

JERSEY / JUDGMENT

Le Cornu and Risoli -v- AG [2014]

JRC 256 (23 December 2014)

[2014] JRC 256

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judgment

the commissioner: 1. On 20 th November, 2014, the Court dismissed the applications of Nicholas Basil Le Cornu and Gino Risoli to declare a casual vacancy in the election held on 15 th October, 2014, for three deputies in the St Helier District No. 1 or to declare the whole of that election void, and we now set out our reasons. 2. We set out the facts as we found them to be having considered all of the evidence before us. There were six candidates for the election, namely the two applicants, Nicholas Le Cornu and Gino Risoli and the third to sixth respondents, namely Scott Wickenden, Judith Martin, Russell Labey and Shannen Kerrigan. 3. The votes cast for the candidates at the election were as follows:- Judy Martin Russell Labey Scott Wickenden Shannen Kerrigan Nicholas Le Cornu Gino Risoli 4. The successful candidates were therefore declared to be Judy Martin, Russell Labey and Scott Wickenden and they were sworn in on 3 rd November, 2014. 5. The issue relates to the nomination form submitted by Scott Wickenden at the nomination meeting held on 17 th September, 2014. Article 20(4) of the Public Elections (Jersey) Law 2002 ("the Elections Law") provides as follows:- "(4) The nomination of a candidate for a public election shall be made by the production to a nomination meeting of a document, in such form as the States may prescribe by Regulations, subscribed by a proposer and 9 seconders, all 10 of whom shall be persons entitled under Article 2(1), (1A), (2) or (3) to vote for that candidate in any poll held for the election." 6. The evidence shows that one of the nine seconders required, namely Sarah Tompkins who had known Scott Wickenden since early childhood, was not entitled to vote for him. She had been living at Flat 2, Charles Place, Charles Street, St Helier, which is within the St Helier District No 1. On 18 th August, 2014, she moved a short distance to 30 Belmont Road, St Helier. A few weeks later, she signed Scott Wickenden's nomination form, believing that she was still resident in St Helier District No 1. 7. Martin Roberts, the Human Resources Director for the Parish of St Helier, whose duties include oversight of the electoral registers for the parish of St Helier, confirmed that 30 Belmont Road is situated in St Helier District No 2, but it is adjacent to the boundary between Districts No 1 and No 2 - indeed the address 33 Belmont Road is situated in St Helier District No 1. 8. Shortly prior to the nomination meeting, Eric Blakely, the electoral officer for the Parish of St Helier, requested all candidates in the general election to submit their nomination forms to him so that he could check that the proposer and seconders were registered in the electoral lists for the relevant districts. Scott

Wickenden submitted his form as requested, and it can be seen from the form that Eric Blakely had gone through it, ticking the entry for the proposer and each of the nine seconders on the left hand side and inserting the requisite electoral numbers. On 16 th September, 2014, and in error, he confirmed to Scott Wickenden that the nomination form had been correctly completed. 9. At the nomination meeting held on 17 th September, 2014, Scott Wickenden passed the nomination form to Martin Roberts, who was acting as clerk to the meeting, who in turn handed it to the Constable, who was presiding. Scott Wickenden had with him Andrea Mallett, who was on the electoral register for St Helier District No 1, who was prepared to act as a seconder if any discrepancy had been highlighted. Nothing was said in relation to the nomination form by any of the parish officials or by any member of the public. 10. On 8 th October, 2014, Sarah Tompkins discovered, when searching for the location of the polling station where she was registered to vote, that her new address was within St Helier District No 2. She posted a status update on the public wall of her Facebook account because, having decided which candidates within St Helier District No 1 she intended to vote for, she would now have to find other candidates to vote for. She received comments on the post from Scott Wickenden's mother and sister, none of which related to the nomination form. She sent Scott Wickenden a private message via Facebook on Thursday, 9 th October, 2014, saying that it appeared she would not be able to vote for him. She made no reference to her ability to second him in the nomination form as she did not think that this was affected. 11. Mr Le Cornu and Mr Risoli were suspicious that as a consequence of these communications, Scott Wickenden must have been aware of the defect in his nomination form prior to the election and they were given leave to cross examine him. Suffice to say that we were impressed by Scott Wickenden whom we found to be an honest and straight forward witness. We accepted his evidence that he had not seen her Facebook post and the responses to it and had not discussed the same with his mother and sister (the latter living in England). He was more than fully occupied with what was his first election campaign, going from door to door delivering leaflets. He received numerous Facebook messages (he had 717 Facebook friends) many of which went unread at this time as did Sarah Tompkins' message. He was first alerted to the problem with the nomination form on 17 th October, 2014, after the election. 12. To summarise we therefore found on the evidence before us that:- (i) Scott Wickenden's nomination form had not been completed in accordance with the Elections Law. (ii) There was no evidence to suggest that Scott Wickenden knowingly permitted an invalid nomination paper to be submitted. The error was inadvertent and technical in nature. (iii) The nomination form had been solicited by Eric Blakely, the electoral officer, specifically for the purpose of checking and he had confirmed to Scott Wickenden that it was in order. Scott Wickenden relied on these checks and representations as to the validity of his nomination form. (iv) At the nomination meeting held on 17 th September, 2014, Scott Wickenden submitted the nomination form to Martin Roberts, who was acting as clerk for the proceedings, who in turn passed it to the Constable, who was presiding and he was not told that there was anything wrong. (v) Scott Wickenden had with him an elector of St Helier District No 1 who could and would have signed the nomination paper had he been told that it was not valid. (vi) There had been no objection to the nomination form, either at the nomination meeting or any time until after the poll. The Elections Law 13. Article 18(1) of the Elections Law provides as follows:- "(1) A person shall be admitted as a candidate for the public

election of an officer in a constituency only if he or she has been duly proposed and seconded at a meeting of persons entitled under Article 2(1), (1A), (2) or (3) to vote at a public election for such an officer in the constituency, being a meeting held in accordance with this Part." 14. The nomination form was produced by Scott Wickenden at the nomination meeting and it was valid on its face. It had the prescribed one proposer and nine seconders and all of them had been confirmed by the electoral officer as being entitled to vote for Scott Wickenden. No objection was raised by any of the parish officials at the meeting or by the public and it would seem all the other requirements for the holding of a nomination meeting under Part 5 of the Elections Law had been met. 15. It follows from this that, notwithstanding this defect, Scott Wickenden was admitted as a candidate for the public election, pursuant to Article 18(1) of the Elections Law and that his subsequent election remains valid unless and until it is successfully disputed under the provisions of Part 10 of the Elections Law. 16. For the purposes of these two applications, it is Article 61 of Part 10 of the Elections Law that is relevant and we set it out in full:- "61 Declaration of vacancy or that entire election void (1) In the case of the election of one or more Senators, the Royal Court shall declare a casual vacancy if a candidate who has been elected as a Senator - (a) Is declared ineligible; (b) Has committed an offence against Article 62 or 64 at the election; or (c) Does not for any reason take the oath of office before the Royal Court. (2) In the case of any other public election, the Royal Court shall declare a casual vacancy in a constituency if the candidate who has obtained the majority of votes in that constituency - (a) is declared ineligible; (b) has committed an offence against Article 62 or 64 at the election; or (c) does not for any reason take the oath of office before the Royal Court. (3) The Royal Court shall declare an election void in a constituency if the election in the constituency has not been conducted in accordance with this Law, and the Royal Court shall then order a fresh election. (4) Notwithstanding paragraph (3), if the Royal Court considers that any failure to conduct an election in accordance with this Law is not a matter of substance and has not affected the result of the election, the Court shall not declare the election void and not order a fresh election." 17. It can immediately be seen that there are difficulties with Article 61(2) which Nicholas Le Cornu points out appears to be a direct translation of Article 28 of the Loi (1897) sur les élections publiques . It makes sense if the election is for a single Deputy, but no sense if the election is for more than one Deputy, as here. None of the three successful candidates received the "majority" of votes as none of them received over half of the total number of votes cast. Even if one of them had received the majority of the total number of votes cast, the provision would appear on a literal reading to have no application to the remaining two successful candidates. 18. Under Article 2 of the Interpretation (Jersey) Law 1954 , words in the singular shall include the plural and vice versa but allowing for this, it does not cure the problem. Even adopting a purposive interpretation, there is a clear distinction between the language used in Article 61(2) and Article 61(1) which relates to Senators. Where different words are used in a statute, there is a presumption that this is deliberate and that the words therefore have different meanings (see *Lidgett v AG*

[2005] JRC 152 at paragraph 14). 19. The Attorney General (who appeared as *partie publique*) drew our attention to the following principles of statutory interpretation as previously accepted by the Court:- (i) In *Buckingham v The Constable of St Helier*

[1966] JJ 679 at page 682, F de L Bois, Deputy Bailiff said this:- "We conceive it to be our duty to place an intelligent interpretation on legislation and, take it as axiomatic that the legislature intended to legislate for a purpose, to ascertain, without ourselves assuming the mantle of the legislature, what was that purpose." He went on to cite with approval from the following English cases:- "In *Pye and others v Minister of Lands for New South Wales* (1954) 3 All. E. R. at p. 514, Lord Porter quotes with approval views expressed by Lord Dunedin and by Viscount Simon, L. C. The view expressed by Lord Dunedin is in *Murray v Inland Revenue Commissioners* [1918] A. C. at P. 553, where he said 'It is our duty to make what we can of statutes, knowing that they are meant to be operative, and not inept, and nothing short of impossibility should in my judgment allow a judge to declare a statute unworkable'. In *Nokes v. Doncaster Amalgamated Collieries Ltd.* [1940] 2 All. E. R. at p. 554, Viscount Simon L. C. said '...if the choice is between two interpretations the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result.'" (ii) It is a rule of construction that an intention to produce an unreasonable or absurd result is not to be imputed to a statute if there is some other construction available (see *Attorney General v Corbière Pavilion Hotel Limited and Another*

[1982] JJ 173 at page 179). 20. On balance, the Attorney General felt it was difficult to move beyond the clear words of Article 61(2) and accordingly, it should not be applied to the case before the Court. The Court had sufficient powers under Article 61(3) to deal with the issues that had arisen. 21. In our view it must have been the intention of the legislature that Article 61(2) would apply to any candidate who had been elected. To suggest otherwise does reduce the legislation to futility in the case of an election for more than one Deputy (or other office). Unlike Article 62(3) which requires the Court to declare the whole election void, Article 61(2) requires the Court to declare a casual vacancy for the office of the candidate who has been found to be ineligible, has offended or has refused to take the oath, which is only sensible as there can be no reason to deprive the other successful candidates of their office on account of such findings against one of them. 22. To interpret Article 61(2) as applying to any candidate who has been elected does however mean making a material change to the provision, reading out express words and reading in new words, so that it is read as meaning- "In the case of any other public election, the Royal Court shall declare a casual vacancy in a constituency if a candidate who has been elected in that constituency" 23. If pressed, we would have interpreted Article 61(2) this way, but we had no need to do so, because we found that Article 61(2)(a) - ineligibility - had no application to this case (there was no question of Article 61(2)(b) or (c) having any application). 24. There is no definition of "eligible" in the Elections Law; nor is it used anywhere else in the Elections Law in relation to candidates, except in Article 61(2)(a) when the term "ineligible" is introduced. 25. The States of Jersey Law 2005 ("the 2005 Law") sets out in Article 7 the qualifications for election as a Senator or Deputy and in Article 8

the disqualifications. It refers to them being "qualified" or "disqualified" but there is a reference to the term "eligible" in Article 7(3) which provides:- "(3) A retiring Senator or Deputy who is not disqualified by this Law or any other enactment shall be eligible for re-election." 26. There is no clear technical meaning of "eligible" or "ineligible". The ordinary meaning of the word (Chambers Dictionary) is "fit or worthy to be chosen; legally qualified for election or appointment" 27. In our view, candidates are "ineligible" for the purpose of Article 61(2)(a) if they are not qualified for or are disqualified from office, in the case of a Deputy under Articles 7 and 8 of the 2005 Law, irrespective of whether they have put themselves forward for admission as a candidate. "Ineligibility" does not extend to the provisions for nomination under Part 5 of the Elections Law, adherence to which can involve breaches which may range from the minor and technical to the substantive. 28. As the Attorney General pointed out, sub paragraphs (b) and (c) of Article 61(2) refer to serious circumstances namely either committing an offence against Article 62 or 64 or failing to take the oath. With reference to sub paragraph (a), if a person does not qualify for office or is disqualified from office, these are similarly serious circumstances; such a person is prohibited from taking up or remaining in such an office. Accordingly, each of sub paragraphs (a),

- (b) and (c) of Article 61(2) apply to circumstances where a candidate who has been elected cannot remain in office, serious circumstances which are ejusdem generis (of the same kind) and which, in the case of sub paragraph (a), would not extend to what may be minor breaches of the nomination process. 29. It was not in dispute that Scott Wickenden was qualified for and not disqualified from election as a Deputy pursuant to the provisions of the 2005 Law and accordingly he was eligible to be put forward as a candidate. Article 61(2) therefore had no application to the facts of this case. 30. That left the Court with Article 61(3) and (4) of the Elections Law. Under Article 61(3), the Court "shall" declare an election void if it has not been conducted in accordance with the Elections Law. It had not been so conducted in this case because of the defect in Scott Wickenden's nomination form. The Court has a discretion, however, under Article 61(4) not to declare the election void if it considers that any failure to conduct the election in accordance with the Elections Law "is not a matter of substance and has not affected the result of the election". Both elements must apply. Decision 31. We take first whether the breach of the Elections Law in this case was a matter of substance. In the case of AG v Pearce

- [2007] JRC 223A, there had been in the words of the Court "a lamentable approach to the serious business of nominating a candidate for public election" in that three persons had been asked to second a Mr Jones as Constable and had signed a nomination form at his request in which his name, as candidate, had been left blank. Mr Jones then decided not to proceed as a candidate and handed over the form to Mr Pearce, who completed and submitted the form with his name as candidate. The Court found that the three seconders did not intend to second Mr Pearce; on the contrary, they intended to second the nomination of Mr Jones. In the circumstances, Mr Pearce had not been duly proposed and seconded as required by the Elections Law. His nomination was invalid because of

insufficient seconders. He was not therefore a candidate for the election. 32. The Court said this in response to a submission by Mr Pearce that it was a little harsh to rule his nomination invalid when he had three additional seconders at the nomination meeting who could easily have signed the form in place of the disputed signatories:- "24 We have to say that we have no sympathy whatsoever with this submission. It is the responsibility of a candidate to ensure that all the signatures on his nomination form are valid and that the persons signing intend to support that candidate. If that turns out not to be the case, the candidate has only himself to blame." 33. The case before us can be distinguished from that of Pearce on a number of grounds. In Pearce, the seconders had been asked to sign a form in which the name of the candidate was left entirely blank and the form was then handed over to Mr Pearce, who knew that they had intended to second Mr Jones. His approach to the nomination process was indeed lamentable. 34. No such criticism can be levelled at Scott Wickenden who had acted responsibly and whose nomination form had been declared in order by the electoral officer. Nicholas Le Cornu and Gino Risoli did criticise one aspect of Scott Wickenden's nomination form. The form was headed "Nomination of candidate for office of Senator, Connétable or Deputy". Scott Wickenden had filled in his name and all the other details as a candidate for St Helier District No 1, but had left blank the space where the type of office was to be specified - Senator, Constable or Deputy. As Advocate Baker, for Scott Wickenden, observed there could be no office of Constable or Senator for the St Helier District No 1. The nomination could only be for that of a Deputy. Neither Eric Blakely, Martin Roberts nor the Constable raised any issue over this and we do not regard it as material. 35. More importantly, in Pearce, a declaration was sought from the Court that Mr Pearce had not been duly nominated in advance of the poll. The Court was able therefore to rule him out as a candidate before the electorate had spoken. The same applies in relation to Re Pearce

[2007] JRC 180A in which Mr Pearce sought to challenge the nomination of Geoffrey Southern. 36. The fact that a poll has taken place is of great significance in our view, in that the electorate has exercised its right to vote under Part 2 of the Elections Law and its right under the European Convention on Human Rights to freely express its opinion as to the people it chooses for the office of Deputy for St Helier District No 1. Article 3 of the First Protocol of the Convention is in the following terms:- "Right to free elections The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature." 37. In a number of judgments emanating from the European Court of Human Rights, it has been held that notwithstanding Article 3 being phrased in terms of contracting states, it guarantees individual rights including the right to vote and stand for elections (see *Kovach v Ukraine* [7 th February, 2008] Application No. 39424/02). 38. In advance of a poll the Court is concerned with the right of candidates to stand for election. After a poll the right of the electorate to vote and thereby freely express its choice is brought into play; a right which weighs heavily in the balance. The breach with which we are concerned in this case is to be considered therefore in the light of a poll

having taken place and of the electorate of the St Helier District No 1 having freely expressed its opinion as to who should be elected as Deputy. 39. Each case will turn on its own particular

facts.

We do not wish to diminish in any way the need for candidates to comply with the requirements of the Elections Law and to be responsible for the validity of their nomination forms. Here, we had a candidate who was eligible, i.e. qualified to be and not disqualified from being a candidate, who had completed the requisite nomination form in a responsible manner and had it confirmed by the electoral officer (at the latter's invitation) that it was in order and who had then been admitted as a candidate at the nomination meeting and thus presented to the electorate as such. He had subsequently been elected in a general election as Deputy. There was no criticism of the way that he had conducted himself in his election campaign. We concluded that on these facts including in particular the fact that the electorate had spoken, the inadvertent and technical defect in his nomination form could not be regarded as a matter of substance. 40. Furthermore, because we did not regard it as a matter of substance, we concluded that it did not affect the result of the election. There was no evidence that Sarah Tompkins' name on the form as a seconder had in any way affected any of the electorate; the electorate, like everyone else in the process, was wholly unaware that she did not qualify. Taken in the round, the reality is that the electorate has expressed its choice freely and that is the result. It would have been disproportionate for the Court to have interfered with that free choice as a consequence of this inadvertent technical error. 41. In his application Mr Le Cornu made a number of other criticisms of the election process, not concerning Scott Wickenden, which would only have affected a handful of votes. He candidly accepted that these criticisms would not, absent the issue of Scott Wickenden's nomination form, have warranted an application to the Royal Court to dispute the election. In essence, Nicholas Le Cornu was seeking a general review of the election procedures and it is not the role of the Court to conduct such a review. If these criticisms are to be pursued, then they will need to be pursued elsewhere. Authorities Public Elections (Jersey) Law 2002. Loi (1897) sur les élections publiques. Interpretation (Jersey) Law 1954. *Lidgett v AG*

[2005] JRC 152 . *Buckingham v The Constable of St Helier*

[1966] JJ 679 . *Attorney General v Corbière Pavilion Hotel Limited and Another* [1982] JJ 173.
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