

PRACTICE NOTE NO 1 OF 2016
NI2016-335

COMMENCING CERTAIN PERSONAL INJURIES CLAIMS URGENTLY

Under the *Road Transport (Third Party Insurance) Act 2008* (ACT) (the Act) a plaintiff who claims damages for personal injury arising out of the use of a motor vehicle is required to comply with the procedures set out in Chapter 4 of that Act. On occasions, the plaintiff is unable to complete those procedures prior to the expiry of the limitation period applicable to the cause of action to be claimed in the proceedings.

Following *Racic v Haltiner* (2010) 4 ACTLR 224, a practice has arisen of such proceedings being commenced and the parties consenting to orders staying the proceedings until the statutorily mandated pre-trial procedures have been completed.

A doubt arose as to whether this was permitted under the Act. A recent amendment to s 150 of the Act permits the court which has jurisdiction over the relevant claims for damages to permit plaintiffs to apply for leave to commence court proceedings notwithstanding that the pre-trial procedures required under that Act have not been completed.

In order to make the process of making such applications efficient and cost effective, where a plaintiff wishes to commence proceedings without first completing pre-trial procedures because, for example, the limitation period in respect of the claim might expire before the proceedings can be commenced, the following procedure should be adopted:

1. An Originating Claim may be filed together with an Application in Proceedings in the usual form, but with no return date, seeking an order that “The plaintiff have leave to commence these proceedings despite non-compliance with Chapter 4 of the *Road Transport (Third Party Insurance) Act 2008* (ACT)”.

2. The Application in Proceedings should set out briefly the grounds for urgent filing of the Originating Claim such as, “the limitation period will expire on [date] and the plaintiff’s injuries have not yet stabilised” or “the limitation period will expire on [date] and the plaintiff has only recently sought legal advice” or similar.
3. The Application in Proceedings must be accompanied by an affidavit in support setting out in brief detail the facts that ground the application and, if known, the attitude of the defendant’s insurer to the application, preferably annexing a document setting out the defendant’s insurers’ attitude.
4. The Plaintiff must then serve a copy of the unsealed Originating Claim and the Application in Proceedings on the insurer of the defendant.
5. If the defendant’s insurers’ attitude is not known at the date of filing the affidavit in Support of the Application in Proceedings, the plaintiff must, within seven days of filing the application in proceeding, file an affidavit setting out the attitude of the defendant’s insurers or, in the alternative, stating why it is not possible to provide an indication of the insurers’ attitude and confirming service of the Originating Claim and the Application in Proceedings on the defendant’s insurers.

If steps 2 and 3 have been completed and the defendant’s insurers do not oppose the making of the orders in the Application in Proceedings, the application will be referred to the Registrar for an order to be made in chambers, if the material supports it.

If the Registrar is not satisfied that there is sufficient evidence to make the order or if the application is opposed, the application will be listed in the Supreme Court, before the Associate Judge or a Judge, or, in the Magistrates Court, before a Magistrate, at a time notified to the plaintiff and, if notified to the Court, the defendant’s insurers or legal representatives.

The plaintiff is still required to have regard to the provisions of r 75 of the *Court Procedures Rules* and take action, if appropriate, to avoid the

proceedings being struck out and the grant of leave will be made conditional upon the Plaintiff complying with that Rule.

The parties will be notified of the grant of leave once made.

Dated 28 June 2016

H MURRELL
Chief Justice

K FRYAR
Acting Chief Magistrate

R REFSHAUGE
Justice

L CAMPBELL
Magistrate