

Legal Practitioners' Liability Committee

LIMITATION PERIOD EXTENDED FOR PSYCHOLOGICAL INJURIES

The High Court has adopted a generous approach to the application of time bars in the context of latent injuries.

This comes against the general tide of shorter limitation periods imposed under the banner of tort reform. The decision is a timely reminder to practitioners that certain provisions of the *Limitation of Actions Act* 1958 (Vic) (the Act) are beneficial in intent and the Court has signalled an intention to interpret them liberally.

Missed limitation periods provide a reliable source of claims brought by disappointed claimants against solicitors. This case provides a useful gauge for solicitors assessing the prospects of certain personal injury claims.

Facts

At the heart of the appeal in *Stingel v Clarke* [2006] HCA 37 was an unusual action in tort for trespass to the person brought many years after the event. Carol Stingel claimed damages for trespass to the person for rape and assaults she alleged were committed by Geoffrey Clarke back in 1971. Ms Stingel's case was that she suffered post traumatic stress disorder of late onset and, soon after 2000, she became aware of the connection between the assault and the disorder. She argued that her case fell within section 5(1A) of the Act so that time began to run only when she first knew of the causal connection with the earlier assaults. Section 5(1A) then provided 6 years from the date of realisation, which, since tort reform, has been reduced to 3 years in Victoria.

Does section 5(1A) cover cases of trespass?

The success of Ms Stingel's claim depended on a threshold question about the scope of section 5(1A). Section 5(1A) provides an extended limitation regime for personal injury actions involving a disease or disorder of late onset. Time is deemed to run only from the date on which the person first knows that he/she has suffered those personal injuries and that they were caused by the act or omission of some person. It is expressed to apply to:

“an action for damages for negligence nuisance **or breach of duty** (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision).....”

This is more generous than the general limitation period in section 5(1)(a) of the Act which provided a general 6 year limitation period (now 3 years) from the date the cause of action accrued. If this general provision applied to her case, the claim would have been extinguished back in the 1970s.

A convincing majority of the Court determined that trespass could be characterised as a “breach of duty” to bring it under the more generous limitation provisions. The majority took a practical approach, observing that “statutes of limitation are more concerned with practical justice than with jurisprudential analysis”. They avoided the anomalous result of putting victims of intentional torts in a worse position than victims of negligence.

Are cases originating in trauma covered by the phrase “disease or disorder”?

The next question was whether the extended limitation regime of section 5(1A) covered cases caused by trauma, given that the provision refers to “disease or disorder”. There were some assumptions that section 5(1A) was confined to actions arising from so called ‘insidious’ personal injuries such as lung disease because it was enacted in the early 1980s with mesothelioma victims in mind.

The High Court concluded its scope could not be confined by reference to the state of medical knowledge available to the Parliament back in 1983 when the provision was enacted. The Court held that cases caused by trauma are covered under section 5(1A).

Lessons

The first message to be drawn is that cases of late onset psychological injury once thought to be statute-barred may be resurrected, provided an action is issued within three years of the ‘date of realisation’. Section 5(1A) will apply equally to victims of intentional torts and negligence. The decision will resonate in cases involving post traumatic stress disorders (PTSDs); that is, claims where the physical trigger occurred many years ago, and the full psychological impact does not hit the victim until many years after the event. It is likely to affect a fairly narrow range of personal injury claims: particularly claims arising from war service or child sexual assault.

The categories of diseases and disorders to which section 5(1A) may apply, are open; they are not confined to claims arising from so called ‘insidious’ personal injuries. Practitioners should be aware that novel medical categories of claim with a long latency period may emerge to fit this broader limitation regime.

The case also highlights the need for practitioners to -

- understand the range of limitation provisions in the Act;
- differentiate general from specific limitations provisions; and
- appreciate that limitation periods for personal injuries are dealt with across Part I, Part II and Part IIA of the Act.

**Legal Practitioners’ Liability Committee
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