



The Queensland Government

# Industrial Gazette

PUBLISHED BY AUTHORITY

PP 451207100086

Annual Subscription \$358.00 (GST inclusive)

ISSN 0155-9362

Vol. 188

FRIDAY, 18 JULY, 2008

No. 12

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Workers' Compensation and Rehabilitation Act 2003 - s. 550 - appeal to the Commission*

**Glen Fraser AND Q-COMP**  
(WC/2007/57)

DEPUTY PRESIDENT BLOOMFIELD

8 July 2008

Appeal against the decision of the Review Unit, Q-COMP - Failure to prosecute case - 8 month delay - Appellant now uncontactable - Public interest - Appeal dismissed pursuant to s. 331.

DECISION

In a brief decision given on transcript on Monday 7 July 2008, I granted an application by Mr P.B. O'Neill, Counsel for Q-COMP, that I should act pursuant to s. 331 of the *Industrial Relations Act 1999* (the Act) to dismiss an Appeal by Mr Glen Fraser (the Appellant), made pursuant to s. 550 of the *Workers' Compensation and Rehabilitation Act 2003*, against a decision of the Review Unit, Q-COMP dated 28 May 2007. In dismissing Mr Fraser's Appeal I indicated that I would provide further, and fuller, reasons by way of published decision at a later date. This is that decision.

The Appeal by Mr Fraser was received in the Registry of the Queensland Industrial Relations Commission (the Commission) on 28 June 2007. It was the subject of a conference before Vice President Linnane on 6 August 2007 when Directions for a hearing in Brisbane on 1, 2 and 3 October 2007 were set. During the course of the conference the Vice President also advised the Appellant the nature of the material he would need to produce during the hearing of his Appeal if he was to succeed. He was especially reminded of the need to have witnesses available, including those of a medical nature, as well as documentary evidence he would need to produce and have available to tender.

On 3 September 2007 the Appellant filed a statement from one of his intended witnesses and also wrote to both Q-COMP and the Commission setting out a list of documents he proposed to rely upon during the course of the hearing as well as his list of witnesses.

However, on 19 September 2007 a letter was received from Nathan Lawyers which indicated that that firm had been appointed by Legal Aid Queensland to act on the Appellant's behalf for the purposes of consulting with Counsel regarding his prospects of success. Nathan Lawyers indicated that they only had basic knowledge of the facts of the case and had also been advised by a mental health worker that the Appellant had recently decompensated and was medically unable to participate in a hearing at this time. The correspondence also referred to letters from a Dr Wong, Registrar of the Acute Care Team of Prince Charles Hospital, to the effect that the Appellant had suffered a major depressive episode which would adversely affect his ability to represent himself. On the basis of the approach made, as well as the Appellant's then medical condition, Nathan Lawyers sought an adjournment of one month to obtain the view of Counsel.

As a result of receipt of this information the hearing scheduled for 1, 2 and 3 October 2007 was cancelled by way of notice dated 20 September 2007.

On 13 November 2007 correspondence was received from Nathan Lawyers in the following terms:

"We have now received Counsel's opinion on the prospects of success of Mr Fraser's Appeal.

As a result of that advice, we have been advised by Legal Aid Queensland that further aid will not be forthcoming and accordingly, we will not be continuing our involvement in the worker's (sic) compensation matter.

We thank the Commission for its indulgence and we ask that further correspondence be directed to our client at his home address."

Subsequently, the Associate to Vice President Linnane attempted to contact the Appellant to set the matter down for Mention to establish his intentions. To this end, the Associate spoke to Mr Fraser by telephone on 22 December 2007 when he asked her to contact him again in a month's time. On 22 January 2008 the Associate made a further attempt to contact the Appellant, but only succeeded in leaving a telephone message on his mobile phone asking him to contact her. This message went unanswered.

Later on, because of the age of the file and the lack of advice from Mr Fraser as to his intentions, the Vice President decided to list the matter for further Call Over to be held on 15 May 2008.

Despite being informed of this Call Over, by correspondence to his last known address, the Appellant failed to appear. However, in order to progress the matter towards a conclusion, the Vice President directed that the matter be set down for hearing on 7, 8 and 9 July 2008 and issued Directions designed to cater for a hearing on those dates. This Directions Order was subsequently mailed to Mr Fraser's last known address.

In accordance with the Directions Order a further Mention was held on 23 June 2008 for the purposes of establishing that all the necessary arrangements had been put into place to allow the trial to proceed as scheduled. Although there was an appearance from Q-COMP there was, again, no appearance by the Appellant. In the course of the Mention the representative for Q-COMP indicated that that organisation had written on a number of occasions to Mr Fraser offering to allow him to discontinue the matter on the basis that each party would bear its own costs. However, none of that correspondence had been responded to. The Q-COMP representative also advised that Q-COMP had recently forwarded copies of the various Directions Orders issued by the Commission as well as a list of witnesses that it proposed to call in the hearing scheduled in July. This material had been sent in an overnight post bag to ensure its delivery.

It also came to light during the course of the Mention that attempts by the Associate to Vice President Linnane and officers of Q-COMP to contact the Appellant by telephone and email had been unsuccessful on the basis that the telephone had been disconnected and his email account had been discontinued.

The Q-COMP representative also expressed the organisation's concern at the amount of money it was expending, including to brief fresh Counsel because of the unavailability of Counsel previously engaged to handle the October 2007 proceedings.

When the matter came on for hearing on 7 July 2008, Mr O'Neill indicated to the Commission that Q-COMP had arranged for a private detective service, International Detection Services, to deliver a letter dated 24 June 2008 to the Appellant's last known address. In this letter Q-COMP referred the Appellant to the matter set down to be heard on 7, 8 and 9 July 2008 and also referred to its previous correspondence of 30 January 2008, 2 June 2008 and 18 June 2008 which had not been responded to.

The letter also informed the Appellant of Q-COMP's intention to make an application to the Commission to have his Appeal struck out pursuant to s. 331(b) of the Act because of its non-prosecution. The Appellant was also invited to contact the author of the letter if he intended to pursue the Appeal. He was also informed that Q-COMP's offer of 30 January 2008 - to the effect that each party would carry its own costs if the Appeal was withdrawn - still stood. The Appellant was also warned that if Q-COMP had not heard from him by Monday 30 June 2008 it would make the necessary application to have the matter struck out.

Mr O'Neill informed the Commission that the representative of International Detection Services tasked with delivering Q-COMP's letter had attended at his last known address and spoken to the inhabitants of that residence. Those inhabitants indicated they had been residing at that address for approximately 8 months and had no knowledge of the existence, or whereabouts, of the Appellant.

Mr O'Neill said that in all of the circumstances he was instructed to make an application that Mr Fraser's Appeal be dismissed, particularly for the reason that further proceedings were not necessary or desirable in the public interest (see s. 331(b)). This was the second occasion on which the matter had been listed for hearing, where the Respondent had briefed Counsel for 3 days and arranged its medical and other witnesses, but the Appellant was not available to conduct his case. Further, the matter had now reached the stage where it was causing serious prejudice to the Respondent.

Finally, Mr O'Neill indicated that other clients of both the Commission and Q-COMP were also being prejudiced by the Appellant's failure to progress his Appeal. Not only had the 3 days been vacated last October, which could have been used by the Commission to deal with other matters, but a further 3 days was now to be wasted because of the Appellant's non-attendance. It was not in the public interest for such events to be allowed to continue.

It has now been more than 12 months since Mr Fraser lodged his Appeal and more than 8 months since he, or anyone acting on his behalf, has contacted the Commission to alert it to the Appellant's circumstances and/or intentions. It is also more than 6 months since anyone from either the Commission or Q-COMP has spoken to the Appellant. Even then, the contact made on 22 December 2007 was at the initiative of Vice President Linnane, through her Associate.

Since that time a number efforts have been made by Q-COMP and the Commission to contact the Appellant to establish his intentions. All of these efforts have been singularly unsuccessful.

I think the stage has now been reached where serious inconvenience, and cost, is being visited on both Q-COMP and this Tribunal by the need to keep Mr Fraser's Appeal file open and to periodically review it. In addition, the advice from Nathan Lawyers, dated 13 November 2007 (above), suggests (I put it no higher than that) that the Appellant has been informed that his prospects of success are such that Legal Aid Queensland has made the decision not to fund his Appeal. That may have influenced his behaviour towards progressing the Appeal. Irrespective of whether that is the case or not, no steps have been taken by the Appellant to pursue his Appeal over what is now a considerable period of time. Further, despite being invited to do so on several occasions, he has failed to contact either Q-COMP or the Commission to advise of his intentions. It now appears that the Appellant is uncontactable. He has left his previous address and has not informed anyone of his current whereabouts. He has also disconnected his mobile phone and internet access.

Given all of the above, I think it is in the public interest that I act to dismiss Matter No. WC/2007/57. If, at some stage in the future, Mr Fraser seeks to advance his Appeal either on the basis that he was not informed about the Call Over of 15 May 2008, the Mention on 23 June 2008 or the hearing set down to commence on 7 July 2008 or because he was medically incapable of representing himself at those times, he can advance such reasons in any re-opening, or other, application he may choose to make. Any claim along those lines would need to be considered, on its merits, at that time.

I shall also issue an Order to the effect that the Appeal be dismissed, with the Appellant to pay the Respondent's costs to be agreed and, failing agreement, either party to have liberty to re-list the matter on 3 days' notice in writing.

The Commission determines and orders accordingly.

A.L. BLOOMFIELD, Deputy President.

*Hearing Details:*  
2008 7 July

*Appearances:*

Mr P.B. O'Neill (Counsel) directly instructed by the Respondent.

Released: 8 July 2008

## QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 - s. 473*  
*Industrial Relations Regulation 2000 - s. 20*

**(Matter No. RIO/2008/146)**

**NOTICE OF APPLICATION FOR AMENDMENT OF NAME  
OF AN INDUSTRIAL ORGANISATION**

NOTICE is hereby given that an application has been made for an amendment to the name of the Queensland Fire Service Senior Officers' Association, Union of Employees. Interested persons may obtain a copy of the application from the Applicant.

All Notices of Objection to such amendment must be lodged in the Registry within thirty-five days from the date of publication of this Notice.

Dated 8 July 2008.

G D SAVILL,  
Industrial Registrar.

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