

CITATION: *Greenough v Northern Territory of Australia* [2003] NTMC 042

PARTIES: BRUCE LEE GREENOUGH

v

NORTHERN TERRITORY OF AUSTRALIA

TITLE OF COURT: Local Court

JURISDICTION: Crimes (Victims Assistance)

FILE NO(s): 2020583

DELIVERED ON: 27<sup>th</sup> August 2003

DELIVERED AT: Darwin

HEARING DATE(s): 25<sup>th</sup> August 2003

JUDGMENT OF: Judicial Registrar Fong Lim

**CATCHWORDS:**

Practice & Procedure – Costs – Unsuccessful applicant – section 24(3) Crimes Victims Assistance Act

**REPRESENTATION:**

*Counsel:*

Applicant: Ms Spurr  
1st Respondent: Mr Randhawa

*Solicitors:*

Applicant: Halfpennys  
1st Respondent: Priestleys

Judgment category classification: C  
Judgment ID number: [2003] NTMC 042  
Number of paragraphs: 13

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

No. 20205263

*[2003] NTMC 042*

BETWEEN:

Bruce Lee Greenough  
Applicant

AND:

Northern Territory of Australia  
1st Respondent

REASONS FOR DECISION

(Delivered 27<sup>th</sup> August 2003)

Judicial Registrar Fong Lim:

1. The applicant was unsuccessful in his application for an assistance certificate (see my decision 1<sup>st</sup> August 2003). The Northern Territory of Australia has applied for costs pursuant to section 24(3) of the Act.
2. Section 24(3) of the Act provides:

(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.
3. The court's discretion in order costs pursuant to section 24 (3) is an unfettered discretion which should be exercised judicially and with regards to the facts of the case before the court.
4. Ms Spurr argued that costs should follow the event. She accepted that the Crimes (Victims Assistance) Act was beneficial legislation but asked the court to consider that the Work Health Act was also beneficial legislation

and in that jurisdiction the court has no compunction about ordering costs to follow the event.

5. Mr Randhawa argued that the applicant in this matter was not frivolous in his claim and that is reflected in my reasons for decision showing that complex issues needed to be considered before the applicant's claim was rejected. He argued that the section was intended to be used in circumstances where the application was a waste of the court's time.
6. I was referred to my decision in *Atkins v Northern Territory of Australia* no 20210862 handed down ex tempore on the 16<sup>th</sup> May 2003, in which I found that there was no offence upon which the applicant could rely. This matter is clearly distinguishable to the present case. In this case I had to carefully consider the evidence put before the court and analyse whether there was a causal link between the offence and the injury.
7. In the second reading speech of the amending bill (which including the addition of section 24(3)) the Attorney General explained the reasons behind the changes made. He stated:

“New Section 24(3) will allow the court to award costs against an applicant if the court dismisses or strikes out the application. Currently, there is no provision discouraging a person from making a false or vexatious application. Clearly, a person who abuses the legal system should not be permitted to get away with it without implication.”
8. It is clear from this comment that the major reason for section 24(3) is to discourage false or vexatious claims. It should be noted however that the legislature did not limit the discretion to award costs only in those cases. The discretion is much broader and if the legislature intended to limit the discretion to false and vexatious matters it would have been specified in the section.
9. Another factor in the applicant's favour is that the Crimes (Victims Assistance) Act is beneficial legislation and should be interpreted as such

that is no orders made should negate that beneficial nature. Ms Spurr argues the Work Health legislation is also beneficial legislation and routinely costs follow the event. It is my view that each scheme should be considered separately. Crimes (Victims Assistance) scheme is a scheme created to assist victims of crime to recover from the injuries arising out of crime. Such victims should not be discouraged from making an application for assistance because of the danger of a costs order against them if they fail through no fault of their own.

10. When considering whether to order costs pursuant to section 24(3) it is incumbent upon the court to consider each matter on its own facts and decide whether the facts justify the exercise of the court's discretion in the Northern Territory's favour.
11. It is my view that this matter certainly was not false or vexatious. I found against the Defendant because he did not discharged the evidential burden of the causal connection between his injury and an offence. I also note that the applicant's prosecution of his claim was relatively timely and without the need for applications for an extension of time. These factors weigh in the applicant's favour.
12. This was a matter which required me to carefully analyse the evidence and the application of the law and was clearly a matter worthy of such deliberation given the severity of the applicant's injury.
13. I therefore refuse the Respondent's application for costs and order that each party bear their own costs of the proceeding.

Dated this 27<sup>th</sup> day of August 2003

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Tanya Fong Lim  
JUDICIAL REGISTRAR