SUPREME COURT OF QUEENSLAND

CITATION:	*Hanson v. Director of Public Prosecutions; Ettridge v. Director of Public Prosecutions* [2003] QSC 277
PARTIES:	**PAULINE LEE HANSON** (applicant) **v.** **DIRECTOR OF PUBLIC PROSECUTIONS (QLD)** (respondent) AND **DAVID WILLIAM ETTRIDGE** (applicant) **v.** **DIRECTOR OF PUBLIC PROSECUTIONS (QLD)** (respondent)
FILE NO:	7566 of 2003 and 7539 of 2003
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court, Brisbane
DELIVERED ON:	1 September 2003
DELIVERED AT:	Brisbane
HEARING DATE:	29 August 2003
JUDGE:	Chesterman J
ORDER:	**Applications dismissed**
COUNSEL:	Mr. C Hampson for the applicant; Mr. A Boe for the applicant Mr. BG Campbell for the respondent
SOLICITORS:	Nyst Lawyers for the applicant (Ms. Hanson) Boe Callaghan Lawyers for the applicant (Mr. Ettridge) Department of Public Prosecutions for the respondent

[1] On 20 August last each of the applicants was convicted of offences against s 408C(1)(f) of the *Criminal Code* - dishonestly inducing a person to do an act which the person is lawfully entitled to abstain from doing.

[2] The first applicant, Ms Hanson, was, in addition, convicted on two counts against s 408C(1)(b) – dishonestly obtaining two cheques. The amount involved was just under $500,000.

[3] The person who was lawfully entitled to abstain from doing an act, the subject of the joint charge, was the Electoral Commissioner of Queensland. The act which he was lawfully entitled not to do was to register Pauline Hanson One Nation (as it was called in the submissions) as a political party.

[4] Both applicants were sentenced to a term of three years imprisonment. Both have appealed, or have indicated they will appeal, against their conviction and the length of the sentence. It is likely that the appeal will be heard in the week commencing 10 November 2003.

[5] Section 70 of the *Electoral Act* 1992 provides that an application for registration of a political party must be made according to the terms of the section. Relevantly a pre-condition to registration is that the party have at least 500 members who are eligible to vote in Queensland State elections. Sections 294 and 295 of the *Electoral Act* provide that candidates who stand for election and receive at least four per cent of the primary vote are entitled to be paid an amount roughly equivalent to a dollar per vote. If the candidates are members of a political party registered pursuant to s 70, it is the party which claims and receives the payment. Otherwise the candidates individually claim and receive the payment.

[6] The application to register Pauline Hanson's One Nation as a political party was made on 15 October 1997. At that date there relevantly were two separate and distinct groups of people. One was known as Pauline Hanson's One Nation. It was the political party. The relevant definition is found in s 3 of the Electoral Act. A political party is an organisation whose object is the promotion of the election of candidates, which it endorses, to the Legislative Assembly. The other group was an incorporated associated initially named Pauline Hanson Support Movement Inc.

[7] The nature of the offences charged against the applicants and of which they were convicted may be understood from the remarks of the Chief Judge of the District Court, who presided over the trial, when passing sentence. Her Honour said:

> 'In finding you guilty the jury has accepted that you, David Ettridge as … one of the national management committee of the party … and you Ms Hanson as another member of that management committee, as well as being the president and vice-president respectively of the support movement knew when (Ms Hanson) caused to be handed in a list of members … which Mr Ettridge had obtained for the purpose of providing to the Electoral Commission, that it was not a list of members of Pauline Hanson's One Nation, the political party. The jury … has found that both of you knew that it was a list of members of the support movement … which changed its name ultimately to Pauline Hanson's One Nation Members Inc. And accordingly (the party) was registered because one of the requirements for registration … was that … you provide a list setting out the names and addresses of 500 members of the party who are electors in Queensland. Whether or not these electors believed they were members of the party, the jury has found that you knew they were not and accordingly the party, through its registration, became entitled to the benefits to which I have referred.'

[8] In summary the political party, Pauline Hanson's One Nation, did not have 500 members or more. The incorporated association did have more than 500 members but it was not a political party and was not entitled to be registered as such. The charges, which the jury accepted as proved beyond reasonable doubt, were that the applicants dishonestly informed the Electoral Commissioner that the members of the support movement were members of the party, thereby inducing the Commissioner to register the political party and later to pay it what became due consequent upon the electoral success of candidates endorsed by Pauline Hanson's One Nation in the 1998 election.

[9] It was not part of the Crown case that the money was misappropriated and used for personal ends. The case is that there was no party entitled to registration and that its registration was obtained by fraud, namely a dishonest statement that it did have the requisite number of members. The entitlement to payment followed from the registration and the election results.

[10] The grant of bail pending appeal is most unusual. The applicant must show exceptional circumstances. Sometimes they have been described as 'very exceptional' or 'exceptional or unusual'. The point of the varying descriptions is merely to underline the fact that bail pending an appeal is granted very rarely. A principal reason for this approach is that a grant of bail after conviction undermines the finality of a jury verdict so that the trial and conviction take on a provisional aspect and appear to be only a step in the process of conviction which would not conclude until judgment was given on an appeal. The law, on the contrary, has always regarded jury verdicts as final and only open to limited challenge.

[11] In *Chamberlain v. R* (1983) 153 CLR 514 at 519 Brennan J expressed the point by saying that a jury verdict should not be regarded as being contingent upon confirmation by a court of appeal. Rather the verdict ought to be accorded 'particular respect'. In *ex parte Maher* [1986] 1 Qd R 303 at 310 Thomas J said:

> '… it is against the public interest that a person duly convicted after a regular trial and sentenced to a substantial period of imprisonment be seen to be a large shortly after conviction. It is important that offenders not only be penalised but that they be seen to be penalised.'

His Honour also pointed out the important and essential difference between an application for bail pending appeal after conviction and an application for bail before a trial. In the latter the applicant is 'clothed with the presumption of innocence' which, of course, has been emphatically rebutted by a jury verdict of guilty. His Honour thought that:

> '… no court exercising a completely untrammelled discretion should grant such bail (pending appeal) unless there were indeed exceptional circumstances present.'

[12] The circumstances which would support an application for bail pending appeal usually fall into one of two categories. The first is where there is an obvious error in the trial process which indicates that an appeal will result in an acquittal or an order for a retrial. The error must be obvious. It must be apparent that in all likelihood an appeal with succeed. In most cases such a patent error will not be

demonstrated on the materials available when a bail application is brought promptly after conviction.

[13] The second category is where a short period of imprisonment has been imposed and the applicant will have served all or most of the term before an appeal could be heard. It is clearly unjust that an applicant, who has a strong case for saying he should not have been sent to gaol, should have to serve all or most of the sentence before an appeal could be heard. Even in such cases it must be shown that there is a strong case that, on appeal, the sentence will be reduced or that a non-custodial sentence of some kind will be substituted.

In *Maher* Thomas J pointed out (312) that no case had been brought to the attention of the court 'in which an offender undergoing a sentence of twelve months or more has been granted bail …' In such cases there is little likelihood that the sentence will be reduced to less than the time which will elapse before an appeal can be heard.

[14] A third ground sometimes advanced by applicants who seek bail pending their appeal is that they will be put to considerable inconvenience and be disadvantaged in trying to prepare their appeals while in jail. There is no doubt that the circumstance creates difficulties for counsel and solicitors seeking instructions for the preparation of an appeal but it has never been regarded as justifying release on bail after conviction and before appeal. See *eg Rodgers v. DPP* (2002) QCA 351 per de Jersey CJ; *DPP v. Ali* (2001) QCA 489 per McPherson JA; *Maher* at 312-3.

[15] The solicitors for Mr Ettridge do not submit that there is an obvious error in the trial process leading to his conviction. They intend to appeal against that conviction but accept that at the present they cannot demonstrate such a patent error. Instead their submissions focus upon the sentencing process which it is said does reveal 'patent errors' which 'demonstrates that the applicant has a good chance of success at the hearing of the sentence application. One such error is sufficient to entitle him to bail.'

[16] Counsel for Ms Hanson argues that there were errors both in the processes of conviction and of sentence.

[17] Mr Hampson QC submitted that there was objective, documentary, and therefore 'incontrovertible' evidence that Pauline Hanson's One Nation, the political party itself, had more than 500 members and was entitled to registration.

The evidence was said to show that applications for membership of Pauline Hanson's One Nation and Pauline Hanson Support Movement Inc. were processed separately. There were different forms of application for each group and differing monetary amounts were payable. Membership of the party was more expensive. Prospective applicants for membership were told that Pauline Hanson's One Nation was the political party whereas Pauline Hanson Support Movement Inc. was a non political organisation which, as its name suggested, existed to support the aims and policies of the party. Applications for party membership were administered at its office in Manly in Sydney. Upon receipt of an application and payment of the fee of $40 staff would issue a receipt and enter details of the new member on a computer data base. By September 1997 the membership of Pauline Hanson One Nation as recorded in the database showed that it had more than 6000 members. More than 500 of these lived in Queensland.

This is said to have been demonstrated by a membership list which became Exhibit 17A. The result, it is submitted, is that there was a valid application to register a political party which was entitled to registration, and it was properly registered. I have simplified the argument and have not referred to all the facts which are said to have been incontrovertible leading to the conclusion I have mentioned.

[18] Then it is said that against this evidence the Crown relied only upon oral statements attributed to Mr Ettridge in the most part, but on two or three occasions to Ms Hanson, the effect of which was that the party had only three members, two of whom were the applicants, and that there was 'no such thing as a One Nation political party'; and that the 'rest of the people are in the support movement.'

[19] The submission is that, viewed objectively, the few oral statements could not disprove the cumulative effect of the evidence showing the existence of 'more than 6000 members of Pauline Hanson's One Nation by September 1997, more than 500 of which live in Queensland.'

[20] Mr Hampson QC did not appear at the trial though his solicitor did. He assured me with great confidence that the facts may be accurately summarised in the manner I have just expressed. Mr Campbell, who appeared for the Crown on the application and prosecuted at the trial, assured me with equal confidence that the evidence was more than sufficient to prove that the political party had no more than three members, and that members of the public who sought to join it were diverted into membership of the Pauline Hanson Support Movement Inc, the constitution of which made it clear that it was a non-political organisation.

[21] It is not possible on a bail application to resolve such fundamental conflicts. The trial ran for many weeks. Many witnesses were called and many documents were tendered. A determination of which of the competing submissions should be accepted will only be possible after a careful and thorough examination of the materials put before the jury. They have not yet been assembled. Certainly they were not put before me. I do not have a transcript of the oral testimony nor copies of the exhibits. The exhibits themselves will need to be interpreted by reference to what was said about them. For example Exhibit 17A, a copy of which I was shown, demonstrates the difficulty. It is no more than a computer generated list of names and addresses. It does not on its face identify the persons whose details appear on the list as members of any organisation. It does not identify the name of the organisation to which those persons belong, if it is in fact a listing of members. It is certainly not incontrovertible evidence that at the time of its registration Pauline Hanson's One Nation in Queensland had more than 500 members.

[22] The case is one in which it is impossible to form a view about the prospects of success of an appeal against conviction. The notice of appeal presently identifies twenty grounds, some of which overlap. The notice indicates that further grounds may be added. Perhaps some will be abandoned. The formulation of grounds for appeal is not yet complete. In the circumstances the court cannot guess at the outcome of an appeal.

[23] One point is taken that the prosecution should have been stayed because of the degree of adverse pre-trial publicity. It is notorious that such grounds rarely succeed.

[24] Numerous complaints are made against rulings made by the Chief Judge in the course of the trial. A number of these complaints will call for an evaluation of the overall strength (or weakness) of the Crown case and how it was presented. It is impossible to make any assessment of the rulings without the record of proceedings at the trial and the detailed submissions of the parties. The case, as Kelly SPJ said in *Maher* (305):

> 'Must be approached on the basis that no view can be formed one way or the other as to the prospects of the appeal succeeding.'

[25] In the context of the submission that the jury's verdict was perverse and that the only reasonable view of the evidence was that Pauline Hanson's One Nation had a popular membership of 500 so that it had an entitlement to registration, it may be worth recalling that a similar matter has previously been litigated in this court. No doubt the evidence was slightly different as, of course, were the issues involved. The standard of proof was different. However on the issue which was common to both trials, whether there was a political party with more than 500 members, a judge of this court, after an examination of the evidence, found it had not. An appeal against that judgment was dismissed.

[26] This leads to a consideration of the arguments that the Chief Judge erred in the exercise of her discretion when imposing sentence, and that the proper exercise of the discretion would have produced a non-custodial sentence so that it will be unjust to require the applicants to remain three months in prison pending the hearing of their appeals.

[27] The Chief Judge sentenced both applicants to three years imprisonment on count 1. Ms Hanson was also sentenced to three years imprisonment on each of the other two counts, all terms to be served concurrently. The applicants will be eligible for parole after serving half that time, eighteen months. The sentences are therefore substantial, which is not the same thing as saying that they are, necessarily, manifestly excessive which is what must be demonstrated if they are to be reduced on appeal. It is not enough to show that another, lesser, sentence would have been appropriate. An appeal court is not entitled to reduce a sentence imposed upon those convicted of a criminal offence unless it is outside the range of permissible penalties.

[28] The submissions advanced on behalf of Ms Hanson in relation to sentence are:

(a) There is no precedent for a prosecution under s 408C of the *Criminal Code* for breaches of the kind prosecuted against Ms Hanson. By contrast s 154 of the *Electoral Act* which prohibits the giving of information that is known to be false or misleading in material particular carried a maximum penalty of six months imprisonment or 20 penalty units – a modest fine.

(b) Count 1 was the most serious of the three counts. That involved obtaining registration of the party by the false statement as to the number of its members. The other two counts of receiving money consequent upon the election did

not constitute separate offences but were really circumstances of aggravation of the first count.

(c) The Chief Judge treated the matter as a case of electoral fraud which it was not.

(d) There was a precedent for someone convicted of electoral fraud involving serious misconduct being given a wholly suspended sentence.

[29] The solicitors for Mr Ettridge have prepared a detailed and helpful submission advancing several grounds why it should be concluded that his sentence is excessive and will be reduced. They are:

(a) The applicant was not legally represented and misunderstood the proceedings when it came to sentence. He was called upon to make submissions in relation to penalty and did not take the advantage offered to put forward reasons why he should not be sent to prison or why any term of imprisonment should be brief. Instead he was disposed to contend that the verdict was wrong. The result is, it is said, 'the court did not receive all "necessary submissions" necessary … in order for it to properly pass an appropriate sentence.'

(b) The Chief Judge failed to have regard to the requirement that there be parity in sentences between co-accused. The point is that Mr Ettridge was sentenced to the same imprisonment as Ms Hanson but she was convicted on three counts not one and the maximum sentence to which she was exposed was 10 years by reason of those other convictions. The maximum sentence in Mr Ettridge's case was only five years. To treat co-accused's identically when their level of offending is different is to offend the "parity" principle.

(c) The Chief Judge sentenced Mr Ettridge on the basis that he received a specific benefit from his crime, namely that he and Ms Hanson were able to allocate the money received from the Electoral Commission. It is said there was no support in the evidence for this finding.

(d) The Chief Judge overlooked matters which s 9 of the *Penalties and Sentencing Act* 1992 obliges a judge to take into account. The factors overlooked were said to have been:

(i) Information as to the applicant's character
(ii) The extent to which he was to blame for the offence
(iii) The present of any aggravating or mitigating factors.

The applicant being unrepresented should have been told that he could address the court about these matters.

(e) The sentence imposed is manifestly excessive when compared against other like offences. The cases were: *R v. Ehrmann* in which *Ehrmann* was sentenced to three years imprisonment to be suspended after nine months. She faced a maximum penalty of 10 years imprisonment, having engaged in a protracted and repeated course of forging electoral enrolments on 47 occasions over three years. The second was *Rouse* in which a wealthy businessman attempted to bribe a member of parliament to defect from the Labor Party in Tasmania and support the conservative parties. The result would have been to change the Government. The third was *R v. Fingleton* in which a chief magistrate was sentenced to 12 months imprisonment to be suspended after serving six months for an offence of quite a different kind.

(f) Another case involving conduct of the kind committed by *Ehrmann* should have been brought to the attention of the Chief Judge. It was a case of *Foster* in which a sentence of three months imprisonment was wholly suspended. Foster seems to have escaped imprisonment because of his excellent character and community service as well as his full co-operation with law enforcement agencies, a plea of guilty and clear remorse.

[30] Mr Campbell's submissions in reply were that:

(a) The Chief Judge did not overlook the need to distinguish between the degree of culpability between the applicants and in sentencing each of them to the same term of imprisonment, did not overlook the need for parity. They were equally culpable in relation to the first count and were given the same punishment. No additional punishment was imposed upon Ms Hanson on the other counts.

(b) There were no patent errors in the sentencing process as it concerned Mr Ettridge. The finding that he received some benefit from One Nation's registration was open on the evidence.

(c) The applicants' convictions were for serious offences.

> "This fraud was upon the Electoral Commission and, therefore, (went) to the heart of the integrity of the electoral system. 79 candidates were endorsed and the name "One Nation" appear(ed) beside their names on the ballot paper, (and) that's a fraud upon other candidates. That's a fraud upon every elector in those electorates. 11 people were elected based upon that fraud. The balance of power of the … Parliament could … have been affected because of the fraud. It seriously

> undermined public confidence in the integrity of the electoral process …"

[31] A judge hearing an application for bail pending appeal cannot – and may not – determine the outcome of an appeal against sentence. The applicants advance a number of reasons, some or all of which may ultimately be accepted, to show why their sentences should be reduced. The decision whether they should be reduced is one which only the Court of Appeal can make. It is only if the likelihood that the sentences will be substantially reduced, and that the reduction will be such that it would be unjust to require the applicants to spend the time that will elapse until the appeal is heard in custody, is high, that bail should be granted. In specific terms that means that it must appear almost certain that the appeals on sentence will succeed and result in terms of imprisonment of about three months, or less. Unless that can be demonstrated it cannot be said that there will be injustice in requiring the applicants to remain in prison for the three months that will elapse before the appeals can be heard.

[32] I cannot be satisfied to the requisite standard that the appeals will result in such an outcome. While it is possible to argue that the sentences imposed were too severe it is not, I think, possible to argue that the applicants were not convicted of a serious offence. The *Electoral Act*, including those parts of it which regulate the registration of political parties, is concerned to ensure that elections are honest, and that the public can be confident that they are honest. Offences which strike at the honesty of electoral processes are, fortunately, very rare. When they have occurred the courts have stressed the need for a punishment sufficient to deter others from similar conduct. It may be the case that the courts have regarded misconduct involving electoral processes more seriously than some (though not all) social and political commentators, but the view which I am obliged to accept is that expressed by the courts.

[33] The former Chief Judge of the District Court when sentencing *Foster* pointed out the need to maintain public confidence in the integrity of the electoral rolls. When dismissing *Ehrmann's* appeal against sentence the president of the Court of Appeal noted that:

> 'Her conduct justified a salutary penalty as a deterrent to others who might contemplate such behaviour and … to show the abhorrence of the community towards conduct which would jeopardise our … democratic system.'

Thomas JA said:

> '… I consider deterrence to be a very importance factor. The crime is not victimless, as was submitted below. Public morality, the democratic process and the public at large are the victims of such distortion. I do not think that the courts can send a signal that the electoral system may be polluted by forgery … without serious punishment.'

[34] The Chief Judge in passing sentence expressed the same views. Her Honour said:

> ‘It is essential that the electoral processes – and the registration of political parties is one of them – are not thwarted or perverted. The crimes you committed affect confidence … in the electoral process.’

[35] These are not mere words. What is at stake is the process of selecting those on whom the populace confers the power to regulate so many aspects of its daily life. Playing with that process must be discouraged.

[36] For these reasons the applications will be refused.