



PREJUDICE

CHRIS MERRITT

A Gulf in success

THE example of the Gulf states is the most eloquent argument in favour of free trade in professional services.

It is more than a coincidence that these booming sheikdoms welcome the world's best lawyers and have a dynamic commercial sector.

Their experience is the perfect argument that needs to be thrown at those countries that continue to protect their domestic legal services industry.

India, for example, is an emerging economic power. Yet it still limits the involvement of foreign lawyers in the success story unfolding on the sub-continent.

India's lawyers might believe such an approach serves their interests. But really, they have nothing to fear. Global law firms are not interested in stealing their lunch.

What interests the world's big firms — including Australia's big firms — is the stream of international transactions that are the result of the transformation of India.

Making those deals happen is a skill that is in short supply in India and all other countries with business sectors that are moving into the big league.

China recognised that and opened the door to the world's big firms in the hope that this would lead to a transfer of skill.

In other areas of commercial endeavour, India has embraced open markets. Why should legal services be any different?

In the Middle East, the big salaries on offer for foreign lawyers might, at first blush, appear just a little obscene. Are lawyers with three years experience really worth \$210,000, tax free?

But if that's what it takes to attract the right talent, why not stand back and let the market sort out the most efficient allocation of resources?

No law firm would continue to pay those sorts of salaries unless it truly believed it was in their interest.

And if that makes a generation of young Australian lawyers extremely wealthy at an extremely young age, so be it. It's one of the joys of operating in a globalised market for talent.

Koori codswallop

THANK goodness for Peter Faris. Most lawyers would run a mile before taking on the politically correct cheer squad that has foisted a Koori county court on the taxpayers of Victoria.

But really, you can't fault the logic of his article in these pages. Racially based courts are an abomination.



Logic: Peter Faris

They ignore the principle that everybody should be subject to the same law administered in the same courts.

Most lawyers would consider that to be the classical definition of the rule of law.

Aborigines should be the first to see the shortcomings of a patronising and separate system of

justice. The unspoken assumption is that they are somehow unable to cope with the "real" courts. What codswallop.

Consider for a moment how this initiative would be viewed if we were talking about a special court designed to take account of the cultural sensitivities of, say, traditional Celts from the backblocks of Scotland who have trouble dealing with multicultural Australia.

Victorian Attorney-General Rob Hulls was clearly motivated by the best intentions when he pushed ahead with this scheme. But there must be better ways of spending taxpayers' money.

After the law and order and health disasters in the Northern Territory, it's astounding that any Australian government could still find anything remotely attractive about allocating public services according to race.

Fiji denies breaching court order

Deported newspaper executive Evan Hannah kept reminding officials of the order

Chris Merritt
Legal affairs editor

Fiji Attorney-General Aiyaz Sayed-Khaiyum denies his interim government breached a court order when it deported Evan Hannah, claiming the government was never properly served with the order.

A notice that accompanied the writ of habeas corpus, and which was stamped by the Fiji High Court, was addressed to the seven parties who were identified as respondents.

They range from Josefa Ravatudei, one of the immigration officials who took Hannah from his home, to the commissioner of police and the permanent secretary of defence, national security and immigration.

But the writ has far broader reach. The accompanying notice says the writ is directed to the respondents "or other person(s) having the custody of Evan David Hannah".

It commands them "to have the body of Evan David Hannah before the said court ..."

"In default thereof, the said court will then ... commit you to prison for your contempt in not obeying the said writ ..."

Once judge Filimoni Jitoko agreed to issue this order, solicitor Jon Apted conveyed the information to Mr Hannah's wife Kata, who passed the news to Mr Hannah while he was still en route to Nadi.

Mr Hannah then informed the officials who had him in custody and kept reminding them of the court's order at regular intervals. His mobile phone was then confiscated.

Mr Apted also obtained the mobile phone number of one of the immigration officers in the car that was taking Mr Hannah to Nadi. Apted sent a text message informing that official of the court's order. There was no reply.

If that text message was received, the officials who had Mr Hannah in custody were told of two separate



Rights denied: Deported Fiji Times managing director Evan Hannah in Sydney earlier this week

Picture: Amos Aikman



Khaiyum

occasions about the court's order.

Mr Apted's team at Munro Leys started faxing the court's notice — and the writ — to government officials just before midnight on the day before Mr Hannah's expulsion.

Between 11.19pm and 12.12am the writ and the notice were faxed to Attorney-General Aiyaz Sayed-Khaiyum and Solicitor-General Chris-

topher Pryde, the air traffic department of Air Pacific, the duty officer of movement control at Air Terminal Services (Fiji) Ltd in Nadi, the commissioner of police, immigration director Bill Naupoto, the permanent secretary of defence, national security and immigration Malakai Tadulala and immigration officers at Nadi Airport.

Early the next morning, before Mr Hannah was deported at about 10am, lawyers from Munro Leys walked around the government offices in Suva

serving the writ on senior government officials.

One of those who was personally served was Solicitor-General Christopher Pryde, who happened to be standing outside the Attorney-General's office.

The Fiji Times provided transport from Suva to Nadi airport for senior associate Feizal Hannif, who started serving the writ on police, immigration and airport officials at 4.50am.

The newspaper also arranged for one of its employees, who was booked

on the 9am Air Pacific flight to Australia, to have a copy of the writ that could be served in the departure lounge on the officials who had Mr Hannah in custody.

That option was never exercised because Air Pacific honoured the court's order and refused to carry Mr Hannah.

Korean Airlines agreed to carry Mr Hannah even though Mr Hannif had informed the airline's ground staff of the court's order and provided them with a copy of the documents.

Interim rulers may be in for trouble with judiciary

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Air Pacific defied the authorities and abided by the court order, as did some of the airport staff at Nadi.

One of the officials who removed Hannah from his home was reduced to tears.

Hannah's suspicions about what lay ahead had been aroused a little more than two weeks after Hunter had been expelled.

Attorney-General Aiyaz Sayed-Khaiyum telephoned Hannah at 10.30am on March 14, asking him to attend a meeting at 2.30pm in his office.

Hannah took along a Munro Leys litigation partner, Jon Apted, who listened as Sayed-Khaiyum told them that Bainimarama was unhappy with *The Fiji Times*.

Hannah explained that as publisher he took responsibility for everything published in the newspaper, but he would not, in any circumstances, give directions to the editorial team.

He told Sayed-Khaiyum there was a separation of powers at the paper to allow the editorial staff to operate without being subjected to improper pressure.

If the interim government had a grievance it could be dealt with in the normal way: through a correction, a letter to the editor, an opinion article, a complaint to the Fiji Media Council or resort to the courts.

The details of that meeting are outlined in an affidavit Hannah completed the next day and left with his lawyers.

Apted knew that if the authorities moved against his client, an urgent application to the courts would be essential.

To cover all contingencies and save time, documents were prepared well in advance to support a variety of possible responses.

"We didn't know exactly what would happen: what time, what basis they would claim for removing him and how much time we would have," Apted says.

"So we had ready a writ of *habeas corpus*, a judicial review application, an application for a stay, a civil action and an application for an *ex parte* injunction. We also took affidavits from Evan and all the exhibits that we needed on his personal circumstances: his job, his family circumstances, his passport and the history of his dealings with the Government.

"The affidavit also covered his role as publisher and the separation of duties between him as publisher and the editor.

"All these were ready when he called to say there were immigration officials and a policeman at his house."

That call was placed to Apted's mobile phone between 6.30pm and 7pm.

Apted was in a meeting and called back five minutes later.

He then told the firm's managing partner, Richard Naidu, what had happened and the two lawyers arrived at Hannah's home at about 7.25pm, when they were confronted with the scene they had been dreading: a government vehicle parked outside.

Hannah's security guards opened the gates and the lawyers found three immigration officials and a policeman in the lounge room.

Those officials were immigration officer Josefa Ravatudei, immigration inspector Yogendra Kumar, passport control officer Paula Yavita and special police constable Asesla Niu.

Hannah, mindful of the circumstances of Hunter's deportation, had dressed for travel and had packed a bag.

Naidu read the removal order and told the immigration officials that Hannah had seven days before the expulsion order took effect.

"This meant they could not take Evan there and then," Apted says.

But the officials persisted and said arguments over the meaning of the order could take place in court.

Naidu, who does most of the pre-publication work for *The Fiji Times*, is very close to the paper, but he is not part of the firm's litigation department and had not been involved directly in preparing for the coming fight. But his presence that night was essential.

He was there so he could swear an affidavit that covered what he saw and it would be used in the proceedings that were sure to follow.

When it became clear Hannah would be taken away that night, Apted went outside and began making calls to arrange an urgent hearing before a High Court judge.

He called court registrar Emosi Koroi

and was told that the family was having evening devotions and could he call back.

After the officials had left with Hannah wedged into the back seat of their government car, Apted and Naidu returned to their office and determined the best way forward was a writ for *habeas corpus*.

Because there is no duty-judge scheme in Fiji, Koroi needed to call judges at home until he found one who was prepared to hear the *habeas* application.

Apted and Koroi then found themselves at the dining table of High Court judge Filimoni Jitoko, who conducted a hearing just as if he were in court and agreed to issue the writ.

The firm informed the Australian consulate, which in turn passed the news to Canberra.

A consular official then caught an early flight to Nadi to offer Hannah whatever assistance might be appropriate.

At the same time, copies of the court's order were being widely distributed and Air Pacific refused to carry Hannah to Australia.

Air Terminal Services at Nadi, after being told of the court order, refused to process Hannah's departure.

Even with Hannah out of the country, the repercussions from this affair are still being felt in Fiji.

At 3pm on Friday, when the respondents to the court's order had been due to produce Hannah to Jitoko, none turned up, the only representatives from the interim government being solicitor-general Christopher Pryde and an assistant.

Pryde told the court he was representing the respondents but had been unable to contact any of them to establish whether they had been served with the writ.

The court process in Fiji is expected to drag on for weeks, but the affair might

Consular officials in Suva became aware of the affair only after hearing about it on the local media

have already made a decisive impact on relations with Australia.

Australian High Commissioner in Fiji James Batley has received a death threat and Fiji is accusing Australian aid agency AusAID of using its activities to encourage critics of the post-coup regime.

After Hunter's expulsion, Australia expressed its extreme disappointment to the Fiji authorities that nobody bothered to inform Australian authorities that an Australian citizen was being deported.

This time, the Fiji side has done it again.

Consular officials in Suva became aware of the affair only after hearing about it on the local media.

The consulate then contacted *The Fiji Times*, obtained Hannah's mobile phone number and called him while he was on the road to Nadi. He assured the consulate that he was not being mistreated.

While Hannah was still on the road, the consulate began calling senior figures in Fiji's interim government, expressing concern, seeking information and requesting immediate consular access. Nothing happened.

Australia's Department of Foreign Affairs then instructed the consulate to have an official at Nadi airport to offer whatever assistance possible.

At the airport, the affair took a bizarre turn.

A consular official learned Hannah was being held in a room just off the main departure hall.

The official knocked on the door, asked to see Hannah, and was told he was not there.

A short time later, the official tried again and had a brief conversation with Hannah through a half-opened door before being told by Fiji authorities to leave.

When it was learned that Air Pacific would not co-operate with the expulsion, the consular official tried to ensure Korean Airlines was aware of the court's order.

But the consular official, armed with a copy of the writ, was turned back at the departure gate.

Hannah was already on board.

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