



**To:** Defendants' Legal Counsel  
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5th May 2025

### Foreign Law Notice

On 7th April 2025 the plaintiff, Mr Anton Tutoveanu, initiated proceedings by Summons in the Supreme Court of NSW's Equity Division, Duty List regarding a political party pre-selection dispute.

On 10th April 2025 a judgment was entered and published concerning foreign citizenship law (see *Tutoveanu v Velez* [2025] NSWSC 359 at [52]-[60]).

*Uniform Civil Procedure Rules 2005* (NSW) Part 6, Division 9 regulates parties contesting issues arising under foreign law:

#### 6.42 Definitions

In this Division—

**foreign court** means a court of a country other than Australia.

**foreign law** means the law of a country other than Australia.

#### 6.43 Filing of notices

- (1) A party who contends that an issue in proceedings in the Supreme Court is governed by foreign law must file and serve on the other parties affected by the issue a notice (a foreign law notice) setting out the relevant principles of foreign law and their application to the issue.
- (2) The foreign law notice must be filed and served by the party contending that an issue is governed by foreign law not more than 6 weeks after the filing by that party of a summons, statement of claim, statement of cross-claim or defence in respect of the proceedings.
- (3) A party on whom a foreign law notice is served who disputes the principles of foreign law or their application must file and serve on the other parties affected by the issue a notice setting out the matter or matters in dispute (a notice of dispute as to foreign law).
- (4) The notice of dispute as to foreign law must be filed and served not more than 8 weeks after the date of service of the foreign law notice.

The issue in these proceedings is whether the plaintiff is disqualified under s 44(i) of the *Commonwealth Constitution* thereby rendering him ineligible to be elected as a candidate in the 2025 Australian Parliament's House of Representatives.

This provision is subject to an implicit qualification which arises from a constitutional imperative that the applicant has taken all reasonable steps required by foreign law to renounce his birth acquired Romanian citizenship (see *Re Gallagher* [2018] HCA 17 at [10]-[11]).

The relevant foreign law includes *The Constitution of Romania* and *Act No. 21/1991 on Romanian Citizenship*.

## **The Constitution of Romania**

### **TITLE I**

#### **General principles**

##### **ARTICLE 1**

Romanian State

...

(5) In Romania, the observance of the Constitution, its supremacy and the laws shall be mandatory.

##### **ARTICLE 5**

Citizenship

(1) Romanian citizenship can be acquired, retained or lost as provided by the organic law.

(2) Romanian citizenship cannot be withdrawn if acquired by birth.

### **Principle**

*The Constitution of Romania* precedes any of its organic laws.

### **Application**

*Commonwealth of Australia Constitution Act* requires:

#### **44. Disqualification.**

Any person who—

(i.) Is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power: ...

...

shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

Since the Romanian law will not permit retraction of any birth acquired citizenship, the foreign-born plaintiff cannot remedy the condition imposed by s 44(i) of the *Commonwealth Constitution*. He is still "entitled to the rights or privileges of a subject or a citizen of a foreign power". The statutory declaration made on 5th December 2024 and 8th April 2025 are sufficient reasonable steps of renouncement amongst long-time material facts. The constitutional imperative is engaged and the plaintiff is eligible to be elected in Australian Parliament.



Anton Tutoveanu  
5th May 2025

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