FEDERAL COURT OF AUSTRALIA

Ramsey v Skyring [1999] FCA 907

PRACTICE AND PROCEDURE – application by Registrar claiming that the respondent is a vexatious litigant – *Federal Court Rules*, O 21, r 1 – respondent commenced numerous proceedings in the Court, arguing that the Australian currency is invalid – whether the requirements of O 21, r 1 are satisfied.

WORDS AND PHRASES – *'habitually and persistently', 'without any reasonable ground', 'vexatious', ' institutes a ... proceeding'*

Constitution, s 115
Reserve Bank Act 1959 (Cth), s 36(1)
Currency Act 1965 (Cth), s 16
Vexatious Litigants Act 1981 (Qld), s 3
Judiciary Act 1903 (Cth), ss 78B, 86(h)
Supreme Court Act 1970 (NSW), s 84(1)
Vexatious Actions Act 1896 (UK)
Federal Court of Australia Act 1976 (Cth), s 59(1), s 59(2)(l)
Supreme Court of Judicature (Consolidation) Act 1925 (UK), s 51(1)
Acts Interpretation Act 1901 (Cth), s 46(1)(a)

Federal Court Rules, O 1, r 4; O 21, rr 1, 3, 5; O 46, r 7A
High Court Rules, O 58, r 4(3); O 63, r 6(1)

Horvath v Commonwealth Bank of Australia [1999] FCA 504, cited
Jones v Skyring (1992) 66 ALJR 810, followed
In the Matter of the Vexatious Litigants Act, unreported, 5 April 1995, S Ct Qld, cited
Attorney-General v Wentworth (1988) 14 NSWLR 481, followed
Commonwealth Trading Bank v Inglis (1974) 131 CLR 311, cited
Ex parte the Attorney-General; Re Alexander Chaffers (1897) 76 LT 351; 45 WR 365, cited
Re Attorney-General (Cth); Ex parte Skyring (1996) 70 ALJR 321, cited
Re Skyring's Application (No 2) (1985) 59 ALJR 561, cited
In the Matter of an Application by Alan George Skyring, unreported, 9 July 1985, High Ct, followed
Re Skyring (1994) 68 ALJR 618, cited
Bremer Vulkan Schiffbau Und Maschinenfabrik v South India Shipping Corporation Ltd [1981] AC 909, cited
O'Shea v Cameron, unreported, 5 March 1996, Qld CA, distinguished

Valassis v South Sydney City Council (1996) 92 LGERA 275, cited
Attorney-General for Victoria v Lindsey, unreported, 16 July 1998, Sup Ct Vic, cited
In re Vernazza [1960] 1 QB 197, cited
Hunters Hill Municipal Council v Pedler [1976] 1 NSWLR 478, followed

GRAHAM KINGSLEY RAMSEY in his capacity as DISTRICT REGISTRAR OF THE FEDERAL COURT OF AUSTRALIA, QUEENSLAND DISTRICT REGISTRY v ALAN GEORGE SKYRING

Q 93 OF 1999

JUDGE: **SACKVILLE J**
DATE: **6 JULY 1999**
PLACE: **SYDNEY**

GENERAL DISTRIBUTION

IN THE FEDERAL COURT OF AUSTRALIA

NEW SOUTH WALES DISTRICT REGISTRY **Q 93 OF 1999**

BETWEEN:	**GRAHAM KINGSLEY RAMSEY in his capacity as DISTRICT REGISTRAR OF THE FEDERAL COURT OF AUSTRALIA, QUEENSLAND DISTRICT REGISTRY** **Applicant**
AND:	**ALAN GEORGE SKYRING** **Respondent**
JUDGE:	**SACKVILLE J**
DATE OF ORDER:	**6 JULY 1999**
WHERE MADE:	**SYDNEY**

THE COURT ORDERS THAT:

1. The respondent's motion to strike out the proceedings be dismissed.
2. The respondent shall not institute any proceedings in this Court without the leave of the Court.
3. Any proceedings currently instituted in this Court by the respondent shall not be continued by the respondent without the leave of the Court.
4. The respondent pay the applicant's costs of and incidental to the proceedings.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

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JUDGE:	**SACKVILLE J**
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REASONS FOR JUDGMENT

Background

1 This is an application made by a District Registrar of the Federal Court of Australia ("the applicant") under O 21, r 1 of the *Federal Court Rules* ("*FCR*"). The application seeks orders that the respondent shall not, without the leave of the Court, institute any proceedings in the Court or continue any proceedings he has already instituted in the Court.

2 The applicant claims that the respondent is a "vexatious litigant", within the meaning of *FCR,* O 21, r 1. The applicant relies on the fact that the respondent has instituted a large number of proceedings in this Court, each of which (according to the applicant) was commenced without reasonable grounds. The applicant says that in each proceeding the respondent, in one form or another, has sought, unsuccessfully, to challenge the legality of paper currency or coinage in use in Australia. Specifically, it is said that the respondent has "habitually and persistently" (to use the language of O 21, r 1) asserted that s 115 and other provisions of the *Constitution,* prohibit the creation of legal tender in forms other than coins containing gold or silver, and that the provisions of the *Reserve Bank Act* 1959 (Cth) ("*Reserve Bank Act*") and the *Currency Act* 1965 (Cth) ("*Currency Act"*) establishing or recognising paper money or coinage as legal tender are invalid. According to the applicant, these contentions have been conclusively and repeatedly rejected by the High Court, the

Supreme Court of Queensland and this Court. In these circumstances, the applicant contends that the terms of O 21, r 1 (set out in par 6 below) have been satisfied and that the orders sought in the application should be made.

3 So far as can be ascertained, this is the first application in this Court for orders pursuant to *FCR,* O 21, r 1. However, orders have been made by this Court pursuant to *FCR* O 21, r 2, which is in similar terms to O 21, r 1, but relates to vexatious proceedings by a person against a particular respondent: see *Horvath v Commonwealth Bank of* Australia [1999] FCA 504.

4 Order 21, r 1, as will be seen, follows a familiar form and the principles governing a rule of this kind are reasonably well settled. Indeed, the present respondent has been the subject of orders under provisions similar to O 21, r 1 in other courts: *Jones v Skyring* (1992) 66 ALJR 810 (orders made pursuant to *High Court Rules,* O 63, r 6(1)); *In the Matter of the Vexatious Litigants Act* (unreported, 5 April 1995, Supreme Court of Queensland, White J) (orders made pursuant to the *Vexatious Litigants Act* 1981 (Qld), s 3). Of course, the orders made in those cases cannot determine the outcome of the present application, which must be decided on the particular language of O 21, r 1 and the facts relevant to the application of that rule.

5 Two procedural points should be noted. First, the respondent, in both his written and oral submissions, has continued to assert the correctness of the constitutional arguments on which he has frequently relied in the past. In view of these constitutional arguments, notices have been served on the Attorneys-General of the Commonwealth and the States in conformity with s 78B of the *Judiciary Act* 1903 (Cth). Not surprisingly, none of the Attorneys-General has sought to appear or be heard in the proceedings. Secondly, the respondent filed a notice of motion seeking to strike out the application, essentially on the ground that it is without merit. The motion was heard at the same time as the application and gives rise to no separate issues.

The Rules

6 *FCR,* O 21, r 1 provides as follows:

> *"1. Upon the application of-*
> *...*
> *c) the Registrar of the Court;*
> *where any person (in this rule called the vexatious litigant) habitually and persistently and without any reasonable ground institutes a vexatious proceeding in the Court, and whether against the same person or against different persons, the Court may order that the vexatious litigant shall not, without leave of the Court, institute any proceeding in the Court and that any proceeding instituted by the vexatious litigant in the Court before the making of the order shall not be continued by him without leave of the Court."*

The term "Registrar" is defined to include a District Registrar of the Court: O 1, r 4.

7 Order 21, r 3 requires a person seeking an order under O 21, r 1 to proceed by application, as has occurred in the present case. Where the Court makes an order under r 1 against any person, the Court is not to give that person leave to institute or continue any proceeding unless satisfied that the proceeding is not an abuse of process and that there is *prima facie* ground for the proceeding: O 21, r 5.

8 Order 21, r 1 follows closely the form of similar provisions in other jurisdictions, such as s 84(1) of the *Supreme Court Act* 1970 (NSW) (considered in *Attorney-General v Wentworth* (1988) 14 NSWLR 481 (Roden J)) and *High Court Rules,* O 63, r 6(1) (the history of which is discussed in *Commonwealth Trading Bank v Inglis* (1974) 131 CLR 311, at 317). These provisions, and their counterparts in other Australian jurisdictions, have a common origin in the *Vexatious Actions Act* 1896 (UK) (56 & 60 Vic, c 51), prompted by the excessive litigious enthusiasm of Mr Alexander Chaffers: see *Inglis,* at 315; *Ex parte the Attorney-General; Re Alexander Chaffers* (1897) 76 LT 351; 45 WR 365. Curiously enough, the introduction in 1943 of a rule concerned with vexatious litigants in the High Court was prompted by a spate of litigation alleging that bank credit and the currency were tainted with illegality: Note, "*Vexatious Litigation*" (1943) 17 *ALJ* 9.

The Validity of *FCR* O 21, r 1

9 The respondent did not suggest that *FCR,* O 21, r 1 was invalid. However, having regard to the fact that Toohey J in *Jones v Skyring* questioned, but ultimately upheld, the validity of the corresponding provision in the *High Court Rules,* it is as well to identify the source of authority for O 21, r 1.

10 Mr Logan, who appeared for the applicant, identified the source of power as s 59(l) and s 59(2)(l) of the *Federal Court of Australia Act* 1976 (Cth) (*"Federal Court Act"*). Section 59(1) confers a rule-making power in the following terms:

> *"(1) The Judges of the Court or a majority of them may make Rules of Court, not inconsistent with this Act, making provision for or in relation to the practice and procedure to be followed in the Court (including the practice and procedure to be followed in Registries of the Court) and for or in relation to all matters and things incidental to any such practice or procedure, or necessary or convenient to be prescribed for the conduct of any business of the Court."*

Section 59(2) states that, in particular, the Rules of Court may make provision for or in relation to a number of specific matters including:

> *"(l) the prevention or termination of vexatious proceedings".*

11 In *Jones v Skyring,* Toohey J (at 814) pointed out that the High Court in *CTB v Inglis* had held that a court has no inherent jurisdiction to restrain a person from commencing new proceedings without leave of the court, although there is inherent jurisdiction to restrain a litigant from making unwarranted and vexatious applications in a pending action without leave of the court. His Honour considered that *High Court Rules*, O 63, r 6(1), was supported by the power conferred by s 86(h) of the *Judiciary Act* 1903 (Cth) to "regulat[e] all matters of practice and procedure in the High Court". As his Honour said (at 314):

> *"Read in its entirety, the rule is concerned with practice and procedure, reinforcing the power of the Court to protect its own process against unwarranted usurpation of its time and resources and to avoid the loss caused to those who have to face actions which lack any substance."*

12 In my view, the reasoning of Toohey J supports the conclusion that FCR O 21, r 1 is a rule which makes "provision for or in relation to the practice and procedure to be followed in the Court" and is therefore validly made in the exercise of the power conferred by s 59(1) of the *Federal Court Act.* If there were any doubt about this conclusion, I think that the specific

power conferred by s 59(2)(l) of the *Federal Court Act* amply supports the validity of a rule providing for orders restricting the right of a vexatious litigant to institute or continue proceedings in the Court.

Proceedings Involving the Currency Issues

13 The applicant read an affidavit which recounted in detail the proceedings in this Court to which the respondent was a party, in which he sought to raise what can conveniently be described as "the currency issues". The following account is taken from that affidavit and the exhibits thereto.

14 While the account refers to some proceedings determined in other courts, notably the High Court, it is not a comprehensive account of proceedings in which the respondent has attempted to raise the currency issues. A more complete indication of the respondent's zeal for the forensic pursuit of the currency issues may be gleaned from such decisions as *In the Matter of the Vexatious Litigants Act* (in which orders were made pursuant to s 3 of the *Vexatious Litigants Act* 1981 (Qld)); *Jones v Skyring* (in which orders were made under *High Court Rules*, O 63, r 6(1)); and *Re Attorney-General (Cth); Ex parte Skyring* (1996) 70 ALJR 321 (in which leave was refused to the respondent to institute proceedings in the High Court raising the currency issues).

15 The first occasion on which the respondent ventilated the currency issues in this Court was on an appeal against a decision of McPherson J of the Supreme Court of Queensland: *Skyring v Federal Commissioner of Taxation* (unreported, 19 August 1983). McPherson J rejected a contention that s 115 of the *Constitution* (which provides that "a State shall not coin money, nor make anything but gold and silver coin a legal tender in payment of debts") prohibited the issue and use by the Commonwealth of paper money as legal tender. His Honour held that s 16 of the *Currency Act* validly prescribed the coins that were legal tender in Australia and that the section was unaffected by s 115 of the *Constitution*, which simply created a prohibition directed to the States.

16 Since the proceedings determined by McPherson J had arisen under the *Income Tax Assessment Act* 1936 (Cth), the appeal was heard by a Full Court of this Court. The Court (Smithers, Northrop and Beaumont JJ) dismissed the appeal on 18 April 1984. The Court

delivered a very brief *ex tempore* judgment, observing that McPherson J had "dealt with the legal issues satisfactorily and correctly".

17 In 1984, the respondent filed applications in this Court against the Commissioner of Patents ("the Commissioner") and Telecom Australia ("Telecom"). The first application concerned a determination by the Commissioner that a number of patents held in the respondent's name would lapse if he did not pay renewal fees within a specified time. The second application concerned a disconnection notice issued to the respondent by Telecom in respect of an unpaid account. In each of the applications, the respondent sought review "for validity" of legislation and subordinate legislation relating to fees or charges and sought orders restraining the Commissioner and Telecom from carrying the decisions into effect, pending resolution of the "central issue of the legality of the currency." The respondent invoked s 115 of the *Constitution* to support his argument as to "the precise medium of Crown issue" he should use "to make payment in a strictly legal manner".

18 Spender J dismissed both applications. It appears that his Honour's judgment in the proceedings against the Commissioner was not transcribed. However, his Honour's judgment in the proceedings against Telecom, given 18 October 1984, specifically adopted the reasoning of McPherson J in the earlier proceedings. Spender J pointed out that the appeal from McPherson J to the Full Court had been dismissed and that the judgment of the Full Court had "self-evident" relevance to the matters before him.

19 The respondent then lodged a number of documents with the High Court. Some of these were in the form of writs seeking prerogative relief. The Chief Justice gave a direction to the Registrar, pursuant to *High Court Rules,* O 58, r 4(3), to refuse to issue any of the writs without the leave of a Judge of the Court. The application for leave was heard and determined by Deane J: *Re Skyring's Application (No 2)* (1985) 59 ALJR 561.

20 Deane J (at 561) identified two particular issues which had emerged during the respondent's submissions:

> *"1. A submission that the combined effect of a number of sections of the Constitution is to erect a barrier against the issue by the Commonwealth of paper money as legal tender. The sections of the Constitution upon which particular refinance is placed are ss 51(xii), (xiii) and (xvi) and s 115. Mr Skyring also referred to ss 105 and 105A. Additionally, reference was made*

> *to the provisions of the* Currency Act *1965 (Cth) dealing with coins. The argument, if accepted, would result in the invalidity of s 36(1) of the* Reserve Bank Act *1959 (Cth) which provides that 'Australian notets are a legal tender throughout Australia'.*
>
> *2. The basis upon which Mr Skyring seeks relief against 'the Judge of the Federal Court' is alleged error by Spender J of the Federal Court of Australia in proceedings in the Federal Court by Mr Skyring against the Commissioner of Patents and Telecom Australia. As I followed Mr Skyring's oral submissions, the error into which Spender J is said to have fallen is a failure to accept the argument referred to in 1 above....He was, however, at pains to stress that the matters which he wished to litigate went beyond the matters which could properly be raised on such an appeal."*

21 In dismissing the applications, Deane J said this (at 561-562):

> *"I have come to a clear conclusion that there is no substance in the argument that there is a constitutional bar against the issue by the Commonwealth of paper money as legal tender. Nor, in my view, would there be any substance in an argument that the provisions of s 36(1) of the* Reserve Bank Act *1959 are invalidated or overruled by the provisions of the* Currency Act *1965."*

22 An appeal by the respondent to the Full High Court was dismissed: *In the Matter of an Application by Alan George Skyring* (Mason CJ, Wilson, Brennan and Dawson JJ, unreported, 9 July 1985). The Court stated (at 2) that it was not persuaded that the judgment of Deane J contained any error.

23 On 26 November 1987, the respondent filed an application in this Court challenging a decision made by the Commissioner of Taxation which disallowed the respondent's objection to an assessment issued to him. The respondent's affidavit in support of the application contested the validity of portions of the *Currency Act* and the *Reserve Bank Act*, on the basis of alleged conflict with s 115 of the *Constitution* and the *Great Charter*. This application was dismissed by Spender J on 12 July 1988.

24 On 11 December 1987, the respondent filed an appeal in this Court, purporting to be on a question of law under s 44 of the *Administrative Appeals Tribunal Act* 1975 (Cth) ("*AAT Act*"), against a decision of the Administrative Appeals Tribunal refusing him unemployment benefits under the *Social Security Act* 1947 (Cth). The appeal, although heard in the original jurisdiction of the Court, was determined by a Full Court since the AAT had been constituted by a Presidential Member: *AAT Act,* s 44(3)(b)(i).

25 The respondent did not dispute that, during the relevant period, he had received payments for professional work totalling $32,000. He contended, however, that the payments should not be recognised for the purposes of the *Social Security Act* because they were not paid in bullion or coin. The Full Court (Fox, Sheppard and Beaumont JJ) unanimously dismissed the appeal on 12 April 1988. In dismissing the appeal, the members of the Court again rejected the respondent's submissions on the currency issues, finding that the *Currency Act* was not inconsistent with the *Reserve Bank Act*, and upholding the validity of the relevant provisions of the legislation. Fox J observed that the respondent had presented the same argument in one form or another in a number of different courts with a slightly different emphasis, but had failed on every occasion.

26 On 28 June 1988, the respondent filed a further application in this Court against the Commissioner of Taxation, seeking to challenge another objection decision. The respondent's supporting affidavit referred to the proceeding as

> *"the latest in a long series seeking to redress some fundamental flaws in the configuration of the national financial/legal system as presently instituted".*

27 On 15 August 1988, Spender J ordered the respondent to provide security for the Commissioner of Taxation's costs in the sum of $2,000. The respondent then attempted to file two further applications, one of which sought to restrain further action on certain judgments

> *"pending a comprehensive, definitive and conclusive determination by the High Court of Australia of the point in respect of the 'currency question' broached in previous hearings but not yet fully determined."*

28 The Deputy District Registrar of the Court subsequently wrote to the respondent, advising him that the application could not proceed until the order for security had been complied with. It appears that the respondent did not comply with the order for security and the applications against the Commissioner did not proceed further.

29 By a notice of appeal dated 5 October 1988, the respondent appealed to the Full Court against a decision of a Judge of this Court made on 3 October 1988. In that decision, Pincus J upheld a decision of a Deputy Registrar declining to accept an affidavit that the respondent had sought to file in certain bankruptcy proceedings instituted against him by the Deputy

Commissioner of Taxation. The notice of appeal referred to the currency issues and the respondent's outline of submissions, in substance, repeated contentions that parts of the *Currency Act* and *Reserve Bank Act* were invalid. The appeal was dismissed by the Full Court (Sheppard, Wilcox and Hartigan JJ): *Skyring v Deputy Commissioner of Taxation* (unreported, 6 December 1988).

30 On 24 April 1989, a Judge of this Court, Spender J, made a sequestration order against the respondent. An application by the respondent seeking the annulment of his bankruptcy pursuant to s 154(1) of the *Bankruptcy* Act 1966 (Cth) was subsequently dismissed by Pincus J. In his *ex tempore* judgment, Pincus J recorded that the respondent continued to rely upon "deficiencies in the national currency": *Re Skyring; Ex parte Skyring v Deputy Commissioner of Taxation* (unreported, 22 November 1990).

31 The respondent appealed to the Full Court against the decision of Pincus J. His notice of appeal claimed, *inter alia,* that

> *"no final determinations have yet been made on...*
>
> *(i) The legality of the physical tokens presently in circulation with which debts incurred may be properly discharged by monetary means...".*

32 The Full Court (Gummow, Einfeld and Heerey JJ) dismissed the appeal: *Skyring v Commissioner of Taxation* (unreported, 22 November 1991). The Court addressed the substance of the respondent's challenge to the validity of s 36(1) of the *Reserve Bank Act* (which provides that Australian notes are legal tender throughout Australia). It ruled that there was no constitutional bar to the Parliament legislating for the issue of paper money as legal tender. The Court noted that both Deane J and the Full High Court had "comprehensively rejected" the respondent's constitutional challenge to the legality of currency notes in circulation in Australia.

33 On 5 March 1992, a Judge of this Court, Drummond J, dismissed a second application by the respondent for annulment of his bankruptcy. The respondent appealed against this decision to the Full Court. This notice of appeal asserted that the proposition adopted by the Full Court and relied on by Drummond J, that there was no constitutional barrier to the issue of paper money, was "unsound". The respondent also asserted that "[t]his proposition has never been formally tested by proper application of due legal process in the proper forum".

34 The Full Court (Northrop, Wilcox and Cooper JJ) dismissed the respondent's appeal: *Skyring v Deputy Commissioner of Taxation* (unreported, 8 May 1992). The Court noted that the grounds relied on by the respondent in his second annulment application were the same as on the first occasion. The Court adopted the reasons given by Drummond J for dismissing the application.

35 On 21 December 1993, the respondent instituted proceedings against Telecom, again seeking to restrain it from disconnecting his telephone service "pending a definitive determination… of the constitutionality of the instruments… purporting to be ...'legal tender'." On 18 February 1994, Spender J dismissed this application, noting that the issues which the respondent sought to agitate had been authoritatively determined against him and that there had been repeated attempts to reagitate matters which were truly *res judicata*.

36 On 29 June 1994, Dawson J heard an application by the respondent in the High Court for leave to commence proceedings by way of prerogative relief seeking to quash certain decisions. The respondent required leave because Toohey J had made orders in 1992 that the respondent was not to begin any action, appeal or other proceeding in the High Court without leave: *Jones v Skyring,* at 814. Among the decisions the respondent sought to challenge in the proceedings before Dawson J was that of Spender J, given on 18 February 1994. The respondent also sought to challenge decisions made by the Supreme Court of Queensland.

37 Dawson J refused the respondent's application for leave: *Re Skyring* (1994) 68 ALJR 618. His Honour said this (at 618-619):

> *"In all these matters...the applicant's argument has relied on the proposition that it is beyond the power of the Commonwealth Parliament to legislate to make paper money legal tender. This in essence is the same argument as that put by the applicant in* Re Skyring's Application *[No 2] (1985) 59 ALJR 561, which was rejected by Deane J. His judgment was confirmed on appeal by the Full Court. The judgment of the Full Court is unreported but is dated 9 July 1985. The matter was concluded in the view of the Court by s 51(xii) and (xiii) of the Constitution and s 36(1) of the* Reserve Bank Act *1959 (Cth). (See also* Skyring v Australia & New Zealand Banking Group Ltd *(unreported, Court of Appeal (Qld), 12 May 1994)). It would, in my view, be an abuse of process to allow the applicant to relitigate a matter which has already been decided adversely to him.*
>
> ...
>
> *The proceedings which the applicant wishes to issue also seek orders quashing in whole or in part the* Telecommunications Act *1975 (Cth) (that Act has been repealed and is now replaced by the* Telecommunications Act

> *1991 (Cth)), the* Currency Act *1965 (Cth), the* Reserve Bank Act *1959 (Cth), the* Banking Act *1959 (Cth),* the *Income Tax Assessment Act 1936 (Cth) and the* Commonwealth Electoral Act *1918 (Cth). Even if prerogative relief were appropriate for this purpose, the only ground put forward by the applicant is the alleged invalidity of paper money as legal tender. As I have said this issue has been concluded against the applicant."*

38 Litigation then took place in the Supreme Court of Queensland, between the ANZ Banking Group Ltd ("ANZ") and the respondent, in which he again agitated the currency issues. In consequence of those proceedings, the ANZ filed a creditor's petition against the respondent, and on 9 December 1996, Spender J made a further sequestration order against his estate. The respondent subsequently filed an application to stay action on the sequestration order, but that application was dismissed by Drummond J on 2 April 1997.

39 On 12 May 1997, Drummond J, on the application of the respondent's trustee in bankruptcy, made orders committing the respondent to prison for contempt by reason of his failure to comply with a summons to produce documents issued by the Deputy District Registrar: *Re Skyring; Ex parte Sweeney* (unreported, 12 May 1997). The execution of the warrant was suspended for twenty-one days to give the respondent a further opportunity to comply with the summons. In the event, he did so and the order for committal was discharged.

40 In his judgment, Drummond J (at 8-9) referred to the respondent's submissions as follows:

> *"He says that there is no valid bankruptcy because there was no valid judgment debt owing by him. At the heart of this submission is the contention that it is beyond the power of the Commonwealth Parliament to pass a law making anything other than gold or silver legal tender, and the further contention by Mr Skyring that, apart from Deane J's judgment reported in (1985) 59 ALJR 561, there has been no determination on this point against him.*
>
> *Mr Skyring says that Deane J's judgment is not effective to determine what he on occasion has referred to as 'the currency point' because of the failure of his Honour to give any reasons for his conclusion that there is no substance in the argument advanced by Mr Skyring that there is a constitutional bar against the issue by the Commonwealth of paper money as legal tender....*
>
> *Contrary to Mr Skyring's submission that it remains open to him to seek a determination of the currency question and thus open to him to challenge the sequestration order in this case, it is plain beyond all doubt that it is no*

> *longer open for Mr Skyring to seek the determination of a court upon that point."*

41 Of course, the proceedings instituted by the trustee against the respondent were not proceedings instituted in the Court **by** the respondent. However, the respondent filed a notice of appeal against the orders made by Drummond J. In a judgment delivered on 13 June 1997, Drummond J ordered that the respondent provide security for the costs of the appeal in the sum of $5,000. His Honour made these observations on the respondent's appeal (at 2):

> *"[H]e sees this appeal as a possible vehicle for giving him an opportunity to ventilate, yet again, the issue at the heart of the mass of litigation which he has brought before the Supreme Court of the State, this Court and the High Court on many occasions since 1983.*
>
> *Mr Skyring's central point is that there has not been a definitive determination on this point, which revolves around the proposition that it is beyond the constitutional power of the Parliament to make anything other than gold or silver coin legal tender. I disagree with that assertion by Mr Skyring.*
>
> *In the reasons I gave for making the order of 12 May 1997, I referred to what Spender J had to say when he made the sequestration order in December last on which Mr Skyring was most recently bankrupted, in which his Honour reviewed at length the many occasions when Mr Skyring has raised this matter before the courts I have mentioned and on which occasions all those courts have rejected Mr Skyring's contention."*

It seems that the respondent did not comply with the order for security. In any event, the appeal did not proceed.

42 On 14 September 1998, the respondent filed an application in this Court against the Australian Electoral Commissioner. The application challenged the decision of the Commissioner to accept nomination deposits from candidates in the Federal seat of Ryan, on the ground that the payments had been made by way of either paper money or bank cheques. The Electoral Commissioner applied to have the proceedings dismissed as frivolous or vexatious. The respondent then filed a motion seeking orders that the Commissioner's solicitor be "not heard further". Dowsett J dismissed the respondent's motion on 23 October 1998 and the application on 4 December 1998.

43 In his judgment dismissing the application, Dowsett J held that, despite the respondent's challenge to the validity of paper currency in Australia, there was no basis to his

attack on the validity of s 170(3) of the *Commonwealth Electoral Act* 1918 (Cth), which specifically authorises a candidate to pay a nomination fee by legal tender or bank cheque. Accordingly, the proceedings were an abuse of process and based on grounds which were frivolous and vexatious. So much followed from the line of cases commencing with *Re Skyring's Application (No 2).*

44 On 4 November 1998, the respondent filed a notice of appeal purporting to appeal from the interlocutory judgment given by Dowsett J on 23 October 1998, dismissing his motion. The notice of appeal again raised the currency issues. On 2 February 1999, the respondent filed an "application" seeking an extension of time in which to file an appeal against the judgment of Dowsett J on 4 December 1998. The application complained of "long-standing defects [with] which the political, financial and legal" affairs of the Commonwealth are conducted.

45 On 16 February 1999, a Full Court dismissed what it treated as the respondent's application for leave to appeal from Dowsett J's interlocutory judgment of 23 October 1998: *Skyring v Australian Electoral Commissioner* [1999] FCA 113 (Spender, Cooper and Tamberlin JJ). Spender J described the application as "misconceived".

46 Meanwhile, on 18 November 1998, the respondent filed an application seeking orders staying further proceedings in his bankruptcy. In particular, he sought an order staying the continuation of his adjourned public examination. Spender J dismissed the application on 2 December 1998: *Skyring v Sweeney* (unreported, 2 December 1998). His Honour noted (at 2) that, yet again, the respondent had sought to argue that

> *"sections of the* Currency Act *[1965] indicate that there is a constitutional bar to the issue of paper notes; that the judgment of Deane J in* Re Skyring's Application No 2 *(1985) 59 ALJR 561 is wrong; that there was not then a final determination of the arguments or issues that Mr Skyring ventilated before his Honour and that the later decision of the Full Court dismissing an appeal from the judgment of Deane J did not have the effect that there was any finality in respect of the judgment."*

47 His Honour pointed out that the difficulty with the submission was that the respondent simply failed to appreciate that his view of Deane J's judgment was wrong. The point had been determined adversely to the respondent and it was "sad that Mr Skyring does not accept that position". Spender J added this comment (at 4):

> *"It will serve no useful purpose to emphasise the cost and loss to Mr Skyring occasioned by his stubborn refusal to accept that his views on the currency question have been conclusively rejected, and that he has exhausted all his avenues of challenge, so I will not."*

48 On 4 December 1998, the respondent filed a notice of appeal against Spender J's judgment. The respondents to that appeal, ANZ and the respondent's trustee in bankruptcy, moved to strike out the appeal or for orders requiring the respondent to provide security for costs. On 4 February 1999, Spender J struck out the appeal against ANZ and ordered the respondent to provide security for costs in respect of the appeal against the trustee, the appeal to be stayed pending compliance with the order.

49 Not to be deterred, on 12 February 1999, the respondent filed a notice of appeal against the orders made by Spender J on 4 February 1999. This appeal has not yet been determined.

50 For the sake of completeness it should be noted that, in addition to the proceedings instituted in the Court, the respondent has frequently presented documents to the Registry which have attracted directions made pursuant to *FCR,* O 46, r 7A. This rule permits a Registrar, where it appears that a document presented to the Registry is an abuse of process, or is frivolous or vexatious, to refuse to accept or issue the document or to seek the direction of a Judge. Between March 1997 and March 1999, there were six occasions on which the respondent presented documents to the Registry for filing and directions were made referring the papers to a Judge of the Court. On each occasion, a Judge made a direction that the documents not be accepted for filing.

Principles

51 *FCR*, O 21, r 1 must be applied having regard to a fundamental principle of the legal system. It is that every person has a right of access to a court to seek remedies in consequence of an alleged infringement of his or her rights: *Bremer Vulkan Schiffbau Und Maschinenfabrik v South India Shipping Corporation Ltd* [1981] AC 909, at 977, per Lord Diplock. Because an order made under a provision such as O 21, r 1 denies a litigant this right, it has been treated as an "extreme" remedy: *Attorney-General v Wentworth* (1988) 14 NSWLR 481, at 484, per Roden J. As Kirby J has pointed out in one of the many cases involving the respondent, "it is regarded as a serious thing in this country to keep a person out

of the courts": *Re Attorney-General* (*Cth*); *Ex parte Skyring,* at 323.

52 Nonetheless, provisions such as O 21, r 1 give effect to an important countervailing policy. As Toohey J pointed out in relation to the equivalent High Court provision, the rule is designed to protect the Court's own processes against unwarranted usurpation of its time and resources and to avoid loss caused to those who face actions which lack substance: *Jones v Skyring*, at 814. Linked with that objective is the need to protect the community, including litigants who wish their disputes to be resolved in an orderly and expeditious manner, against disruption of the court system flowing from the repeated institution of groundless proceedings. The serious consequences of an order made pursuant to O 21, r 1 are acknowledged in the stringent requirements of the rule itself. Only if these requirements are satisfied does the Court have power to make such an order. Even if the requirements are satisfied, the Court must consider whether an order should be made.

53 In order for O 21, r 1 to apply, it must be shown that the respondent

- habitually and persistently
- and without any reasonable cause
- institutes
- a vexatious proceeding
- in the Court.

54 It will be seen that the rule is limited to the case where the respondent institutes a proceeding *in the Court*. In this respect it is to be contrasted, for example, with s 3 of the *Vexatious Litigants Act* 1981 (Qld), which allows the Supreme Court to declare a person to be a vexatious litigant if satisfied that the person has "frequently and without reasonable ground instituted vexatious legal proceedings". A provision in the latter form permits the court, when considering whether the relevant criteria have been satisfied, to take into account vexatious legal proceedings instituted in courts other than the one to which the application is made (although it seems that the provision is limited to proceedings instituted in Queensland courts: *O'Shea v Cameron* (unreported, 5 March 1996, Qld CA)). The terms of *FCR* O 21, r 1 can be satisfied, however, only by proceedings instituted in this Court. Even so, in determining whether particular proceedings instituted in this Court are in fact "vexatious", it may be appropriate to take account of proceedings in other courts where, for example, they

have authoritatively resolved the particular issue against the person instituting the proceedings: cf *O'Shea v Cameron*, at 6, per Mackenzie J, with whom Pincus JA agreed.

55 It has been said that the expression "habitually and persistently" implies more than "frequently" (the latter being the word used, for example, in *High Court Rules*, O 63, r 6(1) and in s 3 of the *Vexatious Litigants Act* 1981 (Qld)). In *Attorney-General v Wentworth*, Roden J (at 492) said this of the same expression, used in s 84(1) of the *Supreme Court Act* 1970 (NSW):

> *"'Habitually' suggests that the institution of such proceedings occurs as a matter of course, or almost automatically, when the appropriate conditions (whatever they may be) exist; 'persistently' suggests determination, and continuing in the face of difficulty or opposition, with a degree of stubbornness."*

Although Roden J eschewed any attempt to formulate a definition of universal application, his test has been cited with approval: *Valassis v South Sydney City Council* (1996) 92 LGERA 275, at 280; *Attorney-General for Victoria v Lindsey* (unreported, 16 July 1998, Sup Ct Vic, Kellam J), at 9. I am content to proceed on the basis that Roden J's observations are correct.

56 The test of whether a person "without any reasonable ground institutes a vexatious proceeding" is an objective one. In *Jones v Skyring,* at 813, Toohey J endorsed the observation of Ormerod LJ in *In re Vernazza* [1960] 1 QB 197, at 208, in relation to almost identical language contained in the *Supreme Court of Judicature (Consolidation) Act* 1925 (UK), s 51(1):

> *"[The words] are referring to legal proceedings, and the question is not whether they have been instituted vexatiously but whether the legal proceedings are in fact vexatious".*

As Toohey J observed, the question must be decided on the facts, not by reference to whether the person against whom the order is sought has acted in good faith. It is therefore immaterial that the respondent may believe in the justice of his or her argument and may not understand that the argument has been authoritatively rejected.

57 In *Jones v Skyring,* Toohey J (at 813) suggested that there was some tautology in the language of the relevant rule, since "vexatious" seemed to add little to the concept of

proceedings instituted "frequently and without reasonable ground". His Honour was of the view that persistent attempts by a litigant to argue questions authoritatively determined against him or her were within *High Court Rules*, O 63, r 6(1). In *Attorney-General v Wentworth,* Roden J (at 492-493) considered that the test was whether an objective assessment of the proceedings instituted by the relevant person showed that they were "utterly hopeless". I do not think it necessary in this case to explore whether Toohey J intended to adopt a less stringent test than that adopted by Roden J or, indeed, whether it is necessary to add anything to the language used in O 21, r 1 itself.

58 In determining whether a person "institutes" a proceeding for the purposes of O 21, r 1, it is necessary to have regard to the definition of "proceeding" in s 4 of the *Federal Court Act,* since the definition applies to the *FCR: Acts Interpretation Act* 1901 (Cth), s 46 (1)(a). The *Federal Court Act* defines "proceeding" to mean:

> *"a proceeding in a court, whether between parties or not, and includes an incidental proceeding in the course of, or in connexion with, a proceeding, and also includes an appeal".*

59 It has been accepted that the filing of an appeal involves the institution of a proceeding in the context of an application to declare a person a vexatious litigant: *Vernazza,* at 209-10, per Ormerod LJ; *Jones v Skyring*, at 813, per Toohey J. In the latter case, Toohey J (at 814) identified applications to a justice for leave to issue proceedings in consequence of a direction under *High Court Rules*, O 58, r 4(3) (the equivalent to *FCR*, O 46, r 7A), notices of motion, notices of appeal and summonses as constituting the institution of legal proceedings. In *Hunters Hill Municipal Council v Pedler* [1976] 1 NSWLR 478, Yeldham J expressed the view (at 488) that:

> *"where a final decision has been given, any attempt, whether by way of appeal or application to set it aside, or to set aside proceedings taken to enforce such decision, which is in substance an attempt to re-litigate what has already been decided, is the institution of legal proceedings. It is to the substance of the matter that regard must be had and not to its form".*

In my view, having regard to the definition of "proceeding" to which I have referred, the observations in these cases apply to *FCR* O 21, r 1.

Application of the Principles

60 Not all of the proceedings in this Court to which the respondent was a party were instituted by him, within the meaning of O 21, r 1. For example, the presentation by the respondent of documents to the Registry but which were not accepted, cannot be regarded as proceedings instituted by him, at least in the absence of an application for leave to issue proceedings: *Jones v Skyring*, at 813. Similarly, the contempt proceeding commenced in 1997 by the respondent's trustee in bankruptcy is plainly not a proceeding instituted by the respondent within *FCR* O 21, r 1. Nevertheless, the evidence clearly shows that, if proceedings not within O 21, r 1 are put to one side, the respondent has instituted a very large number of proceedings in the Court.

61 In every one of the proceedings instituted by the respondent in this Court he has asserted, in one form or another, that the paper currency or coinage in use in Australia is invalid or that the legislation authorising the issue of paper currency or coinage is invalid. It may be that the first such proceeding, the appeal to the Full Court in April 1984, cannot be said to have been a vexatious proceeding or instituted without any reasonable ground. At that stage, neither the Full Court nor the High Court had ruled on the applicant's contention.

62 Thereafter, however, any reasonable observer would have concluded that the respondent's contentions as to the invalidity of the currency could have no reasonable basis. Certainly, once Deane J had ruled against the respondent's contentions in 1985, and his decision had been affirmed on appeal, the respondent's contentions were doomed to failure in this Court and, for that matter, in any other Australian court. They were, to use the words of Roden J in *Attorney-General v Wentworth*, utterly hopeless. They remained so thereafter.

63 The simple fact is that the respondent has refused, or been unable, to accept the fact that the currency issues have been authoritatively decided against him. He has obstinately attempted to raise the same arguments in this Court on many occasions, over a long period. In any sense of the expression, he has "habitually and persistently" and without any reasonable ground instituted vexatious proceedings in this Court.

64 I accept that, for the reasons given earlier, it is a serious matter to make orders against a person under O 21, r 1. But in this case, in my opinion, the very strong likelihood is that, unless an order is made under O 21, r 1, the respondent will continue to institute proceedings

in the Court attempting to raise the currency issues. As Spender J said in *Skyring v Sweeney,* it is sad that the respondent has refused to accept the fact this his contentions are devoid of legal merit. It is also sad that he does not accept that he had had much more than his day in court. His single-minded determination to pursue the currency issues was demonstrated by the fact that in the course of argument on the present application he repeated, almost word for word, arguments that he has put to this and other courts on numerous occasions and which have invariably been rejected.

65 In these circumstances, it is necessary to protect the Court and the community against further waste of scarce resources. Parties unfortunate enough to be caught up in litigation instituted by the respondent in his attempts to agitate the currency issues, also require protection. Accordingly, I propose to make the orders sought by the applicant. The respondent must pay the applicant's costs.

Additional Observations

66 The present case, in my opinion, is clearly one in which the narrow language of *FCR*, O 21, r 1 is satisfied. As I have explained, no action under the rule will succeed unless the person concerned has habitually and persistently instituted vexatious proceedings in this Court. The fact that he or she has done so on innumerable occasions in other courts will not suffice to attract the rule.

67 The cost to the court system and the community of litigants who refuse to accept that a point has been decided authoritatively against them, or who are otherwise determined to pursue hopeless courses in the courts, can be very high. Such litigants are often immune to costs orders and exempt from paying the court fees which other litigants must meet. The present case illustrates the amount of time and the extent of the resources required to address the obstinacy of a single litigant.

68 In my opinion, consideration should be given to broadening the language of *FCR* O 21, r 1 so that it applies to a person who has instituted at least one vexatious proceeding in this Court, and has frequently instituted other vexatious proceedings, whether in this Court or other Australian courts.

I certify that the preceding sixty-eight (68) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Sackville.

Associate:

Dated: 6 July 1999

Counsel for the Applicant:	Self Represented
Counsel for the Respondent:	Mr J Logan
Solicitor for the Respondent:	Australian Government Solicitor
Date of Hearing:	23 June 1999
Date of Judgment:	6 July 1999