

CITATION: *Morina v NTA* [2008] NTMC 039

PARTIES: CHARMAINE MORINA

v

THE NORTHERN TERRITORY OF  
AUSTRALIA

TITLE OF COURT: Local Court

JURISDICTION: Crimes (Victim's Assistance) Alice Springs

FILE NO(s): 20711977

DELIVERED ON: 13 June 2008

DELIVERED AT: Alice Springs

HEARING DATE(s): 23 April 2008

JUDGMENT OF: G. Borchers

**CATCHWORDS:**

**REPRESENTATION:**

*Counsel:*

Applicant: Nicholas Simmons  
Respondent: John McBride

*Solicitors:*

Applicant: Povey Stirk  
Respondent: John McBride

Judgment category classification: C

Judgment ID number: [2008] NTMC 039

Number of paragraphs: 25

IN THE LOCAL COURT  
AT ALICE SPRINGS IN THE NORTHERN  
TERRITORY OF AUSTRALIA

No. 20711944

[2008] NTMC 039

BETWEEN:

**CHARMAINE MORINA**  
Applicant

AND:

**THE NORTHERN TERRITORY OF  
AUSTRALIA**  
Respondent

REASONS FOR JUDGMENT

(Delivered 13 June 2008)

Mr G BORCHERS SM:

1. The Applicant seeks an Assistance Certificate pursuant to s 5 of the *Crimes (Victim's Assistance) Act* in respect of an injury suffered as a result of an offence that occurred at the Alice Springs Centrelink office on 28 June 2004.
2. The Application which is related to Application No 20711972 was filed on the 27<sup>th</sup> April 2007 together with an Application for Extension of Time in which to apply for an Assistance Certificate. Pursuant to s 5(1) of the *Crimes (Victim's Assistance) Act* an Application is to be filed within 12 months of the offence.
3. Leave was granted to the Applicant on 9 January 2008 to extend the period for filing the Application pursuant to s 5(3) of the *Crimes (Victim's Assistance) Act* until 27 April 2007.

## THE OFFENCE

4. The Applicant relied upon an affidavit she swore on 8<sup>th</sup> October 2007. She deposed that on 8 June 2004 she was interviewing a couple at the Centrelink Alice Springs office located at 5 Railway Terrace. She became aware that a man who was with two work colleagues was becoming quite agitated and angry. He became abusive. During this time the Applicant had her back to the man. She heard a loud noise and turned to see that the man had pulled a workstation from its bolts on the floor upending a desk over the two work colleagues. This incident was brought to an end with another male colleague forcing the man onto the ground. The police were called. The Applicant was not involved in this incident nor was the man's behaviour directed towards her. It is to be noted that this incident is alleged to have occurred on a different date to the incident alleged in the Application.
5. The Applicant did not make a statement to the police. This is no bar to her application as the incident was reported to the police. (See 12(b) of the *Crimes (Victim's Assistance) Act*).
6. The Applicant tendered correspondence from the Office of the Director of Public Prosecutions dated 4 September 2007. This correspondence states that Richard Boyd was convicted in the Alice Springs Court of Summary Jurisdiction on 8 June 2004 of unlawfully damaging property, and acting in a disorderly manner in a public place. He was fined on both offences and ordered to pay victim impact levies. As there appears to be inconsistencies regarding the date of the offence pleaded (28 June 2004), as deposed in the Applications affidavit (8 June 2004) and the date of the conviction of Richard Boyd, I have searched the court records. Richard Boyd was convicted of the offences set out in the DPP's correspondence on the 8<sup>th</sup> June 2004, and the offences were committed on the 7<sup>th</sup> June 2004. As the Applicant is clearly referring to the same incident, leave is granted to the Applicant to amend her Application so that the relevant offence is said to have occurred on 7 June 2004.

7. For the Court to order an Assistance Certificate pursuant to s 5(1) of the *Crimes (Victim's Assistance) Act* the Applicant must satisfy this Court on the balance of probabilities that she was a victim of an offence. A victim is defined as:

“a person who is injured or dies as the result of the commission of an offence by another person”. (s 4).

Injury is defined as:

“bodily harm, mental injury, pregnancy, mental shock or nervous shock but does not include an injury arising from the loss of or damage to property (which loss or damage is the result of an offence relating to that property).” (s 4).

In assessing the amount of assistance to be specified in an Assistance Certificate the Court may, “subject to this Act include an amount in respect of mental distress (see s 9(E)) and loss of amenities of life”.

## **THE INJURY**

8. The Applicant deposed that after the incident on the 7<sup>th</sup> June 2004 she reported her distress to her team leader and made an appointment to see both her doctor and her psychologist. She suffered from low self esteem, had become socially isolated and avoided any social contact, found herself getting angry, an emotion which she found difficult to control and had problems thinking rationally.
9. The Applicant relied upon reports from three psychologists; Michael Tyrrell dated 11 February 2005, and 15 February 2007; Tracey Quinney dated 22 February 2005 and Dian Booth dated 6 December 2007. These are the same reports relied upon by the Applicant in support of her Application No 29711952.
10. Although there is no medical evidence tendered in support of the Applicant's assertion that she consulted medical practitioners shortly after

the 7<sup>th</sup> June 2004 offence, both Michael Tyrrell and Tracey Quinney note that this occurred and their examinations and treatment followed on from the early treatment she received after that event.

11. The Applicant continued her employment with Centrelink after the June 2004 incident. In February 2005 Michael Tyrrell suggested that she continue to attend work, although she presented with a “complicated traumatic stress syndrome”. Also in February 2005 Tracey Quinney noted that the Applicant should continue with her employment but avoid dealing with the public so she can regain her confidence in her skills and her ability to manage her work environment. By February 2007 Michael Tyrrell noted that the Applicant resigned from Centrelink “about 12 months ago”, that is sometime at the beginning of 2006. She then purchased a small café/catering business which she ran for around 12 months. In July 2007 she commenced working with her partner in his concreting business, both with physical work and design work. Accordingly the evidence appears to be that the Applicant continued to work after the June 2004 incident, and although she changed the nature of her employment has continued to deal with the public.
12. Tracey Quinney’s opinion of the Applicant was that in February 2005 she presented with symptoms from a previous condition of post traumatic stress disorder exacerbated by the June 2004 incident. Although Ms Quinney noted that the Applicant did not want to return to her pre-injury duties at Centrelink the Applicant continued in that employment for possibly a further 12 months.
13. Michael Tyrrell’s opinion in February 2007 was that the Applicant suffered the low grade chronic remnants of, and enhanced predisposition to post traumatic stress disorder leaving her with permanent increased stress sensitivities. Mr Tyrrell does not state how the 2004 incident contributed to this condition.

14. Dian Booth was of the opinion in December 2007 that the 2004 incident did aggravate the pre-existing condition of Post Traumatic Stress Disorder. Given that Ms Booth's report details a number of incidents and events that clearly relate to Applicant's anxiety problems, it is difficult to reconcile her opinion that the Applicant's problems relate to the incidents in 1998 (Application No 20711952) and 2004 without giving consideration to or examining those other aspects of the Applicant's medical and family history.
15. On the balance of probabilities I find that the Applicant was injured as a result of the 2004 incident and that the injuries she suffered are to be defined as a post traumatic stress disorder. However the Applicant also suffers from a range of other illnesses and conditions including diabetes, Hashimotos, thyroiditis and being overweight which Mr Tyrrell notes bears "on her stress resilience largely via a tendency to feeling fatigue, perhaps lean her to emotional over-reactivity and low self-esteem. This in turn inhibits her readiness to exercise in public, which were she to do so, would help her greatly"
16. The Applicant argues that as a result of the 2004 incident she cannot deal anymore with work environments that have high levels of customer interaction. This appears inconsistent with the facts. She remained in her employment at Centrelink for at least eight months and then bought a café. The Applicant also says that she shuns relationships, public functions and feels anxious travelling interstate or to remote areas. She also suffers from poor sleep patterns, and has problems with her concentration, memory, energy, self-esteem and anger. All these symptoms have been long standing according to the Applicant. All could and do have causes other than the effects that the 2004 incident had upon her.
17. Michael Tyrrell is of the opinion that all these symptoms usually respond well to brief counselling intervention using a well proven post traumatic stress treatment paradigm. Tracey Quinney does not provide a clear

treatment plan although she recommends prescription of a low dosage antidepressant, and psychological treatment involving work with arousal and controlled exposure to threatening situations. She also recommends continued employment albeit without exposure to the public. Ms Booth states, that on the balance of probabilities, the Applicant will most likely require ongoing counselling for the rest of her life, possibly on a monthly basis but more regularly if the need arises.

18. The Applicant submits that she has suffered an extremely prolonged, severe mental injury for a period approaching 10 years. It is submitted that at common law the Applicant would almost certainly be awarded an amount greater than the maximum assistance certificate. However as I am only dealing with the injury referable to the 2004 incident, she submits that this incident exacerbated that underlying condition and should there be assessed at between 60 to 100 % of the maximum permitted under the legislation.
19. I have been referred to a number of authorities. I find little of use in the decision in *Northern Territory of Australia v Cr* [2007] NTSC 29. In that matter the Applicant suffered from brutal physical attacks over a sustained period. Her post traumatic stress disorder was directly related to the physical assaults and left her with significant and chronic problems, including the development of borderline personality disorders. The decision is also authority for how global awards might be made where there are a multiplicity of offences and how the Applicant's conduct, pursuant to s 10 of the *Crimes (Victim's Assistance) Act* might be considered in cases where the victim and offender are in a relationship.
20. I was also referred to *Anthony v Tasmanian Alkaloids Pty Ltd* [2004] TASSC 118 on the principle that an assessment of damages under the *Crimes (Victim's Assistance) Act* should be made on the same basis as would be awarded were the action to be arising in tort. In *Anthony* there was extensive evidence of the plaintiff's pre and post trauma life given by way

of independent witnesses, employment records, and psychiatric reports. In this application there is little or no supporting evidence other than the Applicant's affidavit. While there is no evidence of her employment history or domestic situation prior to 1998, or her life between 1998 and 2004, there was also no exploration of a number of other matters, incidentally referred to in her affidavit, such as medical treatment in 2000 and hospitalisation in 2001.

21. I was also referred to *Locke v Bova & Anor* [2004] NSWSC 534 and *McMillen v Brambles Security Services Ltd* [2001] QSC 271. In both matters significant evidence was called regarding the plaintiff's work and family histories prior to the negligent event, together with significant medical evidence from psychiatrists amongst other medical specialists as to a diagnosis of severe to chronic post traumatic stress associated with major depressive illnesses. In both cases there was ample evidence from independent witnesses regarding how the illness interfered with the plaintiff's post event work and home life. In the current Application very little of this relevant material has been made available to this court nor has it been explored by the three psychologists who have provided reports.
22. It was not argued that the Applicant was not entitled to the grant of an Assistant Certificate because she was more prone to the symptoms of post traumatic stress disorder, particularly anxiety and hypersensitivity than other people. *Mount Isa Mines Ltd v Pusey* (1970) 125 CLR 383 – see Windeyer J at page 406 is proposition that in cases of “nervous shock”, the victim is to be taken as found.
23. However there are a number of questions that ultimately this Court has to be satisfied of and they are:
  - (a) Has the Applicant on the balance of probabilities shown that her injuries are related to the 2004? I am satisfied that her post 2004 condition was the result of an exacerbation to her pre-7 June 2004



condition caused by the incident on that day. However the situation is not clear as none of the material before this Court explores other incidents in the Applicant's life except the 1998 and 2004 incidents and yet other highly relevant events are referred to.

- (b) Is her injury of such a severity that an Assistance Certificate should be granted for an amount of between 60 to 100% of the total amount permitted under the legislation? While there is no doubt that the Applicant does not suffer from a profound psychiatric disability, no matter what diagnostic label is given to her condition, which in this case the three psychologists have termed "post traumatic stress disorder" the Applicant does suffer from anxiety, hypersensitivity, anger, some sleep disorder and a lack of concentration. Michael Tyrrell is not of the opinion that this is chronic otherwise he would not be of the view that the Applicant's condition could respond to brief counselling intervention. Tracey Quinney believes the condition would greatly benefit from psychological treatment and a course of low dose antidepressants. I reject Dian Booth's opinion on this aspect of her report as she provides no reasoning for her conclusion regarding treatment

24. I am satisfied therefore that the Applicant suffers from an injury in the nature of nervous shock with symptoms that have been diagnosed as falling within the definition of post traumatic stress disorder. She is a victim for the purposes of the legislation as a result of the 7<sup>th</sup> June 2004. I do not find her condition chronic or substantial. She continued to work in her employment where the incident took place and in fact continues to be employed.

25. I make the following order:

- (a) that an Assessment Certificate be awarded pursuant to s 8(1) in the amount of \$5000.00.
- (b) the Respondent pay the Applicant's costs and disbursements to be agreed or taxed in default.

Dated this 13<sup>th</sup> day of June 2008.

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**G Borchers**  
STIPENDIARY MAGISTRATE