

SUPREME COURT OF QUEENSLAND

CITATION: *Clampett v Hales & Anor* [2013] QCA 31

PARTIES: **LEONARD WILLIAM CLAMPETT**
(applicant)
v
**INSPECTOR ALLAN HALES OF THE QUEENSLAND
POLICE SERVICE**
(first respondent)
**MICHAEL CALTABIANO DIRECTOR-GENERAL
QLD TRANSPORT**
(second respondent)

FILE NO/S: Appeal No 6354 of 2012
SC No 3658 of 2012

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal – Further Order

ORIGINATING
COURT: Supreme Court at Brisbane

DELIVERED ON: 1 March 2013

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Margaret McMurdo P and Fraser JA and Boddice J
Judgment of the Court

ORDER: **Applicant pay the first respondent’s costs of and
incidental to the application for leave to appeal, to be
assessed on a standard basis.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – PRACTICE
AND PROCEDURE – QUEENSLAND – POWERS OF
COURT – COSTS – where the applicant was refused leave to
appeal – where the first respondent seeks costs on an
indemnity basis – where the first respondent submits the
application for leave to appeal was without merit and doomed
to fail – where the court was not satisfied the applicant
brought the application for an improper purpose – whether
costs should be awarded and on what basis

Judicial Review Act 1991 (Qld)

Colgate-Palmolive Company v Cussons Pty Ltd (1993)
46 FCR 225; [1993] FCA 536, applied

*Fountain Selected Meats (Sales) Pty Ltd v International
Produce Merchants Pty Ltd* (1988) 81 ALR 397; [1988]
FCA 202, applied

Johnston & Anor v Herrod & Ors [\[2012\] QCA 361](#), applied

COUNSEL: No appearance by the applicant
 No appearance by the first respondent, the first respondent's submissions were heard on the papers
 No appearance by the second respondent

SOLICITORS: The applicant represents himself
 Crown Law for the first respondent
 Queensland Police Service Solicitors for the second respondent

- [1] **THE COURT:** The first respondent makes application for his costs of responding to the applicant's application for leave to appeal filed on 18 July 2012, which was refused by order dated 1 February 2013. The first respondent submits those costs ought to be assessed on an indemnity basis as the application for leave to appeal was without merit, and doomed to fail.
- [2] The applicant's application related to a decision in proceedings which were civil in nature. As such, there is no reason why the first respondent should be denied an order for costs. However, an order for costs to be awarded on an indemnity basis is generally only made where the conduct of those proceedings by the applicant is properly to be considered as conduct sufficiently reprehensible to warrant the making of an indemnity costs order.¹
- [3] Whilst the applicant's application for leave was doomed to fail as his application did not enliven the jurisdiction of the *Judicial Review Act* 1991, the Court is not satisfied the applicant brought the application for leave to appeal for an improper purpose, or that his conduct of those proceedings amounted to conduct sufficient to warrant an indemnity costs order. The Court declines, in the exercise of its discretion, to order that costs be assessed on an indemnity basis.
- [4] The Court orders that the applicant pay the first respondent's costs of and incidental to the application for leave to appeal, to be assessed on a standard basis.

¹ *Colgate-Palmolive Company & Anor v Cussons Pty Ltd* [1993] FCA 536; *Fountain Selected Meats (Sales) Pty Ltd v International Produce Merchants Pty Ltd* [1988] FCA 202; *Johnston & Anor v Herrod & Ors* [2012] QCA 361.