

Short Minutes Transcript: Delay and COVID-19

In the case of Rodny and Stricke the Supreme Court made a personal costs order against a solicitor for costs thrown away as a result of delay.

The plaintiff had a costs order made against him by the NSW Civil and Administrative Tribunal and was granted leave to appeal that decision. However, the plaintiff's solicitor failed to file the necessary summons to commence an appeal within the 28-day time limit due to what was described as 'administrative delays' as a result of COVID-19.

The plaintiff applied to commence an appeal seven weeks out of time.

The solicitor filed an affidavit providing an explanation for the delay, stating that:

- The solicitor had instructed his assistant to enter the relevant date for filing the plaintiff's application in his electronic diary, but she failed to do so.
- Due to an administrative oversight, and because he had to relocate his office to his home due to COVID-19 restrictions, the brief to senior counsel was delivered late.

The defendants' solicitor provided affidavit evidence that throughout the proceedings there had been a pattern of the plaintiff's solicitor failing to diarise dates or otherwise comply with timetables.

The Supreme Court stated that the plaintiff 'should not be penalised for his solicitor's mistakes' and that in circumstances where the solicitor agreed to personally pay the costs thrown away as a result of the seven week delay it would exercise its discretion to grant the extension.

The solicitor consented to a personal costs order in favour of the defendants.

This case is a reminder of the Courts' unwillingness to tolerate non-compliance with court ordered timetables and limitation periods, even if the delay is caused by unforeseen events such as COVID-19.

Solicitor's should be prepared to deal with unforeseen circumstances by ensuring that:

- Systems and procedures are up to date and take into consideration relevant factors such as remote working
- Important tasks are not left until the last minute
- Business disruption and contingency plans are in place.

I'm Malcolm Health.

[Rodny v Stricke \(No 2\) \[2020\] NSWSC 1126](#)