

**COURT OF APPEAL**

**PHILIP McMURDO JA**

**Appeal No 12753 of 2016  
SC No 11569 of 2016**

**ROSS JAMES BRADLEY**

**Respondent/Applicant**

**v**

**MATTHEW JAMES McDERMOTT**

**Appellant/Respondent**

**BRISBANE**

**MONDAY, 27 FEBRUARY 2017**

**JUDGMENT**

**PHILIP McMURDO JA:** The respondent to this appeal applies to have it struck out upon two bases. Namely, that the notice of appeal does not comply with rule 747 of the *Uniform Civil Procedure Rules* (Qld), and that the appeal has no prospect of success and is an abuse of process. The appeal is against an order of a judge in the Trial Division, striking out the appellant's proceeding as revealing no cause of action.

The background to this case is a dispute between the appellant and the Logan City Council. In late 2015 the council obtained an order in the Magistrates Court, under the *Local Government Act* 2009, which entitled it to enter the appellant's premises to undertake works. The appellant appealed that order to the District Court, which struck out his appeal in February 2016. The

appellant then came to the Supreme Court, filing an application for judicial review of the District Court order. One of the respondents to that application, who was an officer of the council, applied to strike it out and Martin J so ordered.

The respondent to this appeal is the solicitor, then employed by the firm acting for the council, who represented the council officer in the hearing before Martin J. The proceeding against him was commenced in the Trial Division by a document which the registry treated as an originating application. The proceeding named Mr McDermott as the only respondent. On 24 November 2016, Flanagan J summarily dismissed the proceeding. It is against that order that the appellant now appeals.

Justice Flanagan identified the alleged cause of action as based upon an allegation that, in some way, Mr McDermott had perverted the course of justice in his representation of the council officer in the hearing before Martin J. The proceeding had been commenced without any supporting affidavit and there was no statement of claim. The suggested cause of action had to be discerned from the originating document. The relief sought was the determination, presumably by declarations, of two questions. The first was whether Mr McDermott had perverted the course of justice by: “Representing him in a matter that had no legal capacity.” The second question was as follows:

“When acting as a judicial person, has the defendant exercised control over myself, a living beneficiary of the Global Estate Trust (at law) being an entity directly dependant on the Holy See, listed in the registry of canonical juridical persons kept by the government of Vatican City State.”

Unsurprisingly, Justice Flanagan held that this document disclosed no course of action. He noted that any proceeding in respect of a crime, such as that under section 140 of the *Criminal Code* (Qld), must be brought either by the Crown or in accordance with the private prosecution proceedings, under the *Justices Act* 1886 (Qld).

Rule 747(1)(b) requires a notice of appeal to be in the approved form and to state, briefly and specifically, the grounds of appeal. This notice of appeal does not meet that requirement. For Mr McDermott, it is suggested that there are some four identifiable grounds, although the notice of appeal is not “entirely clear” in identifying them. I am grateful for the intended assistance by those submissions in identifying the grounds of appeal but I have to say that I have a less generous view of the document. One discernible complaint is that Justice Flanagan had no jurisdiction. Beyond that assertion, nothing is revealed to establish any ground of appeal in that respect. Plainly his Honour did have jurisdiction. Beyond that point, the document strays into references to the appellant’s capacity as a “living beneficiary of the Global Estate Trust”, before setting out the orders sought in the appeal. The first of those orders seems to be that the order by Flanagan J be set aside. But the appellant also seeks an order that \$5,000 be paid to the appellant on the basis that the respondent had perverted the course of justice and that another \$5,000 be paid by the law firm which then employed Mr McDermott. The appellant adds a claim for, yet, another \$5,000 against the State of Queensland. The basis for that claim is far from clear. After setting out that relief, the notice of appeal contained several pages of incoherent references to texts and other published sources on the broad subject of “Ecclesiastical Courts and Papal Law”.

What is clear is that the notice of appeal does not comply with rule 747 in that it fails to briefly and specifically state the grounds of appeal. It is also clear that the appeal has no prospects of success because neither the notice of appeal, nor what was said by the appellant in the hearing in this Court, has identified any error by the primary judge, or any other basis upon which his order could be set aside.

I am satisfied that this appeal should be struck out, rather than having the respondent and perhaps other parties vexed by its ongoing existence. The order will be that the notice of appeal be struck out and the appeal be dismissed. The appellant is ordered to pay the respondent’s costs of the appeal to be taxed on the standard basis.