# SUPREME COURT OF QUEENSLAND

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| CITATION: | *Tientjes v Chief Executive, Department of Corrective Services* [2004] QSC 100 |
| PARTIES: | **MARK ANTHONY TIENTJES**<br>(Applicant)<br>v<br>**CHIEF EXECUTIVE, DEPARTMENT OF CORRECTIVE SERVICES**<br>(Respondent) |
| FILE NO/S: | 581 of 2003 |
| DIVISION: | Trial |
| PROCEEDING: | Application |
| ORIGINATING COURT: | Supreme Court, Cairns |
| DELIVERED ON: | 2 April 2004 |
| DELIVERED AT: | Cairns |
| HEARING DATE: | 15 March 2004 |
| JUDGE: | Jones J |
| ORDER: | **1. Grant leave to the applicant to deliver interrogatories addressed to the Chief Executive, Department of Corrective Services in terms of paras 17(second mentioned), 18 (second mentioned), 19, 20, 21, 22, 23 and 24 of the draft interrogatories set out in the application.**<br>**2. I direct that such interrogatories be answered by the respondent or by his delegate Diane Margaret Ryan within 21 days of the date of the delivery of the interrogatories.** |
| CATCHWORDS: | PROCEDURE – INTERROGATORIES – ANSWERS - ORDER FOR ANSWERS – where applicant requires information concerning surrounding a administrative decision made by the Queensland Corrective Services Department – whether all the proposed questions inquire into statements of relevant facts |
| COUNSEL: | Applicant appeared in person<br>Mr R Marsh appeared for the Respondent |
| SOLICITORS: | Crown Law Office for the Respondent |

[1] On 1 December 2003 Mark Anthony Tientjes filed an application for a statutory order of review of a decision of the respondent's delegate to refuse a grant of

remission of part of the applicant's seven year term of imprisonment imposed on 8 June 1999.

[2] Before embarking on the hearing of that application, the applicant applies for an order that the respondent answer certain interrogatories. This latter application is irregular in form but the respondent takes no objection to that. The respondent does however take issue with the applicant's right to make the application and with the relevance of certain of the interrogatories.

[3] The principal application seeks to review a decision of the respondent's delegate refusing to grant remission in respect of a term of seven years imprisonment which the applicant is serving following a conviction for manslaughter.

[4] By letter of 14 October 2003 the applicant was advised, pursuant to s 79 of the *Corrective Services Act* 2000 (hereinafter "the Act") that consideration was being given to not granting him remission. The applicant responded on 27 October 2003 which response was augmented by a further letter from the applicant's solicitors dated 14 November 2003.

[5] On 20 November 2003 the delegate delivered her decision not to grant any remission of the seven year sentence. A formal statement of reasons for that decision was given on 5 January 2004. The statement of reasons listed the material to which the decision maker had regard and the conclusions based on that material included:-

> "I examined your letter of 27 October 2003 as well as your solicitor's letter of 14 November 2003 showing cause why remission should be granted. Contrary to your understanding that I had failed to recognise that you had made a concerted effort towards your rehabilitation, I was very conscious of your endeavours. I noted, and considered favourably, the fact that you successfully completed intervention programs recommended for you.
>
> I was mindful that the psychological report was written specifically for a leave of absence program. It indicated that it was apparent to that you continued to deny your potential difficulties with alcohol abuse. I was mindful of the interpretational comment "given that he may be prone to problems with future alcohol abuse; and his potential interpersonal reactivity under the influence of alcohol may also serve to escalate his risk of future violence."
>
> I noted that the psychologist assessed you as being a low to moderate risk of future violence and a low to moderate risk of re-offending. I noted the factors that were said to be likely to moderate your risk of future re-offending.
>
> I noted that you have been able to abstain from substance abuse whilst subject to high levels of supervision within a highly structured environment. I am concerned that you require a well-structured supervision that supports and facilitates you actioning your relapse prevention plan and post-release strategies. I was also mindful that you had not made an application for post-prison community based release.

> While mindful of the matters raised above, and notwithstanding matters raised by yourself and your solicitor, when balancing all the factors in your case, both positive and negative, I was not satisfied that your discharge does not pose an unacceptable risk to the community in accordance with section 77 of the *Corrective Services Act* 2000."

[6] The grounds upon which the applicant seeks a review of that decision are –

(a) The making of the decision ignored the procedural direction requirements as outlined by the Director General.

(b) The decision ignored the pre-Act legal meaning of "Unacceptable Risk" with respect to pre Act offences as defined by the Chief Justice of Queensland in *McCasker*.

(c) The decision maker did not request the applicant to show cause as to the remission decision when issuing the section 79 letter. The applicant was merely invited to comment on the relevant materials within 21 days.

(d) The Chief Executive failed to notify the applicant before his remitted release date of the intention to refuse remissions as is required in the Act section 79(c).

[7] A consideration of these grounds against the background of the statement of reasons suggest there is very little basis for the making of any factual inquiry by way of interrogatories.

[8] With respect to ground (a), I have assumed the procedural directions referred to are the departmental guidelines and procedures which are a matter of record and thus ascertainable without resort to interrogatories. If not, they should be ascertainable on discovery. The respects in which the guidelines were ignored are not definitively, or perhaps finally, spelt out. If these go simply to the lack of timelines in giving notice of an intention not to grant remission, this is not a fertile basis for review. If the concern is about the alleged failure to have regard to a Release Plan then the issue may have some relevance. But are interrogatories necessary for the point to be considered?

[9] With respect to ground (b) the issue raises an issue going to the decision maker's assessment of "unacceptable risk". The provision of s 75(4) require the decision maker to be satisfied of two matters – (a) the release does not pose an unacceptable risk; or (b) the prisoner has been of good conduct and industry. The Statement of Reasons included findings favourable to the applicant concerning his good conduct and industry. The only basis for the decision maker not granting remission was her lack of satisfaction about the risk of re-offending.

[10] Likewise, with respect to grounds (c) and (d), the issues concern procedural matters about which there appears to be little dispute. The real contention behind the allegation of non-compliance is whether the decision made thereafter is invalid. That, it seems to me, is a matter of construction of the relevant sections of the Act and whether the applicant has been accorded natural justice within the meaning of s 21 of the *Judicial Review Act* 1991 ("JRA"). The ground does not give rise to any need for interrogatories.

[11] Ordinarily any review of the decision would be undertaken simply on a consideration of the statement of reasons. Consequently the granting of leave to deliver interrogatories in such circumstances is not common. However, the application is a "proceeding" within the meaning of that term for the purposes of the *Uniform Civil Procedure Rules* ("UCPR") and rr 228-230 make provisions for the delivery of interrogatories. In particular, r 230 imposes a limitation on the delivery of interrogatories in the following terms:-

> "(1) Subject to an order of the court, the court may give leave to deliver interrogatories –
>
> (a) …
>
> (b) only if the court is satisfied there is not likely to be available to the applicant at the trial another reasonably simple and inexpensive way of proving the matter sought to be elicited by interrogatory."

[12] Consequently the subject matter of the interrogatories must be directly relevant to a matter in dispute. The issue here comes down to allegations of the decision maker's non-compliance with procedures and guidelines and her erroneous understanding of "unacceptable risk".

[13] Interrogatories will not be allowed where the questions go to extraneous or irrelevant matters, sometimes described as "fishing expeditions", or which ask hypothetical questions. Similarly, interrogatories that go only to establish the decision maker's understanding of the law or her opinions as to her own compliance with procedures will not be allowed since these are matters for the court's determination.

[14] A reading of the proposed interrogatories shows that each of the first 20 questions (number 1-18, 15, 16) offends against these limitations. In the main they inquire into actions relating to other prisoners or into the intention of the legislature or the decision maker's understanding of it. Consequently they will not be allowed.

[15] Draft interrogatories numbered 17 (for second time), 18 (for the second time), 19-24 deal with the applicant's prison Release Plan[1] the contents of which the applicant said were verified by the respondent's officers. No such document appears in the list of documents to which the decision maker had regard. The applicant contends this Plan was not considered by the decision maker and that it was relevant to the assessment she was required to make.

[16] This seems to me to be a relevant matter on which the applicant is entitled to seek confirmation of the accuracy of his assertion. I will therefore allow these interrogatories to be delivered.

[17] Draft interrogatories numbers 25 and 26 are not allowed because they inquire into a fact which is known and not disputed.

[18] Draft interrogatory number 27 is not allowed because the topic of its inquiry is uncertain and vague.

[19] Draft interrogatory number 27 is not allowed because it assumes a fact which is not admitted by the respondent.

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[1] Ex "G" affidavit of applicant filed 23.02.04

[20] Draft interrogatories 29-35 are not allowed on the grounds that they are irrelevant.

[21] Draft interrogatory number 26 is not allowed because it refers to a fact which is established on the evidence and is not disputed.

[22] Draft interrogatories 37 and 38 are not allowed because they seek the decision maker's opinion as to the intention of the legislature which is irrelevant.

**Orders**

[23] Accordingly, I will make the following orders:-

1. I grant leave to the applicant to deliver interrogatories addressed to the Chief Executive, Department of Corrective Services in terms of paras 17(second mentioned), 18 (second mentioned), 19, 20, 21, 22, 23 and 24 of the draft interrogatories set out in the application.
2. I direct that such interrogatories be answered by the respondent, or by his delegate Diane Margaret Ryan, within 21 days of the date of the delivery of the interrogatories.