SUPREME COURT OF QUEENSLAND

CITATION:	*Di Iorio v Wagener* [2016] QCA 346
PARTIES:	**PETER DI IORIO** (applicant) **v** **GARY WAGENER** (respondent)
FILE NOS:	Appeal No 5148 of 2016 Appeal No 3622 of 2016
DIVISION:	Court of Appeal
PROCEEDING:	Application to Discharge or Vary
ORIGINATING COURT:	Queensland Civil and Administrative Tribunal
DELIVERED ON:	Order delivered ex tempore 25 November 2016 Reasons delivered 20 December 2016
DELIVERED AT:	Brisbane
HEARING DATE:	25 November 2016
JUDGES:	Gotterson and Philippides JJA and Henry J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Order delivered ex tempore on 25 November 2016:** **Application refused.**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL – RIGHT OF APPEAL – NATURE OF RIGHT – APPEALS IN THE STRICT SENSE AND APPEALS BY WAY OF REHEARING – APPEALS IN THE STRICT SENSE – where the applicant was ordered by QCAT to pay a monetary sum – where the applicant is an undischarged bankrupt – where the applicant appealed the QCAT decision to the Appeal Tribunal of QCAT and the Court of Appeal out of time – where a single judge of appeal exercising the powers of the Court of Appeal heard and refused the application for an extension of time – where the applicant applies to discharge or vary the decision of the single judge of appeal – whether the applicant has demonstrated, on the part of the judge of appeal, an error of law, a material error of fact, a failure to take into account a material consideration, the taking into account of an irrelevant consideration, or unreasonableness in the *House v The King* sense *Supreme Court of Queensland Act* 1991 (Qld), s 30, s 44, s 62 *Uniform Civil Procedure Rules* 1999 (Qld), r 748, r 767

Apidopoulos v Sheriff of Victoria (2000) 1 VR 476; [2000] VSCA 104, cited
Australian Securities Commission v Marlborough Gold Mines Ltd (1993) 177 CLR 485; [1993] HCA 15, applied
Di Iorio v Wagener [2016] QCA 97, affirmed
Keating v Western Australia (2007) 35 WAR 1; [2007] WASCA 98, cited
Patrick v Howorth [2002] NSWCA 285, applied
Transglobal Capital Pty Ltd v Yolarno Pty Ltd (2004) 60 NSWLR 143; [2004] NSWCA 136, cited
Wentworth v Wentworth (1994) 35 NSWLR 726, applied

COUNSEL: The applicant appeared on his own behalf
The respondent appeared on his own behalf

SOLICITORS: The applicant appeared on his own behalf
The respondent appeared on his own behalf

[1] **GOTTERSON JA:** On 26 August 2010, the applicant, Peter Di Iorio, was ordered by the Queensland Civil and Administrative Tribunal ("QCAT") to pay the sum of $8,240 to the respondent, Gary Sean Wagener, who traded as Wagener Building Service. That judgment was registered in the Magistrates Court at Southport on 27 September 2010, and an enforcement warrant based on that unsatisfied judgment was issued on 19 November 2010.

[2] The applicant applied to the Appeal Tribunal of QCAT for leave to appeal against the QCAT decision.[1] That application was refused on 22 November 2010 as a result of the applicant's non-compliance with directions given.

[3] The applicant is an undischarged bankrupt. He is subject to a sequestration order made on 23 October 2014. He appealed to the Federal Circuit Court and then to the Federal Court of Australia against that order. Each appeal was unsuccessful.

[4] On 5 November 2014, some four years after the Appeal Tribunal's refusal, the applicant sought an extension of time within which to seek leave to appeal the original QCAT decision, again to the Appeal Tribunal of QCAT. That application was refused on 28 November 2014.

[5] On 25 February 2016, absent the consent of his Trustee in bankruptcy, the applicant filed a notice of appeal in the District Court at Southport. The appeal was stated to be against the registration of the judgment in the Magistrates Court but was intended by the applicant as a vehicle for challenging the QCAT judgment. The District Court judge who heard the matter treated it as such.

[6] That application was refused on 29 March 2016 for two reasons. One was that the trustee in bankruptcy had not consented to it. The other was that the District Court had no jurisdiction. His Honour observed, correctly, that any avenue of appeal against the original QCAT decision was to the Appeal Tribunal of QCAT and, from there, to this Court.

[7] On 8 April 2016 the applicant filed an application in this Court.[2] By it, he appealed against the District Court order made on 29 March 2016 and sought an array of relief

---

1 Pursuant to s 142(3) of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld).
2 AB38-52.

including "freezing orders", a permanent stay of the Magistrates Court orders and of the sequestration order, as well as orders dismissing or quashing "the QCAT order/judgment of 27 September 2010". The latter was misconceived in that there was no order of QCAT made on that date.

[8] That application was heard by Morrison JA, as a single judge of appeal exercising the powers of the Court of Appeal pursuant to r 767 of the *Uniform Civil Procedure Rules* 1999 ("UCPR"),[3] on 14 April 2016. In reasons dismissing the application delivered on the following day, his Honour observed that, from the applicant's oral submissions, it was clear that he sought three species of relief: first, that the QCAT orders made in 2010 "be reversed"; second, that his bankruptcy be annulled; and third, an urgent injunction restraining the trustee in bankruptcy from selling a property at Palm Beach.[4]

[9] His Honour quite properly identified fatal defects in the second and third species of relief. As to the second, this Court has no jurisdiction to annul the bankruptcy; and, as to the third, the applicant's property had vested in the trustee in bankruptcy who had a statutory obligation to realise it for the benefit of the applicant's creditors, and, on the evidence, no sale was imminent.[5]

[10] So far as the QCAT orders were concerned, his Honour was prepared to treat the application as one concerning leave to appeal pursuant to s 150(1) of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld) ("QCAT Act") against the refusal decisions of the Appeal Tribunal of QCAT made on 22 November 2010 and 28 November 2014 respectively. Given the lapse of time since the refusal decisions, his Honour characterised the application as one for an extension of time within which to apply for leave to appeal against those decisions made under s 151(2)(b) of the QCAT Act.

[11] On 1 September 2016,[6] the applicant filed in this Court a document styled "Notice of Appeal subject to leave to the Full Court of Appeal" against the decision of Morrison JA. The proceeding instituted by that document was heard by this Court sitting as a bench of three judges on 25 November 2016. The relief sought in that proceeding was refused at the conclusion of the hearing. These are my reasons for joining in the refusal.

Right of appeal?

[12] The nomenclature adopted by the applicant, who acts for himself and is not legally trained, for the document filed on 1 September 2016, provokes the question whether there is an avenue of appeal available to him from the decision of Morrison JA to a Court of Appeal constituted by three judges. That is an issue that needs to be addressed first.

[13] The authority of a single judge of appeal to exercise the powers of the Court of Appeal is sourced in several statutory provisions. Sections 44(1) and (2) of the *Supreme Court of Queensland Act* 1991 (Qld) ("the 1991 Act") authorise a judge of appeal to exercise the Court's powers in defined circumstances. Section 30(4) thereof permits a rule of court to provide that the jurisdiction and powers of the Court of Appeal may, in

---

3 Authorised by s 30(4) of the *Supreme Court of Queensland Act* 1991 (Qld).

4 Reasons [17]; AB59.

5 Reasons [19]-[21]; AB59.

6 At the hearing, the applicant accepted that this document superseded a similarly styled notice of appeal filed in this Court on 24 May 2016: AB62-69 and an application filed in the Court on 25 August 2016: AB91-95. Also filed on 1 September 2016 was an affidavit sworn by the applicant on 30 August 2016. It superseded his affidavit in similar terms filed on 25 August 2016: AB96-97. The applicant relied on his affidavit sworn on 8 April 2016 read before Morrison JA: AB16-28.

particular kinds of proceedings, be exercised by fewer than three judges of appeal. Rule 767 of the UCPR is such a rule. Relevantly, r 767(b) provides:

> "Subject to any Act, 1 or more judges of appeal may exercise the powers of the Court of Appeal in… an application in a civil proceeding for leave to appeal or for an extension of time to apply for leave to appeal".

[14] When he refused the applicant's application for an extension of time, Morrison JA, as a single judge of appeal, was exercising a power that was clearly available to him under r 767(b). It is open to doubt that a co-ordinate power to refuse the application was also conferred by ss 44(1) or (2). However, his Honour's power under r 767(b) was not dependent upon such a conferral.

[15] The sole avenue for review of a decision of a single judge of appeal established by legislation is to be found in s 44(4) of the 1991 Act. It states:

> "The Court of Appeal may discharge or vary—
>
> (a) a judgment given by a judge of appeal; or
>
> (b) an order made or direction given by a judge of appeal."

Absent the Court granting such relief, the decision of the single judge of appeal is deemed to be a decision of the Court.[7]

[16] A review of this kind contrasts with the right of appeal for which s 62(1) of the 1991 Act provides. That provision enacts that "an appeal lies to the Court of Appeal from any judgment or order of the court in the Trial Division". As Morrison JA was not sitting in the Trial Division when refusing the applicant's extension of time, and in the absence of any other provision conferring it, there is no right of appeal to this Court against his Honour's decision.

[17] I am prepared to construe ss 44(4) of the 1991 Act as being intended to apply to any instance where a judge of appeal exercises a power of the Court of Appeal which is authorised to be exercised by a single judge of appeal. There is no persuasive indication in s 44 that the subsection was intended to apply only to instances authorised by ss 44(1) or (2).

[18] On that construction, the only avenue of review available to the applicant is that given by s 44(4). It is an avenue that may be pursued by filing an application[8] to discharge or vary the orders made by Morrison JA, which the applicant has not done. This was raised at the hearing. The respondent, who also appeared without legal representation, stated that he did not object to the Court treating the applicant's filed document as one of seeking the exercise of the Court's discretion to discharge or vary the order made by Morrison JA.

Nature of the review available to the applicant

[19] No decision of this Court has previously considered the nature of the review provided for by s 44(4). That is to say, questions as to whether the Court constituted by three or more judges is to deal with the application by way of rehearing ab initio or de novo, by a more restricted form of rehearing, or by a review in the strict sense, have not

---

7 s 44(5).

8 Upon a reading of rr 746(1), 786(5), 778, 779 in conjunction. It cannot be said to fall into a category under Part 3 of Chapter 18 of the *Uniform Civil Procedure Rules* 1999.

previously been addressed. The words of the section themselves do not shed light on how they are to be answered.

[20] There has, however, been a consistent approach taken by the New South Wales Court of Appeal to reviews under s 46(4) of the *Supreme Court Act* 1970 (NSW). That provision is in identical terms to our s 44(4). In *Wentworth v Wentworth*,[9] although they each adopted a differently worded formulation, the members of the court observed that a review under s 46(4) is a strict review, requiring error on the part of the single judge of appeal to be established by the applicant. In quoting from a decision of the English Court of Appeal,[10] Mahoney JA said that in order for an application to discharge or vary to be granted, the applicant must show that the judge of appeal "misdirected himself [or herself] in principle or that his [or her] order was plainly wrong".[11]

[21] At page 729, his Honour cited the following passage from the decision of Kirby P (as his Honour then was) in *Knaggs v Solicitors' Statutory Committee*[12]:

> "…it seems to me that the claimant must show that [the Judge of Appeal's] discretion miscarried. Otherwise, every discretionary practice decision made by a Judge of Appeal … sitting alone would be open to complete reargument as if the order made … had never been pronounced. I do not believe that such was the intention of the Act, providing as it does … for the economic deployment of the Judges of Appeal."

[22] Mahoney JA then made the following observations which reflect the sentiments expressed by Kirby P:

> "In my opinion, the nature of the proceedings on such review should be inferred from the context in which the review takes place and the purpose of the section. One of the main purposes of the section was to relieve the burden imposed upon the Court of Appeal by the extensive nature of its jurisdiction. If the application to the Court of Appeal were to be dealt with as on a re-hearing ab initio, then the effect of the section would be not to reduce but, in relevant cases, to increase the burden upon the Court. Except in cases excluded by s 46 - a full hearing of an appeal or an application for leave to appeal or the like - it would be open to every applicant to have a hearing before a single judge of the Court and then, as of right, an unrestricted second hearing before the Court. I infer from the purpose of the section and the nature of relief available ('discharge or vary') that this was not the legislative intention…
>
> The form of review provided by s 46(4) is different. It is not described as an 'appeal' and, I think, it is in its nature not an appeal. The Court of Appeal, acting under s 46(4), does not provide that the Court of Appeal shall set aside the order made by the judge because there was an error in it and, having set it aside, itself exercise the jurisdiction which the judge exercised. The subsection appears to assume that the order made by the judge was validly made; it provides that the court does not re-exercise the power exercised by the judge, as such. It provides merely that the judge's order may be 'discharged' or 'varied'.

---

9 (1994) 35 NSWLR 726.

10 *Wren v Braunston Canal Services Ltd* (Court of Appeal (England), 23 November 1990 unreported).

11 At 731.

12 Court of Appeal, 8 October 1990, unreported.

> And no provision is made in relation to evidence such as is ordinarily made for this kind of re-hearing. It is, of course, wrong to place too much weight upon, or to draw too much by way of inference from, the terms 'discharge or vary'. But such terms suggest, I think, that the legislature did not see what the Court of Appeal should do as in the nature of an appeal: at least, an appeal of this kind, analogous to that in s 75A [of the *Supreme Court Act* 1970 (NSW)]."[13]

[23] Handley JA was of the view that the power to review is "at least subject to the principles in *House v The King*".[14] Powell JA considered that an applicant must show "that the discretion vested in the primary judge clearly miscarried".[15]

[24] Each of the differently worded formulations were considered by Heydon JA (as his Honour then was) in *Patrick v Howorth*.[16] Drawing upon the commonality in them, his Honour proposed his own formulation, stating that an application to discharge or vary:

> "will ordinarily not succeed unless the decision turns on an error of law, a material error of fact, a failure to take into account some material consideration or the taking into account of an irrelevant consideration, or unless the decision is so unreasonable as to suggest that one of these types of error has been committed even though it does not appear on the face of the reasoning".[17]

This formulation was endorsed by the New South Wales Court of Appeal in *Transglobal Capital Pty Ltd v Yolarno Pty Ltd*,[18] which has been cited authoritatively by the same court as recently as in August 2016.[19]

[25] In 2000, the Court of Appeal of Victoria followed *Wentworth* in *Apidopoulos v Sheriff of Victoria*.[20] After essaying the reasons of each of the members of the New South Wales Court of Appeal, Winneke P, delivering the judgment of the court, said:[21]

> "In our view s 11(5) of the *Supreme Court Act* 1986 should be accorded a similar construction to that which has been given by the Court of Appeal in New South Wales to the counterpart provisions in the *Supreme Court Act* of that State. It would, we think, be contrary to the intention of the legislature to construe s 11(5) as treating an application to discharge or vary an order made by a single Judge of Appeal as a hearing de novo or an appeal in the nature of a re-hearing.
>
> Having regard to the nature of the orders which can be made by a single Judge of Appeal pursuant to the powers invested by r 64.26,[22]

---

13 At 729-730.
14 At 733.
15 At 737.
16 [2002] NSWCA 285.
17 At [10], Hodgson JA and Young CJ in Eq agreeing.
18 (2004) 60 NSWLR 143 at [6]-[7], judgment of the Court (Beazley and Ipp JJA and Santow J).
19 *McGinn v Cranbrook School* [2016] NSWCA 226 at [4] per Gleeson JA (Beazley P and Simpson JA agreeing).
20 (2000) 1 VR 476. The court resorted to *Wentworth* to aid its interpretation of the now repealed s 11(5) of the *Supreme Court Act* 1986 (Vic). (A similar provision is enacted in s 11(4B) although it is subject to "the Rules" making provision for such applications).
21 At present, "the Rules" have limited an applicant's right to make an application to discharge or vary: see rr 64.15, 64.17, 64.18, 64.42 *Supreme Court (General Civil Procedure) Rules* 2015 (Vic); rr 64.22, 64.26, 64.27 *Supreme Court (General Civil Procedure) Rules* 2005 (Vic).
22 Of the *Supreme Court (General Civil Procedure) Rules* 2005 (Vic).

> it is far more consonant with the scheme of the legislation - which, as in New South Wales, contemplates the efficient and economic deployment of the Judges of Appeal - to treat a single Judge of Appeal's discretionary orders made pursuant to s 11(4)[23] as liable to be discharged or varied under s 11(5) only if the discretion can be clearly demonstrated to have miscarried.
>
> It is true that an exercise of a single Judge of Appeal's powers pursuant to the Act and the rules can have significant consequences to a party, particularly where, as in this case, the effect of the order will mean the end of the appeal. That consequence, however, does not destroy the character of the order made by Chernov JA as an exercise of a discretion made in a matter of practice or procedure. Unless it can be demonstrated that the discretion has miscarried, this court should not interfere."[24]

[26] It may be noted that a different approach has been taken to s 61(3) of the *Supreme Court Act* 1935 (WA) which is similarly worded to s 44(4). In that State it has been held that a proceeding under the provision is an appeal by way of rehearing in which error must be shown in order to succeed.[25] However, the Court of Appeal of Western Australia was influenced to that approach by amendments made in 2004 to s 61(1) intended to make it open to a single judge of appeal to dispose finally of an appeal, including appeals in criminal matters.[26] Comparable amendments have not been made in Queensland.

[27] In my view, this Court ought to take the same approach as is taken in New South Wales on this issue.[27] To do so is conformable with the injunction in *Australian Securities Commission v Marlborough Gold Mines Ltd*[28] that intermediate appellate courts in Australia should not depart from intermediate appellate courts in another jurisdiction on the interpretation of Commonwealth legislation or uniform national legislation unless they are convinced that the interpretation is plainly wrong. Here, the Queensland and New South Wales provisions are in identical terms. I have no reason to doubt the correctness of the reasoning in *Wentworth*, or the formulation proposed by Heydon JA in *Patrick* and approved in subsequent decisions.

[28] On this appeal, in order for this Court to grant an application to discharge or vary under s 44(4), the applicant must demonstrate, on the part of the judge of appeal, an error of law, a material error of fact, a failure to take into account a material consideration, the taking into account of an irrelevant consideration, or unreasonableness in the *House v The King* sense.[29]

Time limit for filing an application to discharge or vary?

[29] Rule 748 of the UCPR states that, unless the Court orders otherwise, a notice of appeal is to be filed within 28 days after the date of the decision appealed from. As the cases to which I have referred indicate, an application to discharge or vary is not an appeal

---

23 Similar terms now in s 11(1C).

24 At [18]-[20].

25 *Keating v Western Australia* (2007) 35 WAR 1 at [21]; *Lewis v Western Australia (No 2)* (2008) 37 WAR 483 at [33]; *Marshall v The Town Planning Appeal Tribunal of Western Australia [No 3]* [2008] WASCA 27 at [2].

26 *Keating* at [8]-[9].

27 The hearing of the applicant's application proceeded on that footing.

28 (1993) 177 CLR 485, 492 per Mason CJ, Brennan, Dawson, Toohey and Gaurdon JJ.

29 (1936) 55 CLR 499, 505 per Dixon, Evatt and McTiernan JJ.

in ordinary concepts. Nor is it defined to be an appeal for the purposes of the UCPR.[30] Hence, r 748 does not apply to it. No time limit is imposed for the making of an application under s 44(4) of the 1991 Act to discharge or vary a judgment, order or direction given or made by a judge of appeal.[31]

[30] The position is different in New South Wales. Rule 51.58 of the *Uniform Civil Procedure Rules* 2005 (NSW)[32] states:

> "An application to the Court for the variation or discharge of an order of a Judge of Appeal must be made on notice of motion filed:
>
> (a) within 14 days after the date on which the order is made, or
>
> (b) within such extended time as the Court may fix."

[31] In my view, it would be appropriate for there to be, in Queensland, a time limit for making applications under s 44(4). I respectfully suggest that consideration be given to that. Such a measure would appropriately give effect to the philosophy of proceeding with matters in an expeditious way and avoiding undue delay.[33]

[32] It remains to note that the opinions I have expressed concerning the absence of a right of appeal, the avenue of review available and its nature, and the absence of a time limit were reached without the benefit of legal argument on the subject.

Reasons of Morrison JA

[33] I now turn to the reasons of Morrison JA. It is sufficient for present purposes to focus upon those that concern the application for an extension of time to seek leave to appeal the QCAT refusal decisions. As to it, his Honour said:

> "[30] There is no adequate explanation for the delay in applying for leave to appeal. Mr Di Iorio explained that in the time since the QCAT decisions 2010 and 2014 he has been pursuing numerous other cases, in QCAT and elsewhere, as well as pursuing lines of challenge from the decision relevant to this application, in the District Court and elsewhere. In still further proceedings he has unsuccessfully challenged the sequestration orders.
>
> [31] That does not explain the delay in failing to apply for leave to appeal from the decision of the QCAT appeal division, given on 28 November 2014.
>
> ***Interests of justice***
>
> [32] The interests of justice do not favour the grant of an extension of time.
>
> [33] First, when Mr Di Iorio was made bankrupt on 23 October 2014 his "property" vested in his trustee: s 58 of the *Bankruptcy Act* 1966 (Cth). Unless caught by s 116(2)(g) of the *Bankruptcy Act*, that property would have included any rights in respect of the

---

30 As a notice of appeal is not required to be filed: see r 746(1) and contrast r 746(2)(a) with r 779.

31 No time limit is imposed by the 1991 Act or the UCPR.

32 The antecedent Part 51, r 34 of the *Supreme Court Rules* 1970 (NSW) was discussed by Powell JA in *Wentworth* at 736.

33 See r 5 *Uniform Civil Procedure Rules* 1999.

QCAT proceedings, a chose in action being part of the bankrupt's property: s 116(1) of the *Bankruptcy Act*. The exception in s 116(2)(g) relates to: any right of the bankrupt to recover damages or compensation for personal injury or wrong done to the bankrupt. It seems that the right was caught as one of Mr Di Iorio's complaints is that the trustee would not give consent to the appeal to the QCAT appeal division.

[34] An action (meaning a civil proceeding) commenced by a person who subsequently becomes bankrupt is stayed until the trustee makes a decision to prosecute or discontinue it: s 60(2) of the *Bankruptcy Act*. In so far as the proceedings in QCAT (for leave to appeal to the appeal division) were on foot, unless they were classified as proceedings for "any personal injury or wrong done to the bankrupt" under s 60(4), they were stayed under s 60(2), and abandoned under s 60(3) if no election was made by the trustee. No election was made by the trustee, it seems, and consent to Mr Di Iorio appealing was withheld.

[35] Secondly, Mr Di Iorio has not identified any error of law on the part of the QCAT appeal division, in its decision on 28 November 2014.

[36] Thirdly, the application identifies the judgments against which the appeal is proposed as: the District Court decision on 29 March 2016 and the Magistrates Court in 2010. No reason is included for granting leave.

[37] The application itself therefore does not articulate an understandable basis for the grant of leave. Neither does the affidavit of Mr Di Iorio, which seems directed mainly at the factual contentions that were the subject of the hearing in QCAT in 2010.

[38] Those matters cause me to reach the preliminary view that there is no adequate explanation of the delay and the interests of justice do not require that an extension of time be granted for the application for leave to appeal. I pause to emphasise that this is not a concluded view, but sufficient to make a preliminary assessment of the strength of the serious question to be tried, that is said to underpin the application for an injunction."

Discussion

[34] In his outline filed 10 October 2016, the applicant speaks generally about the entirety of the proceedings in which he has been involved in various courts and tribunals. He complains of being consistently denied a "fair trial" and "natural justice". This occupies the majority of his outline. In addition, there are a number of generalised allegations against Morrison JA which seek to impugn the process before his Honour.[34] No reference is made to his Honour's reasons for judgment.

[35] The applicant also filed two affidavits on 1 September 2016.[35] One of them seeks to explain his delay subsequent to 28 April 2016 in filing this application by detailing

---

34 Including, for example, that his Honour "caused a miscarriage of justice" and denied the applicant procedural fairness: Outline of Argument p1.

35 Said at the hearing by the applicant to supersede an affidavit filed 25 August 2016.

a series of filing misadventures. However, as noted, there is no time limit for filing such an application.

[36] The second affidavit makes similar generalised allegations of being subjected to "errors of judgment" and being denied justice as a result of an "abuse of power" (among other things) throughout his previous proceedings. It also provides a number of legislative extracts from the *Building Work Contractors Act* 1995 (SA), *Queensland Building and Construction Commission Act* 1991 (Qld), *Building and Construction Industry Improvement Act* 2005 (Cth), and the *Australian Consumer Law*. Some two pages of the affidavit are directed to factual contentions that were the subject of the 2010 QCAT hearing and were outlined in similar terms in an affidavit before Morrison JA.[36] None of the material filed by the applicant identifies, or even attempts to identify, error of a kind described by Heydon JA in *Patrick*.

[37] At the commencement of the hearing, the Court invited the applicant to refer to Morrison JA's reasons and to advance submissions based upon them. The applicant made discursive oral submissions for almost an hour that were repetitive of the generalised allegations in his outline, spanned all proceedings in which he had been involved, and were replete with complaints of a denial of natural justice which, in substance, were complaints of being refused relief which he thought he justly deserved.

[38] Despite many efforts by members of the Court to encourage the applicant to address the reasons of Morrison JA, he failed to do so in any meaningful way. He did not point to any error on his Honour's part, let alone an error sufficient for the Court to exercise its discretion to grant his application to discharge or vary his Honour's orders. In these circumstances, it was appropriate for the Court to refuse the applicant's application promptly at the conclusion of the hearing.

[39] **PHILIPPIDES JA:** I have had the advantage of reading the reasons for judgment of Gotterson JA. They reflect my reasons for joining in the order made in this matter.

[40] **HENRY J:** I have read the reasons of Gotterson JA. I agree with those reasons and the order proposed.

---

36 AB16-35.