SUPREME COURT OF QUEENSLAND

CITATION:	*Re Skyring* [2013] QSC 197
PARTIES:	**ALAN GEORGE SKYRING** **(applicant)** **v** **G R COOPER, CROWN SOLICITOR** **(respondent)**
FILE NO:	BS5759 of 2013
DIVISION:	Trial Division
PROCEEDING:	Originating Application
DELIVERED ON:	1 August 2013
DELIVERED AT:	Brisbane
HEARING DATE:	11 July 2013
JUDGE:	Mullins J
ORDER:	**1. The originating application filed on 25 June 2013 is dismissed.** **2. The application for leave to bring a judicial review proceeding in respect of the order made by Magistrate Springer in the Magistrates Court of Brisbane on 18 June 2003 is refused.**
CATCHWORDS:	PROCEDURE – MISCELLANEOUS PROCEDURAL MATTERS – VEXATIOUS LITIGANTS AND PROCEEDINGS – where the applicant has been declared a vexatious litigant – where the order that the applicant was a vexatious litigant was based in part on the applicant's persistence in bringing proceedings to put in issue the validity of the currency issued by the Commonwealth of Australia as legal tender – where the applicant applies to have this order set aside under s 7 of the *Vexatious Proceedings Act 2005* (Qld) – whether there has been a prior court determination of the applicant's legal tender argument – whether it was an appropriate application under s 7 PROCEDURE – MISCELLANEOUS PROCEDURAL MATTERS – VEXATIOUS LITIGANTS AND PROCEEDINGS – where the applicant has been declared a vexatious litigant – where the applicant seeks leave to institute proceedings under s 11 of the *Vexatious Proceedings Act 2005* (Qld) seeking judicial review of the decision of the Magistrate listing an alleged traffic offence for trial – whether the applicant should be given leave to bring the judicial review application

Clampett v Kerslake (Electoral Commissioner of Qld) [2009] QCA 104, considered
Conde v Gilfoyle [2010] QCA 109, considered
Kay v Attorney-General (2000) 2 VR 436, considered
Re Skyring's Application (No 2) (1985) 59 ALJR 561, considered
Skyring v Crown Solicitor [2001] QSC 350, considered
Skyring v Dixon [2010] QSC 150, considered

Vexatious Litigants Act 1981, s 3
Vexatious Proceedings Act 2005, s 7, s 11, s 16

COUNSEL: The applicant appeared in person
M T Hickey for the respondent

SOLICITORS: G R Cooper, Crown Solicitor for the respondent

[1] The applicant was declared a vexatious litigant by White J on 5 April 1995 (the 1995 order) pursuant to s 3 of the *Vexatious Litigants Act* 1981. That Act was repealed by the *Vexatious Proceedings Act* 2005 (VPA). Pursuant to s 16 of the VPA, an order under s 3 of the repealed Act continues in force as a vexatious proceedings order for the purposes of the VPA.

[2] By the originating application that commenced this proceeding on 25 June 2013 the applicant proposed proceeding on an ex parte basis for an order that the court set aside the 1995 order. The purpose of seeking that order was set out in the application as to enable the applicant to institute proceedings "unencumbered" for a judicial review of the order made by Magistrate Springer in the Brisbane Magistrates Court on 18 June 2013 setting down for trial on 8 August 2013 the complaint and summons brought against the applicant over an alleged offence that the applicant had driven his car at 62 kph in a zone signed as having a 50 kph speed limit in Toowong on 17 February 2013.

[3] When the matter first came before this Court on 2 July 2013, Margaret Wilson J ordered the applicant to serve the application and the supporting affidavits on the Attorney-General and adjourned the application to 11 July 2013. The applicant duly served the Crown Solicitor on 3 July 2013. On 11 July 2013, the Crown Solicitor appeared to oppose the applicant's application on the basis that the Crown Solicitor was the party on whose application the order was made in respect of the applicant under the repealed Act.

The applicant's submissions

[4] The 1995 order was based in part on the applicant's persistence in bringing proceedings to put in issue the validity of the currency issued by the Commonwealth of Australia as legal tender. The applicant's primary submission on his application under s 7 of the VPA is that there was never any court determination of this issue and the 1995 order should be set aside.

[5] The applicant's secondary application, if his primary submission were rejected, is that he should be given leave pursuant to s 11(2) of the VPA to bring the foreshadowed judicial review application. For that purpose the applicant relied on the form of application that is exhibit AGS1 to the applicant's affidavit filed on 25

June 2013 (document 3 on the file). The applicant wishes to argue that another argument that he has raised previously has not been determined by the superior courts. This is the argument that the *Australia Act* 1986 (UK) was invalid, as a condition precedent of a favourable referendum of the people of the State of Queensland was not satisfied, with the consequence that the Imperial Act and everything that is dependent on it is of no force and effect. The applicant also seeks to advance an argument based on the decision of the High Court in *Kirk v Industrial Relations Commission of New South Wales* [2010] HCA 1.

Has there truly been a court determination of the applicant's legal tender argument?

[6] White J in the course of giving the reasons for the 1995 order referred to the disposition of the applicant's currency issue against the applicant by Deane J in *Re Skyring's Application (No 2)* (1985) 59 ALJR 561 which decision was upheld by the Full Court of the High Court. That the applicant's argument was disposed on the merits has been recognised in other cases, such as *Clampett v Kerslake (Electoral Commissioner of Qld)* [2009] QCA 104.

[7] The applicant's appeal against the 1995 order was summarily dismissed in the Court of Appeal: [1995] QCA 376. There is a sealed order of the Court of Appeal that the appeal was dismissed with costs. The applicant suggests that it was the order only of the presiding judge, but the transcript of the reasons shows that the other two members of the court agreed with the reasons and the order pronounced by the presiding judge. The sealed order of the court is conclusive about the manner in which the appeal was dealt with.

[8] It is incontrovertible that the applicant's argument about what is legal tender was authoritatively determined against him in the High Court, as accurately recorded by White J in the reasons for the 1995 order.

[9] The applicant's desire to re-agitate an argument that has been settled authoritatively and resulted in the vexatious proceedings order against him is not a basis for bringing an application under s 7 of the VPA. Chernov JA in *Kay v Attorney-General* (2000) 2 VR 436 considered the Victorian provision that empowers the court at any time to vary, set aside or revoke an order declaring a person to be a vexatious litigant, if it considers it proper to do so. Chernov JA observed at [23] "that the provision is not a substitute for the appeal process …, but is confined in its operation to cases where there has been a change in the relevant circumstances since the making of the original order such as to make it appropriate that the order be varied, set aside or revoked." That observation is apt for the circumstances in which s 7 of the VPA may apply. It is arguable that in light of this purpose of s 7 of the VPA an application that is properly brought pursuant to s 7 of the VPA does not require the person who is subject to the vexatious proceedings order to seek leave to bring that application: *Conde v Gilfoyle* [2010] QCA 109 at [25]. The applicant's application purportedly made under s 7 of the VPA is not properly characterised, however, as an application to vary, set aside or revoke the 1995 order, when the applicant is endeavouring to argue that the 1995 order was made on an erroneous basis.

[10] On any view the applicant's bringing this application under s 7 of the VPA was totally vexatious and must be dismissed.

Should the applicant be given leave to bring the judicial review application?

[11] To the extent that the applicant incorporated in this proceeding an application for leave to institute the judicial review proceeding against the order of the Magistrate merely listing an alleged traffic offence for trial, the applicant's affidavits filed in the proceeding do not deal with the requirements of s 11(3) of the VPA.

[12] In any case, the applicant's argument about the validity of the *Australia Act* 1986 (UK) has been disposed of in other proceedings in this Court, as noted in *Skyring v Crown Solicitor* [2001] QSC 350 at [19]. The applicant has also unsuccessfully raised the decision of *Kirk* in another application seeking leave under the VPA to bring a judicial review application to challenge a decision against him in the Magistrates Court under the *Transport Operations (Road Use Management)* Act 1995: *Skyring v Dixon* [2010] QSC 150.

[13] Apart from these considerations, it would be an inappropriate exercise of the discretion under s 11 of the Act to permit the applicant to seek judicial review of a decision of a Magistrate to list the traffic matter for trial. The application for that leave must be refused.

Orders

[14] It follows that the orders which should be made are:

1. The originating application filed on 25 June 2013 is dismissed.
2. The application for leave to bring a judicial review proceeding in respect of the order made by Magistrate Springer in the Magistrates Court at Brisbane on 18 June 2003 is refused.

[15] As the Crown Solicitor has successfully opposed the order sought by the applicant under s 7 of the VPA, the question arises whether a costs order should be made in the Crown Solicitor's favour against the applicant. On the basis that there have been numerous cases decided against the applicant on the issues that he sought to argue in this proceeding, so that it was reasonable for him to have anticipated that his application would fail, the Crown Solicitor seeks a costs order on the indemnity basis. I will give the parties an opportunity to make submissions on costs, when these reasons are published to them.