

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ANTI-DISCRIMINATION LIST NO. A312/2001

Catchwords

Equal Opportunity Act 1995 - s83 - application for exemption -
Victorian Ladies Bowling Association - fear of male domination - application
to permit the VLBA to continue to require that applicants for membership
or to compete be female ?

APPLICANT: Victorian Ladies' Bowling Association
Incorporated

BEFORE: Judge Duggan, Vice President

PROCEEDING: Hearing

DATE OF PROCEEDING: 20 September 2001

DATE OF DECISION: 12 October 2001

APPEARANCES

For Applicant: Ms G. Beecher

DECISION

The application for exemption is refused.

JUDGE DUGGAN
VICE PRESIDENT
VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

REASONS FOR DECISION

1. By this application the Victorian Ladies' Bowling Association Incorporated ("VLBA") seeks an exemption pursuant to s83 of the Equal Opportunity Act to enable it to continue to require that a person be female to be an affiliated member or to compete in its competitions.
2. The application is supported by the affidavit of Dawn Cecilia Berner, sworn 14 August 2001, who, at the time, was the state president of the VLBA. On 21 August 2001 I directed that notification of the making of the application be given by way of advertisement in the daily press. This produced two petitions from affiliated members supporting the application and three letters from members of the public. Two of those letters might be said to have expressed general opposition. The third letter merely made an enquiry and did not express any firm view.
3. With this background the matter came on for hearing before me on Thursday 20 September. Ms G. Beecher appeared on behalf of the applicant. In evidence Ms Berner expanded on the material set out in her affidavit and I heard oral evidence from Mr Peter Wiltshire, the executive officer of the Royal Victorian Bowling Association (RVBA).

4. Until the decision of this Tribunal in *South v RVBA* 28 February 2001, the rules of that association defining affiliated membership provided that only males could be affiliated members. Mr Wiltshire provided information concerning his organisation and the number of, structure of and composition of bowling clubs in this state. I will return to this topic at a later stage in these reasons.

5. Pursuant to its constitution the VLBA produced rules to regulate its affairs. Clause 9B of the constitution provides that an "affiliated member" means a female person. R.2.19 provides that any lady desiring to play pennant competition or social bowls must be an affiliated member of the VLBA. Pursuant to clauses 13A and 14, all office bearers and state councillors must be affiliated members.

6. In May 2001 Ms Berner sought legal advice on the question of whether the constitution and rules of the VLBA complied with the Equal Opportunity Act 1995. Upon receiving advice that the constitution and rules may not comply the VLBA gave instructions for the making of this application for exemption pursuant to s83 of the Act. In so far as it is relevant s83 provides:

"(1) The Tribunal, by notice published in the Government Gazette, may grant an exemption-

(c) from any of the provisions of this Act in any other circumstances specified by the Tribunal."

7. The predecessor of this Tribunal, the Equal Opportunity Board, outlined the principles which applied to the grant of exemptions under s40 of the Equal Opportunity Act 1984 in *Fernwood Fitness Centre* (1996) EOC 92782. This Tribunal has on subsequent occasions held that the principles governing s40 of the 1984 Act were indistinguishable from those that govern applications for exemption under s83 of the 1995 Act. At p7 the Board (consisting of the then President, Ms Cate McKenzie, Ms Carmel Morfuni and Mr Robert Sadler) said:?

"The Board will not exercise its discretion unnecessarily. If conduct is clearly not covered by the Act, whether because it clearly does not constitute discrimination, does or does not fall within an area about which the Act makes provision, or comes within one of the statutory exceptions, there is no need for the Board to exempt the conduct...However, it is not necessary for an applicant for exemption to show that a complaint of discrimination would succeed in the circumstances in which the exemption (is) sought. This, in our view, is to apply too high a standard. It is necessary for an applicant for exemption to show that there is at least an arguable case that the circumstances might constitute discrimination to which the Act would apply. If this is shown, the Board will then ask; is the exemption appropriate in the light of the objectives and scheme of the Act? In considering that question, the Board will, in addition to the particular circumstances of each case, take into account such matters as the reasonableness of the exemption sought and also whether, although not clearly falling within any of the statutory exceptions, the circumstances bear a close resemblance to any of those exceptions Conversely, if exemption is sought for reasons wholly unrelated to the objectives or scheme of the Act (such as to obtain a commercial advantage), an exemption would be inappropriate..."

8. Consistent with that approach Ms Beecher took me to the objectives of the current legislation and suggested that the current application, whilst not being covered by the statutory exemptions was nevertheless consistent with them. I will return to a consideration of

this submission following an examination of the material advanced in support of the primary application.

9. In her affidavit Ms Berner expressed an opinion of the benefits affiliated members gain from participation in lawn bowls competition and administration. Her basic point is that she believes that less women will participate in this beneficial activity if the exemption application is not granted. She points out that a range of other competitions are available for men.

10. The VLBA consists of 539 member clubs with some 24,694 affiliated members. Only six clubs have an all female membership. All other clubs have both male and female members. Most clubs are affiliated with both the VLBA and the RVBA. The RVBA is a State based bowling association that was established to administer lawn bowls for men. Until very recently only men were eligible to be affiliated members of the RVBA. However in August 2001, the RVBA amended its constitution so that both male and females could be affiliated members. This amendment was made to comply with the order of this Tribunal in *South v RVBA*.

11. The RVBA currently has approximately 43,000 members. Most member clubs are controlled by an elected committee. For the last 25 years or so both males and females have been eligible to be elected to management committees. Prior to that time most clubs were structured so that only males were eligible for ordinary membership. Females were eligible for associate membership which usually carried reduced management and playing rights.

12. It is the evidence of Mr Wiltshire and Ms Berner that in the intervening years during which women members have had equal rights only rarely have they taken a significant management role. It is the fear that the refusal of this application will result in women taking a restricted role in both competition and management, in what they now see as their club, the VLBA, that is the principal ground which emerges from Ms Berner's affidavit.

13. I should refer to the specific points that she makes. She refers to the benefits of the present structure of lawn bowls to women. She expresses an opinion about the characteristics of affiliated members. No statistics are kept in respect of these matters but I have little doubt that Ms Berner's opinions are broadly correct.

14. Of the 24,694 affiliated members only 71 are under the age of 25. She believes there are even fewer affiliated members between the ages of 25 and 35. The vast majority of members are between the ages of 55 and 80. Approximately 80% of affiliated members do not play any other type of structured sport. She believes that women who participate in competitive lawn bowls obtain significant physical, mental and social benefits. It is a healthy, physical but undemanding outdoor activity. The exercise may not be demanding but it is of benefit particularly for an older player. Ms Berner also believes competitive lawn bowls also provides mental health benefits. Participation develops skills and coordination which in turn enhances confidence and self esteem. The interaction of competitors helps to develop social networks.

15. She believes that playing bowls or involvement in the administration of bowling clubs or competitions provide a regular opportunity for elderly affiliated members to socialise with other women in their own position. She believes that if affiliated members did not play bowls most would not participate in any other sport and would thus miss out on the significant physical, mental and social benefits associated with involvement.

16. Ms Berner expresses the opinion that the participation of women in the VLBA and in bowls generally will decline if the exemption is not granted. This is because the vast majority of current members would prefer the VLBA to be administered as it is now. She says that over many years as a bowler she has observed mixed bowling. This tends to be dominated by male bowlers. Ms Berner believes that if men are admitted into the VLBA they will come to dominate both its competition and its administration as they tend to do within the participating mixed clubs.

17. In order to determine its member's opinions, in July this year the VLBA posted questionnaires to 1,400 members. The questionnaire was professionally designed and evaluated. The report is exhibited to the affidavit. The results of the survey indicate that the majority of affiliated members wish to retain the option of women's only competition. 60% of respondents preferred to be able to play with women, 12.4% indicated a preference for mixed competition and the remainder indicated no preference. 35.1% said they would play less or a lot less than they do now if they had to play with men. 19.4% said they would play a lot less than they currently play, only 6% said they would play more. 67.5% wish to retain the option of having women's as well as mixed competition available to them.

18. The conclusion Ms Berner drew was that the majority of affiliated members of the VLBA do not want to play in competitions that are open to men. She says that if it is required to permit men to participate in its competitions she is concerned that current affiliated members will compete less or withdraw altogether from the sport. No doubt this is the reason for the alternative application for an exemption permitting the VLBA to provide competitions for which only women members would be eligible.

19. As I understood her, Ms Beecher's point is that without this exemption the VLBA could run competitions for women only if it also ran a parallel competition for men. I do not think this is correct. In my opinion, if the primary application is refused, the VLBA would not be entitled to exclude male affiliated members from participation in its competitions.

20. The position of members of the VLBA is unusual. As I understand it, the vast majority are members of mixed clubs. For the most part they are in a minority in their own clubs. All but a very few of those clubs are effectively controlled by male members. Within those clubs female bowlers participate in mixed social and competitive bowls. Mixed competition at an interclub level is more limited.

21. Until recently, at a wider level, men's competition was organised by the RBVA. The women were organised by the VLBA. As indicated, very recently, the RBVA has changed its constitution to delete the requirement that affiliated members be male. I assume that if this application is refused the VLBA will amend its constitution to delete the requirement that affiliated members be female.

22. Accordingly it can be seen that the existing exclusion has not deprived males of the opportunity of playing bowls at a social or competitive level or of participating in the management of the clubs to which they belong. Until the recent change in the constitution of the RVBA, the converse comment could have been made in respect of female members of clubs. If this application is granted, an incongruous situation will arise whereby females may become members of the RVBA but not males of the VLBA. In view of the existing opportunities for males and females it may well be that the amendments to the two constitutions would have little practical outcome.

23. However, that is beside the point. The amendment to the RVBA constitution was as a result of the decision of this Tribunal in *South v RVBA*. As I understood her, Ms Beecher on behalf of the VLBA, recognised the potential incongruity of the RVBA now being open to

both men and women whereas if this application is successful the VLBA will remain restricted to women.

24. Accordingly, as I have stated, the application was largely based upon a claim that what Ms Berner sees as the traditional relationship between male and female bowlers over the years would be likely to be replicated causing less female participation in social and competition bowling and less involvement in competition management. It is said that this justifies the granting of an exemption in this case.

25. It must be borne in mind that the objectives of the legislation, inter alia, are to "eliminate, as far as possible, discrimination against people by prohibiting discrimination on the basis of various attributes". (s3(b)) Subject to the granting of an exemption by this Tribunal, gender is an attribute on the basis of which discrimination is prohibited (s6). The primary position is that such discrimination is prohibited in any club (of which the VLBA is one) other than a private club.

26. Ms Beecher submitted that the granting of the current application would further the objectives of the Equal Opportunity Act in that it would promote equality of opportunity amongst female bowlers. Her point is that the present structure permitted females to have the opportunity to participate in bowling to the extent that I have already outlined. Men were not discriminated against because of the existence of a parallel structure. For the reasons given she submitted that removal of the restriction on males becoming affiliated members would in this context reduce the opportunities open to women. Such an outcome is contrary to the objectives of the Act.

27. I understand this submission but I do not accept that refusal would have the outcome feared. I do not accept that for the foreseeable future there is any realistic possibility of men assuming a dominant role within the VLBA to the extent that it would impose any limit on the opportunity of women to participate.

28. Ms Beecher also submitted that it was in the public interest that women continue to participate in bowls to the extent that they do now. She said that the conclusion from the survey was that women's participation will decline if male membership is permitted. It is true that the survey results justify this claim. However, as I have stated, it seems to me that the practical consequences will be much less dramatic than is feared.

29. In my opinion the position with regard to this application is that the Equal Opportunity Act 1995 provides that clubs that occupy Crown land or receive any financial assistance from the State or a municipal council, as does the VLBA, should not conduct their affairs so as to discriminate against existing or potential members on various grounds including gender. This the VLBA has done since its inception. It wishes to be able to continue to do so. The strength of its application is its observation that by reason of the parallel structure of the RVBA, no one will suffer. I accept that this is so. Nevertheless, the fact that the RVBA has recently amended its constitution to delete the requirement that affiliated members be male is not irrelevant.

30. In my opinion, it would be incongruous and inconsistent with the objectives of the Act if what was the previously all male vehicle for men's participation was not permitted to remain, whereas within that structure, female exclusivity was permitted.

31. The second major point is the feared adverse consequences for women should the requirement that affiliated members be female be deleted. I understand the fear but I think it is overstated. It is highly unlikely that those consequences will be realised within the

foreseeable future. In fact, by reason of the ongoing existence of the RVBA I think that, within the foreseeable future, the risk of male domination of the VLBA is minimal.

32. It follows that for these reasons I do not regard the grounds advanced for the granting of either exemption application as being of sufficient strength to justify an outcome that would be inconsistent with the basic objectives of the legislation. The application for exemption is refused.

JUDGE DUGGAN
VICE PRESIDENT
VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL