



Précis Paper

Clarke v Angove [2021] ACTSC 121 – Insurance – Practice & Procedure

Abstract – Interlocutory application – The procedure involved in seeking leave for the urgent need to commence proceedings and the implications of significant health issues affecting the applicant's lifespan in *Clarke v Angove* [2021] ACTSC 121.

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Précis Paper

Clarke v Angove [2021] ACTSC 121 – Insurance – Practice & Procedure

1. In this edition of BenchTV, Anca Costin, barrister, and Robert Clynes, barrister, discuss the procedure involved in making an application to commence proceedings urgently and the implications of a life-threatening medical condition affecting the applicant's lifespan in *Clarke v Angove* [2021] ACTSC 121.

Background

2. In *Clarke v Angove* [2021] ACTSC 121, Costin was acting for an eighty-five-year-old man, Mr Clarke, who was injured in a motor vehicle accident. Costin's task was to persuade His Honour that there was an urgent need to commence proceedings for damages.
3. In April 2018, Mr Clarke was in a car accident in Canberra. He was walking across a pedestrian crossing when he was struck by a utility vehicle.

Underlying Legislation

4. The relevant legislation in this claim is the *Road Transport (Third-Party Insurance) Act 2008* (ACT) s 150 ('the Act'), which is used when there is a need for an urgent proceeding.
5. In making such a claim, following giving notice, the plaintiff is required to comply with the Supreme Court of the Australian Capital Territory, *Practice Note No 1 of 2016: Commencing Certain Personal Injuries Claims Urgently*, 28 June 2016 ('the Practice Note').

Procedure

6. Prior to commencing proceedings, pursuant to Chapter 4 of the Act, the parties must attend a compulsory conference and exchange mandatory final offers.
7. On this occasion, that did not occur.
8. However, the matter urgently needed to be heard due to the plaintiff's health and age. He was eighty-five years of age and suffering from a hernia, which he wanted to have operated on before the proceedings.
9. The instructing solicitors prepared the application proceedings together with an affidavit in support, and it was filed in the Supreme Court of the Australian Capital Territory.
10. The Practice Note allows the court to make the orders in chambers if the parties consent.
11. However, the two defendants, the driver and the insurer, did not consent to the application, and the matter had to be heard.

Additional Factors

12. A week before the proceedings, a concerning report was produced by Mr Clarke's general practitioner detailing that he was suffering from a life-threatening pre-leukemia blood condition.
13. The applicant sought leave to be granted to commence proceedings without following the aforementioned procedure and leave for the matter to be stayed.
14. The affidavit included several documents outlining Mr Clarke's health alongside the general practitioner's report, as well as a discharge summary from the hospital.
15. The only evidence produced by the respondent insurer was a Vincents Litigation Table which suggests that the prospective life expectancy of an eighty-five-year-old is six and a half years.

Submissions of the Parties

16. The most crucial piece of evidence for the plaintiff was his medical history and the pre-leukemia blood condition that had been discovered.
17. The insurer attempted to argue that there was no rush as the plaintiff had at least six and a half years to live.
18. Furthermore, the insurer argued that Mr Clarke's condition was expected of a man of his age. It is doubtful that a person of eighty-five years of age would have no health conditions.

Findings

19. His Honour considered all the factors, affirming that the life expectancy provided by the defendant was a mere average. The significant health issues and the plaintiff's age 'severely' affect his lifespan, making it a pressing matter. On that basis, leave was granted.

Conditions

20. By allowing the application, the plaintiff was obligated under Chapter 4 of the Act to attend the compulsory conference and exchange mandatory final offers.
21. There were no authorities to be relied upon at the time of the hearing. However, this decision may be helpful to rely upon in future cases.

Other Similar Legislation

22. The *Personal Injuries Proceedings Act 2002* (QLD) s 43, is similar to s 150 of the Act, which means that this decision can be useful in other jurisdictions.
23. The *Civil Law (Wrongs) Act 2002* (ACT) s 79 is another almost identical piece of legislation.
24. Something to take note of is that the Practice Note does not make exclusive reference to circumstances where a plaintiff is experiencing medical difficulties. However, it does deal with situations where a time limitation is due to expire.

The Outcome of the Application

25. His Honour was able to make orders on the day, to which the parties were made aware of their obligations regarding the compulsory conference and exchanging mandatory final offers. That occurred within the required timeframe, and the matter was resolved and settled at a later date.

BIOGRAPHY

Anca Costin

Barrister, Blackburn Chambers, Canberra

Ms Costin's practice comprises of a range of areas, including employment law, occupational regulation and disciplinary matters, administrative law, personal injury and commercial matters. She holds a Bachelor of Laws (2003) from the Romanian - American University in Bucharest (Romania), a Diploma in Law from the Legal Practitioners Admission Board (University of Sydney) (2014) and a Graduate Diploma in Legal Practice from the Australian National University (2014).

Robert Clynes

Barrister, Blackburn Chambers, Canberra

Mr Clynes was first admitted to practice in 1975 and spent some 30 years in the Canberra office of national law firm Minter Ellison as a commercial litigator. He was ACT Law Society President from 1993-1995 and retired from the firm as Chairman of Partners in September 2005, immediately going to the Bar.

BIBLIOGRAPHY

Focus Case

Clarke v Angove [2021] ACTSC 121

Benchmark Link

https://benchmarkinc.com.au/benchmark/insurance/benchmark_28-06-2021_insurance.pdf

Judgment Link

<https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/act/ACTSC/2021/121.html>

Legislation

Civil Law (Wrongs) Act 2002 (ACT)

Personal Injuries Proceedings Act 2002 (QLD)

Road Transport (Third-Party Insurance) Act 2008 (ACT)

Other

Supreme Court of the Australian Capital Territory, *Practice Note No 1 of 2016: Commencing Certain Personal Injuries Claims Urgently*, 28 June 2016