

IN THE COURT OF APPEAL OF NEW ZEALAND

**CA48/2010
[2012] NZCA 112**

BETWEEN DANIEL THOMAS SPENCER
RIDDIFORD
First Appellant

AND YVONNE ADA RIDDIFORD
Second Appellant

AND THE ATTORNEY-GENERAL
Respondent

Hearing: 2 November 2011

Court: Arnold, Randerson and Stevens JJ

Counsel: Appellant in Person
R Birdsall as McKenzie Friend
M T Parker and J S Andrew for Respondent

Judgment: 28 March 2012 at 10 a.m.

JUDGMENT OF THE COURT

- A The appeal is allowed.**
- B The decision of the Land Valuation Tribunal as to costs is quashed, as is the High Court's order for costs.**
- C The respondent is to pay the appellants usual disbursements.**
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REASONS OF THE COURT

(Given by Arnold J)

An award of costs is challenged

[1] In this appeal the appellants, Mr Daniel Riddiford and his mother Mrs Yvonne Riddiford, challenge an order for costs made against them in the Land Valuation Tribunal (the Tribunal).¹ The Tribunal awarded costs of \$100,000 in favour of the Crown, comprising \$30,000 by way of legal costs (against actual legal costs of \$41,459.10) and \$70,000 for witness expenses (against actual costs of \$82,108.21).

[2] The background is that in September 1991 the Riddifords obtained subdivision consent under the Local Government Act 1974 in relation to 1402 square metres of land containing a farm cottage on their 6500 hectare sheep station on the Wairarapa coast. As a condition they were required to set aside an esplanade reserve. This comprises a 20 metre wide strip running along 9.45 kilometres of coastline. Its total area is a little over 19 hectares.

[3] After the subdivision was approved, Mr Riddiford entered into negotiations with the Department of Conservation and the South Wairarapa District Council about the management rights for the reserve. (The Council would normally have managed it.) By an agreement dated 7 March 1995, Mr Riddiford obtained the right to manage the reserve and to relocate it should he wish to utilise the reserve land for aquaculture.

[4] Mr Riddiford then entered into discussions with Valuation New Zealand about compensation. He indicated that he was seeking compensation of many millions of dollars. Because Valuation New Zealand was disestablished shortly after, the Department of Conservation took over the negotiations. The Department instructed a valuer, Mr Bulman, to undertake a valuation for the purposes of assessing compensation. He assessed reasonable compensation at \$120,000.

[5] This was unacceptable to the Riddifords. As there was no agreement, the matter was referred to the Land Valuation Tribunal for determination under s 290 of the Local Government Act. The hearing before the Tribunal, at which the Riddifords

¹ *Riddiford v Attorney-General* LVT Wellington LVP1/00, 18 May 2007.

were represented by counsel, took six days. The Riddifords' valuation evidence came from Mr Calderwood, a retired valuer who had worked for Valuation New Zealand. It appears that he gave a valuation of around \$11.3 million, although the Riddifords' claim was for approximately \$13.3 million. Mr Calderwood based his valuation on the unique features of the land including what he considered to be its realistic potential for development in the future. In addition, the Riddifords called evidence from various other people, including a planner, a business consultant and a marine biologist, to support an argument concerning the property's potential for aquaculture. For its part, the Crown called two valuers – Mr Bulman, who supported his original valuation of \$120,000, and Mr Hawkins, who assessed the value at \$148,000.

[6] In the result, the Tribunal awarded the Riddifords compensation of \$156,200. The Tribunal said that it was necessary to assess the market value of the coastal strip on a “before and after” basis, that is, taking the value of the station before the esplanade strip was taken and its value after it was taken. The value was to be calculated on a “willing buyer, willing seller” basis. It rejected Mr Calderwell's valuation evidence, on the basis that he did not apply ordinary valuation principles. While the Tribunal accepted that the potential of the land was relevant to its value, there had to be cogent evidence of either real potential which only the owner could turn to account (giving the land special value to the owner), or some special or unique aspect of the property making it particularly suitable for some use attractive to the market, thus increasing the price the market would be prepared to pay. In this case, the potential for aquaculture was not unique and, in any event, it would not be lost as a result of the taking of the coastal strip.

[7] Following this, the Crown applied for costs and the Riddifords applied for the payment of interest on the amount awarded as compensation. The Tribunal considered that it had jurisdiction to award costs under s 11 of the Commissions of Inquiry Act 1908 (the COI Act), which applies to the Tribunal by virtue of s 19(14) of the Land Valuation Proceedings Act 1948 (the LVP Act). In awarding costs to the Crown, the Tribunal emphasised three factors:

- (a) The Crown had made a Calderbank settlement offer in July 2003 in the amount of \$148,000. The Riddifords could have achieved a settlement at not less than the amount ultimately awarded if they had responded sensibly to the Crown's offer then.
- (b) The setting aside of the esplanade reserve was in a real sense unnecessary² and the subdivision was driven by the Riddifords' desire to obtain funds to facilitate the development of the station. Further, the esplanade reserve would be of little practical benefit to members of the public given its location.
- (c) The Riddifords valuation evidence was based on unreasonable arguments and produced "grossly inflated" values.

[8] Having examined the Crown's costs, the Tribunal considered that they were reasonable and made the award noted at [1] above. The effect of the award was that the Crown was reimbursed around 80 per cent of its actual and reasonable costs. The Tribunal also ordered that the Crown pay interest to the Riddifords on the settlement amount.

[9] The Riddifords then appealed to the High Court against the Tribunal's valuation and costs decisions. Ronald Young J and Mr J P Larmer substantially dismissed the appeal against the Tribunal's valuation decision and confirmed the Tribunal's order as to costs.³ In relation to the latter, the Court described the costs award against the Riddifords as "both inevitable and appropriate".⁴ The Court noted that the Riddifords had themselves sought costs of \$263,000, double the costs incurred by the Crown. Subsequently, Ronald Young J and Mr Larmer made an order for costs against the Riddifords on their unsuccessful appeal in the amount of \$11,865.50.⁵

² The Resource Management Act 1991 did away with the need for an esplanade strip. The Riddifords could readily have undertaken their subdivision without the need for such a strip under that Act.

³ *Riddiford v Attorney-General* HC Wellington CIV-2006-485-833, 23 June 2008.

⁴ At [55].

⁵ *Riddiford v Attorney-General* HC Wellington CIV-2006-485-833, 27 August 2008.

[10] The Riddifords then applied to the High Court for leave to appeal against the High Court's judgment on the valuation and costs appeal under s 18A of the LVP Act. Ronald Young J dismissed that application.⁶ Section 18A(2) sets out the relevant criteria. They are: whether any question of law or general principle is involved; the importance of the issues to the parties; the amount of money at issue; and such other matters as the Court considers should be taken into account. Ronald Young J concluded that the proposed grounds of appeal raised no question of law or general principle. Although the Judge accepted that the case had high importance to the Riddifords and that, on their view of it, a significant sum was at stake, he said that they had no credible and reliable valuation evidence to counter that offered by the Crown.

[11] Following this, the Riddifords applied to this Court for leave to appeal, identifying six possible grounds. The Court considered that it was unarguable that the Tribunal had jurisdiction to make an award of costs, but considered that there were other issues in respect of which leave should be granted that were not before the High Court. Accordingly, it granted leave to appeal in respect of the two grounds which we set out immediately below.⁷

Issues on appeal

[12] On the basis of this Court's leave decision, the issues for determination are as follows:

- (a) Accepting that the Tribunal has the jurisdiction to make an award of costs against the Riddifords, is it limited to making an award not exceeding \$600 or does it have a more extensive jurisdiction?
- (b) Is it correct that the Tribunal has no jurisdiction to make an award of costs against the Crown, as held in *Boulton v The Valuation Department*?⁸ If so, does that have any impact on the Tribunal's

⁶ *Riddiford v Attorney-General* HC Wellington CIV-2006-485-833, 22 May 2009.

⁷ *Riddiford v Attorney-General* [2009] NZCA 603.

⁸ *Boulton v Valuation Department* LVT Wellington LVP74/76, 3 July 1980.

discretion when determining whether to make an award of costs in favour of the Crown? We will call this the asymmetry issue.

[13] As will become apparent, because of the view which we have reached on the first question, it is unnecessary that we address the second question in any detail.

Is the Tribunal's jurisdiction to award costs limited to \$600?

[14] The argument that the Tribunal's jurisdiction to award costs is limited to a maximum award of \$600, which was identified in this Court's leave judgment and adopted by Mr Riddiford in argument before us, is as follows.

[15] Section 19(14) of the LVP Act provides:

Every Land Valuation Tribunal shall, within the scope of its jurisdiction, be deemed to be a Commission under the Commissions of Inquiry Act 1908, and, subject to this Act and to any rules or regulations made under this Act, all the provisions of that Act shall apply accordingly.

[16] Turning to the COI Act, s 11 provides:

Power to award costs

The Commission, upon the hearing of an inquiry, may order that the whole or any portion of the costs of the inquiry or of any party thereto shall be paid by any of the parties to the inquiry, or by all or any of the persons who have procured the inquiry to be held:

Provided that no such order shall be made against any person who has not been cited as a party or authorised by the Commission, pursuant to section 4A of this Act, to appear and be heard at the inquiry or summoned to attend and give evidence at the inquiry.

[17] Section 14 of the COI Act currently provides that rules prescribing a scale of costs payable in respect of any inquiry under the COI Act may be made in the manner provided for in s 51C of the Judicature Act 1908. But prior to 1985, s 14 empowered any three or more Judges of the (then) Supreme Court, of whom the Chief Justice was to be one, to make rules prescribing a scale of costs, subject to the approval of the Governor-General in Council.

[18] The predecessor to the COI Act was the Commissioners Act 1903 (the 1903 Act). Section 12 of the 1903 Act authorised any two or more Judges of the (then) Supreme Court to make rules prescribing a scale of costs. Stout CJ and Cooper J did fix a scale of costs on 15 December 1903.⁹ The relevance of the scale for present purposes is that it set a maximum award of costs on any inquiry of £300 (now \$600).

[19] Following this, the 1903 Act was consolidated into the COI Act. Section 1(2)(a) of the COI Act reads:

- (2) This Act is a consolidation of the enactments mentioned in the Schedule hereto, and with respect to those enactments the following provisions shall apply:
 - (a) All Commissions, appointments, rules, Orders in Council, orders, instruments, and generally all acts of authority which originated under any of the said enactments or any enactment thereby repealed, and are subsisting or in force on the coming into operation of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated.

...

[20] One of the enactments named in the Schedule to the COI Act was the 1903 Act. Section 12 of the 1903 Act had a corresponding provision in the COI Act, namely s 14 (as originally enacted). Consequently, as this Court said in the leave judgment, “the 1903 scale enured for the purposes of the [COI] Act as if it had been made under s 14”.¹⁰ This appears to have been accepted by this Court in *Re Erebus Royal Commission; Air New Zealand Ltd v Mahon (No 2)*.¹¹ Although s 14 of the COI Act now provides that a scale of costs may be made in the manner provided for in s 51C of the Judicature Act, no such scale has been promulgated. Consequently, the argument runs, the 1903 scale continues to apply.

[21] Mr Parker for the respondent accepted that:

⁹ The 1903 is set out in full in the Appendix to this decision.

¹⁰ At [9].

¹¹ *Re Erebus Royal Commission; Air New Zealand Ltd v Mahon (No 2)* [1981] 1 NZLR 618 (CA) at 664; aff’d [1983] NZLR 662 (PC). The Privy Council expressly refrained from expressing a view about the 1903 scale: see 687.

- (a) The Tribunal's power to award costs was derived from s 19(14) of the LVP Act and s 11 of the COI Act; and
- (b) The 1903 Order remains in force and has not been impliedly repealed. He did not seek to argue that the amendment of s 14 of the COI Act in some way had the effect of impliedly repealing the 1903 Order.

He argued, however, that the 1903 Order did not apply to the Tribunal as it deals only with costs "payable in respect of any inquiry under the [COI] Act". The Tribunal's function under the LVP Act is quite different from the function of a commission of inquiry under the COI Act. The Tribunal is well accustomed to making orders as to costs when it exercises its jurisdiction under, for example, the Public Works Act 1981.¹²

[22] Before we discuss these contentions, we need to provide a little more background to the LVP Act. When the LVP Act was originally enacted it was called the Land Valuation Court Act. It established two decision-making entities: the Land Valuation Court (the LVC) and regional Land Valuation Committees (the Committees).¹³

[23] The LVC consisted of three members, one of whom was to be a Judge. It was described as a "Court of record ... which, in addition to the jurisdiction and powers specially conferred on it by [the LVP Act], shall have all the powers inherent in a Court of record".¹⁴ The phrase "inherent in a Court of record" appears in numerous statutes which establish courts. It has been held not to extend to the power to punish for contempt¹⁵ or to make Anton Piller orders,¹⁶ but to include the power to control the appearances of lawyers before the court¹⁷ and to strike out proceedings that are an abuse of the court's processes.¹⁸ It is doubtful that it includes the power to award costs, although we are not aware of any authority which specifically addresses the point. In this context we note that the LVC had jurisdiction to hear proceedings

¹² Public Works Act 1981, s 90.

¹³ Land Valuation Court Act 1948, ss 3 and 19 (as enacted).

¹⁴ Ibid, s 3.

¹⁵ *Quality Pizzas Ltd v Canterbury Hotel Employees Industrial Union* [1983] NZLR 612 (CA).

¹⁶ *Axiom Rolle PRP Valuations Services Ltd v Kapadia* [2006] ERNZ 639 (EmpC).

¹⁷ *Owen v McAlpine Industries Ltd* [1999] 1 ERNZ 870 (EmpC).

¹⁸ *Reid v New Zealand Fire Service Commission (No 2)* [1998] 3 ERNZ 1237 (EmpC).

under other enactments, including the Valuation of Land Act 1925, the Public Works Act 1928 and the Servicemen's Settlement and Land Sales Act 1943. The latter two Acts conferred jurisdiction on the LVC to award costs in any proceedings under those Acts.¹⁹ There was no similar provision in the Valuation of Land Act, although it did provide for the award of costs on an appeal from the LVC.²⁰

[24] By contrast with the LVC, there was no requirement for a judicial or legally qualified member in respect of the Committees. The Committees were, as we have already noted, deemed to be commissions under the COI Act. They held hearings and heard evidence, but their powers were clearly more circumscribed than those of the LVC. For example, while the LVC had an express statutory power to dismiss a matter on the ground that it was frivolous or vexatious or made solely for the purpose of delay, the Committees did not.²¹

[25] Both the LVC and the Committees were ultimately abolished and their functions taken over by other bodies:

- (a) The Land Valuation Proceedings Amendment Act 1968 abolished the LVC and transferred its jurisdiction to the Administrative Division of the (then) Supreme Court (now the High Court). The Administrative Division included the two additional lay members appointed under s 3 of the LVP Act.²² When the Administrative Division of the High Court was abolished in 1991,²³ its jurisdiction under the LVC Act was transferred to the High Court, subject to a requirement that at least one valuer sit as a lay member.²⁴
- (b) The Land Valuation Proceedings Amendment Act 1977 abolished the Committees and established Land Valuation Tribunals in their place. The Tribunals were to consist of a Magistrate and two valuers (now a District Court judge and two valuers). So, unlike the position in

¹⁹ Public Works Act 1928, s 84; Servicemen's Settlement and Land Sales Act 1943, s 61.

²⁰ Valuation of Land Act 1925, ss 32 and 43(5).

²¹ Section 35 (as enacted).

²² Land Valuation Proceedings Amendment Act 1968, s 2(6).

²³ Judicature Amendment Act 1991, s 3(1).

²⁴ Judicature Act 1908, s 19.

respect of Committees, all Tribunals must have a judicial officer as Chair. When the Tribunals were established, the opportunity was taken to give them more extensive powers than had been accorded to Committees. For example, Tribunals were given the power to dismiss matters on the ground that they were frivolous or vexatious or brought only to delay.²⁵

[26] Returning to the question whether the 1903 Order affects the Tribunal's power to award costs, there are, as we see it, two questions to be considered:

- (a) The first is whether there is anything in the LVP Act itself which confers jurisdiction on the Tribunal to award costs. This is important because s 19(14) provides that the COI Act applies to the Tribunal subject to the LVP Act.
- (b) The second is whether, if the COI Act is the only source of the Tribunal's general power to award costs, the 1903 Order circumscribes that power.

[27] Beginning with the first question, s 37 of the LVP Act is a possible source of jurisdiction. It provides:

General jurisdiction of Court and Land Valuation Tribunals

- (1) In order that full effect may be given to the intent and purpose of this Act the Court and every Land Valuation Tribunal shall, in every matter coming before it, have full power and jurisdiction to deal with and determine the matter in such manner and to make such order, not inconsistent with this Act, as it deems just and equitable in the circumstances of the case, notwithstanding that express provision in respect of the matter is not contained herein.
- (2) In the course of any proceedings before it the Court and every Land Valuation Tribunal may, with or without any application, and upon such terms as to notice to parties and otherwise as it thinks fit, proceed to exercise any part of its jurisdiction the exercise of which in those proceedings it deems necessary or advisable:

Provided that the parties and the Crown representative shall be given an opportunity of being present when the Court or Land Valuation

²⁵ Land Valuation Proceedings Act 1948, s 35.

Tribunal, as the case may be, so proceeds to exercise any part of its jurisdiction, and of being heard thereon and of producing evidence and cross-examining witnesses.

[28] Section 37(1) is stated in wide terms. Arguably, the language is sufficiently broad to include the power to award costs where the Court or Tribunal thinks it just and equitable to do so.

[29] Further, it might be thought that s 33 of the LVP Act provides support for the view that s 37 confers on the Tribunal a general power to award costs. Section 33(1) provides that the Governor-General may, by Order in Council, confer additional jurisdiction on the Tribunal to determine claims relating to the value of land or compensation for damage to land. Section 33(2) provides that parties may, by agreement and with the Tribunal's consent, confer jurisdiction on the Tribunal to deal with any question relating to the value of land or an interest in land. Finally, s 33(5) deals with costs. It provides that subject to the provisions of any Order in Council or any agreement, the Tribunal may make "such order as it thinks fit as to the costs of any proceedings heard by the Tribunal under this section". While this could be taken to refer only to the Tribunal's costs rather than to those of the parties, the phrase "costs of any proceedings" is arguably apt to cover both the costs of the Tribunal and those of the parties. Looked at in this way, s 33(5) might be said to confer on the Tribunal the same power to award costs in extended jurisdiction cases as it has by implication under s 37 in relation to its within jurisdiction cases.

[30] However, we are satisfied that s 37 was never intended to and does not confer on the Tribunal the power to award costs. We say this for four reasons.

[31] First, s 37 has been in the LVP Act from its enactment. When originally enacted, s 37 applied to the LVC and the Committees. We think it unlikely that the legislature ever intended to confer on Committees, through s 37, a wide discretion to make costs orders in matters with which they dealt. As we have noted, the Committees were not required to have a legally qualified member and their powers were not as extensive as those of the LVC. While it is true that Parliament expanded the powers of the Tribunals when they replaced the Committees in certain respects, there was no change to s 37.

[32] Second, and more significantly, there is s 37A. Section 37A(1) provides that, on the determination of any appeal from a decision of the Tribunal, “the Court may make such order as to the payment and amount of costs to any party to the appeal as it thinks fit”. Section 37A(2) provides that s 37A binds the Crown. This section was inserted into the LVP Act by s 2 of the Land Valuation Proceedings Amendment Act 1967. At that time, s 37 applied to both the LVC and the Committees. The enactment of s 37A indicates that Parliament did not consider that s 37 conferred on the LVC a general power to make costs awards. If s 37 did not confer such a power on the LVC, it could not have done so in respect of the Committees (now Tribunal) either. Moreover, the LVC had, by virtue of s 26 of the LVP Act, the power on an appeal to confirm, discharge or vary any order of the relevant Committee and “generally may make such order as it considers just and equitable in the circumstances of the case”. If the Committees had had a general power to award costs, the LVC could presumably have utilised its s 26 jurisdiction to award costs on an appeal, so that s 37A would have been unnecessary.

[33] While it is by no means decisive, we note that the Minister responsible for the introduction of s 37A, Hon R J Hanan, considered that the LVC had a very limited power to award costs under the LVP Act prior to the amendment. On introducing the Bill to the House the Minister said:²⁶

At present the Land Valuation Court has a general discretion to award costs in cases that come before it only where it thinks the case should not have been brought. In effect, this means that a successful appellant who succeeds in correcting a decision of a land valuation committee may not receive costs. This Bill will enable the court to have a complete discretion in the matter as it does under the Public Works Act, the Land Settlement Promotion Act, and other Acts. This will bring about a long overdue reform.

It seems that the Minister considered that the LVC’s power to award costs prior to the introduction of s 37A was limited to proceedings that were effectively an abuse of process, apparently in the exercise of its powers as a court of record to control proceedings before it (which was, of course, not applicable to the Committees).²⁷

²⁶ (3 May 1967) 350 NZPD 45.

²⁷ (22 June 1967) 351 NZPD 1263.

[34] Third, as noted above, the Tribunal is specifically given the power to award costs in respect of its functions under other enactments.²⁸ Given that such provisions have a long history, it seems unlikely that Parliament would have relied on a general provision such as s 37 to confer similar jurisdiction of the Tribunal in respect of its functions under the LVP Act.

[35] Finally, we are satisfied that s 33 provides no assistance. When originally enacted s 33 applied to the LVC, not to the Committees. When the LVC was abolished and its jurisdiction conferred on the Administrative Division, s 33 was amended to reflect that. It was not until 1977, when the Committees were abolished and replaced by Tribunals, that s 33 was amended to make it applicable to Tribunals rather than the Court.²⁹ When this historical background is taken into account, the current wording of s 33 does not assist with the meaning to be ascribed to s 37.

[36] Given our conclusion that there is nothing in the LVP Act which confers on the Tribunal the general power to make awards of costs, we agree that s 19(14) of the LVP Act and s 11 of the COI Act are the source of the Tribunal's general costs jurisdiction. Accordingly, we come to the second of the questions identified at [26] above, namely whether the \$600 limit in the 1903 Order applies to the Tribunal.

[37] Mr Parker argued that the terms of the 1903 Order referred only to commissions of inquiry and the Tribunal was not a commission and did not act like one. But s 19(14) of the LVP Act deems the Tribunal to be a commission of inquiry and provides that subject to the LVP Act "all the provisions of [the COI Act] apply accordingly". In our view, where a commission's power to award costs under s 11 has been circumscribed by the authorised statutory process, the Tribunal will be bound by that limitation.³⁰

[38] We see the history outlined above as supporting this view. The power of Tribunals to award costs is the same as that of Committees. We think it implausible

²⁸ See the Public Works Act 1981, s 90; the Rating Valuations Act 1998, s 38(4) (in specified circumstances); the Maori Reserved Land Act 1955, s 54 (no power to award costs against the Valuer-General).

²⁹ Schedule to the Land Valuation Proceedings Amendment Act 1977.

³⁰ This is subject, of course, to the specific statutory powers which the Tribunal has to award costs in respect of some aspects of its work.

that Parliament intended that the Committees would have the power to award costs untrammelled by the 1903 Order. It must be remembered that the £300 limit was a significant sum in 1903. The present problem has arisen because the Order has been left unchanged for over a hundred years despite its existence having been drawn to the Executive's attention by this Court in the *Erebus* case and by the Law Commission in its 2008 Report on Commissions of Inquiry.³¹

[39] In those circumstances, we consider that Parliament intended that Committees have the same power to award costs as commissions of inquiry had, and those were, and remain, circumscribed by the 1903 Order. The same position applies in relation to Tribunals.

[40] Against this possibility, Mr Parker submitted that the \$600 limit did not include witness expenses. However, there are two possible answers to that submission, both of which produce outcomes unfavourable to the Crown:

- (a) If the power to award witness expenses is a component of the power to award costs, we see no reason why the 1903 Order would not cover such expenses. On its face, the 1903 Order seems to be comprehensive.
- (b) If the power to award witness expenses is not a component of the power to award costs, the Tribunal had no power to make the award in any event.

[41] In the result, then, we consider that the 1903 Order applied to the costs award made by the Tribunal (including its award as to witness expenses). The award made exceeded the \$600 permitted. Accordingly, the Tribunal made the order without jurisdiction and it must be quashed. It follows from this that the order of the High Court as to costs in that Court on the Riddifords' unsuccessful appeal must also be quashed.

³¹ Law Commission *A New Enquiries Act* (NZCLR 102, 2008) at [7.16].

[42] Mr Parker indicated that if we decided that the limit in the 1903 Order applied to the whole of the Tribunal's costs order, the Crown would not seek an order for costs at a reduced amount but rather would forgo costs.

[43] Given the conclusion we have reached on the first of the two questions on which leave to appeal was granted, we need not answer the remaining question. Obviously, the position in relation to the Tribunal's power to award costs and witness expenses in respect of its functions under the LVP Act is most unsatisfactory. We agree that, from a policy and a practical perspective, the outcome that Mr Parker argued for makes good sense. As a body with a judicial member, conducting hearings which have many of the characteristics of court proceedings, there seems no reason why the Tribunal should not have a broad power to award costs. Other statutes explicitly confer powers to award costs on the Tribunal in particular contexts. Moreover, the Tribunal has proceeded on the basis that it has a broad power under the LVP and COI Acts,³² although the 1903 Order never seems to have been drawn to its attention (unsurprisingly given its age and obscurity). This is a matter that needs to be addressed with some urgency, whether by way of inclusion in the LVP Act of a specific power for the Tribunal to award costs or by revocation/replacement of the 1903 Order or both.

Decision

[44] The appeal is allowed. The decision of the Tribunal as to costs (including witness expenses) is quashed, as is the order for costs made by the High Court against the appellants (which followed the event).³³ Being self-represented, the appellants are not entitled to costs in this Court. However, the respondent is to pay the appellants usual disbursements.

Solicitors:
Crown Law Office, Wellington for Respondent

³² See, for example, *Williams v Attorney-General* LVT New Plymouth LVT1-159, 18 February 2003 at [6]–[18] and [33]; *Kerr-Taylor v Chief Executive of Land Information New Zealand* LVT Auckland LVP4/02, 8 June 2007 at [26].

³³ *Riddiford v Attorney-General* HC Wellington CIV-2006-485-833, 27 August 2008.

APPENDIX

In the matter of “The Commissioners Act, 1903.”

We, the undersigned Judges of the Supreme Court of New Zealand, do hereby, by virtue of section 12 of “The Commissioners Act, 1903,” make the following rules prescribing a scale of costs payable in respect of any inquiry under the said Act, namely:-

Rule I. The following shall be the scale of costs for an inquiry under “The Commissioners Act, 1903,” –

(1.)	Preparing for the inquiry, seeing witnesses and preparing brief, not exceeding ...	£	s	d
		6	6	0
(2.)	Fee for attendance of counsel at hearing, not exceeding (per day) ...	15	15	0
(3.)	Costs of argument of a special case –			
	Preparing case, from ...	£2.2 s.	to 5	5 0
	Argument of special case, from	£10.10 s	to 21	0 0

if the Court before whom the case was argued certifies that costs should be allowed.

Rule II. Any other costs awarded shall be the same as the scale in the Supreme Court, and if there is any doubt as to what costs should be allowed pursuant to scale in any particular matter the Commissioner shall have regard to the scale, and fix such sum accordingly.

Rule III. No costs of any inquiry shall exceed £300.

Dated at Wellington, 15th December 1903.