CITATION:	*Bohlin v Northern Territory of Australia & Miller* [2002] NTMC 010
PARTIES:	ROSS OSCAR CHARLES BOHLIN v NORTHERN TERRITORY OF AUSTRALIA and BRUCE EDWIN MILLER
TITLE OF COURT:	Local Court
JURISDICTION:	Crimes (Victims Assistance) Act
FILE NO(s):	20110406
DELIVERED ON:	5 April 2002
DELIVERED AT:	Darwin
HEARING DATE(s):	21 February 2002
DECISION OF	Mr V M Luppino SM

CATCHWORDS:

Crimes Victims Assistance – Costs – Whether Local Court has power to make an order for costs in favour of the second respondent against the applicant and/or the first respondent – Whether Local Court has power to make an order for costs in the absence of the issue of an assistance certificate.

Crimes (*Victims Assistance Act*) ss 4(1), 6, 7, 8(10).
Local Court Act s 31

Solicitor for the Northern Territory v Moketarinja (1996) 5 NTLR 206

REPRESENTATION:

Counsel:	
Applicant :	Mr Hutton
First Respondent:	Mr Priestly
Second Respondent:	Mr Howse
Solicitors:	
Applicant :	Hunt & Hunt
First Respondent:	Priestleys
Second Respondent:	NAALAS
Judgment category classification:	B
Judgment ID number:	[2002] NTMC010
Number of paragraphs:	17

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20110406

BETWEEN:

ROSS OSCAR CHARLES BOHLIN
Applicant

AND:

NORTHERN TERRITORY OF AUSTRALIA
First Respondent

AND

BRUCE EDWIN MILLER
Second Respondent

REASONS FOR DECISION

(Delivered 5 April 2002)

Mr MR V LUPPINO SM:

1. This was an application for an order for costs consequent upon the discontinuance of an application for an assistance certificate under the Crimes (Victims Assistance) Act ("the Act"). The order is sought by the second respondent against both the applicant and the first respondent.

2. The hearing before me was on a preliminary issue. The basis of the claim for costs is that the application for an assistance certificate was made in bad faith. In this regard the second respondent makes a number of allegations against the applicant. Firstly, he alleges that the applicant, a member of the police force, colluded with other members of the police force in the prosecution of this claim. Secondly he alleges that the applicant gave perjured evidence against the second respondent. Finally he alleges that the applicant prosecuted the claim knowing that the second respondent was innocent of the charge.

3. The issue before me is whether this Court has the power to award costs in favour of the second respondent assuming that the second respondent establishes that the applicant acted in bad faith.

4. The ambit of the power to award costs in applications for an assistance certificate under the Act was the subject of the decision in *Solicitor for the Northern Territory v Moketarinja* (1996) 5 NTLR 206 ("Moketarinja"). In that case Mildren J considered the interrelationship of s 8(10) of the Act (which he found was the only section of the Act which made provision for costs in applications for assistance certificates) and s 31 of the Local Court Act. His Honour held that the legislative intention was that s 31 of the Local Court Act was not to apply in relation to applications for an assistance certificate under the Act.

5. The second respondent argues that in cases of proven bad faith on the part of the applicant that Moketarinja can and should be distinguished. It is argued that there is then scope for s 31 of the Local Court Act to apply giving this Court the usual general power to award costs.

6. Accepting that to be the case for the moment, I note that the first respondent must be made a party to a claim (refer ss 6 and 7 of the Act). The first respondent is essentially in the same position as a co-defendant in a civil matter. If I were to find that s 31 of the Local Court Act does apply, then it is my view that an order for costs against the first respondent in favour of the second respondent would be inappropriate in any event. The reason for this is that the second respondent's complaint is against the applicant only and not the first respondent. There is no allegation of any impropriety at all on the part of the first respondent. Accordingly I can find no reason in any event to justify an order for costs in favour of the second respondent against the first respondent.

7. I now turn to consider whether the second respondent can in any event succeed in the claim for costs against the applicant assuming that bad faith can be established.

8. The relevant section of the Act is s 8(10) which provides as follows:

> 8(10) Where the Court issues an assistance certificate it may make such order as to costs and disbursements as it thinks fit.

9. Section 31(1) of the Local Court Act is also relevant and this provides as follows:

> 31(1) Subject to this or any other Act or the Rules, the costs of and incidental to proceedings in the Court are in the Court's discretion and it has full power to determine by whom, to whom and to what extent the costs are to be paid.

10. Moketarinja dealt with the issue of costs as between the applicant for an assistance certificate and the Northern Territory of Australia as the first respondent. In that case the applicant had failed to attend on the date appointed for the hearing. The first respondent successfully sought an order for costs as a result of that on the basis that it claimed the Local Court had the power to make an order for costs pursuant to s 31 of the Local Court Act. On appeal to the Supreme Court, Mildren J decided that whether or not there was a power to award costs in favour of a party other that than the applicant required determination of the legislature's intention as regards the interrelationship of s 8(10) of the Act and s 31 of the Local Court Act. He decided that the legislature's intention was that s 31 was not to apply to awards of costs for claims under the Act. Specifically he ruled that awards of costs in relation to applications for assistance certificates may be made only in favour of the applicant and only then on condition that an assistance certificate has issued.

11. At page 209 his Honour said;

> "I consider that the intention of the legislature is that an award of cost may be made in relation to an application for an assistance certificate under s 5 of the Act only in favour of the applicant and that the legislature did not intend there would be a power to award costs in favour of the Crown or in favour of an alleged offender"

12. His Honour came to this conclusion following a consideration of the sections of the Act and by an application of the maxim *generalia specialibus non*

derogant to resolve the apparent conflict between s 31 of the *Local Court Act* and s 8(10) of the Act, which sections he considered were otherwise irreconcilable. This is apparent, also at page 209, where his Honour said;

> "Section 8(10) of the Crimes (Victims Assistance) Act does not empower the Court, on the face of it's language, to make any order for costs until such time as a certificate is issued. That appears to be quite contrary to the general power contained in s 31 of the Local Court Act."

13. The argument of the second respondent is that, in cases of proven bad faith on the part of the applicant, Moketarinja can be distinguished, and in that event it could no longer be said that s 8(10) of the *Crimes (Victims Assistance) Act* and s 31 of the Local Court Act are irreconcilable. It follows, it was argued, that consequently this Court then can utilise the general power in s 31 of the Local Court Act to make an order for costs. How this follows from that was not made clear but does not matter in any event.

14. With respect I cannot agree with this submission. The decision of Mildren J in Moketarinja was based on what his Honour found and held to be the intention of the legislature namely that s 31 was not intended to apply to applications for assistance certificates and consequently pursuant to s 8(10) of the Act, an order for costs in such proceedings may be made only in favour of the applicant and only then upon the issue of an assistance certificate. When the ratio of that decision is analysed in this light, the argument that Moketarinja can be distinguished cannot be maintained. It would be more correct to put the argument on the basis that had his Honour in Moketarinja had cause to consider the issue of bad faith and to take that into account, he would have decided the legislature's intention differently. I do not think that is the case in any event, however this serves only to emphasise that the argument of the second respondent is, with respect, misconceived. Moketarinja decided that s 31 of the Local Court Act does not apply to applications under the Act, not because of the different facts of that case but because of the presumed legislative intent determined after a careful consideration of the wording of the Act as a whole. To arrive at the conclusion argued for by the second respondent accordingly requires not that

Moketarinja be distinguished, but that it be overruled on the basis that had the considerations relevant in the current case been considered by the Court in Moketarinja, a different intention would have been attributed to the legislature. Logically once an intention has been attributed to the legislature as his Honour has done in Moketarinja, then that must apply to all cases. Once this Court accepts the intention of the legislature as held in Moketarinja, it is nonsense to suggest that the intention can vary whether bad faith is shown on the part of the applicant.

15. I accept that this can operate quite unjustly in the present case, assuming the second respondent can establish a lack of bona fides on the part of the applicant. That however is not a relevant consideration having regard to the provisions of the Act and the intention of the legislature as determined in Moketarinja. I can only presume that the legislature had regard to all the consequences before passing the Act in the form that it did. Possibly the availability of the existence of other remedies available to the second respondent had a bearing on this.

16. It is my view that there is no power in this Court under any circumstances to make an order for costs in favour of the second respondent in an application under the Act and the claim for costs is dismissed.

17. It follows from the decision in Moketarinja that no assistance certificate having been issued, there is no power in this Court to make any order in favour of the applicant or the first respondent in relation to the costs of this application.

Dated this 5th day of April 2002.

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V M LUPPINO
STIPENDIARY MAGISTRATE