SUPREME COURT OF QUEENSLAND

CITATION:	*Krajniw v Flegg & Ors* [2013] QCA 233
PARTIES:	**TONY KRAJNIW** (applicant) **v** **THE HONOURABLE DR BRUCE FLEGG MP, MINISTER FOR HOUSING AND PUBLIC WORKS** (first respondent) **THE HONOURABLE JARROD BLEIJIE MP, ATTORNEY-GENERAL** (second respondent) **THE PUBLIC TRUSTEE** (third respondent)
FILE NO/S:	Appeal No 2903 of 2013 Appeal No 3728 of 2013 SC No 8211 of 2012
DIVISION:	Court of Appeal
PROCEEDING:	Applications for Extension of Time/General Civil Appeal
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	23 August 2013
DELIVERED AT:	Brisbane
HEARING DATE:	15 August 2013
JUDGES:	Muir and Fraser JJA and Atkinson J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**The applications be refused with costs.**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – TIME FOR APPEAL – EXTENSION OF TIME – WHEN REFUSED – where the applicant applies for an extension of time within which to appeal against an order dismissing, with costs, the applicant's application for a statutory order of review and an order dismissing the applicant's application for a stay of the respondents' decision to plan to sell the Monte Carlo Caravan Park – where the applicant explains his delay as arising from his involvement in other proceedings initiated by him – where the applicant's proposed notices of appeal are oppressive, vexatious and obscure in meaning – where the applicant contends that the subject decision was one within the meaning of s 4(b) of the *Judicial Review Act* 1991 (Qld) – where there was unchallenged evidence before the primary

judges that the subject decision had been abandoned – where the applicant submits that evidence supporting the existence of a non-statutory scheme or program was not given any weight and that he was denied procedural fairness by the primary judges – whether an extension of time within which to appeal should be granted

Judicial Review Act 1991 (Qld), s 4(b)

Krajniw v Flegg & Ors [2012] QSC 392, related

COUNSEL: The applicant appeared on his own behalf
M D Hinson QC for the respondents

SOLICITORS: The applicant appeared on his own behalf
Crown Law for the respondents

[1] **MUIR JA: Introduction** The applicant applies for an extension of time within which:

1. to apply for leave to appeal against an order of Martin J on 14 December 2012 dismissing with costs the applicant's application for a statutory order of review (CA 2903/13);

2. to appeal against the order of Peter Lyons J on 25 January 2013 dismissing the applicant's application for a stay of the respondents' "decision and plan to sell" the Monte Carlo Caravan Park (CA 3728/13).

[2] The applicant's case before Martin J was that the decision under challenge was judicially reviewable as:[1]

> "... a decision of an administrative character made ... by an officer or employee of, the State or a State authority or local government authority under a non-statutory scheme or program involving funds that are provided or obtained (in whole or part)–
>
> (i) out of amounts appropriated by Parliament; or
>
> (ii) from a tax, charge, fee or levy authorised by or under an enactment."

[3] The applications in CA 2903/13 and CA 3728/13 were made on 27 March 2013 and 24 April 2013 respectively. The applicant explains his delay in CA 2903/13 as arising from his involvement in other proceedings initiated by him: the stay application decided by Peter Lyons J; and two other applications filed on 26 February 2013, one for a statutory order of review of the decision to sell the caravan park and the other for a statement of reasons in relation to that decision. Those applications were dismissed by Daubney J on 12 March 2013. The application for judicial review dismissed by Daubney J also claimed the relief sought in the application dismissed by Martin J, from whose decision there was no appeal. The application for judicial review dismissed by Daubney J was thus an abuse of process.

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1 *Judicial Review Act* 1991 (Qld), s 4(b).

[4] The same may be said of the two applications under consideration. The application in CA 2903/13 lists some 34 reasons for justifying the grant of leave. Except as later discussed, it is not easy to distil from the 34 reasons matters recognisable as errors of law on the part of Martin J. Yet the application is a model of brevity and relevance compared with the proposed notice of appeal which has 208 grounds. The document is oppressive and vexatious. It makes abusive and scurrilous assertions, not supported by any evidence, against counsel for the respondent, solicitors for the respondent, the judge and persons who are not parties. The document is, variously, prolix, repetitive and obscure in meaning in places, unintelligible in others. It would not be appropriate or desirable for this court to pick through the plethora of allegations in an attempt to find something arguable.

[5] The above observations apply equally to the notice of appeal in CA 3728/13. That document is substantially a copy of the notice of appeal in CA 2903/13 with "Justice Lyons J" substituted for "Justice Martin J".

[6] Despite the foregoing observations, I will deal with what appears to be the applicant's principal complaints. He contended that Fryberg J held, on 28 September 2012, that the decision to be judicially reviewed was one within the meaning of s 4(b) of the *Judicial Review Act* 1991 (Qld) (the JR Act). Fryberg J determined only that on the material before him there was a sufficiently arguable case to avoid the summary dismissal of the proceeding.

[7] There was unchallenged evidence before Martin J, which he accepted, from the Deputy Director-General Housing Services, Department of Housing and Public Works that no proposal to establish a "Caravan Park Accommodation Program" was ever implemented and no such program was ever formally established. There was further unchallenged evidence before his Honour that there was no "line of funding in the Department budgets or sources of revenues ... allocated or directed to a 'Caravan Park Accommodation Program'".[2] On the basis of that evidence, Martin J held that the subject decision was not one to which the JR Act applied.

[8] There is a complaint that the existence of a non-statutory scheme or program was supported by Exhibits TK-10 and TK-11 which were not given any weight. Exhibit TK-10 was rejected by Martin J as a document of unproven provenance. There was no error in that regard. Exhibit TK-11 is a media release by the then Minister for Housing and Public Works. The exhibit would not appear to prove the existence of a program or a decision made under a program but, in any event, there was evidence before Peter Lyons J, which he accepted (the material was received without objection), which indicated that there was no present intention to sell the caravan park. Consequently, his Honour held that the decision sought to be challenged by the applicant had, in effect, been abandoned. His Honour concluded correctly that, on the evidence before him, there was no utility in an appeal from Martin J's decision.

[9] The applicant complains that an affidavit sworn by Mr Marsh and one sworn by Mr Waters should not have been given any weight. Neither deponent was cross-examined and the judge was entitled to give the affidavits the weight he concluded appropriate.

[10] The remaining complaint is that the applicant was denied procedural fairness by both Martin J and Peter Lyons J. The allegation is not borne out by a perusal of the

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2 *Krajniw v Flegg & Ors* [2012] QSC 392 at [11].

transcripts. The applicant appeared to labour under the misapprehension that in each of the hearings at first instance he was entitled to an examination of a great many issues raised by him irrespective of their relevance or utility. The application before Martin J did not require the hearing of the applicant's allegations. It was an application by the respondents seeking the dismissal of the applicant's amended originating application on the limited grounds relied on by the respondents. It is apparent from Martin J's reasons and the transcript of the proceedings before Martin J that he afforded the applicant an opportunity to be heard and carefully considered all relevant arguments. It is apparent also from the reasons of Peter Lyons J and the transcript of proceedings that he carefully considered all relevant matters and dismissed the applicant's application for unexceptionable reasons.

[11] It would be unjust to require the respondents to respond to the proposed grounds of appeal, particularly as no ground appears to be reasonably arguable.

[12] For the above reasons, I would refuse the applications with costs.

[13] **FRASER JA:** I agree with the reasons for judgment of Muir JA and the order proposed by his Honour.

[14] **ATKINSON J:** I agree with the reasons for judgment of Muir JA and the order proposed by his Honour.