



The possibility of life after death

In April 2016, the Supreme Court of Queensland ruled in the fascinating case of *Re Leith Dorene Patteson* [2016] QSC 104.

The applicant, Ms Leith Patteson met Mr Tony Deane in August 2015. They commenced a relationship in September 2015, shortly after which Mr Deane was diagnosed with a serious and rare blood disease. The couple moved in together and in October 2015 they became engaged. The Court heard that they were anxious to have a child together, trying to conceive in early 2016. Their attempts to have a child were no secret among family and friends.

On 18 April 2016 Mr Deane attempted suicide. He was discovered by Ms Patteson and transported to hospital where he was found to be brain dead. His life support machine was turned off on 20 April 2016.

On 21 April 2016 Ms Patteson applied to the Court for orders authorising the removal of Mr Deane's testes and any spermatozoa from his body and the provision of those to an IVF organisation.

A timely decision in the case was imperative given the fact that the testes and sperm must be removed and processed within 24 hours of death to remain viable.

The case came on before Justice Burns and he very urgently referred to the case of *Gray* [2000] QSC 390. That case involved similar circumstances in which a wife applied for orders for removal of sperm after her 37 year old husband died unexpectedly in his sleep. In this case it was held that, in the absence of specific powers granted by the Parliament, the Courts hold no right to interfere with a deceased body. The application was refused.

However, Justice Burns did not follow the earlier decision and allowed the orders. His view was that allowing them would "permit mature reflection by Ms Patteson whether to proceed with the use of any extracted material and, if an application for use for the purposes of fertilisation is made, the orders proposed today will ensure that such an application will not be rendered futile through loss of viability of the sperm."

This case shows that Australian Courts do have jurisdiction to make orders for the removal of sperm of deceased individuals. It remains to be decided on a case by case basis if that material can be used for fertilisation.