



Supreme Court New South Wales

Medium Neutral Citation:	Application by John Wilson (No 2) [2016] NSWSC 1822
Hearing dates:	On the Papers
Date of orders:	15 December 2016
Decision date:	15 December 2016
Jurisdiction:	Common Law
Before:	Wilson J
Decision:	(1) Pursuant to s 16(3) of the Vexatious Proceedings Act 2008 (NSW), the Court grants leave to the applicant to institute proceedings by lodging a summons pursuant to rules 6.2 and 6.4 of the Uniform Civil Procedure Rules 2005, for preliminary discovery pursuant to r 5.3 of the Rules, in the terms set out in Exhibit F to the affidavit of Martin Thomas Slattery dated 28 September 2016; (2) No order as to costs.
Catchwords:	PROCEDURE – vexatious litigant – Vexatious Proceedings Act 2008 (NSW) – application for leave to commence proceedings
Legislation Cited:	Limitation Act 1969 (NSW) Vexatious Proceedings Act 2008 (NSW)
Cases Cited:	Application by John Wilson [2016] NSWSC 1527 Attorney General of NSW v Wilson [2010] NSWSC 1008
Category:	Principal judgment
Parties:	John Wilson (Applicant)
File Number(s):	2016/292059

JUDGMENT

- 1 As a vexatious litigant, John Wilson requires leave from this Court prior to commencing proceedings. By summons filed on 29 September 2016 he sought leave to initiate proceedings that he would otherwise be prevented from commencing by operation of an order made by this Court in 2010: *Attorney General of NSW v Wilson* [2010] NSWSC 1008.

- 2 On 28 October 2016 the Court made orders pursuant to s 16 of the *Vexatious Proceedings Act 2008* (NSW) (“the Act”) directing the applicant to serve relevant persons with a copy of documentation concerning his application: *Application by John Wilson* [2016] NSWSC 1527. The “relevant persons” for the purposes of the order were the proper officer of the Australian Broadcasting Commission (“the ABC”), the Attorney General, and the Solicitor General. Service was to be effected so that any relevant person who wished to be heard in relation to the application could be heard, by filing written submissions with the Court within 21 days of receipt of the material.
- 3 The applicant has filed evidence establishing that the relevant persons were served by him as ordered. The proper officer of the ABC was served on 7 November 2016; the Attorney General was served on or about 8 November 2016; and the Solicitor General was served on or about 9 November 2016. No submissions from any relevant person has been filed with the Court within the specified time frame of 21 days from receipt of the documentation.
- 4 Accordingly, the application must be determined in the absence of submissions from relevant persons, and on the basis of evidence and submissions from the applicant only.
- 5 Section 16 of the Act governs the granting of leave to an applicant under the Act. It is, relevantly, in the following terms:

“16 Granting application for leave

(1) [...]

(2) [...]

(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.”

- 6 It is therefore necessary for the Court to determine two questions: are the proceedings vexatious; and are there prima facie grounds for the proceedings.

- 7 Proceedings will be vexatious if they fall within the definition provided by s 6 of the Act, which is as follows:

“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.”

The Proposed Action

The applicant believes that he has been defamed by the ABC and wishes to initiate proceedings by way of preliminary discovery, relevant to a possible claim in defamation. Should information obtained as a consequence of preliminary discovery reveal a prima facie cause of action in defamation, the applicant seeks leave to initiate substantive proceedings.

9 The broadcast which he alleges defamed him was made on 30 November 2015, and is briefly described in *Application by John Wilson*. It is not necessary to add to that description here.

10 Although the defendant faces a hurdle posed by the limitation date applicable to the matter, 20 November 2016, that hurdle is not insurmountable, particularly in circumstances where any litigation commenced by the applicant is necessarily delayed by operation of the Act, given that he is obliged to seek leave from the Court prior to filing any initiating process. Although it is apparent that the whole of the delay here is not attributable to the necessity to comply with the Act, that necessity goes some way to explaining the failure to commence proceedings prior to 30 November 2016.

11 There remains a period of about 5 months involving unexplained delay. On 19 April 2016 the applicant received the last response from a relevant agency to his inquiry as to the existence of, and access to, a “domestic terror assessment” concerning him, that being from the Australian Federal Police. This application was not filed until 29 September 2016.

12 Despite that, I cannot conclude that no court would make an order extending the limitation period, and there is power to do so. Section 56A of the *Limitation Act 1969* (NSW) provides:

“56A Extension of limitation period by court

(1) A person claiming to have a cause of action for defamation may apply to the court for an order extending the limitation period for the cause of action.

(2) A court must, if satisfied that it was not reasonable in the circumstances for the plaintiff to have commenced an action in relation to the matter complained of within 1 year from the date of the publication, extend the limitation period mentioned in section 14B to a period of up to 3 years running from the date of the publication.

(3) A court may not order the extension of the limitation period for a cause of action for defamation other than in the circumstances specified in subsection (2).”

13 There is a basis for discovery and, accordingly, I am not able to conclude that the proposed proceedings are vexatious, or without any basis.

14 Leave should be granted to pursue preliminary discovery.

ORDERS

(1) Pursuant to s 16(3) of the *Vexatious Proceedings Act 2008* (NSW), the Court grants leave to the applicant to institute proceedings by lodging a summons pursuant to rules 6.2 and 6.4 of the Uniform Civil Procedure Rules 2005, for preliminary discovery pursuant to r 5.3 of the Rules, in the terms set out in Exhibit F to the affidavit of Martin Thomas Slattery dated 28 September 2016;

(2)

No order as to costs.

Amendments

15 December 2016 - Date of Orders & Decision

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Decision last updated: 15 December 2016