

CITATION: *Spinosa v Victims Assist Queensland* [2017] QCAT 120

PARTIES: **Donato Spinosa**
(Applicant/Appellant)
v
Victims Assist Queensland
(Respondent)

APPLICATION NUMBER: REO020-16

MATTER TYPE: Reopening

HEARING DATE: 21 September 2017

HEARD AT: Brisbane

DECISION OF: **Justice Carmody**

DELIVERED ON: 23 October 2017

DELIVERED AT: Brisbane

ORDERS MADE: **THE APPEAL TRIBUNAL ORDERS THAT:**

1. **The application to reopen the appeal is refused.**

CATCHWORDS: REOPENING – where the applicant seeks to reopen appeal proceedings – where the tribunal has no power to reopen appeal proceedings – where the application to reopen is dismissed

Queensland Civil and Administrative Tribunal Act 2009 (Qld) s 138(1)

APPEARANCES and REPRESENTATION (if any):

APPLICANT Donato Spinosa on behalf of the Applicant
RESPONDENT Brendan James (solicitor) on behalf of the Respondent

REASONS FOR DECISION

[1] The applicant seeks to reopen an appeal under s 138(1) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (QCAT Act).

[2] The grounds for reopening can be summarised as follows:

- it was unfair that the applicant's appeal was summarily dismissed for non-compliance with tribunal directions due to an honest mistake;
- the tribunal erred in finding that the conduct the applicant complained of in the appeal was not unreasonable;
- the fact that police took a witness statement from the applicant regarding his complaint indicated that the matter was sufficiently serious to warrant a finding that the behaviour complained of in the appeal was unreasonable; and
- the tribunal's original decision failed to take into account key considerations, including that Counsel for the respondent "lied in court".

[3] The respondent submits that the real issue is a legally narrow one, and the tribunal must decide if it has the power to reopen appeal proceedings.

[4] The relevant provision of the QCAT Act states:

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(5) A party can not make an application under this section in relation to a decision the subject of an appeal, or an application for leave to appeal, under part 8.

(6) Subsection (5) applies whether or not the appeal or application has been decided.

[5] The applicant says that regardless of the governing legislation, all he seeks is a fair hearing.

[6] Undoubtedly the applicant feels as though there has been a miscarriage of justice – however the meaning of s 138 is clear. The tribunal has no power to reopen a proceeding that is or has been the subject of an application for leave to appeal or appeal, including after it has been decided.

[7] Reopening the applicant's appeal would impermissibly undermine the finality of the tribunal's decision-making powers and functions, and the application must be refused as a matter of law.

Orders

- 1. The application to reopen the appeal is refused.**