SUPREME COURT OF QUEENSLAND

CITATION:	*Clampett v Hill & Ors* [2007] QCA 394
PARTIES:	**LEONARD WILLIAM CLAMPETT** (applicant/appellant) **v** **ROBYN HILL, DIRECTOR OF COURTS, SUPREME AND DISTRICT COURTS** (first respondent) **ANTHONY KWAN GETT** (second respondent) **JUDGE M GRIFFIN** (third respondent)
FILE NO/S:	Appeal No 8819 of 2007 SC No 7991 of 2007
DIVISION:	Court of Appeal
PROCEEDING:	Applications to Strike Out
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	16 November 2007
DELIVERED AT:	Brisbane
HEARING DATE:	12 November 2007
JUDGES:	de Jersey CJ, Williams JA and Keane JA Judgment of the Court
ORDER:	**1. Respondents' applications are allowed** **2. Appeal dismissed, with costs to be assessed on the indemnity basis** **3. Appellant's cross-application is refused**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL - PRACTICE AND PROCEDURE – QUEENSLAND – POWERS OF COURT – OTHER MATTERS – where application for judicial review brought against District Court Judge who dismissed appeal from Magistrate's decision, Commonwealth prosecutor, and Director of Courts, Supreme and District Courts – where judicial review application summarily dismissed with costs – whether appeal against dismissal of application should be struck out PROCEDURE – MISCELLANEOUS PROCEDURAL MATTERS – OTHER MATTERS – where appellant appealed to District Court against Magistrates Court conviction, but declined to prosecute appeal – where

appellant contended his notice of appeal was not properly sealed, and thus invalid, explaining his failure to prosecute appeal – definition of "seal" – whether court process validly sealed

CONSTITUTIONAL LAW – CONSTITUTIONAL AMENDMENT – STATES – QUEENSLAND – where the *Australia Acts (Request) Act 1985* (Qld) was not preceded by a referendum – where appellant argues this was contrary to the requirements of the *Constitution Act 1867* (Qld) as legislation anticipated alterations to the office of Governor – whether authority of Governor affected – whether Queensland courts validly constituted

Australia Act 1986 (UK)

Australia Acts (Request) Act 1985 (Qld)
Constitution Act 1867 (Qld), s 53
District Court Act 1967 (Qld), s 8B, s 39(2)
Judicial Review Act 1991 (Qld)
Uniform Civil Procedure Rules 1999 (Qld), r 978

Lohe v Gunter [2003] QSC 150; SC No 11734 of 2002, 16 April 2003, followed
Sharples v Arnison & Ors [2001] QCA 518; Appeal No 2972 of 2001, 23 November 2001, cited
Skyring v Electoral Commission of Qld & Anor [2001] QSC 080; SC No 2028 of 2001, 17 May 2001, followed

COUNSEL: The appellant appeared on his own behalf
G J Handran for the first and third respondents
D C Rangiah for the second respondent

SOLICITORS: The appellant appeared on his own behalf
Crown Solicitor for the first and third respondents
Director of Public Prosecutions (Commonwealth) for the second respondent

[1] **THE COURT**: The appellant appeals against a judgment of this Court summarily dismissing, with costs, his application purportedly brought under the *Judicial Review Act 1991* (Qld). The respondents seek orders that the appeal be struck out.

[2] The proceeding grew out of the appellant's conviction, in the Magistrates Court on 9 November 2006, for an offence under the Commonwealth *Taxation Administration Act 1953* (Cth). He appealed a fortnight later to the District Court, but when that appeal was called on for hearing, though present he declined to prosecute it. It was, unsurprisingly, dismissed.

[3] The appellant's application to the Supreme Court for judicial review was brought against the District Court Judge who dismissed his appeal, the Commonwealth

Prosecutor who appeared in the appeal to the District Court, and the Director of Courts, Supreme and District Courts.

[4] Much of the complaint before the Judge of this Court who conducted the judicial review hearing centred on the validity of the District Court appeal, having regard to the manner in which court process had been stamped. The appellant's position was that it had not been properly sealed, so was invalid, explaining his failure to prosecute the appeal when called on.

[5] The oddity of the position before the Judge conducting the judicial review was that the appellant was contending that his own proceeding which was the subject of the District Court appeal, and at the heart of the judicial review application, was invalid.

[6] In any event, we agree with the primary Judge. The seal or stamp actually applied to the District Court notice of appeal fell within the ambit of the reference to "other seals" in s 8B of the *District Court Act 1967* (Qld). The term "seal" is not separately defined in the Act, and embraces the stamp used, in accordance with usual practice, in this case. See also r 978 of the *Uniform Civil Procedure Rules 1999* (Qld), and s 39(2) of the *District Court Act*, as to the presumption of regularity.

[7] The appellant complains the primary Judge dealt with the judicial review application at what the appellant believed was to be a directions hearing. But the appellant was given a full opportunity to be heard, and he knew the application would be heard were sufficient time available, as turned out to be the case. He was accorded natural justice.

[8] The conduct of the second respondent prosecutor, and the judicial decision of the third respondent District Court Judge, are not reviewable under the *Judicial Review Act*, as the primary Judge rightly held.

[9] The complaint against the first respondent Director of Courts concerned her failure to respond to a letter of 20 August 2007, in which the appellant sought clarification about the use of the District Court seal, in order to enable him to satisfy himself that the District Court was properly constituted. The appellant contended the first respondent thereby "failed to uphold her oath and abdicated her duty of care to all". The relief sought in the application for judicial review, so far as it bore on the first respondent, was for an order that registrars use the requisite seals, and that they apply the relevant legislation. The application brought against the first respondent was properly dismissed.

[10] So far as grounds may be gleaned from the notice of appeal, the above sufficiently addresses them. Much of the notice of appeal is plainly irrelevant, if not in terms vexatious.

[11] The only order sought in the notice of appeal before this court, is "that this matter be elevated to the High Court of Australia", on the basis it is "the only court that can settle the original issues raised by the respondent in the Magistrates Court". That is relief which this Court cannot grant.

[12] In his outline of argument, the appellant additionally challenges the due constitution of the courts of Queensland. The appellant refers to this issue, and the validity of

the requisite legislation, in a cross-application filed in the Court of Appeal Registry on 5 November 2007. We have had regard to that application, and an affidavit by the appellant filed on the same date.

[13] The appellant's argument runs as follows. The *Australia Acts (Request) Act 1985* (Qld), an Act of the Queensland Parliament, which preceded the *Australia Act 1986* (UK) of the Parliament of the United Kingdom, was not preceded by a referendum. That was contrary to the requirements of s 53 of the Queensland *Constitution Act 1867* (Qld) which, because the Queensland Act anticipated alterations to the office of Governor, necessitated a precedent referendum.

[14] The respective Queensland Courts were duly constituted by the Queensland Parliament when it passed their constituting legislation. The commissions given to judicial officers, under the hand of the Governor, are valid because the authority of the Governor was unaffected by the legislation on which the appellant relies. The argument he seeks to advance has been agitated previously in this Court by persons without legal representation, and rejected. See *Sharples v Arnison & Ors* [2001] QCA 518, *Skyring v Electoral Commission of Queensland & Anor* [2001] QSC 080 and *Lohe v Gunter* [2003] QSC 150.

[15] We mention that the appellant also sought to re-agitate the so-called "currency argument", previously rejected on a number of occasions in this Court. See *Lohe v Gunter*, paras 8-10, and *Skyring v Electoral Commission of Queensland* paras 7-9, and the various cases referred to in those decisions. He asserts the High Court has not yet rejected the "currency argument". But the fact is, that contention has been at the heart of a number of special leave applications which the High Court has refused. The inference is irresistible.

[16] Because the appeal has no reasonable or even arguable prospect of success, the respondents' applications are allowed, and the appeal dismissed, with costs. The appellant's cross-application is refused. The appeal is properly characterised as vexatious. That being so, the costs will be assessed on the indemnity basis.