



Friday, 20 December 2024

Weekly Employment Law A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Employment Law

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Executive Summary (One Minute Read)

Robinson v EACH Ltd (VSCA) - employer's response to carer peer support worker's notification of vicarious trauma had been reasonable, and worker's negligence case for psychiatric injury therefore failed



HABEAS CANEM

Merry Christmas from McGregor



Summaries With Link (Five Minute Read)

Robinson v EACH Ltd [2024] VSCA 313

Court of Appeal of Victoria

Macaulay & Gorton JJA, & Forrest AJA

Negligence - applicant was carer peer support worker with psychological issues from vicarious trauma - sued her employer in negligence - County Court dismissed claim - sought leave to appeal - employer conceded primary judge erred in finding it was unaware carer peer support role carried inherent risk of vicarious trauma so no foreseeability of the risk of injury, but relied on notice of contention of no breach of duty as risk only materialised when applicant told team leader of issues, and its response was appropriate - held: employer owed non-delegable duty to ensure reasonable care was taken for applicant's welfare - duty's content determined by nature of event giving rise to claim and foreseeability of risk of injury - foreseeable risk must be identified with precision, but no need to predict exact circumstances of injury - once risk identified, questions are what reasonable employer would have done in response, and whether that would have avoided or minimised injury - High Court has made clear signs of distress or vulnerability not preconditions for psychiatric injury to be reasonably foreseeable and not legal criteria for liability, but can provide means for reasonable foreseeability to be established on the facts, and, in some cases, absence of them may mean employer would have no reason to suspect a risk of psychiatric injury - employer's response was reasonable - notice of contention was made out - leave to appeal granted but appeal dismissed.

[Robinson](#)

[From Benchmark Tuesday, 17 December 2024]

Benchmark

INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Khachatryan v Armenia (EUHR5S) - In a matter of first impression, the European Court of Human Rights found that a member state has an obligation to provide a mechanism whereby victims of domestic violence may seek compensation for non-pecuniary damage from the perpetrator of the violence

Summaries With Link (Five Minute Read)

Khachatryan v Armenia, Case 11829/16

European Court of Human Rights

Guyomar P, Elósegui, Harutyunyan, Felici, Zünd, Sârcu, & Šimáková JJ

In Armenia, the victim had been subjected to numerous events of serious physical and emotional abuse by her former spouse. He repeatedly threatened and insulted her. He also repeatedly beat her, breaking bones and causing concussions and other grievous injuries. The perpetrator was charged with aggravated torture of a person who was dependent on the perpetrator. However, he was convicted of non-aggravated torture and sentenced to 18 months imprisonment. He did not serve any time as he was exempted under an Amnesty Act. The victim of the abuse unsuccessfully launched civil legal proceedings seeking compensation for both pecuniary and non-pecuniary damage for emotional and psychological suffering due to ill-treatment. Armenian domestic law did not provide for compensation for non-pecuniary damages in this situation. The judgment was affirmed by the local court of appeal. Armenia is one of the 46 member states comprising the Council of Europe and is subject to the European Convention on Human Rights and the jurisdiction of the European Court of Human Rights. The victim sought review of the decision by the Armenian courts by alleging that Armenia had acted in violation of Article 3 of the *European Convention on Human Rights*, which states that 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment'. The Court found that the Armenian criminal-law mechanisms were so defective in terms of protecting the victim that they amounted to a breach of Armenia's obligations under Article 3. The European Court said that Armenia had repeatedly failed to discharge its procedural obligation to respond adequately to the serious acts of domestic abuse. In a decision of first impression, the Court also found that Article 3 imposed an obligation on the state to allow claims by the victim against the perpetrator for compensation for non-pecuniary damages in matters of serious domestic abuse. The Court stated that Article 3 created a positive obligation on the part of a member state in respect of allowing claims for non-pecuniary damage from the perpetrators of such violence directly, or indirectly through the member state. The European Court awarded the victim €24,000 plus €2000 in costs as against Armenia.

[Khachatryan](#)



Poem for Friday

Somewhere

By Rev David Conolly

Somewhere,
unexpectedly,
hope is born.

A voice.
At first, only the cry
of a new-born
gulping for breath.

In time, a voice.

The voice speaks to
a world grown used to
darkness, despair.

The voice says,
*You are light for the world;
Let it shine.
Love, and forgive*

And suddenly, hope is born.

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