

BENCHMARK

Insurance, Banking & Construction

A Daily Bulletin listing Decisions of Superior Courts of Australia

Monday 18 February 2008

Duncan v Chief Executive Officer, Centrelink [2008] FCA 56

Federal Court of Australia

Finn J (Adelaide - heard in Perth)

Freedom of Information Act 1982 (Cth) – s9 requirement to make documents publicly available for inspection & for purchase & to publish a statement specifying those documents – Administrative Decisions (Judicial Review) Act 1977 (Cth): s13 obligation to give reasons for a decision – meaning of "decision" – requirement of a deliberative process - standing as a "person aggrieved" – necessity of an interest beyond that of an ordinary member of the public - remedies – declaratory relief – discretion to refuse relief.
[Duncan\(I\)](#)

Telstra Corporation Limited v Minister for Broadband, Communications & the Digital Economy [2008] FCAFC 7

Federal Court of Australia

French, Weinberg & Greenwood JJ (at Sydney)

Pre-suit discovery of documents – consent orders – production of documents relating to application for substantial funding for establishment of broadband network to regional & under-served areas of Australia – effect of agreement between parties – consent order made. [Telstra Corporation Limited](#) (I,B)

Heperu Pty Ltd & Ors v Morgan Brooks Pty Ltd & Ors (No 2) [2008] NSWSC 80

Supreme Court of New South Wales

Palmer J

Costs – litigant in person – whether self represented litigant should pay costs occasioned to other parties by reason of litigant's lack of legal training rather than by reason of unreasonable conduct – at par 18 of judgment:

“...If Mr Burton seeks to establish a general principle that self represented litigants should be responsible in costs for the prolongation of a trial which results solely from their lack of legal knowledge and experience, then it is, I think, for the Court of Appeal to establish such a principle rather than a trial judge. Such a principle, if established, directly affects the entitlement of litigants in person to approach the Court and conduct their own cases without fear of automatic exposure to an adverse costs order...” [Heperu](#) (I,B,C)

Islamic Assoc of Western Suburbs Sydney Inc v Dr H R K Survery [2008] NSWSC 77

Supreme Court of New South Wales
Hamilton J

Incorporated associations – Constitution & Rules - rule relating to functions of “foundation” members - whether invalid as void for uncertainty or by reason of conflict with Associations Incorporation Act 1984 – detailed consideration of principles & case law - “will be responsible for”; “the development of central projects”, “administrative and financial control” & “real estate management” – held that paragraphs (a), (b), (c) & (e) of rule 3(6) of Constitution & Rules of the Association were invalid & of no legal effect. [Islamic Assoc of Western Suburbs Sydney Inc](#) (I,B,C)

Browning v Bitupave Limited (No 2) [2008] NSWSC 81

Supreme Court of New South Wales
Harrison J

Costs - Bullock order - whether joinder of successful defendant result of conduct of unsuccessful defendant - plaintiff ordered to pay costs of successful defendant incurred in defending plaintiff's claim but with indemnity for such costs from unsuccessful defendant. [Browning \(No 2\)](#); [Browning \(No 1\)](#) –see ‘Benchmark’ Friday 1 February, 2008 - motor vehicle accident – road works in progress. (I,C)

Halwood Corporation (in liq) v Roads Corporation [2008] VSC 28

Supreme Court of Victoria
Osborn J

Land valuation - compulsory acquisition of land reserved under planning scheme for public purposes – applicant sought compensation in respect of loss of market value in its interest in land & professional expenses - aware of reservation at date of purchase – ascertainment of applicant’s interest in land at date of acquisition having regard to such reservation – valuation of land having regard to such reservation – application of the *Pointe Gourde* principle - common law principles - Land Acquisition and Compensation Act 1986 – of

Valuation of Land Act 1960 – Planning & Environment Act 1986 - Interpretation of Legislation Act 1984 - Charter of Human Rights & Responsibilities Act 2006 – at par 3 of judgment:

“The *Point Gourde* principle was described by Kirby P in Haig v The Minister Administering the National Parks & Wildlife Act 1974 85 LGERA 143, 149 - Local Government & Environmental Reports of Australia, as follows:

‘It is so named after Pointe Gourde Quarrying & Transport Co Ltd v Sub-Intendent of Crown Lands [1947] AC 565. According to the principle, which is one devised by the judges, in valuing land for resumption purposes, any increase in the land's value which is entirely due to the scheme underlying the acquisition is to be disregarded. The converse of the principle is also accepted. Any diminution in the value of land which is entirely due to the resumption scheme, or to any blight caused by a step in the resumption process, is to be disregarded in determining the value of the land...’ ” Halwood Corporation (in liq) (B,C)

Ogawa v Briggs & Ors [2008] QSC 018

Supreme Court of Queensland

Wilson J

Legal representation - cancellation of legal aid for criminal law case – grant of aid on conditions - application for judicial review – whether decisions made under an enactment. Ogawa (I)

& Three from Canada...

AB v CD 2008 ABCA 51

Court of Appeal of Alberta

Fraser CJ, Paperny & Watson JJ

Finance – “Norwich Order” – equitable bill of discovery - order sought requiring financial institutions to produce banking records – at par 17 of judgment:

“The appellant offers no valid reason why the normal discovery process will not suffice in this instance. The records sought are those held by banking institutions. This being so, there is no danger of their disappearing or being destroyed once discovery of them is sought. Nor has there been any suggestion to the contrary. Put simply, the plaintiff has not established a proper factual basis for the exercise of a court’s discretion to grant what is an extraordinary remedy – equitable discovery. To the contrary, on the fact findings made by the Chambers Judge, the plaintiff has immediate access to all of the defendant’s financial records within the limits of existing Rules of Court. This alone warrants dismissal of this appeal.” AB v CD (B)

Appin Realty Corporation, Limited v Economical Mutual Insurance Company 2008 ONCA 95

Court of Appeal for Ontario

Laskin, Moldaver & Feldman JJA

Insurance – scope of exclusion clause under policy – whether insurer compelled to defend proceedings in insured’s name – whether insured can compel insurer to brief counsel of insured’s choice – held that insurer had duty to defend claim. [Appin Realty Corporation](#) (I)

Spirent Communications of Ottawa Limited v Quake Technologies (Canada) Inc 2008 ONCA 92

Court of Appeal for Ontario

O’Connor ACJO, Gillese & Watt JJA

Contracts – lease of office space where building under construction – parties two high technology companies - appellant signed ten-year offer to lease majority of space in Ottawa office building that was being constructed - by offer to sub-lease, respondent agreed with appellant that it would sublease approximately 26,000 square feet of the building - that agreement also required that a written sublease agreement was to be finalized - no such further agreement was ever signed - delays in construction due to weather and construction mistakes - consideration of case law as to repudiation, anticipatory & fundamental breach – appeal allowed - judgment for Spirent. [Spirent Communications](#) (C)

Key: (I) Insurance; (B) Banking; (C) Construction