

Sometimes You Might Need to Fight

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Two recent cases, one from the UK and the other decided in Australia, provide good examples of the power and proper function of our courts.

They also illustrate how, unfortunately, ordinary citizens sometimes have to fight to protect their legal rights.

The recent Brexit case in the High Court in England found the Parliament could not proceed with the actual exit process without formally voting to do so.

The other case, which is probably still trending on something somewhere, involved the action brought against three QUT students under the now notorious section 18C of the Racial Discrimination Act. A Federal Circuit Court judge threw it out as having no prospects of success.

You could be forgiven for thinking the Human Rights Commission was a party to this case, but it was in fact commenced by an administration officer after the commission was unable to resolve the dispute.

The English case was commenced by a wealthy businesswoman. And the three students in Queensland were assisted by lawyers who were prepared to support them without charging - although I have seen reports that the students will be pursuing the applicant for costs.

So it can still be quite difficult for the average person to participate in a court case. This is particularly pertinent if you are taking on a well-funded entity such as a federal, state or local government, a government department or a large corporation. Court cases can also be very stressful.

But if you believe you have a case, I would still urge you to seek legal advice. There are sometimes ways to fund matters if you have reasonably good prospects. There might also be cheaper alternatives than an intensive piece of litigation.

I know there is regular criticism of judges in the media. Some of it may in fact be deserved. But what these recent cases indicate to me is that the judiciary system can still work. Rights can still be protected and respected, and courts can still fulfil their intended function through appropriate decision making, which is crucial for the health and wellbeing of our democratic system.

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