

LAWS1205 AUSTRALIAN PUBLIC LAW - CASES

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The Legislature

Section 44

Re Canavan

- SUMMARY:
 - Concerns Section 44(i), which states that any person who “*Is under any acknowledgement of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or citizen of a foreign power*” shall be ineligible to sit for Parliament. Found that unless
- FACTS:
 - Multiple Australian Senators and Representatives were found to have dual citizenship, upon making inquiries with the relevant embassies. They were referred to the High Court on the matter. Before this case, obiter from *Sykes v Cleary* stated that a person seeking to be elected and sit as an MP would need to take “all reasonable steps to divest” themselves of any foreign citizenship they might have. “What amounts to the taking of reasonable steps ... must depend upon the circumstances of the particular case”.
 - Canavan was not disqualified because the High Court was not satisfied that he *actually was* an Italian citizen; due to the potential for Italian citizenship to be conferred indefinitely over time due to its hereditary nature, they understood that some positive steps would need to be taken precedent to citizenship.
 - Xenophon was not disqualified because the alleged form of citizenship he had (‘British Overseas Citizenship’) was not a form of ‘citizenship’ as understood; hence, we must determine the *rights and privileges* of citizenship. Also, Xenophon had never applied for this; it was ‘thrust upon him’ due to the circumstances of his father.
 - All the others were deemed to be foreign citizens, whether they knew or not; they did not take ‘reasonable steps’ for renunciation, and therefore were all disqualified. Note that the court looked **really carefully** at what foreign law required.
- RULING:
 - In *Re Canavan*, it was stated that if renouncing one’s citizenship required extreme steps (e.g. if it required partaking in a renunciation ceremony in a dangerous country), then s44(i) would not result in disqualification. Hence, s44(i) will not be applied “where to do so would be to undermine the system of responsible and representative government established under the Constitution”. This is the ‘**constitutional imperative that an Australian citizen not be irremediably prevented by foreign law from participation in representative government**’, and is a rephrasing of the ‘reasonable steps’ test.
 - It was also established that it *does not matter* whether the MP knew that they were a dual citizen. It would be ‘inimical to the stability of representative government’ to have any uncertainty as to whether individuals were capable of serving in the Commonwealth Parliament. Now, the question becomes - since we know what ‘unreasonable steps’ are (e.g. posing danger to an MP), what are ‘reasonable steps’?

Re Culleton

- SUMMARY:
 - Dealt with the issue of whether someone presently convicted of an offence could run for office. Short answer was ‘no’.
- FACTS:
 - Sen. Rod Culleton (a One Nation Senator who later resigned the party and sat independently) who had (in early 2016) been convicted in absentia in NSW of larceny for stealing someone’s car keys during a dispute. On 8 August 2016, the NSW Local Court annulled the conviction; but on 25 October, they found that he *was* guilty of an offence (he had pleaded guilty), but the charge had been dismissed before going to conviction. Culleton had to pay compensation of \$322.
- RULING:
 - It was decided by the High Court in that case that the Constitution’s framers had decided to make it not only so that people convicted of 1 year or more in prison could not sit, but that anyone *who was so able to be convicted* could not be chosen in the first place. The reason for this is that they didn’t want long periods of confusion while waiting for annulments of convictions in which it would be unknown whether someone could sit or not.
 - Hence, the High Court found that **if a person is able to be convicted of more than one year on the date of their nomination, they cannot be nominated**. That is the functional purpose of s44(ii).