

CITATION: Majetic & Anor v Fyles [2023] NTLC 12

PARTIES: Samuel Majetic

And

Craig Oldroyd

v

Natasha Kate Fyles

TITLE OF COURT: LOCAL COURT

JURISDICTION: CIVIL

FILE NO(s): 2022-00762-LC, 2022-00688-LC

DELIVERED ON: 26 May 2023

DELIVERED AT: Darwin

HEARING DATE(s): 2 September, 30 September 2022

DECISION OF: Acting Judge O'Loughlin

**CATCHWORDS:**

Appeal against declaration of public health emergency – Summary Judgment

*Public and Environmental Health Act 2011* (NT)

*Local Court (Civil Jurisdiction) Rules 1998* (NT)

*General Steel Industries Inc v Commissioner of Railways* (NSW) (1964) 112 CLR 125

*NT Pubco Pty Ltd v Strazdins* [2014] NTSC 8

*Public Service Board of NSW v Osmond* at (1986) 159 CLR 662

**REPRESENTATION:**

Appellants: Self

Counsel Respondent: Greg O'Mahoney and Winnie Liu

Solicitor Respondent: Hutton McCarthy

Decision category classification: B

Decision ID number: [2023] NTLC 12

Number of paragraphs: 46

IN THE LOCAL COURT  
OF THE NORTHERN  
TERRITORY OF AUSTRALIA  
AT DARWIN

No. 2022-00688-LC, 2022-00762-LC

BETWEEN:

SAMUEL MAJETIC and CRAIG OLDROYD

Appellants

AND:

NATASHA KATE FYLES

Respondent

REASONS FOR DECISION

(Delivered 26 May 2023)

ACTING JUDGE O'LOUGHLIN

### **Introduction**

1. The two Appellants have appealed the Respondent's extension of a declaration of a public health emergency
2. This decision is a ruling on the Respondent's application for summary judgment.

### **Background**

3. On 18 March 2020 the Respondent, as the then Minister for Health, declared a public health emergency for the Northern Territory in response to the risk posed by the spread of a new virus named Covid-19.
4. This declaration was made pursuant to section 48 of the *Public and Environmental Health Act 2011* ("PEHA") which allowed the Minister to make such a declaration "...if satisfied... [that] circumstances of such seriousness and urgency exist that are, or threaten to cause, an immediate serious public health risk".

5. The Minister made this declaration in the context of the World Health Organisation having declared a pandemic a week earlier, and every other jurisdiction in Australia making similar emergency declarations.
6. The declaration allowed the Chief Health Officer (“CHO”) to make orders or give directions “*necessary, appropriate or desirable to alleviate the public health emergency*”<sup>1</sup>. The CHO made a number of these orders including mandating the wearing of masks and requiring most people to be vaccinated for their employment.
7. Some members of the public were upset by the emergency declaration, and the CHO directions, as they believed the seriousness of the pandemic was exaggerated, and that the mandates were an unnecessary infringement on their liberty.
8. The emergency declaration was extended on several occasions,<sup>2</sup> and on 15 March 2022 the declaration was extended for the last time for a further 90 days.

### **The Proceedings**

9. Ninety-eight appeals were originally lodged against the above extension,<sup>3</sup> however all but these two appeals were discontinued.
10. On 9 June 2022 the Respondent announced that there would be no further extension and the emergency declaration ended on 16 June 2022. Thus the substantive relief claimed by the Appellants has effectively already been achieved.

### **Law**

11. Section 48 of PEHA provides:

*The Minister may, in writing, declare a public health emergency if the Minister is satisfied:*

  - (a) *circumstances of such seriousness and urgency exist that are, or threaten to cause, an immediate serious public health risk; and*
  - (b) ....
12. Section 50(2) allows the Respondent to extend the emergency declaration for further periods of up to 90 days. Section 107 grants the general right of appeal to the declaration.
13. Accordingly, the summary judgment application requires an assessment of the validity of the Respondents action under section 48. That is, an assessment of the Appellants’ prospects of showing that the Respondent was not, or could not, have reasonably been satisfied that Covid-19 caused a sufficiently serious or urgent risk to public health.
14. As to summary judgment, Rule 28.01 of the *Local Court (Civil Jurisdiction) Rules 1998*, provides:
  - (1) *Where a proceeding generally or a claim in proceedings:*
    - (a) *does not disclose a cause of action;*
    - (b) *is scandalous, frivolous or vexatious; or*

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<sup>1</sup> A right to appeal is provided by section 107 of PEHA.

<sup>2</sup> Pursuant to subsection 50 (2) of PEHA.

<sup>3</sup> Pursuant to section 107 of PEHA.

(c) *is an abuse of the process of the Court,*

*the Court may stay the proceedings generally or in relation to a claim or give judgment in the proceedings generally or in relation to a claim.*

15. In *NT Pubco Pty Ltd v Strazdins* [2014] NTSC 8, Hiley J at [16] - [17] considered the equivalent Supreme Court Rule and stated:

*"Courts have been reluctant to allow summary determinations; rather, a party is ordinarily entitled to have its case placed before the court in the 'ordinary way'. The power under Order 23 is one that should be exercised by a court with great caution; with the applicant bearing a heavy burden. It has been held in this jurisdiction that Rule 23.03 will only be enlivened in circumstances where the plaintiff's case is so clearly untenable that it could not possibly succeed.*

*... in order to succeed under these provisions for summary relief [the defendant] must establish that the claims against them are plainly unsustainable..."*

16. Further, in *General Steel Industries Inc v Commissioner of Railways (NSW)* (1964) 112 CLR 125 Barwick CJ stated at page 130:

*"... great care must be exercised to ensure that under the guise of achieving expeditious finality a plaintiff is not improperly deprived of his opportunity for the trial of his case by the appointed tribunal."*

### **Respondent's Case**

17. It is worth starting with consideration of the Respondent's case.
18. The Respondent clearly has the statutory power to make and extend public health emergencies pursuant to sections 48 and 50 of *PEHA*. That power can be exercised if the Respondent is satisfied that the circumstances are of such seriousness and urgency that they threaten to cause an immediate public health risk.
19. The Respondent's solicitor filed a 225 page affidavit in support of its summary judgment application, which explained in great detail the growing concerns as the Covid-19 virus began to spread. That evidence described the consultation undertaken by the Respondent with appropriately qualified medical experts.
20. That evidence included a number of facts and considerations regarded by the Respondent including:
- 20.1. In early 2020 the Covid-19 virus was spreading throughout the world;
  - 20.2. On 25 January 2020 Australia had its first reported case;
  - 20.3. In March 2020 the World Health Organisation declared Covid-19 to be a pandemic;
  - 20.4. Covid-19 is an infectious airborne virus spread through droplets ejected from the mouth or nose when the person coughs, sneezes or breathes;
  - 20.5. It can cause cold or flu like symptoms or more serious illnesses and possibly death;
  - 20.6. A proportion of NT population were particularly vulnerable to infection;
  - 20.7. There was a real risk the NT Health system may be placed under excessive pressure

by the pandemic; and

- 20.8. Every other state and territory made, or were about to make, similar declarations.
21. The content of this affidavit is very similar to the opinions from numerous epidemiologists who were on nightly television during the subsequent pandemic. The Respondent's evidence is notorious, obvious and compelling.

### **Majetic's Case**

22. Summary judgment is often determined on an assessment of the *likely* evidence but in this matter the Court has the advantage of assessing the *actual* evidence relied upon by the Appellants.<sup>4</sup>
23. Mr Majetic filed a number of affidavits that were difficult to follow but I have tried to deal with each of the more relevant arguments raised.
24. Mr Majetic claimed the Respondent had "failed to rely on adequate, relevant and current documentation for making the decision to extend". As stated above, the Respondent's evidence is overwhelming as to the documentation and concerns that were considered before the making of the declaration and any extension. Mr Majetic did not identify any documentation the Respondent failed to rely on and I find this ground has no prospects of success.
25. Mr Majetic also claims that he has been unable to provide services to all of his clients, and that this has hindered his ability to provide support for his family. Governments regularly pass laws or take other forms of executive action on a broad range of matters such as planning, the environment, and occupational health. The fact that these actions might affect the profitability of a business does not affect their validity.
26. Mr Majetic's affidavits or submissions also included a demand that the Respondent provide "irrefutable evidence as to the existence of the isolated SARS Cov2 ... which was not first combined with another source of genetic material e.g. monkey kidney cells". The PEHA scheme does not require such evidence to be provided, but this is nonetheless a good example of the quality of Mr Majetic's case and his deep suspicion of the government.
27. Mr Majetic complained the Respondent failed to give reasons for her decision to extend the emergency declaration, but there is no such obligation under the PEHA nor at common law.<sup>5</sup>
28. Mr Majetic also demanded the Respondent provide proof of personal indemnity insurance and certificates of its currency, but this is not relevant.
29. Mr Majetic said he objected to "being governed or subject to the Northern Territory Government and any and all draconian laws or directions that it has implemented that are not in line with God's Laws upon which all laws are unilaterally based". He went on to allege:
- 29.1. Breaches of the human rights and the *Legal Profession Act 2006*;
- 29.2. That the NT government and federal government are belligerent occupiers with no

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<sup>4</sup> Orders were made for the filing of evidence-in-chief and the Respondent made the summary judgment application once the Appellants had filed their evidence.

<sup>5</sup> *Public Service Board of NSW v Osmond* (1986) 159 CLR 656 at 662.

jurisdictional duty over tribal sovereigns; and

- 29.3. There has been appropriation of sacred emblems, claiming the Chief Minister, Prime Minister and others are therefore liable to pay \$200 trillion in gold bullion in damages.
30. None of the allegations in the paragraph above are relevant to this appeal. Mr Majetic has not raised any arguments or evidence to suggest that there was insufficient basis for the making and extending of the public health emergency declaration. His appeal has no prospects of success.

### **Mr Oldroyd's Case**

31. Mr Oldroyd's grounds for appealing the extension of the emergency declaration are hard to follow but include the following:
- 31.1. The public health emergency has no basis in fact;
  - 31.2. The vaccine coercion inflicted on the majority of workers contravenes local, federal and international laws and covenants;
  - 31.3. The vaccine has caused 621 deaths nationally; and
  - 31.4. Vaccine rollouts have not slowed the rate of serious disease or death.
32. Much of the content of Mr Oldroyd's appeal complains about the appropriateness of CHO directions, rather than the extension of the declaration of a health emergency, and I have therefore ignored these matters.
33. Mr Oldroyd claimed that there was "NO evidence of a pandemic or serious public health risk by Covid-19 in the Northern Territory", but he did state how or why all the evidence put forward by the Respondent was untrue or unreliable. As stated above, I find the Respondent overwhelmingly makes out the case that there was a serious and urgent concern about the threat posed by Covid-19.
34. Mr Oldroyd's evidence was mostly irrelevant and included grand claims such that the Respondent will be:
- "personally liable ... and or criminally liable for participating in unlawful, illegal and or criminal activity and or for supporting crimes against humanity, genocide, bio-warfare ... committed in furtherance of government policy, under the guise of a public health emergency, which has no basis in fact."*
35. Mr Oldroyd complained that the Therapeutic Goods Association (TGA) has taken away a doctor's ability to discuss or prescribe "proven" prophylactics such as Ivermectin. This is irrelevant, but it is telling that Mr Oldroyd did not include any evidence as to the effectiveness of a veterinary antiparasitic in treating Covid-19. This is another example of the quality of the case put forward by the Appellants.
36. Mr Oldroyd claimed the NT "has experienced no deaths from Covid-19 since the start of this purported pandemic". This is simply not correct as the Respondent's evidence included many primary documents showing there were over 20 Covid-19 related deaths in the NT in February 2022 alone.
37. Mr Oldroyd claimed "It has been proven that Covid-19 vaccines do not reduce Covid-19

deaths", but he did not identify any such proof whereas the evidence from the Respondent was that vaccine programs did mitigate some of the risks.

38. Mr Oldroyd has not produced any arguments or evidence to suggest that he has an arguable case.

### **Application to have Respondent's Lawyers Removed**

39. The Respondent's solicitors wrote to the Appellants inviting them to discontinue and warning of a likely costs order.
40. On 24 June 2022, Mr Oldroyd applied to the Court to "have the defendant's legal representatives removed from the proceedings" and "notice to strike out defendant's legal representatives". He relied on an affidavit of 68 pages stating in part that:
- 40.1. He had religious beliefs and qualifications;
- 40.2. He had sued "the individual Natasha Fyles, in her private capacity as a living woman... However her legal team in ... illegitimate non-binding letters have fraudulently identified the defendant as Minister for Health in an attempt I believe to justify the costs of their representation... and in an attempt to pervert the course of justice";
- 40.3. He lodged complaints to the NT Police alleging threats and intimidation by the Respondent's lawyers;
- 40.4. The Respondent had instituted a "war of nerves" by "threatening costs if I did not withdraw"; and
- 40.5. The solicitors for the Respondent are in breach of *the Trade Practices Act 1974 (Cth)*<sup>6</sup>.
41. Without objection from the Respondent, Mr Oldroyd annexed the purportedly threatening letter which, after dealing with the merits of the appeal, ended with:

*For the reasons set out above, we consider the Minister is likely to be successful... Generally speaking a successful litigant... is entitled to recover a proportion of their legal costs from the unsuccessful party... [If this occurs] we will seek instructions to apply for an order for costs against you... We invite you to withdraw your appeal and discontinue... If you agree to do so our client is willing to bear the costs that she has incurred to date."*

42. This letter was not threatening and was in fact courteous. The offer in respect of costs is frequently made in litigation, and this application to have the Respondent's lawyers removed or "struck out" will be dismissed.

### **Conclusion**

43. The evidence filed by the Appellants is almost entirely irrelevant. The material tendered by the Appellants runs for hundreds of pages but manages to contain no evidence suggesting that the Minister was not properly satisfied as to the serious risk posed by Covid-19.
44. Even the preliminary evidence filed by the Respondent overwhelmingly shows that the Respondent was acting within power as the circumstances were sufficiently serious and urgent to cause the Minister to be satisfied that Covid-19 created an immediate serious

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<sup>6</sup> Repealed in 2011.



public health risk.

45. Noting that the Appellants should be entitled to ordinarily present their case, I find both appeals are frivolous, untenable and cannot possibly succeed.
46. I will order that both be summarily dismissed pursuant to Local Court Rule 28.01.

#### **Orders**

1. In proceeding 2022-00688-LC:
  - a. The Appellant's application for removal of the Respondent's solicitors is dismissed;
  - b. The Respondent's application for summary judgment is granted and the Appellant's appeal is dismissed; and
  - c. Any application for costs by the Respondent is to be made within 45 days.
2. In proceeding 2022-00762-LC:
  - a. The Respondent's application for summary judgment is granted and the Appellant's appeal is dismissed;
  - b. Any application for costs by the Respondent is to be made within 45 days.