

SUPREME COURT OF QUEENSLAND

CITATION: *Sharples v Crime & Misconduct Commission & Ors* [2004] QSC 306

PARTIES: **TERRY PATRICK SHARPLES**
(applicant)
v
CRIME AND MISCONDUCT COMMISSION (QLD)
(first respondent)
**ASSISTANT COMMISSIONER OF MISCONDUCT,
CRIME AND MISCONDUCT COMMISSION (QLD)**
STEPHEN LAMBRIDES
(second respondent)

FILE NO: SC No 1755 of 2004

DIVISION: Trial Division

PROCEEDING: Costs Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 17 September 2004

DELIVERED AT: Brisbane

HEARING DATE: On the papers

JUDGE: Mackenzie J

ORDER: **1. The applicant for the Application pay the first to fourth respondents' and the Attorney-General's costs of and incidental to the Application (including the Applications to dismiss the application) on the standard basis to be assessed.**

CATCHWORDS: PROCEDURE – COSTS – DEPARTING FROM THE GENERAL RULE – OTHER CASES – OTHER CASES – where financial resources of applicant limited – where no effect on public interest – where no reasonable basis for the review – where another remedy is available – whether balance of factors persuades Court to vary general rule that costs follow the event

Judicial Review Act 1991 (Qld), s 48(1), s 49(1), s 49(1)(d), s 49(1)(e), s 49(2)

Sharples v Crime and Misconduct Commission (Qld) & Ors [2004] QSC 162; SC No 1755 of 2004, 28 May 2004, cited *Sharples v Crime and Misconduct Commission (Qld) & Ors*

[2004] QCA 247; SC No 5597 of 2004, 21 July 2004, cited

COUNSEL: Applicant appeared on his own behalf
A J Rafter SC for the first and second respondents
B Thomas for the Attorney-General

SOLICITORS: Applicant appeared on his own behalf
Official Solicitor for the Crime and Misconduct Commission
for the first and second respondents
Crown Law for the Attorney-General

- [1] **MACKENZIE J:** The applicant’s application for judicial review and other forms of relief was summarily dismissed on 28 May 2004. On 21 July 2004 the Court of Appeal dismissed the applicant’s application for leave to appeal against that decision.
- [2] The applicant made a “costs application” under s 49 on 26 March 2004, prior to the hearing in the Trial Division. Both forms of cost order were sought, as alternatives. Section 49(1) firstly empowers the court to make an order that another party indemnify the applicant in relation to costs. The order has operation from the time the costs application is made (s 49(1)(d)). Secondly, it empowers the court to make an order that a party is to bear only his own costs (s 49(1)(e)).
- [3] Section 49(2) requires the court to have regard to three matters, where the applicant is also the applicant in the costs application. It is assumed for the purposes of argument, may not be the case, that where other forms of relief are joined in an application for judicial review, a costs application may be made in respect of all costs. One of the matters to be taken into account under s 49(2) is the financial resources of the applicant or a person associated with him who has an interest in the outcome of the proceedings. I am prepared to assume in the applicant’s favour that his financial resources are limited.
- [4] The second, is whether the proceedings involve an issue that affects or may affect the public interest in addition to any personal right or interest of the applicant. The matters raised by the applicant related to a variety of matters, none of which suggest that any issue that affected or might affect the public interest in addition to his own personal rights or interests was involved. The nature of the matters raised is analysed in my reasons for judgment published as [2004] QSC 162.
- [5] The third matter to be taken into account is whether the proceedings disclose a reasonable basis for the review application. From the reasons for judgment, it is apparent that the order under s 48(1) was based on the absence of any reasonable prospects of success or the availability of other means of redress.
- [6] The Court of Appeal, in refusing leave to appeal, said that no specific question of law had been identified as calling for a determination by the Court of Appeal and

that the reasons in the Trial Division did not contain any obvious error calling for the Court of Appeal to reconsider the issues raised at first instance. The judgment of the Court is published as [2004] QCA 247.

- [7] The function of s 49 is to introduce a variation of the ordinary rule that costs follow the event, to protect a person wholly or partially from liability for costs in a case where the balance of factors in s 49(2) persuades the court that such an order is justified. Where it appears that there are no reasonable prospects of success, or that the application should have been pursued other than in judicial review proceedings because of the availability of another remedy, there is no reason to exercise the discretion in the applicant's favour.
- [8] For reasons explained in my original reasons, there had been other parties involved but following an amendment they were deleted as respondents. However, their entitlement to costs was not resolved as part of that process. Accordingly the costs order, reflecting the terminology referred to in paragraph [2] of my original reasons, is as follows:
1. The applicant for the Application pay the first to fourth respondents' and the Attorney-General's costs of and incidental to the Application (including the Applications to dismiss the application) on the standard basis to be assessed.