

SUPREME COURT OF QUEENSLAND

CITATION: *Sharples v Chairperson, Crime and Misconduct Commission & Anor* [2004] QCA 246

PARTIES: **TERRY PATRICK SHARPLES**
(applicant/applicant)
v
**CHAIRPERSON, CRIME AND MISCONDUCT
COMMISSION BRENDAN BUTLER SC**
(first respondent/first respondent)
CRIME AND MISCONDUCT COMMISSION (QLD)
(second respondent/second respondent)

FILE NO/S: Appeal No 4544 of 2004
SC No 2696 of 2004

DIVISION: Court of Appeal

PROCEEDING: Application for Leave / Judicial Review

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED EX TEMPORE ON: 21 July 2004

DELIVERED AT: Brisbane

HEARING DATE: 21 July 2004

JUDGES: McMurdo P, Williams JA and Mullins J
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **Application for leave to appeal dismissed with costs**

CATCHWORDS: ADMINISTRATIVE LAW – JUDICIAL REVIEW
LEGISLATION – GROUNDS FOR REVIEW OF
DECISION – BREACH OF RULES OF NATURAL
JUSTICE – WHAT CONSTITUTES – whether there was
bias by predetermination in respect of summary dismissal of
judicial review application – whether applicant sought review
on the merits

COUNSEL: Applicant appeared on his own behalf
A J Rafter SC for the respondents

SOLICITORS: Applicant appeared on his own behalf
Official Solicitor Crime and Misconduct Commission for the
respondents

MULLINS J: The applicant applies for leave to appeal against the summary dismissal by the Chief Justice of the applicant's amended application under the Judicial Review Act 1991 ("the Act") which was filed on 27 April 2004. The applicant also applies for leave to appeal against the orders made at the same time by the Chief Justice dismissing the applicant's application under section 49 of the Act for an order that the second respondent indemnify the applicant in relation to the costs of his review application and ordering that the applicant pay the costs of the review application.

The review was sought in respect of three decisions of the first and/or second respondents that were respectively made in respect of three complaints that had been made by the applicant to the second respondent. A summary of those complaints and the respondents' response to them are set out in the reasons for the Chief Justice. The respondents' response was, in effect, not to take any action on the complaints.

The Chief Justice concluded on the basis of the material and submissions before him that the applicant was seeking a review of the merits of the respondents' decisions and that no reasonable basis for the review application was disclosed. Because the Chief Justice considered the application not to be

reasonably arguable, he refused to make the order sought by the applicant under section 49 of the Act and also ordered that the applicant pay the costs of the respondents of the review application.

The draft notice of appeal included in the applicant's affidavit for the purpose of this application raises a number of grounds of appeal including:

1. Actual bias on the part of the Chief Justice in hearing the application which is particularised as pre-judgment and arbitrariness and injustice. On the hearing of the applicant expanded this to include reasonable apprehension of bias;
2. It was not an appropriate matter for summary dismissal of the applicant;
3. That the Chief Justice erred in taking into account what are described by the applicant as irrelevant matters being the Court of Appeal's decision in the Criminal proceedings in relation to Ms Hanson and Mr Ettridge which the Chief Justice participated in and the Electoral Commissioner's decision of 4 December 1997 to register the Pauline Hanson One Nation Party;
4. That the Chief Justice erred in failing to take into account the effect of Ms Cheryl Leach's affidavit and the failure of the respondents to take into account the

supporting affidavits of Ms Shelbourne, Ms Senelbeck and Mr Leach before making the decisions and the evidence supporting the applicant's allegations against the respondents of bad faith.

There is also a ground of appeal that the Chief Justice erred in striking out the applicant's subpoena to Mr Goodwin that was done on the basis that the subpoena was a blatant fishing expedition. That ground of appeal, however, is not relevant to the leave application that is being considered at this time.

In relation to the allegation of bias, the applicant relies on the fact that the Chief Justice was a member of the Court of Appeal that allowed the appeals of Ms Hanson and Mr Ettridge against their convictions for dishonestly inducing the Electoral Commissioner on 4 December 1997 to register Pauline Hanson's One Nation as a political party and that decision was relied on by the respondents in their dismissal of the applicant's first complaint.

The applicant's first complaint to the second respondent was that Mr O'Shea, the former Electoral Commissioner, was made aware of the allegedly incorrect registration of Pauline Hanson's One Nation prior to the 1998 State Election and

failed to take action to de-register the party and refund electoral expenses directly to the candidates, despite the information provided to the Electoral Commissioner by Ms Leach.

The appellant was therefore agitating to the second respondent to investigate Mr O'Shea for official misconduct either in the sense that he had committed a criminal offence or a disciplinary breach providing for reasonable grounds for terminating Mr O'Shea's services, as a result of his decision not to act on Ms Leach's information in May 1998.

The response to the complaint by the respondents was:

"It would appear that Mr O'Shea formed the view that he had sufficient evidence to accept the application for registration on One Nation notwithstanding any information from Ms Leach. This view seems to be similar to that reached by the Court of Appeal in its decision relating to the prosecution of Hanson and Ettridge.

The court had before it evidence of a like nature and decided that the Crown could not establish that the application by Hanson and Ettridge for registration by One Nation was fraudulent.

In those circumstances, it is considered that it would not be possible to establish that the actions taken by Mr O'Shea constituted a criminal offence."

The use made by the respondents of the Court of Appeal decision was to provide support for the existence of evidence

on which Mr O'Shea acted to register the political party and not to substitute the Court of Appeal's decision for its investigation of the applicant's complaint.

The decision of the respondents made the point that Mr O'Shea had formed the view that he had sufficient evidence to accept the application for registration of the subject political party. In the context of the allegation by the applicant that Mr O'Shea had failed to act on the information provided Ms Leach in May 1998 to de-register the party at that stage, the respondents concluded that it would not be possible to establish that the actions taken by Mr O'Shea constituted a criminal offence.

It did not follow from the Chief Justice's participation in and reference to the Court of Appeal decision that he was disqualified in any way from embarking upon a consideration of the discrete issues raised by the review application. The transcript of the hearing before the Chief Justice shows that the Chief Justice had read the material in preparation for the hearing and gave the applicant full opportunity to develop his arguments.

There are no reasonable prospects of the applicant successfully appealing on the ground that the Chief Justice

was either biased or that there was a reasonable apprehension of bias on his part. The effect of the other grounds of appeal is to traverse the applicant's arguments that were advanced before the Chief Justice. The applicant seeks a different outcome than the decisions reached by the respondents in respect of his complaints.

I am of the same view as the Chief Justice that the applicant was in substance using his review application to seek a review of the merits of the decisions made by the respondents which is not the purpose of a review application. The material on this application does not disclose any ground of appeal in respect of which there is any real prospect of success in respect of the dismissal of the review application.

In light of the summary dismissal of the review application, there is no prospect for any successful appeal in respect of the costs orders made by the Chief Justice. I would therefore refuse the application for leave to appeal with costs.

THE PRESIDENT: The applicant has not shown any reason why this Court should grant the application for leave to appeal in this matter for the reasons given by Justice Mullins. I agree with the orders she proposes.

WILLIAMS JA: I agree with the reasons given by Justice Mullins and the order she proposes.

THE PRESIDENT: The application is dismissed with costs.
