SUPREME COURT OF QUEENSLAND

CITATION:	*Pettet v Van Der Merwe* [2016] QCA 117
PARTIES:	**PETTET, Ian Edward** (applicant) **v** **WALTER JAMES VAN DER MERWE** (respondent)
FILE NO/S:	CA No 217 of 2014 DC No 54 of 2014
DIVISION:	Court of Appeal
PROCEEDING:	Application for Leave s 118 DCA (Criminal) – Further Order
ORIGINATING COURT:	District Court at Maroochydore
DELIVERED ON:	4 May 2016
DELIVERED AT:	Brisbane
HEARING DATE:	Heard on the papers
JUDGES:	Holmes CJ and Morrison and Philip McMurdo JJA Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**The applicant pay the respondent's costs of the appeal fixed at $10,000.**
CATCHWORDS:	COSTS – INDEMNITY COSTS – where the applicant was refused leave to appeal under s 118 of the *District Court of Queensland Act* 1967 (Qld) – where the Court found there was no merit in any of the applicant's proposed grounds of appeal – where the respondent sought costs on an indemnity basis – where the respondent argues the applicant's conduct of the proceedings was vexatious – whether costs should be awarded – whether costs should be awarded on an indemnity basis *Pettet v Van Der Merwe* [2016] QCA 13, related
COUNSEL:	No appearance for the applicant No appearance by the respondent, the respondent's submissions were heard on the papers
SOLICITORS:	No appearance for the applicant No appearance by the respondent, the respondent's submissions were heard on the papers

[1] **HOLMES CJ:** The applicant was refused leave to appeal under s 118 of the *District Court of Queensland Act* 1967 against a District Court judge's dismissal of his appeals against convictions for failing to vote. This Court found that there was no

merit in any of his proposed grounds of appeal. The successful respondent seeks to recoup his costs on an indemnity basis, arguing that the applicant's conduct of the proceedings has been vexatious. The respondent has filed submissions and an affidavit. The applicant has not filed any submissions.

[2] The background to the matter (as may be seen from this Court's ex tempore decision, *Pettet v Van Der Merwe*[1]) was that the applicant had made an unsuccessful application to the Magistrates Court at Southport to have an enforcement order made against him in respect of his failure to vote withdrawn. Following the dismissal of that application, however, the State Penalties Enforcement Registry withdrew the enforcement order and referred the fines back to the Electoral Commission Queensland. Subsequently, the applicant was served with a complaint and summons in respect of the two relevant charges.

[3] Thereafter the applicant has contended that the cancellation decision was an abuse of process; that the proceeding against him breached the principle of double jeopardy; and that an estoppel arose from the magistrate's dismissal of his application to have the orders cancelled. In addition, he has argued what purported to be constitutional points: that the SPER registrar had exercised federal judicial power in breach of the Constitution and that compulsory voting was unconstitutional, as suppressing the implied freedom of communication. At each stage of appeal he has advanced new and different arguments.

[4] Nonetheless, I am not convinced that the matter warrants an award of indemnity costs, as the respondent proposes. (An affidavit of the principal lawyer from Crown Law has set out the details of the accounts rendered and the legal costs incurred to date which appear relatively moderate amounting to $16,340.29). However, there is a good deal to be said for fixing the costs ordered, in order to save the costs of assessment. On the rule of thumb that party and party costs are generally about two-thirds of actual costs. I would order the applicant to pay the respondent's costs of the appeal fixed at $10,000.

[5] **MORRISON JA:** I have read the reasons of Holmes CJ and agree with those reasons and the orders her Honour proposes.

[6] **PHILIP McMURDO JA:** I agree with the Chief Justice.

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[1]   [2016] QCA 13.