SUPREME COURT OF QUEENSLAND

CITATION:	*Russell v State of Queensland* [2004] QSC 097
PARTIES:	**MATTHEW LANSDOWNE RUSSELL** (plaintiff) **v** **STATE OF QUEENSLAND** (defendant)
FILE NO:	SC No 4770 of 1996
DIVISION:	Trial
PROCEEDING:	Application for Extension of Time
ORIGINATING COURT:	Supreme Court, Brisbane
DELIVERED ON:	20 April 2004
DELIVERED AT:	Brisbane
HEARING DATE:	19 February 2004
JUDGE:	Chesterman J
ORDER:	**1. That the time for commencing proceedings in respect of the cause of action to recover damages for the injuries described in the amended statement of claim be extended to 11 June 1996** **2. That the defendant's application for summary judgment be dismissed** **3. That the costs of both parties of and incidental to both applications should be costs in the cause**
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 *Limitation of Actions Act* 1974 (Qld), s 30(1)(b) & (c), s 31(2) *Watters v Queensland Rail* [2001] 1 Qd R 448, cited *Randel v Brisbane City Council* [1984] 2 Qd R 276, cited *Moriarty v Sunbeam Corporation Limited* [1988] 2 Qd R 325, cited
COUNSEL:	Mr D B Fraser QC, with Mr G R Mullins, for the plaintiff Mr R Douglas SC, with Mr D J Campbell, for the defendant

SOLICITORS: Gilshenan & Luton for the plaintiff
Crown Solicitor for the defendant

[1] Between 4 July 1986 and 23 February 1996 the plaintiff was an officer in the Queensland Police Service ("QPS"). He retired on the date last mentioned on the ground that he was medically unfit to continue. He had by then attained the rank of sergeant. Between January 1989 and March 1991 he served, when a junior constable, as a covert police officer investigating offences against the *Drugs Misuse Act* 1986 (Qld). In the course of that service he was obliged to mix with drug addicts, drug dealers and assorted criminals. He had to assume a false identity and to lead a rootless and risky life. The plaintiff asserts that in the course of his covert activities it was necessary for him to consume illicit drugs, particularly cannabis, in order to gain acceptance in the social and criminal milieu he inhabited, and to succeed in the deception his role required.

[2] The plaintiff complains that the QPS, effectively his employer, did not provide him with adequate advice or support to enable him to make the difficult transition from the assumed life of a shiftless criminal to that of a law abiding citizen and a uniformed constable sworn to uphold the law. He alleges that the difficulties he experienced in the transition should have been observed or foreseen by his employer which should have given him sufficient support and sympathy to allow him to make the change to everyday life.

[3] The plaintiff has developed a psychiatric illness. It is this which has prevented him from remaining in the police service. He attributes it to the stresses he endured as a covert police officer and the lack of therapeutic support after the cessation of those duties.

[4] On 11 June 1996 the plaintiff commenced proceedings in this court by issuing a writ of summons. His action was sadly neglected by his former solicitors and proceeded at a most dilatory and unsatisfactory rate. A statement of claim was not delivered until 6 July 1998. It was defective. Following a change of solicitors an amended statement of claim was delivered on 2 August 2000. The case as pleaded is that:

(a) The QPS should reasonably have foreseen that the plaintiff's performance of covert duties put him at risk of suffering psychiatric illness and/or developing drug dependence from the consumption of illegal drugs.

(b) The QPS owed the plaintiff a duty to take reasonable steps to avoid or reduce those risks.

(c) The QPS did not have any procedure or protocol for determining whether the plaintiff was consuming illicit drugs; nor did it have in place any adequate system for carrying out psychological assessment and counselling, training or rehabilitation to ensure that he was not suffering psychological harm from the continued performance of covert duties.

(d) The QPS should reasonably have foreseen that those failures placed the plaintiff at risk of developing psychiatric illness and/or drug dependence.

[5] By paragraph 15 of the amended statement of claim the plaintiff alleges that by reason of the performance of covert duties he began to use illegal drugs, particularly cannabis, in about 1989 and became dependant upon it in 1990.

[6] By paragraph 18 it is pleaded that by about 1992 the plaintiff had developed a stress disorder and had become depressed as a consequence of the performance of his covert police duties and his consumption of illicit drugs made necessary by those duties.

[7] By paragraph 24 it is pleaded that as a consequence of the performance of covert duties and the failure of the QPS to provide counselling or psychiatric or psychological support the plaintiff, in about July 1995, developed a chronic adjustment reaction with emotional disturbance and a chronic depressive disorder.

[8] By paragraph 33 of its defence the defendant pleaded that the personal injuries which the plaintiff claims to have suffered in 1989 and 1990 occurred more than three years prior to 11 June 1996 when the action was commenced and were 'consequently … statute barred by reason of s 11 of the *Limitation of Actions Act* 1974' ("the *Limitation Act*"). In its terms the defence relies upon the *Limitation Act* only with respect to the injuries, and the cause of action to which they give rise, pleaded in paragraph 15 of the statement of claim.

[9] On 1 October 2003 the plaintiff applied pursuant to s 31 of the *Limitation Act* for an order that time for commencing the proceedings be extended to 11 June 1996. The defendant opposes the application and on 20 October 2003 cross-applied for summary judgment on the basis that, if the plaintiff's application should fail, the limitation defence is a complete answer to his claim.

[10] The defendant argued that there is no difference between the stress disorder which the plaintiff pleads developed in 1992 and the chronic adjustment reaction and depression which came on three years later. It submitted that there was, 'but one cause of action to which particulars may be added'. The plaintiff, as I understood the argument, appears to accept this proposition and the course of submissions proceeded on the basis that the plaintiff's psychiatric injury for which he claims damages had its onset in 1992, more than three years before 11 June 1996, so that an extension of time under the *Limitation Act* is necessary to validate the proceedings. Both arguments overlook the fact that the *Limitation Act* is not relied on as a defence to the injuries and the cause of action to which they give rise pleaded in paragraph 18 of the statement of claim, ie. those which began in 1992. I will deal with the application on the basis of the arguments, not the defence, which could no doubt be amended. It is the appropriate course to save time and money.

[11] It should be noticed that on the evidence the plaintiff's pleaded drug dependence which he acquired in 1990 is not an injury, separate from the psychiatric disorder, for which damages can be awarded. Oversimplifying things a little, the plaintiff's case is that he became accustomed to consuming cannabis while a covert officer. On his transfer to other police duties he experienced psychological difficulties and stress that had their origins in the disorders of his life as a covert operative. He turned to cannabis to reduce the stress, but its consumption in turn increased the

level of his anxiety for obvious reasons. He was engaging on a regular basis in illegal activity when, as a sworn police officer, he was bound to uphold the law. Moreover detection would have led to his instant dismissal from the QPS. As the plaintiff's stress became more severe and developed into psychiatric illness his drug dependence worsened. It is therefore to be seen as a consequence of the psychiatric ailments with which he has been diagnosed and is in turn a precipitator of the psychiatric illness, but is not itself a separate condition giving rise to a cause of action.

[12] Despite the manner in which the application was argued it is not, I think, possible to dispose of the application on the basis that there is 'but one cause of action' giving rise to different particulars of damage, ie. psychiatric injury. The application must be conducted by reference to the pleadings. It is not possible to know what evidence will be led or accepted at trial. It may turn out that the plaintiff's chronic adjustment reaction and depression only developed in July 1995. There is some support for this view in the evidence adduced in the application. Should that be the case then the proceedings were commenced within time and no extension is necessary.

It should be noted that the only substantial claim for damages flows from the adjustment reaction and depression which are what prevented the plaintiff from continuing to serve as a police officer.

[13] I will deal with the application so far as it relates to the stress disorder alleged to have commenced in 1992, or earlier in 1989 or 1990. This was, as I say, the basis on which the matter was argued and it will be critical should the evidence establish that the plaintiff's disabling psychiatric injury is in fact the disorder that commenced prior to June 1993.

[14] The plaintiff's submission contains a helpful chronology of relevant events distilled from the affidavits. It is reproduced below:

> '(i) After the plaintiff left covert duties, he was transferred to Maroochydore as a uniform police officer in about May, 1991. He performed uniform duties for several weeks prior to a short period of time where he was involved in plain clothes policing, operating from the Caloundra station.
>
> (ii) He completed the Constable First Class course and was promoted to the rank of Constable First Class on or about 19 July, 1991.
>
> (iii) In August, 1991 he consulted Barry Kerr, Psychologist, for one session. This was in respect of an investigation into allegations that a fellow covert officer had been injecting speed. He was concerned that he may also fact an investigation and lose his job because of his cannabis consumption.
>
> (iv) In about September, 1991 the plaintiff commenced the Police Prosecutors course and commenced prosecution duties in Maroochydore later that year. He took up a posting

as a Prosecutor at Maroochydore from 21 February, 1991. The plaintiff found the position of Prosecutor exacerbated his stress and anxiety. He would come into contact with targets whilst appearing in Court.

(v) After ceasing covert duties and taking up his posting at Maroochydore, he attempted to cease using drugs. Over a period of approximately 12 months, he only used cannabis occasionally. This was when he came into contact with other covert and former covert officers. During this time he found it difficult to resist the temptation to use cannabis and recommenced regular use of cannabis.

(vi) In about March, 1992 he read an article in the local newspaper where the then Police Commissioner, Noel Newnham, was quoted as denying that undercover agents were permitted to use illicit drugs. He said they were instructed not to do so. He consulted with the QPS Human Services Officer, Leah Dique. He informed her that he was concerned that he had recorded drug usage on his running sheets. He did not advise her of his ongoing drug consumption because he was concerned about losing his career. He believed he would eventually be able to "kick" the addiction himself.

(vii) In 1993 he consulted a Dentist in respect of a toothache. He was advised that he was grinding his teeth and that some people grind their teeth because of stress. At the time he attributed his teeth grinding to a combination of the stressful nature of police work generally and concerns he had relating to his continued use of cannabis.

(viii) In July, 1993 he was having increasing difficulties coping with stress. Professional assistance was suggest by a friend, Regan Carr. He consulted with a psychologist, Mirte Craig, on or about 5 August, 1993. He consulted with her about five times between August and October, 1993 and received counselling and treatment by way of relaxation therapy.

(ix) The last consultation with Mirte Craig was on 28 October, 2003 (sic 1993). By that time, he had not smoked cannabis for three weeks. He was looking forward to a promotion. He had a positive outlook for the future. No further treatment was recommended.

(x) In December, 1993 he sought and was successful in obtaining a transfer to Noosa. He performed prosecution duties there when Court was sitting and general policing duties on other rostered days. He subsequently moved to the police barracks.

(xi) In about April, 1994, whilst receiving treatment for unrelated medical conditions, he had short discussions with Dr Fitzgerald regarding his work and how he was coping. In May, 1994, Dr Fitzgerald referred him to Dr Brian Hutchinson, Psychiatrist. Dr Hutchinson did not advise him of any diagnosis or that his time in the police force would be limited. He made no recommendation for further treatment.

(xii) In about July, 1994, the Plaintiff took recreation leave and travelled overseas. He significantly reduced his drug usage on the trip.

(xiii) Following his return to Noosa, he continued to suffer stress symptoms and recommenced regular cannabis use. He again had trouble with his teeth and consulted another Dentist.

(xiv) In early 1995, he applied for a posting to the Mareeba Police Station as Prosecutor. He believed a change to the country would reduce stress and he would be better able to cope with his symptoms. During his time at Mareeba his condition worsened. He commenced to consume cannabis each day before work. He found it an escape from the stress and anxiety he was feeling.

(xv) On or about 31 May, 1995 he returned to Noosa to complete a committal proceeding. He took the opportunity to visit Dr Fitzgerald who discussed his continued use of marijuana. Dr Fitzgerald provided some counselling and suggested some alternatives, including a potential period of detox. They resolved that the plaintiff would attempt to reduce his marijuana use and Dr Fitzgerald would review the situation when he next returned to Noosa. No advice was given to the Plaintiff that his career was at risk.

(xvi) He continued to seek to address his symptoms and cannabis use. He was unable to reduce his usage. His symptoms got worse. His girlfriend at the time, Cathy Stuart, discovered he was using cannabis and referred him to see Dr Fitzgerald when in Noosa, later that month.

(xvii) While in Noosa on or about 26 July, 1995 he attended an appointment with Dr Fitzgerald and informed him of the difficulties he was experiencing with anxiety and stress and of his drug dependence. Dr Fitzgerald advised him that he should take a period of time off work. He also prescribed medication, Zoloft.

(xviii) The following day, Dr Fitzgerald informed the plaintiff that he was suffering from a reactive depression caused by his police service and would need a period of time to recover.

He also referred the plaintiff to the Psychiatrist, Dr Colin Seabridge.

(xix) On 2 August, 1995 the plaintiff first consulted with Dr Seabridge. He continued to be treated over the following months and continued to take Zoloft.

(xx) During the following two months, he notice a gradual improvement in his condition. Following consultations and advice from Dr Seabridge and Dr Fitzgerald, it became evident to him in October, 1995 that he was unlikely to be able to return to work in the Police Service. He elected to apply for a medical retirement from the Police Service and after that occurred was "*mildly depressed*".

[15] Dr Fitzgerald, the general practitioner who treated the plaintiff, deposed in his affidavit:

'9. By the end of October 1993, I did not consider that the Plaintiff was in need of any further referrals and his presentation did not at that time indicate that he would require further time off work or that his career in the police force was likely to be at any significant risk …

10. The Plaintiff saw me again in April 1994 … I … discussed the Plaintiff's work … and ascertained he was continuing to suffer stress. … I considered the Plaintiff might benefit from seeing a psychiatrist. I gave him a hand-written letter of referral to a Dr B Hutchinson on 6 May 1994. …

11. … I was not consulted by him again in respect of his psychological condition until 31 May 1995 when he consulted with me in respect to his use of marijuana … I contacted … Dr Taylor, who was attached to a drug treatment clinic, … I discussed with the Plaintiff a plan to treat his abuse problem …

13. I was next consulted by the Plaintiff on 26 July 1995 when he complained of a worsening of his symptoms, including tearfulness and sleep derangement. He was continuing to use marijuana. I advised the Plaintiff that he should consider taking a period of time off work in order to recuperate and obtain treatment. I … raised with the Plaintiff that he may wish to consider a period of anti-depressant medication …

14. On about 27 July 1995 I was again consulted by the Plaintiff. … I provided him with a medical certificate for six weeks leave and … gave (him) a referral to Dr Colin Seabridge … psychiatrist. At this time I felt that the Plaintiff was suffering an adjustment disorder with affective features.

> 15. At this time there began to be an emerging indication that the Plaintiff may not be able to return to his police duties …'

[16] This is the evidence which supports the notion that the plaintiff's symptoms of stress did not develop into a chronic adjustment disorder until about July 1995. Dr Seabridge said in his report of 3 November 1995:

> 'In 1994, Mr Russell had ten weeks leave and went backpacking overseas, during which time he felt markedly improved and stress free. When he returned, his prosecuting duties … had been taken over … and he went briefly into general duties, before transferring to Atherton, where he again became a Police Prosecutor. He remained unsettled with poor sleep, generalised anxiety, intolerance of minor frustration, feelings of alienation and avoidant behaviour. He was angry and frustrated that he was unable to fulfil the promises he had shown early in his Police career, when he was frequently dux of courses he attended. He became extremely bitter and resentful, blaming the Force generally for this disappointment, and he blamed this particularly on the adverse effect that his two and a half years of undercover had on his general attitude.
>
> Mr Russell has been treated with ongoing therapeutic counselling and he has required drug treatment with Zoloft … He remains emotionally labile, readily reduced to tears, questions his own ability, has totally lost his dedication to his career and is generally angry and frustrated.
>
> Mr Russell is suffering from a chronic adjustment reaction with emotional disturbance, resulting from work-based stress and his condition, in my considered opinion, renders him unfit on psychiatric grounds to resume work in the Police Force.'

[17] The plaintiff was examined by Dr Unwin, psychiatrist, at the request of the Workers' Compensation Board. He reported on 4 November 1996:

> 'The story … I was told of the precipitants and stressors … largely connected to his life as an undercover agent. After (this) work … he felt that he was never the same. … The presenting symptoms were
>
> Poor sleep
> Irritability
> Emotional lability
> Fearful of attending the workplace
> Feelings of suicide …
> Excessive reliance on physical fitness
>
> The diagnosis … is … adjustment disorder with emotional and conduct features … substance dependence …
>
> Please note that on my interview there is no reason to suspect that he would fulfil the criteria for PTSD. This is important in that the treatment regimes … are quite distinct.

> The course of the illness (was) as expected. This man is much sicker than even he realises. Although it is true to say that the work he was called upon to do was well beyond his capacity, it is somewhat simplistic to describe all of his deterioration to this. …
>
> This young man has been rendered completely unemployable in the police force or in any like position or career. …'

[18] The plaintiff was also examined by Dr Bell, psychiatrist, at the request of QPS. He reported, on 2 February 1996:

> '… in 1993 he was able to take recreation leave and this did provide some temporary improvement in his condition. … In 1994 he took ten weeks recreation leave … in an attempt to reduce his very high stress levels … symptomology at this stage consisted of the physical manifestations of anxiety, emotional fragility, and being easily moved to tears, often when he thought about work related matters, but sometimes for no obvious reason at all. He felt nervous and uptight much of the time. He suffered sleep disturbance, with restlessness and frequent waking throughout the night. He suffered unpleasant dreams, … he suffered some energy loss … his attention and concentration were reduced and he was very forgetful. … He became disillusioned with police work generally … eventually he lost interest totally in working as a police officer … In the middle of 1995 "it all got too much and I couldn't go on the way it was" … At that time he considered suicide and went on workers' compensation in July 1995.'

It was Dr Bell's opinion that:

> 'For the past three or four years (the plaintiff) has been suffering from a severe adjustment disorder with anxiety and depressed moods. This condition has now become chronic.
>
> There is not nearly sufficient evidence to support a diagnosis of post-traumatic stress disorder … The cause of the condition has been the accumulated stress of his various police duties over the past few years, particularly the time spent as an undercover agent, which initiated the condition. The extent of the condition has been moderately severe in that he has suffered a profound loss of his previous lifestyle, his health has been severely affected and he is no longer able to perform duties of a police officer.'

[19] It is possible to discern in Dr Bell's report the suggestion that the course of the plaintiff's adjustment disorder and depression was progressive, increasing in severity from its onset in 1992 or 1993 until it became chronic in 1995 and sufficiently severe to be disabling. No finding to the effect can be made, of course, in advance of trial. Dr Bell was not questioned on his report. Neither Dr Unwin nor Dr Seabridge expressed an opinion about the date of the onset of the depressive reaction.

[20] Dr Hutchinson did not provide a report nor an affidavit. He has left practice and cannot be located. There is no record of his consultation with the plaintiff which probably occurred on 21 February 1995. The plaintiff described his interview with Dr Hutchinson as unsatisfactory. He suspected that the doctor was inebriated. He took little interest in the plaintiff's complaints and offered no diagnosis.

[21] I did not find the evidence of Ms Craig, a psychologist whom the plaintiff consulted on a number of occasions between 1993 and the present, to be of any assistance. She diagnosed the plaintiff as suffering post-traumatic stress disorder which is discounted by the expert psychiatric opinion and she offers no assistance on the critical point of when the plaintiff's adjustment disorder began.

[22] Section 31(2) of the *Limitation Act* provides, in effect, that three issues must be addressed by a court entertaining an application to extend time. They are:

> (a) There must be a material fact of a decisive character relating to the right of action which was not within the plaintiff's means of knowledge until a date (in this case) after 11 June 1995, being one year prior to the commencement of proceedings.
>
> (b) There must be a *prima facia* case that the defendant would be liable to the plaintiff in an action brought by the plaintiff.
>
> (c) Upon proof by the plaintiff of the first two matters there is a discretion whether or not to grant an extension of time, the discretion being affected by any prejudice the defendant might suffer by reason of an extension of time.

The defendant accepts that the second and third considerations should be concluded in favour of the plaintiff. The question for determination is whether a material fact of a decisive character relating to the plaintiff's right of action was not within his means of knowledge until after 11 June 1995.

[23] The nature and extent of personal injury caused to a plaintiff may be a material fact for the purposes of s 30 of the *Limitation Act*. The economic consequences of a personal injury may themselves be a material fact for the purposes of the section: see *Watters v Queensland Rail* [2001] 1 Qd R 448.

[24] 'In determining whether time should under s 31(2) be extended there are three matters to be considered under subsections (a), (b) and (d) of s 30. Essentially these are:

> (a) Whether the unknown fact relating to the right of action is a 'material' fact within the meaning of that subsection;
>
> (b) Whether the material facts relating to a right of action are 'of a decisive character' and
>
> (d) Whether the fact in question was not within the means of knowledge of the plaintiff.

> Of these, the standard to be applied in determining the second of these matters, involving as it does the behaviour of a reasonable man, is not related to the mentality, personal idiosyncrasies, or behaviour of the particular plaintiff in question. The assessment required by this provision is entirely objective. On the other hand, the background and situation of the plaintiff are relevant to the determination whether he has under s 30(d)(ii) taken 'all reasonable steps' to ascertain the facts …'
>
> Per McPherson J in *Randel v Brisbane City Council* [1984] 2 Qd R 276 at 277-8.

[25] By s 30(1)(b) of the *Limitation Act* a material fact relating to a right of action is of a decisive character:

> '… if but only if a reasonable person knowing those facts and having taken the appropriate advice on those facts, would regard those facts as showing –
>
> (i) that an action on a right of action would … have a reasonable prospect of success and of resulting in an award of damages sufficient to justify the bringing of an action …
>
> (ii) that the person whose means of knowledge in question ought in (his) own interests and taking (his) circumstances into account to bring an action …'

[26] If the evidence available to a particular plaintiff in such that, advised appropriately, he should have pursued an action before the discovery of the material fact, that fact cannot be of a decisive character. The point was described by Macrossan J in *Moriarty v Sunbeam Corporation Ltd* [1988] 2 Qd R 325 at 333 in these terms:

> 'In cases like the present, an applicant for extension discharges his onus not simply by showing that he has learnt some new fact that bears upon the nature or extent of his injury and would cause a new assessment in a quantitative or qualitative sense to be made of it. He must show that without the newly learnt fact or facts he would not, even with the benefit of appropriate advice, have previously appreciated that he had a worthwhile action to pursue and should in his own interests pursue it. This is what the application of the test of decisiveness under s 30(b) comes down to …'

[27] The plaintiff identifies the material fact in question as being:

> (a) The discovery at the consultation with Dr Fitzgerald on 27 July 1995 that he was suffering from reactive depression which would require time off work to recover; and
>
> (b) In October 1995 that he was unlikely to be able to continue work as a police officer.

I am not sure these two facts are separate. If there be a material fact of decisive character it is, I think, that the plaintiff was suffering from a psychiatric disorder which was chronic and disabling. This fact became actually known to the plaintiff in July 1995.

[28] In my opinion the diagnosis of a psychiatric disorder in the second half of 1995 was a material fact of a decisive character. I accept the plaintiff's submissions on this point. Prior to that time the plaintiff experienced significant symptoms of stress for which he sought relief by the consumption of cannabis as well as more conventional treatment. He attributed the stress and his drug consumption to the defendant's failure to provide rehabilitative services at the conclusion of his covert career, but prior to the 1995 diagnosis any action to recover damages would have been beset by difficulty and would have yielded little profit. The difficulties will remain if the action proceeds. The defendant contests the basic elements of the claim and there will obviously be a major debate about the aetiology of the plaintiff's condition. Prior to the diagnosis that the plaintiff was unfit to continue duty any damages he might have recovered from his difficult action would have been small. Though stressed and uncomfortable he was performing his duties to his employer's satisfaction and remained in paid employment. There was no prospect of recovering damages for economic loss. Moreover the plaintiff would have had good reason for not commencing an action and thereby advertising to his employer that he was engaged in the illegal activity of possessing illicit drugs.

[29] In addition the plaintiff was unaware that he had contracted a psychiatric injury prior to July 1995. As far as the material goes none of the doctors or psychologists whom the plaintiff consulted diagnosed such a condition. They were treating him for cannabis dependence which was a consequence, as he saw it, of work related stress. He believed he would recover. Without a recognisable injury there was no cause of action.

[30] The knowledge that he had a recognised psychiatric injury which was disabling and jeopardised his career meant that an action if successful would produce a substantial monetary result. Without it the plaintiff would go unrecompensed for his lost earning capacity. This fact changed the assessment of whether it was reasonable to commence proceedings.

[31] The defendant's submissions in response stress the point that the plaintiff suffered symptoms, including physical discomfort, from 1992 onwards and these symptoms remained the same in character. They were those which led ultimately to the diagnosis of reactive disorder and depression. Moreover, it is submitted, the plaintiff's cannabis dependence which he himself ascribed to his covert service and the defendant's failure to address his problem exposed him daily to the risk of exposure and dismissal. Accordingly, the defendant submits, the plaintiff must have known that his condition was serious and was likely to lead to loss of income. So it is said the plaintiff should have commenced an action.

[32] The submission is cogent but does not, I think, address the plaintiff's real point which is that he believed the symptoms were of 'stress' which he could and would overcome, and so remain a police officer. He sought treatment for stress and for his drug dependence which was a concomitant part of his symptomology. He had successfully evaded detection for several years and not unreasonably believed he could continue until he overcame the problem. It was not until July 1995 that he

was confronted with the reality that he had a chronic psychiatric disorder which disabled him from working.

[33] For those reasons I do not think it right that the plaintiff should have commenced an action before the 1995 diagnosis. The difficulties in such an action were considerable. The likely award of damages was small. The facts which would be disclosed in the proceedings would expose the plaintiff to dismissal and prosecution. The equation changed with the knowledge that his career was lost, together with his earning capacity. The game was then worth the candle. I am therefore satisfied that a material fact of a decisive character was not known to the plaintiff until after 11 June 1995.

[34] The real issue in the application was whether that material fact was within the plaintiff's means of knowledge prior to June 1995. S 30(c) of the *Limitation Act* provides that, for the purposes of s 31:

> 'A fact is not within the means of knowledge of a person at a particular time if, but only if:-
>
> (i) (he) does not know the fact at that time; and
> (ii) as far as the fact is able to be found out by (him) – (he) has taken all reasonable steps to find out the fact before that time.

[35] The question in particular is whether the plaintiff took all reasonable steps, prior to June 1995, to ascertain whether he had a psychiatric illness. The defendant contends that the plaintiff's attendance on Dr Hutchinson is destructive of his case. The submission is that the fact that the plaintiff sought psychiatric assistance shows that he appreciated he had a psychiatric disorder for which he needed treatment. It is no answer, the defendant submits, that Dr Hutchinson did not provide a diagnosis of depression or reactive disorder, nor advised the plaintiff that his employment was in jeopardy. Having realised that Dr Hutchinson was uninterested or unable to help him he should have turned to other competent psychiatrists for the assistance he needed. Moreover, it is submitted, his continuing symptoms of "stress" which had begun years earlier indicate that he acted unreasonably in not seeking psychiatric advice and intervention.

[36] This analysis proceeds on the basis that the plaintiff had a diagnosable depressive condition and/or reactive disorder in February 1995. That is by no means certain on the present evidence. It is not how I understand the case for the plaintiff to be pleaded.

[37] It is implicit in the defendant's submissions that a competent psychiatric assessment early in 1995 would have produced the same diagnosis given by Dr Fitzgerald and Dr Seabridge later that year. The argument is that for the purposes of the *Limitation Act* the plaintiff is assumed to have sought appropriate psychiatric advice no later than February 1995.

[38] The defendant's submissions have obvious force and I have not found the decision easy. I have, however, concluded that the plaintiff had taken all reasonable steps to ascertain the material fact prior to 11 June 1995. The background and situation of the plaintiff are relevant to the determination of whether he had taken all reasonable steps to ascertain the material fact. The reality is that the plaintiff was seeking

medical assistance for symptoms of stress and cannabis dependence which, however distressing, had not precluded him from performing his employment. He had been treated by his general practitioner and a psychologist neither of whom, prior to June 1995, had diagnosed any psychiatric disorder or suggested his employability was in question. The referral to Dr Hutchinson was for assistance with his drug dependence. The doctor proved unhelpful but the plaintiff was seeking assistance for that problem from Dr Fitzgerald and Ms Craig. I do not think it can be said that in not seeking further psychiatric opinion about a condition which his general practitioner and psychologist did not advise existed, the plaintiff failed to take all reasonable steps to ascertain the material fact.

[39] 'Stress' is a word of no precise meaning. As far as I know it has no defined or particular meaning in medicine. Many people experience 'stress' in or as a result of their working lives. They do not necessarily, or even ordinarily, suffer any psychiatric disorder. They cope as best they can, enduring or altering habits or attitudes. It is only in extreme cases that psychiatric intervention is sought. The plaintiff believed himself to be suffering no more than stress. His particular concern was his drug dependence which was both a result of and a cause of his stress. It posed a particular and obvious problem for him in his career. He sought medical assistance, including his consultation with Dr Hutchinson, to address that addiction. Had he been successful a major cause of his stress would have disappeared. It was not unreasonable, in these circumstances, for the plaintiff not to realise that he had developed a psychiatric disorder or to inquire whether he had such a condition.

[40] Accordingly I order that the time for commencing proceedings in respect of the cause of action to recover damages for the injuries described in the amended statement of claim be extended to 11 June 1996. The defendant's application for summary judgment should be dismissed. The costs of both parties of and incidental to both applications should be costs in the cause.