SUPREME COURT OF QUEENSLAND

CITATION:	*ADA v State of Queensland* [2023] QSC 159
PARTIES:	**ADA** (plaintiff/respondent) **v** **STATE OF QUEENSLAND** (defendant/applicant)
FILE NO:	BS No 8025 of 2022
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	24 July 2023
DELIVERED AT:	Brisbane
HEARING DATE:	24 April 2023; further written submissions filed 9 June 2023 and 14 June 2023
JUDGE:	Cooper J
ORDERS:	**1. The proceeding is permanently stayed.** **2. The judgment of the court in the proceeding is to be presented in a form which avoids disclosing information which would identify the plaintiff.** **3. All documents relating to these proceedings, including court documents, written submissions and transcripts of proceedings, are to be withheld by the court registry from search or inspection by any person other than a party to the proceeding or their legal representatives without an order of the court.** **4. The plaintiff pay the defendant's costs of the stay application and of the proceeding to be assessed on the standard basis if not agreed.**
CATCHWORDS:	STATE AND TERRITORY COURTS: JURISDICTION, POWERS AND GENERALLY – INHERENT AND GENERAL STATUTORY POWERS – TO STAY OR DISMISS ORDERS OR PROCEEDINGS GENERALLY – where the plaintiff claims damages in negligence for psychiatric injuries caused by two alleged sexual assaults that occurred in 1968 and 1973 when she was a child in the care of the State – where the State was first informed of the two alleged sexual assaults in 2021 – where the State has not been able to identify the alleged perpetrators of the two sexual assaults and has not located any records relating to either of

the alleged assaults – where the State has applied for a permanent stay of the proceeding – whether a fair trial is possible – whether a permanent stay should be granted

Civil Proceedings Act 2011 (Qld), s 7(4)
Constitution of Queensland Act 2001 (Qld), s 58(1)
Limitation of Actions Act 1974 (Qld), s 11A
Personal Injuries Proceedings Act 2002 (Qld)
Uniform Civil Procedure Rules 1999 (Qld), r 16(g)

Batistatos v Roads and Traffic Authority of New South Wales (2006) 226 CLR 256; [2006] HCA 27, applied
Brisbane South Regional Heath Authority v Taylor (1996) 186 CLR 541; [1996] HCA 25, applied
Chalmers v Leslie (2020) 6 QR 547; [2020] QSC 343, cited
Connellan v Murphy [2017] VSCA 116, applied
GMB v Unitingcare West [2020] WADC 165, cited
Longman v The Queen (1989) 168 CLR 79; [1989] HCA 60, applied
Moubarak by his tutor Coorey v Holt (2019) 100 NSWLR 218; [2019] NSWCA 102, considered
Oram v BHP Mitsui Coal Pty Ltd [2015] 2 Qd R 357; [2014] QSC 230, cited
The Trustees of the Roman Catholic Church for the Diocese of Lismore v GLJ [2022] NSWCA 78, cited
Walton v Gardiner (1993) 177 CLR 378; [1993] HCA 77, applied
Ward v The Trustees of the Roman Catholic Church for the Diocese of Lismore [2019] NSWSC 1776, cited
Williams v Spautz (1992) 174 CLR 509; [1992] HCA 34, considered
Willmot v State of Queensland [2022] QSC 167, considered

COUNSEL: S D Anderson for the plaintiff/respondent
B F Charrington KC with A S Mellick for the defendant/applicant

SOLICITORS: Hawken Roussi Law for the plaintiff/respondent
Crown Solicitor for the defendant/applicant

Introduction

[1] In this proceeding the plaintiff claims damages for negligence in the amount of $2,201,909.13 from the defendant (the **State**).

[2] The plaintiff's loss is alleged to have resulted from psychiatric injuries caused by sexual abuse on two separate occasions when she was a child. The first, in or about the spring or early summer of 1968 around the plaintiff's 11th birthday, is alleged to have occurred at a school operated by the State which the plaintiff attended. The second, in 1973 when the plaintiff was 15 years old, is alleged to have occurred when the plaintiff was walking from a residence where she performed domestic work to the orphanage where she resided under the care and protection of the State.

The plaintiff's claim in respect of the first alleged assault is based on a failure by the State to properly monitor and supervise students at the school. In respect of the second alleged assault, the plaintiff asserts the State breached its duty of care by failing to provide transportation from her work back to the orphanage or to take other reasonable steps to protect her from the risk that she would be assaulted as alleged.

[3] The occurrence of the alleged sexual assaults, the nature and extent of the duty of care owed by the State to the plaintiff, breach of duty, medical causation and quantum of damages are all in issue in the proceeding.

[4] The plaintiff's action for damages relating to personal injury resulting from sexual abuse when she was a child may be brought at any time and is not subject to a limitation period.[1] However, the existing power of the court to permanently stay a proceeding has been preserved.[2]

[5] The State has applied for a permanent stay of the proceeding on the basis that, for reasons addressed in further detail below, a fair trial is not possible.[3]

Factual context

[6] The plaintiff was born in 1957. In March 1967, the Director of the Department of Children's Services declared the plaintiff to be admitted to his care and protection pursuant to s 48 of the *Children's Services Act 1965* (Qld). From that time until her 18th birthday the plaintiff resided at the orphanage. From the evidence it appears that the orphanage was operated, not by the State, but by a separate body corporate incorporated by Letters Patent pursuant to the *Religious, Charitable and Educational Institutions Act 1861* (Qld).

[7] It is common ground between the parties that the State operated the school where the first alleged assault is said to have occurred. There were about 100 students at the school. About 70% to 75% of the students at the school were boys.

[8] The plaintiff attended the school from June 1968 to November 1972. She had an IQ of 75. When she ceased attending the school, the plaintiff was achieving at about grade 4 level.

[9] The plaintiff commenced employment for Dr and Mrs Allen in August 1973. She worked at their residence where she assisted with child minding and performed odd jobs. Her employment with Dr and Mrs Allen ceased some time between early December 1973 and early July 1974.

Allegation of sexual assault by older male student at school

[10] The plaintiff alleges that she was sexually assaulted by an older male student who attended the school. Her affidavit sworn in this proceeding exhibits a notice of claim prepared under the *Personal Injuries Proceedings Act 2002* (Qld) which she

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1 *Limitation of Actions Act 1974* (Qld) (**LAA**), ss 11A(1) and 11A(6)(a).

2 LAA, s 11A(5).

3 The application has been made pursuant to r 16(g) of the *Uniform Civil Procedure Rules 1999* (Qld) or the inherent jurisdiction of the court under s 58(1) of the *Constitution of Queensland Act 2001* (Qld) and s 7(4) of the *Civil Proceedings Act 2011* (Qld).

served on the State in April 2021, including a statement she prepared and annexed to the notice of claim. In her affidavit, the plaintiff swears to the accuracy of that statement.

[11] In that statement, the plaintiff says that the first alleged assault occurred in the principal's office at the school. She states that she remembers being called to the principal's office. The principal was not there but she went into the office as directed. The plaintiff does not identify the name or the position of the person who directed her to go into the principal's office. She states that when she went into the principal's office a male student from the senior school was already in the office. She describes the male student's appearance and states that he seemed intellectually very slow. She states that the older male student spoke to her while they were waiting for the principal to arrive in words to the effect that they should see where the principal was. She says that, at the older student's request, she stood on a chair to look out the window of the office. She says that the older male student then positioned himself close behind her, pressing his body and penis against her back and bottom. She says the older student then wrapped his arm firmly around her stomach before placing his other hand under her dress and inside her underpants, touching her vagina and digitally penetrating her. She says that after the assault concluded the older male student spoke to her, in a threatening voice, words to the effect of "Shut up. Don't tell anyone or I will hurt you. I will get you."

[12] The plaintiff states that after the assault she remained in constant fear for the remainder of the time she attended the school. She says she wanted to report the assault but she was too frightened to say anything because of the threats made to her by the older male student. She goes on to describe the change in her demeanour after the assault. In her affidavit, she states that the older male student who assaulted her was the only boy at the school who she was afraid of and who she would continually avoid when she saw him at the school.

Allegation of sexual assault by truck driver

[13] In her statement, the plaintiff describes being required to walk alone from the orphanage to her work at the residence of Dr and Mrs Allen and then to return to the orphanage after work. She says that the Allen residence was located approximately two kilometres from the orphanage. She clarifies this evidence in her affidavit, explaining that this was the shortest route, but that she did not take that route as she was instructed by the managers of the orphanage (Mr and Mrs Alexander) to take a less complicated, but longer route of approximately three kilometres.

[14] The plaintiff says she remembers seeing a refrigerator truck with a male driver drive past her on a few occasions in the weeks prior to the second alleged assault while she was walking back to the orphanage from the Allen's residence. She says she noticed on those occasions that the driver appeared to stare at her and to slow the truck a little. She says that on the afternoon of the second alleged assault the same driver stopped his truck and offered her a lift as she was walking back to the orphanage. She says that, after she declined the offer, the driver got out of his truck and started a conversation with her. During that conversation the driver moved the plaintiff to the rear of the truck, opened the rear door and pointed out the ice creams he was carrying. She says the driver then forced her inside the rear of the truck, closed the door and forcibly raped her. She says that after the rape had finished the

driver spoke to her, in a threatening voice, words to the effect of "Don't fucking tell anyone, or else I'll get you and fucking kill you."

[15] The plaintiff says she was too afraid to report the second alleged assault to police and felt that there was no one she could tell about what happened to her. She describes being in fear in the weeks and months that followed when she had to continue walking along the same route to and from her work at the Allen's residence.

When were the allegations raised?

[16] The plaintiff first informed the State of the occurrence of the alleged sexual assaults in April 2021 when, as already noted, she served the notice of claim.

Factual investigations and enquiries made by the State

[17] The State filed affidavits of Ms Hasse, the solicitor with the conduct of the proceeding, setting out evidence of the searches and inquiries made to obtain documentary records that might be relevant to the plaintiff's claims and to locate and speak with potential witnesses.

[18] Ms Hasse states that she reviewed documents provided by the Department of Education and the Department of Children, Youth Justice and Multicultural Affairs in response to her inquiries. The documents provided by the Department of Education did not contain any record relating to alleged sexual abuse of the plaintiff by any person while she was enrolled at the school. Similarly, the documents provided by the Department of Children, Youth Justice and Multicultural Affairs did not contain any record relating to alleged sexual abuse of the plaintiff by any person while she resided at the orphanage, or while she was under the care of the State.

[19] Ms Hasse states that after searches were made for former staff of the school she spoke to Mr Macfie who commenced working as a teacher at the school in 1967. Mr Macfie told Ms Hasse that he has no independent recollection of the plaintiff. He was not aware of any sexual incidents or any rumours of the like involving students or teachers during his teaching career at the school. Mr Macfie advised Ms Hasse that to get to the principal's office one had to walk past the secretary then down a hall and past a storeroom. He told Ms Hasse that there were a number of secretaries during his years at the school but that he does not recall the names of those persons. Ms Hasse also contacted Mr Laurens and Ms Grant, who commenced working as teachers at the school in 1970. Neither recalled any incidents of a sexual nature during their time at the school, which post-dated the time the first alleged assault is said to have occurred.

[20] Ms Hasse also refers to documentary evidence of the plaintiff's medical history which is relevant to the question of causation. I address this material further below.

[21] Ms Hasse concludes by stating that there are no persons from whom she can take instructions in respect of the plaintiff's allegations of sexual assault in circumstances where:

(a) the alleged perpetrators have not been identified;

(b) there were no contemporaneous complaints by the plaintiff and there are no contemporaneous records that would assist in determining whether the plaintiff was abused as alleged;

(c) there is no account from any witness with personal knowledge of either of the unnamed perpetrators sexually assaulting the plaintiff;

(d) no witness statements have been disclosed by the plaintiff from any person who witnessed either of the alleged sexual assaults.

Evidence relied upon as corroborating the plaintiff's account

[22] In addition to her own evidence, the plaintiff filed affidavits from the following potential witnesses whose evidence, the plaintiff submitted, corroborates aspects of her account:

(a) Ms Girdler, who resided at the orphanage with the plaintiff and attended the school where the first alleged assault is said to have occurred;

(b) Mr Laurens, who was employed as a teacher at the school from 1970 to 1974 or 1975;

(c) Ms Grant, who was employed as a teacher at the school from January 1970 to December 1971;

(d) Ms Firth and Ms Maher, who both resided at the orphanage with the plaintiff;

(e) Mrs Allen, who employed the plaintiff at the time the second alleged assault is said to have occurred.

[23] As to the period when the first alleged assault is said to have occurred, Ms Girdler says that within about two or three months of starting at the school the plaintiff seemed scared and nervous walking around the playground and common areas. She says that the plaintiff appeared scared of some of the bigger boys but would not tell Ms Girdler why. She says the plaintiff always seemed very frightened of one particular very big, older boy who Ms Girdler describes as being very slow.

[24] As Mr Laurens and Ms Grant were not employed at the school at the time the first alleged assault is said to have occurred neither of them gives any evidence as to the occurrence of that assault.

[25] Each of Ms Girdler, Mr Laurens and Ms Grant give evidence about the extent to which students at the school experienced learning and behavioural difficulties as well as the physical layout of the school, including the location of the principal's office. Mr Laurens and Ms Grant also give evidence about the resources at the school during the period they were employed there, including staff to student ratios.

[26] As to the period when the second alleged assault is said to have occurred, Ms Girdler says that she remembers the plaintiff walking on her own to her domestic or child-minding job at a family home near the orphanage. She says that she remembers the plaintiff suddenly started to experience nightmares during that period. The plaintiff's nightmares would wake Ms Girdler up and she would have to calm the plaintiff down. She recalls the plaintiff yelling out words to the effect of "No, No, Stop", "No, No, Don't" or "Stop, Stop." She recalls asking the plaintiff what was wrong but that the plaintiff would not tell her. She says the plaintiff

started to hide in the bedroom at the orphanage and seemed very frightened to leave that room. She describes the plaintiff as becoming withdrawn, nervous and anxious.

[27] Ms Firth says that she resided at the orphanage from about August 1974 until about December 1975. She says that when she met the plaintiff, soon after arriving at the orphanage, she noticed that the plaintiff was very nervous and easily startled. She says the plaintiff seemed to be very frightened when people approached her suddenly or walked behind her. She refers to the plaintiff making brief passing comments over subsequent years to the effect that she suffered a nasty physical experience when she was about 15 years old, in the months prior to Ms Firth arriving at the orphanage.

[28] Ms Maher says that she recalls the plaintiff began working at somebody's house doing housework and child minding towards the end of 1973 or the beginning of 1974, and that she would walk to work and back to the orphanage each day. She says she remembers that at about that time the plaintiff suddenly seemed to become more shy, reserved and withdrawn.

[29] Mrs Allen says that, in the time the plaintiff was employed at her residence she was essentially non-communicative. Mrs Allen says she experienced great difficulty in maintaining any form of rapport with the plaintiff.

[30] Both Ms Maher and Mrs Allen give evidence about the character of the area between the orphanage and the Allen residence in the relevant period, describing it as mostly semi-rural and farming land. Mrs Allen says that vehicle traffic flow in that period was relatively light compared to current traffic volumes.

Evidence of the plaintiff's medical history

[31] Ms Hasse also exhibits medical records disclosed by the plaintiff which describe her more recent medical history.

[32] The plaintiff attended the Bluewater Medical Centre on a number of occasions between February 2004 and August 2005. The records show those attendances related to asthma, high blood pressure, carpal tunnel syndrome of both hands, reflux, weight loss and a back injury. The records do not indicate that the plaintiff sought treatment from that practice regarding her mental health or the alleged sexual abuse.

[33] The plaintiff attended the Stellar Medical Centre on numerous occasions between September 2014 and March 2021 for a variety of conditions, including chronic neck and lower back pain which she had suffered for many years, bilateral carpal tunnel syndrome, right knee pain, hypertension and symptoms of transient ischemic attack.

[34] Relevantly, the notes of a consultation at the Stellar Medical Centre on 29 November 2016 record that the plaintiff attended due to her experiencing suicidal thoughts, depression and, potentially, post-traumatic stress disorder (**PTSD**). The notes record that the plaintiff stated on that occasion that she had experienced suicidal thoughts for a period of two to three years but that she had no plans to act on those thoughts and never would. The notes record the plaintiff's background as including her time in the orphanage but indicate the plaintiff could not recall her life in the orphanage particularly well. The plaintiff's background was also noted as

including a previous domestic violence relationship and previous childhood sexual abuse. The notes record the plaintiff's past psychiatric history as including a diagnosis of depression approximately five years previously.

[35] Notes of a consultation on 15 March 2017 also relevantly record that the plaintiff had been diagnosed with social anxiety disorder in February 2017, with further assessment required regarding additional diagnoses.

[36] The plaintiff attended Somerset Psychology Services on 16 occasions in 2017 and 2018 for treatment relating to anxiety. The records from that practice do not provide any information as to the substance of the matters discussed during those sessions.

[37] In September 2019, the plaintiff underwent a neuropsychological assessment at the Princess Alexandra Hospital in circumstances where her husband had raised concerns about a history of gradually emerging short-term memory difficulties over a period of two to three years. The report of that assessment described the plaintiff's psychosocial history as being "reportedly significant for a challenging upbringing, personal trauma and domestic violence in a prior relationship", with the plaintiff describing complex family dynamics and ongoing stressors. The report concluded that the plaintiff's cognitive symptoms were most likely contributed to by ongoing chronic pain, associated low mood, psychosocial stressors and a degree of anxiety, probably exacerbated by low self-esteem and confidence.

[38] On 12 April 2021, at the request of her solicitors, the plaintiff was assessed by Dr Pant, psychiatrist, for the purpose of preparing a medico-legal report. In the report, dated 30 April 2021, Dr Pant recorded the history of the two alleged sexual assaults as reported by the plaintiff. The plaintiff's reported history also included her becoming pregnant with her first child after being raped by her uncle and her experience of domestic violence during her first marriage. Dr Pant diagnosed the plaintiff as suffering PTSD as a result of the alleged sexual assaults. Dr Pant also referred to potential negative effects upon the plaintiff's cognitive abilities arising from meningitis she suffered in childhood, prior to the occurrence of the alleged sexual assaults, and the difficulty of quantifying and disentangling the effects on the plaintiff's cognitive abilities arising from the meningitis and the alleged sexual assaults. Dr Pant commented that subsequent life stressors experienced by the plaintiff would have affected her psychological condition, including the treatment she experienced in her first marriage (although not the fact, reported by the plaintiff, of her becoming pregnant with her first child after being raped by her uncle). Dr Pant regarded these later life stressors as having potentially exacerbated the psychological injuries the plaintiff suffered because of the alleged sexual assaults. Dr Pant stated that the plaintiff provides a complex history and acknowledged the difficulty of disentangling the causative impact of different events with precision.

[39] On 24 January 2022, the plaintiff underwent an independent medical examination by Dr Chalk, psychiatrist. In addition to the alleged sexual assaults, the plaintiff's reported history to Dr Chalk included reference to domestic violence she suffered during her first marriage and the rape by her uncle. It also included reference to a further rape by the plaintiff's ex-brother-in-law which resulted in her becoming pregnant with her youngest child. That rape was apparently not included in the plaintiff's reported history to Dr Pant.

[40] Dr Chalk diagnosed the plaintiff as suffering from chronic PTSD coupled with a chronic major depressive illness. He expressed the opinion that the plaintiff's difficulties have arisen as a consequence of a multitude of factors, including a profoundly prejudicial early family life, the alleged sexual assaults during her childhood, the rape by her uncle resulting in the birth of her eldest child, the domestic violence she experienced during her first marriage and the later rape by her ex- brother-in-law resulting in the birth of her youngest child. Dr Chalk described the task of apportionment between the different causal factors as being "profoundly difficult". Ultimately, Dr Chalk did express an opinion as to the degree to which the alleged sexual assaults had contributed to the plaintiff's overall psychiatric impairment, that being 30%, but acknowledged that apportionment is "far from perfect".

[41] As to this medical evidence, Ms Hasse deposes that there are no medical records available relating to the plaintiff's psychological functioning in the period 1968 to 1973, or at the time of the later life events disclosed in the reported histories provided to Dr Pant and Dr Chalk. She states that the State cannot now obtain or adduce any evidence to properly test the veracity of the plaintiff's account of causation in relation to her psychiatric condition.

The pleaded case

[42] The plaintiff pleads that the State owed a her a duty to take all reasonable steps to avoid her suffering harm and, in particular, harm in the form of psychiatric injury as the result of sexual assault while she was a student at the school and, further, while she was a ward of the State. This duty is alleged to have arisen from the State's assumption of control over the plaintiff, the plaintiff's inability to fend for herself because she was a child and the plaintiff's intellectual impairment which is pleaded as having made her more vulnerable than other children of a similar age.

[43] The plaintiff pleads that the State knew, or ought reasonably to have known, that there existed a foreseeable risk of harm to her of psychiatric injury:

(a) while she was a student at the school, because there was insufficient supervision of students given the number of teachers and the number of students, as well as the learning and/or behavioural problems experienced by students at the school which are alleged to have increased the risk of students such as the plaintiff being assaulted;

(b) while she was a ward of the State, because she was intellectually impaired, she was required to walk several kilometres to work on a main road, and she had received no training or education about how to protect herself from strangers who might wish to do her harm.

[44] The State accepts that it owed a duty of care to the plaintiff to take reasonable care and take precautions against a risk of injury to the plaintiff that was foreseeable and where, in the circumstances, a reasonable person in the position of the State would have taken the precautions.

[45] The State does not admit the allegations that the plaintiff was required to walk several kilometres to work and that the plaintiff received no training or education about how to protect herself from strangers, or its knowledge of those matters, in

circumstances where it pleads that it has not located any records in respect of those allegations concerning events which occurred 49 years before the defence was filed.

[46] The State otherwise denies the allegations concerning the content of the duty it owed to the plaintiff and the knowledge it is alleged to have had. The denial concerning the risk of psychiatric injury while the plaintiff was at the school is based on the State's pleading that: the school was adequately staffed; the school was well run; the school was subject to inspections run by the Inspector of Schools to ensure that it was adequately staffed and well run; and that the majority of students attending the school were capable of working at levels approximately commensurate with what might have been expected from children of their respective chronological ages. The denial concerning the risk of psychiatric injury while the plaintiff was a ward of the State is based on the State's pleading that: the plaintiff was not intellectually impaired (although the State accepts that the plaintiff's "intellectual skills fell within the low average range"); and that the route from the orphanage to the Allen residence passed through a residential area.

[47] The State does not admit the allegation of sexual assault by the older male student at the school or the allegation of rape by the truck driver. It also does not admit the alleged consequences of those assaults. The State pleads that those allegations cannot be admitted because:

(a) the plaintiff made no contemporaneous complaint to the State about either of the alleged assaults;

(b) the plaintiff made no contemporaneous complaint to anyone at the orphanage about either of the alleged assaults;

(c) the plaintiff made no contemporaneous or other complaint to police about either of the alleged assaults;

(d) the plaintiff made no complaint to anyone at the school in respect of the first alleged assault;

(e) the plaintiff made no complaint to Dr Allen or Mrs Allen about the second alleged assault;

(f) the plaintiff continued to work for Dr and Mrs Allen for at least several months after the second alleged assault;

(g) the plaintiff did not seek any treatment for the alleged psychological consequences of the alleged assaults;

(h) neither of the alleged assailants have been identified;

(i) the State has not located any records relating to either of the alleged assaults.

[48] The plaintiff pleads that the State was negligent and in breach of the duty it owed to her because it:

(a) placed the plaintiff in a position to be subjected to sexual abuse by the senior male student;

(b) failed to have any, or any adequate, system in place to avoid placing the plaintiff in a position where she would be sexually abused by a student at the school;

(c) failed to provide the plaintiff with transportation to work;

(d) failed to provide the plaintiff with any education to help her avoid the danger of strangers approaching her;

(e) failed to put any, or any adequate, strategies in place to protect the plaintiff from predators such as having her walk with another person to work, telling the plaintiff to take public transport or finding the plaintiff a job where she would not have to walk long distances alone.

[49] The State denies the allegations of breach of duty.

[50] As to the allegations of negligence concerning the first alleged assault, the State pleads that:

(a) it did not cause or permit any student at the school to assault the plaintiff;

(b) it was not reasonably required to continuously supervise every student at the school during the course of each school day;

(c) while the plaintiff was attending the school, the State took all reasonable precautions against a risk of injury to the plaintiff that, in the circumstances, a reasonable person in its position would have taken;

(d) there were no further precautions for the safety of the plaintiff the State could reasonably have taken while she was attending the school.

[51] As to the allegations of negligence concerning the second alleged assault, the State pleads that:

(a) the plaintiff was then about 16 years old and, consequently, was at an age where it was to be expected she could walk through a residential area unaccompanied in daylight hours;

(b) it was not reasonably required to provide transport for every 16 year old in its care for every outing;

(c) it took all reasonable precautions against a risk of injury to the plaintiff that, in the circumstances, a reasonable person in its position would have taken;

(d) there were no further precautions for the safety of the plaintiff it could reasonably have taken.

[52] The State further pleads, in respect of both alleged assaults, that it is not liable to the plaintiff for the opportunistic criminal conduct of others.

[53] The plaintiff pleads that, as a result of the alleged sexual assaults, she has been diagnosed as suffering psychiatric injuries, namely severe depression and anxiety. She further pleads the consequences of those injuries.

[54] The State denies that the alleged assaults (if they occurred) caused the plaintiff to suffer the alleged injuries or consequences on the basis that any psychiatric injury suffered by the plaintiff was caused by events unrelated to the alleged assaults, namely the plaintiff's prejudicial early life, abandonment by her mother, rape by her uncle, rape by her ex-brother-in-law and her experience of domestic violence.

Relevant principles and authority

[55] In *Connellan v Murphy*,[4] the Victorian Court of Appeal (Priest, Beach and Kaye JJA) referred to the decisions of the High Court in *Williams v Spautz*,[5] *Walton v Gardiner*[6] and *Batistatos v Roads and Traffic Authority of New South Wales*,[7] before summarising the test to be applied in an application for a permanent stay of proceedings as follows:[8]

> "In determining whether a proceeding should be stayed as an abuse of process, the authorities to which we have already referred disclose the following propositions:
>
> 1. In order to justify the grant of a stay, a defendant bears a heavy onus. A stay is ordinarily only granted in exceptional circumstances, because it effectively brings to an end litigation without adjudication [*Spautz* at 529].
>
> 2. The categories of abuse of process are not closed [*Walton* at 392-5; *Batistatos* at 264 [6], 265 [9] and 267 [15]].
>
> 3. In particular, the concept of an abuse of process is not confined to cases in which, if the action were to proceed, the defendant would not receive a fair trial [*Walton* at 395].
>
> 4. The fundamental test is whether, in the circumstances, the proceeding would be manifestly unfair to the defendant or would otherwise bring the administration of justice into disrepute among right-thinking people [*Walton* at 395; *Batistatos* at 264 [6]]."

[56] In *Moubarak by his tutor Coorey v Holt*,[9] Bell P (as the Chief Justice of New South Wales then was) summarised the relevant principles in the following way:[10]

> "From a trilogy of decisions of the High Court between 1989 and 2006 ([*Jago v District Court of New South Wales* (1989) 168 CLR 23; [*Spautz*]; [*Walton*]; [*Batistatos*]), the following uncontroversial propositions may be derived:
>
> (1) the onus of proving that a permanent stay of proceedings should be granted lies squarely on a defendant: *Spautz* at 529 (Mason CJ, Dawson, Toohey and McHugh JJ)
>
> (2) a permanent stay should only be ordered in exceptional circumstances: *Jago* at 31 (Mason CJ), 76 (Gaudron J); *Spautz* at 529 (Mason CJ, Dawson, Toohey and McHugh JJ); *Walton* at 388 (Mason CJ, Deane and Dawson JJ)

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4 [2017] VSCA 116 (***Connellan***).
5 (1992) 174 CLR 509 (***Spautz***).
6 (1993) 177 CLR 378 (***Walton***).
7 (2006) 226 CLR 256 (***Batistatos***).
8 *Connellan*, [54]
9 (2019) 100 NSWLR 218 (***Moubarak***).
10 *Moubarak*, 233-4 [71].

(3) a permanent stay should be granted when the interests of the administration of justice so demand: *Jago* at 30 (Mason CJ), 74 (Gaudron J); *Spautz* at 520 (Mason CJ, Dawson, Toohey and McHugh JJ); *Batistatos* at [12] (Gleeson CJ, Gummow, Hayne and Crennan JJ)

(4) the categories of cases in which a permanent stay may be ordered are not closed: *Jago* at 74 (Gaudron J); *Batistatos* at [9] (Gleeson CJ, Gummow, Hayne and Crennan JJ)

(5) one category of case where a permanent stay may be ordered is where the proceedings or their continuance would be vexatious or oppressive: *Jago* at 74 (Gaudron J); *Walton* at 393 (Mason CJ, Deane and Dawson JJ)

(6) the continuation of proceedings may be oppressive if that is their objective effect: *Batistatos* at [70] (Gleeson CJ, Gummow, Hayne and Crennan JJ)

(7) proceedings may be oppressive where their effect is 'seriously and unfairly burdensome, prejudicial or damaging': *Oceanic Sun Line Special Shipping Company Inc v Fay* (1988) 165 CLR 197 at 247 (Deane J); [1988] HCA 32 cited in *Jago* at 74 (Gaudron J); *Batistatos* at [70] (Gleeson CJ, Gummow, Hayne and Crennan JJ)

(8) proceedings may be stayed on a permanent basis where their continuation would be manifestly unfair to a party: *Walton* at 393 (Mason CJ, Deane and Dawson JJ); *Batistatos* at [6] (Gleeson CJ, Gummow, Hayne and Crennan JJ), and

(9) proceedings may be stayed on a permanent basis where their continuation would bring the administration of justice into disrepute amongst right-thinking people: *Walton* at 393 (Mason CJ, Deane and Dawson JJ); *Batistatos* at [6] (Gleeson CJ, Gummow, Hayne and Crennan JJ)."

[57] The summary given by Bell P in *Moubarak* was accepted in this court by Bowskill CJ in *Willmot v State of Queensland*,[11] and by Gotterson AJA (with whom Mullins P and Boddice AJA, as his Honour then was, agreed) in the appeal from that decision.[12] Bowskill CJ also referred to the conclusion expressed by Bell P that "[o]ne circumstance in which a permanent stay will be appropriate is where it is demonstrated, on the balance of probabilities, that it will not be possible to obtain a fair trial".[13]

[58] Bowskill CJ noted that, in a case such as this in which no limitation period applies and in which there ought not be any criticism of the plaintiff for not bringing her claim at an earlier time, the relevant form of unfairness that may be generated as a consequence of the passage of time between the events giving rise to the claim and the resolution of it by a court proceeding is the effect of the delay on the trial

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11 [2022] QSC 167 (***Willmot***), [53].
12 [2023] QCA 102, [48]-[52].
13 *Willmot*, [54] citing *Moubarak*, 237 [88].

process as a result of the "impoverishment of the evidence available to determine the claim". Such impoverishment of evidence will be more acute where a trial is exclusively or heavily dependent on oral evidence and the quality of witness' memory and recollection.[14]

[59] In *Moubarak*, Bell P relied upon a number of statements concerning the "corrosive effect of the passage of time and its consequences for the quality and integrity of the trial process" made by McHugh J, both as a member of the New South Wales Court of Appeal and as a member of the High Court.[15]

[60] Most relevantly, Bell P referred to the following statement of McHugh J in *Longman v The Queen*:[16]

> "The fallibility of human recollection and the effect of imagination, emotion, prejudice and suggestion on the capacity to 'remember' is well documented. The longer the period between an 'event' and its recall, the greater the margin for error. Interference with a person's ability to 'remember' may also arise from talking or reading about or experiencing other events of a similar nature or from the person's own thinking or recalling. Recollection of events which occurred in childhood is particularly susceptible to error and is also subject to the possibility that it may not even be genuine.
>
> No matter how honest the recollection of the complainant in this case, the long period of delay between her formal complaint and the occurrence of the alleged events raised a significant question as to whether her recollection could be acted upon safely. … Experience derived from forensic contests, experimental psychology and autobiography demonstrates only too clearly how utterly false the recollections of honest witnesses can be. …
>
> To the potential for error inherent in the complainant's evidence must be added the total lack of opportunity for the defence to explore the surrounding circumstances of each alleged offence. By reason of the delay, the absence of any timely complaint, and the lack of specification as to the dates of the alleged offences, the defence was unable to examine the surrounding circumstances to ascertain whether they contradicted or were inconsistent with the complainant's testimony."

[61] *Longman* was a criminal case in which the accused was charged with two sexual offences allegedly committed more than 20 years before trial. The complainant was six years old at the time of the first alleged offence and 10 years old at the time of the second alleged offence. In *Moubarak*, Bell P considered the fact that the observations of McHugh J were made in that context did not render them any less pertinent to a consideration of the consequences of a lengthy passage of time on the

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14 *Willmot*, [55] citing *Moubarak*, 234-5 [74]-[77].

15 *Moubarak*, 235-6 [78]-[81] and the cases cited therein.

16 (1989) 168 CLR 79, 107-8 (citation omitted). The same passage was cited by the Victorian Court of Appeal in *Connellan* at [45].

fairness of a civil trial heavily dependent on oral evidence.[17] I agree with that conclusion.

[62] In *Willmot*, Bowskill CJ further noted:[18]

> "An important factor in this context is where, as a consequence of the passage of time, the person or persons who could give evidence, or instructions, on a critical aspect of liability, are no longer available, which might result in the 'practical inability of reaching a decision based on any real understanding of the facts, and the practical impossibility of giving the defendants any real opportunity to participate in the hearing, to contest them or, if it should be right to do so, to admit liability on an informed basis'. Whilst it has been said that a fair trial is not synonymous with a perfect trial, and that the absence of a witness(es) who may be regarded by a party as important, whether through death or otherwise, will not necessarily mean a fair trial cannot be obtained, where that witness is the defendant … or otherwise the only person able to provide instructions on a critical aspect of the case …, the position is quite different."

[63] The Chief Justice went on to observe that a number of decided cases emphasise "the difficult, almost impossible, position that a defendant is placed in when, as a consequence of the passage of time, they are unable to give, or obtain, instructions in relation to the critical allegations(s), before or during the trial".[19] The passages extracted from those cases which I regard as most relevant to the present application contain statements that there could not be a fair trial of the plaintiff's claim in circumstances where the defendant had no way of investigating the alleged sexual assaults that were "foundational" to the pleaded causes of action,[20] or put another way where the defendant was "utterly in the dark" about the allegations made.[21]

[64] On the appeal from the decision in *Willmot*, Gotterson AJA rejected the argument that Bowskill CJ erred in law by attributing excessive weight to the availability or capacity of the perpetrators of the alleged assaults to provide instructions to the defendant or to give evidence at trial, or in concluding that this circumstance was a sufficient basis to determine that any trial would be fundamentally unfair.[22] In reaching that conclusion, Gotterson AJA did not accept a submission that "the identity of the individual or institution whom it is sought to make legally liable for damages for child sexual or other physical abuse determines whether or not proof of an allegation of the same is critical to the claimant's case", observing that where damages are sought for abuse of that kind then proof that the alleged abuse occurred

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17 *Moubarak*, 236 [81].

18 *Willmot*, [57] (citations omitted).

19 *Willmot*, [58]-[67] citing *Moubarak*, 250 [158]-[160]; *The Trustees of the Roman Catholic Church for the Diocese of Lismore v GLJ* [2022] NSWCA 78 (***Lismore Trust v GLJ***), [4], [100], [102]-[103], [118]-[120], noting that special leave to appeal this decision has been granted in the High Court: [2022] HCA Trans 206; *Ward v The Trustees of the Roman Catholic Church for the Diocese of Lismore* [2019] NSWSC 1776 (***Ward v Lismore Trust***), [22]; *Chalmers v Leslie* (2020) 6 QR 547 (***Chalmers***), 554 [31]; *GMB v Unitingcare West* [2020] WADC 165, [134], [139] and [155].

20 *Lismore Trust v GLJ*, [4] and [120].

21 *Moubarak*, 250 [158]; *Ward v Lismore Trust*, [22]. See also *Lismore Trust v GLJ*, [121].

22 [2023] QCA 102, [58]-[70].

is indispensable to the claimant's success whether or not the individual who committed it is a party to the proceeding.[23] His Honour also rejected a submission that the unavailability of the perpetrators of the alleged assaults only becomes relevant on an application for a permanent stay if the defendant can demonstrate that it would be in a materially different position if the perpetrators were available, stating that the possibility that an individual against whom such allegations are made might fail to add to the substance of the evidence does not justify a moderation of the significance of a defendant's inability to investigate foundational facts.[24]

[65] Gotterson AJA also rejected an analogy with cases where claims proceed to trial where a negligent wrongdoer has died in the incident that caused the plaintiff harm, saying that the submission:[25]

> "… has appeal where the proceeding is brought within a limitation period of several years and there is a sufficiency of contemporaneous evidence, including evidence in a physical form, to permit a fair trial. However, as the decision of the High Court in *Batistatos* demonstrates, even a proceeding brought within the applicable limitation period (in that case brought in the 29th year of a 30 year limitation period) will be stayed if, as a consequence of delay, the continuation of the proceeding would be oppressive to the defendant. Thus, the submission loses attraction when oppression of that kind is established."

[66] Finally, Gotterson AJA rejected a submission that there was sufficient useful evidence, which would be called in the plaintiff's case, upon which to conduct a trial. His Honour concluded that the availability of that evidence "does not repair the State's inability to investigate or obtain instructions, lead evidence or cross-examine about the foundational allegations".[26]

Application of principles to the circumstances of this case

[67] Although the written submissions for the State referred to the plaintiff having chosen not to offer any explanation for the delayed reporting of the alleged sexual assaults, in the course of oral argument it was acknowledged that there was no requirement for the plaintiff to provide any explanation. Nor could any criticism be made of the plaintiff for the length of that delay.[27] The position adopted by the State in oral argument was consistent with the authorities which have dealt with similar applications in proceedings which are not subject to any limitation period.[28]

[68] Three primary submissions were made on behalf of the State concerning the consequences of the lapse of time since the occurrence of the alleged assaults.

[69] First, the State submitted that the plaintiff's allegations of sexual abuse are critical or "foundational" to the causes of action which the plaintiff has pleaded against it.

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23 [2023] QCA 102, [60].
24 [2023] QCA 102, [63]-[64].
25 [2023] QCA 102, [66].
26 [2023] QCA 102, [67]-[68].
27 Transcript 1-11:7-33.
28 For example, see *Moubarak*, 234-5 [75]-[76]; *Lismore Trust v GJV*, [116]; *Willmot*, [68].

It argued that any trial would not be fair because it has no way of investigating or ascertaining whether or not the alleged assaults occurred. The alleged perpetrators have not been identified and there are no other alleged witnesses to the assaults. Consequently, there is nobody from whom the State can take instructions on the foundational issue. Further, because there are no documents which address the allegations, the State has no other information it can rely upon in responding to that issue.

[70] Secondly, the State submitted that the lapse of time since the alleged assaults are said to have occurred means it is unable to address the allegations that it breached its duty to the plaintiff by placing the plaintiff in a position to be subjected to sexual abuse or by failing to take reasonable steps to avoid the risk of such abuse. As to the first alleged assault, the State submitted that the only persons who might be in a position to provide instructions relevant to that issue – for example, evidence as to whether anyone was aware that the older male student was in the principal's office with the plaintiff or how long they might have been alone together in the principal's office – are either dead (the principal) or are unable to be identified (any administrative assistant or secretary who might have sat near the principal's office or the person who directed the plaintiff to go to the principal's office). As to the second alleged assault, the State submitted that, in circumstances where the reasonableness of the steps which the plaintiff says ought to have been taken must be judged at the time of the alleged assault and not with the benefit of hindsight, it is now unable to ascertain what might or might not have been considered appropriate in terms of children walking unaccompanied in the area the plaintiff says the second alleged assault occurred or in terms of what might or might not have been considered reasonably required in terms of educating children about the dangers of strangers approaching them.

[71] Thirdly, the State submitted that the nature of the plaintiff's claimed injuries, being psychiatric injuries, requires that the effects of the alleged sexual assaults be disentangled from the effects of later life stressors, including the domestic violence and rapes which the plaintiff suffered as an adult. However, in circumstances where there are no contemporaneous treatment records available, the investigation of how and when these injuries commenced and developed, and their potential causes, is now largely precluded.

[72] The plaintiff accepted the correctness of the State's submission that there is no person from whom it can take instructions as to the occurrence of the alleged sexual assaults.[29] She also appeared to accept in oral argument that this meant the issue whether those assaults occurred could not be ventilated at a trial.[30] However, the plaintiff submitted that, in circumstances where her claim is based upon allegations concerning failures in the systems she says ought to have been put in place to protect her, the witnesses and documents presently available, and which might potentially become available upon further inquiries being made, are sufficient to overcome the difficulties raised by the unavailability of the perpetrators of the alleged sexual assaults. In that context, the plaintiff criticised the nature and extent of the inquiries the State has made in relation to her allegations.

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29 Transcript 1-34:28-39.

30 Transcript 1-40:46 to 1-41:1.

[73] The plaintiff further submitted that, to succeed on its application, the State must demonstrate that the prejudice it claims to have suffered was the result of the lapse of time. She argued that the State has failed to do this in circumstances where, due to likely difficulties in taking instructions from the older male student (if he had been identified) and in ever identifying the truck driver, the State is effectively in no worse position now than it would have been if she had reported the alleged sexual assaults at an earlier time. On this argument, the effluxion of time is irrelevant.

[74] As to the question of causative disentanglement, the plaintiff submitted that the State has ample material with which to cross-examine her on this subject.

[75] I am satisfied that the issue whether the alleged sexual assaults occurred is critical or "foundational" in the sense that word has been used in *Lismore Trust v GLJ* and in *Willmot*. The plaintiff cannot succeed at trial unless she succeeds in establishing that those assaults occurred. If she cannot establish that either or both of those assaults occurred, her claim that the State was negligent in failing to take adequate steps to protect her from the risk of such conduct cannot succeed.

[76] I accept the submission by the State that it has no way of investigating whether or not the alleged sexual assaults occurred and no way of contradicting the plaintiff's account of those events. That is because the perpetrators of the alleged sexual assaults have not been identified or located, there were no other witnesses to either of the alleged assaults, and no relevant documents addressing the alleged assaults have been located. In these circumstances, it is correct to describe the State as being "utterly in the dark" on these critical issues.[31]

[77] The plaintiff criticised the State for failing to provide clear copies of photographs from the school during the relevant period to enable her to try and identify the older male student she alleges assaulted her in the principal's office. Shortly prior to the hearing of the application the State obtained a number of photographs and provided those to the plaintiff's solicitors. There was evidence that, upon viewing one of those photographs, the plaintiff considered one of the boys shown in it to be "similar in appearance" to the student she alleges assaulted her. There was further evidence that, upon being shown the same photograph, Ms Girdler was unable to identify any of the boys but that she considered the same boy referred to by the plaintiff as being of similar appearance, or to be the same boy, that would cause the plaintiff to become upset when she saw him in the playground at the school.

[78] This evidence does not establish that there is any likelihood that the State will be able to identify the older male student who is alleged to have committed the first sexual assault. The plaintiff never knew the name of the older male student. The photograph considered by the plaintiff and Ms Girdler, and other photographs from the relevant period, do not identify any of the students by name. Even if it could be confidently concluded that the boy in the photograph is the same student who is alleged to have committed the first sexual assault (and I do not accept that to be the case on the evidence) I am satisfied that the State now has no way of identifying that student, much less determining his present whereabouts.

[79] There was some suggestion during oral argument that the State ought to have conducted further searches for documents created by teachers at the school such as

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31 *Moubarak*, 250 [158].

major behavioural incident reports and similar documents.[32] There is little reason to think that any such document would record the occurrence of the first alleged assault, for the simple reason that, on her own evidence, the plaintiff did not report that assault to anyone at the school. Having regard to the evidence of Ms Hasse, I am satisfied that the State has demonstrated that it has undertaken all reasonable inquiries that bear upon its ability to investigate whether or not the alleged sexual assaults occurred.

[80] Although it is open to the State to cross-examine the plaintiff, in my view that would not ameliorate the difficulties referred to in [76] above.[33] The State's inability to investigate the issue whether the alleged assaults occurred must necessarily constrain the extent to which the State can effectively cross-examine on that issue. The matters raised in *Longman* (extracted at [60] above) concerning the potential for error in human recollection, particularly recollection of events which occurred in childhood, highlight the unfairness of allowing the claim to proceed where the State is unable to investigate or contradict the plaintiff's account of the alleged assaults.

[81] Further, I do not consider that the evidence that is presently available, or might upon further inquiry become available, means that a trial of the plaintiff's claim will be fair to both parties. Aside from the evidence of the plaintiff, none of that evidence addresses the issue whether the alleged sexual assaults occurred. It does not address the State's inability to obtain instructions, lead evidence or cross-examine effectively about those critical issues.

[82] I also accept that the State has been significantly prejudiced in its ability to address the plaintiff's claim that it is liable in negligence for failing to take adequate steps to protect her from the risk of being sexually assaulted. As to the first alleged assault, the question of the State's liability must turn upon a consideration of the arrangements which applied when students were sent to the principal's office as well as the circumstances in which the plaintiff and the older male student came to be left in the office alone on the day of the first alleged assault. I am satisfied that the State is prejudiced in its ability to respond to that issue because the only witnesses who could give relevant evidence on those matters are either dead (the principal) or cannot now be identified or located (the administrative assistant sitting near the office on the relevant day or the person who directed the plaintiff to go into the office). As to the second alleged assault, it seems highly improbable that those responsible for permitting the plaintiff to walk to and from work at the Allen residence (if they could be identified and located) would now have any accurate recollection of why that was considered appropriate at that time or of what consideration might have been given to other transport arrangements for the plaintiff. Nor is it likely that such witnesses would have any accurate recollection of steps that might have been taken to educate the plaintiff about the dangers of strangers approaching her.

[83] I do not accept the plaintiff's submission that the lapse of time since the alleged sexual assaults occurred is irrelevant. The submission was based on a comparison of the position the State is in now and the position it would have been in if the plaintiff had brought her claim prior to the expiry in 1978 of the limitation period

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32 Transcript 1-36:27-34.

33 See *Willmot*, [80] and *Chalmers*, 555 [33].

which had previously applied, before the LAA was amended to include s 11A.[34] That ignores the fact that even a proceeding brought within the applicable limitation period will be stayed if, as a consequence of delay, the continuation of the proceeding would be oppressive to the defendant.[35] Further, the comparative exercise proposed by the plaintiff was rejected by the High Court in the context of applications to extend a limitation period in *Brisbane South Regional Heath Authority v Taylor*.[36] In that case, Toohey and Gummow JJ stated:[37]

> "A material consideration (the most important consideration in many cases) is whether, by reason of the time that has elapsed, a fair trial is possible. Whether prejudice to the prospective defendant is likely to thwart a fair trial is to be answered by reference to the situation at the time of the application. It is no sufficient answer to a claim of prejudice to say that, in any event, the defendant might have suffered some prejudice if the applicant had not begun proceedings until just before the limitation period had expired."

That statement seems to me to apply equally to an application for a permanent stay where, according to the authorities discussed above, it will be relevant for the court to consider whether prejudice caused by the lapse of time is likely to prevent a fair trial.

[84] If the plaintiff had provided contemporaneous reports of the alleged sexual assaults then steps could have been taken to seek to identify the perpetrators. As to the first alleged assault, a contemporaneous report of the incident would have permitted the alleged perpetrator to be identified from a limited pool of older male students and enabled the school administration to investigate the circumstances of the plaintiff's allegations. As to the second alleged assault, a contemporaneous report would have allowed inquiries to be made directed to, for example, identifying the truck which the plaintiff had noticed on occasions prior to the date of the incident. Those steps are, due to the lapse of time, no longer available. Likewise, inquiries as to matters going to the question of the State's alleged negligence in failing to protect the plaintiff from the risk of being sexually assaulted (see [82] above), would have been much more likely to provide the State with relevant information if they were made around the time of the alleged sexual assaults. As I have already noted, in assessing the position at the time of this application, I am satisfied that the State has suffered significant prejudice.

[85] Finally, I am satisfied that the lapse of time means that the State is now prejudiced in its ability to undertake the exercise of disentangling the causative effect of the alleged sexual assaults from the effect of subsequent life stressors. There are no medical records that would permit the State to investigate the plaintiff's psychological condition before and after the alleged sexual offences during her childhood, or her condition before and after the two separate occasions on which she was raped by members of her family, or the effect of her being exposed to domestic violence. Dr Chalk's attribution of causation between these various events

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34 Transcript 1-62:10-14.

35 *Batistatos*, 279-281 [62]-[70].

36 (1996) 186 CLR 541.

37 (1996) 186 CLR 541, 548-9 (citations omitted). See also the comments of McHugh J (with whom Dawson J agreed) at 554-5 and 556.

does not, in my view, support a different conclusion. His report contains no reasoning or explanation for the assessment he has made, and he acknowledges that the assessment is far from perfect. That must necessarily be the case where the plaintiff's history upon which Dr Chalk relied to apportion the causative effect of different events in the plaintiff's life is limited to the plaintiff's expressed recollection of those events and their impact upon her. I do not consider that the available evidence permits any proper investigation of how and when the plaintiff's psychiatric injuries commenced and developed.[38]

[86] For these reasons, I have concluded that in the circumstances of this case it would be manifestly unfair to the State to permit the proceeding to continue to trial. On that basis, I am satisfied that the State has discharged the burden of demonstrating that this is an exceptional case where a permanent stay is warranted.

[87] As has been stated in other decisions where a stay has been granted of similar proceedings,[39] this outcome involves no criticism of the plaintiff's conduct in not reporting the alleged sexual assaults sooner. Nor does it say anything adverse to the honesty and credibility of the plaintiff.

Plaintiff's application for confidentiality

[88] At the hearing of the application, the plaintiff was given leave to file and read an application seeking that the court's judgment be presented in a form which avoids disclosing information which would identify her and that the file be withheld from search or inspection by any person not a party to the proceedings without an order of the court. The State did not oppose that application.

[89] In light of the allegations of sexual assault against the plaintiff when she was a child, as well as the reference in the material to other matters of a sensitive nature, I am prepared to make the orders the plaintiff has sought.

Orders

[90] The orders I make are:

1. The proceeding is permanently stayed.

2. The judgment of the court in the proceeding is to be presented in a form which avoids disclosing information which would identify the plaintiff.

3. All documents relating to these proceedings, including court documents, written submissions and transcripts of proceedings, are to be withheld by the court registry from search or inspection by any person other than a party to the proceeding or their legal representatives without an order of the court.

4. The plaintiff pay the defendant's costs of the stay application and of the proceeding to be assessed on the standard basis if not agreed.

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38 See *Connellan*, [58]. In the context of an application to extend a limitation period, see also *Oram v BHP Mitsui Coal Pty Ltd* [2015] 2 Qd R 357, 373 [100]-[101].

39 For example, see *Willmot*, [81] and *Lismore Trust v GLJ*, [3].