SUPREME COURT OF QUEENSLAND

CITATION:	*Morris v State of Queensland* [2004] QSC 107
PARTIES:	**TIMOTHY DAVID MORRIS** (applicant) and **STATE OF QUEENSLAND** (respondent)
FILE NO:	S11569 of 2001
DIVISION:	Trial
PROCEEDING:	Application and Cross Application
ORIGINATING COURT:	Supreme Court, Brisbane
DELIVERED ON:	30 April 2004
DELIVERED AT:	Brisbane
HEARING DATE:	3, 4 February 2004
JUDGE:	Douglas J
ORDER:	**Dismiss the application by the plaintiff. Judgment for the defendant in the action.**
CATCHWORDS:	LIMITATION OF ACTIONS – POSTPONEMENT OF THE BAR – EXTENSION OF PERIOD – CAUSE OF ACTION IN RESPECT OF PERSONAL INJURIES – KNOWLEDGE OF MATERIAL FACTS – MATERIAL FACTS OF DECISIVE CHARACTER – whether facts were within the applicant's means of knowledge prior to the relevant date *Limitation of Actions Act* 1974 (Qld), ss. 31 and 30(b)(ii) *Wood v Glaxo Australia Pty Ltd* [1994] 2 Qd R 431, cited *Tiernan v Tiernan* (Supreme Court of Queensland No. 39 of 1992, Byrne J, 22 April 1993, unreported, BC9303449), referred to *Sugden v Crawford* [1989] 1 Qd R 683, referred to *Moriarty v Sunbeam Corporation Ltd* [1988] 2 Qd R 325, referred to *Kitchener v A E Atherton & Sons Pty Ltd* [2004] QSC 030, referred to
COUNSEL:	D B Fraser QC with him G R Mullins for the plaintiff D O J North SC with him J B Rolls for the defendant

SOLICITORS: Gilshenan and Luton for the plaintiff
C W Lohe, Crown Solicitor, for the defendant

[1] **DOUGLAS J**: In this application for an extension of the limitation period to 21 December 2001, the plaintiff, Mr Morris, points to three material facts of a decisive character said to justify the extension sought under s. 31 of the *Limitation of Actions Act* 1974 ("the Act"). They are:

(a) the discovery in early 2001 by the plaintiff that his condition of post-traumatic stress syndrome diagnosed by a Dr Sykes was a serious condition;

(b) the discovery in mid to late 2001 that the plaintiff's police career was likely to be terminated and the realisation that he would suffer significant financial loss as a consequence of the post-traumatic stress disorder;

(c) the rejection of the plaintiff's claim for workers' compensation by WorkCover notified to him on 26 January 2001.

[2] Mr Morris was a police officer who, early in his career, between 1989 and 1992, performed undercover duties with the drug squad and the major crime squad. For the purposes of this application only, the respondent, the State of Queensland, was willing to admit that his statement of claim disclosed an arguable cause of action in negligence in respect of his treatment as an employee of the Crown required to perform that work. It submits, however, that Mr Morris cannot prove a material fact of a decisive character that he only became aware of on or after 21 December 2000, that his application should be dismissed and that the defendant should have judgment in the action. The issue here, then, is whether the material facts of a decisive character relied on by Mr Morris were within his means of knowledge before 21 December 2000.

[3] It seems clear that, objectively, even where his condition was one consistent with denial of the existence of the symptoms, Mr Morris should have known that he was suffering from post-traumatic stress syndrome at the latest by 15 December 2000; see Dr Sykes' evidence at pp. 57-62 of the transcript. He had been his treating general practitioner since 1984 and had diagnosed the condition as early as 22 September 1999 when Mr Morris was reluctant to accept the diagnosis. He had treated him since then and given Mr Morris information about the condition and anti-depressant medication from 26 November 1999. At that point he agreed that Mr Morris had accepted that his condition was severe enough to warrant medication.

[4] On 24 February 2000 he gave Mr Morris a certificate that he was unfit to work based on the same condition. On 15 May 2000 the plaintiff had raised with Dr Sykes, in a conversation that the plaintiff said he did not recall, that he may consider seeking a new vocation. He remained medically unfit for work until late August 2000 when he commenced work with the dog squad in what was described as a "sheltered environment within the police service". Dr Sykes advised him in September and October 2000 that he was not going to be fit for a return to police work except in the form of such sheltered work.

[5] On 15 December 2000 Dr Sykes discussed a report dated 12 December 2000 from a Dr Rose with Mr Morris. That report confirmed Dr Sykes' views that Mr Morris

was suffering post-traumatic stress syndrome. In his oral evidence at p. 62 ll. 12-13 of the transcript he said that Mr Morris "was actually accepting that he had the PTSD at that point". Accordingly the test applied by Davies JA in *Wood v Glaxo Australia Pty Ltd* [1994] 2 Qd R 431, 442 that a fact is within the means of an applicant's knowledge "only when the steady preponderance of opinion or belief of a person who had taken all reasonable steps to ascertain that fact would have been that that was so" is met here.

[6] Dr Rose did take the view that the limited work Mr Morris was then performing was appropriate for him and that he would eventually be able to increase his hours to full time employment, apparently of that limited nature. That information is not inconsistent with the conclusion available on the other evidence, however, that Mr Morris's future career prospects in the police service were not good and that that information was within his means of knowledge.

[7] Mr Morris had told a psychologist, Dr Keen, on 13 October 2000 in a statement that is ex. 4, that he realised that his symptoms may be permanent in 1999, that he had been advised that his condition of post-traumatic stress disorder was chronic and that only one of the 15 undercover agents active at the same time as he was performing duties had not suffered from stress related illness. He said in that statement that of those 15 only three were left in the police service, the remainder having either resigned, been sacked or gone out of the job medically unfit.

[8] He had also applied on three occasions for access to documents from WorkCover, twice in November 2000 and then on 7 December 2000 because he wanted to know what his medical situation was.

[9] He told another psychologist**,** Mr Acutt, over three sessions ending on 23 November 1999, that he had lost interest in his work, had nothing to fall back on, was finding things difficult to deal with and believed that of the fifteen agents who were operational when he was working undercover only four remained in the force at that time.

[10] Later, in August 2001, he told a Dr Flanagan that he felt his career was in jeopardy by the end of 1999 and when he "went off sick", presumably in February 2000, "he thought he might have to quit the police force".

[11] The respondent also points to allegations in paragraph 33 of the statement of claim both in its original form and as amended on 28 January 2004 which assert that he became incapable of efficiently performing duties as a police officer in or about February 2000 and that in or about October 2000 his illness had made it likely that he would become totally and permanently disabled to perform duties as a police officer.

[12] His solicitors wrote a letter to WorkCover dated 16 January 2001 from which it is clear that they were then advising him about a potential personal injuries claim, preparing a statement of claim for damages at common law and were concerned about the limitation period. Mr Morris said in evidence at p. 23 of the transcript that he was not aware of that letter. He first spoke to the solicitors in December 2000 about other matters. During a consultation with one solicitor at the firm he was also introduced to another solicitor, a Mr Mackie. Mr Morris instructed that he had commenced sick leave and wanted to investigate options open to him in relation to conduct directed towards him by the police service that was characterised as unfair

targeting of him. Mr Mackie arranged for him to attend to confer at some length to prepare a statement. On 18 December 2002 he was contacted by telephone to confer with somebody at the firm on 22 December 2000. The solicitors' file for the personal injuries claim was opened on 27 December 2000, after Mr Morris had a consultation for 6½ hours with an articled clerk in the personal injuries section of the firm on 22 December 2000; see pp. 44-46 of the transcript. There is no evidence of the advice, if any, he received on that occasion nor of any other significant occasion for instructions to be given to the solicitors between that date and the letter of 16 January 2001.

[13] In the face of that evidence it seems to me that the logical and most probable inference is that, for some time before the consultation with the articled clerk on 22 December 2000 and, at the latest since 15 December 2000, Mr Morris had the means of knowing that he had post-traumatic stress syndrome as a serious condition likely to cause him significant financial loss because of its probable effect on his career in the police force. The sequence of events points strongly to that conclusion rather than to the view that it was only after 21 December 2000 that he was in a position to give instructions to the solicitors sufficient to allow them to write the letter of 16 January 2001.

[14] For those reasons I do not accept Mr Morris's assertion in paragraph 150 of his affidavit that he came to the realisation that his problems may be more serious than he had believed only after he had obtained a copy of the WorkCover material in early 2001 comprising WorkCover's reasons for decision dated 23 January 2001, a report of Dr Keen dated 8 November 2000, a report of Dr Rose dated 7 December 2000 and a report of Dr Crichton dated 5 January 2001. In fact Dr Keen, who provided a report to WorkCover, formed the view that Mr Morris did not show any significant symptoms of post-traumatic stress syndrome and thought that he needed to return to work but his view was not known to Mr Morris before 21 December 2000.

[15] The rejection of his claim by WorkCover is said to be significant on the basis that thereafter Mr Morris would have reason to be concerned about payment for any further time off work he took as part of his recovery process and the cost of any necessary medical treatment.

[16] Where, in my view, a competent lawyer would be likely to advise the plaintiff that his rights at common law would require potentially expensive and risky litigation to be vindicated, the closing of the alternative avenue of recovering limited compensation under the WorkCover legislation does seem to me to be material but probably not decisive in the context of any decision to sue that he ought to have taken before then in his own interest. The decisive information was that relevant to his future career and the economic loss associated with its curtailment. The evidence satisfies me that he ought to have protected his rights to recover damages for that loss earlier than 21 December 2000 based on his means of knowledge at that time; see s. 30(b)(ii) of the Act and cf. *Tiernan v Tiernan* (Supreme Court of Queensland No. 39 of 1992, Byrne J, 22 April 1993, unreported, BC9303449).

[17] By 16 January 2001 his solicitors were operating on the basis that such a course needed to be taken. That was before the WorkCover decision and their instructions must have been derived from the plaintiff's consultation on 22 December 2000 even if he was not aware of the letter being sent. There is nothing to suggest that the

firm of solicitors added anything to what was already known by Mr Morris before 21 December 2000 in that consultation or that some decisive fact came into Mr Morris's possession on 21 or 22 December 2000. It is a logical conclusion, therefore, simply from the sending of that letter, that a reasonable man in Mr Morris's position before 21 December 2000, appropriately advised, would have brought the action on the facts already in his possession; see Connolly J in *Sugden v Crawford* [1989] 1 Qd R 683, 685; Macrossan J in *Moriarty v Sunbeam Corporation Ltd* [1988] 2 Qd R 325, 333 and Chesterman J in *Kitchener v A E Atherton & Sons Pty Ltd* [2004] QSC 030 at [6]-[8].

[18] On that basis, therefore, it is my view that the relevant material facts of a decisive character were within the plaintiff's means of knowledge before 21 December 2000. Accordingly I dismiss his application and give judgment for the defendant in the action. I shall hear the parties as to costs.