

CITATION: *Moss v Northern Territory of Australia & Gondarra* [2003] NTMC 022

PARTIES: Michael John Moss  
v  
Northern Territory of Australia  
And  
Alberto Gondarra

TITLE OF COURT: Local Court

JURISDICTION: Crimes (Victims Assistance)

FILE NO(s): 20118310

DELIVERED ON: 19<sup>th</sup> May 2003

DELIVERED AT: Darwin

HEARING DATE(s): 28<sup>th</sup> April 2003

JUDGMENT OF: Judicial Registrar Fong Lim

**CATCHWORDS:**

Practice & Procedure – taxation of costs – Section 17 Crimes (Victims Assistance) Amendment Act 2002 – Section 24(4) Crimes (Victims Assistance) Act – Regulations 5,6, & 7 of the Crime (Victims Assistance ) regulations

**REPRESENTATION:**

*Counsel:*

Applicant:	Mr Buckland
1 <sup>st</sup> Respondent:	Mr Randhawa
2 <sup>nd</sup> Respondent:	No Appearance

*Solicitors:*

Applicant:	Morgan Buckley
1 <sup>st</sup> Respondent:	Priestley Walsh
2 <sup>nd</sup> Respondent:	self

Judgment category classification:	C
Judgment ID number:	[2003] NTMC 022
Number of paragraphs:	11

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

No. 20118310

[2003] NTMC 022

BETWEEN:

**MICHAEL JOHN MOSS**  
**Plaintiff**

AND:

**NORTHERN TERRITORY OF  
AUSTRALIA**  
**1<sup>st</sup> Respondent**

**ALBERTO GONDARRA**  
**2<sup>d</sup> Respondent**

REASONS FOR TAXATION RULING

(Delivered 19<sup>th</sup> May 2003)

Judicial Registrar Fong Lim:

1. The Applicant submitted upon interpretation of transitional provisions of the *Crimes(Victims Assistance) Amendment Act 2002* (“the amendment”) and applying the rules of statutory interpretation the costs of the Applicant’s application for assistance can only be at the scale of costs applicable before that amendment because his application was filed before the 1<sup>st</sup> November 2002.
2. Prior to the amendment the relevant sections of the Principal Act read as follows:
  24. Taxation of costs
    - (1) A legal practitioner shall not be entitled –
      - (a) to recover from an applicant costs in respect of an application under section 5;

(b) to claim a lien in respect of costs on an amount paid or payable under section 20; or

(c) to deduct costs from an amount so paid or payable,

except to the extent to which the costs have been allowed as between the legal practitioner and the applicant by the Court on the application of the legal practitioner or the applicant.

(2) Subsection (1) does not apply to costs which are disbursements of the legal practitioner.

3. The Local Court rules which applied at the time provided -

38.07 Costs under *Crimes (Victims Assistance) Act*

Costs under the *Crimes (Victims Assistance) Act* are allowable at 80% of the relevant scale of costs set out in the Appendix unless the Court orders otherwise.

4. The Act and rules were amended such amendment commencing on the 1<sup>st</sup> November 2002 with Section 24 being amended to read –

24. Costs

(1) A legal practitioner shall not be entitled –

(a) to recover from an applicant costs in respect of an application under section 5;

(b) to claim a lien in respect of costs on an amount paid or payable under section 20; or

(c) to deduct costs from an amount so paid or payable,

except to the extent to which the costs have been allowed as between the legal practitioner and the applicant by the Court on the application of the legal practitioner or the applicant.

(2) Subsection (1) does not apply to costs which are disbursements of the legal practitioner.

(3) If the Court dismisses or strikes out an application under section 5, the Court may order that the applicant must pay all or part of the costs incurred by the Territory in respect of the application.

(4) The Regulations –

(a) may prescribe a lump sum fee for specified work done in respect of an application under section 5, and specified disbursements incurred in doing that work, as the costs allowable in respect of that application; and

(b) may prescribe a percentage of the costs otherwise allowable under the Appendix to Order 63 of the Supreme Court Rules as the costs allowable for work done in respect of an application under section 5.

(5) A legal practitioner who is entitled to recover costs in respect of an application under section 5 may claim those costs as prescribed under subsection (4)(a) or as prescribed under subsection (4)(b).

5. The rule 38.07 of the Local Court Rules was repealed and was replaced by regulations 5,6,&7 of the Crimes (Victims Assistance) regulations as follows –

5. Costs: lump sum fees etc. allowable if assistance not over \$5 000

(1) For the purposes of section 24(4)(a) of the Act, the fees and disbursements allowable as costs in respect of an application under section 5 of the Act, where the assistance certificate specifies an amount not exceeding \$5 000, are as follows:

(a) a fee of –

(i) \$750 for work up to and including the first prehearing conference, including taking instructions, obtaining preliminary medical reports, preparing, filing and serving the application, attending the mention and attending the first prehearing conference; or

(ii) \$1 050 if the work referred to in subparagraph (i) also includes an application for an extension of time for the purposes of section 5(3) of the Act;

(b) an additional fee of –

(i) \$350 for further work up to the hearing of the application, including obtaining additional expert medical reports, attending further prehearing conferences and all preparation for the hearing of the application; or

(ii) \$700 if the work referred to in subparagraph (i) relates to an application in respect of which the offender has not been found guilty of the offence that resulted in the injury suffered by the victim and where it was necessary to obtain police records or obtain evidence from witnesses;

(c) for attending the hearing of an application, an additional fee of –

(i) \$400 if the hearing does not exceed half a day;

(ii) \$800 if the hearing exceeds half a day but does not exceed one day; or

(iii) \$800 for the first day of the hearing plus \$400 for each day or part of a day thereafter;

(d) all reasonable disbursements, excluding counsel's fees.

(2) A fee referred to in subregulation (1)(c) is not allowable if, during the hearing of the application, the parties reach an agreement in pursuance of section 10A of the Act and the Court specifies the agreed amount in the assistance certificate.

6. Costs: lump sum fees etc. allowable if assistance over \$5 000

(1) For the purposes of section 24(4)(a) of the Act, the fees and disbursements allowable as costs in respect of an application under section 5 of the Act, where the assistance certificate specifies an amount exceeding \$5 000, are as follows:

(a) a fee of –

(i) \$1 000 for work up to and including the first prehearing conference, including taking instructions, obtaining preliminary medical reports, preparing, filing and serving the application, attending the mention and attending the first prehearing conference; or

(ii) \$1 300 if the work referred to in subparagraph (i) also includes an application for an extension of time for the purposes of section 5(3) of the Act;

(b) an additional fee of –

(i) \$400 for further work up to the hearing of the application, including obtaining additional expert medical reports, attending further prehearing conferences and all preparation for the hearing; or

(ii) \$800 if the work referred to in subparagraph (i) relates to an application in respect of which the offender has not been found guilty of the offence that resulted in the injury suffered by the victim and where it was necessary to obtain police records or obtain evidence from witnesses;

(c) for attending the hearing of an application, an additional fee of –

(i) \$500 if the hearing does not exceed half a day;

(ii) \$850 if the hearing exceeds half a day but does not exceed one day; or

(iii) \$850 for the first day of the hearing plus \$500 for each day or part of a day thereafter;

(d) all reasonable disbursements, excluding counsel's fees.

(2) A fee referred to in subregulation (1)(c) is not allowable if, during the hearing of the application, the parties reach an agreement in pursuance of section 10A of the Act and the Court specifies the agreed amount in the assistance certificate.

7. Costs: percentage of Supreme Court costs allowable

For the purposes of section 24(4)(b) of the Act, the prescribed percentage is 40%

6. Importantly there were transitional provisions in the amending act the effect of which are the subject of this dispute. Those provisions are as follows:

"17. Transitional provisions

"(1) Subject to this section, the Principal Act as amended by this Act applies in relation to an application made under section 5 of the Principal Act whether made before, on or after 1 November 2002.

"(2) Sections 6 and 7 of the Principal Act as amended by this Act apply only in relation to applications filed at the Court on or after 1 November 2002.

"(3) Section 10A of the Principal Act as in force immediately before 1 November 2002 continues to apply, on and after that date, to an application made before that date.

"(4) Despite subsection (3), if an applicant to whom that subsection applies rejects an offer made by the Territory that is agreed to by the offender, and, after hearing the application in respect of which that offer was made, the Court –

(a) issues an assistance certificate that specifies an amount of assistance equal to or less than the amount offered; and

(b) makes an order that the applicant is entitled to be paid costs in respect of his or her application,

the applicant is not entitled to costs incurred by him or her after the date on which the Territory made that offer.

"(5) Section 24(4) and (5) of the Principal Act as amended by this Act and regulations 5, 6 and 7 of the Crimes (Victims Assistance) Regulations apply only in relation to costs for work done on or after 1 November 2002."

7. It is the applicant's submission that the transitional provisions do not contemplate nor do they have the effect of allowing for the costs of an application filed before the 1<sup>st</sup> November 2002 to be assessed on two different scales for work before and after the 1<sup>st</sup> November 2002. The applicant argued that section 17(5) of the amending act refers to Section 24(4) and (5) of the Principal Act as amended and because those sections refer to an "application under section 5" the new cost regulations must only apply to applications filed after the 1<sup>st</sup> of November 2002. The Applicant's counsel comes to that conclusion applying the principle set out in Ocean Road Motel Pty Ltd v Pacific Acceptance Corporation (1963) 109 CLR 276 by the High Court at page 280

"it is not open to question that where by amendment a new provision is inserted into a principal Act and that provision speaks of "this Act" it speaks of the whole Act of which from the time of amendment it forms part and, of course, of the Act in the form which it may from time to time thereafter assume.

8. This is where in my view that applicant's solicitor's interpretation is in error. Of course when a section or regulation refers to an Act or a section of the Act it certainly refers to that Act or section as amended from time to time to state that is trite. Here we have a regulations (subordinate legislation) setting out a cost scale which does not apply (by virtue of transitional provisions) to work done prior to the 1<sup>st</sup> of November 2002. The section to which those regulations are linked is section 24 of the Act.
9. Section refers to work done in relation to an application under section 5 and Mr Buckland argues that can only mean an application under the section 5 of the 1<sup>st</sup> of November 2003. However, section 17(5) must be read in conjunction with section 17(1) of the amending act which states that the amendments apply whether or not an application under section if made before or after the 1<sup>st</sup> of November 2002. It is my view that even though section 17(1) is subject to the operation of section 17(5) it is the clear intention to limit the application of the change in cost rules to "work done" after the 1<sup>st</sup> of November 2002 and not applications filed after the 1<sup>st</sup> November 2002 otherwise the legislature would have referred to applications not work done.
10. It is therefore my ruling that the proper application of the amended costs regime as evidenced by section 24 of the Principal Act and regulations 5,6,&7 is for all work done before the 1<sup>st</sup> of November 2002 is to be dealt with on 80% of the Supreme Court costs scale and subsequent work under the new scale or at 40% of the Supreme Court costs scale regardless of when the application for assistance was filed.
11. Therefore costs will be taxed on that basis.

Dated this 9<sup>th</sup> day of May 2003

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Tanya Fong Lim  
JUDICIAL REGISTRAR