

CITATION: *Parklands Darwin Pty Ltd v Minister for Infrastructure, Planning and Logistics (Costs)* [2023] NTSCFC 1

PARTIES: PARKLANDS DARWIN PTY LTD
(ACN 166 220 248)

v

MINISTER FOR
INFRASTRUCTURE, PLANNING
AND LOGISTICS

TITLE OF COURT: FULL COURT OF THE SUPREME
COURT OF THE NORTHERN
TERRITORY

JURISDICTION: ON REFERENCE from the Supreme
Court exercising Territory jurisdiction

FILE NO: 2020-03216-SC

DELIVERED: 21 April 2023

HEARING DATE: On the papers

JUDGMENT OF: Grant CJ, Kelly J & Hiley AJ

CATCHWORDS:

COSTS – Party/Party – Court’s discretion – Certification for two counsel

Whether retainer of more than one counsel was warranted – Reference involved legally complex constitutional issues concerning the legislative authority of the Northern Territory – Both parties engaged two counsel – Proceedings certified fit for two counsel.

Supreme Court Rules 1987 (NT) r 63.72(9)(b)

Central Australian Aboriginal Congress v CGU Insurance [2009] NTCCA 2, *Joondanna Investments Pty Ltd v Minister for Lands, Planning and the Environment (No 2)* [2015] NTSC 54, *Kroehn v Kroehn* (1912) 15 CLR 137, *Liddle v North Australian Aboriginal Legal Aid Service* [1994] NTSC 6, *Stanley v Phillips* (1966) 115 CLR 470, referred to.

REPRESENTATION:

Counsel:

Plaintiff:

AL Tokley QC with R Bonig

Defendant:

N Chrstrup SC, Solicitor-General for
the Northern Territory, with L Peattie

Solicitors:

Plaintiff:

Finlaysons Lawyers

Defendant:

Solicitor for the Northern Territory

Judgment category classification:

C

Number of pages:

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

*Parklands Darwin Pty Ltd v Minister for Infrastructure,
Planning and Logistics (Costs)* [2023] NTSCFC 1
No. 2020-03216-SC

BETWEEN:

**PARKLANDS DARWIN PTY LTD
(ACN 166 220 248)**

Plaintiff

AND:

**MINISTER FOR INFRASTRUCTURE,
PLANNING AND LOGISTICS**

Defendant

CORAM: GRANT CJ, KELLY J AND HILEY AJ
REASONS FOR JUDGMENT
(Delivered 21 April 2023)

THE COURT:

- [1] On a reference pursuant to s 21 of the *Supreme Court Act 1979* (NT) the Full Court determined that legislation purporting to validate a decision by the defendant to refuse a request by the plaintiff to amend the NT Planning Scheme did not infringe the principles identified in *Kable v Director of Public Prosecutions* (NSW) (1996) 189 CLR 51. A subsequent application for special leave to appeal to the High Court was refused: *Parklands Darwin Pty Ltd v Minister for Infrastructure, Planning and Logistics* [2022] HCA Trans 55.

- [2] The defendant seeks orders that:
- (a) the plaintiff pay the defendant's costs of the reference to the Full Court as taxed or agreed;
 - (b) the plaintiff pay the defendant's costs of the application for costs as taxed or agreed; and
 - (c) the defendant's costs of the reference to the Full Court are certified fit for two counsel.
- [3] The plaintiff does not oppose orders in terms of paragraphs (a) and (b) above, but does oppose an order in terms of paragraph (c). Rule 63.72(9)(b) of the *Supreme Court Rules 1987* (NT) provides that '[n]o fee shall be allowed ... for more than one counsel, unless the Court certifies that the retainer of more than one counsel was warranted'.
- [4] The basis of the plaintiff's objection is, in essence, that minimal evidence and materials were required on the reference; no witnesses were called; there were no disputed facts; there were few relevant authorities; and the hearing before the Full Court lasted for approximately half a day.
- [5] The defendant's position is, in essence, that both parties retained two counsel for the reference proceedings and the application for special leave; the reference was legally complex; the matter gave rise to important constitutional issues concerning the legislative authority of

the Northern Territory; and there was limited time to prepare for hearing.

[6] In *Kroehn v Kroehn* (1912) 15 CLR 137 at 141, Griffith CJ stated that in determining whether the retainer of more than one counsel is warranted regard must be had to, amongst other factors, the importance of the case, the probable duration of the trial, the probability of a conflict of evidence and the general practice as to employing two counsel. That formulation was applied by Barwick CJ in *Stanley v Phillips* (1966) 115 CLR 470 at 478-479 as directed to the basic issue of whether the services of more than one counsel are reasonably necessary for the adequate presentation of the case.

[7] Both authorities were cited by Mildren J in *Central Australian Aboriginal Congress v CGU Insurance* [2009] NTCCA 2 at [18], in determining that the factors relevant to the exercise of the discretion will include the weight of the case, the need for special skill and the complexity of the issues involved. That the case has significant financial consequences may also be a relevant factor: *Liddle v North Australian Aboriginal Legal Aid Service* [1994] NTSC 6; *Joondanna Investments Pty Ltd v Minister for Lands, Planning and the Environment (No 2)* [2015] NTSC 54 at [11]-[12]. However, the case need not be one involving a large amount of money, or in fact any money at all, in order to warrant the certification of two counsel.

Many cases involving significant administrative law or constitutional issues will not have any direct or immediate financial consequences.

[8] In our opinion, the matter was clearly one in which it was appropriate to brief two counsel. As the defendant has submitted, the reference potentially involved a number of complex constitutional issues, one of which had yet to be determined in its application to the Northern Territory as a body politic. That the hearing of the matter did not exceed a day was not reflective of that complexity, or the level of research and analysis necessary in order to prepare the case for presentation. These are not matters which require evidence in order for the Court to make an assessment. They are readily apparent from the nature of the questions involved, the authorities which deal with those questions, the general experience of the courts, and the general practice as to employing counsel in matters of this type.

[9] Accordingly, we make the following orders:

1. The plaintiff is to pay the defendant's costs of the reference to the Full Court, as agreed or taxed in default of agreement.
2. The plaintiff is to pay the defendant's costs of this application for costs, as agreed or taxed in default of agreement.
3. The defendant's costs of the reference to the Full Court are certified fit for two counsel.
