

TORT LAW REVIEW

Volume 14, Number 3

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Children’s right to sue for social workers’ negligence: The impact of the Human Rights Act 1998 (UK) – Raymond Arthur

In *D v East Berkshire Community NHS Trust* [2004] QB 558; [2003] EWCA Civ 1151 and *JD (FC) v East Berkshire Community Health NHS Trust* [2005] 2 AC 373; [2005] UKHL 23 the English judiciary held that children wrongly diagnosed as having been abused or mistakenly taken into care can now sue the social workers responsible. Lord Phillips ruled that the House of Lords’ decision in *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633 which barred claims against social workers in child abuse cases could not survive the *Human Rights Act 1998* (UK). This article examines the development of the law in this area and the implications of this recent landmark decision for children, and their parents, who have suffered as a result of local authority negligence. 135

Executory purpose: Recovery against government for personal injury and property damage in Canada – Melanie Vipond

Recognising the unique relationship between the private law of negligence and the public realm of government services, Canadian courts have applied the policy/operational test to the duty of care analysis in negligence claims. This dichotomy has been refined by developing a clearer concept. “Executory purpose” increases the ambit of reviewable governmental decisions. It should only play a minimal role in the duty of care analysis and allow most claims to be decided at the standard of care stage. The government will have a significant burden of proof in establishing the true policy nature of the decision. This burden directly accords with the legislators’ intent to be bound by tort law. The government will be treated as if it was a private person and will only be treated differently in the extreme situation, where the decision is truly an exclusive matter of policy. 148

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Editorial inquiries:
Tel: (02) 8587 7000

HEAD OFFICE
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Tel: (02) 8587 7000 Fax: (02) 8587 7100



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