QCAT

Queensland **Civil and Administrative Tribunal**

CITATION:	*Joshi v Medical Board of Australia* [2016] QCAT 256
PARTIES:	**VINEY JOSHI** (Applicant/Appellant) v **MEDICAL BOARD OF AUSTRALIA** (Respondent)
APPLICATION NUMBER:	OCR059-15
MATTER TYPE:	Occupational regulation matter
HEARING DATE:	9 November 2015
HEARD AT:	Brisbane
DECISION OF:	**Justice Carmody**
DELIVERED ON:	26 February 2016
DELIVERED AT:	Brisbane
ORDERS MADE:	**IT IS THE DECISION OF THE TRIBUNAL THAT:** **1. Each party is to bear its own costs.**
CATCHWORDS:	PROFESSIONS AND TRADE – HEALTH CARE PROFESSIONALS – MEDICAL PRACTITIONERS – COSTS – where the applicant practitioner applied for an order for wasted costs in respect of a proposed review of the Board's decision – where the applicant contended that the Board's actions in imposing unnecessarily stringent precautionary measures – where the applicant contends the Board's action in initially imposing excessive supervision conditions and then downgrading them on spurious grounds unnecessarily disadvantaged him – where the applicant contends that the Board failed to adequately articulate its case – where the applicant contends the interests of justice require a costs award. *Queensland Civil and Administrative Tribunal Act* 2009 (Qld) s 102

Baxendale-Walker v Law Society [2007] EWCA Civ 233

Board of Professional Engineers of Queensland v Lennox [2011] QCAT 599

R (on the application of Coke-Wallis) v The Institute of Chartered Accountants in England and Wales [2011] UKSC1

Gorlov (on the application of) v The Institute of Chartered Accountants in England and Wales [2001] EWHC Admin 220

APPEARANCES and REPRESENTATION (if any):

APPLICANT/APPELLANT Mr Daniel Davison.
RESPONDENT Lander & Rogers Lawyers.

REASONS FOR DECISION

[1] The applicant practitioner applies for an order for wasted costs in respect of a proposed review of the Board's decision to impose allegedly overly onerous conditions on his registration.

[2] Subsections 102(3)(a) and (f) of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld) (QCAT Act) are invoked in support of the application.

[3] Briefly stated, the applicant contends that the Board's actions in initially imposing Level 1 (personal and direct) supervision conditions, and then later downgrading them on spurious grounds and even then only after he filed a review, unnecessarily disadvantaged him (both professionally and financially) that the interests of justice require a costs award.

[4] The applicant's claims that in deciding to take immediate action by imposing an unnecessarily unduly stringent precautionary measure – Level 1 supervision – the Board prematurely and unjustifiably assessed him as a "serious risk" to health and welfare (without considering his submissions to the contrary and offered undertakings), which had the practical effect of excluding him from his preferred remote area practice and leaving him with no practical corrective option but to start review proceedings.

[5] The applicant also relies on the Board's failure to adequately articulate its case, which is claimed to have unnecessarily disadvantaged him and warrants an order of costs in his favour.[1]

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1 See *Board of Professional Engineers of Queensland v Lennox* [2011] QCAT 599.

[6] Despite the Board's regulatory role in protecting the public by maintaining proper professional standards, it is not immune from paying costs in litigation.

[7] The test, according to the case law the applicant cites, is that an order for costs should not usually be made against a public body simply on the basis that costs follow the event,[2] but can be appropriate if something has gone wrong because of the regulators incompetence[3] or the proceedings were a "shambles from start to finish".[4]

[8] On that basis, however, I am not satisfied that the interest of justice warrant a costs order in the applicant's favour.

[9] In reaching that conclusion I had regard to the following:

1. the proceedings were stopped by the applicant's withdrawal of his review application when its objective of having the supervision condition downgraded to a Level 2 was achieved without it;

2. the applicant was not unnecessarily disadvantaged by any action of the Medical Board. Despite the criticisms of Judge Horneman-Wren SC at a mention on 10 June 2015, the further and better particulars the Board was directed to file (AGJ – 35) make it clear that the "serious risks to persons" conclusion was based on departure from clinical standards and multiple instances of unsatisfactory professional performance resulting in adverse outcomes for patients, and that the failure to communicate appropriately with colleagues related to the delivery of health services, including drug prescriptions;

3. the Board's decision to take immediate action by imposing registration conditions was made in good faith on reasonable grounds. The Board did not have before it the applicant's detailed submissions dated 18 March 2015 due to an administrative error for which the board was not responsible; and

4. based on the additional information, including affidavits filed in the review proceedings, the Board confirmed was not persuaded to alter its risk assessment for the reasons stated at paragraph (g) in the 26 June 2015 reasons for decision, but accept that the risk could be mitigated by Level 2 supervision because of an improved understanding of the matters outlined in his affidavit filed 29 May 2015, evidence that his clinical skills were adequate, and that the focus of restrictions should be on monitoring and support.

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2 *R (on the application of Coke-Wallis) v The Institute of Chartered Accountants England and Wales* [2011] UKSC 1 at [60].

3 See *Baxendale-Walker v Law Society* [2007] EWCA Civ 233 at [40].

4 See *Gorlov (on the application of) v The Institute of Chartered Accountants in England and Wales* [2001] EWHC Admin 220.

[10] Notwithstanding this, I do not think that the Board should have its costs of the application. It was reasonable for the applicant to bring a costs application on the basis of perceived disadvantage due to shortcomings of the Board in discharging its regulatory responsibilities, notwithstanding the fact that a more fulsome investigation of his complaints demonstrated that they were not substantiated.

ORDER

[11] It is the decision of the Tribunal that each party is to bear its own costs.