

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.



Shipton v South East Queensland Sport Aircraft Club Incorporated [2022] QSC 5

Supreme Court of Queensland, Brown J, 28 January 2022

Relief sought from the termination of association membership on the grounds of lack of natural justice.

Key words: Incorporated Association, Queensland, Membership, Termination, Standing, Legal Privilege, Waiver, Appeal to General Meeting

1. The South East Queensland Sport Aircraft Club Incorporated (the Association) is an incorporated association operating an airfield at Kilcoy, Queensland. Its objects include fostering sport aviation activities and providing a facility for the storage, operation and maintenance of recreational aircraft.
2. The Association leased land from the Queensland Bulk Water Supply Authority (SEQWater) and Mr Shipton, a member of the Association, subleased Hangar L at the airfield from the Association.
3. During 2021, Mr Shipton and the Association's committee exchanged a large amount of correspondence about whether Mr Shipton had breached a clause of his sublease by being involved in commercial activities at Hanger L.
4. In July 2021 the Association committee issued a show cause notice to Mr Shipton with ten allegations. The notice referred to rule 11.3.4 of the Association being:

11.3 The Management Committee may terminate a member's membership if the member:
..
11.3.4 conducts themselves in a way considered to be injurious or prejudicial to the character or interests of the Association, the management and operation of the airfield or to the members of the Association in respect of they [sic] conduct as such a member.
5. Mr Shipton requested further particulars of the allegations.
6. The Association then sent a second show cause letter which referred to legal advice obtained by the committee about the alleged lease breach. Mr Shipton requested copies of the legal advice and the Association refused to provide it.

7. The Association then purported to terminate Mr Shipton's membership citing rule 11.3.4.
8. Mr Shipton claimed that the letter did not set out the reasons for the termination other than to state the conclusion that his conduct was injurious or prejudicial to the respondent.
9. Mr Shipton applied to the Court to set aside the decision to terminate his membership and in the alternative, applied for an order that the Association comply with its rules by providing him with the legal advice referred to in the show cause notice.
10. Mr Shipton claimed that he had been denied natural justice by the Association's refusal to provide him with requested material (including the legal advice) or reasons, and that there was no reasonable or rational basis for the committee to find that rule 11.3.4 applied to Mr Shipton.
11. The Association argued that Mr Shipton did not have standing as he was no longer a member and that it gave Mr Shipton a full and fair opportunity to show why the membership should not be terminated.

Standing

12. After examining the Act and rules the Court held that it had jurisdiction under the [Associations Incorporation Act 1981 \(Qld\)](#) to consider the application by a member where the association has purported to terminate their membership which is sought to be challenged because it does not accord with the rules, or with natural justice.

Internal Appeal

13. The Association argued that it was unreasonable for Mr Shipton to make the application where he had a right of appeal to a general meeting, and such a right had not been exercised. The Court should exercise its discretion to refuse to hear the application.
14. The Court noted that the factors it needed to consider were that courts are reluctant to intervene in social or sporting association affairs, legal costs and that an internal appeal was available. Further, the termination of Mr Shipton's membership involved not simply factual matters, but legal issues of natural justice which could not be resolved by a general meeting.
15. The Court refused to exercise its discretion.

Natural Justice

16. Mr Shipton argued that the Association failed to provide natural justice when terminating his membership. The failure to provide the legal opinion was a core part of his argument.

17. The Court noted that a party may waive privilege by asserting the effect or conclusion of a privileged communication on the basis of inconsistency between the conduct of the party and maintenance of confidentiality of the communication and concluded that (at [61]):

The mere reference to legal advice would not generally be sufficient to constitute a waiver of privilege. However, in the present case, the Committee seeks to bolster and justify its position by reference to such advice, a position which was clearly disputed by Mr Shipton in earlier correspondence. Its conduct in maintaining the privilege in those circumstances is unfair and reliance and reference to the legal advice as the basis for the committee regarding Mr Shipton as in breach of his Sublease is inconsistent with its maintaining confidentiality. I find privilege in the advice is therefore waived.

18. The Court found that the show cause letters did not provide proper particulars of what constituted the breach by Mr Shipton and thus he was unable to respond to them in a meaningful way.

19. The Court also found that the denial of natural justice prevented Mr Shipton from being given a full and fair opportunity to respond. Therefore, the decision to terminate should be set aside.

20. This being the situation, the Court had no need to determine whether there was a rational or reasonable basis to form the state of satisfaction required in rule 11.3.4.

Reasons for the Decision

21. The Court noted that normally a club is not required to provide reasons, but Rule 11.5 states:

If, after considering any and all representations made by the member, the Management Committee decides to terminate the membership, the Secretary of the Management Committee must give the member a written notice of decision. The Association, Management Committee or Secretary are not required to give reasons for the termination other than those specified in 11.3 above.

22. The Court found that (at [76]):

The provision of “reasons” requires the Committee to identify the part of the sub-rule the management committee concluded was offended by conduct of the member which it relied upon in terminating the member’s membership. The limitation to ‘specified in 11.3 above’ precludes the Committee being required to otherwise set out any individual findings of fact in relation to the allegations to be provided.

Orders

23. The Court declared the decision of the committee terminating the membership of Mr Shipton void and that the decision be set aside.

24. The Court was unmoved by the argument that the appeal to the general meeting was in process and so no relief should be given, as the defects in the procedure of the committee would not be cured by the appeal.
25. The Court also refused to order the release of the legal opinion, leaving the Association to consider any further course of action.

IMPLICATIONS



This case illustrates the care needed when disclosing the existence of legal advice to the public when you wish to claim legal privilege.

Legal privilege promotes the public interest by preserving the confidentiality of communications between lawyer and client, and by encouraging the client to make a full and frank disclosure of the relevant circumstances to the legal adviser. In so doing, legal privilege outweighs the competing public interest that in the interests of a fair trial, all relevant material should be made available.

Legal professional privilege may be waived generally or in respect of particular issues. Waiver may be expressed or implied, and disputes as to implied waiver usually focus upon whether the conduct is inconsistent with the maintenance of the privilege.

VIEW THE CASE



This case may be viewed at <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QSC//2022/5.html>

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