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Senate Standing Committee on Legal and Constitutional Affairs
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Submission : Inquiry into Access to Justice

To The Committee

I note that your terms of reference are not exclusive of particular issues that affect access to justice but that the committee's terms of reference require of it to pay particular regard to those certain issues.

Having been an environmental and free speech activist since around 1997, I have had cause on many occasions to appear in the courts of Qld and The High Court of Australia. In all but 2 of these occasions it was involuntary in that I had been charged and convicted and had to appeal.

I have been arrested/detained by police over 10 times, many of those violently.

I have lost count of the amount of magistrates court trials I have been through, the amount of district court appeals I have been through , but I have been to the Qld Court of Appeal for 4 different matters (which adds the leave to appeal proceeding for each, winning leave to appeal twice self represented , winning one of those self represented) , and 3 times to the High Court (winning special leave once self represented, and losing 1 self represented , winning one case represented and having the UNHRC stating that I should be acquitted and compensated for another).

I have brought 4 civil actions for false imprisonment and assault against the Qld police and the state of Qld in the Supreme Court, self represented, and have won 3 of those having to appeal the other.

I feel I have much experience of the Qld judicial system and am capable of imparting to the committee many of the obstacles to accessing justice I have come across. I will also be making a submission to the human rights consultation on the same issues.

These are some of the issues I would like to address from my own experiences:

1. Access to transcripts and utilisation of new technology to reduce costs and complexity of litigation;
2. Access to court of appeal decisions in a timely manner to enable compliance with high court rules ;
3. Right of access to, and appearance before appeal courts as a self represented appellant ;

4. The problem of distance , requirements of citizens to comply with the law and to use specific courts and the need for High Court/Federal Court Registries in regional areas of large states.

Access to transcripts and utilisation of new technology to reduce costs and complexity of litigation.

Currently in Qld there is no right to a free copy of the transcripts of magistrate's courts proceedings. There is a right to a copy if you have been and defendant in an indictable matter in the district court. But most of the matters of first instance defence against the state are in the magistrate's court.

If you are defending a matter and you wish to put every bit of evidence that supports you your defence and submit therefore your points of law supporting such defence, having a transcript at the close of evidence is essential as well as time to prepare final submissions.

It is also essential for any subsequent appeal for you to show you had put all matters to prosecution witnesses and also the magistrate.

Whilst those with the money for lawyers who wish to spend months in a lower court defending liberty and principle may have the money to purchase such transcripts, and by having a person in a suit whom a magistrate may listen to on the question of an adjournment, may win such time as the entire transcript is done, - this is not the case for the indigent accused and self represented by choice and by right.

Access to a transcript is supposed to be protected in common law by the right to a fair trial (Kalifeh v District Court Judge Job (1996) 85 ACRIMR 68 at 69). Natural Justice is also said to be implied under CH3 of The Australian Constitution (WA v Ward (1997) 145 ALR 512). The denial of the means to meet a case against a person, a fair chance of acquittal where all of the means and power of the state is ranged against an accused (Dietrich v R [1992] 177 CLR 292) is a denial of natural justice and of the right to a fair trial.

On a number of occasions I have been denied a copy of a decision of the court because there is not a right to be given it for free. On others, I have been given it. It is at the sole discretion and whim of the magistrate. If your name has been splattered across the media of a regional city in North Qld in connection with the case and the cops and some media have done a job on you, then obviously immediate access to a decision acquitting you would enable you to make some eat crow and regain your reputation.

And whilst a court magistrates court registry will compile a case file including a transcript if an appeal is lodged, and allow you to view it and take notes in the registry, this increases costs and disruption to a persons life by either having to take time off work, study or time out of ones personal life to come to the court registry and spend the time going through it. This may include a number of court day's worth or a week of evidence depending on the amount of witnesses in the average arrest matter.

Researching evidence and matters of law takes time; simply having a copy of a transcript makes it easier for a person to present their defence. A person may purchase audio recordings of proceedings

and go from there but, again, there is no right to have them for free. And a self prepared transcript is not an authorised copy and wont carry the same line and page numbers as such a document would.

The costs of transcripts are prohibitive, and the time taken for them to be prepared is also long in many cases. Although in the civil proceedings I was involved in, the state seems to have been able to get transcripts on the day the proceedings took place.

If access to transcripts was a right for the indigent self represented person at first instance there may be no need for an appeal creating more costs and complexity. The effect of charging prohibitive fees also may deny access to representation in any appeal for an indigent person, because they are unable to present their case to a lawyer within the specified time period for an appeal.

Personally, I can't understand the rationale of dragging a person through the courts, in many instances unlawfully and then making them buy back the words they use in their defence.

I have put this to a previous Attorney General of Qld (Welford as AG at the time) as a problem and asked him to amend the recording of evidence act to the effect that magistrates court transcripts should be made available for free to an accused, and to the effect that the Anti Discrimination Act 1991 Qld should be amended, to the effect, that there be a positive free standing enforceable provision that all are equal before the laws in Qld. This would have enabled a court or justice to decide that for an indigent accused to have the same right to justice, or right to a fair trial as someone with wealth then they should be entitled to a free transcript. It would also have meant that cops would not be treated any differently to any other person in relation to their evidence in any court. I received a reply from him to the effect that he would not do such a thing, on the day Palm Island rose against the Qld cops!

There are alternatives to traditional court transcripts, and to this effect on my website at www.cyncicismcentral.org/node/59 I have taken some of the ideas imparted to Welford and presented them to the public in an article entitled "Qld Election wish list : Recommendations for statutory reforms relating to the Qld Police , Ethical Standards Command , Crime and Misconduct Commission .Tue, 03/10/2009".

Extract:

"(18) The Criminal Code must be amended to provide that all have the right to be equal before the laws. This provision would override all Qld laws, and would in time generate many reforms in many areas (as it has in America) on a socio economic basis before the courts for instance; See Griffin v Illinois

<http://supreme.justia.com/us/351/12/case.html>

The Anti Discrimination Act has it as its purpose, but applying the Qld Acts Interpretation Act, it is not a free standing right.

http://www.legislation.qld.gov.au/Acts_SLs/Acts_SL_A.htm

(19) At the moment there is no provision forcing a court to give a free transcript of its decision in a criminal proceedings in a magistrate's court, nor to a free copy of the transcript of proceedings if a person is impecunious and wants to appeal or bring civil proceedings.

(i) Technology exists for proceedings to be DVD recorded at minimal expense and for people to be provided with an official DVD for use in any other court.

(ii) Provision should be made for this and for a free written copy of a decision to be given as a matter of law in a magistrates court proceeding.

(iii) This would increase the ability of people to provide documents to legal advisers;

(iv) Reduce the cost of legal representation through photocopying charges;

(v) Enable higher or civil courts to access an online database to review all evidence, to see and hear witnesses themselves, thereby removing a well known barrier to many a successful appeal and civil suit, and maybe preventing possible miscarriages of justice.

(vi) In Its 2008 Annual Report (pp26-29) The Qld Supreme Court has shown electronic appeal books reduce costs to all concerned

<http://www.courts.qld.gov.au/SupremeCourt/SC-AR-2007-08.pdf>). Justice should come at 1st instance, or in the lower courts which means court film could replace the need for defendants to purchase or wait to purchase a transcript for use in final submissions and addresses also thereby helping to alleviate the concerns of De Jersey CJ about justice being delayed because of transcription problems. “

I incorporate by reference, the rest of my website which gives the background info to many of the court matters I have been involved with.

Access to court of appeal decisions in a timely manner to enable compliance with high court rules.

There are a number of times when having been involved in Qld Court of Appeal matters I have either;

- (a) Not even been informed a decision was due and was made until congratulated by a friend and then reading it in the paper that I have won a very big part of it having to appeal the rest ;and
- (b) And not being given a copy of the decision to enable me to comply with the requirements to apply for Special Leave to the High Court within 21 days of it being handed down. Thus requiring applications for an extension of time, adding to the complexity of the matters.

True it is that I did not appear in the court in Brisbane (in all but 1 matter) as I lived in Townsville and could not keep travelling thousands of k's or afford to have someone there , but there are many

means by which a copy could be given , for instance by email. This would greatly reduce wastage of time and increase the ability of indigent self represented types to comply with high court rules.

Right of access to, and appearance before appeal courts as a self represented appellant.

Self representation is said by the majority of the high court (applying article 14 of the ICCPR) to be a fundamental right (Cachia v Hanes). Yet, myself, I have another experience to relate on the very subject of the High Court's hypocrisy on this matter.

Having won special leave to appeal, self represented, on the papers without appearing, after having done the trial, appeal to the district court, winning leave to appeal in the court of appeal and overturning a 70 year old law, Justice Gummow threatened to withdraw special leave if I did not apply for legal aid or seek representation (Coleman v Power).

Cachia v Hanes [1994] HCA 14; (1994) 179 CLR 403; (1994) 120 ALR 385; (1994) 68 ALJR 374
(13 April 1994) www.austlii.edu.au/cases/cth/HCA/1994/14.html

Coleman v Power & Ors B98/2002 (10 February 2003)
<http://www.austlii.edu.au/au/other/hca/transcripts/2002/B98/1.html>

Not because my appeal was unarguable but that I was self represented. I can only assume, considering he said he did not care about my "capabilities" that it had something to do with dissuading self represented people from trying to appear in the highest court of the land.

I complied with the threat and applied but told legal aid to get stuffed (thus complying). I did however accept representation.

Being a citizen who had the fundamental right to self representation who was not allowed to appear in the highest court of the land was an insult of the greatest magnitude. I wasn't even allowed to appear on the papers self represented and show up the suits again. It being the high court, where could I appeal that point to- on my shoe string budget (dole) at the time?

As pointed out in the next section of this submission, access to justice and the courts is supposed to be a constitutional freedom. A citizen must have the right to be self represented in the highest court of the land if that be their wish. Not every person who represents themselves has a fool for a client and I seem to remember the high court rules being amended to allow for "intelligent lay litigants".

.....Judicial window dressing!

The problem of distance , requirements of citizens to comply with the law and to use specific courts and the need for High Court/Federal Court Registries in regional areas of large states.

The right of Australian citizens and of lawyers to access clients and the courts is implied in the Australian Constitution through both the implied right to freedom of communication (*Cunliffe v CTH* , and *Victorian Council for Civil Liberties Incorporated v Minister for Immigration & Multicultural Affairs* [2001] FCA 1297-The Tampa Case at pars [165]-[167]) and the right of access to the seat of government (*Decision of Deane and Toohey JJ Nationwide News v Wills* (1992) 177 CLR 1 at pp 73-4).

There may not be a right to have this communication facilitated, but where the law requires compliance with it on the matter of which court should be accessed and how- regardless of the distance involved, it should be remembered that the constitution is also said to state that the CTH may not discriminate against states or parts of states or the residents of a state.

Accused people who may be poor wishing to use the appellate jurisdiction, and those wishing to access the federal or high courts original jurisdiction and who may be poor, should have the same right to access justice and the courts of those with ample means.

Qld is not alone in being a state with vast distances between state capitals and towns and regional centres. But unlike NSW and Victoria with vastly superior public transport such as rail between such centres – access to superior and federal courts in Qld for the purpose of filing documents and complying with rules and problems that may arise is made more difficult. There are also the problems of compiling and serving documents, application and appeal books via post and the added cost of postage.

Regional centres in Qld are growing and so too environmental problems that may need to be resolved in federal courts as a requirement of law. Access to such courts at minimal expense would be made a hell of a lot easier if there were a federal court registry in every major regional centre for the purpose of filing documents (perhaps utilising Supreme Court registries).

Such registries already have equipment available for video appearance and by other means.

The state should make it easy for people to comply with or challenge laws by facilitating access to the courts. I also believe that Australia should have 1 system of criminal, civil and common law as well as for human rights protection.

I trust that I have given the senate a few simple ideas and would probably not be alone in thinking this way.

As stated above, I will be making a submission on a number of matters to the human rights consultation, if only to have it on the record.

Yours

Pat Coleman