NOTICE OF FILING AND HEARING

Filing and Hearing Details

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File Title: WALTER SOFRONOFF v ACT INTEGRITY COMMISSION

Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

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Place: To Be Advised



Registrar

Sia Lagos

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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

Form 66 Rule 31.01(1)

Amended Originating application for judicial review



No. 389 of 2025

Federal Court of Australia

District Registry: New South Wales

Division: General

WALTER SOFRONOFF

Applicant

ACT INTEGRITY COMMISSION

Respondent

To the Respondent

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:
Place:
Law Courts Building 184 Phillip St Queens Square, Sydney NSW 2000
Date:
Signed by an officer acting with the authority of the District Registrar
Filed on behalf of (name 2 vale of north) Walter Sefranoff VC (Applicant)
Filed on behalf of (name & role of party) Walter Sofronoff KC (Applicant)

Filed on behalf of (name & role	of party) Walter Sofronoff KC (Applicant)
Prepared by (name of person/l	wyer) Mr Glen Cranny
Law firm (if applicable) G	shenan & Luton Legal Practice
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Address for service (include state and postcode)	Level 9, 15 Adelaide Street Brisbane 4000 QLD
,	[Form approved 01/08/2011]

The Applicant applies to the Court pursuant to s 20(1) of the *Supreme Court Act 1933* (ACT) s 9(3) of the *Jurisdiction of Courts (Cross-Vesting) Act 1987* (Cth) and s 4(1) of the *Jurisdiction of Courts (Cross-Vesting) Act 1993* (ACT) to review the conduct of the Respondent in making an investigation report in the matter of "Operation Juno" (the **Juno Report**) pursuant to s 182 of the *Integrity Commission Act 2018* (ACT).

Details of claim

The Applicant is aggrieved by the conduct because the Applicant is the subject of findings of "corrupt conduct" and "serious corrupt conduct" in the Juno Report made by the Respondent (the **Commission**).

Claim for interlocutory relief

1. The application be heard on an expedited basis.

Grounds of application

Errors of law — the definition of corrupt conduct in s 9(1)(a)(i) of the Integrity Commission Act Error in construction of s 17 of the Inquiries Act

- 1. The finding of the Commission that the conduct of the Applicant could constitute an offence contrary to s 17 of the *Inquiries Act* (at [105]-[119]) is affected by jurisdictional error because:
 - a. the Commission erred in construing s 17 of the *Inquiries Act* as capable of applying to the giving to journalists of Notices of Adverse Comment, draft versions of the Report of the Board of Inquiry and the final Report of the Board of Inquiry (**Final Report**), because those documents were not documents falling within the scope of s 17(a)-(c) of the *Inquiries Act* (at [107]-[109]);
 - b. the Commission erred in concluding that the conduct of the Applicant prior to him ceasing to hold office pursuant to s 9 of the *Inquiries Act* was done otherwise than in exercise of a function under the *Inquiries Act* and therefore contrary to s 17 of the *Inquiries Act* (at [110]), in circumstances where:
 - i. s 18(c) of the *Inquiries Act* provides that a Board may do whatever it considers necessary or convenient for the fair and prompt conduct of the Inquiry; and
 - ii. the unchallenged evidence of the Applicant before the Commission was that he subjectively considered that it was necessary or convenient for the fair and prompt conduct of the Inquiry for him to engage with journalists;

- c. further, or alternatively, the Commission erred in concluding that the conduct of the Applicant was done otherwise than in the exercise of a function under the *Inquiries Act* on the basis that it was done in breach of an obligation of procedural fairness to the Chief Minister of the Australian Capital Territory (at [114]-[118]), in circumstances where:
 - i. none of the conduct of the Applicant was of a legal character capable of engaging the obligation of procedural fairness; and
 - ii. further, or alternatively, the Applicant did not owe any obligation of procedural fairness to the Chief Minister, or any other person, in respect of the conduct; and
 - iii. further, or alternatively, the Applicant's conduct was not in breach of any obligation of procedural fairness owed to the Chief Minister, or any other person.

Error in construction of s 36 of the *Inquiries Act*

- 2. The finding of the Commission that the Applicant's conduct could constitute an offence of contempt contrary to s 36 of the *Inquiries Act* (at [120]-[124]) is affected by iurisdictional error because:
 - a. the Commission erred in construing s 36 of the *Inquiries Act* as applying to a contempt otherwise than in the face or hearing of the Board, contrary to the text of s 36 of the *Inquiries Act* (at [121]-[122]);
 - b. further, or alternatively, the Commission erred in concluding that the Applicant, who was appointed as the "board of inquiry" within the meaning of s 5 of the *Inquiries Act* could commit a contempt of himself (at [123]); and
 - c. further, or alternatively, the Commission erred in concluding that the conduct of the Applicant, constituted as the Board, amounted to, or could amount to, a breach of a non-publication order made by the Board under s 21(3)(b) of the *Inquiries Act* on 19 April 2023 (the **NPO**) in circumstances where:
 - s 23 of the *Inquiries Act* provides that the "procedure at a hearing may be decided by the board" and in the premises, the Applicant was entitled to exercise the discretion in s 23 and notwithstanding the terms of the NPO made by the Applicant pursuant to s 21;
 - further, or alternatively, the NPO applied in terms to publication, not disclosure, and none of the conduct of the Applicant amounted to publication of material in contravention of the NPO;

iii. further, or alternatively, as a matter of construction of s 21(3)(b) of the *Inquiries Act*, a Board cannot itself breach a direction made by itself pursuant to s 21(3)(b).

Error of law / legal unreasonableness — the definition of corrupt conduct in s 9(1)(a)(ii) of the Integrity Commission Act

- 3. The finding of the Commission that the Applicant's conduct could constitute a "serious disciplinary offence" within the meaning of s 9(1)(a)(ii) of the *Integrity Commission Act* (at [129], [135]) is affected by jurisdictional error because:
 - a. the Applicant as Board was not capable of being the subject of a "serious disciplinary offence", because on its proper construction, the concept of "serious disciplinary offence" applies only to an employee and the Applicant was not an employee;
 - b. further, or alternatively, the finding was seriously illogical, irrational and/or unreasonable in that the matters relied on by the Commission are incapable of rationally supporting a conclusion that the conduct of the Applicant would constitute a "serious disciplinary offence" within the meaning of s 9(1)(a)(ii).

Error of law / legal unreasonableness — the definition of corrupt conduct in s 9(1)(a)(iii) of the Integrity Commission Act

- 4. The finding of the Commission that the Applicant's conduct could constitute grounds for dismissal of the Applicant pursuant to s <u>110</u> of the *Inquiries Act*, and therefore fall within the scope of s 9(1)(a)(iii) of the *Integrity Commission Act* (at [135]) is affected by jurisdictional error because:
 - a. the Commission erred in the construction of s <u>110</u> of the *Inquiries Act* in concluding that conduct giving rise to an apprehension of bias is capable of constituting "misbehaviour", or alternatively, that conclusion was legally unreasonable (at [127]-[128]);
 - the Commission erred in the construction of s <u>11</u>0 of the *Inquiries Act* in concluding that conduct in breach of the rules of natural justice is capable of constituting "misbehaviour", or alternatively, that conclusion was legally unreasonable (at [129]-[134]]);
 - c. further, or alternatively, the finding was seriously illogical, irrational and/or unreasonable in that the matters relied on by the Commission (at [125]-[134]) are incapable of rationally supporting a conclusion that the conduct of the Applicant amounted to "misbehaviour" within the meaning of s 10 of the *Inquiries Act*.



- 5. The finding of the Commission that the Applicant's conduct constituted "conduct by a public official that constitutes the exercise of a public official's functions as a public official in a way that is not honest or is not impartial" (at [136], [141]) is affected by jurisdictional error because:
 - a. the Commission's findings as to a lack of honesty, good faith and partiality were made in circumstances involving an excess of jurisdiction, and the Applicant repeats and relies on Grounds 8 to 11 of this Originating Application;
 - b. further, or alternatively, there was no evidence to support the finding at paragraphs [136] and [141];
 - c. further, or alternatively, the finding was seriously illogical, irrational and/or unreasonable in that the matters relied on by the Commission in support of the finding at paragraphs [136] and [141] are incapable of rationally supporting a conclusion that the conduct of the Applicant amounted to the exercise of his functions as a public official in a way that was not honest or was not impartial.

Error of law / legal unreasonableness — s 9(1)(b)(ii)(A)-(B) of the Integrity Commission Act

- 6. The finding of the Commission that the Applicant's conduct was conduct that constituted a "breach of public trust" within the meaning of s 9(1)(b)(ii)(A) of the *Integrity Commission Act* (at [136]-[140]) is affected by jurisdictional error because:
 - a. the Commission erred in construing "public trust" in s 9(1)(b)(ii)(A), by failing to properly construe the concept of "public trust" as requiring a breach by a public official of a public official's duty of loyalty;
 - b. further, or alternatively, the finding was seriously illogical, irrational and/or unreasonable in that the matters relied on by the Commission are incapable of rationally supporting a conclusion that the conduct of the Applicant constituted a breach of public trust within the proper construction of s 9(1)(b)(ii)(A).
- 7. The finding of the Commission that the Applicant's conduct was conduct that constituted "the misuse of information or material acquired by the official in the course of performing their official functions" within the meaning of s 9(1)(b)(ii)(B) (at [140]) is affected by jurisdictional error because:
 - a. the Commission failed to make any finding that the Applicant engaged in a "misuse of information or material";
 - b. further, or alternatively, the finding was seriously illogical, irrational and/or unreasonable in that:

- i. the Commission failed to expose any reasoning as to how the Applicant's conduct constituted a misuse of information or material acquired by the Applicant in the course of performing the Applicant's official functions;
- ii. if, which is denied, the Commission did make such a finding or expose such reasoning, then the finding was seriously illogical, irrational and/or unreasonable in that there was no evidence before the Commission, and/or relied on by the Commission, capable of rationally supporting the conclusion that the Applicant engaged in a "misuse of information or material".

No evidence / legal unreasonableness — findings of dishonesty, deceit and bad faith

- 8. The finding of the Commission that the conduct of the Applicant could not "be reasonably regarded as honest" and that disclosures were made by him otherwise than "on a good faith basis by ordinary standards of probity" (at [134]) is affected by jurisdictional error in that:
 - a. there was no evidence to support the finding;
 - b. further or alternatively, the finding was seriously illogical, irrational and/or unreasonable.
- 9. The finding of the Commission that the conduct of the Applicant demonstrated a "lack of fidelity and good faith" (at [138]) is affected by jurisdictional error in that:
 - a. there was no evidence to support the finding;
 - b. further or alternatively, the finding was seriously illogical, irrational and/or unreasonable.
- 10. The finding of the Commission to the effect that the Applicant acted in conscious disregard of his statutory functions (at [140]) is affected by jurisdictional error in that:
 - a. there was no evidence to support the finding;
 - b. further or alternatively, the finding was seriously illogical, irrational and/or unreasonable.
- 11. The finding of the Commission that the conduct of the Applicant was "deceitful" and "dishonest" in not disclosing to the Chief Minister his intention to give an embargoed copy of the Report to journalists (at [81], and see [102]-[103]) is affected by jurisdictional error in that:
 - a. there was no evidence to support the finding;

b. further or alternatively, the finding was seriously illogical, irrational and/or unreasonable.

Error of law — s 10 of the Integrity Commission Act

- 12. The finding of the Commission that the conduct of the applicant amounted to "serious corrupt conduct" (at [142]) is affected by jurisdictional error in that:
 - a. the Commission erred in construing "integrity" in s 10 of the *Integrity Commission*Act as meaning soundness or efficacy, as distinct from probity, of government or public administration (at [16]);
 - b. in the premises of Grounds 1 to 11 of this Originating Application, the conduct of the Applicant is incapable of amounting to "corrupt conduct", and therefore incapable of amounting to "serious corrupt conduct";
 - c. alternatively, the conclusion that the conduct of the Applicant amounted to "serious corrupt conduct" within the meaning of s 10 of the *Integrity Commission Act*, was seriously illogical, irrational and/or unreasonable in that the matters relied upon by the Commission are not capable of rationally supporting that conclusion.

Orders sought

- 1. A declaration that the Operation Juno Report is affected by jurisdictional error.
- 2. A declaration that the "impugned conduct" of the Applicant as defined in paragraph 4 of the Juno Report does not amount to corrupt conduct within the meaning of s 9(1) of the *Integrity Commission Act 2018* (ACT).
- 3. An order that the Respondents pay the Applicant's costs as taxed or agreed.
- 4. Such further or other order as the Court considers appropriate.

Applicant's address

The Applicant's address for service is:

Place: Brisbane

Email: gcranny@gnl.com.au

The Applicant's address is: Glen Cranny

Gilshenan & Luton Legal Practice

Level 9, 15 Adelaide Street

Brisbane, Qld, 4000



Service on the Respondent

It is intended to serve this application on the Respondent.

Date: 19 March 14 April 2025

Signed by Glen Cranny Solicitor