

SUPREME COURT OF QUEENSLAND

CITATION: *Brisbane City Council v Russell Gordon Haig Mathews*
[2006] QSC 025

PARTIES: **BRISBANE CITY COUNCIL**
(applicant)
v
RUSSELL GORDON HAIG MATHEWS
(respondent)

FILE NO: BS 729/06

DIVISION: Trial Division

PROCEEDING: Application

COURT: Supreme Court

DELIVERED EX
TEMPORE ON: 9 February 2006

DELIVERED AT: Brisbane

HEARING DATE: 9 February 2006

JUDGE: Fryberg J

ORDER: **1. It is declared that the respondent is a person who has frequently instituted and conducted vexatious proceedings in Australia.**
2. It is ordered that proceedings numbered BD10350 of 2005 be stayed as against the second, seventh, eighth, sixteenth, seventeenth and twentieth defendants therein.
3. It is ordered that the respondent be prohibited from instituting any proceedings in any Court of the State of Queensland against the Brisbane City Council and/or any employee of the Brisbane City Council.
4. Respondent to pay the applicant's costs of the application to be assessed.

CATCHWORDS: PROCEDURE – MISCELLANEOUS PROCEDURAL MATTERS – DECLARATIONS – WHO MAY APPLY
Applicant seeks declaration under *Vexatious Proceedings Act 2005* (Qld) that respondent is a person who frequently instituted vexatious proceedings in Australia – whether leave should be granted to institute proceedings – in which parties' favour the court may make an order

	PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND – JUDGMENTS AND ORDERS – OTHER MATTERS - applicant seeks order under <i>Vexatious Proceedings Act 2005</i> (Qld) that respondent be prohibited from instituting further proceedings against it and its employees – whether proceedings instituted by the respondent were vexatious	1
	<i>Vexatious Proceedings Act 2005</i> (Qld) ss 6(1), (2) & (5)	10
	<i>Re Cameron</i> [1996] 2 Qd R 218 considered	
COUNSEL:	J Peden for the applicant The respondent appeared on his own behalf	
SOLICITORS:	Brisbane City Legal Practice for the applicant The respondent appeared on his own behalf	
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SUPREME COURT OF QUEENSLAND
CIVIL JURISDICTION
FRYBERG J

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[2006] QSC 025

No BS729 of 2006

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BRISBANE CITY COUNCIL

Applicant

and

RUSSELL GORDON HAIG MATHEWS

Respondent

BRISBANE

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..DATE 09/02/2006

ORDER

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HIS HONOUR: This is an application by the Brisbane City Council seeking first a declaration that the respondent, Mr Mathews, is a person who has frequently instituted or conducted vexatious proceedings in Australia; second, an order that certain proceedings pending in this Court between the respondent and 25 or so other defendants be stayed permanently as against the applicant and five of its employees who are also defendants; and third, an order that the respondent be prohibited from instituting any proceedings in Queensland against the applicant or any of its employees. Counsel for the applicant indicated during the course of argument that the last of these orders was intended to refer only to proceedings instituted in the Courts of the State of Queensland and was not intended to encompass proceedings instituted in Federal Courts.

The relevant provision of the Vexatious Proceedings Act 2005 is section 6 which provides in subsections 1, 2 and 5 as follows:

"(1) This section applies if the Court is satisfied that a person is -

(a) a person who has frequently instituted or conducted vexatious proceedings in Australia; or

(b) a person who, acting in concert with a person who is subject to a vexatious proceedings order or who is mentioned in paragraph (a), has instituted or conducted a vexatious proceedings in Australia.

(2) The Court may make any or all of the following orders -

(a) an order staying all or part of any proceeding in Queensland already instituted by the person;

(b) an order prohibiting the person from instituting proceedings, or proceedings of a particular type, in Queensland;

(c) any other order the Court considers appropriate in relation to the person.

(5) For subsection (1), the Court may have regard to -

(a) proceedings instituted or conducted in any Australian court or tribunal, including proceedings instituted or conducted before the commencement of this section; and

(b) orders made by any Australian court or tribunal, including orders made before the commencement of this section."

In support of the application, Mr Peden of counsel submitted that the appropriate principle is to be found in the decision of the President in *re Cameron* [1996] 2 Queensland Reports 218 at page 220:

"It is also necessary to decide what makes legal proceedings vexatious. Although there are sometimes statutory indications, the broad test potentially concerns such factors as the legitimacy or otherwise of the motives of the person against whom the order is sought, the existence or lack of reasonable grounds for the claims sought to be made, repetition of similar allegations or arguments to those which have already been rejected, compliance with or disregard of the Court's practices, procedures and rulings, persistent attempts to use the Court's process to circumvent its decisions or other abuse of process, the wastage of public resources and funds, and the harassment of those who are the subject of the litigation which lacks reasonable basis: see, for example *Attorney-General v. Wentworth* (1988) 14 NSWLR 481; *Jones v. Skyring* (1992) 66 ALJR 810; *Jones v. Cusack* (1992) 66 ALJR 815 and *Attorney-General (NSW) v. West* (NSW Common Law Division No. 16208 of 1992, 19 November 2002, unreported)."

Mr Peden submitted that the evidence in the present case demonstrated that Mr Mathews, the respondent, is a person who has frequently instituted and conducted vexatious proceedings in Australia. There is no doubt that Mr Mathews has instituted a number of proceedings. What is in dispute is whether they were vexatious.

In support of the applicant's contention, reliance was placed on an affidavit of Ms Ryan and on Exhibit 1, a set of certified copies of reasons for judgment in the cases identified by Ms Ryan.

In a helpful schedule to his submissions Mr Peden has identified numerous features of the various cases which it is submitted render the proceedings vexatious. I have approached the case on the basis that I should consider whether in fact the proceedings were vexatious and not simply rely upon statements by the judges hearing the proceedings to that effect. I have also permitted Mr Mathews to go behind the reasons for judgment and to explain to the Court why, in his view, the proceedings were not vexatious.

It has to be said that much of what Mr Mathews has told me today is unsupported by evidence. However, it seems to me that even if Mr Mathews were to put in further evidence it would not substantially advance his case. He has been permitted to tender without objection a number of the documents upon which he relies and it seems to me that he is in no way disadvantaged in the case which he seeks to advance.

I should add that, although Mr Mathews was not legally represented before me, he is now a law graduate although not formally admitted. I should also interpolate what is I think fairly well known by all who have had to deal with Mr Mathews, that he does suffer from a degree of disability due to a head injury suffered many years ago. That disability impedes his capacity to concentrate (as he explained to me) after a

prolonged period of time and particularly in afternoons. I have, therefore, accorded him priority and allowed the case to proceed first in today's list.

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To return to section 6, the matters set out in the various reasons for judgment which record the way Mr Mathews has conducted the litigation, seem to me to accurately fulfil the description vexatious. In saying that, I take into account the explanations which Mr Mathews has provided to me today.

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His misfortune seems to have begun when proceedings against him were commenced in the Human Rights and Equal Opportunities Commission for breaches of the Sex Discrimination Act of the Commonwealth. He was unsuccessful in those proceedings and subsequently launched a number of proceedings in the Federal Court himself. Those are the ones which seem to give rise to the appearance and indeed the reality of vexation.

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More recently, Mr Mathews has turned his attention to the 25 people named in the current action. The Council is sued on the basis that it has wrongfully trespassed on his land claiming to be entering to eliminate vermin and has committed nuisance against him by the construction some short distance from his home of a roundabout. Council employees are sued for their conduct as such.

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The claims are joined with other claims against relatives of Mr Mathews on the basis which, in my view, is flimsy and without substance, that the relatives who are sued for deceit,

negligent misrepresentation and breach of fiduciary duty, have also encouraged the Council in its conduct.

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An earlier action in which the Council was joined in proceedings against the relatives for substantially the same relief, was brought before the Court last year. White J ordered that the Council be removed from that action. She also gave Mr Mathews leave to replead the case against his relatives but he did not do so within the time allowed and in consequence the action was subsequently struck out. He has appealed against that decision.

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The features of the proceedings to which I have been referred generally are in my view accurately summarised by Mr Peden. There is a joinder of multiple defendants without any basis for joinder; there are allegations of bias against judges which are completely unsubstantiated (and I should add that the allegations made orally before me today included allegations of bias against the lady who is now the Chief Judge of the District Court and also against the lady who is the Governor); there is the making of hopeless claims; there are unparticularised allegations of deceit and fraud; there are exaggerated damages claims; there is non-compliance with Court proceedings and in particular a failure to deliver complying pleadings; and finally, there is bringing of claims in respect of which it is not possible to demonstrate the suffering of any loss.

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It might be thought that this is in some way related to Mr Mathews' disability, but as he himself asserts, that is not the case. He has placed before the Court evidence from a psychologist indicating that he is quite capable of managing his own affairs.

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I am in short satisfied that Mr Mathews is a person who has frequently instituted and conducted vexatious proceedings in Australia.

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The application being made by a person nominated in section 5(i)(d) of the Act has the result that leave of the Court is necessary for the institution of the proceedings. No doubt that provision is designed to prevent malicious applications or self-serving applications for relief under the Act. In the present case it seems to me that the leave should be granted. There is no suggestion that the application is a device to avoid the merits of the proceeding against the applicant from being litigated and on the contrary I am satisfied that it is designed to provide a measure of protection which is appropriate in all the circumstances. I therefore propose to grant the leave sought.

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The section provides power to make varying types of orders. I accept the submission made by Mr Peden that it is appropriate to limit the relief sought under section 6(2)(a) to the proceedings instituted against the Council and its named employees and also to limit the general relief sought under

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paragraph (b) to proceedings against the Council and any of its employees.

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In view of the applicant's desire to avoid any possibility of constitutional challenge I am willing to limit the ambit of the order to proceedings in Courts of the State of Queensland as sought by the applicant. The order of the Court will be:

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