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JUDGMENT No. 391 / 84

IN THE FEDERAL COURT OF AUSTRALIA)
QUEENSLAND DISTRICT REGISTRY)
GENERAL DIVISION)

QLD G105 of 1984

BETWEEN:

ALAN GEORGE SKYRING

Applicant

AND:

TELECOM AUSTRALIA

Respondent

O R D E R

JUDGE MAKING ORDER:

SPENDER J.

DATE OF ORDER:

18 OCTOBER 1984

WHERE MADE:

BRISBANE

THE COURT ORDERS THAT:

1. Application G105 of 1984 be refused.
2. Applicant pay Respondent's costs to be taxed.



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SPENDER J.

18 OCTOBER 1984

EXTEMPORE REASONS FOR JUDGMENT

I assume for the purpose of this application that the communication which is Exhibit "A" to Mr Skyring's affidavit, filed 9 October 1984, which is a letter dated 26 September 1984, (which is the date upon which this application was filed), and/or the conduct by the person responsible for that letter constitutes a decision to which the Administrative Decisions (Judicial Review) Act 1977 ("the Act") applies.

I have listened to the confident submissions made by Mr Skyring in relation to this matter, and shortly put, none of the grounds of his application are made out. It is not suggested by him that there is anything biased or mala fide in the dealings by the officers of Telecom Australia. Essentially, what he frankly asserts to be the reason for these various applications is his

desire to challenge the money system, essentially on the grounds of claimed infringement of s.115 of the Commonwealth Constitution.

I refer to the judgment of McPherson J. in the Queensland Supreme Court in relation to an income tax appeal between Mr Skyring and the Commissioner of Taxation (unreported 19 August 1983). I adopt expressly the observations which appear at p.3 of his Honour's judgment -

"... some reference was made to s.115 of the Constitution and to the undesirability of the printing, issue and circulation of paper money in which the taxpayer said he might ultimately be obliged to pay the assessment once this appeal failed, if it did. The question whether or not it is desirable to return to the gold standard, to cease issuing paper money or to acknowledge any of the various forms of credit, financing and banking of the kind that were referred to in argument before me is, of course, a matter entirely for Parliament and not for this Court. In this Court the matter of the law governing discharge of obligations is determined by the Currency Act 1965, s.16 of which prescribes what is legal tender in Australia. That Act binds me. It is certainly in no way affected by s.115 of the Constitution which creates simply a prohibition against the issuing of currency by State governments. Accordingly, no problem will arise in relation to a tender by the taxpayer of a sufficient number of notes and coins constituting legal tender within s.16 of the Currency Act for the purpose of discharging his liability under the assessment which has issued. I am, of course, not concerned in any event with the means by which the assessment is to be discharged but only with the question of whether it was properly made. However, I have mentioned the argument on the currency question simply because it was one that was raised before me."

The Act binds me equally as it does McPherson J. It is

certainly in no way affected by s.115 of the Constitution, which creates simply a prohibition against the issuing of currency by State governments.

In my view, the circumstances of s.78B notices under the Judiciary Act 1903 do not apply here, and what has in fact occurred is that the taxpayer, or another person, his wife, has tendered a sufficient number of notes or coins constituting legal tender within s.16 of the Currency Act 1965 to enable the telephone service not to be disconnected.

In this particular case, even assuming that a relevant decision was made, no grounds exist upon which that decision can properly be challenged under the Act in this Court.

The same broad complaint, however, was addressed by Mr Skyring to the Full Court of the Federal Court in the appeal from the judgment of McPherson J., and I have been referred to the judgment of Sir Reginald Smithers in respect of that matter. Its relevance to this present application is self-evident.

It appears from the affidavit of Mr Fitzsimon that the telephone account in question has been paid. In truth the submissions before me were directed to the raising of the question of the currency system and the implications, if any, of s.115 of the Constitution on that matter. For my own part, the position is as was indicated in the judgment of McPherson J., and no reviewable error appears in respect of application number Qld G105 of 1984.

In the circumstances, I order that the application be refused with costs to be taxed.

I certify that this and the 3
pages are a true and correct
copy of the judgment herein.
Mr Justice Spence

Keiff
Associate

Dated 26 11 84.