

IN THE HIGH COURT OF AUSTRALIA

Registry : Brisbane
No : B2/2014

BETWEEN :

Applicant : Peter Markan

and :

Respondent : Bar Association of Queensland

RE: Qld Appeal No 3595 of 2013 SC No 928 of 2013

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APPLICANT'S SUMMARY OF ARGUMENT

Part I:

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1. Australian and Queensland legal systems claim as being derived from English system, which in turn claims of being based on Roman Law, and the Roman Law is considered to be the common denominator of European legal systems in usage today. Whenever convenient, particularly for propaganda use in high profile cases, some Latin maxims from Roman Law are quoted by judges, who want to appear both knowledgeable and 'just', but such applications are not consistent and used only when it serves interest of the system and not 'justice' as the ethical concept.

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2. In this matter, which I presented before the Supreme Court of Queensland and Appeal Court, I relied on well known Roman principle '*Nemo iudex in causa sua*' (no-one should be a judge in their own cause). In spite of repeatedly and hypocritically claimed by anglo judges that '*Justice must not only be done, but must be seen to be done*' both courts ignored that principle justifying their decisions by quoting opinions of some mediocre person.

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3. So, this is my first issue to this court - do you consider the Roman principle '*Nemo iudex in causa sua*' applicable in Queensland and Australian law; if so, should it be given precedence over an opinion of some mediocre person and applied consistently?
4. The second issue relates to the fact of Queensland judiciary ignoring International Covenant on Civil and Political Rights - particularly disrespecting the provisions of Article 14 - 'All persons **shall be equal before the courts and tribunals**. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a **competent, independent and impartial** tribunal established by law.'

Part II:

5. 27.10.2008 - I was convicted in District Court in Southport by judge Leanne Clare to 4 years imprisonment for breaking the hand of the person who attacked me. (DC 286 of 2008)

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6. November 2008 - I engaged for the Supreme Court appeal lawyer Peter Russo with barristers Tim Carmody and Douglas Wilson. Peter Russo, was promising to do what I wanted to be done until I signed the release of the fee money from the trust account and then, he (and his 2 barrister accomplices) sabotaged the appeal by not bringing important matters for judges attention and abandoned the sentence appeal without my knowledge or permission. It was done in such manner that I could not object or prevent it. (R v Markan [2009] QCA 110)
- 10 7. June 2009 - I lodged complaint against conduct of lawyer Peter Russo with Legal Services Commission. LSC dismissed my complaint.
(NONE OF THE ALLEGATIONS CAN BE SUBSTANTIATED)
8. November 2009 - I applied in Supreme Court for judicial review of LSC decision - judge Philippides did not find anything unusual with such conduct.
(NONE OF THE ALLEGATIONS CAN BE SUBSTANTIATED) (8190 of 2009)
- 20 9. November 2009 - I engaged lawyer John Paul Mould and barrister Paul Smith for the appeal to High Court. They took my money for promising to give 'legal advice' about matters suggested by me for the appeal. In return I received 3 letters with rubbish in them purporting to be legal advice and no 'legal opinion' about the issues I asked about. Money was withdrawn from the trust account without my permission.
10. May 2010 - I lodged complaint against lawyer John Paul Mould with Legal Services Commission. LSC in a typical bureaucratic ploy to divert attention from the core issue to a trivial one reluctantly agreed to prosecute JPM for minor breach ONLY which was intended to camouflage the major dishonesty of JPM. Almost THREE YEARS later even such symbolic slap on the wrist has not been done. My core complaint was dismissed. (NONE OF THE ALLEGATIONS CAN BE SUBSTANTIATED)
- 30 11. May 2011- I applied for judicial review of Legal Services Commission decision in Supreme Court - judge Atkinson did not find anything unusual with such conduct
(NONE OF THE ALLEGATIONS CAN BE SUBSTANTIATED)
(Markan v Legal Services Commission [2011] QSC 338)
12. May 2011 - I lodged complaints about conduct of barristers Paul E. Smith, Tim Carmody and Douglas Wilson to Bar Association of Queensland. In spite of reminders I did not receive any correspondence. Complaints later dismissed.
(NONE OF THE ALLEGATIONS CAN BE SUBSTANTIATED)
- 40 13. February 2013 - I started in Supreme Court the proceedings against Bar Association of Queensland. My application for selection of the suitable person as trial judge was dismissed and my claim against Bar Association of Queensland was dismissed as well.
(Markan v Bar Association of Queensland (No 1) [2013] QSC 108)
(Markan v Bar Association of Queensland (No 2) [2013] QSC 109)
(Markan v Bar Association of Queensland [2013] QSC 146)
14. April 2013 and June 2013 - I appealed to Appeal Court both decisions - selection of the trial judge and dismissal of my claim against Bar Association of Queensland. Both appeals were dismissed. (Markan v Bar Association of Queensland [2013] QCA 379)

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15. When contacted State other legal (not judicial) institutions - Crime and Misconduct Commission, Department of Public Prosecutions, etc. - being lawyer dominated outfits they gave me the same type of responses.
(NONE OF THE ALLEGATIONS CAN BE SUBSTANTIATED)

Part III:

16. My human rights are ignored by Queensland judiciary who, like their comrades in the other states, prefer to make noises about human rights in Iran, Zimbabwe or North Korea instead of looking right under their noses.

However, in spite of their disrespectful ignorance and in spite of lack of 'formal' legislation to respect and protect human rights in this State - my rights are not only **my natural human rights** but also they are valid laws looking at the Australian Constitution and the existing legislations.

- a) **Constitutional rights** 109 Inconsistency of laws
When a law of a State is inconsistent with a law of the Commonwealth, **the latter shall prevail**, and the former shall, to the extent of the inconsistency, be invalid.
- b) **Constitutional rights** 117 Rights of residents in States
A subject of the Queen, resident in any State, **shall not be subject in any other State to any disability or discrimination** which would not be equally applicable to him **if he were** a subject of the Queen resident in such other State.
- c) **Australian Human Rights Commission Act 1986** - Schedule 2—International Covenant on Civil and Political Rights - Article 14 - 'All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a **competent, independent and impartial** tribunal established by law.'
- d) **Charter of Human Rights and Responsibilities Act 2006 - VICTORIA**
32. Interpretation
(1) So far as it is possible to do so consistently with their purpose, all statutory provisions must be interpreted in a way that is compatible with human rights.
(2) International law and the judgments of domestic, foreign and international courts and tribunals relevant to a human right may be considered in interpreting a statutory provision.
- e) **Human Right Act 2004 ACT Part 3 Civil and political rights**
Note: The primary source of these rights is the International Covenant on Civil and Political Rights.
8 Recognition and equality before the law
(1) Everyone has the right to recognition as a person before the law.
(2) Everyone has the right to enjoy his or her human rights without distinction or discrimination of any kind.
(3) Everyone is equal before the law and is entitled to the equal protection of the law without discrimination. In particular, everyone has the right to equal and effective protection against discrimination on any ground.

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17. I brought to the attention of the Appeal Court that after I filled in Court Registry the application 'Selection of neutral independent and impartial arbiter to preside over the court hearing in this case' (18.03.2013 - Appeal book p.235) and clearly naming the 'volunteer' Ms Atkinson as not suitable person for the job - I expected a neutral person (another Supreme Court judge) to look at my application.

To my surprise the application against Ms Atkinson was heard by Ms Atkinson herself. The excuse given by Ms Atkinson, and confirmed by the Appeal Court, that this is 'the usual practice' (Appeal book p10 and others) is in odds with Roman rule '*Nemo iudex in causa sua*' and also with Article 14 of the International Covenant on Civil and Political Rights - therefore is the blatant abuse of my human rights.

18. The rule '*Nemo iudex in causa sua*' is internationally known and respected.

Avoiding appearances of possible bias by a judge has been also stressed in numerous legal references in various cases - all the time highlighting not only the legal value but also the ethical value of this rule but 'ethics' is something what is miserably lacking in Queensland 'legal system'. Some legal references are in :

Frome United Breweries Co. v Bath,

Dimes -v- Proprietors of Grand Junction Canal

Opinions of the lords of appeal for judgment in the cause in re Pinochet

19. And here we go - according to local Queensland 'usual practice' (confirmed by the Appeal Court) we have Ms Atkinson acting as an impartial, unbiased person (in her own imagination) and also her 'impartiality' was confirmed by herself when she was acting simultaneously as 'impartial observer'. (appeal book 257-50)

Doesn't it shows that Ms Atkinson has mental problem, suffering from split personality disorder, by taking the guise of 'impartial observer' while performing the function of a 'judge'?

The Court of Appeal has not asked the 'impartial observer' about his opinion as well !

20. How such creatures dare to lecture other people about respect for laws and society standards?

Why Queensland judiciary (through Appeal Court decision) supports such conduct?

It is not hard to imagine eg a murderer using the same tactic of claiming that he is innocent, vouching for himself and confirming his innocence as supposedly 'impartial observer' and then rejecting all evidence presented by other witnesses as not fitting into his scheme. (typical conduct of anglo judges in anglo 'legal' system)

21. Allowing the person to hear his/her own case in court, described as 'usual practice' in Queensland courts, provides the evidence of institutionalized and systemic procedural unfairness in this State legal system and is an abuse of discretion granted to Queensland judges. Such 'usual practice' is not an error in judgment or an honest mistake - it amounts to a gross, clear, arbitrary, unreasonable, and prejudicial error of law by arrogantly and blatantly disrespecting the rule '*Nemo iudex in causa sua*'.

22. 'Reasons' of the Appeal Court transparently repeat 'arguments' put forward by Ms Atkinson herself - providing further evidence of lawyers mafia protecting each other against 'outsiders' like myself. Copying the same trick as the Catholic church was doing for centuries - using the 'authority' of Ptolemy to justify the claim that the earth is flat in spite of rational evidence to the contrary.

23. One of your guys, Lord Diplock in the GCHQ Case, commented about such conduct 'applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.'

24. Common understanding of human nature would indicate that this is extremely difficult even for a person with high level of ethics, morality and sense of justice and fairness to be truly impartial when a personal matter is involved.

Such knowledge of weakness of human nature was known even to ancient people.

That was the reason for the creation of the rule '*Nemo iudex in causa sua*'.

25. However, in Australian/Queensland 'legal' system so often a poor excuse is quoted by judges and lawyers - '*Ebner v Official Trustee* (2000) 2005 CLR 337 at 361, [74]', where it is claimed that personal opinion of few individuals, (who represent nobody except themselves) even when it is in disagreement with their own colleague(s) who could be motivated by the uncommon in those circles sense of morality, OVERRIDES THE ROMAN RULE '*Nemo iudex in causa sua*'!

'Chief Justice Gleeson, McHugh, Gummow and Hayne JJ said the following: "We note that Callinan J ... has expressed the view that it would be preferable in future for challenges of apprehended bias to be determined, where possible, by a judge other than the one who has been asked to disqualify himself or herself. With respect, we are unable to agree.'

26. The doctrine of precedent 'requiring' courts to follow previous decisions which were based on 'similar' facts is abused and serves maintaining the pretentiousness and rottenness of that system. Judges do not analyse sources of law, because all what is required from them is to maintain the appearances and not to seek the truth or justice in moral sense. So we have the atrocity that we have.

27. Although the existence of lawyers mafia in Queensland is rarely spoken about there is public awareness of their influence. Below is a copy of an article written by a person who knows more about Queensland Banana Republic than I do.

Bloodlines on the bench

18 July, 2006

<http://justinianarchive.com/711-article>

The problem with a legal backwater like Brisvegas is that the gene pool from which judges are drawn is quite small, not to say modest.

Blood and marriage flow through the place like warm treacle.

The Douglas clan has supplied judges to the Supreme Court for centuries. More recent synergies include Margaret McMurdo, the President of the Court of Appeal, tied by marriage to Philip McMurdo, a judge in the trial division.

Justice Debra Mullins is married to Brisbane solicitor Pat Mullins of Mullins & Mullins and Justice Margaret White's husband is Michael White QC of the Brisbane Grill.

The Brissy Bar is groaning under the weight of familiar legal names – de Jersey, Williams, Matthews, Fryberg and Derrington – each of whose parents is currently or formerly a member of the Supreme Court. And so it goes.

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28. Article 14 of the International Covenant on Civil and Political Rights defines clearly my right to '**competent, independent and impartial tribunal**'.
Queensland Supreme Court did not provide it to me in spite of my request therefore they abused my human right - which is unlawful and illegal.
I do not like it and I am not going to politely tolerate such abuse and discrimination.

Part IV:

- 10 29. The issues I am bringing for This Court attention are of great public importance because of the preservation of the society trust in the fairness of the administration of justice and the fair and just conduct of the persons selected as the judges in performing their duties.
30. High Court decision is needed to resolve the ambiguity of the essential issue in the legal recognition in Australia/Queensland of Roman principle '*Nemo iudex in causa sua*' (no-one should be a judge in their own cause) in the interests of the administration of justice and fairness of judicial process.
- 20 31. My basic human rights have been trampled upon and due to the fact of the lack of formal recognition of existence of human rights in Queensland (NO LEGISLATION) High Court validation of legitimacy of existing Federal and other States' laws in Queensland is required. (as in point 16 above) (Why Queensland legal system is refusing to recognize and respect my human rights ??????????????????????)
32. My legal rights as Citizen of Australia are abused and I am deprived protection by the Law. I request This Court to determine **why** people like me, non anglo background and non lawyers, are discriminated against by Queensland courts and socially dysfunctional 'legal system' not conforming with the natural laws.

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Part V:

I do not own any property and I have very limited income.

Part VI:

- Appeal Book CA NUMBER: 3595/13 and CA NUMBER: 5272/13
(Markan v Bar Association of Queensland (No 1) [2013] QSC 108)
(Markan v Bar Association of Queensland (No 2) [2013] QSC 109)
40 (Markan v Bar Association of Queensland [2013] QSC 146)
Australian Human Rights Commission Act 1986

Part VII:

I am requesting to supplement this summary with oral argument.

Dated : 22.01.2014

Signed by the applicant Peter Markan

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