

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney General for the State of Queensland v Barnes & Anor*
[2014] QCA 211

PARTIES: **ATTORNEY GENERAL FOR THE STATE OF QUEENSLAND**
(appellant/applicant)
v
MICHAEL BARNES
(first respondent)
ALAN NOEL THOMAS LEAHY
(second respondent)

FILE NO/S: Appeal No 10046 of 2013
Appeal No 10047 of 2013
SC No 135 of 2013

DIVISION: Court of Appeal

PROCEEDING: Application for Extension of Time/General Civil Appeal –
Further Order

ORIGINATING COURT: Supreme Court at Cairns

DELIVERED ON: 26 August 2014

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Fraser and Gotterson JJA and Atkinson J
Judgment of the Court

ORDER: **The second respondent be granted an indemnity certificate pursuant to s 15 of the *Appeal Costs Fund Act 1973*.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL PRACTICE AND PROCEDURE – APPEAL COSTS FUND – GENERAL PRINCIPLES AS TO GRANT OR REFUSAL – where the second respondent applied for an indemnity certificate pursuant to s 15 of the *Appeal Costs Fund Act 1973* – whether an indemnity certificate should be granted
Appeal Costs Fund Act 1973 (Qld), s 15

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

SOLICITORS: Crown Law for the appellant/applicant
Crown Law for the first respondent
Lilley Grose & Long for the second respondent

- [1] **THE COURT:** On 24 June 2014 this court refused an application by the Attorney-General for an extension of time within which to lodge an appeal. The appellant's appeal against costs was allowed only to the extent of ordering the State of Queensland to pay 70 per cent of the second respondent's costs of the judicial review application on the standard basis.
- [2] The State of Queensland was ordered to pay the second respondent's costs of the application for an extension of time to the Court of Appeal on the standard basis. The second respondent was ordered to pay the appellant's costs of the appeal against the costs order on the standard basis with liberty being given to the second respondent to make an application for an indemnity certificate under s 15 of the *Appeals Costs Fund Act 1973*. That application has now been made by the second respondent.
- [3] This court found that the learned primary judge had erred in his application of the *Judicial Review Act 1991 (Qld)* with regard to the costs order which his Honour made. His Honour had determined costs on the incorrect basis so that the discretion miscarried.
- [4] The basis on which the appeal as to costs was allowed was not relied upon by the appellant at first instance, was not a ground relied upon by the appellant when seeking leave to appeal, was not part of any argument in the written outline of argument on appeal and was raised for the first time during oral argument in circumstances where the second respondent was unaware that the argument was to be pursued.
- [5] As the proper interpretation of the costs provisions of the *Judicial Review Act* is a matter of law, the second respondent's application for an indemnity certificate comes within s 15 of the *Appeal Costs Fund Act*. This is therefore a proper case for the exercise of the discretion by this court to grant to the second respondent to the appeal an indemnity certificate in respect of the costs of the appeal.