SUPREME COURT OF QUEENSLAND

CITATION:	*Taylor v Stratford & Ors* [2003] QSC 427
PARTIES:	**GLENN NEIL TAYLOR** (applicant) v **GRAHAM STRATFORD** (first respondent) and **ACME FIREWORKS PTY LTD ACN 091 527 132** (second respondent) **STATE OF QUEENSLAND** (third respondent)
FILE NO:	S6632 of 2003
DIVISION:	Trial
PROCEEDING:	Application
DELIVERED ON:	16 December 2003
DELIVERED AT:	Brisbane
HEARING DATE:	5 August 2003, 15 December 2003
JUDGE:	Wilson J
ORDER:	**On the application filed 28 July 2003:** **1. Declaration that the applicant provided a reasonable excuse for the delay in giving the respondents a part 1 notice of claim pursuant to s 9(1) of the *Personal Injuries Proceedings Act* 2002 (Qld)** **2. Declaration that the applicant gave the respondents a complying part 1 notice of claim pursuant to s 9(1) of the *Personal Injuries Proceedings Act* 2002 (Qld) on 14 May 2003** **On the application filed 10 December 2003:** **1. Order that leave be granted to the applicant pursuant to s 43 of the *Personal Injuries Proceedings Act* 2002 (Qld) to file a claim for damages for loss of consortium and loss of servitium arising out of the personal injuries suffered by Lorraine Susan Taylor on 20 May 2000;** **2. Order that any proceeding commenced pursuant to such leave be stayed pending the determination of any appeal against my decision on the first**

application and pending the final determination of the proceeding commenced on 12 June 2003

CATCHWORDS: LIMITATION OF ACTIONS – CONTRACTS, TORTS AND PERSONAL ACTIONS – PERSONAL INJURY CASES – where applicant allegedly failed to serve notice of claim for loss of consortium and servitium pursuant to s 9 *Personal Injuries Proceedings Act* 2002 (Qld) – where application for declaration that applicant provided reasonable excuse for the delay in giving the respondents such a notice – where relevant Form of Notice of Claim made no provision for loss of consortium claim – where notice was served late – where applicant's solicitor has acknowledged responsibility for delay – where applicant not personally to blame – whether reasonable excuse

LIMITATION OF ACTIONS – CONTRACTS, TORTS AND PERSONAL ACTIONS – PERSONAL INJURY CASES – where applicant allegedly failed to serve complying notice of claim for loss of consortium and servitium – where application for declaration that applicant has given a complying notice – where no particular forms provided for loss of consortium and servitium claims – where neither Act nor Regulations specified requirements for notice of loss of consortium and servitium claims – where applicant's solicitor prepared notice of claim in which applicant's wife was named as the injured person and the particulars related to her – where applicant's solicitor edited notice to include applicant's details – whether applicant has given a complying notice

LIMITATION OF ACTIONS – CONTRACTS, TORTS AND PERSONAL ACTIONS – PERSONAL INJURY CASES – where alternatively applicant seeks leave to proceed with the claim despite non-compliance – whether leave should be granted

LIMITATION OF ACTIONS – CONTRACTS, TORTS AND PERSONAL ACTIONS – PERSONAL INJURY CASES – where judgment delayed pending outcome of appeals in other matters – where judgment in appeals given on 15 December 2003 – where expiration of limitation period on 18 December 2003 – where application brought by applicant seeking leave pursuant to s 43 *Personal Injuries Proceedings Act* 2002 (Qld) to file claim for damages for loss of consortium and servitium – where alternatively application for leave pursuant to s 18(1) *Personal Injuries Proceedings Act* 2002 (Qld) authorising applicant to proceed further – whether leave should be granted in the circumstances

Curran v Young (1965) 112 CLR 99, cited
Kash v SM & TJ Cedergren Builders & Ors [2003] QSC 426, cited
Miller v Nominal Defendant [2003] QCA 558, applied
Opperman v Opperman [1975] Qd R 345, cited
Perdis v Nominal Defendant [2003] QCA 555, applied
Piper v Nominal Defendant [2003] QCA 557, applied
Riley v City of Oakleigh [1939] VLR 384, cited
Stanton v DMK Forest Products Pty Ltd [2003] QDC 150, cited

Acts Interpretation Act 1954 (Qld) s 32AA
Civil Liability Act 2003 (Qld) s 81
Limitation of Actions Act 1974 (Qld) s 11
Motor Accident Insurance Act 1994 (Qld) s 37
Personal Injuries Proceedings Act 2002 (Qld) s 4, s 6, s 7, s 9, s 10, s 12, s 13, s 18, s 20, s 22, s 28, s 43, s 53, s 59, s 74, s 77D
Personal Injuries Proceedings Amendment Act 2002 (Qld)
Personal Injuries Proceedings Regulation 2002 s 3

COUNSEL: W Sofronoff QC and JB Rolls for the applicant
A Collins for the first and third respondents
A Collins and AB Haly (solicitor) for the second respondent

SOLICITORS: Stephen Comino & Cominos for the applicant
McMahons National Lawyers for the first respondent
Phillips Fox for the second respondent
Crown Solicitor for the third respondent

[1] **WILSON J**: On 20 May 2000 Mrs Lorraine Susan Taylor sustained serious personal injuries as the result of a fireworks explosion at a school at Bray Park, north of Brisbane. Her husband, the present applicant, was prompt in retaining solicitors to prosecute on her behalf a claim for damages for personal injuries. It seems that he co-operated fully with the solicitors in providing necessary instructions for his wife's claim and the solicitors were diligent in fulfilling all the pre-litigation steps prescribed by relevant statute law in relation to the claim on her behalf.

[2] The applicant also gave the solicitors instructions to make a claim for damage for loss of consortium and servitium for himself. The present application (which was filed on 28 July 2003 and heard on 5 August 2003) arises out of the applicant's alleged failure to serve a notice of claim relating to his own claim pursuant to s 9 of the *Personal Injuries Proceedings Act* 2002. He seeks –

(a) a declaration that he had provided a reasonable excuse for the delay in giving the respondents such a notice;

(b) a declaration that he has given a complying notice;

(c) alternatively, leave to proceed with the claim despite non-compliance.

[3] In order to understand the nature of the application, it is necessary first to consider the nature of the claims he makes and their place in the relevant statutory scheme.

Loss of consortium and servitium

[4] In *Curran v Young* (1965) 112 CLR 99 the High Court had to determine whether at common law, in the absence of a relevant statutory provision, contributory negligence by an injured wife would defeat her husband's claim for loss of consortium. The Court held that it would not, because the husband's action was independent of his wife's. Barwick CJ said at pp 100 - 101:

> "In my opinion this submission is clearly erroneous. The action of the husband of its very nature is quite independent of that of the wife and is in no sense dependent on her ability to obtain a verdict for herself against the defendant. Although the husband's action may be grounded upon the same act of the defendant as would be an action by the wife for her own injury, the damage is entirely different. He sues, not for the injury to her, but for the damage suffered by himself by the wrongful act of the defendant, albeit because she was injured thereby. The act of the defendant causing injury to the wife in breach of the defendant's duty to her does not lose its tortious character because she is unable by reason of her own conduct to succeed in an action against the defendant. Its tortious character remains, both as against the wife and as against the husband. So does its causal relationship both to the injury to the wife and the damage to the husband.
>
> The wife's failure to take care for herself which disentitles her to succeed is, in my opinion, an irrelevant circumstance in an action by the husband. The matter, of course, would be different if the husband were suing for the consequences of the defendant's negligence in circumstances where the conduct of the wife, when she was doing something which she was either expressly or impliedly authorized to do on his behalf, was a contributing cause to that damage. In such a case his responsibility for her acts may result in his being disentitled to succeed."

McTiernan J said at p 103:

> "It is argued that the action per quod consortium amisit is derivative, and that this concept of the action involves that a defence which the defendant could plead if the wife sues for damages in respect of the injury she sustained may be pleaded in defence to a claim by the husband for loss of consortium. In my opinion the husband's action for loss of consortium and the wife's action for personal injury are entirely separate. The husband's action is not an offshoot of the wife's rights. It would seem he may maintain the action even though his wife consented to the wrong on which he bases the action: *Rogers v. Goddard* (1682) 2 Show KB 255 (89 ER 925). If the wrong was negligence causing injury to the wife the husband does not sue for that damage. His claim is for loss of consortium consequential upon the injury; such loss is damage which he suffers. Contributory

> negligence of the wife postulates that the defendant himself was guilty of negligence as a result of which the wife suffered injury. Her negligence cannot be attributed to her husband unless the defendant proves that the wife was agent or servant of the husband: qua wife, she is not agent or servant for present purposes."

Kitto J said at pp 104 - 105:

> "It seems to me that in the end only one question emerges which requires serious consideration, and that is a question as to the essential ingredients of a husband's action per quod consortium amisit. It is of course a separate action entirely from the wife's action in respect of the personal injury caused to her by the defendant's conduct. It is an action for the damage caused to the husband by the injury of the wife: see generally *Wright v. Cedzich* (1930) 43 CLR 493. He must, of course, prove that some act or omission of the defendant was a substantial cause of the harm done to the wife. That requirement is satisfied in the present case, for the jury's first finding means that although the wife's own carelessness was a cause of her injury, and a sufficiently substantial cause of it to prevent her from recovering damages against the defendant, conduct of the defendant was also a cause of her injury, and was a cause not too remote to entail legal responsibility for that injury. But the question that remains is whether it is of the very nature of a husband's cause of action for loss of consortium that by the infliction upon the wife of the injury which he alleges caused him that loss she herself became entitled to recover damages from the defendant."

Taylor J reviewed relevant English, Canadian and Australian authorities, and reached the same conclusion.

Whether *PIPA* applicable to claims for loss of consortium and servitium

[5] Claims for loss of consortium and servitium are in principle independent of the injured spouse's claim for damages for personal injuries. Are such losses 'personal injury' within the meaning of the Act?

[6] The Act is described in its long title as "an Act to regulate particular claims for and awards of damages based on a liability for personal injuries, and for other purposes". It applies in relation to all personal injury arising out of an incident whether happening before, on or after 18 June 2002: s 6(1). Its main purpose is described in s 4 as being -

> "to assist the ongoing affordability of insurance through appropriate and sustainable awards of damages for personal injury".

Section 4 goes on –

> "(2) The main purpose is to be achieved generally by -

(a) providing a procedure for the speedy resolution of claims for damages for personal injury to which this Act applies; and

(b) promoting settlement of claims at an early stage wherever possible; and

(c) ensuring that a person may not start a proceeding in a court based on a claim without being fully prepared for resolution of the claim by settlement or trial; and

…"

[7] The schedule to the Act contains (and always has contained) the following definitions -

"'**claim**' means a claim, however described, for damages based on a liability for personal injury, whether the liability is based in tort or contract or in or on another form of action including breach of statutory duty and, for a fatal injury, includes a claim for the deceased's dependants or estate

'**claimant**' means a person by whom, or on whose behalf, a claim is made.

'**injured person**' means a person who suffers personal injury

'**personal injury**' includes -

(a) fatal injury; and

(b) prenatal injury; and

(c) psychological or psychiatric injury; and

(d) disease."

[8] The Act presently contains two references to loss of consortium and servitium claims. By s 22(1)(b)(vi) a claimant must give the respondent notice of any claim known to the claimant for gratuitous services or loss of consortium or servitium "consequent on the claimant's personal injury", and by s 28(1)(h) a respondent must give a contributor information about any claim known to the respondent for gratuitous services or loss of consortium or servitium "consequent on the claimant's personal injury". Until 9 April 2003 the Act also contained a provision placing restrictions on the award of damages for loss of consortium or loss of servitium (s 53). That section was repealed, and a similar provision was inserted in the *Civil Liability Act* 2003 (s 58). The now repealed s 53 continues to have effect in relation to an incident which occurred before 9 April 2003: *Personal Injuries Proceedings Act 2002* s 81.

[9] The applicant submitted that an action for damages for loss of consortium is one for damages "based on a liability for personal injury" and is thereby caught by the

terms of the Act. The respondents concurred in that submission. The following passage in the applicant's written submissions encapsulates the argument:

> "Although the losses are different, the claim nevertheless has its origins in the injury to Mrs Taylor. For that reason, it is submitted that an action for damages for loss of consortium is one 'based on a liability for personal injury' and is thereby caught by the terms of the Act. It is clear that by the use of this phrase the Act contemplates a wider area of operation than simply a claim for damages by an injured person who has sustained personal injury. A dependency claim would not be caught if the Act was only so limited. If it was intended that claims be limited only to persons who sustain personal injury, then the definition of 'claimant' is not necessary. Instead, the Act could have referred throughout to 'injured person'. Accordingly, it is submitted that the Act has a wider area of operation to include claims made by persons who are not injured but have suffered loss as a consequence of personal injury to another.
>
> [...]
>
> However, it would be, it is submitted, inconsistent with the objects of the Act, in particular those set out in s 4(2)(a), (b) and (c) for loss of consortium claims not to be caught within the ambit of the Act."

[10] I am persuaded that the Act does apply to loss of consortium claims for the reasons submitted by the applicant.

Time within which notice of claim required to be given

[11] One of the key pre-litigation steps required by the legislation is the giving of a notice of claim. Under s 9 a notice of claim must be given within the earlier of nine months of the incident giving rise to the personal injury or one month after the claimant first consults a lawyer about a possible damages claim. When s 9 first commenced (on 18 June 2002) the notice of claim requirements were not retrospectively applicable. However, they were made so on 29 August 2002 when amendments effected by the *Personal Injuries Proceedings Amendment Act* 2002 commenced.

[12] The amending legislation contained transitional provisions (inserted as s 77A) specifying the times within which notice had to be given. It provides -

> "**77A Special provision for personal injuries arising out of incidents happening before 18 June 2002**
>
> (1) This section applies to a personal injury arising out of an incident happening before 18 June 2002 and in relation to which a period of limitation has not ended.
>
> (2) For the purposes of section 9(3)(a), the day the incident giving rise to the personal injury happened is taken to be 1 August 2002.

> (3) For the purposes of section 9(3)(b), a claimant is taken not to have consulted a lawyer earlier than the day 3 months after the day the *Personal Injuries Proceedings Amendment Act* 2002 receives assent.
>
> ..."

[13] The incident in which Mrs Taylor was injured occurred on 20 May 2000, ie before the commencement of the Act. Pursuant to s 77A, the applicant was deemed not to have consulted a lawyer before 29 November 2002, and so he had until 29 December 2002 in which to give a notice of his claim for loss of consortium. He did not purport to do so until 14 May 2003.

Responses by respondents

[14] Under ss 10 and 12 each of the respondents had one month in which to respond and to raise matters such as whether it was a proper respondent to the claim and whether the notice was a 'complying part 1 notice of claim'.

[15] The first respondent (Graham Stratford) did not respond until 24 June 2003. His solicitors wrote -

> "We refer to the above matter and to your correspondence dated 14 May 2003 purporting to give Notice of your client's claim.
>
> We do not concede that your client has given any Notice of his claim as he has simply provided us with a copy of his wife's notice.
>
> Your client's purported Notice is accordingly not a valid Notice under the Act and we are under no obligation to respond pursuant to the Act until a proper Notice is given.
>
> Further, any attempt to serve a complying Notice by your client is well out of time and your client's claim is, in fact, statute barred."

The applicant's solicitors replied, relying on s 13 to assert (correctly) that no timely response having been received, the first respondent was presumed conclusively to be satisfied that the notice was a complying notice.

[16] The second and third respondents (Acme Fireworks Pty Ltd and State of Queensland) both responded (in time) asserting that the notice was not a complying notice. The second respondent asserted also that no 'reasonable' excuse for the delay had been given.

Explanation for delay

[17] A copy of the notice of claim served on each respondent had been accompanied by a letter giving the following explanation for the delay: -

> "(a) The Notice was given shortly after the implementation of the transitional provisions of *PIPA*;

(b) the focus in relation to the incident was upon the injured person;

(c) the prescribed Form of Notice of Claim made no provision for a party other than the injured person to give notice in respect of a non fatal injury;

(d) following the prescribed form resulted in focusing on the injured person's claim and the claim of Glenn Neil Taylor being inadvertently omitted from the original Notice given."

Reasonable excuse for the delay

[18] Where a notice of claim is not given within the requisite period, the obligation to give the notice continues and the claimant must provide "a reasonable excuse for the delay": s 9(5). This requirement is similar to that in s 37(3) of the *Motor Accident Insurance Act* 1994 which was considered by the Court of Appeal in *Perdis v Nominal Defendant* [2003] QCA 555; *Piper v Nominal Defendant* [2003] QCA 557; and *Miller v Nominal Defendant* [2003] QCA 558. As a result of that trilogy of cases it is now clear -

(a) that the delay for the purpose of s 37(3) of the *Motor Accident Insurance Act* 1994 is the lapse of time from the date of the accident to the date on which a notice with accompanying explanation or excuse for the delay is given;

(b) that for this purpose the question of reasonableness must be considered objectively but having regard to the claimant's personal characteristics such as age, intelligence and education; and

(c) that an explanation for the delay in terms that the claimant had, in a timely fashion, entrusted the matter to a solicitor he reasonably believed was competent to do whatever was necessary and the failure to give a notice of claim was attributable to inaction on the part of the solicitor, will generally be a 'reasonable' one within the meaning of the section. (The qualification to that general proposition where, after a claimant has entrusted the matter to his solicitor, there is something which would cause a reasonable person in his position to make further inquiry or take other steps does not arise on the facts of the present case.)

I consider that a similar interpretation should be given to s 9(5) of the *Personal Injuries Proceedings Act* 2002.

[19] In the present case the whole of the delay from the incident in which the applicant's wife was injured until the notice was given on 14 May 2003 is explained in terms of inaction (stemming from a mistake of law) on the part of the applicant's solicitor. The applicant's solicitor has acknowledged responsibility for the delay. The applicant is in no way personally to blame. I am satisfied that a 'reasonable excuse' was given in the letters written by his solicitors on 14 May 2003.

Whether a complying notice

[20] The notice was required to be given in the approved form, ie in the form approved for a notice of claim at the time the notice was given: ss 9(1), 7(2). By then the

notice was required to be in two parts (pursuant to amendments to s 9 introduced by the *Civil Liability Act* 2003 with effect from 9 April 2003), and it was part 1 that had to be given within the prescribed time. The information required by s 9(2) to be contained in the notice was set out in s 3 of the *Personal Injuries Proceedings Regulation* 2002. Particulars were required about -

- the injured person (subsection 2)
- the incident (subsection 3)
- the nature and treatment of the injured person's personal injury (subsection 4)
- the injured person's economic loss (subsection 5)
- matters of a general nature (subsection 6)
- in the case of a dependency claim, the claimant and any dependants (subsection 7)
- in the case of a health care claim, relevant matters (subsection 8).

Neither s 3 of the Regulation nor the form approved under s 74 of the Act made any express mention of the particulars required with respect to claims for loss of consortium and servitium. Faced with this hiatus, the applicant's solicitor prepared a notice of claim in which Mrs Taylor was named as the injured person and the particulars related to her. The only references to its being the applicant's claim for loss of consortium were on pages 2 and 15 where after the respondents' names and addresses were inserted, the followed was added:

> "From: GLENN NEIL TAYLOR of 58 Dean Street, Bray Park Q 4500 (in respect of a claim for loss of consortium of the injured person Lorraine Susan Taylor)."

The applicant signed the form on pages 14 and 28. On page 14, under the details of the witness to his signature, the following was filled in:

> "Injured Person's Surname/Family Name: *Taylor*
> Given Names: *Glenn Neil*."

In the equivalent place on page 28, 'Injured Person' was deleted and 'Claimant's' substituted as follows:

> "Claimant's
> '~~Injured Person's~~ Surname/Family Name: *Taylor*
> Given Names: *Glenn Neil*."

[21] As I mentioned earlier the now repealed s 53 which limits the recovery of damages for loss of consortium or servitium continues to apply to this claim. Clearly "the injured person" referred to in that section is the injured spouse (in this case, Mrs

Taylor), and not the person bringing the loss of consortium or servitium claim (Mr Taylor).

[22] I consider that the Legislature is to be taken to have intended that a similar meaning be given to "the injured person" in the Regulation. See *Riley v City of Oakleigh* [1939] VLR 384, and see *Acts Interpretation Act* 1954 s 32AA.

[23] It is instructive to consider the notice requirements in the case of a dependency claim as particularised in s 3(7) the Regulation and the approved form. A distinction is drawn between "the injured person" and "the claimant and any dependants". This follows from the definitions of "injured person" and "personal injury" in the schedule to the Act. "Personal injury" includes fatal injury, and so the deceased is "the injured person".

[24] In short, I consider that the applicant's solicitor was correct in making it clear that the claim was one by Mr Taylor for loss of consortium and then inserting in the form particulars of Mrs Taylor's injuries, etc. Apart from being alerted to the nature of Mr Taylor's claim, the respondents were not given information from which they could assess the strength or likely size of his claim. However, that stemmed not from any default on the part of the applicant or his solicitor, but rather from the strict requirements of the Act and Regulations and the absence of an approved form suitable for use in loss of consortium claims. In content the notice given was "a complying notice".

[25] Counsel for the respondents submitted that the notice was a non-complying notice because it (or at least part 1 of it) was given late, and he referred to statements by PD McMurdo J in *Kash v SM & TJ Cedergren Builders* [2003] QSC 426 and Wilson SC DCJ in *Stanton v DMK Forest Products Pty Ltd* [2003] QDC 150 to the effect that a late notice is a not a complying notice.

[26] With respect, I doubt that this proposition is correct. The following definition appears in the schedule to the Act -

> "'**complying part 1 notice of claim'** means part 1 of a notice of claim complying with section 9 and, if a respondent is added under section 14, section 14 that is given as required under chapter 2, part 1, division 1."

That definition draws a distinction between compliance with s 9 and the giving of the notice as required under chapter 2, part 1, division 1 (of which s 9 forms a part). I am inclined to think that a notice is a complying notice if its contents satisfy the requirements of s 9, and that its timeliness is an aspect of the giving of the notice.

[27] Even if the lateness of a notice makes it a non-complying notice, in this case the non-compliance was remedied when the applicant gave a reasonable explanation for the delay.

Limitation period

[28] The limitation period for commencing a proceeding against the respondents for loss of consortium would ordinarily have expired on 20 May 2003: *Limitation of Actions Act* 1974 s 11; *Opperman v Opperman* [1975] Qd R 345. If a complying part 1 notice of claim was given on 14 May 2003 (ie before the end of the limitation

period), then by force of s 59 the applicant might have commenced a proceeding even though the limitation period had expired. Subsections (2) and (3) of s 59 provide –

> "(2) However, the proceeding may be started after the end of the period of limitation only if it is started within –
>
> (a) 6 months after the complying part 1 notice is given or leave to start the proceeding is granted; or
>
> (b) a longer period allowed by the court.
>
> (3) Also, if a proceeding is started under subsection (2) without the claimant having complied with part 1, the proceeding is stayed until the claimant complies with the part or the proceeding otherwise ends."

[29] If a complying part 1 notice was given on 14 May 2003 (as I think it was), the applicant had a further 6 months in which to commence a proceeding. He did so on 12 June 2003, which was within time.

Relief

[30] In the premises the Court should make the following declarations -

(1) that the applicant provided a reasonable excuse for the delay in giving the respondents a part 1 notice of claim pursuant to s 9(1) of the *Personal Injuries Proceedings Act* 2002; and

(2) that the applicant gave the respondents a complying part 1 notice of claim pursuant to s 9(1) of the *Personal Injuries Proceedings Act* 2002 on 14 May 2003.

If a non-complying notice

[31] Had I concluded that the notice was not a complying part 1 notice of claim, I would have regarded this as a case in which the applicant should be allowed to proceed with the claim despite the non-compliance, and would have authorised him to do so: s 18(1)(c)(ii). In so far as it may have been necessary to declare that non-compliance constituted by lateness had been remedied, I would have made a declaration to that effect: s 18 (1)(c)(i).

[32] Upon my so authorising the applicant to proceed and/or declaring non-compliance to have been remedied, the second and third respondents would be taken to have been given a complying part 1 notice of claim - that is, they would be taken to have been given it on the date of my order: s 20 (2)(b). (The first respondent would be taken to have received a complying part 1 notice on 14 May 2003 by reason of his failure to respond in a timely fashion: s 13.)

[33] In these circumstances the limitation period for a proceeding against the second and third respondents would not be extended by s 59. However, I consider it likely that that period was extended by s 77D(2)(b).

[34] If a "complying notice of claim" were taken to be given on my making orders under s 18(1)(c), pursuant to s 77D(2)(b) the limitation period would be extended until 18 December 2003 (subject to leave).

[35] I note that s 77D refers simply to "a complying notice of claim", and not to "a complying part 1 notice of claim". It might be argued that unless both parts 1 and 2 were given, the limitation period was not extended. This point was not taken before me. However, I doubt that was the intention of the Legislature. Section 77D was inserted to protect the rights of persons with claims arising before 18 June 2002. Originally the *Personal Injuries Proceedings Act* 2002 was not applicable to such claims, and it was only on the commencement of the *Personal Injuries Proceedings Amendment Act* 2002 that it was made applicable to them. Section 77D was introduced at the same time. The amendment of s 9 requiring the notice of claim to be in two parts was not made until 9 April 2003 (when the *Civil Liability Act* 2003 commenced). The definition of "complying notice of claim" in the schedule to the *Personal Injuries Proceedings Act* was replaced with a definition of "complying part 1 notice of claim" as from 9 April 2003, but the expression "complying notice of claim" in s 77D was not expressly touched by that amending legislation. (There was another amendment to s 77D not germane to this point.) In the context of other amendments effected by the *Civil Liability Act* 2003, I consider that "complying notice of claim" in s 77D should now be read as "complying part 1 notice of claim".

[36] If this is correct, then the applicant would have had until 18 December 2003 to commence a proceeding, so long as he obtained leave: s 77D(2)(b).

[37] Section 77D(2)(b) may itself be a source of the Court's power to grant leave. At any rate, s 43 is a clear source of power to do so in urgent cases where there has been non-compliance with chapter 2 part 1. The notice of claim requirements of s 9 are only a small (though important) component of that part, which is headed "Pre-Court Procedures", and in this case there are various pre-court procedures still to be complied with. The impending approach of the expiration of the limitation period on 18 December 2003 would have made the commencement of a proceeding "urgent" and I would have granted leave accordingly.

[38] By force of s 77D(3), a proceeding commenced pursuant to subsection (2) would be stayed until the applicant had complied with chapter 2 part 1.

Further application filed 10 December 2003

[39] When this application was heard, the appeals to the Court of Appeal in *Perdis v Nominal Defendant*, *Piper v Nominal Defendant* and *Miller v Nominal Defendant* were still pending. Those appeals were heard in October 2003. I delayed delivering judgment on the application pending the outcome of those appeals.

[40] The Court of Appeal gave judgment in the appeals on 15 December 2003. Concerned at the imminent approach of 18 December 2003, the applicant had in the meantime filed another application seeking the following orders -

(1) that leave be granted to the applicant pursuant to s 43 of the *Personal Injuries Proceedings Act* 2002 to file a claim for damages for loss of consortium and loss of servitium arising out of the personal injuries suffered by Lorraine Susan Taylor on 20 May 2000;

(2) alternatively that leave be granted pursuant to s 18(1)(c)(ii) of *Personal Injuries Proceedings Act* 2002 authorising the applicant to proceed further.

[41] Having regard to my decision on the first application, I would not ordinarily make either of the orders sought in the second application. However, the circumstances are peculiar in that the limitation period under s 77D(2)(b) is about to expire, and should there be a successful appeal against my decision on the first application the applicant would be forever shut out from pursuing his claim. Accordingly I am prepared to make the first order sought in the second application, with the further order that any proceeding commenced pursuant to such leave be stayed pending the determination of any appeal against my decision on the first application and pending the final determination of the proceeding commenced on 12 June 2003. Such a proceeding would automatically be stayed until the applicant complied with chapter 2 part 1 or it was discontinued or otherwise ended: s 43(3).

Orders

[42] On the application filed on 28 July 2003, I make the following declarations -

(1) that the applicant provided a reasonable excuse for the delay in giving the respondents a part 1 notice of claim pursuant to s 9(1) of the *Personal Injuries Proceedings Act* 2002; and

(2) that the applicant gave the respondents a complying part 1 notice of claim pursuant to s 9(1) of the *Personal Injuries Proceedings Act* 2002 on 14 May 2003.

[43] On the application filed on 10 December 2003, I make the following orders -

(1) that leave be granted to the applicant pursuant to s 43 of the *Personal Injuries Proceedings Act* 2002 (*PIPA*) to file a claim for damages for loss of consortium and loss of servitium arising out of the personal injuries suffered by Lorraine Susan Taylor on 20 May 2000;

(2) that any proceeding commenced pursuant to such leave be stayed pending the determination of any appeal against my decision on the first application and pending the final determination of the proceeding commenced on 12 June 2003.

[44] I will hear counsel on costs.