

JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA

TITLE OF COURT : THE COURT OF APPEAL (WA)

CITATION : SHAW -v- JIM McGINTY in his capacity as
ATTORNEY GENERAL & ANOR
[2006] WASCA 231 (S)

CORAM : STEYTLER P
WHEELER JA
BUSS JA

HEARD : 6 APRIL 2006

DELIVERED : 6 NOVEMBER 2006

**SUPPLEMENTARY
DECISION** : 23 NOVEMBER 2006

FILE NO/S : CACV 83 of 2005

BETWEEN : BRIAN WILLIAM SHAW
Appellant

AND

JIM McGINTY in his capacity as ATTORNEY
GENERAL
First Respondent

DAMIAN BUGG in his capacity as
COMMONWEALTH DIRECTOR OF PUBLIC
PROSECUTIONS
Second Respondent

ON APPEAL FROM:

Jurisdiction : SUPREME COURT OF WESTERN AUSTRALIA
Coram : MCKECHNIE J
Citation : SHAW -v- ATTORNEY GENERAL FOR THE
STATE OF WESTERN AUSTRALIA & ANOR
[2005] WASC 149
File No : CIV 1128 of 2005

Catchwords:

Turns on own facts

Legislation:

Nil

Result:

Appellant to pay respondents' costs

Category: B

Representation:

Counsel:

Appellant : In person
First Respondent : Mr R M Mitchell
Second Respondent : Mr D W L Renton

Solicitors:

Appellant : In person
First Respondent : State Solicitor
Second Respondent : Commonwealth Director of Public Prosecutions

Case(s) referred to in judgment(s):

Nil

Case(s) also cited:

Nil

STEYTLER P
WHEELER JA

1 **STEYTLER P:** I agree with Wheeler JA.

2 **WHEELER JA:** At the delivery of judgment in this matter, the first
respondent applied for an order that the appellant pay the first
respondent's costs of his application to be taxed.

3 The appellant was given leave to file written submissions within
seven days if he wished to oppose that application. By letter dated the
following day, the second respondent advised the Court that he too sought
an order that the appellant pay the second respondent's costs of the
application to be taxed, and foreshadowed making oral application to that
effect if necessary when the matter was next re-listed. He also wrote a
letter to that effect to the appellant, who then filed, within time,
submissions addressing both the first and second respondents' application
for costs.

4 The appellant puts forward three reasons why he should not be
required to pay the costs of either respondent. Taking them in the order in
which they appear in his submissions, they are as follows.

5 It appears from pars 38 to 40 inclusive of the submissions that the
appellant takes the view that his application is public interest litigation,
raising matters of constitutional significance. He therefore submits that
costs should not be awarded in such a case. That is simply not correct.
The application was one made to further the private interest of the
appellant as a litigant, in the sense that it was directed to the removal of a
fetter imposed upon him personally. To the extent that the order pursuant
to the *Vexatious Proceedings Restriction Act 2002* (WA) restricted the
appellant from bringing proceedings, that was not a matter of public
interest or of constitutional significance, since the proceedings which he
seeks to bring are largely unintelligible and vexatious and are, to the
extent that they are intelligible, entirely wrong in law.

6 The appellant suggests in par 44 of his submissions, as I understand
it, that no order for costs should be made as the application arose out of a
criminal or *quasi* criminal matter. That is not so. No facts have been
identified by the appellant either in his application, or in the proceedings
before Commissioner Braddock from which he sought to appeal, or in any
of the underlying proceedings which prompted the applications to
Commissioner Braddock, which give rise to any plausible suggestion that
any criminal offence has been committed by any person.

WHEELER JA
BUSS JA

7 Finally, par 87 of the appellant's submissions suggests that it is not open to the Court to make costs orders against the appellant, since "the writers of the Judgment are primary offenders to Treason". No fact is identified which could logically give rise to any such suggestion, and no intelligible submission is made directed to that proposition. It must therefore be disregarded.

8 The orders will therefore be that the appellant pay the first and second respondents' costs of the application to be taxed.

9 **BUSS JA:** I agree with Wheeler JA.