

Extensions of time

By Dr Andrew Morrison RFD SC

***Raggett v The Society Of Jesus Trust 1929 for Roman Catholic Purposes and the Governors of Preston Catholic College* [2009] EWHC 909 (QB)**

In this case, the plaintiff sought an extension of time in which to sue the school he attended between 1969 and 1976 in respect of alleged sexual abuse and assaults committed by a Jesuit teacher at Preston Catholic College. Swift J was satisfied that an episode in April 2005 had reawakened memories of incidents of abuse, giving three years in which to commence proceedings from that date.

The defendant argued that the plaintiff knew all of the circumstances before or, alternatively, that it was prejudiced by the death of the alleged abuser, so that a fair trial was no longer possible. Swift J accepted the plaintiff's evidence as to the reawakening of memories and noted the evidence of a large number of other witnesses supportive of the plaintiff's allegations. She also noted a letter from the priest, which she believed made any denial by the accused impossible to believe. In those circumstances, she held that his death did not prevent a fair trial and extended time for the commencement of proceedings despite the lapse of more than 35 years.

***HWC v Corporation of the Synod of the Diocese of Brisbane* [2009] Australian Torts Reports 82-015; QCA 168**

In this case, the plaintiff was abused by the Synod's employed teacher while at school. At first instance, an extension of time was granted. The plaintiff's psychiatric injury was revived only after the plaintiff came forward many years later, after another complaint against the teacher had been made. The extensive involvement in the subsequent criminal proceedings resulted in the psychiatric condition becoming dramatically worse. The teacher had a previous history of complaints and a conversation between a former headmaster and the most recent headmaster became relevant. Both had since died. The Queensland Court of Appeal said that there was at the least a significant possibility that their inability to give evidence would prejudice the defendant in a way that meant that the extension of time was unfair. An application for special leave to appeal to the High Court is pending.

***Guthrie v Spence* [2009] NSWCA 369**

In this case, the plaintiff had attended St Patrick's Primary School in Griffith, operated by the Trustees of the Marist Brothers. Mr Guthrie was the principal of the school between 1986 and 1989. The plaintiff alleges that while he was in Year 3 to Year 6, Mr Guthrie sexually assaulted him repeatedly. The plaintiff was a minor until he turned 18 in mid-1996. Under the amendments to the *Limitation Act* 1969, he relevantly had a further six years in which to commence proceedings; this period expired around the

middle of 2002. The plaintiff alleged that he remained subject to a disability for a sufficient length of time to prevent the commencement of proceedings until February 2008.

Elkaim DCJ at first instance accepted that submission. Mr Guthrie and the Trustees of the Marist Brothers appealed on the grounds that the matter was not properly brought before the District Court. It was noted in the Court of Appeal that the question as to whether a limitation period had been suspended could have been dealt with in various ways. A defendant could plead a limitation defence and the plaintiff could plead suspension of the limitation period in reply. Alternatively, a defendant could move for summary judgment, although this would still leave the limitation question open to be re-litigated at final hearing if the defendant was unsuccessful. Alternatively, the court could make an order under Rule 28.2 or the UCPR for separate determination of the question. None of these procedures was effectively followed in the District Court.

The Court of Appeal cured this deficiency by transferring the action into the Supreme Court and making orders giving effect to its conclusion. There was psychiatric evidence that the plaintiff's mental state, amounting to PTSD, had become chronic and that he had been substantially impeded or incapable of managing his affairs during the relevant period. Campbell JA (Basten JA and Handley AJA agreeing) held at [177] that he was not satisfied that the first instance judge erred in concluding that the plaintiff suffered a relevant disability after he had turned 18 and for a sufficient period of time afterwards for his action to have been brought within time. In his view [at 183], the evidence established that the plaintiff had an impairment of his mental condition consisting of PTSD. This made him less able to seek advice and engage in rational decision-making. Campbell JA rejected criticism that there was no precise evidence as to when the disability was operative and a suggestion that the causal link between impairment of mental condition and the delay in commencement had not been established. This decision was made in circumstances where the proposition was not advanced in cross-examination and there was no evidence from lawyers of any outward manifestation of difficulty in dealing with a cause of action because the plaintiff had not approached lawyers. In the circumstances, the trial judge was entitled to find that the plaintiff was 'substantially impeded' during the relevant period. Leave to appeal was granted, the proceedings transferred from the District Court to the Supreme Court and the plaintiff was held to have been under a disability after attaining the age of 18 years and until after proceedings were commenced. The appeal from the District Court was dismissed with costs. ■

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