HIGH COURT OF AUSTRALIA

STEWARD J

IN THE MATTER OF AN APPLICATION BY BENJAMIN JACOB MEYER FOR LEAVE TO ISSUE OR FILE

[2025] HCASJ 22
Date of Judgment: 13 August 2025
P15 of 2025

ORDER

1. *The application of 29 May 2025 for leave to issue or file a proposed application for a constitutional or other writ is dismissed.*

Representation

The applicant is unrepresented

1 STEWARD J. By an ex parte application brought pursuant to r 6.07.3 of the *High Court Rules 2004* (Cth) (the "*Rules*") filed on 29 May 2025, the applicant seeks leave to issue or file a proposed application for a constitutional or other writ.

2 The applicant is self-represented.

Background

3 On 6 August 2019, the applicant made an application in the Supreme Court of Western Australia for an extension of time pursuant to s 40 of the *Limitation Act 2005* (WA) within which to commence proceedings against Solomon J (who was, at that time, a Senior Counsel and practicing as a barrister in Perth), regarding allegedly defamatory statements which Solomon J was said to have published. That extension of time was sought nunc pro tunc in respect of an action previously commenced by the applicant in the Supreme Court on 1 June 2018.[1]

4 A single judge of the Supreme Court published reasons in respect of the extension of time application on 17 December 2019.[2] In view of those reasons, on 12 February 2020, Martin J ordered by consent that both the extension of time application and the proceeding commenced by the applicant on 1 June 2018 be dismissed.[3]

5 The applicant sought leave to appeal, and was heard by the Court of Appeal of the Supreme Court of Western Australia (comprised of Buss P, Murphy and Mitchell JJA) on 20 April 2021. Solomon J (i.e. the respondent) was subsequently appointed as a justice of the Supreme Court while the Court of Appeal was reserved. The Court of Appeal delivered judgment on 17 September 2021 – unanimously granting leave to appeal but dismissing the appeal.[4]

6 On 15 October 2021, the applicant applied to this Court (in proceeding P44/2021) for special leave to appeal from the whole of the judgment of the Court of Appeal (the "First Special Leave Application"). The First Special Leave Application relevantly included a proposed ground of appeal which, in effect, asserted that the Court of Appeal's judgment was infected by a reasonable apprehension of bias, arising from the fact of Solomon J's appointment to the Supreme Court while judgment was reserved. On 17 February 2022, Gageler and

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1 *Meyer v Solomon* (2021) 58 WAR 464 at 467 [1]-[2].

2 *Meyer v Solomon* [2019] WASC 458.

3 *Meyer v Solomon* (2021) 58 WAR 464 at 494 [171], 501 [218].

4 *Meyer v Solomon* (2021) 58 WAR 464.

Gleeson JJ refused special leave to appeal on the basis that the proposed appeal "lack[ed] sufficient prospects of success to warrant a grant of special leave".[5]

7 Quite some time later, on 4 June 2025 (in proceeding P17/2025), the applicant filed a further application in this Court for special leave to appeal from the whole of the judgment of the Court of Appeal (the "Second Special Leave Application"). The Second Special Leave Application has not yet been determined by this Court. For present purposes, I express no concluded view as to the merits of the Second Special Leave Application, save to observe that the grounds of the applicant's proposed appeal therein substantially duplicate those outlined in the proposed application here.

The proposed application

8 The applicant had lodged in this Court an application for a constitutional or other writ dated 3 March 2025 (the "Proposed Application"). The Proposed Application seeks orders in the following terms:

> "(1) A writ of certiorari be issued quashing the orders made by the Court of Appeal ("CA") on 17 September 2021, and the orders made by the Supreme Court of Western Australia on 12 February 2020, and a writ of prohibition be issued preventing the Supreme Court from barring the action commenced on 1 June 2018 from proceeding; and
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> (2) [Solomon J] pay the plaintiff's costs of this proceeding and those below."

9 The grounds of the Proposed Application are expressed in the following terms:

> "1. Mitchell JA and [Solomon J's] concurrent and ongoing service in the General Division constitutes grounds for a reasonable apprehension of bias.
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> 2. Control over the selection of judges for the primary and CA hearings by a longstanding friend of [Solomon J] constitutes grounds for a reasonable apprehension of bias.
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> 3. The failure to grant an efficacious extension amounts to jurisdictional error.
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> 4. The Primary Judge's exercise of discretion was legally unreasonable."

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5 *Meyer v Solomon* [2022] HCASL 15 at [1].

10 On 7 March 2025, Beech-Jones J directed the Registrar to refuse to issue or file the Proposed Application without the leave of a justice of this Court first had and obtained, pursuant to r 6.07.2 of the *Rules*.

11 By his present application filed on 29 May 2025, the applicant now seeks leave, pursuant to r 6.07.3 of the *Rules*, to issue or file the Proposed Application. In support of that application, he relies on two affidavits which he affirmed on 22 May 2025 and 8 August 2025 respectively (the "Supporting Affidavits").

Principles to be applied

12 The discretion to grant or refuse leave in an application pursuant to r 6.07.3 of the *Rules* for leave to issue or file a document falls to be exercised with regard to the same criteria which inform the action of the Registrar under r 6.07.1. That is, leave to issue or file a document will ordinarily be refused where the document appears "on its face" to be an abuse of the process of the Court, to be frivolous or vexatious, or to fall outside the jurisdiction of the Court.[6] It is open to this Court to determine without an oral hearing such applications made pursuant to r 6.07.3.[7]

13 While the concept of abuse of process cannot be confined within closed categories, sufficiently for present purposes it encompasses an attempt to invoke the original or appellate jurisdiction of this Court on a basis that is confused or manifestly untenable.[8] For the following reasons, the applicant's Proposed Application comprises such an attempt – and accordingly, would be an abuse of process if filed.

Consideration – proposed apprehended bias claim

14 The gravamen of the applicant's claim in the Proposed Application is that this Court should issue constitutional writs (presumably pursuant to s 75(v) of the *Constitution*) to quash the orders of the primary judge and Court of Appeal. In substance, that claim appears to be founded on the basis that both the primary and appellate judgments were infected by jurisdictional error. Specifically, the applicant contends that there was a "reasonable apprehension of bias" in respect of both judgments.

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6 *Re Lal* [2025] HCASJ 8 at [8]; *Re Praljak* [2025] HCASJ 1 at [23]; *Re Young* (2020) 94 ALJR 448 at 451 [10]-[11]; 376 ALR 567 at 570.

7 *Re Lal* [2025] HCASJ 8 at [8]; *Re Young* (2020) 94 ALJR 448 at 451 [12]; 376 ALR 567 at 570.

8 *Re Lal* [2025] HCASJ 8 at [9]; *Re Praljak* [2025] HCASJ 1 at [23]; *Re Young* (2020) 94 ALJR 448 at 451 [13]; 376 ALR 567 at 570.

15 The proposed claim of apprehended bias would (if the Proposed Application were filed) fall to be assessed by reference to whether "a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide".[9] The applicant proposes to raise broadly two bases for this claim:

(a) First, the applicant contends that Solomon J and Quinlan CJ "were good friends at all relevant times" (including prior to Solomon J's appointment to the Supreme Court). Quinlan CJ did not here determine the applicant's claims at first instance or on appeal. Nevertheless, this alleged friendship is said to give rise to a reasonable apprehension of bias in view of the role that the Chief Justice of the Supreme Court "had historically played in designating judges for trials".

(b) Second the applicant places emphasis on the fact that, as noted above, Solomon J was appointed to the Supreme Court whilst the Court of Appeal was reserved in its judgment. This is said to give rise to a reasonable apprehension of bias – and in particular, the applicant takes issue with the fact that both Solomon J and Mitchell JA (one of the three justices of the Court of Appeal who dismissed the applicant's appeal) served concurrently, and at the time of the appellate judgment, in the General Division of the Supreme Court.[10] The applicant asserts that this is contrary to what he describes as a "longstanding practice in Australian superior courts for judges to refrain from determining matters involving their divisional colleagues".

16 The applicant's proposed claim is fatally flawed in view of the history of these proceedings. It is well-established that this Court's original jurisdiction to issue writs of certiorari, mandamus and/or prohibition is not ordinarily available as an alternative to remedying erroneous judgments by way of appeal (whether or

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9 *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337 at 344 [6] (footnote omitted).

10 Although Mitchell JA was appointed as a judge of the Court of Appeal in July 2016, it is apparent that his Honour also sits at least from time to time in the General Division of the Supreme Court: see, eg, *Western Australia v B W* [2021] WASC 326; *Western Australia v Krumins* [2023] WASC 364. While not explicitly stated in the materials currently before this Court, I infer that Mitchell JA is likely approved to sit in the General Division of the Supreme Court pursuant to ss 7(2)(c) and 10C of the *Supreme Court Act 1935* (WA).

not an appeal is subject to the grant of leave or special leave).[11] If any of the orders below were infected by jurisdictional error due to apprehended bias, the appropriate remedy was to be sought, not by constitutional writs, but by the applicant exercising his rights of appeal.

17 Here, the applicant has already exhausted his relevant rights of appeal, in that (as noted above) he already unsuccessfully appealed to the Court of Appeal and thereafter sought special leave to appeal from the Court of Appeal's judgment through his First Special Leave Application, which this Court refused in 2022. Accordingly, he could only be permitted to raise now a fresh challenge by the Proposed Application in "exceptional circumstances"; as Gibbs CJ, Mason, Wilson, Brennan, Deane and Dawson JJ said in *Metwally (No 2) v University of Wollongong*:[12]

> "It is elementary that a party is bound by the conduct of his case. Except in the most exceptional circumstances, it would be contrary to all principle to allow a party, after a case had been decided against him, to raise a new argument which, whether deliberately or by inadvertence, he failed to put during the hearing when he had an opportunity to do so."

18 The applicant has here failed to demonstrate any such "exceptional circumstances", the absence of which renders the Proposed Application an abuse of process.[13] The principle of finality dictates that the applicant cannot be given a further opportunity to challenge his unsuccessful outcomes in these proceedings. The applicant already had an opportunity to seek the appropriate relief by way of his (unsuccessful) First Special Leave Application – which relevantly already raised very similar contentions of apprehended bias (arising from Solomon J's appointment to the Supreme Court). In dismissing the First Special Leave Application, this Court previously indicated that the proposed appeal (including the apprehended bias claim) "lack[ed] sufficient prospects of success to warrant a grant of special leave",[14] and no arguable basis has been identified to now revisit that existing (and final) conclusion. Accordingly, it is neither necessary nor appropriate for me to now give any further consideration to the question of

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11 See, eg, *Nasir v Federal Court of Australia* [2025] HCASJ 21 at [32]; *Construction Forestry Mining and Energy Union v Director of the Fair Work Building Industry Inspectorate* (2016) 91 ALJR 1 at 8 [22]; 338 ALR 360 at 367.

12 (1985) 59 ALJR 481 at 483; 60 ALR 68 at 71. See also *Nasir v Federal Court of Australia* [2025] HCASJ 21 at [33].

13 *Vella v Minister for Immigration and Border Protection* (2015) 90 ALJR 89 at 92 [19]; 326 ALR 391 at 395.

14 *Meyer v Solomon* [2022] HCASL 15 at [1].

apprehended bias arising from the fact of Solomon J's appointment to the Supreme Court.

19 For completeness, I note that the details of the apprehended bias allegations disclosed in the present Proposed Application do depart in some respects from those previously considered by this Court in the First Special Leave Application. The First Special Leave Application notably did not raise any contention that Solomon J and Quinlan CJ were friends at any relevant times, nor did it (at least explicitly) raise any issue regarding Solomon J and Mitchell JA serving concurrently in the General Division of the Supreme Court. However, in the circumstances, it is unnecessary to here express any concluded view as to the merits of these further apprehended bias claims. Nothing in the applicant's Proposed Application or Supporting Affidavits persuades me that these are in any way fresh matters which the applicant did not previously have the opportunity to raise in his First Special Leave Application – particularly having regard to the following:

(a) In the first of his Supporting Affidavits, the applicant asserts that "[i]n the spring of 2021" he had a conversation with a junior legal practitioner in which he was told that "it was well known amongst the Perth legal community that [Solomon J] was a close friend of [Quinlan CJ]". This would have been at approximately the same time that the applicant filed his First Special Leave Application, and in any event was substantially before this Court refused special leave (in 2022). Accordingly, if this issue was to be raised at all, the applicant was armed with the information required to do so as part of his First Special Leave Application. No satisfactory explanation has been proffered for the applicant's subsequent substantial delay in raising the issue.

(b) The fact that Solomon J and Mitchell JA served concurrently in the General Division of the Supreme Court was plainly public information both at the time of the Court of Appeal's judgment and at the time of the First Special Leave Application. Again, the applicant has proffered no satisfactory explanation for why he has delayed so substantially in raising this issue (to the extent that this matter was not, in any event, implicit in the apprehended bias allegations raised previously in the First Special Leave Application).[15]

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15 There is some indication that the applicant gave consideration to this issue as part of his First Special Leave Application (although he did not therein explicitly refer to Mitchell JA). In the final amended version of the First Special Leave Application filed on 29 November 2021, the applicant asserted that the proposed appeal gave rise to a question of whether "common membership of a superior court [gave] rise to a conflict of interest" under a heading entitled "Ground 3: Apprehended Bias". In

20 It is clear that the plaintiff's proposed apprehended bias claims – to the extent not already captured in the First Special Leave Application previously dismissed by this Court – were capable of being raised at a substantially earlier stage (including as part of the First Special Leave Application). Indeed, even thereafter, the applicant delayed over three more years between this Court refusing the First Special Leave Application and his lodging the present Proposed Application. Even taken alone, that further delay is substantial and unjustified.

21 It follows that the Proposed Application would be an abuse of process if filed, and accordingly, should not be filed. The application filed on 29 May 2025 for leave to issue or file the Proposed Application is dismissed.

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the original version filed on 15 October 2021, the applicant framed this question in slightly different terms, being whether "common membership of a court [gave] rise to apprehended bias".