

# The Hanson Trial: Please Explain?

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In what has been described in the media as one of the most sensational and unusual years in Queensland's legal history,<sup>1</sup> the 2003 criminal trial of Pauline Hanson, former MP and founder of the political party Pauline Hanson's One Nation was the most sensational event of them all. Pauline Hanson and her co-accused David Ettridge were convicted and sentenced to three years imprisonment on fraud charges under the *Criminal Code* (Qld) (the *Code*), relating to their part in the registration of the political party.

What particularly characterised this event was not so much the trial itself, which was relatively uneventful considering the identity of the accused, but the extensive public debate and media coverage<sup>2</sup> following their conviction and imprisonment on 20 August 2003. Pending the hearing of their appeal, unsuccessful applications for bail were taken as far as the High Court. Ultimately, on 6 November 2003, the Queensland Court of Appeal quashed all the convictions and ordered that verdicts of acquittal be entered.<sup>3</sup> Much media analysis has followed, but little discussion of the charges, sentence and appeal process. This article analyses what occurred, and asks the question: Is there really any explaining to do, or were the eventual acquittals an example of due process in accordance with the rule of law?<sup>4</sup> The article also examines the impact of the extraordinary media coverage of the case.

Apparently not expecting to be convicted, Hanson and Ettridge reportedly had lunch together ("relaxed and confident") while the

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<sup>1</sup> Kurnow D, "2003. The Year That Put Queensland's Courts in the National Spotlight", *Stateline Queensland* 5 December 2003, <<http://www.abc.net.au/stateline/qld/content/2003/s1003554.htm>>.

<sup>2</sup> Most of this coverage was devoted to Pauline Hanson, not David Ettridge.

<sup>3</sup> *R v Hanson; R v Ettridge* [2003] QCA 488.

<sup>4</sup> See the comments by de Jersey CJ in the conviction appeal: *R v Hanson; R v Ettridge*, note 3, at [40].

jury were deliberating.<sup>5</sup> That being so, it is not surprising that the convictions and three year gaol terms reportedly were a shock to both.<sup>6</sup> Almost immediately, Pauline Hanson was labelled a political martyr by the media and her supporters: "One Nation was always going to end in tears. And Pauline Hanson was destined to be a martyr."<sup>7</sup>

Because of her high profile as founder of Pauline Hanson's One Nation, the public appetite for details of her gaoling seemed limitless, including what she had for her first meal at the watchhouse, and information about her prison garb.<sup>8</sup> Within days, what was perhaps initially mere curiosity had turned into a tide of critical public opinion questioning the criminal process in the case, and the length of the sentences.<sup>9</sup> Media outlets reported an unprecedented flood of letters and callers questioning her sentence: significantly, a number of these distanced themselves from her political views.<sup>10</sup> Even the Prime Minister was reported as finding her sentence severe: "But if you ask me, like many other people I find the sentence certainly very long and very severe."<sup>11</sup>

The subsequent court cases, including the unsuccessful bail application and the appeals against this decision that eventually went to the High Court,<sup>12</sup> provided further opportunities for media attention, culminating in the successful appeal to the Queensland Court of Appeal on 6 November 2003.<sup>13</sup> Despite the period between conviction

<sup>5</sup> Hart C and Doneman P, "Nerve and Verve at Last Supper", *The Courier Mail*, 21 August 2003.

<sup>6</sup> Hart & Doneman, note 5.

<sup>7</sup> Editorial, "Hanson Sentence Raises Queries", *The Courier Mail*, 22 August 2003; Lloyd G, "Tears Inevitable for Prophet of Doom", *The Courier Mail*, 21 August 2003; see also editorial, "Hanson Sentence Raises Queries", *The Courier Mail*, 22 August 2003.

<sup>8</sup> Hart & Doneman, note 5.

<sup>9</sup> See, for example, "Hanson Sentence Raises Queries", note 7.

<sup>10</sup> Potter D, "Wave of Sympathy Swamps Media", *The Courier Mail*, 22 August 2003.

<sup>11</sup> Reported comment made to Melbourne radio station 3AW: "PM Labels Hanson's Jail Sentence 'Severe'", *The Sydney Morning Herald*, 23 August 2003.

<sup>12</sup> *Hanson v DPP*; *Ettridge v DPP* [2003] QSC 277 (Supreme Court of Queensland, Chesterman J); *Hanson v Director of Public Prosecutions (Qld)* (2003) 142 A Crim R 241 and *Ettridge v DPP* [2003] QCA 410 (Court of Appeal); and *Ettridge v Director of Public Prosecutions (Qld)*; *Hanson v Director of Public Prosecutions (Qld)* (2003) 202 ALR 423 (High Court).

<sup>13</sup> *R v Hanson*; *R v Ettridge*, note 3.

and appeal being relatively short in this case, the fact that ultimately all convictions were quashed and verdicts of acquittal entered raised further questions for commentators about the process.<sup>14</sup>

According to the Chief Justice in the appeal against conviction:

It should be understood that the result will not mean the process has to this point been unlawful. While the appellants' experience will in that event have been insupportably painful, they will have endured the consequence of adjudication through due process in accordance with what is compendiously termed the rule of law.<sup>15</sup>

Despite the Chief Justice pointing out that due process had been observed, and that the process had not been unlawful in this case, a number of aspects of the case led to a reference to the Crime and Misconduct Commission (CMC) on 11 November 2003.

The CMC Report, delivered in January 2004, concluded that no misconduct or other impropriety had been shown to be associated with either the conduct of the litigation, or the police investigation leading to the prosecutions. The CMC also found no evidence of political or other improper pressure or influence; nothing to show a failure to accord due process in accordance with the rule of law; nor any evidence that the Premier had somehow been involved in the prosecution.<sup>16</sup>

Despite the reassurances from both the Chief Justice and the CMC that due process had been observed, questions continue to be asked about the criminal process in this case. In particular, these centre on the nature of the charges and the investigation, the length of the sentence, and the bail and appeal process. Therefore, it is timely to look more closely at some of these issues, in particular the charges against the accused, and the sentences imposed on them. Because of the political context and controversy surrounding the case, it is useful first to briefly examine the history of One Nation.

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<sup>14</sup> See, for example, Head M. "The Jailing of Pauline Hanson: A Victory for Democracy?" (2003) 28 *Alternative Law Journal* 264.

<sup>15</sup> *R v Hanson; R v Ettridge*, note 3, at [40].

<sup>16</sup> Crime and Misconduct Commission, "The Prosecution of Pauline Hanson and David Ettridge: A Report on an Inquiry into Issues Raised in a Resolution of Parliament" (January 2004).

## The rise (and fall?) of One Nation

The phenomenon which is One Nation has been well documented elsewhere.<sup>17</sup> Why the party suddenly emerged when it did has been the subject of much debate,<sup>18</sup> in particular whether the media somehow created 'Hansonism', or whether Pauline Hanson was voicing views already largely present in the community but not yet heard.<sup>19</sup> It is also hardly coincidental that the party's popularity surged at a time when law and order politics were popular.<sup>20</sup> Whatever was the case, the party enjoyed substantial, but relatively short-lived, electoral popularity in the later 1990s and early 2000s.

Pauline Hanson first came to national prominence in 1996 as the Liberal Party candidate<sup>21</sup> for the federal electorate of Oxley, in Brisbane, which she held as an independent. In 1998, she unsuccessfully contested the neighbouring federal seat of Blair.<sup>22</sup> The

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<sup>17</sup> Grant B (ed), *Pauline Hanson: One Nation and Australian Politics*, University of New England Press, Armidale, 1997; Kingston M, *Off the Rails: The Pauline Hanson Trip*, Allen and Unwin, St Leonards, 1999; Leach M, Stokes G and Ward I (eds), *The Rise and Fall of One Nation*, University of Queensland Press, St Lucia, 2000. There is also a large volume of literature analysing various aspects of the Hanson and One Nation phenomenon; see, for example, Perera S, "Whiteness and its Discontents: Notes on Politics, Gender, Sex and Food in the Year of Hanson" (1999) 20 *Journal of Intercultural Studies* 183; Probyn F, "That Woman': Pauline Hanson and Cultural Crisis" (1999) 14 *Australian Feminist Studies* 161.

<sup>18</sup> See, for example, Leach, Stokes & Ward, note 17, and Melbourne Institute of Applied Economic and Social Research, "One Nation: Bane of the National Party" (2001) 3 *Australian Social Monitor* 77, exploring the nature of the support base.

<sup>19</sup> Nolan D, "Interpellating Audiences: 'The Public', the Media and Pauline Hanson" (2001) 34 *Southern Review* 60; Kingston M, "Pauline Hanson and the Media", (The Sydney Institute, 2000); Goot M, "Pauline Hanson and the Power of the Media" in Leach, Stokes & Ward, note 17; Lumby C, *Gotcha: Life in a Tabloid World*, Allen and Unwin, St Leonards, 1999, pp 233-41.

<sup>20</sup> On law and order generally, see Hogg R and Brown D, *Rethinking Law and Order*, Pluto Press, Annandale, 1998.

<sup>21</sup> Although disendorsed shortly before the election, she appeared on the ballot paper as a Liberal Party candidate.

<sup>22</sup> See the description of the One Nation campaign for that election in Kingston, *Off the Rails: The Pauline Hanson Trip*, note 17. The only successful One Nation candidate in that election was Heather Hill, who was elected to the Senate. She was later forced to relinquish the Senate seat to Len Harris, owing to her dual citizenship: see *Sue v Hill* (1999) 199 CLR 462.

popularity of Hanson and her politics gave birth to the party carrying her name, Pauline Hanson's One Nation.<sup>23</sup>

The high point of the party's electoral popularity was the 1998 Queensland State Election, when the party gained 11 of the 89 seats in the Legislative Assembly (representing 23% of the primary vote). By the 2001 election this percentage had dropped to 8.69%, and in 2004 to 4.88%. By comparison, in 2004, the primary vote for another minor party, The Greens, was 6.76%. The 1998 result was an extraordinary outcome for a newly formed minor party whose policies were based on such matters as restricting immigration, eliminating the discrimination created by "political correctness", and repealing native title legislation.<sup>24</sup> However, its Achilles' heel turned out to be the very reason why it was formed: it was a party largely based, and dependent upon, the personal popularity of Hanson.<sup>25</sup> Thus, when Hanson became less involved with the party, its popularity waned; when she was convicted and imprisoned, its popularity surged.

By the end of 1999, the party had no representatives in the Queensland Legislative Assembly. This was due to one resignation, and two separate groups of defections to other parties, or groups of independents.<sup>26</sup> The original party was deregistered in August 1999, but later re-registered in another form. At the next Queensland State Election in February 2001, three members of the re-registered One Nation Queensland Division Party were elected. By the Queensland State Election in February 2004, despite predictions of a resurgence of

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23 The name of the party was later changed, the Queensland branch becoming One Nation Queensland Division.

24 See One Nation Queensland Division Constitution, available at Electoral Commission Queensland website: <[www.ecq.qld.gov.au](http://www.ecq.qld.gov.au)>. See also the analysis in Ahluwalia P and McCarthy G, "Political Correctness: Pauline Hanson and the Construction of Australian Identity" (1998) 57 *Australian Journal of Public Administration* 79.

25 See the discussion in Leach, Stokes & Ward, note 17; and Rutherford J, "One Love Too Many: The Undoing of Pauline Hanson" (2001) 47 *Australian Journal of Politics and History* 192.

26 Following one resignation from Parliament, five members resigned from the party in February 1999 and then sat as independents. In December 1999 the five remaining One Nation members resigned from the party and formed a new party, the City Country Alliance Queensland. When joined by one former One Nation independent in February 2000 this party had six sitting members. No members of the City Country Alliance were elected in the 2001 State Election.

the party after Pauline Hanson's very recent acquittal on the fraud charges,<sup>27</sup> the number of One Nation seats was reduced to one.

A useful chronology of events leading to the trial of Pauline Hanson and David Ettridge is provided in the CMC report,<sup>28</sup> which records that the party was first registered federally under the name Pauline Hanson's One Nation on 27 June 1997. On 15 October 1997, an application was made to register the party in Queensland under the *Electoral Act 1992* (Qld). At the time of the application for registration, Pauline Hanson submitted a membership list of approximately 1000 names. The party was subsequently registered on 4 December 1997, with one of the benefits of registration being the ability to recoup the cost of conducting election campaigns. On 10 July 1998, a former One Nation candidate instituted proceedings in the Supreme Court of Queensland to challenge the registration. This resulted in the registration of Pauline Hanson's One Nation being set aside on 18 August 1999, on the basis that the decision to register was induced by fraud or misrepresentation.<sup>29</sup> That decision was subsequently upheld on appeal.<sup>30</sup>

### The criminal charges

As with so many other aspects of this case, the charges themselves were neither simple nor straightforward. On 20 August 2003, after a five-week trial in the District Court of Queensland, Hanson and Ettridge were convicted under s 408C(1)(f) of the *Code* of dishonestly inducing the Electoral Commissioner to register Pauline Hanson's One Nation as a political party under the *Electoral Act 1992* (Qld); an act the commissioner was lawfully entitled to abstain from doing. Hanson was also convicted on two counts under s 408C(1)(b) of the *Code* of dishonestly obtaining \$225,071.07 from the Electoral Commissioner on 2 September 1998, and \$273,566.24 on 25

<sup>27</sup> See, for example, Willis L, "Hanson Case Highlights Inadequacies of Legal System", *AM*, 8 November 2003.

<sup>28</sup> Crime and Misconduct Commission, note 16. See also the discussion of the lead up to the prosecution in Head M, note 14.

<sup>29</sup> *Sharples v O'Shea* [1999] QSC 190 at [142].

<sup>30</sup> *Sharples v O'Shea* [2000] QCA 23.

September 1998. Each accused was sentenced to three years imprisonment.<sup>31</sup>

The charge of fraud under s 408C is more conventionally employed to prosecute cases of dishonest application of property under s 408C(1)(a). It is often used in complex fraud cases as an alternative to a stealing charge under s 398 of the *Code*. First introduced into the *Code* in 1979, it was originally called "misappropriation". The section was renamed "fraud", and amended and enlarged by the *Criminal Code Amendment Act 1997* (Qld), which substantially overhauled the *Code*. The amendments broadened the application of s 408C, thus facilitating the present charges. The more obscure subsections of s 408C are seldom employed in a prosecution, but this does not necessarily mean that their use was inappropriate or somehow improper in this case. What it does indicate is that circumstances necessitating the use of these subsections will only rarely occur. What was also unusual, although again not inappropriate, was the fact that throughout the lengthy trial Hanson was only represented by a solicitor, and the accused Ettridge represented himself. In the Court of Appeal, they were both represented by senior and very experienced counsel.

Details of the charges are set out in Court of Appeal judgment of de Jersey CJ: the charges were concerned with the application to register the party in Queensland on 15 October 1997. The *Electoral Act 1992* (Qld) required the presentation of the names of at least 500 members of the party who were electors. The accused David Ettridge arranged for the list to be produced for the purpose of the application, and it accompanied the application for registration that was presented by Pauline Hanson to the Electoral Commissioner. The basis of the prosecution case was that the people named on the list were only members of another incorporated body, the Pauline Hanson Support Movement, not the political party. The prosecution alleged that the accused dishonestly presented the list in support of the application for registration of the political party. It was alleged that Hanson was culpable because she presented the list to the Electoral Commissioner, and Ettridge was culpable under s 7 of the *Code* because he had aided Hanson in committing the offence. In all fraud charges under s 408C

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<sup>31</sup> *R v Ettridge and Hanson* (unreported, DC (Qld), Wolfe DCJ, 20 August 2003).

the prosecution is required to prove beyond reasonable doubt that the accused acted "dishonestly".<sup>32</sup>

The two charges against Hanson alone (counts 2 and 3) concerned payments made by the Electoral Commissioner to her, as agent for the registered political party, following the party's success in the 1998 Queensland State Election. The Chief Justice pointed out that the dishonesty found by the jury in relation to those two counts must have been the same dishonesty it found in relation to the securing of the registration of the party, namely, that Hanson knew that the people named on the list were not members of the political party but only of the support movement.<sup>33</sup> Complicating matters was the fact that in the earlier civil case, *Sharples v O'Shea*<sup>34</sup>, the Court of Appeal had set aside the registration of Pauline Hanson's One Nation. However, as the Chief Justice noted in the criminal appeal, *Sharples v O'Shea* was a civil case involving different parties.<sup>35</sup> To this can be added the fact that the civil standard of proof (on the balance of probabilities) differs from the criminal standard of proof (beyond reasonable doubt),<sup>36</sup> and in the civil case the court was not considering charges brought under s 408C of the *Code*, and the particular elements of those charges.

In examining whether the applicants joined the political party or the support movement, his Honour held:

Applying orthodox contract theory, the aggregation of those objective circumstances suggests strongly that the applicant offered to join the political party, which then communicated its acceptance of the offer by the provision of the membership card.<sup>37</sup>

Therefore, when considering whether the applicants for membership were members of the support movement or the party, the Chief Justice held it was the objective rather than the subjective considerations that

<sup>32</sup> See *R v Laurie* [1987] 2 Qd R 763 and *Peters v The Queen* (1998) 192 CLR 493.

<sup>33</sup> *R v Hanson; R v Ettridge*, note 3, at [3-5] per de Jersey CJ.

<sup>34</sup> *Sharples v O'Shea*, note 30.

<sup>35</sup> *R v Hanson; R v Ettridge*, note 3, at [23].

<sup>36</sup> See also the comments to this effect by McMurdo P: *R v Hanson; R v Ettridge*, note 3, at [48].

<sup>37</sup> *R v Hanson; R v Ettridge*, note 3, at [15].



must be regarded.<sup>38</sup> In holding that the convictions should be quashed, his Honour stated that:

[T]he preponderance of the available evidence points to the conclusion that the applicants for membership became members of the political party Pauline Hanson's One Nation, or more probably, of both that political party and the support movement.<sup>39</sup>

Finally, the Chief Justice commented on the legal representation of both parties at the trial:

Members of the public will undoubtedly however query why the crystallization of the appellant's current position need have awaited a lengthy trial – approximately five weeks and then an appeal. There is no easy answer to that question, although reference may be made to the extent, and level of the involvement of lawyers throughout.<sup>40</sup>

While stating that he was not being critical of the prosecutors who were involved in the case, the Chief Justice also took the opportunity to emphasise the need for a “properly resourced, highly talented, top level team of prosecutors within or available to the Office of the Director of Prosecutions.”<sup>41</sup> In examining this and other related aspects of the case, the CMC report found that in a case such as the present, a case likely to engender general public and political controversy, it may have been prudent to obtain outside written advice in relation to the prosecution. However, the absence of such external advice did not indicate any misconduct, and the DPP was under no obligation to obtain it.<sup>42</sup> In relation to the funding of the office of the DPP, that office's submission to the CMC inquiry stated that the

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<sup>38</sup> *R v Hanson; R v Ettridge*, note 3, at [21].

<sup>39</sup> *R v Hanson; R v Ettridge*, note 3, at [28].

<sup>40</sup> *R v Hanson; R v Ettridge*, note 3, at [40]. The solicitor who represented Pauline Hanson at her trial later sued her 'benefactor' Michael Kordek for unpaid fees of \$96,231. Mr Kordek counterclaimed for \$280,000, alleging negligence by the solicitor: see Corkill M, "Hanson Allies Fight Over Bill", *The Australian*, 19 June 2004. The matter was subsequently settled.

<sup>41</sup> *R v Hanson; R v Ettridge*, note 3, at [41].

<sup>42</sup> Crime and Misconduct Commission, note 16, pp 9-10.

availability of additional resources would have eased the burden on the prosecutor and clerk involved in the case, but may not have affected the course of the prosecution.<sup>43</sup> In this case, which was always going to be controversial no matter what the outcome, the failure of the DPP to take external advice from senior counsel, while not misconduct, was almost certainly unwise considering the political context of the charges against the accused.

The other notable aspect of the appeal judgments was the observations made by the President of the Court of Appeal, McMurdo P, on the reported media comments by senior members of the legislature, which her Honour referred to as "inappropriate".<sup>44</sup> Her Honour further stated:

Such statements from legislators could reasonably be seen as an attempt to influence the judicial appellate process and to interfere with the independence of the judiciary for cynical political motives.<sup>45</sup>

Whether or not the comments referred to were made with those motives, they added to the controversy surrounding the case, and it is difficult to disagree with the President that they were "inappropriate", considering all of the circumstances.

## The Sentence

As noted above, the sentence of three years imprisonment imposed on both accused was widely criticised in the media as being too harsh,<sup>46</sup> but there has been little objective analysis of the sentence and whether in fact this was the case.

It is unclear from the sentencing remarks by Wolfe DCJ in the District Court<sup>47</sup> whether the first charge (common to both accused) under s 408C(1)(f) of the *Code* carried with it a circumstance of aggravation

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<sup>43</sup> Crime and Misconduct Commission, note 16, p 10.

<sup>44</sup> *R v Hanson; R v Ettridge*, note 3, at [51].

<sup>45</sup> *R v Hanson; R v Ettridge*, note 3, at [57].

<sup>46</sup> See for example, Potter D, "Wave of Sympathy Swamps Media", *The Courier Mail*, 22 August 2003.

<sup>47</sup> *R v Ettridge and Hanson*, note 31.

under s 408C(2). If this was the case, the maximum penalty would increase from five years imprisonment to ten years imprisonment. Although, because the convictions were quashed, the Court of Appeal was not required to discuss the sentencing aspect of the case, the previous Court of Appeal decisions in the bail appeals made it clear that the maximum penalty in relation to the first charge, common to both accused, was five years imprisonment. In their judgments in relation to both accused in relation to the bail appeal,<sup>48</sup> the court remarked that the sentences appeared high. However, as this was not a criterion for considering whether bail should be granted pending appeal (exceptional circumstances had to be shown)<sup>49</sup> the bail appeal case did not turn on this aspect.

In relation to the two charges against Pauline Hanson concerning the electoral funding, the sentencing remarks by Wolfe DCJ made it clear that these convictions carried with them a circumstance of aggravation, and therefore the maximum sentence was ten years. In Hanson's case, the sentences of three years imprisonment on counts 2 and 3 were made concurrent with the sentence on count 1, on the grounds of the substantial suffering resulting from the conviction, and the events that had occurred since the conviction and the proceedings in the Supreme Court. Her Honour did not make any recommendations for early post-prison community based release in relation to either accused.<sup>50</sup>

In sentencing both Hanson and Ettridge on the fraud charges, her Honour noted that the Crown Prosecutor had submitted that the range<sup>51</sup> in relation to count 1 was three to five years imprisonment. On the face of it this was high considering the maximum penalty was five years imprisonment, the sentencing principle is that the maximum should be reserved for the worst category of cases, the electoral

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<sup>48</sup> *Hanson v Director of Public Prosecutions (Qld)* (2003) 142 A Crim R 241; *Ettridge v DPP (Qld)* [2003] QCA 410.

<sup>49</sup> *Ex Parte Maher* [1986] 1 Qd R 303; see also the reasoning in *Hanson v DPP; Ettridge v DPP* [2003] QSC 277 (Supreme Court of Queensland, Chesterman J).

<sup>50</sup> Post-prison community based release has now replaced parole in sentencing orders in Queensland. Such early release can be recommended under s 157 *Penalties and Sentences Act 1992* (Qld) for sentences of imprisonment of over two years duration (in relation to most, but not all charges). If there is no such recommendation, most prisoners can apply for early release after serving 50% of their sentence: s 135 *Corrective Services Act 2000* (Qld).

<sup>51</sup> That is, the appropriate periods of imprisonment within which the judge should sentence, usually based on previous similar cases.

funding had been repaid, Hanson had no previous convictions, and Ettridge had one previous conviction for a minor offence. Her Honour gave no details of this minor offence in her sentencing remarks, and Ettridge appeared to be treated also as a first offender. Both were of good character, and neither had obtained any personal financial benefit. Balanced against all this however was the seriousness of the charges, concerning as they did the electoral processes, and the requirement, pointed out by her Honour, that those processes not be thwarted or perverted. However, it is very difficult to see how these charges, in the circumstances, could have attracted a sentence in the upper range as submitted by the Crown Prosecutor. On counts 2 and 3 against Hanson, the sentences of three years were not necessarily inappropriate considering the amounts of money involved, the serious nature of the charges, and the maximum penalty of ten years imprisonment. However, in relation to the fraud charges against both Hanson and Ettridge, in view of the mitigating factors noted above, a sentence of suspended imprisonment, either wholly or partly suspended, may not have been unreasonable in the circumstances. The comparative sentences used in the case would seem to support this view.

The comparative sentences submitted by the prosecution were *Ehrmann*,<sup>52</sup> *Fingleton*,<sup>53</sup> and *Rouse*.<sup>54</sup> None were comparative in a strict sense, which is hardly surprising given the unusual nature of the charges. Ehrmann was charged under the *Crimes Act 1914* (Cth) with 24 counts of forgery and 23 counts of uttering, and was sentenced to three years imprisonment, with release on a five year good behaviour recognisance after nine months. The charges related to forged applications for enrolment on the Commonwealth Electoral Roll. Fingleton, the former Queensland Chief Magistrate, was charged under s 119B of the *Code* with threatening a witness in retaliation without reasonable cause. She was sentenced to 12 months imprisonment, which on appeal was ordered to be suspended for an operational period of two years after serving six months of the sentence: the case is presently on appeal to the High Court. The charge under s 119B, also unusual, carried a maximum penalty of seven years. In comparison with the cases of *Ehrmann* and *Fingleton*, the sentences of three years imposed on Hanson and Ettridge were high,

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52 *R v Ehrmann* [2001] QCA 50.

53 *R v Fingleton* (2003) 140 A Crim R 216.

54 *R v Rouse*, (unreported, CA (Tas), 19 October 1990).

particularly considering that the maximum penalty on count 1 was five years imprisonment. Even taking into account the higher maximum sentences on counts 2 and 3, those sentences were still severe when compared with the sentences imposed on *Ehrmann* and *Fingleton*.

In the sentencing remarks, no details were given of any submissions made on Pauline Hanson's behalf by her solicitor, but the transcript of the application for bail to the High Court records that her solicitor submitted that a fully suspended sentence was appropriate, with a head sentence of two to three years.<sup>55</sup> David Ettridge did not make any submissions on his own behalf on sentence.

As one observer noted,<sup>56</sup> critics of the sentences who believed they were too harsh did not have the benefit of sitting in court and hearing the full details of the case. Commentators have also pointed out the irony of the One Nation policy statements on law and order, and the fact that Pauline Hanson was a candidate for the NSW Legislative Council, reportedly on a law and order platform, arguing for tougher sentences for those convicted of serious crimes.<sup>57</sup> Unfortunately for Hanson, she herself received a lengthy sentence.

## Conclusion

Although a difficult and undoubtedly sensational case, it is hard to disagree with the comments of the Chief Justice that the eventual quashing of the convictions did not render the process to that point unlawful, and that the adjudication had followed due process. Part of the reason for these statements in the judgment may have been the unprecedented level of media comment, and the perceived need to explain these aspects of the case.

The fact that the outcomes in the civil and criminal cases differed in some aspects does not necessarily mean that the process in either was wrong. As noted above, the parties in the civil and criminal cases were different, the issues were different, and the standard of proof was different. Although, as the Chief Justice said, their experience would have been "insupportably painful", they were tried in accordance with the law and found guilty by a jury on the evidence presented to the

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<sup>55</sup> *Ettridge v DPP (Qld); Hanson v DPP (Qld)* [2003] HCA Trans 377 (23 September 2003).

<sup>56</sup> Charlton P, "Armchair Judges, Take a Breath", *The Courier Mail*, 22 August 2003.

<sup>57</sup> Charlton, note 56.

court. The complicated nature of the civil and criminal cases, the length of the criminal trial, and the difficulties involved in determining the legal position of the members of the support movement/political party, demonstrate the many complexities in the facts of this case.

The fact that neither Hanson nor Ettridge was granted bail pending the hearing of their appeals was not unusual. In fact, having been sentenced to three years imprisonment, it would have been unusual if they had been released on bail. In cases of this nature involving fraud on the electoral process, custodial sentences would be likely due to the seriousness of the charges. Had Hanson and Ettridge received very light sentences, it is likely there would have been considerable criticism on the basis that they were "getting off lightly".<sup>58</sup> Nonetheless, the sentences in this case were lengthy when compared with the comparative cases presented to the court. It is not unreasonable to suggest that, as in *Fingleton*, the sentences would have been reduced on appeal if the convictions had been upheld.

Perhaps one of the reasons for the outpouring of public sympathy for Hanson was that she was perceived as having been given a comparatively lengthy sentence in relation to a white collar crime, especially one from which she did not personally financially benefit. However, sentences of this length are not unusual in white collar/fraud type cases. This is particularly so in social security fraud cases, which ironically are often given little publicity, meaning that any intended deterrent effect is largely negated. Much longer sentences are handed down in cases involving fraud in positions of trust (also charged under s 408C of the *Code*). These sentences are sometimes in the range of eight to ten years (where the maximum is ten years). Judged against these types of cases, the sentences of Hanson in particular were not long, although the nature and subject matter of the charges were completely different, and therefore difficult to compare.

Although not voiced in much of the debate on this case, underlying the unease may have been a fundamental issue concerning long terms of imprisonment in cases of non-violent crime. In this instance, the convicted persons were very well known, and in the case of Pauline Hanson popular and newsworthy, even among those who professed not to agree with her politics. Seeing such a person go to gaol is never pleasant or easy, as the reaction to her imprisonment illustrated. The

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<sup>58</sup> See, for example, editorial, "Hanson Sentence Raises Queries", *The Courier Mail*, 22 August 2003.

high level of media coverage of her trial and imprisonment magnified this response.

A number of issues in this case led to further questions, many of which were referred to and dealt with by the CMC in its investigation. The fact that the case was unusual and difficult did not necessarily mean that the court processes were wrong. It does however raise questions about custodial sentences for this category of offence where there is no identifiable 'victim', and no violence necessitating the community being protected by imprisoning the offender for a lengthy period. In sentencing offenders, judges are expected to implement the intention of the legislature, which in turn should reflect the intention of the community. Hopefully, the sentencing outcome in this case will contribute to a reassessment of the use of imprisonment in these types of cases, not only in Queensland, but also in all Australian jurisdictions.