

# SUPREME COURT OF QUEENSLAND

CITATION: *Mylne v The Returned & Services League of Australia (Qld Branch) Maroochydore Sub Branch In. & Ors* [2013] QSC 179

PARTIES: **PETER GLEN MYLNE**  
(applicant)

v

**THE RETURNED & SERVICES LEAGUE OF AUSTRALIA (QLD BRANCH) MAROOCHYDORE SUB BRANCH INC IA30508**  
(first respondent)

and

**THE RETURNED & SERVICES LEAGUE OF AUSTRALIA (QLD BRANCH)**  
(second respondent)

and

**TERRENCE JOHN MEEHAN**  
(third respondent)

FILE NO/S: BS 5389 of 2013

DIVISION: Trial Division

PROCEEDING: Originating Application

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 20 June 2013

DELIVERED AT: Brisbane

HEARING DATE: 19 June 2013

JUDGE: Douglas J

ORDER: **Application Dismissed.  
The applicant is to pay all the respondents' cost of and incidental to the application.**

CATCHWORDS: ASSOCIATIONS AND CLUBS – INCORPORATED ASSOCIATIONS – MATTERS RELATING TO INCORPORATION – where a State RSL branch was originally incorporated with letters patent issued under the *Religious Educational and Charitable Institutions Act 1861* (Qld) – where its by-laws provided that its chair shall be elected from nominations submitted by sub-branches – where “sub-branch” meant “a branch ... established under a charter” issued by the State branch - where a sub-branch affiliated with the State branch originally held a charter from the State

branch – where the sub-branch later became incorporated under the *Associations Incorporation Act* 1981 (Qld) and was issued with a new charter – where the sub-branch then amalgamated with another associated incorporated body – where no new charter was issued to the amalgamated incorporated body – where the sub-branch as amalgamated nominated a person to be chair of the State branch – whether the amalgamation meant that the resultant incorporated body could continue to enjoy the benefit of the previously held charter to support the nomination - whether the issue of a charter pursuant to an alleged delegation of power was sufficient

PROCEDURE – MISCELLANEOUS PROCEDURAL MATTERS – DECLARATIONS – standing to seek declaratory relief – where applicant has standing – where relief refused because issue non-justiciable

*Associations Incorporation Act* 1981 (Qld), ss 23, 86(b), 88, 133, 144

*Religious Educational and Charitable Institutions Act* 1861 (Qld)

*Baldwin v Everingham* [1993] 1 Qd R 10, considered

*Cameron v Hogan* (1934) 51 CLR 358, followed

*Kovacic v Australian Carting Association Queensland Inc* [2008] QSC 344, cited

COUNSEL: M M Stewart QC, with D Turner, for the applicant  
M R Fisher (solicitor) for the first respondent  
P Dunning QC, with C L Francis, for the second respondent  
R J Douglas QC for the third respondent

SOLICITORS: Ramsden Lawyers for the applicant  
Thynne & Macartney for the first respondent  
M+K Lawyers for the second respondent  
Steindls Lawyers & Notary for the third respondent

- [1] Mr Mylne has been nominated by the Currumbin-Palm Beach sub-branch of the Returned and Services League of Australia (Queensland Branch) for election to the chair of that branch at its annual general meeting to be held on 21 and 22 June 2013. The other nominee for that position is Mr Meehan, nominated by the Maroochydore sub-branch. Mr Mylne's application seeks a declaration that the Maroochydore sub-branch was at 15 April 2013, when it nominated Mr Meehan, and remains an entity incapable of nominating a person for election as chair of the Queensland Branch. He argues that conclusion should follow because on the evidence presently available to me the Maroochydore sub-branch has not applied for a charter from the Queensland Branch.
- [2] The path to that conclusion starts with by-law 3.01 of the RSL Queensland Branch's by-laws. The Queensland Branch is a body incorporated with letters patent issued under the *Religious Educational and Charitable Institutions Act* 1861 (Qld). Those letters patent continue to be of full force and effect pursuant to section 144 of the *Associations Incorporation Act* 1981 (Qld). By-law 3.01 provides that the chair

shall be elected from nominations submitted by sub-branches. The definition of “sub-branch” in clause 30 of the Queensland Branch’s constitution means “a branch of RSL (Queensland Branch) established under a charter issued by RSL (Queensland Branch) with such responsibilities assigned to it by RSL (Queensland Branch)”.

- [3] The Maroochydore sub-branch was issued with a charter first in 1932. Later, in 2001, it became incorporated under the *Associations Incorporation Act*, and that incorporated body was issued with a charter dated 10 October 2001. In August 2011, however, it decided to amalgamate with an associated services club which was also incorporated under that Act. The amalgamated body’s constitution was approved by the Queensland Branch which consented to the amalgamation and a certificate of incorporation of the amalgamated association issued on 21 June 2012. As no charter had been sought for the amalgamated association, however, none issued until 13 June 2013 when Mr McHugh, the chief executive officer and secretary of the Queensland Branch, purported to issue one pursuant to a delegation of power to him by the Queensland Branch’s board. That was after Mr Meehan’s nomination for the position of chair had gone forward.
- [4] Mr Stewart QC’s submission for Mr Mylne was that the charter issued to the pre-amalgamation Maroochydore sub-branch ceased to be effective when its incorporation was cancelled pursuant to section 86(b) of the *Associations Incorporation Act*, one of the sections dealing with the amalgamation of incorporated associations. He argued that conclusion was supported by clause 14.9 of the Queensland Branch’s constitution, which requires a sub-branch which seeks incorporation to apply for the Queensland Branch’s approval and, following incorporation, provide it with an application for a new charter. He also argues that the charter issued by Mr McHugh was not authorised by the constitution and is ineffective without an application by the sub-branch and a decision by the Queensland Branch’s board.
- [5] The first issue to determine seems to me to be whether Mr Mylne has standing to raise these issues, or whether they are justiciable where he is not a member of the Maroochydore sub-branch, and where he is, arguably, not deprived of any right or entitlement he otherwise enjoys to be a nominee for the position of chair of the Queensland Branch. This is based on the principle that courts do not as a matter of course intervene in the affairs of voluntary associations, unincorporated or incorporated: see *Cameron v Hogan* (1934) 51 CLR 358 at 378.
- [6] Margaret Wilson J analysed the scope of that decision in *Kovacic v Australian Carting Association Queensland Inc* [2008] QSC 344 at paras [26] and following, and said that it was now tolerably clear that the Courts will intervene in the affairs of voluntary associations in some circumstances, including where there has been a breach of contract where a proprietary right has been infringed and where someone’s livelihood or reputation is at stake. Mr Stewart submitted that, here, there had been a breach of contract in respect of clauses 3.1, 3.4 and 3.10 of the Queensland Branch’s constitution in respect of compliance with the provisions of the constitution and any state branch by-laws, in particular. The submission is, in effect, that acceptance of Mr Meehan’s nomination by a sub-branch which did not have a charter was a breach of the constitution which should be regarded as a compact amongst the members of the Queensland Branch.

- [7] In *Baldwin v Everingham* [1993] 1 Qd R 10, Dowsett J took the view that the statutory recognition of political parties there led him to the conclusion that *Cameron v Hogan* did not apply to the case before him. That was factually rather similar to the present circumstances in that it dealt with eligibility to stand for electoral office, but as a member of a political party registered federally. The plaintiff there had submitted that there had been irregularities in the conduct of the endorsement procedure leading up to and including the resolution of the executive of the party to reject his application for endorsement as a candidate.
- [8] His Honour found it difficult to construe the constitution there as having contractual effect in respect of the grievance raised by the plaintiff: see at page 15, line 25. Had it not been for the statutory recognition of political parties to which his Honour referred at page 18, he would have been compelled to the conclusion that the principle in *Cameron v Hogan* did apply. In circumstances such as these, it does not seem to me to be appropriate to treat the breach of the rules complained of as one raising a breach of contract amongst the members of the Queensland Branch which should be justiciable. It does not affect proprietary rights or Mr Mylne's livelihood or reputation, and it is difficult to see what contractual rights sounding in damages, for example, he could be seeking to vindicate. It seems to me to be one of those cases where, on existing authority, the courts should stay their hands from interfering in the internal affairs of these bodies.
- [9] Should I be wrong in that respect, there are other arguments which seem to me to affect the ability of Mr Mylne to obtain the declaration that he seeks. Section 88 of the *Associations Incorporation Act* provides that amalgamation of old associations into a new association does not affect a right or obligation of the old associations. The respondents argue that that subsection, combined with section 88(2), which provides that the amalgamation does not affect a right, obligation or benefit the new association would have had or enjoyed apart from the amalgamation of the old associations, meant that the Maroochydore sub-branch should continue to enjoy the benefit of the charter it previously held.
- [10] They submitted that section 88 should be read as a remedial provision operating to maintain the Maroochydore sub-branch's rights, including the right to nominate a person to hold the chair of the Queensland Branch pursuant to the previous charter it held. Mr Stewart submitted that the section did not have the effect of transferring rights to the new association, unlike section 23 of the Act which deals with the transfer of rights from an earlier unincorporated association. That, however, does not carry the necessary consequence that the pre-existing right to nominate a candidate in reliance on the previous charter has ceased to exist. Within the context set by the Queensland Branch's constitution, it seems to me to be fairly arguable that the old association had a right to the charter that had been issued to it which should not have been affected by the amalgamation by reason of the application of section 88(1)(a) of the Act.
- [11] That clause 14.9 of the Queensland Branch's constitution requires application for a new charter upon incorporation of a sub-branch does not have the necessary consequence that any former charter ceases to be effective. In that context, it may be significant that the holding of a charter does not now seem to be a necessary prerequisite to recognition of sub-branches by the Queensland Branch: see clause 14.5 of the constitution. In those circumstances, therefore, I would also hold that

section 88(1)(a) preserves the Maroochydhore sub-branch's right to the charter previously held by the old association of that name.

- [12] There were numerous further arguments made by the respondents relating to the meaning of "sub-branch" in by-law 3, and to its continuing effectiveness and in respect of the effectiveness of the charter issued by Mr McHugh on 13 June 2013.
- [13] In the circumstances, I do not propose to address those submissions, apart from the submission that section 133 of the *Associations Incorporation Act*, dealing with irregularities in proceedings, gave me jurisdiction to declare the nomination of Mr Meehan by the Maroochydhore sub-branch to be valid, despite any defect, irregularity or deficiency in that proceeding by reason of the Maroochydhore sub-branch's failing to ensure that it had a current charter from the Queensland Branch. Section 133 relates to proceedings under the *Associations Incorporation Act*. The fact that the Queensland Branch was incorporated by letters patent under the *Religious Educational and Charitable Institutions Act* was said to be fatal to the application of section 133 by Mr Stewart on the basis that the defect was a failure to comply with the constitution and by-laws of the Queensland Branch, so that section 133 had no application.
- [14] Mr Douglas QC for Mr Meehan, however, sought to characterise the irregularity on which he relied as the failure of the Maroochydhore sub-branch to apply for a charter, where it and the Queensland Branch were interrelated bodies and proceedings in connection with the meeting of the Maroochydhore sub-branch had been rendered ineffective by its default in observing its own rules. Its constitution in clause 4.1 required it to be cognisant of the Queensland Branch's rules and remarked that it was closely associated with that branch. Its members were bound by the Queensland Branch's constitution as they were also members of the Queensland Branch by virtue of its constitution.
- [15] The respondents argued that there had been an irregularity, arguably, in that the Maroochydhore sub-branch did not apply to the Queensland Branch for a new charter to be issued pursuant to clause 14.9.3(c) of the Queensland Branch's constitution, and did not ensure that it was issued. It did so on the basis that clause 4.1 of the Maroochydhore sub-branch's constitution required it to do so. They also argued that the proceeding which nominated Mr Meehan for the position of chair, being now challenged as being rendered ineffective, was one which the Court could rectify of its own motion or on the application of an interested person pursuant to the section.
- [16] The latter application of section 133(3), does seem to me to be likely to be available to validate the nomination of Mr Meehan in spite of the failure of the Maroochydhore sub-branch to apply for the issue of a new charter pursuant to clause 14.9.3(c) of the Queensland Branch's constitution. Mr Stewart submitted that the form of clause 4.1 of the Maroochydhore sub-branch's constitution, in merely stating that it was cognisant of the Queensland Branch's rules, was a reason for the Queensland Branch to refuse a charter as its constitution required the sub-branch to ensure its members complied with its rules pursuant to clause 14.3.3 of its constitution. Mr Dunning QC's response to that argument for the Queensland Branch was to point out that the sub-branch's members were also members of the Queensland Branch and, therefore, already bound by its rules, an argument which seems to me to be compelling.

- [17] Having regard to my overall view that it is not appropriate to treat this as a justiciable case, and because it is likely that section 88(1)(a) has preserved the Maroochydore sub-branch's previous right to nominate a candidate on the basis that the previous charter continued to be effective, it seems to me that I do not need to make any order pursuant to section 133. Rather, I shall simply dismiss the application by Mr Mylne. Otherwise, I would have been prepared to order relief under section 133.