SUPREME COURT OF QUEENSLAND

CITATION:	*Owen v Menzies & Ors* [2010] QCA 137
PARTIES:	**RON OWEN** (applicant/appellant) **v** **RICHELLE MENZIES** (first respondent/respondent) **TINA JOY COUTTS** (second respondent/respondent) **RHONDA BRUCE** (third respondent/respondent) **SUZANNE MARGARET TURNER** (fourth respondent/respondent) **WOMEN 2 WOMEN** (fifth respondent/respondent)
FILE NO/S:	Appeal No 13824 of 2009 Appeal No 13825 of 2009 SC No 10395 of 2008
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED EX TEMPORE ON:	8 June 2010
DELIVERED AT:	Brisbane
HEARING DATE:	8 June 2010
JUDGES:	McMurdo P and Holmes and Muir JJA Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**The appeals and the application to amend the Notices of Appeal be dismissed, with costs**
CATCHWORDS:	PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND – PLEADING – GENERALLY – appellant appealed against a decision of the Anti-Discrimination Tribunal – appellant sought to rely on large amount of material – primary judge ordered that specified documents be returned to the appellant and that his submissions be condensed – whether primary judge acted without power in removing the appellant's documents from the Court files – whether primary judge erred in "limiting the pleadings" of the appellant and by "not limiting the other parties'" pleadings

APPEAL AND NEW TRIAL – APPEAL - GENERAL PRINCIPLES – ADMISSION OF FRESH EVIDENCE – IN GENERAL – primary judge treated the appeal from the Tribunal as an appeal – whether primary judge should have heard the matter "de novo"

Anti-Discrimination Act 1991 (Qld), s 217 (Repealed)
Uniform Civil Procedure Rules 1999 (Qld), r 5, r 367

Adam P Brown Male Fashions Pty Ltd v Philip Morris Inc (1981) 148 CLR 170; [1981] HCA 39, cited
Aon Risk Services Australia Limited v Australian National University (2009) 239 CLR 175; [2009] HCA 27, cited
Hamilton v Oades (1989) 166 CLR 486; [1989] HCA 21, cited
Logicrose Ltd v Southend United Football Club (Unreported, Chancery Division, 5 February 1988), cited
Malaxetxebarria v State of Queensland [2007] QCA 132, cited
R v Pettigrew [1997] 1 Qd R 601; [1996] QCA 235, cited

COUNSEL: The applicant/appellant appeared on his own behalf
S J Hamlyn-Harris for the respondent

SOLICITORS: The applicant/appellant appeared on his own behalf
Caxton Legal Centre Inc for the respondent

MUIR JA: The appellant appealed against the decision of the Anti-Discrimination Tribunal constituted by Mr Rangiah, upholding a complaint by the first, second and third respondents of unlawful vilification on the grounds of sexuality, in contravention of s 124A(1) of the *Anti-Discrimination Act* 1991 (Qld) and ordering that he pay each of these respondents compensation (Appeal Number 10395 of 2008). He appealed also against an order of the Tribunal that he pay the costs of the successful complainants (Appeal Number 100 of 2009). The third respondent appealed against the decision of the Tribunal dismissing her complaint against the appellant of unlawful vilification (Appeal Number 10487 of 2009).

The three appeals were listed for hearing before the primary Judge on 10 November 2009. Under s 217 of the Act there is a right of appeal to the Supreme Court “on a question of law”. Any appeal from a decision of a judge of the trial division on such an appeal is to

this Court and is by way of a re-hearing on the evidence before the judge of the Trial Division: *Malaxetxebarria v State of Queensland* [2007] QCA 132 at para [41].

When the matter came on for hearing before the primary judge, the appellant sought to rely on an affidavit of approximately 1,000 pages, together with other material of about equal length. For example, a 95 page document was to be relied on in response to the respondents' argument. The primary judge observed of the material, "It is just that your appeal is an absolute mess. It is 2000 pages of argument, most of which is irrelevant, which I can't follow, which is just absolutely impossible".

She made the point that the matter had been listed for a day and that she could not "see how we can possibly work through the material you've just thrown at the Court in no real logical manner".

Her Honour said: "If you are going to have an effective appeal you are going to have to apply your mind to the grounds of appeal and to state succinctly what your arguments are because those documents you have put in serve no purpose other than to confuse."

Her Honour discussed with counsel and with the appellant the best way of proceeding. The appellant sought an adjournment to enable him to condense and order his material. That was initially opposed by counsel for the respondents, but her Honour intimated that a failure to grant an adjournment might constitute a denial of natural justice. Her Honour then made an order in Appeal 10395 of 2008, directing that: specified documents be returned to the appellant; the appellant's filed submissions not to exceed 12 pages and that he file a list of authorities by a certain date. Directions were also given in the other two matters with a view to ensuring that issues and relevant documents were appropriately identified.

The appellant appeals against the primary judge's orders. The grounds are over four pages long and include references to court decisions, quotations from such decisions and expressions of opinion as to the effect of such decisions. They are difficult to summarise.

The substance of the grounds in the Notice of Appeal in each of the three appeals to this Court appears to me to be as follows:

(a) the primary judge acted without power in removing the appellant's large affidavit and pleadings from the Court files;

(b) the primary judge erred in "limiting the pleadings" of the appellant and by "not limiting the other parties'" pleadings;

(c) the primary judge erred as the "pleadings" removed by her were properly filed and are "pleadings in the first instance". The provisions of the *Anti-Discrimination Act* 1991 (Qld), which require registration of the Tribunal's determinations in the Supreme Court, are invalid as they purport to invest the Tribunal, which is not a court, with judicial power; and

(d) and (e) the primary judge erred in treating the appeal from the Tribunal as an appeal and should have heard the matter "de novo" (presumably meaning that the primary judge should have heard the matter afresh and received new evidence).

The appellant also made application for leave to amend the notices of appeal. The application, filed on 6 April 2010, explained that the appellant only received duplicate copies of the orders at first instance after 5 January 2010 and that these orders departed in terms "from the original orders in the court room" and "were much different from the draft orders prepared by the respondents' solicitors." The amendments sought to be made to the notices of appeal were not identified.

There is no substance in any of the grounds of appeal. The appeal is against the exercise of discretions of a judge in interlocutory matters concerning practice and procedure. Appellate courts interfere with such decisions only in exceptional circumstances such as where the law has been misapplied or the decision is likely to lead to a miscarriage of justice. See *Adam P Brown Male Fashions Pty Ltd v Philip Morris Inc* (1981) 148 CLR

170 at 177 quoting with approval the observations of Jordan CJ in *Re Will of F B Gilbert (Dec'd)* (1946) 46 SR NSW 318 at 322-323.

Rule 367 of the *Uniform Civil Procedure Rules* 1999 (Qld) empowers the Court to make "any order or direction about the conduct of a proceeding it considers appropriate". Rule 367(3) provides that, without limiting sub-rule (1), the court may "limit the length of a written submission or affidavit". It may also limit: the time to be taken by the trial or hearing; the number of witnesses a party may call and the time taken in examining, cross-examining and re-examining a witness. Rule 367 plainly authorised the primary judge to make orders of the nature of those the subject of these appeals. Even in the absence of a rule such as Rule 367, the Court's "inherent power to control and supervise proceedings [which] includes the power to make appropriate action to prevent injustice" would have provided the primary judge with adequate power to make the orders. See *Hamilton v Oades* (1989) 166 CLR 486 at 502 and *R v Pettigrew* [1997] 1 Qd R 601 at 610.

Rule 5 of the U*niform Civil Procedure Rules* 1999 (Qld) states that the purpose of the Rules "is to facilitate the just and expeditious resolution of the real issues in civil proceedings at a minimum of expense".

The appellant's conduct was oppressive. Unless the primary judge had acted as she did, the respondents would have been required to sift through masses of material in an attempt to identify the issues and separate the relevant from the irrelevant. Not only has no error been shown in the orders made by the primary judge, but it would have been inconsistent with the objectives of the *Uniform Civil Procedure Rules* 1999 (Qld) for her Honour not to have taken action to cause the issues to be determined on the appeals to be properly identified and to ensure that the affidavits, submissions and other materials were reduced

to manageable proportions. As was pointed out in the joint reasons in *Aon Risk Services Australia Limited v Australian National University* (2009) 239 CLR 175 at 213: "Speed and efficiency, in the sense of minimum delay and expense, are seen as essential to a just resolution of proceedings".

To that pronouncement may be added these observations of Millett J in *Logicrose Ltd v Southend United Football Club* (Unreported, Chancery Division, 5 February 1988): "…a fair trial is a trial which is conducted without an undue expenditure of time and money; and with a proper regard to the demands of other litigants upon the finite resources of the court".

To the extent that the grounds of appeal seek to raise arguments on the "merits", to use that expression rather loosely, they are misguided. The primary judge did not address the merits of the appellant's arguments. That was because she found it impossible to extract them from the mass of material provided by the appellant, let alone properly understand them.

For the above reasons, I would dismiss each of the appeals, and the application to amend the Notices of Appeal, with costs.

THE PRESIDENT: I agree.

HOLMES JA: I agree.

THE PRESIDENT: Those are the orders of the Court.