

**Victoria Police v WX (a pseudonym) (Costs Application)**

**MAGISTRATE:** MAGISTRATE E CONTINI

**DATE OF APPLICATION:** 13 June 2025

**DATE OF REASONS/ORDER:** 10 July 2025

**CASE MAY BE CITED AS:** Victoria Police v WX (a pseudonym) (Costs Application)  
[2025] VChC 2

Catchwords: CRIMINAL LAW – summary hearing in Children's Court – charges not proved – application by Defence for costs – quantum challenged by Prosecution – whether GST is payable on costs ordered – appropriate quantum of costs.

Legislation Cited: *Magistrates' Court Act 1989* (Vic); *Criminal Procedure Act 2009* (Vic); *Children, Youth and Families Act 2005* (Vic); *County Court Civil Procedure Rules 2008*; *Supreme Court (General Civil Procedure) Rules 2015*.

Cases Cited: *Latoudis v Casey* (1990) 170 CLR 534; *Puddy v Borg* [1973] VR 626; *Lujerdean v G C Corrigan & Co Pty Ltd* [2014] VSC 682; *Acuthan v Coates* (1986) 6 NSWLR 472.

## **1. BACKGROUND**

WX, a child, makes application, as the successful accused, for the legal costs incurred by him in respect to defending charges finalised in this court on 13 June 2025.

Three charges proceeded to a contested hearing commencing on 2 June 2025. Upon completion of the prosecution case one charge was discharged following a no case submission, with the remaining two charges dismissed upon him being found not guilty on 13 June 2025.

Both parties have filed written submissions in relation to the application for costs.

The Prosecution concedes that it is appropriate that costs be awarded in the matter. However, it takes issue with the quantum claimed by the Defence.

## **2. POWER TO AWARD COSTS**

The power of this court to award costs flows from s 131 *Magistrates' Court Act 1989* and s 401 *Criminal Procedure Act 2009*, read in conjunction with s 528 *Children, Youth and Families Act 2005* and with the decision of the High Court in *Latoudis v Casey*<sup>1</sup>.

That this power is a broad discretionary one, only limited to costs which the court considers to be just and reasonable, is clear from the judgments of Mason CJ, Toohey J & McHugh J who formed the 3:2 majority in *Latoudis v Casey*. In particular, Toohey J referred with approval to the following passage from the judgment of the Full Court of the Victorian Supreme Court in *Puddy v Borg*:

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<sup>1</sup> (1990) 170 CLR 534.

The discretion is one to be exercised in each case according to its own circumstances. Beyond limiting the power to such costs as to the court seems just and reasonable, the sub-section does not otherwise circumscribe the discretion conferred.<sup>2</sup>

### 3. GST

The Prosecution submits that GST claimed by the Defence as part of its costs is not payable by it. Its submission is said to be based on the judgment of Wood AsJ in *Lujerdean v G C Corrigan & Co Pty Ltd*<sup>3</sup> where his Honour upheld a decision of a judicial registrar that GST was not payable on party-party costs ordered by the County Court in a civil case and quantified on the scale of costs in the *County Court Civil Procedure Rules 2008*. It appears to me that his Honour's reasoning does not assist the Prosecution in this criminal proceeding where there is no applicable scale of costs.<sup>4</sup> I also note that in *Lujerdean's Case* Wood AsJ drew a distinction between the GST consequences of party-party costs and solicitor-client costs, stating:

The decision to change the scale [in 2011] to exclude GST was obviously taken for good reason. If the Applicant's position is correct then GST would be claimable on the scale items irrespective of whether it was applied as between solicitor and client or between parties in a party party scenario. In other words, on either scenario. If that is so then there would have been little reason to change the scale to exclude GST as GST would be relevant in all circumstances.<sup>5</sup>

Further, it is clear from the majority judgments in *Latoudis v Casey* that, in exercising the discretion to award costs against the prosecution in this criminal proceeding, the decision should be viewed primarily from the perspective of the accused who is required to pay GST as part of the financial burden of exculpating himself in this proceeding. For instance, Mason CJ said:

It will be seen from what I have already said that, in exercising its discretion to award or refuse costs, a court should look at the matter primarily from the perspective of the defendant. To do so conforms to fundamental principle. If one thing is clear in the realm of costs, it is that, in criminal as well as civil proceedings, costs are not awarded by way of punishment of the unsuccessful party. They are compensatory in the sense that they are awarded to indemnify the successful party against the expense to which he or she has been put by reason of the legal proceedings.<sup>6</sup>

Toohy J also noted a very significant distinction between costs in civil and criminal proceedings:

If a prosecution has failed, it would ordinarily be just and reasonable to award the defendant costs, because the defendant has incurred expense, perhaps very considerable expense, in defending the charge. What Kirby P said in *Acuthan v Coates*<sup>7</sup> of defendants to committal proceedings is apposite:

The section recognises that persons accused of criminal offences can be put to a great deal of expense in defending themselves. Unlike civil litigation, they cannot simply compromise the matter. Their liberty, reputation and pocket are, or may be, at risk.<sup>8</sup>

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<sup>2</sup> At 561-2 quoting dicta from *Puddy v Borg* [1973] VR 626 at 628. See also the judgment of Mason CJ at 539-40 (also citing with approval dicta from *Puddy v Borg* at 628) and the judgment of McHugh J at 566-7. The power of the Magistrates' Court to award costs referred to in *Latoudis v Casey* was formerly contained in s 97 *Magistrates (Summary Proceedings) Act 1975* which has since been replaced – to substantially identical effect – by s 131 *Magistrates' Court Act 1989*.

<sup>3</sup> [2014] VSC 682.

<sup>4</sup> I note that a costs scale also applies to civil proceedings in the Magistrates' Court but there is no costs scale applicable to criminal proceedings in either the Children's Court or the Magistrates' Court.

<sup>5</sup> At [24]. See also the "two scenarios" referred to by Wood AsJ at [21] and discussed at [22]-[23].

<sup>6</sup> *Latoudis v Casey* at 542-3 per Mason CJ. See also per McHugh J at 566-7.

<sup>7</sup> (1986) 6 NSWLR 472 at 480.

<sup>8</sup> *Latoudis v Casey* at 565 per Toohy J. See also per McHugh J at 568.

The order for costs against the Prosecution which I am making in this case is an order which – insofar as it is just and reasonable to do so – indemnifies the accused against the expense to which he has been put by reason of the criminal proceedings. It is therefore not akin to an award of ‘party-party’ costs as that term is used in relation to civil proceedings. It is not based on any scale contained in subordinate legislation. It is much more akin to a substantial but not total award of ‘solicitor-client’ costs on which – as the above quote from the judgment of Wood AsJ makes clear – GST is “claimable...as between solicitor and client”.<sup>9</sup>

Accordingly the costs award is inclusive of GST.

#### **4. QUANTUM OF SENIOR COUNSEL’S FEES CLAIMED**

The Prosecution submits that the daily appearance rate (\$7,000 excluding GST per day) of senior counsel should be reduced to accord with Schedule 1 of the *Supreme Court (General Civil Procedure) Rules 2015*. The basis for asserting that the fee-capping contained in these Rules would or should apply to the Children’s Court is unclear to me given the differences highlighted in the authorities between costs awards in criminal and civil proceedings<sup>10</sup> and dicta from the majority judgments in *Latoudis v Casey* cited in Part 3 above. This submission is accordingly rejected.

In my view, in the circumstances the costs sought for senior counsel were reasonably incurred and are of a reasonable amount considering the seriousness of the alleged offences in this matter and the potentially very serious ramifications for the accused of a finding of guilt.<sup>11</sup> Those potential ramifications include not only the ‘liberty, reputation and pocket’ of the accused – to quote Kirby P in *Acuthan v Coates*<sup>12</sup> – but also a potential adverse impact on his future employment prospects.

#### **5. QUANTUM OF JUNIOR COUNSEL’S FEES CLAIMED**

The Prosecution submitted that junior counsel did not attend court on 4 June 2025 until midday, first sitting in the public gallery and only later at the bar table where she sat in the instructor’s position. They submit her appearance charge should be reduced by half a day.

The Defence have not refuted this submission other than to note that Counsel’s fees are charged and capped on a daily rate.

I accept the submissions of the Prosecution. In my view a full day’s costs in such circumstances – when an instructor was also in attendance at court – would not constitute expenses reasonably incurred in the matter. The quantum ordered will be adjusted accordingly.

#### **6. PREPARATION COSTS**

The Defence claims 3 days preparation costs for each of the three legal representatives in the matter, submitting that in the usual course of proceedings general practice is for defence practitioners to be allowed at least one day preparation for each hearing date.

The Prosecution submitted that the preparation costs should be scaled back to 1.5 days for each lawyer. This is based on Victoria Police’s general approach to allow a half day preparation for each day in court.

The discretion afforded to the Court as to the quantum of costs is broad but will only extend to costs that were reasonably incurred and of a reasonable amount.<sup>13</sup> In assessing this, I must

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<sup>9</sup> See the quote from *Lujerdean v G C Corrigan & Co Pty Ltd* at [24] reproduced on page 2 above.

<sup>10</sup> See e.g. *Latoudis v Casey* at 543-4 per Mason CJ, at 565 per Toohey J and at 568 per McHugh J.

<sup>11</sup> See e.g. *Latoudis v Casey* at 542-3 per Mason CJ and at 565 per Toohey J.

<sup>12</sup> See the quote from Kirby P in *Acuthan v Coates* at the bottom of page 2 above.

<sup>13</sup> See the dicta from *Latoudis v Casey & Puddy v Borg* whose citations are referred to in footnote 2 above.

consider, among other things, the seriousness of the alleged offences and the complexity of the case. As Toohey J emphasised in his quotation from *Puddy v Borg*: “The discretion is one to be exercised in each case according to its own circumstances.”<sup>14</sup> I cannot therefore consider myself bound by either the “general practice” as asserted by the Defence or “Victoria Police’s general approach” as asserted by the Prosecution. These are no more than starting positions for my analysis.

While the alleged offending in this matter was at the upper end of seriousness in the spectrum of matters that can be determined by this court and the proceeding was expedited, I note that WX gave a no comment record of interview, there was no VARE completed, the evidence before the court was from four witnesses, all of whom provided written statements, and the issue in dispute was of a discrete nature.

Considering all of the circumstances, I am satisfied that the costs sought in relation to preparation of the matter should be scaled back to 1.5 days’ preparation for each counsel and to 2 days’ preparation for the instructing solicitor. This is not because of “Victoria Police’s general approach” to costs but because any greater award of preparation costs would not, in my view, be just and reasonable in the fairly straightforward circumstances of this case. So far as the instructing solicitor is concerned, I consider it is just and reasonable to add a further 0.5 days to his 1.5 days of preparation costs associated with the hearing in order to cover the time spent in taking initial instructions from WX.

## **7. STAY ON PAYMENT**

The Prosecution seeks a stay of 3 months on the payment of costs ordered by the court. No explanation is given for a stay of such length. I do not consider that it is just or reasonable to deprive the Defence of its costs for such a lengthy period, especially as nearly a month has passed since the substantive case was finalised. In my view a stay of 30 days is fair and reasonable.

## **8. ORDER**

The Chief Commissioner of Police is to pay the solicitor for WX costs fixed at \$64,350.00 inclusive of GST. A stay of 30 days is granted. These costs are made up as follows:

Senior counsel – \$34,650.00

comprising 1.5 days preparation and 3 days appearance fee at \$7,700.00 daily rate.

Junior counsel – \$13,200.00

comprising 1.5 days preparation and 2.5 days appearance fee at \$3,300.00 daily rate.

Instructing solicitor – \$16,500.00

comprising 2 days preparation and 3 days attendance fee at \$3,300.00 daily rate.

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<sup>14</sup> See footnote 2 on page 2 above.