

**IN THE MATTER OF QUESTIONS REFERRED TO THE COURT  
OF DISPUTED RETURNS PURSUANT TO SECTION 376 OF THE  
COMMONWEALTH ELECTORAL ACT 1918 (CTH) CONCERNING  
MS LARISSA WATERS (C13/2017)**

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.

Ms Larissa Waters was born in Canada, to Australian parents, in 1977. She then moved to Australia with her parents before her first birthday.

In August 2016 Ms Waters was elected a Senator for Queensland as a result of the general election held on 2 July 2016. She had nominated as a candidate for such a role in June 2016.

Unbeknown to Ms Waters, at the time of her nomination and her subsequent election, she was a citizen of Canada by virtue of her birth in that country. On 18 July 2017, after becoming aware that she held Canadian citizenship, Ms Waters gave notice of her resignation as a Senator. (She later renounced her Canadian citizenship, that renunciation taking effect on 5 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 Waters was returned;
- (b) if the answer to Question (a) is 'yes', by what means and in what manner that vacancy should be filled;
- (c) if the answer to Question (a) is 'no', is there a casual vacancy in the representation of Queensland in the Senate within the meaning of s 15 of the Constitution; and
- (d) what directions and other orders, if any, should the Court make in order to hear and finally dispose of this reference.

Chief Justice Kiefel also made orders that Ms Waters 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 Ms Waters was not disqualified, as she did not voluntarily obtain or retain Canadian citizenship and she took all reasonable steps to renounce it within a reasonable time after becoming aware of it. Her resignation then created a casual vacancy in the Senate, which should be filled in accordance with s 15 of the Constitution.

Ms Waters however submits that she was disqualified by the operation of s 44(i). Her knowledge of the fact that she was born in Canada should have prompted her to make proper enquiries to ascertain whether she was a citizen of that country. She submits that she had therefore not taken all reasonable steps to renounce the Canadian citizenship that she actually held.

Ms Waters submits that the Senate vacancy created by her disqualification should be filled after a special count of ballot papers from the 2016 election, such a count being conducted by the application of s 273(27) of the *Commonwealth Electoral Act* 1918 (Cth) by analogy (that provision referring to deceased candidates, not disqualified candidates).