

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 613 - orders about invalidity or its effects

Queensland Major Contractors Association, Industrial Organisation of Employers
(RIO/2011/12)

COMMISSIONER FISHER

24 March 2011

Application for declaration of invalidity - Orders about effects of invalidity - Election of committee members - Conduct of 2010 election - Authorised returning officer - Affidavit - Rules of organisation - Declared invalidities occurred - Orders granted to remedy declared invalidities.

DECISION
(as edited and expanded)

[1] This is an application by Stephen Mark Abson, President of the Queensland Major Contractors Association, Industrial Organisation of Employers (QMCA) filed on 15 February 2011 seeking the following relief:

"1. A Declaration pursuant to s. 613 of the *Industrial Relations Act 1999* (Qld) (Act) in the following terms:

- (a) An invalidity has occurred in relation to the election of 6 Committee Members to the Executive Committee of the QMCA for the year 2010/2011.
- (b) An invalidity has occurred in relation to the conduct of the 2010 QMCA election by Gregory David James Richards rather than Ross Landsberg, the Returning Officer authorised to conduct the 2010 QMCA election.
- (c) An invalidity has occurred in relation to the signing of the Election Declaration dated 16 November 2010 under Regulation 38 *Industrial Relations Regulation 2000* (Qld) (**Regulation**) by a person other than Ross Landsberg, the Returning Officer authorised to conduct the 2010 QMCA election (exhibited at page 23 of the affidavit of Gregory David James Richards in support of this application).
- (d) An invalidity has occurred in relation to the signing of the Election Result Report dated 17 November 2010 filed under s. 600 of the Act by a person other than Ross Landsberg, the Returning Officer authorised to conduct the 2010 QMCA election (exhibited at page 23 of the affidavit of Gregory David James Richards in support of this application).

2. Orders and declarations pursuant to section 615 of the Act:

- (a) That all acts, matters and things done by or on behalf of, or purported to be done by or on behalf of, persons acting, or purporting to act as Officers and Committee Members of the QMCA from the Annual General Meeting on 15 November 2010 until the date of the Order, are declared valid acts, matters or things done on behalf of the QMCA.
- (b) That all acts, matters and things done by or on behalf of, or purported to be done by or on behalf of, the Executive Committee of the QMCA from the Annual General Meeting on 15 November 2010 until the date of the Order, are declared valid acts, matters or things done on behalf of the QMCA.
- (c) That the people appearing in **Schedule 1** to this application who were declared to be elected as the Officers and Committee Members of the QMCA at the Annual General Meeting of the QMCA on 15 November 2010 are declared to have been validly elected and may hold office until the declaration of Officers and Committee Members for 2011 at the next Annual General Meeting of the QMCA on 21 November 2011.
- (d) That all things done by Gregory David James Richards as or on behalf of the Returning Officer in connection with the 2010 QMCA election are declared to be valid acts done by the Returning Officer in accordance with the Act, the Regulation and the QMCA Rules.
- (e) That the Election Declaration dated 16 November 2010 (exhibited at page 23 of the affidavit of Gregory David James Richards in support of this application) is declared to be valid and effective for the purposes of Regulation 38 of the Regulation.

- (f) That the Election Result Report dated 17 November 2010 (exhibited at pages 24-27 of the affidavit of Gregory David James Richards in support of this application) is declared to be valid and effective for the purposes of section 600 of the Act.
- (g) That Gregory David James Richards is approved as the Returning Officer of the QMCA for the conduct of the 2011 election of the QMCA."

[2] The persons appearing in **Schedule 1** referred to in paragraph [1] 2(c) above are as follows:

"Position	Nominee	Member
President	Steve Abson	Abigroup
Vice President	David Parker	John Holland
Secretary	Daniel Lang	Laing O'Rourke
Treasurer	James Schrimmer	Golding
Committee Member 1	Tony Hackett	BGC
Committee Member 2	Beresford Freshney	Leighton
Committee Member 3	Jason Spears	Thiess
Committee Member 4	Peter Lyons	BMD
Committee Member 5	Struan Collins	Boulderstone
Committee Member 6	Duncan Gibb	Fulton Hogan."

Affidavit of Gregory David James Richards

- [3] An affidavit was filed by Gregory David James Richards, Solicitor employed by Minter Ellison Lawyers as a Special Counsel in the Construction, Engineering and Infrastructure Group (CEI Group) of that firm. Mr Richards is also Executive Secretary of the QMCA and has acted in that position from approximately June 2008 until the present. The position of Executive Secretary is an honorary non-elected position. Mr Richards is not an officer, employee or member of the QMCA and does not represent a member of the QMCA. He has no voting rights and no status under the Rules of the QMCA.
- [4] Mr Richards stated he assists the QMCA with organising and conducting its annual elections and assisted with organising and conducting the 2010 QMCA election. He explained the reasons for any irregularities in the 2010 election process. Mr Richards attached to his affidavit a bundle of documents to which he referred in support of the application.
- [5] Mr Richards stated that at the 2009 Annual General Meeting (AGM) of the QMCA on 16 November 2009 it was resolved that Mr Ross Landsberg act as the Returning Officer of the QMCA for the 2010 elections. A true copy of the Minutes of the 2009 QMCA AGM was provided.
- [6] Mr Landsberg is the Managing Partner of Minter Ellison Brisbane Office and a partner in the CEI Group. Mr Richards works with Mr Landsberg in that group. Even though Mr Landsberg was the Returning Officer for the 2010 QMCA election Mr Richards assisted the QMCA in organising and conducting the election on his behalf and with his knowledge and consent.
- [7] On 5 August 2010 the QMCA commenced its election cycle for 2010. On or about 16 August 2010 Minter Ellison on behalf of QMCA filed a statutory declaration of Ross Landsberg that he was not an employee, member or officer of the QMCA.
- [8] On 26 August 2010 Minter Ellison received the Decision of Registrar Savill dated 26 August 2010 approving the appointment of Mr Ross Landsberg as a returning officer for the QMCA to conduct elections for the position of President, Vice-President, Secretary, Treasurer and five Committee Members.
- [9] As QMCA Returning Officer, Mr Landsberg sought nominations for executive positions of President, Vice-President, Secretary, Treasurer and five Committee Members. A true copy of the covering letter sent to one of the member companies and the enclosed nomination form were attached to Mr Richards' affidavit. On 13 October 2010 Mr Richards attended a meeting of the QMCA Executive to review the nominations. At the meeting Mr Richards received a question without notice whether the QMCA could have six Committee Members.

[10] Rule 21.1 of the QMCA Rules provides:

"The Committee of the Association consists of the Officers and not less than 3 other Committee Members or such other number as determined by the Committee from time to time, all of whom will be elected in accordance with the Rules."

[11] Mr Richards stated that having considered QMCA Rule 21.1 he took the view there was no impediment to the QMCA having six rather than five Committee Members and he said so at the meeting and this was agreed. By 16 October 2010, the closing date for nominations for QMCA executive positions, Mr Richards had received nominations by the following persons for the following positions:

"Position	Nominee	Member
President	Steve Abson	Abigroup
Vice President	David Parker	John Holland
Secretary	Daniel Lang	Laing O'Rourke
Treasurer	James Schrimmer	Golding
Committee Member 1	Tony Hackett	BGC
Committee Member 2	Beresford Freshney	Leighton
Committee Member 3	Jason Spears	Thiess
Committee Member 4	Peter Lyons	BMD
Committee Member 5	Struan Collins	Baulderstone
Committee Member 6	Duncan Gibb	Fulton Hogan."

[12] QMCA Rule 33.8 states:

"The Returning Officer must consider all nominations and if in his/her opinion any nomination is defective s/he must notify the person concerned of the defect and where it is practical to do so give him/her the opportunity of remedying the defect within a period of not less than 7 days after notification."

[13] On behalf of the Returning Officer and in accordance with QMCA Rule 33.8, Mr Richards reviewed each nomination to ensure it was valid (i.e. complied with the QMCA Rules) and found that each nomination was valid.

[14] QMCA Rule 33.10 provides:

"If the number of nominations does not exceed the number of Officers to be elected, the nominees will be declared elected."

[15] Mr Richards took the view that if only one nomination was received for an Officer or a Committee Member position a secret ballot was not required and those nominees could be declared elected at the forthcoming AGM. He did not consider that the decision of Registrar Savill prevented the QMCA having a sixth Committee Member.

[16] On or about 1 October 2010 the QMCA sent to QMCA members a notice of the 2010 AGM to be held on 15 November 2010 together with an agenda and other documentation. Mr Richards said that prior to the AGM it was decided that he act as Returning Officer and a motion to that effect would be put at the 2010 AGM.

[17] At the QMCA AGM on 15 November 2011 the following occurred:

- pursuant to QMCA Rule 33.10 it was declared those nominees listed above in paragraph [11] were elected to the executive positions appearing in that list for 2011/2011; and
- a motion was put and a resolution passed that Mr Richards be the Returning Officer for the QMCA for the 2011 QMCA election.

[18] Both the Election Declaration and the Election Result Report were signed by Mr Richards as QMCA Returning Officer when in fact Mr Landsberg remained the Returning Officer after the AGM for the 2010 election.

[19] An affidavit was also filed by Stephen Mark Abson supporting the application and the affidavit filed by Mr Richards.

Declaration of invalidities

[20] Section 613 provides that the Commission may decide whether an invalidity has happened as follows:

"613 Commission may decide

- (1) The commission may, on application, decide whether an invalidity has happened in -
 - (a) the management or administration of an organisation's affairs; or
 - (b) the election or appointment of an officer of an organisation; or
 - (c) the making, amending or repealing of a rule of an organisation.
- (2) In deciding the application, the commission may declare whether or not an invalidity has happened."

[21] Mr Richards admitted in his affidavit and submissions that the invalidities as stated have occurred. I so decided and therefore declare that invalidities have happened in relation to the management and administration of the QCMA as indicated in paragraph "1." of the application and as set out in paragraph [1] of this Decision.

Orders

[22] Having declared that such invalidities have happened the Commission must then consider s. 615 of the Act which enables the Commission to make an order remedying the effects of the invalidity. Section 615 of the Act provides as follows:

"615 Orders about effects of invalidity

- (1) This section applies if, on the hearing of the application, the commission declares an invalidity has happened.
- (2) The commission may make an order it considers appropriate to -
 - (a) remedy the invalidity or to cause it to be remedied; or
 - (b) change or prevent, or cause to change or prevent, the effects of the invalidity; or
 - (c) validate an act, matter or thing made invalid by or because of the invalidity.
- (3) The commission may also make another order consequential to an order under subsection (2).
- (4) The commission must not make an order under this section if the order would cause substantial injustice to -
 - (a) the organisation that the invalidity concerns; or
 - (b) a member or creditor of the organisation; or
 - (c) a person dealing with or who has dealt with the organisation."

[23] Mr Richards informed the Commission that, although there was no order to do so, an advertisement was placed in the public notices section of "The Courier-Mail" on 9 March 2011 stating that the application had been made for a decision about invalidity and consequential orders.

[24] Having read the application filed on 15 February 2011, the affidavit of Gregory Richards in support of the application filed on 15 February 2011, the affidavit of Stephen Abson filed on 15 February 2011 and having heard the submissions of Mr Richards, the Commission made a decision from the Bench to grant the orders as sought in paragraph "2." of the application and as set out in paragraph [1] of this decision. The Commission considers these orders are sufficient to remedy the declared invalidity.

[25] In making the orders as sought the Commission is satisfied that the orders would not cause substantial injustice to any of the persons or organisations mentioned in s. 615(4) of the Act.

[26] The orders are to take effect as from 21 March 2011.

[27] Order accordingly.

G.K. FISHER, Commissioner.

Hearing Details:
2011 21 March

Released: 24 March 2011

Appearances:
Mr G.D.J. Richards and Ms A. Ford, Minter Ellison Lawyers for Queensland Major Contractors Association, Industrial Organisation of Employers.