



Transcript of Proceedings

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Date: 28 September, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

de JERSEY CJ

No BS7427 of 2004

PATRICK GERARD O'MALLEY

Applicant

and

COMMISSIONER OF POLICE

Respondent

BRISBANE

..DATE 20/09/2004

JUDGMENT

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: The applications before me arise from the applicant's involvement in a program of the Cambridge Certificate of English Language Teaching to Adults, conducted within the Institute of Continuing TESOL Education at the University of Queensland in June and July 2003. The program is conducted by the University of Queensland in conjunction with the University of Cambridge in England. Those participating pay a fee to the University of Queensland, part of which is then transmitted later on to Cambridge, that being described as a moderation fee.

In this case, the applicant completed almost all of the full-time program. He was unable to complete all of it because of sickness from time to time. On the 14th of July 2003 the University of Queensland issued him with a document certifying he had attended 120.5 hours of the 138 hour program.

He wrote to the Vice Chancellor of the University of Queensland on the 4th of August 2003 asking for an explanation as to why he was, "The only trainee out of 12 who was furnished with an attendance certificate, rather than a certificate with provisional results and a report written by the course tutors as stipulated in UQ's handout 'Information for Applicants'."

In response, the Deputy Vice Chancellor of the University of Queensland replied by letter of 26th August 2003 as follows:

"It is current policy for CELTA training delivery institutions to provide a statement of provisional results only to successful candidates. All candidates are provided

with both verbal feedback and written reports on their progress, or otherwise throughout the CELTA course, so that candidates who are not meeting and do not finally meet the criteria in any or all of the assessed components of the course are made aware of their prospective failure of the course. This was indeed the case with regard to your situation on the CELTA course in June/July 2003 and you are notified accordingly.

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It is also standard practice that a failed candidate who has not successfully met the assessment criteria does not receive a CELTA certificate issued by Cambridge ESOL. In these circumstances, the training delivery institution - in this case ICTE-UQ - can issue an attendance certificate within two weeks of course completion. The purpose of this attendance certificate is to provide the candidate with evidence that they have attended the course even though he/she has not met the criteria to gain a pass grade for the course."

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Then in an undated letter, apparently from the University of Cambridge, the applicant was informed, "I regret to inform you that although you have completed an approved course of study at University of Queensland, you have not been successful and will not therefore be awarded the above certificate." The heading of the letter is "Certificate in English Language Teaching to Adults".

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The applicant made complaints to the University of Queensland, as I have outlined, and being dissatisfied with the results, took the matter up with the Commissioner of Police, requesting the Commissioner to carry out an investigation. There have been various notifications from the Commissioner's officers to the applicant - finally, on 24th June 2004, to the effect that the matter warranted no further police investigation.

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The material shows that the police have spent some time coming to a proper understanding of the applicant's allegations and investigating them. In particular, the police investigated the authenticity of the letter from which I quoted - the undated letter in which Cambridge notified the applicant's failure in the course. The police were satisfied that was an authentic document. Indeed its authenticity was confirmed by Cambridge directly.

The applicant focused before me on a possible discrepancy between the treatment accorded him by the University of Queensland and that accorded the other 11 participants in the course. In particular, he draws attention to the fact that he received his course report 12 weeks "late". He raises the possibility, although there is no evidence to support this theory, that the moderation fees may have been transmitted from the University of Queensland to Cambridge in two lots as it were; one covering the 11 other candidates, with the moderation fee in respect of him having been transmitted later on, after he had commenced pursuing his other matters of complaint against the University of Queensland.

At the base of this is a contention that the University of Queensland - perhaps with the complicity of Cambridge - has been guilty of fraud and corruption in respect of its treatment of the moderation fees held by it on trust for transmission to Cambridge. When I pointed out during the oral submissions that there appeared no evidentiary basis for the suspicions the applicant ventilated, his response was to query

why the Universities would not respond to his simple
enquiries: that is, provide details of the times at which the
various cheques were sent in, and details of the times at
which the various candidates received their course reports and
so on.

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The question, of course, arises why the Universities should
have been obliged to respond to this.

Part of the applicant's complaint in relation to the police
investigation concerns their lack of what he terms "cross
verification". Certainly the police verified the authenticity
of the undated letter of notification from the University of
Cambridge. But they did not take the further step upon which
he would insist, and that is - by what he terms "cross
verification" - to contrast the treatment accorded him with
that accorded the other candidates in relation, in particular,
to the despatch of course reports and the remitting of the
moderation fees.

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The police response has been that their having investigated
the matter to the extent they have, it is purely a civil
concern with the applicant at perfect liberty to make further
representations to, and requests of, the institutions, were he
to seek to do so.

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It does seem to me that the applicant is, through this
application, seeking to invoke the power of the State to

pursue what is essentially, from his own aspect, a fishing expedition.

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I am not satisfied that there is any basis upon which the decision of the Commissioner of Police not to conduct the so called "comprehensive" investigation, which the application requests, was bad in law, improperly motivated, based on irrelevant considerations or did not take account of relevant considerations, or was otherwise susceptible of review under the judicial review legislation.

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Indeed, I am satisfied that no reasonable basis for the applicant's application has been disclosed and that pursuant to section 48 of the Judicial Review Act, it should be dismissed with costs to be assessed. That is the order I make, and I make similar orders in respect of the applicant's own application.

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