

# SUPREME COURT OF QUEENSLAND

CITATION: *R v Mathews* [2012] QCA 298

PARTIES: **R**  
**v**  
**MATHEWS, Russell Gordon Haig**  
(applicant)

FILE NO/S: CA No 235 of 2012  
CA No 272 of 2012  
CA No 273 of 2012  
CA No 274 of 2012  
DC No 2121 of 2010

DIVISION: Court of Appeal

PROCEEDING: Applications for Leave s 118 DCA (Criminal)  
Applications for Extension of Time s 118 DCA (Criminal)

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: 2 November 2012

DELIVERED AT: Brisbane

HEARING DATE: 23 October 2012

JUDGES: Margaret McMurdo P and Fraser and White JJA  
Separate reasons for judgment of each member of the Court,  
each concurring as to the orders made

ORDERS: **1. The application to produce material and to adduce further evidence is refused.**  
**2. In CA No 235 of 2012, the application for leave to appeal is refused.**  
**3. In CA No 272 of 2012, the application for an extension of time is refused.**  
**4. In CA No 273 of 2012, the application for an extension of time is refused.**  
**5. In CA No 274 of 2012, the application for leave to appeal is refused.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – PARTICULAR GROUNDS OF APPEAL – OTHER MATTERS – where the applicant is charged with four counts of using a carriage service in such a way that reasonable persons would regard as being menacing, harassing or offensive – where three days into the committal proceeding the matter was adjourned when the applicant advised he would not be appearing and was consulting a psychiatrist –

where those charges presently remain before the Magistrates Court, awaiting completion – where the Court considered the applicant's conduct raised the issue of his fitness for trial and referred this issue to the District Court for determination – where the applicant submitted that the "whole proceeding be stayed permanently as a matter of Qualified Privilege" and that various District Court judges recuse themselves – where the applicant now challenges the decisions of the District Court judges not to recuse themselves and procedural orders made at the mention hearings – whether applications should be granted

*Higgins v Comans* (2005) 153 A Crim R 565; [\[2005\] QCA 234](#), cited

*Mathews v Commissioner of Police* [\[2011\] QCA 368](#), related *Mathews v Morgan & Ors* [2005] QSC 222, related *Schneider v Curtis* [1967] Qd R 300, cited

COUNSEL: The applicant appeared on his own behalf  
S R Hunter for the respondent

SOLICITORS: The applicant appeared on his own behalf  
Director of Public Prosecutions (Commonwealth) for the respondent

- [1] **MARGARET McMURDO P:** The applicant, Russell Mathews, has four related applications before this Court. It is necessary to understand the background to them before considering their merits.
- [2] He has been charged with four counts against s 474.17(1) *Criminal Code* (Cth), that is, using a carriage service, namely, Telstra Big Pond, in such a way that reasonable persons would regard that use as being menacing, harassing or offensive. The charges allegedly occurred at various times between 21 August 2006 and 18 July 2009.
- [3] Mr Mathews has at all relevant times been self-represented. He is not a lawyer but has a law degree. He has suffered brain injury. As White J (as her Honour then was) explained in *Mathews v Morgan & Ors*:<sup>1</sup>

"... It is not in dispute that he is not a well man having suffered brain injury in several episodes, the earliest of which seems to have been in 1967 just after he had completed his secondary schooling. He is in receipt of a disability support pension. Notwithstanding these serious setbacks, Mr Mathews has proceeded to obtain a number of tertiary qualifications from the University of Queensland. Mr Mathews has exhibited a lengthy psychological report from Dr Brian Hazell dated 30 July 1999 in which the opinions of other psychiatrists and psychologists about Mr Mathews are quoted. Dr Hazell has treated Mr Mathews from time to time over many years. Mr Mathews has placed the report before the court to demonstrate his disability and vulnerability. A passage from that report may assist in understanding some the difficulties under which Mr Mathews labours.

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<sup>1</sup> [2005] QSC 222, [2].

'Russell Mathews fits the criteria for a mild neurocognitive disorder DSM-IV, (pp 706-708) with associated personality changes. At best when things are going well he has an organic personality syndrome with associated social incompetence and paranoid ideation. This condition has been longstanding and dates from his fall from a horse in 1967. This is a man of very superior intelligence with a concrete literally minded view of data. Under stress he decompensates, can become delusional and has socially inappropriate responses to the perceived stresses based on his rigid interpretation of his studies in law.' "

- [4] The charges under s 474.17(1) are presently before the Brisbane Magistrates Court awaiting the completion of a committal proceeding as the respondent, the Commonwealth contends the charges should proceed on indictment in the District Court.
- [5] In the Magistrates Court, on 15 March 2010, the charges were listed for committal hearing on 24 June 2010. At a committal review on 9 June 2010, that court refused Mr Mathews' application, initially made on 15 March, to dismiss the charges as it had no power to make such an order: *Higgins v Comans*.<sup>2</sup>
- [6] On 24 June 2010 the committal proceeding commenced. It continued over three days during which Mr Mathews cross-examined witnesses. On the fourth day, 29 June 2010, he advised the court by email that he would not be appearing and was consulting his psychiatrist. As a result, the proceedings were adjourned. The matter was reviewed at mention hearings on eight occasions between 29 June and 24 September 2010. On many of those occasions Mr Mathews communicated with the court by email. He submitted that his brain injury affected his ability to concentrate and question witnesses in the court environment and that his special needs should be accommodated by the court allowing him to cross-examine witnesses by email without physically attending the court. On 15 September 2010, the court found that Mr Mathews' conduct raised his fitness for trial. On 24 September 2010, under s 20B(1) *Crimes Act 1914* (Cth), the court referred the proceeding to the District Court at Brisbane solely for the determination of his fitness for trial.
- [7] On 26 October 2010, Mr Mathews lodged an appeal under s 222 *Justices Act 1886* (Qld) against the magistrate's order of 24 September contending that it was "*ultra vires*" and a perversion of the course of justice. He submitted that the charges were an abuse of process and should be struck out.
- [8] Senior Judge O'Brien heard the appeal on 16 May 2011 (DC No 3095 of 2010). Mr Mathews appeared by telephone, adding oral submissions to his written outline of argument, and answering his Honour's questions. On 21 June 2011, Judge O'Brien delivered his reasons for judgment and dismissed the appeal. His Honour found that a magistrate had no power to permanently stay committal proceedings and could only strike out charges at the conclusion of the committal hearing: *Higgins v Comans*.<sup>3</sup> Mr Mathews' committal proceedings were presently awaiting

<sup>2</sup> (2005) 153 A Crim R 565; [2005] QCA 234.

<sup>3</sup> (2005) 153 A Crim R 565[2005] QCA 234.

finalisation in the Magistrates Court. His Honour also found that Mr Mathews had no right of appeal under s 222 *District Court of Queensland Act 1967* (Qld) as the appeal was not from an order finally disposing of the charges: *Schneider v Curtis*.<sup>4</sup>

- [9] On 13 July 2011, Mr Mathews applied for leave to appeal to the Court of Appeal under s 118 against Judge O'Brien's decision. His application was heard on 25 November 2011 and was dismissed on 13 December 2011: *Mathews v Commissioner of Police*.<sup>5</sup>
- [10] On 3 January 2012, Mr Mathews applied for special leave to appeal to the High Court of Australia against this Court's decision. On 10 May 2012, that application was dismissed, Hayne and Crennan JJ stating that "the Court of Appeal was plainly right".
- [11] Meanwhile, the question of Mr Mathews' fitness for trial was first listed for mention in the District Court at Brisbane on 22 November 2010. The matter was adjourned pending the determination of Mr Mathews' appeal to the District Court discussed above.<sup>6</sup>
- [12] The fitness for trial proceeding was listed for mention in the District Court before the Chief Judge on 15 June 2012. Mr Mathews did not appear but emailed extensive submissions which he asked the court to act on in his absence. He applied to have the Chief Judge disqualify herself on the basis of perceived bias. Her Honour declined to recuse herself and listed the matter for hearing on 12 November 2012, a date which apparently met the availability of Mr Mathews' psychiatrist. The Chief Judge noted that as Mr Mathews claimed to be suffering from a disability, she wanted to give him as much time as possible to prepare. Her Honour ordered that the matter be listed for review on 31 July 2012 so that he could raise any difficulties arising in the preparation of his case.
- [13] On 15 October 2012, Mr Mathews filed an application in this Court for an extension of time to apply for leave to appeal under s 118 *District Court of Queensland Act 1967* (Qld) from those orders (CA No 272 of 2012).
- [14] On 24 August 2012, the matter was listed for mention before Senior Judge O'Brien. As seems to be his custom, Mr Mathews did not appear but sent lengthy submissions to the court. The judge excused Mr Mathews from attendance. His Honour noted that he had considered Mr Mathews' application that he disqualify himself from dealing with the matter, but as there was no demonstrated basis requiring his recusal, the application was refused. Mr Mathews requested to have transcripts of previous mention hearings. His Honour refused to make such an order, noting that Mr Mathews could apply to the State Reporting Bureau for them. Mr Mathews submitted that it was not for him to obtain expert evidence relating to his fitness for trial. His Honour observed that it was for Mr Mathews to collate and present to the court any evidence or arguments that he considered were necessary to his case. His Honour refused Mr Mathews' application for a stay of the proceedings "as a matter of privilege" as he had not disclosed any basis to justify such an order. His Honour also declined to accede to Mr Mathews' request that he determine at that hearing on the material before him the question of the extent of Mr Mathews' disability and its impact on his fitness for trial.

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<sup>4</sup> [1967] Qd R 300.

<sup>5</sup> [2011] QCA 368.

<sup>6</sup> See [8] of these reasons.

- [15] His Honour was anxious to ensure that the fitness for trial hearing proceed as listed in November and that Mr Mathews have the opportunity to make any application for special arrangements said to arise from his disability. His Honour ordered that the hearing of any such application take place on 19 October 2012 when Mr Mathews was to identify to the court any special arrangements which he considered should be made for the hearing and to call or place before the court any relevant evidence or submissions, oral or otherwise. Mr Mathews' outline of argument was to be filed and served on the respondent by 21 September 2012 and was to identify particulars of the disabilities he alleged and of the special arrangements he sought. The respondent was to file and serve its outline of argument in reply no later than 12 October 2012. His Honour directed that a copy of his orders be provided to Mr Mathews.
- [16] On 12 September 2012, Mr Mathews applied for leave to appeal under s 118(3) from Judge O'Brien's order refusing to permanently stay the proceedings "as a matter of Qualified Privilege" (CA No 235 of 2012). Further, on 15 October 2012 he applied for an extension of time to apply for leave to appeal under s 118(3) against Judge O'Brien's order "setting a time for a hearing of matter of my disability, and requirement that I am responsible to prove my disability and required to obtain the Expert evidence, submit an Outline of Argument, and appear in person" (as in the original CA No 273 of 2012).
- [17] On 4 October 2012, Mr Mathews' fitness for trial proceeding was listed for mention before Judge Shanahan. Once again, Mr Mathews did not appear and had emailed submissions to the court. He requested that his Honour disqualify himself from hearing the mention as he was part of a Catholic conspiracy against Mr Mathews. His Honour refused that application. Counsel for the respondent explained that Mr Mathews had appealed against some of Judge O'Brien's orders made on 24 August 2012 (that is, CA No 235 of 2012; CA No 273 of 2012 had not been filed). Mr Mathews had not complied with Judge O'Brien's orders to file his outline of argument and had not identified any special arrangements he required for the November hearing. Counsel for the respondent asked Judge Shanahan to delist the matter for mention on 19 October 2012 and to relist it some days after the Court of Appeal hearing. His Honour refused that application.
- [18] On 15 October 2012, Mr Mathews applied for leave to appeal under s 118(3) against Judge Shanahan's order refusing to disqualify himself and refusing to "intervene in the date for hearing interlocutory application invented by DCJA Kerry John O'Brien" (CA No 274 of 2012).
- [19] On 19 October 2012, the fitness for trial proceeding was again mentioned before Judge O'Brien and again Mr Mathews did not appear. He had not sent the respondent any material under Judge O'Brien's order of 24 August.<sup>7</sup> His Honour noted that the court had again received material from Mr Mathews. Judge O'Brien refused Mr Mathews' latest application that he recuse himself as there was no basis for it. As Mr Mathews had made no application for any special arrangements, none would be put in place for the fitness for trial proceeding in November when Mr Mathews' psychiatrist was available to give evidence.
- [20] Also on 19 October Mr Mathews filed in his matters in this Court an application to produce documents and to adduce further evidence which he claims demonstrates that he has been the victim of a longstanding conspiracy. It seems that the alleged

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<sup>7</sup> See [15] of these reasons.

conspiracy concerned the Chief Judge when she was a barrister appearing before Spender J in the Federal Court in a matter concerning Mr Mathews. The alleged conspiracy also involved the Human Rights and Equal Opportunities Commission and later the Queensland police, some of whom attempted to murder him in 1996.

- [21] It is not easy to apprehend from Mr Mathews' application precisely what documents or material he wants produced or how that material would result in this Court allowing his proposed appeals. The fact is that he has not presented any evidence to this Court (as opposed to scurrilous allegations) to support his proposed appeals. I would refuse his application for orders to produce material and to adduce further evidence.
- [22] Mr Mathews again chose not to attend his hearing in this Court of CA Nos 235, 272, 273 and 274 of 2012. As has become his practice, he relied on his submissions made in the courts below and on further emailed material. He appeared by way of telephone link and made further extensive oral submissions.
- [23] I will first deal with the merits of CA No 235 of 2012, the application for leave to appeal from Judge O'Brien's order rejecting Mr Mathews' "Preliminary motion that the whole proceedings be stayed permanently as a matter of Qualified Privilege".<sup>8</sup> It seems from Mr Mathews' written and oral submissions that he wanted the judge to permanently stay the four charges against s 474.17(1). Those charges were not before the District Court; they remained in the Magistrates Court where the committal proceedings are part heard. The proceedings before the District Court concerned only the question of Mr Mathews' fitness for trial under s 20B *Crimes Act*. But, in any case, Mr Mathews' unsuccessful appeal to the District Court, his application for leave to appeal to this Court in 2011<sup>9</sup> and the High Court's refusal of his application for special leave to appeal from that decision have the result that any appeal from this aspect of Judge O'Brien's order would inevitably fail. I further note that the concept of "Qualified Privilege" has no relevance to an application to permanently stay these charges. By way of completeness, if Mr Mathews' application concerns the stay of the fitness for trial proceedings before the District Court, he has not demonstrated any reason to justify such an order. For these reasons, CA No 235 of 2012 should be refused.
- [24] It is most logical to now discuss Mr Mathews' application for an extension of time to appeal from Judge O'Brien's orders of 24 August "setting a time for a hearing of matter of my disability, and requirement that I am responsible to prove my disability and required to obtain the Expert evidence, submit an Outline of Argument, and appear in person." (CA No 273 of 2012) Mr Mathews has misconceived his Honour's statements during the hearing. Judge O'Brien did not order that Mr Mathews was required to prove his disability in the fitness for trial proceeding. His Honour was simply endeavouring to ensure Mr Mathews understood that if he wished to call evidence as to his fitness for trial, he should make arrangements to do so at the November hearing.<sup>10</sup> His Honour also sought to ensure that the court understood Mr Mathews' contentions as to any special arrangements he required for the hearing. The actual orders made by his Honour summarised above<sup>11</sup> were unexceptional case management orders. Mr Mathews has not demonstrated that

<sup>8</sup> See [14] of these reasons.

<sup>9</sup> *Mathews v Commissioner of Police* [2011] QCA 368.

<sup>10</sup> See [14] of these reasons.

<sup>11</sup> See [15] of these reasons.

they result from any error. I also note that the time for compliance with those orders has now passed so that any appeal would be of arguable utility. It follows that the proposed appeal from these orders would inevitably fail. An extension of time would be futile. For these reasons, CA No 273 of 2012 should be refused.

[25] I turn now to consider CA No 272 of 2012, the application for an extension of time to apply for leave to appeal from the Chief Judge's orders and her decision not to disqualify herself for bias on 15 June 2012.<sup>12</sup> Mr Mathews has made many spurious allegations about Chief Judge Wolfe in his material before this and other courts but he has not produced any evidence to support his claims. The fact that years ago she may have acted either against or for him in a legal proceeding which went badly for him is not in itself evidence of her actual or perceived bias against him. He produced no evidence of the Chief Judge's actual or perceived bias in the case management hearing of his matter before the Chief Judge and nor has he done so in this Court. Her Honour's orders listing the issue of Mr Mathews' fitness for trial for review and hearing were unexceptional and unobjectionable in the circumstances. Mr Mathews has not demonstrated any error leading to the making of those orders. The proposed appeal from the Chief Judge's order would inevitably fail. An extension of time would therefore be futile. For these reasons, CA No 272 of 2012 should be refused.

[26] Finally, I turn to consider the merits of CA No 274 of 2012, the application for leave to appeal from Judge Shanahan's orders summarised above.<sup>13</sup> Mr Mathews did not produce to Judge Shanahan or this Court any credible relevant evidence to demonstrate actual or perceived bias against him. His Honour was plainly right to refuse Mr Mathews' application to recuse. His Honour's refusal to delist Mr Mathews' pending case management hearing on 19 October 2012 was an unexceptional and orthodox exercise of discretion. Mr Mathews has not demonstrated any error leading to its exercise or any injustice resulting from it. Further, the hearing of 19 October has now taken place so that the proposed appeal would be inutile. It follows that, as the proposed appeal is without any prospects of success, the application for leave to appeal, CA No 274 of 2012, must be refused.

#### ORDERS:

1. The application to produce material and to adduce further evidence is refused.
2. In CA No 235 of 2012, the application for leave to appeal is refused.
3. In CA No 272 of 2012, the application for an extension of time is refused.
4. In CA No 273 of 2012, the application for an extension of time is refused.
5. In CA No 274 of 2012, the application for leave to appeal is refused.

[27] **FRASER JA:** I agree with the reasons for judgment of the President and the orders proposed by her Honour.

[28] **WHITE JA:** I have read the reasons for judgment of the President. I agree with her Honour's reasons and the orders which she proposes.

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<sup>12</sup> See [12] of these reasons.

<sup>13</sup> See [17]–[14] of these reasons.