

SUPREME COURT OF QUEENSLAND

CITATION: *Fourmile v O'Burns* [2004] QSC 207

PARTIES: **GAIL LYNETTE FOURMILE**
(Applicant)
v
CALVIN CHARLES O'BURNS
(Respondent)

FILE NO/S: 25 of 2004

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court, Cairns

DELIVERED ON: 7 July 2004

DELIVERED AT: Cairns

HEARING DATE: 21 June 2004

JUDGE: Jones J

ORDER:

- (1) **That the respondent, Calvin Charles O'Burns pay the applicant, Gail Lynette Fourmile \$12500 by way of criminal compensation.**
- (2) **The respondents pay the applicant's costs of and incidental to the application to be assessed on the standard basis.**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGEMENT AND PUNISHMENT – ORDER FOR CRIMINAL COMPENSATION – Where respondent convicted of assault causing bodily harm – Where applicant suffered both physical injury and nervous shock

Criminal Code (QLD), Chapter 65A, s663A, s663A(b), s663AA, s663AA(1), s663AA(2) and s663AA(3), s663B(2)

Workers Compensation Act 1916, s14(1)(c), s14(1)(C)(a)
WorkCover Queensland Act 1996, s167, s167(1)

WorkCover Queensland Regulation 1997, Schedule 2

R v Hurle; ex Parte Anderson (1991) 2 Qld Rep 682

Whyte v Robinson [2000] QCA 99, 28/03/00

COUNSEL: Mr P Edson for the Applicant
No Appearance by or on behalf of Respondents

SOLICITORS: Legal Aid Queensland for the Applicant
No Appearance by or on behalf of Respondents.

- [1] Gail Lynette Fourmile makes this application under the now repealed Chapter 65A of the Criminal Code for criminal compensation for injuries she sustained on the 11 November 1987.
- [2] On 3 March 1988, the respondent Calvin Charles O'Burns pleaded guilty in the Supreme Court of Cairns of one count of assault causing bodily harm whilst armed with an offensive instrument.
- [3] The respondent has been duly served with this application and the supporting material but has not appeared to make any submissions on the question of compensation.
- [4] The applicant was 29 years old at the time of the offence. The respondent was the de facto husband of the applicant at the time of the offence. The attack on the applicant included being dragged to two isolated locations where she was repeatedly punched and kicked. The respondent then struck her around the head and face with a sharp object he had picked up. During the attack, the respondent made repeated verbal threats to the applicant that he would kill her.
- [5] Following the attack the applicant sought help at a nearby house and was then transported by ambulance to the Cairns Base hospital where she was attended to by medical staff.
- [6] There is no suggestion that the applicant in any way contributed to her injuries s663B(2).
- [7] A report from Doctor Peter Michael states that the applicant had the following injuries when presented at hospital on the 11 November 1997:
 - A contusion around the right eye
 - A small subconjunctival haemorrhage in the right eye
 - Lacerations over the right and left brow
 - Small lacerations under both eyes
 - Small laceration on the right side of nose
 - Small lacerations to the corner of the right side of the mouth and to the lower lip
 - Deep laceration above the upper lip extending into the left nostril
- [8] The lacerations were repaired in casualty and required a total of 23 sutures. The applicant was discharged from hospital on the 12 November 1987 but was required

to attend the hospital's dressing clinic daily until the 16 November 1987 to have her wounds attended to.

[9] Since the attack the applicant has suffered psychological damage manifested by a host of symptoms including:

- Nightmares or bad dreams
- Fear of going onto the streets at night time
- Feelings of anger, sadness, depression and emptiness.
- Wanting to cry all of the time
- Feeling tense, over-anxious and on edge
- A feeling of hopefulness about the future
- Fear of being injured again or death

[10] The applicant's psychological state has been appraised by Ms. Christine Richardson, psychologist. She has diagnosed the applicant as suffering from moderate to severe symptoms associated with a major depressive disorder and a psychological profile consistent with moderate post traumatic stress disorder.

Assessment of Compensation

[11] The applicant seeks compensation for both mental or nervous shock and the physical injuries suffered. The criminal compensation scheme applicable to injuries sustained as a result of the commission of a criminal offence prior to 18 December 1995 is governed by Chapter 65A of the Code.

[12] Compensation under Chapter 65A is assessed on the same basis as an award for damages for personal injury in civil cases and economic loss is recoverable. The prescribed amount of upper limit is relevantly specified by s663A and s663AA of the Code to be:

(a) where an injury suffered by reason of the offence is the same or substantially the same as an injury specified in the table set forth in s14(1)(C) of the *Workers Compensation Act* 1916, the amount specified for that injury in the table: see s 663AA(2) of the Code;

(b) where it is not the same or substantially the same, the amount specified in s 14(1)(C)(a) of the *Workers' Compensation Act* 1916, as varied: see s 663A(b) of the Code;

(c) where there are more injuries than one, the amount specified in s14(1)(C)(a) of the *Workers' Compensation Act* 1916 as varied: s 663AA(3) of the Code; and

(d) in the case of mental or nervous shock it is \$20,000: see s 663AA(1) of the Code.[\[1\]](#)

- [13] The references to s14(1)(C) of the *Workers Compensation Act* 1916-1983 are to be read as s167 of the *WorkCover Queensland Act* 1996 and Schedule 2 of the *WorkCover Queensland Regulation* 1997: see *Whyte v Robinson* [2000] QCA 99, 28/03/00; Ryan J in *R v Hurle; ex Parte Anderson* (1991) 2 Qld Rep 682.
- [14] Under Schedule 2 of the *WorkCover Regulation* 1997 there are no listed injuries which are directly analogous to the plaintiff's. The physical injuries endured by the plaintiff are to be categorised as moderate and were recovered from reasonably quickly.
- [15] An award of \$2500 should be made against the respondent to reflect the physical injuries suffered.
- [16] The prescribed maximum the applicant can be awarded under s663AA(1) of the *Criminal Code* is \$20 000. Having regard to the moderate to severe nature of the applicant's psychiatric illness as a result of the attack an award of \$10000 compensation should be made.
- [17] **Orders:**
- (2) That the respondent, Calvin Charles O'Burns pay the applicant, Gail Lynette Fourmile \$12500 by way of criminal compensation.
 - (2) The respondents pay the applicant's costs of and incidental to the application to be assessed on the standard basis.