

SUPREME COURT OF QUEENSLAND

FILE NO/S: S 2646 of 2000

CITATION: *Corrigan -v- Parliamentary Criminal Justice Commission*

PARTIES:

ANTHONY WILLIAM CORRIGAN

(applicant)

v

PARLIAMENTARY CRIMINAL JUSTICE COMMITTEE

(respondent)

DIVISION: Trial Division

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 27 April 2000

DELIVERED AT: Brisbane

HEARING DATE: 12 April 2000

JUDGES: Dutney J

ORDER: Application dismissed with costs to be assessed.

CATCHWORDS:

ADMINISTRATIVE LAW - JUDICIAL REVIEW - CHARACTER OF DECISION - Applicant seeks review of decision of Respondent not to refer complaint against CJC to Parliamentary Criminal Justice Commissioner for investigation - whether decision administrative in character - whether capable of judicial review.

Parliamentary Papers Act (1992) s3

Bill of Rights 1688 (U.K.) Art 9

Criminal Justice Act 1989 s116, 118(1), 118F(3)

Judicial Review Act 1991 s20

Criminal Justice Commission v Nationwide News Pty Ltd
[1996] 2 Qd R 444, considered

Rowley v O'Chee [2000] 1 Qd R 207, followed

COUNSEL: A W Corrigan representing himself as
Applicant

J A Logan SC for the Respondent

SOLICITORS: Parliamentary Criminal Justice Committee for
the Respondent

[1] Mr Corrigan, the applicant, seeks judicial review of a decision of the Criminal Justice Committee ("PCJC") not to refer a complaint against the Criminal Justice Commission ("CJC") to the Parliamentary Criminal Justice Commissioner for investigation.

[2] The application is brought pursuant to s20 of the *Judicial Review Act 1991*.

[3] The PCJC is a committee of the Legislative Assembly.¹

[4] The respondent, PCJC, has applied by way of a preliminary objection to have the application struck out on the basis that the decision of the PCJC as a committee of the parliament is a decision of a parliamentary character and protected from judicial interference by article 9 of the *Bill of Rights 1688* (U.K.)². Further, by s3(2) of the *Parliamentary Papers Act 1992* (Qld):

¹ *Criminal Justice Act 1989* s 116

² The application of Articles of the Bill of Rights to Queensland is established by s 5 of the *Imperial Acts Application Act 1984* (Qld) and by s 40A of the *Constitution Act 1867* (Qld). Art.9 of the *Bill of Rights 1688* (UK) provides "that freedom of speech and debates or

"All. . . . acts done in the course of, or for the purposes of or incidental to, transacting business of ... a committee are "proceedings in parliament"."

Section 3(1) confirms that the definition applies for the purposes of article 9 of the *Bill of Rights* as it applies to the Queensland Parliament.

[5] Adopting the approach of McPherson JA in *Rowley v O'Chee* [2000] 1 Qd R 207 at 220 the combination of article 9 and s3(2) of the *Parliamentary Papers Act* has this affect:

"That no acts done in the course of, for the purposes of or incidental to, transacting business of a committee of the Legislative Assembly ought to be impeached or questioned in any court".

[6] To the extent that the PCJC is acting as a committee of the Legislative Assembly in considering whether to refer a matter to the Parliamentary Commissioner the challenge under the *Judicial Review Act* would appear to be incompetent.

[7] In *Criminal Justice Commission v Nationwide News Pty Ltd* [1996] 2 Qd R 444 at 457 Pincus JA distinguished those functions of the PCJC in which it was plainly acting as a committee of the parliament from those (such as the appointment of Commissioners) where its functions were executive.

[8] If a distinction is to be made between those two roles it seems to me to lie between the role of monitoring the CJC and reporting to parliament on matters pertaining to the CJC³ in which the PCJC is plainly acting as a

proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament".

3 See *Criminal Justice Act* 1989 s 118 (1) (a), (b), (c), (d) and (f)

committee of parliament, the executive role of participating in the constitution of the CJC⁴ and, possibly, the role of issuing guidelines and directions to the CJC as provided under the Act⁵ where it is unnecessary to decide on which side the role falls.

[9] For the purpose of the *Nationwide News* case at 459 Davies JA assumed the correctness of the proposition that the rights and privileges of the PCJC equated with those of parliament but like Pincus JA came to the conclusion that in any case the Court had jurisdiction to restrain unlawful disclosure of a confidential report of the CJC to the PCJC on the basis of a statutory prohibition on disclosure and the Court's jurisdiction over criminal matters. On the way to that conclusion His Honour acknowledged the exclusive control by parliament over its privileges and immunities. The exception to the immunity of proceedings in parliament from judicial interference where there is a breach of statute or other unlawful act is not relevant here.

[10] *Criminal Justice Commission v Nationwide News Pty Ltd* recognises, at least in its supervisory role, that the PCJC acts with the same status *vis a vis* judicial interference as does the parliament itself. Here the decision under review relates to the investigation by the PCJC of a complaint against the CJC. In deciding not to report the matter to the Parliamentary Criminal Justice Commissioner the PCJC is determining not to further investigate the complaint. A decision is in my view an "act" in course of the business of the committee. A decision to refer a matter to the Parliamentary Criminal

4 *Ibid* s 118(1) (e)

5 *Ibid* s US (1) (g)

Justice Commissioner must be a bipartisan one⁶. Thus it recognises the political nature of parliamentary proceedings. For all of the above reasons the decision seems to me to be parliamentary in nature and I can see no reason to distinguish the PCJC from any other committee of the Legislative Assembly merely because it is set up under statute, at least in areas of internal decision making where there is no allegation of breach of any statutory duty or prohibition.

[11] I consider that to challenge the members of a parliamentary committee for the making of a decision whether or not to further investigate a complaint (even a partisan political decision) would be an interference with the internal workings of parliament. I think the prosecution of the current application is prohibited by parliamentary privilege. In this regard whether the application is made under s20 of the *Judicial Review Act* or s41 of that Act is irrelevant.

[12] Once I have determined that the PCJC is acting in a parliamentary role the above conclusion seems to be compelled by the decision of the Court of Appeal in *Rowley v O'Chee (supra)*.

[13] Accordingly, I dismiss the application with costs to be assessed.

⁶ See *Criminal Justice Act* 1989 s 118F(3)