

CITATION: *Phillips v The Territory* [2007] NTMC 063

PARTIES: SUSAN MARGARET PHILLIPS

v

THE TERRITORY

TITLE OF COURT: Crimes (Victim's Assistance)

JURISDICTION: Local Court - Alice Springs

FILE NO(s): 20631187

DELIVERED ON: 25 September 2007

DELIVERED AT: Alice Springs

HEARING DATE(s): 7 June 2007

JUDGMENT OF: J W A Birch

CATCHWORDS:

Crimes (Victims Assistance) – Appeal from Judicial Registrar
Crimes (Victims Assistance) Act 1983 S.8
Local Court Rules 4.04, 25.03
Chabrel v NT of Australia and Mills 9 NTLR 69
Buttista v Cooper (1976) 14 SASR 225
T v The State of SA and Others (1992) Australia Tort Reports 8
Mcilpatrick v Chard (1995) 5 NTLR 9

REPRESENTATION:

Counsel:

Applicant: Rennie Anderson
Respondent: John McBride

Solicitors:

Applicant: Povey Stirk
Respondent: John McBride

Judgment category classification:

Judgment ID number: [2007] NTMC 063

Number of paragraphs: 16

IN THE CRIMES (VICTIMS ASSISTANCE) COURT
AT ALICE SPRINGS IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20631187

BETWEEN:

SUSAN MARGARET PHILLIPS
Applicant

AND:

THE TERRITORY
Respondent

REASONS FOR JUDGMENT

(Delivered 25 September 2007)

HH JWA BIRCH :

1. This application, pursuant to Rule 25.02 (a), is for the hearing of an application against an order made by the Judicial Registrar, Alice Springs, on 9 May 2007. The order made by the Judicial Registrar was for the issue of an assistance certificate under s.8 of the Crimes (Victim's Assistance) Act. The Appellant disputes the sum awarded in that assistance certificate as being too low.
2. Rule 4.04 (Appeal from Registrar) of the Local Court Rules which provides, inter alia:
 - (1) A person affected by an order made by a Judicial Registrar... may appeal to the Court.
 - (2) An appeal under this Rule is to be –
 - (a) by application under Part 25;
 - (b) heard by a Magistrate; and
 - (c) by way of a hearing de novo.

3. The hearing of the application proceeded before me on 7 June 2007. The following documentation (which was also before the Judicial Registrar) became evidence in these proceedings:-

Exhibit A - Application for Assistance filed 6 December 2006.

Exhibit B - Affidavit of the Appellant dated 4 April 2007.

Exhibit C - Report of Jo-Anne Delahunty, Clinical Psychologist, dated 3 April 2007.

Exhibit D - Application for Re-hearing pursuant to Rule 4.04 dated 14 May 2007.

Exhibit E - Affidavit of Appellant dated 21 May 2007.

4. Based on the above material I am satisfied on the balance of probabilities the Appellant suffered injury and is a victim within the meaning of the Act. The offence was also reported to Police within a reasonable time and the Appellant assisted Police in the investigation and prosecution of the offence. I note the offender was dealt with by the Court of Summary Jurisdiction on or about 27 July 2006. The Respondent takes no issue with these findings.
5. I find the facts, as to injury, are as follows:

On 29 January 2006, the Appellant Susan Phillips was employed as a Prison Officer at the Alice Springs Correctional Centre. On this day she was working as the Remand Block Officer in G Block with other officers. Due to the mess in the dining room the Appellant and other officers spoke to prisoner Teddy Marshal about it. Marshal was responsible for keeping the dining room clean. At 1540 hours, in the dining room, while speaking to Marshal, he punched the Appellant, without warning, once to the left cheek with his right fist which caused a 2cm cut to the left cheek just below the eye. In addition the Appellant's glasses were broken. The Appellant received treatment initially at the officer's station and then attended the Alice Springs Hospital for further treatment.

6. Dr Magree saw the Appellant on 29 January 2006 at 21.30 hours in the Emergency Department at the Alice Springs Hospital. Doctors Magree and Helliwell have provided reports of the examination (Exhibit B annexures B, C). On examination:

“There was a 2cm laceration over the left cheekbone, which was superficial, and not bleeding. This was associated with bruising below the eye; there were grazes to the left side of the bridge of the nose, which was tender. The whole of the eye socket was also tender. The eye movements were normal but there was some pain on movement. No double vision was detected but the patient stated her vision was blurred. The patient required a tetanus injection and had blood tests done for hepatitis B, C, HIV’s and syphilis, which are usual. She was discharged from the Emergency Department as unfit for work from 29 January 2006 to 5 February 2006.”

7. Following discharge from Hospital the Appellant had three counselling sessions with Melissa Tabensky, psychologist with DCP. These sessions took place on 1 and 8 February 2006 and 1 March 2006. The Appellant did not find these sessions particularly helpful as the counsellor lacked knowledge of the nature of Prison Officer’s work. The Appellant sought no further counselling assistance until 23 November 2006 when she saw Jo-Ann Delahunty clinical psychologist. The renewed counselling was precipitated by a further work incident occurring on 17 November 2006. A colleague of the Appellant made a “half joking, half threatening” imitative gesture similar to the assault by prisoner Marshal. This gesture caused her “to feel entirely angry and irritable for some time”.
8. M/s Delahunty has prepared a psychological report (Exhibit C) which sets out in detail relevant matters pertaining to the Appellant. Her diagnosis is:

“a mild stress reaction which lasted a number of days and included initial but briefly sustained shock, elevated blood pressure, anxiety about her safety and difficulty sleeping. Symptoms of increased hyper-vigilance outside the work setting persisted approximately two to three months, whilst social withdrawal, anxiety regarding emotional over-reactivity and increased levels of anxiety and hyper-vigilance in the

work situation have persisted at mild levels since the assault. These symptoms meet the criteria for a diagnosis of adjustment disorder with features of anxiety of mild intensity.”

9. In summary and opinion M/s Delahunty expressed the following opinion:

“In addition to her physical injuries, including reported intermittent mild visual impairment, Ms Phillips suffered an initial mild stress reaction with persisting symptoms, which constitute a mild adjustment disorder with features of anxiety... Her prognosis for recovery is guardedly optimistic in that her persisting symptoms are relatively mild, and whilst she experiences some increased emotional arousal at times during her job, she continues to be able to perform all of the required functions... I am somewhat less optimistic regarding Ms Phillip’s prognosis in terms of regaining the interest level and morale she previously enjoyed within the job. Should this deteriorate further, some personal and/or career counselling may be of benefit.”

10. The Appellant has fully recovered from the physical injuries of the assault. Following her return to work the Appellant seems to have worked successfully as a prison officer during the period February 2006 to November 2006. Following the gesture made by a colleague on 17 November 2006 she again became stressed and anxious and sought M/s Delahunty’s assistance. Although the Appellant sought no assistance, by way of counselling or other treatment, during the period February to November 2006 I find on the evidence she had adjustment disorder with features of anxiety of mild intensity which surfaced again following the anxiety and emotional disturbance aroused by her fellow Prison Officer. I draw no inference adverse to the Appellant due to the delay.
11. It is Mr Anderson’s submission taking into account the circumstances of the offence, the injury caused to the Appellant and her mental distress the Court should order an Assistance Certificate issue for an amount within the range of \$10,000 - \$13,000. Mr McBride on behalf of the Respondent submits the claim falls within the lower range of assistance between \$1000 and \$5000. His submission relies upon the minor physical injures suffered by the Appellant, the

distress in November not caused by the assault but by a separate incident, no explanation for the 10 month gap in counselling and the only inference to be drawn is the Appellant only attended counselling with M/s Delahunty at the behest of her legal representatives.

12. The Appellant's application relies upon two heads of damage under s.9 (1) of the Act. That is s.9 (1) (e) and 9 (1) (f), which are respectively pain and suffering of the victim and mental distress of the victim. The approach to be taken by this Court in fixing the amount of assistance under the Act is set out by Kearney J in *LMP v Collins and others* 112 FLR 289 pp 302 – 303. The assessment is to be made without reference to the statutory limit and is to be made on the same basis as an award for damages in a common law action in tort subject to the Act. It is also important in making an assessment of damages that the legislation is remedial and should be interpreted liberally and beneficially.
13. In paragraphs 5 – 7 I have detailed the evidence relating to the pain and suffering of the victim. I am satisfied she has now fully recovered. Her injuries fall within the lower range of seriousness which the Court sees in these types of matters and I assess damages for pain and suffering to be nine hundred dollars (\$900.00).
14. It is very clear on the evidence, the Appellant, as a result of the offence has suffered mental distress in the form of adjustment disorder with features of anxiety of mild intensity. I have considered *Chabrel v NT of Australia and Mills* 9 NTLR 69, *Buttista v Cooper* (1976) 14 SASR 225, and *T v The State of SA and Others* (1992) Australian Tort Report 8. The only reasonable inference to draw from the evidence is the mental distress continued up to and including the counselling with M/s Delahunty. I have detailed the evidence as to mental distress at paragraphs 7, 8 and 9. It is M/s Delahunty's opinion that the Appellant "suffered an initial mild stress reaction with persisting symptoms" resulting in the adjustment disorder. Although, the Appellant has had a history of previous trauma I cannot conclude on the evidence before me it contributed to the diagnosis resulting from the offence on 29 January 2006. Accordingly, I disregard that history for the purposes of my assessment. Despite the residual nature of the mental distress it can only be considered "mild" and I approach my assessment on that basis. After considering the authorities to which I have referred and the range

of awards made by the Courts in the Northern Territory for mental distress this is at the lower end of seriousness. I assess the amount of assistance pursuant to s.9 (1) (f) of the Act to be six thousand five hundred dollars (\$6500.00).

15. At paragraph 9 of these reasons I detailed M/s Delahunty's opinion for the Appellant's future namely "some personal and/or career counselling may be of benefit". No submissions were made to me concerning future counselling due to the obvious uncertainty as to the future for the Appellant. To make such an award I must be satisfied that the Appellant genuinely intended to proceed with counselling and incur the cost: *Mcilpatrick v Chard* (1995) 5 NTLR 9. I am not satisfied on the evidence before me.
16. I order an assistance certificate issue in the sum of seven thousand four hundred dollars (\$7400.00). I will hear the parties on costs.

Dated this 25th day of September 2007.

J W A Birch
MAGISTRATE