CITATION:	*Yaxley v Northern Territory of Australia and Collins* [2002] NTMC 036
PARTIES:	CASSANDRA MAY YAXLEY v NORTHERN TERRITORY OF AUSTRALIA & JOSEPH PHILLIP COLLINS
TITLE OF COURT:	LOCAL COURT
JURISDICTION:	CRIMES (VICTIMS ASSISTANCE) ACT
FILE NO(s):	20201991
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JUDGMENT OF:	V M LUPPINO SM

CATCHWORDS:

Crimes (Victims Assistance) – Meaning of "injury" in s 4 of the Act – Whether the injury is suffered as a result of an offence - Whether claim is excluded as an injury arising from loss of or damage to property – Meaning of "pecuniary loss" – Whether locks installed as additional security are pecuniary loss within the meaning of the Act - Assessment of mental injury – Whether apportionment necessary in relation to pre-existing contributing condition.

Crimes (Victims Assistance) Act 1983 ss 4, 5(1), 9(1).

Woodroofe v Northern Territory of Australia (2000) 10 NTLR 52; *Hillcoat v Northern Territory of Australia and Concepcion* [2001] NTSC 114; *Fagan v The Crimes Compensation Tribunal* (1982) 150 CLR 666; *Chabrel v Northern Territory of Australia and Mills* (1999) 9 NTLR 1; *March v E & MH Stramare Pty Ltd* (1991) 171 CLR 506; *Rigby v Solicitor for the Northern Territory* (1991) 105 FLR 48; *L M P v Collins* (1993) 112 FLR 289

REPRESENTATION:

Counsel:

Applicant	Ms Griffiths
First Respondent:	Ms Truman
Second Respondent	Not represented

Solicitors:

Applicant:	Priestley Walsh
First Respondent:	Halfpennys
Second Respondent	Not represented.

Judgment category classification:	B
Judgment ID number:	[2002] NTMC 036
Number of paragraphs:	43

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

No. 20201991

BETWEEN:

CASSANDRA MAY YAXLEY
Applicant

AND:

NORTHERN TERRITORY OF AUSTRALIA
First Respondent

JOSEPH PHILLIP COLLINS
Second Respondent

REASONS FOR JUDGMENT

(Delivered 20 September 2002)

Mr V M LUPPINO SM:

1. This is an application under the *Crimes (Victims Assistance) A*ct 1983 ("the Act"). The background is that the applicant, with her husband and children, were residents of a house property in Anula. On 16 January 2002 the second respondent unlawfully entered those premises. At that time the applicant and her husband were in the backyard. The offence was committed during night time hours. The applicant heard a noise and asked her husband to check to see that the house had been locked. While the applicant's husband was doing so, he observed someone fleeing from the house. He pursued and apprehended and restrained the person. He subsequently brought the person back to the house where that person was restrained on the floor of one of the rooms of the house until the police arrived.

2. The first the applicant saw of the intruder was when her husband brought him into the house and restrained him pending the arrival of police. During the pursuit the applicant had heard someone calling for help but she did not identify the voice as being that of her husband.

3. Unbeknown to the applicant at the time, the intruder was in possession of a folding knife and a box cutter knife. Those knives however had not been used nor produced at any time during the unlawful entry, during the pursuit by the applicant's husband or in the immediate aftermath.

4. The applicant's husband suffered some injuries in the course of apprehending and restraining the intruder. The applicant's husband made a separate claim under the Act in relation to those injuries and that separate claim was the subject of an assistance certificate.

5. The applicant claims that the events of that night caused increased anxiety. Her husband is a shift worker. In an attempt to alleviate the additional anxiety on the part of the applicant, new deadlocks were fitted to certain of the doors of the house, whether main doors or security doors was not revealed in the evidence. Nor did I have any evidence of the nature of the locks that had been fitted to the same doors, or to the security doors, prior to the unlawful entry. I also note that the intruder gained entry by opening a closed but unlocked security door (Exhibit No. 1). Deadlocks have the effect of requiring the use of keys to unlock, whether from the outside or the inside. On their own the deadlock might not provide any more additional security to prevent unlawful entry than an ordinary lock or than the actual lock fitted to the doors of the applicant's house before the unlawful entry. If the new deadlocks were fitted to security doors, then it is difficult to see, without actual evidence as to the nature of those locks, how security was increased.

6. There were no physical injuries suffered by the applicant. The applicant essentially claimed mental injury. In support of her claim, a report of a

consultant psychiatrist, Dr Kenny, dated 28th March 2002 was tendered by consent. That following is apparent from that report:

(1) The report was prepared following an interview held approximately two months after the incident and a further six months have elapsed to the date of hearing.

(2) Dr Kenny considered that there were two prior incidents in the applicant's history which were relevant to her overall condition.

(3) The first prior incident occurred in October of 2001 when the applicant's handbag was stolen from her parked car.

(4) The second incident occurred some time in November 2001 when an apparently young offender had stolen the applicant's handbag (and that of a girlfriend) which had been left on a kitchen bench in the applicant's house.

(5) Dr Kenny noted what was described to him as "an emotional problem at work" which occurred "some eight years or so ago". That resulted in the applicant becoming over-stressed and having had some six months off.

(6) Dr Kenny was of the view that the two prior incidents described (October and November 2001) "have to be regarded as contributing to her reaction to this one" and that the incident the subject of the claim "is the one that was most distressing to her".

(7) Dr Kenny expressed the view that as the current incident was the third in a period of three to four months that he would have to acknowledge that three such incidents would "have contributed to making her somewhat more insecure in the local area".

(8) Dr Kenny accepted the history given to him by the applicant. He reported (and accepted) that she feels insecure when she is in the

house on her own, less secure in the house generally, is less trusting of young part Aboriginal males (the intruder was a young part Aboriginal male), feels tremulous and jittery.

(9) Dr Kenny diagnosed an acute stress disorder which he said could be best described as "a situational anxiety state or adjustment disorder in response to the incidents and the environment in which the incidents occurred." (my emphasis)

(10) He considered that the anxiety disturbance was of a significant level and although it was improving, it was not the sort of condition which would respond to any treatment. In fact, he thought treatment might be counter-productive. He considered that the applicant would be left with a minor residual situational anxiety state.

(11) In terms of a prognosis Dr Kenny was of the view that the condition would progressively and gradually improve but he added that "she is likely to be left always with some sense of anxiety in this environment and when confronted with certain sorts of situations".

7. The issues which arise in this claim are:

(1) Whether the condition claimed to be suffered by the applicant can be the subject of an assistance certificate under the Act. This in turn depends on whether the condition suffered is an "injury" as that term is defined in section 4 of the Act. This in turn ties in with determination of whether the claimed injury is suffered "…as a result of…" an offence within section 5(1) of the Act;

(2) If so, then whether the cost of the deadlocks referred to in paragraph 5 above can be taken into account in assessing the

amount of an assistance certificate having regard to sections 9(1)(a) and 9(1)(d) of the Act;

(3) If the applicant is entitled to an assistance certificate, how is the amount to be assessed having regard to the two prior incidents described by Dr Kenny as contributing to the applicant's anxiety state.

8. I set out the relevant sections of the Act as they relate to the current application.

> 4. Interpretation
>
> (1) In this Act, unless the contrary intention appears -
>
> "applicant" means a person who makes an application under section 5;
>
> "injury" means bodily harm, mental injury, pregnancy, mental shock or nervous shock but does not include an injury arising from the loss of or damage to property (which loss or damage is the result of an offence relating to that property);
>
> "offence" means an offence, whether indictable or not, committed by one or more persons which results in injury to another person;
>
> "victim" means a person who is injured or dies as the result of the commission of an offence by another person.
>
> 5. Application for assistance certificate
>
> (1) A victim or, where the victim is an infant or the Court is satisfied the victim, because of injury, disease or physical or mental infirmity, is not capable of managing his or her affairs in relation to the application, a person who, in the opinion of the Court, is a suitable person to represent the interests of a victim, may, within 12 months after the date of the offence, apply to a Court for an assistance certificate in respect of the injury suffered by him as a result of that offence.

9. Principles for assessment of assistance

(1) In assessing the amount of assistance to be specified in an assistance certificate in respect of an application under section 5(1) or (2), the Court may, subject to this Act include an amount in respect of -

(a) expenses actually incurred as a result of the injury suffered by, or the death of, the victim;

(b) pecuniary loss to the victim as a result of his total or partial incapacity for work;

(c) pecuniary loss to the dependants of the victim as a result of his death;

(d) any other pecuniary loss arising in consequence of injury suffered by, or the death of, the victim and any other expenses reasonably so incurred;

(e) pain and suffering of the victim;

(f) mental distress of the victim;

(g) loss of the amenities of life by the victim;

(h) loss of expectation of life by the victim; and

(j) loss of, or damage to, the clothing of the victim being worn at the time of the commission of the offence.

(2) For the purposes of subsection (1)(f), mental distress does not include grief.

11. Circumstances in which compensation not payable

In assessing the amount of compensation to be specified in a compensation certificate, the Court shall not include an amount -

(a) by way of exemplary, punitive or aggravated damages;

(b) in respect of loss or damage to personal property other than property referred to in section 9(j); or

(c) where the offence directly resulted in the victim becoming pregnant and the victim gives birth to a child - in respect of

the maintenance of the child.

9. In terms of the approach to interpretation of the Act, it was observed by the Court of Appeal in *Woodruffe v Northern Territory of Australia* (2000) 10 NTLR 52 ("Woodroofe"), that the Act creates a statutory scheme to provide assistance to "certain persons injured or who suffer grief as a result of criminal acts". The purpose underlying the Act is to provide assistance to victims of crime. The Act permits a person who is injured as a result of the commission of an offence by another person to obtain an assistance certificate. That certificate requires the Northern Territory to pay to the recipient the amount specified therein by way of assistance for the injuries suffered by the victim. The Northern Territory then has certain recovery rights against the perpetrator of the criminal conduct. The Act is remedial and therefore should be construed beneficially. As the Court of Appeal said at paragraph 28, the Act should be given "a construction so as to give the most complete remedy which is consistent with the actual language employed and to which its words are fairly open".

10. The primary issue in this case is whether the applicant is entitled to an assistance certificate at all. Ms Truman, counsel for the Northern Territory submitted that as the applicant was not involved in the apprehension of the intruder and as the applicant only first saw the intruder after he had been apprehended by the applicant's husband, then any injury which the applicant suffers in consequence of the events on the night in question does not fall within the definition of "injury" in section 4(1) of the Act. Although I think Ms Truman conceded that the actual symptoms claimed by the applicant would amount to a "mental injury" within the meaning of that phrase in the definition of "injury", Ms Truman submitted that the exclusion in that definition applies to the applicant. That exclusion is to the effect that an injury "arising from the loss of or damage to property" is not regarded as an injury for the purposes of the Act.

11. Ms Griffith, counsel for the applicant, submitted that the claim of the applicant was not for an injury arising from the loss of or damage to the property. She submitted that there was no damage to the property for this purpose. She submitted that the injury (ie the increased anxiety state) arose from the unlawful entry of the intruder on to the premises. She submitted therefore that on a literal interpretation of that provision of the Act, the applicant was entitled to an assistance certificate.

12. I was not directed to any authority dealing directly with the definition, nor am I aware of one. I think some guidance can be taken from *Hillcoat v Northern Territory of Australia and Concepcion* [2001] NTSC 114 ("Hillcoat"). In that case the offender assaulted the applicant and another (both police officers), by menacing them with an axe and advancing on them while uttering threatening words. That was clearly an aggravated assault. As a result, and acting in self defence, the applicant and his fellow officer shot and killed the offender. The evidence established that those events gave rise to a "mental injury" to the applicant. The mental injury suffered by the applicant arose solely out of the reaction to the death and not out of the actual assault by the second respondent upon the applicant. The issue for determination by the court was whether, notwithstanding that the relevant mental injury flowed from the applicant having caused the death of another in self defence, the injury is a result of the offence of assault ie, whether in those circumstances, on a true construction of section 5(1) of the Act, the applicant's injury was suffered by him "as a result of" the offence.

13. In that case Riley J followed *Fagan v The Crimes Compensation Tribunal* (1982) 150 CLR 666 ("Fagan"), where the High Court considered a similar provision in the Victorian Criminal Injuries Compensation Act which provided that an injury gave rise to an entitlement to compensation if it occurred "by or as a result of the criminal act" of another person. In Fagan, Mason and Wilson JJ said at page 673:

> "There is no basis in the context of the Act itself for regarding the words as having a narrow operation. The words are ordinary English words carrying no special or technical meaning. All that is required is a causal relationship; both the word "by" and the phrase "as a result of" indicate a causal connexion. Whether that relationship exists or not is primarily a question of fact. The fact that other unconnected events may also have had some relationship to the occurrence is not material if the criminal act was a cause, even if not the sole cause. The only requirement is that the injury is caused "by or as a result of" a criminal act."

14. In Hillcoat, his Honour noted that the statutory requirement in the Northern Territory Act is expressed slightly differently from that in Victoria in that the injury must be suffered "as a result of" the offence. However, he was of the view that the approach to the interpretation of these words will be the same. He was of the view that the observations of Mason and Wilson JJ in Fagan were equally applicable to the Northern Territory Act. He noted that Mildren J in *Chabrel v Northern Territory of Australia and Mills* (1999) 9 NTLR 1 shared that view. He held that the Act does not require a consideration of proximity or foreseeability, but only causation. He therefore decided it was sufficient if the applicant in the case before him established that the mental injury suffered by him was causally related to the offence and that was primarily a question of fact.

15. Riley J decided the question of causation under the statutory scheme under the Act in the same way as causation applies to the general law of negligence. He applied the approach to causation as did the High Court in *March v E & MH Stramare Pty Ltd* (1991) 171 CLR 506. He therefore held that it was necessary to determine, as a matter of logic, commonsense and experience, whether the mental injury suffered by the applicant was suffered as a result of the offence.

16. I apply the same approach here. The offence committed by the second respondent in this case was unlawful entry. I think resolution of this issue requires consideration of how the injury arises. I do not have any evidence that there was in fact any damage to the property. There is some evidence to

show that some property was stolen, but it would appear that this must have been recovered. Arguably, therefore, there was no damage to property and loss of property. The issue, however, is from what does the injury arise; is it the fact of the damage to property (if any) or the loss of property (if any) or is it from the unlawful entry. I am of the view that the evidence of Dr Kenny clear establishes that it is the latter.

17. It is my view that the applicant's mental injury is causally connected to the offence and not to the loss of or damage to property. Her injury arises from the commission of the offence, namely the unlawful entry into her home. It is therefore my view that the applicant is entitled to an assistance certificate. The remaining issues relate to the amount of the assistance certificate.

18. Section 5(1) of the Act provides some guidance as to how the resolution of the issue of the contributing incidents described in Dr Kenny's report should be resolved. That section is set out in full in paragraph 8 above. In abbreviated form it provides "A victim … may … apply … for an assistance certificate in respect of the injury suffered by him as a result of that offence" (my emphasis).

19. I agree with the submissions of Ms Griffiths that at common law, by application of the principle that you take your victim as you find them, the applicant may have been entitled to have her claim assessed based on her final condition without deduction on account of pre-existing factors. Assessments for the purposes of the Act are based on common law principles as if there were no statutory limit (*Rigby v Solicitor for the Northern Territory* (1991) 105 FLR 48; *LMP v Collins* (1993) 112 FLR 289). However, I think that as a result of Woodroofe, that particular common law principle cannot apply to assessments for the purposes of the Act. Woodroofe involved a situation where an applicant made multiple claims for an assistance certificate against the same offender. Moreover, the victim and the offender had been in a de facto relationship extending over a

number of years. The victim had been subject to much domestic violence at the hands of the offender. The applicant in that case made a number of claims and claimed globally for mental injury. The medical evidence in that case was to the effect that the applicant's overall mental state was accounted for by the events over the entire relationship ie not confined only to incidents which were the subject of applications before the court.

20. The Court of Appeal considered a ground of appeal challenging the approach taken by the Magistrate hearing the initial application to the assessment of the assistance certificate. At paragraph 34 the Court of Appeal said:

> "Although it has been held that common law principles have application to the assessment of the statutory assistance provided under the *Crimes (Victims Assistance) Act* … that observation cannot override the clear expression of the legislative intent to be found in the Act. The common law principles of causation and assessment of damages provide no more than a guide to the operation of the statutory scheme of the assistance established by the Act. The processes of the statutory scheme are to be governed by the terms of the Act including the provisions of s 9, which sets out the applicable principles for assessment of assistance, and s 13, which imposes limits upon the amount of assistance available. Further, s 5 of the Act is precise in its language in relation to matters that give rise to an entitlement to an assistance certificate. It permits the issue of "an assistance certificate in respect of *the* injury suffered by (the victim) as a result of *that* offence" (emphasis added). It is clear that the legislature does not intend that assistance certificates will provide financial assistance to victims in relation to matters that are not able to be identified as *the injury* specifically related to a particular offence."

21. While considering the reasons of Bailey J (who heard the first appeal) the Court of Appeal noted that his Honour agreed that the Magistrate hearing the initial application had failed to take into account the evidence that there were numerous offences committed by the offender in that case against the victim which were not the subject of applications for assistance. At paragraph 38, the Court of Appeal then apparently approved of the following passage from the judgment of Bailey J:

> "Accordingly in a case such as the present, the Local Court, while in adopting a 'global approach' to assessment of assistance might start with 'a total sum which represents full compensation' for the respondent's injuries, (it) would need to take into account the evidence that the psychological damage to the respondent was the result of not only the offences for which assistance certificates were successfully sought, but was contributed to by other offences committed by the offender against the respondent. Depending on the available evidence, this might call for a substantial, or even very substantial, discount from the starting point of 'full compensation' notwithstanding the remedial nature of the Act."

22. The Court of Appeal went on to say at paragraph 40:

> "However, the correct approach is not necessarily to arrive at a total figure for the whole of the damage sustained at the hands of the perpetrator, and then to discount it to allow for that proportion of the psychological injury that was caused for the offences not the subject of the application, although in this particular case, given the state of the evidence, this may be appropriate. It may be that a finding would be open on the evidence that the particular offences the subject of the application, are separately or together sufficient to cause the psychological injuries the appellant ultimately sustained after the first assault in June 1991 and that an award, or awards, can be made on that basis, bearing in mind two considerations. The first is that, to the extent that the appellant was already predisposed to psychological injury prior to then, the respondent must take the victim as she is found, but it is still only liable to the extent that the injuries for which the respondent is liable made the condition worse."

23. The principles of assessment relevant to the current case which can be derived from Woodroofe are:

(1) A global assessment is appropriate in some cases;

(2) An arbitrary apportionment of a global assessment is appropriate in some cases.

(3) Where possible a court should apportion a global assessment according to the individual applications.

(4) Regard must be had for, (ie the global assessment should be discounted on account of), injuries not the subject of an application for assistance.

24. In the current case the only evidence tendered to the court which could assist in the assessment on this basis is the report of Dr Kenny. Dr Kenny does not purport to apportion the relative severity of the various incidents which make up the applicant's psychological profile. It is clear however that in his opinion the two incidents in October and November 2001 are relevant. Dr Kenny says at page 1:

> "However, this incident has to be considered in the light of two prior incidents so as to understand her reaction better."

25. In terms of the comparative severity, at page 2 Dr Kenny says in reference to the incident the subject of the application before me:-

> "This occurred on 16th January 2002 and she said as far as she was concerned it was by far the worst of the three. The other two created considerable inconvenience for her and made her feel somewhat insecure…"

26. Then at page 6 he adds:-

> "I think the two prior incidents would have to be regarded as contributing to her reaction to this one. Nevertheless, this last incident that occurred only some two months ago is the one that was most distressing to her. But of course this was the third incident in some three to four months and one would have to acknowledge that three such incidents would certainly have contributed to making her somewhat more insecure in the local area.... Now obviously this was an upsetting incident to her."

27. In light of the evidence I consider that the approach suggested by the Court of Appeal in Woodroofe is the appropriate one in the circumstances. That will involve a global assessment and an attempt to apportion compensable and non-compensable matters. It is abundantly clear from the report of Dr Kenny that the two prior incidents contribute to the applicant's sense of

insecurity. He dismisses any possible contribution by the work related stress incident some eight years before. Allowing for the fact that Dr Kenny seems to accept that the incident the subject of this claim is by far the most serious and assessing the comparative severity of all the relevant incidents as best I can, I consider that the appropriate apportionment between the two non-compensable prior incidents and the current incident is 1/3:2/3.

28. Having regard to the overall symptoms of the applicant as expressed in the report of Dr Kenny and his prognosis, in my view, the appropriate assessment based on common law principles for the overall condition of the applicant translates to an assistance certificate in the sum of $6,000.00 and, after apportionment on the basis described in the preceding paragraph, I allow $4,000.00 on this account.

29. I now turn to consider the claim in relation to the new locks. The evidence which the parties agreed could be relied upon for this purpose in relation to quantum is the affidavit of the applicant's husband filed in his own application. I consequently accept the evidence of quantum and fix quantum and under this head in the sum of $368.50.

30. The issue, however, is whether the applicant is entitled to this amount. This in turn depends on the interpretation of subsections 9(1)(a) and 9(1)(d) of the Act, which are set out in paragraph 8 above. In interpreting the provisions of the Act, I note the comments of the Court of Appeal in Woodroofe (set out in paragraph 9 above) ie, that the purpose of the Act is to provide assistance for persons injured as a result of criminal acts and that the Act is remedial and therefore should be construed beneficially although not necessarily liberally. The stated purpose of the Act has some significance in the determination of this issue.

31. I note that neither subsection 9(1)(a) nor 9(1)(d) makes any attempt to confine the types of expenses to which they relate to any particular category or class. Both paragraphs have only one limitation which, although

expressed differently in both paragraphs, is, in my view, of the same effect given that a causal connection is required in each case. In subparagraph (a) reference is made to expenses "actually incurred as a result of the injury". In subparagraph (d) the reference is to "any other pecuniary loss arising in consequence of the injury suffered by … the victim and *any other expenses* reasonably so incurred" (my emphasis).

32. The use of the words "any other expenses" in subparagraph (d) would tend to suggest that there are two types of expenses or loss which can fall within subsection 9(1)(d). It is not clear as to what might distinguish the two types. It seems that the combined effect is to make the application of section 9(1)(d) very broad indeed.

33. *Butterworths Australian Legal Dictionary* defines the term "pecuniary loss" as follows:-

> "The loss of an easily calculated sum of money…[but] does not simply mean 'monetary outlay'; such expenditure may be a guide in the assessment of damages but is not a prerequisite of recovery. Loss of service and other material losses are compensable as pecuniary loss…."

34. The various dictionary definitions of "expense" are largely in the same terms namely, a cost incurred or the payment of money. As such they are not particularly helpful.

35. However, allowing for a beneficial interpretation, having regard for the stated purposes of the Act and relying on the specific limiting words contained in each of the subsections, it is my view that the types of expenses referred to in subsections 9(1)(a) and 9(1)(d) are not limited to any particular category or class. The only limitation therefore is whether the claimed expense can be said to either arise in consequence of the injury or has been incurred as a result of the injury. Although it is curious that different wording is used in each subsection, I think that, consistent with the approach in Hillcoat, the same approach to interpretation is required, namely

it is necessary to establish a causal connection with the injury, not with the incident causing the injury.

36. It is conceded by the first respondent that there is no doubt that the applicant and her husband both feel more secure by the installation of the deadlocks. Likewise Dr Kenny seems to note favourably that deadlocks have been fitted. However, there is no suggestion in his report that Dr Kenny considered that new deadlocks were required or necessary for purposes relating to the applicant's injury. There is therefore a shortfall in the medical evidence required to establish the causal connection between the cost and the injury in any event.

37. The evidence of the applicant's husband in relation to this issue in his affidavit would suggest that the deadlocks now allow the residents to lock themselves in. He also states that the deadlocks were necessary because he is away from home at night times for work purposes. In her affidavit sworn 29 July 2002 the applicant states that before the subject incident, the house did not have either deadlocks or security lights. She says that "all those things" have now been installed, presumably also referring to security lighting. It is curious therefore that there is no similar claim in relation to the cost of the installation of security lighting. The applicant says that the installation of the deadlocks have made a huge difference to her anxiety. This has not been confirmed by Dr Kenny and he makes no mention whatsoever about security lighting. There are therefore some inconsistencies and further shortcomings in the evidence.

38. As I said earlier, I had no evidence of the nature of the locks fitted to the relevant doors before the incident. It is not therefore established that those locks were inadequate, nor is the extent to which the new deadlocks increase security established. Although clearly both the applicant and her husband feel more secure, that is not the point. Furthermore, it is clear from Dr

Kenny's report that the symptom of the overall insecurity in the environment relates to all three incidents.

39. Having regard to the purpose of the Act and interpreting sections 9(1)(a) and 9(1)(d) in that light, in my view, even if the evidence had proved sufficient, a claim such as that made by the applicant is beyond the scope of section 9 of the Act. It occurs to me that many things could alleviate the applicant's security in the same way as is claimed to be the effect of the new locks. Mention has already been made (although curiously not claimed) of security lighting. The same argument could be advanced to support a claim for the costs of security screens on windows or doors where none were previously fitted. Taken to its logical (albeit extreme) conclusion, the argument could also justify the provision of monitored alarms or even security patrols. This also serves to highlight the deficiency in the evidence of the applicant. I think some positive qualified opinion would be required, as opposed to the claims of the applicant standing largely alone, before the required connection between the expense and the injury can be established. As I have stated above, I think the absence of anything other than a passing comment by Dr Kenny is telling.

40. Leaving aside the issue of remoteness for the present, in my view, it could not have been the intention of Parliament that an expense such as that claimed by the applicant could be included in an assistance certificate given the stated purpose of the Act and the very limited assistance given by the Act. I am of this view notwithstanding that common law principles of assessment apply to the Act. As was stated in Woodroofe, those principles are a guide only and cannot override the intention of the Legislature.

41. In the end, it is my view that an expense such as that claimed by the applicant in this case cannot be taken into account in assessing an assistance certificate under either of section 9(1)(a) or 9(1)(d). In any event, the evidence before me was not sufficient to establish that the installation of

those locks was either an expense “incurred as a result of the injury”, or “a pecuniary loss “arising in consequence of the injury”, or was “any other expense reasonably so incurred”.

42. Accordingly I issue an assistance certificate to the applicant in the sum of $4,000.00.

43. I will hear the parties as to any other ancillary orders.

Dated this 20th day of September 2002.

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V M LUPPINO
STIPENDIARY MAGISTRATE