

**ARTICLE FOR “WESTERN COUNCILLOR”
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THRILL SEEKERS BEWARE

All of us have come across people who, being fed a diet of sensationalist media stories, may come to believe that the world belongs to pop star celebrities, criminals who get off too lightly and gutsy but unmeritorious claimants who are able to win multi-million dollar compensation awards.

In May this year, the Court of Appeal struck a blow against the third category and ruled that the Shire of Gingin was not liable to a 30 year old man who had suffered severe head injuries from a trail bike accident near Lancelin in 2003.

Bradley Coombe fell about 10 metres when his 400cc Honda trail bike careered off a dune face and crashed onto limestone. His injuries were so severe that he was left unable to remain employed.

Mr Coombe claimed that the Shire was in breach of its duty of care to him because it did not have a warning sign in the car park or in the dunes.

A District Court judge ruled in 2007 that the Shire was 60% liable for Mr Coombe's injuries.

However, the Chief Justice, His Honour Wayne Martin stated that the Shire did not, in effect breach its duty to warn Mr Coombe of the dangers of trail bike riding in the dunes.

In fact, the Shire did have a warning sign at the entrance to the off-road area which read: *“The off-road area is a hazardous environment. Many serious injuries occur each year. Beware. Sudden steep descent. Collisions with vehicles/pedestrians.”* The warning sign also included rules for use of the area.

At the trial, Mr Coombe was not able to say whether he had read the warning sign put up by the Shire. However, His Honour described trail biking as *“an inherently dangerous recreational activity”* and stated *“It seems unlikely that a sign differently worded would have caused him to modify his behaviour.”*

The decision is the latest in a trend of cases and legislation stretching back over the past 10 years or so that puts the onus back onto the public to take more responsibility for their own safety where the activity is obviously dangerous.

Indeed, the decision is a reflection of perhaps how far society has progressed. In the early 20th century, society had a much less developed health system and social welfare safety net compared to Australia today. Imagine being in the shoes of the judge who, when faced with a borderline claim, was conscious of the fact that dismissal of a severely damaged plaintiff would condemn him or her to a miserable, poverty-stricken life, potentially made even more uncomfortable by the lack of sufficient medical care.

Today, there is enough Government healthcare and other welfare infrastructure to mean that a severely disabled person will not automatically end up living in a gutter.

This leaves judges potentially unburdened by such considerations and therefore freer to concentrate on the rational justice of the case – in particular, questions like whether and the extent to which a person should be held responsible for his or her own actions.

This decision is a good new precedent for local government. It is a milestone that promotes both sensible behaviour by members of the public and hopefully, the removal of public liability claims against local governments from the “soft targets” list in the roving eyes of injured thrill-seeking plaintiffs.

Disclaimer

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