

PROCEDURAL FAIRNESS?

An example of the care that committees need to take when considering expulsion of a member has been provided by the South Australian Supreme Court in *Ridgway v Sporting Shooters Association of Australia Hunting & Conservation Branch (SA) Inc* [2015] SASC 7 (28 January 2015).

Mr Ridgway was a member of the Sporting Shooters Association of Australia Hunting & Conservation Branch (SA) Inc (“the Club”). The Council (“Committee”) of the Club on 20 March 2013 sought to expel Mr Ridgway from membership after a protracted period of agitation by Mr Ridgway. In fact, the decision runs to almost 40 pages where the Court seeks to display the tone and behaviour of Mr Ridgway’s dealings with the Club.

The Court noted that “*It soon became apparent that the Plaintiff [Ridgway] was a person obsessed with process and procedure*” [paragraph 26] and that Mr Ridgway’s concerns were “*tendentiously expressed*” [paragraph 49]. The Court also noted the Club’s President being courteous and patient [paragraph 53] but that Mr Ridgway “had become almost entirely preoccupied with the complaint process he had entered upon” [paragraph 54] and “*underscored how unreasonable the Plaintiff [Ridgway] was behaving....*” [paragraph 55].

Whilst the case was argued on the particular provisions of the *Associations Incorporations Act 1985 (South Australia)* there are equivalent provisions in the *Associations Incorporations Reform Act 2012 (Victoria)*.

How did it start?

Mr Ridgway became a member of the Club on retirement with the apparent intention of rekindling an earlier interest in hunting. Mr Ridgway was particularly interested in participating in the Club’s feral animal culling program.

The Court noted, “*before taking part in culling activities new members are required to undertake certain training. The training is divided into a theoretical and practical component. The practical component of the training comprises a marksmanship test during which the member is required to achieve a certain accuracy in shooting targets from a distance of 100 metres. The Plaintiff [Ridgway] became diverted from and did not undertake this aspect of the training prior to his expulsion.*” [paragraph 7]

Mr Ridgway successfully completed the theoretical training but at no stage completed the practical (marksmanship) training.

Mr Ridgway's original concerns later to be described as "complaints", were that he and other participants in the theoretical training component were "subjected to unsolicited remarks and displays of a sexist, sexual and possibly racist nature" on two separate occasions, by the two members (Mr McKenney and Mr Hartwig) conducting the theoretical training. This complaint procedure initiated by Mr Ridgway went for more than two years prior to his expulsion.

A summary of Mr Ridgway's conduct includes the original email of concerns, a further detailed email outlining the 20 or so separate concerns regarding the two incidents seeking specific outcomes. There was no complaint by any other participants. The then president responded by advising that a Member Protection Policy ("MPP") had been adopted with a member being appointed as the Member Protection Information Officer ("MPIO") to discuss the matter. The MPIO then became involved in an ongoing exchange of emails in an attempt to discuss Mr Ridgway's concerns.

Mr Ridgway then responded that before discussing the matter any further he wanted detailed information on the role, experience and qualifications of the MPIO. Further he noted that the MPP did not deal with concerns but rather "allegations" and "complaints". Despite the MPIO's best endeavours Mr Ridgway refused to meet face to face, but continued with detailed and convoluted emails – even claiming that he was "directed" to complain, ignoring his own initiation of the process. The substance of Mr Ridgway's "concerns" or "complaints" were lost in his detailed and obsessive focus on procedure.

He also sought to move amendments to the Constitution of the Club and accused the President of leaking to members to garner support against the proposed amendments. The Court found that the President had simply circulated the proposal to other committee members.

The Court also found that after two years, since joining the Club, Mr Ridgway, apart from the initial training day (which was the catalyst for his concerns), had not engaged in any Club activities.

These are but a sample of Mr Ridgway's preoccupation with his concerns, the demands he placed on a volunteer organisation and his unwillingness to deal with the Club other than by email.

Finally, the Club initiated a show cause procedure that required Mr Ridgway to show cause as to why he should not be expelled from membership. Mr Ridgway did not attend the meeting but was represented by his solicitor. The decision of the meeting, unsurprisingly, was that he be expelled from membership.

Mr Ridgeway's claims

Mr Ridgeway then appealed to the Supreme Court of South Australia saying that the expulsion should be overturned because:-

1. The Club failed to accord him natural justice in the expulsion process by not putting him on notice of all grounds;
2. The Club engaged in oppressive or unreasonable conduct towards him within the meaning of section 61 of the *Associations Incorporation Act 1985 (SA)* [similar to sections 68 and 69 of the *Associations Incorporation Reform Act 2012 (Vic)*];
3. The Club did not follow due process at the expulsion meeting; and
4. Mr Ridgeway sought damages.

The Court found that Mr Ridgeway had been accorded natural justice and the Club had not engaged in oppressive or unreasonable conduct.

However the Court did find that Mr Ridgeway had not been accorded “due process” or “procedural fairness” and therefore the expulsion was invalid. The Court reasoned that the participation of Mr McKenney and Mr Hartwig (the subject of Mr Ridgeway’s original concerns) participated in the deliberations of the expulsion meeting which resolved to expel Mr Ridgeway.

Interestingly, the Court would not grant Mr Ridgeway reinstatement as a member as the relationship between the Club and Mr Ridgeway had completely broken down. The Court considered that it would be most unlikely that Mr Ridgeway would entertain an application for membership renewal. One interpretation of this observation by the Court was that it was a suggestion to Mr Ridgeway not to try. The Court also made it clear that the Club would be well within its rights to refuse an application for membership from Mr Ridgeway provided the Club adhered to the requirements of its Constitution.

On the question of damages, the Court awarded Mr Ridgeway \$500. However the question of costs is yet to be determined and will be a most interesting outcome. Applications to the Supreme Court which result in lengthy court hearings are not inexpensive.

Lessons for Clubs

The obvious lesson for any Club is the requirement for procedural fairness on any disciplinary matter. In these circumstances the alleged perpetrators should not have been participants in the decision making process in order to avoid any allegation of bias or perceived bias against the subject of the disciplinary proceedings.

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Victor Hamit

Wentworth Lawyers Pty Ltd

Level 40

140 William Street

MELBOURNE VIC 3000

Tel: (03) 9607 8380

Mobile: 0408 590 706

Email: vhamit@wentworthlawyers.com.au

Website: www.wentworthlawyers.com.au

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