SUPREME COURT OF QUEENSLAND

CITATION:	*R v Hanson; R v Ettridge* [2003] QCA 488
PARTIES:	**R** **v** **HANSON, Pauline Lee** (appellant/applicant) **R** **v** **ETTRIDGE, David William** (appellant)
FILE NO/S:	CA No 270 of 2003 CA No 275 of 2003 CA No 274 of 2003 DC No 2949 of 2002
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction Sentence Application Appeal against Conviction & Sentence
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	6 November 2003
DELIVERED AT:	Brisbane
HEARING DATE:	5 November 2003
JUDGES:	de Jersey CJ, McMurdo P and Davies JA Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDER:	**In respect of each appeal:** **1. allow the appeal;** **2. quash the conviction or convictions of the appellant, set aside the sentence or sentences imposed in the District Court on 20 August 2003, and in respect of the indictment, direct that judgments and verdicts of acquittal be entered.** **Applications for leave to appeal against sentence dismissed.**
CATCHWORDS:	APPEAL AGAINST CONVICTIONS: OFFENCES UNDER S 408C CRIMINAL CODE – DETERMINATION WHETHER APPLICANTS JOINED POLITICAL PARTY OR SEPARATE SUPPORT ORGANISATION – APPLICATION OF OBJECTIVE CONTRACT THEORY –

IRRELEVANCE OF STATEMENTS OF SUBJECTIVE INTENT OR INTERPRETATION – WHETHER POLITICAL PARTY AND SUPPORT ORGANISATION ARE "RELATED POLITICAL PARTIES" UNDER *ELECTORAL ACT* 1992 – WHETHER JURY ADEQUATELY INSTRUCTED ON AIDING UNDER S 7 CRIMINAL CODE – WHETHER INSUFFICIENCY OF CROWN EVIDENCE SUCH AS TO PRECLUDE FRESH TRIAL

Criminal Code (Qld), s 7, s 408C, s 668E
Electoral Act 1992 (Qld), s 3, s 6, s 70

Australian Energy Limited v Lennard Oil NL [1986] 2 Qd R 216, approved
Codelfa Construction Pty Ltd v State Rail Authority of New South Wales (1981-1982) 149 CLR 337, approved
Jones v Dunkel (1959) 101 CLR 298, considered
R v B & P [1999] 1 Qd R 296, considered
Sharples v O'Shea [2000] QCA 23; Appeal No 7592 of 1999, 10 March 2000, distinguished
Taylor v Johnson (1982-1983) 151 CLR 422, approved

COUNSEL: C E K Hampson QC, with K S Howe, for the appellant in CA No 270 of 2003 and for the applicant in CA No 275 of 2003
B W Walker SC, with P J Callaghan, for the appellant in CA No 274 of 2003
A J Rafter, with B G Campbell, for the respondent

SOLICITORS: Nyst Lawyers for the appellant in CA No 270 of 2003 and for the applicant in CA No 275 of 2003
Boe Lawyers for the appellant in CA No 274 of 2003
Director of Public Prosecutions (Queensland) for the respondent

[1] **de JERSEY CJ**: Each appellant was convicted by a jury in the District Court on 20 August 2003 of the offence, under s 408C(1)(f) of the Criminal Code, of dishonestly inducing the Electoral Commissioner (on 4 December 1997) to register "Pauline Hanson's One Nation" as a political party under the *Electoral Act* 1992 (although the Electoral Commissioner was lawfully entitled to abstain from doing that). Each was sentenced to three years imprisonment. The appellant Hanson was additionally convicted pursuant to s 408C(1)(b) of two offences of dishonestly obtaining property, $225,071.07 from the Electoral Commissioner on 2 September 1998 and $273,566.24 on 25 September 1998. She was sentenced to concurrent three year terms in respect of those offences.

[2] The first offence arose from Ms Hanson's presentation to the Electoral Commissioner on 15 October 1997 of an application to register the political party "Pauline Hanson's One Nation" under the *Electoral Act*. The Act required (s 70(4)(e)) that the application set out the names of 500 members of the party who were electors. The appellant Mr Ettridge arranged for the requisite list to be produced, for the purpose of presentation in support of the application for

registration, and it accompanied the application which was presented by Ms Hanson to the Electoral Commissioner.

[3] The Crown contended that those on the list were not members of the party, but members only of a separate, incorporated body, the Pauline Hanson Support Movement, and that appreciating that, the appellants dishonestly presented the list in support of the application for registration. There was direct liability in the case of Ms Hanson – who actually presented the list to the Electoral Commissioner, and liability under s 7 of the Criminal Code in the case of Mr Ettridge, on the basis he aided Ms Hanson. In convicting the appellants, the jury must of course have been satisfied of those matters beyond reasonable doubt.

[4] The second and third counts, in respect of the appellant Ms Hanson alone, concern payments made to her, as agent of the registered political party Pauline Hanson's One Nation, following the success at the 1998 Queensland State election of candidates endorsed by that party. The dishonesty found by the jury must have rested in the appellants' dishonestly securing the registration of the party on the same basis as involved in the first count – that is, relying on a list of names of persons purportedly being members of the party, but in fact, as the appellant Ms Hanson knew, members of the separate support organization.

[5] Those additional counts in respect of Ms Hanson were subsidiary to the subject matter of count one. Once registration of the political party, Pauline Hanson's One Nation, contemplated under count one, had been effected, then consequentially upon the subsequent electoral success of its endorsed candidates, the registered officer of that party was statutorily entitled to claim the payments which were in fact made. In that way, Ms Hanson's commission of the second and third offences charged was subsidiary to the first.

[6] Ms Hanson was represented at the trial by a solicitor. Mr Ettridge represented himself. Each was represented by Counsel on the hearing of the appeal.

[7] Ms Hanson appeals against her conviction on a number of grounds. The main ground is that the Crown did not establish beyond reasonable doubt that the persons named on the list accompanying the application to register the party were not members of the party (and were members of a separate, support organization). Counsel for Ms Hanson submits the position for which she contends is so clear that the learned trial Judge should have directed an acquittal. Alternatively, the persons named on the list were members of a "related political party", it is submitted, so that the statutory requirement was in fact met. Ms Hanson also contends that five particular pieces of evidence were wrongly admitted (concerning "levels of membership" of what may generically be termed "One Nation"), and alternatively, their having been admitted, the Judge failed to direct the jury properly that the evidence did not bear on the question with what entity contracts of membership were effected. Ms Hanson contends that additional pieces of evidence, prima facie admissible against Mr Ettridge, should not have been admitted in her trial, because "highly prejudicial" to her position. She challenges a pre-trial ruling of another Judge against separate trials, that Judge having rejected a contention that disproportion between the evidence separately admissible against the respective accused would prejudice the appellant Ms Hanson. Ms Hanson challenges the trial Judge's refusal to discharge the jury when Mr Ettridge elicited findings of an earlier civil proceeding in the Supreme Court concerning the registration of One Nation.

She also challenges the trial Judge's pre-trial refusal permanently to stay the indictment, essentially on the basis of adverse publicity. She generally challenges the summing up for lack of necessary precision, and particularly the Judge's failure to remind the jury of the evidence of one Targett, the sole witness called for Mr Ettridge.

[8] For his part, Mr Ettridge challenges the trial Judge's rejection of a submission of "no case to answer", on the ground the evidence was not capable of establishing beyond reasonable doubt that the list accompanying the registration application did not name 500 members of the party, or members of a related political party. He separately criticizes the summing up for want of any direction as to "the manner in which a person could become a member of a political party", as to whether those named on the list might have been members of "a related political party", and as to what is involved in aiding under s 7 of the Criminal Code. Mr Ettridge also challenges aspects of the cross-examination of his witness Mr Targett, and her Honour's failure to refer to Mr Targett's evidence in her summing up.

[9] Each appellant separately applies for leave to appeal against sentence, on the ground the sentences imposed were manifestly excessive.

[10] The issue of fundamental significance is whether, on the evidence adduced, the Crown could establish beyond reasonable doubt that those named on the list accompanying the application for registration of the political party were not members of Ms Hanson's political party, but were members only of the separate organization, Pauline Hanson Support Movement.

Proof that named persons were not members of Pauline Hanson's One Nation

[11] The verdicts posit the jury's satisfaction beyond reasonable doubt that those named on the list were not members of the political party, and that the appellants knew that. I deal first with the question whether, notwithstanding the jury's satisfaction, the evidence was capable of supporting the conclusion that those on the list were not members of the political party. The appellants contend that the evidence necessarily warranted the conclusion that they were members of the political party.

[12] The Pauline Hanson Support Movement was established in late 1996. It was incorporated in March the following year. Its head office was located, some time later, in Sydney. One of its objects was to remain a non-political support organization for Pauline Hanson.

[13] A separate organization, the political party Pauline Hanson's One Nation, was constituted, by a resolution of Ms Hanson, Mr Ettridge and Mr David Oldfield, on 23 February 1997. That organization was a registered association not separately incorporated, also with its office in Sydney. It was registered federally as a political party on 27 June 1997, and in Queensland on 4 December 1997.

[14] In order to determine which organization an applicant for membership joined, it is necessary to examine all of the available evidence of the application to join, and of the treatment and result of the application. On the evidence available here, each person whose name appears on the contentious list provided to the Electoral Commissioner filled in an application form headed "Pauline Hanson's One Nation", which is the name of the political party, and sent it, as requested on the form, to

"Pauline Hanson's One Nation" at a post office address at Manly, New South Wales. The membership fee paid by those applicants was of the order of $40/$50. The application was processed at the Manly office by Ms Wright, an employee of the party. She did that at the request of Mr Ettridge, who was responsible for the operation of the Manly office and was a member of the management committee of the political party. The applicant was issued with a receipt in the name of the political party, and a membership card, again recording the name of the party and stating:

> "Members of Pauline Hanson's One Nation are dedicated to assisting candidates endorsed by Pauline Hanson to win seats in the next Federal Election."

The name of the applicant was entered upon the membership list, maintained by the party.

[15] Applying orthodox contract theory, the aggregation of those objective circumstances suggests strongly that the applicant offered to join the political party, which then communicated its acceptance of the offer by the provision of the membership card.

[16] On 24 May 1997, the National Management Committee of the Pauline Hanson Support Movement had resolved in these terms:

> "Two levels of membership
>
> (1) One Nation members have full voting rights.
>
> (2) Pauline Hanson One Nation supporters have all rights of membership other than voting rights."

The Crown contention at the trial was that both those species of membership concerned membership within the support movement: how, it was asked, could the support movement be making determinations upon membership issues in relation to the political party? Certainly the voting rights of the "One Nation members" – being those in issue here – must be read as rights exercisable within the support movement, not the political party. The second tier members, the "Pauline Hanson One Nation supporters", paid only $5 membership fees, and lacked voting rights. The membership cards issued to those second tier members, processed through the support movement branches unlike the higher level applications which were processed through the political party head office, were also distinguishable in presentation from the cards issued to "One Nation members".

[17] The Crown position was consistent with many public declarations by the appellants, and written confirmation to the same effect, that there were intended to be, and were, only three members of the political party, themselves and Mr David Oldfield. But the constitution of the political party imposed no such limitation. The limitation was intended to be achieved in practice by the Management Committee's discharging its role under the constitution, in determining whether to admit or reject applicants (cl 9), by not admitting further members. The evidence did not however disclose any intervention by the Management Committee in relation to any application prior to the despatch of membership cards and the entry of the name of the applicant upon the party's membership register.

[18] Part of the matrix of fact against which one determines the contractual position is anything relevantly known to an applicant of the process for receipt and treatment of applications. It was not clearly established what, precisely, particular applicants knew. The membership application forms were part of the support organization

branch "starter kits". If an applicant had examined the starter kit, he or she would have noticed a distinction consistently drawn between the political party and the support movement; that $5 membership applications were processed without "head office", Manly involvement; and that to be elected to hold office in a support movement branch, the person needed to be a "One Nation member". None of that, if known, should objectively have led an applicant for the higher level membership to the view that he or she was seeking to join the support organization, not the party.

[19] The only objectively discernable circumstance supporting the Crown position in any degree is the content of the reverse-side of the higher level membership card, which sets out Pauline Hanson's goals and as well, the goals of the support organization. There may be two explanations for that, consistently with the person's nevertheless having been admitted to membership of the political party. The first is that providing information about both aspects of the overall organization would be of general interest to party members. The second, more likely, explanation is that upon taking up the higher level One Nation membership, an applicant effectively joined both the party and the support organization. As has been seen, that level of membership accorded voting rights exercisable at the support organization branch meetings.

[20] Much of the evidence led at the trial amounted to the subjective interpretations of the applicants for membership and the appellants of the party structure, as to what was intended and what was in fact achieved. The applicants for the most part apparently believed they had joined the party. On the other hand, the appellants were at pains to stress that the only members of the party were themselves and Mr Oldfield. Although evidence of various statements of that ilk made orally or in writing was admissible, so far as it came from the appellants, in relation to proof of the dishonesty alleged in the charge, those subjective interpretations could not legitimately aid a determination of the scope of the contracts entered into by the applicants for membership including identifying the contracting parties. That fell to be determined by reference to the objectively discernable circumstances of and surrounding the execution and submission of the applications and their treatment by the recipient.

[21] It is objective, rather than subjective, considerations to which regard must be had in the resolution of such an issue. See *Taylor v Johnson* (1982-1983) 151 CLR 422, 429. The matter was extensively examined by the High Court in the earlier case of *Codelfa Construction Pty Ltd v State Rail Authority of New South Wales* (1981-1982) 149 CLR 337, where, in the context of the implication of terms, Mason J (as he then was) disavowed (p 352) referring to "the actual intentions, aspirations or expectations of the parties". Evidence of those matters was "not receivable". The court looks rather to "the objective framework of facts within which the contract came into existence, and to the parties' presumed intention in this setting". The court thereby focuses (p 353) "upon the presumed, rather than the actual, intention of the parties". Reference might usefully also be made to the statement by Thomas J, as he then was, in *Australian Energy Limited v Lennard Oil NL* [1986] 2 Qd R 216, 238:

> "When evidence of subsequent conduct contains a party's view of the meaning of the contract, it is not generally permissible to use it to persuade the court what the parties really intended."

[22] At the trial, the Crown appears to have proceeded on the basis that evidence of statements of intent and expressions of opinion of that character, by the appellants, was admissible, as relevant to the determination of the question with whom the contracts were effected. They were presented as admissions against interest. That position, said to be supported by *Sharples v O'Shea* [2000] QCA 23, was maintained at the hearing of the appeal.

[23] *Sharples v O'Shea* was a civil case, involving different parties, in which the registration of Pauline Hanson's One Nation was set aside. That learned trial Judge, sitting without a jury, held the list provided in support of the application for registration did not contain the names of members of the party, but the names of members of the support organization, and that it was fraudulently presented.

[24] Among the evidence apparently accepted by her Honour in those civil proceedings was the evidence of Andrew Carne that, quoting from the judgment, "David Ettridge said he needed to produce a list of 500 members to register Pauline Hanson's One Nation in Queensland. Mr Carne asked him how they could use the database which included people who were not members of the political party. Mr Ettridge said that it did not matter as "they are only public servants. They just want to see a list of names, they wouldn't check it out" … Mr Carne printed out a full list of Queensland names which was given to Mr Ettridge who apparently then lost it and asked Mr Carne to explain by telephone to the office administrator, Claire Wright, in Sydney how to extract the Queensland names from the database." That evidence appears to have borne significantly on the conclusion the list was a sham. Mr Carne did not give evidence at this criminal trial, and evidence was not otherwise given of that alleged statement by Mr Ettridge.

[25] The learned trial Judge allowed the admission of evidence of the various statements by the appellants, as to structure and limitation on membership of the party etc, and relied on that evidence to support the inference, otherwise emerging from the evidence (especially, one might think, Mr Carne's), that the list was fraudulently prepared and presented.

[26] Neither of the present appellants gave evidence in those trial proceedings. Her Honour therefore relied on the principle in *Jones v Dunkel* (1959) 101 CLR 298 that "an inference may be drawn contrary to the interests of a party who, although having it within his or her power to provide or give evidence on some issue, declines to do so." That approach on her part, as endorsed by the Court of Appeal, was open in those proceedings.

[27] The issue presently agitated, the precise delineation of the contracts of membership and particularly their parties, was apparently not ventilated before the trial Judge in *Sharples v O'Shea* in the manner in which it was approached here. The approach taken there, both at trial and with appeal endorsement, does not support the conclusion that evidence of the character earlier described was admissible in these proceedings in the criminal jurisdiction, proceedings constituted among different parties, as an aid to the determination of the identification of the parties to the contracts of membership.

Conclusion

[28] The preponderance of the available evidence points to the conclusion that the applicants for membership became members of the political party Pauline Hanson's One Nation, or more probably, of both that political party and the support movement. The Crown cannot on this evidence safely sustain the position upon which the convictions depend, that is, that the list comprises the names of persons who were not members of the political party but were members of the support movement only. It would be unsafe to allow the convictions to stand in these circumstances. The convictions must therefore be quashed, and because a retrial would in the circumstances be futile, judgments and verdicts of acquittal entered (s 668E(2) Criminal Code).

[29] While it is strictly unnecessary to canvass the other issues raised in the proceeding, I will briefly express my views on two others which were the subject of substantial submissions.

A "related political party"

[30] On the assumption that those named on the list were members only of the support organization, as the Crown contended, the question may have arisen whether that support organization was, vis a vis the political party, a "related political party" within the meaning of the *Electoral Act* 1992. Under s 70(4)(e), an application for registration of a party must set out the names and addresses of 500 "members of the party" who are electors. That is defined, by s 3, as "a member of the political party or a related political party". Political parties are "related" (s 6) if "one is a part of the other" or "both are parts of the same political party". A "political party" is "an organization whose object, or one of whose objects, is the promotion of the election to the Legislative Assembly of a candidate … endorsed by it or by a body or organization of which it forms a part" (s 3).

[31] First one would ask whether the support organization could be considered a political party, or part of a political party. Addressing its objects, one notes cl 3, "to assist any endorsed candidate with local fundraising and advocacy", and cl 5, "to identify from time to time and recommend suitable local candidates for endorsement by Pauline Hanson". Those objects may arguably amount to the intended "promotion of the election to the Legislative Assembly of a candidate … endorsed … by a body or organization" of which the support movement forms part, within the scope of the definition of "political party" in s 3.

[32] More broadly it would I consider have been arguable that the relationship between the party and the support organization was sufficiently close to warrant the conclusion that one was part of the other, or both were parts of the same political party within the scope of s 6.

[33] The Crown relied on a view expressed by Ms Wright, the branch coordinator of the support movement employed in the Sydney office, that "the Pauline Hanson Support Movement was a supporters' organization which was quite separate and distinct from the political party …". That amounted however to no more than her opinion on the matter. Whether the entities were related falls to be determined objectively.

[34] The appellant Ettridge raised, at an early stage, the question whether or not the support movement was "part of the same organization" as the political party (on

16 January 2003, at pp 131-2 and on 6 June 2003 at p 202). It was in my view a live issue which, having been raised, should have been left for the consideration of the jury, such that the absence of any reference to the point in the summing up amounts to a substantial deficiency. This would have warranted the quashing of the convictions and retrials.

Absence of instruction on s 7 Criminal Code

[35] Ordinarily, the jury should have been instructed that, to warrant a conclusion that in having the list of names generated by the computer in Sydney and providing it to Ms Hanson who lodged it with the application, Mr Ettridge "aided" Ms Hanson in the commission of the offence contained in count one, Mr Ettridge must knowingly have done the acts for that particular purpose – facilitating Ms Hanson's dishonest provision of that document to the Commissioner in support of the application. See *R v B & P* [1999] 1 Qd R 296.

[36] There was however an admission by Mr Ettridge, in a statement to the investigating police which was admitted into evidence, that he provided the list to Ms Hanson for that very purpose: see p 2290 vol 10. That being the only evidence on the point, the absence of further instruction on the mechanics of s 7 was not, fortuitously, a deficiency in the summing up with any practical ramification.

[37] In light of the above, it is not necessary to deal with other points of criticism of the summing up, or the conduct of the trial, or the applications for leave to appeal against sentence.

Generally

[38] The court strives to deliver an early judgment where there is any reasonable prospect an appellant in custody will consequently be released. Hence the comparatively early publication of these reasons. If one or both of the other Judges on the court agrees in them, the appellants will at once be released and subject to no retrial.

[39] It should be understood that result will not mean the process has to this point been unlawful. While the appellants' experience will in that event have been insupportably painful, they will have endured the consequence of adjudication through due process in accordance with what is compendiously termed the rule of law.

[40] Members of the public will undoubtedly however query why the crystallization of the appellants' current position need have awaited a lengthy trial – approximately five weeks, and then an appeal. There is no easy answer to that question, although reference may be made to the extent, and level, of the involvement of lawyers throughout. Although I do not say this critically of Ms Hanson's representation, it is my view that had both appellants been represented by experienced trial counsel throughout, the relevance of all of the evidence would more likely have been addressed with appropriate precision.

[41] The case will in my view provide a further illustration of the need for a properly resourced, highly talented, top level team of prosecutors within or available to the Office of the Director of Public Prosecutions. In this complex case, which resulted

in a trial of that length, and the consumption of vast public resources, highly talented lawyers of broad common law experience should desirably have been engaged from the outset in the preparation and then presentation of the Crown case. I do not raise this critically of the prosecutors who were involved: my observation relates to the resourcing of the Office. Had that been done, the present difficulty may well have been avoided.

Orders

[42] I would make the following orders in respect of each appeal:

1. allow the appeal;
2. quash the conviction or convictions of the appellant, set aside the sentence or sentences imposed in the District Court on 20 August 2003, and in respect of the indictment, direct that judgments and verdicts of acquittal be entered.

[43] It being unnecessary to determine the merits of the applications for leave to appeal against sentence, those applications should formally be dismissed.

[44] **McMURDO P:** I have read the reasons for judgment of the Chief Justice in which the relevant facts and issues are set out. I agree with the Chief Justice that, for the reasons he gives, the prosecution could not establish beyond reasonable doubt on the evidence in this case that the list of over 500 names provided by the appellant, Hanson, to the Electoral Commissioner was a list of members of the Pauline Hanson Support Movement and not of the political party, Pauline Hanson's One Nation. I will repeat only those facts necessary to explain the following brief observations.

[45] The evidence led at the trial was that applications for membership of Pauline Hanson's One Nation were forwarded to the office of the political party, Pauline Hanson's One Nation, where they were processed. Mr Menagh received the membership applications, filled out the details in a book of butts, wrote out receipts and completed a membership card, which he returned to the applicant. The application forms were then filed and he handed the completed butts to Claire Wright or Kimberley MacLean, who would enter the information on the butts into a computer data base. Mr Menagh was employed and paid by the political party, not the support movement.

[46] Kimberley MacLean did not give evidence. Claire Wright was also employed and paid by the political party. In 1997 she helped set up the party's office where she was responsible for memberships. When an application form for membership arrived, the accompanying subscription was noted and banked. The application form was placed in a pile and subsequently a membership card and receipt was returned to each applicant. The applicant's details were placed in a book of butts and she entered that information into the computer's data base of members. In October 1997, the appellant Ettridge requested her to print out a list of 500 or more Queensland members of the party from the data base. She sorted the data base by postcode and printed out a list of names of over 500 Queensland members and handed it to the appellant Ettridge.

[47] The respondent contends that statements by the appellants and David Oldfield, who jointly constituted the all-powerful Management Committee under the party's Constitution, that they were the only members of the political party and that other "members" were members only of the support group, were admissible to show that

the names on the list given to the Electoral Commissioner were not in fact members of the political party, relying on observations of this Court in *Sharples v O'Shea and Hanson*.[1]

[48] It is self-evident that the *Sharples* case turned on different evidence than this case and that the lower civil standard of proof applied. The evidence of Andrew Carne was significant in the reasoning of the primary judge in *Sharples*:[2] Carne's undisputed evidence, referred to by the primary judge and set out in para [24] of these reasons, was capable of supporting the inference that the list of names Ettridge provided to Hanson for the Electoral Commissioner was not a list of members of the party. This evidence, combined with the terms of the party's Constitution and the admissions said to have been made by the Management Committee, which had exclusive power to admit members to the political party,[3] in the absence of any contrary evidence from members of the Management Committee, was capable of establishing on the balance of probabilities that the list of members was not a list of members of the political party, Pauline Hanson's One Nation.

[49] The evidence in this trial differed from that in *Sharples*. Significantly, Mr Carne was not called to give evidence, apparently because, as the learned primary judge reminded the jury in her summing-up,[4] the investigating police officer assessed him as having absolutely no credit.

[50] Unlike in *Sharples*, the evidence in the appellants' trial established that those named in the list provided by Hanson to the Electoral Commissioner applied to join the political party with the required subscription, which was accepted and banked; a membership card then issued and their names were entered on a computerised data base of members. Over 500 names of Queensland residents were selected by postcode and printed out as the list provided by Ettridge to Hanson for the Electoral Commissioner. Despite some confusing material in the starter kits, this evidence was undisputed and supported the inference that the people named in the list were members of the political party rather than the support group. In the absence of contradictory evidence, that evidence was sufficient to objectively establish their membership. The evidence of statements made by Ettridge and Hanson suggesting that those who applied to be members of Pauline Hanson's One Nation did not become members of the party but of the support group, was not evidence of the objective intention of the parties at the time of contracting to join the unincorporated association, the political party, Pauline Hanson's One Nation. That evidence was, however, directly relevant as to whether the appellants had a dishonest intention when they presented that list to the Electoral Commissioner and, as in *Sharples*, as to whether the membership committee in fact admitted the applicants as members of the party under cll 9 and 16 of the Constitution. The jury were not instructed as to this fundamental distinction and as to the use that could be made of that evidence. That in itself is sufficient to set aside the verdict. When all the evidence is considered, the prosecution was unable to negate the inference reasonably open that those on the list given to the Electoral Commissioner were members of the political party, Pauline Hanson's One Nation, and that the statements made by Hanson and Ettridge to the opposite effect were simply mis-information intended to confuse the membership and to entrench the Management

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1 [2000] QCA 23, Appeal No 7592 of 1999, 10 March 2000, [34].

2 *Sharples v O'Shea and Anor* [1999] QSC 190, No 6318 of 1998, 18 August 1999.

3 See cll 9 and 16 of the party's Constitution.

4 Appeal book, 1843.

Committee's grip on power under the party's Constitution. It follows that the evidence could not support a guilty verdict and a verdict of acquittal should be substituted.

[51] The appellants were convicted and sentenced on 20 August this year. It is common knowledge that convictions and sentences are subject to a lawful appeal process. The appellant Hanson appealed against her conviction on 26 August 2003 and applied for leave to appeal against her sentence on 27 August 2003; the appellant Ettridge filed his notice of appeal against conviction and his application for leave to appeal against sentence on 1 September 2003. The appellants' conviction and sentence attracted a deal of media attention and public interest. Senior members of the legislature, many of whom were trained lawyers, were reported in the media as making inappropriate comments about this case.

[52] The Prime Minister is quoted as saying: "on the face of it, it does seem a very long, unconditional sentence for what she is alleged to have done".[5]

[53] Former Federal Minister and now senior backbencher, Ms Bronwyn Bishop, was reported as likening the prosecution of this matter to something one would expect in Zimbabwe under the regime of the tyrant, Robert Mugabe:

> "It's gone beyond just political argy-bargy of political opponents … I've been very critical of her and her party, but this is something that is above and beyond that political argument – this is someone who has been sent to jail because she spoke her views and that is not acceptable in this country. Very simply, for the first time in Australia, we now have a political prisoner and I find that totally unacceptable … in a country where freedom of speech and freedom to act as a political individual is sacrosanct."[6]

[54] The New South Wales Premier was reported as saying that the sentence seemed excessive because it was "almost a crime without a victim".[7]

[55] Western Australian One Nation MP, Frank Hough, was reported as saying that Hanson had been "hounded into prison … . All she's guilty of is naivety and inexperience."[8]

[56] The Queensland One Nation leader, Bill Flynn, was reported as saying that he believed there had been "considerable political pressures" behind the case.[9]

[57] As far as I have been able to ascertain, there has been no retraction of any of these comments. If these observations were accurately reported, they are concerning. They demonstrate, at the least, a lack of understanding of the Rule of Law, the principle that every person and organisation is subject to the same laws and punishment and not to the arbitrary wishes of individuals or the passing whim of the day. Such statement from legislators could reasonably be seen as an attempt to

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5 Sydney Morning Herald, 26 August 2003; The Age, 26 August 2003; The Australian, 26 August 2003.

6 The Courier-Mail, 26 August 2003; Sydney Morning Herald, 26 August 2003; The Australian, 26 August 2003.

7 The Australian, 22 August 2003.

8 The Courier-Mail, 21 August 2003.

9 The Courier-Mail, 21 August 2003.

influence the judicial appellate process and to interfere with the independence of the judiciary for cynical political motives.

[58] Fortunately, many legislators asked to comment on the case responded with appropriate restraint. For example, the Minister for Foreign Affairs, Mr Downer, pointed out that Hanson's sentence "was a legal decision, not politically driven"[10] and the Deputy Prime Minister and Federal Treasurer noted that "the matter was one for the courts".[11]

[59] A failure by legislators to act with similar restraint in the future, whether out of carelessness or for cynical short-term political gain, will only undermine confidence in the judiciary and consequentially the democratic government of this State and nation.

[60] I agree with the reasons and orders proposed by the Chief Justice.

[61] **DAVIES JA:** I agree with the reasons for judgment of the Chief Justice and with the orders he proposes.

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10 The Courier-Mail, 22 August 2003, p 5; The Australian, 22 August 2003, p 2.

11 The Age, 23 August 2003; Sydney Morning Herald, 26 August 2003.