SUPREME COURT OF QUEENSLAND

CITATION:	*Bartz v Department of Corrective Services* [2001] QSC 392
PARTIES:	**WADE ANTHONY BARTZ** (applicant) **v** **CHIEF EXECUTIVE, DEPARTMENT OF CORRECTIVE SERVICES** (respondent)
FILE NO/S:	8042 of 2001
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Brisbane
DELIVERED ON:	12 October 2001
DELIVERED AT:	Brisbane
HEARING DATE:	1 October 2001
JUDGE:	**White J**
ORDER:	**Refuse the application with costs.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW LEGISLATION – COMMONWEALTH, QUEENSLAND AND AUSTRALIAN CAPITAL TERRITORY – REASONS FOR DECISION AND DISCLOSURE OF INFORMATION – applicant aggrieved by decision – whether decision made by Chief Executive was made under an enactment, or was of a managerial nature – courts will not review management decisions within prisons in the absence of bad faith – whether prisoner has legitimate expectation of entitlement to employment as a full time student under the *Corrective Services (Administration) Act* 1988 (Qld) *Corrective Services Act* 1988 (Qld), s 59 *Corrective Services Act* 2000 (Qld) *Corrective Services (Administration) Act* 1988 (Qld), s 18, 19, s 21 *Judicial Review Act* 1991 (Qld), s 3, s 4, s 7(1), s 20(1), s 32, s 38

Abbott v Chief Executive, Department of Corrective Services SC No 9096 of 2000, unreported decision of 21 December 2000, followed
Australian National University v Burns (1982) 43 ALR 25, considered
Blizzard v O'Sullivan [1994] 1 Qd R 112, considered
Flynn v The King (1949) 79 CLR 1, considered
Grey v Hamburger [1993] 1 Qd R 595, followed
Kioa v West (1985) 159 CLR 550, distinguished
Masters v Chief Executive, Department of Corrective Services, SC No 4827 of 2000, unreported decision of 2 March 2001, followed
McEvoy v Lobban [1990] 2 Qd R 235, followed
Re Walker [1993] 2 Qd R 345, followed

COUNSEL: Applicant on his own behalf
Mr M Plunkett for the respondent

SOLICITORS: Applicant on his own behalf
Crown Solicitor for the respondent

[1] The applicant, who is a prisoner at the Lotus Glen Correctional Centre, Mareeba, seeks an order pursuant to s 38 of the *Judicial Review Act* 1991 (the "Act") that the respondent provide him with a statement of reasons pursuant to s 32 of the Act for declining to designate him a full-time student at the Lotus Glen Farm.

[2] The applicant appeared on his own behalf by telephone link to argue his application. He had, in conformity with directions made by Mackenzie J on 11 September 2001, provided, inter alia, written submissions.

[3] By letter dated 27 June 2001 to the General Manager of Lotus Glen Correctional Centre the applicant sought to be designated as a full time student at the Lotus Glen Farm and remunerated as such, so that he could pursue his studies and be in a better position to obtain employment on his release. The applicant says that he has been a full-time student whilst at main correctional centres during his incarceration and does not wish to engage in "pointless" occupations such as working in the fruit shed, which would be of no use in his rehabilitation and leave him with insufficient time for study.

[4] The general manager responded on the same date, 27 June 2001, to a number of queries from the applicant including the matter of his studies. He wrote:

> "In regard to your studies, you will not be considered as a full-time student at the farm …", "W2" to the affidavit of Wayne Anthony Bartz filed 6 September 2001.

[5] The applicant wrote to the general manager on 30 July 2001 requesting a statement of reasons for the decision refusing the applicant's request to be designated a

full-time student at the Lotus Glen Farm. That statement has not been provided, hence this application.

[6] Section 32 of the Act provides that a person who is entitled to make an application to the court under s 20 in relation to the subject decision may request the person to provide a written statement of reasons in relation to the decision. By s 20(1) a person who is aggrieved by a decision to which the Act applies may apply to the court for a statutory order of review in relation to the decision. By s 7(1) a reference to a person aggrieved by a decision includes a reference to a person whose interests are adversely affected by the decision. The respondent concedes that the applicant is a person who is aggrieved by the subject decision.

[7] The first issue for resolution on this application is whether the decision is one "to which this Act applies", s 20(1). By s 4 of the Act the expression "decision to which this Act applies" means:

> "a decision of an administrative character made, … under an enactment (whether or not in the exercise of a discretion) …".

By s 3 an "enactment" means an act or statutory instrument and includes a part of an act or statutory instrument.

[8] Whether a decision is made under an enactment will vary in different circumstances. As Bowen CJ and Lockhart J observed in *Australian National University v Burns* (1982) 43 ALR 25 at 31 the difficulty does not lie in the definition of the expression "under an enactment". It lies in the application of the expression to particular circumstances. Their Honours quoted the primary judge, Ellicott J, with approval at 31:

> "The clear object of the Act [the *Administrative Decisions (Judicial Review) Act* 1977] is to confer rights on aggrieved citizens as a result of the exercise of powers conferred by an enactment on Ministers, public servants, statutory authorities and others. In many cases the power to exercise will be precisely stated in the legislation. In other cases the power to do a particular thing will be found in a broadly stated power. The Act should not be confined to cases where the particular power is precisely stated. In each case the question to be asked is one of substance, whether, in effect, the decision is made 'under an enactment' or otherwise."

See also *Blizzard v O'Sullivan* [1994] 1 Qd R 112.

[9] The decision for which reasons are requested was made on 27 June 2001. The relevant provisions of the *Corrective Services Act* 2000 which would apply to this application came into force on 1 July 2001. There is nothing in the transitional provisions to suggest that the *Corrective Services Act* 2000 is to apply to this decision and application. It is to the previous legislation, the *Corrective Services Act* 1988 and the *Corrective Services (Administration) Act* 1988 which the inquiry as to whether the decision was made "under an enactment" must be addressed.

[10] The applicant submits that s 18 of the *Corrective Services (Administration) Act* 1988 and s 59 of the *Corrective Services Act* 1988 are the enactments under which the decision of the general manager was made. The *Corrective Services Act* 1988 provides for prisons, community corrections centres and prisoners as well as parole and community corrections boards. Part 2 Division 5, in which s 59 is contained, concerns prisoners and subdivision 4 of Division 5 concerns prison programs. Section 59(2) provides that a prisoner "may be ordered to participate in an approved compulsory program" and ss (3) provides that a prisoner "may participate in an approved voluntary program". An "approved compulsory program"

> "… means any work or other activity prescribed under the *Corrective Services Rules* as an approved compulsory program for the purposes of this Act, whether within or outside of prison",

and an "approved voluntary program" means

> "… any work or other activity prescribed by rules as an approved voluntary program for the purposes of this Act, whether within or outside of prison."

For the purposes of this application it may be assumed that the prisoner's proposed course of study is an approved voluntary program.

[11] Where a prisoner participates in an approved program he is entitled to receive remuneration at a rate prescribed under the *Corrective Services Rules*, s 59(4). That remuneration may be withheld in certain circumstances not here relevant, s 59(5), (6) and (7).

[12] Section 18 of the *Corrective Services (Administration) Act* 1988 is in Part 2 which concerns the role of the chief executive and sets out his functions. It provides

> "Subject to the Minister, the chief executive-
>
> (a) must decide policy for the administration, management and control of corrective services; and
>
> (b) shall develop and administer services and programs for the purposes of assisting prisoners to be absorbed into the community and to assist and encourage them to acquire such skills as may be necessary or desirable for their integration with the community upon their release from prison;
>
> (c) shall develop and administer services and programs for the purpose of counselling persons who, under the *Corrective Services Act 1988*, are subject to probation orders, community service orders or fine option orders;
>
> (d) shall develop and administer services and programs designed to encourage prisoners, and persons referred to in paragraph (c), to

> initiate, maintain and strengthen ties with members of their families and the community."

[13] Section 19(1) expresses the powers of the chief executive in broad terms and are those powers "as are necessary or desirable to allow the proper discharge of the chief executive's functions or any of them whether under this or any other Act". Subsection (2), without derogating from ss (1), specifically authorises the chief executive to do a number of things, relevantly, in ss (2)(b) to

> "establish training facilities and provide courses and scholarships for corrective services officers and prisoners and for persons who, under the *Corrective Services Act 1988*, are subject to probation orders, community service orders or fine option orders;".

[14] There can be no doubt that the office of chief executive is created by statute and the description of the functions of his office and the powers to carry out those functions are statutory in origin. So too, with respect to those to whom the chief executive delegates his powers, s 21 of the *Corrective Services (Administration) Act* 1988. To that extent everything that the chief execution does (or is done in his name) is done under an enactment, *Blizzard v O'Sullivan* [1994] 1 Qd R 112 at 117. Mr Plunkett, who appeared for the respondent, submitted that the powers of the respondent described in s 18(b) of the *Corrective Services (Administration) Act* 1988 are directed to the development and administration of services and programs for inmates in correctional centres as a whole and any decision about an individual prisoner is not derived from that statutory source.

[15] While s 18(b) requires the chief executive to develop and administer such programs for the assistance of prisoners generally, s 59 of the *Corrective Services Act* 1988 "personalises" such programs. A decision made to order a prisoner to participate in an approved compulsory program pursuant to s 59(2) or a decision that a prisoner may not participate in a voluntary program for the purpose of being remunerated as a participant therein are, in my view, decisions of an administrative character made under an enactment. The "contracts of employment" cases such as *Burns* and others cited by Thomas J (as his Honour then was) at 118 of *Blizzard* are in a quite different category, where the immediate or proximate source of the power (to dismiss) was the contract of employment rather than the ultimate legislation which authorised the making of the contract.

[16] The applicant maintains that s 18(b) obliges the respondent to respect the applicant's desire to be assisted to be integrated back into the community when granted parole or at the expiration of his sentence by employing the applicant in the position of full-time student to acquire suitable skills. He maintains in his correspondence with the respondent that he has insufficient time to engage in other employment within the prison system.

[17] The respondent contends that the decision not to employ the applicant as he would wish is a managerial decision about prisoners and not one which the courts will review. There is a long line of decisions to the effect that courts will not review decisions pertaining to the management of prisons and prisoners unless bad faith is shown to be present, *McEvoy v Lobban* [1990] 2 Qd R 235; *Re Walker* [1993]

2 Qd R 345; *Abbott v Chief Executive, Department of Corrective Services* SC no. 9096 of 2000, unreported decision of 21 December 2000; and *Masters v Chief Executive, Department of Corrective Services* SC No 4827 of 2000, unreported decision of 2 March 2001. No element of bad faith is alleged.

[18] Section 18(b) does not grant the applicant any entitlement and there could be no relevant expectation that he would be employed as a full-time student at the Lotus Glen Farm of the kind envisaged in *Kioa v West* (1985) 159 CLR 550, see *Flynn v The King* (1949) 79 CLR 1 per Latham CJ at 5-6 and Dixon J at 7. It is not for the prisoner alone to decide what is best for him in terms of rehabilitation which binds the respondent. The respondent must undertake an assessment, both of the individual in general, his place at a particular institution and the general management of all prisoners and staff in the institution.

[19] Permission to engage in full-time study and to be remunerated for it is a privilege. The privileges which pertain to prisoners do not impose correlative duties upon the manager of a prison, *Grey v Hamburger* [1993] 1 Qd R 595.

[20] It follows that although the decision not to employ the applicant as a full-time student at the Lotus Glen Farm is a decision under an enactment it is a decision of a managerial kind which the courts will not review.

[21] In view of that conclusion it is unnecessary to deal with the respondent's third submission that since the relief sought is discretionary it should be refused because the decision concerns a managerial decision and/or sufficient reasons are given in the context of the correspondence. As to the latter point, that there are no reasons apparent on the face of the document emanating from the general manager of the Lotus Glen Correctional Centre as to why the applicant was not to be designated a full-time student and employed in that capacity.

[22] The application pursuant to s 32 of the *Judicial Review Act* for reasons for the decision given by the respondent on 27 June 2001 is refused and unless there are persuasive reasons for not doing so, with costs.