



HIGH COURT OF AUSTRALIA

Public Information Officer

16 July, 2003

STEPHEN ALFRED CATTANACH AND THE STATE OF QUEENSLAND v KERRY ANNE
MELCHIOR AND CRAIG MELCHIOR

The High Court of Australia today dismissed an appeal by Dr Cattnach and the State of Queensland against an award of damages requiring them to pay the costs of bringing up an unplanned child conceived as a consequence of medical negligence.

After having two daughters in 1985 and 1988, Mrs Melchior wanted no more children and consulted Dr Cattnach, an obstetrician and gynaecologist, about sterilisation. She told him that at age 15 her right ovary and fallopian tube had been removed during an appendectomy. When Dr Cattnach performed a tubal ligation on Mrs Melchior in 1992, what he saw was consistent with that history, so he attached a filshie clip to the left fallopian tube. In fact, only the right ovary had been removed, due to a blood clot, but the right fallopian tube had not. Mrs Cattnach became pregnant at age 44 and gave birth to a son on May 29, 1997. Experts for both sides were present at the birth and after a caesarean delivery her uterus was lifted out, showing the right fallopian tube still intact, although twisted out of its normal position. Mrs Cattnach appeared to have conceived by transmigration of an egg from the left ovary to the right fallopian tube.

The Melchiors sued both Dr Cattnach and the State of Queensland, as the sterilisation was performed in the Redland Hospital, a public hospital in Brisbane. In a trial in the Queensland Supreme Court, Justice Catherine Holmes held Dr Cattnach was negligent in uncritically accepting Mrs Melchior's assertion that her right fallopian tube had been removed, failing to inform Mrs Melchior of the risk of pregnancy if the tube was still there, and failing to inform her of a procedure that would reveal the existence of a functioning fallopian tube. But Justice Holmes did hold that Dr Cattnach's failure to observe the right fallopian tube during the sterilisation procedure was not negligent. She awarded Mrs Melchior \$103,672.39 in damages related to the pregnancy and birth, Mr Melchior \$3,000 for loss of consortium as a result of his wife's pregnancy, and Mr and Mrs Melchior jointly \$105,249.33 for the costs of raising and maintaining a child to age 18. Dr Cattnach and the State appealed against the awarding of the third category of damages, but the Court of Appeal, by majority, dismissed their appeal. They then appealed to the High Court in relation to the third head of damages.

By a 4-3 majority, the High Court also dismissed their appeal. The majority held that the costs of the child's upbringing were directly connected to Dr Cattnach's negligence and constituted legally recognisable damage to Mr and Mrs Melchior. The majority also held that the arrival of a healthy child could not be treated as a benefit to be offset against the financial burden suffered as a consequence of negligence.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*