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MAY 02, 2017

Why Matthew Hooton is wrong - again

by Andrew Geddis

Matthew Hooton being wrong about something is not usually worth writing a post about. But when he speaks ill of one of my friends ... well, action must be taken.

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Back in February, a Twitter debate took place over the possibility that Rule 8.47 of the Labour Party Constitution might result in the Party being hauled into court to defend its list candidate selections. Rule 8.47, for those of you who don't know the minutiae of New Zealand political party governance structures, reads:

> *The Moderating Committee must, in determining the list, ensure that for any percentage of the Party Vote likely to be obtained, and taking into account the electorate MPs likely to be elected with that level of Labour support, the resultant Caucus will comprise at least 50% women.*

As my name got dropped into the mix, I ended up writing this Pundit post where I set out the reasons why I thought a legal challenge on the basis of Rule 8.47 would be very, very difficult to mount. The tl;dr of this debate (such as it was) was that Matthew Hooton – the overexuberant and prolific RoC commentator on everything – was dogmatically sure that unless Labour could guarantee that its list would produce a future caucus with at least 50% woman no matter the level of its party vote, then a court would almost certainly order it to remedy the situation. The legally trained academics who actually study and think about this stuff disagreed, saying that such legal action was highly unlikely to be brought and almost certain to fail.

Some guy on the internet versus the experts. Well, if you want to, you can go back and review the "debate" and decide for yourself who produced the better analysis of the issues.

However, with the Labour Party's recent list announcement, Hooton returned to claim vindication. Exactly *how* the list announcement had this effect was not specified, but it didn't stop him launching a particularly nasty attack on VUW's Dean Knight (who happens to be a good friend of mine), beginning:

> **Matthew Hooton** @MatthewHootonNZ
>
> What's the bet @drdeanknight or AGeddis will pop up in media next 24 hours assuring us rule 8.47 is only really a non-justiciable guideline?

(You'll have to click through to read the rest of the thread, which does not reflect well on Hooton's ability to engage in a civil or respectful fashion with those with whom he may disagree.)

Hooton's mini-me employee at his ridiculously titled "Exceltium" business – "New Zealand's most successful corporate and public affairs consultancy", don't you know! - then smirked in with his own contribution:

> **Ben Thomas** @BenThomasNZ
>
> Media: if you need a public law expert to replace the commentators who denied any litigation risk in Labour's selection, hmu, B Thomas LLM

Of course, if you go back and actually review what Dean and I (and other public law commentators) wrote back in February, it simply wasn't what Hooton and Thomas claim at all. Both Dean and I fully accepted that if you could find some aggrieved individual with standing to bring a case, a claimed failure to comply with Rule 8.47 is justiciable *in theory*. However, the chances of getting a court to find that the rule actually has not been complied with, or to give any relief to the claimant for such a failure to comply, are very, very low. Hence there is minimal (but admittedly non-zero) litigation risk, because people tend not to bring cases to court that they likely won't win. Of course, Exceltium may advise its clients otherwise, but I couldn't possibly comment.

That's not to say that the Labour Party moderating committee didn't try to ensure a 50-50 male female outcome in its list selection process, or that Rule 8.47 has no bite at all. It is, after all, a command given to the committee by the Party as a whole. But saying "the committee tried to do what Rule 8.47 says when compiling the list by ensuring that a 50% female caucus was a realistic proposition after the election" is *not the same* as saying "the committee was worried that if it didn't apply Rule 8.47 so as to ensure that any future caucus at any level of the party vote would be at least 50% women, the Party almost inevitably would end up in court."

And in any case, Hooton's crowing that the Labour list announcement somehow proved he was correct in a near-three-month-old twitter battle with experts in a subject that he knows little-to-nothing about was belied by his tweets on the subject barely two days later. For this morning he was gleefully telling the world:

> **Matthew Hooton** @MatthewHootonNZ
>
> CORRECTION: Looks like @NZLabour HASN'T complied with Rule 8.47 unless they've assumed they'll get an unlikely 32.7%.

So, according to Hooton (and, by association, his mini-me employee Thomas), Rule 8.47 imposes *such* a severe litigation risk that the Party's list decisions were a consequence of its desire to avoid the otherwise inevitable court action (and take ***that***, dishonest shills of the academic world!) … yet the Labour Party has produced a list that doesn't actually comply with the rule at all. I guess that's the sort of clear, logical, incisive analysis that clients of Exceltium expect to receive for their money.

Of course, as replies to Hooton's tweet quickly pointed out, his claim about Labour's list was false – apparently this very important and well informed political commentator couldn't even correctly work out how many MPs Labour would get with 32.7% of the party vote. However, the general point is instructive. For it simply is very, very hard to tell if Rule 8.47 has been complied with at any given level of the party vote, because you have to make a whole series of prior assumptions about who will win individual electorate seats and how great will be the level of "wasted" votes for those parties that don't make the representation threshold.

And it is for that reason that any attempt to challenge the Labour list for failing to meet Rule 8.47 is almost certainly doomed to failure. Because if it's something that can be argued about on twitter for hours on end, how is a High Court judge meant to determine exactly what it requires the Labour Party to do? Or, to put it another way, if the rule is so plastic as to mean quite different things to different interpreters, then it is for the Party to decide how it applies – not a court.

Which is what Dean and I and others said to Hooton and his mini-me employee back in February. We were right then, and nothing that has happened with the announcement of the Labour list changes us being right.

Incidentally, while we are here, this may be a good time to revisit another confident Hooton pronouncement. Back in June 2016, following the announcement of the Labour-Green Memorandum of Understanding, he was dogmatically certain as to its consequence:

> *The Greens can anticipate a net increase in their polling, as can National, but the pact is all downside for Labour.*

Fast forward some eleven months and how does that confident prediction look? Well, Labour and the Greens are polling pretty much at the same level they were at the MOU signing, at 29.5% and 13% respectively. Meanwhile, National has dropped 2-3 percent, to 43%.

Yep, it's really lucky we've got someone like Matthew Hooton to interpret the world for us and confidently tell us what will happen in the future. Really, really lucky.

COMMENTS (3)

by Ross on May 02, 2017

(although not non-zero)

I presume you meant "although not zero" or "greater than zero".

by Andrew Geddis on May 02, 2017

@Ross,

Yes - thanks - change made.

by Ian MacKay on May 02, 2017

Matthew and Mike of Mike's Mad Minute, speak with the same voice so they must be right. Probably plot darkly in murky places so tomorrow...

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