

Plaintiff Submissions

Case Title:	Tutoveanu v. Velez [2025] NSWSC
Hearing Dates:	
Date of orders:	
Decision Date:	
Jurisdiction:	Equity - Duty List
Before:	Kunc J
Decision:	
Catchwords:	ASSOCIATIONS AND CLUBS – disability discrimination – federal election – pre-selection – delayed nomination application – medical condition – working with children check CONTRACT – breach of constitution – nomination rules EQUITY – balance of weights – no delay in action
Legislation Cited:	Commonwealth Constitution, s 44(i) Disability Discrimination Act 1992 (Cth), ss 3, 4, 6, 11, 27, 43, 122, 123 Evidence Act 1995 (NSW), s 104
Cases Cited:	CFMMEU v Personnel Contracting Pty Ltd [2022] HCA 1 Faehrmann v Van Vucht [2018] NSWSC 397 Re Gallagher [2018] HCA 17
Texts Cited:	Constitution of The Greens NSW
Category:	Procedural rulings
Parties:	Anton Tutoveanu (Plaintiff) Luc Velez (First Defendant) The Greens NSW Incorporated (Second Defendant)
Representation:	Counsel: A Tutoveanu (Plaintiff) ... Solicitors: Anton Tutoveanu (Plaintiff) ...
File Numbers:	
Publication Restriction:	Unrestricted

INTRODUCTION

- 1 On 7th April 2025 a summons (**Summons**) was lodged to the Duty Judge in Equity seeking:

1 A declaration pursuant to s 75 of *Supreme Court Act 1970* (NSW) that the second defendant (**The Greens NSW**) had not properly selected a candidate consistent with the party's governing instruments for the upcoming 2025 Sydney Federal election due to disability discrimination of a prospective nominee (**Anton Tutoveanu**) in the pre-selection process conducted between 4th October 2024 and 12th November 2024.

a. That the pre-selection committee for the Sydney electorate and associated local groups had breached the party's Constitution by not providing a reasonable adjustment in the form of an extension of time for a disadvantaged nominee to provide a valid working with children check.

b. That the *Sydney Federal Preselection Rules – 2025* were breached by not re-drawing the internal selection due to lack of diversity within the announced nominee list.

c. That the first defendant (**Luc Velez**) had engaged in aiding and abetting disability discrimination pursuant to the *Disability Discrimination Act 1992* (Cth) by continuing to campaign for his candidacy after becoming aware of the formal complaint that substantiated his invalid selection.

2 An order pursuant to s 65 of *Supreme Court Act 1970* (NSW) for the second defendant to fulfil duty its duty in submitting a valid candidate to the Australian Electoral Commission for the Sydney electorate before the close of nominations at midday on Thursday 10th April 2025.

3 An injunction pursuant to s 66 of *Supreme Court Act 1970* (NSW) for the first defendant Mr Velez to cease making the representation that he is The Greens candidate for the 2025 Sydney Federal election.

4 No damages are sought.

5 Costs are sought.

BACKGROUND

- 2 There is an upcoming election for the 2025 House of Representatives for the Australian Parliament.
- 3 The political party (**The Greens NSW**) are seeking to submit candidates for the upcoming ballot on 3rd May 2025.

Plaintiffs

- 4 The first plaintiff is Mr Anton Tutoveanu (**Tutoveanu**) a non-provisional member of **The Greens NSW** political party.

Defendants

- 5 The first defendant is Mr Luc Velez (**Velez**) also a non-provisional member of **The Greens NSW** and current selected candidate for the 2025 Sydney Federal election for the political party.
- 6 The second defendant is the incorporated association and political party **The Greens NSW**.

EVIDENCE

- 7 The plaintiff has provided an affidavit with 4 exhibits 'CB 1', 'GRN 1', 'AT 1' and 'MED 1'.
- 8 The defendants are yet to provide evidence.

CHRONOLOGY

- 9 On 5th March 2025 **Tutoveanu** registered as a member of **The Greens NSW** political party starting as a provisional member for a 3 month period.
- 10 On 5th June 2024 **Tutoveanu** became a non-provisional member having access to the party's members' website known as "The Greenhouse".
- 11 On 13th August 2024 **Tutoveanu** began participating in an online group messaging platform known as Signal, being added to the chat room named "ISG Inner Sydney Greens". This group had a total of 22 members.
- 12 On 29th August 2024 there were several messages exchanged among the group chat members.
- 13 **Tutoveanu** participated in the Sydney Greens Local Government Election Campaign by:
 - (a) Attending a doorknock with Mr Jay Gillieatt.
 - (b) Letterboxing flyers around Erskineville, Redfern, Surry Hills and Barangaroo/Millers Point under the direction of Matthew Thompson, Luc Velez and Nathan & Matthew McCarthy.
 - (c) Attending a phonebanking evening.
 - (d) Attending pre-polling booths between 7th - 12th September 2024.

- (e) Attending the voting day on 14th September 2024 at the Sydney Masonic Centre and St. Stephen's Uniting Church polling booths.
- 14 On 28th September 2024 **Tutoveanu** received an email about the first meeting of the Sydney Federal Campaign Committee.
 - 15 On 29th September 2024 **Tutoveanu** renewed his membership to be a financial member.
 - 16 On 2nd October 2024 the first meeting of the Sydney Federal Campaign Committee took place.
 - 17 On 4th October 2024 the nominations for pre-selection to stand as **The Greens NSW** candidate for the next federal election for the division of Sydney had opened.
 - 18 On 16th October 2024 **Tutoveanu** emailed the Returning Officer, Seamus Lee, for an extension to submit his application for nomination. Seamus responded that he would consult with the deputies. **Tutoveanu** received no follow up.
 - 19 On 22nd October 2024 there was a Zoom online ISG meeting. **Tutoveanu** sent his nomination forms to Seamus Lee indicating that he was still waiting for a WWCC including information about surrendering his drivers licence due to a medical condition. **Tutoveanu** received no response.
 - 20 On 26th October 2024 the Returning Officer announced the pre-selection nominees to be Luc Velez and Nick Ward.
 - 21 On 31st October 2024 the voting for the Sydney Federal pre-selection had opened.
 - 22 On 6th November 2024 the voting closed.
 - 23 On 8th November 2024 an agenda for the Federal Campaign Strategy Day was sent.
 - 24 On 9th November 2024 **Tutoveanu** attended the Federal Campaign Strategy Day where it was announced that **Velez** was the selected candidate. **Tutoveanu** felt he hadn't been given a fair or equitable opportunity to be considered as a candidate by the party.
 - 25 On 10th November 2024 Danny Jang and Deborah Teague reached out to me to follow up with **Tutoveanu's** concerns.
 - 26 On 12th November 2024 the Returning Officer announced **Velez** as **The Greens NSW** Sydney candidate via email.
 - 27 On 19th November 2024 **Tutoveanu** received a clearance for a WWCC and his nomination became valid on this day per the *Sydney Federal Preselection Rules – 2025*.
 - 28 On 1st December 2024 **Tutoveanu** text messaged **Velez** about being left out and the relevant reasons.
 - 29 On 2nd December 2024 **Velez** sent an email to the party mailing list asserting that he is **The Greens NSW** candidate for Sydney. Danny Jang later responded via text requesting **Tutoveanu** to write to the pre-selection committee members. **Tutoveanu** emailed requesting a re-draw. Deborah Teague replied that a meeting will be held to manage the concerns. Later this day there were some messages exchanged in the ISG Group Chat on Signal.
 - 30 On 3rd December 2024 Deborah Teague emailed **Tutoveanu** requesting further details about his complaint regarding the pre-selection process. **Tutoveanu** responded that he would prepare and provide some formal documents.
 - 31 On 6th December 2024 **Tutoveanu** served a physical copy of a formal complaint resembling a court book to **Velez** (Exhibit 'CB 1').
 - 32 On 7th December 2024 **Tutoveanu** served the formal complaint electronically to **The Greens NSW**.
 - 33 On 9th December 2024 **The Greens NSW** state manager Jamie Parker confirmed receipt of the formal complaint.

- 34 On 14th December 2024 **The Greens NSW** co-convenors Arthur Bain (along with Amy Croft) had acknowledged receipt of **Tutoveanu's** concerns, requesting to seek clarification.
- 35 On 16th December 2024 **The Greens NSW** had announced: "Nominations for preselection as the Greens candidate for the Federal electorate of Wentworth are now open and will close at 5pm on Tuesday, January 7th 2025."
- 36 On 27th December 2024 **Tutoveanu** had a phone call with and responded to **The Greens NSW** co-convenors Arthur Bain (along with Amy Croft).
- 37 On 28th December 2024 **Tutoveanu** replied with points in response to the clarification sought as well as: "As discussed in our phone call, a meeting early next year to plan a re-selection would be the suggested way forward to remedy the complaint. I also note the Wentworth pre-selection process is being conducted well into next month so I believe there is sufficient time for a re-draw."
- 38 On 30th December 2024 **The Greens NSW** co-convenors Arthur Bain (along with Amy Croft) had responded to **Tutoveanu**: "We discussed the potential of a Teams meeting with relevant stakeholders , possibly in the week commencing 6 Jan, with the intention of rebuilding relationships and finding a way forward. This may be through mediation, the escalation to a Conflict Resolution Committee as per section 14.1 of the Preselection Rules, or some other solution. I will call you on Monday 6 Jan to discuss the matter further."
- 39 On 6th January 2025 **Tutoveanu** emailed **The Greens NSW** co-convenors Arthur Bain (along with Amy Croft) to arrange a meeting Thursday evening at 6:30pm: "The purpose of this informal meeting is to find a way forward to resolve the dispute between Anton Tutoveanu and the Sydney Federal Preselection Committee."
- 40 On 9th January 2025 an virtual meeting was held at 6:30pm with participants:
- (a) Anton Tutoveanu (Complainant)
 - (b) Arthur Bain (Co-convenor)
 - (c) Amy Croft (Co-convenor)
 - (d) Deborah Teague (Co-convenor Preselection Committee)
 - (e) Danny Jang (Co-convenor Preselection Committee)
 - (f) Nick Ward (Observer)
- 41 No resolution was reached.
- 42 On 10th January 2025 **The Greens NSW** co-convenors Arthur Bain (along with Amy Croft) responded with meeting notes. Further correspondence was exchanged: "I believe it was clearly stated that the Sydney Preselection will not be rerun"
- 43 On 13th January 2025 **Tutoveanu** continued to advocate for a re-draw.
- 44 On 17th January 2025 **The Greens NSW** co-convenors Arthur Bain (along with Amy Croft) responded: "I am writing to advise that I find that there is no foundation for your complaint"
- 45 On 29th January 2025 **Tutoveanu** followed up about the complaint.
- 46 On 30th January 2025 **The Greens NSW** co-convenors Arthur Bain (along with Amy Croft) reiterate their position on the matter.
- 47 On 23rd February 2025 **Tutoveanu** served a concerns notice electronically to **The Greens NSW** regarding statements of imputation communicated during the virtual meeting that took place on 9th January 2025.
- 48 On 24th February 2025 **The Greens NSW** co-convenors Arthur Bain (along with Amy Croft) acknowledged receipt of the notice.

- 49 On 7th April 2025 **Tutoveanu** lodged a **Summons** to the Supreme Court of NSW for declaratory relief regarding the alleged miscarried complaint.
- 50 On 8th April 2025 **Tutoveanu, Velez** and **The Greens NSW** attended the court for directions.

FACTS

- 1 The plaintiff, Mr Anton Tutoveanu (**Tutoveanu**) suffers from a medical condition (**Medical Condition**).
- 2 **Tutoveanu** surrendered his drivers licence due to the **Medical Condition** and had been using other forms of identification within the community.
- 3 The WWCC process required either a physical NSW Drivers Licence or NSW Photo Card to validate.
- 4 **Tutoveanu** couldn't foresee the need to have a NSW Photo Card due its voluntary nature.
- 5 The admission process for LPAB allows alternative secondary identification to prove NSW residency.
- 6 The WWCC process is beyond the control of **Tutoveanu, Velez** and **The Greens NSW**.
- 51 **The Greens NSW** requires a valid WWCC to approve valid nominees for the pre-selection process.

LEGISLATION & RULES

- 52 *Disability Discrimination Act 1992* (Cth) legislates:

3 Objects

The objects of this Act are:

- (a) to eliminate, as far as possible, discrimination against persons on the ground of disability in the areas of:
 - (i) work, accommodation, education, access to premises, clubs and sport; and
 - (ii) the provision of goods, facilities, services and land; and
 - (iii) existing laws; and
 - (iv) the administration of Commonwealth laws and programs; and
- (b) to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law as the rest of the community; and
- (c) to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.

4 Interpretation

- (1) In this Act, unless the contrary intention appears:

...

reasonable adjustment: an adjustment to be made by a person is a **reasonable adjustment** unless making the adjustment would impose an unjustifiable hardship on the person.

...

6 Indirect disability discrimination

- (1) For the purposes of this Act, a person (the **discriminator**) **discriminates** against another person (the **aggrieved person**) on the ground of a disability of the aggrieved person if:

- (a) the discriminator requires, or proposes to require, the aggrieved person to comply with a requirement or condition; and

(b) because of the disability, the aggrieved person does not or would not comply, or is not able or would not be able to comply, with the requirement or condition; and

(c) the requirement or condition has, or is likely to have, the effect of disadvantaging persons with the disability.

(2) For the purposes of this Act, a person (the **discriminator**) also **discriminates** against another person (the **aggrieved person**) on the ground of a disability of the aggrieved person if:

(a) the discriminator requires, or proposes to require, the aggrieved person to comply with a requirement or condition; and

(b) because of the disability, the aggrieved person would comply, or would be able to comply, with the requirement or condition only if the discriminator made reasonable adjustments for the person, but the discriminator does not do so or proposes not to do so; and

(c) the failure to make reasonable adjustments has, or is likely to have, the effect of disadvantaging persons with the disability.

(3) Subsection (1) or (2) does not apply if the requirement or condition is reasonable, having regard to the circumstances of the case.

(4) For the purposes of subsection (3), the burden of proving that the requirement or condition is reasonable, having regard to the circumstances of the case, lies on the person who requires, or proposes to require, the person with the disability to comply with the requirement or condition.

...

11 Unjustifiable hardship

(1) For the purposes of this Act, in determining whether a hardship that would be imposed on a person (the **first person**) would be an **unjustifiable hardship**, all relevant circumstances of the particular case must be taken into account, including the following:

(a) the nature of the benefit or detriment likely to accrue to, or to be suffered by, any person concerned;

(b) the effect of the disability of any person concerned;

(c) the financial circumstances, and the estimated amount of expenditure required to be made, by the first person;

(d) the availability of financial and other assistance to the first person;

(e) any relevant action plans given to the Commission under section 64.

Example: One of the circumstances covered by paragraph (1)(a) is the nature of the benefit or detriment likely to accrue to, or to be suffered by, the community.

(2) For the purposes of this Act, the burden of proving that something would impose unjustifiable hardship lies on the person claiming unjustifiable hardship.

...

27 Clubs and incorporated associations

(1) It is unlawful for a club or incorporated association, the committee of management of a club or a member of the committee of management of a club or incorporated association to discriminate against a person who is not a member of the club or association on the ground of the person's disability:

(a) by refusing or failing to accept the person's application for membership; or

(b) in the terms or conditions on which the club or association is prepared to admit the person to membership.

(2) It is unlawful for a club or incorporated association, the committee of management of a club or a member of the committee of management of a club or incorporated association to discriminate against a person who is a member of the club or association on the ground of the member's disability:

- (a) in the terms or conditions of membership that are afforded to the member; or
- (b) by refusing or failing to accept the member's application for a particular class or type of membership; or
- (c) by denying the member access, or limiting the member's access to any benefit provided by the club or association; or
- (d) by depriving the member of membership or varying the terms of membership; or
- (e) by subjecting the member to any other detriment.

(4) Neither subsection (1) nor (2) renders it unlawful to discriminate against a person on the ground of the person's disability if membership (however described) of the club or incorporated association is restricted only to persons who have a particular disability and the first-mentioned person does not have that disability.

...

43 Offence to incite doing of unlawful acts or offences

It is an offence for a person:

- (a) to incite the doing of an act that is unlawful under a provision of Division 1, 2, 2A or 3; or
- (c) to assist or promote whether by financial assistance or otherwise the doing of such an act.

Penalty: Imprisonment for 6 months.

...

122 Liability of persons involved in unlawful acts

A person who causes, instructs, induces, aids or permits another person to do an act that is unlawful under Division 1, 2, 2A, 3 or 6 of Part 2 is, for the purposes of this Act, taken also to have done the act.

...

123 Conduct by directors, employees and agents

(1) If, for the purposes of this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, employee or agent had the state of mind.

...

53 The Greens NSW governing instruments:

CONSTITUTION OF THE GREENS NSW

...

2.3. Each member-group is responsible for its own office-bearers, finances, policy platforms and all campaigns or activities which they undertake. Member-groups shall have their own constitutions, or organisational rules, from which they shall function. Except that:

As a condition of membership of The Greens NSW they must conform to the standards required by our principle of "Grassroots Democracy". This would preclude member-groups from imposing discriminatory admission procedures, ... Discrimination prohibited by the NSW Anti-Discrimination Act 1977, and the Federal Racial Discrimination Act 1975, Sex Discrimination Act 1984, and Disability Discrimination Act 1992 would be precluded and includes discrimination on the basis of race, sex, marital status, physical, intellectual, or psychiatric disability, being disfigured, homosexuality, colour, ethnic origin, immigration, pregnancy, age, HIV/AIDS.

...

Sydney Federal Preselection Rules – 2025

...

5. Nomination Process

5.1. Returning Officers shall inform all eligible members of the process for nomination and provide all resources necessary to complete the nomination, including but not limited to the following:

5.1.1. Nominee acknowledgement of accountability declaration

5.1.2. Nominee preselection questionnaire and statutory declaration

5.1.3. Federal Government Nominee Section 44 questionnaire

5.1.4. A valid NSW Working With Children Check

5.1.5. A valid insolvency check obtained within the last 3 months

5.2. Forms required for the nomination process are linked at the end of this document.

5.3. Before the nominations close each Nominee should submit Nominee Information to the Returning Officers.

5.4. The Returning Officers will declare a Nominee's nomination invalid if they do not provide signed and completed forms listed in 5.1.

...

8. Gender Equity and Diversity

8.1. The local groups of the Seat of Sydney will strive to achieve gender parity amongst Nominees.

8.2. In the event that, at the conclusion of the nomination period, the total pool of nominees contains more than 50% of nominees who identify as cis men, or if there is there is an obvious lack of diversity within the nominee pool, an urgent meeting of the preselection committee will be held within 48 hours to determine whether the preselection needs to be suspended and the nomination period reopened to facilitate greater diversity.

SUBMISSIONS

54 A previous instance of a pre-selection dispute was determined in *Faehrmann v Van Vucht* [2018] NSWSC 397. Though not a claim in discrimination, it appears the party member, Seamus Lee, had previously engaged in inequitable conduct to prevent a valid non-provisional member from being fairly considered as a candidate where Ward CJ in Eq had declared in favour of the plaintiff and ordered injunctive relief (see [129]-[140]). The legal context of **The Greens NSW** political party is well understood by the court.

55 **The Greens NSW** have vicarious liability like most corporations who are liable for the actions of their employees/agents (see *CFMMEU v Personnel Contracting Pty Ltd* [2022] HCA 1 at [80]-[83]).

56 Due to the denouncement of dual citizenship in the statutory declaration, the Australian government recognises that **Tutoveanu** has taken all steps to ensure he is indeed *de jure* a exclusive citizen of the nation and no other, in addition to material facts (*de facto*). Therefore, he is not disqualified under s 44(i) of the *Commonwealth Constitution* due to irremediable impediment of foreign law (see *Re Gallagher* [2018] HCA 17).

57 This is a civil court.

58 s 104 of *Evidence Act 1995* (NSW) states:

140 Civil proceedings: standard of proof

(1) In a civil proceeding, the court must find the case of a party proved if it is satisfied that the

case has been proved on the balance of probabilities.

(2) Without limiting the matters that the court may take into account in deciding whether it is so satisfied, it is to take into account—

- (a) the nature of the cause of action or defence, and
- (b) the nature of the subject-matter of the proceeding, and
- (c) the gravity of the matters alleged.

59 Apply the test of "*balance of weights*".

60 There are reasons *for* and *against* when considering **reasonable adjustments** pursuant to s 6 of *Disability Discrimination Act 1992* (Cth).

61 Reasons *for*:

- (a) The Greens NSW have an overriding value of diversity and inclusivity within their political party.
- (b) Tutoveanu submitted Nominee Information before **The Greens NSW** nominee submission deadline.
- (c) The pre-election process is conducted electronically which means simply sending a bulk email to the local group members to vote again. This is a process that would take at most a week.
- (d) **The Greens NSW** had reasonably between 19th November 2025 to 1st January 2025 (over 6 weeks) to re-draw the pre-selection to include a gender-diverse nominee in the pre-selection process.

62 Reasons *against*:

- (a) The Sydney electorate is considered to have a high chance of prospective success by **The Greens NSW**. Beginning the Sydney campaign earlier than the other electorates was to ensure a quality candidate for the party and re-drawing was too much hassle since the party would lose campaigning time to administer the pre-selection again.

63 Ascribing each reason a weight of 1: the "*balance of weights*" test favour the plaintiff.

64 Arguably the reason in *for* (a) could be weighted as more than 1, which still favours the plaintiff.

Defendants

65 The defendants are yet to provide written submissions.

Anton Tutoveanu
Date: 9th April 2025