

Matter No B66 of 2019

IN THE MATTER OF AN APPLICATION BY SIMON CHARLES
DORANTE-DAY FOR LEAVE TO ISSUE OR FILE

Matter No B67 of 2019

IN THE MATTER OF AN APPLICATION BY SIMON CHARLES
DORANTE-DAY FOR LEAVE TO ISSUE OR FILE

Matter No B68 of 2019

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1. On 28 November 2019, Gageler J directed the Registrar to refuse to file a writ of summons in each of proceedings B68 of 2019, B67 of 2019 and B66 of 2019 without the leave of a Justice first had and obtained¹. By ex parte application filed in each proceeding, the applicant now applies for that leave. For the following reasons, leave is refused in each application.

2. In B68 of 2019 the applicant seeks certiorari to quash the decision of the Supreme Court of Queensland (Mullins J) in *Dorante-Day v Marsden*². The grounds for the relief claimed contend that her Honour failed to determine whether the

¹ *High Court Rules 2004* (Cth), r 6.07.2.

² *Dorante-Day v Marsden* [2019] QSC 125.

proceeding was within the exclusive jurisdiction of this Court as a matter arising directly under any treaty³; that the applicant was denied natural justice for reasons including, but not limited to, the refusal to obtain evidence, perjury by the defendant's legal counsel and the late application of case-management principles; and that her Honour's reasons reveal errors of fact and law.

3. At the date of the proceedings before Mullins J, the applicant was employed by the Public Safety Business Agency ("the PSBA") under the *Public Service Act 2008* (Qld) ("the PSA"). The applicant filed an amended application for an order to review the decision of the General Manager, Human Resources of the PSBA to suspend him on normal remuneration pursuant to s 189(1) of the PSA. Section 189 deals with the suspension of a public service employee from duty in stated circumstances. Section 190(2) regulates the procedure for such disciplinary action and provides that natural justice is not required if the suspension is on normal remuneration. Among the applicant's submissions before Mullins J was a challenge to the validity of s 190(2) on the ground that the provision is contrary to Articles 14, 16 and 17 of the International Covenant on Civil and Political Rights (1966)⁴. On the strength

³ *Judiciary Act 1903* (Cth), s 38(a).

⁴ *Dorante-Day v Marsden* [2019] QSC 125 [22](a).

of this contention, the applicant argued that the proceeding was within the exclusive jurisdiction of this Court as a matter arising "directly under any treaty". This and the applicant's remaining grounds were rejected and his amended application was dismissed⁵.

4. No appeal has been taken from her Honour's orders. Commencement of proceedings in the original jurisdiction of this Court does not provide litigants with a means to bypass the ordinary mechanisms of appeal. Those mechanisms include, in the case of this Court, satisfaction of the criteria for the grant of special leave to appeal⁶. The contention that the proceeding before Mullins J is within the exclusive jurisdiction of this Court because it is a matter arising directly under a treaty is untenable. In the circumstances, to permit the applicant to challenge Mullins J's orders by invoking this Court's original jurisdiction would be an abuse of process.
5. Proceeding B67 of 2019 bears an endorsement seeking compensation for the claimed negligent failure of the proposed defendant, the Duchy of Cornwall, to "resolve this matter despite numerous attempts since 2012 to do so". It is asserted that the matters in issue in proceeding B68 of 2019 are

⁵ *Dorante-Day v Marsden* [2019] QSC 125 [57].

⁶ *Judiciary Act 1903* (Cth), s 35A.

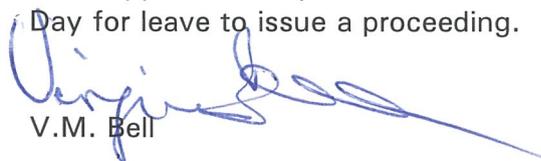
"relevant and thematically central" to the unparticularised claim. There is no foundation for the assertion that the matter is within this Court's exclusive jurisdiction. The pleading is incoherent. It would be an abuse of the process of the Court to permit it to proceed.

6. Proceeding B66 of 2019 bears an endorsement seeking compensation for unfair dismissal, personal injury, loss, damage to reputation, and breach of copyright against the proposed defendant, the State of Queensland. The matters in issue in B68 of 2019 are, again, said to be "relevant and thematically central" to the proceeding. Again, there is no foundation for the assertion that the unparticularised claim is within this Court's exclusive jurisdiction. The pleading is incoherent. It would be an abuse of the process of the Court to permit it to proceed.

ORDERS

1. Leave to file the application for a writ of certiorari in B68 of 2019 is refused;
2. Leave to file the writ of summons in B67 of 2019 is refused;
3. Leave to file the writ of summons in B66 of 2019 is refused.

This page and the preceding 3 pages comprise my reasons for judgment in the matter of three applications by Simon Charles Dorante-Day for leave to issue a proceeding.



V.M. Bell

IN THE HIGH COURT OF AUSTRALIA

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REASONS FOR JUDGMENT

Judgment delivered and published in Sydney
on Tuesday, 25 February 2020.