

In the summer of 2002, Di Fingleton was Chief magistrate in the state of Queensland, in northeastern Australia. Fingleton notified Magistrate Anne Thacker in July 2002 that she had decided to transfer her from Queensland's largest city of Brisbane, to Townsville 700 miles north. Thacker promptly filed an appeal of Fingleton's decision to the judicial committee. Thacker was concerned about the hardship the transfer would cause her family. On August 12, 2002, Co-ordinating Magistrate Basil Gribbin provided a sworn affidavit to Thacker's lawyer supporting her challenge to the transfer.¹ Fingleton retaliated against Gribbin by sending him an email on September 18, 2002, giving him seven days to show cause why he should not be demoted from his position as a coordinating magistrate for his "insubordination" of providing the affidavit.

Queensland's Criminal Code § 119B states:

"A person who, without reasonable cause, causes, or threatens to cause, any injury or detriment to a judicial officer, juror, witness ... in retaliation because of ... anything lawfully done by the juror or witness in any judicial proceeding; is guilty of a crime. Maximum penalty - 7 years imprisonment."

Gribbin was a "witness" who had "lawfully" provided evidence in the form of his affidavit in the "judicial proceeding" of Thacker's appeal, and in retaliation Fingleton "threaten[ed] to cause" him the "injury or detriment" of a demotion. After an investigation, a two-count indictment was issued against Fingleton. She was charged with violating Criminal Code § 119B, and attempting to pervert the course of justice.

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Mallard is a perfect illustration of how easy it is for the police to target someone for a crime that they did not commit.

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Endnotes and sources:

1 *Mallard v The Queen* [2003] WASCA 296.

2 *Mallard v The Queen* [2005] HCA 68.

3 *Id.* at 68 (Justice Kirby). (Under human rights conventions 'equality of arms' means that the conditions of trial do not "put the accused unfairly at a disadvantage.")

4 Corruption and Crime Commission (2005) 'Media Report: CCC to Investigate Controversial Case', released on 02/12/05.

Magistrate Awarded \$348,000 And New Job After "Threat" Conviction Tossed

By Hans Sherrer

On June 4, 2003, a jury convicted Fingleton of violating § 119B. It was her second trial: her first trial ended in a hung jury. The jury was unable to arrive at a decision about the second count. She was sentenced to one year in prison for threatening a witness in a judicial proceeding.

Fingleton was allowed to remain in her position pending the outcome of her appeal to Queensland's Court of Appeal. The appeals court upheld her conviction on June 26, 2003. However, the Court modified her sentence to six months imprisonment, and six months was suspended dependent on two years of clear conduct after her release. (*R. v. Fingleton* [2003] QCA 266 (26 June 2003)) Fingleton then resigned her judgeship and began serving her sentence.

In June 2005, more than a year after she had completed her sentence, Australia's High Court quashed Fingleton's conviction and entered a judgment of acquittal on both counts in the indictment – even though she had only been convicted of one count. (*Fingleton v The Queen* [2005] HCA 34 (23 June 2005))

The High Court didn't base its decision on the merits of the prosecution's case. Which was that Fingleton had illegally threatened to retaliate against Gribbin for filing an affidavit in support of Thacker's challenge to her transfer. Rather, the High Court unanimously (6-0) based its ruling on the premise that under Section 30 of Queensland's Magistrates Act, "a magistrate is not criminally responsible for anything done or omitted to be done by the magistrate in the exercise of an administrative function or power conferred on the magistrate under an Act, although the act done is in excess of the magistrate's administrative authority."²

Since the power to order Thacker's transfer was a part of Fingleton's administrative authority as Chief Magistrate, the Court ruled she was immune from prosecution for any of her actions related to that transfer that exceeded her authority – including her conviction for criminally violating § 119B. Having determined that Fingleton's criminal act was shielded from prosecution by the cloak of magisterial immunity, the Court considered her to have been wrongly convicted.

Queensland has no wrongful conviction compensation statute, so a person whose conviction is quashed must seek an *ex gratia* payment from the government, or sue the people responsible who are not immune from liability. (Judges, prosecutors, and defense lawyers in Queensland are immune from civil liability for a wrongful conviction.)

Queensland's Premier Peter Beattie initially took the hard-line that Fingleton would neither be considered for an *ex gratia* payment, nor would she be restored to her judgeship. His position was based on the fear that doing so would open the floodgates for every exonerated person in Queensland to make a claim for *ex gratia* compensation.

However, contrary to Premier Beattie's public posture, behind the scenes the government was negotiating with Fingleton. In September 2005 a settlement was announced that Queensland would pay Fingleton \$348,000 (\$475,000 Australian) in back pay, and she would be reinstated as a magistrate. She was not reinstated as chief magistrate because someone had been appointed to that position in her absence. She also didn't receive any payment, *per se*, for her wrongful imprisonment – since the monetary award was described as "lost earnings" from June 2003 to her reinstatement effective in October 2005.

Fingleton's "loss of income, liberty, reputation and trauma suffered" were cited as justifications for her payment and reinstatement. Beattie sought to distinguish her situation from other cases of wrongful conviction. Beattie said, "The High Court of Australia decided she never should have been charged, let alone served time in prison. This case is entirely different to others where people have been quite properly charged and convicted and then later acquitted."³

Beattie comment was likely referring to Pauline Hanson, the co-founder of Australia's One Nation political party who was convicted of election fraud in August 2003. Hanson was jailed immediately and served three months in prison before her conviction was quashed by the Court of Appeals in November 2003. The Court determined that the election fraud never occurred. Queensland's Attorney General formalized Beattie's comments in October 2005 by denying Hanson's claim for compensation, saying, "The convention with *ex gratia* payments in Queensland is, unless exceptional circumstances exist, a person acquitted of a criminal charge will not be compensated either for their legal expenses on defending the charge, or for any time spent in custody."⁴

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In the political arena you can expect that some factions will engage in 'dirty politics'. Pauline Hanson, one of Australia's leading politicians, found out about dirty politics the hard way when influential figures orchestrated her wrongfully prosecution and conviction of non-existent crimes.

The political rise of Pauline Hanson

Pauline Hanson began her political career in March 1996, when she won a convincing victory and was elected as the Independent member of the federal House of Representatives for Oxley, a suburb of Brisbane, in the Australian state of Queensland. She successfully made the transition from the 'fish and chip shop lady' to one of Australia's leading politicians. Hanson almost immediately climbed the political ladder and gained television notoriety. She became the media's 'best friend' and at times received more attention than all of Australia's other politicians combined. Hanson's appeal to the media was not just because of her working class background and that she was an attractive and dynamic woman, it was also the result of the controversial views that she held. The issues that received the greatest degree of publicity revolved around race, culture and welfare in Australian society. Hanson argued that she was a typical 'Aussie battler' and that the government of Prime Minister John Howard was no longer in touch with the average Australian.

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After Fingleton's settlement was announced, Fingleton's lawyer, Matt Woods stated, "The payment to her is some recognition of the injustice she has suffered. However, no amount of money could make up for what my client and her husband have been through."⁵

Footnotes and sources:

1 In addition to their regular duties, a Co-ordinating Magistrate allocates the work of the Magistrates Court, for which they are paid an additional \$2,000 per year.

2 *Fingleton v The Queen* [2005] HCA 34 (23 June 2005), ¶42. The Court ruling recognized that a magistrate's protection from criminal liability for administrative actions was a companion to the principle enunciated in Section 30 of the Code that, "a magistrate is not criminally responsible for anything done by the magistrate in the exercise of the magistrate's judicial functions, although the act done is in excess of the magistrate's judicial authority." *Id.* at ¶42.

3 Fingleton Given \$475,000 And Job Back On Bench, Rosemary Odgers and Louise Crossen, *The Courier-Mail*, Brisbane, September 2, 2005.

4 Payout denied to former One Nation leader, *The Australian*, October 27, 2005.

5 Fingleton Given \$475,000 And Job Back On Bench, *supra*.

Additional sources:

R. v. Fingleton [2003] QCA 266 (26 June 2003)
Australia's Hanson Free From Jail, *BBC News*,
November 6, 2003.

'Aussie Battler' Pauline Hanson Exonerated Of Fraud

By Serena Nicholls

Hanson also spoke out against Australia's promotion of multiculturalism and the government funding that was allocated for Ab-origines. In Hanson's maiden speech she stated that she "...did not believe that the colour of your skin determines whether you are disadvantaged," and that "...most Australians want our immigration policy radically reviewed and that of multiculturalism abolished. I believe that we are in danger of being swamped by Asians."¹ In accordance with this view, Hanson believed that the solution to Australia's 'race' issue was to return to a "white" Australia. These views were widely reported around Australia and the Asia Pacific region. This in turn placed immense pressure on Prime Minister Howard.

Initially, Howard argued strongly for Hanson's right to free speech, regardless of its perceived racial content. Howard received strong criticism over his actions, or lack thereof. Many Australians urged Howard to make a public statement explaining that Hanson's views did not represent mainstream Australia. This was necessary because many Australians were concerned that Hanson's views would negatively impact the perception of Australia and ultimately its tourism. When Howard refused to publicly refute Hanson's views there was a public uproar. Howard was repeatedly criticized by the media as being impotent and incompetent. Some even referred to Hanson as the tiger that Howard could not control.² Emotions ran high with many arguing that Howard's failure to refute Hanson's views was because he identified with her policies.

The media interest in Hanson began to slowly fade until April 1997, when she co-founded the One Nation Party. Hanson once again became prominent in newspaper headlines. The unexpected phenomenon was Australia's response to her. It seemed a significant segment of Queensland's electorate was prepared to identify with Hanson's policies. Fourteen months later, Hanson's One Nation Party took 11 out of the 88 seats in the state parliament.³ Many suggested the main reason for this phenomenon was Hanson appealed to Australians who couldn't understand why their lives were so tough, while foreigners were perceived to have it easy.

Although Hanson and the One Nation Party had widespread support, many demonstrators

condemned her policies and labeled her a racist. Opposition was at its peak when Hanson successfully applied for an injunction to prevent a network from playing a song with lyrics describing her as a male homosexual, a prostitute and a member of the Ku Klux Klan. Regardless of the demonstrations, Hanson remained an influential political figure and a potential threat to the Howard government.

The views expressed by Hanson and her One Nation Party greatly impacted Australia's political arena. Some politicians begrudged Hanson for her immediate success in an arena that often takes years to accomplish. Therefore, what happened next was both satisfying for some people and reprehensible for others.

The demise of Pauline Hanson

The Howard government publicly turned against Hanson after One Nation received almost one-quarter of the vote in the June 1998 Queensland election and won eleven seats in Legislative Assembly. In particular, Howard questioned the party's organizational practices and election finances. Hanson responded to these claims by threatening to mount a campaign to devastate the Howard government at the next election. Howard's right-hand-man, Tony Abbot proceeded to surreptitiously campaign against Hanson by soliciting others to commence litigation against One Nation.⁴ This campaign to undermine Hanson enabled the Howard government to narrowly survive the federal election and remain in power. Hanson also lost her legislative seat. One Nation began to lose momentum and was no longer considered a political threat.

Then in 2001, One Nation dramatically resurfaced by winning nearly 10% of the seats in Queensland's state election. That was a blow to the Howard government, and sent the message that Hanson and One Nation were forces to be reckoned with that weren't going away.

Four months after that election, the Queensland police issued a summons against Hanson to face fraud charges. This assisted in the investigation against Hanson and resulted in her prosecution (One Nation co-founder David Ettridge was also prosecuted). The Department of Public Prosecutions alleged that Hanson falsely registered One Nation by submitting the names of 500 supporters instead of party members. On the 20th of August 2003, a jury found Hanson guilty. Hanson defiantly exclaimed, "Rubbish, I'm not guilty ... it's a joke."⁵

She was then sentenced to three years imprisonment without the possibility of parole. Judge Wolfe stated the sentence was appropriate because Hanson had undermined Aus-

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