

# SUPREME COURT OF QUEENSLAND

CITATION: *Crosbie v Lawrence* [2002] QSC 217

PARTIES: **STUART ALLEN CROSBIE**  
(applicant)  
v  
**SHAYNE ALLEN LAWRENCE**  
(respondent)

FILE NO/S: S3439 of 2002

DIVISION: Trial

PROCEEDING: Application for Criminal Compensation

ORIGINATING COURT: Supreme Court, Brisbane

DELIVERED ON: 5 August 2002

DELIVERED AT: Brisbane

HEARING DATE: 5 August 2002

JUDGE: Philippides J

CATCHWORDS: CRIMINAL LAW – JUDGMENT AND PUNISHMENT –  
ORDERS FOR COMPENSATION – where respondent  
convicted of unlawful wounding – where respondent stabbed  
applicant – where applicant suffered mental and nervous  
shock – where applicant’s behaviour contributed to injury  
  
*Criminal Offence Victims Act* 1995, s 21, s 24, s 25  
  
*Dooley v Ward* [2000] QCA 493; [2001] 2 Qd R 436  
*Jones v Coolwell* [2001] QSC 130, 4 May 2001

COUNSEL: Shane Connor for the applicant  
The respondent appeared in person

SOLICITORS: McAlister & Cartmill for the applicant  
The respondent appeared in person

## **PHILIPPIDES J:**

### **The Application**

- [1] The applicant seeks compensation pursuant to s 24 of the *Criminal Offence Victims Act* 1995 (“the Act”) for injuries sustained as a result of the offence of unlawful wounding committed on or about 6 August 2000 for which the respondent was convicted on 5 December 2001.
- [2] Section 24 of the Act provides:
- (1) This section applies if someone (the “convicted person”) –
    - (a) is convicted on indictment of a personal offence; or
    - (b) is convicted on indictment and a personal offence is taken into account on sentence.
  - (2) The person against whom the personal offence is committed may apply to the court before which the person is convicted for an order that the convicted person pay compensation to the applicant for the injury suffered by the applicant because of the offence.
  - (3) The court may make an order (a “compensation order”) for an amount to be paid by the convicted person to the applicant because of the injury.
- [3] Section 21 of the Act describes a personal offence as “an indictable offence committed against the person of someone”.

### **Background Facts**

- [4] On 5 December 2001, the respondent was convicted by jury and sentenced on one count of unlawful wounding, committed against the applicant on or about 6 August 2000 at Coolum Beach.
- [5] The circumstances of the offence were as follows. On 5 August 2000 at about 11:30 pm the respondent was sitting with a group of family and friends at a picnic table in Tickle Park, Coolum Beach. A group of three males, including the applicant, approached the picnic table and a conversation took place involving an accusation directed towards the respondent’s step-brother. There was a verbal altercation between the respondent and the applicant’s group, which ultimately resulted in a fight, which ended when the respondent stabbed the applicant with a flick knife, which the respondent carried in a pouch on his belt.
- [6] It was conceded by the applicant at trial that the first punch was thrown by one Colin Hartnell, a member of the applicant’s group, and not the respondent. Thus the respondent was not the initial aggressor. Furthermore, before the stabbing, the applicant struck the respondent a number of times in the head area and kneed him. It was also conceded by the applicant that, immediately before the stabbing, the respondent told the applicant that he did not want to fight and told him to go away

and to leave him alone. The respondent stabbed the applicant in his left lower chest with a flick knife.

- [7] The jury did not accept that the respondent had acted in self-defence. However, in sentencing the respondent, I took the view that it was consistent with their verdict, that the respondent's conduct in using a knife to stab the applicant was disproportionate to the situation. On that occasion, I sentenced the respondent to 18 months imprisonment, suspended with an operational period of three years.

### **The Applicant's Claim**

- [8] The applicant submitted that the respondent's offence of unlawful wounding was a "personal offence" within the meaning of s 21 of the Act, entitling the applicant to apply for compensation suffered by reason of that offence under s 24 of the Act.

- [9] The applicant claimed that, as a result of the unlawful wounding, he suffered the following injuries:

- (a) severe pain after the stabbing, which reduced to moderate by the date of discharge from hospital on 7 August 2000;
- (b) generalised stomach pain for about one month, which was sharper with fluid consumption;
- (c) mild aches after surfing; and
- (d) psychological illness as a result of fearing for his life after the offence.

- [10] The applicant deposes that, as a result of the unlawful wounding, he experienced "severe pain and was bleeding profusely" and that he "was extremely fearful for [his] well being". In his affidavit sworn 11 March 2002, the applicant states as follows:

"7. I was subsequently taken by ambulance to Nambour Hospital. Throughout this ordeal I was concerned for my life and worried that I had sustained an injury which would permanently affect me. It was a very traumatic experience.

...

10. After discharge from Hospital I continued to suffer generalised pain in the region of my stomach for about a month. It became a lot sharper when I consumed fluids... I now do very little surfboard riding because of the discomfort I experience in my abdomen when surfing. I find that in the area of the stab wound I experience an aching pain. The pain remains for some time after I leave the water after surfing.

11. After the incident I also experienced nightmares for some months... I now feel 'uncomfortable' when meeting people for the first time. I am hesitant to make friendships because I don't feel confident not knowing the background of people I am meeting. I tend to be suspicious of their motives towards me. I never experienced feelings like this prior to the stabbing incident.

12. After the incident I couldn't return to work for about three weeks... I estimate that I lost approximately \$2,250 in net income because of the incident.”

### **Medical Evidence**

- [11] The applicant was admitted to the Nambour General Hospital in the early hours of the morning of 6 August 2000. Dr Baxter was the General and Laparoscopic Surgeon who attended to the applicant that morning. In a report dated 10 April 2001, Dr Baxter reported that the applicant sustained a single stab wound to his left lower chest. Dr Baxter gave a diagnosis of small haemothorax with no apparent abdominal injury and no apparent pneumothorax. The applicant was discharged on 7 August 2000, being kept in hospital overnight.
- [12] The applicant represented to Dr Baxter on 16 August 2000 with epigastric pain that persisted for one month after the injury. Dr Baxter reported that this was brought on by the consumption of alcohol or fluid and was colic in nature. Dr Baxter reported that the applicant had pain for two weeks and returned to work after four weeks and was able to resume normal activities. The applicant made a full recovery and is expected to suffer no permanent disability.
- [13] In relation to the applicant's psychological injury, a report dated 15 March 2002 was prepared by Mr Barry Kerr, Clinical Psychologist. Mr Kerr reported that the applicant suffered post traumatic stress disorder. In his view, the applicant had experienced an event involving an actual threat of death or serious injury, which had caused the applicant to respond with intense fear or helplessness. In addition, Mr Kerr reported that the applicant experienced nightmares and flashbacks, which continued for some time after the incident, and became socially withdrawn and hypervigilant. Mr Kerr's opinion was that the applicant had learned to cope with the incident and was unlikely to suffer any permanent psychological disability.

### **The Appropriate Quantum**

- [14] Compensation is assessed by reference to a maximum amount. Section 25 of the Act prescribes the method of assessing compensation as follows:
- (1) In making a compensation order, a court is limited to ordering the payment of an amount decided under this section.
  - (2) A compensation order may only order the payment to the applicant of a total amount of not more than the prescribed amount (the “scheme maximum”).
  - (3) If more than 1 amount is payable under subsections (4) to (6), the amounts must be added together, and, if the total is more than the scheme maximum, only the scheme maximum may be ordered to be paid.
  - (4) In deciding the amount that should be ordered to be paid for an injury specified in the compensation table, the court is limited to making an order for –
    - (a) If there is only 1 percentage listed opposite the injury – an amount up to the amount that is the listed percentage of the scheme maximum; or

- (b) If there is a range of percentages listed opposite the injury – an amount that is within the listed range of percentages of the scheme maximum.
- (5) In deciding the amount that should be ordered to be paid for any injury specified under a regulation, the court is limited to making an order for the prescribed amount.
- (6) In deciding the amount that should be ordered to be paid for an injury to which subsections (4) and (5) do not apply, the court must decide the amount by –
  - (a) comparing the injury with injuries to which subsections (4) and (5) apply; and
  - (b) having regard to the amounts that may be ordered to be paid for those injuries.
- (7) In deciding whether an amount, or what amount, should be ordered to be paid for an injury, the court must have regard to everything relevant, including, for example, any behaviour of the applicant that directly or indirectly contributed to the injury.
- (8) A decision on the amount that should be ordered to be paid under a compensation order –
  - (a) does not involve applying principles used to decide common law damages for personal injuries; and
  - (b) is to be decided by applying the principles mentioned in section 22(3) and (4).

[15] The method for the assessment of criminal compensation has been outlined by the Court of Appeal in *Dooley v Ward* [2001] 2 Qd R 436. For each injury claimed, the court first characterises the injury according to the categories listed in the compensation table. The compensation table sets out a range of percentages for each category of injury. The court then has regard to the relative seriousness of the injury to arrive at a percentage which is within the specified range. The amount of compensation is calculated by applying the appropriate percentage to the scheme maximum, which is \$75,000.<sup>1</sup>

[16] On behalf of the applicant, it was submitted that the applicant’s stab wound constitutes a “minor stab wound” within item 24 of the compensation table, which provides a range of 6% to 10% of the scheme maximum. It was submitted that an award of 8% to 10% of the scheme maximum would be appropriate for this injury.

[17] Although it had the potential to be quite severe if directed a few centimetres higher, as it turned out from the facts of this case, the single stab wound actually inflicted was not of great severity, only requiring an overnight stay in hospital. I therefore award 6% of the scheme maximum for this stab-wound, namely \$4,500.

[18] In relation to the applicant’s post traumatic stress disorder, it was submitted that this constitutes “minor mental or nervous shock” within item 31 of the compensation table, which provides a range of 2% to 10% of the scheme amount. Counsel submitted that an award of 6% to 8% was appropriate for this injury. Given that the

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<sup>1</sup> See Reg 2 of the *Criminal Offence Victims Regulations* 1995

applicant's psychological disorder is of quite a minor nature and is considered impermanent, an award of 5% is appropriate for this injury, making \$3,750.

### **Contribution to Injury**

- [19] According to s 25(7) the court must have regard to the degree to which the applicant contributed to his own injury. It was conceded on behalf of the applicant that the applicant's conduct contributed to his injuries. Nevertheless, it was submitted that any discount for contribution ought to be small, in the range of 5% to 10%.
- [20] On behalf of the applicant, reliance was placed on *Jones v Coolwell* [2001] QSC 130, 4 May 2001, which was an application for criminal compensation arising from the offence of causing grievous bodily harm. In that case, the applicant had gone to the respondent's home early in the morning, woken him up, demanded a sum of money from him and assaulted him before being stabbed severely by the respondent. The trial judge discounted the award by 15%, his Honour taking the view that the applicant had contributed to his own injury, but that the respondent's reaction had been so grossly disproportionate as to call for only a small adjustment.
- [21] I consider the present applicant contributed substantially to his own injury. As I have mentioned, it was a member of the applicant's group who threw the first punch. Furthermore, the applicant also participated in physically attacking the respondent before the stabbing. The respondent attempted to walk away from the altercation and told the applicant he wanted no part in it. Whilst the respondent's response was disproportionate, it did not result in a life-threatening wound and only a single wound was inflicted. I consider that a discount of 20% is appropriate to reflect the applicant's contribution to his injury.

### **Conclusion**

- [22] In the circumstances, I assess the applicant's entitlement to compensation before adjustment to be \$8,250. I order that this amount be reduced by 20% to reflect the applicant's contribution to his own injury. I therefore award \$6,600 to the applicant by way of compensation for the injuries suffered by him as a result of the commission of the offence.