

# DISTRICT COURT OF QUEENSLAND

CITATION: *Huggett v Borresen* [2010] QDC 95

PARTIES: **TROY ANDREW HUGGETT**  
(Applicant)  
**AND**  
**DAVID JAMES BORRESEN**  
(Respondent)

FILE NO/S: BD 77/2009

DIVISION: Civil

PROCEEDING: Application for criminal compensation

ORIGINATING COURT: District Court, Rockhampton

DELIVERED ON: 22 March 2010

DELIVERED AT: Brisbane

HEARING DATE: 16 October 2009, Rockhampton

JUDGE: Tutt DCJ

ORDER: **The respondent David James Borresen pays to the applicant Troy Andrew Huggett the sum of \$37,500.00, by way of compensation for injuries caused by the respondent to the applicant for which the respondent was convicted by the District Court at Rockhampton on 6 August 2009.**

CATCHWORDS: CRIMINAL COMPENSATION – causing grievous bodily harm – where applicant was victim of “glassing” – where applicant sustained “two stab wounds to face - inability to elevate left corner of mouth - weakness in closing left eye” – where applicant not entitled to compensation for “mental or nervous shock” as applicant does not meet “the criteria for a psychological disorder as a result of the assault” – where applicant’s behaviour did not contribute to index assault.

*Criminal Offence Victims Act* 1995 ss 24, 31

*Ferguson v Kazakoff; ex parte Ferguson* [2001] 2 Qd R 320

*RMC v NAC* [2009] QSC 149

COUNSEL: Mr A.M Arnold for the applicant.

No appearance by or on behalf of respondent.

SOLICITORS: Swanwick Murray Roche Solicitors for the applicant.

**Introduction:**

- [1] Troy Andrew Huggett (“the applicant”) claims compensation under Part 3 of the *Criminal Offence Victims Act 1995* (“the Act”) against David James Borresen (“the respondent”) for alleged injury he sustained arising out of the criminal conduct of the respondent who was convicted by the District Court at Rockhampton on 6 August 2009 for the offence of causing grievous bodily harm to the applicant on 1 August 2008 at Rockhampton.
  
- [2] The application for compensation is made pursuant to s 24 of the Act and is supported by the following material:
  - (a) the applicant’s affidavit with exhibits sworn 29 September 2009 and filed in this court on 30 September 2009;
  - (b) the affidavit with exhibits of David Daniel Lipke, Solicitor, sworn 24 September 2009 and filed in this court on 29 September 2009;
  - (c) the affidavit with exhibits of Dr William Cockburn, Plastic and Reconstructive surgeon, sworn 28 September 2009 and filed in this court on 29 September 2009;
  - (d) the affidavit of Bruce Watson Acutt, Consultant Psychologist, sworn 24 September 2009 and filed in this court on 30 September 2009;
  - (e) the affidavit of Adrienne Joan Jackson, licensed commercial agent, sworn 7 October 2009 and filed in this court on 8 October 2009;

- (f) the affidavit of Stephen James Forster, Deputy Director of Community Services and Development, sworn 14 October 2009 and filed by leave on 16 October 2009.
- [3] The respondent was served with the application and supporting documents on 7 October 2009 as deposed to by the said Adrienne Joan Jackson and acknowledged in the affidavit of the said Stephen James Forster but the respondent made no appearance at the hearing which proceeded in his absence.

**Facts:**

- [4] On 1 August 2008 the applicant was assaulted by the respondent at the Berserker Tavern, North Rockhampton in what is commonly referred to as a “glassing” incident, which the evidence shows was entirely unprovoked, as a result of which the applicant sustained significant injuries to the left side of his face.

**Applicant’s injuries:-**

**Physical Injuries:**

- [5] The applicant claims compensation for physical injuries which are described as follows:<sup>1</sup>

- “1. Two wounds to the left side of his face 1 cm lateral to a line drawn from angle of mouth to lateral canthus. Upper wound 2 cm long and the lower wound 3 cm long;
2. Asymmetry on moving his mouth with a complete inability to elevate the left corner of his mouth;

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<sup>1</sup> Report dated 21 October 2008 from Dr Andrew Castley, Plastics and Reconstructive Registrar, Royal Brisbane and Women’s Hospital – part of Exhibit “A” to applicant’s affidavit.

3. Weakness in closing his left eye.”

**“Mental or nervous shock” injury:**

[6] The applicant also claims compensation for “psychological injury” arising out of the index assault and describes his symptoms from this condition in his affidavit in the following terms:<sup>2</sup>

- “After the incident I was and am extremely fearful of seeing the offender again;
- I have attempted to return to a normal life but I have had difficulty doing this;
- Since the assault I have socialised less than I did previously;
- I have difficulty with sleeping and often think about the incident. This has continued to the current time;
- I have noticed I am a lot more irritable since the incident. Prior to the incident I was a very easy going person and now become agitated a lot more easily;
- I feel the incident has affected my confidence;
- I am forever watchful of my back and very uneasy around strangers. I am much more aware of people around me.”

[7] In support of his physical injuries, which are essentially the residue of the stab wounds to his face, including nerve damage, the applicant relies upon the hospital and other medical records from the Rockhampton Hospital and Royal Brisbane Hospital respectively, together with the report from Dr Cockburn dated 9 September 2009, being Exhibit “A” to Dr Cockburn’s affidavit.

[8] The hospital and medical records set out the nature of the applicant’s injury and treatment received therefor and confirm the applicant’s significant facial injuries.

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<sup>2</sup> Paragraphs 8-12 of applicant’s affidavit.

- [9] Dr Cockburn confirms the applicant's residual scarring and describes it in the following terms:

“There appears to be two areas of scarring. Firstly, in the centre of his left cheek an oblique approximately 6 cm long scar. This is visible because of the contour deficit as it is slightly depressed in comparison with the surrounding tissue. There is also a scar approximately 10 cm in length in the usual place for a parotidectomy incision. This has healed very well and has healed almost imperceptibly.

I can confirm that Troy Huggett has sustained a permanent injury by way of the assault that occurred on 1<sup>st</sup> August 2008. At that time he suffered bruising and the laceration to his cheek was a stab wound from a glass. The resultant scarring has caused facial disfigurement as would have occurred if his facial nerve were not repaired. He would have had a nervous response to this injury, but that is out of my area of expertise.

I would describe the disfigurement, with reference to the 5<sup>th</sup> edition, Evaluation of Permanent Injuries, and would suggest it is best described in Table 8.2. Class 2 and would be defined as 12% impairment of the whole person.”

- [10] Dr Cockburn followed his initial report with a further report dated 28 September 2009,<sup>3</sup> in which he summarised the applicant's residual injuries in the following terms:

“I consider that the injury that Troy Huggett has sustained, bruising and lacerations, would fall into Injury 2. I would described this as severe and 5%.

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<sup>3</sup> Exhibit “B” to his affidavit.

I would consider the stab wounds as Injury 26, severe and would estimate at 25%.

The facial disfigurement and bodily scarring I would consider as Item 28, severe and estimate it to be 20%.”

- [11] With respect to the applicant’s claim for “psychological injury” he relies upon the affidavit of Bruce Watson Acutt, Consultant Psychologist who, among other things, sets out the applicant’s “Physical Sequelae” from the injuries, in which he also sets out the following “statements” and “descriptions” from the applicant:

“Mr Huggett stated that since the assault his social life has changed significantly. He described himself as *‘I was a very social person ... it’s made that very, very hard ... it was a big part of my life ... I just don’t go out as much ... I used to going [sic] to the pub for a beer’*. Mr Huggett stated that he will only go out now with friends so that he is part of a crowd.

He further described his current levels of functioning as *‘It’s hard to sit and relax ... you look at people ... you don’t know. I would rather sit at home now with friends ... It’s unusual because I used to love going down for a drink ... I try not to go there any more or any pub in general’*.

Mr Huggett also described hypervigilant behaviours and changes to his personality *‘I used to be really outgoing and approach people really easily ... that’s changed especially with the scar I don’t feel confident to up and start a conversation’*.

Mr Huggett also stated, *‘I feel edgy if someone comes close’*. He denied dreaming about the assault but stated, *‘I think about it all the time’*. Mr Huggett described his mood following the assault as, *‘At first I was really angry for a couple of months. I wanted justice and*

*an explanation. It's not so bad now but I felt like I had gone back into depression'.*

*He further described himself as 'more cautious now ... not so trusting of people ... now I won't go out of my way to meet people. I fight with myself to keep things right. I feel uneasy a lot. I don't feel comfortable in crowded places ... you look at everyone, anything could happen'.*

- [12] Very importantly, Mr Acutt provides the following “summary” following his examination of the applicant:

“Mr Huggett does not meet the Diagnostic and Statistical Manual of the American Psychiatric Associate (DMS IV) criteria for a psychological disorder as a result of the assault of 1<sup>st</sup> August 2008. He has, however, suffered a significant psychological injury in that he now finds his personality changed and he avoids crowds and going to new places. These changes have had a significant effect on a man who described himself as being quite gregarious and who loved going to the pub to have a beer.

Mr Huggett’s psychological injuries equate to Injury 32 of the *Criminal Offences Victims Act 1995* Mental or Nervous Shock moderate with a level of impairment in the percentile level of 20%.”

**The applicant’s submissions:**

- [13] It is submitted on the applicant’s behalf that he should be awarded compensation for the injuries he sustained as follows:<sup>4</sup>

“(1)	Bruising laceration – (severe) 5% of scheme maximum	\$3,750.00
(2)	Gunshot/stab wound (severe) 25% of scheme maximum	\$18,750.00

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<sup>4</sup> Paragraph 18 of applicant’s written submissions.

(3)	Facial disfigurement and bodily scarring (severe) 20% of scheme maximum	\$18,750.00
(4)	Mental or nervous shock (severe) 20% of scheme maximum	<u>\$15,000.00</u>
		<b><u>\$56,250.00</u></b>

**What is “mental or nervous shock”?:**

[14] The recent decision of *RMC v NAC* [2009] QSC 149 revisited this question and what was said by Thomas JA in *Ferguson v Kazakoff; ex parte Ferguson* [2001] 2 Qd R 320. His Honour Byrne SJA analysed the legal history of the condition in paragraphs [25] to [37] of his judgment and ultimately came to the conclusion in paragraph [38] thereof that:

“Nervous shock” in the *Act* is confined to a recognisable psychiatric illness or disorder”.

**Findings:**

[15] In the light of Byrne SJA’s careful and comprehensive analysis of what is “mental or nervous shock” under the Act, particularly at paragraphs [31]-[35] inclusive of *RMC v NAC* above, I am unable to find that the applicant has suffered “mental or nervous shock” within the terms of s 20 of the Act as a result of the index assault. My reason for this finding is the evidence from Mr Bruce Acutt, the Consultant Psychologist, who states very clearly that the applicant “does not meet the Diagnostic and Statistical Manual of the American Psychiatric Association (DSM IV) Criteria for a psychological disorder as a result of the assault of 1<sup>st</sup> August 2008”.<sup>5</sup> Whilst Mr Acutt says that the applicant has “suffered a significant psychological injury ...”. I find that conclusion is insufficient for the applicant to establish a claim for “mental or nervous shock” under the Act in the light of Mr Acutt’s immediately preceding conclusion and the dictum of Byrne SJA

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<sup>5</sup> “Summary” paragraph – p 3 of Mr Acutt’s report.

referred to above. I therefore make no award for compensation in respect of the applicant's claim for his alleged "mental or nervous shock" condition.

[16] In respect of the applicant's "physical injuries", on the basis of the evidence before me and the submissions made, I find that the applicant is entitled to an award of compensation against the respondent for these injuries and I assess the applicant's compensation in respect thereof as follows:

(a) **Item 2 – "bruising/laceration etc (severe) ... 3%-5%":**

I assess the applicant's compensation in respect of this item in the sum of \$3,750.00, representing 5% of the scheme maximum payable under Schedule 1 of the Act based upon the applicant's own evidence and the evidence contained in the hospital records and medical reports exhibited, particularly the report dated 28 September 2009 from Dr William Cockburn referred to herein.

(b) **Item 26 – "gunshot/stab wound (severe) ... 15%-40%":**

I assess compensation under this item in the sum of \$18,750.00, representing 25% of the scheme maximum payable under Schedule 1 of the Act on the basis of the applicant's own evidence and the hospital records and medical evidence contained in the records exhibited, together with the report dated 28 September 2009 from Dr William Cockburn referred to herein.

(c) **Item 28 – "facial disfigurement or bodily scarring (severe) ... 10%-30%":**

I assess compensation under this Item in the sum of \$15,000.00, representing 20% of the scheme maximum under Schedule 1 of the Act on the basis of the hospital and medical records exhibited and in particular the medical report dated 28 September 2009 from Dr William Cockburn referred to herein.

[17] I therefore award in aggregate the sum of \$37,500.00 to the applicant by way of compensation for the injuries he sustained caused by the respondent's criminal conduct.

**Applicant's direct contribution:**

[18] In deciding the amount of compensation payable to the applicant I must also take into account the behaviour of the applicant that directly or indirectly contributed to the injury (see s 25(7) of the Act).

[19] I refer to the circumstances of the incident as set out in paragraph [4] above and I am satisfied that the applicant did not either directly or indirectly contribute to the injuries he sustained at the hands of the respondent.

**Order:**

[20] I order that the respondent, David James Borresen, pays to the applicant Troy Andrew Huggett, the sum of \$37,500.00, being compensation for injuries caused by the respondent to the applicant for which the respondent was convicted by the District Court at Rockhampton on 6 August 2009.

[21] In accordance with s 31 of the Act I make no order as to costs.