

SUPREME COURT OF QUEENSLAND

CITATION: Palmer v McIver & Ors [2012] QSC 385

PARTIES: **CLIVE FREDERICK PALMER**
(applicant)
v
BRUCE MCIVER, GARY SPENCE, BARRY O’SULLIVAN AND BERNARD PONTING
(respondents)

FILE NO/S: BS11247/12

DIVISION: Trial Division

PROCEEDING: Application

DELIVERED ON: 16 November 2012

DELIVERED AT: Supreme Court, Brisbane

HEARING DATE: 16 November 2012

JUDGE: Douglas J

ORDER: **Application dismissed**

CATCHWORDS: ASSOCIATIONS AND CLUBS – EXPULSION, SUSPENSION AND DISQUALIFICATION – POWER TO EXPEL, SUSPEND AND DISQUALIFY – where the applicant is an honorary life member of the Liberal National Party – where the form of membership entitles the applicant to membership of the State Council and to vote at pre-selections – where the President’s Committee purported to suspend the applicant’s honorary life membership due to repeated trenchant criticism of parliamentary representatives – where the applicant was not put on notice nor given the chance to make submissions as to whether suspension ought occur – where the relief sought at an interlocutory stage is to restrain the respondents from preventing the applicant from attending, speaking, or voting at two pre-selection meetings scheduled to take place on 17 November 2012 and 24 November 2012 – where the other relief sought is that the respondents take such steps as they are reasonably able to do by 8:00am on 17 November 2012 which ensure that the applicant is permitted to attend, speak and vote at the two pre-selection meetings – whether the relief ought be granted

COUNSEL: S Doyle SC with D B O’Sullivan for the applicant
P Dunning SC with P Hastie for the respondents

SOLICITORS: HopgoodGanim for the applicant
ClarkeKann for the respondents

HIS HONOUR: Professor Clive Palmer has recently engaged in trenchant criticism of the Liberal National Party of which he is an honorary life member. That form of membership entitles him to membership of the State Council and to vote at pre-selections.

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Apparently, because of the criticism he has made of members of the Queensland Parliament, he has been suspended but the suspension occurred in circumstances where he was not put on notice that it was about to happen, nor given the chance to make submissions as to whether it should occur.

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The provisions relating to suspension of members of the party indicate that the State Council has power under clause K11 of the party's constitution to prohibit, for example, a person who has brought the party into disrepute or otherwise behaved in a manner contrary to its interests, from exercising any voting power for the purpose of selecting a delegate or a candidate and it may nullify the appointment of any delegate or candidate selected by such party unit. It may also expel such person from the party or suspend some or all of the privileges of membership for a definite or indefinite period.

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The State Council seems to be the major overall governing body of the party. Below it lies the State Executive, a smaller body which, subject to the provisions of the constitution, has power to manage all the affairs of the party, to exercise full control over all members and to hear and determine disputes.

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It also may exercise the powers vested in State Council when it deems necessary. It also has a specific power in respect of suspension of a member and powers in respect of complaints made against members. Clause M7 allows it to deal with a complaint if it decides to and to investigate the complaint as it considers appropriate. Clause M8 allows it to refer a complaint to the Disputes Committee and it may suspend the member pending the investigation and report of that committee.

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The penalties that may be imposed by the State Executive following an investigation by itself under clause M7 or by the Disputes Committee under the procedure beginning with clause M8, may result in expulsion, suspension or censure.

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Below the Executive lies the President's Committee, a four member body at the moment consisting of the President, Vice President, Treasurer and Honorary Legal Adviser. It has a general power expressed in clause N2 to take such action in relation to any exigency arising between meetings of the State Executive as it considers to be appropriate in the interests of the party.

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The President's Committee is the body which has purported to suspend Professor Palmer, it seems in reliance on its powers under clause N2.

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The argument is that that power of suspension resides with the State Executive or the State Council and that the general power given to the President's Committee does not include such

a power and, prima facie, there are reasonable arguments that
can be mounted in respect of that construction of the clause.

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A contrary view put on behalf of the respondents is that when
one reads clause N with clause M, generally, it seems apparent
that the powers under clause N that may be exercised by the
President's Committee would be those powers able to be
exercised by the State Executive, subject to ratification by
it, and again that may be a plausible construction of the
section, so that if that were the case, then the President's
Committee could exercise the powers of the State Executive
under clause M7 to deal with a complaint itself by
investigating it as it considers appropriate and, in this
case, by suspending Professor Palmer pending the result of its
investigation.

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That again runs into problems of construction compared with
the specific power to suspend, given, if the procedure under
clause M8 of reference to the Disputes Committee is relied
upon, which again seems to me to raise a valid argument that
suspension is not necessarily something that may be done by
the President's Committee in reliance upon the State
Executive's power under clause M7.

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As against that argument, it is submitted that the trenchant
nature and repeated nature of the criticisms of Professor
Palmer and their apparently clear contravention of clause
D22(d) of the constitution that members not publicly
criticise, in particular here, Parliamentary representatives

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but direct any criticism through the officers of the party required the President's Committee to act. It was submitted that Professor Palmer's apparent willingness to continue to make such criticisms established that an exigency had arisen between meetings of the State Executive and that affected the issue whether the respondents were obliged to provide Professor Palmer natural justice in respect of what was characterised for the respondents as a suspension pending an investigation.

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Mr Dunning SC for the respondents drew my attention to two cases dealing with circumstances in which the rules of natural justice may not be applied in particular factual situations. See, for example, Gaiman v. National Association for Mental Health [1971] Ch 317 at 335 to 336.

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That really just illustrates the point, however, that from my point of view there is a serious issue to be tried about whether Professor Palmer's suspension has occurred according to the rules or according to the rules of natural justice.

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What does concern me, however, is the provision made in clause U21, in particular, of the party's constitution relating to selection committees. The relief sought at an interlocutory stage by Professor Palmer is to restrain the respondents from preventing him from attending, speaking or voting at two pre-selection meetings that are imminent, one tomorrow and one the following Saturday.

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The other interlocutory relief he seeks is that they take such steps as they are reasonably able to do by 8 a.m. tomorrow which ensures that Professor Palmer is permitted to attend, speak and vote at the following meetings as a member of the LNP and then detailing the two pre-selection committees I have referred to.

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That form of relief presupposes, in a way, that he continues to have the status of a suspended member as no relief is sought interfering with that suspension, and, on the material before me, it would be impossible to reach a concluded decision about his status at this stage. It was not sought either.

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One then comes up against the problem dictated, I was told, partly by State legislation relating to electoral laws that a selection committee must be conducted in a manner where the selection ballot includes votes only from members who are eligible to vote in the ballot under its constitution.

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The selection committee must be chaired by the President, Vice President or a member of the State Executive nominated by the President. So it seems likely that one or some of the respondents are likely to be on the selection committee or chairing it.

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Clause U21(f) then goes on to provide that at the commencement of the selection committee the chairman must introduce each applicant for selection and ask all eligible selectors and

each applicant whether they are satisfied with the
constitution of the selection committee which would, on the
assumptions the application is made on, include Professor
Palmer. If an objection is then made to the constitution of
the selection committee, the chairman must either determine
the objection or allow the selection committee to consider the
objection and to determine it or adjourn it and refer the
objection to the Honorary Legal Adviser for advice and then
State Executive for decision, this being in circumstances
where, as I said, Professor Palmer is, notionally at least,
still a suspended member.

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The rules do not make it crystal clear what the effect of
suspension is on a member but I would have thought that a
likely consequence would be ineligibility to vote in a
selection committee of this nature.

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This argument was raised by Mr Dunning as a threshold argument
on the basis that the candidates for pre-selection who had the
right to express satisfaction with the constitution of the
selection committee were not parties. Initially, it seemed to
me that that was not likely to be a valid objection because
they were third parties interested, no doubt, in whatever vote
Professor Palmer might cast but not interested in the legal
sense in whether he was eligible to cast a vote.

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In the absence of clause U21, I would have been inclined to
regard that as not a fatal consideration but it seems to me to
be relevant both to that issue and to the balance of

convenience that applicants for pre-selection may object to
the constitution of the selection committee. If I do give
interlocutory relief of the type sought I will be restraining
that meeting and the applicants from effectively expressing
their satisfaction with the constitution of the selection
committee because it would be taken out of the hands of the
chairman or the selection committee to determine the objection
to Professor Palmer voting when his status is at the moment
one of being a suspended member.

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If one looks at the balance of convenience in that context,
what he is losing is his right to cast a vote at this or both
meetings - by "this" I mean the meeting tomorrow or both
meetings, the one tomorrow and the one next Saturday - and the
loss of a right to speak and vote there. It was said against
him that he has demonstrated skills in making himself heard
outside meetings and that that is not such a loss and that the
loss of his vote is not significant, having regard to the
possible consequences on the validity of the meeting.

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It seems to me that although I am satisfied that there is a
serious question to be tried about the validity of his
suspension, the fact of it having occurred does impinge on the
way in which the selection committees are to be conducted
where his suspension is still on foot.

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It would not be appropriate to grant the relief he seeks
because of the consequences for the selection committee
meetings if it is subsequently found that he was validly

suspended at the time he cast a vote pursuant to the relief
sought in this application.

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Accordingly, the application is dismissed.

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HIS HONOUR: Costs reserved.

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