

# CONSIDERATION OF STATISTICS IN ADJUDICATIVE FACT FINDING

## CROWN V GALLI (2001)

127 A CRIM R 493

In this case, Spigelman CJ referred to the danger that statistical outcomes suggest an exactness which a statistical distribution does not have, recognising the challenge of using mathematical probabilities as the basis for fact-finding. His Honour observed:

*"Findings of fact in both civil and criminal cases require common sense judgment and the tribunal of fact is required to reach a level of actual persuasion on the whole of the evidence. This does not involve a mechanical application of the probabilities."*

## SELTSAM V MCGUINNESS (2000)

49 NSWLR 262

In this case the court was asked to consider whether exposure to asbestos caused renal cell carcinoma.

Spigelman CJ said:

*"Courts must determine the existence of a causal relationship on the balance of probabilities. However, as is the case with all circumstantial evidence, an inference as to the probabilities may be drawn from a number of pieces of particular evidence, each which does not itself rise above the level of possibility. Epidemiological studies and expert opinions based on such studies are able to form "strands in a cable" of a circumstantial case."*

His Honour stated that evidence of possibility, in this case being statistical, epidemiological studies, should be regarded as circumstantial evidence, which may alone, or in combination with other evidence, be relied upon to establish causation.

## MAKITA (AUSTRALIA) PTY LTD V SPROWLES (2001)

52 NSWLR 705

In this case the court considered the use of expert evidence, finding that expert opinion evidence has to be in a field of specialised knowledge to be admissible.

The case came before the court because Sprowles, an employee of Makita, fell down some stairs at work and made a negligence claim against Makita. An expert physicist who specialised in slip accidents, was brought in who stated in his opinion that the stairs were slippery and had caused Sprowles' fall, despite evidence being to the contrary and Sprowles herself never specifying that the stairs were slippery. The NSW Court of Appeal ultimately ruled that the trial judge erred in relying on the expert's opinion and that Makita was not in breach of their duty of care as an employer.

## ALA15 V MINISTER OF IMMIGRATION AND BORDER PROTECTION [2015]

FCCA 2047

Statistical evidence was sought to be used in this appeal, to demonstrate a judge's bias in that 252 out of the 254 immigration judgments (or 99.21%), the judge found in favour of the respondent Minister for Immigration and Border Protection.

The Full Court of the Federal Court rejected the applicant's contentions, stating that:

*"the mere fact that a particular judge has decided a number of cases, the facts and circumstances of which are unknown, one way rather than another, does not go any way to assisting the hypothetical observer making an informed assessment as to whether that judge might not bring an impartial and unprejudiced mind to the resolution of the question in a particular proceeding before that judge"*.