

**IN THE MAGISTRATES' COURT OF VICTORIA  
AT MELBOURNE**

**CASE NO's: H11275414  
H11305258  
H11801201**

**IN THE MATTER OF**

**VICTORIA POLICE**

**V.**

**KYLE MAGEE**

**DEFENCE SUBMISSIONS & AUTHORITIES**

---

**Date of Document:  
Prepared and Filed by:**

**11 April 2018  
The Accused  
Kyle Magee  
Phone: 0403 769 828  
Email: [kyle@democraticmediaplease.net](mailto:kyle@democraticmediaplease.net)**

---

## **Summary of Legal Argument and Relevant Legislation**

1. There is no substantive factual disagreement regarding the physical elements of the alleged offending: the facts of the placement of posters over advertising panels in two briefs (Informants Luxford and Drewett) and the application of paint over the glass housing of an advertising video screen (Informant Menz) are freely conceded by the defence.
2. The defence pleads not guilty to all charges of Bill Posting and/or Willful Damage under the common law defence of necessity, a defence formalised as the Sudden or Extraordinary Emergency defence in amendments to the Crimes Act 1958, under section 322R.
3. Section 322R of the Crimes Act 1958 provides:
  - (1) A person is not guilty of an offence in respect of conduct that is carried out in circumstances of sudden or extraordinary emergency.
  - (2) This section applies if—
    - (a) the person reasonably believes that—
      - (i) circumstances of sudden or extraordinary emergency exist; and
      - (ii) the conduct is the only reasonable way to deal with the emergency; and
    - (b) the conduct is a reasonable response to the emergency.
  - (3) This section only applies in the case of murder if the person believes that the emergency involves a risk of death or really serious injury.
4. The defence submits that the Accused has a reasonable belief that the combined and interrelated threats of:
  - massive and escalating global inequality,
  - the exponential growth economy,
  - climate change, and
  - the democratic deficit produced by the for-profit media-advertising systemconstitute the existence of an extraordinary emergency.
5. This ongoing emergency involves not only the risk, but the certainty, of the continued death and really serious injury to millions of people, immediately and for as long as our present global political and economic system continues in its current form.
6. The Accused reasonably and genuinely believes his conduct – physically intervening against the dominance of the for-profit media-advertising system – is

the ***only possibly effective avenue for addressing***, at root cause, all the interlinked issues listed in paragraph 4.

7. It is submitted that the conduct of the Accused is **a** reasonable response to the emergencies that threaten global human society. The conduct is especially reasonable as it poses no danger whatsoever to any person and causes only minor inconvenience to a non-personal commercial entity. It is therefore a very pro-social way to make the necessary point, while still making the point in a way dramatic enough to have a reasonable chance of appropriately raising the issues in the public sphere.

### **Background of the Accused**

8. Kyle Magee is 34 years old and is father to a 5 year old daughter, who lives with her mother in northern New South Wales.
9. He moved from his hometown of Shepparton, Victoria to Melbourne in 2002 (at age 18) to commence studying a Science (Physics)/Engineering (Electrical) degree at Melbourne University.
10. During his second year of university (2003), issues of global injustice, environmental degradation, ecological limits, climate change and economic exploitation (amongst other issues), began to dominate his thinking – this led him to defer his studies and travel and think about how he could address these problems through the work of his life.
11. Further reflection led him to the inescapable conclusion that our present global politico-economic system is the root cause of all these problems, and this system only maintains its stranglehold on democracy through the for-profit media-advertising system that dominates the public sphere of our supposed democracies — if democracy was to function without systemic corruption by an economic elite, the media system needed to be run democratically (agenda set by citizens), not be funded by the advertising of for-profit companies and run by for-profit companies (agenda set by for-profit interests).
12. He could see no way to effect such a huge change in media systems through any systemic avenue, only a mass civil disobedience campaign against the for-profit media-advertising system had any real chance of success – and as he knew this campaign was what was needed, he decided to devote his life to it.
13. Upon his return (2005) he began painting over billboards in open protest against the existence and domination of the for-profit media-advertising system – a protest he has chosen continue, despite constantly reflecting on and questioning the merits of this course of action.

14. The Accused feels morally compelled to make this public protest of non-violent civil disobedience – he knows himself to be acting in a state of personal necessity, in response to really existing emergencies.
15. Submitted as evidence is the Accused's criminal record, which details over 30 convictions all related to this protest, dating back 11 years, including 6 custodial sentences of a total of 6 months. Kyle has had no contact with the legal system other than that brought about by his protest.

### **Section 322R(2)**

16. The defence submits that section 322R(1) of the Crimes Act 1958 applies to this case and establishes the Accused's innocence — the relevant section to determine if 322R(1) applies in this case is section 322R(2) which I will go through sequentially.

#### **Section 322R(2)(a)(i)**

17. Section 322R(2)(a)(i) provides the requirement that: the person reasonably believes that circumstances of sudden or extraordinary emergency exist.
18. The Accused has a strong and reasonable belief that the combined emergencies of **massive and escalating global inequality, the exponential growth economy and climate change** cannot be resolved as long as **the democratic deficit produced by the for-profit media-advertising system** continues to exist.
19. The reasons and authorities for perceiving these issues as emergencies will be covered individually:  
  
**massive and escalating global inequality**
20. Presently the richest 1% of the world's population own more than the other 99% – with the 8 richest people possessing more wealth than the poorest 50%<sup>1</sup>
21. While the full destructive human impact of such economic inequality is difficult to encapsulate, UNICEF predicts that on current trends, between the years 2016-2030, 69 million children under five years of age will die from preventable causes, and 167 million children will live in extreme poverty.<sup>2</sup>
22. This global inequality has only increased in the last few decades<sup>3</sup>, despite continuous attempts over that time to address this issue through all systemic

---

<sup>1</sup> *World's eight richest people have same wealth as poorest 50%*, Larry Elliot, The Guardian, 16 January 2017, accessed 30 January 2017.

<sup>2</sup> *The State of the World's Children*, UNICEF 2016 report, accessed 30 January 2017.

<sup>3</sup> *Divided We Stand: Why Inequality keeps rising*, OECD 2011 report, accessed 30 January 2017.

avenues available — this is an emergency we clearly need new approaches to address.

### **The exponential growth economy**

23. In our mainstream political discourse there is overwhelming support of continuous economic growth<sup>4</sup>, it is spoken of as if our lives depend on it, but our lives actually depend on dispensing with the requirement of continuous growth of GDP and establishing a reliable stable-state economy<sup>5</sup>.
24. Professor Albert Bartlett<sup>6</sup> made it his life's work to demonstrate: “The greatest shortcoming of the human race is our inability to understand the exponential function.” He spend much time giving seminars explaining that even small percentages of annual growth (say 2%), will double repeatedly after a certain period of time (called a "doubling time": in the case of 2% annual growth: every 35 years). This means, as they continue to double, they grow exponentially, which is of course completely unsustainable on a finite planet.
25. The facts about the unsustainable growth of the human economy and population were first famously published in a 1972 report commission by The Club of Rome, *The Limits to Growth*<sup>7</sup>. The report used a system dynamics computer model to simulate the interactions of five global economic subsystems, namely: population, food production, industrial production, pollution, and consumption of non-renewable natural resources.
26. A 2008 CSIRO report, *A Comparison of the Limits to Growth with Thirty Years of Reality*<sup>8</sup>, confirmed that the projections contained in the business-as-usual “standard run” scenario described in *The Limits to Growth* were accurate for the first 30 years. This model goes on to predict the collapse of global human society before the middle of the 21st century.
27. Despite the sound evidence of this obvious emergency, we are still not addressing the problem, instead our politicians, economists and media alike continue to venerate exponential growth as our greatest good – this is an emergency that will only worsen the longer we fail to deal with it.

---

<sup>4</sup> *Australian economy shrinks 0.5pc in September quarter, worst fall since global financial crisis*, Michael Janda, ABC News, 7 December 2016.

<sup>5</sup> *Can "green growth" really avert global ecological collapse?*, Martin Kirk, *The Ecologist*, 5th April 2018.

<sup>6</sup> Professor Emeritus of Nuclear Physics at the University of Colorado at Boulder, USA.

<sup>7</sup> *The Limits to Growth*, Donella H. Meadows, Dennis L. Meadows, Jorgen Randers, William W. Behrens III, 1972.

<sup>8</sup> *A Comparison of the Limits to Growth with Thirty Years of Reality*, Graham Turner, CSIRO, 2008.

## Climate change

28. Of peer-reviewed scientific papers on climate change, 97.1% accept the scientific consensus on Anthropogenic Global Warming<sup>9</sup> – that Global Warming is being caused primarily by human activities.
29. As far back as 2007, while visiting weather stations in Antarctica to learn of the impacts of climate change, UN Chief Ban Ki Moon remarked: "I need a political answer. This is an emergency and for emergency situations we need emergency action"<sup>10</sup>
30. Political action on climate change has been blocked and delayed time and time again – the political response to this serious emergency has been inadequate and will cost more and more lives as it continues unabated.

## The democratic deficit produced by the for-profit media-advertising system

31. All the above emergencies are emergencies which the neoliberal, for-profit sector has no particular interest in addressing, and every short-term financial interest in ignoring and perpetuating<sup>11</sup>.
32. The for-profit media-advertising system that dominates our mainstream political discourse – a media system controlled by those who benefit from escalating inequality, exponential growth and no action on climate change – is antithetical to democracy and extremely dangerous.
33. The for-profit media-advertising system must give way to a democratic media system – a system that can prioritise implementing solutions to our various crises and emergencies, rather than prioritising the interest of the obscenely wealthy few.

## A combined extraordinary emergency

34. It is submitted that **massive global inequality, perpetual economic growth, climate change and the democratic deficit produced by the for-profit media-advertising system** present a combined extraordinary emergency for humanity, and that the normally limited legal view of what constitutes an emergency must be expanded so as not to ignore this combined crisis of immense importance.
35. The meaning of the term extraordinary is not defined in the Crimes Act 1958. The Oxford English Dictionary defines extraordinary to mean “very unusual or

---

<sup>9</sup> *Quantifying the consensus on anthropogenic global warming in the scientific literature*, John Cook et al, 2013 Environmental Research Letters, volume 8, number 2.

<sup>10</sup> *UN chief says global warming is 'an emergency'*, ABC News, 11 November 2007, accessed 30 January 2017.

<sup>11</sup> *Neoliberalism – the ideology at the root of all our problems*, George Monbiot, The Guardian, 15 April 2016, accessed 26 February 2017.

remarkable". The Collins dictionary defines extraordinary as "very unusual, remarkable, or surprising". The defence submits that the meaning of extraordinary in the context of an extraordinary emergency is remarkable, rather than unusual or surprising. While being unusual or surprising are subjective and non-consequential elements of any emergency, being remarkable, which the Oxford English dictionary defines as being "worthy of note or attention", is what defines an emergency. Whether a situation being considered as an emergency is perceived as unusual or surprising has no relation to its ability to threaten life or really serious injury. For example, it might not be unusual or surprising that a certain person is attempting to commit violent acts against another person, but it is a remarkable and significant emergency nonetheless.

36. The defence understands that the sudden or extraordinary emergency defence has previously been extremely limited in its interpretation and application, basically only applying to simple situations involving individuals in immediate proximity to one another.

37. The defence submits that more complex, global political situations can and do constitute emergencies in the world that citizens live in – the defence submits that the interpretation of emergencies should be expanded to reflect the reality citizens are dealing with.

#### **Section 322R(2)(a)(ii)**

38. Section 322R(2)(a)(ii) provides the requirement that: the person reasonably believes the conduct is the **only reasonable way** to deal with the emergency.

39. The Accused genuinely believes that his conduct is the only reasonable way to deal with the emergencies listed. He would love to avoid all contact with the legal system, but an analysis of all other possible methods to attempt to deal with the emergencies has revealed them to be less effective, and it is only reasonable for him to choose the most effective method, given the scale and critical importance of the emergencies.

40. Every other unquestionably legal method to address these problems has been tried by many brilliant people over the preceding decades. Academics, journalists and authors have tried various combinations of words, but those methods have not been effective. It is not reasonable to try a method already proven to fall short, it is reasonable to try a different approach — civil disobedience — which has a historical record of producing improbable results.

41. To stop talking about myself in the third person, I believe the neo-liberal ideology – extolling the virtues of "free markets", "free trade", perpetual economic growth and ever-expanding profits — is fundamentally incompatible with effective solutions to escalating injustice, unsustainable levels of growth, and the climate crisis.

42. The same mechanism through which neo-liberal ideology has commandeered global governments — the for-profit media-advertising system that dominates our mainstream media and thereby manipulates our political agenda — is now being used to suppress appropriate political attention and response to escalating injustice, the problem of exponential growth and climate change.
43. The method of confronting our laughably corrupt "democratic" media systems, despite its slim prospects of success, remains for me the only reasonable response — to live co-operatively alongside such a system, knowing it's devastating consequences, is morally unconscionable.
44. I believe if demonstration against for-profit domination of our public space and media was carried out widely and persistently, our media issues could be brought out and resolved, and we would then be in a position to regain control of our political and economic agenda and deal with all the emergencies that confront human society.
45. The language of section 322R(2)(a)(ii) makes clear that it is only I, the Accused, who must believe this action is the **only** reasonable response to the emergency, and I will give evidence to support the fact that I do genuinely believe this. This reading is confirmed by the next section, section 322R(2)(b), which speaks of the necessity that the response chosen by the accused be **a** reasonable response, not the only reasonable response.

### **Section 322R(2)(b)**

46. Section 322R(2)(b) provides the requirement that: the conduct is a reasonable response to the emergency.
47. As I couldn't have Clive Hamilton, Professor of Public Ethics at the Centre for Applied Philosophy and Public Ethics and the Vice-Chancellor's Chair in Public Ethics at Charles Sturt University, appear personally, I'll just have to settle for quoting an article he wrote for online newspaper Crikey:

*The climate emergency has turned into a crisis of democracy. The government is meant to protect the interests of the people, but it has instead protected the interests of the big polluters. The Government is in the thrall of a powerful group of energy companies and it is apparent even to the most dim-witted observer that these corporations are, as Thoreau wrote, "more interested in commerce than humanity". The scientists are beginning to understand that human-induced climate change has disturbed a sleeping giant.<sup>12</sup>*

---

<sup>12</sup> *Hamilton: climate emergency or a crisis of democracy?*, Clive Hamilton, Crikey, February 04, 2009; Accessed 26 February 2017

48. This is a simple statement of the truth that for-profit entities have far too much power in our supposed democracy, and that this hinders our response to the climate emergency, and also the emergencies of exponential economic growth and escalating inequality — it should also be clear to "the most dim-witted observer" that having a media system dominated by for-profit entities only deepens this crisis of democracy.

49. In this analysis bringing attention to the deleterious effect of the for-profit media-advertising system by refusing to live passively alongside it — in an attempt to help us deal with the crisis of democracy that prevents us from dealing with the emergencies facing humanity — is a reasonable response to the emergencies facing humanity.