

COURT ADOPTS “NOT REASONABLE” TEST IN REFUSING TO GRANT AN EXTENSION OF THE LIMITATION PERIOD IN A DEFAMATION CASE

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Despite a ruling that it would not have been reasonable for defamation proceedings to have been commenced within the limitation period, an extension of time was refused because not all of the subsequent delay in commencing proceedings was explained.

IN ISSUE

Whether an extension of the limitation period for commencement of defamation proceedings should be granted and, if so, what is the correct test to determine the length of the extension

THE BACKGROUND

On 29 June 2013, the plaintiff and his friend, Jake Innes, were involved in a serious motor vehicle accident. Mr Innes died immediately following the accident. The plaintiff suffered very serious injuries and was unable to recall any details of the accident, particularly whether he had been the driver of the vehicle. On 24 February 2014, the defendant published a short promotional video on YouTube, Facebook and Twitter as well as aired a segment on Channel Nine News which asserted that the plaintiff had killed his best friend in the accident. On 27 February 2015, the coroner found that Mr Innes had been the driver of the vehicle. The plaintiff then met with a solicitor in March 2015 to discuss the report. After meeting with counsel in May 2015, the plaintiff instructed his solicitors to commence defamation proceedings against the defendant. The plaintiff filed proceedings on 20 October 2015 (8 months after the limitation period had expired). The plaintiff sought an extension of the limitation period pursuant to section 56A of the *Limitation Act 1969* (NSW) (“the Act”) which provides that, if a court is satisfied that it was not reasonable for the plaintiff to commence an action within 1 year of the date of publication, the limitation period must be extended for a period of up to 3 years from the date of publication. At issue was whether time should be extended and, if so, the length of the extension.

THE DECISION

The court was satisfied that, in the circumstances, it was not reasonable for the plaintiff to have commenced defamation proceedings within 1 year from the date of publication. It was

only after the coroner's report had been published in February 2015 that the plaintiff had reasonable prospects of success in a defamation action.

To determine the length of the extension the court adopted the test stated in *Noonan v MacLennan* [2010] QCA 50, that time should not be extended beyond the period within which it was unreasonable to have commenced proceedings. The court noted that the plaintiff moved promptly after receipt of the coroner's report and accepted that the meeting with counsel in May 2015 was the first time that a conference could reasonably be arranged. Thereafter, the court considered that there was insufficient explanation as to the 5 month delay between receiving instructions and filing proceedings.

The court applied the "not reasonable" test and found that it was not reasonable in the circumstances for the plaintiff to have commenced proceedings before 30 June 2015 (6 weeks after instructions were given). However, since proceedings were only filed on 20 October 2015, the application to extend the limitation period was refused.

IMPLICATIONS FOR YOU

This decision confirms the position that, in order for a court to extend a limitation period pursuant to section 56A of the Act, the court must be satisfied that there is a sufficient explanation for any further delay in commencing proceedings beyond the limitation period.

[*Barrett v TCN Channel Nine Pty Ltd* \[2016\] NSWSC 1663](#)

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