CITATION:	*Gibson v Mindil Beach Sunset Markets Association Inc* [2010] NTMC 040
PARTIES:	WENDY GIBSON v MINDIL BEACH SUNSET MARKETS ASSOCIATION INC
TITLE OF COURT:	Local Court
JURISDICTION:	Local Court
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JUDGMENT OF:	R J Wallace SM

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CORPORATIONS – *Associations Act* (NT) s 109 – "oppression"

REPRESENTATION:

Counsel:

Applicant:	In Person
Respondent:	Mr G Clift

Solicitors:

Applicant:	-
Respondent:	De Silva Hebron

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IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20708853

BETWEEN:

WENDY GIBSON
Applicant

AND:

MINDIL BEACH SUNSET MARKETS ASSOCIATION
Respondent

REASONS FOR JUDGMENT

(Delivered 29 June 2010)

Mr R J Wallace SM:

INTRODUCTION

1. The first and abiding difficulty in this matter is to pin down what it is about. It commenced by Originating Application, handwritten, filed by the applicant ("Ms Gibson") on 26 March 2007. The relief sought was:

> "1. the applicant be reinstated as a member of the defendant Association pursuant to s 109(2)(h) of the *Association Act*;
>
> 2. such further orders as the Court sees fit".

2. Simple enough, one would think, even allowing for there being no pleadings as such in matters commenced by Originating Application.

3. A complication, for me at least, pre-existed Ms Gibson's matter. On 3 October 2006 two other women, a Ms Braddy and a Ms Woodward commenced an action against the Mindil Beach Sunset Markets Association Inc ("MBSMA"), seeking various reliefs, including reinstatement. Ms

Braddy and Ms Woodward had been expelled from MBSMA at the same time and by the same process as Ms Gibson. Their proceedings in this Court came before Mr Loadman SM, who struck them out. Olsson AJ put the proceedings back on foot after an involved appeal cum judicial review process and eventually they came to be managed by me, at times alongside Ms Gibson's action. Eventually I made interlocutory orders in the Braddy and Woodward case, dismissing parts of their application and staying the rest. Should any reader of these Reasons wish to know any more of the Braddy and Woodward matters, I refer him or her to the decision of Thomas J of 29 April 2009 in the matter of *Lucinda Woodward and Vicki Braddy v Mindil Beach Sunset Markets Association* (SCC No LA7 of 2008) - her Honour's reasons for dismissing the appeal from my interlocutory orders.

4. Ms Gibson's case has always been different and separate from that of Ms Braddy and Ms Woodward and was treated accordingly, by counsel for MBSMA (Mr De Silva) and, I hope, by me, even when the three applicant women were appearing before me at the same time at some interlocutory stages. As far as I can tell, the allegations that led to Ms Braddy's and Ms Woodward's expulsion from MBSMA are irrelevant to my consideration of Ms Gibson's case – in any event, I cannot now remember any of them – but, in Ms Gibson's case, a potential for confusion remained, in that some witnesses seem sometimes to have regarded the three woman as a single entity. This left me at times unsure whether various allegations involved Ms Gibson as principal, or as some sort of presumed accessory. Ultimately that has turned out to be a very minor concern.

5. However closely Ms Gibson may have worked with Ms Braddy and Ms Woodward before and at the time of their expulsion, there can be no doubt that she shared, to a substantial degree, a desire that the litigation lead to a wide ranging inquiry into the affairs of MBSMA. The reader of Thomas J's judgment supra will be apprised of Ms Braddy's and Ms Woodward's wishes to that end. In Ms Gibson's case, her wish to the same end frequently

became evident in the course of the hearing. It was not clear to me that in so indulging her wishes, Ms Gibson was consciously abusing the process of the Court - sometimes it was my clear impression that she was, in pursuing any rabbit that showed its nose above ground - or doing nothing more reprehensible than allowing ordinary human curiosity to distract her from focussing on the matters fairly and squarely in issue in the proceedings. One is accustomed to having unrepresented litigants do that – and Ms Gibson was unrepresented – but in her particular instance this curiosity was allied to her at least subconscious desire to inquire as widely as possible, in proceedings unconstrained by the parameters that pleadings ordinarily provide. Mr Clift, who appeared for MBSMA made heroic efforts at the start of the hearing to define the issues and frequent necessary efforts during the course of the hearing to limit the proceedings to matters conceivably relevant to those defined issues. It was certainly not his fault that the point of the proceedings was so often indistinct.

BACKGROUND

6. The Mindil Beach Markets are a well established feature of life in Darwin. Thursday evening markets began in the late 1980s. They immediately succeeded in attracting large crowds and they have continued to do so. Sunday evening markets were added a few years later and have come to be equally successful. I do not know, and it does not matter, how the markets were organised in their early days, but at all times relevant to these proceedings there has been an Association of which the market's stallholders have been members. The Association has had a Committee and, the markets amounting to a considerable business, there have been employed staff from a Manager down to run the day to day affairs of the markets. I infer that the Association – MBSMA – was incorporated at some stage under the old *Associations Incorporated Act*, which was repealed when the current *Associations Act* came into force on, I think, 2004.

7. Ms Gibson was a stallholder at the market and therefore a member of MBSMA. For a time she was a member of the Committee of MBSMA, holding the position of Treasurer. She was no longer in that position or on the Committee when, in 2006, she was expelled from the MBSMA.

8. MBSMA has had a series of Constitutions. For the purposes of this action, the Constitutions which matter are those of 2003 and 2006. The latter draws largely on the provisions of a model Constitution provided when the *Associations Act* ("The Act") was passed. The change from the 2003 to the 2006 Constitution is relevant to these proceedings in various ways, but the most significant of these ways is not so much the change of content, as the timing of the change. At the time the MBSMA began to move towards the expulsion of Ms Gibson (and Ms Braddy and Ms Woodward), the 2003 Constitution was in force and its procedures were, naturally, used.

9. By the time the expulsions were completed, the 2006 Constitution had been adopted. MBSMA took legal advice as to which procedure to follow in pursuing the expulsions and was advised to continue (after the 2006 Constitution had been adopted) with the 2003 Constitution's procedure, which of course, had dictated the first few steps of the processes towards expulsion when they began.

10. There is a good likelihood that this advice was wrong and that the expulsions were for that reason ineffective. In Ms Gibson's case, there is further reason to doubt whether she had been given effective notice of the processes and by that reason, her expulsion may have been ineffective. There were other arguable deficiencies in procedure giving further reasons – weaker, but not entirely fanciful – to doubt the legal efficacy of the expulsions. There were very strong reasons to doubt that she had been given natural justice.

11. I make no findings as to any of these matters (nor did Thomas J, who adverted to some of these issues in the Braddy and Woodward case), but it

was hardly surprising that in the light of these doubts, MBSMA reconsidered its position, and, by letter dated 13 March 2008, MBSMA's solicitors, De Silva Hebron, advised that MBSMA had "made the decision, on a commercial basis, to withdraw the notice cancelling your membership dated 27 September 2006" and went on to say that, "the effect of our client's decision is that you remain a member of the Association and the basis for the Court proceedings no longer exists". The letter went on with proposal to settle and terminate the proceedings. Ms Gibson did not, ultimately take up that proposal.

12. She did, somewhat later, return to trade at the markets, despite having her doubts about the efficacy and constitutionality of that decision. Her return has not been without incident, but it does appear that, constitutional or not, the decision has been effectual and there can be no reasonable doubt that Ms Gibson is now once again a member of MBSMA.

13. Until the sending of that letter the matter had been ambling through the pre-trial stages, with occasional mentions before the Judicial Registrar. It appears that on 5 February 2008 Ms Gibson was speaking of making amendments to her Originating Notice – she was ordered to provide a draft by 10 March. No doubt that prospect played a part in the appearance of the letter of 13 March.

14. Ms Gibson had not met the 10 March deadline and on 17 March was ordered to file and serve an application to amend the Originating Notice within 14 days.

15. Not within 14 days, but on 7 April Ms Gibson filed, and I presume served, not an Application to Amend, but an Amended Originating Application. This document was filed without the leave required by Rule 5.15 of the Local Court Rules. Nor has leave since been sought or granted in respect of it. Accordingly, its status in these proceedings would be problematical, if anything turned on it. In practice, nothing does.

16. The reliefs sought in it were:

(a) Reinstatement (already sought);

(b) An order regulating the future conduct of the Association's affairs;

(c) Damages (which is not among the remedies provided for in the Act);

(d) Costs;

(e) Such orders as the Court sees fit.

17. Ms Gibson's next application, filed 1 May 2008 for leave to amend her originating process entirely swallowed up those sought in the 7 April document. The easiest thing to do with that document is to treat it as a nullity.

18. By 1 May, MBSMA had filed an interlocutory application with a view to having Ms Gibson's action dismissed or stayed. [Simultaneous applications against Ms Braddy and Ms Woodward ended in my decisions, appealed unsuccessfully to the Supreme Court]. The application to dismiss or stay in respect of Ms Gibson's case failed on consideration of the reliefs she was seeking, namely those of her application of 1 May added to the relief of reinstatement, sought right from the start and still, as at 1 May, not certainly effected by the letter of 17 April. The new reliefs sought were:

1. An order regulating the future conduct of the association's affairs.

2. The respondent pay the applicants costs.

3. An order authorising the applicant access to the records and books of MBSMA from 2005 to April 2008.

4. An order authorising Wendy Gibson of MBSMA to institute proceedings in the name and behalf of Mindil Beach Sunset Markets Association for the recovery of legal costs and damages from MBSMA Committee and consultants.

5. Such further or other orders as this Honourable Court deems fit.

19. As far as No 3 is concerned, that appeared, and still appears, to be a further attempt by Ms Gibson (also further to divers attempts by Ms Woodward and Ms Braddy) to gain general access to all the records of MBSMA with a view to furthering their desire for a general inquiry into its affairs. It is evidently the case that Ms Gibson has gained access to quite a few records before and during the hearing before me and I have no reason to believe, on her evidence or any other evidence, that she has been denied legitimate access to any documents or records relevant to any other relief sought. Similarly, it is certain that she has, as a member of MBSMA, had access to the records to which members are rightly entitled under the several constitutions and by virtue of the Act. I cannot think of any continuing purpose served by any grant of leave in terms of No 3, that would not be an abuse of process, and, so far as that head of proposed relief is concerned, leave to amend is refused.

20. So far as No 4 is concerned, I did not hear any evidence or submission from Ms Gibson that conveyed any notion of why she sought this relief or what she would do if empowered by being granted it. I can only conclude that Ms Gibson, when drawing up her Application of 21 May 2008, threw in this reflection of s 109(2)(c) of the Act on the off chance that it might somehow come into play in her action. Whether or not my conclusion is correct, s 109(2)(c) speaks of "specified proceedings" and ultimately, Ms Gibson has failed sufficiently to specify the proceedings that she might have in mind (although it is true that she was induced to specify the names, more or less, of one "Consultant", Mr Tormey, and some others). It seemed likely from the outset and it has proved to be the case, that leave must be refused in relation to the amendment sought at No 4.

21. So far as No 1 is concerned, I ordered Ms Gibson on 18 August 2008 to file and serve by 10 September particulars of the, to me, alarmingly vague –

orders she sought "regulating the future conduct of the Association's affairs".

22. Ms Gibson did file and serve an affidavit containing particulars of a sort – not, it is true, by 10 September, but on 25 September, consistent with an extension of time granted. The body of the affidavit reads:

> Future Conduct of the Affairs of the Association.
>
> 1. The interpretation and application of the Constitution Power conferred on the Committee of MBSMA has not been consistently applied.
>
> Re Constitutional Change
>
> Background
>
> - Since about 2003 MBSMA Membership were advised of the requirement to update the Constitution in line with the Association Act.
>
> - Various attempts had been made to review the 2003 MBSMA Constitution.
>
> - In April 2006 when Business Affairs reviewed the election process we were advised that the MBSMA Constitution would need to be revised prior to new elections for MBSMA being held.
>
> - On about 16th August MBSMA Members were advised of the Notice of Special Constitutional meeting and the "Features of the New Constitution" and invited to the Special Meeting on 29th August 2006.
>
> - The Notice identified new features as AGM date, voting and alternative members, office of Chairperson, voting system.
>
> - No Mention was made about the restriction to documentation and Committee Minutes. I did attempt to get a copy of the draft constitution there were none available. I tried to download the document from the internet but was unsuccessful.

- It is not until now that I recognise the extent of the changes for example:

- The 2003 Constitution

- Re Membership

  4.2.2 … with reference to the needs and requirements of the Association.

  4.2.3 … as endorsed by Members pursuit to an ordinary resolution.

  Re Meetings

  5.3.4 … to identify the nature and extent of the business.

  5.3.1 … two weeks prior to an Annual or General meeting a notice … and the nature of the business to be discussed.

  6.4.2(c) The minutes shall contained material information in respect of – the nature of all business conducted.

  Custody of Documents

  7.4.1 … which shall be reasonably appropriate and convenient to Members.

  7.5.2 … at liberty to remove any reference to the name and personal particulars who have made written complaints.

  Power of Committee

  6.1.1 (n) Keep complete and detailed minutes of the meetings and make those minutes available to Members; and

  (o) report to members on the performance of their functions in an open and correct manner.

  The 2006 Constitution

Constitution and Power of Association

5.2 Subject to the Act, the Association may do all things necessary …

(k) make, delete, add or vary in any way By-laws of the Association from time to time for the good of the Association pursuant to the Constitution.

(m) do all such other lawful things as are incidental or conducive to the attainment of the objects and purposes of the Association as set out in these rules.

Management Committee

23. Roles & Powers

(2) The Committee may exercise all powers of the Association expect those matters the Act or this Constitution requires the Association to determine through a general meeting of members.

58 By-Laws and Policies

(1) The Association may, by ordinary resolution at a general meeting, make, delete, add to or vary in any way by-laws and policies of the Association from time to time for the good of the Association.

Division 2 – Rights of Members

17 Access to information on Association

The following must be made available for inspection for members:

(a) A copy of the Constitution;

(b) Minutes of general meetings;

(c) Annual report and annual financial statements.

With no means of obtaining documentation to support reports and or assertions presented at Members Meetings, newsletters or verbal reports. The members are being asked to make decisions within an information vacuum, which increases inaccuracies, friction and misunderstanding.

Recommendation 1

The wording of the Constitution 17(b) be changed to read "documents" of general meetings.

(a) Minutes and Newsletters of MBSMA

- Historically the minutes and details for discussion at MBSMA Meeting have been deficient and the centre of controversy.

- MBSMA Members receive two forms of written communication, the minutes and the weekly newsletter.

- Minutes often record inaccuracies or bias, and the areas in dispute left unresolved.

- Access to articles in newsletter is restricted to any dissenting voices.

- I attempted to attend the Association Meeting on 23rd September 2008 (when my current membership was cancelled).

- By about 2.30pm on Tuesday 2008 I had been advised by another member not to worry about attending the MBSMA Meeting as there was no quorum. I have confirmed with a number of other members that they too were given the same information.

This has been an ongoing problem for many years.

2. (b) MBSMA Rules & Regulation

The need to review the Rules & Regulation of MBSMA has been on the Agenda since about 2004.

Irrespective of why they have not been completed, it is not possible for members rights to be protected when MBSMA

Committee rigidly apply selected sections of the MBSMA Constitution or Rules and Regulations to some members, and extend generous tolerances to others.

Recommendation 2.

The Justice Department, together with interested Members of MBSMA review the Rules and Regulation and procedures that support MBSMA Constitution.

3. The Grievance & Dispute Procedure as per the MBSMA Constitution the MBSMA Committee and Members comply with the MBSMA Constitution Grievance and Dispute procedure.

- I have tried formally three times to use this process during 2005, and many times after that over the default notice. Since my return to membership in April 2008 I have attempted to seek clarification on issues and engage in discussion through mediation or other vehicle.

- Mediation is a voluntary process. If the other party do not agree there is nowhere to go, and the issues just snowball with the associated cost to the members and the Association.

Recommendation 4.

The Court to make a recommendation

If the above are not acceptable then

Recommendation 5.

That a manager be appointed because of breaches of MBSMA Constitution.

23. It is worth remarking straightaway that "Recommendation 5" is asking for an order which, as Mr Clift unanswerably pointed out, is within the jurisdiction of the Supreme Court, but not this Court, to make – see s 109(2)(d) and (2)(5) read with the first paragraph of s 109(1) of the Act. Accordingly, I will not be ordering the appointment of a manager.

24. It is perhaps worth saying, of the apparent disconnect between paragraph 3 and "Recommendation 4" of the affidavit, that, doing the best I can, I read the latter as relating to the former and as seeking an order mandating some sort of compulsory mediation.

25. There is one last introductory matter that must be mentioned.

26. Ms Gibson had returned to trade at the markets, relying on the solicitor's letter of 13 March 2008. After so trading for a few months, she was notified by letter of, I think, 10 September 2008, her membership was once again ended. On this occasion the reason was her non-payment of fees etc. The operative 2006 Constitution provides that, upon such failure to pay within three months of payment falling due, membership ceases. Thus MBSMA had not so much decided to end her membership, but rather, had concluded that a state of affairs existed and that conclusion entailed that Ms Gibson's membership ceased by, as it were, operation of law.

27. On 23 September, Ms Gibson filed an application for relief from the effects of this notice. (She also sought recovery of "costs and damages from MBSMA Committee" – apropos of "damages" she really should have known better, that being a remedy not provided in the Act, a fact of which Ms Gibson had been often informed.)

28. In summary then, the reliefs sought relate to Ms Gibson's first expulsion, her second expulsion mentioned immediately above, and the matters raised in her affidavit. These matters, it must be conceded, go beyond the topics raised in the body of the affidavit reproduced above. There are items in the annexures that need some individual treatment. Unsatisfactory as it is, this is the best I can do to outline what the case is about.

SECTION 109 OF THE ACT

29. Ms Gibson's action seeks relief pursuant to s 109 of the Act, which reads:

> 109 Oppressive or unreasonable acts

(1) An application to the Local Court or Supreme Court for a particular order or orders specified in subsection (2) may be made by a member of an incorporated association or former member expelled from the association (provided the application is made within 6 months after the expulsion) who believes that:

(a) the affairs of the association are being conducted in a way that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member (***the oppressed member***) or in a way that is contrary to the interests of the members as a whole;

(b) an act or omission, or a proposed act or omission, by or on behalf of the association was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member (also ***the oppressed member***) or was or would be contrary to the interests of the members as a whole;

(c) the constitution of the association contains provisions that are oppressive or unreasonable; or

(d) the expulsion of the member was oppressive or unreasonable.

(2) For subsection (1), the orders are as follows:

(a) an order that the association be wound up;

(b) an order regulating the future conduct of the association's affairs;

(c) an order directing the association to institute, prosecute, defend or discontinue specified proceedings, or authorising a member of the association to institute, prosecute, defend or discontinue specified proceedings in the name and on behalf of the association;

(d) an order appointing a receiver or a receiver and manager of the property of the incorporated association;

(e) an order restraining a person from engaging in specified conduct or from doing a specified act;

(f) an order requiring a person to do a specified act;

(g) an order altering the constitution of the association;

(h) an order that the member expelled be reinstated as a member of the association;

(i) an order consequential on or ancillary to an order mentioned in paragraphs (a) to (h).

(3) Subject to subsections (4) and (5), the Court may make the orders the Court considers appropriate if, on the hearing of the application, it is satisfied in relation to a matter specified in subsection (1).

(4) The Court must not make an order for the winding up of the association if it is satisfied the winding up of the association would unfairly prejudice the oppressed member.

(5) The Local Court may only make an order referred to in subsection (2)(b), (c), (e), (f), (g), (h) or (i).

(6) If an order that the association be wound up is made, the provisions of this Act relating to the winding up of an association apply, with the necessary modifications for this Act, as if the order had been made on an application filed in the Court by the association.

(7) If an order makes an alteration to the constitution of the association, then, despite any other provision of this Act but subject to the order, the association does not have power, without the leave of the Court, to make a further alteration to the constitution inconsistent with the order but, subject to this section, the alteration made by the order has effect as if it had been properly made by resolution of the association.

(8) A copy of an order must be filed by the applicant with the Commissioner within 14 days after it is made.

Penalty: 100 penalty units.

(9) For this section, a breach of the constitution of an incorporated association by the committee of the association may be regarded as constituting action that is oppressive to members of the association.

(10) The Commissioner may intervene in proceedings before the Court arising under this section.

(11) If the Commissioner intervenes in proceedings, the Commissioner becomes a party to the proceedings and has all the rights, including rights of appeal, of a party to the proceedings.

30. Section 109(1) thus makes it a precondition for any relief that there be something "oppressive" or "unreasonable" in the conduct, constitution etc of the association, before any relief may be granted to pursuant to s 109(3). Those terms appear to be effectively the same as those of s 232 of the *Corporations Act*, (Commonwealth) which in turn has a long history in various corporation law statutes going back at least to UK legislation in the late 1940s. Corporations are where the money is; where there is money there is litigation; and the difficulty in grasping the case law about these phrases is that there is so much of it. The Magistrates' library's most recent edition of *Ford's Principles of Corporations Law* is the 11th (14 AJ Ford, RP Austin and TM Ramsay), of 2002. The learned authors survey the cases with a view to defining "oppressive, unfairly prejudicial or unfairly discriminatory" between pages 614 and 620. They then move on to list "Instances of oppressive or unfairly prejudicial conduct" from pages 620 to 624. Of course not all of that material is relevant to the present case, but much of it is, and I cannot see any way of usefully compressing the law any further than the learned authors have.

31. Mr Clift provided me with a document entitled "Conspectus of the Law Relating to Oppression" which is slightly less long, and rather more focussed on the issues germane to the present case, and which inevitably cites pretty much the same authorities for pretty much the same purposes as *"Ford's Principles"*. I have appended a copy of this document to these

Reasons as Appendix 1, and I am grateful to Mr Clift, and to whomever else may have been involved in the production of it.

MS GIBSON'S EXPULSION - I

32. In his final submissions on behalf of MBSMA, Mr Clift conceded that there were at least procedural defects, amounting to oppression, associated with the decision to expel Ms Gibson as a member in 2006. Mr Clift was disinclined to argue these points because he also submitted, unanswerably in my view, that any wrong thereby occasioned to Ms Gibson had been remedied as far as it could be pursuant to the Act by her effective readmission to membership via the letter notifying her of the withdrawal of the Default Notice. Her reinstatement being effective, the Act provides no further or greater remedy to right the wrong. In particular, no remedy provided by the Act offers any redress to Ms Gibson in respect of the time between her purported expulsion, on the one hand, and her reinstatement, on the other. (There was nothing to stop her from commencing an action for damages for loss suffered in that period, as I believe Ms Woodward may have done, although it may now be too late for Ms Gibson to follow suit).

33. Consequent upon all of this, there is no need for any Order from this Court to effect her reinstatement, and I make none. Nor is there any purpose to be served in closely considering whether the MBSMA had substantial justification for its decision. Obviously the Committee, in receipt of information from Mr Tim Robinson that Ms Gibson had communicated with the Australian Broadcasting Corporation, contrary to a resolution of a general meeting of MBSMA, and also being in receipt of other information from Mr Brett Meehan, was seized of material perhaps sufficient to justify some severe action against the apparently delinquent member, Ms Gibson. But all of this, like the purported expulsion itself, is water under the bridge.

MS GIBSONS EXPULSION – II

34. Ms Gibson later, in 2008, ran into a second difficulty with her membership, arising from her falling behind, according to the management of the MBSMA, in the due payment of her fees and rent. Clause 13(3) of the, by then operative, 2006 Constitution provides:

> "A member whose membership fee or site rent is not paid within three months after the due date ceases to be a member unless the Committee determines otherwise".

35. Management being of the view that Ms Gibson was thus in default, she was informed that she had ceased to be a member.

36. I am very satisfied on all the evidence that this matter arose in the ordinary course of the management people doing their jobs. There is not a shred of credible evidence that any committee person affected management's attitude to Ms Gibson's account. I am also satisfied that there had been numerous forewarnings of Ms Gibson, by different management employees, that her account was in arrears.

37. Ms Gibson, right from the start, disputed the accuracy of the MBSMA's financial records and it seems there were scores, if not hundreds of phone calls and conversations between her and people in the office before and after her membership was held to have ceased. As a result, quite a few of the office staff had reason to check Ms Gibson's account. I heard evidence from Kylie Thatcher, Lisette Monsello and Julie Hahn, called by MBSMA and Wendy Amiet, called by Ms Gibson. Each of them, spurred by Ms Gibson's unceasing complaints checked the records exhaustively and all concluded that she was more than three months in arrears.

38. Ms Gibson herself really had nothing with which to oppose the wealth of credible evidence, except her conviction that she was not in arrears, a conviction partly based on her view, plainly erroneous in my opinion, that her arrears, if any could be cancelled out by MBSMA applying other of Ms

Gibson's money held by them – in particular her security deposit – to the account.

39. So the overwhelming evidence is that she was, indeed, in arrears and that the Constitution mandated the cessation of her membership. Even if all these managers – Ms Amiet Ms Thatcher, Ms Nansello and Ms Hahn – had somehow got it wrong, the best one could conclude is that it would have been an honest error necessarily based on some mistaken or missing entries in the books, but I have no reason to think such an error was likely.

40. In any event, the people asserting that Ms Gibson was in arrears, were the managers and employed office staff of MBSMA. There is not a shred of evidence to suggest that the Committee, that is to say, the ruling mind of MBSMA, played any part in this finding, or that any individual member of the Committee had anything to do with it. On the contrary, once the decision had been arrived at, and the constitutionally mandated consequence of cessation had been communicated to Ms Gibson, the Committee used its constitutional power and exercised a discretion to reinstate her as a member. There was, in my opinion, no more that the Committee could constitutionally do for her.

41. Whether the Committee was motivated by kindness, or by a sense of fairness, or by weariness with Ms Gibson's relentless argumentation, it is very clear that there is no connection between the purported expulsion of 2006 – in which the Committee moved against Ms Gibson – and the cessation of 2008 – in which the Committee acted only in her favour.

42. Ms Gibson's evidence (p 260 of the transcript of 12 March 2009) is that the dispute about these fees is still not resolved. Whether that is correct or incorrect, there is, in my opinion, no evidence to suggest that she has been treated unfairly, unconstitionally or oppressively in respect of it. No relief is required.

(A) FINANCIAL ALLEGATIONS

43. At one time or another, Ms Gibson questioned witnesses and aired her suspicions that the MBSMA has misapplied, mismanaged or inadequately accounted for various of its financial dealings. I shall deal with these in no particular order and it should be understood that Ms Gibson's dissatisfaction with these matters is not merely with the misapplication or mismanagement of money, but also in some ill-defended and shape-shifting fashion, with the procedure involved and a lack of communication during the process with members, particularly with her.

(i) ACCREDITATION WITH TOURISM NT

44. Exhibit 4 in the proceedings is a folder of materials put together for presentation to Tourism NT, in order that the Mindil Beach Markets be accredited by that body. Given that the markets have become so famous, the need for accreditation (and the consequent access to government funded publicity, among other things) is less obvious to me than it would in the case of a more obscure tourist attraction, but all who were asked were of the view that it was a good and desirable thing to obtain.

45. Mr Robert Tormey (he re-spells his name in Ex 10 and elsewhere, although the transcript has it as Twomey) is the current Treasurer on the MBSMA Committee. He has held that position for about three years, having become eligible for it by being made an honorary member of the markets. He would appear to be a friend of the markets, although he does not trade there and, as far as I know, never has (and only stallholders can be regular members).

46. Mr Tormey's position with MBSMA is, as far as I know, unpaid. He earns his living as a business consultant - through his firm called, I think, Auslink Management Consultants Pty Ltd. His business dealings (as distinct from his committee work) with MBSMA began in 2002. At that time, the markets were, according to Mr Tormey's evidence given 24 June 2009, in a parlous financial state, and he, or his firm, was retained to develop a business plan

to plot a way out of the difficulty. That plan was adopted by the membership at an annual general meeting. Subsequent to that, and no doubt to some degree because of it, the market's financial position improved to a healthy state. Mr Tormey had further contact with the markets when reviewing the implementation of the business plan (which reviews had themselves been part of the plan).

47. So when the time came for MBSMA a to apply for accreditation, a process that would involve submitting documentation to establish that the markets were an enterprise that was viable, above board, solvent, etc, it was natural enough that MBSMA would turn to Mr Tormey to put together the application, together with the necessary supporting documents.

48. According to Mr Tormey's evidence, he received his instructions to this end from the manager of the markets, and not from the Committee or any member of it. Ms Gibson gave Mr Tormey the opportunity to establish that in her cross-examination transcribed at pp 35 – 39 of 24 June 2009:

> Okay, so you dealt with the management and not the committee, is that correct?---I dealt with the manager, yes.
>
> So in between 2005 – from January 2005 to October 2005, did you ever meet with the committee of Mindil Beach Markets?---Not that I can recall and I can't see that I needed to. The general manager had authority to progress with this and I understand that's the role of a general manager, and this is my normal approach to developing quality systems, that I don't deal with boards, I deal with the management.

49. A little later, Ms Gibson's cross-examination led Mr Tormey to recall that he had contacted some other people, one or two of whom may have been Committee members, on a topic connected to the accreditation application. The topic was Ms Gibson's interference in that process. Mr Tormey's evidence was that the person with whom he was dealing at Tourism NT, a Ms Sharon Johnson [my spelling of both her names is speculative] had informed him that Ms Gibson had contacted Tourism NT with a view to

delaying, at least, the accreditation. Ms Johnson, it seems, was bound by the confidentiality provisions of her position to inform no-one beyond Mr Tormey and the market's manager of Ms Gibson's approach. Mr Tormey, who was not so bound, passed the information on to a handful of people he had worked with on his various jobs for the markets – the business plan and the accreditation application.

50. And why shouldn't he? Mr Tormey was the one witness who became visibly cross with Ms Gibson while giving her evidence. Most of his irritation seemed to result directly from her failing to listen to and understand his evidence, so that her questions were often pointless, irrelevant and time wasting. But beyond this there may have been a residue of irritation from historical sources, one of them perhaps being Ms Gibson's attempt, from Mr Tormey's point of view, to white-ant his efforts on behalf of his client, MBSMA, to obtain the accreditation he had been retained to achieve. A man would have to be a saint not to be annoyed by Ms Gibson's approach to Ms Johnson. A further historical source of irritation – dislike even – might be the hints – never substantiated in the least – emanating from Ms Gibson as to some sort of malpractice by consultants in general and Mr Tormey in particular.

51. Right at the start of the hearing, Ms Gibson's evidenced her animus against Mr Tormey – see pp 12 and 13 of the transcript of 2 March 2009 in which the most particularised complaint (on p 12) was:

> "Because, sir, he has been instrumental in spreading misleading information and making false misrepresentations against me personally and to other government departments, without my knowledge".

52. Whatever that may have meant remained unchangedly obscure after Ms Gibson's cross-examination of Mr Tormey, which did not touch on any such matter, unless Ms Gibson was talking exclusively about Mr Tormey's circulation of information concerning Ms Gibson's approach to Sharon

Johnson. In relation to that particular matter, Mr Tormey's actions seem to me to have been justified, appropriate and reasonable. As to other shadowy suggestions that Mr Tormey's relations with MBSMA, as a consultant, were somehow corrupt, improper or unauthorised, there is simply no evidence to support them, and a wealth of evidence from other Committee men that he was regularly retained to do useful jobs and that he did them very satisfactorily.

53. Indeed, it is the case that the evidence leaves me grasping for any explanation of Ms Gibson's attitide towards Mr Tormey. One thing, perhaps, is her suspicion that Mr Tormey might have been a moving force behind a one time idea to privatise the markets – Ms Gibson spoke the word "privatising" as though it were anathema. Mr Tormey's view (p 45) was that, while the idea had been talked about, it had never seriously been discussed.

54. That being so, and there being nothing in the rest of the evidence to suggest anything else, Ms Gibson's interest in the topic is difficult to understand. Even more difficult to understand is her reason for bringing it up in these proceedings. After all, if it were seriously proposed to privatise the markets, the proposal would need to go out to the membership for discussion, debate etc. I suppose it is just imaginable that at that stage of the process conduct that could be characterised as "oppressive" could occur (and it is certainly imaginable at later stages if the matter came to a vote, and over the division of the privatised spoils). But nothing of the sort has happened, as Ms Gibson well knows, and it simply cannot be oppressive for members of MBSMA, or members of the Committee or consultants, or members of the public for that matter, to air ideas as to the future direction the markets may take.

55. I can only conclude that, contrary to Ms Gibson's preliminary fulminations, no aspect of Mr Tormey's dealings with MBSMA (or as an honorary member

and Committee member) have been shown to be improper in any way. There is not, in the evidence, any basis even for any suspicion of impropriety.

(ii) THE MANAGER'S NEW CAR

56. There was an amount of evidence from Ms Gibson concerning a proposal that a new ute be purchased by MBSMA for the markets' use, notably by the manager. Ms Gibson spoke of the issue, but the clearest explanation is probably that Fred May – a committee member with Ms Gibson - in his evidence on 3 March 2009 at p 136-137 of the transcript of that day.

57. It somehow came to Mr May's notice – Ms Gibson may have played a part in that, or she may not – that "they" (who I take to represent the management, perhaps with the approval/support/knowledge of some Committee members) were in the process of buying a <u>new</u> car. It seems that no-one disputes that a vehicle was needed for the purposes put forward. The question was whether it made sense to buy a new vehicle. Mr May thought not, and "so we nipped it in the bud" (p 136 – 137). "We", I take it, includes Ms Gibson. The proposal to buy a new car was aborted, a good second hand Ute was purchased instead, at a cost of a couple of thousand dollars as against the $20,000 odd for the new car.

58. I don't know what to make of this story, which is told again from a different angle by another Committee member, Ross Dudgeon (see p 67 of the transcript of 24 June 2009). Mr Dudgeon's account has Ms Gibson bringing up the issue with the Committee, disapproving of such a decision being taken – or known about by only two Committee members. Mr Dudgeon says that he supported Ms Gibson in this and that the Committee decided on the second hand car. (Mr Dudgeon was often at odds with Ms Gibson, and a point worth noting is his rare agreement with her on this matter).

59. I do know that nothing about it suggests anything that could touch on oppression to anybody. All theories of business concede that management inevitably tends to run things in its own interest and it is the job of boards,

like the Committee of MBSMA, to see that this tendency is reined in and that things are run primarily in the interest of shareholders or members. If this was a case of management tending to act in a self interested fashion, as it may have been, then the Committee did what it was supposed to do, and the story speaks of an association being well governed.

(iii) CATHRYN DONEY'S CONTRACT

60. Ms Cathryn Doney was employed on the management side of MBSMA for a time ending in 2005. After she left that employ, a final payment - wages etc needed to be made. Ms Doney contacted Ms Amiet, the book-keeper, and asked to be paid as a matter of urgency. Ms Doney nominated a sum and Ms Amiet, with some inner reservations, paid that sum over to her. Ms Amiet's reservations arose from the fact that she did not have to hand a copy of Ms Doney's contract of employment and was therefore unable to verify that Ms Doney was entitled to the sum she was asking for (see p 100 – 101 of the transcript of 3 March 2009).

61. Ms Amiet appears to have revealed her reservations to Ms Gibson (then Treasurer) or perhaps to the Committee – quite properly. The Committee discussed the matter. By then it was clear that no signed copy of Ms Doney's contract of employment could be found among the records of MBSMA. According to Mr Dudgeon (p 67 of the transcript of 24 June 2009 and p 468 of the transcript of 21 July 2009, in cross-examination) there was a draft, but there seems to have been some reason to think the final contract differed from the draft. Mr Dudgeon did not know of his own knowledge whether the final contract had ever been signed, but thought that he recalled other Committee members claiming to know that it had been.

62. From this, I conclude that it would have been very difficult to establish whether Ms Doney had been overpaid – she may well not have been – and it appears that the Committee came to a similar view – on p 67 24 June 2009 Mr Dudgeon says:

> "… basically the Committee I think agreed that the payment was made in good faith and that it should stand because there was no other documentation to prove that there should be any different alteration of the payment or whatever".

63. Various possibilities exist. If, by some slip up, there never had been a final contract signed, then the manager would have been at fault. If, contrariwise there had been a contract and the office, MBSMA, copy had been lost, then the manager again would be at fault. (Other documents went missing at about the same time, which led to a tightening up of procedures in that regard.)

64. Nothing about this event suggests any dishonesty or oppression on anyone's part – not Ms Doney, not Ms Amiet, and certainly not Ms Gibson or anyone else on the Committee. It really is difficult to understand why Ms Gibson brought the matter up in the context of her action. Nothing follows from it.

(iv) A LARGE BOOKKEEPING ANOMALY

65. On pages 127 and 128 of the transcript of 3 March 2009, Ms Gibson, in re-examination (more truly a second examination in chief) questioned her witness Ms Amiet about a topic that had exercised her for some time: a sudden and unexplained lurch in the financial position of MBSMA. Ms Amiet was able to explain one such lurch – in 2005 it seems – as being a simple bookkeeping error caused by misapplication of a computer programme. Neither Ms Amiet (nor anybody else) could shed any light on any then such lurch which Ms Gibson apparently had wind of happening in 2007. I have no evidence before me to suggest that there was such a thing in 2007 and I accept, as, apparently did Ms Gibson, Ms Amiet's explanation as to the change in 2005. Nothing relevant to the relief sought by Ms Gibson arose from this.

(B) UNCONSTITUTIONAL ACTIVITIES

66. On the evidence before me there is some uncertainty whether the Committee of MBSMA was properly constituted between late 2005 and sometime in

2006. Initial uncertainty was created by Mr Dudgeon. At a meeting in October 2005, Mr Dudgeon, then a Committee member, moved a motion of no confidence in Ms Gibson, then Treasurer. He told the meeting he could not work with her. The motion was lost. Mr Dudgeon then told the meeting something to the effect "Well, in that case, I resign" or "I will resign". He did not, in the event, ever submit a written resignation, and soon afterwards changed his mind. He wrote a letter to the Committee informing them of this somewhat humiliating volte-face, and directing the Committee's attention to s 27(4)(d) of the Act, which speaks of a public officer of an Association resigning "by signed notice to the Committee", and thereafter carried on as a Committee member. Mr Dudgeon further muddied the waters by alleging, in the same letter (Ex 12), that the October meeting had not been validly assembled, by reason of want of notice.

67. Mr Dudgeon's change of mind may have been in part occasioned by the decisions of one or two other members of the Committee whom he expected to step down with him, but who did not. Be that as it may, some people may have believed, and others may have affected to believe, that his oral statement at the meeting terminated his membership of the committee.

68. Further doubts arose, for reasons insufficiently particularised for me securely to grasp, about the regularity of the election of office holders in early 2006, I think in March of that year. As Mr Dudgeon put it (p 68 of the transcript of 24 June 2009):

> "… the election was basically set up without the input of myself and a number of other Committee members. It was Wendy Gibson, Cindy Woodward, Vicki Braddy, Brett Deehan [ie Meehan] had basically controlled the office, they sent – they arranged the election themselves and they negotiated with the Electoral Commission to oversee that election. But after – after the election results came back those same people then complained that there were irregularities even though they were the ones who had set it up.

69. This seems to have been the election at which Ms Gibson lost her place on the Committee.

70. As I say, I have been unable to decide exactly what was dubious about these elections, but I am satisfied that serious issues arose from them and that quite a few members of MBSMA were aware that there might be a problem. It is a fact of life that an institution of questionable legitimacy is likely to give rise to a tangle of problems: any issue that arises about one of its decisions comes to be argued about in a messy confusion of the merits of the case, on the one hand and the legitimacy of the decision maker, on the other.

71. The Gordian knot in this instance was cut following a suggestion of Mr John McLaren, the Manager of Business Affairs in the Department of Justice. Mr McLaren had been the recipient of numerous enquiries and complaints about the affairs of MBSMA. Incidentally, in responding to these communications, he had informed MBSMA and the Committee that the 2003 Constitution was outmoded and of the new requirements of the Act in respect of the Constitution of an Association. So the adoption of the 2006 Constitution was a step taken at his urging. Along the way, apprised of the doubts about the validity of the election of office holders, he suggested to a general meeting of members that one way out of the tangle would be for the members to confirm, by way of a show of hands, the present Committee in office pending fresh elections. That procedure was adopted, the meeting was overwhelmingly in favour of the resolution, the Committee stayed on and subsequent elections, pursuant to the 2006 Constitution, have given rise to no doubts that I heard of.

72. Ms Gibson's great initial grievance with MBSMA – the default notice – was issued by the Committee the legitimacy of which was clouded by this penumbra of uncertainty. But, as I have written more than once, that grievance has been remedied. She did not at any point make any complaint about her failure to be re-elected. I cannot see any extra oppression to her –

or to anyone else – arising from the Committee's having been being unconstitutional – if it was.

(C) ACCESS TO DOCUMENTS ETC

73. Ms Gibson's appetite for and demands for documentation began, on her evidence, when she was on the Committee of MBSMA (if not before) and has continued throughout the vicissitudes of her membership ever since. As Treasurer, to give one example, her desire to get at the documents led her, with the assistance, it seems, of Brett Meehan, to enter the MBSMA's office (the province of management, not the Committee) and to access the manager's computer during a Christmas period when the office was unmanned. (Her accessing that computer caused the manager to complain of "theft" of information – Ms Gibson admits to having forwarded some of its contents to her own computer – which "theft" was one of the items mentioned on the default notice. What part the complaints of the manager, Kylie Thatcher, played in Ms Gibson's election loss a few months later can only be wondered at.)

74. That episode was early in the piece. As the last, I have touched upon Ms Gibson's endless queries in relation to her underpaid fees. In between, her requests and demands for documents have been persistent and consistent. Then, this action having been commenced, she has had the opportunity to seek discovery, which she has done on a grand scale, apparently indifferent to the time and money this must cost MBSMA, and regardless of the likelihood that greater discovery might advance her cause of action. In respect of the litigation, that is, of course, her privilege. In respect of her membership of MBSMA, and its Committee, her rights to information are less broad.

75. Ms Gibson, in her evidence about her time as Treasurer, described a list of events that caused her disgust because she was not adequately informed of them, or because she never saw the documents which presumably were

created around and about these events. She was then and is now concerned about these matters, for two reasons. First, because the best interests of MBSMA might not have been served – she has no way of knowing because of her lack of access to the documents. As to this concern: it is to her credit, but the interests of the MBSMA or its members as a whole, however badly served, are not related to "oppression" of Ms Gibson. Secondly, (I suppose) because as a member of the Committee, she could be personally liable in certain circumstances for losses, a liability which would conceivably be within the ambit of "oppression". I wrote "I suppose" above because the first answer to that aspect of her case is that she did not put her case that way: her concern was for the membership, not herself. Further, (and a complete answer in itself) is that on the evidence, I have no reason to believe that there have been any such losses. The proposed purchase of a new vehicle was nipped in the bud by the actions of Ms Gibson, among others. A worrying deficit of $30,000.00, which appeared suddenly and without explanation in the books, has been satisfactorily explained as a more accounting glitch that did not correspond to an actual loss. These two items were the only matters in evidence where sizeable amounts of money were involved. There was a middling amount involved in the Tourism Accreditation project, but as to that, it is clear that the MBSMA received fair value and is satisfied with it. If there are any other items they are footling.

76. On the evidence before me, I can find no likelihood of oppression to Ms Gibson arising from her one-time office of Treasurer on that head.

77. Section 38 of the Act sets out a series of requirements which Associations must comply with relating to minutes of meetings. Section 38(5) requires that "the books containing the minutes of proceedings of general meetings of an incorporated Association must be made available for inspection by a member without charge". The evidence is that the minutes of MBSMA meetings are kept in conformity with the Act, and that they are available for

inspection by members at the office. There is no evidence that Ms Gibson has been denied the right to inspect them. She has complained that she has not been supplied with copies when she has asked, and that may well be true. MBSMA is not bound to supply them.

78. She has also complained, and this is not in contest, that she has had no opportunity to listen to tape recordings that have been made of meetings, in order to check the accuracy of the minutes. Ms Gibson also complains that she has been told – and told truly, I find – that those tape recordings have not been kept. Ms Gibson scents a scandal or a conspiracy.

79. The explanation given for this state of affairs, from every witness from MBSMA concerned in the matter, is that a tape recording was made in order that the drafter of the minutes may refer to it to ensure the minutes' accuracy. That is, it was a device supplementary to the minute taker's notes. It was never intended to be a "document" of MBSMA. A given tape recording, once its minutes had been settled, was of no further use. Tapes were not discarded or destroyed – they were used again. The document that mattered was the minutes, not the tape. I found this evidence extremely persuasive. I am comfortably satisfied that there was no nefarious motive associated with the use and re-use of these tapes. Since they no longer exist (for good reason) they are not accessible by anyone, and Ms Gibson is not being denied access. Far from being a reason to suspect a conspiracy around the accuracy of the minutes, the use of the tapes is likely to have improved that accuracy. If Ms Gibson or anyone else believes that minutes are being systematically corrupted, she or he should take their own recording device to meetings and argue the point at the following meeting when adoption of the minutes is moved.

80. Clause 17(b) of the 2006 Constitution likewise requires that minutes of general meetings must be available for inspection by members. MBSMA's

obligations and a member's rights, seem no different under this clause than they do under the Act.

81. The Act also requires, in s 34 that an Association must maintain a register of members and in s 34(2) that the register must be made available for inspection by members. I do not apprehend that Ms Gibson complains that she was denied the right to inspect the register, rather that she was not supplied with the email address of the members, which made it difficult for her to communicate her many concerns to the membership in a timely and cheap fashion. It is undisputed that MBSMA refused to give her the email addresses that they had.

82. I don't know enough about the rapidly developing law of privacy to say whether the MBSMA would have been positively wrong to give Ms Gibson those email addresses. I have seen enough of Ms Gibson's indefatigable complaint writing, and heard enough from the office staff of her tireless pursuit of issues large and small – her disputed payment of membership fees was the one most amply spoken of – to believe that those refusing to give out the email addresses did so in order to spare the membership an endless bombardment of material like the various affidavits Ms Gibson has filed in this case. Be that as it may, there was in my view no obligation to give out those email addresses: they are not documents wrongly denied to Ms Gibson. (One might also note that nearly all the members of MBSMA are accessible by anyone on Thursdays and Sundays for six months of the year, conveniently assembled at Mindil Beach as they work at their stalls. If someone like Ms Gibson wishes to be able to email them, what is to stop her circulating through the market and enquiring of each whether he or she would like to be on her emailing list?)

83. There is no other complaint by Ms Gibson, sufficiently particularised as to which documents she may have not been able to access, for me to be able to usefully comment. There is no evidence of her being denied access to any

document for which the Act or the 2006 Constitution establish a right of access.

84. Among the remedies Ms Gibson seeks is a change to the Constitution of MBSMA so that members have a general right to inspect "documents" of the Association. In the abstract the proposal has attractions, but a consideration of the evidence in this case shows how impractical such a change would be. Perhaps in the case of a small Association – few members, little commercial activity – there might be few enough documents that it would be practical for all members potentially to have access to all of them. But MBSMA is a large organisation and large enough to have an office staff of three or four, to employ other casual staff as rent collectors, etc. It has significant commercial relations with each of its trading members and with governments at various levels. Ms Gibson may not realise exactly how expensive it is to provide free rein to any interested person to the records of an organisation of that size and nor do I, but I do know it would be costly. There are reasons of business efficiency why the structure of members/committee/management (or shareholders/board/management) needs to be maintained, at least with concerns are of a certain size and MBSMA is clearly above that size. Far from being persuaded that such a constitutional change would be in the interests of MBSMA, I am positively persuaded that it would not.

(D) MR TIM ROBINSON – HIS RE-EMPLOYMENT

85. A Mr Tim Robinson was twice employed as manager of MBSMA. Ms Gibson did not like him and I am aware of some of the reasons for that. For example, during the period when Ms Gibson was being accused by Ms Thatcher of having stolen information from Ms Thatcher's computer, Mr Robinson took Ms Thatcher's side and took it upon himself, it seems, to deny Ms Gibson entry to the office (see transcript of 12 March 2009, p 177 – 178). Some other witnesses – Mr May for one, spoke of Mr Robinson with a certain reserve, but I have no idea why they disliked or distrusted him (if

they did). For another, Ms Gibson may have known of Robinson's informing the Committee of her contact with the ABC.

86. As to anything Mr Robinson may have done during his first period as manager, I have no idea and I presume he left the position for perfectly ordinary reasons. Ms Gibson's particular complaint is that he was, without her knowledge or consent, was re-employed as manager for some weeks, sometime in the period, as far as I can work it out, of December 2005 to February 2006. At the time of his re-engagement, Ms Gibson was the Treasurer on the Committee. Her implicit case is that the Committee should have known of the appointment of a manager. Perhaps she is implying that it was properly the function of the Committee, and no other person or body, to make such an appointment. Ms Gibson was not the only relevant person to be in the dark as to the role of Mr Robinson's re-engagement. Ms Amiet, the bookkeeper, and in effect wages clerk, did not know either, nor could she remember how she came to be making up Mr Robinson's pay. After a period of a few weeks – perhaps a couple of months - Mr Robinson again left the employ of MBSMA. At the time of his resignation he had the use of a vehicle owned by MBSMA. It seems that he did not hand the vehicle in immediately, but drove it home. Mr May and Mr Meehan went around to his place a day or two later and collected it.

87. Apropos of this tale of the motor vehicle, it may be that Mr Robinson misused it, briefly, after he resigned, but if so (and the case is far from clear), two Committee members promptly put the matter to rights. I cannot see that anyone had any cause for concern once the vehicle had been promptly recovered.

88. Apropos of the mystery of Mr Robinson's re-engagement, it seems to me that Ms Gibson is probably correct: the Committee qua Committee, not one or more of its members, probably should have been the body to hire a manager. I accept that this was probably not done, although at that time of

the year (near Christmas), it might have been difficult to get a quorum together and if so, one could hardly blame anyone – whoever it was – for acting to fill a position that needed to be occupied by employing Mr Robinson, (who knew the job, having done it before).

89. But even in the worst case from Ms Gibson's angle – the appointment was deliberately made behind Ms Gibson's back - I cannot see that the episode now gives rise to anything apart from standing as a further example of how dysfunctional the Committee was in late 2005 – to add to the examples of the Tourism accreditation imbroglio, the Dudgeon resignation fiasco and the Darwin City Council spat. In particular, I cannot find any way of construing this episode as "oppression" of Ms Gibson. And a year after this event MBSMA had a different Committee and a new constitution, closely following the model constitution set out in the Regulations to the new Act. I see nothing in the Robinson episode to give me cause to think any further changes are needed.

CONCLUSION

90. Ms Gibson's expulsion from MBSMA was oppressive. That oppression has been cured. There was no other, and there has since been no other oppression of her. None of the events deposed to suggests to me that there is anything wrong with the administration of the affairs of MBSMA, or that its Constitution requires amendment to diminish the risk of future oppression, unfairness or wrongdoing. There is plenty of evidence that the affairs of the Association were in a wretched state for a year or two, ending at about the time the new Constitution was adopted. The wretched state of affairs was largely confined to the Committee, where it arose apparently because of irreconcilable ideas and agendas of various Committee members. It spilled out into general meetings of market members and no doubt caused a degree of anger and frustration there. Nevertheless, the worldly affairs of MBSMA went ahead. Markets were held. Tourism accreditation went

forward. A better deal was struck with the Darwin City Council. The office staff did what they were supposed to do.

91. With the adoption of the new Constitution, the only issue left alive from this wretched period was the purported expulsions of Ms Gibson, Ms Braddy and Ms Woodward, which injustice, so far as Ms Gibson was concerned, was cured soon after this action was commenced. It is still difficult to see why the action was persisted in after that, and what it was about.

92. The Originating Application is dismissed. Mr De Silva and Mr Clift have warned Ms Gibson about costs ever since her expulsion was undone. I order Ms Gibson to pay MBSMA's costs, fixed at 80% of the Supreme Court Scale, from 1 May 2008 (the date of filing of MBSMA's Application to have Ms Gibson's action struck out or stayed).

93. There may be unresolved costs issues in relation to the costs of interlocutory matters before that date. If so, both parties have leave to apply.

Dated this 29th day of June 2010

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R J Wallace
STIPENDIARY MAGISTRATE