PSYCHIATRIC INJURY AND ASSAULT
THE IMMEDIATE EFFECT OF R. v. IRELAND, R. v. BURSTOW

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The Court of Appeal decision in R. v. Ireland\textsuperscript{1} arose against a backdrop of fierce controversy over the measures available to punish stalkers, culminating in the enactment of the Protection from Harassment Act, 1997. This Act tackles harassment at the stage where the victim fears for his/her safety.\textsuperscript{2} Those cases of stalking which have been prosecuted under the Offences Against the Person Act 1861 (OAPA) have actually resulted in psychiatric injury. One such case, R v. Ireland, involved an appeal against a conviction under section 47 of the OAPA for Assault Occasioning Actual Bodily Harm. The charges arose as a result of the appellant making a large number of unwanted telephone calls to three women. When the women answered the telephone there was silence. Each of the complainants was examined by a psychiatrist who said in his witness statement that the result of the repeated telephone calls was that each of them suffered significant psychological symptoms as a result of the calls. Those symptoms included palpitations, difficulty in breathing, cold sweats, anxiety, inability to sleep, tearfulness, headaches, stress and a nervous skin condition. The appellant pleaded guilty to three counts of Assault Occasioning Actual Bodily Harm and appealed his conviction on the ground that the making of a telephone call or series of telephone calls, followed by silence, did not constitute an assault for the purposes of section 47. This argument was rejected by the Court of Appeal. The House of Lords also dismissed Ireland’s appeal but offered a very different exposition of the law on assault.

An assault is traditionally understood to be an act which causes another person to apprehend the infliction of immediate, unlawful force

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\textsuperscript{1}[1996] 2 Cr.App.R. 426.
\textsuperscript{2} Sections 1 and 2 prohibit pursuing a course of conduct which amounts to harassment of another and which the defendant knows or ought to know amounts to harassment of the other. Section 4(1) prohibits putting people in fear of violence.
on his or her person. However the Court of Appeal in Ireland appears to have chosen to regard assault as involving more than mere fear of immediate force and as embracing psychiatric injuries. By confirming that section 47 embraces psychiatric injury, the Court of Appeal appears to have gone further than earlier cases which have construed the occasioning of psychiatric injury as a species of *actual bodily harm*. The possibility of a "psychological assault" arises from what may be viewed as the Court's repudiation of the requirement of immediacy in assault and from its *prima facie* misstatement of the *mens rea* of section 47, both of which are discussed below. The alternative interpretation is that the Court of Appeal simply glossed over the requirement of immediacy in assault in order to ensure the conviction of defendants who occasion psychiatric injury over the telephone and that it mis-stated the *mens rea* required for a conviction under section 47 of the OAPA.

**Immediacy and Assault**

The requirement of immediacy is firmly entrenched in the law of assault. In 1830 in the civil case of *Stephens v. Myers*, Tindal C.J in his summing up, said:

> It is not every threat, when there is no actual personal violence, that constitutes an assault, there must, in all cases, be the means of carrying the threat into effect. The question I shall leave to you will be, whether the defendant was advancing at the time, in a threatening attitude, to strike the chairman, so that his blow would almost immediately have reached the chairman, if he had not been stopped...If he was so advancing, that, within a second or two of time, he would have reached the plaintiff, it seems to me it is an assault in law.

This requirement was stated for criminal cases by Lord Coleridge C.J. in *Halliday* when he said "If a man creates in another's mind an immediate sense of danger which causes such person to try to escape, and in doing so he injures himself, the person who creates such a state of mind is responsible for the injuries which result". *Halliday* was

4 *Supra* n.3.
6 4 Car. & P. 350.
7 *Supra* n.6.
8 (1889) 61 L.T. 701.