HOGAN v HINCH: CASE NOTE

SKYE MASTERS*

POSTSCRIPT: Since the author completed this article, Hinch has received a life-saving liver transplant. The case concluded with Hinch being sentenced to home detention for five months on 21 July 2011. As part of this sentence, Hinch was prohibited from broadcasting, publishing, giving the interviews and using the Internet for all social media.

I INTRODUCTION

Derryn Hinch, the well-known radio broadcaster who is often referred to as the 'Human Headline',[1] has long been campaigning against child abuse,[2] seeing himself as a fighter of what could colloquially be termed the 'good fight'.[3] During this prolonged public campaign, Hinch has committed a number of criminal offences

---

* Student editor, Faculty of Law, University of Canberra.

[1] Linley Wilkie, 'Derryn Hinch: Voice of Reason', *Melbourne Weekly* (online), 10 April 2011, <http://www.melbourneweeklyportphillip.com.au/news/local/news/general/derryn-hinch-voice-of-reason/2129490.aspx> at 11 April 2011; Dan Silkstone, 'Priest and Predator', *The Age* (online), 11 October 2003, <http://www.theage.com.au/articles/2003/10/10/1065676160320.html> at 11 April 2011; Richard Ackland, 'Hinch Maintains Rage but High Court Says Silence is Golden', *The Age* (online), 11 March 2011, <http://www.theage.com.au/opinion/hinch-maintains-rage-but-high-court-says-silence-is-golden-20110310-1bpog.html> at 28 March 2011.

[2] Sally Walker, 'Freedom of Speech and Contempt of Court: The English and Australian Approaches Compared' (1990) 40 *International and Comparative Law Quarterly* 583, 587. Interestingly enough, while Hinch has been prominent in his fight against sex offenders, he himself engaged in a sexual relationship with a girl of fifteen when he was in his thirties, an incident which has seen him labelled as a hypocrite by some within the media. However, it must be noted that Hinch claimed this to be an honest mistake, believing that the girl was older than she in fact was: Derryn Hinch, *An Honest Mistake* (2005) HINCH.net <http://www.hinch.net/articles_archive05/an_honest_mistake.htm> at 11 April 2011.

relating to the publication of details of proceedings against alleged and convicted pedophiles. These actions have seen him charged and convicted of contempt on no fewer than three separate occasions.[4] In one such contempt case against Hinch, Young CJ of the Victorian Supreme Court stated that Hinch 'placed himself above the law and claimed a freedom to determine what he might do and what he might not'.[5]

More recently, Hinch has been involved in the 'Name Them and Shame Them'[6] internet campaign and has not been shy in breaching suppression orders to name offenders who are the subject of Extended Supervision Orders (ESOs) under the *Serious Sex Offenders Monitoring Act 2005* (Vic) (the Act). These actions resulted in Hinch being charged with five counts of breaching s 42 of the Act. As part of his defence against the charges, Hinch challenged the constitutional validity of the section.

On 11 March 2011, the High Court handed down a unanimous judgment in *Hogan v Hinch*,[7] holding s 42 of the Act valid and ordering that the criminal matter be referred back to the Magistrates' Court of Victoria.[8]

This case note breaks down the High Court judgment through six sections:

---

[3] Guilty Hinch Rails at 'Bad Law', *The Australian* (online), 4 June 2011 <http://www.theaustralian.com.au/news/nation/guilty-hinch-rails-at-bad-law/story-e6frg6nf-1226068968726> at 6 June 2011.
[4] *Bailey v Hinch* [1989] VR 78; *Hinch v Attorney-General (Vic)* (1987) 165 CLR 15; *Hinch v DPP* [1996] 1 VR 683. For more details about the convictions, see the section in this case note entitled *Hinch's Previous Convictions*.
[5] *Hinch v Attorney-General (Vic)* [1987] VR 721.
[6] Derryn Hinch, *Name Them and Shame Them* (2008) Go Petition <http://www.gopetition.com/petitions/name-them-and-shame-them.html> at 11 April 2011.
[7] *Hogan v Hinch* [2011] HCA 4.

1. The first section gives an overview of the factual and statutory background to the case as well as Hinch's previous contempt convictions;
2. The second section examines the construction of s 42;
3. The third section discusses the decision on Hinch's first point before the Court, namely that the institutional integrity of the Victorian courts has been breached by the Serious Sex Offenders Monitoring Act 2005 (Vic);
4. The fourth section breaks down the second point before the Court, being the question of whether the open court principle has been breached in the instance of the aforementioned legislation;
5. The fifth section goes through the two points raised in the third question before the Court regarding the implied freedom of political communication granted under the Constitution; and
6. The final section provides some concluding remarks.

II THE FACTUAL AND STATUTORY BACKGROUND

A Hinch's previous convictions

As previously mentioned, this is not the first time that Hinch has found himself before the courts on contempt charges. Hinch's first contempt conviction came in 1985, after

[8] Ibid [100].

he named the presiding judge in a matter relating to a convicted pedophile that was the subject of a suppression order.[9]

The following year Hinch was again convicted of contempt[10] after he disclosed details of the prior sexual offences of Father Michael Glennon in his radio broadcasts.[11] At that time, Father Glennon was about to stand trial for the sexual assault of a number of minors.[12]

Hinch's third conviction for contempt relates to a television show that aired on Channel 10. During one episode of this current affairs program in 1994, Hinch revealed the identity of an eight-year-old child who had been the victim of sexual

---

[9] *Bailey v Hinch* [1989] VR 78. This appeal from the decision of the Magistrates' Court upheld the conviction.

[10] This conviction resulted in Hinch being sentenced to a short jail term as well as being ordered to pay a fine: *Hinch v Attorney-General (Vic)* (1987) 164 CLR 15, [9].

[11] Father Glennon has been described by the media as one of 'most notorious pedophiles' in this country, with the sentencing judge in 2003 describing him as 'wantonly evil': Dan Silkstone above n 1. Glennon's first conviction dates back to 1978, when he pleaded guilty to indecently assaulting a girl under sixteen, an offence he served twelve months for: *R v Glennon* [1993] 1 VR 97; *R v Glennon* [2001] VSCA 17, [3].
In 1985 Glennon was charged with a number of sexual offences, and was subsequently convicted. After the matter was appealed all the way to the High Court, it was remitted back to the Victorian Court of Criminal Appeal: *R v Glennon* (1992) 173 CLR 592. The Court of Criminal Appeal upheld both the conviction and the sentence: *R v Glennon* [1993] 1 VR 97.
In November 1997, shortly before he was due to be released from prison, Glennon was again charged with a number of offences for which he was convicted of the majority of them in 1999: *R v Glennon* [2001] VSCA 17, [4]. In this case, two presentments were heard together, and on appeal, the conviction for the first presentment was upheld, while the second presentment was ordered to be sent back for retrial in two separate cases: *R v Glennon* [2001] VSCA 17, [169]. This resulted in two fresh trials, both of which resulted in convictions: Dan Silkstone, above n 1.
These were then appealed, resulting in the conviction for the latter of the two new trial being upheld, but the former sent back for retrial: *R v Glennon (No 3)* [2005] VSCA 262 [46]-[47], [50].
Days out from the start of the retrial in 2009, a permanent stay was ordered on the case: Sarah-Jane Collins, 'No Retrial for Pedophile', *The Age* (online), <http://www.theage.com.au/national/no-retrial-for-pedophile-20090225-8hyg.html> at 23 April 2011.
For a number of years Glennon was the subject of suppression orders, which were lifted in 2003 after his convictions: Sarah-Jane Collins, above.
Glennon will be eligible for parole in 2013: Sarah-Jane Collins, above.

assault.[13] Hinch had done so with the 'consent' of both the child and his parents, but this 'consent' was deemed by the Court to not be valid.[14] It was further held that an identification of the victim was unnecessary for the story.[15]

B The recent charges

The *Serious Sex Offenders Monitoring Act 2005* (Vic)[16] (the Act), which came into effect on 1 July 2005,[17] grants the County and Supreme Courts of Victoria the power to make extended supervision orders for the monitoring of eligible offenders.[18] These extended supervision orders are made in the public interest and allow the authorities to monitor offenders and track their rehabilitation beyond the end of an offender's parole period. The above-mentioned courts also have the power, under s 42 of the Act, to make suppression orders that prohibit the identification of an offender being made known to the public. It was this section that was the subject of Hinch's recent constitutional challenge.

---

[12] *Hinch v Attorney-General (Vic)* (1987) 164 CLR 15, [3]-[7]. At first instance Hinch was found guilty, a decision that was upheld in *Hinch v Attorney-General (Vic)* [1987] VR 721, and later unanimously in *Hinch v Attorney-General (Vic)* (1987) 164 CLR 15.
[13] *Hinch v DPP* [1996] 1 VR 683; Chris Goddard and Bernadette J Saunders, 'Child Abuse and the Media' (2001) 14 *Child Abuse Prevention Issues* <http://www.aifs.gov.au/nch/pubs/issues/issues14/issues14.html>. The subsequent appeal was dismissed: *Hinch v DPP* [1996] 1 VR 683.
[14] *Hinch v DPP* [1996] 1 VR 683; Chris Goddard and Bernadette J Saunders, above n 13.
[15] *Hinch v DPP* [1996] 1 VR 683; Chris Goddard and Bernadette J Saunders, above n 13.
[16] The *Serious Sex Offenders Monitoring Act 2005* (Vic) was repealed on 1 January 2010 and has since been replaced by the *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic): *Hogan v Hinch* [2011] HCA 4, [6]. For ease of purpose though, the Act will be referred to in the present tense throughout this case note: *Hogan v Hinch* [2011] HCA 4, [6].
[17] *Serious Sex Offenders Monitoring Act 2005* (Vic), s 2(2).
[18] An eligible offender is a person on whom a court has imposed a custodial sentence upon conviction of a relevant offence. Relevant offences are defined in the Schedule of the Act: Ibid, s 4(1).

On 20 December 2007, 21 April 2008 and 4 July 2008, the Victorian County Court made suppression orders under s 42 of the Act.[19] Then on 29 September 2008, Hinch was charged with five counts of contravening the three afore-mentioned suppression orders,[20] and was summoned to appear at the Magistrates' Court of Victoria on 29 October 2008.[21] These five charges relate to events on four separate dates, namely: 5 and 21 May 2008; 1 June 2008 (two counts); and 7 July 2008.[22]The counts dated 5 May 2008 and 7 July 2008 arose following the publication of two separate articles on Hinch's website, HINCH.net.[23] Both articles identify the same man who was the subject of a suppression order under the Act at the time of publication.[24] As with the article published on 21 May 2008 (discussed below), these two articles remain online with the individual's names deleted.[25]

As stated in the previous paragraph, the charge dated 21 May 2008 was also an article published on HINCH.net, this one entitled *Protecting the Guilty*.[26] As with the other two articles, the person who was the subject of the suppression order was named within the text of the article. The final two counts, both dated 1 June 2008, are also the only charges that relate to an oral identification rather than a written identification.

---

[19] *Hogan v Hinch* [2011] HCA 4, [14], [57].
[20] Ibid [56].
[21] Ibid [60].
[22] Ibid [14], [56].
[23] Derryn Hinch, *The (Censored) Rapist* (2008) HINCH.net <http://hinch.net/hinch-says-2008/May08/5-5-08.html> at 28 March 2011; Derryn Hinch, *The (Censored) Rapist (2)* (2008) HINCH.net <http://hinch.net/hinch-says-2008/Jul08/7-7-08.html> at 28 March 2011.
[24] This is evident by the title of both articles, as well as from the text of both articles, where Hinch expressly states the subject of the second article is the same as the subject of the first.
[25] It is interesting to note that while both the 5 May and 7 July articles have been censored within the article itself, neither of the links to the articles from the archive are censored: *May 08 Archive* (2011) <http://hinch.net/hinch-says-2008/May08/archive.htm> at 28 March 2011; *July 08 Archive* (2011) <http://hinch.net/hinch-says-2008/Jul08/archive.htm> at 28 March 2011.
[26] Derryn Hinch, *Protecting the Guilty* (2008) HINCH.net <http://hinch.net/hinch-says-2008/May08/21-5-08.html> at 28 March 2011.

These charges resulted from statements that were made by Hinch at a public rally on the steps of Parliament House.[27]

As a defence to the charges, Hinch submitted that s 42 of the Act was constitutionally invalid for three reasons:

1. Section 42 infringes upon the implied freedoms under Ch III of the Constitution by conferring upon the Victorian courts a function that interferes with their 'institutional integrity'.[28]
2. All State and federal courts 'must be open to the public and carry out their activities in public', as is implied in Ch III of the Constitution, ergo s 42 is in breach of the open court principle.[29]
3. Section 42 limits the implied freedom of political communication in Ch III by stymieing an entity's ability to:
    a. appraise legislation and the manner in which the courts apply such instruments; and
    b. bring about legislative change via public lobbying and also make public statistics concerning court proceedings.[30]

Consequently, an application was made by counsel for Hinch – pursuant to s 40(1) of the *Judiciary Act 1903* (Cth)[31] – to have the matter removed into the High Court for a

---

[27] This was reported on in an article written by Hinch the following day, 2 June 2008: Derryn Hinch, *Rallying for the Cause* (2008) HINCH.net <http://hinch.net/hinch-says-2011/March/11-03-11.1.html> at 28 March 2011.
[28] *Hogan v Hinch* [2011] HCA 4, [2], [61].
[29] Ibid [2], [62].
[30] Ibid [2], [63].

determination on the validity of s 42. This application was heard by Hayne, Crennan and Bell JJ on 30 July 2010,[32] and the matter was removed into the High Court.[33] Attorney-General intervention, under s 78A of the *Judiciary Act 1903* (Cth)[34] was made by the Attorneys-General for the Commonwealth, New South Wales, Queensland, South Australia, and Western Australia.[35]

III THE HIGH COURT CHALLENGE

A Construction of section 42

In reaching a decision as to the validity of s 42, the Court first considered the construction of the section, and indeed, the Act as a whole.[36]

There are two operations of s 42: the first two sub-sections grant a court the power to issue a suppression order in proceedings related to the Act; while the third sub-section creates an offence for the publication of material in contravention of an order.[37]

---

[31] Ibid [3], [60]. Under s 40(1) of the *Judiciary Act 1903* (Cth), an Attorney-General may make an application to the High Court to have a matter removed to the High Court for a resolution on a matter involving an interpretation of the Constitution.
[32] *Hogan v Hinch* [2011] HCA 4, [3].
[33] Transcript of Proceedings, *Hinch v Hogan* [2010] HCATrans 184 (30 July 2010) 481-4 (Hayne J). The order is also mentioned in: *Hogan v Hinch* [2011] HCA 4, [3], [60].
[34] Section 78A(1) states: 'The Attorney-General of the Commonwealth may, on behalf of the Commonwealth, and the Attorney-General of a State may, on behalf of the State, intervene in a proceeding before the High Court or any other federal court or any court of a State or Territory, being proceedings that relate to a matter arising under the Constitution or involving its interpretation.'
[35] *Hogan v Hinch* [2011] HCA 4, [60].
[36] Indeed, in any assessment of constitutional validity, the first step is to consider the statutory construction: *Gypsy Jokers Motorcycle Club v Commissioner of Police* (2008) 234 CLR 532, 553 [11].

A court may only make an order under s 42(1) where they are satisfied it is in the public interest.[38] In order to ascertain what is in the public interest under s 42(1), one must first understand the purpose of the Act.[39] Section 1(1) provides that the purpose of the Act is to enhance community protection through the supervision of certain offenders.[40] In addition to s 1(1), s 15(2) sets out further purposes, requiring community protection to be enhanced by a protection order, as well as promoting the rehabilitation, care and treatment of the offender who is subject to such an order.[41] An extended supervision order (ESO) can only be made in an instance where recidivism is likely[42] should the offender be released into the community unsupervised.[43] The suggestion by counsel for Hinch that s 42 creates a covert system for the release of offenders[44] was rejected by the Court, both at the time of the hearing[45] and in the judgment.[46]

---

[37] *Hogan v Hinch* [2011] HCA 4, [45].
[38] Ibid [68]. However, if the order no longer appears to meet the requirement of it being in the public interest, it would be incorrect for the Court to grant a continuation of a suppression order when the matter is before the courts again: *Hogan v Australian Crime Commission* (2010) 240 CLR 651, 664 [32]-[33].
[39] *Hogan v Hinch* [2011] HCA 4, [69], citing *O'Sullivan v Farrer* (1989) 168 CLR 210, 216-17. Where there is no indication of what is to be considered when exercising a discretionary power, 'a general discretion ... will ordinarily be implied', limited only by the scope and purposes of the Act: *O'Sullivan v Farrer* (1989) 168 CLR 210, 216.
[40] *Hogan v Hinch* [2011] HCA 4, [7], [69]. Section 1(1), which is also set out at [7] of the judgment, states that the 'main purpose of this Act is to enhance the protection of the community by requiring certain offenders who have served custodial sentences for certain sexual offences and who are a serious danger to the community to be subjected to ongoing supervision while in the community.'
[41] *Hogan v Hinch* [2011] HCA 4, [7].
[42] That is, is 'more likely than not' to commit a further offence: *RJE v Secretary to the Department of Justice* [2008] VSCA 265, [21]; *ARM v Secretary to the Department of Justice* [2008] VCSA 266. The former was quoted and the latter cited in *Hogan v Hinch* [2011] HCA 4, [9]. However, as noted in *RJE*, it is 'notoriously difficult' to accurately predict the likelihood of recidivism of an individual: *RJE v Secretary to the Department of Justice* [2008] VSCA 265 at [16].
[43] *Hogan v Hinch* [2011] HCA 4, [9].
[44] Ibid, [30].
[45] During the hearing, Bell J noted that a 'simple arithmetic calculation' allows the public to know when after sentencing a person will be released into the community, thus it could hardly be considered covert should a suppression order be granted: Transcript of Proceedings, *Hinch v Hogan* [2010] HCATrans 184 (2 November 2010) 533-4, 529-40 (Bell J).
[46] French CJ noted in his judgment that '[f]ebrile rhetoric of that kind is of no assistance': *Hogan v Hinch* [2011] HCA 4, [30].

The definition of public interest,[47] in the context of s 42(1) must be interpreted in light of ss 13[48] and 15[49] of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (Human Rights Act).[50] The entirety of s 42 is concerned with prohibiting the publicity of information related to the proceedings and resultant ESO; it has nothing to do with the naming of the offender in relation to the commission of or conviction for an offence.[51] Having regard to this, the Court agreed with the submissions from the counsel for the Queensland Attorney-General that the release of information related to an ESO could in fact have the effect of working against the s 1(1) community protection purpose by stymieing the rehabilitation of offenders.[52] Accordingly, s 42(1) seeks to avoid such hampering of the purpose.[53]

Suppression orders, as an area of law, are unclear and unsettled,[54] with many aspects being left to the 'uncertainty of the common law'.[55] The three orders relevant to the

---

[47] 'Public interest' is a term that has 'long informed judicial discretions and evaluative judgments at common law': Ibid, [31].
[48] Section 13 of the *Human Rights Act* (Vic) provides that a person has the right to 'not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with' and not have 'his or her reputation unlawfully attacked'.
[49] In s 15(1), people are granted the 'right to hold an opinion without interference' and in s 15(2), the right to freedom of expression. However, s 15(3) states there are special rights and duties attached to this freedom and 'may be subject to lawful restrictions' where deemed necessary.
[50] *Hogan v Hinch* [2011] HCA 4, [6], [71]. Section 1(2) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) states that one of the purposes of the Charter is to ensure that all Victorian legislation is consistent with the human rights set out in the Charter.
[51] Ibid [35], [38] [74]. [38] qualifies that the identification of a person as having committed an offence will only be of issue in an instance where such an identification could reasonably identify that person as also being the subject of an extended supervision order.
[52] Ibid, [35]-[36], [75].
[53] Ibid, [75].
[54] Ibid, [23], quoting New South Wales Law Reform Commission, *Contempt by Publication*, Discussion Paper No 43, (2000) at [10.20].
[55] New South Wales Law Reform Commission, *Contempt by Publication*, Discussion Paper No 43, (2000) at [10.20].

High Court case were all rather similar in form,[56] and are little more than a restatement of the legislative provisions in s 42(1)(c).[57] While the three orders are within the scope of the power conferred upon the courts under s 42,[58] case authorities suggest that such an order should be explicit in outlining what conduct is covered, 'so that the defendant [in this instance, those subject to the suppression order under s 42] knows what is expected on its part'.[59] Furthermore, as the orders apply 'to the world at large',[60] 'it is desirable that the terms of the injunctions be readily available to all persons who may be affected by them'.[61] While there has been a suggestion that a court cannot bind the world at large,[62] it has been accepted that deliberate conduct hindering the ability of the courts to act effectively shall be considered contempt of court.[63] As the publication of the offenders' names were expressly prohibited by the relevant order, a more detailed construction of the provisions in s 42(1) related to identification of the subjects is not required. That is, the order was articulated in such a way that makes it clear that naming an offender is a breach that falls within the scope of s 42(3).

---

[56] For a more detailed account of the suppression orders, see *Hogan v Hinch* [2011] HCA 4, [15]-[19].
[57] Ibid, [19], [57].
[58] Ibid, [58].
[59] Ibid, [58], citing *ICI Australia Operations Pty Ltd v Trade Practices Commission* (1992) 38 FCR 248, 259-262. In *ICI Australia Operations Pty Ltd v Trade Practices Commission* it was stated that 'injunctions should be granted in clear and unambiguous terms' so as to allow the injunction to be obeyed: *ICI* at 259, as quoted in *Hogan v Hinch* [2011] HCA 4, [19] and citing *Trade Practices Commission v Walplan Pty Ltd* (1985) 7 FCR 495; *Trade Practices Commission v GLO Juice Co Pty Ltd* (1987) 73 ALR 407, 412-14; *Commodore Business Machines Pty Ltd v Trade Practices Commission* (1990) 92 ALR 563; *Maclean v Shell Chemical (Australia) Pty Ltd* (1984) 2 FCR 593, 599.
[60] *Hogan v Hinch* [2011] HCA 4, [59].
[61] Ibid. [58], quoting *ICI Australia Operations Pty Ltd v Trade Practices Commission* (1992) 38 FCR 248, 262.
[62] *Hogan v Hinch* [2011] HCA 4, [24], citing *Raybos Australia Pty Ltd v Jones* (1985) 2 NSWLR 47, 55, 57; *John Fairfax & Sons Ltd v Police Tribunal (NSW)* (1986) 5 NSWLR 465, 477, 467; *"Mr C"* (1993) 67 A Crim R 562, 563, 566.
[63] *Hogan v Hinch* [2011] HCA 4, [24], citing: *John Fairfax & Sons Ltd v Police Tribunal (NSW)* (1986) 5 NSWLR 465, 477, 467; *Attorney-General (NSW) v Mayas Pty Ltd* (1988) 14 NSWLR 342, 355-356,

Nothing within the Act has the effect of creating a provision for the publication of suppression orders,[64] even though such orders 'may be addressed to the world at large'.[65] Thus the question arises as to whether personal service of the judgments is necessitated.[66] The courts' power to forego the requirement of personal service is 'sparingly exercised'.[67] The fact that no provision within the Act requires that the suppression order be published[68] means that an offence under s 42(3) must be looked at in light of the presumption of a *mens rea* element.[69]

There is a presumption that *mens rea* is a requirement of every offence.[70] This presumption is able to be displaced by the express wording within legislative provisions,[71] but has not been done so in the instance of the offence created under s 42(3).[72] The words 'in contravention of an order'[73] indicate that knowledge of the order is required in the first instance.[74] Further, the fact that s 42 departs from the 'norm of open justice, strengthens the presumption of *mens rea*'.[75] While this is an interesting debate, the question of whether the offence is one of strict liability is

---

344; *Savvas* (1989) 43 A Crim R 331, 334; *United Telecasters Sydney Ltd v Hardy* (1991) 23 NSWLR 323, 333-334, 348.

[64] *Hogan v Hinch* [2011] HCA 4, [39], [76].

[65] Ibid, [76].

[66] As is required under r 66.10 of the Supreme Court (General Civil Procedure) Rules 2005 (Vic) and also r 66.10 of the County Court Civil Procedure Rules 2008 (Vic): Ibid.

[67] *Hogan v Hinch* [2011] HCA 4, [76], citing *Drummoyne Municipal Council v Lewis* [1974] 1 NSWLR 655, 658.

[68] *Hogan v Hinch* [2011] HCA 4, [39], [76].

[69] Ibid, [76].

[70] This presumption is an 'essential ingredient in every offence': *He Kaw Teh v The Queen* (1985) 157 CLR 523, 528, quoting the English precedent *Sherras v De Rutzen* [1895] 1 QB 918, 921.

[71] *Hogan v Hinch* [2011] HCA 4, [39], citing *He Kaw Teh v The Queen* (1985) 157 CLR 523, 528-529, 546, 565-566.

[72] *Hogan v Hinch* [2011] HCA 4, [39], [78].

[73] Section 42(3).

[74] *Hogan v Hinch* [2011] HCA 4, [39], [78].

largely immaterial in the present case, as Hinch was aware of the existence of the suppression orders, as is evidenced by his various editorials, including those that named the subjects of the orders.[76] Additionally, counsel for Hinch indicated during the leave application hearing to the High Court that Hinch would plead guilty were s 42 held to be constitutionally valid.[77]

This brings the author to the next section, being that of the discussion of the three grounds on which Hinch based his case.

B Institutional integrity

Hinch's first point of challenge to s 42 was that it confers upon the courts a function that interferes with their 'institutional integrity', an infringement upon the implied requirements of Ch III of the Constitution.[78]

Only courts vested with federal judicial power can exercise federal judicial power.[79] Ch III of the Constitution, in ss 71[80] and 77(iii),[81] allows the Commonwealth to vest

---

[75] Ibid, [39].
[76] Derryn Hinch, *Protecting the Guilty* (2008) HINCH.net <http://hinch.net/hinch-says-2008/May08/21-5-08.html> at 28 March 2011; Derryn Hinch, *The (Censored) Rapist (2)* (2008) HINCH.net <http://hinch.net/hinch-says-2008/Jul08/7-7-08.html> at 28 March 2011.
[77] Transcript of Proceedings *Hinch v Hogan* [2011] HCATrans 184 (30 July 2010) 24-35 (Bennett QC).
[78] *Hogan v Hinch* [2011] HCA 4, [2], [61].
[79] The Constitution creates an 'integrated' court system: Patrick Keyzer, 'Preserving Due Process or Warehousing the Undesirables: To What End the Separation of Judicial Power of the Commonwealth?' (2008) 30 *Sydney Law Review* 100, 101; Peter Johnstone, 'State Courts and Chapter III of the Commonwealth Constitution: Is Kable's Case Still Relevant?' (2005) *University of Western Australia Law Review* 211, 212.
[80] Section 71 of the Constitution provides that federal jurisdiction shall be vested in the High Court and any other courts the legislature creates, as well as any other courts as the legislature chooses to invest with federal jurisdiction.

judicial power in State courts. The legislature has exercised their s 77(iii) power via the inclusion of s 39(2)[82] in the *Judiciary Act 1903* (Cth).[83]

A Ch III court can only be conferred with powers that are judicial in nature or incidental to the exercising of judicial power.[84] In other words, a State court cannot exercise non-judicial power in federal matters. [85] Judicial power is that which is 'concerned with the ascertainment, declaration and enforcement of the rights and liabilities of the parties as they exist',[86] and 'involves the application of the relevant law to facts as found in proceedings conducted in accordance with the judicial process'.[87] To confer a non-judicial power would be to undermine the principle of institutional integrity, which is one of the principles underpinning Ch III.[88] The High Court has held this to be so by virtue of the fact that all powers related to the

---

[81] Section 77(iii) of the Constitution grants the Commonwealth the power to invest 'any Court of a State with federal jurisdiction'.
[82] Section 39(2) of the *Judiciary Act 1903* (Cth) invests federal jurisdiction in the State courts in all matters in which the High Court has jurisdiction.
[83] *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51, 67.
[84] *R v Kirby: Ex parte Boilermakers' Society of Australia* (1956) 94 CLR 254, 254, 271-2, as cited in Patrick Keyzer, above n 79, 100-101.
[85] *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51, 66, citing *British Medical Association v The Commonwealth* (1949) 79 CLR 201, 236 and *Queen Victoria Memorial Hospital v Thornton* (1953) 87 CLR 144, 151-2.
[86] *R v Kirby: Ex parte Boilermakers' Society of Australia* (1956) 94 CLR 254, 281, as quoted in *Thomas v Mowbray* (2007) 233 CLR 307 at 310. *Thomas v Mowbray* also cites the following cases as authorities as further support for this principle: *Queen Victoria Memorial Hospital v Thornton* (1953) 87 CLR 144, 151; *R v Davison* (1954) 90 CLR 353, 365-70, 382, 377-8.
[87] *Bass v Permanent Trustee Co Ltd* (1999) 198 CLR 334, 359, citing *Harris v Caladine* (1991) 172 CLR 84, 150.
[88] While the notion of institutional integrity is indeed a doctrine that the High Court adheres to, it has 'been quite unable to develop convincing principles' for this doctrine: Patrick Keyzer, above n 79, 101.

judiciary, bar the power in s 51(xxxix),[89] are contained within Chapter III, entitled 'The Judicature'.[90]

However, this does not mean that the State courts, when dealing with State matters, are limited to only judicial function;[91] rather the Commonwealth vests the power in the State court and 'must take that court constituted and organised as it is from time to time'.[92] That is to say, the Commonwealth 'takes the [c]ourt as it finds it'.[93] The only limitation placed on the States and Territories in this respect is that State and Territory legislation cannot impinge upon the institutional integrity of the court when exercising federal judicial power, otherwise it will be held by the courts to be invalid.[94]

---

[89] Section 51(xxxix) of the Constitution provides that the Commonwealth has the power to legislate on 'matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth'.

[90] *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51, 78, citing *R v Kirby; Ex parte Boilermakers' Society of Australia* (1956) 94 CLR 254, 275.

[91] *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51, 67, 80.

[92] Ibid, 67, citing *Le Mesurier v Connor* (1929) 42 CLR 481, 496; *Adams v Chas S Watson Pty Ltd* (1938) 60 CLR 545, 554-5; *Peacock v Newtown Marrickville & General Co-operation Building Society No 4 Ltd* (1943) 67 CLR 25, 37; *Kotsis v Kotsis* (1970) 122 CLR 69, 109; *Russell v Russell* (1976) 134 CLR 495, 516-7, 530, 535, 554; *The Commonwealth v Hospital Contribution Fund* (1982) 150 CLR 49, 61.

[93] *Federated Sawmill, Timberyard and General Woodworkers' Employees' Association (Adelaide Branch) v Alexander* (1912) 15 CLR 308 at 313, as cited in *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51, 81.

[94] Patrick Keyzer, above n 79, 101, citing *Forge v Australian Securities and Investments Commission* (2006) 228 CLR 45, 67. In *North Australian Aboriginal Legal Aid Service v Bradley* it was held that this applied also to the Territories: *North Australian Aboriginal Legal Aid Service v Bradley* (2004) 218 CLR 146, 163-4, cited in Patrick Keyzer, above n 79, 101. This has been a contentious issue, given that it limits the power of State legislatures, going against the doctrine of States being possessed of parliamentary sovereignty: Patrick Keyzer, above n 79, 101. However, it has been held that the integrated court system makes it essential that State courts meet a degree of judicial independence, so as to ensure their suitability to exercise federal judicial power: Peter Johnstone, 'State Courts and Chapter III of the Commonwealth Constitution: Is Kable's Case Still Relevant?' (2005) *University of Western Australia Law Review* 211, 212, citing *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51, 112, 114, 116 (McHugh J), 137, 139 (Gummow J).

The Court held that the power of the courts to make an order under s 42(1) is not one that is 'so indefinite as to be insusceptible of strictly judicial application',[95] thus the principle of institutional integrity is not breached by s 42.

What of the Human Rights Act? Section 1(2) of the Human Rights Act states that one of the purposes of the Charter is to ensure that all Victorian legislation is consistent with the human rights set out in the Human Rights Act. Thus the principle of institutional integrity needs to be viewed in light of ss 13 and 15 of the Human Rights Act. It was held by the Court that the right to freedom of expression under s 15 may be reasonably limited so as to conform with the right to privacy under s 13.[96]

C Open justice

The principle of institutional integrity leads into the second question before the Court: does s 42 breach the open court principle?[97]

Ch III of the Constitution broadly requires all courts to be open to the public[98] and appear to be independent and impartial at all times.[99] It is an 'essential characteristic'

---

[95] *R v Commonwealth Industrial Court; Ex parte The Amalgamated Engineering Union, Australian Section* (1960) 103 CLR 368, 383, as quoted in *Hogan v Hinch* [2011] HCA 4, [80].
[96] *Hogan v Hinch* [2011] HCA 4, [84].
[97] Ibid [2], [62].
[98] Ibid [85].
[99] Ibid [20]. As stated in *Totani*, judicial independence must be maintained at all times: *South Australia v Totani* [2010] HCA 39, [1], citing *North Australian Aboriginal Legal Aid Service Inc v Bradley* (2004) 218 CLR 146, [29]; *Gypsy Jokers Motorcycle Club v Commissioner of Police* (2008) 234 CLR 532, [10]; *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337. This is a principle which, as a result of our 'common law heritage', pre-dates the Constitution and indeed informs the Constitution: *South Australia v Totani* [2010] HCA 39, [1], citing Dixon, 'Marshall and the Australian Constitution' (1955) 29 Australian Law Journal 420, 424-5.

of courts that they be open.[100] The serving of justice is the 'final and paramount consideration in all cases',[101] thus the open court principle 'is a means to an end and not the end in itself'.[102] Publicity, in the sense of the open court principle, can only be denied where 'necessity compels departure, for otherwise justice would be denied'.[103] In the absence of any order to the contrary, any person may publish details of the proceedings.[104]

As discussed in the preceding section, the Commonwealth legislature is afforded the authority under Ch III to grant a power to the courts that is an auxiliary function in the exercising of judicial power.[105] That is, the open court principle is not absolute[106] and Parliament can legislate in relation to exceptions to the principle.[107] However, where a

---

[100] *Hogan v Hinch* [2011] HCA 4, [20], citing *Daubney v Cooper* (1829) 10 B & C 237, 240 [1909] ER 438, 440; *Dickason v Dickason* (1913) 17 CLR 50; *Scott v Scott* [1913] AC 417; *Russell v Russell* (1976) 134 CLR 495, 520. Acceptance of this principle was indicated during the hearing when Bennett QC (counsel for Hinch) was discussing the history and Gummow J remarked, 'We know all these things, Mr Bennett. We are not first year law students': Transcript of Proceedings, *Hinch v Hogan* [2010] HCATrans 184 (2 November 2010) 372-3 (Gummow J).

[101] *Hogan v Hinch* [2011] HCA 4, [87], quoting *R v Macfarlane; Ex parte O'Flanagan and O'Kelly* (1923) 32 CLR 518, 549, which quotes *Scott v Scott* [1913] AC 417, 437.

[102] *Hogan v Hinch* [2011] HCA 4, [20].

[103] *R v Macfarlane; Ex parte O'Flanagan and O'Kelly* (1923) 32 CLR 518, 549, quoted in *Hogan v Hinch* [2011] HCA 4, [87]. To this end, there is an inference that the courts may do whatever necessary to ensure that a defendant receives a fair trial: *R v Macfarlane; Ex parte O'Flanagan and O'Kelly* (1923) 32 CLR 518, 549.

[104] *Hogan v Hinch* [2011] HCA 4, [22], citing: *Attorney-General v Leveller Magazine Ltd* [1979] AC 440, 450, 459, 469; *Raybos Australia Pty Ltd v Jones* (1985) 2 NSWLR 47, 55, 61; *John Fairfax & Sons Ltd v Police Tribunal (NSW)* (1986) 5 NSWLR 465, 476-477, 467; *Esso Australia Resources Ltd v Plowman* (1995) 183 CLR 10, 43; *J v L & A Services Pty Ltd (No 2)* [1995] 2 Qd R 10, 44; *Rogers v Nationwide News Pty Ltd* (2003) 216 CLR 327, 335 [15]; *John Fairfax Publications Pty Ltd v District Court (NSW)* (2004) 61 NSWLR 344, 353, 368.

[105] *Hogan v Hinch* [2011] HCA 4, [89], citing *R v Kirby; Ex parte Boilermakers of Australia* (1956) 94 CLR 254, 269-70; *APLA Ltd v Legal Services Commissioner (NSW)* (2005) 224 CLR 322, 407-408 [234]-[235].

[106] *Hogan v Hinch* [2011] HCA 4, [20], citing *Bass v Permanent Trustee Co Ltd* (1999) 198 CLR 334 at 359 [56], which adopts the view of Gaudron J in *Harris v Caladine* (1991) 172 CLR 84, 150.

[107] *Russell v Russell* (1976) 134 CLR 495, 520, quoted in *Hogan v Hinch* [2011] HCA 4, [90] and also mentioned by French CJ at [27]. While the Court held in *Russell v Russell* that closing the court in all proceedings was beyond the scope of power conferred upon the legislature under Ch III, Gibbs J stated that granting power to the courts to close the courts in appropriate instances would be an acceptable exercise of legislative power under Ch III: *Hogan v Hinch* [2011] HCA 4, [90] quoting *Russell v*

court is granted the authority to close proceedings or prevent publication of details relating to proceedings, this authority must be used in such a manner as to minimise the infringement upon the open court principle.[108]

Where legislation grants power inconsistent with 'the essential character of the court or with the nature of judicial power', it will be invalid.[109] Section 42 does not confer a power that infringes upon an 'essential characteristic', nor does it attack the independent and impartial nature of courts.[110]

D Freedom of political communication

The final question before the Court related to the question of whether s 42 breaches the freedom of political communication.[111]

The implied freedom of political communication, which is an inferred freedom drawn from ss 7, 24, 64, 128 and related sections of the Constitution,[112] operates essentially

---

Russell (1976) 134 CLR 495, 520. While the very act of closing a court changes 'the nature of the court', there are instances in which such an action may be 'desirable': *Russell v Russell* (1976) 134 CLR 495, 520.

[108] *Hogan v Hinch* [2011] HCA 4, [27].

[109] *International Finance Trust Co v New South Wales Crime Commission* 2009) 240 CLR 319, 353, quoting *APLA Ltd v Legal Services Commissioner (NSW)* (2005) 224 CLR 322, 411 [247].

[110] *Hogan v Hinch* [2011] HCA 4, [91].

[111] Ibid, [2], [63].

[112] *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 567. The High Court has held that this is a right implicit in the Constitution in a number of cases, most notably: *Theophanous v Herald and Weekly Times Ltd* (1994) 182 CLR 104; *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520. In the instance of Victoria and the ACT, this right has been expressly provided for in their respective Human Rights Acts: *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 15; *Human Rights Act 2004* (ACT), s 16.

as a check and balance upon the legislature,[113] as a means of ensuring the system of representative and responsible government required under the Constitution.[114] However, it is a freedom 'only to the extent that [it is] left unburdened by laws that comply with the Constitution'.[115] That is to say, 'freedom of communication under the Constitution does not mean free of all restrictions'.[116]

Communications related to the courts exercising their judicial power is a matter separate to political communication.[117] Communications concerning the outcome of a case or the reasoning of the presiding judge are not covered under the freedom provided for in *Lange*,[118] except in instances where 'such communications also concern the acts or omissions of the legislature or the Executive Government'.[119]

Lange,[120] later reformulated in *Coleman v Power*,[121] outlined a two-part test for assessing whether a law infringes upon the implied freedom of political communication:

---

[113] *Hogan v Hinch* [2011] HCA 4, [92], citing: *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 567-568; *Coleman v Power* (2004) 220 CLR 1, 50-1 [92]-[96].
[114] *McGinty* settled once and for all that the Constitution 'gives effect to the institution of "representative government" only to the extent that the Constitution established it': *McGinty and Ors v State of Western Australia* (1996) 186 CLR 140, 168, 182-3, 231, 284-5, as cited in *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 566-7.
[115] *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 567.
[116] *Coleman v Power* (2004) 220 CLR 1, 51 [97]. Furthermore, the freedom of political communication is not an absolute right and in some instances, the regulation of this right has the effect of enhancing it rather than limiting it, thus not all legislation restricting the freedom will be deemed unconstitutional: *Coleman v Power* (2004) 220 CLR 1, 51-2 [97]-[99].
[117] *Hogan v Hinch* [2011] HCA 4, [92]-[93], quoting *APLA Ltd v Legal Services Commissioner (NSW)* (2005) 224 CLR 322, 362 [65]-[66].
[118] Matters not related to government or political communication fail the first to meet the first requirement of the *Lange* test, and thus a determination as to whether they offend the freedom of political communication is irrelevant: *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 567.
[119] *APLA Ltd v Legal Services Commissioner (NSW)* (2005) 224 CLR 322, 361, as quoted in *Hogan v Hinch* [2011] HCA 4, [93].
[120] *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 567.

1. 'Does the law effectively burden freedom of communication about government or political matters either in its term, operation or effect?'[122]
2. If the law does indeed burden said freedom, is it 'reasonably and appropriately adapted to serve a legitimate end' that is constitutionally valid?[123]

If the answer to the first part of the test is in the affirmative and the second in the negative, the law will be invalid.[124]

This brings the author to the first *Lange* question as examined in *Hogan and Hinch*.[125]

Counsel for Hinch submitted that the offences with which his client is charged relate to material that is concerned with both the legislature and the administration of justice by the courts under s 77(iii) of the Constitution.[126] While the Court held this to be correct,[127] they also held that s 42 operates merely as an incidental burden upon the freedom of political communication.[128] Where such a burden is incidental, it will be

---

[121] *Coleman v Power* (2004) 220 CLR 1, cited in *Hogan v Hinch* [2011] HCA 4, [47], [97].
[122] *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 567 as cited in *Hogan v Hinch* [2011] HCA 4, [47], and also quoted in *Coleman v Power* (2004) 220 CLR 1, 43 [74].
[123] *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 567, as quoted in *Hogan v Hinch* [2011] HCA 4, [47], and also quoted in *Coleman v Power* (2004) 220 CLR 1, 43 [74]. This second part of the test was reformulated *Coleman v Power* (2004) 220 CLR 1, 77-8 [196]: *APLA Ltd v Legal Services Commissioner (NSW)* (2005) 224 CLR 322 at 402 [213].
[124] *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 567, as quoted in *Hogan v Hinch* [2011] HCA 4, [47], and also quoted in *Coleman v Power* (2004) 220 CLR 1, 43 [74].
[125] *Hogan v Hinch* [2011] HCA 4, [47], [97], in reference to *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 567.
[126] *Hogan v Hinch* [2011] HCA 4, [94].
[127] Ibid, [95].
[128] Mason CJ noted that there is a distinction between laws that significantly burden the freedom of political communication and those which only incidentally burden the freedom: *Mulholland v Australian Electoral Commission* (2004) 220 CLR 181, 200 [40], quoted in *Hogan v Hinch* [2011] HCA 4, [95].

easier to justify.[129] Further, where the prohibition upon communication relates to a matter that is 'neither inherently political in its nature, nor a necessary ingredient of political communication or discussion', a curtailment of the freedom of political communication that is incidental will be constitutionally valid should there be no significant burden.[130] Thus the burden in this instance is permissible.[131]

The second question in the *Lange* test[132] concerns the fact of whether s 42(3) of the Act can be reasonably construed as serving a legitimate purpose and further, being in accordance with the maintenance of representative and responsible government, as commanded by the Constitution.[133]

As noted earlier, s 42 operates within the purposes outlined by s 1(1) of the Act.[134] The burden on communication varies according to the terms of a suppression order made under s 42(1) and indeed as to whether a suppression order is made at all.[135] Hence, the Court answered the second question in the affirmative; that is, s 42(3) of the Act serves a legitimate purpose and is in accordance with the maintenance of representative and responsible government under the Constitution.[136] As such, the

---

[129] *Hogan v Hinch* [2011] HCA 4, [95], cited in *Australian Capital Television Pty Ltd v The Commonwealth* (1992) 177 CLR 106, 169, as cited in *Levy v Victoria* (1997) 189 CLR 579, 618-19, later cited in *Mulholland v Australian Electoral Commission* (2004) 220 CLR 181 at 200.
[130] *Cunliffe v The Commonwealth* (1994) 182 CLR 272, 339, as quoted in *Hogan v Hinch* [2011] HCA 4, [96].
[131] *Hogan v Hinch* [2011] HCA 4, [95]. French CJ, at [50] also declares that there is a burden on the implied freedom of political communication, but does not go beyond that.
[132] As reformulated in *Coleman v Power* (2004) 220 CLR 1: *Hogan v Hinch* [2011] HCA 4, [47], [97].
[133] *Hogan v Hinch* [2011] HCA 4, [47], [97]. Kirby J, in *Levy v Victoria* (1997) 189 CLR 579, 646, as quoted in *Coleman v Power*, stated that the question is necessarily one of a restrictive nature, as 'there is no express conferral of rights, which individuals may enforce': *Coleman v Power* (2004) 220 CLR 1, 51.
[134] *Hogan v Hinch* [2011] HCA 4, [69], [98].
[135] Ibid, [98].
[136] Ibid, [50], [99].

Court found there was no need to assess whether the matter in question has a sufficient link with any Commonwealth issue so as to fall within the limits of the implied freedom of political communication.[137]

IV CONCLUSION

For all of the above-mentioned reasons, the High Court unanimously held s 42 to be valid and thus returned the matter back into the Magistrates' Court.[138]

Despite indications from counsel during the High Court hearing that a guilty plea would be entered should the Court find s 42 to be valid,[139] Hinch entered a plea of not guilty once the matter returned to the Magistrates' Court.[140] Counsel acting for Hinch submitted that the mere naming of a person who is the subject of a suppression order could not constitute identification[141] as Hinch did not give out further details such as 'their addresses, places of employment or physical attributes'.[142] In opposition to the submissions from Hinch's counsel, the DPP submitted that naming a person was

---

[137] Ibid, [99]. However, French CJ discusses the matter, stating that the interrelated nature of the Australian legal system makes it difficult to identify a matter as being one purely related to the States: *Hogan v Hinch* [2011] HCA 4, [48]-[49], quoting *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 at 571-572.
[138] *Hogan v Hinch* [2011] HCA 4, [100].
[139] Transcript of Proceedings *Hinch v Hogan* [2011] HCATrans 184 (30 July 2010) 24-35 (Bennett QC).
[140] Peter Carlyon, *Hinch Enters Not Guilty Plea* (2011) ABC <http://www.abc.net.au/news/stories/2011/05/20/3222421.htm?site=melbourne> at 6 June 2011.
[141] Ibid; *Hinch 'Didn't Identify' Pedophiles* (2011) 3AW <http://www.3aw.com.au/blogs/blog-with-derryn-hinch/hinch-didnt-identify-pedophiles/20110520-1evwi.html> at 6 June 2011.
[142] Peter Carlyon, above n 140.

enough to constitute identification,[143] and on 3 June 2011, Magistrate Charles Rozencwagj found Hinch guilty of four of the charges, with the fifth being dismissed.[144] Due to Hinch's worsening state of health,[145] counsel for Hinch sought a stay on the sentencing to allow Hinch time to receive medical treatment.[146] The DPP,[147] and subsequently the Magistrates' Court, agreed to a two month stay on his sentencing.[148]

There is a certain irony in the High Court decision.[149] The ruling essentially reinforces the law relating to suppression orders and protects the identities of the very people Hinch wishes to name and shame.[150] But despite this, Hinch appears to be incorrigible. Since being charged in 2008, he has not ceased naming people in contravention of suppression orders, nor has he shown any level of remorse.[151] On 21 April 2011, Hinch published the name of a person charged with possession of child pornography

---

[143] 'Derryn Hinch 'Not Sorry' After Conviction for Naming Sex Offenders', *The Australian* (online), 3 June 2011, <http://www.theaustralian.com.au/news/nation/derryn-hinch-found-guilty-of-breaching-court-bans-by-naming-sex-offenders/story-e6frg6nf-1226068743702> at 6 June 2011.
[144] Ibid.
[145] In September 2010, Hinch revealed that he had been diagnosed with liver cancer: *Hinch Reveals Liver Cancer Fight* (2010) ABC News <http://www.abc.net.au/news/stories/2010/09/20/3016931.htm> at 6 June 2011. Since revealing this diagnosis, his condition has deteriorated and he now faces death if he does not receive a liver transplant within the next three months: Peter Munro, 'Hinch's Toughest Assignment: "Watching Myself Die"', *Sydney Morning Herald* (online), 22 May 2011, <http://www.smh.com.au/victoria/hinchs-toughest-assignment-watching-myself-die-20110521-1ey1c.html> at 6 June 2011.
[146] *Hinch Seeks Sentencing Delay on Medical Grounds* (2011) ABC News <http://www.abc.net.au/news/stories/2011/05/18/3220451.htm> at 6 June 2011.
[147] *Hinch Prosecutors Agree to Sentencing Delay* (2011) ABC <http://www.abc.net.au/news/stories/2011/05/18/3220609.htm?site=melbourne> at 6 June 2011.
[148] *Hinch 'Didn't Identify' Pedophiles*, above n 141.
[149] Mary Gearin, *Sex Offenders May Have Gained from Hinch Campaign* (2011) ABC News <http://www.abc.net.au/news/stories/2011/06/04/3235605.htm> at 6 June 2011.
[150] Ibid.
[151] *Hinch Guilty of Breaches but Isn't Sorry* (2011) Sky News <http://www.skynews.com.au/national/article.aspx?id=621139&vId=> at 6 June 2011; Daniel Fogarty, 'Derryn Hinch Guilty of Breaches, Not Sorry', *The Age* (online), 3 June 2011, <http://news.theage.com.au/breaking-news-national/derryn-hinch-guilty-of-breaches-not-sorry-20110603-1fkb1.html> at 6 June 2011.

who is the subject of a suppression order.[152] This latest naming is indicative of Hinch's complete unwillingness to stay within the limits on the law and reinforces Young CJ's comments that Hinch viewed himself as being 'above the law'.[153]

[152] Derryn Hinch, *Finnigan's Wake* (2011) HINCH.net <http://www.hinch.net/hinch-says-2011/April/21-04-11.1.html> at 6 May 2011. While there is a warning to readers at the top of the page that they should not access the file if they live in South Australia, this would not be sufficient to mount a defence against any possible charges. In the instance of suppression orders surrounding the Snowtown murder trial, The *Herald Sun* and also *The Age* were found guilty of contempt of court where newspapers containing material that breached the suppression orders were sold in South Australia. This is despite the papers being directed towards a Victorian audience and only a small number of papers being sold just over the South Australian border: Jacqueline Mowbray and David Rolph, *'It's a Jungle Out There: The Legal Implications of Underbelly'*, Legal Studies Research Paper No. 10/66 (2010) University of Sydney Law School, 4.

[153] *Hinch v Attorney-General (Vic)* [1987] VR 721.