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A BRUSH WITH JUSTICE — *QUEENSLAND V STRADFORD (A PSUEDONYM)* (2025) 421 ALR 376

Note: this article addresses themes of suicide which may be disturbing to some readers.

> 'HIS HONOUR: I have told you, I will put you in jail in contempt of this court if you talk over the top of me. Do you understand? I am not happy at all with you… *if it is that she comes here, and she complains that she has asked for things and you have not given them to her, bring your toothbrush*…'[1]

I Introduction

It is difficult to imagine Mr Stradford's day in court going much worse. On 6 December 2018, when Mr Stradford walked into court, he likely expected a routine hearing. Rather, he was summarily jailed for being in contempt of court by Judge Vasta. The problem, however, was that Mr Stradford *was not in contempt of court*. Judge Vasta proceeded under the erroneous belief that another Judge had found Mr Stradford in contempt of court at a prior hearing.

After the Full Court of the Family Court set aside the contempt order,[2] Mr Stradford successfully sought compensation in the Federal Court of Australia against Judge Vasta, the Commonwealth of Australia and the State of Queensland.[3] However, the High Court of Australia in *Queensland v Stradford (a pseudonym)*[4] held that Judge Vasta — an inferior court judge — was immune from civil suit by judicial immunity. Meanwhile, in response to *Stradford v Judge Vasta*,[5] the Federal Government amended the law so that Division 2 judges of the Federal Circuit and Family Court

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1 *Stradford (a pseudonym) v Judge Vasta* [2023] FCA 1020, [23] ('*Stradford v Judge Vasta*') (emphasis in original).

2 *Stradford v Stradford* (2019) 59 Fam LR 194 ('*Stradford FamC*').

3 *Stradford v Judge Vasta* (n 1).

4 (2025) 421 ALR 376 ('*Queensland v Stradford*').

5 *Stradford v Judge Vasta* (n 1).

of Australia share the same immunity as Division 1 judges.[6] Mr Stradford's chance of compensation ended there.

Part II of this case note sets out the facts of *Queensland v Stradford* and the relevant litigation. Justice Wigney's decision in *Stradford v Judge Vasta* is explained in Part III. Part IV then discusses the High Court's decision in *Queensland v Stradford*. Part V comments on the broader implications of *Queensland v Stradford* on the division between superior and inferior courts and further explores alternative means for judicial accountability.

II Factual Background

From April 2017, Mr Stradford sought property-adjustment orders against his then-wife in the former Federal Circuit Court.[7] In June 2018, Mr Stradford appeared before Judge Spelleken for a directions hearing; her Honour ordered both parties to file statements setting out evidence relevant to their financial positions.[8] In August 2018, the proceedings came to a final hearing before Judge Vasta.

Concluding that Mr Stradford had not made 'full and frank disclosure' in relation to his financial position,[9] Judge Vasta directed the production of Mr Stradford's statements from gambling accounts and tax returns.[10] Judge Vasta warned:

> *If people don't comply with my orders there's only [one] place they go.* Okay. And I don't have any hesitation in jailing people for not complying with my orders …[11]

When Mr Stradford tried to explain the missing documents, Judge Vasta interjected: 'Rubbish — rubbish. Do not accept that for one second, one iota of a second … Do not ever talk over the top of me.'[12] The matter was adjourned.

In November 2018, the matter came before Judge Turner for directions. Mr Stradford still had not produced the documents, so her Honour adjourned the matter for a 'hearing on contempt application'.[13] Importantly, *no finding* had been made on contempt.

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6 Federal Courts Legislation Amendment (Judicial Immunity) Bill 2023 (Cth). See also Explanatory Memorandum, Federal Courts Legislation Amendment (Judicial Immunity) Bill 2023 (Cth) 2.

7 *Stradford v Stradford* [2018] FCCA 3890, [1] ('*Stradford v Stradford*').

8 *Stradford v Judge Vasta* (n 1) [20]; *Family Law Act 1975* (Cth) s 79(2) ('*Family Law Act*').

9 *Stradford v Stradford* (n 7) [10].

10 Ibid [11].

11 Transcript excerpts from the original proceedings were produced in the Federal Court judgment: *Stradford v Judge Vasta* (n 1) [22] (emphasis in original).

12 Ibid [23].

13 Ibid [27].

When the parties returned in December 2018, Judge Vasta opened:

> So that's that. So the matter can't go anywhere at this point in time, *because Judge Turner has determined that you are in contempt of the orders*…[14]

Judge Vasta asked Mrs Stradford her view on the supposed contempt. She pressed that she merely wanted disclosure of documents.[15] Mr Stradford tried to explain why the documents were not produced. This was dismissed.[16] Judge Vasta noted:

> *So I hope you brought your toothbrush*, [Mr Stradford].[17]

Judge Vasta ordered that Mr Stradford be imprisoned for 12 months.[18]

The consequences of this 'gross miscarriage of justice'[19] were both immediate and harrowing. On arrival at the watch house, Mr Stradford was strip searched.[20] When placed into a holding cell, he was punched in the head by another inmate.[21] On his second night, he awoke to find his cellmate strangling him.[22] By the next morning, he had already witnessed various acts of violence, and learnt it was better for him to 'shut his mouth' and 'conform' with the other inmates.[23]

After four nights and five days of detention at the watch house, Mr Stradford was transferred to the Brisbane Correctional Centre.[24] After seeing a psychologist, Mr Stradford was strip searched again.[25] Another inmate later elbowed Mr Stradford in the head while lining up for breakfast.[26] It was clear the mere days spent in detention had a profound mental impact on Mr Stradford. After being groped by an inmate who remarked to Mr Stradford that he would 'look a lot sexier if he shaved his legs', that night, using soap and a razor, Mr Stradford shaved his legs.[27] The immense trauma of his incarceration was most starkly illustrated by Wigney J:

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14 Ibid [30] (emphasis in original).

15 Ibid [33].

16 Ibid [35].

17 Ibid [34] (emphasis in original).

18 *Stradford v Stradford* (n 7) [29].

19 *Stradford v Judge Vasta* (n 1) [1].

20 Ibid [600].

21 Ibid [602].

22 Ibid [607].

23 Ibid [610].

24 Ibid [618].

25 Ibid [621].

26 Ibid [628].

27 Ibid.

> On one occasion, he took some preliminary steps towards a suicide attempt. On that occasion, a guard had not closed the food hatch in the door of his cell. Mr Stradford made a noose out of a blanket or towel and hung it on the hatch, thinking that he could strangle himself by twisting it around his neck. The only reason he did not take that step was that he heard his daughter's favourite song playing on the radio at the time. This was one occasion where Mr Stradford became particularly emotional while giving his evidence.[28]

Six days later, Judge Vasta stayed the contempt order, pending the outcome of an appeal.[29] Judge Vasta noted that he may 'very well have been in error' in making the order.[30] On appeal, Strickland, Murphy and Kent JJ set aside Judge Vasta's orders, and remarked that allowing a decision 'so devoid of procedural fairness' to stand 'would be an affront to justice'.[31]

Mr Stradford initiated proceedings in the Federal Court against Judge Vasta for false imprisonment, and against the Commonwealth and the State of Queensland for vicarious liability — through their court security guards, and police officers and correctional services officers respectively (together, 'enforcing officers') — for enforcing the contempt order.

III Federal Court

The judgment delivered by Wigney J in *Stradford v Judge Vasta* was scathing.[32] While the High Court overturned almost all of his Honour's judgment, it agreed that *Stradford v Stradford* was a 'parody' of a hearing.[33] The Commonwealth did not dispute this.[34] The Attorney-General (SA) did not dispute this.[35] Judge Vasta — though unsurprisingly, less emphatic than Wigney J or the others — did not dispute this.[36]

Justice Wigney held — among other things — that: (1) Judge Vasta was liable for the tort of false imprisonment;[37] and (2) the Commonwealth and Queensland were

28 Ibid [613].

29 *Stradford v Stradford (No 2)* [2018] FCCA 3961, [6].

30 Ibid [6].

31 *Stradford FamC* (n 2) 196 [9].

32 See *Stradford v Judge Vasta* (n 1).

33 *Stradford v Judge Vasta* (n 1) [1]; *Queensland v Stradford* (n 4) 380 [5].

34 Commonwealth of Australia, 'Submissions of the Commonwealth of Australia', Submission in *Commonwealth v Stradford*, C3/2024, 28 March 2024, [9].

35 Attorney-General (SA), 'Submissions of the Attorney-General for the State of South Australia (Intervening)', Submission in *Commonwealth v Stradford*, C3/2024, 12 April 2024, [14.2].

36 Judge Salvatore Paul Vasta, 'Appellant's Submissions', Submission in *Judge Vasta v Stradford*, C4/2024, 28 March 2024, [8], [46].

37 *Stradford v Judge Vasta* (n 1) [373].

vicariously liable for the tort of false imprisonment committed by their respective enforcing officers.[38]

Justice Wigney characterised the Australian doctrine of judicial immunity as follows: a superior court judge is immune from civil liability for anything done 'while acting judicially'.[39] Whereas an inferior court judge enjoys no such protection if the impugned act falls outside their jurisdiction.[40]

Accordingly, his Honour considered four circumstances in which an inferior court judge may lose their protection of judicial immunity: (1) an order is made in a proceeding in which they did not have 'subject-matter' jurisdiction — that is, no jurisdiction to hear or entertain in the first place;[41] (2) an order is made without, outside, or in excess of their jurisdiction; [42] (3) they are guilty of some gross and obvious irregularity in procedure;[43] or (4) an order is made for which there is no proper foundation in law.[44]

There was little debate that Judge Vasta was a judge of an inferior court.[45] The High Court has emphasised that

> the Federal Circuit Court is an inferior court, and as such has no inherent powers. Being a creation of Parliament, that Court has no authority other than that found in the powers and functions conferred upon it by legislation.[46]

When Judge Vasta imprisoned Mr Stradford for contempt, he did not disclose the legislative basis for the order.[47] Justice Wigney contemplated the applicability of: (1) s 17 of the (now repealed) *Federal Circuit Court of Australia Act 1999* (Cth) ('*FCC Act*');[48] (2) pt XIIIA of the *Family Law Act 1975* (Cth) ('*Family Law Act*'); and (3) pt XIIIB of the *Family Law Act*. Each granted a Federal Circuit Court judge powers to deal with contempt or impose sanctions.

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38 Ibid [554], [549].

39 *Stradford v Judge Vasta* (n 1) [206], citing *Sirros v Moore* [1975] QB 118, 135D (Lord Denning).

40 *Stradford v Judge Vasta* (n 1) [207], citing *Wentworth v Wentworth* (2000) 52 NSWLR 602 [195].

41 *Stradford v Judge Vasta* (n 1) [343].

42 Ibid [344].

43 Ibid [345].

44 Ibid [346].

45 *Queensland v Stradford* (n 4) 380 [6].

46 *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v AAM17* (2021) 272 CLR 329, 343 [26] (Steward J) ('*AAM17*').

47 See *Stradford v Stradford* (n 7).

48 *Federal Circuit Court of Australia Act 1999* (Cth) s 17 ('*FCC Act*'), as repealed by *Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021* (Cth).

His Honour considered that: (1) s 17 of the *FCC Act* did not confer a general power to punish contempts; and (2) pts XIIIA–XIIIB were not considered — and could not apply — in imprisoning Mr Stradford. Therefore, the order and warrant 'were invalid and of no effect'.[49] Accordingly, his Honour held that Judge Vasta was not immune from suit via judicial immunity. Mr Stradford received over $300,000 in damages.[50]

IV High Court

A *Validity of the Order*

1 *Chief Justice Gageler, Gleeson, Jagot, and Beech-Jones JJ*

The first question the majority turned to was whether the imprisonment order and the proceeding warrant was valid.[51] Judge Vasta submitted that by virtue of s 17 of the *FCC Act*, his Honour was conferred the same power to punish contempts as the High Court.[52] Section 17 of the *FCC Act* relevantly states:

> **17 Contempt of court**
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> (1) The *Federal Circuit Court* of Australia *has the same power to punish contempts* of its power and authority *as is possessed by the High Court* in respect of contempts of the High Court.
> (2) Subsection (1) has effect subject to any other Act.
> (3) …
>
> Note: See also section 112AP of the *Family Law Act 1975*, which deals with family law or child support proceedings.[53]

The majority relied on *New South Wales v Kable*[54] to explain the effect of the critical distinction between inferior and superior court judges, namely, that a 'judicial order of an inferior court made without jurisdiction has no legal force as an order of that court'.[55]

If Judge Vasta's submissions regarding the effect of s 17 were correct, then the imprisonment order against Mr Stradford would have been valid until eventually

49 *Stradford v Judge Vasta* (n 1) [373].

50 Ibid [843]–[847].

51 *Queensland v Stradford* (n 4) 380 [5].

52 Ibid 384–5 [32].

53 (emphasis added).

54 (2013) 252 CLR 118 ('*Kable*').

55 Ibid 141 [56] (Gageler CJ).

set aside, irrespective of the jurisdictional errors present.[56] In *Stradford v Judge Vasta*, Wigney J relied on pts XIIIA–XIIIB of the *Family Law Act* in finding the order invalid.

Parts XIIIA–XIIIB of the *Family Law Act* confer on courts the power to impose sanctions for contravention of orders and contempt, respectively. Under pt XIIIA, a court may impose a sanction if a person:[57] (1) intentionally fails to comply with an order or makes no reasonable attempt to comply;[58] and (2) if the person has no reasonable excuse for the contravention.[59] Further, if the sanction imposed is imprisonment, the court must be satisfied it is the most appropriate sanction in the circumstances.[60] Additionally, pt XIIIB allows the court to punish contempt by committing a person to prison,[61] where a person: both contravenes a court order and flagrantly challenges the authority of the court.[62]

The majority rejected Wigney J's argument that the existence of pts XIIIA–XIIIB excluded the operation of s 17 to punish for contempts.[63] Their Honours held that s 17 expanded the power of the Federal Circuit Court to punish contempts in all jurisdictions, whereas pts XIIIA–XIIIB conferred any court the power to deal with contempts and contraventions under the *Family Law Act*'s jurisdiction.[64] Each were different regimes dealing with a different subject matter.

It does not, however, follow that in accepting the differences between s 17 and pts XIIIA–XIIIB that a Federal Circuit Court judge exercising power under s 17 would render them 'superior' for the purposes of the validity of their orders.[65] While s 17 grants 'the same power' as a superior court to punish contempts, it does not grant the same jurisdiction.[66]

The majority compared s 17 with s 42(1) of the *District Court of Western Australia Act 1969* (WA), which confers on the District Court of Western Australia 'all the jurisdiction and powers that the Supreme Court has in respect of any indictable offence'.[67]

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56 *Queensland v Stradford* (n 4) 389 [55].

57 *Family Law Act* (n 8) s 112AD(3).

58 Ibid ss 112AB(1)(a)–(b).

59 Ibid s 112AD(3).

60 Ibid s 112AE(2).

61 Ibid ss 112AP(4), (7).

62 Ibid.

63 *Queensland v Stradford* (n 4) 389 [57].

64 Ibid 392 [65].

65 Ibid.

66 *FCC Act* (n 48) s 17.

67 *District Court of Western Australia Act 1969* (WA) s 42(2); *Queensland v Stradford* (n 4) 389 [54].

In *Day v R*[68] the High Court held that the effect of s 42(1) was to provide that 'for this purpose the District Court is a superior court'.[69] Section 17 does not purport to provide such a conferral.[70] The difference being that conferring the power to punish does not equate to a conferral of jurisdiction such that orders impacted by jurisdictional error would be valid until set aside.[71]

Judge Vasta did not challenge the jurisdictional errors present within the order, merely the effect of s 17.[72] As such, the majority held that the imprisonment order and the warrant were invalid.[73]

2 *Justice Gordon*

Justice Gordon (with whom Steward J agreed) held that the orders sentencing Mr Stradford to imprisonment and the commitment warrant were valid until set aside or quashed, even if affected by jurisdictional error.[74] Justice Gordon opined that by virtue of the wording of s 17 — which confers the '*same power*' to the Federal Circuit Court as the High Court for punishing contempts[75] — the *Family Law Act* also conferred the jurisdiction to make such an order which was valid until set aside. If Parliament had intended for the punishment of contempts under s 17 *not* to be valid until set aside, then the wording of s 17 would reflect as such.[76] Her Honour further considered that it would be incoherent for federal courts exercising the same Ch III judicial power to have different standards of validity for their orders.

Her Honour noted that s 17, like its legislative predecessors, was not a simple grant of jurisdiction.[77] Instead, it was 'declaratory of an *attribute* of the judicial power of the Commonwealth' that is vested in all Ch III courts under s 71 of the *Constitution*.[78] The power to punish for contempt is an inherent attribute of that judicial power. Her Honour reasoned that if the power to make orders that are valid until set aside is an attribute of the judicial power itself, then that attribute should not differ between the federal courts that exercise it.[79]

68 (1984) 153 CLR 475.

69 Ibid 479.

70 *FCC Act* (n 48) s 17.

71 *Queensland v Stradford* (n 4) 391–2 [62]–[63].

72 Ibid 388 [52].

73 Ibid 393 [73].

74 Ibid 419–20 [169] (Gordon J).

75 Ibid (emphasis in original).

76 Ibid 420 [171].

77 Ibid 421 [174].

78 Ibid 421 [175] (emphasis in original), citing *Re Colina; Ex parte Torney* (1999) 200 CLR 386.

79 *Queensland v Stradford* (n 4) 438 [176].

B *Judicial Immunity of Inferior Court Judges*

With the jurisdictional validity of the contempt order narrowly determined, the majority turned to the question of judicial immunity. It is well established at common law that judicial officers of superior courts possess an immunity from civil liability for actions arising out of the exercise of their judicial function.[80] This immunity protects judicial independence by allowing judges to exercise their powers without fear of personal liability and provides finality to the public.[81] However, the common law is less clear as to how that immunity applies to judges of inferior courts. Therefore, Judge Vasta's ability to rely on judicial immunity was uncertain.[82]

It is necessary to explore the distinction between inferior and superior courts, as it applies to judicial immunity. There is a line of Australian and United Kingdom case law holding that inferior court judges enjoy narrower immunities than their superior court counterparts.[83] In *Re McC*, the House of Lords held that the distinction between superior and inferior courts persists:

> Whatever the juridical basis for the distinction between superior and inferior courts in this regard, and however anomalous it may seem to some, the distinction unquestionably remains part of the law affecting justices…[84]

Justice Wigney applied that reasoning, and as discussed above, found that judicial immunity did not attach to Judge Vasta's actions in respect of Mr Stradford's imprisonment.[85]

On appeal, Judge Vasta and the Commonwealth argued that the common law does not — or should no longer — recognise any distinction between the scope of immunity for superior and inferior court judges.[86] Mr Stradford argued that the primary judge's reasoning should be upheld.[87]

The Court treated the resolution of this issue as an opportunity to authoritatively state the principle of judicial immunity.[88] The majority found that judges of both inferior and superior courts possess 'immunity from actions arising out of acts done

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80 *Re East; Ex parte Nguyen* (1998) 196 CLR 354, 365–6 [30] ('*Re East*').

81 *Fingleton v The Queen* (2005) 227 CLR 166, 186 [38]–[39] ('*Fingleton*').

82 *AAM17* (n 46) 343 [26].

83 See, e.g.: *Wood v Fetherston* (1901) 27 VLR 492, 501; *Ward v Murphy* (1937) 38 SR (NSW) 85, 94. See generally *Re McC* [1985] 1 AC 528 ('*Re McC*').

84 *Re McC* (n 83) 541, cited in *Queensland v Stradford* (n 4) 398 [89].

85 *Stradford v Judge Vasta* (n 1) [207].

86 *Queensland v Stradford* (n 4) 395–6 [80].

87 Ibid.

88 Ibid 402 [104].

in the exercise, *or purported exercise*, of their judicial function or capacity'.[89] The Court laid out a limited number of circumstances where judicial immunity does not apply.[90] This principle applies across all federal, state and territory courts.[91] The minority judgments principally agreed.[92]

The Court's reasoning was as follows. The purpose of the immunity is uniform across all courts, superior or inferior;[93] any factor that might have historically justified a distinction has fallen away in the modern Australian context.[94] Modern inferior courts are staffed by legally qualified professionals, and any differences in experience or training are insufficient to justify a difference in the scope of immunity.[95] Further, in order for the immunity to fulfil its purpose of removing the 'spectre of litigation', it ought to be stated clearly.[96] An immunity subject to complex, fact-intensive exceptions is not capable of summary judgment and thus fails to protect judges from being harassed by unmeritorious litigation.[97] The Court unanimously found that the common law should not recognise a distinction between the immunity of superior and inferior court judges.[98]

With respect to Judge Vasta's conduct, the majority found that, despite his 'many and egregious errors', Judge Vasta was acting in the purported exercise of his judicial function and was therefore protected by judicial immunity.[99] No civil action in respect of the orders against Mr Stradford could therefore stand.

C *Liability of Enforcing Officers*

The final issue on appeal concerned the enforcing officers who effected Mr Stradford's detention and their liability for false imprisonment. Given that Judge Vasta's imprisonment order and commitment warrant were found invalid for jurisdictional error,[100] it follows that the enforcing officers had acted on invalid orders or

89 Ibid 403–4 [112] (emphasis in original). The majority used the formulation of judicial immunity established in *Re East* (n 80) [30], but expanded it to also include the words 'purported exercise'.

90 *Queensland v Stradford* (n 4) 397–8 [88]. The immunity does not extend to: (1) a judge's private acts unrelated to their judicial office; or (2) an attempt to perform the judicial function of a court to which a judge is not appointed.

91 Ibid 404 [113].

92 Ibid 427 [195] (Gordon J), 467 [324] (Steward J), 448 [262] (Edelman J).

93 Ibid 379 [2].

94 Ibid 402 [107].

95 Ibid.

96 Ibid 379 [2], 401 [100].

97 Ibid.

98 Ibid 403–4 [112] (Gageler CJ, Gleeson, Jagot and Beech-Jones JJ), 427 [197] (Gordon J), 435 [227] (Edelman J), 467–8 [325] (Steward J).

99 Ibid 404 [114].

100 Ibid 393 [73].

warrants. The key question considered by the majority was whether the various enforcing officers possessed protection from civil liability, despite acting on an invalid order.[101]

As a starting point, the majority found that each category of enforcing officer carries a legal duty to enforce orders and warrants issued in judicial proceedings.[102] The majority considered that this may lead to a difficult tension between an officer's obligations to a court and to the law more broadly:

> To perform their role effectively, courts must have their orders enforced and that must be done by officials not subject to the unreasonable burden of having to investigate the validity of the orders or warrants presented to them.[103]

As such, the common law provides some protection from civil liability to individuals who are under a legal obligation to execute the orders of a court.[104] The majority noted that this protection does not extend to circumstances where an official acts on an order that is, on its face, 'of a "kind" that is … beyond the power of the relevant court to grant'.[105] This exception did not apply with respect to Judge Vasta, as his Honour was empowered to make the relevant orders as a judge of the Federal Circuit Court, making them of an appropriate 'kind'.[106] Therefore, the enforcing officers were shielded from civil liability.[107]

Justice Edelman agreed with the majority to the extent that the enforcing officers are not liable; however, his reasoning differed considerably. The majority's judgment treated an order that is attended by jurisdictional error as being invalid from the outset, but, in essence, forgave officials who follow that order.[108] Justice Edelman warned against this approach, instead arguing that even a flawed judicial order is not a nullity, and must be obeyed until set aside.[109] Therefore, officers who act in accordance with a flawed judicial order ought to have a defence of 'justification', as the order still carries inherent legal authority.[110]

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101 Ibid 381 [10].

102 Ibid 416 [155], 417 [159].

103 Ibid 415 [149].

104 Ibid 381 [13].

105 Ibid 416 [153].

106 Ibid 416 [154].

107 Ibid 381 [13].

108 Ibid.

109 Ibid 436 [230].

110 Ibid 448 [264].

V Comment

A *The Inferior and Superior Divide*

Before the High Court's decision in *Queensland v Stradford*, the terms 'superior court' and 'inferior court' were all but meaningless. Now, they are meaningless with respect to judicial immunity.

Two decades ago, Kirby J labelled the superior/inferior binary an 'artificial distinction'.[111] The terminology likely emerged in the United Kingdom as a way of distinguishing courts of record and courts not of record.[112] This meaning later shifted, with the Court of King's Bench beginning to use the terms to describe loosely the scope of a court's jurisdiction.[113] By the 20th century, these definitions were largely settled, with inferior courts being courts whose jurisdiction is limited, and superior courts being courts of unlimited jurisdiction, or which are presumed to have unlimited jurisdiction.[114]

Justice Edelman identified a number of issues with this definition. His Honour argued that the notion of a court with 'unlimited jurisdiction' is incoherent, as all courts in Australia, including the High Court, are courts of limited jurisdiction.[115] His Honour described the distinction as a 'historical anachronism of English and Australian legal history which, if it ever had any sensible justification, lost that justification by the 18th century at the latest'.[116]

Indeed, prior to this judgment, the practical effect the superior/inferior binary generally only manifested itself in one of two ways: (1) it delineated the extent to which judges were protected by judicial immunity; and (2) it determined whether a judgment affected by jurisdictional error was enforceable.[117] In *Queensland v Stradford*, the majority ultimately did away with the first of these practical effects.

For now, the final practical effect of the superior/inferior divide lives on. This means that when a superior court makes a decision, the decision will be enforceable until set aside, irrespective of the presence of a jurisdictional error.[118] When an inferior

111 *Fingleton* (n 81) 214 [137].

112 *Queensland v Stradford* (n 4) 436–7 [233] (Edelman J), citing Henry John Stephen, *New Commentaries on the Laws of England* (Butterworths, 3rd ed, 1853) vol 3, 585.

113 *Peacock v Bell* (1667) 85 ER 81, 87–8.

114 *Queensland v Stradford* (n 4) 438 [237] (Edelman J), citing Butterworth, *The Laws of England*, vol 9 (at 1909), Courts, '1 Introductory' 11–12.

115 *Queensland v Stradford* (n 4) 438–9 [238].

116 Ibid 435 [227].

117 Kristen Walker, 'When Can a Court's Decision Be Ignored?' (2023) 46(2) *Melbourne University Law Review* 572, 580–1.

118 *Kable* (n 54) 133 [32] (French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ) ('*Kable*').

court, on the other hand, makes certain jurisdictional errors, the decision may have no legal effect, in which case it can theoretically be ignored.[119]

This approach is antiquated for a number of reasons. First, there is no Australian court with unlimited jurisdiction.[120] Therefore, the conceptual basis for having one category of courts that is immune to jurisdictional error, and another category that is not, is incoherent. Additionally, the distinction between superior and inferior courts serves no practical purpose in terms of enforcement: both exercise their authority through the same mechanisms and depend equally on the executive to give effect to their orders.[121] Given this functional parity, treating one court's orders as presumptively valid and the other's as voidable is an artificial notion with no bearing on how judgments are actually enforced in modern Australia. The United Kingdom's Supreme Court has done away with the principle that decisions of inferior courts can be ignored in certain circumstances.[122] Australia is yet to follow.

Queensland v Stradford presented the High Court with an opportunity to formally put that outdated terminology to rest. Despite the antiquated nature of designating some courts as superior and others as inferior, the majority in *Queensland v Stradford* did not venture to abandon the terms themselves. In fact, the majority perpetuated the terminology by concluding that judicial immunity 'applies to judges of both superior and inferior courts'.[123] By equalising judicial immunity, the High Court has stripped the superior/inferior distinction of a primary practical consequence, and left behind a hollowed-out label with little practical substance. Justice Edelman warned that the 'application of the distinction has the potential to cause real damage to the fabric of the legal system by creating a quality of justice in so-called "inferior courts" which is inferior'.[124] In the future, the High Court ought to follow its own reasoning to a logical conclusion, and fully embrace a unified conception of judicial authority for all courts.

B *Alternative Sources of Judicial Accountability*

The principle of judicial immunity is instrumental in protecting the independence of Australia's judiciary. As such, the High Court was justified in recasting the immunity in more certain terms, with broad application across all Australian courts. However, in overturning the Federal Court's decision, the High Court has laid bare the lack of avenues for judicial accountability in the federal judiciary:

> Recourse against a wrongful act or omission by a judicial officer … is to be found within such system of appeals as might be applicable, such means of collateral

119 Walker (n 117) 580–1.

120 *Kable* (n 54) 132 [30] (French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ).

121 Walker (n 117) 577–8.

122 *R (Majera) v Secretary of State for the Home Department* [2022] AC 461, 484 [56].

123 *Queensland v Stradford* (n 4) 403–4 [112].

124 Ibid 435 [228].

> challenge as might be available, and such processes of discipline and removal from office to which the judicial officer might be amenable. It is not to be found in a civil suit against the judicial officer.[125]

In spite of the majority's above suggestion, it is difficult to conceive of a judicial officer in Judge Vasta's position being 'amenable' to voluntary discipline or removal.[126] In circumstances where a judicial officer errs in their decision making, an appellate court may provide a form of systemic accountability through overturning a decision. Additionally, a judicial officer who has acted wrongfully may experience something approximating personal accountability through public admonishment of their actions by an appellate court.[127] However, the system of appeals remains a dubious way of achieving accountability for the *wrongdoing* of judicial officers as opposed to righting a legal error, not least due to the considerable difficulty of accessing appellate justice.[128]

If a person cannot access redress for judicial wrongdoing in a federal court through an appeal, they will be caught between non-action and the nuclear option — that is, seeking dismissal by Parliament on the grounds of proved misbehaviour or incapacity.[129] Federal Parliament has never utilised its power of removal, and a state parliament has only used the power once post-Federation — to remove Justice Angelo Vasta, Judge Vasta's father.[130]

An alternative, intermediate approach to managing judicial misconduct might be the introduction by parliament of a federal judicial commission — an independent statutory body responsible for investigating complaints against federal judicial officers.[131] Most Australian states and territories currently operate their own judicial

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125 Ibid 479 [3].

126 Courts do have informal mechanisms to hear complaints of judicial misconduct. Complaints are typically managed by the court's head of jurisdiction (i.e. the Chief Justice/Judge): Law Council of Australia, *Principles Underpinning a Federal Judicial Commission* (Policy Statement, 25 March 2023) 3. However, as the majority suggests, participation by a judge in any proposed disciplinary measures will be entirely voluntary and unenforceable.

127 For an example of such appellate reprimand in relation to this matter, see *Stradford FamC* (n 2) 207 [53].

128 Gabrielle Appleby and Suzanne Le Mire, 'Judicial Conduct: Crafting a System That Enhances Institutional Integrity' (2014) 38(1) *Melbourne University Law Review* 1, 7–8.

129 *Constitution* s 72(ii).

130 Maxim Shanahan, 'Appeal Decision Finds Judges Cannot Be Sued', *Australian Financial Review* (Sydney, 13 February 2025) 11.

131 Australian Law Reform Commission, *Without Fear or Favour: Judicial Impartiality and the Law on Bias* (Final Report No 138, December 2021) 304 [9.4] ('*Without Fear or Favour*').

commissions,[132] and at present, there is considerable political momentum towards a federal commission. In 2021, the Australian Law Reform Commission called for the establishment of a federal judicial commission,[133] and in 2023, the Attorney-General's Department published a discussion paper on the subject.[134] These initiatives demonstrate that the establishment of a federal judicial commission is realistic, even if ambitious.

Some scholars believe that a judicial commission is an inappropriate means of policing judicial misconduct. Chief Judge in Equity McLelland, for example, argues the following:

> Unless a judge is to be removed, there is a powerful public interest in preserving his effectiveness and authority as a judge from serious damage … which a formal investigatory process, as well as the imposition of some sanction short of removal, would cause. Litigants and practitioners may not have full confidence in a judge with some kind of 'black mark' on his record.[135]

To mitigate those concerns, it would be important for a judicial commission to operate with a high degree of confidentiality.[136] Its primary role would be to dismiss unmeritorious complaints privately, thereby protecting judicial reputations. A properly constructed commission would impose formal sanctions only in circumstances where independence and public confidence in the judiciary would be more greatly damaged by inaction than by the imposition of a 'black mark'.[137]

Additionally, a jurisdictional mandate should strictly confine the commission to investigating matters of conduct and capacity, as opposed to issues around reasoning and judicial error. This construction would avoid a commission being (erroneously) perceived by litigants as an alternative to the appeals process, and potentially being seen to supplant the role of appellate courts.[138] Gabrielle Appleby and Suzanne Le Mire also suggest that where cases of misconduct are intertwined with appealable legal error, a disciplinary system ought to wait until any appeals have been resolved, as to avoid overlap with the appellate jurisdiction.[139]

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132 See generally: *Judicial Officers Act 1986* (NSW); *Judicial Commissions Act 1994* (ACT); *Judicial Conduct Commissioner Act 2015* (SA); *Judicial Commission of Victoria Act 2016* (Vic); *Judicial Commission Act 2020* (NT).

133 *Without Fear or Favour* (n 131) 310 [9.25].

134 Attorney-General's Department (Cth), 'Scoping the Establishment of a Federal Judicial Commission' (Discussion Paper, January 2023).

135 Malcolm McLelland, 'Disciplining Australian Judges' (1990) 64(7) *Australian Law Journal* 388, 393.

136 Appleby and Le Mire (n 128) 60.

137 Elizabeth Handsley, 'Issues Paper on Judicial Accountability' (2001) 10(4) *Journal of Judicial Administration* 180, 184–5.

138 Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System* (Report No 89, January 2000) 229–30 [2.267].

139 Appleby and Le Mire (n 128) 50–1.

As it stands, the status quo presents significant challenges for enforcing judicial accountability. A federal judicial commission, carefully designed to preserve judicial independence, would provide an accessible, structured path to greater accountability. In cases like *Queensland v Stradford*, where judicial misconduct is a central issue and civil action is barred, such a body may offer the only realistic mechanism for upholding the integrity of the judiciary.

VI Conclusion

Though Mr Stradford's brush with justice in the Federal Court was short-lived, the case itself threw into question centuries-old legal principles. The High Court's decision provides a definitive statement on judicial immunity, establishing a uniform standard for all courts, and clarifying common law protections for individuals enforcing court orders. However, by further raising the bar for civil suits against judicial officers, the judgment serves as a reminder of Australia's lack of judicial accountability mechanisms. Only time will tell whether Parliament chooses to introduce new mechanisms of enforcing accountability.