SUPREME COURT OF QUEENSLAND

CITATION:	*Morris v State of Qld* [2004] QCA 371
PARTIES:	**TIMOTHY DAVID MORRIS** (plaintiff/appellant) **v** **STATE OF QUEENSLAND** (defendant/respondent)
FILE NO/S:	Appeal No 4618 of 2004 SC No 11569 of 2001
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	8 October 2004
DELIVERED AT:	Brisbane
HEARING DATE:	6 September 2004; 7 September 2004
JUDGES:	Williams JA and Cullinane and Holmes JJ Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Appeal dismissed with costs**
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 – where appellant commenced proceedings in December 2001 for personal injury sustained during his work as an undercover police officer – where appellant applied to have limitation period extended on ground that a material fact of a decisive character was not within his means of knowledge until after December 2000 – where learned primary judge refused application and granted summary judgment against appellant – whether learned primary judge erred in concluding that a material fact of a decisive character was within the appellant's knowledge prior to December 2000 *Limitation of Actions Act* 1974 (Qld), s 31
COUNSEL:	D B Fraser QC, with G A Mullins, for the appellant D O J North SC, with J B Rolls, for the respondent
SOLICITORS:	Gilshenan & Luton for the appellant

Crown Law for the respondent

[1] **WILLIAMS JA:** The appellant commenced proceedings against the respondent by filing a Claim and Statement of Claim on 21 December 2001. An amended statement of claim was filed in January 2004. In its defence the respondent pleaded the Statute of Limitations contending that the cause of action accrued more than three years prior to the commencement of the proceedings. The respondent then applied for summary judgment pursuant to r 293 of the *Uniform Civil Procedure Rules*. The appellant countered that application by applying pursuant to s 31 of the *Limitation of Actions Act* 1974 for an order that the relevant limitation period be extended on the ground that a material fact of a decisive character relating to his right of action was not within his means of knowledge until after 21 December 2000. After hearing both applications the learned judge at first instance dismissed the application of the appellant and entered judgment in the proceeding for the respondent. The appellant has appealed against each of those orders. The respondent admitted for purposes of the application and this appeal that, apart from the defence based on the Statute of Limitations, the appellant had an arguable cause of action.

[2] The appeal must be determined against the background of the following facts. The appellant, who was born on 15 March 1968, entered the Police Academy early in 1985 after completing Year 12 of secondary schooling the previous year. He was sworn in as a constable on 16 March 1987. Thereafter he was assigned to Mackay and his service in the police force was uneventful until he joined the Drug Squad in June 1990. He was involved in covert operations until 30 September 1991 and left the Drug Squad shortly thereafter. After taking recreational leave in February-March 1992 he resumed general duties at Rockhampton on 16 March 1992. Thereafter he served for periods with the Rockhampton Criminal Investigation Branch, with the Rockhampton Juvenile Aid Bureau, on uniform duties at Yeppoon and Emu Park, with the Rockhampton Dog Squad and at the Rockhampton Watchhouse. For reasons hereinafter canvassed he was retired from the Police Service on medical grounds on 27 July 2002.

[3] From the amended statement of claim, the appellant's affidavit in support of his application for an extension of the limitation period, and his oral evidence on the hearing of that application, the following picture is painted with respect to his service in the police force after he joined the Drug Squad. There was no psychological assessment made of the appellant prior to that appointment. During his period with that squad he was required to work undercover with a false identity. That involved socialising with drug users and suppliers. As an undercover operative he was supplied with money to buy large quantities of drugs in an attempt to identify sources of supply. In order to maintain his false identity he was obliged to use drugs when in the company of drug users and suppliers. He was given no training or instruction as to how to cope with such a lifestyle. It is alleged that the respondent ought to have known of his likely drug use and the risk of dependence or psychiatric illness developing.

[4] In his affidavit the appellant refers to a number of specific matters which he claims heightened his level of stress and anxiety. Prior to joining the Dog Squad he had led a sheltered life and his introduction to the use of cannabis was traumatic. On a number of occasions the appellant's cover was blown and he was at some personal risk. On one occasion when in the premises of an informer he was struck in the left

foot with a used syringe which had been left on the floor. The appellant sought medical treatment and was terrified of contracting Hepatitis C. On another occasion the appellant found the front door and letterbox of the unit he was using had been forced open. Later another unit used by the appellant was broken into and trashed.

[5] In paragraph 15 of the amended statement of claim it is alleged that the appellant became a user of illegal drugs in about June 1990, that in or about September 1990 he commenced to experience symptoms of stress and anxiety and in particular feelings of loneliness, isolation, and paranoia, and that he developed a post-traumatic stress disorder soon after his release from covert operative duties (about September 1991) which subsequently became chronic. In the pleading those matters are described as "the initial injuries".

[6] The appellant alleges that he was given no counselling, nor submitted to any assessment, prior to his return to general duties in about March 1992. In his affidavit he says that he went overseas in February-March 1992 with his parents and saw that as "an opportunity to put the past behind me and move on with my life and career in the police service refreshed." He alleges that on return to uniform general duties he found that many procedures and policies had changed and he was "floundering in the role" which caused him "much anxiety". In his affidavit he speaks of feeling depressed and being fearful at that time. The appellant referred in his affidavit to his overseas trip in 1993 in the following terms:

> "In late 1992 I decided to take a break and try to deal with my problems and put them behind me. I decided to take a year off and travel overseas. I was due about three months recreation leave and applied for leave without pay, which was granted.
>
> I finished work on 31 December 1992 and flew out of Australia in January 1993 on a world trip. I did not set foot back in Australia for another 11½ months, spending 13 months away from work in total. My world trip was an attempt to see the world and to put the past behind me and de-stress so that I could come back to the Service refreshed. However, upon my return I realised that the same feelings I had prior to my leave were with me. I felt disadvantaged in my work and general life as a result of my time away."

[7] Between 1994 and 1998 the appellant completed a number of internal courses and obtained his detective designation. When with the Juvenile Aid Bureau he "found it difficult to concentrate on my work and my thought processes were scattered." He claims he over-reacted aggressively with some members of the public and was "increasingly nervous and anxious to the point that my legs would shake in some situations to the point where I had to lock my knees in an attempt to hide this." He transferred back into uniform duties at Yeppoon because he was not coping with his duties in the Juvenile Aid Bureau and wanted to lessen his responsibilities. Again he speaks of being "extremely stressed, anxious, and dysfunctional during this period."

[8] Since about 1984 Dr Sykes has been the appellant's general practitioner. The doctor's clinical notes record a consultation on 23 July 1992 when the appellant was complaining of persisting headaches. The doctor noted that the appellant was tense and needed relaxation. The next relevant consultation was on 1 July 1997 when the appellant again complained of headaches and lethargy and indicated that his job was

no longer enjoyable. There was a follow-up consultation on 25 July 1997 when, as Dr Sykes said in his affidavit, he "considered the possibility that the [appellant] was suffering from a stress related condition. I did not make any diagnosis of the condition."

[9] In paragraph 26 of the amended statement of claim it is alleged that by about May 1998 the appellant "had developed a stress disorder and had become depressed and was experiencing physical symptoms of anxiety"; these were described as "the later injuries".

[10] Then on 22 September 1999 came a critical consultation with Dr Sykes. On that occasion the doctor diagnosed that the appellant was suffering from post-traumatic stress disorder and referred him for assessment to Mr Acutt, a consultant psychologist. He saw the appellant on three occasions in October-November 1999. The appellant in providing a history to Mr Acutt stated that "Dr Sykes had given him some Websites that dealt with Post Traumatic Stress Disorder and that Mr Morris felt that he 'fitted' … every one of the points he had highlighted." The appellant also stated that "he believed that of the fifteen agents who were operational when he was working undercover only four remained in the force at that time." The appellant during that session also informed Acutt that he "wanted to lessen my responsibility as much as I could, but I am still struggling with it." He said that he had to "bluff my way through most situations". On the occasion of the last session (23 November 1999) Acutt informed the appellant "that the results of the test categorised his condition [post traumatic stress syndrome] as chronic and severe."

[11] Acutt's overall assessment was that the appellant "was suffering from a post traumatic stress disorder (DSM-IV) with a level of impairment of functioning rated as severe and symptom severity rating of severe."

[12] Early in the year 2000 the appellant took sick leave. Paragraphs 30 and 33 of the amended statement of claim deal with the appellant's condition early in 2000:

> "30. By in or about February 2000, ... the [appellant] had developed:-
>
> (a) A chronic post traumatic stress disorder with significant re-experiencing of trauma, avoidance phenomena and increased arousal;
> (b) A substance abuse disorder; and
> (c) A depressive disorder ('the latest injuries').
>
> …
>
> 33. In consequence of the matters alleged ... :-
>
> (a) The [appellant] became incapable of efficiently performing duties as a police officer in or about February 2000; and
> (b) Despite the [appellant] commencing a Rehabilitation (Graduated Return to Work) Programme with the QPS in or about October 2000, the initial injuries, the later injuries and the latest injuries make it likely that the [appellant] will become totally and permanently disabled to perform duties as a police officer."

[13] Rather surprisingly there is nothing in the material, particularly the medical reports and evidence, expanding on the alleged "substance abuse disorder". There is nothing to indicate the extent, if any, of use of illicit drugs after leaving the Drug Squad.

[14] It should be noted that in his affidavit Dr Sykes refers to the fact that at consultations on 4 November and 26 November 1999 the appellant was unwilling to accept that he suffered from post-traumatic stress syndrome although he admitted to having symptoms of the disorder. The doctor said that such "denial was not inconsistent with the disorder." The doctor then notes that on 24 February 2000 the appellant consulted him with respect to his post-traumatic stress disorder symptoms and the doctor issued a certificate for three days sick leave. The doctor's evidence goes on: "Over the following 7 months I continued to be consulted by the [appellant] and felt that he was unable to return to work and issued him with certificates to certify this." At a consultation on 15 May 2000 the appellant "raised that he may consider seeking a new vocation. At the time he was only considering the idea as one of many ways of addressing his symptoms." The doctor indicated that he "tried to be positive about the long term prognosis" and was "confident that, with appropriate treatment and the provision of suitable duties by the Service, the [appellant] would be able to return to work and continue his police career." The doctor was involved in discussions with a representative of the Police Service and ultimately certified that the appellant was fit to return to part-time work in a suitable duties program from 11 September 2000. He noted that over the following five months the appellant gradually increased his hours of work. From the appellant's affidavit it appears that he initially worked a four hour shift on two days per week with the Dog Squad in Rockhampton. On or about 11 October 2000 he began working an additional four hour shift each week at the Emu Park police station. According to the appellant he was trying to get his career back on track but yet by March 2001 he was only working 28 hours per week.

[15] In about June 2000 the appellant made an application for worker's compensation primarily, so he said, to recover the expenses of seeing a psychologist regularly. WorkCover in turn referred the appellant to Doctor Rose, a consultant psychiatrist. He assessed the appellant on 1 December 2000. In the course of obtaining a history the appellant told the doctor that he was not using any illicit drugs. Doctor Rose had no doubt that the appellant was suffering from chronic post-traumatic stress disorder. The following extracts from the doctor's report are relevant for present purposes:

> "In my opinion [the appellant] should never again be exposed to danger in his work as a police officer or in any other area of his life. If he does remain in the police force, he should be involved in duties that require no association with criminals or the underworld.
>
> I understand that [the appellant] is currently on a program of rehabilitation and is assisting with training the dog squad as well as performing some watch house work. These are the sort of duties that he may eventually be able to carry out on a full time basis.
>
> …
>
> In my opinion it may be another three months before he is ready to return to full time work.

> [The appellant] appears to be complying with the treatment prescribed by his general practitioner. Even if he did not follow this treatment, he would still probably be able to return to work not involving danger on a full time basis within the next three months.
>
> ...
>
> The work [the appellant] is currently performing is appropriate for him and in my opinion he will eventually be able to increase his hours to full time.
>
> …
>
> The work component of the stress related illness is likely to last indefinitely."

[16] Dr Sykes discussed the report from Dr Rose with the appellant on 15 December 2000; as is noted in the affidavit of Dr Sykes the appellant then accepted he had post-traumatic stress disorder and needed to be treated accordingly. It appears that the appellant did not consult Dr Sykes again with respect to that condition until 6 March 2001 when he requested that the doctor issue him with a medical certificate certifying that he was fit to take his recreational leave. That certificate was granted. Dr Sykes did not then see the appellant until 26 June 2001 by which time the appellant's "symptoms had deteriorated such that he was unfit for work." On the doctor's evidence that situation did not improve over the ensuing 5 months. On or about 28 November 2001 Dr Sykes informed the appellant for the first time he was "medically incapable of returning to his employment."

[17] In oral evidence Dr Sykes was also questioned about his opinion on the appellant's employability throughout 1999-2000. He reiterated his opinion that when he examined the appellant on 26 November 1999 the symptoms of depression were chronic, they had been present for years, and were becoming more pronounced. Under cross-examination the doctor agreed there was a clear history of deterioration in symptoms from 1997 through to 1999. The doctor's attention was drawn to his notes of consultations in August 2000 and asked about a program for a graduated return to work; his response was as follows:

> "He was well enough for a return to some duties in June, but there needed to be qualifications on the sort of work that he was being asked to do. So he needed, in essence, to be in the equivalent of a sheltered environment within the Police Service. There was [sic] some aspects of police work that he would not have coped with and so that by September, with the assistance of Lance Pratt from the Queensland Police Service Rehabilitation, we were getting some alternative duties organised for him with the Dog Squad and eventually with the Emu Park station."

[18] Further answers confirmed the view of Dr Sykes that the appellant was not going to be fit for a return to full police work but some fairly sheltered sort of police work had to be found for him. According to Dr Sykes he advised the appellant of that in August-September 2000, and those discussions on occasions involved Pratt from the

Police Service. In December 2000 when the report from Dr Rose was discussed, Dr Sykes believed the appellant was working between 12 and 20 hours per week.

[19] Dr Sykes agreed under cross-examination that as early as May 2000 the appellant had mentioned he may consider seeking a new vocation. Then came the following questions and answers:

> "It's the case, isn't it, Doctor, that as early as then in May 2000 this man was coming to realise that it may be he would have to seek alternative employment? – Yes.
> And that this was as a result of this medical condition for which you were treating him? – I believe so."

Then in re-examination he conceded that was the only occasion on which he recorded the appellant making a statement to him about seeking a new vocation.

[20] Finally it should be noted that in re-examination the following evidence was given by Dr Sykes:

> "My learned friend cross-examined you about the visits in September 2000, and you mentioned that he was considering a return to the Police Force in what you described as a sheltered environment? – Correct.
> And my learned friend asked you whether you thought that he needed to return to a sheltered environment? – If it was to be in the Queensland Police Service, there needed to be exclusions where he worked due to the presence of people who would remind him or put pressure on him that would put him in situations reminiscent of his traumatic undercover work.
> And was that in the rehabilitation? – That was part of the rehabilitation discussions with Lance Pratt.
> And was it the case that you were excluding him from that work forever, or during the course of the rehabilitation? – That wasn't particularly discussed at the time. It was just for the course of the rehabilitation, those were the exclusions.
>
> ...
>
> Is it the case that you eventually cleared Mr Morris for general duties at Emu Park, Dr Sykes? – Yes, but with restricted hours."

[21] Dr Rose also gave oral evidence on the hearing of the application. The only extract from that evidence that needs to be specifically referred to is his opinion that when he examined the appellant on 1 December 2000 the chronic post-traumatic stress disorder which he then diagnosed had existed for years and was persisting.

[22] Reference should also be made to the report of Mr Keen, a psychologist, who examined the appellant on 13 October 2000 at the request of WorkCover. Contrary to the views expressed by all the other medical practitioners he concluded that the appellant exhibited no significant symptoms of post traumatic stress syndrome. He diagnosed some elevated level of depression, anxiety and anger which in his opinion meant the appellant was suffering an adjustment disorder with mixed anxiety and depressed mood. Given that diagnosis Mr Keen concluded that the appellant's condition was not work-related and he needed to return to work. What,

however, is of some significance for present purposes is that Mr Keen had the plaintiff detail a history of his complaints and condition which document was signed by the appellant. Significantly, in that document the following passages appear:

> "There was approx. 15 undercover Agents for Queensland at the time I was performing these duties. All were young keen Police officers and career Police officers. Out of the 15 or so there is only three left in QPS to my knowledge and only one of these has not suffered from stress related illness to my knowledge. The remainder of the young keen Police officers have either resigned, been sacked or gone out of the job medically unfit.
>
> I have tremendous bitterness to the Service. I am not the person who I was.
>
> SYMPTOMS DETAILS
> - Headaches, migraines, anxiety, loss of memory.
> - …
> - It was in 1999 that I felt that my symptoms were intensified or realised that it may be permanent.
>
> ...
>
> TREATMENT
> G.P. Dr. Mark SYKES – Yeppoon Medical Surgery in Late 1999 ... . Had a number of sessions. No real help. Advised I had Chronic PTSD.
>
> ...
>
> I have been on sick leave since March 2000."

[23] Of some significance is the evidence of Dr Flanagan, a psychiatrist, who examined the appellant for WorkCover on 10 August 2001. In the course of taking a history from the appellant the doctor recorded the following:

> "... at the end of 1999. At this stage he was ashamed and embarrassed that he was seeing a psychologist didn't want anyone to know felt that his career was in jeopardy. He stopped seeing this psychologist when he discovered that he did some work for the police force or the prison. He went off sick at that time; he didn't know what he was going to do; he thought he might have to quit the police force. ... I'm unclear about how long he was off work in 2000."

The doctor confirmed under cross-examination that the appellant told him that when he went off sick (clearly referring to February 2000) that he thought he might have to quit the police force.

[24] Dr Flanagan expressed the opinion that the appellant "quite clearly suffers from severe PTSD, which is entirely the result of the described occupational experiences." In his view he regarded the appellant "as being totally incapacitated for police work and indefinitely for any other form of work." In his affidavit the

appellant says this was the first occasion on which he was made aware that he was totally and permanently incapacitated for work as a police officer.

[25] In oral evidence counsel for the appellant drew Dr Flanagan's attention to the attempt by a number of medical practitioners to have the appellant return to work in the police force. He was then asked his opinion in the light of his diagnosis, and he answered:

> "It is difficult to strike a right balance between therapeutic optimism and giving a patient unreasonable hope. I think his hope was that he would be able to return to the police force. His belief was that he had something – something was going on which he would ultimately be able to overcome and the professionals were supporting that. They were obscuring the fact that he had a very serious disorder which has a relatively poor prognosis and needs very intensive treatment and, generally speaking, doesn't allow people to return to their workplace if their workplace is essentially potentially traumatic as applies to the police force of course. But I think most people with severe PTSD would not be able to continue working in the police force."

[26] Also of significance is the medical assessment of the appellant made by Dr Donohue who examined the appellant on 14 June 2000 at the request of the Police Service. The following extract from his report must be noted:

> "He now describes a lot of somatic symptoms, thought problems, flashbacks, dreaming and hypervigilance and hyperarousals. There are also symptoms of depression. These symptoms have been present since 1992 and have been there for more than 50% of the time. He is currently taking Aropax for treatment and has increased his intake of alcohol but not to excess. He is not using other medication prescribed or illicit medication at this stage.
>
> ...
>
> In summary, I thought he was suffering from post traumatic stress disorder with co-morbid depression. I think the aetiology of the problem relates to significant psychological stresses of a life threatening nature while working as an Undercover Agent.
>
> While his incapacity is significant, I feel there are grounds for optimism that he will be able to return to work. This is certainly Constable Morris's preferred option. However he is not quite ready for this process yet.
>
> ...
>
> At an appropriate time he should be reviewed with a view to commencing a Work Rehabilitation Programme."

[27] The appellant's claim against WorkCover was rejected and he appealed against that decision; the rejection was apparently based on the fact that during his employment with the Dog Squad the WorkCover legislation did not apply to him. The appellant was notified on 26 January 2001 that his appeal had been rejected.

[28] Although the appellant says in paragraph 124 of his affidavit that in December 2001 he gave instructions to his solicitors, Gilshenan & Luton, to commence proceedings, that is misleading. He conceded in oral evidence that those solicitors had been retained in about December 2000. Dr Sykes has recorded that on 29 December 2000 the appellant instructed him to forward a report to those solicitors about the appellant's condition. Of critical importance for present purposes is a letter written by Gilshenan & Luton to WorkCover dated 16 January 2001. Relevantly that letter contained the following passages:

> "As previously stated, we are currently advising our client in respect of a possible personal injuries claim against the QPS. The prospects of that claim will likely be dependent upon an application to the Court for an extension of the limitation period. If the limitation period is extended, our client will have until early-February 2001 in which to prepare and file a detailed Statement of Claim.
>
> ...
>
> Again, our client's Statement of Claim needs to be filed in the Supreme Court by early-February 2001. If we are unable to draw and file the Statement of Claim by that date, our client's cause of action will be out of time and statute barred."

[29] That is not inconsistent with what the appellant said in paragraph 146 of his affidavit:

> "Prior to 2001, I did not give any serious consideration to the issue of bringing proceedings for damages. I had lost very little. I had spent a few hundred dollars on medical bills with Dr Sykes and Dr Acutt in 1999 and Dr Sykes in 2000 and I received much of what I paid back through Medicare. I still had my police career and I did not think that the symptoms, which I now understand to be part of my PTSD, would interfere with my police career in the long term. When I took time off in 2000 I was on paid sick leave and was participating in a process whereby I expected to be rehabilitated back into the work force."

[30] The respondent also points to the fact that in November-December 2000 the appellant made three applications to WorkCover to obtain medical reports and statements relevant to his condition. The respondent's contention is that the only rational explanation is that the appellant was considering his legal position.

[31] It was against the background of all that material that the learned judge at first instance refused to extend the limitation period.

[32] At the outset of his reasons the learned judge at first instance set out the three matters which were relied on by the appellant as "material facts of a decisive character", to justify the extension sought. Those matters were:

> "(a) the discovery in early 2001 by the [appellant] 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 [appellant'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 [appellant's] claim for workers' compensation by WorkCover notified to him on 26 January 2001."

[33] The reasoning of the learned judge at first instance can be discerned from the following extracts from his reasons for judgment:

> "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 ... . …
>
> On 24 February 2000 [Dr Sykes] gave Mr Morris a certificate that he was unfit to work based on the same condition. On 15 May 2000 the [appellant] 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 to return to police work except in the form of such sheltered work.
>
> On 15 December 2000 Dr Sykes discussed a report dated 12 December 2000 from a Dr Rose with Mr Morris. ... In his oral evidence ... 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.
>
> 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.
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> ...
>
> 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'.
>
> 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.

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. ...

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.

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 ... . …

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.

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 ... .

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

> [appellant's] consultation on 22 December 2000 even if he was not aware of the letter being sent. ... 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 ... .
>
> On that basis, therefore, it is my view that the relevant material facts of a decisive character were within the [appellant's] means of knowledge before 21 December 2000."

[34] The matter is complicated because it was common ground between the parties that the extension of time had to be with respect to injuries sustained in about 1991; effectively they would be the injuries alleged in paragraph 15 of the amended statement of claim and therein referred to as "the initial injuries". It will be recalled that therein it was alleged that the appellant developed post-traumatic stress disorder soon after ceasing undercover duties. The appellant has to base his submissions on the proposition that the post-traumatic stress syndrome constituted an injury prior to 1 February 1997 when the *WorkCover Queensland Act* 1996 came into operation because it is accepted on both sides that there has been a failure to comply with the provisions of that legislation with respect to any injury occurring after that date; effectively that means that the appellant has no enforceable claim with respect to "the later injuries" pleaded in paragraph 26 and in "the latest injuries" pleaded in paragraph 30 of the amended statement of claim. It is because the appellant has to demonstrate he was suffering from post-traumatic stress disorder as early as 1991-2 that reliance was placed on Exhibit 1 which contains the following statements attributed to Dr Rose:

> "Dr Rose … confirmed that Mr Morris was suffering symptoms associated with Post Traumatic Stress Disorder soon after leaving the Drug Squad and his work as covert police officer. … Dr Rose confirmed that had Mr Morris explained those symptoms to a Psychiatrist at the time and explained how the symptoms had developed, it is likely that a Psychiatrist would have diagnosed Post Traumatic Stress Disorder. It was more probable than not that he was suffering from Post Traumatic Stress Disorder at that time."

[35] One of the major attacks made by senior counsel for the appellant on the reasoning of the learned judge at first instance related to the finding that Dr Sykes advised the appellant "that he was not going to be fit for a return to police work except in the form of such sheltered work." That was said to be contrary to the evidence of a number of the doctors who gave evidence. Part of the submission on behalf of the appellant in that regard was based on the proposition (to quote from senior counsel for the appellant) that the appellant "had been cleared to return and return to full duties on the 9th of June 2001." It must be said that that proposition is not supported by the evidence. As the appellant said in his affidavit in paragraph 113: "From on or about 9 March 2001 until on or about 27 May 2001 I took recreation leave, followed immediately by a period of long service leave until 9 June 2001." Then in paragraph 116 he said that "On or about 9 June 2001 I returned to work at the Rockhampton Watchhouse on a full time basis." That can be accepted; but importantly no doctor certified that the appellant was fit for work on a full time basis as and from 9 June 2001. Indeed the appellant did not see Dr Sykes from 6 March 2001 until 26 June 2001. On the latter date, some 17 days after the appellant

had commenced work at the Watchhouse, Dr Sykes concluded that the appellant's "symptoms had deteriorated such that he was unfit for work." Thereafter Dr Sykes issued a series of certificates certifying the appellant was unfit for work until, as already noted, Dr Flanagan on 10 August 2001 concluded that the appellant was "totally incapacitated for police work and indefinitely for any other form of work." That 17 day period on the evidence was the only time the appellant worked after February 2001. As already noted during the period August 2000 to February 2001 he had only been working about 20 hours per week. Further, he did not work at all between 24 February 2000 and 20 August 2000.

[36] Overall the evidence clearly establishes that because of a psychiatric condition the appellant had had grave difficulty in maintaining regular employment since about February 1992. He took various forms of extended leave in 1992 and 1993 with a view to overcoming the symptoms he was experiencing, but on the evidence those symptoms returned very shortly after he returned to work. Most, if not all, of his transfers within the Police Service were because he was unable to cope with his work; he was always hoping that a transfer would lead to an improvement in his condition, but that never was the case.

[37] As already noted from August 2000 until the end of that year the appellant was involved in a rehabilitation scheme but working only about 20 hours per week. Further, he was aware that the medical practitioners advising himself and the Police Service considered that it was necessary for him to work in an environment where he would not be exposed to "people who would remind him or put pressure on him that would put him in situations reminiscent of his traumatic undercover work." It is clear that there were "aspects of police work that he would not have coped with" and to quote Dr Rose the appellant "should never again be exposed to danger in his work as a police officer or in any other area of his life. If he does remain in the police force, he should be involved in duties that require no association with criminals or the underworld."

[38] In my view one has only to refer to those passages in order to conclude that by late 2000 it was clear that the appellant had no future in the police force. If that was not obvious to him then it would have been made obvious to him upon his taking "appropriate advice".

[39] Indeed as the letter of 16 January 2001 from Gilshenan & Luton to WorkCover clearly establishes, it was obvious to any lawyer advising the appellant at that time that he had a cause of action based on the impact of his psychiatric condition on his earning capacity and that such proceeding had to be commenced promptly.

[40] Much was made in the course of argument about the reference in that letter to the necessity of starting proceedings "by early-February 2001". It was claimed that it was unclear why that date was said to be significant. That, to my mind, is beside the point. Clearly the writer of the letter appreciated that the appellant had a cause of action and that proceedings needed to be commenced promptly. If that was not expressly made known to the appellant at that time, it would have been revealed to him if he had asked the obvious question.

[41] I agree with the learned trial judge that by 15 December 2000 at the latest the appellant had the means of knowing that his condition was likely to cause significant economic loss and that he ought to commence proceedings to protect his

position. By that date he had not worked full time for about 10 months and was experiencing real difficulty in coping with working 20 hours per week in a relatively sheltered environment.

[42] I am not satisfied that a material fact of a decisive character relating to his right of action was not within his means of knowledge until after 21 December 2000. I agree with the learned judge at first instance in concluding that the decisive information was the significant impact his psychiatric condition was likely to have on his future career and the economic loss associated therewith. In those circumstances, as the learned judge at first instance said, the rejection of the claim for WorkCover in January 2001 was not decisive. Nor was the fact that in August 2001 the doctors finally concluded that he was totally and permanently unemployable in the Police Service. Those matters may have strengthened his case but they were not, in the circumstances outlined above, decisive considerations.

[43] All the conclusions made by the learned judge at first instance were clearly open on the evidence; indeed I can see no reason for questioning the correctness of those conclusions.

[44] It follows that the appeal should be dismissed with costs.

[45] **CULLINANE J:** I have read the reasons of Williams JA in this matter. I agree that for the reasons he gives, the appeal should be dismissed.

[46] **HOLMES J:** I agree with the reasons of Williams JA and with the order he proposes.