QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*Robinson Project Managers Pty Ltd v Cen-Tel Secure Pty Ltd* [2021] QCATA 39
PARTIES:	**ROBINSON PROJECT MANAGERS PTY LTD** (applicant) **v** **CEN-TEL SECURE PTY LTD** (respondent)
APPLICATION NO/S:	APL351-19
ORIGINATING APPLICATION NO/S:	MCDO 60430/17
MATTER TYPE:	Appeals
DELIVERED ON:	23 March 2021
HEARING DATE:	On the papers
HEARD AT:	Brisbane
DECISION OF:	Member Hughes
ORDERS:	**1. Leave to appeal refused.** **2. The Application to stay a decision filed on 19 December 2019 is dismissed.** **3. The Application for miscellaneous matters filed on 15 January 2020 is dismissed.** **4. The interim order made on 19 December 2019 suspending the operation of the order made in MCDO 60430/17 is lifted.**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – INTERFERENCE WITH DISCRETION OF COURT BELOW – PARTICULAR CASES – CONTROL OVER PROCEEDINGS – OTHER CASES – where purpose of appeal is not to conduct a retrial on the merits of the case - where findings open on evidence – where no basis for allegations of bias – where applicant given opportunity to present case – where evidence capable of supporting findings – where leave to appeal refused *Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 3, s 4, s 28, s 142

Armstrong v Kawana Island Retirement Village [2011] QCATA 324
Beale v Government Insurance Office of NSW (1997) 48 NSWLR 430
Bradlyn Nominees Pty Ltd v Saikovski [2012] QCATA 39
Briginshaw v Briginshaw (1938) 60 CLR 336
Coulton v Holcombe (1986) 162 CLR 1
Creek v Raine & Horne Real Estate Mossman [2011] QCATA 226
Ebner v Official Trustee in Bankruptcy (2000) 205 CLR 337
King v ASIC [2018] QCA 352
Makita (Australia) Pty Ltd v Sprowles (2001) 52 NSWLR 705
Mataitini v North Shore Realty Sunshine Coast [2020] QCATA 154
Piric & Anor v Claudia Tiller Holdings Pty Ltd [2012] QCATA 152
R v War Pensions Entitlement Appeal Tribunal (1933) 50 CLR 228
Rayner & Anor v Trabme Pty Ltd t/as Elders Redcliffe [2013] QCATA 212
Slater v Wilkes [2012] QCATA 12
Terera & Anor v Clifford [2017] QCA 181
WAEE v Minister for Immigration and Multicultural and Indigenous Affairs (2003) 236 FCR 593

APPEARANCES: This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld).

REASONS FOR DECISION

What is this appeal about?

[1] An application for leave to appeal is not an occasion to re-try the case presented at trial, as if the latter were a 'preliminary skirmish'.[1] Despite this, Robinson Project Managers Pty Ltd sought to dissect the transcript of the learned Adjudicator's reasons (having not attended the delivery of those reasons) and reargue its case.

[2] That is not the proper basis for an appeal. The learned Adjudicator's reasons are not to be scrutinised 'with an eye keenly attuned to error'.[2] The Tribunal must act fairly[3] and according to principles of natural justice[4] with as little formality and as much speed as matters permit.[5] A clear purpose of the requirement for leave, before a

---

1 *Mataitini v North Shore Realty Sunshine Coast* [2020] QCATA 154, [12] citing *Coulton v Holcombe* (1986) 162 CLR 1, 7.
2 *WAEE v Minister for Immigration and Multicultural and Indigenous Affairs* (2003) 236 FCR 593, [46].
3 *Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 28(2).
4 Ibid, s 28(3)(a).
5 Ibid, s 28(3)(d).

party has the right to appeal, is to prevent any attempt to simply conduct a retrial on the merits of the case.[6]

[3] Robinson's submissions about the learned Adjudicator preferring the evidence from the experts of Cen-Tel Secure Pty Ltd over its own expert, accepting Cen-Tel's evidence, not referring to Cen-Tel's "attitude and demeanour" towards it and simply arguing with the learned Adjudicator's findings do not align with the Tribunal's statutory purview to conduct proceedings in a way that is fair, just, economical, informal and quick[7] or established principle:[8]

> Where one set of evidence is accepted over a conflicting set of evidence, the trial judge should set out his findings as to how he comes to accept the one over the other. But that is not to say that a judge must make explicit findings on each disputed piece of evidence, especially if the inference as to what is found is appropriately clear.
>
> Further, it may not be necessary to make findings on every argument or destroy every submission, particularly where the arguments advanced are numerous and of varying significance.
>
> … it is the purpose which the reasons serve which assumes primary importance in determining the content of the reasons. That purpose must be weighed against other considerations… the content required of a statement of reasons is to be measured against the burden that the provision of reasons imposes on the judicial system. The reason for this is that the giving of overly elaborate reasons can serve to undermine public confidence in the judiciary and in the judicial system in the same way that insufficient reasons can… an overly onerous duty to provide reasons increases costs and delay in the judicial system which has the effect of undermining public confidence in the judicial system.
>
> …
>
> It does not automatically follow that because the reasons for decision are inadequate then an appealable error has occurred. Examination of nearly any statement of reasons with a fine-tooth comb would throw up some inadequacies. Indeed, an appeal court will reserve any intervention to those situations in which it is left with no choice: where no reasons have been given in circumstances where there was an obligation to provide them an in circumstances where a statement of reasons is so inadequate as to constitute a miscarriage of justice. In other words, the statement of reasons must be looked at as a whole and the material inadequacies identified and considered.

[4] This reasoning applies *a fortiori* to the Tribunal, which is statutorily mandated to conduct proceedings in an informal way that minimises costs to the parties and is as quick as is consistent with achieving justice.[9] The primary reasons need only refer to the *relevant* evidence, *material* findings of fact (and reasons for those findings) and the *applicable* law and reasons for applying it.[10]

---

6 *Piric & Anor v Claudia Tiller Holdings Pty Ltd* [2012] QCATA 152, [12] (Wilson J).
7 *Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 3(b).
8 *King v ASIC* [2018] QCA 352, citing with approval *Beale v Government Insurance Office of NSW* (1997) 48 NSWLR 430, 443-444.
9 *Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 4(c).
10 *Armstrong v Kawana Island Retirement Village* [2011] QCATA 324, [13].

Were the findings open on the evidence?

[5] The learned Adjudicator ordered Robinson to pay Cen-Tel the sum of $23,276.97[11] for installing equipment. In making her findings, it is clear that the learned Adjudicator preferred the evidence of Cen-Tel and its experts.[12] She also explained why. That is unremarkable and entirely within the learned Adjudicator's purview. The learned Adjudicator referred to relevant evidence provided at the original hearing to support her findings, including the reports and oral evidence from both parties' experts, invoices, quotes and witness statements. The learned Adjudicator's findings are supported by the evidence.

[6] It was not an error to prefer the evidence of an expert who did not possess a particular licence or qualification. In conducting a proceeding, the Tribunal must act fairly and according to the substantial merits of the case. It is not bound by the rules of evidence and may inform itself in any manner it considers appropriate.[13] While that does not mean that the rules of evidence may be ignored as of no account,[14] it does permit the Tribunal to receive, in an appropriate case, evidence which may not be admissible in a court as expert evidence.[15]

[7] As the learned Adjudicator noted, Robinson did not adduce any industry standards in evidence. Cen-Tel's experts had experience in the industry. The learned Adjudicator was entitled to receive their evidence and give it weight as expert opinion. The learned Adjudicator referred to this evidence to support her ultimate findings, which she was entitled to weigh accordingly.

[8] Robinson also raised allegations that the learned Adjudicator accepted fraudulent evidence. Allegations of fraud are serious, and the threshold of proof is commensurately high.[16] The alleged discrepancy in dates of discussions does not prove fraud, nor does it affect the learned Adjudicator's ultimate findings.

[9] Conversely, the learned Adjudicator noted inherent contradictions in the evidence of the representative from Robinson confirmed in a witness statement.[17] This was sufficient for the learned Adjudicator to make a finding of "significant doubt" about the credit of Robinson's representative as a witness.[18] Having heard the evidence of the representatives from both parties, the learned Adjudicator was in the best position to assess credibility. It is not an error to prefer one version of facts to another.[19]

Was the decision infected by bias?

[10] Robinson also made various allegations of bias and "collusion" between the learned Adjudicator and Cen-Tel's representative. Robinson did not raise any concerns of bias with the learned Adjudicator at the actual hearing. Bias is a serious allegation.

---

11 Order dated 29 November 2019.
12 Transcript dated 29 November 2019, page 1-5, lines 4 to 47; page 1-6, lines 1 to 47; page 1-7, lines 1 to 16.
13 *Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 28(1).
14 *R v War Pensions Entitlement Appeal Tribunal* (1933) 50 CLR 228, 256 (Evatt J).
15 *Makita (Australia) Pty Ltd v Sprowles* (2001) 52 NSWLR 705, [85].
16 *Briginshaw v Briginshaw* (1938) 60 CLR 336.
17 Transcript dated 29 November 2019, page 1-6, lines 36 to 45
18 Transcript dated 29 November 2019, page 1-6, lines 45 to 46.
19 *Slater v Wilkes* [2012] QCATA 12, [6].

Allegations of bias require more than mere speculation. The threshold to prove bias is high:

> … if a fair-minded lay bystander might reasonably apprehend that the decision-maker might not bring an impartial mind to the determination of the issues that he or she must decide.[20]

[11] Robinson made much of the learned Adjudicator not initially allowing its expert to give evidence. Nothing turns on this. The Tribunal is not bound by the rules of evidence[21] and, subject to procedural fairness,[22] may ask questions of parties and their witnesses as it sees fit. The learned Adjudicator simply adjourned the hearing to allow the experts from both parties to give evidence.

[12] Robinson also referred to the learned Adjudicator's "wording and tone" when reading her reasons for decision into the record as "very negative" and "reflect her conduct throughout the entire process". In doing so, Robinson has sought to scrutinise the learned Adjudicator's conduct of the hearing to a level that is inconsistent with the Tribunal's statutory mandate to conduct proceedings in an informal way that minimises costs to parties and is as quick as is consistent with achieving justice,[23] particularly in the busy and demanding minor civil disputes jurisdiction, where thousands of applications are processed and determined each year.[24]

[13] Minor civil dispute applications are conducted quickly and efficiently to meet the demands of this high-volume jurisdiction. The Tribunal's resources for the resolution of disputes are in high demand and serve, as the High Court has recently observed in relation to court resources, '…the public as a whole, not merely the parties to the proceedings.'[25]

[14] It is the learned Adjudicator's role to make findings. Sometimes this entails findings adverse to a party. The use of wording and tone helps to convey this.[26] It does not show bias. Upon reading all the transcripts, it is evident that a hallmark of the hearing was the parties constantly interrupting and talking over each other and even the Bench, throughout the two hours. The learned Adjudicator invariably met these interruptions with courtesy and patience. The learned Adjudicator respectfully managed a very difficult hearing, even by minor civil dispute standards.

[15] Nothing suggests that the learned Adjudicator's conduct of the hearing was untoward. The learned Adjudicator asked relevant questions of the parties and gave them an opportunity to respond, referring to supporting material where appropriate. By doing so, she focused on the issues and used time and resources efficiently, consistent with the Tribunal's mandate.

[16] The learned Adjudicator gave Robinson ample opportunity to present material to prove its case and to rebut Cen-Tel's evidence. Both parties filed material to support their case and were given an opportunity to present their case, consistent

---

20 *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337, 344-5 [6].
21 *Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 28(3)(b).
22 Ibid, s 28(3)(a).
23 Ibid, s 4(c).
24 *Rayner & Anor v Trabme Pty Ltd t/as Elders Redcliffe* [2013] QCATA 212, [46] (Wilson J).
25 *Creek v Raine & Horne Real Estate Mossman* [2011] QCATA 226, [13] (Wilson J).
26 *Gollan v Vaccaneo* [2013] QCATA 228, [8]; *Schepis & Anor v QM Properties Pty Ltd* [2012] QCAT 197, [21] – [23] (Wilson J).

with the objects of the QCAT Act and within the demands of the jurisdiction. Having read the transcript, the Appeal Tribunal is satisfied that the allegation of bias is baseless.

What are the appropriate orders?

[17] Because this is an appeal from a minor civil dispute, leave is required.[27] Leave will not be granted where a party simply desires to re-argue the case on existing or additional evidence.[28] The appeal process is not an opportunity for a party to again present their case.[29] It is the means to correct an error by the Tribunal that decided the proceeding.[30]

[18] Having read the transcript and considered the evidence, the Appeal Tribunal finds nothing to indicate that the learned Adjudicator acted on a wrong principle, or made mistakes of fact affecting her decision, or was influenced by irrelevant matters. The evidence was capable of supporting the learned Adjudicator's findings.

[19] There is no question of general importance for the Appeal Tribunal to determine. There is no reasonably arguable case that the Tribunal was in error.[31] There is no reasonable prospect of substantive relief on appeal.[32] There is no evidence that a substantial injustice will result if leave is not granted.[33]

[20] Leave to appeal is refused. The Application to stay a decision and the Application to strike out the appeal are therefore otiose and are dismissed. The interim order made on 19 December 2019 suspending the operation of the order made in MCDO 60430/17 is lifted.

---

27 *Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 142(3).
28 *Piric & Anor v Claudia Tiller Holdings Pty Ltd* [2012] QCATA 152, [12] (Wilson J).
29 *Bradlyn Nominees Pty Ltd v Saikovski* [2012] QCATA 39, [9].
30 Ibid.
31 *Terera & Anor v Clifford* [2017] QCA 181.
32 Ibid.
33 Ibid.