SUPREME COURT OF QUEENSLAND

CITATION:	*Musgrave v The Central and Northern Queensland Regional Parole Board* [2017] QSC 312
PARTIES:	**THOMAS RICHARD MUSGRAVE** (applicant) **v** **THE CENTRAL AND NORTHERN QUEENSLAND REGIONAL PAROLE BOARD** (respondent)
FILE NO:	BS 2716 of 2016
DIVISION:	Trial Division
PROCEEDING:	Application
DELIVERED ON:	15 December 2017
DELIVERED AT:	Brisbane
HEARING DATE:	On the papers
JUDGE:	Brown J
ORDER:	**That each party bear its own costs of and incidental to the application.**
CATCHWORDS:	PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – where the applicant was unsuccessful in an application for judicial review – where the respondent seeks an order for costs – where the applicant is impecunious and a prisoner – whether in all the circumstances costs should follow the event *Judicial Review Act* 1991 (Qld), s 49 *Uniform Civil Procedure Rules* 1999 (Qld), r 681
COUNSEL:	The applicant made submissions on his own behalf M Hickey for the respondent
SOLICITORS:	Prisoners Legal Service for the applicant Crown Law for the respondent

[1] On 17 November 2017, I ordered that if the respondent wished to pursue an order for its costs to be paid by the applicant, it should provide further submissions in that regard and that the applicant should respond accordingly.

[2] The respondent seeks an order for costs. It relies on the fact that pursuant to r 681 of the *Uniform Civil Procedure Rules* 1999 (Qld), the costs of a proceeding are at the discretion of the Court but follow the event unless the Court otherwise orders. It submits that there is no evidence before the Court upon which the Court can exercise the discretion and the Court should not deprive a successful party of its costs.[1] The respondent submits that, as there is no evidence before the Court that would favour the Court exercising its discretion so as to deprive the respondent of its costs properly incurred in defending Mr Musgrave's application, it should have a costs order in its favour.

[3] Mr Musgrave submits that each party should bear its own costs. In particular he refers to s 49 of the *Judicial Review Act* 1991 (Qld), which he submits displaces the general rule that costs follow the event. The applicant has submitted that he is impecunious. He has been incarcerated at Maryborough since 2013 which is uncontroversial. Further, he is 72 years of age. He was also granted a fee reduction for the purpose of filing the proceeding, because he was not in a position to meet the costs of the full filing fee. He has outlined the income that he receives while in prison and stated in his submissions that, prior to his incarceration, his income was entirely comprised of Centrelink payments, although he did not provide an affidavit. In that regard, he indicated that, in the time limit provided for further submissions as to costs, he could not prepare affidavit material, but is prepared to do so and provide the Court with a copy of his prison trust account statement. He has also submitted that an application considering the impact of an administrative order on the length of a sentence prior to a prisoner's release on parole is a matter of clear public interest.

[4] While the relevant provisions of the *Uniform Civil Procedure Rules* 1999 (Qld) are applicable to the question of costs, they apply subject to s 49(4) of the *Judicial Review Act* 1991 (Qld), which may allow for costs consequences more favourable to the applicant than are ordinarily appropriate under the Rules.[2]

[5] I do not consider that the case involved any matter of public interest. The matter involved the application of well-known principles to a decision of the Parole Board. On the basis of the applicant's age, time in prison and the fee reduction, I infer that

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1 *Civil Service Co-operative Society Ltd v General Steam Navigation Company* [1903] 2 KB 756.
2 *Leahy v Barnes (No 2)* [2013] QSC 263; see also *Foster v Shaddock & Ors* [2016] QCA 163.

he does not have any significant financial resources to meet a costs order. While the applicant was unsuccessful, I do not consider that the applicant lacked any reasonable basis to make such an application, although it could not be regarded as an application with good prospects of success. I also take into account that in applications such as these, the State is put to the expense of defending them, and that the usual order as to costs, namely that they follow the event, is to compensate the successful respondent and not to punish the unsuccessful applicant.[3]

[6] In this case, I make an order that each party bear its own costs of and incidental to the application on the basis I am satisfied that there would be no practical utility in making an order that costs follow the event, notwithstanding the applicant's lack of success and the expense to which the State was put.

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[3] *Oshlack v Richmond River Council* (1998) 193 CLR 72.