

Friday, 3 February 2017

Daily Composite Insurance, Banking, Construction & Government A Daily Bulletin listing Decisions of Superior Courts of Australia

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CIVIL (Insurance, Banking, Construction & Government)

Executive Summary (1 minute read)

Royal Bank of Canada v Trang (SCC) - privacy - loans and mortgages - debtors' mortgagee required to produce mortgage discharge statement to creditor - appeal allowed (B)

Nicholas v Australian Offshore Solutions Pty Ltd (FCA) - administrative law - workers compensation - claim made under *Seafarers Rehabilitation and Compensation Act 1992* (Cth) dismissed (I B C G)

Wittensleger v Australian Securities and Investments Commission (FCA) - administrative law - corporations - extension of time to appeal against imposition of lifetime banning orders by ASIC refused (B)

Vegas Enterprises Pty Ltd v Rumsley (FCA) - costs - set-off of costs orders against each other refused - debt appropriation order not set aside - application dismissed (I B C G)

Strel v Cordia (No 2) (NSWSC) - costs - rejection of offers of compromise not unreasonable - first defendant to pay plaintiff's costs on ordinary basis (B)

Armstrong Strategic Management and Marketing Pty Limited v Expense Reduction Analysts Group Pty Ltd (No 10) (NSWSC) - costs - plaintiffs to pay defendant's gross sum of \$5.75 million for their costs in addition to costs paid by the plaintiffs or assessed as payable to defendants (I B)

Goodenough v State of Victoria (VSC) - limitations - assault - former prisoner pardoned of conviction granted leave to sue State in negligence for assault while in prison (I)

Summaries With Link (Five Minute Read)

Royal Bank of Canada v Trang 2016 SCC 50

Supreme Court of Canada

McLachlin CJ, Abella, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon, Côté & Brown JJ
Privacy - loans and mortgages - Royal Bank of Canada (RBC) was judgment creditor of Trang (debtors) - bank sought sheriff's sale of debtors' property - sheriff required mortgage discharge statement - RBC unable to obtain statement from debtors - RBC sought to compel debtors' mortgagee (Scotiaban) to produce statement - RBC's motion dismissed - Court of Appeal upheld decision - c.5, s7(3)(c), schedule 1, cl.4.3.6 *Personal Information Protection and Electronic Documents Act, S.C. 2000 (Act)* - whether Act precluded mortgagee from disclosing statement to creditor without mortgagor/debtor's consent - whether implied consent by debtors to disclosure - held: appeal allowed - Scotiabank to produce mortgage discharge statement to RBC.

[Royal](#) (B)

Nicholas v Australian Offshore Solutions Pty Ltd [2017] FCA 43

Federal Court of Australia

Siopis J

Administrative law - workers compensation - applicant was employee of respondent on ship - another employee signed applicant off duty by signing in log book - applicant claimed compensation under *Seafarers Rehabilitation and Compensation Act 1992 (Cth)* against respondent, claiming sign off caused him physical and mental injury - respondent rejected claim - Tribunal affirmed respondent's decision - ss3(c), 9, 66(2) & 78 *Seafarers Rehabilitation and Compensation Act 1992 (Cth)* - ss44 & 44(3) *Administrative Appeals Tribunal Act 1975 (Cth)* - whether denial of fair hearing - whether apprehended bias - whether denial of procedural fairness - conduct of tribunal member - alleged errors of law - held: grounds of appeal failed - appeal dismissed.

[Nicholas](#) (I B C G)

Wittensleger v Australian Securities and Investments Commission [2017] FCA 41

Federal Court of Australia

McKerracher J

Administrative law - corporations - applicant sought extension of time to 'appeal' against Administrative Appeal Tribunal's decision affirming lifetime banning orders imposed by Australian Securities and Investments Commission - applicant contended Tribunal erred by not granting adjournment to allow compliance with witness summons applicant issued - applicant

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also contended Tribunal erred by failing to independently review decision of ASIC - applicant contended that the summons directed to company was regularly issued, that Tribunal did not set it aside and that it should have been complied with by company prior to hearing - applicant also sought to adduce further evidence - delay - merits of appeal - prejudice - held: leave to adduce further evidence refused - appeal had no prospects of success - extension of time refused.

[Wittensleger](#) (B)

Vegas Enterprises Pty Ltd v Rumsley [2017] FCA 35

Federal Court of Australia

Barker J

Costs - applicant sought declaration that proceedings' costs order in its favour against Mr Philip George Clifford be set off against cross-claim costs order in Mr Clifford's favour against applicant in same proceeding - applicant also sought to set aside debt appropriation order based on cross-claim costs order - whether purported assignment of cross-claim costs order by Mr Clifford to his lawyer entailed costs orders could not be set off - whether debt appropriation order ought to be set aside due to lawyer's alleged failure to inform Court cross-claim cost order's purported assignment was subject of challenge in related proceedings - ss120 & 121 *Bankruptcy Act 1966* (Cth) - ss3, 51(3), 54 & 103(1) *Civil Judgments Enforcement Act 2004* (WA) - s34(4) *Legal Profession Conduct Rules 2010* (WA) - s13 *Statutes of Set-off, Insolvent Debtors Relief 1728* (UK) (2 Geo II c22) - held: application dismissed.

[Vegas](#) (I B C G)

Strel v Cordia (No 2) [2017] NSWSC 18

Supreme Court of New South Wales

Darke J

Costs - Court found plaintiff administrator of father's estate entitled to become property's registered proprietor and that first defendant had failed to establish adverse possession of property - plaintiff sought costs on indemnity basis due to first defendant's unreasonable conduct and failure to accept offers of compromise - whether offers were invitations to capitulate - whether real and substantial element of compromise - held: first defendant's conduct did not warrant indemnity costs order - not unreasonable for first defendant to have rejected offers of compromise - first defendant to pay costs on ordinary basis.

[Strel](#) (B)

Armstrong Strategic Management and Marketing Pty Limited v Expense Reduction Analysts Group Pty Ltd (No 10) [2017] NSWSC 16

Supreme Court of New South Wales

Ball J

Costs - Court dismissed proceedings - defendants sought order that plaintiffs pay their costs, pay some of the costs on an indemnity basis, and that costs be assessed as gross sum and fixed - plaintiffs sought partial release of security held for defendants' cost to assist them in

paying costs order already made - held: partial release of security refused - not unreasonable for plaintiff to reject offers - indemnity costs refused - gross sum order granted - plaintiffs to pay defendant's gross sum of \$5.75 million for their costs in addition to costs paid by plaintiffs or assessed as payable to defendants.

[Armstrong](#) (I B)

Goodenough v State of Victoria [2017] VSC 12

Supreme Court of Victoria

Ierodiaconou AsJ

Limitations - assault - in 1993 plaintiff convicted of driving offences - plaintiff sentenced to two months in prison - while in prison, plaintiff assaulted in shower and alleged he was raped - plaintiff wished to sue State of Victoria in negligence - plaintiff sought extension of time to claim against State - plaintiff had received pardon for conviction - whether to grant extension of time under s27K *Limitations of Actions Act 1958* (Vic) - held: primary cause of delay was plaintiff's campaign to secure pardon which was not achieved for over 20 years - prejudice to defendant not fatal - Court did not accept trial would be unfair as a result - there would be 'negative and serious impact' on plaintiff if application not allowed - s27K(2) LAA 'not confined to what is reasonable' - Court should extend time where it considers it 'just and reasonable to do so' - it was just and reasonable to extend time - application granted.

[Goodenough](#) (I)

CRIMINAL

Executive Summary

Redenbach v The Queen (VSCA) - criminal law - sentencing - doctrine of 'fresh evidence' - cancellation of applicant's parole - appeal against sentence allowed - individual sentences imposed

Lau v The State of Western Australia (WASCA) - criminal law - no error in not directing jury on duress - appeal against conviction dismissed

Summaries With Link

Redenbach v The Queen [2017] VSCA 2

Court of Appeal of Victoria

Weinberg & Kyrou JJA

Criminal law - sentencing - applicant pleaded guilty to trafficking drug of dependence, possession of drug of dependence, possessing machine to falsify documents, handling stolen

goods, forging and fraudulently altering driver's licence - applicant sentenced to total effective sentence of 2 years 9 months with 18 months non-parole period - applicant sought to appeal against sentence on basis fresh evidence should be received concerning cancellation of his parole - particulars of fresh evidence which applicant sought that Court receive were that on 14/8/13 applicant's parole was cancelled by Adult Parole Board, applicant not informed of cancellation and sentencing hearing proceeded on flawed assumption parole not cancelled - applicant contended that if judge had known that applicant would not complete sentence until June 2017 she would almost certainly have imposed lesser sentence - doctrine of 'fresh evidence' - held: appeal allowed - head sentence and non-parole period imposed below set aside - individual sentences imposed.

[Redenbach](#)

Lau v The State of Western Australia [2017] WASCA 16

Court of Appeal of Western Australia

Buss P; Mazza & Mitchell JJA

Criminal law - appellant appealed against conviction for possessing prohibited drug with intent to sell or supply it to another, and possession of cash 'reasonably suspected of being stolen or unlawfully obtained' - trial judge did not direct jury to consider whether State had disproved duress - appellant contended primary judge erred by not directing jury on duress - s6(1)(a) *Misuse of Drugs Act 1981 (WA)* - s417(1) *Criminal Code (WA)* - held: appellant failed to discharge evidential burden concerning elements of defence of duress - trial judge correct in decision - appeal dismissed.

[Lau](#)

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Lord, Make Me an Instrument of Thy Peace

By [St. Francis of Assisi](#)

Lord, make me an instrument of Thy peace;
where there is hatred, let me sow love;
where there is injury, pardon;
where there is doubt, faith;
where there is despair, hope;
where there is darkness, light;
and where there is sadness, joy.

O Divine Master,
grant that I may not so much seek to be consoled as to
console;
to be understood, as to understand;
to be loved, as to love;
for it is in giving that we receive,
it is in pardoning that we are pardoned,
and it is in dying that we are born to eternal life.

Amen.

The Sydney Male Choir today sing the famous reflection of St Francis of Assisi to the setting of Rutter 'Lord, make me an instrument of Thy peace', in memory of Jason David McCarthy.

The great Sydney Male Choir is now rehearsing at 6.15PM at Aquinas Institute Harrington Street Sydney each Tuesday and are auditioning. enquiries@sydneymalechoir.com.au

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