FEDERAL COURT OF AUSTRALIA

Skyring v Australian Electoral Commissioner [1999] FCA 113

ALAN GEORGE SKYRING V AUSTRALIAN ELECTORAL COMMISSIONER
QG 148 OF 1998

SPENDER, COOPER & TAMBERLIN JJ
16 FEBRUARY 1999
BRISBANE

NO QUESTION OF PRINCIPLE

IN THE FEDERAL COURT OF AUSTRALIA

QUEENSLAND DISTRICT REGISTRY **QG 148 OF 1998**

BETWEEN:	**ALAN GEORGE SKYRING** **Appellant**
AND:	**AUSTRALIAN ELECTORAL COMMISSIONER** **Respondent**

JUDGES:	**SPENDER, COOPER & TAMBERLIN JJ**
DATE OF ORDER:	**16 FEBRUARY 1999**
WHERE MADE:	**BRISBANE**

THE COURT ORDERS THAT:

1. The application for leave for an extension of time within which to appeal is refused.
2. The applicant pay the respondent's costs of and incidental to the application, to be taxed if not agreed.

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

NO QUESTION OF PRINCIPLE

IN THE FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY **QG 148 OF 1998**

BETWEEN:	**ALAN GEORGE SKYRING** **Appellant**
AND:	**AUSTRALIAN ELECTORAL COMMISSIONER** **Respondent**

JUDGES:	**SPENDER, COOPER & TAMBERLIN JJ**
DATE:	**16 FEBRUARY 1999**
PLACE:	**BRISBANE**

REASONS FOR JUDGMENT

SPENDER J:

1 On 14 September 1998, Mr Skyring filed an application for an order of review to review a decision of the Australian Electoral Commissioner to accept the nomination payments of candidates in the seat of Ryan for the federal election to be held on 3 October 1998.

2 A notice of motion was filed by the Australian Electoral Commissioner on 20 October 1998 - that is to say, after the election had been held - which sought to have Mr Skyring's application for an order of review dismissed pursuant to O 20, r 2 of the Federal Court Rules on the basis that no reasonable cause of action was disclosed, the proceeding was frivolous or vexatious, or was an abuse of process. Mr Skyring today says that it was as a response to this notice of motion that he filed his notice of motion with which this present application for leave to appeal is concerned.

3 On 21 October 1998, Mr Skyring filed a notice of motion seeking orders first, that counsel for the respondent, a Mr M. Hanson *"be not heard further in the course of deliberations to determine the course that further action in this matter overall should take"*; and secondly, that the Australian Electoral Commissioner *"similarly not be heard further on these matters, in deliberations to determine the course that further action in this matter overall should take"*. On 23 October 1998, Dowsett J dealt with Mr Skyring's motion.

4 It seems to me that the present application for leave to appeal from the orders of Dowsett J on 23 October 1998, wherein he dismissed the motion and ordered Mr Skyring to pay the respondent's costs of that motion, is based on a misconception. In essence, what Mr Skyring is centrally concerned about depends on his appeal from the decision made by his Honour on 4 December 1998, and that his application for leave to appeal from the orders made on 23 October 1998 is simply misconceived.

5 On 23 October 1998 Mr Skyring initially said to his Honour that there was a *"presumption that everybody is making…that there has in fact been a final determination given on the central matter in issue"* which he described as *"the sovereign right of the Crown versus private interests in the creation of money, and particularly that form known as legal tender."*

6 His Honour, in respect of the present motion, asked Mr Skyring why he should make the orders sought in the motion. His Honour said:

> *"It's not a basis for his not acting that…he's not doing things the way you think they should be done."*

And Mr Skyring said:

> *"…it's not what I say. There is a specific point which has not been addressed."*

To which Dowsett J said:

> *"…well, that's got nothing to do with whether or not the solicitor continues to act."*

Mr Skyring later again said:

> *"…he was inferring, as every counsel has done that I've struck in this matter that has been going on for 10 years, it is inferred, but not outright stated, that this final determination has been given."*

His Honour said:

> *"…the fact that a lawyer might be wrong is not a reason for his not acting."*

And later:

> *"For the moment I'm only interested in the suggestion that the solicitor can't act. You've got an application to that effect?"*

To which Mr Skyring said:

> *"I've put an affidavit in basically seeking - to draw attention to this fact that I cannot get an answer to this question."*

7 His Honour referred to that affidavit, and said:

> *"In my view it doesn't disclose any basis for excluding …Mr Hanson…from acting."*

And later:

> *"…there is nothing in this material which would lead to Mr Hanson being excluded from acting."*

8 He then gave his short reasons for dismissing the motion, which were, in essence, that no valid grounds had appeared for making the orders sought. His Honour's ruling had nothing to do with the ultimate determination of the validity of Mr Skyring's central point, and to that extent, Mr Skyring's present complaints are quite premature.

9 So far as the orders made by Dowsett J on 23 October 1998 are concerned, they did not determine any substantive rights. Mr Skyring has urged us that his motion was *"a vital sub-plot"* to prevent that which ultimately occurred on 4 December 1998: that is to say, the dismissal of his application on the grounds that it was vexatious or an abuse of process. In respect of the orders made on 23 October 1998, applying the tests for leave for an extension of time within which to appeal, we have to ask ourselves a number of questions: whether, in all the circumstances, the decision of the primary judge is attended with sufficient doubt to warrant it being reconsidered by the Full Court, and whether substantial injustice would result if leave were refused, supposing the decision to be wrong: *Niemann v Electronic Industries Ltd [1978] VR 431*.

10 In this particular case, no substantial injustice would be done if the motion for leave be refused; nor, quite frankly, is there any doubt that the decision, on the material before Dowsett J, was the correct one.

11 While it may be of no comfort to Mr Skyring that today's proceeding does not really result in the further consideration of his central complaint, the fact of the matter is there is no basis on which leave to appeal ought to be granted. It seems to me that the application for an extension of time within which to bring an application for leave to appeal from the interlocutory judgment of Dowsett J on 23 October 1998 should be refused.

COOPER J:

12 I agree.

TAMBERLIN J:

13 I agree.

SPENDER J:

14 Again, the ordinary rule is that the unsuccessful applicant for leave to appeal should have to pay the costs of the other side.

SPENDER J:

15 The order of the Court is that the application for leave for an extension of time within which to appeal is refused, and the applicant should pay the respondent's costs of and incidental to the application, to be taxed if not agreed.

I certify that the preceding fifteen (15) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justices SPENDER, COOPER and TAMBERLIN.

Associate:

Dated: 16 February 1999

The applicant appeared in person.

Counsel for the Respondent: Mr D O J North SC

Solicitor for the Respondent: Australian Government Solicitor

Date of Hearing: 16 February 1999

Date of Judgment: 16 February 1999