SUPREME COURT OF QUEENSLAND

CITATION:	*Knight v Tabcorp Holdings Ltd* [2008] QSC 282
PARTIES:	**COLIN ALBERT KNIGHT** (plaintiff) **v** **TABCORP HOLDINGS LIMITED** (defendant)
FILE NO/S:	SC 206/2006
DIVISION:	Trial Division
PROCEEDING:	Trial
ORIGINATING COURT:	Supreme Court at Townsville
DELIVERED ON:	13 November 2008
DELIVERED AT:	Townsville
HEARING DATE:	31 October and 3 November 2008
JUDGES:	Cullinane J
ORDER:	**1. Judgment for the plaintiff against the defendant in the sum of $425,204.72 with costs to be assessed** **2. Costs to be assessed as at and from the 1 February 2006, such costs to be assessed on a standard basis**
CATCHWORDS:	TORTS - NEGLIGENCE – DUTY OF CARE - BREACH OF DUTY – where defendant employed plaintiff as a security officer at Jupiter's Hotel & Casino, Townsville – where plaintiff suffered injury whilst removing a patron from the premises – where plaintiff claims damages - whether employer failed to provide employee with safe place of work or system of work – whether injury sustained was a reasonably foreseeable consequence TORTS – NEGLIGENCE – STATUTORY DUTY OF CARE – BREACH OF STATUTORY DUTY – CAUSATION - where defendant employed plaintiff as a security officer at Jupiter's Hotel & Casino, Townsville – where plaintiff suffered injury whilst removing a patron from the premises – where s 28 (1) of the *Workplace Health and*

safety Act 1995 (Qld) imposes an obligation on an employer to ensure the workplace health and safety of its employers – where plaintiff claims damages – whether defendant breached statutory duty

Casino Control Act 1982, s 92
Criminal Code Act 1899 (Qld), s 277
Liquor Act 1992 (Qld), s 165(1), s 165A
Workplace Health and Safety Act 1995, s27, s 28

Bourke v Power Serve Pty Ltd & Anor [2008] QCA 225

COUNSEL: J Baulch SC for the plaintiff
AR Philp SC for the defendant

SOLICITORS: Sciacca's Lawyers for the plaintiff
Wilson Ryan & Grose Lawyers for the defendant

[1] The plaintiff claims damages for personal injuries sustained by him in the course of his employment with the defendant on or about 22 November 2003.

[2] The plaintiff who was born on 30 June 1965, was employed as a security officer at the defendant's casino at Townsville.

[3] The plaintiff had been employed by the defendant for some eight years having commenced in about 1995.

[4] Relevant events of the date on which the plaintiff sustained his injury are captured on a DVD which is exhibit 1. The defendant has security cameras operating throughout the area of the casino and the adjacent areas such as the entrance to the casino and hotel and the stairs at the entrance to the premises.

[5] The DVD shows the plaintiff and another officer one Booth in the presence of other officers including a supervisor, take a patron by the arm and commence to walk him out of the area of the casino towards the door. The supervisor, one Johnson, is nearby at the time that they first take hold of the patron and he and another officer follow the plaintiff and Booth and the patron out of the casino proper. At this time the patron is offering little in the way of resistance although it is obvious that some force is being used to propel him forward.

[6] Each officer appears to take the patron by the arm placing one arm under the patron's arm at the armpit and bending it back over the shoulder and using the other hand to grip the hand and wrist of the patron.

[7] As the three exit the casino and pass into the foyer approaching the exit, the patron becomes increasingly resistant planting his feet on the floor and bending his knees to prevent his forward movement. Greater force is then used by the two officers as the patron is taken towards the exit.

[8] To exit the building it is necessary to pass down two lots of stairs. At the higher of the two sets of stairs there are some four stairs and at the lower some three stairs.

[9] As the three approach the first lot of stairs and at a point where they are about to descend them, the patron lifts his feet off the ground causing his weight to be thrown onto the two officers.

[10] He places his feet on the ground after they have traversed the stairs but when they reach the second set of stairs, he again lifts his feet from the ground causing the officers to bear his weight.

[11] My impression of the patron is that he is a solidly built man, certainly weighing significantly more than both the plaintiff and Booth, each of whom though tall and well built, are more lightly framed than the patron.

[12] The plaintiff says that he felt a "knot-type" pain in his back as they were descending the first lot of stairs and he was bearing the patron's weight.

[13] The plaintiff has sued in negligence and for the breach of the defendant's duty to him as his employer. A claim based upon a breach of statutory duty owed to him pursuant to s 28 of the *Workplace Health and Safety Act* 1995 as amended is also made.

[14] In essence the plaintiff claims that he sustained a serious injury to his back because he had not been properly instructed as to a safe and effective manner to move a patron who was resisting as this patron was and acting as this patron was acting.

[15] More specifically it is the plaintiff's case that the appropriate way in which the officers should have acted was to use a pain compliant hold on the patron and that had they done so, he would not have lifted his feet from the ground and thrown his weight upon the officers. It is the plaintiff's case that he had not been adequately instructed in the use of such a hold and he had neither the competence nor the confidence to attempt to apply such a hold on the occasion he sustained his injury.

[16] The plaintiff and a number of former employees of the defendant were called as witnesses to give evidence about what was claimed to be the absence of adequate training of employees in the use of techniques to remove unruly or resistant patrons during their time as employees.

[17] The patron concerned had a history of being troublesome and had had to be removed before.

[18] As I understand matters, a pain compliant hold is a hold where the person being held is subjected to some degree of pain and avoids attempting to resist or to create difficulties whilst being removed so as to avoid any increase in pain.

[19] The evidence satisfies me that pain control holds are effective in achieving their purpose.

[20] The defendant called an expert, one William Turner, who had in fact conducted a course at the casino in techniques of removing persons in the year that the plaintiff

sustained his injury. I will return to this in due course. In addition, the defendant called Patrick Clifford who was at the time the safety and security manager.

[21] At the outset it can be said that it is obvious that there had been a good deal of unhappiness on the part of employees with what was perceived by them to be a lack of training and that some of them took the initiative to do something about this. In some cases, some informal instruction was given by officers and in the case of Mr Turner the holding of his course was initiated by one of the officers, Shane Johnson, who had experience of his courses whilst in part time employment with the Department of Health.

[22] It seems that at the time that the plaintiff was first employed at the casino, there was little, if anything, in the way of instructions about or controls exercised over the way in which officers removed patrons. Senior counsel for the defendant in the course of cross-examining the plaintiff, referred to this as being a period of "Rafferty's Rules".

[23] In the late 90s a Crowd Controller's Licence was introduced and this lead to some changes in the methods adopted by security officers.

[24] A system of training was introduced but I am satisfied that this was primarily concerned with written material with the officers being instructed in legal requirements and the security operating procedures which were introduced. There were occasions where some of the officers got together at the end of a class and to use the plaintiff's words, "put each other onto a – a lock of some form". There was a small amount of role playing according to the plaintiff's evidence. A security operating procedure was issued to the officers. Exhibit 22 was the security operating procedure which was current at the time of the incident.

[25] As will be seen clause 4 says:-

> "*In most situations where a physical restraint is deem* (sic) *necessary it is preferable that two security officer* (sic) *are present to initiate the removal by use of an appropriate lawful restraint.*"

[26] Section 277 of the *Criminal Code Act* 1899 (Qld) provides for the right to remove a trespasser and limitations upon that right:

> "***277 Defence of premises against trespassers—removal of disorderly persons***
> ***(1)*** *It is lawful for a person who is in peaceable possession of any land, structure, vessel, or place, or who is entitled to the control or management of any land, structure, vessel, or place, and for any person lawfully assisting him or her or acting by his or her authority, to use such force as is reasonably necessary in order to prevent any person from wrongfully entering upon such land, structure, vessel, or place, or in order to remove therefrom a person who wrongfully remains therein, provided that he or she does not do grievous bodily harm to such person.*
> ***(2)*** *It is lawful for a person who is in peaceable possession of any land, structure, vessel, or place, or who is entitled to the control or management of any land, structure, vessel, or place, and for any person acting by his or*

> *her authority, to use the force that is reasonably necessary in order to remove therefrom any person who conducts himself or herself in a disorderly manner therein, provided that he or she does not do the person grievous bodily harm.*
> ***(3)** In this section—*
> ***place** includes any part of an enclosure or structure, whether separated from the rest of the enclosure or structure by a partition, fence, rope, or any other means, or not."*

[27] A person may be excluded from entry to a casino pursuant to s 92 of the *Casino Control Act* 1982 (Qld) as amended. There is a similar right on the part of a licensee of licensed premises. See s165 (1) and s 165A of the *Liquor Act* 1992 (Qld).

[28] It was common ground that the pain control hold is permissible provided that excessive force is not used.

[29] The plaintiff attended a course in August 2003 conducted by William Turner. The circumstances in which this course came to be held are dealt with a little later in these reasons. Although the plaintiff thought that the course he attended was over some six hours, it would appear that in fact one course of three hours was repeated and the plaintiff attended one of these. Subsequently, a further course was conducted by Turner dealing with communications. At the conclusion of the first course in which holds and restraints were demonstrated there was some role playing in which the plaintiff played the role of the person being removed. This, together with some informal earlier role playing, would seem to have been the sum total of training which the plaintiff had been given about pain compliant holds prior to the incident I have described. I am satisfied from the evidence of the plaintiff and the evidence of other witnesses to which I will shortly refer that the plaintiff had not prior to his injury in 2003 been given any adequate training which would have given him a reasonable competence or confidence to use a pain compliance hold for the purposes of removing a patron who was resisting.

[30] As I have said the early training largely was concerned with teaching officers about their legal obligations and training them in other areas such as hospitality training and fire evacuation. Michael Greenway, one of the witnesses, describes the training as "theory and legislation and no techniques or holds were taught".

[31] There is a reference in the evidence to the fact that when the plaintiff and some of the witnesses started, a number of the employees were ex-policemen, ex-military and marital arts people who had prior training in techniques of removing patrons and I infer this included pain compliant holds.

[32] Some of the witnesses expressed their concern how over time as these persons had moved on, the new security officers, without prior experience in the field, were not adequately trained when they commenced their employment with the defendant. Mr Greenway gives his concerns about safety in doing the job in those circumstances as being "the main reason why I left".

[33] Before turning to the evidence of the various witnesses who were formerly employees of the defendant, I should say that some of the grievances which are

dealt with in evidence such as alleged understaffing do not seem to me to bear directly upon the issue that I am concerned with.

[34] Steven Mouat, who is currently an underground miner, was employed at the casino for four years, finishing in June 2006. His statement is exhibit 4.

[35] He had not prior to starting at Jupiters had any previous experience in security.

[36] When he commenced he was given some training which was in the nature of inculcation in the relevant provisions of the *Criminal Code* and other pieces of legislation. He said that he and his fellow security officers "rarely received any practical training". He referred to another officer providing some training but not having any particular expertise in the field. He says he was shown two or three simple arm and wrist locks.

[37] He was present when Mr Turner conducted a course which on his recollection was over some six hours during which some six or seven restraint and transport techniques were demonstrated following which the officers broke into two groups where it appears the techniques which had been shown were practised. This was the only training that he received.

[38] He says that he regularly asked his superiors for extra training making such request to Mr Johnson, Mr Booth and Mr Clifford. All of these gave evidence.

[39] In cross-examination Mr Mouat said that he had been shown a video with other training security officers when he commenced and that following that "a couple of moves" were demonstrated. These included a wrist lock.

[40] The term wrist lock has been used in a number of senses in the evidence. It is referred to in the pleadings. It is apparent that the term wrist lock describes the manner in which the plaintiff and Booth were holding the patron as he was being evicted but it is also apparent that it is also used in the sense of a pain compliant hold which involves putting pressure and twisting the patron's hand and wrist with a view to increasing the level of the pain if necessary so as to have him comply with the directions of the security officers.

[41] Michael Greenway was employed at the defendant's casino between September 1995 and September 2005. He was employed as a security guard and a shift supervisor as well as in other non-security roles. He became a supervisor in 2000 or 2001.

[42] His statement is exhibit 7.

[43] He says that when he became a security officer he underwent an initial induction which was largely written and concerned with legislation roles and responsibility. On Friday nights and Saturday nights for approximately six weeks the training security officers would go onto the casino floor and be teamed up with an experienced officer who they would shadow for a few hours. He says that all of the training which he had was theory and legislation with no techniques or holds being taught.

[44] Mr Bawden, a security officer took it upon himself to give some practical training to security officers. This training, such as it was, was not compulsory. Mr Greenway says that he dropped into the training for a short period whilst he was working, even though, if I understand things correctly, he should not have done so.

[45] Apart from this he did not have any training in restraints and although he was still a security officer at the time of Mr Turner's course in late 2003 was not aware of the course being conducted.

[46] Chris Hurlock (whose statement is exhibit 5) was employed at the casino as a security officer between 1995 and 2003. He is currently employed as a paramedic by Queensland Ambulance Service.

[47] He says that when he commenced work at Jupiters, he was given six weeks of training in the form of an induction which did not involve any practical training except to team up with an experienced officer on a Friday and Saturday night over a period of approximately six weeks and observe what such an officer or officers did.

[48] He says that the only training he received over the period that he was there related to fire warden training, fire evacuation and some hospitality training.

[49] He was promoted to the position of supervisor at which time there was some training relating to dealing with difficult patrons but he says the training amounted only to role playing sessions.

[50] He spoke to a supervisor about the lack of training and put forward a training plan to the supervisor which was approved. However, he says it was voluntary and security officers came in their own time. No restraint techniques were involved in this. He says that he also complained to Clifford.

[51] In cross-examination he said that he had had some training prior to commencing at the casino, being the holder of a security officer licence.

[52] In cross-examination he was asked whether he recalled any practical training conducted by any of the supervisors and he said that there was no such official training but some people "would just do some adlib stuff, just other officers just doing some training together". This was not organised by the defendant.

[53] Shane Johnson (whose statement is exhibit 2) was employed at the casino between June 1996 and June 2004.

[54] He says that he became a shift manager in 2000. According to his statement he regularly asked for training in restraints, having had no such training when he commenced to work at the casino. The induction programme was concerned with reading policies and procedures and legislation and spending Friday and Saturday nights with an experienced operator.

[55] He says he recalls Mr Bawden providing some training to the security staff but that he was not really qualified to provide the sessions.

[56] Because of his concerns, he put forward a proposal to Mr Clifford and a report. This was apparently based upon a manual which enabled him to complete over a period a 38 hour training programme.

[57] He had a part time job at the Townsville Hospital where he received significant training in restraints and the transporting of patients. This was provided by Mr Turner and it was as a result of his familiarity with Mr Turner and his training sessions at the hospital that he put the proposition to Mr Clifford that Mr Turner should be asked to provide similar training to security officers. He said he did so because of his concern at the absence of any training in constraints and the resultant lack of competency on the part of security officers in this area. His concerns also extended to the fact that assessments were being made that members of the security staff were able to perform their tasks competently when to his view they clearly were not because of the absence of training in this important area.

[58] He spoke to Turner and asked whether he would be prepared to provide training to the casino and spoke to Clifford who gave him the green light to discuss the matter further with Turner. Ultimately Turner suggested a few dates and proposed a package which would cost the defendant $1,400. This was unacceptable to the casino and ultimately as a result of negotiations, Turner reduced his fees to $600 for the purposes of providing two three hour sessions. This was according to Johnson's recollection the same session twice but for different groups. It is said that attendance was compulsory.

[59] These sessions related to training in constraints and holds with a later session by Turner being concerned with communications.

[60] In his statement Johnson says that had the officers used a pain control hold on the patron being removed on the occasion I am concerned with then the patron would probably not have lifted his leg.

[61] Mr Johnson had made a statement to the defendant some months after the accident which is in its terms is somewhat different to the effect of the evidence he gave in exhibit 5. The statement which he made to the defendant is expressed in somewhat exculpatory terms. He says that what is shown on the DVD of the two officers (the plaintiff and Booth) removing the patron is in accordance with what officers were taught in control and restraint training sessions.

[62] His explanation for this in cross-examination was that the security officers removed the patron without any punches being thrown so that "was in line with what the casino wanted".

[63] He agreed with the proposition that at the time he made that statement he couldn't see anything wrong with the removal as the two officers completed it but that he had had very little training himself at that time. He has since joined the police force and had extensive training in constraints including pain compliance holds and that in his current state of knowledge he would have "definitely" used a pain compliance hold and that these holds are an effective method of controlling a patron who is resisting.

[64] David Booth who was the other security officer removing the patron with the plaintiff (his statement is exhibit 3) had been employed by the defendant at its casino up until three weeks prior to the trial at which time he was dismissed.

[65] He spoke of commencing in May 1994 and receiving a basic induction over six weeks largely concerned with theory and procedures in relation to activities at the casino.

[66] He did not receive any practical training apart from shadowing an experienced security officer for some four weeks.

[67] He had not prior to starting at the casino had any security experience as the defendant was aware.

[68] The only training he received during his time there was what he described as "a short aggressive behaviour management course" with Mr Turner. It was very short comprising a couple of hours of theory after which Turner demonstrated some holds and following which the officers split into pairs and practised on each other for a short period of time. The theory which they were taught by Turner did not relate to holds. Turner told them that usually the course is much longer but that it had been drastically reduced.

[69] He contrasted his training at the casino with the experience he had had whilst employed at Queensland Health where he is a security supervisor. He said that there they were given aggressive behaviour management training over a week long course during which they were taught holds and pressure points and were required to pass the course before commencing to work.

[70] He said that he complained about the lack of training to Mr Clifford.

[71] He said that looking back with all of the training that he has now received at the hospital, he would definitely have identified the stairs as a potential risk factor and that he would have used a pain compliance hold to induce compliance by the patron who was being removed. He knew the patron to be difficult.

[72] A number of the witnesses identified the presence of stairs as an area of particular concern when removing a patron.

[73] Karl Grazioli (whose statement is exhibit 6) gave evidence of working at the casino from May 1999 to February 2004. He had had no security experience prior to working at the casino. He gave evidence about his induction when he commenced and what it entailed. He said that he had attended a training course given by Mr Bawden, who was an ex-army officer and was a supervisor at the casino. He said that they were invited to attend and there were given some training in techniques. He says that he also saw an instructional video but did not recall seeing any wrist locks or removal techniques in the course of that. Mr Bawden's session lasted approximately one to one and a half hours, at the end of which some role playing which went on for about half an hour was engaged in.

[74] He says that he left the casino because of his concern about the lack of training and his concern that someone would get hurt.

[75] Mr Turner was called by the defendant. His evidence was given by telephone. Two statements by him were tendered. In the first Mr Turner who has undoubted qualifications in the area expressed the view that a patron's resistance can often be negated by officers using restraint holds that offer the ability to apply "pain compliance" eg. wrist lock holds which he goes on to describe. A little later in the statement he says:

> "*It has been my experience that properly applied wrist locks (using pain compliance) are more effective and safer when moving a subject both up and down stairways."*

[76] The second of the statements is somewhat argumentative. It asserts that there was no need for the application of pain compliance holds prior to the three descending the first set of stairs. He went on then to contend that the action of the patron in lifting his legs as the first set of steps was being negotiated, was unexpected and that whatever decision was made by the security officers at the time it would have been necessary for them to support the body weight of the patron for some period of time.

[77] In cross-examination he retreated from some of the assertions in this statement.

[78] He was asked a number of questions about the courses which he conducted in August 2003. He acknowledged that there had been a reduction in the extent of the course associated with a reduction in his fee although he did not have a clear recollection of having negotiated a lesser fee. It is not entirely clear that he accepted there were two three hour sessions but the evidence as a whole satisfies me this was the case with the one course being repeated.

[79] He said he moved amongst the group making an assessment as to how they were performing, seeing if they were making mistakes. He said he spoke with the management and told them that to improve the skills of the officers they needed to practise the skills and to have practise sessions and he suggested that he would be prepared to conduct further training for them.

[80] The only further training he performed related to tactical communication.

[81] He said that the teaching of restraints requires the persons taught to continuously practise the skill and he accepted the proposition that refresher sessions are required. He said he had told the casino that further training was warranted.

[82] It was put to him that at the time the three persons approached the first lot of stairs that given the resistance of the patron that would have been the appropriate point at which a pain compliance hold would have assisted in reducing the risk to the patron and to the officers. His answer was:

> *"Ah, I – I – I can agree with that, yes. If he'd been me – if it was me in that situation I would – I would have moved to a wrist lock."*

[83] It is apparent from the context of his evidence that he is here talking about a wrist lock in the sense of a pain compliance hold.

[84] When he had put to him the history of the plaintiff as someone who was known to resist being removed from the casino he said:

> *"One of the things they teach us for officers to do a threat assessment and one of the things that I – that I instruct is that if they have a special knowledge about the subject or the patron and that knowledge was that he is of a resistant nature, I would have suggested that the – it may have been appropriate to use a restraint hold from the very beginning because of his previous history."*

[85] Mr Clifford who was from 2004 to 2006 the safety and security manager and before that the safety and security shift manager gave evidence of Mr Turner's course. He said that Mr Johnson had done the course previously at the hospital and suggested that such a course might be of value to security officers.

[86] He gave evidence that the procedures as set out in exhibit 22 are in the same terms as appeared in earlier versions of the Security Operating Standards (SOS).

[87] He accepted that Mr Booth and Mr Johnson had raised concerns with him about the absence of training.

[88] The evidence as a whole satisfies me that there was an absence of adequate training of security officers in pain constraint holds. Such procedures plainly involve a risk of injury to the persons to whom they are applied and also those who apply them although to a lesser extent. Such techniques plainly require a system of adequate training and assessment and ongoing monitoring.

[89] The evidence of Mr Turner makes this clear and similar views are expressed by the various witnesses who were called and whose evidence has been canvassed in these reasons. Such training as there was not sufficient to enable an officer such as the plaintiff to competently apply a pain constraint hold.

[90] The defendant failed to have in place a proper system of work which would ensure that security officers were adequately trained in the use and application of such technique.

[91] I am also satisfied that given the extent of the resistance of the patron and given what was known of his likely behaviour from his previous history, a properly instructed security officer would have applied a pain constraint hold before the three arrived at the first level of stairs and that had such a pain compliance hold been applied, it is likely that he would not have lifted his feet from the ground causing the plaintiff and Booth to bear his weight. Although such a finding is unnecessary, it seems to me that Booth was in the same position as the plaintiff as far as inadequate instruction is concerned.

[92] The plaintiff has made out a cause of action based upon negligence and breach of duty and I am satisfied that the defendant's negligence and breach of duty were a cause of the plaintiff's injuries.

[93] The plaintiff has also made out a breach of statutory duty pursuant to s 28 of the *Workplace Health and Safety Act* 1995 as amended.

[94] Breach of s 28 gives rise to a cause of action. The employer's duty under this provision to ensure the employer's safety is absolute. To use the words of Muir JA in *Bourke v Power Serve Pty Ltd & Anor* [2008] QCA 225 at para 32:

> *"The employer has failed to ensure the safety of the employee. Causation is established. If the employee's safety had been ensured, the employee would not have been so injured."*

[95] Section 27 provides for the means by which an employer might discharge his duty to an employee.

> "***27 How obligations can be discharged if no regulation etc. made***
> ***(1)*** *This section applies if there is not a regulation or ministerial notice prescribing a way to prevent or minimise exposure to a risk, or an advisory standard or industry code of practice stating a way to manage the risk.*
> ***(2)*** *The person may choose any appropriate way to discharge the person's workplace health and safety obligation for exposure to the risk.*
> ***(3)*** *However, the person discharges the workplace health and safety obligation for exposure to the risk only if the person takes reasonable precautions, and exercises proper diligence, to ensure the obligation is discharged."*

[96] The defendant alleges in paragraph 5 of its amended defence that it discharged its obligations to the plaintiff and particularises this.

[97] As will be apparent from the findings I have made, the defendant has not satisfied me that it discharged its obligations to the plaintiff in the respects alleged. I have already made a positive finding against the defendant on the issue of negligence and breach of duty and these findings necessarily preclude the discharge of the onus which rests upon the defendant in response to the claim for breach of statutory duty.

[98] The plaintiff has made out of a cause of action for breach of statutory duty which caused his injury.

[99] The plaintiff felt pain at the time of the incident but says that he continued working and completed his shift. On the following morning he took pain killers because of the pain which he was then suffering. He continued to work his usual shifts but said that he was suffering constant back pain which became more severe causing him to have difficulty urinating.

[100] He saw his doctor on 28 November 2003 and by the end of 2003 was regularly visiting him and taking painkillers prescribed by him.

[101] On 6 January 2004 he was given a medical certificate to remain off work for six days so that he could undergo a CT scan.

[102] In March 2004 he consulted a doctor who issued a medical certificate that he was unfit to work. He says that he awoke in excruciating pain on 24 March 2004 and was taken by an ambulance to the Townsville General Hospital where he was given panadeine forte and morphine and an MRI examination was carried out.

[103] Dr Blue, an orthopaedic surgeon saw the plaintiff on 25 March 2004.

[104] In his report (exhibit 12) of 29 March 2004 he outlines the plaintiff's then complaints and the fact that a segmented lumbar CT scan taken on 7 January 2004 had demonstrated a L5/S1 disc protrusion with left-sided S1 nerve root compromise.

[105] Dr Blue recommended that the plaintiff consult a neurosurgeon in Townsville with a view to surgery.

[106] Dr Guazzo saw him in May 2004 and operated upon him on 15 June 2004. At the time of the procedure carried out on 15 June 2004 he found a chronic moderate sized disc protrusion causing S1 nerve root compression. This was surgically treated.

[107] There are a number of reports from Dr Guazzo which outlines his progress following the surgery. Generally according to Dr Guazzo in his report of 12 July 2004 the plaintiff had made good progress. However he was complaining of headaches which developed in the first days after surgery, some dizziness and some "jolting electric shock like sensations" occurring weekly in his right leg, the cause of which is unknown.

[108] There are a number of reports thereafter of Dr Guazzo dealing with his progress. In the most recent of 10 November 2004, he said that the plaintiff still complained of shooting pains in his right leg being in the nature of electric shocks. He also complained of some mild left-sided groin pain and some occasional symptoms in his leg. He was continuing to take painkillers.

[109] There was a decrease in the range of movement of the lumbar spine and "very marked and inconsistently restricted straight leg raising of both legs".

[110] No cause of the right leg symptoms was shown upon an MRI being carried out.

[111] He said in that report that from a neurological point of view the plaintiff was stable and stationary and had a disability of some 10% of the whole person. He thought that the plaintiff should continue with physical rehabilitation in the way of swimming and walking but should avoid activities that require repetitive bending and twisting or heavy physical exertion.

[112] The plaintiff returned to his employment with the defendant working in the control room. This is much lighter work than the work he did as a security officer.

[113] He returned to work in September 2004 having ceased in March 2004 preparatory to having the operation by Dr Guazzo.

[114] The plaintiff worked for a period on a full time basis at the control room before reducing his work to the part time work which he is now performing. He is capable

of performing this work according to Miss Bentley, an occupational therapist, provided he can sit, stand and walk around as he chooses. He may be capable of working an additional shift per week instead of the two that he is currently working but at the time she saw him she thought that the two shifts per week were about as much as he could undertake. He would not be capable of returning to work on a full time basis either in the control room or elsewhere at the casino.

[115] Dr Price, an occupational therapist, has said that the plaintiff is not capable of performing the tasks of a police officer. The plaintiff said that he had an ambition to become a police officer although the evidence does not suggest he had pursued this is any way apart from having the relevant documentation printed off the computer for the purposes of completing an application.

[116] It is obvious that the plaintiff has developed some psychological problems since he sustained his injury. According to Dr Leong, a psychiatrist, he is mildly anxious, moderately dysphoric in mood, despondent, restricted and labile in affect and has some slight impairment in his attention and concentration.

[117] His long term prognosis in this regard is reasonable if he is provided with some counselling, pain management and anti-depressant medication.

[118] The plaintiff's enjoyment of life has been significantly impaired because of the pain that he suffers and the restrictions that this imposes upon him as well as the psychological problems which have come in the wake of the pain. These have all impacted it seems to me heavily upon his activities and his enjoyment of life generally.

[119] The plaintiff no longer performs all of the tasks around the yard which he previously did.

[120] He gave me the impression of being somewhat morose and unhappy with his predicament.

[121] He is now 43.

[122] He and his partner have two children, a son born in early 2003 and a daughter born early in 2005.

[123] The question whether the plaintiff should undergo a further procedure was canvassed in evidence. His view is that he would only be prepared to do so if it was certain that he would obtain improvement from it. There are clearly some functional aspects of the plaintiff's current condition and he has some complaints which he makes which cannot be related to his physical disabilities. He saw Dr Nowitzke about the question of a possible further surgery.

[124] The plaintiff says he was disappointed in the outcome of the first surgery, notwithstanding that Dr Guazzo thinks that he had a good result. He is disinclined to have any further surgery. I think in the light of the evidence placed before me and particularly the evidence of Dr Nowitzke this is not an unreasonable attitude for him to take.

[125] The parties handed to the Court a schedule of the damages which each contends for. There is surprisingly little difference between the two parties.

[126] I assess the plaintiff's general damages in the sum of $60,000.

[127] I allow interest on $35,000 at 2% for 4.9 years producing a figure of $3,430.

[128] Special damages are agreed upon in the sum of $16,774.55 as is interest on this in the sum of $514.50.

[129] The *Fox v Wood* component it is common is $3,150.

[130] Past economic lost is calculated by reference to the earnings which the plaintiff would have earned had he remained in employment with the defendant as a security officer and the income he would earned in his part time employment with the Department of Families at the Youth Detention Centre from which employment he has now been discharged. He had not worked there since March 2004.

[131] I allow $90,000 in respect of past economic loss. I also allow interest in the sum of $17,610.94 on past economic loss.

[132] Future economic loss is an area where there is a significant difference between the parties. The plaintiff is plainly at a very significant disability now in the marketplace should he lose his employment with the defendant. There has to be taken into account all of the usual contingencies and vicissitudes. The plaintiff may have joined the police force although he was at the time of the accident 38 and had not taken any steps apart from the rather tentative one I have just referred to to advance his ambition.

[133] I allow future economic loss in the sum of $225,000.

[134] Past superannuation is allowed in the sum of $8,100.

[135] Future superannuation is allowed in the sum of $20,250.

[136] There is a claim for future expenses. The plaintiff will continue to incur pharmaceutical costs and some medical costs. He should have ongoing counselling according to Dr Leong and there is some possibility although I think it a remote one, that he will change his view about surgery. The surgery involved would be a disco gram and there is a possibility of what would be major surgery in the form of a two level fusion. I do not think that his disinclination to have this surgery is likely to change.

[137] I allow in respect of future expenses a global sum of $15,000.

[138] The total of these amounts is $459,829.99

[139] The sum of $34,625.27 is to be repaid.

[140] I give judgment for the plaintiff against the defendant in the sum of $425,204.72 with costs to be assessed as at and from 1 February 2006, such costs to be assessed on a standard basis. .