

IN THE HIGH COURT OF AUSTRALIA
BRISBANE OFFICE OF THE REGISTRY

No. B13 of 2002

BETWEEN:

MELISSA JANE COUCHY

Applicant

and

JEANNIE ANNE DEL VECCHIO

Respondent

APPLICANT'S ADDITIONAL SUMMARY OF ARGUMENT

Part I – Additional special leave questions

1. The applicant seeks to raise additional special leave questions:
 - 1.1. Is the provision pursuant to which the applicant was convicted, namely s.7(1)(d) of the Vagrants, Gaming and Other Offences Act 1931 (Qld) invalid as being beyond the legislative power of the Queensland Parliament?
 - 1.2. Does the Constitution permit absolute statutory prohibition of use of insulting words to a person in or near a public place?
 - 1.3. Is the decision of the Queensland Court of Appeal in *Coleman v. P & C* [2001] QCA 539 correct, insofar as it held, by majority, s. 7(1)(d) of the Vagrants, Gaming and Other Offences Act 1931 (Qld) to be not invalid?

Part II – Facts

2. The relevant facts remain as asserted in the primary summary of argument and are apparently accepted by the respondent.¹

Part III- Summary of Argument

3. The appellant in *Coleman's* case distributed pamphlets, containing words held to be insulting, in the Townsville Mall. The written insults were chiefly that a certain constable was corrupt and that the local police were "*slimy, lying bastards.*" This produced a charge of publishing insulting words, a charge which ultimately failed

¹ See Respondent's written argument paragraph 5

because the relevant statutory language was held to infringe the Constitution. Mr Coleman also was held to have insulted a police officer orally, by saying: “*This is Constable P – a corrupt police officer.*” A charge of using insulting words, based on the spoken imputation of corruption, succeeded, the relevant provision being held (by majority) to be valid.

4. The distinction drawn in *Coleman* is, at best, a doubtful one. It seems incongruous that the Constitution should protect a written insult but not an oral one; the former could well be more widely put about, and so more damaging, than an oral insult.
5. In this case the relevant provision, s.7(1)(d), is that which the majority in *Coleman* held to be valid.² The invalidity held to exist in *Coleman* was the inclusion of the words “*abusive, or insulting*” in s.7A(1)(a) of the same Act.
6. It appears to have been the requirement in s.7 (1)(d) that the insult be delivered in a **public place** –absent from s.7A(1) - which, according to the principal judgment in *Coleman* (par. 71) made the critical difference between the two provisions there considered. So that a written allegation of corruption, albeit distributed in a public place, could be lawfully made, but not a spoken allegation - even if true - to the same effect.
7. It is submitted that for millennia people have used public places to air grievances against governments and their agents and that this process may not be free of observations, accurate or otherwise, of an insulting kind. A statute whose effect is to prohibit such observations can hardly be “*reasonably appropriate*” to serve such a “*legitimate end*” as is mentioned in *Lange*.³
8. Secondly, s.7(1)(d) prohibits the use of insulting words in or near a public place irrespective of whether:
 - 8.1. the words are spoken with intent or are calculated to provoke a breach of the peace; or
 - 8.2. a breach of the peace is likely to be occasioned by their use.

Thus a provision that imposes criminal responsibility in circumstances where no breach of the peace is intended or likely to occur is not reasonably adapted, appropriate or proportionate to the legitimate end of preventing breaches of the peace.

9. Thirdly, s.7(1)(d) imposes an absolute prohibition: it is not subject to defences that are apt to protect freedom of communication such as their publication in good faith in the course of discussing a subject of public interest or unlikelihood of harm.

² Section 7(1)(d) of the Vagrants, Gaming and Other Offences Act 1931, which so far as relevant creates an offence in these terms:

“*Any person who, in any public place or so near to any public place that any person who might be therein, and whether any person is therein or not, could view or hear...uses any ...insulting words to any person...shall be liable to a penalty of \$100 or to imprisonment for 6 months ...*”

³ *Lange v. Australian Broadcasting Corporation* (1997) 189 CLR 520

Part IV- Reasons why special leave should be granted

10. In addition to the reasons previously advanced, it is submitted that the protection of discussion of a political kind and of criticism of those in or purporting to exercise authority is of importance. Although the facts of the present case do not involve any such discussion or criticism, the question of constitutional principle sought to be raised should be considered, whether or not the Court has a favourable view of the applicant's conduct.⁴
11. If for the reasons given by McMurdo P in *Coleman* the provision under which the applicant was convicted is invalid, special leave should be granted in the interests of justice and to avoid a miscarriage of justice.
12. The validity of sections of the kind under which the applicant was convicted, and the use of such provisions to arrest persons who do not intend and are not likely to cause a breach of the peace involve issues of public importance.

Part V – Authorities

1. *Lange v. Australian Broadcasting Corporation* (1997) 189 CLR 520;
2. *Coleman v. P & C (Attorney-General intervening)* (unreported)[2001] QCA 539;
3. *McGraw-Hinds Pty Ltd v. Smith* (1979) 144 CLR 633.

Part VI – Oral Argument

4. The respondent wishes to supplement this summary with oral argument. Notices will be served pursuant to section 78B of the *Judiciary Act* 1903 (Cth).

Andrew Boe
Boe Callaghan
Solicitors for the Applicant
22 April 2002

⁴ *McGraw-Hinds Pty Ltd v. Smith* (1979) 144 CLR 633