

**LEGAL PRACTITIONERS  
DISCIPLINARY TRIBUNAL  
AT DARWIN**

**CITATION:** *Godfrey v Law Society Northern Territory & Gray  
(No 2)*

LPDT No. 2020-02640-SC

**PARTIES:** **GODFREY, Keith Daniel**  
**Appellant**  
v  
**LAW SOCIETY NORTHERN TERRITORY**  
**First Respondent**  
v  
**THELMA GRAY**  
**Second Respondent**

**FILE NO:** 2020-02640-SC

**DELIVERED:** 29 July 2021

**HEARING DATE:** 18 February 2021

**DECISION OF:** **Acting Judge Oliver (Chair)**  
**Mr Richard Giles**  
**Ms Patrica Slocum**

**REPRESENTATION:**

**APPELLANT:** Self

**SECOND RESPONDENT:** Mr T Liveris

## REASONS FOR DECISION

1. The Appellant, Keith Godfrey, appealed the decision of the Law Society which had dismissed all three grounds of his complaint against the Second Respondent, Thelma Gray.
2. The Tribunal unanimously dismissed his appeal. The Second Respondent seeks an order for her costs, including the costs of this application, against the Appellant. The First Respondent does not wish to be heard on the application.
3. The subject matter of the complaints has a relatively lengthy history around representation for Mr Godfrey by Ms Gray in a matter before the Federal Circuit Court in 2018. Ultimately, as he was not granted legal aid funding, Ms Gray ceased to represent him.
4. The three grounds of appeal were first, that Ms Gray did not have sufficient contact with Mr Godfrey. Second, that she mismanaged and misrepresented Mr Godfrey's matter in court and third, that she did not have sufficient knowledge of Mr Godfrey's case in order to carry out her fiduciary obligations.
5. The full history of the matter and the reasons for dismissing the complaints is set out in the previous decision of the Tribunal. In short, in dismissing the appeal the Tribunal found that the complaints were without foundation and indeed found that

“Ms Gray acted competently and with reasonable diligence to take what steps she could to advance Mr Godfrey's matter in circumstances where her retainer was conditioned on his receipt of legal aid funding. The Tribunal is satisfied that Ms Gray actually undertook a considerable amount of work in order to be able to progress Mr Godfrey's matter in the event that legal aid was granted. She took initial instructions, filed an appearance notice, obtained documents from his previous lawyer, tried to assist his application for legal aid and appeared amicus for him in the Federal Circuit Court where she obtained a subpoena for documents that were sought to assist his case.”

6. The Appellant filed a response to the costs application by way of a letter to the Registry Manager dated 18 June 2021 to which he attached both a letter from a general practitioner and a Centrelink statement as to his income. As it is not a sworn statement, the Tribunal may consider what weight should be given to its contents, however in all the circumstances there is likely nothing that would arise from that.
7. The letter from the general practitioner, which is addressed “to whom it may concern”, states that the letter is being written “at Keith's request to provide

information about his medico social status as his regular GP.” It summarises his medical conditions and that he is “currently unemployed and live (sic) on social benefits”. Curiously, the letter is dated “30/05/2021” which therefore predates the costs application which was filed on 10 June 2021 and must therefore have been intended for some other purpose. The Centrelink statement is dated 15 June 2021.

8. In his letter Mr Godfrey advances that his reason for bringing the appeal is that he believed that it was what he should do “ultimately, to support my children”. Quite how the complaint against Ms Gray would ultimately support Mr Godfrey’s children is unclear unless it is intended to be a reference to his statement in his complaint form that the outcome he sought to achieve was “receive financial compensation”. Mr Godfrey did not however, either in his affidavit evidence or in submissions, advance a proposition that the Tribunal should award compensation or the basis for such an award. At best, the nexus between Mr Godfrey’s children and Ms Gray would seem to be what occurred before the Federal Circuit Court regarding an interlocutory application made by Mr Godfrey in relation to his children that was adjourned on that day to the final hearing date that had already been listed. As the Tribunal noted in its decision, that order appears to have been properly made and Mr Godfrey did not lose the opportunity to pursue the orders he was seeking.
9. Mr Godfrey’s second ground for opposing a costs order is that he would be unable to meet an award of costs as he is solely reliant on a Commonwealth Disability Support Pension.
10. In many tribunals the general rule is that parties bear their own costs. However, section 512 of the *Legal Profession Act* 2006 provides that the Disciplinary Tribunal may make an order as to costs of an appeal as it considers appropriate. Given the formal nature of these proceedings and that they are appellants from a decision of the Law Society as the disciplinary body together with the serious consequences that may attach to findings of professional misconduct or unsatisfactory professional conduct, it is not surprising that the Tribunal has been invested with this power. It is not unusual for a costs order to be made in this jurisdiction.
11. The power to award costs is a discretionary power but not an arbitrary one.

”A guiding principle by reference to which the discretion is to be exercised – indeed, “one of the most, if not the most, important” principle – is that the successful party is generally entitled to his or her costs by way of indemnity against the expense of litigation that should not, in justice, have been visited upon that party.”<sup>1</sup>

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<sup>1</sup> *Northern Territory v Sangare* [2019] HCA 25 at [25].



12. That principle can be modified or displaced where the successful party has engaged in conduct in the litigation that would justify a different outcome.<sup>2</sup> There was nothing in the conduct of the respondent in this matter that delayed the proceedings or caused any unwarranted costs. Public interest considerations may also displace the usual principle<sup>3</sup> however that is not a matter relevant to these proceedings.

13. Impecuniosity without more is not a matter that will exclude a costs order being made. As was said in *JB & Ors v Northern Territory of Australia (No 2)*<sup>4</sup>

“It is well established that impecuniosity alone of a party opposing a costs order is not a sufficient justification. There are three main reasons for this. First, in the vast majority of cases there is no relevant connection between the unsuccessful party’s impecuniosity and the litigation or the conduct of the successful party. Second, if impecuniosity were a bar to an order for costs there would be no disincentive for impecunious parties to bring proceedings which lacked merit. Third, such a departure from the ordinary rule would require courts to make an assessment of the level of impecuniosity of the unsuccessful party in order to determine if it was sufficient to justify the Court making no order as to costs. Such a process would be unnecessarily time-consuming and costly.”

14. Mr Godfrey essentially says that a costs order against him would be futile based on the limited income that he has. Again, as said in *Sangare*, “the courts have consistently rejected the suggestion that a costs order should not be made against an impecunious party because it would be futile to do so”.<sup>5</sup> As the High Court noted, the financial circumstances of the unsuccessful litigant may change in the future so that the costs order is no longer an exercise in futility and the successful party can then take the benefit of the order.

15. The third reason that is advanced by Mr Godfrey for opposing a costs order is that he has a “mental health plan to help with an anxiety condition I have and the possibility of having costs awarded against me is causing me duress (sic)<sup>6</sup>.” The only information before the Tribunal in support of this reason is contained in the letter from Dr Silva referred to above. Dr Silva says

“He still has a behaviour disorder – Anxiety and depressive symptoms with PTSD

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<sup>2</sup> Ibid.

<sup>3</sup> Ibid at [33].

<sup>4</sup> [2019] NTCA 3 at [15].

<sup>5</sup> *Northern Territory v Sangare* [2019] HCA 25 at [35].

<sup>6</sup> Presumably Mr Godfrey means stress or perhaps distress.

He is currently not on medications but under care of a psychologist under GP MHCare plan and expecting services to continue.”

16. It might well be expected that the prospect of a costs order would cause some stress to the person against whom an order is sought. However, as previously noted the letter from Dr Silva predates the costs application and cannot therefore have been intended to be a comment as to the effect that a costs order would have on Mr Godfrey’s “behaviour disorder”. There is therefore no evidence before the Tribunal as to the effect that a costs order would have on Mr Godfrey that would justify a departure from the usual order for costs.
17. The second respondent Ms Gray, points to the offer of settlement of the matter made by letter to the appellant Mr Godfrey on 29 January 2021. The letter is said to constitute a “Calderbank Offer.” Essentially, Ms Gray offered that if the appellant withdrew his appeal she would not seek the costs that she had already expended in defending the matter. The second respondent says that her offer<sup>7</sup> was an extensive one as  
  
“on the state of the evidence then before the Tribunal, the Second Respondent had good prospects of resisting in whole the Applicant’s claim and was therefore made in good faith; allowed a reasonable time for the Applicant to consider its terms; made at a time when the Applicant was aware of the Second Respondent’s case and had had time to contemplate the same and made at a time when acceptance would have saved significant costs.”
18. The offer was indeed a generous one as it involved foregoing costs that already had amounted to \$11,000.00. No reply was received to that offer and the matter proceeded to the hearing that had been listed for 18 February 2021.
19. The respondent seeks an order that the applicant pay her costs of and incidental to the Appeal and this Application, with such costs to be taxed in default of agreement or alternatively fixed in the sum of \$30,156.50.
20. Considering the matters noted above, and pursuant to the power conferred on this Tribunal under section 512 of the *Legal Profession Act* 2006, the applicant should pay the respondent's costs of and incidental to the Appeal and this Application and this Tribunal orders that such costs be fixed in the sum of \$30,156.50.

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<sup>7</sup> Attached to the affidavit of Storm Francis Lawler sworn 10 June 2021.



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**Acting Judge Oliver, Chair**



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**Mr Richard Giles, Member**



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**Ms Patricia Slocum, Member**