

IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMON LAW DIVISION  
JUDICIAL REVIEW AND APPEALS LIST

S CI 2013 05722

IN THE MATTER OF an Appeal on a Question of Law pursuant to Section 272 Criminal  
Procedure Act 2009

BETWEEN

**KYLE MAGEE**

**APPELLANT**

**v**

**SHAYNE WALLACE**

**RESPONDENT**

### **FURTHER SUPPORTING AFFIDAVIT OF KYLE MAGEE**

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Date of document: 23 December 2013  
Filed by the Appellant  
**Kyle Anthony Magee**

Phone: 0417 669 971  
Email: kyleanthonymagee@gmail.com  
Postal Address: Unit 4 / 5 Creswick Street  
Hawthorn VIC 3122

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I, Kyle Magee, the Appellant, declare and affirm as follows:

1. I have been representing myself in this matter since 14 February 2013.
2. I make this affidavit further to my previous affidavit, filed for these proceedings and dated 4 November 2013, in accordance with the orders of the Honourable Associate Justice Mukhtar, dated 10 December 2013.
3. Order 2 of Associate Justice Mukhtar's orders states:

The Appellant shall file and serve the Attorney General, the Commission and the Respondent with :-

(a) an additional supporting affidavit which exhibits a transcript of the hearings as conducted in the Melbourne Magistrates' Court on:

(i) 20 August 2013;

(ii) 18 September 2013;

(iii) 7 October 2013; and

(b) a CD disc containing the audio of those proceedings --

by 4pm on 30 December 2013.

4. Now produced and shown to me at the time of swearing this affidavit, and marked "**KM - 10**", is a copy of the transcripts of all three days of the Magistrates' hearing mentioned above, in accordance with order 2(a).

5. Now produced and shown to me at the time of swearing this affidavit, and marked "**KM - 11**", is a CD disc containing the audio of those proceedings, in accordance with order 2(b).

**DECLARED AND AFFIRMED** by the said )

KYLE MAGEE )

at Melbourne in the State of Victoria )

this 23rd day of December 2013 )

Before me: \_\_\_\_\_

IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMON LAW DIVISION  
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BETWEEN

**KYLE MAGEE**

**APPELLANT**

**v**

**SHAYNE WALLACE**

**RESPONDENT**

**Exhibit "KM - 10"**

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Date of document: 23 December 2013

Filed by the Appellant

**Kyle Anthony Mage**

Postal Address: Unit 4 5 Creswick Street  
Hawthorn VIC 3122

Phone: 0417 669 971

Email: [kyle@globalliberalmediaplease.net](mailto:kyle@globalliberalmediaplease.net)

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This is the exhibit marked "**KM - 10**" referred to in the affidavit of **Kyle Magee**, affirmed at  
**Melbourne**, in the State of Victoria, this **23rd** day of **December 2013**.

Before me: \_\_\_\_\_

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TRANSCRIPT OF PROCEEDINGS

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MAGISTRATES' COURT

MELBOURNE

TUESDAY 20 AUGUST 2013

BEFORE MR A.P. CAPELL, MAGISTRATE

THE POLICE v. KYLE MAGEE

MS S. BENSKIN appeared on behalf of the Police

THE ACCUSED appeared in person

**PROCEEDINGS RECORDED BY MAGISTRATES' COURT**

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SPARK AND CANNON  
Level 9, 620 Bourke Street, Melbourne

9248-5678



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3 any means (electronic, mechanical, microcopying, photocopying,  
4 recording or otherwise) be reproduced, stored in a retrieval  
5 system or transmitted without prior written permission of the  
6 Authorised Officer.

7 MS BENSKIN: Your Honour, this is a contested matter. I

8 believe it's been booked in for two hours. I'm not sure  
9 as to the reasoning of the two hours. There is just the  
10 one charge of bill posting and only one witness that the  
11 prosecution intend to call.

12 HIS HONOUR: Yes.

13 MS BENSKIN: I believe it's a unique case in that the accused  
14 concedes all information relating to the offence and that  
15 the offence is complete. It's just the reasoning as to  
16 why it occurred with human rights, Your Honour.

17 HIS HONOUR: Yes, all right. Well, I'll come to that. I'll  
18 just login. Okay, you're Kyle Magee?

19 ACCUSED: Yeah, that's right.

20 HIS HONOUR: Yes. Mr Magee, first of all I just want to find  
21 out is it your intention to plead guilty or not guilty to  
22 the charge?

23 ACCUSED: Not guilty.

24 HIS HONOUR: Okay. Well, I think as much as I'm being told that  
25 the informant - that all facts are agreed, I'd still want  
26 to hear facts from the informant - - -

27 MS BENSKIN: Yes, Your Honour - - -

28 HIS HONOUR: - - - and need the informant to be cross-examined  
29 and take it from there.

30 MS BENSKIN: Yes, Your Honour.

31 HIS HONOUR: Mr Magee - you have one witness?

32 MS BENSKIN: Yes, Your Honour.

33 HIS HONOUR: Mr Magee, do you have any other witnesses apart  
34 from yourself?

1 ACCUSED: Just myself.

2 HIS HONOUR: Okay. All right, if you dispute any of the  
3 evidence that's given by the witness you have the  
4 opportunity to ask that witness questions and put an  
5 alternative version of the facts. I think I'm reading  
6 between the lines what the informant or the prosecutor  
7 said at the beginning, that you're saying on a question  
8 of law which is fine.

9 ACCUSED: Yeah, that's true.

10 HIS HONOUR: You can't put questions of law to the witness; you  
11 can only put questions relating to facts.

12 ACCUSED: Of course. I have no question to the facts as they  
13 were put in the statement. The only thing that I could  
14 possibly disagree with is the rendering of my statements  
15 but you know, that's not really that important.

16 HIS HONOUR: Yes, all right. Do you have any objection to the  
17 informant - if that's the case - the male informant is  
18 Shayne Wallace?

19 MS BENSKIN: Yes, Your Honour.

20 HIS HONOUR: Reading from the statement?

1 ACCUSED: No.

22 HIS HONOUR: Because there's a power under the Evidence Act to  
23 do so.

24 MS BENSKIN: Yes, Your Honour.

25 HIS HONOUR: So perhaps if you call the informant and he can  
26 read from the statement and I'll assist Mr Magee if I  
27 need to.

28 MS BENSKIN: As Your Honour pleases. Your Honour, the  
29 prosecution call Constable Shayne Wallace.

30 HIS HONOUR: Thank you.

1 <SHAYNE CLINTON WALLACE, sworn and examined:

2 MR WALLACE: Your Honour, my full name is Shayne Clinton  
3 Wallace. I'm a Constable of Police currently stationed  
4 at the Melbourne West Police Station. My registered  
5 number is 37276. I'm currently seconded to the Melbourne  
6 crime investigations unit.

7 MS BENSKIN: Constable, do you have a copy of your statement  
8 there?---Yes, I do.

9 HIS HONOUR: If you could just read slowly from that?---Yes.

10 MS BENSKIN: If you read it slowly?---Yes. "On the 14 February

11 2013 I was performing divisional van duties in the  
12 Melbourne area in company with Constable Telesa  
13 Blackhall, her registered number is 38341. At  
14 approximately 3.50pm we received information from police  
15 communications centre to attend the concourse of Southern  
16 Cross Railway Station at Spencer Street, Melbourne  
17 regarding a male bill posting. At approximately 3.54pm  
18 we attended at the Southern Cross Railway Station. On  
19 our arrival to the concourse I had a conversation with  
20 security supervisor, Joseph ~~Manner~~ <sup>MANA</sup>, who detailed his  
21 observations to me in relation to the male's actions at  
22 the station." So just to elaborate there, Mr ~~Manner~~ <sup>MANA</sup>  
23 basically told me that he'd asked the accused to stop  
24 bill posting and he continued to do this behaviour.

25 When you say bill posting what do you mean?---He was using a  
26 paint brush and - with a sticky substance and he was  
27 sticking black paper and political - well, media protest  
28 signs to a Lipton Ice Tea sign.

29 Continue?---So - - -

30 Once you attended?---Yeah. We've attended the Collins Street  
31 end of the concourse where I've observed a male using a

1 paint brush and sticking black pieces of paper and  
2 documents to an advertisement board. "The male was  
3 wearing a sleeveless yellow fluoro vest, black shorts. I  
4 would describe this male as approximately 180 centimetres  
5 tall, Caucasian, medium build, bald head. I know now  
6 this male to be the accused in the matter, Kyle  
7 Magee. I have then approached him and in the presence of  
8 hearing of Constable Blackhall I had the following  
9 conversation with the accused - - -

10 What was that conversation?---"Hi, my name is Constable Shayne  
11 Wallace and is Constable Blackhall, we're from the  
12 Melbourne West police station. Can you stop doing this."  
13 Sorry that's what - I'll start again. "'My full name is  
14 Constable Shayne Wallace and this is Constable Blackhall.  
15 We are from the Melbourne West police station.' The  
16 accused replied, 'You cannot stop me doing this.' I said,  
17 'Can you please stop what you're doing, I want to speak  
18 to you.' There was no reply from the accused. I said,  
19 'Can you please state your full name and date of birth.'  
20 The accused replied, 'Kyle Magee, 15/10/1983.' I said,  
21 "Where are you currently living?' The accused replied,  
22 'Squatters houses, social banned houses.' I said, 'Do  
23 you have any identification?' The accused replied, 'Yes'  
24 and at this stage the accused produced a Victorian  
25 driver's licence number 058277184 with a recorded expiry  
26 of 16/10/13 which was bearing a photograph of the  
27 accused. I also conducted a name check via police  
28 communication with also confirmed his identity. I then  
29 had a further conversation with the accused. I said,  
30 'Kyle, I'm going to ask you some questions in relation to  
31 the offence of bill posting. Before continuing I must



1 inform you that you do not have to say or do anything but  
2 anything you say or do may be given in evidence. Do you  
3 understand that?' The accused replied, 'Yes.' I said,  
4 'I have received a report from Southern Cross security  
5 you were asked to stop bill posting and you've continued  
6 to do this. I've then observed you bill posting and  
7 you've continued to do this.' The accused replied, 'I'm  
8 making a statement against corporate greed, I'm just  
9 going to keep on doing this.' I said, 'Why were you bill  
10 posting here today?' and he said, 'Political protest.' I  
11 said, 'What are you using to stick these documents to the  
12 advertising wall?' The accused replied, 'A flour and  
13 water paste.' I said, 'What were the documents you were  
14 sticking to the advertisement wall?' The accused  
15 replied, 'Explain my objection to advertising.' I said,  
16 'Has anyone given you permission to stick these documents  
17 to the advertising wall?' The accused replied, 'Apart  
18 from myself nobody.' I said, 'Do you have any permits to  
19 do this?' The accused replied, 'No.' I said, 'Do you  
20 know it's an offence to bill post?' The accused replied"  
21 - sorry I'll start again. "I said, 'Do you know it's an  
22 offence to bill post?' The accused replied, 'No.' I  
23 said, 'Did Southern Cross security ask you to stop bill  
24 posting?' The accused replied, 'Yes.' I said, 'What is  
25 your reason of bill posting?' The accused replied,  
26 'These advertising posters have an effect on democracy.'  
27 I said, 'This matter will be reported and you may receive  
28 a summons.' The accused replied, 'I'm going to keep  
29 doing it.' I then took a photograph of the paint brush  
30 and the bucket that was containing the paste."

31 Constable, do you have that photo with you today?---Yes, I

1 certainly do.

2 Can I just get you to have a look at the photo and just detail  
3 to the court what exactly is on that photo?---That's a  
4 red handled paint brush. It's in a bucket. It looks  
5 like a misty sort of paste in a clear bucket. It was  
6 taken on the pavement.

7 I tender that Your Honour.

8 HIS HONOUR: Have you seen that Mr Magee?

9 ACCUSED: Yeah.

10 HIS HONOUR: Okay. That will be exhibit A.

11 #EXHIBIT A - Bundle of three photographs.

12 MR WALLACE: "I then took two photographs of the advertisement  
13 wall."

14 MS BENSKIN: I'll get you to have a look at one of them?---Yes.  
15 Can you detail to the court what was on that photo?---Yes, it's  
16 an advertising - sorry, it's a piece of paper that's  
17 detailing the effects on the advertising - detailing it's  
18 a multi-billion dollar industry.

19 Without reading exactly what's on it, what type of writing is  
20 on there?---It's like typed up on a computer.

1 Whereabouts was that photo taken?---It was the - stuck to the  
22 actual advertising sign.

23 I tender that, Your Honour.

24 HIS HONOUR: Mr Magee?

25 ACCUSED: Yeah, yeah, *they were all in the brief.*  
~~that (indistinct)~~

26 MS BENSKIN: You said that here was another photo. You took  
27 two photos in relation to the wall. Can you detail to  
28 the court what's in the third photo?---So the last photo  
29 is actually the advertising wall. It contains black  
30 paper, it contains a typed up version of his objection  
31 towards advertising. It's approximately 25 pieces of

1 paper stuck to the wall.

2 I tender that, Your Honour.

3 HIS HONOUR: You've seen that one as well? I put all the  
4 photos just in the one exhibit.

5 MS BENSKIN: Yes, Your Honour. Once you've taken the photos  
6 what's happened then?---The accused has since left and  
7 Constable Blackhall and I have attended the Southern  
8 Cross security control room where I viewed the CCTV. I  
9 was unable to get a copy of this CCTV just due to the  
10 fact that Southern Cross weren't really the most easiest  
11 people to deal with getting that footage. Then at 4.20  
12 we've commenced - resumed our patrol duties.

13 Are you aware of any - what restitution have Southern Cross  
14 sought in relation to this?---I spoke to Southern Cross  
15 and they weren't - they didn't want any restitution. I  
16 tried to pursue cleaning costs, costs to replace the  
17 board and they said, no, it hosed off. They didn't want  
18 any restitution at all.

19 That's the evidence from this witness, Your Honour.

20 HIS HONOUR: Any questions you want to ask the witness?

21 ACCUSED: Yes, I have a couple - - -

22 HIS HONOUR: You'll have to stand up Mr Magee.

23 ACCUSED: No problem.

24 <CROSS-EXAMINED BY ACCUSED:

25 How long between the day of the alleged offending and you  
26 writing the statement was <sup>there</sup>~~that~~?---Is it all right if I  
27 refer to the date of my statement Your Honour?

28 HIS HONOUR: You may, yes.

29 MS BENSKIN: Your Honour, there was no objection from the fact  
30 that the witness was - - -

31 HIS HONOUR: Yes, no problem.

1 MS BENSKIN: - - - reading from the statement in relation to  
2 this matter?---It would be approximately six days after.

3 ACCUSED: Yeah. You didn't have a recording device on the  
4 day?---No, I took contemporaneous notes which is in the  
5 book here. That was taken at the time. We call it a  
6 field interview where I ask you a question, write it  
7 down, you give me a response, I also write that down at  
8 the time.

9 At what point did you produce the notebook and start taking  
10 notes? Was it immediately or (indistinct) - - -?---Well,  
11 it was when I first - when I first spoke to you up near  
12 the first billboard at the time I spoke to you and then I  
13 had a further conversation with the security and then  
14 I've got the book and started recorded the actual full  
15 conversation.

16 Yeah, I remember that. That was at the entrance of the  
17 station, quite a bit later on in the piece. How certain  
18 are you that I said you cannot stop me from doing this as  
19 the first thing that I said when you came up to me?---I  
20 do remember that part, you did say you cannot stop me  
21 from doing this and at the time - I mean we get people  
22 bill posting in the city all the time. A lot of times  
23 people just pull it down and walk off but when you said  
24 you can't stop me from doing this - it was just your  
25 demeanour at the time. That's why I've had the  
26 conversation with you.

27 Could it have been my demeanour or just the fact that I didn't  
28 want to pull them down that made you think that my  
29 attitude was of that kind, that I may have said that?  
30 ---Both really.

31 The only other question I have is how accurately you copied



1 down - when you asked for the reason for posting bills,  
2 what was the reason that you said I gave?---"I'm going to  
3 keep doing it."

4 How sure are you I said that that's what I said there?---I  
5 wrote it down at the time.

6 Yeah, okay. No further questions.

7 HIS HONOUR: Thanks Mr Magee. Re-examination?

8 MS BENSKIN: No, Your Honour, we close the prosecution case.

9 HIS HONOUR: Yes, thank you.

10 MS BENSKIN: May the witness be excused?

11 HIS HONOUR: Sorry? Yes.

12 MS BENSKIN: I was asking for him to be excused, Your Honour.

13 HIS HONOUR: Yes, you're excused thanks.

14 <(THE WITNESS WITHDREW)

15 (Witness excused.)

16 HIS HONOUR: Is that the prosecution case?

17 MS BENSKIN: It is Your Honour.

18 HIS HONOUR: The charge reads, "The accused at Melbourne on  
19 14 December posted a document on a structure, namely an  
20 advertising board without the consent of the occupier."  
21 What is your evidence for without the consent of the  
22 occupier?

23 MS BENSKIN: Your Honour, the constable gave evidence stating  
24 that the - - -

25 HIS HONOUR: I appreciate that. You're not calling them to  
26 give evidence?

27 MS BENSKIN: Your Honour, I was - as far as the summary case  
28 conference was concerned with the accused the facts were  
29 conceded in relation to that matter.

30 HIS HONOUR: Okay. All right, yes. That's fair comment.

31 Perhaps can the informant go back in the witness box. I

1 want to ask something.

2 MS BENSKIN: Yes, Your Honour.

3 <SHAYNE CLINTON WALLACE, recalled:

4 HIS HONOUR: I'll allow you to ask questions arising out of  
5 this, Mr Magee, if need be. It says namely an  
6 advertising board and we've got photos. An advertising  
7 board is an advertising board. Upon what basis can  
8 anyone put something on an advertising board at Southern  
9 Cross from the information you're provided by Southern  
10 Cross?---I believe they need permission to - they need  
11 permission by Southern Cross to be able to be able to  
12 bill post within their station.

13 Yes, okay. Anything arising out of that Mr Magee?

14 ACCUSED: There's only one thing I'd like to do while you're in  
15 the witness box - - -

16 HIS HONOUR: Well, not on law, it's got to be on facts.

17 ACCUSED: Yeah, this is a fact. I'm simply handing up my  
18 criminal record.

19 HIS HONOUR: I didn't necessarily need to know that Mr Magee.

20 ACCUSED: Yeah, well I've decided to be 100 per cent open about  
21 all of this so that's what I'm doing. Would you agree  
22 that that is my criminal record?---Yes.

23 Yeah, well I tender that as evidence.

24 HIS HONOUR: Okay. Thank you, you can step down.

25 <(THE WITNESS WITHDREW)

26 (Witness excused.)

27 HIS HONOUR: All right. Mr Magee, this is now your  
28 opportunity. There are a couple of options you have.  
29 One you can go into the witness box and give evidence  
30 about the facts. Alternatively, you don't have to go  
31 into the witness box and give evidence about the facts.

1 But, you can't just stand there and say something about  
2 the facts. You can about the law but you can't just  
3 stand there and say well, I disagree with that fact and  
4 that fact and - - -

5 ACCUSED: My legal advisors have tried to make me understand  
6 this and as unnatural as it is I think I've got some  
7 grasp of it.

8 HIS HONOUR: Yes, okay. So, do you wish to go into the witness  
9 box?

10 ACCUSED: Yes, I do.

11 HIS HONOUR: Yes, okay.

12 <KYLE ANTHONY MAGEE, affirmed and examined:

13 HIS HONOUR: Take a seat if you want to Mr Magee. Perhaps if  
14 you can just tell me about 14 February of 2013?---Yeah.  
15 The facts - the factual description of my actions I don't  
16 disagree with. I attended the station and covered some  
17 advertising boards first in black paper to obscure all  
18 images and written messages on the advertising board and  
19 then affixed documents that explain the reasons for my  
20 objection to advertising. It's not just the advertising  
21 that exists in public space, the out of home advertising  
22 that I covered that I object to. It's also you know, the  
23 advertising that props up our <sup>for-</sup>~~poor~~ profit media. Yeah,  
24 it details the implications, I believe it has, in the  
25 media which are anti-democratic and well, psychologically  
26 damaging.

27 So, look you're saying one - and you've been very open, you're  
28 saying look, yes I did do this. My reason for doing it  
29 was because it was - you're saying it was a legitimate  
30 form of political protest?---Yeah, that's correct.

31 That you were aware that you couldn't do that?---I wasn't aware

1 that I couldn't do it, no. I was pretty aware that the  
2 police would assume that I wasn't able to do it.  
3 Attending a public train station in the middle of the day  
4 which I knew to be surveilled by security staff via - I  
5 thought that there was a high chance of me being stopped  
6 by police which leads me to think I would never have said  
7 you cannot stop me to a police officer. Obviously I know  
8 they can.

9 We'll just wind back a little bit there. There was what's  
10 called a summary case conference and this is where you  
11 have discussions and work out what the issues are in  
12 dispute?---Yeah.

13 The reason I raise that question earlier was about the consent  
14 issue and the prosecution have taken the view today that  
15 wasn't an issue, that you knew it was without the consent  
16 of Southern Cross. What do you say about that? Because,  
17 if they've run this today on the basis that they  
18 understood that wasn't an issue then I would probably  
19 reopen their case to call someone from Southern Cross to  
20 say there wasn't consent?---Yeah. I guess I never even  
21 considered that element of the case.

22 Yes, all right. So what you're saying is you might not have  
23 been aware of the need to obtain consent, which isn't a  
24 defence?---As I've - as the criminal record that I've  
25 handed up previously sort of details, I've had a few  
26 dealings with the law doing a similar protest so I was  
27 aware that it would be said that I didn't have  
28 permission. But, what I'm arguing is that the Human  
29 Rights Charter, freedom of expression, does give me  
30 permission.

31 Yes, separate issue?---Yeah, but yeah, I was fully aware that

1 it would be alleged that I didn't have permission.

2 Okay. Now, when you were spoken to by the police what's your  
3 recall of the conversation?---Well, it's months ago. I  
4 can't recall exactly what I said. But, reading over the  
5 statements I just sort of know that I would not have said  
6 that and I would not have said you cannot stop me for the  
7 obvious reasons.

8 Do you have a memory of any of the conversation?---Yeah, yeah  
9 of course. I remember the police officer approaching and  
10 him asking me what I was doing and me just saying what I  
11 was clearly doing which is pasting over these  
12 advertisements, saying that it was a political protest.  
13 Then I probably went on to say that I was going to defend  
14 my actions with the Human Rights Charter which the  
15 informant may have taken as me saying I had the  
16 permission to do this and the law can't stop me which was  
17 not what I said.

18 So, you're pasting over actual ads that were already there?

19 ---Yeah, yeah. I don't know if you've been to Southern  
20 Cross station but the way they do it is they have the  
21 whole sort of station - - -

22 I've been there on a regular basis but I tend not read the  
23 advertising?---Yeah, yeah, a lot of people claim not to.  
24 They sell the whole station out to one advertiser so  
25 there were lots and lots of Lipton Advertisements all  
26 over the place, I covered a few of them.

27 Yes. Anything else you wanted to say about the facts at the  
28 moment?---I guess I haven't very well explained the  
29 political objection to advertising. But, it's pretty  
30 difficult to just do that off the cuff and I don't know  
31 how important it is to the case as far as you're going to

1 consider.

2 No, that - it's - I'm looking at the facts at the moment and  
3 then we'll deal with the law. So on the facts of that  
4 day. The explanation you've given for the behaviour is a  
5 relevant fact, I was doing it - it was a political  
6 objection to advertising. That's why I was doing what I  
7 was doing. That's fine. I then will have to deal with  
8 the law. Anything on the actual facts of that day?

9 ---Well, I guess I could say that when I was doing what I  
10 was doing the reaction from the public was largely just  
11 interest, a lot of people were watching and asking me  
12 what I was doing and why. I was able to tell them that  
13 it was a protest against advertising and the sort of  
14 media system that it props up. I said you know, you can  
15 read these posters. They also - it also had the website  
16 - the address of my website up there and QR code for  
17 those with smart phones to go directly to the website  
18 which is where I outlined more of what I think and why  
19 I'm doing what I'm doing which is an ongoing protest.

20 Okay?---Another reason I could give for my behaviour is that  
21 traditional methods of raising awareness of this issue I  
22 believe will be ineffective in this particular instance  
23 given the cultural acceptance of advertising and the  
24 general view that people have that it's something that's  
25 beyond democratic control when really I think it's  
26 precisely the issue that we should be looking<sup>at.</sup><sub>^</sub> In a  
27 world where we have these developed democracies that are  
28 pretty much totally under the thumb of global capitalism  
29 to have our media controlled by these same sorts of  
30 people and same sorts of organisations is - well, it's  
31 pretty much madness.



1 That's the explanation?---Yeah.  
2 Okay. Do you have any questions?  
3 MS BENSKIN: Yes, Your Honour.  
4 <CROSS-EXAMINED BY MS BENSKIN:  
5 Mr Magee, you were at Southern Cross station, at the railway  
6 station on 14 February?---I certainly was.  
7 That's correct isn't it?---Yeah.  
8 With you you had a bucket and paint brush?---Yeah.  
9 What was in the bucket?---It was a flour and water glue.  
10 What was that for?---It was for pasting paper onto the  
11 advertisements.  
12 When you went to the railway what else did you have with you?--  
13 -Pretty much nothing. A backpack to carry the things and  
14 that's it.  
15 You had black paper with you?---Yeah.  
16 You had the pre-typed prepared statements with you?---Yes.  
17 When you went to Southern Cross station you didn't go to the  
18 security office did you?---No, I didn't.  
19 You didn't speak to anyone to ask them if it would be okay if  
20 you posted those bill posters there?---No, I didn't.  
21 When security approached you and asked you to stop you didn't  
22 stop did you?---No. I just said to them that it was a  
23 political protest and that I believe, as it was in public  
24 space, that I had a right to do this and they informed me  
25 that they were going to call the police and I said yeah,  
26 that's okay. I assume the police will stop me when they  
27 get here. Yeah, they didn't make too much of an effort  
28 to stop me. At one point - maybe it was Joseph <sup>MANA</sup>~~Manner~~,  
29 the guy who made the statement, he did come over and  
30 start pulling the posters down and at that point I  
31 engaged him about why I was doing it and saying that I

1 thought that advertising was a negative influence,  
2 particularly on children. He ended up sort of  
3 understanding where I was coming from and like stopping  
4 to pull the posters down which didn't come across in his  
5 statement at all. He said at first I thought it was just  
6 some sort of graffiti type person trying to put my own  
7 thing up but once he realised it was a political ~~process~~ <sup>protest</sup>  
8 he was much more tolerant and he just stood back and  
9 waited for the police to arrive.

10 He told you he was calling the police didn't he?---Yeah.

11 Who do you believe owns those advertising boards?---Well, I  
12 can't say I'm exactly sure. Ever since Southern Cross  
13 has been revamped it's now in private hands so I don't  
14 know which consortium owns it. I have no idea how to find  
15 out.

16 So in your own words the consortium wouldn't seek any  
17 permission in order to - - -?---Well, I don't even know  
18 who they are and so no, I didn't. But, the advertising  
19 boards are emblazoned with JC Decaux which is a  
20 multi-national advertising company. So, either the space  
21 is rented to them or they're given permission to place  
22 their property in the station.

23 No further questions, Your Honour.

24 HIS HONOUR: Thank you. Mr Magee, you can stand down.

25 <(THE WITNESS WITHDREW)

26 HIS HONOUR: That's the evidence you seek to call?

27 ACCUSED: Yeah, ~~that's it.~~ I guess so.

28 HIS HONOUR: All right. The law, you'll have to stand up and  
29 go through it.

30 ACCUSED: Okay. Basically I'm saying that this political  
31 expression falls under s.15(2) of the Charter which is



1 freedom of expression. There's a number of limitations  
2 that are imposed upon these expressions, that's in 15(3).

3 The first of these sections are - - -

4 HIS HONOUR: You've got to appreciate that I haven't got the  
5 Charter in front of me at the moment.

6 ACCUSED: Yeah, that's good. Well, I was just trying to get  
7 the exact wording of - - -

8 HIS HONOUR: I want to be referred to particular provisions  
9 because I'll be going away to look at them more.

10 ACCUSED: Yeah, 15(3)(a) is what I'm talking of currently.

11 HIS HONOUR: Yes.

12 ACCUSED: I'm just trying to find exactly which is - special  
13 duties and responsibilities attached to the right of  
14 freedom of expression and the right may be subject to  
15 lawful restrictions <sup>reasonably</sup> ~~readily~~ necessary to respect the  
16 rights and reputations of other persons. Persons is  
17 defined in the charter to mean a human being. However,  
18 there is a precedent relevant to this case which is the  
19 case of Magee v Delaney where Kyrou J ruled that what the  
20 Charter was actually trying to say where it referred to  
21 persons was any non-natural legal entity.

22 So, with that in mind you'd have to say that 3(a) is  
23 talking about respecting the rights and reputations of  
24 all legal personalities. To that I would say that my  
25 expression doesn't impinge on any rights of anyone. The  
26 advertising company who owns the advertising board did  
27 not have their property damaged. The company that owns  
28 the train station, I assume they have really no interest  
29 in the advertising apart from the rent that's paid to  
30 them.

31 I guess that's basically it. It means that 3(a)

1 doesn't really apply in this case. 3(b) is for the  
2 protection of national security, public order, public  
3 health or public morality. I'd say that national  
4 security, public health and public morality are not  
5 brought into question by what I've done. You could even  
6 argue that public health or public morality could  
7 potentially be improved by the removal of corporate  
8 advertisements from ~~the~~ public space and public media  
9 space as well.

10 The only thing that could possibly be a limitation is  
11 public order. What I go through in my submissions is the  
12 test in the case of Brooker, a New Zealand Supreme Court  
13 case, where a number of Justices talk about what  
14 constitutes a threat to public order. In their case  
15 they're talking about a man singing so it's an auditory  
16 expression but they do say that it has to be an overtly  
17 manifested disturbance which constitutes an interference  
18 with the ordinary and customary use - - -

19 HIS HONOUR: One of the problems is that I really should be -  
20 what's the citation for that? I should get a copy of  
21 that - which I can get anyway.

22 ACCUSED: Yeah. The citation - - -

23 HIS HONOUR: Do you have the citation?

24 ACCUSED: The citation is Brooker v The Police (2007) New  
25 Zealand Supreme Court 30.

26 HIS HONOUR: Thirty?

27 ACCUSED: Yeah. Then it has 4 May 2007.

28 HIS HONOUR: It's Brooker or Booker?

29 ACCUSED: Brooker, B-r-o-o-k-e-r.

30 HIS HONOUR: Yeah.

31 ACCUSED: The Justices sort of seem to come together on what

1           they think constitutes a threat to disorder. I don't  
2           know if you want me to go through them one by one here  
3           although the - - -

4   HIS HONOUR: To be quite honest I think - the case is on - were  
5           you prepared for this?

6   MS BENSKIN: Yes, Your Honour. I have a copy of the case law  
7           of Magee v Delaney for Your Honour if you would like a  
8           copy of that. Your Honour, it is a similar situation  
9           where Magee has damaged property by painting over a bus  
10          shelter outside the court. It went to the Supreme Court  
11          and a very similar argument - - -

12   HIS HONOUR: Is that Emerson J?

13   ACCUSED: Kyrrou J.

14   MS BENSKIN: No, Kyrrou J.

15   HIS HONOUR: Kyrrou, yes. Have you seen that?

16   ACCUSED: Yeah. That's was my case.

17   MS BENSKIN: It's his case.

18   HIS HONOUR: Sorry?

19   ACCUSED: That was me, the beginning of my case. So that's  
20          obviously why I handed my criminal record, it's not going  
21          to be secret. Yeah, so to go on from there. The  
22          definitions of a disturbance to public order as outlined  
23          in the case of Brooker - I submit - I'm not going to read  
24          them out unless you particularly want me to. But, by  
25          that test my conduct doesn't interfere with public order.  
26          I haven't prevented anyone from using the space normally.  
27          I haven't caused anxiety or disturbance to anyone.

28          Basically there was no complaint by the public to the  
29          security staff or the police. The only thing I noticed  
30          from the public was interest and one girl even gave me a  
31          high five which was unusual. The other thing - the other

1 threat to public order that could be alleged is if it was  
2 said that my action impinged on somebody's property  
3 rights, therefore that being something we can't allow to  
4 be protected under freedom of expression. It's for  
5 public policy considerations or for public order. To  
6 that I'd say that I haven't impinged on any property  
7 rights, causing no damage. As I've been charged with  
8 posting bills and the brief does not mention damage at  
9 any point I submit that the prosecution also does not  
10 believe that any damage was caused.

11 If they do seek to allege that damage has been caused  
12 the <sup>De Simonj</sup>~~(indistinct)~~ principle is something that I would  
13 invoke to say that arguing that the court cannot take  
14 that into account because if it is proven that or  
15 attempted to be proven that I have in fact caused damage  
16 then that makes me liable to be charged with a more  
17 serious charge which I was not charged with. In light of  
18 there being no damage caused and those other  
19 considerations I'd say there's no threat to public order  
20 either.

21 Another important part of Kyrou's decision in Magee v  
22 Delaney was that the initial reason that he gave for  
23 rejecting the appeal was on the public policy  
24 considerations again centring around the concept of  
25 damage. In that case I was being charged with criminal  
26 damage for applying a water based paint to a perspex  
27 advertising shell, even though in that case it was hosed  
28 off with a pressure hose with minimum cost and  
29 inconvenience to the advertising company. It was ruled  
30 that that was damage, just by virtue of the charge and me  
31 being found guilty of it.



1 I have kind of lost my train of thought, sorry.

2 HIS HONOUR: You talked about the distinction between the 2012

3 Supreme Court matter.

4 ACCUSED: That's right. Yeah, so the public policy

5 considerations that he had there were centred around

6 damage. In this case I submit that there has been no

7 damage. The public policy consideration and that

8 expression can never be protected where it involves an

9 element of damage to a third party's property is not

10 relevant in this case. That flows through - the lack of

11 damage flows through to the considerations contained in

12 the Charter itself.

13 HIS HONOUR: Yes.

14 ACCUSED: Yes, so all this is outlined much more articulately

15 in the submissions. From then on - - -

16 HIS HONOUR: Are they submissions you prepared?

17 ACCUSED: Yeah. I've done them with the help of previous

18 submissions prepared by a lawyer who - - -

19 HIS HONOUR: Were you intending to hand those up?

20 ACCUSED: Yeah, yeah I am.

21 HIS HONOUR: Have you given them to the prosecution?

22 ACCUSED: No, I haven't.

23 HIS HONOUR: It should be given to the prosecution and - - -

24 ACCUSED: I was unaware of that - - -

25 HIS HONOUR: No, that's all right.

26 ACCUSED: I'll give them this copy here. I was told that

27 submissions came after evidence so I guess they would

28 have been after I got out of that box. Sorry about that.

29 I'll hand up with the submissions a copy of the posters

30 that were affixed to the advertising boarding.

31 HIS HONOUR: I don't have a problem with that.

1 MS BENSKIN: I've - this is similar information that was posted  
2 on there.

3 ACCUSED: It's just more complete. In the photos there's only  
4 one - - -

5 HIS HONOUR: Look, I think what happens now is this; you've  
6 prepared some written submissions which are pretty much  
7 putting your case.

8 ACCUSED: Yeah.

9 HIS HONOUR: Ordinarily both parties have an opportunity to  
10 consider the written submissions and then come later on  
11 and argue them. I think that's what has to happen.  
12 That's not going to happen today.

13 ACCUSED: Yeah, I assumed<sup>1</sup> that might be the case.

14 HIS HONOUR: We'll be picking a day where I will read the New  
15 Zealand case you refer to. I'll have a look at your  
16 submissions. The prosecutor will look at those. Then  
17 we'll come back.

18 ACCUSED: The one - - -

19 HIS HONOUR: That's the way we'll have to do it.

20 ACCUSED: Yeah, there is one case that I've neglected to  
21 mention.

22 HIS HONOUR: In the written submissions?

23 ACCUSED: No, just about the submissions, it's not evidence,  
24 it's about law. The Ramsden case in Canada is of a lot  
25 of relevance and used in the submissions. It's a case  
26 where a man was postering about his upcoming band  
27 performance and council bylaw said that no postering is  
28 allowed. He challenged that to the Supreme Court of  
29 Canada saying that it was an infringement on his human  
30 rights. They ended up ruling in his favour saying that  
31 is was an undue restriction so there is a precedent for

1           postering being protected expression - - -  
2   HIS HONOUR: But that's not referred to in your written  
3           submissions?  
4   ACCUSED: It is. That's quite key, that's why I thought I'd  
5           just mention it.  
6   HIS HONOUR: Look, we're going to choose another day to come  
7           back here so I can read all this material. Then I'll let  
8           each of you again speak to that. All right.  
9   ACCUSED: Yeah.  
10   HIS HONOUR: I'll make my decision on that day.  
11   ACCUSED: No problem.  
12   HIS HONOUR: So it's a matter of which day.  
13   MS BENSKIN: I'm in the court's hands Your Honour.  
14   HIS HONOUR: Any particular days that don't suit you, Mr Magee?  
15   ACCUSED: I don't think there's any dates that I won't be able  
16           to come to.  
17   MS BENSKIN: Other than a Friday Your Honour, I'm part-time so  
18           not Friday.  
19   HIS HONOUR: Not Fridays.  
20   MS BENSKIN: Not Friday.  
21   HIS HONOUR: You put a fair bit of your case Mr Magee - you  
22           distinguish the Supreme Court decision on the question of  
23           the damage?  
24   ACCUSED: Yeah, that's correct.  
25   HIS HONOUR: It would be potentially 18 or 19 September. Hold  
26           on. No, 18th. I'll just see if there's time on  
27           18 September which is a Wednesday. Is that date  
28           suitable?  
29   MS BENSKIN: Yes, Your Honour. Your Honour, I assume that  
30           based on the fact that it's on submissions that the  
31           informant would not be required?

1 HIS HONOUR: No. What I'm doing is adjourning the matter  
2 part-heard until 18 September at 10am. If I could obtain  
3 a copy of those submissions Mr Magee. If I could have a  
4 copy of those.  
5 ACCUSED: Did I not already hand one up? --- *oh sorry, I have got one, yes.*  
6 HIS HONOUR: Then I'll give each of you an opportunity to speak  
7 on that day once I've considered the law.  
8 ACCUSED: Great, thanks.  
9 HIS HONOUR: Thank you, you're free to go.  
10 ADJOURNED UNTIL WEDNESDAY 18 SEPTEMBER 2013



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TRANSCRIPT OF PROCEEDINGS

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MAGISTRATES' COURT

CIVIL JURISDICTION

MELBOURNE

WEDNESDAY 18 SEPTEMBER 2013

(2nd day of hearing)

BEFORE MR A.P. CAPELL, MAGISTRATE

KYLE  
~~LYLE~~ MAGEE

Plaintiff

- and -

VICTORIA POLICE

Defendant

PROCEEDINGS RECORDED BY MAGISTRATES' COURT

1 HIS HONOUR: Thanks, Mr Magee. Just take a seat. Now, I've  
2 heard the evidence in this matter, and on the last  
3 occasion I was provided a copy of the decision in the  
4 matter of Magee v Delaney, and also a copy of your  
5 submissions, Mr Magee. Today is set aside to argue for  
6 that, the law.

7 First and foremost, can I just confirm that  
8 prosecution rely upon - they say Southern Cross Railway  
9 Station is privately owned, so to speak, but it's  
10 accessed by the public. There is advertising literature  
11 throughout the station, there are retail premises  
12 throughout the station, that Mr Magee admits he was  
13 posting over, effectively, advertisements in the  
14 forecourt, so to speak, and has given evidence to that  
15 effect. The argument is that it's a right to express his  
16 views politically. Correct?

17 ACCUSED: Yes.

18 HIS HONOUR: And that's what we're here for. What I'm going  
19 to do is perhaps go through with Mr Magee his submissions  
20 and ask him for clarification of certain things, and I'll  
21 ask you for comment in relation to it.

22 MS BENSKIN: Your Honour, I can assist. I had a little bit of  
23 time yesterday to have a look through the submissions of  
24 Mr Magee, and I have done some written submissions.  
25 I was unsure as to how your Honour would like to proceed  
26 with it. I have provided Mr Magee with my written  
27 submissions, so I have no doubt he will also discuss some  
28 of the issues that I have raised.

29 I'm happy to provide your Honour with a copy of the  
30 written submissions, not necessarily for me to read off  
31 them, but certainly to be able to refer to them. The

1 prosecution would submit that it's quite a simple case of  
2 s.10 of the Summary Offences Act of bill posting.  
3 However, obviously the Charter of Human Rights and  
4 Responsibilities is involved in that also.

5 HIS HONOUR: Well, if you can hand those submissions up.

6 MS BENSKIN: Yes, your Honour. I would have provided that  
7 yesterday; however, I wanted to make sure that Mr Magee  
8 had a copy also.

9 HIS HONOUR: Thanks. I was in Ballarat yesterday. But I've  
10 still got to go through this with Mr Magee. Have you got  
11 your submissions there?

12 ACCUSED: Yes.

13 HIS HONOUR: *I'll just go to the actual section. I'm just getting s.10 up.*  
~~I'm just getting s.10 up.~~ What Mr Magee is

14 charged with is posting a document on a structure, namely  
15 an advertising board, without consent of the occupier or  
16 owner or any person or body having authority to give  
17 consent. The way the section reads - and just at the  
18 beginning of your submissions, Mr Magee, you say that you  
19 plead not guilty to the offence of posting bills  
20 et cetera and defacing property. I appreciate that's  
21 what s.10 says, "Any person who posts any placard bill  
22 sticker or other document on or writes or paints on or  
23 otherwise defaces any road bridge or footpath" et cetera,  
24 so it doesn't necessarily involve defacing, does it?

25 ACCUSED: That's just the full title of the charge.

26 HIS HONOUR: That's the full title. But I don't necessarily  
27 think, just because you post, it means you deface.  
28 I don't think it follows that posting is defacing.

29 ACCUSED: I would agree with that.

30 HIS HONOUR: I want to make this absolutely clear. I'm not  
31 going to go into the political reasons why. I want to go

1           into - you want to express a view. It's how you express  
2           that view and where you express that view. I'm not going  
3           to go into the view itself.

4   ACCUSED: Yes, of course.

5   HIS HONOUR: I'm not here to - - -

6   ACCUSED: Judge on whether that's right or wrong, what I'm  
7           trying to say.

8   HIS HONOUR: That's right. For all intents and purposes, we're  
9           actually a pretty free country compared to a lot.

10   ACCUSED: Yes, I'm pretty <sup>concerned</sup> (~~indistinct~~) about the whole world.

11   HIS HONOUR: There are abilities to at least, for instance,  
12           come to this court and express this view, and for the  
13           court to hear this view. Going into the rights and  
14           wrongs of global advertising, I'm not going to do that.  
15           That's in there, there's a political view that you had,  
16           and you're entitled to have that view. Whether I have  
17           the same view or don't have the same view is irrelevant.

18   ACCUSED: Yes, I know that that's what's always said, but I  
19           tend to think that it does have some <sup>what of an</sup> (~~indistinct~~) impact  
20           on the final decision, and it's quite frustrating for me  
21           that it's sort of kept undercover, but I do understand  
22           that that's the way that it's supposed to be.

23   HIS HONOUR: What about paragraph 10 of your submissions? In  
24           this, you say, "I conducted this expression in the middle  
25           of the day at a busy public location I knew to be  
26           surveilled by security staff, with the full expectation  
27           of being disturbed by police." That was exactly the same  
28           as in relation to the other matter that went to the  
29           Supreme Court, wasn't it?

30   ACCUSED: Yes.

31   HIS HONOUR: When you say, "I make no attempt to hide or get

1 away with my expression, as I'm neither ashamed of my  
2 expression nor unwilling to defend it in a court of law."  
3 So the factual matrix, apart from the charge, is similar,  
4 done openly, where it will be seen, and where you are  
5 potentially going to be apprehended or spoken to.

6 ACCUSED: Yes, and also where a large number of members of the  
7 public are going to see it.

8 HIS HONOUR: Going to paragraph 11, you say, "I have turned to  
9 this avenue of expression through a lack of effective  
10 alternative. In my opinion, the method I have chosen is  
11 the only method with any real chance of effectively and  
12 appropriately raising this issue in the public sphere."  
13 Now, you're saying there's no ability in any other forum  
14 at all to air your protest?

15 ACCUSED: No, I'm not saying that there's no way that I can say  
16 what I'm saying in another way. What I'm saying is that  
17 to actually cause it to become an issue in the political  
18 scene today, I could become an academic, I could write  
19 numerous tomes on the ills of advertising and how the  
20 media needs drastic reform, but ultimately that's going  
21 to be a conversation in a niche of liberal elites, and  
22 it's not going to have any major impact on (indistinct)

23 HIS HONOUR: Yes, and I'm not going to give you ideas for how  
24 you can, so it can later on be said that I told you you  
25 could do it this way. For example, recently, it appears  
26 that people have got into the senate with very, very few  
27 votes.

28 ACCUSED: Yes, but that involved all sorts of preference  
29 harvesting, which I don't really sort of have the  
30 networking skills to carry out.

31 HIS HONOUR: I'm simply making the point that there are many

1 people who have made a difference by being who they are  
2 and making sure they get heard, and they haven't had to  
3 do it this way.

4 ACCUSED: Yes, potentially. Still, what I say about running  
5 for parliament, I mean, even in the unlikely situation  
6 that I was elected, with the media the way that it is,  
7 and with the sort of things that I'm pushing - - -

8 HIS HONOUR: I don't think the media had any impact on some of  
9 the people who appear to be in the senate.

10 ACCUSED: Yes. No, I'm talking about, yes, once you're in,  
11 forget about the whole election process.

12 HIS HONOUR: No, no, but in terms of actual, I suspect, there  
13 are very, very few Australians have any idea of some of  
14 the people who have now been elected.

15 ACCUSED: Yes, and this is more a problem with the senate  
16 voting system above the line, but say I did get in, then  
17 trying to press the points that I think are very  
18 important and that would sort of need to be addressed  
19 globally, I would probably get very little sort of  
20 sympathy from the press which is funded by advertising  
21 and run by people that are of like mind.

22 HIS HONOUR: But that's a fairly defeatist attitude.

23 ACCUSED: I don't think it's defeatist, I think it's more  
24 realistic and because I feel so strongly about it, I  
25 can't do nothing and I can't spend my life doing  
26 something that I think will have a very, very limited  
27 impact, if anything at all. I mean, the same could be  
28 said with the method that I've chosen, but to me it feels  
29 more likely to make an impact.

30 HIS HONOUR: See, I heard on the radio this morning that  
31 there's a person dressing up as a clown with balloons



1 standing on street corners in England scaring people who  
2 ring the police, and the police say, "Well, we can't do  
3 anything about it. They're doing nothing wrong," and  
4 that's been publicised in Australia. It's publicised  
5 widely in Britain. Word gets out. I don't know what  
6 it's all about. I heard it on the radio.

7 ACCUSED: Yes, I don't know.

8 HIS HONOUR: I've got no idea what it's about.

9 ACCUSED: Yeah, either do I. I can't even guess.

10 HIS HONOUR: No, but I'm just saying, that's the way of getting  
11 a message out somehow. I don't know what that person is  
12 trying to spread. It's not an offence.

13 ACCUSED: It's not very effective communication of a political  
14 opinion if he does have one, the fact that it's just  
15 being reported that a clown is scaring people and nobody  
16 can stop him. But, yes, I guess you could see what I'm  
17 doing as pretty much a clown with balloons scaring  
18 people, and what the legal system then does to me because  
19 of my actions is kind of the spectacle which I want to  
20 people to think about and to look at and, you know, to  
21 decide about.

22 The fact that I'm, you know, going to continue doing  
23 it, it's basically going to be my life's pastime is, you  
24 know, whether or not the legal system allows it, which is  
25 very much looking like they're not going to, or whether I  
26 am continually incarcerated, people would have to think,  
27 "What would lead a person to do this," and, you know,  
28 then I'd try to explain, hopefully I'll reach a few  
29 people.

30 HIS HONOUR: The paragraph 11 gives me the impression of  
31 defeatist attitude when- - -

1 ACCUSED: There's certainly that running through me. I mean, I  
2 do want to have the biggest impact that I can, but  
3 ultimately it's probably going to amount to very little,  
4 if anything at all, and that's not - I don't think it's  
5 defeatist, I think it's just accepting the likelihood of  
6 victory.

7 HIS HONOUR: From little things, big things grow. I mean, lots  
8 of little movements have become big.

9 ACCUSED: Yes. It's not out of the realm of possibility.

10 HIS HONOUR: Yes, all right. Paragraph 13, This really applies  
11 very much to the facts of this matter, you make the  
12 distinction between the Supreme Court matter where you  
13 were charged with criminal damage, and this matter.

14 ACCUSED: Yes.

15 HIS HONOUR: What you say is, "I seek to make my point in a way  
16 that creates no damage to any property."

17 ACCUSED: Yes.

18 HIS HONOUR: You make the point that there's been no  
19 compensation sought in this matter and by inference that  
20 there hadn't been damage.

21 ACCUSED: Yes.

22 HIS HONOUR: The Supreme Court decision also went into threat  
23 to damage property, didn't it?

24 ACCUSED: Yes, I believe it did, but that might have been  
25 talking about the fact that I had a paint bucket and a  
26 brush with me, even though I only intended to do what I'd  
27 <sup>done</sup> ~~do~~, <sup>on</sup> ~~on~~ Kyrren J was of the opinion that I was to go elsewhere  
28 and do more, similar offending, which I never was, but if  
29 the actual act itself creates no damage then there's no  
30 threat of damage in that act or any threat of further  
31 action.



1 HIS HONOUR: Yes, but the fact is Kyr<sup>du</sup>~~an~~ J, paragraph 97, said,  
2 "It's sufficient for me to state my conclusion that the  
3 exercise of the right and the form of damage to a third  
4 party's property or a threat of such damage, is not  
5 protected by s.15(2)."  
6 ACCUSED: Yes.  
7 HIS HONOUR: So it doesn't necessarily involve damage.  
8 ACCUSED: Well, a threat of damage involves damage.  
9 HIS HONOUR: No, it doesn't.  
10 ACCUSED: Well, how does - - -  
11 HIS HONOUR: There's no damage, it's a threat.  
12 ACCUSED: Well, if the action that I've carried out is ruled to  
13 not constitute damage which the prosecution have said in  
14 their submissions, they don't believe it's damage, then  
15 how can the threat of further similar action be a threat  
16 of damage when that act itself caused no damage.  
17 HIS HONOUR: The threat of damage, Kyr<sup>du</sup>~~an~~ J said that that  
18 threat of damage would still be sufficient to - as I  
19 said, paragraph 97, "The exercise of the right and the  
20 form of damage to a third party's property or a threat of  
21 such damage is not protected by s.15(2)." It doesn't  
22 have to involve damage.  
23 ACCUSED: I fail to see the logic in that. If the act itself  
24 is not damage, then how can the threat of that act be  
25 considered a threat of damage.  
26 HIS HONOUR: But that's what Kyr<sup>du</sup>~~an~~ J said.  
27 ACCUSED: But he didn't say that. He said something about  
28 damage or threat of damage. If we're just talking about  
29 the past threat of damage, then with my action, which has  
30 caused no damage according to the prosecution, there is  
31 no threat of damage.

1 HIS HONOUR: Yes. But I think if you go through the decision  
2 and my interpretation of it - - -  
3 ACCUSED: No, I don't have it.  
4 MS BENSKIN: Your Honour, I can show Mr Magee.  
5 ACCUSED: Yes, it's okay. I've read it.  
6 HIS HONOUR: Repeats that at paragraph 99, paragraph 101, "The  
7 other charge of having the implements is akin to a threat  
8 of damage to a third party's property."  
9 ACCUSED: Yes, but in that case he's talking about painting  
10 over Adshel which was considered damage by him. So  
11 again, if you were talking about this action, it's  
12 completely different.  
13 HIS HONOUR: At paragraph 128, it talks about the right to own  
14 and enjoy one's property free from unlawful interference,  
15 it doesn't refer to damage.  
16 ACCUSED: Yes, well, I'm arguing that the interference that  
17 I've created - - -  
18 HIS HONOUR: Is not unlawful.  
19 ACCUSED: - - - is not unlawful and, yes, I could run some  
20 other lines of argument.  
21 HIS HONOUR: The paragraph 151, "Includes laws that enable  
22 citizens to engage in their personal business affairs  
23 free from unlawful physical interference to their  
24 personal property." So your argument is unlawful.  
25 ACCUSED: Well, yes, I guess so.  
26 HIS HONOUR: See, it isn't restricted just to damage. It's  
27 interference. That's the word that's being used.  
28 ACCUSED: Yes, I think when <sup>he's saying interference</sup> ~~we say offences~~ - - -  
29 HIS HONOUR: Damage is one aspect of interference.  
30 ACCUSED: Yes, well, I think that's pretty - yes, I mean, you  
31 can interpret it in that way if you want.

1 HIS HONOUR: I'm giving you the opportunity to debate it.  
2 ACCUSED: Yes, well, the way I thought it was, you were  
3 presenting it as your opinion.  
4 HIS HONOUR: No.  
5 ACCUSED: Okay.  
6 HIS HONOUR: The purpose of this is for debate.  
7 ACCUSED: Yes, okay. I guess, yes, the advertising - - -  
8 HIS HONOUR: And plus, as you acknowledge, I'm bound by Supreme  
9 Court decisions so I have to deal with that.  
10 ACCUSED: Yes. Yes, of course. I understand now. Yes. So I  
11 wouldn't deny that the private property, the advertising  
12 has been interfered with in the way that the owners would  
13 like it to function, so of course they would regard it as  
14 interference, but I'm saying that that political  
15 expression is lawful and so, yes, I guess. I don't know,  
16 that's about it.  
17 HIS HONOUR: So it's really focusing on the word "unlawful".  
18 ACCUSED: To be honest, I hadn't seen this threat to damage, or  
19 hadn't looked through all of Kyras<sup>ou</sup>'s decision like this,  
20 with the - - -  
21 HIS HONOUR: Yes, see, being conscious of the difference, the  
22 question of no - and you refer to it in your submissions,  
23 but it doesn't really matter, whether they did it in the  
24 course of their work or not, the whole question - there  
25 is no claim for damage and that's different from the  
26 other matter on which I'm bound by the Supreme Court, and  
27 you said the point of difference is there's no damage  
28 here.  
29 ACCUSED: There's no damage, yes. It does say it.  
30 HIS HONOUR: When one looks at that decision, the  
31 interpretation you can put on it is that damage is



1           one element of interference. The word is more  
2           "interference".  
3   ACCUSED: Yes.  
4   HIS HONOUR: And damage can be interference.  
5   ACCUSED: Yes.  
6   HIS HONOUR: That's why I'm raising it with you.  
7   ACCUSED: Yes, damage can be interference, yes, and I'm not  
8           denying that what I've done could be knocked on the head  
9           because it's called interference but, yes, I don't think  
10          that that is what <sup>Kyrou</sup>~~Cairo~~ meant when he was referring to  
11          interference but.  
12   HIS HONOUR: No, and that's why I raised the whole question of  
13          threat of damage too, because it wasn't restricted to  
14          damage.  
15   ACCUSED: I still can't understand how threat of damage is  
16          related to anything other than the threat of damage.  
17   HIS HONOUR: But that <sup>Kyrou</sup>~~Cairo~~ said it wasn't covered by 15(2).  
18   ACCUSED: Yes. <sup>Kyrou</sup>~~Cairo~~ seemed to really dislike me.  
19   HIS HONOUR: No, and I'm bound by what he said. Now, the  
20          decision in Ramsden, I haven't had a chance to read it  
21          yet, but I'll get access to that.  
22   ACCUSED: Yes.  
23   HIS HONOUR: That basically involved bill posting on utility  
24          poles in the city. That was considered in your matter,  
25          in the Supreme Court matter.  
26   ACCUSED: Yes, it was.  
27   HIS HONOUR: It was. It could be argued, and I don't know, I  
28          haven't read the prosecution submissions yet, that that's  
29          a little bit different because there was nothing on the  
30          light poles.  
31   ACCUSED: Yes.

1 HIS HONOUR: It wasn't obscuring advertising for instance.

2 ACCUSED: Yes. So it's back to the question of interfering  
3 with a private property owner. But what I'd say is that  
4 the primary purpose of the private property that they own  
5 is to project an image in the public space so - - -

6 HIS HONOUR: Sorry, just wait. Tell me - I'll just stand this  
7 down briefly.

8 (Short adjournment.)

9 HIS HONOUR: I think we'd got to the Ramsden matter. Yes.

10 Effectively that was putting bill posters up on utility  
11 poles, and it was an offence created by summary offence  
12 punishable by a maximum fine of \$2000. Then we say at  
13 paragraph 25, "It is important to note that in Ramsden's  
14 case the court was considering expressions that  
15 essentially constituted promotion of the accused's own  
16 band." These days to put any bill posters up, for  
17 instance musicians, have to have a permit, do they, or  
18 not?

19 ACCUSED: I don't think so. I think it's just open slather,  
20 and as far as I can tell there's no permit system or  
21 anything, and there's even, you know, legitimate  
22 businesses that go around and do it just wherever they  
23 can, or wherever they think is appropriate. It's gone to  
24 the point where even political parties are paying these  
25 companies to go round putting their posters up, and as  
26 far as I can - - -

27 HIS HONOUR: So to your knowledge there are no by-laws for  
28 instance about that prevent you from putting posters up  
29 in public areas.

30 ACCUSED: I believe there is. I think some councils are  
31 particularly hard on people for putting them up on



1 utility poles but, yes, as far as the people - the  
2 companies that go around doing it, I don't think they've  
3 got any special permits or anything. They just do it.  
4 So ~~earle~~<sup>Kyrrou</sup> J said that people should be free to enjoy their  
5 private property, you know, without interference. I  
6 guess I could say that the people who put these  
7 advertisements here, they're not sitting in front of them  
8 or around them enjoying them.

9 It's not for their use that they enjoy them, it's to  
10 enter public space and to enter people's consciousness  
11 against their will really, if you're just walking through  
12 a public space, you haven't asked to see any  
13 advertisements, but you do see it because they have the  
14 wealth to buy a thin slice of private property adjoining  
15 some public space. So I'd say that it's not really a  
16 matter of me depriving the advertising companies of  
17 enjoyment of their private property, as much as it is me  
18 depriving them of their ability to sort of invade public  
19 space.

20 HIS HONOUR: One of the points that was made sort of throughout  
21 the Supreme Court decision was s.20 which states that, "A  
22 person must not be on private property other than in  
23 accordance with law," and then referred back to s.15(2),  
24 "Every person has the right to freedom of expression,  
25 which includes the freedom to seek, receive and impart  
26 information," and that was a point that was regularly  
27 made. But in a sense if there is an advertisement there,  
28 that by blocking it you're prohibiting or inhibiting a  
29 person's opportunity to view.

30 ACCUSED: Yes. Well, it was said that their space that they  
31 own is sort of public space and is unable to be covered,

1 and that's limiting the rights of humans who don't have  
2 such enormous resources. But, yes, the focus on the  
3 imparting of ideas that happens through advertising. I  
4 should have an expert witness to be here to talk about  
5 how advertising contains nothing of the sort. It's more  
6 about emotional manipulation.

7 HIS HONOUR: I did an economics degree in the 70s. Right?

8 ACCUSED: Yes.

9 HIS HONOUR: But in a sense one they have the space, then  
10 people are entitled to view it, aren't they?

11 ACCUSED: People are entitled to see what - - -

2 HIS HONOUR: To receive - yes, receive that information.

13 ACCUSED: Well, it's kind of like if you own some property and  
14 you just want to blast out static noise from a sound  
15 system at people. Like there's laws of that, and  
16 likewise I think there should be laws against visual  
17 pollution that's sort of occurred under this advertising  
18 culture.

19 HIS HONOUR: There should be laws which plans - - -

20 ACCUSED: Yes.

21 HIS HONOUR: You've got to get into parliament and do something  
22 about that.

23 ACCUSED: Well, not necessarily. If you influenced the  
24 law-makers, influence~~d~~ the community, then it's going to  
25 happen anyway. I don't have any desire to be the actual  
26 person who signs the dotted line or anything like that.  
27 But I guess what I'm doing with this argument is trying  
28 to say that a human rights argument grants an avenue for  
29 me to challenge the domination of advertising of public  
30 space, and that's sort of how we can step into a real  
31 debate and think about whether or not it's right.

1 I know that it is currently allowed that if you own  
2 private property next to public space you can advertise  
3 whatever you want there, but I disagree with it, and it  
4 is fundamental to the expression. I know that Ramsden  
5 was putting his posters up on a pole which was blank  
6 otherwise, but it's important for me to block it because  
7 ~~that is~~ <sup>that is</sup> they use the expression, that's the symbol.

8 That's saying, "Hey, do we have to see this? We're  
9 in public space. That's private property." So I guess  
10 you could even argue - I mean this is ridiculous, but  
11 this is the kind of level that it gets down to, that my  
12 posters actually exist in public space hanging off the  
13 private property, and where do you draw the line?

14 HIS HONOUR: Okay. Now, at paragraph 30, or the heading  
15 3(c) Magee v Delaney Findings and Distinctions, and what  
16 you're really saying to me is, well, this is different  
17 from that matter, and that's why it's got a point of  
18 difference where you can distinguish it from what is a  
19 binding decision on me. Right?

20 ACCUSED: Yes.

21 HIS HONOUR: Paragraph 31, "He was concerned with the charge of  
22 criminal damage. Damage consisted of painting over an  
23 advertising panel. His Honour held that any expression  
24 involving damage could not be protected under s.15 of the  
25 charter for public policy considerations over and above  
26 the specific limitations of the charter itself. Central  
27 to his decision was that the ~~critical discretion~~ <sup>political expression</sup> was made  
28 by committing an act of damage, and that comes back to -  
29 you could interpret his decision as that whole thing  
30 about interference, and his damage was part of  
31 interference. That's going to be something for me.



1 ACCUSED: Yes. I guess, well, if you're looking at  
2 interference, then is that like a question of public  
3 order under the charter, and then the public order  
4 arguments that I've laid out are relevant.

5 HIS HONOUR: Yes.

6 ACCUSED: What I would say is that any interference with  
7 corporate advertisement is at such a minute scale that it  
8 really shouldn't overwhelm someone's human right to  
9 meaningful political expression and, you know, the fact  
10 that they blasted off with pressure water hoses in the  
11 regular way that they clean the station, it's really a  
12 minor inconvenience for them, completely reversible with  
13 no effort.

14 HIS HONOUR: One of the things the (indistinct) in the decision  
15 - you may not have - he seems to say how minor it is  
16 isn't relevant. That's probably wrongly worded.

17 ACCUSED: Yes, I think his decision was problematic in a lot  
18 of ways, because he made no - - -

19 HIS HONOUR: Can I just, while I've got it in my head, and I'll  
20 come back to that.

21 ACCUSED: Yes.

22 HIS HONOUR: Paragraph 202 - because that was one of Mr Holt's  
23 submissions. It wasn't paragraph 202. Paragraph 206,  
24 "The penalty that may be imposed upon conviction for an  
25 offence does not form part of the elements of that  
26 offence." Therefore it has no bearing on the  
27 circumstances in which a person may be found guilty.  
28 "Each of the lesser offences rendered Mr Magee's act of  
29 painting over the advertisement a criminal offence in  
30 that sense prohibited with. The fact an offence carries  
31 a lower penalty doesn't accord with the nature of the

1 prohibition." I took that as saying that the fact that  
2 it might be viewed as minor still doesn't justify it.

3 ACCUSED: Yes, that may be true. But the interference is minor  
4 and that comes into the point I was going to make.

5 HIS HONOUR: Yes, but the offence that you've been charged with  
6 is far lesser than criminal damage.

7 ACCUSED: Yes.

8 HIS HONOUR: And that was argued and the point that he  
9 determined was, "Well, it's not relevant" - I don't know  
10 whether he said it's not relevant.

11 ACCUSED: It wouldn't surprise me.

12 HIS HONOUR: But he says the fact of the lower penalty doesn't  
13 alter the nature of the prohibition.

14 MS BENSKIN: That would be paragraph 202, Your Honour, in  
15 relation to that.

16 HIS HONOUR: Yes, paragraph 202. Yes.

17 ACCUSED: Well, the upshot of his decision really is that any  
18 expression that causes any damage or interference  
19 whatsoever, so pretty much what anybody decides is  
20 undesirable or some party decides is undesirable, can  
21 therefore be struck down and not covered under freedom of  
22 expression.

23 But to use the example that Saul used in that  
24 hearing, he's talking of the Aboriginal Tent Embassy  
25 being on the public land. They put their tent up over  
26 the grass, the grass was going to die underneath, that's  
27 damage to public property. Under <sup>Kyrou</sup>~~Cairns~~ J's decision,  
28 that could invalidate their whole expression. Obviously,  
29 the expression is far more important than the life of the  
30 lawn underneath.

31 HIS HONOUR: I don't think you'd read his decision to say that



1           there's no right.

2       ACCUSED: Well, he said any interference, yes, no matter how  
3           minor. I guess it could really be saying that. Well, I  
4           guess, if you're bound by the decision and you read it to  
5           say that, then you're bound by it.

6       HIS HONOUR: No. I am bound by a Supreme Court decision, and  
7           you've appropriately identified that, and what you've  
8           sought to do in 3(c) is saying distinctions, and in that  
9           way saying that that shouldn't apply to this particular  
10          fact situation, and one of the points you made early on  
11          in paragraph 10 was, "I was trying to be seen. I did it  
12          openly. I wanted it to be seen," is applicable here.  
13          The difference is the method. One is painting over an  
14          ad, the other one is posting over an ad.

15       ACCUSED: Yes, and in real terms there is very little  
16          difference between the two offences, they were both  
17          cleaned in exactly the same way.

18       HIS HONOUR: That's right.

19       ACCUSED: But in legal terms, there's a world of difference.

20       HIS HONOUR: But that's what I'm saying.

21       ACCUSED: Yes.

22       HIS HONOUR: I'm bound by his decision and what are the  
23          distinctions which you identified, and the point you had  
24          been making, and have been making, is damage. That's  
25          where you make the distinction.

26       ACCUSED: Yes, and even though it is functionally the same, I'd  
27          say the fact that it's not damaged doesn't invalidate a  
28          lot of what he said. That's not the only thing.

29       HIS HONOUR: Yes, that's what you're saying is a distinction.  
30          All right, well, I'll go on. See, the present charge  
31          concerns a charge of posterling over an advertising

1 structure. Unlike criminal damage, it's not an element  
2 of the present charge that damage occurred, correct. Nor  
3 does the charge sheet allege that damage occurred,  
4 correct. But again, we're focusing on damage.

5 Furthermore, if the prosecution seeks to allege  
6 damage, they should have preferred either the charge of  
7 wilful damage or criminal damage, and they could have  
8 potentially done that. The court cannot take into  
9 account an aggravating feature, correct. Therefore, the  
10 public policy limitation imposed by <sup>Kyrou</sup>~~Cairo~~ J, expressions  
11 that involve damage, has no application in this case.

2 So that's where you are making the distinction, I  
13 think, and then paragraph 35 he went on, after having  
14 already made his decision, to rule that the limiting  
15 considerations within section 15(3) of the Charter itself  
16 was sufficient to limit the right of freedom of  
17 expression. So the only distinction I see that you're  
18 making is the damage.

19 ACCUSED: Yes, and as I understood it, that was what <sup>Kyrou</sup>~~Cairo~~'s  
20 decision ultimately turned on, was the damage that  
21 occurred.

22 HIS HONOUR: Yes.

23 ACCUSED: And, yes, I guess I've come a little bit unprepared  
24 for answering to the other statements that he made.  
25 Because I thought disposing of the element of damage  
26 freed you to make a judgment on this without <sup>Kyrou</sup>~~Cairo~~'s  
27 decision having any say. But it appears I was leaving  
28 out a few statements which are - - -

29 HIS HONOUR: Well, no. I've read his decision and what you've  
30 said here is absolutely correct. If there's a  
31 distinction, from that I'm not bound by it. But I have

1 to determine there's a distinction.

2 ACCUSED: Yes.

3 HIS HONOUR: All right, and I mean, you know the facts of each

4 of the matters. I mean, you know the facts of the - you

5 could transpose the matters that occurred in the bus

6 shelter to the railway station, save as to the method,

7 because the method was to - and I agree with the - and I

8 think <sup>Kyrou</sup>~~Cairo~~ said it was an expression and whereas I think

9 the magistrate said it wasn't.

10 ACCUSED: The magistrate said it was an expression but he

11 denied that it was art.

12 HIS HONOUR: Yes, okay.

13 ACCUSED: Then <sup>Kyrou</sup>~~Cairo~~ said, it was an expression, it's not

14 important to say whether it's art or not.

15 HIS HONOUR: Yes. But paragraph 3, "Was the painting over the

16 advertisement capable of imparting information or ideas

17 for the purpose of s.15(2)? Yes, and I accept that what

18 you were doing is capable of imparting information." I

19 mean, if you looked at what the person was doing and

20 looked at the words, it's clear that you're covering over

21 advertising, it's making a point. So it's imparting

22 information.

23 ACCUSED: Yes, and it's the text which has - - -

24 HIS HONOUR: Yes, that's right, the text as well. But I think

25 each of them could be viewed as imparting information or

26 imparting a message and trying to get a message across,

27 all right?

28 ACCUSED: Yes.

29 HIS HONOUR: So the distinction is purely the method of doing

30 it, is the way I'm viewing it.

31 ACCUSED: Yes, that's right.



1 HIS HONOUR: Now, I'll just go on. When you go into the  
2 limitations on s.15(2), it's covering similar ground,  
3 which ~~Cairo~~<sup>Kyrou</sup> pretty much did as well. Because ~~Cairo~~<sup>Kyrou</sup>  
4 pretty much said, "Well, I don't actually need to get to  
5 15(3), because - - -"

6 ACCUSED: Of <sup>public</sup> policy considerations.

7 HIS HONOUR: "But was the painting over of the advertisement  
8 capable of imparting information? Yes. Does the  
9 imparting of information or ideas by means of damage,"  
10 and he used the word "damage", "To a third party's  
11 property engage the right to freedom of expression  
12 conferred by section 15(2)? No."

13 He pretty much said that beyond that point he didn't  
14 need to go any further.

15 ACCUSED: Yes, but then he went *for - at least another 100 paragraphs*

16 HIS HONOUR: Then he went further.

17 ACCUSED: Yes, and I wasn't quite sure why he would do that.  
18 Supreme Court judges normally don't rule on what they  
19 aren't supposed to.

20 HIS HONOUR: Yes.

21 ACCUSED: So it seemed like some sort of personal vendetta  
22 against this argument.

23 HIS HONOUR: Yes. I think it's what we call dicta rather than  
24 ratio. In other words, it's a comment that's being made  
25 but you're not bound by it.

26 ACCUSED: Yes, okay.

27 HIS HONOUR: It's persuasive but not binding.

28 ACCUSED: Yes, right. Well, if that's the case then I believe  
29 that, the same as this offence, doesn't involve damage,  
30 frees you from the parts of the decision which you are  
31 definitely bound by.

1 HIS HONOUR: But it still comes back to whether damage is an  
2 element of interference. So if you put at the top of a  
3 pyramid interference, there are many ways to interfere.  
4 One is to damage or stand in front of.  
5 ACCUSED: Yes, I guess I could use my body to block the ad for  
6 several hours.  
7 HIS HONOUR: There're a number of people that could be - - -  
8 ACCUSED: Yes. I sort of still think that this method, yes,  
9 does interfere, but the level of interference is very  
10 small and shouldn't outweigh - - -  
11 HIS HONOUR: That's where the comments made about "minor"  
12 where - - -  
13 ACCUSED: Yes.  
14 HIS HONOUR: Anyway.  
15 ACCUSED: The intricacies of legal arguments aren't something  
16 I'm very good at taking ~~them~~ seriously.  
17 HIS HONOUR: No, you have set them out well here.  
18 ACCUSED: Yes.  
19 HIS HONOUR: It's more a debate.  
20 ACCUSED: Yes. I guess - I don't know. I don't really know  
21 what to say.  
22 HIS HONOUR: That's really, I think, to the public order aspect  
23 of it.  
24 ACCUSED: Yes. I did write the submissions to be pretty total.  
25 HIS HONOUR: Yes.  
26 ACCUSED: Yes, so I sort of hadn't really prepared to say much  
27 more than what is already in there.  
28 HIS HONOUR: Yes. No, I said on the last occasion because I  
29 have not seen, I have not made a decision - - -  
30 ACCUSED: Yes.  
31 HIS HONOUR: - - - I need to have an opportunity to read it and



1           then I need to have an opportunity to discuss it, and  
2           that's what we're doing.

3   ACCUSED:   Yes.

4   HIS HONOUR:  See, the point you're making at paragraph 54, for  
5           instance, by the conduct, caused very little or no  
6           interference to the ordinary custody, use of the train  
7           station by bodily presence there is no more interference  
8           than that caused by any of the hundreds of people from  
9           the public train station.  It's calm, unobtrusive, to  
10          anyone with that interest, and the point you're making  
11          there is that, "Well, I'm not really breaching public  
12          order because I'm not interfering with anyone's ability  
13          to go about what they're doing."

14   ACCUSED:  Yes, that is correct, and the only argument that the  
15           prosecution has put forward about my interference has  
16           been the interference with the advertising company.

17   HIS HONOUR:  There is also, as I referred to, s.15.  "People  
18           have the right to receive information too."

19   ACCUSED:  Yes.

20   HIS HONOUR:  You might not want them to receive that  
21           information but - - -

22   ACCUSED:  I sort of deny that it's information, and again I  
23           have never - - -

24   HIS HONOUR:  Yes, but that's the point.

25   ACCUSED:  Sorry?

26   HIS HONOUR:  That's the point.  It could be information to do  
27           with public health.

28   ACCUSED:  Yes.  Well, I would probably not cover over anything  
29           that I deemed actual information.

30   HIS HONOUR:  Yes.

31   ACCUSED:  What I did cover over was an ad for sugar water with

1 people riding bikes and big smiles on their faces that  
2 just - there's no information there apart from, "You can  
3 buy drinks," which everybody knows.

4 HIS HONOUR: But that's your opinion. See, if it's a public -  
5 how I distinguish, for instance, between, say, a public  
6 health ad. Right? You're the one that makes the  
7 decision. You're the one that makes the decision as to  
8 what the public should see and what the public shouldn't  
9 see.

10 ACCUSED: Yes. I don't think it's just my reason. I think  
11 it's a pretty sort of standard way of <sup>viewing</sup>~~doing~~ things. I  
12 mean, a public health message, and I mean, advertising  
13 for public safety and all sorts of public interest sort  
14 of things, is a funny area, particularly for me with my  
15 idea that we shouldn't be advertising at all.

16 Yes, I think it's pretty clear when an advertisement  
17 doesn't contain any information and has no public benefit  
18 whatsoever, and I guess what I would argue is that these  
19 ads are doing more damage to the community than they are  
20 helping the community, so the right to receive  
21 information for a child to have the right to receive  
22 information that they should drink more sugary water and  
23 that will bring them happiness, I don't know whether -  
24 it's like saying, "I have the right to be robbed," or, "I  
25 have the right to, you know, sort of <sup>be</sup>~~done~~ any personal  
26 harm.

27 HIS HONOUR: At the end of the day you're making the decision  
28 as to what the - - -

29 ACCUSED: Yes. I'm making the decision but then I'm coming to  
30 the cause and saying, "This is my reasoning. Do you  
31 agree?" Ultimately it's up to the judiciary to decide

1           whether advertising has any public benefit and so I - - -  
2   HIS HONOUR: No, it's not for me to make a decision about  
3           whether advertising has any public benefit.  
4   ACCUSED: Well, if you're saying that the imparting of ideas  
5           and information is an important part of democracy then  
6           surely you have to rule on what's information and ideas  
7           and what's not.  
8   HIS HONOUR: No.  
9   ACCUSED: So any information or anything that could construed  
10          as information?  
11   HIS HONOUR: Yes. What does the section say?  
12   ACCUSED: So could it not be said that the person who pastes of  
13          the utility pole is preventing the viewer from receiving  
14          information contained <sup>on</sup> ~~from~~ the wood grain of the utility  
15          pole, the pattern there that the wood makes or, you know,  
16          the dusty surface? That has some kind of information  
17          there?  
18   HIS HONOUR: Yes, maybe so.  
19   ACCUSED: That goes into a realm of abstraction.  
20   HIS HONOUR: It does.  
21   ACCUSED: Really <sup>absurd</sup> ~~into the~~ - - -  
22   HIS HONOUR: I'm just simply making the point that you're the  
23          one that's making the decision about imparting - where's  
24          the section?  
25   ACCUSED: I guess another argument I can put there is - - -  
26   MS BENSKIN: Your Honour, are you after s.10?  
27   HIS HONOUR: No, s.15.  
28   MS BENSKIN: I have it here.  
29   HIS HONOUR: Look, I have it here but I just can't - - -  
30   ACCUSED: I believe I mentioned this somewhere in my  
31          submissions but the charter talking about the right to



1 receive and impart information, it's rights that apply to  
2 human beings and the corporations who run their  
3 advertising space and the corporations who put the ads on  
4 there with the advertising corporation, they don't have  
5 any rights under the charter.

6 HIS HONOUR: Didn't the - <sup>Kyrou</sup>~~Cairo~~ deal with that?

7 ACCUSED: <sup>Kyrou</sup>~~Cairo~~ did deal with it. He totally misinterpreted  
8 the clear wording of the charter in my opinion.

9 HIS HONOUR: Yes. That's a basis for an appeal to the Court of  
10 Appeal. I'm bound by his decision.

11 ACCUSED: Yes. Well, if you can go to the - I don't have that  
12 decision in front of me, and I can't remember the exact  
13 wording of - yes, he basically said, when the charter  
14 said "human beings" - when it said "persons", it wasn't  
15 referring to just human beings.

16 HIS HONOUR: That's what he said for the - and this is one of  
17 the - the purpose of s.15.3(a) of the Victorian Charter  
18 is, "The right to freedom of expression subject to lawful  
19 restrictions reasonably necessary to respect the property  
20 rights of other persons irrespective whether those  
21 persons are human beings, government bodies, or other  
22 types of legal entities," yes.

23 ACCUSED: Yes. So he said that, but in the Human Rights  
24 Charter a person is defined as, "Person means a human  
25 being."

26 HIS HONOUR: Yes.

27 ACCUSED: To say that the writers of that legislation were so  
28 clumsy that they used a word that they had defined  
29 elsewhere and didn't actually mean that is a bit of a  
30 stretch and, yes, I will appeal that decision when I can.

31 HIS HONOUR: Yes. I'm just saying - - -

1 ACCUSED: So he has made that judgment and it's binding on you.

2 So you - - -

3 HIS HONOUR: No. I'm simply saying that there's a right of  
4 appeal to the Court of Appeal.

5 ACCUSED: Yes.

6 HIS HONOUR: And I'm bound by the Supreme Court.

7 ACCUSED: Yes. I'm definitely going to appeal.

8 HIS HONOUR: Yes, all right. Just going back to s.15.2, "Every  
9 person has the right to freedom of expression which  
10 includes freedom to seek and receive and impart  
11 information." So receive information and ideas. Receive  
12 information. An advertisement is information whether you  
13 like it or not. It's the information.

14 ACCUSED: I don't believe so.

15 HIS HONOUR: But you're the one making the decision on that.

16 ACCUSED: Yes. Well, that's sort of legal argument and you're  
17 making your mind up about - - -

18 HIS HONOUR: And there are means, if something is falsely  
19 advertised, there are laws relating to false advertising.

20 ACCUSED: Yes, that's true, where a factual claim is made  
21 that's provable to be false.

22 HIS HONOUR: Yes.

23 ACCUSED: Yes. I guess the lines are a bit more diffuse in  
24 advertising. You can't say, "Oh, that sign there had a  
25 girl smiling riding a bike when she was drinking that."  
26 That doesn't happen when you drink that drink. You say  
27 that is a lie. You can't knock down advertising using  
28 those laws, and that's probably why those laws are  
29 useless in controlling advertising because it's not about  
30 factual claims any more. It's about emotional  
31 manipulation, psychological tricks, all sorts of



1 skulduggery.

2 HIS HONOUR: We all know advertising is for the purpose of  
3 getting people to purchase a product.

4 ACCUSED: Yes. I'd say it's not - - -

5 HIS HONOUR: It's about profit and not about how good it will  
6 be for you.

7 ACCUSED: Certainly not.

8 HIS HONOUR: But it's information.

9 ACCUSED: The only information contained really is the brand  
10 name you were supposed to buy. That's the one bit of  
11 information they make sure they don't miss out on. And I  
12 guess, even if - okay, so we rule that it's information.  
13 The right to receive and impart information, I mean, it  
14 can't be absolute in any society. I mean, when somebody  
15 is talking and someone else is quiet, that's just the  
16 nature of conversation. Somebody could talk over  
17 somebody. Are they going to wind up in court saying,  
18 "This person was interfering with my freedom of  
19 expression?"

20 And, yes, I am going over the top of an  
21 advertisement. They've had the opportunity to say what  
22 they're saying, if they are saying anything, in that  
23 train station, in multiples, for months. They're up  
24 there for weeks and weeks. What I put up stayed up for  
25 probably - from about 3 o'clock, when I did it, till the  
26 cleaning shift came in that night. Me speaking over them  
27 is a tiny little speck of the time.

28 And even saying that, I was able to cover three  
29 panels in the time I was there. The whole place is  
30 totally plastered with the same message. So to say that  
31 I'm really interfering with their message, or with what

1           they're trying to impart, it's - actually, that's  
2           something that I wrote down that I'd forgotten about. In  
3           this circumstance, in this train station, where there's  
4           so many of the same advertisement, I covered only three  
5           of what was probably hundreds of multiple - yes, they're  
6           still getting to speak. I'm getting to make my  
7           expression otherwise, and I don't think that they should  
8           have 100 per cent right to - - -

9   HIS HONOUR: Yes.

10   ACCUSED: And that's another thing I raised in submissions,  
11           there is no legal right to say that if you own just a  
12           thin slice of private property adjoining public space,  
13           then you can then project whatever image you wish.

14   HIS HONOUR: Yes, what you say at paragraph 59, "This right to  
15           project into public space from a strategically placed  
16           thin slice of private property, which has become  
17           culturally accepted for some strange reason, has no legal  
18           basis. There is nothing explicit or implied in private  
19           property law that grants the right of property owners to  
20           project whatever image they would like into a public  
21           space." That's what you mean?

22   ACCUSED: Yes, that's what I'm talking about. But there is a  
23           right, a legal protection, for the sort of expression  
24           that I'm doing. So I've done it over the top of an  
25           advertisement, but what I'm doing has some legal  
26           protection, and what they're doing kind of has none.  
27           I mean, I know it's their private property, but there's  
28           no explicit - so when you're talking about the human  
29           rights of someone making a political expression or the  
30           rights of a private property owner which aren't spelled  
31           out in law anywhere, I think that the law should - - -

1 HIS HONOUR: Yes. At paragraph 63, "It's submitted my  
2 expression constitutes political expression." Yes?

3 ACCUSED: Yes. Of course, yes, I wrote that.

4 HIS HONOUR: You say at paragraph 64, "The only limit which  
5 could potentially apply is the need to preserve public  
6 order under s.15(3)(b). Any disturbance of public order  
7 is minimal and well below the threshold of acceptable  
8 disturbance as outlined in Booker's case."

9 ACCUSED: Yes, and I spoke about how a political expression is  
10 to be afforded the highest protection, and involved in  
11 that is that threats to public order should sort of have  
12 to be greater to result in a limitation of that  
13 expression. So in this case, a political expression  
14 where the only threat to public order is some soggy bits  
15 of paper that have to be hosed off that night, I'd say  
16 that that's an insufficient threat to public order to  
17 limit the right.

18 HIS HONOUR: So you would agree that there are some that would  
19 go over the line? What you're saying is, it depends on  
20 the facts?

21 ACCUSED: Yes, it's completely case-specific.

22 HIS HONOUR: What you say is this is a minor example, and  
23 therefore political expression should overrule that.

24 ACCUSED: Yes. All political expression should not be limited  
25 by such a minor interference.

26 HIS HONOUR: Then effectively, how you've finished this off,  
27 you're saying that this section of the act is  
28 incompatible with the charter.

29 ACCUSED: Sorry?

30 HIS HONOUR: Section 10 of the act is incompatible with the  
31 Charter of Human Rights.

1 ACCUSED: In certain circumstances, yes. Actually, I'm not  
2 saying it's incompatible. It's that if expression is  
3 protected by the charter, then that can be seen as lawful  
4 excuse, necessarily to exempt you from prosecution under  
5 s.10. So it's limiting what can be charged under that  
6 charge, according to the content of the communication.

7 I mean, it could be so that commercial posterings is  
8 not covered under freedom of expression, particularly  
9 where it's not an individual person who stands to profit,  
10 and there would be nothing to prevent prosecution under  
11 s.10(1) of the Summary Offences Act. It's just  
12 case-specific, when you've just first got to rule whether  
13 it's protected expression, and then if that's the case,  
14 that can be seen as lawful excuse.

15 HIS HONOUR: See, heading number 6, Declaration of Inconsistent  
16 Interpretation and Referral to the Supreme Court, "This  
17 section is only relevant if the court finds it cannot  
18 interpret the offence of posting bills and defacing  
19 property consistently with the charter." So effectively  
20 you are saying it.

21 ACCUSED: No, that would be if you couldn't - say you did find  
22 that freedom of expression protected what I've done, but  
23 you found no way to reconcile that with the charge that  
24 arises out of the same activity. Then it could be  
25 referred to the Supreme Court. But what I'm saying first  
26 in that situation, where you've got the freedom of  
27 expression and you've got the charge, is that the freedom  
28 of expression can constitute the lawful excuse that  
29 exempts you from the charge, and that's what I believe is  
30 probably the best way to resolve that situation.

31 HIS HONOUR: I'm now going to go to the prosecutor. I'll just



1 have a read of this. So the prosecution would agree that  
2 the ~~Cairo~~ <sup>Kyrou</sup> decision was what occurred, parting of  
3 information or ideas for the purpose of s.15(2).

4 MS BENSKIN: Yes, Your Honour. I believe that Mr Magee is more  
5 making - and correct me if I'm wrong, but the decision of  
6 Mr ~~Cairo~~ <sup>Kyrou</sup> would be more - there's similarities in the same  
7 defence of the freedom of expression despite the offence  
8 itself being somewhat different. The prosecution haven't  
9 - he hasn't been charged with anything, criminal damage,  
10 or anything where a lawful excuse is required, it's more  
11 a consent as per the wording in s.10.

12 HIS HONOUR: Those words - - -

13 ACCUSED: Yes, that's right.

14 HIS HONOUR: Criminal damage is without lawful excuse.

15 ACCUSED: Yes, without having consent.

16 HIS HONOUR: So that implies that there can be circumstances  
17 where there's an excuse, that could be damaging a door,  
18 breaking in to try to get somebody out, therefore it's  
19 damage, but it's not criminal because you're trying to  
20 get somebody out of there.

21 MS BENSKIN: The wording in bill posting itself is "consent".

22 HIS HONOUR: With consent, if you go and get consent, then  
23 therefore the bill posting wouldn't be ~~legal~~ <sup>illegal</sup>, so I think  
24 they're similar concepts.

25 MS BENSKIN: Yes, Your Honour. I'm unsure if Your Honour would  
26 like me to address any of the issues that have been  
27 raised since. I believe that damage has probably been  
28 described - - -

29 HIS HONOUR: That's (indistinct)

30 MS BENSKIN: It's conceded that there is no damage and there's  
31 no restitution sought in relation to the damage, and the



1 time between Mr Magee posting them and them being  
2 removed, once again there's no damage in relation to  
3 that, but the prosecution would concede that - would  
4 submit that damage was not part of the offence of bill  
5 posting of which he's been charged with. In relation to  
6 the freedom of - - -

7 HIS HONOUR: But that's where Mr Magee is saying you can  
8 distinguish between the decision of <sup>Kyrou</sup>~~Cairo~~. That's his  
9 argument is because there wasn't damage, therefore.

10 MS BENSKIN: Yes.

11 HIS HONOUR: What I'm saying is you could interpret <sup>Kyrou</sup>~~Cairo~~'s  
12 decision as being damage as part of - part of  
13 interference - - -

14 MS BENSKIN: Yes, Your Honour.

15 HIS HONOUR: - - - because he uses that word regularly.

16 MS BENSKIN: And to supplement that also, the human rights  
17 argument in relation to the expression of which <sup>Kyrou</sup>~~Cairo~~  
18 also addresses, including public order and, in  
19 particular, the form of expression that the accused has  
20 used and, as Your Honour has pointed out, the other human  
21 rights, the other people and members of the public that  
22 have had their rights also affected as a result of  
23 Mr Magee's actions.

24 They have rights also, not specifically the  
25 advertisement company, admittedly they obviously pay  
26 substantial money to have the advertisement boards there,  
27 but the prosecution would submit that any member of the  
28 public walking in that concourse area has a right to view  
29 and, as we've already discussed 15(2), receive  
30 information, whether it's in print or orally.

31 The prosecution will also submit that perhaps 15(3)

1 in that, "The special duties and responsibilities are  
2 attached to the right of the freedom of expression and  
3 the right may be subject to lawful restrictions, in  
4 particular, the respective rights and reputation of other  
5 people."

6 HIS HONOUR: Yes.

7 MS BENSKIN: Other than what's written in the written  
8 submission and what's already been brought to the  
9 attention of Mr Magee in relation to the decision of  
10 Mr <sup>Kyron</sup>~~Cairo~~, the prosecution have nothing further, unless  
11 your Honour would like to question.

12 HIS HONOUR: Anything else, Mr Magee?

13 ACCUSED: I don't think so. There was one thing I forgot to  
14 hand up on the first day of the hearing, which is a  
15 report from my psychologist. Often magistrates are a  
16 little bit curious about my mental state and my  
17 psychologist was quite insistent that he would write a  
18 report so I'll hand that up if - - -

19 HIS HONOUR: I probably shouldn't receive that now. I  
20 shouldn't, because evidence is finished.

21 ACCUSED: Okay.

22 HIS HONOUR: There's been no finding.

23 ACCUSED: Is it still considered - - -

24 HIS HONOUR: It's only if there's a finding of guilt that I  
25 would be looking at it.

26 ACCUSED: Okay.

27 HIS HONOUR: It's not relevant to my decision on this as to a  
28 finding of guilt or otherwise.

29 ACCUSED: All right. I'll give it to you later if there's bad  
30 news.

31 HIS HONOUR: Yes. Okay. I'm not making a decision today.

1 ACCUSED: Yes.  
2 HIS HONOUR: I'll provide written reasons. 7 October, 2 pm.  
3 ACCUSED: Yes.  
4 MS BENSKIN: Yes, Your Honour.  
5 ADJOURNED UNTIL MONDAY 7 OCTOBER 2013

1 Melbourne Magistrates' Court  
2 VPOL v K. Magee  
3 Case No. D10987761  
4 7 October 2013  
5

6 [Magistrate Capell] Well today is my decision in relation to this matter.  
7

8 Mr. Magee is charged under section 10 subsection 1 of the Summary Offences Act 1966, that on the  
9 14th of February this year, he posted a document on an advertising board at Southern Cross Railway  
10 Station, without consent of any person having authority to give consent.  
11

12 Mr. Magee unashamedly admits that he placed black paper and typed documents upon an advertising  
13 sign within the concourse of the station.  
14

15 They were pasted with a flour and water paste, Mr. Magee admits that his purpose was to obscure the  
16 message being conveyed on the advertising board, and that he did so without the consent of the  
17 appropriate authority, in the knowledge that consent was required.  
18

19 Mr. Magee made it clear in both his evidence and his submissions, that his actions were part of his  
20 personal protest against the global advertising industry.  
21

22 In his submissions he stated: "This expression is rational and intentional, I conducted this expression in  
23 the middle of the day, in a busy public location I knew to be surveilled by security staff, with the full  
24 expectation of being disturbed by police. I make no attempt to hide or get away with my expression as I  
25 am neither ashamed of my expression nor unwilling to defend it in a court of law. This expression is  
26 meant to be calm and peaceful, non-threatening to members of the public, as well as being totally  
27 unobtrusive to those uninterested in the expression, in contrast to the jarring imagery of modern  
28 advertising, that is clambering for the attention of passersby through any means available."  
29

30 In other words, on the face of it, the charge has been made out, however Mr. Magee argues that his  
31 actions are protected under section 15 of the Charter of Human Rights and Responsibilities Act 2006,  
32 and his summary argues: "I hold a genuine belief that for-profit advertising has a detrimental effect on  
33 both individuals and democracy, and that intervention by the government to ban or regulate such  
34 advertising is required. My actions of posterage over advertisement panels inside Southern Cross  
35 Station are a symbolic, non-violent, non-damaging protest designed to express, in an artistic manner,  
36 that includes literal explanation, my logically justified objection to for-profit advertising. Section 15(2)  
37 of the charter protects expression of ideas, even where the form of expression is abstract, the practice  
38 previously relatively unknown and the action deemed unacceptable by police culturally conditioned to  
39 accept and protect the exclusive private domination of public space"  
40

41 During the course of his evidence Mr. Magee tended his own prior convictions, indicating that i would  
42 find out about them anyway, given that he intended to rely, in his submissions, on the distinction  
43 between the facts of this case, and the decision of Mr. Justice Kyrou in Magee v Delaney reported at  
44 (2012) VSC 407, where he was the appellant in the Supreme Court of Victoria.  
45

46 In that matter Mr. Magee was charged with criminal damage, and possessing materials for the purpose  
47 of damaging property, both offences being under the Crimes Act 1958.



1 In that matter Mr. Magee, like here, did not dispute committing the physical elements of the offences,  
2 but contended that his acts engaged the right of freedom of expression, in section 15 subsection 2 of the  
3 Charter, and that the exercise of that right in furtherance of his philosophical opposition to advertising,  
4 constituted a lawful excuse for the purposes of those two provisions of the Crimes Act.

5  
6 The facts of that matter were that Mr. Magee painted over an advertisement in a bus shelter owned by  
7 the City of Melbourne, whilst the advertisement was owned by a private company.

8  
9 In the present case Mr. Magee argued that as much as Southern Cross Railway Station may be private  
10 property, that it is a railway station which is a very public area, and that one should be able to express  
11 oneself politically in such a public area, and that the limitation imposed by this provision under the  
12 Summary Offences Act cannot be justified within a free and democratic society.

13  
14 During the course of argument at the hearing on the 18th of September, Mr. Magee agreed with me,  
15 that the circumstances of his behaviour were exactly the same in the other matter, save that a different  
16 method was used, his whole purpose was to be seen in a busy area and was to interfere with advertising  
17 which had been payed for and which was in a private place, freely used by the public.

18  
19 Mr. Magee argued that the difference here was that he was not charged with damaging property and  
20 that was a significant reason why i could distinguish the matter from the decision of Mr. Justice Kyrou.

21  
22 Mr. Justice Kyrou approached his task by defining six main issues on the appeal, given his decision is  
23 binding on me, I intend to approach consideration of Mr. Magee's arguments the same way:

24  
25 a. Was the pasting over of the advertisement capable of imparting information or ideas for the purposes  
26 of section 15 subsection 2 of the Victorian Charter?

27  
28 Mr. Justice Kyrou found that the painting over of the advertisement was a means of imparting  
29 information and ideas.

30  
31 By his expression in the current matter, Mr. Magee was doing exactly what was doing in the earlier  
32 matter. As Mr. Justice Kyrou said, at paragraph 65, those messages include that the person who  
33 performed the act was protesting about something, was protesting about advertisements in bus shelters,  
34 objected to the contents of the particular advertisement, or did not want the public to see the  
35 advertisement.

36  
37 There is no doubt in the current matter that this expression is capable of expressing information or  
38 ideas for the purposes of section 15 subsection 2 of the Victorian Charter. Those same comments can  
39 apply to the current facts, save that it was a train station and not a bus shelter.

40  
41 Mr. Justice Kyrou dismissed the appeal under section 199 a) subsection 1 of the crimes act, at this point  
42 on the basis that the provision, or sorry the possession, of the items to effect the purpose was  
43 preparatory of conduct capable of imparting information or ideas.

44  
45 The second question posed by Mr. Justice Kyrou was "does the imparting of information or ideas by  
46 means of damage to a third party's property engage the right to freedom of expression conferred by  
47 section 15 subsection 2 of the Victorian Charter?", in that case Mr. Justice Kyrou said no.

1  
2 Mr. Magee says that this is the point of difference between the previous matter and this matter, no  
3 restitution has been claimed and he has not been charged with an indictable offence, but rather a  
4 summary offence, he's not been charged with an offence involving damage.

5  
6 In his written submissions Mr. Magee makes the point that criminal damage is not an element of the  
7 present charge, and that, and I quote from his written submission, paragraph 34: "the public policy  
8 limitation imposed by Justice Kyrou on expressions that involve damage has no application in this  
9 case".

10  
11 At footnote 9, Mr. Magee makes reference to paragraph 97 of Mr. Justice Kyrou's decision to support  
12 that contention, it ignores that Mr. Justice Kyrou also said that would not apply to threat of such  
13 damage.

14  
15 In other words, there does not actually have to be damage caused for there to be a limitation on the  
16 expressive conduct.

17  
18 Mr. Justice Kyrou then went on to say, that if he had been wrong, re. the dismissal of the section 199  
19 charge at the earlier stage, the preparatory behaviour was akin to a threat of damage, and would be  
20 conduct which fell outside section 15 subsection 2.

21  
22 I cannot read Mr. Justice Kyrou's decision as narrowly as Mr. Magee would like.

23  
24 It is apparent in the further discussion around section 15 (3) a. and b. of the Charter that damage is just  
25 an example of a general principle that one has the right to own and enjoy one's property free from  
26 unlawful interference, damage is but just one example of such interference.

27  
28 At paragraph 129 of the decision, Mr. Justice Kyrou says: "It follows that an absolute prohibition on  
29 intentional damage to the property of another without lawful excuse, such as that contained in section  
30 197 of the crimes act, is a restriction that is reasonably necessary to respect the rights of property  
31 owners, the same applies to an absolute prohibition on being armed with materials for the purpose of  
32 damaging property without lawful excuse"

33  
34 At paragraph 151: "Without limiting the lawful restrictions that may be reasonably necessary for the  
35 protection of public order, they obviously include laws that enable citizens to engage in their personal  
36 and business affairs free from unlawful physical interference to their person or property".

37  
38 In paragraph 156: "In the present case i've already held that Mr. Magee's conduct in painting over the  
39 advertisement, and being armed with materials for the purpose of painting over more advertisements  
40 did not engage the right to freedom of expression"

41  
42 At paragraph 181: "The right to freedom of expression has never been treated as a license to ignore the  
43 criminal law, including laws designed to protect property rights".

44  
45 In paragraph 192: "The mode of expression selected by Mr. Magee did not only effect the property  
46 rights of the City of Melbourne and Adshel, it also prevented other persons from exercising their right  
47 conferred by section 15 subsection 2 of the victorian charter"

1  
2 Mr. Magee has been charged with posting a document on another's property without consent, sorry  
3 without consent of an authority.  
4  
5 Why does this law exist? It's to protect the property rights of another or others.  
6  
7 Why does the charge of criminal damage exist? to protect the property rights of another or others.  
8  
9 Mr. Magee argues he has no other means of communicating his message, hence he has to take the  
10 action he has, I disagree.  
11  
12 There are many ways one can communicate a message without it interfering with the property of  
13 another.  
14  
15 Further it is clear Mr. Magee himself has attempted to prevent members of the public receiving  
16 information, namely advertising, which of itself could be a breach of the Charter.  
17  
18 During submissions i raised with him whether he would interfere with a public health message at  
19 Southern Cross Railway Station, he said he would not, in itself this means Mr. Magee becomes the  
20 arbiter of what the public see and don't see, is that what is intended by the Charter? I don't believe so.  
21  
22 If one returns to the second question posed by Mr. Justice Kyrou, and and transposes it to the fact of  
23 this case, it reads: Does the imparting of information and ideas by means of interfering, by bill posting,  
24 with a third party's property engage the right to freedom of expression conferred by section 15  
25 subsection 2 of the Victorian Charter? I am bound to follow the reason of Mr. Justice Kyrou, and the  
26 answer would have to be no.  
27  
28 Section 7 subsection 2 of the Charter sets out the relevant matters to consider when determining the  
29 circumstances in which a human right may be limited.  
30  
31 Here the owners of southern cross railway station are entitled to rent out space that they own to  
32 advertisers, advertisers who have rented that space are entitled to convey their message, as members of  
33 the public we can consider that message and accept or discard it, the public have that right, it is not for  
34 Mr. Magee to assume ownership of what we see or don't see by posting over that message.  
35  
36 For these reasons I am satisfied that restriction in section 10 subsection 1 of the Summary Offences Act  
37 constitutes a reasonable limitation on the right to freedom of expression referred to in section 15 of the  
38 Charter, taking into account all the matters referred to in section 7 subsection 2 of the Charter.  
39  
40 Given those findings, there is no need to make a referral of this matter to the Supreme Court for a  
41 declaration of inconsistent interpretation.  
42  
43 I find the charge proven.  
44  
45 Yes, Mr. Magee, I think on the last occasion you said you had a psychological report?  
46  
47 [Mr. Magee] Yep, I've got that here.

1  
2 [Magistrate Capell] May I have a look at that?  
3  
4 [Mr. Magee] Yep.  
5  
6 [Magistrate Capell] The prosecutor needs to read it first.  
7  
8 [Mr. Magee] Oh, okay.  
9  
10 [Magistrate Capell] Yes, I've read that Mr. Magee, now, what do you want to say to me?  
11  
12 [Mr. Magee] Umm, I guess, one reason for giving you my criminal record was because you were going  
13 to find out anyway because of the Kyrou decision, but another reason was just to demonstrate that it's  
14 the only time that I've broken the law is to make this political expression, which um, apart from some  
15 damage, which would have been an imperceptible subtraction from the bottom line of a few advertising  
16 companies, it's ultimately victimless.  
17  
18 Um, apart from that, I don't know what a lawyer would normally say in this situation, there's my child,  
19 she'll get sad.  
20  
21 [Magistrate Capell] Arr, put it this way, I don't intend to jail you, because I've noticed this: "aside from  
22 a focus with regard to symptom management, treatment sessions have also provided a forum for Mr.  
23 Magee to discuss his philosophical views and underlying beliefs in a non-judgmental and supportive  
24 environment, while also attempting to challenge his avenue of social and political expression and  
25 related behaviours that have consistently resulted in detrimental outcomes with regard to his freedom,  
26 incarceration and his previous and ongoing legal involvement".  
27  
28 Um further, the fact that you are seeing someone where you can actually express those things, and  
29 discuss them, and philosophise over them.  
30  
31 Are you seeking a jail term?  
32  
33 [Prosecutor Benskin] No, your honour.  
34  
35 [Magistrate Capell] Further, um, I see the point that's made by the psychologist, it's obvious to anyone  
36 involved in the criminal justice system: "a custodial sentence would most likely lead to mr. magee  
37 being unnecessarily exposed to a high concentration of criminal and antisocial elements within the  
38 prison system and to a culture of antisocial behaviour and violence that may potentially expose him to  
39 harm from inmates due to his political beliefs."  
40  
41 It also refers to you as having the positive role of a young daughter, um, overall positive and supportive  
42 family and social relationships, high level of functioning, high level of intelligence and insight, and  
43 your academic ability - you're not silly.  
44  
45 In other words, you'll work it out one day.  
46  
47 A lot of the political issues you raise are not lost on me I can assure you, the problem is I have to



1 impose the law.  
2  
3 I think I mentioned during the hearing that I went to university in the 1970's where a lot of what you  
4 would argue was very much a part of the course that I did, and understand, but I've got to impose... er,  
5 apply the law.  
6  
7 Is there any forfeiture of the items sought?  
8  
9 [Prosecutor Benskin] Your honour all I have is the photograph in relation to the items.  
10  
11 [Mr. Magee] The items were taken from me on the day.  
12  
13 [Magistrate Capell] Yeah, that's why i thought there might be an application to destroy them.  
14  
15 [Prosecutor Benskin] Your honour, perhaps, if your honour would be minded to make the order in  
16 relation to the paste and the, or the bucket and the, umm, from the photographs, it'd just be the  
17 paintbrush and the bucket your honour.  
18  
19 [Magistrate Capell] Well that property will be forfeited and destroyed.  
20  
21 Otherwise Mr. Magee I acknowledge your financial circumstances, that at the beginning of the hearing  
22 you advised me that you're not in any employment, I intend to convict you and fine you \$400.  
23  
24 [Prosecutor Benskin] As your honour pleases.  
25  
26 [Magistrate Capell] If you choose not to pay it, there are consequences, you know what they are.  
27  
28 I'll grant an initial stay of 3 months for payment for that amount, which is, until the 4th of January next  
29 year.  
30  
31 Yes, thank you.  
32  
33 [Clerk] Silence all stand please, the 20th division of the melbourne magistrates court is now adjourned.

IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMON LAW DIVISION  
JUDICIAL REVIEW AND APPEALS LIST

S CI 2013 05722

IN THE MATTER OF an Appeal on a Question of Law pursuant to Section 272 Criminal  
Procedure Act 2009

BETWEEN

**KYLE MAGEE**

**APPELLANT**

**v**

**SHAYNE WALLACE**

**RESPONDENT**

**Exhibit "KM - 11"**

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Date of document: 23 December 2013

Filed by the Appellant

**Kyle Anthony Mage**

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This is the exhibit marked "**KM - 11**" referred to in the affidavit of **Kyle Magee**, affirmed at  
**Melbourne**, in the State of Victoria, this **23rd** day of **December 2013**.

Before me: \_\_\_\_\_