An allegation of non-compliance with a statutory requirement or an administrative procedure is not enough of itself to confer standing.

The fact that a person may have commented on environmental aspects of a proposal as part of an environmental assessment process does not of itself confer standing to complain of a decision based on that process.

An organisation does not demonstrate a special interest simply by formulating objects that demonstrate an interest in and commitment to the preservation of the physical environment.

Determining whether a person has standing will always depend upon the facts and circumstances in each case. However, there is no basis for suggesting that the interests that must be affected in order to establish standing under s 33B(1) are any different to the interests that are referred to in s 33B(2)(a). Equally, a person who seeks to rely upon the ground in s 33B(2)(b) must still establish that they are a person whose interests are affected by the decision.

In practice, it will tend to be individuals or corporations who are most likely to rely upon the ground in s 33B(2)(a) and, although there is nothing to prevent them from relying on the ground in s 33B(2)(b), this ground is more likely to be relied upon by groups or associations.

HIGH COURT

Selected Seeds Pty Ltd v QBEMM Pty Limited [2010] HCA 37

Selected Seeds Pty Ltd is a grain and seed merchant in Queensland. In 2002 it purchased seed held out to be Jarra grass seed but which was substantially contaminated with Summer grass seed. While Jarra grass is high quality feed for livestock, Summer grass is an aggressive weed.

Selected Seeds sold the seed crop to S and K Gargan. The Gargans then supplied the seed to M Gargan, who cultivated the seed. With each successive harvest, the crop contained a higher proportion of Summer grass. By the time M Gargan sold the seed crop to Landmark Operations Limited (Landmark), the crop was almost entirely Summer grass. Landmark sold this crop as Jarra grass seed to R and J Shrimp. When the Shrimps sowed the Summer grass seed on their land, the resulting Summer grass weed infestation caused financial loss.

In 2006 the Shrimps commenced proceedings in the Federal Court against Landmark for damages. Landmark joined M Gargan to the proceedings, who in turn joined Selected Seeds. The parties reached a settlement under which Selected Seeds paid for some of the damage, but their insurer–QBEMM Pty Ltd, refused to indemnify for this loss.

Selected Seeds bought an action against QBEMM in the Supreme Court of Queensland to enforce the insurance policy. The policy provided that QBEMM would indemnify Selected Seeds against sums payable as compensation for property damage. The Supreme Court allowed the claim, and QBEMM appealed to the Court of Appeal. The Court of Appeal allowed the appeal, prompting Selected Seeds to appeal to the High Court.

Grounds of appeal

The arguments before the High Court focused on the operation of an efficacy clause. This clause exempted QBEMM from liability to indemnify Selected Seeds for the failure of any product to correctly fulfil its intended use or function.

Selected Seeds argued that the damage had resulted from introduction of Summer grass, not from a failure of the seeds to correctly fulfil their intended use or function. Therefore, the efficacy clause did not apply and QBEMM was liable to pay under the insurance policy. QBEMM argued that because the seed had not produced Jarra grass, the seed had not fulfilled its intended function, and the efficacy clause did apply. These arguments were the grounds on which each party succeeded at the Supreme Court and Court of Appeal, respectively.

Patrick Vuleta

Decision

The High Court was critical of the Court of Appeal's reasoning in choosing to characterise the damage as resulting from the seeds' failure to correctly fulfil the intended use or function. The Court of Appeal read the terms of the efficacy clause broadly, applying it to liability having any causal connection with a failure to fulfil an intended use. Consequently, a seed which produced an unexpected crop could be seen as not fulfilling an intended function.

The High Court stated this interpretation was too wide and inconsistent with the rest of the insurance policy. The operation of the efficacy clause had to be determined by construing its words according to their natural and ordinary meaning. This must be done in light of the policy which was aimed at insuring against property damage. Examined in this way, the efficacy clause acted to limit the insurance policy to property damage, not provide a broad exemption from liability.

The High Court held that liability did not arise from the seeds' failure to produce Jarra grass. It came from property damage caused by Summer grass contamination. Liability was caused by what the seed actually did, not what it failed to achieve. Consequently, the High Court found that the efficacy clause did not apply, and ruled in favour of Selected Seeds.

Patrick Vuleta