

COURT OF APPEAL

MORRISON JA

**Appeal No 6039 of 2015
QCAT No 4235 of 2015**

PUBLIC TRUSTEE OF QUEENSLAND

Applicant

v

**IAN CURR
SENIOR MEMBER CLARE ENDICOTT
PUBLIC GUARDIAN**

Respondents

BRISBANE

WEDNESDAY, 22 JULY 2015

JUDGMENT

MORRISON JA: Mr Curr instituted a notice of appeal on 19 June 2015, and on the same day, an amended notice of appeal was filed. The notice of appeal listed three respondents; Senior Member Clare Endicott, the Public Guardian and the Public Trustee. The third respondent named in the appeal, namely, the Public Trustee, has applied, by application filed on 15th of July, to strike out the appeal on the basis that there is no jurisdiction. Parties will be referred to as they were in the original application for leave to appeal. Affidavits have been filed explaining the proceedings, particularly by Mr Curr, who deposes to a particular sense of grievance concerning the treatment of Mr Taylor, who has been removed from his house by order of the Public Guardian, or under the processes of the Public Guardian and placed in a high care facility.

There can be no doubt that Mr Curr feels a particular sense of grievance and outrage at what has followed. I make no comment at all about the rights or wrongs of the matters raised by Mr Curr, but I do not doubt that he feels those matters very keenly.

However, the difficulty is that there is no jurisdiction in this court to hear Mr Curr's appeal. The order sought to be challenged was made by Senior Member Endicott on 11 June 2015. That order merely extended time for compliance with previous orders made on 30 January 2015. Thus, the order was interlocutory in nature, deciding no substantive rights between the parties to those proceedings.

An avenue of appeal from that decision is available under s 142 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld), to the appellate division of QCAT. As the order is not a final order, appeal will only be by leave under s 142(3) of the Act.

Section 149 is the provision in the Act which provides that a party can appeal to this Court against a decision of QCAT. However, s 149 provides that an appeal to this Court is available only against two types of decisions in QCAT, namely, a "costs amount decision"¹ and a decision by a judicial member of QCAT.²

The decision of Ms Endicott to extend time to comply with an order is not a costs amount decision, nor is Ms Endicott a judicial member.

Therefore, there is no avenue to appeal to this court.

The notice of appeal and amended notice of appeal, each filed 19 June 2015, being incompetent, should be struck out. A single justice of the Court of Appeal has the power to do so.³ Therefore, the notice of appeal and amended notice of appeal are struck out.

The third respondent has applied for the costs in the event that the application to strike out succeeds. I can see no reason why costs should not follow the event, and therefore, there will be an order that the third respondent's costs of, and incidental to, the application to strike out be paid by Mr Curr to be assessed on the standard basis.

¹ *Queensland Civil and Administrative Tribunal Act 2009* (Qld) s 149(1).

² *Queensland Civil and Administrative Tribunal Act 2009* (Qld) s 149(2).

³ *McElligott v McElligott & Ors* [2014] QCA 54, pg. 3; Supreme Court Practice Direction 3 of 2013, [6].

The orders, therefore, are as follows: the notice of appeal and amended notice of appeal are struck out, and the third respondent's costs of, and incidental to, the application to strike out are to be paid by Mr Curr to be assessed on the standard basis.