THE HIGH COURT

2016 No. 768 JR

Between:

Shane Devlin

Applicant

– and –

The Minister for Justice and Equality

Defendant

JUDGMENT of Mr Justice Max Barrett delivered on 21st February, 2018.

I

Facts

1. It is an unhappy consequence of their challenging role that members of An Garda Síochána occasionally get injured in the course of their duties. When a personal injury not causing death occurs, a member may be eligible for compensation under the Garda Síochána (Compensation) Acts 1941 and 1945 where, per s.2(1)(c) of the Act of 1945, *inter alia*, the relevant injury was "*maliciously inflicted*".

2. Sergeant Devlin was injured on 19th July, 2013, it appears while seeking to restrain a prisoner when he (Sergeant Devlin, since retired) was engaged in prisoner escort duties at Virginia Courthouse on that date. On 9th October, 2013, Sergeant Devlin made a related application for compensation under the Acts of 1941 and 1945. In a letter sent to Sergeant Devlin's solicitors on 12th July, 2016, a civil servant at the Department of Justice indicated that the Minister for Justice, etc. was refusing compensation on the basis that the injury that Sergeant Devlin suffered was not "*maliciously inflicted*".

3. On 10th October, 2016, the High Court (Humphreys J.) granted Sergeant Devlin leave to bring judicial review proceedings in respect of the Minister's decision to refuse compensation.

4. On 27th February, 2017, the solicitors for Sergeant Devlin wrote to the Chief State Solicitor's Office seeking voluntary discovery of "[t]*he file of papers considered by the decision maker to include all working notes, internal department communications, literature, materials consulted by the decision maker, advices together with materials of whatever kind that may have formed part of the decision making process herein*." The reason offered for seeking voluntary discovery of this documentation reads, *inter alia*, as follows:

> *"In order to make a proper decision in relation to the question of malice, it is to be assumed that the decision maker must acquaint him or herself with the relevant facts of the incident, that is to say the facts and circumstances that gave rise to the injury.*
>
> *The Applicant believes that there is a somewhat extraordinary state of affairs relating to the Respondent's procedures in and about the manner in which the decision maker becomes acquainted with the facts of the case. The Applicant believes that the Respondent has directed (in all cases) that no Garda statements are to be furnished. The reason for this directive is known only to the respondent. The facts and circumstances are contained in Garda statements and therefore the Applicant is at [a loss]…to understand how the decision maker then acquaints him or herself with the relevant facts so as to ensure that the correct decision maker then acquaints him or herself with the relevant facts so as to ensure that the correct decision is made. The decision has legal consequences. It is therefore a decision of particular importance.*
>
> *Having regard to the matters pleaded by the Applicant in the Statement of Grounds and the Respondent's Statement of Opposition it would be difficult for the trial Judge to make any adjudication on the issue without having sight of file of papers as it was before the decision maker."*

5. On 28th March, 2017, the Chief State Solicitor's Office wrote to the solicitors for Sergeant Devlin, referring to the letter of 27th February and stating that "[O]*ur client respectfully refuses to provide voluntary discovery as the reasons given do not demonstrate that discovery is relevant or necessary for the fair disposal of the trial….Furthermore, the reasons given are erroneous as there is no such directive relating to Garda statements*".

6. By way of courtesy, and also perhaps to show good faith as regards the Chief State Solicitor's assertion concerning the absence of the directive aforesaid, an index of the documents relied upon by the decision-maker was appended to the letter. This shows that several Garda statements were relied upon by the decision-maker. Also exhibited by an officer of the Department of Justice, *etc*. in a later affidavit placed before the court is a copy of the in-house Departmental guidelines as regards the processing of claims under the Acts of 1941 and 1945. This reads, *inter alia*, as follows:

> *"Incoming Garda reports*
>
> *Reports from the Garda Division and the Chief Medical Officer (CMO) are required in order for the recommending officer (HEO) and the decision officer (AP) to make a recommendation.*
>
> *When the reports are received in the Division, they must be checked to ensure that all dates are in order, all medical reports referred to, on file etc….*
>
> *In the case something is unclear or dates are wrong etc., request clarification from Garda HQ who will forward medical issues to the CMO. You do not deal with the CMO yourself.*
>
> *Note:*
>
> *As a claim for compensation is a civil action taken by a member of An Garda Síochána under the Garda Síochána*

(Compensation) Acts 1941/45, it is not the policy of An Garda Síochána to release any official statements and reports relating to the incident to Solicitors without the appropriate Court order."

7. It is also expressly averred to in that affidavit that the Minister "*has not adopted a policy 'of refusing Garda statements of evidence' when reaching* [his]…*decision*."

II

Law

8. It is clear since at least the time of the decision of Laffoy J. in *Fitzwilton Ltd v. Judge Mahon & ors.* [2006] IEHC 48 that the entitlement to discovery applies equally to judicial review and other proceedings. The reason why discovery is rarely sought in judicial review proceedings is because the facts are seldom a matter of relevant dispute upon an application for judicial review. Why is this so? Because as the court noted in its recent judgment in *Callan v. Minister for Justice and Equality* (Unreported, High Court, 2nd February, 2018), para.3:

"[T]*hese are judicial review proceedings; this is not an appeal. The law reports are replete with examples in which judges have spoken to the quite limited role of the court in such applications*. In *this regard, the court has been referred to the judgment of* Looby v. Minister for Justice, Equality and Law Reform *[2010] IEHC 411, another judgment of the High Court concerned with an application to the Minister under the Act of 1941, in which Hedigan J. made the following comments, at para. 6.1, which are representative of the legal orthodoxy concerning judicial review applications that, for good or bad, has hitherto pertained…*

> 'The jurisdiction of the court in judicial review is a very limited one. The Court does not sit as a court of appeal. Even were it to disagree with the decision on the facts, made by the deciding body, it cannot interpose its opinion for that of the body specifically charged with making particular decisions because that would be to usurp the functions of such body. The court may only intervene on the basis of an identifiable error of law or the irrationality of the decision.'"

9. In the within case, the facts of the incident that led to the injury are not in dispute. The issue is whether, having regard to those facts, the injury sustained by Sergeant Devlin was "*maliciously inflicted*". In this regard, the court recalls the following observations of Geoghegan J. in *Carlow Kilkenny Radio Ltd v. Broadcasting Commission of Ireland* [2003] 3 I.R. 528, 537:

> "[D]*iscovery will not normally be regarded as necessary if the judicial review application is based on procedural impropriety as ordinarily that can be established without the benefit of discovery. Likewise, if the application for judicial review is on the basis that the decision being impugned was a wholly unreasonable one in the Wednesbury sense, discovery will again not normally be necessary because if the decision is clearly wrong it is not necessary to ascertain how it was arrived at. Where discovery will be necessary is where there is a clear factual dispute on the affidavits that would have to be resolved in order properly to adjudicate on the application or where there is prima facie evidence to the effect, either that a document which ought to have been before the deciding body was not before it or that a document which ought not to have been before the deciding body was before it."*

10. Here there is no dispute concerning the facts of the incident that yielded the injury. Nor is there *prima facie* evidence of the type referred to by Geoghegan J in the above-quoted text. The issue arising is, as mentioned, whether the injury was "*maliciously inflicted*" or not. That is a question of law, the answer to which rests on the proper legal meaning to be attached to the term "*maliciously inflicted*", as employed in s.2(1)(c), not in the documentation of which discovery is now sought, discovery of which documentation is not therefore necessary or relevant and, as a consequence, cannot be proportionate.

III

Conclusion

11. For the reasons aforesaid, the discovery sought by way of the motion of 10th July, 2017, is respectfully refused.