



New South Wales  
Supreme Court

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**CITATION:** TUNG v HEALTH CARE COMPLAINTS COMMISSION OF NSW & ANOR [2009] NSWSC 204

**HEARING DATE(S):** Wednesday 25 March 2009

**JUDGMENT DATE:** 27 March 2009

**JURISDICTION:** Common Law

**JUDGMENT OF:** Hall J at 1

**DECISION:** The amended summons is dismissed.

**CATCHWORDS:** MEDICAL PRACTITIONERS - deregistration - where Recommendation by Professional Standards Committee for deregistration – where plaintiff told by Medical Board legal officer incorrect information about time for lodging appeal – where order made by Chairperson of Medical Tribunal for deregistration – whether lost opportunity to appeal before order under s.63(3) of the Medical Practice Act 1992 made - whether made in breach of procedural fairness requirements - whether order of Chairperson should be stayed and plaintiff's registration reinstated pending appeal – lodging of appeal before the order of the Chairperson made had no effect on making of the order for deregistration – no denial of procedural fairness before Professional Standards Committee – no denial of procedural fairness otherwise under the statutory scheme under the Medical Practice Act – summons dismissed

**LEGISLATION CITED:** Medical Practice Act 1992  
Criminal Law Consolidation Act 1935 (SA)

**CASES CITED:** Bannister v Walton (NSWCA, unreported, 30 April 1992)  
Gad v Health Care Complaints Commission (NSWCA, unreported, 26 November 2001)

Re Minister for Immigration; Ex parte Lam (2003) 195 ALR  
502  
South Australia v O'Shea (1987) 163 CLR 378

**PARTIES:** Margaret Siu-Ying TUNG v  
HEALTH CARE COMPLAINTS COMMISSION OF NSW &  
ANOR

**FILE NUMBER(S):** SC No 11294 of 2009

**COUNSEL:** P: M Lynch  
1/2D: G Furness

**SOLICITORS:** P: Whitehead Cooper Williams  
1D: Health Care Complaints Commission  
2D: NSW Medical Board

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**IN THE SUPREME COURT  
OF NEW SOUTH WALES  
COMMON LAW DIVISION**

**HALL J**

**FRIDAY 27 MARCH 2009**

**No 2009/11294**

**MARGARET SIU-YING TUNG v HEALTH CARE  
COMPLAINTS COMMISSION OF NEW SOUTH WALES &  
ANOR**

**JUDGMENT**

1 **HIS HONOUR:** These proceedings were commenced by summons filed on 6 March 2009 which subsequently was amended by way of amended summons filed on 16 March 2009.

2 The plaintiff is a medical practitioner and seeks orders, inter alia, concerning an order made by the Chairperson of the Medical Tribunal pursuant to s.63(3) of the *Medical Practice Act 1992*. The order made on that date provided for the removal of the plaintiff from the medical register.

3 The plaintiff seeks relief in the amended summons in the following terms:-

"1. *That the order of the Chairperson of the Medical Tribunal of 4 February 2009 be stayed pending determination of the Plaintiff's appeal to the Medical Tribunal.*

2. *That the Registrar of the Medical Board (Second Defendant) reinstate the Plaintiff's registration pending determination of the Plaintiff's appeal to the Medical Tribunal.*
3. *Such further orders as the court sees fit.*
4. *Costs."*

4 In the amended summons, "Grounds" are identified in the following terms:-

*"The Plaintiff was misled by the legal advice of the Second Defendant that she had no right of appeal against the findings and determination of the Professional Standards Committee until the Chairperson had made an order for her deregistration."*

5 The plaintiff, in support of the summons, relied upon the affidavits of Dennis Paul Williams, her solicitor, sworn 5 March 2009 and 25 March 2009.

6 The defendants relied upon the following affidavits:-

- (1) Affidavit of Rhonda Leigh Ianna, solicitor with the Health Care Complaints Commission, sworn 13 March 2009.
- (2) Affidavit of Phillip Jane Hook, solicitor with the Health Care Complaints Commission, sworn 12 March 2009.
- (3) Affidavit of Domarina Azad, legal officer with the New South Wales Medical Board, affirmed 19 March 2009.

7 The plaintiff was represented by Mr Mark Lynch of counsel and Ms Gail Furness of counsel appeared on behalf of the first and second defendants. I have had the benefit of helpful written outline of submissions on behalf of the plaintiff and the defendants.

8 Before dealing with the issues that fall for decision in the present proceedings, it is necessary to record certain matters by way of factual background.

### **Background matters**

9 The plaintiff was born in Hong Kong and came to Australia at a young age in 1966. In later years, she worked as a registered nurse in Hong Kong and for some years after 1988 as a registered nurse in New South Wales.

10 She undertook studies at the University of Sydney in medicine and in 2001 graduated in medicine. She was first registered as an intern in New South Wales on 9 January 2002.

11 Prior to this date, namely, on 7 December 2001, the New South Wales Medical Board received information that suggested that the plaintiff may suffer from an impairment. In due course an Impaired Registrants' Panel was convened under the *Medical Practice Act* and a hearing by the Panel occurred on 5 April 2002. The Panel concluded that there was insufficient evidence to require the plaintiff to participate in the Impaired Registrants' Programme.

12 On 10 May 2005, a further health notification was received by the New South Wales Medical Board. Following assessment, an Impaired Registrants' Panel was convened in September 2005 but was not then concluded as the plaintiff had left Australia to join her family in Canada.

13 On 30 April and 1 May 2008, a Professional Standards Committee convened to consider a complaint concerning the plaintiff's practice of medicine.

14 On 10 November 2008, the Professional Standards Committee (the "*Committee*") conducting an inquiry under s.167 of the Act delivered its decision. A copy of the decision was annexed to Ms Ianna's affidavit

(Exhibit A). The decision records findings by the Committee on the question of impairment and a further finding that such impairment would detrimentally affect the plaintiff's ability in relation to her practice (p.29). In relation to the complaint as to the plaintiff's capacity, the Committee recommended the plaintiff's deregistration. The recommendation was expressed to be made pursuant to s.63(2) of the Act accompanied by a statement that the matter was to be referred with that recommendation to the Chairperson of the Medical Tribunal or to a Deputy Chairperson nominated by the Chairperson.

- 15 In a letter dated 18 December 2008 to the plaintiff written by Ms Azad on behalf of the Medical Board, it was noted that no order had been made under s.61 of the *Medical Practice Act* in respect of what was referred to as Complaint 1 (an alleged disciplinary matter). The letter continued:-

*"In relation to Complaint 2, the Committee recommends deregistration on the grounds of lack of physical or mental capacity to practice medicine. It makes this recommendation in respect of s.63(2), referring the matter with this recommendation to the Chairperson of the Medical Tribunal or to a Deputy Chairperson nominated by the Chairperson."*

- 16 In the letter of 18 December 2008, reference was made to the availability of an appeal under s.87 of the *Medical Practice Act*. Any such appeal, the letter stated, was to be made within 28 days of the handing down of the decision (or such longer period as the Registrar may allow).
- 17 The letter enclosed for the plaintiff's attention a copy of the Board's letter to the Chairperson, Medical Tribunal dated 18 December 2008, a copy of which is Annexure A to Ms Hook's affidavit.
- 18 It was common ground that the plaintiff did not receive the last-mentioned letter until 18 December 2008, notwithstanding that the Committee's *Reasons for Decision* are dated 10 November 2008.

- 19 The plaintiff, in January 2009, had a lawyer acting for her, a Mr Paul Baram of Deacons. Mr Baram wrote to the New South Wales Medical Board on 6 January 2009 and in that letter confirmed advice of Ms Azad of the Board that the plaintiff had until 22 January 2009 to appeal what was referred to as *"the Board's decision"*.
- 20 On 5 January 2009, Deacons, acting on behalf of the plaintiff, confirmed advice of Ms Azad that the plaintiff had until 22 January 2009 within which to appeal the Board's decision.
- 21 On 9 January 2009, Ms Azad wrote to Mr Baram referring to his request for an extension of time *"to appeal the Committee's Decision"*. In that letter, Ms Azad recorded:-
- "An appeal should only be lodged once an Order has been made by the Medical Tribunal. Accordingly, your request for an extension will not be considered by the New South Wales Medical Board at this time."*
- 22 In an email dated 18 January 2009, Ms Azad again referred to the fact that, as an order had not been made by the Tribunal, there was no *"decision to appeal"*. She apologised for any confusion created by earlier correspondence in respect of appeal rights.
- 23 On 19 January 2009, by email, Ms Azad advised the plaintiff again that, as no order had been made, there was no *"decision"* to appeal. Accordingly, the request for an extension of time to lodge the appeal would not be considered at that time. Ms Azad apologised for any confusion caused by earlier correspondence advising her of the commencement period of her appeal rights.
- 24 On 4 February 2009, an order pursuant to s.63(4) of the Act was made by the Chairperson of the Medical Tribunal of New South Wales (the Honourable Justice R O Blanch, Chief Judge of the District Court of New South Wales).

25 On 6 February 2009, Ms Azad wrote to the plaintiff on behalf of the Board enclosing a copy of the order made by the Tribunal by the Chairperson on 4 February 2009.

26 On 6 March 2009, a *Notice of Appeal* was lodged on behalf of the plaintiff with the Medical Tribunal. The grounds of appeal were three-fold:-

“1. *The findings were unwarranted, against the evidence and the weight of the evidence and failed to take into account relevant considerations and evidence.*

2. *The appellant was denied procedural fairness and was not given adequate opportunity to respond by way of evidence or submissions to the possibility that she faced deregistration nor to appeal against the findings or the recommendation of the Professional Standards Committee prior to the order of the deregistration made by the Chairperson.*

3. *The findings were wrong.”*

27 Ms Furness confirmed that no point is or has been taken that the appeal was not lodged within time. She stated that the defendants' position is that expedition of the hearing of the appeal should be sought.

28 The relief sought in the notice of appeal included orders for the setting aside of the findings and recommendation of the Committee and the order for deregistration.

29 Mr Williams, in his affidavit sworn on 5 March 2009, stated that the plaintiff was not legally represented at the Inquiry conducted by the Committee and she did not have the benefit of legal assistance at the Inquiry. I note at this point that s.177(1) of the *Medical Practice Act* provides that, at an Inquiry conducted by a committee, a practitioner concerned and complainant are entitled to attend and to be accompanied by an Australian legal practitioner or another adviser “... *but are not entitled to be*

*represented at the inquiry by the Australian legal practitioner or other adviser except as provided by sub-section (2).*

30 Section 177(2) provides that an adviser (other than an Australian legal practitioner) of a practitioner may represent the practitioner before the Committee at an Inquiry.

31 Ms Furness drew attention to correspondence in which the plaintiff's attention was drawn to the provisions of s.177. In particular, by letter to the plaintiff dated 4 December 2007, the legal officer on behalf of the Board observed that the plaintiff was entitled to be accompanied by an Australian Legal Practitioner or other adviser who could assist her before the Inquiry but that a legal practitioner could not represent her. The letter stated:-

*"The Board strongly recommends you contact your Medical Defence Union about this inquiry ..."*

32 In a letter of 3 March 2008 by the Legal Director of the Medical Board to the plaintiff, it was noted:-

**"7. Representation**

*Dr Tung advised that she will represent herself during the Inquiry. Dr Tung was counselled as to the usefulness of having an advisor at the Inquiry and was urged to contact her medical insurer. She said that she would not do this."*

33 In the same letter, it is also recorded:-

*"Dr Tung stated that she was aware of the consequences of the Inquiry in terms of conditions or possible deregistration but she said that it didn't matter as she had not been practising in Australia for some time now."*

34 Mr Williams, in his first affidavit, stated that, based upon advice given by the Medical Board's "Legal Officer", namely, that the plaintiff "enjoyed no

*right of appeal*", no appeal pursuant to s.87 was pursued prior to 4 February 2009.

35 In paragraph 27 of the same affidavit, Mr Williams stated:-

*"But for the advice provided by Ms Azad referred to above, the plaintiff would have initiated an appeal pursuant to Section 87(1)(a) and Section 87(1)(b) prior to the Chairman making the deregistration order, and hence would not be deregistered now."*

36 Mr Williams stated that the plaintiff sought an order that *"the deregistration Order"* be stayed until the determination of the plaintiff's appeal to the Tribunal.

37 In his affidavit sworn on 25 March 2009, Mr Williams annexed a copy of a print-out from the Board's website listing current deregistered doctors as at 10 March 2009 (Annexure A). Mr Williams added that it was common knowledge within the *"medico-legal profession"* that the Board routinely notified medical boards and such like entities in countries overseas of the deregistration of medical practitioners in New South Wales. The plaintiff had advised him that the Board had informed the United Kingdom General Medical Council and its Canadian counterpart of the order made on 4 February 2009.

38 Mr Williams added that it was a matter of record that since at least 2002, when the initial proceedings brought against the plaintiff were commenced, *"there has never been any recorded instance of the Plaintiff posing any danger whatsoever to any patient of hers or of any doctor associated with her nor of any hospital in which she has worked"* (paragraph 5).

39 On 16 September 2005, an Impaired Registrants' Panel was convened by the Board. A decision of the Panel (Annexure A to Ms Azad's affidavit) noted that the plaintiff, at that time, had relocated to Canada but still intended to attend any reconvened Impaired Registrants' Panel inquiry. A

recommendation was made that, if she did return to Australia, she not be permitted to resume medical practice in New South Wales without the issues raised in Dr Wright's reports being addressed through the appropriate Board procedures.

- 40 On 4 December 2007, the Board advised the plaintiff that a Professional Standards Committee inquiry hearing would take place on 30 April and 1 May 2008.

#### **Plaintiff's submissions**

- 41 The plaintiff relied upon the advice of Ms Azad in her letter to Deacons dated 9 January 2009 to the effect that an appeal could only be lodged following the making of an order had been made by the Tribunal and that, accordingly, her request for an extension of time would not be considered by the Board at that time.

- 42 In the plaintiff's written submissions, it was contended:-

*"11. In accordance with the Board's advice, the plaintiff then unrepresented, did not and could not pursue her appeal rights prior to the Chairperson adopting the PSC recommendation to deregister the plaintiff as he did on 4 February 2009 ..."*

- 43 Mr Lynch contended that the plaintiff was misled by the incorrect advice given on behalf of the Board. He contended that, but for the incorrect advice, an appeal would have been lodged before the Chairperson made the order on 4 February 2009 and that had an appeal been filed before that date, the Chairperson would, in light of an appeal having been instituted, not have made the order based on the Committee's recommendation.

- 44 It was, accordingly, contended that the plaintiff was denied the opportunity of putting on an appeal and that, in consequence, she suffered detriment

in that deregistration resulted from the making of the order. I note, however, that an appeal pursuant to s.87(6) of the *Medical Practice Act* does not, in itself, have any effect upon a finding made by a Committee unless and until the Tribunal makes an order in the disposition of the appeal. An appeal, in other words, does not operate as a stay.

#### **Defendants' submissions**

- 45 In the written outline of submissions for the first and second defendants and in oral submissions, Ms Furness of counsel outlined the statutory scheme and referred to the matters which she contended refuted the suggestion that the plaintiff had been denied procedural fairness or, more particularly, that she had "*lost an opportunity to put any information or argument to the decision-maker or otherwise suffered any detriment*", quoting dicta of Gleeson CJ in **Re Minister for Immigration; Ex parte Lam** (2003) 195 ALR 502 at [36].
- 46 The plaintiff, Ms Furness noted, could have appealed the decision of the Professional Standards Committee at any time until 22 January 2009 but that, at no time, did she or those representing her lodge or seek to lodge an appeal with the Registrar of the Board. Furthermore, no appeal was rejected by the Registrar in that period.
- 47 It is an agreed fact that the plaintiff, in fact, later lodged an appeal from the decision of the Committee, as earlier noted, and no issue is taken with the time in which the appeal was lodged. Furthermore, Ms Furness, on behalf of the Board, indicated that it was open to the plaintiff to apply for expedition and there would be no opposition by the Board should such an application be made.
- 48 In the written outline of submissions on behalf of the defendants, it was contended that:-

*"12. The structure of the legislation and requirements of procedural fairness combine to the effect that there never was an opportunity available to the Plaintiff to make submissions to the Chairperson of the Tribunal, which was denied."*

49 Ms Furness contended that the issue of procedural fairness is to be considered in light of the proceedings before the Committee in which the plaintiff participated, tendered materials and made submissions. It was contended, at this initial stage of the decision-making process, a proper opportunity and a fair hearing was provided to the plaintiff. The ultimate order as to deregistration was made by the Chairperson of the Medical Tribunal who, in turn, based his decision on the findings of the Committee. The Chairperson had, before doing so, not been provided with any other material than the Committee's reasons for decision.

50 In relation to the plaintiff's contention that it is unlikely that the Chairperson would have made the order if an appeal to the Medical Tribunal had been pending as at 4 February 2009, Ms Furness observed that the plaintiff's contention was that the Chairperson would have effectively stayed the effect of the Committee's decision. However, Ms Furness also observed that the *Medical Practice Act* made no provision for a stay of a Committee's decision and, in any event, the plaintiff had not, in these proceedings, satisfied the well-established principles that govern the grant of a stay. Reference was made in this respect to the decisions of the Court of Appeal in **Gad v Health Care Complaints Commission** (NSWCA, unreported, 26 November 2001 at [8] to [10] per Ipp AJA (as his Honour then was)) and **Bannister v Walton** (NSWCA, unreported, 30 April 1992 per Mahoney, Sheller and Cripps JJA).

51 In **Gad** (supra), Ipp AJA stated:-

*"8. The claimant has appealed against these findings and during the course of argument before me submissions were made as to the merits of the appeal. It is very difficult in a hearing of this kind to come to any reliable conclusion on the merits of the appeal of this kind."*

*Nevertheless, I accept that the appeal is arguable, but I am not able to conclude that the claimant's prospects are stronger than that. I also take into account that the appeal is essentially directed to factual findings made.*

9. *On the basis of the findings of the Tribunal it would not be appropriate to allow the claimant to continue the practice of medicine. The grounds of the Tribunal's decision and its reasoning make this abundantly plain. I recognise of course that there is a possibility that these findings will be set aside on appeal. But I take into account that the findings of the Tribunal were made after a detailed hearing. See in this regard the observations of Mahoney JA in **Bannister v Walton** (unreported, NSWCA, 30 April 1992).*
10. *In the end, the potential harm to the public in allowing the claimant to practise, having regard to the findings made against him, has to be measured against the harm to the claimant and others should a stay not be granted. In carrying out this balancing exercise, regard has to be had to the conduct of the claimant (as found) which was fundamentally inimical to what one would expect of a person conducting a practice of medicine."*

52 In contrast to appeals from decisions of a Medical Tribunal, there was no statutory power to order a stay. It was also submitted that there was no action to stay as the plaintiff's name has been removed from the register.

53 Any question of a stay, it was submitted on behalf of the second defendant, would have to bring into account the objects of the *Medical Practice Act* which is protective in nature (s.2A). The particular findings made by the Tribunal were such that a stay would not be a proper exercise of discretion in light of those objects. Additionally, it was contended the plaintiff had not shown that the likelihood of success on appeal may be considered as high.

54 It was also submitted for the defendants that there had been no practical injustice suffered by the plaintiff, that she had lost no opportunity which

would otherwise have been available to her and that she has availed herself of the procedures used under the Act by lodging an appeal against the decision of the Committee and the order of the Chairperson of the Medical Tribunal.

55 Finally, it was contended for the defendants that any delay experienced can be cured by an expedited hearing of the appeal.

56 Without any intended discourtesy, I do not consider it is necessary to detail all the matters Ms Furness raised in her oral submissions. I have, however, had regard to all such matters which I have found to be of assistance in the consideration of these proceedings.

57 It was, accordingly, submitted on behalf of the defendants that the relief sought in the amended summons for the quashing of the order made by the Chairperson and the reinstatement of the plaintiff's name to the register should be dismissed.

### **Consideration**

58 It is necessary to consider the factual circumstances relevant to the present proceedings in the context of the statutory regime established by the *Medical Practice Act*.

59 As earlier noted, s.2A states, inter alia, that the object of the Act "*is to protect the health and safety of the public*". Section 2A(3) provides that, in the exercise of functions under the Act, "*the protection of the health and safety of the public is to be the paramount consideration*".

60 Section 28(1) provides that the Board "*must remove*" the name of a person from the Register if removal of the person's name is required by any order under the Act including, in particular an order of the Chairperson.

61 Section 29(1) provides, inter alia:-

*"A person whose name has been removed from the Register under s.25 (Removal of person wrongfully registered) ... may appeal to the Tribunal against the removal or alteration."*

62 Section 36 deals with complaints in relation to registered medical practitioners. By s.39(c), a complaint may be made as to the competence of a practitioner if the *"person does not have sufficient physical capacity, mental capacity or skill to practice medicine ..."*.

63 The term *"impairment"* is defined in Clause 3 of the Dictionary to the Act. In that definition, there is reference to the physical and mental impairment *"... which detrimentally affects or is likely to detrimentally affect the person's physical or mental capacity to practise medicine ..."*.

64 The recommendation made by the Committee was based upon specific findings made by it concerning the plaintiff's capacity to practice medicine. Those findings, of course, followed the hearing by the Committee following notice to the plaintiff and an Inquiry in which she participated.

65 Upon referral of the Committee's recommendation, the Chairperson or Deputy Chairperson may make an order in the terms recommended by the Committee or such other order as to the suspension or registration of the person as the Chairperson or Deputy Chairperson thinks proper *"based on the findings of the Committee"*: s.63(3).

66 The provisions of s.63 of the *Medical Practice Act* do not envisage or provide for the Chairperson or the Deputy Chairperson to act upon any other basis than that specified in s.63(3). There is no requirement for the Chairperson, before making an order, to evaluate or assess the merits raised by any appeal.

67 There is, accordingly, no basis to assume, as was contended by Mr Lynch on behalf of the plaintiff, that, had the plaintiff lodged an appeal before 4

February 2009, the Chairperson would have taken some other course than that which occurred, namely, the making of the order.

- 68 Under the statutory scheme of the Act, the remedy available to a medical practitioner affected by a decision or finding of the Committee or the exercise by it of any power under the Division 4 of Part 4, is by way of an appeal under s.87 which is by way of a re-hearing and fresh evidence or evidence in addition to or in substitution of the evidence received at the inquiry, may be given: s.87(4).
- 69 In a case such as the present, s.87 confers on a medical practitioner effectively two rights of appeal. The first is a right to appeal to the Tribunal in respect of findings made by a Committee: s.87(1)(a). The second is a right of appeal to the Tribunal in respect of the exercise of a power by the Chairperson under Division 4 of Part 4 of the Act (which includes the power to make an order under s.63(3)).
- 70 Although the making of an order under s.63(3) is a discrete step following the making of a recommendation by a Committee and consequent upon referral of the matter with the Committee's recommendation in accordance with s.63(2), the recommendation and the order may be both considered to be the outcome of the process provided for by the Act, namely, the inquiry of the Committee conducted in accordance with the provisions of Division 3 of Part 12 of the *Medical Practice Act*.
- 71 It is clear from the *Reasons for Decision* of the Committee given on 10 November 2008 that the question as to "protective orders", in particular, possible deregistration of the plaintiff was a matter raised before the Committee. At p.24 of the reasons for decision, the Committee recorded:-

*"In relation to protective orders, the HCCC submitted that in light of Dr Tung's submissions, the HCCC now seeks a recommendation from the Committee to the Medical Tribunal pursuant to Section 63 of the Act that Dr Tung be deregistered ..."*

72 At p.25 of the reasons for decision, the Committee recorded:-

*"In view of the stronger position taken by the HCCC in relation to the recommendation under Section 63, it was submitted that Dr Tung should be given a further period of time at the Committee's discretion to respond. The Committee agreed with this position taken by the HCCC."*

73 The *Reasons for Decision* then set out matters raised by Dr Tung including those in relation to "Complaint 2" under the sub-heading "Dr Tung's Submission in Reply" (at p.26).

74 Accordingly, no question has been raised in the present proceedings of a denial of procedural fairness before the Committee on the question as to what, if any, recommendation the Committee should or might make. That matter was directly in issue and the plaintiff was provided with the opportunity of dealing with it.

75 The issue of procedural fairness and "opportunity" or "lost opportunity", accordingly, is to be evaluated in the context of the whole of the statutory process established by the *Medical Practice Act* and that was followed in this case.

76 In that context, it is significant that an appeal does not affect any finding or exercise of power with respect to which it has been made until the Tribunal makes an order on appeal: s.87(6).

77 On the issue of procedural fairness, in **South Australia v O'Shea** (1987) 163 CLR 378, a somewhat similar question was raised to that in the present proceedings in relation to the provisions of s.77(a) of the *Criminal Law Consolidation Act 1935* (SA) whereby the Governor was empowered, on the recommendation of the Parole Board, to release on licence a person detained in an institution under that section of the Act. In the course of his decision, Mason CJ observed:-

*"The scheme to which s.77(a) provides is not unfamiliar. It allows a place for the presentation of the offender's case – before the Board when it is considering whether it should make a recommendation for release. There are many illustrations of this legislative model which entails the holding of an inquiry by a body authorised to make a recommendation to a Board or Minister which may make a decision rejecting the recommendation without conducting any further inquiry. ... The hearing before the recommending body provides a sufficient opportunity for a party to present his case so that the decision-making process, viewed in its entirety, entails procedural fairness. If the decision-maker intends to take account of some new matter, not appearing in the report of the recommending body, and the party has had no opportunity of dealing with it, the decision-maker should give him that opportunity ..."*

78 Accordingly, I am of the opinion that, the plaintiff having had the opportunity of presenting her case to the Committee on the question of possible action to be recommended by it, has not established that there was a denial of procedural fairness. This is so, even if it be assumed that she was misled on the question as to the time for the lodging of an appeal.

79 Accordingly, the amended summons should be dismissed.

80 In accordance with the provisions of Rule 42.1 of the *Uniform Civil Procedure Rules*, the general rule is that costs follow the event. In the event, however, that any contrary order is sought by the plaintiff, any written submissions in that respect should be lodged with my associate by 4.00 pm on 6 April 2009 and any submissions in reply within a further seven days.

I CERTIFY THAT THIS AND THE.....16.....  
PRECEDING PAGES ARE A TRUE COPY  
OF THE REASONS FOR JUDGMENT HEREIN  
OF THE HONOURABLE JUSTICE HALL

Date.....27.3.09.....

Associate.....G. Guelke Barr.....