

SUPREME COURT OF QUEENSLAND

CITATION: *Mount Isa City Council v The Mount Isa Irish Association Friendly Society Ltd* [2018] QCA 269

PARTIES: **MOUNT ISA CITY COUNCIL**
(applicant)
v
THE MOUNT ISA IRISH ASSOCIATION FRIENDLY SOCIETY LTD
ACN 087 649 349
(respondent)

FILE NO/S: Appeal No 557 of 2018
SC No 13137 of 2016
SC No 253 of 2017

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal – Further Order

ORIGINATING COURT: Supreme Court at Brisbane – [2017] QSC 316 (Daubney J)

DELIVERED ON: 12 October 2018

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Sofronoff P and Gotterson and Philippides JJA

ORDERS: **The application for an indemnity certificate is granted.**

CATCHWORDS: APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – APPEAL COSTS FUND – POWER TO GRANT INDEMNITY CERTIFICATE – WHEN GRANTED – where the unsuccessful respondent applied for an indemnity certificate pursuant to s 15 of the *Appeal Costs Fund Act 1973* (Qld) – where the appeal succeeded on a question of law, namely, the correct interpretation of provisions in s 101 of the *Local Government Regulation 2012* (Qld) – where the construction advanced by the respondent had prevailed at first instance and is apt to be categorised as “fairly arguable” – where there was no judicial authority on point – where construction of the provisions was hindered by a defective example – whether the respondent should be granted an indemnity certificate
Appeal Costs Fund Act 1973 (Qld), s 15

COUNSEL: R G Bain QC, with S D Fynes-Clinton and J P Hastie, for the applicant
G Gibson QC, with P F Mylne, for the respondent

SOLICITORS: King & Company Solicitors for the applicant
McKeering Down Lawyers for the respondent

- [1] **SOFRONOFF P:** I agree with Gotterson JA.
- [2] **GOTTERSON JA:** Judgment in this appeal was given on 18 September 2018. The unsuccessful respondent to it, the Mount Isa Irish Association Friendly Society Ltd (“the Friendly Society”), has applied for an indemnity certificate pursuant to s 15 of the *Appeal Costs Fund Act 1973* (Qld). Since the appeal succeeded on a question of law, namely, the correct interpretation of provisions in s 101 of the *Local Government Regulation 2012* (Qld), the jurisdiction to grant such a certificate is enlivened.
- [3] It is true that the construction argument advanced by the Friendly Society unsuccessfully on appeal had prevailed at first instance. However, that of itself, is no sufficient reason for refusing a grant.¹
- [4] Notwithstanding that it was not accepted on appeal, the construction urged by the Friendly Society is apt to be categorised as “fairly arguable”. It was advanced in circumstances where there was no judicial authority on the point. Moreover, the task of construction of the provisions was hindered by the defective example given in one of the key provisions under consideration.
- [5] These factors resonate with those that have been given at the appellate level in Queensland as examples favouring the grant of a certificate.² Having regard to them and the importance of the point generally for local governments in Queensland in levying water rates and charges, I favour the grant of the certificate sought.
- [6] **PHILIPPIDES JA:** I agree for the reasons stated by Gotterson JA that the indemnity certificate sought should be granted.

¹ *Lauchlan v Hartley* [1980] Qd R 149 per Connolly J at 150 (Wanstall CJ and Lucas SPJ concurring).

² *Ibid* at 151.