SUPREME COURT OF QUEENSLAND

CITATION:	*Mathews v Commissioner of Police* [2011] QCA 368
PARTIES:	**MATHEWS, Russell Gordon Haig** (applicant) **v** **COMMISSIONER OF POLICE** (respondent)
FILE NO/S:	CA No 201 of 2011 DC No 3095 of 2010
DIVISION:	Court of Appeal
PROCEEDING:	Application for Leave s 118 DCA (Criminal)
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	13 December 2011
DELIVERED AT:	Brisbane
HEARING DATE:	25 November 2011
JUDGES:	White JA, Margaret Wilson AJA and Douglas J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Application for leave to appeal refused.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – STAY OF PROCEEDINGS – WHEN REFUSED – where leave to appeal sought against decision of District Court dismissing appeal purportedly made pursuant to s 222 of the *Justices Act* 1886 (Qld) – where District Court proceeding concerned order of Magistrate in committal proceedings dealing with charges against applicant for using a carriage service to menace, harass or cause offence – where applicant raised issue of his fitness to be tried – where s 20B(1) of the *Crimes Act* 1914 (Cth) invoked – where District Court judge concluded that applicant's complaint about refusal to stay proceeding provided no basis for allowing appeal to that Court – whether this Court in its original jurisdiction ought consider whether the committal proceedings should be stayed *Crimes Act* 1914 (Cth), s 20B(1) *Justices Act* 1886 (Qld), s 222 *Higgins v Comans* (2005) 153 A Crim R 565; [2005] QCA 234, referred *Mathews v The Commissioner of Police* [2011] QDC 246, affirmed

COUNSEL: The applicant appeared on his own behalf
S R Hunter for the respondent

SOLICITORS: The applicant appeared on his own behalf
Director of Public Prosecutions (Commonwealth) for the respondent

[1] **WHITE JA**: I have read the reasons for judgment of Douglas J and agree with his Honour that the decision in the District Court was clearly correct and the application for leave to appeal should be refused. I also agree with his Honour's further observations that it is not appropriate that this Court should consider Mr Mathew's application that this Court in its original jurisdiction should consider whether the committal proceedings should be stayed.

[2] **MARGARET WILSON AJA**: I agree with the order proposed by Douglas J, and with his Honour's reasons for judgment.

[3] **DOUGLAS J**: This is an application for leave to appeal against a decision of the District Court dismissing an appeal purportedly made pursuant to s 222 of the *Justices Act* 1886 (Qld). The proceeding in the District Court was against an order made by a Magistrate at Brisbane on 24 September 2010 during a committal proceeding dealing with charges against the applicant of using a carriage service to menace, harass or cause offence.

[4] During the proceedings, where the applicant was conducting his own defence, the Magistrate expressed the view that by his correspondence and what he had to say in Court he had raised the issue of his fitness to be tried. Then, acting under s 20B(1) of the *Crimes Act* 1914 (Cth), the Magistrate referred the question of the appellant's fitness to be tried to the District Court.

[5] That section provides as follows:

> "(1) Where, in proceedings for the commitment of a person for trial of a federal offence on indictment, being proceedings begun after this section commences, the question of the person's fitness to be tried in respect of the offence, is raised by the prosecution, the person or the person's legal representative, the magistrate must refer the proceedings to the court to which the proceedings would have been referred had the person been committed for trial."

[6] The learned District Court judge said that it was clear from the section that:[1]

> "once the question of a person's fitness to be tried is raised, then a referral by the Magistrate becomes mandatory. If the Court to which the proceedings have been referred finds the person charged to be fit to be tried, the Court must remit the proceedings to the Magistrate and proceedings for the commitment must be continued as soon as practicable (s 20B(2)). If the Court finds the person unfit for trial, then various other consequences may follow upon proof of the existence of a prima facie case (ss 20B(3), 20BA, 20BB, 20BC)."

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1 *Mathews v The Commissioner of Police* [2011] QDC 246 at [4].

[7] He went on to point out that the Notice of Appeal set out some 72 grounds of appeal which he described as confusing and repetitive but which related to a refusal by the Magistrate to stay the proceedings.

[8] The lengthy submissions lodged by the applicant in this application reflected a similarly confusing complaint about the continuation of the proceedings against him and sought to invoke what he described as this Court's wide powers of control over the proceedings of Magistrates' Courts to dispose of the proceedings against him finally.

[9] As the learned primary judge pointed out, the Magistrate had drawn the applicant's attention to the decision of this Court in *Higgins v Comans*[2] where the Court held that the Magistrates Court has no power to order a permanent stay of a committal proceeding. Keane JA, at para [38], concluded that whether or not proceedings on indictment should be stayed as an abuse of process is a decision for the Court which tries the matters charged on indictment. The learned District Court judge then concluded, in my view correctly, that the applicant's complaint about the refusal to stay the proceeding provided no basis for allowing the appeal to that Court.

[10] His Honour then dealt with what he described as a fundamental difficulty which confronted the applicant which applies equally to his application here. His Honour said that:[3]

> "[9] … In *Schneider v Curtis* [1967] Qd R 300 the Full Court held that an appellable order for the purposes of s 222 of the *Justices Act 1886* (Qld) means an order which has the effect of disposing of a complaint as distinct from an interlocutory order made during the course of proceedings. In that case Gibbs J with whom Wanstall and Douglas JJ agreed, said at p 306:-
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> "In my opinion the legislature did not intend that the wide powers of control over the proceedings of Magistrates which this Court may exercise by an order to review should also be available on an appeal under s 222. Such an appeal in my opinion only lies from an order which disposes of a complaint, for example by dismissing it, or by entering a conviction and imposing a penalty. It does not lie from a Magistrate's ruling, given at the close of the complainant's case, that there is a case for the defendant to answer, for although such a ruling may amount to a refusal of an application, and may be regarded as an order within the meaning of s 4, it is made upon an incidental application during the hearing of the complaint and is not an order made upon the complaint."
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> [10] The authority of *Schneider v Curtis* has been upheld in a number of cases including *Paulger v Hall* [2002] QCA 353, *Coulter v Ryan* [2006] QCA 567 and *Mathews v Cabrera* [2010] QCA 300.

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2 [2005] QCA 234.

3 *Mathews v The Commissioner of Police* [2011] QDC 246 at [9]-[12].

> [11] In the present case the order made under s 20B(1) of the *Crimes Act 1914* (Cth) did not have the effect of finally disposing of the complaints. The referral was made during the course of the committal hearing but the proceedings themselves remain afoot. Should the appellant be judged fit for trial then those proceedings will continue before the Magistrate.
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> [12] The consequence in my view is that the order made by the Magistrate on 24 September 2010 is not an appellable order for the purposes of s 222 of the *Justices Act 1886* (Qld). Accordingly this appeal should be dismissed."

[11] In my view his Honour's conclusions on that point were correct. It is also inappropriate for us to enter on an examination of the merits of the charges against Mr Mathews and of the question whether the proceedings against him should be stayed. The fact that the form of his appeal to the District Court was pursuant to s 222 of the *Justices Act* is not the only reason for that conclusion. It is not the function of this Court at this incomplete stage of committal proceedings to entertain an application that they be stayed. That is a question for the Court to which any charges are committed, if indeed the charges are committed for trial.

[12] The result is that the application to appeal should be refused.