

Tuesday, 8 September 2015

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

 Follow @Benchmark_Legal

Search Engine

[Click here](#) to access our search engine facility to search legal issues, case names, courts and judges. Simply type in a keyword or phrase and all relevant cases that we have reported in Benchmark since its inception in June 2007 will be available with links to each case.

Executive Summary (1 minute read)

Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center) (SCC) - human rights - discrimination - no connection between company's refusal to train pilot and pilot's ethnic or national origin - appeal dismissed (I)

Perisher Blue Pty Ltd v Nair-Smith (No 2) (NSWCA) - costs - Calderbank offers - interest on costs - variation of costs orders refused (I)

Di Paolo v Salta Constructions Pty Ltd (VSCA) - choice of law - workplace injury - limitations - uniform cross-border compensation legislation - claims governed by common law of Western Australia - appeal dismissed (I C)

Richter v Driscoll (VSC) - judicial review - no error in Medical Panel's decision plaintiff had current capacity for employment - application dismissed (I G)

Rodda v Ian Rodda Pty Ltd; Ian Rodda Pty Ltd v Rodda (No 3) - (SASC) - costs - plaintiffs more than substantially successful at trial - defendants to pay plaintiffs' costs (I B)

Kezic v St John Of God Health Care Inc (WASCA) - workers compensation - applications for leave to appeal against arbitrators' interlocutory decisions dismissed (I G)

Sims v Jooste (WASCA) - costs - defamation - stay or suspension of costs order refused (I)

Siberia Mining Corporation Pty Ltd v Wilson (WASC) - judicial review - mining leases - warden's recommendation that exemption from expenditure conditions be refused set aside (I B C G)

Summaries With Link (Five Minute Read)

Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center), 2015 SCC 39

Supreme Court of Canada

McLachlin C.J. and Abella, Rothstein, Cromwell, Karakatsanis, Wagner and Côté JJ.

Human rights - discrimination - Canadian company (B) trained pilots - Canadian citizen born in Pakistan (L) held Canadian and US pilot's licences - L registered for training under US licence - US authorities refused to issue security clearance for L - B denied to train L under US licence on basis of US's refusal to issue security clearance - B also refused to train L under Canadian licence - Commission alleged B had impaired L's right to avail himself of services ordinarily offered to public and right to safeguard of his dignity and reputation without discrimination based on ethnic or national origin contrary to ss4, 10 & 12 Quebec Charter of human rights and freedoms - Tribunal agreed with Commission - Court of Appeal set aside Tribunal's decision on basis Tribunal could not find B discriminated against L without proof U.S. authorities' decision was based on ground prohibited under Charter - whether 'prima facie' discrimination established - whether connection between B's decision and L's ethnic or national origin- held: not open to Tribunal to conclude B's decision constituted prima facie discrimination under the Charter - B's decision to deny L's request for training had been based solely on US refusal to issue security clearance - Commission did not adduce sufficient evidence to show L's ethnic or national origin played any role in US authorities' refusal to issue security clearance - appeals dismissed.

[Quebec \(I\)](#)

Perisher Blue Pty Ltd v Nair-Smith (No 2) [2015] NSWCA 268

Court of Appeal of New South Wales

Gleeson JA; Tobias AJA

Costs - indemnity costs - Court allowed appeal by applicant (Perisher) - Court did not disturb primary judge's orders on specific matters - Court otherwise ordered respondent (Dr Nair-Smith) to pay Perisher's costs of proceedings on ordinary basis and half of Perisher's costs of appeal - Perisher sought variation of costs orders - Calderbank offers - interest on costs - no identification of costs directed to causation issue - s101(4) *Civil Procedure Act 2005* (NSW) - s368(5) *Legal Profession Act 2004* (NSW) - s70(5) *Legal Profession Uniform Law Application Act 2014* (NSW) - s45AA *Supreme Court Act 1970* (NSW) - rr20.26, 42.7, 42.13A, 42.14, 42.15, 42.15A, 51.47, 51.48 & 51.49 *Uniform Civil Procedure Rules 2005* (NSW) held: Perisher did not make out case for special costs order at first instance or on appeal - Perisher did not make out case for award of interest on costs as paid - amended notice of motion dismissed.

[Perisher \(I\)](#)

Di Paolo v Salta Constructions Pty Ltd [2015] VSCA 230

Court of Appeal of Victoria

Osborn & Kyrou JJA; Garde AJA

Choice of law - limitations - worker sued respondents for workplace injuries sustained in Perth - worker was resident of State of Victoria and working in Perth at time of accident - worker contended law of Victoria governed proceeding - primary judge found worker's claims against two respondents governed by substantive law, including applicable limitation periods, of common law of Western Australia, unmodified by Div 1a Pt IV *Workers' Compensation and Injury Management Act 1981* (WA) (WCIMA) - effect of finding was that worker's claims were statute-barred - worker sought leave to appeal - effect of national uniform legislation for coverage of workers operating temporarily in another jurisdiction - limitation period governing claims - ss80, 129MA & 129MB *Accident Compensation Act 1985* (Vic) (AC Act) - ss20, 93AA, 93AB WCIMA - whether trial judge misconstrued similarly-worded choice of law provisions of s129MB AC Act and s93AB WA Act.- statutory construction - purpose of amendments to AC Act which inserted choice of law provisions - held: leave to appeal granted - worker's contentions as to proper statutory construction rejected - appeal dismissed.

[DiPaolo \(I C\)](#)

Richter v Driscoll [2015] VSC 457

Supreme Court of Victoria

Zammit J

Judicial review - Medical Panel found plaintiff had a current capacity for employment with consequence she was no longer eligible for weekly compensation payments under *Accident Compensation Act 1985* (Vic) - plaintiff sought review of Medical Panel's decision - plaintiff contended Panel failed to take into account relevant considerations and to provide adequate reasons - ss3 & 5 *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) - 'suitable employment' - The Odd Lot Doctrine - role of a 'light process worker' - held: no error of law by Panel, either by failing to take into account mandatory considerations or to provide adequate reasons - application dismissed.

[Richter \(I G\)](#)

Rodda v Ian Rodda Pty Ltd; Ian Rodda Pty Ltd v Rodda (No 3) [2015] SASC 135

Supreme Court of South Australia

Nicholson J

Costs - plaintiffs successful at trial and obtained declaration of right and suite of orders including declaration farming land was held by defendants on constructive trust for them, order directing transfer of title, order for an account of rents and profits, order for equitable compensation and order for payment of unpaid trust distributions - plaintiffs sought that defendants pay whole of their costs on a party and party basis - s40 *Supreme Court Act 1935* (Vic) - held: plaintiffs more than substantially successful - order for costs on party and party basis would not likely be a full indemnity - defendants did not persuade Court to depart from general rule that costs should

follow event or find plaintiffs should be deprived of proportion of costs - orders made in terms sought by plaintiffs.

[Rodda](#) (I B)

Kezic v St John Of God Health Care Inc [2015] WASCA 182

Court of Appeal of Western Australia

Newnes & Murphy JJA

Workers compensation - appellant pursuant to s254 *Workers' Compensation and Injury Management Act 1981* (WA) (the Act) sought leave to appeal from dismissal in part of four appeals arising from arbitrators' interlocutory decisions in relation to workers' compensation claims - ss3(d), s 61, 177, 178, 185(1), 188(5), 190(1) & 267 - held: appellant did not establish any substantial injustice would be done by leaving primary judge's decision unreversed - grounds of appeal did not arguably indicate decision below was wrong or attended with sufficient doubt to justify grant of leave - circumstances of case did not justify grant of leave - applications for leave to appeal dismissed.

[Kezic](#) (I G)

Sims v Jooste [2015] WASCA 170

Court of Appeal of Western Australia

Buss JA & Beech J

Stay - suspension order - costs - appellant sued respondent for defamation - appellant's action dismissed - trial judge ordered that appellant pay respondent's costs of action - appellant sought order for stay or suspension of order until appeal judgment - s15 *Civil Judgments Enforcement Act 2004* (WA) - whether 'special circumstances' to make order - held: no 'special circumstances' to justify making of suspension order under s15 - not in interests of justice for court to exercise power to make interim order in form of stay of execution pending hearing and determination of the appeal - application dismissed.

[Sims](#) (I)

Siberia Mining Corporation Pty Ltd v Wilson [2015] WASC 322

Supreme Court of Western Australia

Allanson J

Judicial review - applicant sought exemption from expenditure conditions applicable to mining leases it held - applicant sought judicial review of warden's recommendation that exemption be refused - s436A *Corporations Act 2001* (Cth) - ss8(1), 82(1), 82(1)(c), 98, 101(2)(c), 102, 102(2), 102(2)(b), 102(2)(f), 102(3), 102(5), 102(6), 102(7) & 160(c) *Mining Act 1978* (WA) - regs 31 & 54 *Mining Regulations 1981* (WA) - whether failure to properly consider evidence - whether warden made adverse credit findings which ought to have been disclosed - held: warden erred in law in consideration of s102(2)(b) and breached natural justice - report and recommendation of warden set aside.

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

Benchmark



AR CONOLLY & COMPANY
L A W Y E R S

[Click Here to access our Benchmark Search Engine](#)