

# ACT CIVIL & ADMINISTRATIVE TRIBUNAL

**COUNCIL OF THE LAW SOCIETY OF THE AUSTRALIAN  
CAPITAL TERRITORY v LP 201809 (Charles Filgate Giles)  
(Occupational Discipline) [2021] ACAT 1**

**OR 9/2018**

**Catchwords:**

**OCCUPATIONAL DISCIPLINE** – costs – costs assessment – powers of the Registrar to assess costs pursuant to the *ACT Civil and Administrative Procedure Rules 2020* – principles of the tribunal under the *ACT Civil and Administrative Tribunal Act 2008* – where a bill of costs was prepared prior to the costs assessment – where procedures are to be as inexpensive as is consistent with achieving justice – Registrar to determine procedure for costs assessment – bill of costs allowed – order for costs made

**Legislation cited:**

*ACT Civil and Administrative Tribunal Act 2008* ss 7, 48  
*Legal Profession Act 2006* s 433

**Subordinate**

**Legislation cited:**

*ACT Civil and Administrative Tribunal Rules 2020* r 71  
*Court Procedures Rules 2006* r 1809

**Cases cited:**

*Council of the Law Society of the Australian Capital Territory v LP 201809 (Charles Filgate Giles)* [2019] ACAT 60

**Tribunal:**

Deputy Legal Registrar E Steel

**Date of Orders:**

6 January 2021

**Date of Reasons for Decision:**

6 January 2021

**AUSTRALIAN CAPITAL TERRITORY )**  
**CIVIL & ADMINISTRATIVE TRIBUNAL )**

**OR 9/2018**

**BETWEEN:**

**COUNCIL OF THE LAW SOCIETY OF THE**  
**AUSTRALIAN CAPITAL TERRITORY**  
Applicant

**AND:**

**LP 201809**  
Respondent

**TRIBUNAL:** Deputy Legal Registrar E Steel

**DATE:** 6 January 2021

### **ORDER**

The Tribunal orders that:

1. The assessed costs for the costs order made on 27 June 2019 are \$118,096.22
2. The costs of the assessment are \$13,109.16
3. The total amount which the respondent is to pay the applicant is \$131,205.38

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Deputy Legal Registrar E Steel

### REASONS FOR DECISION

1. In 2018 the Council of the Law Society of the Australian Capital Territory (**the Law Society**) applied to the Tribunal for disciplinary orders under the *Legal Profession Act 2006* (**Legal Profession Act**) arising from the professional conduct of the respondent, who practised as a legal practitioner in the Australian Capital Territory (**ACT**).
2. The tribunal made orders and gave reasons in relation to liability on 27 June 2019: *Council of the Law Society of the Australian Capital Territory v LP 201809 (Charles Filgate Giles)* [2019] ACAT 60.
3. Usually, parties to an application in the tribunal must bear their own costs, except in limited circumstances.<sup>1</sup> One of those circumstances applies to these proceedings, as section 433 of the Legal Profession Act is an authorising law about costs orders for this type of ACAT matter.
4. Order 3 of the tribunal orders of 27 June 2019 is an order that the respondent pay the applicant's costs of the proceedings as agreed or as assessed by the Registrar.
5. Rule 71 of the *ACT Civil and Administrative Tribunal Rules 2020* (**the ACAT Rules**) commenced on 1 February 2020. It sets out the functions of the Registrar in assessing and making orders about costs, including:
  - (2) *An order for assessed costs may specify the scale or process for assessing costs.*
  - (3) *If the tribunal makes an order for assessed costs, the registrar must assess the costs in accordance with the order and these rules.*
  - (4) *At the end of a costs assessment the registrar must issue an order specifying—*
    - (a) *the assessed costs for the costs order; and*
    - (b) *the costs of the assessment.*
  - (5) *If no order is made under subrule (2), the registrar may decide the scale and procedure to be followed to determine the assessed costs and the costs of the assessment.*

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<sup>1</sup> See *ACT Civil and Administrative Tribunal Act 2008* section 48

6. The 27 June 2019 orders were for costs as agreed or assessed, rather than for a fixed amount. The order for assessed costs did not specify the scale or the procedure for assessing those costs.
7. As a result, it was open to the Registrar to decide the scale and procedure to be followed. Rule 71(6) and (7) of the ACAT Rules include things the Registrar may decide to do in those circumstances:
  - (6) *Without limiting the registrar's power to assess costs, the registrar may decide to do any of the following:*
    - (a) *conduct a hearing by any means, including on the papers;*
    - (b) *require a bill of costs to be prepared;*
    - (c) *require a list of objections to items in a bill of costs to be prepared;*
    - (d) *apply a scale of costs under the Court Procedures Rules 2006;*
    - (e) *require the parties to attend a dispute resolution process;*
    - (f) *assess the costs in an amount agreed by the parties to the costs order without proceeding to a full assessment.*
  - (7) *The registrar may be informed of facts in any way the registrar considers appropriate.*
8. The applicant lodged an application for interim or other orders on 16 September 2020, asking the tribunal to make orders about costs.
9. That application attached a bill of costs, together with an affidavit setting out the attempts to reach an agreement with the respondent outside the tribunal, and the basis for seeking costs and the costs of the assessment.
10. Pursuant to Rule 71 of the ACAT Rules, the Registrar made orders on 7 October 2020:
  - a. requiring the parties to attend a dispute resolution process, namely a conference convened by the Registrar, listed for 17 November 2020; and
  - b. requiring the respondent to prepare and file a list of objections to the applicant's bill of costs, on or before 5 November 2020.
11. I was satisfied that the respondent was made aware of the 17 November conference, the requirement to prepare a list of objections, and the consequences for not participating, and that he had been served with the bill of costs:

- a. the orders of 7 October 2020, together with the application and attachments, including the bill of costs and the listing notice for the conference, were served on the respondent's previous legal representatives. They replied to say they no longer acted for him;
  - b. the orders and related documents were then sent to the respondent himself on 16 October 2020;
  - c. the respondent replied by email later that day to say that he did not intend to participate in the costs proceedings;
  - d. tribunal Registry staff acknowledged his email, and informed the respondent that the matter remained listed for conference and, if he did not participate, orders may be made in his absence;
  - e. on 13 November 2020 the tribunal sent a further confirmation email to the parties with the details of the audio-visual link for the 17 November conference;
  - f. on 16 November 2020 the respondent emailed the tribunal to say that he would not be able to attend the conference and asked for an alternative date in one week. No further information about the reason for, or evidence in support of, the request was included or attached;
  - g. I took this to be a request for an adjournment. As there was no basis to grant the adjournment, the request was refused. Registry staff replied to the respondent to tell him that his request for an adjournment had been considered in light of ACAT's *Practice Note No 2, Adjournments*, and that the request had not been granted. He was reminded that the proceedings were going ahead as listed and, if he did not attend, orders may be made in his absence.
12. The respondent did not file a list of objections to the bill of costs.
  13. The legal representative for the applicant appeared at the conference on 17 November via the pre-arranged audio-visual link. The respondent did not appear. He did not appoint a representative to appear on his behalf. He did not



provide any further evidence in support of his application for an adjournment. Being satisfied that he was aware of the proceedings but had failed to appear either personally or by a representative, I proceeded to hear the costs application in his absence.

### Procedure for assessing costs

14. The next step was to “decide the scale and procedure to be followed to determine the assessed costs and the costs of the assessment”.<sup>2</sup>
15. In deciding how to proceed, I considered the rules dealing with similar matters under the *Court Procedures Rules 2006* (**Court Procedure Rules**). In particular, Rule 1809 of those Rules applies if the party liable for costs does not file a notice of objection to the bill of costs. Rule 1809 reads:

#### **1809 Costs — default assessment if no objection to bill of costs**

- (1) *This rule applies if the party liable for costs does not file a notice of objection to the bill of costs.*
- (2) *On proof that the bill of costs was served on the party liable for the costs, the registrar must —*
  - (a) *assess the costs without considering each item and by allowing the costs claimed in the bill of costs; and*
  - (b) *issue a certificate of assessment for the amount of the assessed costs.*
- (3) *However —*
  - (a) *despite subrule (2) (a) —*
    - (i) *the costs must be assessed subject to rule 1804 (Costs — payment of disbursements); and*
    - (ii) *the costs of attending the assessment of costs (other than attendances the registrar considers necessary), and any other anticipated costs included in the bill, are not allowable; and*
  - (b) *subrule (2) (a) does not prevent the registrar correcting an obvious error in the bill of costs or assessing the costs differently in exceptional circumstances.*

16. In this case, the respondent had been served the bill of costs, he was given an opportunity to file a list of objections to items in the bill of costs, but no objections had been filed.

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<sup>2</sup> ACAT Rules rule 71(5)

17. I decided to adopt the approach of Rule 1809 of the *Court Procedures Rules* and assess the costs without considering each item, and by allowing the costs claimed in the bill of costs
18. There were no exceptional circumstances to warrant assessing these costs differently. There was no indication that the bill of costs included an account that had not been paid.
19. Rule 1809(b) does not prevent the Registrar correcting an obvious error in the bill of costs. I assessed the bill of costs for that purpose but did not identify any obvious errors.
20. The process under Rule 1809 is an assessment of the costs without considering each item. Although not required to do so, out of an abundance of caution I did review the bill of costs more generally. I also heard from the applicant about the basis for the amounts claimed and was satisfied that there was a proper basis for the amounts sought. I formed the view that the costs in the bill of costs were reasonable amounts and were reasonably incurred.
21. The assessed costs will be the amount sought in the bill of costs, i.e. \$118,096.22.

### **Cost of assessment**

22. Consistent with the principle that tribunal procedures are to be “simple, quick, inexpensive and informal as is consistent with achieving justice”,<sup>3</sup> the ACAT Rules about costs include the means to resolve costs disputes without the time and expense of proceeding to a full assessment. For example, under Rule 71(6)(e) and (f) the Registrar may:
  - (e) *require the parties to attend a dispute resolution process;*
  - (f) *assess the costs in an amount agreed by the parties to the costs order without proceeding to a full assessment.*
23. If there is no resolution, those Rules do allow the Registrar to require a bill of costs to be prepared, and then to require a list of objections to be filed, before conducting a hearing by any means.

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<sup>3</sup> *ACT Civil and Administrative Tribunal Act 2008* section 7

24. In this case, a bill of costs was prepared prior to filing the application to assess costs. The applicant addressed the question of why the costs of preparing the bill of costs should be awarded as part of the costs of the assessment, particularly given Rule 71(6) of the ACAT Rules.
25. On this occasion, given the fact that the bill of costs was prepared prior to the commencement of the ACAT Rules, and given its role in the parties' efforts to resolve the matter prior to making the costs assessment application, I was satisfied that it was appropriate to award the costs of its preparation. I was also satisfied that the remaining costs of the assessment were reasonable, including, for example, legal costs incurred in attempts to reach an agreement about costs.
26. For similar matters in future, parties should be prepared to explain if they have gone to the expense of having a bill of costs prepared before the Registrar has required it, and before participating in a dispute resolution process in the tribunal.
27. The costs of the assessment are awarded in the amount of \$13,109.16.

## Orders

### The Tribunal orders:

4. The assessed costs for the costs order made on 27 June 2019 are \$118,096.22
5. The costs of the assessment are \$13,109.16
6. The total amount which the respondent is to pay the applicant is \$131,205.38

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Deputy Legal Registrar E Steel

**Date(s) of hearing**

17 November 2020

**Solicitors for the Applicant:**

Ms K Binstock, McInnes Wilson Lawyers

**Respondent:**

N/A