



## Transcript of Proceedings

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State Reporting Bureau  
Date: 18 August, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

MUIR J

No S2477 of 1997

RAYMOND HLINOVSKI

Plaintiff

and

QUEENSLAND RAIL

Defendant

BRISBANE

..DATE 09/08/2004

JUDGMENT

**WARNING:** The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: I am satisfied that subject to a matter that I am  
about to mention that the settlement should be sanctioned.

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It is a matter of concern to me that the applicant, that is,  
the plaintiff in the proceedings and his family will, if the  
settlement is not sanctioned, proceed with litigation that may  
well end up to their financial, as well as emotional and  
mental detriment.

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Mr Hlinovsky does not, it seems to me, appreciate the risks  
inherent in litigation and perceives that he has an  
entitlement to recover as a result of the litigation process  
moneys which will offer him, in effect, a replacement income.

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Unfortunately, his legal entitlements may well not amount to  
that or to anything like it and I doubt that Mr Hlinovsky can  
be brought to understand that.

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The matter I intimated I had a reservation about is this:  
although the medical evidence, that is the psychiatric  
evidence, appears strong, there does appear to me to be an  
inconsistency between Dr Lada's report of 9 August 2004 and  
the form that he signed the day before. If it is the case  
that the applicant has capacity within the meaning of the Act  
then it is proper, irrespective of the consequences to himself  
and his family, that he be allowed to exercise free choice  
irrespective of where it might lead.

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HIS HONOUR: By this application the plaintiff's litigation guardian, the Public Trustee, seeks to have sanctioned a settlement of the plaintiff's litigation, recorded in terms of settlement, exhibited to the affidavit of Mr Kootsookos, sworn and filed today. The settlement is supported by counsel's opinion and by Mr Kootsookos.

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Earlier today I indicated that, in my view, the settlement was in the best interests of the plaintiff. A complication arose, however, because the settlement, or sanctioning of the settlement, is opposed by Mr Hlinovsky, the plaintiff. He does not consider it to be adequate. He advances no legally sustainable reason for his opposition. His concern as he expressed it and as Mrs Hlinovsky expressed it, is that the amount is quite inadequate to provide for him and his family.

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I got the distinct impression that Mr Hlinovsky was not addressing, or was unable to address the critical issue, which is whether the offer is an appropriate one, having regard to the evidence, and the risks are of a lesser sum being awarded should the matter go to trial, as well as other pertinent considerations such as the costs of conducting a trial, and the effect on his health and wellbeing of any prolongation of these proceedings.

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Dr Lada, Mr Hlinovsky's treating psychiatrist, expressed an opinion in a report dated today, that Mr Hlinovsky continues to display the features of a severe chronic mental disorder,

and as a result, does "not have the capacity to act as a litigant in legal proceedings".

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As that opinion appeared, on the face of it, to be inconsistent with opinions expressed in a report of Dr Lada dated 8 July 2004, I intimated to Mr Rangiah, who appears for the plaintiff, or at least, instructed by the Public Trustee, that Dr Lada should give evidence explaining that apparent inconsistency.

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Dr Lada was called; he gave evidence by telephone. It became apparent that in completing and signing the formal document, Dr Lada did not turn his mind to the critical question here. Having turned his mind to it and having been given further information on which to base his opinion, he expressed a firm view that the plaintiff was not in a position where he was capable of freely and voluntarily making decisions about the settlement of his litigation.

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He was cross-examined by both Mr and Mrs Hlinovsky. I use the term "cross-examined" in a broad sense, because their concern, really, was to put their position to the doctor. It was interesting to note that, that having been done, the doctor appeared to me to be even more confirmed in an already definite opinion.

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I can see, therefore, no reason for my not accepting Dr Lada's opinion. He appeared concerned, also, that it was in the interests of Mr Hlinovsky to put this matter behind him. I

too, am convinced that it is in the best interests of Mr Hlinovsky, and no doubt, members of his family, that this matter be brought to an end. As I have already intimated, it is apparent to me that the settlement is an appropriate one.

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HIS HONOUR: I will add those words, and with that alteration, I order in terms of the draft initialled by me.

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Mr and Mrs Hlinovsky, that will have the effect that the settlement is sanctioned in terms of the draft order.

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