SUPREME COURT OF QUEENSLAND

CITATION:	*Kovacic v Australian Karting Association (Qld) Inc* [2008] QSC
PARTIES:	**JAMES KOVACIC by his litigation guardian VALENTINO KOVACIC** (applicant) **v** **AUSTRALIAN KARTING ASSOCIATION (QLD) INC** (respondent)
FILE NO:	BS 8505 of 2008
DIVISION:	Trial Division
PROCEEDING:	Originating Application
DELIVERED ON:	22 December 2008
DELIVERED AT:	Supreme Court, Brisbane
HEARING DATE:	10, 12 November 2008
JUDGE:	Wilson J
ORDERS:	
CATCHWORDS:	ASSOCIATIONS AND CLUBS – JURISDICTION OF THE COURTS – INCORPORATED ASSOCIATIONS – INTERFERENCE IN INTERNAL MANAGEMENT – GENERALLY – where respondent an incorporated voluntary association which administers sport of karting – where respondent comprised of clubs – where resolution of respondent that clubs refuse to accept applicant's race entry – where the Courts are reluctant to interfere in the affairs of voluntary associations – whether the fact that the respondent is incorporated under the *Associations Incorporation Act* is enough to make validity of resolution justiciable – whether resolution has impact on applicant's livelihood or reputation PROCEDURE – MISCELLANEOUS PROCEDURAL MATTERS – DECLARATIONS – standing to seek declaratory relief – where applicant has standing – where relief refused because issue non-justiciable *Associations Incorporation Act 1984* (NSW), s 18 *Associations Incorporation Act 1981* (Qld), s 2(f), s 26(2) *Supreme Court Act 1995* (Qld), s 128 *Associated Provincial Picture Houses v Wednesbury Corporation* [1948] 1 KB 223, cited *Australian Workers' Union v Bowen (No 2)* (1948) 77 CLR 601, cited

Baldwin v Everingham [1993] 1 Qd R 10, cited
Bornecrantz v Queensland Bridge Association Inc [1999] QSC 58, cited
Cameron and Others v Hogan (1934) 51 CLR 358, cited
Dickason v Edwards (1910) 10 CLR 243, cited
Edgar and Walker v Meade (1916) 23 CLR 29, cited
Forster v Jododex Aust Pty Ltd (1972) 127 CLR 421, cited
Hornby v Narrandera Ex-Servicemen's Club Ltd [2001] NSWSC 235, cited
Maloney v New South Wales Coursing Association Ltd (1978) 1 NSWLR 161, cited
McClelland v Burning Palms Surf Life Saving Club (2002) 191 ALR 759, cited
Mutasa v AG [1980] QB 114, cited
Rose v Boxing New South Wales Inc [2007] NSWSC 20, cited
Samuel v St George Leagues Club Ltd, NSWSC (20 October 1992), unreported judgment, cited
University of Technology Sydney v Gerrard [2001] NSWSC 368, cited
Wilson v RSL of Australia (Qld Branch) [2006] QSC 376

COUNSEL: PD Dunning SC and CA Johnstone for the applicant
SJ Carius for the respondent

SOLICITORS: Levitt Robinson for the applicant
Slater & Gordon for the respondent

[1] **Wilson J**: The applicant, a 15 year old boy who is a talented go-kart racer, lives in New South Wales. He has held a licence issued under the rules of the Australian Karting Association Incorporated ("the AKA") since January 2002, and he has scored places in national and state competitions. His parents are staunch and vocal in their support for his endeavours.

[2] On 27 October 2007 the respondent passed a resolution –

> "That the clubs of Qld support the AKA (Qld) Prosecutor in that they will refuse to accept the race entry of James Kovacic ["the applicant"]".[1]

[3] In this proceeding the applicant, by his litigation guardian (his father Valentino Kovacic), seeks a declaration that the decision is void and an order restraining the respondent from making a similar decision or a decision to similar effect.

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1 Affidavit of Valentino Kovacic filed 22 September 2008, ex VK-5, p 33.

The Australian Karting Association and the respondent

[4] The AKA administers the sport at the national level. Its members are the state Karting Associations, including the respondent.[2] Its council is comprised of one delegate from each member association.[3]

[5] The respondent is an incorporated association pursuant to the *Associations Incorporation Act 1981* (Qld). Its membership is comprised of clubs (apart from individuals awarded honorary life membership).[4] Its objectives include –

> "2(f). To administer the Sport of Karting in accordance and in conjunction with the National Competition Rules for the Australian Karting Association Inc".[5]

[6] In order to qualify as a competitor or as a driver, a person must hold a licence issued with the authority of the AKA or recognised by it.[6] There are several categories of licences.[7] An applicant for a licence must be a member of an affiliated club and must remain a financial member of an AKA club during the period of the licence, in most cases in his or her home state.[8] He or she may hold only one licence at a time.[9] The licence is issued by the State Secretary/Licensing Officer.[10] The AKA may refuse to issue or withdraw a licence without giving any reason.[11] If the stewards of a meeting or the State Secretary believe a driver suffers from a medical condition rendering him or her incapable of driving safely at all times, they may advise the driver that he or she may not drive on a course controlled by the State Karting Council unless fit.[12]

[7] State Councils are responsible for running races through member clubs, with the permission of the AKA.[13] A licence pertains to events authorised by the AKA, and AKA licence holders who participate in events not authorised by the AKA forfeit entitlements contained within their licences during and arising from the event.[14] The Organisers (i.e. member Clubs) reserve the right to reject any entry without giving any reason or accept an entry subject to conditions not contrary to AKA regulations; the AKA or the State Karting Council may direct them to accept an entry.[15] No complaint or appeal may be made against the refusal of an entry.[16]

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2 Australian Karting Association Incorporated, *Manual: Rules of the AKA* (2008, 41st ed.), p 15, rule 2: see Affidavit of David Steirn, filed 22 September 2008, ex DS-1.
3 Ibid, p 16, rule 7.
4 Constitution of the Australian Karting Association (Qld) Inc, clause 4: Affidavit of John Harold McCleverty, filed 6 November 2008, ex JHM-1, p 22.
5 Ibid, clause 2: p 18.
6 Australian Karting Association Incorporated, *Manual: Sprint Racing Regulations* (2008, 41st ed.), p 76, reg 13.01: see Affidavit of David Steirn, filed 22 September 2008, ex DS-1.
7 Ibid, p 76, reg 13.02.
8 Ibid, p 77, reg 13.04.
9 Ibid, p 77, reg 13.04 (3).
10 Ibid, p 77, reg 13.06.
11 Ibid, p 78, reg 13.13(1).
12 Ibid, p 79, reg 13.13(3).
13 Ibid, chapters 11 and 19.
14 Ibid, p 71, reg 11.08.
15 Ibid, p 116, reg 19.05.

[8] Both the AKA Rules[17] and the respondent's constitution[18] deal with "Discipline of Members", but of course in the case of the AKA, the members are the State Karting Councils and in the case of the respondent, the affiliated clubs. The conduct of individuals is dealt with in the AKA Rules as follows –

Chapter 5	General Offences
Chapter 6	Penalties
Chapter 7	Complaints
Chapter 8	Appeals
Chapter 9	Tribunal Procedure
Chapter 10	Australian Motor Sport Appeal Court

Complaints Against the Applicant and his father

[9] The applicant participated in the Queensland Club Championships on 30 June and 1 July 2007.

[10] There was a complaint about the applicant's behaviour brought by the guardian of Chaz Mostert. On 22 August 2007 the applicant was found guilty by an AKA Disciplinary Tribunal in Queensland of breaching rule 5.01(b),[19] which proscribes behaving or speaking in an intimidating manner. His licence was suspended for 12 months, wholly suspended for 12 months.[20] In the incident which gave rise to the complaint there was an altercation between Mostert's guardian and the applicant's father, which resulted in Chaz Mostert's licence being suspended for 12 months, wholly suspended for 12 months, on account of his guardian's behaviour.[21]

[11] The applicant made a complaint to stewards[22] about another competitor Shaun Butcher; he alleged that unacceptable conduct by Butcher denied him first place.[23] The applicant's father asked two other men who were stewards at the meeting[24] to give evidence. There seems to have been some confusion or misunderstanding as to the substance of the request, and in the upshot they did not give evidence.[25] Mr

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16 Ibid, p 52, reg 7.04(a).

17 Australian Karting Association Incorporated, *Manual: Rules of the AKA* (2008, 41st ed.), p 16, rule 6: see Affidavit of David Steirn, filed 22 September 2008, ex DS-1.

18 Constitution of the Australian Karting Association (Qld) Inc, clause 8: Affidavit of John Harold McCleverty, filed 6 November 2008, ex JHM-1, p 23.

19 Australian Karting Association Incorporated, *Manual: Sprint Racing Regulations* (2008, 41st ed.), p 46, reg 5.01(b): see Affidavit of David Steirn, filed 22 September 2008, ex DS-1.

20 Affidavit of Valentino Kovacic, filed 22 September, ex VK-8 p 55; Affidavit of John Michael Lane, filed 6 November 2008, paras 9 and 13.

21 Affidavit of John Michael Lane, filed 6 November 2008, paras 10 – 12.

22 Mr A. Billing and Mr L. O'Connor.

23 Affidavit of John Michael Lane, filed 6 November 2008, para 14.

24 Mr Peter Thomas and Mr Malcolm Saunders.

25 Affidavit of John Michael Lane, filed 6 November 2008, paras 17 – 22.

Kovacic told the clerk of the course and the stewards that Queensland officials were corrupt and took bribes and that he would not get a fair hearing; he declined to participate. There was a flurry of correspondence between solicitors for the applicant and his father on the one hand and the respondent on the other.[26] The stewards dismissed the complaint. The applicant appealed unsuccessfully to the AKA National Appeals Tribunal in September 2007[27] and the Australian Karting Appeals Court in September 2008.[28]

[12] The respondent made a complaint against Mr Kovacic on account of his alleged behaviour in posting material on the Karting Australia Forum under the *nom de plume* "Speed Kills". There was a further flurry of correspondence – from Mr Kovacic's solicitors to the AKA, from the respondent to Mr Kovacic, and between Mr Kovacic's solicitors and the respondent's solicitors.[29] Mr Kovacic denied it was he who posted the material and the complaint was dismissed on 11 October 2007.[30]

[13] Mr Lane, who was the respondent's treasurer, was the prosecutor in the disciplinary proceedings. The minutes of the meeting on 27 October 2007 record –

> "42.10.07 Treasurer raised concerns about a couple of tribunal cases relating to James Kovacic. He stated that he had been inundated with solicitors' letters and threats of legal action, and that he was not prepared to act as prosecutor on any cases arising to a tribunal involving Mr. Kovacic in the future. Some of the Delegates, who are also Officials who have come in contact with the person agreed, resulting in the following
> **Motion** : That the clubs of Qld support the AKA (Qld) Prosecutor in that they will refuse to accept the race entry of James Kovacic.
> **Moved** : Gold Coast/Townsville
> **For** : Unan
> Motion Carried"[31]

[14] In June 2008 the applicant attempted to enter the Queensland State Karting Championships, organised by the Rockhampton Formula K Kart Club. He sent entry forms to the respondent's secretary, but these were returned to him.[32] On or about 17 June 2008, his father discovered the resolution of 27 October 2007 on the respondent's website.[33]

Effect of the resolution

[15] Counsel for the applicant advanced three principal arguments why the respondent's resolution of 27 October 2007 is invalid:

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26 Ibid, para 29 ; ex JML-1.
27 Affidavit of Valentino Kovacic, filed 22 September, ex VK-8, p 56.
28 Affidavit of John Michael Lane, filed 6 November 2008, ex JML-2, pp 26 – 30.
29 Ibid, para 39 ; ex JML-3.
30 Affidavit of Valentino Kovacic, filed 22 September, pp 54 and 58.
31 See above n 1.
32 Affidavit of Valentino Kovacic, filed 22 September, paras 12 - 18; ex VK-4, pp 18 - 20
33 Ibid, para 16.

(i) that the respondent had no power to effect an indefinite ban on a person racing in Queensland, and no power to direct constituent clubs to proceed on the basis that such a ban exists and so refuse an entry;

(ii) that the resolution was passed in breach of the rules of procedural fairness:

(a) neither the applicant nor his father received any notice of the pending decision prior to its being made;

(b) the respondent did not give notice of the resolution having been passed, and the applicant did not find out about it until some months later when he applied to enter a race;

(c) the resolution was affected by the bias of Mr Lane who was the prosecutor under the AKA Rules and who held personal animosity towards the Kovacics;

(iii) that the decision was so unreasonable that it cannot stand.

[16] Counsel for the applicant submitted that the resolution purports to impose on the applicant a life ban from competing in Queensland. Under the AKA Rules, penalties may be imposed only in disciplinary proceedings, and there is only one offence for which a penalty of up to a lifelong ban may be imposed - assault of an official.[34] The resolution was not passed in a disciplinary proceeding, and assault of an official was not alleged. The respondent has purported to penalise the applicant for the conduct of his parents. There may be cases where the sins of the parents are legitimately visited on the child under the AKA Rules, but this is not one of them. Drivers are at all times responsible for the conduct of their crews: a driver may be charged with any offence committed by a crew member, and a driver's parent in the pit/paddock area will be automatically classed as a pit crew member.[35] However, the resolution has not been shown to have arisen out of conduct by Mr Kovacic in the pit/paddock area.

[17] Counsel for the respondent submitted that the resolution is little more than an expression of intention on the part of the clubs who are collectively the Organisers of the various race events to exclude his race entry, and that should a race entry be received, it would be up to an individual club to decide whether or not to act in accordance with that expression of intention.[36] He pointed out that the right to reject an entry rests with the Organiser of a competition. Neither the AKA nor the respondent (under the AKA Rules or its own Constitution) has any express power to

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34 Australian Karting Association Incorporated, *Manual: Sprint Racing Regulations* (2008, 41st ed.), p 48, reg 6.03: see Affidavit of David Steirn, filed 22 September 2008, ex DS-1, Chapter 6. See Rule 6.03.

35 Ibid, p 27, reg 1.05.

36 Transcript of proceedings on 12 November 2008, p 2.37.

direct the Organiser to refuse to accept an entry, and the rejection of an entry was expressly removed from the complaint and appeal provisions.[37]

[18] Suffice it to say that the competing submissions on the true import of the resolution are both fairly arguable.

[19] Had the resolution been to impose a life ban in a disciplinary proceeding, then, subject to any express or implied exclusion of the rules of natural justice in the respondent's Constitution or the AKA Rules, the applicant would have been entitled to notice and to be heard before an unbiased tribunal. He would have had a good argument that the decision was affected by actual bias because of the participation of Mr Lane, the prosecutor, in the deliberations.[38]

[20] Counsel for the respondent submitted that the resolution was passed in the exercise of a quasi-executive function rather than a quasi-judicial function, with the result that the rules of natural justice were not applicable. He submitted further that the refusal of a race entry, being tantamount to the exercise of a proprietorial right, does not require the exercise of natural justice.[39]

[21] Conscious of the unavailability of judicial review of the merits of administrative decisions, the applicant's counsel formulated the third pillar of their submissions in terms of *Wednesbury* unreasonableness.[40] I understood them to submit that the decision to impose a life ban on the applicant (if that is what it was) in consequence of his father's behaviour was so unreasonable that no reasonable decision-maker could have made it.[41] I do not find it necessary to express a considered view on this, because, as I am about to explain, I do not consider that the validity and effect of the decision are justiciable matters.

Standing and Justiciability

[22] The Court has a very wide jurisdiction to grant declaratory relief at the suit of a person with a real interest to establish. Section 128 of the *Supreme Court Act 1995* (Qld) provides –

> "No suit shall be open to objection on the ground that a merely declaratory decree or order is sought thereby and it shall be lawful for the court to make binding declarations of right without granting consequential relief."

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37 See para [7] above.

38 *Samuel v St George Leagues Club Ltd,* NSWSC (20 October 1992), unreported judgment per Powell J: cited in *Hornby v Narrandera Ex-Servicemen's Club Ltd* [2001] NSWSC 235 at [8]; *Dickason v Edwards* (1910) 10 CLR 243; *Australian Workers' Union v Bowen (No 2)* (1948) 77 CLR 601; *Maloney v New South Wales Coursing Association Ltd* (1978) 1 NSWLR 161 at 170-171; *Wilson v RSL of Australia (Qld Branch)* [2006] QSC 376 at [30]; J R S Forbes, *Justice in Tribunals* (2006, 2nd ed, The Federation Press), p 291.

39 Respondent's Outline of Submissions, filed by leave 10 November 2008, para 41.

40 *Associated Provincial Picture Houses v Wednesbury Corporation* [1948] 1 KB 223.

41 cf. *Bornecrantz v Queensland Bridge Association Inc* [1999] QSC 58, paras 47 - 49.

See also *Forster v Jododex*;[42] *Baldwin v Everingham*;[43] *University of Technology Sydney v Gerrard*;[44] and *Rose v Boxing New South Wales Inc.*[45] Nevertheless it may refuse to grant declaratory relief in respect of a non-justiciable issue.[46]

[23] The Courts are reluctant to interfere in the affairs of voluntary associations. In *Cameron v Hogan*,[47] Rich, Dixon, Evatt and McTiernan JJ said –

> "The policy of the law is against interference in the affairs of voluntary associations which do not confer upon members civil rights susceptible of private enjoyment"[48]

and Starke J said –

> "Has Hogan, however, any redress in a Court of law for such unauthorized act? It may be unlawful in the sense that it is void (*Graham* v. *Sinclair*[49]). But to give him a right of relief at law or in equity, Hogan must establish some breach of contract with him, or some interference with his proprietary rights or interests. As a general rule, the Courts do not interfere in the contentions or quarrels of political parties, or, indeed, in the internal affairs of any voluntary association, society or club".[50]

What happened in that case was neatly summarised by Dr Forbes in *Justice in Tribunals* as follows –

> "[3.50] Australia's most celebrated 'club case' belongs not to our own litigious era but to the time of the Great Depression. In July 1930 Sir Otto Niemeyer, an agent of the Bank of England, prescribed bitter fiscal medicine for deeply indebted Australian governments. A 'Premiers' Plan' proposed to slice 20 per cent[51] off public service salaries and pensions. The leader of Victoria's Labour government was Edmond John Hogan (1884-1964). His party ordered him to repudiate the Premier's Plan as a 'capitalist betrayal' of ordinary Australians. When Hogan ignored that direction the party expelled him, effectively ending his premiership.
>
> Hogan responded by suing the unincorporated party for damages and a declaration that his expulsion was void for want of natural justice. We shall never know whether that claim was justified, because the

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42 *Forster v Jododex Aust Pty Ltd* (1972) 127 CLR 421, 435.
43 [1993] 1 Qd R 10, 15.
44 [2001] NSWSC 368, para 10.
45 [2007] NSWSC 20, para 55.
46 *Rose v Boxing New South Wales Inc* [2007] NSWSC 20, [56]; *Mutasa v AG* [1980] QB 114; R P Meagher, J D Heydon and M J Leeming, *Meagher, Gummow & Lehane's Equity Doctrines and Remedies* (2002, 4th ed, Butterworths LexisNexis), para 19-25; Forbes, above n 38, paras 16.40 - 16.49.
47 *Cameron and Others v Hogan* (1934) 51 CLR 358.
48 Ibid, p 378.
49 (1918) 25 C.L.R., at p. 107.
50 Ibid, pp 383 - 384.
51 The reduction was compromised at 10 per cent in 1931.

> High Court did not examine it. Hogan fell, so to speak, at the door of the court. His grievance was dismissed as non-justiciable, although he prudently relied on both of the then recognised ways of taking a 'club case' to court – property and contract. On the first count it was held that the party's assets were not for the enjoyment of members, but for the advancement of a political agenda.[52] The fact that candidates for election to parliament received party funds for electoral purposes did not establish a personal benefit.
>
> Hogan's action in contract also failed, because the court found no intention to create legal relations".[53]

[24] Unlike the political party in *Cameron v Hogan*, the respondent is a separate legal entity, incorporated under the *Associations Incorporation Act 1981* (Qld), and unlike Mr Hogan, the applicant is not a member of an association which purported to expel him.

[25] The mere fact that the applicant is not a member of the respondent does not mean that he lacks standing to seek declaratory relief.[54] As a licensee and competitor whose participation in competitions is regulated by the network of provisions to which I have already referred, I think he has a sufficient interest to satisfy the standing test. I say this regardless of whether he has a financial interest in having the decision declared void. But whether the Court may grant relief turns on whether there is a justiciable issue.

[26] The scope of the decision in *Cameron v Hogan* has been explored in many cases over the last 64 years. It is now tolerably clear that the Courts will intervene in the affairs of voluntary associations in some circumstances, including –

(a) where there has been a breach of contract;

(b) where a proprietary right has been infringed;

(c) where someone's livelihood or reputation is at stake.[55]

In *Edgar and Walker v Meade*,[56] a case involving the affairs of a trade union, and in *Baldwin v Everingham*,[57] a case involving a political party, Courts intervened because legislative recognition of trade unions and political parties had taken them beyond the ambit of mere voluntary associations.

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52 *Camberon v Hogan* (1934) 51 CLR 358 at 375, 385.

53 Forbes, above n 38, pp 40 - 41.

54 See para [22] above; *University of Technology Sydney v Gerrard* [2001] NSWSC 368, para 9.

55 *Field v N.S.W. Greyhound Breeders, Owners & Trainers Association Ltd* [1972] 2 NSWLR 948; *Plenty v Seventh-Day Adventist Church of Port Pirie* (1986) 43 SASR 121; *Carter v NSW Netball Association* [2004] NSWSC 737; *Rose v Boxing New South Wales Inc* [2007] NSWSC 20, para 59.

56 (1916) 23 CLR 29; 43 - 44.

57 *Baldwin v Everingham* [1993] 1 Qd R 10, 20.

[27] Counsel for the applicant submitted that the Court should intervene in this case because the respondent is an incorporated association.[58] They relied on *McClelland v Burning Palms Surf Life Saving Club,* a decision of Campbell J of the New South Wales Supreme Court.[59] That was a case of expulsion of a member of an association incorporated under the *Associations Incorporation Act 1984* (NSW). His Honour set out s 18 of that Act as follows –

> "[105] Section 18 provides:
>
> (1) Subject to this Act, an incorporated association shall not: ...
>
> (b) exercise any power contrary to a restriction on the exercise of that power contained in the rules of the association ...
>
> (3) An act of an incorporated association ... is not invalid by reason only that the doing of the act is prohibited by subsection (1) or by the rules of the association....
>
> (5) The fact that:
>
> (a) the doing of an act by an incorporated association was or would be prohibited by subsection (1) or by the rules of the association ...
>
> may be asserted or relied on only in: ...
>
> (d) proceedings against the association by a member of the association to restrain the doing of any act by the association."

He continued –

> "[106] Analogously to *Edgar v Meade* ([90] above), the members of an association incorporated under this Act have *locus standi* in a court to take proceedings against the association to restrain the association from treating as valid any purported expulsion or suspension which is contrary to the rules of the association. Section 18(5)(d) of the Act expressly confers that *locus standi*.
>
> [107] This conclusion mirrors the conclusion which has been reached in relation to the standing of a member of a club conducted by a company limited by guarantee to approach the court for relief concerning a wrongful expulsion.[60] By this process of reasoning, the important policy objective of allowing the courts to decide such matters can be carried out, without running foul of the High Court's decision in *Cameron v Hogan*,[61] which related to an unincorporated association[62]."

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58 Transcript of proceedings on 10 November 2008, pp 1.6 – 1.13.

59 (2002) 191 ALR 759; [2002] NSWSC 470.

60 *McNab v Auburn Soccer Sports Club Ltd* [1975] 1 NSWLR 54 at 59 per Needham J.

61 (1934) 51 CLR 358.

62 cf *McKinnon v Grogan* [1974] 1 NSWLR 295.

There is no precise analogue of s 18 of the NSW statute in the Queensland legislation. Section 26, which is concerned with *ultra vires* conduct, provides that a lack of capacity or power may be relied on only in certain proceedings between the incorporated association and a member, or between the incorporated association or a member and present or former officers of the association.[63] Sections 71 - 73 are concerned with the rights and obligations of members and their enforcement. As I have said, the applicant is not a member of the respondent.

[28] In my view the fact that the respondent is incorporated under the *Associations Incorporation Act 1981* (Qld) is not enough to make the validity of its resolution of 27 October 2007 justiciable. Incorporation under that legislation is not indicative of significance in public affairs such as that accorded by legislation to trade unions and political parties.[64]

[29] This is not a case of breach of contract or infringement of a proprietary right. Is it one affecting the applicant's livelihood or reputation in a relevant sense?

[30] The applicant is a 15 year old school boy. Although no longer married, his parents provide for his maintenance and education, and are both very supportive of his endeavours.

[31] The applicant's AKA licence has not been affected by the respondent's resolution of 27 October 2001. His current licence was issued on 8 January 2008 and will expire on 7 January 2009.[65]

[32] He lives in New South Wales, where he does most of his racing. The effect of the resolution has been to prevent him from racing in Queensland - but it seems that between 2003 and 2007 he raced here only about once a year. Otherwise, there is no evidence that his activities have been curtailed as a result of the resolution. Indeed, in the last 12 months he has raced overseas, in China[66] and in Spain, where he established his eligibility to compete in a major international event, the Formula BMW Series, in the United States in 2009.[67] He is a successful and ambitious amateur sportsman, but whether he will ever make the cut as a highly paid professional is purely speculative.

[33] On 17 September 2008, the applicant's father swore –

> "26. As a result of the Respondent's conduct, the Plaintiff has either lost the benefit of sponsorships or faces the imminent risk of losing the benefit of sponsorships, which he has received from persons or entities, the value of which I would estimate has currently been about $200,000.00 per annum:

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63 *Associations Incorporation Act 1981* (Qld), s 26(2).
64 See *Baldwin v Everingham* [1993] 1 Qd R 10, 20.
65 Affidavit of Valentino Kovacic filed 6 October 2008, ex VK-A.
66 Affidavit of John Harold McCleverty, filed 6 November 2008, ex JHM-2, p 41.
67 Ibid, pp 39 and 42 - 44; Affidavit of Valentino Kovacic filed 22 September 2008, para 7.

(a) Joe Leone of Kart-Attack withdrew sponsorship in June, 2008, on the ground, as he told me, 'There is no smoke without fire'. He had provided Rotax gear.

(b) Remo Luciani of Remo Racing, the supplier of MG Tyres, based in Horsham in Victoria, has told me:

> 'I am considering withdrawing my support for James,' in early July, 2008. [sic]

(c) Additionally, support has not been maintained or renewed by the following sponsors, since June, 2008:

(i) Mr Paul Reitdyk of Racer Sportswear, who has been donating clothing and merchandise at an estimated cost of $50,000.00 annually; and

(ii) Mr Kip Foster of Kartforce Western Australia, who supports James through building and rebuilding engines for him at an estimated cost of $50,000.00 annually.

...

27. Mr Mitchell Biner of Oversteer Race Centre, who has been donating labour and storage facilities and provided parts at cost, the annual value of which is approximately $80,000.00 to $100,000.00, told me last month and I verily believe:

> 'I am considering withdrawing as a sponsor because unless this matter can be cleared up, supporting James could actually damage my business, rather than generate additional business for me.'"[68]

[34] This evidence establishes no more than that three people (Messrs Leone, Reitdyk and Foster) have withdrawn or not maintained their sponsorships and that two others (Messrs Luciani and Biner) have made statements that they are considering withdrawing their sponsorships. There is no evidence from any of the sponsors themselves attributing their actions or declarations of intention to the respondent's conduct. There is no evidence of whether the applicant has other sponsorships (in addition to or in substitution for those not continued or at risk for whatever reason), and if he does, of the relative importance of these particular sponsorships to his continuing participation in the sport. For example, it has not been suggested that in the absence of these sponsorships he will be unable to compete overseas next year.

[35] There has been some media interest in the action taken against the applicant by the respondent, with an inquiry by the Sydney Morning Herald,[69] and interviews of Mr Lane by ABC Radio in Newcastle[70] and Mr McCleverty (the respondent's then

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68 Affidavit of Valentino Kovacic filed 22 September 2008.
69 Affidavit of John Harold McCleverty, filed 6 November 2008, para 98.
70 Affidavit of John Michael Lane, filed 6 November 2008, paras 54 – 56.

president) by the television program A Current Affair.[71] The applicant's mother has indicated her intention to publicise the respondent's behaviour in a karting magazine.[72] However, there is no evidence that any of this publicity has had or is likely to have any adverse effect on the applicant's participation in karting or his ability to attract sponsorships.

[36] In short, I am unpersuaded that the respondent's resolution has had or is likely to have any detrimental impact on the applicant's livelihood, his financial capacity to continue to race or his reputation. In these circumstances, the validity of that resolution is not a justiciable issue.

Conclusion

[37] The proceeding should be dismissed.

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71 Ibid, para 57; Affidavit of John Harold McCleverty, filed 6 November 2008, paras 10. 99 – 100.

72 Affidavit of Tracey Lee Kovacic filed 29 October 2008; Affidavit of John Michael Lane, filed 6 November 2008, paras 42 - 45.