

**Case Study**

**Mulligan v Coffs Harbour City Council [2005]**

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HCA 6321 October 2005

## Case Review

This case, heard before the High Court of Australia, addresses specific issues of negligence and the responsibility of care in a public area. The case was heard simultaneously with a similar case, *Vairy v. Wyong Shire Council*, in an effort to establish precedent in a relatively unclear area of the law.

In a nation where outdoor recreation is particularly common, this case has wide-range impacts. In this case, an unfortunate accident resulted in a precedent-setting case. The plaintiff has undoubtedly suffered as a result of his accident. The court had to balance his responsibility against that of the park management authorities. Would the plaintiff have taken the same actions if warning signs against it were present? It is impossible to know.

*Background*

The incident prompting this case occurred at Park Beach in New South Wales. Coffs Creek is a shallow but popular swimming area that leads toward the ocean. The depth of the water and the materials of the creek bed are variable. Portions of the park are set aside and maintained as safe areas for swimming.

The plaintiff, a tourist from Ireland had been swimming in the channel earlier on the day of his accident. As he swam he made superficial estimations of the waters depth by attempting to touch the bottom. Several times that day he dived forward into what appeared to be deeper water and floated along the creek toward the ocean. On one of his forward dives Mr. Mulligan hit the bottom of the creek bed and suffered a severe injury.

Mr. Mulligan and the plaintiff from the connected *Vairy v. Wyong Shire Council* case are now paraplegic as a result of their injuries. Mr. Mulligan's damages were set at over \$9 million by a judge. The lower courts denied his claim, however.

Mr. Mulligan's counsellors argued that because the variable depth of the creek and the prevalence of swimmers there were well known. The park authority had an obligation to provide sufficient warnings to divers.

#### *Case Details*

In their arguments the plaintiffs' lawyers attempted to establish a foundation based on two propositions. They argued successfully that the actions of the plaintiffs and the resulting injuries were foreseeable by the park managers. They also attempted to draw associations between the responsibilities of individuals owning buildings with public access and the responsibilities of park management. This proposition was more difficult to establish.

After the accident, several warning signs were erected in the area. These included signs warning of submerged objects, currents and the absence of rescue personnel at certain times. In his appeals the plaintiff attempted to use the placement of these signs as a *de facto* admission of guilt. If the signs were practicable at that time, then why were they not in place prior to the accident?

...**Source**

Australasian Legal Information Institute. 2007, 'Mulligan v. Coffs Harbour City Council [2005].' *ALII* (online). Retrieved 8/26/2007 from:  
[http://www.hcourt.gov.au/media/Vairy\\_and\\_Mulligan.pdf](http://www.hcourt.gov.au/media/Vairy_and_Mulligan.pdf).