SUPREME COURT OF QUEENSLAND

CITATION:	*Attorney-General for the State of Queensland & Anor v Francis* [2007] QSC 367
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (first applicant) and **DIRECTOR-GENERAL, QUEENSLAND CORRECTIVE SERVICES** (second applicant) v **DARREN ANTHONY FRANCIS** (respondent)
FILE NO/S:	BS 3069 of 2004
DIVISION:	Trial Division
PROCEEDING:	Application
DELIVERED ON:	4 December 2007
DELIVERED AT:	Brisbane
HEARING DATE:	3 December 2007
JUDGE:	Philippides J
ORDER:	**Application dismissed**
CATCHWORDS:	CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – OTHER MATTERS – where the respondent was released from custody subject to a supervision order pursuant to the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) – where the respondent contravened the supervision order – where the supervision order was amended on an application by the Attorney-General under s 22 of the Act following the respondent's contravention of the order – where a further application was made under s 18 of the Act seeking to vary the accommodation condition of the amended supervision order – whether the application was competently made – whether the accommodation condition should be varied *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld), s 18, s 20, s21, s 22
COUNSEL:	W Sofronoff QC, with J Horton, for the applicants N M Cooke QC, with J Fenton, for the respondent
SOLICITORS:	Crown Solicitor for the applicants Aboriginal and Torres Strait Islander Legal Service (Qld South) Ltd for the respondent

[1] **PHILIPPIDES J:** On 7 November 2007 an order was made on the application of the Attorney-General under s 22 of the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) ("the Act"), amending the conditions attaching to a supervision order following the respondent's contravention of the order. Although the Attorney-General's application also initially sought rescission of the supervision order and a detention order, the Attorney-General did not ultimately seek those orders, it being conceded instead that the risk presented by the respondent could be appropriately managed by an amended order for supervised release so as to ensure the adequate protection of the community.

[2] After hearing evidence and submissions, amendments to the supervision order were made in accordance with a draft order tendered by the Attorney-General, which further strengthened the already stringent conditions of the supervision order, including the addition of a curfew requirement and a condition that the respondent comply with monitoring directions, which under the Act extend to electronic monitoring.

[3] Further, an amendment was also made to the accommodation condition, which previously saw the respondent released to hostel accommodation in Fortitude Valley. That accommodation was roundly criticised by all the medical experts, because it placed the respondent in an environment where he had ready access to illicit drugs, in respect of which the respondent was required to be abstinent. On the hearing of the s 22 application, Senior Counsel for the Attorney-General accepted the submissions made on behalf of the respondent that, on the evidence before the Court, the best available accommodation option was the residence of the respondent's mother. As Senior Counsel for the Attorney-General summarised the evidence in his submissions, "… having his mother there who could provide support for him was better than not having someone there living in the same place who could provide him with the support" and "there [were] advantages to it which seem … to outweigh the concerns or disadvantages." The accommodation condition was amended accordingly.

[4] An application is now brought by the second applicant with the consent of the Attorney-General, pursuant to s 18 of the Act, seeking to further vary the accommodation condition, essentially on the basis that there is a concern that media attention directed at the respondent's release and public reaction might possibly result in the harassment of and vigilantism towards the respondent and his mother. In formulating these concerns, Senior Counsel for the applicants placed particular reliance on evidence of such conduct directed towards Mr Fardon, after media coverage of his release under a supervision order.

[5] In opposing the application, Senior Counsel for the respondent noted that Mr Fardon has a history of sexual offending both of a predatory nature and against children, which raised very acute concerns in the community upon his release, and warned against extrapolating from the experiences in Mr Fardon's case. It is not disputed that the respondent is not a paedophile, and has no history of any sexual offending against children, nor of any predatory sexual offending. The medical evidence identified those at risk as women with whom the respondent is in a sexual relationship and the risk as one that arises in the context of drug or alcohol abuse by

the respondent. There is no evidence that there has been any inaccurate reporting of the nature of the risk to the community presented by the respondent. I note that neither the respondent's mother, nor the respondent, express any concern or seek an alteration of the accommodation condition in the light of the application now brought.

[6] Furthermore, I note that, notwithstanding that the issue of the potential for harassment was ventilated in the previous application, the concession was made on behalf of the Attorney-General that the most appropriate accommodation option was the respondent's mother's residence. And, although the events concerning Mr Fardon occurred prior to the amended supervision order being made, they did not prompt any further submissions from the Attorney-General. The order as made already allows for the respondent, should it prove necessary, to be relocated to an alternate address as approved by a Corrective Services officer. Such accommodation might include, but is not limited to, the Wacol Prison Reserve. In any event, the potential for harassment or vigilantism cannot necessarily be avoided simply by placing the respondent in accommodation such as the Wacol Prison Reserve, since that is only proposed on a temporary basis.

[7] In those circumstances, I do not consider that grounds have been shown for the amendment of the order made on 7 November 2007 and the application is accordingly dismissed.

[8] Notwithstanding that conclusion, I should deal with a preliminary matter of law that was raised by the respondent as to the competency of the application brought under s 18 by the applicants. It was said on behalf of the respondent that an application for amendment was only permitted under s 18 in respect of a "released prisoner" and that, until the respondent, who is presently in custody, was actually released pursuant to the amended supervision order, he was not a "released prisoner" so that the application was premature and invalidly brought. That submission is clearly unsustainable. The dictionary contained in the schedule of the Act defines "released prisoner" in accordance with s 18(1), which, in turn, defines a released prisoner as "a prisoner released under a supervision order or interim supervision order". Division 5 of the Act, which concerns contraventions of supervision orders or interim supervision orders, proceeds on the basis that a prisoner released on a supervision order remains a "released prisoner", even though he is detained in custody after being brought before the court under a warrant issued under s 20 in respect of a contravention or suspected contravention: see s 21 (and previous s 22(3)(c)). The respondent was a "released prisoner" when the supervision order was suspended on 27 March 2007 and he was ordered to be detained in custody under the previous s 22(3)(c). He still retains that status and the application is therefore validly brought.