

SUPREME COURT OF QUEENSLAND

CITATION: *Skyring v Lohe* [2004] QSC 089

PARTIES: **ALAN GEORGE SKYRING**
(applicant)
v
CONRAD WILHELM LOHE
(respondent)

FILE NO: SC No 1907 of 2004

DIVISION: Trial

PROCEEDING: Application on papers

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 13 April 2004

DELIVERED AT: Brisbane

HEARING DATE: 6 April 2004

JUDGE: Mackenzie J

ORDER: **The application is refused with costs.**

CATCHWORDS: PROCEDURE – JUDGMENTS AND ORDERS – IN GENERAL – OTHER MATTERS – where applicant seeks revocation of declaration as vexatious litigant - whether leave should be given to bring election petition – where issues pursued similar to those in proceedings which formed basis of declaration – where no prospect of success

Australia Act 1986 (Cth)
Constitution of Queensland 2001(Qld)
Constitution (Office of Governor) Act 1987 (Qld)
Vexatious Litigants Act 1981 (Qld), s 4 & s 8

Skyring v Electoral Commission of Queensland and Beattie [2001] QSC 080, Chesterman J, cited
Skyring v Electoral Commission of Queensland and Beattie [2001] QSC 080, Mackenzie J, cited

SOLICITORS: Applicant on his own behalf
Crown Law for the respondent

[1] **MACKENZIE J:** The applicant has been declared a vexatious litigant under the *Vexatious Litigants Act 1981* since 5 April 1995. He wishes to file petition in the Court of Disputed Returns challenging the return of the Premier as Member for

Brisbane Central at the recent State Election. The applicant was a candidate for that election and would otherwise be a person who might bring such proceedings. However, leave is necessary for a vexatious litigant to bring such a petition (*Skyring v Electoral Commission of Queensland and Beattie* [2001] QSC 080, Chesterman J).

- [2] The applicant asks for leave to be granted to him to proceed with an application for the immediate revocation of the declaration that he is a vexatious litigant. The basis is said to be that such revocation is essential for the proper conduct of the petition since the Registry requires leave to be had and obtained by the applicant for any matter he may seek to litigate since he is a vexatious litigant. (*Skyring v Electoral Commission of Queensland and Beattie* [2001] QSC 080, Mackenzie J). The order of 5 April 1995, while valid and of full force, inhibits his ability to bring the petition. The application also seeks “such further orders as to the court shall seem meet in the quite extraordinary circumstances of this case”. The application goes on to assert that the claim and the action he proposes to take “is as well for the Queen as for himself” to facilitate remedy of long standing defects in respect of the manner in which the State and Nation’s affairs generally, but especially the political, legal and financial aspects thereof, are conducted.
- [3] The written submission is somewhat involved but it is apparent that the applicant sees it as necessary for the declaration made on 5 April 1995 to be set aside. An appeal to the Court of Appeal against that declaration was dismissed and a later attempt to have the decision set aside by the High Court failed.
- [4] The applicant has presented a number of arguments that the basis upon which the declaration was made was erroneous and that there had been no definitive determination by the High Court of its correctness. He also referred to subsequent attempts to challenge the basis of the declaration, raising the same point in those instances that there had been no fair trial of issues he wished to raise.
- [5] At Trial Division level there is no basis upon which the order declaring the applicant a vexatious litigant can be set aside *ex debito justitiae*, as the applicant requires. While the Court of Appeal decision that the declaration was properly made stands, a Trial Division judge is bound to apply that decision and the Registry is entitled to refuse to receive an application in respect of which leave of a Supreme Court judge has not been given. Such a proceeding is invalid and of no force or effect (s 8(1A)). In any event, there is no reason to think that there are reasonable prospects of success if the arguments foreshadowed are raised.
- [6] The only statutory basis upon which an order declaring a person a vexatious litigant can be revoked is to be found in s 4. The relevant prerequisites are that the person declared to be a vexatious litigant:
- (a) Does not intend to pursue the course of conduct that occasioned the person being declared a vexatious litigant; and
 - (b) Does not intend to pursue a course of conduct that might occasion an order that he is a vexatious litigant.

- [7] Reading the application, the applicant's submissions in writing and his affidavit which annexes the proposed electoral petition suggests that he still pursues issues unsuccessfully pursued in the proceedings which formed the basis of his declaration. These include challenges to the constitutional validity of the *Australia Act 1986* and the *Constitution (Office of Governor) Act 1987* (since repealed by the *Constitution of Queensland 2001*) and the consequences for the legitimacy of Parliament and the executive. The issue of what constitutes legal tender is also raised again. Given the nature of what he intends to pursue, although there may be some additional but related arguments as well, I cannot be satisfied that the criteria in s 4 for revoking the order under the statutory procedure are satisfied. If there are variants of the arguments which have led to the applicant being declared vexatious which he wishes to develop, I am not persuaded that they have prospects of success which would justify leave to institute proceedings. The application is refused with costs.