

CITATION: *Northern Territory of Australia v Miaris* [2006] NTMC 085

PARTIES: NORTHERN TERRITORY OF AUSTRALIA

v

PETER MIARIS

TITLE OF COURT: Local Court

JURISDICTION: Crimes (Victims Assistance) Act

FILE NO(s): 20527839

DELIVERED ON: 27 October 2006

DELIVERED AT: Darwin

HEARING DATE(s): 18 July 2006

JUDGMENT OF: Jenny Blokland CM

**CATCHWORDS:**

CRIMES (VICTIMS) ASSISTANCE – RECOVERY OF PAYMENTS MADE –  
OPERATION OF AMENDMENTS

*Crimes (Victims Assistance) Act* s 21

*Maxwell v Murphy* (1957) 96 CLR 261

*Fisher v Hebburn Ltd* (1960) 105 CLR 185

*Mathieson v Burton* (1971) 124 CLR 1

*George Hudson Ltd v Australian Timer Worker's Union* (1923) 32 CLR  
413 at 434

*Pearce and Gedes*, “*Statutory Interpretation in Australia*” 6<sup>th</sup> ed,  
chapter 10

**REPRESENTATION:**

*Counsel:*

Plaintiff: Ms Day

Defendant: Self

*Solicitors:*

Plaintiff: Department of Justice

Defendant: Self

Judgment category classification:	B
Judgment ID number:	[2006] NTMC 085
Number of paragraphs:	19

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

No. 20527839

BETWEEN:

**NORTHERN TERRITORY OF  
AUSTRALIA**  
Plaintiff

AND:

**PETER MIARIS**  
Defendant

REASONS FOR DECISION

(Delivered 27 October 2006)

Jenny Blokland CM:

**Introduction**

1. This is an application brought by the Northern Territory (“the Plaintiff”) pursuant to s 21 *Crimes (Victims Assistance) Act* against Mr Peter Miaris (“the Defendant”) for recovery of monies paid to a victim pursuant to an order under that Act. On the day of the hearing before me Ms Day appeared for the plaintiff and the defendant appeared unrepresented. The defendant, (despite difficulties he had in presenting his case and despite exhibiting signs of being emotionally distressed in relation to the prospect of being ordered to pay the full amount sought by the plaintiff), declined, in the strongest of terms, to take up suggestions made at the commencement of the hearing to obtain legal advice. I have endeavoured to consider not only the plaintiff’s arguments but the arguments that could be made on the defendant’s behalf, acknowledging that this is far from an ideal situation.

2. The relevant facts around the pre-requisites for recovery are largely undisputed as they relate to s 21 *Crimes (Victims Assistance) Act*. The court must be satisfied that the amount specified in the certificate and associated costs have been paid by the Territory to the applicant and that the offender was found guilty of, (or, on balance of probabilities committed), an offence that resulted in injury. Those facts are readily proven by the affidavit of Ms Louise Marie Noto deposed to on 10 July 2006. That affidavit outlines that the plaintiff paid \$3000.00 pursuant to s 20 *Crimes (Victims Assistance) Act* to the applicant on 30 August 2004 and paid \$4668.72 by way of costs and disbursements under s 20 to the Solicitor for the applicant making a total payment of \$7668.72.

3. The Notice of Defence reads as follows:

“I Peter Miaris am defending the claim made against me for \$8077.92. There were five (5) accused of the crime which occurred on the 13<sup>th</sup> September 2002. Three of which were given juvenile diversion. I understand that they do not have to repay any money to the government but one of the accused besides me was an adult at the time. His name is Cameron Ormond. He was the main offender that did not turn up to court for the trial. I spoke with Collection House and they said that even though he did not turn up for court he is still responsible for paying the money back to the government. That means I should only have to pay half of the money owed. This being \$4038.96.”

4. The defendant, although invited by the Court, did not file any affidavit material, nor would he give evidence in the proceedings before me. Mr Miaris strongly put that he should not have to pay the money, stating from the bar table:

“Well I already went to a hearing before this and they said that juvenile diversion, whatever, people they don’t have to pay no other money and I wasn’t the main offender and I shouldn’t have to fucking pay any of this money.

If I have to pay anything. I don’t give a shit, I’m going to go kill myself, I don’t give a fuck, it’s simple as that. This bloke hit me first and I bashed him. I only went that far, I was defending myself

and it's not my fault if I assaulted him. How am I supposed to know, fucken, when to stop, if he wanted to stop he would have fucken bashed me, I'd be the one going for crimes victim against him.

He chased me after I already finished fighting with him, man. He still was chasing me and I fucken ran away, Man, and I'm the one getting done for assault, and that fucken judge didn't believe me. Fucken he's got hold of my leg, I told him, 'Let go, let go', and he fucking didn't want to let go, nothing, (inaudible) other people jumped in and probably did more damage than what I did, fucking kicking him and shit and didn't do fuck all, man, the cunt was holding me.

They want this fucken money off me, man \$4500 legal fees, \$3000. Man, I had my fucken jaw broken, I nearly fucken died and this cunt is complaining about a little couple of scratches in his mouth."

5. Regrettably Mr Miaris would not give evidence about that matter, nor would he agree to adjourn to give himself time and an opportunity to put relevant material together in a statutory declaration or affidavit together to enable it to be considered in these proceedings.
6. I can only bear in mind what he has said from the bar table and attempt to investigate whether there is other support for those facts in the available material. For this purpose the plaintiff tendered the Affidavit of the victim, Aaron Joseph Cross sworn 25 May 2004 that annexes his statement to police as follows:

"At about 4.15pm on Thursday the 20<sup>th</sup> of September 2001 I was at the Casuarina Shopping Square with my brother and a friend, Allan HOARE. I had been at the shopping centre since about 2pm.

We walking towards woolworths from the eatery side of Casuarina Square. As we were just passing Colorado Clothing shop I noticed three males walking in the opposite direction. All three males appeared to be staring at us. Simon said "hello" and we continued to walk. I did not know these males and I didn't think Simon did either. He said hello because they were staring.

I would describe the three as follows:

1. Male, half caste Aboriginal, thin to medium build, tall about 180cm, black hair. He was wearing a white baseball cap, trousers and black basketball singlet.
2. Male, Asian, 165 to 168cm in height, medium build, black curly hair. He was wearing white and green t-shirt, shorts and no cap.
3. Male, Caucasian, normal complexion (not fair/not olive), medium build, short about 160cm. He was wearing red basketball singlet, white cap.

We continued onto the toilets near Dimocks Book store. We were all washing our hands when I saw the males that we had passed before walk in. Male number 1 said “what’s your problem”. He said this to my brother. Simon answered “Nothing I was just saying hello”. Male Number 1 got right up close to Simon. He had his face very close to Simons face. The other two were standing behind him. Male number 1 continued to talk to Simon in an aggressive tone. He was saying things like “come on you want a go, Do you want a fight, you have a problem.”

I then step in and said “everythings all right, just leave it alone.” A Shopping centre security guy then walked into the toilets and told the guys annoying us to leave. He said “not you guys again, leave the store.” The security guy walked them out.

We then walked to the Casuarina Cinema to get the car keys off from Teresa who is Simon’s girlfriend. I wanted to get all of us out of there as I feared that these boys would come after us. I collected the keys from Teresa and we started heading towards the Cinema exit next to Einsteins. Before we left I approached 4 Security guards and advised them that I was worried that there might be some trouble. I asked if they could hang around whilst Simon, Allan and I left the area. The said “it will be all right”. They then left the area.

Within about 2 minutes of speaking to security I could hear a commotion behind me. I turned and saw a group of about 25 teenagers walking towards us. They were coming from the direction of inside the shopping centre. I could see in the group Male number 1, 2 and 3. Male number 1 yelled out “your gone now” or words to that effect. The group surrounded us. Male number 1 appeared to be the mouth peace. He started repeating again what he had said in the toilets “what’s your problem.”

I was saying to him “everything is all right, we’re not here to cause trouble. We don’t even know you”. He replied “your gone know.”

It was a cluster of persons. Allan, Simon and I were separated by the group. I could see Allan past male number 1 and Simon was to the right of me.

One of the other males not previously described then hit Simon. He saw him running towards Simon from the Simons right hand side. He was holding his right fist up and when he reached Simon he king hit him to the right side of the face. Simon fell into the corner of the automatic sliding glass doors and then hit the ground. He did not move.

I ran over to where Simon was. This was only about 5 steps. I was worried that the group were going to get stuck into Simon while he was on the ground. I stood between Simon who was still on the ground and the group of teenagers in a protective stance.

Male number 1 then punched me with his right fist to the left side of my mouth. I then felt a number of blows coming from numerous directions. I recalled seeing number 2 and 3 throwing punches. I was trying to defend myself by punching back. I sure I managed to hit some of them but I don't who or where I hit. I fell to the ground. The group then started kicking me. I was kicked in the head, back of the arms, back, back of the legs. I had hurred up in a ball and was trying to protect my face.

Male 1, 2 and 3 I specifically remember kicking me. Male number 1 kicked my head mainly, male number 2 kicked in the back and male number 3 where ever he could get me. The attack suddenly stopped and I saw the crowd was leaving. I then saw security in the area.

I picked myself up and went to Simons side. Simon was on his side and his breathing sounded laboured. He was gurgling like he had blood in his throat. There was blood all over him and the floor. His head was in a pool of blood. I roled him further on his side and made sure his passage ways were clear. I put him in a coma position. I called out for someone to call an ambulance.

The ambulance came and I went with Simon to the Hospital. I did not get treatment at the time.

As a result of the assault I received split lip, bruised, swollen and grazed knuckles, bruising and soreness to the back, back of my legs and arms and lumps on my head.

I don't know what happen to Allan.

At no time did Simon, Allan or I prevoke this assault.

At no time did Simon or I give permission to this group to assault us.”

7. The Precis annexed to the affidavit that relates specifically to the defendant in these proceedings reads as follows:

“At about 4:00pm on Thursday the 20<sup>th</sup> of September, 2001, the deft was at the Casuarina Square Shopping Centre in company with two co-offenders (Ormond and Mellevoy).

The deft and co-offenders observed the victims (Aaron and Simon Cross) walk past them and shortly after located the victims walk into the toilets near the Woolworths store. A co-offender (Ormond) threatened the victims, telling them they were going to fight them outside. Store security arrived and the deft and co-offenders were requested to leave the toilets.

The deft and co-offenders walked to the Casuarina bus interchange and located several groups of juveniles. The juveniles were told of the earlier confrontation and asked to back up the deft and co-offenders for a fight with the victims.

The deft and co-offenders and a group of approx 20 juveniles, walked around the centre and located the victim (Simon and Aaron Cross) and surrounded them near the entrance to the Einsteins game parlour.

A co-offender (Ormond) began jostling with the victim’s brother (Aaron). Another co-offender (Collins) ran over to a victim (Simon) and punched him once with a clenched right fist connecting with the victim’s right-side jaw with full force.

This victim was instantly knocked unconscious and fell to the ground hitting his head on the automatic sliding doors.

The victim (Aaron) seeing his brother knocked unconscious, stood in front of his brother and the group came towards him and he then began throwing punches at the group of offenders. The deft then threw punches at the victim along with several co-offenders punching the victim also. The victim fell to the ground and the deft then kicked him at least three times to the upper body. The co-offenders also kicked the victim whilst on the ground. The offenders dispersed when security arrived.



At about 4:48pm on Tuesday the 2<sup>nd</sup> of October 2001, the deft attended at Casuarina LPO and participated in an electronic record of interview. The deft made admissions to the offence and was advised he would be summonsed in relation to the matter.

When asked his reason for assaulting the victim the deft said, “he was going to fight my friends.”

Victim (Simon) was transported to hospital and received six stitches above his left eye. He lost one top front tooth and the other front tooth was chipped, a laceration to his bottom lip where a tooth has pierced a hole through. He also suffered severe headaches and memory loss of about 2 hours.

Victim (Aaron) received bruising to his upper body and a cut to the inside of his bottom lip, causing him to endure pain when attempting to eat solids, which interfered with his health for several days.

At the time of the offence the deft did not have permission to assault the victims nor was he provoked. The deft was in company of approx 15 other juveniles at the time of the assault.”

8. Although this material certainly supports Mr Miaris’ submission that there were others involved as offenders, it does not support his submission at all that the victim somehow contributed to his injuries. As mentioned above, Mr Miaris would not give evidence before me and declined the invitation to adjourn to prepare material supporting his version. Although in my view it must seem unfair in this situation to Mr Miaris to only proceed against one perpetrator for recovery purposes, that is not something specifically dealt with in the *Crimes (Victims Assistance) Act* and the usual principles that one or all could be proceeded against are not displaced.
9. The *Crimes (Victims Assistance) Act* does not allow me to divide the amount equally or proportionately between relevant offenders for recovery purposes. I note that it appears to be accepted that the only *finding of guilt* for *aggravated assault* was made in relation to Mr Miaris. There is insufficient material before me to satisfy me that the victim contributed to his injuries or that the amount paid to the victim was excessive in all the circumstances. Section 21 *Crimes (Victims Assistance) Act* refers to an excessive “amount

paid”. It therefore refers to the sum actually paid to the victim, not the circumstances more broadly defined. It does not envisage reducing the sum on the basis of multiple offenders. On that basis I could not find the amount paid to the victim was “excessive”. All Mr Miaris would be able to do in these circumstances is to proceed against the other offenders for recovery back for their contribution. I acknowledge this would be difficult, costly and unlikely the circumstances.

10. I am however concerned that in circumstances where the defendant did not attend and did not participate in the *Crimes (Victims Assistance)* hearing, he should be liable for recovery purposes for the sum of \$4668.72 for costs and disbursements. His non participation would have made those proceedings straight forward. It must also be remembered that the certificate amount was \$3000.00. During the course of the hearing Ms Day indicated she could hand up the Bill of Costs, however that was not done in the end. In my view \$4668.72 is excessive in the circumstances although I bear in mind that the problem historically with *Crime (Victims Assistance)* applications is that the costs often far exceeded the award. (See eg. Dr Toyne, Attorney General, Second Reading Speech 22 August 2002). In my view the costs should be no more than \$2000.00 for an application such as the one dealt with in this matter and I would reduce the sum recoverable to \$2000 against the defendant for costs on the basis that \$4668.72 is excessive.

### **Legislative Regime**

11. This recovery action is brought under s 21 *Crimes (Victims Assistance) Act*, a relatively new section passed by the Legislative Assembly in 2002 (No. 57 of 2002) and commenced on 1 November 2002. The *Assistance Certificate* issued in these proceedings is dated 24 August 2004. This Certificate provides for the sum of \$3000.00 and costs to be paid to the victim Aaron Joseph Cross by the Northern Territory. The incident giving rise to the offence forming the basis of the original *Crimes (Victims Assistance)*

application for assistance occurred on 20 September 2001 and the defendant was convicted on 13 September 2002. I was advised by counsel for the plaintiff that the original assistance application was filed in September 2002 (transcript p4). There is a question on whether the recovery regime legislated for in Act No. 57 of 2002 is applicable to these proceedings.

12. Section 21, *Crimes (Victims Assistance) Act*, (Section 13 of Act No.57 of 2002) provides as follows:

**21. Territory may commence proceedings to recover from offender**

(1) Where the Territory has paid an amount under section 20, it may commence proceedings for recovery of an equal amount from the offender alleged to have committed the offence that resulted in the injury or death in respect of which the payment was made.

(2) Proceedings under this section are to be commenced not later than 3 years after the date of issue of the assistance certificate relating to the amount paid under section 20.

(3) In proceedings under this section, the Territory must prove to the satisfaction of the Court –

- (a) that the Territory paid an amount under section 20;
- (b) the total amount paid by the Territory under section 20; and
- (c) that the offender named in the proceedings was found guilty of an offence that resulted in the injury or death in respect of which that payment was made or that on the balance of probabilities the offender committed that offence.

(4) The Court may reduce the amount to be recovered by the Territory in proceedings under this section if –

- (a) the offender satisfies the Court that the victim contributed to his or her injuries or death; or
- (b) the Court is satisfied that the amount paid under section 20 was excessive in the circumstances.

(5) Subsection (4) applies even though the amount of assistance has already been reduced under section 10(2).

(6) If the Court is satisfied that the assistance certificate specifying the amount to be paid by the Territory should not have been issued, the Court may determine that the Territory is not entitled to recover any amount from the offender.

13. The transitional provisions (s17 No. 57 of 2002) read as follows:

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

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

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

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

- (a) Issues an assistance certificate that specifies an amount of assistance equal to or less than the amount offered; and
- (b) Makes an order that the applicant is entitled to be paid costs in respect of his or her application,

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

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

14. The plaintiff argues that this recovery is permitted by virtue of s 17(1) of Act No. 57 of 2002 as it relates to “an application made under section 5 of the Principle Act”. Ms Day also acknowledged that an alternative interpretation exists. Ms Day submitted that it was “unclear” as to whether the recovery provision is an application under s 5 *Crimes (Victims Assistance) Act*. She also submitted that even if not, this action was covered by the new provisions. Ms Day points out that the defendant was a party to the original proceedings given he was served and had an opportunity to be

heard. She submitted “Unfortunately because the transitional items are not 100% clear we have adopted the abundance of caution and brought this proceeding. However if you take a different view and decide to dismiss this proceeding on the basis that it’s the wrong one then what we would do would simply register the assistant certificate and obtain judgement”.

(Transcript p.6) Ms Day also submitted: “We’ve taken this procedure which gives, in effect, Mr Miaris another opportunity to be heard because he did have an opportunity to be heard the first time. In my submission the provisions can be read either way depending on how you construe them, but we’ve taken the view that we want to give Mr Miaris every opportunity.”

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In my view the “Transitional Arrangements” do not expressly deal with s 21 amendments but I have concluded that the amendments operate to cover all recovery actions once the sum has been determined.

15. First principles are that in the absence of a clearly expressed statutory provision to the contrary, an amending Act will be assumed not to have retrospective operation: *Maxwell v Murphy* (1957) 96 CLR 261. (And see discussion in Pearce and Gedes, “Statutory Interpretation in Australia” 6<sup>th</sup> ed, chapter 10). Amending Acts should not be construed as attaching new legal consequences to facts: *Fisher v Hebburn Ltd* (1960) 105 CLR 185 at 194:

“There can be no doubt that the general rule is that an amending enactment – or, for that matter, any enactment – is prima facie to be construed as having a prospective operation only. That is to say, it is prima facie to be construed as not attaching new legal consequences to fact, or events which occurred to fact, or events which occurred before its commencement.”

Further, if the Act is expressed in such a way that it is capable of either interpretation, “...it ought to be construed as prospective only”: *Mathieson v Burton* (1971) 124 CLR 1 at 22. In my view this legislation does not directly raise the problem of retrospective operation that impinges on

existing rights or obligations. This legislation primarily regulates the way that already existing obligations are dealt with. The flip side of the “first principles” argument is that legislation operates prima facie prospectively and on that basis covers this situation. It really comes down to what is contemplated by the amending Act. The section in question really deals with the pursuit of remedies and so far as I can see, does not affect, adversely, any right of the defendant or any other person caught in his situation. By being the subject of recovery proceedings under this new provision, his rights were improved. He could have challenged the amount in the Award as being excessive but regrettably he chose not to take the opportunity to adduce evidence. The plaintiff’s arguments appear to be correct that the defendant, (or others like him) are placed in a more advantageous situation by virtue of possessing the right to be heard at the original hearing and then being permitted to put arguments at the recovery hearing. Clearly that puts any person in his position in a more advantageous situation than the previous position. I am required to consider the whole circumstances of the legislation as suggested in *George Hudson Ltd v Australian Timer Worker’s Union* (1923) 32 CLR 413 at 434:

“But its application is not sure unless the whole circumstances are considered, that is to say, the whole of the circumstances which the Legislature may be assumed to have before it. What may seem unjust when regarded from the standpoint of one person affected may be absolutely just when a broad view is taken of all who are affected. There is no remedial Act which does not affect some vested right, but, when contemplated in its total effect, justice may be overwhelmingly on the other side.”

16. Amending Act No. 57 of 2002 provided a review of the *Victims Assistance Scheme*, in order “to streamline court procedures, improve efficiencies, and better address the needs of victims.” (See Second Reading Speech -22 August 2002). The Amending Act provides for the defendant to be removed from the original proceedings. Previously defendants were required to be a

party to proceedings as the Northern Territory had an automatic right of recovery.

17. Although defendants are now removed, at the time of any recovery action, the defendants now have rights to attempt to persuade the Court of the matters in the new s 21(4) and (5) and have the opportunity to persuade the Court that a certificate should not have been granted. The Amending Act also allows for settlement of claims; affidavit evidence in proceedings; the ability for Judicial Registrars to hear matters; the further regulation of legal costs. It also covers substantive matters concerning the need for the victim to report the offence to police; the inability to recover if the injury occurred during the commission of a crime; provision for the Northern Territory to set-off amounts awarded to victims who have been offenders in previous awards of compensation; taking account of private medical benefits in assessment; abolition of privilege in relation to medical documents; certain costs awards to be made in the case of dismissal of an application, and increasing victim's levies. Obviously the Amending Act covers both procedural and substantive matters. Different principles in terms of retrospectivity or prospectivity may apply depending on whether any of those procedural or substantive matters affect pre-existing rights. The Transitional Provisions are drafted in a way that assumes that distinction making special provision for those parts of the Amending Act that affect substantive rights. Section 17(1) clarifies that all applications, essentially whenever filed under section 5 will now come under the new provisions, (with certain exceptions dealt with in the sub-sections). Those exceptions would be expected because they deal with substantive matters or preserve certain steps that might otherwise be invalidated by the new provisions: eg s 17(2) concerning a new mode of service and removing defendants; s 17(3) preserves the former position and does not disadvantage applicants by way of costs for previous decisions made in the proceedings; s 17(4) regulates costs further in the preserved s 10A where that section continues to apply by

virtue of s 17(3); s 17(5) ensure new costs rules will not apply to *work already done* before the amendments. Although I do not agree that s 17(1) Transitional Provisions necessarily covers the current recovery action as it is not an “application”, in my view by operation of ordinary principles, the new s 21 *Crimes (Victims Assistance)* operates to include the recovery actions on the part of the Northern Territory whether the right to recovery arose before or after the commencement of the new amendments. No substantive right is affected and the overall aggregate justice indicates that the Amending Act should be construed to include recovery of amounts that were ordered prior to its enactment.

18. I allow the plaintiff’s claim as follows:

\$3000 (Assistance)

\$2000 (Costs)

\$5000

\$409.20 (Filing and Costs)

Total \$5409.20

I Will order the defendant pay this amount to the plaintiff.

19. I am very concerned about the defendant’s mental health. I intend to request the Legal Aid Commission provide a lawyer to attend when I hand down these reasons to either give advice to or assist the defendant to access services.

Dated this 27<sup>th</sup> day of October 2006.

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**JENNY BLOKLAND**  
CHIEF MAGISTRATE