

**IN THE MATTER OF QUESTIONS REFERRED TO THE COURT  
OF DISPUTED RETURNS PURSUANT TO SECTION 376 OF THE  
COMMONWEALTH ELECTORAL ACT 1918 (CTH) CONCERNING  
SENATOR THE HON MATTHEW CANAVAN (C11/2017)**

Date referred to Full Court: 24 August 2017

Section 44 of the Constitution provides that any person who has any of certain attributes shall be incapable of being chosen or of sitting as a Senator or a Member of the House of Representatives. Among those attributes are (in s 44(i)) being a subject or a citizen of a foreign power.

In May 2016 Senator Matthew Canavan was nominated in a group of Queensland candidates for the Senate for the general election held on 2 July 2016. Senator Canavan was then returned as a Senator for Queensland after the election.

Senator Canavan was born in 1980. At that time he was a citizen only of Australia (as were his parents). In 1983 however an Italian Constitutional Court decision in relation to a 1912 Italian statute had the apparent effect that Senator Canavan's mother became an Italian citizen by descent (by virtue of her mother's Italian citizenship), as did her children.

Senator Canavan however remained unaware of his potentially having Italian citizenship until 18 July 2017 (when he was told by his mother that, years earlier, she had included his name in a form used to register herself as an Italian citizen living abroad). The next day, Senator Canavan commenced taking steps to ascertain whether he did in fact hold Italian citizenship. Those steps culminated in his renunciation of Italian citizenship, which took effect on 8 August 2017.

On 24 August 2017 Chief Justice Kiefel, sitting as the Court of Disputed Returns, referred to a Full Court, under s 18 of the *Judiciary Act* 1903 (Cth), the following questions that had been transmitted by the Senate on 9 August 2017 pursuant to s 377 of the *Commonwealth Electoral Act* 1918 (Cth):

- (a) whether, by reason of s 44(i) of the Constitution, there is a vacancy in the representation of Queensland in the Senate for the place for which Senator Matthew Canavan was returned;
- (b) if the answer to Question (a) is "yes", by what means and in what manner that vacancy should be filled;
- (c) what directions and other orders, if any, should the Court make in order to hear and finally dispose of this reference; and
- (d) what, if any, orders should be made as to the costs of these proceedings.

Chief Justice Kiefel also made orders that Senator Canavan and the Attorney-General of the Commonwealth ("the Attorney-General") be heard and be deemed to be parties to the reference under s 378 of the *Commonwealth Electoral Act* 1918 (Cth).

A Notice of a Constitutional Matter has been filed by the Attorney-General.

The Attorney-General submits that the phrase “is a subject or a citizen ... of a foreign power” in s 44(i) of the Constitution should be construed as referring only to a person who has voluntarily obtained or retained that status. A person who does not know that he or she is, or ever was, a foreign citizen has not voluntarily obtained that status and therefore is not disqualified. Alternatively, where a person became aware that he or she was a foreign citizen (or that there was a prospect of such citizenship) but took all reasonable steps to renounce that citizenship within a reasonable time of becoming aware of it, the person was not disqualified under s 44(i) of the Constitution because he or she did not voluntarily retain that citizenship. The Attorney-General submits that Senator Canavan was not incapable of being chosen as a Senator by virtue of s 44(i) of the Constitution, as he did not voluntarily acquire or retain Italian citizenship.

Senator Canavan both adopts the submissions of the Attorney-General and further submits that a conferral of citizenship by a foreign law on a person who has little or no connection with the foreign state ought not be recognised under Australian law.

On 26 September 2017 Chief Justice Kiefel granted Mr Geoffrey Kennett SC leave to appear as amicus to act as a contradictor in law.

Mr Kennett submits that it ought to have occurred to Senator Canavan prior to his nomination that he might hold Italian citizenship, since forms that his mother gave him in 2006 (which he understood to be documents required for taking up Italian citizenship) on their face indicated that they were for Italian citizens residing abroad. Senator Canavan should therefore have enquired and ascertained the position in respect of Italian citizenship at a time earlier than he did.