

SUPREME COURT OF QUEENSLAND

CITATION: *Whitelaw v O'Sullivan* [2011] QCA 41

PARTIES: **WHITELAW, Stephen Allan**
(respondent/applicant)
v
O'SULLIVAN, Michael
(appellant/respondent)

FILE NO/S: CA No 59 of 2010
DC No 8449 of 2008

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal – Further Orders

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: 11 March 2011

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Margaret McMurdo P, Holmes JA and Applegarth J
Judgment of the Court

FURTHER ORDERS: **1. The time to bring this application for an indemnity certificate under *Appeal Costs Fund Act 1973 (Qld)* is extended to 25 February 2011.**
2. The respondent is granted an indemnity certificate under s 15 *Appeal Costs Fund Act 1973 (Qld)*.

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – APPEAL COSTS FUND – POWER TO GRANT INDEMNITY CERTIFICATE – GENERAL PRINCIPLES AS TO GRANT OR REFUSAL – respondent sought to apply for an indemnity certificate under s 15(1) *Appeal Costs Fund Act 1973 (Qld)* – whether indemnity certificate should be granted

Appeal Costs Fund Act 1973 (Qld), s 15(1)
Criminal Code 1899 (Qld), s 24, s 271 and s 273
Police Powers and Responsibilities Act 2000 (Qld), s 50, s 615

Brannock v Jetstar Airways P/L [2010] QCA 252, cited
Haug v Jupiters Ltd t/as Conrad Treasury Brisbane [2007] QCA 328, cited
Lauchlan v Hartley [1980] Qd R 149, cited

COUNSEL: P J Callaghan SC for the respondent/applicant
B W Farr SC for the appellant/respondent

SOLICITORS: Official Solicitor, Crime and Misconduct Commission
(Queensland) for the respondent/applicant
Gilshenan and Luton Lawyers for the appellant/respondent

- [1] **THE COURT:** On 21 December 2010, this Court granted leave to appeal in this matter, and allowed the appeal with costs, remitting the matter for rehearing to the District Court. The respondent has applied for an extension of time to apply for an indemnity certificate under s 15(1) *Appeal Costs Fund Act* 1973 (Qld).
- [2] By way of explanation for the delay in bringing this application, the respondent states that his solicitor who had conduct of the matter was on long service leave when this Court's judgment was delivered and did not return from leave until 8 February 2011. The application was filed on 25 February 2011 after the solicitor consulted with counsel.
- [3] In our view, that is a sufficient explanation to allow the application for an indemnity certificate to be brought outside the time frame stated in para 29 of Supreme Court of Queensland Practice Direction No 2 of 2010. We would extend time to bring the application under para 4 of that Practice Direction.
- [4] We turn now to the respondent's application for an indemnity certificate under s 15(1)(b) *Appeal Costs Fund Act*. That provision gives this Court a wide and unfettered discretion to grant an indemnity certificate to a respondent where an appeal succeeds on a question of law.
- [5] The appeal certainly succeeded on a question of law, namely, the construction of s 50 *Police Powers and Responsibilities Act* 2000 (Qld) ("PPRA") and its interaction with s 615 of PPRA, together with the judge's failure to provide sufficient reasons in his consideration of s 24, s 271 and s 273 *Criminal Code* 1899 (Qld).
- [6] Prior to this Court's decision, there was no decided law as to the construction of s 50 PPRA. The judge below was not referred to s 615 PPRA. It was not a case where the respondent encouraged the judge to break from established authority so that he should be deprived of the benefit of an indemnity certificate: see *Lauchlan v Hartley*;¹ *Haug v Jupiters Limited t/as Conrad Treasury Brisbane*² and *Brannock v Jetstar Airways Pty Ltd*.³ And nor was it the fault of the respondent that the judge below failed to give adequate reasons in his consideration of s 24, s 271 and s 273 *Criminal Code*. In these circumstances, it seems an appropriate case in which to grant the respondent the indemnity certificate he seeks.

ORDERS:

1. The time to bring this application for an indemnity certificate under *Appeal Costs Fund Act* 1973 (Qld) is extended to 25 February 2011.
2. The respondent is granted an indemnity certificate under s 15 *Appeal Costs Fund Act* 1973 (Qld).

¹ [1980] Qd R 149, 151-152.

² [2007] QCA 328, [5], [6].

³ [2010] QCA 252, [2], [3].