



Transcript of Proceedings

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Date: 20 May, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

de JERSEY CJ

No 2696 of 2004

TERRY PATRICK SHARPLES

Applicant

and

CHAIRPERSON, CRIME & MISCONDUCT
COMMISSION BRENDAN BUTLER QC

First Respondent

and

CRIME AND MISCONDUCT
COMMISSION (QLD)

Second Respondent

BRISBANE

..DATE 14/05/2004

JUDGMENT

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HIS HONOUR: Mr Sharples seeks review under the Judicial Review Act 1991 of certain decisions of the Crime and Misconduct Commission. The Crime and Misconduct Commission seeks the dismissal of that application under section 48 of the Judicial Review Act on the grounds specified in that provision. Mr Sharples has applied under section 49 of the Act for an order that the Commission indemnify him in respect of his costs of the judicial review application. The Crime and Misconduct Commission seeks the dismissal of that application for costs.

Mr Sharples made three complaints to the Commission in February this year, none of which the Commission sustained. The first was that the then Electoral Commissioner, Mr O'Shea, was made aware by Ms Leach of factual matters suggesting the ineligibility for registration of Pauline Hanson's One Nation Party prior to the 1998 State election, yet failed to take action to deregister the party and refund electoral expenses directly to the candidates. This amounted to a complaint of official misconduct against Mr O'Shea.

The Commission declined to proceed on the complaint on the basis that it failed to raise any reasonable suspicion of official misconduct. That was based in Mr O'Shea's having formed the view, which the Commission implicitly accepted as reasonable and open, that the application for registration was valid notwithstanding Ms Leach's experience, and that Mr O'Shea's approach, with the benefit of hindsight, derived support from the decision of the Court of Appeal delivered

subsequently in the criminal proceedings in relation to
Ms Hanson and Mr Ettridge.

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I should say that there is reference in paragraph 1 of the
amended application for judicial review to malicious
prosecution of Mr Sharples in that Mr O'Shea secured a
bankruptcy order based on Mr Sharples' failure to meet a costs
order. That would, however, seem to have been an instance of
Mr O'Shea simply exercising legal rights consequent upon the
order of the Court.

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The second complaint was that an officer of the Commission,
Ms Cronin, intimidated, or, as it was put in one passage,
subordinated Ms Leach against giving evidence of the matters
she had communicated to Mr O'Shea by advising - perhaps
emphasising - that Ms Leach would have to give her evidence in
Court and become subject to media attention. The Commission
took the view that the advice given to Ms Leach was purely
factual and not properly characterised as involving
intimidation or threats.

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There was a related allegation that the Commission erred in
failing to assist Mr Sharples to pursue additional evidence.
The position taken by the Commission was that it could deal
adequately with the complaint on the basis of the evidence of
Ms Leach, that is, not disputing the evidence put forward from
Ms Leach, and that the additional evidence to which
Mr Sharples was referring would be merely confirmatory.

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Indeed, in the amended application Mr Sharples also complains that the Commission did not elect to proceed with the complaint on the basis of that support, given Ms Leach's affidavit material, by further affidavits he was able to obtain without the assistance of the Commission, being affidavits from Ms Shelbourne, Ms Senelback, and Mr Leach. As advised by letter dated 5 March 2004, the Commission took the view that:

"There was no suggestion ... that Ms Leach's account was disputed by the CMC, and as the (further) material merely confirms Ms Leach's account, it does not advance the complaint further."

The third complaint was that another person, one Glen Wilson, put pressure on Ms Leach, saying that if she gave such evidence he would disclose that she had provided false information on an application submitted to the Queensland Electoral Commission. The Crime and Misconduct Commission concluded that because Mr Wilson was not the holder of an appointment in an office of public administration, the Commission lacked jurisdiction in respect of that complaint. Mr Sharples has not agitated that matter further.

Through the amended application for judicial review, and having heard his oral submissions here this morning, it is plain to me that Mr Sharples is essentially seeking, in relation to the determinations made by the Commission, a review on the merits. Mr Sharples contends that the application should not be determined in its current form and that he should be permitted to progress it by calling oral evidence and subjecting witnesses to cross-examination. He

submitted in summary, as it were, that the Commission should be regarded as having failed to bring an open mind to the matter, as effectively having fobbed him off.

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The Judicial Review Act, of course, does not allow for a review on the merits. The grounds upon which this Court is statutorily permitted to embark upon these reviews are limited. It does seem to me that the grounds on which the Commission proceeded were open and reasonable, with the consequence that the application for judicial review should be dismissed, and I say open and reasonable as matters of plain conclusion such that the application should be dismissed summarily. In other words, I take the view, in terms of section 48 of the Judicial Review Act, that "No reasonable basis for the application ... is disclosed."

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I am conscious of the need for care in determining matters summarily, but I am sufficiently persuaded, to the appropriate level of satisfaction, that this application could not succeed, to warrant my summarily dismissing it. Therefore, there will be an order under section 48 of the Judicial Review Act, on the application of the Crime and Misconduct Commission, that the application for judicial review be dismissed.

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Mr Sharples applies for costs under section 49, as I have mentioned. There is no question that he is impecunious, on the material before me. He submits under section 49(2)(b) that the proceeding involves an issue that affects the public

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interest. Certainly, as I said to him during his submissions, the public has a vital interest in proper performance by the Crime and Misconduct Commission of its charter. Mr Rafter, who appeared for the Commission, submitted that the consideration mentioned in subsection 2(c) was very important in the case; that is, whether the proceeding discloses a reasonable basis for the review application.

It seems to me that once one reaches the view that it does not, as has been my determination, it is then very difficult to identify a benefit to the public interest in the further ventilation of the application. I consider that the application not having been reasonably arguable, costs should follow the event in respect of the application by the Commission under section 48, that is, that those costs be borne by Mr Sharples, and that his own application under section 49 for costs should be dismissed.
