Judicial Review

R. *v.* Criminal Injuries Compensation Board, *ex p.* A

CO/1253/90 February 20, 1992

McCullough J.

Contempt of Court Act 1981, s.11—Criminal Injuries Compensation Scheme, para. 4—whether reasons given for refusal to waive three year time limit unreasonable—order prohibiting publication of information calculated to lead to identification of applicant.

In December 1989, the applicant applied to the Criminal Injuries Compensation Board to obtain compensation for sexual offences allegedly committed against her and consequential psychological damage. She alleged that her stepfather had committed such offences against her during the two years or so up to Christmas 1984.

Statements made by the applicant showed that while she was at school she had wanted to and had been able to put her experiences behind her, more or less, and to get on with life, but at university she had had more time to reflect. As to why she had not previously asked anybody to claim criminal injury compensation, she said that one of the main reasons was lack of knowledge that the scheme applied to her circumstances. Also she had not wanted to face her stepfather in court. Another reason, she supposed, was because she had been able to shut the assaults out of her mind. In none of the statements submitted with her application did she say that the reason was the fact that she did not think her symptoms were severe enough to justify making a claim prior to consulting her new solicitor in October 1988. Her statements suggested that the severe symptoms, which prompted her to seek medical advice and brought about her referral to the consultant and ultimately led to her giving up her course, only developed after she had instructed her present solicitor and had expressed a desire to claim compensation.

Under paragraph 4 of the Criminal Injuries Compensation Scheme, applications for compensation will only be entertained if made within three years of the incident giving rise to the injury except that the Board may, in exceptional cases, waive this requirement. As the applicant's claim related to incidents alleged to have happened between seven and five years before her application, she asked that the time limit be waived. The Board refused.

The applicant applied for judicial review of the Board's decision. In an affidavit, the Chairman of the Board amplified the reasons for his decision:

> "I was aware that between January 1985 and October 1988, when Miss A became 21, and thereafter up until the date of her application . . . she had the advantage of being represented by two firms of solicitors and had been the client of a local authority. At no stage during this period of limitation or at any time prior to December 1989 was an

application submitted to the Board. I was forced to conclude that this was because (a) Miss A did not wish to make an application; (b) was advised not to make an application or (c) was not advised that such an application could and should be made. . . . Having carefully considered the circumstances in which this application came to be made, I decided that it was not one which I should treat as exceptional."

Held, granting the application:

(1) No one considering the papers submitted to the Board could reasonably have said that he was forced to the conclusion that there were only three possibilities, namely that the applicant had not applied before December 1989 either because she did not wish to make an application, or because she had been advised not to make one, or because she had not been so advised that an application should be made.

There was a further manifest possibility which could not reasonably have been dismissed on a careful reading of the material submitted to the Board. Indeed, it was the only reasonable inference to draw. It was that the solicitor whom she had consulted when she was 17 years old saw no reason in the circumstances to tell her about the criminal injuries compensation scheme and did not do so. Nor did the local authority from whom she sought assistance with housing at the same time. Thereafter she had done what seemed to her to be the sensible thing; she tried to put it all out of her mind and to get on with her life. Until 1988 she did not know about the possibility of making a claim. This accounted for the passing of the time during her minority and during the following three years. In those three years no solicitor had acted for her. As for the final 14 months, any concern of the Chairman that this period was somewhat too long was understandable, but there was no indication that his decision would have been otherwise had the application been made, for example, early in 1989. In any event, having regard to the history which the solicitor had set out in the document accompanying his letter, the only fair thing to do if the Chairman had been minded to refuse the application on this ground alone, would have been to ask the solicitor to account in fuller detail for the passing of those 14 months. But the applicant's application to the Board did not fail because she had not sought legal advice between October 1985 (her eighteenth birthday) and October 1988. It failed essentially because the Chairman looked at the whole period in its entirety and felt driven to conclude that there were only three possible explanations for her not having made a claim before she did. This clear defect in the reasoning for rejecting the applicant's application flawed the decision and it must be quashed.

(2) Directions were given under section 11 of the Contempt of Court Act 1981 prohibiting the publication of the applicant's name, address or any particulars calculated to lead to her identification. In the present case there were two people to consider: the applicant and her stepfather. The stepfather had neither been convicted nor charged nor even, so far as was known, interviewed by the police. One's sense of fairness to him may be offended by the publication of anything calculated to lead to his identity, but that did not entitle the court to make an order prohibiting any mention of his name. The fact that the order would incidentally protect the stepfather was neither here nor there. It was a bonus which accorded with the sense of fairness of all those who had been involved in these proceedings.

With the applicant herself, however, the position was different. Her psychiatric and psychological interests made it right to withhold her name. The fact that her surname had already appeared in the published court list for two days did not inhibit the making of this order.

Cases considered: *Attorney-General* v. *Leveller Magazine Ltd.* [1979] A.C. 440; *H.* v. *Ministry of Defence* [1991] 2 All E.R. 834; *R.* v. *Arundel Justices, ex p. Westminster Press Ltd.* [1985] 1 W.L.R. 708.

S. Sedley Q.C. and *S. Maidment* (John Howell & Co., Sheffield) for the applicant; *R. Ter Haar* (Treasury Solicitor) for the respondent.

A. P. Le S.