



**SUPREME COURT OF  
QUEENSLAND**

CHAMBERS OF THE CHIEF JUSTICE

17 April 2015

Mr Peter Davis QC  
Murray Gleeson Chambers  
Level 31, Hitachi Building  
239 George Street  
Brisbane , 4000

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Dear Mr Davis

***R v Cowan***

The President of the Court of Appeal has written to me expressing concern about the fact that I met with representatives from the organisation Bravehearts (Ms Hetty Johnston and Ms Ruby O'Rourke) on Wednesday 15 April at 2:30pm because of public statements reportedly made by Ms Johnston critical of the appellant in this matter.

Her honour is of the respectful view that I should disclose the fact of this meeting to you and what was discussed at it.

I have attached an email received from Ms Johnston requesting the meeting and stating its purpose. No topic relevant to the Cowan appeal was raised or discussed.

However, please advise whether you wish to make any submissions.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Tim Carmody', written over a horizontal line.

The Honourable Tim Carmody  
**Chief Justice**

cc Mr A Moynihan QC  
President, Court of Appeal

## Rachel Monaghan

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**From:** Hetty Johnston <hj@bravehearts.org.au>  
**Sent:** Monday, 16 March 2015 2:09 PM  
**To:** Hetty Johnston; Chief Justice Carmody  
**Subject:** RE: Hi from Hetty

Perhaps Judge Orazio (Ray) Rinaudo might also be interested?

Kind regards,

Hetty Johnston AM  
Founder & CEO  
**Bravehearts Inc**  
[www.bravehearts.org.au](http://www.bravehearts.org.au)  
**2015 Queensland Australian of the Year**

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**From:** Hetty Johnston  
**Sent:** Monday, 16 March 2015 1:37 PM  
**To:** 'ChiefJustice.Carmody@courts.qld.gov.au'  
**Subject:** Hi from Hetty

Hi Tim,

I hope you are well.

You may recall when we last met at your office that I discussed HubCare - a new machine learning / analytics response to child protection that can save the gov 80% in staff admin costs alone let alone the benefit to kids. Chief scientist at CSIRO now works with them – UQ also. You need to hear about this because it fits perfectly with the recommendations of the Carmody Inquiry (I am sure you know the one ☺). Tim, Ruby and Ian are coming to Qld on 15<sup>th</sup> April to meet with Government on 16<sup>th</sup>. I was hoping if they got here a day earlier, so 15<sup>th</sup> April, they (and i) could meet with you. Is that possible? please.

Kind Regards,

### **Hetty Johnston AM**

#### **Founder & CEO**

**2015 Queensland Australian of the Year**

2015 Inducted to the Logan Wall of Acclaim

Justice of the Peace (Qualified), JP (Qual)

*Member of the International Society for the Prevention of Child Abuse and Neglect (ISPCAN)*

*Member Australian Government Cyber-Safety Working Party*

*Member Qld Government Child & Family Reform Stakeholder Advisory Group*

*Fellow of the Australian Institute of Community Practice and Governance*

*Member Australian Institute of Company Directors, (MAICD)*

*2014 Member of the Order of Australia, (AM)*

*2014 USA Wall Street Journals Women of Note*

*2013 Ernst & Young Social Entrepreneur of the Year (Nthrn Region)*

*2013 Financial Review & Westpac Top 100 Women of Influence*

*2013 YWCA –125 Leading Women*

*2012 Finalist Telstra Business Womens Awards*

*2010 Paul Harris Fellowship - Rotary International*


2009 Toastmasters International Communication and Leadership Award  
2006 Finalist Australian of the Year (Qld)  
2004 Australian Lawyers Alliance Civil Justice Award  
2003 Australian Lawyers Alliance Civil Justice Award

Bravehearts Inc. | PO Box 575, Arundel BC, QLD 4214  
Phone: (07) 5552 3000 | Fax: (07) 5552 3088 | [bravehearts.org.au](http://bravehearts.org.au)  
QLD • NSW • VIC • TAS



**IMPORTANT**

This email and any attachments are confidential and may be privileged in which case neither is intended to be waived. If you have received this message in error, please notify us and remove it from your system. It is your responsibility to check any attachments for viruses and defects before opening or sending them on. Bravehearts Inc. operates under an Article of Association, is operated by a Board of Management and is assisted by a professional Advisory Committee. We are registered under the Collections Act 1966; ABN and GST registered (41 496 913 890), are a registered Charity and are registered with the ATO as a DGR (Deductible Gift Recipient). For more information about us and our work in the community, visit our website at [www.bravehearts.org.au](http://www.bravehearts.org.au)

 Please consider the environment before printing this e-mail



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20 April 2015

The Chief Justice  
Supreme Court of Queensland  
Law Courts Complex  
304 George Street  
BRISBANE QLD 4000

Dear Chief Justice,

**RE: *R v COWAN***

I refer to your letter of 17 April 2015. These are issues which must be determined in open court, not in private correspondence. Obviously, I will need to take instructions before such a hearing takes place.

I am aware that Ms Johnston is an advocate for children's rights and, in particular, was a vociferous public advocate – even on the day of the appeal itself – for a dismissal of my client's appeal.

In order for me to be able to form a view about the significance of your relationship with Ms Johnston and your meetings with her and to advise my client accordingly, would you please inform me of the nature and length of your relationship with Ms Johnston, the occasions that you have met with her since Mr Cowan's arrest on 13 November 2011 and what was discussed at each meeting. In particular, I note that Ms Johnston's email to you

also refers to an earlier meeting with you. It is not possible to advise my client without knowing what was discussed at these and any other meetings that you have had with Ms Johnston.

It also seems that your relationship with Ms Johnston predates Mr Cowan's arrest. A question arises as to whether disclosure of the relationship ought to have been made before the hearing of the appeal. Please advise how, in those circumstances, you came to be a member of the court which sat on the appeal.

I have written to the President. A copy of my letter is attached.

A copy of this letter and a copy of my letter to the President have been provided to Fraser JA and Mr Moynihan QC.

Yours faithfully,

Peter J Davis QC  
Chambers

**PETER J DAVIS QC**  
**Barrister-at-Law**  
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20 April 2015

The Honourable Justice Margaret McMurdo  
President of the Court of Appeal  
Supreme Court of Queensland  
Law Courts Complex  
304 George Street  
BRISBANE QLD 4000

Dear Madam President,

**RE: *R v COWAN***

As you are aware, the Chief Justice wrote to me about this appeal on 17 April.

I have responded. A copy of my letter is enclosed.

You will see that I have expressed the view that questions arise as to whether disclosure of the relationship between the Chief Justice and Ms Johnston ought to have been made before the hearing of the appeal. Also relevant to that issue are the circumstances in which you came to list the Chief Justice as one of the judges who should hear the appeal. Could you please provide that information to the parties.

Yours faithfully,

Peter J Davis QC  
Chambers



**SUPREME COURT OF  
QUEENSLAND**

**COURT OF APPEAL**

CHAMBERS OF THE PRESIDENT

21 April 2015

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Dear Mr Davis

***R v COWAN***

Thank you for your letter of 20 April 2015.

You have asked me to provide the circumstances in which I came to list the Chief Justice as one of the judges who should hear the appeal.

My best recollection is that the then Appeals Registrar, Mr Peter Irvine, discussed the listing of the Cowan appeals and the membership of the Court with me in about early August 2014, not long after the appointment of Chief Justice Carmody.

The former Chief Justice had directed registry staff to always check with him as to his availability to sit on high-profile matters. The Cowan appeals were within this category. The practice became that, in such matters, although ordinarily the Chief Justice and the President did not sit together to hear appeals, the Court would be constituted by the three most senior judges available.

Mr Irvine suggested to me dates for the two-day hearing of the Cowan appeals which were convenient to the Court and the parties. These dates coincided with periods when the Chief Justice was sitting in the Court of Appeal. Mr Irvine asked me if I was content to sit with the Chief Justice. I agreed and directed that the third member of the Court should be the most senior judge of appeal available. Holmes JA was unable to sit on the Cowan appeals.

I understand from Mr Irvine that he spoke with the Chief Justice to ensure he was content with these arrangements, as it was to be the first time Chief Justice Carmody and I would sit together. I do not know if Mr Irvine spoke first with me or with the Chief Justice about the listing.

Mr Irvine later informed me that the membership of the Court for the Cowan appeals would be the Chief Justice, Fraser JA and me. I was unaware of any problem or issue arising out of this proposal and raised no objection or concern.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Margaret McMurdo', written in a cursive style.

Hon Justice Margaret McMurdo AC  
**President**

Cc: *Chief Justice*  
*Fraser JA*  
*A J Moynihan QC, Director of Public Prosecutions*





**SUPREME COURT OF  
QUEENSLAND**

CHAMBERS OF THE CHIEF JUSTICE

22 April 2015

Mr Peter Davis QC  
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Dear Mr Davis

**RE: *R v Cowan***

I refer to your letter of 20 April 2015 regarding the matter of *R v Brett Peter Cowan*.

My correspondence with you and Mr Moynihan QC was not an attempt to resolve this matter by "private correspondence". Nor was it a fulsome or partial disclosure of the circumstances of the meeting.

Rather, it was merely a prompt and courteous notification of the apparent concerns of President McMurdo to ascertain whether either party would be inclined to formally raise the matter with the Court.

In *Ebner v Official Trustee in Bankruptcy* the High Court of Australia held that:

"as a matter of prudence and professional practice, judges should disclose interests and associates if there is a *serious possibility* that they are potentially disqualifying" (emphasis added).<sup>1</sup>

It is my preliminary opinion that nothing raised by the parties or President McMurdo would give rise to a serious possibility that a fair minded person might reasonably apprehend that I am biased or prejudiced on the basis of the meeting held on Wednesday 15 April 2015.

In the absence of either party formally raising the matter with the Court, or any reasonable ground for disqualification being apparent, no ethical or legal duty to disclose the circumstances surrounding the meeting has been enlivened.

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<sup>1</sup> *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337, [69].

To:

22 April 2015

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In relation to your interrogatories, the *Guide to Judicial Conduct* provides:

"[i]t is not appropriate for a judge to be questioned by the parties or their advisers [in relation to the disqualifying circumstances]."<sup>2</sup>

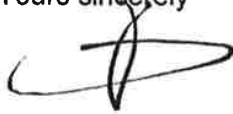
Accordingly, it would be inappropriate to respond, by private correspondence or in open court, to your questions regarding the content of ostensibly confidential meetings between community leaders and the head of jurisdiction without the matter being formally and properly raised by the parties.

Even if I was minded to respond to your enquiries, private correspondence would not constitute an ethical or conscientious medium of exchange. Any such disclosure should be effectuated in open court, not through private cables.<sup>3</sup>

As the determination of disclosure and disqualification resides exclusively within the domain of the judge subject to the alleged apprehension of bias, kindly ensure that any further enquiries are directed to my Chambers for consideration and not to the President of the Court of Appeal.

Please advise whether you wish to raise this matter with the Court.

Yours sincerely



The Honourable Tim Carmody  
**Chief Justice**

cc Mr A Moynihan QC  
President, Court of Appeal

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<sup>2</sup> Australasian Institute of Judicial Administration, *Guide to Judicial Conduct* (2<sup>nd</sup> edn, AIJA: Melbourne), 16.

<sup>3</sup> Australasian Institute of Judicial Administration, *Guide to Judicial Conduct* (2<sup>nd</sup> edn, AIJA: Melbourne), 15.

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23 April 2015

The Chief Justice  
Supreme Court of Queensland  
Law Courts Complex  
304 George Street  
BRISBANE QLD 4000

Dear Chief Justice,

**RE: *R v COWAN***

I refer to your letter of 22 April 2015.

I expect to receive instructions shortly to bring an application to the Court of Appeal seeking orders that the appeal be adjourned for hearing before a differently constituted court. This appears to be the consequence of the disqualification of one of three judges sitting on an appeal.

Despite the view you have expressed on page 2 of your letter, I maintain that it would be of assistance in the handling of this matter if you disclosed the information which I have requested. All the correspondence passing over the last few days and any further letters making disclosure will be tendered in open court during any application.

Yours faithfully,

Peter J Davis QC  
Chambers

Cc   McMurdo P  
      Fraser JA  
      Moynihan QC



**SUPREME COURT OF  
QUEENSLAND**

CHAMBERS OF THE CHIEF JUSTICE

24 April 2015

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Dear Mr Davis

In light of recent exchanges of correspondence concerning me I will be mentioning the matter of *R v Cowan* at 2:30pm today, Friday, 24 April 2015. Legal representatives will be required. I will be presiding over the mention alone.

Yours sincerely

A handwritten signature in black ink, appearing to be 'T Carmody'.

The Honourable Tim Carmody  
**Chief Justice**

cc Mr A Moynihan QC  
President, Court of Appeal  
The Hon Justice HB Fraser, Judge, Court of Appeal