

# SUPREME COURT OF QUEENSLAND

CITATION: *Campaigntrack Victoria Pty Ltd v The Chief Executive, Department of Justice and Attorney-General & Ors* [2016] QCA 96

PARTIES: **CAMPAIGNTRACK VICTORIA PTY LTD**  
ACN 143 538 112  
(applicant/appellant)  
v  
**THE CHIEF EXECUTIVE, DEPARTMENT OF JUSTICE AND ATTORNEY-GENERAL**  
(first respondent)  
**GALACOAST PTY LTD (IN LIQUIDATION)**  
ACN 053 364 435  
(second respondent)  
**GARY WILLIAM GANNON**  
(third respondent)

FILE NOS: Appeal No 5714 of 2015  
QCAT Appeal No 362 of 2014

DIVISION: Court of Appeal

PROCEEDING: Application for Leave *Queensland Civil and Administrative Tribunal Act* – Further Order

ORIGINATING COURT: Queensland Civil and Administrative Tribunal – [2015] QCATA 61

DELIVERED ON: 15 April 2016

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Margaret McMurdo P and Applegarth and Henry JJ  
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **The first respondent pay the applicant/appellant’s costs of and incidental to the application for leave to appeal dated 5 June 2015 and the appeal.**

CATCHWORDS: PROCEDURE – COSTS – GENERAL RULE: COSTS FOLLOW THE EVENT – where party unsuccessful in QCAT Appeal Tribunal proceeding – where it succeeded on appeal, by leave, to the Court of Appeal – whether it should be awarded, in addition to its costs in the Court of Appeal, its costs of the QCAT Appeal Tribunal proceeding

*Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 48(1), s 61, s 100, s 102(1), s 102(3), s 153(2)(d)

*Campaigntrack Victoria Pty Ltd v The Chief Executive, Department of Justice and Attorney-General & Ors* [2016] QCA 37, cited

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

SOLICITORS: No appearance for the applicant/appellant  
No appearance for the respondent

[1] **MARGARET McMURDO P:** I agree with Applegarth J's reasons for ordering that the first respondent pay the applicant/appellant's costs of and incidental to the application for leave to appeal filed 5 June 2015 and the appeal.

[2] **APPLEGARTH J:** On 26 February 2016, this Court delivered judgment in this matter, granted leave to appeal, allowed the appeal and made various orders.<sup>1</sup> It directed that if no submissions on costs were made within 14 days of the delivery of the Court's judgment, then it would be further ordered:

“The first respondent pay the applicant/appellant's costs of and incidental to the application for leave to appeal dated 5 June 2015 and the appeal.”

The appellant (“Campaigntrack”) and the first respondent (“the Chief Executive”) have made submissions.

[3] The Chief Executive submits that the foreshadowed order is the appropriate order, given the Court's decision. Campaigntrack submits that, in addition to that order, the Chief Executive should be ordered to pay the costs of the “QCAT Appeal Tribunal proceedings”.

[4] The Chief Executive opposes such an additional order, and notes that the proceedings before the Tribunal (both at first instance and on appeal) were conducted on the basis of the costs being ones to be borne in any event by each party. Neither the first instance decision on 6 May 2015 nor the Appeal Tribunal's decision of 23 July 2014 made an order as to costs. This course is submitted by the Chief Executive to be consistent with s 100 of the *Queensland Civil Administrative Tribunal Act 2009* (Qld) (“*QCAT Act*”). That section provides that, other than as provided under that Act or an enabling Act, each party to a proceeding must bear the party's own costs for the proceeding.

[5] Section 102(1) of the *QCAT Act* confers a discretion on the Tribunal to make an order requiring a party to a proceeding to pay all or a stated part of the costs of another party to the proceeding “if the tribunal considers the interests of justice require it to make the order”. Section 102(3) provides that in deciding whether to award costs under subsection 102(1) the Tribunal may have regard to the following:

“(a) whether a party to a proceeding is acting in a way that unnecessarily disadvantages another party to the proceeding, including as mentioned in section 48(1)(a) to (g);

<sup>1</sup> *Campaigntrack Victoria Pty Ltd v The Chief Executive, Department of Justice and Attorney-General & Ors* [2016] QCA 37.

- (b) the nature and complexity of the dispute the subject of the proceeding;
- (c) the relative strengths of the claims made by each of the parties to the proceeding;
- (d) for a proceeding for the review of a reviewable decision –
  - (i) whether the applicant was afforded natural justice by the decision-maker for the decision; and
  - (ii) whether the applicant genuinely attempted to enable and help the decision-maker to make the decision on the merits;
- (e) the financial circumstances of the parties to the proceeding;
- (f) anything else the tribunal considers relevant.”

- [6] In opposing any additional order for costs, the Chief Executive observes that the problem with which the appeals were concerned arose, in part, from the difficulty associated with the primary member’s finding that the claim had been made within time, but concurrently extending the time within which to make such a claim. The Chief Executive submits that the Chief Executive should not be responsible for those costs. Further, the matter which necessitated the further appeal was an important question of law.
- [7] Campaigntrack seeks to engage some of the matters stated in s 102(3) of the *QCAT Act*.
- [8] First, it submits that the Chief Executive acted in a way that unnecessarily disadvantaged another party to the proceeding. It relies upon the Chief Executive’s failure to act on the finding of the member at first instance that the claim against the fund was made within time and to process the claim in accordance with the relevant provisions. According to Campaigntrack, the Chief Executive did not at any stage challenge the finding of the member at first instance, and simply chose to ignore the finding. However, the Chief Executive was entitled to appeal on questions of law without challenging the findings of fact made by the Tribunal member. The Chief Executive’s conduct in appealing the orders made at first instance did not “unnecessarily” disadvantage Campaigntrack. It disadvantaged Campaigntrack to the extent that Campaigntrack became a respondent to that appeal. It did not involve the kind of conduct mentioned in s 48(1)(a) to (g) of the *QCAT Act*.
- [9] The Appeal Tribunal expected the Chief Executive to “fully consider” the Tribunal’s original findings. The Chief Executive did not accept the claim, notwithstanding the Appeal Tribunal’s final observations. However, that does not bear upon the costs of the Appeal Tribunal proceeding, in which the Chief Executive succeeded on points of law. Instead, it provides an additional reason as to why Campaigntrack should have its costs of the appeal to this Court.
- [10] Next, Campaigntrack relies upon “the nature and complexity of the dispute the subject of the proceeding”, observing that the matter involved complex questions of law which were important and had implications for the operation of s 61 of the *QCAT Act* in various contexts. Account should be taken of this fact. Account also should be taken of the fact that the same or similar questions of law arose before the Appeal Tribunal and the Chief Executive’s outline of submissions before the Appeal Tribunal (as distinct from the Chief Executive’s notice of appeal) did not seek the Chief Executive’s

costs of the Appeal Tribunal proceeding in the event of success. No order for costs of the Appeal Tribunal proceeding was made in favour of the Chief Executive. Campaigntrack's original failure on points of law before the Appeal Tribunal was not visited with an adverse costs order against it, and its eventual success on those same points is not a sufficient reason to visit its costs of the Appeal Tribunal proceeding upon the Chief Executive.

- [11] Next, in reliance on s 102(3)(c), Campaigntrack submits that the Chief Executive's arguments about the absence of the power to extend time under s 61 lacked merit, and were based on a misinterpretation of case law, whereas its submissions were determined to be correct. Campaigntrack had a stronger argument in the appeal to this Court than that advanced by the Chief Executive. However, the Chief Executive's arguments were not without merit, and the relative strength of the arguments made before the Appeal Tribunal is not a sufficient reason to displace the usual rule as to costs contained in s 100 of the *QCAT Act*.
- [12] Finally, Campaigntrack submits that it is relevant that since September 2012 it has consistently argued that its claim against the fund was made within time, and that the actions of the Chief Executive since that time have effectively left it without remedy, and have caused it to incur costs. However, any party which pursues a remedy, or which opposes a claim, or in this case opposes an appeal to the Appeal Tribunal, is required to incur costs. This is not a sufficient reason to displace the usual position under s 100 that each party to a proceeding before the Tribunal must bear the party's own costs for the proceeding.
- [13] I am not persuaded that, taking the matters relied upon by Campaigntrack as a whole, the interests of justice require the Chief Executive to pay Campaigntrack's costs of the appeal proceeding to the Appeal Tribunal (APL 362/14).
- [14] Campaigntrack did not seek orders from this Court pursuant to s 153(2)(d) of the *QCAT Act* that the Chief Executive pay its costs of the proceeding at first instance before the Tribunal member (GAR 351-12). It remains open to Campaigntrack to do so, based upon the strength of its case that its claim was made within time, and such other matters which might incline the Tribunal, when it reconsiders the matter, to make an order for costs. Whether the interests of justice warrant the usual order for costs under s 100 being displaced is a matter best left for the Tribunal member to consider if an order is sought for the Chief Executive to pay all or a stated part of the costs of the proceeding before the Tribunal at first instance. In my view, the most appropriate order for costs in relation to the costs in this Court and the costs of the appeal proceeding before QCAT is one confined to the costs of the application for leave to appeal dated 5 June 2015 and the appeal to this Court. I would order:
- “The first respondent pay the applicant/appellant's costs of and incidental to the application for leave to appeal filed 5 June 2015 and the appeal.”
- [15] **HENRY J:** I have read the reasons of Applegarth J. I agree with those reasons and the order proposed.