

CITATION: *Gold Coast Apartment Management P/L v Price & Ors* [2017] QCATA 99

PARTIES: **Gold Coast Apartment Management Pty Ltd**
ACN 166 953 153
(Applicant/Appellant)
v
Lesley Price
(First respondent)
Michael Sullivan
(Second Respondent)
The Body Corporate for Condor CTS 13200
(Third Respondent)
Daphne Clayton
(Fourth Respondent)
Patricia Garrick
(Fifth Respondent)

APPLICATION NUMBER: APL299-16

MATTER TYPE: Application and Appeals

HEARING DATE: 16 May 2017

HEARD AT: Brisbane

DECISION OF: **Justice Carmody**

DELIVERED ON: 13 September 2017

DELIVERED AT: Brisbane

ORDERS MADE: **THE APPEAL TRIBUNAL ORDERS THAT:**

1. The appeal is dismissed.
2. The adjudicator's order voiding Motion 19 is confirmed.

CATCHWORDS: APPEAL – BODY CORPORATE AND COMMUNITY MANAGEMENT ACT – whether an adjudicator's order nullifying a resolution passed at an extraordinary general meeting for non-compliance with the standard module is valid – where a threshold issue concerns the appellant's standing to appeal the order and, therefore, the competence of the filed appeal-whether the adjudicator made any material

mistake of fact.

Body Corporate and Community Management Act 1997 (Qld) ss 94(1), 95(1), 98, 99, 100, 101, 119, 243, 269(3), 276, 289, 289(1)(c), 289(1)(d)(ii)(D), 289(1)(d)(ii)(F), Schedule 5, Schedule 6

Body Corporate and Community Management (Standard Module) Regulation 2008 (Qld) ss 73, 114, 114(2)(c)(i)(A), 116, 116(2)(b)(i), 121

Body Corporate and Community Management (Accommodation Module) Regulation 2008 (Qld) ss 11, 114, 117, 119

Justices Act 1886 (Qld) s 222 (1)

Queensland Civil and Administrative Tribunal Act 2009 (Qld) ss 142, 150 (1)

Baillie v Oriental Telephone Co [1915] 1 Ch 503

Bulfin Bebarfalds Ltd (1938) 38 SR (NSW) 423

Chequepoint Securities Ltd v Claremont Petroleum NL (1987) 11 ACLR 94

House v The King (1936) 55 CLR 499

Morat Pharmaceuticals Pty Ltd v Hoft Pty Ltd & Anor [2014] QCA 319

Owen v Edwards [2006] QCA 526

Peel v London and North Western Railway Co [1907] 1 Ch 5

Peters American Delicacy CO Ltd v Health (1939) 61 CLR 457

Powell v Birmingham Vinegar Brewery Co [1894] AC 8

Project Blue Sky Inc v ABA (1998) 194 CLR 355

Ryan v Edna May Junction Gold Mining Co NL (1916) 21 CLR 487

Trojan Resorts Pty Ltd v Emprove Holdings Pty Ltd and Body Corporate for The Reserve CTS

31561 [2017] QCA 153

Joske's Law and Procedure at Meetings in Australia, 11th ed, Law Book Co, 2012 [21.25]

APPEARANCES and REPRESENTATION (if any):

APPLICANT/APPELLANT: W Thomas of Counsel instructed by MBA
Lawyers
FIRST RESPONDENT: T McQuillan for the first respondent
SECOND RESPONDENT: M Sullivan (self-represented)
THIRD RESPONDENT: M de Waard of Counsel instructed by OMB
Solicitors
FOURTH RESPONDENT: T McQuillan for the fourth respondent
FIFTH RESPONDENT: P Garrick (self-represented)

REASONS FOR DECISION

[1] This is an appeal under s 289 of the *Body Corporate and Community Management Act 1997* (Qld) (BCCMA). The question of law it raises is whether an adjudicator's order nullifying a resolution passed at an extraordinary general meeting for non-compliance with the standard module is valid. A threshold issue concerns the appellant's standing to appeal the order and, therefore, the competence of the filed appeal.

The context

- [2] The appellant owns Lot #3 in Condor CTS13200. He purchased the property management rights for the scheme in December 2013.
- [3] From 4 August 2015 the executive committee for Condor, chaired by Sam Cook, and the appellant began negotiations for a caretaking service agreement.
- [4] Engagement of a service contractor must be approved by ordinary resolution of the body corporate without proxies. An agreement is void unless it is in writing, states the terms of the engagement including start and end dates, the services to be provided and the basis for calculating payment.¹
- [5] An extraordinary general meeting to ratify the agreed terms of the contract was called for on 31 March 2016.

¹ *Body Corporate and Community Management (Standard Module) Regulation 2008* (Qld) ('Standard Module') s 114.

[6] Motion 18 supported a change from the standard module (Std Mod) to the accommodation module (Acc Mod). Under Std Mod s 119, the maximum term of a service contract inclusive of extensions is 10 years, and 25 years under s 117 of the Acc Mod.²

[7] Motion 19 depended on passing Motion 18. Motion 19 proposed the engagement of the appellant as caretaker.³ It read:

... the Agreement circulated with this motion ... will commence one day after the recording of the new Community Management Statement giving effect to the change of the Regulation Module ... and that the parties are authorised to insert the commencement and termination dates into the Agreement ... once those dates are known ... together with execution of the Deed of Agreement also circulated with this motion ...

[8] The accompanying note to Motion 19 was in the following terms:

The new Agreement circulated with this Motion proposes to give Gold Coast Apartment Management Pty Ltd a five (5) year term with four (4) x five (5) year Option as a Caretaker and Letting Agent for Condor Apartments CTS 13200. It is well known that Condor Apartments has, up to now, been quite unstable and it is affecting the values of Owners' lots. Your Committee, both past and present, and Peter Hill of Gold Coast Apartment Management Pty Ltd have been working together for many months to create the proposed Agreement, one which is in the best interest of all Owners. The Agreement should finally add some much needed stability to Condor Apartments and give the services to the building that it so desperately needs.

The negotiated yearly remuneration is approximately 50% below the industry average for the services that Gold Coast Apartment Management Pty Ltd will be offering and is comparable to the costs that the Body Corporate is currently paying for the grounds keeping, maintenance and cleaning of Condor Apartments.

Some of the key points to the Agreement are:

- 1) Discounted remuneration of only \$20,000 + GST for the first two years. This equates to a saving to lot owners of over \$200,000 which could drastically reduce body corporate levies or go towards major maintenance such as lift replacements.
- 2) On top of the grounds keeping, maintenance and cleaning services, Gold Coast Apartment Pty Ltd are also offering:
 - (a) A live-in-on-site manager who is contactable 24-hours to deal with day time and after hours emergencies, safety issues and guest/tenant behavioural issues.
 - (b) The proposed Agreement states no Schoolies bookings – a very important clause to the Owner-Occupiers of Condor.
 - (c) A dedicated reception for Condor Apartments.

² *Body Corporate and Community Management (Accommodation Module) Regulation 2008 (Qld) ('Accommodation Module') s 117.*

³ Standard Module s 73.

Mr Hill is committed to getting Condor Apartments back where it belongs, as one of the most sought after buildings to live in and holiday in Surfers Paradise. The Committee considers that the provisions incorporated into the Agreements provide for a commercially sound and financially advantageous arrangement for Owners.

Past and present Committee Members ask you to vote 'YES' to this very important motion.⁴

- [9] The body corporate sent a letter to Condor residents on 10 March 2016 (21 days before the date of the meeting) advising them that due to a clerical error the service agreement sent out with the voting papers was the wrong one and listed eight amendments “contained in the new ... agreement ... attached ...”.⁵
- [10] Under that agreement the Condor scheme was potentially bound to pay the appellant a lucrative management fee over initial term of 5 years plus four x five yearly options (2016–2041) beginning with \$20,000 in the first two years and escalating to \$120,000 in the third year.
- [11] Clarifying material circulated to the meeting before it is held may remove any initial deficiencies but, of course, a key function of an information notice is to help members decide whether to attend the meeting at all.
- [12] Disclosure of full facts and the true nature of the proposed transaction at the meeting itself will not cure a defective memorandum.
- [13] A previous committee was given advice by OMB Lawyers in November 2015 that an earlier iteration of the proposed service agreement was “not ... to be entered into” because it was contrary to the scheme’s best interests, as it failed to contemplate a commercial body corporate controlled tendering process, comprehensive due diligence investigations, competitive market based salary calculations, a professionally drafted schedule of duties and regulatory compliance guarantees, in the sense that the options were all exercisable by the appellant specific performance standards and regular reviews. The draft circulated to the meeting superseded the one criticized by OMB but still had the same shortcomings.
- [14] The OMB advice was not included in the notice meeting papers. No mention was made in the note to Motion 19 of any of the key points of general application made by OMB.
- [15] The first respondent, who owns Lot #54, immediately applied to the Commissioner for urgent interim orders, to confirm that identified motions (including Motion 19) to be put at the scheduled emergency general meeting be ‘ruled out of order’.
- [16] The adjudication application was referred to an adjudicator.

⁴ Emphasis in original.

⁵ Sam Cook’s hearing affidavit, Exhibit B.

- [17] On 17 March 2016 the Commissioner invited the committee to make 'one submission' by 4:00pm 29 March 2016.
- [18] The body corporate committee submitted that the first respondent was just trouble-making and trying to frustrate its work in reprisal for being forced to resign (or removed) as an executive member over legal problems associated with a \$300,000 disbursements dispute dating back to 2014.
- [19] The adjudicator made an interim order on 31 March 2016 preventing the body corporate from entering into any contracts based on Motion 19 without a submission from all affected lot owners pursuant to BCCMA s 247 "given the short time frame" and the "difficulties involved in distributing the application to the committee".⁶
- [20] Both Motions 18 and 19 were passed at the meeting by a substantial majority of votes.
- [21] Final submissions concerning Motion 19 were sought from all lot owners in April 2016 but the appellant did not lodge one.

The adjudicator's final order

- [22] The adjudicator was not satisfied that Motion 18 or the latest version of the draft caretaking agreement provided for an exact date or a term that indicates when the agreement will begin⁷ and when it will end⁸ as required by the Acc Mod.
- [23] She considered Motion 19 to be 'poorly drafted' and the explanatory material misleading.
- [24] The adjudicator held that in light of the objective standard of reasonableness it was essential for the body corporate to "seriously consider the terms of any long term management rights, especially ... where lot owners will be tied up for 25 years on terms" with dubious benefits to Condor.⁹ She found that the body corporate failed in its obligation to provide all relevant evidence and material (including by inference the OMB advice) to all lot owners and was remiss in not including a more detailed explanation of the practical effect on the scheme of a change from the module and submitting motion 19 without any explanatory material or comment.
- [25] The adjudicator suggested the more appropriate sequence of events would have been for the body corporate to have waited until Motion 18 was passed and the new CMS was lodged before putting Motion 19 to enter into a caretaking and letting agreement. This would have allowed the actual commencement and expiry date to have been included in the

⁶ Adjudicator's Order, 31 March 2016, 1 [9].

⁷ Adjudicator's Order, 28 July 2016, 13 [71]; cf Standard Module s 116(2)(b)(i).

⁸ Adjudicator's Order, 28 July 2016, 13 [71]; cf Standard Module s 114(2)(c)(i)(A).

⁹ Adjudicator's Order, 28 July 2016, 11-12 [57].

agreement and circulated to all lot owners with the motion, voting papers and other requisite explanatory material.

[26] The appellant complains that:

1. The Adjudicator failed to correctly exercise her discretion in the sense of *House v The King*¹⁰ sense by:
 - a) confusing the evidence in relation to the various versions of the Caretaking and Letting Agreement;
 - b) concluding, against the evidence that:
 - (i) the OMB Advice was relevant to whether Motion 19 is void;
 - (ii) the Committee failed to obtain, and seriously consider, independent legal advice regarding the Agreement;
 - (iii) the Committee's failure to provide lot owners with the OMB Advice was unreasonable;
 - (iv) lot owners were not advised of the effect of Motion 18;
 - (v) the validity, or otherwise, of Motion 18 was probative of any defect in Motion 19;
2. The Adjudicator failed to afford procedural fairness pursuant to subsection 269(3) of the *Body Corporate and Community Management Act 1997* by considering issues not raised by the parties, and without inviting submissions on the issues: i.e.
 - a) the validity of Motion 18;
 - b) the statutory validity of Motion 19 and the Agreement.
3. The Adjudicator misinterpreted subsection 114(2)(c) of the *Body Corporate and Community Management (Standard Module) Regulation 2008* by requiring Motion 19 to specify the start of the term of the Agreement as a specific date.

The appellant's standing

[27] The right to appeal an adjudicator's order is limited to a person 'aggrieved by the order'.¹¹ Section 289 provides:

Right to appeal to appeal tribunal

- (1) This section applies if—

¹⁰ (1936) 55 CLR 499.

¹¹ *Body Corporate and Community Management Act 1997* (Qld) ('BCCMA') s 289(1)(c).

- (a) an application is made under this chapter; and
 - (b) an adjudicator makes an order for the application (other than a consent order); and
 - (c) a person ... is aggrieved by the order; and
 - (d) the aggrieved person is—
 - (ii) ...
 - (A) an applicant; or
 - (B) a respondent to the application; or
 - (C) the body corporate for the community titles scheme; or
 - (D) a person who, on an invitation under section 243 or 271(1)(c), made a submission about the application; or
 - (E) an affected person for an application mentioned in section 243A notice in; or
 - (F) a person not otherwise mentioned in this subparagraph against whom the order is made.
- (2) The aggrieved person may appeal to the appeal tribunal, but only on a question of law.

[28] The appellant claims standing as such a person based on (a) an invitation under s 243 BCCMA, to make a submission about the adjudication application under s 289(1)(d)(ii)(D) BCCMA and (b) in making of an order against it within s 289(1)(d)(ii)(F).

Section 289(1)(d)(ii)(D) BCCMA

[29] Section 289(1)(d)(ii)(D) refers to a person who made a submission 'on an invitation under section 243 or 271(1)(c)'. The second respondent (the body corporate) disputes the making by the appellant of an interim submission about the adjudication application, but I do not think it matters.

[30] Section 243 BCCMA requires the Commissioner to give 'the original notice' of an adjudication application to the body corporate for it to give, shortly after receipt, a copy to lot owners and confirm compliance.¹² The original notice must invite written submissions from recipients within a stated time.¹³

[31] The original notice to the Condor Body Corporate requested it to distribute it, plus attachments 'to committee members *immediately* upon receipt'.

¹² BCCMA s 243(1), (4).

¹³ BCCMA s 243(2).

- [32] The chairman responded on behalf of the committee.¹⁴ In addition to the committee's submissions Mr Cook attached "another one submitted by Lot #3"; that is, the appellant.
- [33] The only invitation in the original notice dated 17 March 2016 was directed to 'the committee' members which did not include the appellant.
- [34] Accordingly, he is not an aggrieved person with a right of appeal under s 289(1)(d)(ii)(D) BCCMA.

Section 289(1)(d)(ii)(F) BCCMA

- [35] The Adjudicator's order declared motion and resolution 19 "at all-times void".¹⁵
- [36] The declaration is said to be "against" the appellant because (a) it states and, thus, adversely affects its legal and commercial rights by preventing it, in effect, from contracting with Condor.
- [37] In support of its interpretation of "aggrieved person" the appellant referred me to *Owen v Edwards*¹⁶ in which the same phrase was considered in the context of a person's standing to appeal to the District Court under the *Justices Act 1886* (Qld).
- [38] Section 222(1) of the *Justices Act* states:

If a person feels aggrieved as complainant, defendant or otherwise by an order made by justices or a justice in a summary way on a complaint for an offence or breach of duty, the person may appeal ... to a District Court judge.

- [39] In reliance of the approach taken by Lord Herschell LC in *Powell v Birmingham Vinegar Brewery Co*¹⁷ Jones J held¹⁸ that for a stranger to proceedings to meet the description "a person who feels aggrieved ... by an order" he or she must have in fact a 'real or direct interest' in proceedings.
- [40] The body corporate argues that being aggrieved by an adjudication order is not the same as having the appeal status of an "aggrieved person" and the phrase "against whom" does not mean "against whose interests". The adjudicator's declaration that a motion or resolution of a meeting is void is not made "against" anyone affected including the appellant.
- [41] Alternatively, the body corporate contends that the declaration is made against it, if anyone, because its practical effect was not allowing it to

¹⁴ Submission 1163715/1614 dated 26 March 2016 and 11165215/1614 in identical terms dated 28 March 2016.

¹⁵ Adjudicator's Order, 28 July 2016, 14 [74].

¹⁶ [2006] QCA 526.

¹⁷ [1894] AC 8, 10.

¹⁸ *Owen v Edwards* [2006] QCA 526, [27].

unreasonably enter into any agreements with an illegal object and places no limits on the appellant.

- [42] Under the BCCMA an affected person for an adjudication application means a person other than a party (applicant or respondent) to the application, who would be directly and materially affected by the outcome sought by the applicant.
- [43] On the appellant's analysis, where, as here, all owners are named in the proceedings as "affected persons", they are automatically aggrieved persons for appeal purposes. This is reasonably arguable but the contextual effect of s 289(1)(d) strongly suggests the contrary.
- [44] Schedule 6 of the BCCMA identifies the service contractor as a potential affected person for an application by a lot owner about a body corporate decision relating to the contract and other lot owners as likely to be affected persons about proposed body corporate expenditure of a significant nature.
- [45] If all affected persons were intended to have the status of an aggrieved person s 289(1)(d)(ii) probably would have made that clearer. The parties, the body corporate, and an affected person for an 'urgent' dispute resolution referral without notice are all mentioned in s 289(1)(d)(ii) A, B, C and E. Submitters pursuant to s 243 and 271(1)(c) are mentioned in (ii)D. The only other type of aggrieved person is in (ii)(F) viz., "a person ... against whom the order is made".
- [46] Although clearly an "affected person" and "a person otherwise mentioned in subparagraph (d)(ii)" the appellant is neither a submitter nor a person against whom any declaratory order is made within BCCMA s 289(i)(d)(ii)(D) or (F). Accordingly, it is not a person aggrieved by the order within s 289(1)(c) as distinct from a person aggrieved at the making of the order. The fact that the applicant personally made no submission about the application is decisive against him.
- [47] Appeal rights under s 142 QCAT Act are even more restrictive than those under the BCCMA. The QCAT Act permits only a party to a QCAT proceeding to appeal against the decision of a tribunal constituted by a non-judicial member, with leave if necessary.
- [48] The Court of Appeal recently struck out an appeal filed by a non-party lot owner from a QCAT tribunal order invalidating resolutions of an annual general meeting of a body corporate terminating letting agreements on the ground that the words 'a person' in s 150(1) QCAT Act read in the light of s 142(1) of the Act did not extend to a person who was not competent to appeal under s 142(1), despite "its commercial interest in the outcome of

the litigation” or “who might venture that it is convenient or necessary that they themselves might appeal”.¹⁹

- [49] On my reckoning the appellant has no right of appeal under s 289 BCCMA. In the event that the appellant was found to have standing, and contrary to the appellant’s arguments, the adjudicator’s decision is still unimpeachable on the merits.

The management committee’s role and responsibilities

- [50] Under s 94(1) BCCMA a body corporate has the relevant function of administering the assets for the benefit of the owners of the lots included in the scheme, and for that purpose has specific power to enter into service contracts and disperse funds.²⁰
- [51] There must be a committee for the body corporate comprised and elected as provided in the applicable regulation module.²¹ The administration of a community titles scheme is based on the democratic principle of majority rule.
- [52] The management of the body corporate is divided between the executive committee and the members in general meeting.
- [53] The committee must put into effect the lawful decisions of the body corporate.²² A decision of the committee is a decision of the body corporate.²³ Despite s 97 of the BCCMA, the committee can engage body corporate managers, service contractors and letting agents to help it meet its statutory obligations.
- [54] Section 94(2) obliges the body corporate to “act reasonably” in “anything it does” in performing its general functions including making a decision for that purpose. An example of ‘making a decision’ is provided as passing or rejecting a motion by resolution at a general meeting or committee meeting of the body corporate. This includes administering the common property and assets for the benefit of the lot owners, entering into contracts and conducting meetings of the scheme.
- [55] The question of reasonableness is objective. Good intentions and honest beliefs are immaterial. A reasonable action, including a decision, is not necessarily the correct or preferable one but is made in good faith in the overall best interests of most owners. There is at the very least an equitable obligation for the committee to provide adequate explanatory material to a general meeting.²⁴

¹⁹ *Trojan Resorts Pty Ltd v Emprove Holdings Pty Ltd and Body Corporate for The Reserve CTS 31561* [2017] QCA 153, 4.

²⁰ BCCMA s 95(1).

²¹ BCCMA ss 98-99.

²² BCCMA s 101.

²³ BCCMA s 100.

²⁴ *Chequepoint Securities Ltd v Claremont Petroleum NL & Ors* (1986) 11 ACLR 94.

Meetings

- [56] The members of a community title scheme have a legitimate expectation of a reasonably sufficient standard of information allowing them weigh up the pros and cons and cast a meaningful vote at a general meeting in their *own best interest*, regardless of the impact it has on the rights or expectations of others.
- [57] The duty to inform extends to giving bona fide advice.²⁵ However, the dominant purpose of the explanatory material is to inform the voters, not to present both sides of the argument.²⁶
- [58] Explanatory information should be "... full, frank and open. It must not in any case be misleading or 'tricky', whether by suppression of facts or in what it actually states."²⁷
- [59] An explanatory note is not construed benevolently. The test is whether it gives fair warning to the members of the matters to be dealt with by the meeting.²⁸ Sometimes too much detail can mislead a voter reading a note quickly, as much as too little.
- [60] Inaccurate, inadequate or misleading explanatory notes may result in the resolution passing a motion to be declared void if the decision of a lot owner to vote for it was adversely affected by the tainted information.
- [61] Thus, voting papers for a general meeting must be accompanied by an explanatory note from the body corporate committee to help the members understand its purpose **and effect** so it can be debated and voted on.
- [62] Entering into the service agreement with the applicant was a major management (and financial) decision.
- [63] The material provided to members for the general meeting did not explain the effect of Motion 19 if Motion 18 was passed. It is not suggested that the committee did not have a duty to explain the reasons for and consequences of a change of module.
- [64] Motions 18 and 19 were standalone but intimately related. Any deficiency in one had cross-contaminating effects on the other.
- [65] The adjudicator found that the lot owners were told about the practical effect of changing modules but the significance of doing so in light of Motion 19 was not spelled out for them to meaningfully consider.

²⁵ cf *Peel v London and North Western Railway Co* [1907] 1 Ch 5.

²⁶ *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355.

²⁷ Joske's Law and Procedure at Meetings in Australia, 11th ed, Law Book Co, 2012 [21.25] citing *Baillie v Oriental Telephone Co* [1915] 1 Ch 503; *Bulfin Bebarfalds Ltd* (1938) 38 SR (NSW) 423.

²⁸ *Ryan v Edna May Junction Gold Mining Co NL* (1916) 21 CLR 487.

- [66] However, in the absence of fraud, oppression or other abuse of power²⁹ a breach of the disclosure duty is necessary but not always enough of itself to invalidate an affirmative vote. The breach must be such as to empower an adjudicator to make an order under s 276, including one mentioned in Sch 5 BCCMA.
- [67] It was open to the adjudicator to find that claiming Motion 19 had the “past and present committee support” was in the circumstances factually incorrect.
- [68] In *Morat Pharmaceuticals Pty Ltd v Hoft Pty Ltd & Anor*³⁰ Muir JA held a misstatement that the committee supported new caretaking and letting arrangements to be in breach of the committee’s obligation to provide the meeting with correct information.
- [69] In my opinion, the adjudicator did not make any material mistake of fact even if she did confuse which specific agreement was considered at the meeting. The practical effect of the final version for the scheme remained the same as its antecedents and the adjudicator’s focus was on the discrepancy in the dates of the three versions not their content or disclosure.
- [70] Any misinterpretation of the standard module requirements about specifying dates did not affect the result. Committee’s breach of duty of disclosure mattered more than the service agreement dates.
- [71] The OMB advice may have been three months old at the time of the extraordinary general meeting, and not given in relation to the exact version of the agreement voted on, but the thrust of the advice was relevant information for lot owners at the meeting. The committee should have known about the OMB advice before it did and, in any case, should have circulated it before the meeting date or postponed it. The Short Punch & Greatorix Lawyers advice may have been “independent legal advice regarding the Agreement” but it did not even mention much less critique the OMB advice.
- [72] That is not surprising since the committee that obtained the Short Punch & Greatorix Lawyers advice in February 2016 apparently did not know about the OMB opinion until late March 2016.
- [73] The finding that the management committee acted unreasonably in breach of its duty to fully disclose and clearly and accurately explain in plain language, likely to be understood by affected parties, the practical effect of all significant terms of the proposed service agreement was open and reasonable. It also justified the order.
- [74] The Motion 18 issues may not have been raised by the parties but the BCCMA adjudicators are investigators with a self-informing role. They

²⁹ *Peters American Delicacy Co Ltd v Health* (1939) 61 CLR 457.
³⁰ [2014] QCA 319.

make just and equitable orders under BCCMA sch 5 to resolve disputes. The failure to invite submissions on Motion 18 did not breach the hearing rule in the circumstances.

- [75] Accordingly, the appeal is dismissed and the adjudicator's order voiding Motion 19 is confirmed.