



Magistrates' Court
Victoria

MAGISTRATES CASES 1994

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SUBJECT MATTER

ANIMALS

- Dog on lead- moved 3-4 inches - bit child - “attack” - not an attack - owner of dog not guilty: 41/94

BAIL

- conspiracy/incitement to murder - premeditated - strong case - defendant in show cause situation - trial 3 months away - strong case - numerous priors - magistrate in error in fixing bail - failure to include reasons in order - grant of bail a nullity: 25/94
- summary offence - not appropriate to impose special conditions for collateral purpose: 23/94

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- jurisdiction to hear indictable offences - must be exceptional circumstances to decline to hear - must consider all relevant circumstances: 35/94
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- Barrister's fees - counterclaim beyond court's jurisdiction - Rules not suspended during settlement negotiations - interest: 38/94
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- Claim/counterclaim struck out with right of reinstatement - terms of settlement not executed - matter may be reinstated: 33/94
- Consumer credit - money lender - re-financing agreement - agreement illegal - “agent”: 11/94
- Costs - claim/counterclaim dismissed - overall counterclaimant successful - awarded costs - no error: 24/94
- Costs - sensible course not adopted by party - expense and inconvenience incurred - costs awarded on solicitor/client basis: 12/94
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- Discovery - test to be applied in ordering - bias - duty of Magistrate to caution legal practitioner dissenting: 36/94
- Motor vehicle collision - truck turning left - breach of Regulation - effect - whether contributory negligence: 51/94
- Motor vehicle collision- vehicle not repaired at date of hearing - interest not to be allowed: 9/94
- Motor vehicle collision - with mobile car wash - not *res ipsa loquitur* - not negligent driving - not necessary for Magistrate to have a view of the car wash: 50/94
- Negligence - golf course near busy road - golf ball struck motor car - damage caused - golf course owner liable for damage: 10/94
- Rehearing - notice sent to wrong court - interest awarded in excess of amount sought in request - order not irregular: 47/94
- Stay of proceedings - interstate court more appropriate - statutory criteria not exhaustive - discretion: 17/94
- Venue - agreed to by parties - adjourned to another court by Magistrate - Magistrate in error: 15/94

CRIMES COMPENSATION

- assault - broken dentures, bruising to body and face 25% loss of vision in one eye - award \$5,000: 1.17/94
- assault - bruising and lacerations to head and body - award \$2,500: 1.11/94
- assault - bruising to jaw, chest and arms and cut to jaw - award \$1,800: 1.10/94
- assault - ear bitten off during scuffle award \$10,000: 1.5/94
- assault - injury to nose - report to police incomplete - unco-operative with police - application dismissed: 1.4/94
- assault - kick to shoulder causing permanent residual injury - award \$4,500: 1.9/94
- assault - musculo-ligamentous strain of cervical spine - award \$3,000 - post-traumatic stress disorder - award \$4,000: 1.1/94
- assault on applicant's husband - PTSD - award \$2,500: 1.2/94
- assault - slashed to head/neck whilst in prison - numerous priors inc.violence - application refused:1.8/94

SUBJECT MATTER

- attempted robbery - PTSD - \$4,000: 1.6/94
- daughter raped and murdered - PTSD - award \$12,500: 1.15/94
- drunk and disorderly person in 8-yr- old applicant's home - PTSD - award: \$4,500: 1.16/94
- funeral expenses - award allowed for head stone, shroud, attire, catering and grave plot: 1.13/94
- incest - 6 separate acts - award increased for each act - total award \$54,000: 1.7/94
- "injury" - post-traumatic stress disorder - mental disorder within meaning of "injury": 1/94
- son sexually abused by de-facto - emotional distress and depression - award \$3,500: 1.14/94
- stabbed with knife - severe injuries - award \$12,500 but reduced to \$7500 due to applicant's contributory behaviour: 1.3/94
- witness to murder - PTSD - award \$4,500: 1.12/94

CRIMINAL LAW

- bail - conspiracy/incitement to murder - premeditated - strong case - unacceptable risk - magistrate in error in granting bail: 32/94
- bail - show cause situation - strong case - numerous priors - trial 3 months away - magistrate in error in fixing bail - failure to include reasons in order - grant of bail a nullity: 25/94
- bail - summary offence - not appropriate to impose special conditions to achieve collateral purpose: 23/94
- causing injury intentionally or recklessly - two separate offences: 55/94
- committal proceedings - hand-up brief - no witness required - may not subsequently require witness to attend at committal: 56/94
- costs on dismissal - types of costs orders available - may apply test of just and reasonable: 37/94
- order entered in Register - no application made for costs - cannot apply for costs later: 62/94
- costs on striking out - relevant considerations - justification for making of order: 61/94
- dog bit child - dog on lead - could only move 3-4 inches - "attack" - no attack: 41/94
- plea of guilty - dispute with summary - not open to Magistrate to decline to deal with - "Conviction" - meaning of: 49/94
- possess/use cannabis - used whilst in parked car - not "in connection with the driving of a motor vehicle" - no power to affect driver licence: 27/94; 60/94
- proper venue - serious indictable offences to be heard in locality where occurred: 48/94
- search warrant - form of warrant - offence/articles sought should be particularised: 54/94
- theft - labels changed - lower price paid - dissociative disorder - whether related to intention - whether dismissal open: 53/94
- transfer of prisoner interstate - "harsh or oppressive": 39/94
- victim impact statement - procedure - victim may be legally represented - Prosecutor should assist victim: 29/94
- victim of sexual offences - identification of - child -unable to give effective permission to disclose identity - who may give permission - defence of honest and reasonable belief not available: 59/94

LANDLORD AND TENANT

- Lease expired - premises vacated - arrears of rent - jurisdiction in Magistrates' Court - reference to arbitration not necessary: 44/94

MONEY LENDERS

- consumer in arrears - re-financing agreement signed - a "borrowing of money" - "agent" - agreement illegal: 11/94

MOTOR TRAFFIC

- Drink/driving

- blood sample taken - charged under s49(1)(b) and (g) - charge under s49(1)(g) dismissed - not double jeopardy to convict on other - presumption of continuance can apply: 22/94
- brother's name given - misnomer - charge should be amended: 26/94
- certificate containing ambiguity - "12am" - evidence admissible to resolve ambiguity: 20/94
- identification of driver - certificates tendered - linked with driver/defendant - not contradicted - defendant properly convicted: 45/94
- PBT device mispronounced - not relevant - "Require" - not necessary for instrument to be set up and ready for use: 2/94
- refusal to accompany for breath test - reason - dog due for daily pill - no reason of substantial character - no defence of necessity - sufficient requirement: 52/94
- requirement to furnish sample - made informally - sufficient compliance with RSA - element of offence omitted from charge - should be amended: 18/94
- requirement to furnish sample - "come with me" - not sufficient - operator must give evidence that instrument of approved type: 19/94
- requirement to go to police station - police officer must reasonably believe defendant was driver of vehicle - evidence of breath test to be excluded: 21/94
- sample of breath - meaning of - presence of stomach vapours do not make out defence: 30/94
- standard alcohol solution destroyed - defendant not deprived of a defence - no abuse of process: 14/94
- driver assaulted/vehicle damaged - not offences "in connection with the driving of a motor car" - no order against licence: 58/94
- driving whilst licence suspended - prior for similar offence - no power to impose a fine: 28/94
- fail to stop/render assistance/report to Police - not absolute/strict liability offences - honest and reasonable belief not available - must be damage to property - aggregate fine open: 13/94
- possess/use cannabis - in parked car - not "in connection with the driving of a motor vehicle" - no power to affect driver licence: 27/94; 60/94

NATURAL JUSTICE

- Bias - evidence rejected on demeanour - no reasons given - prejudgment - denial of natural justice - no waiver: 16/94
- Bias - dissent from ruling by legal practitioner - duty of Court to caution practitioner - no bias on part of Magistrate: 36/94

SUBJECT MATTER

NEGLIGENCE

- Golf course near busy road - motor car struck by golf ball and damaged - golf course owner liable: 10/94
- Motor vehicle collision - not repaired at date of hearing - interest not to be allowed: 9/94
- Motor vehicle collision - with mobile car wash - lights not easily seen - not negligent driving - *res ipsa loquitur* rule not applicable - not necessary for Magistrate to have a view: 50/94
- Motor vehicle collision - with left-turning truck - Reg breached - effect - whether contributory negligence: 51/94

PRACTICE AND PROCEDURE

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- adjournment application for civil matter - no error in refusing with liberty to apply: 12/94
- amendment of charge - matter of defence involved - appropriate to amend: 18/94
- amendment of charge - brother's name given - charge should be amended: 26/94
- committal proceedings - witness not required - effect - no right to later require examination of witness: 56/94
- consent to summary jurisdiction - must be entered in records: 49/94
- "conviction" - meaning of: 49/94
- costs on dismissal - several types of costs orders available - may order what is just and reasonable: 37/94
- costs - dismissal order entered in Register - cannot subsequently apply for costs: 62/94
- costs on striking out - relevant considerations - justification for making of order: 61/94
- discovery prior to action - available in arbitration proceedings - otherwise discovery/interrogatories not available: 42/94
- discovery - test to be applied - dissent from ruling by legal practitioner - duty of Court to caution: 36/94
- "exceptional circumstances" - means circumstances which rarely occur, outside reasonable anticipation or expectation: 43/94
- natural justice - witness' evidence rejected on demeanour - no reasons given - prejudgment - denial of natural justice: 16/94
- 'no case' submission - test to be applied: 18/94
- plea of guilty - "conviction" - meaning - Magistrate must deal with matter: 49/94
- proper venue - agreed to by parties - Magistrate in error in adjourning to another Court: 15/94
- proper venue - serious indictable offences - should be heard locally: 48/94
- rehearing - notice of defence sent to wrong court - no rehearing - interest allowed in excess of amount claimed - not irregular: 47/94
- search warrant issued by Magistrate - Magistrate should not have to answer interrogatories concerning circumstances of issue: 4/94
- Search warrant - form of warrant - offence/articles sought should be particularised: 54/94
- sentencing - breach of suspended sentence - may be heard by any Magistrate: 31/94
- stay of proceedings - interstate court said to be more appropriate - statutory criteria not exhaustive: 17/94
- struck out with right of reinstatement - terms of settlement not executed - matter may be reinstated: 33/94
- summons short-served - court not deprived of jurisdiction - resignation of magistrate part-heard - may be resumed by another - summons struck out may be re-instated: 46/94
- summons to produce documents - objection to production - tests to be applied - procedure to be followed by court: 40/94
- suppression order - media to be heard on making of - media not a party to proceedings - not entitled to issue witness summons: 6/94
- suppression order - cannot be interim if under *Health Act* 1958 s129 - "social consequences": 7/94
- transfer of prisoner interstate - "harsh or oppressive": 39/94

SENTENCING

- aggregate fine - open where continuing episode: 13/94
- cannabis - has harmful effects: p. 231
- causing injury intentionally/recklessly - two separate offences: 55/94
- driving whilst licence suspended - prior conviction for similar offence - no power to impose a fine: 28/94
- intensive correction order - breached - "vary the order" - meaning - cannot impose suspended sentence - "commit to prison": 57/94
- plea of guilty - factor to be taken into account: 3/94
- possess/use cannabis - in parked car - not "in connection with the driving of a motor vehicle" - no power to affect driver licence: 27/94; 60/94
- suspended sentence breached - may be heard by any Magistrate: 31/94
- victim impact statement - procedure discussed - role of Prosecutor - victim may be legally represented: 29/94

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