HIGH COURT OF AUSTRALIA

Public Information Officer

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ANDREW BATISTATOS (by his tutor William George Rosebottom) v ROADS AND TRAFFIC AUTHORITY OF NEW SOUTH WALES
ANDREW BATISTATOS (by his tutor William George Rosebottom) v NEWCASTLE CITY COUNCIL

A man who tried to sue over injuries suffered in a motor vehicle accident near Newcastle in 1965 could not proceed as a fair trial was no longer possible, the High Court of Australia held today.

Mr Batistatos, 74, has spent much of his life in institutions. His mother died when he was two and he and his brother and sister went into children's homes. At age five, he was committed to the Newcastle Mental Asylum as he was mentally retarded. He was later assessed as having an IQ of 69. Mr Batistatos was released from the asylum in 1954 and worked for the Department of Public Works as a cleaner until the accident left him a quadriplegic. He was returning from a party when his van overturned on Fullerton Street in Stockton in August 1965. Mr Batistatos spent the next 14 years in a hospital and a nursing home until his brother located him. He has lived with his sister in Sydney since 1982.

The accident was allegedly caused by the negligence of Newcastle City Council and the Roads and Traffic Authority in the design, construction or maintenance of the road. The dog leg-shaped road lacked warning signs, lighting and reflector posts. Vegetation allegedly obscured vision where the crash occurred. The road has since been straightened. Mr Batistatos commenced an action for damages against the RTA and the Council in the New South Wales Supreme Court in December 1994. He claimed that, despite the lapse of 29 years since the accident, he was not barred from bringing his action by the *Limitation Act* because he was a person under a disability within section 11(3) of the Act. The consequence of that would be that the ultimate bar of 30 years under section 51(1) applied to him.

The RTA and the Council sought summary dismissal or permanent stay of the action. They claimed the lapse of time meant a fair trial was no longer possible and constituted an abuse of process. Police records, medical records, road design and construction documents, people involved in road maintenance before 1965, and the identity of the insurer in 1965 could no longer be located, and the physical state of the road had changed substantially. Under Supreme Court Rules, where it appears no reasonable cause of action is disclosed, the proceedings are frivolous or vexatious, or the proceedings are an abuse of process of the Court, the Court may order that the proceedings be stayed or dismissed. Justice Clifton Hoeben rejected the applications to dismiss or stay the action. He rejected the argument that Mr Batistatos's claim was so obviously untenable it could not possibly succeed and held that the Council and the RTA had failed to show they could not have a fair trial.

The NSW Court of Appeal allowed an appeal by the RTA and the Council. It held that they had not shown that the cause of action was untenable, but due to the long period of time since the accident the action could not be fairly tried. Mr Batistatos appealed to the High Court, which by a 4-3 majority, upheld the Court of Appeal decision and dismissed the appeals. It held that an action commenced within the absolute 30-year limit may still be subject to a stay for abuse of process and that it is not necessary for there to be some oppressive conduct on the part of a plaintiff in commencing the action before a permanent stay may be granted.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*

Address: PO Box 6309, Kingston ACT 2604 Telephone: (02) 6270 6998 Fax: (02) 6270 6909
Email: fhamilton@hcourt.gov.au