SUPREME COURT OF QUEENSLAND

CITATION:	*Clampett v Kerslake (Electoral Commissioner of Queensland)* [2009] QCA 104
PARTIES:	**LEONARD WILLIAM CLAMPETT** (applicant) **v** **DAVID KERSLAKE** **(Electoral Commissioner of Queensland)** (respondent)
FILE NO/S:	Appeal No 2783 of 2009 SC No 2483 of 2009
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED EX TEMPORE ON:	24 April 2009
DELIVERED AT:	Brisbane
HEARING DATE:	24 April 2009
JUDGES:	Keane and Fraser JJA and White J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDERS:	**1. Strike out the notice of appeal.** **2. The applicant is to pay the respondent's costs of and incidental to the proceeding in this Court, on the indemnity basis.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – GENERALLY – where applicant made an application for statutory and judicial review of the Electoral Commissioner's decision to allow the 2009 Queensland state election to proceed – where applicant contended that s 85(1) of the *Electoral Act* 1992 (Qld) is inconsistent with s 115 of the *Commonwealth Constitution*, as it authorises the use of paper money, coins that are not silver or gold coins and bank cheques – where such argument had already been authoritatively rejected in previous cases brought by the applicant – whether the applicant should be given leave to appeal the primary judge's refusal to grant statutory and judicial review under s 48(5) of the *Judicial Review Act* 1991 (Qld) *Commonwealth Constitution* (Cth), s 115 *Constitution Act* 1867 (Qld), s 53

Electoral Act 1992 (Qld), s 85(1)
Judicial Review Act 1991 (Qld), s 48
Vexatious Proceedings Act 2005 (Qld), s 10(1)

C*lampett v Hill & Ors* [2007] QCA 394, cited
Re Skyring's Application (No 2) (1985) 59 ALJR 561, cited
Re Skyring [1999] QCA 460, cited
Skyring v O'Shea [1995] QCA 376, cited

COUNSEL: The applicant appeared on his own behalf
M D Hinson SC for the respondent

SOLICITORS: The applicant appeared on his own behalf
Crown Law for the respondent

FRASER JA: On 11 March 2009 a Judge of the trial division made an order under section 48 of the *Judicial Review Act* 1991 summarily dismissing the applicant's application for statutory review and application for judicial review.

The primary Judge considered that the application was frivolous, vexatious and an abuse of process of the Court.

The applicant purported to appeal against that decision. Subsection 48(5) of the *Judicial Review Act* 1991 provides that such an appeal lies only with the leave of this Court. The purported appeal is therefore incompetent. It should be struck out unless this is an appropriate case for leave.

The originating application sought review of "the statutory provisions pursuant to which the Electoral Commissioner of Queensland," the respondent, "made his decision on the 3rd day of March 2009 whereby he allowed the Queensland State general election to proceed" and, "the aforesaid administrative decision made by the Electoral Commissioner."

Subsection 85(1) of the *Electoral Act* 1992, requires that a deposit of $250 "in cash or bank cheque" accompany the nomination of a candidate for election. The applicant's main argument is that subsection 85(1) is inconsistent with section 115 of the *Commonwealth*

Constitution because subsection 85(1) authorises the use of paper money, coins that are not silver or gold coins, and bank cheques.

Section 115 of the *Constitution* precludes a State from coining money or making anything but gold and silver coin a legal tender in payment of debts. It has no bearing upon the validity of subsection 85(1) of the *Electoral Ac*t 1992, which does not create a debt but simply requires a deposit of $250 if a nomination of a candidate for election is to be effective. Furthermore, the issue and use, as legal tender, of the familiar paper money and coins in circulation in Australia are authorised by Commonwealth legislation, the validity of which is unaffected by section 115.

In *Clampett v Hill* [2007] QCA 394 at paragraphs 15 and 16, this Court rejected as vexatious an appeal in which the applicant agitated his argument to the contrary. The applicant nevertheless repeats that rejected argument. In doing so, he adopts Mr Skyring's earlier argument to the same effect even though it was rejected as lacking legal merit in numerous authoritative decisions including a decision of the Full Court of the High Court on 9 July 1985 which affirmed Justice Deane's decision in *Re Skyring's Application (No 2)* (1985) 59 ALJR 561.

In *Re Skyring* [1999] QCA 460 (Court of Appeal number 9356 of 1999, 3 November 1999), this Court dismissed Mr Skyring's appeal from a decision in which Justice Muir had rejected his application for the revocation of a declaration made by Justice White on 5 April 1995 that he was a vexatious litigant.

The declaration had resulted from Mr Skyring's repeated attempts to agitate the so-called "currency argument" which the applicant now seeks to advance. In the 1999 decision, this Court, having noted that in *Skyring v O'Shea* [1995] QCA 376 (Court of Appeal number 56 of 1995, 7 August 1995) three Justices had unanimously dismissed an appeal from Justice White's decision, affirmed Justice Davies' statement in the 1995 decision that,

"Time has long passed when it is necessary to set out and reject, once again, the arguments of the appellant."

The applicant also contended in his originating application that enactments leading up to and including the *Australia Act* 1986 (UK) were constitutionally invalid on account of a failure to comply with referendum requirements in section 53 of the *Constitution Act* 1867 (Qld).

This argument has also often been authoritatively rejected including by this Court in *Clampett v Hill* [2007] QCA 394 at paragraphs 12 to 14 and in the earlier decisions there cited.

I also reject the applicant's bizarre argument that the primary Judge erred by failing to accede to the respondent's application for an order that the applicant pay the respondent's costs of the application.

There was no arguable error in the primary Judge's decision to summarily dismiss the applicant's originating application. This purported appeal is similarly frivolous, vexatious and an abuse of the Court's process.

The respondent argues that it is open to this Court now to make an order declaring that the applicant's originating application and his appeal were instituted in contravention of subsection 10(1) of the *Vexatious Proceedings Act* 2005.

The respondent contends that the applicant brought his application in concert with Mr Skyring who was declared a vexatious litigant under section 3 of the *Vexatious Litigants Act* 1981 by the order of Justice White mentioned earlier.

The applicant denies the allegation that he has acted in concert with Mr Skyring. In my view, the purported appeal to this Court is not an appropriate vehicle for the resolution of that disputed factual question.

I would accede to the respondent's application for costs to be assessed on the indemnity basis because the arguments advanced in support of the proposed appeal were both manifestly hopeless and foreclosed by authoritative decisions of which the applicant was aware.

I would strike out the notice of appeal and order that the applicant pay the respondent's costs of and incidental to the proceeding in this Court to be assessed on the indemnity basis.

KEANE JA: I agree.

WHITE J: I agree also.

KEANE JA: The orders of the Court are then that the notice of appeal is struck out and the applicant must pay the respondent's costs of and incidental to the proceeding in this Court to be assessed on the indemnity basis.