



Our Ref: EJM: 80332

13 January 2017

Ms Rachel Callinan
Usher of the Black Rod
Parliament House
P.O. Box 6100
Canberra ACT 2600
Email: blackrod.sen@aph.gov.au

E. JOHN MAITLAND
LL. B (Hons)
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Dear Ms Callinan

**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 RODNEY NORMAN CULLETON
High Court proceeding No. C15 of 2016**

We act for Senator Rodney Culleton.

We are in receipt of your correspondence to Senator Culleton dated 12 January 2017 wherein you refer to the president's advice that he has notified a vacancy in the representation of Western Australia relating to our client's seat in the Senate.

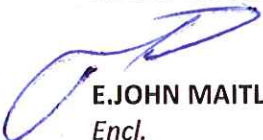
We have this day written to the President of the Senate, a copy of which is enclosed, wherein we refer to the stay imposed by Barker J in the Federal Court proceeding No. WAD 492 of 2016 and the further stay imposed by Dowsett J yesterday, copies of which are enclosed.

You will see from the enclosure that we have requested, *inter alia*, to remove Senator Culleton from office during the period of the stay and pending the outcome of our client's appeal to the Federal Court (Fully Court) against the orders made by Barker J on 23 December 2016 so as to hopefully avoid the time and costs expected to be incurred in pursuing an urgent application for leave and injunctive relief in the High Court pursuant to the Summons filed yesterday (copy enclosed).

We request you refrain from taking any further steps to enforce the removal of Senator Culleton from office pending further orders of the Court.

We thank you for your assistance and look forward to your favourable response by return.

Yours faithfully
MAITLAND LAWYERS


E. JOHN MAITLAND
Encl.
cc Senator Parry





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13 January 2017

Senator The Honourable Stephen Parry
President of The Senate
Parliament House
P.O. Box 6100
Canberra ACT 2600
Email: senator.parry@aph.gov.au

COPY

Dear Senator Parry

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 RODNEY NORMAN CULLETON
High Court proceeding No. C15 of 2016

We act for Senator Rodney Culleton.

We are in receipt of your correspondence to Senator Culleton dated 11 January 2017 wherein you referred to the sequestration order made by Barker J in Federal Court proceeding [2016] FCA 1578, and an extract from the National Personal Insolvency Index recording our client as an undischarged bankrupt, and on this basis you satisfied yourself that our client is an undischarged bankrupt.

With respect, we disagree with your assumption that our client is an undischarged bankrupt because the Orders made on 23 December 2016 in proceeding No. WAD 492 of 2016 were stayed for a period of 21 days. We refer to Order 2 of the orders made by Barker J on 23 December 2016 (copy enclosed) and to order 1 of the Orders made by Dowsett J on 12 January 2017 (copy enclosed).

The entry on the National Personal Insolvency Index upon on which you relied should not have been made by the Australian Financial Security Authority at the time by reason of order 2 of the orders made by Barker J on 23 December 2016 that there be a stay of all proceedings under the Order for a period of 21 days. The entry of the Insolvency Index would appear to be a breach of the Orders and in the circumstances the entry should be annulled pending the duration of the stay and any appeal.

For the above reasons, we are of the opinion that by reason of the stay Senator Culleton does not at this time fall within the ambit of section 44iii of the Constitution, and accordingly the provisions of section 45 of the Constitution cannot be invoked while the stay is in place or the appeal is successful.

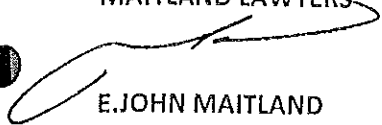
We note that you have written to the Governor of Western Australia advising that a vacancy has happened in the representation of that State through your understanding that Senator Culleton has become disqualified. With respect, we are of the view that your declaration that a vacancy has happened in relation to Senator Culleton's position in the Senate is premature because of the stay.

You will be aware that Senator Culleton has issued a Summons in the above High Court proceeding seeking leave to join you in your capacity as President of the Senate as a defendant in High Court proceeding C15 of 2016 and seeking injunctive relief to preserve the status quo. In order to avoid the time and costs expected to be incurred in pursuing an urgent application for leave and injunctive relief in the High Court, we request you:

1. Agree to refrain from taking any further steps to remove Senator Culleton from office, but instead agree that his status as a Senator for Western Australia should remain intact pending the period of the stay and the hearing and determination of the appeal commenced by Senator Culleton in the Federal Court (Full Court) to set aside the orders of Barker J.
2. Agree to write to the Governor of Western Australia to advise that your earlier letter was written in error and that the vacancy that you believed had happened has not yet happened because of the stay imposed by the Federal Court on the orders made by Barker J, and that no vacancy will occur while the stay is in place and/ or if the order made by Barker J on 23 December 2016 is set aside or annulled.
3. Advise the Usher of the Black Rod that no further steps are to be taken against Senator Culleton during the period of the stay and/or the hearing and determination of the appeal.
4. Rectify and remove all Parliamentary references to our client as "former" Senator Culleton.
5. Confirm your agreement to the above by return email.

We thank you for your assistance and look forward to your favourable response by return, failing which our client shall take such steps as he is advised.

Yours faithfully
MAITLAND LAWYERS



E. JOHN MAITLAND
Encl.



Federal Court of Australia
District Registry: Western Australia
Division: General

No: WAD492/2016

BALWYN NOMINEES PTY LTD
Applicant

RODNEY NORMAN CULLETON
Respondent

ORDER

JUDGE: JUSTICE BARKER

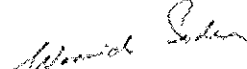
DATE OF ORDER: 23 December 2016

WHERE MADE: Perth

THE COURT ORDERS THAT:

1. The estate of Rodney Norman Culleton be sequestrated under the *Bankruptcy Act 1966* (Cth). The Court notes that the date of the act of bankruptcy was 30 August 2016.
2. There be a stay of all proceedings under the sequestration order for a period of 21 days.
3. The petitioning creditor's costs (including any reserved costs) be taxed and paid out of the estate of Rodney Norman Culleton in accordance with the statute.

Date that entry is stamped: 23 December 2016


Registrar



Federal Court of Australia
District Registry: Western Australia
Division: General

No: WAD2/2017

RODNEY CULLETON
Appellant

BALWYN NOMINEES PTY LTD
Respondent

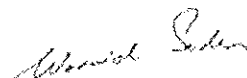
ORDER

JUDGE: JUSTICE DOWSETT
DATE OF ORDER: 12 January 2017
WHERE MADE: Brisbane (via videolink)

THE COURT ORDERS THAT:

1. all proceedings under the sequestration order made on 23 December 2016 against Rodney Norman Culleton be stayed until 4.00pm on Friday 20 January 2017 or other earlier order;
2. the matter otherwise be adjourned to a date to be fixed on or prior to Friday 20 January 2017; and
3. costs be reserved.

Date that entry is stamped: 12 January 2017


Registrar

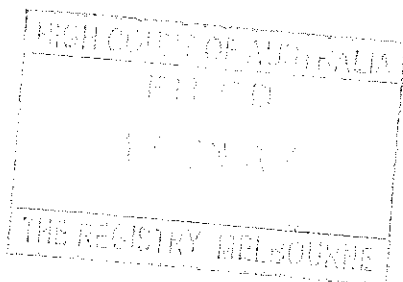
Form 21 -- Summons

(rules 13.02.1, 32.01.1 and 57.05.2)

**IN THE HIGH COURT OF AUSTRALIA
SITTING AS THE COURT OF DISPUTED RETURNS
CANBERRA REGISTRY**

No. C15 of 2016

10



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 Rodney Norman Culleton**.

20

SUMMONS OF SENATOR RODNEY NORMAN CULLETON



Filed on behalf of
Senator Rodney Norman Culleton by

MAITLAND LAWYERS
Suite 1005
530 Little Collins Street
MELBOURNE VIC 3000

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Ref: EJM 80332

IN THE HIGH COURT OF AUSTRALIA
SITTING AS THE COURT OF DISPUTED RETURNS
CANBERRA REGISTRY

Matter No. C15/2016

10

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 Rodney Norman Culleton.

SUMMONS

20 TO THE ATTORNEY-GENERAL
C/ Australian Government Solicitor
4 National Circuit Barton ACT 2600
AND TO

THE PRESIDENT OF THE SENATE

SENATOR THE HONORABLE STEPHEN PARRY

Parliament House Canberra ACT 2600



ALL PARTIES
~~YOU ARE SUMMONED~~ to attend before the Justices at the Principal Registry Canberra of the Court on *RETURN DATE TO BE FIXED* at 10.15am on the hearing of an application by the Applicant Senator Rodney Norman Culleton for Orders that:

1. Declaration that Rodney Norman Culleton is a duly elected senator of the current Parliament of the Commonwealth.
2. Declaration that *Commonwealth Electoral Act 1918* Part 22 Division 2 is invalid.
3. Alternatively Declaration that the *Commonwealth Electoral Amendment Act 2016* Part 22 Division 2 is invalid to the extent that it authorizes the referral of the questions stated in the letter of the President of the Senate to the Court of Disputed

Returns dated 8 November 2016 to Mr Phelan, Registrar of the High Court of Australia or otherwise seeking the advice of the High Court of Australia sitting as the Court of Disputed Returns.

- 4. Order staying further conduct of the Senate referral.
- 5. Leave be granted to join the President of the Senate, Senator The Honourable Stephen Parry as a party to this proceeding pursuant to Rule 21.01(a) of the *High Court Rules* 2004
- 6. Order restraining the President of the Senate, Senator The Honourable Stephen Parry, his servants and agents, from taking any steps to notify a vacancy for the place of the plaintiff in the Senate of the current Parliament pursuant to Constitution section 21 or otherwise
- 7. Order restraining the President of the Senate, Senator The Honourable Stephen Parry, his servants and agents, from making any representations that the plaintiff is an undischarged bankrupt and/or disqualified to sit as a Senator for Western Australia pending the determination of proceeding WAD 2 of 2017 in the Federal Court of Australia (Full Court)
- 8. Alternatively Order staying further conduct of the Senate referral pending the determination by the High Court of Australia of the cognate proceedings herein commenced by an application to show cause.
- 9. Directions for the further conduct of the matter.
- 10. Costs.

Filed: 12 January 2017

[Handwritten signature]

[Handwritten signature] Registrar



This summons was filed for Rodney Norman Culleton by John Maitland, Principal of Maitland Lawyers, Suite 1005/ 530 Little Collins Street Melbourne Victoria 3000
Solicitor for Senator Rodney Norman Culleton