

Damages (Medical) Division - Victorian County Court

Andrea Wallace, Melbourne

Since the beginning of 1998 all personal injury cases against health care providers, issued out of the County Court of Victoria, have been entered into the new Damages (Medical) Division. This special division of the County Court's civil jurisdiction has been created to deal with the management of medical negligence proceedings, from the date they are issued until the commencement of trial.

Background

There have been numerous procedural changes to the County Court since the introduction of Order 34A in January 1996. The most significant of these changes was the abolishment of the automatic right to discovery and interrogation. The Court also introduced Directions Hearings, whereby parties are required to appear before the Court and advise of the progress of the claim. Any applications for discovery and interrogation are to be made at this Directions Hearing. The Court has also actively encouraged all parties to attempt alternative dispute resolution, with the Court ordering mediation in almost all cases. These procedures have promoted the speedier resolution of cases. It appears that following on from this "success", the Court proceeded to conduct a widespread review of the Court's Rules and procedures, looking at matters such as cost penalties, the use of expert witnesses, and increased judicial control of proceedings. The Court also considered the growing number of medical negligence cases in its jurisdiction and reviewed the special needs of such cases.

A sub-committee was formed to review the medical negligence cases and it is understood that the main priority was to ensure early disclosure of information between the parties. Under the existing rules and Court Orders, medical reports did not have to be exchanged until one month prior to mediation. Further, in recognition of the difficulties which

Plaintiffs experience in getting doctors to comment on negligence in malpractice cases, all comments on liability could be excluded from the copy of the medical report served on the other party. However the proposed rules sought to change this by requiring full disclosure, including the service of medical reports from treating doctors at the time the writ is served. In consultation with members of the legal profession, including several members of APLA, concerns as to such proposed changes were raised. To date there have been no formal changes to the rules in medical negligence cases. However Orders are now being made by Judges in individual cases requiring the full exchange of medical reports, without any deletions on liability. Such individual Orders are inconsistent with Rules 33.01.50 of the Rules of the Supreme Court of Victoria (which also apply in the County Court)

Management of interlocutory steps

The new Medical Division has operated to manage the interlocutory steps which are critical in medical negligence cases. Such management occurs at Directions Hearings which are held approximately six months after proceedings are issued and then a further directions hearing is held one month prior to trial to ensure the case is ready to proceed.

The Court will order formal discovery when asked to do so by either of the parties. In relation to interrogatories, the Court will allow those which relate to issues of liability, but in general it will not allow interrogatories relating to the assessment of damages. The view of the Court is that such matters can adequately be dealt with by the exchange of medical reports and particulars of special damage. However in some complex cases, concise interrogatories which relate to proof of quantum may be allowed by the Court.

The cases are listed for trial with other damages cases in the one Damages List. That is, there is not a panel of judges who just hear medical negligence cases. There is still a right to have a trial by jury in all cases.

The Judge currently in charge of the list is Judge Wodak. He has indicated a preparedness to hear urgent applications, if required. He is seeking to encourage co-operation between practitioners. When parties can reach accord on matters of general management, they are able to seek consent orders by contacting the Judge's Associate by fax.

To date cases have proceeded through this new Division expeditiously, and in my experience cases are being listed for trial earlier than other cases in the General Damages Division. For example, cases issued in July 1997 have been listed for hearing in October 1998. This means Plaintiffs are now able to avoid the excessive delays which had plagued the Court system for many years. ■

Andrea Wallace is a Solicitor at Holding Redlich and is also the Victorian Chair of the Medical Negligence Special Interest Group. Phone (03) 9321 9999

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