



## Supreme Court New South Wales

<b>Medium Neutral Citation:</b>	<b>Application by John Wilson [2016] NSWSC 1527</b>
<b>Hearing dates:</b>	On the Papers
<b>Date of orders:</b>	28 October 2016
<b>Decision date:</b>	28 October 2016
<b>Jurisdiction:</b>	Common Law
<b>Before:</b>	Wilson J
<b>Decision:</b>	<p>(1) Within 14 days of the date of these orders the applicant is to serve each relevant person with a copy of the following documents:</p> <ul style="list-style-type: none"><li>(a) Summons filed in the Registry of this Court on 29 September 2016;</li><li>(b) Affidavit of John Wilson of 1 September 2016 filed in support of the summons;</li><li>(c) Affidavit of Martin Thomas Slattery of 28 September 2016, and annexed documents A – F inclusive;</li><li>(d) Submissions filed by the applicant on 20 October 2016;</li><li>(e) Copy of this judgment; and</li><li>(f) A notice that the person is entitled to be heard on the application.</li></ul> <p>(2) For the purposes of order (1) above, “relevant persons” are:</p> <ul style="list-style-type: none"><li>(a) the proper officer, Australian Broadcasting Corporation;</li><li>(b) the Attorney General; and</li><li>(c) the Solicitor General.</li></ul> <p>(3) Any relevant person who wishes to be heard in relation to the determination of the application pursuant to s 14(2) of the Vexatious Proceedings Act 2008 (NSW) is to file any written submissions in the Registry of this Court within 21 days of receipt of the documents referred to in order (1) above, serving a copy of such submissions on the</p>

applicant.

(4) The application will be determined on the papers.

**Catchwords:**

PROCEDURE – vexatious litigant – Vexatious Proceedings Act 2008 (NSW) – application for preliminary discovery pursuant to rr 5.3 and 5.4 of the Uniform Civil Procedure Rules 2005 (NSW) – application for leave to institute proceedings

**Legislation Cited:**

Defamation Act 2005 (NSW)  
Uniform Civil Procedure Rules 2005 (NSW)  
Vexatious Proceedings Act 2008 (NSW)

**Cases Cited:**

Attorney General of NSW v Wilson [2010] NSWSC 1008

**Category:**

Principal judgment

**Parties:**

John Wilson (Applicant)

**Representation:**

Solicitor: Carroll & O'Dea Lawyers (Applicant)

**File Number(s):**

2016/292059

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## JUDGMENT

1 John Wilson is a vexatious litigant, having been so declared by this Court in 2010: *Attorney General of NSW v Wilson* [2010] NSWSC 1008. Relevantly, the orders of the Court were:

“Pursuant to s 8(7)(b) *Vexatious Proceedings Act 2008* John Wilson is prohibited from instituting proceedings in New South Wales other than with leave of an appropriate court under that Act.”

2 As a consequence of that order the applicant requires leave from an appropriate court prior to instituting legal proceedings. This Court, being the Court that made the order, is an appropriate court: *Vexatious Proceedings Act 2008* (NSW), s 12.

3 Believing that he may have been defamed by a report broadcast by the Australian Broadcasting Commission (“the ABC”) on television on 30 November 2015, the applicant seeks leave to institute proceedings otherwise prohibited by the terms of the 2010 order.

4 In the subject broadcast, the applicant was referred to as a person identified by a “domestic terror threat assessment” as “an extremist member of the sovereign citizen movement and a potential terror threat to Australia” (Annexure A to the affidavit of Martin Thomas Slattery filed 28 September 2016 in support of the application, hereinafter “Slattery”).

5 The applicant contends that the characterisation of him broadcast by the ABC is potentially defamatory.

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He has made inquiries of the NSW Police, the Australian Federal Police (“the AFP”), and the ABC, in an effort to obtain a copy of the “domestic terror threat assessment” that the ABC report referred to, but has been unsuccessful. Neither the NSW Police nor the AFP have such a document, and the ABC declined to provide the applicant with any relevant documentation in its possession absent a subpoena or other legal process (Slattery, Annexures D, E and C respectively).

7 By summons filed on 29 September 2016 the applicant seeks the following relief:

“That in accordance with section 14 of the *Vexatious Proceedings Act 2008* (NSW) the Court grant leave to institute proceedings that the vexatious proceedings order would otherwise prohibit the applicant from instituting.”

8 In brief submissions filed on 20 October 2016 in support of the summons the applicant delineates the “proceedings” he seeks leave to institute as, initially, an application for preliminary discovery pursuant to rr 5.3 and 5.4 of the Uniform Civil Procedure Rules 2005 (“UCPR”). Should discovery reveal a prima facie case for action in defamation, the applicant also seeks leave to institute substantive proceedings.

9 “Proceedings” is broadly defined by s 4 of the *Vexatious Proceedings Act*:

**“4 Meaning of “proceedings”**

In this Act, proceedings includes:

(a) any cause, matter, action, suit, proceedings, trial, complaint or inquiry of any kind within the jurisdiction of any court or tribunal, and

(b) any proceedings (including any interlocutory proceedings) taken in connection with or incidental to proceedings pending before a court or tribunal, and

(c) any calling into question of a decision, whether or not a final decision, of a court or tribunal, and whether by appeal, challenge, review or in another way.”

10 An application for pre-trial discovery is clearly caught by s 4(a) and is thus a proceeding for the purpose of the Act. An action in defamation is an action or suit and is also caught by s 4.

11 The proceedings the applicant seeks leave to institute are thus matters in respect of which an application of this nature may be made.

12 In considering whether leave ought to be granted by the Court to the applicant to commence proceedings, regard must be had to those matters in s 16 of the *Vexatious Proceedings Act*. The section is in these terms:

**“16 Granting application for leave**

(1) Before an appropriate authorised court grants an application made under section 14 for leave to institute proceedings, it must:

(a) order that the applicant serve each relevant person with a copy of the application and affidavit and a notice that the person is entitled to appear and be heard on the application, and

(b) give the applicant and each relevant person an opportunity to be heard at the hearing of the application.

(2) At the hearing of the application, the court may receive as evidence any record of evidence given, or affidavit filed, in any proceedings in any Australian court or tribunal in which the applicant is, or at any time was, involved either as a party or as a person acting in concert with a party.

(3) The court may grant leave to institute proceedings subject to the conditions that the court considers appropriate.

(4) However, the court may grant leave only if it is satisfied that:

- (a) the proceedings are not vexatious proceedings, and
- (b) there are one or more prima facie grounds for the proceedings.

(5) In this section:

“*relevant person*”, in relation to the applicant for leave to institute proceedings, means each of the following persons:

- (a) the person against or in relation to whom the applicant proposes to institute the proceedings,
- (b) the Attorney General,
- (c) the Solicitor General,
- (d) the appropriate registrar for the authorised court that made the vexatious proceedings order concerned if the registrar applied for the order in relation to the applicant,
- (e) any person referred to in section 8 (4) (d) or (e):
  - (i) who applied for a vexatious proceedings order in relation to the applicant, and
  - (ii) who the appropriate authorised court dealing with the application considers should be served,
- (f) any person:
  - (i) who made an application in relation to the applicant under section 70 of the *Land and Environment Court Act 1979* or section 84 of the *Supreme Court Act 1970* before the commencement of this section, and
  - (ii) who the appropriate authorised court dealing with the application considers should be served.”

13 A proceeding will be vexatious for the purposes of s 16(4)(a) if it falls within the definition provided by s 6:

**“6 Meaning of “vexatious proceedings”**

In this Act, “*vexatious proceedings*” includes:

- (a) proceedings that are an abuse of the process of a court or tribunal, and
- (b) proceedings instituted to harass or annoy, to cause delay or detriment, or for another wrongful purpose, and
- (c) proceedings instituted or pursued without reasonable ground, and
- (d) proceedings conducted in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose.”

14 The information provided to the Court in support of the application is very limited, no doubt because the information the applicant has access to is limited. He may have an actionable claim although, as the applicant himself concedes in his affidavit of 1 September 2016, the ABC may have a defence to any such action, wholly vitiating it. Even on the scant information available, a number of the defences referred to in Division 2 of Part 4 of the *Defamation Act 2005* (NSW) are potentially available.

15 However, part of what is sought is pre-trial discovery of documents and it may be that permitting the applicant to pursue discovery would determine whether his proposed substantive action has merit prima facie. This in turn would allow the Court to determine those matters referred to in s 16(4) of the *Vexatious Proceedings Act*.

16 Accordingly, I propose to make orders pursuant to s 16(1) of the Act giving relevant persons an opportunity to be heard in relation to the question of leave to institute proceedings in the nature of discovery, pursuant to r 5.3 of the UCPR. I do not propose

to make orders with respect to discovery pursuant to r 5.4 of the UCPR, since the identity of any person not a party to the prospective proceedings, but who may have some relevant document, is not established on the material filed in support of the application and hence, not identified for the purposes of s 16(5) and s 8(4)(e) of the Act.

17 It is premature in my view to make s 16(1) orders in relation to the substantive litigation. Consideration should first be given to the institution of proceedings for discovery.

## ORDERS

- (1) Within 14 days of the date of these orders the applicant is to serve each relevant person with a copy of the following documents:
  - (a) Summons filed in the Registry of this Court on 29 September 2016;
  - (b) Affidavit of John Wilson of 1 September 2016 filed in support of the summons;
  - (c) Affidavit of Martin Thomas Slattery of 28 September 2016, and annexed documents A – F inclusive;
  - (d) Submissions filed by the applicant on 20 October 2016;
  - (e) Copy of this judgment; and
  - (f) A notice that the person is entitled to be heard on the application.
- (2) For the purposes of order (1) above, “relevant persons” are:
  - (a) the proper officer, Australian Broadcasting Corporation;
  - (b) the Attorney General; and
  - (c) the Solicitor General.
- (3) Any relevant person who wishes to be heard in relation to the determination of the application pursuant to s 14(2) of the *Vexatious Proceedings Act* is to file any written submissions in the Registry of this Court within 21 days of receipt of the documents referred to in order (1) above, serving a copy of such submissions on the applicant.
- (4) The application will be determined on the papers.

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Decision last updated: 28 October 2016