SUPREME COURT OF QUEENSLAND

CITATION:	*Re: Skyring* [2014] QSC 28
PARTIES:	**ALAN GEORGE SKYRING** (applicant)
FILE NO:	BS1253 of 2014
DIVISION:	Trial Division
PROCEEDING:	Application
DELIVERED EX TEMPORE ON:	13 February 2014
DELIVERED AT:	Brisbane
HEARING DATE:	13 February 2014
JUDGE:	Peter Lyons J
ORDERS:	**The originating application filed 11 February 2014 is dismissed.**
CATCHWORDS:	PROCEDURE – MISCELLANEOUS PROCEDURAL MATTERS – VEXATIOUS LITIGANTS AND PROCEEDINGS – where the applicant has been declared a vexatious litigant – where the applicant seeks leave to institute three proceedings under section 11 of the *Vexatious Proceedings Act* 2005 (Qld) – where the applicant characterised the first application as an application to reopen a 1983 judgment concerning whether currency issued by the Commonwealth of Australia is legal tender – where the second application is for compensation consequent on the applicant being declared a vexatious litigant in a 2013 proceeding – where the third application is to challenge a Magistrate's order consequent on a finding the applicant had exceeded the speed limit – whether each proposed application would be vexatious *Vexatious Proceedings Act* 2005 (Qld), s 10, s 11, s 12(1)(b), s 13 *Bailey v Marinoff* (1971) 125 CLR 529; [1971] HCA 49, considered *DJL v The Central Authority* (2000) 201 CLR 226; [2000] HCA 17, considered *Re Cameron* [1996] 2 Qd R 218; [1996] QCA 37, followed *Re Skyring* [2013] QSC 197, considered *Re Skyring's Application (No 2)* (1985) 59 ALJR 561, considered *Skyring v Commissioner of Taxation of the Commonwealth* (No. 5 of1983, 19 August 1983, VC8321370), considered
COUNSEL:	The applicant appeared on his own behalf

SOLICITORS: The applicant appeared on his own behalf

[1] **PETER LYONS J:** In 1995, White J declared the present applicant to be a vexatious litigant pursuant to the *Vexatious Litigants Act* 1981 (Qld) *(VLA)*: see *Re: Skyring* (178 of 1995. judgment dated 5 April 1995, VC9506042). The *VLA* was repealed by the *Vexatious Proceedings Act* 2005 (Qld) *(VPA)*. By virtue of section 16 of the *VPA*, an order made under the *VLA* in force immediately before the commencement of the *VPA* is taken to be a vexatious proceedings order for the *VPA*. Section 10 of the *VPA* provides that, in such a case, a person may not institute proceedings to which the vexatious proceeding order applies without the leave of the Court under section 13 of the *VPA*. Section 11 of the *VPA* authorises an application for leave to institute proceedings.

[2] The applicant is today making an application under s11 of the *VPA*. Before turning to the details of the application, reference should be made to section 11(3) of the *VPA*. It requires an applicant to file an affidavit with the application that does three things. One is the affidavit must list all occasions on which the applicant has applied for leave, whether under section 11 of the *VPA* or under the relevant provisions of the *VLA*. The second is that the applicant must list all other proceedings the applicant has instituted in Australia, whether before or after the commencement of the *VPA*. The third is that the applicant must disclose all facts material to the application, whether supporting or adverse to it, known to the applicant. Section 12 then requires the Court to dismiss an application under section 11 if the affidavit does not substantially comply with section 11(3).

[3] The applicant's affidavit lists proceedings he has instituted in Australia in a table nominating some 40 proceedings. It is difficult to clearly identify where that table is to be found, but it is in exhibit AGS3 to the affidavit filed in support of the application and, within that exhibit, forms part of the document identified as exhibit AGS3 to an affidavit said to have been affirmed on the 30th of October 2013. I have not identified a reason to regard that list as incomplete and as, accordingly, not satisfying section 11(3)(b) of the *VPA*.

[4] The applicant's affidavit refers to a number of matters. It is not clear whether he has disclosed all facts material to his application, but that is not a matter which I propose to consider further.

[5] His material includes a list of applications for leave, some of which were made under the *VPA*. That list is to be found in exhibit AGS3 to his affidavit in support of the application and within an affidavit close to the beginning of that exhibit, more specifically on page 8 of the affidavit. The list includes an application in the Federal Court which, it seems to me, was not required to be included in the list, because it would appear the application was not made under the *VPA* or its predecessor, but by reason of some order made under a Commonwealth statute.

[6] It is clear, however, that there were earlier applications for leave made under either the *VPA* or its predecessor. A list, as such, was not made in the applicant's affidavit. However, his affidavit included material on which he relied as satisfying the requirement of section 11(3)(a). That, too, is found as part of exhibit AGS3 to the affidavit filed in support of the application. More specifically, it is found in another affidavit of the applicant identified as exhibit AGS2 to an affidavit said to

have been affirmed on 21 October 2013. In that affidavit on page 2, the applicant referred to the requirements of section 11(3) of the *VPA*. After that reference, he said that he provided the following information.

[7] There then follows a discussion of whether it was necessary for him to refer to some litigation which he considered to be irrelevant to section 11(3). He then listed a series of proceedings subsequent to the 1995 declaration. In his description of those proceedings, he makes no reference to an application for leave under section 11 of the *VPA* or the analogous proceedings of the *VLA*. It may well be that, in referring to these proceedings, he has substantially complied with the requirement to list the occasions on which he has applied for leave. I do not intend to dismiss the application on the basis that he has not complied with section 11(3).

[8] However, section 12(1)(b) of the *VPA* requires me to dismiss the application if I consider the proceeding to be a vexatious proceeding. The application identifies more than one proceeding in respect of which leave is sought. It is convenient at this point to identify briefly the various proceedings which the applicant seeks leave to commence. I will do so, but not in the order in which they are dealt with in the originating application, and on the basis that leave is required separately for each of the matters I am now about the identify.

[9] The first is an application characterised as an application to reopen the judgment of McPherson J in *Skyring v Commissioner of Taxation of the Commonwealth* (No 5 of 1983, 19 August 1983, VC8321370).

[10] The second proceeding is a judgment of Mullins J of the 1st of August 2013 (*Re Skyring* [2013] QSC 197). The applicant also seeks leave to bring what is described as a claim for compensation consequent on his being declared a vexatious litigant.

[11] Finally, he seeks leave to, as he describes it, "remove into this Court, for purposes of review by this Court, as to the 'ultimate legality, constitutionally' of an order of a Magistrate of the 23rd of January 2014". That order arose out of a complaint and summons alleging that the applicant had exceeded the speed limit on the 17th of February 2013. The order was made by Magistrate Young, and appears in exhibit AGS2 to the affidavit in support of the present application. It was that a conviction not be recorded, but that the applicant pay a fine of $280 and the sum of $84.40 for costs of court.

[12] In each case I am required to consider whether the proceedings would be vexatious. For the purposes of the *VLA*, the question whether proceedings were vexatious was considered by the Court of Appeal in *Re Cameron* [1996] 2 Qd R 218 at 220 in the judgment of Fitzgerald P it was said:

> *"…The broad test (for deciding whether proceedings are vexatious) potentially concerns such factors as the legitimacy or otherwise of the motives of the person against whom the order is sought, the existence or lack of reasonable grounds for the claims sought to be made, repetition of similar allegations or arguments to those which have already been rejected, compliance with or disregard of the court's practices, procedures and rulings, persistent attempts to use the Court's processes to circumvent its decisions or other abuse of process, the wastage of public resources and funds, and the harassment of those who are the subject of litigation which lacks reasonable basis…"*

[13] As will be apparent from the passage cited, the question was considered in the context of an application for a declaration that a person was a vexatious litigant. It seems to me, however, that this passage provides a useful guide in determining whether the proceedings the subject of the present application, or any of them, are vexatious.

[14] Before I turn to consider each of the proceedings for which leave is sought, I might observe that the application and supporting material in the present case raises a question about the way in which the proceedings would be conducted. Although the applicant has provided extensive material, much of it would appear to be generally irrelevant to the application for leave. It is not well organised and at times is difficult to understand. I also note, with some concern, that notwithstanding the fact that the proceedings sought leave for the re-opening of the judgment of McPherson J, the applicant could not identify where, in his material, he had provided a copy of that judgment, if he had done so. The judgment of Mullins J was a refusal to grant leave for an order setting aside the declaration of White J. The application itself was made necessary by reason of the judgment of White J. So the terms of any order made by her Honour were of some importance for the present application. However, again, the applicant was not able to identify her Honour's judgment in the voluminous material which he had provided and it is not clear that it is to be found there. Those matters are by no means decisive but they do appear symptomatic of the way in which the applicant would conduct litigation if granted leave.

[15] I have already identified the character of the judgment of Mullins J, at least in rather broad terms. The application was, in fact, made under section 7 of the *VPA*, under which the court might vary or set aside a vexatious proceedings order. In dismissing the application, Mullins J stated that the application itself before her was vexatious, at least in relation to the re-agitation of the decision of White J. There was also an application for leave to institute judicial review proceedings against an order of a Magistrate setting down for trial the matter which lead to the decision of Magistrate Young. In dealing with it her Honour noted that the applicant wished to advance an argument about the validity of the *Australia Act* 1986 (UK), which her Honour observed had been disposed of in other proceedings in this court.

[16] The decision of McPherson J, in respect of which leave is sought, was the determination of the reference of an objection by the applicant to an assessment of income tax. It was unsuccessful. It is apparent that the applicant is not pursuing this application for the purpose of setting aside the determination itself. In the course of his reasons, McPherson J made reference to a submission made by the applicant. That submission referred to section 115 of the *Commonwealth Constitution*. Much that is said by his Honour is accepted by the applicant. The applicant, for example, accepted his Honour's statement that he was bound by the *Currency Act* 1965 (Cth). However, he took issue with the statement of his Honour that the Act was not affected by section 115 of the Constitution which, his Honour said, "…creates simply a prohibition against the issuing of currency by state governments." It is his Honour's discussion at that point, and perhaps the discussion which follows, which the applicant wishes to agitate if leave were granted. I might add that it would appear that he would wish to agitate the same matter in the other proceedings for which he seeks leave. One of his complaints is that the issue he attempted to raise before McPherson J had never been finally determined by a court in this country.

[17] The first difficulty with the application is that the applicant could not identify jurisdiction in this court to reopen the decision of McPherson J. The applicant referred to *DJL v The Central Authority* [2000] HCA 17 at paragraphs 33-38. The case was itself concerned with the power of the Family Court to set aside orders previously made by it. However, in dealing with that power, the joint judgment of five members of the Court discussed the powers of the common law courts at Westminster as well as the English Court of Chancery to reopen and rehear matters previously decided. It is not necessary to rehearse what is said by their Honours. Particular emphasis was placed by the applicant on paragraph 35, recording that the Court of Chancery had power to reopen and rehear cases which had been tried before it even after the decree had been entered.

[18] However, their Honours observed that the "peculiar state of affairs in Chancery" did not survive the *Judicature Act* 1873 (UK). The applicant argued that this Court should be regarded as having those powers. The argument did not make reference to the legislation which in fact regulates the powers of this Court, such as that found in the *Civil Proceedings Act* 2011 (Qld) and the *Supreme Court of Queensland Act* 1991 (Qld), nor did it take into account the statement of Barwick CJ in *Bailey v Marinoff* (1971) 125 CLR 529, 530, which stated the rule to be that once an order disposing of a proceeding has been perfected, and absent any statutory provision to the contrary, the proceeding is at an end and in its substance is beyond recall by that court. The statement of the rule was supported by a reference to the due administration of the law and the promotion of justice once a case has been finally disposed of.

[19] In terms of what was said in *Re Cameron*, the applicant has failed to demonstrate any reasonable ground for bringing this proceeding. Indeed, his real purpose is, he says, to have a final determination of the matter he raised about the validity of currency. That may well be thought to be a motive which would not be regarded as legitimate, even if there were power to reopen the decision of McPherson J. Moreover, as Mullins J noted in the unsuccessful application determined by her last year, this question was finally disposed of by Deane J in *Re Skyring's Application (No. 2)* (1985) 59 ALJR 561, upheld by the Full Court of the High Court and recognised as finally disposing of the matter by the Court of Appeal in this state in *Clampett v Kerslake (Electoral Commissioner of Qld)* [2009] QCA 104.

[20] The applicant also submitted that in respect of McPherson J's decision, the appellate process was unsatisfactory. He did not seek to demonstrate why that was so, and I would not be prepared to accept that without a fuller explanation. However, I do not place any significant weight on that consideration in reaching my conclusion. By reason of the matters referred to earlier, I am satisfied that the application for which leave is sought in relation to the judgment of McPherson J is vexatious.

[21] The application in respect of the judgment of Mullins J also seeks to circumvent the appellate process. No reason was given for proceeding in this fashion rather than by way of appeal.

[22] Again, there is the difficulty which arises in relation to the power of a judge of this Court to reopen an earlier decision of another judge of the same Court. I have mentioned the applicant's reliance on the Chancery practice prior to 1873 in the United Kingdom. I might observe that neither the decision of Mullins J, nor that of McPherson J for that matter, was a decision given in the exercise of the Court's

equitable jurisdiction. Both were based on specific grants of jurisdiction by statute, which were not attempts to codify the equitable jurisdiction exercised by the English Courts before 1873.

[23] Moreover, by re-opening the judgment of Mullins J, the applicant would seek to, again, litigate matters which have been decided adversely to him on a number of occasions. So far as he seeks to re-open her Honour's decision relating to judicial review proceedings, it would appear consistent with material he has placed before the Court in the present application that he wishes to contest the validity of the *Australia Act*, a matter which has been decided a number of times – see, for example, *Clampett v AG (Qld)* [2013] QCA 325. In the circumstances, I am satisfied that the proposed proceedings would be vexatious.

[24] With respect to the claim for compensation said to be payable because of the declaration that the applicant is a vexatious litigant, the applicant could not identify a cause of action, nor any authority, which would support such a claim as he proposes. When pressed to identify the respondent, he nominated the State of Queensland. However, the source of his alleged entitlement is a decision of this Court. He was unable to explain in any comprehensible fashion why the State of Queensland might possibly be liable in respect of consequences of an order of this Court.

[25] By reference to the propositions which I have referred to in *Re Cameron*, the applicant could not identify any reasonable grounds for this claim. It is likely to result in the wastage of public resources and funds and they are aspirant of those who would have to deal with the litigation. In my view, this claim, too, is vexatious.

[26] The applicant stated in his affidavit that in the Magistrates Court proceedings determined by Young M, the applicant was not permitted to participate in the hearing upon the question whether he had breached the *Transport Operations (Road Use Management) Act* 1995 (Qld) because of the vexatious proceedings order which had been made against him. If true, that might well provide a basis for challenging the orders made against him. However, as the applicant's submissions were developed orally, it became abundantly clear that his purpose was not to challenge the order. Rather, it was to challenge the validity of the *Judicial Review Act* 1991 (Qld), which no longer provides for reference to the Crown, for the purpose of obtaining prerogative writs. It also sought to challenge the validity of the *Australia Act* and to re-agitate the currency arguments, which have been referred to previously.

[27] That the purpose was to litigate these matters and not, in truth, to seek the setting aside of the orders was made clear by the applicant when he said that he would not be interested in pursuing an appeal to the District Court under section 222 of the *Justices Act* 1886 (Qld). The course he has chosen was chosen because he considered it was the only means open to him to advance the matters which I mentioned a short time ago.

[28] So much is also clearly demonstrated by the notice to admit facts, which the applicant would deliver, if granted leave. That notice identifies a number of matters, not all of which I will recite. However, in paragraph one, an admission is required that the applicant's analysis of "the current 'overall governmental

situation'" within the Commonwealth and, in particular, within Queensland is as he set out in various documents. Another matter in respect of which an admission is sought is that the *Australia Act* is of no effect: see paragraph 11. He then seeks an admission that there is no proper basis in law for all changes which have been wrought to the administration of Queensland since 14 February 1986: see paragraph 12.

[29] He also seeks an admission that the *Supreme Court of Queensland Act* is invalid. He makes reference to the *Supreme Court Act* 1995 (Qld), also in this part of the notice to admit facts, but it is likely that he would seek a similar declaration in respect of the *Civil Proceedings Act*. These things reinforce the conclusion I have reached about his purpose in instituting this proceeding. They are relevant to the conclusions I have come to about the other proceedings for which leave is sought. Again, I am satisfied that these proceedings, if instituted, would be vexatious. Accordingly, I dismiss the application.

[30] Since stating the reasons set out above, the applicant has made some further submissions about the decision of Deane J in *Re Skyring's Application (No 2)*. In giving those reasons, I referred to the decision of Mullins J and her Honour's statement that Deane J had determined, adverse to the applicant, the argument he wished to advance in relation to the legitimacy of currency and, in particular, bank notes issued in Australia. The applicant drew my attention to the judgment of Deane J and the subsequent judgment of the Full Court of the High Court. He first pointed out the fact that an order had been made by the Chief Justice directing the Registrar of the High Court to refuse to issue writs without the leave of a Justice first having been obtained. His complaint was that that order had been made without notice to him and, arguably, without power.

[31] Whether that submission is correct or not, it seems to me, is of no present relevance. If the order were wrongly made, then he would have been entitled to have writs issued. That, in my view, does not affect the decision of Deane J, to which it will be necessary to pay some attention a little later.

[32] His second point was that the decision of Deane J was of no effect, no documents having been served on any other party and there being no submissions from anyone other than him. That may have been a matter which other parties could have agitated had a decision been made in favour of the applicant; however, the decision of Deane J was adverse to him and the applicant has not satisfied me that the decision is of no effect because there were no other parties involved in the proceedings before Deane J.

[33] He then noted that Deane J correctly recorded in two numbered paragraphs the contentions he wished to make. He related those contentions to the position he wishes now to advance, his point being that they have never been finally determined. Although not expressed in precisely the same way in the various places at which they have been agitated by him, they were recorded by Deane J as being that the Constitution erects a barrier against the issue by the Commonwealth of paper money as legal tender. The argument also drew support from the provisions of the *Currency Act* dealing with coins as legal tender. It resulted in a contention that section 36(1) of the *Reserve Bank Act* 1959 (Cth), providing that notes are a legal tender throughout Australia, was invalid. The second part of the submissions recorded by Deane J was, in a sense, a repetition of the first, it being contended that Spender J in the Federal Court erred in not accepting the applicant's

argument, which has just been summarised. It might be noted that Deane J also recorded that the applicant's affidavit relied upon before him was a written outline of the argument the applicant wished to advance and was supplemented by oral submissions. He identified it as an overall attack upon the Australian financial system and, to some extent, on the Australian legal system.

[34] His Honour concluded that there was no substance in the argument that there is a constitutional bar preventing the Commonwealth from issuing paper money as legal tender, nor was there any substance in an argument that section 36(1) of the *Reserve Bank Act* was invalidated or "overruled" by provisions of the *Currency Act*. His Honour also dealt globally with other matters raised in argument, concluding that no basis had been disclosed for the relief sought in the proposed writs or indicated in the course of oral submissions.

[35] There was an appeal to the Full Court of the High Court. The critical finding of Deane J was expressly referred to, namely, that there was no substance in the argument that there was a constitutional bar against the issue by the Commonwealth of paper money as legal tender. I note that that appears to be the very point the applicant contends as not being authoritatively decided. It is also clear that the same question was agitated on the appeal. The joint judgment, it would appear, of four members of the Court recorded that their Honours had listened attentively to the applicant's submissions on the appeal, but were not persuaded that the judgment of Deane J contained any error.

[36] The statement by the judges who determined the appeal that they were not persuaded that the judgment of Deane J contained any error had the result that the appeal was dismissed. That order disposed of the question of the validity of the issue of notes as legal tender. It is very clear that that question has been authoritatively decided by the High Court of Australia.

[37] The applicant also contended that he was not given an opportunity to be heard. That is inconsistent with what is recorded both on the judgment of Deane J and that of the Full Court of the High Court. I do not accept that it was correct. Accordingly, the additional submissions do not alter the conclusions previously reached.