Dear Associate

I asked you on the phone today (Tuesday 29th July 2014) to be able to do the hearing by written submissions given my work commitments. By your email Justice Nicholas has rejected this even though it is quite common to have matters dealt with by written submissions.

I have decided to do my best and move forward with written submissions as per below and as per the attached files. I have to also assume that the court has ignored my request in the email that I sent on Sunday which you received yesterday as per the attachment requesting that the matter of penalty and costs be dismissed. (See: RE: FW: Munsie v Dowling [2014] NSWSC 962) Attached are Submissions and also the original email sent by Addisons Lawyers with the suppression order and other documents which shows that there was no Penal Notice attached.

I have also sent these submissions to the federal Attorney-General Senator Brandis and state A-G Brad Hazzard and the NSW Premier Baird as these are matters that also raise constitutional issues and I have asked them to intervene in these matters. The key constitutional issue is political communication as decided by the High Court in Lange v ABC 1997 and Coleman V Power 2004. I do note that Justice Nicholas did represent one of the parties, Nationwide News Pty Ltd (News Corp), in Lange v ABC so he should be very well versed in the relevant issues.

In your email you said Justice Nicholas said ”*it is important that you attend to enable you to meet the case put against you by the plaintiffs and to put submissions to the court.”*

Well I make the point that the court has gone forward on other occasions without me being there without my consent or knowledge (Ex Parte) and decided my fate so nothing is new here. Once before Justice Harrison on the 14th of April 2014 and a second time before Justice McCallum on the 6th of May 2014.

I will be at the Royal Commission into Trade Unions on Wednesday doing my job as a journalist. I will be there from 9am to 4pm and then head home and write a story / publish videos etc and finish after midnight. A big day like that normally knocks me around for a few days and I will not be in a fair and just state to attend the hearing on Thursday morning and it is fairer on me to do written submissions to finalise the matter.

Why Justice Nicholas rejected doing it be written submissions I do not know as it is quite common to have matters decided by written submissions. I suspect it is because Justice Nicholas does not want my submissions to be documented and traceable given he ignored my evidence and arguments at the hearing.

Justice Nicholas is no longer a judge and should not be hearing the matter even more so given his bullying and threatening manner at the hearing where he threatened to have me removed from the court and deny me natural justice for doing nothing more than defending myself. The NSW Supreme Court is more than happy to hear a matter ex parte without my knowledge and decide my future / fate when it suits them, yet wants to deny me the right to have written submissions.

Submissions

By: Shane Dowling
Ph 0411 238 704
Matter: Justine Munsie and Ors v Shane Dowling [2014] NSWSC 962

The key issue Justice Nicholas said is his judgement at paragraph 31 is that the applicants failed to hand deliver a sealed copy of the judgment bearing a penal notice as per required by the law. A penal notice being as I take understand from Wikipedia to be: *"In civil procedure a penal notice is a warning endorsed on a court order, notifying the recipient that he or she is liable to committal to prison or to pay a fine for breach of the order."*

Justice Nicholas said at paragraph 31 of his judgment:

> 31: Should issues of penalty and costs arise, the parties will have the opportunity for making submissions on a date to be arranged through my Associate. However, any issue of penalty will require consideration of the application of *Uniform Civil Procedure Rules*, rule 40.7(3), which requires that the sealed copy of the judgment must bear a penal notice. In *Westpac Banking Corporation v Burke* [2011] NSWSC 549 (para 21) Bergin CJ in Eq considered that the options available to the Court in the exercise of its discretion in sentencing, if a finding of contempt is made, is limited if no notice has been served.

It is true if no notice is served but becomes worse if no penal notice ever existed. In fact there never was a penal notice whatsoever which makes the applicants whole case fatally flawed.

Key issue.

1. The applicants failed to hand deliver a sealed hardcopy bearing a penal notice as per Rule 40.7(1) and Rule 40.7(3) of the *Uniform Civil Procedures Rules* 2005 (the *Rules*). Based on numerous precedents and as pointed out in Justice Nicholas's judgement "sentencing" "is limited" if rule 40.7(3) is not complied with.

Applicant's case fatally flawed:

The applicants I assume will rely on Rule 40.7(4) which says: (4) If a person liable to committal or sequestration by way of enforcement of a judgment has notice of the judgment:
(a) by being present when the judgment is directed to be entered, or
(b) by being notified of the terms of the judgment, whether by telephone, telegram or otherwise, the judgment may be enforced against that person by committal or sequestration without service having been effected in accordance with this rule.

I assume they will rely on this because of the email they sent me on the 15th April 2014. Which says:

From: *Richard Keegan [mailto:richard.keegan@addisonslawyers.com.au]*
Sent: *Tuesday, 15 April 2014 4:55 PM*
To: *shanedowling@hotmail.com*
Subject: *Confidential: Supreme Court of NSW proceeding 2014/114469*

Dear Mr Dowling

We act for the plaintiffs in this Supreme Court proceeding commenced against you.

In accordance with orders made by Harrison J yesterday, we attach, by way of service, sealed copies of those orders, together with our clients' notice of motion, statement of claim, affidavit sworn by Justine Munsie on 14 April 2014 and exhibits.

You will see that the proceeding has been listed for noon on Thursday 15 April before his Honour and there is a suppression order currently in place which prohibits the disclosure of any information about the proceeding (order 6).

Please let me know if you have any questions or if you would like us to provide you with hard copies of the documents. (I added the bold because it shows they could have supplied hard copies if they wanted to but did not)

If you retain legal representatives please ensure they make contact with us prior to the return of the application on Thursday.

Regards

Richard Keegan | Senior Associate
ADDISONS

This again is fatally flawed given there was no penal notice attached as Bergin CJ says at paragraph 11 in *Westpac Banking Corporation v Bruce Patrick Burke [2011] NSWSC 549:*

11. I do not read Rule 40.7(4) ***as excluding the mandatory requirement for the inclusion of the notice required by Rule 40.7(3). There are very good reasons why the notice "must" be included in the "judgment".*** *As Barrett J said in McDonnell v Novello [2006] NSWSC 1186:*

So with no penal notice ever existing let alone being served in hard copy or even soft copy the applicant's case is misconstrued because of some key and basic failings on their behalf. They do not even meet the requirements of Rule 40.7(4).

Having regard for what Bergin CJ says at paragraph 23 in *Westpac Banking Corporation v Bruce Patrick Burke [2011] NSWSC 549* I believe I should not have been found guilty of contempt of court let alone be penalised.

23: "I am satisfied that there is a serious issue to be tried in respect of whether it is necessary to comply with Rule 40.7(3) before a finding of contempt can be made and it should be considered at the trial of the matter."

Precedents that support this:

Westpac Banking Corporation v Bruce Patrick Burke [2011] NSWSC 549
Bergin CJ in Eq

Anderson v Hassett [2007] NSWSC 1310 per Brereton J at [9]
Davies v Beyond Building Systems Pty Ltd & Ors [2009] NSWSC 1282 per Brereton J at [6]
Duncan-Strelec v Tate [2008] NSWSC 1145 per Young CJ in Eq (as his Honour then was) at [17] and [18]
Leung v Good Friend Development Pty Ltd [2008] NSWSC 142 per Barrett J at [6].

This happened even though there were many read flags telling the applicants that they needed to serve a sealed hardcopy of the judgement with a penal notice. Some of the red flags being:

1. The applicants argued that they needed an ex parte hearing and a suppression order because I had disobeyed an instruction from them in 2011 and published a letter they sent me with "Not for publication" on it. This argument shows up in the transcript from that day (14th April 2014) and also in the affidavit of Justine Munsie dated the 14th and filed the 15th April 2014 paragraphs 32 to 35. It is also in Richard Keegan affidavit of the 17trh April 2014.
   So given my noncompliance with their instructions was the main concern that they say justified the suppression order then they had an ever bigger obligation to make sure the paperwork was filled in write and served correctly to make sure I did comply. There is no excuse especially their failure to serve a penal notice.

2. Justice Harrison's orders were issued on the 14th of April and served via email at 4.55pm on the 15th of April. They have over 24 hours to make sure that the paperwork was right and to serve it properly but failed to do so. I live at Bondi Beach. It is less than 30 minutes in peak hour to drive from the City. There is no excuse for their failure to serve the paperwork properly

3. As it says in the email from Richard Keegan "***Please let me know if you have any questions or if you would like us to provide you with hard copies of the documents."*** They had an obligation to serve me a hard copy with a penal notice. They should not have been asking me if I would like ***"hard copies of the documents"*** As Justice Young CJ in Eq said in Duncan-Strelec v Tate [2008] NSWSC 1145 (24 October 2008) at paragraph 39 ***"****I would not like it to become the culture of solicitors in Sydney that they do not properly serve a formal order with the prescribed note because that is the standard way of doing things,* ***it is the fair way of doing things*** *and it avoids complications."*

4. The applicant's lawyers, Addisons Lawyers, were the lawyers for the respondents who were charged for contempt in the matter *Davies v Beyond Building Systems Pty Ltd & Ors* [2009] NSWSC 1282. It followed a similar issue in relation to a breach of Rule 40.7(3). Addisons lawyers new what

issues would arise from failing to serve the orders and penal notice properly so once again there is no excuse in my case for them to have failed in serving the paperwork properly.

5. Red flags aside. The applicants, Kerry Stokes and Justine Munsie, were represented by lawyers (Addisons) and a barrister (Sandy Dawson) and one of the applicants Justine Munsie is herself a lawyer. And Kerry Stokes would have one of his in-house lawyers overseeing the matter which is customary for billionaires. They all knew from their legal training and years of experience that they had to file and serve by hand a copy sealed copy of the judgement with a penal notice attached.

Stokes has put the go slow routine on the defamation hearing with the help of Registrar Christopher Bradford

Kerry Stokes – Frivolous and vexatious litigant.

The court has not charged me but Stokes has so why has Mr Stokes instituted the contempt proceedings in the first place is relevant. He knows his defamation proceedings has no legs and he is using the contempt proceedings in a clear attempt to bully and intimidate me into stop writing about his corrupt conduct.

Mr Stokes who is executive chairman of Channel 7 recently lost three cases on the same day in the Federal Court of Australia where he was trying to stop ACMA from publishing finding that Kerry Stokes's Channel 7 had defamed people including falsely calling one person a murder.

The three judgments are:

Channel Seven Perth Pty Limited v Australian Communications and Media Authority [2014] FCA 669 (Click here to read)

Channel Seven Adelaide Pty Limited v Australian Communications and Media Authority [2014] FCA 667 (Click here to read)

Channel Seven Brisbane Pty Limited v Australian Communications and Media Authority [2014] FCA 668 (Click here to read)

Kerry Stokes uses the courts for delaying tactics and to undermine crtics.

Channel 7 and its reporters in November 2013 interfered in the administration of Justice in the Simon Gittany murder trial yet were not given any penalty. In an article posted on the Daily Telegraph website titled: "Channel Seven barred from airing program on Today Tonight claiming to have fresh evidence in the Simon Gittany murder trial" it says:

Lawyers for the network agreed not to air the new allegations or footage taken of Gittany as he approached the court this morning after a request from Justice Lucy McCallum.

She said Today Tonight producer Vanda Carson had emailed the court's public information officer and apologized for the approach by the program's camera crew and journalist but had "missed the point".

The accused could still be required to take the stand again and the journalist's actions could be construed as an interference with the administration of justice, Justice McCallum said.

She also asked the network to give an undertaking that it's reporting would not speculate about possible future evidence and restrict its coverage to evidence already given under oath to which it agreed.

http://www.dailytelegraph.com.au/news/nsw/channel-seven-barred-from-airing-program-on-today-tonight-claiming-to-have-fresh-evidence-in-the-simon-gittany-murder-trial/story-fni0cx12-1226755366088

So what is worse? Channel 7 reporters deliberately interfering in a murder trial that was still in progress before the court to make money from advertising or me complaining about a suppression order that expired a day later because it could not be justified even though Kerry Stokes barrister Sandy Dawson argued that the suppression order should stay. And my complaint was covered by constitutionally protected political communication. It must be noted that Sandy Dawson (and I believe Addisons Lawyers) also represented Channel 7 and their reporters when Justice McCallum stopped the murder trial and hauled Channel 7 into court as per the above article.

Judge Garry Neilson

A few weeks ago Judge Neilson in effect said that paedophilia and incest are now OK with the public and no longer taboo. What Judge Garry Neilson has said in open court has scandalised the court more than anything I have done. Yet he is likely to go unscathed except for maybe an early retirement which I am sure he has already planned.

No previous criminal history whatsoever – No there was no victim and no one was denied justice by my actions I the suppression order expired the day after I breached them – what I wrote was clear and blatant political communication which is not against the law as per the High Court judgements Lange v ABC and Coleman v Power

Kerry Stokes strategy is very clear.

Stokes and his lawyers have put the deliberate go slow routine on the defamation proceedings and have no intention of following it through to hearing as it would be futile as it is clearly covered by qualified privilege both from a legislative and common law viewpoint.

What Stokes wants is to run up my costs and have a fine for the contempt matter proceedings as he is asking for costs to be paid forthwith and paid on an indemnity basis. Then he will withdraw the defamation on the basis that he has taught me a

lesson when in fact he had no basis for the defamation or contempt proceedings in the first place.

The judge should decide there is no penalty given the previous arguments. But even if the judge decided there should be one it should nothing when my situation is compared to the judgement in *Davies v Beyond Building Systems Pty Ltd & Ors* [2009] NSWSC 1282.

In that matter there was a victim in that a person was denied justice because of the two people being in contempt and breaching a court order. They only had to pay a security (although a large one). In my matter there is no victim and no one was hurt and the suppression order only lasted another day because it could not be justified. So a day later and I would not have been in breach of the suppression order.

Also in *Davies v Beyond Building Systems Pty Ltd &* Ors they had lawyers representing them (Addisons) and their lawyers should have known better. In my matter I am self-represented and should be given some latitude given I am not legally qualified.

For that reason I should not be punished at all and the applicant should pay my costs such as transcript which has cost me $490 as the applicants where warned in Justice Nicholas's judgement at paragraph 31 that any penalty could at best be "limited" because of the applicants own failings to be fair and just in their dealings with me. There were also many red flags saying that the applicants had an obligation to hand deliver a sealed copy of the judgment bearing a penal notice as per required by the law

The applicants have pressed ahead with a hearing for costs and punishment even knowing their case was totally flawed. That is why they should pay my costs.

Justice Harrison has not published his judgement/reasons for the ex parte hearing on the 14th of April and justified why he issued the Suppression order and/ why he had an ex parte hearing. This puts Justice Harrison in breach of the law as he has not published reasons. Scandalously it has not stopped the court finding me in contempt of the unjustified suppression order. And now the court is considering punishing me which makes it even worse.

It is no wonder that the federal treasure Joe Hockey is suing Fairfax Media for defamation in the Federal Court of Australia which shows even the politicians do not have confidence in the fairness of the Supreme Court of NSW.

It is bad enough that someone is found guilty of contempt of court for the crime of journalism and making a complaint to the Attorney-General, Chief Justice and Federal Police. It becomes even more scandalous if the person is also then punished in any way.

End of Submissions

Shane Dowling
Ph 0411 238 704
Justine Munsie v Shane Dowling [2014] NSWSC 962