



## Transcript of Proceedings

Copyright in this transcript is vested in the Crown. Copies thereof must not be made or sold without the written authority of the Director, State Reporting Bureau.

REVISED COPIES ISSUED  
State Reporting Bureau  
Date: 22 October, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

JONES J

Application No 478 of 2004

SAMUAL PENBERTHY

Applicant

and

RAYMOND McALPINE WALKER

First Respondent

and

NIRVANA NOW PTY LTD

Second Respondent

and

NATURES GEMHOUSE PTY LTD

Third Respondent

CAIRNS

..DATE 19/10/2004

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 for grant of leave pursuant to section 43 of the Personal Injuries Proceedings Act 2002 for the applicant to start proceedings in the Court for damages against one or other of the three respondents.

1

The applicant was injured on the 31st of October 2003 whilst on board a fishing vessel, the "Loray" which came into collision with a navigation beacon as it was passing through the leads at Cairns Harbour.

10

The vessel was then under the control of the first respondent. The vessel was operated at the time by either the second respondent or the third respondent. That is a matter about which the applicant remains unsure.

20

The applicant duly gave notice of claim to the first and second respondent in November 2002. Each of those respondents have agreed by a minute of consent order, Exhibit 2, for the sought after leave to be granted.

30

The third respondent has made no response at this stage. There was a suggestion that the third respondent may have been entitled to indemnity under the WorkCover Legislation, but whilst that appears not to be the case the position has not been clarified.

40

That uncertainty only became a matter of notice to the applicant some two weeks ago and it explains why the third

50

respondent has not consented to the order whilst the other two respondents have.

1

This is a matter which proceedings must be commenced before the 31st of October 2004. There is an urgency which makes necessary the exercise at my discretion for granting of the leave sought.

10

I should say this; the third respondent has been served with the application as appears in the affidavit of Robert Anderson filed by leave this day. The third respondent has not appeared to oppose the order which has been sought.

20

In all those circumstances I'll make orders against all respondents in terms of the draft order which has become Exhibit 2 in the application.

30

-----

40

50