

Supreme Court New South Wales

Medium Neutral Citation:	Attorney General in and for the State of New South Wales v Wilson [2011] NSWSC 221
Hearing dates:	In chambers
Decision date:	30 March 2011
Before:	Harrison J
Decision:	Application for leave to commence proceedings dismissed
Catchwords:	PRACTICE & PROCEDURE - application for leave to commence proceedings under Vexatious Proceedings Act 2008 - applicant prohibited from commencing legal proceedings without leave of the court - failure by applicant to disclose material facts in support of application - application dismissed
Legislation Cited:	Vexatious Proceedings Act 2008
Category:	Procedural and other rulings
Parties:	John Wilson (Applicant)
File Number(s):	2010/49922

JUDGMENT

- HIS HONOUR** : On 23 September 2010 orders were made under the *Vexatious Proceedings Act 2008* which had the effect of prohibiting Mr Wilson from instituting proceedings in New South Wales other than with the leave of an appropriate court and in accordance with the procedure provided for in ss 14 and 15 of that Act.
- By notice of motion filed 1 November 2010 Mr Wilson seeks an order in the following terms:

"1. That the a [sic] judge grant leave, under section 14 of the *Vexatious Proceedings Act 2008* to initiate proceedings under the *Defamation Act 2007* against Nationwide News Pty Ltd."

- 3 Mr Wilson's application for leave is accompanied by an affidavit sworn by him on 27 October 2010. I shall refer to the terms of that affidavit later in these reasons.
- 4 Sections 14 and 15 of the *Vexatious Proceedings Act* are as follows:

" 14 Application for leave to institute proceedings

(1) This section applies to a person ('the applicant') who is:

(a) subject to a vexatious proceedings order prohibiting the person from instituting proceedings, or

(b) acting in concert with another person who is subject to an order referred to in paragraph (a).

(2) The applicant may apply to an appropriate authorised court for leave to institute proceedings that the order would otherwise prohibit the person from instituting.

(3) The applicant must file an affidavit with the application that:

(a) lists all occasions on which the applicant has applied for leave:

(i) under this section, or

(ii) before the commencement of this section-as required by an order under section 70 of the *Land and Environment Court Act 1979* or section 84 of the *Supreme Court Act 1970* , and

(b) lists all other proceedings the applicant has instituted in Australia, including proceedings instituted before the commencement of this section, and

(c) discloses all facts material to the application, whether supporting or adverse to the application, that are known to the applicant.

(4) The applicant must not serve a copy of the application or affidavit on any person unless:

(a) an order is made under section 16 (1) (a), and

(b) the copy is served in accordance with the order.

(5) An appropriate authorised court may dispose of the application by:

(a) dismissing the application under section 15, or

(b) granting the application under section 16.

(6) Despite any other Act or law, the applicant may not appeal from a decision disposing of the application.

15 Dismissing application for leave

(1) An appropriate authorised court must dismiss an application made under section 14 for leave to institute proceedings if it considers:

(a) the affidavit required by section 14 (3) does not substantially comply with that subsection, or

(b) the proceedings are vexatious proceedings, or

(c) there is no prima facie ground for the proceedings.

(2) The application may be dismissed even if the applicant does not appear at the hearing of the application."

- 5 Section 14(3)(c) requires Mr Wilson to disclose all facts material to the application, whether supporting or adverse to it, that are known to him. Mr Wilson's affidavit does not disclose a single fact that could conceivably have anything to do with a cause of action against Nationwide News Pty Ltd for defamation. The affidavit does not refer to Nationwide News Pty Ltd. It does not refer to defamation. It does not refer to any publication. It does not refer to any defamatory words, defamatory meanings or imputations, or anything vaguely concerned or connected with any alleged cause of action in defamation or indeed any cause of action at all.
- 6 On the contrary, the affidavit contains, under the heading "All facts material to this application for leave under s 14 of the Vexatious Proceedings Act 2008 to institute proceedings" a series of discursive and disconnected statements about the Magna Carta, the right to trial by jury, the Constitution, Habeas Corpus, the Holy Bible, the Bill of Rights 1689 and the Universal Declaration of Human Rights. There are others as well. The affidavit is also replete with quotations from Thomas Jefferson, Halsbury's Laws of England, Lord Edward Coke and Lysander Spooner. None of the matters referred to or quoted strikes me as bearing in any meaningful or helpful way upon the leave sought or the cause of action alleged.
- 7 It is clear that the affidavit required by section 14(3) does not substantially comply with that subsection. Facts material to the application for leave to commence defamation proceedings ought clearly to include facts material to the circumstances in which and out of which that cause of action is said to arise. There is not the slightest suggestion of any such material in the affidavit relied upon by Mr Wilson. Moreover, for the same reasons, the proposed defamation proceedings are plainly vexatious and there is no prima facie ground for them.

Conclusions and orders

- 8 Having regard to the terms of s 15(1) of the Act, I consider that the application for leave to commence proceedings must be dismissed.

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Decision last updated: 30 March 2011