Neutral Citation No. [2015] NICA 7 | *Ref:* **WEI9529**

Judgment: approved by the Court for handing down | *Delivered:* **11/02/2015**
(subject to editorial corrections)

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (COMMERCIAL)

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BRIAN HOOD AND STEWART HOOD

(Plaintiffs) Appellants;

-v-

JOHN DUNLOP
AS THE PROVINCIAL GRAND MASTER OF THE PROVINCIAL GRAND LODGE OF FREE AND ACCEPTED MASONS OF ANTRIM

-and-

BARRY LYONS
AS THE GRAND SECRETARY OF THE GRAND LODGE OF FREE AND ACCEPTED MASONS OF IRELAND

(Defendants) Respondents.

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Before: Morgan LCJ, Weir J and O'Hara J

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WEIR J (delivering the judgment of the court)

Introduction

[1] This is an appeal from the judgment of Weatherup J by which he rejected the appellant's claims for a declaration that the respondents were in breach of contract in suspending the appellants from membership of the Masonic Order and for damages and repayment of their 2009 membership fees. Mr Orr QC and Mr Girvan appeared for the appellants and Mr Good QC with Mr Henry appeared for the respondents. The court is indebted to them for their well-focused arguments.

[2] The genesis of the dispute between the parties lay in a disagreement that arose between the appellants, who are father and son, on the one hand and who were at all material times members of the Masonic Order and thus subject to the Laws and Regulations ("the Laws") of the Grand Lodge of Free and Accepted Masons of Ireland ("the GLI") and on the other hand certain senior officers of the Provincial Grand Lodge of Antrim ("the PGL") to whose jurisdiction the appellants and the Lodge in Templepatrick of which at all material times they were members were also subject.

[3] It is not necessary or relevant for present purposes to discuss in any detail the nature of the disagreement but it undoubtedly became quite fierce and involved, inter alia, the forthright and repeated oral and written expression of and circulation among other Masons of opinions by the appellants critical of PGL senior officers. What happened ultimately appears from the following paragraphs of Weatherup J's judgment:

> "[9] In the present case charges involving expulsion and suspension arose when charges of unmasonic conduct were laid against the plaintiffs.
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> [10] On 30 March 2009 charges were preferred in pursuance of Law 35 against the plaintiffs. They were stated to be that in correspondence during the recent past the plaintiffs had made remarks of a discourteous and disparaging and offensive nature against the Provincial Grand Master of Antrim and senior officers of the Provincial Grand Lodge of Antrim unbecoming of a Freemason and further had circulated correspondence to brethren to be used in Lodges criticising the decisions of the Provincial Grand Lodge Board of General Purposes of Antrim. The charges were preferred against both plaintiffs and were signed by seven Provincial officials, being the Deputy Grand Master, three Assistant Grand Masters, the Grand Treasurer, the Grand Registrar and the Assistant Grand Secretary, all of Antrim Province."

[4] The Laws relevant to this dispute are 16, 35 and 67 extracts from the provisions of which (so far as material to this dispute) are as follows:

> **Law 16** provides that all differences amongst lodges or Brethren which cannot be adjusted by a Provincial Board of General Purposes or the Provincial Grand Lodge, the Board of General Purposes of the

Metropolitan District, or otherwise, shall be decided by the Grand Lodge. Any Brother aggrieved by such decision may at any time within six months apply to the Grand Lodge.

Law 35 provides that if a charge involving suspension or expulsion is brought against any Brother either by a Lodge or a Brother or by the Supreme Grand Royal Arch Chapter of Ireland such charge shall be in writing and shall, if the Brother charged belongs to, or has belonged to a Lodge meeting within the Metropolitan District or elsewhere than in a Masonic Province, be referred directly to the Grand Lodge Board of General Purposes; and if the Brother belongs or has belonged to a Lodge meeting in a Masonic Province, then directly to the Board of General Purposes of such Province.

Such charge shall be sent to the Grand Secretary or the Provincial Grand Secretary, as the case may be, and shall as soon as practicable be brought before the Board of General Purposes of the Metropolitan District or of the Province and at the same time a copy of the charge shall be forwarded to the Grand Secretary's Office.

If on consideration of the charge the Board of General Purposes of the Metropolitan District or of the Province find a prima facie case they shall serve on the Brother charged a summons to appear before the Board of General Purposes of the Metropolitan District or the Province, as the case may be, or any Committee thereof to answer the charge.

The Metropolitan District or Provincial Board of General Purposes or any Committee appointed shall hear and investigate the charge and shall report to the Grand Lodge Board of General Purposes on whether the charge has been proved, what if any penalty should be inflicted by Grand Lodge and any facts and circumstances which in their opinion it is necessary or desirable to bring forward.

The report shall be considered by Grand Lodge Board of General Purposes under Law 67 and thereafter submitted to Grand Lodge, which shall punish,

> reprimand or acquit the Brother charged as they think fit.
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> *The Grand Master or his Deputy or his Assistant may, if he thinks fit, in the case of any Brother charged with an offence involving expulsion or suspension, prohibit temporarily such a Brother from attendance at his own or any other Lodge under the Irish Constitution pending investigation of the charge (emphasis supplied).*
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> Any Brother aggrieved by any such decision of the Grand Lodge may at any time within six months apply to the Grand Lodge for a rehearing of the case as provided by Law 16.
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> **Law 67** provides that the duties of the Grand Lodge Board are to investigate all subjects of Masonic complaint or irregularity which may have been sent forward by Provincial Grand Lodges or the Board of General Purposes of the Metropolitan District, to examine all applications, memorials and petitions to the Grand Lodge and decide thereon and in cases involving the suspension or expulsion of a Brother to report thereon to the Grand Lodge for its decision."

[5] As noted above, by notices dated 30 March 2009 to the Provincial Grand Secretary and signed by the following officials of the Province of Antrim namely, the Provincial Grand Master, two Provincial Assistant Grand Masters, the Provincial Grand Registrar, the Provincial Grand Treasurer and the Provincial Assistant Grand Secretary, charges of unmasonic conduct were laid by those signatories against the appellants. These were copied on 31 March by PGL to the second respondent at GLI. On the same date the members of the PGL Standing Committee were summoned to a meeting to be held on 7 April to consider the charges of unmasonic conduct against the appellants. We note here as it will later become relevant that on 6 April the appellants were temporarily prohibited by the Deputy Grand Master of GLI from attendance at their own or any other Lodge under the Irish Constitution pending investigation of the charges against them. We shall return hereafter to this discrete aspect.

[6] On 7 April the Standing Committee of PGL met as arranged. A majority of those present were, naturally, the same senior officers of PGL who had signed the complaints against the appellants. The following was recorded in the minutes of that meeting:

> "It was agreed that there was a case to answer but it was proposed by [one of the complainants], seconded

> and passed unanimously that in consideration of the demands of Natural Justice this Standing Committee could take no further action and therefore the matter must be passed to GLI for further action."

[7] Thereafter, apart from referring on 8 April the complaints to GLI under Law 16, which provides for GLI to decide all differences amongst Lodges or Brethren which cannot be adjusted at Provincial level, the PGL took no further action in relation to them.

[8] The appellants then on 30 April countered with their own complaints of unmasonic conduct against the PGL officers who had laid the complaints against them. The appellants' complaints were made directly to GLI rather than PGL, Mr Stewart Hood observing in his letter "… I do not consider that they can be dealt with within the Province of Antrim …." Interestingly, he also asked in that letter that the Brethren against whom he had complained "be prohibited temporarily as provided for in Law 35", a seeming acknowledgment at that stage that the power of temporary prohibition in Law 35 italicised above was available to GLI exercising its Law 16 jurisdiction.

[9] No temporary prohibition appears to have issued from GLI against those PGL members and on 30 April the appellants sought to have the temporary prohibition which had been imposed upon them on 6 April by GLI removed. On 5 May Mr Brian Hood and on 11 May Mr Stewart Hood wrote again to GLI "appealing" the temporary prohibitions imposed upon them and it appears that the prohibitions were indeed rescinded on 8 May.

[10] Thereafter the entirety of the process for dealing with the complaints against the appellants was dealt with by GLI and its Committees. The course of events was fully described by Weatherup J as follows:

> "[17] A Grand Lodge sub-committee met on 26 June 2009 to consider both the charges of unmasonic conduct against the plaintiffs and the charges of unmasonic conduct made by the plaintiffs against the Provincial officials. The meeting was adjourned into July 2009. The minutes record that one of those present questioned the sub-committee's function in the light of threatened legal action from the plaintiffs' solicitors and asked whether the sub-committee should hold itself in abeyance while legal action was pending. The Grand Registrar believed this to be a valid point. The Chairman concurred. The matter was put back to 15 July when the meeting of the sub-committee reconvened. It was then noted in the minutes that the Chairman believed that the sub-

committee should wait until the Grand Secretary had heard from the solicitors involved before it proceeded to the hearing. Thus the involvement of solicitors and the threat of legal proceedings led to deferred consideration of both sets of charges by the sub-committee. There then followed over the summer of 2009 exchanges between the plaintiffs and the Grand Lodge in relation to the charges. The Writ of Summons in this action was issued in September 2009.

[18] On 27 October 2009, the Grand Lodge sub-committee issued a summons to the plaintiffs to attend a hearing of the charges on 7 November 2009. It was stated that the sub-committee would proceed to hear and investigate the charges and report thereon pursuant to Law 35. The hearing proceeded and the sub-committee prepared a report dated 1 December 2009. The sub-committee found the plaintiffs had engaged in unmasonic conduct and made recommendations for the suspension of the plaintiffs. The report was sent to the Board of General Purposes and on 3 December 2009 the Board accepted the report and recommended it to Grand Lodge.

[19] The matter came to the Grand Lodge on 28 December 2009. The Grand Lodge decided that the second plaintiff should be suspended for 18 months and the first plaintiff should be suspended for 15 months. Other findings were made in respect of other matters. Official notice of the determinations was forwarded to the plaintiffs on 7 January 2010.

[20] An appeal was lodged by the plaintiffs in pursuance of Law 16. The appeal did not come on for rehearing until 2013. In May 2013 the sub-committee submitted a further report under Law 35 that the charges of unmasonic conduct had been established against the plaintiffs. On this occasion the proposal was that the plaintiffs be suspended during the pleasure of Grand Lodge. That report was forwarded to the Grand Lodge Board of General Purposes on 29 May 2013. The Board adopted the sub-committee report and forwarded the same to Grand Lodge. Grand Lodge received the report on 5 October 2013 and the recommendations were accepted. Hence, the

> plaintiffs were suspended during the pleasure of Grand Lodge."

The nature and extent of the appeal to this court

[11] The appellants were naturally disappointed at the outcome of the disciplinary process which they had not sought to injunct and in which rather they had participated without objection. They therefore then revived their pursuit of the present proceedings which had, effectively, been waiting in the wings. A number of complaints about the procedures which had been followed in the process were then pursued before Weatherup J, all of which he rejected. For the purposes of this appeal the complaints were narrowed to the following two:

(1) That GLI claimed that it acted under Law 35 whereas those provisions self-evidently (apart perhaps from the words in it italicised above) refer, where a Brother belongs to a Lodge meeting in a Masonic Province, to proceedings before the Board of General Purposes of such Province and not to proceedings before GLI. The GLI was therefore in error in purporting to apply the procedures set out in Law 35 to this disciplinary process under Law 16 and also, in any event, in failing to comply with the exact terms of Law 35.

(2) The appellants' suspension was unlawful and should be declared to have been so because Law 35, where the power to prohibit temporarily is found, refers only to disciplinary matters being dealt with by the Province and not those being dealt with by GLI under Law 16 as was the case here so that GLI had no power of temporary prohibition such as was purportedly exercised against the appellants in the period between 6 April 2009 and 8 May 2009 when it was rescinded.

The legal position on the suspension of members from clubs

[12] This was succinctly set out by Weatherup J in the following paragraph of his judgment which before this court both parties continued to agree correctly represents the position:

> "[21] It was agreed by Counsel for the parties that the legal position between the plaintiffs and the defendants reflected that applying to the suspension by an unincorporated club of one of its members. The law in relation to suspension from clubs I summarise as follows:
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> (i) First of all, the members of the club are governed by a contract between the members, which may be expressed or implied. The terms

of the contract are to be found in the rules of the club. The members cannot take action that is not provided for under the rules. Thus, a club governed by rules prescribing the amount of the annual subscription but not containing any provision for the amendment or alteration thereof cannot by a resolution passed by a majority of the members present at the general meeting raise the amount of the subscription so as to bind existing members and the Court will interfere by injunction to restrain the expulsion of a dissident member for refusing to pay the increased subscription - Harrington and Sandals [1903] 1 Ch 921.

(ii) Secondly, there is no inherent power to expel a member of a club but a member may be expelled if the rules so provide and the power of expulsion is exercised in conformity with the rules. Thus, where a member was expelled from a club for disorderly conduct but the process was not undertaken in accordance with the rules the Court intervened - Murphy v Synnott [1925] NI 14.

(iii) Thirdly, the Court will not interfere against the decision of the members of a club professing to act under its rules unless it can be shown either that the rules are contrary to natural justice or that what has been done is contrary to the rules or that there has been mala fides in arriving at the decision. Thus, where the rules of the club provided that the committee could recommend that a member should resign for conduct injurious to the character and interests of the club and if he refused to resign a general meeting could expel the member, the Court refused to intervene when an expulsion was in accordance with the rules and not in breach of natural justice or mala fides - Dawkins v Antrobus [1879] Ch 615.

(iv) Fourthly, a power of expulsion from a club is of a quasi-judicial nature and must be exercised so as to adhere to the rules of natural justice. Thus, where a member was convicted

> of an offence warranting expulsion but he had not been given notice of the intention to proceed against him and afforded an opportunity to be heard the Court intervened - Fisher and Keane [1878] Ch 353."

Weatherup J distilled two themes from the applicable legal position which, again, are not the subject of complaint by either party on this appeal. They are:

(1) That a Court will restrain expulsion or suspension of a member of a club if the rules of the club are not observed in relation to such expulsion or suspension.

(2) A Court will require any power granted by the rules to expel or suspend a member to be exercised in accordance with natural justice or, as it might now be described, procedural fairness, which includes a fair hearing and the absence of any actual or perceived bias by the decision-makers.

Consideration

[13] As to the applicability of Law 35, it is clear that its provisions (apart arguably from the power of temporary prohibition italicised above) did not automatically apply to decisions of GLI proceeding under Law 16. Indeed, neither in Law 16 itself nor, with one exception, elsewhere in the laws are procedures provided by which GLI is to deal with differences that are referred to it. That exception is contained in Law 35 where it is provided that if the Brother charged *belongs to a Lodge meeting within the Metropolitan District or elsewhere than in a Masonic Province* (which is plainly not the present case) then the charge shall be referred directly to the Grand Lodge Board of General Purposes and the procedures of Law 35 apply as they would to a charge being considered at Provincial level under Law 35. That leaves a third type of case such as the present where the person against whom the charge is laid *is* a member of a Masonic Province but that charge requires to be decided by GLI in the circumstances set out in Law 16. That the present charges did require to be dealt with outside the Province by GLI was recognised both by the complainants as Senior Officers of the Province and also by the appellants when they in turn came to complain against those officers. As Weatherup J put it at paragraph [23]:

> "It is apparent in the present case that literal compliance with Law 35 would have resulted in an investigation of the charges against the plaintiffs by members of the Province of Antrim. Had such a procedure been applied in the circumstances it would have created a tension between the two themes referred to above, namely the provision in Law 35 for an investigation in the Province of Antrim and the

> requirements of procedural fairness that actual or perceived bias by the decision makers be avoided."

In fact GLI did apply as nearly as possible the procedure from Law 35 to the instant complaint. Whether it did so because it erroneously believed that the procedure in Law 35 applied under the Laws to these complaints or because, there being no procedure prescribed under Law 16, the Law 35 procedure was, as one of the respondents suggested in evidence, used as a "template" is immaterial provided that the procedures actually employed were not contrary to the Rules, procedurally unfair or exercised mala fides.

[16] We are satisfied as was Weatherup J that the procedures actually employed were not contrary to the Rules as the Rules prescribed no process for a Law 16 investigation, that the procedures employed based upon Law 35 were not procedurally unfair and were participated and acquiesced in by the appellants until such time as the matter had been decided against them by GLI. No question of mala fides was pursued on the hearing of this appeal. We therefore reject the first ground of appeal.

[17] The second ground of appeal pursued before us involved a submission on the part of the appellants that the power of temporary prohibition vested in the Grand Master or his Deputy or his Assistant (italicised above) applies only to proceedings to which Law 35 is made directly applicable and accordingly that in a Law 16 case such as the present there was no power to temporarily prohibit the appellants. We do not accept that submission. The power is vested solely in officers of GLI and not in any Provincial official and applies to "the case of any Brother charged with an offence involving expulsion or suspension" which it is agreed the present charges plainly did. Therefore, while the italicised paragraph might have been more helpfully located elsewhere in the Laws, we are satisfied that the power is not confined by its terms to a case to which Law 35 is directly applicable.

[18] Whether the absence of any express right of appeal against such a temporary prohibition or its duration is procedurally unfair is perhaps a question that might fall to be considered in different circumstances. However, in this particular case, after the temporary prohibition had been imposed the appellants first protested against it to GLI and then wrote to appeal against it, whereupon it was promptly rescinded. In those circumstances the appellants were in fact promptly accorded the remedy that they sought so that in this case no breach of contract in fact flowed from the absence of an express right of appeal. Accordingly this ground of appeal is also rejected.