CITATION: S*ertic v Northern Territory of Australia* [2005] NTMC 051

PARTIES:	Mary Anne Sertic
	v
	The Northern Territory of Australia
TITLE OF COURT:	Local Court
JURISDICTION:	Local Court
FILE NO(s):	20105298
DELIVERED ON:	19 August 2005
DELIVERED AT:	Darwin
HEARING DATE(s):	26 June 2005
JUDGMENT OF:	Dr John Lowndes, SM

CATCHWORDS:

VICTIMS ASSISTANCE - ENTITLEMENT TO ISSUE OF AN ASSISTANCE CERTIFICATE – WHETHER APPLICANT A "VICTIM"

REPRESENTATION:

Counsel:

Plaintiff:	Mr Buckland
Defendant:	Mr Lawrence

Solicitors:

Plaintiff:	Anthony Buckland
Defendant:	Priestleys

Judgment category classification:	B
Judgment ID number:	[2005] NTMC 051
Number of paragraphs:	127

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

No. 20105298

BETWEEN:

MARY ANNE SERTIC
Plaintiff

AND:

THE NORTHERN TERRITORY OF AUSTRALIA
Defendant

REASONS FOR JUDGMENT

(Delivered 19 August 2005)

DR JOHN LOWNDES SM:

THE NATURE OF THE APPLICATION

1. This is an application for crimes (victims) assistance brought pursuant to the *Crimes (Victims) Assistance Act.*

2. According to the application the applicant alleges that she was assaulted on 3 April 2000 by the second and third respondents at the Ards Caravan Park, Winnellie. She alleges that as a result of the assault she suffered a shovel wound to the left foot and subsequent infection, bruising to head, left arm and right eye. Further, she experienced sleeping difficulties and nightmares.

3. The circumstances surrounding the assault are more fully particularised in the applicant's affidavit sworn 15 May 2003 (part of Ex 1 in the applicant's case). The salient parts of that affidavit are set out below:

"2. On the 3rd April 2003 I was living at the Ards Caravan Park in Winnellie. On that date I was asleep in a caravan when I was woken when two people entered the caravan.

3. The people referred to in paragraph 2 I know to be Robyn Rolfe and Murray Pascoe.

4. Robyn asked me where the keys to Murray's car were to which I replied that they were on the table. I had borrowed Murray's car that day with his permission.

5. At this time Murray had what looked like a police baton in his hand. It was a small black club-type baton. Murray began to hit the walls of the caravan with the baton very hard. He was talking with Robyn but I cannot remember what they were saying.

6. My friend Duane Tryhorne was in the caravan at the time. Murray hit Duane Tryhorne with the baton. I saw Duane put his left arm up as Murray struck at him to the left side of his body. Duane got up and ran outside. At this time I was still lying in bed. Then Murray struck at me with the baton. I raised my left arm to block the strike. I then put my arm down to get out of bed. As I did I felt a blow to the left side of my head down behind my ear which caused a sudden sharp pain.

7. I then saw Robyn with a shovel. I was sitting on the end of the bed. Robyn then grasped the handle of the shovel with both hands and lifted the shovel and forced it down onto my left leg and foot. She repeated this several times also hitting me on the legs.

8. At this time Murray was smashing up the caravan.

9. They then left the caravan I heard Murray's Commodore start and drive off, I walked outside and saw Murray driving around the caravan park. Murray stopped outside the caravan and got out of the car. I said ' Gee Murray what sort of drugs are you on' and he said 'None' and poked me in the left eye repetitively. Then he got into his car and drove off."

4. The applicant also made a statutory declaration dated 18 December 2002 (part of Ex 1) wherein she gave a similar account of the incident.

THE THRESHOLD QUESTION: THE COMMISSION OF AN OFFENCE

(a) The requirement

5. Section 12 (a) of the Act provides that the Court shall not issue an assistance certificate where it is not satisfied, on the balance of probabilities, that the person whom the applicant claims was injured or killed was a victim within the meaning of the Act.

6. Victim is defined in s 4 as meaning "a person who is injured or dies as the result of the commission of an offence by another person".

7. Therefore, the issue of an assistance certificate depends upon the Court being reasonably satisfied on the balance of probabilities that the applicant injured as a result of the commission of an offence by another person?

(b) The Standard of Proof

8. As is clear from ss 12(a) and 17 of the Act the relevant standard of proof is the civil standard, namely, on the balance of probabilities.

9. Given the general nature of applications under the *Crimes (Victims) Assistance Act* , the standard of proof is as elaborated upon by Dixon CJ in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361:

> "The truth is that, when the law requires the proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence before it can be found: it cannot be found as a result of a mere mechanical comparison of probabilities independently of any belief in its reality"

10. In determining whether an applicant has established his or her case on the balance of probabilities, the tribunal of fact must have regard to the seriousness of the allegation made in the application, the inherent

unlikelihood of an incident of that type, or the gravity of the consequences flowing from a particular finding.[1]

11. The case must be proved to the reasonable satisfaction of the tribunal of fact: reasonable satisfaction should not be produced by inexact proofs, indefinite testimony or indirect inferences.[2]

(c) The Evidence

12. The applicant's account of the alleged assault is as set out in the introductory part of these reasons for decision

13. The affidavit of Duane Alan Tryhorne, sworn 12 December 2003, was tendered in support of the application (part of Ex 1 in the applicant's case).

14. According to Mr Tryhorne, on or about 3 October 2000, the applicant was with him in his caravan at the Ard's Caravan Park at Winnellie. At about midnight a male and a female – known by him to be the second and third respondents – broke into his caravan. The second respondent, who had entered the annex to the caravan and then the van proper, was armed with an object that resembled a police baton. After switching the light on the second respondent struck Mr Tryhorne with the baton. Mr Tryhorne said that he escaped from his assailant by exiting through another entrance to the caravan. Mr Tryhorne went on to say that the second respondent struck the walls of the caravan and began to interrogate the applicant in relation to some car keys. He heard him yelling at the applicant and hitting objects. He also heard the applicant yelling out from which he inferred that he was hitting her. Mr Tryhorne said that the third respondent was outside the caravan and was just entering the annex as he exited the caravan. He said that she took hold of a shovel which was located in the annex and she

[1] See *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361.
[1] See *Briginshaw* v *Briginshaw* (1938) 60 CLR 336 at 362

entered the caravan armed with that shovel. Mr Tryhorne said that while the two respondents were inside the caravan he could hear "cries of pain" from the applicant, from which he inferred the two respondents were "beating" the applicant. Mr Tryhorne gave hearsay evidence that he had been told by the applicant that the third respondent had struck her with the shovel and the second respondent had hit her with the baton. He also said that the next morning the applicant told him that her head and foot were hurting, and he could see that she had been struck "because there were obvious marks on her head, leg and foot" and "her foot was beginning to swell".

15. The applicant also sought to rely upon the various documents and material contained in Exhibit 1, described as the "Court File", which contained the following in addition to the application for assistance and the affidavits of the applicant and Duane Tryhorne:

    (1) Medical records from the Tamarind Centre;

    (2) Report from Stuart Park Surgery dated 22 March 2004, and

    (3) Medical records for Royal Darwin Hospital.

16. The applicant relied upon the following further evidence:

    (1) The psychiatric report prepared by Dr Robert Athey dated 14 February 2005;

    (2) The affidavit of Anthony Dean Buckland sworn 29 March 2005 to which was annexed a further psychiatric report prepared by Dr Athey dated 22 March 2005, and

    (3) The affidavit of Valerie Honor Aloi sworn 27 May 2005.

17. Ms Aloi, who was the applicant's former case manager at Cowdy Ward, deposed that the applicant had told her about the alleged assault. The deponent said that she was present during the interview conducted by Senior Constable Dye. The deponent said that the applicant appeared well

and in control, and gave a full account of the alleged assault to the interviewing officer. Ms Aloi stated that the applicant did not appear to be medicated at the time of the interview.

18. In his report dated 14 February 2005 Dr Athey stated that the applicant had reported to him that on 3 April 2000 at about 3am, while asleep in a caravan in Darwin with her boyfriend, she was assaulted by two persons who went by the name of Murray Pascoe and Robyn Rolfe. The applicant told Dr Athey that she had no idea why she had been assaulted.

19. Dr Athey stated that the applicant had informed him that Murray Pascoe had belted her around the head with a police baton while Robyn Rolfe wielded a shovel which struck her on the foot. The doctor also said that the applicant had told him that during the assault she was poked in the left eye which has affected her vision to this day.

20. According to Dr Athey the applicant claimed that Murray Pascoe had "several connections in Darwin", and if she dared say anything about it to the police or other authorities she would be further attacked and run out of town or, otherwise, made to regret her actions."

21. The doctor stated that he was informed by the applicant that two to three days after the assault she developed an infection in the left foot where the shovel had struck her, a condition known as cellulitis. The applicant was admitted to Darwin hospital for treatment. The applicant claimed that while she was in hospital Murray Pascoe had continuously telephoned and threatened her. However, she said that she may have been delirious at the time.

22. According to Dr Athey, following her discharge from hospital, the applicant stood outside the fire station where Murray Pascoe worked and told all and sundry about what he had done to her. Dr Athey said that the applicant later realised that her conduct was inappropriate.

23. The only past psychiatric history referred to in Dr Athey's report of 14 February 2005 was a period of depression following the termination of a relationship and subsequent termination of a pregnancy occurring many years ago.

24. In his summary and assessment, Dr Athey stated that following the assault the applicant developed cellulitis followed by a period of confusion and atypical behaviour. He said that she required psychiatric treatment for approximately six months . Her condition settled after that time. Dr Athey proffered the opinion that her psychiatric illness amounted to "some kind of anxiety-related reaction, probably a severe acute stress disorder following an incident". He expressed the view that she may also have sustained an acute brain syndrome following the history of cellulitis, thereby explaining the confusion and her untoward behaviour.

25. However, Dr Athey went on to say that "the use of long term injections suggests that she probably had more of an emotional problem which could have been a temporary psychosis or temporary hypomanic reaction". His final opinion was couched in these terms:

> "The most likely reaction I consider was probably that of an acute stress disorder, which is similar to post-traumatic stress disorder and arises following a traumatic and frightening incident.
>
> This condition now appears to have resolved with no ongoing problems..."

26. Prior to preparing his supplementary report dated 22 March 2005, Dr Athey was provided with a much fuller medical history concerning the applicant. That history consisted of records relating to her admission to Darwin Hospital in 2000 and records from the Tamarind Centre.

27. In his report Dr Athey observed that there was a note, dated 25 April 2000, in the hospital records suggesting that Ms Sertic had a diagnosis of schizo-affective disorder and she was being treated with the anti-psychotic

medication, Olanzapine, and the mood stabilising drug Sodium Valproate. Dr Athey went on to state:

> "She had been referred via the Tamarind Centre for making frequent reports to police, accusing people of murder and standing outside the police station to talk to people that weren't there. There is also a suggestion that she was admitted to a psychiatric hospital in Brisbane in 1987 with a schizophreniform psychosis. The history goes on to suggest that she was referred to the Tamarind Centre again in August 2002, also with a supply of Olanzapine."

28. Dr Athey went on to note that "she appeared to have settled over that period of time, but there is further evidence of a head injury in 2001 following an assault".

29. The doctor said that the reports from the Tamarind Centre suggested that the applicant was given a long-term depot antipsychotic in November 2002. Further, there was a suggestion that she had schizophrenia in May 2003. On 8 August, year unknown, she was reported to have been talking aloud and accusing Dr Singh of being Dr Death.

30. Dr Athey said that while it was clear that the applicant was disturbed, there was no history of exactly why the diagnosis of schizophrenia was made.

31. When he examined the applicant on 8 February 2005, Dr Athey found no evidence of any psychosis – certainly no evidence to suggest that she was schizophrenic. He stated: "It would be very unusual for schizophrenia to resolve completely, particularly as she denied taking any medication at the time.

32. Dr Athey proffered the following opinion:

> "I would think therefore that her past history shows psychotic episodes, but the notes appear to be descriptive and very useful for passing on messages and for hospital management, but do not give a clear reason why the diagnosis of schizophrenia or the related condition of schizophreniform disorders was made, nor is there any evidence that a urine drug screen was taken.

> I would suggest there is a high possibility that she may have been abusing cannabis, particularly as she was mixing with people who were involved in the drug scene, according to the history I obtained when I interviewed her in Brisbane on 8 February. If this was the case, she may well have had episodes of florid psychosis, which would disappear once she ceased using marijuana.
>
> The other possibility I would raise is that she had an acute brain syndrome, that is, an acute delirious state following her foot infection which appears to have been quite severe on the notes. A heightened temperature can cause a delirious condition which mimics schizophrenia.
>
> I am clearly left with the conclusion that Mr Sertic clearly has had psychiatric problems in the past, but they may well be due to a drug induced psychosis or to an acute brain syndrome or both. If she did have ongoing schizophrenia it would be unlikely that she would have presented as coherently as she did when I reviewed her on 8 February 2005 in Brisbane."

33. The evidence presented in the first respondent's case differed in some very material respects from the evidence presented by and relied upon by the applicant.

34. In his affidavit sworn 12 November 2004 (Ex 3 in the respondent's case) Mr Murray Pascoe, the second respondent, deposed that he had little contact with the applicant: see paragraphs 2 and 3 of his affidavit. The second respondent denied ever having assaulted the applicant. He also denied having threatened the applicant and telling her he knew the Hell's Angels. The second respondent said that he had never met the person "Dwayne" and certainly had not assaulted him.

35. The first respondent also relied upon the affidavit of Melissa Dunn sworn 28 May 2004 (Ex 1 in the respondent's case). Ms Dunn is the solicitor with carriage of the matter on behalf of the first respondent, the Northern Territory of Australia. The following documents were annexed to her affidavit: letter dated 25 July 2005 from the NT Police with attachments, statutory declaration of Constable Kim Dye dated 13 August 2004 and

email from David Hoschke, NT Police subpoenaed documents relating to the applicant and a true copy of the death certificate of Robyn Rolfe.

36. The letter dated 25 July 2005 from NT Police had attached to it case summary reports Promis 231150 and 231125 referable to an incident on 4 April 2000. The first case summary report 231150 (4/4/2000 – 21.00) relates to an incident on 4 April at site 51 Ards Caravan Park Winnellie. The report says that the complainant, the present applicant, reported that on 3 rd or 4 April between 2200 - 2300 hrs she was assaulted by two people, Murray Pascoe and his wife Bobby Pascoe. The report states that the complainant was intoxicated at the time. According to the second case summary report 231125(4/4/2000 – 20.02) the applicant had complained of having been assaulted last night by Murray Pascoe and had requested a police standby.

37. In her statutory declaration made 13 August 2005 Constable Dye deposed that in October 2001 she was charged with the task of investigating an assault alleged to have occurred in April 2001. The constable went on to say that the complainant who was Mary Anne Sertic, the applicant, had reported to the police at about 9.00am on 4 April 2001 that she had been assaulted. The applicant had indicated that she was reporting the incident for the purposes of information only. Constable Dye further deposed that on 17 July 2001 the applicant attended Darwin City Police Station to make a formal complaint in relation to the April incident. In her declaration the constable mentioned that she had had difficulty obtaining details from the applicant in relation to the alleged assault.

38. The affidavit of Kim Vanessa Dye was tendered as part of the first respondent's case (Ex 2 in the respondent's case). That affidavit deposed as to the circumstances surrounding the investigation of the alleged assault. As a result of the investigation it was determined that there was

insufficient evidence to mount a successful prosecution against the alleged offenders.

39. The first respondent also sought to rely on the affidavit of Marjorie Clair Smith sworn 11 November 2004 (Ex 4 in the respondent's case).

40. Marjorie Smith, who is the mother of Murray Pascoe, deposed that she first met the applicant about 10 years ago. At that time the deponent was a care worker at Catherine House, a safe refuge for women funded through the Salvation Army by the Government. She recalled the applicant having sought the assistance of Catherine House on numerous occasions. The deponent said that the majority of times when the applicant returned to Catherine House she would report that she had been assaulted again.

41. In paragraphs 4 to 7 of her affidavit the deponent recounted instances of her contact with the applicant over the years.

42. In paragraphs 10-13 the deponent deposed as to her knowledge and contact with Robyn Rolfe (the third respondent, now deceased) over the years. In paragraph 14 she stated that she had never seen Robyn Rolfe assault anyone.

43. The deponent stated in paragraph 15 of her affidavit that she had never known Murray Pascoe to allow anyone to drive his Commodore. Further, she stated that she had never known Murray Pascoe to have any association or involvement with the Hell's Angels.

44. In paragraph 17 of her affidavit the deponent stated that the applicant had never lived at her house or in the caravan at 92 Moil Crescent Moil. Finally, the deponent said that she was not aware of any discussion having ever taken place between the applicant and her husband during which he had asked her to arrange alternative accommodation for Murray Pascoe, as he did not want Murray living any longer at 92 Moil Crescent Moil.

45. The first respondent also relied upon the affidavit of David Gordon Smith sworn 11 November 2004 (Ex 5 in the respondent's case).

46. Mr Smith, the husband of Clair Smith, stated that he could not recall ever meeting anyone by the name of Mary Sertic; and certainly never had any discussions with anybody about arranging alternative accommodation for Murray Pascoe. He said that he and Murray had always got on with each other and he enjoyed living with him at 92 Moil Crescent Moil because of common interests.

47. In paragraph 5 of his affidavit Mr Smith said that no one by the name of Mary Sertic had ever lived in the house or caravan at 92 Moil Crescent Moil.

(d) Evaluation of the evidence

48. This presents as a most difficult case which requires the tribunal of fact, applying the civil standard of proof, to evaluate and weigh fallible, incomplete and contradictory pieces of evidence with a view to reaching a conclusion about a past event, namely a rather vicious assault said to have occurred on 3 April 2000. Inevitably, the credibility and reliability of all witnesses is in issue. The task of assessing each of the witnesses, in terms of their credibility and reliability, is made extremely difficult in this case by the fact that none of the witnesses gave viva voce evidence and subjected to the rigours of cross-examination. The Court was denied the benefit of seeing and hearing any of the witnesses. The demeanour of a witness can be significant in determining the weight to be accorded to the evidence of that witness. The credibility and reliability of each of the witnesses is left to be assessed on "the papers" - so as to speak - and by carefully scrutinising the various affidavits, scouring for significant internal inconsistencies and juxtaposing the contents of those affidavits

with any reliable item or items of evidence which might reveal where the true facts fall.

49. The task is made even more difficult by the fact that the applicant, whose credibility and reliability is absolutely critical in this case, has a psychiatric history which predates the commission of the alleged assault and continuing up until a considerable period after that alleged assault. Obviously, the applicant's mental condition cannot be ignored when considering the credibility and reliability of the applicant because of the obvious potential for a psychiatric illness to affect those two aspects of a witness's account of past events.

50. The first observation I make is that it is not possible to reconcile the account given by the applicant with the evidence given by the second respondent. The applicant alleges that she was assaulted by the second and third respondents while the second respondent categorically denies that either he or the third respondent ever assaulted her. The accounts are diametrically opposed.

51. In deciding which of those accounts are to be preferred one begins by examining the internal consistency of each account and the consistency of the account with other evidence presented at the hearing.

52. The applicant's account discloses a temporal inconsistency. The application filed and signed by her alleges that the assault took place on 3 April 2000. However, in her supporting affidavit sworn 15 May 2003 (part of Ex 1) she alleges that the assault occurred on 3 April 2003.

53. However, the allegation made in her application that the assault took place on 3 April 2000 is generally consistent with the Promis case summary reports which record a complaint made by the applicant on 4 April 2000 to the effect that she was assaulted by the second and third respondents on 3 or 4 April 2000; though it should be noted that according to Constable Dye

the applicant had reported to police that at about 9.00 am on 4 April 2001 she had been assaulted.

54. The allegation made in the application that she was assaulted on 3 April 2000 accords with the contents of the applicant's statutory declaration dated 18 December 2002.

55. Furthermore, the allegation that she had been assaulted on 3 April 2000 is consistent with the history that the applicant gave to Dr Athey.[3]

56. By way of contrast, there is a patent inconsistency between the applicant's assertion that the assault occurred on 3 April 2000 and Mr Tryhorne's evidence that the assault took place some 6 months later on 3 October 2000.

57. The difficulty in this case is that none of the mentioned witnesses attended the hearing and gave oral evidence. Nor were any of the witnesses subjected to cross–examination. No opportunity was afforded to the witnesses – particularly the applicant - to explain inconsistencies in their evidence. Nor was any opportunity afforded to counsel for the parties to explore and explicate those inconsistencies. Therefore, the Court is left to deal with and resolve those inconsistencies on the face of the affidavits, and other documents tendered in these proceedings, without the benefit and assistance of the usual dynamics of the adversarial process.

58. There is, of course, a marked difference between an account which alleges an incident on the 3 April 2000 and one which relates to an incident 3 years later, on 3 April 2003. However, it should be noted that the day and month remains constant in each account and the only variable is the year.[4] Although a person may recall the day and month on which an incident occurred his or her memory may fail in relation to the year in which it

[3] See Dr Athey's report dated 14 February 2005.
[3] The day and month is also consistent with the Promis case summary reports.

occurred. That is not an uncommon experience. In the ordinary course of events, such memory failure may not, on its own, impugn the reliability of the historian and lead a tribunal of fact to question whether the incident in fact occurred. But what is very different in this case is that the applicant swore an affidavit on 15 May 2003 – the applicant's primary evidence - in which she recounted an incident on 3 April 2003, a mere 6 weeks earlier. This assertion substantially undermines the credibility and reliability of the applicant because the applicant is, on a date proceeding the filing of her application, alleging an incident which also post-dates the application.

59. The assertion made in the applicant's affidavit presents further difficulties. It is patently inconsistent with the evidence given by Dr Athey who first saw the applicant on 8 February 2005. Dr Athey stated that the applicant had given him a history of having been assaulted on 3 April 2000. The applicant's assertion is also inconsistent with the evidence given by Mr Tryhorne (by way of affidavit sworn 12 December 2003) who stated that the assault took place on 3 October 2000.

60. The applicant's pattern of recall is thus:

(1) In her application dated 2 April 2001 the applicant alleges an assault on 3 April 2000;

(2) In her statutory declaration dated 18 December 2002 the applicant asserts that she was assaulted on 3 April 2000.

(3) The applicant swears on 15 May 2003 that an assault occurred on 3 April 2003;

(4) The applicant tells Dr Athey on 8 February 2005 that an assault took place on 3 April 2000

61. The applicant's memory of what occurred vacillates between 2 dates, namely 3 April 2000 and 3 April 2003. In my opinion, the vacillatory nature of her recollection of events severely impacts upon her credibility and reliability and raises real questions as to whether in fact she was

assaulted by the second and third respondents on either 3 April 2000 or 3 April 2003, or indeed at any other time. There are at least four possibilities. The first is that her claim is a complete fabrication. The second is that an incident occurred but it has been grossly exaggerated by the applicant (and her supporting witness), the true state of affairs being that no one was assaulted during the incident. The third is that is she operating under a delusional belief that she was assaulted. The fourth is that the applicant is telling the truth and she was in fact assaulted in the manner alleged.

62. When considering the various possibilities it is important to have regard to all the evidence, in particular the evidence given by the second respondent.

63. The second respondent categorically denies ever having assaulted the applicant. As he was not cross-examined the second respondent remains unshaken in his evidence. Unlike the account given by the applicant, the version given by the second respondent does not disclose any inconsistencies. There is nothing on the face of the affidavit that would suggest that the second respondent is other than a truthful witness. Accordingly, the second respondent's evidence decreases the probability of the applicant's version being a true and accurate account, especially in the light of the inconsistencies which permeate her version of events.

64. However, it is important not to overlook Mr Tryhorne's evidence which on its face supports the account given by the applicant and challenges the second respondent's denial of having ever assaulted the applicant. But the Court needs to approach Mr Tryhorne's evidence with a great deal of circumspection. His evidence is rendered fundamentally suspect or less than cogent by the following aspects:

    (1) He asserts that the alleged assault occurred on 3 October 2000 which is at variance with the two alternative dates given by the applicant. That discrepancy, viewed in the context of

other features of the witness' evidence, tends to impugn both the credibility and reliability of the witness.

(2) Although he gave an account of the two respondents attending and entering his caravan armed with offensive weapons, he did not witness the actual alleged assault. He merely drew inferences that the two respondents were assaulting the applicant. Furthermore, he admitted that he had been told by the applicant that she had been struck by the two respondents. His evidence is largely based on inference and hearsay. Although the Court is not bound by the rules of evidence and may inform itself on any matter in such manner as it thinks fit,[5] the Court may attribute to a particular item or body of evidence whatever weight it may consider appropriate. In this case, minimal weight should be attributed to the circumstantial and hearsay evidence given by Mr Tryhorne.

(3) In her affidavit sworn 5 November 2004 Constable Dye deposed as follows:

> "Duan Tryhorne, identified by Mary Sertic as a victim/witness of the alleged assault, stated to police that he left the scene before seeing what happened."

This item of evidence does not accord with the evidence given by Mr Tryhorne who says he remained at the scene, albeit outside the caravan. It also raises the possibility he witnessed far less than he says he witnessed. Constable Dye's evidence is yet another matter that casts doubt upon Mr Tryhorne's credibility and reliability.

(4) According to his affidavit, Mr Tryhorne recalled Constable Dye attending his premises during the last quarter of 2003. He also recalled making an arrangement to attend an appointment with her regarding the matter. Mr Tryhorne stated that he subsequently attempted to make contact with Constable Dye. He said that he arranged to see her at the police station but she was absent on duty. He said that he made subsequent calls to the station, leaving messages; but she failed to return his calls. Mr Tryhorne stated that he had not "deliberately or intentionally avoided assisting police" and he believed that he had "done as much as could be reasonably expected of (him) to assist police." Mr Tryhorne's evidence is not on all fours with the evidence given by Constable Dye. She says that Mr

[5] See s 15(3) *Crimes (Victims Assistance)Act.*

> Tryhorne failed to attend the Darwin Police Station twice after she had made arrangements with him to attend and provide a statement in relation to the matter. It is apparent on all the evidence that Mr Tryhorne failed to report to police what can only be described, on the basis of the witness' account, a most serious instance of home invasion. If the incident in fact occurred in the manner described by Mr Tryhorne, it is most surprising that he did not report the incident to police : not only was he and the applicant viciously assaulted but his home was unlawfully entered. In relation to subsequent contact between Constable Dye and Mr Tryhorne, I prefer the constable's account to that of Mr Tryhorne. Constable Dye was tasked to investigate the alleged assault. Mr Tryhorne had been identified as a possible victim/witness from whom she was keen to obtain a statement. Given her status of investigating officer, I consider her recall of events to be superior to that of Mr Tryhorne and, having regard to the overall quality of her investigation of the alleged offence, I find it inconceivable that she would have neglected her duty in the way alleged by Mr Tryhorne. The only conclusion that I can draw is that Mr Tryhorne failed to actively and reasonably pursue the matter following the initial contact with Constable Dye. The failure to report, coupled with lack of diligence in pursuing the matter, raises the real possibility that the incident never occurred or that the incident has been grossly exaggerated and the true state of affairs is that no one was ever assaulted.

65. On account of those aspects the corroborative value of Mr Tryhorne's evidence becomes somewhat dubious, and his evidence does very little, if anything, to increase the probability that the applicant was assaulted by the second and third respondents.

66. There is a further body of evidence which when considered with the rest of the evidence before the Court impugns the credibility and reliability of the applicant's account of the alleged incident.

67. In her statutory declaration dated 18 December 2002 the applicant stated that on 3 April 2000 she was living at 92 Moil Crescent Moil in a caravan which was located at the front of those premises and which she shared with Murray Pascoe. She also said that she had been approached by Mr Pascoe

(who appears to be one and the same person as Gordon Smith) and asked by him if she could assist in finding alternative accommodation for Murray Pascoe. She said that Mr Pascoe had told her that he did not want Murray living at 92 Moil Crescent.

68. In that statutory declaration the applicant asserted that she had borrowed Murray's car (a 4-wheel drive). That piece of evidence was contradicted by Murray Pascoe. Mrs Smith believed that Murray had only lent his 4-wheel drive to his brother on the odd occasion.

69. The applicant's evidence in relation to her place of residence was contradicted by both Marjorie Smith (Murray Pascoe's mother) and her husband, Gordon Smith (the person identified by the applicant as being Mr Pascoe). Both witnesses were adamant that the applicant had never lived either at the house or in the caravan at 92 Moil Crescent. Mrs Smith said that she not aware of any discussion ever having taken place between the applicant and Mr Smith regarding alternative accommodation. Mr Smith backed up his wife's evidence. Not only could he not recall ever having met anyone by the name of Mary Sertic, but he was adamant that he had never discussed with anyone about making arrangements for alternative accommodation for Murray Pascoe. Indeed, Mr Smith said that he got on well with Murray Pascoe and enjoyed living with him at 92 Moil Crescent.

70. I prefer the evidence of Mr and Mrs Smith. Mr and Mr Smith lived at 92 Moil Crescent and were obviously in the best position to know who was living at their residence. It is inconceivable that the two witnesses would lie or be mistaken about the applicant's living arrangements, which is such a peripheral issue in this case and which is a matter of which both had direct knowledge and first hand experience. Having expressed a preference for the evidence of Mr and Mrs Smith, it follows that the Court rejects the applicant's evidence. If the applicant cannot be accepted in relation to that piece of evidence, then the Court is entitled to exercise care and caution in

accepting the rest of her evidence, particularly that which goes to the substantive issues in this case.

71. I also prefer the evidence of Mr and Mrs Smith in relation to the alleged conversation between the applicant and Mr Smith regarding alternative accommodation for Murray Pascoe. I do so because Mr and Mrs Smith were living as husband and wife and they were again in the best position to know whether there were any domestic issues concerning Murray's continuing residence at 92 Moil Crescent. Again it is inconceivable that they would lie or be mistaken about the matter raised by the applicant for the same reasons given in relation to the members of the household at 92 Moil Crescent. Having rejected the applicant's evidence the Court must approach the rest of the applicant's evidence with the requisite degree of caution.

72. The applicant's claim that she had borrowed Murray Pascoe's 4 wheel drive on 3 April 2000 is far more difficult to resolve. The second respondent denies having lent the vehicle to her. Mrs Smith somewhat obliquely supports the second respondent. The applicant maintains that she borrowed the vehicle. I have to say that, without the benefit of oral evidence and cross-examination, I am unable to determine the issue one way or the other.

73. Although it is always open to the tribunal of fact to reject one part of a witness' evidence and yet to accept another part, in all the circumstances of this case the rejected parts of the applicant's evidence cast a long shadow of doubt over her credibility and reliability in relation to the alleged assault. The rejected parts of the evidence relate to her connection with Murray Pascoe as does the allegation that she was assaulted, and an unfavourable view taken of one or more aspects of her evidence inevitably impacts upon an assessment of other more significant aspects of her evidence which go to the heart of the application.

74. The absence of any supporting medical evidence also tends to cast doubt upon the credibility and reliability of the applicant's account of the assault.

75. The applicant asserts that she was injured as a result of the assault. In her statutory declaration dated 18 December 2002 the applicant claimed that Murray had repeatedly poked her in the left eye. She stated that two days after the assault she went to the hospital because she had developed an infection in her left foot where she had been struck with the shovel. She said that she was treated in hospital for her infection for about three weeks. The applicant complained that as a result of the second respondent hitting her on the head with the baton she suffered bruising to her head. She also suffered severe headaches for weeks after. She stated that she had a nervous breakdown and spent five weeks at Cowdy Ward where she received treatment.

76. In her affidavit sworn 15 May 2003 the applicant added that she was admitted to hospital with an infection and cellulitis of the left foot, which was as a result of the injury to her left foot with the shovel. She went on to say that she had a fever and had to have an intravenous needle in her arm and was administered antibiotics for about two weeks. The applicant stated that she had an operation on her left foot while she was in hospital. The infected material was removed and the wound was cleansed. The applicant said that during the period of her hospitalisation she experienced pain until the infection settled down. She stated that she had to take pain killers to control the pain and could not walk, and had to use a wheelchair for about a week. Following her discharge from hospital she had to take antibiotics and pain killers for about a week. As her foot was still sore, she went to the doctor's surgery at Stuart Park. She was prescribed pain killers to ease the pain. The applicant said that she was on crutches for about three months. She said that her foot is still not back to normal, and there is a spur on her foot on the bone. The applicant says that her foot becomes painful when she walks a medium distance.

77. The applicant has provided an extensive history of injury as a result of the assault and detailed the treatment that she received as a consequence of her injuries. However, the medical evidence does very little in establishing a nexus between the alleged assault and the injuries complained of.

78. According to the statutory declaration of Charbel Sandroussi, the Surgical Registrar, Royal Darwin Hospital, dated 22 April 2003 (part of Ex 1) the applicant presented to Royal Darwin Hospital on 9 April 2000, complaining of pain in the left foot and swelling as well as chest pain and left jaw pain. She stated that the injuries occurred after being assaulted on 3 April 2000, having her left foot trodden on and being hit to the body with a stick.

79. The instantly striking feature of the applicant's presentation at Royal Darwin Hospital on 9 April 2000 is that it is not fully consistent with the applicants' account of the assault and consequent injuries.

80. According to the applicant the second respondent struck her on the head with a baton and Robyn Rolfe struck her legs several times with a shovel. This does not accord with the history given to the Surgical Registrar.

81. The complaint of pain in the right side of the chest and left jaw pain does not figure at all in the applicant's evidence as set out in her statutory declaration and affidavit. Nor does the applicant's complaint of contusion of the right ribs. If in fact the applicant was suffering from pain and bruising in these areas one must ask what was the cause of such pain and bruising. Nowhere in her account of the alleged assault does she make mention of being struck in any of those areas of the body.

82. There is no mention of the applicant being poked in the eye, and yet according to Dr Athey the applicant said that she was still having trouble with her vision in February 2005. The absence of any reference to the eye injury in the surgical registrar's statutory declaration raises some doubt as to whether the second respondent in fact poked the applicant in the eye.

83. According to the Surgical Registrar "physical examination revealed a collection of pus in her left foot associated with the injury as well as associated cellulitis of her left foot and ankle". The registrar went on to say that the applicant required an operation to drain the abscess in her foot and a course of antibiotics. The applicant was discharged on 29 April 2000 once the infection was under control.

84. Nowhere in the statutory declaration does the surgical registrar express any opinion as to the consistency of the reported injuries with the alleged assault. The surgical registrar was in a position to venture such an opinion, but did not do so. Nor is there any further report from the registrar addressing that matter.

85. In a case such as this, where physical injuries are alleged and the victim receives medical treatment, one would expect, at a bare minimum, an opinion as to the consistency of the injuries with the alleged incident. Of course, consistency of injuries with an alleged incident is certainly not determinative, but it does go some way towards substantiating an alleged incident such as an assault. The absence of such evidence does not assist the applicant.

86. The presence of pain in the left foot and swelling coupled with a collection of pus and associated cellulitis could be caused by virtually anything, and hence the need for some evidence indicating at least that the observed injury/condition was consistent with the alleged assault.

87. A further problem is that it is very difficult to reconcile the injury to the left foot and ankle, as observed by the surgical registrar, with the applicant's account that she was struck on the legs by the third respondent with a shovel several times – even about a dozen times, according to her statutory declaration. Had that occurred one would have expected far more extensive injuries than those observed on admission to hospital. Furthermore, the surgical registrar did not observe any injury to her right

leg, and one would have thought, on the strength of the applicant's account, that she would have certainly suffered an injury of some kind to that leg.

88. The medical records relating to the applicant's period of hospitalisation at Royal Darwin Hospital offer very little support for the applicant's case. They record cellulitis of the left foot and "probable assault 5/7 ago". The clinical notes for 9/4/00, which read "was assaulted with stick to ribs 6/7 ago" and "pain in ribs has been there since the assault", raise matters which are inconsistent with the applicant's account of the assault. The waters are further muddied by the following notations which appear in the "Outpatient Clinical Progress" notes: "someone stepped on my foot n 1/52 also; also beaten up with a baton 3-4/7 ago; hit r side of body and L jaw." Again this history cannot be reconciled with the applicant's account of the assault.

89. The waters are further muddied by the contents of Dr David Welch's medical report dated 22 March 2004 (part of Ex 1) which discloses medical records relating to various attendances by the applicant at the Stuart Park surgery.

90. The first recorded attendance is on 27 April 2000 relating to "extensive dressings on left foot". No explanation is given for the presentation; nor is any relevant history noted. However, this appears to be the attendance immediately following discharge from hospital referred to in the applicant's affidavit. If the applicant was assaulted in the way she says she was, and she attended the Stuart Park surgery to have some painkillers prescribed for her foot which was injured during the alleged assault,[6] then it is most surprising that the medical records are completely silent as to how she came by the injury. There are other attendances in the records which note assaults reported by the applicant.

[6] The attendance, in fact, records prescription of painkillers.

91. The second attendance on 12 July 2000 reads: “Patient reports being beaten a few days ago and can’t recall exact details.” It is not clear whether this is a reference to the alleged assault. If it is then it is clearly inconsistent with an assault having occurred on 3 April 2000.

92. The following notation appears in the records on 31 August 2000: “ Claims was beaten up last night by friend, hit to stomach and right ribs, left ankle”. Again it is unclear whether this refers to the alleged assault. If it does, then once gain it is inconsistent with the applicant’s allegation that she was assaulted on 3 April 2000.

93. The fourth recorded attendance is on 10 November 2000 and reads as follows: “L. ankle ligament damaged when hit by woman with a shovel. Got cellulitis. Hit on head by police baton recently – 3 months”. This appears to be a clear reference to the alleged assault; however, the notation indicates that the applicant was assaulted in about June 2000 which is inconsistent with the applicant’s claim that she was assaulted on 3 April 2000.

94. The recorded attendance on 31 May 2002 reads as follows: “Was assaulted by several people and was admitted to hospital.”

95. The Stuart Park surgery records do not assist the applicant’s case for a number of reasons. First they do not corroborate the applicant’s allegation that she was assaulted on 3 April 2000 or 3 April 2003. Secondly, they do not establish a sufficient nexus between the alleged assault and the injuries observed during the various attendances. Thirdly, they indicate that the applicant may have been the victim of assaults on a regular basis – a matter referred to in Marjorie Smith’s affidavit. If that be true, then the applicant may well be confusing incidents and the perpetrators of the various assaults.

96. Finally, it is important to bear in mind the applicant's psychiatric history and profile. This is a circumstance which affects the credibility and reliability of the applicant's account of the assault.

97. There is a suggestion in Dr Athey's report dated 22 March 2005 that the applicant was admitted to a psychiatric hospital in Brisbane in 1987 with a schizophreniform psychosis. This past psychiatric history is also recorded in the psychiatric discharge summary from Top End Mental Health Service (discharge date 29/05/02). This condition predates the alleged assault.

98. Dr Athey also refers to a note dated 25 April 2000 suggesting that the applicant had a diagnosis of schizo-affective disorder.

99. There are also the records of the Tamarind Centre which record the applicant's psychiatric history during 2002 – 2003.

100. Although the applicant's psychiatric history is not complete for the period 1987, up until the time Dr Athey saw the applicant, there is a real possibility, based on pure common sense, that at the time of the alleged assault the applicant was suffering from a mental illness, particularly in view of the diagnosis back in 1987. There is nothing in Dr Athey's report which would exclude that possibility. Although it is sought to attribute the mental illness which manifested itself during 2002 and 2003 to the alleged assault, there is again a real possibility that that condition was a continuation of her earlier documented psychiatric history.[7] Again, there is nothing in Dr Athey's report which would exclude that possibility. As pointed out by Dr Athey the applicant's past history shows psychotic episodes. In my opinion, there is a real possibility that the assault alleged to have occurred on either 3 April 2000 or 3 April 2003 was the product of the applicant's mental illness. As at 3 April 2000, due to a pre-existing mental illness, the applicant may well have been operating under a

[7] The difficulties in establishing a nexus between the applicant's psychiatric condition and the alleged assault are discussed below, pp 31-33.

delusional belief that she had been assaulted by the second and third respondents. Alternatively, as at 3 April 2003, on account of the earlier documented history of treatment with the Tamarind Centre for a mental illness, the applicant was operating under a delusional belief that she had been assaulted by the second and third respondents. The alleged assault has some rather bizarre features which, to my mind, are consistent with an episode of florid psychosis. Furthermore, the applicant's psychiatric condition may well explain the inconsistencies in her account of the assault.

101. There are further aspects of the applicant's evidence which throw doubt on the reliability of her account of the assault. In relation to her claim that the second respondent threatened her whilst she was in hospital, the applicant admitted that she may have been delirious at the time. Further, she conceded that her disorderly behaviour following her discharge from hospital, during which she made public allegations about what the second respondent had done to her, had been inappropriate. Although only fairly minor matters, they contribute to the blanket of unreliability that covers the applicant's account of the assault.

102. An alternative hypothesis is that an incident did occur on either 3 April 2000 or 3 April 2003 between the applicant and the second and third respondents which was devoid of any assault or other criminal conduct, but due to her extant mental illness the applicant grossly exaggerated the occurrence.

(e) Conclusion

103. Applying the civil standard of proof, as expounded in *Briginshaw v Briginshaw* (1938) 60 CLR 336, I am unable to be reasonably satisfied on the balance of probabilities that the applicant was assaulted by the second and third respondents on 4 April 2000 or 4 April 2003 or on any other date.

104. As pointed out by The Honourable Mr Justice Hodgson in his article entitled "The Scales of Justice: Probability and Proof in Legal Fact-Finding",[8] the tribunal of fact must hold an actual belief in the occurrence in question as a matter of probability. However, in order to attain "an actual belief, amounting to reasonable satisfaction, about the fact in question", there must be adequate evidence before the Court concerning the circumstances of the particular case.[9] As also pointed out by his Honour, the evidence may be inadequate because it is based "on most general and scanty material" or because "the party bearing the onus of proof does not make a reasonable attempt to lead evidence concerning the particular facts".[10] However, the evidence led by the party carrying the burden of proof, although full and specific, may be so internally inconsistent and inconsistent with other evidence that it cannot form an adequate basis for establishing the fact in question to the reasonable satisfaction of the tribunal of fact.

105. There are a number of aspects of the evidence which result in the Court not being reasonably satisfied on the balance of probabilities that the applicant was assaulted by the second and third respondents on the 3 April 2000 or 3 April 2003 or on any other date:

(1) the internal inconsistencies in the applicant's account of the assault;

(2) the absence of any evidence explaining those inconsistencies;

(3) the inconsistency between the applicant's account and the history disclosed by other evidence tendered in these proceedings;

(4) the applicant's lack of credibility or reliability in relation to various peripheral matters;

[8] The Hon Mr Justice D. H. Hodgson " The Scales of Justice: Probability and Proof in Legal Fact-Finding" (1995) 69 ALJ 731.
[9] Justice Hodgson, n 8 at 731;732.
[10] Justice Hodgson, n 8 at 731-732.

(5) the absence of supporting medical evidence as to the applicant's physical injuries;

(6) inconsistencies between the injuries alleged by the applicant and injuries recorded in other evidence;

(7) the applicant's psychiatric history and profile which suggests that the applicant may have been operating under a delusional belief that she was assaulted or have exaggerated an incident which did not involve an assault;

(8) the history of the applicant being assaulted on several occasions over the years which suggests that the applicant may have been confusing the incident and the identity of the perpetrators; and

(9) the firm denial by the second respondent that he ever assaulted the applicant;

106. Essentially, it is the applicant's lack of credibility or reliability and the general inadequacy of the evidence presented in the applicant's case which stands in the way of the Court being reasonably satisfied as a matter of probability that the applicant was assaulted by the two respondents on either of the postulated dates or any other date.

107. However, the existence of contrary possibilities, which were canvassed during these reasons for decision, has also been taken into account in deciding whether the onus of proof has been discharged. Although those contrary hypotheses are not in themselves conclusive against proof on the civil standard,[11] when one combines those alternative hypotheses with the inherent weaknesses in the applicant's evidence it is clear that the onus of proof has not been discharged.

108. During the course of my deliberations I have considered whether it is open on the evidence for the Court to find that the applicant was assaulted by another person (s) unknown.

[11] See *Murray v Kickmaier* [1979] 1 NSWLR 414 at 415.

109. The possibility that the applicant was assaulted (in the manner alleged) by some one else certainly arises on the evidence, given that the applicant appears to have been assaulted on a fairly regular basis. However, the evidence before the Court is not sufficient to elevate that possibility to a probability. The applicant has maintained throughout that she was assaulted by the second and third respondents and that history is recorded in the various items of documentary evidence tendered in these proceedings. The applicant has never suggested that she was assaulted by some other person (s). Furthermore, there is the very real possibility that the alleged assault never occurred and was the product of her psychiatric illness. In my opinion, the existence of those competing hypotheses precludes the Court from being reasonably satisfied that the applicant was assaulted by a person (s) other than the second and third respondents.

110. However, even if the Court were reasonably satisfied in that latter regard the failure of the applicant to comply with the requirements of s 12(b) and (b) (a) of the *Crimes (Victims Assistance) Act* – the reporting provisions - would most probably preclude the issue of an assistance certificate in this matter.

THE SECONDARY ISSUE: THE NEXUS BETWEEN AN OFFENCE AND INJURY

111. In order to qualify for the issue of an assistance certificate an applicant must not only establish that he or she was the victim of an offence but they were injured as a result of the commission of the offence.

112. Consideration of the injury aspect is of only academic interest bearing in mind that the Court was not satisfied that the applicant was the victim of an offence – the threshold requirement. However, if the Court had been satisfied in that regard, the applicant would, in my opinion, have had extreme difficulty in establishing the nature and extent of her injuries.

113. The available medical evidence, principally consisting of the hospital records and the records from the Stuart Park surgery, fails to establish a sufficient nexus between the alleged assault and the injuries as observed and/or recorded. As indicated previously, there is not even evidence as to the consistency of the observed and/or recorded injuries with the alleged incident. The Court is left with just the applicant's account of her consequent injuries and effects, which on its own is not persuasive. However, the Court might have been prepared to accept, on a commonsense basis, that the applicant suffered some pain and perhaps bruising as a result of the assault. But that would leave the applicant's claim at the very bottom end of the range of claims for assistance under the *Crimes (Victims Assistance) Act,* resulting in only a nominal award of monetary assistance, say $1000.

114. The mental injury component of the applicant's claim would have been equally problematical.

115. The available psychiatric evidence does not establish a sufficient nexus between the alleged assault and the applicant's mental condition as documented in the Tamarind Centre records or other records and as reported upon by Dr Athey.

116. There is evidence that the applicant had a mental illness prior to the date of the alleged assault, being either 3 April 2000 or 3 April 2003. That evidence lays the foundation for the very high possibility that the applicant's mental condition was not a consequence of the alleged assault, but occurred and subsisted independently of the incident. This does not present as one of those cases where an assault occurs and, within a short period thereafter, the victim is found to suffering from a mental illness – a mental injury - which he or she did not have prior to the assault: in the present case mental injury cannot be intuitively inferred from the sequence of events.

117. Nor do I consider that the evidence is sufficient to establish that as a result of the alleged assault the applicant suffered an aggravation, exacerbation or deterioration of a pre-existing psychiatric condition such as to constitute a mental injury which is compensable under the Act.

118. I do not believe that the expert evidence presented in this case is sufficiently cogent to establish that the applicant suffered a mental injury as a result of the alleged assault or any other assault.

119. In his first report dated 14 February 2005 Dr Athey vacillated; and the fluctuating opinions he expressed, were all without the support of corroborative evidence. He based his assumptions solely on the history he obtained from the applicant who, with due respect, could not be considered to be the most reliable historian. As is freely conceded by Dr Athey, his opinions are no more than mere theories which remain to be validated by objective evidence.

120. He speculates that the applicant may have sustained an acute brain syndrome following the history of cellulitis. However, the connection between the postulated syndrome and the alleged assault is very tenuous because of the unsubstantiated connection between the cellulitis and the alleged assault.

121. In all the circumstances, very little weight could be attributed to Dr Athey's conclusion that "the most likely reaction was probably that of an acute stress disorder", following the incident. Although the doctor was expressing an opinion in terms of probability, his opinion must be viewed in the context of the very general theorising in which he engaged in his initial report, without the benefit of the applicant's medical records.

122. Dr Athey's second report dated 22 March 2005 does not advance the applicant's case much further.

123. Although Dr Athey had the benefit of the applicant's medical and psychiatric records at the time of preparing his second report, the opinions expressed therein do not establish a nexus between the alleged assault and the applicant's mental condition. The material provided in the report increases the probability that the applicant's mental condition was unrelated to the alleged assault.

124. There is one aspect of Dr Athey's report which is particularly telling against the applicant. On page 3 of his report he says:

> "I would suggest there is a high possibility that she may have been abusing cannabis, particularly as she was mixing with people who were involved in the drug scene, according to the history I obtained when I interviewed her in Brisbane on 8 February. If this was the case, she may well have had episodes of florid psychosis, which would disappear once she ceased using marijuana."

This raises a hypothesis which is inconsistent with her condition being a consequence of the alleged assault, unless the use of marijuana was an indirect cause of the assault; but there is no evidence of that.

125. A general difficulty with Dr Athey's evidence, which affects the cogency of his evidence, is that he only saw the applicant on one occasion and he never treated her for her condition. Dr Athey is, therefore, unable to offer a longitudinal view of her condition which might have provided greater insight into the genesis of her condition and its contributory factors.

126. In my opinion, the evidence is not sufficiently cogent to establish a claim for loss of amenities of life for the reason I am unable to be reasonably satisfied that any demonstrated loss of amenities was casually related to the assault (assuming that was proved to the satisfaction of the Court). Any loss of amenities may well have been the product of her psychiatric illness which predated either 3 April 2002 or 3 April 2003 – the postulated dates of the alleged assault.

127. I have reached the view that had the applicant satisfied the Court that she had been the victim of an assault then it would have only been appropriate to award her an amount of $1000 by way of assistance.

Dated this 19 day of August 2005.

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Dr John Allan Lowndes
STIPENDIARY MAGISTRATE