



## HIGH COURT OF AUSTRALIA

**Manager, Public Information**

22 April 2009

### DAVID STUART & ANOR v TANIA KIRKLAND-VEENSTRA & ANOR

Today the High Court decided that two police officers did not owe Mrs Kirkland-Veenstra's husband, Ronald Veenstra, a duty of care to take steps to prevent him from committing suicide.

At about 5.40am on 22 August 1999, two police officers observed Mr Veenstra in his car at a beachside car park. There was a hose pipe leading from the exhaust into the interior of the car, but the car engine was not running. The officers spoke with Mr Veenstra who indicated that he had thought about doing something stupid but had changed his mind. The officers offered to contact various people, including his wife or a doctor, but Mr Veenstra said that he would go home and talk to his wife. The officers considered that Mr Veenstra was rational and cooperative and showed no sign of mental illness. They allowed him to leave. Later that day, Mr Veenstra committed suicide at his home by securing a hose from the exhaust of his car and starting the engine.

Under section 10 of the Mental Health Act (Victoria), the police officers were empowered (though not obliged) to apprehend a person and take him or her to be assessed by a medical practitioner if he or she appeared to them to be mentally ill ("mental illness" being defined in the Act to mean "a medical condition that is characterised by a significant disturbance of thought, mood, perception or memory") and they reasonably believed that he or she had recently attempted suicide or was likely to do so.

Mrs Kirkland-Veenstra sued the officers and the State of Victoria, arguing that the officers owed duties of care, both to her husband to protect his health and safety, and to her to avoid the foreseeable psychiatric injury consequential upon her husband committing suicide.

In the Victorian County Court, the trial judge held that, as a matter of law, the officers owed neither Mr Veenstra nor Mrs Kirkland-Veenstra a duty of care. On appeal to the Victorian Court of Appeal, it was held by majority that the officers did owe those duties of care. The two officers appealed to the High Court and the High Court today allowed their appeal.

In three separate judgments, all six Justices decided that the officers owed no duty of care to either Mr Veenstra or Mrs Kirkland-Veenstra. It was explained that historically the law did not oblige a person to rescue another from harm. In one judgment it was held that the circumstances present in this case did not contain special features to take the case outside of that general rule; no duty of care arose. The Justices held that the control of the risk of the harm to himself remained with Mr Veenstra.

In each of the judgments it was pointed out that the Mental Health Act was not designed to prevent suicide; it was addressed to the protection of mentally ill persons. It would be wrong to assume that all persons who attempted suicide were mentally ill; the Mental Health Act contained no such assumption.

Three Justices considered the fact that the police officers had not formed the view that Mr Veenstra was mentally ill to be critical. Unless they had that opinion they were not permitted to apprehend him pursuant to section 10 and take him to be assessed. They did not have that power.

The High Court set aside the decision of the Victorian Court of Appeal and reinstated the trial judge's finding that the officers owed no duty of care to Mrs Kirkland-Veenstra.

- *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.*