SUPREME COURT OF QUEENSLAND

CITATION:	*A-G (Qld) v Francis* [2006] QCA 425
PARTIES:	**ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (applicant/respondent) **v** **DARREN ANTHONY FRANCIS** (respondent/appellant)
FILE NO/S:	Appeal No 452 of 2006 SC No 3069 of 2004
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal - Further Order
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	27 October 2006
DELIVERED AT:	Brisbane
HEARING DATE:	11 August 2006; 30 August 2006; 26 September 2006
JUDGES:	Keane and Holmes JJA and Dutney J Judgment of the Court
FURTHER ORDER:	**No order as to the costs of the appeal**
CATCHWORDS:	STATUTES - ACTS OF PARLIAMENT - INTERPRETATION - *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) - appellant convicted of violent sexual offences against two women - order made with respect to appellant pursuant to the Act - appellant successful on appeal to this Court - whether costs should follow the event in these proceedings under the Act *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) *Oshlack v Richmond River Council* [1998] HCA 11; (1998) 193 CLR 72, cited
COUNSEL:	N M Cooke QC, with M J Rinaudo, for the appellant M D Hinson SC, with M Maloney, for the respondent
SOLICITORS:	Aboriginal & Torres Strait Islander Legal Service for the appellant Crown Law for the respondent

[1] **THE COURT:** On 30 August 2006 and 26 September 2006, this Court made orders in the appellant's appeal.[1] On the latter date, this Court reserved its order as to costs and granted the parties leave to make written submissions as to costs. The appellant seeks an order for the recovery of his costs of the appeal, limited to the fees incurred in respect of his representation on the appeal by Senior Counsel.

[2] It is common ground that the Court has power to make an order for the costs of a party incurred in proceedings under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) ("the Act").

[3] The appellant argues that the usual rule in civil proceedings, ie that costs follow the event, should be applied in this case. The appellant argues further that the prospect of an adverse award of costs may have a sobering effect on the readiness of the respondent to oppose the making of supervision orders, while the refusal of an order to a successful detainee may impede a detainee's ability to obtain legal representation.

[4] It must be recognised that proceedings under the Act are unusual and, perhaps, unique. In this regard, the Attorney-General was obliged by s 27 of the Act to initiate the review proceedings which, in this case, ultimately led to the making of a supervision order, as opposed to an order for the appellant's continued detention. While it is true that, as the appellant says, the only contest between the parties was whether a continuing detention order or an order for supervised release should be made, this was a contest which was not amenable to settlement by agreement between the parties: the Court was required to determine the contest on the evidence adduced by the parties by reference to criteria which reflect the public interest in the adequate protection of the community.

[5] These considerations tend seriously to weaken the claims of the rule as to costs usually applied to civil litigation between parties concerned to vindicate their private interests.[2] Another way of making this point is to postulate a case where the detainee is unsuccessful in contending for either supervised or absolute release. To treat the usual rule, that costs should follow the event, as decisive in such a case would clearly be unjust.

[6] To say this is not to say that an order for costs may never be made against the unsuccessful party in review proceedings under the Act. Clearly, there is a discretion as to costs which must be exercised having regard to the circumstances of each case. It must be exercised judicially by reference to relevant considerations; and these considerations may be gleaned from the special context in which the discretion is to be exercised.

[7] It is true that the appellant was successful on appeal in obtaining an order for supervised release. That is a substantial, but not decisive, factor in the appellant's favour. On the other hand, the Attorney-General was obliged to initiate and to pursue the review proceedings. The position adopted in the proceedings by the Attorney-General was not adopted irresponsibly and was not clearly untenable. Indeed, the Attorney-General succeeded at first instance. It is also relevant here that

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1 See *A-G (Qld) v Francis* [2006] QCA 324 and *A-G (Qld) v Francis* [2006] QCA 372 respectively.

2 Cf *Oshlack v Richmond River Council* [1998] HCA 11; (1998) 193 CLR 72 at 86 - 87 [36], 88 - 89 [40] – [41], 89 [45], 119 - 120 [132].

the appellant agitated a number of grounds of appeal, most of which were rejected by the Court.

[8] The consideration that the Court will not be disposed to treat "success" as a sufficient warrant for making an order for costs against an unsuccessful party may, to some extent, constitute a disincentive to legal representation being made available to a detainee on a speculative basis, but that consideration is, in our view, of less weight than the undesirability of accepting that "success" should be thought to generate a prima facie entitlement to an award of costs in proceedings under the Act.

[9] For these reasons, we consider that there should be no order as to the costs of the appeal.