

BETWEEN:

STATE OF QUEENSLAND
Appellant

and

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THE ESTATE OF THE LATE JENNIFER LEANNE MASSON
Respondent

APPELLANT'S OUTLINE OF ORAL ARGUMENT

Part I:

I certify that the outline is in a form suitable for publication on the internet.

Part II:

- 20 1. The trial judge in a carefully reasoned judgment concluded that the treatment given to Ms Masson was not negligent. In coming to that conclusion, the trial judge found-
- a. That in 2002 there was responsible body of medical opinion which supported the use of salbutamol and not adrenaline to someone suffering respiratory attack, but with high heart rate and high blood pressure (as was Ms Masson);
- b. The QAS Manual provided guidance to paramedics but did not direct the use of adrenaline. Rather it required the exercise of judgment and experience to determine the best treatment for the patient. The guidance given to the paramedic was to 'consider' the use of adrenaline: see Supplementary Book
30 pages 6, 10, 19, 20, 21, 29, 31, 32, 33, 34 and 36; Trial Judge Reasons Core Appeal Book page 36 [119], [120].
- c. Mr Peters did consider, but decide against, the use of adrenaline for the reason that he identified Ms Masson as having a high heart rate and high blood pressure. He chose instead the administration of salbutamol. His doing so was supported by the evidence of the appellant's paramedic witness (Mr Hucker) and the appellant's expert medical opinion evidence (Drs Brown, Boots and Ramin). It also drew some support from witnesses called by the

respondent (in particular the paramedic Mr Keneally and Dr Raftos, an emergency medical specialist).

2. The Court of Appeal overturned that judgement. The Court of Appeal's reasons are largely directed to the issue of whether treatment of Ms Masson conformed with the Manual. Doing so focused attention on compliance with a professional standard or practice to the exclusion of the proper question, which is not decided solely or even primarily by reference to the Manual, of whether the conduct of Mr Peters (and thus the QAS) fell below the standard of care to be expected of reasonable paramedics in the circumstances. There are a number of issues which arise.
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3. *First-the Appellant's Outline paras [19]-[30]*: Did Mr Peters consider the administration of adrenaline at all? The Court of Appeal overturned the trial judge's conclusion that he had considered adrenaline for four reasons: (i) that a 2009 statement made by Mr Peters was unambiguous and showed that he had not considered adrenaline (beyond concluding he could not administer it); (ii) that Mr Peters had not given evidence that the 2009 statement was a mistake; (iii) that the pleaded case was inconsistent with Mr Peters having given consideration to the use of adrenaline; and (iv) Mr Peters' oral evidence was against him having given consideration to the use of adrenaline.
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4. On examination of the evidence and the trial judge's reasons it is clear the reasons relied on by the Court of Appeal do not justify overturning the trial judge's carefully considered view of the evidence as a whole: cf *Fox -v- Percy* (2003) 214 CLR 118 at [28], [39].
5. The Respondent describes this issue (whether Mr Peters considered the use of adrenaline) as the sole determinative issue. That is not accepted, but if it is, then the respondent fails on causation, because the respondent did not attempt to advance a case that had Mr Peters considered the use of Adrenaline he would have done anything differently: *Appellant's Outline paras [37]*
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6. *Second- the Appellant's Outline paras [38]-[58]*: Whether there was a respectable body of medical opinion that salbutamol was an appropriate treatment for Ms

Masson (at the time she had an elevated heart rate and blood pressure)? The trial judge held there was and the Court of Appeal concluded that that finding was not open on the evidence.

7. In doing so the Court of Appeal (Core Book page 64):

- a. (especially at Court of Appeal [160]) misstated the effect of the trial judge's findings (cf trial judge at [153]-[155]; [55], [56], [93], [151]);
- b. did not have regard to the evidence, relied on by the trial judge, which established there was such a respectable body of medical opinion: The Appellant's Outline at [38]-[58]; Reply Outline at [20];
- c. (at [165]) distinguished the appellant's evidence because it did not conform to a hypothetical assumption which the experts rejected.

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8. *Third-The Appellant's Outline paras [59]-[70], [31]- [36]:* The Court of Appeal (at [163]) held that even if there was a respectable body of medical opinion in 2002 that salbutamol was the preferred treatment for Ms Masson, and if Mr Peters was aware of that and administered salbutamol in accordance with it, nonetheless that would be negligent because it was not in accordance with the apparent preferred treatment as revealed in the QAS Manual.

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9. That approach is to be rejected because-

- a. it focuses on only one, or perhaps two, of the pages of the Manual to the exclusion of the other parts requiring the exercise of judgment and experience by the paramedics;
- b. it (explicitly) assumes the paramedics lack the expertise to make appropriate judgements, when the evidence is to the contrary: trial judge reasons at [119]-[120];
- c. it sets, exclusively, as the standard of care compliance with a professional standard contrary to *Rogers-v Whitaker* (1992) 175 CLR 479. The paramedic did not owe Ms Masson a duty of care to follow the Manual.

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Dated: 10 June 2020



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