

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. *S22* of 2019

BETWEEN:



Shane Dowling
Applicant

Prothonotary of the Supreme Court of New South Wales

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Respondent

APPLICATION FOR SPECIAL LEAVE TO APPEAL

The applicant applies for *special leave* to appeal from the *whole* of the judgment of the Court of Appeal – NSW Supreme Court given on the 21st December 2018.

Part I:

[*The proposed grounds of appeal and the orders that will be sought if leave or special leave is granted.*]

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Grounds of Appeal

Erred in law

1. The court erred in law and should have found that what I said in court on the 3rd of February 2017 was protected as political communication as per the 1997 High Court decision in *Lange v ABC* and the contempt conviction was invalid. See also *The Herald & Weekly Times Ltd v Popovic* [2003] VSCA 161 which in effect says criminal allegations against judges, whether in court or out, is protected as political communication.
2. The court erred in law and should have found that the suppression orders which resulted in 2 contempt convictions were invalid as they infringed on my right political communication as per 1997 High Court decision in *Lange v ABC*.

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3. The court erred in law and should have found that the suppression orders issued on the 3rd of February 2017 were invalid as soon as they were issued as they did not comply with legislation and precedents.
4. The court erred in law and should have found that the suppression orders issued on the 8th of February 2017 were invalid as soon as they were issued as Justice Robert Beech-Jones published written reasons which breached his own suppression orders.
5. The court erred in law in making a decision that the suppression orders were valid as they did not comply with UCPR r40.7.
- 10 6. The trial judge and court of appeal judges erred in law and should have found actual bias by the prosecution in failing to advise me of the police complaint investigation as it raised many issues including perceived bias by the court and another reason why interstate judges should have been appointed to hear the matter.
7. The trial judge and court of appeal judges erred in law in failing to find the prosecution in contempt of court for breaching court orders regarding the filing of evidence and submissions etc.
8. I was not allowed to cross-examine witnesses.

Erred in Fact

1. The court erred in fact as I did not say what the court convicted me of saying on the 3rd of February 2017 as the court deliberately edited the transcript and took it out of
20 context.

Perceived Bias

1. The list of perceived bias is a mile long and includes but is not limited to 1. Me being refused bail so I could properly represent myself. 2. Being denied the right to cross examine witnesses. 3. The prosecution having regular private communication with Justice Helen Wilson. 4. The prosecution being able to lie to the court to get suppression orders. 5. Suppression orders being on the matter for 18 months which were used by Justice Helen Wilson and the prosecution to regularly threaten me with further contempt charges when I was trying to defend myself in court.

Actual Bias

- 30 1. Interstate judges should have been appointed for my trial and appeal given Chief Justice Tom Bathurst had instructed court staff to have me jailed over the same issues relating to an email I sent to all the court judges on the 6th of September 2016 as per the below police statements of the CEO and Principle Registrar Chris D'Aeth and the Prothonotary of the NSW Supreme Court Rebel Kenna who also

prosecuted me for the concept. At paragraph 10 of Chris D'Aeth's statement he talks about his meeting with Chief Justice Tom Bathurst regarding the issue. They made frivolous and vexatious complaints to the NSW Police, CDPP and Federal Police. I was charged by the NSW Police after they were pressured to do so. But the CDPP withdrew the charge as it was baseless.

Orders sought

1. My conviction is quashed and the prosecution pays my costs.
2. The High Court make a finding of fact that I was a political prisoner for my incarceration from the 22nd of August 2018 until my release on the 21st December 2018.
3. The High Court make a finding of fact that my conviction by Justice Helen Wilson was politically motivated.
4. The NSW Supreme Court returns all the copies of my computer / hard drive which it illegally obtained and has given to Kerry Stokes / Channel Seven / Seven West Media / Capilano Honey to help with their SLAPP lawsuits.
5. All court matters involving me in NSW have an interstate judge appointed to hear the matters.
6. Any other orders the court sees fit.

20 Part II:

[A concise statement of the leave or special leave questions said to arise.]

1. If new laws cannot be legislated by governments to stop the media from reporting and publishing judicial corruption allegations as per the 1992 High Court judgment Nationwide News Pty Ltd v Wills [1992] HCA 46 then how can a court introduce new common laws as per my conviction to stop reporting and publishing judicial corruption allegations? It is my opinion they cannot introduce new common laws and the trial judge and court of appeal judges knew it and that is why they deliberately ignored the High Court precedent Nationwide News Pty Ltd v Wills which I raised and referenced many times.
- 30 2. Is criticism and/or allegations of corrupt/criminal conduct by judicial officers protected by the freedom of communication on matters of government and politics as per Lange v ABC [1997] HCA.

3. Is criticism and/or allegations of corrupt/criminal conduct by judicial officers which is said in open court protected by the freedom of communication on matters of government and politics as per *Lange v ABC* [1997] HCA.
4. Is accusing a judicial officer of taking bribes in the face of the court protected by the freedom of communication on matters of government and politics as per *Lange v ABC* [1997] HCA
5. Is accusing a judicial officer of being a paedophile or suspected paedophile in the face of the court protected by the freedom of communication on matters of government and politics as per *Lange v ABC* [1997] HCA
- 10 6. Why is it legal to call judicial officers bribe takers and paedophiles and/or suspected paedophiles outside of court but not inside of court as per my convictions? Which is in effect what Justice Helen Wilson said to me in court.
7. Are suppression orders issued by a court invalid if they infringe on freedom of communication on matters of government and politics as per *Lange v ABC* [1997]
8. Are contempt of court charges invalid if they infringe on freedom of communication on matters of government and politics as per *Lange v ABC* [1997] HCA.
9. My contempt charge was a small part of the bigger police complaint/charge which involved numerous judges and court staff. It was dropped because it was malicious.
- 20 Which raises the question in relation to the associated contempt charge: Should a court be able to hear its own case involving its own judges and court staff?

Part III:

[A brief statement of the applicant's argument in support of the grant of leave or special leave.]

Background

In January 2011 I set-up and started publishing the website Kangaroo Court of Australia which specializes in judicial and political corruption. Up to 2014 I knew very little about any NSW judges except what I read in other media. But in April 2014 Kerry Stokes
30 instituted defamation proceedings against me in what is best described as a SLAPP lawsuit and since then he has instituted a number of other SLAPP lawsuits and I have been before over 20 NSW Supreme Court judges and I am now well-known but disliked by NSW Supreme Court judges. I have written many articles accusing judges of numerous crimes

including taking bribes and being paedophiles etc and most if not all of the judges are well aware of the articles as many of the articles have been tendered in court, but none of the judges have ever complained.

I have lost count of the number of suppression orders and non-publication orders issued against me but my guess it would be over 20 all of which are or were a baseless abuse of power by the courts and all almost all related to Kerry Stokes, except the suppression orders in this matter, and without a doubt bribes are taking place.

I have also had 2 super-injunctions issued against me both of which have been lifted as it was scandalous that they were ever issued in the first place. A prime example is the recent
10 NSW Court of Appeal judgment Capilano Honey v Shane Dowling (October 2018) where wide ranging suppression orders and non-publication orders were lifted. The matter also had a super-injunction for 18 months, but it was removed by consent after pressure by the judge as it had become very embarrassing for the court.

Contempt Charge

I was charged for contempt of court for saying on the 3rd of February 2017 in court before Registrar Christopher Bradford that he is a known bribe taker and suspected paedophile and that Justice Clifton Hoeben is a paedophile. The Prothonotary went to court that
20 afternoon at an ex parte hearing and had suppression orders and non-publication orders put on what I said in court. I breached those suppression orders by writing an article telling people what happened and I was charged with a further 2 contempts for doing nothing more than reporting what happened. I was not charged until April 2017.

I deny the allegations and argue that even if I was guilty of saying what the court claims then it was protected as political communication as per Lange v ABC. What I said in court was taken out of context and selectively edited to change what I had said. It must be noted in September 2016 I said almost the exact same thing to Registrar Bradford about him in court and he did not complain and refused to recuse himself from hearing the matter. So in September 2016 what I said to Registrar Christopher Bradford was such a minor issue he could still hear matters involving me but in February 2017 it was such a huge issue that he
30 had to have me charged with contempt and could no longer hear matters involving me.

What changed? An email I sent to the Supreme Court judges in September 2016 and the subsequent police complaint which was coordinated by Chief Justice Tom Bathurst, CEO and Principle Registrar Chris DÁeth and the Prothonotary Rebel Kenna regarding the email.

Email to the court accusing 15 judges, 1 magistrate and 2 registrars of being paedophiles or suspected paedophiles.

On the 6th of September 2016 I sent an email to all the judges of the NSW Supreme Court accusing 15 judges, 1 magistrate and 2 registrars of being paedophiles or suspected paedophiles and raising issues of judicial bribery such as the \$2.2 million Australian Mafia bribe of NSW judges as reported in 2015 by the ABC Four Corners program and Fairfax Media. I notified the judges that I would be publishing a story and gave them an opportunity to respond. No one responded and I published an article on the 9th of
10 September 2016 titled "*Paedophile priest gets 3 months jail for raping 3 boys by NSW Supreme Court's Justice Hoeben*". The article also published a copy of the email. No one has ever complained to me about the article or asked me to take the article down from my website. Even when the police charged me in June 2017 they never asked me to take the article down and it is still on my website.

Police charge

The police charged me in June 2017 for sending the email in September 2016. Until that time, I never knew a compliant had been made to the police. I never received the brief of evidence until October 2017 when I was in jail for 4 months and never read it until
20 December 2017. I never received the full brief of evidence as they clearly has no intention of going to hearing. I found it odd my hearing for contempt was on the 4th of May 2017 and at the hearing I raised the fact that I had said the same thing in the email and article in September 2016 and nothing had happened. Then a few weeks later in June 2017 the NSW police raided my unit and took my computers. This was disturbing as both matters were clearly related and were in fact part of the same issue.

Chris D'Áeth's and Rebel Kenna's wrote police statements which confirmed that the same people who were trying to stitch me up for the police complaint were also the same people who stitched me up for the contempt charges. They were having trouble getting the police and CDPP to charge me, so they stitched me up in the Supreme Court for contempt where
30 they controlled the outcome then seemed to use that to put pressure on the NSW Police to charge me. Ultimately the CDPP found no crime had been committed with the email and withdrew the charge. At paragraph 10 of Chris D'Aeth's police statement he confirms Chief Justice Tom Bathurst's involvement and oversight of the attempt to stitch me up for jail.

Below is part of an article I published in April 2018 after the CDPP withdraw the charge with some of the time line of events before I said what I said in court on the 3rd of February 2017 which shows Chief Justice Tom Bathurst and others conspiring to have me charged for saying the same thing but more extensively in the email in September 2016.

The article is titled "*CDPP formally drop criminal charges against journalist Shane Dowling in free speech case*" and can be found at:

<https://kangarocourtsofaustralia.com/2018/04/02/cdpp-formally-drop-criminal-charges-against-journalist-shane-dowling-in-free-speech-case/>

10 **The timeline of events as outlined in the police witness statements of Chris D'Aeth, Rebel Kenna and Detective Kristijan Juric.**

The most interesting thing about the timeline and police statements is the fact that Chief Justice Tom Bathurst went police shopping to find someone who would charge me when he had obviously been told that the CDPP and Federal Police wouldn't charge me because no crime had been committed.

6th September 2016 – Tuesday – 11.35pm – I sent email to NSW Supreme Court judges accusing 18 judicial officers of being paedophiles or suspected paedophiles and raising issues of bribery: The email started off:

20 *"I am writing to you all regarding the list of paedophile judges that I intended on making a formal complaint about to the AFP, Australian Crime Commission, NSW Crime Commission and Royal Commission into Child Sexual Abuse. The list is below."*

"As we all know corruption in the NSW Courts is widespread and systemic. In July 2015 Fairfax Media and the ABC's Four Corners program reported that NSW judges had been bribed \$2.2 million by the Mafia which was confirmed by Justice David Davies in December 2015. Maybe you have evidence that the above judges have also benefited from the Mafia bribes or other bribes. If you have evidence of judicial bribery, please contact me ASAP." (Click here to read more)

30 6th of September 2016 – (Source: Chris D'Aeth police statement) Registrar Rebel Kenna forwarded my email to Chris D'Aeth, CEO and Principle Registrar of the Supreme Court of NSW. This seems odd as I sent the email at 11.35pm so its hard to see Rebel Kenna checking her email that late at night and then forwarding it on. Maybe it just a mistake by Chris D'Aeth.

8th September 2016 – I published an article titled “Paedophile priest gets 3 months jail for raping 3 boys by NSW Supreme Court’s Justice Hoeben” which included a copy of the email from the 6th of September.

8th September 2016 – (Source: Chris D’Aeth police statement) Chris D’Aeth forwarded my email from the 6th September to Jillian Caldwell, Special Counsel for the Crown Solicitor asking for advice.

8th of September 2016 – (Source: Detective Kristijan Juric police statement paragraph 4) Detective Senior Sergeant Day handed a report from the NSW Crown Solicitors Office to Detective Kristijan Juric regarding an alleged telecommunications offence in relation to the email I sent.

Detective Kristijan Juric makes no mention of the CDPP who the matter was later sent to by Chris D’Aeth via his instruction to Jillian Caldwell. Detective Kristijan Juric also fails to mention the AFP which the CDPP forwarded the matter to.

Detective Juric’s statement jumps from a complaint on the 8th of September 2016 at paragraph 4 to paragraph 6 where he says:

“6. During my subsequent enquiries I contacted the Crown Solicitors Office of NSW to obtain contact details of persons named in the email and article. As result of these enquires on the 8th of March 2017, Rebel Kenna attended Sydney City Police Station and supplied a statement.”

20 So what did Detective Juric do from the 8th of September 2016 until the Kenna witness Statement on the 8th March 2017. Did he contact the 17 others on the list and why didn’t they give police statements? It makes no sense why a complaint was made to the CDPP and Federal Police only days after the complaint was handed to NSW Police Officer Detective Kristijan Juric.

What might make sense is if the complaint was made first to the NSW Police and they said it was a federal crime and needed to go to the CDPP or AFP. Then the CDPP and AFP made a decision that no crime had been committed and then the NSW Police were pressured into charging me because the CDPP and AFP refused to do so. But only one of the 18 named as paedophiles and suspected paedophiles, Rebel Kenna, would make a complaint. I think it is likely that Rebel Kenna was pressured to make a complaint.

30 During my arrest Detective Kristijan Juric said I could face other charges when they contact the others named in my email. Which means from the 8th of September 2016 until the 21st of June 2017 they had not contacted anyone else named in the email with the obvious question of why not.

9th of September 2016 – I was in court for a mention before Registrar Christopher Bradford. I asked Bradford to stand down given I had published on the internet that he is a suspected paedophile and known bribe taker which I recorded on video. Registrar Bradford refused to stand down. ([Click here to watch the video](#))

20th September 2016 – (Source: Chris D'Aeth police statement) Chris D'Aeth receives an email with a 21 page document attached from Jillian Caldwell giving advice regarding the email.

21th September 2016 – (Source: Chris D'Aeth police statement) Chris D'Aeth discusses advice given by Jillian Caldwell with Chief Justice Tom Bathurst. After the discussion
10 Chris D'Aeth sends Jillian Caldwell an email asking that the matter be sent to the CDPP for consideration

26th September 2016 – (Source: Chris D'Aeth police statement) Chris D'Aeth receives an email from Jillian Caldwell saying she had been emailed by the CDPP and they had referred the matter to the Australian Federal Police for further investigation. I never heard from the AFP or the CDPP.

2nd February 2017 – (Source: Chris D'Aeth police statement) Chris D'Aeth writes a witness statement for the NSW Police. The fact that the NSW Police were back involved must mean the AFP and the CDPP had refused to charge me with any crime.

3rd February 2017 – At court on Friday the 3rd of February 2017 I said something in court
20 and was later charged and found guilty for contempt and for breaching suppression orders that were put on the matter. The contempt matter was heard on the 4th May 2017. I can't say what for as there are suppression orders on it and one of my bail conditions while I wait for sentencing is that I cannot breach the suppression orders again.

8th March 2017 – (Source: [Rebel Kenna police statement 8-3-17](#)) Rebel Kenna makes a police statement.

4th May 2017 – The hearing for the contempt was held before Justice Helen Wilson. I was later ordered to serve all Attorney-Generals a Notice of a Constitutional Matter.

One of my key arguments was that I had emailed the court in September 2016 accusing 18 judicial officers of being paedophiles or suspected paedophiles and raised bribery
30 allegations but none of them had complained and I had also published the email in an article in September 2016 and they hadn't complained about that either.

21st June 2017 – I was charged by the NSW police for breaching telecommunications laws for the email that I sent in September 2016 to all the judges of the NSW Supreme Court asking questions and giving them an opportunity to respond to allegations which is nothing

more than journalists do around the world every day of the week. The police executed a search warrant on my unit while I was at work and took my computer and the spare one I had which the police said they would give back in about 10 days which forced me to buy a new one. I went to the police station after work and was charged.

I thought the police charge was clearly related to me raising the fact that they had not complained about the email in court on the 4th of May during my defence for contempt. The police said that they had received a complaint from the Crown Solicitors Office which I remember as taking that they received a complaint from the CEO Leah Armstrong who at that stage had carriage of my case. Leah Armstrong stood down from having day-to-day carriage after the police charge.

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The police charge and the fact that it was withdrawn raises many questions that the Court of Appeal and trial judge refused to address. Two of which are:

1. Firstly, what was the Court of Appeal and trial judge doing hearing the matter? If ever there was a time an interstate judge/judges needed to be brought in this was it.
2. How could I be charged for contempt for court for making the allegations in court I made in February 3rd 2017 when the same allegations and more extensive allegations were already before the court in the email I sent to the judges in

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September 2016 and that was found to be ok as the charge was withdrawn by the CDPP and Justice Wilson has in effect said it was OK. She said it is not what I said but where I said it and how that resulted in my contempt charge. She in effect said it is OK if I say it outside court.

Stealing my computer

The court had my computer while they were prosecuting me and sentencing me for contempt and have given it to Kerry Stokes so he can use it for his war of law against me.

Part IV:

30 *[Any reasons why an order for costs should not be made in favour of the respondent in the event that the application is refused.]*

Because it is in the public interest that the High Court hear the matter as many people in the public are calling for a Royal Commission into the Australian Judiciary and there are

very serious unchallenged allegations against numerous judicial officers which they have confirmed are ok for me to publish on my website.

Part V:

[A list of the authorities on which the applicant relies, identifying the paragraphs at which the relevant passages appear.]

Nationwide News Pty Ltd v Wills [1992] HCA 46

Lange v ABC [1997] HCA 189

Coleman v Power [2004] HCA 39

10 Theophanus v. The Herald and Weekly Times Ltd [1994] HCA 46

ABC v O'Neill [2006] HCA 46

The Herald & Weekly Times Ltd v Popovic [2003] VSCA 161 Paragraphs 1 to 10 and 97 and 188 to 253. Paragraphs 10 and part of 232 are below which re-enforce that High Court judges and Victorian Supreme Court judges support my arguments that judges and their conduct is covered by the "*constitutionally implied freedom of communication in respect of political and government matters*".

10. That does not mean that there can never be a discussion about a judicial officer which will, or might, be relevant to the system of representative and responsible government. It is not difficult to conceive of circumstances where discussion of the character and/or conduct (**whether in or out of court**) of a judicial officer is capable of amounting to a discussion on government or political matters in the relevant sense. This would particularly be so where the discussion impacts directly or indirectly on the executive government itself; whether in the exercise of its powers to appoint the officer, or in exercising or failing to exercise its powers to initiate the officer's removal. Such a discussion may well bear the characteristics of one which is capable of informing and shaping the views of the electors about the performance of their elected representatives.

20 232. The learned trial judge held that the article was published on matters of a political or government nature. His reasoning can be briefly summarized. His Honour carefully analyzed the three High Court cases dealing with the constitutionally implied freedom of communication in respect of political and government matters. They are Nationwide News Pty Ltd v. Wills,[123] Theophanus v. The Herald and Weekly Times Ltd[124] and Stephens v. Western Australian Newspapers Ltd.[125] His Honour noted what Deane and Toohey JJ. said in the Wills case[126] Their Honours described [127] the subject matter of the implied freedom as - "Information, opinions and ideas about all aspects of the

government of the Commonwealth, including the qualifications, conduct and performance of those entrusted (or who seek to be entrusted) in the exercise of any part of the legislative, executive or judicial powers of government which are ultimately derived from the people themselves."

Part VI:

[The particular constitutional provisions, statutes and statutory instruments applicable to the questions the subject of the application set out verbatim.]

10 "The High Court held that the Constitution established systems of representative and responsible government in particular under sections 7, 24, 64 and 128 and that the freedom to discuss political and government matters was indispensable to these systems of government."

Section 72 of the Australian Constitution

Dated

18/1/19



[Applicant or the legal practitioner
representing the applicant]

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To: The Respondent - Brett Thomson NSW - Crown Solicitors Office
Level 5, 60-70 Elizabeth Street, Sydney NSW 2000

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

The Applicant's address for service is:

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30 shanedowling@outlook.com.au