SUPREME COURT OF QUEENSLAND

CITATION:	*Wilson v RSL of Australia (Qld Branch)* [2006] QSC 376
PARTIES:	**ROBERT CHARLES WILSON** (applicant) **v** **RETURNED & SERVICES LEAGUE OF AUSTRALIA (QUEENSLAND BRANCH)** (respondent)
FILE NO/S:	BS1974 of 2006
DIVISION:	Trial Division
PROCEEDING:	Trial
ORIGINATING COURT:	Supreme Court
DELIVERED ON:	13 December 2006
DELIVERED AT:	Brisbane
HEARING DATE:	23 November 2006
JUDGE:	Muir J
ORDER:	**1. Application dismissed** **2. Applicant to pay respondent's costs including reserved costs, if any, of and incidental to the application, to be assessed on the standard basis**
CATCHWORDS:	ASSOCIATIONS AND CLUBS – EXPULSION, SUSPENSION AND DISQUALIFICATION – EXERCISE OF POWERS OF EXPULSION – GENERALLY – where applicant a member of the RSL – where applicant suspended – where applicant seeks various declarations in relation to the suspension proceedings – whether orders ought be made *Australian Football League v Carlton Football Club Ltd* [1998] 2 VR 546, applied *Australian Workers' Union v Bowen (No 2)* (1948) 77 CLR 601, applied *Bornecrantz v Queensland Bridge Association Inc* [1999] QSC 58, applied *Maloney v New South Wales Coursing Association Ltd* (1978) 1 NSWLR 161, applied
COUNSEL:	D Topp for the applicant A Harding for the respondent
SOLICITORS:	Quinn & Scattini Lawyers for the applicant BCI Law for the respondent

Introduction

[1] The applicant, Robert Wilson, is a member of the Returned & Services League of Australia (Queensland Branch) ("the State Branch"), a member of the Returned & Services League of Australia (Queensland Branch) Beenleigh and District Sub-Branch Inc ("the Sub-Branch") and of the Beenleigh RSL Services Club Inc ("the Services Club"). The State Branch is a body incorporated under the *Religious, Educational and Charitable Institutions Act* 1867. The Sub-Branch and the Services Club are bodies incorporated under the *Associations Incorporation Act* 1981. Prior to 22 December 2004, when the assets of the Services Club were acquired by the Sub-Branch, the Services Club owned premises in Beenleigh in which it conducted its business under the name "Beenleigh RSL Services Club".

[2] The saga, which led to these proceedings, began with an incident at the bar of the Beenleigh Services Club premises at about 9 pm on 18 March 2004. Ms Peta Warner, who was serving at and in charge of the bar, made a statement in which she gave the following account of the incident. Ms Warner observed that the applicant and another person, who were drinking together, were swaying, stumbling and speaking louder than normal. She refused to serve them alcohol and told them that they had had too much to drink. She said, "No more, it's the law". The applicant threatened her with the loss of her job and demanded, in an aggressive manner, "the red incident book" to write out a complaint. Ms Warner gave him a complaint form but he continued to demand the book and to behave aggressively "by yelling and slamming his fist on the bar several times". In another statement, she referred to his conduct as ranting and raving at her.

[3] By letter dated 24 November 2004, the Registrar of the State Branch Tribunal of the RSL informed the applicant that it had found him guilty of three charges brought against him by the Beenleigh Sub-Branch, which were heard by the Tribunal on 12 October 2004.

[4] After entertaining submissions, the Tribunal imposed the penalty that the applicant be transferred to the RSL (Qld Branch) "Miscellaneous List of Members" for a period of two years. The applicant challenges the Tribunal's determination on the grounds identified and addressed below. He seeks declarations, including declarations that:

- the decision relating to charge 1 is invalid as that charge had to be heard and determined at the local club level at first instance; and
- the whole of the Tribunal's decision is invalid as the Tribunal applied the wrong test for determining guilt by imposing the onus on the applicant and/or because of the Chairman's bias towards the applicant.

The charges heard by the Tribunal

[5] It is convenient to set out the three charges determined by the Tribunal as well as something of the events leading up to the Tribunal hearing. The charges are:

> "Conduct unbecoming of a member – Charge 1 'Conduct unbecoming of a member in that he, at approximately 9:00pm on the 18 March 2004 was intoxicated and did abuse, intimidate and bully a

> female employee of the Beenleigh RSL Services Club Inc. namely Ms Peta Warner, in the performance of her lawful duties under the Responsible Service of Alcohol legislation in that he did raise his voice at her, bang his fists upon the bar in her vicinity and demand from her the staff incident book';
> Conduct detrimental to the interests of the Sub Branch of which he is a member – Charge 2 'Conduct detrimental to the interests of the Sub Branch of which he is a member in that he, on Thursday 18 March 2004 at approximately 9:00pm did threaten the continuity of employment of a staff member of the Beenleigh RSL Services Club, namely Ms Peta Warner, in the performance of her lawful duties under the Responsible Service of Alcohol legislation in that he said to her "You will not have a job by Sunday" or words substantially to that effect and further said "When I go to the committee meeting next week you shouldn't be here as a person" or words substantially to that effect'; and
> A further charge of Conduct detrimental to the interests of the Sub Branch of which he is a member – Charge 3 'Conduct detrimental to the interests of the Sub-Branch of which he is a member in that he, on Thursday 18 March 2004 at approximately 9:00pm did fail to take a lawful direction from a member of staff of the Beenleigh RSL Services Club Inc, namely Peta Warner, under the Responsible Service of Alcohol legislation such conduct placing at risk the financial viability of the Club and its ability to service its leasing agreement with the Beenleigh & District RSL Sub-Branch Inc.'"

The path to the Tribunal hearing

[6] In a letter dated 15 July 2004, from the Beenleigh Sub-Branch, the applicant was advised that the Sub-Branch Committee would meet on 16 August 2004 to consider whether he was guilty of the five acts of the alleged misconduct set out in the letter. All of the allegations related to the incident. The hearing did not take place and the charges did not proceed.

[7] In a letter from the Registrar of the Tribunal dated 30 August 2004 the applicant was advised that the Beenleigh Sub-Branch had lodged three charges against him with the Tribunal. The letter advised the procedures to be followed on the hearing of the charges and enclosed a copy of the charges, a copy of the relevant by-laws and "copies of all papers and documents".

[8] Some correspondence took place between the Tribunal, the Beenleigh Sub-Branch and the applicant. A number of employees of the Sub-Branch had given statements of their respective recollections of the incident to the Sub-Branch. The applicant wrote to four of these witnesses, including Ms Warner, informing them, peremptorily and inaccurately, that they were "required to attend" the Tribunal hearing. The Sub-Branch wrote to the Registrar of the Tribunal stating that the employees could not be forced to attend the hearing but that if the applicant paid the $500 (the estimated cost of their attendance) the Sub-Branch would "make every effort" to encourage witnesses to attend. It was said that the only person the Sub-Branch proposed calling as a witness was Ms Warner but that it was proposed that another person be available on the telephone should the need arise for him to give evidence.

[9] On 1 October 2004, the Registrar wrote to each of the Sub-Branch employees to whom the applicant had written referring to the applicant's letter to that person and advising:

> "Would you please note that Mr. Wilson's request is unusual in that if you were to attend the hearing you would be giving evidence on behalf of the Beenleigh RSL Sub Branch Inc. and not Mr. Wilson, although he would be entitled to ask questions of you at that time."

[10] On the same day, the Registrar wrote to the Sub-Branch stating:

> "I refer to your letter dated 30 Sep 04 and advise that the Chairman, State Branch Tribunal is also concerned that Mr. Wilson has written to the witnesses to the incident in the Beenleigh Club on 18 Mar 04. We are unable to see how those witnesses could assist his defence.
> The Tribunal Chairman agrees that it is not necessary for all witnesses to attend, however it would add weight to the Sub Branch case if Ms. Peta Warner were to attend and restate her account of the incidents."

The Tribunal hearing

[11] The hearing before the Tribunal took place on 12 October 2004. Ms Warner was the only witness called by the Beenleigh Sub-Branch. Mr Childs represented the Sub-Branch and, in effect, presented the Sub-Branch's case against the applicant. The applicant gave evidence on his own behalf and cross-examined Ms Warner.

[12] Soon after the commencement of the hearing, Mr Childs asked a question of Ms Warner concerning the incident which the Chairman deemed to be a leading question. The Chairman said:

> "Look, I'd rather you didn't lead the witness if you don't mind. My main concern is to find out from Ms Warner exactly what happened and if she confirms, all she has to do is confirm that ah under the Responsible Service of Alcohol legislation that he did raise his voice at her, bang his fists upon the bar in her vicinity and demand from her the staff incident book. Now did those events take place?"

Ms Warner replied, "Yeah they did".

[13] In the course of cross-examination the applicant revealed that he and Mr O'Brien had been drinking for 11 hours and said, "I would have to admit after 11 hours we would have been swaggering around". He admitted also that he had been told by Ms Warner, "no more it's the law", and that he had responded in words to the effect:

> "… that if you don't know the job of the supervisor behind the bar, you shouldn't be there and I demanded the red incident book. I did that on a couple of occasions."

[14] He further admitted to having a "befuddled head" and to being "a little bit agitated". He said that he did not "normally go off like that" and admitted to arguing with Ms Warner.

[15] At the conclusion of the cross-examination about the only difference in substance between the applicant's and Ms Warner's version of events was that he denied directly threatening her employment.

[16] The Tribunal was entitled to accept Ms Warner's evidence in preference to that of the applicant; she was not befuddled at the time and made a prompt written record of her recollection. I now turn to a consideration of the applicant's grounds of application.

Charge 1 is invalid as it had to be heard and determined at the local club level at first instance.

[17] The applicant's argument depends on paragraphs 1.1 and 1.4 of By-law 7 of the RSL (Qld Branch) Rules. Under paragraph 1.1, if the committee of a sub-branch has reason to believe that a member may be guilty of "conduct unbecoming a member", it must give notice to the member of the date, time and place of the meeting at which the committee will consider the matter. Paragraph 1.4 provides that in the event of a guilty finding, the committee may impose a penalty or resolve that the matter be referred to the State Branch for its consideration. The applicant's argument is that the jurisdiction of the State Branch Tribunal was not properly invoked as the Beenleigh Sub-Branch did not hold the meeting contemplated by paragraph 1.4 and thus could not resolve that the matter be referred to the State Branch.

[18] There are a number of difficulties with the applicant's argument. Paragraph 1 deals with disciplinary action by the committee of a sub-branch. Paragraph 2 establishes a State Branch Tribunal. Paragraph 3 gives the State Branch Tribunal power to discipline members in the circumstances there stated, including where the member:

> "(b) has been guilty of conduct unbecoming a member;
>
> …
>
> (e) has been guilty of conduct detrimental to the interests of a sub-branch of which he is a member."

[19] The disciplinary powers of sub-branches are limited to circumstances in which a member is guilty of conduct unbecoming a member and those powers are plainly subsidiary to the powers of the State Branch Tribunal.

[20] Paragraph 1.1 commences:

> "Notwithstanding the provisions of Paragraphs 3 and 4, if the Committee of a Sub-Branch has reason to believe …"

[21] A reason why the Beenleigh Sub-Branch did not proceed with a disciplinary hearing, as foreshadowed in its letter of 15 July, was that each charge contained an allegation that the applicant's conduct was detrimental to the interests of the Beenleigh RSL. The Committee of the Sub-Branch was alerted to the fact that it had no power to deal with such a charge. Accordingly, the Committee resolved on 9 June 2004 to "prefer the charges … through the State Branch Tribunal". The response of the Committee was to abandon the charges identified in its letter of 15 July and to formulate charges under the National Rules.

[22] The point which the applicant takes is thus erroneous. It is also wrong to assert that charge 1 had to be heard and determined at the local club level at first instance. Paragraph 3 of By-law 7 is not subject to By-law 1. The introductory words of By-law 1 make it plain that disciplinary powers of a State Branch Tribunal may be exercised independently of the actions of the Committee of the Sub-Branch but the Committee may, notwithstanding the disciplinary powers of the State Branch Tribunal, deal with a member for conduct unbecoming a member.

[23] It was no part of the applicant's case that the proceedings of the State Branch Tribunal miscarried because the charges were formulated by the Beenleigh Sub-Branch and brought by it to the State Branch Tribunal. It is thus unnecessary for me to consider whether this constituted a procedural irregularity. If it did, I doubt that I could operate to nullify the Tribunal's determination. Irrespective of how the charges came before the State Branch Tribunal, it could, as it did in this case, form an opinion in terms of paragraph 3.1 if it complied with the requirements of paragraph 3.2.

The proceedings miscarried as the Tribunal used the wrong test for determining guilt by imposing the onus on the applicant

[24] The particulars of this allegation are:

> "In dialogue with the Respondent's representative during the Hearing, the Chairman of the Tribunal said "… the job's up to him [meaning the Applicant] to prove it wasn't detrimental to the Sub-Branch and to convince us that in fact this charge is not sustainable."[1]

[25] Mr Childs was the person referred to in the particulars as the other party to the conversation.

[26] It would be wrong to evaluate a statement, such as the one under consideration, as if it occurred in isolation and as if it were made by a judge in the course of a formal hearing. It is not suggested that the Chairman, or any other member of the Tribunal, was a lawyer. The subject observations were made by the Chairman after the Tribunal had heard evidence from Ms Warner, the only witness called by the Sub-Branch, and appears to have been made in relation to charge 3. Admissions made by the applicant supported the case against him. Ms Warner's evidence made out a strong prima facie case. By the time the Chairman made the observations, it was quite open to the Tribunal members to form a strong, if tentative, view that the evidence established that the applicant's conduct was detrimental to the interests of the Sub-Branch. It was thus a sensible enough course to put the applicant on notice that an explanation was required.

[27] It is significant also that there was no other reference to or discussion about the onus of proof, as such, before the Tribunal. That reinforces my conclusion that, by the remarks under consideration, the Chairman should not be seen to be stating an evidentiary principle applicable to the conduct of the proceedings.

[28] It is as well, also, to have regard to the following principles stated by Dixon J in *Australian Workers' Union v Bowen (No 2)*:[2]

> "It is important to keep steadily in mind that we are dealing with a domestic forum acting under rules resting upon a consensual basis. It is a tribunal that has no rules of evidence and can inform itself in any way it chooses. Members may act upon their own knowledge and upon hearsay if they are satisfied of the truth of what they so learn and if they give the member with whom they are dealing a proper opportunity of answering the charge and defending himself. The tests

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1 Transcript lines 1153-1155.

2 (1948) 77 CLR 601 at 628.

> applied to juries' verdicts, namely, whether there was evidence enabling a reasonable man to find an affirmative or whether upon the evidence a finding was unreasonable, have no place in the examination of the validity of such a domestic tribunal's decisions. But the tribunal is bound to act honestly, that is to say it must have an honest opinion that what the member before it did amounted to misconduct and its decision must be given in the interests, real or supposed, of the body it represents and not for an ulterior or extraneous motive."

The Chairman's bias vitiated the proceedings

[29] The applicant alleges actual or apprehended bias. It is well established, however, that for proceedings of a domestic tribunal to be set aside on the grounds of bias, actual bias must be proved.[3]

[30] In *Maloney v New South Wales National Coursing Association Ltd*[4], Glass JA, with whose reasons the other members of the court agreed, in the course of explaining the difference between courts on the one hand and domestic tribunals on the other, said:

> "The rules being enforced have no consensual basis. The parties have not chosen the tribunal. The judges and those being judged are drawn from two groups of people so numerous and so placed in relation to each other that it is not only desirable, but also eminently feasible, to insist that the former should be purged of all bias towards the latter, whether real or apprehended. Domestic tribunals are usually established in circumstances which are radically different. The members, generally speaking, have agreed to abide by a set of rules and the authority of a committee to enforce them, if necessary by expulsion. The committee members cannot, in the nature of things, divest themselves of the manifold predilections and prejudices resulting from past associations with members. Apprehension of bias could be generated in all kinds of ways. If it was a disqualifying consideration, the enforcement of the consensual rules would be largely unworkable. There may be some circumstances where a suspicion of bias would operate to disqualify a member of a domestic tribunal. But generally speaking it does not so operate and, in particular, it cannot operate with respect to tribunals such as that set up by Art. 10 in the articles the defendant association: cf. SA de Smith, *Judicial Review of Administrative Act*, 3 rd ed, p 232."

[31] The allegations of bias are as follows:

(a) Leading questions were asked of Ms Warner by the Chairman on a number of occasions;
(b) Mr Childs was permitted to ask leading questions of Ms Warner;
(c) The Chairman cross-examined the applicant;
(d) On an occasion when Ms Warner referred to a statement by an absent bus driver, the Chairman said "unfortunately we can't accept that

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3 *Maloney v New South Wales Coursing Association Ltd* (1978) 1 NSWLR 161 at 170, 171 and *Australian Workers' Union v Bowen (No 2)* (1948) 77 CLR 60.

4 At 171.

evidence at this stage because it means that Wilson wouldn't have the opportunity of cross-examining on that particular point";

(e) The Chairman suggested that the applicant was acting against his own interest in raising a legal argument;

(f) The Chairman of the Tribunal caused the Registrar to write to the Sub-Branch on 23 June 2004 stating that the Services Club "might also consider taking action under its Rules because the said Rules most probably are able to bar a member from entering the Club premises whereas the Sub Branch and State Rules probably do not have this ability";

(g) The Sub-Branch Secretary acknowledged that, "[i]t would not seem appropriate that [the applicant] be subject to disciplinary action in more than one forum, arising out of the same incident";

(h) The Sub-Branch and the Tribunal wrote to prospective witnesses "conveying the impression" that it was acceptable for them to ignore the applicant's request to attend the hearing;

(i) The Tribunal Chairman had formed the view as to the desirability of certain witnesses attending the Tribunal hearing, prior to hearing from the applicant on the point. He had also made a suggestion to assist the Sub-Branch to "add weight" to the case against the applicant;

(j) The Tribunal made its decision on the erroneous basis that the respondent admitted both offences when he had not; and

(k) The Chairman prevented the applicant from fully arguing his case by cutting short argument on one occasion.

[32] In order to determine the validity of the above complaints it is necessary to consider the whole of the transcript and to obtain a flavour of the way in which the proceedings were conducted. Having undertaken that exercise, it appears to me that the Tribunal took its role seriously and, in particular, took care to afford procedural fairness to the applicant. For example, the Tribunal refused to receive evidence in statement form of persons who were not present at the hearing; the applicant was encouraged to make out his defence; Mr Childs was asked not to lead Ms Warner in her evidence; and care was taken to exclude submissions or assertions not based on evidence. Additionally, the Tribunal permitted cross-examination by the applicant, although that was not required by the Rules.

[33] The approach taken by the applicant in these proceedings is to subject the correspondence prior to the hearing and the words used by Tribunal members at the hearing to microscopic analysis. The analysis assumes that the Sub-Branch and the Tribunal were acting in bad faith. Accordingly, written or oral statements which are quite capable of being given an innocent interpretation are treated by the applicant as sinister and as providing evidence of bias. Many of the examples of alleged misconduct are examples of the Tribunal acting contrary to the way in which a judge presiding over a civil or criminal hearing would be expected to behave. The allegations are thus based on a false premise. The applicant's approach also proceeds in blissful ignorance of the weakness of the applicant's factual case and the resulting lack of contest about material facts. It would be unrealistic and unfair to ignore these matters when evaluating the Tribunal's conduct.

[34] It is convenient to consider allegations (a), (b), (c), (d) and (e) together. The complaints about the leading questions ignore the fact that the proceedings were

before a lay tribunal not bound by rules of evidence or procedure. It is true that the Chairman asked questions of the applicant but that is not untoward. Even judges in criminal trials are permitted to ask questions in order to clarify evidence which has been given or, for that matter, to obtain relevant information. Any questioning by the Chairman was not excessive.

[35] Nothing sinister can be read into the comment about the absence of the bus driver witness. The observation was nothing more than a trite comment and hardly points to any pre-judgment or partisanship. The absent person's statement supported Ms Warner's evidence and her evidence was in need of no corroboration. As I mentioned earlier, the only factual matter of substance in dispute concerning the events constituting the incident was whether the applicant made a direct threat about Ms Warner's continual employment.

[36] Although it is correct that the Chairman demanded that the applicant not continue with an argument and expressed considerable irritation during the course of the argument, it does not appear to me that the applicant was denied natural justice. The argument in question had already been raised and disposed of and the applicant was adding nothing new to elucidate his position. The Tribunal was entitled to bring discussion on the point to an end so as to sensibly manage the proceedings. The Chairman's blasphemous and sarcastic exclamations during the applicant's submission, whilst intemperate and indecorous, do not evidence an inability to afford natural justice. Human nature ensures that from time to time tribunals will fail to conceal their exasperation and express themselves with a want of decorum. But this does not, without more, vitiate the proceedings.

[37] The letter of 23 June 2004 was part of a chain of correspondence in which discussion occurred between the Sub-Branch and the State Branch as to the appropriate way of preferring charges against the applicant. In the letter of 23 June the view was expressed that the charges should be heard by the Sub-Branch committee in the first instance. That opinion was based upon the construction of By-law No 7. The letter pointed out that it may be only the Services Club which could prevent a member from entering Club premises. That observation drew attention to possible limitations on the power of different bodies to impose penalties. Having regard to the nature of the body concerned, it does not appear to me that this piece of correspondence shows any element of prejudging or demonstrates any bias.

[38] The conduct of the Sub-Branch in relation to witnesses can shed no light on whether the Tribunal's conduct was such as to demonstrate bias. The Tribunal had statements from the persons concerned which would lead any reasonable person to consider that they were likely to give evidence against, rather than for, the applicant. It was not suggested that the applicant required those persons to be present for any reason other than to enable him to cross-examine with a view to disputing or discrediting their evidence. Accordingly, if the correspondence did convey the impression to proposed witnesses that they could ignore the applicant's request for them to attend the hearing, it demonstrated no more than that the Tribunal was concerned to avoid unnecessary proliferation of witnesses. It is also the fact that the persons concerned were under no legal obligation to attend the hearing.

[39] As to the allegation that the Chairman had formed a view as to the desirability of certain witnesses attending the Tribunal hearing prior to hearing from the applicant on the issue, the applicant has no reasonable grounds for complaint. The factual

issues were straightforward. The Tribunal was entitled to endeavour to manage the proceedings with a view to efficiency and expedition, as long as it afforded the applicant natural justice. The reference, in the Registrar of the Tribunal's letter of 1 October 2004 to the Secretary of the Beenleigh Sub-Branch, to Ms Warner's evidence adding weight to the Sub-Branch case is an unfortunate choice of words. It does not, however, demonstrate bias, either by itself or taken together with the other matters complained of by the applicant. The reality was that Ms Warner was the critical and most obvious witness in the case against the applicant.

[40] On 30 September 2004, the Secretary of the Beenleigh Sub-Branch had written to the Registrar referring to the costs involved in having a number of witnesses appear at the hearing and stating that Ms Warner was the only witness the Sub-Branch proposed calling. The letter of 1 October expressed agreement that it was not necessary for all witnesses to attend and made the above observation about Ms Warner. Taken in context, it should be viewed as amounting to no more than an observation that it would be desirable for the Tribunal to hear the oral evidence of the principal witness for the Sub-Branch. It would have been better if the observation had been omitted or worded differently. My conclusion that there was nothing sinister in the Registrar's choice of language is supported by the fact that the Tribunal's conduct at the hearing discloses no element of partisanship.

[41] Although on one occasion a member observed at the conclusion of the hearing that the applicant had admitted both offences and the Chairman said that the applicant admitted charges 1 and 2, I do not consider that the Tribunal was acting under any misapprehension. It would have been abundantly plain to all concerned that the applicant was vigorously contesting the charges. What is being said in the passages relied on by the applicant is not that he has conceded the charges but, in effect, that even on his own evidence or admissions the charges have been established.

Charge 2 was not made out as there was no evidence of conduct detrimental to the Sub-Branch

[42] The argument was based on the premise that the applicant's conduct could not be "detrimental to the interests of the Sub-Branch" unless it was established that actual loss or damage had been sustained as a result of the applicant's conduct. That approach, with respect, is too simplistic. Conduct may be detrimental to the interests of a person where that conduct exposes the person to a risk of injury, even though the injury is not sustained. That was plainly the case here for a variety of reasons. One obvious risk was the disaffection or loss of the services of Ms Warner. Another risk was that the applicant's conduct could cause Ms Warner, and other persons in her position, to become be reluctant to exercise due control over club patrons and thus create conditions unattractive to members and other potential users of Club facilities. It is surely the case that conduct by members which interferes with the orderly service of alcoholic beverages and the staff's control over the way in which and the persons to whom such beverages are served is inimical to the proper running of the Service Club's business. The conduct is thus detrimental to the Club's interests. Many other examples could be provided.

[43] It was not part of the applicant's case that detriment to the Services Club could not be equated with detriment to the Sub-Branch or that detriment to the Sub-Branch could not be inferred from detriment to the Services Club. Accordingly, there was no investigation in the evidence or in submissions of the precise relationship

between the two entities. About all that is known in that regard is that at relevant times the two bodies had identical committees.

[44] The submission also ignores the fact that Tribunals, such as the State Branch Tribunal, may act on their own knowledge and make their own enquiries.[5] That is an important consideration, having regard to the assumption that conduct detrimental to the Services Cub would or could also be detrimental to the Sub-Branch.

[45] The approach in the authorities in which courts may interfere in findings of fact by domestic tribunals is far from consistent, as the following passage from the reasons of Hayne JA in *Australian Football League v Carlton Football Club Ltd*[6] shows:

> "Likewise, it is not effective to preclude the Court applying a general principle of law (if that is its proper characterisation) that enforcement will be restrained of decisions of domestic tribunals that are 'absurd' or 'unreasonable' (*Dickason* at 254 per O'Connor J) or are decisions that 'no reasonable man could come to' (*Dickason* at 254 per O'Connor J) or are decisions contrary to 'fundamental principles of common justice' (*Dickason* at 255 per O'Connor J) or are decisions 'at which no reasonable man could honestly arrive' (*Dickason* at 258 per Isaacs J) or are decisions for which there is 'no evidence' (*Lee v. Showmen's Guild of Great Britain* [1952] 2 Q.B. 329 at 340 per Somervell LJ) or are decisions affected by '*Wednesbury* unreasonableness' (*Associated Provincial Picture House Ltd v Wednesbury Corporation* [1948] 1 KB 223). (I need not and do not choose between these various expressions.)"

[46] Ashley AJA, in the same case, provided the following summary of authority:[7]

> "In my opinion the principle goes at least this far: that a court may intervene in a case of the present type if there is 'no evidence' which supports a decision: (*Lee*), or if a decision may properly be described as being:
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> . perverse: *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 (Mason J said at 359 that this 'signifies acting without any probative evidence');
> . irrational: *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 410;
> . unreasonable: *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223 at 229-230 per Lord Greene MR;
> . not based in material having rational probative force: *Re Pochi and Minister for Immigration and Ethnic Affairs* (1979) ALD 33 at 41 per Brennan J.;
> . such that no reasonable man could (honestly) arrive at: *Dickason* at 254 per O'Connor J and at 258 per Isaacs J.
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> A decision will not be based in material having rational probative force if it is founded upon irrelevant material."

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5 *Australian Workers' Union v Bowen (No 2)* (1948) 77 CLR 601 at 628. See also *Carr v Simnovec* (1980) 26 SASR 263 and *Australian Football League v Carlton Football Club Ltd* [1998] 2 VR 546.

6 [1998] 2 VR 546 at 568-9.

7 At 578-9.

[47] For the above reasons, the applicant has not shown that the Tribunal's decision satisfied any of those tests.

Charge 3 was not made out as there was no evidence of the conduct being detrimental to the Sub-Branch

[48] For the reasons given in relation to charge 2, the applicant's argument cannot succeed. It is not fanciful to consider that the applicant's conduct was such as to create a risk of weakening the orderly management of the Club so as to threaten its profitability and heighten the risk of future breaches of the *Liquor Act* 1992. The charge does not suggest that the Sub-Branch would terminate the lease of the Services Club premises. The complaint concerns a threat to the Services Club's business which would place at risk the financial viability of the Club and endanger its ability to service its lease from the Sub-Branch.

[49] The Tribunal, with its knowledge of the workings of the Services Club and the Sub-Branch, was well placed to form an opinion on whether relevant facts had been made out. Again, the applicant has not shown that the Tribunal's decision satisfied any of the tests set out in paragraphs [45] and [46] hereof. As appears from *Australian Workers' Union v Bowen (No 2)*[8], the Tribunal's findings, if honestly made, could not be set aside merely because a Court considered them unreasonable.

Charge 3 was not made out as there was no lawful direction and if there was, the applicant did not fail to take it

[50] The applicant's contention is that he was not given a direction by Ms Warner; she merely refused to serve him any further alcohol.

[51] In the course of the hearing, the lawful direction particularised was that the applicant, having been refused service by Ms Warner, "refused to accept the fact that he was refused service that resulted in this incident".[9] The facts surrounding the incident are hardly disputed. The applicant himself, referring to charge 3, said:[10]

> "I was told that I would get no more alcohol. In Peta's statement she also says we were doing nothing wrong. And that's why I said well, what have we done? The answer was 'No more it's the law'. Hands on hips, grinning, and that stance upset me and that's when I said 'Where do you get the authority' and so forth. But there was no charge, no 'Go and sit down' or 'Leave the building' or anything. It was just there is no more alcohol being served …"

[52] The charge is not that a lawful direction was not followed. It is that the applicant "did fail to take a lawful direction" from the staff member. It does not appear to me to be a misuse of language to refer to a statement to a person demanding to be served alcohol that no further alcohol would be served as a direction or a directive. "Direction" is defined in the *Shorter Oxford English Dictionary* as "1. The action or function of directing … instructing or administering".

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8 Supra.

9 Transcript 906.

10 Transcript 1051 et seq.

[53] Even if there is a slight problem in terminology, the gravamen of the complaint was quite plain and no confusion arose. None has been alleged and the applicant has not been prejudiced in any way.

The penalty imposed is manifestly excessive

[54] The argument put forward on behalf of the applicant is as follows. The penalty, in essence, amounts to a two-year ban on holding any office in the RSL and on being either a member or associate member of any RSL Sub-Branch. No unduly intoxicated person was actually served, no public liability claim was made, and no liquor licence was threatened to be cancelled, let alone cancelled. Nor was there any fine or other loss or damage. The penalty thus seems unduly harsh. On an earlier occasion, a member of the Sub-Branch and of the Services Club had his membership suspended for two years by the Services Club for throwing an empty beer glass across the room into a wall and for punching another member of the Sub-Branch. No charges were brought against him by the Sub-Branch or the State Tribunal. Another member of the Sub-Branch shouted at several women and threw a glass. He then punched another member of the Sub-Branch and was suspended by the Sub-Branch for four months. Additionally, the applicant had already been suspended for four months by the Beenleigh Services Club. He was thus punished twice for matters arising out of the same incident.

[55] The irrelevant considerations to which the applicant is alleged not to have been given an opportunity to respond consist of:

- Discussion by Tribunal members about matters which could have flowed from the applicant's conduct;
- The capacity for or tolerance of alcohol of the Tribunal members; and
- The normal conduct of bar supervisors.

[56] In those discussions the Tribunal members were doing no more than drawing on their own life experiences and experiences of Club operations to articulate views as to the nature of the applicant's conduct and its possible consequences. They were not admitting any evidence which the applicant had not had an opportunity to address and nor were they raising matters which ought properly to have been brought to the attention of the applicant.

[57] The discussion about the possible demise of the applicant within two years was no doubt tasteless and betrayed inappropriate levity but there was nothing to suggest that the observations went to any considerations actually taken into account by the Tribunal in determining penalty.

[58] As for the Tribunal's determining penalty before the applicant was invited to make submissions on penalty, it was merely the fact that the Tribunal reached a provisional view on penalty. It then quite properly afforded the applicant an opportunity to be heard. The critical thing is that the applicant was given an opportunity to be heard and that the Tribunal properly entertained his submissions.

[59] As I understood his submissions, the applicant's counsel relied on the penalty imposed by the Services Club not as showing some vitiating error of principle, but as demonstrating that the penalty imposed was excessive.

[60] The principle to be applied was identified by Chesterman J in *Bornecrantz v Queensland Bridge Association Inc*[11] as a requirement, on the part of an applicant, to show that the Tribunal's decision "is so disproportionate to [the applicant's] transgression that it must indicate bad faith or some other miscarriage of the [Tribunal's] function". His Honour went on to observe:

> "This is merely an adjunct to the '*Wednesbury* principle' by which if a decision is so unreasonable that no reasonable decision-maker could have made it, the decision itself supplies the grounds for impugning it as being unlawfully made."

[61] Reference to the penalties imposed by the Sub-Branch or the Club does little to advance the applicant's case. Those penalties were imposed by different bodies in respect of different charges and there is insufficient knowledge of the facts and circumstances surrounding the transgressions to permit the making of worthwhile comparisons.

[62] Whilst the penalty imposed by the Tribunal was greatly in excess of that imposed by the Services Club, it does not appear to me that no reasonable decision-maker could have imposed it. The charges which the Tribunal found established were quite serious in nature. And the Tribunal was entitled to conclude that the applicant's conduct merited a substantial penalty.

Conclusion

[63] For the above reasons, the application will be dismissed and the applicant ordered to pay the respondent's costs including reserved costs, if any, of and incidental to the application, to be assessed on the standard basis.

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11 [1999] QSC 58.