

(1) Ethical & professional obligation

Overarching purpose of the court

- **Introduction:** Courts have an overarching purpose to facilitate and give effect to the **just, efficient, timely and cost effective resolution of the real issues in dispute** in the exercise of **any** of its powers (*ss 7(1), 8(1) CPA*)
- **s9(1):** court shall further overarching purpose **by** having regard to **s9(1) CPA** factors when making order/direction
 - **Just determination:** consider whether order promotes the just determination of proceeding (*s9(1)(a)*)
 - **Just: (order)** promotes just determination as (*access key docs, evidence be tested, preserves assets*)
 - **Unjust: (order)** undermines justice as (*causes prejudice, delays trial, imposes neg cost, speculative*)
 - **Early settlement:** consider the public interest in the early settlement of disputes by agreement (*s9(1)(b)*)
 - **Promote: (order)** promotes settlement as (*discovery, expert evidence, mediation*) clarify real issues
 - **Hinder: (order)** hinder settlement as creates (*increased costs, tactical pressure, interlocutory disputes*)
 - **Efficient conduct of court business:** consider the efficient conduct of the business of the Court (*s9(1)(c)*)
 - **Efficient: (order)** supports efficiency as (*narrows issues, prevents wasted trial time, avoids adjournment*)
 - **Inefficient: (order)** undermines efficiency as (*multiple hearings, complex supervision, broad discovery*)
 - **Efficient use of resources:** consider the efficient use of judicial & admin resources (*s9(1)(d)*)
 - **Efficient:** use of resources justified as dispute is (*serious, high-value, complex, cause injustice if unresolved*)
 - **Inefficient:** use of resources inefficient as (*claim is low-value, issue is minor, request is speculative*)
 - **Minimise delay:** minimise trial delay, except where reas needed for fair issue determination & prep (*s9(1)(e)*)
 - **Justified:** delay reasonably necessary for (*trial preparation, obtain evidence, respond fairly, expert report*)
 - **Unjustified:** delay is not justified as (*application is late, party knew earlier, no good explanation, tactical*)
 - **Timely determination:** consider the timely determination of the proceeding (*s9(1)(f)*)
 - **Support:** order supports timely determination as (*sets timetable, narrows issues, avoids later adjournment*)
 - **Undermine:** order undermine timely determination as (*push trial, requires more evidence, create dispute*)
 - **Proportionality:** consider dealing w/ proceeding prop to complexity of issues **AND** amount in dispute (*s9(1)(g)*)
 - **Support:** order is more likely proportionate as (*complex matter, high-value, serious, publicly important*)
 - **Against:** order is less likely proportionate as (*simple matter, low-value, minor benefit, excessive cost*)
- **s9(2):** for the purposes of considering these objects, the court **may** have regard under **s9(2) CPA**
 - **Pre-litigation process:** consider if parties complied w/ mandatory or voluntary pre-litigation processes (*s9(2)(a)*)
 - **Support: (X)** complied by (*sending letter of demand, attempting mediation, exchanging docs, negotiating*)
 - **Against: (X)** failed to comply by (*ignoring letter of demand, refusing mediation, commencing prematurely*)
 - **Reasonable endeavours** consider if parties used reasonable endeavours to resolve dispute/limit issues (*s9(2)(b)*)
 - **Support: (X)** complied by (*making offers, admitting uncontested facts, narrowing pleadings*)
 - **Against: (X)** failed to comply by (*refusing reasonable offers, broadening issues, pursuing weak points*)
 - **Promptness:** consider the promptness with which the parties conducted the proceeding (*s9(2)(c)*)
 - **Support: (X)** acted promptly by (*filing early, seeking orders as soon as issue arose, responding on time*)
 - **Against: (X)** delayed by (*late application, missed deadlines, slow disclosure, ignoring orders*)
 - **Delay beyond party's control:** consider if any lack of promptness was beyond the party's control (*s9(2)(d)*)
 - **Support:** delay may be excused if caused by (*illness, unavailable witness, late disclosure by other party*)
 - **Against:** delay is less excusable if caused by (*poor preparation, lawyer oversight, tactical delay*)
 - **Comply w overarching obligations:** consider if parties complied w/overarching obligations in *ss16-26* (*s9(2)(e)*)
 - **Support: (X)** complied as (*acting honestly, cooperating, narrowing issues, disclose docs, unnecessary cost*)
 - **Against: (X)** failed to comply by (*misleading conduct, fail to cooperate, causing delay, excessive discovery*)
 - **Prejudice:** consider prejudice caused by making or refusing the order (*s9(2)(f)*)
 - **Support:** refusing order prejudice (X) as (*can't prove case, evidence may be lost, assets may disappear*)
 - **Against:** granting order prejudice (X) as (*causes delay, cost, confidentiality burden, disruption*)
 - **Public importance:** consider public importance of the issues & desirability of judicial determination (*s9(2)(g)*)
 - **Support:** significant public importance as (*public body involved, systemic issue, public funds, env issue*)
 - **Against:** low public importance as dispute is (*ordinary private contract, debt claim, low-value priv dispute*)
 - **Legal advice & representation:** consider whether parties had legal advice and representation (*s9(2)(h)*)
 - **Supports leniency:** court allow flexibility as (*party self-represented, vulnerable, misunderstood procedure*)

Overarching obligations on parties

- **Introduction:** Court in making any order/direction in civil proceeding shall consider overarching oblig on parties (*ss17-26 CPA*). Subj to paramount duty to further admin of justice (*s16*) these prevail over legal/contrac oblig (*s 12*)
 - **Lawyers:** must comply with OOs despite any obligation the lawyer has to act in accordance with the wishes or instructions of the client (*s 13(2)*) + must not cause client to contravene any OO (*s 14*)
- **(X) bound by OOs:** Here, (X) is bound by overarching obligations as (**party - *s10(1)(a)*, lawyer/ party representative - *s10(1)(b)*, law practice- *s10(1)(c)*, person providing financial assistance to party - *s10(1)(d)*, insurer - *s10(1)(d)(i)*, litigation funder - *s10(1)(d)(ii)*, expert witness - *s10(3)*) BUT **ss 18, 19, 22 26 OOs NOT apply**).**
- **OOs apply:** The OOs apply to (**dispute**) as concerns (**aspect of civil proceeding in court – *s11*, interlocutory proceeding - *s11(a)*, appeal from order or a judgment – *s11(b)*, ADR undertaken in civil proceeding - *s11(c)***)
- **OOs breached:** Here, (X) breached several OOs as (...) - amounts to breach of paramount duty to court (*s16*)
 - **Act honestly:** (X) (**lied about price**) which shows (X) not acted honestly at all times in civil proceedings b/w themselves & (Y). (X) subjectively intended to do the act which is said to be objectively dishonest by ordinary standards of reasonable & honest person (*Bolitho*). Thus (X) breached OO to act honestly (*s 17*). Like *Bolitho* - contrived costs documents and misleading representations used to deceive Court & others about legal fees
 - **Proper basis:** (X) (**made irrelevant claims of family issues that have no connection to claim, claim contradicted by documents, no evidence for allegation**), meaning (X) did not 'assess whether a proper basis existed when (**advancing/ responding**) to a claim' (*Bolitho*). Hence (X) breached OO to not make any (**claim/response to a claim**) that is (**frivolous - *s18(a)*, vexatious - *s18(b)*, abuse of process - *s18(c)***), does not on the factual and legal material available to them at the time of making or responding to the claim have a proper basis - *s18(d)*)
 - **Necessary steps to resolve dispute:** (X) (**brought up irrelevant family drama, made unnecessary app**) which they do not reasonably believe is necessary to facilitate resolution or determination of proceeding – breached *s19*
 - **Cooperate:** (X) (**ignored correspondence, refused timetable**) so (X) failed to cooperate with the Court and the other parties in connection with the conduct of the proceeding – breached *s20*
 - **Not mislead or deceive:** (X) (**lied about procedure price, made inaccurate statement to Court, omitted key facts**) which was capable of inducing (Y) into error (*Bolitho*) & therefore (X) likely engaged in conduct that is misleading or deceptive (*s 21(a)*), or at least likely to mislead or deceive (*s 21(b)*). Hence breached *s21*
 - **Reasonable endeavours to resolve dispute:** (X) (**refused mediation w/o reason, failed to negotiate**) so failed to use reasonable endeavours to resolve dispute by agreement, including, if appropriate, by ADR – breached *s22*
 - **Counter:** (X) counters NO breach as ADR is not in interest of justice (as have parties with power imbalance) **OR** dispute is of a nature that only judicial determination is appropriate (as civil penalty is sought)
 - **Narrow issues:** (X) (**refuse admissions, broad pleadings, excessive discovery**) so fail to narrow issues- breach *s23*
 - **Reasonable & proportionate costs:** (X) (**rambled to client, wasted resources on irrelevant claims, high costs for simple matter, amount in dispute is small - *s24(b)***) so applying the 'fact-sensitive inquiry' (*Bolitho*) – likely that costs incurred not reasonable or proportionate to complexity of dispute or amount in dispute – breach *s24*
 - **Minimise delay:** (X) (**made late application**) so failed to use reasonable endeavours to act promptly (*s 25(a)*) & minimise delay (*s 25(b)*). This is serious as delay affected (**trial prep, listing, other parties, resources**) - breach *s25*
 - **Disclose critical documents:** (X) failed to disclose existence of documents of (**contract, key email, report**) critical to the resolution of the dispute at the earliest reasonable time, or as directed by the Court – thus breached *s26*
 - **Not use documents in discovery outside of civil litigation:** (X) used (**doc**) in discovery for (**threaten**) – breach *s27*
- **Consequences:** As (X) likely breached (*s17/18/19/20/21/22/23/24/25/26*), the Court may take the breach into account when exercising any power in the proceeding (*s28(1)*), including its discretion as to costs (*s28(2)*). (X) may apply for order & must do so in (**court where proceeding started**) (*s30(1)(a)*) & must be made prior to finish of proceeding (*s30(2)*). If satisfied of contravention on BoP, Court may make any order it considers appropriate in interests of justice under *s 29(1)*, like here (**order (X) to pay some or all legal costs or expenses caused by breach - *s29(1)(a)*, order costs to be payable & enforceable immediately - *s29(1)(b)*, order (X) to compensate (Y) for financial other loss materially contributed to by breach - *s29(1)(c)*, prevent (X) from take specified steps in the proceeding - *s29(1)(d)*, require (X) to take steps to remedy breach - *s29(1)(e)*, make other order in interests of a person prejudicially affected by breach (**remove irrelevant statements, stop misuse**)- *s29(1)(f)*) (*Yarra Australia*)**

(2) Costs

Basis of taxation

- **Type:** If costs awarded, (**losing party's**) costs taxed on standard, indemnity, or other basis as Court directs (*r 63.28*).
- **Standard:** default position is that costs are to be taxed on a standard basis, except as provided by the *SCR (r 63.31 SCR)*. This means (**winning party**) can have their costs that've been **reasonably incurred** & of reasonable amount paid to them by (**losing party**) (*r 63.30 SCR*). This includes disbursements (**medical reports, hiring sols..**)
- **Indemnity:** Due to (**breaching party's**) behaviour of (...), costs may be awarded in favour of (**other party**) on an indemnity basis rather than the standard basis. Costs on an indemnity basis include all the costs incurred save those unreasonably incurred or of an unreasonable amount (*r 63.30.1(1)*). If doubts as to whether costs were unreasonably incurred or of an unreasonable amount, court will favour (**winning party**) (*63.30.1(2)*)

Cost indemnity rule

- **Introduction:** Courts follow 'costs indemnity rule'. However, courts have full power & ultimate discretion as to by whom & what extent costs paid (*s 24(1) SCA*), subject to Order 63 (*r 63.02 SCR*). Here, (**winning party**) succeeded & obtained (**judgement for \$400,000**) so (**losing party**) pays (**winning party's**) costs. BUT argue exception applies (..)

Exceptions **if don't fit – no cost consequences (see time!)*

- **Rejection of settlement:** (**offeree**) rejected (**offeror's**) settlement offer of (**\$300,000**) & **failed to better it at trial**. Relevant as parties have overarching oblig use reasonable endeavours to resolve disputes by agreement (*s22 CPA*)
- **Pre-litigation offer:** (**offeror**) argues made pre-litigation offer. Satisfy reqs under *r 26.08.1(1)(a)-(c)*. **BEFORE**
 - **Satisfied:** Here, (**offeror**) make written offer to settle for (**\$300,000**) (**a**) **BEFORE proceedings commenced** (no writ- *r 5.11*), offer open for reasonable time of (**14 days**) which was not accepted (**b**) AND (**offeror**) later obtained judgment of (**\$400,000**) which (**was/was not**) **no less favourable** than offer of (**\$300,000**) (**c**). So **cost consequences**- Court order (**offeree**) to pay all or part of (**offeror's**) costs on basis on indemnity basis on day offer was made, commencement of proceedings, or another time Court think fit (*r 26.08.1(2)*)
 - **Not satisfied:** Here, as the **proceeding was already on foot** (writ has already been filed commencing the proceeding per *r 5.11(1)*) - the offer does not constitute a public pre litigation offer.
- **Calderbank offer:** (**offeror**) argue **Calderbank** offer so Court consider after judgment when deter cost **ANY DAYS**
 - **Calderbank offer:** Firstly, (**offeror**) argues (**\$300,000**) is **Calderbank** offer as was ('without prejudice save as to costs' offer/'without prejudice' offer but reserving right to refer to offer regarding costs), clear & capable of acceptance as stated (**amount, terms, deadline**), reasonable time of (**X days**) for acceptance, provided reasons why it should be accepted of (**weak prospects, litigation risk, costs risk, evidence issue**), foreshadowed application for indemnity costs if rejected (**Calderbank, Hazeldene**)
 - ✓ **Counter:** (A) argue NOT effective **Calderbank** offer as (**unclear, gave too little time, not contain genuine compromise, not explain why should be accepted, not warn of indemnity costs**)
 - **Unreasonable rejection:** Secondly, (**offeror**) argues unreasonable for (**offeree**) to reject (**offeror's**) Calderbank offer in circumstances (**Hazeldene**). Court will consider factors stated at *[25](a)-(f)*. Here..
 - ✓ **Stage of proceedings:** offer made (**1 month before trial, after mediation & extensive interlocutory steps, close to trial**) so (**offeree**) had enough info to assess (**liability, prospects**) - unreasonable rej
 - **Counter:** offer made (**very early**) so (**offeree**) had limited ability to assess merits – reasonable
 - ✓ **Time to consider offer:** offer open for (**14 days, wks**), so (**offeree**) has enough time – unreasonable rej
 - **Counter:** offer open for (**few hours, 1 day before trial**) so insufficient time
 - ✓ **Extent of compromise:** genuine compromise as (**offered to settle for lower claim**) - unreasonable rej
 - **Counter:** offer looked like demand for surrender as (**minimal discount, harsh terms**) – can reject
 - ✓ **Offeree's prospects:** at date of offer, (**offeree's**) prospects weak as (**clear liability, evidence favoured offeror, poor defence, expert evidence against them**) so unreasonable rejection
 - **Counter:** at date of offer, (**offeree**) had arguable prospects as (**conflicting evidence...**) - reasonable
 - ✓ **Clarity of offer:** offer was clear as identified (**amount, deadline, release terms, costs position**) so (A) could understand and accept it so supports unreasonable rejection
 - **Counter:** offer unclear as (**amount uncertain, costs unclear**) - reasonable rejection
 - ✓ **Indemnity costs warning:** (**offeror**) warned would seek indemnity costs if rejected - unreasonable
 - **Counter:** offer NOT warn indemnity costs be sought so unfair impose indemnity costs
- ✚ **Cost consequences:** (**offeree's**) rejection was unreasonable, so court likely order indemnity costs from the date (**offeree**) unreasonably rejected offer - closing date of the offer or a reasonable time after it was made

- **Offer of compromise:** (offeror) argues made offer of compromise (*O 26 SCR*). OoC is taken to be made w/o prejudice & not admissible until costs considered, unless offer provides otherwise (*r 26.04-05*) **14 DAYS ONLY**
 - **Validity:** (offeror's) offer will only be a valid OoC if ALL *r 26.02(3)-(4)* requirements are met
 - ✓ **Writing:** Here, (offeror) (did/not) make offer in writing as (\$300,000 plus costs/written letter)
 - ✓ **Prepared under rr 27.02–27.04:** Here, offer (was/was not) prepared according to *rr 27.02–27.04*
 - ✓ **Served under O 26:** Here, offer (did/did not) state it was served in accordance with *O 26*
 - ✓ **Costs position:** Here, the offer (did/did not) identify whether costs were included or in addition to the offer because it stated (\$300,000 plus costs / inclusive of costs) (*r 26.02(4)*)
 - **Procedure:** For offer, (offeror) may serve OoC any time before verdict/judgment (*r 26.03(1)*), may serve more than 1 OoC (*r 26.03(2)*) & if offer states expiry time, it must **remain open for at least 14 days** after service (*r 26.03(3)*). Offer no be withdrawn while open unless Court orders otherwise (*r 26.03(5)*). For **acceptance**, (offeree) may accept by written notice before expiry date, or if no date is specified, **within 14 days after service** or before verdict/judgment, whichever is sooner (*r 26.03(4)*). Payment be made within 28 days of acceptance, unless offer provides otherwise (*r 26.03.1*). Here.. **SEE THE TIME OPEN FOR OFFER**
 - ✓ **Accepted but not paid:** Here, (offeree) accepted offer **BUT** does NOT pay so can withdraw acceptance with Court's leave if payment is not paid within the offer's time, or if no time is specified, within 28 days after acceptance (*r 26.07(1)*). If (P) defaults, (D) may apply for an order giving effect to the accepted OoC & staying or dismissing proceeding (*r 26.07.1*). If (D) defaults, (P) may apply for order giving effect to the OOC & striking out (D's) defence (*r 26.07.1*)
 - **Failure to accept:** As OoC is valid & not accepted by verdict/judgment, *r 26.08 SCR* applies (*r 26.08(1)*).
 - ✓ **D rejects P's offer + P gets equal/greater judgment - injury claim:** Here, (D) rejected (P's) offer of (\$300,000) & (P) obtained judgment of (\$400,000), which is equal to or greater than offer. As this is injury claim as (P alleges...), (P's) costs are on indemnity basis (*r 26.08(2)(a)*), subj to Court discretion
 - ✓ **D rejects P's offer + P gets equal/greater judgment - non-injury claim:** Here, (D) rejected (P's) offer of (\$300,000) & (P) obtained judgment of (\$400,000), which is equal to or greater than offer. As this is non-injury claim, (P's) costs are on a standard basis up to 11am on 2nd business day after service & costs thereafter on indemnity basis (*r 26.08(2)(b)*), subject to court discretion (*r 26.08*).
 - ✓ **P rejects D's offer + P gets equal/less than D's offer:** Here, (P) rejected (D's) offer of (\$300,000) & (P) obtained judgment of (\$100,000), which is equal to or less than (D's) offer. (P) gets costs against (D) before 11am on 2nd business day after offer served on standard basis & (D) gets costs against (P) thereafter on standard basis (*r 26.08(3)*), subject to court discretion (*r 26.08*).
 - ✓ **P unreasonably rejects D's offer + D wins:** Here, (P) unreasonably rejected D's offer of (\$300,000) & (P's claim was dismissed/ judgment was entered for D). (D) gets costs against (P) until 11am on the 2nd business day after service on a standard basis, and costs on indemnity basis thereafter (*r 26.08(4)*)
- **Breached OOs:** (innocent party) argue costs should reflect (breaching party's) breach of *CPA* OOs (*Yara, s 28(2) CPA*). Here, (breaching party) (relied on material causing delay). This breached obligation to narrow real issues in dispute (*s 23*), ensure costs reasonable & proportionate (*s 24*) & minimise delay (*s 25*). Thus, court may make discretionary costs order in interests of justice (*s 29*), like require (breaching party) to pay (innocent's party's) costs connected to contravention, pay costs immediately, or compensate (innocent party) for loss caused by breach (*s29(1) CPA*)
- **Win in wrong court:** Although (winning party) succeeded, they won in wrong court as proceeding brought in **Supreme Court** when could've been in County Court. This is because (winning party's) recovery, excluding costs was (**\$100,000 or less for debt/damages - r 63.24(1)**), (**\$50,000 or less for libel/slander - r 63.24(2)**), **relief other than debt/damages worth \$100,000 or less - r 63.25**) as was (\$20,000). Thus unless Court orders otherwise, (WP) only recover costs they would have recovered had proceeding been brought in County Court, less any additional costs incurred by (LP) as proceeding was brought in Supreme Court (*r 63.24(1)*). Analogous to *Dutton* - costs limited
 - **Set-off:** (WP) counters (LP's) set-off reduce recovery under \$100,000 - could've recovered more (*r 63.24(3)*)
 - **Case transfer:** (WP) counters proceeding transferred to the SCV from lower court (*r 63.24(3)*) – not apply
- **Wins but loses on some claim:** Although (winning party) succeeded on (5 claims), costs should be reduced as (winning party) lost on (1 claim). Court may exercise its discretion under *s 24 SCA* to make issues-based or proportionate costs order, so (losing party) only pays portion of (winning party's) costs referable to successful issues, excluding time & expense spent on (unsuccessful claim) (*Byrnes, Wiles, Thurin*)
 - **Discretionary:** losing some issues not automatically justify departure from cost indemnity rule (*KSG*)

- **Public interest:** (party/group) argue proceeding brought in public interest as (no personal financial stake, broader comm purpose) as (...) - thus Court depart from ordinary costs rules. If (party) successful, can seek costs on indemnity basis (*Australian Federation of Consumer Organisations*). However, if (party) unsuccessful, can seek to avoid costs order against them entirely, however they aren't immune from costs indemnity rule (*Bar Advocacy NSW*)
 - **Protective cost order:** may seek a protective costs order under *CPA s 65C* to cap or limit exposure to adverse costs, if appropriate to further the overarching purpose in *s 7 CPA*. The Court considers the *s 65C(2A)* factors, including timing, complexity, whether damages are claimed, whether the claim is arguable and not frivolous/vexatious, whether abandonment would be undesirable & *Bare* considerations - likely costs, the parties' conduct, number of people affected & applicant's ability to pay. Here, PCO applies/not..
- **Overarching purpose:** In making any costs order, Court must further the overarching purpose of facilitating the just, efficient, timely and cost-effective resolution of real issues in dispute (*s 7 CPA*) & may make any costs order it considers appropriate to further that purpose (*s 65C(1) CPA*). Here, order supports overarching purpose in *s7 CPA* as settlement offers promote early resolution & here (*SSBR's rejection of reasonable offer caused matter 3 days extra*)
- **Conclusion:** Overall, (losing party) will likely pay (winning party's) as succeeded & obtained judgment for (\$400,000). (winning party) has a strong argument for indemnity costs as (losing party rejected her \$300,000 plus costs offer and she obtained a more favourable judgment). (winning party) may also seek costs thrown away or an additional costs order because (losing party's irrelevant hard-copy evidence wasted one trial day). If the Court rejects indemnity costs, (winning party) should still recover costs on the standard basis as the successful party.

Costs orders against lawyers

- **Introduction:** (party 1) seek costs order against (party 2's) (sol/barrister) as caused costs to be incurred **improperly, w/o reasonable cause** OR to be **wasted by failure to act w/ reasonable competence & expedition** (*r 63.23(1) SCR*)
- **Improper:** Here, (party 1) argue (party 2's) lawyer **caused costs to be incurred improperly, w/o reasonable cause** as (proceedings are hopeless, abusive & brought for improper basis AND lawyer assisted in drafting claims) (*r 63.23(1)*)
- **Wasted:** Here, (party 1) argue (party 2's) lawyer **acted w/o reasonable competence & expedition** by failing to attend in person or by a proper representative (*r 63.23(2)(a)*) as (...) which is comparable to *Hera Project* where there was a lack of fulfilment to responsibilities both to the plaintiff and to the court **OR file any document which ought to have been filed** as (...) (*r 63.23(2)(b)*) **OR lodge or deliver any document for use of Court which ought to have been lodged or delivered** as (...) (*r 63.23(2)(c)*) **OR be prepared with proper evidence or account** as (...) (*r 63.23(2)(d)*) **OR otherwise proceed** as (prepared/relied on irrelevant hard-copy material, causing one trial day wasted) so waste costs – which is comparable to *Hera Project* where negligible state of preparation (*r 63.23(2)(e)*)
 - **Evidence wastes a day at trial:** the Court will note the evidence regarding (diff massage oils) was irrelevant to the issues at hand & caused (5 days) of the trial to be dedicated to dealing with that evidence. As (losing party's) lawyers, not (losing party), are responsible for paying (winning party's) costs for (5 days) of trial
- **Costs:** If satisfied, Court may order that all or part of the solicitor-client costs be disallowed or repaid, that the lawyer reimburse their client for costs the client has been ordered to pay, or lawyer pay all or part of another party's costs (*r 63.23(1)(a)-(c)*). However, Court must first give lawyer reasonable opportunity to be heard & here... (*r 63.23(3)*)
- **CPA:** When making order against costs, Court must further overarching purpose in *s 7 CPA* (facilitate just, efficient, timely & cost-effective resolution of real issue), incl efficient use of court resources & timely determination (*ss 9(c), (d), (f)*). As (party 2's) lawyer acted against objs, court consider cost sanctions as complying w/ overarching purpose

Costs in interlocutory proceedings

- **Introduction:** As have interlocutory application made in proceeding & there is order made on application (*r 63.20(a)*) **OR** order is silent as to costs (*r 63.20(a)*), then costs are parties' costs in proceeding unless Court otherwise orders
- **Costs are served:** As the Costs are reserved in this proceeding, the reserved costs are the party's costs in the proceeding unless the Court orders otherwise (*r 63.22*)

(3) Jurisdiction

*"Which Court should (P) commence proceedings against [D] in and why?"

- **Introduction:** For (P's) proceeding to be heard before the relevant court, the court must have both subject matter jurisdiction (SMJ) and territorial jurisdiction (TJ) (*Laurie*). Jurisdiction is 'the scope of the court's power to examine and determine facts, interpret and apply the law, make orders and declare judgment' (*Wardley Australia*)

Subject matter jurisdiction

- **Introduction:** SMJ is whether court can hear kind of claim, having regard to relief sought, complexity & expertise
- **In which Court should (P) commence proceedings:**
 - **Cause of action only involving state claim & is not overly complex/relatively low value (COUNTY COURT):** (P) is advised to pursue claim in (tort, negligence, breach of contract, personal injury) in **County Court**. This claim will not be suitable for the Magistrates Court (MC) as MC has a jurisdictional limit of up to \$100,000 in respect of a claim for damages or equitable relief per *s 100 of MCA*, which is **below** the amount that (P) is claiming (<\$100,000). Although both Supreme Court per *s 85(1) of the Constitution Act* and County Court per *s 37(1)(a) of the County Court Act* have unlimited jurisdiction, the facts suggest that the case would not be complex, and County Court would be more appropriate. This may also be risk averse because if (P) were to pursue in Supreme Court and (P's) recovery is under 100k, (he/ she) may only be entitled to the costs that (he/she) would have recovered had (he/she) brought the proceeding in the County Court, less the amount equivalent to the additional costs incurred by (D) because the proceedings were brought in the Supreme Court (*SCR r 63.24(1)*)
 - **No cause of action which is a federal matter:** As the facts do not indicate that a federal cause of action has accrued (such as an ACL action or taxation matter), the application of the *Jurisdiction of Courts (Cross-Vesting) Act 1987 (Vic)* to vest federal jurisdiction in the Supreme Court, and the Federal Court's accrued jurisdiction to hear state matters does not need to be considered
 - **Cause of action only involving state claim & is complex/high value (SUPREME COURT):** (P) is advised to pursue this claim in (tort, negligence, breach of contract, personal injury) in the **Supreme Court**. This claim will not be suitable for Magistrates Court (MC) because MC has jurisdictional limit of up to \$100,000 in respect of a claim for damages or equitable relief per *s 100 of MCA*, which is **above** the amount that (P) is claiming (>\$100,000). Although both Supreme Court (*s 85(1) Constitution Act*) & County Court (*s37(1)(a) County Court Act*) have unlimited jurisdiction, the facts suggest that case would complex as (complex questions of causation, vicarious liability), thus the County Court may not be as appropriate. However, there is risk that if (A) were to pursue in Supreme Court & (P's) recovery is under 100k (he/she) may only be entitled to costs (he/she) would have recovered had (he/she) brought proceeding in the County Court, less the amount equivalent to additional costs incurred by (D) because proceedings were brought in Supreme Court, rather than County court (*r 63.24(1) SCR*).
 - **No cause of action which is a federal matter:** As the facts do not indicate that a federal cause of action has accrued (such as an ACL action or taxation matter), the application of the *Jurisdiction of Courts (Cross-Vesting) Act 1987 (Vic)* to vest federal jurisdiction in the Supreme Court, and the Federal Court's accrued jurisdiction to hear state matters does not need to be considered.
 - **Cause of action involves both state and federal claim (SUPREME COURT):** (P) has a state claim in (breach of contract/negligence/tort) and a federal claim in (ACL/taxation/Cth statute), thus prima facie (P) could commence in either **Supreme Court** or **Federal Court**. The Supreme Court can hear state claim due to its unlimited jurisdiction (*s 85(1) Constitution Act*) & may also hear federal claim through cross-vesting as State courts can exercise Federal Court jurisdiction (*ss 4, 5(4) JCCVA*). The Federal Court can hear federal claim, but it can only hear the state claim through accrued jurisdiction if claims are part of a 'single controversy' (*s 22 Federal Court Act, Fencott*). Here, claims (arise from "common substratum of facts" as same contract/ transaction OR are "completely disparate" as diff conduct/diff time/diff parties) (*Re Wakim*). Thus, claims (do/ not) fall within 1 "ambit of matter" (*S22 FCA, Fencott*). Even if accrued jurisdiction exists, commencing in Federal Court is risky as if federal cause of action fails, state claim may also fail (*Johnson Tiles*). Thus (P) should preferably commence in the Supreme Court, which can determine the state claim even if the federal claim fails.
 - **Sole cause of action is a federal matter (FEDERAL COURT):** (P) is advised to pursue this claim in the **Federal Court**. This is because the entire cause of action appears to be in a federal matter (ACL/taxation matters). Had state matters formed part of the one controversy, (P) would have had to rely on accrued jurisdiction for the Federal Court to hear state matters that form part of the one controversy, however if the federal cause of action fails then the entire proceeding will fail (*Johnson Tiles*). This would have wanted to be avoided.