SUPREME COURT OF QUEENSLAND

CITATION:	*Chilcott v Queensland Health & Anor* [2002] QSC 118
PARTIES:	**PETER BERNARD CHILCOTT** (applicant) **v** **MEDICAL BOARD OF QUEENSLAND** (first respondent) **QUEENSLAND HEALTH** (second respondent)
FILE NO/S:	S 264 of 2001
DIVISION:	Trial
PROCEEDING:	Application for Statutory Order of Review
ORIGINATING COURT:	Supreme Court at Townsville
DELIVERED ON:	8 May 2002
DELIVERED AT:	Townsville
HEARING DATE:	29 April 2002
JUDGES:	Cullinane J
ORDER:	**Application dismissed with costs to be assessed.**
CATCHWORDS:	ADMINISTRATIVE LAW - JUDICIAL REVIEW LEGISLATION - whether applicant had sufficient standing under s.7(1) of the Judicial Review Act 1991 - what the role of the Court is in applications of this nature.
COUNSEL:	The Applicant appeared on his own behalf. R. Devlin for the first respondent M. Plunkett for the second respondent
SOLICITORS:	The Applicant appeared on his own behalf. Philips Fox for the first respondent Crown Law for the second respondent

[1] The Applicant who is a medical practitioner at Bowen has made an application for statutory review of two decisions, one of the First Respondent, the Medical Board of Queensland and the other of Gregory Richard Jones, a delegate of the Minister

for Health. The delegate was wrongly named in the application but it is common ground that the delegate is in fact Gregory Richard Jones. I gave leave to amend the application accordingly without any objection.

[2] This application was preceded by earlier applications. However events overtook those applications. This application relates to existing conditional registrations of two Nigerian doctors. Earlier conditional registrations expired before the applications were heard.

[3] The Applicant asks the court to have regard to all of the material including material filed in the earlier applications and I indicated a preparedness to do this.

[4] The Applicant appeared on his own behalf whilst the Respondents were represented by counsel.

[5] The two decisions under challenge are:

> (a) a decision pursuant to s.17C(2) by the delegate of the Minister for Health that Bowen is an area of need for the purposes of s.17C(1)(d) of the Medical Act; and
>
> (b) a decision by the Medical Board of Queensland that the two doctors concerned be granted conditional registration pursuant to s.17C(1) for one year permitting them to practice in Bowen.

[6] The relevant provisions of the Act provide respectively:

> *"17C.(1)(d) Unmet areas of need*
>
> *A person may be registered for the purpose of enabling an unmet area of need, decided under subsection (2), to be met if the board is satisfied that the person has suitable qualifications and experience to practise medicine in the area of need;"*
>
> *"S.17C.(2) For subsection (1)(d),the Minister may decide there is an unmet area of need relating to a medical service if the Minister considers there are insufficient medical practitioners practising in the State or part of the State or provide the service at a level that meets the needs of people living in the State or the part of the State".*

[7] The Applicant conducts a practice in partnership with three others. There are in total eight practitioners in private practice in Bowen apart from the two doctors who have received conditional registration.

[8] There are doctors employed at the Bowen and Collinsville Hospitals. Collinsville forms part of the Bowen Shire.

[9] At the outset the Respondent challenged the standing of the Applicant to seek judicial review. An order had been made earlier that a statement of reasons be provided to the Applicant , something which he would have been entitled to receive only if he had sufficient standing. However it is fair to say that the matter was not

at that time the subject of substantial argument as it was on the hearing of this application.

[10] Section 7 (1) of the *Judicial Review Act* provides as follows:

> *"(a) to a person whose interests are adversely affected by the decision; or*
>
> *(b) in the case of a decision by way of the making of a report or recommendation - to a person whose interests would be adversely affected if a decision were, or were not made in accordance with the report or recommendation".*

[11] The Applicant raised three matters which arguably gave him standing. The first was suggested damage to his reputation but there was no evidence led in support of this claim. The second was that as one of the existing medical practitioners in Bowen the granting of conditional registration to the two doctors concerned must necessarily have an adverse impact upon his practice resulting in economic detriment. There is evidence placed before the court from which it was suggested that prior to the conditional registration of any doctors under the Act the existing medical practitioners were not fully occupied according to certain criteria. The third ground is that the Applicant was deprived of the right to apply for a position at the practice at which the two conditionally registered doctors are employed by the failure of the Respondent and particularly the Second Respondent to ensure that appropriate steps were taken to secure the services of a registered medical practitioner in Australia. The steps which should have been taken, according to the Applicant, involved advertising for an Australian doctor. He says that he would have applied for the position.

[12] Any detriment in this regard it seems to me must flow not from either of the decisions made here but from the failure of the proprietor of the medical practice concerned to advertise for registered Australian medical practitioners as the Applicant claims should have been done. As will be seen, the Second Respondent relied upon evidence from the proprietor in concluding that were insufficient medical practitioners practising in that part of the State.

[13] The basis then upon which the Applicant must ground his right to bring the application is that as a medical practitioner in the Bowen area, any determination that the Bowen area is an area of need and consequent conditional registration of medical practitioners must necessarily or be likely to impact adversely upon his income as a medical practitioner. There is no evidence of any actual impact at present.

[14] The test to be applied as to standing under the *Judicial Review Act 1991* is the same as that to be found in the *Administrative Decisions (Judicial Review) Act 1977*. Section 16 of the *Judicial Review Act* requires a similar approach to be adopted to that taken under the Commonwealth legislation.

[15] On the hearing the Applicant cross-examined Mr Jones. It had been intended that he would cross-examine Dr Toft but Dr Toft's answers to specific questions posed by the Applicant were accepted by the Applicant without the necessity for cross-examination and these were placed in evidence.

[16] The question whether a person is a person aggrieved will in each case turn upon the terms of the particular legislation, an analysis of its subject matter and the scope and purpose of the relevant statutory provisions.

[17] The purpose of the legislation under consideration here is, in my view, obviously enough to enable the health needs of residents in areas where there are insufficient medical practitioners to be met by the conditional registration of persons who are not able to be registered but who satisfy certain criteria. Thus the satisfaction of a public need is what is aimed at. The relevant parts of the legislation have already been set out in these reasons and it is that which has to be considered together with the Ministerial policy issued in relation to the subject. The policy it may be noted has to some extent been overtaken by the amendments to the Act which amongst other things conferred upon the Minister the power to determine whether there is in a part of the State an un-met area of need relating to a medical service. Conditional registration is granted for a period of one year.

[18] In a number of cases it has been held that a purely competitive or economic interest that a competitor might have in protecting his or her market share would not in itself be sufficient to qualify that person as an aggrieved person. See *Alphapharm Pty Ltd v Smithkline Beecham (Australia) Pty Ltd* (1994) 49 FCR 250 and *Big Country Developments Pty Ltd v Australian Community Pharmacy Authority* 60 FCR 85. It is of course important always to bear in mind that the question has to be considered by reference to the particular legislation under consideration.

[19] I should add that the Applicant recently sought judicial review under the *Administrative Decisions (Judicial Review) Act 1977* before the Federal Magistrates Court in respect of an exemption granted by a delegate of the Federal Minister for Health under s.3J of the *Health Insurance Act 1973*. The effect of this order was that the two Nigerian doctors to whom reference has earlier been made were granted exemptions from the provisions of that section, the result being that the patients of the two doctors have the right to claim Medicare benefits. The test applicable in that case was whether an area was "an area of workforce shortage".

[20] The Applicant claimed standing on broadly similar grounds to those which are relied upon here and it was held applying the principles in the cases to which I have referred that he did not have sufficient standing to institute proceedings. The issues were in a broad sense similar to those which arise here.

[21] I think that a similar conclusion should be reached here.

[22] There is, as I have indicated, no evidence that the Applicant suffers any financial loss as a consequence of the two doctors being permitted to practise at Bowen. Nor does it follow that this will inevitably occur.

[23] Moreover a consideration of the purposes of the legislation, the aims sought to be achieved, and the specific legislative procedure to be followed satisfies me that the purely postulated disadvantage which the Applicant claims as a person specifically effected because he was already providing such services and the postulated loss that would flow because there are, he says, already sufficient medical practitioners in Bowen does not confer a sufficient interest to support an entitlement to bring an application of this kind. This would be sufficient to dispose of the application.

However, I propose to consider the various grounds which the Applicant advanced in support of the application.

[24] It is apparent that the Applicant has spent a good deal of time and effort in the investigation of the matter and the preparation of this application but it also clear that he has unrealistic expectations of what might be able to be achieved on an application for judicial review.

[25] The Applicant's objection is primarily to the determination by the Minister's delegate that there is an un-met area of need relating to a medical service in Bowen. However he raises a number of matters in relation to the decision of the First Respondent to give conditional registration to the two Nigerian doctors and is at least in some of the material inclined to argue that the First Respondent ought to have considered afresh the question of an area of need when considering the question of the conditional registration of the doctors concerned.

[26] It is important to bear in mind the limited role which the court in the exercise of the function invoked here has. In *Minister for Aboriginal Affairs v Peko Wallsend Ltd* (1986) 162 CLR 24, Mason J said at page 41:

> *"The limited role of a court reviewing the exercise of an administrative discretion must constantly be borne in mind. It is not the function of the court to substitute its own decision for that of the administrator by exercising a discretion which the legislature has vested in the administrator. Its role is to set limits on the exercise of that discretion, and a decision made within those boundaries cannot be impugned"*

[27] Power to make the decisions concerned is conferred by the legislature upon the Respondents. It is not the court's function to give an advisory opinion nor to conduct an inquiry into whether offences against the *Medical Act* are being committed. I mention this because in some of the material which the Applicant places before the court he seeks both of these things.

[28] The application raised a breach of natural justice claim. He contended that he was entitled to be heard before the decisions were made and that the failure to give him the opportunity to be heard denied him natural justice.

[29] I do not think this can be accepted. In *Pharmacy Restructuring Authority v Martin* (1994) 53 FCR 589 the Full Court of the Federal Court said at p.597:

> *"We do not know of any general principle to the effect that a statutory authority charged with the duty of considering an application is obliged by the principles of fairness to notify and hear everybody whose economic interest may be damaged by an approval. To promulgate a general rule imposing such an obligation would be to visit upon statutory decision makers a potentially massive task of indeterminate* reference."

[30] There was evidence in the present case that a large number of these applications are dealt with each year.

[31] The legislation under consideration here and the decisions taken pursuant to it are directed not towards the rights and expectations of individuals but rather are

directed towards the community in the relevant area as a whole. See *Comptroller General of customs v Kawasaki Motors Pty Ltd* (1991) 103 ALR 661 at 680. I am not persuaded that the applicant had any entitlement to be heard before either decision was made.

[32] The evidence establishes nonetheless that before the determination under s.17C(2) was made here the Applicant in fact made a number of representations to the delegate and there is nothing to suggest that these were not taken into consideration. In these circumstances it is difficult to see how the Applicant could be said to have been denied natural justice if such a duty were owed to him.

[33] A number of the Applicant's arguments were directed towards matters which clearly go to the merits of the matter, or are, it seems to me, not relevant to the court's function on this application. I will however deal with them.

[34] On the hearing the Applicant placed a written outline of argument before the court. The matters raised there do not coincide with the application itself. In the application the Applicant listed virtually all of the grounds available for judicial review. In an outline handed to the court upon the hearing he addressed various issues and I will assume that these are the only issues that he wishes to pursue. There is no material which would raise any open issue.

[35] Throughout the outline in relation to a number of the points which the Applicant raises is an argument that legislation and the decisions made pursuant to it conflict with the ministerial statement at the time of the second reading of the Bill amending the Act so as to include the two provisions under consideration here in their present form.

[36] It would seem that the legislation was introduced at a time when an initiative between the Commonwealth and the States entitled "Doctors for the Bush" was being undertaken. Pursuant to this scheme, doctors who would not otherwise have been eligible for registration would be encouraged to work in remote areas and after a period of time would become entitled to registration. The aim of the scheme was to provide medical practitioners for remote areas which otherwise would not have been serviced by them. It was made clear in the Minister's statement that this scheme applied only to remote areas and from other material it seems that Bowen was not included in these.

[37] Whilst the application in some respects has confused what the Minister said about the scheme with the terms of the legislation I think it is fair to say that the emphasis throughout the speech upon the scheme and the examples which were given might suggest that the legislation concerning areas of need was intended to be limited to the criteria of the "Doctors for the Bush" scheme.

[38] The Applicant has raised concerns that in both the applications under consideration here and in other decisions the Minister and the Board have departed from the criteria of the "Doctors for the Bush" scheme.

[39] What the Minister said in her reading speech cannot be substituted for the legislation, nor can it affect the plain language of the Act which contains none of the limitations upon which the Applicant relies. As will be seen from s.17C(2) what the

Minister has to consider is whether there are insufficient medical practitioners practising in the State or a part of the State to provide a service at a level that meets the needs of the people living in the State or part of the State. Upon such a determination being made that there is an un-met area of need the Board may register a person for the purpose of enabling that to be met provided that the person or persons concerned have appropriate qualifications and experience to practise medicine in that area. Section 14B(1) of the *Act's Interpretation Act* provides for circumstances in which certain extrinsic material including a speech made at the time of a second reading might be had regard to. This however can only be done where:

(a) a provision is ambiguous or obscure

(b) the ordinary meaning of the provision would lead to a result that was manifestly absurd or is unreasonable, or

(c) to confirm the interpretation conveyed by the ordinary meaning of the provision.

[40] None of those are applicable here.

[41] I have dealt with this matter at some little length because of the emphasis which the Applicant places upon it.

[42] It is clear contrary to some of the argument advanced by the Applicant, that it is the Minister or his delegate and not the Medical Board which has to determine whether there is or is not an area of need.

[43] A number of the arguments related to the absence of any evidence that there was any difficulty in recruitment of Australian medical practitioners for the Bowen area. This was advanced presumably in support of a ground that the Second Respondent's decision was unreasonable in the *Wednesbury* sense. The proprietor of the medical practice concerned was, according to Mr Jones, asked if she had taken steps to obtain an Australian graduate or Australian graduates and he said in evidence that:

> *"She on all occasions demonstrated that she had and in fact, using a locum agency a bona fide locum agency which has been the case for the - for a number of years now was the only alternative open to her".*

[44] In these circumstances it is impossible to accept that this ground has been made out. It hardly needs to be mentioned that it is not the court's function to determine whether the Second Respondent ought to have reached a different conclusion or found the evidence unacceptable or pursued the matter further. These are matters beyond the ambit of the Judicial Review application.

[45] A number of issues were raised about the legality of the medical practice as which the two conditionally registered doctors are practising and which the First Respondent was aware was the sponsor. Whilst the Medical Act imposes a number of restrictions upon the activity that someone who is not a medical practitioner can engage in, there is no such restriction upon the ownership of a medical practice. The Applicant raises a number of matters relating to what might be regarded as the specifics of the proposal of the application for conditional registration such as the

reference from a Dr Hicks and the role of a Dr Manning as a supervisor. These are all matters which were dealt with in the questions directed by the Applicant to Dr Toft who provided answers on behalf of the First Respondent. Again it is impossible to say that there is any illegality as alleged by the Applicant in the manner in which the registration was dealt with or in the fact that a person not a medical practitioner is the proprietor of a practice. It is also impossible in the light of the affidavit of Dr Toft and the answers provided to conclude that the decision to conditionally register the doctors was so devoid of any rational justification as to invoke the jurisdiction of this court on an application of this kind. The court furthermore, cannot conduct investigations of the kind that the Applicant the conduct of the practice or the receipt of income. If there is evidence of breaches of the law it is the function of those who are charged with enforcing those laws to pursue the matter.

[46] The Applicant advanced a challenge to the basis upon which the Second Respondent determined whether there is, in any particular area, an area of unmet need.

[47] The Second Respondent, for these purposes has adopted a model described in a document “Medically Underserved Communities - Queensland".

[48] The methodology involves taking population statistics for relevant areas from the most recent census, Medicare statistics for the average number of general practitioner consultations per head of population per year, and Australian Institute of Health and Welfare data of average consultations undertaken by what is described as an average FTE (Full Time Equivalent) general practitioner each year. Various factors are applied to allow for the particular make up of a community and these are applied to the statistics just referred to. In this way the Second Respondent determines whether an area is an area of need.

[49] The Applicant suggests that other date ought to have been used. He refers to certain Medicare data which, he says, shows that demand for medical services in the Bowen division is in fact dropping.

[50] I have reservations whether the data the Applicant relies upon is inconsistent with the Second Respondent’s conclusion that Bowen is an area of need. Whether it is however seems to me to be irrelevant. It is for the Minister to establish an appropriate basis for determining whether an area is an area of need, not the court.

[51] Similarly, there is no possible basis for an argument that the determination of Bowen as an area of need was devoid of any rational justification, that is unreasonable in the Wednesbury sense. There plainly was, on what has just been set out, a basis for it. it is unnecessary to repeat that the merits of the decision or the basis for it lies outside the Court’s jurisdiction.

[52] I think what I have said above disposes of the various matters raised. There were others but they seem to me to be irrelevant or no more than assertions for which neither evidence nor argument was advanced.

[53] I have taken the written outline which the Applicant handed to the court and the summary of points on the last page as representing those matters which the Applicant sought to advance before the court on this application.

[54] The result will be that the application will be dismissed with costs to be assessed.