

# SUPREME COURT OF QUEENSLAND

CITATION: *Cooper v Mathews; Mathews v Corp of the Synod of the Diocese of Brisbane & Ors (No 2)* [2018] QSC 64

PARTIES: **In File No 3025 of 2017:**  
**GREGORY RICHARD COOPER**  
(applicant)  
v  
**RUSSELL GORDON HAIG MATHEWS**  
(respondent)

**In File No 5449 of 2016:**  
**RUSSELL GORDON HAIG MATHEWS**  
(plaintiff) v  
**CORPORATION OF THE SYNOD OF THE DIOCESE OF BRISBANE**  
(first defendant)  
AND  
**JOHN LESLIE MORGAN**  
(second defendant)  
AND  
**DOUGLAS PORTER**  
(third defendant)  
AND  
**QUEENSLAND POLICE SERVICE**  
(fourth defendant)  
AND  
**HENRI ELIAS RANTALA**  
(fifth defendant)  
AND  
**STATE OF QUEENSLAND**  
(sixth defendant)  
AND  
**THE UNIVERSITY OF QUEENSLAND**  
(seventh defendant)  
AND  
**ST JOHNS COLLEGE COUNCIL**  
(eighth defendant)  
AND  
**PHILLIP ASPINALL**  
(ninth defendant)  
AND  
**REGAN IRELAND**  
(tenth defendant)

FILE NO/S: SC Nos 3025 of 2017 & 5449 of 2016

DIVISION: Trial Division

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PROCEEDING: Applications for costs

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 29 March 2018

DELIVERED AT: Brisbane

HEARING DATE: 27 April 2017 and written submissions by the respondent

JUDGE: Jackson J

ORDER: **The respondent pay the applicants' costs of the applications filed 3 March 2017, 23 March 2017 and 24 March 2017.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – DEPRIVING SUCCESSFUL PARTY OF COSTS – OTHER CASES – OTHER CASES – where applicants successful – where respondent submits that order prevented good claims from proceeding – where respondent submits that defective pleadings caused by disability – where respondent submits that he is indigent and other parties are wealthy – whether costs should follow the event

*Civil Proceedings Act 2011 (Qld), s 15*

*Uniform Civil Procedure Rules 1999 (Qld), rr 681, 702*

*Board of Examiners v XY [2006] VSCA 190, cited*

COUNSEL: B McMillan for the applicant in BS3025/17 and the sixth defendant in BS5449/16  
D P de Jersey for the first, eighth and ninth defendants in BS5449/16 A I O'Brien for the third and seventh defendants in BS5449/16  
Written submissions for the respondent in BS3025/17 and plaintiff in BS5449/16

SOLICITORS: Crown Solicitor for the applicant in BS3025/17 and the sixth defendant in BS5449/16  
K&L Gates for the first, eighth and ninth defendants in BS5449/16  
Minter Ellison for the third and seventh defendants in BS5449/16

[1] On 27 April 2017, I ordered that the respondent is prohibited from instituting proceedings including interlocutory proceedings in any Queensland Court or Tribunal without the leave of the Court (with three exceptions) and that proceedings BS8514 of 2015, BS12511 of 2015, BS5450 of 2016 and BS5449 of 2016 be stayed.

- [2] On that date the applicants in each of the applications applied for an order that the respondent pay the applicants' costs of the applications to be assessed on the standard basis. I gave leave to the respondent to file a written submission which he did.
- [3] Before I gave a decision on costs the respondent started an appeal from the orders of 27 April 2017. On 22 December 2017 the Court of Appeal dismissed the appeal.<sup>1</sup>
- [4] The question of costs of each of the applications remains to be decided.
- [5] Under s 15 of the *Civil Proceedings Act* 2011 (Qld) and r 681(1) of the *Uniform Civil Procedure Rules* 1999 (Qld) the costs of the proceeding are in the discretion of the Court but follow the event unless the court orders otherwise.
- [6] Summarising, the respondent submits the court should order otherwise because, first, he has good claims against each of the applicants that have been frustrated by the orders staying each of the proceedings and prohibiting him from instituting further proceedings. Second, he submits that his disabilities have caused his pleadings to be defective. Third, he submits that he is indigent, whereas each of the applicants for a costs order is wealthy.
- [7] The first consideration is not one that can be assessed or that should be taken into account in exercising the discretion as to costs on these applications.
- [8] As to the respondent's disabilities, whilst I recognised their existence in my reasons for judgment, the primary purpose of an order for costs is not to punish the person against whom it is made. It is to compensate the successful party for the expense that it has incurred in bringing or defending the relevant proceedings. I do not say that the respondent's disabilities are irrelevant, but they are not a weighty factor in the present circumstances.
- [9] As to the respondent's lack of wealth, it is not usually a relevant circumstance which affects the discretionary power to make an order for costs under a rule like r 681(1).<sup>2</sup>
- [10] In my view, the respondent should be ordered to pay the applicant's costs of the applications, which by virtue of r 702(1) are to be assessed on the standard basis without any need for an express order to that effect.

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<sup>1</sup> *Mathews v Cooper & Ors* [2017] QCA 322.

<sup>2</sup> *Board of Examiners v XY* [2006] VSCA 190, [31]-[36]