

DISTRICT COURT

CIVIL JURISDICTION

JUDGE ROBIN QC

No 128 of 2010

LUKE OWEN CREIGHTON

Applicant

and

GUY ALEXANDER CLARKE & ORS

Respondents

BRISBANE

..DATE 12/02/2010

..DAY 1

CATCHWORDS

Application for criminal compensation - court disapproves of process server's describing service of respondents "at an address known to the court" - there were no relevant addresses known to the court.

HIS HONOUR: The applicant seeks compensation under the Criminal Offence Victims Act in respect of an offence of assault occasioning bodily harm while in company. O'Malley pleaded guilty to that offence and many others in Judge Trafford-Walker's Court on the 17th of October 2008, I sentenced the others at a later stage.

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When the trial was expected to get underway in Maroochydore on the 15th of June 2009 they pleaded guilty. I observed on that occasion that they were fortunate not to be charged with grievous bodily harm. The prosecution appeared to take a highly understanding approach to their situations, including to what might be an appropriate punishment.

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Mr Creighton was a good Samaritan. One evening when he was enjoying himself with a mate at the Alexandra Headland Surf Life Saving Club, he noticed a gang of young thugs setting upon other young people in the vicinity of a bus shelter and went to some trouble to intervene to put an end to the ruckus. He had a companion called Wessels. He was the one seriously hurt when king hit by Clarke and the punishment by the defendants continued when he was on the ground.

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Mr Creighton had experience in the defence force in East Timor, which was one of the factors that perhaps inclined him to think he had the ability and the responsibility to intervene. The East Timor episode takes on some significance because of the real possibility that it resulted in some post-traumatic stress disorder. According to Dr Ray, on the basis

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of Mr Creighton's information, that had settled down or become manageable. According to her report, again based on Mr Creighton's information, there has been a flare-up or a new psychological injury, understandably enough, flowing from the offence which concerns the Court today.

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The applicant has become wary of people, changed his lifestyle, for example by associating with friends in private locations rather than more public ones. Dr Ray seems to think that those difficulties may settle down with treatment by practitioners in her sphere. Her approach is that the assault by the respondents caused a new psychological injury and also caused the earlier one to flare up.

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She notes that there are difficulties of a psychological nature within Mr Creighton's family affecting his sister in particular. The psychological aspects may play some part in damaging the confidence which Mr Creighton needs for his employment, which is an abseiler working in the construction industry. Whether or not that's so, the consequences of his physical injuries have an impact. That is by way of his susceptibility to sudden episodes of pain from his facial injuries, it is understandable that this would be an unwelcome feature for someone in his line of work.

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Dr Lynham's report is a convenient summary of the injuries. He refers to marked bruising and swelling to his facial regions but, more specifically, to his left face. He sustained a four centimetre laceration to his left eyebrow.

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He sustained a fracture of his left zygomatic complex and associated orbit, that is, a fracture of his left cheekbone and eye socket. He suffered a fracture of his left maxilla and his left frontal bone. He also suffered from damage to his left orbital nerve, that is the nerve that supplies sensation to the left side of his face and mouth.

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Dr Lynham goes on to report, "He was initially treated on the 2nd of February at Nambour Hospital. The laceration was attended to and he had full and comprehensive clinical and radiographic assessment, including a CT scan. Subsequently, he attended the Royal Brisbane Hospital on the 5th of February 2009 where again a full assessment was undertaken and also review of the investigations taken at Nambour Hospital.

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He underwent operation at Royal Brisbane Hospital on the 13th of February 2009. The operation was an elevation of his zygomatic complex with access via an intra-oral incision. After the zygomatic complex was placed into position it was fixed with the use of a titanium plate with four titanium screws.

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Unfortunately, Mr Creighton is left with alterations to the sensations in his face and mouth. He has the bouts of stabbing pain, that I've referred to, a few times a week and also severe pain in the anterior incisor teeth about his left side. There's a scar inside his mouth and one above his left eyebrow". Dr Lynham doesn't anticipate much further improvement in contrast, I think, to Dr Ray. The offence

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happened on the 2nd of February 2008.

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There's no contest to the applicant's material, the respondents not having appeared today when called. I've made some adverse comment regarding the process server's three affidavits of service. They all depose to service on the named respondent "at an address known to the Court". So far as I'm aware, the Court has no idea where these people are unless O'Malley is still in custody, which seems unlikely. Mr Bagley tells me he had some concerns of his own about the service affidavits and suggests that the Court would have bail addresses.

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That's indeed the case but, in my opinion, based on experience in the Court, those bail addresses will be old and unlikely to be of much use now. So far as I'm aware, the Court has no idea where any of these people might be and the apparent misrepresentation is concerning. It doesn't dissuade me from dealing with the application today in the interests of efficiency. According to the process server, each of those served acknowledged who he was. It may be that an assumption has been made by him that the Court is aware of addresses that may have been obtained from some other quarter, such as Community Corrections.

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I'm grateful to Mr Bagley for his submissions. I think his suggested awards, which come substantially inside the top half of the provisions in item 8, Facial Fracture Severe, and item 33, Mental or Nervous Shock Severe, are on the high side and

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prefer to come down in the middle of the range for item 8.
And given the complications noted in relation to the earlier
likely post-traumatic stress disorder, I think the item 33
award should be slightly lowered. I'd allow 25 per cent in
each of those categories and adopt Mr Bagley's suggestion of 4
per cent award under item 2. That's \$3,000, each of the
others is \$18,750; the total is \$40,500 and the
respondents-----

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HIS HONOUR: The Court's intention is that the applicant
receive \$40,500. So it's order as per initialled draft.

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