NOTICE OF FILING

Details of Filing

Document Lodged:	Submissions
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	28/09/2025 6:40:41 PM AEST
Date Accepted for Filing:	29/09/2025 4:47:33 PM AEST
File Number:	VID416/2025
File Title:	JAN MAREK KANT v PRINCIPAL REGISTRAR FEDERAL COURT OF AUSTRALIA
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA

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.

The date of the filing of the document is determined pursuant to the Court's Rules.

No. VID 416/2025

Federal Court of Australia

District Registry: Victoria

Division: General

JAN MAREK KANT

Applicant

PRINCIPAL REGISTRAR, FEDERAL COURT OF AUSTRALIA

Respondent

Applicant's Submissions

CHRONOLOGY

1. Between 05 Sep 2024 and 27 Feb 2025, the Applicant sought to commence proceedings in the Federal Court, seeking a remedy requiring things be done by the *Australian Human Rights Commissioner* and enabling the Applicant to proceed against a declared *Commissioner of Australian Secret Police*.

2. On 06 Mar 2025, the *Respondent* refused to file documents produced by the Applicant (Collectively '**the *Documents***') including:
   a. The *Form 69 Originating application* in pages 835 through 838 of "**JMK-4**"
   b. The *Form 17* ***Statement of claim*** in pages 839 through 873 of "**JMK-4**"
   c. The *Form 18* notice in page 834 of "**JMK-4**"

3. On 01 Apr 2025, the Applicant lodged an *Originating application for judicial review* pursuant to s.5 *Administrative Decisions (Judicial Review) Act 1977*, 39B(1) & 39B(1A) *Judiciary Act 1903* and 19(1) *Federal Court of Australia Act 1976*.

DECISION

4. According to the 06 Mar 2025 letter of the Registrar Hammerton-Cole, the *Documents* were refused for filing because, if the *Documents* were filed and a proceeding were commenced accordingly, the proceeding would be:
   a. based on a cause of action which no reasonable person could properly treat as *bona fide*; and/or;
   b. without substance; and/or,
   c. groundless; and/or,
   d. fanciful; and/or
   e. without a properly stated cause of action; and/or,
   f. without prospects of success.

5. Such a proceeding is hereafter referred to as an ***impermissible*** proceeding.

6. "*bona fide*" has no relevant special meaning in the law. It is to be understood in plain English to mean "*real, not false*" and "genuine"[1].

Respondent

7. The *Federal Court of Australia* is a "*court*" per *Harris v Caladine* (1991) and in 77(iii) of the Constitution; it is an "*organisation … consisting of judges and with ministerial officers having specified functions*". Distinction between the *Federal Court of Australia* and its Principal Registrar (or other registrars) is arbitrary. The *Respondent* is hereafter referred to as the Federal Court.

Jurisdictional error

8. The legislative power of Parliament to authorize the exercise by officers of the Federal Court of part of its jurisdiction, powers and functions is subject to limitations, as is the power of the court to delegate part of its jurisdiction, powers and functions.[2] The delegation must not be to an extent where a litigant cannot avail himself of the judicial independence guaranteed in s.72 of the Constitution. The Federal Court cannot, in accordance with the Constitution, refuse to determine a matter without a Judge giving to it so much consideration as summary judgement requires. A decision by a registrar to not allow a proceeding to commence is in every instance a decision made by an officer without jurisdiction to make it and must be subject to review by a Justice.

9. The 06 Mar 2025 decision did not specify the problematic claims. The *Documents* cannot, based on information in the decision letter, be revised to make them acceptable for filing. The 06 Mar 2025 refusal in effect prevents all litigation of the matter, however stated a cause of action and however strong the prospects of success. The Applicant submits, with all due respect, preventing litigation of the matter is precisely what the Federal Court intended. A decision made by the Federal Court with such intention is necessarily a decision made in error of jurisdiction[3].

Evidence Act 1995

10. The Applicant relies on the affidavit affirmed by him on 11 Sep 2025 to prove on evidence of conduct of the Federal Court that the Federal Court has (or did have) *intention* of preventing litigation of the matter, or similar matters between the parties, to the effect of shielding officers of the Commonwealth and others from prosecution and otherwise from justice with respect to wrongs done by such persons to the Applicant.

11. The *Federal Court of Australia* is a "*person*" and *intention* is a "*state of mind*" in 97(1) *Evidence Act 1995*. The Federal Court can have *intention*, and its conduct can be evidence of that *intention*, if the *tendency rule* does not apply. 140(1) *Evidence Act 1995* requires balancing evidence given by the Applicant against (the non-existent) evidence given by the Federal Court. "*The court must find the case of* (the Applicant) *proved*". This is not an *ex-parte* proceeding and so the Applicant is not required to disclose anything that may harm his case[4].

12. Circumstances of the matter require the *tendency evidence* be admitted consistently with 100(1) *Evidence Act 1995* if 97(1)(a) *Evidence Act 1995* is inapplicable.

---

[1] "*bona fide*" in the Cambridge Dictionary at *dictionary.cambridge.org/dictionary/english/bona-fide*
[2] *Harris v Caladine* [1991] HCA 9 [10, 11]
[3] See: cl.29 *Magna Carta* 1297 & Chapter III of the Constitution
[4] *Jadewest 2024 Pty Ltd v BTFMS Pty Ltd (No 3)* [2024] WASC 244 [25, 26]

hearing de novo

13. The exercise of delegated powers by a registrar must be subject to review by a judge the court, on questions of both fact and law, for the delegation to be valid[5]. The review must be by way of *hearing de novo*.

14. In deciding whether a proceeding commenced on the *Documents* would be an *impermissible* proceeding, the *Documents* must be considered in depth (not on their face) and the Court must also have regard to affidavit materials filed by the Applicant. The question is not "Did materials before the Registrar Hammerton-Cole on 06 Mar 2025 in fact appear to be of such nature that a proceeding commenced on the *Documents* would be an *impermissible* proceeding?"; the question is "Would a proceeding commenced on the *Documents* in fact be an *impermissible proceeding*?"

15. A proceeding may appear *impermissible* on the face of documents with which it's commenced but not in fact not an *impermissible* proceeding. The Federal Court refusing to file such documents would wrongly curtail a person's right of bringing proceedings to enforce the law[6].

16. The *Rules* require any documents refused for filing be so refused by a registrar. It is not open to the Court to find the *Documents* should be refused for filing on grounds not stated in the letter of the Registrar Hammerton-Cole dated 06 Mar 2025.

THE PROPOSED APPLICATION

Cause of Action

17. The proposed *First, Second,* and *Third Respondents* each refused or failed, in breach of duties imposed on them by law, to properly deal with matters disclosed to them by the Applicant. This cause of action is properly stated in the *Documents*.

18. The proposed *First*, *Second*, *Third* and *Fifth Respondents* each (or jointly) did or failed to do things required of them by law, thus causing the Applicant to become or to remain restrained of his liberty. This cause of action is properly stated in the *Documents*.

19. The proposed *Fourth Respondent* has under *Privacy Act 1988* duties enforceable by injunction made under *Regulatory Powers (Standard Provisions) Act 2014* (**RP Act**). These include a duty of assisting with or ensuring/enforcing the compliance of other persons including the proposed *Respondents*. No intention to continue to fail to properly discharge those duties is necessary[7]. For purposes of s.121 RP Act, it is sufficient to point to a *state of affairs* that could not exist if said duties were in fact properly discharged. The *Statement of claim* and affidavit materials disclose such a *state of affairs* and this cause of action is properly stated in the *Documents*.

20. The proposed application has no clear precedent in case law. This alone is sufficient reason to order the proposed application be filed.

Bona fide

[5] *Harris v Caladine* [1991] HCA 9 [11]
[6] *Aldridge v Johnston* [2020] SASCFC 31 [4]
[7] See: s.124 *Regulatory Powers (Standard Provisions) Act 2014*

21. It is not to a reasonable person inconceivable someone can be so wronged that no amount of legal remedy would suffice if the wrongdoers were not also publicly held accountable and punished. The Applicant clearly believes himself so wronged and the cause of action is *bona fide*.

Vexation

22. Each proposed *Respondent* is an officer of the Commonwealth sued in his official capacity on behalf of the Commonwealth. No such party to a proceeding suffers *vexation* by result of claims to remedy against it if such a remedy is within judicial power of the court to grant. The *Reasons for Judgment* of the Justice White in *Ferdinands v Registrar Cridland* (2021) are not similarly applicable in this matter.

Substance

23. On first glance at *Division 268* of the *Criminal Code*, it may appear a person in Australia cannot be a victim of "*crimes against humanity*" committed by an officer of the Commonwealth. On close examination of *Subdivision C* and the *Dictionary*, however, it is apparent the Commonwealth can be a relevant "*government of a country*", and an individual can be a relevant "*civilian population*"; nothing in the words of *Division 268* precludes the commission of an offence against *Subdivision C* by an officer of the Commonwealth (*Attorney-General* included).

24. ss. 268.121, 268.122 *Criminal Code* in effect exempt the *Attorney-General* and anyone who acts on his behalf from punishment in respect of offences against *Division 268*. ss. 268.121, 268.122 *Criminal Code* must be unconstitutional or otherwise bad in law.

25. If it is not impossible that the Applicant was victim of one or more "*crimes against humanity*", a reasonable person would not conclude an application for remedy requiring the relevant authorities bring about prosecution and punishment in respect of such crimes must be frivolous or without substance.

Amounts in damages

26. To adequately punish and deter outrageous conduct, assessment of exemplary damages must have regard to incomes and/or assets of the person against whom such damages are awarded. It can reasonably be argued that an "*obvious public interest in bringing public servants to book*"[8] makes claims to damages as stated in the *Originating application* not in any relevant way fanciful and, in any case, the *Rules* allow for an award of damages in lesser amount than is stated in an *Originating* application. The *Rules* do not allow for an award of damages in greater amount than is stated in an *Originating application*.

27. The Court has jurisdiction to award damages in the full amount claimed by the Applicant.

Compensation for injury to feelings

28. Exemplary damages can in Australia be awarded in respect of outrageous conduct causing *injury to feelings*. Such claims are permitted *inter alia* by *Privacy Act 1988*.
29. A reasonable person would not conclude the Applicant has no prospect of successfully prosecuting his claims with respect to *injury to feelings*.

False imprisonment

[8] *Watkins v Home Office* [2006] UKHL 17 [8]

30. It is clear the Applicant believes he is or was detained in a "*Garrison*" and seeks remedy with respect to conduct that improperly caused him to become or remain restrained of his liberty.

31. s.11 *Habeas Corpus Act 1679* requires no "*Subject of this Realme*" be detained in a ***Garrison*** "*contrary to the true meaning of* (the) *Act*". A person so detained "*shall and may for every such Imprisonment maintaine by vertue of* (the) *Act an Action of* ***false Imprisonment*** *in any of His Majestyes Courts of Record*" against the persons "*by whome he or she shall be soe committed detained imprisoned sent Prisoner or transported*", "*and against all or any person or persons that shall frame contrive write seale or countersigne any Warrant or Writeing for such Committment Detainer Imprisonment or Transportation or shall be adviseing aiding or assisting in the same or any of them*".

32. A *Garrison* in the "*true meaning of*" *Habeas Corpus Act 1679* includes any place occupied by personnel of the ***Defence Forces*** while acting in an official capacity. The Act makes actionable the unlawful detention of a person within a *Garrison* even if no part of that *Garrison* is a custodial facility.

Defence Forces

33. In *Attorney-General (United Kingdom) v Heinemann Publishers Australia Pty Ltd* (***AGUK***), six Justices of the High Court found the role of the *Security Service* is as was set out in a relevant directive in 24 Sep 1952 and follows:

> "*The Security Service is part of the Defence Forces of the country. Its task is the Defence of the Realm as a whole, from external and internal dangers arising from attempts at espionage and sabotage, or from actions of persons and organisations whether directed from within or without the country, which may be judged to be subversive of the State.*"

34. It was unnecessary in *AGUK* for the High Court to consider intelligence agencies other the *Security Service*, but it is to be understood the other intelligence agencies of the United Kingdom also form "*part of the Defence Forces*". Further, as intelligence agencies of the United Kingdom form part of the *Defence Forces* of the United Kingdom, the intelligence agencies of Australia (including the *Office of National Intelligence*) must be part of the *Defence Forces* of Australia. From this it follows that any person detained in a place occupied by officers of the *Office of National Intelligence*, or of the other member organisations of the *National Intelligence Community*, is detained within a *Garrison* and may *"maintaine by vertue of* (*Habeas Corpus Act 1679*) *an Action of false Imprisonment"* in the Federal Court.

35. The personnel of the *Defence Forces*, whether or not they are subject to *Martiall Lawe*, have no immunity of ordinary law. This evident on plain reading of *Petition of Right 1627* and a corresponding limitation on legislative and executive power is implicit to the Constitution. 37(5) *Australian Security Intelligence Organisation Act 1979* is unconstitutional and therefore not indicative of the contrary. Claims to damages against the proposed *Respondents* are not fanciful.

Commissioner of Australian Secret Police

36. The Applicant cannot realistically proceed against the "*Commissioner of Australian Secret Police*" described in paragraphs 183 through 194, 239, 241, and 284 through 289 of the *Statement of claim* unless the Court makes the necessary declaration. A reasonable person would expect the proposed *Respondents* collectively hold all information necessary to identify an officer of the

Commonwealth or other person who heads the "*Australian Secret Police*" organisation which is described in the *Statement of claim* mainly by reference to things done to the Applicant by the organisation. The claim to a declaration is not fanciful or without substance and the correct *Respondents* are identified in the proposed application.

substantially similar inconveniences, annoyances and discomforts

37. s.80 *Judiciary Act 1903* necessarily implies the punishments provided by laws of the Commonwealth **can** be inadequate and, in such cases, the common law may prescribe additional or greater punishments as the circumstances require. Unless a Court ordered such punishments on its own motion, applying for relevant orders would necessarily be the job of the prosecutor. Item 320 of the *Statement of claim* is not fanciful.

Publication of written submissions

38. Whereas determining an application "on the papers" is an expedient alternative to trial of matters not requiring examination of witnesses, the parties to such a matter are necessarily denied some of the "open justice" to which they are ordinarily entitled. Publication of the parties' written submissions by the Court (perhaps appended to *Reasons for Judgement*) is a straightforward and realistic solution to that problem. It is also in the public interest that such documents are published.

EARLY REFUSALS TO FILE DOCUMENTS

39. The Federal Court's decision w.r.t *Lodgment ID: 1365753* (in "**JMK-1**") was a refusal to file the *Form 69* dated 05 Sep 2024 and accompanying documents. That decision was unreasonable.

40. A writ of "*do your job*" is an arbitrarily-named prerogative writ that may, in circumstances not amenable to *mandamus* or *prohibition*, issue to require officers of the Commonwealth properly discharge their duties with respect to a *state of affairs*. The effect of the writ is similar to that of the RP Act injunction described in paragraph 19 above but the writ is not limited to enforcing only laws made enforceable under RP Act. s.80 *Judiciary Act 1903* by implication requires the Federal Court innovate in the common law as necessary to provide adequate remedies. A writ of "*do your job*" (perhaps named differently by the court) not having yet issued does not prevent such a writ issuing.

41. The Federal Court's decision with respect to *eLodgement* 1424958 and *eLodgement* 1428125 (in "**JMK-2**" and "**JMK-3**" was a refusal to file the relevant documents. That decision was unreasonable.

COSTS

42. The proposed application is (or would be) a *test case* and also a *public interest case*[9]. The present application is a *test case* or a *public interest case* or both. The Applicant should not be required to pay costs.

Prepared by: Jan Marek Kant, Applicant

28 Sep 2025

[9] *Martin v Electoral Districts Boundaries Commission (No 2)* [2017] SASCFC 43 [8]