

# **Purvis v New South Wales [2003] HCA 62; 217 CLR 92; 202 ALR 133; 78 ALJR 1**

## **1) Reference Details**

Jurisdiction: High Court of Australia

Date of decision: 11 November 2003

## **2) Facts**

The appellant, a pupil from a State high school, had been excluded as a result of his repeated assaults on other pupils and teachers. The appellant claimed that this amounted to unlawful discrimination under section 22 of the Disability Discrimination Act, arguing that his behaviour which was a result of brain damage suffered in infancy fell within the section 5 meaning of disability (when read in conjunction with section 4).

## **3) Law**

Sections 5, 10, 22 of the Disability Discrimination Act 1992

## **4) Legal Arguments**

The Appellant

The appellant argued that the meaning of "disability" also included the effects or results of that underlying disorder, malfunction, illness or disease.

On the issue of causation the appellant submitted that "it is unnecessary for the purposes of this case to determine whether the test of causation is a "but for" test, requiring only that the person's disability have a real causative effect in the sense that, but for its presence, the act complained of would not have occurred; or a "but why" test, requiring an investigation of the reasons which led the alleged discriminator to accord the less favourable treatment to the person with the disability."

The application argued that attention must be paid to the particular characteristic of the complainant which *in fact* led to the decision or action of which complaint is made. It was sufficient if the particular characteristic were *the fact of, or an aspect of*, the complainant's disability. Applying either test, the motive or intention of the discriminator in taking the aggrieved person's disability into account was irrelevant, however benign that motive or intention might be.

*The State*

The respondent asserted that the underlying reason for exclusion of the appellant was not his disability but the genuine threat that he considered that the respondent posed to other pupils and teachers.

## **5) Decision**

The majority dismissed the appeal. Gleeson J held that the appellant's condition was clearly covered by the definition of disability in the Disability Discrimination Act but that sections 5, 10 and 22 of the Act were concerned with "the *lawfulness* of the conduct of the school authority, and with the true basis of the decision of the principal to suspend and later expel the pupil." He went on to assert that making a decision based on a threat to safety was not contrary to the purposes of the Disability Discrimination Act. The basis of the principal's decision to exclude the pupil was not based on his disability, but on the threat to other pupils and teachers. The judgement seems to show that in order for conduct to fall under prohibited conduct under the Disability Discrimination Act, disability must be the reason for discrimination and not merely a causal factor of the main reason.