

Draft Notes for Callover

AD: 2008-02-04

Full text of practice note 1 plus annotations in **bold**.

**Request leave to use recording device pursuant to Order 10 Rule 9.
(Unrepresented, difficult to take notes at same time. Would otherwise need to buy expensive transcript.)**

FEDERAL COURT OF AUSTRALIA

Practice Note No 1

APPEALS TO A FULL COURT

Practice Note No 1 issued on 14 August 2003 is revoked and the following Practice Note is substituted.

This Practice Note applies to all parties to appeals before the Full Court, including parties who are not represented by a legal practitioner unless the Court or a Judge otherwise orders.

The Practice Note also applies to other proceedings before the Full Court, in so far as the practices and procedures described are appropriate to such other proceedings.

A – Listings for Full Court sittings

The District Registrar will prepare a list of all appeals and other matters pending for hearing before a Full Court.

The District Registrar will forward a notice of call-over to the solicitors on the record and to any unrepresented parties. The notice will state the date of the next call-over.

The list will be called over before a Judge or a Registrar. At the call-over the parties must be in a position to advise the Court:

- 1 of the nature of the matter and the essential issues and how they arise;
 - 1.1 **Matter concerns preventing or recovering damages, including punitive damages, for hindering and interfering with freedom of election, malfeasance, abuse of power etc. Administrative law, Constitutional law, Elections, breach of statutory duty.**

- 1.2 Prerogative writs and/or injunctions and/or orders for review requiring Australian Electoral Commission (AEC) and an Australian Electoral Officer (AEO), Daryl Wight to perform their duties by enrolling the applicant as a silent elector and accepting nomination as a candidate to be listed on ballot paper at current election of Senators representing the people of Victoria and/or declarations and damages, including punitive damages. Jurisdiction also under s. 383 of Commonwealth Electoral Act 1918 (CEA).
- 1.3 Original form 5 prepared in haste for interlocutory orders to prevent damage arising from candidate being intimidated from nominating by requirement to disclose current address on nomination form as a result of failure to enrol as a silent elector.
- 1.4 Amended form 5 dated 2 November 2007 prepared in even greater haste in compliance with undertaking for oral hearing before Jessup J on the afternoon of 1 November to take all necessary steps “as soon as you humanly can” to file in rejection of nomination that occurred while Ryan J was delivering judgment that morning.
- 1.5 May require amendment with grounds under AD(JR) Act pursuant to Order 54A Rule 3(2) and Order 54 as adapted, including particulars of fraud and bad faith as required by 54.2(2).
- 1.6 Will also require particulars of damage and grounds for exemplary damage with particulars of malice, fraudulent intention, fraud, misrepresentation, breach of trust, wilful default and undue influence pursuant to Order 10.
- 1.7 Also correction of an obvious slip (replace “respondent” by “applicant” in claims 5 and 7 of amended application dated 2 November 2007).
- 1.8 Interlocutory relief not obtained. At first directions hearing application was peremptorily dismissed without notice before appellant could seek interlocutory orders and directions pursuant to rules 1.9, 3.3 and 10.5.
- 1.9 Apart from the procedural and jurisdictional issues arising from the peremptory dismissal appealed against, the essential issues are whether the appellant is entitled to be enrolled and nominated as a candidate under his current name, which is not the name on his driver’s licence, and whether itinerant electors are entitled to apply for their enrolment details to be suppressed in the same way as electors with fixed addresses.
- 1.10 The issues arise from the respondent’s refusal to permit the appellant to vote and to be nominated as a candidate and threats to do harm to the appellant and family by disseminating enrolment details as part of a campaign waged by the AEC against political opponents of the major parties. The improper purpose behind the respondent's refusal to perform their duties in this election is that they were responsible for the issue of a fraudulent arrest warrant for the applicant intended to cause some incident during the 2004 general elections and wished to avoid the embarrassment of having to explain at the start, rather than at the end, of an election campaign why they had obtained the warrant, why it had

not been executed and why they had persisted in harassing the applicant's family instead of the applicant.

- 1.11 Much of the evidence establishing malfeasance, abuse of power, malice and bad faith etc in relation to the respondents conduct in the recent Senate election also establishes that damage has been caused over a period of many years, especially within the last 6 years, by fraudulently obtaining a warrant to arrest the appellant during the 2004 Federal Elections and repeatedly raiding the homes of family members on that pretext. When particulars are filed, the claim will also be seeking damages for other causes of action such as abuse of process and malicious prosecution in the same series of transactions that culminated in the most recent breaches of statutory duties and interference with free elections.**
- 2 of the nature of any cross appeal filed or to be filed in the near future;
 - 2.1 Counsel for Respondents announced at the hearing on 14 November 2007 before Gordon J that there were no instructions for them to appeal a decision of the AAT that was favourable to the appellant and is binding on the respondents. Time for any such appeal has now expired.**
- 3 of the nature of any notice of contention filed or to be filed in the near future;
 - 3.1 As no orders unfavourable to appellant were made by AAT, appellant has not appealed the AAT decision. The summary judgment appealed against was however substantially based on a misunderstanding of the AAT decision and reasons for decision based on a false affidavit from the respondents which misrepresented the nature of the hearing by omitting all but 2 pages of the 32pp application to the AAT and omitting the "T documents" prepared by the respondents pursuant to s 37 of the AATA.**
 - 3.2 It is inevitable therefore, that in hearing the appeal, this Court will also be considering the AAT matter and should have all relevant documents in the Appeal Book or by affidavit. Deliberate omission by respondents in affidavit seeking summary judgment has resulted in the relevant documents only being on the AAT file but not on the Federal Court file despite a judgment purportedly based on the AAT matter.**
 - 3.3 Despite not needing to appeal the AAT decisions made so far, appellant will be contending that interpretation of the CEA by AAT is wrong on 2 issues:**
 - 3.3.1 Driver's licence in previous name is evidence of applicant's previous name and therefore of identity to establish entitlement to enrol and vote in current name. Nothing in CEA requires documentary evidence of current name.**
 - 3.3.2 CEA s.104 is applicable to "silent" enrolments by itinerant electors.**
- 4 whether there are any motions still to be dealt with;
 - 4.1 Leave to record proceedings.**
 - 4.2 Leave for appellant's outline to exceed 10 pages.**

- 4.3 **Leave for appellant to file new affidavit evidence.**
- 4.4 **Appellant to have liberty to apply for further orders and directions.**
- 4.5 **Stay costs order made by Jessup J on 1 November 2007.**
- 4.6 **Direct Registrar to obtain transcript of judgment by Jessup J.**
- 4.7 **Direct inclusion of AAT application, “T documents” and all correspondence in Appeal Book.**
- 4.8 **Direct respondents to prepare “T documents” and their correspondence in electronic form.**
- 4.9 **Dismiss, with costs on a full indemnity basis, respondents notice of motion that:
 - 1. *The title of the proceedings be amended to describe the Applicant as “Albert Langer using the name Arthur Dent”.***
- 4.10 **Dispense with notice for summary judgment of parts of the appeal pursuant to s. 31A(1) of the Federal Court of Australia Act 1976 (FCAA).**
- 4.11 **Summary judgment for the applicant on each of the orders sought numbered 1, 5, 11 and 12 on grounds that the respondents have no reasonable prospects of successfully defending the appeal.**
- 4.12 **Separate the hearing of orders sought numbered 6, 7, 9 and 10 as:
 - 4.12.1 **they concern matters that are of greater public importance and urgency than the rest**
 - 4.12.2 **can be determined independently of the rest**
 - 4.12.3 **are capable of largely determining the outcome of the whole matter**
 - 4.12.4 **raise important questions of law****
- 4.13 **Expedite the urgent hearing of orders sought numbered 6, 7, 9 and 10**

whether the matter is ready to be listed for hearing;

- 4.14 **On damages, nowhere near ready. As a result of their pre-emptive strike by applying for summary judgment without notice, the respondents have not yet even been informed of the full extent of the claims they will be defending against but only have the hastily prepared affidavit and claim for interlocutory orders.**
- 4.15 **On review and correction of their decisions in relation to enrolment and nomination, appellant is ready and respondents must also be taken to be ready since they applied for summary judgment.**
- 4.16 **Summary judgment for the appellant on enrolment is appropriate since, contrary to Gordon J, the appellant has already been successful as the respondents are bound by the AAT's decision ordering them to enrol the applicant and are stopped from denying that they contravened the CEA by failing to enrol the applicant.**

- 4.17 **On silent enrolment it is appropriate for the AAT to hear and determine the application, including the factual issues and merits before it reaches a Full Court.**
- 5 whether the appeal index been settled;
5.1 **Appointment with Registrar for settling is 29 February.**
- 6 whether the appeal books have been prepared;
6.1 **All documents proposed for inclusion in the draft index are in the volumes here in court today. Can print or file electronically as soon as index settled.**
- 7 whether any consideration has been given to conducting the appeal electronically;
7.1 **Appellant is equally unfamiliar with practices in physical and electronic courtroom and unable to say whether the nature of these proceedings would be more suitable for one than the other.**
7.2 **Appellant is comfortable with computer technology and assumes that electronic courtroom could be well suited to disposing of any preliminary matters that cannot be dealt with either at callover or by registrar.**
- 8 whether there is any degree of urgency in listing the matter;
8.1 **Yes, for those parts proposed to be heard separately and expedited.**
8.2 **See also the "TAKE NOTICE" on first page of Notice of Appeal.**
- 9 of the names of counsel briefed to appear;
9.1 **None so far.**
- 10 whether counsel is briefed to appear in any other matters that may be listed in the same Full Court sittings including matters to be heard elsewhere in Australia;
10.1 **Respondents are unpredictable. If they decide to execute the arrest warrant they obtained in 2004 during these proceedings, appellant could be required to attend application for Habeas Corpus. Would suggesting joining it to these proceedings.**
- 11 of dates in the proposed sittings when the parties or their representatives are not available for hearing and the reasons for non-availability.
11.1 **Relevant sittings dates are:**
11 February - 7 March 2008. Appellant has medical appointment on Monday 25 February
5-30 May 2008. Currently available.

The parties must also be in a position to provide details of any other matters that may affect the listing of the matter. Such other matters may include:

- 12 identification of other pending cases involving similar legal issues;
12.1 **Remainder of AAT matter 2007/5484 concerning silent enrolment as explained above.**

12.2 High Court appeal from previous Full Court decisions mentioned below has still not been heard.

- 13 whether any party intends to argue that a previous Full Court decision should not be followed;
- 13.1 **In [1996] FCA 1295 (7 March 1996) the decision to vacate the costs order made a week earlier in [1996] FCA (1 March 1996) should have explicitly included the costs order associated with the sentence for contempt that was commuted to the rising of the court. Given the nature of the Australian Electoral Commission and the Australian Government Solicitor it was unwise to rely on common sense.**
- 14 whether leave to appeal or leave to extend time for the filing and service of the notice of appeal is required;
- 14.1 **Agreement to extend time for appellant to file appeal against AAT decision to coincide with appeal from Gordon J was recorded in transcript (P-15).**
- 14.2 **If necessary, time should be further extended corresponding to orders sought number 11.**
- 15 whether any party seeks expedition of the hearing of the appeal;
- 15.1 **Appellant seeks expedition of parts of the appeal as explained above.**
- 16 whether any Judge of the Court, other than the primary Judge, has made adverse findings as to the credit of any party, or the principals of any party, to the appeal;
- 16.1 **In addition to primary judges Gordon, Jessup and Ryan JJ, Black CJ should not sit on the appeal in view of item 13 above.**
- 17 whether the appeal is said to raise a particularly important issue of law and, if so, what issue is raised.
- 17.1 The appeal raises particularly important issues of law concerning:
- 17.1.1 enforcement of free elections by the courts and whether electoral officials can inflict damage with impunity
 - 17.1.2 how judges are to handle applications for summary judgment
 - 17.1.3 how the intertwining of matters under review by the AAT at the same time as proceedings in court should be dealt with.