

CITATION: *Munro v Department of Justice and Attorney-General Offender Debt Recovery Scheme*
[2016] QCAT 349

PARTIES: Adrian Andrew Munro
(Applicant/Appellant)
v
Department of Justice and Attorney-General
Offender Debt Recovery Scheme
(Respondent)

APPLICATION NUMBER: GAR170-16

MATTER TYPE: General administrative review matters

HEARING DATE: 30 September 2016

HEARD AT: Bundaberg

DECISION OF: **Member Milburn**

DELIVERED ON: 4 October 2016

DELIVERED AT: Hervey Bay

ORDERS MADE: **The application for review filed by Adrian Andrew Munro in GAR170-16 is dismissed.**

CATCHWORDS: VICTIMS OF CRIME – where the applicant assaulted a person for which he was convicted of grievous bodily harm on his own admission

REVIEW – PAYMENT OF FINANCIAL ASSISTANCE – where the applicant does not dispute the amount as assessed as payable by him pursuant to section 115 of the *Victims of Crime Assistance Act 2009* – where the applicant applied to QCAT for a review of the decision to seek recovery from him of the amount of financial assistance that has been paid to victim of the act of violence perpetrated by the applicant – where the applicant seeks an order of the tribunal to reduce or remove any obligation to provide payment by way of reimbursement of the amount paid to the victim, based on his own personal circumstances and financial hardship – where the applicant seeks an order of the tribunal in the alternative to

direct the basis upon which the amount of money should be paid over time – whether the applicant had a right of review with respect to his personal circumstances or the basis upon which repayment is to be made under the *Victims of Crime Assistance Act 2009*

Victims of Crime Assistance Act 2009 (Qld), s 86, s115, s117, s118, s119 and Schedule 2

Department of Justice and Attorney-General Offender Debt Recovery Scheme v Richardson [2015] QCATA 8

APPEARANCES:

APPLICANT: Adrian Andrew Munro

RESPONDENT: Department of Justice and Attorney-General
Offender Debt Recovery Scheme represented
by Sarah Louise Chase, by leave

REASONS FOR DECISION

Background

- [1] On 11 October 2009, the applicant, who was then 18 years old, struck a victim with such force that he caused his jaw to shatter. The victim fell to the ground without being able to break his fall because the blow rendered him unconscious. The applicant left the scene but was apprehended, charged and some 11 months later was convicted of grievous bodily harm in the District Court at Maryborough on his own admission.
- [2] The sentencing court did not order that the applicant serve any actual term of imprisonment, opting instead to impose a period of imprisonment to be served in the community by way of intensive correction order for 12 months. The court made no order for payment of any compensation to the victim.
- [3] The victim sought financial assistance pursuant to the provisions of the *Victims of Crime Assistance Act 2009* (VOCAA). The Offender Debt Recovery Program (ODRP), being a section of the Department of Justice and Attorney-General, assessed the claim under what was then the new financial regime applicable for compensation to victims of crime. Indeed, as far as the applicant is concerned, it is likely that he was fortunate to have this matter assessed under the current regime. The former regime provided for payment of compensation based on a statutory scale, as opposed to the current scheme that is largely limited to reimbursement of expenditure and loss to a victim.

- [4] In any event, ODRP assessed the victim's claim and saw fit to make five separate payments to the victim as follows:

Victim payment type	Date of payment approval	Amount of payment
Special assistance (essentially, ex-gratia payment)	30 January 2012	\$3000.00
Loss of earnings	30 January 2012	\$10,208.00
Incidental travel	30 January 2012	\$172.00
Other expenses	30 January 2012	\$733.00
Medical expenses	13 February 2012	\$958.00
Total payment amount		\$15,071.00

- [5] After initially sending a recovery notice to the applicant's former address, ODRP did send a notice to the applicant's correct address on 13 May 2016. Upon receipt of the notice, which the applicant says came as a shock to him, he sought an internal review of the decision to seek recovery from him in the sum of \$15,071.00. The internal review mechanism resulted in the acting scheme manager of the Department of Justice and Attorney-General, Offender Debt Recovery Program confirming the original decision. The decision maker sent a notice of the decision of the internal review to the applicant on 15 June 2016. By this notice, the scheme manager informed the applicant that he had an entitlement to review the decision externally through the Queensland Civil and Administrative Tribunal. Section 115(g)(ii) of VOCAA provides authority for the tribunal to review the internal decision.

The applicant's case – based on his personal circumstances and hardship considerations

- [6] The applicant gave evidence to the tribunal that he is now 25 years of age and has not had a criminal conviction; indeed, not even a traffic conviction, since he was convicted of grievous bodily harm. He is a father of two and a production worker, who works in shifts of up to 12 hours at a time.
- [7] He gave evidence to the tribunal as to the circumstances that led to the offending behaviour, which ultimately resulted in the victims of crime assistance payment. He explained that he committed the offence in circumstances where he was adversely affected by the consumption of alcohol, provoked (in a manner insufficient to constitute a defence) and was grieving as a result of the loss of his grandmother, who was also his carer. In short, he was a troubled young man at the time.

- [8] During the tribunal hearing, he expressed his remorse for his actions. In his written submissions to the tribunal, the content of which he confirmed on oath as true and correct at the hearing, the applicant said, amongst other things:
- a) 'Subsequent to my plea, I willingly and completely participated in all remedial programs of rehabilitation. This included anger management and alcohol and this includes awareness programs and I served a court imposed probation period without incident. I also learned a significant life lesson and fully appreciate the debt to society owed by people who make such mistakes. In my own case, my life today is very different. I rarely partake of alcohol and I appreciate the program of anger management I undertook and there has never been a hint of problems in those areas since. I have a permanent job and I have never reoffended, including no traffic offences. I have two children. To earn my living in modest employment, I work rotating shift work to provide for my children'.
 - b) 'While I am willing to pay for my earlier behaviour, no longer a factor in my current life, I am simply unable to pay such an amount. I do not dispute the offence nor wish to deny liability for repayment'.
- [9] The applicant went on to explain his current financial circumstances and argued that enforcement of the payment demand against him would have an adverse economic impact on his family.
- [10] He explained that he does have a motor vehicle which he says was valued by prospective purchasers (presumably dealers) for \$6000 – \$7000, yet he owes somewhere in the order of \$30,000 on that vehicle. He said that he needs the vehicle in order to get to and from work and to assist with taking his daughter to and from kindergarten.

The legal position

- [11] The applicant's case fails as there is no legal justification for making the type of order sought by him.
- [12] The tribunal has the power to review the decision of the scheme manager, however the basis upon which the decision can be varied is limited.
- [13] Section 115(g) of VOCAA (below) provides for a limited basis upon which an applicant/offender may challenge a decision made with respect to a claim for payment.

Victims of Crime Assistance Act 2009
s115 Notice of intended recovery

Before the State may, under this part, recover from a person all or a part of the assistance granted to someone else, the scheme manager must give the person a notice stating—

- (a) the date on which the assistance was granted; and

- (b) the amount of the assistance granted and the conditions (if any) imposed on the grant; and
- (c) the act of violence for which the assistance was granted; and
- (d) whether the assistance was granted to a primary victim, secondary victim or related victim of the act of violence; and
- (e) the offence of which the person has been convicted that the scheme manager claims is a relevant offence for the act of violence for which the assistance was granted; and
- (f) the amount of the assistance, or the part of the assistance, the State seeks to recover from the person under this part; and
- (g) that the person may—
 - (i) within 14 days after being given the notice, dispute a claim mentioned in paragraph (e) by giving the scheme manager notice of the dispute; and
 - (ii) if the person does not agree with the scheme manager's decision given after considering the notice of the dispute—apply to QCAT for a review of the scheme manager's decision; and
- (h) that when the question of whether the offence of which the person has been convicted is a relevant offence for the act of violence for which the assistance was granted is no longer in dispute, the person is liable to pay the amount mentioned in paragraph (f) to the State under section 117(4); and
- (i) anything else prescribed under a regulation.

- [14] Section 115(e) provides for one basis upon which an applicant/offender may challenge the scheme manager's decision. That is, to argue that the offence in question is not a 'relevant offence'. When the question of whether the offence of which the person has been convicted is a relevant offence for the act of violence for which the assistance was granted is no longer in dispute, the person is liable to pay the amount of the assistance, or the part of the assistance, the State seeks to recover from the person to the State under section 117(4). Neither the offset provisions contained in section 118 of VOCAA nor the provisions of section 119 of VOCAA, dealing with the reduction in offender's liability to pay if an amount is received under *Corrective Services Act 2006*, apply in the current circumstances. Other than that, the only basis upon which an applicant/offender may challenge the decision is to argue that section 86 of VOCAA is relevant to the particular circumstances and has not been appropriately applied.
- [15] In this instance, grievous bodily harm is 'a relevant offence for the act of violence for which the assistance was granted'. The offence of grievous bodily harm is listed as a category B 'act of violence for which payment to the victim may be made' in schedule 2 of VOCAA.
- [16] Once the scheme manager has given a person a notice under section 115 (the recovery notice); and the question of whether the offence of which the person has been convicted is a relevant offence for the act of violence for which the assistance was granted is no longer in dispute¹, then the offender is liable to make payment of the amount. While a review of the

¹ VOCAA s 117(1)(b).

quantum is not part of the applicant's case, the legal position was settled clearly in *Department of Justice and Attorney-General Offender Debt Recovery Scheme v Richardson* [2015] QCATA 8, where the appeal jurisdiction of the tribunal determined that an offender does not have the right to seek external review to QCAT on the issue of quantum.

- [17] If, as it does in this case, the tribunal determines that this is a relevant offence, then the amount of money recoverable against the offender can only be varied if there was an order made at the time of sentence by way of direct compensation to the victim. If so, section 86 of VOCAA would have the effect of reducing the amount to be recovered through the statutory scheme. That section does not provide any assistance to the applicant in this case because the sentencing court did not make any order for direct compensation to the victim as part of the sentence.

Conclusion

- [18] The tribunal is satisfied that the decision of ODRP to seek recovery from the applicant in the sum of \$15,071.00 both at first instance and on internal review is correct.
- [19] The application for review filed by Adrian Andrew Munro in GAR170-16 is dismissed.