

# SUPREME COURT OF QUEENSLAND

CITATION: *Attorney-General of the State of Queensland v Legal Services Commissioner & Anor* [2018] QCA 267

PARTIES: **ATTORNEY-GENERAL OF THE STATE OF QUEENSLAND**  
(appellant/applicant)  
**v**  
**LEGAL SERVICES COMMISSIONER**  
(first respondent)  
**HAROLD WARNER SHAND**  
(second respondent)

FILE NO/S: Appeal No 5758 of 2017  
QCAT No 163 of 2013

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal – Further Orders

ORIGINATING COURT: Queensland Civil and Administrative Tribunal – [2017] QCAT 159

DELIVERED ON: 12 October 2018

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Morrison and McMurdo JJA and Brown J

ORDERS: **1. The second respondent pay to the appellant the costs of the appeal, not including the costs of the Attorney-General in seeking leave to apply for that order.**  
**2. There should be no order for the costs of that application for leave.**

CATCHWORDS: APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – POWERS OF COURT – COSTS – where the Court allowed the appellant’s appeal – where the appellant sought no order for costs in her notice of appeal or outline of submissions – where the appellant sought leave to make an application for the costs of the appeal when the judgment was delivered – where paragraph 52 of Practice Direction 3 of 2013 provides that parties wishing to make submissions on costs must do so in their written outlines of argument and/or orally at the hearing – where the appellant was granted leave to apply for costs – where the *Legal Profession Act 2007* (Qld) provides a distinct role for the appellant Attorney-General to challenge a decision of the Queensland Civil and Administrative Tribunal in the public interest – whether the appellant should be granted an order

for costs in her favour

*Legal Profession Act 2007 (Qld)*, s 468

*Attorney-General of the State of Queensland v Legal Services Commissioner & Anor; Legal Services Commissioner v Shand* [2018] QCA 66, related  
*Attorney-General for the State of Queensland v Legal Services Commissioner & Anor* [2018] QCA 198, related  
*Grocon Constructors (Qld) Pty Ltd v Juniper Developer No 2 Pty Ltd* [2015] QSC 333, cited

COUNSEL: P Dunning QC SG, with F Nagorcka, for the appellant  
 T P Pincus for the second respondent

SOLICITORS: Crown Law for the appellant  
 Motteram Lawyers for the second respondent

- [1] **MORRISON JA:** I agree with the reasons of McMurdo JA and the orders his Honour proposes.
- [2] **McMURDO JA:** This appeal was heard and decided with an appeal by the Legal Services Commissioner against a decision of the Queensland Civil and Administrative Tribunal in relation to Mr Shand, who was then a solicitor. The Tribunal had declined to recommend that Mr Shand’s name be removed from the Roll of Legal Practitioners. The outcome in each appeal was that the appeal was allowed, the decision of the Tribunal was set aside and the respondent’s name was removed from the Roll.<sup>1</sup>
- [3] In compliance with this Court’s Practice Direction,<sup>2</sup> the Legal Services Commissioner sought his costs of the appeal. By an oversight, the same order was not sought within the submissions for the Attorney-General. Consequently, when the judgment was delivered, there was an order for costs in favour of the Commissioner but no order for the costs of the Attorney-General’s appeal.
- [4] An application has now been made by the Attorney-General for those costs. It is submitted that the costs should follow the event and that there are previous cases where two sets of costs have been awarded where both the Attorney-General and the Legal Services Commissioner exercised their rights to appeal.
- [5] For the respondent, it is argued that the usual rule is that, where parties with parallel interests are separately represented, and are successful, the unsuccessful party will not be ordered to pay two sets of costs without good reason. The submission cites *Grocon Constructors (Qld) Pty Ltd v Juniper Developer No 2 Pty Ltd*<sup>3</sup> and *Dal Pont Law of Costs* at 11.52, where it is said:

“If separate representation is chosen, the litigants cannot assume that, should they be successful, the court will direct the unsuccessful party(ies) to indemnify each of them for their costs. The policy is

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<sup>1</sup> *Attorney-General for the State of Queensland v Legal Services Commissioner & Anor; Legal Services Commissioner v Shand* [2018] QCA 66.

<sup>2</sup> Practice Direction Number 3 of 2013, para 52.

<sup>3</sup> [2015] QSC 333 at [64].

that a desire to be represented separately by a lawyer of one's own choice cannot be indulged in at another's expense without good reason. Therefore, the court will not normally allow more than one set of costs to successful litigants where there was no possible conflict of interest between them in the presentation of their cases".<sup>4</sup>

(Citations omitted.)

- [6] That general proposition may be accepted, but it is necessary to have regard to the statutory context. By s 468 of the *Legal Profession Act 2007* (Qld) an appeal may be made to this Court from the Tribunal's decision by a party dissatisfied with the decision and by the Minister. Although the Legal Services Commissioner performs a public duty in proceedings of this kind, the statute provides for a distinct role for the Attorney-General to challenge a decision of the Tribunal in the public interest. Whilst there was no evident tension between the respective arguments for the appellants, the distinct role of the Attorney-General takes the case out of the more usual kind referred to in the passage set out above.
- [7] In my view the general rule, that costs follow the event, should apply. I would order that:
1. The second respondent pay to the appellant the costs of the appeal, not including the costs of the Attorney-General in seeking leave to apply for that order.
  2. There should be no order for the costs of that application for leave.
- [8] **BROWN J:** I agree with the reasons given by McMurdo JA, and the orders proposed by his Honour.

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<sup>4</sup> G E Dal Pont, *Law of Costs* (LexisNexis Butterworths, 4<sup>th</sup> ed, 2018) 11.52.