HIGH COURT OF AUSTRALIA

KIRBY J

RE ATTORNEY-GENERAL FOR THE COMMONWEALTH OF AUSTRALIA AND ANOR;
26 February 1996

High Court Procedure—Constitutional Law

High Court procedure—O 63 r 6 of the High Court Rules—Vexatious litigant—Application for leave to commence proceedings following order made under O 63 r 6—Leave refused. Constitutional Law—Power of Commonwealth Parliament to legislate with respect to "Legal tender"—Constitution, ss 51 (xii), xiii), whether paper money legal tender in Australia—Argument untenable—Leave to commence proceedings refused.

Headnote

Hearing

SYDNEY
#DATE 26:2:1996

The Applicant appeared in person

Orders

In each Matter
Application for leave to commence proceedings refused.

Decision

KIRBY J In order to understand the present proceedings it is necessary to read four decisions of this Court. The first is Re Skyring's Application (No 2) (1). The second is an unreported decision of a Full Court of this Court, Justices Mason, Wilson, Brennan and Dawson of 9 July 1985 on appeal from the first decision titled In the matter of an Application by Alan George Skyring. The third is the decision of Justice Toohey in Jones v Skyring (2). An application was brought for leave to appeal against that decision. It was rejected by the Court in an unreported decision of 1 July 1993. The fourth is Re Skyring (3), a decision of Justice Dawson.

2. Justice Toohey, in his 1992 decision, made an order under O 63 r 6 of the High Court Rules that, without leave of the Court or of a Justice of the Court, Mr Skyring should not be permitted to commence further proceedings in the Court. Justice Dawson, in his 1994 decision, declined to give such leave in the proceedings then brought before him. I am asked now to give leave for the commencement of proceedings in three matters.

3. Apart from the above proceedings, there has also been a great deal of litigation in the Federal Court of Australia, in the Court of Appeal of Queensland, in the trial division of the Supreme Court of Queensland, and in the District Court of Queensland before at least two judges of that last mentioned court, Judges Pratt and McMurdo. The full litigation in Queensland need not be described. It is sufficient to note that on 12 May 1994 the Court of Appeal of Queensland refused an extension of time within which Mr Skyring could appeal against an order of Justice Dowsett of the Supreme Court of Queensland in chambers, striking out an action in the Supreme Court of Queensland designed, in effect, to challenge the note issue of Australian currency. The Court of Appeal held that the appeal had no prospects of success and that the extension necessary for its prosecution should be refused.

4. For some years Mr Skyring, with obvious sincerity, has been agitating an opinion that it is beyond the constitutional power of the Federal Parliament to legislate to make paper money, as distinct from gold, legal tender in this country. He raises, in connection with that challenge, a number of other challenges to the legality of the banking and taxation systems of this country. The extreme inconvenience of a return to gold in the modern credit economy, in a global milieu which is fast replacing even paper money with electronic funds, has been brought home to Mr Skyring. However, he relies on the Constitution and on Magna Carta and seeks to enlist the aid of the courts to uphold his strongly held opinions. His opinions are also held by another citizen, Mr Cusack. It is useful to note the associated proceedings involving Mr Cusack (4). If the foregoing five reported decisions of this Court are read, they will explain the great number of reported and unreported decisions which lie behind the application which is now before me.

5. Unfortunately for Mr Skyring it is my view that his arguments were effectively rejected in 1985. They were rejected by Justice Deane in the first case of the series. His Honour's judgment was affirmed by the Full Court of this Court in the second judgment in the series. That rejection was applied by Justice Toohey in the third case. It was assumed by Justice Dawson in the fourth. Mr Skyring argues that that judgment of the Full Court of this Court was merely interlocutory and did not finally dispose of the merits of his application. However, if that judgment is considered, it indicates fairly clearly, in my opinion, that the Full Court of this Court considered that there was no legal merit in the points being argued. That certainly was the view which Justice Toohey took of the holding of the Full Court of this

Court when he came to consider the matter in 1992 (5). It was also the view taken by the Court of Appeal of Queensland in 1994.

6. Mr Skyring's persistence in agitating the constitutional issues which he has repeated before me today led to the order by Justice Toohey under Order 63. Mr Skyring has subsequently applied to Justice Dawson for leave, in effect, to reagitate at least some of the issues. As I have said, that leave was refused.

7. Three proceedings are now presented to the Registrar of this Court in Brisbane for the purpose of commencing actions against various officers of the Commonwealth and others designed, in effect, to agitate the same constitutional and legal points. I will summarise those proceedings as follows:
.B102 of 1996: This is substantially a challenge to a decision of the Court of Appeal of Queensland confirming a conviction which followed a verdict of a jury in a criminal trial. That verdict arose out of an arraignment of Mr Skyring before Her Honour Judge McMurdo in the District Court of Queensland on 8 May 1995. Mr Skyring was then charged with 16 counts of offences against the Crimes (Currency) Act 1981 (Cth) . He pleaded not guilty and stood his trial. On 9 May 1995 the jury returned verdicts of guilty on all 16 counts. Her Honour convicted Mr Skyring. He was released on a bond. He appealed to the Court of Appeal of Queensland, challenging the legal basis of the statute upon which he had been charged. That appeal was rejected. Application No B102 of 1996 is designed to challenge his convictions. In answer to questions addressed to him by me, Mr Skyring affirmed that no separate or other basis of challenge was raised by him beyond the constitutional and related issues he wants to argue;
.B103 of 1996: This concerns a challenge to another decision of the Court of Appeal of Queensland. That decision upheld an order of Justice White, declaring Mr Skyring to be a vexatious litigant in the Supreme Court of Queensland. The application to have him declared a vexatious litigant was brought at the request of the Australia and New Zealand Banking Corporation. The proceedings name Justice Spender of the Federal Court of Australia as a party. This was done presumably because of earlier connected proceedings brought by Mr Skyring against Telecom, heard by her Honour. However, the essence of the proceedings appears to be a challenge to the decision of the Queensland Court of Appeal affirming the earlier determination of Justice White declaring Mr Skyring to be a vexatious litigant; and
.B105 of 1996: Mr Skyring explained that the purpose of these proceedings was to challenge a decision of the Electoral Returning Officer for the federal electorate of Ryan in rejecting his nomination for candidature in the current federal election. Mr Skyring told me that he had presented gold coin, which he asserted was equivalent to the required deposit of $250. He asserted that the other candidates who had deposited $250 in paper notes, had not properly paid a deposit as the law requires. He raised a question as to whether their nominations were valid. But the foundation for that challenge was once again his constitutional and associated legal arguments which, as I have held, have been disposed of earlier by Justice Deane and affirmed by a Full Court of this Court.

8. I approach the application by Mr Skyring for leave to proceed on the three proceedings, which I have in general terms described, with the following considerations in mind:
First, it is always important for every Judge to keep an open mind in case a person who has been rejected by courts in the past may have, hidden amongst the verbiage of his or her arguments, a point which has not been previously seen and which may have merit. Vigilance, and not impatience, are specially required where that person is not legally represented;
Secondly, it is regarded as a serious thing in this country to keep a person out of the courts. The rule of law requires that, ordinarily, a person should have access to the courts in order to invoke their jurisdiction. It is a rare thing to declare a person a vexatious litigant. It is extremely rare in this Court to

use the power, whether under the inherent power or under O 63, to require leave before a person may commence proceedings invoking the Court's jurisdiction;
Thirdly, the Court must never shy away from the determination of a point sought to be argued simply because it may have major ramifications. Mr Skyring urged that I should not be reluctant to provide relief on the legal grounds argued by him simply because to provide relief would be to attack both the banking and taxation and other economic systems of this country. The history of this Court since its establishment in 1903, including recently, has shown that the Court does not refrain from offering relief where the law requires it simply because its decisions may have large consequences for the nation or particular interests in it;
Fourthly, I do not pause to consider the appropriateness of the particular process that Mr Skyring has commenced, seeking relief by way of the writs of certiorari and mandamus. It is not necessary for me, in the decision which I have arrived at, to determine whether they are in each case, or in any of the cases, the appropriate process of the Court to invoke its jurisdiction. Mr Skyring appears before me today unrepresented. If he had commenced proceedings by an irregular process which had any separate or different merit from the matters which have already been determined by the Court, I would endeavour to assist him to get such proceedings into proper form or require him to commence again in proper form. I would not dispose of his application upon such a formal basis; and
Fifthly, no question arises as to the validity of the rule under which Mr Skyring approaches the Court for leave to proceed. In any case, Justice Toohey in the decision cited (6), has indicated his opinion that the rule is valid and I am content to proceed on that basis.

9. Having taken into account all of the considerations which I have mentioned, listened carefully for more than an hour to Mr Skyring's arguments and attended closely to the decision of Justice Deane and the affirmation of that decision by a Full Court of this Court, I am of the opinion that Mr Skyring is once again endeavouring to argue matters which have been held by the Court to be without legal merit.

10. In my opinion the applications under O 63 r 6 for leave to begin the three proceedings nominated should therefore be refused. I so order.
1 (1985) 59 ALJR 561; 58 ALR 629.
2 (1992) 66 ALJR 810; 109 ALR 303.
3 (1994) 68 ALJR 618 .
4 See Jones v Cusack (1992) 66 ALJR 815; 109 ALR 313.
5 See Jones v Skyring (1992) 66 ALJR 810 at 813; 109 ALR 303 at 309.
6 Jones v Skyring (1992) 66 ALJR 810 at 814; 109 ALR 303 at 311-312 .