



Crown Immunity - alive and well! Case Summary - *Roads Corporation v Pearse*

November 2012

Facts

Mr and Mrs Pearse (the defendants) are the registered proprietors of 26 Kaikoura Avenue, Hawthorn. On 31 March 2011, they lodged an application under s 60(1) of the *Transfer of Land Act 1958* (Vic) for an order vesting in them ownership in part of the neighbouring property at 28-42 Kaikoura Avenue, claiming that they were entitled to the land by reason of adverse possession since at least 1 July 1994, a period exceeding 15 years. The Roads Corporation, as registered proprietor of the disputed land, lodged a caveat to protect its interest in the property. There was a factual dispute between the parties as to whether the Pearses had in fact been in possession of the disputed land, such that a claim for adverse possession could be made. On 16 July 2012 the Court ordered that, before the proceeding went to trial, there should be a trial on the preliminary question whether:

at all times, or at any and what time, between 1 July 1994 and 31 March 2011 was the [Roads Corporation] entitled to the immunity of the Crown for the purposes of s 7 of the *Limitations of Actions Act 1958*.

Judgment

Justice Bell accepted that the Roads Corporation would only be entitled to Crown immunity if it could demonstrate that it was the intention of the legislation under which it is constituted that it be regarded as the Crown for that purpose.

Summary

In a recent decision, Bell J of the Supreme Court of Victoria held that, in defending an adverse possession claim, the Roads Corporation was entitled to rely on the immunity of the Crown specified in s 7 of the *Limitations of Actions Act 1958* (Vic).

The case is important for all departments and statutory authorities as it highlights the factors a court will consider in order to determine whether a statutory corporation can rely on Crown immunity in circumstances where it is not explicitly provided for in legislation.

The *Transport Integration Act 2010* (Vic) s 83, which makes clear that the Roads Corporation is to be regarded as the Crown, did not take effect until after the relevant period of the Pearses' claim. The relevant legislation that preceded it, *Transport Act 1983* (Vic), did not explicitly provide that the Roads Corporation should be regarded as the Crown. His Honour considered that the following factors would therefore be relevant in ascertaining whether such an intention could be derived from the *Transport Act 1983* (Vic):

- Whether the functions the Roads Corporation performs are 'governmental in character', such that it should be regarded as the Crown

- The extent to which the Crown is able to control the activities of the Roads Corporation, such that it should be regarded as an instrument of the Crown

Control

Section 31(1) of the *Transport Act 1983* provides that the Corporation must exercise its powers and perform its duties 'subject to the general direction and control of the Minister, and to any specific directions given by the Minister'. The control of the Minister extends to 'close supervision of the budgetary and financial affairs of the Roads Corporation'. The Court noted that the Minister must approve the sale of surplus land, which suggests, with respect to its role in managing its land, that Parliament intended for Roads Corporation to be regarded as the Crown. His Honour also considered relevant the fact that the Minister controlled purchases of land by the Roads Corporation and had the power to transfer assets between groups. His Honour described the Crown's control as that which 'must be placed at the very high end of the spectrum'.

The nature of the Roads Corporation's establishment and processes for appointment were also considered relevant by Bell J, in particular that the Roads Corporation is established by statute and is not incorporated under the *Corporations Act 2001*, and that the Government has significant powers with respect to the appointment of the Chief Executive and Advisory Board, and influence over the way they perform their roles. The Court held that these were further instances of 'close governmental control' indicating Parliament's intention that the Roads Corporation should be regarded as the Crown.

Functions Governmental in Character

Bell J categorised the statutory functions of the Roads Corporation set out in the 1983 Act, to maintain and extend the state's declared road network and assist in the management of undeclared roads, as 'traditionally governmental and public in nature'. These functions, his Honour held, suggest that Parliament intended the Roads Corporation to have the 'privileges and

immunities of the Crown, including statutory immunity from adverse possession', which reflects the 'practical difficulty faced by the Crown in monitoring all land in which it has an interest'.

His Honour also noted that the statutory obligations of the Roads Corporation to have regard in its decision-making to community benefit and enhancement of the environment, and to operate within the parameters of Government policy, demonstrate Parliament's intention that the Roads Corporation is to be regarded as the Crown.

Bell J found in favour of the plaintiff and ordered that the Roads Corporation is entitled to the immunity of the Crown for the disputed period.

Importance of the case

This case is important for all departments and statutory authorities as it highlights the factors a court will consider to determine whether a statutory authority can rely on Crown immunity in circumstances where it is not explicitly provided for in legislation.

This case summary is provided for general information only. For further information or legal advice on any issues raised in this case summary please contact:

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