

MEMBER DISPUTES – CONSIDER MEDIATION!

[Wolfe v Sydney Bush Walkers Inc \[2018\] NSWSC 1032 \(4 July 2018\)](#) is another example of a protracted dispute between members. It appears that passions can be elevated in these circumstances that are not necessarily evident in commercial disputes. The Supreme Court of New South Wales, in its opening paragraph of the decision in this case, noted:-

“1. This case is an unhappy example of a falling out between members of a recreational club that has led, quite unnecessarily, to legal processes out of all proportion to the issues at hand.

The case evolved from a member who was writing a part of the club’s history and a claim of plagiarism together with an apology not being in an agreed form. In our experience, disputes over the writing of a club’s history are not uncommon, unfortunately.

We strongly recommend that if a member (or other) is approved to write a history of the club, then there should be a clear understanding of the terms of the engagement. Most notably, will the author or the club own the copyright in the work?

But on the point of passion overriding common sense, we saw in our article in June 2018 [here](#) in [Snow v Consumer Association of South Australia Inc. \[2018\] SADC 49](#), the District Court also noting 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’.”

In our June 2018 article, we stressed the importance of procedural fairness (or natural justice) which was also stressed in our article of February 2015 [here](#).

However, adopting procedural fairness (natural justice) principles will not guarantee that disputes between members or between the committee/board and a member will not arise.

We do suggest that clubs and other NFPs give consideration to adopting an independent mediation process to further reduce the risk of impassioned members resorting to legal proceedings. Inevitably, resorting to legal proceedings is expensive, time consuming and frequently causes irreparable damage to previously productive relationships.

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