

SUPREME COURT OF QUEENSLAND

CITATION: *Mowen v Queensland State Government* [2011] QSC 12

PARTIES: **BEVAN ALAN MOWEN**
Applicant
V
QUEENSLAND STATE GOVERNMENT
Respondent

FILE NO/S: s703/2010

DIVISION: Trial Division

PROCEEDING: Originating Application

ORIGINATING COURT: Supreme Court Rockhampton

DELIVERED ON: 3 February 2011

DELIVERED AT: Rockhampton

HEARING DATE: 31 January 2011

JUDGE: McMeekin J

ORDER: Application dismissed

CATCHWORDS: ADMINISTRATIVE LAW – Whether Applicant has interests in the nature of proprietary, material, financial or special interest[s] in the subject matter of the proceeding so as to give him standing

ADMINISTRATIVE LAW - DISTINCTION BETWEEN ADMINISTRATIVE AND JUDICIAL FUNCTIONS – Whether the sale of Queensland Rail is justiciable

CONSTITUTIONAL LAW – CONSTITUTIONAL AMENDMENT – STATES - Whether Court has the power to issue a mandatory injunction requiring the State government to call a referendum

Australia Act 1986 (Cth) s2(1)

Crown Proceedings Act 1980 (Qld) s8

Transport Infrastructure (Railways) Act 1991 (Qld) s2.4

Constitution Act 1867 (Qld) s1, 2, 2A, 11A, 11B & 53

Constitution of Queensland 2001 Preamble & s58

Australian Conservation Foundation v Commonwealth

(1980) 146 CLR 493

Crowther v Brisbane City Council [2010] QCA 348

Mobil Oil Australia Pty Ltd v Victoria (2002) 211 CLR 1

Union Steamship Co of Australia Pty Ltd v King (1988) 166 CLR 1

COUNSEL: Applicant in person

Ex parte

SOLICITORS: Applicant in person

Ex parte

- [1] **McMEEKIN J:** Mr Mowen applies for an injunction. He appears in person. The named respondent is the “Queensland State Government”. The application is brought ex parte. The purpose of the proposed injunction is to force the government of this State to hold a referendum of the people to enquire into the recent sale of Queensland Rail.
- [2] Mr Mowen’s concerns relate principally to public safety and what he perceives as the failure of the government to consult either Her Majesty or the people in effecting the sale of a significant public asset, a sale which, he says, has increased the number of deaths on our public roads. That is so, Mr Mowen submits, because the sale of Queensland Rail means that more freight must be moved by road than previously and that has the effect of bringing onto our public roads an increased number of larger vehicles – he is particularly concerned with the use of “B Double” semi-trailers – at a time when those public roads have not been engineered to cope with such large vehicles. He has gathered evidence of the number of fatalities caused by such large vehicles and referred me to studies done in New South Wales concerning the over representation of such vehicles in fatal accidents.
- [3] Further Mr Mowen submits that the statute governing Queensland Rail makes no provision for its sale. He referred me to s 2.4 of the *Transport Infrastructure (Railways) Act 1991* (Qld) which details the powers of Queensland Rail and pointed out that there is no mention there of any ability to sell Queensland Rail itself but rather mention is made in s 2.4(c) of partnerships and joint ventures.
- [4] Whatever the merits of the application, and having heard no debate on the subject I am not prepared to make any comment, I perceive at least three fundamental problems with the application. First there is no such entity as the “Queensland State Government”. If proceedings are to be brought against the Crown in right of the State then proceedings are to be brought “against the Crown under the title the ‘State of Queensland’”: s 8 *Crown Proceedings Act 1980* (Qld).
- [5] Secondly, I do not have, so far as I am aware, any jurisdiction to order the government of this State to hold a referendum about such a matter. Mr Mowen has referred me to s 53 of the *Constitution Act 1867* (Qld) which provides for the holding of a referendum, but only in respect of certain measures. It provides in ss 53(5) that “[a]ny person entitled to vote at a general election of members of the

Legislative Assembly is entitled to bring proceedings in the Supreme Court for a declaration, injunction or other remedy to enforce the provisions of this section”.

- [6] I am prepared to assume that Mr Mowen is entitled to vote and so entitled to apply under the provision.¹ However the measures mentioned have nothing to do with the sale of Queensland Rail or indeed the sale of any public asset. The measures mentioned are restricted by subsection 53(1) to “A Bill that expressly or impliedly provides for the abolition of or alteration in the office of Governor or that expressly or impliedly in any way affects any of the following sections of this Act namely—sections 1, 2, 2A, 11A, 11B; and this section 53”. Those sections are not connected with the sale of public assets by the government.
- [7] The sections referred to in s 53 provide under the headings “The Legislature” and “The Governor” respectively as follows:

“The Legislature

1 Legislative Assembly

There shall be within the said Colony of Queensland a Legislative Assembly.

2 Legislative Assembly constituted

Within the said Colony of Queensland Her Majesty shall have power by and with the advice and consent of the said Assembly to make laws for the peace, welfare and good government of the colony in all cases whatsoever.

2A The Parliament

- (1) The Parliament of Queensland consists of the Queen and the Legislative Assembly referred to in sections 1 and 2.
- (2) Every Bill, after its passage through the Legislative Assembly, shall be presented to the Governor for assent by or in the name of the Queen and shall be of no effect unless it has been duly assented to by or in the name of the Queen.

The Governor

11A Office of Governor

- (1) The Queen’s representative in Queensland is the Governor who shall hold office during Her Majesty’s pleasure.
- (2) Abolition of or alteration in the office of Governor shall not be effected by an Act of the Parliament except in accordance with section 53.
- (3) In this Act and in every other Act a reference to the Governor shall be taken—
- (a) to be a reference to the person appointed for the time being by the Queen by Commission under Her Majesty’s Royal Sign Manual to the office of Governor of the State of Queensland; and

¹ I can probably take judicial notice of the fact that Mr Mowen stood for the federal seat of Capricornia at the recent election thus suggesting he is on the electoral role.

(b) to include any other person appointed by dormant or other Commission under the Royal Sign Manual to administer the Government of the State of Queensland.

11B Definition of Royal Sign Manual

In section 11A the expression *Royal Sign Manual* means the signature or royal hand of the Sovereign.”

[8] Section 53 is concerned with the preservation of the constitutional arrangements but not with the day to day decisions of the government.

[9] Mr Mowen has also referred me to s 58 of the Constitution of Queensland 2001 which provides:

“Supreme Court’s superior jurisdiction

(1) The Supreme Court has all jurisdiction necessary for the administration of justice in Queensland.

(2) Without limiting subsection (1), the court—

(a) is the superior court of record in Queensland and the supreme court of general jurisdiction in and for the State; and

(b) has, subject to the Commonwealth Constitution, unlimited jurisdiction at law, in equity and otherwise.”

[10] That, with respect, does not meet the present problem. To have “all jurisdiction necessary for the administration of justice in Queensland” does not give to the Court the power to do what it likes.

[11] Mr Mowen relied principally on the Preamble to the Constitution which provides:

“Preamble—

The people of Queensland, free and equal citizens of Australia—

(a) intend through this Constitution to foster the peace, welfare and good government of Queensland; and

(b) adopt the principle of the sovereignty of the people, under the rule of law, and the system of representative and responsible government, prescribed by this Constitution; and

(c) honour the Aboriginal peoples and Torres Strait Islander peoples, the First Australians, whose lands, winds and waters we all now share; and pay tribute to their unique values, and their ancient and enduring cultures, which deepen and enrich the life of our community; and

(d) determine to protect our unique environment; and

(e) acknowledge the achievements of our forebears, coming from many backgrounds, who together faced and overcame adversity and injustice, and whose efforts bequeathed to us, and future generations, a realistic opportunity to strive for social harmony; and

(f) resolve, in this the 150th anniversary year of the establishment of Queensland, to nurture our inheritance, and build a society based on democracy, freedom and peace.”

[12] I observe as well that the *Australia Act* 1986 (Cth), in s 2(1), provides that each State has "full power to make laws for the peace, order and good government of that State that have extra-territorial operation".

- [13] Mr Mowen submitted that the decision to sell Queensland Rail did not reflect good or responsible government (see (a) and (b) above), and did not “nurture our inheritance” (see (f) above), but rather disposed of that inheritance. He submitted that the wide jurisdiction of the Supreme Court entitled the Court to intervene.
- [14] The error in the submission is the assumption that the Court has jurisdiction to strike down State legislation on the ground that, in the opinion of the court, the legislation does not promote or secure the peace, welfare and good government of the State. It is well recognised that the Court does not have such jurisdiction: *Union Steamship Co of Australia Pty Ltd v King* (1988) 166 CLR 1 at 10; 82 ALR 43; 62 ALJR 645; *Mobil Oil Australia Pty Ltd v Victoria* (2002) 211 CLR 1 at 33; 189 ALR 161; [2002] HCA 27; BC200203432 per Gaudron, Gummow and Hayne JJ.
- [15] *Mobil Oil* was concerned with the Constitution of the State of Victoria but reference was made to the formula used in the Queensland Constitution by Gaudron, Gummow and Hayne JJ in the following passage:
- “[46] Other State Constitutions use expressions other than "in and for" the State in describing the power of the State legislature. "[F]or the peace, welfare, and good government" of the State, or "for the peace, order, and good Government" of the State are expressions in some State Constitutions. **But just as a power to make laws for the peace, welfare, and good government (or peace, order, and good government) of a State is a plenary power so, too, is the power of the Victorian Parliament to make laws "in and for Victoria". Neither the words "peace, welfare [or order], and good government" nor the words "in and for" the State are to be read as words of limitation.**”²
- [16] The point that Mr Mowen seeks to agitate is not, in my view, justiciable.
- [17] Thirdly, even if I had any such jurisdiction I very much doubt that Mr Mowen has standing to apply for such an order. The question of his standing is inextricably tied up with the question of the relief that can be granted. Absent any specific statutory entitlement the general principle is that to have standing to bring a proceeding, an individual must have interests in the nature of “proprietary, material, financial or special interest[s] in the subject matter of the proceeding”. It is not sufficient merely to be interested in the subject matter, in the sense of having “a mere intellectual or emotional concern” with the only advantage to be gained “the satisfaction of righting a wrong, upholding a principle or winning a contest”. Such a person is not “someone whose interests are affected”. See generally *Australian Conservation Foundation v Commonwealth* (1980) 146 CLR 493, [1979] HCA 1; *Crowther v Brisbane City Council* [2010] QCA 348 per Holmes JA at [9].
- [18] Mr Mowen is a concerned citizen who seeks to right what he sees as a wrong. Whilst that might show a commendable interest in the good governance of the State, that of itself is insufficient to give him standing to seek an injunction.
- [19] The application is dismissed.

² Emphasis added and citations omitted