

WALSH HALLIGAN DOUGLAS CASE UPDATE – 4

WALSH HALLIGAN DOUGLAS
LAWYERS



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Supreme Court of Queensland Vos v Hawkswell & Anor [2010] QCA 92

At first instance, the plaintiff's claim for damages for personal injuries arising out of a motor vehicle accident failed.

The defendant's vehicle had hit the plaintiff's vehicle from behind.

The plaintiff and the defendant gave substantially different versions of how the accident occurred.

Independent witness evidence was that the plaintiff drove in front of the defendant and stopped in front of him resulting in the defendant's vehicle colliding with the rear of the plaintiff's vehicle.

The plaintiff's appeal failed.

Supreme Court of Queensland McKay v McKay & Anor [2010] QSC 84

The claimant sustained severe brain damage in a motor vehicle accident.

A declaration had been made that the insurer would provide funds to the claimant, to a limit of \$425,000, for the demolition of her residence and the construction of alternative accommodation.

It was later determined that the cost would exceed \$425,000.

The insurer agreed to pay additional funds by way of an advance on damages, however submitted that the matter required sanction by the Court pursuant to section 59(2) of the *Public Trustee Act*.

Relevantly, the insurer was under no obligation to make the payment at that particular point in time.

The application was dismissed as the Court was not satisfied that it had the power to make the order.

Supreme Court of Queensland Till v Nominal Defendant [2010] QSC 121

During the trial of the plaintiff's claim, counsel for the plaintiff became concerned that the plaintiff lacked capacity to provide instructions and therefore the proceedings were stayed pending the determination of the plaintiff's capacity.

The plaintiff refused to undergo psychiatric examination.

The plaintiff's solicitors successfully obtained an order that the question of the plaintiff's capacity be referred to the Queensland Consumer and Administration Tribunal for determination.

**Supreme Court of Queensland
Bazley v Wesley Monash IVF Pty Ltd
[2010] QSC 118**

After being diagnosed with cancer in July 2009, the applicant's partner provided a semen sample to the respondent. Unfortunately, the applicant's partner died.

The applicant was informed by the respondent that it would destroy the stored semen.

On application, the Court determined that the stored semen was property, the ownership of which vested in the deceased while alive and in his personal representatives after his death.

The Court ordered the respondent continue to hold and maintain the semen for a period of time.

**District Court of Queensland
Nichols v Curtis and QBE Insurance
(Australia) Limited (No2)
[2010] QDC 99**

The plaintiff suffered personal injuries in a motor vehicle accident.

Following a conference, mandatory final offers were exchanged as follows:

- plaintiff's MFO - \$75,000 plus costs.
- second defendant's MFO - \$28,860.

After proceedings were issued, further offers were exchanged pursuant to the *Uniform Civil Procedure Rules* including an offer by the second defendant of \$50,000 plus statutory costs.

Judgment of \$47,618.10 was given for the plaintiff.

A dispute arose as to costs.

The Court ordered the second defendant pay the costs of the plaintiff on a standard basis to a maximum of \$2,500.

**District Court of Queensland
Wright v KB Nut Holdings Pty Ltd
[2010] QDC 91**

The applicant brought an application seeking orders that the respondent comply with its obligations pursuant to section 27(1) of the *Personal Injuries Proceedings Act 2002*.

The applicant alleged that her finger was pricked by a needle while she was cleaning an internal staircase in an apartment let to her by the respondent.

Relevantly, one of the questions the applicant asked was whether the respondent and/or its cleaning contractors had ever found any needles or other drug related utensils in any of the apartments prior to the index incident.

McGill DCJ stated "*There is a difference between information as to whether the respondent did or omitted to do something and information which is only relevant to the question of whether the respondent had a duty to do something, or to do more, in the lead up to the particular incident. What the respondent in fact did, which may relevantly be nothing, can in my opinion be part of the circumstances of the incident, or the reason for the incident. Whether circumstances existed such that the respondent at that time had a duty to do something other than what the respondent did seems to me to be something separate from the circumstances of or the reasons for the incident. That focus is on the content of the duty, whereas section 27(1)(b) is essentially talking about the issue of causation. Information can be obtained about what the*

respondent did or did not do, but not about what the respondent ought to have done....

It follows that in my opinion in the present case, the claimant is entitled to information about what the respondent actually did or did not do by way of cleaning or inspection of the premises, but information which is relevant to the question of what the respondent's duty was in the circumstances then prevailing, in relation to the cleaning or inspection of the premises, is not something which is within the scope of section 27(1)(b)."

The respondent was ordered to provide information although was not required to answer the question whether any needles or other drug related utensils had been found in any of the apartments prior to the index incident.

**District Court of Queensland
Curry v Brisbane City Council
[2010] QDC 148**

The applicant was injured in a motor vehicle accident when walking across a pedestrian crossing in Brisbane.

The applicant brought an application seeking orders that the respondent comply with its obligations pursuant to section 27(1) of the *Personal Injuries Proceedings Act 2002*.

Relevantly, correspondence passing between the parties referred to other accidents at the intersection.

Reid DCJ stated that *"In my view,.....documents about prior accidents at the subject intersection are not disclosable."*

In relation to the information sought by the applicant, Reid DCJ stated *"...the questions do not seek information in the respondent's possession about the circumstances of, or the reasons for, the incident... Rather, they are questions, essentially in the form of interrogatories, designed to establish that the*

respondent owed a duty of care to the applicant. They are not directed to the actual cause of the accident itself."

The application was dismissed.

**District Court of Queensland
Spackman v Stevens & Anor
[2010] QDC 118**

In or about 2001, the second defendant constructed a deck at the home of the first defendants.

The plaintiff's husband rented the premises from the first defendants.

The plaintiff claimed to have suffered injuries when she was standing on a deck at the premises and it cracked beneath her.

Notably, the plaintiff's claim was in negligence. There was no claim based on contract or breach of statutory duty.

The Court accepted that the plaintiff and her husband had made complaints to the landlords' agent about the deck.

Judgment was given for the plaintiff against both defendants.

**Supreme Court of Queensland
Samways v WorkCover Queensland & Ors
[2010] QSC 127**

The plaintiff claimed to have suffered an injury to his left shoulder when he walked into the raised bucket of a bobcat on a construction site.

He claimed damages for negligence and/or breach of statutory duty against his employer, the principal contractor at the site and the company who provided the bobcat and the bobcat operator.

The credibility of the plaintiff was an issue in the proceedings.

The Court held that each defendant was negligent and apportioned liability as follows:

- employer – 10%
- principal contractor – 30%
- supplier of bobcat and operator – 60%.

Damages were reduced by 20% for contributory negligence on the basis that the plaintiff had not exercised reasonable care for his own safety as he failed to observe and thereby avoid the raised bucket of the bobcat.

Damages were assessed in the vicinity of \$25,000 with no allowance for future earning capacity.

**District Court of Queensland
Jackson v Reeves & Suncorp Metway
Insurance Limited
[2010] QDC 43**

Rule 24 of the *Uniform Civil Procedure Rules* deals with the renewal of claims. The Court's leave is required once the five year anniversary is reached in respect of a claim.

In this matter, the Court renewed the claim on the basis that it was in the interests of all parties to do so.

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