SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General for the State of Queensland v Sri & Ors* [2020] QSC 246
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant) **v** **JONATHAN SRI** (second respondent) **JARRAH ROBERT KERSHAW** (third respondent) **LAURA ANNE LOUISA HARLAND** (fourth respondent) **QUEENSLAND HUMAN RIGHTS COMMISSION** (intervener)
FILE NO:	BS 8613 of 2020
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED EX TEMPORE ON:	8 August 2020
DELIVERED AT:	Brisbane
HEARING DATE:	8 August 2020
JUDGE:	Applegarth J
ORDER:	**1. The third and fourth respondents must not attend, or encourage others to attend, the planned sit-in protest on the Story Bridge on 8 August 2020.** **2. The third and fourth respondents are prohibited from interfering with access to public rights of way on the Story Bridge, such interference being defined as:** **(a) Blocking vehicle and pedestrian access to the Story Bridge; and** **(b) Unreasonably obstructing the roadway on the Story Bridge and all surrounding roads.[1]** **3. By 10:30am on 8 August 2020, or as soon as reasonably practicable thereafter, the third and fourth respondents must cause to be placed on the Refugee Action Collective Queensland's website and Facebook**

page, as well as any personal Facebook pages held by the third and fourth respondents, words to the effect that the event on 8 August 2020 has been the subject of an injunction ordered by the Supreme Court of Queensland and that another event is presently planned for 15 August 2020.

4. **The Originating Application and Affidavit of P Aitken affirmed 7 August 2020 be served upon the third and fourth respondents as soon as reasonably practicable.**

5. **The applicant be taken to have served the third and fourth respondents by texting a photo of the Order as made by the Court to the third and fourth respondents' mobile numbers that are known to the applicant.**

6. **Liberty to apply.**

7. **The application is adjourned to Monday 10 August 2020 at 10:00 am.**

8. **Costs reserved.**

CATCHWORDS: EQUITY – EQUITABLE REMEDIES – INJUNCTIONS – INJUNCTIONS FOR PARTICULAR PURPOSES – TO RESTRAIN UNAUTHORISED ACTS – where the applicant seeks an urgent injunction restraining the respondents from attending or encouraging others to attend a planned sit-in protest on the Story Bridge – where the injunction was sought against the third and fourth respondents *ex parte* – whether an injunction should be granted in the circumstances

Human Rights Act 2019 (Qld), s 13, s 19, s 20, s 21, s 22, s 23
Peaceful Assembly Act 1992 (Qld)
Public Health Act 2005 (Qld)

Attorney-General v Mercantile Investments Limited (1920) 21 SR (NSW) 183, cited
Commissioner of Police (NSW) v Gibson [2020] NSWSC 953, cited
Commonwealth of Australia v John Fairfax & Sons Ltd (1980) 147 CLR 39; [1980] HCA 44, cited
Cooney v Council of the Municipality of Ku-rin-gai (1963) 114 CLR 582; [1963] HCA 47, cited
The Mayor, Aldermen, Councillors and Citizens of the City of Melbourne v Barry (1922) 31 CLR 174; [1922] HCA 56, cited

COUNSEL: G del Villar QC for the applicant
The second respondent appeared for himself
P Morreau for the intervener

SOLICITORS: Crown Law for the applicant
Queensland Human Rights Commission for the intervener

[1] The Attorney-General seeks urgent injunctions to, in effect, restrain certain parties, and the second, third and fourth respondents in particular, from attending or encouraging others to attend a planned sit-in protest on the Story Bridge on 8 August 2020. There is another planned protest due for 15 August 2020. Because of the urgency and the fact that proceedings against the third and fourth respondents today have been *ex parte*, I propose to make only orders in relation to the apprehended sit-in protest on the Story Bridge at noon today, it already being 10.30 am. That explains the circumstances of urgency.

[2] The Attorney seeks those orders on the basis that injunctions are appropriate to enforce and protect one or more public rights, and that the Court, in its discretion, should grant injunctions. The jurisdiction to enforce and protect public rights is outlined in the applicant's submissions. The authorities establish that prohibitions and restrictions directed towards public health and comfort, and which were imposed for the benefit of the public, or at least a section of it, may be the subject of such an order: *Cooney v Kuringai Corporation* (1963) 114 CLR 582 at 605.

[3] An issue arises as to whether such an order should be made in the Court's discretion, and I will return to that. I think that even without the *Human Rights Act* 2019 (Qld), any Court asked to grant an injunction to stop or restrict a public assembly would always give great attention to rights that attach in a democracy to individuals and groups to participate in peaceful assemblies.

[4] Rather than speak in those generalities, it is important to give attention to the particular threat and the risks that it poses, as well as the rights that would be constrained by orders of the kind that I have been asked to make. I should consider competing rights and interests.

[5] I was assisted by careful and comprehensive submissions, done obviously at great haste but with great thoroughness, by the Queensland Human Rights Commission. The resolution of this application is not determined in an abstract sense by referring to competing rights: between the rights of the third and fourth respondents and others to engage in peaceful public assembly and competing rights and social interests. The resolution of this application turns on the specific facts, the extent of the threat, and the possible hazards if that threat materialises at noon.

[6] To be clear, the conduct proposed, or that arguably is proposed, for noon is not a procession. There is some uncertainty as to whether the planned sit-down at noon will proceed. That arises from the inclusion on the Refugee Action Collective Queensland Facebook page of an announcement that an event would be hosted next Saturday, 15 August 2020, from noon until 3 pm. That may suggest that the event planned for today has been abandoned.

[7] Councillor Sri was served. But I do not propose to make orders against him in light of the state of the evidence and his submissions as to his involvement or lack of involvement in today's planned event. He mentioned in email communications that he thought that the event had been called off.

[8] The third and fourth respondents appeared on Channel 9 News last night and indicated that they would be willing to stop today's Story Bridge protest from going ahead on a certain condition. There is no evidence that that certain condition has been fulfilled. And so in the circumstances, there is a reasonable apprehension, not to be overstated but not to be understated, that they will continue with their planned protest today or that others will continue based on previous Facebook and other social messaging, not knowing that it has, in fact, been called off. However, there is insufficient evidence before me that it has, in fact, been called off so as to remove the apprehension that a sit-in is planned, at least by some, for noon.

[9] The nature of the sit-in as intended by the group is depicted in the evidence. It is described as a mass sit-in on the Story Bridge. Numbers on social media, as with anywhere else, can be deceptive. The material before me records that 1K, which I take to be 1,000 people are going, and another 2,200 people are interested. The post for midday Saturday, 8 August, said:

> "We're going to walk onto the Story Bridge, sit down in the middle of the road and refuse to move until our perfectly reasonable demand is met."

[10] And then there is reference to the concern for punitive detention. Later in the post it says:

> "It's time to engage in mass civil disobedience."

[11] It refers to how civil disobedience has been effective in changing matters. It continues:

> "This means deliberately disobeying laws to highlight and prevent further injustice."

[12] The post goes on to say:

> "When we walk onto that bridge, police will likely try and stop us, tell us to move, threaten to arrest us, but we will do it anyway."

[13] It indicates that the action carries the risk of arrest, with certain colour ratings concerning the risk of arrest. The other matter to note is an intent to just keep doing this. As it says:

> "If we don't win this time, we just keep trying."

And so there is a prospect of further similar events.

[14] I wish to be clear that because of the circumstances of urgency, and because the third and fourth respondents have not been heard and Councillor Sri was given little notice of this proceeding, I am not presently concerned with the legality or otherwise of any action that is planned for 15 August. That will be the subject of hearings that can take place, if necessary, by exercising liberty to apply over the weekend or on Monday or such other day next week that suits the convenience of the parties to argue more fully and on notice, and with appropriate preparation of any issue in relation to 15 August.

[15] The court does not give any sanction or approval to any planned sit-in on 15 August, but nor does its orders today prohibit it. Natural justice requires that anyone planning to conduct that event on 15 August 2020 be given an opportunity to argue their case and to resist a similar form of injunction.

[16] It is apparent that the mass sit-in that was planned for noon on 8 August and, for all I know, may still be planned by some as a supplement or a precursor to the event on 15 August, involves an entirely different form of public assembly to a procession. It is apparent that the intent is for people to stage a sit-in and not move, and to engage in civil disobedience that results in police arresting those who decide to persist by staging that sit-in.

[17] This is not the time or the place to engage in a lengthy excursion into the rights of users of a public highway. A famous case called *Melbourne Corporation v Barry* (1922) 31 CLR 174 at 196 and 197 was cited when I was a law student in relation to the kind of permit system that then operated. Justice Isaacs referred to a procession, and he said:

> "The common purpose of the procession or its incidence may make the procession unlawful, but that depends on whether some unlawfulness exists either at common law or by statute."

[18] In effect, his Honour said that a procession is no more than a number of individuals exercising in aggregate the individual right of each to pass along the thoroughfare. Importantly for present purposes, his Honour said:

> "A thoroughfare is for the purpose of passing and repassing."

[19] And his Honour said – and this is critical – after citing earlier authority:

> "The same case shows there is no right of "public meeting" in a public thoroughfare."

[20] Processions as a form of peaceful public assembly are apt to interfere with rights of other individuals to pass and repass. And in these days when we have a *Human Rights Act*, one can refer not simply to the common law right to pass and repass along thoroughfares and across bridges, but a right of movement that is confirmed by section 19 of the *Human Rights Act* 2019 (Qld).

[21] Conflicts between protesters and other road users are not new. They are a feature of our democratic history. And I would adopt, with respect, what has been lately said by other Courts dealing with different legislation and different fact situations to this case in relation to the importance of public assembly. I will cite without quoting what was said in *Commissioner of Police, New South Wales v Gibson* [2020] NSWSC 953 at [23] and [24]. Those sentiments were reflected in what Justice Isaacs said in 1922, and what many other jurists before and since Justice Isaacs have said about the importance of public assembly and procession.

[22] Conflicts between the rights of different road users occur on many occasions that are not concerned with protests. Road users are inconvenienced by a variety of public assemblies, whether they be occasions such as Anzac Day, St Patrick's Day, protests against the war in Iraq, reconciliation marches across

bridges, and so on. Some interference with other road users and the general public convenience must be expected because of the importance of freedom of assembly, freedom of association and freedom of expression. All this is trite.

[23] In 1992 the *Peaceful Assembly Act* 1992 (Qld) was introduced into this state as an important reform. It is an enduring reform which displaced the police permit system with a better and more carefully calibrated regulation of the right of public assembly. I benefited from the description of that Act in Ms Morreau's submissions. The Act provides certain immunities from criminal or civil liability if its provisions are engaged. I am not going to go through the Act in all of its details.

[24] When one is considering this case and the accommodation that must be achieved between the right to engage in public assemblies on the great issues of the day, or even smaller issues of the day, and other rights, it is well to recall that the Act is an attempt to regulate that conflict and to provide an appropriate accommodation which advances as far as possible the right of peaceful assembly. It does so by processes for authorised public assemblies, for an assembly notice to be given in accordance with section 8. There can be the approval of a public assembly. There are different timing considerations depending upon whether the application is made not less than five business days before the event or less than five days within the event. Someone who leaves it until very late can seek authority and can apply to the Magistrates Court if there is opposition or an inability to resolve differences with the authorities.

[25] I hasten to add that the fact that neither the third and fourth respondents, nor, it seems, any other organisers of today's event, applied under the *Peaceful Assembly Act* 1992 (Qld) does not make what they intend to do unlawful. Instead, they have lost the opportunity to gain the important protection which that Act gives in relation to conduct which might otherwise be a criminal offence of a certain kind or a public nuisance or some other civil wrong. That is because section 6 gives an immunity if the public assembly is authorised, is peaceful, and is held substantially in accordance with the relevant particulars and conditions. A person who participates in that assembly does not merely because of their participation incur any civil or criminal liability because of the obstruction of a public place.

[26] The application by the Attorney-General has two bases in laws that are passed for the greater good and confer general rights in the public, including the right about which I have already remarked, to pass and repass upon roads. The first is the one which I have just mentioned. That is a well-recognised category of public right. See, for example, *Attorney-General v Mercantile Investments Limited* (1920) 21 SR (NSW) 183 at 187. Justice Harvey referred to how a Court of Equity can intervene at the suit of the Attorney-General to grant an injunction in relation to the commission of any threatened wrongful act that is a menace to the general rights of the public which are of a proprietary nature, such as the user of the highway or which is likely to cause injury to the members of the public in general. Further examples are given.

[27] Here, it is apparent that a sit-down by a large number in the middle of the Story Bridge would be completely inconsistent with that public right. It would be also inconsistent with the individual rights of citizens to travel on the road; as I have said, rights that are longstanding and are recognised in the *Human Rights Act*. The *Human Rights Act* is of relevance in the present context. I have had the advantage of helpful submissions concerning some of its complexities. I can leave those complexities to one side. It is important to focus upon the relevant rights, both of the organisers and those who would wish to take part in the planned sit-down on the Story Bridge, as well as the rights which that Act confers on other citizens.

[28] Before turning to those specific rights, it is always to be recalled that human rights under that Act may be limited and that a human right may be subject under law to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. Section 13(2) considers what are the reasonable and justifiable limits. Those limits apply to the acts that are later enumerated, including freedom of movement (section 19); freedom of thought, conscience, religious belief (section 20); freedom of expression (section 21); peaceful assembly and freedom of association (section 22); and taking part in public life (section 23).

[29] Any of those rights, including the right to movement, are subject to reasonable regulation whether it be in the interests of controlling speed on roads, safety to other road users or other individuals' rights. The right to movement, as is well known in present circumstances, is subject to regulation governing quarantine. Here, I simply wish to emphasise that as important as the human rights of the organisers, including the third and fourth respondents, are, those rights need to be accommodated against the rights of others and also against demonstrable public goods.

[30] The United States has constitutional guarantees on freedom of expression and other important rights of the kind which the organisers plan to exercise either today or next week, or both. Those rights guaranteed in fairly absolute terms by the Constitution are subject to reasonable regulation as to time, place and manner. One sees that on the television and in documentaries where picketers continue to move on. They are exercising the right to be on the highway and to move, which is not necessarily an absolute right to stand still or sit down on a road.

[31] Returning to the present day and the present facts of this case, the Story Bridge, as anyone would know, is a major traffic route through this city. I have regard to the evidence concerning the volume of traffic that passes along it, and I have regard to Inspector Aitken's evidence about the volume of traffic. I am also assisted by email evidence from the Brisbane City Council concerning traffic flows and the assessment undertaken by a traffic network engineer. Without that expert evidence, I probably would have concluded of my own that any significant blockage of the Story Bridge can turn the whole city's traffic into, if not chaos, then extreme disruption. That applies to the inevitable backing-up of cars on roads leading to the Story Bridge, such as Shafston Avenue, Ipswich Road and Main Street if the authorities are not given adequate notice of the blockage.

[32] In any event, enormous work would need to be done to reroute those vehicles through other areas, and the likely effect on any day of the week would be significant congestion in the city. That delay and congestion might be something that simply has to be tolerated in the balancing exercise, just as important civic occasions result in inconvenience when there are processions in city streets and across bridges for Labour Day, Anzac Day and other celebrations, or important protests in our democracy in relation to many pressing social issues. We all must tolerate that inconvenience.

[33] Here, though, the threatened inconvenience is of a different order because it is not one or even two lanes of Story Bridge that are being impeded by a large procession. It is a threatened sit-down with the obvious intent to block the bridge. The risk to life and limb is obvious. But even if police could, with all of their skill, manage such a difficult situation – and great numbers would be required to do so, I would think – the inconvenience is not a brief one for people who are stuck in traffic. They include emergency vehicles needing to cross the bridge. They include individuals who would have occasion to, say, visit St Vincent's Hospital which is in close proximity to the Story Bridge. That could be a nurse who has to travel across the Story Bridge to go to work there. It could be a doctor who has to go from one hospital to another, as I know doctors do on Saturdays covering for specialists in intensive care wards and the like. In addition to those perhaps stark examples are the problems that would be presented from families visiting a loved one in hospital.

[34] More generally, there is the dislocation caused to people going about their lawful business, and that includes small businesses, people who have to deliver things, people who have to earn a living, drive children from one parent to another. And so the inconvenience is not minimal. There is no indication as to how long that sit-down would last.

[35] It seems to me that balancing the legitimate right to public assembly in all of its forms, including sit-down protests, against the public interest, the threatened obstruction of traffic is a significant burden upon the public and upon individuals. The position might have been different had I been informed as to the process that was intended for the duration of the sit-down. But on the evidence which I have, and the third and fourth respondents' indication that if their condition was not met, the protest would be going ahead, I have to apprehend that the disruption to individuals and the greater public would be significant and long-lasting. My assessment of that is affected by the obvious intent of the organisers to engage in civil disobedience. I take that to be effectively an admission that they do not – or at least some of them do not – intend to abide by reasonable directions by police to move on.

[36] I have reached the conclusion that this form of assembly in this location on this day imposes a significant burden upon the rights of other citizens and upon the public more generally. That imposition has not been moderated by any proposal. It has not been the subject of an attempt to engage in the processes provided for by the *Peaceful Assembly Act*. I conclude that, giving all appropriate weight to the rights of the organisers and those who would wish to participate in the sit-down, that this is an appropriate case to exercise the jurisdiction which the Attorney-General has invoked.

[37] That makes it unnecessary for me to consider or rely upon an additional argument, which is enforcement of public rights that arise from the *Public Health Act* and the "Gathering Direction". That relevantly provides for a maximum of 100 people to gather publicly. There would seem to be an expectation or plan that there would be more than 100 people gathering. I do not intend to digress into analysing those different directions and the circumstances in which groups of more than 100 may be authorised for different occasions.

[38] There is nothing before me that there was an attempt to gain an exception under that law. One would have expected any attempt to gain an exception to be supported by a detailed plan as to how social distancing was to be achieved. This case is singularly different on the evidence before me to the case of *Gibson* decided on 26 July 2020 in the New South Wales Supreme Court, where one was concerned with a peaceful assembly and procession of possibly 500 people and there were reasonable steps taken to alleviate the risk of COVID-19, including volunteers to work in COVID safety teams and the like.

[39] As I remarked during submissions, this case is entirely different. It is a static assembly. It is a sit-down and not-to-move-on assembly which distinguishes it from processions which achieve social distancing. In fact, the intent to engage in civil disobedience and, in effect, be arrested highlights the fact that police would be required to come into close physical contact with individuals.

[40] As I say, the apparent threatened breach of the *Public Health Act* would provide an additional ground to conclude that the Attorney-General should obtain an order of the kind here.

[41] I wish to emphasise that the jurisdiction to grant injunctions in aid of laws which create offences in an exceptional one. See *Commonwealth of Australia v John Fairfax & Sons Ltd* (the *Defence Papers* case) (1980) 147 CLR 39 at 49-50 citing *Gouriet v Union of Post Office Workers* [1978] AC 435. However, this is an exceptional case. I consider that it is certainly open to the Attorney-General to conclude that this is an exceptional case in which after-the-fact fines and possibly jail sentences are inadequate to enforce the *Public Health Act*.

[42] As I say, I do not need to rest my decision on the *Public Health Act* aspect. Even if it had been thought that the balance was only finely tilted in favour of granting an injunction because of the interference to the rights of ordinary road users, and the threat of civil disobedience and disruption, the additional factor of what would seem to be a threatened breach of the *Public Health Act* would be an additional matter which weighed strongly in the exercise of my discretion.

[43] It is unnecessary for me to decide today whether the Attorney-General carries any onus to demonstrate that the limitations sought by the order requested are reasonable and proportionate. Even if there was an onus resting on the Attorney, I consider that the Attorney has discharged that onus. I conclude that the orders sought are appropriate in urgent circumstances to protect a public benefit. It is for these reasons that immediately before giving these reasons I grant *ex parte* injunctions against the third and fourth respondents in

the form initialled by me. If the third and fourth respondents wish to contest that order, they have liberty to apply. Otherwise, the matter is adjourned to 10 am on Monday.

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[1] Order 2 was set aside on 10 August 2020.