

CITATION: *Till v Work Health and Safety Queensland – Office of Industrial Relations, Queensland Treasury Department & Anor (No 2)* [2016] QCATA 172

PARTIES: Liam Till
(Applicant/Appellant)
v
Work Health And Safety Queensland – Office Of Industrial Relations, Queensland Treasury Department
Sunshine Coast Regional Council
(Respondents)

APPLICATION NUMBER: APL074-16

MATTER TYPE: Costs

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Justice Carmody**

DELIVERED ON: 7 November 2016

DELIVERED AT: Brisbane

ORDERS MADE: **IT IS THE DECISION OF THE APPEAL TRIBUNAL THAT:**

- 1. The applicant is to pay the first respondent's costs of and incidental to this application for leave to appeal or appeal fixed in the amount of \$1,800.00.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – GENERAL MATTERS – POWER TO AWARD GENERALLY – STATUTORY BASIS GENERALLY – where the tribunal found it had no jurisdiction to hear the applicant's claim – where the applicant was unsuccessful in applying for leave to appeal the decision – where the first respondent seeks its costs of and incidental to the proceeding – whether the interests of justice require a costs order to be made

Justices Act 1886 (Qld) s 222; Schedule 2
Justices Regulation 2014 (Qld) Part 2 Item 1
Queensland Civil and Administrative Tribunal Act 2009 (Qld) ss 48(1)(f), 48(2)(c), 100,102

APPEARANCES and REPRESENTATION:

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld) (QCAT Act)*.

REASONS FOR DECISION

- [1] The applicant unsuccessfully tried to appeal the tribunal's decision in GAR 201-15 to dismiss his application to review a decision of Work Health and Safety Queensland (the first respondent) not to investigate his concerns about dogs being allowed off leash near his home.
- [2] On 10 December 2015, after requiring submissions from all parties, the tribunal dismissed the application for lack of jurisdiction. An attempt to reopen that application was dismissed by a Senior Member after considering further submissions. The applicant's appeal was dismissed by me on 26 August 2016 after a third lot of submissions.
- [3] The tribunal at first instance dismissed the application because it was not a "reviewable decision" within the meaning of the *Work Health and Safety Act 2011 (Qld) (WHS Act)* or *Work Health and Safety Regulation 2011 (Qld) (WHS Regulation)*.
- [4] I found the same on appeal and directed the parties to file submissions on the first respondent's application for costs.
- [5] Generally, each party must bear their own costs¹ unless this rule is displaced in the interests of justice.²
- [6] According to the first respondent, a costs order against the applicant in its favour is required in the interests of justice having regard to ss 48 (1)(f) and (2)(c) QCAT Act. That is, the tribunal should find that the applicant vexatiously conducted the proceeding to the first respondent's disadvantage and exercise its discretion to make an order under s 102 to compensate it for reasonable costs incurred unnecessarily.
- [7] In support of its application for costs, the first respondent claims that the applicant:
 - (a) sought to vexatiously agitate the same issues on several occasions before QCAT and the... appeal tribunal in circumstances where he was aware, or

¹ *Queensland Civil and Administrative Tribunal Act 2009 (Qld) (QCAT Act) s 100.*

² *Ibid s 102.*

ought to have been aware, that his applications and appeal application had no prospects of success;

- (b) made submissions in support of his appeal application that were vague, confusing, embarrassing, argumentative, inflammatory, lacking in substance and, in part, gratuitously offensive; and
- (c) sought to abuse the review process provided for by the QCAT Act to coerce the regulator of the WHS Act to administer that Act in a manner consistent with his own personal opinions, and contrary to the law.

[8] I respectfully agree with the first respondent's characterisation of the applicant's litigation conduct. The tenor of his submissions makes it plain that he is genuinely aggrieved at the state of affairs on the beach near his home because dogs are allegedly roaming off-leash. However, appeal submissions failed to identify any error in the finding that the tribunal lacked the jurisdiction and power to help him.

[9] The applicant was wholly unsuccessful in repeated attempts to convince the tribunal that it had jurisdiction to hear his application.

[10] Litigants need to be held financially accountable for trying to argue hopeless or spurious appeal points where the reasons for the decision at first instance cannot be faulted. For this reason, I will order that the applicant is to pay the first respondent's fixed costs of and incidental to his application for leave.

[11] The professional costs sought by the first respondent are those applicable to an appeal to the District Court from a decision of a Magistrate.³ I accept the submission that an award of costs in the amount of \$1,800.00 (being \$1,500.00 for instructions, preparation and attendance at a directions hearing, plus a 20% increase, being \$300.00) is required in the interests of justice in the circumstances of this proceeding.

ORDER

1. The applicant is to pay the first respondent's costs of and incidental to this application for leave to appeal or appeal fixed in the amount of \$1,800.00.

³ Under s 222 of the *Justices Act* 1886 (Qld) as provided for by Schedule 2 Part 1 Item 4 and Part 2 Item 1 of the *Justices Regulation* 2014 (Qld); the effect of which is that the amount of costs to be awarded is increased by 20%.