

**IN THE MATTER OF QUESTIONS REFERRED TO THE COURT
OF DISPUTED RETURNS PURSUANT TO SECTION 376 OF THE
COMMONWEALTH ELECTORAL ACT 1918 (CTH) CONCERNING
THE HON BARNABY JOYCE MP (C15/2017)**

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 June 2016 The Hon Barnaby Joyce MP was nominated as a candidate for the National Party of Australia in the general election to be held on 2 July 2017. Mr Joyce was then elected to the House of Representatives as the Member for New England.

Unbeknown to Mr Joyce, at the time of his nomination he was a New Zealand citizen by descent through his father, James Joyce. James Joyce had immigrated to Australia in 1947 from New Zealand, where he was born a British subject. He became a New Zealand citizen upon the inception of that status in 1949. Under New Zealand law, Barnaby Joyce was a New Zealand citizen upon his birth in Australia in 1967.

Mr Joyce became aware of the possibility that he might have New Zealand citizenship after media enquiries to his office in late July 2017. On 10 August 2017 the New Zealand High Commissioner informed Mr Joyce that he was a citizen of New Zealand under the law of that country. Four days later Mr Joyce completed the steps required to formally renounce his New Zealand citizenship.

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 House of Representatives on 15 August 2017 pursuant to s 377 of the *Commonwealth Electoral Act* 1918 (Cth):

- (a) whether, by reason of s 44(i) of the Constitution, the place of the Member for New England (Mr Joyce) has become vacant;
- (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 Mr Joyce, the Attorney-General of the Commonwealth (“the Attorney-General”) and Mr Antony Harold Curties Windsor 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 Mr Joyce was not incapable of being chosen as a Member of the House of Representatives by the operation of s 44(i) of the Constitution, as he did not voluntarily acquire or retain his New Zealand citizenship.

Mr Joyce makes similar submissions and submits that he was not disqualified. This is in circumstances where he was unaware of the possibility that he might be a New Zealand citizen at the time of his nomination as a candidate for the election and that (as a sitting Member) he acted with alacrity to renounce such citizenship once he knew that he had it.

Mr Windsor submits that Mr Joyce was ineligible to be chosen or of sitting as a Member of the House of Representatives, as there is no applicable exception to disqualification by the operation of s 44(i) of the Constitution. Where a person knows that a parent was born in a country other than Australia he or she ought, prior to nominating as a candidate for election to Parliament, make enquiries and then renounce any foreign citizenship held.