

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Flori v Carroll and Anor (No. 2)* [2022] QIRC 124

PARTIES: **Flori, Ricky**
(Complainant)

v

Carroll, Katarina
(First Respondent)

and

State of Queensland (Queensland Police Service)
(Second Respondent)

CASE NO.: AD/2020/115

PROCEEDING: Application in existing proceedings

DELIVERED ON: 4 April 2022

HEARING DATE: On the papers

MEMBER: Merrell DP

DATES OF WRITTEN SUBMISSIONS: Respondents' written submissions filed on 25 February 2021 and Complainant's written submissions filed on 10 March 2022

ORDER: **Document Number 3 to the Complainant's affidavit filed on 18 January 2022, described as 'Reprisal Deed of Agreement', will not be admitted into evidence.**

CATCHWORDS: EVIDENCE - ADMISSIBILITY - Complainant a former police officer who made a complaint to the Queensland Human Rights Commission alleging contravention by the Respondents of the *Public Interest Disclosure Act 2010*, contending that a decision to defer the issuing of honours and awards to him was a reprisal within the meaning of s 40(1)(b) of the *Public Interest Disclosure Act 2010* - complaint referred to the Queensland Industrial Relations

Commission - Complainant seeks various orders and other relief under the *Anti-Discrimination Act 1991* to remedy alleged reprisal - Complainant filed an affidavit sworn by him in support of his complaint - exhibited to the affidavit is a Deed of Agreement entered into between the Complainant and certain other persons concerning proceedings in the Queensland Civil and Administrative Tribunal - objection by Respondents to admissibility of Deed of Agreement - Deed of Agreement irrelevant - Deed of Agreement not admissible - order that the Deed of Agreement not admitted into evidence

LEGISLATION:

Anti-Discrimination Act 1991, s 208

CASES:

Deanne Maree King v Workers' Compensation Regulator [2019] QIRC 134

Flori v Carroll and Anor [2022] QIRC 034

APPEARANCES:

The Complainant in person.

Mr S. McLeod QC instructed by Ms R. Fogarty of the State of Queensland (Queensland Police Service), for the First and Second Respondents.

Reasons for Decision

Introduction

- [1] The background to this matter is set out in *Flori v Carroll and Anor*.¹
- [2] Mr Flori filed an affidavit on 18 January 2022 in support of his complaint. Mr Flori intends to rely on that affidavit as his evidence-in-chief at the hearing of his complaint ('Mr Flori's affidavit').² The Respondents' have no objection to that course.³
- [3] However, the Respondents object to the admissibility of one of the exhibits to Mr Flori's affidavit, being a document identified as 'Document Number 3' and described as 'Reprisal Deed of Agreement' ('the Deed').

¹ [2022] QIRC 034.

² T 1-2, ll 33-36. Mr Flori's affidavit filed on 18 January 2022 is the affidavit he filed on 6 December 2021, but which contains all the exhibits which were omitted from the affidavit filed on 6 December 2021.

³ T 1-2, ll 38-44.

[4] The parties have filed submissions about the admissibility of the Deed.

[5] This is my decision about the admissibility of the Deed.

[6] For the reasons that follow, the Deed is inadmissible.

The Deed

[7] On its face, the Deed was entered into on 8 May 2015 between Mr Flori and the State of Queensland through the Queensland Police Service ('the Service') and certain other individuals who were or are employees of the State through the Service. Those other individuals are not respondents to Mr Flori's present complaint before the Commission ('Mr Flori's complaint'). The Deed concerned the settlement of certain proceedings before the Queensland Civil and Administrative Tribunal which concerned different allegations by Mr Flori that he was the subject of an unlawful reprisal within the meaning of the *Public Interest Disclosure Act 2010*.

[8] Mr Flori does not, in the body of his affidavit, provide any evidence as to how the Deed is relevant to his present complaint.

[9] The Respondents object to the Deed on the basis that it is wholly irrelevant to Mr Flori's complaint.

[10] Mr Flori submits that the Deed is relevant because, in their outline of submissions filed in respect of Mr Flori's complaint, the Respondents have referred to a disciplinary notice which he contends was the subject of the proceedings referred to in the Deed. Mr Flori submits that the disciplinary notice was later withdrawn.⁴

[11] As best as I can make out, Mr Flori then seems to contend that the Deed is relevant because the respondents to the Deed undertook not to cause or attempt to cause detriment to him and that the alleged conduct of the Respondents is in breach of that undertaking.⁵

[12] Mr Flori seems to further submit that:

- the Deed should be admitted into evidence because the Commission is not bound by the rules of evidence; or, in the alternative
- the Deed is similar fact evidence and should be admitted on that basis.⁶

[13] In my opinion, the Deed is not admissible. There are four reasons for this.

[14] First, at paragraph [24] of the Respondents' outline of submissions filed on 10 September 2021, they do refer to Mr Flori being issued with a disciplinary hearing notice. It seems to me that the reference to the disciplinary hearing notice in the Respondents' outline of submissions is by way of background. That matter is not relevant to the Respondents' defence to Mr Flori's complaint.

⁴ Mr Flori's submissions filed on 10 March 2022 ('Mr Flori's submissions'), para. 4.

⁵ Mr Flori's submissions, paras. 54-55.

⁶ Mr Flori's submissions, paras. 56-58.

- [15] The Respondents' defence to Mr Flori's complaint is that the deferral of the decision to issue him the honours and awards he sought was not because he made a public interest disclosure, but because there may be discrediting conduct in which Mr Flori engaged, when working as a police officer, which may be proven in District Court proceedings still being pursued by Mr Flori. For this reason, my opinion is that the Deed is not relevant to Mr Flori's complaint.
- [16] Secondly, having regard to the terms of the Deed, I cannot see anything that would prevent the First Respondent from subsequently deferring a decision to issue Mr Flori with the honours and awards he seeks. Whether or not that deferral was a reprisal within the meaning of the *Public Interest Disclosure Act 2010* is the matter to be determined in Mr Flori's complaint.
- [17] Thirdly, despite the fact that, pursuant to s 208(1) of the *Anti-Discrimination Act 1991*, the Commission is not bound by the rules of evidence, the overriding obligation of the Commission is to act judicially and to afford the parties procedural fairness such that the rules of evidence should only be departed from in the clearest of circumstances and where the interests of justice require it to be done.⁷ The Deed is not relevant to the determination of Mr Flori's complaint. There is no reason why it is in the interests of justice that the rules of evidence should not be observed, such that the Deed should be admitted into evidence when it is not relevant.
- [18] Fourthly, the essential criterion for the admissibility of similar fact evidence is its relevance.⁸ The proceedings in the Queensland Civil and Administrative Tribunal, that were the subject of the Deed, were settled without any admission of liability. The bare fact of the settlement of the other proceedings, where Mr Flori alleged a different reprisal within the meaning of the *Public Interest Disclosure Act 2010*, involving different respondents and where there was no admission of any liability by any of those respondents, could not logically be taken to be proof that a reprisal, similar to the one he alleges occurred in the present case, did in fact occur.

Conclusion

- [19] The question in the present proceeding is whether the Deed is admissible.
- [20] For the reasons I have given, the Deed is not admissible.

Order

- [21] I make the following order:

Document Number 3 to the Complainant's affidavit filed on 18 January 2022, described as 'Reprisal Deed of Agreement', will not be admitted into evidence.

⁷ *Deanne Maree King v Workers' Compensation Regulator* [2019] QIRC 134, [25] (Vice President O'Connor).

⁸ *Ibid* [12].