

EQUAL OPPORTUNITY TRIBUNAL

(District Court Administrative and Disciplinary Division)

RAGLESS v SOUTH AUSTRALIAN FIELD & GAME ASSOCIATION

[2016] SAEOT 1

Judgment of His Honour Judge Costello, Member Ms A Bachmann and Member Mr R Altman

8 April 2016

HUMAN RIGHTS - DISCRIMINATION

ASSOCIATIONS AND CLUBS - EXPULSION, SUSPENSION AND DISQUALIFICATION - POWER TO EXPEL, SUSPEND AND DISQUALIFY

The complainant made a Complaint against the South Australian Field and Game Association (SAFGA) alleging unlawful discrimination against him by officials of SAFGA and its Southern Branch in taking action to have his firearm's licence and membership of SAFGA removed on the grounds of a previous mental illness.

HELD: SAFGA did not unlawfully discriminate against the complainant in taking action to report him to the Registrar of Firearms or to suspend his membership.

Complaint dismissed.

Equal Opportunity Act 1984 ss 6, 66, 72, 93; *Firearms Act 1977* s 21, referred to.
Ragless v Stokes [2015] SAEOT 1, considered.

Complainant: STEPHEN JOHN RAGLESS In Person

Respondent: SOUTH AUSTRALIAN FIELD & GAME ASSOCIATION Counsel: MR K GILCHRIST - Solicitor: GILCHRIST CONNELL

Hearing Date/s: 08/03/2016 to 10/03/2016

File No/s: DCCIV-14-787

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RAGLESS v SOUTH AUSTRALIAN FIELD & GAME ASSOCIATION
[2016] SAEOT 1

Introduction

1 This is a Complaint by Stephen John Ragless against The South Australian
Field and Game Association (SAFGA) pursuant to the *Equal Opportunity Act*
1984 (SA) ('the Act') claiming that SAFGA (and more particularly officials of
both SAFGA and its Southern Branch ('Southern')) discriminated against him.

2 The discrimination is alleged to arise out of unlawful actions taken by the
aforementioned officials to have his firearms licence and membership of SAFGA
suspended.

The Complaint

3 Mr Ragless articulated his concerns in the Complaint Form filed in
August 2013 which provided as follows:

...

After publishing a story about a [sic] anxiety driven nervous breakdown the club officials
suspended my membership to prevent me from standing for the position of Branch
secretary at the annual A.G.M.

Some of the State body were responsibly [sic] for suspending my firearms license [sic]
and membership on direction from Southern.

...

Background to the Complaint

4 In or about 2008 Mr Ragless suffered a nervous breakdown which
emanated from concerns he had that the work upon which he had been engaged
for a particular developer was being undertaken to a less than satisfactory
standard.

5 He began to worry that after certain of those projects were completed,
claims might be made against him by the developer which could result, to use his
words, in him being 'sued and bankrupted' or worse still, him being charged with
'fraud and going to gaol'.

6 The subsequent nervous breakdown resulted in him having to spend some
three weeks in the Noarlunga Hospital in 2008.

7 After his discharge he was treated by a psychiatrist for the next 12 months
and remained on anxiety/depression medication until around June of 2012.

8 During and after his admission to hospital one of his former workmates and
a then close friend, Greg Dawes, supported him in his recovery, including
visiting him in hospital. Thereafter, as he slowly recovered, Mr Dawes played an

integral role in getting him back into Southern and in having his firearms licence (which had been removed after his breakdown) restored.

9 In or about April 2012 Mr Ragless determined to cease taking his medication. From that point on he gradually reduced his medication to a stage where he ceased taking it altogether in early June 2012.¹

10 Mr Ragless, was at that time, the person charged with overseeing a project to build Southern's new club premises. At this time Mr Ragless also had concerns as to the direction in which the club was being taken. In his opinion it was not being run in the best interests of its members, but rather with commercial gain as the primary objective.

11 From June 2012 onwards he clashed with some of the members on Southern's committee. As a measure of his dissatisfaction, he resolved to stand as Secretary of the Club against the then Secretary, Peter Perry, one of the persons on the committee whom he viewed as intent on taking the club in the wrong direction.

12 Mr Ragless complains that in order to thwart his campaign, to become Southern's Secretary and restore Southern's traditional culture and philosophy, Greg Dawes, Peter Perry and the then State Secretary of SAFGA, Darian Stringer, amongst others, conspired to use the fact of his previous mental illness to have his firearms licence removed and his membership of SAFGA suspended.

13 The alleged 'conspiracy', he submitted, culminated in reports to the Registrar of Firearms on 12 October 2012 from Messes Dawes and Stringer , asserting a suspicion that Mr Ragless was not considered 'safe to possess firearms' and requesting that his firearms be removed from his possession. It also culminated in the suspension of his membership from SAFGA on 23 October 2012.

14 In response, and through Messrs Dawes and Stringer, SAFGA asserts that these officials had legitimate concerns with respect to the mental health of Mr Ragless. It further asserts that some of his public utterances and behaviour towards certain members and officials, constituted conduct unbecoming of a member and warranted his suspension.

15 Prior to considering these issues in more detail, it is convenient to set out the statutory scheme governing both the Complaint and the prior reports to the Registrar of Firearms.

¹ It remains unclear as to the extent of the role played by his GP in his decision to cease taking the medication. There is little doubt that the decision as to the manner and rate of reduction in medication was made by Mr Ragless.

The Statutory Scheme

16 Section 93 of the Act relevantly provides:

93—Making of complaints

- (1) A complaint alleging that a person has acted in contravention of this Act may be made—
- (a) by a person aggrieved by the act;

...

17 Section 72 of the Act relevantly provides:

72—Discrimination by associations

- (1) It is unlawful for an association to discriminate—

...

- (b) against a member of the association on the ground of disability—
- (i) by refusing or failing to provide a particular service or benefit to that member; or
- (ii) in the terms on which a particular service or benefit is provided to that member; or
- (iii) by expelling that member from the association or subjecting him or her to other detriment.

18 Section 66 of the Act relevantly provides:

66—Criteria for establishing discrimination on ground of disability

For the purposes of this Act, a person discriminates on the ground of disability—

- (a) if he or she treats another unfavourably because of the other's disability, or a past disability or a disability that may exist in the future...

19 Section 6 of the Act relevantly provides:

6—Interpretative provisions

...

- (3) For the purposes of this Act, a person (the *discriminator*) treats another unfavourably on the basis of a particular attribute or circumstance if the discriminator treats that other person less favourably than in identical or similar circumstances the discriminator treats, or would treat, a person who does not have that attribute or is not affected by that circumstance.

20

Section 21 of the *Firearms Act 1977* relevantly provides:

21H—Requirement to expel certain persons from firearms clubs

- (1) If the controlling body of a recognised firearms club has reasonable cause to believe that—
 - (a) the actions or behaviour of a member of the club has been such that there is a threat to the member's own safety or the safety of others associated with the member's possession or use of a firearm; or
 - (b) a firearms prohibition order applies to a member,the controlling body must expel the person from membership of the club.
- (2) Subsection (1)(b) does not apply—
 - (a) to an interim firearms prohibition order; or
 - (b) to a firearms prohibition order until the period allowed for an appeal against the order has expired or, if an appeal has been instituted, until the appeal lapses or is finally determined.
- (3) A person incurs no civil or criminal liability as a result of action taken in good faith in compliance, or purported compliance, with this section.

21I—Obligation to report

- (1) If the controlling body of a recognised firearms club has reasonable cause to suspect in relation to a member of the club that the member is suffering from a physical or mental illness or condition, or that other circumstances exist, such that there is a threat to the member's own safety or the safety of another associated with the member's possession or use of a firearm, the club must, as soon as practicable after the suspicion is formed, make a report to the Registrar including—
 - (a) the name and address of the person the subject of the suspicion; and
 - (b) the suspected threat to safety and circumstances giving rise to the threat (including the nature of any physical or mental illness or condition contributing to the threat).
- (2) If a member of a recognised firearms club or a person employed or engaged at the grounds of a recognised firearms club has reasonable cause to suspect that a person to whom a firearms prohibition order applies has gained or attempted to gain access to the grounds of the club, the member or person must, as soon as practicable after the suspicion is formed, report the matter to a police officer.
- (3) If a commercial range operator or a person employed or engaged at the range of a commercial range operator has reasonable cause to suspect that a person to whom a firearms prohibition order applies has gained or attempted to gain access to the range of the operator, the operator or person must, as soon as practicable after the suspicion is formed, report the matter to a police officer.
- (4) A person incurs no civil or criminal liability in making a report in good faith in compliance, or purported compliance, with this section.

Discussion

21 It is unnecessary to rehearse in specific detail the evidence given by the various witnesses called by the complainant. Some witnesses such as Messrs Jensen and Low (fellow SAFGA members) proffered the opinion that the complainant had been treated unfairly. Others such as the complainant's wife and daughter said that his mental health in 2012 was good. Mr Stokes said that he attended the Southern committee meeting at which time Mr Ragless spoke about his previous mental illness. He said that Mr Ragless was 'almost excited' while he spoke. He said the committee were 'horrified' after hearing him address the meeting. He said nobody on the committee had encountered someone speaking in this way before and all were 'at a loss' as to what to do. As a result, they determined to do nothing in the hope that 'given a bit of time he'll sort of be okay'. Mr Perry said that he agreed with the reasons advanced by Mr Dawes for suspecting that the complainant was unfit to hold a gun licence. We accept that each of the complainant's witnesses was genuine and honest in the evidence they gave.

22 For his part, Mr Ragless told us that his mental health had recovered by April 2012 to a point where he felt that he could reduce and ultimately cease taking his medication.

23 We accept that at that time he was a longstanding, hardworking and passionate member of Southern, with strong views about the way Southern was being run. We also accept his evidence that at that time he had a renewed enthusiasm for life and a genuine desire to 'tell his story', about his battle with, and ultimate triumph over, his mental illness, to the wider 'gun community'.

24 In his view, the manner in which he set about expressing his dissatisfaction with some officials at Southern and conveying his mental health story was, and continues to be, entirely fair and reasonable.

25 We accept that in giving his evidence he also was generally forthright and honest. However, in our view, the behaviour exhibited by Mr Ragless in 2012, his publicly expressed utterances on the issue of his mental health and the tenor of his emails to some of the Southern officials, was potentially susceptible to a different interpretation, namely that of the conduct of a person with a mental illness.

26 The question which the Tribunal must determine is whether SAFGA through its officials contravened the Act by discriminating against him on the ground of disability, in this instance, his past mental illness. It is for that reason that we consider it to be necessary to examine the evidence of both Mr Dawes and Mr Stringer in some detail.

27 The discrimination alleged is SAFGA's actions in taking steps to have his firearms licence and membership of SAFGA removed.

The Firearms Licence Suspension

28 On 12 October 2012 Mr Dawes, in his capacity as President of Southern, forwarded a report to the Registrar of Firearms in the following terms:

...

Reasons for suspicion that member is suffering a physical or mental illness, or condition, or other circumstance why member is considered not safe to possess firearms:

This person has a previous history of mental illness which resulted in the suspension of his firearms licence and removal of his firearms by me. This occurred approximately four years ago.

After a period of hospitalisation his condition was managed with medication. Some months ago and prior to the above date Mr Ragless stopped taking his medication. Since that time both I and members of the club have noticed a steady deterioration of his capacity for rational thought and behaviour. He has become increasingly irrational, aggressive and argumentative during this time. At the date given above Mr Ragless attended a meeting and delivered a speech (a copy of which is attached) which caused considerable alarm.

His behaviour since that meeting has become increasingly focused on any other person who has disagreed with his actions. Mr Ragless is now targeting individuals members on a daily basis via email and phone calls. The people contacted, including myself, are experiencing this behaviour as harassment and find it threatening. As I have seen his behaviour deteriorate I cannot with any confidence anticipate his future conduct.

Under these circumstances I could not allow Mr Ragless onto the shooting ground especially with a firearm as I have a duty of care to the members of the club. I cannot ensure their safety in the present circumstances due to Mr Ragless unpredictable behaviour and his intense focus on individuals.

I am only too aware that this notification will further inflame Mr Ragless thus I am very concerned for the personal safety of myself and my family.

The State Executive of SA Field & Game Association via the State Secretary Mr Darian Stringer has supplied documentation to support their notification as submitted today to Inspector Angelo Pippas and Constable Shaun Holland. We likewise have also attached documents which support this notification. They include a letter published in the national newsletter of the Australian Federation of Field & Game and documents sent to the committee.

I ask on behalf of the Southern Branch SA Field & Game Association that Mr Ragless's firearms are removed from his possession immediately.

Signed

Mr Greg Dawes

...

President Southern Branch SA Field & Game Association

...

29 In his evidence Mr Dawes said that from around mid 2012 he began to observe changes in the complainant's behaviour.

30 He said that in mid June 2012 he received an email from him which appeared to be a criticism of Mr Perry. It came to him quite unexpectedly. In his view, it could not be rationally explained and was quite unwarranted. A couple of weeks later Mr Ragless published an email to club members and others, which Mr Dawes interpreted (in our view not unreasonably) as an intimidating response to an innocent error, in an earlier email published by Mr Perry, with respect to which clubs were open for persons to shoot on an upcoming weekend.

31 A month or so later he drove Mr Ragless to a shoot at Central Branch. He said that during the trip Mr Ragless talked about a range of matters including issues which, to Mr Dawes' knowledge, had led to his breakdown in 2008. He said that he also talked about the Port Arthur massacre, a topic which was personally distressing to Mr Dawes. He said that he told Mr Ragless if he didn't stop talking in this way he would put him out of the car.

32 He was so concerned for Mr Ragless and his mental health that a day or so later he rang Mrs Ragless and expressed his concerns to her. He told her that he felt Mr Ragless seemed to be focussing on the same issues that he had focussed on in 2008 and which had led to his breakdown. However, he said that Mrs Ragless disagreed with him and he took it no further.

33 A weekend or two later he stayed overnight with Mr Ragless after a 'working bee' at the Southern clubhouse. His conversations with Mr Ragless that evening served only to confirm in his mind his concerns for the complainant's mental health.

34 About a week later Mr Ragless asked to address a committee meeting at Southern. He addressed the meeting for some 30-40 minutes about events surrounding his mental illness. Mr Dawes said that Mr Ragless read from an article he was proposing to publish in the National Gun Club Magazine. He talked about his previous thoughts of committing suicide and told of the various ways that he had contemplated ending his life, including hanging himself, electrocuting himself and shooting himself.

35 We pause to note that Mr Ragless said that he had decided to publish such an article, amongst other things, because of his belief that Mr Dawes had told Mrs Ragless, in the telephone call referred to earlier, about the fact that in 2008 Mr Ragless had contemplated committing suicide. Both Mr Dawes and Mrs Ragless deny that the topic of his committing suicide was mentioned in that phone call.

36 Mr Dawes said that, in hindsight, he should have lodged a report with the police at that time. A couple of weeks later the complainant tendered his resignation from the steering committee on the new clubhouse building project

because of what he perceived was the committee's dissatisfaction with his work. In Mr Dawes' opinion, the project, under the complainant's stewardship, had stalled due to the complainant's erratic behaviour.

37 There then followed an altercation on the shooting range at Southern between Mr Ragless and Mr Perry. The complainant accused Mr Perry of a serious breach of the shooting rules² but conceded that he had, in turn, threatened Mr Perry. On the day after the incident Mr Dawes spoke to Mr Ragless who he said was in an agitated state and swore at him. On the following day the complainant announced in an email that he would be standing for the position of club secretary. However, some 10 days later he received an email from Mr Ragless declaring that due to concerns for his mental health from family and friends he had determined to withdraw his nomination for office.

38 During the course of the following days he said that he observed further behaviour from Mr Ragless, which he considered to be erratic. He said that when he tried to speak to him on 7 October 2012 Mr Ragless said words to the effect 'get your hands off me and fuck off'. He also became aware of correspondence from Mr Ragless being sent to club personnel such as Mr Perry, which Mr Dawes regarded as targeted, aggressive and harassing.

39 In the circumstances, he decided that he had no option but to make a report to the police regarding the complainant's fitness to hold a firearm. We accept that at the time he made his report Mr Dawes genuinely believed that the complainant was not safe to possess firearms.

Mr Stringer

40 In 2012 Mr Stringer was the secretary of SAFGA and a police accredited Firearms Safety Instructor.

41 He became aware of the fact that Mr Ragless had had a previous history of mental illness through the publicly distributed National Magazine. He also learned things such as his contemplated suicide and the fact that he had recently discontinued his medication for that illness.

42 On 6 October 2012 he attended a State Shooting Titles meeting. Over the course of the weekend he observed the complainant to be in an agitated state. He appeared to him to be behaving in an extremely confrontational and argumentative fashion.

43 He was sufficiently concerned about his behaviour that on 9 October 2012 he informally contacted the firearms branch of SAPOL to seek advice about what

² This incident was detailed in a previous Tribunal decision *Ragless v Stokes* [2015] SAEOT 1. Mr Dawes subsequently interviewed witnesses to the incident, none of whom said that there was a serious breach of the rules.

to do. He was advised that if he held fears about the complainant's fitness to hold a firearms licence he would need to make a formal report.

44 On 12 October 2012 he filed the following report to the Registrar of Firearms, giving the following as his reasons for suspecting that the complainant was not 'safe to possess firearms':

...

Personal admission of being under medical care and having ceased medication. Past self surrender of firearms to another licensee. Mood swings and concentration on single person or subject. Blame being directed at others for small incidents. Report in a national newsletter of his condition. Very confronting when in conversation, personal or group. Spreading untruths in respect to actual happenings. Changing information and actions on a daily basis.

...

45 Mr Stringer said that at the time he forwarded his report to the Registrar he genuinely held a suspicion that the complainant was not fit to possess a firearm.

46 We accept that at the time he made his report, Mr Stringer genuinely believed that the complainant was not safe to possess firearms.

47 Mr Ragless asserted that the evidence disclosed a conspiracy on the part of Mr Stringer, Mr Dawes and others to thwart his campaign to gain office on the committee at Southern and to use his history of mental illness to do it.

48 As we have said, we do not doubt that Mr Ragless genuinely holds these views. However, 'try as we might' we simply cannot accept this submission. Mr Dawes was a long standing friend and ally of Mr Ragless. There is simply no basis in the evidence to support a proposition that Mr Dawes would decide to undermine the complainant's election campaign and use his past mental health to do it.

49 Mr Ragless advanced as the rationale for Mr Dawes' behaviour a submission that he was seduced by Mr Stokes³ and the money Mr Stokes had. In short, he suggested that Mr Stokes had effectively 'bought' Mr Dawes and that Mr Dawes had 'turned on' his long standing friend, Mr Ragless and callously used his mental illness in so doing.

50 These are serious allegations for which, in our view, there is not a shred of evidence.

51 In the case of Mr Stringer, there is an equal absence of evidence as to why he would act in this way. He was acquainted with Mr Ragless but was no more than a fellow gun enthusiast.

³ At that time Mr Stokes was a member of Southern committee.

52 There is no suggestion, even from the complainant, that Mr Stringer was ever ‘in the thrall’ of Mr Stokes. Indeed, Mr Ragless accepted that up until a week before his report to the Registrar, Mr Stringer had had little to do with him. In the space of a week he submitted that he had not only agreed to be part of the conspiracy but to actively further it by making a false report to the police.

53 There is simply no evidence capable of supporting such a thesis and we reject it.

54 The question remains as to whether either Mr Dawes or Mr Stringer engaged in unlawful discrimination on the grounds of the complainant’s mental illness in making their reports to the Firearms Registrar.

55 In our view, and for the reasons expressed, Mr Dawes and Mr Stringer made their reports to the Registrar of Firearms based on genuine and reasonable concerns with respect to the fitness of Mr Ragless to hold a firearm. They did not, in so doing, contravene the Act.

56 In so saying, we do not suggest that Mr Ragless was, at that time, suffering from a mental illness. Nevertheless, in our view, both Mr Stringer and Mr Dawes reasonably suspected that he did and, as such, they did not breach the Act in making their reports to the Registrar.

57 Even if we were to find that they had acted in breach of the Act, the fact that they genuinely believed that they were obliged to make their reports means that they, and in turn SAFGA, would be ‘protected’ by s 21I(4) of the *Firearms Act* which provides that:

21I—Obligation to report

...

(4) A person incurs no civil or criminal liability in making a report in good faith in compliance, or purported compliance, with this section. (our emphasis)

58 To make a report where there is reasonable cause to suspect that a member of a firearms club has a mental condition which might render that person a threat to the safety of himself or others is, in our view, a report in good faith in purported compliance with the section.

59 We reiterate that in relying on this provision, we are not to be taken as concluding in any way that at the time Mr Ragless was in fact a threat to the safety of himself or others. There is insufficient evidence before us to make such a finding, even if it were necessary to do so which it is not.

The Membership Suspension

60 It was submitted by Mr Gilchrist, counsel for SAFGA, that, on this issue, the complainant’s case, fairly interpreted, was that his membership was

suspended due to a failure on the part of SAFGA to comply with its Constitution. It was not a case, so he submitted, based upon a breach of the Act, for unlawful discrimination and was therefore not justiciable by the Tribunal.

61 The complainant was unrepresented. His arguments should not therefore be subjected to a level of nuance which might otherwise apply were he to have been represented. We therefore propose to approach our consideration of this issue on the assumption that the removal of his membership was a potential act of alleged unlawful discrimination based upon his mental illness and part of an unlawful conspiracy designed to thwart his campaign for office.

62 For reasons already articulated, we reject the suggestion of an unlawful conspiracy. There is no evidence to support it.

63 Following the removal of his firearms licence the complainant continued to publish 'posts' on his website with respect to Mr Perry and to forward emails to SAFGA officials which, although legitimate in his mind, were susceptible to an interpretation of being violent and threatening.

64 By way of example, we note that a post on his website of 16 October 2012 said:

I did not sleep well on Friday night and woke with a fear that if one of my friends challenged Peter it could result in death or serious injury.

65 We regard this as a potentially inflammatory comment and arguably an incitement to others.

66 He also emailed Mr Stringer, amongst others, on 23 October 2012 and said:

These people have been branch stacking by abusing whoever they don't like until they left Southern. They attempted to set me up and I have proof. They could go to gaol and so could you. (our emphasis)

67 This is clearly a threat of a potential report of a SAFGA official for arguably criminal behaviour.

68 He then said:

If I get in trouble with Police I am going to plead temporary insanity.

69 This was interpreted by the recipients as a warning that he may be prepared to act criminally and that if he did he would use mental illness as a defence. We regard that interpretation as reasonable in the circumstances.

70 In our view, SAFGA's decision to suspend him (pending an appeal) on 23 October 2012 was reasonable even if it was done in breach of the rules of its Constitution as asserted by Mr Ragless. It is unnecessary for us to determine whether the decision to suspend him was, either in fact or in law, in breach of

SAFGA's Constitution because we are satisfied that it was none the less a decision made in the genuine belief that his conduct was unbecoming of a member and not a decision based on conduct which constituted unlawful discrimination in breach of the Act.

Conclusion

71 SAFGA did not unlawfully discriminate against the complainant in taking action to report him to the Firearms Registrar or to suspend his membership.

72 The Complaint is therefore dismissed.