SUPREME COURT OF QUEENSLAND

CITATION:	*Amos v Brisbane City Council* [2005] QCA 433
PARTIES:	**EDWARD AMOS** (plaintiff/applicant) v **BRISBANE CITY COUNCIL** (defendant/respondent)
FILE NO/S:	Appeal No 6933 of 2005 DC No 2281 of 2005
DIVISION:	Court of Appeal
PROCEEDING:	Application for Leave s 118 DCA (Civil)
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	25 November 2005
DELIVERED AT:	Brisbane
HEARING DATE:	4 November 2005
JUDGES:	Jerrard and Keane JJA and Muir J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Application dismissed with costs**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – WHEN APPEAL LIES – BY LEAVE OF COURT – COSTS ORDERS – applicant commenced proceedings in Magistrates Court for damages sustained by him when he tripped over a water valve on a Brisbane footpath – Magistrate found against applicant on liability and dismissed claim – Magistrate ordered applicant to pay respondent's costs – applicant sought leave to appeal in District Court and was refused – applicant seeks leave to appeal under s 118(3) of the *District Court of Queensland Act* 1967 (Qld) on the issue of costs STATUTES – ACTS OF PARLIAMENT – INTERPRETATION – RULES OF CONSTRUCTION – WORDS TO BE GIVEN LITERAL AND GRAMMATICAL MEANING – WHERE MEANING AMBIGUOUS OR UNCERTAIN – PRESUMPTIONS AS TO LEGISLATIVE INTENTION – applicant contends under s 56 of *Personal Injuries Proceedings Act* 2002 (Qld) ("PIPA") there is no power to award costs where claim under $30,000 and plaintiff unsuccessful – applicant contends purpose of PIPA is to create a 'code' for all personal injury litigation in Queensland

and Magistrate had no power to award costs – whether legislature intended s 56 to provide a complete 'code' for the awarding of costs – whether courts' powers to award costs in circumstances not explicitly dealt with by PIPA are removed

STATUTES – ACTS OF PARLIAMENT – INTERPRETATION – CONSIDERATION OF EXTRINSIC MATTERS – WHERE MEANING AMBIGUOUS OR UNCERTAIN – whether words of s 56 are 'ambiguous or obscure' – whether extrinsic material required to assist in section's construction

Acts Interpretation Act 1954 (Qld), s 14A, s 14B
District Court of Queensland Act 1967 (Qld), s 118(3)
Personal Injuries Proceedings Act 2002 (Qld), s 56
WorkCover Queensland Act 1996 (Qld), s 325(1)

Charter Reinsurance Co Ltd v Fagan [1997] AC 313, cited
CIC Insurance Ltd v Bankstown Football Club Ltd (1997) 187 CLR 384, considered
Jones v Wrotham Park Settled Estates [1980] AC 74, considered
Kingston v Keprose Pty Ltd (No 3) (1987) 11 NSWLR 404, cited
Project Blue Sky Inc v Australian Broadcasting Authority (1998) 194 CLR 355, considered
Vacher & Sons Ltd v London Society of Compositors [1913] AC 107, cited
WACB v Minister for Immigration and Multicultural and Indigenous Affairs (2004) 210 ALR 190, considered

COUNSEL: M Horvath for the appellant
R D Green for the respondent

SOLICITORS: Keller Nall & Brown for the appellant
Barry & Nilsson for the respondent

[1] **JERRARD JA:** In this application I have read the reasons for judgment of Muir J and the orders proposed by His Honour, and I respectfully agree with those reasons and orders.

[2] **KEANE JA:** I have had the advantage of reading the reasons for judgment of Muir J. I agree with his Honour's reasons and the orders which his Honour proposes.

[3] **MUIR J:** The applicant commenced proceedings in the Magistrates Court against the respondent Brisbane City Council for damages sustained by him when he tripped over a water valve located on a footpath at Albion and fell and hit his head on a water hydrant. The learned Magistrate, who heard the trial of the proceeding, assessed damages in the sum of $3,000 but found against the applicant on liability and dismissed the claim. She ordered that the applicant pay the respondent's costs fixed at $8,706.18 plus $1,200 in respect of two interlocutory applications. An application for leave to appeal from the Magistrate's decision to the District Court

was refused, with costs, on 25 July 2005. The applicant seeks leave to appeal from that decision under s 118(3) of the *District Court of Queensland Act* 1967 (Qld), but only to the extent of challenging the costs orders made at first instance and on appeal.

The applicant's contentions

[4] The argument sought to be ventilated on appeal, should leave be granted, is that on the correct construction of s 56 of the *Personal Injuries Proceedings Act* 2002 (Qld) ("the Act"), there is no power to award costs where the claim is under $30,000 and the plaintiff is unsuccessful. It is contended that the application merits the grant of leave because the prospects of success on appeal are "strong" and that a decision on the construction of s 56 of the Act will provide general and useful guidance to insurers, legal practitioners and those members of the public affected by the Act's operation.

[5] The applicant's case is based on the premise that s 56 contains a complete code for the making of costs orders in proceedings "based on a claim" where there is not an award of damages exceeding $50,000. It is submitted that as the applicant did not succeed in obtaining a damages award, s 56 made no provision for an award of costs and the Magistrate had no power to order costs.

The respondent's contentions

[6] The respondent submits that leave to appeal should be refused as the issues to be raised on the appeal are "merely involved with the application of the plain and ordinary meaning of the relevant legislation to certain facts".

[7] The construction of s 56 of the Act which the respondent advances, however, differs from that argued by the applicant. The respondent argues that on the proper construction of s 56 "a court awards $50,000 or less in damages in a proceeding" if it finds against the plaintiff on liability, dismisses the proceeding and makes no order for the payment of damages.

Section 56 of the Act

[8] Section 56 of Act relevantly provides:

> "**Costs in cases involving damages awards of not more than $50 000**
>
> **(1)** This section applies if a court awards $50 000 or less in damages in a proceeding based on a claim, but it does not apply to the costs of an appellate proceeding.
>
> **(2)** If the court awards $30 000 or less in damages, the court must apply the following principles—
>
> (a) if the amount awarded is less than the claimant's mandatory final offer but more than the respondent's, or the respondents', mandatory final offer, no costs are to be awarded;
>
> (b) if the amount awarded is equal to, or more than, the claimant's mandatory final offer, costs are to be awarded to the claimant on an indemnity basis as from the day on which the proceeding started, but no award is to be made for costs up to that date;

> (c) if the amount awarded is equal to, or less than, the respondent's, or the respondents', mandatory final offer, costs are to be awarded to the respondent or respondents on a standard basis as from the day on which the proceeding started, but no award is to be made for costs up to that date.
>
> **(3)** If the court awards more than $30 000 but not more than $50 000 in damages, the court must apply the following principles…"

The construction of s 56 of the Act

[9] Section 56, given a literal construction, applies only if a court awards damages in a proceeding based on a claim. Subsections (2) and (3) are also premised on the existence of "awards … in damages" within certain specified limits and subsection (6) assumes the existence of "an award of damages".

[10] Subsections (2) and (3) of s 56 prescribe the costs orders to be made, in stated circumstances, by reference to the relationship which the damages award bears on mandatory final offers. Subsections (4) and (5) impose limitations on the power to order costs in specified circumstances. Subsection (6) gives a court power to relieve a party from the consequences of the application of subsections (2) and (3) in circumstances which the subsection stipulates.

[11] It may be thought curious that subsections (4) and (5), which are designed to prevent a party recovering costs incurred unnecessarily or wastefully in relation to a trial or preparation for it, should be made applicable only to cases in which a plaintiff obtains an award of damages.

[12] It is perhaps surprising also that subsections (2) and (3) are confined in their application to cases in which a plaintiff succeeds in obtaining an award of damages. But do considerations such as these justify the construction advanced by the appellant?

[13] The following observations in the reasons of the majority in *Project Blue Sky Inc v Australian Broadcasting Authority*[1] make the point that statutory interpretation is not merely a linguistic or semantic exercise and that the context of the words used and the purpose of the statutory provisions must be borne in mind:[2]

> "The primary object of statutory construction is to construe the relevant provision so that it is consistent with the language and purpose of all the provisions of the statute. The meaning of the provision must be determined 'by reference to the language of the instrument viewed as a whole'. In *Commissioner for Railways (NSW) v Agalianos*, Dixon CJ pointed out that 'the context, the general purpose and policy of a provision and its consistency and fairness are surer guides to its meaning than the logic with which it is constructed'. Thus, the process of construction must always begin by examining the context of the provision that is being construed." (footnotes omitted)

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1 (1998) 194 CLR 355.

2 In the joint judgment of McHugh, Gummow, Kirby and Hayne JJ at 381. See also the observations of Steyn LJ in *Arbuthnott v Fagan* (unreported) 30 July 1993 CA quoted in *Charter Reinsurance Co Ltd v Fagan* [1997] AC 313 at 326.

[14] *CIC Insurance Ltd v Bankstown Football Club Ltd*[3] is another relatively recent decision which cautions against undue literalism in statutory construction. In their joint judgment, Brennan CJ, Dawson, Toohey and Gummow JJ observed:

> "Moreover, the modern approach to statutory interpretation (a) insists that the context be considered in the first instance, not merely at some later stage when ambiguity might be thought to arise, and (b) uses 'context' in its widest sense to include such things as the existing state of the law and the mischief which, by legitimate means such as those just mentioned, one may discern the statute was intended to remedy. Instances of general words in a statute being so constrained by their context are numerous. In particular, as McHugh JA pointed out in *Isherwood v Butler Pollnow Pty Ltd*, if the apparently plain words of a provision are read in the light of the mischief which the statute was designed to overcome and of the objects of the legislation, they may wear a very different appearance. Further, inconvenience or improbability of result may assist the court in preferring to the literal meaning an alternative construction which, by the steps identified above, is reasonably open and more closely conforms to the legislative intent". (footnotes omitted)

[15] McHugh JA (as his Honour then was), in *Kingston v Keprose Pty Ltd (No 3)*,[4] referred with approval to the observations of Lord Diplock in *Jones v Wrotham Park Settled Estates*[5] in which his Lordship said that if the application of the literal or grammatical meaning would lead to results which would defeat the purpose of a statute the court could read words into it. His Honour noted the three preconditions to such an exercise:

> "First, the court must know the mischief with which the Act was dealing. Secondly, the court must be satisfied that by inadvertence Parliament has overlooked an eventuality which must be dealt with if the purpose of the Act is to be achieved. Thirdly, the court must be able to state with certainty what words Parliament would have used to overcome the omission if its attention had been drawn to the defect."

[16] In *WACB v Minister for Immigration and Multicultural and Indigenous Affairs*,[6] Gleeson CJ, McHugh, Gummow and Heydon JJ, in discussing the role of the court in remedying perceived legislative deficiencies, appeared to recognise implicitly a further restriction on the court's ability to read words into statutes. They said:

> "In *Cooper Brookes (Wollongong) Pty Ltd v FCT*, Gibbs CJ said that the canons of construction should not be treated so rigidly as to prevent the implementation of a realistic solution in the case of a drafting mistake. However, his Honour went on to say that, where the language of a statutory provision is clear and unambiguous, and is consistent and harmonious with the other provisions of the enactment, it must be given its ordinary and grammatical meaning." (footnotes omitted)

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3 (1995-1997) 187 CLR 384 at 408.

4 (1987) 11 NSWLR 404 at 422, 423.

5 [1980] AC 74.

6 (2004) 210 ALR 190. See also *Vacher & Sons Ltd v London Society of Compositors* [1913] AC 107 at 121.

[17] The words of s 56(1) are clear and unambiguous. "Award" is defined, relevantly, in the *Shorter Oxford English Dictionary* as "that which is awarded or assigned as payment, penalty, etc." An award of damages in so far as courts are concerned, is an order of the court in favour of a successful plaintiff ordering the defendant to pay the sum determined by the court to be the damages for the wrong suffered by the plaintiff. The words of the subsection are quite incapable of accommodating an order dismissing a proceeding, with or without an assessment of damages to assist in the final disposition of the matter by an appellate court. In those circumstances, there are no damages and it follows that there can be no award of damages. Section 56, literally construed, is not inconsistent or in disharmony with any other provision of the Act.

[18] I consider it unlikely that the wording of s 56 was the product of some legislative mistake or inadvertence. It would be surprising if, by the words of s 56(1), Parliament actually intended the section to apply to any relevant proceeding in which no damages are awarded. There is nothing arcane or abstruse about the concept of an award of damages which might lead anyone perusing the section to conclude that it could be so construed. The focus in subsections (2) and (3) on "the amount awarded" and the necessity for an award of damages in subsections (5) and (6) are further indications that subsection (1) was not the result of a drafting error or legislative inadvertence.

[19] For better or worse, the legislative focus was on the circumstance in which a plaintiff commences proceedings and succeeds, at least to the extent of obtaining some damages. Section 56 says nothing about costs in cases where there is no award of damages or where the award is over $50,000. Presumably, the legislative intention was that costs in other cases could be left for determination in the normal way. Whilst there may be debate about whether it was desirable to confine the scope of section 56 in this way, the legislative scheme which emerges from a literal construction of the section cannot be said to be illogical, perverse or improbable.

[20] The argument that the section provides a complete code governing awards of costs is unsustainable. The fact that Parliament has chosen to prescribe the way in which costs must be disposed of in proceedings in which there are awards of damages for $50,000 or less hardly gives rise to the implication that the courts' long-standing statutorily conferred powers to award costs are otherwise removed.

[21] The language of s 56 stands in stark contrast to that of s 325(1) of the *WorkCover Queensland Act* 1996 (Qld) which provides:

> "(1) No order about costs, other than an order allowed under this section, is to be made by the court in the claimant's proceeding."

[22] It is reasonable to conclude that if Parliament had intended to introduce a like restriction into the Act, it would have used similar, express language.

[23] Counsel for the appellant contended that the Explanatory Notes to the *Personal Injuries Proceedings Bill* 2002 (Qld) supported the appellant's construction.

[24] The passage from the Explanatory Notes on which particular reliance was placed is:

> "**Fundamental legislative principles**
> The Bill raises a number of issues relating to fundamental legislative principles arising from:

- The proposed abolition of the costs indemnity rule for smaller claims with total damages of less than $30,000 and the capping of legal cost recovery for claims between $30,000 and $50,000;

…".

[25] In his Second Reading Speech the Attorney-General and Minister for Justice said:

"The purpose of this bill is to give certainty to those involved in personal injuries litigation and streamline the claims process. The bill is framed around three key strategies:

- reducing the costs of legal proceedings;
- reducing the number of frivolous claims for minor injuries; and
- capping the size of large claims.

… The provisions in this bill for pre-court procedures and limits on the recovery of legal costs will reduce the costs of managing claims. In particular, the number of smaller claims will be reduced because of:

- limits on costs recoverable;
- streamlined processing of claims; and
- minimum thresholds for claims for gratuitous care and for loss of comfort and service."

[26] The Explanatory Notes and Second Reading Speech are "extrinsic material"[7] to which regard may be had to the extent permitted by s 14B of the *Acts Interpretation Act* 1954 (Qld).

[27] Section 14A of the *Acts Interpretation Act* 1954 (Qld) directs that:

"(1) In the interpretation of a provision of an Act, the interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation."

[28] Section 4 of the Act provides:

"**Main purpose**

(1) The main purpose of this Act is to assist the ongoing affordability of insurance through appropriate and sustainable awards of damages for personal injury.

(2) The main purpose is to be achieved generally by –

(a) …
(b) …
(c) …
(d) …
(e) minimising the costs of claims; …"

[29] A regime such as that provided for in s 56 of the Act which limits the amount of costs recoverable by a successful claimant may well assist in achieving the Act's purposes. "Minimising the costs of claims" is one means of achieving the Act's purposes contemplated by s 4. Such a provision might also assist in "reducing the number of frivolous claims for minor injuries".

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7 See *Acts Interpretation Act* 1954 (Qld), s 14B(3)(e) and (f).

[30] It is difficult, however, to understand how the "ongoing affordability of insurance through appropriate and sustainable awards of damages" could be assisted by depriving a wholly successful defendant of the right to recover costs from the wholly unsuccessful plaintiff.

[31] The explanatory notes are consistent with a legislative scheme in respect of the costs able to be recovered by plaintiffs who succeed in obtaining an award of damages. So too is the Second Reading Speech. Conversely, a reduction in the number of "frivolous claims for minor injuries" is unlikely to be promoted by removing the disincentive of an order for costs against wholly unsuccessful plaintiffs.

[32] The more obvious point to be made about the extrinsic material, however, is that it cannot assist in the construction of s 56, the words of which are not "ambiguous or obscure". Giving those words their ordinary meaning does not lead "to a result that is manifestly absurd or … unreasonable".[8]

Conclusion

[33] For the above reasons, I would dismiss the application with costs. The applicant has demonstrated no error in the conclusion reached by the Magistrate at first instance or the Judge on appeal and the appeal has no reasonable prospects of success.

[34] I would refuse leave also for the reason that the appeal is against an order (in respect of a relatively small sum of money) made in the exercise of a discretion in an unsuccessful appeal. Such appeals ought, in the interests of finality in litigation, be discouraged.

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[8] See *Acts Interpretation Act* 1954 (Qld), s 14B(1)(b).