Dear Ms Riseley,

Please find attached to this cover letter my submission to the Law Reform Committee’s Inquiry into Vexatious Litigants.

Yours sincerely,

[Signature]

JULIAN KNIGHT
Dear Mr Scheffer,

What follows is my submission to the Law Reform Committee’s Inquiry into Vexatious Litigants.

INTRODUCTION

I am a 40-year-old prisoner serving a Life sentence, with a minimum non-parole term of 27 years (Ref: \textit{R v Knight} [1989] VR 705), in Port Phillip Prison at Laverton North. I have been in custody since 9 August 1987. I will become eligible for release on parole in 2014.

During my time in custody, I have initiated one proceeding against the Commonwealth Department of Employment, Education and Training, and various court and tribunal proceedings against the Victorian prison authorities.

During the period 1987-2001, I initiated but later withdrew a civil claim in the Magistrates Court against a prison governor (in 1992), an appeal to the Commonwealth AAT over AUSTUDY not being available to prisoners (in 1992), and two FOI appeals in the Victorian AAT (in 1994 and 1995).

During the period 2001-2003, I initiated 4 VCAT proceedings, 9 Supreme Court and 3 Court of Appeal proceedings, all against the Victorian prison authorities.

The seizure by the prison authorities of a binder of legal documents relating to the death of Prisoner Dean Williamson (in Barwon Prison in 2000) resulted in my first Supreme Court case (\textit{Knight v Spadano & Scaife} Case No 7642/2001). The documents in question were returned in court during the trial of the proceeding 8 days prior to the scheduled start of the inquest that, as a result, had to be postponed for 18 months.
The VCAT and Supreme Court proceedings that followed this initial case resulted from a continual string of Freedom of Information, prison discipline and opening of legal mail issues.

In relation to the three prison discipline cases, it should be noted that a Corrections Victoria report of the review of the prison system’s discipline regime (“The Prison Discipline Review”), was completed in June 2003. During August-September 2003, the aforementioned judicial review cases were heard before Justice Cummins, and requests were made of Corrections Victoria for the production of the Prison Discipline Review report. These requests were denied on the grounds that the report had not been completed. When a copy of the report was released some time after the court cases had been finalized, it was found that the report had been published three months prior to the court cases starting and that each of the issues raised in the three court cases had been identified by Corrections Victoria in their report. Justice Cummins, however, found that each of the issues raised before him were ‘wholly unmeritorious, unjustified and, at best, nit-picking’ (see Knight v Spadano & Walker [2003] VSC 412).

It should be noted that many of the cases I pursued during 2002-2003 were interrelated. The prison discipline cases I pursued (Knight v Correctional Services Commissioner & Others; Knight v Walker & Smith; Knight v Clements) were all relevant to my indefinite placement in Acacia High Security Unit (HSU) at Barwon Prison, which was the subject of the proceeding Knight v Minister for Corrections & Others. Specifically, the prison discipline hearings were used as a justification for my placement in Acacia HSU so these matters had to be addressed before I could challenge my classification and placement. One of the prison discipline cases involved such trivial matters as ‘unauthorized possession of a prison-issued transistor radio’ (i.e. taking an issued radio from one unit to another). Another involved unauthorized possession of nails.

The aforementioned cases were all filed separately over a 9-month period in 2002-2003, but due to the Supreme Court’s case management they were all heard together by Justice Cummins during August-September 2003

In relation to the proceeding Knight v Clements, a case involving the unauthorized possession of a pair of scissors, the presiding prison governor had made enquiries of store staff and an officer at another prison before the hearing of the charge in question. As a result of the information he received (which he failed to tell me that he had received and which turned out to be wrong), he decided before the hearing that I was guilty of the charge and, therefore, dismissed everything I said in my defense. These facts did not come out until he was cross-examined in court, some nine months after the prison disciplinary hearing. In the earlier prison case of Crowley v Smith, heard by Justice Smith, a prisoner had a prison disciplinary hearing decision overturned by the
Supreme Court because the presiding governor ‘did not inform Crowley of all the relevant information that he had received’ (Crowley v Smith [2001] VSC 17 at 40, 42). In dismissing an appeal by the prison governor, the Court of Appeal held that ‘the Governor had breached the rules of procedural fairness by excluding the respondent from the hearing whilst he made enquiries of the informant and his witnesses relevant to the critical issue which had been raised by [Crowley]’ (Stewart v Crowley [2002] VSCA 201 at 31). The Court of Appeal also found that ‘in the interests of fairness to the person accused, that all information which he received relevant to the charge before him should be taken in the presence of that person’ (at 31). Identical arguments raised by me before Justice Cummins were dismissed out-of-hand as “nit-picking”.

The day before Justice Cummins commenced hearing my five proceedings he handed down his decision in another prison case, Badenoch v Secretary to the Department of Justice. In that case, the prisoner’s applications for an injunction preventing the prison authorities moving him from one prison to another was refused by Justice Cummins on the grounds that ‘the applications by Mr Badenoch are misconceived, taking them at their highest (Badenoch v Secretary to the Department of Justice [2003] VSC 329 at 43). Justice Cummins added that, ‘I consider neither a serious question to be tried has been made out nor an arguable case’ (at 44). Even so, he declined to order costs against the prisoner – as he did in my case – and he stated that, ‘I must say that Mr Badenoch in appearing for himself argued the matters he wished to place before the court in a most thoughtful and comprehensive way. His submissions were relevant and if I may say so, very well presented both orally and in writing’ (at 13). I received no such commendation.

On 19 October 2004, I was declared a vexatious litigant by Justice Smith in the Supreme Court of Victoria at Melbourne (Ref: A-G (Vic) v Knight [2004] VSC 407). The declaration was made pursuant to section 21 of the Supreme Court Act 1986 (Vic), and was for a period of 10 years. At the time this declaration was made I had 10 years left to serve of my minimum term.

A number of errors appear in Justice Smith’s judgment, which I outlined in a letter to his Associate on 24 October 2004 (see attached letter).

Three days after declaring me a vexatious litigant Justice Smith handed down a judgment upholding a prisoner’s claim against the Corrections Commissioner for Emergency Management Days (Pavic v Anderson [2004] VSC 410). This decision was later overturned by the Court of Appeal (see Anderson v Pavic [2005] VSCA 244).

I was the 13th person to be declared a vexatious litigant in Victoria, and it should be noted that only one other prisoner has been declared a vexatious litigant anywhere in Australia since
1928: Dennis Fritz in Queensland on 21 July 1987. In his case, 'The basis for his status as a vexatious litigant is his repetitious attempts in the past, by devious devices and against various parties, to canvass afresh the same conviction for rape and, at times, another conviction of incest committed in broadly similar circumstances' (see Re the Application of Fritz (unreported, Queensland Supreme Court, 1 April 1996, Derrington J).

Since being declared a vexatious litigant in 2004, I have only made one application to the Supreme Court, in which I was successful in obtaining conditional leave to proceed (see Knight v Anderson [2007] VSC 278). Contrary to media reports, that case involved the interception by prison authorities of a letter of apology to one of my victims not an attempt by me to write to all of my victims. As a result of this court victory, the State Government introduced the Justice Legislation Amendment Bill 2007 in order to amend relevant parts of the Corrections Act 1986 (Vic) (see particularly the retroactive application of Clause 2(2)).

I must say that the following “Questions & Issues” posed by the Issues Paper give an overall indication of addressing a problem that does not exist, and of making a tendentious, spurious and specious case for increasing the power of government agencies to shut people out of the courts.

**QUESTIONS & ISSUES**

**Vexatious litigants in Victoria**

- **How common are vexatious litigants in Victoria’s courts and tribunals?**

Not very common. Since the passage of the Supreme Court (Vexatious Actions) Act 1928 (Vic), the Victorian Supreme Court has only declared 14 people as vexatious litigants. Four of these declarations, however, have been made since 2000.

- **Are vexatious litigants more common in some courts or tribunals, or in some types of legal disputes, than others?**

It appears that the Supreme Court deals with most of the litigation held to be “vexatious”. An overview of the 14 cases of declared vexatious litigants in Victoria, and of similar cases in the other Australian jurisdictions, indicates that the most common legal disputes in question are the following: divorce and child custody; worker’s compensation and employment; land and other property disputes; and disputes with government departments or other institutions.
Why do you think some people become vexatious litigants? Do they try to solve their legal disputes in other ways before going to court? If so, are there features from their previous attempts to solve disputes that contribute to them becoming vexatious litigants?

In my case, my first Supreme Court proceeding against the prison authorities was not initiated until mid-2001 (by which time I had been in custody for 14 years). In that case, and in the cases that followed, I utilized every appropriate and available avenue of dispute resolution: local prison management, official prison visitor, Corrections Victoria Head Office, and the Victorian Ombudsman. In a number of cases during 2001-2003, and in relation to my last proceeding, the prison authorities steadfastly refused to resolve the dispute only to eventually concede just prior to the matter going to trial (see *Knight v Anderson* [2007] VSC 278 at 4) or during the trial itself.

Do vexatious litigants have any common characteristics?

In 2007 the Victorian Law Reform Commission suggested that the Victorian Parliament Law Reform Committee should consider the relationship between mental health and vexatious litigation, What is the relationship, if any, between mental health and vexatious litigation?

The effect of vexatious litigants on the justice system

What effect do vexatious litigants have on courts and tribunals in Victoria? What are the costs for courts and tribunals?

During 2001, the Common Law Division of the Supreme Court of Victoria dealt with a total of 1,694 writs, originating motions and other cases (*Annual Report*, Part 2, Table 8, page 7). During the same period, I was responsible for only one originating motion (*Knight –v- Spadano & Scaife*) that involved a one-day hearing.

During 2000, the Commercial and Equity Division and the Common Law Division dealt with 4,319 proceedings.

During 2001, they dealt with 4,941 proceedings.

Victoria’s 14 declared vexatious litigants have reportedly initiated over 400 proceedings since 1928, and cost Government departments $6.2m to defend (see “Pests cost $6.2m). The rate of proceedings, however, equates to only 5 proceedings per year. Many of these proceedings only involve a one-day or part-day hearing. Aside from there being no indication of how the figure of $6.2m was arrived at, it should be noted that Government departments regularly defend actions to the point of trial then concede the relief sought by the plaintiff. If departmental officials were personally responsible for court costs – instead of relying entirely on the public purse – then I suggest many more actions would be settled long before reaching trial.
By way of comparison, one only has to examine the differing ways Corrections Victoria and GSL Custodial Services have dealt with the compensation claims made by Prisoner Greg Brazel. Both claims were similar in nature but whereas GSL Custodial Services (a private firm) swiftly reached an out-of-court settlement with Prisoner Brazel, Corrections Victoria (a Government agency) continues to stonewall and draw out proceedings.

The six individuals declared vexatious litigants in Victoria since 1988 have initiated a total of 173 proceedings amongst the tens of thousands of proceedings in that 20-year period (Brian Shaw 54, Ian Kay 53, Michael Weston 19, David Lindsey 18, myself 16, and Gabor Horvath 13). Of these 173 proceedings, it must be remembered that not all of these proceedings were held to be “vexatious”, and many were of short duration.

In my case, only 10 of my 16 proceedings were eventually held to be “vexatious”, and no case lasted longer than 2 days of hearings.

By way of comparison, as the Herald Sun noted, ‘Seven Network boss Kerry Stokes’ failed bid to sue over football broadcast rights … racked up $200 million in legal fees’ (Herald Sun, 11 September 2007, page 4).

- What effect do they have on judges and tribunal members, court staff, lawyers and witnesses?

I cannot speak for the court staff I have had contact with, but I can state that I never encountered any complaints from them about my conduct. In fact, during the conduct of my Supreme Court proceedings I corresponded with the Supreme Court Librarian and I was in regular telephone contact with the Prothonotary.

The effect on individuals and agencies who are victims of vexatious litigants

- What effect do vexatious litigants have on the individuals or organizations who are victims of their conduct?

- If you think you or your organization has been the victim of a vexatious litigant, describe the impact on you. What were the financial costs? Were there other costs?

Again, it should be noted that Government departments fund their legal actions and defenses via the public purse. It should also be noted that they are also not averse to using these funds to seek court costs against plaintiffs in order to bankrupt them (i.e. silence them). One only has to look at the recent experience of the Wonthaggi community group Your Water Your Say, which was bankrupted by the State Government when it sought court costs. When orders for court costs are made the other way (i.e. against the Government), the Government simply uses taxpayers’ money.
Applying for a declaration under Victoria’s vexatious litigant laws

• Are there people in Victoria’s courts and tribunals who are vexatious litigants, but have not been the subject of action under the vexatious litigant laws? If so, why do you think no action has been taken?

I am not the only prisoner who has launched court proceedings against Corrections Victoria. Nor am I the only prisoner who has initiated multiple proceedings against them. I am also not the only prisoner who has been the subject of adverse publicity regarding my court cases. Unlike some other prisoners, however, I have never had a proceeding I initiated struck out by the court on the ground that it is scandalous, frivolous or vexatious, or an abuse of process. The only occasion in which the prison authorities attempted to have one of my proceedings struck out, they failed (see Knight v Minister for Corrections & Others [2003] VSC 82). Why I am the only prisoner who the Attorney-General has sought a vexatious litigant declaration against is a question only the Attorney-General can answer.

• If you think you or your organization has been the victim of a vexatious litigant, did you take any action to have the person declared a vexatious litigant? If not, why not? What other action did you take?

• Does the community know enough about the fact that a person can be declared a vexatious litigant, and how? How could community awareness be improved?

• Should the Attorney-General be the only person who can apply to have a person declared a vexatious litigant? Who else should be able to apply, e.g. senior court staff or other parties to the litigation?

Aside from the Attorney-General, any party to repeated proceedings should possess the power to apply to have a person declared a vexatious litigant (including against a Government department). With respect to the Supreme Court, the Court possesses an inherent power to regulate its own proceedings and court staff are empowered to regulate the initiation of proceedings (see rr 27.06, 27.07, Supreme Court (General Civil Procedure) Rules 2005 (Vic) and Smith 1989, pp 49-50).

It should also be noted that judges can give, and have given, encouragement in their judgments to the Attorney-general to take action against a particular plaintiff (see Smith 1989, p 60). In none of my cases was such encouragement given.
Should courts and tribunals other than the Supreme Court have the power to declare a person a vexatious litigant? Should they be able to make a declaration on their own motion, i.e. without an application from another person?

If the power to declare a person a vexatious litigant were devolved to courts and tribunals other than the Supreme Court, then a concurrent amendment would have to be that each court and tribunal could only make a declaration affecting their own jurisdiction. Otherwise, the Supreme Court would have an overlapping power with the lower courts and tribunals.

Who is a vexatious litigant under Victoria’s laws?

Does the law in Victoria make it too easy or too difficult for a person to be declared a vexatious litigant?

Given my own experience, I would say that the law makes it too easy for the Attorney-General to have a person declared a vexatious litigant. There is no rule or precedent regarding how many of a person’s cases need to be struck out, what percentage of cases need to be unsuccessful, or what the person’s motivation was or how the cases were conducted, for a declaration to be made. As I have indicated above, none of my proceedings were struck out as being frivolous or vexatious but 10 of 16 of my cases were later held by Smith J to be “vexatious” and “hopeless” (see Attorney-General (Victoria) v Knight [2004] VSC 407, at 35).

What should the ‘test’ be for determining whether a person is a vexatious litigant? For example, should the test be that the person has brought vexatious legal proceedings ‘frequently’, rather than stricter test of ‘habitually’ and ‘persistently’?

No, and especially not in the absence of a legislative definition.

Should the Supreme Court (or other courts and tribunals if appropriate) be able to consider other criteria? For example, should it be able to consider:

- the way the person has conducted the litigation?
- the person’s motive for bringing the litigation, e.g. whether the proceedings were brought to harass or annoy another person or to cause delay or detriment?

Unlike the present situation, the Court should be able to consider whether the person conducted the proceedings properly and in good faith.
• Should the Supreme Court be able to take into account any interlocutory (or interim) applications that the person has brought during the proceeding?

Yes, including any interlocutory or interim applications brought against the person (i.e. the failed strike out application brought against me in *Knight v Minister for Corrections & Others*).

**What rights should an alleged vexatious litigant have?**

• What rights should an alleged vexatious litigant have when the Supreme Court (or other courts and tribunals if appropriate) hears an application? For example, should he or she have a right to free legal representation?

Those rights that are afforded to every other party before the Court. It should be noted that Victoria Legal Aid does not offer free legal representation to persons the subject of a vexatious litigant application.

• What rights of appeal should a vexatious litigant have?

Those rights of appeal that are afforded to every other party before the Court.

• Should the Supreme Court (or other courts and tribunals if appropriate) be able to make other orders to control vexatious litigants? For example, should it be able to:
  - Impose conditions on the right of the person to continue or bring litigation, such as a power to order that the person cannot bring proceedings unless they are legally represented?
  - Prevent a person from entering court premises?

The power to impose conditions on a person bringing litigation already exist (e.g. the power to order security for costs). With respect to vexatious litigants continuing litigation on the condition that they are represented, most grants of leave have imposed this condition beginning with the first grant to Rupert Millane in 1930 (see *Re Millane* [1930] VLR 381, and Smith 1989, p 64). In my case, I was also granted leave on the condition that I am legally represented from that point onwards (see *Knight v Anderson* [2007] VSC 278 at 31).

What purpose would be served by preventing a person from entering court premises?
The effect of a vexatious litigant declaration

- Are vexatious litigant declarations effective at stopping vexatious litigants? How do they try to press their claim after a declaration is made?

A vexatious litigant declaration actually creates multiple proceedings due to the leave requirement imposed by s21(4) of the Supreme Court Act 1986.

- Are there 'loopholes' in the laws that allow vexatious litigants to continue litigating, e.g. through relatives, friends or other associates? Should the Supreme Court be able to control litigation by people who act 'in concert' with a vexatious litigant?

The Court is already able to control litigation by people acting in concert with declared vexatious litigants by having them declared vexatious litigants too! This was the situation with the declaration of Geza Laszloffy in 1963 (see Smith 1989, p’s 59 and 64).

It should also be remembered that for someone to bring proceedings they first must have standing to pursue the matter (i.e. they must have some involvement with the dispute in question).

- Does the law make it too easy or too difficult for a vexatious litigant to get leave from a court or tribunal to continue or bring litigation? For example, should the vexatious litigant have to show that there are reasonable grounds for the litigation?

The provisions of s21(4) of the Supreme Court Act already requires that the vexatious litigant have to show that there are reasonable grounds for the litigation.

- Under the current laws, a vexatious litigant can apply for leave ex parte (without the court or tribunal hearing from anyone else). Should the Attorney-General, or any other people, be notified when a vexatious litigant seeks leave? What rights should those people have?

The Supreme Court already habitually notifies the intended defendant that a leave application is being made. On the only occasion that I have sought leave the proposed defendant (the Corrections Commissioner) was notified following the first interlocutory hearing (see Knight v Anderson [2007] VSC 278), and had the normal rights of a party to litigation. Even so, a proposed defendant cannot have it both ways: complain about being made a party to proceedings, and then insist on being a party to any leave application.
Should courts and tribunals be able to decide leave applications ‘on the papers’, without hearing from anyone in person?

If there is no intention or no need to make further submissions in person, there should be no impediment to having the application decided ‘on the papers’.

Should courts and tribunals be able to impose conditions when they grant leave to a vexatious litigant to bring litigation, e.g. should they be able to order the vexatious litigant to provide security for the likely legal costs of the defendant?

The power to impose conditions on a person bringing litigation already exist (e.g. the power to order security for costs). Since 1928, the Supreme Court of Victoria has only ever granted conditional leave to vexatious litigants, granting leave to continue litigation on the condition that they are represented (see Re Millane [1930] VLR 381, Knight v Anderson [2007] VSC 278 at 31, and Smith 1989, p 64).

Should vexatious litigants have a right of appeal when a court or tribunal refuses to grant leave?

Yes. There is no sound reason for taking away someone’s normal right of appeal.

Balancing rights and interests

Victoria has a Charter of Human Rights and Responsibilities that, amongst other things, protects the rights of people to a fair hearing. Do you think Victoria’s vexatious litigant laws strike the right balance between access to the courts and the need to protect other parties and the justice system from vexatious litigants?

Other ways to respond to vexatious litigants

What other laws in Victoria could be used to respond to vexatious litigation and vexatious litigants? Are they used too little or too often?

The main appropriate way to respond to allegedly vexatious litigation is to make a strike-out application pursuant to r23.01 of the Supreme Court (General Civil Procedure) Rules 2005. As indicated above, the only occasion the prison authorities made such an application against me they failed (see Knight v Minister for Corrections & Others [2003] VSC 82).
Ironically, once a person is declared a vexatious litigant each application for leave to bring proceedings from then on is conducted very much like an r23 strike-out application.

- Are there any laws that would help courts and tribunals respond to vexatious litigants that should be introduced in Victoria?

- Is there any other action that courts and tribunals could take to manage vexatious litigants, e.g. should there be more guidelines or training for judges, tribunal members and court staff on how to deal with difficult litigants?

- Should courts and tribunals be able to refer vexatious litigants to support services? What kinds of support services would be required?

- How should the law, and courts and tribunals, respond to any mental health issues arising from vexatious litigation?

I suggest that the Committee refer this question – and the earlier question regarding any relationship between mental health and vexatious litigation – to Professor Paul Mullen, Clinical Director of Forensicare at Thomas Embling Hospital, for investigation. I know of no vexatious litigant having been declared insane or having been treated for mental health problems. (see Mullen & Lester 2006).

The impact of vexatious litigation in other federal, state and territory courts

- If a person is declared a vexatious litigant by a federal court or a court in another state or territory, what effect should that have in Victoria? For example:
  - Should the declaration automatically apply in Victoria as well?
  - should the Supreme Court (or other courts and tribunals if appropriate) be able to take account of the person’s litigation in federal or other state or territory courts when they are considering whether to declare the person a vexatious litigant in Victoria?

If such a declaration was to apply in Victoria as well, does that mean that a court in another state or territory could also overturn a declaration made by the Victorian Supreme Court?

With respect to taking into account litigation in other jurisdictions, they already do so.
Yours sincerely,

_______________________________

JULIAN KNIGHT

References:


Justice Legislation Amendment Bill 2007 (Vic)


Victorian Government Gazette, G45 4 November 2004, page 3063

www.julianknight-hoddlastreet.ca

Legislation:

Corrections Act 1986 (Vic)
Supreme Court Act 1986 (Vic)
Supreme Court (General Civil Procedure) Rules 2005 (Vic)
Cases:

* NB: all case citations with a medium neutral citation are accessible at the respective austlii and Supreme Court of Victoria and Victorian Civil & Administrative Tribunal websites (www.austlii.edu.au/au/cases/VIC & www.supremecourt.vic.gov.au).

Attorney-General (Victoria) v Knight [2004] VSC 407

Badenoch v Armytage [2003] VSC 329

Crowley v Stewart [2001] VSC 17
Stewart v Crowley [2002] VSCA 201

Re Fritz (QSC, 11 July 1991, Thomas J)
Re the Application of Fritz (QSC, 1 April 1996, Derrington J)

Knight v Spadano & Scaife (VSC, 22 October 2001, Ashley J)
Knight v Spadano & Scaife [2003] VSCA 102
Knight v State of Victoria (CORE) & Wise [2002] VCAT 731
Knight v State of Victoria (CORE) & Wise [2003] VCAT 712 (costs)
Knight v Wise & Spadano [2002] VSC 355
Knight v CORE [2002] VCAT 1769
Knight v CORE (VCAT, 20 December 2002)
Knight v Minister for Corrections & Others [2003] VSC 82
Knight v CORE [2003] VCAT 501
Knight v Secretary to the Department of Justice [2003] VSC 341
Knight v Secretary to the Department of Justice [2004] VSC 29
Knight v Spadano & Walker; Walker & Smith; Clements; Correctional Services Commissioner & Others; Minister for Corrections & Others [2003] VSC 412
Knight v Spadano & Walker; Walker & Smith; Clements; Correctional Services Commissioner & Others; Minister for Corrections & Others [2003] VSC 413 (costs)
Knight v Spadano & Walker; Walker & Smith; Clements; Correctional Services Commissioner & Others; Minister for Corrections & Others [2004] VSCA 228
Knight v State of Victoria (CORE) & Wise [2003] VSC 459
Knight v Anderson [2007] VSC 278

Re Millane [1930] VLR 381

Pavic v Anderson [2004] VSC 410
Anderson v Pavic [2005] VSCA 244
Mr Justice Tim Smith        Mr Julian Knight
Supreme Court of Victoria       Barwon Prison
DX21-0608          DX21-7020
MELBOURNE             VIC COUNTRY
Att: Ms J. Mesiti        24 October 2004
Associate

RE: JUDGMENT IN A-G (Vic) v KNIGHT [2004] VSC 407

Dear Ms Mesiti,

I am writing to His Honour in relation to certain errors in His Honour’s judgment in the matter of Attorney-General v Knight [2004] VSC 407 (19 October 2004).

I hereby request that His Honour consider the errors in question with a view to correcting the record where necessary.

I would appreciate it if you would bring the following errors to His Honour’s attention:

(1) At footnote 1 at page 3, the citation for A-G v Weston does not nominate the relevant court.

(2) At paragraph 8(C)(ii) at page 5 and at paragraph 22 at page 12, in relation to VCAT proceeding number A24/2002, His Honour found that ‘Mr Knight filed an originating motion (No 7221 of 2003) seeking an extension of time for leave to appeal from the decision of Deputy President Coghlan’ (paragraph 8(C)(ii)) [my emphasis], and that ‘Mr Knight instituted proceedings seeking an extension of time to commence an application for leave to appeal from the decision and sought leave to appeal’ (paragraph 22) [my emphasis]. His Honour added that, ‘This application was filed on 20 August 2003, approximately 13 months after the substantive decision’ (paragraph 22). The application for leave to appeal related not to the substantive decision but to the subsequent costs order made on 20 June 2003. The relevant references are Exhibit JPR-4 and the transcript of the hearing of proceeding 9420/2003 on 9 September 2004 at page 25, lines 20-23.

(3) At paragraph 15 at page 10, in relation to Supreme Court proceeding number 6596/2002, His Honour found that ‘Mr Knight had already had explained to him by Ashley J and the Court of Appeal that relief cannot be sought in the absence of a live dispute.’ [my emphasis] Her Honour Balmford J delivered her judgment in 6596/2002 on 27 August 2002, prior to the Court of Appeal delivering its judgment in the appeal from the decision of Ashley J on 23 July 2003.

(4) At paragraph 23 at page 13, in relation to the judgment of Kellam J in Supreme Court proceeding number 7221/2003, His Honour found that, ‘His Honour also referred to the applicant’s professed desire to seek payment for media interviews in the future’ ([2003] VSC 459, paragraph 29 at page 10). His Honour Kellam J was, with respect,
mistaken in making this finding: my submission was that paid media interviews were one of only three ways that I could raise the funds necessary to meet a costs order, not that I wished to give such interviews. I wrote to His Honour to clarify this submission and His Honour did not repeat the aforementioned finding in his judgment in Supreme Court proceeding number 6753/2003 ([2004] VSC 29, paragraph 14 at page 4).

(5) At paragraphs 26 and 27 at pages 13-14, in relation to VCAT proceeding number G1338/2002, His Honour referred to 'a previous determination of an application by Mr Knight involving telephone records containing similar sorts of information' (paragraph 26) [my emphasis], and that, 'Counsel submitted in this proceeding that the comparison was not valid in that visiting a prisoner is a public act that can be observed and telephoning is not. But even telephoning involves disclosure to prison officers of the identity of the person contacting the prisoner’ (paragraph 27) [my emphasis]. The previous determination in question (VCAT proceeding number G342/2002) involved not telephone records but a daily mail register. The relevant references are Exhibit JPR-6 and transcript page 38, lines 5-15.

(6) At paragraph 30(d) at page 16, in relation to Supreme Court proceeding number 4596/2002, His Honour found that 'This occasion concerned the finding on three separate incidence of sharpened prison issue knives.’ [my emphasis] The relevant Statement of Claim concerned three separate Governor’s Hearings, of which only one concerned an allegedly sharpened prison issue knife. The relevant reference is Exhibit JPR-9, paragraph 3 of Statement of Claim in 4596/2002).

(7) At paragraph 32(a) at page 16, the case citation is given as 9745 of 2002: the correct citation is 7945 of 2002. The relevant references are Exhibit JPR-9, the transcript at page 61, line 7, and at paragraph 30(b) of the judgment at page 15.

I submit the above list of errors for His Honour’s consideration and action.

Yours sincerely,

JULIAN KNIGHT

cc. Mr Peter C. Golombek, Victorian Government Solicitor
Mr Charles A. Sweeney QC, Owen Dixon Chambers