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THE EMPEROR'S NEW CLOTHES: Resourcing CISM Policies

ADRIAN TWOMEY
Solicitor

www.advokat.ie atwomey@advokat.ie 053-9238000

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Introduction

- The Emperor's New Clothes – a short story
- Psychiatric injury and the law
- Protecting your people and your organisation
- The resource issue

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Nervous Shock

- Negligence, compensation, physical injury and nervous shock
- *Lynch v Knight* (House of Lords, 1861):

"mental pain or anxiety the law cannot value, and does not pretend to redress, when the unlawful act complained of causes that alone."

- Lord Wensleydale

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The Railway Cases

- Irish courts breaking new ground
- *Byrne v Southern and Western Railway Co.*, Court of Appeal, 1884
- Train entered siding and broke down wall of telegraph office
- Superintendent of telegraph office awarded compensation despite no physical injury
- *Bell v G.N. Railway Company*, 1890
- Carriages unhooked; female passenger compensated for mental injury

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The 20th Century

- Negligence
 - Existence of Duty
 - Breach of Duty
 - Factual Causation of Damage
 - Remoteness and Foreseeability
- Employers' Liability
 - Safe Place of Work
 - Safe System of Work
 - Competent Fellow Employees
 - Safe Plant and Equipment
- Volenti Non Fit Injuria
- Public Policy
- Safety Health and Welfare at Work Acts

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The Breakthrough Cases


- Recognition of psychiatric injury
- Occupational Stress
- *Walker v Northumberland County Council*, [1995] IRLR 35
- First award for purely psychiatric injury
- £175,000 damages
- £150,000 costs (2 week trial)
- £75,000 other costs (sick pay & ill-health pension)
- Subsequent British and Irish cases

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The Breakthrough Cases



- *Frost & Ors v Chief Constable of South Yorkshire Police*, [1997] 1 All ER 540
- Hillsborough disaster
- 5 police officers suffering from PTSD succeeded in the Court of Appeal
- The position was reversed, however, in *White & Ors v The Chief Constable*, [1999] 2 AC 455, in the House of Lords
- Plaintiffs not "primary victims"
- Injury not foreseeable

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The Lebanon Cases



- Post Traumatic Stress Disorder
- *McHugh v. Minister for Defence*, [2001] I.R. 424

"The defendants, as employer, are under a duty to take reasonable care for the safety of their employees and must keep abreast with contemporary knowledge in the field of reduction in the effects of potential afflictions to which soldiers are inevitably exposed in the course of duty".

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The Lebanon Cases



- *Knowles v. Minister for Defence*, High Court, 22/02/2002 O'Donovan J. stated that:-
- "if, while he was a serving soldier in the Lebanon, the plaintiff, for whatever reason, manifested severe psychological or psychiatric problems which ought to have been recognised as such by his superiors and/or by the army medical corps to the extent that it was obvious that he required medical treatment, I think that the army were under an obligation to arrange for such treatment and that their failure to do so would in the event that it could be established that that failure compounded the plaintiff's problems, amount to negligence in respect of which the plaintiff would be entitled to compensation."

- O'Donovan J.

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The Lebanon Cases



- Post Traumatic Stress Disorder
- *Murtagh v Minister for Defence*, [2008] IEHC 292
- Soldier suffering from PTSD following tour of duty in the Lebanon in 1986
- Not diagnosed by army medics until 1996
- Failure to diagnose and take remedial action constituted a breach of duty
- Blamed the PTSD for the break-up of his marriage in 1995
- Award of €305,000

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The Lebanon Cases



"The plaintiff is not entitled to compensation because in his work in the army in the Lebanon he had been exposed to stress or because he has suffered post traumatic stress in the course of his work as a peacekeeper amid the hostility of the various factions involved in the conflict in the Lebanon. The plaintiff must prove, on the balance of probabilities, that his injury from the post traumatic stress disorder was caused by the fault of his employer in the failure to diagnose and treat and eliminate or reduce the levels of his PTSD."

- Budd J., High Court

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Allegations in *Murtagh*



"Counsel for the plaintiff has helpfully collected together the particulars of negligence and breach of duty and breach of contract ...

1. The defendants failed properly to monitor or treat the plaintiff;
2. The defendants failed properly to examine the plaintiff;
3. The defendants failed properly to counsel the plaintiff;
4. The defendants failed properly to brief the plaintiff prior to engagement in the Lebanon;
5. The defendants failed properly to assess the impact of intrusive trauma on the plaintiff as a vulnerable soldier;
6. The defendants failed to warn the plaintiff of the potential risk of post traumatic stress disorder;

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Allegations in *Murtagh*




7. The defendants failed to identify the symptoms of post traumatic stress disorder in the plaintiff;
8. The defendants failed to recognise that the plaintiff was displaying symptoms of psychological problems, which required treatment;
9. The defendants failed to recognise the significance of the symptoms that the plaintiff exhibited;
10. The defendants failed to provide remedial therapy for the plaintiff;
11. The defendants delayed in sending the plaintiff for psychiatric assessment, notwithstanding the symptoms he had displayed;
12. The defendants failed properly to provide follow up services for the plaintiff;

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Allegations in *Murtagh*



13. Insofar as they did participate in his treatment, failed to properly and professionally identify and diagnose his actual condition of post traumatic stress and failed to provide and maintain a proper and full medical history extending back to the incident which gave rise to treatment in the Lebanon to his treating psychiatrists so that they could properly assess and diagnose his condition leading to proper and appropriate treatment;
14. Having treated him for alcohol abuse, apparently successfully, failed to ensure his treating psychiatrists knew and were aware of the traumatic events to which he was exposed during service in the Lebanon giving rise to the necessity to treat him there and his subsequent development of post traumatic stress;

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Allegations in *Murtagh*



15. Caused, allowed or committed a systemic failure of transmission of information to occur as affected the plaintiff in that there was no system by which the plaintiff's operational officers and NCOs reported their observations of the plaintiff's inability to cope and deal with the pressures and trauma to which he was exposed to the medical corps or from one branch of the medical corps to another, and in turn to the treating psychiatrists;
16. Caused, allowed or committed the plaintiff to be treated simpliciter for alcohol abuse without ensuring his treating doctors were aware of the traumatic events which gave rise to his problems while serving in the Lebanon and had a full and complete picture of his medical history so as to give rise as to a suspicion of an underlying cause for his abuse of alcohol so as to enable same to be treated at the earliest opportunity."

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Conclusions



- Liability can attach to an employer arising from their causation of or failure to respond to psychiatric injury
- Need to act reasonably and carefully
- Preventative measures and training
- Policies and procedures: recognition and acknowledgement of the problem – a double-edged sword
- Reacting appropriately
- Medical assistance

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Conclusions



- The need to stay on top of developments in the field
- Resourcing/funding your policy – don't be an Emperor!
- Breaking your own rules

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To Learn More ...



- Gillian Kelly BL, 'Post Traumatic Stress Disorder, Mental Injury and the Law' (Thomson Roundhall, 2008)

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