



Magistrates' Court
Victoria

MAGISTRATES CASES 2008

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SUBJECT MATTER

ADMINISTRATIVE LAW

Delegation of power to a discretionary authority - Act provided that Regulations may confer a power on a person - delegation of power to Departmental Secretary valid - court not in error in convicting person in breach of the Regulation: 47/08

BAIL

- **application for** - applicant to show cause why detention not justified - unreasonable delay before trial
 - may spend more time in custody than probable sentence - bail granted - parity with co-accused
 - difficult to achieve: 07/08
- **application for** - long delay in matter coming on for trial - accused in custody for revocation of parole
 - *Charter of Human Rights and Responsibilities Act* to be read within relevant provisions of the *Bail Act* - application for bail refused: 52/08

CIVIL PROCEEDINGS

Accident Compensation claim - employee injured at place of employment - whether "in the course of" employment - magistrate in error in finding it was sufficient if injury occurred at place of employment during prescribed work hours: 36/08

Application for adjournment - delay on part of plaintiff - had reasonable opportunity to present case - reasons for adjournment not convincing - magistrate not in error in refusing application for an adjournment: 40/08

Bill of Exchange (cheque) - cheque dishonoured - complaint issued under *Instruments Act* - application to magistrate for leave to defend - application allegedly out of time - application granted - question of fact not law - magistrate not in error: 33/08

Claim by beneficiary of superannuation fund against trustee - evidence did not support the claim - magistrate in error in making an award on the claim - *Jones v Dunkel* - inference to be drawn - magistrate drew impermissible inferences: 58/08

Claim for debt plus interest and costs - finding by magistrate that proceedings should not have been commenced against party - open to magistrate to make an award of indemnity costs - award of interest where delay in taking proceedings - Sanderson order: 48/08

Claim for rectification - tiles damaged by cleaning product - magistrate not in error in preferring one expert over the other - quotes tendered without objection - magistrate entitled to rely on quotes: 06/08

Contract for sale of business - time of the essence - deposit paid - notice of rescission served - party did not elect to rescind contract - magistrate not in error in ordering return of deposit: 09/08

Contract for sale of motor vehicle - sale between car dealers - dealer allowed another person to trade until LMCT licence obtained - magistrate not in error in finding that defendant not a party to the contract: 41/08

Costs - matter under *Accident Compensation Act* - professional costs determined by Deputy registrar by reference to County Court Scale - Deputy Registrar in error - magistrate correct to fix quantum of costs: 34/08

Debt - monies advanced in two amounts - some repayments made - whether amount paid should be applied to the oldest debt - magistrate not in error in finding that as both debts were sought to be recovered by the one demand, payments were against both debts and accordingly not statute-barred: 18/08

Domestic building dispute - Deed of Indemnity had clause which required that the builder be informed promptly of the proposed settlement of any claim - claim settled by Insurance company with home owner - builder not informed - magistrate in error in holding otherwise: 45/08

Employer and employee - employee's employment terminated by company - whether terminated for redundancy - legal test for "redundancy" - magistrate not in error in finding position redundant: 19/08

Legal practitioner - lump sum bills rendered - client requested itemised bill in respect of one bill - if such bill not sought in respect of other bills solicitor may recover amounts owing - rehearing application - no defence on the merits - magistrate not in error in refusing application to rehear: 57/08

SUBJECT MATTER

- Negligence** - collision between motor vehicle and tram - economic loss sustained by tramway operator - penalties payable to third party as a result of tram out of use - "kind or genus" - magistrate not in error in finding loss not reasonably foreseeable: 12/08
- Negligence** - collision between truck and tram - economic loss sustained by tramway operator - penalties payable to third party as a result of trams being diverted - 'no case' submission - magistrate applied wrong test - *res ipsa loquitur* - magistrate not in error in refusing to apply doctrine: 13/08
- Negligence** - personal injury - heavy grille in schoolyard lifted by pupils - pupil injured when grille dropped - no warning signs erected - whether there had been a departure from the duty of reasonable care owed by school to pupils: 14/08
- Negligence** - property damage caused as a result of water flowing from spa in room - claim for damage done - flow of water was not from land of another - provisions of *Water Act 1989* did not apply - award of damages correctly made - Calderbank Offer - magistrate correct in making usual order as to costs: 05/08
- Negligence** - property valuation report overvalued - action taken in County Court - action settled - claim taken in Magistrates' Court - test of causation - magistrate not in error in dismissing claim: 08/08
- Particulars of Defence** - particulars of defence will depend on the allegation pleaded - application by plaintiff to have defence struck out for want of particulars - no error by magistrate in refusing the application but ordering that further and better particulars be filed and served - no error in ordering that applicant pay costs of the application: 15/08
- Practice and procedure** - case proceeded not precisely according to the pleadings - defendant not taken by surprise - party had reasonable opportunity to respond to plaintiff's case - no procedural unfairness - no error by magistrate in making order on the claim: 44/08
- Sale of business** - false or misleading representation made to purchasers - vendors liable for loss incurred: 39/08
- Sale of business** - purchaser unable to raise necessary funds - letter sent requesting extension of time otherwise contract at an end - no reply to letter by vendor - relationship continued between parties - money not forthcoming - business sold to third party and loss incurred - magistrate correct to find original purchasers liable - common law estoppel discussed: 43/08

COSTS

- Claim for debt plus interest and costs** - finding by magistrate that proceedings should not have been commenced against party - open to magistrate to make an award of indemnity costs - award of interest where delay in taking proceedings - Sanderson order: 48/08
- Costs in motor vehicle collision proceeding** - finding that proceedings issued in wrong name - application to order costs against solicitor personally - application granted - no error: 22/08
- Costs on dismissal of charges** - all charges dismissed against one defendant some dismissed against other - whether defendants were "successful" - magistrate not in error in refusing order for one defendant and ordering informant to pay for one day's costs for second defendant: 17/08
- Costs** - matter under *Accident Compensation Act* - professional costs determined by Deputy registrar by reference to County Court Scale - Deputy Registrar in error - magistrate correct to fix quantum of costs: 34/08
- Offer of Compromise** - offer not accepted - Calderbank Offer - magistrate correct in making usual order as to costs: 05/08

CRIMINAL LAW

- Accident Compensation claim** - claimant failed to notify doctor of current work commitments - doctor certified person as unfit for work and entitled to payments - magistrate not in error in finding that person fraudulently obtained payments: 53/08
- Assault** - indecent assault - consent - defendant suffering from Asperger's Syndrome - prosecution required to establish beyond reasonable doubt that the complainant was not consenting or might not be: 01/08
- Child pornography** - cartoon figures modelled on *The Simpsons* - finding that they depict "a person" - magistrate not in error in finding charge proved: 56/08
- Duplicity** - accused charged with one charge alleging three separate acts - principles of duplicity - charge proved - magistrate not in error: 32/08
- Graffiti offences** - sentencing - immediate imprisonment within range on sentencing: 04/08
- Insulting language/behaviour in a public place** - context of the behaviour is important - police officers properly required to intervene - subjected to a barrage of insults - magistrate correct to convict: 10/08
- Police rights and duties** - police officer disclosed information contained in the Victoria Police Manual - source and scope of police officer's duty - magistrate not in error in dismissing charge: 28/08
- Use of an optical surveillance device** - installed by publican in hotel staff locker directed at the staff shower stalls - finding by magistrate that the defendant had installed the device in order to observe a private activity without consent of the person involved - defendant convicted and fined - no error: 42/08

EVIDENCE

- Application to admit statement of dead person** - factors to consider when such application made - deceased

SUBJECT MATTER

was at senior management level and affected by material interest - application refused: 37/08

Duplicity - accused charged with one charge alleging three separate acts - principles of duplicity - charge proved - magistrate not in error: 32/08

Evidence in the form of an emailed Certificate from Roads Corporation - whether best evidence rule applies - magistrate not in error in relying on certificate to find charge proved: 23/08

INSURANCE

Mutual corporation limited by guarantee - mutual offerings described as offerings - corporation not an insurance company - magistrate not in error in so finding: 03/08

LOCAL GOVERNMENT

Register of Councillors' interests - councillor failed to provide return of interests - gifts received by councillor - not declared - magistrate not in error in finding charge proved: 02/08

MOTOR TRAFFIC

- Drink/driving

- **Blood sample taken from driver of motor cycle** - reading of 0.131% BAC - statement in record of interview that driver drank 4-5 pots of beer prior to the collision - no expert evidence given as to effect of consumption of that quantity of alcohol - finding by magistrate that driver not in excess of 0.05% BAC - charge dismissed - magistrate in error: 24/08

- **Breath test** - driver conveyed to police station - test taken - reading 0.127% BAC - driver told he could not have second test - told he could have blood test but reading could be higher - operator not called at hearing - certificate or operation of instrument not challenged - driver not unfairly treated - no error in convicting: 25/08

- **Charges under s49(1)(b) and (f) laid** - nothing inappropriate in laying both charges - reading on s49(1)(b) charge read down by magistrate and no order made by magistrate against defendant's driver licence - magistrate not in error in finding both charges proved - magistrate in error in dismissing s49(1)(f) charge: 59/08

- **PBT test** - driver's breath contained alcohol - driver requested to accompany police to station for full breath test - driver agreed - invited to travel in rear of divisional van - driver objected - matters to consider whether requirement to accompany was valid - magistrate in error in dismissing charge: 31/08

- **Request for documents about breathalyser** - question is whether there was a reasonable possibility that access to the documents would materially assist the defendant in defending the charge - not a fishing expedition - magistrate in error in refusing application: 50/08

Speeding charge - infringement notice given - certificate produced at hearing - effect of certificate - magistrate in error in dismissing charge: 30/08

NATURAL JUSTICE

Application for adjournment - delay on part of plaintiff - had reasonable opportunity to present case - reasons for adjournment not convincing - magistrate not in error in refusing adjournment - no injustice to plaintiff: 40/08

Application for person to undergo a compulsory procedure - magistrate did not view VATE tape prior to granting application - tape not transcribed and tape did not provide any exculpatory material - magistrate not in error in granting application - no breach of rules of natural justice: 20/08

Costs in motor vehicle collision proceeding - finding that proceedings issued in wrong name - application to order costs against solicitor personally - solicitor given adequate time to make submission to court - solicitor not denied natural justice - application granted - no error: 22/08

Practice and procedure - case proceeded not precisely according to the pleadings - defendant not taken by surprise - party had reasonable opportunity to respond to plaintiff's case - no procedural unfairness - no error by magistrate in making order on the claim: 44/08

Procedural fairness - judge failed to inform counsel that sentence of imprisonment contemplated - counsel believed that only question was whether conviction should be imposed or not - defendant denied procedural fairness: 04/08

Procedural fairness - person charged with drink/driving offence - allegedly told by operator that if blood test taken could produce a higher result - operator not called to give evidence - reading of 0.131% BAC - due to high reading less likely for blood test to have assisted defendant - no unfairness in the circumstances: 25/08

PRACTICE AND PROCEDURE

Abuse of process - defendant at committal proceedings - claim that prosecuting authorities allowed accused's extradition to Australia whilst application to European Court of Human Rights pending - nature of committal proceedings - not amenable to doctrine of abuse of process - no abuse of process in proceedings: 49/08

Abuse of process - defendants committed for trial on indictable charges and summary offences adjourned *sine die* - stays granted on committal charges - summary offences brought on for hearing - magistrate

SUBJECT MATTER

correct to refuse to permanently stay hearing of summary charges: 29/08

Abuse of process - charges under s49(1)(b) and (f) of *Road Safety Act 1986* laid - nothing inappropriate in laying both charges - not an abuse of process - reading on s49(1)(b) charge read down by magistrate and no order made by magistrate against defendant's driver licence - magistrate not in error in finding both charges proved - magistrate in error in dismissing s49(1)(f) charge: 59/08

Access by accused to documents - accused must show that there is a reasonable possibility the documents sought will materially assist the defence - documents not used by prosecution - magistrate correct in ruling that such documents should be produced: 11/08

Application for person to undergo a compulsory procedure - magistrate did not view VATE tape prior to granting application - tape not transcribed and tape did not provide any exculpatory material - magistrate not in error in granting application: 20/08

Application for person to give evidence via video link - matters to consider where such application made - accused has no fundamental right to confront in court witnesses who give evidence - not established that witness would be physically and mentally unable to give evidence in trial - application refused: 35/08

Application for rehearing - interlocutory in nature and not a final order - not appealable: 60/08

Charge-sheet and summons - requirement that copy be served on defendant - copy summons served was not a true copy of the summons filed with the Registrar - summons erroneously struck out by magistrate - no requirement to serve copy of summons filed: 16/08

Consent to summary jurisdiction at committal mention - defendant sought to later withdraw consent - magistrate rejected request following Chief Magistrate's Practice Direction - magistrate in error: 27/08

Costs on dismissal of charges - all charges dismissed against one defendant some dismissed against other - whether defendants were "successful" - magistrate not in error in refusing order for one defendant and ordering informant to pay for one day's costs for second defendant: 17/08

Infringement offence - failure to comply with fire prevention notice - summons issued - not a "charge" - must have certain particulars set out in the summons - summons contained sufficient description - magistrate not in error in finding matter proved: 55/08

Pleadings - case proceeded not precisely according to the pleadings - defendant not taken by surprise - party had reasonable opportunity to respond to plaintiffs' case - no procedural unfairness - no error by magistrate in making order on the claim: 44/08

Reasons for decision - function of reasons differs where question one of fact or one of law - reasons may not be required if a question of law - magistrate may be in error if reasons not given on questions of fact: 06/08

Reasons for decision - magistrate gave reasoned decision including facts, the arguments of the parties and the applicable legal principles - adequate reasons: 29/08

Reasons for decision - magistrate made finding in civil proceedings without giving reasons - magistrate in error: 46/08

Suppression order - publication of identification of "Witness A" prohibited - order posted on court door - no error in referring to witness by that designation - order proscribing publication outside Victoria - magistrate in error: 54/08

Suppression Order - application to set aside order that defendant defend action by use of a pseudonym - case in interlocutory stages - different considerations apply to full hearing - order to remain in place for the time being: 51/08

SENTENCING

Community-based Order - various conditions attached to CBO - such conditions *ultra vires* and liable to deletion - CBO made for offence not punishable by imprisonment - magistrate in error: 21/08:

Graffiti offences - sentencing - damage almost \$53,000 - immediate imprisonment within range on sentencing for such offence: 04/08

Riot - matters to consider where person charged with riot - double punishment - court not bound to take account of fact that prosecution may have been selective in laying of charges - parity - principles of: 38/08

Suspended sentence breached - Court must restore the sentence held in suspense and order defendant to serve it unless there are exceptional circumstances - magistrate in error in failing to articulate exceptional circumstances and failing to restore the suspended sentence: 26/08

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Suppression order - publication of identification of "Witness A" prohibited - order posted on court door - no error in referring to witness by that designation - order proscribing publication outside Victoria - magistrate in error - presumption as to acts done outside territory of legislation: 54/08

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