

IN THE COUNTY COURT OF VICTORIA  
AT MELBOURNE  
CIVIL DIVISION

Not Restricted

Case No. CI-07-00121

PHILIP GLUYAS

Plaintiff

v

PARIS TENANA

Defendant

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JUDGE: HIS HONOUR JUDGE CAMPBELL

WHERE HELD: Melbourne

DATE OF HEARING: 11, 12 and 13 August 2008

DATE OF JUDGMENT: 29 August 2008

CASE MAY BE CITED AS: Gluyas v Tenana

MEDIUM NEUTRAL CITATION: [2008] VCC 1161

**REASONS FOR JUDGMENT**

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Catchwords: DEFAMATION ACTION – assessment of damages – publication on the worldwide web – no appearance by or for defendant – unrepresented plaintiff – *Defamation Act 2005*.

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APPEARANCES: Counsel Solicitors

For the Plaintiff Appeared in person -

For the Defendant No appearance -

HIS HONOUR:

- 1 This is an application for an assessment of damages for defamation. The plaintiff also seeks an injunction to prevent further defamatory publications by the defendant.
- 2 The plaintiff issued a Writ on 15 January 2007. The Writ contained what purports to be an "Indorsement of a Statement of Claim . . . ". Whilst not fully complying with the provisions of Order 13.02, the document sets out the basis of the plaintiff's claim against the defendant and the remedy sought.
- 3 The plaintiff also compiled "and issued" a further document entitled "Particulars of Complaint" dated the same day as the Writ. That document purports to set out in great detail – together with a large number of what are said to be "exhibits" – in effect the plaintiff's whole case against the defendant.
- 4 I need say something shortly about the progress of the matter through the Court. Attempts at ordinary service of the Writ and other documents on the defendant were unsuccessful. The defendant is not personally known to the plaintiff and appears to have no intention of participating in the judicial process.
- 5 Ultimately, on 21 April 2008, His Honour Judge Williams extended the validity of the Writ and directed that there be effective service of the documents by E-mail at an E-mail address as identified by the plaintiff as being that of the defendant. Service was carried out in this manner. No appearance was or has been entered by the defendant, and on 28 July 2008, Her Honour Judge Davis entered interlocutory judgment for the plaintiff against the defendant and ordered that damages be assessed. Thus the matter came before me for that purpose on 11 August 2008.
- 6 The Registrar of the Court advised the plaintiff that pursuant to Order 51.02, he was required to give notice to the defendant of the time and place of this

hearing. This the plaintiff was unable to do. That was because, so he swore and I accept, that following upon the Orders for substituted service to an E-mail address for the service of the Writ and other documents by that means, the E-mail address in question was shut down, or whatever the appropriate phrase may be. Further, communications from the defendant through a website “forum” to the plaintiff made it abundantly clear that the defendant had no intention of facilitating service of any documents upon him.

7 I was satisfied by the plaintiff’s evidence and the exhibits he produced that the defendant was and is deliberately and contumaciously avoiding service. I therefore acceded to an application from the plaintiff to dispense with service of the notice of the time and place of the hearing of this assessment.

8 I need now make a number of observations about matters pertinent to this case.

9 Firstly, the plaintiff appeared in person. He has also prepared all the pleadings and documentation himself. He seemed to have grappled with the requirements of the Rules of Court in that regard with a modest degree of success. However, the difference between a pleading and evidence to support a pleading is something that he had not always appreciated. Thus, I required him to give evidence before me in regard to such matters, notwithstanding the provisions of Order 21.01: (see *Williams – Civil Procedure Victoria* at 21.01.20, and the cases there cited).

10 Secondly, this case is about the use, and more accurately the abuse of the facilities afforded to persons by the worldwide web and E-mail. All of the defamatory statements alleged by the plaintiff were made by the defendant on the worldwide web on several websites and what are called “forums” attached to particular websites. The forums in turn frequently have what are called “threads”. Within such forums people are able to communicate with others and, it seems, express views and observations that might not otherwise be

articulated in public.

- 11 Indeed the plaintiff himself has or has had his own website upon which he has communicated with others who have similar interests, particularly in what he called “professional wrestling”. He has also published a good deal of material about the medical condition known as Asperger’s Syndrome, of which he is a sufferer. The consequences of the publication of the latter material have been at least partly responsible for that which gives rise to his claim.
- 12 Thirdly, as I have already mentioned, he has been diagnosed as suffering from Asperger’s Syndrome and has been under regular psychiatric monitoring for a number of years.
- 13 Asperger’s Syndrome is described in brief in Mosby’s *Medical Nursing and Allied Health Dictionary* at page 142 as follows:

“A pervasive developmental disorder similar to Autistic Disorder, characterised by a severe impairment of social interactions and by restricted interests and behaviours, but lacking the delays in development of language, cognitive function and self help skills that additionally define Autistic Disorder. It may be equivalent to a high functioning form of Autistic Disorder.”
- 14 I make passing reference to this because part of the plaintiff’s presentation of his case on the issue of damages concentrated upon the effect of the defamatory material upon himself as a person with that Syndrome. As I have indicated, the plaintiff had published on his own website a voluminous description of the Syndrome and the way in which it affected him personally in everyday life. This gave, as it were, ammunition to the defendant in his publication of abusive comments upon which this action is based.
- 15 However, whilst no doubt counsel, if acting for the plaintiff, would have adduced admissible evidence of this aspect – that is the effect upon the plaintiff of the defamatory remarks – no such evidence was forthcoming. I gave the plaintiff the opportunity to call his psychiatrist if he wished. That doctor, it transpired, would not be available for some six weeks and I was not

16 Fourthly, although seemingly a simple task, the conduct of the assessment of damages in this case where the plaintiff is unrepresented and with no legal training, and there is no appearance by or for the defendant, it is not as easy as might be thought. I have endeavoured to steer a course of assisting where necessary the plaintiff's conduct of the case without becoming his advocate. I have I hope borne in mind the proper interests of the absent defendant in applying the law both as is now set forth in the relevant provisions of the *Defamation Act 2005*, and otherwise.

17 I need now say something of the usage of alternative names in communications on the worldwide web. People apparently give themselves a "screen name" or title or descriptive name in such communications. Thus the plaintiff used, and uses I think still, the name "Timelord".

18 The defendant, it transpires from the exhibited material and the evidence, has used the names "Mookchow", "Mookchow 2" and "The Cunning Lingus". The latter is, I regret to say, a pointer to the nature of some of the material posted by the defendant on websites, forums and threads.

19 It is not necessary for me to again retry the various steps by which the plaintiff has satisfied my brethren and myself that the defendant is the person who has utilised the above names in defaming the plaintiff.

20 The plaintiff claims to have been defamed on at least four separate occasions up to the date of his Writ, namely 15 January 2007.

21 In dealing with each of these matters, I propose to give a brief summary of each incident, and attach as Schedules to these Reasons, copies of what was posted on the forums or websites. The full details of the defamatory statements relied upon are to be found in detail in those Schedules.

22 The material also shows that upon learning of the first publication relied upon by the plaintiff occurring on 25 January 2006, he immediately sought legal advice under a *pro bono* scheme, and solicitors sent a letter to the persons operating the website upon which that statement was published.

23 That letter was effective, in that the demand was soon complied with. Nevertheless, the defamatory material was in the public domain for at least some days and accessible to members of the forum and others.

24 The first “incident” as the plaintiff calls them, was discovered by the plaintiff on 25 January 2006. The gravamen of the message is that the author – using a name “The Cunning Lingus” – is that he himself is “gay” and is in a gay relationship with the plaintiff who is described as “Phil aka Timelord”.

25 Whilst the plaintiff does not in terms plead imputations in his paperwork, there are I think at least three imputations that may be taken from this message. That is apart from the repulsive nature of their expression.

26 Those imputations are that:

- (a) the plaintiff is a homosexual;
- (b) that he is in a homosexual relationship with the defendant;
- (c) that the plaintiff has been secretive about his homosexuality, particularly to his family.

27 The full text of this publication is in Schedule 1.

28 The plaintiff relied on what he called “the second incident”. This is to be seen

as a convoluted attempt by the defendant to “pirate” the plaintiff’s web name. The content of the document clearly shows that the defendant had been made aware of the solicitor’s letter referred to above, and is mocking the plaintiff, daring him to sue the defendant.

29 Whilst it is unsavoury in its terms, I do not regard it as containing any defamatory innuendo or imputation against the plaintiff. It may be arguable that it replicates or continues the first libel but I am not prepared to act upon that possibility. I include it in the Schedule of documents however to demonstrate the conduct of the defendant. It is Schedule 2.

30 The next incident relied upon by the plaintiff appeared on a forum created by the defendant and which seems to have been raised on 4 July 2006. Amongst other things, it contained a title “Put Shit on Time Lord Forum”. The document then makes reference to a “thread” described as “The Official Timelord is a Child Molester Thread”.

31 The author again is “The Cunning Lingus”.

32 The clear imputation is that the plaintiff is a paedophile. This is Schedule 3.

33 The thread referred to above is reproduced in Schedule 4.

34 In my view it contains a further and additional set of imputations, namely:

- (a) That the plaintiff and his legal team go on child sex tours throughout Asia;
- (b) That the plaintiff had gone to Western Australia to associate with other homosexuals;
- (c) That he had gone to Western Australia to pursue paedophilic activities;
- (d) That he had been barred from “Fed” dressing rooms for being a pervert.

35 The next incident involves a message directed to the plaintiff on a web log.

Apparently the plaintiff had been arguing over the net with the web log owner about autistic spectrum disorders. The defendant had somehow come across this log and posted, on 28 December 2006, more defamatory statements.

36 The imputations from this material are, at least in my view:

- (a) That the plaintiff suffers from a more dangerous, and psychotic, condition than Asperger's Syndrome;
- (b) That the plaintiff has been in a homosexual relationship with the defendant for the last three years;
- (c) That the relationship is a continuing one;
- (d) That the plaintiff is a paedophile.

37 The context of this log is in Schedule 5.

38 Interspersed amongst various defamatory remarks contained in the documents are other abusive and taunting remarks directed at the plaintiff and his so-called lawyers and legal team posted in various places.

39 Subsequent to the issue of the Writ, the plaintiff, in April and August 2007, continued to publish defamatory remarks about the plaintiff. He also obtained from somewhere the plaintiff's unlisted mobile telephone number, and posted it on a website inviting people to ring the plaintiff.

40 Indeed as late as 19 April 2008, the defendant sent an email to the plaintiff clearly acknowledging that he had been served with the documents ordered by Judge Williams and continuing his abuse of the plaintiff. That such conduct can be taken into account in assessing damages for past defamatory conduct is clear on the authorities: See *McGregor on Damages*, 16<sup>th</sup> ed. at 1903 *et seq.*

41 For the sake of completeness, I include a copy of the defendant's email of 19

April 2008. This is Schedule 6.

42 By reason of the constant stream of defamatory statements published by the defendant, the plaintiff sought an injunction restraining such further conduct.

43 The plaintiff purported to rely upon authority, namely *Australian Broadcasting Corporation v O'Neill* (2006) 227 CLR 57.

44 I have read that case. Unfortunately – and bearing in mind that he is not a lawyer – I think the plaintiff has misunderstood what that case was about. It is not in my view an authority that assists him.

45 I also pointed out both jurisdictional and other problems in granting an injunction as he sought. Whilst on a purely subjective view there is good ground for wishing to curb the defendant's appalling conduct in his pursuit of the plaintiff, in the circumstances of this case, to my mind little benefit is likely to be obtained from granting an injunction, even if the other problems could be overcome.

46 I turn now to the question of damages. Fortunately for the defendant, the *Defamation Act 2005* has now removed the ability of the Court to award exemplary damages. If ever there was a case for exemplary damages, I think this would have been it.

47 I do not propose to regurgitate the various authorities relating to matters to be taken into account in awarding damages to the plaintiff. He himself at least has a grasp of some of those principles.

48 The plaintiff in his submissions asserted that a sum of \$20,000.00 was an appropriate figure by way of damages. I agree with him.

49 There will be judgment for the plaintiff against the defendant for \$20,000.00 damages, together with damages by way of interest in the sum of \$3,600.00.

50 I order that the defendant pay the plaintiff's costs fixed at \$200.00.

**APPENDICES:**

Schedule 1

Schedule 2

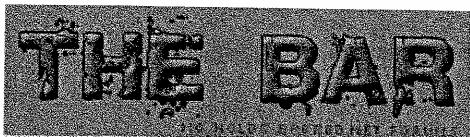
Schedule 3

Schedule 4

Schedule 5

Schedule 6

## **SCHEDULE 1**



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## A message for TIMELORD or PHIL or whats his surname???

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### Author

#### The Cunning Lingus



Joined: 14 Aug 2005  
Posts: 397  
Location: Your Mothers Bedroom

### Message

[Posted: Wed Jan 25, 2006 11:04 am](#) Post subject: A message for TIMELORD or PHIL or whats his surname???

[\[ quote\]](#)

Apparently there are lawsuits going on EVERYwhere and Im feeling left out

Call it a Mental Condition if you will.....

But I really want to share something with the rest of the Australian Wrestling Community.

I AM GAY and I AM IN A GAY RELATIONSHIP WITH PHIL aka TIMELORD.

The problems started last year when, after a night of passionate, dirty, sweaty, love making with my boy Timey we had a little pillow talk.

"Sweety" he asked "If you could make love with any other man on Earth, who would it be?"  
"CORY!!" I answered, without any hesitation  
and without remorse "CORY!! I WANT CORY TO DOMINATE ME LIKE HE DOES HIS MESSAGEBOARD!!"

And MY GOD you shouldve seen his reaction!!

He cried, He Whaled, He stuck three fingers up his own arse then whistled the theme from MASH.....It was so Horrific and Traumatic that watching any match with Cremator seemed exciting after this, but I digress, My boy Timey.....FUCKING LOST IT!!

From there out of sheer jealousy for my lustful feelings towards Stu, Timey has been on a jealous rampage usinlh EVERY means necessary to try and make my Fantasy Boy Stu feel bad because of my feelings for him.

12 Jan 2006

My boy Timey aka Phil only has one problem, and one problem only.....  
He needs to come out of the closet and admit that he is Gay. Not only to  
us, but to his entire family. I have kept our secret for way too long Phil  
and I thinks its time for you to finally be honest with not only your freinds  
and family, but be honest with yourself.

I ask that EVERYONE who reads this post please copy and paste it and  
send this to any member of Timey's family or anyone of his 4 freinds as  
I believe that it is VERY important for them to know.

In the end I have been left broken hearted,  
I just dont know what to do..... Maybe I might get my boy Timey back. But only if he  
comes out and is honest with himself.

Mookchow.

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**Franky Valentyn**

[Posted: Wed Jan 25, 2006 11:30 am](#) [Post subject:](#) [quote](#)

Joined: 29 Mar 2005  
Posts: 285

**Quote:**

He Whaled

um.....better not tell Greenpeace.....

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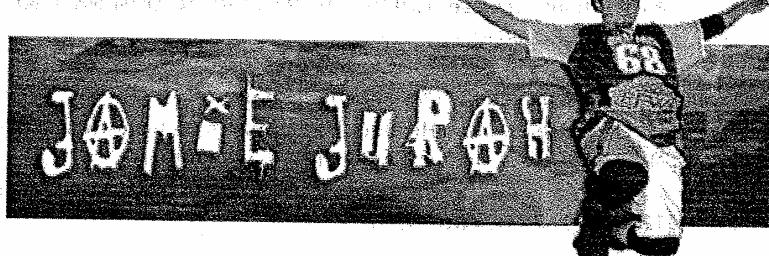
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**Bjorn**

[Posted: Wed Jan 25, 2006 11:38 am](#) [Post subject:](#) [quote](#)

Joined: 27 Mar 2005  
Posts: 73  
Location: Adelaide

**LMFAO**

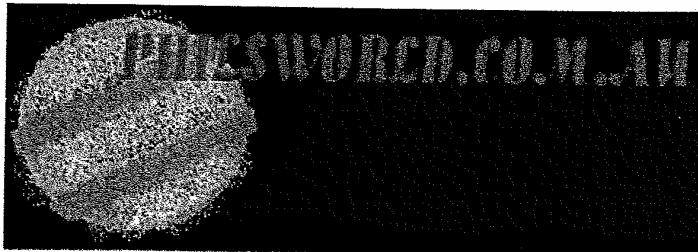


The \*unofficial\* revolution, surrender you monkeys and beef.

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## **SCHEDULE 2**



FORUM HOME  
FORUM HELP  
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Phil's World Home Page  
Other Phil's World home pages  
Asperger  
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**Spastics Anonymous**    **Posted:** February 09, 2006 12:11 pm

[REPORT](#) [EDIT](#) [QUOTE](#)

New Member

Group: Banned  
Posts: 1

Member No.: 28

Joined: February 09, 2006

Rating: < 0 ( 0 ) 10 >

Ol! [beep!]head,

Im being left out!!! Where is my letter from your cheap arse solicitor??  
I WANT TO CHALLENGE THIS!!

Or is this another one of your personalities caused by your Apsaregus Syndrome??  
I WANT TO HEAR FROM YOUR SOLICITOR!!

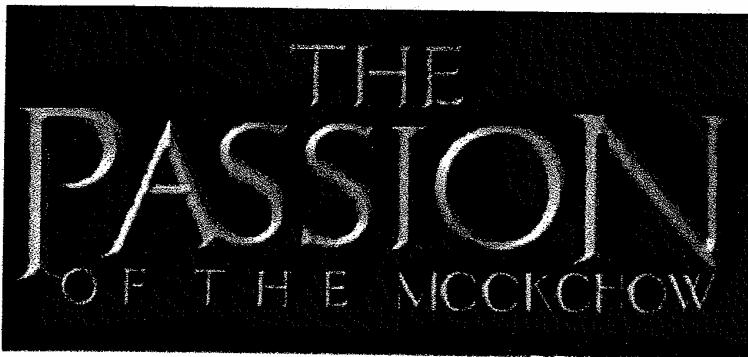
GO ON SUE ME!!! I DARE YOU YA HEAD [beep!]ED MORON!!!

P.s Welcome to the Internet

IP: [ 10.82.0.51 ]

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## **SCHEDULE 3**



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## Put Shit on Timelord Forum

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Topics	Replies	Author	Views	Last Post
<a href="#">**The Official TIMELORD IS A CHILD MOLESTOR thread!!!</a>	6	<a href="#">The Cunning Lingus</a>	50	<a href="#">Tue Jul 04, 2006 The Cunning Lingus</a>
<a href="#">What would it take...</a>	0	<a href="#">Mikey</a>	21	<a href="#">Tue Jul 04, 2006 Mikey</a>
<a href="#">**Forum Rules!!!</a>	0	<a href="#">The Cunning Lingus</a>	18	<a href="#">Tue Jul 04, 2006 The Cunning Lingus</a>

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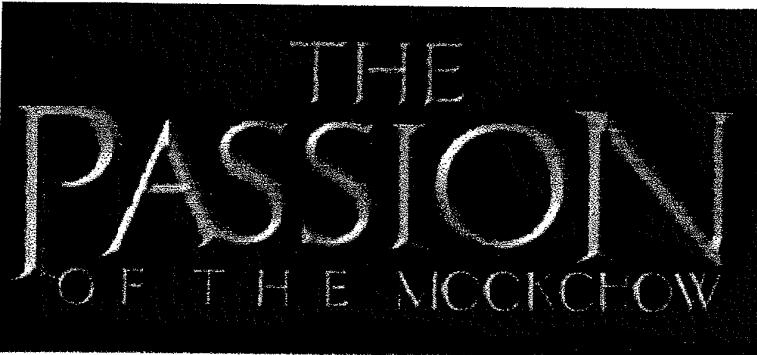
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## **SCHEDULE 4**



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## \*\*The Official TIMELORD IS A CHILD MOLESTOR thread!!!

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### Author

### Message

#### The Cunning Lingus

Site Admin



Joined: 20 Jun 2006

Posts: 70

Location: In Your Pants

[Post](#) [Posted: Tue Jul 04, 2006 4:27 am](#) [Post subject: \\*\\*The Official TIMELORD IS A CHILD MOLESTOR thread!!!](#)

If this doesnt do it.....NOTHING WILL!!!

But seriously, this dude Timelord is a fuck and so is his legal team. In fact I reckon they go on Child Sex tours through out Asia.

HELL even on Timelords website he admits going over to W.A to Camp out at Gay Haunts and Pick up minors!!

He has already been banned from every fed for being a pervert in the dressing rooms.

Now we need to banned together and get the freak banned for life from walking the streets!!

Mookchow.

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#### The Cunning Lingus

Site Admin

[Post](#) [Posted: Tue Jul 04, 2006 4:32 am](#) [Post subject:](#)

I'd Just like to add that The Asylum supports Timelord and his Child Molesting activities.



## **SCHEDULE 5**

Phil Gluyas aka Timelord aka Fuckface is and has been my personal Bitch for that last 3 years and will continue to be my Bitch until I get bored with him.

Hey Phil glad to see you have found this blog, Now I can make a name for myself here at your expense.....

And Phil, Its not beause you suffer from Asparagus Disease, It's because I just dont like you.....

You truely do look like a Child Molestor.

You really do.

The difference between you and a child molestor?

A Child Molestor still has a freind or two.

Mookchow.

p.s Go on say Phil!! "Im taking this to the courts tomorrow....."

Post a Comment

<< Home

few things we actually agree on!)

But Jackson's going the right way about getting one if he doesn't get off this blog!! This is none of your business, LT!! GET OUT!!

At 21 December, 2006, Anonymous said...

Oh - and another thing. You are NOT a member of my forum so don't lie. And I'll have my proof when I DON'T get an email requesting the new general password. I know who all the members are and their ISP's. And I know what yours is as well - Secret Squirrel (from the HRPW forum).

At 21 December, 2006, Fore Sam said...

Who's LT?

At 22 December, 2006, Anonymous said...

Lunatic Thighs, Best (AKA Lunatic Twat). Pay attention! Jackson's internet nick.

At 28 December, 2006, Lord Mookchow said...

My Name is Paris Tenana aka Mookchow!!!

All I got to say is: OH MY GOD!!! (In Joey Styles Fashion)

Phil you are a DROOLING SPASTIC MORON!!!  
No he doesn't suffer from AP,  
He suffers from acute A.D.D in  
a very psychotic form.

By the way, I hope your dipshit lawyer is charging you for trying to stop this blog- cause he aint got a hope in hell.

Oh yeah Phil, where is my Court Orders?? I've been waiting for 3 years for them.

What kind of a backyard Lawyer are you using??

Oh hang on, its illegal to say your name, Right??

## **SCHEDULE 6**

**Philip Gluyas**

---

**From:** Paris Tenana [paristhegreat@hotmail.com]  
**Sent:** Saturday, 19 April 2008 12:52 PM  
**To:** Phil's World Legal Office  
**Subject:** RE: Directions Hearing

Ummmmm Nope,  
Unless it was given to me by an Officer of the Law or by a Court Clerk  
I am under no obligation to turn up.

And receiving a scanned letter from your dodgy, spastic Email address  
hasn't got a legal leg to stand on You drooling spastic fuck.

Anyway, I'm up in Cairns on the piss and drugs ;)

Hope this causes more frustration and greif for you, after all you need  
something to do with your time you unemployed, pathetic waste of  
human flesh.

Please continue, this is so entertaining for me :)

Mookchow.

p.s This isn't Paris's Email address-lol And its up to you too prove it :)  
p.p.s THIS IS SO MUCH FUN!!!!

> From: legal2@philsworld.com.au  
> To: paristhegreat@hotmail.com  
> Subject: Directions Hearing  
> Date: Wed, 9 Apr 2008 10:35:17 +1000  
>  
> Attached - it is strongly advised that you attend.