NO QUESTION OF PRINCIPLE

IN THE FEDERAL COURT OF AUSTRALIA

QUEENSLAND DISTRICT REGISTRY **QG 103 of 1998**

BETWEEN: **ALAN GEORGE SKYRING**
APPLICANT

AND: **AUSTRALIAN ELECTORAL COMMISSION**
RESPONDENT

JUDGE(S): **DOWSETT J**

DATE OF ORDER: **4 DECEMBER 1998**

WHERE MADE: **BRISBANE**

THE COURT ORDERS THAT:

1. The application is dismissed.

2. The applicant is to pay the respondent's costs of the application, including reserved costs.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

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PLACE: **BRISBANE**

REASONS FOR JUDGMENT

This is a directions hearing relating to an application by Alan George Skyring to review a decision of the Australian Electoral Commissioner made in connection with the last federal election for the House of Representatives in the seat of Ryan. The application for review is extensive and discursive. It is not entirely clear what relief is sought.

It seems, however, from what Mr Skyring has said to me today, that he issued the application with the primary intention of obtaining information from the Electoral Commissioner concerning the mechanism by which deposits were paid by candidates in Ryan and in other electorates and for the Senate. This seems to me to be an improper purpose for which to commence proceedings of this kind. No meaningful review of any decision of the respondent is to be sought. Mr Skyring accepts that, in order to challenge the validity of any of the electoral outcomes, he must proceed by way of petition pursuant to s 352 of the *Commonwealth Electoral Act 1918* (Cth). The application has been brought for an improper purpose and should be dismissed, on that ground alone, as an abuse of process.

However, there is also a motion pursuant to O 20 r 2, brought by the respondent, to have the application dismissed as frivolous and vexatious. In order to understand the application, it is necessary to appreciate that Mr Skyring has developed a view as to the monetary system in use in this country. He starts with an assertion that any currency issued must be either gold or silver - a proposition which, as I understand it, finds no support in the *Constitution.* He challenges the validity of paper money, notwithstanding the provision in the *Reserve Bank Act 1959* (Cth) - s 36 - which provides for its issue. In particular, for present purposes, he points to s 36(2). This provision seems to have been designed to facilitate the conversion to decimal currency in 1966, but in any event, there can be no doubt that Mr Skyring is correct

in saying that the intention of s 36 is that bank notes will represent amounts of currency as prescribed in the *Currency Act 1965* (Cth).

Section 8 of the *Currency Act 1965* provides that the basis of the Australian currency is the dollar. That Act also makes provision for the composition of various coins, including gold $200, $100, $50 and $25 coins, silver $10 coins and other coins of copper and nickel or copper, tin and zinc. Curiously, the $1 coin is not expressly provided for, probably because at the time of enactment it was intended that the dollar be a note rather than a coin. Pursuant to s 13.2 the Treasurer may, by instrument, authorise the issue of other coins and prescribe their composition. It may be that the dollar coin has been issued in this way. In any event, the provision of s 36 of the *Reserve Bank Act 1959* linking bank notes to currency values appears to be a reference to s 8 which prescribes the monetary value, rather than to the standard composition schedule which appears at the end of the Act.

So far, I must say, I can see no arguable legal point demonstrated by Mr Skyring's submissions. His concern appears to be, however, largely provoked by the decision made by the government or the mint to issue gold coins which, I am told, are bought and sold at a price in excess of their face value. They are minted as $200, $100, $50 or $25 coins and made substantially of gold. They are traded in accordance with the current gold price on world markets. It is said that this debases the currency. I must say that from my own simplistic point of view it does seem a less than desirable course, but no doubt commercial and other considerations led to its being adopted.

Mr Skyring's primary complaint is that pursuant to s 170(3) of the *Commonwealth Electoral Act 1918* (Cth) a candidate for the House of Representatives, in particular for the seat of Ryan, was required, with his or her nomination, to deposit legal tender or a cheque drawn by a bank or other financial institution on itself in discharge of the obligation to pay a nomination fee in connection with such a nomination. The evidence demonstrates that in the electorate of Ryan, each candidate, other than Mr Skyring, chose the option of a bank cheque. Mr Skyring, I should say, paid in gold coins according to their face value. As I have already explained, that means that he paid a substantial amount more than the face value in order to facilitate his nomination.

A candidate may comply with the requirements of s 170(3) by delivering a bank cheque for $350. Each candidate, other than Mr Skyring, did that. Mr Skyring says that the existence of the gold coins in the circumstances to which I have referred so undermines the whole of the monetary system, that neither paper money nor cheques can continue to have any validity. I simply cannot see the logical path by which that conclusion is reached. The point is that cheques are contemplated by the *Currency Act 1965*. They are provided for in the *Bills of Exchange Act 1909* (Cth). They are contemplated by s 170 of the *Commonwealth Electoral Act 1918.*

The candidates having complied with the requirements of s 170(3), I cannot see any basis for

challenging the adequacy of what they did. If Mr Skyring wishes to challenge the validity of any election result, the proper course is for him to file a petition in the High Court. I understand that he has already done this. In the circumstances, for the reasons which I have given, the application is both an abuse of process and is based upon grounds which are frivolous and vexatious. That this is so is demonstrated by a line of cases in which Mr Skyring's submissions or variations of them have been held to be without foundation, including in particular a decision of Deane J in *Re Skyring's Application* (No 2) (1985) 59 ALJR 561, a decision which was not interfered with on appeal by the Full High Court.

In the circumstances, the application is dismissed.

I order the applicant to pay the respondent's costs of the application including reserve costs.

I certify that this and the preceding two (2) pages are a true copy of the Reasons for Judgment herein of the Honourable Justice Dowsett

Associate:

Dated: 11 December 1998

Applicant Appeared in Person

Counsel for the Respondent: Mr P. North

Solicitor for the Respondent: Australian Government Solicitor

Date of Hearing: 4 December 1998

Date of Judgment: 4 December 1998