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## 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)

**Linke v TT Builders Pty Ltd (No 2)** (FCA) - costs - enforcement of costs order - evidence of disposal of assets - charging orders made - charges registered on titles of properties owned by respondent (I B C)

**Arinson Pty Ltd v City of Canada Bay Council** (NSWCA) - easements - appellants granted easements over Council's land - appellants required to pay compensation to Council - appeal dismissed (B C)

**Ping Yuan v Da Yong Chen** (NSWSC) - medical treatment - plaintiff able to give consent for collection of sperm from unconscious husband - order restraining use of sperm until further order (I)

**Re Venture Capital Group Pty Ltd (No 2)** (VSC) - contract - repudiation - dispute resolution agreement terminated - defendants entitled to damages (I B)

**D'Agostino v Greater Shepparton City Council** (VSC) - administrative law - refusal to extend time for completion of development approved under permit - appeal allowed (B C G)

**Bonney v Compass Group (Australia) Pty Ltd** (WASCA) - costs - pt XV *Workers' Compensation and Injury Management Act 1981* (WA), had no application to costs of appeal to Court - costs order made in favour of successful respondent (I)

**Parlapiano v The Registrar of Titles** (WASC) - real property - easements - application for extinguishment of easement in its entirety - requirement to place advertisement in local newspaper to provide opportunity for objection (B)

## Summaries With Link (Five Minute Read)

### **Linke v TT Builders Pty Ltd (No 2) [2015] FCA 704**

Federal Court of Australia

White J

Costs - enforcement of costs order - applicant's claim against first and second respondents resolved by applicant's acceptance of an offer of compromise - Court made orders for taxation of costs pursuant to acceptance of offer and for identification of net amount of costs to which applicant entitled - applicant sought to enforce costs order - evidence of disposal of assets by respondent - rr41.01 & 41.10 *Federal Court Rules 2011* (Cth) - *Enforcement of Judgments Act 1991* (SA) - held: in the circumstances applicant had apprehensions it would be difficult for him to enforce judgment debt - in public interest that Court's orders respected and obeyed - appropriate for Court to assist judgment creditors to enforce entitlements - respect for law would be undermined if judgment debtors could readily frustrate enforcements of judgments against them - Court satisfied it was appropriate for charging orders sought by applicant to be made and for charges to be registered on titles of two properties owned by respondent.

[Linke](#) (I B C)

### **Arinson Pty Limited v City of Canada Bay Council [2015] NSWCA 199**

Court of Appeal of New South Wales

Basten & Meagher JJA; JC Campbell AJA

Easements - Land and Environment Court granted easements to appellants pursuant to s88K Conveyancing Act 1919 over land of which respondent Council was registered proprietor - Land and Environment Court ordered appellants to pay compensation to the Council and its costs - appellants challenged decision that compensation should be paid for the easements - appellants also challenged order for costs if appeal otherwise succeeded - 'special circumstances' - onus - required reasoning process - restoration of status quo - 'blight' argument - expectation to purchase - legal policy - s55 *Environmental Planning and Assessment Act 1979* - s58(3) *Land and Environment Court Act 1979* - ss5, 6, 37, 38, 43(4) *Roads Act 1993* - r14.7 Uniform Civil Procedure Rules 2005 - held: appellants' submissions unsuccessful - question of costs did not arise - appeal dismissed.

[Arinson](#) (B C)

### **Ping Yuan v Da Yong Chen [2015] NSWSC 932**

Supreme Court of New South Wales

Fagan J

# Benchmark

Medical treatment - plaintiff sought order to facilitate collection of sperm from defendant husband lying unconscious in a critical condition at hospital - *Assisted Reproductive Technology Act 2007 - s40 Guardianship Act 1987 - Human Tissue Act 1983* - held: proposed procedure fell within meaning of "treatment" for the purposes of s40 - Court declared medical practitioners of fertility clinic could lawfully act upon consent of plaintiff with respect to extracting and storing semen - husband died 45 minutes after extraction - there was issue whether consent of husband as 'gamete provider' under Assisted Reproductive Technology Act was able to be established - declaration made that plaintiff may give consent for collection of sperm from her husband, and order restraining use of sperm until further order - directions to facilitate notification of interested parties and to permit joinder  
[PingYuan](#) (I)

## **Re Venture Capital Group Pty Ltd [2015] VSC 319**

Supreme Court of Victoria

Robson J

Contract - repudiation - plaintiff and defendants ran business - parties entered dispute resolution agreement for plaintiff to sell to defendants plaintiff's interest in business - independent expert appointed under agreement to resolve differences between two valuers of business - plaintiff unilaterally terminated independent expert's appointment on basis expert breached terms of appointment - plaintiff sought declarations that dispute resolution agreement remained on foot, further declarations and specific performance - held: plaintiff had repudiated dispute resolution agreement - defendants entitled to accept, and had accepted repudiation - dispute resolution agreement terminated - defendants entitled to damages - plaintiff's interlocutory process dismissed.

[ReVenture](#) (I B)

## **D'Agostino v Greater Shepparton City Council [2015] VSC 332**

Supreme Court of Victoria

Zammit J

Administrative law - application for leave to appeal from decision of Victorian Civil and Administrative Tribunal under s85(1)(f) *Planning and Environment Act 1987* refusing to extend time within which development approved under permit may be completed - ss69 & 81 - held: VCAT erred in law by not considering, in its exercise of s69 discretion, offsite works carried out by appellants - VCAT misconstrued nature and composition of building works and the concept of warehousing - the offsite works were evidence of commencement of development and arguably demonstrated appellants did not intend to warehouse permit - VCAT erred in making new permit decision without identifying relevant change in policy - appeal allowed

[D'Agostino](#) (B C G)

## **Bonney v Compass Group (Australia) Pty Ltd [2015] WASCA 6**

Court of Appeal of Western Australia

Newnes & Murphy JJA

Costs - respondent sought costs consequent on dismissal of appellant's appeal - appellant



contended that as appeal arose out of proceedings under *Workers' Compensation and Injury Management Act 1981* (WA) Court could not make such an order - appellant contended costs of appeal governed by pt XV, s264 of the Act under which costs order may only be made by 'dispute resolution authority' - held: appellant's submission misconceived - pt XV had no application to costs of appeal to Court but was concerned with costs of proceedings of which 'dispute resolution authority' was seised under Act and costs of appeal from arbitrator to District Court under pt XIII - costs of appeal to be determined on basis this was appeal from decision of the District Court - costs were in discretion of Court - general rule was that successful party entitled to costs - costs order made in favour of respondent.

[Bonney](#) (I)

## **Parlapiano v The Registrar of Titles [2015] WASC 253**

Supreme Court of Western Australia

K Martin J

Real property - easements - plaintiff sought order pursuant to s129C(1)(c) *Transfer of Land Act 1893* that easement burdening his land be extinguished in its entirety, or extinguished in relation to his land - held: Court satisfied it was appropriate to issue an order extinguishing part of easement over plaintiff's lot on basis his 'reasonable use' was impeded - easement no longer served any useful purpose, providing no practical benefit - easement was entirely redundant - application for extinguishment in entirety allowed in part - plaintiff required to place advertisement in local newspaper to provide chance for to provide any benefited persons chance to object to proposed extinguishment in entirety.

[Parlapiano](#) (B)

## CRIMINAL

### Executive Summary

**McGrath v The Queen** (VSCA) - criminal law - community correction order - cultivating commercial quantity of cannabis - theft - possessing cocaine - possessing prohibited weapon - leave to appeal against sentence refused

### Summaries With Link

## **McGrath v The Queen [2015] VSCA 176**

Court of Appeal of Victoria

Maxwell P, Redlich & Kyrou JJA

Criminal law - applicant pleaded guilty in County Court to one charge of cultivating commercial quantity of cannabis, one charge of theft, one charge of possessing cocaine and one charge of



possessing a prohibited weapon - applicant sought to appeal against sentence - applicant contended that because trial judge not guided by guideline judgment in *Boulton v The Queen* concerning community correction order, decision to impose custodial sentence was infected by specific error - whether case was 'CCO territory' - principle of parsimony - held: trial judge well aware of CCO as option and correctly applied principle of parsimony in concluding that seriousness of applicant's offending required substantial custodial term - as applicant had pleaded guilty to cultivating 8.5 times commercial quantity of cannabis trial judge's conclusion was well open - leave to appeal refused.

[McGrath](#)

# Benchmark

## **Winter: A Dirge**

By Robert Burns

The wintry west extends his blast,  
And hail and rain does blow;  
Or, the stormy north sends driving forth  
The blinding sleet and snaw:  
While tumbling brown, the burn comes down,  
And roars frae bank to brae;  
And bird and beast in covert rest,  
And pass the heartless day.

The sweeping blast, the sky o'ercast,  
The joyless winter-day,  
Let others fear, to me more dear  
Than all the pride of May:  
The tempest's howl, it soothes my soul,  
My griefs it seems to join;  
The leafless trees my fancy please,  
Their fate resembles mine!

Thou Pow'r Supreme, whose mighty scheme  
These woes of mine fulfil,  
Here, firm, I rest, they must be best,  
Because they are Thy will!  
Then all I want (O, do Thou grant  
This one request of mine!)  
Since to enjoy Thou dost deny,  
Assist me to resign.

[Robert Burns](#)

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