

SUPREME COURT OF QUEENSLAND

CITATION: *Soley v Crime and Corruption Commission* [2016] QSC 241

PARTIES: **GERALD CAMPBELL SOLEY**
(applicant)
v
CRIME AND CORRUPTION COMMISSION
(respondent)

FILE NO/S: BS No 5697 of 2016

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 20 October 2016

DELIVERED AT: Brisbane

HEARING DATE: 3 September 2016

JUDGE: Martin J

ORDER: **The application is dismissed.**

CATCHWORDS: ADMINISTRATIVE LAW – JUDICIAL REVIEW –
GROUNDS OF REVIEW – RELEVANT
CONSIDERATIONS – where the applicant made complaints
to the respondent of fraud against the Office of the Health
Ombudsman (OH) and various other persons involved in the
provision of a medical script – where the respondent decided
to refer the complaint to the OHO – where the applicant seeks
judicial review of that decision – whether the respondent
failed to take into account a relevant consideration

Crime and Corruption Act 2001 (Qld), s 34, s 35
Judicial Review Act 1991, s 20(2)(a), s 20(2)(e), s 23(b), s 27

COUNSEL: The applicant appeared in person
D Keane for the respondent

SOLICITORS: The applicant appeared in person
Crime and Corruption Commission directly instructed

- [1] The applicant seeks a statutory order of review and the respondent cross-applies for an order that the application be dismissed under s 48 of the *Judicial Review Act* 1991 (the Act).
- [2] The application describes the decision sought to be reviewed in the following way:
- “The decision by the CCC (letters dated 15/10/15, 30/10/15 and 18/12/15) to use the devolution principle concerning serious corrupt conduct by staff at the Health Ombudsman’s office. The corrupt conduct being a breach of the Criminal Code.”
- [3] The ground advanced in support of the application is:
- “The CCC should investigate corrupt conduct by public servants which breaches the Criminal Code.”

Background to the application

- [4] On 17 August 2015, the applicant sent an email to the Crime and Corruption Commission (CCC) in which he sought advice as to actions taken by the Queensland Health Ombudsman with respect to certain conduct by persons employed in the office of the Health Ombudsman. Further correspondence ensued and, on 15 October 2015, the CCC replied summarising the applicant’s concerns in this way:
- “We understand the concerns you have raised with the CCC and the OHO are that:
1. the officers from the OHO have fraudulently falsified documents relating to a complaint you made relating to Dr Kyung Ha You.
 2. Mr Atkinson-MacEwen was aware of the conduct alleged but took no action and allowed the conduct to occur.”
- [5] The letter goes on to advise:
- “As your concerns relate to the conduct of the public official, Mr Atkinson-MacEwen, the matter has been referred to an officer nominated by the OHO to deal with. For your information that person holds the position of the Director, Business Innovation.”
- [6] The applicant responded by making further complaints about the OHO and telling the CCC that he did not trust the Health Ombudsman to handle them with honesty. On 30 October 2015, the CCC replied and said:
- “I understand you seek clarification about why we referred your concerns [to] the Health Ombudsman to deal with when the Health Ombudsman advised you to report your concerns to the CCC.
- As stated in our letter dated 15 October 2015, our decision included consideration of the ‘corruption principle’s [sic] set out in section 34 of the *Crime and Corruption Act* 2001 (CC Act) which includes the devolution

principle which recognises the responsibility of a chief executive officer and the senior managers to manage their agency, including dealing with inappropriate behaviour of staff. In effect, the principle provides that action to deal with corrupt conduct should, generally, be taken by the agency.

In your case, given the concerns are about the Health Ombudsman himself, the CCC recognises the conflict of interest in him dealing with your complaint and so has, in accordance with section 48A of the CC Act, referred your complaint to the nominated officer at the Health Ombudsman's office to deal with. That officer holds the position of Director, Business Innovation.”

- [7] The applicant sent further emails to the CCC in which he expressed his displeasure at the reference by the CCC to the Director, Business Innovation at the OHO. On 18 December 2015, the CCC sent a letter to the applicant advising him that the additional information he had provided would be passed on to that particular officer.
- [8] The applicant has made a number of accusations with respect to the conduct of staff at a hospital and he has also made allegations that documents had been forged in order to forestall a proper investigation.

The decision for which review is sought

- [9] The decision made by the CCC was to refer the applicant's complaint to the OHO in accordance with the *Crime and Corruption Act 2001* (CC Act).

The ground of the application

- [10] The ground identified in the application for a statutory order of review is not one provided for under the Act. But, in an email (Ex 1) sent to the respondent on 20 September, he says:

“Under Section 27 of the JR Act.

I will also be referring to Section 23 (b) of the JR Act and Section 20 (2) (a) and (e).

The relevant information is the script I took down to the Government Pharmacy at the RBWH.

I told the CCC that the script was signed by the medical student Miss Kathy You and was rejected by the pharmacy because she wasn't a doctor.

I then stated that my complaint of fraud against the Health Ombudsman and 4 of his staff was because they illegally changed Miss Kathy You for Dr Kyung Ha You so as to make out a doctor had made out the script so the OHO could dismiss my complaint.

A copy of the script, which can be found at the RBWH pharmacy and the Infectious Diseases Unit, would prove if Miss Kathy You or Dr Kyung Ha You signed the script.

The script is vital evidence to prove if fraud took place.

The CCC never requested this vital evidence (the script) to prove if fraud took place. (failing to take a relevant consideration into account).

A breach of the rules of natural justice and other rules.

In a letter sent to Ms Ann Gummow, Acting Chairperson, Crime and Corruption Commission dated 18/8/15 The Health Ombudsman wrote; I refer to the enclosed correspondence from Mr Gerard Soley to the Office of the Health Ombudsman (OHO) dated 14 August 2015 in which he has raised allegations of fraud against staff of the OHO and myself.

The fact that an allegation of fraud has been made against the Health Ombudsman and 4 of his staff [sic] use of Public Interest.

The public and I want to know if this allegation is true.

The CCC should not have used the devolution principle on such a serious allegation of public interest. (section 34 of the CC Act, public interest).

The public and I want to know if the Health Ombudsman and 4 of his staff are guilty of fraud.

By the CCC using the devolution principle we will never know if the Health Ombudsman and 4 of his staff are guilty of fraud.

The CCC had a responsibility to inform the public if they found at the Health Ombudsman guilty of fraud by doing a thorough investigation.

The script which was rejected by the Government Pharmacy at the RBWH was a vital part of the evidence.”

[11] Mr Soley appears to allege that a prescription was written for him by a medical student and that the prescription could not be filled because it was not created by a doctor. He alleges that officers from the OHO have fraudulently falsified documents to make it appear that a doctor with the same surname as the medical student signed the original prescription. Further, he says that Mr Atkinson-MacEwen was aware of that fraud and did not take any action.

[12] While it is not completely clear, it appears that the applicant is relying on s 27 of the Act to advance other grounds to support his application. That section provides:

“The applicant for a statutory order of review is not limited to the grounds set out in the application but, if the applicant wishes to rely on a ground not set out in the application, the court may direct that the application be amended to specify the ground.”

[13] The applicant then appears to rely upon s 20 (2) (a) and (e) and s 23 (b) of the Act. Section 20(2)(a) and (e) provide:

“(2) The application may be made on any 1 or more of the following grounds—

(a) that a breach of the rules of natural justice happened in relation to the making of the decision;

...

(e) that the making of the decision was an improper exercise of the power conferred by the enactment under which it was purported to be made;”

[14] Section 23 (b) provides:

“In sections 20(2)(e) and 21(2)(e), a reference to an improper exercise of a power includes a reference to—

...

(b) failing to take a relevant consideration into account in the exercise of a power;”

[15] I will proceed on the basis that the assertions in Exhibit 1 form the basis of the appellant’s case.

[16] The first ground is that the CCC failed to take into account a relevant consideration. Whether the script was forged or not was a matter which was remitted to the OHO to consider. It was, though, taken into account – as evidenced in the letter of 15 August when the CCC referred to his complaint that “officers from the OHO have fraudulently falsified documents relating to a complaint you made relating to Dr Kyung Ha You.”

[17] The second ground – a breach of the rules of natural justice – is harder to understand. The decision to send the matter to the OHO is for the CCC under the CC Act. The relevant principles to be applied by the CCC are set out in s 34 of the CC Act and the manner in which the CCC is to perform its corruption functions is set out in s 35 of the CC Act.

[18] Section 34 contains the following:

“It is the Parliament’s intention that the commission apply the following principles when performing its corruption functions—

...

(c) Devolution

- subject to the cooperation and public interest principles and the capacity of the unit of public administration, action to prevent

and deal with corruption in a unit of public administration should generally happen within the unit”

[19] Section 35 of the CC Act relevantly provides:

“(1) Without limiting how the commission may perform its corruption functions, it performs its corruption functions by doing 1 or more of the following—

expeditiously assessing complaints about, or information or matters (also *complaints*) involving, corruption made or notified to it;

referring complaints about corruption within a unit of public administration to a relevant public official to be dealt with by the public official;

...”

[20] The action taken by the CCC was one which was specifically contemplated by the CC Act and consistent with that statute’s principles. The applicant has not demonstrated that he was denied natural justice. His complaint was considered and a decision made within the confines of the legislation.

[21] In his oral submissions the applicant submitted that all that needed to be done was for the CCC to obtain a copy of the prescription and it would be seen “that the Health Ombudsman changed the medical student over for a doctor with the same surname.” That, and the balance of the applicant’s submissions, were consistent with the true purpose of his application being that the CCC should have embarked upon an investigation of the merits. In arguing that case, the applicant has not shown that the CCC acted in a way which attracts the attention of the Act.

Conclusion

[22] The application, as framed, is flawed. It does not identify a ground of review permitted under the JR Act. The grounds advanced informally have no substance. No other reasonable basis for a review is disclosed in the material. The application is dismissed.