Court Notes

By Mark Hunter, SFNT

Romeo -v- Conservation Commission of the Northern Territory.
High Court of Australia No. D584/ 1996 (Full Court) - delivered 2 February 1998.

The appellant asked the High Court to declare the limits of the common law liability of a public authority. She fell about six metres from the top of Dripstone Cliffs onto Casuarina Beach one night in April after consuming an amount of rum mixed with cola.

The area in question forms part of the Casuarina Coastal Reserve which is managed by the respondent pursuant to the *Conservation Commission Act* 1980. The Reserve includes eight kilometres of coastline and about two kilometres of cliffs.

Dripstone Park offers facilities such as barbecues, toilets, lighting and play equipment. The area of the accident is some distance from the park and offered nothing more than a carpark bounded by log fencing to prevent erosion of the cliff edge. The trial judge found that most visitors to the clifftop area used it to view tropical sunsets in the early evening.

The appellant sustained serious injuries causing high levels of paraplegia as a result of her fall. Counsel for the appellant argued that the cliff edge should have been fenced by the respondent. The Court of Appeal found the risk of injury to be obvious and the respondent's failure to provide protection against it as not unreasonable.

HELD (McHugh and Gaudron JJ dissenting) -

1. The respondent was under a duty of care at common law to take reasonable care to avoid risks of injury to visitors lawfully visiting the reserve.
2. The respondent did not breach its duty of care to the appellant.
3. The appeal is dismissed.

(per Brennan CJ) - The cliff and its dangers were obvious to persons exercising reasonable care for their own safety. The respondent was under no duty to fence, light, erect warning signs or take other steps to protect the [public from obvious dangers.

(per Toohey and Gummow JJ) - The risk of injury existed only in the case of someone ignoring the obvious. The respondent was under obligation to take reasonable steps to prevent the foreseeable risk becoming an actuality but this did not require the fencing or illumination of about 2 kilometres of cliff line.

(per Kirby J) - The risk was obvious and because the natural condition of the cliffs was part of their attraction, the suggestion that the cliffs should have been enclosed by a barrier must be tested by the proposition that all equivalent sites for which the Commission was responsible would have to be so fenced.

(per Hayne J) - The reasonable person takes account of the fact that people do not always pay attention, do not always take care of themselves and may be affected by alcohol. The possibility of a coincidence of such an unusual combination of the circumstances did not require the fencing of the Dripstone Cliffs.

APPEARANCES

Appellant

Counsel: Waters & Southwood
Solicitors: Waters James McCormack

Respondent

Counsel: Pauling QC, Webb, Balkin
Solicitors: Solicitor for the NT

COMMENTARY

The respondent did not seek costs against the appellant. The High Court did not take up the respondent's invitation to overturn its previous decision in *Nagle -v- Rottnest Island Authority*. Brennan CJ, however, indicated his willingness to adopt this course and reinstate the test of common law negligence expressed by Dixon J in *Aitken -v- Kingsborough Corporation*.

High Court – Special Leave Applications

The following letter to the President of the Law Council, has been circulated to all law societies and is reprinted here for information:

Dear President
re: Special Leave Applications

This will confirm my verbal advice that the Court proposes a less radical lateration to its special leave procedure than the procedure which we earlier discussed.

The Court will sit only two Justices on most special leave applications. This will allow the listing of 12 cases on each special leave day (instead of 9), each Justice sitting on 8 of those cases. If, for some reason, it is desired to sit a third Justice on the hearing of a particular application, the third Justice who is not primarily allocated to the case will join his or her colleagues for that case.

Yours sincerely
Gerard Brennan
Chief Justice, High Court of Australia

Court Reporting for the Federal Court

Following is an abbreviated version of a letter also to the President of the LCA and circulated to all law societies for information:

I am writing to advise that the Court has entered into new contractual arangements for the provision of court reporting services for the Courtand parties to proceedings.

The major change is that these services will now be provided by two contractors, in lieu of the previous sole contractor (Auscript). The new contractors will supply services on a state or territory basis as follows:

Auscript
NSW - Queensland - Tasmania - ACT - Northern Territory

Spark & Cannon Pty Ltd
Victoria - South Australia - Western Australia

Although there will be a marginal increase to the price of transcript, it is considered that the new contractual arrangments will provide a better long term outcome for both parties and the Court as a result of an additional supplier in the national market. [...]The new arrangements will also recognise the increasing move to the use of electronic transcript in either paper or electronic form.

The new arrangements will come into effect at the start of the 1998 Law Term.

Warwick Soden, Registrar, Federal Court of Australia