

SUPREME COURT OF QUEENSLAND

CITATION: *R v Dykstra* [2011] QCA 213

PARTIES: **R**
v
DYKSTRA, Benjamin
(applicant)

FILE NO/S: CA No 33 of 2011
DC No 44 of 2010

DIVISION: Court of Appeal

PROCEEDING: Miscellaneous Application - Criminal

ORIGINATING COURT: District Court at Townsville

DELIVERED ON: 30 August 2011

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Fraser JA, Margaret Wilson AJA and Mullins J
Judgment of the Court

ORDER: **Application refused**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL - PRACTICE AND PROCEDURE – QUEENSLAND – APPEAL COSTS FUND – POWER TO GRANT INDEMNITY CERTIFICATE – WHEN REFUSED – where the applicant succeeded in an appeal against conviction on a point of law – where the applicant sought an indemnity certificate pursuant to s 15 of the *Appeal Costs Fund Act 1973* (Qld) – whether an indemnity certificate should be granted
Appeal Costs Fund Act 1973 (Qld), s 15

COUNSEL: No appearance for the applicant, the applicant’s submissions were heard on the papers
No appearance for the respondent

SOLICITORS: Connolly Suthers Lawyers for the applicant
No appearance for the respondent

- [1] **THE COURT:** On 26 July 2011 the Court allowed the applicant’s appeal against his conviction of unlawfully doing grievous bodily harm and ordered a new trial.¹ By a letter dated 22 August 2011 from the applicant’s solicitor to the registrar, which attached an affidavit by the solicitor and an outline of argument, the applicant has applied for an indemnity certificate for the costs of the appeal under s 15 of the *Appeal Costs Fund Act 1973* (Qld). The applicant contends that such a certificate

¹ *R v Dykstra* [2011] QCA 175.

should be granted on the ground that the applicant's appeal against conviction was an "appeal against the decision of the District Court ... which succeeded on a question of law, namely the trial judge having erred in giving an *Edwards* direction on lies."

[2] Section 15 provides:

"(1) Where an appeal against the decision of a court—

(a) to the Supreme Court;

(b) to the High Court of Australia from a decision of the Supreme Court;

on a question of law succeeds, the Supreme Court may, upon application made in that behalf, grant to any respondent to the appeal an indemnity certificate in respect of the appeal.

(2) Where an appeal against the decision of a court to the District Court on a question of law succeeds, the District Court may, upon application made in that behalf, grant to any respondent to the appeal an indemnity certificate in respect of the appeal."

[3] The application is fundamentally misconceived because s 15(1) empowers the Court to grant an indemnity certificate in respect of an appeal only "to any respondent to the appeal".

[4] The application is refused.