

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Deemal-Hall v Office of the Director of Public Prosecutions & Ors* [2023] QCATA 137

PARTIES: **GWENDOLINE CECILY DEEMAL-HALL**
(applicant/appellant)

v

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
(first respondent)

DEPARTMENT OF JUSTICE AND ATTORNEY-GENERAL
(second respondent)

OFFICE OF THE INFORMATION COMMISSIONER
(third respondent)

APPLICATION NO/S: APL335-23

MATTER TYPE: Appeals

DELIVERED ON: 10 November 2023

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Justice Mellifont, President

ORDERS:

- 1. The application for leave to be represented filed by the applicant on 10 October 2023 is dismissed.**
- 2. The application for leave to be represented filed by the respondents on 25 October 2023 is dismissed.**
- 3. No order as to costs.**

CATCHWORDS: ADMINISTRATIVE LAW – FREEDOM OF INFORMATION – REVIEW OF DECISIONS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – PROCEDURE – where the parties seek leave to be legally represented in an appeal of a decision under the *Information Privacy Act 2009* (Qld) (IP Act) – whether the IP Act confers a right to legal representation and leave of the Tribunal is unnecessary

Information Privacy Act 2009 (Qld), s 132, s 198
Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 43(2)(b)(iii)
Right to Information Act 2009 (Qld), s 122

McCrystal v Queensland Building and Construction Commission [2023] QCATA 133, applied

APPEARANCES & REPRESENTATION: 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

- [1] On 10 October 2023, Ms Deemal-Hall filed an application with the Appeal Tribunal seeking that the decision of 11 September 2023 made by the Office of the Information Commissioner (“the OIC”) be set aside and that the decision be remitted to the OIC to be decided according to law. The appellant named the Office of the Director of Public Prosecutions, the Department of Justice and Attorney-General, and the OIC as respondents in her application.
- [2] The appellant’s access application was made under the *Information Privacy Act 2009* (Qld) (“the IP Act”). She applied for external review of the first respondent’s decision under the IP Act. The decision subject of the appeal proceedings determined that access to information may be refused under the IP Act.
- [3] This appeal was brought under s 132 of the IP Act, which confers jurisdiction on QCAT to hear appeals from the Information Commissioner on a question of law.
- [4] Ms Deemal-Hall filed an application for leave to be represented in the proceedings on the same day. She supplied several grounds as to why leave should be granted, including that “the Respondent is a State Party and is likely to be legally represented” and that appeals under s 132 of the IP Act are likely to concern complex questions of law.
- [5] In turn, the first and second respondents collectively filed their own application for leave to be represented on 25 October 2023. The application submitted that, pursuant to section 43(3)(a) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (“the QCAT Act”), in deciding whether to give a party leave to be represented in a proceeding, the Tribunal may consider whether the party is a State agency.
- [6] The matter now comes before me to decide whether the applications for leave should be granted. Section 43(2)(b)(iii) of the QCAT Act provides that a party may be represented if an enabling Act states the person may be represented.
- [7] In *McCrystal v Queensland Building and Construction Commission* [2023] QCATA 133, I found that section 122(2) of the RTI Act confers parties a right to be legally represented in appeals from the Information Commissioner on a question of law under the RTI Act s 119.¹
- [8] Section 122(2) of the RTI Act provides that:

For the QCAT Act, section 43(2)(b)(iii), a person may be represented before QCAT by a lawyer on a reference of a question of law under section 118 or on an appeal on a question of law under section 119.

¹ At [7] and [10]. See also *Rinaldi v Department of Justice and Attorney-General (Right to Information and Privacy)* [2023] QCATA 136 at [6].

[9] The IP Act contains an analogous provision at section 198(2):

However, for the QCAT Act, section 43(2)(b)(iii), a person may be represented before QCAT by a lawyer on a reference of a question of law under section 131 or on an appeal on a question of law under section 132.

[10] I find that the IP Act s 198(2) also confers parties a right to be legally represented but with respect to appeals brought under section 132 of the IP Act. The applications for the Tribunal's leave before me are, hence, unnecessary.

[11] Accordingly, I make the following orders:

1. The application for leave to be represented filed by the applicant on 10 October 2023 is dismissed.
2. The application for leave to be represented filed by the respondents on 25 October 2023 is dismissed.
3. No order as to costs.