

**SNAPSHOTS**

## High Court revokes special leave to consider employer's duty of care during workplace investigation

*Govier v The Uniting Church in Australia Property Trust (QLD)*

[Link to decision](#)

The worker was employed as a disability care services provider who suffered physical and psychological injuries when she was attacked by a co-worker in December 2009. The worker was hospitalised as a result of her injuries and her employer commenced an investigation into the incident the same day. The employer issued a letter to the worker the next day which required her to attend an interview to discuss the incident and informing her that she would be put off work on full pay until the investigation was completed.

The worker did not attend the interview. She presented a medical certificate stating that she was unfit for work. Approximately two weeks later, the employer sent another letter to the worker that was critical of her conduct during the incident and required her to show cause as to why her employment should not be terminated. The worker did not respond and did not return to work.

The worker developed chronic post-traumatic stress disorder and a depressive disorder. She sued her employer in negligence, claiming that it had breached the duty of care that it owed to her in the way that it had handled the investigation. The matter was heard in the District Court, Queensland where a judge held that although the letters sent by the employer had caused distress and aggravated the worker's psychological injury, the employer did not have a duty of care to avoid or minimise the risk of psychological harm while investigating a workplace incident.

The worker appealed the decision and the Queensland Court of Appeal unanimously confirmed the decision of the trial judge.

The worker then applied for and was granted special leave by the High Court to appeal from the decision of the Queensland Court of Appeal.

The matter came before the High Court on 13 April 2018 where the issue for consideration was framed in terms of whether the employer's duty of care to exercise the power to conduct an investigation is sourced as an implied contractual obligation or is a tortious obligation or both.

As the hearing proceeded, the absence of the employment contract as an exhibit became increasingly problematic given that the nature of the duty could not be properly considered without understanding the contractual framework.

Following a short adjournment, the Court resumed and stated (per Bell J) that: 'The contract of employment is not in evidence. In the course of the hearing, its centrality to the determination of the issues on which special leave to appeal was granted has emerged. It follows that the proceeding is not a suitable occasion on which to determine those issues.'

The Court revoked special leave so the matter did not proceed effectively leaving the final determination with the decision by the Queensland Court of Appeal.

Decision Date: 13 April 2018

Matter Number: B51/2017

Decision Maker: High Court