

Gunns20 update

December 2005

Heidi Douglas (#5) wins international Film Award

Heidi Douglas (defendant #5) has won a Katherine Knight Award at the Earthvision International Environmental Film festival 2005, held in Santa Cruz California.

The award was given for her short film "Tasmania's forests: A Global Treasure, A National Responsibility" (The Wilderness Society, 2004).

Katherine Knight along with her partner Ed Scehl founded the EarthVision International Environmental Film and Video Festival in 1998. This award is in honour and appreciation of individuals, like Katherine, who spend their lives in pursuit of raising consciousness about environmental issues - informing, inspiring and involving those around them.



CONGRATULATIONS HEIDI!



The Forests and Free Speech national tour came about in response to the Gunns20 lawsuit.

This hugely successful national tour has been co-ordinated by Louise Morris (def #8) and Luke Chamberlain, travelling from QLD to WA, visiting regional and capital centres along the way. Tour events have highlighted the ongoing campaign to save Tasmania's forests, the ramifications of this lawsuit for Australian civil society if Gunns succeeds, as well as the need for state-based legislative reform to make such lawsuits a thing of the past.

The tour will hold its final event on the eve of the one year anniversary of the serving of the writ in Perth on 13 December at the Perth Town Hall.

The Forests and Free Speech national tour has succeeded in reaching beyond the conservation movement to draw support for the defendants in this case. Importantly, a cross-section of industry and political figures have been alerted to the broader implications of this landmark lawsuit through the tour. More than 3000 names of people supporting the defendants, legislative reform and the protection of Tasmania's irreplaceable forests have been collected across the country to date.

see: www.treedefenders.org.au



Defendants at first court appearance, January 2005

case update: VERSION III

On 18 July 2005, Justice Bongiorno of the Victorian Supreme Court struck out Versions 1 and 2 of Gunns' statement of claim. The statement of claim contains the allegations of fact and the legal basis upon which Gunns are seeking financial compensation through the proceedings they have initiated against the Gunns 20.

On 15 August 2005, Gunns submitted the *third* version of the statement of claim.

On 9 November 2005, all defendants notified the court of their intention to apply to strike out Version 3.

In applying for a strike-out of the statement of claim, the defendants are effectively saying that the statement of claim is so faulty that they should not be required to respond to the claim in court.

There are a number of grounds upon which a statement of claim can be struck out, including that it is frivolous, vexatious or embarrassing.

The first two versions of Gunns' claim were struck out by Justice Bongiorno on the grounds that they were 'embarrassing'. The legal term 'embarrassing' suggests a claim is drafted such that defendants can not work out what they are being accused of, and thus can not defend themselves against the claim.

Is Version III any different from the earlier versions?

Version 3 of the statement of claim is very similar to Versions 1 and 2. Julian Burnside QC (defence counsel) observed at a court hearing in August V3 is

"...Like a Rubik's cube that has been twisted around a few times; all the same bits are there, they are just in different places..."

Some of the notable (and less legally complex) differences between V3 and V1 and V2 include:

key differences

1. Version 3 claims \$500,000 more in damages than the earlier versions, taking the total damages claim to \$6.895 million (up from \$6.4 million)
2. The allegation that defendants were engaged in 'guerilla activities' has been removed.
3. The allegation that defendants were involved in criminal conspiracies has been removed.

A number of defendants are no longer included in several of the allegations of criminal activity set out in the claim:

Lou Geraghty (defendant #14)

Small business owner, grandmother and Lucaston local, is **no longer accused** of the following offences (as she had been in V1 & V2):

- Filling 12 culverts in an area to be logged with rocks, timber and debris
- Placing a lock on a boom gate
- Ramming mud into the dozer exhaust
- Putting a rag into the hydraulic system of a dozer
- Affixing signs to a fence e.g 'John Gay' is a bully'

Brian Dimmick (defendant #16)

Independent filmmaker is **no longer accused** of the following offences (as he had been in V1 & V2):

- Constructing a barricade
- Ramming mud into the exhaust of a dozer
- Putting mud/dirt into the transmission of a dozer
- Affixing signs to a fence e.g "Huon Countil licks John Gay's bum"

Simon Brown (defendant #9)

Artist, is longer accused of the following offences (as he had been in V1 and V2):

- Placing a lock on a boom gate installed by Gunns
- Ramming mud into the exhaust of a dozer
- Putting mud/dirt into the transmission of a dozer
- Affixing signs

Filmmaker Heidi Douglas & the Huon Valley Environment Centre (defendants #5 & #17)

have been dropped entirely from the Banks Action, in which they were formerly accused of attempting to injure Gunns by pressuring various financial institutions to withdraw their services and investments with Gunns Ltd

Gunns allege some defendants interfered with their relationship with a number of financial institutions. Westpac has been added to this list of institutions within the third claim.

a year
in review

14 DEC 2004 WRIT IS SERVED

Defendants served with writ & version one of Statement of claim

11 MARCH 2004 DIRECTIONS HEARING

Plaintiffs don't attend. Case is moved to major torts list. Judge expresses concern about statement of claim (SoC)

30 MARCH 2004

Plaintiff's lawyers (EMA Legal) write to all defendants seeking to adjourn Directions Hearing set for 8 April 2005. Defendants reject this request for delay.

8 APRIL 2005 DIRECTIONS HEARING

Timetable is set for request and provision of further & better particulars. Strike-out Hearing foreshadowed for July.

22 APRIL 2005

Deadline for defendants to request further & better particulars

10 JUNE 2005

Deadline for plaintiffs to provide further & better particulars

15 JUNE 2005

EMA file proposed revision of timetable to delay date for Strike Out

17 JUNE 2005 DIRECTIONS HEARING

Requested by plaintiffs to seek to delay Strike Out date. Judge refuses request and awards costs for the day's Hearing to the defendants. 4 July 2005 is confirmed as date for Strike Out.

1 JULY 2005

Plaintiffs serve second version of SoC late on Friday afternoon.

4-8 JULY 2005 HEARING for STRIKE OUT APPLICATIONS

Defendants 1, 3, 4, 5, 7, 8, 10, 11, 12, 14, 15, 16, 17, 19 & 20 apply to strike out claim. Defendants 2, 6, 9, 13 & 18 reserve their rights to apply for the SoC to be struck out.

18 JULY 2005 JUDGEMENT ON STRIKE OUT

Justice Bongiorno strikes out both first and second versions of the SoC in their entirety and give plaintiffs 4 weeks to re-plead.

15 AUGUST 2005 VERSION III IS SERVED

17 AUGUST 2005 MENTION

Costs awarded to defendants for 8 April Hearing and strike out application. Timetable set for request & provision of further & better particulars.

14 SEPTEMBER 2005

Deadline for defendants to request further & better particulars.

26 OCTOBER 2005

Deadline for plaintiffs to provide further & better particulars.

9 NOVEMBER 2005

Defendants notify court of their wish to apply for version III of the SoC to be struck out.

22 DECEMBER 2005

Deadline for Defence teams to serve notice of grounds to strike out

31 JANUARY 2006

Deadline for defence teams to file outline of argument i.e why Statement of Claim should be struck out.

15 FEBRUARY 2006

Deadline for Plaintiffs (Gunns Ltd) to file response

1 MARCH 2006

Deadline for defence teams to file any reply to plaintiffs' response

9 -11 MARCH 2006 HEARING for STRIKE OUT APPLICATIONS

other news

Around the country, the Gunns20 case has compelled a number of politicians to raise the issue of defending free speech.

On the 10th of October, Independent Member for Calare, Peter Andren introduced the a motion to the House of Representatives calling for legislative reform . Duncan Kerr (ALP) and Tony Windsor (Ind) spoke in support of the motion.

In explaining his reasons for putting this motion and its relevance to the Gunns case, Peter Andren had this to say:

"...Brian Walters's...is also representing defendants in the Gunns case. Even if successfully defended, after months if not years the suits could cost hundreds of thousands of dollars—money the defendants just do not have. One of the Gunns defendants, Dr Peter Pullinger, a dentist and former member of the party liberals for forests, faces a crippling \$784,000 suit for campaigning for the protection of the Tarkine wilderness from logging.

The recent agreement between the Commonwealth and Tasmanian governments will dramatically reduce logging of old-growth forests in the Tarkine. That change of heart was the result of public action led by people like Peter Pullinger, yet the lawsuit remains in place as he expends money and anxiety to defend himself, like the other defendants.

While no-one should deny the legitimate right to seek justifiable restoration of reputation and damages, every step should be taken to defend free speech.... "

For the full transcript, see page 90 of :
www.aph.gov.au/hansard/rep/dailys/dr101005.pdf

Politicians in Tasmania, NSW, SA and the ACT have also introduced motions, legislation and made comments in relation to safeguarding freedom of speech through legislative reform and the Gunns20 case.

Political commentary on the case has extended beyond Australia, to be raised in the British Parliament by Liberal Democrat MP, Norman Baker (Shadow Environment and Rural Affairs Secretary). This motion condemned the Gunns' court case as 'an attack on basic civil liberties and freedom of speech.' His motion recognises the community and bi-partisan political support for greater forest protection in Tasmania.

For the full text of the Norman Baker's motion, please see:

<http://edmi.parliament.uk/EDMi/EDMDetails.aspx?EDMID=28847&SESSION=875>

further reading

Saving forests in an era of company writs and sedition...

"Is protecting the environment an act of sedition? The question is not just rhetorical - it comes out of concerns raised that the proposed new anti-terrorism laws would render ordinary democratic practices illegal..."

to read the full article from TWS 'bush lawyer' Greg Ogle, see http://margokingston.typepad.com/harry_version_2/2005/11/environmental_p.html#more

Defendant #8 gets sued twice

In September, Louise Morris, defendant #8 in the Gunns20 case, found out from a newspaper journalist that she had been named in a second lawsuit over forest campaigning in Tasmania. In reflecting on the past year, Louise commented:

"...Like the other defendants my year was shaped in no small way by the Gunns Ltd lawsuit. I became more focussed on the case through co-ordinating the Forests & Free Speech national tour with Luke Chamberlain.

Things got even more eventful for me during the tour when I was advised by a journalist from the Hobart Mercury newspaper that I was the sole defendant in a new lawsuit brought by Tasmanian logging company Harback Logging. I was issued this writ via a public notice in the Mercury newspaper..."

This claim alleges that Louise has conspired with unspecified people to do unspecified acts, causing unspecified damages. The case continues.

Louise has put in an appearance at the Tasmanian Supreme Court.

web update

gunns20.org

The gunns20.org website was set up to support the defendants and inform people about the progress of the case. You can find media articles, court transcripts, event information and more on the site. It's an excellent resource on the case.

A huge thank you to Lilia, Neil and Andrew for all their hard work on the site over the past year.

Donations to the shared Legal Defence Fund can now be made online