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# Written Submissions



No. ACD22 of 2023

Federal Court of Australia

District Registry: Australian Capital Territory

Division: Administrative And Constitutional Law And Human Rights (ACLHR)

**Ben Anthony RUSHTON**

Applicant[s]

**COMMONWEALTH OF AUSTRALIA**

Respondent[s]

## **Applicant's second outline of submissions in response to the Respondent's outline of submissions in response to the Applicant's interlocutory application.**

### **A. Introduction**

This brief second outline of submissions addresses the Respondent's outline of submissions filed 8 August 2023, in response to the Applicant's outline of submissions filed 24 July 2023 on his interlocutory application filed 14 April 2023:

### **B. Response to Respondent's Submissions**

1. The Applicant prays for the Court order to give summary judgement and/or grant cause of action estoppel by *res judicata* binding declaration of legal right<sup>1</sup> by interlocutory injunction<sup>2</sup> **enforcement**<sup>3</sup> and specific performance orders mandating that the Respondent joint wrongdoers shall comply with the order of the Federal Circuit Court of Australia (FCC) first in time, first in right, binding estoppel by *res judicata* claim preclusion and merger in judgement in *Rushton v Rushton* [2014] FCC (P)BRC10298 at [1], granted against the whole of the

<sup>1</sup> *Federal Court of Australia Act 1976* (Cth), s. 21-23, 32 and 53; *Bass v Permanent Trustee Co Ltd* [1999] HCA 9; 198 CLR 334; 73 ALJR 522; 161 ALR 399 at [89] i.e. "**declaration of legal right**".

<sup>2</sup> Federal Circuit Court of Australia (FCC) first in time, first in right, binding estoppel by *res judicata* and merger in judgement in *Rushton v Rushton* [2014] FCC (P)BRC10298 at [1], "The court orders that: 1. **All extant applications are dismissed for want of jurisdiction.**" Dated 6th May 2015 by Judge Hughes; In *Idoport v NAB* [2006] NSWCA 202 at [113-114], i.e. "**The Court's inherent jurisdiction to prevent an abuse of its processes attaches to extant proceedings.**" In *Anlaby v Praetorius* (1888) 20 Q.B.D.764, at 768-9 Fry L.J. stated on the issue of void proceedings that: "**A plaintiff has no right to obtain any judgment at all.**"; "**Time cannot render valid an act void in its origin.**" Dig. 50, 17, 29; Broom, Max.178.

<sup>3</sup> In *Clayton v Bant* [2020] HCA 44; 272 CLR 1 at [34], [50-51], [66-67], [69-70], [76], [78], "Merger or *res judicata* in the strict sense"; "**merger of the right or obligation in the judgment**"; "**prior right, with added consequences such as enforcement mechanisms...**"; "**right on the local judgment, which is "of a higher nature."**"; In *Idoport v NAB* [2006] NSWCA 202 at [113-114], i.e. "**The Court's inherent jurisdiction to prevent an abuse of its processes attaches to extant proceedings.**" In *Anlaby v Praetorius* (1888) 20 Q.B.D.764, at 768-9 Fry L.J. stated on the issue of void proceedings that: "**A plaintiff has no right to obtain any judgment at all.**"

Filed on behalf of (name & role of party) Ben Anthony RUSHTON, applicant and aggrieved claimant.

Prepared by (name of person/lawyer) Ben Anthony: RUSHTON.

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Respondent's extant<sup>4</sup> interlocutory application 'and all multiplicity of proceedings concerning any of those matters avoided', regarded as a mere colourable simulacrum usurpation against non-derogable absolute inherent rights<sup>5</sup>, *ex debito justitiae* ('by reason of an obligation of justice, as a matter of right')<sup>6</sup>, by operation of law, to restrain any and all of the Respondents continual<sup>7</sup> insistence and refusal to cease and desist, unauthorised infringing and tortious conduct identified in this matter, as follows, for the protection against further injury for which the widower aggrieved could not be adequately compensated in damages such as his life and limb, considering his right of survivorship for his three maternally orphaned offspring and his own parents (disabled aged) protected carer, *nunc pro tunc* ('now for then'), *praeterea preterea* ('hereafter') and *ab initio* ('from the beginning'), without further ado:

### Tortious conduct

- A. Tortious conduct of registered and protected Intellectual Property (IP) exclusive right trade mark, copyright, distress and conversion<sup>8</sup>, conscription<sup>9</sup> and insistence on infringement<sup>10</sup> of

<sup>4</sup> Federal Circuit Court of Australia (FCC) first in time, first in right, binding estoppel by *res judicata* and merger in judgement in *Rushton v Rushton* [2014] FCC (P)BRC10298 at [1], "The court orders that: 1. **All extant applications are dismissed for want of jurisdiction.**" Dated 6th May 2015 by Judge Hughes in Canberra; In *Idoport v NAB* [2006] NSWCA 202 at [113-114], i.e. "**The Court's inherent jurisdiction to prevent an abuse of its processes attaches to extant proceedings.**" In *Anlaby v Praetorius* (1888) 20 Q.B.D.764, at 768-9 Fry L.J. stated on the issue of void proceedings that: "**A plaintiff has no right to obtain any judgment at all.**"; In *Tomlinson v Ramsey Food Processing Pty Ltd* [2015] HCA 28; (2015) 256 CLR 507 at [20] i.e. "res judicata", [21]-[22], [24], [25], [26] i.e. "**estoppel and abuse of process.**"

<sup>5</sup> Pursuant to the *Australian Human Rights Commission Act 1986* (Cth), Sch. 2, *International Covenant on Civil and Political Rights* (ICCPR), article 4.2 "no derogation from article 7 (i.e. "**No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.**") may be made under this provision", also article 4 of the (Australian Treaty Series 1989 No. 21) *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), OPCAT 2018, and rule 90, 92, 93, 99 and 152 of the *International Humanitarian law* (IHL), as is herein claimed that this article has been derogated in the present case, and other articles such as 1.1, 2.3(a-c), 7, 9, 10.1-2(a), 12.1, 14.6 - 7, 17, 22, 23.1 and 26 of the ICCPR, and related, treaties, conventions and legislation listed in the Originating application in this case; *Morro, N & Ahadizad v Australian Capital Territory* [2009] ACTSC 118 at [13-14], [49-52], [55].

<sup>6</sup> *Commonwealth of Australia v Davis Samuel Pty Limited and Ors* (No 11) [2017] ACTSC 2, at [100-110] and [114-116]; "High-profile, law reform" extant case *Kaney v Rushton* [2017] ACTSC 11 at [78]; *Anlaby v Praetorius* at 768-9; *Craig v Kanssen* [1943] 1 KB 256 at 259 and 262, i.e. "**ex debito justitiae, entitlement to relief from an injustice**", *Crane v DPP*, [1921] 2 AC 299 at 332-3, i.e. "no valid trial at all. ... field open for a real trial."; *Romani v State of New South Wales* [2023] NSWSC 49, Justice Wright agreed at [38-42], [46-50] and [78]; *United States v. Throckmorton* (1878), 98 U.S. 61, 68 at [22]; *Cabb v Cabb* [2013] FamCA 572, full court defined the doctrine of ("a matter decided") *res judicata* estoppel at [6-12]; *Clayton v Bant* [2020] HCA 44 at [66-67]; and *King v Hoare* (1844) 13 M & W 494 at 504 [153 ER 206 at 210], defined the doctrine of merger or *res judicata* in judgement in the strict sense; *Rola Co. (Australia) Pty. Ltd. v Commonwealth* (1944) 69 C.L.R. 185 and *Cameron v Cole* (1943-4) HCA 5, 68 C.L.R. at [p. 589-590]; *State of NSW v Kable* [2013] HCA 26; 252 CLR 118 at [55]-[56].

<sup>7</sup> In *Commonwealth Life Assurance Society Ltd v Smith* (1938) HCA 2 at [535], [550] and *Beckett v New South Wales* [2013] HCA 17 at [34-35] i.e. "**Nolle prosequi – a stay of proceedings sine die?**" [35.] "**The effect of a nolle prosequi** (staying by the Attorney-General of proceedings on an indictment) is open to question. An old case indicates that it **is not a sufficient ending of the prosecution because it still leaves the accused liable to be indicted afresh on the same charge.**"; *Commonwealth Life Assurance Society Ltd v Smith* (1938) HCA 2 at [527], "Held that **the guilt or innocence of the plaintiff was not an issue going to his cause of action in malicious prosecution, ... maliciously prosecuting him on insufficient materials** [where a *nolle prosequi* is entered for the groundless initiating statement of claim, not made on oath, the claim was therefore immaterial and a nullity and proceedings void, as in the present case].

<sup>8</sup> *Penfolds Wine Pty Ltd v Elliott* (1946) HCA 46; 74 CLR 204 at [p. 218-219], [229], i.e. "conversion, assumption of the powers of the true owner"; *Banks v Ferrari & Ors* [2000] NSWSC 874 at [57].

<sup>9</sup> In *Greater Fredericton Airport Authority v NAV Canada* [2008] NBCA 28 (CanLII) 229 NBR (2d) 238; 290 DLR (4th) 405, i.e. "**duress, gun to the head**"; In *Samantha Jane Moore v Jonathon Michael Blackburn* [2010] ACTSC 143 (Refshauge J) at [7-8], the Full Court of the Family Court of Australia in *Chapman v Palmer* (1978) 4 Fam LR 462. Despite its age, it appears to be still regarded as authority: see *C v B* (2007) 38 Fam LR 1 (at 26 [107]). [8.] In *Chapman v Palmer*, the unanimous court described the situation in relation

the exclusive legal usufruct rights, titles, estate, private property and secured super-priority beneficial interest title holder of the legal usufruct<sup>11</sup>;

- B. Tortious conduct of 'passing off' with misleading or deceptive conduct<sup>12</sup>, misfeasance in public office, 'abuse of public office, dishonestly causing a detriment to another person'.
- C. Tortious conduct of great trespass<sup>13</sup> *quare clausum fregit* ('with force and arms, broke and entered the close') to the 'protected person'<sup>14</sup> of the aggrieved with seizure of private property and chattels by the use of harassment, nuisance, threats, violence, torture and armed force colour of law 'actions against his life, family, private property, estate, beneficial interests, fundamental rights and freedoms'<sup>15</sup>, in extant private civil matters, recklessly

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to changes of surname as follows (at 465-6): **A surname is not a matter of law but matter of repute: *R v Smith* (1865) 4 F & F 1099; *Re T (Orse H)* [1963] 1 Ch 238 at 240; [1962] 3 All ER 970; *Earl Cowley v Countess Cowley* [1901] AC 450 at 460.**; In *Hopwood & Anor v Cuthbertson* [2001] TASSC 64 at [46]. As was said in *Re T* [1962] 3 WLR 1477 at 1480: **"It is of course well known that a person's surname is a conventional name and forms no part of his true legal name"**; In *Buffier v State Bank of NSW* [1999] HCATrans 479 (Gleeson CJ, (In Chambers)), His Honour: "Go outside the Court and call his full **Christian names** and **surname** three times."; *British Medical Association v The Commonwealth* [1949] HCA 44; 79 CLR 201 at [p.293], i.e. **"compulsion amounting to conscription, ...in which the individual is left no real choice but compliance."**; ICCPR, art. 16, "the right to recognition everywhere as a **person before the law**."<sup>10</sup> In *The Cultural Intelligence Project Pty Ltd v The Entourage Education Group Pty Ltd* [2021] FCCA 504, at [26-27], [31-32], i.e. [26.] **"In the present case, I consider that there is a strong prima facie case for the grant of an injunction for relief. The applicant has a registered trade mark. It is prima facie valid."**; In *Vieright Pty Ltd v Myer Stores Ltd* [1995] FCA 173 at [iv]; i.e. 'Isaacs J. remarked in *Meyers v Casey* (1913) 17 CLR 90 (at 123), **it is trite law that insistence on the right to do that which is properly objected to is ground for the injunction.**'; *Vertical Leisure Limited & Anor v Skyrunner Pty Ltd & Anor* [2014] FCCA 2033 at [12-13], [35-36]: i.e. (Trade Marks Act) "The relief the Court may grant includes **injunctive relief** (s.126(1)(a)..."; **"A person infringes a registered trade mark if the person uses as a trade mark a sign that is substantially identical with, or deceptively similar to, the trade mark"** in accordance with section(s) 20, 120, 126 and 191 of the *Trade Marks Act* 1995 (Cth); also see 15 U.S. Code § 1118 - Destruction of infringing articles.

<sup>11</sup> *Griffiths v Northern Territory of Australia* [2006] FCAFC 178 at [65], i.e. **"usufruct"**.

<sup>12</sup> In *Vertical Leisure Limited & Anor v Skyrunner Pty Ltd & Anor* [2014] FCCA 2033 at [12.] "relief for the Respondents' **infringement of trademark, infringement of copyright, misleading or deceptive conduct in trade or commerce and for passing off.**"; In *Sweetman v Bradfield Management Services Pty Ltd* (1994) ATPR 41-290 at [38], **"conduct will also be misleading, where conduct said to have occasioned loss consists of a failure to attach appropriate qualifications to advice or information supplied, or a failure to disclose that an opinion provided is based on less than reasonable grounds."**

<sup>13</sup> *Morro, N & Ahadzad v Australian Capital Territory* [2009] ACTSC 118 at [49-52], [55]; *State of New South Wales v Williamson* [2011] NSWCA 183 at [57-58] i.e. **"trespass to the person"**; "injury of false imprisonment"; **"False imprisonment is plainly one category of trespass to the person."**; "damages can be awarded in an action for trespass as vindication of the fact that a right of the plaintiff has been infringed."; IHL rule 99; In *McDonald v Coles Myer Ltd (t/as K-Mart Chatswood)* (1995) Aust Torts Reports 81-361 at [62,690] NSWCA, Powell JA said: **"Further, as the tort of false imprisonment is derived from trespass."**

<sup>14</sup> **"Protected Persons"** pursuant to rule 27, 99, 104 & 138 of the *Customary International Humanitarian Law* (IHL) scheduled to the *Geneva Conventions Act* (GCA) 1957 (Cth), Sch. 4, *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, such as articles 27, 31-32, 37 and 71; *The Manual of the Law of Armed Conflict*, Australian Defence Doctrine Publication 06.4, 2006 at [§ 5.23, 5.24; see also §§ 4.30, 9.2, 9.11, 9.55, 5.57, 9.58 and 12.37], states: [5.24] **"Religious personnel, including military chaplains, are protected persons in the same way as are medical personnel."**; *Crimes Act* 1900 (Cth), s. 56 'Obstructing member of the clergy in discharge of his... duties'; *Criminal Code* (R.S.C., 1985, c. C-46) (Canada), s. 176 (1) 'Obstruction or violence to or arrest of officiating clergyman', (2) 'Disturbing religious worship or certain meetings'; *Offences against the Person Act* 1861 (Imp.), chap. 100 (24 & 25 Vict.), s. 36 'Obstructing or assaulting a clergyman or other minister in the discharge of his duties.'; *Aged Care Act* (ACA) 1997 (Cth), Part 4.1, Div. 54.11(3)(a), the Applicant live-in carer is considered a **"protected person"** ('eligible to receive an Australian Government income support (carer) payment ...living in the patient's [protected aged care] home for the past 2 years').

<sup>15</sup> 'Crimes against humanity, genocide, war crimes, and torture are international crimes which have risen to the level of *jus cogens* ("the compelling law") standing and are deemed to be "peremptory" and nonderogable' [fn. 40, 58]. Under international law, these obligations are to be considered as *obligatio erga omnes* ("obligations flowing to all", that is, binding on all states), the consequence of which is that impunity cannot be granted, and universal jurisdiction over perpetrators of such crimes' [fn. 41, 51, 89], in accordance

causing harm, detriment, “unlawful interference with his privacy, family, home, correspondence, unlawful attacks on his honour and reputation”<sup>16</sup>, with unauthorised usufruct administration of the aggrieved’s legal estate in accordance with the ‘rules of usufruct and private property’<sup>17</sup>, against the will and without the freely expressed and/or written consent of the aggrieved’s established lawful and legal capacity and standing as super-priority security beneficial interest title holder of the legal usufruct;

- D. Tortious conduct of the public radio and internet media broadcast of the Respondent’s officers (“high-profile, ACAT law reform enforcement”) armed force private property seizure, ouster (video evidence footage available) and (advocating) ‘natural family group genocide’ against the will of the aggrieved widower reversioner husband and contrary to his offspring’s wishes not to be kidnapped and trafficked (into the custody of an estranged litigious privy half-brother in law) by armed officers from their unarmed widower father and usual family habitual residence, private property, school and family, with the Respondent’s (tactical and general duties uniformed) armed officers engaging (video evidence footage available) the unarmed aggrieved in absolutely overwhelming numbers (tens) of officers during multiple trespass attacks on private property, arising from the civil ‘extant applications’<sup>18</sup> of the unauthorised executor *de son tort* by the *inter absentes* (‘between those absent’) *clausula rebus sic stantibus* (‘things being as they stand’) unilateral mistake and *ultra vires* ‘usurpation of jurisdiction’<sup>19</sup> proceedings for the privy third-party *devastavit* of the *mort d’ancestor* escheated estate matters and conversion of the aggrieved’s ‘estate of matrimony’<sup>20</sup> after the death of his terminally ill wife<sup>21</sup> (2015), in breach of the first in time, first in right, binding estoppel by *res judicata* claim preclusion judgement in *Rushton v Rushton* [2014] FCC (P)BRC10298), causing extreme undue financial loss and hardship, harm, detriment, trauma, nuisance, homelessness, “unlawful interference with the protected person of the aggrieved’s privacy, family, home, correspondence, unlawful attacks on his honour and reputation”<sup>22</sup> and ‘other circumstances that affect his ability to conserve his own interests’<sup>23</sup> such as being ‘unrepresented is a relevant matter to be taken into account’<sup>24</sup> with the outrageous outcome that is clearly not ‘just or equitable’, involving ‘conspiracy to

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with the *National measures to repress violations of international humanitarian law* (Civil law systems), Geneva, 23-25 September 1997, ISBN 2-88145-114-4; *Polyukhovich v The Commonwealth of Australia and Another* [1991] HCA 32; 172 CLR 501; TOOHEY J. at [39-41].

<sup>16</sup> *R v Gunner* [2018] ACTSC 71 at [35]; *Ivan Josip Lukatela v John Arthur Birch* [2008] ACTSC 99 at [2-6], i.e. *Magna Carta*, (1297) 25 Edw 1 c 29, “**No freeman shall be taken or imprisoned...**” and *Human Rights Act* 2004 (ACT); ICCPR art. 7, 9, 17-18, where art. 17(1) of the ICCPR provides “**No one shall be subject to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation**” (IHL rule 99, 105) or art. 7 “**torture**” (IHL rule 90, 92, 93 and 152).

<sup>17</sup> (Australian Treaty Series 1910 No. 8) *International Convention concerning the Laws and Customs of War on Land* (The Hague Convention (IV)), Art. 45, 55-56; *DPP v Kaba* [2014] VSC 52; 44 VR 526 at [350-351]; *The King [R] v Casement* [1917] KB 98, at p. 137 (i.e. “allegiance”); *NSW v K* [2021] NSWSC 915 at [12].

<sup>18</sup> *Rushton v Rushton* [2014] FCC (P)BRC10298 at [1]. The court orders that: “1. **All extant applications are dismissed for want of jurisdiction.**” Dated 6th May 2015 by Judge Hughes in Canberra.

<sup>19</sup> *Federal Commissioner of Taxation v Futuris Corporation Limited* [2008] HCA 32 at [5]. Cp. *The Case of the Marshalsea* (1612) 10 Co Rep 68 b, at pp 76 a, 76 b; 77 ER 1027 at pp 1038-1041 (at 389); *Hrycenko v Hrycenko* [2022] FCAFC 152 at [126], “without jurisdiction has no legal force”; The doctrine of *ultra vires* is expressed in *South Australia v Commonwealth* (1942) 65 CLR 373, 408 (Chief Justice Latham, HCA 1942, First Uniform Tax Case); *Thorington v. Smith* (1868) 75 U.S. 1, p.75, i.e. “**government of paramount force**”.

<sup>20</sup> *Attorney-General (Vict.) v The Commonwealth* (1962) 107 CLR 529, p.577 at [4], p.578 at [5].

<sup>21</sup> Superior Federal Circuit Court of Australia (FCC) first in time, first in right, binding estoppel by *res judicata* claim preclusion and merger in judgement in *Rushton v Rushton* [2014] FCC (P)BRC10298 at [1]; In *Romani v State of New South Wales* [2023] NSWSC 49, Justice Wright agreed at [38-42], [46-50] and [78].

<sup>22</sup> *R v Gunner* [2018] ACTSC 71 at [35]; *Ivan Josip Lukatela v John Arthur Birch* [2008] ACTSC 99 at [2-6], i.e. *Magna Carta*, (1297) 25 Edw 1 c 29, “**No freeman shall be taken or imprisoned...**” and *Human Rights Act* 2004 (ACT); ICCPR art. 7, 9, 17-18, where art. 17(1) of the ICCPR provides “**No one shall be subject to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation**” (IHL rule 99, 105) or art. 7 “**torture**” (IHL rule 90, 92, 93 and 152).

<sup>23</sup> Extant inferior court privy “high-profile, law reform” case *Kaney v Rushton* (abstention) [2017] ACTSC 11.

<sup>24</sup> *Chen v Secretary, Department of Social Services* (No 2) [2020] FCA 384 at [36].

defeat justice', 'attempting to pervert justice'<sup>25</sup>, 'legal rights'<sup>26</sup> and freedoms, "abuse of process in which the use of a court's procedures would be unjustifiably oppressive to a party or would bring the administration of justice into disrepute"<sup>27</sup>;

- E. Tortious conduct of battery, malicious wrongful arrest, without warrant<sup>28</sup>, causing breach of the peace and false imprisonment<sup>29</sup> and acting with 'conscious wrong doing in contemptuous disregard of the aggrieved's fundamental rights'<sup>30</sup> and freedoms;
- F. Tortious conduct of malicious prosecution<sup>31</sup> and abuse of process against the protected person and family of the aggrieved, without warrant, fine or conviction on insufficient materials that breached the "cause of action estoppel" with extant proceedings, where *nolle prosequi* is entered for the groundless cause of action in the extant application initiating statement of 'claim or raising such an issue can constitute an abuse of process' that was not made on oath, and caused a subsequent charge arising by the officers of the Respondent that were "neither a party to that earlier (first in time, first in right, binding estoppel by *res judicata* claim preclusion judgement in *Rushton v Rushton* [2014] FCC (P)BRC10298) proceeding, nor the privy of a party to that earlier proceeding"<sup>32</sup>;
- G. Tortious conduct of wrongful imprisonment<sup>33</sup>, detention, false imprisonment<sup>34</sup>, 'akin to the wrongs of assault and battery, and consists in imposing, by armed force or threats, an

<sup>25</sup> *Crimes Act* 1914 (Cth), s. 13 Institution of proceedings, s. 35 Giving false testimony, s. 36 Fabricating evidence, s. 42(1)(a-b) Conspiracy to defeat justice, and s. 43(1)(a-b) Attempting to pervert justice.

<sup>26</sup> *Federal Court of Australia Act* 1976 (Cth), s. 21; *Bass v Permanent Trustee Co Ltd* [1999] HCA 9; 198 CLR 334; 73 ALJR 522; 161 ALR 399 at [89] i.e. "**declaration of legal right**".

<sup>27</sup> In *Tomlinson v Ramsey Food Processing Pty Ltd* [2015] HCA 28; (2015) 256 CLR 507 at [20] i.e. "*res judicata*", [21]-[22], [24], [25], [26] i.e. "**estoppel and abuse of process.**"; In *Idoport v NAB* [2006] NSWCA 202 at [113-114], i.e. "**The Court's inherent jurisdiction to prevent an abuse of its processes attaches to extant proceedings.**" In *Anlaby v Praetorius* (1888) 20 Q.B.D.764, at 768-9 Fry L.J. stated on the issue of void proceedings that: "**A plaintiff has no right to obtain any judgment at all**".

<sup>28</sup> *DPP v Hamilton*, [2011] VSC 598 at [24] and *DPP v Kaba* at [61-62], cited Lord Parker, C.J. of Eng. in *Rice v Connely*, [1966] 2 Q.B. 414; *Kuru v State of NSW* [2008] HCA 26, at [38-40], [43-44], [47], [52-53].

<sup>29</sup> *Feather v. Rogers* (1909) 9 SR (NSW) 192, at p. 196; *George v. Rockett* [1990] HCA 26 at [9-10]; (1990) 170 CLR 104; *Plenty v. Dillon* [1991] HCA 5; *Cruden v. Neale*, 2 N.C. 338 2 S.E. 70; *Romani v State of New South Wales* [2023] NSWSC 49 at [36, 73-74 and 76-77]; *State of New South Wales v Williamson* [2011] NSWCA 183 at [57-58] i.e. "**trespass to the person**"; "injury of false imprisonment"; "**False imprisonment is plainly one category of trespass to the person.**"; "damages can be awarded in an action for trespass as vindication of the fact that a right of the plaintiff has been infringed."; IHL rule 99; In *McDonald v Coles Myer Ltd (t/as K-Mart Chatswood)* (1995) Aust Torts Reports 81-361 at [62,690] in the NSW Court of Appeal, Powell JA said: "**Further, as the tort of false imprisonment is derived from trespass.**"

<sup>30</sup> *Morro, N & Ahadzid v Australian Capital Territory* [2009] ACTSC 118 at [50-52], [55].

<sup>31</sup> *Commonwealth Life Assurance Society Ltd v Smith* (1938) HCA 2 at [535], [550]; *Beckett v New South Wales* [2013] HCA 17 at [34-35], i.e. "**effect of nolle prosequi**"; "**not a sufficient ending of the prosecution**"; "**accused has not been convicted**"; In *Mullett v Nixon* [2016] VSC 512 at [17], 'The tort of MP consists...'; In *A v State of New South Wales* [2007] HCA 10 at [53], [91], [95], '**tort of malicious prosecution**'; '**person abuses his privilege**'; '**tort of malicious procurement of a search warrant**'.

<sup>32</sup> In *Tomlinson v Ramsey Food Processing Pty Ltd* [2015] HCA 28; (2015) 256 CLR 507 at [20] i.e. "*res judicata*", [21]-[22], [24], [25], [26] i.e. "**estoppel and abuse of process.**"; In *Idoport v NAB* [2006] NSWCA 202 at [113-114], i.e. "**The Court's inherent jurisdiction to prevent an abuse of its processes attaches to extant proceedings.**" In *Anlaby v Praetorius* (1888) 20 Q.B.D.764, at 768-9 Fry L.J. stated on the issue of void proceedings that: "**A plaintiff has no right to obtain any judgment at all**".

<sup>33</sup> In *Lewis v Australian Capital Territory* [2020] HCA 26; 94 ALJR 740 at [24-25], and [43-45, 82-84], and [110-111]. See *The 8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty* (2023) – published by the International Commission of Jurists (ICJ), Geneva, p. 19, *Principle 13 'Custodial sentences may only be imposed as a measure of last resort.'* [45.] "... **the tort of false imprisonment, a form of trespass to the person.**" [83.] "The interference with the plaintiff's proprietary right is valued as if the plaintiff waived the tort and charged for use of their property. The object of the award is not merely to compensate the plaintiff but to deny the defendant the value of the property which the defendant had improperly used or retained."; *Ivan Josip Lukatela v John Arthur Birch* [2008] ACTSC 99 at [3-6], *Magna Carta*, c. 29 and *Human Rights Act* 2004 (ACT).

<sup>34</sup> *Feather v. Rogers* (1909) 9 SR (NSW) 192, at p. 196; *George v. Rockett* [1990] HCA 26 at [9-10]; (1990) 170 CLR 104; *Plenty v. Dillon* [1991] HCA 5; *Cruden v. Neale*, 2 N.C. 338 2 S.E. 70; *Romani v State of New*

unlawful restrain upon a man's freedom of locomotion', 'total restraint of movement by detention preventing him from exercising his freedom of motion and locomotion against his will and without lawful justification'<sup>35</sup>, without warrant<sup>36</sup>, fine or conviction, enslavement and recklessly endangering the gazetted (former) non-corporate Commonwealth officer at his peril with 'bad faith negligent lack of the duty of care'<sup>37</sup> for the unconvicted aggrieved whom was not 'segregated from convicted persons or subject to separate treatment appropriate to their status as unconvicted' in accordance with and breach of ICCPR article 10.1- 2(a).

H. Tortious conduct of interference with the enjoyment by another of a positive legal right<sup>38</sup>.

### Order 1

2. The Applicant relies not only on the first-hand witness admissible facts identified at [8]-[9] in his sealed Affidavit (affirmed on 15 April 2023) as the Respondent infers but also on the facts, such as at [12], [15], [17] and [19] as grounds for the grant of (**Order 1**) interlocutory *quia timet* ('because he fears or apprehends') injunctive relief<sup>39</sup> to issue in lieu of any damages and/or injury, *nunc pro tunc* ('now for then'), *praeterea preterea* ('hereafter') and *ab initio* ('from the beginning'), *nemo me impune lacessit* ('no one harasses me with impunity') and *qui facit per alium facit per se* ('he who acts through another does the act himself'), *ex debito justitiae* ('by reason of an obligation of justice, as a matter of right'), by operation of law, without further ado.

### Order 2

3. The Applicant relies on the first-hand witness admissible facts identified in his sealed Affidavit (affirmed on 15 April 2023), such as at [10], [12], [14]-[15], [16], [19], [21]-[22], [25]-[26], [28] as grounds for the grant of a (**Order 2**) interlocutory *quia timet* ('because he fears or apprehends') injunctive relief to issue in lieu of any damages and/or injury, *nunc pro tunc* ('now for then'), *praeterea preterea* ('hereafter') and *ab initio* ('from the beginning'), for the "cause of action estoppel" **enforcement** mechanism, notwithstanding that the violation has been committed by persons acting in an official capacity' in accordance with ICCPR article 2.3(a-c), *nemo me impune lacessit* ('no one harasses me with impunity') and *qui facit per alium facit per se* ('he who acts through another does the act himself'), *ex debito justitiae* ('by reason of an obligation of justice, as a matter of right'), by operation of law, without further ado.

Date: 14 August 2023.

Ben Anthony: Rushton.

Pastoral Carer, Aggrieved Widower: Applicant.

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*South Wales* [2023] NSWSC 49 at [36, 73-74 and 76-77]; *State of New South Wales v Williamson* [2011] NSWCA 183 at [57-58] i.e. "**trespass to the person**"; "injury of false imprisonment"; "**False imprisonment is plainly one category of trespass to the person**"; "damages can be awarded in an action for trespass as vindication of the fact that a right of the plaintiff has been infringed."; IHL rule 99; In *McDonald v Coles Myer Ltd* (t/as K-Mart Chatswood (1995) Aust Torts Reports 81-361 at [62,690] in the NSW Court of Appeal, Powell JA said: "**Further, as the tort of false imprisonment is derived from trespass.**"

<sup>35</sup> *Nye v State of NSW* [2003] NSWSC 1212 at [28], [297]; (2004) ATR. 81-725, i.e. "**wrongful arrest, false imprisonment and malicious prosecution**"; "**force, handcuffing**"; "**right to liberty is priceless.**"

<sup>36</sup> *DPP v Hamilton*, [2011] VSC 598 at [24]; *DPP v Kaba* at [61-62], cited Lord Parker, CJ Eng. in *Rice v Connely*, [1966] 2 Q.B. 414; *Kuru v State of NSW* [2008] HCA 26, at [38-40], [43-44], [47], [52-53].

<sup>37</sup> *Public Governance, Performance and Accountability Act* 2013 (Cth), s 25, 26; *Donoghue v Stevenson* [1932] UKHL 100; AC 562 (Lord Atkin's **neighbour principle**; **duty of care and nuisance**).

<sup>38</sup> In *Northern Territory of Australia v Mengel* (1995) HCA 65; 185 CLR 307, p.343 at [47-49] i.e. "**economic torts**"; "**tort of intentional interference with the enjoyment by another of a positive legal right**"; "**tort of interference with trade or business interests by an unlawful act**"; *Bass v Permanent Trustee Co Ltd* [1999] HCA 9; 198 CLR 334; 73 ALJR 522; 161 ALR 399 at [89] i.e. "**declaration of legal right**".

<sup>39</sup> In *Vieright Pty Ltd v Myer Stores Ltd* [1995] FCA 173 at [iv]; i.e. 'Isaacs J. remarked in *Meyers v Casey* (1913) 17 CLR 90 (at 123), **it is trite law that insistence on the right to do that which is properly objected to is ground for the injunction.**'; *Vertical Leisure Limited & Anor v Skyrunner Pty Ltd & Anor* [2014] FCCA 2033 at [12-13], [35-36]: i.e. (*Trade Marks Act*) "The relief the Court may grant includes **injunctive relief** (s.126(1)(a))..."