

**ROBINSON HELICOPTER COMPANY INCORPORATED v  
McDERMOTT & ORS (B61/2015)**

Court appealed from: Queensland Court of Appeal  
[2014] QCA 357

Date of judgment: 19 December 2014

Special leave granted: 30 October 2015

In May 2004 a “Robinson 22” helicopter crashed close to the Northern Territory-Queensland border killing the pilot, Mr Kevin Norton. Mr Graham McDermott (the sole passenger in the helicopter at the time), his wife Ms Juanita McDermott, and Mr McDermott’s employer, NTB Pastoral Holdings Pty Ltd (together “the Respondents”) brought an action for damages against a number of parties, including the Robinson Helicopter Company Inc. (“Robinson”).

It was common ground the accident was caused by the failure of bolt 4 in the helicopter’s forward flexplate. Bolt 4 was a critical fastener that, if removed or lost, could compromise the safe operation of the helicopter. For this reason, the helicopter maintenance manual (“the manual”) specified that a secondary locking mechanism be employed. This involved a “palnut” to be placed on bolt 4 and that after its installation, a torque (paint) stripe to be applied across both bolt 4 and the palnut. If bolt 4 had been incorrectly assembled therefore, the torque stripe would have been visibly damaged, thus alerting the Licensed Aircraft Maintenance Engineers (“LAMEs”) during the regular inspections.

On 28 March 2014 Justice Lyons dismissed the claim against Robinson. His Honour concluded that Robinson had taken reasonable care to address the risk of the flexplate’s failure from an inadequately torqued bolted joint. He further held that neither the helicopter itself nor the manual had a defect for the purposes of s 75AD and s 75AE of the *Trade Practices Act 1974* (Cth).

On 19 December 2014 the Court of Appeal (McMurdo P & Wilson J; Holmes JA dissenting) allowed the Respondents’ appeal. The majority noted that Justice Lyons’ reasoning was reliant on the premise that an intact torque stripe was a sufficient indicator of the security of each relevant bolt. This however was not the case, as the application of a torque wrench would have revealed to the LAMEs that the relevant bolt was loose. The majority further found that the manual itself was inadequate because it did not instruct the LAMEs to investigate a deteriorated or incomplete torque stripe. Justice Holmes however held that the most recent LAMEs who had inspected the helicopter were alive to the significance of an intact torque stripe. His Honour noted that each of them had given evidence that he would have taken further action had he noticed a deteriorated torque stripe.

The grounds of appeal include:

- The Court of Appeal erred in finding (at [85]) that no disadvantage of the kind there identified from the use of [the] torque wrench, attached to the

use of a simple, inexpensive spanner to check each bolt in the flexplate for looseness, when the evidence was to the contrary.

- The Court of Appeal erred in departing from findings made by the trial judge which were open on the evidence and further which were neither glaringly improbable nor contrary to compelling inferences.