Supreme Court of Victoria

Slaveski & Ors v Austin Health [2010] VSC 493 (22 October 2010)

Last Updated: 1 November 2010

IN THE SUPREME COURT OF VICTORIA	Not Restricted

AT MELBOURNE

COMMON LAW DIVISION

PRACTICE COURT

No. 5589 of 2010

SLAVESKI & ORS — Plaintiff

v

AUSTIN HEALTH — Defendant

JUDGE:	DIXON J
WHERE HELD:	MELBOURNE
DATE OF HEARING:	14, 15 & 22 OCTOBER 2010
DATE OF JUDGMENT:	22 OCTOBER 2010
CASE MAY BE CITED AS:	SLAVESKI & ORS v AUSTIN HEALTH
MEDIUM NEUTRAL CITATION:	[2010] VSC 493

PRACTICE AND PROCEDURE – Injunction – to restrain or require medical procedure – *Parens patriae* jurisdiction – unconscious patient following catastrophic brain stem haemorrhage resulting in irreversible coma

MEDICINE – Injunction to restrain or require medical procedure – Unconscious patient following catastrophic brain stem haemorrhage resulting in irrevocable coma.

APPEARANCES:	Counsel	Solicitors
For the Plaintiff	In person on 14 & 22 October, 2010 Mr M. Gronow, of counsel on 15 October, 2010	JP Sesto & Co on 15 October, 2010
For the Defendant	Mr P.B. Halley	DLA Phillips Fox
Amicus curiae:	Mr M. Wells	Office of the Public Advocate

HIS HONOUR:

1 In this proceeding I have before me an application initially made orally by Mr Ljupco Slaveski acting on his own behalf and without any Motion or affidavit in support in the Practice Court in the early evening of 14 October 2010.

2 In opening the application, Mr Slaveski expressed his concern about the treatment of his father Mr Dragan Slaveski who apparently is an inpatient at the Austin Hospital, having suffered a massive stroke a couple of days earlier. He was, I was told, unconscious, and the hospital was threatening to "pull the plug" at 10.00 am the following morning despite there being some prospects that he would recover. Mr Slaveski appeared to be complaining in particular about the conduct of a Dr Daryl Jones, a specialist medical practitioner in the intensive care unit at the hospital. He asserted Dr Jones said the plug will be pulled because "you don't have a court order to stop me".

3 I was unable to discern any relevant material facts from the somewhat hysterical and theatrical performance of Mr Slaveski in the course of the hearing that evening. It appeared to me that the application could have been as much about Mr Slaveski's needs as those of his father. There did not appear to be any rational basis for Mr Slaveski's expressed fears. In fact he did not appear rational in Court. There was no affidavit and I did not then require Mr Slaveski to give evidence. He spoke from the well of the Court and handed to me a one page sheet with printed information about "The Brain Stem" and his handwritten notes which said "At 10 am he is taking the tubes and plug - We said no – He said we'd need a court order – I said you do that and we'll sue you and your whole family – He said don't you threaten".

4 The application was stood down while two matters were pursued. First, an arrangement made for the Prothonotary, Mr Rodney Ratcliffe, to make contact with the Austin Hospital. Second, Mr Slaveski was asked to arrange for his mother and brothers to attend Court.

5 Upon the Court resuming, Mr Ratcliffe stated in open court that he had contacted the corporate counsel for Austin Health, Ms Margaret Kingston, by telephone. He explained what he had been told in that conversation by Ms Kingston concerning the circumstances of Mr Dragan Slaveski. As matters have developed it is not necessary to record all of the information then provided save to state that Ms Kingston informed Mr Ratcliffe that the procedure scheduled for 10.00 am did not involve "pulling the plug" on Mr Slaveski senior and it did not necessarily need to proceed at that time. Rather, the medical staff considered it in his best interests that a tube which had been inserted into his trachea to maintain his airways and facilitate his unassisted breathing ought be removed. It was also considered to be in the interests of family members that a time be nominated for that procedure to occur.

6 Further, clinical notes and photocopies of investigative film were provided to the Court by fax and copies of these documents were given to Mr Slaveski. In addition to admission notes, observations, etc., they recorded the views of a case committee which had considered Mr Slaveski's prognosis and ongoing management and conveyed to the family that he had no realistic prospects of survival and that the medical staff recommended he

be permitted to die with dignity.

7 Mr Slaveski's mother and brother were now in Court and informed me that they supported the application being made. Mrs Slaveski appeared not to speak English well and other family members assisted by translating the proceedings to her. Before Court rose for the day, Mr Slaveski's cousin, Mr Sasho Slaveski arrived at Court and I was informed he was a solicitor with JP Setso & Co. I explained again to Mr Sasho Slaveski the order the Court proposed to make. I also drew attention to its limited application temporally, and the desirably of both proper material to support the application and legal representation for the plaintiffs to advance it beyond 4.00 pm on the following day.

8 To obtain relief from a court of the kind sought, plaintiffs must demonstrate that there is a serious question to be tried. They must prove, prima facie, a sufficient likelihood of success to justify, in the circumstances, the preservation of the status quo pending trial. In the context of this case Mr Slaveski would ordinarily be required to show that the plaintiffs, or Mr Slaveski senior, have a putative legal or equitable right in respect of which final relief is to be sought, which will justify restraining the proposed medical procedures. Australian Broadcasting Corporation v O'Neill.[1] See also Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd.[2]

9 Although no serious question for trial was being revealed at this stage, at least in relation to the position of the plaintiffs, several matters caused me concern. The first was the fact that Mr Slaveski was legally unrepresented, irrational, most likely grief stricken, and plainly concerned for his own father. His mother and brother supported his application. The second matter was that the relevant material facts were not clear but what was clear was that there was no immediate need for the hospital to act at 10.00 am the following morning and it was, apparently, prepared to defer any procedure. It was not suggested to Mr Ratcliffe, in response to his inquiry, that any deferral would have any significant negative impact on the welfare of Mr Slaveski in the short term. However, I did not find myself in a position at that time to draw any conclusions either way as to what might be in the best interests of Mr Slaveski senior. The third matter was that it was possible an attempt was being made to invoke, in respect of Mr Slaveski senior, the parens patriae jurisdiction of the Court.

10 Acting on the basis that I should "take whichever course appears to carry the lower risk of injustice if it should turn out to have been wrong, in the sense of granting an injunction to a party who fails to establish his right at the trial, or in failing to grant an injunction to a party who succeeds at trial",[3] I restrained Dr Daryl Jones, the doctor identified by Mr Slaveski, or the persons for the time being in charge of the care of Dragan Slaveski, born 10 October 1939, at the intensive care unit at the Austin Hospital until 4.00 pm on 15 October, 2010 from carrying out the procedure which had been scheduled for 10.00 am on 15 October 2010, which procedure included the removal of a tube assisting in the maintenance of his airways.

11 The further hearing of the application was adjourned until 10.30 am the following morning, 15 October, 2010. This order was immediately communicated to Ms Kingston at Austin Health by Mr Ratcliffe at my direction and Ms Kingston informed Mr Ratcliffe that she would notify the appropriate medical staff that it had been made.

12 The Court also arranged for assistance the following morning from the Office of the Public Advocate, seeking an independent understanding of the circumstances actually occurring with the management of Mr Slaveski senior by the hospital. A representative of that Office agreed to make inquiries at the hospital about the circumstances of Mr Slaveski senior and report to the Court later that day.

13 When the matter was called on again on 15 October, 2010, Mr Slaveski, his two brothers and his mother, who had joined him as co-applicants for the relief sought, were represented by Mr Gronow of counsel acting on the instructions of JP Setso & Co.

14 Mr Gronow, when asked, invited me to assume jurisdiction in this matter based upon the parens patriae jurisdiction of this Court, to which I shall turn in a moment. A passing reference was also made to a possible cause of action in intentional tort. I presume that what Mr Gronow had in mind is that the law treats as unlawful,

both criminally and civilly, conduct which constitutes an assault on or a trespass to the person. Consensual contact does not, ordinarily, amount to assault. I refer to the well known, very broadly stated principle of bodily inviolability articulated by Cardozo J in Schloendorff v Society of New York Hospital:[4]

> Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent commits an assault.

15 I should say that the law in Australia is well settled,[5] that it is lawful for and the duty of a hospital which, or a doctor who, has undertaken the care of a patient who is unconscious, to carry out such treatment as is necessary and appropriate to safeguard the life, health and welfare of that patient even though such patient is in no position to give or refuse consent to the course taken. These issues were not developed in argument before me and I say no more about them.

16 Mr Gronow filed in Court an affidavit by Mr Slaveski which recited his version of events from the time of his father's collapse on 11 October 2010, including some of his conversations with Dr Jones and other medical specialists. Mr Halley, who appeared for Austin Health, did not seek to cross-examine Mr Slaveski upon this affidavit. An exhibit to the affidavit was the copy of the records first provided to the Court by Austin Health.

17 It became clear that the family wished to obtain a further opinion, described as a second opinion, about Mr Slaveski senior's circumstances and prognosis. Mr Halley and Mr Wells from the Office of the Public Advocate either raised no objection or were prepared to accept this process. In response to my inquiry, Mr Halley informed me that Austin Health did not consider a short adjournment for this purpose to be detrimental to Mr Slaveski senior's welfare and it and its medical staff would continue to inform the family about all developments and proposed management decisions affecting Mr Slaveski senior notwithstanding the difficulties created by the interim injunction and, more generally, the application.

18 I should record that I was informed that there was an incident at the hospital between Mr Slaveski and Dr Jones which was in dispute. The incident was described as reluctance by Mr Slaveski to accept the decision of the medical case conference in respect of his father, his reluctance being manifested by a threat to kill Dr Jones. The police were called and this application followed. Mr Slaveski described the events differently, denying he made any threat but that Dr Jones did threaten to unplug his father, and saying it was him, not the Austin, who had involved the police. He said the police told him it was a civil matter and he would need a Court order. I make no finding about this incident and do not take it into account in my deliberations. I do, however, note that Austin Health has, at all times, appeared to manage difficult circumstances professionally and empathetically and I saw no sign of confrontational behaviour from them. The same could not be said of what I saw of Mr Slaveski's behaviour in Court.

19 Notwithstanding that there was no basis shown to question whether Austin Health was continuously giving careful consideration to the welfare and best interests of Mr Slaveski senior, I agreed to extend the injunction, albeit in somewhat different form, until 4.00 pm today to enable a second opinion for the family. That I did so should not be interpreted as implying a finding that such restraint was considered necessary, as opposed to prudent, by the Court. I declined to continue the restraint against Dr Jones personally. It was not shown to be appropriate or to add to the restraint directed to his employer, Austin Health.

20 When the hearing resumed today, Mr Gronow appeared, as a matter of courtesy to the Court and explained that his instructions, and those of his instructing solicitor, had been withdrawn by the plaintiffs. Before he withdrew, he filed in Court an affidavit sworn by Sasho Slaveski this morning which, apart from explaining why he was withdrawing as solicitor, exhibited a report from Dr GA Brazenor, a consultant neurosurgeon. Thereafter Mr Ljupco Slaveski represented himself and the other members of his family.

21 Mr Halley for Austin Health tendered four affidavits, each sworn 21 October 2010, the deponents being

Stephen Warrillow, who is a staff specialist at the intensive care unit of the Austin Hospital; Jonathan Buckmaster, also a staff specialist at the intensive care unit; Associate Professor Helen Dewey, head of the stroke services unit at the Austin Hospital and Associate Professor Graeme Hart, the medical director of the intensive care unit. Each of those affidavits affirmed a joint report dated 21 October 2010.

22 As I have observed, the period of the adjournment had been utilised to have Mr Slaveski senior examined by Associate Professor Graham Brazenor. His report, dated 19 October 2010, was received by the Court as the independent assessment for which the adjournment was sought last Friday but he was not called as a witness. His conclusions appeared to be in agreement with those of the specialists at Austin Health. Apart from one matter I will mention in due course, I do not detect any differences of opinion amongst the various medical practitioners associated with the treatment of Mr Slaveski senior.

23 Before turning to the medical evidence, I noted above that Mr Gronow, when retained for the plaintiffs, invited me to assume the Court's parens patriae jurisdiction for the application. Mr Slaveski made no submission about the legal basis of the plaintiffs' claims.

24 The parens patriae jurisdiction of this Court is an ancient jurisdiction which has a long history. The Supreme Court is vested with the parens patriae jurisdiction, historically exercised by the Courts of Chancery, a consequence that seems to flow from s.85 of the Constitution Act 1975 and the Judicature Act 1883.[6]

25 Lord Brandon in Re F, (Mental Patient: Sterilisation),[7] described this jurisdiction in these terms:

> It is an ancient prerogative jurisdiction of the Crown going back as far perhaps as the 13th century. Under it, the Crown as *parens patriae* has both the power and the duty to protect the persons and property of those unable to do so for themselves, a category which included both minors (formerly described as infants) and persons of unsound mind (formerly described as lunatics or idiots).

26 The leading discussion of the nature of this jurisdiction is that of the High Court of Australia in Secretary Department of Health & Community Services v JWG & SMB, commonly referred to as Marion's case[8] which concerned an application by parents for the sterilisation of their retarded 14 year old daughter.

27 This jurisdiction is essentially protective in nature. Mason CJ, Dawson, Toohey and Gaudron JJ stated:

> No doubt the jurisdiction over infants is for the most part supervisory in the sense that the courts are supervising the exercise of care and control of infants by parents and guardians. However, to say this is not to assert that the jurisdiction is essentially supervisory or that the courts are merely supervising or reviewing parental or guardian care and control. As already explained, the *parens patriae* jurisdiction springs from the direct responsibility of the Crown for those who cannot look after themselves; it includes infants as well as those of unsound mind. So the courts can exercise jurisdiction in cases where parents have no power to consent to an operation, as well as cases in which they have the power.

28 By resort to the jurisdiction, the Court is empowered to protect the human dignity and rights of individuals who are disabled in such a way that they cannot protect such dignity and rights for themselves. In Marion's case Justice Brennan stated:

> That this value underlines and informs the law. Each person has a unique dignity which the law respects and which it will protect. Human dignity is a value common to our municipal law and to international instruments related to human rights. The law will protect equally the dignity of the hail and hearty and the dignity of the weak and lame,

> of the frail baby and of the frail aged, of the intellectually able and of the intellectually disabled. Our law admits no discrimination against the weak and disadvantaged in their human dignity.

29 The decision in Re F, which I referred to earlier, establishes that the role of the Court in relation to persons who are unconscious and in need of medical attention or like protection is the same as its role in relation to those who are mentally incapable.

30 Thus the inability of Mr Slaveski senior to protect himself because he is in a state of unconsciousness is a matter which can enliven the parens patriae jurisdiction of the Court.

31 I also note the careful and detailed exposition of these principles in the decision of the New South Wales Supreme Court in Northridge v Central Sydney Area Health Service.[9] In that case O'Keefe J made orders against a hospital that it provide the plaintiff's brother, a drug addict in a coma, with necessary appropriate medical treatment directed towards the preserving of his life and the promoting of his good health and welfare.

32 In exercising this jurisdiction, the paramount consideration is to preserve the life of or safeguard, secure or promote or prevent the deterioration in the physical or mental health of the person the subject of the jurisdiction. Any operative or medical procedure that is carried out must be undertaken to save that life or to ensure improvement or prevent deterioration in physical or mental health.

33 In Re F, the Court described this conclusion as having also been supported by reference to the principle of necessity with the consequence that treatment or other procedures undertaken must be in the best interests of preserving the life, health or welfare of the person concerned.

34 The High Court in Marion's case recognised that the overriding criterion for the exercise of the jurisdiction is the protection of the best interests of the health and welfare of the person, the subject of its exercise. It is not a jurisdiction which is exercised for the benefit of others.[10] However, in exercising such jurisdiction the admonitions of superior courts should be borne in mind that, although the jurisdiction is broad, it should be exercised cautiously.[11]

35 In my view there is undoubted jurisdiction in this Court to act to protect the right of an unconscious person such as Mr Slaveski senior to receive ordinary, reasonable and appropriate as opposed to extraordinary, excessively burdensome, intrusive or futile medical treatment, sustenance and support. What constitutes appropriate medical treatment in a given case is a medical matter in the first instance. Where there is doubt or serious dispute in this regard the Court has power to act to protect the life and the welfare of the unconscious person.

36 Mr Slaveski senior apparently had a sudden collapse on Monday 11 October 2010. He has demonstrated, upon examination, neurological unresponsiveness ever since. In layman's terms he has suffered a catastrophic stroke.

37 Associate Professor Brazenor, examining Mr Slaveski on behalf of the plaintiffs, recorded about his neurological examination that Mr Slaveski:

• was not under sedation of any sort.

• was intubated and then ventilated but triggering the respirator for most of the time. There had apparently been short periods of apnoea.

• was unresponsive in neurological examination to severely painful stimuli on any of the four limbs or on the face. In the testing of cranial nerves there was no gag reflex whatsoever on either side. There was no oculi cephalic reflex and there were no corneal reflexes. On cold caloric testing on either side there was not the slightest hint of ocular deviation.

• showed on the CT scan taken on the day of his admission, a devastating pontine haemorrhage obliterating the pons and possibly the upper medulla oblongata and lower metencephalon. He was already mildly encephalic at the time.

38 The four specialist medical practitioners, who are treating him at the Austin Hospital in their joint report expressed their opinion to be, in summary:

• Mr Slaveski has suffered catastrophic brain stem haemorrhage resulting in irreversible coma.

• He is unable to move, speak, eat or communicate and has no apparent awareness of his environment and no response to central stimuli.

• His only remaining brain stem function is spontaneous breathing and reflex coughing.

• He currently has a breathing tube in place facilitating supported ventilation. If the breathing tube is removed he might or might not be able to maintain an adequate airway. We are unable to say with certainty.

• The prospect of meaningful neurological recovery is negligible.

• Ongoing support with the breathing tube is, in our opinion, not in his best interests.

39 Those doctors stated they believed ongoing and active intervention to be futile and not in his best interests and expressed their joint opinion that removal of the breathing tube is in his best interests.

40 Associate Professor Hart gave evidence before me and was cross-examined by Mr Slaveski. He expanded upon, and explained, the findings of the joint report which I have set out. I am satisfied on Associate Professor Hart's evidence that Austin Health has the welfare and best interests of Mr Slaveski senior as its primary concern.

41 Significantly, as the provider of a second opinion for the family, Associate Professor Brazenor stated that Mr Slaveski senior was "receiving maximal care in the intensive care unit at the Austin Hospital" noting that the Austin care has been exemplary and he could not fault it in any way. His opinion was that Mr Slaveski senior had incurred a devastating haemorrhage and the most likely outcome in the next six weeks, no matter how intensively he is treated, is death.

42 One of the issues raised by the plaintiffs on the basis of Associate Professor Brazenor's report was whether there should be performed a tracheostomy and a feeding gastrostomy.

43 Associate Professor Hart stated that the performance of such an operation could be considered and that such consideration was, in a large part, informed by the need to deal with and manage the expectations of Mr Slaveski senior's family, as they deal with a very traumatic and grief-stricken period in their lives. From the course of his questioning of Associate Professor Hart, Mr Slaveski conveyed that the plaintiffs trusted the medical management being supervised by Associate Professor Hart and wanted him to perform the procedure. Whether the performance of that procedure would have any beneficial affect for Mr Slaveski senior is open to serious doubt and the weight of medical evidence before me is that any further medical intervention may not be in Mr Slaveski senior's best interests. I find that Associate Professor Hart has Mr Slaveski senior's welfare under careful consideration as he deals with and manages the expectations of the family and that what is being considered by Austin Health is ordinary, reasonable and appropriate as opposed to extraordinary, excessively burdensome, intrusive or futile medical treatment, sustenance and support.

44 I am in no doubt that the Court has no place on the case management committee which oversees the management of Mr Slaveski senior nor do I consider there is any serious question that it should take up such a place.

45 Associate Professor Brazenor noted a possibility, possibly as much as 50 per cent, that Mr Slaveski senior will survive in body but in a persistent vegetative state. There was a small chance, which he put at no more than 10 per cent viewed most optimistically, that he may eventually survive with some cognitive activity. The 10 per cent chance, as I understood it, is based in the prospect that there may be some settling or resolution over time with Mr Slaveski senior being maintained by the procedures of the tracheotomy and feeding gastrostomy in the meantime. For his part, Associate Professor Hart did not accept this opinion. He told me that 10 per cent was, in his view, too optimistic an assessment of the chances that recovery of some cognitive activity might occur because of the clinical evidence of the state and extent of the brain stem damage sustained by the stroke and the limited nature of his responses at present.

46 However, the ultimate prognosis for Mr Slaveski senior following these procedures was agreed by all medical specialists. At best, if that chance eventuated, he would be in a state which the doctors described as "locked in", unable to move his limbs or swallow or speak, possibly able to communicate with others only by means of eye movements or opening and closing his eyes. While Associate Professor Brazenor identified this as a possible outcome, Associate Professor Hart's opinion from his observations and treatment of Mr Slaveski senior was that the level of brain stem damage which is presently evident, and the nature and extent of his limitations following that damage suggests that it is unlikely that he would recover any capacity for eye movements.

47 In any event, all the doctors expressed the view that a “locked in” state could be regarded, for Mr Slaveski senior, as the worst of all possible outcomes, including death. It was suggested to me that the consequence for Mr Slaveski senior may well be to be maintained in an extremely depressive state. No medical practitioner suggested that this outcome could be regarded as safeguarding, securing or promoting, or preventing the deterioration in, the physical or mental health of Mr Slaveski senior.

48 The conclusion which I draw on the totality of the evidence which has been presented before me is that there is no basis for the Court to form a view that the management by Austin Health of Mr Slaveski senior's health and welfare had been anything other than proper and appropriate. Issues in relation to the preservation of his life, such as his prospects now are, are being properly and appropriately managed by Austin Health.

49 It is clear that there has been in the background some difficulties arising between the hospital and Mr Slaveski senior's immediate family. Mr Slaveski has sought to strengthen his hand in that apparent conflict by coming to Court seeking to persuade me to intervene. Although legally represented for part of the time, he has largely conducted the application on his own. In doing so, he revealed clearly to the Court that, for Austin Health, the process of managing appropriate medical treatment of Mr Slaveski senior and the needs and wishes of the family is an extremely difficult and fraught process by reason of the nature of the personalities who are involved. I formed the view that achieving a proper balance in that process was being achieved admirably by Associate Professor Hart and his team.

50 Mr Wells of the Public Advocate’s Office, who had been to the hospital, visited Mr Slaveski senior, and spoken to both staff and family members, did not suggest otherwise and neither did Associate Professor Brazenor. I wish to record my gratitude for the participation of the Office of the Public Advocate on short notice in assisting the Court in understanding the circumstances of Mr Slaveski senior. I will also record that, throughout this application, Austin Health has been both co-operative in, and accommodating of, the process through which the Court has worked. No inference adverse to this conclusion should be drawn from the making, and extension, of the interim injunction.

51 I am not satisfied that the protection of the best interests of Mr Slaveski senior in terms of his health and welfare is in any way assisted by the Court continuing to intervene by injunctive relief restraining the Austin Hospital and the doctors who work there in the way that they have and will discharge their duties and obligations in his treatment and management.

52 For these reasons I do not propose to extend the injunction.

(Submissions re orders and costs)

53 The order of the Court is that the proceeding commenced by originating motion stands dismissed. There is no order as to costs.

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[1] [2006] HCA 46; (2006) 227 CLR 57 Gleeson CJ and Crennan J [19], [65]–[83] per Gummow and Hayne JJ. See also *Beecham Group Ltd v Bristol Laboratories Pty Ltd* [1968] HCA 1; (1968) 118 CLR 618.

[2] (2001) 208 CLR 199 at [8]–[13].

[3] *Bradto Pty Ltd v Victoria* [2006] VSCA 89; (2006) 15 VR 65 [35].

[4] (1914) 105 NE 92 at 93, *Secretary Department of Health & Community Services v JWG & SMB* [1992] HCA 15; (1991-2) 175 CLR 218, at 234.

[5] Refer *Halsbury's Laws of Australia* at [370]-[1225] and to the cases there cited.

[6] I note the comments of Morris J in *Re BWV: Ex parte Gardner* [2003] VSC 173; (2003) 7 VR 487 at [96]–[102] who had the benefit of a comprehensive submission from the Solicitor General in that case on the history and nature of the jurisdiction. See also *Director-General of Social Welfare v J* [1976] VR 89 at 96; *Carseldine v Director, Department of Children's Services* [1974] HCA 33; (1974) 133 CLR 345 at 350, 351per McTiernan J; *Re Jane* (1988) 85 ALR 409 per Nicholson CJ.

[7] [1992] AC 1, 57.

[8] [1992] HCA 15; (1991-2) 175 CLR 218; see also *Gillick v West Norfolk and Wisbech Area Health Authority* [1985] UKHL 7; [1986] AC 112 at 183, 184; *Halsbury's Laws of Australia* (LexisNexis, electronic) at [205-1670], [205-1690], [205-2105], [285-15].

[9] [2000] NSWSC 1241.

[10] *Northridge* at [22].

[11] *Re O'Hara* [1969] UKHL 4; (1970) AC 668 at 695; *Marion's Case, supra* at 280; *Northridge* at [22].
