

LIES, DAMN LIES AND THE BRISBANE CITY COUNCIL¹

Dr Brian Senewiratne replies

Thank you for asking me to respond to your queries about the replies you have had from the Brisbane City Council (BCC). Daniel David's article on the net is essentially correct. There have been a few omissions, since he did not have access to some of the letters I have had. The sequence of events he describes is correct and attempts by the Mayor to claim otherwise, is simply dishonest.

My wife (73) and I (75) have been charged **and convicted** for "*interfering with protected vegetation*" on our property in Brisbane. We will be sentenced on September 20, 2007. What we will do after that, I do not know. Our bank balance is low, very low, fighting this outrageous Case for so many months (which BCC made sure of, by dragging it out as long as possible).

I am not given to swearing but on this occasion I will. **I swear on Almighty God or the Bible or whatever, that I have not cleared 'protected vegetation'**. For a start, there could not have been protected vegetation in the area in question, since it is our backyard which I have regularly mowed for the past 30 years.

I have enough credibility in the international arena, and in Australia, to say this without having to swear. This is not necessarily true of BCC whose employees have, as we will see, lied on oath, having hypocritically taken the Bible in their hand. As a Christian, I wish they had left this Book aside, if they were going to do what they did.

Going well beyond the realms of credibility, during the trial, BCC claimed that our whole property had 'significant native vegetation', despite there being a house and a large mango plantation.

If dragging us through the Courts on a patently false and malicious charge was not enough, BCC has decided to **compulsorily** acquire two thirds of our land, in a completely illegal act. It is in violation of the *Acquisition of Land Act 1967*, hence unlawful, and *ultra vires* the power of Council.

Before I deal with this gross abuse of power, I will state what I said in Geneva at the June 2007 UN Human Rights Council meeting. Referring to Sri Lankan Government violating the human rights of its citizens, I said,

"The citizens of a country should not rest their hopes too much on the Law, the Courts and the Constitution. J

ustice, fair-play, truth and conscience lie in the hearts of men and women. When that dies, no Law, no Court, and no Constitution, will save them".

When I came here 30 years ago, I did not dream that a comment relevant to Sri Lanka will also apply equally well to Australia. What has been tried and convicted on August 8, 2007, is not just a couple in the closing years of their lives, but Australia, which is now on par with some of the more dreadful countries. Australia does not need to be there.

¹ A group of us who were concerned at what was happening to Dr.Senewiratne, wrote to the Mayor, Deputy Mayor and Premier of Queensland. We were unsure of the veracity of their replies and asked Dr Senewiratne took at them. He has sent us this reply which we thought was worth publishing in view of the widespread international concerns.

The Charge

- 1) "Interference with protected Vegetation when the interference was not strictly in accordance with the permit issued by Council".
- 2) "Failing to comply with the Compliance Notice dated 11 November 2004".

For good measure, it is a *criminal* prosecution. The implication and sly insinuation is that we are criminals. It is a shameful proposition. The Mayor might have a more user-friendly explanation. Whatever his convoluted explanation, on 20 September 2007, my wife and I will be asked to stand up, and be sentenced like any convicted criminal. Does that bother me? Not half as much as it bothers me about the damage done to the good name and international standing of Australia, still struggling to put behind it the outrageous acquisition of Aboriginal land (with peanuts being paid as compensation) - Mabo or no Mabo. There is a particularly Australian phrase, "a fair go". I doubt whether what has happened to us, with worse, much worse, to come, is a shining example of this.

Charge 1.

What was the 'protected vegetation'? Some miserable gum-tree saplings (there are thousands on the land), which were making it impossible for us to access the lantana, a noxious weed, **we were ordered to clear**. As one of the expert witnesses, a legendary "fair-dinkum Aussie" observed during our trial, "*Dr and Mrs Senewiratne were damned if they did, damned if they didn't*". It was the decency and inherent fairness of people like him, which contrasted so strikingly with those who gave evidence against us, who had neither. Most of them were BCC employees and others with despicable vested interests.

As I have said, and I will say it again because of its importance, there could not have been any 'protected vegetation' since the area in question is our back garden which had been regularly mowed by me for years (till the BCC clamped a Vegetation Protection Order and then an Environmental Protection Order to devalue the land, in preparation for acquisition). So, whatever vegetation was there, and still is there, is secondary growth.

How much of this supposedly 'protected vegetation' did we clear? About 100 sq meters out of the 26,000 square meters which BCC is about to *compulsorily* and completely illegally, take from us. Why just 100 sq.m? Because that was all that was necessary for the clearing machine to access the lantana. So, all this fuss, this criminal charge, this terrible trauma, humiliation and expense, is about 100 sq m of insignificant secondary growth? Yes, it is. Unbelievable. Yes, unbelievable, in a so-called 'civilized country'. I suggest that this unbelievable action has more to do with intimidation and bullying than any sanctimonious concerns about the environment.

For a start, there is a mass of lantana growing on BCC property on the other side of our fence and virtually every BCC land in the area!

What were the '*conditions of the permit*' which we failed to observe '*in strict accordance*'? It is hilarious. The BCC Permit was that **a 10 metre firebreak be cleared all round the property and the area cleared be replanted and watered for a period of 2 years**. The 'Environmental Experts' in BCC do not seem to understand that a fire-break is to *clear* vegetation. Having cleared it, if it is replanted, it is an exercise in futility, as are most of the activities of BCC.

The only **source of water** is our garden tap. A measurement showed that a garden hose would have to run for 1.2 km to cover the entire periphery of the block. The pressure generated would not be enough to *move* the water, let alone work sprinklers. If they did work, the area covered by each sprinkler is such that there would have had to be 1,200 sprinklers, probably more.

We would have had to use domestic water, since the creek that runs across the land is dry for most of the year. I remind you that we are on level 5 water-restriction which prohibits even the watering of your garden. The Magistrate made the point that there were no water restrictions at the time. That was *absolutely* correct, as one would expect from someone of his standing. Did I hear someone say that Australia is a dry continent and a drought is always on the cards?. So, whatever was planted would have died. We could, of course, have re-planted, re-re-planted and re-re-re-planted for 2 years (which BCC said we will have to do).

The entire suggestion was preposterous, and I wrote to the Council saying that the conditions on the Permit were unacceptable.

BCC responded by sending another Pest Control notice asking us to clear the lantana and other weeds, or face prosecution.

Because of this, the drought, and the increasing fire hazard (we had already had a major fire which took our garden shed and very nearly our house and those of our neighbours for which we would have been liable), I decided to clear the lantana and other weeds, as well as the dead branches on the ground and some of the scrub, leaving the large trees, as requested by the Fire Officer. I had to hire a machine with a long arm to do this as much of the lantana was growing on the other side of the creek.

In the subsequent Court Case against us, a Council worker (who boasted about her qualifications which was made much of in the judgment), said in evidence, that she had told me not to use a machine to clear the lantana. That was an absolute lie said in Court, under oath, and constitutes perjury. In most countries one would be locked up, here there was applause.

According to this BCC 'expert', waving her shining degrees, the only acceptable way of clearing lantana is to cut each stem and put a drop of poison on the cut stem in 15 seconds! I need hardly dwell on the absurdity of this – we are talking of 8 acres of land. I'd challenge her to go over several acres across which lantana had spread, cut each stem and put a drop of poison within 15 seconds. She would have been there for years, by which time the lantana, growing in profusion in the adjoining BCC property, would have come back to our land!

Charge 2

Lets leave the absurd and move on to the ridiculous - the Compliance Notice' of 11 November 2004.

1. Cut down and remove 5 dead trees on the property
2. Remove all the dead branches and scrub that the machine had placed in a dry gully (which BCC could not distinguish from a creek)
3. Prepare the soil, mulch and replant the cleared area of some 8,000 sq. metres with 4,200 trees, shrubs and ground cover (most of which had not existed there previously), space as specified, water and look after them for 2 years, replacing any dead plants.

It is of interest that the area we were asked to plant was land which the Council wished to acquire. Effectively, we were the 'gardeners' for the BCC. What I would dearly like to see is BCC planting 4,200 plants in this area, and watering them with water that is available only in their imagination. I doubt if I will have that pleasure.

We complied with 1) and 2) but not with 3) since it was physically impossible to do so. As I have said, the area they wanted replanted is too far away to be watered. During the Court Case, a Council Officer said we could have hired a water bowser to come in and water the plants. This is yet another absurd suggestion since there are no roads in the land other than our driveway. There are certainly no roads where BCC wanted the plants put down.

This is the evidence, "beyond all reasonable doubt", on which we were found guilty and convicted.

Incidentally, the property is jointly owned, but we are being charged and convicted, individually. Presumably, each one will be sentenced individually. So if we get fined, say \$20,000 (the fine imposed on us by BCC was \$35,000 for clearing 'protected vegetation'), it will be $\$20,000 \times 2 = \$40,000!!!$ In algebra we called it Q.E.D *quad erat demonstrandum*. - that which had to be demonstrated or, in this case, 'achieved'.

Now for the real agenda – acquiring our land

BCC had decided to *compulsorily* acquire 2.591 hectares of our land. What for? For "environmental purposes". Is that legal? Of course, not.

Lets look at the Law, check it yourself, it is on the net. In Queensland, freehold land is acquired under the *Acquisition of Land Act 1967*. Land can be *compulsorily* acquired for a essential road, hospital, school etc but not for a vague 'Environmental purpose'. "Environmental purpose" is not identified in the *Acquisition of Land Act 1967*. As such, the action is *prima facie*, unlawful, *ultra vires* the power of Council.

Did we point this out to Council? We sure did, and at no small cost. And the response? Let me quote Doug Muir, the Acquisitions and Disposal Officer BCC, 6 July 2007, "*This matter has again been considered by Council, which after due consideration of the objection.....,is still of the opinion that the land described is required, and has resolved to make an application to the Department of Natural Resources and Water for approval to the proposed resumption*". Amen.(the 'Amen' is mine).

Recently I was invited to meet the Shadow Health Minister to discuss restructuring the Health system. Also present was a prospective MP who happened to be a long-standing Councillor. I spilt out my tale of woe. With disarming honesty she said, "*Council cannot compulsorily acquire your land for environmental purposes. Council simply does not have the power. I have been in Council for long enough to know that*".

The small matter of being *ultra vires* the power of Council does not bother BCC. As I have said, I had a letter from the appropriate BCC Officer that BCC had decided to ask the Minister of Natural Resources and Water to resume the land. Priya Thamoderam, Vice Chair of the Tamil Writer's Guild, London, who has spent endless hours trying to stop this injustice, wrote a desperate appeal to the said Minister. The reply was that the Minister was in fact not the right person. The right person was the Minister of Local Government, Planning and Sport! So BCC had sent the acquisition request to the wrong Minister! The roars of laughter from Priyas's office in London,

were heard here. Metaphorically, I mean. To lay on an international comedy show is not a recognised function of BCC.

The face behind the Agenda

Of interest is a letter circulated by a 'gentleman' who has bought one of the houses adjoining us. He urges the others in the area to write to the Lord Mayor and their Councilor, "*It is in our interests as local residents (to have this land acquired).....The alternative is a never ending threat to development on Doctor's block and this one (that's the next block)*". He goes on, " ... *the increased cost of a subdivided block could go beyond what Council is prepared to pay. We must beat this developer now and have the whole of both blocks acquired and rehabilitated as conservation land*". The cat is very much out of the bag.

This gentleman is in for a shock. I had a very experienced property lawyer from Sydney who told me what will happen (as has happened many times). Council will take this land from us, wait till the dust settles (and my death), change the current classification of the land from "Emerging Communities" to a more user-friendly one, block it up and sell it, making about a 500% profit. The reason, if reasons need be given, "*People don't have a place to live and it is the responsibility of a caring Council to address this humanitarian issue by releasing land*" (as they offered to do for me in return for a gift (see below).

A problem

I am not sure how the Mayor is going to explain this one, but there is a (small) problem. I have a letter from the Kim Shields, BCC Asset Officer, Land Acquisition, dated 13/4/05 which states, "*Council desires to secure an area comprising two hectares in area. That area comprises all the land with the Environmental Protection Area designation. The same area is covered by VPO (Vegetation Protection Order) The valuation has been assessed on the basis that a 7,200 m2 lot could be developed but the remaining part of the 2.0 hectares would be provided to Council free of cost as a condition of the development*".

So, BCC is acquiring 2 hectares in an Environmental Protection Area (also covered by a Vegetation Protection Order) **but** 7,200 sq metres of this so-called protected area can be developed provided I donate the rest to BCC free. What BCC must explain is how an "environmentally protected area" become unprotected by the act of donating part of it to Council?

When I did not agree to this nonsense, 2.0 hectares suddenly became 2.591 hectares. The extra 0.591 hectares is completely cleared land behind my house i.e. part of my back garden which has no "protected" vegetation (because I have mowed it for the past 30 years) Come off it. We are not stupid!

Post-acquisition

The Mayor, in response to some very worried people in this country and in many countries outside Australia says, "*When acquired, this land will form part of an extensive land holding by Council in the area dedicated to preserving the natural bushland and wild life corridor*"

That had me in fits of laughter. In the middle of this "natural bushland" is a very unnatural quarry, a massive one at that, owned and run by..... guess? Yes, BCC.

As for wild life running across our land, running where? The adjoining lands are fully developed with stacks of houses. Beyond that is the main road (Creek Road) with 4 lanes of traffic. I rather like the idea of animals racing from the forest into people's homes, and then crossing Creek Road to be knocked down by passing vehicles. Animals are not that stupid (Kamalini and I did a degree in Zoology before I did medicine).

The despicable strategy of BCC which I have set out, is a pathetic attempt to bully us, tarnish our image, portray us as criminals and irresponsible people who cannot be trusted to look after the environment, and even unfit to own land which must, in the public good, be taken away from them. When it is, it must be ensured that we are not in a position to defend ourselves by financially taking us to the wall on some trumped-up charge, so that we have no option but to accept whatever crumbs are thrown at us by BCC. It is a dreadful thing to do. It is a violation of basic civil rights which we must resist, and will.

Think about it. Council workers have lied to have people convicted on a criminal charge, denying them a fair trial and justice. Has Australia got down to that level? It must make us all sit up and worry.

Each time one has to defend one's self from unjust, even illegal, acts exercised by a Government, an Institution or any other body, in a frank abuse of power, the nearer one moves towards fascism. If we do not challenge this unfettered abuse of power, we become part of the problem.

Compensation

The compensation for illegally stealing some 2.591 hectares of my land is laughable -. \$430,000 for 2.0 hectares (it has since increased to 2.591 ha ie 26,000 sq m). A doctor who works at the local hospital has just bought a 700 sq m block down the road and paid \$750,000 i.e \$1,000 a sq m. And what is BCC offering us for 26,000 sq m? I told you. Get your calculator out and see what 'big time' stealing is.

Actually BCC is not even offering that. If you look at Kim Shields' letter, what it says is that we can get \$430,000 for the land that BCC has kindly allowed us to develop. There is no monetary offer, as such, from BCC.

The Mayor has written to you that if I am not satisfied, I can go to the Land Court. And who will pay for that? It will not be ourselves, because we have already been taken to the cleaners by the lantana case and our combined bank balance is in three figures.

When the Minister (once BCC gets the right one) signs the document, its all done bar the shouting. Most of my life's 'savings' – what I hoped would enable me to stop seeing patients and do what I really want to do – to address the major human rights violations in a number of places, will be gone. In most countries they call this stealing, here they call it 'Environment purposes'. Excuse me while I laugh.

The Mayor and Deputy Mayor must explain

1. The claim by the Mayor, sent to heaps of you, which states that the decision to acquire the land was subsequent to the Court Case. “ *The decision to the compulsory acquisition of the Senewiratne property for environmental purposes was made independently of the prosecution some considerable time after the prosecution was well advanced*”. This is a half-truth. Remove

the 'compulsory', and it becomes a blatant lie. The decision to acquire the land, as informed by the letter from Council, was dated July 2002, the Court Case was filed in August 2005.

There is a strong possibility that whoever in BCC is putting out this falsehood is doing so to try and show that the intimidation of a Court Case and the attempt to take us to the financial wall, was not done to force us to accept whatever was on offer from Council for the land.

2. The claim by the Mayor that we can go to the Land Court is equally absurd. Having taken us to a serious depletion of our financial resources, where does he think we can find the money to pay for lawyers to appear for us in the Land Court?

3. If environmental concerns are the reason for the acquisition of our property, can the Council explain

a) How it is that a quarry right in the middle of a so-called environmentally sensitive area is still functioning. Obviously environmental sensitivity is applicable only to other people's lands.

b) How it is that lantana is growing freely on BCC property immediately adjacent to our land and in several other areas in Brisbane. Clearly, BCC does not seem to practice what it preaches, or is it some special 'protected' noxious weed?. The clear impression is that ordering us to clear the lantana and then charging us for doing so in a manner unacceptable to Council, has an ulterior motive that has nothing to do with lantana but much to do with intimidation.

c) How is it that if we were prepared to donate part of the 2 hectare block that Council wanted, the rest of this 'environmentally important' area suddenly lost its importance and could be developed? Bribery of a sort (donation of land) seems to be the answer to 'environmental concerns'. Is that BCC policy? If it is, rate-payers and the public have a right to know.

BCC is doing well

In his letter to you, the Mayor boasts that BCC has "*an extensive landholding*". With land prices sky rocketing, that is very good (economic) news. I only hope that this was not acquired the same way that BCC is proposing to acquire my property.

A postscript in the letter of the Mayor to some of you says, "*our credit rating remains a healthy AA+ and rate rises have been the lowest in 15 years*" Just as well, since with rate payers being taken to the wall, higher rates will not be payable by some, who, alas, now include me and my wife.

There is some confusion here. It is the same confusion that exists with the public hospitals. A hospital is not judged by its 5-star buildings, but on how it treats its patients. A Council is not judged by its AA rating, but how it treats its rate-payers. Where BCC is concerned, it is abysmally poor.

What happens next?

Court Case

We will be Sentenced on 20 September 2007 in the Holland Park Magistrate's Court by His Honour, Magistrate Arnold. We will be asked to stand and be sentenced like tow common criminals. My lawyers want me to plead in mitigation, saying that it is my first offence, what great

things I have done in the field of Human Rights etc. I will do no such thing. I am not going to say it is my 'first offence', which is an admission that I have committed an offence. I have not. As I said at the start of this document, I swear on almighty God that I did not clear protected vegetation. BCC does not have a scrap of evidence to prove that 'protected vegetation' was at the path I cleared to access the lantana and to reduce the fire hazard. I could not even do the latter because a BCC office, bright there by the neighbours, stopped me. Why should I say that this is a 'first offence'?

To get on my knees and grovel is not my style. I will leave the Court with my dignity intact. The nature of the Sentence is up to the Magistrate. I will not grovel to have this altered.

What do I want to do?

Leave Australia. If Kamalini was not there, I'd leave the day after I am sentenced. Leave and go where? Anywhere, where people are treated better than I have been by BCC. I'd hand over the sale of my property and my house to my solicitor, ask him to deposit in my bank the peanuts he will get, less his charges, and deal with the next victim.

I see no reason to live in, or contribute in any way, to a fascist dictatorship where people in authority lie on oath, where people are convicted for offences they have not committed, and then have their property acquired completely illegally. Why should I? I can make a contribution to one of a dozen countries where I will be treated better. It could be a country with a much lower 'rating', BCC can keep its gross injustices. And its AA+ rating.

What can you do?

Or rather, what *more* can you do? Nothing, absolutely nothing. Should you write more letters? To whom? And for what purpose? You will get the same reply, now firmly embedded in the hard-disk of the BCC computer, which a single stroke on the key board will 'emit'. Save some poor clerk the bother.

I guess we still have the Media – the conduit to the last remaining "Court" – the 'Court of Public Opinion.' If ordinary decent people, those who vote in Councillors, the Mayor, MPs, Ministers etc know what is happening to others among them, there might be some action. BCC could, of course, tell the whole lot to go to hell, as they have done to the *Acquisition of Land Act*.

Do the *rest* of the Councillors know all this? I do not know. Should they be informed of the injustice that has been done, with much more to follow? I do not know. Can they be contacted? Yes they can, their emails are on the BCC website. Are they decent people? I do not know, but I hope so.

Will God help? I do not know. You can try Him, I know from personal experience, this current problem excepted, that He can, and does. He can handle most things, BCC might be the exception. Do I still believe in God? Yes, I do, He (and public opinion) are all I have left in a world seeped in injustice. I will not allow a unjust, crooked, bullying, lying, and sinful organisation to get between me and my God. If I do, I will lose much more than I have.

Do I regret coming to Australia?

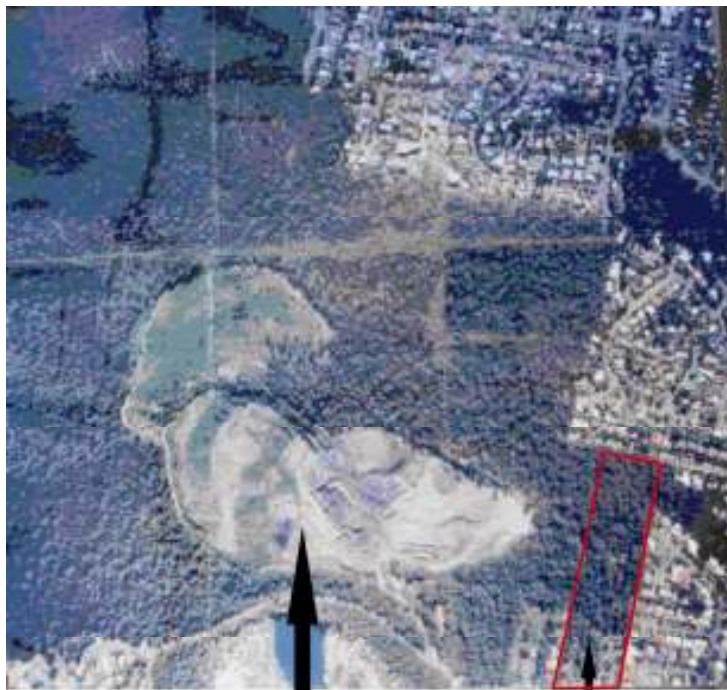
I did have a wide choice of countries. So, do I regret the choice I made to come here as Associate Professor of Medicine and Visiting Physician? “Yes” and “No”. “Yes I do, because I have lost all, or nearly all”. “No I don’t because I have met some of the finest people on planet earth”.

Australia is a wonderful country, one of the finest I have lived in. On a rating from 0 -100, most of the people, the ordinary Aussies, are in the 80 -100 group, some, whom I count as friends, are 110+. At the other end are a set of bastards, rating from 5-0, some -10. Most are in BCC and the rest on the other side of my fence (and whom I had invited to use my pool and in return, gave very damaging and totally false evidence against me at the trial).

In choosing a country to live in, it is important to see how their citizens are treated. Some of these countries at the bottom of the economic ladder, in the so-called ‘Third World’, with an abysmally poor AA rating, whatever that might be, treat their citizens in a more just way. Had I been single, I would have moved to one of them tomorrow, telling BCC that they can have the bloody lot, as so many others, unable to fight any longer, have done

Let me get back to where I started – that piece I said in Geneva about *Justice, fair-play, truth and conscience lying in the hearts of men and women and that when that dies, no Law, no Court, and no Constitution will save the citizens*. Australia is not yet a Republic and should sing “God save our Gracious Queen”. We can replace this with “God save our gracious people, from the likes of those in BCC”.

Brian Senewiratne 30 August 2007



BCC Quarry in 'protected area'

My Land BCC want nearly 2/3

The rubbish we cleared (100 sq m) to access Lantana at the back



Lantana Flourishing on BCC Land

