

“LESSONS LEARNT FROM APPEALS”
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PRESIDENT, COURT OF APPEAL¹
QCAT CONFERENCE, THURSDAY, 19 MAY 2016

President of QCAT, Justice Thomas, Deputy President Judge Sheridan, senior members and members.

It is a pleasure to be spending time with this important group of judicial officers at this significant seminar on this Brisbane May morning.

I acknowledge the traditional owners of this land, on this side of the Brisbane River the Turrbal people and on the southern side the Jagera people, and pay my respects to their elders past and present.

When I refer to you as important judicial officers I am not trying to curry favour or merely capture your interest. I am sincere. The work you do has an enormous impact on every litigant. Many of your decisions about children, young people, adult guardianship and administration were once within the jurisdiction of the Supreme Court of Queensland. Your determination of residential tenancy disputes can affect people’s most basic right, a roof over their heads. Decisions about occupational regulation are critical to a person’s right to practice a vocation or profession and the protection of the public. The building disputes you resolve can be notoriously complex and bitterly contested. They sometimes involve very large amounts of money, with bankruptcy or insolvency at stake. Similar comments apply to your retail shop lease jurisdiction. Often the most passionate community disputes are over fences, trees or body corporate issues, the resolution of which also falls on your shoulders. You also have an extensive jurisdiction to review administrative decisions, for example, those involving Blue Card applications, civil partnerships, retirement villages and right to information requests. And from a jurisprudential perspective, your decisions in the anti-discrimination area are especially significant in developing Queensland’s human rights discourse.

Indeed, your decision about a deaf person’s right to sit on a jury is soon to be discussed by the High Court of Australia: See *Lyons v State of Qld* [2016] HCATrans 60 (11 March 2016).

The scope of the legislation listed on your website giving you jurisdiction is quite staggering. I commend you on your informative and user-friendly website which I found helpful in preparing this paper. I expect the profession and self-representing litigants also find it helpful.

With such a diverse jurisdiction, I was not entirely surprised to learn that in the 2014/15 year 28,666 matters were lodged in QCAT. And I was impressed that, in the same year, 31,104 cases were finalised. As the head of a busy jurisdiction, I know how satisfying it is to have statistics showing your court or tribunal is in “the green”, not “the red”! Such statistics do not come without sound management and the hard work of all of you, as well as your sessional members and full-time and part-time adjudicators. It is a credit to you and them that in the 2014/15 year there were only 540 appeals from QCAT to the QCAT appeal tribunal, just 1.74% of matters determined by QCAT in that period. Even more impressively,

¹ I gratefully acknowledge the research and editing assistance of my associate, Marryum Kahloon LLB (Hons) (Bond).

there were only 15 appeals from QCAT to the Court of Appeal lodged that year: 12 were determined that year and of those, only 4 were allowed. In other words, in the 2014/15 year, QCAT determined 31,104 matters with only 4 matters in that period, or 0.013%, being successfully appealed to the Court of Appeal. You can and should be extremely proud of this record.

You should also be proud of your record with mediation and innovative dispute resolution, encouraged by Ch 2, Part 6, Divisions 3 and 4 *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (the *QCAT Act*). Congratulations. All this shows that QCAT is an essential part of Queensland's justice system. It deserves to be valued, nurtured and adequately resourced.

I turn now to my topic. For a judicial officer, coping with appeals can be stressful. It is a character building exercise for the judicial officer whose judgment is under appeal. When Michael Kirby was appointed President of the New South Wales Court of Appeal, a District Court judge, Tom Dunbar, wrote a congratulatory letter which included these verses:

“If ‘tis the lot of such as we
From great heights peed upon to be;
Why then bareheaded we wait to see
What shall descend from mighty Kirby P?”²

As a former first instance judicial officer, I empathise with Judge Dunbar's sentiments. But as an intermediate appellate judge, I also empathise with Michael Kirby's presidential response that the “‘peeing on’ would not only be done *by* Kirby P – but *on* Kirby P from Lake Burley G!”³

No one enjoys being overturned on appeal. But I urge you not to become disheartened about appeals from your decisions, even when you get the Silver Medal. Inevitably you will feel a little hurt and bruised. I certainly get that feeling from time to time, courtesy of Lake Burley G! Every judicial officer below the High Court does. I recall the late great Bruce McPherson telling me that, the first time he was overturned as a trial judge by the Court of Criminal Appeal, he walked along George Street at lunch time thinking every passer-by was looking at him and sniggering at his foolish judicial error!

If you are a busy judicial officer, as you all are, then it is inevitable that, from time to time, your decisions will be overturned on appeal. The heavier your workload, and the more difficult the cases, the more likely that you will have appeals from your decisions. A resilient reaction to being overturned on appeal should be part of the job description of all judicial officers: other than those on Lake Burley G! Appeals are the justice system functioning as it should. Furthermore, appeals allow the law to develop, which is a positive thing. Remember, too, that appeals often have quite a different life to the proceeding at first instance. It is unsurprising the results are different when the case from QCAT argued in the Court of Appeal is sometimes barely recognisable to that argued before the QCAT member. See, for example, *Chinese Medicine Board of Australia v Lee* [2014] QCA 149. The appeal

² A J Brown, *Michael Kirby: Paradoxes & Principles* (Federation Press, 2011) 182.
³ *Ibid.*

from the QCAT appeal tribunal was allowed and the matter remitted, but not on a ground advanced by the appellant, either before QCAT, or the Court of Appeal.

That said, if you are being overturned persistently on appeal, perhaps it is time to ensure you are understanding the appellate judgments and applying them as required by law. No judicial officer would want to become like one notorious, now long retired Magistrate. In the days of the Court of Criminal Appeal, the unwritten, and usually successful, first ground of appeal in matters from him was that the primary Magistrate was Magistrate X!

Before distilling some lessons learned from appeals from QCAT to the Court of Appeal, I will briefly review the appeal provisions under the *QCAT Act*:

- Under s 142(1), in most cases a party to a QCAT proceeding may appeal to the QCAT appeal tribunal from the decision of a QCAT member other than the President, Deputy President or supplementary members who are Supreme or District Court judges.
- Under s 142(3), leave of the QCAT appeal tribunal is required for appeals from minor civil disputes, interlocutory decisions, costs orders and appeals on a question of fact or a question of mixed law and fact.
- Timeframes and procedural requirements are set out in s 143.
- Section 143A empowers the QCAT appeal tribunal to refer a matter to the primary tribunal to decide if the proceeding should be re-opened. Under s 144, the President of QCAT can, with leave of the Court of Appeal, transfer a QCAT appeal to the Court of Appeal.
- An appeal does not act as a stay but a tribunal member has power under s 145 to order a stay when a decision is appealed against.
- Section 146 sets out the QCAT appeal tribunal's powers when deciding an appeal on a question of law only. An appeal under s 146 is an appeal in the strict sense; it is not by way of re-hearing.
- Under s 147, appeals to the QCAT appeal tribunal on questions of fact or mixed law and fact (for which leave is required under s 142(3)(b)) are by way of re-hearing and additional evidence can be received. More on s 146 and s 147 later.
- The QCAT appeal tribunal is required under s 148 to give its final decision and reasons in writing to each party.
- Under s 149, a party may appeal:
 - from a costs decision other than in an appeal from the QCAT appeal tribunal on a question of law and with leave of the Court of Appeal;
 - from a decision (other than a QCAT appeal tribunal decision) of the President, Deputy President, or supplementary members who are Supreme or District

Court Judges, directly to the Court of Appeal on a question of law as of right or, on a question of fact or mixed fact and law with leave; and

- No appeal lies to the Court of Appeal from a registrar's refusal to accept matters for filing.
- Under s 150, a person may apply for leave to appeal to the Court of Appeal against a decision of the QCAT appeal tribunal refusing an application for leave to appeal, a final decision or a costs order, but only on a question of law and with the leave of the Court of Appeal.
- Temporal and procedural requirements for appeals to the Court of Appeal are referred to in s 151.
- Under s 152, an appeal to the Court of Appeal does not operate as a stay of the QCAT decision, but the Court of Appeal or QCAT may make an order staying the decision.
- The powers of the Court of Appeal in deciding an appeal from the QCAT appeal tribunal on a question of law only are set out in s 153 (analogous to s 146); it is an appeal in the strict sense; it is not by way of re-hearing.
- Under s 154 (analogous to s 147), appeals to Court of Appeal from QCAT on questions of fact or mixed law and fact are by way of re-hearing and additional evidence can be received.

In this presentation I will focus, not on appeals to the QCAT appeal tribunal but on recent applications for extensions of time, applications for leave to appeal and appeals to the Court of Appeal from QCAT. My associate, Marryum Kahloon has collated a schedule briefly summarising these matters from August 2013. It will be attached to the paper which will be distributed to you later.

Not all recent Court of Appeal decisions originating from QCAT readily provide universal lessons. As to be expected, some turned on the construction of statutes where legal minds will often differ. These are not apt to provide the general principles of broad application envisaged by my topic. See, for example, *Australian Retirement Homes Ltd v Ash* [2013] QCA 355 which concerned the construction of provisions of the *Retirement Villages Act 1999* (Qld); *Hill-Mack Pty Ltd v Chief Executive, Office of Liquor and Gaming Regulation* [2014] QCA 19 which concerned the construction of provisions of the *Liquor Act 1992* (Qld); and *Campaigntrack Victoria Pty Ltd v Chief Executive, Department of Justice and Attorney-General & Ors* [2016] QCA 37 which concerned the construction of provisions of the *Property Agents and Motor Dealers Act 2000* (Qld)(Repealed).

The first lesson arises, not from any particular case, but from the diversity of QCAT's jurisdiction. Lesson one: at the commencement of every hearing, at first instance or on appeal, be sure you have jurisdiction to proceed and state the source of your jurisdiction. In your reasons also clearly state the source of your jurisdiction. If you identify at an early stage that you do not have jurisdiction, you will save yourself a lot of work, and the parties and the state a lot of money.

The second lesson is distilled from *John Urquhart t/a Hart Renovations v Partington & Anor* [2016] QCA 87, an appeal from the QCAT appeal tribunal's determination of an appeal from

a QCAT member concerning a home-building dispute. At [75] and [76], the Court made clear that when deciding a QCAT matter, whether at first instance or on appeal, the tribunal should address all the arguments raised by the parties, at least briefly, even if your decision on just one point will determine the case. I appreciate this will sometimes be onerous but otherwise a successful appeal against your decision on that one point will mean the whole case has to be re-determined. Such a result is the antithesis of the quick and economical access to justice envisaged in the objects of the *QCAT Act*, s 3. It will also mean that if a decision has been overturned by the QCAT appeal tribunal and remitted for re-hearing, the primary tribunal will have the QCAT appeal tribunal's rulings to assist in avoiding further appealable errors.

Medical Board of Australia v Alroe [2016] QCA 120 provides another straightforward, practical lesson. Sometimes judicial officers are so relieved to have completed their reasons, they do not pay sufficient detail to the orders. Often orders are more important to parties than reasons, and appeals are from orders, not reasons. Accurately determining orders is a critical part of your function. Look at the orders the parties are seeking in their applications and outlines of argument. In *Alroe*, a QCAT supplementary member exercising original jurisdiction, without giving adequate reasons, made costs orders which were sought by neither party and which were contrary to the orders specifically sought by one party. An application for leave to appeal to the Court of Appeal had to be instituted. Unusually, the parties gave the Court of Appeal a joint submission asking for the costs orders to be set aside and for the question to be remitted to QCAT with one party having its costs of the appeal, and the other party being granted an indemnity certificate for those costs under s 15 *Appeal Costs Fund Act 1973* (Qld). Again, this was the antithesis of the *QCAT Act's* objects of fair, economical and quick access to justice and the error resulted in unnecessary community funded expense. Lesson three is to identify the orders the parties are seeking and if you give different orders, give reasons for doing so.

Like the Court of Appeal, QCAT has many self-represented litigants. They are not always successful but, sometimes they are. Mr Ericson for example. His builder's license was suspended and then cancelled for failure to meet the financial requirements for licensing under the *Queensland Building Services Authority Act 1991* (Qld). He argued that the QBSA wrongly failed to take into account a trade debt owed to him and applied to QCAT to review the cancellation. The QCAT member decided in his favour, set aside the cancellation and terminated the suspension. He appealed to the QCAT appeal tribunal which found two errors of law in the primary decision and substituted its own decision, cancelling Mr Ericson's license. He successfully sought leave to appeal to the Court of Appeal, which found that although the QCAT appeal tribunal correctly identified the errors of law made by the QCAT member,⁴ in determining the appeal as one limited to questions of law, its powers were constrained by s 146 *QCAT Act*. Only where the determination of the question of law is capable of resolving the matter as a whole in a party's favour can the QCAT appeal tribunal substitute its own decision. The determination of an appeal under s 146 is not a re-hearing, whether on the evidence before the QCAT member or on fresh evidence.⁵ The Court of Appeal explained that, had the appeal proceeded under s 147 by way of leave to appeal on a question of fact or mixed law and fact (see s 142(3)(b) *QCAT Act*) the appeal would have been by way re-hearing; the QCAT appeal tribunal could then have made its own findings and substituted its own decision based on those findings. Had it proceeded under s 147, it should have stated that it was acting under s 147; granting leave to appeal; and substituting its

⁴ *Ericson v Queensland Building Services Authority* [2013] QCA 391 [20] and [22].

⁵ Above [25].

own findings of fact and exercising its own discretion. It should then also have given reasons for so doing.⁶ The Court of Appeal granted Mr Ericson's application, allowed the appeal and remitted the matter to the QCAT appeal tribunal for reconsideration in accordance with the Court of Appeal's reasons. See *Ericson v Queensland Building Services Authority* [2013] QCA 391.

But that was not nearly the end of the Ericson saga. The name Ericson suggests Viking blood and this had become a saga worthy of the Vikings. When the matter was remitted to the QCAT appeal tribunal, it decided that the determination of the questions of law before it were capable of resolving the matter as a whole in QBSA's favour, exercising its power under s 146. It also gave reasons confirming the licence cancellation and purported to exercise the discretion afresh, as if the appeal had proceeded under s 147.

Mr Ericson again successfully applied for leave to appeal to the Court of Appeal. See *Ericson v Queensland Building and Construction Commission* [2014] QCA 297. This time, the Court of Appeal found that the QCAT appeal tribunal had overlooked part of the Court of Appeal's reasoning in [2013] QCA 391, namely that the resolution of the questions of law (whether the suspension could be reviewed and whether the QCAT member's construction of the financial requirements was correct) could not determine the application.⁷ The Court of Appeal specifically stated that this was a task for the QCAT member. The appeal tribunal had no power under s 146 to conduct a re-hearing and to reach its own conclusions on the evidence. The appeal tribunal's purported exercise of jurisdiction under s 147 was flawed because this required the granting of leave and the QCAT appeal tribunal said nothing as to whether and, if so, why leave was granted. Nor did it identify what error of mixed fact and law was the basis for its decision to re-hear the matter under s 147. It followed that the jurisdiction under s 147 to interfere with the QCAT member's exercise of discretion did not arise.⁸ The Court of Appeal allowed the appeal and remitted the matter to a differently constituted QCAT appeal tribunal for reconsideration in accordance with the Court of Appeal's reasons.

This time the QCAT appeal tribunal allowed the appeal, set aside the decision of the QCAT member and returned the matter to that member for reconsideration.

Unsurprisingly, Mr Ericson, still on a roll, once more applied for leave to appeal to the Court of Appeal. At the conclusion of the hearing of his application, the Court refused his application for leave to appeal with costs, indicating it would give its reasons later. Those reasons are expected to be delivered shortly. Even so, it is by no means certain that the Ericson epic is over.

The fourth lesson which arises from Mr Ericson's arduous journey through QCAT and the Court of Appeal, and back again twice, so far, is that the QCAT appeal tribunal in exercising its jurisdiction must make clear whether the appeal is proceeding on a question of law under s 146 or by way of leave to appeal on a mixed question of fact and law under s 147. If proceeding under s 146, it should identify the error of law. The QCAT appeal tribunal cannot treat the appeal as a re-hearing, nor receive fresh evidence nor make new findings of fact. Only if the determination of the legal error is capable of resolving the matter as a whole, can it substitute its own decision. Otherwise, the appeal must be allowed and the matter remitted

⁶ Above [28].

⁷ [2014] QCA 297 [13].

⁸ Above [17].

for reconsideration. If the QCAT appeal tribunal is proceeding under s 147, it should identify the error of fact or mixed fact and law. If granting leave to appeal, it should state why. The resulting appeal under s 147 must be decided by way of re-hearing and new evidence can be received and different or additional findings of fact can be made or discretions exercised.

The QCAT appeal tribunal's difficulties with s 146 and s 147 have not been limited to *Ericson*. The importance of the QCAT appeal tribunal identifying whether the appeal is on a matter of law only under s 146 or by leave under s 147 was also emphasised in *Albrecht v Ainsworth & Ors* [2015] QCA 220, [94], [96] and [98].

Problems can arise where matters are determined on the papers without an oral hearing. This can save costs. But not always. It can also lead to misunderstandings which would have been quickly clarified at an oral hearing but result in an expensive appeal. See, for example, *Bartlett v Contrast Constructions Pty Ltd* [2016] QCA 119. A typographical error in Mr Bartlett's submissions to the QCAT appeal tribunal caused it to proceed on the basis that Mr Bartlett was submitting the polar opposite of what his counsel intended; had an oral hearing occurred, this error would have become evident and Mr Bartlett would have had an opportunity to correct it. The fifth lesson is be wary of proceedings without an oral hearing in complex matters. If you are determining such a matter on the papers, do not hesitate to ask for further submissions or an oral hearing if you consider it prudent. In the long run, it may actually save time and costs.

My sixth and final lesson comes from *Ryan v Worthington* [2015] QCA 201. Like *Urquhart*, QCAT had to construe a home building contract. The case found its way to the Court of Appeal via the QCAT appeal tribunal which allowed the appeal, referring to a single member decision of QCAT to support the principle that the construction of a contract is a matter of fact. Unfortunately there are many more authorities of appellate courts, including the High Court (for example, *Westport Insurance Corporation v Gordian Runoff Ltd* (2011) 244 CLR 239, [82]), to the effect that construing contracts involves questions of law.⁹ I appreciate that QCAT has an enormously broad jurisdiction and parties are often self-represented or represented by relatively junior practitioners, so that you may not get Rolls Royce assistance. But the lesson learnt from *Ryan v Worthington* is, when relying on a principle of law, find the most persuasive authority available to support that principle.

Here endeth today's lessons. It is now your turn to give me feedback about the operation of your Act and practical aspects of your work which you think the Court of Appeal may not sufficiently apprehend. Before I invite discussion on these and other matters, on behalf of the Court of Appeal I thank each of you for your hard work in discharging the functions of your important office to the best of your knowledge and ability, treating everyone fairly and without bias, according to law, consistent with your oaths or affirmations of office.¹⁰ The community expects nothing less and no-one can ask any more.

⁹ [2015] QCA 201 [11] and [12].

¹⁰ See *QCAT Act* s 228 and *Queensland Civil and Administrative Tribunal Regulation 2009* (Qld) s 2.

Year	Month	Coram	Matter Name	Summary of Matter	Outcome
2013	Aug	Holmes and Morrison JA and North J	<i>Underwood v Department of Communities & Ors</i> [2013] QCA 234	Appellant appealed the Information Commissioner's decision to refuse to grant an injunction. This was not a final decision under s 150(2) <i>QCAT Act</i> and therefore QCA did not have jurisdiction to hear the matter.	Appeals incompetently instituted.
	Nov	Gotterson and Morrison JJA and North J	<i>Australian Retirement Homes Ltd v Ash</i> [2013] QCA 355	Validity of general service charges in retirement villages. The Appeal Tribunal erred in construction of provision of <i>Retirement Villages Act</i> 1999 (Qld).	Appeal allowed. Decision of the Appeal Tribunal substituted with original decision of Member.
	Dec	McMurdo P and Muir and Gotterson JJA	<i>Singh v Legal Services Commissioner</i> [2013] QCA 384	Appellant convicted of attempting to pervert the course of justice in Fiji and failed to give notice of conviction to QLS. QCAT ordered appellant be struck off the roll. Penalty not excessive.	Appeal dismissed.
		McMurdo P, Gotterson JA and M Wilson J	<i>Flegg v Crime and Misconduct Commission and Anor</i> [2013] QCA 376	The Appeal Tribunal conducted the appeal on basis the of an error of law but proceeded to contradict findings of fact made by the Senior Member below and failed to have reference to other findings of fact made which were material to the sanction. The ground of appeal was unreasonableness and the facts as found by the Senior Member needed to be the frame of reference.	Leave granted. Appeal allowed & written submissions as to orders invited.
		Holmes and Fraser JJA and Applegarth J	<i>Ericson v Queensland Building Services Authority</i> [2013] QCA 391	QBCC suspended the appellant's building license for a contravention of a license condition. The Appeal Tribunal found errors of law in the decision below and substituted the decision. However, QCA held that the Appeal Tribunal had engaged in rehearing the matter and this was erroneous as the appeal had proceeded under s 146 <i>QCAT Act</i> .	Leave granted. Appeal allowed & matter remitted.
2014	Feb	Fraser and Morrison JJA and PD McMurdo J	<i>Hill-Mac Pty Ltd v Chief Executive, Office of Liquor and Gaming Regulation</i> [2014] QCA 19	Construction of <i>Liquor Act</i> 1992 (Qld). Error of construction by Member: failed to take into account approach of HCA in <i>Kirk</i> ; wide construction adopted was also manifestly unreasonable considering the legislative intent.	Appeal allowed & matter remitted.
	Mar	McMurdo P, Gotterson JA and M Wilson J	<i>Flegg v Crime and Misconduct Commission & Anor</i> [2014] QCA 42	Finalisation of 2013 appeal (discussed above). Decision of Senior Member was not unreasonable in the relevant sense. Appeal to the Appeal Tribunal dismissed.	Decision of the appeal tribunal set aside and that appeal dismissed.

2014	Mar	McMurdo P and Gotterson and Morrison JJA	<i>Niall v Mangrove Housing Association Inc</i> [2014] QCA 58	QCAT ordered residential tenancy agreement between the applicant and respondent be terminated on the ground of the applicant's objectionable behaviour. Applicant failed to demonstrate lack of procedural fairness.	Leave refused.
	April	Muir and Gotterson JJA and Applegarth J	<i>Queensland Building & Construction Commission v Meredith</i> [2014] QCA 62	Respondent successfully sought review of QBCC's decision to refuse his application to be categorised as a 'permitted individual' under <i>Queensland Building Services Authority Act 1991</i> (Qld) by QCAT. QBCC appealed to the Appeal Tribunal unsuccessfully. On appeal to QCA, failed to show any error of law.	Leave refused.
		Holmes and Muir JJA and Applegarth J	<i>Queensland Building & Construction Commission v Robuild Pty Ltd</i> [2014] QCA 81	QCAT Member found QBCC had failed to properly serve the respondent with an infringement notice. Unsuccessful appeal to the Appeal Tribunal. On appeal to QCA, failed to show any error of law.	Leave refused.
	May	Muir JA and Martin and Jackson JJ	<i>Robb v Tunio</i> [2014] QCA 127	Minor civil claim about loan repayment. Applicant did not establish an error of law.	Leave refused.
	Jun	Muir and Gotterson JJA and Douglas J	<i>Chivers v State of Queensland</i> [2014] QCA 141	Appellant was a nurse with a prior injury unable to work night shifts. State of Qld accommodated her "with difficulty". Appellant launched discrimination claim and was successful in QCAT. Overturned by the Appeal Tribunal on basis that Senior Member had erred in failing to find an exemption under s 25 <i>Anti-Discrimination Act 1991</i> (Qld) applied. On appeal to QCA, failed to show any error of law.	Appeal dismissed.
		Gotterson and Morrison JJA and Boddice J	<i>Chinese Medicine Board of Australia v Lee</i> [2014] QCA 149	Appellant failed to consider the second limb of a relevant provision of the <i>National Health Law</i> ; it was not addressed before QCAT or the QCA. Therefore appeal allowed but not on a ground advanced by the appellant. Further, the primary judge viewed the appellant as being precluded from refusing registration because it has erroneously registered others in a similar position to the respondent - no such estoppel binding the appellant.	Appeal allowed & matter remitted.

2014	Jun	Fraser and Morrison JJA and Philippides J	<i>Warren v Legal Services Commissioner</i>	Respondent sought order for substituted service in disciplinary hearing. Applicant admitted to having a copy of the notice at the directions hearing. QCAT directed the hearing to proceed and did not make orders about service. Applicant alleges she has not been duly served.	Appeal dismissed.
	Aug	Fraser, Gotterson and Morrison JJA	<i>Legal Services Commissioner v Bone</i> [2014] QCA 179	Appeal on costs. Error in exercise of discretion to award indemnity costs. Error in law that “special circumstances” existed and tribunal also proceeded on erroneous findings of fact.	Appeal allowed.
	Nov	Holmes and Fraser JJA and McMeekin J	<i>Queensland Building and Construction Commission v Arthurs</i> [2014] QCA 307	QBCC cancelled the respondent's building license because he was categorised as an “excluded person” following the appointment of liquidators to a company of which the respondent was a shareholder. The Appeal Tribunal reinstated the building license. On appeal to QCA, failed to show any error of law.	Leave refused.
		Holmes, Gotterson and Morrison JJA	<i>Theo v Birrer</i> [2014] QCA 288	Dispute regarding adjudication of bond apportionment following the termination of a tenancy. On appeal to QCA, failed to show any error of law.	Leave refused.
		Holmes JA, Mullins and Henry JJ	<i>Ericson v Queensland Building Services Authority</i> [2014] QCA 297	Once remitted to the Appeal Tribunal, following 2013 QCA decision, a decision was made under both s 146 and s 147 <i>QCAT Act</i> . However, the Appeal Tribunal had still made new findings of fact if the appeal proceeded under s 146. If it proceeded under s 147, the mixed error of fact and law was not identified by the Appeal Tribunal and leave to appeal was not explicitly granted in the reasons.	Leave granted. Appeal allowed & matter remitted.
		Fraser JA and North and Flanagan JJ	<i>Shorten v Bell-Gallie</i> [2014] QCA 300	Appeal of guardianship decision. Applicant failed to show an error of law as no breach of natural justice had occurred and all relevant considerations had been taken into account.	Leave refused.
		Fraser and Gotterson JJA and Philippides J	<i>Graham v Legal Services Commissioner (No 1)</i> [2014] QCA 305	Appellant was retained to and failed to provide a costs statement. QCAT found this was "unsatisfactory professional conduct". Appellant contended the conduct did not occur "in connection with the practice of law".	Appeal dismissed.
		Fraser and Gotterson JJA and Philippides J	<i>Graham v Legal Services Commissioner (No 2)</i> [2014] QCA 306	Case stated from QCAT President: does a costs assessor have the same protection and immunity from disciplinary proceedings as a judge when performing the functions of a costs assessor?	Answered no.

2014	Dec	Holmes and Muir JJA and McMeekin J	<i>Morat Pharmaceuticals Pty Ltd v Hoft Pty Ltd & Anor</i> [2014] QCA 319	Respondent applied for meeting of body corporate or resolution passed at the meeting be declared void. Adjudicator dismissed application but respondent was successful on appeal. On appeal to QCA, prospect of success on proposed grounds was modest and would only further prolong litigation and cause unnecessary expense.	Leave refused.
		McMurdo P, P Lyons and North JJ	<i>Chandra v Queensland Building and Construction Commission</i> [2014] QCA 335	Application for an extension of time to appeal refused. Senior Member did not allow for an oral hearing or further submissions and therefore applicant was unable to comment on considerations raised. The Senior Member also failed to address aspects of the applicant's submissions and, as a result, there was a failure to accord natural justice.	Appeal allowed - order refusing extension of time is without legal effect.
2015	March	Holmes JA and A Lyons and Dalton JJ	<i>Ashworth v Costello</i> [2015] QCA 40	Applicant seeks an extension of time in which to appeal. Appeal is without merit; applicant attempting to conflate Magistrate Court proceedings with an old QCAT decision.	Application for extension of time refused. Leave refused.
	May	Holmes and Philippides JJA and P Lyons J	<i>Rintoul v State of Queensland & Ors</i> [2015] QCA 79	Construction of <i>QCAT Act</i> . Member made order that, unless further particulars filed by X date the matter would be dismissed. On X, solicitors requested an extension of time. The following day, the Member granted the extension. Question referred to the President - decided matter was dismissed on X date. Incorrect construction, Member had power to vacate previous orders and grant extension.	Appeal allowed and decision substituted.
	June	McMurdo P, Gotterson and Philippides JJA	<i>Donovan Hill Pty Ltd v McNab Constructions Australia Pty Ltd</i>	Dispute concerning whether QCAT has the power, in exercising its review jurisdiction, to award costs to entities who were non-parties in a review proceeding where there has been an unsuccessful joinder application. Majority in the QCA held that QCAT did not have this power.	Leave granted. Appeal dismissed.
	Aug	Holmes and Gotterson JJA and Mullins J	<i>Lyons v State of Queensland</i> [2015] QCA 159	Deaf applicant excluded from jury service made a claim of indirect discrimination. On appeal to QCA, grounds of appeal did not have sufficient merit to warrant grant of leave. Special leave to HCA has been granted in this matter.	Leave refused.

2015	Sep	McMurdo P and North and Henry JJ	<i>Maksymiuk v Savage</i> [2015] QCA 177	Applicant challenged a notice to leave under the <i>Residential Tenancies and Rooming Accommodation Act 2008</i> (Qld) in QCAT. The application was dismissed by both QCAT and the Appeal Tribunal. On appeal to QCA, failed to show any error of law.	Leave refused.
	Oct	McMurdo P and Gotterson JA and Dalton J	<i>Thompson v Raud & Anor</i> [2015] QCA 193	Application for an extension of time to appeal from the Appeal Tribunal's refusal of an extension of time to appeal. QCA had no jurisdiction to hear appeal as this was not a final decision.	Leave refused.
		Holmes CJ and P Lyons and Burns JJ	<i>Commissioner of State Revenue v Di Sipio & Anor</i> [2015] QCA 198	Dispute regarding assessment of first home concession where respondent's purchased home subject to an existing tenancy. The Appeal Tribunal found that s 154 <i>Duties Act 2001</i> (Qld) did not apply. Question of construction is of general importance, therefore leave to appeal granted; however, QCA adopted an even wider construction than the Appeal Tribunal and confirmed the decision below.	Leave granted. Appeal dismissed.
		Fraser JA and Henry and Burns JJ	<i>Commercial Property Management & Ors v Commissioner of State Revenue</i> [2015] QCA 209	Dispute regarding the construction of s 69 <i>Tax Administration Act 2001</i> (Qld) and QCAT's review jurisdiction. Interpretation adopted by the Appeal Tribunal affirmed by QCA.	Leave refused.
		Morrison and Philippides JJA and Flanagan J	<i>Ryan v Worthington</i> [2015] QCA 201	Domestic building dispute between the parties concerning the construction of the contract. The Appeal Tribunal held that the construction of a contract is a question of fact and the construction reached by the Member was "open on the evidence". QCA overturned this finding as there is a line of High Court authority that the construction of a contract is a question of law.	Leave granted. Appeal dismissed.
	Nov	Fraser and Morrison JJA and Mullins J	<i>Francis v Crime and Corruption Commission & Anor</i> [2015] QCA 218	The Appeal Tribunal ordered the dismissal of the applicant from the Queensland Police Service and applicant appealed on the basis that the test of unreasonableness had been misapplied and the Appeal Tribunal misconstrued and misstated the decision below. On appeal to QCA, failed to show any error of law.	Leave refused.

2015	Nov	McMurdo P and Philippides JA and Boddice J	<i>Nichols v Earth Spirit Home Pty Ltd</i> [2015] QCA 219	Appeal Tribunal decision to enforce an entirely oral building contract. QCA held the findings made by the Appeal Tribunal were consistent with the relevant provisions of the <i>Queensland Building and Construction Commission Act 1991</i> (Qld).	Leave granted. Appeal dismissed.
		McMurdo P, Morrison JA and Martin J	<i>Albrecht v Ainsworth & Ors</i> [2015] QCA 220	The Appeal Tribunal erred in finding that the Adjudicator had made errors of law and that she had applied the incorrect legal test. The appeal to the Appeal Tribunal was limited to questions of law but the Appeal Tribunal may have considered additional material not before the Adjudicator.	Leave granted. Appeal allowed. Decision of the Appeal Tribunal set aside and that appeal dismissed.
		Holmes CJ and Douglas and North JJ	<i>Surrey & Anor v Sand and Surf Design Pty Ltd</i> [2015] QCA 274	Domestic building dispute between the parties and preliminary hearing held to determine whether respondent had lawfully terminated the building contract. The Appeal Tribunal overturned the primary decision. Applicant alleged a denial of natural justice and error in the Appeal Tribunal's reconsideration of the matter. On appeal to QCA, failed to show any error of law.	Leave refused.
2016	Feb	McMurdo P and Applegarth and Henry JJ	<i>Campaigntrack Victoria Pty Ltd v The Chief Executive, Department of Justice and Attorney-General & Ors</i> [2016] QCA 37	Claim was lodged against claim fund under <i>Property and Motor Dealers Act 2000</i> (Qld) but dispute about whether claim was made in time. Question of law whether QCAT could extend the 14 day period specified in <i>PAMDA</i> . The Appeal Tribunal characterised it as a substantive requirement that could not be modified by power given to the Tribunal under s 61 <i>QCAT Act</i> . QCA concluded it is a procedural requirement and the Appeal Tribunal erred in construing the <i>PAMDA</i> provisions as being inconsistent with s 61.	Leave granted. Appeal allowed & matter remitted.
	Apr	McMurdo P, Applegarth and Henry JJ	<i>John Urquhart t/as Hart Renovations v Partington & Anor</i> [2016] QCA 87	Domestic building dispute between the parties concerning whether the "enclosed stage" had been reached in the construction. The Appeal Tribunal did not consider all of the grounds of appeal and arguments advanced by the appellant, misstated the chronology of events and, although correctly identified errors in the use of expert evidence below, failed to conclude if the ultimate conclusion reached by the Member below was correct.	Leave granted. Appeal allowed & matter remitted.

2016	Apr	McMurdo P and Morrison JA and Jackson J	<i>Robertson & Anor v Airstrike Industrial Pty Ltd</i> [2016] QCA 104	Claim against the claim fund under the <i>Property Agents and Motor Dealers Act 2000</i> (Qld). QCAT allowed the claim and the Appeal Tribunal overturned it. Application for an extension of time to apply for leave to appeal was filed almost 17 months after the final decision. QCA held that prospects of success in the appeal were low if leave were granted.	Leave refused.
	May	McMurdo P and Fraser JA and North J	<i>Bartlett v Contrast Constructions Pty Ltd</i> [2016] QCA 119	Domestic building dispute between the parties. QCAT Member at first instance made an error of law when a claim by the appellant for liquidated damages was rejected. QCA overturned the Appeal Tribunal's finding that an owner's contractual entitlement to liquidated damages for a builder's delay in completion under a building contract might be defeated by a finding merely that it was "unreasonable" for the owner to defer terminating the contract after the owner first became aware that it had a right to terminate the contract; the law concerning mitigation of damages was not applicable to this claim.	Leave granted. Appeal allowed.
		Gotterson and Philip McMurdo JJA and Applegarth J	<i>Medical Board of Australia v Alroe</i> [2016] QCA 120	QCAT Member made an order as to costs. As the proceeding was a review under s 100 <i>QCAT Act</i> , each party is to bear their own costs unless otherwise provided in an Act. The QCAT Member departed from this position and applied the principle that costs follow the event without receiving submissions from the parties or giving reasons for the order.	Appeal allowed & matter remitted.