

SUPREME COURT OF QUEENSLAND

CITATION: *McEachan v Hewlett & Anor* [2015] QSC 15

PARTIES: **MATTHEW MCEACHAN**
(applicant)
v
SHEENA HEWLETT
(first respondent)
and
LANCE HEWLETT
(second respondent)

FILE NO/S: 991 of 2015

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 31 January 2015 (*ex tempore*)

DELIVERED AT: Brisbane

HEARING DATE: 31 January 2015

JUDGE: Daubney J

ORDER: **Order in terms of the amended draft placed with the papers.**

CATCHWORDS: EQUITY – EQUITABLE REMEDIES – INJUNCTIONS – INJUNCTIONS FOR PARTICULAR PURPOSES – OTHER CASES – whether injunctive relief should be granted to restrain the respondents from distributing, or permitting or authorising any other person to distribute how-to-vote cards.

CONSTITUTIONAL LAW – THE NON-JUDICIAL ORGANS OF GOVERNMENT – THE LEGISLATURE – ELECTIONS AND RELATED MATTERS – OTHER MATTERS –where the respondent(s) failed to register their how-to-vote card(s) with the Queensland Electoral Commission and whether this amounted to a failure to comply with section 183 of the *Electoral Act 1992* (Qld).

Electoral Act 1992 (Qld), s 183, s 196.

COUNSEL: N Ferret for the applicant

SOLICITORS: ClarkeKann Lawyers for the applicant

- [1] **HIS HONOUR:** This is an application for urgent injunctive relief by the Liberal National Party candidate in today's election for the electorate of Redlands. The application seeks to enjoin the first respondent Sheena Hewlett, an independent candidate standing in that seat, and, in effect, those working on her behalf from distributing how-to-vote cards in the form which is exhibited to the material.
- [2] The basis for the application is that the first respondent failed to comply with the requirements of section 183 (2) of the *Electoral Act* 1992 (Qld) in relation to the lodgement with the Queensland Electoral Commission of this proposed how-to-vote card. Section 183 (2) requires, in effect, that a person who authorises a how-to-vote card for a person other than a candidate endorsed by a registered political party must lodge certain information with the Queensland Electoral Commission by no later than 5 pm on the Friday that is seven days before the polling day. Relevantly, the person is required to lodge with the Queensland Electoral Commission a certain number of the how-to-vote cards and a statutory declaration relating to financial contributions.
- [3] On the material before me it appears that this how-to-vote card was not lodged with the Queensland Electoral Commission until two days ago, that is, 29 January 2015. That clearly was not compliant with section 183 (2). Section 183 (9) positively prohibits a person from distributing, permitting or authorising the distribution of a how-to-vote card to which, relevantly, section 183 (2) applies, if that subsection has not been complied with. As I have already noted, there is, on the material before me, a patent non-compliance with section 183 (2).
- [4] I observe that section 183 when read in full sets up a code for the timely examination by the Queensland Electoral Commission of how-to-vote cards before the election itself is conducted on polling day. The Commission is empowered to reject a how-to-vote card which has been lodged with it in the circumstances described in section 183 (3). If the Commission rejects a how-to-vote card, it must give written reasons for the rejection – section 183 (4).
- [5] A person to whom reasons for a rejection are given may no later than 5 pm on the Wednesday immediately before election day revise the how-to-vote card and, effectively, relodge the revised how-to-vote card for the purposes of complying with section 183 (2) – see section 183 (5). Moreover, section 183 (6) requires that the Commission make a how-to-vote card that it has not rejected available for public inspection and on its website.
- [6] The subsections to which I have referred make it clear, in my view, that the time limit prescribed by section 183 (2) ought be given full force and effect so as to facilitate the codified rejection and amendment process to which I have referred and the public notification process referred to in section 183 (6). Accordingly, I see no grounds for latitude in the application of the strict time frame referred to in section 183 (2) on the material before me.
- [7] The first respondent's how-to-vote cards were not lodged in compliance with that time limit and, accordingly, distribution of those how-to-vote cards prima facie contravenes section 183 (9) in those circumstances.
- [8] It is appropriate to grant the injunctive relief sought. Given the urgency with which the application has been brought, it is appropriate for the respondents to have liberty

to make urgent application to vary or set aside the injunctions that I am about to grant.

- [9] I note for completeness that efforts have been made to bring the present application to the notice of the respondents. In particular, phone calls were made early this morning giving express notice of the applicant's intention to bring the present application. That notification has included leaving a message on the second respondent's voicemail. Given the urgency with which the application is being brought, I am satisfied that all appropriate efforts have been made to give the respondents notice of the present application.
- [10] There will be an order in terms of the amended draft that I now initial and place with the papers.