Supreme Court of Victoria opts to hear would-be jury trial by judge alone in an effort to keep the wheels of justice turning

As our clients will all be well aware, Victorian courts have presently suspended jury trials until further notice in response to the COVID-19 pandemic. This means that unless alternatives are found, many trials will be postponed for hearing once the restrictions are lifted, and will have to jostle for court time together with the ordinary case load which would have been scheduled for that period.

In an effort to mitigate the delays and potential injustice that might be caused by an overloaded court system after jury trials resume, the Supreme Court of Victoria has demonstrated a strong desire to push on with cases tried by judge alone, wherever possible.

A recent decision issued by the Court has indicated that if all else is equal, and no particular *injustice* will be caused by determining a case by judge rather than with a jury, it will likely be considered both in the interests of justice to the plaintiff, and in the public interest, for cases to be heard "in an orderly, timely and cost-effective way (which) militates against the deferral of hearing cases in a climate of uncertainty, by one mode of trial, when a case may equally justly be heard via another mode straight away."[1]

In reaching this conclusion, the Court considered the application of r 47.02 in the *Supreme Court (General Civil Procedure) Rules 2015* (Vic) (the **Rules**), and which provides that the court has an overriding discretion to determine the mode of trial regardless of the wishes of the parties. It noted that in exercising this power regard must be had to the overarching obligation pronounced in the *Civil Procedure Act 2010* (Vic) to facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute.[2] Key to this decision were the plaintiff's injuries and the adverse effects of the litigation process upon him (he had already applied and been granted an expedited hearing in this regard) and the unprecedented nature of the COVID-19 crisis which means that it is very difficult to know when cases will be heard again before a jury.

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[1] *Mulquiney v Reynolds & Anor (Ruling No 1)* [2020] VSC 119, paragraph [8].
[2] Ibid, paragraph [7].

Meridian Lawyers regularly assists health practitioners to respond to patient complaints and allegations of professional negligence. This article was written by Principal Kellie Dell'Oro and Associate Anna Martin. Please contact us if you have any questions or for further information.

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