



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

DEPUTY PRESIDENT CLANCY
DEPUTY PRESIDENT MILLHOUSE
COMMISSIONER BISSETT

C2022/7586

s.604 - Appeal of decisions

Appeal by Patial
(C2022/7586)

Sydney

12.00 PM, TUESDAY, 7 FEBRUARY 2023

Continued from 05/12/2022

PN1

DEPUTY PRESIDENT CLANCY: Good afternoon. I'll confirm appearances. Mr Patel, you appear for yourself?

PN2

MR P PATIAL: Yes.

PN3

DEPUTY PRESIDENT CLANCY: Thank you. Mr Pall, you're here on behalf of Kailish Lawyers?

PN4

MR A PALL: Yes.

PN5

DEPUTY PRESIDENT CLANCY: Thank you. Mr Patial, the Full Bench has had the benefit of being able to read your form F7 notice of appeal. It also has had the benefit of reading your written submissions filed in accordance with the directions. This morning you have the opportunity to make some oral submissions to supplement what you have previously put in writing and we will hear you on them now, thank you.

PN6

MR PATIAL: Thank you. I, Prateek Patial, am the appellant in these proceedings. The matter is listed today for permission to appeal pursuant to section 604 of the Fair Work Act 2009. I submit that the Fair Work Commission has no evidence that Mc Kenna C was not racist, not dishonest, not corrupt and did not take a bribe in these proceedings.

PN7

Therefore, because of the conduct of Mc Kenna C in these proceedings, I firmly believe that Mc Kenna C was racist, dishonest, corrupt and took a bribe, communicated with the respondent's white representatives and gave preferential treatment to the whites by hiding their misconduct in the proceedings. Accordingly, Mc Kenna C's decision should be set aside and an honest Commissioner or President should rehear the matter in the public interest.

PN8

I also submit that Mc Kenna C had ample opportunity throughout the proceedings to refer this matter to the President, Deputy President or Commissioner of Federal Court of Australia. Those have the legal qualifications and jurisdictions to hear an exceptional matter involving two lawyers who are binded by the Legal Professional Uniform Law.

PN9

I submit that the education qualification of Mc Kenna C are not published on the Fair Work Commission web site or any government directory and are intentionally hidden from the Australian public. Therefore, I submit that Mc Kenna C is not capable of working in the role of a Commissioner at the Fair Work Commission. Further, Mc Kenna C has no legal qualifications to hear the

matters of the solicitors. That is, the solicitors or officers of the Supreme Court. Accordingly, Mc Kenna C's decision should be set aside and an honest Commissioner or President should rehear the matter. In *Charistead v Charistead* [2021] HCA 29 at 11:

PN10

Where, as here, a question arises as to the independence or impartiality of a judge, the applicable principles are well established and they were not in dispute. The apprehension of bias principle is that 'a judge is disqualified if a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide'. The principle gives effect to the requirement that justice should both be done and be seen to be done, reflecting a requirement fundamental to the common law system of adversarial trial – that it is conducted by an independent and impartial tribunal.

PN11

Its application requires two steps: first, 'it requires the identification of what it is said might lead a judge ... to decide a case other than on its legal and factual merits'; and, second, there must be articulated a 'logical connection' between that matter and the feared departure from the judge deciding the case on its merits. Once those two steps are taken, the reasonableness of the asserted apprehension of bias can then ultimately be assessed.

PN12

At 12:

PN13

*As five judges of this Court said in *Johnson v Johnson*, while the fair-minded lay observer 'is not to be assumed to have a detailed knowledge of the law, or of the character or ability of a particular judge, the reasonableness of any suggested apprehension of bias is to be considered in the context of ordinary judicial practice'.*

PN14

At 13:

PN15

*Ordinary judicial practice, or what might be described in this context as the most basic of judicial practice, was relevantly and clearly stated by Gibbs CJ and Mason J in *Re JRL*; *Ex parte CJL* in 1986 by adopting what was said by McInerney J in *R v Magistrates' Court at Lilydale* ... 'The sound instinct of the legal profession – judges and practitioners alike – has always been that, save in the most exceptional cases, there should be no communication or association between the judge and one of the parties (or the legal advisers or witnesses of such a party), otherwise than in the presence of or with the previous knowledge and consent of the other party.*

PN16

Once the case is under way, or about to get under way, the judicial officer keeps aloof from the parties (and from their legal advisers and witnesses) and

neither he nor they should so act as to expose the judicial officer to a suspicion of having had communications with one party behind the back of or without the previous knowledge and consent of the other party. For if something is done which affords a reasonable basis for such suspicion, confidence in the impartiality of the judicial officer is undermined'.

PN17

In light of Chariteas, the Commissioner's decision should be set aside because I believe and suspect that the Commissioner has connections with the respondent's ex-solicitors, Troy Plummer and Sarah Christie, or Employsure Law. The Commissioner did the findings without any supporting evidence. The respondent's ex-solicitor employee communicated with the Commissioner on at least three occasions without copying me. The Commissioner gave favouritism to the respondent's ex-solicitor because she is white.

PN18

The Commissioner has evidence that the respondent's ex-solicitor provided the false information at the Commission, but the Commissioner refused to take any action against them. On the other hand, the Commissioner did (indistinct) Commission with me and further racist remarks. It's in the transcript, it's the first day of the hearing and it's already mentioned in the Commissioner's first decision.

PN19

The Commissioner's decision is contrary to the Australian legal authorities and the Commissioner changed the Australian court procedures according to her convenience, and ordered me to do the cross-examination of the witness prior to filing the cross-applicant replies and also instructed me to send the cross-examination questions to a cross-applicant and the witness before the cross-examination.

PN20

Further, there is a perjury in the proceedings. I submit that Mr Amit Pall – Amit - committed perjury in the proceedings. I submit that in the cross-examination, Amit gave false evidence in the proceedings that the agreement for general use was approved by the Law Society of New South Wales. I submit that under cross-examination Amit also gave false evidence in the proceedings that the appellant drafted the agreement for general use. However, Amit affirmed at the Commission that he has been using these kinds of agreements and arrangements with the other lawyers for the past 13 years.

PN21

I submit that the agreement for general use sham agreement is a (indistinct) precedent provided by legal software to the subscribers for general use and was drafted by (indistinct) I further submit that 61,000 practitioners globally have the exact same copies of the agreement for general use. I submit that agreement for general use is not an enterprise agreement.

PN22

I submit that a corrupt Commissioner took a bribe for not referring the matter to the Federal Court of Australia, though as per section 576 of the Fair Work Act 2009 the Fair Work Commission has no jurisdiction to listen to the sham

agreement matter. I submit that the Commissioner took a bribe to hide the perjury of Amit and his misconduct of sham agreement.

PN23

There is also false and misleading information to the Fair Work Commission by Sarah Christie, the respondent's representative. I submit that to seek representation, Ms Sarah Christie – Sarah - provided false and misleading information to the Commission that she is a paid agent. I submit that Sarah is a law graduate covered by the Legal Services Award 2020 and Employsure Law legal firm employee, and worked as an employment relations associate from 15 September 2020 to 23 August 2021.

PN24

I submit that Sarah, Troy Plummer – Troy - and Amit provided false information to the Commission that the appellant deleted 5803 emails from his in box without any evidence. I submit that the Commissioner has no evidence that shows the appellant deleted 5803 emails. However, the Commissioner published these allegations in the decision on the public form without any evidence.

PN25

I submit that the Commissioner didn't use her brain and try to investigate how Sarah, Troy and Amit got the exact number, 5803 emails, without any evidence. I submit that the Commissioner took a bribe to publish these allegations publicly and defame me without evidence, and defaming my character, just to persuade the public.

PN26

There is also a persuasion of perjury by Sarah Christie. I submit that on 9 March 2020, Sarah committed the persuasion of perjury at the examination-in-chief of Ms Sindha Pall-Kaur. I submit that on 9 March 2021 at examination-in-chief by Ms Sarah Christie of Ms Kaur, Ms Christie:

PN27

Thank you, Ms Kaur. You have prepared and we have submitted a witness statement that you drafted back in October; is that correct?

PN28

On that, Ms Kaur replied:

PN29

Yes, that is correct.

PN30

I submit that on 20 October 2021, Sarah filed the form F6 application for costs at item number 24, page 2 of (indistinct words) dated 15 October 2020. Sarah is claiming that she had drafted a witness statement – a draft witness statement of Ms Kaur. However, at the examination-in-chief the question was totally opposite.

PN31

I submit the Commissioner took a bribe to hide the position of perjury by Sarah in the proceedings, although I had raised the issue of perjury by Sarah and bring into

Commissioner's attention several times. However, Commissioner ignored these allegations and didn't investigate.

PN32

There is further – of evidence tampering at the proceedings. I submit that Sarah did the evidence tampering by removing her signature from her emails provided to the Commission with the cost application submissions on 12 February 2022 by using the Outlook tool with the intent to mislead the Commission and with a motive to gain the monetary benefit for his client and for herself. I submit that Sarah and Troy provided 10 invoices of Koala Investment Property Pty Ltd – Koala- to the Commissioner concerning these proceedings.

PN33

I submit that Sarah and Troy tampered with the invoices by replacing the word 'Koala' with 'Kaila'; K-a-i-l-a, and the word is Koala, K-o-a-l-a. I submit that the Commissioner took a bribe to hide the misconduct of evidence tampering at the Commission by Sarah and Troy in the proceedings, though I have raised the issue for the Commissioner's attention several times. I further submit that the Commission and the Commissioner have no invoices of the respondent Kailash Lawyers and Consultants concerning the costs.

PN34

I submit that the Commission and the Commissioner only have the invoices that belong to a different company, Koala Investment Property Pty Ltd, ACN 603793308 and the ABN number for that company is 18603793308. The ACN number and the ABN number of that company is totally different with Kailash Lawyers. I submit that Koala is not a party to this proceedings and is not related to this matter.

PN35

I submit that the Commissioner took a bribe to award the cost of \$36,398.05 plus GST without having any invoices of Kailash Lawyers and Consultants, ACN 604582550 and the ABN number is 90604582550. The Commissioner has no invoices concerning the cost of \$36,398.05 for Kailash Lawyers and Consultants. Those are the respondents in this proceedings. Further, there are some fake and bogus invoices which were given to the Commission.

PN36

I submit that Sarah and Troy provided 10 invoices of Koala Investment Property Pty Ltd to the Commissioner concerning these proceedings. I submit that invoice numbers 2 and 3 were created on Friday, 2 September 2022, at 3 pm and 11 minutes – at 3.11 and 38 seconds. However, Sarah and Troy, employees of Employsure Law, claim that the two invoices were created on 12 November 2022 and the invoice 3 was created on 15 December 2020 - sorry, my mistake. I said the invoice 2 was created on 12 November 2020 and invoice 3 was created on 15 December 2020. However, the original date of creation was 2 September 2022 at 3.11.28 pm.

PN37

I submit that the Commissioner took a bribe to hide the misconduct of providing fake and bogus invoices by Sarah and Troy in the proceedings at the Commission,

although I have raised this allegation in front of the Commissioner and the Commissioner didn't even try to investigate, and didn't refer the invoices to the cost assessor for further investigation. There is also dishonesty of false rates in the schedule of costs.

PN38

I submit that Sarah is a law graduate with a job title 'employment relations associate' from 15 September 2020 to 23 August 2021. I submit that Sarah has no practising certificate to practise as a solicitor in Australia. I submit that Sarah intentionally falsely claimed the solicitor schedule rates and deliberately (indistinct) the words of the Fair Work Regulations 2009 at the discretion of the Fair Work with higher discretionary rate in the issue of costs to mislead the Commission, with the motive to gain a (indistinct) advantage and for a monetary benefit.

PN39

I further submit that the Commissioner helped Sarah Christie at the cross-examination by putting the words in her mouth. I submit that as per section 678 of the Act, it is an offence to provide a false statement to the Commission. I submit that the Commissioner took a bribe by not referring the matter to the costs assessor approved by the Law Society New South Wales for assessment when the appellant explicitly raised – when I explicitly raised it and brought it to the Commissioner's attention concerning false costs and charges.

PN40

I submit that the Commissioner took a bribe to hide the misconduct of Sarah and Troy in relation to providing false information to the Commission and claiming fraudulent charges in the schedule of costs. There is a further help by the Commissioner at the cross-examination of Sarah Christie, dated 23 March 2022. I submit that Troy, Sarah and Employsure Law formally withdrew from the proceedings on 30 December 2021 by providing notice form F54 to the Commission.

PN41

However, I submit that the Commissioner allowed Troy Plummer to represent Sarah on 22 March 2022 without any hearing, although I opposed the representation on 21 March 2022 by email. However, the corrupt Commissioner again allowed the representation by ignoring section 596 of the Fair Work Act. I submit that the Commissioner interfered in the cross-examination of Sarah, helping Sarah to give the answer and put words in Sarah's mouth.

PN42

I submit that the Commissioner did not allow me to ask questions from Sarah at the cross-examination concerning the false rates charged by her. I submit that the Commissioner directed me to provide the cross-examination questions in writing to Sarah in advance. I submit that the Commissioner took a bribe from Troy and Employsure Law to help Sarah at the cross-examination. There is also corruption in the preferential treatment given to the white Sarah and white Troy.

PN43

I submit that McKenna C ignored the Fair Work Act 2009, Fair Work Regulations, Legal Professional Uniform Law and Australian case laws, and the evidence provided by the Law Society of New South Wales. The Law Society of New South Wales provided evidence to the Commissioner. However, the Commissioner ignored the evidence. I submit that the corrupt Commissioner ignored the facts and the evidence that the respondent representatives did the evidence tampering, colluding with a witness and drawing allegations without evidence on the appellant.

PN44

I submit that the Commissioner had communicated directly with Sarah and Troy, Employsure Law. I submit that the corrupt Commissioner knew that the respondent did not provide the proper disclosure and did not file any submissions raised the Commissioner herself on 29 September 2022. Surprisingly, the Commissioner raised some regulations to the respondent. The respondent didn't even reply to the regulations raised by the Commissioner. I submit that the corrupt McKenna C provided preferential treatment towards Sarah and Troy, and hide the number of misconduct in the proceedings and also ignored the regulations raised by herself.

PN45

I submit that Mc Kenna C is racist and biased, and took a bribe to hide the misconducts of the respondent and the respondent's representative in the proceedings. I submit that the Commissioner took a bribe to deliver the decision in favour of the respondent. I firmly believe that the corrupt Commissioner does not have a higher school certificate, HSC, and the Commissioner is an HSC dropout as there are no qualifications of Mc Kenna C at the Fair Work Regulations where all the other Commissioners and the Presidents have their qualifications mentioned at the web site.

PN46

I submit that the Commissioner has no legal qualification to serve the court. Even she has no legal qualification to assist the matters in the proceedings with solicitors. They are called the officers of the Supreme Court. I submit that the Commissioner didn't refer the costs to a cost assessor approved by the Law Society of New South Wales for assessment when it was explicitly raised by me.

PN47

Communication. At least on four occasions Sarah and Employsure Law send the communications to the Commissioner without copying me. On 20 April 2021, without my knowledge and consent Sarah sent the schedule of agreed facts to the Commissioner 15 minutes approximately prior to the hearing, via email. In the circumstances Sarah persuaded the Commissioner with false facts which resulted in the miscarriage of justice. I submit in the above circumstances I reasonably believe that Sarah, Troy and Employsure Law communicated with the Commissioner without my knowledge prior to the decision; therefore, the Commissioner's decision is contrary to the law and evidence.

PN48

I also submit that the investigation should be happen on Mc Kenna C. On 23 August 2021, I submit the dishonest and the corrupt Mc Kenna C provided the

false statement via email to me that the Commissioner has instructed me to confirm that 'the respondent's representative Employsure have not sent numerous emails to this office without copying you or separately serving you'.

PN49

However, contrarily, I submit that the Commission and I have clear evidence that the respondent's representatives sent communications to the Commissioner without copying me on 15 March 2021, 26 March 2021, 20 April 2021, 23 December 2021. Accordingly, the Commissioner's statement is a false statement. I submit that I formally believe that Mc Kenna C had some understanding with the respondent's representatives.

PN50

The main important point of this proceeding is the fake work experience because of the dismissal happened. I submit that the respondent's representative Mr Amit Pall provided the fraudulent documents to his employee, Prateek Mahajan. I submit that there are numerous witnesses, including there is one practising solicitor Ms (indistinct) and a paralegal Ms Sindha Pall-Kaur concerning the fake work experience certificate.

PN51

I submit that the corrupt Commissioner did not allow me to ask questions from Ms Kaur at the cross-examination of her concerning fake work experience on 9 March 2021. The Commissioner stop me in the middle when I was trying to ask questions from Ms Kaur regarding the fake work experience. I submit that the corrupt Commissioner stopped me in the middle when I asked a question concerning the fake work experience for Ms Kaur.

PN52

I submit that the corrupt Commissioner told Ms Kaur not once the cross-examination questions concerning Prateek Mahajan's employment. I submit that the corrupt Commissioner took a bribe from the respondent and the respondent's representatives, either the employee Sarah or the Employsure Law, to hide the respondent's misconduct of fake work experience.

PN53

There was an issue of the Small Business Code. I submit I received the following emails and directions from the Commissioner in the proceedings. I submit on 24 September 2020, I received directions from the Commissioner to file submissions regarding jurisdiction, not an employee. On 14 October 2020, I received the amended directions from the Commissioner to file submissions regarding jurisdiction, not an employee.

PN54

On 2 December 2020, the notice of listing stated that the above matter is also listed for jurisdiction, not an employee and arbitration conference or a hearing in person before Mc Kenna C on Tuesday, 9 March 2021. On 2 March 2021, I submit the notice of listing stated that the above matter is listed for direction, not an employee and arbitration conference or hearing in person before Mc Kenna C at Tuesday, 9 March 2021. I submit that on 11 March 2021, the notice of listing stated that the above matter is listed for jurisdiction, not an employee and

arbitration conference or hearing in person before Mc Kenna C at Tuesday, 20 March 2021.

PN55

I submit that on 30 March 2021, the notice of listing stated that the above matter is listed for jurisdiction, not an employee and arbitration conference or hearing in person before Mc Kenna C at Tuesday, 20 April 2021. I submit that on 1 April 2021, I received the notice of listing stating that the above matter is listed for jurisdiction, not an employee and arbitration conference or hearing in person before Mc Kenna C at Thursday, 20 May 2021.

PN56

I submit that the matter was heard in the Commission only to decide whether I was an employee or not an employee. I submit that during the proceedings that the Commissioner did not give the opportunity to me or instructed or directed me to provide submissions on the Small Business Fair Dismissal Code – the code. However, the matter was only heard for jurisdictional issues to consider whether I was an employee or not an employee.

PN57

I submit that I also provided evidence to the Commissioner that Amit did not allow me to have a support person at the meeting on 26 August 2020. Moreover, I have provided evidence to the Commissioner that Amit tried to involve me in money laundering, to take a bank loan for the amount of \$1 million from NAB Bella Vista under my name and force me to sign as a director for a 1 million-dollar loan.

PN58

There was an immigration fraud (indistinct words) to Mr Mahajan and also a refusal by me to involve in the activities mentioned above, Amit terminated my employment. I submit that the Commissioner took a bribe from the respondent and Employsure Law to hide the respondent's misconduct which I mentioned above and, further, without giving me a procedural fairness on the Small Business Code the Commissioner published – the Commissioner gave the decision on the Small Business Code.

PN59

I also submit that at the previous Full Bench appeal, I raise those issues and they have not listened to the concerns. The (indistinct words) evidence where I was not given an opportunity to put the submissions on the Small Business Code in front of Mc Kenna C. However, Mc Kenna C has published the decision of – published – raised the issues of Small Business Code in her decision.

PN60

Further, there is an error of facts of law in the Mc Kenna C decision throughout the proceedings. As per *Hollis v Vabu* – it's a High Court decision – the courts are not bounded by the level the parties give to the agreement. Instead they will examine the (indistinct) system and work practices to assess where the person is an employee or where - whether the person is an employee. However, the Commissioner didn't even check. The Commissioner just follow the sham agreement when the Commission has no jurisdiction over the sham agreement.

PN61

In *Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd*, the High Court stated parties cannot create something which is every feature of a rooster, but call it a duck. However, I was an employee of Kailash Lawyers. However, Amit created a document called a general agreement which is not an enterprise agreement. In considering the criteria, it is necessary to consider the following questions posed by Bromberg J in *On Call Interpreters and Translators Agency Pty Ltd v Federal Commissioner of Taxation*:

PN62

Simply expressed, the question of whether a person is an independent contractor in relation to the performance of particular work may be posed and answered as follows: Viewed as a 'practical matter' is the person performing the work of an entrepreneur who owns and operates a business; in performing the work, is that person working in and for that person's business as a representative of that business and not of the business receiving the work?

PN63

If the answer to that question is yes, in the performance of that particular work, the person is likely to be an independent contractor. If no, then the person is likely to be an employee.

PN64

However, I worked under training. I wasn't a supervision of Ms or Ms Pall. I was not working as an independent contractor. However, the Commissioner's decision clearly states that I worked as an independent contractor, however, Amit and their representatives also give the submission to the Commission I was under the supervision.

PN65

In *Putland v Royans Wagga Pty Ltd* [2017] the court found that the first and second employee applicants were employees of the respondent. In *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd*, the High Court decided that the second appellant was the employee of the respondent for the purposes of Commonwealth Fair Work Act 2009. In the light of the above cases, Hollis, Quest, FCT, On Call, Putland, CFMMEU, I submit that the Commissioner erred in finding my employment relationship and did not follow the approach or criteria used by the relevant authorities.

PN66

The Mc Kenna C decision is contrary to the Legal Profession Uniform Law; Australian case law; High Court of Australia case law; Federal Court of Australia case law; worldwide case law – even the worldwide case law - Australian Taxation Office, ATO; Australian government guidelines published on the web site for the general public. Even the Fair Work Commission guidelines published on their own web site for general public and their own body, the Fair Work Ombudsman, published on the web site for the general public, and Fair Work Act 2009. The Commissioner's decision is contrary to all these relevant authorities.

PN67

I submit that Mc Kenna C's decision that I'm not an employee doesn't qualify with the basic definition of the Independent Contractors Act 2006 because the respondent accepted and affirmed at the Fair Work Commission, therefore, performing the work. The respondents have provided me with stationery that includes numerous items, which includes pens; folders; computer (indistinct); chair; tables; the use of software; the legal software; the use of the legal portals; the Commonwealth court portal; the Family Law portal; the subscriptions. Even he has paid for my (indistinct words) the WorkCover insurance and even the professional indemnity insurance.

PN68

I submit that the Commissioner took a bribe for not referring the matter to a Federal Court of Australia though, as per section 576 of the Fair Work Act 2009, the Fair Work Commission had no jurisdiction to listen to the matter on the nature of the coercion, duress, or similar matter which she has mentioned at paragraph 15 and dated 6 August 2021. The Fair Work Commission has no jurisdiction on this matter under section 576 of the Fair Work Act. The evidence speaks for itself at paragraph 15, dated 6 August 2021.

PN69

I submit it is in the public interest that the appeal should be allowed or granted to me because of the following number of misconducts of the respondent, the respondent's representatives and the corrupt Mc Kenna C. Number 1, bribery. I submit I firmly believe that the corrupt Commissioner took or received a bribe from the respondent and the respondent's representatives to hide the misconduct and gave a federal decision contrary to the law and evidence.

PN70

Corruption. I firmly believe that the corrupt Commissioner is not legally qualified to serve the court and give the court's orders without having the proper invoices and full disclosures. The respondent breached and ignored the corrupt Commissioner's direction and did not file the re-submissions which were raised by the Commissioner herself.

PN71

However, the Commissioner totally ignored the breach and the Commissioner didn't question the respondents about missing re-submissions and the requisitions as per her directions. Instead, the Commissioner (indistinct) the respondent's re-submissions and give a decision in the respondent's favour because the Commissioner took a monetary benefit from the respondent and the respondent's representatives.

PN72

Number third is the perjury. Amit committed perjury at the proceedings. I have already provided evidence to the Commission concerning this allegation. Number 4 is the persuasion of perjury. Sarah, the respondent's representative, the law graduate, committed persuasion of perjury at the proceedings. I have already provided the evidence to the Commission concerning this allegation in my evidence.

PN73

Number 5, evidence tampering. Sarah and Troy, the representatives, did the evidence tampering at the proceedings which were submitted at the Commission. I have already provided the evidence to the Commission concerning these allegations. Number 6, fake or bogus invoices. Sarah and Troy, the respondent's representatives, provided the fake and bogus invoices at the proceedings. I have already provided the evidence to the Commission concerning this allegation.

PN74

Number 7, dishonesty and false rates. I submit that Sarah claimed the false hourly rate of a solicitor at the proceedings in the (indistinct words) when Sarah was not admitted as a solicitor or lawyer in Australia. I have already provided the evidence to the Commission concerning this allegation. The next one is bogus allegations. I submit that Sarah and Troy through malicious allegations tarnished my character and integrity, and accused me of stealing and deleting 5803 emails without any evidence. The corrupt Commissioner published this allegation on a public form without any evidence, just to persuade the public.

PN75

The next one is false and misleading information. I submit that Troy, Sarah and Amit have provided false and misleading information to the Fair Work Commission in the proceedings. I have already provided the evidence to the Commission concerning this allegation. The next one is the Small Business Code. I submit that the respondent forced me into illegal activities to mislead the Department of Home Affairs concerning the fake work experience given to Mr Prateek Mahajan and, on my refusal, terminating my employment. I have already provided the evidence to the Commission concerning this allegation. Now the respondent is taking the shield of Small Business Code to save his illegal activities and misconduct.

PN76

The next one is a sham contract, coercion, duress or similar matters. I submit that as per section 576 of the Fair Work Act 2009, the Commission has no jurisdiction to listen to these matters. When these matters were raised the Commission didn't even refer these matters to a Federal Court of Australia and didn't stop the proceedings in the middle. She continued the proceedings and gave the decision when she has no jurisdiction.

PN77

The next one is the apprehended bias. I submit that the High Court set aside the trial judge's decision in *Charisteads v Charisteads* [2021] HCA 29 because all -

PN78

the various communications between the trial judge and the wife's barrister 'otherwise than in the presence of or with the previous knowledge and consent of the other parties to the litigation.

PN79

I submit that:

PN80

It cannot be imagined that the other parties to the litigation would have given informed consent to the communications even if consent had been sought, and it was not.

PN81

I submit:

PN82

The communications should not have taken place. There were no exceptional circumstances.

PN83

The next one is the disregarding of the Australian and the worldwide case laws, legislation and evidence. I submit that Mc Kenna C disregarded the Fair Work Act 2009, ignored the evidence provided by me to her and gave the decision contrary to the law in the favour of the respondents. I further submit I have already provided the evidence to the Commission concerning this allegation.

PN84

The next one is indemnity costs. I submit that the corrupt Commissioner ordered the indemnity costs without the assessment by the court's assessor although I have raised numerous discrepancies and sought that the costs should be assessed by an independent court assessor approved by the Law Society New South Wales. I further submit that the corrupt Commissioner raised concerns about full disclosure and directed the respondents to re-submit the invoices with proper disclosures. However, the respondent breached and ignored the Commissioner's directions, and didn't file the submissions. I submit I have already provided the evidence to the Commission concerning this allegation.

PN85

The next one, I submit I have also provided evidence of these allegations against Mc Kenna C. However, from the beginning of this proceeding the corrupt Mc Kenna C intentionally or wilfully ignored the evidence provided to her and bypassed the respondent and respondent's representative's misconduct and breaches because Mc Kenna C took the bribe from the respondent and respondent's representatives.

PN86

Therefore, it is in the public interest that the appeal should be allowed to save the Fair Work Commission's integrity and maintain the public faith in the public eye. I submit it is in the public interest that the appeal should be allowed and the Fair Work Commission impose penalties on the imposters Troy, Sarah and Amit. I submit that it is in the public interest that the appeal should be allowed and the Commission should also investigate the corruption in the Commission and take harsh steps, and (indistinct) to stop bribery and corruption at the Fair Work Commission to maintain the faith of the Australian public in the Fair Work Commission.

PN87

I submit that it is in the public interest that the appeal should be allowed and the Fair Work Commission also investigate the corrupt Mc Kenna C's conduct, and

should penalise according to maintain the faith of the Australian public in the Fair Work Commission that their matters are heard fairly, impartially and all accusations are followed and applied to make the decision.

PN88

I submit it is in the public interest that the appeal should be allowed and it is a duty of the Commission for the public to maintain the significance of the Fair Work Act 2009 when Mc Kenna C intentionally ignored and disregarded the Fair Work Act 2009 and work legislation, including Independent Contractors Act 2006, in her decision. I submit it is in the public interest that the appeal should be allowed so that any honest Commissioner or President or Deputy President should hear the proceedings and justice be served.

PN89

At the end, I submit that this appeal should be allowed and heard again because of many discrepancies in these proceedings from the beginning. I also submit that the Fair Work Commission must clarify to the public whether the supervised trainees or unlisted practitioners are independent contractors or employees, or they can work as independent contractors under the Legal Profession Uniform Law.

PN90

I submit that the public needs to know the clear answer, because Mc Kenna C's decision is vague and contrary to the law. Mc Kenna C has two (indistinct) which are both contrary, providing that the Legal Profession Uniform Law and Australian case laws are wrong. I also submit Amit, Sarah and Troy are also (indistinct) that the agreement for general use is valid and approved by the Law Society without any concrete evidence.

PN91

However, it is the duty of the Commission to clarify to the Australian public whether the enterprise agreements are not necessary for the Legal Profession Uniform Law and can be replaced by agreement for general law, so that all the public can follow the agreement for general use and the small business can save thousands of dollars which they are spending on enterprise agreements. Further, the Commission must make it clear to the public and set an example that Small Business Code is not an escape for employers or the corrupt employers who have the misconduct and force employees to do illegal work. Accordingly, the appeal should be allowed and the matter be reheard.

PN92

I further submit that the formal duty of the Commission towards the public is to rehear the matter impartially and should penalise all the representatives who had misrepresented the Commission, committed perjury, persuasion of perjury, racism, corruption, et cetera, and set an example to save the Australia public's faith in the Fair Work Commission.

PN93

If the leave to appeal is not allowed and the matter is not reheard, then the corruption Commissioner's decision is giving the golden pass to the offenders or employers like the respondent to use the Small Business Code as a shield and take

advantage of the employees' needs and force them into illegal activity. Hence, the Commission should rehear this matter.

PN94

The respondent's representatives are serial law offenders. I submit the respondent's representatives are serial law offenders and the Federal Court of Australia already punished them by putting up a penalty of \$1 million for misrepresentations to the public. Still, the respondent's representatives are misrepresenting the Commission in this proceedings.

PN95

I submit in the light of the above submissions that Mc Kenna C has misused her position and power, disregarded and ignored the Legal Profession Uniform Law, Australian case law, High Court of Australia case law, Federal Court of Australia case law, worldwide case laws, Australian Taxation office – ATO – Australian government guidelines published on their web site for the general public, Fair Work Commission guidelines published on their web site for the general public, Fair Work Ombudsman web site, published on their web site for the general public and the Fair Work Act in her decision and misused her position and power to suppress my voice, and give the preferential treatment to the white Sarah and Troy.

PN96

In the light of the above submissions, I submit that there are significant errors of fact in the Commissioner's decision and it is in the public interest that the permission to leave should be allowed to the appellant. I also rely on the evidence and submissions I had already filed and provided to the Commission, including my outline of submissions filed on 29 November 2022 via email sent to the Deputy President, respondent and respondent's representatives. Unless the Commission requires anything further, those are my submissions.

PN97

DEPUTY PRESIDENT CLANCY: Thank you. Could I just seek some clarification from you.

PN98

MR PATIAL: Yes.

PN99

DEPUTY PRESIDENT CLANCY: This is in particular reference to the form F7 notice of appeal. You just indicate when you have got that in front of you, please.

PN100

MR PATIAL: The notice of appeal?

PN101

DEPUTY PRESIDENT CLANCY: Yes, please.

PN102

MR PATIAL: Form F7, notice of appeal. So, form F7, notice of appeal, filed on 7 November 2022?

PN103

DEPUTY PRESIDENT CLANCY: Yes, thank you.

PN104

MR PATIAL: Can I just take a printout of this form or - yes, you can ask me questions, yes.

PN105

DEPUTY PRESIDENT CLANCY: Do you have it in front of you?

PN106

MR PATIAL: No, it's in the computer. Can I see on the computer or do I have to take a printout?

PN107

DEPUTY PRESIDENT CLANCY: You can see it on the computer if you have got it there on your computer.

PN108

MR PATIAL: Yes.

PN109

DEPUTY PRESIDENT CLANCY: All right. Could you go to the third page of the notice of appeal.

PN110

MR PATIAL: Yes.

PN111

DEPUTY PRESIDENT CLANCY: And at question 1.2 it requires you to provide a description of the decision and order you're appealing. Are you there?

PN112

MR PATIAL: 'The further details of the matter you are seeking to appeal.'

PN113

DEPUTY PRESIDENT CLANCY: Yes.

PN114

MR PATIAL: Yes, yes, yes, I am there.

PN115

DEPUTY PRESIDENT CLANCY: Thank you. As I understand it you have indicated (a) decision of 28 October 2022.

PN116

MR PATIAL: Yes.

PN117

DEPUTY PRESIDENT CLANCY: If we turn over the page, on to page 4 - - -

PN118

MR PATIAL: Yes.

PN119

DEPUTY PRESIDENT CLANCY: - - - just down at the bottom it says, secondly, the decision dated 18 July 2022.

PN120

MR PATIAL: Yes.

PN121

DEPUTY PRESIDENT CLANCY: All right. Then, please, if you could go to the sixth page, about halfway down.

PN122

MR PATIAL: Yes.

PN123

DEPUTY PRESIDENT CLANCY: You have the decision dated 24 November 2021.

PN124

MR PATIAL: Yes.

PN125

DEPUTY PRESIDENT CLANCY: All right. Then just below that, (d), decision 24 August 2021.

PN126

MR PATIAL: Yes.

PN127

DEPUTY PRESIDENT CLANCY: Right. Original decision made on 6 August 2021.

PN128

MR PATIAL: Yes.

PN129

DEPUTY PRESIDENT CLANCY: Thank you. Then if you go to the bottom of the page, (e), order dated 28 October 2022.

PN130

MR PATIAL: Yes.

PN131

DEPUTY PRESIDENT CLANCY: Thank you. If you go over to page 8, please.

PN132

MR PATIAL: Page 8.

PN133

DEPUTY PRESIDENT CLANCY: Right at the bottom of that page you say the order dated 6 August 2021.

PN134

MR PATIAL: Yes.

PN135

DEPUTY PRESIDENT CLANCY: Thank you. Now, in your written submissions and your oral submissions you have referred us to 'this appeal should be allowed' and you have referred to 'this appeal' in a range of contexts. Just so that the Full Bench is clear, when you refer to 'this appeal' are you referencing those combination of six orders and decisions that I have just taken you to?

PN136

MR PATIAL: Yes, thank you, because these are all relevant to the same proceedings.

PN137

DEPUTY PRESIDENT CLANCY: Okay.

PN138

MR PATIAL: These are all part of the proceedings.

PN139

DEPUTY PRESIDENT CLANCY: All right. Now, just in relation to those, if I could just ask you to address us in one particular respect. If I could take you back to page 4, please, of your notice of appeal.

PN140

MR PATIAL: Yes.

PN141

DEPUTY PRESIDENT CLANCY: Where you have outlined the decision 18 July 2022 - - -

PN142

MR PATIAL: 18 July. Page - - -

PN143

DEPUTY PRESIDENT CLANCY: Sorry, page 4.

PN144

MR PATIAL: Page 4?

PN145

DEPUTY PRESIDENT CLANCY: Yes, down the bottom.

PN146

MR PATIAL: Yes.

PN147

DEPUTY PRESIDENT CLANCY: You have put that this appeal includes the decision of 18 July 2022.

PN148

MR PATIAL: Yes.

PN149

DEPUTY PRESIDENT CLANCY: To appeal that decision now you are out of time pursuant to the rules of the Fair Work Commission and in particular rule 56(2) of the rules. I will just read that to you:

PN150

The notice of appeal must be lodged: (a) within 21 calendar days after the date of the decision being appealed against; or (b) if the decision was issued in the form of an order, within 21 calendar days after the date of the order –

PN151

so it refers to a combination of decisions and orders here –

PN152

or (c) within such further time allowed by the Commission on application by the appellant.

PN153

Just hold that thought. If I'm looking at the decision dated 18 July 2022, to the extent you wish to appeal that decision - - -

PN154

MR PATIAL: Yes.

PN155

DEPUTY PRESIDENT CLANCY: - - - the appeal was lodged outside the required 21 days.

PN156

MR PATIAL: Yes.

PN157

DEPUTY PRESIDENT CLANCY: Just stay with me with that. Also if we turn to again page 6 of your notice of appeal - - -

PN158

MR PATIAL: Yes.

PN159

DEPUTY PRESIDENT CLANCY: - - - and halfway down the page, the decision of 24 November 2021.

PN160

MR PATIAL: Yes.

PN161

DEPUTY PRESIDENT CLANCY: You are seeking appeal to us a decision of the Full Bench of the Commission; is that correct?

PN162

MR PATIAL: Yes.

PN163

DEPUTY PRESIDENT CLANCY: To the extent you seek to make that appeal, that is also outside the 21-day time period.

PN164

MR PATIAL: Yes.

PN165

DEPUTY PRESIDENT CLANCY: Then if I could take you to the next one just about a line below that, the decision dated 24 August 2021.

PN166

MR PATIAL: Yes.

PN167

DEPUTY PRESIDENT CLANCY: Original decision made on 6 August 2021. Again, if you're seeking to appeal that as part of this appeal, that is outside the 21-day time period.

PN168

MR PATIAL: Yes.

PN169

DEPUTY PRESIDENT CLANCY: Then, finally, the last order which is the one referred to on page 8 of your notice of appeal, the order dated 6 August 2021.

PN170

MR PATIAL: Yes.

PN171

DEPUTY PRESIDENT CLANCY: To appeal that order you are also outside the 21-day time period required by the rules.

PN172

MR PATIAL: Yes.

PN173

DEPUTY PRESIDENT CLANCY: So what I would like you to do is now address us in the terms of rule 56(2) of the Fair Work Commission Rules 2013 and in particular address us on whether further time should be allowed by this Full Bench to appeal those particular decisions and order that I've just taken you to that are outside the 21-day time limit. You are invited to apply to us and make submissions as to why we should allow further time to appeal those decisions and that particular order, all right? You can do that now.

PN174

MR PATIAL: Yes. I submit that all the decisions and orders are related to the same proceedings and I am applying that the exception should be allowed because there is a conduct of bribery, corruption, perjury and evidence tampering, and dishonesty was involved in the proceedings. It takes time to find out these things because of the bribery – there is a bribery involved in the proceedings. I submit there is also corruption in the proceedings.

PN175

I submit there is perjury in the proceedings. I submit that there is a persuasion of perjury in the proceedings. I submit that there is evidence tampering in the proceedings. I submit that intentionally false and bogus invoices were given to the Commissioner and submitted at the Commission. I submit that because there was a bribery involved, so the respondent's representatives put dishonestly and false rates in the (indistinct) reports.

PN176

I submit that there was some bogus allegations which are also published on the public form without any sort of evidence. I submit that the false and misleading information was given to the Commission by the respondent and respondent's representatives. I submit that there was no procedural fairness given to me and the decision was given under the Small Business Code.

PN177

I also submit that as per section 576 of the Fair Work Act, the Commission has no jurisdiction on the sham contract for (indistinct words) matter. I submit even it's like – it's an exception of 21 days rule (indistinct) the Commissioner has no jurisdiction to deliver the decisions on the matters of sham contracting, coercion, duress or similar matters which is mentioned in the Commissioner's decision at paragraph 15 – in her original decision.

PN178

I submit that there is an apprehended bias in the proceedings. I submit that the Commissioner gave the preferential treatment to the whites and, further, racist remarks on me. The Commissioner did aid this Commission and make fun of my age in the proceedings. She was laughing at the time of passing the remarks when I was calling myself a young lawyer. It is really awful for a Commissioner on such a – sitting on a high position, although she has no qualifications, and she passed the racist remarks on me at the proceedings which were also recorded in the transcript.

PN179

I submit that there is an error on the face of law in the Commissioner's decision. I submit that the Commissioner intentionally disregard the Australian and worldwide case law, legislation and the evidence. I submit that there is a question on the integrity of the Fair Work Commission. I submit that a normal person – that persons come to the Fair Work Commission so that they can get justice, but not to be harassed by these Commissioners where they will face racism and which was clearly – I submit that there is also an exception because we also found at the end of the proceeding that the Commissioner did the communication with the respondent's representative which also points the fingers on the Fair Work's integrity.

PN180

So, accordingly, I submit to keep the faith of the Australian public in the Fair Work Commission and to prove to the public that the Fair Work Commission is fair, the exception should be given to me and the permission to appeal should be allowed.

PN181

DEPUTY PRESIDENT CLANCY: Thank you, Mr Patial. Mr Pall, you will recall from the directions made in this proceeding that the matter today has been listed for permission to appeal only. In accordance with the Commission's usual processes, as the respondent you weren't required to file any material in the way of submissions. With the matter being listed for permission to appeal only and in that context, do you wish to say anything before we conclude today?

PN182

MR PALL: Yes. I will try to keep it short, members. Mr Patial again has taken us through a lengthy barrage – constant barrage – of all these spurious allegations which are completely unfounded, highly defamatory and I would seek that the Commission uses their powers to a degree of discretion to address this matter very seriously as far as all these allegations are concerned in relation to an Honourable member of the Commission, members of the Legal Society, including myself and my respondents.

PN183

Mr Patial has again ignored the decision of the Deputy Commissioner dated 6 December in these proceedings, whereby the member cautioned Mr Patial in paragraph 8 as per section 674(1) and (2) not to make any unfounded allegations of such highly, highly, highly, highly offensive against a member. Again, Mr Patial has done that today, so I would really urge that the Deputy President take serious consideration of whatever Mr Patial has said today and keeping in mind section 674(1) and (2). I seek some orders should be made in that regard to save the integrity of the Fair Work Commission and its members.

PN184

Having said that, it appears Mr Patial in his oral submissions and his written submissions hasn't addressed any appealable error in fact or in law. In his submissions he hasn't demonstrated any relevant case test that in respect of public interest should be applied and why. It is just again a constant barrage of all these unfounded allegations which are going on and on his oral submissions and his written submissions in all these proceedings. These are my submissions.

PN185

MR PATIAL: I can't hear. Sorry, I can't hear.

PN186

MR PALL: We can't hear you, Deputy President.

PN187

DEPUTY PRESIDENT CLANCY: Thank you. Mr Patial, you have the opportunity to make any final comments to the Commission before we conclude today and you can do so now.

PN188

MR PATIAL: Yes. I will reply to the respondent's submission?

PN189

DEPUTY PRESIDENT CLANCY: Yes, that's it. Thank you.

PN190

MR PATIAL: Yes. I submit that the unfounded allegations were thrown by the respondent and respondent's representatives on me concerning the deletion of the emails – of the 5803 emails. The Commissioner, the respondent, the respondent's representatives – no one has any evidence and there is no evidence in the books of the Commission that I have deleted these emails. However, these allegations are published on the public form.

PN191

These allegations were thrown by the respondent and the respondent's representatives, which were taken by the Commissioner and published on the media. On the other hand, I have thrown the allegations on the respondent and the respondent's representative with evidence. For example, removing of signatures.

PN192

These events I have already given to the Commissioner, the Commissioner has the submissions. The Commission can look into the material and see these signatures were missing concerning the false rates. The Commission should (indistinct) the Commission itself do investigation and see these rates were wrongly put the respondent and the respondent's representatives.

PN193

Communication. I have already given the numbers - I have already mentioned the dates in my submissions. The Commission has the powers to investigate. Even I have already filed these emails in my evidence, in my tender bundle. The Commissioner can look into the evidence. Further, requisitions. I have already given the evidence to the Commission concerning the requisitions were raised by the Commissioner before in the matter of the costs. It was clearly seen by the Commission that the respondent didn't file the re-submissions. However, the decision was made.

PN194

On the other hand, I have already mentioned the numerous cases, the case of Chariteas, where the decision of the Commission or where the decision of the court – of the Family Court – was satisfied by the High Court because there was a communication between the barrister and the judge. In this matter the communication was happened with the respondent's representative and the Commissioner did the communication.

PN195

I have four emails. The four emails were already provided to the Commission. I don't know how many number of times the Commissioner did the communication with the respondent's representatives. I have already requested the Commissioner to refer the matter to the costs assessor or to impartial person. However, the Commissioner ignored the directions and said no.

PN196

Further, I have also referred to the cases concerning the error on the face of law. The decision the Commissioner made is totally – sorry, there was a substantial error on the face of law in the Commissioner's decision. I have mentioned the case of *Hollis v Vabu* in my submissions, on page number 6. I have also mentioned the case of *Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd* in my submissions concerning the error on the face of law.

PN197

I have also mentioned the submissions imposed by *On Call Interpreters and Translators Agency Pty Ltd v Federal Commissioner of Taxation*, on page number 6. I have also mentioned the case of *Putland v Royans Wagga Pty Ltd*. I also mentioned the case of *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* where those decisions were totally different than the Commissioner's decision. The Commissioner didn't even follow the guidelines of the High Court of the relevant authorities.

PN198

The Commissioner's decision is also – there is error on the face of law and the Commissioner's decision is also contrary on the guidelines published on the Fair Work Commission web site which is for the general public and on the Fair Work Ombudsman web site. These are all published on the Fair Work Ombudsman web site for the Australian public and ATO guidelines published for the Australian public. The Australian government guidelines – even the case law. The Commissioner disregarded all the case laws.

PN199

I also mentioned the section 576 of the Fair Work Act 2009 where the Commissioner has no jurisdiction to listen to the matter of a sham contracting. I also give the evidence concerning the Fair Work experience to the Commission and to a Full Bench regarding the Fair Work experience given by Mr Amit Pall to Prateek Mahajan. There are numerous witnesses, approximately eight witnesses, including a practising solicitor Ms (Indistinct) and a paralegal Sindha Pall-Kaur.

PN200

Sindha Pall-Kaur gave the evidence at the cross-examination. However, the Commissioner interrupted me in the middle, stopped me, not to ask the questions concerning the fake work experience from Ms Pall. Why? The only reason for that, because she took a bribe. She don't want me to ask the questions concerning the fake work experience of Ms Kaur because otherwise she has to give the decision against the respondent, so that is the reason she stopped me in the middle.

PN201

I submit that the respondent's submissions are totally irrelevant. I have already submitted the cases concerning the error on face of law and the criteria in relation to public interest why the appeal should be allowed, because there are concerns of bribery, there are concerns of bribery – sorry, there are concerns of bribery, corruption, definitely perjury committed by Mr Amit Pall. It has been recorded in the transcript. The evidence speaks for itself.

PN202

Persuasion of perjury by the respondent's representative; the evidence speaks for itself. I have already given the evidence to the Commissioner, to the Full Bench and to the Fair Work Commission. They can see the transcript. They can see the schedule of course, the evidence speaks for itself. Evidence tampering, taking bogus invoices, the dishonesty and false rates, the bogus allegations of deletion of the 5803 emails and false and misleading information, procedural fairness in relation to the Small Business Code and, most importantly, the Fair Work Commission has no jurisdiction under section 576 of the Fair Work Act 2009 regarding the sham contract, coercion, duress.

PN203

However, at paragraph 15 in the original decision the Commissioner gave the decision on the basis of this, so accordingly I submit that the permission to appeal should be allowed because to maintain the public faith in the Fair Work Commission.

PN204

DEPUTY PRESIDENT CLANCY: Thank you. The Full Bench thanks the parties for their attendance today. We also thank Mr Patial for the material he has submitted prior to the hearing today. The Full Bench will now adjourn. It will reserve its decision and a decision in writing will be sent to the parties in due course. The Commission will now adjourn.

ADJOURNED INDEFINITELY

[1.21 PM]