

SUPREME COURT OF QUEENSLAND

CITATION: *Fritz v Director of Public Prosecutions (Qld)* [2026]
QCA 192

PARTIES: **DENNIS MELVIN FRITZ**
(appellant)
v
DIRECTOR OF PUBLIC PROSECUTIONS (QLD)
(first respondent)
OFFICER IN CHARGE, SERGEANT D SPERLING;
BUNDABERG POLICE PROSECUTIONS
(second respondent)
DETECTIVE SENIOR CONSTABLE CARMELITTA
JOY KILPATRICK (GLADSTONE CPIU)
(third respondent)

FILE NO/S: Appeal No 1429 of 2026
SC No 3 of 2026

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal

ORIGINATING COURT: Supreme Court at Bundaberg – Unreported, 17 March 2026
(Crow J)

DELIVERED ON: 29 September 2026

DELIVERED AT: Brisbane

HEARING DATE: 10 September 2026

JUDGES: Boddice JA, Doyle JA, Davis J

ORDERS: **1. Leave to file the amended notice of appeal be refused.**
2. Leave to adduce further evidence by the appellant be refused.
3. Leave to adduce evidence as to the appellant’s vexatious litigant status is granted.
4. The appeal is allowed, only to the extent that Order 1 below be varied to be the application for leave is refused pursuant to rule 15 of the *Uniform Civil Procedure Rules 1999 (Qld)*.
5. No order as to costs of the appeal.

CATCHWORDS: PROCEDURE – STATE AND TERRITORY COURTS: JURISDICTION, POWERS AND GENERALLY – VEXATIOUS LITIGANTS, PROCEEDINGS AND RELATED MATTERS – OTHER MATTERS – where the appellant was refused leave to file an application for a statutory order of review – where the primary judge recorded that the

applicant required leave as the applicant had been declared a vexatious litigant and because the Registrar had referred the application to a judge under r 15 of the *Uniform Civil Procedure Rules 1999* (Qld) – where there was a factual dispute about whether the applicant remained a vexatious litigant requiring leave – where further documentary evidence was adduced on appeal that established that the appellant had been discharged as a vexatious litigant – whether the primary judge erred in refusing the application on the alternative basis, being under r 15 of the *Uniform Civil Procedure Rules 1999* (Qld)

Uniform Civil Procedure Rules 1999 (Qld), r 15

McEwan v Merrin (Magistrate) [2023] QSC 6, applied

COUNSEL: The appellant appeared on his own behalf
R H Berry for the first respondent
M D Nicolson for the second and third respondents

SOLICITORS: The appellant appeared on his own behalf
C E Christensen, Crown Solicitor for the first respondent
Queensland Police Service Legal Unit for the second and third respondents

- [1] **BODDICE JA:** By notice of appeal filed 9 April 2026, the appellant appealed the primary judge’s orders made on 17 March 2026, dismissing his application for leave to file an application for statutory order of review and ordering that he pay the costs of the respondents, on a standard basis.
- [2] The appellant relied on multiple grounds of appeal. Those grounds alleged a denial of procedural fairness due to the appellant’s inability to hear and a failure to provide requested changes to the manner of the hearing; material errors of fact and law; failures to address misconduct by one of the respondents; failures to apply binding authority and to determine the matter according to law; and apprehended bias by reason of the primary judge having had access to a “without prejudice” offer.
- [3] At the hearing of the appeal, the appellant sought leave to file an amended notice of appeal to include grounds which addressed the substantive criminal proceedings, which were the subject of the application for statutory order of review.

Primary decision

- [4] The primary judge recorded that the appellant needed leave to file the application for statutory order of review, because he was constrained by both having been declared a vexatious litigant in 1987, and because the Registrar had referred the application to a judge under r 15 of the *Uniform Civil Procedure Rules 1999* (Qld) (**UCPR**), as the application was considered “prima facie to be vexatious or not in proper form.”
- [5] The primary judge recorded that there was a factual dispute about whether the appellant was, in fact, a vexatious litigant. The appellant alleged that a decision had previously been made to undeclare him a vexatious litigant.
- [6] The primary judge found that on the balance of probability, the appellant remained a vexatious litigant. Therefore, that appellant had to satisfy the court, on the balance of probability, that the application he sought to file was not vexatious.

- [7] The primary judge found that in respect of that matter, the appellant had difficulty. The proposed application for statutory order of review did not identify the person that made the decision, nor the specific decision. It identified a potential raft of decisions, including referencing a decision by a particular magistrate, who was not notified as a decision-maker.
- [8] The primary judge found that in circumstances where numerous decisions were referred to and there was no attempt to specify which decision is the decision sought to be challenged, the application for statutory order of review was extremely defective and unfair to the respondent and any unnamed respondents.
- [9] The primary judge concluded that the appellant had not satisfied the court that the proceeding was not vexatious and that in those circumstances, leave ought not to be granted under s 10 of the *Vexatious Proceedings Act 2005* (Qld).
- [10] The primary judge found that as the appellant had been wholly unsuccessful, costs ought to follow the event. The primary judge noted that there was affidavit material containing a “without prejudice” offer that had been made by the appellant, which the appellant said was improper to have been included in the material. After noting that the primary judge had only read the affidavit subsequent to determination of the application, the primary judge concluded that the usual rule should apply and ordered that costs be paid on a standard basis.

Leave to amend notice of appeal

- [11] The appeal relates only to a refusal of an application for leave to file an application for statutory order of review. There is no proper basis upon which this Court ought to consider grounds of appeal which relate to criminal proceedings, the subject of the application for statutory order of review. Leave to file the amended notice of appeal should therefore be refused.
- [12] As those proposed grounds are not the subject of this appeal, the appellant’s application to adduce further evidence relevant to them, should also be refused as that evidence is irrelevant to the hearing of the application.

Appeal

- [13] The respondents concede that in refusing leave to file the application for statutory order of review on the ground that the appellant was a vexatious litigant, the primary judge was in error. That concession is properly made as documentary material obtained subsequent to the primary hearing establishes that the order declaring the appellant a vexatious litigant had been discharged many years before the hearing of the application for leave. Leave to adduce that further evidence should be granted.
- [14] That concession means the appeal ought to be allowed, unless the Court is satisfied on its own review of the application, that leave ought to be refused on the alternate basis upon which the primary judge was asked to determine that leave to file the application for statutory order to review should be refused, namely, pursuant to r 15 of the UCPR.
- [15] The application for statutory order to review refers to multiple decisions by multiple magistrates, in respect of underlying criminal proceedings. The document does not identify the specific decision the subject of the application, or the person who was the relevant decision-maker.

- [16] Such a document is not only defective. It is unfair. The proposed respondents are entitled to be properly informed as to the particular decisions that are the subject of the application for statutory order of review, together with the grounds upon which each such decision is the subject of that application. Without that specificity, the respondents are seriously prejudiced. Such a document is properly to be categorised as an abuse of process of the Court or vexatious, such that leave to file ought to be refused pursuant to r 15 of the UCPR.¹
- [17] The appellant submitted that the primary judge's conclusion involved giving priority to form over substance. However, that conclusion recognises that the essence of any court proceedings is that a respondent to that proceeding be properly and fairly informed of the case to be met by that respondent.
- [18] As leave to file the proposed application for statutory order of review should be refused, it unnecessary to consider the appellant's remaining grounds of appeal.

Costs

- [19] The appellant sought leave to appeal the order for costs made by the primary judge. That order was made in circumstances where the appellant had been wholly unsuccessful in obtaining leave to file the proceeding. That circumstance warranted an order that costs follow the event.
- [20] Whilst the primary judge referred to a "without prejudice" offer to settle made by the appellant, the primary judge did not use it to order an assessment of costs other than on the standard basis. Such an order was in accordance with the usual rule of costs following the event.
- [21] Whilst the primary judge's ultimate basis for dismissing the application for leave has been shown to be incorrect, the alternate basis upon which the primary judge would have dismissed the application was correct.
- [22] In those circumstances, there is no basis upon which to set aside the costs order. Costs of the application before the primary judge ought to follow the event.
- [23] In respect to the costs of the appeal, none of the respondents sought costs. Accordingly, there should be no order as to costs in relation to the costs of the appeal.

Orders

- [24] I would order:
1. Leave to file the amended notice of appeal be refused.
 2. Leave to adduce further evidence by the appellant be refused.
 3. Leave to adduce evidence as to the appellant's vexatious litigant status is granted.
 4. The appeal is allowed, only to the extent that Order 1 below be varied to be the application for leave is refused pursuant to rule 15 of the *Uniform Civil Procedure Rules 1999* (Qld).
 5. No order as to costs of the appeal.

¹ *McEwan v Merrin (Magistrate)* [2023] QSC 6.

- [25] **DOYLE JA:** I agree with the reasons of Boddice JA and with the orders proposed by his Honour.
- [26] **DAVIS J:** I have read the reasons and proposed orders of Boddice JA and I agree with those reasons and the orders proposed by his Honour.