

10-06 - 2008

Executive Officer
Victorian Parliament Law Reform Committee
Parliament House
Spring Street
East Melbourne 3002

Submission No. VL/7
Received 12/06/2008
Law Reform Committee

Re: **Law Reform Committee Inquiry into Vexatious Litigants**

That 14 instances of individuals having been declared 'Vexatious Litigants' since the Victorian parliament passed laws for courts to deal with them in 1928 suggests that those provisions are among the least used and least needed of statute laws in the state.

A recent U.K. Supreme Court of Judicature - Court of Appeal (Civil Division.) covered in some detail matters relating to 'Vexatious Litigants', primarily as to their impact on precious court resources and time; that may be the concern of this inquiry, but it is **not** superior to our right of access to public records and justice. (*Bhamjee v Forsdick and Others*. [2003] EWCA Civ 1113.)

Bhamjee, and Australia's first vexatious litigant, Rupert **Millane** (In the 1920s) appear to have assailed the courts with what is quite clearly vexatious litigation. On a population basis alone, the U.K. is likely to have far more instances in this category than we have in Victoria but their numbers do not appear to be high either. Since the 'U.K.' gave up 'independence' and surrendered 'sovereignty' to the European Union, (Without consent and against the will of their people, much like the Bracks/Brumby Toll Road, Toxic dump, Bay dredging, Desalination plant, PPPs, Infrastructure disposals, etc.) they now have certain E.U. legal restraints to deal with that do not concern us, but basically, their manner of dealing with the problem was very similar to ours.

The UK System seems to indulge in a far more extensive (Public funded) appeal process than ours; here only the Attorney General can make the application to the Supreme Court for the 'declaration', and the 'vexatious litigant' must obtain the consent of the Supreme Court before initiating further litigation. Our local system could stop the process at Magistrate's court level with an application straight to the Supreme Court, (Subject to the appeal process.) where the UK courts have a greater variety of similar orders and restrictions they may impose on vexatious litigants, but they may still appeal to higher and higher courts.

The major obvious difference between the U.K. and our system appears to be in the fact that they have a Vexatious Actions Act, (1896) which apparently resulted from an earlier court case, (*See; Marie Anne Davies (1888) 21 QBD 241*) whereas we have an act to deal specifically with 'vexatious litigants'. Individuals who make application for information under F.O.I. provisions are **not** indulging in 'litigation' and should **not** be subjected to 'vexatious litigant' provisions; that just introduces another barrier, and would appear to be an abuse of process, by using the law as a **political weapon** to deny access to justice, or information that our MPs appear to wish to keep secret and hidden from us, just as some wish to do under 'anti-terrorism' 'legislation' !

The **sole purpose** of 'elected representatives' is to represent in parliament the will of the people of their respective electorates; they were **not** elevated to that position of trust to submit to the wishes and pursue the political agenda of an undemocratic and unrepresentative private 'political party' and betray those who voted for them. If 'elected representatives' wish to pursue any course of action which may be against our will and they do not want that matter publicised, they should **not** indulge in that course of action ! For MPs to act against our interests and/or to impose their will on us constitutes a major fundamental breach of trust !

Serious researchers in any of a multitude of disciplines could very quickly fall victim to the 'repeated requests' definition proposed as 'vexatious', and members of the press also would rapidly be prevented from pursuing legitimate investigations in the public interest' as opposed to the national interest which certain MPs often claim as their domain; perhaps that is one of the motivating factors for that proposed alteration to this law ? It is illegitimate for MPs or courts to redefine words for their benefit.

The perceived problems with 'vexatious litigants' is far less than the problem of a plaintiff being denied access to the courts because of the arbitrary rejection of proper judicial process by a clerk of court, court registrar, or a judge either after or before hearing evidence from the plaintiff, as appears to have occurred recently. (*O'Bryan v Commonwealth*. (2006) Bendigo CI-06-03878.

That situation appears to be at the very least, a denial of natural justice, and very likely, a perversion of the course of justice by an officer of the court, and perhaps others, in breach of the democratic 'separation of powers' of government; it is **not** the act of a 'model litigant'. (The constitution s.75 provides for High Court jurisdiction in litigation between an individual and the commonwealth.)

A clerk of the court, a court registrar, or a lone judge does **not** constitute a **valid** court in accordance with the provisions of the Commonwealth of Australia constitution, Chapter III. (*Kable v DPP (NSW) (1996) CLR 51; Forge v ASIC (2006) HCA 44; 80 ALJR 1606; Gypsy Jokers v Commissioner of Police (WA) (P26/2007)* [<http://www.austlii.edu.au/au/other/hca/bulletin/hcab0709.html#internal52>]

Social welfare, taxation and police agencies are likely to be high on the list for requests for information, and are also likely to make more refusals to provide the requested information, yet there appears to be a commercial organisation which offers a wide range of personal data on individuals not readily available through normal 'official' channels; Why is it so? The desire of MPs and courts to suppress information regarding the identity of convicted paedophiles and sex offenders does **not** protect the public, nor does it treat kindly staff at schools etc, who **must** have police checks to work or have dealings with children, but '**vexatious litigants**', who may have been mistreated by some government agency, must have their personal information **published** and may, under proposed law changes, be prevented from seeking redress or remedy in our courts by our courts!

The Imperial Acts Application Act restricts actions of various legislatures, to the extent that some prefer to ignore it entirely, (*Carnes v Essenberg (23-08-1999) QCA 339*) and in so doing attempt to deprive the 'Australian' people of our birthright liberties and freedoms that are entrenched in, and by, the constitution; they include 'Magna Carta, 'Habeas Corpus', the 'Bill of Rights' and other law, as it existed in Britain and Australia in 1900 and at the commencement of Australia's constitution. Those laws cannot be repealed by any Australian parliament, regardless of changes to the laws that may have taken place in the UK since that date.

No provision of the commonwealth constitution may be altered other than by the 'Australian' people, in accordance with s. 128. That constitution, and all valid laws made under its provisions by the Parliament of the Commonwealth are binding on the courts, judges, and people of every State and every part of the Commonwealth, notwithstanding anything in the laws of any State.

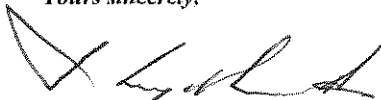
After decades of denial, the high Court has conceded that Australia is an independent sovereign nation, and that Australian **sovereignty** resides in the 'Australian' people. (*Australian Capital Television v The Commonwealth (1992) CLR 106 F.C. 92/033; Hung Sue v Hill. HCA 30. (20-09-1999. Etc.)*) Various Australian 'parliaments' and 'courts' seem reluctant to recognise this state of affairs, and prefer to impose their will and legislation upon us in order to control what we may or may not have or do. It seems they prefer to unlawfully ignore various sections of the Commonwealth of Australia constitution, including important parts relating to the proper structure of our courts which are **not** being complied with as required under Chapter III. (*See Kable, Forge, etc.*)

The reality is that **everything** that 'elected representatives' and 'parliaments' do is of direct interest and concern to the 'Australian' people, who are entitled to have complete, free and unfettered access to any and all information relating to their actions. The proposed change to Freedom of Information legislation simply attempts to **restrict** our access to that information. The 'Australian' people fund the government and its 'Agencies' and the collection of the public record; we already own it and should not need to pay again to access any of it. It is totally **repugnant** even to attempt to prevent public access to public records; to penalise those who request it is **tyranny** !

The current provisions for dealing with 'vexatious litigants' appear to be more than adequate; it can **never** be appropriate to make access to the law, or to public record information difficult, or more difficult and/or expensive, for the 'Australian' people.

It is my will that those we elect to protect and represent our interests in the parliament make **no alterations** to the 'vexatious litigant' law which may in any manner deny or restrict our access to the public records or to courts and justice !

Yours sincerely,



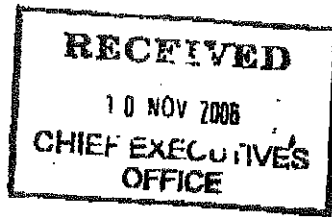
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Encl; Portion of Correspondence A-G Dept (Cwlth) to HCA re O'Bryan.



Australian Government
Attorney-General's Department

Legal Services and
Native Title Division



06/1640

9 November 2006

Mr Christopher Doogan
Chief Executive and Principal Registrar
High Court of Australia
PO Box 6309
KINGSTON ACT 2604
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Dear Mr Doogan

O'Bryan v Commonwealth: Writ

I am writing to confirm that this Department considers it appropriate for the High Court of Australia to be responsible for the handling of the Commonwealth's defence in the matter of O'Bryan v Commonwealth, County Court of Victoria, at Bendigo CI-06-03878. Specifically, we have no objection to your proposed strategy of writing to the County Court of Victoria to advise that the Commonwealth will consent to any order of the County Court, save as to costs; and to take no active part in proceedings.

If the County Court of Victoria seeks submissions from the Commonwealth or if the matter develops in an unexpected manner such that the Department's involvement should be reconsidered, please let us know.

As it was necessary to give interim instructions on Friday 5 November (to avoid the possibility of default judgment being entered against the Commonwealth on the required appearance date of Monday 8 November) I instructed the Australian Government Solicitor to enter a conditional appearance on behalf of the Commonwealth. The conditional appearance will automatically become an unqualified appearance on 19 November. I have since instructed AGS to undertake no further work on this matter.