SUPREME COURT OF QUEENSLAND

CITATION:	*Coffey v State of Queensland & Ors* [2013] QCA 37
PARTIES:	**JOHN LAWRENCE COFFEY** (appellant) **v** **STATE OF QUEENSLAND** (first respondent) **RON MIENTJES (POLICE OFFICER)** (second respondent) **DAVID McKENZIE (POLICE OFFICER)** (third respondent)
FILE NO/S:	Appeal No 6421 of 2012 SC No 493 of 2007
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal – Further Orders
ORIGINATING COURT:	Supreme Court at Cairns
DELIVERED ON:	8 March 2013
DELIVERED AT:	Brisbane
HEARING DATE:	Heard on the papers
JUDGES:	Margaret McMurdo P and Holmes and White JJA Judgment of the Court
ORDERS:	**1. The first respondent is to pay two thirds of the appellant's costs of and incidental to the proceedings at first instance, to be assessed on the Supreme Court scale on the standard basis if the appellant was legally represented and otherwise by reference to the Supreme Court's costs of filing and other court fees.** **2. The appellant is to pay the respondents' costs thrown away in consequence of the order of 9 June 2010 vacating the trial date, to be assessed on the standard basis.** **3. The appellant is to pay the respondents' costs of and incidental to the application filed 1 February 2012, including the respondents' costs thrown away in consequence of the adjournment on 3 February 2012 of the application, to be assessed on the standard basis.**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – POWERS OF THE COURT – COSTS – where the appellant's appeal was allowed and the parties were directed to file written

submissions as to the costs of the proceedings at first instance – where the costs orders at first instance were made on the basis that the appellant had received less than the amount of a settlement offer – where that offer was now exceeded by the judgment sum as varied on appeal – where the appellant was successful in relation to only some of the issues argued at trial and subsequently on appeal – where the costs orders made at first instance included orders relating to costs thrown away and the costs of an interlocutory application – whether and how the costs orders made at first instance should be varied

COUNSEL: No appearance by the appellant, the appellant's submissions were heard on the papers
No appearance by the respondents, the respondents' submissions were heard on the papers

SOLICITORS: No appearance by the appellant, the appellant's submissions were heard on the papers
Crown Law for the respondents

[1] **THE COURT:** In this proceeding, the appellant's appeal was allowed and orders made increasing the judgment sum against the first respondent by $12,000, giving judgment in the sum of $600 against the second respondent and requiring the respondents to pay the appellant's outlays on the appeal. However, no order was made when the judgment was given as to the costs of the proceedings at first instance, the parties instead being directed to file submissions in that regard. They have now done so.

[2] At first instance, the first respondent was ordered to pay half of the appellant's costs up to and including 28 May 2010 "on the standard basis if the plaintiff was legally represented and otherwise by reference to the Supreme Court's costs of filing and other court fees". The appellant was to pay the respondents' costs after 28 May 2010, to be assessed on the standard basis. That was because the damages awarded at first instance fell below an offer made on that date to settle for $35,000. That is no longer the case, and the costs orders made below require variation accordingly.

[3] The respondents now propose an order that the first respondent (which is vicariously liable for the second respondent) pay two thirds of the appellant's costs of the proceedings at first instance by reference to the Supreme Court's costs of filing and other court fees. The proposal that the payment should be made on a two thirds basis is a sound one, given that the appellant's success on the appeal was limited to two out of the five areas in which he advanced arguments, reflecting a similar level of success in relation to the issues at trial.

[4] The learned trial judge's orders intimated that the appellant might, at some stage in the proceedings at first instance, have had legal representation, although it is not clear that he did. His Honour's reference to the possibility should be maintained; it is appropriate if the appellant was legally represented at any point, and can do no harm if he was not. This Court's judgment on the appeal expressed the view that

two costs orders, relating to costs thrown away and the costs of an application, should stand. There is no reason to depart from that view.

[5] The orders in respect of the costs below will be as follows:

1. The first respondent is to pay two thirds of the appellant's costs of and incidental to the proceedings at first instance, to be assessed on the Supreme Court scale on the standard basis if the appellant was legally represented and otherwise by reference to the Supreme Court's costs of filing and other court fees.

2. The appellant is to pay the respondents' costs thrown away in consequence of the order of 9 June 2010 vacating the trial date, to be assessed on the standard basis.

3. The appellant is to pay the respondents' costs of and incidental to the application filed 1 February 2012, including the respondents' costs thrown away in consequence of the adjournment on 3 February 2012 of the application, to be assessed on the standard basis.