SUPREME COURT OF QUEENSLAND

CITATION:	*Rintoul v State of Queensland & Ors* [2015] QCA 79
PARTIES:	**JENNETTE RINTOUL** (appellant) **v** **STATE OF QUEENSLAND** (first respondent) **DOUG QUADRIO** (second respondent) **PETER LEMON** (third respondent)
FILE NO/S:	Appeal No 7080 of 2014 ADL No 047 of 2013
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Queensland Civil and Administrative Tribunal at Brisbane – [2014] QCAT 332
DELIVERED ON:	8 May 2015
DELIVERED AT:	Brisbane
HEARING DATE:	10 March 2015
JUDGES:	Holmes and Philippides JJA and Peter Lyons J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. The appeal is allowed and the answer to the question referred set aside, with the following answer substituted:** **"The answer to the question referred – whether the proceeding ADL047-13 was dismissed on 31 March 2014 following Ms Rintoul's failure to comply with the decision (specifically paragraph 2) dated 17 March 2014 – is that the proceeding ADL047-13 was not then finally dismissed."** **2. The respondents are to pay the appellant's costs fixed in an amount of $250.00.**
CATCHWORDS:	APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – POWERS OF COURT – ORDERS SET ASIDE OR VARIED – where the appellant filed a complaint of discrimination under the *Anti-Discrimination Act* 1991 (Qld) in the Queensland Civil and Administrative Tribunal – where the Tribunal member made a self-executing order requiring the appellant to file and serve further particulars by 4.00 pm

on 31 March 2014, her application to be dismissed in the event of non-compliance, without further order – where the appellant's solicitors wrote to the Tribunal on 31 March 2014 seeking an extension of time – where on 1 April 2014 the Tribunal member vacated her previous orders and directed that the further particulars be filed and served by 4 April 2014 – where the respondents made an application seeking a reference to the President of the Tribunal of the question of law as to whether the proceeding had been dismissed on 31 March 2014 – where the President found that the appellant's application had been dismissed on 4.00 pm on 31 March 2014 – whether the Tribunal member had the power under s 61(c) of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld) to waive the appellant's non-compliance with the order – whether the appellant's proceedings were finally dismissed on 31 March 2014

Acts Interpretation Act 1954 (Qld), Sch 1
Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 28, s 48, s 61, s 62(1), s 117, s 127, s 135, s 142, Sch 3

Cachia v Hanes (1994) 179 CLR 403; [1994] HCA 14, applied
FAI General Insurance Co Ltd v Southern Cross Exploration NL (1988) 165 CLR 268; [1988] HCA 13, applied
Mango Boulevard Pty Ltd v Spencer [2010] QCA 207, cited
Merrin v Commissioner of Police [2012] QCA 181, applied

COUNSEL: The appellant appeared on her own behalf
J Farren for the respondents

SOLICITORS: The appellant appeared on her own behalf
Crown Law for the respondents

[1] **HOLMES JA:** This appeal is against a decision of the President of the Queensland Civil and Administrative Tribunal, made on a question of law referred by a member of the Tribunal pursuant to s 117 of the *Queensland Civil and Administrative Tribunal Act* 2009. The question, which the President of the Tribunal answered in the affirmative, was whether the appellant's proceeding (a complaint of discrimination under the *Anti-Discrimination Act* 1991) was dismissed on 31 March 2014.

The Tribunal's orders dismissing and purporting to reinstate the proceeding

[2] The respondents to the appellant's application in the Tribunal had applied to strike out her proceeding under s 48 of the *Queensland Civil and Administrative Tribunal Act* on the ground that she had been "acting in a way that unnecessarily disadvantage[d]" them. That application was dismissed on 17 March 2014, but the Tribunal member made a number of orders, which included the following:

> "2. Jennette Rintoul will file one (1) copy in the Tribunal and serve one (1) copy on the State of Queensland, Doug Quadrio and Peter Lemon further particulars of her claim by:
>
> **4:00pm on 31 March 2014**

…

4. Jennette Rintoul will file one (1) copy in the Tribunal and serve one (1) copy on the State of Queensland, Doug Quadrio and Peter Lemon any submissions in reply to the respondents' submissions on costs by:

4:00pm on 28 April 2014

…

7. If Jennette Rintoul does not comply with paragraphs 2 and 4 by the due dates, application ADL047-13 will be dismissed without further order."

[3] The further particulars were not filed by 4.00 pm on 31 March 2014. On that day, the appellant's solicitors wrote to the Tribunal saying that because their client had recently moved to South Australia there had been some difficulty and delay in obtaining her instructions, and they had not been able to obtain the detail required in the timeframe allowed for by the Tribunal. With some effrontery, they went on to say that they "required" an extension of time to 4 April 2014.

[4] On 1 April 2014, the Tribunal member who had made the original orders made further orders. Treating the appellant's solicitors' letter as an application for an extension of time, she purported to vacate her previous orders and made directions setting in place a new timeline, which required service of the further particulars of claim by 4 April 2014 and listed the substantive application for hearing on 17 and 18 July 2014.

The referral of the question of law

[5] The respondents made an application seeking a reference to the President of the Tribunal of the question of law as to whether the proceeding had been dismissed on 31 March 2014. They also sought a stay of the Tribunal member's orders of 1 April 2014, pending the determination of the question of whether the proceeding had been dismissed. The reasons for seeking the reference and the stay were said in the application to be contained in an accompanying letter. In that letter, the respondents argued that the Tribunal lacked jurisdiction to extend the time period for the filing and serving of further particulars because the proceeding had already been dismissed.

[6] The appellant's solicitors made two points on the reference by letter and submission: the first, that the Tribunal's discretions under s-ss 28(1) and (4) of the *Queensland Civil and Administrative Tribunal Act*, respectively to set its own procedure and to admit evidence notwithstanding noncompliance with a time limit, gave it power to extend the time; and the second, that it was to be implied from Order 7 of the 17 March orders that further action, short of a formal order, would be required before the proceeding was dismissed. The submission otherwise advanced arguments that the appellant had met the altered time requirement for the delivery of particulars and would suffer hardship if the proceeding were not continued.

[7] The respondents argued in response that order 7 was a self-executing order which by virtue of s 127(b) of the *Queensland Civil and Administrative Tribunal Act* took effect at 4.00 pm on 31 March 2014. Section 127 provides as follows:

> "**When decision takes effect**
>
> A decision of the tribunal in a proceeding takes effect –
>
> …
>
> (b) if the decision states a later date or time when the decision is to take effect – the later date or time."

The self-executing order not having been the subject of a stay, the respondents contended, the order took effect, and it was not to the point that the appellant had subsequently attempted to comply. They were entitled to have the proceeding dismissed and "not to be further disadvantaged by the [appellant's] deleterious conduct of [it]".

The decision on the reference

[8] The President of the Tribunal delivered his decision on the referred question of law on 11 July 2014. He regarded the wording of the order as clear; he did not consider it carried any implication that further action was required before the application was dismissed. He referred to s 127(b) (as to the date on which the decision took effect) and observed that no power was identified in the *Queensland Civil and Administrative Tribunal Act* which would allow dismissed proceedings to be revived. There was no "re-opening ground", as defined in Schedule 3 of the Act;[1] and s 135, which permits correction of mistakes in the content of a decision, did not apply. It followed, his Honour concluded, that by operation of the direction made on 17 March, without need for further order, the application was dismissed on 4.00 pm on 31 March 2014.[2] He went on to make some observations in relation to submissions made by the appellant as to the merits of an extension of time, while observing that they were in fact irrelevant to the question referred.

[9] Here it appears that the appellant, who was unrepresented on the appeal, may have misconceived what was decided by the President of the Tribunal. Her grounds of appeal are as follows:

> "That I have been denied procedural fairness according to QCAT's own charter of purpose under S28(2) & (3,a,b,d,e). I have not had an opportunity to have this case heard or the evidence tested. The 'strike out' denies me 'natural justice' by preventing a hearing on these matters."

She seeks an order that the order to dismiss her proceeding be overturned. However, the decision appealed from was not the dismissing of the proceeding she had brought,[3] but the decision of the question of law.

Whether the dismissal order took effect on 31 March 2014

[10] Section 62(1) of the Act confers on the Tribunal a number of powers, which include the power to "give a direction at any time in a proceeding and do whatever is

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[1] The non-appearance of the party at the hearing, with reasonable excuse for not attending, or the discovery of significant new evidence not reasonably available when the proceeding was decided.

[2] That decision then became the decision of the Tribunal: *Queensland Civil and Administrative Tribunal Act* s 117(3).

[3] Jurisdiction to hear an appeal against that decision resided in the appeal tribunal of QCAT: *Queensland Civil and Administrative Tribunal Act* s 142.

necessary for the speedy and fair conduct of the proceeding". That power is sufficiently broad to encompass an order which dismisses a proceeding in the event of non-compliance with a direction. Order 7 was, in my view, unequivocal in its terms in taking effect in the event of non-compliance by the specified dates. It did not contemplate any further step as necessary before dismissal of the proceeding, but was in truth self-executing. It was not necessary that some formal finding be made that the requirements had not been complied with.[4] The order that the application be dismissed without further order in the event of non-compliance was a "decision" of the Tribunal as defined by schedule 3 to the Act.

Power to waive compliance after dismissal

[11] What remains to be considered, however, is whether there existed in the Tribunal any power to waive compliance with the 17 March orders and extend time, notwithstanding the passing of the time for compliance. The Tribunal President was clearly correct in concluding that neither of the possible ways of reviving proceedings which he identified was open. This was not a case of non-appearance with reasonable excuse or of discovery of fresh evidence, so the re-opening power contained in Division 7 of the Act was not available. Nor was it a case, as contemplated by s 135, where correction of mistakes in a decision was necessary.

[12] But the President was not referred to the Tribunal's powers to extend time and to waive compliance with procedural requirements contained in s 61 of the *Queensland Civil and Administrative Tribunal Act*, which also require consideration in this context. The section provides:

> "**Relief from procedural requirements**
>
> (1) The tribunal may, by order –
>
> (a) extend a time limit fixed for the start of a proceeding by this Act or an enabling Act; or
>
> (b) extend or shorten a time limit fixed by this Act, an enabling Act or the rules; or
>
> (c) waive compliance with another procedural requirement under this Act, an enabling Act or the rules.
>
> (2) An extension or waiver may be given under subsection (1) even if the time for complying with the relevant requirement has passed.
>
> …"

[13] Counsel for the respondents here argued that the only conceivably relevant subsection of s 61(1) was (c), but the requirement to file further and better particulars was not a procedural requirement under the Act or any associated legislation. It was, rather, a requirement under a decision of the Tribunal.

[14] However, the compass of the expression "procedural requirement under this Act" in s 61(1)(c) is extended considerably by the definition of the preposition "***under***, for an Act or a provision of an Act" in Sch 1 of the *Acts Interpretation Act* 1954 as:

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4 Cf *Mango Boulevard Pty Ltd v Spencer* [2010] QCA 207 at [106].

"under, for an Act or a provision of an Act, includes—

(a) by; and

(b) for the purposes of; and

(c) in accordance with; and

(d) within the meaning of."

The requirement to file particulars contained in Order 7 was, in my view, a procedural requirement imposed in accordance with the *Queensland Civil and Administrative Tribunal Act*.

[15] The respondents argued that interpreting s 61(1)(c) as permitting waiver of compliance with a procedural requirement arising through an order of the Tribunal was too broad an interpretation of the provision, and to give it that effect after dismissal of a proceeding would defeat the purpose of self-executing orders. As to the latter, it does not follow, of course, that every application for a waiver of compliance will be granted. More importantly, the provision is of a beneficial kind. It is not difficult to envisage situations where a want of any power in the Tribunal to revive proceedings after a self-executing order for dismissal had taken effect would produce injustice.

[16] In *FAI General Insurance Co Ltd v Southern Cross Exploration NL*,[5] the High Court was concerned with a New South Wales Supreme Court Rule which gave the court the power to extend any time fixed by a judgment or order after the time had expired and whether or not the application for the extension was made before or after its expiry. The High Court held that the rule conferred jurisdiction to extend time, notwithstanding that a self-executing order for dismissal of the proceedings had taken effect. Wilson J, delivering the leading judgment, said of the provision:

> "It is a remedial provision which confers on a court a broad power to relieve against injustice. The discretion so conferred is not readily to be limited by judicial fiat. The fact that it manifestly is a power to be exercised with caution and, in the case of conditional orders, with due regard to the public policy centred in the finality of litigation does not warrant an arbitrary limitation of the power itself, not expressed in the words of the rule, so as to deny its capacity to apply to circumstances such as those which are to be found in the present case. It would be wrong to so read the rule as to deny to a court power to prevent injustice in circumstances where the party subject to a conditional order ought to be excused from non-compliance."[6]

[17] In my view, s 61 is a provision of precisely that kind and ought to be construed in the same way.[7] The Tribunal member, then, had power to waive the appellant's non-compliance with her orders, as she did by vacating them and setting a new time line. The proceeding was not finally and irretrievably dismissed on 31 March 2014; it was reinstated by the further orders of 1 April.

Whether the question referred was limited to dismissal of the proceeding as at 31 March

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5 (1988) 165 CLR 268.

6 At 283-284.

7 This Court has held that the powers conferred by O 90 r 6 of the *Rules of the Supreme Court* and rule 7(1) of the *Uniform Civil Procedure Rules* 1999 are similarly broad: *Rankin v Agen Biomedical Ltd* [1999] 2 Qd R 435; *Singh & Ors v Starkey & Ors* [1999] QCA 279.

[18] However, when the Court explored this interpretation of the provision with counsel for the respondents, a new tack was taken: it was contended that whether the Tribunal member had jurisdiction to waive compliance after the time for it had passed and thus to re-enliven the proceedings was not, in fact, in issue on the appeal. The question of law referred to the Tribunal's President, it was argued, was confined to whether the proceeding was dismissed on 31 March 2014, and did not embrace whether it had subsequently been revived.

[19] This was not a worthy submission. It did not reflect what the respondents had argued on the reference, in which the reasons given for seeking it included the argument that the Tribunal lacked jurisdiction to extend the time period for filing and serving the further particulars once the proceeding had been dismissed. It did not reflect the application for a stay of the orders of 1 April 2014 until the reference was determined. (If it were considered that the reference would not resolve the question whether the proceeding had properly been revived, there was no basis on which to seek such a stay. Indeed, there was no point at all in the reference of the question of law if it were not to answer the question of whether the proceeding had been finally dismissed.) It did not reflect what occurred subsequently as a result of the determination of the question of law: counsel for the respondents conceded that the hearing of the proceeding had not gone ahead in accordance with the timetable in July 2014, because it was their position that the proceeding was finally dismissed. It did not reflect the respondents' outline of argument in this Court, which once again made the submission that once the proceeding was dismissed, the Tribunal lacked any further jurisdiction and could not extend the time for compliance with the original orders.

[20] In my view, it was implicit in the question put to the President of the Tribunal that he was being asked to decide as a matter of law whether the proceeding was finally dismissed on 31 March 2014. And it is apparent that his Honour did regard himself dealing with the question of whether the appellant's application was dismissed conclusively, not merely as at that date, because he reviewed the sources of power which, as he apprehended matters, might have been open to the Tribunal to allow the proceeding to be revived once dismissed.

Orders

[21] The appeal should be allowed and the answer to the question referred set aside, with the following answer substituted:

> "The answer to the question referred – whether the proceeding ADL047-13 was dismissed on 31 March 2014 following Ms Rintoul's failure to comply with the decision (specifically paragraph 2) dated 17 March 2014 – is that the proceeding ADL047-13 was not then finally dismissed."

[22] The appellant sought her costs in an amount of $11,126.56 should she be successful on the appeal. The items for which she sought recovery included the cost of her labour in preparing for the appeal, airfares and accommodation, postage, printing costs and "sundries". A litigant in person cannot recover compensation for the time spent in preparing his or her case.[8] Outlays should be recoverable only to the same

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8 *Cachia v Hanes* (1994) 179 CLR 403 at 410.

extent that they would were the litigant represented; [9] they do not extend to travelling costs.[10] The appellant is entitled to a modest amount to represent the costs of printing and posting documents. I would order that the respondents pay her costs fixed in an amount of $250.00.

[23] **PHILIPPIDES JA:** I agree with the reasons for judgment of Holmes JA and the orders proposed.

[24] **PETER LYONS J:** I have had the advantage of reading in draft the reasons of Holmes JA, with which I agree. I also agree with the orders proposed by her Honour.

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9 *Cachia v Hanes* at 417.

10 *Cachia v Hanes* at 411; *Merrin v Commissioner of Police* [2012] QCA 181 at [2], [38].