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Date: 26 September 2005

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Mr. R. Needham
Chairperson
Crime & Misconduct Commission
GPO Box 3123
BRISBANE Q 4001

Dear Mr. Needham,

CMC Inquiry into the Gold Coast City Council

With regard to the Terms of Reference for the Inquiry into the Gold Coast City Council I would like to make a submission in relation to Clause 2 (a) – misleading voters.

The present situation for Local Governments in Queensland is that there are no legislative requirements for candidates to lodge “How to Vote” Cards for approval prior to a Local Government Election. By comparison, under the Queensland Electoral Act 1992 – Candidates, Political Parties for State Elections are required to lodge with the Electoral Commission the number of “How to Vote” Cards and a declaration about financial contributions by Political Parties and others. It is considered that the State Government “How to Vote” Card procedure would be an improvement but would not address all issues in relation to “How to Vote” cards.

A situation arose at the last Pine Rivers Shire Council Election which illustrates this point well. A “How to Vote” card which was in my opinion clearly misleading to voters, was distributed by a candidate, seemingly with impunity. Justice Holmes in her decision (copy attached) in Van Twest –v- Monsour (27/3/04) stated in part “..... however, what does appear is that the legislation as it stands does not make provision for a situation in which I think the ordinary voter would expect it to; and that is one where a person presented with the how-to-vote card would be misled as to the nature of the support of the candidate. One can envisage any number of inaccuracies could appear on a how-to-vote card so as to mislead voters about whom they should vote for, which simply do not appear to be covered by this provision”.

Council considers the present legislation to be inadequate and should be amended prior to the next Local Government Election.

Yours sincerely,

Ray Burton
Chief Executive Officer



Transcript of Proceedings

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State Reporting Bureau
Date: 5 April, 2004

SUPREME COURT OF QUEENSLAND
CIVIL JURISDICTION
HOLMES J

TRIS VAN TWEST
and
CHRIS MONSOUR

Applicant

Respondent

BRISBANE

..DATE 27/03/2004

ORDER

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HER HONOUR: This was an application for an ex parte injunction requiring a candidate in the Pine Rivers Shire Council election either to amend all reference in words and in picture to Yvonne Chapman from a how-to-vote card or to desist from using the how-to-vote card at polling booths.

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The offending how-to-vote card shows the candidate, a Ms Monsour, and against the same coloured background has a photograph of the mayor, Mrs Yvonne Chapman, stating that she was re-elected unopposed. The layout of the how-to-vote card, including the common colouring, does convey a suggestion that Ms Monsour has the support of Mrs Chapman, that they have in common, apparently, their policies for the purposes of the election, and thus that Mrs Chapman supports Ms Monsour, which is not the fact.

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So, to that extent, it does appear to be misleading. However, The Local Government Act 1993 contains certain provisions in relation to how-to-vote cards in section 392A, which set out the requirements of a how-to-vote card and, in subsection 6, prohibit the distribution of a how-to-vote card with particulars as required by the section which are false. None of the particulars required by the section apply in this case. That provision simply does not cover a representation of support which does not exist.

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The applicant relied more on section 394 which is headed "Misleading Voters". Subsection 1 provides as follows:

"During an election period a person must not print, publish, distribute or broadcast anything that is intended or likely to mislead an elector about the way of voting at the election."

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Subsection 2:

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"A person must not, for the purpose of effecting the election of a candidate, knowingly publish a false statement of fact about the personal character or conduct of the candidate."

It was not advanced as an argument that this how-to-vote card fell within subsection 2. Subsection 3 deals with material likely to induce an elector to vote other than in accordance with this part and, again, reliance was not placed on that part. Rather, the argument was that, within the meaning of subsection 1, the material was likely to mislead an elector about the way of voting at the election. At first blush, that looks apt, if one reads it as meaning the casting of a vote for a particular candidate; but there is authority on the meaning of the subsection.

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In Robertson v Knuth, which was very properly brought to my attention by Ms Muir, counsel for the applicant, and which is reported at (1997) 1 QdR 95, the Court of Appeal had occasion to consider an equivalent provision. The Court adopted the reasoning of the High Court in Evans v Crichton-Browne (1981) 147 CLR 168 in relation to section 329 of The Commonwealth Electoral Act 1918 to conclude that the phrase "about the way of voting", like the phrase "in relation to the casting of a

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vote" in the Commonwealth section, was concerned with "statements intended or likely to affect an elector when he seeks to record and give effect to the judgment which he has formed as to the candidate for whom he intends to vote rather than with statements which might affect the formation of that judgment".

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What that means becomes even clearer when one looks at Evans v Crichton-Browne. At page 204 the words of a particular provision of The Electoral Act which used the phrase "in relation to the casting of his vote" was considered. The Court said:

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"The phrase 'case a vote' has a well-defined meaning."

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And they refer to various dictionary definitions.

"It does not include to decide for whom to vote."

At page 205 the Court discussed some of the things intended to be prohibited: misleading or incorrect statements which would go to interfering with an elector in the casting of his vote. For example, a statement in a newspaper advertisement that a ballot paper should be marked in a way which would not conform to the requirements of the Act and which would render the vote invalid, might mislead or improperly interfere with an elector in the casting of his votes.

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The conclusion one comes to is that the section is concerned with the way in which the voter is likely to carry out the actual physical casting of his vote by completing the ballot paper.

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That being the case, it does not seem that the ballot paper in question does offend against the terms of the section and I dismiss the application.

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However, what does appear is that the legislation as it stands does not make provision for a situation in which I think the ordinary voter would expect it to; and that is one where a person presented with the how-to-vote card would be misled as to the nature of the support of the candidate. One can envisage any number of inaccuracies which could appear on a how-to-vote card so as to mislead voters about whom they should vote for, which simply do not appear to be covered by this provision.

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