

Australian Capital Territory Restraining Order 93/494
Philip Selth v Alexander Buchanan Restraining Order
Exhibit No 17 Letter dated 26.11.93 by Christine Bayliss
Sir Anthony Mason Chambers
14/179 Elizabeth Street
Sydney NSW 2000
Tel: 02 9373 7433
Fax: 02 9373 7422
DX: 343
EM: philip_bates@fcl.fl.asn.au

26 November 1993

The Chancellor, Pro-Vice-Chancellor and Members of the ANU Council

Dear Sirs and Mesdames,

The ANU either directly or through legal assistance to other persons has involved my son, Alex Bayliss (Buchanan), in a chain of litigation over the past eighteen months that has incurred over forty Court appearances and periods where my son was needlessly held in custody for a number of weeks at a time. In every single case the courts have found the charges unsustainable. This is all the more significant when one considers that my son has, on most occasions, appeared as a litigant in person whereas on all occasions the other parties, including the ANU itself, have had legal representation.

The ANU has continually either provided legal assistance to facilitate such litigation on behalf of other parties, or it has more directly been involved to the extent of itself being a party to such litigation on several occasions.

In all cases the litigation has been a complete waste of time for every instance has involved unsustainable allegations or the request for orders which the Court has no power to grant.

It would seem significant that my husband has lost fewer cases in fourteen years of bar practice than the University seem to have lost in an eighteen-month period. Thus, it is not unreasonable to conclude that the University has been involved in what can be described as nothing short of frivolous or vexatious litigation. One might further wonder whether Pro-Vice Chancellor Selth made a wise decision in rejecting a possible career at the bar for an administrative university position?

I am further concerned that this chain of unsuccessful has had a negative effect on my son's outlook. Where he once saw the law as existing for the attainment of legal remedies in cases where problems could not be resolved by other measures, he now sees it as something that powerful financial bodies, such as the ANU, use it for the purposes of mere harassment. This is understandable given the chain of events over the last eighteen months, the numerous occasions on which Alex has been arrested, the times he has been held in custody without bail, his many court appearances and the fact that, despite what should have been quality legal advice and representation by their legal flotilla, the ANU, and the parties it has legally assisted, have on all occasions lost their cases to a litigant in person.

Given this gross misuse of the law, it would seem to me that the ANU must minimally accept a large portion of the moral responsibility for Alex's attitudes. It is surely not the way to instill appropriate behaviour?

It has now got to the point that one must question which behaviour is appropriate - that originally, but incorrectly according to the courts, supposed to have involved my son, or the repeated, disruptive, and

inappropriate use of litigation by the ANU? For example I believe that following instructions deriving from the Pro-Vice-Chancellor, University security called the police and had Alex arrested twice this week when he was reading in the University library. On both occasions he was unlawfully arrested and detained for forty five minutes and then released. This can hardly be regarded as an appropriate use of the law.

And even if the ANU successfully litigated in the future it would not be able to erase a record of eighteen months of seemingly vexatious litigation and a misuse of University funds.

One must question what effect a seemingly continued harassment has on a boy of Alex's age? If the ANU's own frivolous misuse of legal remedies has created an attitude problem in Alex then the ANU must accept moral responsibility. One cannot expect Alex to remain indifferent to the fact that his studies have been seriously compromised by unsuccessful litigation on the part of the University.

These problems cannot be resolved by further recourse to legal remedies. Furthermore, such attempts seem unwarranted given the trivial nature of the latest alleged offences. I have noted that there has never been an allegation that Alex has caused bodily harm to any persons or damage to property.

Alex deserves an opportunity to proceed with his studies without spending his life preparing to defend himself in the courts. But for the past eighteen months he has almost continually been preparing his defences in a lot of futile litigation. This, and several periods of unjustified incarceration (once lasting five weeks!), have prevented him from making any progress with his studies. This would seem to indicate some problem with what should be a university's primary role: education.

The sheer failure of legal remedies, the unjust disruption to Alex's life and his studies, the waste of the financial resources of the university all indicate that another more constructive approach is warranted so that Alex can get on with his life and the University can concentrate on his primary role as an education institution.

Negotiations between the Pro-Vice-Chancellor and Alex have failed because it would appear that there is some personality conflict between them. This is not to be interpreted as any negative reflection on the Pro-Vice-Chancellor; these things happen. But I am concerned that the ANU has not endeavoured to sit down in a non-threatening situation to explain its concern to Alex, and negotiate resolutions.

There was an initial attempt to at counselling (and my husband and I visited the University to facilitate that) but this was based on a premise of supposed fault that the courts later found unsustainable. Hence it is not surprising that counselling consisted of Alex protesting his innocence, a position which the courts later upheld.

If someone was made available genuinely to assist Alex with difficulties he was facing, then any concerns that the University might have, could surely be more simply and effectively resolved. For example why didn't the University send an independent Counsellor to give Alex support whilst he was spending several weeks in remand?

Surely this was just as stressful for a student as having a drug problem, and just one example where the University offers support without regard to the question of blame.

It also appears that confidential discussions between Alex and a disability adviser were improperly disclosed by that officer by letter to This the Pro-Vice-Chancellor dated 15/6/92 to the University administration, and the University is now resisting attempts by Alex to see details set out there.

It is now clear the Supreme Court's decision to acquit Alex of all charges that the University had wrongly

pre-judged Alex's supposed guilt, and has most inequitably given legal and financial support to one student, Rachel Michelle Piercey, in preference to another, namely Alex.

This inequity was rightly perceived by Alex to be a further injustice which compounded and inflamed the original injustice of allegations which he always protested were false. And his claim has now been upheld. The University should not have prejudged the Court's decision but should have adopted a position of equity and impartiality by either giving neither student legal advice or otherwise legally assisting both students and allowing the Court to establish the truth. In my opinion the university should apologise to Alex for the gross inequity in its erroneous pre-judgment of the outcome. However it would be self evident that a student wrongly accused would feel a heightened sense of grievance, and legitimately so.

I urge the ANU to negotiate a resolution to these problems in an appropriately delicate manner rather than with heavy-handed legal bludgeoning which will inevitably expose the ANU to ridicule when these scandalous matters become more widely known. It is also vital that the ANU issues appropriate directives to staff and makes suitable public statements which will come to the attention of the student body and others to overcome the prejudice which the ANU's action have caused Alex.

Because of his involvement in this issue, a copy of this letter has been sent to Harry Geddes at the ANU Law School.

Yours faithfully,

CHRISTINE BAYLISS