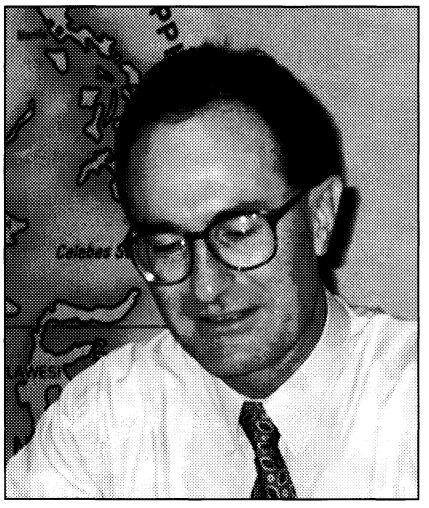
case notes with mark hunter



Mark Hunter

Richmond Valley Council v Standing

NSW Court of Appeal No. CA 40999/01

Judgment of Heydon JA, Handley and Sheller JJA agreeing, delivered 4 November 2002

TORT - NEGLIGENCE - PEDESTRIAN "TRIP HAZARDS"

The 62 year old plaintiff tripped in broad daylight and injured herself when in June 1997 the toe of her left shoe went into a 15mm deep *"crack, gap or hole"* in a concrete footpath outside the Casino High School. She was awarded substantial damages by Blanch J at trial.

The plaintiff had only used the particular footpath on two prior occasions and the trial judge accepted that she was taking ordinary care in walking along. Two experts were called by the plaintiff. Their evidence was that the footpath posed a significant *"trip lip hazard"* and a *"hidden trap"* to the plaintiff, taking into account *"cognitive and perceptual ergonomics"*.

The defendant admitted knowledge of the high traffic footpath in question but claimed that the danger was not great enough to warrant immediate repairs, given the Council's budgetary constraints. The prioritised replacement of footpaths was the defendant's preferred approach.

HELD

1. Appeal allowed / Statement of Claim dismissed with costs.

Their Honours determined that the defendant's failure to repair the footpath did not create a *"foreseeable risk of harm to pedestrians"* if they were *"exercising reasonable care for their own safety"* - *Brodie v Singleton Council* and *Ghantous v Hawkesbury City Council (2001) 206 CLR 512.*

The Court of Appeal observed:

> *"The reasoning* (of the plaintiffs' expert witnesses) *appears to be that the hole in the crack was a trip hazard because if the plaintiff did not see it she was capable of tripping on it, and she did not see it."*

Their Honours noted that the damaged nature of the footpath was plainly apparent and that the plaintiff had admitted observing prior to her accident that the footpath was damaged.

The Court of Appeal found no hidden traps in the footpath, and no duty of care owed by the defendant to the plaintiff. There was no evidence of a history of accidents or complaints concerning the footpath.

Their Honours determined that the defendant was under no duty to inspect, identify or rectify footpath conditions of the type encountered by the plaintiff. Heydon JA observed:

> *"So far as there was any hazard it was both not only obvious but insignificant and common. The condition of the pavement was typical of innumerable kilometres of pavements in the cities, suburbs and towns of this country".*

APPEARANCES

Appellant: Joseph SC and Glascott / Phillips Fox

Respondent: Campbell / Mitchell, Playford and Radburn.

COMMENTARY

This decision is one of four footpath injury judgments delivered by the NSW Court of Appeal this year. Two were heard during the same week in August, and judgments in three of the appeals were handed down on 4 November. In all four cases the pedestrian failed on appeal.

The judgment of the High Court in the (jointly heard) appeals of *Brodie v Singleton Council* and *Ghantous v Hawkesbury City Council* (2001) 206 CLR 512 is assisting public authorities in this type of negligence proceeding.