

SUPREME COURT OF QUEENSLAND

CITATION: *Tierney v Commissioner of Police* [2011] QCA 293

PARTIES: **TIERNEY, James Victor**
(applicant)
v
COMMISSIONER OF POLICE
(respondent)

FILE NO/S: CA No 150 of 2011
DC No 137 of 2010

DIVISION: Court of Appeal

PROCEEDING: Application for leave s 118 DCA (Criminal)

ORIGINATING COURT: District Court at Cairns

DELIVERED EX TEMPORE ON: 18 October 2011

DELIVERED AT: Brisbane

HEARING DATE: 18 October 2011

JUDGES: Margaret McMurdo P, Chesterman JA and Margaret Wilson AJA
Separate reasons for judgment of each member of the Court, each concurring as to the orders made

ORDERS: **Delivered ex tempore on 18 October 2011:**

- 1. The application for an adjournment of the application for leave for Mr Mathews to appear on behalf of the applicant, Mr Tierney, is refused.**
- 2. The application for leave for Mr Mathews to appear on behalf of the applicant, Mr Tierney, is refused.**
- 3. The application for Mr Mathews to be joined as a party to the appeal is refused.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL - PRACTICE AND PROCEDURE – QUEENSLAND – POWERS OF COURT – OTHER MATTERS – where Mr Mathews sought leave to appear on behalf of the applicant in his application for leave to appeal – where Mr Mathews sought an adjournment of his application for leave to appear to obtain further material in support of it and made a further application to be joined as a party to the appeal – where Mr Mathews argued the applicant was unable to appear for himself as he is under a disability – where the arguments that Mr Mathews sought to put forward on behalf of the application were those canvassed before the primary judge – whether Mr Mathews should be given leave to appear on behalf of the applicant – whether Mr Mathews should be joined as a party to the appeal

District Court of Queensland Act 1967 (Qld), s 118(3)
Justices Act 1886 (Qld), s 222, s 224
Legal Profession Act 2007 (Qld) s 21, s 22, s 24(1)

Brisbane City Council v Russell Gordon Haig Mathews
 [2006] QSC 25, cited
Mathews v Cabrera [2010] QCA 300, cited
Mathews v Smith [1997] QCA 365, cited
Mathews v Telstra Corporation Ltd [1998] QCA 407, cited
Russell Mathews v Rev Canon Professor Dr John Morgan & Ors [2006] QCA 143, cited
R v Mathews [1992] QCA 462, cited
R v Mathews [1995] QCA 336, cited
R v Mathews [2010] QCA 196, cited

COUNSEL: No appearance on behalf of the applicant
 S J Farnden for the respondent

SOLICITORS: No appearance on behalf of the applicant
 Director of Public Prosecutions Queensland for the
 respondent

THE PRESIDENT: The applicant, James Victor Tierney, was found guilty on 10 August 2009 after a summary trial in the Cairns Magistrates Court of common assault on 12 October 2007. He was placed on a good behaviour bond for three months in the sum of \$250 without conviction. He applied under s 224 *Justices Act 1886 (Qld)* for an extension of time to appeal against that finding of guilt and his sentence under s 222 *Justices Act*. The learned District Court judge allowed Mr Russell Mathews to appear on Mr Tierney's behalf as a disability advocate. The judge concluded that Mr Tierney had not provided any reasonable explanation for his delay in filing his appeal and, more importantly, the appeal was not a viable one. Mr Tierney has applied for leave to appeal from that decision to this Court under s 118(3) *District Court of Queensland Act 1967 (Qld)*.

Mr Mathews has applied, by telephone link, to appear on behalf of Mr Tierney in his application for leave to appeal. He has also applied for an adjournment of that application to obtain further material in support of it and he has further made an oral application to be joined as a party to this appeal. There is no unequivocally persuasive evidence that the applicant is, in fact, under a disability such that he is unable to appear for himself in this application. Mr Tierney gave fluent evidence in the trial in the Magistrates Court. It is

true that in cross-examination at that trial he gave evidence to the effect that he suffered post-traumatic stress disorder and major depression for which he took medication. He also claimed to have suffered brain damage during a hospital procedure when he did not breathe for 30 minutes. As a result, he said in his evidence, his short-term memory was affected but he added that this did not impact on his ability to give accurate evidence at his trial because he has sworn an oath to tell the truth. Mr Mathews, in support of his application to appear on Mr Tierney's behalf, read an affidavit from Mr Tierney's wife, Judith Tierney. She has sworn she is a New South Wales registered nurse with over 30 years experience in mental health fields in Australia and overseas. She stated that in 1993, following a simple hospital day procedure, Mr Tierney suffered a damaged hypothalamus (brain damage) and post-traumatic stress disorder with resulting severe depression, distorting his memory, causing problems with balance and lack of confidence. Nevertheless, an unequivocal, clear medical report has not been provided to this Court to confirm Mr Tierney's disability.

But even accepting that Mr Tierney has this disability, for the following reasons I am not persuaded that this Court should allow Mr Mathews to appear on Mr Tierney's behalf, whether as a disability advocate under the *Disability Discrimination Act 1992* (Cth) or in any other capacity.

First, Mr Mathews has been declared a vexatious litigant and is prevented from instituting proceedings in any court in relation to the Brisbane City Council: see *Brisbane City Council v Russell Gordon Haig Mathews* [2006] QSC 25. Mr Mathews has previously appeared on his own behalf in many hearings including *R v Mathews* [1992] QCA 462, [1995] QCA 336 and [2010] QCA 196; *Mathews v Smith* [1997] QCA 365; *Mathews v Telstra Corporation Ltd* [1998] QCA 407; *Russell Mathews v Rev Canon Professor Dr John Morgan & Ors* [2006] QCA 143; and *Mathews v Cabrera* [2010] QCA 300.

Second, the arguments that Mr Mathews would wish to put forward on Mr Tierney's behalf, on the material already placed before this Court, are largely those which were canvassed before the primary judge and which are recorded in the transcript of the District Court proceedings in the appeal record book. Third, Mr Mathews has informed this Court that he, like Mr Tierney, also suffers from brain damage. Fourth, those who are not lawyers do not have any right to appear on behalf of others in this Court: see *Legal Profession Act 2007* (Qld) s 21, s 22 and s 24(1). That is because the public interest in the proper administration of justice requires that legal work be carried out only by those who are properly qualified so that consumers are protected: see s 3(a) and s 22 *Legal Profession Act*. Fifth, as Mr Mathews is not a legal practitioner he is not an officer of the Court and is not bound by the ethical obligations which attach to legal practitioners so that this Court could not have confidence in the honesty, accuracy and reliability of any submissions made by him on behalf of Mr Tierney.

For all these reasons, I would refuse his application to appear on behalf of Mr Tierney. I would also refuse his application for an adjournment of that application to obtain further material in support of his application to appear on Mr Tierney's behalf. The adjournment would be futile and achieve nothing.

As I stated earlier, Mr Mathews has also made an oral application to be joined as a party to this appeal on the basis that he claims police have harassed or attacked him and brought bogus charges against him purely for the purpose of preventing him from pursuing Mr Tierney's appeal rights. If that is so, or if he wishes to make those allegations against the police, he should pursue his rights against the police in his own action. These matters do not give him any entitlement to be joined as a party to this appeal which concerns only Mr Tierney and the Commissioner of Police.

For those reasons, I would also refuse his application to be joined as a party to this appeal.

CHESTERMAN JA: I agree.

MARGARET WILSON AJA: I agree.

THE PRESIDENT: The orders are:

1. The application for an adjournment of the application for leave for Mr Mathews to appear on behalf of the applicant, Mr Tierney, is refused.
2. The application for leave for Mr Mathews to appear on behalf of the applicant, Mr Tierney, is refused.
3. The application for Mr Mathews to be joined as a party to the appeal is refused.

The telephone link will now be terminated, thank you.