SUPREME COURT OF QUEENSLAND

CITATION:	*Kosteska v Magistrate Manthey & Anor* [2013] QCA 105
PARTIES:	**LILLE KOSTESKA** (applicant) **v** **MAGISTRATE BEVAN MANTHEY** (first respondent) **PAUL GERARD MURRAY (REGISTRAR OF SPER)** (second respondent)
FILE NO/S:	Appeal No 7440 of 2012 SC No 5434 of 2012
DIVISION:	Court of Appeal
PROCEEDING:	Application for Leave/Judicial Review
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	10 May 2013
DELIVERED AT:	Brisbane
HEARING DATE:	20 February 2013
JUDGE:	Margaret McMurdo P and Atkinson and Martin JJ Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Application for leave to appeal refused.** **2. The stay application is refused.** **3. Applicant to pay second respondent's costs on an indemnity basis.**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL - PRACTICE AND PROCEDURE – QUEENSLAND – WHEN APPEAL LIES – BY LEAVE OF COURT – GENERALLY – where the applicant seeks leave to appeal an order dismissing her application for judicial review of the orders of the first respondent – where applicant sought leave to appeal on a number of grounds including that the Court of Appeal was not a lawfully established court and that the applicant was denied natural justice – whether the Court of Appeal should grant leave to appeal pursuant to the *Judicial Review Act* 1991 (Qld) APPEAL AND NEW TRIAL – APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – STAY OF PROCEEDINGS – WHEN REFUSED - where the applicant makes a stay application with respect to all orders made by

	the Magistrate Court instituted against the applicant by the Queensland Police Service since November 2009 – whether the Court of Appeal should allow the stay application
	Judicial Review Act 1991 (Qld), s 48
	Clampett v Hill & Ors [2007] QCA 394, cited *Kelly v Campbell* [2002] FCA 1125, cited *Kosteska v Phillips* [2011] QCA 266, cited *Meads v Meads* [2013] 3 WWR 419; [2012] ABQB 571, cited *R v Australian Broadcasting Tribunal; Ex parte Hardiman* (1980) 144 CLR 13; [1980] HCA 13, cited *Re Cusack* (1985) 60 ALJR 302, cited *Re Skyring* [1999] QCA 460, cited *Re Skyring's Application (No 2)* (1985) 59 ALJR 561, cited *Sharples v Arnison* [2002] 2 Qd R 444; [2001] QCA 518, cited *Skyring v Australia and New Zealand Banking Group* [1993] QCA 118, cited *Skyring v Australia and New Zealand Banking Group* [1994] QCA 143, cited *Skyring v Commonwealth Commissioner of Taxation* [1993] QCA 119, cited *Skyring v Lohe* [2000] QCA 451, cited
COUNSEL:	The applicant appeared on her own behalf E M Fletcher for the first respondent M T Hickey for the second respondent
SOLICITORS:	The applicant appeared on her own behalf Crown Law for the first and second respondents

[1] **MARGARET McMURDO P:** This application for leave to appeal should be refused and the stay application dismissed for the reasons given by Martin J. I agree with the orders proposed by his Honour.

[2] **ATKINSON J:** I agree with the reasons of Martin J and the orders he proposes.

[3] **MARTIN J:** On 19 June 2012 the applicant filed an application for judicial review of:

(a) The "judgments and orders" of the first respondent made on 3 April 2012 in the Magistrates Court at Cleveland, and

(b) "a series of claims" made by the second respondent against the applicant.

[4] The "judgments and orders" of the first respondent referred to convictions entered after pleas of guilty against the applicant for offences under the *Police Powers and Responsibilities Act* 2000 (Qld), an offence under the *Drugs Misuse Act* 1986 (Qld), and an offence under the *Bail Act* 1980 (Qld). The applicant was fined $1,000.

[5] The first respondent, properly,[1] did not seek to be heard save as to any question which might arise as to costs, allegations of misconduct and so on.

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[1] *R v Australian Broadcasting Tribunal; Ex parte Hardiman* (1980) 144 CLR 13.

[6] The "series of claims" made by the second respondent consisted of a "Reminder Notice" from the State Penalties Enforcement Registry ("SPER") to the effect that the applicant owed $15,278.60. That amount was made up of SPER fees and 36 fines for offences dating back to 2003 and including matters such as: exceeding the speed limit, driving while unlicensed, driving an unregistered vehicle, possessing property suspected of being stolen, and failing to vote at an election.

[7] On 23 July 2012 the second respondent filed an application seeking, among other things, an order under s 48(1)(c) of the *Judicial Review Act* 1991 (Qld) ("JR Act") that the applicant's application be dismissed. That application was successful. On 7 August 2012 orders were made dismissing the applicant's application and requiring her to pay the second respondent's costs.

[8] The matter now comes before the Court of Appeal pursuant to an application for leave to appeal the order of 7 August 2012. Leave is necessary pursuant to s 48(5) of the JR Act.

[9] The application for leave to appeal is expressed to be made by "Lille: of the Kosteska family (as commonly known)" and "as well for the Queen as for herself and … made with a view to correcting serious defects in the manner in which legal affairs especially of the nation generally, and the State of Queensland particularly, are presently conducted, and have been for a very long time".

[10] In bringing this application, the applicant extends a line of similar, hopeless cases. Notwithstanding that her arguments, if correct, would mean that the Supreme Court had no power to grant the orders she seeks, she persists in her applications. The irony of her position seems to have escaped her. But it has not dulled her appetite for wasting the time of courts and the unfortunate respondents to these pointless exercises.

[11] Ms Kosteska's argument on this application appears to be that:

(a) She was denied natural justice at first instance; and

(b) That "the entire legal system, as established and presently implemented across this Commonwealth of Australia and State of Queensland, is 'inherently capable [sic], technically' of addressing such matters at first instance, and to the take the requisite 'corrective' action to properly and completely remedy the situation if 'irregularities' are uncovered" and that "the applicant has 'serious concerns that 'the system' as a whole, is simply 'not up to that task'."

Denial of natural justice

[12] So far as it is possible to discern a thread of argument which would support this ground of appeal, the following seem to be the complaints made by the applicant:

(a) The learned primary judge displayed bias against the applicant;

(b) The learned primary judge did not make reference, in her reasons, to some applications for special leave which had been made to the High Court of Australia by the applicant;

(c) The learned primary judge did not take into account some matters, (the identity of these is difficult to determine); and

(d) The learned primary judge "saw fit to attack" the applicant "on behalf of the respondents".

[13] The transcript of the proceedings discloses that the learned primary judge had examined all the material before her and proceeded to afford the applicant a complete opportunity to present her case. Her Honour would not have made reference to applications for special leave to the High Court of Australia because they were not relevant to the matter before her.

[14] The learned primary judge did engage the applicant in a series of questions which was clearly designed to elucidate, so far as it was possible, the applicant's argument. During that exchange her Honour expressed some strong views about the value of the applicant's contentions, but nothing more than might be expected given the nature of the argument.

[15] It was also argued that her Honour was "severely constrained" in respect of the orders she could make by the "British Coat of Arms" which appeared above the bench.[2] Apparently, the presence of this representation (of what is actually the Royal Coat of Arms) required that the law which was to be upheld in all proceedings was the common law of England "in all of its might and majesty". But, says Ms Kosteska, that requirement was ignored. There are occasions (thankfully very rare) when a submission is made that is so misguided, so erroneous and so lacking in any understanding of the basics of Australian law that one is faced with a truly sublime absurdity. This is such an argument. The presence of a coat of arms in a courtroom is merely a symbol of authority. It provides no power. It creates no duty.

[16] Ms Kosteska was given a complete opportunity to present her case, such as it was, and it cannot be demonstrated that she was denied natural justice.

The flaws in Australia's entire legal system

[17] This is not the first case in which Ms Kosteska's argument has been advanced. It, and others like it, have wasted the time of the courts and opposing litigants, together with taxpayers' money for some time. (This is not a peculiarly Australian problem. Similar fruitless cases have burdened the Canadian courts – so much so that Associate Chief Justice Rooke has examined in detail the characteristics, indicia and concepts of what he describes as Organised Pseudolegal Commercial Arguments.[3])

[18] The kernel of Ms Kosteska's argument under this heading is contained within her written submissions filed on 19 June 2012. She says that the proceeding in the Magistrates Court was "utterly lacking any proper basis in law" when viewed "in hard constitutional terms". This audacious submission is supported, she says, by the following (which is set out in the same manner as in her written submission):

> "**3.** …the essential basis is that, as **there has NOT been – since at least 3 March 1986 at 5.00 am GMT**, when the now notorious ***Australia Act (Imp) 1986,*** **purportedly** enacted by the Imperial Parliament at Westminster on behalf of, and at the behest of, the Australian 'authorities' of the day, **ostensibly came into force here at that time – ANY proper basis in law CONSTITUTIONALLY** upon which ANY of the now 'very many' enactments which have purportedly 'become law' in this country since that time, then **ALL such laws purportedly now 'in force' are NOT so, since they**

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2 The initial application was heard in the Law Courts Complex.

3 *Meads v Meads* [2013] 3 WWR 419; [2012] ABQB 571.

> **have ALWAYS 'utterly lacked' ANY proper 'constitutional' foundation, and therefore they ALWAYS HAVE BEEN NULL AND VOID AT LAW from the time of their enactment, appearances to the contrary notwithstanding.**
>
> **4. This 'most unlikely' situation arises as a consequence of a 'very fundamental procedural error' in the process whereby that enactment was made,** in that, as the ***referenda***, required by the *State Constitution Acts* then in force in both Western Australia and Queensland to sanction ANY change to the 'powers of the Office of State Governor' of the type envisaged by, and indeed expressly in, the *Australia Acts (Request Acts) 1985,* **had NOT been held before those *Acts* were signed into law** by the respective Governors of those States, then the requisite **formal agreement of ALL States and Territories, necessarily required FROM ALL States and Territories** for such an enactment to be PROPERLY made at law by the Imperial Parliament, **HAD NOT IN FACT AND IN LAW BEEN OBTAINED to properly sanction such a change. The necessary consequence HAS TO BE therefore, as stated above**."

[19] It is not easy to summarise what is said in the written submissions filed by the applicant. In some respects it resembles the stream of consciousness style of writing used (more entertainingly) by authors such as Jack Kerouac. There are, for example, contentions that "some very influential people" commonly known as the "the Elite" have been responsible for the unlawful act of subtly removing the common law and replacing it with commercial law so that, amongst other things, the Supreme Court is now an unconstitutional Court of Admiralty which operates under the international law of the sea.

[20] No arguments are advanced to support any of this. Rather, in keeping with the style of all the submissions made by Ms Kosteska, questions are asked which are apparently intended to raise matters of great import. For example:

> "Is it also not so that a contract is not deemed valid if it is all factors have not been fully exposed and excepted [sic] by all parties involved, in which case the imposition or enforcement of all such CONTRACTS or CORPORATE REGULATIONS called STATUTES, are in fact not valid or void at law?
>
> Is it also not true that the pseudo Judges of these pseudo Courts have NO powers without the Consent of both the Plaintiff and the Defendant [AND] in every case the Judge must determine that he has Consent; Personam and Subject Matter Jurisdiction before he can act or access the Cesta Que Trust?
>
> Is it also not so that a corporation is a fiction and cannot be sovereign?
>
> Is it not so that as I can touch, feel, smell, bleed, and am in fact a living, breathing Child of God, I am in FACT a Sovereign and have higher authority over any fiction?"[4]

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[4] Similar exaggerated claims are examined in *Meads v Meads (supra)*.

[21] The applicant has also attached to her written submission excerpts from decisions of the High Court of Australia, some newspaper articles relating to "Project Wickenby" and the Bell Resources litigation, correspondence between Mr Alan Skyring and the High Court of Australia, excerpts from various books including "A History of Money", "Descent into Slavery" and "The Second Treatise of Civil Government", documents promoting the establishment of a parliamentary state bank, and a statutory declaration in relation to an entirely different matter.

[22] Many of the contentions advanced by Ms Kosteska have been previously considered by the Court of Appeal or the High Court of Australia. Similar or associated contentions have been dealt with, and dismissed, in *Skyring v Commonwealth Commissioner of Taxation*,[5] *Skyring v Australia and New Zealand Banking Group*,[6] *Re Skyring*,[7] *Skyring v Lohe*,[8] *Sharples v Arnison*,[9] *Kelly v Campbell*,[10] *Skyring v Australian & New Zealand Banking Group Ltd*,[11] *Re Skyring's Application (No 2)*,[12] *Re Cusack*,[13] *Clampett v Hill & Ors*,[14] and *Kosteska v Phillips*.[15]

[23] Each of the arguments advanced on the constitutional grounds by Ms Kosteska has been firmly and convincingly rebuffed and dismissed in many decisions over many years. The result of this case can be no different.

Stay Application

[24] On 8 October 2012 Ms Koteska filed an application ('the stay application") seeking the following orders from this court:

(a) That "a permanent stay be applied on all of the orders made in the Cleveland Magistrates Court on the 4th April 2012 in respect of all proceedings instituted against the applicant by the Queensland Police Service since November 2009"

(b) That "the Applicant's motor vehicle Driver Licence be reinstated forthwith in a 'unrestricted' form, which allows her to drive her car anywhere at any time on the public roads in Australia 'as other normal people do'"

(c) That "the Applicant be afforded forthwith by the State authorities, compensation in an appropriate quantum manner and form as recompense for the highly improper action which has been taken against her by those 'authorities' over the last decade and more as she sought, quite properly to 'have corrections made' to the unlawful aspects, constitutionally of 'the entire government setup' in this State"

(d) That "necessary action be taken forthwith" with respect to certain matters involving the applicant "to have them properly determined at law by the High Court of Australia"

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5 [1993] QCA 119.
6 [1993] QCA 118 and [1994] QCA 143.
7 [1999] QCA 460.
8 [2000] QCA 451.
9 [2002] 2 Qd R 444.
10 [2002] FCA 1125.
11 [1995] QCA 376.
12 (1985) 59 ALJR 561.
13 (1985) 60 ALJR 302.
14 [2007] QCA 394.
15 [2011] QCA 266.

(e) That "the State Attorney-General 'be instructed' to intervene in the proceedings with respect to an application by the applicant for special leave to appeal to the High Court on the basis that as he is really the only legal officer in this State who has the necessary 'legal standing' to have carriage of such an action, given the nature of matters raised in it, there is no credible option open to anyone but to do just that."

[25] The basis for the stay application is said to be that there has been an admission by the respondents "of the veracity of the fundamental tenets upon which the applicant's action was initially brought in this matter". The application claims that the respondents', not having served a notice on the applicant during these proceedings to dispute those facts alleged by the appellant, it follows that judgment should be given for her for the orders she seeks.

[26] The applicant relies upon r 190 of the *Uniform Civil Procedure Rules*. It does not apply to these proceedings.

[27] The applicant has not provided any argument to support the making of such extraordinary orders.

Orders

[28] I would refuse the application for leave to appeal and refuse the stay application.

[29] The second respondent has sought his costs on an indemnity basis. Given the circumstances referred to above, I see no reason why such costs should not be ordered and I would order that the applicant pay the second respondent's costs on an indemnity basis with respect to both the application for leave to appeal and the stay application.