

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



Brady v Moore & Anor (Approved) [2022] IEHC 420

High Court of Ireland, Stack J, 5 July 2022

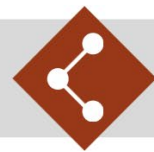
An unincorporated association member injured while volunteering for the association sought to recover damages under occupier's liability.

Key words: Unincorporated association, Ireland, Club, Volunteer, Visitor, Occupiers' Liability

1. St. Mary's Donore GAA Club (the Club) is an unincorporated association.
2. The Committee of the Club decided to refurbish their one-storey clubhouse. They thought that the roof slates might be suitable for salvage and did so themselves with volunteers before a contractor started refurbishment works.
3. Brady was a member of the Club and also a committee member.
4. Brady volunteered to help remove the roof slates and fell through the roof onto the ground. There was no scaffold and no health and safety precautions of any sort.
5. Brady suffered serious physical injuries as a result of the fall, as well as anxiety and depression after the accident, and was unable to work.
6. The Club's insurance did not cover any claim by Brady.
7. Brady sued other members as representatives of the Club, based on the claim that he was a visitor within the meaning of the [Occupiers' Liability Act, 1995](#), and that the Club consequently owed him a duty of care pursuant to s. 3 of that Act.
8. The Club was unrepresented in Court, but members of the Club appeared, saying that they did not want to dispute anything Brady said, were grateful for his contribution to the Club over the years, and that they acknowledged the seriousness of his injuries.
9. The Court noted that it appeared that the Club itself was in occupation of the lands and clubhouse.

10. The Court identified that the problem for Brady was, that as a member of the Club, he himself was, along with the other members, the “occupier” for the purposes of the Act. By the authority of *Murphy v. Roche* (No. 2) [1987] I.R. 656, a club, as an unincorporated association of persons, cannot be sued by one of its members. A person cannot sue an unincorporated club of which he or she is a member because one cannot sue oneself.
11. The Court noted that the cases in England and Wales had developed a less restrictive approach, but that it ought not to depart from established precedent.
12. The Court also noted this was the situation in Northern Ireland found in *McKinley v. Montgomery* [1993] N.I. 93.
13. The Court dismissed the claim as Brady was not a visitor.

IMPLICATIONS



The GAA is a community-based volunteer organisation promoting Gaelic games, culture and lifelong participation across Ireland with many local clubs. The Association’s basic aim is to “strengthen the National Identity” through its primary purpose to promote and control the National games of Hurling, Gaelic Football, Handball and Rounders, refer <https://www.gaa.ie>.

The Court noted (at [39]):

While the English and Northern Irish caselaw therefore leaves open the possibility that there may be cases in which, based on special circumstances falling outside the usual activities of a members’ club and the usual activities of Committee members, liability can be established on general *Donoghue v. Stevenson* grounds, in imposing any such liability the courts would, I think, be bound in considering whether a duty of care existed or was breached to have regard for the enormous social benefits of members’ clubs across a wide variety of activities, enhancing the lives of people of all ages from young children to the very elderly. If liability were too readily imposed, people who otherwise volunteer their time might be dissuaded from doing so and this would be damaging to the social life and leisure pursuits of a very large proportion of the population.

And further (at [41]):

Imposition of a duty of care in these circumstances would result in a chilling effect on a wide range of social and leisure pursuits, enjoyed by a very large proportion of the population. Unfortunately, there are examples, of which this is one, where the incident is regarded in law as an accident for which no one is responsible.

The Court appeared not to consider [McGroarty v Kilcullen](#) [2021] IEHC 679 that permitted a volunteer to sue their unincorporated golf club for negligence during building works: see <https://eprints.qut.edu.au/226135>

A legal issue raised in this case was permitting a person to sue for breach of an obligation said to be owed to him by the members of an association of which he is also a member (in Australia, refer *Healey v Ballarat East Bowling Club* [1961] V.R. 206).

VIEW THE CASE



This case may be viewed at <https://www.bailii.org/ie/cases/IEHC/2022/2022IEHC420.html>

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Author: McGregor-Lowndes, Myles & Hannah, Frances M.

Email: acpns@qut.edu.au

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