

SUPREME COURT OF QUEENSLAND

CITATION: *Institution of Engineering & Mining Surveyors and Anor v Surveyors Board of Queensland* [2014] QSC 190

PARTIES: **INSTITUTION OF ENGINEERING & MINING SURVEYORS**
(first applicant)
and
JAMES McGREGOR SHEPHERD
(second applicant)
v
SURVEYORS BOARD OF QUEENSLAND
(respondent)

FILE NO: BS 4254 of 2013

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 15 August 2014

DELIVERED AT: Brisbane

HEARING DATE: 12 August 2014

JUDGE: Applegarth J

ORDER: **1. The application is dismissed**
2. The applicants pay the respondent's costs of and incidental to the proceeding to be assessed on the standard basis

CATCHWORDS: ADMINISTRATIVE LAW – JUDICIAL REVIEW – GENERALLY – where the *Surveyors Act* 2003 (Qld) empowered the Surveyors Board of Queensland to establish the competency frameworks “appropriate for the qualifications, skills, knowledge and experience” needed for registration as a surveyor – where the Board required completion of three years tertiary study in a relevant program – where the applicants challenge the validity of the competency framework on the ground that the Board lacked power to require a tertiary qualification – where the applicants acknowledge that an academic degree from a university clearly falls within the natural and ordinary meaning of the phrase “qualifications, skills, knowledge and experience” – whether competency framework not authorised.

Acts Interpretation Act 1954, s14B
Surveyors Act 1977 (Qld); s 37

Surveyors Act 2003 (Qld), ss 3, 9, 36, 39

Alroe v Medical Board of Queensland [2011] 2 Qd R 200
R v Refshauge; Ex parte Thomson (1976) 11 ALR 471

COUNSEL: D P O’Gorman SC for the first and second applicants
 J Brasch for the respondent.

SOLICITORS: Cockburn Legal for the applicants
 Lander and Rodgers for the respondent

- [1] The Surveyors Board of Queensland (“the Board”) must establish the competency frameworks “appropriate for the qualifications, skills, knowledge and experience” needed for registration as a surveyor.¹ The *Competency Framework – Surveyor* published by the Board on 16 April 2013 includes amongst the requirements for registration possession of a tertiary qualification in surveying. In particular, applicants need to demonstrate that they have completed a course of study of at least three years full time duration acceptable to the Board or have previously been registered as a surveyor by the Board.
- [2] The applicants challenge the validity of the 2013 Competency Framework, and seek a declaration that it is invalid and of no effect. The essential issue is whether the Board has power to require a person to possess a tertiary qualification in surveying in order to obtain registration as a surveyor.

The parties’ submissions

- [3] The applicants acknowledge that an academic degree from a university clearly falls within the natural and ordinary meaning of the phrase “qualifications, skills, knowledge and experience” in s 39(1) of the Act. They argue that:
- (a) other matters fall within that phrase, such as a diploma conferred by a TAFE institute and relevant experience as a surveyor;
 - (b) the Board must consider more than qualifications; it also must consider the skills, knowledge and experience needed for registration as a surveyor;
 - (c) reference to extrinsic material makes it clear that possession of a tertiary qualification in surveying was not intended to be the only way a person could establish competency;
 - (d) the possession of a tertiary qualification in surveying is but one of the qualifications against which the competency of an applicant for registration as a surveyor might be assessed;
 - (e) the Board adopted a restrictive and narrow interpretation of what can be a “qualification” for the purposes of s 39 by requiring the possession of a tertiary qualification in surveying;
 - (f) it was open to the Board to determine that qualifications other than the possession of a tertiary qualification was sufficient because a “qualification”

¹ *Surveyors Act 2003 (Qld)*, s 39(1)(a) (“the Act”).

is not restricted to an academic qualification and may include other skills and experience.

- [4] The Board responds that:
- (a) leaving aside the alternative path for registration as a surveyor (i.e. previous registration as a surveyor), it is permitted to require a candidate to have a tertiary qualification;
 - (b) the word “qualification” includes an academic qualification, and if it simply meant qualification by reason of skills, knowledge and experience the word “qualifications” in s 39 would be unnecessary;
 - (c) it is authorised to determine what qualifications, skills, knowledge and experience are needed for registration as a surveyor;
 - (d) it was open to the Board, after undertaking the consultation required by s 39(2), to determine that possession of a tertiary qualification in surveying, in addition to other skills, knowledge and experience, was needed for registration as a surveyor.

Consideration

- [5] I agree with the Board’s submissions. They are supported by the clear language of s 39 of the Act, when considered in its statutory context. The provision is not ambiguous or obscure, so as to permit reference to extrinsic material. Nor is it necessary or appropriate to refer to extrinsic material to avoid a result that is manifestly absurd or unreasonable.²
- [6] Drawing on extrinsic material, the applicants submit that:
- (a) the possession of a tertiary qualification in surveying was not intended to be the only way a person could establish competency; and
 - (b) the Act permits the assessment of an applicant’s competence by reference to more than academic training, and the possession of a tertiary qualification in surveying was not intended to be the sole qualification that a person must possess in order to be registered as a surveyor.

Reference to extrinsic material is unnecessary to support these propositions. They are supported by the terms of the Act. The applicants are correct to submit that the possession of an academic qualification is merely one way of assessing the competency of an applicant for registration as a surveyor.

- [7] The applicants’ submissions, however, do not answer the following points:
1. It is open to the Board to require an academic qualification (whether basic or advanced) as one aspect of the “qualifications, skill, knowledge and experience” needed for registration under an appropriate competency framework.

² *Acts Interpretation Act 1954 (Qld)*, s 14B.

2. The type of academic qualification (and any dispensation from it) is a matter of judgment or policy for the Board, subject to its duty under s 39(2) to consult with the entities considered by the Board as having appropriate knowledge and experience in the relevant type of surveying.
 3. The fact that the Board might have required possession of an academic qualification other than a tertiary qualification in surveying, or some form of non-academic qualification,³ does not mean that the Board lacked power to require a tertiary qualification.
- [8] The applicants have not established that the 2013 Competency Framework is not authorised or that the Board adopted an erroneous view of what can be a “qualification” for the purposes of s 39 and thereby erred in law.
- [9] In deference to the helpful submissions of counsel, and because of the interest of members of the first applicant and the Board in the issues that were canvassed, I shall record some additional matters by way of background and further explanation.

Statutory context

- [10] The purposes of the Act are:
- (a) to protect the public by ensuring surveys are carried out by registrants in a professional and competent way; and
 - (b) to uphold the standards of practice within the profession; and
 - (c) to maintain public confidence in the profession.

These purposes are achieved by, among other things, establishing the Board and providing for the registration of persons under the Act.⁴ One of the Board’s functions is “to establish competency frameworks for qualifying persons for registration”.⁵

- [11] An individual is eligible for registration as a surveyor if the individual:
- (a) has, within one year before applying for registration, been assessed under the Act or a corresponding law as having the relevant competency; or
 - (b) under a corresponding law, holds a registration equivalent to the registration sought;

and the Board is satisfied the individual is a suitable person to hold the registration.⁶

- [12] The Board must establish the competency frameworks appropriate for the qualifications, skills, knowledge and experience needed for:
- (a) registration as a surveyor, surveying graduate or surveying associate; or

³ Adopting a broad meaning of the word “qualification” in its statutory context.

⁴ The Act, s 3(2).

⁵ The Act, s 9(a).

⁶ The Act, s 36(2).

- (b) a registration endorsement.⁷
- [13] In establishing a competency framework, the Board must consult with the entities considered by the Board as having appropriate knowledge and experience of the relevant type of surveying.⁸ A competency framework is a statutory instrument, but is not subordinate legislation.⁹ It has effect when it is published as required under s 40(a).¹⁰
- [14] As a matter of historical interest, the Act replaced the *Surveyors Act 1977* (Qld) which stated the qualifications for registration as a surveyor. These were that the person satisfied the Board that the person was of good fame and character and was a fit and proper person to be registered. The person also had to either:
- (a) possess the prescribed academic qualifications and gained over a period of two years practical experience in surveying sufficient to satisfy the Board of the person's capacity to maintain a high level of performance in all aspects of the practice of surveying; or
- (b) be otherwise qualified as prescribed.¹¹
- [15] The changes introduced by the 2003 Act to the system of registration were stated in the Explanatory Notes to the *Surveyors Bill 2003* to be that registration was to be based on competency rather than academic qualifications. It was recognised that qualifications alone could not adequately test an applicant's ability to operate as a professional surveyor.
- [16] The legislation provided for the Board to approve or adopt an appropriate competency and assessment framework in the various categories of registration and endorsement. The Explanatory Notes in connection with cl 39 confirmed that the competency framework adopted by the Board was the basis for the operation of the registration system. The Notes stated:
- “While it is likely that most people obtaining registration will have completed tertiary training, it is possible for persons to obtain the same level of knowledge without tertiary training. The focus of the competency framework is on the qualifications, skills, knowledge and experience that the person is required to have, and not on how they obtained them.”
- [17] The legislation was intended to allow the Board to assess surveyors for registration based on competence assessed by reference to competency frameworks, rather than simply qualifications.
- [18] The terms of the 2003 Act make clear that the possession of a tertiary qualification (with or without some practical experience) would not necessarily be sufficient to establish the required competency. The possession of a tertiary qualification (or any prescribed academic qualification) was not stated by the Act to be a pre-requisite to registration. Instead, the legislation provided for the Board to establish competency

⁷ The Act, s 39(1).

⁸ The Act, s 39(2).

⁹ The Act, s 39(3).

¹⁰ The Act, s 39(4).

¹¹ *Surveyors Act 1977*, s 37.

frameworks and to decide whether possession of an appropriate academic qualification should be a pre-requisite to registration.

- [19] Incidentally, it was the fact that the possession of an appropriate tertiary qualification was neither sufficient nor necessary for registration that inclined the Scrutiny of Legislation Committee in 2003 to not insist that the relevant qualifications be listed in a Regulation.
- [20] The terms of the 1977 legislation did not prescribe academic qualifications from a university. Consistent with the 2003 Explanatory Notes, a person who had previously been registered as a surveyor by the Board, but who had not completed a university course of study of at least three years full time duration, might meet the requirements of the 2013 Competency Framework.
- [21] I should note that in adopting the 2013 Competency Framework the Board did not provide that the required academic qualification was sufficient. It required an applicant for registration to possess many other qualities.

The statutory phrase “qualifications, skills, knowledge and experience”

- [22] The Act does not define these terms and they should be given their natural and ordinary meaning unless the statutory context suggests otherwise.
- [23] The phrase “qualifications, skills, knowledge and experience” is a composite expression. The legislature did not use the phrase “qualifications, skills, knowledge **or** experience” so as to permit, for example, the establishment of a competency framework that permitted the registration of an unqualified person with few skills but who has substantial experience. It was for the Board to establish competency frameworks appropriate for “the qualifications, skills, knowledge **and** experience” needed for registration. The selection and blending of the required qualifications, skills, knowledge and experience are a matter for the Board’s determination. For example, it might be open to the Board, in theory, to conclude that a certain tertiary qualification is unnecessary if the required level of competency can be achieved by other qualifications, skills, knowledge and experience.
- [24] The ordinary meaning of the words “qualifications, skills, knowledge and experience”, when applied in the statutory context of s 39 of the Act, would seem to permit the Board to establish a competency framework that imposes an academic qualification, notwithstanding an applicant having demonstrated skills, knowledge and experience. Whether an academic qualification is required, and the standard of such an academic qualification, is a matter for the Board to determine, subject to implied conditions upon the exercise of power and observance of the process required by s 39(2).
- [25] In some statutory contexts, a reference to “qualifications” may be interpreted narrowly in the sense of academic qualifications.¹² It is unnecessary to decide in this case whether the word “qualifications” in s 39 has this narrow meaning. It is sufficient to observe that the express inclusion of the word “qualifications” indicates that it comprehends a type of qualification that is attained not simply by the

¹² *R v Refshauge; Ex parte Thomson* (1976) 11 ALR 471 at 475; *Alroe v Medical Board of Queensland* [2011] 2 Qd R 200 at 204 [14].

possession of skills, knowledge and experience. Were it otherwise, the word “qualifications” would be unnecessary.¹³

- [26] If the word “qualifications” has a broader meaning than academic qualifications, it would be open to the Board to require such non-academic qualifications. Still, it would be open to the Board to require an academic qualification if the Board considered that such a matter should form part of the competency framework.
- [27] The words of s 39 and their statutory context leave the Board with the task of determining whether an academic qualification should be included amongst the qualifications, skills, knowledge and experience needed for registration.
- [28] The applicants correctly acknowledge that an academic degree from a university clearly falls within the natural and ordinary meaning of the phrase “qualifications, skills, knowledge and experience”. The context in which those words appear and the purpose of the Act does not require a different meaning to be given to the phrase. The fact that other forms of academic qualifications and other forms of non-academic qualifications fall within the phrase does not assist the applicants’ argument. This simply means that it was open to the Board to determine that a qualification could include a qualification other than the possession of a tertiary qualification in surveying. It does follow that it was not open to the Board to determine that such a qualification was necessary, in addition to other qualifications, skills, knowledge and experience.

Conclusion

- [29] The applicants have not established that the Board concluded that possession of a tertiary qualification was the only kind of qualification that it might adopt in carrying out its function of establishing a competency framework under s 39. The applicants have not proven that the respondent adopted an erroneous interpretation of what can be a “qualification” for the purposes of s 39 and thereby erred in law.
- [30] The ordinary meaning of the provision in its statutory context empowered the Board to include possession of an academic qualification amongst the qualifications, skills, knowledge and experience needed for registration as a surveyor in accordance with the competency framework established by the Board.
- [31] The legislation conferred on the Board the function of establishing competency frameworks, and in carrying out that function of the Board was required to make a judgment about the qualifications (including academic qualifications) needed for registration as a surveyor. Academic qualifications are clearly one form of qualification that may be needed for registration as a surveyor. In adopting the 2013 Competency Framework the Board made a determination that applicants should have completed a course of at least three years full time duration by way of a tertiary qualification in surveying, but included a dispensation if the applicant had been previously registered as a surveyor by the Board.
- [32] To say, as the applicants’ submissions do, that in adopting the competency framework it was open to the Board to determine that the qualifications might be something other than the possession of a tertiary qualification, does not answer the

¹³ *R v Refshauge; Ex parte Thomson* (1976) 11 ALR 471 at 475.

point that it was open to the Board to determine that the qualifications should include such a qualification.

- [33] Even adopting a broad meaning to the word “qualification”, and not restricting it to an academic qualification, the Board might conclude that an academic qualification of some kind was necessary in addition to skills, knowledge and experience. It is for the Board, not this Court, to decide what those academic qualifications should be.

Orders and costs

- [34] The application is dismissed.
- [35] Costs should follow the event. Unfortunately, those costs include costs thrown away by the adjournment of the application when it came before the Court on 27 March 2014, at which time the second applicant was joined. It would introduce unnecessary complexity to make the second applicant only responsible for the costs incurred by the respondent after that date. The most appropriate order for costs is that the applicants pay the respondent’s costs of and incidental to the proceeding to be assessed on the standard basis.