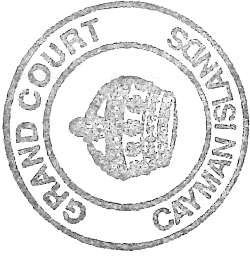


22. 4. 98

*W*



1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 HOLDEN AT GEORGE TOWN, GRAND CAYMAN  
3

4 CAUSE NO. 315 OF 1997  
5

6 IN THE MATTER OF THE PROCEEDS OF CRIMINAL CONDUCT LAW  
7 1996  
8

9 AND  
10

11 IN THE MATTER OF THE MUTUAL LEGAL ASSISTANCE  
12  
13 (UNITED STATES OF AMERICA) LAW 1986  
14

15 AND  
16

17 IN THE MATTER OF WILLIAM J. McCORKLE ET AL  
18

19  
20 Before Harre CJ  
21

22 RULING  
23

24 Section 24 of the Judicature Law (1995 Revision) is the primary source of the power  
25 of the Grand Court to award costs. In respect of costs or charges other than court fees  
26 payable under the Judicature Law or any rule which may be requisite to obtain  
27 judgment (the award of which in favour of any party recovering judgment against  
28 another is mandatory) the court has a discretion, subject to law, to award costs to a  
29 successful litigant. I know of no other Law or rule which is relevant to the exercise of  
30 this discretion. The discretion is a wide one, and the practice that costs follow the  
31 event has not hardened into a rule.

32  
33 This case raised a matter of great public importance. It was the first case where wide  
34 issues as to the interpretation of the Proceeds of Criminal Conduct Law 1996 fell to be  
35 considered. The Attorney General had conduct of the case pursuant to a request under

1 the Mutual Legal Assistance Treaty with the United States of America and a  
2 certificate by the Cayman Authority. The Authority is a judge, acting in an  
3 administrative capacity. The Attorney General was giving affect to an obligation  
4 imposed upon him and did so in an entirely proper manner. It would be wrong that he  
5 should be penalised in costs. He was in this case as a public official performing a  
6 public duty, and not for any reason for personal gain.

7

8 Mr. and Mrs. McCorkle were wholly successful in their application. That they did not  
9 succeed on every argument which they advanced is not in itself a ground for a refusal  
10 to award costs. However, a number of precedents where no order for costs in favour  
11 of a successful litigant was made were brought to my attention. They could in the  
12 nature of things provide no more than analogies but they were forceful ones, and I  
13 mention them by name for the convenience of those who may come after me in  
14 considering such issues and in recognition of the diligence of counsel. They were -

15

16 *Liversidge v. Sir John Anderson* [1942] AC 206;  
17 *New Zealand Maori Council v. Attorney-General of New Zealand*  
18 [1994] 1 AC 466;  
19 *R v. Metropolitan Police Commissioner ex p Blackburn* (No. 3)  
20 [1973 1 QB 241];  
21 *R v. Sec. of State for the Environment ex p Shelter* [1997]COD 49;  
22 *Finsbury Bank & Trust Company v. Attorney General of the Cayman*  
23 *Islands* 6th December 1996 a decision of the Cayman Islands Court of  
24 Appeal.  
25

26 All these analogies, which I apply fortified by the view of Lord Woolf in his 1996  
27 Report entitled *Access of Justice* that the Court should have a discretion not to order  
28 an unsuccessful party to pay the other party's costs on the grounds that the

1 proceedings have been brought in the public interest, have left me with the firm view  
2 that the appropriate exercise of discretion in this case is to make no order as to costs,  
3 as in the case of previous applications in which the Attorney General succeeded but  
4 sought no such order.

5

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8



G.E. Harre  
Chief Justice

9

10 22nd April, 1998

