



## HIGH COURT OF AUSTRALIA

Public Information Officer

12 December 2006

### STATE OF NEW SOUTH WALES v DOROTHY ISABEL IBBETT

The High Court of Australia today upheld awards of aggravated and exemplary damages against the State of New South Wales for trespass and assault by police officers.

Mrs Ibbett, 75, brought action in the NSW District Court for damages for trespass and assault after two police officers pursued her son Warren into the garage of her home at Forster on the NSW central coast. Warren Ibbett, 48, lived with his mother after his release from prison in 1997 for armed robbery. About 2am on 23 January 2001, while Mrs Ibbett was asleep, Mr Ibbett arrived home in his van, pursued by an unmarked police car for speeding. He drove into the garage and closed the roller door with a remote control. As the door was closing, Senior Constable Darren Pickavance slid under it and with his service pistol drawn sought to arrest Mr Ibbett. Senior Constable Pickavance had no basis for making such an arrest or entering the property. Neither officer was in uniform but wore casual clothing. Mrs Ibbett was woken by the commotion. When she went into the garage Senior Constable Pickavance swung his gun towards her. He ordered Mrs Ibbett to open the garage door to let in Senior Constable Peter Harman. The officers handcuffed Mr Ibbett and pushed him down on to the driveway. His van was moved on to the driveway and searched. He was taken back into the garage and strip-searched. Criminal proceedings were commenced against Mr Ibbett but the charges were later dropped.

Judge Colin Phegan found that the entry on to the property by Senior Constables Pickavance and Harman was without lawful justification and amounted to trespass. He held that Senior Constable Pickavance caused such an apprehension of harm on Mrs Ibbett's part it amounted to assault. Judge Phegan awarded Mrs Ibbett \$50,000 for trespass, made up of \$10,000 in general damages, \$20,000 in aggravated damages and \$20,000 in exemplary damages, and \$25,000 for assault, made up of \$15,000 in general damages and \$10,000 in exemplary damages. The Court of Appeal dismissed the State's appeal and allowed Mrs Ibbett's cross-appeal. It increased the total damages to \$100,000 by awarding another \$15,000 in exemplary damages and \$10,000 in aggravated damages for the assault. The State appealed to the High Court.

The Court unanimously dismissed the appeal. The State complained that by awarding general, aggravated and exemplary damages for trespass the State was punished twice for the same wrong. The High Court held that the Court of Appeal's upholding of the award of aggravated damages was consistent with basic principle. It held that the Court of Appeal was mindful of the conceptual distinction between the compensatory nature of aggravated damages and the punitive and deterrent nature of exemplary damages. The Court of Appeal was also aware of the dangers of an excessive overall award where factors supporting one head of damages could also support the other.

- *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.*