SUPREME COURT OF QUEENSLAND

CITATION:	*Mowen v Rockhampton Regional Council* [2018] QSC 192
PARTIES:	**BEVAN ALAN MOWEN** (plaintiff/respondent) **v** **ROCKHAMPTON REGIONAL COUNCIL** (defendant/applicant)
FILE NO:	449 of 2017
DIVISION:	Trial Division
PROCEEDING:	Application
DELIVERED ON:	28 August 2018
DELIVERED AT:	Rockhampton
HEARING DATE:	20 August 2018
JUDGE:	Davis J
ORDER:	**1. Leave is granted to the Rockhampton Regional Council under s 5 of the *Vexatious Proceedings Act* 2005 (Qld) to bring an application against Bevan Alan Mowen for a vexatious proceedings order.** **2. Pursuant to s 6 of the *Vexatious Proceedings Act* 2005 (Qld), Bevan Alan Mowen is prohibited from commencing or continuing proceedings claiming damages or aggravated damages for defamation against the Rockhampton Regional Council.**
CATCHWORDS:	PROCEDURE – STATE AND TERRITORY COURTS: JURISDICTION, POWERS AND GENERALLY – VEXATIOUS LITIGANTS, PROCEEDINGS AND RELATED MATTERS – where the applicant has previously applied for vexatious proceedings orders – where that application was refused – where the respondent has joined the applicant to further proceedings – whether the respondent should be declared a person who frequently instituted or conducted vexatious proceedings – whether the respondent should be prohibited from bringing actions against the applicant *Commonwealth Electoral Act* 1918 (Cth) s 245 *Limitation of Actions Act* 1974 (Qld)

Local Government (Planning and Environment) Act 1990 (Qld) s 7.6
Uniform Civil Procedure Rules 1999 (Qld) r 171, r 293, r 371
Vexatious Proceedings Act 2005 (Qld) s 5, s 6, s 10

Ex parte Edwards [1989] 1 Qd R 139, cited
Fingleton v The Queen (2005) 227 CLR 166, cited
Fung v Tam [2012] QCA 10, cited
Lohe v Sargent [2001] QSC 386, cited
Markan v Bar Association of Queensland [2015] QCA 128, cited
Mowen v Australian Electoral Commission [2016] QCA 152, cited
Mowen v Electoral Commission of Queensland [2015] QSC 16, cited
Mowen v Electoral Commission of Queensland [2015] QCA 221, cited
Mowen v McGowran [2010] QCA 86, cited
Mowen v Morning Bulletin/APN and Ors [2012] QSC 194, cited
Mowen v The Morning Bulletin/APN & Ors [2013] QCA 36, cited
Mowen v Queensland State Government [2011] QSC 12, cited
Mowen v Queensland State Government [2011] HCASL 190, cited
Mowen v Rockhampton Regional Council; Bendigo and Adelaide Bank Limited v Mowen [2017] QSC 295, cited
Mowen v Rockhampton Regional Council [2018] QSC 44, cited
Mowen v State of Queensland [2011] QCA 137, cited
Mowen v State of Queensland [2018] QSC 183, cited
Mudie v Gainriver Pty Ltd (No 2) [2003] 2 Qd R 271, considered
Re Mowen [2012] QSC 434, cited
Re Skyring (Unreported, Supreme Court of Queensland, White J, 5 April 1995), cited
Ross-James v Turnbull [2017] QSC 275, cited

COUNSEL: M P Amerena for the applicant
The respondent appeared in person

SOLICITORS: King & Company for the applicant

[1] The defendant Council applies for orders under the *Vexatious Proceedings Act* 2005 (Qld) against the plaintiff, Mr Mowen. While the plaintiff appeared on the application, he evinced an intention not to contest it[1] in circumstances I describe later.

Background

[2] Mr Mowen instituted proceedings by filing a claim in this Court on 6 July 2017 with an accompanying statement of claim. That became Supreme Court proceedings 449 of 2017.[2]

[3] Mr Mowen had, for some time, been in dispute with the Council over the calculation of rates claimed by the Council concerning a property in which Mr Mowen had an interest at a place called Struck Oil. Mr Mowen asserts that the rates ought to have been calculated to take account of a pensioner discount to which he says he is entitled. Bendigo and Adelaide Bank Limited (Bendigo) holds a mortgage over the property. The Council allegedly told Bendigo that:

(a) there were unpaid rates on the property in excess of $14,000; and

(b) the Council was about to exercise powers to sell the property to recover the outstanding rates.

[4] Bendigo, no doubt in order to preserve its security, then paid the outstanding rates to the Council. Presumably, Bendigo claims that an amount equivalent to the money paid to the Council is now owing to it by Mr Mowen and secured by the mortgage over the property.

[5] In the statement of claim in Supreme Court proceedings 449 of 2017, Mr Mowen claimed that defamatory imputations arise from the two statements made by the Council to Bendigo.

[6] In Supreme Court proceedings 449 of 2017, Mr Mowen claimed against the Council:

> "(a) Damages for Defamation in the sum of $250,000;
>
> (b) Aggravated damages of $250,000;
>
> (c) Costs; and
>
> (d) Interest pursuant to s 47 of the *Supreme Court Act* 1995."

[7] In its defence, the Council made various denials and pleaded the defence of qualified privilege.[3] Amended pleadings were delivered, the details of which are not relevant to the present application.

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1 Except perhaps on appeal.

2 The current proceedings.

3 *Defamation Act* 2005 (Qld) s 24(1).

[8] In the meantime, Bendigo instituted proceedings against Mr Mowen in the District Court seeking recovery of a debt. They are District Court proceedings 2778 of 2017. Mr Mowen counterclaimed against the bank and also joined other defendants by counterclaim.

[9] On 27 November 2017 McMeekin J heard various applications concerning Supreme Court proceedings 449 of 2017 and District Court proceedings 2778 of 2017.

[10] Mr Mowen sought orders from McMeekin J that:

(a) District Court proceedings 2778 of 2017 be transferred to the Supreme Court;

(b) District Court proceedings 2778 of 2017 and Supreme Court proceedings 449 of 2017 be "joined".

[11] His Honour dealt with the second part of Mr Mowen's application on the basis that Mr Mowen sought either consolidation of the two proceedings or an order that they be heard together or heard in sequence.[4]

[12] The Council cross-applied:

(a) for summary judgment pursuant to r 293 of the *Uniform Civil Procedure Rules* 1999 (Qld) (UCPR); or in the alternative

(b) to strike out all or various parts of the statement of claim pursuant to r 171 UCPR; or in the alternative

(c) further and better particulars of the statement of claim; and

(d) various orders under the *Vexatious Proceedings Act*.

[13] Summary judgment was sought by the Council on the basis that Mr Mowen's defamation action had no real prospect of success[5] as there was no answer to the pleaded defence of qualified privilege.

[14] Relief under the *Vexatious Proceedings Act* was claimed by the Council based on a number of proceedings brought by Mr Mowen both at first instance and on appeal. One of these proceedings is particularly relevant to the present application, namely *Mowen v BWBK Pty Ltd t/a Rockhampton Building Approvals*. That claim was filed in the Supreme Court and became Supreme Court proceedings 312 of 2016 but was transferred to the District Court, becoming District Court proceedings 26 of 2018.

[15] *Mowen v BWBK* is also an action for damages for defamation. BWBK complained to police that Mr Mowen had stolen a file from their offices. Mr Mowen claimed that, by making the complaint, BWBK had defamed him. The relief claimed in *Mowen v BWBK* was as follows:

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4 *Mowen v Rockhampton Regional Council; Bendigo and Adelaide Bank Limited v Mowen* [2017] QSC 295 at [36]; UCPR rr 78, 79.

5 UCPR r 293.

"(a) Damages for Defamation in the sum of $250,000

(b) Aggravated damages of $250,000

(c) Costs; and

(d) Interest pursuant to section 47 of the Supreme Court Act 1995."

[16] On 20 December 2017 McMeekin J gave judgment in the various applications which were heard in November.[6] His Honour:

(a) dismissed the application brought by Mr Mowen;

(b) gave judgment for the Council in Supreme Court proceedings 449 of 2017;

(c) gave leave to the Council to apply for a vexatious proceedings order but dismissed the application;

(d) made some directions in order to have the question of costs determined.

[17] On 9 March 2018 McMeekin J made costs orders against Mr Mowen.[7]

[18] On 7 June 2018 Mr Mowen filed what purported to be an amended claim and statement of claim in Supreme Court proceedings 312 of 2016 (now District Court proceedings 26 of 2018) which is *Mowen v BWBK*. By that time, those proceedings had been remitted to the District Court.

[19] By the purported amended claim, Mr Mowen added three defendants, Swanwick Murray and Roche, Anthony M Arnold, and the Council. Swanwick Murray and Roche is a firm of solicitors who acted for BWBK in the proceedings brought against it by Mr Mowen. Mr Arnold is a barrister who, on instructions from Swanwick Murray and Roche, settled BWBK's defence. As against the Council, who is named as the fourth defendant, the purported amended claim states:

"4. <u>The Plaintiff Claims from the Fourth Defendant:</u>

<u>(a) The amount of $250,000 for Defamation;</u>

<u>(b) The amount of $250,000 for Aggravated Damages.</u>

<u>He makes this claim in reliance on the facts alleged in the attached statement of claim</u>."[8]

[20] A document purporting to be an amended statement of claim (although simply headed "Statement of Claim") was attached to the amended claim. The amended statement of claim purported to make four amendments.

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6 *Mowen v Rockhampton Regional Council; Bendigo and Adelaide Bank Limited v Mowen* [2017] QSC 295.

7 *Mowen v Rockhampton Regional Council* [2018] QSC 44.

8 Amendments underlined as in the document filed.

[21] Firstly, the heading was amended to add the three new defendants.

[22] Secondly, in relation to the complaint made by BWBK to police, which is said to be the defamatory statement, an allegation was added that the statement "is interpreted in the Dictionary, matters (d) in Schedule 5, *Defamation Act* 2005 (Qld)". Whatever that might be thought to mean, it is clearly relevant to the statement allegedly made by BWBK to the police. It has nothing to do with the Council.

[23] Thirdly, an allegation was added:

> "The conduct of the defence and the flawed advice deliberately given to in attempting to defend this indefensible matter by the failure to admit fault".[9]

[24] Presumably, this new allegation purports to form the basis of the liability of the second and third defendants who were the lawyers who acted for BWBK in the proceedings brought by Mr Mowen. It clearly is not an allegation against the Council.

[25] Fourthly, there was an amendment to the prayer for relief in these terms:

> "The Plaintiff claims the following relief:
>
> (a) Damages for Defamation in the sum of $250,000 from Defendants 1, 2 and 4
>
> (b) Aggravated damages of $250,000 from each of the four Defendants
>
> (c) Costs; and
>
> (d) Interest pursuant to section 47 of the Supreme Court Act 1995, from the date of the defamatory statement."[10]

[26] It can be seen then that no allegation is made in the amended statement of claim which supports any claim whatsoever against the Council.

[27] Swanwick Murray and Roche, Mr Arnold and the Council all brought applications to set aside the proceedings under r 371(2)(a) of the UCPR. Those applications came before Burnett DCJ on 27 July 2018. When the matter came before his Honour, he indicated an intention not to hear the matter because Swanwick Murray and Roche and Mr Arnold were local practitioners. Submissions were made and his Honour then decided he ought to hear the applications. Mr Mowen objected to his Honour hearing the matter, and then claimed that he had recently ingested morphine and could not participate. His Honour then indicated that he would adjourn the matter to Brisbane on 7 August to accommodate Mr Mowen. Mr Mowen told his Honour that he would not participate in the hearing in Brisbane, even though it was made clear that Mr Mowen could appear by telephone.

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9 Paragraph 6 of the amended statement of claim; replicated here with the obvious grammatical error.

10 Amendments underlined as in the document filed.

[28] On 7 August 2018 Burnett DCJ heard the applications. There was no appearance by Mr Mowen by telephone or otherwise and, relevantly here, his Honour set aside the proceedings as against the Council.

The proceedings before me

[29] The applicant applied for the following orders:

> "1. A vexatious proceeding order under s6(2)(b) of the *Vexatious Proceedings Act* 2005 that the plaintiff, Bevan Alan Mowen, be prohibited from instituting a proceeding or proceedings in Queensland wherein relief is sought against the defendant, the Rockhampton Regional Council, for damages for defamation or for aggravated damages.
>
> 2. Such further or other vexatious proceeding order under s.6 of the *Vexatious Proceedings Act* 2005 as the Court thinks fit.
>
> 3. Such further or other order as the Court thinks fit.
>
> 4. Costs including indemnity costs."

[30] The application came before me as one of several matters in a general Applications List in Rockhampton. I called the list over and in the course of doing that I mentioned the present matter. Mr Amerena of counsel appeared for the Council and Mr Mowen appeared for himself. The following exchanges occurred:

> "HIS HONOUR: Mowen v Rockhampton Regional Council.
>
> MR M.P. AMERENA: For the applicant/defendant, your Honour. Mr Mowen's here in person.
>
> HIS HONOUR: Yes.
>
> MR AMERENA: I understand Mr Mowen wants to apply for an adjournment.
>
> MR B.A. MOWEN: No, no. It's all right. I just want the decision reserved. But if you wanted an adjournment, I don't mind. I'm not - - -
>
> MR AMERENA: No, no. I don't want an adjournment.
>
> MR MOWEN: No. Okay.
>
> HIS HONOUR: I'm sorry. You do or don't want an adjournment?
>
> MR MOWEN: No. Well, your Honour, if you appeal decisions from lower courts, is it the Supreme Court that hears the judicial review, or is it a Court of Appeal in Brisbane?
>
> HIS HONOUR: Well, that very much depends. I think what we'll do is, I've had a look at some of the material in this.
>
> MR MOWEN: My form, no?

HIS HONOUR: I've had a look at some of the material. What I think I'll do is I'll hear your matter not before 11 o'clock.

MR MOWEN: Yeah.

HIS HONOUR: I'll deal with the other matters and hopefully we'll get to your matter by 11 o'clock.

MR MOWEN: Yeah. Your Honour, I won't last that long. The cold really affects my bones. So what I'll do is, I won't contest it. Okay, your Honour?

HIS HONOUR: Well, that's totally a matter for you. The application has been made. The business of the court means that I'll get to you hopefully about 11 o'clock.

MR MOWEN: Yeah.

HIS HONOUR:. I'll note your - - -

MR MOWEN: Your- - -

HIS HONOUR: I'll note your appearance and that's a matter for you.

MR MOWEN: Yeah, no. Your Honour, I won't last. I'm very ill this morning. Cold really affects me.

HIS HONOUR: All right.

MR MOWEN: I won't - I'll just have to look at appealing the decision at a later date, but - - -

HIS HONOUR: All right. Well, that's totally a matter for you.

MR MOWEN.. - - - these matters - - -

HIS HONOUR: I've noted your appearance.

MR MOWEN: Thank you, your Honour.

HIS HONOUR: You've been duly served. You've appeared. I've told you that I can't reach your matter till 11 o'clock. And - - -

MR MOWEN: Yes. No, I appreciate that, your Honour.

HIS HONOUR: - - - that's totally a matter for you. Thank you.

MR MOWEN: Thank you, your Honour."[11]

[31] Despite the discussion before me of the prospect of an application for an adjournment, Mr Mowen did not make such an application.

[32] The application came back before me just after midday. There was no appearance by Mr Mowen. I proceeded to hear the application in his absence.

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[11] Transcript at 1-1 l 3 to 1-3 l 28.

[33] The Council wished to rely on some material that I was told had been served upon Mr Mowen that morning and I indicated to Mr Amerena that if he wished to rely on the material he ought lead evidence about the circumstances in which Mr Mowen was served. Mr Amerena then called his instructing solicitor, Mr Williams. Mr Williams identified the documents that were served upon Mr Mowen as a short affidavit of his[12] and an outline of argument attaching a bundle of authorities.[13] Mr Williams gave this evidence:

> "MR AMERENA: And just tell the court, please, what happened as you handed these documents to Mr Mowen?---Mr Mowen told me that he couldn't carry the material. I offered to carry the material in for him and to give it to him there. He then said that he - said the affidavit was late, that he had an understanding that there was a two business day requirement to service of affidavit material. I then followed him into the courtroom. As he went to sit down, I again went to serve the material upon him. He said he couldn't take it because of his crutches. The - I approached him. I told him that I was obliged to serve an affidavit upon him and if he didn't accept it, I would place it on the ground next to him. He said he will take it, but if I could then place it on the ground after he had taken it. I handed him the material. He then handed it back to me and I placed it on the ground."[14]

[34] The material served upon Mr Mowen was left in the Court when he withdrew.

[35] After Mr Williams had given evidence, I proceeded to hear Mr Amerena's submissions on the application.

The statutory context

[36] The *Vexatious Proceedings Act* arms the Court with tools to restrict vexatious proceedings. It does not purport to be a code and does not affect any inherent jurisdiction of the Court.[15] Section 5 provides as follows:

> "**5 Applications for vexatious proceedings orders**
>
> (1) Any of the following persons may apply to the Court for a vexatious proceedings order in relation to a person mentioned in section 6(1)(a) or (b)—
>
> (a) the Attorney-General;
>
> (b) the Crown solicitor;
>
> (c) the registrar of the Court;

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12 Exhibit 1.

13 Exhibit 2.

14 Transcript at 1-7 ll 2–11.

15 Section 4.

(d) a person against whom another person has instituted or conducted a vexatious proceeding;

(e) a person who has a sufficient interest in the matter.

(2) An application may be made by a person mentioned in subsection (1)(d) or (e) only with the leave of the Court."

[37] The term "vexatious proceedings order" is defined as:

"***vexatious proceedings order*** means an order made under section 6(2)."

[38] Section 6 provides as follows:

"**6 Making vexatious proceedings orders**

(1) This section applies if the Court is satisfied that a person is—

(a) a person who has frequently instituted or conducted vexatious proceedings in Australia; or

(b) a person who, acting in concert with a person who is subject to a vexatious proceedings order or who is mentioned in paragraph (a), has instituted or conducted a vexatious proceeding in Australia.

(2) The Court may make any or all of the following orders—

(a) an order staying all or part of any proceeding in Queensland already instituted by the person;

(b) an order prohibiting the person from instituting proceedings, or proceedings of a particular type, in Queensland;

(c) any other order the Court considers appropriate in relation to the person.

(4) The Court must not make a vexatious proceedings order in relation to a person without hearing the person or giving the person an opportunity of being heard.

(5) For subsection (1), the Court may have regard to—

(a) proceedings instituted or conducted in any Australian court or tribunal, including proceedings instituted or conducted before the commencement of this section; and

(b) orders made by any Australian court or tribunal, including orders made before the commencement of this section."[16]

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16 Statutory notes removed.

[39] As can been seen, s 5 lists the persons who may bring an application for a vexatious proceedings order. Three of the persons, namely the Attorney-General, the Crown Solicitor and the Registrar of the Court are government officers who each have a role in the administration of justice. Those persons may apply as of right. The other persons listed in s 5 are persons who are either the target of a vexatious proceeding or have some other particular interest. Those persons may only apply for a vexatious proceedings order with the leave of the Court. It is though well-established that leave under s 5(2) to bring the application may be given at the hearing of the application itself.[17] The Council is a party who may only apply by leave.

[40] Mr Amerena submitted that as McMeekin J had given leave in the application heard in November 2017, the Council still had the benefit of that leave and therefore the present application could be brought as of right. I reject that submission. The grant of leave given by McMeekin J related to the application then before his Honour. The application before me is a new application. McMeekin J clearly did not intend to give leave for the bringing of any future applications.

[41] Section 6 authorises the making of different types of orders. Section 6 implicitly recognises that the harm done by a vexatious litigant may be confined to a particular defendant or might involve a broader interference with the administration of justice. Section 6 empowers the Court to prohibit the vexatious litigant from commencing any proceedings whatsoever. Generally, such an application would be brought by the Attorney-General, the Crown Solicitor or the Registrar and would be made when the public interest in the administration of justice is in issue. Skyring[18] and Sargent[19] were both declared vexatious litigants under the *Vexatious Litigants Act* 1981 (Qld), the predecessor of the present legislation, upon an application by the Crown Solicitor. Upon an application of a private person (with leave), the relief will generally be limited to orders designed to prevent damage to that applicant, rather than orders involving a broader prohibition. *Ross-James v Turnbull*[20] is an example of a case were the order was limited to address potential damage to a particular defendant.

[42] By s 6, the discretion to give relief arises where, relevantly here, the respondent has "frequently instituted or conducted vexatious proceedings in Australia". The term "vexatious proceedings" is defined as:

> "***vexatious proceeding*** includes—
>
> (a) a proceeding that is an abuse of the process of a court or tribunal; and

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17 *Markan v Bar Association of Queensland* [2015] QCA 128 at [22], *Fung v Tam* [2012] QCA 10 at [14]-[20] and *Mowen v Rockhampton Regional Council; Bendigo and Adelaide Bank Limited v Mowen* [2017] QSC 295 at [91].

18 *Re Skyring* (Unreported, Supreme Court of Queensland, White J, 5 April 1995).

19 *Lohe v Sargent* [2001] QSC 386.

20 [2017] QSC 275.

(b) a proceeding instituted to harass or annoy, to cause delay or detriment, or for another wrongful purpose; and

(c) a proceeding instituted or pursued without reasonable ground; and

(d) a proceeding conducted in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose."

[43] The term "proceeding" is defined as:

"***proceeding*** includes—

(a) any cause, matter, action, suit, proceeding, trial, complaint or inquiry of any kind within the jurisdiction of any court or tribunal; and

(b) any proceeding, including any interlocutory proceeding, taken in connection with or incidental to a proceeding pending before a court or tribunal; and

(c) any calling into question of a decision, whether or not a final decision, of a court or tribunal, and whether by appeal, challenge, review or in another way."

[44] Section 10 of the *Vexatious Proceedings Act* provides for the consequences of a vexatious proceeding order. Section 10 provides:

"**10 Vexatious proceedings order prohibiting institution of proceedings**

(1) If the Court makes a vexatious proceedings order prohibiting a person from instituting proceedings, or proceedings of a particular type, in Queensland—

(a) the person may not institute proceedings, or proceedings of the particular type, in Queensland without the leave of the Court under section 13; and

(b) another person may not, acting in concert with the person, institute proceedings, or proceedings of the particular type, in Queensland without the leave of the Court under section 13.

(2) If a proceeding is instituted in contravention of subsection (1), the proceeding is permanently stayed.

(3) Without limiting subsection (2), the Court, or the court or tribunal in which the proceeding is instituted, may make—

(a) an order declaring that a proceeding is a proceeding to which subsection (2) applies; and

(b) any other order in relation to the stayed proceeding it considers appropriate, including an order for costs.

> (4) The Court, or the court or tribunal in which the proceeding is instituted, may make an order under subsection (3) on its own initiative or on the application of a person mentioned in section 5(1)."

[45] By s 10, a person against whom an order is made prohibiting them from commencing proceedings may still do so but only with leave of the Court. Sections 11, 12 and 13 concern the procedure for an application for a grant of leave.

The present application

[46] I have not heard Mr Mowen on the application. However, he appeared on the application, confirmed that he had been served with the material and elected not to participate, just as he elected not to participate in the application heard by Burnett DCJ in *Mowen v BWBK*. Mr Mowen has been given the opportunity of being heard for the purposes of s 6(4) of the *Vexatious Proceedings Act*.

[47] Mr Mowen has over the last eight years frequently instituted or conducted vexatious proceedings in Australia,[21] in that he has instituted and prosecuted various proceedings which had no reasonable grounds to support them.

[48] In *Mowen v McGowran,*[22] Mr Mowen sought to present an information under s 686 of the *Code*[23] to this Court alleging that a solicitor who had previously acted for him had committed the criminal offence of attempting to pervert justice.[24] The judge to whom Mr Mowen sought to present the information dismissed his application and that decision was upheld on appeal.[25]

[49] In *Mowen v Queensland State Government*,[26] Mr Mowen applied for an injunction to prevent the sale of Queensland Rail. He clearly had no standing to bring such an application. The application was dismissed, but Mr Mowen persisted. His appeal to the Court of Appeal was dismissed[27] as was his application for special leave to appeal to the High Court of Australia.[28]

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21 See s 6(1)(a).

22 Brought 15 December 2009.

23 Private prosecution of an indictable offence.

24 *Criminal Code* (Qld) s 140.

25 [2010] QCA 86.

26 [2011] QSC 12.

27 *Mowen v State of Queensland* [2011] QCA 137.

28 *Mowen v Queensland State Government* [2011] HCASL 190.

[50] In 2012 the Council commenced proceedings against Mr Mowen in the Magistrates Court to recover rates, charges and levies.[29] Mr Mowen counterclaimed. The counterclaim was completely baseless. At one stage Mr Mowen appealed to the District Court against an order to which Mr Mowen had consented. The appeal was of course dismissed.

[51] In *Mowen v Morning Bulletin/APN and Ors*,[30] Mr Mowen brought a baseless application under the *Limitation of Actions Act* 1974 and when unsuccessful he appealed.[31] On appeal Dalton J observed "that the proceedings before us were utterly devoid of merit" and costs were awarded on an indemnity basis.[32]

[52] In *Mowen v Electoral Commission of Queensland*,[33] Mr Mowen sought an injunction to stop the 2015 State election. That application was dismissed by Daubney J who described Mr Mowen's contentions as "plainly unarguable".[34] Undeterred, Mr Mowen appealed and the appeal was dismissed.[35]

[53] In *Mowen v Rockhampton Regional Council; Bendigo and Adelaide Bank Limited v Mowen*,[36] McMeekin J recorded that a similar application had been made by Mr Mowen to his Honour in an attempt to prevent the 2012 State election. That application was baseless and was also dismissed.[37]

[54] Mr Mowen did not vote in the 2013 Federal election and was convicted by a Magistrate of contravention of s 245(15) of the *Commonwealth Electoral Act* 1918. He was fined. He appealed the conviction to the District Court and then sought leave to appeal to the Court of Appeal.[38] Constitutional arguments were raised in the Court of Appeal. Atkinson J, in giving judgment, considered that the constitutional arguments were "clearly unmeritorious".[39] The application for leave was dismissed.

[55] *Mowen v The Crown and the State of Queensland* is an action which was commenced in the Rockhampton Registry.[40] Mr Mowen claimed damages from the State of

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29 Magistrates Court proceedings 186 of 2012.

30 [2012] QSC 194.

31 *Mowen v The Morning Bulletin/APN & Ors* [2013] QCA 36.

32 At [25].

33 [2015] QSC 16.

34 At [2]–[3].

35 *Mowen v Electoral Commission of Queensland* [2015] QCA 221.

36 [2017] QSC 295.

37 *Re Mowen* [2012] QSC 434.

38 *Mowen v Australian Electoral Commission* [2016] QCA 152.

39 At [17].

40 Supreme Court proceedings 635 of 2017.

Queensland in the sum of $30,240,000 as he was imprisoned for 14 days by order of a Magistrate, an order that was subsequently successfully appealed. There are obviously difficulties with any action for false imprisonment where the plaintiff was imprisoned by order of a court.[41] Perhaps unsurprisingly, the action was summarily dismissed by Crow J on 14 August 2018.[42]

[56] There is also, of course, *Mowen v BWBK Pty Ltd*.[43] As already observed, Mr Mowen claimed against BWBK damages for defamation in the sum of $500,000[44] as a result of a complaint made to police. Mr Mowen also joined the solicitors and barrister who acted for BWBK in the proceedings. That case is still pending against BWBK, but my preliminary view is that even if the case was made out the quantum claimed is, to say the least, ambitious.

[57] When McMeekin J dismissed the Council's application for a vexatious proceedings order,[45] his Honour analysed the proceedings that I have referred to above.[46] His Honour did not make an order for reasons summarised by his Honour as follows:

> "[152] In my judgment some, but not all, of these various proceedings merit the term vexatious. I bear in mind that the test is quite demanding – the proceedings must be 'seriously and unfairly burdensome, prejudicial or damaging or productive of serious and unjustified trouble and harassment'. And the bringing of vexatious proceedings must be frequent.
>
> [153] The two most egregious claims concern the pursuit of Mr McGowran and the counterclaim against the lawyers who acted for the Council. Mr Mowen is evidently making good the threat he made in his letter to the Council. The bringing of the claims is disturbing and vexatious but there are only two such claims over 5 years.
>
> [154] The striking thing about the proceedings to interfere with the governance of the State is that Mr Mowen sought not to harass or annoy anyone save the judge in what were patently futile attempts to obtain injunctions. He did not serve any contradictor, no doubt to avoid paying costs. But it is difficult to see that the proceedings bear the character described in the legislation.

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41 See *Fingleton v The Queen* (2005) 227 CLR 166 at [36].

42 *Mowen v State of Queensland* [2018] QSC 183.

43 Supreme Court proceedings 312 of 2016, District Court proceedings 26 of 2017.

44 Including aggravated damages.

45 *Mowen v Rockhampton Regional Council; Bendigo and Adelaide Bank Limited v Mowen* [2017] QSC 295.

46 Although the amended claim and statement of claim had not been delivered in *Mowen v BWBK* and *Mowen v State of Queensland* [2018] QSC 183 had not been decided.

> [155] I can well understand the Council bringing the application. Their officers are being pursued through the Courts most unfairly simply for doing their jobs. The Council should have leave to bring the application. In my view Mr Mowen's conduct comes very close to the line. However in my judgment the Council has not shown that at this stage his conduct merits the imposition of the orders of the type mentioned in s 6(2) of the VPA."

[58] His Honour assessed the application on the basis that "the proceedings must be 'seriously and unfairly burdensome, prejudicial or damaging or productive of serious and unjustified trouble and harassment'". His Honour adopted that phrase from *Mudie v Gainriver Pty Ltd (No 2)*.[47] That was a case involving an application for costs under s 7.6 of the *Local Government (Planning and Environment) Act* 1990 (Qld). Section 7.6(1A) empowered the Planning and Environment Court to order costs where the proceedings before the Court were "frivolous or vexatious". As to that term, the Court of Appeal said:

> "[35] The words 'frivolous or vexatious' are not defined in the Act and should be given their ordinary meaning, unfettered by their meaning in the very different context of striking out or staying proceedings for an abuse of process. By the time an application for costs is made, the court knows the issues which have been litigated whilst a interlocutory applications, the court must to some extent speculate and must necessarily be cautious to ensure a deserving claimant is not unjustly deprived of the opportunity of a trial of the action. The Macquarie Dictionary defines 'frivolous' as 'of little or no weight, worth or importance; not worthy of serious notice: a frivolous objection. 2. characterised by lack of seriousness or sense: frivolous conduct …' and 'vexatious' as '1. causing vexation; vexing; annoying …'.
>
> [36] Unquestionably, something much more than lack of success needs to be shown before a party's proceedings are frivolous or vexatious. Although in a different context, some assistance can be gained from the discussion of the meaning of these words in *Oceanic Sun Line Special Shipping Company Inc v Fay* where Deane J states that 'oppressive' means seriously and unfairly burdensome, prejudicial or damaging and 'vexatious' means productive of serious and unjustified trouble and harassment, meanings apparently approved by Mason CJ. Deane, Dawson and Gaudron JJ in *Voth v Manildra Flour Mills Pty Ltd*. Those meanings are apposite here."

[59] The definition of "vexatious proceeding" in the *Vexatious Proceedings Act* is expressed in inclusory, not exhaustive terms. Each of the paragraphs of the definition stand alone

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47 [2003] 2 Qd R 271 at 283–4; *Mowen v Rockhampton Regional Council; Bendigo and Adelaide Bank Limited v Mowen* [2017] QSC 295 at [92]–[94].

as examples of a "vexatious proceeding". It is very clear that Mr Mowen has instituted or pursued proceedings without reasonable grounds.[48] *Mowen v McGowran*[49] is such a case. The attempts to prevent the 2012 and 2015 State elections[50] are clearly examples of such cases. Mr Mowen's attempt to interfere in the sale of Queensland Rail[51] is also an example of a case completely devoid of grounds to support it. Mr Mowen mounted an appeal[52] and a special leave application[53] in pursuit of that folly, both of which were unsuccessful. *Mowen v State of Queensland*[54] is yet another baseless proceeding.

[60] Mr Amerena in his written submissions acknowledged, of course, the order of McMeekin J in dismissing his client's first application under the *Vexatious Proceedings Act* and raised the issue as to whether any appeal to discretion on a fresh application (like the present) could only succeed where there has been a change in circumstances.[55]

[61] Obviously, any application based solely upon the same material as was before McMeekin J would be bound to fail. However, since the order of McMeekin J, Mr Mowen sought to join the Council in *Mowen v BWBK*. As already observed, McMeekin J gave summary judgment in favour of the Council on the claim for damages for defamation alleged in Supreme Court proceedings 449 of 2017. The purported amendment to the claim and statement of claim in *Mowen v BWBK* appears to be an attempt to reignite the very claim that was summarily dismissed by McMeekin J. There is no evidence, or even any allegation, of any allegedly defamatory statement made by the Council beyond the allegations made in Supreme Court proceedings 449 of 2017.

[62] There was no appeal by Mr Mowen from the order of McMeekin J in Supreme Court proceedings 449 of 2017. The amendment to the claim and statement of claim in *BWBK* was an act done directly inconsistently with his Honour's ruling. The amendment constituted either the commencement of, or continued conduct of, a vexatious proceeding. The Council was then put to the trouble and expense of applying to Burnett DCJ to have the allegations dismissed.

[63] At present, the Council is probably not currently the subject of a vexatious proceeding by Mr Mowen as proceedings against it in both Supreme Court proceedings 449 of 2017 and *Mowen v BWBK* have been terminated. Section 5(1)(d) does not require that an applicant be the subject of a pending vexatious proceeding. Section 6 empowers the

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48 Section 6(1)(a) and paragraph (c) of the definition of "vexatious proceeding".

49 [2010] QCA 86.

50 *Mowen v Electoral Commission of Queensland* [2015] QSC 16 and *Re Mowen* [2012] QSC 434.

51 *Mowen v Queensland State Government* [2011] QSC 12.

52 *Mowen v State of Queensland* [2011] QCA 137.

53 *Mowen v Queensland State Government* [2011] HCASL 190.

54 [2018] QSC 183.

55 *Ex parte Edwards* [1989] 1 Qd R 139.

Court to prevent further vexatious proceedings against a party who has been the subject of a vexatious proceeding.

[64] The Council has now been vexed twice by the claim for damages by Mr Mowen for defamation; once in Supreme Court proceedings 449 of 2017 and once in *Mowen v BWBK*. The risk of the Council having to face further proceedings in relation to these claims should be removed.

[65] I grant leave to the Council under s 5 of the *Vexatious Proceedings Act* 2005 (Qld) to bring an application against Bevan Alan Mowen for a vexatious proceedings order.

[66] Pursuant to s 6 of the *Vexatious Proceedings Act* 2005 (Qld) I prohibit Bevan Alan Mowen from commencing or continuing proceedings claiming damages or aggravated damages for defamation against the Rockhampton Regional Council.

[67] I will hear the parties on costs.