

## DISCIPLINARY RULES MUST HAVE EXPRESS POWER TO SUSPEND OR EXPEL

[\*Snow v Consumer Association of South Australia Inc. \[2018\] SADC 49\*](#) provides some interesting observations in the need for procedural fairness (also referred to as natural justice) in disciplinary procedures against members of Not-for-profit (“NFP”) Associations.

This case was a decision of the South Australian District Court delivered in May 2018 resulting from an appeal by member Mr Snow against an unfavourable (to him) decision in the Magistrates Court.

Mr Snow made extensive claims of oppressive and unreasonable conduct by the Committee of Consumer Association of South Australia Inc. within the meaning of section 61 of the [\*Associations Incorporation Act 1985\*](#) (SA). This provision is similar to sections 68 and 69 of the [\*Associations Incorporation Reform Act 2012\*](#) (Vic). The case also reveals that emotions can run high in NFPs.

One aspect which Mr Snow appears to have been successful was that Consumer Association of South Australia Inc. had no express rule in its Constitution to suspend or expel him “from taking part in the business of the association”. Therefore, it could not suspend or expel him.

Along with many submissions, Mr Snow sought reinstatement of his membership. The District Court in making its final orders, in [\*Snow v Consumer Association of South Australia \(No 2\) \[2018\] SADC 65\*](#) queried:-

*“The question then clearly arises whether it is appropriate to reinstate Mr Snow in the circumstances where he has shown a bent for disruption, obsessive technicality and the pursuit of his own objectives.”*

The District Court also noted the relationship between Mr Snow and the Consumer Association of South Australia Inc. as:-

*“Overall the situation is as the Magistrate rightly characterised the relationship as one that ‘waxed and waned, but eventually it had broken down’. As her Honour further observed his:*

*... correspondence failed to address the gravamen of the complaints against him, and focussed on form rather than substance ... [which] ...demonstrated a clear unwillingness to address the substance of the allegations being made.*

*and:*

*... his preference to deal with technicalities and form as opposed to addressing the substance of the matter.*

*This court characterised his stance over the persistent demands for further and better particulars of the charges as a ‘rouse for delay and obfuscation’.*”

Finally, the District Court determined:-

*“Given that Mr Snow succeeded in demonstrating errors in the approach of the Magistrate and was vindicated to the extent of securing declarations of wrongful suspension and expulsion, but otherwise failed to obtain orders for reinstatement or for a rehearing of his appeal to a general meeting, there will be no order as to costs.”*

Accordingly, NFPs should confirm that the provisions of Constitutions or Rules provide express powers to suspend or expel members. If such a power does not exist then such action by an NFP is likely to be oppressive or unreasonable conduct.

Even if the Constitution or Rules specifically provide for suspension or expulsion, the NFP should ensure that it conducts any disciplinary procedures in accordance with procedural fairness or natural justice. Some aspects which need to be included in ensuring procedural fairness by the Association include that the member must:-

1. be advised of the charges against him;
2. given reasonable notice to attend a disciplinary hearing;
3. be given a fair and reasonable opportunity to present his side of the story and test the evidence against him;
4. be heard by an unbiased and fair minded disciplinary board; and
5. be advised of the decision and given the opportunity to speak on penalty.

The terms procedural fairness and natural justice are largely self-explanatory and NFPs need to ensure that a fair procedure is adopted in hearing disciplinary matters against members. Too often we see matters that are too hastily considered and become highly emotive. In one case, a matter was brought before the president of a sporting club on Friday night only for him to demand that a hearing be held the next morning (Saturday) requiring the alleged offending member to appear at 9:00am with no specific details of the allegations.

A simple approach is to simply ask oneself: if this were happening to me would I consider it to be fair?

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