

# SUPREME COURT OF QUEENSLAND

CITATION: *Verra v Lane* [2002] QSC 121

PARTIES: **LAURENCE PETER VERRA**  
(applicant)  
v  
**RAY LANE,**  
**DIRECTOR SUPPORT SERVICES, DEPARTMENT OF**  
**JUSTICE AND ATTORNEY GENERAL**  
(respondent)

FILE NO/S: S 561 of 2001

DIVISION: Trial

PROCEEDING: Application for Statutory Order of Review

ORIGINATING COURT: Supreme Court at Townsville

DELIVERED ON: 8 May 2002

DELIVERED AT: Townsville

HEARING DATE: 30 April 2002

JUDGES: CULLINANE J

ORDER: **1. Applicant entitled to the expenses claimed by him on 27<sup>th</sup> March 2000 in accordance with the provisions of the Transfer and Appointment Expense Directive Number 16 of 99.**  
**2. Respondent to pay the Applicant's costs of and incidental to the application to be assessed.**

CATCHWORDS: ADMINISTRATIVE LAW - JUDICIAL REVIEW  
LEGISLATION - whether Respondent erred in determining that the Applicant's claim did not meet relevant criteria contained in the Directive of the Minister for Employment, Training and Industrial Relations-whether Directive requires narrow construction of its terms.

COUNSEL: G Reithmuller for the applicant  
A McSporan for the respondent

SOLICITORS: Giudes & Elliott for the applicant  
Crown Solicitors for the respondent.

- [1] This is an application for judicial review of a decision of the Respondent refusing an application by the Applicant for certain expenses pursuant to a Directive of the Minister for Employment, Training and Industrial Relations. The relevant Directive is dated July 1999 and was made pursuant to s.34 (2) of the *Public Service Act* 1996. It applies to all public servants. It was common ground that the Applicant who is now a Stipendiary Magistrate is a person to whom the Directive at all relevant times applied.
- [2] The relevant chronology of events is as follows:
- (a) In 1977 the Applicant was appointed to Ipswich and purchased a residence there. In 1988 he was transferred to Charters Towers as a Clerk of the Court. He there occupied a dwelling provided by the Department of Justice and did not acquire a residence at that centre.
  - (b) In 1998 whilst in Charters Towers he sold his residence at Ipswich but did not at that time purchase another residence.
  - (c) In May 1999 he was appointed as a Stipendiary Magistrate at Brisbane and the following month, June 1999, was transferred as a Stipendiary Magistrate to Townsville.
  - (e) In September 1999 he purchased land in Townsville and had constructed a residence on that land.
- [3] The application for expenses was made in March 2000. The Applicant has been compensated in respect of the expenses associated with the new residence in Townsville but was refused the expenses associated with the sale of his residence at Ipswich.
- [4] The amount of the claim is not the subject of any dispute.
- [5] The Respondent's decision to refuse the claim was made on the 16<sup>th</sup> July 2001. There had been some earlier correspondence about the matter in which another ground of refusal was raised but this is no longer relevant.
- [6] The application was rejected on the grounds that "the sale of the house was not related to his subsequent appointment as a Stipendiary Magistrate".
- [7] The application to review is made on the ground that the Respondent erred in determining that the Applicant's claim did not meet the relevant criteria contained in the Directive.
- [8] Thus the resolution of the application turns upon the construction of the relevant provisions of the Directive.
- [9] The Directive which is headed "Transfer and Appointment Expenses" is stated to have as its purpose: "*To prescribe the expenses that may be paid on behalf of an officer or employee specified in this directive when transferred from one centre to another or appointed to the Queensland Public Service*".

- [10] Under Schedule A which contained the heading “General Conditions” the following appears:

***“Entitlement”***

*A public service officer or temporary employee engaged under section 113(2)(a) of the Public Service Act 1996 (referred to as “employee” in this schedule) transferred from one centre to another shall be allowed transfer expenses for -*

- *The conveyance of self, family and effects to the centre to which transferred; and*
- *Board and lodging; and*
- *Other items of expenditure related to taking up duty; as provided in this schedule*

- [11] The relevant part of the Directive is found in clause 7 under the heading “Expenses Associated with Sale and Purchase of Residence or Land”. It is desirable if I set the whole of this out.

<i>TRANSFER EXPENSES</i>		
<i>CATEGORY AND CONDITIONS OR APPROVAL</i>	<i>ENTITLEMENTS</i>	
	<i>EMPLOYEE WITHOUT DEPENDANT</i>	<i>EMPLOYEE WITH SPOUSE OR CHILDREN</i>

***7. EXPENSES ASSOCIATED  
WITH SALE AND PURCHASE OF  
RESIDENCE OR LAND***

*An employee who sells a principal residence at a former centre and purchases a residence to be occupied by the employee at the new centre shall be refunded expenses as shown, subject to compliance with the conditions in (I) - (iii) below.*

*An employee who sells land at a former centre and purchases land at the new centre for the specific purpose of erecting a principal residence shall be refunded expenses as shown, subject to compliance with the conditions in (I)-(iii) below.*

*(i) The employee must have sold a principal residence or land at a former centre, which need not be the centre where the employee was located immediately prior to the transfer to the new centre where expenses have been claimed.*

*(ii) The principal residence or land owned at the former centre may be sold at any time subsequent to the transfer from that centre but must be sold within 2 years of arrival at the new centre where expenses have been claimed*

**STAMP DUTY**

*Actual stamp duty paid on the purchase of the property.*

*As for an employee without dependant.*

**LAND TITLE FEES**

*Actual fees set by the Department of Natural Resources for -*

- *Receipt noting of and memorials under a release of mortgage (on the previous property);*
- *Memorandum of transfer (on the purchase of the new property);*
- *Receipt noting entry of and memorials required under the endorsement of mortgage (on the new property).*

*As for an employee without dependant*

*As for an employee without dependant*

**AND**

*Application fees for each transaction.*

*As for an employee without dependant*

**CONVEYANCING FEES**

*Actual fees up to the following limits -*

	<u>Sale Purchase</u>	
Residence	\$800	\$1100
Land	\$500	\$600

*(Fees on the sale of property may be refunded to the employee at the time of sale. The refund should not be withheld until property is purchased at a new centre).*

- (iii) *The principal residence at the former centre may be tenanted while the employee occupies official or rented accommodation at other centres as a result of subsequent transfers.*
- (iv) *To claim expenses associated with the purchase of a residence at the new centre the employee must purchase and occupy the residence at the new centre within two years of arrival.*
- REAL ESTATE COMMISSION*      *As for an employee without dependant*
- Actual real estate commission paid to an agent up to the following limits -*
- |                  |               |
|------------------|---------------|
| <i>Residence</i> | <i>\$1000</i> |
| <i>Land</i>      | <i>\$500</i>  |
- (v) *To claim expenses associated with the purchase of land at the new centre the employee must sign a contract to erect a principal residence on that land within two years of arrival at that centre.*
- (vi) *The residence purchased or erected at the new centre must not be tenanted between purchase and occupancy.*
- (vii) *This does not apply to a transfer within the same city area.*
- (viii) *An employee transferred back to a former centre may be refunded expenses for the sale and purchase of a residence or land at that centre, provided the sale of the residence or land took place before the date of the current transfer.*
- (ix) *Refunds are restricted to a property of average size and market price as determined by the chief*

*Executive.*

*Note: "Centre" is defined as a location to which an employee has been appointed".*

- [12] From a reading of Clause 7 it seems clear that an officer is entitled to the relevant expenses of sale of the principal residence where he/she has:
- (a) Sold a permanent residence following a transfer to another centre, and
  - (b) Purchased a residence for occupation or land on which to erect such a residence at a centre to which he/she has received a transfer.
- [13] The issue is whether the transfer in (a) must coincide with the transfer in (b). It is the Respondent's case that it must, whereas the Applicant contends that there is no such restriction.
- [14] The Respondent, as a secondary argument, contended that as the sale took place before the transfer to Townsville it could not satisfy sub-clause (ii) which requires that the sale take place within two years after arrival at the new centre. It was contended that the relevant sale must take place after arrival at the new centre. This construction would create, it seems to me, (on either approach) unnecessary difficulties and would preclude recovery where somebody sold his/her dwelling after transfer but before arrival in the new centre. In my view the reference to the sale occurring within "two years of arrival at the new centre" must be taken as fixing a time limitation beyond which the sale cannot occur but should not be regarded as prescribing a point in time before which it cannot occur. See *Bock v Don-Rex Furniture Qld* (1981) Q.R. 326.
- [15] The Directives have to be construed against the relevant background. The public servants to whom the Directive is applicable include people (such as the Applicant) who can be expected in the course of their career to move a number of times from place to place within the State. Some of the places to which they will be transferred will be quite remote.
- [16] Unlike public servants who are not subject to transfer this will have major ramifications in terms of the acquisition of and the sale of and the occupation of a residence. In some instances it seems residences are provided by the State and some of the places to which such persons might be transferred are places in which the acquisition of a residence may be difficult or even impossible or at best unattractive.
- [17] The Respondent places particular reliance upon the reference in the purpose referred to earlier and in the general conditions to "a transfer from one centre to another". I do not think that references of this kind provide any assistance in the construction of clause 7. They are general references and in my view should not be regarded as anything more than a reference to the practice of transferring public servants.

- [18] It was argued, by both sides that anomalies arise if the other side's construction is adopted. For the Respondent it was submitted that an employee would be entitled, on the Applicant's case, to recover expenses where the sale of the house was determined not by a transfer and the need or desire to provide another residence but by advantageous market conditions and that the relevant sale could be separated from the relevant purchase by many years although it was accepted that the relevant sale must follow a transfer.
- [19] For the Appellant it was submitted that the Respondent's approach would require an officer to retain ownership of a residence in which he/she could no longer reside because of a transfer but who has no desire or need to acquire a new residence at the place to which he/she is first transferred and that the officer would have to either rent the premises or leave them vacant until such time as he/she was transferred to a centre at which he/she decided to acquire a residence.
- [20] Subclause (vii) is in my view inconsistent with the Respondent's approach. The sale contemplated by that subclause would not on its face have to be associated with any transfer to a centre. I accept that the subclause should be read subject to the limitation in clause 7(ii) that the sale must occur following a transfer from the centre where the resident was located as otherwise there would be no limitation on the time or circumstances in which the sale might take place (as long as it was before the transfer back). On the other hand I do not think that there is any justification for construing it in the way that the Respondent contended. This would require the clause to be read as subject to the following implications:
- (a) that the officer sell the residence following a transfer
  - (b) That the officer intended to acquire a new residence at the centre to which he/she was transferred.
  - (c) That the plan to acquire or erect a new residence was intercepted by a re-transfer back to the former centre.
- [21] Nor do I think that subclause (vii) should be disregarded when considering the question of construction which arises here because it is concerned with a particular state of affairs.
- [22] In addition it seems to me that the Respondent's approach would create difficulties in other respects. One would expect that it would not uncommonly occur that an officer transferred from one centre where he/she had a residence might before the expiration of the period provided for in sub-clause (iv) and before he/she had decided to acquire a new residence at the new centre or before he/she had been able to put into effect an intention to do so be transferred to a further centre where a new residence was acquired. As will be seen, the Applicant was transferred from Brisbane to Townsville one month after his transfer to Brisbane. Counsel for the Respondent was inclined to accept that such a state of affairs should give rise to an entitlement to claim in respect of the expense entailed. However it is, in my view, not possible to see how this could be so on the construction advanced by the Respondent. The Respondent in something of a shift from its primary submission, suggested that the critical test might be whether the dwelling was sold with an intention to acquire a new residence. However, even on the single transfer

approach, clause 7 clearly permits an officer who sold without any intention to acquire a new residence but who changes his/her mind and does so within the relevant time to recover the expenses of sale and acquisition.

- [23] I do not think that the Direction compels such a narrow construction of its terms as that contended for by the Respondent.
- [24] The Directive is intended to compensate those public servants who are required to move from place to place within the State whilst employed in the State. It should be given, if there is any ambiguity, a broader rather than a narrow or technical construction and one which furthers rather than impedes the aim of providing compensation to the officers concerned.
- [25] I declare that the Applicant is entitled to the expenses claimed by him on 27<sup>th</sup> March 2000 in accordance with the provisions of the Transfer and Appointment Expenses Directive No 16 of 99.
- [26] I order the Respondent to pay the Applicant's costs of and incidental to the application to be assessed.