DETERMINATION NO. 16.12.01

Adjudicator's Decision on Costs

pursuant to the

Construction Contracts (Security of Payments) Act **(NT)**

DECISION ON COSTS

Application for costs

1. On 12 October 2012 I made a determination in favour of the applicant in the sum of $63,780.50 plus interest of $1,576.16. I said then that I would give the parties an opportunity of considering the determination and making submissions before I decided the question of costs. Then and in an earlier email to the parties on 7 October, I said that it seemed to me that s 36 of the *Construction Contracts (Security of Payments) Act* ("the Act") contemplates a decision on costs separate from a determination, particularly since subsection (3) requires written notice of the decision together with reasons, and subsection (4) applies Divisions 4 and 5 to a costs decision. These Divisions relate to the effect and enforcement of determinations. In my email of 7 October, I invited the parties to inform me if they disagreed with my approach and said that if they did, the issue would have to be determined. Neither party responded to my email, which I took to be an indication they had no objection to that course.

2. Section 36 says:

> **Costs of parties to payment disputes**
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> (1) The parties to a payment dispute bear their own costs in relation to an adjudication of the dispute (including the costs the parties are liable to pay under section 46).
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> (2) However, if an appointed adjudicator is satisfied a party to a payment dispute incurred costs of the adjudication because of frivolous or vexatious conduct on the part of, or unfounded submissions by, another party, the adjudicator may decide that the other party must pay some or all of those costs.
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> (3) If an appointed adjudicator makes a decision under subsection (2), the adjudicator must:
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> (a) decide the amount of the costs and the date on which the amount is payable; and
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> (b) give written notice of the decisions and the reasons for them to the parties.
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> (4) Divisions 4 and 5 apply (with the necessary changes) to a decision made under subsection (2) as if it were a determination of an appointed adjudicator.

3. Under subsection (2), the enquiry is as to whether a party has incurred costs of the adjudication because of either:

(a) of frivolous or vexatious conduct of; or

(b) unfounded submissions by,

another party.

4. When I made my determination on 12 October, I gave the parties until close of business on 16 October to make submission on costs if they wished, and until close of business on 17 October to respond to the other's submissions.

5. On 15 October 2012 I emailed the parties saying:

> I write to inform the parties that, in preparation for receiving your submissions on costs, I have read *Mudie v Gainriver Pty Ltd & Anor* [2002] 2 Qd R 271 (copy attached). I write to provide you the opportunity of commenting on the applicability of the decision to this case if you wish. Of course, you are not limited to this case in your submissions.

6. On 16 October 2012, the applicant delivered submission in which it sought costs of and incidental to its further submissions dated 13 October. Upon receipt of those submissions, I emailed the parties on 16 October saying:

> I note that the applicant has only sought costs of its further submissions. I am unsure of the reason for this but on the face of it, s 36 permits costs to be given for the whole application or response. I state this in case either party wishes to apply for the costs of the whole application or response. Obviously evidence of those costs would need to be adduced if such an application were made. I also make it clear that my present view that costs of the whole application or response are permitted by s 36 is not a final and concluded view. I am open to be persuaded otherwise.

7. After I sent that email, the respondent emailed saying it had not received the determination, upon which I sent the determination again by email and by facsimile.

8. On 17 October, the applicant delivered amended submissions on costs in which it sought costs of and incidental to the application for adjudication in the sum of $11,150.00 comprised of:

Professional fees of the application	$ 8,250
Professional fees of the costs submissions	$ 1,150
Adjudicator's fees	$ 1,750

9. Pausing here, in its final submissions of 19 October, the respondent related, without contending for a consequence, that the applicant had not sought costs in its initial application for adjudication or further submissions made in that

application, and that when it first applied for costs on 16 October it only sought costs of its further submissions. The respondent does not contend that any of this history disentitles the applicant from costs of and incidental to the whole application, and I do not consider it does. To my mind, s 36 contemplates costs being dealt with after the determination is made, where appropriate.

10. Because it seemed the respondent had not received the determination and my email regarding submissions on costs on 12 October, I proposed allowing the respondent two working days from 16 October (the date on which it received the determination) to make its primary submissions on costs. Neither party objected to that course and I received the respondent's submissions on 18 October.

11. After I had read the respondent's submissions on costs, I asked the parties by email if they intended commenting on each other's primary submissions as I initially proposed, or if they were content for me to make my decision on costs on those submissions. It seemed to me that the parties might not need to make further comment since the respondent had had some time to comment on the applicant's primary submissions. I stressed that I was not cutting off the opportunity of commenting if the parties wished. The applicant replied the next day that it did not intend to reply to the respondent's submissions; the respondent delivered submissions in reply on 19 October.

12. In its amended submissions, the applicant argued that the respondent's submission in the adjudication that [another company] was the principal to the contract, rather than the respondent, was unfounded within the meaning of s 36(2). The applicant did not address the question of whether the respondent's conduct was frivolous or vexatious.

13. The respondent submitted that its conduct was not frivolous or vexations within the meaning of s 36(2) and as interpreted by *Mudie v Gainriver Pty Ltd & Anor* [2002] 2 Qd R 271 and *Ebis Enterprises Pty Ltd v Sunshine Coast Regional Council* [2011] QCA 15. It said that "A lack of success does not automatically make the respondent's case 'frivolous or vexatious'. Indeed, in order for s 36(2) to be enlivened, it effectively requires a finding that the respondent deployed its response for an improper purpose."

14. To an extent the parties' submissions did not meet each other – the applicant addressed the issue of unfounded submissions but not frivolous or vexatious conduct, while the respondent addressed frivolous or vexatious conduct but not unfounded submissions (until its final submissions of 19 October, dealt with below).

15. Since the respondent had the applicant's submissions before it made its submissions and then replied to the applicant's amended submissions, it has had an opportunity of considering and addressing the allegation of unfounded submissions. I do not think it is a denial of natural justice for me to decide costs on that basis. And since the respondent has specifically addressed frivolous or vexatious conduct, neither is it is a denial of natural justice to decide costs on that basis.

16. In its final submissions of 19 October, the respondent said the applicant has not sought costs on the basis of the respondent's conduct being frivolous or vexatious and that it is not too late to attempt to run that submissions. I think this is a matter of fairness and natural justice, not one of waiver or the like. I do not think that I am limited to the grounds of unfounded submissions where the respondent has had an opportunity of addressing, and has addressed in detail, the grounds of frivolous or vexatious conduct.

17. I will summarise my findings in the determination to give context to the parties' submissions on costs. My comments are intended as a summary only and not as separate or different findings from those in the determination. If I express myself differently here than in the determination, it is unintentional and because of an infelicity of language, and the findings in the determination prevail over an inconsistency.

The determination summarised

18. I made the determination in favour of the applicant because I found it had proved its entitlement on the balance of probabilities and I rejected the respondent's sole ground of opposition to the application. That ground was that the contract relied on by the applicant was not between the applicant and the respondent, but between the applicant and a different company, [EPL]. The respondent's argument was that the adjudicator lacked jurisdiction because,

essentially, there was no contract between it and the respondent which could be the subject of a valid payment claim, payment dispute and application for adjudication. Had I found that the applicant's contract was with EPL rather than with the respondent, I would have had to dismiss the application.

19. The respondent relied essentially on two facts to support its argument. It said firstly that [one of its employees] and its director had told [a representative] of the applicant that the contract would be with EPL when the contract was first discussed. Secondly, it said that EPL had paid some of the invoices rendered by the applicant to the respondent.

20. [The applicant's representative] disputed that he had been told that the contract was to be with EPL. I resolved that conflict between the witnesses by looking at the contemporaneous and subsequent documents between the parties (reports, invoices, emails and letters) and found that the respondent's assertions were inconsistent with those objectively ascertained facts. I found inherently improbable that the respondent would send and receive those documents in its name without complaint if it had said earlier that the contract was with EPL rather than with the respondent. Not only were the documents inconsistent with the respondent's contention, they were entirely consistent with the applicant's assertion of a contract with the respondent.

21. I also found that the payment of some invoices by EPL, even if noticed by [the applicant's representative] which he disclaimed, was consistent with a contract with the respondent, particularly since the respondent paid at least the first invoice and in later documents said that it was seeking finance to pay the applicant. These factors were equally – if not more – consistent with a contract with the respondent as with the respondent's assertion that there was a commercial or financial arrangement between it and EPL for payment by the respondent of some of EPL's liabilities. No documents were submitted evidencing this arrangement.

22. As a result of my findings summarised above, on the balance of probabilities on the material before me I rejected the respondent's assertion that the applicant's contract was with EPL, and found that the contract was between the applicant and respondent. There being no other objection to my jurisdiction or to the substantive application, I considered the material and

found I had jurisdiction and that the applicant was entitled to the amount claimed.

23. I recite my findings on the parties' contentions to show the issues between them and that I comprehensively dismissed the respondent's primary allegations of fact on which it based its contention. I did not merely decide between two equally arguable contentions, but instead I found that the respondent had not established its base factual foundation, and that its allegations were inconsistent with the objective documentary evidence and were inherently improbable.

24. Supporting this conclusion was that, on the material before me, its response to the application was the first time the respondent had raised the argument that the applicant's contract was with EPL. Numerous invoices had been sent by the applicant to the respondent, with all but the last being paid. EPL said a dispute existed over the work the subject of the payment claim, but despite that dispute (itself undocumented), no point was taken by either EPL or the respondent before the application that the respondent was the incorrect recipient of the invoices. No explanation was given in the response or in subsequent material in the adjudication as to why the point was not raised earlier.

Was respondent's submission unfounded?

25. The applicant seeks costs because it says the respondent's submission that EPL was the principal was unfounded. The respondent did not address this submission although it had the applicant's first and amended primary submissions before it made its submissions.

26. In my view, the submission of the respondent that it was not party to the contract was without foundation. The submission lacked the evidential foundation which I rejected as being inconsistent with the objective evidence and being inherently improbable in light of the parties' conduct. The argument was raised for the first time in the response to the application, even though the contract and invoices under the contract had been in existence for around 12 months. No objective evidence of the alleged dispute as to the quality of the work was adduced.

27. In its final submissions of 19 October, the respondent said at par 7 that its mere lack of success does not make its submissions unfounded. I agree and I make it clear that I do not find the submissions to be unfounded on that basis. In summary, I find its submissions to be unfounded because I rejected the factual foundation advanced for the submissions for the reasons given in the determination and summarised here. For present purposes, I can agree with the respondent's proposition at par 8 of its final submissions that "submissions" are not the same as "the response and its attachments". That does not change the outcome of the costs application since all the submissions were the only resistance to the application.

28. The respondent also referred to a decision of the Australian Competition Tribunal in *Duke Eastern Gas Pipeline Pty Ltd* (2001) ATPR 41-827 at 43,196 which stated that an outcome advancing the commercial interests of a party would not be sufficient, in itself, to warrant a costs order, that costs of reviews before the Tribunal should be awarded sparingly and where conduct materially or unnecessarily increases costs.

29. I do not know the terms of the costs provisions in that case but I note it was an administrative review of a Ministerial decision and I am not persuaded that the same principles govern costs awards in those reviews as in applications under the Act. Unless the wording of the costs provisions and the underlying principles were the same, I would hesitate in applying those comments. I agree that the fact that an outcome advanced the commercial interests of a party would not be sufficient, in itself, to warrant a costs order under the Act. I would be prepared to find, however, that the conduct of the respondent in resisting the application on the sole ground I rejected materially and unnecessarily increased costs. But I make it clear I do not apply the reasoning in the Tribunal to make my decision on costs.

Was respondent's conduct frivolous or vexatious?

30. The respondent submits that its conduct was not frivolous or vexatious, relying on *Ebis Enterprises Pty Ltd v Sunshine Coast Regional Council* [2011] QCA 15 to submit that s 36(2) effectively requires a finding that the respondent deployed its response for an improper purpose before it is liable for costs.

31. In its initial response to the application, the respondent sought costs, saying at par 13 that "the conduct of the applicant in making the payment claim and the application was both frivolous and vexatious in that it made an application where the contract was not as between the applicant and respondent." If I were to apply that reasoning to the facts as found, it could be said that it was frivolous or vexatious of the respondent to resist the application on the ground that the contract was not between the applicant and respondent. However I will not take that course, partly because I do not think it is necessarily frivolous or vexatious merely to claim, without more, that a contract is between certain parties and not other parties, whether in an application or in a response. There could well be situations where it was not clear who the parties to the contract were and it was fairly arguable either way and it could not be said that the submissions or conduct were unfounded or were frivolous or vexatious.

32. In *Mudie v Gainriver Pty Ltd & Anor* [2002] 2 Qd R 271, the Queensland Court of Appeal was considering planning legislation which, like the Act, permitted costs to be awarded where conduct was frivolous or vexatious. Of that phrase, McMurdo P and Atkinson J said:

> [34] It seems likely that one purpose of s7.6(1) of the Act, which sets out the general rule that each of the parties bear their own costs, consistent with the objectives of the Act, is to ensure that citizens are not discouraged from appealing or applying to the Planning and Environment Court because of fear that a crippling costs order might be made against them. The provision no doubt also recognises the public interest character of some applications to the Planning and Environment Court. For that reason, there is often an understandable judicial reluctance, demonstrated in the planning cases referred to by his Honour, in finding proceedings brought by citizens to be frivolous or vexatious.
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> [35] The words "frivolous or vexatious" are not defined in the Act and should be given their ordinary meaning, unfettered by their meaning in the very different context of striking out or staying proceedings for an abuse of process. By the time an application for costs is made, the court knows the issues which have been litigated whilst a interlocutory applications, the court must to some extent speculate and must necessarily be cautious to ensure a deserving claimant is not unjustly deprived of the opportunity of a trial of the action. The Macquarie Dictionary defines "frivolous" as "of little or no weight, worth or importance; not worthy of serious notice: a frivolous objection 2. characterised by lack of seriousness or sense: frivolous conduct …" and "vexatious" as "1. causing vexation; vexing; annoying …".
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> [36] Unquestionably, something much more than lack of success needs to be shown before a party's proceedings are frivolous or vexatious. Although in a different context, some assistance can be gained from the discussion of the meaning of these words in *Oceanic Sun Line Special Shipping*

> *Company Inc v Fay* where Deane J states that "oppressive" means seriously and unfairly burdensome, prejudicial or damaging and "vexatious" means productive of serious and unjustified trouble and harassment, meanings apparently approved by Mason CJ. Deane, Dawson and Gaudron JJ in *Voth v Manildra Flour Mills Pty Ltd*. Those meanings are apposite here.
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> [37] Whether proceedings are vexatious or oppressive will turn on the circumstances of the case and will include public policy considerations and the interests of justice. (footnotes omitted)

33. Giving separate reasons but agreeing in the result, Williams JA said:

> [59] For the appellant to succeed the court must be satisfied that the appeal to the Planning and Environment Court was "frivolous or vexatious" within the meaning of those words in the section of the legislation empowering the court to make an order for costs. Each word is used in everyday language and there is little doubt as to the ordinary meaning of each. The Shorter Oxford English Dictionary defines "frivolous" as follows:
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> "1. Of little or no value or importance, paltry; (of a claim, charge, etc) having no reasonable grounds. 2. Lacking seriousness or sense; silly."
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> That work defines "vexatious" as follows:
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> "1. Causing or tending to cause vexation, annoyance, or distress; annoying, troublesome.
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> 2. In law. Of an action; instituted without sufficient grounds for winning purely to cause trouble or annoyance to the defendant."
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> [60] So far as the law is concerned the terms have been incorporated into rules of court as a ground upon which a claim may be struck out summarily. If a proceeding discloses no viable cause of action it can be struck out as being frivolous or vexatious. In consequence something of a gloss has been superimposed upon the ordinary meaning of each word when used in that context. But when the terms are not used in the context of striking out a claim which is groundless that gloss is no longer relevant and one must revert to the ordinary meaning of each word. But that is not to say that cases dealing with the striking out of an action on the ground that it was frivolous and vexatious are entirely irrelevant. Dixon J *in Dey v Victorian Railways Commissioners* (1949) 78 CLR 62 at 91 said:
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> "The application is really made to the inherent jurisdiction of the court to stop the abuse of its process when it is employed for groundless claims".
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> [61] S7.6 of the *Local Government (Planning and Environment) Act* 1990 clearly could apply to the situation where an appeal was struck out because it was groundless, but there is no reason to so limit the operation of the provision. If it was only to apply to the striking out of an appeal then it would have been easy for the legislation to have so provided. In this area of the law it quite often happens that more than one party is dissatisfied with a decision of a local authority which may be the subject of an appeal. In those circumstances it is often merely an accident that a particular party is the appellant for purposes of the appeal. Once the appeal is instituted other affected parties may raise additional issues for determination by the court. If a party resisted such an appeal by relying on assertions which were groundless then there is no reason why that party's conduct should

> not be described as being "frivolous or vexatious". To adapt the phraseology of Dixon J, in such circumstances there has been an abuse of process in that the court's time and resources have been employed in exposing a groundless basis for resisting the appellant's claim. Further, the meaning attributed to the word vexatious by Deane J in *Oceanic Sun Line Special Shipping Co Inc v Fay* (1988) 165 CLR 197 at 247 also covers that situation; there it was said: "Vexatious should be understood as meaning productive of serious and unjustified trouble and harassment". A developer and local authority clearly produce unjustified trouble and harassment when they resist in court the setting aside of void decisions and seek to justify unlawful conduct on wholly unmeritorious grounds. Such resistance would, in ordinary parlance, be described as "frivolous and vexatious".

34. Although the legislation being considered there and the Act have different subjects, I think there is a commonality of purpose in their costs provisions and that it is safe to apply their Honours' comments to this case. I am conscious of the need to take care in applying judicial comments on different legislation from different jurisdictions, yet I think the purposes of the two Acts are sufficiently similar to take guidance from the Queensland Court of Appeal on the interpretation of words well known to the law.

35. *Mudie* was considered and applied by a differently constituted Court of Appeal in *Ebis*, with McMurdo P and Philippides J agreeing with Chesterman JA who, after quoting similar passages from *Mudie* as I have quoted, said at [7]:

> The notion underlying this elucidation of the section is that a proceeding will be frivolous if it lacked substance, so there was no reasonable basis for starting it so that its prosecution produced unjustified trouble for the other party

36. Later his Honour equated frivolous or vexatious conduct with bringing proceedings without proper grounds, where he said at [13]:

> In the absence of evidence that the Council did not believe that the letting of the premises was unlawful it is not established that the proceeding was brought frivolously or vexatiously i.e. without proper grounds.

37. The only remarks in either *Ebis* or *Mudie* which could be taken as supporting the respondent's contention that it is only frivolous or vexatious conduct if there is an improper purpose are those of Chesterman JA, where he said at [8];

> The fact that the P & E Court made the enforcement order makes it difficult to conclude that the proceeding was brought "without sufficient grounds for winning purely to cause trouble or annoyance", a common meaning of vexatious in this context.

38. However his Honour made it clear that being "purely to cause trouble or annoyance" was only a common meaning. It was not the only meaning, as is apparent from his Honour's other comments quoted above.

39. The respondent's submission is also at odds with *Mudie* where the Court of Appeal held at [39] that the lower court had "placed the bar for an applicant for costs under [the section] too high".

40. I do not think it is necessary for an applicant for costs under s 36(2) to show that the other party brought or resisted the adjudication application for an improper purpose. I reject that submission of the respondent and apply the meaning of "frivolous or vexatious" as elucidated in *Mudie* and *Ebis*.

41. I consider the respondent's conduct frivolous or vexatious in making the allegations of having told [the applicant's representative] that the contract would be with EPL when (a) they were unable to substantiate those allegations, (b) the allegations were inconsistent with the objective documentary evidence, (c) the allegations were made for the first time in the response to the application, (d) neither witness stated he had the authority to contract on behalf of EPL, (e) EPL, despite having submitted a declaration in support of the respondent, did not say that either witness had the authority to contract on its behalf, and (f) [the director of the respondent], who appears to have been held out in the response as having contracted on behalf of EPL, was not a director, shareholder, officer, employee or agent of EPL on the material before me.

42. Making such allegations in those circumstances is frivolous in that it is without foundation and against objective evidence, and it is vexatious in that it caused the respondent unnecessary time, cost and trouble.

43. Since that was the only resistance to the application for adjudication, the application would have been unnecessary if the respondent had not maintained that position. If the respondent only took that position after the application was made, there was no other basis for not paying the payment claim, and again the application should not have been necessary. I think the conduct and submissions of the respondent caused the incurrence of all of the costs of the

application and not just those costs after it made the formal submission in its response.

44. I find that the applicant has incurred costs of the adjudication because of frivolous and vexatious conduct on the part of, or unfounded submissions by, the respondent.

Amount of costs

45. When I invited submissions on costs at the time I made the determination, I invited the parties to provide evidence of the amount of costs claimed since the Act requires me to specify a sum. The applicant provided a bill of costs itemising the time spent on the application at an hourly rate of $330 showing $12,342 for professional fees, plus GST and adjudicator's fees totalling $15,326.20. Despite this figure in the bill, the applicant said it has only been charged $8,250 for professional fees of the application, $1,150 for professional fees of the costs submissions, plus adjudicator's fees.

46. In its submissions of 19 October, the respondent said if costs were awarded they should be restricted to the first application on a party-party basis in accordance with the Supreme Court Scale. It said in par 14 that "The indemnity rule is ousted by the Act. The exceptions under the Act are not to be a complete indemnity but a partial indemnity. No grounds have been made out (if the power exists) for cost to be ordered on a solicitor-client basis."

47. The respondent did not say what the indemnity rule was or how it was ousted by the Act, or why costs under the Act should not be a complete indemnity, or why a party should establish grounds for costs to be on a solicitor-client basis.

48. In my view, since s 36 is in a setting separate and quite distinct from litigation (where costs are usually party-party or standard basis unless ordered otherwise), and since it is expressed in general language with the specific exceptions, the section confers a discretion on an adjudicator to award such costs as he or she considers appropriate in the circumstances, to be exercised judicially on the usual principles (eg, *House v R* (1936) 55 CLR 499). The legislature does not expressly require an adjudicator to consider the difference between solicitor-client and party-party costs. In some cases that difference might be relevant to the exercise of the discretion in determining what was

appropriate in the circumstances, for example if they was a gross disparity between them indicating unnecessary or unreasonable incurrence of some costs.

49. Other indicators of the legislature's intention are the preconditions for awarding costs. One of those, frivolous or vexatious conduct, would often be grounds for awarding solicitor-client costs in litigation (depending perhaps on individual circumstances), whereas unfounded submissions, on their own, might not normally be sufficient (see, eg, *Colgate-Palmolive Company v Cussons Pty Ltd* (1993) 46 FCR 225). The legislature has therefore mixed a precondition for solicitor-client costs in litigation with a factor not normally justifying such an order. To my mind, this indicates the conferral of a general discretion freed from the strictures of awarding party-party costs other than in certain limited, undefined circumstances.

50. It is also relevant that the starting points for awarding costs are different in adjudications from litigation. In the former, no costs are awarded unless there is some specified conduct. In the latter, costs are awarded on the party-party basis to the successful party unless there is some specified conduct.

51. I therefore reject the respondent's contention that the applicant is limited to party-party costs. In any event, I have found that the respondent's conduct was frivolous or vexatious, which would normally entitle an opposing party in litigation to solicitor-client costs. If necessary, I would find that the respondent's conduct justified solicitor-client costs against it on that basis for the reasons given in finding it was frivolous or vexatious.

52. If I am wrong and an adjudicator is only permitted to award costs on the party-party basis to the successful party unless there is some other conduct, I would find that the amount claimed by the applicant represents its party-party costs. The bill of costs submitted by the applicant was for some $12,342 plus GST and disbursements. The work itemised in that bill could properly be seen as solicitor-client work, representing all the work done for the applicant on the application. The amount claimed of $8,250 for that work could properly be seen as the party-party items in that bill. An examination of those items shows that at least that amount could be properly classed as party-party items. It is irrelevant to this classification that the applicant has only been charged for the

party-party items. Classification of work into party-party or solicitor-client depends not on the amount the client pays but on the nature of the work. There can easily be cases where all or the majority of a client's legal fees are properly categorised as party-party.

53. The respondent says the rate of $350 per hour is too high and that the rate should be $240 per hour as set out in the *Supreme Court Rules*. I note that the rate actually charged to and claimed by the applicant is $330 per hour. Applications under the Act are not governed by the *Supreme Court Rules*, which can be little more than a guide as to appropriateness in such applications. For example, if the rate claimed grossly exceeded the rate in the *Rules*, it might indicate unreasonableness. I find that the rate of $330 per hour is reasonable and appropriate given the specialist nature of the work, the time constraints on applications, the amount claimed and the issue in dispute.

54. Examining the items claimed in the bill of costs, the time taken and sums charged, I consider those costs to be reasonable. The respondent has not attacked any items in the bill of costs. The items or amounts are not disproportionate to the amount claimed, the hourly rates charged are reasonable, and the amount of time spent on preparing the application and responding to the respondent's submissions was appropriate. As I related in the determination, there were a number of further submissions in the determination and on the question of costs. Since the amount claimed in the bill of costs is reasonable, it follows that the lesser sums claimed of $8,250 and $1,150 are also reasonable.

55. I therefore award the applicant its costs in the sum of $11,150.00 calculated as set out at [8] above.

56. I draw the parties' attention to the slip rule in s 43(2) if I have made a miscalculation or some other correctible error.

Dated: 19 October 2012

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CAMERON FORD

Registered Adjudicator