CITATION:	*Nalita Ferguson v Northern Territory of Australia* [2004] NTMC 036
PARTIES:	NALITA FERGUSON v NORTHERN TERRITORYOF AUSTRALIA
TITLE OF COURT:	Local Court
JURISDICTION:	Crimes (Victims Assistance) Act
FILE NO(s):	20218541
DELIVERED ON:	11th May 2004
DELIVERED AT:	Darwin
HEARING DATE(s):	7th May 2004
JUDGMENT OF:	Judicial Registrar

CATCHWORDS:

Practice and Procedure – Taxation of costs – Regulation 6(1)(b)(i) &(ii) Crimes Victims Assistance Regulations.

REPRESENTATION:

Counsel:

Applicant:	Ms Spurr
1st Respondent:	Ms Howard

Solicitors:

Applicant:	Halfpennys
1st Respondent:	Hunt & Hunt

Judgment category classification: C
Judgment ID number: [2004] NTMC 036
Number of paragraphs:

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

No. 20218541

BETWEEN:

Nalita Ferguson
Applicant

AND:

Northern Territory of Australia
Respondent

TAXATION RULING

(Delivered)

JUDICIAL REGISTRAR FONG LIM:

1. The parties came to an agreement on the issue of an Assistance Certificate for the Applicant but could not agree on the amount of costs payable to the Applicant. The matter came before me on a taxation of costs with the main issue being the application of Regulation 6(1)(b)(i) & (ii) of the Crimes (Victims Assistance) regulations.

2. Regulation 6(1)(b)(i) & (ii) provide:

> 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:…….
>
> (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;

3. The issue between the parties is whether the Applicant should be allowed $400 or $800 for further work.

4. In this matter there were two alleged offenders, one was convicted and the other not charged. The Applicant's solicitors submitted that although an offender had been convicted there was some reasonable grounds to suspect that there may be a claim of contributory behaviour against their client. In particular advice from the investigating officer that the second offender was not charged because of "conflicting stories".

5. The Applicant argued that because of the comment made by the police officer it was reasonable and necessary for further investigation of the police records and evidence from witnesses. It was also put to me that as the Crimes (Victims Assistance) Act is beneficial legislation I should find in favour of the Applicant where a matter is in the balance.

6. The Respondent argued that they had written a letter on the 22nd of August 2003 advising the Applicant that on the basis of the police case summary and certificate of proceedings that they would accept liability that the Applicant was a victim pursuant to the Crimes (Victims Assistance) Act and that there was no issue of contributory behaviour. The only issue at the time the letter was sent was the quantum of the certificate. Therefore there was no need for a further investigation by the Applicant from the date of that letter.

7. The Applicant's stated that some of that investigation was done prior to the receipt of the letter however did not say that all such investigation was done prior to the receipt of the letter.

8. It is clear in my mind that the legislation does not contemplate the situation where there are two offenders one is convicted and one is not. Regulation 6 (1)(b)(ii) refers to "the offender" which interpreted literally would only assume one offender. However the Interpretation Act states in section 24 "In an Act (b)

words in the singular shall include the plural and words in the plural shall include the singular" this applies equally to regulations. Does this mean that if there is a conviction then an Applicant cannot claim the costs under regulation 6(b)(1)(ii)?

9. The purpose of the Act is to "provide assistance to certain persons injured or who suffer grief as a result of criminal acts". Part of that purpose is served by allowing the Applicant costs for the preparation of the application for Assistance. The purpose of limiting those costs through regulation was to ensure that no unnecessary costs were claimed and to limit the drain of legal costs on the fund available to give assistance to victims. It must be noted however that the purpose of the regulations, as subordinate legislation, can not be contrary to the purpose of the Act and must be read in light of the purpose of the Act.

10. In a matter where there is a single offender and a conviction it is clear Regulation 6 only allows the Applicant to claim the costs under regulation 6(b)(1)(i). By placing this restriction on the costs the Legislature by its regulating power has made the assessment that if there is a conviction it is not necessary for the Applicant to obtain police records or evidence from witnesses about the alleged offence and therefore such costs will not be allowed. Nevertheless there are situations in which there is a conviction and the issue of contributory behaviour of the victim is relevant. In those situations it is my view that it is entirely appropriate and reasonable for the Applicant to obtain police records and statements from witnesses yet the regulations do not contemplate costs for that work. The Legislature has not said that an Applicant should not make those enquires in matters where the offender has been found guilty, just that the extra costs allowable will be less than those in matters where the offender is not found guilty.

11. In this matter the Applicant argued that even though there was a conviction of one offender it was entirely appropriate and reasonable for the Applicant to investigate because there was some suggestion of contributory behaviour. I agree that it is reasonable for the Applicant's solicitors to investigate the possibility of the contributory behaviour whether the offender was found guilty or not. However the regulations are drafted in such a way which restrict what costs can be claimed.

12. To obtain the costs under Regulation 6(1)(b)(ii) the application must be one in which the offender has not been found guilty and it must have been necessary to obtain Police records and witness statements. Here an offender has been found guilty and it is my view the fact that another alleged offender has not been charged or found guilty is irrelevant. The Act only requires there to be an offence out of which the victim is injured it does not require all offences to be proved (if there are multiple offences).

13. It is my view that it is the clear intention of the legislature to limit the costs of preparation to $400 if the offender was found guilty and increase it to $800 only if there is no finding of guilty and it was necessary to get police files and witness statements. There is no discretion provided to the court in the application of these regulations so unless both of those criteria as fulfilled then only the $400 can be claimed.

14. It is my further view that even if it was reasonable for the Applicant to get police files and witness statements to establish whether there was contributory behaviour that is included in the $400 is allowable under the Regulations.

15. In addition, the fact that the Respondent had admitted liability in a letter would have only influenced my decision if there had been no finding of guilt and it had been served prior to the Applicant making those enquiries.

16. I therefore will allow the Applicant costs as allowable pursuant to Regulation 6(b) (1) (i) that is $400.00.

17. **Costs of Taxation -** The parties also addressed me in relation to the costs of attending taxation and the application of the 20% rule.

18. The solicitor for the Respondent argued that the 20% rule should apply in these circumstances and also that given she served an offer of $1400 plus GST (which is what has been allowed) then the Applicant should pay the Respondent's costs of the appearance at taxation.

19. The solicitor for Applicant argued that the 20% rule should not apply against her client as it is beneficial legislation and that the court has no power to order costs

against the Applicant unless the Applicant's application has been dismissed or struck out (see section 24(3) of the Crimes (Victims Assistance) Act). I agree with the Applicant about the Application of section 24(3). In this matter the Applicant's claim has been successful therefore no costs can be ordered against him.

20. The "20% rule" is contained in Order 63.34(6) of the Supreme Court Rules. Rule 63.34 is applied by the court in taxations for Crimes (Victims Assistance) matters through rule 5 of the Crimes (Victims Assistance) rules which allows the court to apply the Local Court rules where a procedure is wanting. There are no rules of taxation under the Crimes (Victims Assistance) rules and Order 63 of the Supreme Court rules is adopted in Local Court taxations by rule 38.02 of the Local Court rules.

21. Order 63.34 gives the court the discretion to disallow the costs of taxation should 20% or more be deducted from the costs claimed in the bill of costs. In this matter more than 20% has been deducted however my view is that the amount claimable under the Regulations was not clear in this case and was a matter appropriately brought before the Court. Given that and the fact that this is beneficial legislation I am not prepared to order that the costs of taxation should be disallowed.

22. Therefore the costs of the proceedings are allowed at $1540 including GST plus $82.80 for the costs of taxation and $338.00 for the filing fee.

Dated this day of

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Tanya Fong Lim
JUDICIAL REGISTRAR