RBR 3/00 Challenges to State Election Results in Queensland 1938 –2000

The *Electoral Act 1992* was the first Electoral Act in Queensland not to provide for the right of appeal on questions of law to the Full Court of the Supreme Court.

The Queensland Parliamentary Legal, Constitutional and Administrative Review Committee has recommended that the 1992 Act be amended, by the inclusion of an appeal right to the Supreme Court on matters of law.

This Research Brief outlines the history of electoral petitions presented against declared electoral results in Queensland. It describes the history of electoral law in Queensland, deals with the current *Electoral Act 1992* in more detail, and concludes by giving a summary of all challenges to election results and other electoral matters in Queensland State elections since 1938.

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1. INTRODUCTION

The British House of Commons initially relied upon the common law of elections to settle election disputes.

In the United Kingdom, the common law of elections partially gave way to statutory provisions in the *Parliamentary Elections Act 1868.* Prior to this 1868 Act, the House of Commons had the right, recognised by common law, of determining election disputes. Disputes were determined by the Committees of the House wherein there gradually evolved a set of principles for their guidance[1] over time.

In Australia, the houses of parliament have never had the rights and powers that were initially accorded the House of Commons in relation to the hearing of election disputes. Statute law in the main has been the basis for the determination of election disputes in this country with the first legislation establishing an elections tribunal being enacted in 1843.[2]

2. BRIEF HISTORY OF QUEENSLAND ELECTORAL LAWS AS TO CONSTITUTION OF TRIBUNAL AND APPEAL RIGHTS

The courts are the receivers of petitions concerning electoral matters. The petitioning of a court is the formal process of seeking an order from the court. Generally, the orders sought fall within the following categories:

- an order declaring the election void (on one or more grounds)
- an order declaring that votes declared informal be included in the count
- an order declaring that votes included in the count be declared informal
- an order that votes credited to one candidate be credited to another candidate
- an order declaring that another candidate be declared to have been elected.

Petitions against Queensland election results were first provided for in the *Elections Act 1858.* This Act established an Elections and Qualifications Committee. The legislation authorised the Speaker of the Legislative Assembly to nominate the Members of that Committee.

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1 *The Flinders Election Petition. Forde v Lonergan* [1958] QR. 324.

2 *Electoral Districts Act 1843* (NSW).

The *Elections Tribunal Act 1886* established an Elections Tribunal. Membership of the Tribunal consisted of a Judge of the Supreme Court of Queensland and 6 Members of the Legislative Assembly known as assessors. These Members were nominated by the Speaker. There were in fact 12 Members of the Legislative Assembly who were nominated by the Speaker to a list of assessors authorised to sit on the elections tribunal. Any 6 of these 12 Members could constitute the Elections Tribunal with the designated Supreme Court judge.

The Election Tribunal had the power to inquire into and determine all questions referred to it by the Legislative Assembly concerning any errors on the part of returning officers, allegations of bribery or corruption against any person, or any other allegation concerning the validity of any election.

The parties to the petition each had the right to choose 3 names from the list of 12 members to constitute the Elections Tribunal. At such hearings, questions of law were determined by the Judge whilst questions of fact were determined by the 6 assessors chosen to sit. In cases of deadlock among the assessors on a question of fact the judge was to determine that question of fact.

The Election Tribunal was authorised to:

> *…be guided by the real justice and good conscience of the case, without regard to legal forms and solemnities, and shall direct itself by the best evidence that it can procure…*[3]

The Judge reported the determination of the tribunal to the Speaker of the Legislative Assembly.

Upon questions of law there was the right of appeal that lay with the Full Court of the Supreme Court. of Queensland.[4] There was also provision that any petition that was determined by the elections tribunal judge to be a special case, was to be heard directly by the Full Court of the Supreme Court. of Queensland. The decision of the Full Court was final.[5]

2.1 SECTION 101 - ELECTIONS

Act 1915 provided that the Elections Tribunal would no longer be constituted by the inclusion of members of the Legislative Assembly but would henceforth be constituted by a judge of the Supreme Court of Queensland sitting alone. The

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3 *Elections Tribunal Act 1886,* Section 24.

4 *Elections Tribunal Act 1886,* Section 27.

5 *Elections Tribunal Act 1886,* Section 28.

Elections Tribunal constituted in this way was authorised to hear and decide questions of law and of fact. However, the right of appeal to the Full Court of the Supreme Court of Queensland on questions of law, was maintained.[6]

The *Elections Act 1983* maintained the Elections Tribunal being constituted by a single judge of the Supreme Court of Queensland with a right of appeal to the Full Court of the Supreme Court upon questions of law.

3. CURRENT ELECTORAL LAW IN QUEENSLAND – ELECTORAL ACT 1992

Section 127 established the Supreme Court of Queensland as the Court of Disputed Returns. A single judge constitutes the Court of Disputed Returns. **Section 141** eliminated the right of appeal to the Full Court of the Supreme Court of Queensland from the court of disputed returns. The elimination of the right of appeal from the decision of the court of disputed returns was a recommendation contained in Electoral and Administrative Review Commission (EARC)1991 report on the review of the *Elections Act*.[7] The rationale stated in the EARC report was that Queensland and Tasmania were the only 2 States to allow appeals from the decision of the initial hearing and that the change would bring Queensland into line with those other States.[8]

Under **s 129**, the Act recognises those who may dispute an election:

- a candidate; or
- an elector; or
- the Electoral Commission of Queensland; or
- a person designated by the Electoral Commission of Queensland as having not correctly nominated.

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6 *Elections Act 1915*, Section 118.

7 Queensland. Electoral and Administrative Review Commission, *Report on the Review of the Elections Act 1983-1991 and Related Matters*, (1991), Vol 2 p 281 [13.100 (g)].

8 Electoral and Administrative Review Commission (1991) p 269 [13.25].

4. BACKGROUND TO THE PROPOSED AMENDMENTS TO THE ELECTORAL ACT 1992

Section 147 of the *Electoral Act 1992*(Qld*)* obliges the court of disputed returns to ensure that a copy of any orders made by that court be sent to the Legislative Assembly.

In the matter of *Carroll v Electoral Commission of Queensland*[9] Mackenzie J expressed an opinion that the Legislative Assembly might wish to examine the possibility of amending the *Electoral Act 1992* in regard to:

- how-to-vote card specification requirements; and
- appeals on matters of law, from the court of disputed returns to the Court of Appeal.

This opinion was conveyed to the Legislative Assembly. The Attorney-General, Hon Matt Foley MLA, requested the **Legal, Constitutional and Administrative Review Committee** (LCARC) to examine Judge Mackenzie's expressed opinion, and report to the Parliament.

LCARC's report was tabled in the House on 17 September 1999.[10] The recommendations in relation to appeals from the court of disputed returns were:

Recommendation 3:

> *The committee recommends that the Attorney-General, as the Minister Responsible for the Electoral Act 1992 (Qld), insert a new division 4 (Appeals) into part 8 of the Act (after section 148) to provide for appeals from judgments or orders of the Court of Disputed Returns on questions of law*.[11]

Recommendation 4:

> *The committee recommends that the body to hear appeals from decisions of the Court of Disputed Returns be a new entity: the Appeals Division of the Court of Disputed Returns*.[12]

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9 *Re Carroll v Electoral Commission of Queensland and Reeves* [1998] QSC 190.

10 Queensland. Legislative Assembly. Legal, Constitutional and Administrative Review Committee (LCARC), *Issues of electoral reform raised in the Mansfield decision: Regulating how-to-vote cards and providing for appeals from the Court of Disputed Returns,* Report No 18, September 1999, p 4.

11 LCARC, Report No 18, p 47.

12 LCARC, Report No 18, p 50

Recommendation 5:

In order to minimise the possibility of any future appeal to the High Court from the Court of Disputed Returns (and/or the Appeals Division proposed for that Court in Recommendation 4), the committee recommends that the Attorney-General review and amend the provisions of the Electoral Act 1992 (Qld) pertaining to the Court of Disputed Returns to ensure that the Court of Disputed Returns is established and functions—and is interpreted to be established and function as an entity separate from the Supreme Court.[13]

Recommendation 6:

The committee recommends that the Attorney-General, as the Minister responsible for the Electoral Act 1992 (Qld), amend part 8, division 2 (Disputing elections) of the Act to enable the Court of Disputed Returns to state a case for the opinion of (or reserve questions of law for) the proposed Appeals Division of the Court of Disputed Returns.[14]

In an answer to a parliamentary question in December 1999 the Premier said:

… Cabinet has given authority for the preparation of legislation that will largely reflect the suggestions of the Court of Disputed Returns and recommendations of the all-party Legal, Constitutional and Administrative Review Committee which has also examined this issue.

Amendments will be made to the Electoral Act and the Local Government Act to regulate how-to-vote cards and in relation to challenges to election results.

The Attorney-General will be introducing that legislation as soon as it is drafted.[15]

5. EXAMPLES OF CHALLENGES TO STATE ELECTION RESULTS IN QUEENSLAND

This section provides a checklist of challenges that have occurred in Queensland to date. The importance of an appeal provision to a higher court from an elections tribunal (or court of disputed returns) can be gauged from the number of initial Tribunal decisions that have been overturned on appeal or have had matters of law reinforced or determined.

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13 LCARC, Report No 18, p 53.

14 LCARC, Report No 18, p 55.

15 Hon P Beattie, Premier, *Queensland Parliamentary Debates*, 7 December 1999 p 5942.

5.1 WEBB V HANLON – ITHACA - 1938 STATE ELECTION [16]

This election took place on 2 April 1938. The Full Court heard the appeal that was lodged (from the decision of the elections tribunal hearing) in November and December 1938 and handed down its decision in February 1939.

The Supreme Court judge sitting alone as the Elections Tribunal had decided, on the evidence before him, that illegal practices had been committed under **s 106(2)** of the *Criminal Code* and consequently the respondent had not been duly elected.

The substance of the initial petition was that the respondent contravened **s 106(2)** of the *Criminal Code* by allowing, with his knowledge and consent, two agents to distribute unsigned pamphlets. **Section 106(2)** read at the time:

> *Any person who prints, publishes, or posts, any bill, placard, or poster, which has reference to an election and does not bear on the face of it the name and address of the printer and publisher is guilty of an offence, and is liable on summary conviction to a fine of one hundred pounds.*[17]

The Elections Tribunal initially held that the acts of the respondent afforded reasonable grounds for the belief that a majority of the electors might have been prevented from electing the candidate they preferred.[18]

The Full Court of Queensland heard the appeal from a decision of the Elections Tribunal by virtue of its authority under **s 118** of the *Elections Act 1915-1936.*

The appeal to the Full Court turned on the standard of proof that was required to be shown under **s 111** (Principles of Trial) of the *Elections Act 1915* in order that an election should be declared void.

Central to the Full Court's ruling that the Elections Tribunal's initial decision be set aside was that **s 111** of the Act had not been interpreted correctly by the elections tribunal judge. The appellant court held that **s 111** was merely a procedural section that did not affect the rules of the common law as to onus of proof and the standard of proof required to succeed in a petition before a court or tribunal. The onus of proof lies with the party bringing the matter before the tribunal, whilst the standard of proof at common law also lies with that party to prove the issue on the balance of probabilities.

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16 *Re Ithaca Election Petition, Webb v Hanlon* [1939] St R Qd 90.

17 The relevant Section is now s 106 (b).

18 *Re Ithaca Election Petition,* at 91.

At the time, **s 111** of the *Elections Act 1915-1936* read:

> *Upon the trial of an election petition or reference the Tribunal shall be guided by the real justice and good conscience of the case, without regard to legal forms and solemnities, and shall direct itself by the best evidence it can procure, or which is laid before it, whether the same is such evidence as the law would require or admit in other cases or not.*

The Full Court as the Appeal Court overturned the Elections Tribunal's ruling on the basis that the Tribunal judge did not apply the necessary standard of proof to the facts that were presented to him.

The Full Court held that:

- the Elections Tribunal judge was wrong in finding on the evidence that these two persons were the agents of the candidate;
- **section 111** did not affect the rules of the common law as to the onus of proof;
- the evidence did not establish knowledge or consent by the candidate or that he had adopted the acts of those persons.[19]

5.2 GRANT V DUNSTAN AND CARNEY[20]- NASH- 1950 STATE ELECTION

The election that was the subject of the appeal to the Full Court from the initial decision of the elections tribunal was conducted on 29 April 1950. The appeal against the decision of the elections tribunal was not concluded for some time with the Full Court sitting in August and October 1951 and handing down its verdict on 12 December 1951.

The Full Court of the Queensland Supreme Court determined this appeal under the power confirmed upon it by **s 118** of the *Elections Act 1915.* The matter before the court concerned a complaint of an official error made by the principal electoral officer in compilation of the electoral roll for the electorate of Nash.

Carney, the principal electoral officer, declared Dunstan, the ALP candidate for Nash, duly elected with a majority of 25 votes. The number of electors who had been refused enrolment and subsequently a vote at the election, was 22. A petition was filed by Grant who was a registered voter in the seat of Nash.

The Elections Tribunal held (and the Full Court of the Supreme Court of Queensland agreed) that under **s 35A** of the *Elections Act 1915* a person entitled to

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19 *Re Ithaca Election Petition,* at 91.

20 *Re Nash Election Petition, Grant v Dunstan and Carney* [1952] St R Qd 53.

be on the roll of a new electorate but omitted from that roll, was not entitled to vote. Grant appealed this decision to the Full Court.

The Full Court, in dismissing the appeal, also held that under **s 118** of the *Elections Act 1915* the term **"Full Court"** meant the Supreme Court of Queensland and that court had authority under **s 58** of the *Supreme Court Act 1867* to award costs.[21]

5.3 FORDE V LONERGAN[22]- FLINDERS- 1957 STATE ELECTION

At the State election of 3 August 1957 the petitioner Forde, an ALP candidate in the State electorate of Flinders, petitioned the Elections Tribunal when the respondent Lonergan was declared to have been elected by a majority of one vote. The Tribunal heard the matter in February 1958 and handed down its decision in March 1958.

Forde sought an order that the election be declared void on the grounds that 16 votes cast by absent voters for the seat of Flinders were rendered invalid when the Presiding Officer did not comply with the then requirements of **s 69** of the *Elections Act 1915.*

Section 69 required that the absentee voters had to answer certain questions, to endorse the answers on an envelope and sign the envelope. The absentee votes in question were rejected by the Presiding Officer on the grounds that the envelopes did not bear ballot numbers on the outside.

The petitioner, Forde, argued:

- that the Tribunal should apply the common law of elections to the facts and hold that there had been no real election because the majority of the electors had not chosen the respondent Lonergan; and
- that the Tribunal should also apply the common law of elections in cases where official irregularities had been shown to have occurred, and that the tribunal should hold that the onus of showing that those irregularities could not have affected the election, lay with the candidate declared elected.

The Tribunal held that the election was void as the 16 absentee votes in question were rejected through the fault of the Presiding Officer. It was possible that had they been included in the count, the petitioner may have won. However, the Tribunal rejected the petitioner's argument that it should apply the common law of

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21 *Re Nash Election Petition,* at 78.

22 *The Flinders Election Petition, Forde v Lonergan* (1958) Qd R 324.

elections and held that it was not bound by the common law but that such law may be of persuasive value in determining the "real justice" of the case.

5.4 NIGHTINGALE V ALISON[23]- MARYBOROUGH- 1983 STATE ELECTION

The contest for the seat of Maryborough in the October 22 1983 general State election was between Nightingale (ALP), Alison (National Party) and Bailey an Independent candidate. The outgoing sitting ALP member did not recontest the seat. Alison had previously held the seat between 1971 and 1977 as a member of the Liberal Party. A major election issue at the time was the campaign by the Fraser Island Defence Organisation headed by John Sinclair for the nomination of Fraser Island on the World Heritage Register.

Alison was declared the elected member with a majority of 8 votes and Nightingale petitioned the Elections Tribunal against this outcome. The sections relevant to the case were **s 79** (mode of voting) and **s 103 (**causes for rejection and circumstances of non-rejection of ballot-papers) of the *Elections Act 1983.*

The petitioner, Nightingale, challenged the validity of over 70 votes on the basis that they had either been wrongly counted for the respondent Alison or were erroneously rejected by the Returning Officer. The Tribunal handed down its decision on 13 April 1984 overruling the decision of the Returning Officer. It allowed 14 votes that the Returning Officer had declared to be informal to be counted. After the inclusion of the 14 votes the winning majority to Alison increased by a further 6 votes. The final declared winning majority for Alison was 13 votes.

5.5 TURNER V KING[24] - NICKLIN- 1989 STATE ELECTION

The election was conducted on 2 December 1989. The Elections Tribunal handed down its decision on the petition in May 1990. The Full Court heard an appeal from the Elections Tribunal's decision in October 1990 and handed down its own decision on 21 November 1990.

The Full Court heard an appeal against the decision of the Elections Tribunal under the authority of **s 154** of the *Elections Act 1983.* In this case, the Returning Officer for the electorate of Nicklin declared that King had been duly elected at the

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23 *Re Maryborough Election Petition; Nightingale v Alison* [1984] 2 Qd R 214.

24 *Turner v King* [1992] 1 Qd R 307.

2 December 1989 poll. Turner and another lodged a petition with the Registrar of the Elections Tribunal.

King submitted at the hearing of the Elections Tribunal that the petition should be struck out because a copy of the petition had not been served upon himself nor his agent, nor the Returning Officer for the electorate of Nicklin in accordance with **s 136** of the *Elections Act 1983*.[25] Requirements for the service of an election petition under **s 136** were:

- petition to be presented within 8 weeks after the declaration of the poll result;
- petition to be served upon the sitting member, if any, and the returning officer for the electoral district within 14 days after the presentation of the petition; and
- service of the petition was to be effected similar to the service of a writ or summons unless otherwise prescribed.

The Elections Tribunal held that the time of service of a copy of the petition on the respondent King and the Returning Officer by the petitioner Turner did not breach the provisions of the *Elections Act 1983.*

A further issue raised at the Tribunal hearing was whether the election should be declared void as a consequence of deficiencies in the security of ballot papers before and during the recount by the returning officer and during a recount carried out by the registrar of the elections tribunal.

The Elections Tribunal looked at the evidence and held that there had been no specific breach of a statutory provision, then examined the evidence in the light of common law of elections principles. The evidence examined from both positions was still held not to be sufficient to suggest that the election result may have been affected under the circumstances.

King accepted the decision of the Elections Tribunal concerning the serving of the petition. However, King appealed to the Full Court concerning the security of ballot papers under **ss 97-99**. **Section 97** required the presiding officer to examine, count and seal the votes and forward the parcels to the returning officer. **Section 98** required the returning officer to examine and count the votes at the polling booth and seal parcels. **Section 99** required the returning officer to open the sealed parcels that were transmitted by the presiding officer, count the votes and reseal the parcels.

In dismissing the appeal, the Full Court held:

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[25] *Elections Act 1983* was repealed by the *Electoral Act 1992.*

- that there had been no breaches of the provisions of the *Elections Act 1983;* and
- had the requirements of **ss 97-99** been breached, the election itself would not have automatically been invalidated as the requirements of the sections were directory rather than mandatory; and
- it was appropriate to apply the common law of elections as the test upon which an election might be declared void:
  - where there had been no real election at all; or
  - where the election had not been conducted under the existing election law.

5.6 GOSS V SWAN[26] - ASPLEY- 1992 STATE ELECTION

In September 1992 the Supreme Court of Queensland heard an application from the sitting member and Liberal Party candidate for the seat of Aspley, John Goss, for an injunction to restrain the exhibiting of certain election signs erected by the ALP during the election campaign.

The signs, which were the subject of the injunction hearing, contained the wording:

> *A vote for the Liberals is a vote for the Nationals.*

The injunction application centred on the plaint that the election signs in question breached **s 163(1)** *Electoral Act 1992* concerning the misleading of voters.

Section 163(1)reads:

> *A person must not, during the election period for an election, print, publish, distribute or broadcast anything that is intended or likely to mislead an elector in relation to the way of voting at the election.*

In rejecting the application for an injunction to stop the signs from being displayed, the Supreme Court held:

- whether **s 163** had been infringed should be considered in relation to a gullible and naive elector and not to one of ordinary sophistication and the way in which such an elector may mislead himself or herself is of no regard; and
- any advertisement alleged to have infringed against **s 163** should be read for what it said and not a meaning that it did not bear that could only result from an unreasonable misconstruction; and
- the fact that an advertisement created a mere possibility rather than a likelihood of misleading electors, did not result in an infringement of **s 163**.

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[26] *Goss v Swan* [1994] 1 Qd R 40.

In injunction applications, the courts take the conduct of the applicant into account:

- the court took note of the fact that the application was not made immediately the offending signs were noticed, and the complainant's Party had itself engaged in similar conduct; and
- the chances of harm being caused by the subject signs in the manner complained of, were in fact remote.[27]

5.7 TANTI V DAVIES[28] - MUNDINGBURRA - 1995 STATE ELECTION

The petition to the Court of Disputed Returns resulted from the declaration of the seat of Mundingburra after the State election held on 15 July 1995. The petitioner was Frank Tanti, the Liberal Party candidate for the seat, and the respondent was Ken Davies the ALP candidate, who had been declared elected by a majority of 16 votes after the distribution of preferences. The Court of Disputed Returns did not hand down a decision on the matters raised in the petition until December 8 1995 after hearings on November 15-17 1995.

The petition presented, claimed that **s 105** concerning those voters who may make a declaration vote) and **s 110** concerning the recording of a vote using posted voting papers of the *Electoral Act 1992* had been breached.

The petitioner Tanti, claimed in the petition that there had been cases of:

- multiple voting where persons had voted at more than one polling booth under their correct name or alternatively multiple voting had been recorded under the names of enrolled persons by persons who were not in fact those persons (personation);
- there were declaration votes that had not been counted;
- there had been a denial of voting rights in some instances;
- there had been a denial of a right to cast a declaration vote to some voters;
- some votes counted in favour of the respondent should have been excluded as informal.

The Court of Disputed Returns found:

- that 7 votes had been wrongfully counted as the circumstances of their casting had made them invalid; and

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27 *Goss v Swan* at 40.

28 *Tanti v Davies* (No 3)(1996) 2 Qd R 602.

- that 11 electors had been denied a vote by reason of error or omission on the part of electoral officials; and
- that there were 22 electors who had been deprived of the opportunity to vote validly, these being soldiers serving in a peace keeping force in Rwanda; and
- that 6 electors were disenfranchised by error on the part of electoral officials; and
- that as a consequence of error on the part of electoral officials, the petitioner was not credited with 4 formal votes that he should have been credited with and the respondent was credited with 2 formal votes that he should not have been credited with.

In summary, the Court found that 39 votes that should have been formally counted were not, whilst 7 votes that had been formally counted should not have been counted. Consequently the Court held that the respondent may not have been elected had the 39 errors or 7 omissions not occurred and the 7 unlawfully cast votes not been counted. A new election was ordered under the authority of **s 136** of the *Electoral Act 1992.*

Under the Act there was no right of appeal against this decision as this right which had existed under the 1983 Act was omitted from the 1992 Act.

The new election for the seat of Mundingburra was duly held on 3 February 1996 with the petitioner Tanti being declared elected.

5.8 CARROLL V ELECTORAL COMMISSION OF QUEENSLAND AND REEVES[29] - MANSFIELD – 1998 STATE ELECTION

In 1998, the Court of Disputed Returns heard a petition alleging contravention of **s153** (false or misleading statements) and/or **s 154** (false, misleading or incomplete documents) and/or **s 158** (interfering with election right or duty) and/or **s 163** (misleading voters) of the *Electoral Act 1992.*

The behaviour complained of, was the handing out of how-to-vote cards that purported to be the official preference advice of Pauline Hanson's One Nation Party at election booths by ALP workers in the seat of Mansfield. The petitioner, Frank Carroll, the former Liberal sitting member, alleged that this conduct occurred with the knowledge and the authority of Phil Reeves the ALP candidate (who was declared the winner) and the ALP.

[29] *Re Carroll v Electoral Commission of Queensland and Reeves* [1998] QSC 190.

The Queensland Court of Disputed Returns followed a previous High Court decision that was based on similar circumstances to the matter before it.[30] The matter that came before the High Court resulted from an appeal from a decision of the court of disputed returns validating the 1980 election of Noel Crighton-Browne as a Senator for Western Australia.

By this decision, the High Court determined that advertising directed at encouraging electors to vote in a particular way did not amount to a breach of **s161(e)** of the *Electoral Act 1918* (Cth*),* a section similar to **s 163** of the *Electoral Act 1992* (Qld).

The Court of Disputed Returns drew a distinction between an attempt to mislead voters with respect to an intention (already made), and an attempt to influence their political judgement (not already made) as to whom they should vote for. The former being a breach of **s 163,** whilst the latter was not.

The Court of Disputed Returns found that there was little direct evidence of voters in Mansfield actually being influenced in relation to their vote by the how-to-vote cards that were handed out. Consequently the court found that there had been no contravention of **s 158** or **s 163 (1)** of the 1992 Act. The declared election result was not disturbed.

6 ELECTOR FAILING TO VOTE WITHOUT VALID AND SUFFICIENT EXCUSE

6.1 KROSCH V SPRINGELL, EX PARTE KROSCH[31] - ROCKHAMPTON – 1972 STATE ELECTION

This matter stemmed from a plaint of Keith Eric Krosch, the returning officer for the state seat of Rockhampton, that an enrolled elector Peter Henry Springell had failed to record a vote at the general election of 27 May 1972. Failure to vote without valid and sufficient excuse was covered by **s 63** of the *Elections Act 1915.*

Springell attended a polling booth within the Rockhampton electorate on the day of the poll and handed the following letter to an electoral official:

> *I do not consider that any of the candidates standing for the seat of Rockhampton are worthy of my vote. This also applies to the parties they represent. The main*

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30 *Evan v Crighton-Browne* (1981) 147 CLR 169.

31 *Krosch v Springell, ex parte Krosch* [1974] Qd R 107.

> *problem of the day, such as the environmental crisis, the population explosion and the economic problems associated with these are non- issues. Instead we have been treated to mudslinging, noise pollution, tree desecration and polemical discussions of trivia.*
>
> *An informal vote is not an effective means of registering my protest, I have therefore chosen not to vote, and I shall also refuse to pay any fines imposed on me.*

The Returning Officer issued a summons returnable to the Rockhampton Magistrates Court against Springell for failure to vote without valid and sufficient excuse. The Magistrate acquitted Springell of the plaint but the Crown appealed the decision in the Full Court of the Supreme Court. of Queensland. This appeal was heard on 23 November 1973.

The matter turned on the correct interpretation of the words *"valid and sufficient reason"* in the Act. The High Court of Australia had previously determined the correct meaning for these terms in the case of *Judd v McKeon.*[32] In the High Court it was held:

> *…the reason given by an elector for not voting is not valid and sufficient unless it admits the duty and puts forward some countervailing matter which would ordinarily release him from the duty. Physical prevention would be such a reason, but disagreement with the political views of all the candidates is not.*[33]

The Full Court of the Supreme Court of Queensland rejected the argument of Springell that the legislature did not intend to compel an elector to vote for a person for whom there was a well founded objection that amounted to a valid and sufficient reason for not voting.

The Full Court ordered that the Magistrate's decision be set aside and remitted the matter back to that court for the recording of a conviction and a penalty in accordance with the Act.

7. REGISTRATION OF PAULINE HANSON'S ONE NATION PARTY UNDER THE *ELECTORAL ACT 1992* (QLD)

As a new political force, Pauline Hanson's One Nation sought registration as a political party in Queensland under the *Electoral Act 1992*. The Electoral Commissioner granted registration in December 1997.[34]

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[32] *Judd v McKeon* [1926] 38 CLR 380.

[33] *Judd v McKeon* at 382.

[34] *Queensland Government Gazette* No 84, 5 December 1997 p 1503.

In 1998, proceedings commenced in the Supreme Court of Queensland seeking an order to set aside the 1997 decision of the Electoral Commissioner to enter Pauline Hanson's One Nation in the register of political parties.[35] The plaintiff, Terry Sharples had earlier unsuccessfully contested the state seat of Burleigh in 1998 as a candidate for Pauline Hanson's One Nation Party.

Pauline Hanson's One Nation had applied for Party registration in accordance with **s 70(4)(e)** of the *Electoral Act 1992* by supplying the names and addresses of 500 members of the Party who were enrolled electors. It was a requirement of **s 70** that this be done in cases where the Party was not currently represented in the Queensland Parliament.

The plaintiff Sharples argued that the names on a list of Party members submitted to the Electoral Commission of Queensland in support of the registration application were in fact members of a non-political support group for Pauline Hanson's One Nation. They were not members of the Party itself as this support group was separate from the Party itself and was officially known as Pauline Hanson Supporters' Movement Inc.

The official structure of the organisation was that Pauline Hanson's One Nation Party had only three members, these being Mr Ettridge, Mr Oldfield and Ms Hanson, who were all members of the management committee of the Party.

The constitution of the Party did not allow for members of branches of Pauline Hanson's Supporters' Movement Inc to be members of the Party.

In handing down its decision the Supreme Court of Queensland held that an administrative decision could be set aside on the basis that it had either been induced by fraud or misrepresentation.

The Court further held that the registration was obtained by misrepresenting to the electoral commissioner that the list of names submitted were Party members when this was not so.

The court set aside the Electoral Commissioner's decision to enter Pauline Hanson's One Nation in the Register of Political Parties, thereby de-registering the Party in Queensland.

An appeal to the Full Court of the Supreme Court of Queensland was lodged against the decision that the One Nation Party had not been lawfully registered. That appeal was heard in December 1999 with the decision being handed down on 10 March 2000. The Court of Appeal upheld the earlier decision of the Supreme

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35 *Sharples v O'Shea and Another* QSC (98/6318) 18/8/1999.

Court that the One Nation Party had not been properly registered in accordance with the provisions of the *Electoral Act 1992.*

8. PROVISIONS UNDER THE *LOCAL GOVERNMENT ACT 1993*

8.1 ROBERTSON V KNUTH[36] - MAYORALTY ELECTION CAIRNS – 1995 LOCAL GOVERNMENT ELECTIONS

Section 336 of the *Local Government Act 1993(Qld.)* is similar in effect to **s 163** of the *Electoral Act 1992(Qld).* The election petition that was raised concerned a local authority election for the City of Cairns conducted on 11 March 1995. The petitioner, Robertson, stood for the position of Mayor as a candidate of the 'OzOne' team. The respondent Knuth was the returning officer.

The matter arose out of an article published in the *Cairns Post* of 4 March 1995 linking the petitioner Robertson with a policy of a no-tax system other than the levying of a 1% tax on bank account balances. The petitioner objected to the article on the grounds that it suggested to the public that he was an inappropriate person to vote for because of these economic ideas.

The petitioner sought an order from the Supreme Court of Queensland (not the Court of Disputed Returns) that the local election be declared void on the grounds that **s 336** of the *Local Government Act 1993* had been contravened. The other ground for appeal was that the Returning Officer had an obligation to seek an injunction in response to the misleading publication. This application was refused and the petitioner lodged an appeal with the Full Court of the Supreme Court of Queensland.

The Full Court ruled that the appellant had failed to show that the publication of the article in the *Cairns Post* had denied voters a fair and free opportunity of electing a candidate of their choice.[37] For this to be the case, Robertson would have had to have shown that the contents of the article would have affected electors when they sought to record a vote. The Full Court held that the *Cairns Post* article did not cast any adverse reflection on the personal character or conduct of the appellant and affirmed the lower court's decision.

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36 *Robertson v Knuth* (1997) 1 Qd R 95.

37 *Robertson v Knuth* at 96.

9. CONCLUSION

In the legal system, the provision for appeals to higher courts against decisions of lower courts plays an important part in the accumulation of consistency of decisions, and ensuring procedural justice for aggrieved parties.

An election tribunal or a court of disputed returns is no different to any other court. Its role is to adjudicate on legislative provisions just as many other courts are required to do. Adjudication of legislative provisions in relation to elections requires questions of law to be determined. An avenue of appeal to a higher court on issues of law is a fundamental safeguard for consistency in decisions handed down by the courts or tribunals on these matters.

In addition, LCARC in its Report No 18 endorsed the principle that aggrieved parties should have an avenue of appeal open to them on matters of law. The Committee reported that the competing elements of the desire to finalise electoral disputes quickly, and adherence to procedural justice could be resolved in favour of an appeal avenue that ensured procedural justice. The Committee therefore recommended (re)introduction of appeals from the Court of Disputed Returns, but on a number of conditions *"designed to afford parties procedural justice but, at the same time, ensure the speedy resolution of electoral disputes."*[38]

[38] LCARC, Report No 18, pp 45-47 and p 56.

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