IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
JUDICIAL REVIEW AND APPEALS LIST

Not Restricted

S ECI 2021 00274

MARLENE KAIROUZ — Plaintiff

v

THE HONOURABLE STEVE BRACKS
THE HONOURABLE JENNY MACKLIN
(In their capacity as Administrators of the Australian Labor Party Victorian Branch and the persons whose names are set out in the Schedule in their capacity as the National Executive of the Australian Labor Party and the Interim Governance Committee of the Victorian Branch of the Australian Labor Party) — Defendants

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JUDGE:	Ginnane J
WHERE HELD:	Melbourne
DATE OF HEARING:	17-18 February 2021
DATE OF JUDGMENT:	19 March 2021 First Revision: 19 March 2021
CASE MAY BE CITED AS:	Kairouz v Bracks
MEDIUM NEUTRAL CITATION:	[2021] VSC 130

ASSOCIATIONS – Australian Labor Party – National Executive – Federal oversight of Victorian Branch – Administrators appointed – Rules amended – Plaintiff charged by Administrators with branch stacking – Whether resolution providing for federal oversight valid – Whether charges valid – Application for interlocutory injunction restraining hearing of charges – Whether issues raised justiciable – Whether serious question to be tried – Balance of convenience

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APPEARANCES:	Counsel	Solicitors
For the Plaintiff	Mr J Karkar QC with Ms M Pilipasidis	Cornwalls
For Defendants 12, 14, 15	Mr P Buitendag	Johnson Winter & Slattery
For Defendants 1-11, 13, 16-26	Mr P G Willis SC with Mr A D Lang and Mr J Kirkwood	Holding Redlich

HIS HONOUR:

1 The plaintiff, Ms Marlene Kairouz, has been the member for Kororoit in the Victorian Legislative Assembly since 2008 and is a member of the Victorian Branch of the Australian Labor Party ('ALP' or 'the Party'). Between 2014 and 16 June 2020, she was Cabinet Secretary and then Minister in the Victorian Government. She seeks an interlocutory injunction restraining the defendants from proceeding with the hearing of charges brought against her by the Administrators of the Victorian Branch which are to be heard by the Disputes Tribunal. The Administrators were appointed by the National Executive. The charges allege that she was involved in branch stacking. She challenges the National Executive's resolution to appoint the Administrators to control the Victorian Branch, its approval of rule amendments, the action of the Administrators in laying the charges and their validity. The final relief that she seeks include declarations of the invalidity of the National Executive's actions.

2 The principal issue raised on the present application was whether Ms Kairouz's claims were justiciable. The ALP is an unincorporated association. The parties also made submissions about whether Ms Kairouz's case raised serious questions to be tried, the balance of convenience and what interlocutory relief could be ordered as the charges are already before the Disputes Tribunal.

3 I have decided that Ms Kairouz has established a case to be granted an interlocutory injunction preventing the hearing of the charges until the determination of this proceeding.

4 I should state clearly that the opinions and conclusions that I express in this judgment on all contested issues are not final, but are expressed only to decide this interlocutory application. I could only express final opinions and conclusions after hearing evidence and submissions at the trial. Nor do I express any conclusion about the accuracy of the facts alleged in the charges concerning the plaintiff as that is not a matter for this Court to decide on this application.

5 The first and second defendants, Mr Steve Bracks, formerly the Premier of Victoria and Ms Jenny Macklin, formerly a member of the House of Representatives and a

Minister in the Australian Government, were appointed by the National Executive as Administrators of the Victorian Branch on 16 June 2020 and their appointment ended on 31 January 2021, when they were replaced by an Interim Governance Committee appointed by the National Executive. The charges against Ms Kairouz were communicated to her by the Acting State Secretary at 10.53pm on Sunday 31 January 2021, the Administrators last day in that role.

6 The amended rules extended the definition of branch stacking with, in Ms Kairouz's case, retrospective effect and reversed the onus of proof so that Ms Kairouz has to satisfy the Disputes Tribunal that she did not engage in the branch stacking alleged.

7 The third to twentieth, twenty-second and twenty-third defendants constituted the National Executive of the ALP ('the National Executive') as at 16 June 2020, and remain members of the National Executive. After 16 June 2020, the twenty-first defendant was appointed to the National Executive to fill the vacancy occasioned by the resignation of Mr A Somyurek.

8 The twenty-second to twenty-sixth defendants constitute the Interim Governance Committee of the Victorian Branch appointed by the National Executive with effect from 1 February 2021 to replace the Administrators.

The appointment of the Administrators

9 On 15 June 2020, Mr D Andrews, the Premier of Victoria, wrote to the National Executive of the ALP, stating:

> I write to notify you of my intention to charge Mr Adem Somyurek with offences under the Australian Labor Party Victorian Branch Rules, and to request that the National Executive hear and determine those charges and, if satisfied that offences have been committed, expel Mr Adem Somyurek as a member of the Australian Labor Party.
>
> Reports broadcast on 60 Minutes on 14 June 2020 and published in The Age newspaper on 15 June 2020, show Mr Somyurek making threats about a Cabinet Minister, and derogatory remarks about Members of Parliament, Young Labor members and others. The reports also identify significant evidence of offences relating to party memberships. In my view, the ALP should not have as a member someone who conducts himself in this manner.
>
> I will write to you further shortly in relation to the charges.

I also advise you that the Victorian Attorney General has referred all of these matters to Victoria Police and the Independent Broad-based Anti-corruption Commission for investigation.

10 On 15 June 2020, Mr A Somyurek resigned his membership of the ALP.

11 On 16 June 2020, Mr Andrews again wrote to the National Executive, stating:

> I write to request your endorsement of a process for reform of the Victorian Branch of the Australian Labor Party to guarantee integrity and probity in all of our affairs.
>
> This plan has my full support as both leader of the Victorian Parliamentary Labor Party and Premier of Victoria.
>
> I have no confidence in the integrity of any voting rolls that are produced for any internal elections in the Victorian Branch. Accordingly, we must suspend those elections and begin a long and critical process of validating each and every member of the Labor Party in Victoria as genuine, consenting and self-funded.
>
> I cannot accept yet another review that, while well intentioned, cannot and will not deliver the profound reform that is required.
>
> I have asked Steve Bracks and Jenny Macklin to serve as administrators of the Victorian Branch while this process is undertaken and I ask that you appoint them to those roles. I have full confidence that they are best placed to undertake this work.
>
> I seek your agreement to the detailed plan attached to this correspondence and I look forward to your support and assistance in making these fundamental reforms so that we can, in all ways, be a party that lives its values.'

12 Mr Andrews attached to his letter a document titled 'National Executive oversight of reforms to the Victorian ALP' which stated:

> **National Executive Oversight**
>
> ALP National Executive exercises its powers under Rule 16(f)(ii) to appoint Steve Bracks and Jenny Macklin as administrators of the Victorian Branch.
>
> The administrators are appointed for an initial term extending to 31 January, 2021. For the term of the National Executive oversight:
>
> - All Committees of the Victorian State Conference, as defined in the Victorian Rules, are suspended
> - All officials and staff of the Victorian Branch will report to the administrators.
>
> **Initial scoping report**
>
> National Executive directs the administrators provide an initial scoping report

by 31 July 2020.

The scoping report will include recommendations to the National Executive on integrity measures for the Victorian Branch membership.

The scoping report should also include processes for consulting with the Party membership.

The administrators should develop this scoping report in consultation with the Victorian State Secretary and the Victorian Branch President.

Final Report

The National Executive requests that the administrators report back by 1 November 2020, with a final report.

The final report should include recommendations on how the Victorian Branch should be restructured and reconstituted so that the branch membership comprises genuine, consenting, self-funding party members.

Suspension of voting rights

National Executive notes the request of the Victorian Labor Leader that all voting rights in the Victorian Branch be suspended at least until 2023.

National Executive will exercise its powers under Rule 16(f)iii to conduct all preselections for the next federal and state elections.

Administration support

For the term of the National Executive oversight, officials and staff of the Victorian Branch shall report to the administrators.

National Executive will consider the need to further support the work of the administrators.

Should the administrators require special advice or professional services, these shall be appointed with the approval of the National Executive Committee.

13 The National Executive met on 16 June 2020 and passed a resolution which in effect implemented the 'oversight' requested by Mr Andrews. The steps which were taken under the National Executive 'oversight' might also be described as National Executive intervention in the Victorian Branch, but nothing turns on the name given to it. The resolution was in the following terms:

Recommendation:

National Executive notes the correspondence from the Premier of Victoria in relation to necessary reform of the Victorian Branch.

National Executive resolves to exercise its powers under Rule 16(f)(ii) to appoint Steve Bracks and Jenny Macklin as administrators of the Victorian

Branch. The administrators are appointed for an initial term extending to 31 January, 2021.

For the term of the National Executive oversight:

- All committees of the Victorian State Conference, as defined in the Victorian Rules, are suspended
- All officials and staff of the Victorian Branch will report to the administrators.

National Executive directs the administrators to provide an initial scoping report by 31 July 2020. The scoping report will include recommendations to the National Executive on integrity measures for the Victorian Branch membership. The scoping report will include recommendations on how to maintain affiliate representation in the Victorian ALP. The scoping report should also include processes for consulting with the Party membership and affiliated unions. The administrators should develop this scoping report in consultation with the Victorian State Secretary and the Victorian Branch President.

The National Executive requests that the administrators report back by 1 November 2020, with a final report. The final report should include recommendations on how the Victorian Branch should be restructured and reconstituted so that the branch membership comprises genuine, consenting, self-funding party members.

National Executive notes the request of the Victorian Labor Leader that all voting rights in the Victorian Branch be suspended at least until 2023. National Executive will exercise its powers under Rule 16(f) iii to conduct all preselections for the next federal and state elections.

For the term of the National Executive oversight, officials and staff of the Victorian Branch shall report to the administrators. National Executive will consider the need to further support the work of the administrators. Should the administrators require special advice or professional services, these shall be appointed with the approval of the National Executive Committee.

('the Administration Resolution')

The National Executive's amendments to the Victorian Branch Rules

14 On 14 September 2020, the National Executive resolved ('the Amendment Resolution') that the 'Victorian Rules be adapted in order to confirm the Administrators powers' by amending the then existing rules to add Rule 26 entitled 'Temporary Rules Applicable During the Period of the Administration'. These rules gave the Administrators various powers during the period of the administration to 31 January 2021, including the power to charge a member with a breach of the branch stacking rules and to revoke the membership of a member. I will refer to the existing rules as

amended on 14 September as the 'Amended Rules'.

15 By the Amendment Resolution, the National Executive amended the existing rules, inter alia, by:

(a) changing the definition of 'branch stacking':

> 5.17.1.1. Branch stacking is conduct unacceptable to the Party. Branch stacking is defined as the enrolling of persons to the Party by offering inducement or enrolling persons for the principal purpose of influencing the outcome of ballots of members within the Party.

to

> 5.17.1.2. Branch stacking is conduct unacceptable to the Party. Branch stacking means any activity relating to enrolling members, renewing memberships or transferring members between branches:
>
> 5.17.1.2.1. Engaged in for the predominant purpose of influencing the outcome of ballots of members within the party; or
>
> 5.17.1.2.2. That has the effect, or is likely to have, or intended to have, the effect of enrolling a member, or retaining as a member, a person who is not a genuine member.

(b) adding r 26.4 'Breach of branch stacking rules' in the following terms:

> 26.4.1. This Rule applies when the Administrators allege that a member has breached the branch stacking rules.
>
> 26.4.2. The Administrators may, in their absolute discretion, charge a member with a breach of the branch stacking rules.
>
> 26.4.3. In the event that the Administrators charge a member under sub-rule 26.4.2, the charge will be dealt with by the Disputes Tribunal in accordance with Rule 20 of these Rules, subject to sub-rules 26.4.4 and 26.6.
>
> 26.4.4. For the purposes of sub-rule 26.4.3, a member charged with branch stacking is presumed to have engaged in the activity or activities in question;
>
> 26.4.4.1. for the predominant purpose of influencing the outcome of ballots of members within the Party; and/or
>
> 26.4.4.2. with the intention of enrolling as a member, or retaining as a member, a person who is not a

genuine member;

unless the member satisfies the Disputes Tribunal otherwise.

26.4.5. Despite anything in these Rules to the contrary, the Administrators may suspend the membership of a member who has been charged under sub-rule 26.4.2 pending a decision by the Disputes Tribunal in accordance with sub-rule 26.4.3.'

(c) adding rr 26.6.4 and Rule 26.6.5 empowering the Administrators to charge members with breaches of the branch stacking rules and other disciplinary offences; and

(d) adding r 26.6.7 to the effect that '[a] decision made by the Administrators in relation to the administration is not subject to review by the Disputes Tribunal' constituted under the Rules of the Victorian Branch.

16 As mentioned, at 10.53pm on 31 January 2021, the Acting State Secretary notified Ms Kairouz that the Administrators were charging her under rr 26.4.2 and 26.6.5 of the Amended Rules with four contraventions of the Amended Rules relating to alleged branch stacking.

17 The charges are to be heard by the Disputes Tribunal which is established by r 20 and which is 'specifically responsible' for hearing and deciding charges related to disciplinary offences. If it is satisfied that the member charged has committed an offence, it may impose penalties ranging from a reprimand to expulsion.

18 Clause 30 of the National Constitution establishes a National Appeals Tribunal, which is responsible on behalf of the National Executive for hearing all appeals by members that relate to compliance with the National Constitution or enforcement of the rights and obligations of members, affiliated unions and constituent units of the Party and making recommendations to the National Executive in relation to those appeals. The National Executive must promptly consider all recommendations of the Tribunal and may make any decision in relation to the appeal it thinks fit. No appeal may be heard by the Tribunal until all practicable avenues of appeal have been exhausted under the rules of the relevant state branch.

Structure of the ALP

19 To understand Ms Kairouz's challenge to the appointment of the Administrators, the rule amendments and the laying of the charges, it is necessary to say something about the ALP's structure.

20 The ALP is an unincorporated association formed to promote its stated political objectives. Clause 2(a) of its National Constitution states:

> It is intended that the National Constitution and everything done in connection with it, all arrangements relating to it (whether express or implied) and any agreement or business entered into or payment made or under the National Constitution, will not bring about any legal relationship, rights, duties or outcome of any kind, or be enforceable by law, or be the subject of legal proceedings. Instead all such arrangements, agreements and business are only binding in honour.

21 The Victorian Branch Rules contain a similar provision in r 23.

22 Clauses 14 and 16 of the National Constitution establish a National Executive as the chief administrative authority of the ALP subject only to the National Conference. With that qualification, the National Executive may exercise all powers of the ALP on its behalf without limitation, including in relation to the state branches and other sections of the Party: cl 16(d).

23 Under cl 16(f), the National Executive has certain powers over state branches:

> Without limiting the plenary powers of the National Executive under clause 16(d), if in the opinion of the National Executive any state branch or section of the Party is acting or has acted in a manner contrary to the National Constitution, the national platform or a decision of National Conference, as interpreted by the National Executive, the National Executive may:
>
> (i) overrule the state branch or section;
>
> (ii) intervene in the state branch or section, and take over and direct the conduct of its affairs; and
>
> (iii) conduct any pre-selection that would otherwise have been decided by the state branch or section.

24 By cl 16(e)(v) of the National Constitution, the National Executive must elect a National Executive Committee.

25 Clauses 46 and 47 of the National Constitution state:

State branch rule changes

> 46. All state branch rules must be revised in accordance with these National Principles of Organisation as amended at the National Conference held in December 2011, and be submitted to the National Executive for endorsement no later than 31 December 2013.
>
> 47. Pursuant to clause 16(d), the National Executive is empowered to amend the rules of any state branch as required to implement the National Principles of Organisation.

26 On 29 January 2021, the National Executive further amended the Amended Rules (the 'Further Amendment Resolution') by, inter alia:

(a) rescinding Rule 26 of the Amended Rules;

(b) providing for the appointment by the National Executive of the Interim Governance Committee to replace the Administrators and perform all the functions of the Administrative Committee and Party Officers of the Victorian Branch and to facilitate the progression of the Victorian Branch from the control of the Administrators from 31 January 2021 to the Interim Governance Committee; and

(c) adding r 26.8.1 in the following terms:

> Notwithstanding that the appointment of the Administrators ceased as at midnight on 31 January 2021, charges laid by the Administrators during the period of the administration shall be heard and determined by the Disputes Tribunal in accordance with rule 26 as it applied during the administration and any suspension of the member in question shall continue.

The Administrators' and Ms Kairouz's communications

27 On 20 November 2020, Mr Bracks and Ms Macklin wrote to Ms Kairouz, notifying her that, as the appointed Administrators of the Victorian Branch of the ALP, they were 'tasked with ensuring all members of the Victorian branch are genuine, consenting, and self-funding'. The Administrators also asked questions relating to Ms Kairouz alleged involvement in branch stacking. Extensive correspondence and communication followed, which it is unnecessary to set out in this interlocutory judgment. Some of the questions concerned statements by Ms Kairouz when she took part in a meeting in early 2020 at which Mr Somyurek and staff were present, which

was held in a Ministerial conference room.[1] The discussion at that meeting was covertly recorded by a person unknown and an ALP employee later prepared a transcript by listening to that recording. The recording is said to have been destroyed. The charges that Ms Kairouz now faces appear, in part, to be based on the discussion that was recorded. Many of the questions the Administrators posed to Ms Kairouz sought her explanation of terms that she and others were alleged to have used in the meeting.

28 Ms Kairouz responded to the Administrators in a number of letters. She initially said that as she was surreptitiously recorded, unless she knew the context of the conversation, she could not recall what she meant by some terms that she was said to have used. She requested access to the recording. In later correspondence, Ms Kairouz corrected and clarified some of the words attributed to her by the Administrators and confirmed that her reference to 'checklists' at the first meeting was for the purpose of good administration and organisation and not because of any plans with Mr Somyurek. She denied directly or indirect involvement in, or knowledge of, any branch stacking. She described the role that her office and staff performed in processing membership applications in accordance with the prescribed rules. She denied being involved in membership renewal processes, stating that this was left to voluntary activists and that it was common for paid staffers also to be party activists. She clarified the role that one member of her staff performed and denied any knowledge of membership transfers between different branches. She explained her attendance at the meeting attended by Mr Somyurek and others as occurring by chance when she was walking past the conference room and was invited into the meeting.

Authorities on the justiciability of the proceeding

29 Before summarising the parties' submissions, it is appropriate to refer to the principles and main authorities on the justiciability of Ms Kairouz's proceeding.

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[1] There appears to have been another meeting in early 2020.

30 Justiciability is a term used to describe whether a claim for relief is capable of being settled or decided by a court of law.[2]

31 The parties understandably devoted considerable attention to the High Court's decision in 1934 of *Cameron v Hogan*,[3] which binds me. Mr Hogan was Premier of Victoria as Parliamentary leader of the ALP. He commenced proceedings against the Party's executive officers after he was excluded from the ALP and he was not pre-selected as its candidate in the next election in 1932. His exclusion followed his refusal to oppose the 'Premiers' Plan'. Mr Hogan was re-elected but not as the ALP candidate, but he sought declarations that he was still a member of the Party and that his exclusion was wrongful, alleging that he had suffered loss and damage by not being the leader of the Parliamentary Labor Party.

32 The High Court dismissed Mr Hogan's proceeding for two principal reasons. First, his membership of the ALP did not establish any legal or equitable interest that entitled him to the grant of an injunction. Secondly, as the ALP was a voluntary unincorporated association, members were not in a contractual relationship and had no proprietary rights or interests in its property.[4] Starke J said that:

> 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.[5]

33 Rich, Dixon, Evatt and McTiernan JJ stated:

> Judicial statements of authority are to be found to the effect that, except to enforce or establish some right of a proprietary nature, a member who complains that he has been unjustifiably excluded from a voluntary association, or that some breach of its rules has been committed, cannot maintain any action directly founded upon that complaint.[6]
>
> …
>
> The foundation of the jurisdiction to grant an injunction is the existence of some civil right of a proprietary nature proper to be protected. The property under

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2 Macquarie Dictionary (8th ed 2020) 836.
3 (1934) 51 CLR 358.
4 Ibid 378.
5 Ibid 384.
6 Ibid 370.

> the control of the central executive and that under the control of the branches might, if all the members concurred in dissolving the association, be distributed among them, but if so, it would be by reason of a decision under the rules authorising that distribution. Except for this, the respondent has no interest capable of enjoyment.[7]
>
> …
>
> The organisation is a political machine designed to secure social and political changes. It furnishes its members with no civil right or proprietary interest suitable for protection by injunction. Further, such a case is not one for a declaration of right. The basis of ascertainable and enforceable legal right is lacking. 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.
>
> For these reasons the respondent is not entitled to invoke the jurisdiction of the Courts of law in reference either to his complaint that his nomination for selection was improperly withheld from ballot, or that a resolution for his expulsion was adopted without authority or justification under the rules. In these circumstances the question, whether, upon the true meaning of the rules, the central committee acted in accordance with or contrary to them is not one of which the Court takes cognisance.[8]

34 *Cameron v Hogan* was recently applied by Riordan J in *Setka v Carroll* ('*Setka*'),[9] which concerned actions by the National Executive to expel Mr Setka from the ALP pursuant to its 'plenary powers'. As is discussed below, Riordan J rejected the line of authority about justiciability, stemming from *Baldwin v Everingham* ('*Baldwin*'),[10] which is one basis for Ms Kairouz's case. His Honour did not consider that the line of authority provided a proper basis for distinguishing *Cameron v Hogan*, which he was bound to follow.[11] Dowsett J in *Baldwin* placed particular reliance on the registration of political parties under the Electoral Acts.[12]

The Electoral Act 2002 (Vic)

35 It is appropriate next to consider key features of the Victorian system for funding political parties contained in the *Electoral Act 2002* as it was relied on by Ms Kairouz on the justiciability issue.

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7 Ibid 377.
8 Ibid 378.
9 (2019) 58 VR 657.
10 [1993] 1 Qd R 10.
11 (2019) 58 VR 657, 683 [60], 685 [68].
12 [1993] 1 Qd R 10, 18-20.

36 The registration of a political party does not confer incorporation but is necessary to obtain public funding. A registered political party can be an unincorporated association. A political party is defined as an organisation whose object or activity is to promote the election of a member of the party to Parliament.[13] A political party registered under the Act must have a nominated registered officer.[14] Section 211 contains an 'entitlement' to public funding of political and election expenditure. For elections held after 24 November 2018, the entitlement is $6 for every first preference vote given for a candidate for election to the Legislative Assembly, and $3 for each first preference vote given for a candidate for election to the Legislative Council.[15] The entitlements are paid to the registered officer of the political party,[16] who must pay them into the State campaign account and provide an annual return to the Victorian Electoral Commission,[17] provide a statement of expenditure after the election,[18] together with an audit of the statement.[19]

37 Section 206(2) states with reference to Part 12 - Election Expenditure:

> (2) a reference in this Part to things done by or with the authority of a registered political party must, if the registered political party is not a body corporate, be read as a reference to things done by or with the authority of members or officers of the registered political party on behalf of the registered political party.[20]

38 A number of decisions since 1993 have followed *Baldwin*, mainly in pre-selection disputes. One such case was *Coleman v Liberal Party of Australia, New South Wales Division (No 2)* ('*Coleman*').[21] Palmer J summarised the basis on which this line of authority had distinguished *Cameron v Hogan*:

> I think, the reality that certain decisions of a political party's internal process — such as those relating to selection of candidates for election, for example — are in truth not private matters at all; they are very public, particularly when

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13 *Electoral Act 2002* (Vic) ('Electoral Act') s 3.
14 Ibid s 44.
15 Ibid s 211(2A).
16 Ibid s 212.
17 Ibid s 212(4A).
18 Ibid s 208(1).
19 Ibid s 209.
20 See s 207F, ss207GB-207GD, 208 and 209.
21 (2007) 212 FLR 271 (2007) 212 FLR 271 at 281; recently followed in *James v Wilson* [2019] NSWSC 17 (Lindsay J).

> there are disputes between factions. In such circumstances, a political party may regard it as highly expedient in order to quell faction-fighting that the final decision on the Constitutional validity of its internal proceedings be left, not to a domestic tribunal constituted by party members whose impartiality may, however unjustly, be called into question but, rather, to a Court whose impartiality is beyond any question. Perhaps it is this expediency which explains why the decisions distinguishing *Cameron v Hogan* on the ground explained in *Baldwin v Everingham* have never been taken on appeal, so that the High Court has never had occasion to revisit *Cameron v Hogan*.
>
> Judges have called attention to the fact that a modern political party registered under the legislation governing elections is in itself an institution whose internal stability and good governance is important in the democratic process. Accordingly, there is a public interest in ensuring that a registered political party, which is entitled to funding assistance for electoral expenses from public monies, is administered in accordance with a correct construction of its rules.
>
> In my opinion, if the Disputes Panel in the present case has not construed the Constitution correctly, so that Mr Coleman has been wrongfully deprived of consideration as a candidate by a properly constituted Selection Committee, there is a public interest in affording him the right to have that error corrected in this Court by declaration and, if necessary, injunction. If such relief is otherwise available in the present case, I would exercise the Court's discretion to grant it.[22]

39 The Baldwin line of authority about the justiciability of political party disputes has been referred to or considered in decisions of this Court. In *Daley v Newnham*,[23] Hargrave J granted an interlocutory injunction in considering that there was a serious question to be tried about the justiciability of the dispute. He noted the conflicting authorities, but considered that the issue could not be conclusively resolved in 'a busy Practice Court'.[24]

40 *Barker v Australian Labor Party*[25] was a dispute about compliance with the pre-selection rules, but Kennedy J dismissed the proceeding. In obiter, her Honour stated the dispute was justiciable and that she considered that 'the analysis of the single Justices

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22 [47]-[49] (citations omitted).

23 [2005] VSC 303.

24 In *Jackson v Bittar* [2011] VSC 11, Pagone J refused an interlocutory injunction in a Victorian Branch pre-selection dispute and noted that he did not find it necessary to consider 'the interesting arguments about justiciability'. In *Mulholland v Funnell* [2014] VSC 346, I refused an application in the Practice Court to grant an interlocutory injunction restraining the convening of a State Conference of the Democratic Labour Party and challenging the defendant's use of the title Federal President. The issue of justiciabilty was not determined.

25 [2018] VSC 596.

in distinguishing Cameron is correct'.[26] She said that:

> [t]he identification of the endorsed candidate … may be seen as important for the proper working of the Victorian Act [ie the Electoral Act] and thereby designed to effectuate the conduct of State elections. This is similar to the approach taken by Robson J in *Butler*, namely, that the identification of the secretary and the secretary's role in registration was important for the proper working of the Victorian Act.[27]

41 Robson J in *Butler v Mulholland (No 2)* ('*Mulholland (No 2)*'),[28] adopted a somewhat different approach to the justiciability of disputes in political parties. That case concerned a dispute within the Democratic Labour Party ('DLP') about who was the Victorian Branch secretary and who comprised the Executive. His Honour considered that it was in the public interest for the operation of the *Electoral Act* to resolve that dispute.[29]

42 Robson J said that:

> In substance, the relief sought all turns on the question of which faction or members thereof (that is, Mr Butler's faction or Mr Mulholland's faction) constitutes the officers of the Executive of the Victorian State Branch.[30]

43 His Honour held that the dispute was justiciable and distinguished *Cameron v Hogan*. In referring to the Baldwin line of authorities, he stated that they:

> had regard to the importance of political parties in public affairs and (by implication) that the proper administration of these voluntary associations extended beyond the interests of the party members inter se and into the broader public welfare. On that basis, the authorities have distinguished political parties from mere social unincorporated associations, whose affairs are only of concern to its members.[31]
>
> …
>
> The DLP is registered as a political party under the Commonwealth Act, having been registered on 20 July 1984. Under the Victorian Act, the Victorian Electoral Commission must establish and maintain a Register of Political Parties containing a list of the political parties which are registered under the Act. The DLP is a registered political party. …
>
> Under the Victorian Act, a registered political party is entitled to payments by

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26 Ibid [235].
27 Ibid.
28 [2013] VSC 662.
29 Ibid [105]
30 Ibid [72].
31 Ibid [97].

> the State. Under s 208 of the Act, for the purpose of having an entitlement under s 211 (ie a sum for each first preference vote), the registered officer of a registered political party must within a certain time provide information to the Victorian Electoral Commission on the amount spent by the party in a State election.
>
> It can be seen, therefore, that the identity of the secretary and his authority to make an application to the Commission for registration of the political party are important issues for the proper working of the Victorian Act.
>
> In my opinion, the issue of who is the Secretary of the DLP in the Victorian State branch is a justiciable issue. Similarly, the Secretary can only act with the authority given to him under the Constitution of the DLP and in accordance with the instructions of the State Executive. The membership of the State Executive is therefore an important issue, which it is in the public interest to resolve. In my opinion, the determination of the issue of who constitutes the State Executive is also justiciable.[32]

44 In *Setka*, Riordan J referred to Robson J's judgment in *Mulholland* (*No 2)*, apparently without question, stating:

> An example of the Court exercising jurisdiction for the limited purpose of protecting the objects of an electoral Act can be found in *Butler v Mulholland [No 2].* In that case, Robson J found that the issue of who was the secretary of the Democratic Labour Party was justiciable because, under the *Electoral Act 2002* (Vic), an application for registration was required to be signed by the secretary of the political party; and the application determines the identity of the 'registered officer', who had other powers under the *Electoral Act 2002* (Vic). Robson J held that 'the identity of the secretary and his authority to make an application to the Commission for registration of the political party are important issues for the proper working of the Victorian Act'.[33]

45 But as I have set out in [43], in the same part of Robson J's judgment to which Riordan J referred, his Honour also concluded that the identification of the members of the Executive of the Victorian Branch of the DLP, who gave instructions to the Secretary, was a justiciable matter, which it was in the public interest to resolve.[34]

46 Three years later, the Court of Appeal in *Mulholland v Funnell*,[35] which was another of the many cases dealing with disputes in the DLP, referred to Robson J's judgment without disapproval. The dispute that gave rise to that litigation was described in the

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32 [101]-[105].
33 *Setka v Carroll* (2019) 58 VR 657, 680 [50].
34 [2013] VSC 662, [105].
35 [2016] VSCA 290.

first sentence of the joint judgment:

> This application for leave to appeal arises from a fundamental dispute over the composition of the federal and Victorian Branches of the Democratic Labour Party ('DLP').[36]

47 In issue was whether the Federal and State Conferences of the DLP were validly convened and whether the election of office-bearers and resolutions passed at the Conferences were void. The Court of Appeal did not suggest that these issues were not justiciable, but referred to Robson J's judgment in which there was extensive discussion of justiciability. The Court of Appeal refused leave to appeal from the judgment of the trial judge, who had summarily dismissed the proceeding on a number of grounds. They were that Mr Mulholland's claim had no real prospects of success, because neither his pleadings nor his supporting evidence put in issue the fundamental proposition on which his case relied, namely, that the DLP Federal Conference was invalid, because of the outcome of previous litigation and because of his failure to join a contradictor. It might be said that no particular significance should be attached to this judgment as it was an application for leave to appeal from a summary judgment dismissing a proceeding, where one side was not legally represented and the question of justiciability was not raised. But still noteworthy is the nature of the dispute that was before the Court of Appeal and the authorities to which the Court referred, without any suggestion that the dispute was not justiciable.

48 Finally, there is the decision of the Full Court of the Queensland Supreme Court in in *Burton v Murphy* ('*Burton*'),[37] which was heard 11 years before *Baldwin* and involved a challenge to the Federal Executive's intervention in, and suspension of, the operation of the Queensland Branch of the ALP. The Court gave extensive consideration to the rules and dealt with issues relating to Federal Executive's powers. No point about justiciability appears to have been raised at trial or on appeal. The trial judge, Lucas SPJ, said that the defendants had not relied on *Cameron v Hogan* to oust his jurisdiction

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36 Ibid [1].

37 [1983] 2 Qd R 321. In submissions, the parties referred to *Jackson v Bittar* [2011] VSC 11, which referred to *Burton v Murphy*.

and that it had been distinguished many times. In that regard, he referred to his decision in a previous case,[38] stating:

> In that case I distinguished *Cameron v Hogan* on the ground that what was sought was the due administration of the property of a voluntary association according to its rules, and the same considerations apply here, since one of the declarations and one of the injunctions sought by the plaintiffs are directed towards the receipt of receipt of moneys and the entitlement to property of the Interim Administrative Committee. The defendants did not rely on *Cameron v Hogan* to oust my jurisdiction, and I am content to distinguish it on the basis which I have indicated. The rights of the defendants to receive and deal with the money and property of the Queensland body cannot be established unless the resolution of March 1, 1980 is held to be binding upon the Queensland body.[39]

Ms Kairouz's submissions

49 Senior counsel for Ms Kairouz submitted that, at the very least, the question of whether her claims were justiciable was a serious question to be tried. In addition, each of her pleaded claims raised a serious question to be tried.

50 Ms Kairouz submitted that her challenges to the validity of the National Executive's Administration Resolution, including the appointment of the Administrators, raised serious questions to be tried. The National Executive had not formed an opinion that the Victorian Branch was acting contrary to the National Constitution as cl 16(f) required. Instead, it acted '[a]t the behest of the Premier of Victoria'.[40] The Resolution did not refer to any provision in the National Constitution, national platform, or to any decision of the National Conference, which the Victorian Branch was said to have contravened. The National Executive did not have the power to appoint external administrators to a State Branch, but could only take over and direct its affairs.

51 Ms Kairouz submitted that because the Amended Rules were created in furtherance of the National Executive's invalid resolution, the amended branch stacking rules under which she was charged, were invalid. They were not amendments made under the National Executive's power 'to amend the rules of any state branch as required to implement the National Principles of Organisation' under cl 47 of the National

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38 *Rendall-Short v Grier* [1980] Qd R 100, 109.
39 [1983] 2 Qd R 321, 325 (footnote).
40 *Plaintiff's Submissions* [3].

Constitution. The rules violated the national and state ALP objectives and values. They considerably expanded the definition of branch stacking; they added a new rule which gave the Administrators powers to revoke or suspend a member's membership and provided that once the Administrators alleged that a member had engaged in the expanded definition of branch stacking activities, the member is 'presumed to have engaged in the activity … unless the member satisfies the Disputes Tribunal otherwise'.

52 Further, the charges related to conduct and events that occurred before 14 September 2020 the day on which the Amended Rules were made and were not intended to operate retrospectively. In reversing the onus of proof, the rule conflicted with the Disputes Tribunal's duty to provide the person charged with procedural fairness.[41]

53 Ms Kairouz submitted that the balance of convenience favoured the grant of an interlocutory injunction as her position in the ALP may be otherwise compromised and if expelled she would not be able to obtain pre-selection for the 2022 election.

54 Her claims were not foreclosed by *Cameron v Hogan* because of the significant changes in the recognition of political parties in Australian politics. The changes included the 1977 amendments to the *Australian Constitution* providing for the filling of casual Senate vacancies and the enactment of State and Commonwealth Electoral Acts providing for public funding.[42] To obtain funding under the Electoral Acts, the ALP must have its own constitution and a registered authorised officer. It can no longer be treated as just a club or voluntary association. Australian courts have distinguished *Cameron v Hogan* on many occasions when granting injunctions or making declarations in disputes about the operation of political parties. Isaacs J's judgment in *Edgar v Meade,*[43] which dealt with trade unions and registered organisations, supports the significance of the registration of political parties and the justiciability of disputes about their operation.

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41 *ALP 2020 Rules* r 20.10.1.1.

42 See *Australian Constitution* s 15 as amended by the *Constitution Alteration (Senate Casual Vacancies) 1977* (Cth); *Commonwealth Electoral Act 1918* (Cth); *Electoral Act 2002* (Vic).

43 (1916) 23 CLR 29, 43-4.

55 Senior counsel for Ms Kairouz informed the Court that the Victorian Branch will receive approximately $13 million of public funds to contest the 2022 State election. That amount is based on the number of votes it received at the 2018 election. I was similarly informed that ALP members of State Parliament pay 6.2% of their salaries to the Party.

56 If Ms Kairouz has to establish an arguable legal or equitable interest to obtain an interlocutory injunction, then her interest in the ALP's assets and the fact that the Branch Rules constituted a contract were sufficient.[44]

57 The decision in *Setka* should not be followed, or was distinguishable, because it concerned facts quite different from the National Executive's intervention in the Victorian Branch, it did not adequately consider previous decisions, and because a contract existed between members of the ALP.

Defendants' submissions

58 The 12th, 14th and 15th defendants were separately represented, but adopted the other defendants' submissions. My references to the defendants' submissions should be read accordingly.

59 The defendants sought the dismissal of the summons seeking interlocutory relief and not the dismissal of the whole proceeding.

60 The defendants submitted that Ms Kairouz had failed to show a serious question to be tried or prima facie case, as the proceeding itself was not justiciable. She had shown no legal or equitable interest that would entitle her to the grant of a final injunction as required by the principles discussed in *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd.*[45]

61 There was no basis for distinguishing *Cameron v Hogan* and it was for the High Court to make any change to the law established by that decision. The ALP remained an unincorporated association as it has always been, and its significance in public affairs

44 Citing *Petros v Beru* [2007] VSCA 226.
45 (2001) 208 CLR 199.

remains much as it was at the time of *Cameron v Hogan*. No contract existed between members of the ALP.

62 The ALP's voluntary registration under the Electoral Acts did not change its legal character, nor did the amendments to the *Australian Constitution* in 1977. The Commonwealth legislation incorporating trade unions, which Isaacs J considered in *Edgar v Meade,* provided no analogy. Robson J's decision in *Mulholland (No 2)* did not establish any general principle. It dealt with a dispute over office-holders, which had to be resolved so that the statutory scheme for public funding of political parties could operate.

63 Riordan J in *Setka* correctly decided that *Baldwin* and the cases that followed it, usually without much further analysis, were erroneously decided because they did not identify a cause of action or ascertainable or enforceable legal right which gave the plaintiffs a cause of action.[46] If the issue of justiciability went to trial, the Court would be considering again the issues decided in *Setka*.

64 While the defendants' primary submission was that Ms Kairouz's claims were not justiciable, they did not concede that her case raised serious questions to be tried, nor that the Administration Resolution was invalid. They did not agree that the branch stacking rule amendments operated retrospectively.

65 The defendants submitted that if, however, the Court found that Ms Kairouz had established a serious question to be tried, the balance of convenience and the exercise of the Court's discretion did not support the grant of an interlocutory injunction. The charges against Ms Kairouz would be heard and determined by the Disputes Tribunal constituted by a former judge of the State, and it would provide her with procedural fairness. Clause 2 of the National Constitution and r 23 of the Victorian Branch Rules provide for disputes to be resolved in accordance with party rules and not through legal proceedings. The Disputes Tribunal could decide question about the validity of the charges or whether it had jurisdiction to hear them. There was also a mechanism

46 (2019) 58 VR 657, 683 [60].

for an appeal to the National Appeals Tribunal.

66 The charges are before the Disputes Tribunal and Ms Kairouz has been granted an extension of time to respond to them. No order can be made against the defendants as they have nothing left to do. The Disputes Tribunal is not a party to the proceeding.

Analysis

67 I should again stress that I am considering an application for an interlocutory injunction and that the views that I express below are not final opinions or conclusions. They could only be formed after hearing evidence and submissions at the trial.

Justiciability

68 In order to obtain interlocutory relief, Ms Kairouz must establish a serious question to be tried, including as to the justiciability of her claims and that the balance of convenience favours the grant of an interlocutory injunction. To obtain an interlocutory injunction, she must establish some right or interest which, if established, would entitle her to final relief.[47] Injunctions may go in aid of statutory rights.[48]

69 It is appropriate to repeat that *Cameron v Hogan* binds this Court. Nonetheless, many decisions of trial judges, particularly in Queensland, New South Wales and South Australia, have decided that unincorporated political parties have changed in character because of the public funding regime and their registration under the Electoral Acts. Some of those cases have suggested that political parties have become a form of public institution and that disputes arising in them, particularly in respect of their pre-selection of candidates for election, are justiciable in the public interest. However, there are judgments rejecting that basis for distinguishing *Cameron v Hogan* including, Riordan J's considered judgment in *Setka*.

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47 *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* (2001) 208 CLR 199, 241 [91] (Gummow and Hayne JJ).

48 *Fejo v Northern Territory of Australia* (1998) 195 CLR 96, 123 [33] (Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ).

70 I do not consider that Isaacs J's judgment in *Edgar v Meade*, assists the plaintiff. In issue in that case was the effect of the Commonwealth *Conciliation and Arbitration Act 1904* which was supported by s 51(xxxv) of *Australian Constitution* and which provided for the incorporation and regulation of trade unions and industrial associations and the rights of their members. Those rights have been extended to include a right to seek to enforce rules. Justice Higgins described this system as 'the new province of law and order'. Subject to any further argument, it appears to have little relevance to the justiciability of Ms Kairouz's claims.

71 However, the cases contain other approaches to disputes in political parties that are related to, but distinct from, *Baldwin* and which provide some support for Ms Kairouz's case. For instance there is Robson J's judgment in *Mulholland (No 2)* that suggests that a dispute in a political party is justiciable when it concerns the identity of a party officer, such as the secretary or the equivalent, who is the authorised officer responsible under the Electoral Acts for the receipt and accounting for public money. In addition, a dispute may be justiciable when it concerns the identification of the party members who will give the authorised officer instructions, usually the Executive or an Administrative committee. These matters are justiciable because they are associated with, or incidental to, the proper operation of the Electoral Acts and proper accountability for the expenditure of public money provided under them. The statutory regime for the public funding of political parties cannot operate unless disputes about who has authority to control the expenditure of public funding or has authority to give instructions to the authorised officer are justiciable. It is important to note that this approach does not require that the plaintiff's primary claim be related to the operation of the *Electoral Act* or accountability for public funding. The approach of Robson J was that it was sufficient to confer justiciability in a political party dispute when the disputed issues have a connection to the operation of the *Electoral Act*. That will particularly be the case when the issues concern the identity of persons in a political party who play a role required by the Electoral Act to ensure accountability for public funding.

72 Disputes of the kind considered by Robson J differ significantly from those concerning who should be pre-selected or who is entitled to vote in the pre-selection, which were usually the issues raised in the Baldwin line of authority.

73 The Court of Appeal and trial decisions in *Mulholland v Funnell*,[49] provide some support for the conclusion that even apart from considerations concerning the proper operation of the *Electoral Act*, courts may decide disputes about the operation of political parties, including, in that instance, about the composition of the federal and Victorian branches of the DLP. The present case might be argued as raising fundamental issues over the control of and operation of the Victorian branch of the ALP during this period of federal oversight or intervention.

74 Then there is the Queensland Full Court judgment in *Burton* decided more than forty years ago following federal intervention in the Queensland Branch. The trial judge in that case considered that *Cameron v Hogan* could be distinguished on the ground that what was sought was the due administration of the property of a voluntary association according to its rules.

75 While recognizing the binding authority of *Cameron v Hogan*, many subsequent cases, that I have referred to in this judgment, suggest that disputes within political parties may be regarded as justiciable when particular circumstances are present. These circumstances include a fundamental dispute about who governs the party and, if the party is registered under the Electoral Acts, who is the authorised officer and who comprises the committee or other body which is entitled to give instructions to the authorised officer. Where such a fundamental dispute is present, the lack of certainty about the control of, or accountability for, significant public funding provided to the party may also be influential in establishing justiciability.

76 I consider that taking into account the different approaches to justiciability of political party disputes discussed above, that Ms Kairouz's has established a serious question to be tried about whether the issues she raises are justiciable. The dispute, at least in

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49 [2015] VSC 108; [2016] VSCA 290.

part, concerns the identity of those who govern the Victorian Branch of the ALP and, therefore, who can give instructions to the authorised officer, whether the secretary or some other officer. The Victorian Branch of the ALP is to receive millions of dollars of public money for the 2022 State election. But the Administrative Resolution that Ms Kairouz challenges renders all officers subject to direction, initially from the Administrators, and now the Interim Governance Committee. Prior to the Administrative Resolution, the administration of the Victorian Branch of the ALP between State Conferences, appears to have been under the direction of the Administration Committee and/or the Officers' Committee. The Administrative Resolution suspended the operation of those committees until 2023.

Serious questions to be tried on the claims raised by Ms Kairouz

77 So I must next decide whether the issues upon which Ms Kairouz's claim relies raise serious questions to be tried. They are, first, that the National Executive did not form the necessary opinion required to invoke cl 16(b) of the National Constitution and make the Administration Resolution to oversight or intervene in the Victorian Branch, suspend all its elected committees and appoint Administrators who were not officials. Secondly, that the National Constitution did not authorise the National Executive to amend the rules proscribing branch stacking and to give the Amended Rules retrospective effect or revere the onus of proof.

78 I consider that Ms Kairouz's arguments about the construction of the rules and the validity of the Administrative Resolution raise serious questions to be tried. It is arguable that the terms of that Administrative Resolution do not validly invoke cl 16(f)(ii) and exceeded that power in the appointment of Administrators. If the Resolution is defective it may make the oversight or intervention unlawful.[50] If the appointment of the Administrators was invalid, the adoption of the Temporary Rules on 14 September 2020 'to confirm the Administrators powers' may also be invalid.

79 If the rules are construed to have a retrospective effect, it may be that they were made

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50 *Burton v Murphy* [1983] 2 Qd R 321 at 332 (D.M. Campbell J).

beyond power. There is authority, *Clarke v Australian Labor Party*,[51] that retrospective rule amendments that prejudice the interests of members are beyond power. The presumption of branch stacking and the reversal of the onus of proof also raise issues of validity. Usually, a provision reversing the onus of proof is not a procedural change and therefore cannot be construed to have retrospective effect, in the absence of an express statement.[52] Then there is the consideration that the rules under which Ms Kairouz was charged were 'Temporary Rules applicable during the period of the Administration' (r 26).

80 There is some overlap between justiciability issues and the rights that Ms Kairouz may rely on to support her claim to an injunction or for a declaration. I consider that her challenge to the Administration Resolution, the appointment of the Administrators, the Branch Rule amendments made by the National Executive and the validity of the charges raise serious questions to be tried. Her right to challenge those matters is arguably both a legal and a public or public interest right, the latter being the right referred to in the cases I have previously mentioned such as *Mulholland (No 2)* and *Coleman*.[53] The rule amendments which she seeks to challenge may directly affect her legal right not to face invalid charges of a serious character. There is also a serious question to be tried as to whether she can assert a public interest in challenging the Administration Resolution in order to establish who is entitled to govern the Victorian Branch.

Balance of convenience

81 The next issue concerns the balance of convenience. The defendants contend that Ms Kairouz should first have her charges determined by the Disputes Tribunal before approaching the Court for any relief. I consider that the balance of convenience favours the grant of an interlocutory injunction to enable all legal arguments to be resolved before any Disputes Tribunal hearing occurs. Otherwise, as things stand, it is probable that the charges against Ms Kairouz will be heard and determined before

51 (1999) 74 SASR 109.
52 D Pearce, *Statutory Interpretation in Austrlia* (LexisNexis Butterworths 9th ed 2019) 382.
53 (2007) 212 FLR 271.

the Court ruling, and she will have to decide how to attempt to prove that she did not engage in branch stacking. The defendants argue that Ms Kairouz could have the Disputes Tribunal decide whether the reversal of the onus of proof and possible retrospectivity made the rules invalid. While I accept that the Disputes Tribunal can determine its own jurisdiction conferred by the Branch Rules,[54] it is by no means certain that it could hear and determine an argument that the rules under which the charges were brought were invalid. As Ms Kairouz contended, the Tribunal may be required to apply rules whose validity is being challenged and which presume guilt.

82 I note that in *Daley v Newnham*,[55] Hargrave J granted an interlocutory injunction and did not consider that the plaintiff needed to exhaust internal appeal rights provided by the rules, in that case the National Constitution, before obtaining relief. [56]

83 In my opinion, it is preferable that the issues raised by Ms Kairouz should be decided by the Court before any charges are heard.

Conclusion

84 I consider that the appropriate parties to be bound by an interlocutory injunction are the members of the Interim Governance Committee, the 22nd to 26th defendants, who appear now to have carriage of the charges, having replaced the Administrators. Subject to Ms Kairouz giving the usual undertaking as to damages, I will order that the 22nd, 23rd, 24th, 25th and 26th defendants by themselves or by their servants or agents, be restrained and prohibited from proceeding with or pursuing the charges against Ms Kairouz dated 31 January 2021 before the Disputes Tribunal until the hearing and determination of this proceeding, or further order. I will reserve liberty to apply in case any modification of the interlocutory injunction is required. The members of the Disputes Tribunal are not parties to this proceeding, but the intention of the interlocutory order is that, subject to any further order, the Disputes Tribunal will not hear and determine the charges before the completion of this proceeding.

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54 See eg *Re Adams and the Tax Agents Board* (1976) 12 ALR 239 (Brennan J) and *McKechnie v VCAT* [2020] VSC 454 [158] (Cavanough J).

55 [2005] VSC 303.

56 Ibid [28]-[30].

85 I will hear the parties about the directions necessary for the further conduct of this proceeding.

SCHEDULE OF PARTIES

S ECI 2021 00247

MARLENE KAIROUZ ..... Plaintiff

v

THE HONOURABLE STEVE BRACKS ..... First Defendant

THE HONOURABLE JENNY MACKLIN ..... Second Defendant

THE HONOURABLE ANTHONY ALBANESE ..... Third Defendant

TIM AYRES ..... Fourth Defendant

STEVEN BAKER ..... Fifth Defendant

NICK CHAMPION ..... Sixth Defendant

KATE DOUST ..... Seventh Defendant

GERARD DWYER ..... Eighth Defendant

DAVID GRAY ..... Ninth Defendant

ROSE JACKSON ..... Tenth Defendant

TIM JACOBSON ..... Eleventh Defendant

GRAEME KELLY ..... Twelfth Defendant

SUE LINES ..... Thirteenth Defendant

TARA MORIARTY ..... Fourteenth Defendant

BOB NANVA ..... Fifteenth Defendant

MICHAEL O'CONNOR ..... Sixteenth Defendant

MICHAEL RAVBAR ..... Seventeenth Defendant

AMANDA RISHWORTH ..... Eighteenth Defendant

WENDY STREETS ..... Nineteenth Defendant

SHANNON THRELFALL-CLARKE ..... Twentieth Defendant

RAFF CICCONE ..... Twenty-first Defendant

SUSIE BYERS ..... Twenty-second Defendant

LINDA WHITE ..... Twenty-third Defendant

BEN DAVIS ..... Twenty-fourth Defendant

MICHAEL DONOVAN ..... Twenty-fifth Defendant

LLOYD WILLIAMS ..... Twenty-sixth Defendant

CERTIFICATE

I certify that this and the 30 preceding pages are a true copy of the reasons for judgment of the Honourable Justice Ginnane of the Supreme Court of Victoria delivered on 19 March 2021.

DATED this nineteenth day of March 2021.

Associate