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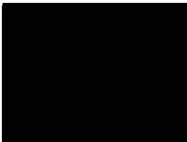
RE: HUMAN RIGHTS INQUIRY

My submission supports in the strongest possible terms the promulgation of a Human Rights Act for Queensland.

From time immemorial there has been the questioning of governmental decision making – from the highest to lowest levels; its overriding supervision and the supervisors. Juvenal asked: “quis custodiet ipsos custodes” – who shall guard the guards?

My three decades in the legal world only reinforces my conclusion that the common law offers no secure protection of human rights. Parliament has full power to make laws and can extinguish past understood rights if it determines these as a lesser priority than responding to some perceived contemporary evils eg *Al-Kateb v Godwin* 2004 HCA 37; *Fardon v A-G [Qld]* 2004 HCA 46. Too easily and increasingly, draconian laws to deal with the evils of terrorism and/or paedophilia were extended [occasionally with some proper justification] well beyond those extreme circumstances to the general law. Some states have passed legislation where such ancient rights as those to silence, association, legal representation and/or against self-incrimination were abrogated – often also excluding any judicial oversight.

The arguments in favour of a Human Rights Act are well known and I endorse these without elaboration. A majority in the legislature can easily lead to prejudice to the rights of the disadvantaged. An appropriate approach, on the “macro basis” is that broadly suggested for a Human Rights Act for Queensland, namely the paramountcy of the legislature [with certain obligations] but with judicial oversight limited to declaring incompatibility with accepted human rights principles. With consequential publicity, an educated people can express their will, as a final resort, at an election.

The other aspect of the Act is the “micro” one, and the empowering of individuals. Too often when rights are limited, if not terminated, they are those of the most marginalised in our society and least able to defend themselves. If rights have not been legislatively excised, then they may be practically negated by bureaucratic action. While sometimes justice prevails [eg *Houda v NSW* 2005 NSWSC 1053, *Evans v NSW* 2008 FCFCA 130 and especially *Rowe v Kemper* 2008 QCA 175], often it is only by coincidental personal tenacity, individual wealth or the skill, courage and commitment of lawyers, community advocates, political activists or 

crusading journalists. Those rights should be available to all as a matter of course and not dependant on chance acquaintance or champion – formalised in legislation and with a cheap, accessible quasi-judicial tribunal to enable the pursuit of any remedy as a free standing action. The absence of the latter is a defect in Victoria's Charter of Rights.

The protected rights should, at the very least, include the legal and other rights encompassed in the Universal Declaration of Human Rights and the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights.

There will need to be a balancing of rights limited by responsibility [eg "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic." OW Holmes J, Schenck v US 1919 249 US 47, at 52] and a delineation to ensure rights do not inappropriately impinge on the legislature's role in approving public expenditure and the executive's role in establishing priorities in the public interest.

Beyond the legal framework, human rights recognition requires social acceptance and cultural change, so competing views should, where practical and without losing core principles, be accommodated. It is stating the obvious that reasonable minds may differ on how such balancing is to be achieved.

I urge the Committee to advise the Queensland Parliament that the State needs a Human Rights Act – even if the determination of the precise rights to be protected requires further consideration. "On résiste à l'invasion des armées; on ne résiste pas à l'invasion des idées" [Victor Hugo: "Nothing is as powerful as an idea whose time has come"]. A Human Right Act is an idea - and ideal - whose time has come.

I thank the Committee for its time and consideration.



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