SUPREME COURT OF QUEENSLAND

CITATION:	*Dent v Langs Building Supplies Pty Ltd* [2015] QSC 368
PARTIES:	**CHRISTINE DEBBIE DENT** (applicant) **v** **LANGS BUILDING SUPPLIES PTY LTD ACN 010 007 315** (respondent)
FILE NO/S:	SC No 5420 of 2015
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	21 December 2015
DELIVERED AT:	Brisbane
HEARING DATE:	24 July 2015; Further written submissions from the respondent dated 10 August 2015
JUDGE:	Burns J
ORDER:	**Application dismissed**
CATCHWORDS:	LIMITATION OF ACTIONS – EXTENSION OR POSTPONEMENT OF LIMITATION PERIODS – EXTENSION OF TIME IN PERSONAL INJURIES MATTERS – KNOWLEDGE OF MATERIAL FACTS OF DECISIVE CHARACTER – KNOWLEDGE –GENERALLY – where the applicant was employed by the respondent – where the applicant alleges that she sustained personal injury in the course of that employment – where the applicant suffers from chronic pain and impairment – where the applicant did not commence proceedings within the statutory limitation period – whether an extension of time should be granted – whether a material fact of a decisive character was not within the applicant's means of knowledge prior to the expiry of the limitation period *Limitation of Actions Act 1974* (Qld) ss 30, 31 *Baillie v Creber & Anor* [2010] QSC 52 *Barnes v Smith & Ors* [2011] QSC 259 *Brisbane South Regional Health Authority v Taylor* (1996) 186 CLR 541

Castillon v P & O Ports Limited (No 2) [2008] 2 Qd R 219

Dick v University of Queensland [2000] 2 Qd R 476

Honour v Faminco Mining Services Pty Ltd & Anor [2009] QCA 352

Moriarty v Sunbeam Corporation Ltd [1988] 2 Qd R 325

NF v State of Queensland [2005] QCA 110

Sugden v Crawford [1989] 1 Qd R 683

Wood v Glaxo Australia Pty Ltd [1994] 2 Qd R 431

Thompson v WorkCover Queensland [2011] QSC 197

COUNSEL:	R Myers for the applicant M T O'Sullivan for the respondent
SOLICITORS:	Shine Lawyers for the applicant BT Lawyers for the respondent

[1] The applicant, Ms Dent, applies for an extension of a limitation period pursuant to s 31 of the *Limitation of Actions Act* 1974 (Qld). Between 2000 and 2011, she was employed by the respondent, Langs Building Supplies Pty Ltd, and alleges that, as a result of the work she was required to do in the course of that employment, she suffered personal injuries for which she seeks damages.

[2] For the reasons that follow, the issue for determination is whether Ms Dent has satisfied the onus on her to establish that, within the meaning of the Act, a material fact of a decisive character was not within her means of knowledge until 14 August 2013.

Background

[3] Ms Dent is 35 years of age. She was employed by Langs as a sawyer. Her duties involved hard, physical work which was repetitive in nature.[1]

[4] By the middle of the year following the commencement of her employment, Ms Dent first reported an injury to her back. This was in consequence of heavy lifting in the course of her employment. She attended on a general practitioner on 1 June 2001 complaining of low back pain, but did not lodge a statutory claim with WorkCover Queensland.

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[1] Ms Dent's duties are described in paragraph 2 of the affidavit she swore in support of her application and which was filed on 2 June 2015.

[5] Ms Dent sustained a further injury to her back on 31 July 2007 whilst lifting timber at work. She attended at the Logan Hospital for treatment, where she was investigated radiologically, prescribed analgesics and referred for physiotherapy. The x-ray revealed a bilateral pars defect.

[6] On 6 February 2008 Ms Dent injured her right shoulder and back whilst lifting long lengths of timber overhead at work.

[7] On 20 December 2008, Ms Dent was involved in a motor vehicle accident, in consequence of which she suffered right sided chest pains and cervical spine tenderness. She received treatment from the Logan Hospital and follow-up treatment from a general practitioner with respect to headaches and, it seems, depression. She subsequently retained a firm of solicitors[2] to act on her behalf with respect to a claim for damages.

[8] On 2 September 2009, Ms Dent attended on her general practitioner after she had again injured her back after lifting heavy timber at work.

[9] On 16 June 2011, Ms Dent arrived at her place of work and parked her car. After she alighted, she was putting her backpack on when she felt "immediate sharp pain" in her back. She immediately notified her supervisor and went home.

[10] On 18 June 2011, she attended on a general practitioner who noted that it had "been 5 years since her back started bothering her". Ms Dent was referred for a CT scan of her lumbar spine. This was undertaken on 20 June 2011. It revealed disc bulges at L3/L4, L4/L5 and L5/S1 (with right sided nerve root compression). The presence of facet joint arthritis was also noted at L3/L4 and L4/L5.

[11] On 20 June 2011, Ms Dent was advised that her position at Langs had been made "redundant with immediate effect" due to a downturn in business.

[12] On 21 June 2011, Ms Dent attended on a general practitioner reporting low back pain. She was prescribed analgesics and referred to the Orthopaedics Department of the Logan Hospital.

[13] Ms Dent was followed up by the general practitioner on 28 June 2011. She reported low back pain as well as the fact that she had been made redundant. The general practitioner noted that Ms Dent would "not be able to look for another job at the moment because of pain."

[14] On 13 July 2011, Ms Dent again attended on her general practitioner. At that time, the general practitioner completed a Centrelink Certificate. In it, the opinion is expressed that the "Christine's physical and psychological condition are assessed as permanent … It is unlikely that she would be able to sustain over 15 hours of work on the open labour market for the next 24 months". The date of the onset of symptoms was reported to be 20 August 2007 when Ms Dent injured her lower back at work. It was noted that, since then, she had suffered from "on & off low back pain" but had recently experienced

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2 Sinnamon Lawyers. See Affidavit of Christine Dent (filed 2 June 2015) pp 189ff.

"severe back pains again". It was also reported that the current impact of Ms Dent's condition on her ability to function was expected to persist for "three – 24 months". Ms Dent was certified as "temporarily unfit for work" for two months (that is, until 13 September 2011).

[15] On the next day, 14 July 2011, Ms Dent applied for and subsequently received the Centrelink Disability Support Pension.

[16] On 25 August 2011, a Centrelink Job Capacity Assessment was undertaken. The injury to Ms Dent's lower back in 2007 was noted as well as the recent recurrence of severe back pain. Her "baseline work capacity" was assessed at "15 – 22 hours" and future work capacity at "30+ hours given that the client has been able to sustain full-time employment in the past with both episodic back pain and chronic headaches".

[17] On 31 August 2011, Ms Dent attended on her general practitioner reporting pain and reduced appetite due to pain. On the next day, she attended on a different general practitioner reporting chronic low back pain.

[18] On 5 September 2011, Ms Dent reported to her general practitioner that she was in significant amounts of pain and that this was causing disturbed sleep. On the same day she attended on a psychologist, and reported that she had been suffering extreme pain since she was injured when putting her backpack on at work.

[19] Ms Dent returned to see the psychologist on 23 September 2011 and, again, on 27 September 2011. Ms Dent expressed anger at Langs because of her "retrenchment", but told the psychologist that she had renewed her "forklift ticket" so that she would be in a position to "get a job forklift driving" which would not require her "to be on her feet". Ms Dent told the psychologist that she was required to see a specialist regarding her back injury but that she was "hoping for a quick [operation] to return back to some form of employment".

[20] On 27 September 2011, Ms Dent also attended on her general practitioner for the purposes of obtaining a Centrelink Medical Certificate. It was noted that the waiting list for "further investigation & perhaps surgery … is likely to be over 24 months". The general practitioner assessed Ms Dent's "physical and psychological conditions" as being "permanent, stabilised and diagnosed". Further, the opinion was expressed that it was "unlikely that she would be able to sustain over 15 hours of work on the open labour market for the next 24 months".

[21] On 29 September 2011, a Centrelink Job Capacity Assessment was undertaken. After noting that the waiting list for further investigation of Ms Dent's injuries was likely to be "over 24 months", Ms Dent was assessed as being "unsuitable to work due to chronic pain" which impacted on her physical capacities in a number of ways and was "likely to deteriorate". The opinion was then expressed that Ms Dent's "physical and psychological condition are assessed as permanent".

[22] On 1 November 2011, Ms Dent returned to see the psychologist. She reported "excruciating pain" in her back. On the next day, she consulted a general practitioner with respect to her pain.

[23] On 9 November 2011, a Centrelink Job Capacity Assessment noted that Ms Dent's "symptomatology is significant and whilst awaiting specialist treatment, which is likely to take more than two years, [she] will be unable to sustain employment".

[24] On 16 January 2012, Ms Dent again attended on her psychologist. She reported having become "increasingly frustrated with pain", that she was "unable to do most activities of daily living", that "nothing seem[ed] to help the pain" and that she was afraid that her "back injury won't remediate".

[25] She returned to the psychologist on 30 January 2012. At that time, Ms Dent expressed concern about her situation if her "back doesn't improve [and she] can't go back to work" and if she had "to live like this for the rest of [her] life".

[26] On 18 June 2012, Ms Dent attended on her general practitioner for the completion of an application to Centrelink for a paid carer.

[27] On 27 September 2012, Ms Dent attended on a podiatrist who advised her that she would require modified workwear, including work boots. On 4 October 2012, Ms Dent told her general practitioner that she had seen the podiatrist and that he had advised "joggers, shoes and work boots – when she goes back to work again".

[28] On 19 October 2012, Ms Dent attended on her psychologist and reported continuing pain and restriction. She returned on 7 November 2012 complaining of sleep deprivation through being awoken with pain. She also told the psychologist that she felt her condition was worsening, that she was still waiting to see the orthopaedic surgeon and that she was frustrated because she wanted to return "to work as soon as [her] back is fixed".

[29] Ms Dent attended on her general practitioner on 21 February 2013 reporting low back pain that had become worse over the preceding 5 to 6 days. She returned on 9 May 2013 and 11 June 2013 with, in each case, reports of low back pain.

[30] On 14 August 2013, in consequence of the referral that was made in June 2011, Ms Dent was examined by an orthopaedic surgeon at the Logan Hospital, Dr Cheung. Dr Cheung reported that he did not "think surgery [would] reduce [Ms Dent's] poor level of impairment or disability".

[31] On 22 August 2013, Ms Dent underwent an MRI of her lumbar spine. It revealed numerous irregularities including a loss of disc height at T11/T12, disc bulges at L4/L5 associated with a disc protrusion and compression of the L5 nerve root, and a disc bulge at L5/S1 associated with a disc protrusion and compression of the S1 nerve root.

[32] On 25 September 2013, Ms Dent attended on Dr O'Neill, an orthopaedic surgeon at the Logan Hospital. Dr O'Neill reported that Ms Dent had been "suffering from back pain

for the last 2 years" since the "twisting injury" she sustained in June 2011 and that, since then, she had suffered "some pain and shooting down her left leg". Dr O'Neill considered that, given Ms Dent's "long history, her not outstanding radicular pain, and her young age, that conservative management would be the way to go."

[33] On 12 November 2013, Ms Dent first made contact with her present solicitors. She was seen by a solicitor in that firm on 21 November 2013. Her claim was subsequently investigated and, on 28 July 2014, an urgent Notice of Claim was lodged.

[34] For the purposes of investigating her claim, Ms Dent was examined by Dr Campbell, a neurosurgeon, on 7 April 2014. Dr Campbell reported that the onset of what he described as Ms Dent's "severe symptoms" could be traced to the June 2011 incident when she was putting on her backpack after arriving at work. He noted that Ms Dent had not returned to work since then and that she lived in a house with her carer. Dr Campbell regarded the "primary cause of the lumbar spine injury" to be the "strenuous, repetitive work duties" Ms Dent had performed at Langs. Based on the records from Dent's general practitioner which reported a five year history of low back pain in 2011, Dr Campbell considered it likely that Ms Dent's "injury commenced in about 2006". He expressed the opinion that the twisting injury that occurred in June 2011, although trivial, resulted in a "severe exacerbation due to significant underlying lumbar spine injury resulting from ongoing strenuous work duties". Given that, at the time of reporting, it had been "two years and 10 months since the onset of severe lower back pain", Dr Campbell considered that Ms Dent's condition had "reached maximum medical improvement" and that "[f]urther recovery in the future is unlikely." He considered that Ms Dent's prospects of ever returning to work in any capacity were poor due to her difficulties with sitting, standing, walking, lifting and bending. Dr Campbell thought it likely that Ms Dent will remain on a Disability Support Pension.

Ms Dent's evidence

[35] An affidavit sworn by Ms Dent was filed in support of her application and read at the hearing. She was also cross-examined.

[36] Ms Dent deposed that, while she was on the waiting list to see an orthopaedic surgeon at Logan Hospital, she regularly consulted her general practitioner who managed her back pain through the prescription of analgesia. Based on the "Centrelink Medical Certificates and advice received from" her general practitioner, Ms Dent believed that "once [she] saw an orthopaedic surgeon … and underwent further investigations and treatment, including possible surgery, [she] would experience an improvement in [her] condition and be able to return to work." She deposed that it was not until she saw the orthopaedic surgeon, Dr Cheung, on 14 August 2013 that she "appreciated the possible permanent nature" of her injury. Then, on 25 September 2013, when Dr O'Neill confirmed Dr Cheung's initial suspicions that surgery would not offer Ms Dent any benefit, she realised for the first time that her "back pain would be permanent and it was unlikely that [she] would be able to work again in the future". Ms Dent summarised the overall position in these terms:

> "I had experienced multiple back injuries during the course of my employment with Langs Building Supplies. When I injured my back on 16 June 2011, I expected that it would eventually get better. I never anticipated that my pain and restrictions would be permanent. I spoke with my doctors about getting back to work and was never told that this would be an option for me. My general practitioner indicated to me that my fitness for work would change once I was treated by a specialist. I fully expected that, once I saw a specialist I would have some surgery or other treatment and my back would improve such that I would be able to regain my independence and return to work. I did not even consider bringing a claim for compensation as I thought I would be fine. When I saw Dr Cheung at Logan Hospital on 14 August 2013, I was shocked when he said that it was unlikely there was anything that could be done to improve my back condition. I had not anticipated this possibility before this date."[3]

[37] When cross-examined, Ms Dent was taken through some of the contents of her Notice of Claim for Damages which was signed by her on 18 August 2014 and submitted to WorkCover Queensland in support of her claim.[4] Ms Dent accepted that her symptoms of lower back pain commenced in 2007 and that she had suffered a number of exacerbations since that time. She said that, although the incident in June 2011 caused her to cease work, she did not think it appropriate to consult lawyers about a claim because she was "unaware … how long [the] injury was lasting for" and that she was "under the assumption that [she] was going into surgery to have [the injury] fixed".[5] Ms Dent agreed that her symptoms of pain had been consistent since June 2011, that she was "severely debilitated" by her injury and "totally unfit for work".[6] She accepted that this had been the position since 16 June 2011. Later in her cross-examination, Ms Dent made the point that the general practitioner had stated to her that she could work up to 15 hours a fortnight and, for that reason, she did not agree that she was totally incapacitated.[7]

[38] Ms Dent agreed in cross-examination that, in 2012, she commenced receiving the Disability Support Pension because of the injury to her back, and that she had remained in receipt of that benefit up to the date of the hearing. She also confirmed that she has required the assistance of a full-time, live-in carer following the June 2011 incident, although the other evidence before me would suggest that an application was not made to Centrelink in this regard until June 2012. Ms Dent agreed that, from June 2012, she was "using a wheelchair for long walks … if [she] wanted to get out of the house."[8]

[39] Ms Dent confirmed in cross-examination that, at the time of the June 2011 incident, she was employed on a full-time permanent basis by Langs and earning approximately $650 net per week, with a capacity to earn up to $740 net per week.[9] She did not agree that,

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3 Affidavit of Christine Dent (filed 2 June 2015) [24].
4 Exhibit BRT1 to the affidavit of Bruce Thomas (filed 22 July 2015).
5 Transcript of proceedings 1-16.
6 Ibid 1-17.
7 Ibid 1-21.
8 Ibid 1-25.
9 In her Notice of Claim for Damages, Ms Dent sought the higher of those two amounts for past economic loss over the period from 16 June 2011 to the date of the Notice ($115,440). The other claims advanced in the Notice include general damages ($150,000) and past care ($187,200) as well as claims for interest. The claim for past care is calculated with reference to a loss of 40 hours per week at a cost of $30 per hour.

because she was "losing a considerable sum of money every week – $740 net", that she should have sought legal advice about her claim. In particular, she said that, although she was "disabled to a certain degree" and "had to be put on a pension", this was only until she "had that surgery to be put back to 100 per cent."[10] She accepted though that she was "losing about $35,000 a year" and that, over two years, a loss of "about $70,000" was a "lot of money."[11] However, she said that such a sum would have only been worth pursuing if she had been "told that [she] was never able to work again".[12]

Consideration

[40] By s 31(2)(a) of the Act, the discretion to extend the limitation period is enlivened if two requirements are met. *First*, that a material fact of a decisive character relating to the right of action of the applicant was not within the means of knowledge of the applicant until a date after the commencement of the year last preceding the expiration of the period of limitation for the action. *Secondly*, that there is evidence to establish a right of action. If those requirements are satisfied then the court has a discretion to extend the limitation period for 12 months from the time when the material fact was within the applicant's means of knowledge. Usually, the discretion will then be exercised in favour of an extension unless there is relevant prejudice.[13]

[41] Here, it was not submitted that there will be any relevant prejudice if an extension is granted and nor was it submitted that Ms Dent had failed to point to the existence of evidence which, it can reasonably be expected, will be available at trial and will, if unopposed by other evidence, be sufficient to prove her case.[14] As such, this application is concerned with whether Ms Dent has satisfied the onus on her to establish that a material fact of a decisive character was not within her means of knowledge until she received advice from Dr Cheung on 14 August 2013. If so, the limitation period may be extended to 14 August 2014 and, in that event, the Notice of Claim for Damages will have been served within time.[15]

[42] As Thomas J held in *Dick v University of Queensland*,[16] the correct approach to deciding an application such as this is to first inquire whether the facts of which the applicant was unaware were material facts. If they were, the next step is to ascertain whether they were of a decisive character. If so, it must be ascertained whether those facts were within the means of knowledge of the applicant before the specified date.

[43] In the present case, Ms Dent relies on s 30(1)(a)(iv) of the Act, which informs that a material fact relating to a right of action includes the "nature and extent of the personal injury". On her behalf it was submitted that, until she saw Dr Cheung on 14 August 2013, she did not appreciate the nature and extent of her lower back injury. In particular, it was submitted that Ms Dent did not understand that her incapacities would be permanent, that

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10 Transcript of proceedings 1-21.
11 Ibid.
12 Ibid.
13 *Baillie v Creber & Anor* [2010] QSC 52 at [4] per McMeekin J, referring *to Brisbane South Regional Health Authority v Taylor* (1996) 186 CLR 541 at 544 per Dawson J; 555 per McHugh J.
14 *Wood v Glaxo Australia Pty Ltd* [1994] 2 Qd R 431,434-5 (Macrossan CJ).
15 Further Outline of Argument on behalf of the Respondent (filed 10 August 2015); para 4.
16 [2000] 2 Qd R 476.

they could not be satisfactorily addressed by surgery or any other treatment, and that she was for all intents and purposes commercially unemployable. I have no hesitation in accepting Ms Dent's evidence in these respects. These were material facts relating to Ms Dent's right of action and in respect of which she was unaware until 14 August 2013.

[44] The next question, though, is whether such facts were of a decisive character. Section 30(1)(b) of the Act provides that material facts relating to a right of action are of a decisive character if, and only if, a reasonable person knowing those facts and having taken the appropriate advice on those facts would regard those facts as showing:

> "(i) that an action on the right of action would (apart from the effect of the expiration of a period of limitation) have a reasonable prospect of success and of resulting in an award of damages sufficient to justify the bringing of an action on the right of action; and
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> (ii) that the person whose means of knowledge is in question ought in the person's own interest and taking the person's circumstances into account to bring an action on the right of action."

[45] Both of the above conditions must be satisfied before a material fact may properly be regarded as "decisive". Each condition must be considered from the point of view of a reasonable person who has taken appropriate advice on those facts.

[46] In determining whether a newly learned fact has the necessary quality of decisiveness an applicant "must show that without the newly learned fact or facts he would not, even with the benefit of appropriate advice, have previously appreciated that he had a worthwhile action to pursue and should in his own interests pursue it".[17] As Connolly J said in *Sugden v Crawford*:

> "Implicit in the legislation is a negative proposition that time will not be extended where the requirements of s 30(b) are satisfied. Without the emergence of the newly discovered fact or facts, that is to say, where it is apparent, without those facts, that a reasonable man, appropriately advised, would have brought the action on the facts already in his possession and the newly discovered facts merely go to an enlargement of his prospective damages beyond a level which, without the newly discovered facts, would be sufficient to justify the bringing of the action."[18]

[47] In a similar vein are the following observations of the Court of Appeal in *Honour v Faminco Mining Services Pty Ltd & Anor*:

> "It follows that the material fact is not of a decisive character if, before knowing that fact a reasonable person would know facts that that person would regard (having taken appropriate advice) as showing that an action would (ignoring the effect of limitation period) have a reasonable prospect of success, and of resulting in an award of damages sufficient to justify the bringing of an action on the right of action; and that the potential claimant ought, in that person's own interests and taking that person's circumstances

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17 *Moriarty v Sunbeam Corporation Ltd* [1988] 2 Qd R 325, 333 (Macrossan J).

18 [1989] 1 Qd R 683, 685.

> into account, bring an action on the right of action. However, if, without knowledge of that fact, a reasonable person, having taken appropriate advice, would not regard the facts known to that person as showing that an action would (ignoring the effect of the limitation period) have a reasonable prospect of success, and of resulting in an award of damages sufficient to justify the bringing of an action, then the fact is of a decisive character. Further, if, without knowledge of the material fact, a reasonable person, having taken appropriate advice, would not regard the facts known to that person as showing that the potential claimant ought in that person's own interest and taking that person's own circumstances into account, bring an action, then the material fact is not of a decisive character."[19]

[48] The evidence establishes that, prior to her attendance on Dr Cheung, Ms Dent had not worked since 16 June 2011 in consequence of the exacerbation she sustained on that date. Although the medical certificates left open the possibility that Ms Dent had some capacity for work – up to 15 hours per fortnight – it is difficult to accept that such a possibility was at all realistic given the chronicity and severity of her symptoms of pain and immobility. The fact of the matter, in any event, is that Ms Dent was unable to carry out remunerative employment because of her injuries and, in consequence, she lost income that she otherwise would have earned from her employment. That loss was accruing at a rate of between $650 and $740 net per week. Even confining any assessment to a two-year period post-incident, Ms Dent's net loss was between $67,600 and $76,960. Furthermore, from at least the middle of 2012, Ms Dent was receiving assistance from a person described as a "full-time paid carer". Using the rate ($30) and weekly hours (40) advanced in the Notice of Claim, the cost of her paid care was $1,200 per week. Also, from the same time, Ms Dent had become so immobile in consequence of her injuries that she required a wheelchair for "long walks".

[49] Ms Dent deposed to her expectation that, once she saw a specialist, she would receive surgical or other treatment for her lower back which would enable her to return to work. At one point when she was cross-examined, Ms Dent said that she believed any such treatment would return her "back to 100 per cent."[20] Although I accept that Ms Dent believed that she could be treated sufficiently to return to work and, further, that her belief in that regard was reinforced by statements made to her by her general practitioner, I am unable to accept that Ms Dent believed that what was in prospect was some form of treatment that would completely address her symptoms. Indeed, in 2012, Ms Dent expressed concerns to her psychologist that suggest to the contrary, and the feature that she renewed her forklift license in order to pursue a different line of work must be taken as some acknowledgement on her part that she might not be able to return to the type of heavy, physical work she had performing up to 16 June 2011. At the very minimum, Ms Dent's future earning capacity depended on the success of whatever treatment might be offered to her when she was eventually seen by an orthopaedic surgeon.

[50] In any event, I must consider the discretion from the point of view of a reasonable person who has taken appropriate advice on the facts I have summarised in the preceding two paragraphs. To my mind, a reasonable person, taking appropriate advice on those facts,

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19 [2009] QCA 352, [74].

20 Transcript of proceedings 1- 21.

would have appreciated that he or she had a worthwhile action to pursue and should in his or her own interests pursue it. To adopt the expression used by Keane JA in *Castillon v P & O Ports Limited (No 2)*, there was a "critical mass of information" within Ms Dent's means of knowledge prior to 14 August 2013 which justified bringing the action.[21] I am accordingly not persuaded that the material facts on which Ms Dent relies were of a "decisive character" within the meaning of s 30(1)(b) of the Act. They merely went to the enlargement of what was already a worthwhile cause of action.

[51] For Ms Dent, it was submitted that a "two year loss of income just doesn't justify an action these days."[22] In this regard, particular reliance was placed on the decision of McMeekin J in *Barnes v Smith & Ors*.[23] It was also submitted that the legislative restrictions which now exist in relation to awards of damages have affected the extent to which some components of damage as well as costs may be recovered.

[52] I reject these submissions. No evidence was placed before me to support the contention that Ms Dent should not, because of legislative restrictions or for some other reason, be regarded as having a worthwhile action to pursue prior to 14 August 2013.[24] *Barnes* was a different case. The facts of that matter were that the applicant was injured in 2005 and kept working until 2010. After ceasing work, she sought medical advice and was eventually told that she would need to undergo surgery. Shortly stated, the applicant in that case did not have the significant loss of income, long-term paid care or severe manifestation of symptoms which are all present in this case.

[53] My conclusion that the material facts on which Ms Dent relies were not of a "decisive character" within the meaning of s 30(1)(b) of the Act is sufficient to dispose of this application. However, for completeness, I add that I am also not persuaded that the facts on which Ms Dent now relies were outside her means of knowledge prior to 14 August 2013.

[54] By s 30(1)(c) of the Act, a fact will be outside a person's means of knowledge if, but only if:

> "(i) the person does not know the fact at that time; and
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> (ii) as far as the fact is able to be found out by the person—the person has taken all reasonable steps to find out the fact before that time."

[55] This provision does not import a "reasonable person" test. As Keane JA explained in *NF v State of Queensland*:

> "It is to be emphasised that s 30(1)(c) does not contemplate a state of knowledge of material facts attainable in the abstract, either by the exercise of "all reasonable steps", or by the efforts of a reasonable person. It speaks of a state of knowledge attainable by an actual person who has taken all reasonable steps. The actual person postulated by s 30(1)(c) as the person

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21 [2008] 2 Qd R 219, [34], [41].

22 Transcript of proceedings 1-33.

23 [2011] QSC 259.

24 Compare *Thompson v WorkCover Queensland* [2011] QSC 197, where a solicitor gave evidence to the effect that he would not have advised the applicant to sue.

> who has taken all reasonable steps, is the particular person who has suffered particular personal injuries. Whether an applicant for an extension of time has taken all reasonable steps to find out a fact can only be answered by reference to what can reasonably be expected from the actual person in the circumstances of the applicant. It seems to me that, if that person has taken all the reasonable steps that she is able to take to find out the fact, and has not found it out, that fact is not within her means of knowledge for the purpose of s 30(1)(c) of the Act."[25]

[56] With those principles in mind, I cannot agree that Ms Dent took all reasonable steps to find out the facts she learned when she was examined by Dr Cheung. After her motor vehicle accident, Ms Dent retained lawyers to act on her behalf with respect to that claim. In the case of this claim, she did not approach lawyers until after she saw Dr Cheung. Why she took such a different approach here is not satisfactorily explained. True it is that Ms Dent was waitlisted to see an orthopaedic surgeon, but I do not consider it reasonable for her to have chosen not to seek legal advice given the serious effects of the June 2011 exacerbation of her injury. Had she done so, a specialist medical assessment of her injuries would have undoubtedly followed.

Conclusion

[57] For these reasons, the application must be dismissed.

[58] I shall hear the parties on the question of costs.

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[25] [2005] QCA 110, [29].