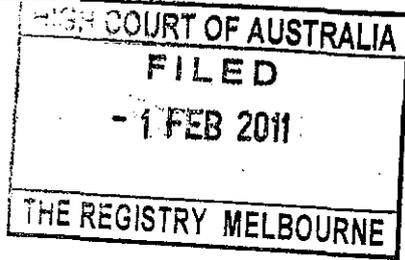


IN THE HIGH COURT OF AUSTRALIA  
MELBOURNE OFFICE OF THE REGISTRY

No. M 176 of 2010

BETWEEN:



MAURICE BLACKBURN  
CASHMAN

Appellant

- and -

FIONA HELEN BROWN

Respondent

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APPELLANT'S CHRONOLOGY

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Part I: Certification

- 1. This chronology is in a form suitable for publication on the Internet.

Part II: List of principal events

Date	Event
2003	Respondent employed by the appellant firm as a salaried partner and as head of its family law practice in Melbourne.
8 Jan 2003 to 17 Nov 2003	Respondent claims that she was "systematically undermined, harassed and humiliated" in this period by a fellow employee and that complaints and requests to the managing partner for intervention was unanswered and that, as a consequence, she suffered psychological injury and associated loss and damage.
12 Dec 2005	Respondent claims statutory compensation for non-economic loss pursuant to Section 98C of the <i>Accident &amp; Compensation Act 1985</i>

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(Vic) (the "Act"). The amount of compensation payable to the respondent was determined, in part, by the assessment of the respondents' degree of impairment in accordance with Section 91 of the Act.

- 23 Feb 2006 The Victorian WorkCover Authority (the "Authority"), by its authorised agent, accepted that the respondent had a psychological injury arising out of her employment with the appellant.
- 22 Mar 2006 Pursuant to Section 104B(9) of the Act, the Authority referred the following medical questions to a medical panel for its opinion under Section 67 of the Act –
- (1) what is the degree of impairment resulting from the accepted injury/s assessed in accordance with Section 91 and is the impairment permanent?
  - (2) does the worker have an accepted injury which has resulted in a total injury mentioned in the table in Section 98E(1)?
- 28 Jun 2006 The medical panel, constituted by Dr Diane Neill and Dr Nathan Serry, determined the degree of impairment in accordance with section 91 of the Act, which by sub-section 91(6) invoked the gazetted *Clinical Guidelines to the Rating of Psychiatric Impairment*. The medical panel certified as follows –
- (1) the panel is of the opinion that there is a 30% psychiatric impairment resulting from the accepted psychological injury, when assessed in accordance with section 91(2) for the purposes of section 98C and 134AB(3) & (15) of the Act. The degree of psychiatric impairment is permanent within the meaning of the Act;
  - (2) No.
- 15 Aug 2006 The Authority advised the respondent of the panel opinion and of her entitlements under section 98C of the Act.
- 25 Oct 2006 The respondent made application pursuant to section 134AB(4) of the Act, by which she sought access to the statutory "serious injury"

gateway beyond which she could then commence common law proceedings against the appellant for damages. Having regard to the medical panel opinion, the respondent was deemed by operation of section 134AB(15) of the Act to have suffered a “serious injury”.

- 18 Jul 2007 The respondent commenced a proceeding in the County Court of Victoria by which she claimed common law damages for negligence. The respondent nominated mode of trial by jury.
- 29 Sep 2009 By amended defence, the appellant denied (among other things) the respondent’s allegations of causation and injury.
- 15 Oct 2009 By amended reply, the respondent claimed that the medical panel opinion must be accepted as final and conclusive in the common law proceeding. The respondent pleaded, among other things, that the appellant is estopped from making any assertion at trial inconsistent with –
- (a) the opinion of the medical panel;
  - (b) the respondent having, as at 28 June 2006, a serious injury as defined in section 134AB(37)(c) of the Act;
  - (c) the respondent having, as at 28 June 2006, a permanent severe mental disturbance or disorder;
  - (d) the respondent having, as at 28 June 2006, a psychological injury arising out of her employment with the appellant.
- 22 Oct 2009 Prior to empanelment of the jury at trial in the County Court of Victoria, the learned trial judge, his Honour Judge Lacava, stated the following questions for determination of the Court of Appeal pursuant to Section 76(1) of the County Court Act 1958 (Vic) –
- (1) Do any, and if so which, of the estoppels pleaded in paragraph 1A(i) of the plaintiff’s amended reply to the amended defence arise?
  - (2) Is this Honourable Court obliged to accept as final and conclusive in any trial of this action any, and if so which, of the matters pleaded by the plaintiff at paragraph 1B(a) and (b) of

her amended reply to amended defence?

- (3) Is the defendant precluded from acting in any, and if so which, of the ways claimed by the plaintiff in paragraph 1B(c) of her amended reply to amended defence?

2 & 3 Feb 2010 The stated case came on for hearing before the Court of Appeal constituted by Ashley JA, Mandie JA and Ross AJA.

25 Aug 2010 Judgment delivered by the Court of Appeal. For the reasons stated by Ashley JA, in which Mandie JA and Ross AJA agreed, the Court answered the stated case as follows –

(1) unnecessary to answer;

(2)

&(3) the defendant is prohibited in this proceeding from –

(a) making any assertion, whether by pleading, submission or otherwise, and

(b) leading or eliciting evidence, whether in evidence in chief, cross examination or re-cross examination,

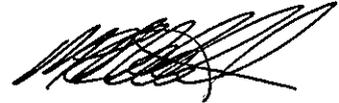
which is inconsistent with the opinion of the medical panel provided on or about 28 June 2006; and in particular from making any assertion, or leading or eliciting evidence, to the contrary of the following –

(i) that the plaintiff, as at 28 June 2006, suffered a permanent (in the sense of it being likely to last into the foreseeable future) mental or behavioural disturbance or disorder which was severe by reference to its consequences with respect to pain and suffering and loss of earning capacity, when judged by comparison with other cases in the range of possible mental or behavioural disturbances or disorders;

(ii) that it was the pain and suffering and loss of earning capacity consequences of the accepted psychological injury which constituted the permanent mental or behavioural

disturbance or disorder which was severe.

10 Dec 2010 Special leave granted to appeal to the High Court of Australia.



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**DATED:** 1 February 2011.