

SHORT SHOTS

Police officer fails to establish any breach of duty of care

Melanie Sills v State of New South Wales

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The plaintiff claimed that she was exposed to numerous traumatic incidents during her service with the NSW Police Force from 2003 -2012 as a result of which she suffered a psychological or psychiatric injury. Alleged breach of duty of care by the defendant in failing to institute and maintain a system that would identify officers at risk, to ensure that they received appropriate treatment and support, to ensure that they were not required to perform duties likely to aggravate, exacerbate or perpetuate such injury without appropriate safeguards and to discharge such officers pursuant to s72 of the Police Act 1990 if safeguards were unable to be implemented and maintained with respect to performance of duties.

Issues for determination [366]:

- The scope and content of the defendant's duty of care;
- Whether duty of care breached by the defendant;
- Whether such breach caused plaintiff's psychological injury.

Competing expert medical opinion, statement of legal principles [368], the scope of the duty of care must be formulated prospectively per *State of NSW v Briggs*, consideration of the particular role of police officers and the nature of their statutory duties.

Per *Briggs*, 'there could be no doubt that police work involved a risk of psychiatric injury to police officers. The inquiry that was then to be undertaken was "what a reasonable man would do by way of response to the risk". The focus must fall upon how police officers should have been instructed to perform their work, not upon what steps the Police Service should have taken to provide support for officers who had been exposed to traumatic incidents.'

Scope and content of duty of care found to have been properly articulated, system of work employed by the police service was not in issue, whether risk of psychiatric injury perceptible and if a response to a perceived risk is reasonably necessary to ameliorate that risk, intervention by employer into private lives of employees.

Failure to implement recommendations of police psychiatrist considered in light of plaintiff's failure to make candid disclosure as to extent of her psychological problems and absence of any report of psychological problems after 2006. Plaintiff was aware of support services available but did not seek out those services. When identified as an officer at risk advised she was seeking counselling outside work and following her transfer to the Exhibits Office, she was no longer required to attend traumatic accidents.

Finding: Having regard to the history, it was a reasonable response for the defendant to do nothing (during the relevant period) to implement the recommendations of the Police Medical Officer ('PMO') and police psychologist so that the plaintiff failed to establish a breach of the duty of care owed to her. Evidence established personal problems outside work and for supervising officers to intervene this could give rise to difficulties of intrusion and invasion of privacy.

Verdict for the defendant

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Decision Date: 10 May 2018

Matter No: 2016/151328

Decision Maker: Mahony DCJ, District Court of NSW

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