

SUPREME COURT OF QUEENSLAND

CITATION: *Bell & Anor v Beattie & Ors* [2003] QSC 388

PARTIES: **IAN BRUCE BELL**
(first applicant)
TREVOR JOHN MAHAFFEY
(second applicant)
v
PETER DOUGLAS BEATTIE
(first respondent)
ANNA MARIA BLIGH
(second respondent)
THOMAS ALFRED BARTON
(third respondent)
STEPHEN DOMINIC BREDHAUER
(fourth respondent)
JUNITA IRENE CUNNINGHAM
(fifth respondent)
WENDY MARJORIE EDMOND
(sixth respondent)
MATTHEW JOSEPH FOLEY
(seventh respondent)
PAUL THOMAS LUCAS
(eight respondent)
TERENCE MICHAEL MACKENROTH
(ninth respondent)
ANTHONY MCGRADY
(tenth respondent)
GORDON RICHARD NUTTALL
(eleventh respondent)
HEINRICH PALASZCZUK
(twelfth respondent)
MICHAEL FANCIS REYNOLDS
(thirteenth respondent)
STEPHEN ROBERTSON
(fourteenth respondent)
MERRI ROSE
(fifteenth respondent)
ROBERT EVAN SCHWARTEN
(sixteenth respondent)
JUDITH CAROLINE SPENCE
(seventeenth respondent)
RODNEY JON WELFORD
(eighteenth respondent)
DEAN MACMILLAN WELLS
(nineteenth respondent)

FILE NO/S: S7889 of 2003

DIVISION: Trial Division

PROCEEDING: Application – Further orders

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 13 November 2003

DELIVERED AT: Brisbane

HEARING DATE: 18 September 2003

JUDGES: Mackenzie J

ORDER: **It is ordered that the applicants pay on the standard basis the respondents' costs of and incidental to the application for a statutory order of review, including costs of and incidental to the application by the respondents to dismiss the applicants' application under s 48 of the *Judicial Review Act 1991 (Qld)*, together with reserved costs, if any, to be assessed**

CATCHWORDS: PROCEDURE – COSTS – GENERAL RULE - COSTS FOLLOW THE EVENT – COSTS OF WHOLE ACTION – GENERALLY – where application for statutory order of review dismissed under s 48 *Judicial Review Act 1991 (Qld)* – where no reasonable basis for application disclosed – whether costs order should be made under s 49

Judicial Review Act 1991 (Qld), s 49
Uniform Civil Procedure Rules 1999 (Qld), r 689

COUNSEL: I B Bell appeared on his own behalf in the application filed 4 September 2003 and in the application filed 12 September 2003
 No appearance for the second applicant in the application filed 4 September 2003 or in the application filed 12 September 2003
 J A Logan SC, with S A McLeod, for the respondent in the application filed 4 September 2003 and in the application filed 12 September 2003

SOLICITORS: I B Bell appeared on his own behalf in the application filed 4 September 2003 and in the application filed 12 September 2003
 No appearance for the second applicant in the application filed 4 September 2003 or in the application filed 12 September 2003
 Crown Solicitor for the respondent in the application filed 4 September 2003 and in the application filed 12 September 2003

[1] **MACKENZIE J:** Judgment was delivered on 8 October 2003 dismissing an application for a statutory order of review under the power to do so conferred by s 48(2) of the *Judicial Review Act 1991 (Qld)*. A prerequisite to that order is that no

reasonable basis for the application is disclosed. Such a finding would militate strongly against an order under s 49 if one were sought, as the application did (see s 49(2) (c)).

- [2] The applicable principle under the *UCPR* is to be found in rule 689. While costs are in the discretion of the court, costs follow the event unless the court considers that another order is more appropriate. Prior to the applications being heard both applicants were communicated with on behalf of the respondents inviting them to withdraw their application on the basis that each party bear their own costs. Several reasons why they might wish to do so were advanced including the prematurity of proceedings having regard to the stage that proceedings in parliament had reached, and the absence of a decision of an administrative character which might found a right to reasons for the decision to promote the legislation.
- [3] Nevertheless the proceedings were not withdrawn and the matter was heard on 18 September 2003. The fact that the costs of a hearing had to be expended by the respondents rendered nugatory the offer that the proceedings be discontinued on the basis that each party pay its own costs.
- [4] The case is not one where the discretion to make an order under s 49 should be exercised. No other reason demonstrating why the prima facie rule in r 689 *UCPR* that costs follow the event should be displaced was advanced. Under the circumstances the respondents are entitled to an order for costs.

Orders

- [5] It is ordered that the applicants pay on the standard basis the respondents' costs of and incidental to the application for a statutory order of the review, including costs of and incidental to the application by the respondents to dismiss the applicants' application under s 48 of the *Judicial Review Act 1991 (Qld)*, together with reserved costs, if any, to be assessed.