

## Employment Court orders High School to pay two former employees \$1.79 million

**The recent decision of *Cronin-Lampe v Melville High School* highlights employers' obligations in respect of employees' mental health, and particularly those who have inherently stressful or emotional jobs. The \$1.79m award sends a big warning to employers about the potential consequences of failing to meet the required standards.**

### Background

Mr and Mrs Cronin-Lampe (**the Cronin-Lampes**) were employed by Melville High School (**MHS**) as guidance counsellors from the late 1990s until 2011.

Throughout their employment, the Cronin-Lampes provided extensive counselling services in the context of a wide range of traumatic circumstances including student suicides, fatal crashes, terminal illness and murder. During the 15 or 16 years of their employment, there were approximately 32 deaths. The Cronin-Lampes were actively involved in these tragedies, both in the immediate aftermath and usually in relation to ongoing issues.

In 2012, the Cronin-Lampes were diagnosed with post-traumatic stress disorder.

The Cronin-Lampes raised various claims against MHS in relation to the significant mental harm they suffered.

### Contractual causes of action

The Cronin-Lampes raised three contractual causes of action for; breach of terms implied by common law, breach of terms implied by the Health and Safety in Employment Act 1992 (as it then was), and breaches of

implied and express terms derived from the Secondary Teachers' Collective Agreement.

The Cronin-Lampes essentially alleged that MHS failed to meet its health and safety obligations, and failed to manage workload and workplace conditions adequately.

MHS argued that it met the applicable duties, and to the extent it did not, it said the consequences of the alleged failures were not reasonably foreseeable.

After considering the evidence, Judge Corkill found that by 1999-2000 MHS was sufficiently on notice that there was a foreseeable risk of harm to the Cronin-Lampes' health and safety. MHS knew the Cronin-Lampes had been required to deal with a significant degree of trauma including suicide, and it was known that their workload increased, but this did not lead to any proactive steps being taken, as required by the legislation, to systematically and effectively identify the stress created.

Judge Corkill ultimately found that MHS breached express and implied contractual health and safety duties it owed to the Cronin-Lampes. Both Mr and Mrs Cronin-Lampe suffered mental harm in the form of PTSD as a result of those breaches. Their injuries were caused by the established breaches of contract. It was foreseeable that the Cronin-Lampes suffered harm of the kind which occurred if the employer did not take all practicable steps to eliminate, isolate, or minimise and monitor the hazards of their occupation.

### Personal grievances

Judge Corkill said that the contractual breaches also constituted unjustified conduct.

The Cronin-Lampes also raised four further relationship problems that the Court said were better dealt with as personal grievances. These included allegations that MHS failed to provide time off and cover during absences, a bullying issue, an issue with "BJ" and a status issue.

---

## Employment Court orders High School to pay two former employees \$1.79 million (Continued)

Judge Corkill said the traumatic incidents, with the allied need to provide services to those affected by those events, could be expected to have raised a red flag as to the steps a fair and reasonable employer could be expected to have taken to rectify the absence of relevant health and safety measures.

Judge Corkill concluded that the actions of MHS, and how it acted, were not steps which a fair and reasonable employer could have taken in all the circumstances. The personal grievances were also established.

### Affirmative defence

MHS tried to argue that the statutory bar of the Accident Compensation Act precluded Mrs Cronin-Lampe from seeking damages because she had cover for mental injury. However, Judge Corkill was not satisfied the criteria in s 21B was made out, and therefore the defence in s 317 did not apply.

### Remedies

As the Cronin-Lampes made out both their contractual claims and personal grievance claims, Judge Corkill was required to consider the availability of both damages and remedies, acknowledging that there could not be a double recovery for overlapping claims.

Judge Corkill firstly considered the appropriate common law award for non-economic loss for past, present and ongoing mental harm. Judge Corkill set Mr and Mrs Cronin-Lampes appropriate awards at \$97,500 and \$130,000 respectively.

Judge Corkill then went on to consider whether a different award would be justified under s 123(1)(c)(i) of the Employment Relations Act, and found the appropriate level of compensation was \$85,000 for Mrs Cronin-Lampe, and \$63,750 for Mr Cronin-Lampe.

The Cronin-Lampes were entitled to the higher of the two remedies.

Judge Corkill awarded further remedies in relation to the Cronin-Lampes rental property. The Cronin-Lampes gave evidence that they came under significant financial stress, so their rental property was sold below its capital value. Judge Corkill found that *but for* the income challenges the Cronin-Lampes faced, the property would have been retained and available for subsequent sale and utilisation of proceeds. Judge Corkill said that viewed objectively, a serious breach of contract which affected the Cronin-Lampes ability to work and thus service indebtedness, was reasonably foreseeable, and awarded damages for lost capital gain, loss of rental income and interest on both.

The Cronin-Lampes were further entitled to lost income, lost superannuation, and costs for psychologist sessions.

### Contributory conduct

Judge Corkill did accept that the Cronin-Lampes could have referred to their health issues with greater specificity in 2011, during the periods when they were affected by their escalating PTSD conditions. The Court said there was an obligation to disclose the impacts of the circumstances to MHS, whether directly or via the PPTA. This did not happen. Judge Corkill said that such a step may well have led to the provision of professional assistance earlier than was obtained. Accordingly, remedies were reduced by 5% for contributory behaviour.

Collectively, and after the 5% reduction for contribution, the remedies totalled just short of \$1.8m.

### Key takeaways

While this case will undoubtedly cause concern for employers given the significant financial award, the facts are important. The Cronin-Lampes had suffered significant mental harm over a sustained period of time, and this was reflected in the remedies.

It does however highlight the obligation on an employer to be proactive in relation to employee's health and

---

**Employment Court orders High School to pay two former employees \$1.79 million**  
(Continued)

safety, including mental health. It is not just about what you know, but also what you ought to know.

If there is (or should be) a level of awareness, employers are required to take appropriate steps to remove or minimise potential hazards. What this looks like will be fact specific, but this case tells us that the Court will award significant remedies where an employer fails to meet the required standard.

**Want to know more?**

If you have any questions about the case, or what it may mean for your workforce, please contact our specialist [Employment team](#).