

FORM 5G

Rule 5.02(2), 56.01(2)

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION
JUDICIAL REVIEW AND APPEALS LIST**

No.

B E T W E E N

JAN MAREK KANT
Plaintiff

-and-

SUPREME COURT OF VICTORIA
Defendant

ORIGINATING MOTION FOR JUDICIAL REVIEW

(where commenced under 39(1) Charter of Human Rights and Responsibilities Act 2006)

Date of Document: 02 March 2024

Filed on behalf of: The Plaintiff

Telephone: 0450 827 208

Prepared by: The Plaintiff

Email: jmjarosz01@gmail.com

3/33 Bewdley Street

Ormond VIC 3204

TO THE DEFENDANT

TAKE NOTICE that this proceeding by originating motion has been commenced by the plaintiff for the relief or remedy set out below.

IF YOU INTEND TO DEFEND the proceeding, **YOU MUST GIVE NOTICE** of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by:

- (a) filing a "Notice of Appearance" with the Prothonotary by submitting the Notice of Appearance for filing electronically in RedCrest or in person at the Principal Registry, 450 Little Bourke Street, Melbourne. See www.supremecourt.vic.gov.au; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this originating motion.

IF YOU FAIL to file an appearance within the proper time, the plaintiff **MAY OBTAIN JUDGMENT AGAINST YOU** without further notice.

IF YOU FILE an appearance within the proper time, the plaintiff cannot obtain judgment against you except by application to the Court after further notice to you. There will first be a directions hearing of which you will receive notice by summons or otherwise.

***THE PROPER TIME TO FILE AN APPEARANCE** is as follows:

- (a) where you are served with the originating motion in Victoria, within 10 days after service;
- (b) where you are served with the originating motion out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the originating motion in Papua New Guinea, within 28 days after service;
- (d) where you are served with the originating motion in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;
- (e) in any other case, within 42 days after service of the originating motion.

FILED

Prothonotary

THE PLAINTIFF CLAIMS:

1. An:

- a. order in the nature of mandamus directed to the Defendant; or,
- b. injunction;

requiring the Defendant to:

- c. seal the *ORIGINATING MOTION BETWEEN PARTIES* of 17 February 2024 and accompanying documents; and,
- d. cause the application for writ of *habeas corpus*, as made with filing of the draft *SUMMONS* of 18 February 2024, to be heard by a Judge of the *Judicial Review and Appeals List*; and,
- e. if a Judge issues writ of *habeas corpus* as sought by the Plaintiff, seal:
 - i. a *SUMMONS*, complete with hearing information and otherwise substantially similar to the draft *SUMMONS* of 18 February 2024; and,
 - ii. documents filed in accompaniment to the draft *SUMMONS* of 18 February 2024;

under the *Charter of Human Rights and Responsibilities Act 2006*; in particular, under subsection 39(1) of that Act as alternative to making similar claims under the *Supreme Court (General Civil Procedure) Rules 2015* or *Administrative Law Act 1978*.

- 2. Determination of the proceeding without notice to any person not a party to the proceeding under the *Charter of Human Rights and Responsibilities Act 2006*; in particular, without giving notice under subsection 35(1) of that Act, unless the Defendant calls into question application of that Act or the interpretation of statutory provisions consistently with it.
- 3. Determination of the proceeding without oral hearing under the *Civil Procedure Act 2010*; in particular, under subsection 7(2) of that Act. Absence of an oral hearing causes the Defendant no injustice.
- 4. *Reasons for decision*, and publication of the same, under the *Charter of Human Rights and Responsibilities Act 2006*; in particular, under subsection 24(3) of that Act.
- 5. Costs in the amount paid by him in fees in this proceeding.

THE GROUNDS RELIED UPON ARE:

- 1. The Defendant refused to seal documents, produced by the Plaintiff to the Defendant by filing in *RedCrest*, with *eFile ID*: 384285.
- 2. The Defendant refused to seal documents, produced by the Plaintiff to the Defendant by filing in *RedCrest*, with *eFile ID*: 385924.
- 3. The Defendant had earlier produced to the Plaintiff two *REFUSAL* documents, both dated 15 February 2022, each pertaining to different proceedings as were apparently proposed with the filing of documents with *eFile ID*: 384285 and *eFile ID*: 384285.
- 4. The 01 March 2024 refusal to seal documents of both *eFile ID*: 384285 and *eFile ID*: 385924 is a single decision.
- 5. The 01 March 2024 refusal decision is unlawful because of the *Charter of Human Rights and Responsibilities Act 2006*; in particular, because of subsections 38(1), 24(1) and 6(2) of that Act.

6. Production of the *REFUSAL* documents was unlawful because of the *Charter of Human Rights and Responsibilities Act 2006*; in particular, because of subsections 38(1), 24(1) and 6(2) of that Act.
7. The actions suggested in the *Reviewer Comments*, of emails dated 01 March 2024, do not address the reasons for refusal; which are,
 - a. grounds for review are stated in a document that can't be sealed; and also,
 - b. reasons given in the *REFUSAL* documents; therefore,there is no reasonable hope of success in application for review under *Rule 28A.04(5)* as suggested by the Defendant.
8. In failing or refusing to hear matters which the Plaintiff seeks to bring before the Court, the Defendant fails to give proper consideration to a right to *fair hearing* within the meaning of 24(1) *Charter of Human Rights and Responsibilities Act 2006*; and, makes decisions unlawfully within meaning of subsection 38(1) of that Act.
9. A right to *fair hearing* within meaning of 24(1) *Charter of Human Rights and Responsibilities Act 2006* must imply right of bringing matters to hearing by an independent and impartial court. The alternative in this instance would be right to *fair hearing*, by an independent and impartial court, of only those matters that such a court wishes to hear – a court that chooses not to hear particular matters is not impartial, and to construe right to *fair hearing* as exclusive of such right of bringing matters to hearing would be absurd.

~~EXTENSION OF TIME.~~**

FURTHER PARTICULARS of the claim appear in the affidavit made in support of the claim. A copy of the affidavit and of any exhibit to the affidavit is served with this originating motion.

1. Place of trial—
Melbourne
2. This originating motion was filed—
by the plaintiff in person
3. The address of the plaintiff is—
3/33 Bewdley Street, Ormond VIC 3204
4. The address for service of the plaintiff is—
3/33 Bewdley Street, Ormond VIC 3204
5. The email address for service of the plaintiff is—
jmjarosz01@gmail.com
6. The address of the defendant is—
Level 25, 121 Exhibition St, Melbourne VIC 3000