SUPREME COURT OF QUEENSLAND

CITATION:	*Queensland Police Service & Anor v Rose & Anor* [2016] QCA 105
PARTIES:	**QUEENSLAND POLICE SERVICE** (first applicant/first respondent) **AUSTRALIAN FEDERAL POLICE** (second applicant/second respondent) **v** **JANICE ROSE** **KATHLEEN GUTHRIE** (respondents/appellants)
FILE NO/S:	Appeal No 111 of 2016 Appeal No 12903 of 2015 SC No 10273 of 2015 SC No 10751 of 2015
DIVISION:	Court of Appeal
PROCEEDING:	Application to Strike Out
ORIGINATING COURT:	Supreme Court at Brisbane – Unreported, 3 December 2015
DELIVERED ON:	22 April 2016
DELIVERED AT:	Brisbane
HEARING DATE:	19 April 2016
JUDGES:	Fraser and Philip McMurdo JJA and Douglas J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**In each appeal the appeal be dismissed and the appellants pay to the respondents their costs of the appeal.**
CATCHWORDS:	PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COMMENCING PROCEEDINGS – PLEADINGS – STRIKING OUT – DISCLOSING NO REASONABLE CAUSE OF ACTION OR DEFENCE – where the respondents commenced proceedings by way of claim and originating application in the Trial Division – where the learned primary judge struck out the claim on the basis that it was prolix, vexatious and did not disclose a reasonable cause of action – where his Honour also struck out the originating application because it was not in a form disclosing the relief sought by the respondents – where the respondents appealed from those orders on numerous grounds, including that the learned primary judge did not read or refer to all the affidavit material filed in support of the claim and the originating application – where the applicants seek orders striking out the

notices of appeal because they do not state the nature of the orders sought, are largely unintelligible and do not conform with the *Uniform Civil Procedure Rules* 1999 (Qld) – whether the notices of appeal should be struck out

du Boulay v Worrell [2009] QCA 63, cited
Rose v Premier of Queensland Department, (Hon. Campbell Newman, Premier) (No 2) [2013] NSWSC 1421, cited

COUNSEL: M Nicolson for the first applicant/first respondent
G del Villar for the second applicant/second respondent
The respondents/appellants appeared on their own behalf

SOLICITORS: Public Safety Business Agency for the first applicant/first respondent
Australian Government Solicitor for the second applicant/second respondent
The respondents/appellants appeared on their own behalf

[1] **FRASER JA:** I agree with the reasons for judgment of McMurdo JA and the orders proposed by his Honour.

[2] **PHILIP McMURDO JA:** The appellants commenced two proceedings against the respondents in the trial division. There was an originating application filed on 13 October 2015, which sought injunctive relief, and a claim filed on 27 October 2015, which sought relief in the nature of damages or other compensation.

[3] Each proceeding was struck out summarily by Applegarth J on 3 December 2015. His Honour held that the originating application disclosed no relief which was available to either appellant and was vexatious. In the other proceeding, his Honour held that the statement of claim was prolix and vexatious and disclosed no reasonable cause of action and nor did the claim itself.

[4] In each proceeding the appellants filed a notice of appeal but in one appeal, against only the respondent Queensland Police Service. The other respondent, Australian Federal Police, was added by a subsequent consent order.

[5] The appeals have not progressed to a hearing in the usual way. They came before the court upon applications by the respondents that the notices of appeal be set aside and that the appeals be dismissed. The notices of appeal are said to be non-compliant with the court's relevant rules, by not stating the nature of the order sought or by setting out in any intelligible way the grounds of appeal. The respondents further argue that the appeals have no prospects of success so that the court should do more than require the notices of appeal to be amended: the appeals should be dismissed.

The originating application

[6] The originating application sought the following orders:

> "1. We wish to place injunction on the digital doctoring of surveillance material and pirated videos that use doubles
>
> 2. Stop High Impact Surveillance and monitoring as per exhibit B regarding information recording

a. Cease crime operations in Work space as per exhibit B Note estimated completion date 30th June 2013

b Cease the high impact recording and monitoring as per exhibit B Note estimated completion date 30th June 2013.

3. Cease Identity fraud in the above matters which relate to audio and visual identity theft and surrender same to the court and cease to use the material for any commercial, private or personal enterprise.

4. We request PolyGram used for surveillance monitors. This relates to all surveillance monitors and their material and not to be kept by individual monitors with business concerns as an agenda.

5. We request that any QPS, AFP or military reports that are false and defamatory not to be used as defamation has occurred. See exhibit EF and G."

[7] The document which was referred to as "exhibit B"[1] in paragraphs 1 and 2 was an internal document of the Australian Federal Police, apparently obtained by the appellants under the *Freedom of Information Act* 1982 (Cth). It identified two police officers as involved with some police operation. But on the face of the document that had no apparent connection with either of the appellants.

[8] In the fifth of the orders sought by the originating application there was a reference to "exhibit EF and G".[2] Exhibit E was a copy of a letter from Queensland Police Service to the Health Ombudsman of Queensland dated 9 June 2013. The subject of that letter was the mental health of one of the appellants, who had been identified by the Queensland Health Police Liaison Officer as "the subject of a number of interactions with police which would indicate she has a mental health condition". Exhibits F and G were apparently two parts of the same document, which was a "summary of the relevant police interactions" with that appellant and which had been enclosed in the letter which was exhibit E.

[9] Paragraphs 1 and 2 of the originating application seemed to complain about some activity in the nature of what exhibit B described as "information recording" over a six month period in 2013. As best this part of the appellants' case could be understood, it was a complaint that this activity, which the appellants described as "surveillance and monitoring", had been directed at them and was ongoing. But the nature of that activity was not described in a way by which the respondents could have sought to meet whatever case the appellants had in mind or by which the court could have framed an injunction. Further, the basis in law for enjoining this conduct, if it was ongoing, was not apparent.

[10] Paragraphs 3, 4 and 5 of the originating application appeared to relate to some concern about the use of material which had resulted from this surveillance. Paragraph 3 appeared to allege that the respondents had engaged in "identity fraud" in respect of that material and paragraph 5 alleged that the respondents, as well as perhaps the Australian Defence Force, had written reports which were "false and defamatory" of

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1 The document was exhibit B to an affidavit, jointly made by the appellants, which was filed with the originating application.

2 An apparent reference to the documents exhibited as such to the same affidavit.

the applicants. Again the appellants' complaint or complaints were not described in a way in which the respondents could meet the case or the court could frame an injunction.

The claim

[11] In the claim, the appellants sought relief which was expressed as follows:

> "Grounds for damages and compensation due to inaction of the QPS and the AFP from a mismanaged AFP and ministerial file.
>
> This resulted in financial loss due to defamation in the workplace and service providers as well as inappropriate medical action which resulted in substandard medical treatment and blocking legal representation."

[12] The statement of claim comprised some seven pages but covered a very broad range of subjects. In its first paragraph, it referred to an alleged experience of the appellant Ms Rose when working as a registered nurse in New South Wales in the 1990s. The effect of the allegation was that Ms Rose was unfairly "blacklisted" and that this "brought [her] under the attention of the AFP." In the same paragraph there was a reference to "legislative changes made in NSW", which involved a named individual who may have been a minister in the New South Wales government. This was the only possible reference to a "ministerial file" on which the claim was based.

[13] The next event alleged by the statement of claim was in 2006, when it was said that "there was AFP paperwork…which stated high impacts surveillance and recording for serious organised crime for no offences." Two officers of the AFP were there named. (Those names were upon the document which was the exhibit B referred to in the originating application.) In the same paragraph in the statement of claim, there was a reference to "an incident…at the Brisbane airport where a wallet was found and not given in until three days time", which was described in "paperwork that was given to me by the FOI". That allegation gives the impression that there was some document produced within the AFP which related to the appellant Ms Rose and which may have been critical of her conduct in some way. The balance of the paragraph 2 then referred to Ms Rose borrowing money from a bank to purchase a farm in Queensland, at an interest rate higher than was offered to other customers of the bank and which ultimately resulted in the bank enforcing its remedies against the farm for the borrower's default. The paragraph concluded with some statement as to an investigation permit being granted to a mining company in April 2011, prior to the bank's taking possession.

[14] From that point on, the statement of claim became yet more difficult to describe here because the events alleged were so numerous and were apparently unrelated to each other.

[15] Paragraph 3 of the statement of claim referred to, amongst other things, a car accident in which the appellant Ms Rose was involved and the attempts which she made to obtain workers' compensation or damages from that accident. Paragraph 4 again referred to that compensation claim against Q-Comp before going to her complaint that the appellants' mother (the appellants being sisters) had received "chemical assaults and raised electricity levels in her home to make her health compromised", as being in some way related to Ms Rose's compensation claim. She claimed that her children were also being "targeted in their workplaces".

[16] In paragraph 5 the statement of claim moved to a different subject matter: illegal drugs. There was a complaint that in January 2011 one of the appellants was sent,

unsolicited, a package which she was later told was heroin. She complains that there was "inaction from NSW police", which she reported to ICAC in 2013. There was a suggestion that the AFP intervened and "blocked the action of this". In the same paragraph, she went to another subject which was that a medical practitioner (now deceased) had "worked as a monitor contact and…vilified me" and that this doctor's son had continued that behaviour.

[17] In paragraph 6 of the statement of claim, it was said that the appellant and Ms Guthrie returned to New South Wales in 2011, after which there were disputes with neighbours who, it was pleaded, were working as "monitors" and who were acting in a vilifying and intimidatory way. The relevance of these interactions to the present respondents was not at all explained.

[18] In subsequent paragraphs there were descriptions of incidents at the farm in south east Queensland where the appellants were living in which, it was alleged, they were the subject of harassment and for which their complaints to the Queensland police did not receive a satisfactory response. Part of the conduct in the nature of harassment was alleged to have involved "systematic chemical assaults" by persons who were not identified by the pleading. Then there was a further allegation that both appellants suffered an "increase[d] level of skin cancers", with one of them developing a melanoma.

[19] There was also a complaint about the quality of surgery which one of the appellants received in a procedure to replace her right hip. In the same paragraph there was a reference to that appellant becoming bankrupt and to the other appellant being given custody of her children upon her divorce.

[20] In the several paragraphs numbered 12, another subject was raised, which was an alleged "signature fraud" at the Rathdowney post office. The complaint seemed to be that the post office had allowed someone other than one of the appellants to sign for a letter from the local council, with the result that she did not receive the letter and became liable to pay $250 to the council for not responding to some document in the nature of an infringement notice. There was a complaint that the Queensland police did not satisfactorily investigate this allegation of fraud. There was a further complaint that the appellants were "publicly vilified by the owners of the post office when we attempted to sort out the matter with them" which was "due to the AFP and QPS targeting".

[21] Paragraph 13 contained a number of allegations centring around the appellants being made involuntary patients by the actions of police officers and mental health workers in January 2012. It was pleaded that after the appellants were released some three or four weeks later, they returned to New South Wales "because the level of targeting was so great on the farm".

[22] Paragraph 14 referred to vilification by somebody else occurring at a place in New South Wales where they then lived.

[23] This long list of incidents was sought to be connected by paragraph 15 of the pleading, which alleged that "every workplace for [the appellants] since 2007 has had undermining and infiltration from a third party person". This final paragraph of the pleading went on to complain of events in 2015, when the appellants were working and living in the Nambour area, where they were subjected to conduct by individuals which was "vilifying and defamatory in nature". This was said to be "due to the AFP and state police target". The statement of claim concluded with a claim for relief as follows:

> "We ask for damages from defamation, public vilification and undiagnosed cancer."

The primary judgment

[24] Applegarth J began by reminding himself that "there is a high threshold to summarily dismiss a claim" and that "some latitude is extended to self-represented litigants who are not familiar with court rules." He referred to these observations of Muir JA in *du Boulay v Worrell*:[3]

> "[69] It may be that self-represented litigants should be afforded a degree of indulgence and given appropriate assistance. But if a self-represented person wishes to litigate, he or she is as much bound by the rules of Court as any other litigant. Those rules exist to facilitate efficient, fair and cost-effective litigation. The Court's duty is to act impartially and ensure procedural fairness to all parties, not merely one party who may be disadvantaged through lack of legal representation. The other party to the litigation is entitled to protection from oppressive and vexatious conduct regardless of whether that conduct arises out of ignorance, mistake or malice."

[25] Applegarth J then said:

> "During the hearing today, each plaintiff, effectively, acknowledged that the originating application and the statement of claim were not in a proper form.
>
> Turning, first, to the statement of claim, it does not comply with the pleading rules. It is prolix and vexatious. It does not disclose a reasonable cause of action and should be struck out pursuant to r 171.
>
> The claim, which I have recited, does not disclose a cause of action.
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> The originating application is not in any semblance of a form which discloses relief that is available to either applicant. There is not utility in that originating application remaining. It does not begin to identify appropriate relief and is vexatious and should be struck out."

[26] His Honour added that as the claim was to be struck out there was no occasion to consider leave to file an amended statement of claim.

[27] His Honour declined to consider the affidavits which had been filed by the appellants and said:

> "It is inappropriate for me to sift through the voluminous affidavits that have been filed in order to discover for myself possible legal claims. The matters that have been put in the statement of claim which I have struck out are, to adopt the words used by Justice Hulme,[4] 'lengthy, discursive and largely unintelligible'. It would be unfair, oppressive and vexatious to permit either of these proceedings to continue."

[28] His Honour added that the statement of claim was in a narrative form and insofar as it was a claim for damages for defamation, it did not identify "the particular words

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3 [2009] QCA 63.

4 In *Rose v Premier of Queensland Department, (Hon. Campbell Newman) (No 2)* [2013] NSWSC 1421, when striking out a case brought by the present appellants on the basis that their pleadings were incomprehensible and did not disclose a cause of action.

used, the particular publication, the imputations that were conveyed, [and] to whom the publication was made."

The notices of appeal

[29] The notices of appeal in these two proceedings are in substantially the same terms. They contain a similar although shorter narrative than that in the statement of claim. Very little is said in the notices of appeal about the reasoning of the primary judge. But a complaint is made that his Honour "didn't read the case matter", an apparent reference to the voluminous affidavit material which Applegarth J declined to consider.

[30] But no part of that affidavit material is identified as critical to the outcome. And his Honour was not obliged to consider that material, reasoning as he did that the documents by which these proceedings were commenced were unintelligible and did not identify any cause of action or appropriate relief. I should note also that there was a similar complaint in the notices of appeal about another judge who had not heard these strike out applications but had simply directed the respondents to bring them. Obviously that complaint is groundless and is irrelevant to these appeals.

[31] In one of the notices of appeal, it is said that the primary judgment "was made on false and misleading information from the defendants." But again, his Honour decided the applications upon the basis of the initiating documents, not upon evidence about any of the matters to which reference was made in those documents.

[32] There is a complaint in one notice of appeal that his Honour declined to hear the totality of the appellants' submissions. It is right to say that there were some subjects upon which his Honour said that he would not hear them further. But clearly his Honour was correct in saying so: the subjects were irrelevant and nonsensical, such as a suggestion of the participation in some way of the KGB in some of those events.

[33] It is unlikely that the appellants understand why their proceedings were struck out. But if so, that is not the fault of the primary judge: it is the result of the appellants' inability to understand the necessity to distil their very many grievances into a form which sets out a case for which the law might provide them with a remedy, and in particular a remedy against one or both of the parties which they have sued. Many of the events in their narrative had no apparent connection with either respondent. In some places, there was a discernible complaint that police had not acted upon complaints or concerns which they had raised. But in those cases, the basis for a legal liability to the appellants was not apparent. His Honour was clearly correct to characterise the originating application, claim and statement of claim as he did and to strike out each proceeding.

The present applications

[34] As already noted, the appeals came before the court on applications by the respondents to strike them out. The suggested basis for these applications was that they were an abuse of process. A particular complaint was that the notices of appeal referred to no alleged error by the primary judge. In my view there was at least one complaint within the notices of appeal which did suggest an error, namely that the primary judge failed to consider the affidavit material. That ground could not succeed but it was nevertheless a ground which criticised the reasoning of the primary judge.

[35] In the hearing in this court the appellants sought to rely upon an affidavit which, in several respects, referred to facts which were said to have occurred since the hearing

before the primary judge. The court ruled that the affidavit was irrelevant to the present applications, which were to be determined by reference to the notices of appeal, the primary judgment and the documents by which the respective proceedings were commenced. It was upon those initiating documents that his Honour concluded that the cases should be struck out. Similarly the court declined to receive affidavit evidence from an officer of the Australian Federal Police. This was an affidavit referred to in the primary judgment but which was not the subject of any finding by his Honour.

[36] The appellants made oral submissions which, like their statement of claim and their notices of appeal, covered a broad range of factual allegations but which did not meet the arguments for the respondents. The appellants also handed up a further document containing written submissions, comprising three pages, which was irrelevant for the same reason and which contained many statements defamatory of third parties. It should not be placed on the file.

[37] I would not wish to encourage respondents to make applications for summary dismissal of appeals where the application is not made on the basis of a failure to prosecute the appeal or some other non-compliance with the procedural rules, but upon an argument of lack of merit in the appeal. But these appeals should be dismissed because there is nothing within the notices of appeal which raises an arguable ground of appeal and where it is clear that the judgment of the primary judge was correct.

Orders

[38] In each appeal I would order that the appeal be dismissed and the appellants pay to the respondents their costs of the appeal.

[39] **DOUGLAS J:** I agree with the reasons of Philip McMurdo JA and the orders proposed by his Honour.