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# Supreme Court of Queensland Decisions

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## Smyth v State of Qld & Ors [2005] QSC 175 (5 July 2005)

Last Updated: 7 July 2005

### SUPREME COURT OF QUEENSLAND

CITATION: *Smyth v State of Qld & Ors* [\[2005\] QSC 175](#)

PARTIES: **STEPHEN ALLAN JOHN SMYTH**  
(applicant)

v

**STATE OF QLD**  
(first respondent)

a

### **INDSAY RICHARDSON**

(third respondent)

FILE NO: BS5069 of 2005  
DIVISION: Trial Division  
PROCEEDING: Application  
ORIGINATING COURT: Supreme Court at Brisbane  
DELIVERED ON: 5 July 2005  
DELIVERED AT: Brisbane  
HEARING DATE: 30 June 2005  
JUDGE: Wilson J  
ORDER: **Dismiss the application**  
CATCHWORDS: MINING LAW – STATUTORY REGULATION OF  
CONDUCT OF MINING OPERATIONS – REGULATIONS  
AS TO SAFETY OF MINES AND MACHINERY – IN  
G INITIONS – where accident occurred while  
transporting coal in between two mining leases – meaning of "coal  
mine" – meaning of "from a coal mine" – [Coal Mining Safety and](#)

Health Act 1999 (Qld)

MINING LAW – STATUTORY REGULATION OF  
 CONDUCT OF MINING OPERATIONS – REGULATIONS  
 AS TO SAFETY OF MINES AND MACHINERY – IN  
 G INITIONS – whether transportation of the  
 product from one mining lease to another was an on-site activity –  
 meaning of "adjoining, adjacent to, contiguous with" – Coal Mining  
 Safety and Health Act 1999 (Qld)

Coal Mining Safety and Health Act 1999 (Qld), [ss 4-6](#), [s 9](#), [s 10](#),  
[s 16](#), [s 27](#), [s 34](#), [s 42](#), [128](#), [s 199](#), [s 255](#), [s 256](#)

COUNSEL: MD Hinson SC and JW Merrell for the applicant  
 PJ Flanagan SC and JM Horton for the first respondent

SOLICITORS: Hall Payne for the applicant  
 Crown Solicitor for the first respondent  
 Sparke Helmore for the second and third respondents

[1] **Wilson J:** On 8 July 2004 Robert Leslie O’Neile was driving a triple road train hauling raw coal along Wollombi Road, Glenden when it veered off the road and the lead trailer came to rest on top of the prime mover. Mr O’Neile died in the accident.

[2] The raw coal was being transported between two mining leases operated by the second respondent Newlands Coal Pty Ltd – ML 4761 where it had been mined and ML 4771 where it was to be washed. The two mining leases were separated by a grazing property "Suttor Creek". They were connected by Wollombi Road, which was a public road. The accident site was about 6 kilometres from ML 4761 and about 1 kilometre from ML 4771.

[3] The applicant is an "industry safety and health representative" within [s 27](#) of the Coal Mining Safety and Health Act 1999. He is employed by the Construction, Forestry, Mining & Energy Union, Mining & Energy Division. He wants the Chief Inspector of Mines to investigate the fatality and to commence a prosecution in respect of it. The Chief Inspector considers that he lacks jurisdiction to investigate the accident because it occurred on a public road, although he has initiated an investigation into antecedent breaches of the Act alleged to have occurred on one of the mining leases.

[4] The applicant seeks the following declaration –

(a) that the location of the accident that occurred on 8 July 2004 on Wollombi Road occurred at a coal mine within the meaning of the Coal Mining Safety and Health Act 1999;

(b) that the functions and powers of the inspectors under the Coal Mining Safety and Health Act 1999 apply to the accident that occurred on 8 July 2004 on Wollombi Road.

### How the questions arise

[5] One of the functions of inspectors under s 128 of the Act is –

"(h) to investigate serious accidents and high potential incidents and other matters at coal mines that affect the successful management of risk to persons;"

By s 16 –

### "16 Meaning of serious accident

A serious accident at a coal mine is an accident at a coal mine that causes –

- (a) the death of a person;
- (b) a person to be admitted to a hospital as an in-patient for treatment for the injury."

By s 199 –

### "199 Place of accident must be inspected

As soon as practicable after receiving a report of a serious accident causing death at a coal mine, an inspector must inspect the place of the accident, investigate the accident to determine its nature and cause, and report the findings of the investigation to the chief inspector."

Thus an inspector may investigate the accident only if it occurred at a coal mine.

[6] An inspector, an industry safety and health representative or a site senior executive may recommend to the Chief Inspector that there be a prosecution for an offence against the Act: s 256. Such a prosecution must be commenced by the Chief Inspector or someone else authorised by the Minister or the Attorney-General: s 255(5).

[7] The applicant has recommended to the Chief Inspector that a prosecution be commenced against the site senior executive (the third respondent Mr Lindsay Richardson) for failing to discharge safety and health obligations imposed by s 42 (d) and (e): see s 34. Those obligations are –

### "42 Obligations of site senior executive for coal mine

A site senior executive for a coal mine has the following obligations in relation to the safety and health of persons who may be affected by coal mining operations –

(d) t

### **I mine "**

[8] The issue is whether the place where the fatality occurred was a coal mine within the meaning of the legislation. Sections 9 and 10 provide –

"

(1) A *coal mine* is any of the following places --

- (a) a place where on-site activities are carried on, continuously or from time to time, within the boundaries of la

( ) a place where on-site activities are carried on, continuously or from time to time, on land adjoining, adjacent to, or contiguous  
w  
w (a);

(c) a place where on-site activities are carried on, continuously or from time to time, unlawfully because land at the place is not the subject of a mining tenure;

(d) a place that was a coal mine while works are done to secure it after its abandonment;

(e) a place where tourism, education or research related to coal mining happens that is declared under a regulation to be a coal mine.

(2) A **coal mine** includes buildings for administration, accommodation and associated facilities within the boundaries of land the subject of the mining tenure for the mine or on land adjoining, adjacent to, or contiguous with the boundaries of the land the subject of the mining tenure.

(3) Despite subsection (1)(d), a place that was a coal mine is not a **coal mine** after its abandonment merely because work is being done at the place by or for the State--

(a) to ensure public safety; or

(b) t

(1) ***On-site activities*** a

w --

(a) constructing --

(i) things required or permitted to be constructed under an exploration permit, mineral development licence or mining lease; or

(ii) for a place mentioned in section 9(1)(c)--things that are required or permitted to be constructed under an exploration permit, mineral development licence or mining lease;

(b) treating coal and disposing of waste substances;

(c) rehabilitating of a place after coal mining operations;

(d) maintaining and testing pla

***On-site activities*** do not include the following --

- (a) airborne geophysical surveys;
- (b) transporting product from a coal mine on public roads or public railways or on any other railway;
- (c) constructing and installing surface railways;
- (d) air transport to and from a coal mine;
- (e) pastoral activities;
- (f) a \_\_\_\_\_ -site activity under a regulation."

[9] The place where the coal was extracted on ML 4761 and the place where it was to be washed on ML 4771 were clearly coal mines within s 9(1)(a). The question is whether the accident site was a coal mine within s 9(1)(b).

[10] Counsel for the applicant submitted that, notwithstanding that the accident occurred on part of a road that runs outside the boundaries of the mining leases, the accident occurred at a coal mine within the meaning of s 9(1)( ) of the Act because:

- (a) the accident occurred at a place where on-site activities were carried out, being activities carried on principally for, or in connection with, exploring for or winning coal, namely transporting raw coal from lease 4761 to lease 4771 for it to be washed; and
- (b) such activities were carried on continuously or from time to time; and
- (c) the accident site was a place on land adjoining, adjacent to, or contiguous with the boundaries of lands the subject of mining tenures (ML 4671 and ML 4771) and within which were places where on-site activities were carried on, namely, winning coal (ML 4761) a \_\_\_\_\_ (ML 4771).

[11] Transporting raw coal to a washing plant probably is an activity "carried on principally for, or in connection with, exploring for or winning coal", but it is nevertheless not an on-site activity if it falls within the exclusion in s 10(2)( ) –

"transporting product from a coal mine on public roads...".

Raw coal is clearly "product", which is defined in schedule 3 as including –

" \_\_\_\_\_, waste material, treated and semi treated material".

At the hearing argument focused on the meaning of "transporting product from a coal mine", in particular whether the phrase "from a coal mine" is descriptive of the product (raw coal) or whether it has a geographical connotation being descriptive of the place from which the transportation begins.

[12] It is instructive to consider the nature of the legislation. It is expressed to apply to "coal mines and coal mining operations" (s 4) and to everyone who may affect the safety or health of persons at a coal mine, everyone who may affect the safety or health or persons as a result of coal mining operations and a person whose safety or health may be affected while at a coal mine or as a result of coal mining operations

(s 5). Its objects are (s 6) –

(a) to protect the safety and health of persons at coal mines and persons who may be affected by coal mining operations; and

(b) t

l mining activities are defined in schedule 3 as activities, including on-site activities, carried out at a coal mine associated with exploration, extracting, processing and treatment, and installat la l.

[13] Senior counsel for the applicant submitted that in the context of legislation concerned with the health and safety of persons working at coal mines or who may be affected as a result of coal mining operations the exclusions in s 10(2) should be construed narrowly, or no more broadly than the words require them to be construed. That is correct in principle.

[14] It is also necessary to consider the particular exclusion in s 10(2)(b) in the context of the other exclusions in that subsection. Paragraphs (a), (c), (d) a

lies with the aviation authorities. If an accident occurs on a public road, it is ordinarily for the police to investigate, just as it is ordinarily for the police and Queensland Rail to investigate an accident which occurs on a public railway.

[15] Senior counsel for the applicant submitted that the raw coal was being transported from one part of a coal mine to another part of the coal mine, rather than from a coal mine to a place that was not a coal mine. As senior counsel for the second and third respondents submitted, this involves the notion that two separate mining leases are two parts of one coal mine although geographically distinct. Paragraph (a) of s 9(1) links a coal mine to a mining tenure; in other words, for each mining tenure there is a coal mine. In the instant case there were two distinct coal mines. To treat the area between the two mining leases as itself a coal mine within s 9(1)(b) because it was a place where on-site activities were carried on and one which was adjoining, adjacent to or contiguous with each of the mining leases begs the question of what are on-site activities.

[16] If "from a coal mine" refers to the place from which the transportation begins, one wonders why no destination is specified in the exclusion. On the other hand, if it is descriptive of the product, it is providing a nexus with the coal mine which would be absent if the trailers were empty. In the absence of such a nexus, there would be no purpose in the exclusion, for the activity would clearly not be an on-site activity. What paragraph (b) does is to exclude an activity which might fit within the definition of an on-site activity but for the fact that it occurred on a public road (or a public railway).

[17] The preposition "from" is defined in the *Macquarie Dictionary* as –

" \_\_\_\_\_, instrumentality, and cause or reason".

To construe "from a coal mine" as descriptive of product is consistent with the use of "from" to describe its source or origin.

[18] The addition of the words "from a coal mine" is not unduly repetitious. The definition of product (an

inclusive definition) refers to various materials. While raw coal is "as mined material" and so necessarily something having its origin in a coal mine, the other expressions used in the definition ("waste material", "treated and semi treated material") do not on their face refer necessarily to things having their origin in a coal mine, even if they have that quality in the contexts in which "product" is used in the legislation.

[19] The Explanatory Notes which accompanied the bill for this Act contain the following –

"Sub-clause 10(2) provides details of those activities that are not regarded as on-site activities. Those activities include airborne surveys and air transportation, use of public roads a

mine on a public road, rather than with the transportation of product on a public road away from a coal mine.

[20] Further, the place where the accident occurred was not on land adjoining, adjacent to, or contiguous with boundaries of the land the subject of either of the mining leases.

[21] These definitions appear in the *Macquarie Dictionary* –

"*adjoin* 1. to be in connection or contact with; abut on... 2. to lie or be next, or in contact"

"*adjacent* lying near, close, or contiguous; adjoining; neighbouring"

"*contiguous* 1. touching; in contact 2. in close proximity without actually touching; near."

"Adjoin" is the narrowest of these expressions: it requires actual contact, while the others require mere proximity.

[22] The accident site was 1 kilometre from the boundary of the land the subject of one mining lease and 6 kilometres from the boundary of the land the subject of the other. It was not "adjacent to or contiguous with" either.

[23] For these reasons, I have concluded that the transportation of the raw coal along Wollombi Road from one mining lease to another was not an on-site activity. It follows that the accident site was not a coal mine within s 9(1)(b) of the Act.

[24] The declarations sought should not be granted.

[25] The application is dismissed. I will hear counsel on costs.

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