



## Transcript of Proceedings

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Date: 17 September, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

No 432 of 2004

NICHOLAS DAMETTO

Applicant (Plaintiff)

and

STATE OF QUEENSLAND

First Respondent  
(First Defendant)

and

HERBERT OBERN

Second Respondent  
(Second Defendant)

CAIRNS

..DATE 15/09/2004

JUDGMENT

**WARNING:** The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: This is an application on the part of the plaintiff for leave pursuant to section 43 of the Personal Injuries Proceedings Act 2002 to proceed, notwithstanding non-compliance with the provisions of that Act prior to commencement of an action.

The plaintiff was injured on the 16th of January 1997. He was then 13 years of age, having been born on the 18th September 1983. He consulted his present solicitors in March of 1997 and thereafter the defendants were advised of this impending claim, and there was interaction between the plaintiff's solicitors and a claims adjuster. Since that date there has been the enactment of the Personal Injuries Proceedings Act which required other steps to be taken.

On behalf of the plaintiff a notice of claim dated the 30th of August 2002 was forwarded to the relevant insurer. This prompted the insurer to raise certain questions or requisitions which was done on the 13th of October 2002. The plaintiff's solicitors prepared a response to those requisitions, but through oversight or through the file becoming mislaid in the solicitors' offices, the response was not returned. This fact was only brought to the attention of the plaintiff's solicitors within the last few days and, as a consequence, the response to the insurer's requisitions has now been sent, but it has made necessary this application because of the impending expiration of the limitation period on the applicant's 21st birthday - that is on the 18th of September 2004.

Having regard for the urgency with which the proceedings have to be entered, and the fact that the delay which has been caused is properly explained, I propose to grant the application.

The insurer and the defendants are well aware of the circumstances of the claim, and have been from early times, and consequently I do not see that there is any prejudice to their pursuing any defence of the plaintiff's action.

I make the following orders:

- (1) That the applicant plaintiff be granted leave pursuant to section 43 of the Personal Injuries Proceedings Act 2002 to bring a proceeding for damages for personal injuries sustained on 16 January 1997, despite non-compliance with the requirements of section 9 of the said Act;
- (2) I order that such proceedings be stayed until the applicant has complied with chapter 2 part 1 of the said Act;
- (3) I make no order for costs, having regard to the fact that the respondents have not appeared, nor indeed even advised the Court of their intention not to appear.

I should mention that I am satisfied on the affidavit of Jane Marie Winkle that the appropriate parties have been served and have indicated to the applicant's solicitors that they would not be appearing on this application.

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