

ARNOLD SARDELL

LEGAL, CONSTITUTIONAL AND
ADMINISTRATIVE REVIEW COMMITTEE
26 JUN 1996

21 - 6 - 96

The Research Director,
Legal, Constitutional and Administrative Review Committee,
Parliament House,
BRISBANE. Qld. 4000

Dear Sir,

re:- TRUTH IN POLITICAL ADVERTISING.

Thanks for sending me a copy of Issues Paper number 1. Please accept this submission on my behalf.

It is necessary to make a few general observations prior to examining the subject in detail.

BAD LEGISLATION.

- 1.1 It has been observed from time to time that legislation which cannot be enforced is bad legislation.
- 1.2 Legislation in this area would be difficult to enforce.
- 1.3 That is not sufficient reason to refrain from enacting such legislation.

DETERRENT.

- 2.1 Opinions vary as to the value and effect of punishment acting as a deterrent against further similar activity.
- 2.2 What it does do in some cases is to deter a person punished from further activity.
- 2.3 In this instance we are not dealing with criminals but men and women serving in the highest profession possible.
- 2.4 As a general rule they would not manipulate facts outside Parliament. In an election campaign circumstances differ and claims may be made which, being false, may be construed as trying to influence voters.
- 2.5 Knowing they could be punished for doing so may well make them more careful when under the stress of a campaign.
- 2.6 This is ample reason for enacting legislation.

REPUTATION OF POLITICIANS.

- 3.1 For some time now the esteem in which politicians are held is at an all time low. This is not altogether the fault of politicians.
- 3.2 The only times Parliament appears on T.V. news is when individuals are behaving in a manner not likely to raise the esteem in which they are held.
- 3.3 Similarly when interviewing on current affairs or weekend programmes truth is seldom the primary objective.
- 3.4 Far too frequently the interviewee is engaged in a "search and destroy" campaign.

- 3.5 To introduce any form of truth legislation would go a long way to restoring esteem. It would be seen as a genuine attempt to restore credibility to politicians and politics generally.

ISSUES PAPER NO.1.

- 4.1 The whole paper seems to be rather limited to electoral campaigns and written documents. Should not verbal statements be subject to the same criteria.
- 4.2 Our senior politicians are subjected to many interviews and questions in depth. These are not confined to electoral campaigns but take place all the time.
- 4.3 If statements are made which are patently false and it can be shown this was known to be so, should the politician not be called to account.

JUDICIARY.

- 5.1 On page 5 it is suggested the judiciary could be politicised whether a breach has occurred. In other words a Judge would be asked to adjudicate on opinion versus fact.
- 5.2 Should not the legislation carry the right of appeal.
- 5.3 Judges may not like these vague situations but they would not necessarily be politicised.
- 5.4 A parallel may well be found in some cases by suggesting they may be affected in their decisions by the particular Church they attend on Sundays.
- 5.5 It is submitted that our Judges are well able to carry out their functions without being politicised or of seeming to be politicised.

SELECT COMMITTEES.

- 6.1 Page 2,3 and 4 deal with a Select Committee and its function and report into the Electoral System and report thereon.
- 6.2 This Committee "only touched" upon the issue of political advertising. This Committee comprised politicians and they may not have been the best persons to judge on political advertising.
- 6.3 Ultimately section 392(2) was repealed as a result of the majority report.
- 6.4 It is submitted that this was an unfortunate decision and that the minority report by Senator Macklin put the position more clearly and should have been accepted by the House.

SOUTH AUSTRALIA.

- 7.1 The paper makes mention of the position of this area and the position in that State. Section 113(1) provides details of an offence in regard to truth and political advertising.
- 7.2 Unfortunately it does not mention the procedure leading to Court action.
- 7.3 It has been in force since 1985 but there is no mention of the judiciary becoming in any way politicised.

QUEENSLAND.

8.1 The Private Members Bill tabled in Parliament in 1995 by the then Shadow Attorney General the Honorable Denver Beanland would appear to be both adequate and sufficiently embracing.

8.2 It is strongly recommended that your Committee examine this and use it as it is to bring about legislation to incorporate it.

PAGE 8.

9.1 Yes - it is not only possible but should be enacted. Adequate reasons for doing so have already been given.

9.2 Not necessarily. There are occasions when vagueness is deliberate and possibly successful in creating confusion. Legislation could well result in a better presentation of material.

9.3 Yes.

9.4 There is a great distinction between political and commercial advertising. At the same time there is a great similarity. Commercial advertising can be equally as vague as political advertising in its claims. However there are various bodies to ensure it is kept within reasonable bounds. Also competitors can challenge claims and periodically do so. Should not political advertising be subject to some form of control.

9.5 The Macquarie Dictionary defines free speech as "the right to voice one's opinion in public". But no right is absolute. If Queensland should enact a Bill of Rights the position may well alter. In the meantime the normal limits of decency must apply. Defamation will always be a safeguard against excesses. Would not truth legislation be equally effective as defamation legislation.

9.6 It would be extremely difficult to define truth in a political concept. It is recommended that the guidelines be laid down as per page 6 Queensland, and that truth must then conform to these guidelines.

9.7 The penalties imposed should probably include all those mentioned in paragraph 7. See also comments later in this submission against paragraph 10.

9.8 The defence should be as described in page 3. "The Act provided it as a defence....." etc.

9.9 Should legislation ever be enacted the position of third party publishers will need to be clarified. They could not be expected to accurately gauge the difference between fact and opinion on material given to them. This might happen during an election campaign which would not give the publisher ample time to carry out an accurate assessment of the material before publication.

Therefore it would be most unlikely that they could be held responsible for what might be an untrue statement given to them in all honesty.

As it is now some official has to be named as being responsible for all political matter.

They will of course be subject to defamation and all other Acts to which they are currently subject.

9.10 Should a breach be suspected the first investigation should be by Parliamentarians. In this regard the ideal solution would be for your Committee to become a Standing Committee and so assume a permanent status. It would then be the initial body to determine a breach or not. Your members would be the most highly qualified having the responsibility for the drafting of the Bill and its passage through the House.

Failing this a select Committee could be formed to examine each report as and when made or suspected.

The only appropriate authority to mete out any form of punishment is our Court system. A breach of this type of legislation would more likely to be classed as a misdemeanour, as opposed to a more serious offence.

Therefore it would come within the orbit of the magistrates Court rather than a higher one.

If the Committee found a breach had occurred and action was called for it would pass it to the D.P.P. Whether it could make any specific recommendations would be a matter for legal opinion.

The legislation would include guide lines for the Courts and possibly a maximum penalty.

It would be the existence of the legislation itself that would tend act as a deterrent rather than any penalty. The publicity any action would attract would be in many cases, far more damaging to reputations and careers than any Court imposed penalty, even if that penalty were to be the maximum provided.

9.11 and 12.

As Queensland has a unicameral system how-to-vote cards should be abolished in all elections where there are 4 or less candidates.

Five candidates should be the absolute minimum number of candidates justifying how-to-vote cards.

The affiliation or otherwise of candidates should be shown on the ballot paper.

Far too frequently voters take how-to-vote cards from all candidates. This is usually done to endeavour not to disclose the voters chosen ^{CHOICE} or alternatively to make the people handing them out ^{THINK} that the vote will go in their direction.

A similar recommendation was made to E.A.R.C. some years ago, but that organization failed to recommend it to the then appropriate committee.

To stand and watch at any polling booth is to support this recommendation. The savings in cost though not paramount would be considerable.

CONCLUSION.


The writer is grateful to your Committee for the opportunity to express an opinion. Should the Committee recommend legislation to Parliament and should Parliament enact legislation it will attract nothing but solid support from the community. That in turn might well

- 5 -

help to restore some credibility in the way members of the public view their elected representatives.

Should the Committee hold any public meetings, advice of such meetings would be greatly appreciated.

Yours sincerely.


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(ARNOLD SANDELL)