SUPREME COURT OF QUEENSLAND

CITATION:	*Crime and Misconduct Commission v Wilson & Anor* [2012] QCA 314
PARTIES:	**CRIME AND MISCONDUCT COMMISSION** (applicant/appellant) **v** **ASSISTANT COMMISSIONER PAUL WILSON** (first respondent) **STEPHEN WAYNE CHAPMAN** (second respondent)
FILE NO/S:	Appeal No 6566 of 2012 QCAT No 315 of 2011 QCAT No 339 of 2011
DIVISION:	Court of Appeal
PROCEEDING:	Application for Leave *Queensland Civil and Administrative Tribunal Act*
ORIGINATING COURT:	Queensland Civil and Administrative Tribunal at Brisbane
DELIVERED ON:	16 November 2012
DELIVERED AT:	Brisbane
HEARING DATE:	2 November 2012
JUDGES:	Muir and Gotterson JJA and Daubney J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Leave to appeal be granted.** **2. The appeal be allowed.** **3. The order of the Queensland Civil and Administrative Tribunal Appeals Tribunal of 27 June 2012 allowing the appeal against the order of the Tribunal of 24 August 2011 joining the Crime and Misconduct Commission to disciplinary review proceedings be set aside.** **4. The first and second respondents pay the applicant's costs of and incidental to the appeal.**
CATCHWORDS:	STATUTES – ACTS OF PARLIAMENT – OPERATION AND EFFECT OF ACTS – INTERACTION OF ACTS – where first respondent found two allegations of improper conduct against second respondent – where a fine of $200 was imposed with respect to each charge – where second respondent admitted guilt on one of the matters but applied to

QCAT for review of the decision on the other matter – where applicant applied for review of both sanction determinations – where QCAT ordered that applicant be joined in the second respondent's application – where the first and second respondent appealed against the joinder of applicant – where Appeal Tribunal set aside joinder order – where second respondent submitted that the identification in s 219G(3) of the *Crime and Misconduct Act* ("CMC Act") of applicant as a party to a review proceeding only when applicant made the application for review manifests an intention that applicant could only be a party to a relevant review proceeding if such proceeding was commenced on applicant's application – where second respondent argued there was an inconsistency between s 219G(3) and the intervention and joinder provisions, ss 41(2) and 42, of the *Queensland Civil and Administrative Tribunal Act* ("QCAT Act") in which the former prevailed by virtue of s 7 of the QCAT Act – where second respondent submitted ss 41(2) and 42 are incompatible with the strict time limits of s 219G – where first respondent put forward similar arguments – whether s 219G(3) of the CMC Act implicitly excludes the operation of ss 41(2) and 42 of the QCAT Act

Crime and Misconduct Act 2001 (Qld), s 33, s 219G(3), s 219H
Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 6, s 7, s 33, s 34, s 40, s 41, s 42

Electric Light and Power Supply Corporation Ltd v Electricity Commission (NSW) (1956) 94 CLR 554; [1956] HCA 22, considered
Kitching & Anor v Queensland Commissioner of Police & Ors [2010] QSC 303, considered
Rushby v Roberts [1983] 1 NSWLR 350, cited

COUNSEL: M J Copley SC for the applicant/appellant
S A McLeod for the first respondent
P E Smith for the second respondent

SOLICITORS: Crime and Misconduct Commission for the applicant/appellant
Queensland Police Service for the first respondent
Queensland Police Union Legal Group for the second respondent

[1] **MUIR JA**: **Introduction** The applicant Crime and Misconduct Commission ("the Commission") applies for leave to appeal from a decision of the Appeal Tribunal of the Queensland Civil and Administrative Tribunal ("QCAT") given on 27 June 2012 in each of proceedings APL 315/11 and APL 339/11 setting aside an order made by a QCAT member joining the Commission as a party to a QCAT review proceeding commenced by the second respondent, Senior Constable Chapman, against the first respondent, Assistant Commissioner of Police Wilson. The

decision under review was a charge that Senior Constable Chapman had been untruthful during a disciplinary interview concerning a police vehicular chase of a motorcycle which ended in the death of the motorcyclist and the injury of his pillion passenger. Senior Constable Chapman pleaded guilty to an associated charge of failing to comply with the Queensland Police Service Vehicle Pursuit Policy.

[2] The central issue for determination on this appeal is whether s 219G(3) of the *Crime and Misconduct Act* 2001 ("the CMC Act"), which identifies the parties to a proceeding for a review of a reviewable decision, implicitly excludes the operation of s 41(2) and s 42 of the *Queensland Civil and Administrative Tribunal Act* 2009 ("the QCAT Act"). Those provisions, respectively, empower the Tribunal to give leave for a person to intervene in a proceeding and to order the joinder of a person as a party to a proceeding.

Identification of relevant proceedings and issues

[3] On 2 February 2011, Assistant Commissioner Wilson found two allegations of improper conduct (untruthfulness (matter 1) and improper conduct in failing to comply with Queensland Police Service Policy regarding pursuits (matter 2)) substantiated against Senior Constable Chapman and imposed a sanction of a fine of $200 on each charge. Senior Constable Chapman applied to QCAT for a review of the decision on the first matter. He had admitted his guilt in respect of the second matter. The Commission applied for a review of both sanction determinations. QCAT ordered on 24 August 2011 that the Commission be joined as a respondent to Senior Constable Chapman's application. Senior Constable Chapman and Assistant Commissioner Wilson each appealed against the joinder orders to the QCAT Appeal Tribunal.

[4] On 20 October 2011, the Tribunal: set aside the finding of untruthfulness and its associated sanction; confirmed the improper conduct determination; and set aside the determination of Assistant Commissioner Wilson imposing the sanction of a $200 fine and substituted a sanction of a reduction of Senior Constable Chapman's salary entitlements by two pay points for two years.

[5] In his reasons delivered on 24 August 2011 regarding the Commission's application, Member Thomas observed:

> "The CMC, upon examining the cases, decided to seek a review of all matters. In the matters concerning Buckley, Webster and McLoughlin it sought review of the decision maker's failure to find that the charges were substantiated. It could not to do so in Chapman's matter (OCR 29-11) because there was already a finding of substantiation. Accordingly the proceedings it has brought in Chapman's case are confined to the inadequacy of the sanction. However Chapman has brought an application to review that finding of substantiation, and if that finding were set aside upon review, the CMC would not be able to challenge the result because it was not a party to those proceedings.
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> This is a procedural application by the CMC, seeking to be joined as a respondent in Chapman's application for review OCR029-11, and

alternatively that it be permitted to appear as an intervener. The application is opposed both by Constable Chapman and by the decision maker."

[6] The persons named above were police officers involved in the police chase incident against whom disciplinary proceedings were also instituted. The decision maker found in respect of each of them that misconduct had either not been substantiated or not established.

The relevant statutory provisions

[7] Before considering the reasons of the Appeal Tribunal and the arguments advanced by the parties, it is useful to set out the relevant statutory provisions.

[8] Section 219G and s 219H of the CMC Act relevantly provide:

"**219G Proceedings relating to reviewable decisions**

(1) The commission or a prescribed person against whom a reviewable decision has been made may apply, within the period mentioned in subsection (2) and otherwise as provided under the QCAT Act, to QCAT for a review of the reviewable decision.

(2) The application must be made—

(a) if the reviewable decision relates to a decision or finding mentioned in the *Police Service Administration Act 1990*, section 7.4(2A), 7A.4 or 7A.5—within 14 days after the day on which notice of the decision or finding was given; or

(b) otherwise—within 14 days after the day on which the reviewable decision was announced.

(3) The parties to a proceeding are—

(a) the prescribed person; and

(b) the person who made the reviewable decision; and

(c) if the application is made by the commission—the commission.

219H Conduct of proceedings relating to reviewable decisions

(1) A review of a reviewable decision is by way of rehearing on the evidence **(*original evidence*)** given in the proceeding before the original decision-maker **(*original proceeding*)**.

(2) However, QCAT may give leave to adduce fresh, additional or substituted evidence **(*new evidence*)** if satisfied—

(a) the person seeking to adduce the new evidence did not know, or could not reasonably be expected to have known, of its existence at the original proceeding; or

(b) in the special circumstances of the case, it would be unfair not to allow the person to adduce the new evidence.

(3) If QCAT gives leave under subsection (2), the review is—

(a) by way of rehearing on the original evidence; and

(b) on the new evidence adduced."

[9] Sections 7, 40, 41 and 42 of the QCAT Act provide:

"**7 Application of Act if modifying provision in enabling Act**

(1) This section applies if a provision of an enabling Act (the ***modifying provision***) provides for—

(a) the tribunal's functions in jurisdiction conferred by the enabling Act; or

(b) a matter mentioned in section 6(7).

(2) The modifying provision prevails over the provisions of this Act, to the extent of any inconsistency between them.

(3) This Act must be read, with any necessary changes, as if the modifying provision were a part of this Act.

…

(6) In this section—

enabling Act means an enabling Act that is an Act.

…

40 Parties to review jurisdiction

(1) A person is a party to a proceeding in the tribunal's review jurisdiction if the person is—

(a) the applicant; or

(b) the decision-maker for the reviewable decision the subject matter of the proceeding; or

(c) intervening in the proceeding under section 41; or

(d) joined as a party to the proceeding under section 42; or

(e) someone else an enabling Act states is a party to the proceeding.

(2) In a proceeding in the tribunal's review jurisdiction, so far as is practicable, the official description of the decision-maker must be used as the party's name instead of the decision-maker's name.

41 Intervention

(1) The Attorney-General may, for the State, intervene in a proceeding at any time.

(2) The tribunal may, at any time, give leave for a person to intervene in a proceeding, subject to the conditions the tribunal considers appropriate.

42 Joining parties

(1) The tribunal may make an order joining a person as a party to a proceeding if the tribunal considers that—

(a) the person should be bound by or have the benefit of a decision of the tribunal in the proceeding; or

(b) the person's interests may be affected by the proceeding; or

(c) for another reason, it is desirable that the person be joined as a party to the proceeding.

(2) The tribunal may make an order under subsection (1) on the application of a person or on its own initiative."

The Appeal Tribunal's decision and reasons

[10] At first instance, the Tribunal rejected submissions on behalf of the Assistant Commissioner and Senior Constable Chapman that s 219G of the CMC Act excluded the operation of s 42 of the QCAT Act. The Appeal Tribunal reached the contrary conclusion. It reasoned that s 42 of the QCAT Act was inconsistent with the requirement of s 219G of the CMC Act that an application by the Commission for review of a reviewable decision be made within 14 days after the announcement of such a decision. The purpose of s 219G(2)(b) was identified as upholding a public interest in ensuring prompt action by the Commission. In her reasons, with which the President agreed, the Appeal Tribunal member observed, in respect of the absence of a time limit on joinder in s 42 of the QCAT Act, that:

"[38] … It strikes me as wholly inadequate, as a matter of public policy, to facilitate the joinder of an independent CMC at any point other than at an early juncture. To allow joinder at any stage of disciplinary review proceedings interferes with the functioning of the employer/employee relationship that exists between the Police Service and the officer being disciplined.

> It must be remembered that despite its important and valuable public safety role, the Police Service must also be able to manage its officers like any other employer, without interference from the CMC at whatever point it decides to involve itself.
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> …
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> [41] The 14 day timeframe provided in s 219G of the *CM Act* for the CMC to consider taking part in disciplinary proceedings strikes a balance between the public interest in ensuring police integrity, and the rights of the employer and the officer."

[11] The Appeal Tribunal held, however, that s 41(2) of the QCAT Act enabled the Tribunal to permit another entity to join in review proceedings:

> "[46] …wherever the circumstances warrant such an intervention, unrestrained by the usual time constraints for joinder arising under either the *QCAT Act* or an enabling Act; and without the strict need to establish interest criteria for a joining party under s 42(1) of the *QCAT Act*."

[12] It was said that:

> "[47] …In the appropriate case, this may allow public interest advocacy by the CMC, even in circumstances in which the opportunity afforded the CMC by s 219G of the *CM Act* has already passed."

[13] In the subject case, however, it was concluded that there was no utility in permitting the Commission to intervene having regard to its intention to take a passive role in the proceeding. It was concluded that it was inappropriate to permit joinder merely to guard against the eventuality that the Tribunal's decision may miscarry or otherwise to create a right of appeal should the Commission be dissatisfied with the Tribunal's findings. The Appeal Tribunal member observed:

> "[50] To allow joinder in the manner proposed would place the CMC in a monitoring role with the Tribunal, permitting it to be passive unless the Tribunal makes a decision it deems unsatisfactory. This would place the independent role that the Tribunal holds in these matters in peril, in that applications for joinder or intervention might come to be seen as deserving a more heavy-handed approach by the Member, and such a result is surely not the intention of the legislature."

[14] For the above reasons, the Appeal Tribunal concluded that the Commission had failed to show that it came within one or other of the considerations relevant to joinder in s 42(1)(a) or s 42(1)(b) ("interests may be affected") or s 42(1)(c) ("desirable") of the QCAT Act.

Consideration

[15] Section 6(2)(a) of the QCAT Act defines an "enabling Act" as "an Act, other than this Act, that confers original, review or appeal jurisdiction on the tribunal". Section 7(2) of the QCAT Act provides that a "…modifying provision prevails over

the provisions of this Act, to the extent of any inconsistency between them". A "modifying provision" is a provision of an enabling Act which provides for QCAT's functions in jurisdiction conferred by the enabling Act or for a matter mentioned in s 6(7) of the QCAT Act.[1]

[16] Section 6(7) provides that an enabling Act may include provisions about matters "which may add to, otherwise vary, or exclude provisions" of the QCAT Act regarding those matters. The matters are: requirements about applications, referrals or appeals; the conduct of proceedings including practices and procedures and the Tribunal's powers; and the enforcement of QCAT's decisions. Where an enabling Act contains a modifying provision, the QCAT Act "must be read, with any necessary changes, as if the modifying provision were a part of" the QCAT Act.[2]

[17] By virtue of s 7(3) of the QCAT Act, it is necessary to read the QCAT Act as if s 219G was part of it. Plainly, any application under s 219G must be made within the times required by s 219G(2). The general requirement in s 33(3) of the QCAT Act that an application for the review of a reviewable decision must be made within 28 days is not applicable. Additionally, s 34 of the QCAT Act provides that where an enabling Act provides for the referral of a matter to the Tribunal, the referral must be made within the period provided for under that Act.

[18] It is also obvious that where an application within s 219G is regularly made, the parties to the proceedings are those specified in s 219G(3) and that the Commission will be a party only if it initiated the application. The obvious role of s 219G(3)(c) is to enable the Commission, if it so desires, to have the carriage of a review proceeding and to initiate a proceeding if the decision maker fails or declines to do so. But for s 219G, the Commission could not commence an application for review.

[19] Counsel for Senior Constable Chapman argued, in effect, that the identification in s 219G(3)(c) of the Commission as a party to a review proceeding only when the Commission made the application for review manifests an intention that the Commission could only be a party to a relevant review proceeding if such proceeding was commenced on the Commission's application. There was thus, according to the argument, an inconsistency between s 219G(3) and ss 41 and 42 in which the former prevailed by virtue of s 7 of the QCAT Act. Counsel for Senior Constable Chapman also argued that the application of ss 41(2) and 42 was incompatible with the strict time limits imposed by s 219G. A similar argument was advanced by counsel for the Assistant Commissioner.

[20] I am unable to conclude that there is an inconsistency between s 219G and ss 40, 41 and 42. Section 219G deals with the normal state of affairs in which the parties to a review proceeding will be the decision maker and the person against whom the decision has been made. It deals also with the circumstance in which the Commission has decided that the decision should be reviewed and, to that end, makes application for review to QCAT.

[21] Section 219G does not advert to the possibility of either intervention or joinder and there does not appear to me to be any sufficient reason to conclude that there was a legislative intention to exclude the application of the provisions of the QCAT Act dealing with those matters. Indeed, the Appeal Tribunal and the respondents accepted that the operation of s 41 of the QCAT Act was not excluded by s 219G.

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1 QCAT Act, s 7.

2 QCAT Act, s 7(3).

[22] The fact that s 219G(2) provides for only 14 days within which to apply for a review of a reviewable decision is not a particularly cogent reason for favouring the construction adopted by the Appeal Tribunal. The desirability of an expeditious determination of any review proceeding is a matter which QCAT may take into account in giving leave to intervene or in considering an application for joinder. Whether a joinder would be unjust or otherwise inappropriate is more obviously a consideration relevant to the exercise of a discretion to permit or refuse joinder rather than one which bears on the construction of the subject statutory provisions. Also, once it is accepted that the Commission may be given leave to intervene under s 41, the construction argument based on the time limitations in s 219G(2) has diminished attraction.

[23] Rules of Court normally, if not invariably, contain provisions for the joinder as parties to a proceeding of persons whose participation in the proceeding would be desirable or just. For example, r 69(1) of the *Uniform Civil Procedure Rules* (Qld) permits the joinder of a person whose participation "would be desirable, just and convenient to enable the court to adjudicate effectually and completely on all matters in dispute connected with the proceeding". The intervention of third parties in proceedings other than by application of joinder rules has been permitted in a wide range of circumstances where the intervener has shown a sufficient interest in the matters in issue in a proceeding or where intervention is desirable in the interests of justice.[3]

[24] Where a statute confers jurisdiction in respect of a particular matter on an established court, unless the statute indicates to the contrary, the rules practice and procedure of that court will apply to the exercise of such jurisdiction. The principle is explained by the Court in *Electric Light and Power Supply Corporation Ltd v Electricity Commission (NSW)*:[4]

> "When such a course is adopted it is taken to mean, unless and except in so far as the contrary intention appears, that it is to the court as such that the matter is referred exercising its known authority according to the rules of procedure by which it is governed and subject to the incidents by which it is affected. There are 'well-known passages in *National Telephone Co. Ltd. v. Postmaster-General*, which it may be as well to quote. Viscount *Haldane* L.C. said: 'When a question is stated to be referred to an established court without more, it, in my opinion, imports that the ordinary incidents of the procedure of that court are to attach, and also that any general right of appeal from its decisions likewise attaches'. Lord *Parker of Waddington* said: 'Where by statute matters are referred to the determination of a court of record with no further provision, the necessary implication is, I think, that the court will determine the matters, as a court. Its jurisdiction is enlarged, but all the incidents of such jurisdiction, including the right of appeal from its decision, remain the same'. Lord *Shaw of Dunfermline* said: 'In the general case, when a court of record … becomes possessed, by force of agreement and statute, of a reference to it of differences between parties, the whole of the statutory consequences of procedure before such a court ensue'." (citations omitted)

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3 See *Rushby v Roberts* [1983] 1 NSWLR 350 at 353–354.

4 (1956) 94 CLR 554 at 559.

[25] The Court later discussed the methodology of determining whether the statute conferring jurisdiction manifested an intention that the normal rule not apply:[5]

> "*Sugerman* J. in the Land and Valuation Court and *Owen* J. and *Roper* C.J. in Eq. in the Supreme Court considered that the provisions which the *Purchase Act* makes, the nature of the scheme it embodies and certain indications to be found in its text evinced a contrary intention and displaced the operation of the presumptive rule. The question for decision is whether the considerations which may be marshalled in support of this conclusion form any satisfactory ground for excluding the application of the principle, or perhaps it is better to say for positively implying an exclusion of the right to require the statement of a case.
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> It may be remarked that the rule or principle invoked is but an expression of the natural understanding of a provision entrusting the decision of a specific matter or matters to an existing court. It is no artificial presumption. When the legislature finds that a specific question of a judicial nature arises but that there is at hand an established court to the determination of which the question may be appropriately submitted, it may be supposed that if the legislature does not mean to take the court as it finds it with all its incidents including the liability to appeal, it will say so. In the absence of express words to the contrary or of reasonably plain intendment the inference may safely be made that it takes it as it finds it with all its incidents and the inference will accord with reality. The indications of a contrary intention which the learned judges forming the majority in the Supreme Court and *Sugerman* J. found in the *Purchase Act* must of course be considered in combination and weighed together as accumulated evidence. But before this can be done each must be stated and its validity discussed and that of course involves some degree of separate treatment." (citations omitted)

[26] Section 41(1) of the QCAT Act is, perhaps, a recognition of the standing of the Attorney-General in relation to questions concerning the Crown, charitable trusts, public duties, wrongs and the public interest. Section 41(2) appears to contemplate the role of bodies such as the Commission which act in the public interest but which, in the absence of such a rule, may lack the standing of the Attorney-General.

[27] Where an entity is given leave to intervene in, or is joined as a party to, a review proceeding its status as a party to the review proceeding is conferred by s 40(1)(c) or (d).

[28] Section 219G has a facilitative rather than exclusionary role. As counsel for the appellant submitted, without such a provision, the Commissioner could be involved in relevant review proceedings only by application under ss 41 or 42.

[29] The above considerations suggest that if the legislature had intended s 219G to displace the provisions of the QCAT Act relating to intervention and joinder that intention would have been clearly expressed and it was not.

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5 *Electric Light and Power Supply Corporation Ltd v Electricity Commission (NSW)* (1956) 94 CLR 554 at 560.

[30] In discussing discretionary considerations relevant to joinder, the Appeal Tribunal had regard to a perception that police officers might "perpetually be exposed to the stress and uncertainty in relation to their employment status" if the Commission were allowed to "interject itself in disciplinary proceedings at any juncture". Another concern of the Appeal Tribunal was the undesirability, in its view, of the Commission being joined as a party where it intended to take a passive role in the proceeding unless it deemed the Tribunal's decision unsatisfactory.

[31] The Appeal Tribunal was of the view that to permit such conduct would imperil the Tribunal's independence as "applications for joinder or intervention might come to be seen as deserving a more heavy-handed approach by the Member…". I am unable to share the Appeal Tribunal's concern. There does not appear to me to be a substantial difference between the possibility of an appeal by the Commission should it not be satisfied with the Tribunal's decision and the position which applies in numerous proceedings in civil courts. In such proceedings, the Tribunal will be conscious of the possibility, and even the likelihood, of an appeal, particularly if the issues are strongly contested and the litigants have substantial means. We are fortunate to enjoy a judicial system in which the legal profession and the public, rightly, have an expectation that judicial tribunals will make their determinations on the merits without fear or favour, uninfluenced and unaffected by bias, prejudice and other extraneous considerations.

[32] The Commission's role identified in the above passage, and discussed at some length in *Kitching & Anor v Queensland Commissioner of Police & Ors*,[6] amply provides a sufficient interest for the purposes of s 42 of the QCAT Act.

[33] I do not accept the Appeal Tribunal's view that the Commission's professed intention not to actively participate in the proceedings, which it sought to join in order to obtain or preserve a right of appeal, produced the result that it could not have an interest which "may be affected by the proceeding". It was said that:

> "[33] Whilst the CMC may have had a concern about the appropriateness of the initial penalty imposed in this matter, in my view, that, together with the statutory functions of the CMC, does not, *ipso facto*, translate to become an 'interest' in these proceedings sufficient to justify its joinder as a party under the *QCAT Act*.
>
> [34] That interest is a broad public interest, and not one specific to the CMC. In order to draw that nexus the learned Member who allowed the joinder observed that the CMC has,
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> > '... the important function of independent monitoring and review in relation to police misconduct.'"

[34] Counsel for the applicant took issue with the Appeal Tribunal's finding that the applicant had not shown that its interests "may be affected by the proceeding". I accept the validity of this criticism. As the member noted in his reasons at first instance:

> "[8] The Crime and Misconduct Commission has the important function of independent monitoring and review in relation to

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6 [2010] QSC 303.

> police misconduct. This is made clear by the *Crime and Misconduct Act* 2001 ('the CMC Act') sections 35(1)(c), 35(1)(g), 35(1)(h) and section 219A, subparagraphs (a)(b) and (c).
>
> [9] The police disciplinary system is largely administered within the police force itself, and the CMC is the independent watchdog to prevent any perception of favouritism or laxness within the police department in the prosecution of errant police. Its functions and purpose are described in *Kitching v Queensland Commissioner of Police* [2010] QSC 303, paras 40-47, and *Crime and Misconduct Commission v Eaton* [2011] QCAT 161."

[35] The roles vested in the Commission by s 33 of the CMC Act, of raising "standards of integrity and conduct in units of public administration" and ensuring complaints about misconduct are dealt with appropriately, distinguish the Commission's interest in disciplinary proceedings from those of members of the public. The Commission's interest in such matters is hardly a broad public interest. On the contrary, it is a clear interest specific to it derived from its statutory role. It is relevant also that the Commission's joinder application had the purpose of attempting to ensure the imposition of what, in the Commission's view, was an appropriate sanction for the subject offending conduct. In such circumstances, it would not appear to be a particularly productive use of public resources to compel the Commission to make application under s 219G and actively participate in the QCAT Proceedings relating to matters other than penalty.

[36] Counsel for the Assistant Commissioner argued that although the Commission would have been a person whose "interests may be affected by the proceeding", if the Commission had sought joinder with the intention of actively participating in the proceedings at first instance, the Commission's stated intention to take no active role meant that the Commission's interests could not be so affected. This contention must be rejected. Whether the Commission was to be an active or passive participant in the proceedings before the Tribunal until its appeal rights were engaged concerned the manner in which the Commission intended to protect or advance its interests, not the existence of those interests. The Commission's interests remained the same irrespective of the role it intended to play in the proceedings.

[37] This is a clear case for the granting of leave to appeal. The parties acknowledge that the appeal gives rise to an issue of statutory construction which has a practical bearing on the conduct of disciplinary proceedings.

[38] For the above reasons, the applicant has demonstrated that the Appeal Tribunal erred in setting aside the Tribunal's orders made on 24 August 2011. It has not been shown why costs should not follow the event. It was submitted by counsel for Senior Constable Chapman that he had been caught in a "turf war" and should not be ordered to pay costs. In order to protect himself from a costs order, he could have abided the order of the Court and not taken an active role in the appeal. He took the latter course. I would order that:

1. Leave to appeal be granted.

2. The appeal be allowed.

3. The order of the Queensland Civil and Administrative Tribunal Appeals Tribunal of 27 June 2012 allowing the appeal against the order of the Tribunal of 24 August 2011 joining the Crime and Misconduct Commission to disciplinary review proceedings be set aside.

4. The first and second respondents pay the applicant's costs of and incidental to the appeal.

[39] **GOTTERSON JA**: I agree with the orders proposed by Muir JA and with the reasons given by his Honour.

[40] **DAUBNEY J:** I also agree with Muir JA.