

THE HIGH COURT

[2013 No. 297 SP]

IN THE MATTER OF AN GARDA SIOCHANA (COMPENSATION) ACTS, 1941 AND 1945 AND

BETWEEN

JOHN LEAHY

APPLICANT

AND
THE MINISTER FOR FINANCE

RESPONDENT

JUDGMENT of Mr. Justice Bernard J. Barton delivered on the 8th day of February, 2016

1. The Applicant was born on the 2nd of June 1963 and resides at Balinacloy, Maree, Oranmore, Co. Galway. He is married with an eight year old son and is a serving member of the force. On the 26th of June 2008, he was subjected to a vicious and prolonged attack by two pit-bull terriers which occurred whilst he was in the course of making an arrest of a suspected drug dealer. On the 10th of April 2010 he was authorised by the Minister for Justice and Law Reform to bring these proceedings in respect of the injuries and loss suffered and sustained by him as a result of the attack.

Vocational background.

2. The Applicant sat his Leaving Certificate in 1980. His ambition was to become a member of An Garda Síochána. Due to a recruitment embargo at the time his initial attempt to secure a place in Templemore Training College was unsuccessful. However, he persisted and ultimately secured a training place for the intake of new recruits which commenced on the 6th of November 1985. Upon his passing out from Templemore in April the following year, he was assigned uniformed duties at Store Street Garda station in Dublin.

3. It did not take the Applicant long to make a good impression on his superiors and in 1987 he was accepted for and passed a motorcycle training course. In 1991 he applied for and was transferred to plain clothes Garda duties. During the next twenty years he proved himself to be a dedicated, effective and efficient member of the force, receiving some twenty commendations over that time. He was also awarded the Scott Medal for bravery in saving the life of a man who would almost certainly have died as a result of a fire in his apartment if it had not been for the actions of the Applicant. At the time of the events giving rise to these proceedings, he was working with the plainclothes anti drugs unit in Galway.

Past medical history.

4. The Applicant has a relevant past medical history. In the course of his career he was involved in numerous confrontations, some of which resulted in his sustaining injuries of one sort or another but from which he recovered and returned to full duty. However, he was not always so fortunate. In 1993 he suffered a right shoulder injury in respect of which he required surgery. This was followed a year later by a serious assault which occurred on the 18th of December 1994 as a result of which the Applicant sustained a number of serious injuries, including injuries to his neck and back as well as psychological sequelae.

5. His back injury remained the source of significant symptomology and, as a consequence, the Applicant underwent an MRI scan which confirmed the presence of degenerative changes including a prolapsed intervertebral disc at the L5/S1 level. When seen by Mr. Byrne, consultant orthopaedic surgeon, in March 1996 the Applicant's back was noted to be in spasm with accompanying pain and discomfort; spinal movements were limited. Back surgery was carried out by Mr. Byrne on the 1st of April 1996 during which a large prolapsed disc was removed. Post-operative recovery was slow despite physiotherapy, medication, injective therapy, and manipulation of his back. However, he never fully recovered from the back injury though he did return to full-time policing duties.

6. He was medically reviewed by Mr. Byrne on the 21st of October 1997, following which he prepared a report in which he recorded the Applicant as having remained more or less static with good and bad days. Complaints made to Mr. Byrne were of intermittent back pain, impulse pain, and of occasional cramps and pains in his legs. Clinical examination showed a limited range of straight leg raising on the right to 70 degrees and on the left to 90 degrees. He had an absent right angle jerk as a consequence of the discectomy.

7. In his report Mr. Byrne expressed the opinion that the Applicant had a permanent ongoing disability in his back and that he would never regain his previous fitness nor the ability to engage in rigorous training necessary for the discharge of full Garda duties. His prognosis was that the Applicant was likely to have permanent ongoing mild disability in his back which would be aggravated with a lot of sitting or driving or vigorous exercise. It was also his opinion that the Applicant would go on to develop some degree of arthritis in his lower spine but that he was not likely to require any further surgery as a result of the injury.

8. Following his back surgery, the Applicant remained significantly symptomatic and for which he was treated with medication, exercises and a manipulation of his back which Mr. Byrne carried out on the 15th of July 1996. Thereafter the Applicant gradually improved but experienced flare ups in symptoms from time to time for which he required medical intervention, including a further manipulation of his back by Mr. Byrne in late 2007.

9. In a letter to the Applicant's GP, Dr Hannay, dated the 19th of November 2008, Mr. Byrne referred to a review which he had carried out on the Applicant that day in which he recorded the Applicant as saying that he had been "*doing very well*" until he had had a fall at work when he was attacked by two pit-bull terriers as a result of which he (the Applicant) thought that he had injured his back and that it had "*gotten back to what it was like before his manipulation*". (This is a reference to the manipulation carried out by Mr. Byrne in late 2007). Complaints of a lot of back pain with restricted movement of the spine seen on clinical examination were noted. His view was that there was not really an awful lot to be done other than that the Applicant might consider another manipulation. He did not think there was any indication for further scans or surgery.

10. The Applicant's evidence was that following the back surgery in 1996 his recovery was slow and that when he had flare-ups, he had injections to help him deal with his pain. However, he gradually improved over time to a position where he had aches and pains which were intermittent and at a level which did not prevent him from performing full-time Garda duties. He took medication when he experienced flare-ups in his symptoms and sometimes needed direct medical intervention but, generally, he was able to manage.

The assault.

11. In 1999 the Applicant applied for a transfer to detective duties and as a detective Garda was assigned to the international terrorism unit. He found this assignment very interesting and rewarding. However, that did not last. The Applicant's wife was from Galway and, as she wanted to be close to her family, they moved down and the Applicant was transferred and assigned uniform duties in Loughrea. Although he continued to experience intermittent symptomology, he was able to perform his duties to a high level, especially in crime prevention. Not surprisingly, it didn't take long before the Applicant was offered a position in the anti-drugs unit based in Galway city which, at that time, was experiencing a significant increase in heroin drug abuse.

12. On the 26th of June 2008, whilst making an arrest of a suspected drug dealer, the Applicant was attacked by two pit bull terriers. Under a search warrant, he and five other officers had entered a house where suspected drug dealers and others were believed to be preparing and or dealing in illicit drugs. Having placed one suspect under arrest in the vicinity of a doorway into a room on a narrow corridor, he heard another suspect shout the word "Bull", immediately following which an ordinary terrier and two pit-bull terriers came out of another room and attacked; biting him on both legs and knocking him to the floor in the process.

13. Garda Keenan, who had accompanied the Applicant into the house and witnessed the attack by the dogs, gave a harrowing description of the viciousness with which the dogs, and one of the dogs in particular, had repeatedly bitten the Applicant. She and other colleagues had tried to stop the attack after pleas made by the Applicant with the house occupants to call the dogs off were ignored. They started to hit the dogs with batons. One of the pit-bull terriers and the ordinary terrier were ultimately subdued but the other pit-bull became more enraged. The Applicant quickly began to feel the pain of the bites and noticed that his jeans were being torn and that his legs were both bleeding from the bite injuries. He was frightened that he might die and asked one of his colleagues to call an ambulance.

14. Eventually the other officers dragged the Applicant out of the house into the garden. Further attempts to release what was by now the clenched grip of the Applicant's right leg by the remaining pit-bull were unsuccessful. The Applicant gave evidence that he could feel the teeth of the pit-bull digging deeper into his calf muscle; the pain was agonising and he could see that he was bleeding more heavily. The other officers continued to try but could not unlock the grip of the pit-bull. It was in this desperate situation that the Applicant reached out, caught the pit-bull by the throat and collar and wrestled him to the ground; ultimately getting on top of the dog. In this position the Applicant found himself face to face with the enraged dog which he was holding away at arms length. Understandably, he was afraid to follow the suggestion made by one officer that he let the dog go since he feared that the dog would bite him in the face or throat if he did so. Some of the officers eventually managed to grab the dog by its legs pulling it off the Applicant and locking it in a room in the house. The dog was subsequently destroyed.

The scarring injuries.

15. The attack by the pit-bull terriers resulted in horrific soft tissue injuries to the Applicant's legs – particularly his left leg – and as a result of which he has been left with disfiguring scarring which will be permanent. Photographs taken in the days immediately after the incident were introduced into evidence and have been viewed by the Court. Apart altogether from the scarring left by the dog bites, the Applicant has been left with what his consultant plastic reconstructive and hand surgeon, Mr. Regan, described as a muscle hernia where the muscle on the left calf has herniated out through the fascia. Whilst further surgery is not required for this it does constitute a cosmetic deformity presenting as a bulge of several centimetres in diameter on the lateral side of his left calf, though it is not the cause of any functional impairment.

Psychological injuries.

16. The Applicant also developed significant symptoms of post traumatic stress disorder including sleep disturbance, nightmares, fear, anxiety, and hyper-vigilance; all of which have been reported upon on behalf of the Applicant by Dr. McInerney. In her last report dated the 7th of July 2011 she described the Applicant as having almost made a full recovery with only mild anticipatory anxiety about unknown dogs and any situations of confrontation with them. In her view, prognosis for the future was good. In a report of the 18th of September 2008, Dr Devitt, consultant psychiatrist reporting on behalf of the Respondent, expressed the view that the Applicant had suffered significant psychological symptoms as a result of the incident including intrusive recollections, avoidance behaviour, and anxiety; all of which were consistent with a diagnosis of post traumatic stress disorder which he categorised as being moderate in degree. His prognosis for the Applicant accorded with that of Dr McInerney and in this regard he noted that the Applicant had previously suffered post traumatic stress symptomology following the assault of 1994 but from which he had essentially recovered over time.

17. In evidence, the Applicant accepted that although it had taken quite a considerable time to do so, he had almost fully recovered from his psychological injuries. He was still afraid of strange dogs or confrontational situations which he would always seek to avoid if possible.

18. The Applicant attended Helen Lawless, a psychotherapist, within two weeks of the assault and attended psychotherapy – albeit on an irregular basis – thereafter but from which he derived a benefit. Terrifying though the experience was and resulting as it did in a post traumatic stress disorder of moderate severity, the Applicant made an almost full recovery as prognosticated by both Dr. McInerney and Dr. Devitt.

The shoulder injury.

19. As previously alluded to earlier in this judgment, the Applicant had sustained an injury to his right shoulder in 1993 as a result of which he had to have an acromioplasty which was performed by Mr. Michael Stephens. The Applicant was experiencing problems in his right shoulder for some eighteen months prior to the date of the assault and for which he had attended Mr. Kenneth Karr, consultant orthopaedic surgeon. He reviewed the Applicant on the 1st of April 2008. An MRI scan of the right shoulder showed that the Applicant had a small full thickness tear of the supraspinatus tendon. He had surgery for this condition performed by Mr. Karr on the 21st of July 2008. It was accepted by the Applicant that he would most likely have had the surgery irrespective of his involvement in the assault. There had been some discussion about non surgical options with Mr. Karr. However, because his pre-assault symptomology had been worsened as a result of the assault, this confirmed his decision to go ahead with the surgery. The Applicant does not seek to hold the Respondent responsible for the costs associated with the surgery or, indeed, the necessity of having the surgery on his right shoulder carried out; he freely accepted that apart from an aggravation of the symptomology between the time of the assault and the date of the operation his right shoulder condition was not otherwise causally related to the assault.

The back injuries.

20. Subsequent to his discharge from hospital following the assault, the Applicant attended his GP, Dr Hanney. He prepared a detailed report for the assistance of the Court, dated the 27th of December 2013. This is the same doctor to whom Mr. Byrne had written following a medical review of the Applicant on the 19th of November 2008. The Applicant complained of persisting lower back pain when reviewed by Dr Hanney on the 8th of April 2009. He arranged for an MRI of the Applicant's back which disclosed a disc protrusion at the L4/L5 level. The Applicant was then seen by Mr. John McCabe, consultant orthopaedic surgeon, on the 15th of June 2009. He noted the Applicant's previous discectomy at the L5/S1 level, that the Applicant had had some increased back ache with outer buttock pain bilaterally in 2007 – which had been the subject of an MRI scan taken on the 12th of November – and that Mr. Byrne had performed another spinal manipulation procedure which was reported to have given the Applicant some reasonable relief of painful symptoms.

21. Whilst the scan carried out in November 2007 had disclosed evidence of degeneration in the L4/L5 and L5/S1 discs, the repeat MRI scan carried out on the 2nd of June 2009 also disclosed an L4/L5 disc prolapse compressing the right L5 nerve root. The Applicant underwent surgery on the 18th of August 2009 consisting of a right L4/L5 discectomy with decompression of the right L4 and L5

nerve roots, following which he subsequently reported a significant reduction of painful symptoms in his right leg. The Applicant had a significant aggravation of symptoms in 2011 for which he required active medical intervention including injection for pain relief.

22. In Mr. McCabe's opinion, the attack on the Applicant resulted in an exacerbation of the lower back symptoms. He thought it possible if not probable that the assault was responsible for causing the prolapse of the L4/L5 disc. In a report dated the 22nd of August 2011, Mr. McCabe considered that the letter from Mr. Byrne to the Applicant's GP would somewhat substantiate an exacerbation of a chronic lower back condition from the time of the assault in 2008.

23. Mr. Joe Sparks, consultant orthopaedic surgeon examining and reporting for the Respondent in May 2012, also expressed the opinion that the Applicant's pre-existing and intermittently symptomatic back problems were exacerbated by the assault and that it was likely that the Applicant would have intermittent symptoms in the future with the possibility that he would require either injective and/or surgical intervention. It was not possible for him to offer a percentage likelihood of the chance of further intervention being required or to give an accurate timing of that. In terms of causation, the pre-existing degenerative changes present before the assault would, however, be a contributory factor to be taken into account.

24. The opinion of Mr. John Byrne, as expressed in his reports dated the 21st of October 1997 and 17th of November 2000, was that the Applicant would have a permanent ongoing disability which would give him periods of back pain, spasm and intermittent leg pain as a consequence of the assault of 1994, but that it was unlikely that he would require any further surgery. This is significant in the context of the Applicant's claim in these proceedings that the exacerbation of his pre-existing back condition as a result of the assault of June 2008 has led not only to the surgery of 2009 with an exacerbation in 2011 but also to a position where at some indeterminate point in the future he is facing a real risk of further surgery; a risk which Mr. Sparks has also acknowledged.

Left hip injuries.

25. The Applicant suffered injuries to his left hip. In this regard, it is significant that during his hospital admission following the assault the Applicant had complained of pain in his left hip which had been X-rayed. He had some minor asymptomatic changes present. There was a very gradual onset of symptomatology in the years after the assault. The Applicant received some physiotherapy from Caroline Reynolds in 2011. Hip pain worsened considerably and she referred the Applicant to Mr Mulhall, consultant orthopaedic surgeon. He carried out hip surgery on the 12th of April 2012 from which the Applicant made a slow recovery which was assisted by physiotherapy and injection therapy. In the absence of any left hip symptoms pre-assault, Mr. Mulhall expressed the opinion in his report of the 26th of June 2008 that the Applicant's left hip injuries were causally related to the assault. The Applicant still suffers from intermittent symptoms in his left. The prognosis is that the Applicant will likely require a left hip arthroplasty in the next 10 to 20 years.

Causation issue and submissions.

26. The central question in issue between the parties concerns the causation of and responsibility for the deterioration in the Applicant's back condition to a point where further surgery was required.

27. It was submitted on behalf of the Applicant that, prior to the assault, his back condition, insofar as it was referable to the injuries sustained by him as a result of the 1994 assault, had settled to the point where he was left with intermittent stiffness, aches and pains, as well as occasional flare ups which he had learned to live with. Vocationally, he was able to discharge the policing duties required of him. The medical opinion available to the Applicant at the time as expressed by Mr. Byrne, who had operated on him in 1996 and had subsequently carried out a back manipulation in 2007, was that, although he was likely to experience ongoing symptomatology in his back for the foreseeable future, it was unlikely that he would require further back surgery.

28. The Applicant brought an application for compensation under the Acts in respect of the injuries sustained by him as a result of the 1994 assault. That application was heard and determined in 2001. An award was made which included compensation as to the future in respect of injuries to the Applicant's neck and back. When regard was had to the medical evidence in relation to the Applicant's neck injuries, it was submitted that the Court, in awarding the Applicant general damages for future pain and suffering, clearly proceeded on the basis that whilst the Applicant had some low grade back symptomatology, it was unlikely that there would be a deterioration such as would warrant further back surgery.

29. On behalf of the Respondent it was submitted that there was no sufficiently close temporal relationship between the assault and the deterioration in the Applicant's back symptomatology which ultimately led to the back surgery of 2009. In this regard it was to be noted that of the many visits by the Applicant to his GP throughout 2008 there was no record of the Applicant complaining about his back or complaining about any deterioration in his back. The first mention of any deterioration in symptomatology in the Applicant's GP notes and records only arose after receipt of a letter by the GP from Mr. Byrne in November 2008, and in which Mr. Byrne had referred to the Applicant as being in a lot of pain following an attack by two pit-bull terriers. Even at that stage Mr. Byrne was still expressing the view that he did not consider that there were any clinical indications for further scans or surgery. The Respondent contended that the subsequent development of increasingly painful symptomatology including sciatica as a result of another prolapsed disc was, on the balance of probabilities, more likely attributable to a progression of the degenerative changes which were clearly present in the Applicant's lumbar spine prior to the assault.

Decision on causation.

30. It is abundantly clear from a reading of the reports of Dr. McInerney, Dr. Devitt, Dr. Hannay, and Helen Lawless, as well as the report of Mr. Regan, that in the aftermath of the assault the Applicant was affected psychologically by what had happened to him and by the appearance of the healing scars which he disliked intensely. The psychological affects must be taken into consideration when examining the record of reporting on the Applicant's complaints.

31. The physical injuries were also the source of a lot of pain and discomfort. It is clear from his evidence that the Applicant had become accustomed to the discomfort aches and flare-ups arising from the condition in his back prior to the date of the assault giving rise to these proceedings. No doubt these intermittent symptoms continued after the assault and that being so it is hardly surprising, in my view, that there is no record of the Applicant complaining of these when he attended his GP in the months following the assault. Understandably, he complained of new injuries, psychological and physical, consequent on the attack by the dogs. It was these which his doctors recorded.

32. Commenting on the absence of any reference in the notes at Galway Hospital to a complaint by the Applicant of back pain at that time, Mr. McCabe, in his report of the 22nd of August 2011 observed that *"this could certainly be explained by the fact that this was not the predominant problem which caused him to attend plastic surgical colleagues."*

33. The Court is not solely dependent on the evidence of the Applicant in relation to a worsening of the symptomatology in relation to his back. Whatever about the records, Mr. McCabe had the Applicant's account of the worsening of his symptomatology corroborated

by Mr Regan, to whom he had spoken about the Applicant's injuries, complaints and treatment. Mr. Regan had advised Mr McCabe that the Applicant had complained about his back and hips when in hospital and that the Applicant had been x-rayed at the time. However, it was the content of the letter from Mr. Byrne of the 19th of November 2008 rather than the discussion with Mr. Regan that Mr. McCabe subsequently referred to as something which, *"...would somewhat substantiate an exacerbation of a chronic lower back condition from the time of the assault of 2008."*

34. Consistent with the Applicant's evidence that he had been getting on with his life, was able for his duties and was not overly troubled by such symptomology as he was experiencing in his back prior to the date of the assault, Mr. Byrne recorded in his letter of the 19th of November 2008 that, on review, the Applicant told him that he had been *"doing very well"* until he had had a fall at work when he was attacked by two pit-bull terriers. The Applicant also complained at that time of being in a lot of back pain, though Mr. Byrne did not think that to be true sciatica; physical examination showed restricted back movement.

35. Having carried out the initial surgery in 1996 and having more recently carried out a successful back manipulation prior to the date of the assault it is, in my view, entirely understandable that it would be to Mr. Byrne that the Applicant would recount the affect which he believed the assault had had on his pre existing back condition.

36. The Applicant was referred both to Mr. Byrne and Mr. McCabe when his condition worsened significantly in 2009. The reason for doing this, as it would appear from the GP's notes, was to increase the prospects of the Applicant having early surgery. This also explains why the Applicant became a patient of Mr. McCabe having previously been a patient of Mr. Byrne. Likewise, the Applicant would have had to make an appointment for the medical review by Mr. Byrne in November 2008.

Conclusion.

37. All of the medical reports prepared on behalf of the parties have been admitted into evidence without formal proof. Accepting as I do the evidence of the Applicant and that of Mr. McCabe and Mr. Byrne contained in their reports and in Mr. Byrne's letter of the 19th of November 2008, I am satisfied that, as a result of the assault, the Applicant suffered a deterioration in his pre-existing, intermittently-symptomatic back condition together with a prolapse of the disc at the L4/L5 level of his spine. That prolapse explains and is consistent with the subsequent development of the Applicant's right sided sciatica after the attack. Significantly, this disc was not present on the earlier scans of the Applicant's back, including the scan of the 12th of November 2007, whereas the scan of the 2nd of June 2009 showed a marked right sided L4/L5 disc prolapse which was compressing the right L5 nerve root.

38. This subsequent scan was taken after the opinion expressed by Mr. Byrne in his letter of the 19th of November 2008. It is quite clear from the letter of the 19th of November 2008 that the Applicant had made reference at the time of that medical review to sciatica-type symptoms. I infer this from the comment of Mr. Byrne that he did not consider the Applicant to be experiencing true sciatica. Although Mr. Byrne felt then that there was no indication for a further scan notwithstanding the Applicant's complaints, subsequent events establish that there was in fact a developing problem which was not only consistent with the Applicant's complaint that he was in a lot of back pain, but also with his complaint of radiculopathy into his right leg. Mr. McCabe, unlike Mr. Byrne, had the benefit of the MRI scan taken subsequently on the 2nd of June 2009.

39. Finally, if there was any question remaining about the probable cause of the deterioration in the Applicant's pre-existing back condition, Mr. Sparks expressed the opinion in his report of April 2012, against a disclosed background of the disc surgery in 2009, that *"...it is likely that Garda Leahy's pre-existing and intermittently symptomatic back problems were rendered symptomatic or exacerbated by the incident."*

40. Having due regard to this evidence and the findings of fact made, I am satisfied on the balance of probabilities and hold that the assault giving rise to these proceedings was responsible for exacerbating the Applicant's pre-existing degenerative and intermittently-symptomatic back condition. I am satisfied and hold that the exacerbation caused an increase in the Applicant's back symptomology and the development of the right sided sciatica consistent with a prolapse of the L4/L5 disc. Accordingly, the Applicant is entitled to be compensated for the pain and suffering attributable to the exacerbation, including the prolapsed disc, to date and the likely consequences of that in the future. Finally, I am satisfied that the probability is that the Applicant is likely to require further medical treatment for his back in the future and that there is a palpable risk that he may require manipulation of his back if not further surgery; the very risk which Mr. Byrne had thought unlikely as late as November 2008, but before the medical information – including the MRI scan of June 2nd – which became available to Mr. McCabe in 2009.

The other injuries.

41. I accept the evidence of the Applicant and that contained in the reports of Dr. McInerney, the GP Dr. Hannay, the psychologist Ms. Lawless and Dr. Devitt, that the Applicant suffered a post traumatic stress disorder as a result of the attack. Apart from an understandable fear in the presence of strange dogs, which still persists, and a reticence to become involved in confrontational situations, the Applicant has essentially made a full recovery. It is to his credit that despite the level of his increased back symptomology noted by Mr. Byrne in November 2008, that the Applicant resumed his duties at the end of following month.

42. So far as the Applicant's left hip injury is concerned, there is no causation issue between the parties. Interestingly enough, and consistent with the account of Mr. McCabe given in his first medical report that he had been told by Mr. Regan that the Applicant was complaining of pain in his hips and that x-rays had been taken after admission, the medical records show that the Applicant's left hip was indeed x-rayed after his admission to hospital.

43. The Applicant went on to develop significant symptomology in his hip which led to the surgery carried out by Professor Mulhall. In his view there was an underlying mild degeneration which was either exacerbated or accelerated. The Applicant was still significantly symptomatic when reviewed by Professor Mulhall in June 2013. The Applicant was asymptomatic in relation to his minor degenerative changes prior to the assault. The prognosis given by Professor Mulhall is that the Applicant will require a hip arthroplasty at some time in the next ten to twenty years. I accept that evidence and in doing so note that Mr. Sparks, when commenting on the report of Professor Mulhall in his report of April 2012, did not demur from the conclusions reached.

44. There is no evidence to support a conclusion, nor indeed has it been suggested, that the asymptomatic minor degenerative changes in the Applicant's left hip would have gone on to deteriorate to a point where hip surgery would be required.

45. From these findings and conclusions, the Applicant faces not only the risk of further manipulation or surgery in relation to his back at some point in the future but, also, the probability that he will require a left hip arthroplasty sometime in the next 10 to 20 years.

46. The bite injuries sustained by the Applicant have now healed. The Applicant has a significant bulge on the left lateral calf which Mr. Regan says is caused by the muscle herniating out through the fascia. This does not result in any functional impairment but it is cosmetically noticeable. In addition, the Applicant has multiple small scars on his left leg, two of which are particularly large; one

measuring four centimetres and the other nine centimetres in length and consistent with the injuries caused by the dog bites. The Applicant also has some well-healed scarring where he was bitten albeit to a lesser extent on the right leg. I've had an opportunity of viewing these scars. They are well healed, pale in colour but clearly noticeable. They are permanent but unlikely to be the source of any discomfort or other problems to the Applicant other than cosmetically. Finally, the Applicant also has operation scars about which, to his credit, he does not complain.

47. So far as the right shoulder injury and the subsequent surgery in 2008 is concerned, the Applicant accepts that apart from a worsening of symptomology which developed between the assault and the surgery, the Respondent has no liability to compensate him in these proceedings .

Assessment of compensation.

48. The assessment of compensation to be awarded to the Applicant under the Acts in respect of pain and suffering to date and pain and suffering into the future, as well as for pecuniary losses, is to be assessed in accordance with the well-settled principles of Tort law applicable to the assessment of general damages in actions for personal injury. See *Carey and Ors v. Minister for Finance* [2010] IEHC 247 and *Murphy v. the Minister for Public Expenditure and Reform* (unreported) delivered 21st July 2015.

49. The Applicant's case is complicated by the presence of previous injuries and their consequences, sustained in the course of his duty including injuries to his lower back and psychological sequelae which were the subject matter of a previous application brought under the Acts by the Applicant and for which the Applicant was awarded compensation in 2001. Particulars of this have been disclosed to the Court.

50. The liability of the Respondent to compensate the Applicant for the back injury is confined to the exacerbation or aggravation of the pre-existing condition and symptomology from which he suffered at the time of the assault; such exacerbation including the development of the prolapsed disc for which he required surgery. Similarly, the liability of the Respondent in respect of the right shoulder injury is confined to the worsening of symptoms between the assault and the surgery. The Respondent is, however, liable to compensate the Applicant in respect of the left hip, dog bite and psychological injuries which are attributable to the assault of June 2008.

51. Applying the legal principles to the assessment of compensation in respect of the injuries and loss for which the Respondent is liable under the Acts, the Court considers that a fair and reasonable sum for pain and suffering to date is €120,000 and, in respect of future pain and suffering, the sum of €65,000, added to the which will be the sum of €17,505.44 in respect of agreed special damages together with the sum in respect of the Applicant's claim for loss of earnings attributable to the injuries caused by the assault and which the parties have agreed is to be advised to the court. And the Court will so order.