

SUPREME COURT OF QUEENSLAND

CITATION: *Queensland Conservation Council Inc v Xstrata Coal Queensland P/L & Ors* [2007] QCA 377

PARTIES: **QUEENSLAND CONSERVATION COUNCIL INC**
(objector/appellant)
v
**XSTRATA COAL QUEENSLAND PTY LTD, ITOCHU
COAL RESOURCES AUSTRALIA PTY LTD, ICRA
NCA PTY LTD and SUMISHO COAL AUSTRALIA
PTY LTD**
(applicants/first respondent)
ENVIRONMENTAL PROTECTION AGENCY
(statutory party/second respondent)

FILE NO/S: Appeal No 2235 of 2007
AML No 207 of 2006
ENO No 208 of 2006

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal – Further Order

ORIGINATING COURT: Land and Resources Tribunal

DELIVERED ON: 2 November 2007

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: McMurdo P, Holmes JA and Mackenzie J
Judgment of the Court

FURTHER ORDER: **The first respondent is granted an indemnity certificate under s 15 Appeal Costs Fund Act 1973 (Qld)**

CATCHWORDS: PROCEDURE – COSTS – where the appeal succeeded on a point of law – where the Land and Resources Tribunal erred in denying natural justice to the appellant – where the first respondent was ordered to pay costs – where leave was subsequently granted to make written submissions in support of an indemnity certificate under s 15(1)(a) of the *Appeal Costs Fund Act 1973 (Qld)* – whether an indemnity certificate should be granted
Appeal Costs Fund Act 1973 (Qld), s 15(1)(a)

COUNSEL: S J Keim SC, with C J McGrath, for the appellant
D J S Jackson QC, with S E Brown, for the first respondent
I R Pepper (*sol*) for the second respondent

SOLICITORS: Environmental Defenders Office for the appellant
Allens Arthur Robinson for the first respondent
Environmental Protection Agency for the second respondent

- [1] **THE COURT:** On 12 October 2007 this Court allowed this appeal with costs to be paid by the first respondent. The first respondent was given 14 days within which to apply for and make written submissions in support of an indemnity certificate under s 15(1)(a) of the *Appeal Costs Fund Act 1973* (Qld). The first respondent has now made its application and submissions.
- [2] Section 15(1)(a) gives this Court an unfettered discretion to make such an order where an appeal against the decision of a court to the Supreme Court succeeds on a question of law. The Land and Resources Tribunal is a court as defined in s 4 *Appeal Costs Fund Act*. The present appeal succeeded on a question of law. This Court determined that the Land and Resources Tribunal had erred in denying natural justice to the appellant. The first respondent did not in any way encourage the Tribunal in that error. In the circumstances, it is entirely proper that the first respondent should be granted an indemnity certificate under s 15(1)(a).

FURTHER ORDER:

The first respondent is granted an indemnity certificate under s 15 *Appeal Costs Fund Act 1973* (Qld).