Patrick Cusack

Like his friend ***Alan Skyring***, Patrick Cusack ran a variety of arguments based in the validity of the currency and also reliance on imperial enactments.

In ***Cusack, Patrick Leo v Australian Electoral Commissioner [1984] FCA 400*** Patrick Cusack sought review of decision not to accept his nomination for the House of Representatives Election unless it was accompanied by deposit of $250.00, in accordance with section 170 of the *Commonwealth Electoral Act 1918.* He contended that the provisions of Act are in conflict with Magna Carta and the Great Charter of Liberties, and are therefore invalid. The court dismissed the application.

> *"I think it is necessary to make it as clear as I can to Mr Cusack and perhaps others that there has been involved in this whole approach a misconception of the constitutional provisions that apply to legislation passed by the Australian Parliament. Sir Samuel Griffith made it clear in* ***Chia Gee v. Martin (1906) 3 CLR 649*** *that it is not open to argument that a law of the Commonwealth is invalid because it is not in conformity with Magna Carta. The Chief Justice said at p.652-3:*
>
> *"A number of objections have been taken to the convictions in this case, all of which are unsubstantial. ... The first point made by Mr Le Mesurier was that the Immigration Restriction Act 1901 was unconstitutional, because its provisions were contrary to the provisions of Magna Charta, and the Statues which had since confirmed it, and also inconsistent with certain treaties. The contention that a law of the Commonwealth is invalid because it is not in conformity with Magna Charta is not one for serious refutation."*
>
> *His Honour makes it clear that an argument that a law is invalid because it is in conflict with Magna Carta is not a substantial one. .. So that at the core of the argument that has been addressed to me by Mr Cusack is a misconception as to the basis upon which Commonwealth legislation may be declared invalid, and the primary submission by Mr Cusack that Magna Carta is in some sense a guarantee that no legislation can be enacted in conflict with it is a fallacious one."*

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Patrick Cusack appealed this decision in ***Cusack, Patrick Leo v Australian Electoral Commission [1984] FCA 478*** on the grounds none of the nominations were valid as they were in conflict with the provisions of the *Currency Act 1965*. The application was dismissed.

> *"Fundamental to this application by Mr Cusack is a misapprehension as to the purpose of Part IV of the Currency Act 1965, and, I apprehend, also a misunderstanding as to what is meant by "legal tender". Legal tender is nothing more than the tender or offer of payment in a form which a creditor is obliged to accept. The Currency Act provides for the existence of copper, nickel and bronze coins for relatively small amounts. .. This provision simply means that a person can discharge an obligation up to those defined amounts by the tendering of coins. He is not able, for instance, to discharge a debt for $250 by tendering 25,000 one cent coins: any such purported tender is not a tender that the person would be obliged to accept. On the other hand, a tender of a bus fare of 20 cents by 20 one cent coins would be a legal tender.*

> *When one deals with the question of bank notes as legal tender, s.36 of the Reserve Bank Act 1959 provides in sub-s.(1):- "(1) Australian notes are a legal tender throughout Australia. .. Section 36 therefore clearly provides that Australian notes are a legal tender throughout Australia. It follows that it is possible to discharge obligations by paying coins up to the defined limit provided for by Part IV of the Currency Act, or by notes of whatever denominations. ... But in any event, if one has to discharge an obligation of $250 as s.170 of the Act requires, that can be done by paying that sum by Australian bank notes to the value of $250 or by Australian bank notes to a lesser sum with some coins to the difference in accordance with the Currency Act. So far as the requirements of s.170 of the Act are concerned as to a banker's cheque, what s.170 does is to enable the obligation required by the section to be discharged in one of two ways; that is to say, by the tender of legal tender, which may be Australian notes exclusively or Australian notes with some coins; and the second method is by the tender of the sum of $250 by banker's cheque."*

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In 1985 Patrick Cusack lodged with the High Court a number of documents including some which purported to be writs of summons against *"the Judge of the Federal Court of Australia holden at Brisbane"* and several Commonwealth Ministers. These documents were singularly uninformative as to what they hope to achieve. The lengthy affidavit which accompanied them raised various matters of a political nature but eventually came to *"the question of the legality of Australia's paper money and banking system with reference to the Currency Act 1965 and Reserve Bank Act 1959"*. The affidavit made it clear that he contended, as ***Alan Skyring*** contended, that banknotes issued by the Commonwealth do not constitute legal tender. Gibbs CJ directed the Registrar *"to refuse to issue the process without the leave of a Justice first had and obtained".*

Patrick Cusack sought leave to issue a writ of certiorari to remove into the Court judgments and orders made by Spender J in the Federal Court in Brisbane, dismissing applications for orders for review under the *Administrative Decisions (Judicial Review) Act 1977* (Cth). In ***Re Cusack (1985) 60 ALJR 302***, Wilson J. refused leave to issue the documents, describing the submissions (at 95) as *"based on the alleged unconstitutionality of the Reserve Bank Act 1959 (Cth) and having regard to the provisions of the Currency Act 1965 (Cth)"* and as similar to that advanced by ***Alan Skyring*** and rejected by Deane J. in ***Re Skyring's Application (No. 2) (1985) 59 ALJR 561***. In refusing leave to issue the documents, Wilson J endorsed the decision of Deane J. Wilson J. also stated:

> *"The validity of laws enacted by the Commonwealth Parliament falls to be determined by reference to the proper construction of the Australian Constitution. It is not open to base an argument for validity by reference to alleged inconsistencies between laws of the Commonwealth and either Magna carta or the Bill of Rights."*

In 1988, Patrick Cusack lodged with the High Court a document purporting to be a writ against the Attorney-General of Queensland, to which Wilson J. gave a direction *"that this process not issue without the leave of a Justice first had and obtained".* Shortly after, he lodged with the Court a summons by which he sought: *"an order nisi to issue a Writ of Certiorari to remove into the High Court for review to determine the constitutional validity of certain Commonwealth statutory provisions contained within the Reserve Bank Act 1959, Commonwealth Bank Act 1959, Banking Act 1959 and Currency Act 1965",* seeking to argue yet again the question of legal tender which Wilson J had resolved against him. Wilson J. gave the by now customary direction. Patrick Cusack applied for leave *"to issue the process reviewed by Honourable Mr. Justice Wilson on 7th of February, 1989"*.

McHugh J. refused that application ***In the Matter of Cusack; In the Matter of Skyring [1989] HCATrans 36***.

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Patrick Cusack applied for leave to appeal from the judgment of McHugh J, which was refused by a Full Court, comprising Brennan J and Dawson J in ***Re Cusack [1989] HCATrans 154***.

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Patrick Cusack applied for an order for removal into the High Court of *"the whole cause pending in the Supreme Court of Queensland in W3423/88 ... on the grounds that it is a cause involving an interpretation of the Constitution"*. The affidavit lodged in support of the notice of motion left no doubt of his intention to raise again the questions determined against him. Mason C.J. refused the application in ***Cusack v Australia and New Zealand Banking Group Limited and Anor [1991] HCATrans 167***.

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Patrick Cusack applied for leave to appeal from the judgment of Mason CJ, which was rejected by a Full Court (Brennan J, Gaudron J and McHugh J) in ***Cusack v Australia and New Zealand Banking Group Limited and Anor [1991] HCATrans 315***.

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In 1992, the Registrar of the High Court, Frank William Dudley Jones, applied for an order declaring Patrick Cusack a vexatious litigant. The proceeding was heard by Toohey J in ***Jones v Cusack [1992] HCATrans 201***.

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It is very rare for an individual to be declared a vexatious litigant by the High Court. Only four people have been declared to be vexatious litigants by the High Court of Australia since its inception, and two of those were regarding the long-debunked currency argument. One was Patrick Cusack in ***Jones v Cusack [1992] HCA 40*** (Toohey J) and the other was ***Alan Skyring*** in ***Jones v Skyring [1992] HCA 39***. It was ordered that either *"...shall not, without the leave of the Court or a Justice, begin any action, appeal or other proceeding in the Court."*

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Patrick Cusack sought special leave to appeal this decision, which was refused by a Full Court comprising Brennan ACJ, Dawson J and Gaudron J in ***Cusack v Jones [1993] HCATrans 184***.

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Judgment for possession was given to the bank due to a default on a mortgage of Patrick Cusack's property 4 years prior. In ***Cusack and Cusack v Australia and New Zealand Banking Group Ltd [1993] QCA 212*** he appealed this decision, on the grounds that section 115 of the *Constitution* prohibits the issue by the Commonwealth of paper money as legal tender. The application was dismissed.

> *"His difficulty in relying on that is the decision of the High Court in Re Skyring's Application (No. 2) (1985) 59 ALJR 561. In that matter His Honour Mr Justice Deane said that his conclusion was that there was no substance in the argument to the effect of that which Mr Cusack now desires to put. Mr Cusack here submits that His Honour's conclusion on that occasion was either obiter or a non sequitur and therefore would not be binding upon us here, or at least would be a decision of such a kind that we would not be bound to follow it. I do not agree that that is so. In any event, the matter later went on application for special leave to appeal to a full High Court consisting of four other learned Justices. In refusing leave, their Honours quoted the passage in the reasons for judgment of Mr Justice Deane that has been cited here. Having done so they said this:-*
>
> *"We are no persuaded that the judgment of Deane J contains any error. We should say, in addition, that the power conferred upon the Commonwealth Parliament by section 51(ii) of the Constitution to legislate with respect to taxation extends to the imposition of taxation and its collection even though it has the effect of requiring the person on whom taxation is levied to pay the tax out of property which he owns."*
>
> *In the face of those remarks and of the fact that the applicant there was unable even to secure special leave to appeal in order to raise the very point now presented to us, it seems to me that it can scarcely be said to give rise to a triable issue sufficient to justify a grant of leave to defend. Quite apart from that, I for my part am no more persuaded now than I was in 1983 that section 115, which in terms embodies a prohibition address to the State, has any application to the Commonwealth at all."*

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In ***Cusack v Commissioner of Taxation [2002] FCA 1012; 120 FCR 520*** Patrick Cusack contended that there are two distinct forms of Australian currency, metal coins, and all other forms of currency, such as bank notes, and that there is an "internal exchange rate" of around 5:1, with which monetary obligations may be converted. Thus, an obligation of $500 can be converted to an obligation of $100, and therefore the respondent is unable to make an assessment which unambiguously expresses in a sum certain the assessable income of the taxpayer. He submitted the assessments are void for uncertainty, and that it reduces the numerical expression of his assessable income, and liability to pay tax by a factor of 5:1. The court found the contention that there are two forms of Australian currency with different values is fallacious, and dismissed the application.

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An application by Cusack [2003] HCATrans 460 seeking special leave to issue proceedings on this matter was subsequently refused. Brief and to the point.

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