

**COURT OF APPEAL**

**GOTTERSON JA  
McMURDO JA  
MULLINS J**

**Appeal No 1094 of 2019  
QCATA No 193 of 2018**

**SIMON ALDERTON  
SALLY ALDERTON**

**Applicants**

**v**

**WIDE BAY CONSTRUCTIONS PTY LTD  
ACN 080 402 302  
t/as DIXON HOMES HERVEY BAY**

**Respondent**

**BRISBANE**

**WEDNESDAY, 15 MAY 2019**

**JUDGMENT**

**GOTTERSON JA:** This is an application for leave to appeal against a decision of the Appeal Tribunal of the Queensland Civil and Administrative Tribunal (“QCAT”) constituted by Member Paratz on 2 January 2019. That decision is APL193-18. On 10 December 2017, the applicants entered into a contract with the respondent for the building of a home on their property. Construction was completed on 6 November 2008. On 19 November 2014, the applicants complained to the Queensland Building and Construction Commission (“the Commission”) about six defects. The Commission issued the respondent with a notice to rectify or complete in relation to two of those defects and advised the applicants that the other

four had been investigated. One had been found to have been rectified and there was insufficient evidence to reveal defective construction in relation to the other three.

On 22 April 2015, the Commission advised the applicants that the respondent had attended to the two items which had been the subject of the notice. On 21 May 2015, the applicants began proceedings in QCAT seeking rectification of defective work to the value of \$18,500. They also sought a review of the decision of the Commission which had been made on 12 January 2015. Their claim was heard in October 2016 and dismissed on 28 March 2017.

The applicants then sought leave to appeal that decision. In the course of that proceeding before the Appeal Tribunal, the applicants filed an application seeking leave to rely upon fresh evidence. That application was numbered APL131-17. The Appeal Tribunal constituted by Senior Member Howard refused the application on 24 November 2017. On 7 February 2018, Senior Member Howard published reasons for the refusal.

Next, the applicants sought from this Court an extension of time within which to appeal that refusal. Their application was itself refused on 29 June 2018. The citation for the refusal is [2018] QCA 149. The substantive reason for the refusal was that the decision of the Appeal Tribunal constituted by Senior Member Howard refusing leave to the applicants to lead further evidence was not a final decision. Hence, it was not an appealable decision under s 150(2) of the *Queensland Civil and Administrative Tribunal Act 2009* (“the QCAT Act”) or any other provision thereof.

The applicants then sought to appeal the decision of the Appeal Tribunal constituted by Senior Member Howard by another means. On 22 June 2018, they filed in QCAT two applications, both of which were numbered APL193-18. One of them was an application for “leave from the internal Appeal Tribunal to appeal an interlocutory decision of the Appeal Tribunal”. The interlocutory decision in question was that of the Appeal Tribunal constituted by Senior Member Howard. The second application was for an extension of time within which to file the leave application.

These applications were determined on the papers by an Appeal Tribunal constituted by Member Paratz. On 2 January 2019, orders were made refusing the application for an extension of time and dismissing the application for leave to appeal. Member Paratz regarded the applications as misconceived in several respects. Firstly, they proceeded on the erroneous basis that there is within QCAT an “internal Appeals Tribunal” to which an appeal might be brought from the Appeal Tribunal of QCAT. There is no such separate appellate Tribunal. Secondly, for the applications to be competent, it would have to be legally possible to appeal to the Appeal Tribunal from a decision of the Appeal Tribunal. Such an appeal is not possible under Part 8 Division 1, or any other provision of the QCAT Act.

Member Paratz was correct to regard the applications as misconceived in these respects. I would add a third respect. Written submissions filed by the applicants in this Court propose that the leave application filed on 22 June 2018 was for leave to appeal against a non-final decision within the meaning of s 142(3)(a)(ii) of the QCAT Act. That section, however, applies only to non-final decisions of “the Tribunal” and not to a decision of the Appeal Tribunal, as the decision of Senior Member Howard was.

It was in these circumstances that on 4 February 2019, the applicants filed in this Court an application for leave to appeal the decision of the Appeal Tribunal constituted by Member Paratz and for an order setting aside that decision. Later, on 12 April 2019, the applicants filed an application for leave to adduce further evidence, which it is said was not before the original Tribunal.

Appeals to this Court from the decision of the Appeal Tribunal of QCAT are governed by s 150 of the QCAT Act. Under s 150(1), a person may appeal against a decision of the Appeal Tribunal to refuse an application for leave to appeal to it. Section 150(2), which is not relevant for present purposes, allows appeals against cost-amount decisions and final decisions. Under both ss 150(1) and (2), an appeal may be made only on a question of law and only with the leave of this Court.

In my view, the leave that the applicants are seeking here is not to appeal a decision of the Appeal Tribunal within the meaning of s 150(1). That is because the application for leave before the Appeal Tribunal on that occasion was described in the application as one for leave to appeal to “the internal Appeal Tribunal” from the Appeal Tribunal. That application was dismissed because it was misconceived. There was no such avenue of appeal available for which leave could have been given. To make a contrast, that was not an instance where there was a refusal of leave to appeal by the Appeal Tribunal under a competently made application for leave to appeal.

For these reasons, the application for leave to appeal to this Court filed on 4 February 2019 must also be dismissed as incompetent. I would add that in any event, the submissions made by the applicants with respect to the reasons of the Appeal Tribunal constituted by Member Paratz do not raise any viable prospects of success on a question of law.

I would propose the following orders:

1. Application for leave to appeal dismissed.
2. Application for leave to adduce further evidence dismissed.

**McMURDO JA:** I agree.

**MULLINS J:** I agree.

**GOTTERSON JA:** The orders of the Court are:

1. Application for leave to appeal dismissed.
2. Application for leave to adduce further evidence dismissed.