SUPREME COURT OF QUEENSLAND

CITATION:	*Markan v Bar Association of Queensland (No 3)* [2014] QSC 225
PARTIES:	**PETER MARKAN** (plaintiff) v **BAR ASSOCIATION OF QUEENSLAND** (defendant)
FILE NO/S:	BS2980/14
DIVISION:	Trial
PROCEEDING:	Application
DELIVERED ON:	15 September 2014
DELIVERED AT:	Brisbane
HEARING DATE:	30 July 2014
JUDGE:	Alan Wilson J

ORDERS:

1. **That the defendant have leave under s 5 of the *Vexatious Proceedings Act* 2005 (Qld) to apply to the Court for a vexatious proceedings order under the *Vexatious Proceedings Act* 2005 (Qld) against the plaintiff Peter Markan;**

2. **That it be declared that Peter Markan is a person who has frequently instituted or conducted vexatious proceedings in Australia, within the meaning of s 6 of the *Vexatious Proceedings Act* 2005 (Qld);**

3. **Pursuant to s 6 (2)(a) of the *Vexatious Proceedings Act* 2005 (Qld), this proceeding BS2980/14 is stayed;**

4. **Pursuant to s 6 (2)(b) of the *Vexatious Proceedings Act* 2005 (Qld), Peter Markan is prohibited from instituting proceedings in any Queensland Court, apart from an appeal from these orders;**

5. **The applications brought by Peter Markan filed on 26 May 2014 are dismissed; and**

6. **That Peter Markan pay the defendant's costs, assessed on the indemnity basis.**

CATCHWORDS:	PROCEDURE – MISCELLANEOUS PROCEDURAL MATTERS – VEXATIOUS LITIGANTS AND

PROCEEDINGS – where the plaintiff has brought numerous proceedings in the Queensland Supreme Court, Queensland Court of Appeal and the High Court in response to his conviction for a criminal offence in the District Court of Queensland in 2008 – where the defendant has brought an application to make the plaintiff the subject of a vexatious proceedings order under the *Vexatious Proceedings Act* 2005 (Qld) – where the plaintiff has brought a number of cross-applications – whether proceedings brought by the plaintiff should be stayed – whether the plaintiff should be made the subject of a vexatious proceedings order

Anti-Discrimination Act 1991 (Qld), s 7, s 9, s 10
Australia Act 1986 (Cth)
Australian Constitution, s 109, s 117
Australian Courts Act 1828 (UK)
Australian Human Rights Commission Act 1986 (Cth)
Charter of Human Rights and Responsibilities Act 2006 (Vic)
Charter of the International Military Tribunal at Nuremberg
Due Process of Law Act 1368
Human Rights Act 2004 (ACT), Part 3
International Covenant of Civil and Political Rights, art 2, art 3, art 14, art 25, art 26
Magna Carta
Queensland Constitution, s 59
Rome Statute of the International Criminal Court
Statute of Monopolies 1623
Vexatious Proceedings Act 2005 (Qld), s 5, s 6

Attorney-General (NSW) v Chan [2011] NSWSC 1315, cited
Attorney-General (NSW) v Gargan [2010] NSWSC 1192, cited
Brown v Lizars (1905) 2 CLR 837, cited
Chia Gee v Martin (1905) 3 CLR 649, cited
Clough v Leahy (1904) 2 CLR 139, cited
Essenberg v The Queen (2000) 21(13) Leg Rep C3e, cited
Gargan v Kippin Investments Pty Ltd [2009] FCA 398, cited
Jones v Cusack (1992) 109 ALR 313, cited
Mabo & Ors v Queensland (No 2) (1992) 175 CLR 1, 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] HCASL 80, related
Markan v Bar Association of Queensland [2014] QCA 34, related
Markan v Bar Association of Queensland (No 1) [2013] QSC 108, related
Markan v Bar Association of Queensland (No 2) [2013] QSC 109, 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
Mudie v Gainriver Pty Ltd (No 2) [2003] 2 Qd R 271, cited
Powell v Lee (1908) 99 LT 284, cited
R v Markan [2009] QCA 110, related
Re Skyring [1994] QCA 143, cited
Smith v Hughes (1871) LR 6 QB 597, cited

COUNSEL: Mr Markan appeared on his own behalf
DG Clothier QC with PJ McCafferty for the defendant

SOLICITORS: Mr Markan represented himself
Bartley Cohen for the defendant

[1] **Wilson J**: This is the third action Mr Markan has brought against the Bar Association of Queensland. He has also, out of those proceedings, brought three appeals to the Court of Appeal and two applications to the High Court for special leave to appeal. He has also brought proceedings against the Crime and Misconduct Commission (as it was formerly named) and the Queensland Police Service. In the CMC action he also, again, brought an appeal in the Court of Appeal.

[2] BAQ says all these proceedings involve unmeritorious, fanciful or ridiculous claims which, despite dismissal by judges at first instance and in appeal courts, are maintained by Mr Markan – to the point, BAQ argues, that he should be made the subject of a *vexatious proceedings order* under the *Vexatious Proceedings Act* 2005 (Qld). If an order under the VPA is not made then BAQ seeks, in the alternative, an order striking out his claim and statement of claim in this action.

[3] Mr Markan cross-applies. He seeks orders that BAQ should be declared the *vexatious person*, and that BAQ's application to strike out his claim and statement of claim should, itself, be struck out. He also cross-applies for an order that the Court reject BAQ's application for the *vexatious order* against him; and, for the selection of a "*…neutral, independent and impartial arbitrator to preside over the Court hearing*". (Unless otherwise indicated, words and phrases in italics are taken from Mr Markan's court documents and submissions.)

Where it began: Mr Markan is, in his view, wrongly convicted of a criminal offence

[4] In late 2008 Mr Markan was convicted by a jury in the District Court of one count of grievous bodily harm and sentenced to four years' imprisonment, with a parole date fixed after two years. He was alleged to have assaulted a fellow employee at a resort where they both worked on South Stradbroke Island, breaking his left arm.

[5] Mr Markan represented himself at trial. He did not give or call evidence. His case, which he put to the complainant in cross-examination, was that the complainant was the aggressor and that Mr Markan had not caused him any physical injury except to his hands and arms. Although Mr Markan had told investigating police that he had acted in self defence, and although the judge presiding at his trial had warned Mr

Markan that unless he gave evidence there would be no evidence before the jury on that issue, he nevertheless chose not to give evidence himself.

[6] After the trial Mr Markan retained solicitors who engaged Mr Tim Carmody SC (as the present Chief Justice then was) and Mr Douglas Wilson of counsel to advise in relation to, and represent him in, an appeal. An appeal against conviction only was commenced. It was heard on 27 March 2009 and dismissed by the Court of Appeal on 1 May 2009.[1]

[7] Mr Markan then retained different solicitors who engaged Mr Paul Smith of counsel (as his Honour then was) to advise in relation to a special leave application which was filed, but dismissed by the High Court on 4 November 2012.[2]

[8] The application for special leave contained six grounds of appeal. The first was that there was an irregularity in the selection of the trial judge who had previously been the Director of Public Prosecutions. The High Court, after noting that the Court of Appeal had not been asked to address that question, observed that "*... no claim of bias could succeed unless it were demonstrated that the trial judge had been personally involved in the decision to proceed against the applicant. This has not been demonstrated*".[3]

[9] The second ground alleged procedural unfairness at the trial – that the trial judge had refused to have the complainant recalled so that a medical witness could examine him. Again, the High Court noted, the matter did not appear to have been taken up in the Court of Appeal but, in any event, Mr Markan had not demonstrated error in the trial judge's discretionary decision on the point.[4]

[10] The third ground involved a complaint by Mr Markan that he was wrongly prevented from asking an investigating police officer why the officer did not ask the complainant about a supposed discrepancy between the complainant's claim that he had been hit many times on the head, and the lack of any signs of this during medical examination. Mr Markan also complained that the trial judge had wrongly refused to allow a question as to why the police officer had concluded that Mr Markan was not acting in self-defence. Again, the High Court observed that Mr Markan had not demonstrated error in the Court of Appeal's failure to uphold those complaints – the first question was a matter for medical evidence, and the second involved an attempt to seek an opinion on the matter not the subject of expert evidence.[5]

[11] The fourth ground related to the trial judge's summing up, and errors alleged to have occurred in it. Mr Markan complained that the Court of Appeal had not dealt with the matter but, as the High Court observed, it did not appear that it had been asked to do so. In any event, as the High Court went on to observe, the complaints (which focused upon an alleged absence of medical evidence about the complainant having head injuries) were pointless; there was clear evidence that the complainant suffered a broken arm at the hands of Mr Markan, and that was sufficient so as to

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1 *R v Markan* [2009] QCA 110.
2 *Markan v The Queen* [2010] HCASL 241.
3 Ibid at [4].
4 Ibid at [5].
5 Ibid at [6].

establish grievous bodily harm; and, Mr Markan did not himself give evidence to contradict the complainant's evidence about being hit on the head.[6]

[12] The fifth ground related to a reference by the complainant, while testifying, to Mr Markan adventuring into cyber-crime. There was some focus, in the course of the trial, on whether this was a reference to a prior criminal conviction of Mr Markan. Later, in the presence of the jury, the witness withdrew any suggestion of any previous conviction of Mr Markan for cyber-crime.[7]

[13] The sixth ground involved a submission that the conviction was based on fabricated evidence – in particular, the complainant's claim to have been hit on the head and the leg. Mr Markan complained that the Court of Appeal had not dealt with those points but, again, the High Court was not dissuaded that it had been asked to do so, and said: "*What the jury made of the evidence and the complainant's credibility was a matter for them*".[8]

[14] It is compelling, from a reading of the decisions of the Court of Appeal and the High Court, that Mr Markan made a number of wide-ranging complaints to both about his criminal trial but that in each instance the appeal court concluded that they were immaterial, were not the product of any error by the presiding trial judge, and, insofar as the trial could be said to have been conducted in a way disadvantageous to Mr Markan, that was the sole product of decisions he made himself – in particular, the decision not to give evidence – in circumstances where he had been fully and fairly informed of his choices, and the consequences of them, by the trial judge.

Mr Markan complains about his lawyers

[15] Mr Markan complained to the Legal Services Commission about the conduct of his solicitors and counsel in both appeals. The Commissioner referred his complaints about the barristers to BAQ for investigation, report and recommendation. In April 2012 BAQ delivered two reports to the Commissioner in which it concluded that neither Mr Carmody SC and Mr Wilson in the Court of Appeal, nor Mr Smith in the High Court, were guilty of any misconduct. Mr Markan's principal complaint had been that his barristers did not run points which he considered to be important. Some of them were, in fact, advanced on his special leave application and found not to have merit. In respect of all the others, BAQ's report concluded that any failure by the barristers to follow Mr Markan's instructions was the legitimate product of their own forensic judgment, consistent with applicable rules of conduct and their overriding duty to the court.

[16] Mr Markan did not sue his solicitors or barristers. Rather, he commenced the various actions against BAQ, and the Police Commissioner and the CMC, which are now said to be vexatious.

Mr Markan's first action (BS928/13) and the appeals in it

[17] In his first proceeding, begun in February 2013, Mr Markan pleads that arising out of the actions of the Legal Services Commissioner and BAQ in investigating his

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6 Ibid at [7].
7 Ibid at [8].
8 Ibid at [10].

complaints about his barristers (of which he had notice) and his acceptance of that procedure, there was a contract between him and BAQ which the Association breached by failing to find in his favour – i.e., by not making findings of misconduct by the barristers.

[18] Mr Markan sued BAQ for $10,000,000.13, alleging that it is an "*... arrogant mafia organisation operating to subvert the Government and community institutions*", and has been involved in a "*... fragrant contempt of laws in this country*", which involved "*... unlawful act [sic] indicating gross malice and ill will ... affecting the whole society, eroding public confidence in the operation of justice system [sic]*".

[19] The damages are calculated under six heads – compensatory, consequential, aggregated, exemplary, parasistic [sic] and restitution damages – with an amount of $1,666,666.683333 for each head.

[20] BAQ applied to have the statement of claim struck out. After a hearing before Dalton J on 5 March 2013, Mr Markan filed an amended claim and statement of claim. It was, arguably, more extreme and less coherent. In it, he: "*…demands that the Defendant makes the public apology for the harm and distress caused utilizing all major public media available in a clear and highly visible manner*"; alleges BAQ has been involved in criminal conduct; and, demands that "*... people associated with the Bar Association of Queensland ... be sent to re-education facilities where they will be subjected to hard physical labour to instill [sic] in them the respect to other people in the community*".

[21] In the statement of claim there is an apparent attempt to improve the pleading relating to the alleged breach, with an allegation that BAQ failed to provide "*... the service of 'INVESTIGATION' in honest, fair and reasonable manner according to law*".

[22] The new claim also seeks a declaration that BAQ is a "*... criminal organisation and to order its dissolution*".

[23] Mr Markan also applied, separately, for orders that a "*... neutral independent and impartial arbiter ... preside over the court hearing this case*". Atkinson J heard that application on 17 April 2013. Mr Markan asked her Honour to disqualify herself. She refused.[9] A week later, on 24 April 2013, she heard BAQ's renewed application to strike out the proceedings, and Mr Markan's oral application for a stay of her decision not to disqualify herself.[10] On 7 June 2013 she made orders striking out the claim and statement of claim.[11] In her reasons Atkinson J concluded that there was no basis in fact or law for the plaintiff's claims sufficient to maintain his case. She observed that "*... portions of the claim and statement of claim and amended statement of claim merely make scandalous accusations of criminal or other serious misconduct without pleading any material facts which could be said to support such allegations*"; and, "*... to allow such pleadings to continue would be an abuse of process of the court*"; and, that the claims made by Mr Markan contained "*… numerous baseless and scandalous allegations of dishonest conduct*".[12]

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9 *Markan v Bar Association of Queensland (No 1)* [2013] QSC 108.

10 The stay was refusedo on the date of the hearing: *Markan v Bar Association of Queensland (No 2)* [2013] QSC 109.

11 *Markan v Bar Association of Queensland* [2013] QSC 146.

12 Ibid at [61]-[63].

[24] Between the first and second hearings before Atkinson J Mr Markan had appealed to the Court of Appeal, and sought a stay pending the determination of that appeal. He also appealed the decision striking out his claim and statement of claim. Both appeals were heard together on 8 October 2013. Both were dismissed on 13 December 2013.[13] The Court, in a joint judgment, concluded that the pleadings, even after amendment, did not disclose any reasonable cause of action.[14]

[25] Mr Markan filed two applications for special leave to appeal against both orders made by the Court of Appeal. In them he described the conduct of Atkinson J, and the Court of Appeal judges, as "… *like mafia dons protecting their friends and to pervert or obstruct Justice and the Rule of Law*". The applications were dismissed on 13 May 2014,[15] Bell and Gageler JJ observing that there was no error in the decision of Atkinson J not to recuse herself, and that her assessment that the amended statement of claim disclosed no reasonable cause of action was unimpeachable.

Mr Markan's second action (BS6041/13) and the appeals in it

[26] Mr Markan had commenced the first action in February 2013. In early June 2013 he sent BAQ what purported to be an invoice for $11,000,000.13 "… *for the service provided by Peter Markan concerning the redemption of Bar Association of Qld*". It purports to be a detailed invoice with particulars – e.g., Mr Markan purports to "charge" BAQ $2,000 per minute for 1,500 minutes for work associated with an attendance in court before Atkinson J on 24 April 2013, for a total cost of $3,000,000.

[27] Less than a month later he began a new action claiming, again, that BAQ make a public apology for public distress caused to him; that anyone associated with BAQ be sent to re-education facilities and subjected to hard labour; and that he be paid $11,000,000.13 for services by which Mr Markan had provided BAQ with "… *the service of 'public ridicule' and 'public humiliation'*".

[28] The statement of claim is couched in quite conversational terms – e.g., "… *queensland [sic] barristers enjoy being abused, cursed and swore at because they get sexual satisfaction from it. Although it sounded to me weird, kinky and depraved I kept it to myself because you do not say such things to clients*".

[29] The prayer in the statement of claim seeks payment of the invoice for $11,000,000.13 "*exactly and approximately*". As to interest it alleges that Mr Markan is " … *in the process of creating the algorithm for the calculation of the interest on the money due. However initial calculation, looking at the array of the derivative of the variance between parameters and arguments of the difference between queensland barristers [sic] stupidity and their arrogance, shows values unbelievably huge and requires further testing*".

[30] BAQ applied to strike out the claimant's statement of claim. Mr Markan cross-applied for the selection of a "… *neutral, independent and impartial arbiter to preside over the court hearing this case*"; to strike out BAQ's application; and, for a grant of "… *LEGAL IMMUNITY for anything done or said in court by the plaintiff*".

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13 *Markan v Bar Association of Queensland* [2013] QCA 379.

14 Ibid at [31].

15 *Markan v Bar Association of Queensland* [2014] HCASL 80.

[31] The applications were heard by Fryberg J on 25 and 26 July 2013. Again, Mr Markan asked the judge to recuse himself. That was refused. Mr Markan then sought to "… *exercise common law rights and human rights*" and informed the Court that he was "*refusing to participate in this proceeding*". In his absence Fryberg J determined all the applications and, as BAQ requested, struck out the action. He observed that the statement of claim "… *contains no cause of action known to law. The document is, in short, fanciful. The claim is unsustainable and consequently should not be allowed to proceed*".

[32] Mr Markan filed a notice of appeal in early August 2013, relying on grounds almost identical to those put forward in his earlier appeal against the orders of Atkinson J. The appeal came on for hearing on 18 February 2014. Mr Markan asked each of the judges (McMurdo P, Muir JA and Mullins J) to recuse themselves. They refused. Their decision was handed down on 28 February 2014.[16] Mr Markan's claims for payment of his invoice were variously described as "*patently ridiculous*" (McMurdo P), "*frivolous, vexatious and scandalous*" (Muir JA) and "*misguided*" (Mullins J).

[33] Mr Markan has sought special leave in the High Court to appeal against those orders. His application alleges that the decision is "*deeply offensive*" and makes an unparticularised allegation that one of the appeal court judges was "*... receiving financial benefit from the other party before the court*". The Queensland Supreme Court is described as "*... the hub of racism*". The application is yet to be determined.

Mr Markan's third action (BS2980/14)

[34] This third action, in which his and BAQ's applications are now being considered, also followed a purported "invoice" from Mr Markan to BAQ. On its face it has two components. The first is described as the "*non creative*" component for $500,000 which, it is said, has been "*graciously waved [sic]*". The second is described as the "*creative component*" for the "*promotion of Bar Association of Queensland ... as the most effective Mafia organisation in the world*". The amount, which is not broken down, is $10,000,000.13. The statement of claim alleges the parties have reached an agreement, under which this sum is payable by BAQ to Mr Markan, "*... by virtue of their conduct*".

[35] It is alleged in the statement of claim that BAQ has been a "*very successful criminal organisation*" which has gained its "*greatest benefit ... by obtaining the monopoly for the staffing the position of 'judges' in courts"*; and that "*...mafia appointed 'judges' ... corruptly obtained position of so called 'authority' within legitimate legal system"*. Amongst Mr Markan's prayers for relief he seeks a declaration that s 59 of the *Queensland Constitution* is invalid (because it breaches the *Statute of Monopolies* 1623 and "*human/civil rights legislation*"), and an associated declaration that "*any member of the community has the right to become a judge (as unalienable human/civil right [sic]), as such job does not require any specific qualifications or competence*".

[36] Again, the pleading includes claims that BAQ is a criminal organisation, and that persons associated with it should be sent to re-education facilities and subjected to hard physical labour.

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16 *Markan v Bar Association of Queensland* [2014] QCA 34.

[37] Again, when BAQ attacked his pleading Mr Markan cross-applied: to strike out BAQ's application to strike out his claim and statement of claim; to reject BAQ's application that he be declared a vexatious litigant; to declare to have BAQ itself declared a vexatious "person"; and, for the selection of a neutral and independent and impartial arbiter to reside over the court hearing.

Mr Markan's other litigation: Crime and Misconduct Commission, Qld Police Service and Legal Services Commission

[38] It is not only BAQ which has been the subject of proceedings of this kind, brought by Mr Markan. He sued the Crime and Misconduct Commission (as it then was) in proceedings commenced in May 2013. He also sued the CMC for $10,000,000.13 for damages, sought a public apology from it and, also, asked the court to recommend that people associated with that organisation be sent to re-education facilities where they would be subjected to hard physical labour.

[39] As the decision of the Court of Appeal in *Markan v Crime and Misconduct Commission* [2014] QCA 60 shows, Mr Markan had earlier instituted proceedings against the Legal Services Commission in the nature of an application for judicial review of the Commission's handling of his original complaint. A judge of the Supreme Court determined there was no basis for a review.[17] Then, he lodged a formal complaint with the CMC about the conduct of the Legal Services Commission and BAQ alleging – again and in particular – that the Commission was "*involved in mafia style protection of lawyers who are abusing the system*". When the CMC did not take any action in respect of that complaint he bought proceedings in which he alleged the CMC was a "*commercial organisation*", contracted "*to provide services to the people of Queensland*" but had failed to act in an "*honest, fair and reasonable manner …, but rather was guilty of unconscionable conduct and dishonesty*" and had therefore failed in its duties.

[40] The Trial Division judge who heard the matter determined there was no basis for judicial review.

[41] The same themes emerged in Mr Markan's claim and statement of claim in the CMC proceedings and in his written and oral submission to the Court of Appeal as in his three actions against BAQ. At paragraph [17] of his reasons in the Court of Appeal, Morrison JA (with whom McMurdo P and Gotterson JA agreed) noted that Mr Markan's written and oral submissions to the court consisted of a repetition of what had occurred before the primary judge, and went on to make demands that Mr Markan's human rights be acknowledged and respected, and attacked the primary judge on the basis of his lack of competency, and made "*scandalous assertions going to the judge's character and confidence*" – without, again, any evidence or persuasive arguments to support any of these allegations.

[42] At paragraph [18] Morrison JA observed that the central theme of Mr Markan's 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. At [20] he observed that Mr Markan's

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

> "*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'*".

The appeal was dismissed, with costs.

[43] Mr Markan then sent correspondence to the Commissioner of Police calling for the "*arrest, investigation and prosecution*" of the three judges who determined the CMC matter in the Court of Appeal. When that did not happen he brought proceedings against the Qld Police Service.[18] He, again, sought damages of $10,000,000.13 on the basis that QPS had breached its "*SOCIAL CONTRACT*" to protect him as a member of the Queensland community.

[44] In his statement of claim he says that at the Court of Appeal hearing he asked all three presiding judges to provide evidence of their competence; that they failed to do so; and, therefore, in the absence of that evidence there could, in effect, be no disagreement with his categorisation of the court as a "*kangaroo court*", nor any legal challenge to that conclusion. He recites, in the statement of claim, that he is treating those appeal court judges "*… just as the public gallery and they are welcome to listen to my issues I have with 'Crime and Misconduct Commission' and then I presented my case in legitimate court without illegitimate judges*".

[45] The prayer for relief seeks orders, again, for a public apology; for a declaration that the QPS be declared a "*CRIMINAL ORGANISATION*"; and that persons associated with the QPS be sent to re-education facilities and subjected to hard labour.

[46] Mr Markan brought an application that a Trial Division judge, sitting in applications, make orders freezing QPS's bank accounts and all available assets and, indeed selling the QPS including its assets if the amount "*… in bank accounts is not sufficient to cover my legal Claim*"; and, in any event, for the payment to him of $10,000,000.13.

Do any of Mr Markan's claims have substance?

[47] It might be argued by Mr Markan, as a non-lawyer and a self-represented litigant, that the various terms used by judges to describe his proceedings and his conduct of them are expressed in lawyerly terms and, in some cases, a form of judicial shorthand, and that no court or judge has ever actually pointed out or explained to him, citing chapter and verse, why all the relief he seeks is without any legal basis and doomed to fail. It is appropriate, then, to consider the basis of his claims and, for the sake of finality, to consider if any have any merit or substance.

[48] First, there is no basis for his claims alleging contracts with some defendants, and breaches of them. BAQ's initiation of an investigation, for example, did not bring into existence a contract with Mr Markan for the simple reason the alleged

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[18] BS4836/14.

transaction did not occur, is entirely unilateral, and lacks a fundamental prerequisite for the creation of a contract: an offer, and its acceptance.[19]

[49] Secondly, Mr Markan attempts to rely upon a number of international treaties to support his contention that the judicial selection process, set out in s 59 of the *Queensland Constitution*, overlooks fundamental human rights; and, therefore, that the judges are biased because they are chosen from a particular portion of society, namely lawyers.

[50] He relies, for this argument, upon the right to a "*fair and public hearing by a competent, independent and impartial tribunal established by law*" guaranteed by Article 14 of the *International Covenant of Civil and Political Rights* (ICCPR), and a number of other articles concerning equal treatment;[20] but, his contention that the ICCPR is binding law in Queensland by virtue of ss 109 and 117 of the *Australian Constitution* is incorrect, as it does not bring into play constitutional issues regarding inconsistencies between Commonwealth and State laws, nor laws that discriminate between residents of different States.

[51] Further, the ICCPR is an international treaty that is not directly enforceable by Australian courts. Mr Markan points to the replication of much of the ICCPR in the human rights legislation in Victoria and the Australian Capital Territory,[21] but these statutes are not applicable in Queensland, and there is no comparable Queensland Act that establishes that the ICCPR is binding in this State. For the same reason, the Supreme Court of Queensland has no jurisdiction to determine alleged breaches of other international treaties, including the *Rome Statute of the International Criminal Court*, and the *Charter of the International Military Tribunal at Nuremberg*.[22]

[52] Thirdly, Mr Markan relies on anti-discrimination legislation to further his argument relating to the unfairness of judicial appointments. Mr Markan cannot rely on the *Australian Human Rights Commission Act* 1986 (Cth), as it invests that Commission with a statutory jurisdiction beyond the scope of this Court. Mr Markan also contends that the suppression of his claim is "*direct discrimination*" (section 9(a)) and discrimination on the basis of a "*political belief or activity*" (section 7(j)) under the *Anti-Discrimination Act* 1991 (Qld), but he is unable to provide factual evidence demonstrating direct discrimination in the legal sense, namely how he has been treated "*less favourably*" by the BAQ, on the basis of his political beliefs or the political activities in which he might engage.[23]

[53] Fourthly, he claims that the judicial selection process in Queensland is inconsistent with principles enunciated by the *Magna Carta*, the *Due Process of Law Act* 1368

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19 *Smith v Hughes* (1871) LR 6 QB 597; *Powell v Lee* (1908) 99 LT 284. This had previously been explained to Mr Markan in the context of a similar claim in the reasons of Atkinson J in *Markan v Bar Association of Queensland* [2013] QSC 146 at [41].

20 Articles 2 (equal treatment without distinction), 3 (although this is relied upon on a misconceived basis as it enshrines the right to equality between men and women regardless of gender), 25 (freedom to take part in public affairs and have access to the public service) and 26 (equal protection of the law).

21 *Charter of Human Rights and Responsibilities Act* 2006 (Vic); *Human Rights Act* 2004 (ACT), Part 3.

22 The *Rome Statute* is the treaty that established the International Criminal Court, and the *Charter of the International Military Tribunal at Nuremberg* was the decree issued on 8 August 1945 setting out the laws and procedures that would govern the Nuremberg Trials.

23 *Anti-Discrimination Act* 1991 (Qld), s 10(1).

and the *Statute of Monopolies* 1623. Although these historical instruments were received as English law by the Australian colonies through a number of Imperial Acts,[24] they are not binding legislation. This is because, like all British statutes, they do not apply to the extent that the Commonwealth or Queensland legislatures have chosen, through exercising their parliamentary sovereignty, to override them.[25]

[54] Finally, he refers to *Mabo (No 2)*[26] to suggest that judges of the Supreme Court do not have judicial authority because that case established that "*previous pretences that Australia was an empty country or empty place is* [sic] *not valid*" and that "*that law of the land is an Aboriginal law*".[27] Although Mr Markan's first contention is correct and the High Court did reject the doctrine of *terra nullius* and recognise common law native title, it did not undermine or supersede Anglo-Australian law *per se* or impact on the validity of the appointment of judicial officers in this country.

Should an order be made against Mr Markan under the VPA?

[55] BAQ's contention, is, in short, that Mr Markan has serially instituted and pursued vexatious proceedings against BAQ and other parties, and there is an irresistible inference that he will continue to do so.

[56] Under s 6 of the VPA a "*vexatious proceedings order*" can be made if the court is satisfied if the person has frequently instituted or conducted vexatious proceedings in Australia.

[57] A "*vexatious proceeding*" is defined in the dictionary to the VPA to include a proceeding that is an abuse of the process of a court; a proceeding instituted in a court to harass or annoy, to cause delay or detriment, or for another wrongful purpose; a proceeding instituted in a court without reasonable ground; and, a proceeding conducted in a court in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose.

[58] The term has been construed to mean something more than a lack of success – rather, the proceedings must be seriously and unfairly burdensome, prejudicial or damaging or productive of serious and unjustified trouble and harassment.[28]

[59] The court has to consider two matters, and be satisfied about them: that the plaintiff has instituted or conducted vexatious proceedings; and, that they have been instituted or conducted frequently.

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24 English law was received into the colony of New South Wales on 25 July 1828 by virtue of the passage of the *Australian Courts Act* 1828 (UK). It was also received into Queensland on this date, as it was part of New South Wales until its segregation in 1859.

25 *Chia Gee v Martin* (1905) 3 CLR 649, 653 per Griffith CJ, cited in *Re Skyring* [1994] QCA 143 at 4 by Macrossan CJ, McPherson and Pincus JJA; *Brown v Lizars* (1905) 2 CLR 837, 867 per O'Connor J; *Clough v Leahy* (1904) 2 CLR 139, 151 per Griffith CJ; affirmed more recently by McHugh J in special leave application *Essenberg v The Queen* (2000) 21(13) Leg Rep C3e.. The *Australia Act* 1986 (Cth) prevented the United Kingdom from legislating with effect in Australia from the date it came into operation on 3 March 1986.

26 *Mabo & Ors v Queensland (No 2)* (1992) 175 CLR 1.

27 Transcript at 1-11.

28 *Mudie v Gainriver Pty Ltd (No 2)* [2003] 2 Qd R 271 at 283-4.

[60] *Frequently* is a relative term, to be considered in the context of litigation and may also include applications made within proceedings.[29] The number of actions, and applications in court, brought by Mr Markan since 2011 fairly falls within the usual meaning of the word *frequently*. The question, then, is whether they are *vexatious*.

[61] The analysis of each of the actions set out earlier, and of the absence of any legal substance in the claims made in any of them, shows a similarity of form and content – fanciful claims, with no basis in law, as to the existence of a contract for the provision of a service which is, itself, plainly fictitious and ridiculous; claims for extraordinarily high damages, the calculation of which has no rational nor sensible basis; the making of unsubstantiated and baseless, but very serious, accusations against each defendant, supplemented by affidavit material and written submissions which repeat or expand upon those statements and, also, extend to include judges in general, and specific members of the judiciary; regular appeals, to the limit of the appeals process, in which the appeal involves nothing more than a rerunning of arguments previously said to be without merit, and hopeless – and, the use of the appeal forum to repeat unjustified, baseless and sometimes scandalous accusations (including personal attacks upon the judge who decided the matter under appeal); and, applications to judges who preside over cases involving Mr Markan to recuse themselves.

[62] A number of judges have now categorised and described Mr Markan's proceedings, the claims he makes, the relief he seeks, and the interlocutory applications and appeals he has brought as, variously (but not exhaustively), *baseless, scandalous, an abuse of process, outrageous, fanciful, unsustainable, patently ridiculous, frivolous, vexatious, misguided, manifestly without merit,* and *doomed to fail.*

[63] Despite his many setbacks in the courts, and statements by a number of judges in those terms (and adverse costs orders), he persists. The absence of any legal basis for his actions, combined with his perseverance in the face of these adverse judgments, compels the conclusion that his proceedings are vexatious within the meaning of that term in the VPA.

[64] There is another aspect of the various proceedings brought by Mr Markan which, in my view, tells strongly against him and cements the conclusion that the actions are vexatious: despite what has now so often been said to him by courts and judges, he has learnt nothing from those decisions and judgments and displays no insight into what they reveal about the manifest shortcomings in his conduct of his litigation.

[65] A vivid example is that, when applications are brought to strike out his proceedings and he is allowed the opportunity to amend, he does not do so in a way which is responsive, or rational; rather, his amended claims and pleadings are more extravagant, and less coherent, than the documents he initially filed. The rules and practice of proper pleading are not easily learned, but the remedies he seeks have become increasingly disconnected from reality, and bizarre. The zenith (or nadir) might be said to be his attack upon s 59 of the *Queensland Constitution* and the claims he now makes about sitting judges.

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[29] *Attorney-General (NSW) v Gargan* [2010] NSWSC 1192 at [7]; and, see *Jones v Cusack* (1992) 109 ALR 313 at 315, where Toohey J regarded an application for leave, two summonses and three notice of motion in six years as readily answering the description of "*frequently instituted legal proceedings*".

[66] I am entitled to take into account what has happened in other proceedings, and what has been said by courts and judges involved in those proceedings.[30] While what has been said elsewhere about Mr Markan's conduct does not constitute findings of facts in a proceeding, I am entitled to take notice of his stance in proceedings and judicial reviews of them on their merits.[31]

[67] I am also entitled to consider the way in which Mr Markan has conducted his affairs in the context of litigation in Queensland courts and to use that evidence as something which is capable of throwing light on the question whether the commencement of further vexatious proceedings is likely.[32]

[68] It is compelling that Mr Markan has brought proceedings which, being without merit or prospects of success, are an abuse of the process of the court. The history of the proceedings he has begun, involving ridiculous and impossible claims, also compels the conclusion that they have been instituted (whether deliberately or otherwise) to harass, annoy, to cause delay or detriment, or for another wrongful purpose; and, that his conduct of the proceedings themselves should also be described in that way.

[69] Those things said, there is no reason to think that, had they been pointed out to Mr Markan at the very outset – e.g., at the time of what I think is his first proceeding (against the Legal Services Commission) – he might have mended his ways, and framed proceedings in a way which did not attract past and present attacks upon them. Transcripts of each of the proceedings show a number of judges told him that various of his heads of relief were unknown to law, or unsustainable. Another telling point is that he has now brought three actions against BAQ in which the pleadings have become increasingly (as it were) conversational, and silly. It is inescapable that he would not, and will not, learn from his mistakes.

[70] I am, for these reasons, satisfied that all the proceedings traversed in these reasons are vexatious, within the meaning of that term in the VPA, and that the present action is yet another instance. Mr Markan has already taken up a great deal of time and trouble (and public resources) in the Trial Division, the Queensland Court of Appeal, and the High Court. He should be stopped.

[71] It is, then, appropriate to make a *vexatious proceedings order* under the VPA. BAQ requires leave to apply (VPA, s 5(2)) and, for the reasons which make an order appropriate and necessary, it should have that leave. A declaration about Mr Markan under s 6 of the VPA is also appropriate, as is an order staying this proceeding and prohibiting him from instituting proceedings in Queensland apart from an appeal from these orders. Mr Markan's various cross-applications are all without merit or superfluous, and must be dismissed.

[72] The orders will be:

a) That the defendant have leave under s 5 of the *Vexatious Proceedings Act* 2005 (Qld) (VPA) to apply to the Court for a vexatious proceedings order under the VPA against the plaintiff Peter Markan;

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30 *Attorney-General (NSW) v Chan* [2011] NSWSC 1315 at [39] per Adamson J.

31 *Gargan v Kippin Investments Pty Ltd* [2009] FCA 398 at [18] per Perram J.

32 Ibid at [12].

b) That it be declared that Peter Markan is a person who has frequently instituted or conducted vexatious proceedings in Australia, within the meaning of s 6 of the VPA;

c) Pursuant to s 6 (2)(a) of the VPA, this proceeding BS2980/2014 is stayed;

d) Pursuant to s 6 (2)(b) of the VPA, Peter Markan is prohibited from instituting proceedings in any Queensland Court, apart from an appeal from these orders; and,

e) The applications brought by Peter Markan filed on 26 May 2014 are dismissed.

[73] BAQ also seeks its costs, on an indemnity basis. The Association has succeeded in its application and there is no reason it ought not have its costs. As this analysis shows, Mr Markan has repeatedly brought baseless and vexatious claims against BAQ. The circumstances warrant an order that costs be assessed on the indemnity basis.