

HIGH COURT OF AUSTRALIA

GLEESON J

IN THE MATTER OF AN APPLICATION BY
VALERIE PEERS FOR LEAVE TO ISSUE OR FILE

[2024] HCASJ 36

Date of Judgment: 20 September 2024
M76 of 2024

ORDER

- 1. The ex parte application for leave to issue or file the application for a constitutional writ is refused.*

Representation

The applicant is unrepresented

1 GLEESON J. By application filed on 28 August 2024, the applicant ("Ms Peers") seeks leave to issue or file an application for a constitutional or other writ dated 22 August 2024, which names a Deputy Registrar of the High Court of Australia as the defendant ("the proposed application"). The application complies with r 6.07.3 of the *High Court Rules 2004* (Cth) and is supported by an affidavit sworn by Ms Peers on 28 August 2024.

2 The application follows a direction to the Registrar made, on 26 August 2024, by Beech-Jones J pursuant to r 6.07.2 of the *High Court Rules 2004* (Cth) to refuse to file or issue the proposed application without the leave of a Justice.

3 The relief sought in the proposed application comprises writs of prohibition, mandamus and certiorari directed to a decision of the Deputy Registrar to refuse to accept for filing an application made by Ms Peers for special leave to appeal from a judgment of a single judge of the Supreme Court of Victoria in *Peers v Fletcher*¹ ("the special leave application"). Ms Peers contends that she is entitled to the relief sought because the Deputy Registrar had no power to refuse to accept the special leave application for filing.

4 The Deputy Registrar did not have power to refuse to accept the special leave application for filing as a person is entitled to seek special leave to appeal in this Court from a decision of any Supreme Court of a State.²

5 By r 1.10.1 of the *High Court Rules 2004* (Cth), a special leave application is filed in the Court if it has been lodged with the Court in accordance with r 1.07 and it is accepted in the Registry. Ms Peers' evidence is to the effect that she lodged the special leave application with the Court and the application was rejected "because all avenues of appeal in lower courts have not been exhausted before applying for special leave to appeal". Ms Peers' evidence raises an arguable case that the special leave application was lodged with the Court in accordance with r 1.07 and that the application was not filed in the Court because it was rejected by the Registry.

Relevant principles

6 The discretion to refuse the leave sought is to be exercised by reference to the criteria set out in r 6.07.1, namely whether the proposed application "appears ... on its face to be an abuse of the process of the Court, to be frivolous or vexatious

1 [2024] VSC 427.

2 *Constitution*, s 73(ii); *Chief Commissioner of Police v Crupi* [2024] HCA 34 at [9]. See also *Dimitrov v Supreme Court (Vic)* (2017) 263 CLR 130 at 143 [27]; O'Brien, *Special Leave to Appeal* (2nd edn, 2007) at 68.

or to fall outside the jurisdiction of the Court".³ Implicit in the requirement that a document the subject of an application under r 6.07.3 be considered "on its face" is that such an application falls to be determined on the papers.⁴ While there are no "closed categories" of what amounts to an abuse of process, that concept captures attempts to invoke the jurisdiction of the Court on bases that are confused or untenable.⁵

Consideration

- 7 It is necessary to deal with the three claims for relief in the proposed application separately. If there is no arguable basis for the grant of a writ of mandamus or prohibition, then the application must be refused because the Court does not possess jurisdiction to grant certiorari in a case in which the Court does not otherwise possess original jurisdiction.⁶

Prohibition

- 8 A writ of prohibition is a negative or restraining order. For example, such a writ may prohibit the impugned decision-maker from proceeding until certain conditions are satisfied,⁷ or it may prevent a person from assuming a jurisdiction that has not been conferred upon them.⁸ A writ of prohibition may not be granted

3 *Re Young* (2020) 94 ALJR 448 at 451 [11]; 376 ALR 567 at 570 [10].

4 *Re Young* (2020) 94 ALJR 448 at 451 [12]; 376 ALR 567 at 570; *Re Simmonds* [2020] HCA Trans 34.

5 *Re Young* (2020) 94 ALJR 448 at 451 [13]; 376 ALR 567 at 570 [13].

6 *Re Bowen; Ex parte Federated Clerks Union of Australia* (1984) 154 CLR 207 at 211; *Re Refugee Review Tribunal; Ex parte Aala* (2000) 204 CLR 82 at 90-91 [14]; *Re McBain; Ex parte Australian Catholic Bishops Conference* (2002) 209 CLR 372 at 393-394 [19], 403 [55], 440-441 [176]; *Plaintiff S157/2002 v Commonwealth* (2003) 211 CLR 476 at 507 [80].

7 *R v Australian Stevedoring Industry Board; Ex parte Melbourne Stevedoring Co Pty Ltd* (1953) 88 CLR 100 at 118. See also *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 at 595.

8 *R v Hibble; Ex parte Broken Hill Proprietary Co Ltd* (1920) 28 CLR 456 at 463, 479-480.

3.

once all possible operation of the impugned order complained of has been completely exhausted.⁹

9 The proposed form of relief, although described as a writ of prohibition, does not purport to prohibit anything. It is framed in the following way:

"Writ of prohibition against Registrar Bennett who has exceeded her jurisdictional powers on the grounds that she cannot exercise a discretion conferred upon the Court to decide whether or not to grant special leave to appeal ..."

10 The proposed application for relief is entirely directed to the fact of the Deputy Registrar's rejection of the applicant's lodgement of the special leave application for filing. There are no facts alleged that are capable of supporting a finding that the Deputy Registrar has either the intention or the capacity to do anything further in relation to the rejected special leave application.

11 In those circumstances, the applicant has identified no arguable basis for the claimed writ of prohibition.

Mandamus

12 Mandamus is a judicial command instructing the defendant to perform a public duty, which, in the opinion of the superior court, the defendant has wrongly refused to perform.¹⁰ The form of writ of mandamus sought by the applicant is:

"Writ of mandamus to compel [Registrar Bennett] to perform her duties according to law to file the matter or refer the application to the Justices of the Court to decide whether to exercise their discretion to grant special leave to appeal against the decision of Watson J."

13 The proposed application does not identify a duty that remains to be performed by the Deputy Registrar. As already noted, the applicant's complaint is that lodgement of her special leave application was rejected. As already noted, the applicant does not allege facts that are capable of supporting a finding that the Deputy Registrar has any capacity to accept the rejected application in the Registry, unless the applicant re-lodges it. Accordingly, the alleged facts do not disclose an arguable basis for the proposed writ of mandamus.

9 *R v Hibble; Ex parte Broken Hill Proprietary Co Ltd* (1920) 28 CLR 456 at 463; *Queensland Trotting Board v McLean* (1972) 125 CLR 488 at 491.

10 *Re Jarman; Ex parte Cook (No 1)* (1997) 188 CLR 595 at 604.

Conclusion

14 Ms Peers may have been inconvenienced by the rejection of the special leave application but she can re-lodge the application if she wishes to do so. Under r 13.03.1 of the *High Court Rules 2004* (Cth), I order that the application be dismissed without listing it for a hearing. The application for leave to issue or file the application for a constitutional writ is refused.