

LAND APPEAL COURT OF QUEENSLAND

CITATION: *De Tournouer v Department of Natural Resources and Water(No 2)* [2009] QLAC 0009

PARTIES: Margaret Frances De Tournouer
(applicant)
v.
Chief Executive, Department of Natural Resources and Water
(respondent)

FILE NO: LAC2008/0773

DIVISION: General Division

PROCEEDING: Costs of appeal to the Land Appeal Court

ORIGINATING COURT: Land Court of Queensland

DELIVERED ON: 6 August 2009

DELIVERED AT: Brisbane

HEARD AT: Written submissions

THE COURT
White J
Mrs CAC MacDonald, President of the Land Court
Mr PA Smith, Member of the Land Court

ORDER: **There is no order as to the costs of the appeal to the Land Appeal Court.**

CATCHWORDS: Costs – Land Appeal Court – *Water Act 2000* – unsuccessful party seeks each side to bear own costs of appeal – no application for costs by respondent – no order for costs of appeal.

COUNSEL: Mr DR Gore QC for the appellant
Mr WL Cochrane with Mr S Fynes-Clinton for the respondent

SOLICITORS: Preston Law for the appellant
Crown Solicitor, Crown Law for the respondent

- [1] On 12 June 2009, this Court handed down its decision¹ in an appeal brought by the appellant, Margaret Frances De Tournouer, against a decision of the Land Court² concerning her application for a water licence made under the provisions of the *Water Act 2000*. This Court ordered that the appeal be dismissed and that the appellant pay the respondent's costs of and incidental to the appeal unless the appellant contended that some other order ought to be made.
- [2] Both parties have submitted that the Land Appeal Court's power to award costs in an appeal from the Land Court is coextensive with (and therefore no greater than) the costs power of the Land Court at first instance. In those circumstances, it is submitted, s.882(3) of the *Water Act* applies and therefore each party to the appeal to this Court must bear the party's own costs for the appeal.
- [3] While the Court might have taken a different view of the effect of the legislation in so far as it relates to the costs of an appeal to the Land Appeal Court, in the absence of an application for costs by the respondent it is not appropriate to elaborate those issues.
- [4] The order of the Court is that there be no order as to costs.
- Order**
- [5] There is no order as to the costs of the appeal to the Land Appeal Court.

WHITE J

**CAC MacDONALD
PRESIDENT OF THE LAND COURT**

**PA SMITH
MEMBER OF THE LAND COURT**

¹ *De Tournouer v Department of Natural Resources and Water* [2009] QLAC 0006.

² *De Tournouer v Chief Executive, Department of Natural Resources and Water* [2008] QLC 0151.