

SUPREME COURT OF QUEENSLAND

CITATION: *SAY v AZ; ex parte A-G (Qld)* [2006] QCA 524

PARTIES: **SAY**
(applicant/appellant)
v
AZ
(respondent/respondent)
EX PARTE ATTORNEY-GENERAL OF QUEENSLAND

FILE NO/S: Appeal No 5783 of 2006
DC No 151 of 2006

DIVISION: Court of Appeal

PROCEEDING: Application for Leave s 118 DCA (Civil) – Further Order

ORIGINATING COURT: District Court at Townsville

DELIVERED ON: Judgment delivered 10 November 2006
Further Order delivered 8 December 2006

DELIVERED AT: Brisbane

HEARING DATE: 20 September 2006

JUDGES: Holmes JA, Jones and Mullins JJ
Further Order of the Court

FURTHER ORDER: **The respondent is to be granted an Indemnity Certificate under s 15 *Appeals Costs Fund Act 1973***

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – APPEAL COSTS FUND – POWER TO GRANT INDEMNITY CERTIFICATE – WHEN GRANTED – where the appellant was successful on an appeal in respect of quantum of criminal compensation order – where it was ordered that the respondent pay \$42,750 compensation to the appellant, together with her costs of the appeal – whether the respondent should be granted an Indemnity Certificate under s 15 of the *Appeals Costs Fund Act 1973* (Qld)
Appeals Costs Fund Act 1973 (Qld), s 15, s 15(1), s 16(2)
Beardsley v Loogatha [2001] QCA 438; Appeal No 5823 of 2001, 26 October 2001, considered
HW v LO [2001] 2 Qd R 415; [2000] QCA 377, considered

COUNSEL: A J Kimmins, with R W Frigo, for the applicant
No appearance for the respondent

K Mellifont, for the Attorney General, as *amicus curiae*

SOLICITORS: HQF Lawyers for the applicant
No appearance for the respondent
Crown Law for the Attorney-General

- [1] **THE COURT:** The appellant was successful on an appeal in respect of the quantum of a criminal compensation order. In consequence it was ordered that the respondent pay her compensation of \$42,750 together with the costs of the appeal. The appellant seeks also an order granting the respondent an Indemnity Certificate under s 15 of the *Appeals Costs Fund Act 1973* (Qld), pointing out that such an order was made in *Beardsley v Loogatha* [2001] QCA 438.
- [2] *Beardsley v Loogatha*, in turn, applied an approach adopted in *HW v LO* [2001] 2 Qd R 415 in which the Chief Justice reasoned that, the appellant's appeal on a question of law having succeeded, the respondent could be taken to have applied for a certificate under s 15(1) of the *Appeals Costs Fund Act*. Once such a certificate had been granted, the Appeal Costs Board had the power, under s 16(2) of the Act, if it was satisfied that the respondent would not or could not pay the costs ordered to be paid to the appellant, to direct that those costs be paid from the Fund on the respondent's behalf.
- [3] The only point of distinction between the circumstances in *HW* and those here is that in the present case there has been an application, albeit by the appellant, for an Indemnity Certificate. Given the Court's preparedness in both *HW* and *Beardsley* to order, in similar circumstances, that an Indemnity Certificate issue, there seems no reason not to adopt the same approach here.
- [4] The order of the Court is that the respondent be granted an Indemnity Certificate under s 15 *Appeals Costs Fund Act 1973*.