

SUPREME COURT OF QUEENSLAND

CITATION: *Markan v Crime and Misconduct Commission* [2014] QCA 60

PARTIES: **PETER MARKAN**
(appellant)
v
CRIME AND MISCONDUCT COMMISSION
(respondent)

FILE NO/S: Appeal No 9591 of 2013
SC No 4516 of 2013

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 1 April 2014

DELIVERED AT: Brisbane

HEARING DATE: 21 March 2014

JUDGES: Margaret McMurdo P, Gotterson and Morrison JJA
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **Appeal dismissed, with costs.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – RIGHT OF APPEAL – WHEN APPEAL LIES – ERROR OF LAW – where the appellant requested the learned primary judge provide him with evidence of his Honour’s competence as a judge – where before the learned primary judge the appellant contended that the respondent was obliged to provide him protection against “lawyers’ mafia” and had failed to do so – where the learned primary judge gave judgment to the respondent against the appellant, finding that the appellant’s application had no prospects of success – where on appeal the appellant questioned the competency and legitimacy of appointment of the learned primary judge, the members of this Court and the Supreme Court generally – where the appellant repeats his contention made before the learned primary judge that the respondent was obliged to provide him protection against “lawyers’ mafia” and failed to do so – whether the learned primary judge erred in failing to provide evidence of his Honour’s competence as a judge – whether the learned primary judge erred in finding that the appellant’s application had no prospects of succeeding

Crime and Misconduct Act 2001 (Qld)

Markan v Legal Services Commission [2011] QSC 338, cited
R v Markan [2009] QCA 110, cited

COUNSEL: The applicant appeared on his own behalf
P F Richards for the respondent

SOLICITORS: The applicant appeared on his own behalf
Crime and Misconduct Commission for the respondent

- [1] **MARGARET McMURDO P:** This appeal should be dismissed with costs for the reasons given by Morrison JA.
- [2] **GOTTERSON JA:** I agree with the order proposed by Morrison JA and with the reasons given by his Honour.
- [3] **MORRISON JA:** This is an appeal by Mr Markan from an order giving judgment for the respondent in respect of his entire claim.

The Claim and Statement of Claim

- [4] The claim was filed on 20 May 2013. It seeks the following relief:
- (a) that the respondent make a “public apology for the harm and the distress caused utilizing all major public media available in a clear and highly visible manner”;
 - (b) that the respondent pay monetary compensation of “A\$10000000.13” (AUD\$10,000,000.13), as damages for loss suffered by the appellant;
 - (c) an order declaring the respondent “as criminal organisation and to order its dissolution”;
 - (d) a declaration that the personnel of the respondent are not fit and proper to hold “any position in Queensland requiring trustworthiness and honesty”, and an order “prohibiting those people from applying or holding such positions in Queensland”; and
 - (e) a recommendation from the Court that “the people associated with [the respondent] be sent to re-education facilities where they will be subjected to hard physical labour to instil in them the respect for other people in the community”.
- [5] The statement of claim has a number of curious elements to it, but the essential nature of the claim seems to turn on the appellant’s assertion that: he lodged a formal complaint about the conduct of the Legal Services Commission and the Bar Association of Queensland; he provided evidence that the Legal Services Commission was “involved in mafia style protection of lawyers who are abusing the system, are taking advantage of people in distress, stealing money from people and deceiving people”; the respondent had not taken any action in respect of the complaint nor given any response to the appellant; and that the respondent
“...has been involved in unlawful act [sic] indicating gross malice and ill will – breach of contract and the breach of trust not on individual scale but affecting the whole society, eroding public confidence in the operation of public institutions”.
- [6] The statement of claim commenced with a declaration of what is involved in the appellant’s case, namely:

“The subject of my application to this Court relates to the issue of lack of respect for the human rights in Queensland and the issue of racist attitude, discrimination and vilification of people who are not lawyers and are not of anglo origin and treatment of such people as SECOND CLASS CITIZENS.”

- [7] Then follows a series of allegations in respect of the respondent, including:
- (a) that the respondent is a commercial organisation;
 - (b) that the respondent was an agent of the Queensland government, contracted to provide services to the people of Queensland;
 - (c) that notwithstanding its public claims to be a body that deals with corruption and organised crime, the respondent had failed to provide the appellant with “protection from the abuse by the organized crime – Lawyers Mafia”;
 - (d) the respondent did not act in an honest, fair and reasonable manner, with all due diligence, but rather was guilty of unconscionable conduct and dishonesty;
 - (e) by reason of (c) and (d), the respondent had breached its obligations;
 - (f) that the respondent was involved in:
 - “- protection of interests and hegemony of lawyers in legal industry,
 - abuse and discrimination of people of non anglo origin;
 - the abuse of human rights,
 - deception and fraudulent claims,
 - is inciting of racial hatred,
 - its conduct is the abuse of position of public trust,
 - displays fragrant [sic] contempt of laws of this country,
 - hypocritically is accusing at any occasion other people of being ‘criminals’.”

Material on the application

- [8] On the application before the learned primary judge the respondent relied upon an affidavit which exhibited the appellant’s complaint and other material.¹ The appellant’s contention was that his complaint to the Legal Services Commission about a particular lawyer had gone unexamined because the Legal Services Commission had “swept the matter under the carpet and no action has been taken against crooked lawyer acting dishonestly”.² In fact, the appellant’s complaint in respect of the lawyer resulted in the Legal Services Commission determining that disciplinary proceedings would be instituted against that lawyer. That was notified to the appellant on 11 April 2011.³ The appellant instituted proceedings by way of judicial review, in respect of the Legal Services Commission’s handling of the complaint. The Supreme Court determined that there was no basis for a review.⁴
- [9] The affidavit also exhibited correspondence between the appellant and the respondent in 2009, concerning his complaints about his trial and conviction on a charge of causing grievous bodily harm. The appellant represented himself at the trial, but was represented by counsel on the subsequent appeal.⁵

¹ AB 8-162.

² AB 13; Letter from Mr Markan to the Crime and Misconduct Commission, dated 4 February 2013.

³ AB 15; Letter from the Legal Services Commission to Mr Markan, dated 11 April 2011.

⁴ *Markan v Legal Services Commission* [2011] QSC 338.

⁵ *R v Markan* [2009] QCA 110.

- [10] The complaints to the respondent in 2009 concerned the conduct of the trial judge and the two Crown prosecutors.⁶ Those complaints were dismissed.⁷ On 28 March 2011, the respondent, in response to further correspondence by the appellant, advised that it had considered his latest material concerning the conduct of the judge and prosecutors during his trial, but reaffirmed the position that there was no suspicion of official misconduct.⁸
- [11] Later complaints in 2011 were directed at the individual lawyers who represented him on the appeal against his conviction. Those complaints had been directed in the first instance to the Legal Services Commission. Because the complaints were against individual privately practising lawyers, the complaints were referred to the Bar Association of Queensland for investigation. On 6 July 2011 and 1 August 2011 the appellant was advised of those steps, by the Legal Services Commission and Bar Association of Queensland respectively.⁹
- [12] The affidavit material filed by the respondent before the learned primary judge established that the respondent's functions arise from the *Crime and Misconduct Act 2001 (Qld)* ("the Act"), and do not involve any suggestion of contract with complainants. Further, it is not part of the function and purpose of the respondent to deal with complaints about private lawyers, because a private law practice or firm of lawyers does not fit within the statutory definition of a "unit of public administration". Finally, unless the complaint about a private lawyer in a private law practice or firm of lawyers involved "major crime", within the definition of that term in Sch 2 of the Act, the respondent had no function to fulfil in terms of investigation.¹⁰
- [13] On the application itself the appellant did not file any written material. In terms of his submissions, the appellant commenced with this question: "Is the Queensland legal system a dodgy, shabby backyard operation or respectable system which complies with international rules, standard and obligation?"¹¹ He went on to state that the general subject of his application to the Court was in the terms recited above at paragraph [6].
- [14] After a recitation of various points concerned with an asserted lack of recognition of human rights in Queensland, the appellant then requested the learned primary judge to "respect the law and provide me with the evidence of your competence as the judge".¹² Not surprisingly, the learned primary judge declined, but invited any other submissions the appellant wished to make. The appellant persisted with that line and eventually advanced the following points:
- (a) that the respondent had denied him his entitlement to protection under the law against the "lawyers' mafia";¹³ he identified the "lawyers' mafia" as being "people who are not only lawyers and

⁶ AB 25; Letter from the Crime and Misconduct Commission to Mr Markan, dated 14 September 2009.

⁷ AB 33; Letter from the Crime and Misconduct Commission to Mr Markan, dated 17 June 2009.

⁸ AB 128; Letter from the Crime and Misconduct Commission to Mr Markan, dated 28 March 2011.

⁹ AB 17 (Letter from the Legal Services Commission to Mr Markan, dated 6 July 2011), 19 (Letter from the Bar Association of Queensland to Mr Markan, dated 1 August 2011), 21 (Letter from the Bar Association of Queensland to Mr Markan, dated 1 August 2011), and 23 (Letter from the Bar Association of Queensland to Mr Markan, dated 1 August 2011).

¹⁰ AB 8-9.

¹¹ AB 3.

¹² AB 4.

¹³ AB 6.

barristers but people who are associated with legal organisations”, including the respondent, the Queensland Bar Association, and the Legal Services Commission;¹⁴

- (b) that there was a “social contract” between himself and the State of Queensland, and that the respondent, as a subcontractor to the Queensland government, had to provide him with protection against the “lawyers’ mafia”;¹⁵
- (c) that the “racial structure” of the respondent indicated that the entire organisation was of English origin, without representation from any other group; he continued that this was a “racist policy” affecting many people including himself.

The decision by the learned primary judge

- [15] His Honour correctly recognised that central to the claim for declaratory relief under the claim and statement of claim, was the allegation that there was a “lawyers’ mafia” which was being protected by the respondent, evidenced by the dismissal of Mr Markan’s complaints. His Honour then referred to the powers and responsibilities of the respondent and its function which included investigating allegations of misconduct in “units of public administration”. He then referred to the respondent’s contentions which included that there was no basis to the complaints lodged by the appellant, there were no prospects of success against the respondent in the action because the respondent had no jurisdiction to take any action against private lawyers, and there was no evidence at all of a “lawyers’ mafia”.
- [16] His Honour concluded that there was no prospect of succeeding on any part of the claim because: there was no evident factual basis upon which it could be supported, particularly as to the assertion of a “lawyers’ mafia”; the legislative scheme, under which the respondent was established, did not support the possibility of a claim; the suggested lack of respect for human rights, as a basis for the claim, lacked merit and was irrelevant; and that there was no evidence to suggest the respondent had failed to carry out its obligations properly.

Discussion

- [17] The appellant’s address to this Court, both in writing and orally, consisted of a repetition of what had occurred before the primary judge. The written outline commenced with the same identification of the subject matter of the application, as is set out in paragraph [6] above. It went on to make demands that the appellant’s human rights be acknowledged and respected, though no coherent argument was developed as to why they might have been infringed. Further, the written outline attacked the learned primary judge on the basis of his lack of competency, and made scandalous assertions going to the judge’s character and competence. No evidence was led, nor any persuasive argument advanced, to support any of those allegations.
- [18] The central theme of the written outline was that for a variety of reasons, some of them bizarre, the learned primary judge was not qualified to hear the application because of his appointment under an illegitimate and corrupt legal system. The appellant’s written outline in reply descended to even greater depths in terms of abuse, not only of the learned primary judge, but also the respondent’s deponent of the affidavit filed on the application. I do not intend to repeat the abuse in terms, but it can be characterised as pernicious allegations concerning a “lawyers’ mafia”.

¹⁴ AB 6.

¹⁵ AB 6.

- [19] The appellant did not elevate his argument in his oral address. Once again he commenced with the recitation set out in paragraph [6] above. He questioned the competency and legitimacy of the appointment of the members of this Court, as well as the Supreme Court generally, and demanded that the members of the Court provide him with “the evidence of your competence as a judge”. He then embarked upon what could only be described as a diatribe about the “lawyers’ mafia” and the denial of his human rights.
- [20] The appellant’s abuse of the Court, and of the opportunity to address the issues in the appeal, reached the level where he asserted that none of the members of this Court were recognised by him as legitimate judicial officers, able to hear and determine the issues in the appeal, describing this Court as a “kangaroo court”. In response to questions from the bench, the appellant agreed that he did not wish this Court to make any decision on his appeal, but rather merely to remain idly by while he made a speech.
- [21] More importantly, nothing in the appellant’s address raised any new point from that which was evident in the submissions made to the learned primary judge. Nor was any ground established to suggest error on the part of the learned primary judge.
- [22] In my view it has not been demonstrated that the learned primary judge erred in any way.¹⁶ Indeed, his Honour’s decision to grant judgment on the basis of the claim and statement of claim in this case was plainly correct.¹⁷ The facts referred to in paragraphs [8] to [12] above reveal that the appellant’s complaints were properly dealt with by the appropriate bodies.¹⁸ The claim and statement of claim were manifestly without merit and doomed to fail.¹⁹

Conclusion

- [23] I would dismiss the appeal, with costs.

¹⁶ See *Gobus v Queensland Police Service* [2013] QCA 172.

¹⁷ See *Deputy Commissioner of Taxation v Salcedo* [2005] QCA 227.

¹⁸ That was also evident in this Court’s decision in an earlier case brought by the appellant against the Bar Association of Queensland: *Markan v Bar Association of Queensland* [2014] QCA 34, at [3]-[6].

¹⁹ Aspects of the claim in this case are similar to the appellant’s claim against the Bar Association of Queensland: *Markan v Bar Association of Queensland* [2014] QCA 34. As the reasons in that case show, at [1], [3]-[7] and [26], the assertions in that statement of claim bore a close resemblance to those advanced in this case. That claim was also struck out.