



## Recent costs decisions in criminal law summary matters

**Date: Monday October 9, 2023**

A defendant who successfully defends charges in the Magistrates Court is not automatically entitled to costs, but they can usually apply for the reimbursement of some of their legal costs. The relevant legislation, the *Justices Act 1886*, sets out a variety of factors for the court to consider when deciding whether to award costs.

Two recent District Court appeal cases in Queensland have provided useful guidance on the recovery of costs in such matters. In this article, we explore those cases in a little more detail.

Further, for more information about costs in criminal law matters, you can read our earlier article, [‘Recovering your legal costs in criminal law matters’](#).

### Factors relevant to a discretionary award of costs in criminal matters

In *Wells v Commissioner of Police* [2023] QDC 120, Morzone KC, DCJ considered the proper application of factors relevant to a costs award under sections 158 and 158A *Justices Act 1886*.

The matter concerned an appeal from a magistrate's refusal to award costs on the basis that:

- the original proceedings against the appellant had been investigated properly and brought in good faith; and
- the appellant had unreasonably declined an opportunity to provide a version which could have avoided a prosecution.

In upholding the appeal, Morzone DCJ found that the magistrate had misdirected herself in respect of these matters.

The case concerned a charge of contravening a [domestic violence order](#). It was alleged that the appellant had driven past the complainant and verbally abused her from a passing car. Although she did not see the person who yelled out, the complainant said she recognised the appellant's voice and his vehicle. Police sought to interview the appellant about six weeks later, at which time he denied the allegation and accused the complainant of lying. Police advised him that they had other witness statements which corroborated the complainant's version.

Judge Morzone found that the police had misrepresented the existence and probative force of the witness statements they held. Moreover, after the appellant was charged, his solicitor wrote to police providing details of a potential alibi, and asking them to conduct further inquiries into the location of the vehicle apparently identified by the complainant, the suggestion being that the appellant did not have access to that vehicle at the relevant time. Police did not conduct further investigations.

In allowing the appeal, his Honour ruled that the inadequacy of the police investigation supported a costs order in the appellant's favour. Despite receiving timely notice from the appellant's solicitor about matters of alibi, and notice of the appellant's inability to access the car in question, the police did not adequately investigate these matters.

Further, Morzone J ruled that the appellant had not unreasonably declined an opportunity to provide an explanation which could have avoided a prosecution. On the contrary, his Honour considered that the appellant took the earliest opportunity to explain his position to the best of his ability, given the unfair, inappropriate and provocative police interview to which he was subjected.

His Honour noted that in those circumstances, the appellant could not reasonably be expected to calmly and meticulously analyse the allegations to provide a more temporally exacting and comprehensive alibi. Rather, he did his best in that moment to explain his position before any charges were laid. His Honour noted that if the matters advised to the police had been promptly investigated and accepted, he would have been exonerated and spared from prosecution.

In the circumstances, his Honour considered that the factors contained within section 158A *Justices Act* made it fair and proper for the appellant to be paid his reasonable costs.

## Counsel's fees

Another recent District Court of Queensland case has confirmed that counsel's fees (barrister's fees) are not recoverable as a separate disbursement in respect of costs applications under the *Justices Act* in summary matters.

In the context of legal costs applications, 'costs' are generally regarded as the professional fees for a lawyer's work, whilst 'disbursements' or 'outlays' are the additional out-of-pocket expenses associated with the legal work – court filing fees, expert reports, etc.

In *Short v Queensland Police Service* [2023] QDC 131, Judge Smith DCJA was considering an appeal under section 222 *Justices Act 1886* against a costs decision made by a magistrate. Short had been charged with various [traffic offences](#). After a lengthy hearing (including cross-examination of witnesses across separate hearing days), the charges were ultimately withdrawn by the police.

In the subsequent costs application, Mr Short's lawyers sought a total of \$27,000.00 for counsel's fees and nearly \$12,000.00 for solicitor's fees. The prosecutor submitted that costs should be limited to the amount allowed for under the scale of costs in Schedule 2 to the *Justices Regulation* 2014. The Magistrate agreed and awarded Mr Short \$4,250 in legal fees and a further \$2,668 in disbursements, calculated in accordance with the scale.

Mr Short appealed the Magistrate's costs decision. On appeal, attention was first given to whether costs should be awarded for an amount higher than allowed by the scale on the basis of the matter being of "*special difficulty, complexity or importance*". per section 158B (2) *Justices Act*.

Judge Smith determined the matter was not of that character, noting that the case really involved straightforward credit issues, and the charges were simply traffic charges. He also found that they were not of particular importance to the development of the law, even if personally important to the appellant.

Consequently, his Honour ruled that recoverable costs were limited to the amount specified in Schedule 2 of the Regulation. Having done so, he turned to consider whether counsel's fees are recoverable as a disbursement, separate to the limited allowance made for legal fees under the scale.

His Honour considered a previous District Court judgment of Porter KC DCJ in the matter of *Baker v Smith (No 2)* [2019] QDC 242. In that case, Porter J held that there is no power to award an additional amount for counsel's fees under the scale, as professional fees under the scale encompass all legal professional work, even if done by more than one lawyer. In that context, the word 'lawyer' in the scale was regarded as including both barristers and solicitors.

Judge Smith agreed, upholding the magistrate's original costs decision. His Honour ruled that the appellant's legal fees were limited to those provided by the scale, such that counsel's fees could not be regarded as a separate disbursement. In final comments perhaps reflecting his Honour's views of the total costs involved, his Honour noted that the appellant was entitled to have his fees assessed independently if he wished.

## Get help from a criminal lawyer

It's important to understand that even if you are successful in a criminal court matter, including a dismissal or acquittal, you are not automatically entitled to costs. If you're wondering if your specific circumstances entitle you to apply for reimbursement of your costs, you should seek advice from an experienced criminal lawyer.

Gilshenan and Luton are award-winning criminal lawyers, and several of our team members are Accredited Specialists in Criminal Law.

## Contacting Gilshenan &Luton

[07 3361 0222](tel:0733610222) (24/7)

[gnl@gnl.com.au](mailto:gnl@gnl.com.au)

---

*This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.*