

SUPREME COURT OF QUEENSLAND

**REGISTRY: BRISBANE
NUMBER: of 2003**

First Applicant: IAN BRUCE BELL

AND

Second Applicant : TREVOR JOHN MAHAFFEY

AND

First Respondent : PETER DOUGLAS BEATTIE

AND

Second Respondent: ANNA MARIA BLIGH

AND

Third Respondent THOMAS ALFRED BARTON

AND

Fourth Respondent : STEPHEN DOMINIC BREDHAUER

AND

Fifth Respondent: JUNITA IRENE CUNNINGHAM

AND

Sixth Respondent WENDY MARJORIE EDMOND

AND

Seventh Respondent : MATTHEW JOSEPH FOLEY

AND

Eighth Respondent: PAUL THOMAS LUCAS

AND

APPLICATION FOR STATUTORY ORDER OF REVIEW
APPLICATION FOR REVIEW

Filed on behalf of the Applicants
Forms 54 and 56, R. 566, 567 and 568

Ian Bruce Bell of and
Trevor John Mahaffey care of :
7 Allamanda Avenue
Little Mountain Queensland 4551
Telephone / Fax. (07) 5491 4887

APPLICATION FOR STATUTORY ORDER OF REVIEW

APPLICATION FOR REVIEW

Application to review the decision of the respondents made jointly and severally on 18th of August 2003 to :

1. Submit legislation to the Queensland Parliament which, if passed and assented to by the Governor, would have the effect of prohibiting in the state of Queensland, a primary producer from sending off his property any milk or milk products not subjected to mandated chemical modification by the application of heat by a process known as pasteurisation.

The Applicants claim :

2. A Declaration that a legislative provision having the effect stated in "1." above, would be ultra vires the Parliament's capacity, inter alia for the reasons that it would contravene Public Policy and the requirements of Section 4 of the Legislative Standards Act. 1992.

OR in the alternative,

3. An Order of Prohibition relating to certain parts of the Primary Industry and Other Legislation amendment Bill or other proposed legislation having the effect named in "1." above.

OR further in the alternative,

4. A Prerogative Injunction or an Injunction that legislation having or potentially capable of being used to have the effect named in "1." above may not be brought before the Parliament by the Respondents or any of them for a Second Reading until all reasonable endeavours to formulate provisions for a regime not having such effects of actual or potential detriment to the rights and freedoms of citizens are explored and alternative provisions formulated which would comply with the Public Policy requirements of the Common Law and the Legislative Standards Act 1992, inter alia at Section 4 and submitted to the Parliament by the Respondents.

The Applicants further claim :

5. An order pursuant to Section 38 of the Judicial Review Act 1991 that :

The Twelfth Respondent forthwith provide to the First Applicant the Statement of Reasons sought by the First Applicant for the Twelfth Respondent's decision to ban the removal from a farm of fresh milk and in relation to which, by letter dated 6th August 2003, the Twelfth Respondent advised the First Applicant of his refusal to comply with the request.

6. Review of the conduct of the Twelfth Respondent in respect of his refusal (as advised by letter dated 6th August 2003) of the First Applicant's request for a Statement of Reasons pursuant to Section 32 of the Judicial Review Act 1991 for the Twelfth Respondent's decision to ban the removal from a farm of fresh milk.

The Applicants claim Interlocutory relief of :

6. A Stay upon the Respondents or any of them causing the Primary Industry and Other Legislation Amendment Bill to be brought on for further Reading in the Parliament until the determination of these proceedings or further order of the Court
7. Abridgment of the time for Service provided in Uniform Civil Procedure Rule 572
8. An order that the Respondents do jointly and severally pay the Applicants' costs on a solicitor / own client basis from the time of filing of this application, pursuant to the provisions of Section 49 of the Judicial Review Act 1991

NOTE

For the purposes of this Application, "fresh milk" means cows or goats milk not subjected to the damaging heat process commonly known as 'pasteurisation.'

The Applicants are aggrieved by the decision subject of this application because :

Applicants are a consumer and a producer respectively of unpasteurised cow's milk.

The First Applicant is a consumer of fresh milk provided by the Second Applicant. The First Applicant used to suffer from two medically verified incurable ailments. As evidenced by medical imaging films taken before and after he commenced regular consumption of fresh milk, one condition (arthritis) has been cured and the other condition majorly alleviated. The First Applicant has by experience found that if he does not continue taking fresh milk for any significant period of time, his arthritis returns and continues to get worse until he resumes taking fresh milk. Neither he nor his medical attendants know of an alternative to alleviate his condition.

The first Applicant has studied nutrition as an interested layperson for some years and is persuaded that fresh milk is a vital source of nutrition for his children to make up for some of the serious nutritional deficits modern processed foods impose on city dwelling children today. He feels he is entitled to feed his own children with the foods he honestly assesses as essential or best for their good health.

The Second Applicant is a producer of top quality, organically produced fresh milk from a jersey cow herd and his family's livelihood is threatened by the decision for which review is sought. He knows that the many nutritional benefits of milk are in the main sourced from the cream or butterfat content of that milk. Jersey cows produce milk 80 percent creamier than the standard applied to commercial producers at large supplying pasteurised milk to consumers. He also understands the many substantial benefits of consuming fresh milk and possesses compelling data of major health benefits obtained by many of his customers. For ethical reasons, he does not want to supply a nutritionally inferior product to his consumers by being compelled to pasteurise his milk. Nor does he want to be compelled to put his organically produced milk into a big vat containing milk from various other non organic producers and thus denying to consumers any possibility of obtaining the organically produced milk many of them wish to use.

Since he has sold milk direct to retailers and the public, the only local milk processing plants which are large, foreign owned enterprises have, for no acknowledged reason, refused to collect the Second Applicant's surplus milk or any of his milk. This creates for the large processors, the capacity (which they have demonstrated the intention to use) to close down this family dairy farm if the Respondents are permitted to assist the processors by preventing the Second Applicant from selling to his own established outlets and clientele.

Many people in Queensland do enjoy, and wish to continue to enjoy the benefits they perceive are to be obtained from fresh milk. 800 of them have already presented a petition to that effect to Parliament.

A great many more people want to have fresh milk but do not yet know where they might obtain it. It is axiomatic that Australia is a free country and Australians expect, and are entitled to expect that government regulation will impose on their lives in adverse ways and reduce their freedom of choice only in the ways and to the extent actually necessary. It is completely unnecessary that fresh milk not be available to those who want it and additionally, that Queensland dairy farmers not be denied by that device, access to a known major, untapped export market for gourmet fresh milk cheese which Queensland producers have the expertise to supply exists in Europe.

Many parts of the western world have fresh milk available and no significant health problems arise through it; on the contrary, it is probable if not yet empirically shown that substantial health benefits accrue to the public health. Good evidence is accruing that processed milk causes serious health problems, inter alia juvenile onset diabetes.

Queensland used to have fresh milk available without public health problems arising from it. Queensland currently allows the production and sale of unpasteurised goats milk and the same simple regular laboratory testing regime applied to it could easily be applied to cows milk. It would be very simple for the persons vested with protecting the health of Queenslanders to put in place a simple monthly laboratory testing regime of fresh milk at the farm as currently applies to fresh goats milk. It is unnecessary that goat milk should be so available to the public and cows milk not. It would be very simple to discharge any duty to inform the public of any possible health risk attaching to fresh milk with a simple labelling requirement. This would leave Queenslanders free to choose what they eat and, unlike the regime presently proposed by the Respondents, be in compliance with Public Policy and the provisions of the Legislative Standards Act 1992.

The Grounds of the Application are : as below and as set out in the accompanying affidavits.

IN RELATION TO THE DECISION IN "1." (above)

Common Law Review :

Public Policy and any mainstream theory of jurisprudence dictates that in Australia, needless government intervention in the lives of citizens is improper and that statutes should be interpreted and decisions reviewed by the courts from that standpoint.

The above principle is enshrined in Section 4 of the Legislative Standards Act and the decision sought to be reviewed clearly contravenes that statute. The law requires an evaluation of proposed legislation as against this statute and none was done.

Irrelevant considerations had a significant or substantial part in the making of the decision.

The power was exercised for an improper purpose.

The power was exercised in accordance with a rule or policy.

The power was exercised unreasonably.

The power was exercised when there was no evidence to support the decision made, or in the alternative, evidence so weak that no reasonable person could have come to the same decision.

Statutory Judicial Review : (Sections of the Judicial Review Act 1991)

Section 20 (2)(b) that procedures that were required by law to be observed in relation to the making of the decision were not observed.

Section 20 (2) (f) That the decision involved an error of law (whether or not the error appears on the face of the record of the decision).

Section 20 (2) (g) That the decision was induced or affected by fraud.

Section 20 (2) (h) That there was no evidence or other material to justify the making of the decision.

Section 24

Section 20 (2) (l) That the decision was otherwise contrary to law.

IN RELATION TO "5." and "6." (above)

The Twelfth Respondent acted not in compliance with the clear requirements of the statute.

The Applicant claims :

The relief set out in numbers 1 to 8 (inclusive), above.

TO THE RESPONDENTS :

A directions hearing in this application (and any claim by the applicants for interlocutory orders) will be heard by the Court at the time, date and place specified below. If there is no attendance before the court by you or your counsel or solicitor, the application may be dealt with and judgement may be given or an order made in your absence. Before any attendance at that time, you may file and serve a notice of address for service.

APPOINTMENT FOR DIRECTIONS HEARING

Time and Date :

Place : Supreme Court, Law Courts Building, George Street, Brisbane

Signed :

Dated :

PARTICULARS OF THE FIRST APPLICANT

Name ; Ian Bruce Bell
Applicant's Residential Address : 7 Allamanda Avenue
Little Mountain Queensland 4551
Applicant's Address for Service : 7 Allamanda Avenue
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Applicant's telephone number : (07) 5491 4887 (0412) 463 777
Applicant's facsimile number : (07) 5491 4887
Applicant's E-mail address : brucebell@iprimus.com.au

PARTICULARS OF THE SECOND APPLICANT

Name ; Trevor John Mahaffey
Applicant's Residential Address : Webster Road
Goomborian Queensland 4570
Applicant's Address for Service : 7 Allamanda Avenue
Little Mountain Queensland 4551
Applicant's telephone number : (07) 5491 4887 (0412) 463 777
Applicant's facsimile number : (07) 5491 4887
Applicant's E-mail address : brucebell@iprimus.com.au

Signed :

Description : First Applicant

Dated : 4th September 2003

Signed :

Description : Second Applicant

Dated : 4th September 2003

This Application is to be served on :

The First to the Nineteenth Respondents inclusive,
all care of the Crown Law Department