SUPREME COURT OF QUEENSLAND

CITATION:	*Skyring v Registrar Bancroft QCAT & Anor* [2012] QSC 80
PARTIES:	**ALAN GEORGE SKYRING** (applicant) **v** **REGISTRAR DAVID BANCROFT QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL BRISBANE** (first respondent) **MICHELLE HOWARD MEMBER, QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL** (second respondent)
FILE NO/S:	2608 of 2012
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	30 March 2012
DELIVERED AT:	Brisbane
HEARING DATE:	23 March 2012
JUDGE:	Ann Lyons J
ORDER:	**The application pursuant to s 11 of the *Vexatious Proceedings Act* 2005 (Qld) for leave to institute a proceeding is refused.**
CATCHWORDS:	PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND – JURISDICTION AND GENERALLY – GENERALLY – where applicant is a vexatious litigant – where vexatious litigant makes application for leave to proceed under *Vexatious Proceedings Act* 2005 (Qld) – where the proposed proceedings in Queensland Civil and Administrative Tribunal (QCAT) are to review a decision made by the Legal Services Commissioner – where the proposed proceeding is without reasonable grounds, brought for an improper purpose and an abuse of process. *Vexatious Litigants Act* 1981 (Qld), s 3. *Vexatious Proceedings Act* 2005 (Qld), s 11, s 12.

Conde v Attorney General for the State of Queensland [2010] QCA 66.
Fung v Tam & Anor [2012] QCA 10.
Re Cameron [1996] 2 Qd R 218.
Re Skyring [1995] QSC 55.
Skyring v Electoral Commissioner & Anor [2001] QSC 80.

COUNSEL: Applicant on his own behalf

SOLICITORS: Applicant on his own behalf

ANN LYONS J:

[1] On 5 April 1995 Mr Alan Skyring was declared to be a vexatious litigant under s 3 of the *Vexatious Litigants Act* 1981 (Qld). Mr Skyring appealed that decision to the Court of Appeal and the Court unanimously struck out the appeal, declaring it to be incompetent.

[2] On 20 March 2012 Mr Skyring filed an application in this Court seeking an order that he be given leave, pursuant to s 11 of the *Vexatious Proceedings Act* 2005,

> "**to bring an action in this court for Statutory and Judicial Review of two decisions made recently by QCAT on the applicant's Applications to review a decision made previously by the Legal Services Commissioner** which was not only seriously in error in fact and law, but also highly defamatory of the applicant." [original emphasis]

[3] Essentially, Mr Skyring wants the Queensland Civil and Administrative Tribunal ("QCAT") to review a decision made by the Legal Services Commissioner on 12 December 2011 and in order to do so he needs an order pursuant to s 11 of the Act permitting him to institute proceedings.

The factual background

[4] The Court of Appeal decision of *Koteska v Phillips; Koteska v Commissioner of Police*[1] raised concerns that Mr Skyring might be attempting to assist litigants and involve himself in litigation brought by others when he was not a legal practitioner. The Legal Services Commissioner conducted an investigation. On 12 December 2011 the Legal Services Commissioner wrote to Mr Skyring, stating the following:

> "From the material to hand it appears clear that you intend to continue to pursue your frivolous claims in the courts. The courts in this jurisdiction have already indicated their unwillingness to entertain your baseless, unsubstantiated arguments. You have been categorised as a vexatious litigant in our jurisdiction. The courts will continue to monitor your involvement in claims in this jurisdiction and will take appropriate action to ensure that you do not unnecessarily burden the legal system.

1 [2011] QCA 266.

> It is also clear from the material that you intend on assisting others whenever, wherever and however you can with their legal problems. Based on the decision in *Koteska v Phillips; Koteska v Commissioner of Police* I assume that this assistance includes providing advice and assistance to people to mount defences to various matters based on your constitutional arguments (that have previously been rejected by the courts).
>
> While your actions may conflict with the vexatious litigant order against you and the *Legal Profession Act 2007* (Qld), they more importantly place the persons you assist at significant risk. Given that the courts have already rejected your arguments the persons relying on your advice are essentially presenting an argument that can not possibly succeed. They are therefore essentially being deprived of the opportunity to defend their claims. It is noteworthy to add that you[r] arguments do not impress but perturb the Judges who hear them. This has a flow on effect for those who you assist.
>
> Importantly your actions in assisting people with their court matters are not in any way protected. You do not have professional liability insurance and you are not legally entitled or qualified to provide legal advice as you have not completed the required study or gained experience as an admitted legal practitioner. The people that you assist may quite legitimately have claims against you for any negligent advice.
> …
> I confirm that I am concerned about your conduct and the responses you have provided during the course of this investigation. It is my view that you are likely a risk to legal consumers in this state.
>
> Whilst I have decided not to take any further action at this time I will continue to monitor your conduct and should further matters of this nature be brought to my attention then I will have no hesitation in taking the appropriate action that I deem necessary at that time…"

[5] On 6 February 2012 Mr Skyring lodged an application with QCAT seeking a review of that decision by the Legal Services Commissioner. Clearly the decision he seeks to have reviewed is a decision by the Commissioner that he would take no further action in relation to the assistance Mr Skyring provided in the *Koteska*[2] litigation but that he would continue to monitor his conduct.

[6] On 12 February 2012 Mr Skyring was advised by the first respondent, a registrar of QCAT, that his application for a review the decision of the Legal Services Commissioner had been rejected, pursuant to s 35(3) of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld), on the basis that he had been declared a vexatious litigant pursuant to the *Vexatious Litigants Act* 1981 (Qld). He was also informed that, pursuant to s 16 of the *Vexatious Proceedings Act* 2005 (Qld), he was a person who was on the register of vexatious litigants and, due to the requirements of s 10 of the Act, he could not institute proceedings without leave of the Supreme Court.

---

2 *Koteska v Phillips; Koteska v Commissioner of Police* [2011] QCA 266.

[7] Mr Skyring filed an application with QCAT for an internal review of that decision on 20 February 2012. On 29 February 2012 his application for review was rejected by the second respondent, a senior member of QCAT.

This application

[8] Mr Skyring seeks leave, pursuant to s 11 of the *Vexatious Proceedings Act* 2005, to institute a proceeding. The proceeding that he wishes to institute is a judicial review pursuant to the *Judicial Review Act* 1991 (Qld) in relation to a decision of the Legal Services Commissioner.

The *Vexatious Proceedings Act* 2005 (Qld)

[9] There is no doubt that Mr Skyring is a person who is on the register of vexatious litigants.

[10] Section 11 of the Act outlines the procedure Mr Skyring must adopt in relation to this application for leave to institute proceedings and the section specifies in some detail the material which must be filed to support the application:

> "**11 Application for leave to institute a proceeding**
>
> (1) This section applies to a person (the applicant) who is—
>
> (a) subject to a vexatious proceedings order prohibiting the person from instituting proceedings, or proceedings of a particular type, in Queensland; or
>
> (b) acting in concert with another person who is subject to an order mentioned in paragraph (a).
>
> (2) The applicant may apply to the Court for leave to institute a proceeding that is subject to the order.
>
> (3) The applicant must file an affidavit with the application that—
>
> (a) lists all occasions on which the applicant has applied for leave under—
>
> (i) this section; or
>
> (ii) before the commencement of this section, the Vexatious Litigants Act 1981, section 8 or 9; and
>
> (b) lists all other proceedings the applicant has instituted in Australia, including proceedings instituted before the commencement of this section; and
>
> (c) discloses all facts material to the application, whether supporting or adverse to the application, that are known to the applicant.
>
> (4) The applicant must not serve a copy of the application or affidavit on any person unless—
>
> (a) an order is made under section 13(1)(a); and
>
> (b) the copy is served in accordance with the order.
>
> (5) The Court may dispose of the application by—
>
> (a) dismissing the application under section 12; or

(b) granting the application under section 13.

(6) The applicant may not appeal from a decision disposing of the application.

[11] Mr Skyring has filed an affidavit in support as required by s 11 of the Act and states that he has complied with the requirements of the section. However, he has made it quite clear that he is abiding by the requirements of the Act "**under extreme protest**" [original emphasis]. He states that "The **Registry is YET AGAIN seeking to enforce on me, QUITE WRONGLY, the requirements of a judgment and order which is ultimately founded on a massive miscarriage of process"** [original emphasis]. He also states that the "the stance adopted by the Registry is ultimately founded on **PRESUMPTION that the legislation invoked is, in fact and in law, 'constitutionally valid'**" [original emphasis]. He states he 'vehemently disputes' the accuracy of the presumption.

[12] Mr Skyring also disputes that he is a vexatious litigant and says he was "**PURPORTEDLY 'declared' to be a vexatious litigant"** [original emphasis] in this Court in 1995, in the HCA in 1992 and the FCA in 1999."

[13] Mr Skyring is required to list all the occasions that he has applied for leave since he was declared a vexatious litigant. He states he has only made one application for leave since the 2005 Act commenced and that was in relation to a conviction in the Brisbane Magistrates Court in March 2010. He then lists all his applications for leave prior to the commencement of that Act in an Exhibit to his Affidavit[3] which sets out the following applications:

In Queensland Courts from 1995 until 2005

1995 appeal to the Queensland Court of Appeal;
1997 application to have 1995 declaration set aside;
2001 an Election Petition re the 2001 State General Election;
2004 an Election Petition re the 2004 State General Election.

In the Courts of the Commonwealth from 1992:

1992 an application to the Federal Court of Australia, made in March 1992 to have bankruptcy proceedings instituted by the ATO annulled on the basis of his 'legal tender' argument;
1993 an appeal of the decision to the High Court ;
1996 an application to the High Court for a prerogative writ to have the Queensland Court of Appeal judgment upholding a 1995 declaration that Mr Skyring was a "vexatious litigant" quashed;
1997 an application to the Federal Court challenging the legality of the bankruptcy proceedings instituted by ANZ Bank in late 1996;
1998 application to the Federal Court for a Judicial Review of the Australian Electoral Commissioner's decision to allow the 1998 Federal General Election to proceed when they had not satisfied the 'quantum of monetary value' requirements;
1999 an ex parte application to the High Court for certiorari to quash that judgment;

---

3 Exhibit AGS-2 to the affidavit of Alan George Skyring, sworn 20 March 2012.

1999 an appeal to the Full Court of the Federal Court of a decision declaring Mr Skyring "globally" a "vexatious litigant" brought by the Registrar of the Qld District Registry in March 1999;

2000 an application to the High Court for Leave to appeal a judgment made in July 2000;

2004 an application to have the Court appointed Trustees having carriage of his affairs removed from office. A further application to the High Court to have that judgment set aside *ex debito justitiae*;

2008 an application to the Federal Court against the judgment on Appeal against the Commissioner of Taxation of the Commonwealth of Australia;

2009 an application to the HCA under s 40 of the *Judiciary Act* 1903 to have proceedings before the Magistrates Court removed to the High Court to determined the 'legal tender' question.

[14] Mr Skyring sets out in his affidavits the basis for his application for leave to institute proceedings. Mr Skyring argues that the basis upon which he continues to be regarded as a vexatious litigant in all courts in this State arises from a clerical error made in the Registry of the Court of Appeal. He argues that the settled order bore no relationship at all to what transpired in the hearing before the Court and that instead of the outcome being recorded as 'appeal upheld' it was mistakenly recorded as 'appeal dismissed'.

[15] Mr Skyring also argues:

> "5. My **claims**, and the action sought based thereon, **are as well for the Queen (being Her Majesty Queen Elizabeth II of the House of Windsor) as for myself,** and are made with a view to facilitating remedy of long-standing defects in respect of the manner in which the *Affairs of State* of both the State of Queensland and the Commonwealth of Australia generally, but the political, financial and legal aspects thereof in particular, are conducted, it having now been surely demonstrated 'beyond reasonable doubt' – by the turn of events in all proceedings to date involving Courts of the Commonwealth and the State of Queensland in both my own endeavours and also those of others – that no other approach is either appropriate or tenable in the extraordinary circumstances now prevailing, to adjudicate in the manner they rightly deserve, the matters of major social moment raised above"[4] [original emphasis].

[16] In his affidavit sworn 19 March 2012 Mr Skyring sets out the basis for his application to QCAT as follows:

> "8. In the face of this documentation then, which, when taken as a whole, surely provides 'proof beyond reasonable doubt' that not only has the principal matter which I sought to have 'definitively determined' *via* the action which brought me into the legal system in this country at first instance in 1983 - *i.e.* **what form of 'tender of money' constitutes a legal tender of money 'in hard constitutional terms'**- in this nation - **not only NOT BEEN SO DETERMINED to this very day** by the ONLY Court in this nation State of Australia which has the necessary jurisdiction to BE ABLE

[4] Affidavit of Alan George Skyring sworn 20 March 2012, para 5.

> to make such a determination LEGALLY, *viz*. the High Court of Australia, **but also ALL endeavours by others to 'deter' me** from my very single minded approach aimed at obtaining just such a judgment from that Court - by having me 'formally declared at law' to be a 'vexatious litigant' -**MUST NOW also be regarded as having 'failed utterly' in that, while such declarations were indeed made at first instance,** on applications bought ultimately at the behest of those having a 'vested interest' in NOT having such a socially vital matter 'definitively determined' at Law by a properly constituted Court empowered to do so, when those judgments were subsequently challenged by myself on appeal, **as the documentation exhibited to this affidavit clearly shows, those judgments at first instance CANNOT be fairly said to have 'stood up' to close scrutiny in that process, and therefore were clearly made spuriously at first instance.**
>
> 9. In such a situation then, the approach which has long been adopted by the Registry of this Court of requiring me to 'obtain leave of the Court' before I commence ANY action before it, **IS NOW AND ALWAYS HAS BEEN A MASSIVE PERVERSION OF THE COURSE OF JUSTICE and therefore CAN NOW NO LONGER BE TOLERATED.** In this instance then, ANY attempt to try to again enforce such a stance will be regarded as highly inappropriate and will be responded to accordingly" [original emphasis].

[17] Section 12 of the Act then sets out the criteria the court must take into account in determining whether leave to institute a proceeding is appropriate:

> **"12 Dismissing application for leave**
>
> (1) The Court must dismiss an application made under section 11 for leave to institute a proceeding if it considers—
>
> (a) the affidavit does not substantially comply with section 11(3); or
>
> (b) the proceeding is a vexatious proceeding.
>
> (2) The application may be dismissed even if the applicant does not appear at the hearing of the application".

[18] I accept that Mr Skyring has attempted to comply with the requirements of s 11. Accordingly, the real issue is whether the proceeding that he wishes to institute – that is a review of the decision of the Legal Services Commissioner – is a vexatious proceeding.

Is the application to QCAT a vexatious proceeding?

[19] The term 'Vexatious proceeding' is defined in the Schedule of the *Vexatious Proceedings Act* 2005 as follows:

> **"vexatious proceeding includes—**
>
> (a) a proceeding that is an abuse of the process of a court or tribunal; and
>
> b) a proceeding instituted to harass or annoy, to cause delay or detriment, or for another wrongful purpose; and
>
> (c) a proceeding instituted or pursued without reasonable ground; and

(d) a proceeding conducted in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose."

[20] Accordingly, I must determine whether the proceeding Mr Skyring wishes to institute in QCAT, seeking a review of the Legal Services Commissioner's decision, is: an abuse of process; or has been instituted to harass and annoy; or for another unlawful purpose; or is a proceeding instituted without reasonable ground.

[21] It would seem clear that the decision made by the Legal Services Commissioner was that he was taking no further action against Mr Skyring in relation to the past assistance he had provided to Ms Koteska in her litigation. Mr Skyring was also advised that his conduct would be subject to future monitoring to ensure that he was not inappropriately providing legal assistance to litigants. In his application seeking a review of that decision Mr Skyring makes the following allegations:

- The decision was a 'massive and highly improper use of powers of the state' and amounted to a 'conspiracy' to harass him and intimidate him from pursuing his recourse to proper legal means;
- He was prevented from pursuing matters in his own right and his own case and had been 'utterly thwarted' from 'pursuing to their rightful and proper conclusion, legally:
- The entire judicial system of Queensland should be exposed for 'what they really are' and should be stopped;
- The Attorney-General of Queensland should be directed to intervene in the special leave proceedings in the High Court with respect to the *Koteska* litigation as the application for special leave has been filed in the High Court Registry but not as yet accepted as there is no lawyer of 'appropriate standing' to have carriage of the appeal. The Attorney-General of Queensland, however, has the necessary standing.
- Compensation is sought for the 'enormous damage' done to himself and Ms Koteska personally due to the 'massive miscarriages of process' which precipitated the Appeals to QCA actually brought in Ms Koteska's case and the like appeal which he was unable to 'get up' in his own case "for reasons well beyond my control which actions have now precipitated this present complaint brought by myself."

[22] In the recent Court of Appeal decision of *Fung v Tam & Anor*[5] the relevant principles in relation to vexatious proceedings were examined and the Court endorsed the approach adopted by the Judge at first instance who had relied upon the principles identified by Fitzgerald P in *Re Cameron*[6] as follows:

"[38] As to what constitutes vexatious legal proceedings, this Court has adopted a 'broad test' as expressed by Fitzgerald P in *Re*

5 [2012] QCA 10.
6 [1996] 2 Qd R 218.

> *Cameron*, which was decided in relation to the *Vexatious Litigants Act 1981* (Qld). In that decision, Fitzgerald P identified the following as factors which are relevant to the determination of whether proceedings are vexatious: (a) the legitimacy or otherwise of the motives of the person against whom the order is sought, (b) the existence or lack of reasonable grounds for the claims sought to be made, (c) repetition of similar allegations or arguments to those which have already been rejected, (d) compliance with or disregard of the Court's practices, procedures and rulings, (e) persistent attempts to use the Court's process to circumvent its decisions or other abuse of process, (f) the wastage of public resources and funds, and (g) the harassment of those who are the subject of the litigation which lacks reasonable basis."[7]

[23] An examination of those factors is clearly necessary to determine whether the proceedings Mr Skyring wishes to institute are vexatious. There is no doubt that the Legal Service Commissioner was carrying out the functions he is required to perform pursuant to the *Legal Profession Act* 2000 (Qld). The monitoring of legal services by the Legal Service Commissioner is obviously within the ambit of his functions. Accordingly notice to Mr Skyring that he was required to comply with the law is entirely appropriate. It would seem to me that any argument that the decisions made by the Commissioner in this regard was beyond his power or was inappropriately exercised is doomed to fail. Similarly, an application by Mr Skyring for QCAT to review the Commissioner's decision to take no action against him is clearly misconceived. The Commissioner was obviously carrying out his statutory functions. I consider that the application he seeks to institute before QCAT is a proceeding that he is seeking to institute without reasonable grounds.

[24] Furthermore the relief he seeks from QCAT by way of an order for compensation is also misconceived and without any proper foundation, as is his application for QCAT to require the Attorney-General to intervene in High Court proceedings. I consider that the proceedings Mr Skyring wishes to institute are brought for an improper purpose namely he seeks simply to avail himself of an opportunity to once again pursue his views about the Courts and the judicial system as a whole.

[25] I also consider that the application for review is an abuse of process. A perusal of Mr Skyring's reasons for his application clearly reveals that his motivation is not to have the decision of the Commissioner changed. Rather, it reveals that he is simply availing himself of yet another opportunity to 'rehash' arguments he has previously propounded unsuccessfully to a number of Courts and Tribunals.

[26] From what I can glean from Mr Skyring's obscure affidavit material in support of his application for leave he wishes to have the decision of the Legal Services Commissioner reviewed so that he can argue three issues: first, that the original decision declaring him a vexatious litigant was wrongly decided; second, that the Courts are not constitutionally valid; and third, that the current method legal tender in this country is not valid. Those matters are matters which, as his affidavit material indicates, have been argued unsuccessfully and appealed unsuccessfully on numerous occasions. Mr Skyring's declaration in accordance with s 11(3), in relation to applications he has previously made, clearly reveals those matters.

---

7 *Fung v Tam & Anor* [2012] QCA 10.

[27] A further difficulty with the affidavit material filed by Mr Skyring is that it is difficult to fully understand the points he wishes to make. His oral argument presented in Court on the day that his current application was heard was also difficult, if not impossible, to follow. In *Conde v Attorney General for the State of Queensland*[8] Fraser JA made some relevant observations in relation to a similar application for leave by Mr Conde;

> "The Court is used to applying the Court's procedural rules in a flexible way in order to meet the particular disadvantages which are suffered by some unrepresented litigants. However, making every allowance for the fact that Mr Conde is unrepresented and that English is not his first language, the form of the Notice of Appeal and Mr Conde's arguments make it plain that he would conduct his proposed appeal in a way such as would harass, annoy and cause delay and beyond the bounds of what might reasonably be expected from a litigant who lacks legal skills or training. More importantly, for the reasons given above, the inference is inevitable that there is no reasonable ground for Mr Conde's proposed appeal. It follows that the proposed appeal is a vexatious proceeding. The Court is therefore obliged by s 12(1)(b) to refuse Mr Conde's application for leave."

[28] The arguments Mr Skyring seeks to present are not logical, will be pursued with great vehemence and will occupy significant periods of time.

[29] Furthermore having examined the 1995 decision of the Court of Appeal[9] and the Order of White J (as her Honour then was), Mr Skyring's argument – that that the Court of Appeal decision in 1995 confirming his status as a vexatious litigant was an error which bore no relationship to the hearing – is simply wrong. The briefest examination of the relevant material establishes that fact. Furthermore he has sought to agitate that issue elsewhere on a number of occasions and failed.

[30] Mr Skyring is also seeking to reargue his 'legal tender' argument which has been rejected by this court on a number of occasions. In this regard I note the decision of Muir J (as his Honour then was) in *Skyring v Electoral Commissioner & Anor*[10]:

> "[7] It is an abuse of process for a litigant to seek to litigate a matter which has already been litigated and decided adversely to him on a final basis.
>
> [8] Mr Skyring has pursued his currency argument, unsuccessfully, in many courts on many occasions. Some of these proceedings are listed in the reasons for judgment of Davies JA in *Skyring v Australia and New Zealand Banking Group Ltd*. Mr Skyring sought to differentiate the present currency argument from that previously advanced by making it referable to section 36(2) of the *Reserve Bank Act* 1959, rather than section 36(1), on which he had relied in other proceedings. However, the substance of his argument remains unaltered and, in any event, the section 36(2) "refinement" has been raised unsuccessfully by Mr Skyring in other proceedings.

---

8 [2010] QCA 66, p7.
9 [1995] QSC 55.
10 [2001] QSC 80, delivered 17 May 2001.

> [9] As mentioned above, the currency argument is a necessary element of the first ground Mr Skyring wishes to raise in the petition. It is therefore plain that he cannot be given leave to institute proceedings as long as the currency issue is a matter for determination. That conclusion is sufficient to dispose of the application, there being no suggestion that Mr Skyring is prepared to abandon the currency issue."

[31] I cannot discern how the 'legal tender' argument which Mr Skyring seeks, once again, to agitate has a rational connection to the decision he seeks to have reviewed.

[32] I consider therefore that the proceedings Mr Skyring wishes to institute are indeed vexatious proceedings as defined in the *Vexatious Proceedings Act* 2005

[33] Mr Skyring's application for leave pursuant to s 11 is refused.