

COURT OF APPEAL

**FRASER JA
GOTTERSON JA
FRYBERG J**

**Appeal No 2621 of 2012
SC No 1412 of 2011**

BCH

Appellant

v

DEPARTMENT OF COMMUNITIES (CHILD SAFETY)

JULIEANN CORK

Respondents

BRISBANE

DATE 31/08/2012

JUDGMENT

FRASER JA: This is an appeal from orders made in the Trial Division on the 21st February 2012 striking out an amended application for judicial review, ordering the return of certain documents the subject of subpoenas, and ordering the appellant to pay the first and second respondents' costs of proceedings.

The order was made on the footing that it was appropriate to strike out the judicial review application because the appellant had not availed herself of the opportunity to amend it in particular terms which had been afforded by a previous order in the Trial Division.

It is evident that this did not form a basis for striking out the application either under s 48 of the *Judicial Review Act* or at all. The consequence of the failure of the appellant to avail herself of that opportunity to amend the application, but to amend it in different terms,

perhaps would have justified an order striking out the amendments, but it did not justify an order summarily striking out the application for judicial review. The orders made below must, therefore, be set aside.

Mr McLeod, who appeared for the respondents to the appeal, sought to support the orders on the footing that the judicial review application lacked utility because the decisions sought to be reviewed have since been overtaken, but this was not an argument which had been effectively put below in a way which would have justified striking out. Particularly given that the appellant is unrepresented, it would be inappropriate to proceed on that basis.

Accordingly, I would propose that the appeal be allowed and the orders made in the Trial Division on the 21st February 2012 be set aside and that the matter be remitted to the Trial Division for determination.

GOTTERSON JA: I agree.

FRYBERG J: I also agree.