

Quick reference guide.

SELF-REPRESENTED LITIGANTS: LIST OF AUTHORITIES.

1) General principles

Roberts v Harkness [2018] VSCA 215

[48] It is an essential requirement of a fair hearing that each party be given a ‘reasonable opportunity’ of presenting its case, whether in writing, or orally, or both. This will ordinarily include being informed of the case to be advanced by the opposing party, and having an opportunity to respond. ...

[53] ...we do not consider that the framework of analysis changes in any significant respect where one of the parties is unrepresented. The question to be asked — both at first instance and on judicial review — remains the same: what is (or was) required to give the unrepresented person a reasonable opportunity to advance his/her own case and to be informed of and respond to the opposing case?

[54] The one key difference, however, is that the Court will first have to assess the capability of the unrepresented person to formulate, and communicate, the case which he/she wishes to present. The assumptions as to capability on which the Court proceeds where a party is represented do not, of course, apply.

2) Assess and adjust for capability

Matsoukatidou v Yarra Ranges [2017] VSC 61

Roberts v Harkness [2018] VSCA 215

3) Explain both substantive and procedural law

Roberts v Harkness [2018] VSCA

[56] ...the duty to afford a fair hearing may require the judicial officer to seek to elicit and elucidate the legal point, through exchanges with the litigant.

Downes v Maxwell Richard Rhys & Co Pty Ltd (2014) 313 ALR 383

[25] ...a frequent consequence of self-representation is that the Court must assume the burden of endeavouring to ascertain the rights of parties which are obfuscated by their own advocacy.

Trkulja v Markovic [2015] VSCA 298

[39] It is elementary that a judge ought to ensure that the self-represented litigant understands his or her rights so that he or she is not unfairly disadvantaged by being in ignorance of those rights. Notwithstanding this, the judge should refrain from advising a litigant as to how or when he or she should exercise those rights

She v RMIT University [2021] VSC 2

4) Dispose expeditiously of arguments which have no basis

Roberts v Harkness [2018] VSCA

[12] It was readily apparent from both of the documents which Mr Harkness had filed with the court that he was able to articulate, fully and clearly, the basis of his objection to jurisdiction. It was equally clear that the objection had no foundation whatsoever in law and that no amount of elaboration could have altered that position.

Collis v Bank of Queensland Limited [2021] VSCA 17

In our opinion, the ground is unintelligible and does not provide any basis to challenge the jurisdiction of the County Court or interfere with the decision of the judge.

Zhong v Attorney-General [2020] VSC 302

Irrelevancies and other drivel

[155] There are numerous other matters raised in Mr Zhong’s written materials that are simply irrelevant to his case or are completely nonsensical, and cannot reasonably be dealt with in any detail in this judgment....

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SELF-REPRESENTED LITIGANTS: SKILLS AND STRATEGIES

[156] First, these other complaints are without merit. I trust that the mere mention of a few of them will serve to explain why that is so. They include matters ranging from alleged gender bias in the jury, to unequal treatment before the law, to public utterances by Attorneys past and present in respect of matters that have nothing to do with Mr Zhong’s case, to allegations of police corruption in general, to (unrelated) findings made at IBAC, to the Royal Commission concerning so-called “Informer 3838”, and to generalised — and sometimes quite improper and offensive — criticisms of the successive attorneys, lawyers, judges, police, the courts and the legal system.

[157] Secondly, while this Court strives to give a full and fair hearing to all litigants, whether legally represented or not, this is not Speakers’ Corner. No one has the right to come along to a court and demand that the judge pay regard to whatever irrelevancy or bile-ridden thought happens to pop into that litigant’s head. There is no legitimate purpose to be served in seriously entertaining such drivel. These complaints necessarily are heard and considered, but are then given the short shrift that they deserve.

5) Apply reasonable limitations

Doughty-Cowell v Kryiazis [2018] VSCA
(wilful defiance in Courtroom)

Carroll v Goff [2021] VSCA 267 (decision on papers)

[92] The decision also occurred in the context of a high volume jurisdiction... This consideration reinforces the need for the Court to identify and manage critical issues, and avoid spending unnecessary time on irrelevant issues, so as to advance the overarching purpose.

Application by Horner [2020] VSCA 85
(decision on papers)

Soo v Yang & Vale [2022] VSCA 227
(application for adjournment refused)

Chopra v Department of Education and Training [2021]
VSCA 36 (application for adjournment refused)

Goldberg v Stocker [2017] VSCA 126 (sit at Bar table)