[2006] QSC 306

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

ROBIN A/J

No 7543 of 2006

PAUL DAVID HENDERSON	Applicant
and	
ANDREW WILLIAMS, DELEGATE OF DIRECTOR GENERAL OF JUSTICE AND ATTORNEY-GENERAL	Respondent

BRISBANE

..DATE 27/09/2006

ORDER

4th Floor, The Law Courts, George Street, Brisbane, Q. 4000 Telephone: (07) 3247 4360 Fax: (07) 3247 5532

HIS HONOUR: This is the occasion fixed for a directions hearing in respect of Mr Henderson's "application relating to statement of reasons" filed on the 6th of September this year. It is not conceded on the other side that the circumstances come within the Judicial Review Act 1991 but that question has not been argued out.

The source of Mr Henderson's grievance as described in his letter of the 23rd December 2005 to the Director of the State Reporting Bureau is the alleged inappropriate conduct of an officer of the Bureau, Mr Walmsley. Mr Walmsley had been brought in as a superior officer by a member of the Bureau's counter staff. There appears to have been some difficulty in Mr Henderson being provided with audio tape dubbings in relation to a trial of Freeman v. James.

The letter indicates satisfaction with the service provided by counter staff but gross dissatisfaction with Mr Walmsley's intervention which, as described in the letter, led to Mr Henderson being thrown out of the premises unceremoniously.

In due course, there was sent to him a letter from Mr Williams, Acting Director of the Organisational Capability Branch of the Department of Justice and Attorney-General dated 21 April 2006. It related to the incident which was placed on the morning of the 23rd of December 2005. The letter advised:

> "After giving careful consideration to this matter, I am satisfied that Mr Walmsley's actions or the actions of any other officer of this department were not inappropriate in all the circumstances."

It does not really matter, but a stamped date of 21st April 2006 and the typed date of 20 April 2006 on Mr Williams' letter create some uncertainty as to the true date.

Mr Henderson for reasons I can understand requested in a response encapsulated in his letter of 21 April 2006, "a compliant statement of reasons for your decision." Mr Williams was provided with a checklist of matters to which he should have regard in compiling his statement of reasons. I take it that the checklist has some official provenance. There has been no response. However, on the eve of today's hearing, Mr Henderson has found his situation changing rapidly.

Mr Williams' letter of 29 June 2006 which carries a stamp 3 July 2006 advised that Mr Williams was now aware what was sought was a statement of reasons under section 32 of the Act.

He expressed his opinion that his decision was not one which the Act applies, so that there was no entitlement to be provided with a statement of reasons, and stated he had no intention of providing one.

What has happened yesterday, after Mr Williams and others have looked into matters in preparation for the anticipated hearing, is that a determination was made that Mr Williams lacked the authority to make any decision at all, he not

having received the appropriate delegation from the Director-General of the Department.

Mr Williams himself has signed another letter, this time bearing a stamped date of yesterday and no other relevant date, advising that he has "repealed" his decision to the effect of being satisfied of Mr Walmsley's actions. The letter advised there would be a fresh investigation by another officer.

As well as that letter, there has been generated another from Mr Boustead, Assistant Crown Solicitor, which refers to "shortcomings in the process" leading to Mr Williams' decision.

In addition to the lack of appropriate delegation, concern was mentioned that Mr Henderson had been denied an opportunity to comment on the proposed findings of Mr Williams before they were made.

One might wonder why that second aspect was added if Mr Williams lacked power. On the other hand, an explanation may be an appropriate concern to relate events to common sense notions about what following the requirements of natural justice would render pertinent.

There is no acknowledgment of any error in Mr Williams' decision (except as to the processes he followed), nor that the Judicial Review Act is applicable.

An offer was made for an outcome today which would see Mr Henderson's application dismissed with the respondent paying his costs to be assessed on the standard basis.

Mr Henderson has not accepted that offer which may be under a cloud now that the respondent has incurred trouble and costs in attending and securing representation by Mr Burns.

Mr Henderson's point of principle that it would be undesirable to permit and/or establish a precedent for a request for reasons to be stymied at the last minute by repeal of the decision is understandable.

It would represent a threat to the standards of administration that the community would probably expect to be followed if that became a common practice.

Mr Burns has asserted from the Bar table, on instructions from Mr Boustead, that this is by no means the first occasion on which a decision has been "repealed" and a new investigation instituted.

The application is under Section 38, subsection (2) of which provides that:

> "If the Court considers that the requestor (of a written statement of reasons) was entitled to make the request a Court may order the decision maker to give the statement within a specified period."

In my opinion, the word "may" introduces the notion of a discretion entitling the Court to have regard to considerations of utility. The circumstances here are not a bare repeal of the decision, reasons for which are wanted, but a lack of power of the purported decision maker to decide. I would not think that that would be a terribly common scenario.

The Court should not lose sight of the origin of all of this being Mr Henderson's concern about Mr Walmsley's activation of the duress button and the like back on the 23rd of December. There is no reason to doubt that the investigation now promised will occur or that, in the course of it, Mr Henderson will be accorded the right to be heard which Mr Williams did not make available.

In the circumstances, I think there is no utility, but rather the prospect of the incurring of much trouble and costs in allowing the application to proceed. It may well be that the Act is not relevant anyway.

In my opinion, it is appropriate for the Court to make an order in terms of Mr Boustead's offer. I would not be inclined in the circumstances to entertain Mr Burns's foreshadowed possible application for costs of his client in the circumstances that developed today because of Mr Henderson's refusal of the offer, but I will invite him to make submissions if he wishes to.

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HIS HONOUR: Yes, I will accede to your suggestion and exclude from the order in Mr Henderson's favour costs of today.

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