[2007] WASCA 288

JURISDICTION	**:**	SUPREME COURT OF WESTERN AUSTRALIA
TITLE OF COURT	**:**	THE COURT OF APPEAL (WA)
CITATION	**:**	SHAW -v- THE STATE OF WESTERN AUSTRALIA [2007] WASCA 288
CORAM	**:**	PULLIN JA BEECH AJA
HEARD	**:**	19 DECEMBER 2007
DELIVERED	**:**	19 DECEMBER 2007
FILE NO/S	**:**	CACV 144 of 2007
BETWEEN	**:**	BRIAN WILLIAM SHAW Appellant AND THE STATE OF WESTERN AUSTRALIA Respondent

ON APPEAL FROM:

Jurisdiction	**:**	SUPREME COURT OF WESTERN AUSTRALIA
Coram	**:**	EM HEENAN J
Citation	**:**	SHAW -v- ATTORNEY GENERAL FOR THE STATE OF WESTERN AUSTRALIA [2007] WASC 270
File No	**:**	CIV 1955 of 2007

Catchwords:

Appeal - Vexatious litigant - Whether leave should be granted to institute proceedings - Whether Court of Appeal has jurisdiction to grant leave - *Vexatious Proceedings Restriction Act 2002* (WA)

Legislation:

Vexatious Proceedings Restriction Act 2002 (WA), s 6
Supreme Court Act 1935 (WA)

Result:

Application dismissed

Category: B

Representation:

Counsel:

Appellant	:	In person
Respondent	:	No appearance

Solicitors:

Appellant	:	In person
Respondent	:	Director of Public Prosecutions (WA)

Case(s) referred to in judgment(s):

Attorney General for State of Western Australia v Shaw [2004] WASC 280
Attorney-General v Shaw [2007] VSC 148
Commonwealth Bank v Ridout Nominees Pty Ltd [2003] WASC 215
Shaw v Attorney General for the State of Western Australia [2005] WASC 149
Shaw v Attorney General for the State of Western Australia [2007] WASC 270
Shaw v McGinty [2006] WASCA 231

1 **PULLIN JA**: The applicant, pursuant to s 6(1) of the *Vexatious Proceedings Restriction Act 2002* (WA), seeks leave to institute proceedings by way of appeal again the judgment of EM Heenan J (***Shaw v Attorney General for the State of Western Australia*** [2007] WASC 270) whereby the applicant was refused leave to review two decisions of Registrar Powell. In 2004 the applicant was made the subject of orders under the *Vexatious Proceedings Restriction Act 2002* by Braddock C, one of which reads:

> No legal proceedings should be instituted by Brian William Shaw or any person acting on behalf of Brian William Shaw in the state of Western Australia in the Supreme Court … unless Brian William Shaw shall first obtain the leave of the Supreme Court … pursuant to s 6 of the *Vexatious Proceedings Restriction Act 2002*.

2 See ***Attorney General for State of Western Australia v Shaw*** [2004] WASC 280.

3 The applicant applied for leave to appeal against the order of Braddock C which was heard by McKechnie J. Leave was refused (***Shaw v Attorney General for the State of Western Australia*** [2005] WASC 149). The applicant then appealed to this court. The appeal was dismissed (***Shaw v McGinty*** [2006] WASCA 231). McKechnie J and the Court of Appeal ordered the applicant to pay costs and costs were taxed before Registrar Powell, who made the decisions which are under consideration.

4 The transcript of the proceedings before Registrar Powell reveals that the applicant did not object in the proper sense to any items in the bill of costs because he considered that the proceedings were invalid and that the court had no jurisdiction. He simply asserted that position. Registrar Powell made it plain that the issues raised before EM Heenan J were not matters that Registrar Powell could deal with. After the taxation of costs, Registrar Powell said he would sign the allocaturs if there was no request for review.

5 The applicant did file a request for review by Registrar Powell, but he did not submit that any error of principle had been made by the registrar during the taxing of the bill. Instead he submitted that the whole of the proceedings were void. The allocaturs were signed on 7 September 2007. The applicant then sought leave to commence proceedings to review the taxation of costs in each case. If the applicant had objected to items in the bill of costs and wished to review the taxations to correct any error of principle in relation to the taxation, then EM Heenan J may have

granted leave to commence proceedings for review of the taxation, but a question of that kind did not arise given the position adopted by the applicant.

6 Although the first order sought in the originating summons before EM Heenan J was an order that the taxation in the two cases be reviewed, the other orders sought and the affidavits filed made it plain that the applicant was only interested in continuing to advance the now familiar points which he has raised unsuccessfully before EM Heenan J, before the Court of Appeal, before the registrar, and in other litigation. The other litigation is summarised in the reasons of Hansen J in ***Attorney-General v Shaw*** [2007] VSC 148. In that case Hansen J declared the applicant to be a vexatious litigant in Victoria.

7 The affidavits filed by the applicant in the proceedings before EM Heenan J exceeded 40 in number. They exhibited inter alia the whole of the coronation service of Queen Elizabeth II and copies of applications made in the Supreme Court of Victoria to summons a grand jury (referred to in Hansen J's reasons for decision). The application for leave to commence proceedings was refused by EM Heenan J. Pursuant to s 6(1) of the *Vexatious Proceedings Restriction Act 2002* the applicant now seeks leave to institute an appeal against that decision.

8 The short answer to that application is that the Court of Appeal does not have jurisdiction to grant leave. Section 6(1) of the *Vexatious Proceedings Restriction Act 2002* reads:

> An application for leave to institute proceedings, or proceedings of a particular class (in this section called 'the proceedings'), that is required by an order under section 4(1)(d) is to be made -
>
> (a) in the case of proceedings in the Supreme Court, to the Supreme Court or a Judge.

9 The *Supreme Court Act 1935* establishes a Supreme Court (see s 6). Section 7(1) states that the exercise of the court's jurisdiction is divided between the general division and the Court of Appeal. Section 7(4) states that the general division exercises all of the jurisdiction of the Supreme Court other than the jurisdiction referred to in s 58(1). Section 58(1) of the *Supreme Court Act 1935* states that the Court of Appeal shall have, and shall be deemed, since the coming into operation of the Act, always to have had jurisdiction to hear and determine the applications, appeals and other proceedings listed in subpars (a) to (l), none of which refer to

proceedings under the *Vexatious Proceedings Restriction Act 2002* (WA). Section 58(1)(m) confers jurisdiction on the Court of Appeal to hear:

> [A]ll causes and matters and proceedings which:
>
> (a) by any Act of this State or rules of court or;
>
> (b) by or under any Imperial Act, or Act of the Commonwealth of Australia are required to be heard and determined by the Court of Appeal.

10 Neither s 6 nor any other section of the *Vexatious Proceedings Restriction Act 2002* requires any application for leave under that Act to be heard by the Court of Appeal. No other Act or rules require that to occur. As a result, the Court of Appeal does not have jurisdiction to entertain this application.

11 Even if the court had jurisdiction, I would have refused leave to appeal for the following reasons. Section 6(5) of the *Vexatious Proceedings Restriction Act* requires the court hearing the application to dismiss it if it considers that:

> (a) the affidavit does not disclose everything required by subsection (3) to be disclosed;
>
> (b) the proceedings are vexatious proceedings; or
>
> (c) there is no prima facie ground for the proceedings.

12 One of the proposed grounds is that:

> Justice Heenan violated the critical maxim that a Judge must not be a Judge in his own cause and as such voided the hearing.

13 This is a frivolous and vexatious ground based on the fact that EM Heenan J once sat on an application for an interlocutory injunction in a matter of ***Commonwealth Bank v Ridout Nominees Pty Ltd*** [2003] WASC 215, and that the applicant was a friend of the Ridouts. The applicant submitted that EM Heenan J should therefore disqualify himself. EM Heenan J says in his reasons that he did not sit on those proceedings, but even if he had done so, the fact that the applicant was a friend of the Ridouts was irrelevant; the ground is without any merit.

14 Other grounds flow from what is now an oft repeated contention by this applicant about the alleged invalidity of the *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003* (WA). This contention has

no merit, as has been made clear by the Court of Appeal in ***Shaw v McGinty*** [2006] WASCA 231 and by EM Heenan J.

15 Other grounds make irrelevant and unsubstantiated allegations of 'criminal activity', 'fraud', 'treason', and 'criminal breach' of various sections of various Acts by politicians, judges and other people. The proposed grounds are frivolous and vexatious. They have no reasonable prospect of succeeding and they reveal no prima facie case.

16 In addition, the affidavit filed by the applicant in these proceedings did not disclose all the facts material to the application as required by s 6(3) of the *Vexatious Proceedings Restriction Act 2002*. In particular the applicant did not reveal what had happened in the proceedings before Registrar Powell. For those reasons the application is dismissed.

17 **BEECH AJA**: I agree with Pullin JA.

18 First, I agree, for the reasons that his Honour gives, that the Court of Appeal has no jurisdiction to entertain an application under s 6 of the *Vexatious Proceedings Restriction Act* and on that ground the application must be dismissed.

19 Secondly, if the court did have jurisdiction, I too would have dismissed the application, for the reasons given by Pullin JA. The applicant made reference to and provided copies of authorities relating to the criteria for leave to appeal in various contexts including questions of leave to appeal against interlocutory judgments, and referred to the criteria that they are attended with sufficient doubt and may give rise to an injustice. Those criteria are not applicable to the present application. The *Vexatious Proceedings Restriction Act* stipulates conditions referred to by Pullin JA which, if they exist, require dismissal of the application. In my opinion those conditions exist, for the reasons given by Pullin JA, so that if the court had had jurisdiction, I would have dismissed the application.