SUPREME COURT OF QUEENSLAND FILE NO/S: S 2694 of 2000

CITATION: *Turner v Valuers' Registration Committee of Queensland*

PARTIES:

PAUL TURNER (applicant)

v

VALUERS' REGISTRATION COMMITTEE OF QUEENSLAND (respondent)

DIVISION: Trial Division

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 5th May 2000

DELIVERED AT: Brisbane

HEARING DATE: 27th April 2000

JUDGE: Holmes J

ORDER: Application dismissed

CATCHWORDS:

JUDICIAL REVIEW - Application to dismiss under ss.12, 13, and 48 of *Judicial Review Act 1991*- whether s.61(1) *Valuers' Registration Act 1992* makes adequate provision for review of disciplinary decision

COUNSEL: E.M. O'Reilly SC for the Applicant
M.O. Plunkett for the Respondent
SOLICITORS: Allen Allen & Hemsley for the Applicant
Crown Solicitor for the Respondent

[1] The applicant has sought judicial review of a decision of the Valuer's Registration Committee ("the Committee"), made on 4 February 2000, to find him guilty of

a charge of conducting himself in a manner amounting to professional misconduct, the substance of which was that he, as a registered valuer, had allowed an unregistered person to prepare valuation reports, which he signed. The grounds of his application are that there has been a breach of the rules of natural justice; that procedures required by law were not observed (ie that the rules of natural justice were not observed); that the making of the decision was an improper exercise of power, in that irrelevant considerations were taken into account and relevant considerations were not taken into account, a discretionary power was exercised in accordance with the rule without regard to the merits, and the exercise of power was unreasonable; that the decision involved an error of law in that regulations were misapplied; and that there was no evidence or other material to justify the making of the decision. An application is also made to review the respondent's conduct in making the decision, on similar grounds.

[2] Before me, the applicant has sought to expand his application by seeking review of the respondent's consequent decision on 17 April 2000 (to make an order, in effect, to cancel the applicant's registration if he fails to pay the costs of the proceeding and investigation) on the ground that the *Valuers' Registration Act* 1992 does not provide for the cancellation of registration for failure to pay costs. The applicant has also sought a stay of the orders of the respondent made on 17 April 2000, which in addition to the order already detailed, included an order that the applicant give an undertaking to abstain from signing valuation reports prepared by an unregistered person without himself inspecting the property in question.

[3] By cross-application, the respondent applied to dismiss the existing application for review pursuant to ss 12, 13, and 48 of the *Judicial Review Act* 1991. Those provisions are, respectively, in the following terms:

s.12. Despite section 10, but without limiting section 48, the court may dismiss an application under section 20 to 22 or 43 that was made to the court in relation to a reviewable matter because-

(a) the applicant has sought a review of the matter by the court or another court, otherwise than under this Act; or

(b) adequate provision is made by a law, other than this act, under which the applicant is entitled to seek a review of the matter by the court or another court.

s.13. Despite section 10, but without limiting section 48, if-

(a) an application under section 20 to 22 or 43 is made to the court in relation to a reviewable matter; and

(b) provision is made by a law, other than this Act, under which the applicant is entitled to seek a review of the matter by another court or a tribunal, authority or person;

the court must dismiss the application if it is satisfied, having regard to the interests of justice, that it should do so.

s.48(1) The court must stay or dismiss an application under section 20, 21, 22 or 43 or a claim for relief in such an application, if the court considers that-

(a) it would be inappropriate:

(i) for proceedings in relation to the application or claim to be continued; or

(ii) to grant the application or claim; or

(b) no reasonable basis for the application or claim is disclosed; or

(c) the application or claim is frivolous or vexatious; or

(d) the application or claim is an abuse of the process of the court.

(2) A power of the court under this section-

(a) must be exercised by order; and

(b) may be exercised at any time in the relevant proceeding but, in relation to the power to dismiss an application, the court must try to ensure that any exercise of the power happens at the earliest appropriate time.

(3) The court may make an order under this section-

(a) of its own motion; or

(b) on an application by a party to the proceeding.

(4) The court may receive evidence on the hearing of an application for an order under this section.

(5) An appeal may be brought from an order under this section only with the leave of the Court of Appeal.

[4] Mr Plunkett's argument, in essence, was that adequate provision was made by law for review by another court, in the form of s61 of the *Valuers Registration Act*, which provides for appeal to the District Court; so that dismissal of the proceedings was warranted under any or all of those provisions.

[5] The primary issue, then, was whether the appeal available under s61 to the District Court constituted adequate provision for review of the Committee's decision. s61(1) of the *Valuers Registration Act* provides as follows:

A person aggrieved by:

(a) a refusal by the board of the person's application for registration as a valuer; or

(b) a refusal by the board to restore the person's name and other particulars to the register; or

(c) an admonition, reprimand or other order of a committee; or

(d) a refusal by the board of the person's application to be recorded as a specialist retail valuer; or

(e) a decision by the board to limit the person's authority as a specialist retail valuer to particular areas of the State; or

(f) a decision by the board to remove the person's name from the list of specialist retail valuers;

may appeal against the decision to a District Court judge at Brisbane whose decision must be given effect by the board.

[6] In the present case it is subsection 1(c) which gives the applicant a right of appeal. Subsection 61(2)(b) provides that the appeal "is by way of re-hearing on the material before the board or committee or, if the judge hearing the appeal so orders, on materials submitted on the appeal, or on both." The judge's powers on such an appeal are set out in subsection (3); where appeal is made by a person aggrieved by "an admonition reprimand or other order", the judge may:

(i) allow the appeal; or

(ii) allow the appeal and make any other order that a committee may make under s59(1)(a) to (d), (3) or (4); or

(iii) dismiss the appeal.

[7] Mr Plunkett for the respondent contended that the availability of such an appeal meant that a full merits review by way of re-hearing on all substantive matters was available, constituting adequate provision for review. He relied in particular on two decisions of Thomas J., one of which is unreported (*Rogers v Sadler, Bevin, and Dawson* (No 6 of 1992, 4 February 1993) and *Stubberfield v Webster*, reported at (1996) 2 Qd.R 211. In the former case, His Honour held that the existence of a right of review on the merits in the Land Court warranted the granting of an application for stay of the applicant's proceedings under the *Judicial Review Act*; while in the latter case, the existence of an appeal by leave under the Magistrates Court, in circumstances where the facts were capable of giving rise to an important question of law or justice, made it appropriate to dismiss an application under the *Judicial Review Act.* In *Stubberfield v Webster*, Thomas J observed that "as a general rule judicial review should not be seen as a substitute for the appeal at process in the civil courts".[1]

[8] Ms O'Reilly for the applicant argued that s61 did not afford adequate provision for review. In the first instance, one of the allegations of breach of the rules of natural justice was that the Committee had not provided the applicant with full particulars of the charge brought against him, while another was that he had not been provided with all information before the Committee, including legal advice and counsel's opinions, a report relied on by the investigator, and the board's file. Because there was no procedural provision for the supply of particulars before any appeal, and because it was in the judge's discretion as to whether further material would be admitted on the appeal, there could be no assurance that such breaches (assuming them to have occurred) would be made good on the appeal. Secondly, the appeal provided by s61(1) was, she argued, only against the "admonition,

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1 P. 217

reprimand or other order" of the Committee; there was no provision for appeal against the finding of guilt itself. Accordingly even if the District Court judge hearing an appeal in the matter found for the applicant, he or she could do no more than set aside or vary the penalty, and could not affect the finding of guilt, which would remain on the Board's records against the applicant.

[9] So far as Ms O'Reilly's first point, as to whether the breaches of the rules of natural justice alleged against the Committee would be cured by the District Court on appeal is concerned, it does not seem to me that I should proceed on an assumption that any District Court judge hearing such an appeal would not be astute to ensure that procedural fairness was afforded to the applicant. As with other legislation governing appeals against disciplinary decisions by professional boards, there is no provision, either in the *Valuers Registration Act* or by way of any regulation, for the procedure to be adopted upon an appeal under s61. Clearly, however, a District Court judge hearing such an appeal can make appropriate directions, extending, if need be, to the provision of particulars. So far as the question of material before court is concerned, the judge on appeal has a discretion by virtue of s61(2)(b) to receive further material. In both instances, one could not reasonably anticipate that the judge on appeal would act, in the exercise of his or her power and discretion, other than in accordance with the rules of natural justice. Accordingly, I do not think that there is substance in this point.

[10] That leaves the question of whether the construction of s61 contended for by Ms O'Reilly, that is, that the appeal right is limited to appeal against penalty, is correct; because if it is, it seems plain that one could not regard it as an adequate substitute for judicial review of the decision to find the applicant guilty of misconduct. Ms O'Reilly argues that "the decision" against which appeal may be brought, by virtue of s61(1), must be the decision to admonish, reprimand or make other order; the subsection

contains no reference to appeal against the Committee's finding of guilt. On a literal reading, that argument has some force; and it is interesting to note that the *Architects Act* 1985, by way of contrast, provides for appeal against "a finding of guilt...or a disciplinary order".[2] However, on an examination of s61 in context with s59 of the *Valuers Registration Act*, and on consideration of some authorities in relation to construction of appeal provisions, I have come to the conclusion that it entails an unwarrantedly narrow construction.

[11] s59 of the *Valuers Registration Act* provides as follows:

> (1) If a committee finds a registered valuer guilty of the charge made against the person, the committee may-
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> (a) admonish or reprimand the valuer; or
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> (b) order the valuer to give an undertaking to abstain from specified conduct; or
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> (c) order the valuer to pay to the board a penalty of an amount equal to not more than 100 penalty units; or
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> (d) order that the valuer's registration be suspended for up to 12 months; or
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> (e) order that the valuer's registration be cancelled.
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> (2) If a committee makes an order under subsection (1)(e), the board is to remove from the register the name and other particulars of the valuer.
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> (3) A committee may order the valuer to pay to the board the amount of the costs of and incidental to the

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2 S84(1) *Architects Act* 1985.

proceeding, including the cost of the investigation that preceded the proceeding.

(4) If a committee makes an order under subsection (1)(c), the order may contain a direction that the valuer's registration be suspended for a specified period if the valuer fails to pay the penalty within a specified time.

(5) If the valuer does not pay the amount ordered within the time specified, the valuer's registration is suspended for the period specified in the direction.

[12] It is to be noted that the finding of guilt by the Committee is not the subject of a separate provision; rather it is the premise within subsection 59 (1) upon which the Committee may act to administer its admonition or reprimand, or make its order within the subsection's terms. On the applicant's construction, that premise cannot be examined on appeal; all that the appeal court can do is to examine the result, and determine whether the penalty is excessive. That would lead to the odd result that an appeal might, under s61(3)(c)(i), be allowed, without any penalty or sanction at all being imposed, notwithstanding the continued existence of the finding of guilt, although s 59 does not contemplate the possibility of such a finding without resulting penalty.

[13] The better view, in my opinion, is that the decision which may be appealed is the whole of the decision contemplated by s59(1); that is, to find the valuer guilty and take one of the steps as set out in the succeeding sub-provisions. The appeal may then be allowed in full, so that no further order other than a setting aside of that decision is required; or may be allowed to the extent that the Committee's order is varied; or, of course, may be dismissed. To construe the section otherwise would be to limit the right of appeal against a decision of a disciplinary Committee to an extraordinary extent.

[14] Support for the wider view which I have taken can be found in two English decisions, *Stepney Borough Council v Joffe* (1949) KB 599, and *Sagnata Investments Ltd v Norwich Corporation* (1971) 2 QB 614. In the *Stepney Borough Council* case, s25 of the *London County Council (General Powers) Act* 1947 gave "any person aggrieved" by various licensing decisions the right of appeal to a petty sessional court, which then had power to confirm reverse or vary the decision of the Borough Council. A licence to trade as a street vendor could be refused or revoked if the Borough Council made any one of a number of findings of fact, or formed an opinion that the applicant was, on account of misconduct or otherwise, unsuitable to hold such a licence. Three traders convicted of offences had their licences revoked on the grounds of unsuitability, and appealed to a magistrate. The Borough Council argued that the magistrate was not entitled to review the cases on the merits, but rather that his jurisdiction was limited to considering whether or not there was any material on which the Council could reasonably have arrived at its decisions to revoke the licences. The magistrate regarded himself as entitled to consider the merits of each case de novo, and reached a different view as to the traders' suitability to hold licences. However, he stated a question for the opinion of the court as to the extent of his powers on the hearing of such an appeal. On appeal it was held that the appeal to the magistrate was not limited, as the Borough Council contended, to a decision on whether there was evidence upon which the Council could have come to its conclusion. If that contention were correct, the right of appeal would be "purely illusory"[3]. The court held, rather, that there was an unrestricted right of appeal, and that it was open to the court of petty sessions to substitute its opinion for the opinion of the Borough Council. Lord Goddard CJ pointed out that a magistrate had power to "confirm reverse or vary the decision of the Borough

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3 Per Goddard CJ at p.602

Council”; and in the light of that broad power, he was bound on appeal to form his own opinion upon the matter, confirming reversing or varying the decision according to the view he took of the case.

[15] *Stepney Borough Council v Joffe* was followed by the Court of Appeal in *Sagnata Investments Ltd v Norwich Corporation* (1971) 2 QB 614, a case concerned with whether an appeal to quarter sessions from a local authority's decision based on its general policy was a re-hearing. The majority concluded that it was, the recorder being “free to embark on a complete consideration of all the relevant material presented to him”.[4]

[16] A similar issue arose in *Public Service Association of South Australia v Federated Clerics Union of Australia, South Australian Branch* (1991) 173 CLR 132. The Registrar appointed under the *Industrial Conciliation and Arbitration Act* 1972 was entitled, under s121 of that Act, to refuse an application for registration of an alteration in a union's rales if he formed an opinion that it would have a prejudicial effect; for any reason for which an application by an association for registration could be refused; or for any other reason that he considered it proper to refuse the application. S.104 of the Act provided for leave to appeal against an act or decision of the Registrar to the Full Commission, which was enabled by s 105 to take further evidence and to make such order as it thought fit, including the confirming, quashing, or varying of the Registrar's decision. The Federated Clerks' Union and the Australian Social Welfare Union appealed a decision of the Registrar, arguing that the Full Commission had jurisdiction to re-hear the whole matter, receiving further evidence where appropriate. The Full Commission refused to grant leave, concluding, without re-hearing the matter, that no error appeared in the way that the Registrar had dealt with it. The unions concerned successfully sought

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4 per Edmund-Davies LJ at p.636

judicial review of the Commission's refusal of leave to appeal in the Full Court of the Supreme Court of South Australia.

[17] An appeal to the High Court by the Public Service Association against that result was unsuccessful. It was argued for the Association that any error on the part of the Full Commission was an error made within jurisdiction, relief by way of judicial review being limited by s95 of the Act to challenge on the ground of excess or want of jurisdiction. A majority in the High Court held that the decision was susceptible of review on the ground that it involved an excess of jurisdiction. Relevantly for present purposes, Brennan J. considered the nature of the appeal to the Commission. Referring *to Stepney Borough Council v Joffe* and *Sagnata Investments Ltd v Norwich Corporation* (supra) he observed that, since the appeal to the Full Commission was to be determined by the making of such order as the Full Commission thought fit, "it is necessarily implied that the Full Commission should determine for itself whether to form the opinions entrusted to the Registrar by s121, although there is no express direction to do so".[5]

[18] Adopting a similar approach in the present case, I have reached the view that the subject matter of the appeal, the breadth of the appeal judge's powers and the relationship between ss59 and 61 all indicate that the appeal under s61 is a full appeal on the merits, in the course of which the appeal court can be expected to examine the committee's decision in its entirety.

[19] Accordingly, I conclude that there is adequate provision for review of the matter by another court. For the purposes of s12 of the *Judicial Review Act* 1991, I consider it proper to exercise the discretion conferred to dismiss the application, whilst for the purposes of s13, I

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5 at p.138

am satisfied that it would be in the interests of justice to do so. It is hardly necessary to consider s48, but for similar reasons I would consider it inappropriate for proceedings in relation to the application to be continued.

[20] The application for judicial review is dismissed. I will hear the parties as to costs.