

SUPREME COURT OF QUEENSLAND

CITATION: *Prndac v Moores* [2010] QSC 50

PARTIES: **LAWRENCE ANTHONY PRNDAC**
Applicant
v
TIMOTHY CHARLES MOORES
Respondent

FILE NO/S: S653 of 2009

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Rockhampton

DELIVERED ON: 24 February 2010

DELIVERED AT: Supreme Court Rockhampton

HEARING DATE: 1 February 2010

JUDGE: McMeekin J

ORDER: **The respondent pay the applicant compensation pursuant to s 24 of the Criminal Offence Victims Act 1995 in the sum of \$21,000.**

CATCHWORDS: CRIMINAL LAW - JURISDICTION, PRACTICE AND PROCEDURE - JUDGMENT AND PUNISHMENT - ORDERS FOR COMPENSATION, REPARATION, RESTITUTION, FORFEITURE AND OTHER MATTERS RELATING TO DISPOSAL OF PROPERTY - COMPENSATION - QUEENSLAND - where the respondent was convicted of intent to do grievous bodily harm to the applicant - where the applicant suffered physical and psychological injuries - whether compensation should be reduced where there is more than one cause of injury
Criminal Offence Victims Act 1995 (Qld), s 24
Victims of Crime Assistance Act 2009 (Qld), ch 6
SAY v AZ; ex parte A-G (Qld) [2006] QCA 462

COUNSEL: AD Grant (solicitor) for the applicant
No appearance for the respondent

SOLICITORS: Eric Muir Lawyers for the applicant
No appearance for the respondent

- [1] Lawrence Anthony Prndac applies for compensation pursuant to section 24 of the *Criminal Offence Victims Act* 1995 (“the 1995 Act”). Section 24 provides that where a person is convicted on indictment of a personal offence then “the person against whom the personal offence was committed may apply to the Court for an order that the convicted person pay compensation for injuries suffered because of the offence.”
- [2] The respondent is Timothy Charles Moores. Mr Moores pleaded guilty to the offence of wounding Mr Prndac with intent to do grievous bodily harm in the Supreme Court at Bundaberg on 26 November 2008. The respondent has been served with the proceedings but has not appeared.
- [3] The *Victims of Crime Assistance Act* 2009 repealed the 1995 Act but the transitional provisions contained in chapter 6 of the 2009 Act require that Mr Prndac’s application be heard and determined under the provisions of the 1995 Act, given that his application was filed on 1 December 2009, the day of commencement of the 2009 Act, and so within the two month window of commencement allowed by subsection 156(2)(b) of the 2009 Act, and within the three years mandated by the 2005 Act.¹

Circumstances of the Offending Conduct

- [4] On the 6th of April 2008, the respondent came to the applicant’s work place armed with two knives that he had obtained from his home and stabbed the applicant several times. The respondent was eventually restrained by three of the applicant’s fellow work mates.
- [5] There had been some dispute between the men some days before, involving the applicant and another man more so than the respondent, but in no sense can it be said that the respondent provoked this assault.

The Injuries Suffered

- [6] The applicant was treated at the Bundaberg Hospital with multiple lacerations. The hospital report records a deep laceration to the dorsum of the left forearm, multiple lacerations to the left arm and neck, and a puncture to the right radial aspect of the right forearm. The wounds required suturing.
- [7] I am provided with the reports of psychologists, Anthony Bligh and Jacob Humes, and a psychiatrist, Dr David Straton. They are consistent in their analysis that Mr Caldwell has a post traumatic stress disorder and that this assault has made a material contribution to the condition. As well, major depressive episodes are reported.

Entitlement to Compensation

- [8] In order to qualify for compensation under the 1995 Act, the applicant must show that the respondent was convicted on indictment of a personal offence,

¹ See s 40(1)(a) of the 1995 Act.

that the personal offence was committed against him, and that as a consequence he has suffered injuries as defined in the Act.

- [9] Each of those three conditions is satisfied here.
- [10] In making a compensation order the Court is limited to ordering the payment of an amount in accordance with s 25 of the 1995 Act. That section provides that a Court assessing compensation may not order more than the prescribed amount, which is \$75,000, and must determine the appropriate compensation by reference to the percentages specified in the Compensation Table which is to be found in Schedule 1 to the Act. By s 25(4) the amount of compensation awarded for injuries specified in the table may not be more than the percentage of the scheme maximum which appears in the table with respect to each injury. The Court is required to apply that nominated percentage or adopt an amount within the listed range of the percentages of the scheme maximum.
- [11] The scheme maximum is reserved for the most serious cases and the amounts provided in other cases are required to be scaled according to their seriousness: s 22(4).
- [12] It is relevant to note that the compensation intended to be provided by the 1995 Act “is intended to help the applicant and is not intended to reflect the compensation to which the applicant may be entitled under common law or otherwise”: s 22(3). In arriving at an appropriate amount of compensation, the legislation provides that the Court is not to apply principles used to decide common law damages for personal injuries: s 25(8).

Assessment of Compensation

- [13] Mr Grant, who appeared for the applicant, submitted that the following amounts of compensation ought to be allowed:

Item	Description of Injury	Percentage of scheme maximum	Amount
1	Bruising/Laceration (minor)	2%	\$1,500
24	Stab wounds (minor)	6%	\$4,500
32	Mental or Nervous Shock (moderate)	20%	\$15,000
	TOTAL:		\$21,000.00

- [14] In my view, the claims made in relation to bruising/laceration and the stab wounds are at a very moderate level and are appropriate.
- [15] The claim for mental or nervous shock requires further discussion.
- [16] The applicant has quite severe symptoms of post traumatic stress disorder. His symptoms are comprehensively described in the report of Dr Straton as follows: intense fear and feelings of helplessness, flashbacks three or four

times per day, frequent nightmares and panic attacks, avoidance of people and thoughts, feelings or conversations associated with the assault, intense psychological distress, sleeping difficulties, outbursts of anger, hyper vigilance and exaggerated startle response, with the condition causing distress and impairment in social, occupational and other important areas of functioning.

- [17] Mr Humes added intermittent suicidal ideation and loss of desire for purposeful functioning to that list of symptoms.
- [18] Mr Prndac has been treated extensively by a number of practitioners. Dr Straton thought that psychotherapy was called for in November 2008 when he last saw the applicant. The most recent report is that of Mr Bligh of September 2009. He is treating, or has treated, the applicant for alcohol abuse. He thought that there was a good prognosis, but with a need for further counselling.
- [19] The complicating feature of the case is that the applicant's mental health was far from robust prior to the subject offence and it is clear that many factors contribute to his condition. His history of alcohol and drug abuse goes back to when he was 17 years of age – that is, to 1985.² In 2006, and therefore prior to the subject incident, he was treated as an inpatient at the Mental Health Service at the Prince Charles Hospital in relation to suicidal ideation. According to the history provided to Dr Straton, the applicant was attacked by a gang a few days after the subject offence was committed, he took out a weapon and fired it, and a car chase occurred. This resulted in the applicant being jailed for 6 months for discharging the weapon. It seems that as matter of common sense that both the pre-existing state of his health and the post incident events have made some contribution to the present condition.
- [20] The fact that other matters have contributed to the psychiatric condition for which compensation is sought does not mean that Mr Prndac is disqualified from obtaining such compensation. It is necessary for him to show that the offence in question has materially contributed to the injury for which compensation is sought: *SAY v AZ; ex parte A-G (Qld)* [2006] QCA 462. That precondition is plainly satisfied here.
- [21] In *SAY*, Holmes JA held at [23]:
- “Where there is a single state of injury produced by a number of factors, some or all of which warrant a reduction in the award, the Court must do its best to make allowance for their contribution, although the evidence may not lend itself to any precision. Often a broad-brush approach of the kind adopted by Thomas JA in *Sanderson v Kajewski* will be necessary. The exercise may be one of discounting, or fixing on a lower percentage on the compensation scale to allow for the role of other factors, rather than necessarily a strict process of apportionment. In that exercise, it is legitimate to consider the nature of the other contributing factors...”
- [22] Turning then to the Compensation Table, it seems to me appropriate that the described symptoms of the post traumatic stress disorder and depression from which the applicant suffers fall into the severe category of “mental or nervous

² The applicant was born 1 October 1968.

shock,” but towards the lower end of it. The range given is 20% to 34% (Item 33).

- [23] No attempt has been made by the medical experts or the lawyers to address the issue of the effect of the pre-existing condition, and of the subsequent incident and jailing, on the applicant’s mental state. The reports suggest that the applicant was coping reasonably well after his treatment at the Prince Charles Hospital. He plainly had employment at the time of the subject incident. The symptoms complained of since the subject offence seem largely to have been triggered by the frightening attack on him.
- [24] Adopting a broad brush approach I propose reducing the assessment from the 25% level which I would otherwise have thought appropriate to 20% to allow for these factors. That coincides with the submission made.
- [25] The total compensation then will be as follows:

Item	Description of Injury	Percentage of scheme maximum	Amount
1	Bruising/Laceration (minor)	2%	\$1,500
24	Stab wounds (minor)	6%	\$4,500
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	TOTAL:		\$21,000.00

- [26] I order that the respondent pay the applicant compensation pursuant to s 24 of the *Criminal Offence Victims Act 1995* in the sum of \$21,000.