SUPREME COURT OF QUEENSLAND

CITATION:	*Mathews v Commissioner of Police* [2015] QCA 284
PARTIES:	**MATHEWS, Russell Gordon Haig** (applicant) **v** **COMMISSIONER OF POLICE** (respondent)
FILE NO:	CA No 326 of 2014 DC No 115 of 2014
DIVISION:	Court of Appeal
PROCEEDING:	Application for Leave s 118 DCA (Criminal)
ORIGINATING COURT:	District Court at Brisbane – [2014] QDC 256
DELIVERED ON:	18 December 2015
DELIVERED AT:	Brisbane
HEARING DATE:	3 September 2015
JUDGES:	Gotterson and Morrison JJA and McMeekin J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**The application is refused.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – MISCARRIAGE OF JUSTICE – where the applicant was charged with offences under the *Criminal Code* (Cth) – where the applicant was arrested when a policeman and Brisbane City Council officers entered his home – where the applicant was discharged in respect of all charges – where the applicant subsequently applied to the Magistrates Court to have the magistrate refer the policeman and Brisbane City Council officers to the Crime and Misconduct Commission for official misconduct – where the application was dismissed – where the applicant appealed to the District Court of Queensland – where the learned District Court judge dismissed the appeal holding that the magistrate's refusal to refer matters to the Crime and Misconduct Commission was not an "order on a complaint" and therefore not within the scope of s 222 of the *Justices Act* – where the applicant appeals this decision and submits that the learned primary judge displayed apprehended bias against him; the policeman and Brisbane City Council officers who arrested him committed armed robbery; the learned magistrate, by his refusal to notify the Crime and Misconduct Commission, had approved of, and was an accessory to, armed robbery; and

that the learned primary judge, by his refusal to notify the Crime and Misconduct Commission, had approved of, and was an accessory to, armed robbery – whether an appeal is necessary to correct a substantial injustice – whether there is a reasonable argument that there is an error to be corrected

Crime and Misconduct Act 2001 (Qld)
District Court of Queensland Act 1967 (Qld), s 118(3)
Justices Act 1886 (Qld), s 4, s 222, s 222(1)

Berry v Commissioner of Police [2015] 1 Qd R 388; [2014] QCA 238, cited
Mathews v Cabrera [2010] QCA 300, cited
Mathews v Commissioner of Police [2014] QDC 256, cited
Mathews v Commissioner of Police [2011] QCA 368, cited
Paulger v Hall [2003] 2 Qd R 294; [2002] QCA 353, considered
Pickering v McArthur [2005] QCA 294, considered
White v Commissioner of Police [2014] QCA 121, cited

COUNSEL: No appearance for the applicant, the applicant's submissions were heard on the papers
No appearance for the respondent, the respondent's submissions were heard on the papers

SOLICITORS: The applicant is self-represented
Director of Public Prosecutions (Commonwealth) for the respondent

[1] **GOTTERSON JA:** I agree with the order proposed by Morrison JA and with the reasons given by his Honour.

[2] **MORRISON JA:** Mr Mathews was charged with four offences of using a carriage service to menace, harass or cause offence, under s 474.17 of the *Criminal Code* (Cth). The offences were alleged to have been committed on various dates between August 2006 and July 2009.

[3] A committal proceeding in the Magistrates Court commenced on 24 June 2010. For reasons that do not presently matter, those proceedings had still not been finalised by January 2014.

[4] On 10 January 2014, the prosecution advised the Court that it was no longer in the public interest to pursue the charges and no further evidence was presented. The learned magistrate discharged Mr Mathews in respect of all charges.

[5] Earlier the same day Mr Mathews had emailed an application to the Magistrates' Court in these terms:

> "I require you … pursuant to the Crime and Misconduct Act 2001, section 38 and/or otherwise to notify the CMC of what must be at least a suspicion of official misconduct or likewise or worse in this information, complaint matter before [the magistrate's name]."

[6] After having discharged Mr Mathews the learned magistrate considered and then rejected that application. Mr Mathews then appealed that decision to the District Court pursuant to s 222 of the *Justices Act* 1886 (Qld).

[7] The learned District Court judge heard the appeal on the papers,[1] and dismissed it, holding that the learned magistrate's refusal to refer matters to the Crime and Misconduct Commission was not an "order on a complaint" and therefore not within the scope of s 222 of the *Justices Act*.

[8] Mr Mathews seeks leave to appeal from that decision pursuant to s 118(3) of the *District Court of Queensland Act* 1967 (Qld). The issues raised are whether:[2]

(a) an appeal is necessary to correct a substantial injustice; and

(b) there is a reasonable argument that there is an error to be corrected.

Nature of the proposed appeal

[9] As previously mentioned, Mr Mathews' appeal to the District Court was under s 222 of the *Justices Act* 1886 (Qld). Any appeal to this Court must be under s 118(3) of the *District Court of Queensland Act* 1967 (Qld). There are differences between the two, as explained in *White v Commissioner of Police*:[3]

> "There is therefore considerable difference between the nature of the appeal that was available to the applicant from the Magistrates' Court to the District Court and that which he seeks to bring from the District Court to this court. In the appeal to the District Court, s 223 of the *Justices Act* provides for a rehearing on the evidence given at trial, and any new evidence adduced by leave. That is a rehearing, in the technical sense consisting of a review of the record of the proceedings below, rather than a completely fresh hearing. To succeed on such an appeal an appellant must establish some legal, factual or discretionary error.[4] By contrast, an appeal to this court from the District Court seeking to review the decision of the District Court in its appellate jurisdiction, may only be made with leave of this Court, and is not an appeal by way of hearing, but a strict appeal where error of law must be demonstrated.[5]"

[10] Therefore, in order to demonstrate prospects of success in the proposed appeal Mr Mathews must identify error of law in the decision of the District Court.

Suggested grounds of appeal

[11] Mr Mathews has set out the grounds of his application.[6] Leaving aside abusive, scandalous, irrelevant and subjective assertions, they are:

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1 Mr Mathews had sought that it be heard that way, and an order was made to that effect on 24 September 2014: AB 135.

2 *Pickering v McArthur* [2005] QCA 294 at [3]; *Berry v Commissioner of Police* [2014] QCA 238 at [4]; *White v Commissioner of Police* [2014] QCA 121 at [5].

3 [2014] QCA 121 at [8].

4 *Commissioner of Police v Al Shakarji* [2013] QCA 319 at [65] per Margaret Wilson J; *Teelow v Commissioner of Police* [2009] QCA 84 at [3]-[4].

5 *Gobus v Queensland Police Service* [2013] QCA 172 at [3]-[5] per Fraser JA, and *Commissioner of Police v Al Shakarji* [2013] QCA 319 at [75] per North J.

6 AB 142-148.

(a) the learned primary judge displayed apprehended bias against him;

(b) the evidence given in the Magistrates Court by a named policeman demonstrated that the policeman and Brisbane City Council officers had committed an armed robbery when they entered Mr Mathews' house and land on 29 November 2004, and Mr Mathews was arrested; this was because the policeman did not have a court order, required under the *Health Act* 1937, to enter Mr Mathews' premises, and the Brisbane City Council had acted on a ruse;

(c) the prosecution was aimed at covering up the armed robbery;

(d) the learned magistrate, by his refusal to notify the Crime and Misconduct Commission, had approved of, and was an accessory to, armed robbery; and

(e) the learned primary judge, by his refusal to notify the Crime and Misconduct Commission, had approved of, and was an accessory to, armed robbery.

[12] If Mr Mathews' appeal is successful, he seeks the following order:

> "… that The Court of Appeal state unequivocally that, on the evidence by [the policeman], given under oath, coram [the magistrate], that the evidence strongly and completely supported a *prima facie* case that [the policeman] … and the Brisbane City Council whose officers had requested the assistance of [the policeman] to force entry to my house and land … on 29th November 2004, had committed armed robbery."

Approach of the learned primary judge

[13] In his reasons[7] the learned primary judge noted that Mr Mathews had relied upon s 38 of the *Crime and Misconduct Act* 2001 (Qld)[8] as the foundation for his application to have the learned magistrate refer conduct to the CMC. It provided:

> "**38 Duty to notify commission of corrupt conduct**
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> (1) This section applies if a public official reasonably suspects that a complaint, or information or matter (also a ***complaint***), involves, or may involve, corrupt conduct.
>
> (2) The public official must notify the commission of the complaint, subject to section 40."

[14] The term "public official" is defined in Schedule 2 to the *Crime and Misconduct Act* 2001 as:

> "(a) the ombudsman; or
>
> (b) the chief executive officer of a unit of public administration, including the commissioner of police; or
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> (c) a person who constitutes a corporate entity that is a unit of public administration."

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7 *Mathews v Commissioner of Police* [2014] QDC 256.

8 By the time of the appeal, it had become the *Crime and Corruption Act* 2001.

[15] It followed that the learned magistrate was not a "public official" and s 38 had no application. The result was that the learned primary judge held that there was no statutory basis for the application.[9]

[16] The learned primary judge then turned attention to whether there was an avenue of appeal under s 222(1) of the *Justices Act* 1886. The right to appeal under that section is given to a person aggrieved "by an order made by justices or a justice in a summary way on a complaint for an offence or breach of duty". The term "order" is defined in s 4 of the *Justices Act* as (relevantly) including:

> "… any order, adjudication, grant or refusal of any application, and any determination of whatsoever kind made by a Magistrates Court, and any refusal by a Magistrates Court to hear and determine any complaint or to entertain any application made to it ..."

[17] His Honour referred to the long standing line of authority in the Full Court of the Supreme Court and this Court, that established that when s 222(1) refers to "an order made … on a complaint", it refers to the orders that finally dispose of a complaint.[10] The learned primary judge continued:[11]

> "[24] In fact, the complaint was already at an end prior to the consideration of the "application", the learned magistrate having already discharged the appellant in respect of all charges before going on to consider the appellant's application.
>
> [25] It follows that this is not a matter to which s 222(1) of the Act has application and does not "fall within the compass of what may be appealed under s 222".

Discussion

[18] Mr Mathews has advanced no basis whatsoever to suggest that there may be apprehended bias on the part of the learned primary judge.

[19] Further, no attempt whatsoever has been made by Mr Mathews to identify an error of law in the decision of the learned primary judge. In my view it would be futile in any event for a number of reasons.

[20] First, the learned magistrate refused the application to him on the basis that he was not a "public official" under the *Crime and Misconduct Act* 2001.[12] He was plainly right as to that. Therefore there was no avenue for him to refer anything to the Crime and Misconduct Commission, even if there was substance to the complaint.

[21] Secondly, the refusal of the application was made after Mr Mathews had been discharged in respect of all remaining charges.[13] There was, therefore, no remaining complaint on which an order might be made. That meant that s 222(1) of the *Justices Act* 1886 was not engaged. The case did not even reach the stage referred to in *Paulger v Hall*:[14]

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9 Reasons at [15]-[16].

10 Reasons [19]-[22], citing *Schneider v Curtis* [1967] Qd R 300 at 304-305; *Owen v Canavan & Anor* (unreported, CA 199 of 1994, 4 August 1995); and *Paulger v Hall* [2002] QCA 353 at [26]-[27].

11 Reasons [24]-[25]. Internal footnote omitted.

12 AB 28-29.

13 AB 27, 28-29.

14 *Paulger v Hall* at [26].

> "*Schneider v Curtis* is authority for the proposition that no appeal lies under s 222 from a ruling made on an incidental application during the hearing of the complaint; the right of appeal is given only from "any order made … upon a complaint", and those words refer to an order "disposing of the complaint itself"…"

[22] That this point disposes of any suggestion of appellable error, and reveals Mr Mathews' application as humbug, is demonstrated by the fact that Mr Mathews has been the subject of orders refusing some of his many suits on the same basis, including in an earlier application for leave to appeal in this very matter.[15]

Conclusion

[23] For the reasons given above I would refuse the application for leave to appeal.

[24] **McMEEKIN J:** I agree with the reasons of Morrison JA and the order proposed by his Honour.

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15 *Mathews v Cabrera* [2010] QCA 300, *Mathews v Commissioner of Police* [2011] QCA 368 at [10]-[11].