

Protocols for pre-hearing conferences in “serious injury” applications under s93 of the Transport Accident Act.

Preamble

On 20 September 2007, her Honour Judge Davis of the County Court attended the LIV’s Litigation Lawyers Section TAC Committee meeting and set out her vision for pre-hearing conferences in TAC “serious injury” applications. The Committee set up a sub-committee comprising of Geraldine Collins, Tim Adam and (now) Julie Hobbs to draw protocols to facilitate the pre-hearing conferences and measure the outcomes.

Introduction

These protocols apply to TAC serious injury applications listed for hearing in the County Court on or after Monday 17 March 2008. It is anticipated that the conferencing will commence in February 2008.

The pre-hearing conference will be conducted in a spirit of goodwill. The parties will use their best endeavors to ensure that there is a full and frank discussion and the issues between the parties are fully canvassed.

Pre-Hearing Conference

- 1.1 Where an Originating Motion has been listed for hearing on or after 17 March 2008, the proceeding will be the subject of a formal conference during the period 42 to 30 days prior to the hearing date allocated by the court and after the final exchange of materials by the parties.
- 1.2 The purpose of the conference is to attempt to resolve the serious injury question. The parties will enter into a bona fide discussion of all relevant issues. The conference is considered to be concluded if the matter does not resolve at the conclusion of the scheduled conference, or if there is mutual agreement that there be ongoing discussions, at the conclusion of those discussions.
- 1.3 The plaintiff must be present at the conference. It is anticipated that there be meaningful dialogue with the plaintiff about his or her transport accident related injuries and the effects of those injuries on the plaintiff. The TAC accepts that this may be a threatening and stressful event for the plaintiff and agrees that the dialogue should be part of a non threatening and participative discussion between the plaintiff, his or her legal

representative and the TAC. If the plaintiff is a minor or a person under a disability, then their litigation guardian may elect to be part of the conferencing process or not at their discretion.

- 1.4 The TAC will ensure that a representative who has the appropriate authority will be present at the conference.
- 1.5 Whenever possible the conference will be conducted at the McPhee Mediation Centre (level 10, 488 Bourke St Melbourne, phone no. 9670 4003). The TAC agrees to meet the expense of the hiring of rooms at the McPhee Mediation Centre for the conferencing.

Other Matters

- 2.1 If credit is in issue, the TAC's representative will outline the credit issues at the conference and the credit material will be provided to the plaintiff's representative at the conference. The TAC will not engage in further surveillance once the conference has concluded subject to clause 3.1 to 3.4.
- 2.2 The parties agree that anything said at the conference is "without prejudice" and cannot be discussed or referred to in a subsequent court hearing or conference.
- 2.3 The costs of the conference will be "costs in the cause" (except for the expense of the hiring of the rooms at the McPhee Mediation Centre see 1.5 above). If the matter is not resolved at the conference and the plaintiff is ultimately unsuccessful in his or her serious injury application, the TAC will not seek its costs of and associated with the pre-hearing conference in any costs order it seeks against the plaintiff.

Originating Motion not Reached

- 3.1 Should a matter not resolve pursuant to these protocols, it is anticipated the trial of the Originating Motion will proceed as listed by the Court. If the matter is adjourned or not reached a new trial date (the second trial date) will be fixed by the Court.
- 3.2 Between the original and the second trial date, the parties are entitled to obtain further material. All such material is to be exchanged in accordance with the Court Rules and in accordance with these protocols no later than 42 days prior to the second trial date.

- 3.3 Subject to the leave of the Court, no further material is to be obtained by the parties subsequent to 42 days prior to the second trial date.
- 3.4 If a party serves novel or new material the parties may consent to time being abridged to enable the other party to respond to the novel or new material.
- 3.5 Should the parties agree, a further conference may be held in accordance with the terms of these protocols.