DISTRICT COURT OF QUEENSLAND

CITATION:	*Schafer v Bacon* [2022] QDC 60
PARTIES:	**MICHELLE LYNETTE SCHAFER** (Appellant) **v** **BRETT CHRISTOPHER BACON** (Respondent)
FILE NO:	59/21
DIVISION:	Planning and Environment
PROCEEDING:	Appeal – *Justices Act 1886* (Qld) s 222
ORIGINATING COURT:	Magistrates Court at Rockhampton
DELIVERED ON:	18 March 2022
DELIVERED AT:	Rockhampton
HEARING DATE:	18 February 2022 and 14 March 2022
JUDGE:	Clarke DCJ
ORDER:	1. **Application for extension of time to file is refused** 2. **The appeal be dismissed** 3. **The appellant is ordered to pay the respondent's costs on the standard basis**
CATCHWORDS:	PLANNING AND ENVIRONMENT – PROSECUTION – GENERALLY – proceedings for breach of enforcement notice issued by local authority for carrying out assessable development work without a permit – challenge to the jurisdiction of the court
LEGISLATION:	*Justices Act 1886* (Qld) ss 222–223, 224(1)(a), 225 *Planning Act 2016* (Qld) s 168(5) *Local Government Act 2009* (Qld) ss 8, 9(1), 9(4)(a), 243, 251, 254 *Evidence Act 1977* (Qld) s 43
CASES:	*Fox v Percy* (2003) 214 CLR 118

Allesch v Maunz (2000) 203 CLR 172

Teelow v Commissioner of Police [2009] QCA 84

Robinson Helicopter Company Inc v McDermott (2016) 90 ALJR 679

McDonald v Queensland Police Service [2018] 2 Qd R 612

Re Finlayson; Ex parte Finlayson (1997) 72 ALJR 73

Mbuzi v Torcetti [2008] QCA 231

Rowe v Kemper [2008] QCA 175, cited

R v Tait [1999] 2 Qd R 667

Oshlack v Richmond River Council (1998) 193 CLR 72

APPEARANCES: The appellant appeared on her own behalf

Mr M J McDermott of counsel instructed by King and Company for the respondent

[1] Over a year ago Ms Schafer was convicted of an offence contrary to the *Planning Act 2016* (Qld) s 168(5) of contravening an enforcement notice on 23 November 2019. Ms Schafer was not inclined to enter a plea at the start of the summary hearing (or, as she put it, to consent to the proceedings). Ms Schafer challenged the jurisdiction of the local authority to prosecute the complaint and summons against her, being a subject of the Queen in the UK or as a "natural-born subject". After dealing with the jurisdictional point, the learned Magistrate correctly entered a plea of not guilty on the appellant's behalf and appropriately advised her as to the mode of summary hearing, as she was representing herself. The evidence led in support of conviction was largely unchallenged, save repeated objections. Procedural matters were proved by evidentiary certificates.[1]

[2] The grounds of appeal to this court appear to also raise the jurisdictional issue and are repeated as follows:

1. Breach of *Australian Constitution* clause 5, sections 34, 44, 74, 76(IV), 106-109, 117, 123; and

2. Breach of *Constitution Act 1867* (Qld) ('*Queensland Constitution*') sections 1, 2, 11A, 11B, 14, 53.

[3] In a nutshell, the complaint centred on Ms Schafer having conducted assessable development works of moving two shipping containers and connecting utilities to them, on a block of land at Ogmore (north of Rockhampton and within the boundaries of the Livingstone Shire Council), without Council approval. An enforcement notice was issued: the allegation to be proved was that she failed to comply with it.

[4] A Notice of Appeal to a District Court Judge and a Notice of Application for Extension of Time for Filing the Notice of Appeal was filed on 23 November 2021, which was over 10 months after the hearing date. The reason for the inordinate delay is perhaps explained by Ms Schafer having brought judicial review proceedings in the Supreme Court (which was dismissed) and a dozen applications to the High Court of Australia.

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1 *Local Government Act 2009* (Qld) s 251.

[5] Exhibit 2 to an affidavit that was sworn on 14 February 2022 (which appears to bear the appellant's signature), is a document entitled "my cases" from the High Court of Australia. It shows the filing of Form 17 Application for Removal on nine occasions between 15 June 2021 and 10 December 2021; a Form 23 Application for Special Leave to Appeal on 15 November 2021; and a Form 31 Application for Leave to Issue or File on 21 December 2021. All were rejected. The twelfth application, which was another Form 31 Application, had been filed on 6 January 2022. Ms Schafer had not received confirmation whether it had also been rejected by the date of the hearing of this appeal on 18 February 2022. Accordingly, Ms Schafer sought and was granted an adjournment. Ms Schafer undertook to obtain further legal advice about her identified limited prospects of success, on that occasion.

[6] Following the adjournment, Ms Schafer filed further documents entitled "Statement of Claim" and "Affidavit", which are of a similar vein and largely repetitive of the material filed originally, entitled "Affidavit" and "Outline". The filed material is largely indecipherable. The theme centres upon constitutional issues which are said to emerge following the abolition of the Upper House of the Queensland Parliament 100 years ago,[2] and some perceived inconsistency of local government laws with the *Australian Constitution*, or the *Queensland Constitution*, or both. The filed documents otherwise contain case summaries, article extracts, a letter from Mr Culleton (Great Australian Party) to the Governor-General calling on him to stand down, and a claim of $40,000 for damages to health, $10,000 for defamation of character, plus costs.

[7] On the resumed hearing, the respondent confirmed that on 17 February 2022, the Honourable Justice Keane AC found it would be "futile" to grant leave to issue or file the Application for Removal to the High Court.[3] In oral submissions, the appellant appeared to confirm her argument, without clarity, or legislative or judicial support, that the *Local Government Act 2009* (Qld) was inconsistent with the *Australian Constitution* and/or the *Queensland Constitution*. Ms Schafer also stated the grounds of appeal concerned the "lawfulness" of the Queensland Governor and the Governor-General of the Commonwealth of Australia.

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2 On 23 March 1922 - *Constitution Act Amendment Act 1922* (Qld) s 2.

3 *Judiciary Act 1903* (Cth) s 40; *High Court Rules (2004)* (Cth) r 6.07.2.

[8] Section 223 of the *Justices Act 1886* (Qld) confirms an appeal under s 222 is by way of a rehearing of the original evidence that was given in the proceeding to which the order is appealed against.[4]

[9] Courts have regularly determined the basic following principles apply: it is for the appellant to demonstrate some legal, factual or discretionary error;[5] the court is obliged to conduct a "real review", and to make its own findings of fact, or draw its or draw its own inferences and conclusions.[6]

[10] In *Mbuzi v Torcetti*[7] Fraser JA said the following:[8]

> The appeal proceeded under s 223(1) on the evidence given in the Magistrates Court. On such an appeal the judge should afford respect for the decision of the magistrate and bear in mind any advantage the magistrate had in seeing and hearing the witnesses give evidence, but the judge is required to review the evidence, to weigh the conflicting evidence, and to draw his or her own conclusions: *Fox v Percy*[9] at [25]; *Rowe v Kemper*[10] at [5].

[11] Pursuant to s 225 of the *Justices Act 1886* (Qld), among other things, on hearing the appeal I may either confirm, set aside, vary the appealed order or make any other order I consider just.

[12] As to the question whether time should be extended for the filing of the appeal, in *R v Tait*[11] the court said the following:[12]

> [T]he Court will examine whether there is any good reason shown to account for the delay and consider overall whether it is in the interests of justice to grant the extension. That may involve some assessment of whether the appeal seems to be a viable one. It is not to be expected that in all such cases the Court will be able to assess whether the prospective appeal is viable or not, but

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4 *Justices Act 1886* (Qld) s 222.
5 *Allesch v Maunz* (2000) 203 CLR 172; *Teelow v Commissioner of Police* [2009] QCA 84.
6 *Fox v Percy* (2003) 214 CLR 118; *Robinson Helicopter Company Inc v McDermott* (2016) 90 ALJR 679; *McDonald v Queensland Police Service* [2018] 2 Qd R 612.
7 [2008] QCA 231.
8 Ibid [17].
9 (2003) 214 CLR 118.
10 [2008] QCA 175.
11 [1999] 2 Qd R 667.
12 Ibid [5].

> when it is feasible to do so, the Court will often find it appropriate to make some provisional assessment of the strength of the applicant's appeal,[13] and take that into account in deciding whether it is a fit case for granting the extension. Other factors include prejudice to the respondent, but in the case of criminal appeals this is not often a live issue. Another factor is the length of the delay, it being much easier to excuse a short than a long delay.

[13] Whilst the appellant's conduct in bringing persistent applications in the incorrect court does not appear to be a good reason to account for the considerable delay, especially in circumstances where the respondent drew the appellant's attention to the appropriate mode of appeal within approximately one month of the summary hearing, I consider it appropriate to make a provisional assessment about whether the appeal should succeed. Just because the appellant persisted with bringing futile applications in the wrong jurisdiction would not normally constitute good reason for delay.

[14] On conducting a real review of the summary hearing, I discern no error. The evidence clearly supported the charge. The appellant's evidence effectively accepted the allegation. The appellant gave evidence she owned the land, continued to live in the shipping containers and had never applied for the necessary permits to do so. The jurisdictional point was considered by the Magistrate and rejected as being without foundation. With respect, I agree with that view and otherwise with his Honour's careful analysis of the evidence and the making of findings of fact which led to the guilty verdict.

[15] Ms Schafer has failed to demonstrate there is any relevance between the provisions of the *Australian Constitution* and the *Queensland Constitution* and the case under review. The appellant seems to have simply randomly picked some provisions of the *Australian Constitution* and the *Queensland Constitution* which have absolutely nothing to do with this case.[14] Above a mere assertion that the appeal should again be removed from the District Court of Queensland and uplifted to the High Court of Australia, there is nothing to confirm the case involves a matter which arises under

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13 Compare *Kolalich v DPP (NSW)* (1991) 173 CLR 222, 228; *Gallo v Dawson* (1992) 66 ALJR 859, 860.

14 Indeed, one of these provisions (s 14 of the *Queensland Constitution*) was repealed in 2001 - *Constitution of Queensland 2001* (Qld) s 94, as at 3 December 2001.

the purview of the *Australian Constitution*, as it must do so to enliven the operation of those provisions.[15] No doubt, that informs the many rejected applications to the High Court of Australia in this matter already.

[16] Also, as counsel for the respondent otherwise correctly points out:

(i) The Magistrate considered and property rejected the jurisdictional issue, which is confirmed by legislation[16];

(ii) The Queensland Parliament is constitutional;

(iii) No conflict arises – *Australian Constitution* s 109 has no operation;

(iv) The role of the Governor or Governor-General is irrelevant; and

(v) The Court is required to take judicial notice of legislation.[17]

[17] I have concluded the appeal does not enjoy a viable prospect of success. The appeal is incompetent. The appellant has failed to demonstrate the existence of some legal, factual or discretionary error. There is no reason to conclude the Magistrates Court lacked jurisdiction to determine the valid complaint.

[18] The appellant has not demonstrated there is any good reason to explain the delay. The application for extension of time is refused. The appeal must be dismissed.

[19] As to costs, in *Oshlack v Richmond River Council*[18] the High Court said the following about the discretion to award costs:[19]

> Costs are not awarded to punish an unsuccessful party. The primary purpose of an award of costs is to indemnify the successful party. If the litigation had not been brought, or defended, by the unsuccessful party, the successful party would not have incurred the expense which it did. As between the parties, fairness dictates that the unsuccessful party typically bears the liability for costs of the unsuccessful litigation.

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15 See *Re Finlayson; Ex parte Finlayson* (1997) 72 ALJR 73.
16 *Local Government Act* 2009 (Qld) ss 8, 9(1), 9(4)(a), 243, 254.
17 *Evidence Act* 1977 (Qld) s 43.
18 (1998) 193 CLR 72.
19 Ibid [67].

[20] The appellant's proceedings were doomed to fail. Nonetheless, the respondent was put to the expense of meeting, or attempting to meet, the appellant's case. In the exercise of discretion, I consider it appropriate to order the appellant pay the respondent's costs, on the standard basis.