

CITATION: *St James v Northern Territory of Australia and Masters* [2003] NTMC 050

PARTIES: SUE ST JAMES
(Applicant)

AND

NORTHERN TERRITORY OF AUSTRALIA
(First Respondent)

AND

LUKE MASTERS
(Second Respondent)

TITLE OF COURT: LOCAL COURT

JURISDICTION: CRIMES VICTIMS ASSISTANCE

FILE NO(s): 20214872

DELIVERED ON: 15 September 2003

DELIVERED AT: Darwin

HEARING DATE(s): 2 September 2003

JUDGMENT OF: Judicial Registrar Monaghan

CATCHWORDS:

Crimes (Victims Assistance) – Principles of assessment-distinguishing grief from mental injury-apportionment where mental injury results from a number of factors apart from offence in question.

Crimes (Victims Assistance) Act ss 4(1), 5(1), 17

Brown v Northern Territory & Forrester [2003] NTMC 013;

Chabrel v Northern Territory & Mills (1999)9 NTLR 69;

T V State of South Australia (1992) Aust Torts Rep 8-167

REPRESENTATION:

Counsel:

APPLICANT: C Spurr

RESPONDENT: M Dunn

Solicitors:

Plaintiff: HALFPENNYS

Defendant: PRIESTLEYS

Judgment category classification: B

Judgment ID number: [2003] NTMC 050

Number of paragraphs: 44

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

No. 20214872

BETWEEN:

SUE ST JAMES
Applicant

AND:

**NORTHERN TERRITORY OF
AUSTRALIA**
First Respondent

AND

LUKE MASTERS
Second Respondent

REASONS FOR DECISION

(Delivered 15 September 2003)

Brenda Monaghan JR:

1. This is an application for *Crimes (Victim's Assistance)* filed by the applicant Sue St James on 2 October 2002. I accept that both the application and the notice of hearing were properly served upon the second respondent.
2. The application relates to an incident which occurred on 19 May 2002 when the applicant was threatened by the second respondent Luke Masters. The second respondent is the applicant's son. The statement made to police (a copy of which is annexed to the applicant's affidavit) gives the circumstances of the offence. It appears that on 19 May 2002 the applicant's son was at her home when she returned and was violent and angry. He proceeded to smash a number of items in the house and to threaten the applicant on more than one occasion. The statement states that

“Luke then grabbed the turps from in the laundry and tipped it all over the floor of the laundry and then threw some over my legs. I was wearing jeans. He then went looking for some matches or his lighter that he had on him in the pocket of his jeans. He was continually swearing and appeared to be totally uncontrollable. He realised that his lighter was outside”.

3. It appears from the statement that the second respondent proceeded to blame the applicant for his condition in that he had had an unsettled childhood. He also acknowledged that he hadn't had “a cone” for a couple of days and that he needed one. Luke proceeded to rip out plants in the garden. He then ripped a wooded stake out of the ground and ran at the applicant holding the stick in the air as if he was going to hit her with it. Instead he hit a metal support pole for the veranda which was situated right next to the applicant.
4. The second respondent then proceeded inside and punched and damaged a bedroom door, smashed a mirror and the television unit and told the applicant “*I'll slit your guts open and put your intestines all around the lounge room walls so the boys can see it*”. Soon after, he grabbed a carving knife from the kitchen and walked outside saying “*I am going to fucking kill you*”. He ran at a neighbour with the knife held up in the air as though he was going to stab him and later chased the neighbour from the property armed with a garden shovel.
5. The police attended the scene and the second respondent was later arrested and charged. He was convicted on a number of charges including an aggravated assault on his mother and threats to kill her. On the aggravated assault charge the second respondent was convicted and sentenced to imprisonment for three months commencing for December 2002. On the threat to kill charge, the second respondent was convicted and sentenced to imprisonment for a period of one month from the same date. The defendant was immediately released however with the total period of imprisonment wholly suspended upon certain conditions.

6. The applicant claims a psychological injury was caused to her when her son assaulted and threatened to kill her on 19 May. She notes in her affidavit sworn 6 March 2003 that she was terrified throughout the incident. She was terrified that Luke would set her alight should he find his lighter and she remained terrified when he threatened to hit her with a wooded stake and later with a knife. She was also extremely worried for the safety of her ten year old son Thomas who was there at the time.
7. The first respondent accepts that the applicant suffered stress and grief as a result of the incident but denies that she in fact suffered “*an injury*” compensable under the *Crimes (Victim’s Assistance) Act*. The first respondent points to the recent history of the applicant prior to the assault and suggests that any emotional turmoil suffered by the applicant as a result of this incident was insignificant and short lived as compared to the other traumas in the applicant’s life.
8. A chronology of some of the more significant events in the applicant’s life from November 2000 onwards is set out below. This chronology is compiled from the affidavits and supporting documents filed:

27.11.00 -relationship problems

14-12-00 - relationship breakup

12-01-01 assault outside nightclub-black eyes, fractured nose, lack of consciousness, bruising-trouble sleeping –commenced taking temazepan to help sleeping - Jan to April 2001– crying all the time, irritable with children, sleeping badly, bad dreams, reluctant to go out, couldn’t handle crowds (see VIS).

10-04-01 -fall from a cliff-multiple physical injuries-in coma for 2 weeks and in hospital for 3 months-ongoing panic attacks, flash backs, not sleeping-prescribed Aropax and Valium

11-02 Hearing of assault charge following assault in January

1-02-02 developed infection in left shoulder necessitating several operations-the last in early 2002 -ongoing treatment through to May.

2-05-02 Victim Impact Statement made re assault on 12 Jan 01-“a different person. I am afraid of strangers in the supermarket...I need a friend to come with me...I am now afraid of the dark...I have nightmares”

19-05-02 Dispute with son-threatened and assaulted by him-nightmares started again (affid of applic 30-07-03), ongoing panic attacks

22-02-02 Reviewed by Dr Zacharia (ENT specialist)

27-05-02 Interviewed by Kenny-diagnosed PTSD complicated by reality based fear from January assault –says between Jan and April taking 2 Aropax a day plus 3 Valium a day and sleeping tablets

9-08-02 -slipped on stairs-hurt herself month in Bali

7-11-02 compensation for January assault in sum of \$21,504.00

26-11-02 examined by McLaren re cva-assault by so

30-11-02 Son found guilty of aggravated assault

4-12-02 Son sentenced

24-12-02 Assaulted outside Hippie Club

24-01-03 Overdose Attempt on Aropax

29-01-03 Injury to sternum when sailing

12-03-03 Examined by Dr McLaren

?24-03-03 Interviewed by McLaren-stopped Aropax-started Propanolol

23-05-03 Examined by Dr McLaren

9. The significant events include a serious assault suffered by the applicant outside a nightclub on 12 January 2001(the January 2001 assault). As a result of that assault the applicant suffered black eyes, a fractured nose, lack of consciousness and bruising. A psychiatric report prepared by Dr Kenny and dated 31 May 2002 diagnosed the applicant as suffering from post traumatic stress disorder complicated by reality based fears as a result of the

January 2001 assault. The applicant ultimately received a victims certificate in the sum of \$21,504.00 with respect that assault.

10. The applicant's injuries were exacerbated on 10 April 2001 when the applicant fell from a cliff (the cliff fall) and suffered multiple physical injuries. She was in a coma for two weeks and in hospital for three months. As a result of this fall, the applicant suffered ongoing panic attacks, flashbacks and trouble sleeping. She suffered ongoing pain and disability as a result of her physical injuries and spent a long time recovering. She is now on a disability support pension as a result of these injuries.
11. Following the cliff fall, the applicant also developed a serious infection in her left shoulder which necessitated several operations, the last of which was undertaken in early 2002. The need for medication continued through until May 2002.
12. The dispute with the second respondent, the subject of this claim, occurred on 19 May 2002 (the May 2002 assault). Since this time, the applicant has been assaulted outside the Hippy Club on 24 December 2002 and has also had two minor accidents causing physical injuries, one on 9 August 2002 when she slipped on the stairs and hurt herself and the other on 29 January 2003 when she injured her sternum when sailing. The Northern Territory submits that these numerous other stressful incidents in the applicant's life were and are the cause of any psychological symptoms rather than the May 2002 assault, the subject of this claim.
13. The question for the court is firstly, whether the applicant in fact suffered a psychological injury as a result of the May 2002 assault. If she did, then the second question is the extent of that psychological injury taking into account the fact that this assault represents only a small proportion of the number of stressors in the applicant's life as at May 2002 thus necessitating an assessment of the extent of the psychological injuries which result from other factors.

14. The provisions of the Act relevant to the assessment of an Assistance Certificate and the issues in this case are as follows:
15. Section 4(1) of the *Crimes (Victim's Assistance) Act (the Act)* defines injury and victim as follows:

"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);

"victim" means a person who is injured or dies as the result of the commission of an offence by another person.

16. Section 5(1) of the Act states:

“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 the victim as a result of that offence.

17. Section 9 of the Act states:

- (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
- (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.

18. Section 17(1) of the Act states:

(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 . (2) In proceedings under this Act, the Court may receive in evidence any transcript of evidence in proceedings in any other court, and may draw any conclusions of fact therefrom that it considers proper. (3) In proceedings under this Act, all evidence other than the evidence referred to in subsection (4) is to be given by affidavit. (4) Evidence included in a sworn statement, a medical report, or any other report relevant to the *victim's injury, filed at the Court in accordance with rules or practice directions referred to in section 15(1) or with an order of the Court, is not required to be given by affidavit, whether filed –*

(a) before or after the commencement of this subsection; or

(b) in accordance with rules or practice directions in force before or after the commencement of the Crimes (Victims Assistance) Rules.

(5) Subsection (4) does not prevent a report referred to in that subsection from being given by affidavit.

(6) A party may cross-examine the deponent of an affidavit, or the person who made a statement or report referred to in subsection (4), only with the leave of the Court.

19. You will note that 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 specifically mentions mental distress (see section 9(1)(f)). Note however that section 9(2) of the Act states that mental distress does not include grief.

20. Magistrate Luppino in the case of *Brown and Northern Territory of Australia and Forrester* [2003] NTMC 013 considered the differences between grief and mental injury. I quote from paragraph 18 of that decision as follows :

“It is therefore necessary to determine how much, if any, of the applicant’s condition is “grief” within the meaning of section 9(2) of the Act. I think some guidance in distinguishing grief from mental injury can be drawn from *Chabrel v Northern Territory and Mills* (1999) 9 NTLR69. In that case Mildren J approved of the decision of Olsson J in *T v State of South Australia a& Anor* (1992) Aust Torts Rep 8-167 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.’ ”

21. The applicant has been examined by two psychiatrists, Dr Barrie Kenny and Dr McLaren. Both psychiatrists have reached different conclusions.
22. The applicant first saw Dr Kenny on 27 May 2002 – some eight days after the assault/threats by her son. The purpose of Dr Kenny’s report at that stage was to consider the impact of the earlier January 2001 assault upon the applicant. This report is to my mind of some significance to this application because of the close proximity of Dr Kenny’s examination to the May 2002 assault. Dr Kenny comments not only on the January 2001 assault but its sequelae including the cliff fall and the applicant’s resultant injuries.

23. Dr Kenny in his May 2002 report also mentions the circumstances surrounding the May 2002 assault at page 3 as follows;

“Since then (ie. the cliff fall) she has lived a very restricted life. Tends to be tearful more easily, is irritable, grumpy, startles easily and feels fearful.. She has not worked, not studied and she has also been confronted with major problems with her 20 year old who is a drug user and has threatened to kill her. He has assaulted her, threatened her with a knife and smashed up her house. She has recently taken out an intervention order against him and is charging him with assault”.

At page 6 of his report Dr Kenny makes the following comment;

“It is clear she is a lady who has had some difficulties, difficult times in her life. For example: She has had three marriages all of which have broken down. She has three children, one of whom is drug abusing, violent and has been threatening her and one of whom suffers Asperger’s syndrome. She had a serious back injury requiring surgery some eight to nine years ago but in my understanding does not give evidence of any significant pre-existing psychiatric, psychological or emotional problems.....she was then a victim of the assault that occurred in January 2001, that is some 16 – 17 months ago now.....now it is quite clear that she suffered a post traumatic stress disorder associated with this frightening assault. The manifestations of that have included sleep impairment, bad dreams and a tendency to keep thinking about the incident, nerviness, anxiety, irritability, tending to startle easily, problems with memory and concentration and there is a certain element of avoidant behaviour, such that she now leads a much more isolated life that she used. Now she (has) had counselling and has had anti-depressant medication and from the point of view of that assault she has improved to some extent.....she also needs to redefine her relationship with her very wayward 20 year old son, as it has obviously been a significant and continuing stressful time for her”

24. As regards the effect of the earlier assault upon her Dr Kenny says

“she has a clear post-traumatic stress disorder caused by the assault and complicated by reality based fear of again bumping into her assailant”.

He suggests that at that time that

“it would be reasonable to consider that she might require say another four or five sessions of counselling at perhaps \$150.00 per session and perhaps anti-depressant medication at \$30.00 per month for another six months”.

Dr Kenny considered her prognosis generally good and suggested that her symptoms would progressively resolve.

25. The applicant received a victim’s assistance certificate in the sum of \$21,504.00 with respect to the January 2001 assault. The certificate was issued in November 2002 and although I know none of the details, I assume that it included some sort of provision for the suggested medical treatment.
26. After reading Dr Kenny’s first report, I formed the clear view that he considered the May 2002 assault was insignificant as compared with the January 2001 assault-despite the fact that the assault by her son had happened only 8 days before Dr Kenny interviewed the applicant.
27. Dr Kenny reviewed the applicant again on 26 November 2002 with respect to this application for victim’s assistance with respect to the May 2002 assault.
28. Dr Kenny confirmed his view that the assault had an ongoing effect on the applicant and I quote from page 3 of his report:

“She said she remains frightened of him. She said she does not sleep well when she is back in Darwin. She said she does not eat particularly well when she is back in Darwin. She said she has nightmares associated with this and other traumas in her life

She remains frightened of him. She feels that he has ruined his life and worries about that. She said she is not having any treatment. She said she did have some counselling through crimes compensation, was referred to a psychiatrist after this assault. She said that since she has been back in Darwin she has been taking valium again”.

29. As regards his medical opinion, Dr Kenny states at page 5 of his report

“Her history of course is really quite complex and it really is quite difficult to sort out what traumas have caused what psychiatric or psychological problems. You will of course be aware of the fact that I considered that she suffered a post traumatic stress disorder associated with the frightening assault – the subject of my previous report. You will note too that I thought that her post traumatic stress disorder was complicated by her reality based fear of her assailant. You note that I suggested that she needed to redefine her relationship with her very wayward 20 year old son.....so once again it is difficult to sort out the impact that this particular frightening incident that happened some six months ago now has had upon her. Once again I think it is reasonable to suggest that she has some of the manifestations of post traumatic stress disorder and a reality based fear of her son.....but we have to keep in mind that the assault has occurred in the setting of a long history of disturbed behaviour by this young fellow. I don’t think she needs any treatment, other than perhaps anxiolytic medication while she stays in Darwin, and I think once she moves away from Darwin – thereby defining much more clearly her relationship with her wayward son – her symptoms will gradually resolve and I will be surprised if she is left with significant long term psychiatric or psychological problems of a result thereof. It is always difficult trying to put this sort of reaction into a psychiatric framework/context, but basically it is a normal and understandable reaction to a traumatic experience”.

30. Finally at page 7 of his report paragraphs 6 and 7 Dr Kenny states

“you understand from this report and my prior report that the matter is really quite complex. It is really difficult to define clearly the distinction between the effects of that initial assault for which I saw her, this serious fall with injury that she sustained and this assault by her son. Nevertheless I still think it is reasonable to have some psychological/psychiatric reaction to this particular incident, separate from the other incidents”.

31. The applicant also saw another psychiatrist namely Dr McLaren who came to a different view after examination. Dr McLaren examined the applicant for the first time on 12 March 2003. Ms St James mentioned a number of symptoms

“she said that she was feeling generally very anxious. Her sleep was quite poor.....she was getting perhaps 2 hours of sleep per day.....she said her memory was not the best but her concentration was adequate. She was having a little trouble thinking and that she

had “too many thoughts whirring around in her head”. She said her mood was good although she was having bouts of feeling low and miserable lasting perhaps a quarter of the time in all. She described these as pretty bad but she was never sick of life and not suicidal.....she was having frequent bouts of feeling tense and agitated during which her heart raced and she had a number of other semantic symptoms of anxiety. She was having five or six attacks per day which would last until she got away from whatever caused them. As far as she knew that would be about an hour at the most and she would take ten minutes to settle.when out and about, she had the feeling that people were looking at her and talking behind her back. She often felt in danger from people who have upset her or people she may have upset in the past..... She said all these symptoms had been present for about two years. She had many fears prior to that but matters were much worse after an assault in April 2001. She had been assaulted by an ex-boyfriend who chased her over a cliff. She suffered multiple injuries and was in hospital for about three months. She said there were several other assaults, including one by another former partner who knocked her out, broke her nose and attempted to throttle her. He has since been prosecuted. Some half-caste children assaulted her on Eve 2002, and her landlady on 20 February 2003. Finally she mentioned an assault by her 20 year old son in May 2002, when he held a knife to her throat. More recently, she had taken an overdose.”

32. Mr McLaren expresses his opinion on the applicant at page 4 of his report. He states “At present, this lady suffers from a moderately severe psychiatric disorder characterised by a variable depressive condition, an anxiety state with phobic features and panic attacks, and paranoid ideas. I would not like to attempt to force her condition into any of the procrustean boxes provided by the modern diagnostic systems. Suffice it to say that she is moderately disabled by symptoms and that her life is never going to get very much better.....on each of the four occasions I have seen her, she has expressed the very greatest concern for Luke (the second respondent). On her account, his position in life is parlous at best. It is highly likely that he has a most severe personality disorder complicated by drug abuse and that, unless he does something about that in the near future, he is likely to end up in prison, in the mental hospital, hopelessly addicted to drugs or alcohol, or dead from suicide or homicide. She is perfectly aware of this and it terrifies her.

However she is right when she says that there is very little available for him.....In my opinion, her concerns for her son Luke are entirely realistic.....I see no reason to believe that her present mental state has been measurably influenced by Luke's most recent assault upon her. Any impact of his behaviour on or about 19 May 2002 has long since disappeared in the social chaos and mental turbulence which has characterised her unhappy existence almost since birth. There is no psychiatric basis what so ever for attributing any portion of her present distress to that assault. In fact, she freely states it is not the assault itself which troubles her but her very real concerns and fears for her sons future. As a matter of psychiatry, any attempt to attribute such stress as she presently experiences to that incident is bound to fail”.

33. In commenting upon her Victim Impact Statement, Dr McLaren states “I have read her Victims Impact Statement but I think that this is a disingenuous attempt to attribute to one incident a great deal of other psychopathology, blame for which would correctly reside in the long distant past”.
34. In the light of two conflicting reports, the first question for me to decide is whether or not the applicant suffered an injury as a result of the assault upon her by her son in May 2002. In her affidavit sworn 6 March 2033 the applicant states at paragraph 7b “I was on medication for depression at the time of the incident due to an earlier assault from another party, however, subsequent to the assault my dosage was increased from 2 to 4 tablets per day. I was taking this medication being Aropax 20mg until approximately 1 month ago. My medication was then changed as Aropax 80mg was no longer working. I am currently taking Exeffor 75mg which is prescribed by my general practitioner Dr Blunt”. The applicant also goes on to state at paragraph 7k “I also suffer bad dreams. These commenced after the assault and continue up to present. They take the form of Luke yelling at me,

threatening me and also the phone ringing and me being scared to answer it because I think it will be someone informing me that Luke is dead”.

35. I note the words of *Olsson J in T v State of South Australia* (supra) that:

“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.”

36. I note that the incident that occurred in May 2002 was a frightening and stressful incident for the applicant. The threats made were threats to kill her and they were made by a person who was obviously very violent and emotional and aggressive throughout the incident. His violent mood is clear from his destruction of furniture and household effects and his use of flammable liquid and household objects as potential weapons.

37. I note that as a result of the incident, the applicant obtained a restraining order to prevent her son from approaching her. This seems evidence to me that the applicant did not see this as yet another minor distressing incident with her son but a matter of greater significance. I also note that despite the fact that the offender was her son, she assisted the police with the prosecution of charges laid against him. I note the applicant’s affidavit evidence of the effect the incident had upon her including the increase in her medication following the incident.

38. I take these matters into account in concluding that the applicant has suffered

“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.”

such that she should be entitled to be considered for crimes victims assistance.

39. The next question for me to consider is the amount of compensation that should be awarded to the applicant as a result of this mental injury. It is not easy to apportion a sum when the injury in question is but one of a number of factors which has affected the applicant. These factors include the impact of the January 2001 assault, the cliff fall and the ever present concerns the applicant has for her son Luke’s wellbeing – such fears having been in existence for a number of years.
40. It also appears that both psychiatrist’s agree that these aforementioned factors have had a far greater impact on the applicant’s state of mind than this incident with her son. In fact, Dr Kenny diagnosed the applicant as suffering from Post Traumatic Stress Disorder 8 days after she was assaulted by her son but he related this condition back to the January assault and did not dwell in any depth on the May 2002 assault.
41. I also accept the comments of Dr McLaren regarding the Victim Impact Statement in that Ms St James is being “*disingenuous*” in attempting to place more emphasis on the May 2002 assault and the effect it has had on her than the incident in fact deserves. I don’t dispute that the incident was traumatic and frightening but its impact must be seen in context noting the other traumatic incidents the applicant was dealing with at the time and the role they had had to play in affecting her mental state.
42. It is not easy to quantify the amount of assistance the applicant should obtain in circumstances such as this with respect to any psychological injury but I can say that I have placed some emphasis on the weight Dr Kenny

placed on the incident in his report 8 days after the incident. I have ultimately reached the conclusion that the sum of \$1,000.00 is an appropriate sum for any mental injury and distress suffered.

43. I do not intend to grant any award for medical expenses or counselling. As regards the issue of counselling, I have formed the view that the issues the applicant may now be dealing with as they relate to her son are more likely to be her ongoing concerns and fears for his safety rather than the specific incident in May 2002. Also the expert evidence available to me does not sufficiently support such an allowance. I also have no evidence before me of the cost of any increased need for medication and I am unwilling to consider a global sum even if I were satisfied that a small award should be made.
44. I order an Assistance Certificate be issued in the sum of \$1,000.00. I further order that the first respondent pay the applicants costs of an incidental to the proceedings – to be agreed or taxed.

Dated this 15th day of September 2003.

B MONAGHAN
JUDICIAL REGISTRAR