

SUPREME COURT OF QUEENSLAND

CITATION: *Henderson v Taylor, Information Commissioner of Queensland* [2006] QCA 393

PARTIES: **PAUL DAVID HENDERSON**
(appellant/applicant)
v
CATHI TAYLOR (AKA CATHERINE MARY TAYLOR), INFORMATION COMMISSIONER QUEENSLAND
(first respondent)
RACHEL ELIZABETH JEAN MOSS
(second respondent)

FILE NO/S: Appeal No 3458 of 2006
SC No 6205 of 2005

DIVISION: Court of Appeal

PROCEEDING: Miscellaneous Application - Civil

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED EX TEMPORE ON: 11 October 2006

DELIVERED AT: Brisbane

HEARING DATE: 11 October 2006

JUDGES: Mackenzie, Philippides and Philip McMurdo JJ
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **Application for adjournment dismissed**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – HEARING OF APPEAL – the appellant/applicant applies to vacate today’s date for the hearing of this appeal on a number of grounds – whether today’s date for the hearing of the appeal should be vacated

COUNSEL: The appellant/applicant appeared on his own behalf
T J Bradley for the first respondent

SOLICITORS: The appellant/applicant appeared on his own behalf
Nicol Robinson Halletts for the first respondent

McMURDO J: The appellant applies to vacate today as the date for the hearing of his appeal upon on a number of bases which I can hope can be fairly summarised within these reasons.

One submission which he makes is that having regard to the other matters which have been listed for hearing today, relevant to his appeal, he has been in something of a state of confusion as to whether he should prepare for the hearing of this appeal today. And, as I understand what he has said, he has been under some difficulty in preparing for the hearing of the appeal. As to that argument it does not seem to me that the other matters which have been listed today associated with this appeal should have presented any difficulty for him, either in knowing that he had to argue his appeal today or in being ready to argue it.

The other arguments which he advances to vacate today as the date for hearing, broadly speaking, concern his desire to make further enquiries with a view to obtaining better evidence than he was able to put before the learned primary judge. In particular, he has identified two lines of enquiry. One of them he says has been inspired by documents which he has recently obtained from the Queensland Police Service and which he has put before us. They consist of emails sent within the Police Service relevant to the complaint made by the respondent to this appeal of the event of the appellant going to her house endeavouring to serve the originating application upon her. He described this material, that is the recently obtained emails from the Police Service, as being in the

nature of a 'smoking gun' and he says that has inspired him to pursue further enquiries which he has not had time to pursue in the last few weeks.

As I see that matter however, those inquiries must necessarily be unproductive because they could only go to prove or further prove a fact which is already clear and, which it appears to me, was clear to the learned primary judge, which is that the first respondent did complain to the Police Service of his attempt to serve her with the application at her residence. Moreover, it was already clear in my view that the essence of that complaint, whether the complaint was justified or not, was that there was something in the nature of stalking or intimidation involved in the appellant's conduct.

That is a matter which does not seem to me to have been in controversy in the hearing which is the subject of this appeal and so there is no point in vacating today's hearing to enable him to make that further enquiry. The other line of enquiry he wishes to pursue, broadly speaking, concerns the circumstances by which ultimately the hearing of his application for contempt occurred as it did on the 30th of March last. He complains that it should not have gone ahead on that day. That is a complaint he put to the learned primary judge. He asked for an adjournment on that date and that adjournment was refused. His complaint, he should have been given an adjournment, is a ground of this appeal.

That complaint which involves, of course, a challenge to the exercise of a discretionary power, must be upon the basis of the material which the learned primary Judge had. It does not seem to me to be relevant for him to pursue that line of enquiry as to how the matter was listed for the 30th of March as it was. He is able to agitate that ground of appeal, of not granting of an adjournment, within this appeal.

As I see it then, from the various matters which he has argued both in writing and orally this morning, he has demonstrated no good reason why the hearing of this appeal should not occur today.

MACKENZIE J: I agree.

PHILIPPIDES J: I also agree.