

## Second crossbencher to be referred to the High Court

Written by Michelle Grattan, Professorial Fellow, University of Canberra

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Further uncertainty has been thrown over the Senate crossbench, with the government moving to have the High Court determine whether One Nation's Rod Culleton was ineligible for election.

This follows Tuesday's announcement that the Government would ask the Senate to refer to the court the eligibility on July 2 of former senator Bob Day, from Family First.

Day has resigned, so what is at stake is not his future but how his replacement is chosen, which will determine who succeeds him.

The questions over Day's and Culleton's eligibility at the time of their election both relate to section 44 of the constitution but are different. Day's goes to an alleged indirect pecuniary interest in a contract with the Commonwealth; Culleton's to the legal proceedings in which he was involved.

For the final weeks of the Senate this year, the government has lost the vote of Day, its strongest crossbench supporter, while Culleton, from Western Australia, has flagged he perhaps will not vote while his future is being determined.

Attorney-General George Brandis said he had sought a legal opinion on October 13 in view of issues raised in proceedings begun in the High Court against Culleton by Bruce Bell, who is a former associate of the senator.

These were based on an allegation that, at the time of the July 2 election, Culleton had been convicted of an offence punishable by a prison sentence of a year or longer, and was therefore "incapable of being chosen" as a senator under the constitution.

The conviction related to a larceny charge in New South Wales. In court last week Culleton avoided having a conviction recorded, after pleading guilty to the theft of keys from a tow truck driver in 2014. Culleton said he was "protecting my assets".

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Brandis on Saturday sent Senate president Stephen Parry the opinion he had received from the Solicitor-General. He also gave a copy to Culleton.

(The opinion was from Justin Gleeson, who announced last week he was quitting as Solicitor-General, after a bitter conflict with Brandis.)

The Senate on Monday will be asked to refer both the Culleton and Day matters to the court and is certain to agree.

Culleton said in a statement that the Solicitor-General's opinion had concluded he was "not duly elected as a senator".

He was seeking advice from the Senate's Clerk and President.

Culleton said he might have to postpone any votes on bills, "in goodwill", while his eligibility was investigated. "While I have a dark cloud over me I have to remain honourable not only to myself, but to the Senate and to parliament," he said.

If it came "down to the crunch" he said he would fight this in the High Court and represent himself.

"This is a constitutional matter, and boy am I sharp on the Constitution (the real law of Australia) so this is right up my veggie patch," he said.

Senator Culleton said this was another political attack to remove him from the Senate.

"A single action over a \$7.50 key could now lead to an entire nation being stopped," he said, adding he was referring to any bills to be tabled in parliament next week.

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