of Westminster Adoption Act 1942* and 2(2) of The Schedule thereto

23. s.12 *Australia Act 1986* confirms Imperial legislation, made before the adoption of *Statute of Westminster, 1931* took effect, forms a part of the law of the Commonwealth irrespective of adoption with an Act of Parliament of the Commonwealth.
24. No Act of the Parliament of the Commonwealth purports to amend or repeal *Liberty of Subject Act 1354*, *Observance of due Process of Law Act 1368* or *Habeas Corpus Act 1640*.

Laws of Victoria

25. The Federal Court exercises jurisdiction in Victoria, and the laws of the State of Victoria therefore apply in this proceeding by effect of 79(1) *Judiciary Act 1903*.
26. s.16 *Constitution Act 1975* and 2(1) *Australia Act 1986* make Victorian legislation binding on the Federal Court generally.
27. 3(1) *Constitution Act 1975* requires the Federal Court administer justice subject to *Imperial Acts Application Act 1980*.

Privacy Act

28. A federal court is, unless the contrary intention appears, an *agency* in the meaning of *Privacy Act 1988* (**Privacy Act**). Whenever a federal court is not an *agency* in the meaning of the Privacy Act, it is an unincorporated association other than an *agency*; an unincorporated association that is not an *agency* is an *organisation* in the meaning of the Privacy Act.
29. A federal court is always an *agency* or an *organisation* in the Privacy Act, and is therefore:
- always a *regulated entity* in meaning of s.12B *Privacy Act 1988*; and,
 - an *APP entity*, unless the intention appears that an *APP entity* not be “an *agency* or *organisation*”
30. s.66 *Privacy Act 1988* also has the effect it would have if the operation of the Privacy Act in relation to federal courts were expressly confined to an operation to give effect to International Covenant on Civil and Political Rights¹⁷ done at New York on 16 December 1966 (**the Covenant**).
31. s.66 *Privacy Act 1988* also has the effect it would have if the operation of the Privacy Act in relation to federal courts were expressly confined to an operation treating federal courts as corporations.
32. s.6A, s.13, s.15 & 12.1 *Schedule 1, Privacy Act 1988* also have the effect these provisions would have if the operation of the Privacy Act in relation to federal courts were expressly confined to an operation to give effect to the Covenant.
33. 6A(1) *Privacy Act 1988* also has the effect it would have if it read:
- For the purposes of this Act, conduct **breaches** a provision of Schedule 1 of the Act if, and only if, it is contrary to, or inconsistent with that provision.*
34. 13(1) *Privacy Act 1988* also has the effect it would have if it read:
- Conduct engaged in by a federal court is a violation of rights or freedoms recognised in the Covenant if it breaches a provision of Schedule 1 of the Act.*
35. s.15 *Privacy Act 1988* also has the effect it would have if it read:

¹⁷ see: Schedule 2 *Australian Human Rights Commission Act 1986*

A federal court must not engage in violation of rights or freedoms recognised in the Covenant.

36. 12.1 *Schedule 1, Privacy Act 1988* also has the effect it would have if it read:

If it is capable of doing so, a federal court must, on request by an individual, do a thing required for giving effect to a right or freedom recognised in the Covenant.

37. 66(1) *Privacy Act 1988* also has the effect it would have if it read:

(1) A federal court contravenes this subsection if:

(a) the federal court is requested by an individual to do something required for giving effect to a right or freedom recognised in the Covenant; and,

(b) the federal court refuses or fails to do so.

Civil penalty: 60 penalty units.

38. 66(1AA) *Privacy Act 1988* also has the effect it would have if it read:

(1AA) A federal court commits an offence if:

(a) the federal court is an entity of a kind mentioned in subsection 12B(1); and

(b) the federal court engages in conduct that constitutes a system of conduct or a pattern of behaviour; and

(c) the system of conduct or pattern of behaviour results in 2 or more contraventions of subsection (1).

Penalty: 300 penalty units.

39. The *Federal Court of Australia* is a federal court to which the *Privacy Act* applies; it is always an entity of the kind mentioned in 12B(1) *Privacy Act 1988*.

40. By extension of *Article 14* of the Covenant and 12B(2) *Privacy Act 1988*, s.15 *Privacy Act 1988* requires the Federal Court not fail or refuse to hear any justiciable matter a natural person attempts to bring before it.

41. By extension of *Article 14* of the Covenant, *Privacy Act 1988* requires the Federal Court be “*independent and impartial*” in determining the rights of a natural person in a “*suit at law*”.

International Covenant on Civil and Political Rights

42. A right of judicial remedy to violation of a right or freedom recognised in the Covenant is itself a right recognised in the Covenant¹⁸.

43. A right to judicial determination of one’s rights, by an independent and impartial tribunal, is a right recognised in the Covenant¹⁹.

44. A “*tribunal*” (in meaning of *Article 14* of the Covenant) that chooses not to hear certain matters is not “*independent and impartial*”.

Federal Court Act/Rules

45. It is for the respondent to a proceeding before the Federal Court to object to the competency of an application²⁰.

¹⁸ see: *Article 3* of the Covenant

¹⁹ see: *Article 14* of the Covenant

²⁰ see: 31.05 *Federal Court Rules 2011*

46. By necessary implication of *Rule 31.05*, powers conferred by *Rule 2.26* exclude power to refuse documents on grounds of competence of the Federal Court's jurisdiction.
47. The Federal Court making substantive judgments about the underlying merit of claims in a proceeding, otherwise than in the exercise of judicial power, is contrary to s.35A *Federal Court of Australia Act 1976*²¹.

Errors

Factual errors

48. Claims in the 27 July 2024 originating application treat only information held by the *Central Intelligence Agency* of the United States. These also include a claim to equitable remedy not sought under *Regulatory Powers (Standard Provisions) Act 2014*²².
49. The 29 July 2024 originating application also includes claims in the alternative to those referred to in the 13 August 2024 letter. The sought voiding of warrants need not apply to all warrants issued by the Attorney-General²³.

Evaluative errors

50. The Federal Court erred in refusing to file the 22 July 2024 originating application on a ground that *Chief Justice, Supreme Court of Victoria* and the *Supreme Court of Victoria* are distinct entities. The Applicant seeks to proceed against the *Chief Justice, Supreme Court of Victoria* on behalf of his Supreme Court.
51. The Federal Court erred in deciding, without giving reasons²⁴, that a cause of action disclosed in the originating application and/or affidavit submitted by the Applicant on 27 July 2024 is without substance and fanciful. The Applicant seeks to proceed in the matter on pleadings after any questions of service or competency are resolved; he has not disclosed the grounds of his claims²⁵.
52. The Federal Court erred in deciding, without giving reasons²⁶, that a claim to remedy disclosed in the originating application, affidavit and/or *Notice of a Constitutional Matter* submitted by the Applicant on 29 July 2024 is "*without substance, groundless and fanciful, and both frivolous and vexatious*"; the Applicant has standing and a *prima facie* case in the matter²⁷.

Jurisdictional errors

53. In refusing to file the 22 July 2024 originating application on grounds including the *Chief Justice, Supreme Court of Victoria* not being a Commonwealth entity, the Federal Court made a substantive judgement otherwise than in the exercise of judicial power.
54. In refusing to file the 27 July 2024 originating application on grounds including a s.119 *Regulatory Powers (Standard Provisions)* requirement that applications under Part 7 of that Act be made

²¹ see also: *Nyoni v Murphy* [2018] FCAFC 75 at [31 – 38]; *Ferdinands v Registrar Cridland* [2021] FCA 592 at [12]

²² see: "JMK-5" p.5

²³ see: "JMK-6" p.11

²⁴ see: "JMK-4" p.6

²⁵ see: "JMK-5"

²⁶ see: "JMK-4" p.8

²⁷ see: "JMK-6" pp.11,13-28

only by an 'authorised person', the Federal Court made a substantive judgement otherwise than in the exercise of judicial power.

55. In refusing to file originating applications lodged by the Applicant, the Federal Court violates a right of judicial remedy (to violation of a right or freedom recognised in the Covenant) as recognised in the Covenant.
56. On examination of "**JMK-6**" and "**JMK-7**", it is apparent that no reasonable person can refuse the 29 July 2024 originating application, on grounds of it being "*without substance, groundless and fanciful, and both frivolous and vexatious*", and not also refuse the 06 August 2024 originating application on similar grounds. It must be inferred the 29 July 2024 originating application was refused for reasons not disclosed in the Federal Court's 13 August 2024 letter; it is to be concluded the Federal Court is not independent, or not impartial, or neither independent nor impartial.

Unlawfulness

57. Committing a crime is unlawful.

58. The physical elements of an offence against 66(1AA) *Privacy Act 1988* are:

- a. A person engages in conduct.
- b. The conduct constitutes a *system of conduct or pattern of behaviour* – the element is a circumstance in which the conduct occurs or a result of the conduct.
- c. The conduct results in two or more **contraventions** of 66(1) *Privacy Act 1988* – the element is a result of the conduct.

The physical elements of each *contravention* are:

- d. A request is made of a person to do something the Privacy Act requires – the element is a circumstance in which the conduct occurs.
- e. The person has a duty to do the thing requested of him – the element is a circumstance in which the conduct occurs.
- f. The person refuses or fails to do the thing requested of him – the element is a result of conduct.

59. When refusing to file the Applicant's originating applications, the Federal Court meant to engage in conduct.

60. When refusing to file the Applicant's originating applications, the Federal Court was aware:

- a. that its conduct constituted, or would constitute in the ordinary course of events, a *system of conduct or pattern of behaviour*; or,
- b. of a substantial risk its conduct constituted, or would constitute, a *system of conduct or pattern of behaviour*, and having regard to circumstance known to it, it was unjustifiable to take the risk.

61. When refusing to file the Applicant's originating applications, the Federal Court was aware its conduct would result in two or more *contraventions* in the ordinary course of events.

62. When refusing to file each of the Applicant's originating applications, the Federal Court was aware the Applicant had requested a matter be heard.

63. When refusing to file each of the Applicant's originating applications, the Federal Court was aware it had duty to hear any justiciable matter that a natural person attempts to bring before it.
64. When refusing to file each of the Applicant's originating applications, the Federal Court knew doing so would result in it failing to hear a matter that a natural person attempted to bring before it.
65. In refusing to file more two or more originating applications produced to it by the Applicant, the Federal Court committed a crime under 66(1AA) *Privacy Act 1988*. The Federal Court committed the crime, in the first instance, on refusing to file the Applicant's 22 July 2024 originating application.²⁸
66. By effect of *Observance of due Process of Law Act 1368*, the Federal Court having decided not to file the Applicant's originating applications makes *a posteriori* 2.26 *Federal Court Rules 2011* void and inoperative²⁹; decisions made under *Rule 2.26* are therefore made in error of jurisdiction and are unlawful.
67. The Federal Court's decisions not to file the Applicant's originating applications dated 22 July 2024, 27 July 2024 and 29 July 2024 are each unlawful because of:
 - a. *Liberty of Subject Act 1354*; and,
 - b. *Observance of due Process of Law Act 1368*; and,
 - c. s.3 *Habeas Corpus Act 1640*; and,
 - d. s.8 *Imperial Acts Application Act 1980*; and,
 - e. s.35A *Federal Court of Australia Act 1976*; and,
 - f. s.15 *Privacy Act 1988*; and,
 - g. 66(1) *Privacy Act 1988*; and,
 - h. 66(1AA) *Privacy Act 1988*.

Remedy

68. The Applicant seeks writs of *mandamus*, in respect of the Federal Court's decisions not to file his 22 July 2024, 27 July 2024 and 29 July 2024 originating applications, on a ground of the unlawfulness of each refusal decision. 39B(1) *Judiciary Act 1903* empowers the Federal Court to issue the sought writs against itself.
69. The Applicant seeks an injunction on a ground of the unlawfulness of the Federal Court refusing to file his originating process. Insofar as the relevant provisions of the common law are inapplicable or insufficient, s.80W *Privacy Act 1988* and s.15C *Acts Interpretation Act* empower the Federal Court to issue the sought injunction against itself.

Costs

70. The Applicant seeks his ordinary costs if the Respondent complies with *Public Service Act 1999*, *Legal Services Directions 2017*, and the *overarching purpose* of the civil practice and procedure provisions.

²⁸ see: "JMK-8" & "JMK-9"

²⁹ see also: *Bank of New South Wales v The Commonwealth* (1948) 76 CLR 1 at 370

71. 4.2 *Legal Services Directions 2017* requires the Respondent pay costs if the proceeding is a “test case in the public interest”. This proceeding is a “test case in the public interest”³⁰.
72. *Dishonesty* in meaning of 13(1) *Public Service Act 1999* is its ordinary meaning as repeated in 130.3 *Criminal Code*.
73. Unlawful conduct of a proceeding, by a party to a civil proceeding, is contrary to the *overarching purpose* of the civil practice and procedure provisions; the Court must, in exercising its discretion to award costs in a civil proceeding, take account of any failure to conduct the proceeding according to the law³¹.

Prepared by: Jan Marek Kant, Applicant

³⁰ see: *R (on the application of UNISON) v Lord Chancellor* [2017] UKSC 51 at [68 – 73]

³¹ see: 37M(1), 37N(1) & 37N(4) *Federal Court of Australia Act 1976*