

**COURT OF APPEAL**

**MARGARET McMURDO P  
MORRISON JA  
PETER LYONS J**

**Appeal No 128 of 2014  
DC No 4534 of 2012**

**SERGUEI POGADAEV**

**Appellant**

**v**

**COMMISSIONER OF POLICE**

**Respondent**

**Appeal No 129 of 2014  
DC No 99 of 2013**

**ALEXEI POGADAEV**

**Appellant**

**v**

**MATTHEW ELLIS SCOTT**

**Respondent**

**Appeal No 130 of 2014  
DC No 4533 of 2012**

**ALEXEI POGADAEV**

**Appellant**

**v**

**BELINDA STEWARD**

**Respondent**

**BRISBANE**

**TUESDAY, 3 MARCH 2015**

**JUDGMENT**

**THE PRESIDENT:** These matters purported to be cases stated under s 227 *Justices Act* 1886 (Qld). It is now common ground that the appeals bringing the cases stated were flawed, as there had been no final determination of the appeal to the District Court, so that s 227 had no application. Mr Heaton QC for the appellants orally applied for a declaration that the noncompliance with s 145 *Justices Act*, which has occurred in each of these cases, of itself, amounts to such a fundamental irregularity that it renders any ensuing proceedings a nullity. Mr Byrne QC for the respondent accepts that this Court has power to make such a declaratory order, but urges the Court not to make an order in the exercise of its discretion.

The Court has power to make such a declaration under s 29(3) *Supreme Court of Queensland Act* 1991 (Qld). I do not, however, consider that it is appropriate in the circumstances here to do so. Importantly, a proper process for the determination of the appeals in these cases lies under the *Justices Act* to the District Court. That process has not been completed. Significantly, the appellants are not in custody. Further, they wish this Court to overturn a longstanding decision of the Full Court of the Supreme Court of Queensland, *Todhunter v Zacka; ex parte Zacka* [1965] Qd R 515. If they are successful, there are likely to be very wide repercussions throughout the state in potentially tens of thousands of cases determined by the Magistrates Court. It is desirable that, if this matter proceeds in this Court, it does so with the benefit of a decision from the District Court at first instance and before a bench of five judges. For those reasons, I would refuse the oral application for declaratory relief and dismiss the cases stated so that the appeals can be determined in the District Court.

**MORRISON JA:** I agree.

**PETER LYONS J:** I also agree.

**THE PRESIDENT:** So the order is the oral application for declaratory relief and the appeals in the cases stated are dismissed so that the appeals can be determined in the District Court.