

# NATURAL JUSTICE AND SPORT: *PETERSEN v PROSERPINE GOLF CLUB*

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## I INTRODUCTION

Natural justice is a fundamental common law principle, one that also applies to non-judicial bodies which is why it is relevant to the disciplinary hearings of sporting clubs. It requires that a person accused of misbehaviour be given sufficient opportunity to prepare and present their case, and that bias not be involved in the decision. Both these aspects of natural justice were at issue on the North Queensland case of *Petersen v Proserpine Golf Club Inc*<sup>1</sup> due to the way in which the golf club conducted its hearings into allegations of misconduct against the plaintiff, Bernice Petersen.

## II NATURAL JUSTICE AND SPORT

A feature of sport is that many legal issues are handled internally, in professional sports by match review panels or tribunals set up by its governing body to hear matters involving indiscretions. Non-professional sporting clubs can deal with such matters through a committee hearing. Whether a matter is being heard by a sporting tribunal or a committee the common law principle of natural justice will apply. Natural justice comprises of the right to be given a fair hearing with the opportunity to present your case,<sup>2</sup> and the right to have a decision made by an unbiased and uninterested decision maker. It is also referred to as procedural fairness. The requirement that the matter be heard by unbiased decision-maker is often referred to as the ‘bias rule.’ That rule covers not only actual bias, but also situations where a reasonable apprehension of bias may exist.<sup>3</sup> Thus, if a fair-minded person would reasonably think that a tribunal or a committee has prejudged a case, the rule is infringed.

This concept needs to be kept in mind when looking at the decisions of sporting tribunals, and players can obtain relief from the courts if they feel that they have been denied natural justice. For instance, in *Hall v NSW Trotting Club Ltd*,<sup>4</sup> involving a stewards’ enquiry, it was held that:

It is necessary first to establish what rules of natural justice the stewards were required to observe. In my view they were these. The stewards were bound to inform the appellant of the nature of the accusations made against him and to give him a fair opportunity of make

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<sup>1</sup> [2018] QSC 71.

<sup>2</sup> Robin Crekye, Matthew Groves, John McMillan and Mark Smyth, *Control of Government Action*, LexisNexis Butterworths, 5<sup>th</sup> edition, 2019, 717.

<sup>3</sup> *Ibid* 733.

<sup>4</sup> [1977] 1 NSWLR 378.

any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice.<sup>5</sup>

While this case involved a professional sport, natural justice also applies to amateur sport, as illustrated by *Petersen v Proserpine Golf Club Inc*.

### III PETERSEN V PROSERPINE GOLF CLUB

#### A Background Facts

Proserpine Golf Club was formed in 1925, firstly as a seven-hole course then, a few months later, a nine-hole course around the town's showgrounds. In 1948 the land for the present course was purchased. The new course was opened in May 1952.<sup>6</sup> Bernice Petersen had been a member of the Club since 1965<sup>7</sup> which represented 55 of the 67 years it had been on its present site. In 2008 she was given life membership. However, in 2014 the club received letters of complaint from other members about her conduct on the golf course on a number of occasions. The Club wrote Petersen a letter on 30 July 2014, outlining these complaints and requesting she attend a committee meeting on 6 August.<sup>8</sup> Petersen stated that she considered the meeting to be 'of an informal nature' and 'that she was not informed of any particular allegations against her.'<sup>9</sup> The President of the Club maintained that it was explained to her at the outset of the meeting that it 'was of a disciplinary nature and related to her conduct at the recent pennants competition.'<sup>10</sup> On the following day, 7 August, the Club sent Petersen a letter stating she had been suspended for a month.<sup>11</sup>

On 10 August Petersen notified the Club that she wished to appeal the decision under Clause 8 of the Club's constitution.<sup>12</sup> She requested access to her file and was allowed access to the material, though she was not allowed to remove or copy any of it.<sup>13</sup> A meeting was then held at the club on 19 August to allow Petersen to dispute the decision. The decision was upheld.

On 16 February 2015 Petersen received another letter 'requesting that she attend the Club that evening to address complaints relating to her conduct at the Club on 11 February 2015.'<sup>14</sup> Petersen claimed that at the meeting she was only given a few minutes to read the four letters of complaint.<sup>15</sup> After Petersen left the meeting the board discussed the matter and decided to suspend her until 30 September, and terminate her

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<sup>5</sup> Ibid 388, citing *De Verteuil v Knaggs* [1918] AC 557, 560.

<sup>6</sup> Proserpine Golf Course Website, <https://www.proserpinegolfclub.com.au>

<sup>7</sup> *Petersen v Proserpine Golf Club Inc* [2018] QSC 71 [1] ('*Petersen*').

<sup>8</sup> Ibid [23].

<sup>9</sup> Ibid [26].

<sup>10</sup> Ibid [27].

<sup>11</sup> Ibid [30].

<sup>12</sup> Ibid [38].

<sup>13</sup> Ibid [39].

<sup>14</sup> Ibid [56].

<sup>15</sup> Ibid [57].

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life membership.<sup>16</sup> Petersen was informed of this decision in a letter dated 17 February, with it also being stated that the ‘decision was final.’<sup>17</sup>

Later that year, on 14 July, Petersen received another letter from the Club requesting she attend a meeting on 21 July as the Club had received further letters of complaint, this time regarding her behaviour at an event at the Collinsville Golf Club on 11 July.<sup>18</sup> Petersen requested ‘the meeting be adjourned as she was out of town.’<sup>19</sup> The board, however, went ahead with the meeting, and in her absence, suspended her for a further year, that is, up until 30 September 2016, Petersen being informed of this in a letter dated 29 July 2015.<sup>20</sup>

Petersen then sought to have the decisions overturned, one ground being that the Club ‘failed to accord the applicant natural justice in the processes that were followed leading to the suspension of her membership and termination of her life membership.’ The second ground was that the Club ‘failed to follow its rules for termination of membership and appeals against the termination of membership.’<sup>21</sup>

### B *The Trial Decision*

Justice North noted that under Clause 7 of the Club’s constitution membership could be terminated for a number of reasons, the relevant one here being under Clause 7(3)(d), where a member ‘conducts himself or herself in a manner considered to be injurious or prejudicial to the character or interests of the association.’ His Honour also noted Clause 7(4) which stated that the ‘member concerned shall be given a full and fair opportunity of presenting the member’s case,’<sup>22</sup> with this rule reflecting ‘one aspect of what is called natural justice.’<sup>23</sup> Thus, what was at issue in the case was the fair hearing component of natural justice.

His Honour noted that the ‘purpose of the meeting of 19 August 2014 was to allow the applicant the right to appeal’ the decision from 6 August which had resulted in Petersen being suspended for a month.<sup>24</sup> Justice North also noted that:

In certain circumstances the right to appeal can cure the defect of an original decision. It is therefore necessary to determine whether the applicant was afforded natural justice at the meeting of 6 August 2014, and in circumstances of a finding that the applicant was not afforded same, whether the appeal meeting of 19 August 2014 remedied this defect.

It was held that Petersen ‘was provided little or no time to respond to the allegation at the meeting of 6 August 2014.’ The question then was whether the defect was cured by the 19 August meeting. Justice North noted that this second meeting was held ‘before

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<sup>16</sup> Ibid [58].

<sup>17</sup> Ibid [59].

<sup>18</sup> Ibid [65].

<sup>19</sup> Ibid [66].

<sup>20</sup> Ibid [68].

<sup>21</sup> Ibid [3].

<sup>22</sup> Ibid [7].

<sup>23</sup> Ibid.

<sup>24</sup> Ibid [19].

six board members' of the Club and 'was not a general meeting of club members.'<sup>25</sup> His Honour then held that as both parties agreed 'the power to suspend the membership is contained within the power to terminate in Clause 7, it follows as a matter of construction that Clause 8 must also apply, and the appeal meeting should have been held before a general meeting.'<sup>26</sup> Justice North thus held that Petersen 'was denied natural justice' in the 6 August decision while the appeal hearing on 19 August 'was in breach of the constitution and unlawful.'<sup>27</sup>

In regard to the meeting on 16 February 2015 Justice North noted it was 'not suggested that the applicant was provided with any agenda, copies of the letters of complaint or particulars of any motion or sanction that might be imposed.' Furthermore, 'she was only given an opportunity to read the letters immediately prior to the commencement of the meeting.'<sup>28</sup> He then held that 'there was a clear failure' to provide Petersen 'with a full and fair opportunity to be heard...both in relation to the complaints and the sanction to be imposed.'<sup>29</sup> The decision by the Club to suspend Petersen's membership and terminate her life membership was held to be void.<sup>30</sup>

Justice North then addressed the issues from the 21 July meeting, pointing out that firstly, the board did not particularise the alleged conduct by Petersen, and why it was unacceptable, and, secondly, proceeded to conduct the meeting in her absence. He then held that:

I have reached the firm view that the respondent's failure to provide the applicant with full particulars of the complaint against her and to have an opportunity to meet any evidence that might be relied upon against her in the context of her request for an adjournment failed to give her adequate notice of the complaint and thus failed to provide her with a full and fair opportunity to present her case. There was a breach of natural justice.<sup>31</sup>

Thus, the decision to extend the suspension until 30 September 2016 was also held to be void.<sup>32</sup>

#### IV DISCUSSION

A case involving the suspension of a golfer from a small club in a regional North Queensland town may appear to be an insignificant one, even if it was heard in the Supreme Court. However, it involved a question of natural justice which is one of the fundamental aspects of our legal system. One of the issues raised was the time, or more precisely the lack of it, that Petersen was given to prepare her case. The question then is what constitutes an appropriate time for natural justice to be followed, with Justice

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<sup>25</sup> Ibid [42].

<sup>26</sup> Ibid [52].

<sup>27</sup> Ibid [55].

<sup>28</sup> Ibid [61].

<sup>29</sup> Ibid [62].

<sup>30</sup> Ibid [63].

<sup>31</sup> Ibid [69].

<sup>32</sup> Ibid [71].

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North referring to *Gould v Isis Club Incorporated*<sup>33</sup> where it was held that even six days was ‘far too short.’<sup>34</sup> Thus, in regard to the meeting on 6 August where she had not been ‘notified in advance of the particulars of the complaint nor given time to gather any evidence’<sup>35</sup> there was a clear breach of natural justice. Later, for the 16 February meeting, Petersen had only been shown the letters immediately before the meeting, and thus there was, again, a lack of time to prepare her case.

It is suggested there was also a breach of the bias rule in regard to the meeting on 21 July, because it was clear that the board did not believe she could not attend. That was why they proceeded to suspend her despite her absence. As Justice North pointed out, it was also ‘apparent from the letter of 29 July 2015 that the board had in mind the conduct of the decisions of 6 August 2014 and February 2015 when it decided to make findings against the applicant.’<sup>36</sup>

A significant evidential aspect of the case was that ‘conflicting evidence was provided by both parties’ and in regard to the dispute between Petersen and members of the committee as to what actually took place at the 6 August meeting, Justice North noted that ‘the minutes of the meeting are not particularly helpful in providing any insight in this matter.’<sup>37</sup> It is suggested therefore that something all sporting clubs should be aware of is the importance of taking sufficient notes in any disciplinary hearing as the minutes of these meetings could later become important documentary evidence. The case also highlights the importance of ensuring that the club’s constitution is properly followed as the appeal hearing did not follow the Club’s constitutional requirements, which is why the Club’s behaviour was held to be unlawful.

Sporting clubs should be aware that *Petersen v Proserpine Golf Club Inc* also highlights the potential problems that can occur if natural justice is not followed in a disciplinary process as a disgruntled member has every right to take the matter to court. Not only is this stressful for those running the club, it is also expensive, especially if the case is lost, as costs usually follow the event. For small, essentially non-profit, organisations such as a regional golf club, this could potentially be fatal to its long-term survival.

## V CONCLUSION

There is little doubt that the case is a minor one from an administrative law perspective. However, it is far more significant from a sports law perspective as it provides a rare opportunity for judicial insight into the application of natural justice to a non-professional sport — the lesson being that natural justice must be followed by clubs in those sports when dealing with disciplinary matters.

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<sup>33</sup> [2015] QSC 253

<sup>34</sup> *Ibid* [52].

<sup>35</sup> *Petersen* (n 7) [33].

<sup>36</sup> *Ibid* [70].

<sup>37</sup> *Ibid* [29].

