

SUPREME COURT OF QUEENSLAND

CITATION: *Alexander v Toowoomba Hockey Association Inc* [2010] QSC 484

PARTIES: **LESLEY ANN ALEXANDER**
(applicant)

v

TOOWOOMBA HOCKEY ASSOCIATION INC
(respondent)

FILE NO/S: BS13247/10

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 24 December 2010

DELIVERED AT: Brisbane

HEARING DATE: 21 December 2010

JUDGE: Martin J

ORDER: **1. Declare that the decision made by the respondent on 9 September 2010 suspending the applicant's membership of the respondent was in breach of the constitution of the respondent and the rules of natural justice.**
2. Order that the decision by the respondent to suspend the applicant's membership of the respondent be set aside.

CATCHWORDS: ADMINISTRATIVE LAW – JUDICIAL REVIEW – REVIEWABLE DECISIONS AND CONDUCT – REVIEW OF PARTICULAR DECISIONS – where the applicant was suspended from the respondent association following a misconduct hearing – whether the respondent's constitution, by-laws and code of conduct had been complied with – whether there had been a breach of natural justice – whether the respondent's decision should be set aside

Associations Incorporation Act 1981 (Qld), Pt 8

South Australia v O'Shea (1987) 163 CLR 378

COUNSEL: P Hackett for the applicant
A MacSporran SC for the respondent

SOLICITORS: Walkers Solicitors for the applicant
Condon Charles Lawyers for the respondent

- [2] The applicant seeks the following orders pursuant to Part 8 of the *Associations Incorporation Act 1981* (the Act):
- (a) A declaration that the decision made by the respondent on 9 September 2010 suspending the applicant's membership of the Toowoomba Hockey Association was in breach of the constitution of that Association and the rules of natural justice; and
 - (b) An order that the decision by the respondent to suspend the applicant's membership of the Toowoomba Hockey Association be set aside.
- [3] The applicant is a member of the respondent which is an incorporated association under the Act.
- [4] This application arises out of an incident which occurred at Club Glenvale which is a licensed club premises operated by the respondent.
- [5] It was alleged by Michele Holmes, a member of the club, that the applicant had behaved inappropriately towards her in the clubhouse.
- [6] On 6 September 2010 Ms Holmes sent a complaint to the respondent about the applicant by email at about 4.30pm. Ms Holmes had told Michael Smith, a member of the board of directors of the respondent, on 4 September 2010 that she wanted to make a complaint about the applicant's behaviour on the previous night. He says he informed Ms Holmes that the complaint needed to be in writing and addressed to the board of the respondent.
- [7] The complaint in the email was in the following terms:

"Mrs Alexander approached me in an aggressive manner and proceeded to loudly verbally abuse me, regarding what she considers my incompetence as the Umpires Portfolio Holder for the Toowoomba Hockey Committee.

The entire tirade took place in the front entrance of the club in view and earshot of dining members and guests. At the time my 11 year old daughter (Molly) and I were in conversation with Jenny Peach (nee Mogg). The immediate barrage of disgusting language prompted me to remove Molly from the environment as she was becoming visibly upset.

Mrs Alexander continued her verbal attack with no regard for her surroundings. I feel that her public display was completely inappropriate and may well have offended guests arriving at the club. Actions like this can only serve to tarnish the good name that is so proudly deserved by Club Glenvale.

I have taken my portfolio responsibilities very seriously and invested countless hours in improving the standard and profile of all Toowoomba Hockey umpires. It is not acceptable for a person to approach a committee member in this highly offensive manner.

Jenny Peach who is a member of Past High Hockey Club was a witness to the above mentioned incident is willing to make herself available to verify my account of events should this be required.

I believe Mrs Alexander's behaviour is clearly a breach of Toowoomba Hockey's code of behaviour and would appreciate the support of the members of the board, in this matter. The fact that she could be so abusive in my child's presence would suggest that she would stop at nothing to get her point across.

As this negative behaviour towards umpires is not an isolated incident (refer correspondence to H.C dated around 23/06/10), I am concerned that this could impact on Grand Final day. I hope that this can be prevented and the day can be celebrated in the spirit that is intended.

Please contact me if there are any questions regarding this matter."

- [8] The minutes of the board of directors' meeting of the respondent held on 7 September 2010 record that the complaint from Ms Holmes was received and that a Code of Behaviour Tribunal would be convened to attend to the issue.
- [9] Following that meeting Mr Smith telephoned the applicant and told her that he had been at the meeting, that Ms Holmes had put in a letter of complaint about her, that the board decided that it would have a meeting about the complaint on Thursday evening, and that it would be in her interest to attend that meeting.
- [10] The applicant asked to be given a copy of the complaint. Mr Smith, after a number of requests, told her that he would not provide a copy because Ms Holmes and her husband did not want a copy of the letter to be given to her.
- [11] Mr Smith says that he did show the applicant a copy of the complaint but only after deleting what he referred to as "irrelevant parts of the letter of complaint". He does not say when he did this, but I consider it more likely than not that the applicant was not shown this document until her appearance before the tribunal. The document Mr Smith refers to has not been exhibited to any affidavit.
- [12] The applicant goes into some detail about what occurred at the hearing of the Code of Behaviour Tribunal. The tribunal heard from Ms Holmes and her husband first and then from some other witnesses. The applicant was not present when that was taking place.
- [13] The minutes of that meeting set out a summary of the hearing and, towards the end of that summary, the following appears:
- "Lesley stood in from [sic] of Michel [sic], with her hands clasped in front of her & with a smirk on her face said 'I apologise to you for the language I used in Club Glenvale last Friday night'. She then clapped her hands and left. There was no meaning in the spoken words."
- [14] A meeting of the board of directors took place immediately following the tribunal meeting. The minutes of that meeting record that the board discussed the incident and it was resolved that the applicant's membership should be suspended immediately and reinstated on 1 January 2011.

- [15] Contrary to the resolution of the board, the letter written to the applicant informing her of the decision was to the following effect:

“The Board of Directors have decided to suspend your membership of the Association from 10th September, 2010 until 01 January 2011 as per THA Constitution. You may apply to have your membership reinstated following that date.”

- [16] On the same date, a letter was sent on behalf of Club Glenvale which contained the following:

“While the tribunal members acknowledge that you did make a statement that contained words of apology the members feel it important to identify that we believe it was not done in a genuine manner. This, however, reflects more on you than on the process.”

- [17] Following receipt of those letters, the applicant’s solicitors wrote to the respondent alleging a failure to follow the constitution, the bylaws and the code of conduct and asserted a denial of natural justice and that the decision was *ultra vires*.
- [18] A subpoena for production of the complaint and the respondent’s records was filed and served on 9 December 2010. The material the subject of the subpoena and the affidavits of the respondent were not served on the applicant until the day prior to the hearing in this Court.

The Toowoomba Hockey Association

- [19] The respondent’s constitution relevantly provides:

“8. TERMINATION OF MEMBERSHIP AND OTHER MATTERS

- a) ...
- b) If a member:
 - ...
 - iv. conducts himself or herself in a way considered injurious or prejudicial to the character of interests of the Association;
 - v. conducts himself or herself in a way which has breached the Association's behaviour protocol;

Then the Board of Directors shall consider whether his or her membership shall be terminated, suspended or other punishment imposed.
- c) ...
- d) In relation to rules 8 B and C in the event of a hearing by the Board of Directors:
 - i. The party shall be given notice in writing at least one (1) week prior to the meeting at which the matters or complaints or charges will be considered and shall be given particulars of such matters or complaints or charges.

[20] The Respondent's bylaws relevantly provide:

“8.5.2 Scope of Authority

... The Code of Behaviour Committee is restricted to addressing misconduct that occurs outside the field of play and which is not under the control of game officials...

8.5.3 Procedures

A charge of misconduct may be made to the Toowoomba Hockey Committee or the Board of Directors by a member of the Code of Behaviour Monitoring Panel or another member of the Association in writing within 48 hours of the alleged offence. The Board of Directors and/or Toowoomba Hockey Committee must then refer the charge to the Code of Behaviour Committee.

When a report is received the Code of Behaviour Committee shall, within 12 calendar days of the advice being offered, hold a meeting of committee which shall determine the penalty, if any, that shall apply.

The President of the Toowoomba Hockey Association, as Chairperson of the Code of Behaviour Committee shall:

- a) Notify the Club that it is the subject of the charge, or a member of their club is subject of the charge and the time and place of the hearing, and
- b) Notify the relevant persons involved in the charge of the time and place of the hearing. The Chairperson of the Code of Behaviour Committee shall notify representatives of the club, sub-association or team or player, umpire or member charge of the charge against it/him/her upon the first appearance before the Judiciary Committee.”

[21] The Respondent's Code of Behaviour Policy relevantly provides:

“2 Reporting an Incident

- 2.0.1 Should a person feel that an incident needs to be addressed this can be done by completing an Incident Report Form held at reception and returning it to the reception desk within 48 hours of the said incident.”

Procedural fairness

[22] On behalf of the applicant, Mr Hackett identified seven matters which he said would support a conclusion that procedural fairness was not afforded to the applicant. I deal with those below.

- [23] First, it is said that the complaint was received more than 48 hours after the alleged incident. It was argued that, as a result, the respondent had no power to deal with such a complaint. The relevant provision of the respondent's bylaws is clause 8.5.3. It says that a charge of misconduct may be made to the Toowoomba Hockey Committee or the Board of Directors by a member of the Association in writing within 48 hours of the alleged offence. The Board of Directors must then refer the charge to the Code of Behaviour Committee. It was argued that those provisions meant that a complaint received after the 48 hours did not give the respondent any power to deal with the complaint. I do not think that is how the provision should be read. At most, a failure to provide a charge within 48 hours might allow the board to decline to refer the charge to a Code of Behaviour Committee but there is nothing in clause 8.5.3 which would invalidate a charge of misconduct made after the 48 hour period.
- [24] Second. The minutes of the Code of Conduct Tribunal record that two documents were submitted. The first was the letter from Ms Holmes. That was provided to the respondent on the day prior to the hearing in this Court. The second, an incident report from Club Glenvale, has not been provided and it was not put into evidence in this hearing. I accept the submission from the applicant that the committee determined the matter on the basis of a report which has not been provided to the applicant. In other words, the committee determined the matter without having given notice to the applicant in accordance with the requirements of clause 8(d) of the respondent's constitution.
- [25] Third. I accept the submission that, contrary to the requirements of the constitution, the bylaws and the code of conduct, the respondent has not provided properly or at all to the applicant the charge against her, or the particulars of the manner in which that charge breached the provisions of any of those documents.
- [26] Fourth. I accept the submission that the Code of Conduct Tribunal minutes of its meeting on 9 September strongly suggest that the decision and the penalty consequent upon that decision had been determined before the tribunal met.
- [27] Fifth. I accept the submission that the decision of the Tribunal that the applicant's apology was not sincere was not conveyed to her nor was she told that the Tribunal proposed to take the matter further by referring it to the Board.
- [28] Sixth. I accept the submission that there was an inconsistency in the approach and response by the respondent. On one hand, the applicant was told by the respondent that "the hockey related aspects of this issue are closed". On the other hand, the applicant was told that her membership was suspended.
- [29] Seventh. I accept the submission that the decision of the Board was not conveyed accurately to the applicant.
- [30] The constitution and other constitutive documents of the respondent require that, in circumstances such as this, a person the subject of a complaint be afforded sufficient time and particularity to consider the matter. Neither was afforded in this case. The applicant was not given the complaint in writing. The applicant was not given at least a week's notice. The applicant was not provided with an appropriate or adequate account of the nature of the alleged misconduct or any particulars of it. The respondent's failure to do these things denied the applicant the ability, had she

desire to do so, to seek further evidence about the conduct in question. It was submitted on behalf of the respondent that there had been, when one looked at all of the circumstances, a sufficient provision of procedural fairness. However, the provisions of the constitution and the other documents form part of the contract between the applicant and the respondent which is created by the Act. It is well accepted that the requirements of natural justice will be satisfied if "...the decision-making process, viewed in its entirety, entails procedural fairness" (See *South Australia v O'Shea* (1987) 163 CLR 378 at 389).

[31] When the decision-making process is viewed in its entirety in this case, I cannot find that the requirements of natural justice have been satisfied.

[32] I make the following orders:

1. Declare that the decision made by the respondent on 9 September 2010 suspending the applicant's membership of the respondent was in breach of the constitution of the respondent and the rules of natural justice.
2. Order that the decision by the respondent to suspend the applicant's membership of the respondent be set aside.

[33] I will hear the parties on costs.