

SUPREME COURT OF QUEENSLAND

CITATION: *Harrison v President of the Industrial Court of Queensland & Ors*
[2016] QCA 153

PARTIES: **PAUL KEVIN HARRISON AS ACTING
COMMISSIONER FOR MINE SAFETY AND HEALTH**
(applicant)
v
**THE PRESIDENT OF THE INDUSTRIAL COURT OF
QUEENSLAND**
(first respondent)
KEVIN JAMES HENDRY
(second respondent)
MANSELL MINING AND SHOTCRETE PTY LTD
ACN 083 099 718
(third respondent)
MOUNT ISA MINES LIMITED
ACN 009 661 447
(fourth respondent)

FILE NOS: Appeal No 6941 of 2015
SC No 9195 of 2014

DIVISION: Court of Appeal

PROCEEDING: Case Stated – Further Order

ORIGINATING
COURT: Industrial Court at Brisbane – [2014] ICQ 18

DELIVERED ON: 10 June 2016

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Margaret McMurdo P and Morrison JA and Jackson J
Separate reasons for judgment of each member of the Court,
each concurring as to the order made

ORDER: **In each proceeding, the parties should bear their own
costs of the originating application and the case stated.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND
TERRITORY COURTS – COSTS – GENERAL RULE:
COSTS FOLLOW EVENT – GENERAL PRINCIPLES AND
EXERCISE OF DISCRETION – where the applicant was
successful in the case stated for the opinion of the Court of
Appeal – where complaints made to prosecute offences were
defective and the applicant did not seek to fix the errors until
requested by the Court of Appeal – whether it was appropriate
to depart from the general rule that costs follow the event

Uniform Civil Procedure Rules 1999 (Qld), r 483, r 681,
r 745, r 766

Oshlack v Richmond River Council (1998) 193 CLR 72; [1998]
HCA 11, cited

COUNSEL: No appearance by the appellant, the appellant's submissions were heard on the papers
No appearance for the first respondent
No appearance by the second and fourth respondents, the second and fourth respondents' submissions were heard on the papers
No appearance by the third respondent, the third respondent's submissions were heard on the papers

SOLICITORS: No appearance for the appellant
No appearance for the respondents

- [1] **MARGARET McMURDO P:** I agree with Jackson J's reasons for determining that there be no order as to costs and that the parties bear their own costs of the originating application and the case stated.
- [2] **MORRISON JA:** I have read the reasons of Jackson J and agree with those reasons and the order his Honour proposes.
- [3] **JACKSON J:** The orders made when the case stated was decided¹ permitted the parties to make written submissions as to costs.
- [4] The applicant submits that he was successful in respect of the case stated questions and that the costs of the proceeding should follow the event. The applicant submits there are no special exceptional circumstances,² to justify departure from the general rule that costs follow the event and that accordingly the second, third and fourth respondents should be ordered to pay the applicant's costs.
- [5] The first respondent took no part in the proceeding. Costs are not sought by or against him.
- [6] The second and fourth respondents submit that no order as to costs of the "appeal" should be made. They rely on r 766(1)(d) of the *Uniform Civil Procedure Rules 1999 (Qld)* ("UCPR") by which this court may order as to the whole or part of the costs of an "appeal" as it considers appropriate.
- [7] By r 745(1)(b) of the UCPR, Pt 1 of Ch 18 (which includes r 766(1)) applies to an appeal to the Court of Appeal from a decision of the Industrial Court. However, an application made in the supervisory jurisdiction of the court for a prerogative order or declaratory relief to the same effect would not ordinarily be described as an appeal.
- [8] In each proceeding in the present case, the originating application was made in the supervisory jurisdiction of this court, which is original jurisdiction, not appellate jurisdiction. In that proceeding, a case was stated for the opinion of this court under

¹ *Harrison v President of the Industrial Court of Queensland & Ors* [2016] QCA 89.

² *Oshlack v Richmond River Council* (1998) 193 CLR 72, 126 [143] referring to "exceptional or special circumstances".

r 483(2) of the UCPR. The case stated was heard by this court under Ch 18 Pt 2 of the UCPR. Nevertheless, the hearing of the case stated and the orders made in the application upon the case stated were made in the original jurisdiction of this court, not the appellate jurisdiction.

- [9] At least arguably, therefore, the appropriate rule as to costs is r 681(1) of the UCPR under which costs of a proceeding are “in the discretion of the court but follow the event, unless the court orders otherwise”.
- [10] In particular, the second and fourth respondents submit that the case stated before this court arose directly from the failure of the appellant to commence proceedings in the Industrial Magistrate’s Court by proper complaints against the respondents and that the decision of this court on the appeal did not change, but reaffirmed, the conclusion that the complaints against the second, third and fourth respondents remain defective.
- [11] The third respondent submits that even after the decision of this court the basis on which the complaint against the third respondent can proceed is not clear. The point made applies to each of the respondents, namely that the original complaint did not set out a clear statement of the relevant obligation or its contravention and the form of amendment proffered by the applicant at the hearing of the application did not answer the range of defects or non-compliances in the existing complaints.
- [12] In my view, there is substance in the respondents’ submissions. From the outset, they have asserted that the complaints were defective in a way that meant that they could not proceed. To that extent they were right. Additionally, they asserted that as a matter of law the defects were incapable of remedy. To that extent, they were wrong.
- [13] However, until requested by this Court to do so the applicant has not sought to fix what were obvious errors and defects by intimating that it would make an election to proceed on one charge and make an application for an appropriate amendment. Because of its insistence upon an erroneous course before the Industrial Magistrate and the Industrial Court, the applicant should not be excused from its share of responsibility for the costs of the proceeding in this court.
- [14] Accordingly, in my view, it is appropriate that in each proceeding there be no order as to costs and the parties should bear their own costs of the originating application and the case stated.