SUPREME COURT OF QUEENSLAND

CITATION:	*Thompson v MacMillan* [2026] QSC 206
PARTIES:	**JAMES BOYD THOMPSON** (plaintiff/applicant) **v** **ELIZABETH (LIZA) MACMILLAN** (sixth defendant/respondent)
FILE NO/S:	BS 9148 of 2013
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	1 September 2026
DELIVERED AT:	Brisbane
HEARING DATE:	15 May 2026
JUDGE:	Ryan J
ORDER:	**1. The application is refused.** **2. If the sixth defendant/respondent seeks her costs of this application, then she is to so inform my associate within 3 business days of the delivery of these reasons, by email, copying in the plaintiff/applicant. If she does seek her costs, then I will make directions about the way in which costs will be determined. If she does not seek her costs, then my order will be: “No order as to costs”.**
CATCHWORDS:	PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – where there is an extensive history of litigation between the parties – where a costs order was made against the applicant in favour of the respondent several years ago – where a costs assessor was appointed and a costs certificate filed – where the applicant seeks a review of the costs assessment – where the applicant alleges that the assessor failed to provide adequate reasons – where the applicant alleges that the assessor failed to consider his objections – where the applicant alleges that the assessor failed to assess costs based on the correct principles – whether the assessment ought to be reviewed *Legal Profession Act 2007* (Qld) s 342 *Uniform Civil Procedure Rules 1999* (Qld) r 735, 742 *Australian Coal & Shale Employees Federation v The Commonwealth* (1953) 94 CLR 621

	Civil Mining & Construction Pty Ltd v Wiggins Island Coal Export Terminal Pty Ltd [2024] QSC 28 *Giannarelli v Wraith (No 2)* (1991) 171 CLR 592 *Hunter v Hunter* [2015] QSC 181 *Idemitsu Queensland Pty Ltd v Agip Coal Australia Pty Ltd* [1993] QCA 565 *King v Allianz Australia Insurance Limited* [2015] QCA 101 *Legal Services Commissioner v Wright* [2010] QCA 321 *Magna Alloys and Research Pty Ltd v Kevin Lindsay Coffee (No 2)* [1982] VR 97 *Murjen Pty Ltd v F V Parmelia & Ors* [1993] QSC 312 *Richards v Watt* [1866] QSCR 143 *Ricks v White* [1995] 2 Qd R 302 *Smith v Buller* (1875) LR 19 Eq 473 *Thompson v Cavalier King Charles Spaniel Rescue (Qld) Inc* [2022] QSC 82 *Thompson v Cavalier King Charles Spaniel Rescue (Qld) Inc* [2022] QSC 300 *Thompson v Cavalier King Charles Spaniel Rescue (Qld) Inc* [2023] QSC 214
COUNSEL:	The plaintiff/applicant appeared on his own behalf N Delaney (solicitor) for the defendant/respondent
SOLICITORS:	ACLG Lawyers for the defendant/respondent

[1] Under rule 742 of the *Uniform Civil Procedure Rules 1999* (Qld) (**UCPR**), the plaintiff/applicant, seeks a review of several specific decisions of Mr Stuart Naylor, a costs assessor, in relation to his assessment of the costs payable by the plaintiff to the sixth defendant in accordance with one of two costs orders made in the sixth defendant's favour by Mullins J (as her Honour then was) about ten years ago.

[2] This is not the first time the applicant has asked for a review of a costs assessment in relation to costs payable by him in this matter, but this is the first time he has asked for a review of these particular costs.

[3] The respondent filed no material and made very limited submissions on the application.

[4] For the reasons which follow, I refuse the application to review the costs assessment.

[5] If the sixth defendant seeks her costs of this application, then she is to so inform my associate within 3 business days of the delivery of these reasons, by email, copying in the applicant. If she does seek her costs, then I will make directions about the way

in which costs will be determined. If she does not seek her costs, then my order will be: “No order as to costs”.

Context for review

History of the matter

[6] The plaintiff’s membership of a charitable organisation was terminated in 2011. In 2013 he brought a claim seeking relief of an injunctive nature and damages. There were originally seven defendants to his claim. The litigious “tale”, as it were, up until May 2022 is set out in the decision of Jackson J in *Thompson v Cavalier King Charles Spaniel Rescue (Qld) Inc* [2022] QSC 82.

[7] By the time of Jackson J’s decision, only the first and third defendants remained as defendants in the proceedings – the others having died or having had the claims against them struck out.

[8] Jackson J’s decision put an end to the plaintiff’s claim by way of: (a) summary judgment in favour of the third defendant; and (b) an order staying proceedings against the first.

[9] Although Jackson J’s decision brought an end to the claim, it did not bring an end to the plaintiff’s litigation which has, since then (with the exception of his unsuccessful appeal against Jackson J’s decision),[1] focused on challenges to the costs orders made against him over the thirteen-odd years of the litigation of his claim.

The present application

[10] This application concerns costs ordered in favour of the sixth defendant. The plaintiff’s claims against her were struck out by Mullins J on 12 February 2016. Her Honour then made two costs orders in the sixth defendant’s favour. The first, order 33, required the plaintiff to pay the costs of the first and sixth defendants of the application filed on 27 January 2016 on the indemnity basis; and the second, order 35, required the plaintiff to otherwise pay the costs of the proceedings of the fifth, sixth and seventh defendants on the standard basis. The present application concerns the costs ordered in favour of the sixth defendant by order 35 only.

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1 The plaintiff’s appeal against Jackson J’s decision was dismissed, summarily and with costs, on 17 February 2023.

[11] It is necessary to spend a little time on the history of the matter to explain, at least in part, why an order for costs made in 2016 is still the subject of litigation.

[12] I will pick up the story from **2 February 2022**, when the sixth defendant filed a costs statement, seeking costs from the plaintiff of $99,544.23 (#298).[2]

[13] The costs statement was delivered to the plaintiff on 7 December 2021. He filed his original notice of objection to it on the day it was filed: **2 February 2022** (#299 and #300). On **15 February 2022**, he filed an amended notice of objection (#308). His objections fill more than 450 A4 pages. It then took a year for a costs assessor to be appointed. *Some* of the reasons for the delay in appointing a costs assessor appear in Jackson J's decision in *Thompson v Cavalier King Charles Spaniel Rescue (Qld) Inc* [2022] QSC 300. Other attempts by the sixth defendant in early 2023 to have a costs assessor appointed were unsuccessful. But finally, on **17 February 2023**, the Registrar appointed Mr Stuart Naylor to conduct the costs assessment.

[14] On **25 July 2023**, Mr Naylor filed his costs assessor's certificate (#370) in which he stated that he had assessed the costs payable by the plaintiff to the sixth defendant in the amount of $92,296.64 (later amended to $92,255.64),[3] inclusive of the costs of the assessment and Mr Naylor's own fees.[4]

[15] On **9 August 2023**, the plaintiff was ordered by the Deputy Registrar to pay $92,255.64 to the sixth defendant (#371).

[16] On **11 August 2023**, the plaintiff made a written request for Mr Naylor's reasons (#372).[5]

[17] On **7 September 2023**, Bradley J (as his Honour then was) stayed the enforcement of the order for costs (#371) until the determination of the appeal against Jackson J's decision in *Thompson v Cavalier King Charles Spaniel Rescue (Qld) Inc* [2022] QSC 300 which was relevant to the costs assessment.

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2 Numbers in this format are court file document numbers.

3 The amended costs assessor's certificate was filed on 20 November 2023.

4 In other words, Mr Naylor determined that the sixth defendant was entitled to be paid the costs of the assessment (a total of $18,550.30).

5 The request was out of time, but the time for him to make it was extended by Bradley J (as his Honour then was) on 7 September 2023.

[18] The appeal was dismissed, with costs, on **8 September 2023**. On **28 September 2023**, the plaintiff made payment to the sixth defendant in accordance with the order (#371). On **17 October 2023**, he paid $7,587.48 to Mr Naylor for his reasons.

[19] Mr Naylor's reasons were delivered on **1 November 2023** and filed on **6 November 2023** (#386).

[20] On **15 November 2023**, the plaintiff filed an application to review Mr Naylor's costs assessment (#385), which was adjourned until 22 December 2023, but not served.

[21] The review application was listed for a one-day hearing in the civil list on **26 April 2024** but, on **10 April 2024**, the hearing date was vacated (by consent) by the Civil List Manager as the plaintiff was recovering from surgery. A new date for the hearing was not set at that time.

[22] On **6 January 2025**, the plaintiff filed an application for an order that he be provided with copies of the documents which had been provided by the sixth defendant to Mr Naylor.

[23] On **10 January 2025**, the Registrar made an order extending time for the plaintiff to serve a notice of objection. On **24 January 2025**, the Registrar refused the plaintiff's application for an extension of time within which to serve an objection (#396).

[24] The plaintiff amended his application twice – on **28 January 2025** (#398) and on **23 December 2025** (#406). He supported the application by way of three affidavits (#405, #407 and #408).

[25] On **4 January 2026**, the amended application filed on 23 December 2025 (#406) was listed for hearing on **15 May 2026**. That was the application I heard.

Authorities on the approach to the Court's task

[26] Many authorities deal with the criteria to be applied by a judge reviewing a costs decision – often citing the relevant discussion of the matter by Fullager J in *Magna Alloys and Research Pty Ltd v Kevin Lindsay Coffee (No 2)* [1982] VR 97 at 102 – 103 (my emphasis):

> "The general principles to be applied by the court on judicial review of a taxation by a taxing master of a bill of costs are, in my opinion,

clear. In the case of *582 St Kilda Road v Campbell* (unreported 5 September 1975), Lush, J said: 'The nature of the powers exercised by a judge on the review of the decision of the taxing master **is identical with that exercised by any tribunal reviewing a discretionary decision**' … I think that for a considerable time past it has been unnecessary to go beyond the judgment of Kitto J in *Australian Coal & Shale Employees Federation v The Commonwealth* (1953) 94 CLR 621'. Lush J then cited the very well-known passage appearing at (94 CLR) 632, from the reference to *Lovell v Lovell* (1950) 81 CLR 513 down to the reference to *House v R*, and then added: 'That passage is cited so often and in so many different contexts that it is worth recording again that the case is related to the review of a matter of costs taxation'. Lush J also followed and applied the observations of Kitto J upon questions which relate to amount only, that is to say, **upon the general approach of the court 'where the question is one of amount only', which is one of strong reluctance to interfere at all**. The reluctance is, however, based on obvious reasons and not on any 'tyrannical rule' fettering the judicial discretion.

I shall accordingly apply the general principles indicated by Kitto J and by Lush J. The court must distinguish in its approach between, on the one hand, cases **'where it is a question whether the master has exercised his discretion properly, or it is only a question as to the amount to be allowed', in which latter cases, 'the court is generally unwilling to interfere with the judgment of its officer, whose peculiar province it is to investigate and to judge of such matters, unless there are very strong grounds to show that the officer is wrong in the judgment he has formed'**. It has thus been said that 'it is **only in an extreme case'** that the court will interfere with the master's decision on a matter involving **nothing but quantum,** though it must be remembered that such phrases are not the words of any statute or rule, but a very compendious judicial summary of the general approach to determinations of an officer whose peculiar province it is to investigate and judge of such matters, by judges whose special or particular province or training it certainly is not."

[27] Kitto J himself said (my emphasis, footnotes omitted):

"… the true principle limiting the manner in which appellate jurisdiction is exercised in respect of decisions involving discretionary judgment is that **there is a strong presumption in favour of the correctness of the decision appealed from, and that that decision should therefore be affirmed until the court of appeal is satisfied that it is clearly wrong.** A degree of satisfaction sufficient to overcome the strength of the presumption may exist where there has been an error which consists in acting on a wrong principle, or giving weight to extraneous or irrelevant matters, or failing to give weight or sufficient weight to relevant considerations, or making a mistake as to the facts. Again, the nature of the error may be discoverable, but even so it is sufficient that the result is so unreasonable or plainly unjust that the appellate court may infer that there has been a failure to properly exercise the discretion which the law reposes in the court at first instance: *House v The King*. So, too, in my opinion, the exercise of the jurisdiction to review a taxation of costs is subject to no narrower limitation than that which was stated by Bovil C.J. and Brett J. in *Hill v Peel*: — 'A very wide discretion must necessarily be left to the taxing officer, which must be exercised by him after a careful consideration of the particular circumstances of each case; and where, after properly considering the matter, the master has arrived at a decision, it lies upon those who impeach his decision to satisfy the Court that he is wrong.'

Where a principle is involved, the Court will always entertain the question, and, if necessary, give directions to the master; but, **where it is a question of whether the master has exercised his discretion properly, or it is only a question as to the amount to be allowed, the Court is generally unwilling to interfere with the judgment of its officer, whose peculiar province it is to investigate and to judge of such matters, unless there are very strong grounds to shew that the officer is wrong in the judgment which he has formed."**

[28] More recently, authoritative guidelines for the conduct of a costs assessment review were collected by her Honour Justice Muir in *Civil Mining & Construction Pty Ltd v Wiggins Island Coal Export Terminal Pty Ltd* [2024] QSC 28 at [20] (my emphasis):

"The following eight guidelines for conducting a review under UCPR r 742 (some of which overlap), emerge from the authorities:

a) First: The onus lies on those who seek to impeach the costs assessor's decision to satisfy the court of the error;

b) Secondly: An application to review involves the exercise of the direction so it is analogous to an appeal. It follows that the well-known principles pertaining to an appeal against the exercise of a discretion, as set out in *House v The King* [1936] 55 CLR 499 at 505, are applicable: the court may interfere with a costs assessor's exercise of discretion where it is demonstrated that the costs assessor has either acted upon a wrong principle, failed to exercise a discretion, or exercised a discretion in a way that was manifestly wrong;

c) Thirdly: A decision of a costs assessor will be manifestly wrong if it was not open on the facts or not within the costs assessors lawful discretion;

d) Fourthly: **There is a strong presumption in favour of the correctness of a cost assessor's decision such that it should be affirmed unless the judge on review is satisfied that it is clearly wrong**;

> e) Fifthly: **Ordinarily, the discretion of the costs assessor will not be interfered with on review unless the costs assessor has erred on a question of principle**;
>
> f) Sixthly: **Where the decision involves quantum only, it is, generally speaking, final, and it must be a very exceptional case in which the court will even listen to an application to review such a decision**;
>
> g) Seventhly: In practice, it is necessary to show there has been some specific error or that the outcome is so obviously inappropriate there is an undisclosed error in the exercise of the assessor's judgment; **it is not sufficient for the reviewing court to take the view that if it had been performing the assessment, a different amount would have been assessed**; and
>
> h) Finally: If there is an error, it is appropriate (if in a position to do so) for the court of review to exercise the relevant judgment itself."

[29] In my review, I abided by the list of guidelines outlined by her Honour, as further informed by the content of the long quotes set out above: the critical points being that–

(a) generally, there is to be no interference with the discretion of a costs assessor unless they have erred on a question of principle; and

(b) where the challenge is to the quantum allowed, the court should be unwilling to interfere (see also *King v Allianz Australia Insurance Limited* [2015] QCA 101 at [18]). Although if a court is persuaded that there has been a mistake in the calculation of quantum, then it will be corrected.

The plaintiff/applicant's authorities

[30] I considered the authorities listed in the applicant's outline and, where relevant, took them into account in my consideration of his grounds. Generally, I noted that:

(a) Several turned on their own facts. For example, the outcome in *Richards v Watt* [1866] QSCR 143 depended upon there being no *evidence* that certain costs were necessary.

(b) Some expressed well established principles or definitions in general terms. For example, *Smith v Buller* (1875) LR 19 Eq 473; *Murjen Pty Ltd v F V Parmelia & Ors* [1993] QSC 312; and *In Re Gibson's Settlement Trusts* [1981] Ch 179.

(c) Some made both general statements of principle and dealt with facts peculiar to the litigation with which they were concerned. For example, in addition to setting out the characteristics of items that were properly allowed, and the notion of a "luxury", in *Ricks v White* [1995] 2 Qd R 302, Demack J considered the necessity of two counsel or two experts in that particular case.

(d) Some did not appear to relate to an issue which was raised in the present application. For example, *Giannarelli v Wraith (No 2)* (1991) 171 CLR 592 concerned primarily the power of a taxing officer to compel the production of documents; as well as the officer's power to give a copy of any documents produced to the other party to the taxation – which was not in issue in the present case (see the applicant's submissions at [6]). *Legal Services Commissioner v Wright* [2010] QCA 321 concerned an asserted "third party payer" but there was no such payer involved in this case. *Idemitsu Queensland Pty Ltd v Agip Coal Australia Pty Ltd* [1993] QCA 565, which concerned restitution, might have been of some *tangential* relevance if the applicant had been successful in this application for a review, but not otherwise.

[31] The applicant relied upon *In Re Gibson's Settlement Trusts* [1981] Ch 179 for the proposition that more than a mere statement that a claim was reasonable is required for reasons to be adequate – which I took into account in my evaluation of his arguments.

[32] The applicant relied upon *Murjen Pty Ltd v F V Parmelia & Ors* [1993] QSC 312 for his argument that the assessor abandoned the simple meaning of the words used in

the scale in favour of a complex set of assumptions which were said to have been drawn from elsewhere – which I took into account in my evaluation of his arguments.

[33] One of the applicant's arguments was that the assessor used the wrong test in determining whether to allow a certain item. The applicant observed that, at times, the assessor considered whether costs were "reasonable" and at other times whether costs were "necessary and proper". The assessor's reasons read as a whole convey that he applied a "reasonable" test if there was a challenge to the treatment of an item – that is, he asked how a reasonably competent solicitor would assess an item's relevance and worth (at [6]). And he applied a test of "necessary and proper" when the challenge was about how or why the work was done by the sixth defendant's solicitor. That is, he asked whether the work was necessary and proper in the conduct of the litigation at hand (at [3]). The assessor's approach was orthodox.

The plaintiff/applicant's complaints

"**Ground 1A:** That, in breach of rule 720(2)(b), on …14 March 2023 the costs assessor … issued a direction that was inconsistent with the rules of natural justice."

[34] I have assumed that this complaint concerns the assessor's decision to conduct the assessment on the papers without an oral hearing. The assessor is responsible for deciding the procedure to be adopted in a particular costs assessment as per rule 720(4). The rule expresses no preference for an oral hearing. Whatever procedure is adopted, the rules of natural justice or procedural fairness require that all parties have an opportunity to be heard. It cannot be suggested that the plaintiff was denied that opportunity. Indeed, it may be thought that the volume and content of his objections were more easily assessed in their written form. There is nothing in this ground.

"**Ground 1:** For numerous items the costs assessor failed to provide adequate reasons. For those items [footnoted by the plaintiff in his application] the costs assessor could be said to have provided no reason at all."

[35] There is nothing in this ground.

[36] A proper evaluation of the adequacy of the reasons requires the nominated footnoted paragraphs to be considered in the context of the assessor's reasons as a whole. A fair and reasonable interpretation of the assessor's brief reasons in the nominated

paragraphs (in effect, amounting to a statement that he considered a claim to be a reasonable or a necessary or a proper one) is that it is a shorthand reference to the assessor's application of the principles upon which "reasonableness" or "necessity and propriety" are to be judged, which are set out in the earlier paragraphs of the reasons ([1] – [10]).

[37] Clearly, the reasons relating to objection 1409 ([158]) are those in [157] about which the applicant makes no complaint of inadequacy.

"**Ground 2:** In numerous instances the costs assessor's reasons were inadequate because the reasons failed either to acknowledge or to contend with arguments made in the notice of objections. Mr Naylor failed to comply with the requirement at r 721(f) to give due consideration to all other relevant circumstances." [The application contained a footnote listing the paragraphs to which this complaint related.]

[38] There is nothing in this ground. The assessor clearly appreciated that the applicant was the audience for his reasons. In framing his reasons, he was entitled to assume that the applicant appreciated the context for the assessor's explanation. I consider that, in relation to each paragraph complained of (noting that many concerned trivial amounts), the reasons adequately responded to the applicant's objection, especially bearing in mind that one is dealing with the exercise of discretion.

"**Ground 3**: In breach of r 721(h), the costs assessor did not exercise his discretion judicially through having failed to give due consideration or any consideration to the argument put at objection 10A to items 1266 to 1287 inclusive." [The applicant footnoted paragraph [17] of the reasons.)

[39] The essence of objection 10A *appears to be* that items 1266 to 1287 had already been considered and allowed in the assessment of the indemnity costs of order 33 and there had been, as the applicant put it, "A second bite of that cherry!"

[40] The contention that the assessor failed to give due consideration to the argument put at objection 10A is not borne out. He clearly considered it and determined it on the basis that those items did not appear to relate to the 27 January 2016 application (dealt with by order 33) and there had been no attempt by the applicant to prove that they did. There is nothing in this ground.

"**Ground 4**: Contrary to long and well established legal principles that legal costs should not permit a party to make a profit, the costs assessor allowed Ms Macmillan to be reimbursed a greater amount for costs than she had been billed."

[41] This ground expands upon ground 3. In addition to inviting me to consider document 255 (the costs assessor's certificate relating to order 33 – the costs assessor being Mr Kerr), the applicant also invited me to consider document 259. Document 259 was the costs assessor's reasons.

[42] I read both documents. I note that Mr Kerr's assessment was set aside by Callaghan J on the basis that Mr Kerr's reasons were inadequate. But regardless, neither document 255 nor document 259 assist the applicant in this ground.

[43] As was the case in the matter before Dalton J, appealed to the Court of Appeal (see *Thompson v Cavalier King Charles Spaniel Rescue (Qld) Inc* [2020] QCA 2 at [19]), this ground amounted to nothing more than an assertion, unsupported by evidence including, for example, the relevant client agreement or the firm's financial records.

"**Ground 5**: The costs assessor did not exercise his discretion judicially through having failed to give due consideration to the points raised at objection 12. In his reasons the costs assessor pointed to the matter having been ongoing and the costs payable under the order not being those of a particular firm of solicitor's (sic) costs. However, it is quite clear from the nature of the work claimed in those items are of ACLG Lawyers – a solicitor acquainting himself with the facts of the matter – prior to the time the solicitor had nominated to the Court." [The applicant footnoted paragraph [18] of the reasons.]

[44] There is nothing in this ground. The assessor's response adequately deals with the points raised in the objection including in the way in which he dealt with the applicant's pedantic interpretation of the colloquial phrase "a couple of weeks ago".[6]

"**Ground 6**: The costs assessor did not exercise his discretion judicially through having failed to give due consideration or any consideration to objections 13, 14, 15 and 16 or at the point of assessment item-by-item. The costs assessor's excuse "vastly

6 The Court of Appeal dealt with, and dismissed, a similar argument: see [2020] QCA 2 at [20].

different scales of costs" is without substance. Although the quanta have increased on multiple occasions, the text describing what is allowable for perusals and examination is to identical effect then as now … [t]he costs assessor failed to comprehend the legal meaning of perusal and its distinction from examining (or scanning or skimming) and the principle of their relative hierarchies. The costs assessor failed to consider the actual word count of documents claimed to have been **examined** and comparing the amount claimed allowable at the scale's premium rate for **perusal**."

[45] This ground went on to detail complaints about the assessor's treatment of various items. Whilst it was expressed in terms of the assessor having erred in principle, in fact, it amounted to a complaint about the outcome (the quantum) of the proper exercise of the assessor's discretion in relation to numerous items which is not an appropriate basis for review.

"**Ground 7**: Improperly, the costs statement routinely claimed twice upon the receipt of correspondence – under scale 17 for perusal and under scale 9 for examination. Contrary to proper principles … on numerous occasions the costs assessor allowed both (1) a charge-per-item-of-work plus (2) a time-based charge for what should be considered a single piece of work."

[46] While there was an assertion of impropriety, this complaint in fact amounted to a complaint about the outcome of the proper exercise of the assessor's discretion which is not an appropriate basis for review.

[47] **Grounds 8, 9, and 13** are complaints about quantum and do not provide a basis for review.

[48] **Grand 10** seeks the correction of "calculation and/or transcription errors totalling $44.20". Such a trivial amount does not warrant review.

[49] **Grounds 11, 12 and 14** complain that the assessor did not accept the applicant's argument that Item 3(b) in the Supreme Court Scale required "the proportional amount of the cost of ½ hour" to be calculated to the exact minute and that the assessor ought to have doubted the veracity of the claims rounded to 5-minute intervals.

[50] The applicant relied upon [290.20] of *Quick on Costs* which suggested that Item 3(b) of the Scale of Costs for the Supreme Court required the time allowed after the first quarter hour to be calculated on a minute-by-minute basis. Item 3 states:

> **Costs on a quarter-hourly basis**
> If, under an item of this schedule, costs in relation to a matter are allowable on a quarter-hourly basis, the amount to be allowed is –
> (a) for less than a quarter-hour spent on the matter – the cost of 1 quarter-hour; or
> (b) for part of a quarter-hour after the first quarter-hour spent on the matter – a proportionate amount of the cost of 1 quarter-hour.

[51] The assessor considered rounding to 5-minute time frames to be acceptable. His reasons appear at [97]. Further, as the assessor appreciated, even if the applicant's construction of item 3(b) was correct, the assessor was presented with times *which may have been rounded* to 5-minute increments but there was no evidentiary basis for the assessor to doubt the accuracy of the times in fact claimed. There is nothing in this ground warranting a review. In any event, this general objection applied to items which were the subject of *specific* objection.

[52] **Ground 15** was along similar lines. In my view, it was adequately addressed by the assessor in [97].

[53] **Ground 16** is not a viable ground.

[54] **Grounds 17 and 18** engaged in an argument about whether the assessor had correctly determined that it was not practical to attach certain invoices to the Costs Statement (namely, invoices for express post and parking) and complained that not to do so amounted to a denial of natural justice to the applicant who could not examine the invoices. This ground amounted primarily to an attack on the exercise of the assessor's discretion. The suggestion that the applicant was deprived of natural justice or somehow unfairly prejudiced by not being able to "scrutinise" invoices for services which are public, common and widespread, with costs that are easily estimable, is ingenuine.

[55] **Grounds 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 38, 40, 41, 43, 44, 45, 46, 47, 48, 49, 50** complain – often querulously – about the exercise of the assessor's discretion. These grounds effectively invited the court to re-assess, rather than review the principle upon which the costs were assessed, which is

something the court does not do (*cf Hunter v Hunter* [2015] QSC 181 especially at [19]).

[56] Additionally, **<u>Ground 27</u>** *seems to reflect* a misunderstanding on the applicant's part. He says, " … Mr Naylor still doesn't get it. Perusal is the rigorous reading where the solicitor is applying his or her skill and legal knowledge, making notes and considering how to progress in the client's interests". The applicant *seems to be implying* that examination is *something less*. Indeed, he makes this point in other grounds. But *if* that is the applicant's understanding, it is not correct. As Muir J explained in *Civil Mining & Construction Pty Ltd v Wiggins Island Coal Export Terminal Pty Ltd* [2024] QSC 28 at 258 (my emphasis):

> "The following meanings for these terms emerge from the authorities:
>
> (a) Drawing (or drafting) …
>
> (b) Producing …
>
> (c) Perusing [Item 8]: Entails a careful reading of the document, giving detailed consideration to its contents and the application of the solicitor's legal knowledge to determine what steps should be taken in the client's interests as a consequence of the document. [Footnoting *Re Feez Ruthning's Bill of Costs* [1989] 1 QR 55 at 73; *McCoombes v Curragh Qld Mining Limited* [2001] QDC 142 at [38]].
>
> (d) **Examining [Item 9]: Involves a higher level of review than a perusal. An examination charge is applicable if a close reading of the document, i.e. a perusal is unnecessary.** It may mean reading only a portion of the document closely; or it may mean a high level or even more cursory relive of the whole document, but without reading every line closely. It may also mean comparing the contents of one document with another. [Footnoting R Quick, Quick on Costs, Thomson Reuters, [290.120] An examination charge is not limited to examining Document A for the purpose of drafting Document B. An examination charge is also available in respect of a range of matters. For example, the work o collating a document, making notes about a document, preparing an index to documents or a chronology, or comparing two documents. [Footnoting *Ernest v Patridge* (1863) 2 New Rep 232.]"

[57] The assessor's reference in [129] to "the item relating to examination with a view to preparing submissions" is an example of examining Document A for the purpose of drafting Document B as above.

[58] **Ground 39** is an argument about the assessor's decision that the applicant was to bear the costs of the assessment. The suggestion that the discretion was not exercised judicially is not borne out by the assessor's reasons. The applicant's reference to the relevance of his success (in the sense of his objections resulting in the costs being reduced by slightly less than 26%) was supplemented by his oral submission that if costs were reduced by 15 per cent or more, then the person entitled to the costs bore the costs of the assessment, referring to, *inter alia*, *Hunter v Hunter*.

[59] I note that the applicant in *Hunter v Hunter* "enjoyed more than a little success" ([11]). I note also that the assessor included most of the costs of the assessment as a disbursement which was payable by the applicant to the respondent. The reference to 15 per cent appears in paragraph [33]:

> "I accept that the outcome was a relevant consideration for a decision on who should bear (and to what extent) the costs of the assessment. The applicant goes further and submits that an assessor should not allow the costs of the assessment where more than 15 per cent of the costs claimed have been disallowed. Rule 735 of the UCPR affects an assessment "of costs payable out of a fund" where that threshold of 15 per cent is reached. But that rule does not apply here. Section 342 of the *Legal Profession Act 2007* (Qld) provides that upon an assessment under Div 7 of Pt 3.4 of the Act, the lawyer must pay the costs of an assessment if the costs claimed are reduced by 15 per cent or more, unless the assessor otherwise orders. But no submission was made by either side here as to the relevance of s 342 to the present question."

[60] Thus, as in *Hunter*, rule 735 does not apply here; nor does section 342 of the *Legal Profession Act 2007* (Qld) – as the applicant has been told more than once in the course of other costs litigation in this matter: see, for example, *Thompson v Cavalier King Charles Spaniel Rescue (Qld) Inc* [2023] QSC 214 at [30] and [31] per Callaghan J.

[61] However, I respectfully agree with P McMurdo J (as McMurdo JA then was) that an objector's degree of success is a consideration relevant to the exercise of an assessor's discretion as to who is to pay the costs of the assessment. However, his Honour made it plain that the extent of success of not the only relevant consideration. His Honour said (my emphasis):

> [34] "The assessor reasoned that ordinarily the costs of an assessment should be paid by the party liable for costs in the absence of an offer to settle by that party. Absent such an offer, the party

entitled to costs has no choice but to have the costs assessed. In my view, that reasoning was sound.

[35] The assessor then considered whether *some* of the burden of the costs of the assessment should be borne by the present respondents. He correctly took into account the outcome of the costs assessment. That was a relevant consideration because where claims in a costs statement are substantially reduced by the assessor it can be said be said that the costs of the assessment have been increased through the fault of the party which presented the costs statement. **But that is not the only consideration: it was also relevant for the assessor to consider the nature and the extent of the objections. In this case, the assessor noted that the applicant appeared to have an objection to every item. And he noted that her objections were not framed by reference to the relevant principles and rule and that at least some of them were entirely without merit. In my view, there was no error in the exercise of his discretion in deciding to apportion the costs of the assessment as he did."**

[62] I accept that the assessor did not in paragraph [175] refer to the degree of success enjoyed by the applicant on the one hand, versus the nature and extent of the applicant's objections or the relative proportions of those with merit and those without on the other, but at [6] of the reasons, the assessor observed that many of the applicant's objections were expressed in verbose and repetitive terms and many related to claims for very small amounts of money. It is reasonable to infer that that would not have been lost on the assessor when he came to determine who was to bear the costs of the assessment. Nor would the degree of the applicant's success have been lost on him. The assessor cross-referred to paragraph [12] in his paragraph [175]. As [12] explains, the assessor heard from the parties before determining that the Sixth Defendant was entitled to recover the costs of the assessment. Thus, the applicant had an opportunity to be heard. There is no basis for a conclusion that there is any relevant error in the assessor's approach to this issue.

[63] **Ground 391** (sic) is not a viable ground.

[64] **Ground 42** raises issues about the difference between a short letter, a formal letter and an ordinary letter and essentially disputes the assessor's characterisation of certain correspondence but amounts to nothing more than a challenge to the outcome of the exercise of the assessor's discretion.

[65] **Ground 50** accuses the assessor of bias – a scandalous accusation that is not borne out and ought never to have been made.

Findings

[66] Based on my analysis of the plaintiff/applicant's complaints, I refuse his application (#406).

[67] If the sixth defendant/respondent seeks her costs of this application, then she is to so inform my associate within 3 business days of the delivery of these reasons, by email, copying in the plaintiff/applicant. If she does seek her costs, then I will make directions about the way in which costs will be determined. If she does not seek her costs, then my order will be: "No order as to costs".