

Chief Justice Carmody

From: Chief Justice Carmody
Sent: Wednesday, 6 May 2015 8:31 PM
To: Justice MAMcMurdo; Justice Fraser
Subject: RE: Cowan

Dear President and Justice of Appeal Fraser,

I refer to your last-minute email correspondence received at 4:59PM and 7:02PM respectively on 6 May 2015 regarding the application in *R v Cowan*.

As the issues that you have each raised are of great legal and ethical significance, I will reflect on the matter this evening to determine the appropriate course of action. I will notify the parties promptly when a determination has been made for the purposes of expediting the disposal of the application. I wholeheartedly agree that this application should be resolved as rapidly as practicable.

The Honourable Tim Carmody
Chief Justice
Supreme Court of Queensland
PO Box 15167 City East QLD 4002 | Level 16, Queen Elizabeth II Courts of Law, 415 George Street Brisbane QLD 4000
Telephone: +61 7 3247 3916 | Facsimile: +61 7 3247 4206

From: Justice MAMcMurdo
Sent: Wednesday, 6 May 2015 7:02 PM
To: Justice Fraser; Chief Justice Carmody
Subject: RE: Cowan

Good evening Chief Justice.

The circumstances that have arisen in this case in light of your correspondence with Justice Fraser and me (about which the parties know nothing) appear unique.

In addition to Fraser JA's suggestion, I suggest you consider whether you disclose to the parties your memorandum to me of 22 April 2015, especially in light of its third and fourth paragraphs, so that the parties might make informed submissions as to whether you should withdraw from hearing the application to recuse by reason of apparent prejudgment of the issue. If you decide to disclose that memorandum, I suggest you should also give consideration to disclosing my letter of 17 April to which your memorandum refers and my response of 23 April.

I agree with Justice Fraser that if disclosure is to be made, the documents should be emailed to the parties (and copied to Justice Fraser and me) before the hearing so that the hearing will not be delayed.

Please let Justice Fraser and me know as soon as possible whether you intend to disclose to the parties the documents raised by us.

The Hon Justice Margaret McMurdo AC
President, Court of Appeal, Supreme Court of Queensland

From: Justice Fraser
Sent: Wednesday, 6 May 2015 4:59 PM
To: Chief Justice Carmody
Cc: Justice MAMcMurdo
Subject: Cowan

Dear Chief Justice,

I refer to the application listed for hearing tomorrow in R v Cowan, which raises the issue whether you alone or the Court should decide whether you are disqualified by apprehended bias from hearing the appeals.

In your memorandum of 24 April to the President (cc to me), and particularly in your memorandum of 29 April to me and the President in reply to my email to you of 28 April, you made statements about how that issue should be resolved which, I respectfully suggest, require consideration to be given to the question whether those memoranda should be disclosed to the parties so that they might make informed submissions upon the topic whether you are disqualified from hearing the application by reason of apparent prejudgment of the issue.

According to past practice, as I understand it, the judge whose participation in a matter is potentially in issue would decide upon the necessity for and extent of any disclosure. That is complicated here by two factors. The first is that the application challenges the past practice in relation to disqualification in a way which might have implications for the practice in relation to disclosure. The second factor is that the subject matter of the potential disclosure is not known only by the judge whose participation in issue but comprises statements made to other judges hearing the case. I have never encountered or heard of such a thing happening before now, so far as I can recall.

I write now to ascertain your view and the President's view upon the question whether those memoranda should be disclosed to the parties with a view to them making any submission they might wish to make upon the topic.

If the memoranda are to be disclosed, I would respectfully suggest that they might be emailed to the parties in advance of the hearing so that they could formulate any submission they might wish to make without delaying the hearing.

Yours faithfully

Justice Hugh Fraser
Court of Appeal
Supreme Court of Queensland
PO Box 15167
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Telephone: 3247-4283
Email: justice.fraser@courts.qld.gov.au

Chief Justice Carmody

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Chief Justice Carmody

From: Justice Fraser
Sent: Friday, 1 May 2015 12:03 PM
To: Chief Justice Carmody; Justice MAMcMurdo
Subject: RE: Applications CA No 53 of 2014 and CA No 77 of 2014

Dear Chief Justice

I joined in the President's respectful request that you make disclosure and seek submissions from the parties. I therefore feel bound to state, although your objection was directed only to the President, that I can at present see no legitimate basis upon which I should not participate in the hearing of the application and today's directions hearing before the Court of Appeal. Of course I express no view upon the appropriateness of the application or whether and how the Court should dispose of the application – that must await argument.

That being so I feel obliged to interrupt my vacation to sit whilst I am in Brisbane and available.

Yours faithfully

Justice Hugh Fraser
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Supreme Court of Queensland
PO Box 15167
City East
Brisbane Qld 4002
Telephone: 3247-4283
Email: justice.fraser@courts.qld.gov.au

From: Chief Justice Carmody
Sent: Friday, 1 May 2015 9:35 AM
To: Justice MAMcMurdo
Cc: Justice Fraser
Subject: Applications CA No 53 of 2014 and CA No 77 of 2014

President McMurdo,

Please let me know how in light of your prompting of this application and your subsequent future listings email to Tracy Dutton on 23 April, 2015 you could seriously contemplate sitting on any bench asked to consider any transfer application based on my alleged disqualification for apparent bias.

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Chief Justice Carmody

From: Justice MAMcMurdo
Sent: Friday, 1 May 2015 11:38 AM
To: Chief Justice Carmody
Cc: Justice Fraser
Subject: RE: Applications CA No 53 of 2014 and CA No 77 of 2014

Chief Justice

First, I emphasise that when I wrote to you on 17 April asking you to disclose your meeting to the parties, I did so to protect the administration of justice generally and to ensure that justice was done in this case. In doing so I was not prejudging the issue but ensuring the parties were informed. I did so with the full support of Justice Fraser, as my letter of 17 April makes clear. You have never acknowledged that the request came from both Justice Fraser and me, either in your correspondence with me and the parties or in court when you mentioned the matter alone last Friday.

Second, as to my response on 21 April to Mr Davis's letter to me of 20 April, it was entirely appropriate. My letter was not private as you asserted in your memorandum of 22 April. It was copied to counsel and the other judges who sat on the case. Nor did it, as you asserted on 22 April, 'disclose confidential information regarding internal court systems and [your] allocation to parties in the appeal'. There is nothing confidential or secretive about the listing process in the Court of Appeal. The listing staff follow established guidelines to avoid any suggestion of hand-picking particular judges to influence decisions in particular cases, in accordance with best court management practice. Contrary to your extraordinary assertions in your memorandum of 22 April, my letter to Mr Davis supported, not undermined your position.

Third, the purpose of the mention this afternoon is 'to seek directions for the orderly and expeditious disposition' of Mr Cowan's application to the Court of Appeal for your disqualification. The appeals have been heard by the Court of Appeal comprising Justice Fraser, you and me. The application has been brought before this Court. Its future conduct and determination will no doubt be the subject of submissions which will require consideration. But the application having been made to THE COURT must first come before THE COURT.

The Hon Justice Margaret McMurdo AC
President, Court of Appeal, Supreme Court of Queensland

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30 April 2015

The Chief Justice,
The President of the Court of Appeal,
Fraser JA
Supreme Court of Queensland
Law Courts Complex
304 George Street
BRISBANE QLD 4000

Dear Judges,

RE: *R v COWAN*

The application had been filed, but no material was filed. All efforts are being made to prepare material which I hope will be filed in the week commencing 11 May.

The material is taking some time to prepare because it is necessary to put before the court reports of public statements made by both the Chief Justice and Ms Johnston. I am relying on the resources of the Legal Aid Office to exhaustively identify that material. It is voluminous.

The application also raises difficult legal questions and research is being done to identify cases from jurisdictions other than Australia.

I understand Justice Fraser's position and appreciate very much that his Honour is prepared to interrupt his leave to hear the case.

However, I will simply not be in a position to be able to do justice to the application if it is heard on 7 May.

I understand that Justice Fraser is available again between 25 May and 1 June. I hope to have the case ready by then and I am available on 26, 27 and 28 May and I am appearing in the Court of Appeal on 29 May in another matter.

Yours faithfully,


Peter J Davis QC
Chambers.

Cc Tony Moynihan QC

Rachel Monaghan

From: Kelly Morseu
Sent: Wednesday, 29 April 2015 2:53 PM
To: Rachel Monaghan
Subject: FW: R v Cowan

Dear Rachel

Her Honour has asked me to forward this email trail onto you and to invite the Chief Justice to action it as soon as possible.

Many thanks.

Kindest regards
Kelly

Kelly Morseu
A/Executive Assistant to the Hon Justice M A McMurdo AC
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| QLD 4002 | 415 George Street, Brisbane QLD 4000
| t: +61 7 3247 9214
| f: +61 7 3247 9232
email: kelly.morseu@justice.qld.gov.au
w: www.courts.qld.gov.au

From: Justice MAMcMurdo
Sent: Wednesday, 29 April 2015 2:10 PM
To: Justice Fraser; Chief Justice Carmody
Subject: RE: R v Cowan

I agree

The Hon Justice Margaret McMurdo AC
President, Court of Appeal, Supreme Court of Queensland

From: Justice Fraser
Sent: Wednesday, 29 April 2015 1:47 PM
To: Chief Justice Carmody
Cc: Justice MAMcMurdo
Subject: Re: R v Cowan

Dear Chief Justice

Thank you for your memorandum by way of a prompt reply to my email below.

As to the first point in your memorandum (that you have not seen a copy of my reasons circulated at the end of February even though the proper notification was duly given), that is disturbing. In due course please let me know the result of your enquiry about how that occurred. That is necessary to ensure that it is not repeated, to the disadvantage of litigants and the community.

As to your second point, my email does not assert that a request by a party for a judge to recuse himself or herself on the ground of apprehension of bias should be decided by the Court of Appeal rather than by the judge alone. In so far as your memorandum refutes such a proposition, it refutes something I have not asserted and do not assert.

Nor is such a proposition implicit in my offer to interrupt my leave to sit before I leave Australia next Friday. I made that offer only in the interests of the efficient disposition of the appeal, in circumstances in which Mr Cowan by his senior counsel has foreshadowed an application to the Court which heard the appeals, rather than merely a request to you to recuse yourself, and where no direction has been made about the timing of any such application. It may be that any such application will be found to be misconceived on the basis you advance, that any request for a judge to recuse himself or herself should be determined by the judge alone. But if such an application is made to the Court, the Court must reconvene to hear and determine it on its merits, without regard to a preconceived view of the Court's jurisdiction decided without hearing argument on the application.

Because I leave the Country next Friday and am not scheduled to recommence sitting in the Court of Appeal until after the mid-year vacation, further unfortunate delay will unnecessarily be incurred if Mr Cowan brings his application after I have left. This was why I respectfully suggested the making of appropriate directions to force any such application on before next Friday.

I again respectfully urge the making of the directions indicated in my first email.

Yours faithfully

Hugh Fraser JA

From: Justice Fraser
Sent: Tuesday, 28 April 2015 6:22 PM
To: Chief Justice Carmody
Cc: Justice MAMcMurdo; Tracy Dutton; Paul Wigley
Subject: R v Cowan

Dear Chief Justice

As you will know I am on leave. I circulated my draft judgment in this matter soon after I received the President's draft judgment and before I departed Brisbane on leave. I have read the exchanges of correspondence between you and the President and the transcript of the mention before you.

You have not circulated a draft judgment and you indicated at the mention that judgment would not be delivered before Mr Cowan brought his foreshadowed application to the Court. Accordingly (if you do not recuse yourself, a topic upon which I have not commented and do not comment) judgment in this matter must continue to be delayed until some time after you circulate a draft judgment after the foreshadowed application is brought, heard, and determined.

On the morning of 8 May I depart Australia on a long-planned overseas trip as part of my leave. I respectfully suggest that the foreshadowed application could and should be brought, heard and determined before then.

There is no apparent reason why the foreshadowed application could not be brought now or at least within a couple of days

In these circumstances I respectfully suggest that the Court should tomorrow morning (Wednesday 29 April) direct that Mr Cowan is to file any application he proposes to bring in this matter by no later than 1 May at 4 pm and that any such application will be heard on a day between 4th and 7th May to be fixed by the Registrar.

I am prepared, exceptionally, to interrupt my leave to sit in that period.

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**SUPREME COURT OF
QUEENSLAND**
CHAMBERS OF THE CHIEF JUSTICE

COPY

MEMORANDUM

Queen Elizabeth II Courts of Law
415 George Street
Brisbane QLD 4000
PO Box 15167
City East QLD 4002
PH 61 7 3247 4279
FX 61 7 3247 4206
www.courts.qld.gov.au

To: Fraser JA; President, Court of Appeal
From: Carmody CJ
Date: 29 April 2015
Subject: *R v Cowan*

I refer to your email dated 28 April 2015 regarding the matter of *R v Cowan*. I recognise that the notification of your draft reasons in *R v Cowan* was received on 27 February 2015, however for some reason I did not obtain a copy. I have instructed my Associate to print a copy of the draft reasons for my consideration immediately.

The proposition that the originating application, which is yet to be filed by the appellant, should be determined by the whole Court of Appeal is manifestly inconsistent with established precedent and practice within Queensland and other Australian jurisdictions. Furthermore, it is fundamentally incompatible with the principle of judicial independence. Consequently, I propose to hear and determine the application for disqualification sitting alone.

I acknowledge the importance of expediency in resolving the application. I intend to mention the application on Thursday 30 April 2015 to provide further directions regarding its disposition.

Chief Justice

Rachel Monaghan

From: Kelly Morseu
Sent: Wednesday, 29 April 2015 9:27 AM
To: Rachel Monaghan
Subject: FW: R v Cowan

Good Morning Rachel

Her Honour has asked me to forward this email trail to you and ask that you request the Chief Justice to action this as soon as possible. Time is of the essence.

Kindest regards
Kelly

From: Justice MAMcMurdo
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On the morning of 8 May I depart Australia on a long-planned overseas trip as part of my leave. I respectfully suggest that the foreshadowed application could and should be brought, heard and determined before then.

There is no apparent reason why the foreshadowed application could not be brought now or at least within a couple of days

In these circumstances I respectfully suggest that the Court should tomorrow morning (Wednesday 29 April) direct that Mr Cowan is to file any application he proposes to bring in this matter by no later than 1 May at 4 pm and that any such application will be heard on a day between 4th and 7th May to be fixed by the Registrar.

I am prepared, exceptionally, to interrupt my leave to sit in that period.

Yours faithfully

Hugh Fraser JA

Chief Justice Carmody

From: Justice Fraser
Sent: Tuesday, 28 April 2015 6:22 PM
To: Chief Justice Carmody
Cc: Justice MAMcMurdo; Tracy Dutton; Paul Wigley
Subject: R v Cowan

Dear Chief Justice

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**SUPREME COURT OF
QUEENSLAND**
CHAMBERS OF THE CHIEF JUSTICE

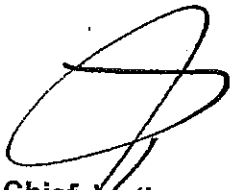
MEMORANDUM

To: President, Court of Appeal; Fraser JA
From: Carmody CJ
Date: 27 April 2015
Subject: *R v Cowan*

Queen Elizabeth II Courts of Law
415 George Street
Brisbane QLD 4000
PO Box 15167
City East QLD 4002
PH 61 7 3247 4279
FX 61 7 3247 4206
www.courts.qld.gov.au

On Friday 24 April 2015 I held a mention in the Chief Justice's Court wherein I disclosed to the parties in *R v Cowan* certain information and documentation relevant to a meeting with Ms Hetty Johnston and an unaffiliated third party held on Wednesday 15 April 2015.

Please find enclosed the transcript of the proceedings.



Chief Justice

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TRANSCRIPT OF PROCEEDINGS

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SUPREME COURT OF QUEENSLAND

CRIMINAL JURISDICTION

CARMODY CJ

Indictment No 53 of 2014

Indictment No 77 of 2014

THE QUEEN

v.

BRETT PETER COWAN

BRISBANE

2.51 PM, FRIDAY, 24 APRIL 2015

DAY 1

Any Rulings that may be included in this transcript may be extracted and subject to revision by the Presiding Judge.

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

MR P.J. DAVIS: Your Honour, I appear for the applicant. P.J. Davis QC. I'm leading MR EDWARDS, and we appear for Mr Cowan instructed by Bosscher Lawyers.

5 THE CHIEF JUSTICE: Thank you, Mr Davis.

MR A.W. MOYNIHAN: If your Honour pleases, my name's Moynihan, initials A.W., of Queen's Counsel, and I appear with MR CASH, initials G.P., for the respondent in the appeal.

10

THE CHIEF JUSTICE: Thanks, Mr Moynihan. Recent exchanges of correspondence have made it necessary in the interests of transparency for this mention. The relevant context is that on the 15th of April I met with Bravehearts founder and well known child protection advocate Ms Hetty Johnson in my
15 chambers with an unaffiliated third party to discuss an information solution system for reducing administrative expenses and burdens associated with child protection matters relating to the recommendations in the 2013 Child Protection Inquiry Report. This long scheduled meeting was disclosed in advance through the Chief Justice's Engagement Calendar, which was publicly available on the Queensland Supreme
20 Court website.

A couple of days later I wrote to the parties at the urging of the President of the Court of Appeal. The purpose of this correspondence was to courteously notify the parties of the President's assertions. I assured the parties that the Cowan matter was
25 not raised directly or indirectly at the meeting. Despite this fact, out of an abundance of caution and at the President's insistence, I offered the parties the opportunity to make submissions. Queen's Counsel for the appellant responded with a series of interrogatories, claiming that further information was required to obtain proper instructions from his client.

30

In accordance with paragraph (e) of section 3.5 of the Australasian Institute of Judicial Administration's *Guide to Judicial Conduct* it is inappropriate for a judicial officer to be questioned about an alleged disqualifying matter by the parties or on their behalf. I also advised that paragraph (f) of section 3.5 of the *Guide to Judicial
35 Conduct* required any disclosure to occur in open court. Therefore, I declined to respond to the interrogatories advanced by counsel.

Yesterday counsel for the appellant replied to my disinclination to answer his questions, stating that he expected to receive instructions to initiate an application for the appeal to be adjourned for hearing before a differently constituted court,
40 apparently as a result of the disqualification of a judge. Counsel stated that despite my view of the impropriety of responding to his interrogatories he remained of the view that it would be of assistance for further disclosure to be made. No further correspondence has since been exchanged between myself and senior counsel for the
45 appellant with the exception of advising him of this mention.

5 There is nothing unusual or inappropriate – in fact, it is standard practice for heads of jurisdiction – to meet with community leaders from time to time, even if they possess a general, intellectual or emotional interest in a matter before the court or its outcome. In fact, I meet with the Attorney-General, Police Commissioner and Child Safety Department officers on a regular basis. None of these meetings impede my neutrality or impartial discharge of my judicial function.

10 Ms Johnston and I do not have a relevant close and continuing relationship that would impact on the impartiality of my decisional processes. She is not a party to the proceedings, nor does she have a financial or commercial interest in the outcome of the matter. In my opinion, she is not within the category of persons which may be reasonably apprehended to make ex parte communications or representations in this matter. Any purported risk of this occurring is further mitigated by the fact that the meeting was scheduled publicly in advance and attended by an independent and
15 unaffiliated third party.

20 Accordingly, although my strong preliminary opinion is that there is no serious possibility that a fair minded person might reasonably apprehend bias on the basis of this meeting, this disclosure today is intended to preserve public confidence in the judicial system through facilitating transparency and open justice. Overreaction, mischief-making rumour and baseless innuendo may impugn the integrity of the administration of justice just as well as actual or apprehended bias. However, in such circumstances judges should not too readily disqualify themselves out of a risk of damaging judicial independence, delaying justice to the parties and burdening
25 other judicial officers subject to existing time and resource constraints.

30 With that in mind, I open this court up to the submissions of the parties. If they require further time to consider their submissions, I will stand the matter down. I will publish the documentation I've referred to and invite the Director of Public Prosecutions to tender them for the record. Mr Davis.

MR MOYNIHAN: If the court - - -

35 MR DAVIS: Yes, your Honour.

THE CHIEF JUSTICE: I'm sorry.

40 MR MOYNIHAN: If the court please, I tender the bundle of documents under tabs 1 through to 8 referred to by the learned Chief Justice in his preceding remarks. If it please the court.

THE CHIEF JUSTICE: Thank you. I'll admit the bundle and mark them exhibit 1.

45 **EXHIBIT #1 ADMITTED AND MARKED**

THE CHIEF JUSTICE: Yes, Mr Davis.

MR DAVIS: Your Honour, could I tender a bundle of documents. They're basically the correspondence together with some other materials. Our learned friend
5 has a copy. Your Honour, I've received this morning instructions to bring an application to the Court of Appeal seeking your disqualification from further hearing the matter. The basis of the application is apprehended bias, given the association between yourself and Ms Hetty Johnston, the CEO of Bravehearts, which is, in effect, the lobby group interested in the protection of children, primarily against
10 sexual interference.

The material for the application is presently being mustered and may take a week or so. Once the material has been prepared, then, obviously, full particulars of the application can be given. However, some explanation of the likely shape of the
15 application can be given now. Your Honour, Ms Johnston is not only an advocate for child protection but she has been an advocate strongly and specifically against Mr Cowan. She has made public comments directly against Mr Cowan, including such things that he ought never be released. It is against that background that the relationship between your Honour and Ms Johnston must be evaluated to see whether
20 in the light of that relationship impartiality can be suspected.

We point to at least the following. The email which is attached to the letter from your Honour to me of 17 April 2005 is an email from Ms Johnston to your Honour. That shows that Ms Johnston has such a state of familiarity with your Honour that
25 she can make the subject matter of an email to your Honour headed, "Hi from Hetty." Further, she feels that she can address the email, "Hi Tim," and she can include in the email a smiley face symbol. The email itself refers to a meeting to discuss a Bravehearts project called HubCare. While in the letter of 17 April your Honour says that Cowan was not discussed, it seems obvious that HubCare and
30 Bravehearts would've been discussed, and the general theme of the email is that Ms Johnston has written to your Honour to assist in the policy objectives.

In the third addition of his book, Judicial Ethics in Australia, the Honourable James Thomas QC deals with the caution which a judge must exhibit when being associated
35 with what Mr Thomas calls organisations with an agenda or social change. Could I take your Honour to tab 3 in the documents that I've handed up, and, in particular, Mr Thomas deals with this issue at paragraph 8.5 of his book, which is on page 138, and the upshot of it is that – and basically his Honour's talking here about membership of an association, not association with an association, but his Honour
40 speaks in terms of the caution that a judge must have when dealing with associations with a particular – those associations having a particular social interest, and, of course, Bravehearts do, and the interest that Bravehearts has is directly contrary to the interests of my client. If your Honour goes to 8.10, there's a paragraph which
45 says:

The difficulty is not confined to membership of such organisations. Tacit assistance may be just as bad. The undesirability of placing oneself in a

position which may be taken as giving support to a dubious organisation is instanced by the conduct of the chief judge of the Massachusetts Superior Court who attended a public lecture.

5 THE CHIEF JUSTICE: Well, do you mean to say that Bravehearts is a dubious organisation?

MR DAVIS: No. I'll come to that. It's not suggested that -- for a moment that Bravehearts is a dubious organisation; however, your Honour, it's a lobby group,
10 and Mr Cowan is someone who had been directly targeted by that very lobby group, and yet it seems that your Honour is associating with the lobby group to assist it. That seems to be expectation of Ms Johnson.

Your Honour, the second aspect is this: we very respectfully observe that your
15 Honour's appointment as Chief Justice caused controversy. It is fair to say that there were public comments made by persons who directly opposed your Honour's appointment and some who publicly supported it. Your Honour, Ms Johnson actively and publicly supported your Honour's appointment. She made many public comments to that effect, and we'll include them in the material to be filed.

20 One of these appears on the Bravehearts' website, where Ms Johnson calls critics of your Honour's appointment petulant. That unfortunately is not in the materials, but what she does in the website is not only does she actively attack persons who have attacked your Honour but she then says that your Honour is a champion for child
25 protection and that your Honour will see that the courts become more victim focused than accused focused. It seems that Ms Johnson was an advisor to your Honour when your Honour, then as Carmody SC, conducted the Carmody Inquiry into child abuse. Therefore, your Honour, we have the situation where the Ebner test is applied, where, firstly, Ms Johnson is an ardent public supporter of your Honour's,
30 because of your Honour's stance in child protection. Mr Cowan - - -

THE CHIEF JUSTICE: That may not be the only reason, Mr Davis.

35 MR DAVIS: I beg your pardon?

THE CHIEF JUSTICE: That may not be the only reason. That may not be my only qualification.

40 MR DAVIS: I'm not suggesting that it is.

THE CHIEF JUSTICE: Well, why do you say that that's why she supports me?

45 MR DAVIS: Because that's what she says. She says in her Bravehearts' website -- that's what she speaks about, and this is the very woman, of course, who speaks about child protection, we understand why, says that your Honour is going to change the court to victim based, then she attacks Mr Cowan, and then your Honour sees her, and your Honour then, it seems, was engaged in some promotion -- or, helping

her promote Bravehearts, and she's got such familiarity with your Honour that she addresses emails "Hi Tim" to the Chief Justice of Queensland. Yes, your Honour?

THE CHIEF JUSTICE: That's my name, Mr Davis.

MR DAVIS: Yes, your Honour. Yes. Yes. And your Honour would be - - -

THE CHIEF JUSTICE: It doesn't matter whether I'm the Chief Justice or the chief street sweeper, that's still my name.

MR DAVIS: And if I said to your Honour, "Hello Tim," from the bar table, then I would be in all sorts of strife.

THE CHIEF JUSTICE: Well - - -

MR DAVIS: And, your Honour - - -

THE CHIEF JUSTICE: She wasn't at the bar table.

MR DAVIS: No. No, she wasn't. She was in a private meeting with your Honour, ultimately.

THE CHIEF JUSTICE: No. She was writing an email.

MR DAVIS: And she was in a private meeting with your Honour, ultimately.

THE CHIEF JUSTICE: Yes.

MR DAVIS: Mr Cowan is somebody who Ms Johnson has publicly reviled and expressed views publicly concerning his fate in the criminal justice system, and your Honour obviously has a long association with Ms Johnson. So after you've sat on a court considering an appeal by the very man against whom Ms Johnson has made direct adverse comments, you meet with her in a private meeting to discuss the promotion of Bravehearts, an organisation which is a lobby group and has directly lobbied against Mr Cowan.

In our respectful submission, your Honour should make full disclosure of at least the following: the full extent of your involvement with Ms Johnson, including, in particular, involvement from the time of the commencement of the Carmody Inquiry; correspondence that has passed between you and Ms Johnson, especially emails since your appointment as Chief Justice and, further, particularly any emails in response to the email setting up the meeting. That's our position.

Can I turn to the procedural issue as to who determines the question of apprehended bias in these circumstances, because your Honour raised that in the correspondence. The starting position is, with the greatest respect, as your Honour has stated in the correspondence, that it is for the judge against whom the allegation of apprehended

5 bias to consider the issue. The authorities seem to suggest that there is no right of appeal from such a determination, such a determination is not a judgment or an order; however, the decision made by a judge against whom the question of apprehended bias has arisen may itself be part of an appeal. So if your Honour was sitting alone, your Honour would rule on the topic. That wouldn't be the subject of an appeal, but the question of apprehended bias would be subject to the broader appeal.

10 THE CHIEF JUSTICE: Yes. It would go to jurisdiction.

MR DAVIS: I beg your pardon?

THE CHIEF JUSTICE: It would go to jurisdiction.

15 MR DAVIS: Well, the difficulty, though, arises when the judge against whom an allegation of apprehended bias is made is not a judge sitting alone but is a judge who himself or herself forms part of a Court of Appeal or forms part of a Full Court exercising original jurisdiction, for instance, the High Court, and that was the issue that arose in the Hindmarsh Bridge case. In the Hindmarsh Bridge case, which is
20 Kartinyeri and Commonwealth of Australia (1998) 195 CLR 337, Justice Callinan heard an application that he disqualify himself from sitting on the case.

His Honour dismissed that application. The case was heard by a Full Court, including Callinan – Justice Callinan. An application was then made in the original
25 jurisdiction of the High Court for Justice Callinan to be disqualified. That application was never heard, because Justice Callinan disqualified himself. Sir Anthony Mason wrote an article which was published in the Constitutional Law and Policy Review in August 1998. I don't know whether your Honour's seen that, but it's in the materials. It's - - -

30 THE CHIEF JUSTICE: No. I've read it, Mr Davis.

MR DAVIS: - - - number 1. The upshot of that opinion is that it must be for the court, namely, the Full Court, to determine whether it's delivering a judgment that's
35 affected. So the whole court must determine whether the judgment which it delivers is proper according to law. If one of those members is affected by ostensible bias, it must follow that that court should determine that issue. So the procedure we think is appropriate is that an application is brought to the Court of Appeal. Now, if there is a disqualification, then it seems, pursuant to the Supreme Court Act, that the only
40 appropriate order is the one I flagged that we'll seek, namely, that the appeal is heard again before a differently constituted court.

THE CHIEF JUSTICE: So it's not an application for an adjournment before a differently constituted court on the basis that it's part-heard; it's an application for
45 me to disqualify or it's an application to affirm my disqualification by apprehended bias, which is to be decided by me as part of a panel of three?

MR DAVIS: Well, that's an interesting question, because what happened in the Hindmarsh Bridge case was that Justice Callinan was not to participate in the review. So what happened was his Honour heard the disqualification application himself. So he's sitting alone, and he hears that. He rules that he ought not disqualify himself.
5 The appeal then proceeds. Then there was an application filed to the Full Court for an order that Justice Callinan be disqualified from the appeal.

THE CHIEF JUSTICE: That was before it started, was it?

10 MR DAVIS: I'm not quite sure. It seems that the appeal was actually heard, but – anyway.

THE CHIEF JUSTICE: But that's not a problem, the fact that we've heard it and judgments have been drafted in this matter?
15

MR DAVIS: Well, I didn't know the judgments had been drafted, but it's irrelevant that judgments have been drafted if they haven't been delivered.

20 THE CHIEF JUSTICE: What about the fact that it's part heard? Is - - -

MR DAVIS: Well, it's been heard by a court.

THE CHIEF JUSTICE: Yes.

25 MR DAVIS: So it's been heard by a court of three. I'll take your Honour to the sections in a minute.

THE CHIEF JUSTICE: I'm just wondering, if – I'm just wondering why the result has to be a differently constituted court. Even if one was – one of the three was
30 disqualified or stood aside, why would the other two have to do that?

MR DAVIS: Well, can I take your Honour to the sections, because I should have done that earlier rather than make some assertions. I should have taken your Honour to the sections. They're in tab 2.
35

THE CHIEF JUSTICE: Yes.

MR DAVIS: Now, the starting point is section 28:

40 *The Court of Appeal consists of the President of the Court of Appeal –*

etcetera. Then if your Honour looks at section 30 – and then if your Honour goes to 31, you'll see:

45 *After the Court of Appeal has started the hearing –*

So we submit that the Court of Appeal has started the hearing. It probably hasn't finished it, because it would finish it with a judgment. So if the Court of Appeal has started the hearing - - -

5 THE CHIEF JUSTICE: Sometimes they use the phrase hearing -- hearing determined. Presumably -- I mean, you may be right. Maybe - - -

MR DAVIS: No, I - - -

10 THE CHIEF JUSTICE: - - - hearing includes determined.

MR DAVIS: Yeah, I'm fairly confident that in this context of -- your Honour, it means hearing.

15 THE CHIEF JUSTICE: And I suppose (b) -- it adds force that the subparagraph (b) talks about before the proceeding has been determined.

MR DAVIS: Yes. So if your Honour -- your Honour's a little bit ahead of me. If you go to (b):

20

If one of the judges constituting the court dies or resigns as a judge --

either of those two things don't apply, obviously --

25 *or is certified as incapable of sitting before the proceeding has been determined.*

And then if your Honour looks at subsection (2):

30 *A judge is certified as incapable of sitting if the Chief Justice --*

well, that wouldn't be so here --

35 *or the President of the Court of Appeal has issued a certificate stating that the judge is incapable of sitting, whether temporarily or otherwise.*

Now, the difficulty with that is that -- and we haven't researched this fully, but our preliminary approach is that disqualification for apprehended bias would not be - - -

40 THE CHIEF JUSTICE: An incapability.

MR DAVIS: - - - incapability. So - - -

THE CHIEF JUSTICE: It'd be a physical or mental or some other thing.

45

MR DAVIS: Well, we think that's what it means. And that's why subsection (2) is there. One could imagine that if there was a judge who had sat on a Court of Appeal,

5 your Honour might, as Chief Justice – might engage in an investigation and then
certify a judge who was bodily or mentally incapable. It's a bit hard to think that the
President of the Court of Appeal would certify that the Chief Justice is incapable of
sitting because of apprehended bias. I don't think that's what that – it doesn't seem
to be that that's what that's saying. I can say that – I think without breaching any
confidence – that Mr Moynihan certainly doesn't share our initial view that it means
that no judgment could be delivered by the court that has actually seen.

10 THE CHIEF JUSTICE: You mean he says the principle of necessity would allow
two to do it, not - - -

15 MR DAVIS: I'm not sure what he says about the principle of necessity and I'm not
sure the principle of necessity arises, given that we're dealing here with a statutory
provision and we've got many, many judges who could hear it. So, anyway – but it
seems under section 31 that you just simply end up with a situation where one judge
can't continue. It's not within the exceptions in 31 to enable two judges to finish it.
So it would have to be adjourned away to a new court. So - - -

20 THE CHIEF JUSTICE: That'd be regrettable.

MR DAVIS: Beg your pardon, your Honour?

THE CHIEF JUSTICE: That would be regrettable.

25 MR DAVIS: Your Honour, my client is convicted of murder. He's convicted of a
particularly notorious murder.

30 THE CHIEF JUSTICE: I don't – I'm not saying it shouldn't happen if it should
happen; I'm just saying it would be regrettable if it did have to. And I understand
perfectly your submissions on behalf of the interests of Mr Cowan. I'm not cavilling
with that at all.

35 MR DAVIS: Well, your Honour, the short point, I suppose, is this: that we do hold
from instructions to file an application. We hold those instructions to file it to the
Court of Appeal. It might very well be that there would need to be some preliminary
argument as to exactly how that works. I could see, based on what happened in the
Hindmarsh Bridge case, the Court of Appeal may very well think that it's best for
your Honour to deliver a judgment. And I assume that what your Honour said earlier
when we first walked into court is not a final judgment, because, of course, you
40 hadn't heard us. So I assume that that was just your Honour's initial - - -

THE CHIEF JUSTICE: I think I said in my strong preliminary view.

45 MR DAVIS: Yes.

THE CHIEF JUSTICE: Yes.

MR DAVIS: No, I appreciate that. I'm just confirming that.

THE CHIEF JUSTICE: Yes.

5 MR DAVIS: So it might very well be that the Court of Appeal asks your Honour to
give an opinion after hearing evidence – I beg your pardon – after hearing
submissions and then if your Honour's decision was to continue in the case, well, it
might be that the other two than review that. There is also a complication given –
there seems to be a complication also caused by the fact that here we're dealing with
10 an intermediate Court of Appeal. The position in the Supreme Court is more
difficult. The position in the High Court is more difficult, because the Court of
Appeal could simply decide the issue and it might decide the issue on the basis that
the court leaves it to your Honour and then any appeal then to the High Court could
include a complaint about these matters. The High Court's in a different position, of
15 course, because it has to determine the issue itself, because there's no appeal. So - - -

THE CHIEF JUSTICE: And I think there's a recent decision where they
complained about the New South Wales Court of Appeal not dealing with an
apprehended bias issue.

20 MR DAVIS: Yeah.

THE CHIEF JUSTICE: Which left the High Court with having to deal with it,
because you can't erase it and leave it unresolved, because you allow some other
25 issue to determine the outcome of the appeal. Once you raise something like that,
it's got to be resolved one way or the other.

MR DAVIS: Yes. Your Honour, we wouldn't like to see judgment in the case
delivered until we've had an opportunity to file an application. The application will
30 hopefully be filed next week. I think the material is probably a couple of weeks
away. There's just a lot of it. Thank you, your Honour.

THE CHIEF JUSTICE: Okay. Thanks, Mr Davis. Yes, Mr Moynihan.

35 MR MOYNIHAN: Your Honour, it's obvious that at this point there is no
application.

THE CHIEF JUSTICE: No.

40 MR MOYNIHAN: So it's very difficult for me, not knowing the context of the
application, to make any meaningful - - -

THE CHIEF JUSTICE: Yes.

45 MR MOYNIHAN: - - - submissions. So – but I think it is able to be said that, in
any event, the Crown will likely, as it did in the High Court Hindmarsh Bridge case,
make submissions drawing attention to the relevant principles and cases that may

assist in determining the issue. As far as my preliminary research on this issue goes, it seems that this is unprecedented in the sense of an application being made after an appeal has been heard, but before judgment is delivered. So there is no guidance by this court or the High Court in this state in these type of circumstances.

So to that extent there will have to be some consideration of a number of cases from other jurisdictions but one should probably start with the statute in this case and that is – in this State and that is why the application itself will be fundamentally important because it will tell whether the application is one to engage section 31 of the Supreme Court Act or alternatively it seeks to engage the common law principle of a denial of natural justice.

THE CHIEF JUSTICE: And also – I mean, obviously I'm concerned with delay, delaying justice to the parties. And I think Mr Davis is right, with respect, that if you simply don't disqualify yourself you don't make an appealable order or judgment. You just carry on. But that's not to say that it couldn't be framed in a way that elicited an order that could be appealed. I don't know.

MR MOYNIHAN: Your Honour, if I could direct your Honour to what the High Court said about that in Wilson's case in – has your Honour – you may not have seen that. I can give you the citation. It's Michael Wilson & Partners Limited against Nicholls and Others (2011) 282 ALR 685.

THE CHIEF JUSTICE: Yes.

MR MOYNIHAN: But in any event, the real - - -

THE CHIEF JUSTICE: Was that a costs order or something? It was an interlocutory order that they latched onto to appeal.

MR MOYNIHAN: That's correct. There was an interlocutory – there was an aspect of interlocutory application about it. But really, Mr Davis is correct to the extent that obviously there will need to be some consideration of how the application, when it is made, is heard, whether it's heard by your Honour sitting alone or before the court that heard the appeal. And Mr Davis has taken you to some of the sections but one should start with the statute and the statute, in my submission, makes plain, when one follows through the sections which your Honour has already been taken to, the first is section 28 which establishes the Court of Appeal itself. Section 29, of course, gives the court its powers and jurisdiction. But paragraph – I beg your pardon – section 30 makes it very clear that:

Subject to this Act, any three or more judges of appeal constitute, and may exercise all the jurisdiction and powers of, the Court of Appeal.

And subparagraph (4) provides:

A rule of court may provide that the jurisdiction and powers of the Court of Appeal may, in a particular kind of proceedings, be exercised by fewer than three judges of appeal.

5 So the statute makes clear that all powers and jurisdiction must be exercised by the three or more judges of appeal in any one case, unless there is a rule of court that may provide that the power or jurisdiction can be exercised otherwise. Now that, of course, is the reason why section 31 is there because there may be cases where there is no such rule to authorise the power or jurisdiction to be exercised with less than
10 three – for example, in relation to the hearing of an appeal – and one of the three judges becomes, for whatever reason, incapable of proceeding. And the section picks up obviously death, resignation, one could probably add to that bankruptcy or some other medical condition but the section itself doesn't limit the type of matters that may make a judge incapable of continuing to hear the matter. And it's there in
15 ---

THE CHIEF JUSTICE: You don't want to get too subjective.

20 MR MOYNIHAN: I beg your pardon?

THE CHIEF JUSTICE: You wouldn't want to get too subjective.

MR MOYNIHAN: No. No, but it's a very important power because it's the power that allows the court to continue when there are at least two judges remaining who
25 can hear and determine the appeal.

THE CHIEF JUSTICE: Yes. So as Mr Davis said, it's a question of whether a disqualification amounts to an incapacity or an incapability ---

30 MR MOYNIHAN: That's right.

THE CHIEF JUSTICE: --- or inability, anyway.

MR MOYNIHAN: That's right. There's an argument to be had there but
35 preliminary to – my point is there's an argument to be had as to who hears this application. And when one then goes to look at the sections that give judges of appeal powers to do things or power and jurisdiction to do things with less than three, then one goes to sections like rule 104 of the Practice Rules ---

40 THE CHIEF JUSTICE: Isn't it more fundamental than all that? Like isn't it a question of judicial independence and – I would have thought, just as a matter of basal principle, two other judges can't tell you what – whether you are disqualified by apprehended bias because that's a question for an independent judge to – sorry -- that's a question for the judge to decide independently.

45 MR MOYNIHAN: Well, Sir Anthony Mason in his article, which your Honour said you had read ---

THE CHIEF JUSTICE: Yes.

5 MR MOYNIHAN: - - - suggests that the alternate argument to that, of course, is that because in Australia it is a purely objective test that the other members of the court may be better placed to make that assessment and that others outside of the judge might think that it is difficult for a judge to assess whether they are. And the second reason is - - -

10 THE CHIEF JUSTICE: Well, if that's true, the judge at the centre of the controversy would never make it and it would be better - it would always be better for someone else to make it.

15 MR MOYNIHAN: Quite, and that is why, in the appellate circumstance, that can be done. But yet a judge sitting at first instance it can't be, so one is left with the judge alone making the determination in that. Now, I'm only positing for your Honour - - -

THE CHIEF JUSTICE: Yes.

20 MR MOYNIHAN: - - - in answer to your Honour's question.

THE CHIEF JUSTICE: I can see from my - well, from anyone's point - you would probably prefer someone else to decide it rather than - - -

25 MR MOYNIHAN: Yes.

THE CHIEF JUSTICE: - - - decide something like that about yourself. It seems strange but that's the way it has been done, so - - -

30 MR MOYNIHAN: It's the way it has been done. And your Honour could also perhaps be assisted to look at sections like 43 and 44 of the Supreme Court Act which enumerate the actual powers and jurisdiction that can be exercised by one judge alone sitting in appeal, as distinct from all three. And, of course, this situation, in my submission, isn't one of them.

35 THE CHIEF JUSTICE: All right. Well, what are we - what's the next step?

MR MOYNIHAN: Well, really there should be no step at all until an application is filed.

40 THE CHIEF JUSTICE: Right.

MR MOYNIHAN: And then once it's filed - - -

45 THE CHIEF JUSTICE: We will work it out from there. Do you agree with that, Mr Davis?

MR DAVIS: Yes, your Honour. Yes. My only concern is judgment will have been delivered - - -

THE CHIEF JUSTICE: Yes. Look, I - - -

5

MR DAVIS: - - - because I - - -

THE CHIEF JUSTICE: - - - I mean, I'm not going there. I can't imagine - well, I can't speak for the other judges, but I won't.

10

MR DAVIS: Well, we will - - -

THE CHIEF JUSTICE: You don't - - -

15

MR DAVIS: We will - - -

THE CHIEF JUSTICE: - - - want me to deliver judgment, I mean I'm not going to.

20

MR DAVIS: No. Thank you, your Honour. Well, we will file an application within the next seven days.

THE CHIEF JUSTICE: Okay. All right. Well, thanks gentlemen.

25

MR DAVIS: Thank you.

THE CHIEF JUSTICE: Adjourn the court.

ADJOURNED

[3.28 pm]



**SUPREME COURT OF
QUEENSLAND**
CHAMBERS OF THE CHIEF JUSTICE

COPY

MEMORANDUM

Queen Elizabeth II Courts of Law
415 George Street
Brisbane QLD 4000
PO Box 15167
City East QLD 4002
PH 61 7 3247 4279
FX 61 7 3247 4206
www.courts.qld.gov.au

To: President, Court of Appeal
Cc: Fraser JA
From: Carmody CJ
Date: 24 April 2015
Subject: *R v Cowan*

I refer to your correspondence dated Friday 24 April 2015 regarding the mention to be held today at 2:30PM.

The sole purpose of this mention is to formally disclose in open court my meeting with Ms Hetty Johnston on Wednesday 15 April 2015 and to invite the parties to make submissions.

Although the appeal and its hearings are unquestionably procedures properly heard before the whole Court, matters concerning the disclosure of allegedly disqualifying circumstances are exclusively the domain of the relevant Judge subject to the allegations. Accordingly, your attendance is unnecessary for the purposes of conducting the mention.

Recognising that your attendance is unnecessary to determine the appropriateness of disclosure or disqualification, the *Guide to Judicial Conduct* provides that "the decision [on disqualification] should be made at the earliest opportunity."¹ Therefore, I intend to receive the submissions of the parties as soon as possible to allow for the expeditious resolution of this matter.

In any event, as you were significantly involved in motivating this disclosure, I propose to sit alone for the purposes of preserving both the *fact* and *appearance* of judicial independence.

Chief Justice

¹ Australasian Institute of Judicial Administration, *Guide to Judicial Conduct* (2nd edn, AIJA: Melbourne), 15.



**SUPREME COURT OF
QUEENSLAND**

CHAMBERS OF THE PRESIDENT

MEMORANDUM

TO: Chief Justice

**CC: Fraser JA
Judges of Appeal
Byrne SJA**

FROM: President Court of Appeal

DATE: 24 April 2015

RE: *R v Cowan*

Brisbane Supreme Court
QEII Courts of Law Complex
415 George Street
Brisbane QLD 4000

PO Box 15167
City East QLD 4002

PH (07) 3247 9214
FX (07) 3247 9232
www.courts.qld.gov.au

You informed me at 9:00am this morning that you, extraordinarily, are mentioning the appeals in *R v Cowan* at 2:30pm today before you alone.

I have been attending a seminar for Supreme and District Court judges since 9:00am.

These appeals have been heard by the whole Court (Fraser JA, you and me). If it is to be mentioned, it should be mentioned before the whole Court, not just one member of it. Fraser JA is presently in Japan but he returns on Tuesday next week. The appeals should be mentioned before the whole Court next week.

Your comments in correspondence since 17 April to the parties, Fraser JA and me imply that only I asked you to disclose your meeting with Ms Johnston. As my letter to you of 17 April makes clear, Fraser JA shared my concern and joined in my request that you disclose the meeting with Ms Johnston and what was discussed you should make this clear to the parties.

If you persist in mentioning these appeals before you alone today, I request you direct a transcript be prepared as a priority and that copies be supplied to Fraser JA and me.

The Honourable Justice Margaret McMurdo AC
President

Rachel Monaghan

From: Rachel Monaghan
Sent: Friday, 24 April 2015 8:55 AM
To: Pina Gillespie
Cc: 'pdavis@qldbar.asn.au'
Subject: R v Cowan
Attachments: 201504240949.pdf

Importance: High

Tracking:	Recipient	Read
	Pina Gillespie	Read: 24/04/2015 8:55 AM
	'pdavis@qldbar.asn.au'	

Dear Pina,

Please find attached letter from the Chief Justice for Mr Moynihan's attention.

Kind regards,

Rachel Monaghan
A/Executive Assistant to the
Honourable T F Carmody Chief Justice
Supreme Court of Queensland
Level 16, Queen Elizabeth II Courts of Law
415 George Street, Brisbane, QLD, 4000
(PO Box 15167, City East, QLD, 4002)
Telephone: +61 7 3247 4279 | Facsimile: +61 7 3247 4206
Email: Rachel.Monaghan@justice.qld.gov.au

-----Original Message-----

From: ricoh@justice.qld.gov.au [mailto:ricoh@justice.qld.gov.au]
Sent: Friday, 24 April 2015 9:50 AM
To: Rachel Monaghan
Subject: Message from "JP2068738"

This E-mail was sent from "JP2068738" (Aficio MP 301).

Scan Date: 24.04.2015 09:49:59 (+1000)
Queries to: ricoh@justice.qld.gov.au



**SUPREME COURT OF
QUEENSLAND**
CHAMBERS OF THE CHIEF JUSTICE

COPY

24 April 2015

Mr A Moynihan QC
Director of Public Prosecutions
Level 6, State Law Building
50 Ann Street
Brisbane Qld 4000

Queen Elizabeth II Courts of Law
415 George Street
Brisbane QLD 4000
PO Box 15167
City East QLD 4002
PH 61 7 3247 4279
FX 61 7 3247 4206
www.courts.qld.gov.au

Dear Mr Moynihan

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

The Honourable Tim Carmody
Chief Justice

cc Mr P Davis QC
President, Court of Appeal
The Hon Justice HB Fraser, Judge, Court of Appeal

Rachel Monaghan

From: Rachel Monaghan
Sent: Friday, 24 April 2015 8:53 AM
To: 'pdavis@qldbar.asn.au'
Cc: Pina Gillespie
Subject: R v Cowan
Attachments: 201504240949.pdf

Importance: High

Tracking:	Recipient	Read
	'pdavis@qldbar.asn.au'	
	Pina Gillespie	Read: 24/04/2015 8:55 AM

Dear Mr Davis,

Please find attached letter from the Chief Justice.

Kind regards,

Rachel Monaghan
A/Executive Assistant to the
Honourable T F Carmody Chief Justice
Supreme Court of Queensland
Level 16, Queen Elizabeth II Courts of Law
415 George Street, Brisbane, QLD, 4000
(PO Box 15167, City East, QLD, 4002)
Telephone: +61 7 3247 4279 | Facsimile: +61 7 3247 4206
Email: Rachel.Monaghan@justice.qld.gov.au



**SUPREME COURT OF
QUEENSLAND**

CHAMBERS OF THE CHIEF JUSTICE

COPY

24 April 2015

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

Queen Elizabeth II Courts of Law
415 George Street
Brisbane QLD 4000
PO Box 15167
City East QLD 4002
PH 61 7 3247 4279
FX 61 7 3247 4206
www.courts.qld.gov.au

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

The Honourable Tim Carmody
Chief Justice

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

Chief Justice Carmody

From: Justice MAMcMurdo
Sent: Thursday, 23 April 2015 12:47 PM
To: Tracy Dutton
Cc: DL-Supreme Court Judges; DL-Supreme Court Judges - Brisbane; Julie Steel
Subject: Future listings of judges in the Court of Appeal

Dear Tracy

I regret to inform you that following an extraordinary memorandum yesterday from the Chief Justice in relation to R v Cowan I cannot sit with him again on any Court.

Please ensure in future that I am not listed to sit with the Chief Justice.

He has been copied into this email.

Best wishes

Margaret

The Hon Justice Margaret McMurdo AC
President, Court of Appeal, Supreme Court of Queensland

PETER J DAVIS QC
Barrister-at-Law
ABN 29 578 313 997

Level 31, 239 George Street
BRISBANE QLD 4000
P O BOX 12166 George Street Qld 4003

Telephone: (07) 3175 4601
Facsimile: (07) 3175 4666
pdavis@qldbar.asn.au

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,

Per. A Cumming
for

Peter J Davis QC
Chambers

Cc McMurdo P
 Fraser JA
 Moynihan QC



**SUPREME COURT OF
QUEENSLAND**

CHAMBERS OF THE PRESIDENT

MEMORANDUM

TO: Chief Justice

**CC: Fraser JA
Judges of Appeal
Byrne SJA**

FROM: President Court of Appeal,

DATE: 23 April 2015

RE: *R v Cowan*

Brisbane Supreme Court
QEII Courts of Law Complex
415 George Street
Brisbane QLD 4000

PO Box 15167
City East QLD 4002

PH (07) 3247 9214
FX (07) 3247 9232
www.courts.qld.gov.au

Dear Chief Justice

I refer to your memorandum of 22 April 2015.

I reject all your ill-conceived allegations of impropriety.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Margaret McMurdo'.

The Honourable Justice Margaret McMurdo AC
President



**SUPREME COURT OF
QUEENSLAND**
CHAMBERS OF THE CHIEF JUSTICE

COPY

MEMORANDUM

Queen Elizabeth II Courts of Law
415 George Street
Brisbane QLD 4000
PO Box 15167
City East QLD 4002
PH 61 7 3247 4279
FX 61 7 3247 4206
www.courts.qld.gov.au

To: President, Court of Appeal

Cc:

From: Carmody CJ

Date: 22 April 2015

Subject: Correspondence regarding *R v Brett Peter Cowan*

I refer to your memorandum dated 17 April 2015 regarding the matter of *R v Brett Peter Cowan*, and your private correspondence with Mr Peter Davis QC dated 21 April 2015.

As a preliminary matter, I find it disturbing that a scheduled meeting, disseminated in the public domain through the Chief Justice's Calendar, between the head of jurisdiction and an arms-length non-party community leader, attended by an independent third party unaffiliated with Bravehearts, would cause you "deep concern" regarding my independence or impartiality.

Any suggestion that this would be sufficient to give rise to a reasonable apprehension of bias or prejudice, even with the knowledge of Ms Johnston's previous public statements, is unsupported by precedent and utterly preposterous.

It is even more alarming that your Associate decided to investigate, on your instructions or otherwise, any comments made by Ms Johnston regarding *Cowan*. As an application for disqualification is the exclusive responsibility of the parties to be determined by the relevant judge, this appears a singularly exceptional interference with the ordinary judicial process.

Judicial independence requires a judge to be independent of not only the Legislature or Executive, but *other* judicial officers. A judge should not attempt to improperly influence another judge regarding a matter exclusively in their authority. Although a judge may rightly seek the opinion of other judicial officers regarding disclosure or disqualification, it would be entirely inappropriate for other judges to independently argue for such action.

Your memorandum appears to go beyond a mere notification of potential ethical concerns surrounding my meeting with Mlles Johnston and O'Rourke. It presents conclusions deriving from a sophisticated application of law to facts obtained by investigation. In this respect, it is almost tantamount to submissions on the matter of my disclosure or disqualification. Such statements risk interfering with judicial independence and the orderly administration of justice.

Apparently not content with this, your letter dated 21 April 2015 to Mr Davis disclosed confidential information regarding internal court systems and my allocation to parties in the appeal. As the determination of disclosure and disqualification resides exclusively within the domain of the Judge subject to the alleged suspicion of bias, this constitutes a gross violation of judicial ethics. Indeed, you appear not only to have made submissions regarding my disclosure and disqualification, but to have unilaterally decided based on those uninformed submissions to make partial disclosure to the parties on my behalf through private correspondence.

If it assuages your anxieties, I confirm that I will continue to dispose of the issues surrounding disclosure and disqualification in accordance with the requirements of law and judicial ethics. In exchange, I trust that you will kindly suppress the urge to make any further statements which risk undermining the administration of justice in *R v Brett Peter Cowan*.

A handwritten signature in black ink, consisting of a stylized 'J' followed by a horizontal line and a small flourish.

Chief Justice



SUPREME COURT OF
QUEENSLAND

CHAMBERS OF THE CHIEF JUSTICE

COPY

22 April 2015

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

Queen Elizabeth II Courts of Law
415 George Street
Brisbane QLD 4000
PO Box 15167
City East QLD 4002
PH 61 7 3247 4279
FX 61 7 3247 4206
www.courts.qld.gov.au

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).¹

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.

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



Chambers of the Chief Justice, Supreme Court of Queensland

To:

22 April 2015

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]."²

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.³

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

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

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

Chief Justice Carmody

From: Kelly Morseu
Sent: Tuesday, 21 April 2015 4:52 PM
To: Chief Justice Carmody; Justice Fraser; DPP Mailbox
Subject: R v Cowan
Attachments: Scanned ltr 21.4.15 P J Davis QC re Cowley.pdf

Dear All

Please find attached a scanned copy of a letter dated 21 April 2015 to Mr Peter Davis QC from The Honourable Justice Margaret McMurdo AC regarding *R v Cowan*.

Kindest regards

Kelly Morseu
A/Executive Assistant to the Hon Justice M A McMurdo AC
| Court of Appeal | Supreme Court of Queensland PO Box 15167, City East
| QLD 4002 | 415 George Street, Brisbane QLD 4000
| t: +61 7 3247 9214
| f: +61 7 3247 9232
email: kelly.morseu@justice.qld.gov.au
w: www.courts.qld.gov.au



SUPREME COURT OF
QUEENSLAND

COURT OF APPEAL

CHAMBERS OF THE PRESIDENT

21 April 2015

Peter J Davis QC
P O Box 12166
George Street
BRISBANE QLD 4003

Supreme Court of Queensland
415 George Street
Brisbane QLD 4000

PO Box 15167
City East QLD 4002

PH +61 7 3247 9212
FX +61 7 3247 9232
www.courts.qld.gov.au

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.

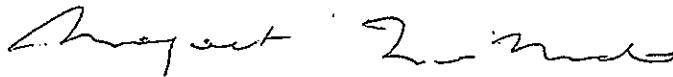
The former Chief Justice had directed registry staff to always check with him as to his availability to sit on high-profile matters. The Cowan appeals were within this category. The practice became that, in such matters, although ordinarily the Chief Justice and the President did not sit together to 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 dark 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



Queensland
Government

Director of Public Prosecutions – Anthony Moynihan QC
Deputy Director of Public Prosecutions – Michael Byrne QC

Office of the
Director of Public Prosecutions

Department of
Justice and Attorney-General

Name: Tony Moynihan QC
Phone: 3239 6114
Our Ref:
Your Ref:

21 April 2015

The Honourable Tim Carmody
Chief Justice
Supreme Court of Queensland
PO Box 15167
CITY EAST QLD



Dear Chief Justice

I refer to your letter of 17 April 2015 concerning the appeal in the matter of *R v Brett Peter Cowan*. I have also received copies of letters sent by Mr Davis QC to you and The Honourable Justice Margaret McMurdo, President of the Court of Appeal.

I am not in a position to advise whether I will make any submissions until Mr Davis receives his client's instructions and indicates the course he intends to take.

Yours sincerely

Anthony Moynihan QC
Director of Public Prosecutions (Qld)

cc. The Honourable Justice Margaret McMurdo
The Honourable Justice Hugh Fraser
Mr Peter Davis QC

Chief Justice Carmody

From: Peter Davis <pdavis@qldbar.asn.au>
Sent: Monday, 20 April 2015 11:18 AM
To: Chief Justice Carmody
Subject: FW: R v Cowan
Attachments: 0624_001.pdf

With compliments

Peter J Davis QC

Level 31, 239 George Street, Brisbane Qld 4000
Telephone: (07) 3175 4601 Facsimile: (07) 3175 4666

Website: www.murraygleesonchambers.com.au

Liability limited by a scheme approved under Professional Standards Legislation

From: Peter Davis
Sent: Monday, 20 April 2015 9:57 AM
To: 'chiefjustice.carmody@courts.qld.gov.au'
Subject: R v Cowan

Dear Chief Justice

Please find attached my response to your letter of Friday

Peter J Davis QC

Level 31, 239 George Street, Brisbane Qld 4000
Telephone: (07) 3175 4601 Facsimile: (07) 3175 4666

Website: www.murraygleesonchambers.com.au

Liability limited by a scheme approved under Professional Standards Legislation

From: canon [<mailto:scanner@qldbar.asn.au>]
Sent: Monday, 20 April 2015 9:43 AM
To: Peter Davis
Subject: canon scan

PETER J DAVIS QC
Barrister-at-Law
ABN 29 578 313 997

Level 31, 239 George Street
BRISBANE QLD 4000
P O BOX 12166 George Street Qld 4003

Telephone: (07) 3175 4601
Facsimile: (07) 3175 4666
pdavis@qldbar.asn.au

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,

A handwritten signature in dark ink, appearing to be 'Peter J Davis', followed by a long horizontal line extending to the right.

Peter J Davis QC
Chambers

PETER J DAVIS QC
Barrister-at-Law
ABN 29 578 313 997

Level 31, 239 George Street
BRISBANE QLD 4000
P O BOX 12166 George Street Qld 4003

Telephone: (07) 3175 4601
Facsimile: (07) 3175 4666
pdavis@qldbar.asn.au

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,

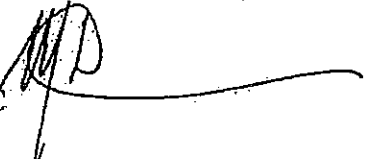
RE: *R v COWAN*

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

Chief Justice Carmody

From: Justice MAMcMurdo
Sent: Friday, 17 April 2015 2:53 PM
To: DL-Court of Appeal Judges; Justice Byrne; Justice PDMcMurdo
Subject: FW: R v Cowan (copies of letters from Chief Justice 17.4.15)
Attachments: Scanned Ltr 17.4.15 CJ to P Davis QC re R v Cowan.pdf; Scanned Ltr 17.4.15 Pres to CJ re R v Cowan.pdf

The Hon Justice Margaret McMurdo AC
President, Court of Appeal, Supreme Court of Queensland

From: Kelly Morseu
Sent: Friday, 17 April 2015 2:35 PM
To: Justice MAMcMurdo
Subject: R v Cowan (copies of letters from Chief Justice 17.4.15)

Dear Judge

As requested, letters from the Chief Justice dated 17.4.15 to A Moynihan (Director, DPP) & P Davis QC.

Kindest regards
Kelly

Kelly Morseu
A/Executive Assistant to the Hon Justice M A McMurdo AC
| Court of Appeal | Supreme Court of Queensland PO Box 15167, City East
| QLD 4002 | 415 George Street, Brisbane QLD 4000
| t: +61 7 3247 9214
| f: +61 7 3247 9232
email: kelly.morseu@justice.qld.gov.au
w: www.courts.qld.gov.au



**SUPREME COURT OF
QUEENSLAND**

CHAMBERS OF THE CHIEF JUSTICE

Rec'd 2:23pm
17/4/15
Jm

COPY

17 April 2015

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

Queen Elizabeth II Courts of Law
415 George Street
Brisbane QLD 4000
PO Box 15167
City East QLD 4002
PH 61 7 3247 4279
FX 61 7 3247 4206
www.courts.qld.gov.au

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

The Honourable Tim Carmody
Chief Justice

cc Mr A Moynihan QC
President, Court of Appeal

Rachel Monaghan

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
2015 Queensland Australian of the Year

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.

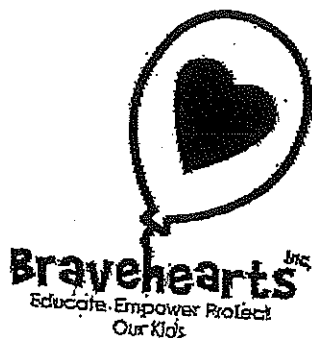
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Founder & CEO
2015 Queensland Australian of the Year
2015 Inducted to the Logan Wall of Acclaim
Justice of the Peace (Qualified), JP (Qual)
Member of the International Society for the Prevention of Child Abuse and Neglect (ISPCAN)
Member Australian 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
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**SUPREME COURT OF
QUEENSLAND**
CHAMBERS OF THE CHIEF JUSTICE

17 April 2015

Mr A Moynihan QC
Director of Public Prosecutions
Level 6, State Law Building
50 Ann Street,
BRISBANE QLD 4000

Queen Elizabeth II Courts of Law
415 George Street
Brisbane QLD 4000
PO Box 15167
City East QLD 4002
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www.courts.qld.gov.au

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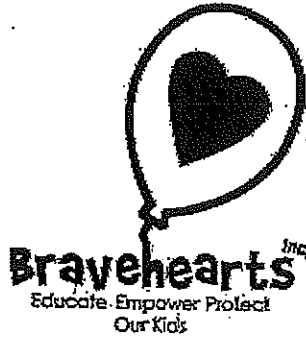
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SUPREME COURT OF
QUEENSLAND
COURT OF APPEAL

CHAMBERS OF THE PRESIDENT

17 April 2015

The Hon Tim Carmody
Chief Justice
Supreme Court of Queensland
415 George Street
BRISBANE. 4000

Supreme Court of Queensland
415 George Street
Brisbane QLD 4000
PO Box 15167
City East QLD 4002
PH +61 7 3247 9212
FX +61 7 3247 9232
www.courts.qld.gov.au

Dear Chief Justice

R v COWAN

I have been informed that earlier this week you met with Ms Hetty Johnston from Bravehearts. I am deeply concerned about this.

The judgments in *R v Cowan* are not yet delivered either in his appeal against conviction or in the Attorney-General's appeal against sentence.

My Associate obtained the attached material yesterday from the internet. It records Ms Johnston's strong statements about the outcome of the Cowan trial and her views as to the sentence. It also shows her close connection with the family of the victim in the Cowan trial and the Daniel Morecombe Foundation.

Justice Hugh Fraser is presently on long leave and in Japan but I have sent him the attached material and discussed my concerns with him.

In the circumstances, it is our respectful view that you should disclose immediately the fact of this meeting and what was discussed at it to both parties and afford them an opportunity to make submissions about it if they wish.

Yours sincerely

Hon Justice Margaret McMurdo AC
President

Cc: *Fraser JA*
Judges of Appeal

Chief Justice's Engagements Calendar

Week 12-18 April 2015

Date/Time	
Sunday	
Monday	3pm "Inspire U Law Camp" information session TC Beirne School of Law in conjunction with the Aboriginal and Torres Strait Islander Studies Unit, University of Queensland
Tuesday	9am Meeting of the Judges of both Divisions of the Court
Wednesday	
Thursday	2:30pm Meeting Bravehearts Inc
Friday	
Saturday	

Acting Governor of Queensland

Chief Justice Duties, Admin and Judgment Writing

Acting Governor of Queensland
Court
Chief Justice Duties, Admin and Judgment Writing

smh.com.au

The Sydney Morning Herald

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Tougher laws could lead sex offenders to kill victims: Daniel Morcombe judge

Published: March 14, 2014 - 4:58PM

- [Live blog: as it happened](#)
- [Cowan sentenced](#)
- [Police defend 10-year investigation](#)
- [Inside police operation](#)

The judge in the Daniel Morcombe murder trial says the case highlights arguments against tougher sentences for sex offenders.

Justice Roslyn Atkinson says she is concerned harsher jail terms would act as a "perverse incentive" to offenders to kill their victims.

The Newman government has introduced some of the country's toughest child sex-offender laws since it came to power, including life imprisonment with a 20-year non-parole period for serious repeat offenders.

Murderers face the same minimum sentence.

The judge made her comments on Friday, just before sentencing Daniel's killer Brett Peter Cowan, 44, to life imprisonment including 20 years without parole.

"People who call for longer sentences, harsher sentences, for sex offenders need to consider the evidence in this case, that Mr Cowan killed Daniel Morcombe to avoid detection," Justice Atkinson told the Supreme Court in Brisbane on Friday.

"And if the sentence for a sex offence is the same as the sentence for a murder, my concern is that it would act as a perverse incentive to offenders to kill victims.

"Killing a victim is worse than sexual offending against a victim and this case is an example of that."

Cowan had two convictions for molesting children before 2003, when he abducted and killed Daniel, 13, on the Sunshine Coast.

His more recent before that was in 1994 when he was sentenced to seven years' imprisonment for the horrific sexual assault of a six-year-old boy.

The former tow-truck driver served only half that term.

Tough stance to continue: A-G

Queensland Attorney-General Jarrod Bleijie said the government would continue to take the toughest stance on child-sex offenders.

"Everything we have done has been about preventing other families from going through what the Morcombes have had to endure," he said in a statement.

"We want Queensland to be the safest place to raise a child and we will do whatever we can to protect the most vulnerable in our community."

Cowan, a father of three, was also sentenced on Friday to three-and-a-half years' jail for indecently dealing with Daniel and two years for interfering with his corpse, to be served concurrently with his murder sentence.

The judge was required to sentence Cowan to a non-parole period of at least 15 years, but said she felt Cowan's crimes warranted a harsher penalty.

"Everything about what you did to that child was horrific and disgraceful," she told Cowan in the Brisbane courtroom.

"This is not just a murder, but a terrible murder. It has had widespread and shocking impacts."

The judge said Cowan had never shown any remorse for what he did, apart from feeling sorry for himself.

She added that his opportunistic offending in broad daylight drove "fear into the hearts" of everyone in the community.

Child protection advocate Hetty Johnston said Queensland laws needed to be changed to make it easier for judges to sentence paedophiles to even harsher sentences.

"This man should never, ever see the light of day again and whatever happened today should have made sure that sealed it," she told reporters outside court.

 "I would have liked to have seen him just [get] life [for] life - you know, 50 years, 100 years no parole, just never let him out."

Daniel vanished while waiting for a bus at Woombye on the Sunshine Coast on December 7, 2003.

His remains were found in bushland at the Glass House Mountains in the Sunshine Coast hinterland in August and September 2011.

Daniel's parents, Bruce and Denise Morcombe, now child safety campaigners, were not in court, choosing to attend a fund-raiser instead.

Reward Morcombe officers: Newman

Queensland Premier Campbell Newman says the undercover police officers who brought Daniel's murderer to justice should be rewarded.

The prosecution case succeeded after jurors were shown footage of Cowan confessing to the killing of 13-year-old Daniel in the presence of undercover police officers posing as members of a national criminal syndicate.

Asked if these officers needed to be rewarded for their undercover work in 2011, Mr Newman agreed.

"There are many ways that they can be acknowledged and rewarded for their efforts," the Premier told reporters in Houston, Texas.

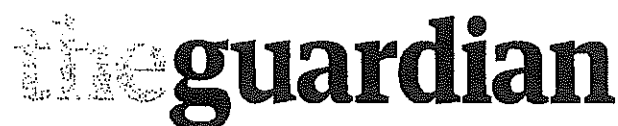
"Just getting this result, having the satisfaction of bringing a predator like this to justice is reward enough for their great efforts."

But Police Commissioner Ian Stewart, who decides such rewards, expressed dismay that undercover police methods needed to be aired before a jury to secure Cowan's conviction.

"The more widely it's known, the less effective it becomes," Mr Stewart told reporters in Brisbane.

AAP

This story was found at: <http://www.smh.com.au/national/tougher-laws-could-lead-sex-offenders-to-kill-victims-daniel-morcombe-judge-20140314-34rv9.html>



Daniel Morcombe's killer sentenced to life, with no parole for 20 years

Judge says Brett Peter Cowan's 'horrific and disgraceful' murder of schoolboy had driven 'fear into the hearts' of the community

Australian Associated Press

Friday 14 March 2014 15.38 AEDT

Serial paedophile Brett Peter Cowan has been sentenced to life in prison, with a non-parole period of 20 years, for murdering Sunshine Coast schoolboy Daniel Morcombe.

The 44-year-old father of three was also sentenced on Friday for indecently dealing with Daniel, 13, and interfering with his corpse in December 2003.

Supreme court justice Roslyn Atkinson was required to sentence Cowan to a non-parole period of at least 15 years, but said she felt Cowan's crimes warranted a harsher penalty.

"Everything about what you did to that child was horrific and disgraceful," she told Cowan in the Brisbane courtroom.

"This is not just a murder, but a terrible murder. It has had widespread and shocking impacts."

Atkinson said Cowan had been jailed twice before for molesting young boys in circumstances eerily similar to Daniel's disappearance.

"Whenever anyone is considering the prospect of granting you parole in the future they should mark my words that you are a convincing, plausible and adaptable liar, and prepared to lie to advance your own interests," she said.

The justice said Cowan had never shown any remorse for what he did, apart from feeling sorry for himself.

She added that his opportunistic offending in broad daylight drove "fear into the hearts" of everyone in the community.

Daniel's parents, Bruce and Denise Morcombe, now child safety campaigners, were not in court, choosing to attend a fundraiser instead.

Cowan was also sentenced to three-and-a-half years' jail for indecently dealing with Daniel and two years for interfering with his corpse, to be served concurrently with his murder sentence.

The former tow truck driver has already spent two-and-a-half years in prison since his arrest in August 2011.

Child protection advocate Hetty Johnston said Queensland laws needed to be changed to make it easier for judges to sentence paedophiles to even harsher sentences.

"This man should never, ever see the light of day again and whatever happened today should have made sure that sealed it," she told reporters outside court.

"I would have liked to have seen him just [get] life [for] life - you know, 50 years, 100 years no parole, just never let him out."

Daniel vanished while waiting for a bus at Woombye on the Sunshine Coast on 7 December, 2003.

His remains were found in bushland at the Glass House Mountains in the Sunshine Coast hinterland in August and September, 2011.

Cowan had previously been jailed for sex crimes against young boys in Brisbane and Darwin in 1987 and 1993, and had a history of molesting children dating back to his teen years.

More news

Topics

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Queensland

Child protection



NEWS

'Daniel would be alive today if it were not for the system'



Adam Davies | 13th Mar 2014 5:32 PM



Bravehearts founder Hetty Johnston speaks to the media after Brett Peter Cowan was found guilty of murdering Sunshine Coast boy Daniel Morcombe.

David Smart

BRAVEHEARTS founder Hetty Johnston says Daniel Morcombe would still be alive today if it were not for a system that put the civil liberties of convicted sex offenders first and foremost.

The child safety advocate has called for legislative changes to be introduced to keep sex offenders behind bars indefinitely.

Daniel Morcombe was abducted and killed in December 2003.

His remains were located more than a decade later.

Judge considers sentence against Daniel's vile killer

His killer, Brett Peter Cowan, was found guilty on Thursday (Mar 13) of murdering the Sunshine Coast teen.

Cowan's sordid criminal past was read out in court including to conviction for child sex offences.

Ms Johnston said, outside the Brisbane Supreme Court on Thursday, the guilty verdict should be a catalyst for change to ensure Daniel Morcombe had an everlasting legacy.

"If there is any doubt that these type of people could reoffend then they should not be released," she said.

"If that happened in this case Daniel would still be alive today.

"These offenders are released from our courts on a daily basis and it must stop.

"Little lives like Daniel's would not have to be lost on the mantle of the civil rights of convicted sex offenders.

"Daniel did not have to die. He should be here today if the system got it right."

Top cop delighted at Cowan decision

Ms Johnston said every Queenslanders owed a massive debt to the Morcombe family.

"Every parent and every grandparent owes the Morcombe family, and Daniel, so much," she said.

"Through their pain, suffering and resilience every child in this country will be safer."

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NEWS

Morcombes and Bravehearts forge links



nfuge | 1st Feb 2013 5:45 AM



Patron of the Daniel Morcombe Foundation Bob Atkinson, Denise Morcombe of the Daniel Morcombe Foundation, Bravehearts executive director Hetty Johnston and Bruce Morcombe of the Daniel Morcombe Foundation unite.

Darryn Smith

MORE children suffering from sexual assault will be able to seek help on the Sunshine Coast as the Daniel Morcombe Foundation spreads its wings.

The foundation has paired up with national child protection advocate Bravehearts to provide a full-time counsellor one day a week on the Coast and four days at Bravehearts' new Strathpine office. The first client will be seen next week.

Bravehearts founder and executive director Hetty Johnston said the service would provide counselling to some of the most vulnerable members of the community.

"One in five children are sexually assaulted before they turn 18," she said.

Ms Johnston said the Coast and northside of Brisbane had eight of the top 10 suburbs in Queensland for police referrals.

"We needed to be here. The demand is here," she said.

Ms Johnston said there were 36 people on Bravehearts' counselling waiting list at both locations and the new counsellor would see at least 15 clients a week.

"We expect the demand to outstrip that very quickly, but it's 15 kids a week who are not going to have to endure the kind of suffering they now do," she said.

"Those children who don't get that professional help, they've got the ball and chain around the ankle.

"They're the children that end up doing drugs or committing suicide and we need to help those children."



AUSTRALIAN



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Join the Dots

3 Piers to Prevention

Bravehearts Adventures

Research and Lobbying

Events

(group-ctrl)

Find us on Facebook

Bravehearts Inc.
17,482

Bravehearts Inc.
2 hrs

With growing demand for Bravehearts diverse services nationally, we'd like to welcome Belinda and Soren to bolster our counselling team in Sydney. Bravehearts delivered 3638 counselling sessions in Australia last year.

Belinda and Soren are currently taking new referrals for adults, adolescents and children. If you'd like to speak to them, please contact them.

Facebook social share

Bravehearts and Daniel Morcombe Foundation join forces to help Aussie kids

Bravehearts has answered community calls to boost its counselling services on the Sunshine Coast and Strathpine with help from the Daniel Morcombe Foundation.

The Foundation will fund a new full-time counsellor to work one-day-per-week at the Daniel Morcombe Foundation's new location at The Big Pineapple complex from next week and four days at Bravehearts new Strathpine office, due to open on February 11.

The Daniel Morcombe Foundation approached Bravehearts Founder and Executive Director Hetty Johnston in 2012 to explore the possibility of sharing important resources and together making a significant dent in the waiting period experienced by victims of child sexual assault.

"This is a united approach to combat child sexual assault and helping Bravehearts to reach more kids was a no-brainer," said Bruce Morcombe.

"Being independent remains important to each organisation, but reducing duplication and back-end costs is fundamental to making every dollar count."

Denise Morcombe said it is gratifying to support the Sunshine Coast community with a new and much needed service, as the community had been so supportive of the Daniel Morcombe Foundation.

"This joint initiative will give cost-effective frontline support to children and we commend Hetty Johnston and Bravehearts for the important work they do in the community," she said.

Bravehearts' Hetty Johnston said the new service would provide vital counselling to some of the most vulnerable members of the community.

"The Daniel Morcombe Foundation's funding will allow our new full-time Bravehearts counsellor to reach 15 kids each week across the two locations," said Ms Johnston.

"This Foundation campaigns tirelessly for child safety and supporting victims of crime and we thank them for their generosity. Working together to make Australia the safest place in the world to raise a child is another big step toward stopping child sexual assault in our society."

Bravehearts Counselling Service is the Queensland Police preferred provider of support for those affected by child sexual assault.

There are currently 36 people on the waiting list at Strathpine and the Sunshine Coast. The north side of Brisbane represents eight out of the top 10 suburbs in Queensland for police referrals.

Bravehearts' Therapeutic Services Manager said the appointment of a new counsellor would help to reduce waiting times, but conceded challenges ahead following a 300 per cent spike in enquiries since the Federal Government announced its Royal Commission in to child abuse.

"We are at breaking point and this will take some pressure off as we seek to reach more people on the Sunshine Coast with our services," she said.

"The Royal Commission is having a real impact on survivors of child sexual assault; it is giving many the confidence to break the silence and tell their stories, and we expect a constant flow-on effect as those people seek our counselling services."

"Bravehearts sets the standard in the provision of specialist therapeutic services and support to children and young people, adults and non-offending family members affected by child sexual assault."

Bravehearts Counselling Service consists of psychologists and counsellors who specialise in assisting children and families to overcome trauma by using evidence-based interventions and best practice. The services do not investigate child sexual assault, but focus on working with children and families to manage psychological symptoms that have resulted from this crime.

Research shows that 1 in 5 Australian children will be sexually assaulted before the age of 18.

In October 2012, Bravehearts launched its breakthrough 3 Piers to Prevention strategy – Educate, Empower, Protect – solid foundations to making Australia the safest place in the world to raise a child by 2020.