

SUPREME COURT OF QUEENSLAND

CITATION: *Jamieson v Beattie* [2008] QCA 358

PARTIES: **WILLIAM ROBINSON JAMIESON**
(respondent/applicant)
v
PETER BEATTIE
(appellant/ respondent)

FILE NO/S: Appeal No 109 of 2006
DC No 1 of 2004

DIVISION: Court of Appeal

PROCEEDING: Application for Indemnity Certificate

ORIGINATING COURT: District Court at Southport

DELIVERED ON: 14 November 2008

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Holmes JA and Douglas J
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **Application for Indemnity Certificate Refused**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL - PRACTICE AND PROCEDURE – QUEENSLAND – APPEAL COSTS FUND – POWER TO GRANT INDEMNITY CERTIFICATE – GENERAL PRINCIPLES AS TO GRANT OR REFUSAL – where application for indemnity certificate made almost two years after judgment given in the Court of Appeal – where applicant furnished no submissions in explanation of the delay – whether an indemnity certificate should be granted
Appeal Costs Fund Act 1973 (Qld), s 15(1)
Lamb v Brisbane CC & Anor [\[2008\] QCA 109](#), applied

SOLICITORS: Clarke and Kann for the applicant
Baker Johnson Lawyers for the respondent

[1] **HOLMES JA:** On 13 October 2006, judgment was given in this court allowing an appeal by Mr Beattie against a District Court judgment given in favour of Mr Jamieson, the applicant here. The applicant was ordered to pay Mr Beattie's costs of and incidental to the appeal. The action at first instance was for defamation in respect of three separate publications. This court found that the trial judge had erred in making findings unsupported by the evidence, that all imputations pleaded

in respect of all three publications were made out and that the plaintiff had established an absence of good faith and actual malice.

[2] On 16 September 2008, almost two years after judgment was delivered, the applicant applied for an indemnity certificate under s 15(1) of the *Appeal Costs Fund Act 1973* (Qld) in respect of the costs of the appeal. The application was supported by an affidavit by the applicant's solicitor which identified the appeal and the orders made, and exhibited a copy of the court's order and reasons. It was not accompanied by any submissions, and it did not identify any reasons for granting the certificate. Despite invitation, no submissions have been forthcoming from the applicant's solicitors.

[3] Supreme Court Practice Direction No. 1 of 2005 stipulates that:

“An application for an indemnity certificate and accompanying certificates will be made either orally at the appeal hearing or parties may indicate that they intend to provide written submissions to the court within seven days of judgment of the court”.

Plainly enough, neither happened here.

[4] In *Lamb v Brisbane CC & Anor*¹ such an application was made almost 12 months after judgment was given. Keane JA, with whom I agreed, said this:

“While the Court has a discretion to grant a certificate notwithstanding non-compliance with the time limits in the Practice Direction, and the Court's discretion is a wide one, the lapse of such a long time could reasonably be expected to result in the refusal of a certificate unless there are strong grounds for granting the certificate. It is not in the interests of the due administration of justice that the Court should be required to devote time to the review of the circumstances of decisions given long ago by stale applications for indemnity certificates.” (Citations omitted.)

[5] Here, the only explanation for the delay is that the assessment of costs took place only this year. That, of course, is beside the point; the making of an application is in no way dependent on any steps having been taken towards assessment of the costs. There is no explanation for the delay which is twice that in *Lamb*, and the deficiency is compounded by the absence of any submission as to why the matter warrants a certificate.

[6] I would refuse the application for an indemnity certificate.

[7] **DOUGLAS J:** I agree with the reasons of Holmes JA and the order proposed by her.

¹ [2008] QCA 109.