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.

COLEMAN V LIBERAL PARTY OF AUSTRALIA, NEW SOUTH WALES DIVISION (NO 2) [2007] NSWSC 736 (6 July 2007)

New South Wales Supreme Court, Palmer J, 06 July 2007

Whether Court could intervene in the domestic affairs of a political party that was an unincorporated association.

Key words: Unincorporated Association, New South Wales, Incorporated Association, Meetings, Validity of Meeting, Pre-Selection, Political Party

1. The case involved Liberal Party pre-selection procedures for the federal seat of Cook which is located in New South Wales. On the eve of the Selection Committee meeting scheduled for the 23rd June, 2007, an aspiring candidate, Mr. Coleman, claimed that his chances of selection were diminished by the decision of the Party's Disputes Panel to exclude fifteen of his supporters from the proposed meeting. Therefore, he sought an order to restrain the holding of the meeting until aspects of the Constitution of the Liberal Party of Australia (NSW Division) ("The Constitution") were clarified.

2. In the hope of ultimately settling the matter, Justice Palmer granted an interlocutory injunction for five days. He then heard submissions from those affected before delivering his final judgment. As Justice Palmer pointed out, the Liberal Party of Australia (NSW Division) is a voluntary unincorporated association with its own Constitution. In addition, it is a registered political party with links to its federal political counterpart, the Liberal Party of Australia.

3. The fact that both the state and federal parties were registered - the former under Part 4A of the *Parliamentary Electorates and Elections Act 1912* (NSW) and the latter under Part XI of the *Commonwealth Electoral Act 1918* - convinced his Honour that matters relating to the Constitution's interpretation were capable of being dealt with in a court of law. This conviction was based upon his approval of an earlier judgment by Justice Dowsett in the *Queensland Supreme Court, Baldwin v Everingham* [1993] 1 Qd R 10.

4. Justice Dowsett argued strongly that the statutory recognition accorded to political parties provided grounds to distinguish the long-accepted precedent of *Cameron v Hogan* (1934) 51 CLR 358 that membership of a voluntary organization failed to create contractual relations with an associated right to legal relief. On the basis of this premise, Justice Palmer examined Clause 17 of the Constitution, the relevant section for the determination of disputes within the New South Wales Division of the Liberal Party. He agreed there was a "dispute" as defined in Clause 17.6.1. Although the dispute stemmed from a successful challenge made to the rolls of selectors by Mr. Coleman's rival, Mr. Towke, it hinged on the construction of Clauses 4.1.5 and 4.1.6 which permitted the State Director to correct procedural defects in specified circumstances.

5. His Honour accepted that Mr. Towke's two subsequent applications to the Disputes Panel for review of the State Director's ability in this regard complied with the requirements of Clauses 17.7.1 and 17.11.2. Further, he acknowledged that the ensuing Disputes Panel's decisions, including the final one that refused to validate meetings of Mr. Coleman's supporters at Caringbah and the Miranda Kingsway Business Branch, were properly arrived at.

6. However, Justice Palmer refused to interpret the words of Clause 17.4.5 to mean that the final decision of the Disputes Panel could not be appealed. He argued that, given good governance of political parties was fundamental to the democratic process, it was in the public interest to ensure that the Constitution had been correctly construed. Upon re-examination of Clauses 4.1.5 and 4.1.6, he decided that, although the original date for the close of the rolls was 23rd May, the date for determining the eligibility of selectors was contingent upon any challenge mounted to their selection. His Honour's reading of Clause 4.1.5(a) therefore extended the time limit to the 29th June.

7. Since the Selection Committee meeting had already been fixed for 23rd June, common sense required that this be the deadline. As a result, he made declarations that the meetings held within this timeframe by the Caringbah Branch and the Miranda Kingsway Business Branch had, in fact, validly allowed the branches to remedy the earlier defects identified by the State Director.

IMPLICATIONS

Australian readers should compare this decision with that in *John Setka v Noah Carroll & Ors* [2019] VSC 571, where the ability of a court to intervene in expulsion of a member of an unincorporated political association was considered. In short, the judge found that he was bound by the High Court's decision in *Cameron v Hogan* [1934] HCA 24; 51 CLR 358 and had no jurisdiction.

The Australian High Court case of *Cameron v Hogan* confirmed that associations which are 'social, sporting, political, scientific, religious, artistic or humanitarian in character', and not formed 'for private gain or material advantage', are usually formed on the basis of mutual consent. Unless there is some clear, positive indication that the members wish to relate to each other in a legal fashion, the rules of the association will not be treated as an enforceable contract in contrast to the rules of incorporated bodies such as companies. Since *Cameron v Hogan*, a significant number of cases have distinguished or otherwise declined to follow this precedent of the High Court. A trenchant criticism is found in *McKinnon v Grogan* [1974] 1 NSWLR 295, 298 where Wootten J said that 'citizens are entitled to look to the courts for the same assistance in resolving disputes about the conduct of sporting, political and social organisations as they can expect in relation to commercial institutions'. According to Wootten J at 298, if disputes are not settled by the courts, this would create a 'legal-no-man's land, in which disputes are settled not in accordance with justice and the fulfilment of deliberately undertaken obligations, but by deceit, craftiness, and an arrogant disregard of rights'.

VIEW THE CASE

This case may be viewed at http://www.austlii.edu.au/au/cases/nsw/supreme_ct/2007/736.html

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