CITATION: *Maslin v Northern Territory of Australia & Tolios* AND *Watters v Northern Territory of Australia & Tolios* [2003] NTMC 020

PARTIES:	WAYNE EDWARD MASLIN
	v
	NORTHERN TERRITORY OF AUSTRALIA
	and
	JORDAN JOHN TOLIOS
	LENNOR ANNE WATTERS
	v
	NORTHERN TERRITORY OF AUSTRALIA
	and
	JORDAN JOHN TOLIOS
TITLE OF COURT:	Local Court
JURISDICTION:	Crimes (Victims Assistance) Act
FILE NO(s):	20212061 and 20212062
DELIVERED ON:	30 April 2003
DELIVERED AT:	Darwin
HEARING DATE(s):	7 March 2003
DECISION OF:	Mr V M LUPPINO

CATCHWORDS:

Crimes Victims Assistance – Principles of assessment – Multiple instances of threatening behaviour by second respondent towards the applicant - Only one incident the subject of claims – Applicant suffered mental distress – Apportionment where mental distress results from an extended course of conduct not all of which is subject to claims - Allowance to be made on account of the mental illness of the second respondent.

Statutory Interpretation – Purpose of an Act – Interpretation of remedial legislation - Principles of *noscitur a sociis* and *ejusdem generis.*

Crimes Victims Assistance Act ss 4(1), 5(1) 9(1), 9(2), 10(1), 10(2), 17(1)
Interpretation Act s 55(3), 62A

Woodroofe v Northern Territory of Australia (2000) 10 NTLR 52; *McIlfatrick v Chard & Northern Territory of Australia* (1995) 5 NTLR 9; C*habrel v Northern Territory of Australia & Mills (1999)* NTLR 69; *T v State of South Australia & Anor* (1992) Aust Torts Rep 8-167; *Geiszler v Northern Territory* (1996) NTSC, unreported, 3 April 1996.

REPRESENTATION:

Counsel:

Applicant:	Ms Farmer
First Respondent:	Mr Johnson
Second Respondent:	Ms McLaren

Solicitors:

Applicant:	Withnall Maley
First Respondent:	Priestly Walsh
Second Respondent:	Asha McLaren

Judgment category classification:	B
Judgment ID number:	[2003] NTMC 020
Number of paragraphs:	35

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

No. 20212061

BETWEEN:

WAYNE EDWARD MASLIN
Applicant

AND:

NORTHEN TERRITORY OF AUSTRALIA
First Respondent

and

JORDON JOHN TOLIOS
Second Respondent

No. 20212062

LENNOR ANNE WATTERS
Applicant

AND:

NORTHEN TERRITORY OF AUSTRALIA
First Respondent

and

JORDON JOHN TOLIOS
Second Respondent

REASONS FOR DECISION

(Delivered 30 April 2003)

Mr V Luppino SM:

1. These two claims under the *Crimes (Victims Assistance) Act* ("the Act") were heard contemporaneously on 7 March 2003. The matters could be conveniently dealt with on this basis as the offences the subject of the two claims occurred in quick succession on the same date and have common elements in each claim. The offender is the same in both matters and much of the pertinent history and facts of the matter are common to both claims.

2. The relevant offence in each case is an assault by threat only and no actual physical contact is alleged. The injury in both cases is a mental injury. There are no physical injuries in either case.

3. The assessment of the assistance certificate in each case is complicated by reason of the history of the matter between the respective applicants and the second respondent. In general terms there is a history of abusive and threatening conduct directed by the second respondent to the applicants over a period of time. I think it is clear from the medical evidence, which is discussed in more detail later in these reasons, that the whole course of conduct during these episodes has contributed to the overall mental picture of each of the applicants. Notwithstanding that, the matter for which the claim is made in the case of each applicant is one discrete isolated incident, albeit I consider it to be the most severe and the most recent.

4. The actual claims relate to incidents occurring on the 9 December 2001. The evidence is that the applicants are defacto partners. The second respondent resided next door to the applicants. On 9 December 2001 the applicants had returned home in the afternoon after shopping. The undisputed allegations in relation the applicant Maslin is that at this time the second respondent, extensively utilising expletives in the process, threatened to punch that applicant's head in and also made reference to breaking his jaw. The threats continued over a period of time. In the case of the applicant Watters, it is alleged that the second respondent, again extensively utilising expletives threatened to sexually assault her. Again the allegation is undisputed.

5. Both applicants say that the second respondent has been causing trouble since some time in September 2000. However, his conduct on previous occasions is relatively tame compared to the events which occurred on 9 December 2001. Previously the second respondent had a habit of repeatedly yelling obscenities, playing music loudly, throwing mangoes onto the home of the applicants and generally intimidating the applicant Maslin. On 9 December 2001 however the threats were more significant and detailed. The gist of the evidence of both applicants is that the episode the subject of the claim has contributed most to their overall mental picture. The applicants have since sold their home as a result and it has required that type of drastic action to alleviate their symptoms.

6. A summary of the evidence in each of the two cases will help put the assessment of the claims in context. Dealing firstly with the claim by Mr Maslin, in summary form his evidence is that:-

    1. He is a neighbour of the second respondent and the second respondent had a mental illness, (Maslin is of course not qualified to express that opinion);

    2. The second respondent has verbally threatened and abused him on multiple occasions since about September of 2000;

    3. This abuse culminated with the events on 9 December 2001 which is the subject of the claim; specifically the applicant says "...from my recollection the second respondent said word to the affect (sic) 'I am coming over to your place and I will punch your head in, come down here you fat cunt, I will only need thirty seconds of your fucking time to break your fucking jaw'. The second respondent continued to use obscene language and threatened to smash me." I note however that the application describes the offence as a threat to kill. There is no evidence of this;

4. The threat made on 9 December 2001 was more specific compared to the previous episodes which were more general;

5. As a result of his heightened anxiety, fear of intimidation and fear of their safety, the applicants sold their property and moved to a new home in July 2002. Since then Maslin's anxiety has dissipated to some extent.

7. Dr McLaren provided a medico-legal report for the purposes of these proceedings. His report in relation to the applicant Maslin is dated 5 June 2002. Relevantly to the claim the report provides, in summary form:-

1. He refers to the applicant living with his defacto partner and their infant son. He comments that Mr Maslin's defacto is <u>again</u> pregnant (my emphasis) and he says that he saw the applicant in between the sale of the home and the move;

2. He says that the applicant complained of feeling frightened of the second respondent as he (the second respondent) was big and aggressive and seriously disturbed mentally and that he lived in constant fear and apprehension that he or his family would be assaulted;

3. The second respondent's conduct from September 2000 is described namely, that he was extremely aggressive, shouting, swearing, playing loud music and driving his car in a threatening manner; he refers to the second respondent having assaulted people (I had no evidence of this) and having damaged property including the applicant's property, (I likewise had no evidence of damage to property other than that owned by the applicants);

4. The applicant gave no history of previous mental symptoms;

5. On examination, Dr McLaren felt that the applicant was neither anxious depressed, hostile or suspicious, there were no signs of

psychotic disorder and that the applicant functioned with a high range of intellect;

6. He was of the view that at that time the applicant showed no significant signs of mental disorder but that the applicant has experienced "considerable distress" over the preceding 18 months as a result of the actions of the second respondent;

7. He describes the effect this has had on the applicant and he says that there has been a significant interference with the quality of his life and has forced the applicant to take time off work, be involved in legal action and the installation of new fencing and security devices in his home;

8. He says that the applicant would have qualified for the diagnosis of adjustment disorder. Clearly Dr McLaren here refers to a diagnosis at an earlier time. He says that that diagnosis however requires there to be "significant distress" and he claims to be unable to say what level of distress would be expected within the context of the stressors faced by the applicant. As if to further confuse the issue, Dr McLaren then says that that diagnosis is generally reserved for a single incident albeit that it could have several parts, hence he prefers to label the applicant's condition as continuing stress response. It appears ambiguous whether this is a recognised mental illness although he says quite categorically "in any event he has suffered a mental disorder", presumably referring to the diagnosis of continuing stress response. My interpretation of Dr McLaren's report is that he is satisfied that the applicant suffers a mental disorder but he is uncertain as to the proper characterisation of that disorder;

9. Dr McLaren rules out any pre-existing or contributing disorder;

10. He expresses the conclusion that the mental symptoms constituted "an injury". It is not his role to make that conclusion and his opinion on this point counts for nought.

8. In relation to the applicant Watters her application also makes a claim only for the events on 9 September 2001. She describes the threat made by the second respondent, specifically directed to her but immediately after the threat made to the applicant Maslin. In her affidavit in support of the application she states that the second respondent called her a "slut" a number of times and then threatened to rape her. In her statutory declaration dated 26 January 2002 she said that she was concerned that the second respondent might harm her "or the baby" after he had dealt with Maslin. She then said that the second respondent said to her words to the effect of "…why don't you come sit on my fucking fat Greek cock, come and sit on my face and put your pussy in my face, you're a really lovely piece of skirt. I'll come over and fuck you and when I've finished with that fat poofter then, I can come over and fuck you…".

9. Whether the applicant was pregnant or not at the time of this offence was made an issue by Ms McLaren for the second respondent. The statutory declaration referred to above refers to the applicant Watters having a four month old son named Mackinlay. This would suggest he was born sometime in September 2001. In his report regarding this applicant, Dr McLaren takes a history that she was then (ie, June 2002) some three months pregnant which means that she would have conceived some time in March 2002. Further on in his report however he, referring to the events the subject of this claim, describes her then as being "near term". It is not clear what the source of the information is but it must be wrong given the applicant's statutory declaration. I find that the applicant Watters was not pregnant at the time of this event and I deal later with the impact of this on the assessment of an assistance certificate.

10. Watters says that as a direct result of the threats she suffered anxiety and fear of the second respondent. She says that she continued to suffer the anxiety and stress more so when her partner left for work. She confirms that the symptoms of anxiety and stress have dissipated substantially since she and her partner moved house in July 2002.

11. Given her description of what occurred when police attended on 9 December 2001, I feel that those fears were justified. She describes in some detail how the second respondent attempted to evade police, how he fled and in the course of that how he drove his car in a dangerous manner, how the second respondent was very agitated and was yelling at police and screaming abuse at police and specifically how that intensified when police manoeuvred to arrest him.

12. Dr McLaren also interviewed this applicant for medico-legal purposes and provided a report, also dated 5 June 2002. In summary form, and other than the matters discussed above in relation to the applicant's possible pregnancy, the following pertinent matters emerge from the report:-

    1. Presenting complaints were a pattern of disturbed sleep;

    2. Her recall and concentration was impaired but she relates this to her then pregnancy and Dr McLaren seems to agree;

    3. She has bouts of feeling low and miserable which appear to be in part at least, attributed to the actions of the second respondent. Those bouts of misery have improved since they sold their house;

    4. She has a pre-existing disorder namely fear of spiders and of masks being placed on her face;

    5. Dr McLaren also describes a bout of depression seven years ago when the applicant miscarried at sixteen weeks. She was then prescribed anti-depressants and had some suicidal ideation;

6. The history of the involvement of the second respondent from September 2000 is described, largely consistent with other records of this. Specifically she reported to Dr McLaren that the police were called some forty times;

7. There is a reference to an event occurring in December 2000. Presumably this is a typographical error, as it appears to refer to the incident the subject of this claim. Dr McLaren said that she was then, "near term" and that "the neighbour threatened to rape her". Dr McLaren refers to this as occurring during "her first pregnancy". He says that her mental state deteriorated as a result of the incident the subject of the claim and she was prescribed anti-depressants. Clearly all this must be referring to the incident the subject of the claim;

8. On examination Dr McLaren found no signs of a depressive state nor of a psychotic disorder or organic impairment of brain function;

9. He concludes that there was then evidence of a mild continuing anxiety state, the symptoms of which have settled considerably since relocating;

10. He considers that she made a good recovery from her depressive condition following her miscarriage seven years ago but he says that the symptoms recurred following the threats from the mentally disturbed neighbour. To somewhat confuse the position regarding the pregnancy, Dr McLaren then describes this as occurring "during her second pregnancy";

11. His formal diagnosis is that of an adjustment disorder with depressed mood which he says is a recognised mental illness. He concludes that as it was traumatically acquired, it is an "injury". Again, the drawing of such a conclusion is beyond his role in this matter;

12. He does not consider that further psychiatric treatment is required although he says that the applicant may require short term intervention if these symptoms do not settle following the relocation.

13. There was no evidence before me to show that the symptoms of either applicant had not settled following the relocation and I find that the symptoms have settled at least to the point that no further treatment intervention is required.

14. In relation to the relevance and impact of the possible state of her confinement at the relevant time, the evidence about this and the extent of its relevance to Dr McLaren's opinion is certainly unclear. I have found that she gave birth to one child approximately September 2001 and again became pregnant some time in March 2002. Other than noting that the applicant was "near term" at the time of the subject incident, Dr McLaren makes no more mention of this. He does not seem to take the state of pregnancy into account at all in his assessment and in his opinion generally. Indeed he makes very little further comment about it after that. Admittedly however the position is not clear. In the end I am of the view that on the available material Dr McLaren placed little if any emphasis on the actual state of pregnancy of the applicant at the time of the event in question in coming to his diagnosis and to his conclusions. Hence, for this part, the discrepancy into the state of pregnancy of the applicant appears to be irrelevant. Credibility issues however may still be relevant.

15. I now then proceed to assess the assistance certificate. I must have regard to the fact that the injury in each case is mental injury only and that the condition of both applicants has been affected by or contributed to by the totality of their suffering as a result of the abuse and threats of the second respondent. This has occurred over a period of approximately 15 months necessitating calls to police on approximately forty occasions.

16. The provisions in the Act relevant to the assessment of an assistance certificate and the issues in this case are as follows:-

4(1) In this Act, unless the contrary intention appears –

"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(1) A victim or, ……. 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 the victim as a result of that offence.

9(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 or her total or partial incapacity for work;

(c) pecuniary loss to the dependants of the victim as a result of his or her 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

(i) 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.

10(1) In considering an application for assistance, and in assessing the amount of assistance to be specified in an assistance certificate, the Court shall have regard to the conduct of the victim and to any other matters it considers relevant.

(2) Where the Court, on having regard under subsection (1) to the conduct of the victim, is satisfied that the victim's conduct contributed to the injury or death of the victim it shall reduce the amount of assistance specified in the assistance certificate by such amount as it considers appropriate in all the circumstances.

17(1) A fact to be proved by an applicant in proceedings under this Act shall be sufficiently proved where it is proved on the balance of probabilities.

17. Mental injury is a term that is referred to in the definition of "injury" but is not separately defined. However, section 9(1) of the Act, which sets out the matters to be taken into account in assessing the amount of an assistance certificate, in section 9(1)(f), specifically directs regard be had to mental distress. Further, section 9(2) of the Act directs that mental distress does not include grief, which is itself rather odd given the stated objects in the preamble to the Act.

18. The first step is therefore to determine how much, if any, of the applicant's mental condition is "grief" within the meaning of section 9(2) of the Act. The case of C*habrel v Northern Territory of Australia and Mills* (1999) 9 NTLR 69 ("Chabrel") provides some guidance in distinguishing grief from mental injury. In that case Mildren J approved of the decision of Olsson J in *T v State of South Australia & Anor* (1992) Australian Torts Rep 8-167 ("T") where in discussing the meaning of "mental injury" as used in the South Australian Act, his Honour said:

> "Whilst I accept that the statute obviously has in contemplation something more than a condition of mere sorrow and grief, nevertheless what the court is required to do so is to consider the situation of a claimant following a relevant criminal act and contrast

> it with that which pre-existed the Act in question. Leaving aside proven conditions of mental or nervous shock, if the practical effect of the relevant conduct has been to bring about a morbid situation in which there has been some more than transient deleterious effect upon a claimant's mental health and well being, so as to adversely affect that persons normal enjoyment of life beyond a situation of mere transient sorrow and grief, then, in the relevant sense, the person has sustained mental injury."

19. Having regard to the foregoing, I conclude that the condition of both applicants in this case goes beyond mere grief. In coming to this conclusion, I have regard to the long term effects suffered by both applicants and that it took something as drastic as relocating to alleviate their symptoms. In addition, although Dr McLaren seems to have trouble characterising the precise condition in the case of Mr Maslin, his unchallenged evidence on this point is that both applicants suffer a recognised mental disorder. Therefore consistent with the dicta of Olsson J in T, this takes it outside mere grief.

20. That then overcomes the first hurdle for the applicants. The use of the words "…for that offence" in section 5(1) of the Act mandates that the assistance certificate is only to cover so much of the overall mental injury suffered by the applicant as is attributable to the subject incident only. The available evidence is not sufficient to make this apportionment with any mathematical precision. The approach to be taken in such a case is dictated by *Woodroffe v Northern Territory of Australia* (2000) 10 NTLR 52 ("Woodroffe"). In that case, in determining the correct approach to be taken in such a case, the Court said at paragraphs 40-41:

> "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 pre-disposed to psychological injury prior to then, the respondent must take the victim as she is found, but is still only liable to the extent that the injuries for which the respondent is liable, made the condition worse:"

21. In my view, from the available evidence it is entirely clear that the episode occurring on 9 December 2001 is by far the worst of all the episodes involving the second respondent. I would describe all the events that occurred before then as more in the nature of anti-social type behaviour, albeit severe behaviour of that kind. On the day in question however the second respondent made very pointed threats to the applicant Maslin. A specific method of assault was described, namely punches to the head and breaking of the jaw. In the case of the applicant Watters I find that on this occasion the applicant did threaten to rape her. This is the first time such a threat was made. All of this I think also needs to be viewed in context of the lengths the second respondent went to evade and resist police and his continuing abuse and defiance when arrested.

22. In the case of Watters I am of the view that the incident occurring on 9 December 2001 accounts therefore for eighty-five percent of her overall mental injury. In the case of the applicant Maslin I am of the view that the applicable proportion should be seventy percent allowing firstly that the threat made to him on 9 December 2001 was not as severe as that made to Watters and secondly, given that the antecedent behaviour of the second respondent was directed more to Maslin than to Watters.

23. Mr Johnson for the first respondent in both matters submitted that the evidence in relation to Mr Maslin does not disclose a mental injury. I have already dealt with that.

24. Ms McLaren for the second respondent made a number of points. Her first was that the second respondent was not charged with a threat to rape the applicant Watters. It is true that as a result of these offences the second

respondent was convicted of charges pursuant to section 47(e) of the *Summary Offences Act* namely, unreasonably causing substantial annoyance to the two applicants in this matter. He was also convicted of resisting police. The certificate of proceedings which was part of the evidence before me establishes this. Why the actual charge was relevant according to the submission was not made clear to me. The relevant sections of the Act, particularly the definitions of "injury" and "offence", have been set out above. The Act does not require that the injury result from an offence for which the offender is convicted. It merely requires an injury (including a mental injury) to result from an offence. The evidence as to what occurred on 9 September 2001 is unchallenged. Clearly an offence has been committed. It is irrelevant that the second respondent was not charged nor convicted of the threat to rape or for that matter the assault by threat.

25. Ms McLaren also submitted that the applicant Watters was lying in letting Dr McLaren believe that she was near term at the time of the incident. I am not prepared to make a positive finding about that. There is much ambiguity in Dr McLaren's comments on the point of the actual state of pregnancy of the applicant at the time. It is not entirely clear as to what is the source or cause of that misunderstanding. More importantly however, as I say above, I do not consider that he places any significant weight on that in coming to his opinion. Ms McLaren's further point, that the credibility of the applicant Watters is nonetheless still in question largely falls by the wayside given that there really remains no issue upon which I need to make any finding about the credibility of Watters, there being no challenge to the remainder of the evidence presented.

26. Ms McLaren also submitted that the applicant Watters had a pre-existing condition and that this was relevant to the question of assessment. She relied on the apparent phobia of spiders and masks on the face as well as the depressive disorder diagnosed following her miscarriage some seven years ago. This was all taken into account by Dr McLaren and is described in some detail in his report. Dr McLaren says that she made a good recovery

from that. Quite a good deal of time has elapsed between the two events, at least six years on my reckoning. Dr McLaren says that the symptoms recurred following the episode the subject of the claim. I interpret this as referring to the recurrence of the same type of disorder, namely the depressive component, not that Watters' injury is an exacerbation of a pre-existing condition. It would have helped if Dr McLaren had been quite specific on this point. I am not aware of the reason that he has not addressed that specifically however on the basis of the available material it is my finding that for all intents and purposes, whatever previous mental disorder the applicant Watters suffered had resolved prior to September of 2000 when the episodes with the second respondent commenced.

27. The last submission made by Ms McLaren relates to section 10 of the Act which has been set out above. She submitted that section 10 of the Act enabled a deduction in the amount otherwise to be provided in an assistance certificate to the respective claimants by reason of the fact that the second respondent suffered from a mental illness at the relevant time and that his conduct resulted from the effects of that illness. Ms McLaren had sought to tender various medical records concerning the second respondent to that end. Ms McLaren's argument centred on the words "…the Court shall have regard to the conduct of the victim *and to any other matters* it considers relevant" in subsection (1). Her submission is that the words in italics enabled this court to make such a deduction. I cannot take the section heading to section 10 into account in interpreting that section by reason of section 55(3) of the *Interpretation Act*. It would seem however from the wording used in the section that the section deals with matters relating to the victim, particularly the conduct of the victim, and not matters of a mitigating nature from the second respondent's point of view. Certainly the words "…and to any other matters it considers relevant" are ambiguous enough so that they might be read as supporting Ms McLaren's contention, at least on a literal reading and perhaps in isolation.

28. However, those words must be interpreted according to the relevant applicable principles of statutory interpretation. I think the starting point is section 62A of the *Interpretation Act* which directs that regard be had to the purpose or object of an Act in interpreting a provision of that Act. The purpose of the Act is to compensate victims of crime. This is evident from the preamble to the Act which describes the Act as "An Act to provide assistance to certain persons injured or who suffer grief as a result of criminal acts". It is important to note therefore that the Act is remedial legislation to be interpreted beneficially adopting a construction which is most favourable to an applicant where that is not inconsistent with the language used (*Geiszler v Northern Territory* (1996) NTSC, unreported, 3 April 1996, and Woodroffe). The words in section 10 must therefore be given a construction which gives the most complete remedy consistent with the actual language used. Ms McLaren's interpretation hardly achieves this.

29. I also consider that there is scope for the application of *noscitur a sociis*. That principle is to the effect that the meaning of words in an Act are to be derived from the context in which those words appear. That context is I think related to the victim not the perpetrator. I am not entirely convinced that the principle of *ejusdem generis* applies to the words in question. That principle, which dictates that general words are interpreted by reference to the specific words with which they appear, requires a clear genus to be established by the specific words. I doubt that a genus can be established where the specific term is as narrow as in section 10 of the Act ie, "…the conduct of the victim…". If such a genus were however established then clearly the general words would be interpreted as relating to the conduct of the victim and not relating to matters relevant to the second respondent.

30. In *McIlfatrick v Chard* (1995) 5 NTLR 9 ("McIlfatrick"), his Honour Angel J expressed the view that section 10 could go as far as enabling a Court to make an allowance for future dental expenses in assessing an assistance certificate. This I think supports my view that interpretation according to the *ejusdem generis* rule should not apply by reason that a genus is not

established. Else the words "…and to any other matters…" could only refer to words relating to the conduct of the victim which therefore could not allow an allowance for future dental expenses in the way which his Honour suggested. That decision however is consistent with an interpretation that those words relate to the victim and not the second respondent. For these reasons, I remain of the view that section 10 does not enable me to take the second respondent's mental condition into account and I rejected the tender of the medical records on behalf of the second respondent.

31. If Ms McLaren's submission were to be correct, then in any event the question of the extent of a deduction and whether it should be made remains a discretionary matter (McIlfatrick). I note that section 10(2) mandates an appropriate reduction, however that only applies where the issue is the conduct of the victim contributing to the injury. That therefore that has no application on the facts of this case.

32. In my view, even if on a proper construction of section 10(1) the type of deduction proposed by Ms McLaren was allowed, a deduction in the amount of an assistance certificate on that account should be rejected in any event on discretionary grounds.

33. In coming to this conclusion, I again have regard to the stated purpose of the Act. I consider that it would be inappropriate to take that into account, at least in the absence of any contributing conduct on the part of the applicants. I see no reason in view of the remedial nature of the Act why an applicant should be denied this simply because of factors personal to the second respondent. Even if that deduction were to be limited to cases where the offender suffers a mental illness, I think it would still be unfair to do so. Otherwise regard would also have to be had to other possible relevant personal circumstances such as hardship, disadvantage, socio-economic factors etc. to deprive otherwise innocent victims of the very limited assistance that they are entitled to under the Act.

34. Taking all of the foregoing into account, I would assess damages at common law for Maslin in the sum of $6,000.00. I issue an assistance certificate for seventy percent of that namely, $4,200.00. In the case of Watters, I assess damages at $8,000.00 and issue an assistance certificate for eighty-five percent of that namely, $6,800.00.

35. I will hear the parties as to costs.

Dated this 30th day of April 2003.

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V M LUPPINO
STIPENDIARY MAGISTRATE