

# SUPREME COURT OF QUEENSLAND

CITATION: *Boyd v Department of Corrective Services* [2004] QSC 126

PARTIES: **VICTOR BOYD**  
(Applicant)  
v  
**CHIEF EXECUTIVE, DEPARTMENT OF  
CORRECTIVE SERVICES**  
(Respondent)

FILE NO/S: 625 of 2003

DIVISION: Trial

PROCEEDING: Application

ORIGINATING  
COURT: Supreme Court, Cairns

DELIVERED ON: 2 April 2004

DELIVERED AT: Cairns

HEARING DATE: 12 February 2004

JUDGE: Jones J

ORDER: **That the respondent forthwith proceed to determine the applicant's eligibility for remission pursuant to s 75 of the Act.**

CATCHWORDS: ADMINISTRATIVE LAW – JUDICIAL REVIEW  
LEGISLATION – GROUNDS FOR REVIEW OF  
DECISION – where the applicant seeks review of a  
preliminary decision of the delegate of the respondent not to  
grant remission - where the respondent failed to give the  
applicant a notice pursuant to s 79(2) of the *Corrective  
Services Act 2000* – whether the failure to give notice affects  
the substantive application for remission  
*Corrective Services Act 2000*

COUNSEL: Applicant in Person  
Mr. Plunkett for the Respondent

SOLICITORS: Crown Solicitors for the Respondent

[1] This is an application for judicial review of a decision of the Chief Executive Officer, Department of Corrective Services in the sense of his failing to give a notice pursuant to s 79(2) of the *Corrective Services Act 2000* (“the Act”).

- [2] The notice was pertinent to a consideration of whether the applicant was entitled to a grant of remission of part of a sentence of five years imprisonment imposed on him by the Court of Appeal on 3 October 2001. The applicant had been in custody since 19 August 2000 in respect of the offence and consequently his full time release date is 18 August 2005. If he was entitled to the maximum of one third remission of his sentence his release date would have been 18 December 2003.
- [3] At the date of the hearing of this application, the CEO had not given final consideration to the applicant's eligibility for remission. The only step taken in the course of this consideration was the sending to the applicant of a letter dated 30 January 2004 advising that the respondent, by his delegate, Mrs Diane Ryan, was considering not granting any remission, and inviting him to show cause why the grant of remission should not be refused.
- [4] A prisoner's eligibility for remission depends upon the application of the provisions of s 75 of the Act. Foremost amongst these is the discretion imposed by s 75(2) which is in the following terms:-
- “(2) Subject to subsection (3) and (4), the Chief Executive may grant remission of up to one third of the term of imprisonment if satisfied –
- (a) The prisoner's discharge does not pose an unacceptable risk to the community; and
- (b) That the prisoner has been of good conduct and industry; and
- (c) Of anything else prescribed under the Regulation.”
- [5] If the Chief Executive is considering refusing to grant remission the procedure to be following is specified in s 79 of the Act. This requires the Chief Executive to give the prisoner notice outlining the reasons for the proposed refusal and inviting the prisoner to show cause by written submissions within 21 days after the notice is given. The Chief Executive is then obliged to consider all written submissions thus provided and to inform the prisoner by written notice whether the remission is refused.
- [6] That process, if a prisoner is to be accorded his rights under the Act, must be completed before the earliest date in which remission could take effect. In *George William Lynde v Chief Executive, Department of Corrective Services*<sup>1</sup> R Douglas J said:-
- “The power to grant remission of one third necessarily contemplates that a grant of remission must be considered prior to or at the two thirds mark – it must have been the intention of parliament that the Chief Executive would consider granting remission at or before the two thirds mark.”
- [7] In *Kay v Chief Executive, Department of Corrective Services*<sup>2</sup> White J considered the regulations made pursuant to the predecessor legislation and noted that “since the regulations relating to remission affect the liberty of an individual they should be strictly construed and favourably so to the individual”. However it is clear that a breach of an obligation of this kind does give rise to any invalidity. See *Project Blue Sky Inc v ABA*<sup>3</sup>.

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<sup>1</sup> [2000] QSC 346 @ [15]

<sup>2</sup> [2000] QSC 367

<sup>3</sup> (1994) CLR 355

- [8] Mr Plunkett of counsel for the respondent properly and readily conceded that the respondent's failure to consider the grant of remission in a timely way breached the Act and the departmental policy on remissions and the relevant guidelines. Such breaches may attract internal sanctions but delay itself does not assist in determining the substantive application. See *Smith v Queensland Corrective Services Commission*<sup>4</sup>.
- [9] Similarly in *Bartz v Corrective Services Commission*<sup>5</sup> Holmes J found that the failure to meet a time requirement under these provisions did not give rise to any legal consequence other than the opportunity to make an order in the nature of a mandamus pursuant to s 22 of the Judicial Review Act ("JRA").
- [10] The applicant *prima facie* has an entitlement to an order pursuant to s 22 of JRA. That relief could take the form of the orders referred to in s 30(3) – appropriately an order directing the making of the decision and/or a declaration of rights.
- [11] Here the respondent acknowledges his failure to meet the statutory obligation in a timely way but has commenced to undertake the task with which he is charged. That raises the question of whether an order in either form serves any useful purpose. A declaration is not necessary to resolve any controversy between the parties – there is none, nor would such a declaration have any utility if there is a challenge to the CEO's decision. I am therefore not persuaded that it is appropriate to make a declaration. An order directing the making of a decision does however fill some limited purpose. The effect of an order is to ensure that the process which has now been commenced will be completed in a timely way. This will mean that when the applicant responds to the invitation of 30 January 2004 due consideration will be given to that response and a decision made.

### Orders

- [12] I order that the respondent forthwith proceed to determine the applicant's eligibility for remission pursuant to s 75 of the Act.

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<sup>4</sup> (2001) 2 QdR 77 at [39]

<sup>5</sup> [2000] QSC 336