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# Update Summary

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**UPDATE 334**

**JULY 2024**

**VICTORIAN COURTS**

**G Nash KC**

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New and updated commentary has been provided by **Sandra Karabidian:**  
**Orders 11 – 25**

**Updated:**

- The court possesses an inherent jurisdiction to stay its proceedings as an abuse of process. See *Kermani v Westpac Banking Corporation* (2012) 36 VR 130; [2012] VSCA 42, at [CPR23.01.10].
- The court granted an application to dismiss a plaintiff's originating motion seeking orders quashing a mediation certificate that a mediation had failed. See *Koronczyk v Victorian Small Business Commissioner* [2023] VSC 431, at [CPR23.01.40].
- The proceeding may constitute an abuse of process if it 'can be clearly seen to be foredoomed to fail' or where it will 'inevitably fail'. See *R v Smith* [1995] 1 VR 10, 15, at [CPR23.01.60].
- That the balance of convenience favours another jurisdiction or that some other jurisdiction would provide a more appropriate forum does not justify such an order. See *Oceanic Sun Line Special Shipping Co v Fay* (1988) 165 CLR 197; [1988] HCA 32; at [CPR23.01.160].
- The Court made orders to strike out the plaintiff's pleading. See *Magriplis-Hampton v MM LP Holdings Pty Ltd* [2023] VSC 150, at [CPR23.01.360].
- It is necessary for a defendant to establish that it would be futile to allow the statement of claim to go forward in its present form. See *Uber Australia Pty Ltd v Andrianakis* (2020) 61 VR 580; [2020] VSCA 186, at [CPR23.02.20].
- Any difference between whether a proceeding is considered scandalous, frivolous or vexatious or an abuse of process of a court is now 'largely irrelevant'. See *Knight v Bell* [2000] VSCA 48, at [CPR23.02.20].
- The court rejected the plaintiff's submission that the strike out application be dismissed on the basis that any deficiencies can be remediated by a notice to admit. See *Sobh v Ali* [2023] VSC 225, at [CPR23.02.20].
- Summary judgement test also regulates when pleadings may be amended. See *Charleton v Department of Education and Training Victoria* [2024] VSC 141, at [CPR23.02.40].
- If the court forms a view that the conduct of the plaintiff may potentially be considered an abuse of process, the court may award costs against the plaintiff on an indemnity basis. See *Hambleton v State Trustees Ltd* [2016] VSC 215, at [CPR25.02.60].
- The court holds a discretion as to the award of costs in circumstances which has been described as "absolute, unconfined or unfettered". See *Soteriadis v Nillumbik Shire Council* [2015] VSC 363, at [CPR25.05.20].
- It is appropriate to consider the conduct of the defendant prior to the commencement of proceedings. See *Prodromos Anastasi Foukkare v Angreb Pty Limited* [2006] NSWCA 335, at [CPR25.05.20].

- Parties may seek orders of the court barring the party seeking to leave to discontinue or withdraw from recommencing the proceeding. See *The Kronprinz* (1887) 12 App Cas 256; *Lawson v Wallace* [1968] 3 NSW 82, 86, at [CPR25.06.20].

**New:**

- **Costs**, has been inserted, at [CPR23.01.400]
- **Leave to discontinue**, has been inserted, at [CPR25.02.20]
- **Costs of strike out application**, has been inserted, at [CRP23.02.180]
- **Notice of discontinuance or withdrawal**, has been inserted, at [CPR25.04.40]

