

CITATION: *In the Estate of Cutting* [2019] NTSC 94

PARTIES: PUBLIC TRUSTEE OF THE  
NORTHERN TERRITORY as  
administrator of the ESTATE OF THE  
LATE JANETTE CUTTING

AND

13 Beneficiaries

TITLE OF COURT: SUPREME COURT OF THE  
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT exercising Territory  
jurisdiction

FILE NO: 64 of 2019 (21925366)

DELIVERED ex temp: 17 July 2019

HEARING DATES: 11 and 12 July 2019

JUDGMENT OF: Hiley J

**CATCHWORDS:**

TRUSTEES – opinion, advice or direction from the Court pursuant to s 69 of the *Public Trustee Act 1979* (NT) – Public Trustee’s discretion under s 32(5) of the *Public Trustee Act 1979* (NT) not to make enquiries or institute proceedings in respect of acts or omissions of other persons at a time before the Public Trustee became the executor or trustee

TRUSTEES – opinion, advice or direction from the Court pursuant to s 69 of the *Public Trustee Act 1979* (NT) – whether to pursue taxation of indemnity costs where other party contends that they must be assessed according to the scale referred to in SCR 63.32(1)

COSTS – indemnity costs – meaning of – meaning and effect of SCR 63.27 and SCR 63.32

*Cutting v Public Trustee for the Northern Territory (No 2)* [2018] NTSC 51;  
*In Re Kay's Settlement* [1939] Ch 329; *In Re Brogden* (1888) 38 Ch D 546;  
*Plan B Trustee Ltd v Parker* [2013] WASC 216; *Re Application of  
Macedonian Orthodox Community Church St Petka Inc (No 3)* [2006]  
NSWSC 1247; *Re Lemon Tree Passage & Districts RSL and Citizens Club  
Co-Operative Ltd* (1987) 11 ACLR 796, referred to.

*Family Provision Act 1970* (NT)

*Limitations Act 1981* (NT) s 44

*Public Trustee Act 1979* (NT) s 32, s 69, s 97

*Public Trustee Act 1978* (Qld), s 46

*Supreme Court Rules 2008* (NT), r 63.27, r 63.30, r 63.32, r 63.61

## **REPRESENTATION:**

### *Counsel:*

Applicant:	J Ingrames
13 Beneficiaries:	D Alderman

### *Solicitors:*

Applicant:	HWL Ebsworth Lawyers
13 Beneficiaries:	Murphy Schmidt

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IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA  
AT DARWIN

In the matter of an application by PUBLIC TRUSTEE OF THE  
NORTHERN TERRITORY as administrator of the ESTATE OF THE  
LATE JANETTE CUTTING for directions under section 69 of the  
*Public Trustee Act 1979* (NT) [2019] NTSC 94  
No. 64 of 2019 (21925366)

BETWEEN:

**PUBLIC TRUSTEE OF THE  
NORTHERN TERRITORY as  
administrator of the ESTATE OF  
THE LATE JANETTE CUTTING**

AND

**13 BENEFICIARIES**

CORAM: HILEY J

REASONS FOR JUDGMENT

(Delivered ex tempore 17 July 2019)

**Introduction**

- [1] The Public Trustee of the Northern Territory is administrator of the Estate of the Late Janette Cutting (the **Estate**). The Public Trustee has sought the opinion, advice or direction of the Court pursuant to s 69 of the *Public Trustee Act 1979* (NT) in relation to three questions. Filed with the Originating Motion was a Statement of Facts (as contemplated by s 69 of the *Public Trustee Act 1979*).

[2] The questions, and hence this application, arise following the decision of this Court in *Cutting v Public Trustee for the Northern Territory (No 2)* [2018] NTSC 51 (*Cutting [No 2]*).

[3] The questions are set out in full in the Originating Motion and are, in summary:

**Question 1:** Whether the Public Trustee is justified in not pursuing claims against the former executors of the Estate, Peter Ruzsicska and Frederick Huysse (**former executors**), the former executors' solicitors Maleys Barristers & Solicitors (**Maleys**) and Phillip Cutting (**Mr Cutting**) in respect of Estate assets transferred to Mr Cutting in 2008 and 2009 (the **claims**).

**Question 2:** Whether the Public Trustee is justified in distributing the Estate on the basis that the amount of \$250,000.00 received from Mr Cutting pursuant to the purported settlement agreement should be apportioned between the Estate's shares in Philjan Nominees (NT) Pty Ltd and the Anula property on the basis of their respective market values (on the basis set out in the Originating Motion).

**Question 3:** Whether the Public Trustee is justified in pursuing the taxation of costs in proceeding 45 of 2016 (21627074) and in contending on taxation that its costs should be assessed at actual rather than scale rates.

- [4] The Public Trustee submits the Court should answer each question "Yes".
- [5] Although this application was brought ex parte notice of the application was provided to the known beneficiaries, understood to be 15 in number. In particular there had been correspondence between the Public Trustee and Murphy Schmidt, solicitors of Queensland, who have been representing the majority of the beneficiaries for a long time.
- [6] The Originating Motion was filed on 27 June 2019. The Court agreed to hear this matter as a matter of urgency. Counsel for the Public Trustee contended that relevant limitations periods might expire 12 months after the Court's decision in *Cutting [No 2]* on 26 July 2018, assuming that that decision would constitute a "material fact" for the purposes of s 44 of the *Limitations Act 1981* (NT).
- [7] At the first hearing of this matter, on 11 July 2019, Mr Alderman of counsel sought and was granted leave to appear for 13 of the beneficiaries on the instructions of Murphy Schmidt (the **majority beneficiaries**). Although Murphy Schmidt had been aware of some or all of these matters for some time they did not have, and would not expect to be given, all the materials upon which the Public Trustee relies, for example counsel's opinion concerning whether the Public Trustee should be pursuing claims against third parties. Mr Alderman

had only been instructed earlier that day and thus required more time to become familiar with the relevant background.

[8] Mr Ingrams of counsel, appearing for the Public Trustee, submitted that the determination of questions 1 and 3 was urgent. If I did not answer “yes” to question 1, the Public Trustee would probably be statute barred from instituting any of the claims if it did not do so by 26 July 2019. It would then have to very quickly draft relevant initiating proceedings and have them filed before 26 July. If I answer question 3 “yes”, the solicitors for the Public Trustee had only until the next day to file their application to have the costs taxed.

[9] Accordingly, I agreed to hear submissions concerning question 3 then and to attempt to provide my answer before lunchtime the next day. I deferred the hearing of submissions in relation to the other questions until 2 pm the following day, mainly to enable Mr Alderman to obtain further information and instructions.

[10] On 12 July 2019 my associate sent to the solicitors for the Public Trustee draft reasons concluding with my answer “yes” to question 3. A fuller version of those reasons is reproduced below.

[11] Prior to the commencement of the hearing at 2 pm on 12 July, Mr Alderman provided an outline of submissions indicating that the majority beneficiaries do wish the Public Trustee to bring proceedings against Cutting, the former executors and the solicitors for the former

executors. Understandably, the Public Trustee remains reluctant to bring such proceedings, particularly in the absence of indemnities as to costs.

[12] At the commencement of the hearing, counsel informed me that there had been discussions between them and their respective instructors to the effect that the majority beneficiaries have selected or were about to select two of them who were ready willing and able to replace the Public Trustee as executor of the Estate. If this were to occur, they could bring such proceedings as they wished instead of the Public Trustee.

[13] I agreed to hear the submissions in relation to question 1 and if possible to give my decision in relation to that question as a matter of urgency. This would enable the Public Trustee to decide whether or not it should commence proceedings in respect of one or more of the claims as a matter of urgency to cover the possibility of new executors not taking over until it was too late for proceedings to be brought.

[14] It was agreed that there is no particular urgency for answering question 2. Indeed there would be no need for that question to be answered if new executors replace the Public Trustee. This has now occurred.

## Question 1

[15] At the end of the hearing on 12 July 2019 I made the following direction pursuant to s 69 of the *Public Trustee Act 1979*:

- (a) Direction under s 69 of the *Public Trustee Act 1979* that the Applicant is justified in not further enquiring into or instituting any proceedings in respect of the acts, omissions and distributions occurring in relation to the estate of the late Janette Cutting (“Estate”) before the Applicant became the administrator of the Estate, including:
- (i) the actions of Phillip Cutting in transferring the share in Philjan Nominees (NT) Pty Ltd owned by the Estate to himself on or around 25 March 2008;
  - (ii) the actions of the former executors of the Estate Peter Ruzsicska and Frederick Huysse in entering into a purported settlement agreement of Phillip Cutting's claim against the Estate under the *Family Provision Act 1970* (NT) on or around 16 September 2008;
  - (iii) the omissions of Peter Ruzsicska and Frederick Huysse in failing to ensure that any settlement agreement was conditional upon the approval of the Court and in failing to apply for judicial approval of the settlement agreement prior to giving effect to the purported settlement;



(iv) the actions of Peter Ruzsicska and Frederick Huysse in giving effect to the purported settlement agreement by:

- (1) transferring or confirming the transfer of the Estate's share in Philjan Nominees (NT) Pty Ltd to Phillip Cutting on or around 26 February 2009 (or purporting to do so);
- (2) assigning the debt owed by Philjan Nominees (NT) Pty Ltd to the Estate to Phillip Cutting on or around 26 February 2009 (or purporting to do so);
- (3) selling the Estate's interest in the property at 6 Ellison Court, Anula in the Northern Territory of Australia (Anula property) to Phillip Cutting for less than market value on or around 10 March 2009 and subsequent acts giving effect to that sale, including failing to terminate the contract for the sale of the Anula property following Phillip Cutting's failure to pay the amount owing in April 2009;
- (4) not seeking or recovering payment of any rent from Phillip Cutting in respect of his occupation of the Anula Property from the period from the date of the death of Janette Cutting until the date on which Phillip Cutting

became the registered proprietor of the Anula Property  
(and/or thereafter);

(v) the actions of Phillip Cutting in receiving the assets pursuant  
to the settlement agreement;

(vi) the actions and omissions of Maleys Barristers & Solicitors in  
respect of their advice to (or failure to advise) Peter  
Ruzsicska and Frederick Huysse in respect of the above  
actions and omissions.

[16] These are my reasons for making that direction.

***Relevant background***

[17] Between 2008 and 2012 pursuant to a purported settlement agreement  
entered into between the former executors and Mr Cutting regarding  
the latter's potential claim against the Estate under the *Family  
Provision Act 1970* (NT):

(a) The share in Philjan Nominees (NT) Pty Ltd (**Philjan**) owned by  
the Estate was transferred (or purportedly transferred) to  
Mr Cutting;

(b) The amount of \$53,000 owing to the Estate by Philjan was  
assigned (or purportedly assigned) to Mr Cutting;

- (c) The property at 6 Ellison Court, Anula (**Anula Property**) owned by the Estate was sold and transferred to Mr Cutting for \$250,000, being \$100,000 less than the market value of that property; and
- (d) The Estate released (or purportedly released) Mr Cutting from all claims (including, for example, a claim for recovery of rent in respect of Mr Cutting's occupation of the Anula Property).

[18] In *Cutting [No 2]*, this Court held that the purported settlement agreement was not valid and binding on the Estate and Mr Cutting. The Court also rejected an application by Mr Cutting for orders in terms of the purported settlement agreement. The Court declined to make consequential orders dealing with the return of the assets transferred to Mr Cutting on the basis that additional evidence, submissions and parties may be required.<sup>1</sup>

### ***Legal Principles***

[19] Section 32(5) of the *Public Trustee Act 1979* (NT) provides that:

Notwithstanding the provisions of any other Act, or rule, or law to the contrary, the Public Trustee upon becoming executor, administrator or trustee pursuant to the provisions of this Part shall not be obliged to inquire into or to institute any proceedings in respect of any acts or omissions or distributions done or omitted or made by any other person whether as executor, administrator, trustee or otherwise at any time before the Public Trustee became the executor, administrator or trustee as aforesaid.

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<sup>1</sup> *Cutting [No 2]* per Hiley J at [98].

[20] The Public Trustee seeks the Court's approval of the Public Trustee's decision to exercise its discretion to not pursue potential causes of action against the former executors, their solicitors and Mr Cutting. Whilst it would appear that s 32(5) already confers such a discretion upon the Public Trustee counsel for the Public Trustee recommended that approval of the Court be sought and obtained to cover the possibility that s 32(5) might not apply. It seems that his concern was that it might be suggested that because the Public Trustee has previously made enquiries about such matters, albeit in the course of and for the purpose of defending Mr Cutting's application under the *Family Provisions Act 1970*, the Public Trustee has waived its rights to rely on s 32(5).

[21] Mr Ingrames informed me that the only other jurisdiction in Australia with a provision similar to s 32(5) is Queensland<sup>2</sup> but that he has not been able to locate any decisions on either provision. Notwithstanding counsel's concerns I consider that s 32(5) of the *Public Trustee Act 1979* would entitle the Public Trustee to decide not to make further enquiries even if it had already made some enquiries in relation to the same kind of matters. Moreover, the provision clearly empowers the Public Trustee to decide not to institute proceedings.

[22] In my view s 32(5) contemplates that the Public Trustee may make enquiries as to possible acts or omissions on the part of others who

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<sup>2</sup> Section 46(2) of the *Public Trustee Act 1978* (Qld).

have had a role in the administration of an estate before the Public Trustee became involved, and if appropriate to institute proceedings. Section 32(5) also gives the Public Trustee power to avoid incurring the further costs of continuing with such inquiries and instituting such proceedings in appropriate circumstances. An obvious example of appropriate circumstances would be if the apparent potential cost of carrying out the further enquiries and pursuing litigation was thought to outweigh the benefits to the Estate of engaging in those further activities. Even if s 32(5) of the *Public Trustee Act 1979* were not directly applicable in the present matter, it is of some assistance for present purposes as it demonstrates statutory recognition of the extensive discretions conferred upon the Public Trustee.

[23] Although there appear to be no authorities concerning s 32(5) of the *Public Trustee Act 1979* there are a number of authorities elsewhere which assist in identifying relevant principles in matters where a trustee or similar person such as a liquidator seeks judicial advice before taking certain action.

[24] In *Re Application of Macedonian Orthodox Community Church St Petka Inc (No 3)* [2006] NSWSC 1247 at [80], Palmer J summarised the relevant considerations on an application of this nature as follows:

In a judicial advice application in which the trustee asks whether it is justified in prosecuting or defending litigation, all the Court does is to reach a view as to whether the Opinion of Counsel satisfies it that there are sufficient prospects of success to warrant

the trustee in proceeding with the litigation. Counsel's Opinion must address the facts necessary to support the legal conclusions reached and must demonstrate that the propositions of law relied upon for those conclusions are properly arguable. Whether, in the light of Counsel's Opinion, there are "sufficient" prospects of success calls for another judgment, founded upon such considerations as:

- the nature of the case and the issues raised;
- the amounts involved, including likely costs
- whether the likely costs to be incurred by the trustee are proportionate to the issues and that significance of the case;
- the consequences of the litigation to the parties concerned;
- in the case of a charitable trust, any relevant public interest factors:

see e.g. *In re Brogden* (1888) 38 Ch D 546; *In re Kay's Settlement* [1939] Ch 329.

[25] Similarly in the context of a liquidator's application for judicial advice in *Re Lemon Tree Passage & Districts RSL And Citizens Club Co-Operative Ltd* (1987) 11 ACLR 796 at 799 Young J stated:

What is required is that the court have material to enable it to assess: (1) the reasonable chances of the liquidator succeeding; (2) the estimated cost of the litigation; and (3) how the litigation is to be funded in the first instance.

[26] More recently, in *Plan B Trustee Ltd v Parker* [2013] WASC 216 at [37], a case in which a trustee sought approval of its decision *not* to commence proceedings, Edelman J summarised the relevant considerations as follows:

There are numerous considerations relevant to the giving of directions that concern whether litigation is, or is not, justified. The overlapping considerations include the following:

- (i) the prospects of success;
- (ii) the known means of the other party to satisfy any judgment;
- (iii) the potential for the litigation to deplete the trust estate;
- (iv) the costs should the application be unsuccessful, and whether those costs are proportionate to the issues and to the significance of the case;
- (v) the irrecoverable costs even if the application is successful;
- (vi) the nature of the case and issues raised and what will be gained if the action is to succeed; and
- (vii) any public interest factors in the case of a charitable trust.

***Consideration***

[27] With these principles in mind that I have considered the following matters:

- (a) the nature of the claims and the issues raised;
- (b) the prospects of success;
- (c) the consequences of the litigation to the parties concerned;
- (d) the amounts involved / what will be gained if one or more of the claims is to succeed;
- (e) the known means of the other parties to satisfy any judgment;
- (f) the costs involved including:
  - (i) the costs involved should the claim(s) be unsuccessful;
  - (ii) the irrecoverable costs even if one or more of the claims is successful;

- (iii) whether those costs are proportionate to the issues and to the significance of the claim(s);
- (iv) how the litigation is to be funded in the first instance;
- (v) the potential for such litigation to deplete the trust estate;
- (g) other considerations.

[28] In light of the possibility that one or more of the claims might be brought either by the Public Trustee or someone else on behalf of the Estate or beneficiaries it is not appropriate for me to say much about some of those matters in these reasons. Suffice to say that I have read and had regard to the detailed written confidential advice of Mr Ingrams of counsel and formed by own views before concluding that the Public Trustee is justified in not pursuing the claims.

[29] I can express some views about a few of the matters summarised in [27] above.

The consequences of such litigation for the parties concerned

[30] If the Public Trustee is successful in relation to a particular claim it is likely that the value of the Estate will be higher than it presently is and consequently the beneficiaries should recover more. However, in addition to recovering its legal costs from the unsuccessful defendant, the Public Trustee would also be entitled to commission at the prescribed rates in respect of any assets recovered.



[31] On the other hand, if the Public Trustee was not successful the Estate may be fully exhausted by the costs of the proceedings and, unless the Public Trustee is indemnified by someone such as the beneficiaries, the Northern Territory may be liable for any adverse costs orders that are made.<sup>3</sup>

[32] If the Public Trustee does not bring a claim the Estate would be able to make a distribution to beneficiaries in the order of \$105,000. It seems that a new executor appointed by them, could still bring such proceedings, subject of course to any relevant limitations periods.

#### Other considerations

[33] I accept the following points made by Mr Ingrames on behalf of the Public Trustee.

- (a) This is a private not a charitable trust, so public interest factors do not apply.
- (b) The Public Trustee is not bound to pursue litigation of this nature. Rather s 32(5) of the *Public Trustee Act 1979* (NT) confers a broad discretion upon the Public Trustee not to make further enquiries or pursue such claims.
- (c) There is a risk to the Northern Territory in having to fund with public monies what is in effect a personal claim.

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**3** Section 97 of the *Public Trustee Act*.

- (d) It is less than clear whether all beneficiaries would support the Public Trustee pursuing the claims, particularly those who are not represented by Murphy Schmidt. Indeed one of those not represented has previously expressed strong dissatisfaction about the way the whole case has been handled, including by the Public Trustee.
- (e) If new executors appointed by the beneficiaries proceeds with one or more of the claims:
  - (i) the executors can then negotiate directly with the potential defendants or whoever might be indemnifying them;
  - (ii) the beneficiaries may be able to make their own individual decisions about whether they wish to participate and the level of funding which they are willing to invest in such an action;
  - (iii) the beneficiaries willing to invest the funds (as well as the effort and resources) may be the ones ultimately rewarded by any payout;
  - (iv) the further costs and commission of the Public Trustee will be much less than they would be if the Public Trustee manages the litigation itself;

- (v) there is less likelihood of duplication of legal fees between the Public Trustee's solicitors and the solicitors for the majority beneficiaries;
- (vi) being beneficiaries themselves, the new executors are likely to take a more active stance in pursuing and resolving the claims than would the Public Trustee, they being in a better position to provide and obtain instructions and have regard to their own financial circumstances.

### Question 3

- [34] Ordinarily, under the general law, where a person is entitled to “indemnity costs” that person is entitled to recover all costs actually incurred, except to the extent shown to be unreasonable.<sup>4</sup>
- [35] Order of the SCR 63 relates to costs. Part 3 of SCR 63 relates to costs of a party in a proceeding. That Part includes SCR 63.24 to 63.32.
- [36] SCR 63.01 states that “**indemnity basis**, in relation to the taxing of costs, is the basis on which costs are taxed in accordance with rule 63.27.”
- [37] SCR 63.27 is headed “Indemnity basis”. It states that:

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<sup>4</sup> See *Ragata Developments Pty Ltd v Westpac Banking Corporation* [1993] FCA 115; *Degmam Pty Ltd (in liq) v Wright (No 2)* [1983] 2 NSWLR 354; *Indigenous Business Australia v Kani* (2012) 31 NTLR 121; *Central Australian Aboriginal Congress Inc v CGU Insurance Ltd* (2009) 24 NTLR 222.

On a taxation of costs on the indemnity basis, all costs shall be allowed except to the extent that they are of an unreasonable amount or have been unreasonably incurred, and any doubts which the Taxing Master has as to whether the costs were reasonably incurred or are reasonable in amount shall be resolved in favour of the receiving party.

[38] SCR 63.27 has two components:

- (a) “all costs shall be allowed except to the extent that they are of an unreasonable amount or have been unreasonably incurred”;
- (b) any doubts concerning the latter issue – i.e. whether the costs were reasonably incurred etc. – are to be resolved in favour of the receiving party.

[39] This might be compared to SCR 63.26 which relates to costs on a standard basis. It states that:

On a taxation of costs on the standard basis, there shall be allowed a reasonable amount in respect of all costs reasonably incurred, and any doubts which the Taxing Master has as to whether the costs were reasonably incurred or are reasonable in amount shall be resolved in favour of the paying party.

(underlining mine)

[40] It too has two components, both different to those in SCR 63.27:

- (a) it does not allow all costs – it only refers to “a reasonable amount in respect of all costs reasonably incurred”;
- (b) any doubts – are to be resolved in favour of the paying party.

[41] The first part of SCR 63.27 seems to reflect the general law. “Costs” is defined to include disbursements. Otherwise there is no relevant definition. Presumably therefore it means all “costs” in the normal sense.

[42] SCR 63.29 and 63.30 also appear relevant to the present matter and effectively require that the costs of the Public Trustee be paid on an indemnity basis.

[43] SCR 63.32 is headed “Ascertaining costs on a taxation”. SCR 63.32(1) states:

Subject to these Rules, the scales of costs contained in Parts 2 and 3 of the Appendix, together with the notes and provisions contained in Parts 1 and 3 of the Appendix, apply in relation to the taxation of all costs for work done after the commencement of this Order.

[44] On its face this sub-rule applies to “the taxation of all costs”. This would mean that the scales of costs contained in Parts 2 and 3 of the Appendix apply to all costs, that is both standard and indemnity costs.

[45] Mr Cutting’s lawyers had argued that SCR 63.32 applies to both standard costs and indemnity costs. The only function of SCR 63.27 is to reverse the presumption.

[46] Counsel for the Public Trustee contends that SCR 63.32 only applies to standard costs. Counsel relies upon the opening words “subject to these rules” and contends that SCR 63.27 is one such qualifying rule.

But if that was so, the same result would pertain in respect of SCR 63.26 (re standard costs). This would effectively leave no room for the operation of SCR 63.32 and the accompanying appendices and scales.

[47] Contrary to the contentions on behalf of the Public Trustee I do think that SCR 63.32 is intended to apply to indemnity costs as well as standard costs.

[48] This construction is supported by SCR 63.32(2) which relates to situations where indemnity costs would be ordered, namely:

(a) “costs payable to a solicitor by his own client” – cf SCR 63.59;

(b) costs payable by a trustee – cf SCR 63.30;

(c) “other cases, which in the opinion of the Taxing Master, warrant his so allowing” – eg other cases where indemnity costs are payable.

[49] Accordingly, I do think that the scales of costs prescribed under SCR 63.32(1) are prima facie applicable. However, there are strong grounds for seeking the exercise of the discretion given to the taxing master under SCR 63.32(2) to allow costs of amounts higher than those prescribed in the scales. That provision would empower the taxing master to allow costs by way of full indemnity in the manner contemplated in other provisions such as SCR 63.27.

[50] Interestingly, Part 5 provides for a detailed “procedure on taxation on standard basis.” Part 6 relates to solicitor client costs and SCR 63.61 applies the Part 5 procedures to an application for those kinds of costs. However there seems to be no prescribed procedure for other taxations of costs allowed on an indemnity basis.

[51] Despite my conclusion that SCR 63.32 does apply to all costs, including indemnity costs, I consider that a person entitled to indemnity costs would have strong prospects of convincing the taxing master to allow costs in amounts higher than those prescribed in the scales. This is particularly so where the relevant party is a trustee, the kind of situation the subject of SCR 63.30.

[52] In summary I consider that SCR 63.32(1) prima facie applies. However, any person entitled to indemnity costs can, and normally would be expected to, request the taxing master to allow for complete indemnity costs under SCR 63.32(2). As part of that process that person would request the taxing master to allow those costs actually paid or payable by that person to its lawyer.

[53] Accordingly, I consider that the Public Trustee is justified in applying for the taxation of its costs and contending that its costs after 28 September 2017 should be assessed at the rates agreed between the Public Trustee and its solicitors rather than the rates set out in the Appendix to Order 63 of the *Supreme Court Rules 1987*.

[54] I answer question 3: “Yes”.

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