

**COURT OF APPEAL**

**FRASER JA  
McMEEKIN J  
PETER LYONS J**

**Appeal No 5944 of 2013  
SC No 5853 of 2013**

**CHAD EVERETT ROWE**

**Appellant**

**v**

**EMMANUEL COLLEGE &  
ALISON JANE SCHULTZ**

**Respondents**

**BRISBANE**

**THURSDAY, 31 OCTOBER 2013**

**PETER LYONS J:** The appellant has appealed against order 2 of orders made in the trial division on the 28th of June 2013. On that occasion, the appellant had applied for an adjournment, and order 2 was intended to impose conditions on which the learned primary Judge was prepared to grant it. Obviously, the appellant has had the benefit of that adjournment granted in those circumstances. Order 2 was discharged a short time later by an order of another Judge in the trial division, made on the 15th of July 2013. On that occasion, the appellant gave undertakings, one of which was related to a matter the subject of order 2, though substantially narrower in scope than the order.

The appellant has been unable to identify any legitimate purpose for pursuing his appeal. The ground advanced with most force was that it was relevant to the question of costs. Costs were reserved on the 28th of June 2013. No doubt, if they are ever determined, they will be

determined in light of all the circumstances; and the fact that a condition was imposed on the adjournment is unlikely to be decisive, particularly when the condition remained in force for a relatively short time. There can be little doubt that the appeal has caused the respondents to incur costs. The reasons given in the trial division on the 15th of July recorded the appellant's inability to meet orders for costs. Absent some better explanation than has been advanced by the appellant, it is not difficult to conclude that a purpose of the appeal is to harass the respondents, against whom he has also commenced other proceedings.

It might be noted that, on the 15th of July, the proceedings were adjourned, one of the undertakings then given by the appellant being that he would not institute proceedings against the first respondent, with one exception, unless he first applied for leave as if he were the subject of an order made under the *Vexatious Proceedings Act 2005*.

The heading to the appellant's outline of argument refers to bias, a matter not raised in his grounds of appeal, nor supported by any argument in his outline. The appellant is a solicitor. He is no doubt aware of the significance of an allegation of bias against a judicial officer. The reference to bias seems to me indicative of the cavalier attitude taken by the appellant to the conduct of the appeal.

One ground of appeal is that the appellant was denied procedural fairness in the proceedings at first instance. The allegation is repeated in the appellant's very brief outline of argument. A reading of the transcript demonstrates that the allegation is baseless.

In my view, it is clear that the appeal has been pursued vexatiously – see *Mudie v Gainriver Pty Ltd (No 2)* [2003] 2 Qd R 271 at paragraph 35, *Re Cameron* [1996] 2 Qd R 218 at 220. It should be struck out.

**FRASER JA:** I agree with those reasons.

**McMEEKIN J:** I agree with all that Lyons J has said of the order that he proposes.

**FRASER JA:** The order of the court is that the appeal is struck out.

...

**FRASER JA:** The appellant is ordered to pay the respondent's costs of the appeal.