

**IN THE WARDEN'S COURT OF QUEENSLAND
HELD AT BRISBANE**

**IN THE MATTER OF: APPLICATION BY OBJECTOR FOR COSTS
MLA70151**

**BEFORE MR A J CHILCOTT
ACTING MINING WARDEN**

APPLICANT: SOUTH BLACKWATER COAL LTD

**OBJECTORS: LLOYD EDWARD CHARLES WALL,
KEITH DOUGLAS McCAMLEY,
IAN KEITH McCAMLEY and
AUDREY JOAN McCAMLEY**

**CATCHWORDS: MINING – COSTS – SUCCESSFUL OBJECTIONS –
APPLICATION REJECTED BY MINISTER – TAXED
COSTS - SUPREME COURT SCALE**

Mineral Resources Act 1989

DETERMINATION:

Having handed down my report and recommendation with respect to MLA 70151, both parties were heard regarding the question of costs.

Of course, the recommendation handed down on 2 March 1998, was that the application be recommended for rejection. Such reasons were given on that date in my recommendation. Subsequent to my Report and Recommendation being handed down, Counsel for the Respondent Objectors sought costs, such order being opposed by Counsel for the Applicant Mining Company.

Regarding the question of costs arising out of the hearing of an application for a mining lease, it is necessary to state the basis upon which any award may be considered:-

- (a) the administrative nature of the hearing;
- (b) whether and to what extent an objection resulted in a recommendation as a condition of grant;
- (c) whether an objection plainly lacks bona fides or is obviously frivolous;
- (d) whether an objection once having been lodged was pursued in Court by the objector and the circumstances attendant to that pursuit;
- (e) whether objections were introduced into the proceedings in addition to those already lodged;

- (f) the conduct of the application by the applicant and the objector;
- (g) the respective positions of the parties.

In addition to the criteria mentioned above, another matter to be taken into account may be where an applicant for a mining lease fails to perform the duties imposed by Part 7 of the *Mineral Resources Act* to the extent that an objector is severely prejudiced. In such cases, awards of costs should, in my opinion, be made.

The jurisdiction of the Warden's Court to award costs in the hearing of applications for mining leases and objections is given under s.368 of the *Mineral Resources Act 1989* as amended.

The provisions of s.368 of the *Mineral Resources Act 1989* (as amended) state amongst other matters that:-

- (1) Costs may be awarded by the Warden's Court in respect of any matter (including the hearing of applications and objections under this Act) brought before the Warden's Court.
- (2) Costs awarded by the Warden's Court shall be at the discretion of the Warden and the amount thereof may be determined by the Warden or taxed by the Registrar of the Warden's Court or a taxing officer of a District Court or of the Supreme Court as the Warden may direct.

An award of costs shall be at the discretion of the Warden and that discretion of course must be exercised in a judicial manner. (See *Donald Campbell and Co Ltd v Pollak* (1927) AC 732 at 811, 812). The rationale is that any award of costs be just and reasonable (see *Latoudis v Casey* (1990) 170 CLR 534 at 566-7). Costs between party and party are given as an indemnity. They are not imposed to "punish" a party (see *Civil Procedure Victoria Vol 1 Williams* at 5603.6).

The primary function of the Warden's Court is to hear the evidence in support of the application and objections thereto and the opposing parties are given the opportunity to test the evidence. The record of the proceedings are then forwarded onto the Minister for a decision as to rejection of the application or recommendation for grant.

The decision by the Warden, of course, is a recommendation only and is not binding.

Neither the applicant who wins a recommendation for grant of a mining lease nor the objector who succeeds in obtaining a recommendation for rejection should expect costs to follow the recommendation unless such circumstances exist which warrant exercise of a discretion to award costs in favour of one or the other.

The objector, in effect, in lodging a notice of objection against the grant of the mining lease may obtain one or all of the following results:-

Firstly, a recommendation for rejection by the Warden; or secondly, a decision of the Minister to reject the application; or thirdly, a decision of the Governor-in-Council not to grant the mining lease.

Although a recommendation for a grant of a lease may not fall in favour of the objector benefits that can be obtained by objections being raised are that conditions may be imposed that may not have been achieved if the objection had not been raised in order to protect the interests of the objector.

In this case, it was submitted by Counsel for the applicant mining company that this is only an administrative matter and that costs do not necessarily follow the event.

It is evident that, in the past, the practice of the Warden's Court in some cases has been to award costs in whole or in part depending on a number of factors.

However, in this matter, there were a number of objections raised and rigorously pursued at the hearing and which were subsequently successful. Of course, some of the objections raised were not successful.

The reasons for recommendation for rejection were delivered in my decision on 2 March 1998.

Subsequent to the report and recommendation being forwarded to the Minister, the Minister made a decision to reject the application and I understand that such decision was made by the Minister on 18 May 1998.

This is clearly a situation where the objections raised have not only been successful in gaining a recommendation to reject the application by myself but have been vindicated in that the Minister made a decision to reject the application as well.

Having considered the submissions made by both Counsel, the legislation and the authorities referred to as well as all of the circumstances regarding this matter, it is my view that I should exercise my discretion and make an award of costs in favour of the Respondent Objectors. In all of the circumstances, it is just and reasonable that the Respondent Objectors should recover their costs.

Accordingly, I order that the Applicant Mining Company pay the Respondent Objectors costs of the application to be taxed on the Supreme Court Scale by a Taxing Officer of the Supreme Court.

Dated at Brisbane this 22nd day of January 1999.

A J CHILCOTT
ACTING MINING WARDEN

© 1999