

IN THE SUPREME COURT OF VICTORIA
FULL COURT – CRIMINAL JURISDICTION

IN THE MATTER of the *Crimes Act 1958*

And

IN THE MATTER of an Application by

Brian William Shaw

APPLICATION


TAKE NOTICE that the Full Court of the Supreme Court will be moved on the day of 2004 at a.m. by the applicant for the following Orders pursuant to section 354 of the *Crimes Act 1958*, the applicant having disclosed indictable offences committed by:

A. Mr. Paul Coghlan

1. The Sheriff is ordered to summons a Grand Jury to appear at a Court to be holden at a time and place determined by the Court in accordance with the provision of section 354 of the *Crimes Act 1958 (VIC)* to attend at such Court at that time and place to inquire present do and execute all things which on the part of the Queen shall then and there be commanded of them.
2. Such further or other orders that may be just and necessary.

DATED the 28 day of May 2004.

This application is filed by Brian W. Shaw.



IN THE SUPREME COURT OF VICTORIA No of 2004
FULL COURT – CRIMINAL JURISDICTION

IN THE MATTER of the *Crimes Act* 1958
And

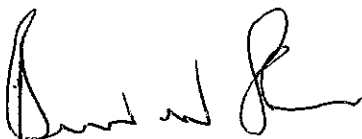
IN THE MATTER of an Application by
Brian William Shaw

AFFIDAVIT NUMBER 2 OF B. W. SHAW

Date of Document: May 27, 2004
Filed on behalf of: The Applicant
Prepared by: Brian William Shaw

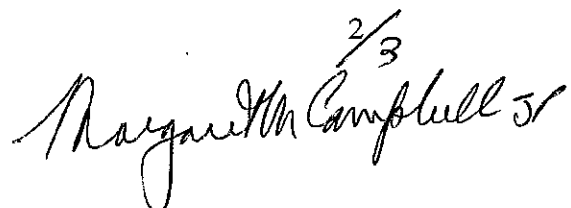
I, Brian William Shaw of 280 Leakes Road, Truganina in the State of Victoria state and affirm the following: -

1. I state that I have laid two charges against the Director of Public Prosecutions Victoria Mr. Paul Coghlan
 - a. Treachery (Commonwealth)
 - b. Attempt to Pervert the Course of Justice
2. The charges were heard in the Melbourne Magistrates Court on 8th April 2004 by Magistrate Fitzgerald
3. The charges were part heard and adjourned until 17th May 2004 Melbourne Magistrates Court.
4. On 17th May 2004 in the Melbourne Magistrates Court, Melbourne the two charges against Mr. Paul Coghlan Director of Public Prosecutions Victoria were taken over by the Victorian Office of Public Prosecutions and Dismissed (Magistrate Popovic Presided)
5. By using his own Office the legal reality of this legal fiasco is that the Director of Public Prosecutions Victoria Mr. Paul Coghlan heard and



determined his own Indictment, declared himself not guilty, permitted no evidence, the Court had to submit to the pre arranged decision.

6. In accordance with existing Statute Law in the State of Victoria, once a Court has refused or declined to hold an offender to bail, an application can be made to the Full Court of the Supreme Court of the State of Victoria for the formation of a Grand Jury, consisting of Twenty Three Men to hear and determine both the charge and evidence and make a prosecution decision based on the presented facts.
7. The charge of Attempting to Pervert the Course of Justice in this matter is the use of this particular Judicial Office to protect Indictable Offences occurring in Victoria involving Freemasons, taking and administering Unlawful Oaths in the State of Victoria contrary to Section 316 Crimes Act 1958 Victoria.
8. The organization of Freemasonry demands that their members take specific Oaths, such Oaths have no Authority by any specific Act of Parliament of the State of Victoria, and as such are unlawful and indictable.
9. All Masonic Oaths are binding on all members of Freemasonry. All Oaths are taken in a Ritual manner and include and involve a Murder Suicide Pact, which equates to a Threat to Kill.
10. On various occasions I have exhibited a video enactment of various Masonic Oaths, such video has never been shown in open Court to date.
11. I have submitted Affidavits from former Freemasons, I have also included the content and working of various Masonic Oaths, affirmed by Affidavit of former Freemasons.
12. The particular situation that lead to these charges being laid against Mr. Paul Coghlan occurred on 8th October 2002 at the Melbourne Magistrates Court.
13. On 8th October 2002 Mr. Paul Coghlan, Director of Public Prosecutions intervened in Private Prosecution Charges laid by



myself, against Mr. Charles Wheeler, a current Master of the Supreme Court of Victoria.

Mr. Wheeler is a member of Freemasonry and as such has both taken and administered Unlawful Oaths in the State of Victoria, contrary to Statue Law (Section 316, Crimes Act 1958 Victoria).

14. The Director and Office of Public Prosecutions should have taken over the indictment and prosecuted on my behalf, until such time that the matter had all the evidence tendered to the Court, via, the Witness Box.
15. To date all relevant evidence has been suppressed. In an attempt to Pervert the Course of Justice.
16. The charge of Treachery was laid because of the Intent of Section 51.3 of the Public Prosecutions Act 1994 Victoria.
17. Exhibits are

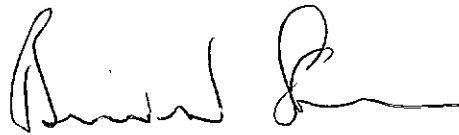
DPP 1 Grand Jury Application for Master Wheeler

DPP 2 Charge & Summons

DPP 3 Originating Affidavit

DPP 4 Magistrates Decision May 17th 2004

Affirmed by Brian William Shaw



At... WARRIBEEin the State of Victoria

This ^{MC} 28th Day of May 2004

Before me:.....



A JUSTICE OF THE PEACE FOR VICTORIA
REG. No. 0024
MARGARET MAY CAMPBELL
7 MUIRHEAD CRES.
WERRIBEE 3030

IN THE SUPREME COURT OF VICTORIA No of 2004
FULL COURT – CRIMINAL JURISDICTION

IN THE MATTER of the *Crimes Act* 1958
And

IN THE MATTER of an Application by
Brian William Shaw

EXHIBIT

mc
Date of Document: May 2~~7~~⁸, 2004
Filed on behalf of: The Applicant
Prepared by: Brian William Shaw

This is the exhibit referred to and marked **DPP 1** in the affidavit of Brian William Shaw
Affirmed on the *mc* 2⁸th day of May at Werribee in the State of Victoria.

Before me: *Margaret M Campbell JP*

Grand Jury Application for Master Wheeler

A JUSTICE OF THE PEACE FOR VICTORIA
REG. No. 5924
MARGARET MAY CAMPBELL
7 MUIRHEAD CRES.
WERRIBEE 3030

IN THE SUPREME COURT OF VICTORIA
FULL COURT; CRIMINAL JURISDICTION

No: of 2004

IN THE MATTER of the Crimes Act 1958

And

IN THE MATTER of an Application by

Brian William Shaw

APPLICATION

TAKE NOTICE that the Full Court of the Supreme Court will be moved on the Day of 2004 at am by the Applicant for the following Orders pursuant to Section 354 of the Crimes Act 1958, the Applicant have disclosed

Indictable offence/offences against:

Mr. Charles Wheeler

Master of the Supreme Court of Victoria

And that a Court has declined or refused to commit the alleged offender, namely: Mr. Charles Wheeler

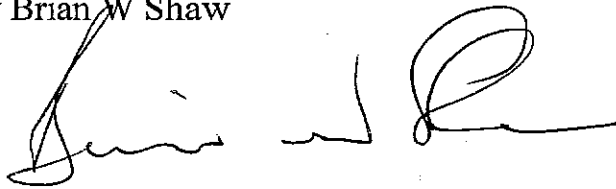
1. The Sheriff is ordered to summons a Grand Jury to appear at a Court to be holden at a time and place determined by the Court in

accordance with the provision of Section 354 of the Crimes Act 1958 (Vic) to attend at such Court at that time and place to inquire present do and execute all things which on the part of the Queen shall then and there be commanded of them.

2. Such further or other orders that may be just and necessary.

DATED The 19th day of March, 2004

This Application is filed by Brian W Shaw

A handwritten signature in black ink, appearing to read 'Brian W Shaw', written in a cursive style.

AFFIDAVIT

I, Brian, William Shaw of 280 Leakes Road, Truganina, 3030 in the State of Victoria do state and affirm the following:

1. THAT, the Application to this Honourable Court is lodged on the legal basis that the Oaths of Freemasonry are unlawful oaths contrary *inter alia* to section 316 of the *Crimes Act* 1958, Victoria, and as such constitute an indictable offence.

2. Masonic Oaths, Blue Lodge

FREEMASONRY takes two directions. The first three degrees are termed the Blue Lodge; inclusive of the Entered Apprentice oath degree, the Fellow craft oath and degree, the Master Masons oath and degree, after which it branches into two specific arms termed the York Rite and Scottish Rite inclusive of Shiners, 32nd degree, Knights of Malta and Knights Templars.

a. MASONIC OATH – ENTERED APPRENTICE

In the presence of the great architect of the universe, and of this worthy, worshipful and warranted lodge of free and accepted masons, regularly assembled properly dedicated of my own free will and accord do hereby (v m touches candidates right hand with his left hand and hereon (v m touches The Bible with his left hand) sincerely and solemnly promise and swear that I will always hele, conceal and never reveal.



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Justice of the Peace
WA 9146

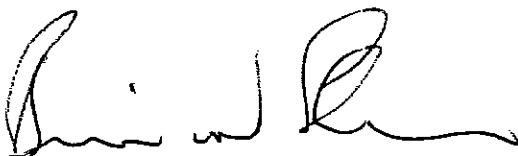
These secret points I solemnly swear to observe, without evasion, equivocation, or mental reservation of any kind, under no less a penalty, on the violation of any of them, than that of having my throat cut across, my tongue torn out by the root, and buried in the sand of the sea at low water mark, or a cable's length from the shore, where the tide regularly ebbs and flows twice in twenty four hours or...

What you have repeated may be considered but a serious promise; as a pledge of your fidelity and to render it a solemn obligation, you will seal it with your lips on the volume of the sacred law. (The Bible)

b. MASONIC OATH - FELLOWCRAFT

In the presence of the grand geometrician of the universe, and of this worthy and worshipful lodge of fellow craft Freemasons, regularly held, assembled, and properly dedicated, of my own free will and accord do hereby (the worshipful master touches candidate's right hand with his left). And hereon (Worshipful Master touches The Bible with his left hand) solemnly promise and swear that I will always hele, conceal and never improperly reveal, any or either of the secrets or mysteries of or belonging to the second degree in Freemasonry.....

These several points I solemnly swear to observe, without evasion, equivocation, or mental reservation of any kind, under no less a penalty, on the violation of any of them, than that of



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having my left breast laid open, my heart torn there from, and given to the ravenous birds of the air, or devouring beasts of the field as a prey, so help me almighty god, and keep me steadfast in this my solemn obligation of a Fellow Craft Freemason.

Worshipful Master.....As a pledge of your fidelity, and to render this a solemn obligation which might otherwise be considered a serious promise, you will seal it with your lips twice on the volume of the sacred law (The Bible)

c. MASONIC OATH – MASTER MASON

I....in the presence of the most high, and of this worthy and worshipful lodge of master masons, duly constituted, regularly assembled, and properly dedicated, of my own free will and accord, do hereby (Worshipful Master touches candidate's hands with his left hand) and hereon (Worshipful Master touches The Bible with his left hand) most solemnly promise and swear that I will always hele, conceal, and never reveal any or either of the secrets or mysteries of or belonging to the degree of a Master Mason to anyone in the world... ..

All these points I solemnly swear to observe, without evasion, equivocation, or mental reservation of any kind, under no less a penalty, on the violation of any of them, than that of being severed in two, my bowels burned to ashes, and those ashes scattered over the face of the earth and wafted by the four




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cardinal winds of heaven, that no trace or remembrance of so vile a wretch may no longer be found among men, particularly master masons so help me the most high, and keep me steadfast in this my solemn obligation of a master mason.

Worshipful Master.....as a pledge of your fidelity and to render this binding as a solemn obligation for so long as you shall live, you will seal it with your lips thrice on the volume of the sacred law (The Bible)

3. On 28 February 2002 indictable information was given to Detective Senior Sergeant M. Gilenane 17952, Criminal Investigation unit, Ballarat Police Department, Victoria concerning Master Wheeler, Master of the Supreme Court of Victoria. Master Wheeler is a high ranked Freemason who has taken a judicial oath and as such is bound by law to obey and administer the laws of the State of Victoria, whereas in the capacity of a Freemason, Master Wheeler has breached section 51 and 151 of the *Evidence Act* 1958 and the following sections of the *Crimes Act* 1958 in the State of Victoria:

3A., 6B.(2)(a), 6B.(4), 181, 182, 184, 314, 315, 316, 321, 321A.(2), 321B., 321M., 321O., 325, 325(6), 326(1), 363 and section 371.

4. THAT, it is noted and stated that it is legally impossible to take a judicial oath to administer and uphold law within the State of Victoria and to take and administer Masonic oaths swearing allegiance to Freemasonry above all other allegiances. This is in total breach of the



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law stated herein but not limited to this Affidavit. All breaches are indictable pursuant to State law. Masonic Oaths contradict Truth

a. *I swear to tell the truth the whole truth*

b. *I will always **hele, conceal, and never reveal***

5. Freemasonry and their unlawful Masonic oaths open up a chain of indictable offences contrary to the *Crimes Act* 1958, Act No 6231/1958, in particular in breach of Sections 316, 314, 315, 321, 321A.(2), 321B., 321M., 321O., 323, 325, 3A., 6B.(2)(a), 6B(4), 371, 181, 182, 184, 325(6), 326(1) and section 363. Pursuant to the *Crimes Act* 1958 all breaches of such Act are indictable.

6. Crimes Act 1958, Section 422.

Procedure where facts proved on trial disclose more serious offence

(1) Where on the trial of a person for an indictable offence it appears that the facts in evidence amount in law to another indictable offence carrying a heavier penalty, he shall not for that reason be entitled to be acquitted of the offence charged and subject to sub-section (3), shall not be liable to be prosecuted afterwards for the other offence.

(2) Where on trial of a person on indictment or presentment for attempting to commit an offence or assault or other act preliminary to an offence it appears that the facts in evidence amount in law to the complete offence, the person shall not for that




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WA 6103

reason be entitled to be acquitted of the offence charged and subject to sub-section (3), shall not be liable to be prosecuted afterwards for the completed offence.

- (3) Notwithstanding sub-section (1) and (2), in a case to which either of those sub-section applies the trial judge may if he thinks fit in his discretion discharge the jury from giving any verdict and direct the person to be presented for the other indictable offence or the completed offence, as the case may be.

7. Treason constitutes a breach contrary to the *Crimes Act 1958* and can briefly be defined as a '*breach of allegiance*'.
8. The legal action is taken by right of access to the courts revealing indictable offences against the *Crimes Act 1958*, Victoria, Section 316 and other named sections. The *Crimes Act 1958*, Victoria, is current Statute Law in the State of Victoria by virtue of the *Constitution Act 1855* purportedly overridden by the *Victorian Constitution Act 1975*. Such *Victorian Constitution* is bound to the *Commonwealth Constitution* by section 106 of the *Commonwealth Constitution*. The *Commonwealth Constitution* itself is bound to the Crown in England, in particular covering clause 5, *Commonwealth Constitution* and the *Judiciary Act 1903* (CTH).



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9. CRIMES ACT VICTORIA 1958: SECTION 316 (2)(a) (vii)

“Not to reveal or discover any UNLAWFUL ASSOCIATION, SOCIETY OR CONFEDERACY or ANY ILLEGAL ACT done or to be done or ANY ILLEGAL OATH or ENGAGEMENT that may have been administered or tendered to or taken by himself or any other person or the import of any SUCH OATH or ENGAGEMENT.

10. THAT, the charges laid against Mr Charles Wheeler are laid out in detail in the charge sheet in various sections, but, essentially they form three specific charges:

- (i) The taking and administering of unlawful oaths
- (ii) Attempting to pervert the course of justice.
- (iii) Conspiracy to pervert the course of justice

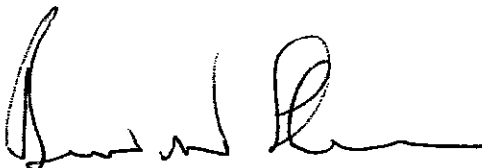
11. THAT, Section 151 of the Evidence Act 1958 State of Victoria, states:

“The taking of any extra-judicial oath that does not have jurisdiction or cognisance by or under some “Act” or “ordinance in force” shall be unlawful. Every Masonic member who has taken a judicial oath within the State of Victoria is in breach of this Section of the Evidence Act 1958, Victoria.

12. EVIDENCE ACT 1958 SECTION 51:

Abolition of extra-judicial oaths:

“It shall not be lawful for any person to administer or cause or allow to be received any oath or affidavit touching any matter or thing



 **RODNEY STYLE**
Justice of the Peace
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whereof such person hath not jurisdiction or cognisance by or under some "ACT" or "ordinance in force." (Portion of Section)

"It shall not be lawful"

13. CRIMES ACT 1914 SECTION 34(1)(b)

"Being a Judge or Magistrate, willfully and perversely exercises Federal jurisdiction in any matter in which he has personal interest,"

Shall be guilty of an offence. Penalty: Imprisonment for 2 years.

14. CRIMES ACT 1914 SECTION 44

"Any person who asks, receives or obtains or agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person, upon any agreement or understanding that he will compound or conceal any indictable offence against the law of the Commonwealth or Territory, or will abstain from discontinue or delay any prosecution for any offence, or will withhold any evidence thereof,"

Shall be guilty of an offence Penalty: Imprisonment for 3 years.

15. CRIMES ACT 1914 SECTION 43.

"Any person who attempts, in any way not specifically defined in this Act, to obstruct, prevent, pervert, or defeat the course of justice in relation to the judicial power of the Commonwealth,"

Shall be guilty of an offence. Penalty: Imprisonment for 5 years.



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Justice of the Peace

16. CRIMES ACT 1914 SECTION 42

“Any person who conspires with another to obstruct, prevent, pervert, or defeat, the course of justice in relation to the judicial power of the Commonwealth,”

Shall be guilty of an indictable offence.

Penalty: Imprisonment for 5 years.

17. CRIMES ACT 1958, VICTORIA SECTION 322E

“Nothing in this Part shall be taken to affect directly or indirectly any matter of Law of practice applicable to treason or misprison of treason.”

18. CRIMES ACT 1958 VICTORIA SECTION 321M

“A person who attempts to commit an indictable offence is guilty of the indictable offence of attempting to commit that offence.”

19. CRIMES ACT 1958 VICTORIA SECTION 325

(1) *“Where a person (in this Section called, “the principal offender”) has committed a serious indictable offence, (in this Section called, “the principal offence”) any other person who, knowing or believing the principal offender to be guilty of the principal offence or some other serious indictable offence without lawful authority, or reasonable excuse does any act with the purpose of impeding the apprehension, prosecution, conviction or punishment*



 **RODNEY STYLE**
Justice of the Peace
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of the principal offender shall be guilty of an indictable offence.”

20. CRIMES ACT 1958, VICTORIA SECTION 326

(1) *“Where a person has committed a serious indictable offence, any other person who, knowing or believing that the offence, or some other serious indictable offence has been committed and that he has information which might be of material assistance in securing the prosecution or conviction of an offender for it, accepts any benefit for not disclosing that information, shall be guilty of a summary offence and liable to level 8 imprisonment.*

Penalty: 1 year maximum)


(3) *“For the purpose of this section a person shall be deemed to accept a benefit if he accepts or agrees to accept any benefit or advantage, or the promise of any benefit or advantage, either to himself or to another, whether or not the benefit or advantage is in money or money’s worth.*

(4) *“A person convicted of an offence against sub-section (1) shall be liable:*

(a) If the principle offence is one for which the penalty is Level 1 imprisonment (life) to Level 3 imprisonment (20 years maximum)

21. CRIMES ACT 1958, VICTORIA SECTION 323

“A person who aids, abets, counsels or procures the commission of an indictable offence may be tried, indicted or present and punished as a principal offender.




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Justice of the Peace
V.A. 5143

22. COMMONWEALTH CONSTITUTION ACT - SECT 5

This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State; and the laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth

23. COMMONWEALTH CONSTITUTION ACT - SECT 44

Any person who:

- (i) is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power; or
- (ii) is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer; or

shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

24. Scottish Rite 33rd Degree Oath and Ritual (Portion)

"When it was time for the final obligation we all stood and repeated the oath with the representative candidate, administered by the Sovereign Grand Inspector General. We then swore true allegiance to the Supreme Council of the 33rd Degree above all other allegiances and swore never to recognize any other brother as being a member of the Scottish Rite of Freemasonry unless he also recognizes the supreme authority of this Supreme Council."

(Extract from the book, "The Deadly Deception" Pg 104, co-authored by Jim Shaw and Tom McKenney describing portion of the ritual and



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200203

oath of allegiance required by members attaining the 33rd Degree of Freemasonry in the Scottish Rite of Freemasonry in the United States of America.)

25. BYRNE and ARMSTRONG VLR. Vol xxv, 126, 1899.

“An application for a Grand Jury under Sec 389 of the Crimes Act 1890 may be made *ex parte* and upon the applicant complying with the requirements of that Section the Full Court has no discretion but is bound to grant a rule directing the Sheriff to summon a Grand Jury.”
(So held, per, Madden CJ. William, Holroyd and a’Beckett, JJ. Hodges and Hood, JJ, dissenting.)

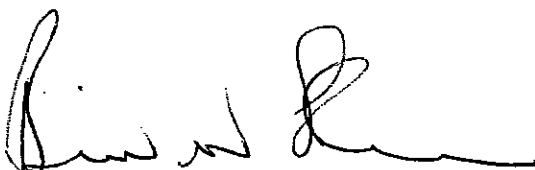
The words: “*The Full Court has no discretion but is bound to grant a rule*”, did bind the Full Court but in the year 2001, the Full Court did not consider itself bound, which is the reason why the Victorian Solicitor General was introduced into the matter with prior intent to overrule the Byrne/Armstrong judgment, a binding precedent judgment that had been relied upon for over 100 years of Victorian Law. It was overruled to protect Freemasonry from being placed in front of a Grand Jury. Such intent is still happening and evident with each Application and refusal to *file service and process*.

26. ATT-GENERAL VIC v THE C’WEALTH 146 CLR 629 1980

- a) “*Neither a State nor the Federal Government can openly or secretly, participate in the affairs of any religious organizations or groups and vice versa.*”
- b) “*It was intended not only to keep the States hands out of religion, but to keep religion’s hands off the State, and above all, to keep bitter religious controversy out of the public life by denying to every denomination any advantage from getting control of public policy or the public purse.*”

27. ATT-GENERAL VIC v THE C’WEALTH 146 CLR 633 1980

“*Section 80 (trial by jury) and Section 116 are among the very few Guarantees of Freedom in the Constitution.*”



RODNEY STYLE
Justice of the Peace
W.A.C.J.B

28. *THAT, the Masonic rank and order, known as "The Shriners" requires either Masonic membership in the Knights Templars or in the 32nd degree of the Scottish rite. To be a "Shriner" is and remains today, a Masonic oath to serve the Muslim cause, bound by a Masonic oath to Allah in Mecca in the Middle East*

OBLIGATION / OATH

"...In willful violation whereof may I incur the fearful penalty of having my eyeballs pierced to the center with a three-edged blade, my feet flayed and I be forced to walk the hot sands upon the sterile shores of the Red Sea until the flaming Sun shall strike me with a livid plague, **and may Allah, the god of Arab, Moslem and Mohammedan, the god of our fathers, support me to the entire fulfillment of the same.**" (from the oath of obligation, Ancient Arabic Order of Nobles of the Mystic Shrine ["Shriners"])

29. *THAT, the Application to this Honourable Court is lodged on the legal basis that the Oaths of Freemasonry are unlawful oaths contrary *inter alia* to section 316 of the Crimes Act 1958, Victoria, and as such constitute an indictable offence.*

30. *Campbell v McArdle 1986, unreported (Grand Jury Vic)*

*"I should add that we also had an application from Mr. Flanagan, who appears for the Attorney-General, which was in substance to offer the services of the Attorney-General to the Court as *amicus curiae*. For reasons similar to those, which apply to the application on behalf of the defendant, the Court does not feel disposed at present to invite the Attorney-generals counsel to*



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Justice of the Peace
VIC 3143

address us. We shall accordingly proceed with the matter ex-parte and consider the one matter which I earlier reserved, viz whether the affidavits disclose indictable offences.”

31. GRAND JURY: CRIMES ACT 1958: SECTION 354.

“An application for a Grand Jury may be made ex parte. It is sufficient if the affidavit in support of such an application discloses a state of facts which if true, amount to the committing of an indictable offence. Such facts need not necessarily be sworn to by the deponent as being within his own knowledge.”

(In re Davies & Millidge Supreme Court VLR. Vol xix)

32. Regina v Lord Chancellor, ex parte Witham QB (1998) at page 575

A. The order of 1996 is ultra-vires. The Lord Chancellor in that it is in breach of legislative intent that access to the courts is not to be denied save by clear words in a Statute.

B. Every civilised system of Government requires that the State should make available to all its citizens a means for the just and peaceful settlement of disputes between them as to their respective legal rights that means provided are Courts of Justice to which every citizen has a Constitutional right of access in the role of a Plaintiff to obtain the remedy



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to which he claims to be entitled in consequence of an alleged breach of his legal or equitable rights by some other citizen or defendant.

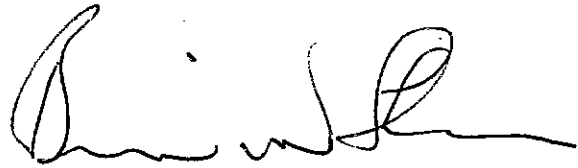
C. It is a principle of our law that every citizen has a right of unimpeded access to a court.

D. Lord Wilberforce said that rules, which did not comply with that principle, would be ultra-vires.

E. A citizen's right to unimpeded access could only be taken away by express enactment.

F. There can be no balancing of the interests of Justice against the cost to public funds.

Affirmed by Brian William Shaw



At...CLOVERDALE.....in the State of Western Australia

This 19th Day of March, 2004

Before me:.....



RODNEY STYLE
Justice of the Peace
WA 9146

IN THE SUPREME COURT OF VICTORIA No of 2004
FULL COURT – CRIMINAL JURISDICTION

IN THE MATTER of the *Crimes Act* 1958
And

IN THE MATTER of an Application by
Brian William Shaw

EXHIBIT

MC
Date of Document: May 28, 2004
Filed on behalf of: The Applicant
Prepared by: Brian William Shaw

This is the exhibit referred to and marked **DPP 2** in the affidavit of Brian William Shaw
Affirmed on the *MC* 28th day of May at Werribee in the State of Victoria.

Before me: *Margaret M Campbell J*

Charge & Summons

A JUSTICE OF THE PEACE FOR VICTORIA
REG. No. 9924
MARGARET MAY CAMPBELL
7 MUIRHEAD CRES.
WERRIBEE 3030

CHARGE AND SUMMONS

EXECUTION COPY

Defendant Copy - Bring this with you to Court

Magistrates' Court General Regulations 69/2000 Form 7

TO THE DEFENDANT		Unsuitable Dates	
MR PAUL COGHLAN 565 LONSDALE ST MELB		Preferred Dates	
		M <input checked="" type="checkbox"/>	F <input type="checkbox"/>
You have been charged with an offence against the law. Read these pages to see what you must do.		Registration No.	State
		Licence No.	State

Details of the charge against you

What is the charge?	1 TREASURY (8 October 2002.) (1)(A)(i)		
Under what law?	<input type="checkbox"/> State <input checked="" type="checkbox"/> Wealth <input checked="" type="checkbox"/> Act <input type="checkbox"/> Reg	<input type="checkbox"/> Other - Specify Act or Regulation No. CRIMES ACT 1914	Section/Clause (Full Ref.) S. 24 AA
Type of Offence	<input type="checkbox"/> Summary Offence (You should go to Court) <input checked="" type="checkbox"/> Indictable Offence (You <u>must</u> go to Court)		
Are there more charges?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes - see "Continuation of Charges" attached.		
Informant	BRIAN WILLIAM SHAW		Phone No: 93941116
Agency and Address	280 LEAKES ROAD TRUWANINA		
Informant Signature			Date 15.3.2004

Where will the case be heard

Where you must go	The <input checked="" type="checkbox"/> Magistrates' / <input type="checkbox"/> Childrens' Court of Victoria at MELBOURNE		
Address	233 WILLIAM ST, MELBOURNE	Phone No.	96247777
When	Time 10:00	Day 8th	Month APRIL Year 2004

Details about this summons

Issued at	MELBOURNE	Date	15/3/2004
Issued by:		<input checked="" type="checkbox"/> Registrar <input type="checkbox"/> Magistrate <input type="checkbox"/> Prescribed Person	
Charge Filed at	MELBOURNE	Date	15/3/2004

CONTINUATION OF CHARGES

Defendant Copy - Bring this with you to Court

Person Charged MR PAUL COOMAN	Page No 2
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2	ATTEMPT TO PERVERT THE COURSE OF JUSTICE (8 OCTOBER 2002.)
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<input checked="" type="checkbox"/> State <input checked="" type="checkbox"/> C>Wealth	<input type="checkbox"/> Act <input checked="" type="checkbox"/> Reg	<input type="checkbox"/> Other - Specify	Act or Regulation No. CRIMES ACT 1914	Section or Clause (Full Ref.) S. 43
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<input checked="" type="checkbox"/> Summary Offence (You should go to Court but you must go if you are on bail)	<input checked="" type="checkbox"/> Indictable Offence (You must go to Court)
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3	
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<input checked="" type="checkbox"/> State <input type="checkbox"/> C>Wealth	<input type="checkbox"/> Act <input checked="" type="checkbox"/> Reg	<input type="checkbox"/> Other - Specify	Act or Regulation No.	Section or Clause (Full Ref.)
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<input type="checkbox"/> Summary Offence (You should go to Court but you must go if you are on bail)	<input type="checkbox"/> Indictable Offence (You must go to Court)
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Are there more charges? No Yes - see Page No. 3

Informant **BRIAN WILLIAM SHAW**

Agency and Address **280 LEAKES ROAD TRUBONINA** Phone **9394 1116**

Informant Signature 	Registrar Signature 
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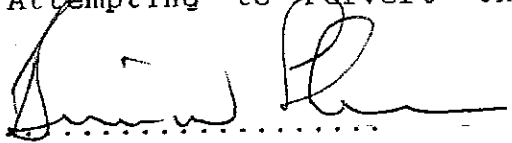
Charge filed at **MELBOURNE** Date **15/3/2004**

AFFIDAVIT of SERVICE.

I, Brian William Shaw, 280 Leakes Road Truganina, 3029 Victoria, do state and affirm the following,

1. That I served the defendant Mr Paul Coghlan, Director of Public Prosecutions Victoria, a copy of Charge and Summons, by handing the summons personally to Mr John Thomas at the Office of the Director of Public Prosecutions 565 Lonsdale Street, Melbourne, at 2.10pm, Monday 15th March 2004.
2. The Summons was served in accordance with Section 34 (1) (b) (ii) of the Magistrate's Court Act No 51/1989.
3. The Summons lists the matter for the Melbourne Magistrate's Court 8th April 2004.
4. There is two charges listed both are from the Crimes Act 1914, one is for Treachery Section 24 AA (1)(a)(i), the other is under Section 43, Attempting to Pervert the Course of Justice.

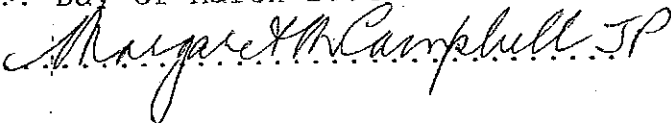
Affirmed by Brian William Shaw



At *Werribee* in the State of Victoria.

This .. *16th* .. Day of March 2004.

Before me



A JUSTICE OF THE PEACE FOR VICTORIA
REG. No. 9924
MARGARET MAY CAMPBELL,
7 MUIRHEAD CRES.
WERRIBEE 3030

CERTIFIED EXTRACT

The Magistrates' Court of Victoria at MELBOURNE

made the following entries

in the register on the 17th day of May 2004

Case Number	S00781263		
Charge Number	2		
Informant, Plaintiff, Complainant or Applicant	SHAW , BRIAN WILLIAM		
Defendant/Respondent	COGHLAN , PAUL	D.O.B:	
How before the Court	CHARGE AND SUMMONS	Fees:	
Nature of Charge or Civil Proceeding	Defendant at MELBOURNE on 8/10/2002 did commit a breach of Act CCRI.43 ATTEMPT TO PERVERT JUSTICE		

COURT ORDER

Struckout.
Reason(s):
WITHDRAWN

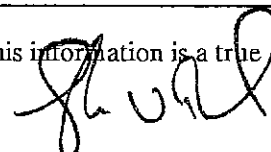
J POPOVIC
MAGISTRATE

PG 1

Remarks No Plea Taken
MR BURNS

I am a registrar of the Magistrates' Court of Victoria and I certify that in my opinion this information is a true extract from the register of the court at the abovementioned location.

Dated at MELBOURNE this 24th day of May 2004



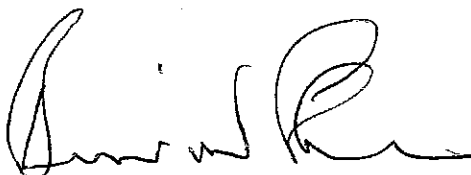
STEPHEN RECK
Deputy Registrar
Magistrates' Court of Victoria

233 William St. Melbourne
REGISTRAR OF THE MAGISTRATES' COURT

AFFIDAVIT

I, Brian, William Shaw of 280 Leakes Road, Truganina, 3030 in the State of Victoria do state and affirm the following:

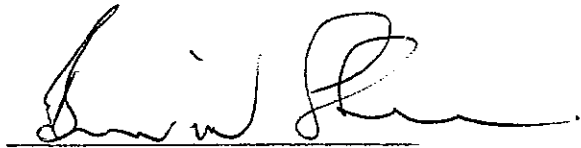
1. The taking and administering of unlawful oaths within the State of Victoria is unlawful and indictable. (Section 316 Crimes Act 1958)
2. All members belonging to the organisation and structure of Freemasonry take and administer unlawful oaths. Such oaths are not known to the general public, nor sanctioned by any specific Act of the Parliament of the State of Victoria.
3. On October 2, 2002 the Office of Public Prosecutions by letter written by T. Heffernan, Associate to the Director of Public Prosecutions declared that they would be intervening to discontinue the private charges laid by myself against Mr. Charles Wheeler, a Master of the Victorian Supreme Court.
4. On October 8th, 2002 legal staff of the Office of Public Prosecutions made application in the Melbourne Magistrate's Court to take over the charges laid against Mr. Wheeler and discontinue them.
5. Both applications were accepted by the Court.
6. I was given opportunity to address the Court concerning a cost application against myself for filing the charges.
7. I read out two specific sections of the Public Prosecutions Act, 1994, Victoria section 22 (1)(B)(ii) and section 51(3).
8. Section 51(3) of the Public Prosecutions Act, 1994 is in legal fact an act of both Treason and Treachery for the specific fact that it seeks to break the allegiance to the Monarch without public consent via referendum. Accordingly, I have laid the charge of Treachery against the Director of Public Prosecutions, Mr Paul Coghlan inclusive of



1/2

attempting to pervert the course of justice in deliberately blocking application process for private prosecution of the unlawful oaths indictability under section 354 of the Crimes Act, 1958, Victoria.

Affirmed by Brian William Shaw:



At: Werribee in the State of Victoria

This: sixteenth day of March 2004

Before me: Margaret M Campbell JP

A JUSTICE OF THE PEACE FOR VICTORIA
REG. No. 9924
MARGARET MAY CAMPBELL
7 MUIRHEAD CRES.
WERRIBEE 3030

IN THE SUPREME COURT OF VICTORIA No of 2004
FULL COURT – CRIMINAL JURISDICTION

IN THE MATTER of the *Crimes Act 1958*
And

IN THE MATTER of an Application by
Brian William Shaw

EXHIBIT

me
Date of Document: May 28, 2004
Filed on behalf of: The Applicant
Prepared by: Brian William Shaw

This is the exhibit referred to and marked **DPP 4** in the affidavit of Brian William Shaw
Affirmed on the *me* 28th day of May at Werribee in the State of Victoria.

Before me: *Margaret Campbell SP*

Magistrates Decision May 17th 2004

AUST. CRIM. JUSTICE SYDNEY
R. G. No. 5024
MARGARET JAY CAMPBELL
7 MUIRHEAD CRES.
WERRIBEE 3030

**In the Magistrates Court of Victoria
at Melbourne**

In the Matter of:

Brian Shaw (Informant)

Against

**Robert Brooking, Peter Buchanan, Philip L. Cain, Stephen Pendrill Charles,
Alex Chernov, Paul Coghlan, Michael Jeffrey, John Spence Winneke
(Defendants)**

APPEARANCES

Mr Shaw	Self represented
Ms Dipietrantonio	Director of Public Prosecutions (Victoria)
Mr Sharp	Commonwealth Director of Public Prosecutions
Mr Burns	Victorian Government Solicitor (representing Robert Brooking, Peter Buchanan, Philip L. Cain, Stephen Pendrill Charles, Alex Chernov, Paul Coghlan, John Spence Winneke)
Ms Pryde	Australian Government Solicitor (representing Michael Jeffrey)

REASONS FOR DECISION

This matter was listed in the Melbourne Magistrates' Court and came before me on 17th may, 2004. Brian Shaw initiated private prosecutions against:

Justice Robert Brooking, a judge of the Court of Appeal Victoria
Justice Peter Buchanan, a judge of the Court of Appeal Victoria
Philip L. Cain, a Master of the Court of Appeal of Victoria
Justice Stephen Pendrill Charles, a judge of the Court of Appeal Victoria
Justice Alex Chernov, a judge of the Court of Appeal Victoria
Paul Coghlan, Director of Public Prosecutions Victoria
Michael Jeffrey, Governor General of Australia
Justice John Spence Winneke, President, Court of Appeal, Victoria

The defendants were charged by Mr. Shaw with the following offences:

With respect to Justices Winneke, Charles, Chernov, Buchanan, and Brooking:

Wilfully and perversely exercising Federal Jurisdiction in a matter in which he has a personal interest under s. 34(b)(1) of the Crimes Act 1914 Commonwealth

With respect to Governor General Michael Jeffrey:

Incitement to treason under s. 316(1) of the Crimes Act (1958) Victoria (3 counts), attempting to pervert the course of justice under s. 43 Crimes Act 1914 Commonwealth, attempting to pervert the course of justice under s.321M Crimes Act 1958 Victoria, and two Counts of Treachery under s. 24AA(1)(a)(i) Crimes Act 1914 Commonwealth

With respect to Master Cain, Attempting to pervert the course of justice under s. 43 Crimes Act 1914 Commonwealth

With respect to Mr Coghlan:

Treachery under s. 24AA(1)(a)(i) Crimes Act 1914 Commonwealth and Attempting to pervert the course of justice under s. 43 Crimes Act 1914 Commonwealth.

In relation to Justice Winneke and Mr. Coghlan, process was issued on 15 March 2004 and was returnable on 8 April 2004. Both cases were adjourned to 17 March 2004.

All other process was issued on 16th April 2004 and returnable on 17th May, 2004.

By notices dated 7th May, 2004, and pursuant to s.9(5) of the Director of Public Prosecutions Act 1983, Damian Bugg, the Director of Public Prosecutions of the Commonwealth of Australia, took over and declined to carry on further the proceedings in so far as they related to all charges laid under the Crimes Act 1914 Commonwealth with respect to each putative defendant.

Ms Dipietrantonio advised the Court on 17 May 2004 that pursuant to s.22(1)(b)(ii) of the Public Prosecutions Act, the Director of Public Prosecutions for Victoria took over the proceedings in relation to the charges under the Crimes Act (1958) Victoria laid against Governor General Jeffrey and that the Director of Public Prosecutions withdrew the charges.

Prior to making any orders, I invited Mr Shaw to address me in relation to the applications to withdraw the proceedings. Mr Shaw addressed me about some aspects of the charges themselves. I was not assisted by his submissions at that time as they did not address the specific issues before me, namely the powers of the Commonwealth Director of Public Prosecutions and Director of Public Prosecutions for Victoria taking over of the prosecutions and what options I had before me once applications were made to withdraw proceedings.

I was satisfied that there were no longer any proceedings before the court and all charges against all defendants were withdrawn.

Mr Burns then applied for costs against Mr Shaw on behalf of the Victorian Government Solicitor's Office in the sum of \$6314.61. A bill of costs was provided to me at the hearing.

Ms Pryde applied for costs against Mr Shaw in the sum of \$2000 on behalf of the Australian Government Solicitor's Office. Ms Pryde did not produce an itemised bill at the time of the hearing, however, a copy was hand delivered to the Melbourne Magistrates' Court on 19 May 2004. The bill was in the amount of \$3267.70. However, in the covering letter accompanying the bill, Ms Pryde indicated that the sum sought to be recovered from Mr Shaw remained \$2000.

Neither the Commonwealth director for prosecutions or director of Public Prosecutions for Victoria sought costs.

Mr Burns, in making the application for costs, did not make any submissions as to why costs ought to be granted, save to say that the Victorian Government Solicitor's Office had been put to expense on behalf of its clients. Similarly, Ms Pryde also made no submissions in support of costs.

I expressed concern about whether Mr Shaw should be made responsible for costs given that the prosecutions had been taken over by the Commonwealth Director of Public Prosecutions and Director of Public Prosecutions Victoria. I also noted that the applications for costs were made on behalf of Government solicitors instructed by the defendants and that it was not the defendants themselves who had suffered a loss as a result of the prosecutions.

Mr Burns provided me with three authorities in support of the costs application and which he submitted supported the notion that the court could make costs orders against a non-party:

Knight and Another v. FP Special Assets Limited and Others (1992) 174 CLR 178
R v. Scott (1993) 114 ACTR 20
Leigh v. Hodgkinson BC9507197

Having read the decisions, I am satisfied that they provide ample authority that costs orders against non-parties are able to be made in appropriate cases, and that this would be a matter which fell into the categories discussed by the cases.

The most apposite authority I was referred to was *Leigh v. Hodgkinson* the facts of which were similar to the matter before me.

The presiding judge, Mr Justice Smith, summarised the particulars of the case before him at BC9507197 at 2 as follows:

"It appears that in or between July and September 1994 the Director of Public Prosecutions for the Commonwealth, in exercise of his powers under s9(5) of Director of Public Prosecutions Act 1983, took over the proceedings from Mr Leigh. At a subsequent hearing on 12 September 1994, the Director of Public Prosecutions announced to the Magistrates Court that he was declining to prosecute the matter and was seeking orders striking out all charges. A

debate ensued at the end of which the magistrate ordered that a cost order should be made in favour of the defendants stating that the defendants had not prolonged the proceedings and were entitled to reasonable costs. Her Worship ordered that costs be ordered against Mr Leigh pursuant to s131 Magistrates Court Act 1984. According to a contemporaneous note of the proceedings, she indicated that she was satisfied that such an order should be made against Mr Leigh observing that the DPP had stepped in at a late stage and "with the public interest at heart".

I reproduce a significant portion of His Honour's judgement due to the similarities between *Leigh v Hodgkinson* and the matter before me.

"In this case there is the complication that the order sought by the defendants was an order against Mr Leigh and not the party on the record, the DPP. The appeal is in fact not against the making of an order for costs in favour of the defendants but the making of that order against Mr Leigh. The result of the order made below was that the lay informant who was no longer a party was required to bear the cost burden of the proceedings as a result of a decision taken by the DPP to discontinue the proceedings, a decision over which the former lay informant had no control. To the extent that that decision involved a consideration of the merits of the proceedings, the merits again were relevant as well as the reasons generally for discontinuance. The decision of the DPP, for example, may have been influenced by public interest considerations - eg the cost to the community which may have outweighed the importance of the matter or the merits of the proceedings. If that were the basis for discontinuing the proceedings, then an issue would arise whether the community through the DPP should bear the cost of a decision that has been made in the interest of the community.

Before her Worship, the defendants carried the onus of proof in their application and they had to place admissible material before the court sufficient to persuade her to make the order sought. The only material before the magistrate was the statement made in open court by the DPP that he proposed to discontinue in the exercise of his statutory power. No evidence was given as to his reasons. Even if it be open to imply a presumption of regularity in that situation (and on that I express no view), such a presumption would do no more than support a conclusion that the decision was properly made. In the absence of the evidence of the DPP's reasons, however, one could not conclude that the decision had not been made on public interest grounds even though there might have been merit in the prosecution. As I have said, if that were the situation then the question would arise whether the DPP on behalf of the community should bear the cost and not the lay informant. It may have been assumed that the DPP's decision was made on the basis that the prosecutions had no merit. While that may well be so for her Worship to base her decision on such an assumption would have been to assume the existence of an opinion or a fact of which there was no evidence. She would also have determined the issue on the basis of the latter's opinion, an opinion of a party to the proceedings that was not tested. Her Worship found that the DPP had not delayed matters and, therefore, added to the costs

but that finding was relevant, in my view, only to the question of an apportionment of costs if Mr Leigh was liable.

It seems to me that there was no relevant material before the magistrate which would have justified the decision made to make Mr Leigh liable not the DPP, and accordingly, the application of the defendants should have failed and the order against Mr Leigh should not have been made.

I reach this conclusion with reluctance because I am conscious of the possibility that the resolution of the question could involve a daunting investigation ending in the same result. If the matter be approached, however, on the basis that it is the defendants who are seeking an order for costs against the non-party rather than the informant on the record, a possible commencement point would be the calling of evidence by the defendants from the person in the DPP's office responsible for the decision not to proceed who could give evidence of his or her reasons and who could then be cross-examined by Mr Leigh to challenge those reasons.


The issue may well be quickly resolved. In the end, however, the fact cannot be escaped that no admissible material was placed before her Worship to support a decision requiring Mr Leigh to pay the defendants' costs rather than the DPP. As a result, it may be said that her Worship made her decision to order costs against Mr Leigh without having regard to relevant considerations. This came about because of the failure of the defendants to adduce admissible evidence in support of their application. Perhaps, therefore, more accurately, the error demonstrated was that there was no basis upon which an order could properly be made against Mr Leigh rather than the DPP. In these circumstances it appears to me that error has been shown such as warrants interference with the order made below."(paragraphs 9 to 12 of BC9507107)

In the case before me, no reasons were given, let alone was there any evidence put before me of reasons, for the withdrawal of the proceedings by either the Commonwealth Director of Public Prosecutions or the Director for Public Prosecutions for Victoria.

In the absence of being provided with reasons for the decisions to withdraw, I am not in the position to evaluate whether or not it is appropriate to make costs orders against the original informant, Mr Shaw, or whether the Commonwealth Director of Public Prosecutions or the Director for Public Prosecutions for Victoria are the appropriate parties against whom costs orders would be appropriately made.

Accordingly, the costs applications are dismissed.

ORDER MADE 24TH MAY, 2004



JELENA POPOVIC
DEPUTY CHIEF MAGISTRATE
MELBOURNE MAGISTRATES COURT