SUPREME COURT OF QUEENSLAND

CITATION:	*Markan v Bar Association of Queensland* [2015] QCA 128
PARTIES:	**PETER MARKAN** (appellant) **v** **BAR ASSOCIATION OF QUEENSLAND** (respondent)
FILE NO/S:	Appeal No 8847 of 2014 SC No 2980 of 2014
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Supreme Court at Brisbane – [2014] QSC 225
DELIVERED ON:	10 July 2015
DELIVERED AT:	Brisbane
HEARING DATE:	28 April 2015
JUDGES:	Margaret McMurdo P and Holmes JA and Flanagan J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Appeal dismissed.** **2. The appellant to pay the respondent's costs assessed on the indemnity basis.**
CATCHWORDS:	PROCEDURE – MISCELLANEOUS PROCEDURAL MATTERS – VEXATIOUS LITIGANTS AND PROCEEDINGS – where the appellant was convicted of grievous bodily harm and sentenced to four years imprisonment – where the appellant unsuccessfully appealed his conviction – where the appellant complained to the Legal Services Commission and the Bar Association of Queensland about the conduct of his solicitors and barristers in that appeal – where the Bar Association concluded that no barrister was guilty of misconduct – where the appellant sued the Bar Association for $10 million in damages for breach of contract – where the appellant then sued the Bar Association for $11 million in damages – where the appellant then sued the Crime and Misconduct Commission for $10 million in damages – where the appellant again sued the Bar Association for $10 million in damages – where the Bar Association successfully applied to strike out that action and for orders concerning the appellant under the *Vexatious Proceedings Act* – where the appellant appeals from that decision on the basis that, as the primary

judge was formerly a member of the Bar Association, he was not "independent" or "impartial" and this infringed Article 14 of the *International Covenant on Civil and Political Rights* – where the appellant also contends that s 59 of the *Constitution of Queensland* is inconsistent with Article 14, and is therefore invalid – whether the appeal should be allowed

Australian Human Rights Commission Act 1986 (Cth)
Charter of Human Rights and Responsibilities Act 2006 (Vic)
Commonwealth of Australia Constitution Act 1900 (Cth), s 109, s 117
Constitution of Queensland 2001 (Qld), s 59
Due Process of Law Act 1368 (Imp)
Human Rights Act 2004 (ACT)
Liberty of Subject 1354 (28 Edward 3 ch 3)
Magna Carta
Statute of Monopolies 1623 (21 Jac 1 c 3)
Uniform Civil Procedure Rules 1999 (Qld), s 444, s 447
United Nations International Covenant on Civil and Political Rights, Art 14
Vexatious Proceedings Act 2005 (Qld), s 5, s 6

Fung v Tam & Anor [2012] QCA 10, cited
Glennan v Commissioner of Taxation (2003) 77 ALJR 1195; (2003) 198 ALR 250; [2003] HCA 31, cited
Kingswell v The Queen (1985) 159 CLR 264; [1985] HCA 72, cited
Kosteska v Phillips; *Kosteska v Commissioner of Police* [2011] QCA 266, cited
Markan v Bar Association of Queensland [2013] QCA 379, related
Markan v Bar Association of Queensland [2013] QSC 146, related
Markan v Bar Association of Queensland [2014] 2 Qd R 273; [2014] QCA 34, related
Markan v Bar Association of Queensland [2014] HCASL 80, related
Markan v Bar Association of Queensland [2014] HCASL 119, related
Markan v Bar Association of Queensland (No 3) [2014] QSC 225, related
Markan v Crime and Misconduct Commission [2014] HCASL 120, related
Markan v Crime and Misconduct Commission [2014] QCA 60, related
Markan v Legal Services Commission [2011] QSC 338, related
Markan v The Queen [2010] HCASL 241, related
R v Markan [2009] QCA 110, related
R v Walker [1989] 2 Qd R 79, cited
Re Finlayson: Ex parte Finlayson (1997) 72 ALJR 73, cited

COUNSEL:	The appellant appeared on his own behalf D G Clothier QC, with P J McCafferty, for the respondent
SOLICITORS:	The appellant appeared on his own behalf Bartley Cohen for the respondent

[1] **MARGARET McMURDO P:** The appellant, Peter Markan has appealed from the primary judge's orders made on 15 September 2014 giving the respondent, the Bar Association of Queensland, leave under s 5 *Vexatious Proceedings Act* 2005 (Qld) to apply to the court for a vexatious proceedings order against him; declaring that he is a person who has frequently instituted or conducted vexatious proceedings in Australia within the meaning of s 6 of that Act; staying his proceeding in the trial division, BS2980/14, under s 6(2)(a) of that Act; under s 6(2)(b) of that Act, prohibiting him from instituting proceedings in any Queensland court, apart from an appeal from these orders; dismissing his applications filed on 26 May 2014; and that he pay the Bar Association's costs assessed on the indemnity basis.

[2] Mr Markan has appealed against those orders on the following grounds:

"a. The subject of my application to this Court relates to the issues of:

- the lack of respect for human rights in Queensland;
- racist attitude, discrimination and vilification of people who are not lawyers and not of anglo origin and who represent themselves in courts;
- denial of the protection by law to such people;
- treatment of such people by 'public institutions' and courts as SECOND CLASS CITIZENS;
- creating of TOTALITARIAN REGIME consisting of lawyers who, through stooges infected various democratic institutions and courts, are controlling Australian society as a self-professed 'master breed';
- enacting of concealed dictatorship when an opinion of an unelected individual is claimed to be binding to 22 million free people in Australia
(those so called 'authorities' in legal proceedings),

b. Alan Wilson, as the 'judge' employed by Supreme Court of Queensland, failed to recognize and acknowledge that the Australian Constitution is the primary law,

c. Alan Wilson, as the 'judge' employed by Supreme Court of Queensland, failed to provide me the protection as guaranteed to me by articles 109 and 117 of the Australian Constitution,

d. Alan Wilson, as the 'judge' employed by Supreme Court of Queensland, failed to recognize and acknowledge valid laws as per 'Imperial Acts Application Act 1984'

e. Alan Wilson, as the 'judge' employed by Supreme Court of Queensland, failed to recognize and acknowledge the fact that Queensland and Australia are not on the moon but are a part of the International Community, therefore subjected to laws governing that community,

f. Alan Wilson, as the 'judge' employed by Supreme Court of Queensland, failed to recognize and acknowledge the fact that Australia (in geographical sense) has been populated by Aboriginal communities and has been subjected to their laws, **before** it was 'acknowledged' by HC decision in 1992, and those laws have NEVER been repealed,

g. Alan Wilson, as the 'judge' employed by Supreme Court of Queensland, displayed lack of knowledge of basic legal principles existing in the system in which he professes to have the role of supreme guru,

- Eg.he accepted BAQ lawyers making application **without them first** obtaining the leave of court to make such application (amended application, 22 July 2014, point 2A)
- Eg.he provided BAQ lawyers preferential treatment by allowing them not to comply with the provisions of rules 444 and 447 of UCPR1999 which was unfair and prejudicial to me,

h. Alan Wilson's conduct highlights serious problems with the administration of justice in Queensland:

- Judiciary is the hub of racism – maintaining 'colonial mentality' through subtly disguised arrangements, reflected in attitudes and conduct, and resulting in the abuse and discrimination of people from non anglo background,
- Judiciary is the primary tool of hegemony of one ethnic group of people ('anglos') over other subjugated citizens of the State of non anglo background,
- Judges are given so called 'immunity' permitting them to say any rubbish they choose without having legal responsibility for what they say,
- Due to 'immunity' judges openly and blatantly abuse human rights without fear of punishment,
- There is no effective community supervision of selection of judges, judicial conduct and their decisions,
- The feudal concepts of 'masters' and 'slaves' are maintained to enable protection of depravity within legal industry,

i. Alan Wilson failed to comply with the provisions of the law and he is involved in the abuse of the Australian Constitution, Queensland laws, The International Covenant on Civil and Political Rights and other internationally recognized legal standards.
He did not express any feeling of guilt or remorse.

j. Alan Wilson is involved in improper exercise of power, in the abuse of judicial discretion which has been exercised arbitrarily and capriciously and in bad faith. The abuse resulted in a manifest injustice.

k. Alan Wilson, through his conduct of disrespect for laws, lost his right to expect other people to obey the laws

l. Alan Wilson's authoritarian conduct brings the administration of justice in Queensland into disrepute and has impact on the issue of integrity and respect for the law affecting the Queensland legal system as a whole."

[3] He seeks orders that the orders of the primary judge be "null and void – not having any legal consequences, the verdict set aside and the ordering a new hearing" and asks for "a truly independent and competent **arbiter**, conforming to internationally recognized standards, to preside over the court hearing against the Bar Association of Queensland."

The primary judge's decision

[4] Before discussing Mr Markan's contentions, I will summarise the primary judge's reasons. His Honour carefully and accurately analysed the history of Mr Markan's litigation in the Supreme Court of Queensland since 2009 and his contentions in that litigation.[1] In essence, the history of that litigation is as follows.

[5] Mr Markan considered he was wrongly convicted in 2008 of grievous bodily harm. He was sentenced to four years imprisonment. He was self-represented at trial but legally represented on his appeal to this Court which was dismissed.[2] He was represented by different lawyers in his unsuccessful High Court appeal.[3]

[6] He next complained to the Legal Services Commission about the conduct of his solicitors and barristers in those appeals. The Legal Services Commissioner referred his complaints about the barristers to the Bar Association for investigation, report and recommendation. In April 2012 the Bar Association delivered reports to the Commissioner which concluded that no barrister in either appeal was guilty of misconduct.

[7] Mr Markan then sued the Bar Association for $10 million in damages for breach of contract. The trial division judge who heard the case refused Mr Markan's application to recuse and struck out his claim.[4] His appeal and his application to stay that judgment were dismissed by this Court.[5] His application for special leave to appeal to the High Court of Australia was also dismissed.[6]

[8] He commenced a second action against the Bar Association this time seeking $11 million in damages. The Bar Association once more applied to strike out Mr Markan's claim and statement of claim. A different trial division judge refused Mr Markan's application to recuse and again struck out his claim and statement of claim.[7] The appeal from that decision was also unsuccessful.[8] So too was his application for special leave to appeal to the High Court of Australia.[9]

[9] In the meantime Mr Markan unsuccessfully applied for judicial review of the Legal Services Commission's handling of his complaint against his barristers in his original criminal appeals.[10]

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1 *Markan v Bar Association of Queensland (No 3)* [2014] QSC 225 [4] – [46].
2 *R v Markan* [2009] QCA 110.
3 *Markan v The Queen* [2010] HCASL 241.
4 *Markan v Bar Association of Queensland* [2013] QSC 146.
5 *Markan v Bar Association of Queensland* [2013] QCA 379.
6 *Markan v Bar Association of Queensland* [2014] HCASL 80.
7 Fryberg J, 26 July 2013.
8 *Markan v Bar Association of Queensland* [2014] QCA 34.
9 *Markan v Bar Association of Queensland* [2014] HCASL 119.
10 *Markan v Legal Services Commission* [2011] QSC 338.

[10] He then brought an action against the Crime and Misconduct Commission (CMC) for $10,000.000.13 in damages. The CMC successfully applied for judgment in its favour, a decision upheld on appeal.[11] His application for special leave to appeal to the High Court of Australia was refused.[12]

[11] Mr Markan next wrote to the Commissioner of Police calling for the arrest of the three judges who constituted this Court in *Markan v Crime and Misconduct Commission*.[13] When the Commissioner did not accede to that request, Mr Markan sued the Queensland Police Service (QPS) for $10,000,000.13 and applied to freeze QPS's bank accounts and assets.

[12] Mr Markan commenced yet another action against the Bar Association of Queensland, this time seeking $10,000,000.13 in damages. The Bar Association applied to strike out this action before the primary judge and applied for orders concerning Mr Markan under the *Vexatious Proceedings Act*.

[13] The primary judge, after analysing Mr Markan's arguments in his past litigation and in the present case, concluded that his contentions were entirely without merit.[14] His Honour then considered the terms of the *Vexatious Proceedings Act*. His Honour concluded that he was satisfied that Mr Markan had frequently instituted and conducted vexatious proceedings in the Supreme Court of Queensland[15] and therefore made the orders the subject of this appeal.

Conclusion

[14] Mr Markan's grounds of appeal are difficult to comprehend from a legal viewpoint. Together with his written and oral submissions, they amount to a scandalous attack on the primary judge and on the Queensland justice system. In essence, they challenge whether the primary judge was, or whether any Queensland judge would be, true to his or her oath or affirmation of office in hearing and determining Mr Markan's cases. But when this Court questioned whether, in light of his objections to the judges constituting this Court he wished to make oral submissions in the appeal, he elected to continue with his submissions.[16]

[15] He contended that Article 14 of the *International Covenant on Civil and Political Rights* (ICCPR), which guarantees the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, was infringed. That was because, he submitted, the primary judge was not independent or impartial as he was formerly a barrister and member of the Bar Association. His argument went further. He contended that s 59 *Constitution of Queensland* 2001 (Qld) is unlawful as it provides that a judge must be a barrister or solicitor of the Supreme Court of Queensland of at least five years standing. No court, he submitted, could be independent or impartial if it was constituted by a person who was formerly a barrister or solicitor. He argued that, as s 59 is inconsistent with the rights articulated in Article 14, it is, by reason of s 109 of the *Commonwealth of Australia Constitution Act* 1900 (Cth) (Commonwealth Constitution), invalid.

[16] Mr Markan has not given the ordinarily required notices under s 78B *Judiciary Act* 1903 (Cth) to the Attorneys-General of the Commonwealth and the States when raising a constitutional issue but, for reasons I shall shortly explain, as Mr Markan's present

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11 *Markan v Crime and Misconduct Commission* [2014] QCA 60.
12 *Markan v Crime and Misconduct Commission* [2014] HCASL 120.
13 *Markan v Crime and Misconduct Commission* [2014] QCA 60.
14 *Markan v Bar Association of Queensland (No 3)* [2014] QSC 225 [47] – [54].
15 Above [56] – [71].
16 T1-8 – T1-11.

appeal is plainly inarguable, his failure to give s 78B notices does not prevent this Court from determining it: Re *Finlayson: Ex parte Finlayson*;[17] *Glennan v Commissioner of Taxation*;[18] and *Kosteska v Phillips*; *Kosteska v Commissioner of Police*.[19] In truth, he has not raised any constitutional issue which could engage s 78B.

[17] As the primary judge noted, the ICCPR is not directly enforceable by the Supreme Court of Queensland.[20] The ICCPR is not part of the law of Queensland. Therefore any inconsistency with it does not invoke s 109. The mere incorporation of the ICCPR in the schedule of the *Australian Human Rights Commission Act* 1986 (Cth) does not make the ICCPR a law enforceable in Queensland; that Act concerns matters before the Australian Human Rights Commission, not matters of the kind brought by Mr Markan against the Bar Association in the Supreme Court of Queensland. His arguments are not assisted by s 14(4) and (5) *Acts Interpretation Act* 1954 (Qld). In any case, s 59 *Constitution of Queensland* and Article 14 of the ICCPR are not in conflict or contradictory and can operate in a complimentary way. This aspect of the appellant's contentions is absent all merit.

[18] Mr Markan has also referred in submissions to s 117 *Commonwealth Constitution* which declares that 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 or her if he or she were the subject of the Queen resident in such other state. His argument seems to be that he should be entitled to the protection offered by the *Charter of Human Rights and Responsibilities Act* 2006 (Vic) and the *Human Rights Act* 2004 (ACT). It is trite to observe that under Australia's federal system of governance, statutes enacted by the parliaments of Victoria and the ACT are not ordinarily applicable to people in Queensland. Section 117 does not make every law passed by one State applicable in every other State. Mr Markan has not identified any law relevant to these proceedings which gives differential treatment to citizens attributable to residence so as to raise s 117. His misconceived contentions have not been made out.

[19] As 2015 is the 800th anniversary of the enactment of *Magna Carta*,[21] it is not entirely surprising that Mr Markan has raised it in his wide-ranging contentions. He appeared to argue that the judicial selection process in Queensland is inconsistent with principles enunciated in the ancient statutes, not only of *Magna Carta* but also *Due Process of Law*,[22] *Statute of Monopolies*[23] and *Liberty of Subject*.[24] He contended that, as the primary judge was not Mr Markan's "peer," Ch 39 *Magna Carta* has been breached. Judges, he submitted, were not his equals.

[20] Accepting that *Magna Carta* forms part of the law of Queensland, it seems likely that its Ch 39 applies only to the criminal law: see *Kingswell v The Queen*.[25] In any case, Ch 39 *Magna Carta* accepts that a free man can be dealt with "by the law of the land." In so far as Mr Markan may have been entitled to a trial by jury, the relevant provisions of the *Vexatious Proceedings Act* impliedly repealed any provisions of Ch 39 with which it conflicted: *R v Walker*.[26] As to the remaining statutes to which Mr Markan has referred,

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17 (1997) 72 ALJR 73, 74.
18 (2003) 198 ALR 250.
19 [2011] QCA 266 [14] – [15].
20 *Markan v Bar Association of Queensland (No 3)* [2014] QSC 225 [51].
21 (1297) 25 Edw 1 ch 29.
22 (1368) 42 Edw 3 ch 3.
23 (1623) 21 James 1 ch 3.
24 (1354) 28 Edw 3 ch 3.
25 (1985) 159 CLR 264, 299.
26 [1989] 2 Qd R 79, 85 – 86.

he has not articulated the basis upon which they may be relevant to this appeal. They do not provide any legitimate reason to question the validity of s 59 *Constitution of Queensland* or of the proceedings the subject of this appeal.

[21] Mr Markan contended that the Bar Association received preferential treatment from the primary judge as it was not made to comply with the provisions of *Uniform Civil Procedure Rules* 1999 (Qld) (UCPR) r 444 and r 447. These rules are contained in UCPR Ch 11, which is headed "Evidence", Pt 8 of which is headed "Exchange of correspondence instead of affidavit evidence." Those rules apply to the limited types of applications specified in r 443. As the Bar Association's amended application before the primary judge[27] was not an application within r 443, r 444 and r 447 had no application. This submission is entirely misconceived and unmeritorious.

[22] Mr Markan submitted the judge did not separately consider and determine the leave question under s 5 *Vexatious Proceedings Act*. This contention, too, is misconceived. It was appropriate in this case for the judge to consider the merits of the Bar Association's proposed application in determining whether to grant them leave to apply for a vexatious proceedings order. It was not necessary for the Bar Association to apply for leave before filing its substantive application. Even if I am wrong in this, the order granting leave cured any irregularity. See *Fung v Tam & Anor*.[28] This contention is not made out.

[23] Mr Markan's long and unsuccessful litigation against the Bar Association demonstrates his persistence in repeatedly raising arguments ruled inarguable by this Court and the High Court of Australia.[29] Mr Markan's large number of actions in this Court and their similarity of form and content without any legal basis, justified the declaration at first instance that he was, under s 6(1)(a) *Vexatious Proceedings Act* "a person who has frequently instituted or conducted vexatious proceedings in Australia." The primary judge rightly gave leave to the Bar Association to apply to the court under s 5 *Vexatious Proceedings Act* to make the application. His Honour properly stayed Mr Markan's action against the Bar Association. His Honour was correct to prohibit him from instituting proceedings in any Queensland court. The award of costs on the indemnity basis was also well open in the circumstances.

[24] Mr Markan has not made out any of his grounds of appeal. He has not demonstrated any error on the part of the primary judge. The appeal must be dismissed. His persistent and outrageous claims against the Bar Association and his refusal to accept the decisions of this Court and of the High Court of Australia warrant a costs order against him in this appeal on the indemnity basis. I propose the following orders:

Orders

1. Appeal dismissed.
2. The appellant to pay the respondent's costs assessed on the indemnity basis.

[25] **HOLMES JA:** I agree with the reasons of Margaret McMurdo P and the orders she proposes.

[26] **FLANAGAN J:** I agree with the orders proposed by Margaret McMurdo P and with the reasons given by her Honour.

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27 AB 527.

28 [2012] QCA 10, [14] – [20].

29 See, for example *R v Markan* [2009] QCA 110; *Markan v The Queen* [2010] HCASL 241; *Markan v Bar Association of Queensland* [2013] QCA 379; *Markan v Bar Association of Queensland* [2014] HCASL 80; *Markan v Bar Association of Queensland* [2014] HCASL 119; and most recently *Markan v Police Service* [2015] HCASL 98 where Kiefel and Keane JJ refused special leave. Their Honours considered this Court's conclusion, that Mr Markan's claim was a clear abuse of process and the appeal based on groundless contentions, was clearly correct.