

IN THE HIGH COURT OF AUSTRALIA

SITTING AS THE COURT OF DISPUTED
RETURNS

Office of the Registry
Brisbane No B99 of 2001

Between -

RICHARD STEPHEN GUNTER

Petitioner

and

DR PETER HOLLINGWORTH

First Respondent

MAJOR GENERAL PETER ARNISON A.O.

Second Respondent

PETER DOUGLAS BEATTIE

Third Respondent

AUSTRALIAN ELECTORAL COMMISSIONER

Fourth Respondent

ALAN GEORGE SKYRING

Fifth Respondent

JAMES EDGAR STEWART

Sixth Respondent

TREVOR ACWORTH

Seventh Respondent

DONALD CAMERON

Eighth Respondent

DONALD GORDON CAMERON

Ninth Respondent

GUMMOW J

TRANSCRIPT OF PROCEEDINGS

FROM BRISBANE BY VIDEO LINK TO CANBERRA

ON FRIDAY, 12 APRIL 2002, AT 9.45 AM

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MR R.S. GUNTER appeared in person.

MR M.C. SWAN: Your Honour, I appear for the first and fourth respondents. (instructed by the Australian Government Solicitor)

HIS HONOUR: Yes.

MR SWAN: The first respondent does not propose to make any submissions in this matter and abides the order of the Court. The fourth respondent has yesterday filed a summons seeking

HIS HONOUR: It has been misidentified. The Australian Electoral Commission is the relevant party.

MR SWAN: Yes, that is part of the summons, your Honour.

HIS HONOUR: Yes. I should make an order now identifying the fourth respondent as the Australian Electoral Commission in place of the Australian Electoral Commissioner.

MR SWAN: Thank you, your Honour.

HIS HONOUR: You appear for the Australian Electoral Commission?

MR SWAN: Yes, your Honour.

MR M.D. HINSON, SC: If your Honour pleases, I appear for the second and third respondents.
(instructed by the Crown Solicitor for the State of Queensland)

HIS HONOUR: That is his Excellency the Governor of Queensland and the Honourable Premier of Queensland?

MR HINSON: That is so, your Honour. We support the summons of the fourth respondent in so far as he seeks an order that the petition be dismissed.

MR A.G. SKYRING appeared in person.

HIS HONOUR: You are the fifth respondent.

MR J.E. STEWART appeared in person.

HIS HONOUR: You are the sixth.

MR T. ACWORTH appeared in person.

HIS HONOUR: You are the seventh.

MR D. CAMERON appeared in person.

HIS HONOUR: Any other persons who have been joined as respondents in Court this morning?
Thank you.

I should indicate first the preliminary view I have formed as to the further conduct of this proceeding and I will then invite any submissions

dissenting from the course of conduct I propose. The first question that arises is the appropriate forum for further consideration of this matter. Section 354(1) of the *Commonwealth Electoral Act 1918* confers jurisdiction on this Court:

either to try the petition or to refer it for trial to the Federal Court of Australia –

For avoidance of any doubt, I should indicate the references in section 354(1) to trial of the petition include all interlocutory and other incidental steps and would include the determination of the summons filed 11 April 2002 by the fourth respondent, the Australian Electoral Commission. It appears to me as at present advised to be appropriate that this Court should make an order under section 354(1) referring the petition for trial in the Federal Court of Australia, Queensland District Registry.

Section 363A enjoins the making of a speedy curial decision in these election petition matters. The burden on this Court, not the least in its original jurisdiction as a result of its exclusive jurisdiction in certain immigration matters, and the comparative position of the Federal Court of Australia, given its greater membership, make that court the more appropriate forum to achieve the objective indicated in section 363A.

The presence of numerous residents in Queensland as participants in person in this litigation, as has just been indicated, points to Brisbane rather than Canberra, which is the seat of this Court, as the more appropriate and convenient location for the conduct of the further steps in this litigation. Accordingly, I propose to make orders conformably with that view of the matter. Is there any dissent from that?

MR SWAN: That seems entirely appropriate, your Honour.

HIS HONOUR: Yes. It is a very unsatisfactory method of trying anything by video link, I am afraid. The noise that is on the line this morning is just an indication of that.

So the orders I will make will be:

1. The petition will be referred for trial to the Federal Court of Australia, Queensland District Registry.
2. The proceeding be continued in the Federal Court as if steps already taken in this Court, including the filing of the summons on 11 April 2002, had been taken in the Federal Court.
3. The Registrar of this Court provide to the proper officer of the Federal Court photocopies of all documents filed in this Court and the deposit which has been lodged pursuant to section 356 of the *Commonwealth Electoral Act 1918* .
4. The costs of the proceedings in this Court to date be costs in the Federal Court.
5. The costs referred to in this Court, including the costs of this order be according to the scale applicable to proceedings in this Court and thereafter according to the scale applicable in the Federal Court and in the discretion of the Federal Court.

I think there is no need to certify for counsel, as we have been in open court as the Court of Disputed Returns. The Court will now adjourn.

AT 9.52 AM THE MATTER WAS CONCLUDED