

SUPREME COURT OF QUEENSLAND

CITATION: *Re Hall* [2002] QSC 091

PARTIES: **ANTHONY BRUCE HALL**
(applicant)
v
VICTORIA BROWN
(first respondent)
PENNY ADAMS
(second respondent)
PAULA HAYE
(third respondent)
BRENDA WALKER
(fourth respondent)
DONNA SHIPTON
(fifth respondent)
ROBYN CURTIS
(sixth respondent)
DIANNE COOK
(seventh respondent)
WILLIE SMITH
(eighth respondent)
FRANK BARNES
(ninth respondent)
CLEM BURTON
(tenth respondent)

FILE NO: 2369 of 2002

DIVISION: Trial

PROCEEDING: Application

DELIVERED ON: 10 April 2002

DELIVERED AT: Brisbane

HEARING DATE: 25 March 2002

JUDGE: Ambrose J

ORDER: **Application dismissed**

CATCHWORDS: JUDICIAL REVIEW – DECISION – application for review by former treasurer of the Beenleigh High School Parents and Citizens Association – where association pays members of the association for services provided to the high school – where applicant contends that association members are not entitled to payment under the constitution of the association – whether application defective – whether reviewable decision

Education (General Provisions) Act 1989 (Qld), s 92, s 96(4),

s 103(5), s 106
Education (General Provisions) Regulation 2000 (Qld), rg 38
Judicial Review Act 1991 (Qld), s 20(2)(b)

COUNSEL: The applicant appeared on his own behalf
 S W Sheaffe for the respondents
 SOLICITORS: The applicant appeared on his own behalf
 Harris Sushames for the respondents

- [1] **AMBROSE J:** This is an application purporting to seek relief under the *Judicial Review Act 1991*.
- [2] The applicant is the former treasurer of the Beenleigh State High School Parents and Citizens Association (“the Beenleigh P & C”). The applicant appears not to have received any legal assistance either in the preparation of his application and supporting affidavit or in preparation of his legal argument advanced upon it.
- [3] The applicant seeks to rely upon s 20(2)(b) of the *Judicial Review Act 1991* for the relief which he seeks.
- [4] All respondents are members of the P & C the first three respondents being respectively the president, secretary and vice president of that association. The applicant seeks no relief against the eighth respondent.
- [5] On 6 June 2001 a review of the accounts of the association took place. It was noted that the applicant as treasurer, and his wife as vice president of the association, were both cheque signatories. After some discussion and disputation the applicant resigned from the position of treasurer amid assertions that he had not properly performed the duties of treasurer of the association. It is unnecessary to examine in detail the matters and disputation preceding his resignation.
- [6] In the course of the events apparently leading to the applicant’s resignation as treasurer (and apparently his wife’s resignation as vice president) a question emerged as to the effect of cl 15(b) of the Model Constitution for Parents and Citizens Associations adopted by the Beenleigh P & C under regulation 38 of the *Education (General Provisions) Regulation 2000*.
- [7] Clause 15 of the Model Constitution adopted by the Beenleigh P & C reads as follows –

“15. DISTRIBUTION OF INCOME AND ASSETS

- (a) The income and property of the Association will be used and applied solely to the Association’s objectives and in the exercise of its powers.
- (b) No portion of Association’s funds will be distributed, paid or transferred directly or indirectly to members of the Association.”
- [8] By letter dated 31 May 2001 the administration officer of the Queensland Council of Parents and Citizens Associations Inc expressed the view to the president of the South Coast Regional Council that although the Constitution prohibits employees

from being officer bearers of an association, it does not prohibit members of an association from being employed by it.

- [9] The officers of an association who may be elected at the annual general meeting of the association are the president, vice president, secretary, treasurer and such other additional “officers” as may be determined by the association.
- [10] Under cl 8(a) the officers of the association so elected must hold office “in an honorary capacity” and under cl 8(g) no employee of the association is eligible to hold office.
- [11] There is nothing in the Constitution which expressly prohibits the association from employing members of that association with a view to achieving its objects.
- [12] Under cl 12 – FINANCE – it is provided in cl 12(c) that –
- “(c) All moneys raised by and on behalf of the Association will be handed to the Treasurer of the Association to be lodged in the name of the Association.
- (d) All moneys raised by the Association will be used :
- for defraying expenditure lawfully incurred by the Association; and
 - towards the objects and functions of the Association.”
- [13] In cl 12(f) it is provided –
- “(f) Except for the payment of wages, allowances or petty cash, cheques will be crossed ‘not negotiable’ and marked ‘account payee only’.”
- [14] Under the heading EXPENDITURE in cl 12 it is provided –
- “(a) No expenditure, except as a matter of urgency, and as approved by a majority of the officers, may be incurred without the prior approval of the Association.”
- [15] Section 92 of the *Education (General Provisions) Act* 1989 (“the Act”) provides –
- “(1) Subject to section 96(4), all moneys received by an association shall by force of this section be vested in the corporation to be applied by the association at the direction of the corporation to the following purposes—
- (a) firstly in defraying all expenditure lawfully incurred by the association;
 - (b) secondly towards the objectives and functions of the association in accordance with this Act.”
- [16] Section 96(4) provides –

“(4) An association shall deal with any funds coming into its hands pursuant to an agreement referred to in subsection (1) —

- (a) for the purposes prescribed by section 92(1) or subsection (1); or
- (b) subject to such purposes, as the Minister directs; or
- (c) in the absence of such prescription or direction, as the association thinks fit consistent with the objectives of an association.”

[17] Under s 106 of the Act of 1989 it is provided —

“(1) This section applies to an interested member if—

- (a) the interested member has a direct or indirect financial interest in an issue being considered, or about to be considered, by the entity; and
- (b) the interest could conflict with the proper performance of the member’s duties in relation to the consideration of the issue.

(2) As soon as practicable after the relevant facts come to the interested member’s knowledge, the member must disclose the nature of the interest to a meeting of the entity.

(3) Unless the entity otherwise directs, the interested member must not —

- (a) be present when the entity considers the issue; or
- (b) take part in a decision of the entity about the issue.

(4) The interested member must not be present when the entity is considering whether to give a direction under subsection (3).

...

(7) A disclosure under subsection (2) must be recorded in the minutes of the entity.

(8) In this section —

“**entity**”, in relation to an interested member, means the association or the executive committee or a subcommittee of the association.

“**interested member**” means a member of an association, or the executive committee or a subcommittee of the association.”

[18] Under s 103(5) of the 1989 Act it is provided that proceedings in any court may be taken against an association in its name as prescribed in the regulations.

[19] In my view this application is formally defective. It does not seek to review any decision of the association. It seeks merely to obtain restrictive and mandatory injunctions against members of the association. One might think, that the only decision raising the matter which the applicant seeks to ventilate, that might be

reviewed pursuant to the *Judicial Review Act*, is that reached at a meeting of the association at which it was resolved that members of the association employed by it in the school tuckshop, and doing other things assisting it to perform its function, failed to comply with s 106 of the Act in that those members of the association who were to be employed by it for remuneration coming within the contemplation of s 106(1)(a) did not disclose any interest they had as required by s 106. Alternatively perhaps, if they did disclose the interest (as one would expect they would if they had any knowledge of the requirements s 106) the requirements of s 106(3) and (4) were not complied with.

- [20] There is no evidence whatever to suggest any non-compliance with s 106 of the Act at any meeting in which it was resolved that some members of the association would be paid specified remuneration for working in the tuckshop or in other areas within the school to perform the functions of the association.
- [21] In my view, in the absence of such evidence, there is no basis upon which any such decision might be reviewed – even if the applicant in this case sought to review such a decision which he did not seem to do.
- [22] In case that is thought to be too technical an approach to deal with the complaints of this applicant who really seeks, I think, to contend that the effect of cl 15(d) of the Beenleigh P & C Constitution is to “prohibit payment of any P & C funds directly or indirectly to members of the P & C association with the consequence that the association may only resolve to pay for the services rendered by persons not members of the association to achieve the objects of the association”. It is contended that as a consequence of the proper construction of this clause, members of the association who provide service to it may only do so voluntarily.
- [23] The applicant conceded that the crux of his argument was to the effect that upon a proper construction of s 106 of the Act when read with cl 15(e) of the Constitution, no member of the association who provides services to achieve its objects may be paid out of the association funds.
- [24] Although in my view the application for the relief actually sought must fail, it may be useful to construe cl 15 of the Model Constitution in the context of the relevant statutory provisions and regulations made under the Act in the context of the submissions so emphatically made at such length by the applicant.
- [25] In my view, cl 15 as its heading indicates, deals with the distribution of the income produced by the association and the assets of the association. It should be read with cl 17 – DISSOLUTION – and particularly cl 17(c) which deals with the disposal of funds and property under the general control of the association upon its dissolution.
- [26] Clause 15(a) clearly permits the association to expend its funds to pay persons providing services to achieve its objectives.
- [27] There is nothing in the Constitution of the Beenleigh P & C to even suggest that it may not employ people who are its members to provide services. This is in stark contrast to the requirements of cl 8 of the Constitution that “officers of the association must hold that office in an honorary capacity”.
- [28] There is nothing to suggest in this case that any officers of the association were paid monies for the performance of their duties as officers.

- [29] In my view properly construed cl 15(b) merely prohibits the distribution or payment of an association's funds to members of the association on the basis simply that they are members.
- [30] In my view the contention by the applicant in effect that members of the association may not be employed by it to provide services designed to achieve the objectives of the association would lead to such consequences as to significantly impair its efficient operation.
- [31] I agree with the contention of counsel for the respondents that cl 15(b) only prohibits payment of the association's funds either directly or indirectly to its members based only upon the fact that they are members. To the extent that members of the association are paid for goods they provide or services which they render to it with a view to achieving its objectives in my view cl 15(b) has no application.
- [32] I dismiss the application.
- [33] I order that the applicant pay to the respondents (with the exception of the eighth respondent) their costs of and incidental to the application to be assessed on a standard basis.