



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 10 Oct 2023 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: M71/2023
File Title: In the matter of an application by Jan Marek Kant for leave to a
Registry: Melbourne
Document filed: AMENDED Form 23 - Application for leave or special leave
Filing party: Applicant
Date filed: 10 Oct 2023

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.

Form 23 – Application for leave or special leave to appeal

Note: see rule 41.01.1.

IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

BETWEEN:

In the matter of an application by
Jan Marek Kant
For leave to appeal

APPLICATION FOR LEAVE TO APPEAL

The applicant applies for leave to appeal from the whole of the judgment of the Chief Justice Kiefel given on 15 September 2023.

Part I: The proposed grounds of appeal include:

1. The judgment restrains the applicant from proceeding against the Commonwealth; and,
2. The judgement prevents the making of a decision on an application for an order regarding the lawfulness of a person's detention; and,
3. The judgement is not made on the reasons given; and,
4. The Court did not consider the evidence; and,
5. The judgement was made on a different application; and,
6. The judgement is unlawful.

The orders that will be sought if leave is granted are:

7. An order filing the applicant's Form 12 that was the subject of a rule 6.07.2 direction by the Justice Gleeson, or a Form 12 of substantially similar content, when lodged by the applicant in this proceeding; and,
8. An order guaranteeing the applicant's right to proceed against the Commonwealth; and,
9. An order guaranteeing the applicant's right to proceed in respect of violations of his human rights by persons acting in an official capacity; and,
10. An order that human rights provisions, as given in submissions for this proceeding, apply in all proceedings in Australian courts to which the applicant is or becomes a party; and,

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11. Declaratory orders with respect to Part 5.3 of the *Criminal Code*; and,
12. Further orders for giving effect to those above; and,
13. An order for costs, in favour of the applicant, of the amount paid in fees to the Court in these proceedings.

Part II: Leave questions arising include:

14. Was the judgement of the Chief Justice Kiefel, given on 15 September 2023 and made available to the plaintiff by filing with the Court, correctly made on the plaintiff's application in respect of his *Form 12* that was subject of a rule 6.07.2 direction by Justice Gleeson? And,
15. Does the Constitution guarantee the right to proceed against the Commonwealth?
16. Does the Constitution guarantee the rights prescribed by the *International Covenant on Civil and Political Rights* while Australia remains a party to that treaty? And,
17. Do the provisions of the *Charter of Human Rights and Responsibilities Act 2006* apply to Commonwealth public authorities and Commonwealth law? And,
18. Did the Court fail to give proper consideration to a relevant human right in making a decision, and is the judgement of the Chief Justice Kiefel, given on 15 September 2023 and made available to the plaintiff by filing with the Court, therefore unlawful?

Part III: Leave to appeal should be granted because:

19. The judgement was made in error; or,
20. The judgement is unlawful; and,
21. The judgement is incompatible with one or more human rights; and,
22. The Court must, in the case of this application and that of the subsequent appeal, find in favor of the applicant by default; because,
 - a. In the absence of a superior court, an appeal can be heard only by the High Court of Australia; and,
 - b. The High Court of Australia is the respondent in this matter; and,
 - c. Natural justice prohibits a court from finding in its own favor in proceedings to which it is a party.

Part IV: An order for costs should not be made against the applicant because it could cause financial hardship.

Part V: Relevant authorities include:

23. Kant, JM 2023, 'Application for Leave to Appeal', *Form 23*, High Court of Australia.

"Natural justice prohibits a court from finding in its own favor in proceedings to which it is a party"

24. Felix Kulov v. Kyrgyzstan, *Communication No. 1369/2005*, U.N. Doc. CCPR/C/99/D/1369/2005 (2010) at [8.4]:

"As for the author's claims under articles 9, paragraph 3, read together with article 2, paragraphs 1 and 2, that the decision to place him in pretrial detention was made by a prosecutor, i.e. a representative of the executive branch, under the national legislation, in his absence, and that he was not brought before a judge or other officer authorized by law to exercise judicial power. The Committee notes that the State party has not provided any information, showing that the prosecutor had the institutional objectivity and impartiality necessary to be considered an "officer authorized to exercise judicial power within the meaning of article 9, paragraph 3, of the Covenant. In these circumstances, the Committee concludes that the facts as submitted reveal a violation of the author's rights under article 9, paragraph 3, of the Covenant."

25. Felix Kulov v. Kyrgyzstan, *Communication No. 1369/2005*, U.N. Doc. CCPR/C/99/D/1369/2005 (2010) at [10]:

"In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy including the payment of adequate compensation and initiation of criminal proceedings to establish responsibility for the author's ill-treatment under article 7 of the Covenant. The State party is also under an obligation to prevent similar violations in the future."

26. Felix Kulov v. Kyrgyzstan, *Communication No. 1369/2005*, U.N. Doc. CCPR/C/99/D/1369/2005 (2010) at [11]:

“Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2, of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to its Views. The State party is also requested to publish the Committee’s Views.”

Dated: 10 October 2023


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Applicant

TAKE NOTICE: Before taking any step in the proceedings you must, within **14 DAYS** after service of this application, enter an appearance and serve a copy on the applicant.

The applicant is self-represented.

IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

BETWEEN:

In the matter of an application by
Jan Marek Kant
For leave to appeal

APPLICATION FOR LEAVE TO APPEAL - ANNEX

Part VI: Relevant Constitutional provisions include:

25. Section 71 of the *Commonwealth of Australia Constitution Act*:

“The judicial power of the Commonwealth shall be vested in a Federal Supreme Court, to be called the High Court of Australia, and in such other federal courts as the Parliament creates, and in such other courts as it invests with federal jurisdiction. The High Court shall consist of a Chief Justice, and so many other Justices, not less than two, as the Parliament prescribes.”

26. 75(i) of the *Commonwealth of Australia Constitution Act*:

“In all matters—

(i.) Arising under any treaty:

the High Court shall have original jurisdiction.”

27. 75(iii) of the *Commonwealth of Australia Constitution Act*:

“In all matters—

(iii.) In which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party:

the High Court shall have original jurisdiction.”

28. Section 80 of the *Commonwealth of Australia Constitution Act*:

“The trial on indictment of any offence against any law of the Commonwealth shall be by jury, and every such trial shall be held in the State where the offence was committed, and if the offence was not

committed within any State the trial shall be held at such place or places as the Parliament prescribes.”

Relevant treaty provisions include:

29. Article 2, paragraph 2 of the *International Covenant on Civil and Political Rights*:

“Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.”

30. Article 2, paragraph 3(a) of the *International Covenant on Civil and Political Rights*:

“Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;”

31. Article 2, paragraph 3(b) of the *International Covenant on Civil and Political Rights*:

“Each State Party to the present Covenant undertakes:

(a) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;”

32. Article 7 of the *International Covenant on Civil and Political Rights*:

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

33. Article 9, paragraph 1 of the *International Covenant on Civil and Political Rights*:

“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

34. Article 9, paragraph 3 of the *International Covenant on Civil and Political Rights*:

“Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.”

35. Article 9, paragraph 4 of the *International Covenant on Civil and Political Rights*:

“Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”

36. Article 9, paragraph 5 of the *International Covenant on Civil and Political Rights*:

“Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”

37. Article 12, paragraph 1 of the *International Covenant on Civil and Political Rights*:

“Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”

38. Article 12, paragraph 2 of the *International Covenant on Civil and Political Rights*:

“Everyone shall be free to leave any country, including his own.”

39. Article 14, paragraph 3(c) of the *International Covenant on Civil and Political Rights*:

“In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(c) To be tried without undue delay;”

40. Article 17, paragraph 1 of the *International Covenant on Civil and Political Rights*:

“No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”

41. Article 17, paragraph 2 of the *International Covenant on Civil and Political Rights*:

“Everyone has the right to the protection of the law against such interference or attacks.”

42. Article 19, paragraph 2 of the *International Covenant on Civil and Political Rights*:

“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

43. Article 22, paragraph 1 of the *International Covenant on Civil and Political Rights*:

“Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.”

44. Article 25(b) of the *International Covenant on Civil and Political Rights*:

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;”

Relevant statutory provisions include:

45. Section 80 of the *Judiciary Act 1903*:

“So far as the laws of the Commonwealth are not applicable or so far as their provisions are insufficient to carry them into effect, or to provide adequate remedies or punishment, the common law in Australia as modified by the Constitution and by the statute law in force in the State or Territory in which the Court in which the jurisdiction is exercised is held shall, so far as it is applicable and not inconsistent with the Constitution and the laws of the Commonwealth, govern all Courts exercising federal jurisdiction in the exercise of their jurisdiction in civil and criminal matters.”

46. 4(1)(j) of the *Charter of Human Rights and Responsibilities Act 2006*:

“For the purposes of this Charter a public authority is—

(j) a court or tribunal except when it is acting in an administrative capacity;”

47. 6(2)(b) of the *Charter of Human Rights and Responsibilities Act 2006*:

“This Charter applies to—

(b) courts and tribunals, to the extent that they have functions under Part 2 and Division 3 of Part 3;”

48. 6(2)(c) of the *Charter of Human Rights and Responsibilities Act 2006*:

“This Charter applies to—

(c) public authorities, to the extent that they have functions under Division 4 of Part 3.”

49. 6(4) of the *Charter of Human Rights and Responsibilities Act 2006*:

“This Charter binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.”

50. 21(2) of the *Charter of Human Rights and Responsibilities Act 2006*:

“A person must not be subjected to arbitrary arrest or detention.”

51. 21(5)(a) of the *Charter of Human Rights and Responsibilities Act 2006*:

*“A person who is arrested or detained on a criminal charge—
(a) must be promptly brought before a court;”*

52. 21(5)(b) of the *Charter of Human Rights and Responsibilities Act 2006*:

*“A person who is arrested or detained on a criminal charge—
(b) has the right to be brought to trial without unreasonable delay;”*

53. 21(7)(a) of the *Charter of Human Rights and Responsibilities Act 2006*:

*“Any person deprived of liberty by arrest or detention is entitled to apply to a court for a declaration or order regarding the lawfulness of that person's detention, and the court must—
(a) make a decision without delay;*

54. 32(1) of the *Charter of Human Rights and Responsibilities Act 2006*:

“So far as it is possible to do so consistently with their purpose, all statutory provisions must be interpreted in a way that is compatible with human rights.”

55. 32(2) of the *Charter of Human Rights and Responsibilities Act 2006*:

“International law and the judgments of domestic, foreign and international courts and tribunals relevant to a human right may be considered in interpreting a statutory provision.”

56. 38(1) of the *Charter of Human Rights and Responsibilities Act 2006*:

“Subject to this section, it is unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right.”

57. 39(1) of the *Charter of Human Rights and Responsibilities Act 2006*:

“If, otherwise than because of this Charter, a person may seek any relief or remedy in respect of an act or decision of a public authority on the ground that the act or decision was unlawful, that person may seek that relief or remedy on a ground of unlawfulness arising because of this Charter.”

58. 39(2)(b) of the *Charter of Human Rights and Responsibilities Act 2006*:

“This section does not affect any right that a person has, otherwise than because of this Charter, to seek any relief or remedy in respect of an act or decision of a public authority, including a right—

(b) to seek a declaration of unlawfulness and associated relief including an injunction, a stay of proceedings or exclusion of evidence.”

59. 4(1)(a) of the *Terrorism (Commonwealth Powers) Act 2003*:

“The following matters are referred to the Parliament of the Commonwealth—

(a) the matters to which the referred provisions relate, but only to the extent of the making of laws with respect to those matters by including the referred provisions in the Commonwealth Criminal Code in the terms, or substantially in the terms, of the text set out in Schedule 1;”

Dated: 27 September 2023