

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



Thorpe v Adelaide University Post Graduate Students' Assn Inc [2004] SASC 438

South Australia Supreme Court, DeBelle J, 23 December 2003

Application for declaration that plaintiff elected president of student association and for order quashing association's resolution declaring plaintiff's ineligibility to hold office – application granted – duly elected president

Key words: Incorporated Association, South Australian Supreme Court, Meetings, Validity

1. Ms Thorpe completed her Graduate Diploma in Creative Writing toward the end of 2002 at the University of Adelaide. However, she failed to be awarded the qualification due to her non-payment of certain university fees. During 2003, she did not pursue any further study at the University, but acted in the role of President of the Adelaide University Post Graduate Students' Association. In March of that year, she formally nominated for the position of President and was elected unopposed at the Annual General Meeting on the 27th March, 2003. Subsequently, members of the Association resolved that she was not eligible to hold the office. Ms Thorpe sought a declaration that she had been duly elected President of the Adelaide University Post Graduate Students' Association Inc. as well as an order quashing the resolution questioning her eligibility to hold that office.
2. To determine the matter, it was necessary to refer to the Association's Constitution. Article 2(a) stated that the Association represented the University of Adelaide's postgraduate students as well as Association members. Members were categorized as ordinary, associate or honorary. Of particular relevance was Article 3.1 as this concerned Ordinary Membership of the Association. To be an Ordinary Member, a student must be enrolled in a course that had as a prerequisite the prior completion of a University degree. If an Ordinary Member no longer met the requirements of Article 3.1, then, under Article 3.1(a), the Ordinary Membership would last up until the following Annual General Meeting.
3. The meaning of the words, "Until the following Annual General Meeting", occupies much of the judgment. Ms Clarke's lawyer argued that they referred to the conclusion of the next AGM, whilst the Association's legal representative contended they alluded to its commencement. After an examination of Articles 10.1 and 10.2 which used the phrase, "Until the next Annual General Meeting", Judge DeBelle suggested all three expressions should be given the same meaning to ensure consistency. While not providing a definitive meaning, he stated categorically in Paragraph 16 that the words did not mean, "Until the commencement of the next Annual General Meeting." Therefore, Article 3.1(a) permitted Ms Clarke to nominate for the Presidency as she would have remained an

ordinary member until the Annual General Meeting held on the 27th March. In his view, her ineligibility to receive her award was an irrelevant consideration in determining her membership of the Association.

4. With her election as President of the Association, Article 3.1(b), which dealt specifically with Ordinary Membership for Office Bearers, came into play. It stated:

"The Council and/or a General Meeting shall have the power to confer Ordinary Membership on students who have completed a postgraduate qualification at the University of Adelaide, effective for a period not exceeding twelve months from the date of the AGM immediately following the completion of a postgraduate qualification at the University of Adelaide."

5. Therefore, at the conclusion of the AGM, Ms Thorpe, being no longer an ordinary member, had to apply for ordinary membership to be conferred as set out in Article 3.1(b). Since she met the requirement that she had completed a postgraduate qualification, she would be eligible for Ordinary Membership for the next year. Thus, Ms Thorpe was declared to be the duly elected President of the Association.

IMPLICATIONS



This is an illustration of the principle of statutory interpretation that words used consistently should be given the same meaning consistently.

VIEW THE CASE



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