

# SUPREME COURT OF QUEENSLAND

CITATION: *Simmons v Federal Minister for Defence & Anor* [2003] QSC 422

PARTIES: **GARY DAVID SIMMONS**  
(applicant)  
**v**  
**FEDERAL MINISTER FOR DEFENCE**  
(first respondent)  
**QUEENSLAND MINISTER FOR POLICE**  
(second respondent)

FILE NO: 9166/03

DIVISION: Trial Division

PROCEEDING: Application

DELIVERED ON: 4 November 2003

DELIVERED AT: Brisbane

HEARING DATE: 31 October 2003

JUDGE: Muir J

ORDER: **That the originating application filed 15 October 2003 be dismissed**

CATCHWORDS: PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND – PRACTICE UNDER RULES OF COURT – Chambers – where the applicant sought various forms of declaratory relief by originating application – where the relief sought was of abstract or hypothetical nature – whether in the circumstances the declarations sought are able to be made  
*Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564  
*Forster v Jododex Australia Pty Ltd* (1972) 127 CLR 421

COUNSEL: The applicant appeared in person  
MJF Burnett for the first respondent  
SL Moody for the second respondent

SOLICITORS: The applicant appeared in person  
Australian Government Solicitor for the first respondent  
CW Lohe Crown Solicitor for the second respondent

- [1] **Muir J:** By an originating application filed 15 October 2003 the applicant, Gary David Simmons seeks the following relief.  
“That, GARY DAVID SIMMONS can not be:

1. Denied Rights under International Covenant on Civil & Political Rights 1966 Part 1 Article 1 part II Article II (1)(2)(3) & United Nations Declaration of Human Rights 1948 – 1998.
  2. Denied the Rule of law both domestic & International.
  3. Subject to cruel unusual and inhuman punishment.
  4. Denied adequate legal representation.
  5. Denied the Right to obtain proper and adequate Medical Treatment.
  6. Denied adequate explanation why objects appear in my throat after a surgical operation during Defence Service 9 July 1965 – 5 November 1971.”
- [2] The application also seeks an order that the applicant “have leave to seek compensation from the Federal and Queensland Governments pursuant to Rule of Law.”
- [3] Both respondents seek to have the application dismissed on grounds that it discloses no cause of action, is frivolous and vexatious, amounts to an abuse of process and generally fails to comply with the Uniform Civil Procedure Rules.
- [4] I listened carefully to the applicant’s oral evidence and it is plain that a number of matters are causing him substantial concern. He brings this application in order to address those concerns.
- [5] A fundamental problem with the originating application is that the declaratory relief sought is of an abstract or hypothetical nature. There is no definition of the factual framework against which the declarations are sought so as to make it possible for a Court to determine whether or not the making of a declaration is merited. In these circumstances it is impossible to know whether the making of a declaration would have any utility and to be satisfied that it is not addressing a merely hypothetical problem. Courts do not make declarations in these circumstances<sup>1</sup>.
- [6] The foregoing is sufficient to dispose of the originating application but I make the following further observations for the applicant’s benefit. With regard to paragraph 1 of the applicant’s claims for relief it seems to me that the submissions of Ms Moody to the effect that the charters or treaties referred to in that paragraph do not give rise to rights enforceable under the law of Queensland are correct.
- [7] I accept also the correctness of Mr Burnett’s submissions on behalf of the first respondent that the basis upon which the applicant claims relief is not sufficiently identified to enable the first respondent to understand the precise nature of his claims and the circumstances in which they are said to arise. For example, it is not plain whether the matters complained of in paragraphs 1 to 6 inclusive are in the past or are current. Unless that is properly identified one cannot tell whether or not limitation defences apply or whether the matters the subject of the claims have already been the subject of prior, and final, determination by a tribunal.
- [8] For these reasons I dismiss the originating application of 15 October 2003. The second respondent filed an application dated 30 October 2003 in which it sought an

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<sup>1</sup> See eg. *Forster v Jododex Australia Pty Ltd* (1972) 127 CLR 421 at 437, 438 and *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 at 582.

order that the originating application be dismissed and various other consequential orders including an order for costs. I will hear further submissions on the question of costs when these reasons are published.