REASONS IN SUPPORT OF NOTICE OF MOTION

If the administration of Justice is brought into disrepute the ordinary citizen may well lose respect for the judicial system and from that breeds anarchy.

This is why the Courts and the parliament have borne in mind the serious issue of the administration of Justice falling into disrepute.

His Honour Basten J stated that

" the courts will punish those whose actions tend to bring the administration of justice into disrepute"

“JUDGING COMMUNITY STANDARDS AND MORES”

A Paper delivered to the ROSEVILLE ROTARY CLUB

On 17 April 2013

The Hon Justice John Basten Judge of the NSW Court of Appeal

From
https://www.judcom.nsw.gov.au/publications/benchbks/sentencing/public_justice_offences.html

It states

"Offences against justice/in public office

[20-120] Introduction

Part 7 Crimes Act 1900 (NSW) is headed “Public justice offences”. Division 2 deals broadly with interference in the administration of justice. Division 3 provides offences for interfering with participants in the criminal justice process. Division 4 provides offences for perjury and other false acts.

The seriousness with which the community regards offences against justice can be gauged from the Second Reading Speech for the Crimes (Public Justice) Amendment Bill (Legislative Assembly, Hansard, 17 May 1990) which inserted Pt 7 into the Crimes Act: Marinellis v R [2006] NSWCCA 307 at [10]; Richards v R [2006] NSWCCA 262 at [68].

The then Attorney-General, the Hon John Dowd MLA said at p 3691:

“Offences that damage the administration of justice strike at the very heart of our judicial system. It is fundamentally important that confidence is maintained in our system of justice, and to this end must be protected from attack. Those who interfere with the course of justice must be subject to severe penalties. Not only do offences concerning the administration of justice affect individuals, but the community as a whole has an interest in ensuring that justice is properly done."

Under LEGAL PROFESSION UNIFORM LAW AUSTRALIAN SOLICITORS' CONDUCT RULES 2015

Solicitors have a PARAMOUNT duty to the Administration of Justice and to the extent that there is a conflict with other laws this paramount duty prevails.

It is also well established by precedent that the power of a Court to stay proceedings should be exercised sparingly but that a stay can be issued to protect the administration of Justice.

McHugh J in Rogers v R [1994] HCA 42; (1994) 181 CLR 251 stated:-

Although the categories of abuse of procedure remain open, abuses of procedure normally fall into one of three categories:

(1) the court's procedures are invoked for an illegitimate purpose;

(2) the use of the court's procedures is unjustifiably oppressive to one of the parties; or

(3) the use of the court's procedures would bring the administration of justice into disrepute "

In Moti v The Queen [2011] HCA 50; (2011) 86 ALJR 117 French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ, noted that the concept of abuse of process extends to a use of the Court's processes in a way which is inconsistent with two fundamental policy requirements which arise in criminal proceedings. Those two fundamental requirements were described by the High Court of Australia in Williams v Spautz [1992] HCA 34; (1992) 174 CLR 509 at [20] per Mason CJ, Dawson, Toohey and McHugh JJ, in these terms:

"The first is that the public interest in the administration of justice requires that the court protect its ability to function as a court of law by ensuring that its processes are used fairly by State and citizen alike. The second is that, unless the court protects its ability so to function in that way, its failure will lead to an erosion of public confidence by reason of concern that the court's processes may lend themselves to oppression and injustice."

These cases show that it is a vitally important function of the Courts to protect the administration of Justice and prevent it from falling into disrepute.

It is also submitted that a Court has the power to prevent the appearance by a solicitor or barrister if the appearance will cause the administration of justice to fall into disrepute.

In the present case the Crown Solicitor should not be allowed to appear for the defendant [redacted] as to allow it would bring the administration of Justice into disrepute.

As was stated in Moti (above) *"The first is that the public interest in the administration of justice requires that the court protect its ability to function as a court of law by ensuring that its processes are used fairly by State and citizen alike"-*

The processes of the Court must be used fairly by both State and Citizen.

In the present case it is clear that the State is not doing this.

How can it be said to be fair when the Crown Solicitor and the DPP are so closely aligned that they simply work in concert to shut down any case brought against a client of the Crown Solicitor by a private prosecutor?

Not only do they work in concert to shut it down but they work in concert to have charges brought against the same private prosecutor.

How can public confidence in the Judicial system be maintained when a situation such as this is not only happening but allowed by the Courts?

In the current situation the following events must be noted.

1) The DPP regularly briefs the Crown Solicitor in various matters. Therefore the DPP is a client of the Crown Solicitor.

2) The briefing of the Crown Solicitor by the DPP is a violation of the Director of Public Prosecutions Act in that there is no statutory power for a Solicitor for the DPP briefing another Solicitor.

3) The Crown Solicitor instituted proceedings in the Equity Division of the Supreme Court against me on behalf of the Secretary of FACS who is the employer of the defendant [redacted] in the current case.

4) The Crown Solicitor at the behest of FACS (it's client) approached the DPP (it's client) and requested criminal charges be laid against me.

5) The Crown Solicitor in the case Burton v [redacted] represented [redacted] the defendant in the private prosecution brought by me and wrote to their client the DPP asking them to take over the case and shut it down.

6) In the case outlined above the DPP took over the case and shut it down.

To a reasonable person properly informed the situation is clear.

That is that the Crown Solicitor,[redacted] and the DPP are all taxpayer funded entities.

In the case of the DPP they admit that what they do is in the name of the community. They act for the community and state they are "independent"

However they do not act independently, they act in concert with the Crown Solicitor.

In the present case the DPP shuts down criminal charges when requested by the Crown Solicitor and lays criminal charges when requested by the Crown Solicitor and this is what the community sees.

In the present case if [redacted] was to be committed for trial it is the DPP who must prosecute her yet the DPP prosecutes me at the behest of the Crown Solicitor and will no doubt shut down the case of [redacted] if and when requested by the Crown Solicitor.

This very same DPP flagged in Court that there were considering having the Crown Solicitor represent them against me in a notice of motion against the criminal charges laid against me.

How could all this not bring the administration of Justice into disrepute?

To compound it further, the DPP violates their own guidelines in withholding evidence against me in my criminal case at the behest of the Crown Solicitor and then resist my attempt to get a fair trial by requesting the evidence be provided.

The Court must be able to see that the Crown Solicitor in attempting to represent [redacted] is doing what no other law firm would be allowed to do.

Every law society and every bar association in Australia along with every legal services commissioner counsel against such conflicts. It is taught in University, it is spoken of in the judgments and it is legislated against by Parliament.

The Crown Solicitor gains it's right of appearance for [redacted] under S44 of the LEGAL PROFESSION UNIFORM LAW APPLICATION ACT 2014

However S44 is subservient to Part 2 Rule 3 of the LEGAL PROFESSION UNIFORM LAW AUSTRALIAN SOLICITORS' CONDUCT RULES 2015

There is no right of appearance for a solicitor if the appearance of that solicitor will bring the administration of Justice into disrepute.

The community has an interest in seeing guilty people convicted and innocent people acquitted after a fair and open trial according to law.

Victims have an interest in seeing their complaint dealt with according to law in an open just and transparent criminal justice system.

To allow a Solicitor to violate the principles of Justice and be seen by the community to be so closely tied in with the DPP as to be able to thwart Justice and have matters closed down and initiated at will is to cut at the very heart of the Judicial system and to erode public confidence in the system.

It is a violation of all principles of a fair, just and equitable system of criminal law and the Court cannot and should not allow it.

The Parliament does not intend it's laws to be used to defeat justice or to bring the administration of Justice into disrepute. The Courts counsel against it and in truth the behavior of the past and the obvious intention in the future of the Crown Solicitor in this case would rightly be frowned upon by the common citizen.

Justice must not just be done. It must be seen to be done in a fair just and equitable fashion.

To allow the Crown Solicitor to have right of appearance in this matter is contrary to all the principles laid down by the Courts and Parliament and should not be allowed.

In fact the community would rightly see the behavior of the Crown Solicitor as a taxpayer funded law service perverting the course of Justice.

The community would rightly see the DPP as no longer being independent but acting at the behest of the Crown Solicitor.

The test that the Court must apply is the " reasonable person properly informed". When the reasonable person is properly informed and taking into account all the circumstances they could no longer have confidence in the system.

The community already views the Legal system as being biased against the ordinary folk. They already see a system that is inequitable. They already view Courts as out of touch and unfair.

In the current situation it is worse because here we have the community believing that the Department of Family and Community Services is an out of control organisation that runs a "kids for cash " programme.

We have an organisation, (one that the defendant [redacted] works for) seen by the community as having at it's head a convicted and sentenced heroin trafficker who is married to a high ranking Federal Labor Politician.

The community sees cases like William Tyrell and the many other cases where children have been killed in care and then covered up by the department.

They see an iron curtain of secrecy covering up the removal of children by the department who routinely utilise taxpayer funded lawyers to strip children away under dubious legislation using "risk of harm" provisions which result in children being taken from loving homes where they are not in harm and then placed in positions of far greater risk.

They see families destroyed with no chance of healing, they see talk about reform but never action.

They see so called not for profits making fortunes out of the misery of the destroyed families and they see it done in their name with no hope of reform.

The people are despondent, despondency breeds distrust. distrust breeds contempt, contempt breeds hatred and hatred breeds resistance.

The very reason the Courts and Parliament strive to avoid the administration of Justice being brought into disrepute is to avoid a situation whereby the public believe the Courts are oppressive and unjust because once the public perceive that the Courts are oppressive and unjust they will then perceive that they are living under a system of tyranny.

In the present case the Crown Solicitor didn't even ask the DPP to investigate and consider shutting down the case against [redacted] They asked them bluntly to take it over and shut it down. They will do so again.

The Court should take note of the purpose of private prosecutions as it is relevant.

In the 1975 case of Gouriet v Union of Post Office Workers, Lord Wilberforce described the right to bring a private prosecution thus: '… *a valuable constitutional safeguard against inertia or partiality on the part of authority'.*

In the private prosecution of Burton V [redacted] not only did the DPP shut it down after being requested to do so by their client the Crown Solicitor they did it after a Magistrate had ordered that the case be filed and served.

The community would be right to be aghast.

The community would rightly see this as an "us and them" scenario but worse still as an "us and them" scenario done in their name and using their money.

It cannot and should not be tolerated.

In the present case there is no doubt that unless restrained by the Court, the Crown Solicitor will once again simply write to their client the DPP asking them to shut down the case against their client [redacted]

At the same time they remain the driving force along with their client the DPP against me the private prosecutor in this matter .

Why would the community have any faith in the legal system if this is allowed to continue?

I respectfully ask this Court to find that the duty of the Crown Solicitor to the administration of justice precludes it from acting for [redacted] under S44 of the Legal Services Act.