

SUPREME COURT OF QUEENSLAND

CITATION: *Saxby v Saxby & Ors* [2018] QSC 314

PARTIES: **Sharon Saxby**
(applicant)
v
Gavin Saxby
(first respondent)

and

Shaun Adams
(second respondent)

and

Francis McGrath
(third respondent)

FILE NO/S: TS No 624 of 2018

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Townsville

DELIVERED ON: 21 December 2018

DELIVERED AT: Brisbane

HEARING DATE: 17 and 18 September 2018

JUDGE: Brown J

ORDERS: **The orders of the Court are that:**

1. It is declared that:

- a. **The meeting of 28 April 2018 was valid.**
- b. **The meeting of 17 June 2018 was not validly called.**
- c. **The removal of Mr Frank McGrath as President on 28 April 2018 was void.**
- d. **The termination of Ms Sharon Saxby's position as Secretary on 6 July 2018 and 22 July 2018 was void.**
- e. **The election of Mr Gavin Saxby as Vice President**

on 28 April 2018 was valid.

- f. **As at 18 September 2018, the Executive of the Club consisted of Mr McGrath as President, Mr Saxby as Vice President, Ms Saxby as Secretary and Ms Horton as Treasurer.**
 - g. **The decision to terminate the membership of Mr Frank McGrath, by the management committee on 30 May 2018 was void.**
 - h. **The decisions to terminate the memberships of Ms Sharon Saxby, Mr Gavin Saxby and Mr Shaun Adams at the meeting of the Club on 22 July 2018 were void.**
2. **Mr McGrath, Ms Saxby and Mr Saxby are to take all reasonable steps to place these reasons on the Club's Facebook site by 7 January 2019.**
 3. **The parties make submissions, if any, by 24 January 2019 as to costs.**
 4. **The parties make submissions as to any further relief required by 24 January 2019 arising out of this application and these reasons.**

CATCHWORDS:

ASSOCIATIONS AND CLUBS – EXPULSION, SUSPENSION AND DISQUALIFICATION – EXERCISE OF POWER – GENERALLY – where the relevant Club is the NQ Speedway Kart Club Inc (the Club) – where the applicant as Secretary called a general meeting in which a resolution was passed to remove the third respondent as President, and subsequently terminate his membership – where the third respondent submits that he was not accorded a full and fair opportunity to respond to the allegations made against him and the decision was void – where the third respondent continued to act as President and purported to remove the applicant as Secretary and subsequently terminate her membership – where the Club's management committee is presently in a state of disarray – whether each purported exercise of power was valid pursuant to the Club Rules.

Associations Incorporation Act 1981 (Qld)

Hall v NSW Trotting Club Ltd [1977] 1 NSWLR 378

Kaur v Sikh Gundwara Perth (Inc) [2017] WASC 270

Re Mullen [1995] 2 Qd R 608

COUNSEL:

The applicant appeared on her own behalf

The first respondent appeared on his own behalf

No appearance for the second respondent

D T Forbes for the third respondent

SOLICITORS: The applicant appeared on her own behalf
 The first respondent appeared on his own behalf
 No appearance for the second respondent
 Mackey Wales for the third respondent

Nature of dispute

- [1] Ms Sharon Saxby was elected as Secretary of the NQ Speedway Kart Club Inc (**the Club**) on 24 February 2018. Mr Francis McGrath, commonly known as Frank McGrath, was elected President and Ms Horton was the treasurer. Mr Shaun Adams was the Speedway Karting Association of Australia (**SKAA**) representative. The Club is an incorporated association. Ms Saxby called a general meeting as Secretary of the Club on 28 April 2018. At the meeting of 28 April 2018, a resolution was passed that Mr McGrath be removed as President under Rule 20.3 of the Club Rules. At the meeting of 28 April 2018, Mr Gavin Saxby's nomination for Vice President was accepted, there being no other nomination. Ms Saxby also seeks a declaration that her husband was validly voted in as Vice President. A further resolution was passed that Mr McGrath be required to attend a show cause meeting with the management committee to advise why his Club membership should not be terminated.
- [2] A show cause letter was duly sent to Mr McGrath outlining matters of complaint by Ms Saxby as Secretary. On 30 May 2018 the management committee purported to terminate Mr McGrath's membership. He did not appeal that decision to a general meeting. Ms Saxby seeks declarations that Mr McGrath was validly removed as President and his membership validly terminated.
- [3] Mr McGrath contends that the meeting of 28 April 2018 was invalidly called and that he was not accorded a full and fair opportunity to respond to the allegations made against him at either the meeting of 28 April 2018 or at the management committee meeting of 30 May 2018 and that the decisions were void. Mr McGrath's lawyers wrote to the Secretary and management committee raising the prospect that their client would make an application to this Court to seek a determination to that effect, however, no such application was in fact made. Instead of doing so, Mr McGrath, through his lawyers, asserted that the decisions of 28 April and 30 May 2018 were void and that he remained President. He then purported to call a special general meeting of the Club as President to address, *inter alia*, issuing a show cause notice to Ms Saxby. At Mr McGrath's instigation, a general meeting was held on 17 June 2018. That meeting voted in favour of a show cause notice being issued to Ms Saxby. A special meeting was held on 22 July 2018. Prior to that meeting being called, Mr McGrath sent an email to Ms Saxby on 6 July 2018 stating that he and Ms Horton, who was the Treasurer, had determined to stand Ms Saxby down as Secretary, effective immediately. Notwithstanding that letter, the special meeting on 22 July 2018 voted that Ms Saxby be removed as Secretary. At a meeting described as a general meeting, said to have occurred straight after the meeting of 22 July 2018 (for which no prior agenda was set), members voted to terminate Ms Saxby's membership and ban her for life. The meeting also voted that Mr Gavin Saxby be banned for three years and Mr Shaun Adams be banned for two years.
- [4] Ms Saxby asserts that the meetings of 17 June and 22 July 2018 were invalid and that she was denied natural justice in relation to the 22 July 2018 meeting. She seeks a declaration that her

removal was invalid, as was the removal of Mr Adams and Mr Saxby. She sought such declarations after being advised to do so by SKAA.

- [5] It falls to the Court to determine whether the various resolutions were valid or not and whether there was a denial of natural justice such that any of the decisions made should be set aside. There is a further issue as to the whether the action is properly constituted, given that the Club was not a party and whether the matter which was brought as an application could be heard. I consider both of these matters first.

Jurisdiction to hear the matter

- [6] Ms Saxby lodged an originating application in this Court on 7 August 2018, seeking declarations that Mr McGrath's position as President and his membership were validly brought to an end, and that she was invalidly removed as Secretary and banned from the Club, as were Mr Gavin Saxby and Mr Shaun Adams. Mr Saxby and Mr Adams were joined as respondents by Ms Saxby, although neither sought to act as contradictor to the application. In fact, Mr Saxby supported the relief sought. Mr Adams did not choose to appear or partake in the proceeding.
- [7] At the hearing, Mr McGrath sought to be joined on the basis that the declarations sought affected him, which he opposed, and he wished to be a contradictor. I ordered that he be joined as a party to the application having been satisfied that it was appropriate under r 69 to join him.
- [8] Notwithstanding that Mr McGrath had asserted that he remained as President of the Club, he did not apply for the Club to be joined. I raised with the parties why the Club had not been joined and whether the matter could proceed. While the Club would normally be a party to an application such as this, the fact is that no-one is in a position to presently know who can act on behalf of the Club and provide instructions, given the impasse that has been reached and competing resolutions purported to have been passed. Further, I was informed by Mr McGrath's counsel that Mr McGrath had purported to appear at a directions hearing on behalf of the Club and was warned by North J that if he did not have proper authority, both he and his legal advisors could be liable for costs if he sought to appear for the association. In having Mr McGrath as a party, there was a contradictor who was legally represented.
- [9] The Rules of the Club provide that the management committee has the general control and management of the administration of the affairs, property and funds of the association.¹
- [10] Traditionally, the courts do not readily intervene in the internal workings of clubs and societies. However, provision is made for such intervention by the *Associations Incorporation Act 1981 (Qld) (the Act)*.²

¹ Affidavit of F McGrath, CFI 3, Exhibit FM-1, Rule 22.

² See discussion of Fraser JA in *Pine Rivers, Caboolture and Redcliffe Group Training Scheme Inc & Ors v Group Training Association Queensland & Northern Territory Inc* [2013] QCA 358 at [44]-[46].

- [11] Pursuant to s 71 of the Act, where a member of an incorporated association is deprived by a decision of that association of a right conferred on the member by the rules of that association as a member thereof, the Supreme Court shall have jurisdiction to adjudicate upon the validity of that decision under the rules. Section 71 of the Act further provides that an incorporated association shall be bound by the rules of natural justice in adjudicating upon the rights of its members conferred by the rules of such association on its members.
- [12] Pursuant to s 72 of the Act, the Supreme Court may on the application of a member make orders, including interim orders, giving directions for the performance and observance of the rules of such incorporated association by any person who is under an obligation to perform or observe those rules or declaring and enforcing the rights and obligations of members of such incorporated association between themselves and the rights and obligations between such incorporated association and any member or members thereof. Pursuant to s 73 of the Act, this Court has a broad power to grant such relief as is appropriate in the circumstances.
- [13] Given that there is presently division as to who constitutes the Executive and the relevant individuals are party to these proceedings and there is a contradictor, I heard the matter. Any relief granted however, will be limited.
- [14] Ms Saxby's application also sought declarations that the membership of Mr Chad McGrath and Mr Sam Nucifora had been validly terminated. As they had not been served with the material, I determined that it was not appropriate to hear that aspect of the application. In any event, there is no evidence that they have sought to dispute the resolutions resulting in termination of their membership. As such, there appears to be no live dispute to be determined by this Court.
- [15] At the outset of the hearing, I tried to ascertain whether there were factual disputes which had to be determined, in order to determine whether the matter could proceed as an application. Ms Saxby and Mr Forbes, counsel for Mr McGrath, informed me that there was little factual dispute as to the matters which had to be determined and that the hearing could proceed. Subject to the determination of some objections to Ms Saxby's affidavit, her evidence was not disputed. Ms Saxby was not cross-examined. Ms Saxby cross-examined Mr McGrath. Evidence was also given by Ms Brown. As the hearing progressed, there were in fact some further factual disputes which emerged. I have however resolved the present applications largely on the basis of facts which are uncontroversial between the parties. I outline the factual background below, which is largely drawn from Ms Saxby's affidavit or documents which were admitted in evidence. I accept Ms Saxby's evidence.
- [16] I found Mr McGrath to be an unreliable witness who was evasive and self-serving in his responses, being able to recall matters which appeared to benefit his position and not recalling matters which seemingly did not assist, with no other apparent reason for the difference in explanation. As I have found his evidence to be unreliable, I have generally given it little weight unless corroborated by other matters. However, little turns on his evidence.
- [17] While allegations were raised in relation to Mr McGrath's conduct leading up to the meeting of 28 April 2018, it was not necessary for me to make any finding as to those matters to determine the proceedings and I have not done so.

Decision to remove Mr McGrath as President

- [18] Based on the evidence of Ms Saxby and documents provided, I find that the sequence of events leading to Mr McGrath's removal as President was as follows.
- [19] After Ms Saxby was elected as Secretary in February 2018, complaints were made about two Club members, one of whom was Mr McGrath's son, Mr Chad McGrath, and the other, Mr Nucifora. Ms Saxby carried out some investigations in that regard. Ms Saxby informed Mr McGrath that a show cause meeting would need to be held in relation to Mr Chad McGrath and Mr Nucifora as a result of the investigations. Mr McGrath expressed some resistance to that occurring, in response to which Ms Saxby stated that she would raise the matter at the next general meeting, to be held on 11 March 2018. A number of members indicated that they could not attend the meeting of 11 March 2018, with the result that the date was cancelled. Ms Saxby then attempted to arrange another date for a meeting. Mr McGrath subsequently posted on Facebook on 10 April 2018 that the next meeting would be on 13 May 2018. As several members complained because that was Mother's day, the date was subsequently changed to 28 April 2018 by Ms Saxby, without Mr McGrath's agreement. The 28 April date was the date of the Cairns Race meeting. Ms Saxby informed Mr McGrath that she would allow everyone to contribute to the agenda and would inform them when agenda items were due and when papers would be sent out. Mr McGrath stated that he would have nothing to do with the meeting. Ms Saxby informed Mr McGrath that if he failed to call a show cause meeting with Mr Nucifora and Mr Chad McGrath, he was putting himself in a position of conflict and was not acting in the best interests of the Club, and she would raise a motion to remove him as President.
- [20] Ms Saxby created a Facebook post on 13 April 2018 informing members that a general meeting was to take place and if they wanted anything on the agenda to notify her by 25 April 2018. She sent an email to members later that evening informing them of the same and that the agenda and papers would be provided on 26 April 2018.
- [21] On 26 April 2018, the agenda and general meetings were posted by Ms Saxby. The agenda did not contain any item of business as to the proposed removal of Mr Frank McGrath as President. Ms Saxby fairly conceded that there was no specific item which referred to Mr McGrath's removal but submitted that it was caught under new business and that she had told him orally that it would be raised if he did not act upon the complaints.
- [22] Mr McGrath posted on Facebook that he would not be attending on 28 April 2018 as his kart would not be ready. I do not accept his evidence in this regard and find that he decided not to attend the meeting. After 13 April but prior to 28 April 2018, Ms Saxby made several attempts to contact Mr McGrath but was unsuccessful. Mr McGrath posted a message on 28 April 2018 stating that the general meeting was not to take place as it was unconstitutional on advice from "a Governing Body". The posting of the message is consistent with a decision by him not to attend the meeting. The governing body likely referred to was the SKAA. When asked by Ms Saxby whether what she had been told by Mr McGrath was accurate, the Secretary of the SKAA stated that she was unaware of any such advice to Mr McGrath and that the SKAA committee had not met or been consulted. Mr McGrath however in cross-examination stated that he was not referring to the SKAA but did not identify to whom he was referring. I find that he was referring to the SKAA. Ms Saxby left a message on Mr McGrath's phone prior to

the 28 April 2018 meeting proceeding, informing him that she would be proposing a motion to have him removed as President.

- [23] The general meeting on 28 April 2018 went ahead. Rule 20 of the Club's Rules provides that a member may be removed from office at a general meeting of the association but that before a vote is taken about removing the member from office, the member must be given a full and fair opportunity to show cause why he or she should not be removed from office. The Rules provide that there is no right of appeal against a member's removal from office. Ms Saxby relies on her having informed Mr McGrath that she would raise a motion to remove him if he did not attend the meeting to deal with the show cause position of Mr Chad McGrath and Mr Nucifora. She contends that the matter was 'new' business.
- [24] Mr McGrath contends that the meeting of 28 April was not called as required by Rule 35 of the Club's Rules and further that he was not given any or a full and fair opportunity to show cause why he should not be removed as President.
- [25] Mr McGrath does not refute that Ms Saxby had told him that she would propose a motion to remove him as President if he did not agree to call a show cause meeting in the terms I have described above. I have little doubt that he was aware of the possibility that a motion may be moved by Ms Saxby to remove him as President at the April meeting.
- [26] However, for the reasons below, I do not consider that the notice given to him was sufficient to comply with the Rules of the Club such that he had a full and fair opportunity to be heard as to why he should not be removed from office. Although there is some evidence to support Ms Saxby's submission that Mr McGrath sought to deliberately evade the 28 April 2018 meeting and prevent it occurring, the evidence was not sufficient for me to conclude that any lack of notice to him as to his possible removal was the result of him seeking to avoid such notice being given.
- [27] There is no issue that the meeting of 28 April 2018 was called 14 days before that date, as required under Rule 35, or that there was a quorum for the purposes of the general meeting. It is contended however by Mr McGrath, that under Rule 35.6, the notice of the general meeting had to state the business to be conducted at the meeting and could not be provided later as had occurred in this case.
- [28] There is a difficulty in the construction of Rule 35 and particularly Rule 35.6. The difficulty is posed by Rule 35.5. It specifies, "However, notice of the following meetings must be given in writing" and refers to meetings called to hear appeals from management committee decisions to, *inter alia*, reject a person's application for membership of the association. Rule 35.4 provides for a management committee to decide the way in which notice must be given. Rule 35.6 provides that notice of a general meeting must state the business to be conducted at the general meeting. One construction of Rule 35.6 is that it is referring to a notice which must be given in writing namely that specified in Rule 35.5. An alternative construction is that the notice stating the business to be conducted must be provided for any meeting. I consider the better construction is that if the meeting is to address the matters in Rule 35.5, the notice of the meeting must be given in writing and comply with Rule 35.6, in order to give Rule 35.4 meaning.

- [29] In any event, the notice of 13 April 2018 provided for parties to submit items for the agenda and stated that meeting papers would be available on 26 April 2016. That identifies that the business will consist of matters that are raised by the various members. Naturally, business carried over from a previous meeting to the next meeting would be part of the business as identified in the previous minutes. I consider that notice of the business to be dealt with at the general meeting was provided by the notice that was posted on 13 April 2018. Even if I am wrong about that, this would be an appropriate case for the Court to make an order to cure the irregularity under s 133 of the Act and order that the notice given was sufficient for the purposes of Rule 35. I am satisfied that no substantial injustice would arise in respect of the Club or its members, given that the notice of general meeting made it very clear when the papers would be provided and that members could provide individual items of business by a particular date to be included in the items of business and that the agenda was accepted at the general meeting. It was also apparent from the evidence of Ms Brown and Mr McGrath that there was not a stringent practise by the Club to issue the notice of a general meeting and agenda fourteen days before. I do not find the 28 April 2018 meeting was invalid.
- [30] It was asserted on behalf of Mr McGrath that the election of Mr Gavin Saxby as Vice President was invalid due to the lack of notice. I do not accept that argument for the reasons given above and further because notice was given as to the election of the Vice President well in advance of the meeting. The position of Vice President had been vacated at the meeting of 24 February 2018 by Mr David Keating and nominations had been advertised on 1 March 2018. By an email of 1 March 2018 from Ms Saxby as Secretary to the members, they were notified that the position had been vacated and nominations for the position were called for, which was to be determined at the next general meeting of 11 March 2018 which was subsequently cancelled. That meeting did not occur and 28 April 2018 was the date of the next meeting. The business of the meeting referred to the Vice President Nomination. Mr Gavin Saxby was the only nomination and was accepted at the meeting.
- [31] Turning to the question of whether the decision of the general meeting to remove Mr McGrath was a denial of natural justice, while what is required to accord natural justice will depend on the circumstances, Samuels JA in *Hall v NSW Trotting Club Ltd* neatly summarised the principles in relation to disciplinary matters, which are apt in the present case:³
- “It is necessary first to establish what rules of natural justice the stewards were required to observe. In my view, they were these. The stewards were bound to inform the appellant of the nature of the accusations made against him, and to give him ‘a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice’: *De Verteuil v Knaggs* [1918] 18 AC 557 at 560 applied in *University of Ceylon v Fernando* [1960] 1 WLR 223 at 232...”
- [32] The items of business did not refer to the removal of Mr McGrath as President. While the evidence of Ms Saxby, which was unchallenged, shows that she orally flagged the possibility of raising a motion for his removal as President, it was, prior to 28 April 2018, only to be raised, according to her, if he refused to hold the show cause meeting for allegations against Mr

³ [1977] 1 NSWLR 378 at 388.

Nucifora and Mr Chad McGrath to be ventilated. While Ms Saxby attempted to contact him on 28 April and left a voice message to say that she intended to move a motion to remove him as President, there is no evidence that he heard that message. In any event, to purport to provide notice just prior to the meeting occurring was not sufficient notice to permit him a full and fair opportunity to respond. Nor was it sufficient notice to the broader membership to only raise the motion at the meeting. While I accept that genuine concerns were held by Ms Saxby and others as to Mr McGrath's behaviour, there was no circumstance of urgency which abrogated the need to give reasonable notice of a motion to remove him as President in accordance with Rule 20.4, particularly as there is no right of appeal against a member's removal from office (see Rule 20.5). As was said in *Re Mullen*,⁴ proper notice has to be given "not at the steps of the hearing room, but in such time as would enable that person to reasonably and effectually prepare any case which they would seek to make". Rather than moving the motion for Mr McGrath's removal at the meeting, the meeting should have resolved to give him a show cause notice and consider it at the next meeting. I find that Mr McGrath was not informed in a reasonable time prior to the meeting what resolution was proposed and what was to be relied upon in support of such a motion so he could respond to the allegations being made. Rule 20(4) was not complied with and natural justice was not accorded. In the circumstances, the Court will not make the declaration sought in paragraph 4 of the originating application.

- [33] Rather surprisingly, Mr McGrath has not sought relief to have the decision set aside or a declaration to that effect, notwithstanding that his solicitors indicated that he would take such action by a letter dated 16 May 2018, if the management committee did not indicate that he was still President. It appears to have been assumed by Mr McGrath that the decision at the general meeting was a nullity without the need for a Court order, even though the motion had passed. That does not necessarily follow. A decision made in circumstances where there is a denial of natural justice is not necessarily declared void.⁵ I will consider the appropriate relief below.

Decision to terminate Mr McGrath's membership

- [34] Mr McGrath was notified of his removal as President and provided with a show cause notice, in accordance with the resolution at the general meeting, by a letter dated 2 May 2018, as to whether or not his membership should be terminated by the management committee. The letter outlined the issues that needed to be addressed by Mr McGrath in relation to the show cause meeting. Two out of the nine issues were stated in the following terms: "not following the requirements of the constitution" and "not acting in the best interests of the club". Mr McGrath was invited to attend the meeting of the management committee on 23 May 2018 or respond in writing.
- [35] A letter was sent by Mr McGrath's solicitors to Ms Saxby as Secretary of the Club on 22 May 2018, stating that the Secretary had no proper authority to issue him with a show cause letter as the April meeting was invalid and any resolution passed at that meeting was invalid. The

⁴ [1995] 2 Qd R 608 at 614.

⁵ *McClelland v Burning Palms Surf Life Saving Club* [2002] NSWSC 470 at [155].

letter of Mr McGrath's solicitors however, responded to the allegations, but contended that in relation to the two issues set out above, the allegations did not particularise any conduct which was alleged to have contravened the particular provisions or the respects in which he was not acting in the best interests of the Club. The letter asserts that the allegations in the letter were vague, not properly particularised and unsupported by evidence and therefore did not comply with Rule 10 of the Rules. The letter did not seek further particulars of the conduct. The letter contended however that none of the conduct outlined could constitute a basis for termination. It did adopt a conciliatory tone insofar as it proposed that the matter could be resolved between the parties in the best interests of the Club.

[36] The response of 23 May 2018 written on behalf of the management committee to Mr McGrath's solicitors stated in part that:

"We, the management committee, feel that Frank McGrath was not acting in his duties of President and had a conflict of interest in the matters raised for the agenda that were to be set forward for the March and April meeting and withdrew his support and involvement in carrying out the best interest (sic) of the club."

[37] The letter of 23 May also stated that Mr McGrath had had ample opportunity to address the concerns of Club members and the management committee prior to the 28 April meeting, and could appeal the decision to remove him as President.

[38] The show cause meeting was set for 30 May 2018 by the letter of 23 May. Mr McGrath did not attend the meeting. However, his solicitors sent a letter dated 30 May 2018, stating that he would not attend the meeting and reiterating that there was no proper basis upon which Mr McGrath's membership could be terminated and that the 28 April 2018 meeting was invalid and that he had not had a full and proper opportunity to be heard prior to the decision to remove him as President.

[39] On 1 June 2018, Mr McGrath was notified by letter that the management committee had a quorum at the meeting on 30 May 2018 and had terminated his membership following a unanimous resolution, noting his decision not to attend.

[40] Mr McGrath did not appeal the decision as provided for in Rule 11 of the Club Rules.

[41] Ms Saxby contends that the management committee met the requirements of Rule 10 and that a declaration should be made by this Court that Mr McGrath's membership was validly terminated.

[42] Rule 10 of the Club's Rules permits the management committee to terminate a member's membership on one of the grounds set out in Rule 10.3. Rule 10.4 provides that before the management committee terminates a member's membership, it must give the member a full and fair opportunity to show why the membership should not be terminated. Clause 10.5 provides that if, after considering all representations made by the member, the management committee decides to terminate the membership, the Secretary of the committee must give the member a written notice of the decision.

- [43] In the submissions made on behalf of Mr McGrath, his counsel sought to assert that the onus was on Ms Saxby to show that Rule 10 was complied with, because it was her originating application seeking a declaration that the resolution was valid. In that regard, it was submitted that she had not proven that a management committee meeting had taken into account the representations contained in the letters of Mr McGrath's solicitors. Ms Saxby stated that there were minutes of the 30 May 2018 meeting and she had not put them in evidence as she was not aware that it was a factual issue, although she conceded that she had been provided with Mr McGrath's submissions seeking to be joined and which outlined his substantive response to the declarations sought. There is sufficient evidence from Ms Saxby that the decision was made by the management committee to remove Mr McGrath.⁶ It is true however, that there is no evidence as to what was considered by the management committee in reaching that decision and whether clause 10.5 was complied with. I considered whether because of the lateness of Mr McGrath's joinder and the raising of this contention, I should permit Ms Saxby the opportunity to provide such evidence. However, I do not need to determine this matter in order to decide the present application and will not consider it further.
- [44] Turning to the other issues raised in opposition to the declarations sought by Ms Saxby, it is asserted on behalf of Mr McGrath that, as a result of the 28 April meeting not being validly called, Mr Gavin Saxby was not validly appointed as Vice President of the Club, and further that the SKAA representative is not a valid member of the management committee. I have addressed the question of Mr Saxby's election as Vice President above and determined it to be valid. As to the SKAA representative, Ms Saxby contends that they are a part of the management committee, whereas Mr McGrath contends they are not. Evidence was called from the previous Secretary, Ms Kate Brown. She referred to the fact that the SKAA representative attended management committee meetings but did not vote unless they held another position as an officeholder. She also gave evidence, however, that there was no formal voting at management committee meetings during her time as Secretary. As such, her evidence was not probative of the issue.
- [45] It is evident that the management committee meeting could only have consisted of Mr Gavin Saxby, Ms Sharon Saxby and Mr Shaun Adams. Ms Horton took no active part in the management committee after Mr McGrath was removed.
- [46] Under Rule 24 of the Rules, more than 50 percent of the members elected to the management committee as at the close of the last general meeting of the members are required to form a quorum.
- [47] Under the Rule 18 of the Rules, the management committee "consists of a President, treasurer, and any other members the association members elect at a general meeting". In the case of the NQ Speedway Kart Club, Ms Saxby was elected as Secretary and was a member of the management committee. The minutes of 24 February 2018 refer to committee resignations consisting of the Secretary and the SKAA representative and to nominations for those positions having been given and to Ms Saxby and Mr Adams accepting nominations and being declared by the President to hold those positions. That is consistent with the annual

⁶ Affidavit of Saxby, CFI 7 at [60].

general meeting minutes of 24 September 2017. Given the reference to the fact that the SKAA representative was a committee position and that nominations were sought for those positions and the positions declared at a general meeting, consistent with Rule 18 of the Rules, the SKAA representative is a member of the management committee. It was submitted on behalf of Mr McGrath that the fact that there was a motion at the meeting of 28 April 2018 for the SKAA representative to be recognised as part of the management committee, which was passed, demonstrated that the SKAA representative was not otherwise a member of the management committee. Further, it was submitted that the motion was invalid as it would require a change to the constitution which could only occur by a special resolution under Rule 43. That is not however consistent with Rule 18.1, which is not prescriptive as to the membership of the management committee, insofar as it refers to “any other members the association members elect at a general meeting.”

[48] If Ms Saxby, Mr Saxby and Mr Adams were at the management committee meeting, that would constitute a quorum. Rule 21 of the Club Rules provides that in the event of a casual vacancy, the continuing members of the management committee may act despite a casual vacancy on the management committee. I have determined that Mr McGrath was not validly removed. While there is an argument open that Mr McGrath was still a member of the management committee, I consider the better view is that, until a determination is made by the Court to that effect, there was a casual vacancy⁷ and the decisions of the management committee were not invalidated by the fact that meetings occurred without Mr McGrath since his purported removal at the meeting of 28 April 2018.

[49] It is further contended however, that the two allegations in the show cause notice, namely failing to comply with the constitution and failing to act in the best interests of the Club, were so vague that it was impossible for Mr McGrath to know what was alleged and that there was thus a denial of natural justice.⁸

[50] While the letters of 2 May 2018 and 23 May 2018 to Mr McGrath and his solicitors respectively sought to outline the matters to which he was obliged to respond, I consider that Mr McGrath was not given proper particulars of the respects in which he did not comply with the Rules of the Club or the best interests of the Club, in those letters failing to identify the basis upon which he is said to have a conflict of interest and is said to not have complied with the Rules of the Club. I appreciate that members of a Club are generally not lawyers and the Court must take that into account in considering the matter.⁹ However, some factual basis has to be provided of the particular allegations that are to be made against a member under Rule 10.3. While the letter of 23 May did purport to give further details, I consider that the allegations lacked the specificity required for him to be able to respond to the respects in which he had not complied with the Club Rules and had failed to act in the best interests of the Club. It is necessary that, in order that to be given a “full and fair opportunity” to show why his membership should not be terminated, Mr McGrath needed to know the particulars

⁷ As defined in s 62 of the *Associations Incorporation Act 1981* (Qld).

⁸ Relying on *Bryant v Hawkesbury Radio Communication Co-operative Society Ltd* [2014] NSWSC 848 at [48].

⁹ *Gould v Isis Club Inc* [2015] QSC 253 at [11].

of each of the grounds raised under Rule 10.3.¹⁰ While Mr McGrath again avoided attending the meeting where he could have sought further clarification, such notice needs to be given a reasonable time in advance to permit the person to respond. While Mr McGrath's non-attendance was unmeritorious and may in other circumstances have abrogated any denial of natural justice, on this occasion that is not the case.

- [51] While there was an avenue for appeal, which was not taken up by Mr McGrath, the availability of a right of appeal does not of itself cure any denial of natural justice.¹¹ Correspondence sent on behalf of Mr McGrath's solicitors to the management committee made it clear that they considered the decision of the management committee was invalid. I will not therefore make a declaration that the termination of Mr McGrath's membership is valid.

Meeting of 17 June 2018

- [52] As set out above, Mr McGrath did not seek to appeal the decision of the management committee of 30 May. Rather, he sought to simply act on the basis that the decisions were void, but asked Ms Saxby on 3 June 2018 to call a general meeting, purportedly as President of the Club, which he stated was to include two items, "Clarification of 28 April meeting, legality" and "Show cause Sharon Saxby". Ms Saxby responded, informing him that, as he was no longer President or a member, he had no right to call a meeting. By a letter of 5 June 2018, Ms Saxby informed the membership that Mr Frank McGrath had requested a special general meeting with a request that Ms Saxby attend a show cause meeting. The letter referred to Rule 39 which relates to a special general meeting and stated that she was happy to attend a show cause meeting and outlined that she would call such a meeting if she received nine written requests from members as provided in Rule 39(1)(b)(ii).
- [53] Mr McGrath, however, chose to call a special general meeting himself, purportedly as President, on 5 June 2018 for 17 June 2018.¹² That did not fulfil the 14 days' notice requirement in Rule 39. While it was conceded, quite correctly by Mr McGrath's counsel, that Mr McGrath as President had no power to call a special general meeting under Rule 39, it was contended that he could call a general meeting under Rule 35.3.
- [54] Ms Saxby submits that, as the meeting was not validly called and not called within the time required by the Club Rules, any of the resolutions from the meeting were invalid. Ms Saxby also contends that people who were recorded as being welcomed as new members had not been supplied to the Secretary under Rule 13 of the Rules, and no vote had occurred at a management committee meeting as required by Rule 9 of the Rules to determine whether to accept their membership applications. Mr McGrath's counsel claimed that the matter had not been raised by Ms Saxby in her application and should not be permitted to be heard. It was in fact raised as an issue in this application in paragraph 8 of the originating application. I accept that there is no evidence that the new members had been accepted as members in accordance with the Rules for the purpose of the meeting held on 17 June 2018, and were

¹⁰ *Gould v Isis Club Inc* at [39].

¹¹ *Twist v Randwick Municipal Council* (1976) 136 CLR 106 at 116.

¹² Affidavit of F McGrath CFI 3, Exhibit FM14.

therefore ineligible to vote. It seems that for neither the 17 June 2018 nor 22 July 2018 meeting, they had been accepted as members, given that that requires management committee approval and confirmation through the Secretary. Despite Mr McGrath indicating to Ms Saxby that he would provide the forms with the minutes of the meeting, he did not do so.

- [55] Counsel for Mr McGrath contends that the Court should treat that as trivial or make a ruling under s 133 of the Act, notwithstanding that no cross-application was made on behalf of Mr McGrath. Counsel for Mr McGrath relied on the fact that the meeting occurred and a number of members attended.
- [56] At the time of calling the meeting, Mr McGrath had been removed. While I have found that there was a denial of natural justice to Mr McGrath in that regard, the decision was not a nullity and that decision remained operative until a determination otherwise by this Court. Further, the general meeting ruling that the 28 April 2018 meeting was invalidly called is not legally correct for the reasons outlined above. The same position applies in respect of the termination of Mr McGrath's membership. The appropriate course would have been for Mr McGrath to appeal the termination of his membership at a general meeting and after that, to move appropriate motions before the general meeting to address matters or for him to have brought the matter before this Court.
- [57] Even putting to one side the fact that Mr McGrath was not in a position to call such a meeting, there is a further irregularity with the meeting insofar as new members were welcomed at the meeting and permitted to vote when they had had not been accepted as members in accordance with the Rules.
- [58] In the circumstances, I do consider that a substantial injustice would be caused by exercising my discretion in favour of curing any irregularity affecting the calling and conduct of the meeting, even if I accept that Mr McGrath could have called the meeting as a general meeting under Rule 35. I find the meeting was not validly called.

Show cause letter of 23 June 2018

- [59] Ms Saxby was sent a show cause letter on 23 June 2018 informing her that a meeting would be held on 22 July 2018 and that a vote would be taken to remove her from the position of Secretary. The meeting of 22 July 2018 was held as a consequence of the 17 June 2018 meeting which was not validly called. However, I will assume for present purposes that it was validly called.
- [60] On 6 July 2018, Ms Saxby was sent an email by Mr McGrath, informing her that he and Ms Jemma Horton had determined that she should be stood down as Secretary immediately. The email did not state that it was temporary until the show cause meeting of 22 July 2018. As Ms Saxby had been elected to the position as Secretary, she could only be removed at a general meeting under Rule 20. Her removal as Club Secretary on 6 July 2018 was therefore invalid.
- [61] Ms Saxby stated that, as she had been removed as Secretary, she did not attend the meeting of 22 July 2018. While the meeting records that all present at the meeting and seven proxies voted for her removal, she had already been stood down as Secretary and there is no record that the vote at the general meeting was ratifying that decision. In the circumstances, she was

not validly stood down as Secretary. Nor did the letter of 6 July 2018 inform her that she would still be given a full and fair opportunity at the meeting of 22 July 2018 to show why she should not be removed from office.

- [62] While the 23 June 2018 letter gave Ms Saxby proper notice of the matters to be raised as to her removal, the intervening action by Mr McGrath and Ms Horton in determining to stand her down and not stating that that was pending the outcome of the general meeting negated the notice that had been given. Ms Saxby was not removed at the general meeting in accordance with Rule 20.4 of the Rules and her removal was invalid.
- [63] A meeting took place after the special general meeting which was stated to be a general meeting. It had not been called under Rule 35. A notice by email sent to members by Mr McGrath on 24 June 2018 only referred to a show cause meeting to be held at 4:00 pm on 22 July 2018. That was borne out by the cross-examination of Mr McGrath and Ms Brown who could not identify any notice of a general meeting being issued. The general meeting purported to terminate the membership of Ms Saxby, Mr Saxby and Mr Adams, without any notice being given, and impose a life ban on Ms Saxby and bans of three years on Mr Saxby and Mr Adams. Under the Rules, it is the role of the management committee to determine whether to terminate a members' membership. A general meeting determines any appeal under Rule 12 from such determination. Further, there is no power to impose a ban on a member from membership in the future. The termination was not in accordance with Rule 10 and was invalid. Further, as the meeting was not called in accordance with Rule 35, the terminations of Ms Saxby, Mr Saxby and Mr Adams were invalid. Concerningly, seven proxies were relied upon for the general meeting which were only for the special meeting. While the vote would have still passed, the general meeting appears to have occurred with no proper regard to the Rules.

Relief

- [64] It is not for this Court to descend into the merits of whether any officer holder or member should or should not be removed. However, given that there were general meetings or purported general meetings which sought to remove the President, Secretary and Vice President from their positions on the management committee, and resolutions removing them were passed by members, some additional orders are warranted. I also consider that it is important for these reasons to be provided to the membership. It is for the membership to decide the most appropriate course to adopt.
- [65] There is obvious antagonism between Ms Saxby and Mr McGrath, and each has a very different view it appears, as to how the Club should be operated. Ultimately, the workings of the Club are a matter for its members, bearing in mind that this is supposed to be a social sporting club. The membership should have the opportunity to determine who is to operate this Club. While I appreciate that Mr McGrath tried to resolve this without having to resort to Court, when it became evident that that was not going to occur, an application should have been made by him, rather than his seeking to assume that he could address the matter by treating the earlier meeting and votes as invalid. I note that Ms Saxby brought these legal proceedings in order to resolve the matter and particularly due to information provided by the SKAA and the Office of Fair Trading. I have no doubt she did so because she was seeking to act in the best interests of the Club. Ms Saxby did seek to comply with the Rules of the Club in

terms of the steps taken, but as I have found above, from a legal point of view, that was done without ensuring that natural justice occurred. Similarly, the steps taken by Mr McGrath were not sufficient to comply with the Rules in the respects which I have outlined.

- [66] The Court has broad powers under s 72 of the Act. The decisions to remove Mr McGrath as President and Ms Saxby as Secretary and to terminate their memberships as well as the memberships of Mr Gavin Saxby and Mr Shaun Adams were invalid. Given that the Office of Fair Trading has stated that the position of the officers of the Club is in dispute, and the SKAA has stated the status of the executive needs to be resolved, I consider that there is utility in making declarations and 'reverse' declarations both as to the purported removal of Mr McGrath and Ms Saxby and Mr Gavin Saxby's positions on the management committee and as to their memberships.¹³ While I have given consideration to the fact that Mr McGrath's removal as President and Ms Saxby's removal as Secretary were passed at a general meeting, I do not consider that those matters are such that the declarations should not be made, given the breaches that have occurred. In the case of the termination of memberships of Ms Saxby, Mr Saxby and Mr Adams, the general meeting had no power to terminate the memberships and I will make a declaration that they are void. I also have considered Mr Adam's email to Mr McGrath's solicitors, stating that he did not wish to have anything to do with the matter. However, given that does not necessarily extend to his membership, there is still utility in making the declaration.
- [67] I considered proposing that Mr Frank McGrath, Ms Sharon Saxby and Mr Gavin Saxby call a general meeting in accordance with Rule 35 of the Club Rules, with the business of the meeting and resolutions be put to the meeting to determine whether each of them is confirmed in or removed from those positions, however, given that the Club is not a party to the proceedings, it would not be appropriate to do so. In any event, there are mechanisms under the Rules for the membership to resolve how the management committee should be constituted, if that has not been done at an annual general meeting already. I would encourage the membership to seek to resolve the matters of conflict in a constructive way, perhaps with the aid of a mediator if necessary, and to bear in mind that this is a not-for-profit sporting club to facilitate enjoyment of the sport.
- [68] What I propose to do therefore, on the basis that the relevant parties to the dispute have been parties to these proceedings, is to make declarations that they were not lawfully removed from their positions on the management committee of the Club, and that the termination of their membership was not in accordance with the Rules and that the decisions in that regard were void. They therefore remain members of the Club, subject to their now paying any annual membership fee if it has fallen due in the interim. I will also make a declaration that Mr Saxby's election as Vice President was valid and that the meeting of 28 April 2018 was valid. I will make a declaration that the 17 June 2018 meeting was not validly called for the reasons set out above.
- [69] Given the conflict that has occurred between the parties and the fact that the Club has continued to operate with a shadow Executive following Mr and Ms Saxby's removal and Mr Adams removal, I would be willing to make a declaration that the Executive up until the

¹³ *Kaur v Sikh Gundwara Perth (Inc)* [2017] WASC 270 at [34].

Annual General meeting consisted of Mr McGrath as President, Mr Gavin Saxby as Vice President, Ms Emma Horton as Treasurer and Ms Saxby as Secretary. Prior to making any such declaration about Mr Adams, I would require evidence of what his position is in relation to that matter. Prior to making that declaration, I will give the parties the opportunity to make submissions as to the making of any such declaration, given that other events may have occurred. I will presently limit the declaration to the position as at 18 September 2018.

[70] I will also direct that these reasons be made available to the membership via their Facebook website.

[71] Given the above outcome, Ms Saxby has been partially successful in her application, as has Mr McGrath. It would seem in those circumstances that the appropriate costs order is that each party bear its own costs. However, I will allow the parties to make submissions to the contrary if they wish to, prior to making any final orders in that regard. Any submissions must be filed and served by 24 January 2019.

Orders

[72] I make the following declarations:

- (1) I declare that the meeting of 28 April 2018 was valid.
- (2) I declare that the meeting of 17 June 2018 was not validly called.
- (3) I declare that the removal of Mr Frank McGrath as President on 28 April 2018 was void.
- (4) I declare that the termination of Ms Sharon Saxby's position as Secretary on 6 July 2018 and 22 July 2018 was void.
- (5) I declare that the election of Mr Gavin Saxby as Vice President on 28 April 2018 was valid.
- (6) As at 18 September 2018, the Executive of the Club consisted of Mr McGrath as President, Mr Saxby as Vice President, Ms Saxby as Secretary and Ms Horton as Treasurer.
- (7) I declare that the decision to terminate the membership of Mr Frank McGrath, by the management committee on 30 May 2018 was void.
- (8) I declare that the decisions to terminate the memberships of Ms Sharon Saxby, Mr Gavin Saxby and Mr Shaun Adams at the meeting of the Club on 22 July 2018 were void.

[73] I order that Mr McGrath, Ms Saxby and Mr Saxby are to take all reasonable steps to place these reasons on the Club's Facebook site by 7 January 2019.

[74] I propose to make an order that all parties bear their own costs, however I will allow the parties to make submissions, if any, by 24 January 2019 as to costs. If no submissions are made by that date, I will make the order that all parties bear their own costs by 1 February 2019.

[75] I will order that the parties make submissions as to any further relief required by 24 January 2019 arising out of this application and these reasons.