



HIGH COURT OF AUSTRALIA

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Details of Filing

File Number: B24/2024
File Title: Fuller & Anor v. Lawrence
Registry: Brisbane
Document filed: Form 27F - Outline of oral argument
Filing party: Respondent
Date filed: 09 Sep 2024

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**IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY**

BETWEEN:

BIANCA FULLER
First Appellant

and

CHIEF EXECUTIVE OF QUEENSLAND CORRECTIVE SERVICES
Second Appellant

and

MARK LAWRENCE
Respondent

RESPONDENT'S OUTLINE OF ORAL ARGUMENT

PART I: CERTIFICATION

This outline of oral argument is in a form suitable for publication on the internet.

PART II: PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

1. The second *Tang* criterion encompasses decisions which derive legal force or effect, in whole or in part, from the relevant enactment (RS [13]-[24])

1.1 The reasoning in *Tang* is consistent with the proposition that a decision might be properly characterised as one made under an enactment notwithstanding that it might additionally be characterised as one made under another instrument: *Tang* at [20], [64], [66]-[67], [69].

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1.2 The plurality in *Tang* identified the essential feature of a decision made under an enactment as the affecting of legal rights and obligations: *Tang* at [80]. A decision which derives its capacity to affect rights or obligations from both the enactment and from another source maintains that essential feature.

1.3 This Court should adopt the proposition that a decision may satisfy the second *Tang* criterion and qualify as one made under an enactment if its capacity to affect legal rights or obligations is at least partly derived from the enactment.

2. **The Direction affected the Respondent's rights or obligations and it derived its capacity to do so from the DPSO Act (RS [25]-[33])**

2.1 The Appellant has conceded that Respondent's rights have been affected by the requirement in the Direction: AS [30].

2.2 The Appellant has conceded that the Direction was expressly or impliedly authorised by the DPSO Act: AS [16].

10 2.3 The Supervision Order required the Respondent to comply with a direction which was authorised by s 16C(1) of the DPSO Act; namely, a direction that was (a) given by a "corrective services officer"; (b) given after the officer formed the reasonable belief required by s 16C(1); and (c) that was a "reasonable direction".

2.4 The Supervision Order did not require the Respondent to comply with a direction that was not authorised by s 16C(1) of the DPSO Act, no matter how "reasonable" that direction might be.

20 2.5 It is the legal status or effect of the Direction as one authorised by s 16C(1) of the DPSO Act that enables it to affect the Respondent's rights. That is, the Direction is no mere 'factum'; it has a legal status or effect which it derives from s 16C(1) of the DPSO Act.

3. **The Direction satisfies the second *Tang* criterion because the Direction itself affected the Respondent's legal rights or obligations (RS [34]-[39])**

3.1 The existence of the Direction reduced the Respondent's rights and exposed the Respondent to new legal jeopardy under s 20 or s 43AA of the DPSO Act. Those changes depend upon the existence of the Direction.

3.2 On the proper understanding of *Tang*, the Direction itself affected the Respondent's legal rights and obligations.

Dated: 9 September 2024

A handwritten signature in blue ink, appearing to read 'Matt Black', positioned above a horizontal dotted line.

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