

# SUPREME COURT OF QUEENSLAND

CITATION: *Monsour v Pine Rivers Shire Council* [2004] QCA 336

PARTIES: **CHRISTINE MIRIAM MONSOUR**  
(applicant/respondent)  
v  
**PINE RIVERS SHIRE COUNCIL**  
(respondent/appellant)

FILE NO/S: Appeal No 3188 of 2004  
SC No 2312 of 2004

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 17 September 2004

DELIVERED AT: Brisbane

HEARING DATE: 12 August 2004

JUDGES: McMurdo P, Jerrard JA and Dutney J  
Separate reasons for judgment of each member of the Court,  
each concurring as to the order made

ORDER: **Appeal dismissed with costs**

CATCHWORDS: LOCAL GOVERNMENT – ORDINANCES,  
REGULATIONS, BY-LAWS AND LOCAL LAWS –  
VALIDITY – POWER TO MAKE – GENERALLY – where  
the *Local Government Act* 1993 (Qld) provides for making  
model local laws – where model local laws are made by  
adopting pro forma laws already approved by the Minister  
and repealing inconsistent local laws - where the Pine Rivers  
Shire Council adopted a pro forma law about advertising in  
the shire – where the pro forma law had been repealed before  
the model local law was “made” - whether the model local  
law valid

STATUTES – ACTS OF PARLIAMENT –  
INTERPRETATION - INTERPRETATION ACTS AND  
CLAUSES – PARTICULAR ACTS AND ORDINANCES –  
QUEENSLAND – where the *Acts Interpretation Act* 1954  
(Qld) preserves the effect of a repealed Act or a provision of  
a repealed Act in relation to anything begun under the Act –  
whether the *Acts Interpretation Act 1954* (Qld) operates to  
preserve a pro forma law repealed after it is adopted but  
before a model local law is “made”

*Acts Interpretation Act 1954 (Qld)*, s 20  
*Local Government Act 1993 (Qld)*, s 851, s 856, s 856A, s 857, s 858, s 867, s 868, s 869  
*Statutory Instruments Act 1992 (Qld)*, s 7

COUNSEL: C L Hughes SC for the appellant  
 L D Bowden for the respondent

SOLICITORS: Legal Services Department Pine Rivers Shire Council for the appellant  
 Stephens and Tozer for the respondent

- [1] **McMURDO P:** I agree with Dutney J that the appeal should be dismissed with costs for the reasons he gives.
- [2] **JERRARD JA:** In this appeal I respectfully agree with the reasons for judgment and order proposed by Dutney J.
- [3] **DUTNEY J:** The short issue in this appeal is whether the Pine Rivers Shire Council (“the council”) effectively made a local law concerning advertising in the shire by the steps undertaken by it between 22 February 1999 and 19 May 2000.
- [4] The *Local Government Act 1993 (Qld)* (“LGA”) makes provision for laws to be made by a local authority. Once made, laws applicable to a local authority area are called “local laws”. Such laws can be made in one of three ways. The LGA refers to the three methods as “making model local laws”, “making interim local laws” and “making other local laws”. Laws made in the third way are laws drafted for the specific purposes of the local authority making them and the Act provides for a process of Ministerial approval, advertising and public consultation. Laws made in the second way are not relevant to this appeal. Laws made in the first way are made by adopting pro forma laws already approved by the Minister as generally appropriate to local authorities wherever they may be located. Because these are pro forma laws already considered and approved by the Minister, the local authority is not required to advertise or consult with the public before making them but must, in addition to resolving to adopt them follow the other processes laid down by Chapter 12, Part 2, *Division 1* of the LGA.
- [5] The factual background to the appeal is of little relevance. The respondent was a candidate in the 2004 local government elections. Her advertising signs for the election were deemed by the council to be unlawful as breaching local law 7 “Control of Advertising”. Local law 7 “Control of Advertising” was a law which the council had purported to make as a model local law. The respondent then challenged the validity of that law.
- [6] The relevant statutory scheme under which the council purported to make local law 7 is to be found in Chapter 12, Part 2, *Division 1* of the LGA. In February 1999 the relevant parts of that legislation were as follows:

### “Model local law process

**856.(1)** The process stated in this division or division 3 (Making other local laws) must be used to make a model local law.

**(2)** If a local government purports to make a model local law in contravention of subsection (1), the purported law is of no effect.

#### Step 1 – make a law

**857.(1)** A local government makes a model local law if, by resolution, it –

- (a)** adopts a model local law about a matter; and
- (b)** if there is an existing local law about the matter that is inconsistent with what is adopted – amends or repeals the existing local law so that there is no inconsistency.

**(2)** The local government’s chief executive officer must certify the required number of copies of the local law to be the local law as made by the local government.

**(3)** For subsection (1)(a), the adoption of a model local law with changes about an anti-competitive provision consistent with a resolution of the local government made under section 891 in relation to the local law is the adoption of a model local law.

**(4)** A local government must not adopt a model local law with an anti-competitive provision (whether or not in an amended form) unless the local government has complied with division 5 in relation to the proposed model local law.

#### Step 2 – give public notice of law

**858.(1)** A notice of the making of the model local law must be published in the gazette stating the following –

- (a)** the name of the local government making the local law;
- (b)** the name of the local law;
- (c)** the date of the local government’s resolution making the local law;
- (d)** the name of any existing local law amended or repealed by the new local law;
- (e)** if a public interest test report under division 5 has identified an anti-competitive provision in the model local law and the provision is changed – the fact of the anti-competitive provision and the extent of change.

...”

[7] While the terminology is confusing I shall refer to the sample laws gazetted by the Minister as Model Local Laws. I shall refer to local laws made by following the procedures in Chapter 12, Part 2, *Division 1* of the LGA as model local laws. Where documents are set out I have used upper and lower case as it appears in the text being quoted.

- [8] On 30 October 1998, the Minister published a number of Model Local Laws in the Gazette, one of which, Model Local Law 22, was “Control of Advertising”.
- [9] A recommendation by the shire solicitor concerning the adoption of Model Local Law 22 was considered by the Planning & Environment Committee at its meeting on 4 February, 1999. The solicitor’s instructions had apparently been to consider new local law policies in relation to advertising. Local law policies are governed by Chapter 12, Part 2, *Division 4* of the LGA.
- [10] Omitting irrelevant parts the advice and recommendations of the solicitor were as follows:

“A review of those policies has been undertaken and some amendments to those policies are proposed. Those draft policies along with a copy of Model Local Law 22 are contained in Appendix “H” hereto. Should the Council wish to adopt Model Local Law 22, then the draft policies could then be adopted as local law policies at the same time.

There is a notification process required for the adoption of a model local law however, no extensive public consultation period is required.

Committee is advised that the adoption of a local law policy involves a public consultation period of 21 days after which any submissions made must be taken into account. The Council may then adopt a local law policy.

Should Council wish to adopt Model Local Law 22 “Control of Advertising” and adopt the proposed local law policies thereunder, consideration will need to be given to the following resolutions.

#### SHIRE SOLICITOR’S RECOMMENDATIONS

1. Council resolve to adopt Model Local Law 22 “Control of Advertising” and that the local law so adopted shall be known as Local Law No. 7 “Control of Advertising”.
2. Council resolve that upon the final adoption of local law policies made under Local Law 7 (Model Local Law 22), Local Law 7 “Signs and Advertisements” be repealed.
3. Council resolve to propose to make the following local law policies:-
  - i) Local Law Policy 7.1 – (Temporary Signs Charitable Purposes – Permitted Advertisement);
  - ii) Local Law Policy 7.2 – Erection of Election Posters – Permitted Advertisement)
  - iii) Local Law Policy 7.3 – (Roadside Signs – Permitted Advertisement)
  - (iv) Local Law Policy 7.4 – (Real Estate Signs)

(v) Local Law Policy 7.5 – (Advertising Hoardings & Signs – Permit Applications).”

- [11] The committee resolved to hold the consideration of the recommendations over until the next meeting which was held on 11 February 1999 when consideration of the recommendations was again deferred until the committee’s meeting on 17 February 1999. On 17 February 1999 the committee resolved that the shire solicitor’s recommendations be adopted. The advice and recommendations were included in the minutes of the committee for that day.
- [12] The minutes of the Planning & Environment Committee adopting the shire solicitor’s recommendations were presented to the general meeting of council on 22 February 1999 where 2 resolutions in relation to those minutes were carried. The first resolution was that “the Minutes of the Planning & Environment Committee Meeting held on Wednesday 17 February 1999 be received as a report.” The second resolution was that “the Minutes of the Planning & Environment Committee Meeting held on Wednesday 17 February 1999 be adopted with amendments.”
- [13] Despite the reference to amendments in the second resolution no amendments are included in the minutes of the general meeting of council. As is clear from a reading of other resolutions on that day, it was the council’s practice to record any amendments in the minutes in the same place as the resolution. Since there would have to be a record of any amendment it is hard to envision any other sensible practice. In any event, from the absence of any other reference to amendments in the minutes of the general meeting of council it appears safe to conclude that there were in fact no such amendments. Counsel for neither party suggested that there had in fact been any such amendments.
- [14] The resolution passed at the general meeting of the council to adopt the minutes of the Planning & Environment Committee effectively makes the solicitor’s recommendation, which the committee had earlier adopted, a resolution of the council. This is because of Clause 21 of Part A of Local Law No. 3 (Proceedings and Business of the Council, Committees, Offices and Common Seal) for Pine Rivers Shire. That provides the following:

“Committee Reports

- 21 (a) A report of a committee shall be considered and dealt with at the meeting at which it is presented.
- (b) If in a report of a committee distinct recommendations are made, the decision of the Council may be taken separately on each recommendation.
- (c) A report of a committee, or a portion thereof, may be amended by Council in any manner it may think fit, or may be referred back to the committee for further consideration.
- (d) The recommendations of a committee shall so far as adopted by the Council, be resolutions of the Council.”

- [15] Nothing further was done by the council after 22 February 1999 towards completing the statutory prerequisites for making a Model Local Law into a local law until 17

April 2000. In the meantime the Minister repealed the Model Local Laws effective from the date of gazettal of the repeal which was 24 December 1999. Also, Chapter 12, Part 2, *Division 1*, was amended by Act No 30 of 1999, effective from 16 June 1999, to add a s 856A, which reads:

**“856A Step 1 – propose a law**

Before making a model local law, a local government must, by resolution, propose to adopt the model local law.”

[16] On 17 April 2000 the council adopted the minutes of the Planning & Environment Committee of 13 April 2000. After some commentary concerning compliance with the LGA in relation to subordinate local laws the minutes of the committee set out the following recommendation from the shire solicitor which the committee resolved to adopt:

- “1. In respect of the proposed Subordinate Local Laws 7.3, 7.4 and 7.5, the Council, having regard to the above report resolve to implement the recommendations of the report in accordance with s 891 of the Act;
2. In respect of the adoption of proposed Local Law 7 “Control of Advertising” the council resolve as follows:-
  - (a) After having considered the submissions made by the submitters Council resolves finally to adopt proposed Local Law no. 7 “Control of Advertising”;
  - (b) Having adopted Local Law no. 7 Council resolve to repeal the current Local Law 7 “Signs and Advertisements”.”

[17] Further resolutions followed concerning the making of subordinate local laws.

[18] On 19 May 2000 the council gazetted the purported making of the new local law in these terms:

“Pursuant to the provisions of the *Local Government Act 1993*, the Pine Rivers Shire Council made Local Law No. 7 (Control of Advertising), by resolution dated seventeenth day of April 2000, which repeals existing Local Law 7 (Signs and Advertisements).”

[19] The competing arguments can be stated shortly. The respondent here (the applicant below) submitted that the new local law 7 was invalid because at the time it was made there was no Model Local Law 22 (Control of Advertising) as a result of the repeal of the Model Local Laws the previous December. As a result, if the council wished to make a local law in similar terms it had to follow the procedure laid down in Chapter 12, Part 2, *Division 1* of the LGA, as it stood after 15 June 1999. The council did not follow the procedure in Chapter 12, Part 2, *Division 1*.

[20] The council argued that by its resolution of 22 February 1999 it had adopted Model Local Law 22. It had not “made” a model local law because the legislation<sup>1</sup>

<sup>1</sup> *Local Government Act 1993* (Qld), s 857(1)(b) and s 858(1).

required that in addition to the adoption of the Model Local Law the council had also to amend or repeal any inconsistent local law and give notice of the making of the model local law in the gazette. In this case the existing local law 7 (Signs and Advertisements) was inconsistent and had to be repealed.

- [21] Because there was a Model Local Law 22 when it was adopted in February 1999 the requirement in s. 857(1)(a) had been met and when the other requirements for making a model local law were satisfied the law was made.
- [22] There was a separate and subsidiary argument advanced by the appellant in reliance on s. 20(2)(b) of the *Acts Interpretation Act 1954* (Qld) (“AIA”). I shall address that separately.
- [23] At its most simple the question was whether a model local law could be made under Chapter 12, Part 2, *Division 1* of the LGA if the Model Local Law, while existing at the time of its adoption, had been repealed by the time the steps precedent to its being made into a model local law were complete.
- [24] Despite the able and persuasive arguments of senior counsel for the appellant I do not think the council was able to rely on the provisions of Chapter 12, Part 2, *Division 1* of the LGA to make a local law by adopting a Model Local Law and otherwise satisfying the requirements of the Division if the Model Local Law had ceased to be such by the time the steps were completed.
- [25] “Model local law” is defined in s. 851 of the LGA in these terms:
- “(1) A “model local law” is a law about a matter within the jurisdiction of local government that is proposed by the Minister as suitable for adoption by local governments as a local law.
  - (2) A model local law must be gazetted.”
- [26] A Model Local Law is defined in the present tense. At the time the model local law was purportedly made by the council it was neither still proposed by the Minister as suitable for adoption within the meaning of s. 851(1) nor gazetted within the meaning of s. 851(2). The gazettal must be taken to have ceased at the time of gazettal of the repeal. If the definition is substituted for the expression “model local law” in s. 856 it is clear that what the statute authorises is the making of a model local law which expression refers to a local law in a form which the Minister has already approved as suitable to be adopted by councils generally. It does not seem to me to help that the proposed model local law had that approval when it was adopted but had lost it before the model local law was made. Because of s. 856(2) “adoption”, although a step in the process has no legal significance until the other steps are completed.
- [27] The abbreviated procedure for making a model local law is presumably available because the content of the proposed law has already been considered by the Minister as suitable for adoption and implementation. Once the Model Local Law is repealed this prior acceptance of its form ceases.
- [28] Senior counsel for the appellant argued that the definition must be read as only requiring the Model Local Law to be current as at the date of its adoption by the council. The definition uses the word “adoption”. In my view this is too fine a

distinction. The verb in the operative sections is “to make”. The adoption of the Model Local Law is only one step in the process. Inserting the definition of “Model Local Law” after the verb, the LGA authorises the making of a law about a matter that is proposed by the Minister as suitable for adoption. It does not authorise the making of a law about a matter which was proposed by the Minister as suitable for adoption at the time the council decided by resolution to adopt it but before it completed the process of making it a local law.

- [29] The requirement for a current approval by the Minister is far from being only of academic interest. The consequence of making a local law by adopting a Model Local Law is that the council does not have to seek specific approval for the proposed law from the Minister under s. 867(1). It does not have to go through the process of advertising and consultation that the council must go through to make an ordinary local law.<sup>2</sup> The public gets no input into the making of a local law by the adoption of a Model Local Law as it does in relation to an ordinary local law<sup>3</sup>. The council is not required to consider submissions in relation to the proposal<sup>4</sup>.
- [30] The subsidiary argument in relation to s. 20(2)(b) of the AIA is as follows. That section preserves the effect of a repealed Act or a provision of a repealed Act in relation to anything done under the Act. The section relevantly provides:

**“20 Saving of operation of repealed Act etc.**

(1) In this section -

“Act” includes a provision of an Act.

“repeal” includes expiry.

(2) The repeal or amendment of an Act does not –

.....

(b) affect the previous operation of the Act or anything suffered, done or begun under the Act; or

.....”

- [31] By reference to s. 7 of the AIA and s. 7 of the *Statutory Instruments Act 1992* (Qld), it can be argued that a Model Local Law falls within the extended definition of an Act or a provision of an Act. It is unnecessary to decide one way or the other whether it does. The problem from the point of view of the appellant is that the making of a model local law is done or begun under the provisions of the LGA and not under the provisions of the Model Local Law. Hence the AIA has no application.
- [32] In my view the purported making of Model Local Law 7 (Control of Advertising) was invalid and the appeal should be dismissed with costs.

<sup>2</sup> See *Local Government Act 1993* (Qld), s. 868.

<sup>3</sup> See *Local Government Act 1993* (Qld), s. 869.

<sup>4</sup> See *Local Government Act 1993* (Qld), s. 870.