Attachment D

HIGH COURT REGISTRY PROCESS

RC v R [2020] NSWCCA 76

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1. This paper outlines my experience with registry process of the High Court. Most of my experience was very positive. Some aspects, late in the process, were disappointing and concerning because of the possible implications they might have had on fair treatment of a self-represented applicant.

Introduction

2. By way of background, I found myself in a situation where I had only one avenue to rectify what, in my opinion, had been a gross miscarriage of justice. That avenue was to seek special leave to appeal to the High Court over a judgement of the NSW Court of Criminal Appeal. At that stage, I had spent some 90% of my superannuation investments (and total savings) on legal costs; and had my request for *pro bono* support to appeal to the High Court turned down by the law company that had represented me (unsuccessfully, as it turned out). My only practicable option was to apply for special leave as a self-represented applicant.

3. With no knowledge or experience of such a process, I was deeply indebted to the advice and assistance received from High Court registry officers both in Canberra and Sydney. This was particularly the case with regard to the Sydney registry because it was far more involved in the process. I expressed my gratitude in telephone conversations and several email exchanges; and reiterate it here.

Court Rules

4. I felt somewhat disadvantaged when I discovered that there was a difference in the process for a self-represented applicant compared to one with legal representation. This relates to Rules 41.05.1 and 41.05.2[1]. I assumed that the purpose of this difference is to enable preliminary vetting to avert a mischievous or ill-conceived application. I was confident mine was neither; nor in any other way without substance.

5. The process I experienced diverted from the rules when it reached Rule 41.04. Up until then both parties (applicant and respondent) had adhered to the rules. Rule 41.04 obliges the respondent, within 14 days after service of the application, to file and serve on the applicant a notice of appearance. In this case, that deadline was 30 June 2020.

6. On 1 July 2020, I sent an email to the Sydney Registry stating:

> "On 16 June, I served the application for special leave on the respondent. Under Rule 41.04, the respondent should have filed and served a notice of appearance by 30 June (within 14 days after service of the application)….That has seemingly not happened….Is there some procedure the respondent has open to it that I'm not aware of?"

[1] High Court Rules 2004

7. On the same day, I received a reply which stated:

> "I confirm that the Respondent has not filed an appearance nor response concerning the above-mentioned matter. The Registry will contact you or the Respondent if further steps need to be taken."

8. The issue at his juncture related only to the appearance, which the rules obliged the respondent to lodge and serve. The response was another and later issue.

9. I followed up with a further query to clarify what was happening in view of the unexplained departure from the court rules. In an email to the Sydney Registry on 3 July 2020, I asked:

> "I would very much appreciate some insights into what is happening if you would be so kind.
> Clearly the HC rules (in this case 41.04) are not being adhered to by the respondent. I would appreciate knowing if this is a standard and acceptable (to the HC) practice; and, therefore, nothing to be concerned about.
> If that's the case, when would the Registry expect an appearance to be filed and served?
> If that's not the case, what next will happen?"

10. In the same email, I also sought advice as to the process that would normally take place in the implementation of Rule 41.05.02; and expressed my concern that, given the rules seem to expect an appearance to be filed before the process proceeds to Rule 41.05.02, delays by the respondent in filing an appearance would seem improper.

11. The Registry never responded to my email of 3 July 2020; nor did I receive any further clarification as to the process. (The Deputy Registrar would later apologise for the lack of action by the Registry in response to my email of 3 July 2020 (in email of 25 August 2020.))

12. The next advice I received was an email from DLS[2] dated 24 August 2020 stating:

> "The Form 7 - Notice of appearance in the above matter has been accepted for filing."

13. On the same day, the appearance was served on me by the respondent in an email stating:

> "I overlooked filing this document at the relevant time – it has now been filed on behalf of the Respondent and I apologise for the delay."

14. In an email to the Sydney Registry dated 25 August 2020, I rehearsed the anomalies and concerns manifested in the process to date; and again sought to ascertain and understand the process in relation to the phases covered by Rules 41.04 and 41.05. I also reiterated my concern at what would seem to have been an eight-week delay that should not have happened.

[2] Digital Lodgement System of the High Court

15. The Deputy Registrar replied the same day as follows:

> "Although the filing of a Notice of Appearance by the respondent was very late, the respondent's failure to file in a timely manner did not delay the progress of your application.
> Your application's progress has been delayed, however, due to two other factors: an indication in the Court's system that you were represented by lawyers, followed by the Registry's lateness in noticing that error.
> It came to the Registry's attention only last week that our records indicated, incorrectly, that you were represented by lawyers.
> I was unaware of your earlier emails but I nevertheless apologise for the lack of action by the Registry in response to your email of 3 July 2020.
> Your application has now progressed for the Court's consideration and you will be informed in due course of any direction that the respondent filed a Response."

16. As to the stated reasons for the delays, I was dismayed that that should be the case. I had pointed out in an email to the Sydney Registry on 14 June 2020 that the DLS system had associated me with a law firm seemingly on the basis of our having the same email domain: @iinet.net.au. I had asked in that email that the anomaly be corrected. Moreover, it was not obvious why such a situation would be relevant to a delay in the respondent's filing an appearance. In fact, it should have raised an expectation on the part of the registry that not only should the appearance be filed in a timely manner (i.e. by 30 June 2020) but that under Rule 41.05.1, the respondent should have filed a response by 7 July 2020.

Disposition

17. The matter was listed for determination on 14 October 2020 without hearing oral argument.

18. The following disposition was filed on 14 October 2020:

> The applicant requires an extension time within which to file an application for special leave to appeal from a decision of the Court of Criminal Appeal of the Supreme Court of New South Wales.
>
> The proposed appeal lacks sufficient prospects of success to warrant a grant of special leave. Hence, it would be futile to grant the extension of time that is sought. Special leave to appeal should be refused.

Comment

19. While not resiling from a likely perceived weakness in my application, I believe that the way the application process unfolded raised concerns about the treatment of self-represented applicants and the disadvantages to which they are subjected. If the purpose of Rule 41.05.2 is to provide a mechanism to filter out mischievous or ill-conceived applications, that should not give rise to non-adherence of other rules that are clearly applicable and should have been observed. The sequence of events and the rationales put forward inevitably raise concerns as to fairness to the self-represented applicant.

Attachment D

Further Correspondence with Registry

20. In view of my perception of the prejudicial way the application process was handled – to the significant disadvantage to the applicant – I wrote to the Chief Executive and Principal Registrar of the High Court on 29 January 2021 at some length. The opening paragraph sums up the gist of my letter:

> "The purpose of this letter is to raise issues relating to processes of the court (and their aftermath) that I believe contributed to an outcome that was unfairly disadvantageous to me; and to seek your consideration of the issues with a view to providing redress."

21. After a wait of five months for a reply, I wrote again on 29 June 2021; and received acknowledgement and an apology from the Senior Registrar. There then followed correspondence between us culminating in helpful advice from the Senior Registrar relating to a second application for special leave, although I didn't think my concerns about the Registry process had been fully or correctly addressed.

22. I remain indebted to the Registry's assistance in lodging a second application (cf. Attachment E) notwithstanding its ultimate rejection by the High Court.