

DISTRICT COURT OF QUEENSLAND

CITATION: *BDT v BDG* [2019] QDC 74

PARTIES: **BDT**
(plaintiff)

and

BDG
(defendant)

FILE NO/S: S11781/2017

DIVISION:

PROCEEDING: Assessment of damages

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 10 May 2019

DELIVERED AT: Brisbane

HEARING DATE: 27 March 2019

JUDGE: McGill SC, DCJ

ORDER: **Certify damages assessed at \$972,812.91, including \$349,778.41 by way of interest.**

CATCHWORDS: DAMAGES – Psychiatric injuries – sexual assault – whether aggravated damages appropriate – assessment of economic loss – interest on past loss.

AP v Di Pino (No. 2) [2012] QDC 5 – considered.
Battiato v Lagana [1992] 2 Qd R 234 – cited.
Bird v Bool (Writ 815/95, 16 October 1997, Derrington J, unreported, BC 9705223) – considered.
Callinan v Borovina [1977] Qd R 366 – cited.
Camm v Salter [1992] 2 Qd R 342 – cited.
Clark v Ainsworth (1996) 40 NSWLR 463 – cited.
Davis & Anor v Bound & Anor [2011] QDC 82 – considered.
Fire and All Risks Insurance Co Ltd v Callinan (1978) 140 CLR 427 – cited.
Grieve v Gomez [2017] QDC 298 – considered.
Henry v Thompson [1989] 2 Qd R 412 – cited.
Jackson v Bagwell [1992] 2 Qd R 390 – cited.
K v G [2010] QSC 13 – considered.
Malec v JC Hutton Pty Ltd (1990) 169 CLR 638 – applied.
MBP (SA) Pty Ltd v Gogic (1991) 171 CLR 657 – cited.
P v R [2010] QSC 139 – considered.
Paten v Bale (Writ 8921/98, 19 October 1999, Wilson J, unreported, BC 9906872) – considered.
Richardson v Oracle Corporation Australia Pty Ltd [2014] FCAFC 82 – distinguished.

Schmidt v Argent [2003] QCA 507 – cited.
Seabrook v Allianz Aust. Insurance Ltd [2005] QCA 58 –
 cited.
WAQ v Di Pino [2012] QCA 283 – considered.
Webster v Yasso [2002] QDC 206 – considered.

COUNSEL: H Blattman for the plaintiff
 The defendant appeared in person

SOLICITORS: Murphy Schmidt for the plaintiff
 The defendant was not represented

- [1] This is an assessment of damages under a default judgment for damages to be assessed given by a registrar on 26 October 2018. On 10 November 2017 the plaintiff filed a claim and statement of claim in the Supreme Court seeking damages for physical and psychological injury as a result of assault and battery of her by the defendant. On 31 January 2018 default judgment was signed by a registrar, but that judgment was set aside on 24 August 2018 by Crow J.¹ A further request for judgment was filed on 10 October 2018, resulting in the default judgment under which I am assessing damages.
- [2] The assessment occurs in accordance with UCPR r 509. Notice of the hearing was served on the defendant, he was produced from custody and attended, though he did not take any particularly active part in the proceeding; his only contribution was to repeat his assertions of innocence. The hearing was conducted largely on affidavit, pursuant to directions I made under r 510; the plaintiff gave some oral evidence, and oral evidence was heard from a psychiatrist of whom I had some questions.
- [3] Damages are to be assessed in respect of the cause of action pleaded in the statement of claim served on the defendant on which default judgment was obtained. I am not concerned with any question of liability, but need to identify the scope of that for which damages are being assessed from the statement of claim.

Background

- [4] The plaintiff is the daughter of the defendant. Between 15 August 1973 and 20 September 1983, while the plaintiff was aged between five and 15 years old, on 11 occasions identified in the statement of claim the defendant assaulted the plaintiff. This consisted of six instances of vaginal rape, one instance of simulated intercourse on the outside of her clothing, one example of attempted rape, and instances of the defendant licking the plaintiff's genitalia, rubbing the plaintiff's vagina with his hand, placing the plaintiff's hand on his penis which he rubbed with it, kissing her on the mouth, pushing his erect penis towards her face and groping her breast. There was also one occasion when the defendant struck the plaintiff repeatedly with a large wooden spoon causing deep bruising. The statement of claim alleges that as a result of this the plaintiff suffered the physical pain associated with the infliction of the injuries, and psychiatric injury in the form of post-traumatic stress disorder and chronic depressive symptoms. Paragraph 26 of

¹ I suspect this was associated with the defendant's application for an extension of time within which to appeal against his conviction at his criminal trial. The application was refused by the Court of Appeal on 21 February 2019: *R v BDG* [2019] QCA 24.

the statement of claim refers to further consequences but it seems to me that they reflect aspects of the psychiatric injury.

Evidence

- [5] The bulk of the plaintiff's evidence was given in an affidavit by her, affirmed on 21 August 2018 and filed the following day. In the affidavit she says she was born on 5 November 1967, the second oldest of six children of the defendant and his wife. When the plaintiff was young the defendant would work away from home for several weeks at a time. When he came home he would drink a lot, was aggressive and terrorised the family. She recalled that the first instance of sexual abuse occurred when her mother was in hospital for the birth of her next child. She said that she always hated the abuse which was often physically very painful, and she always resisted to the extent that she could. She also tried to avoid the defendant, by hiding under the house or sleeping under her bed or in the car, to avoid further abuse.
- [6] Although there is not a good deal of reference to it in the material, it is clear that the particular instances the subject of the criminal charges, and listed in the statement of claim, were not the only instances of sexual abuse to which the plaintiff was subjected.² She said that her mother and other members of the family were also subjected to domestic violence, and she was quite frightened of the defendant. She said the defendant threatened to kill her and her mother on numerous occasions, a threat which carried more force because he had a rifle at home, and on one occasion discharged it into their fireplace, to intimidate her. He also told her that if she reported what he was doing the family would be broken up and the children separated and put into homes; because of this, she never reported the abuse to anyone.
- [7] Most of the abuse occurred while the family were living at one of two addresses in Toowoomba, but one of the rapes occurred while the family was living for a few months in Cyprus. Between 1980 and 1982 the defendant was largely away from home for work, and the plaintiff was free from the abuse, but in 1983, soon after she started high school, he returned and sexually abused her again, although by this time she was old enough to resist more effectively and this abuse was limited to fondling one of her breasts, which started while she was asleep. After this incident the plaintiff left home.
- [8] The plaintiff said that she had a very disrupted education, as a result of her reaction to the abuse she had suffered, though it appears that as well she received no encouragement to study from either parent. She said that she would often skip school after there had been traumatic events at home, and her parents were unconcerned about this. When she went to high school, her results were very poor, and she was in the process of repeating year 10 when the last incident happened and she left school. That interfered with her education, though she made a further attempt to complete year 10 in the following year, 1984, by correspondence. She mistook the date of her final exam and as a result did not achieve that qualification. At that point she gave up on education.
- [9] After she left home she initially squatted in a vacant shop in a country town, and obtained a job as a mother's help for which she earned a small amount of cash.

² See affidavit of plaintiff Exhibit DTB01 p 38.

Subsequently she moved to a larger town with a boyfriend, and obtained a job in a local business. This was away from where she had grown up, and she felt safe from the defendant, although she remained depressed and had some suicidal thoughts. In about 1987 she and the boyfriend broke up and she moved to Toowoomba where she stayed with another friend in a flat. She later obtained a job at a hotel and moved into the hotel. While working there she met the man she subsequently married, and the following year began to live with him in Brisbane. She took a computer course at a business academy and achieved satisfactory results, but did not work for three years after becoming pregnant with her first child. She then began some part-time work but after a second son was born stopped work again to look after her children.

- [10] The plaintiff said she was very protective of the children and concerned that they might be abused if anyone else looked after them. She did however return to work in 1997 when both sons were attending kindergarten. She worked in a laundry, and obtained an administrative position there in 2003, before moving to another administrative job with another business. She was able to cope with the work there, but left because she was under pressure to socialise with other people at lunchtime and did not want to have to discuss her past. She then obtained a data entry position with a laboratory company, and after two years moved to a personal assistant role in a similar company. She became concerned about the attitude of the person she was assisting and left soon after to obtain a position with Queensland Health in its pathology service. She has remained in that service since.
- [11] The plaintiff has achieved promotions, and in 2009 was made manager of a laboratory, though she said that she had to be encouraged to apply for the promotions, and feels that she only achieved these positions by default. In 2010 she undertook a course in laboratory skills which she said she found very difficult because she found it hard to concentrate and hard to assimilate information. She said she finds her position challenging and difficult, and she has difficulty in concentration and is easily distracted. She has not pursued further opportunities for promotion, and on one occasion declined to take up a particular position which was ultimately pursued by two people who are now in higher positions than she is. She remains reluctant to apply for other positions which might advance her career. In early 2015 she enrolled in a degree course through an open university. She was able to complete the first unit, but only by working on it fulltime, because of difficulties in concentration.
- [12] The plaintiff made, for a long time, very little disclosure about what had happened. When she was 18 she told one friend that she had been abused but did not elaborate. Because of her reluctance to disclose what had happened, it was only recently that she sought medical assistance for her psychological symptoms. These have continued, including nightmares of particular sexual assaults and other intrusive thoughts about the abuse.
- [13] In August 2014, the plaintiff made a complaint to police, as a result of which criminal charges were brought against the defendant. At a trial in March 2016 the jury were unable to agree, and there was a second trial in September 2016 when the defendant was convicted on all counts, and sentenced to a term of imprisonment. The plaintiff said she persevered in the hope that she would have some relief from her psychological symptoms if the defendant was convicted, but in fact the symptoms have continued and she has also had to contend with the distress of

having to speak about what had happened to her. Because the trial and conviction had not produced an improvement in her psychological state, she spoke to a general practitioner who referred her to a psychiatrist, but she did not find that psychiatrist's treatment helpful and did not persist with it.

- [14] The plaintiff complains of persisting depression, anxiety, flashbacks, intrusive thoughts, sleeplessness, nightmares, a constant sense of fear of the defendant, an inability to concentrate, memory problems, and a lack of confidence and self-esteem. She has frequently considered suicide, and has been unable to engage in normal relationships with her siblings and other people. She does not enjoy sexual intercourse.
- [15] The plaintiff has been recommended further treatment, but said in her affidavit that she was unsure whether she could undertake it at present: para 155. However in oral evidence she expressed a willingness to attempt the course of further treatment recommended by Dr Foxcroft: p 14. She also said that she had been taking anti-depressant medication for some time, prescribed by her general practitioner: p 13. This is notwithstanding that in her affidavit she also said that when she was treated by the psychiatrist in October 2016 she had said she did not want to take medication: para 134. The difficulty which arises in her case is that it seems that any attempt to treat her problems will inevitably involve discussion of the origin of her symptoms, and this in her experience has made her symptoms worse. Her reluctance to discuss her symptoms, which may well be a feature of her psychiatric condition, impedes her capacity to benefit from treatment.
- [16] Apart from her psychiatric state, she has high blood pressure, for which she takes medication which presumably controls it, and she has polycystic kidney disease, for which she has been told there is a risk of kidney failure in a few years. She has a brother who is willing to donate a kidney if required.
- [17] There was also an affidavit from the plaintiff's husband who advised that he was told of the abuse several years ago but not of the details, which was not something she wanted to talk about. He said that in discussions with the plaintiff she had expressed doubts about her ability to perform in roles which might have become available to her through her work. She tends to become stressed in unfamiliar situations. He confirmed that the plaintiff was very protective of their children when they were little. He also said that the plaintiff is withdrawn and does not engage readily in social events.
- [18] In a further affidavit sworn in March 2019 the plaintiff said that her kidney function had declined and she may need the kidney transplant earlier than anticipated. She also spoke of her distress when, during the hearing of an application for an extension of time within which to appeal against his conviction, the defendant continued to deny that the abuse had occurred. No doubt she was also distressed by his similar conduct at the hearing before me.

Medical evidence

- [19] The plaintiff was examined on 3 January 2017 by Dr Foxcroft, a psychiatrist, for the purposes of a medico-legal report: Exhibit 2. Dr Foxcroft diagnosed post-traumatic stress disorder, which he described as a long term clinically significant disorder as a consequence of early childhood abuse perpetrated by the defendant. This in his opinion had coloured and flavoured all her early development and subsequent

interpersonal functioning, and affected most aspects of her psychological function in life generally. She has had active symptoms of post-traumatic stress disorder from the time of the abuse, and they are continuing.

- [20] Dr Foxcroft's opinion was that the plaintiff's ability to work had been impaired due to the symptoms, particularly from difficulties with concentration, and he found that there was some impairment in concentration on testing, on a clinical level. He noted that she has an interest in playing soccer, but otherwise has no recreational activities, has little social life and few active friendships. Dr Foxcroft's opinion was that the plaintiff's prognosis was poor, because the condition tends to take a chronic course once well established. Her symptoms in short are likely to persist. He does nevertheless recommend treatment for her symptoms, though expressed the view that a long period of treatment is likely to be required, of the order of three years or more.
- [21] Without treatment her condition is likely to deteriorate progressively, and she risks the development of further depressive illness. He also recommended anti-depressant medication. Dr Foxcroft in oral evidence said that he had an interest in this area, and provides courses of treatment along the lines recommended for the plaintiff. He said however that in his experience about 50 per cent of those like the plaintiff who embark on such courses do not complete them. Presumably those who do manage to complete them obtain some benefit from them, though he was vague about this.
- [22] During a conference by telephone with counsel in July 2018³ Dr Foxcroft expressed the view that the plaintiff would have been able to undertake the course in laboratory skills which she declined to pursue, and considered that her reasons for not taking the course were consistent with the usual symptoms of her condition. A person in her position would need to be pushed into the course by a therapist or some other person. He expressed the view that the plaintiff would not be able to undertake a training role because of her psychological condition.

General damages

- [23] There is no evidence of any specific physical injury, or medical evidence in relation to the physical injury, and the position seems to be simply that the plaintiff suffered pain while enduring some of the offences.⁴ The main consequence of the defendant's conduct has been the plaintiff's post-traumatic stress disorder, which has severely impacted on her life, and is continuing to interfere with her ability to enjoy life, and pursue her earning capacity. It seems to me that most of the other matters complained of are really features or consequences of the psychiatric injury. I accept the evidence of Dr Foxcroft in relation to the plaintiff's psychiatric condition generally. I was referred to one earlier Queensland decision in relation to damages for psychiatric injury consequent upon sexual assault,⁵ and I am aware of a number of others. I shall mention these in chronological order.
- [24] In *Bird v Bool*⁶ the plaintiff suffered psychiatric injury following sexual assaults, which extended to rape, over a period of five years commencing when she was 11.

³ See Exhibit 3.

⁴ Except for the deep bruising referred to in para 7(a) of the statement of claim.

⁵ *P v R* [2010] QSC 139.

⁶ Writ 815/95, 16 October 1997, Derrington J, unreported, BC 9705223.

The plaintiff suffered symptoms of post-traumatic stress disorder, her education was severely disrupted, she had difficulty with normal sexual activity, and although she entered into a de facto relationship and gave birth to a child the relationship had subsequently broken down. Her difficulties continued, although generally her psychiatric symptoms had subsided considerably. General damages were assessed at \$40,000. Derrington J said:

“The award does not pretend to compensate the plaintiff adequately for the suffering she has endured. When damages are awarded for personal injury, the law has long since recognised that this cannot be achieved by a money award, and so the amount is assessed as well as that can be done by comparison with other awards. It would be wrong to interpret it in any other way.”

- [25] In *Paten v Bale*⁷ the plaintiff was indecently dealt with on five occasions between the ages of six and eight by a neighbour who was a family friend. Damages were assessed separately in respect of each of the five incidents.⁸ As a result she was diagnosed with chronic post-traumatic stress disorder, chronic depression, a sexual aversion disorder, and an unspecified personality disorder, which were entirely or partly due to the abuse.⁹ The plaintiff had received some medical and psychiatric treatment, but the prognosis was that there would be a need for treatment indefinitely, relapses of depression which might require hospitalisation would be likely, and her psychological functioning would be adversely affected indefinitely. Her future employment prospects were very limited. Wilson J, who was aware of the decision in *Bird v Bool*, assessed damages for pain and suffering and loss of amenities at \$35,000.
- [26] In *K v G* [2010] QSC 13 the defendant had engaged in a range of sexual activities including intercourse with the plaintiff over a period of a few weeks, at a time when the plaintiff was eight years old. The plaintiff was diagnosed with severe depression and post-traumatic stress disorder. She had received a good deal of treatment for psychiatric problems over the years, involving many admissions to psychiatric units for self-harming behaviour and depression, and had received anti-depressants and anti-psychotic agents and mood stabilisers. The psychiatrist who gave evidence expected only modest improvement so that the condition would probably remain serious, with a significant risk of shortened life expectancy from suicide and a greater risk of major depression or schizophrenia in the future. That plaintiff's damages had to be assessed under the Civil Liability Regulation, so it is not directly applicable, but she was assessed with an ISV of 45, the equivalent of \$80,900.
- [27] In *P v R* [2010] QSC 139 the plaintiff claimed damages for sexual assault which occurred on six occasions when she was eight, involving a friend of her father who was living at his house. The assaults involved touching, digital penetration and simulated intercourse. The plaintiff was said to have suffered and to continue to suffer from significant psychiatric illness, with a guarded prognosis. She had body image disturbance which manifested itself in an eating disorder and persistent self-harming, which had left her with extensive and unsightly scarring. There had been three suicide attempts and she had been admitted to mental health facilities on four

⁷ Writ 8921/98, 19 October 1999, Wilson J, unreported, BC 9906872.

⁸ This approach has not been adopted in any other case that I am aware of.

⁹ The plaintiff had suffered other significant misfortunes during her life.

occasions. The plaintiff had suffered difficulties in employment, in study and in her relationships. Damages for pain and suffering and loss of amenities, assessed at common law, were \$80,000.

- [28] In *Webster v Yasso* [2002] QDC 206 the plaintiff claimed damages for rape from a defendant who had previously been in a sexual relationship with her, but from whom she had separated. There was some physical injury in the form of bruising, and she developed a generalised anxiety disorder which was aggravated by subsequent property damage by the defendant. The plaintiff suffered nightmares, had sleeping difficulties, remained very anxious, had difficulty in establishing social relationships, had become withdrawn and been left with a generalised feeling of insecurity, and had difficulty in obtaining employment. I assessed damages at \$500 for the physical injury, \$15,000 for the psychological injury, and I also allowed \$20,000 for violation of personal integrity.¹⁰ This is not a factor which I have seen mentioned in other cases where damages have been assessed, and it is directly related to the immediate nature of the trespass rather than the consequences in terms of psychological injury.
- [29] In *AP v Di Pino* (No. 2) [2012] QDC 5 the plaintiff claimed damages for sexual assault in the form of placing a hand on a breast outside clothing, rubbing the upper part of her leg and rubbing the area of her vagina outside her clothing.¹¹ The plaintiff subsequently suffered post-traumatic stress disorder but had had other stressors which contributed to her long term psychiatric state, including another sexual assault in the form of rape; I found that the plaintiff would probably have had significant psychological problems anyway because of the other factors. The plaintiff's condition had improved as a result of treatment, a more settled life and greater maturity, and further treatment was likely. I assessed general damages of \$25,000, plus \$5,000 for violation of personal integrity. An appeal from my decision was dismissed: *WAQ v Di Pino* [2012] QCA 283.
- [30] I was referred to some decisions from interstate courts in support of a submission that general damages awards in other states are often much higher than in Queensland. I am necessarily not aware in sufficient detail of the damages typically awarded in other states for psychiatric injury, whether or not consequent upon sexual abuse, properly to be able to assess this submission, but in any event I do not consider that it is necessary to do so. Bearing in mind the comment cited earlier of Derrington J, with which I respectfully agree, the other decisions from which I might gain assistance in assessing damages for pain and suffering and loss of amenities are appropriately confined to Queensland decisions. If there is to be an attempt to align Queensland awards with awards in other states, that I think is a matter for the Court of Appeal.
- [31] I was also referred to a couple of decisions of the Queensland Civil and Administrative Tribunal awarding damages for sexual harassment. It was submitted that such damages were trending upwards in Queensland as a result of the judgment of the Full Federal Court in *Richardson v Oracle Corporation Australia Pty Ltd* [2014] FCAFC 82. That case was concerned with the assessment of damages under the *Australian Human Rights Commission Act 1986* (Cth). The Full Federal Court

¹⁰ I referred to Fleming "The Law of Torts" (9th edition 1998) p 29. See also McGregor on "Damages" (15th edition 1998) para 1615.

¹¹ The defendant was charged with a criminal offence for each of these but convicted only of one of the three counts.

increased an award of general damages from \$18,000 to \$100,000, notwithstanding a finding that the trial judge's award was consistent with past awards in cases of that kind. No doubt it is a part of the function of the Full Federal Court to set standards for awards of statutory compensation in particular fields. This is not such a case.

- [32] The case particularly relied on by the plaintiff, *P v R (supra)*, is in my opinion distinguishable. That plaintiff's psychiatric condition seems to have been worse than in the present case; there had been three suicide attempts,¹² and four admissions to mental health facilities, most recently for a period of six weeks. The plaintiff had had a number of periods when she had been unable to work because of her psychiatric problems, apart from when she was a hospital inpatient. There had been extensive self-harm which had left her with extensive and unsightly scarring on several parts of her body.¹³ That plaintiff's condition had not improved and from the medical evidence it was unlikely to improve in the future, at least to any significant extent. The award of general damages of \$80,000 covered both the psychiatric injuries and the physical scarring. Overall it seems to me that the psychiatric injury suffered by that plaintiff was more serious. Although the acts of sexual assault in that case were not as serious in the present, damages for pain and suffering and loss of amenities are principally concerned with the extent and severity of the consequences of those acts, rather than their inherent nature. Overall, in the light of the earlier decisions, I assess damages for pain and suffering and loss of amenities at \$80,000. In view of the length of time since the events and the possibility of some improvement in the plaintiff's condition in the future, I apportion \$60,000 of this to the past.
- [33] There is another aspect of general damages, which I have referred to in previous decisions. In *Webster v Yasso* [2002] QDC 206, referred to earlier, I awarded damages for violation of personal integrity independently of any compensation for actual injury as an aspect of general damages, referring principally to something stated in the ninth edition of Fleming's Law of Torts, pp 29 and 30. It is possible in a particular case to have a trespass to a person, like a trespass to land, which does not cause any actual damage, but it may well be appropriate still to award damages to compensate for violation of personal integrity, or of the right of property, in each case. Damage as such is not an element of the cause of action for trespass.¹⁴
- [34] I applied the decision in *Webster (supra)* when awarding such damages in *AP v Di Pino (supra)*, in the amount of \$5,000: [63]. Although that case involved an indecent touching it was on the outside of clothing, a much less significant violation than a violent rape. This was not the subject of specific consideration by the Court of Appeal, although a passing reference was made to it when noting that some of the matters relied on by the appellant as justifying an award of aggravated damages had been covered by other allowances I had made: [47]. In the circumstances I think that if the Court of Appeal had regarded my approach as obviously wrong, it is likely that their Honours would have said so.
- [35] I therefore propose to allow an amount for violation of personal integrity in the present case. This will have to be a significant amount, to reflect the seriousness of the violation extending to the repeated penile rape of a child between the ages of

¹² In this matter the plaintiff has had suicidal thoughts: Exhibit 2; Exhibit 1 para 58, para 149.

¹³ In this matter the plaintiff has engaged in some self-harm, but I was not given details of scarring.

¹⁴ *Battiato v Lagana* [1992] 2 Qd R 234, an unusual case where a jury awarded no damages for trespass to the person.

seven and eleven by her father. There is little relevant guidance as to the quantum of such an award, but doing the best I can I allow \$50,000 on this basis. Because of the basis of this award, it all arose at the time of the assaults, so it is all past loss.

Aggravated damages

- [36] In *WAQ v Di Pino (supra)* the Court of Appeal at [43] endorsed the proposition that aggravated damages are given to compensate the plaintiff when the harm done to the plaintiff by a wrongful act was aggravated by the manner in which it was done.¹⁵ The court went on to say at [44]:

“The compensatory nature of aggravated damages requires that in order for them to be awarded, the manner or circumstances in which the defendant’s actionable wrongful conduct was carried out increased the plaintiff’s suffering.”

There is authority to support the proposition that aggravated damages can be awarded to compensate for conduct occurring after the specific conduct which is tortious.

- [37] In submissions the plaintiff identified 13 matters relied on as justifying an award of aggravated damages. The first was that the defendant was the plaintiff’s father, a matter which was appropriately taken into account when passing sentence on him.¹⁶ This was certainly an aggravating feature of the wrongfulness of the defendant’s conduct, justifying punishment of him, so that it would be a matter which was appropriately dealt with by way of exemplary damages had it not been for the fact that it was dealt with by the sentence imposed after the criminal trial. To the extent that this contributed to the extent of her psychiatric problems, that has already been covered by the award in respect of the full extent of those problems. On the whole, I do not think this is a matter properly dealt with by way of aggravated damages.
- [38] The second matter relied on was that the rapes were painful and humiliating, and the defendant ignored her pleas to stop. Much of this is inherent in violent rape, for which the plaintiff has already been compensated. The plaintiff was afraid of the defendant, but this was because of what he was doing to her. An award of aggravated damages is something which is appropriate in a situation where the wrongful act was made worse and causes greater suffering because of some particular way in which it was done, but where the relevant wrongful act is a violent rape, there has to be something apart from that which specifically satisfies the test for aggravated damages. This submission is really directed to the inherent seriousness of the wrongful acts.
- [39] The plaintiff then relied on two comments supposedly made to other people who came upon the plaintiff and the defendant when he was engaged in the abuse: a statement “I’m teaching her” to the plaintiff’s mother, and a statement, apparently also directed to the plaintiff’s mother, that “She’s better than you”. There is nothing in such comments which seems to me to aggravate the harm which the plaintiff

¹⁵ Citing *Uren v John Fairfax and Sons Pty Ltd* (1966) 117 CLR 118 at 149 per Windeyer J.

¹⁶ See affidavit of plaintiff Exhibit DTB01 p 311.

would have suffered if the same incident had occurred without such comments being uttered.¹⁷

- [40] Reference was made to the threats made to the plaintiff that she and her siblings would be put in foster care if she complained, something which the plaintiff believed. I suspect the real problem here was that the sexual abuse continued, possibly facilitated by an absence of complaint, and one could imagine that her psychiatric problems might have been aggravated by the fact that she may have felt trapped in a situation where she had no choice but to continue to submit to this activity, but there is no medical evidence to support the proposition that her psychiatric state has been made worse as a result of that, and in any case I have already compensated her for the full extent of her psychiatric problems.
- [41] Apart from that, I think the real difficulty here is that it was not the case that the threats had the effect of aggravating the harm done to the plaintiff other than by the fact that the rapes and other abuse continued. It is not harm separate from that inflicted directly by the wrongful acts. The same applies to the threats to kill the plaintiff, which was also relied on. Again this sort of conduct is relevant to punishing the plaintiff, but it is not shown to have made her harm worse other than by contributing to the severity of her psychiatric problems. Indeed, the same applies to the next matter relied on, that the plaintiff was so terrified of the defendant that she took steps by hiding to prevent him from coming upon her so as to abuse her.
- [42] The plaintiff relied on the fact that, some years after she left home, when she ran into the defendant in the main street of Toowoomba and yelled at him for what he had done to her, without identifying what specifically, he laughed it off as if it was a joke and did not admit what he had done. This matter is related to other matters as well, that the defendant had pleaded not guilty at his trials thereby forcing the plaintiff to give evidence twice which exacerbated her condition, had maintained his innocence during the hearing of the application to the Court of Appeal, and had done the same in the proceeding before me. He had also been critical of the plaintiff in a letter sent to her solicitors in June 2018. It was said that the plaintiff had been unable to obtain closure because of the defendant's continued lack of remorse and denial of the abuse.
- [43] At least in the context of the criminal trial, for reasons explained by Wilson J in *Paten v Bale (supra)* at [16], with which I respectfully agree, aggravated damages cannot be awarded because the defendant maintained his innocence. In that case as well, no aggravated damages were awarded in respect of the defence of the civil proceedings, her Honour noting that any aggravation of trauma associated with reviving the memories of what had happened had been otherwise taken into account. Although the defendant still denies the abuse occurred, he has not in fact sought to defend the present proceedings at any stage, and did not even exercise his right to cross-examine the plaintiff on the hearing of the assessment of damages.
- [44] I do not think that the mere fact that a defendant does not admit that the events occurred provides any justification for an award of aggravated damages, particularly when I have fixed compensation for the whole of the psychiatric injury the plaintiff

¹⁷ Contrast *Henry v Thompson* [1989] 2 Qd R 412, where aggravated damages were awarded because in the course of a physical assault the plaintiff was urinated on, which was insulting and humiliating but caused no physical harm: p 415.

has suffered, including any effect on it of the defendant's conduct.¹⁸ The only other matter relied on was a reference to the psychiatric symptoms the plaintiff has suffered over the years, and the fact that they have deteriorated since 2011, which has already been covered by the damages for the psychiatric injury. The position is like that in *Paten v Bale (supra)*, in that no grounds for aggravated damages have been shown.

- [45] I note that aggravated damages, although sought, were not awarded in *Bird v Bool (supra)*, and my declining to award aggravated damages in *Di Pino (supra)* was upheld by the Court of Appeal. It is true that in *P v R (supra)* aggravated damages were awarded. The matters referred to as justifying an award of aggravated damages were that it was a sexual assault on a young child, that the defendant had convinced the plaintiff's father that the assaults had not occurred leading to a split between the plaintiff and her father (a factor which was said to have been referred to by the doctors as contributing to a psychological injury), and that her injuries had been exacerbated by the ongoing litigation, particularly where at one stage terms of settlement were reached but the settlement collapsed because the defendant refused to sign them.
- [46] It was not apparent from my reading of the judgment that in assessing damages for pain and suffering and loss of amenity the trial judge disregarded those features of the psychiatric injury which were covered by the award of aggravated damages, and I have a strong suspicion that there was an element of duplication in that award, which in my view is not justified.¹⁹ The feature that the case was about a sexual assault on a young child by her father is a matter that I have covered by the award of damages for violation of personal integrity. It seems to me somewhat strange to award aggravated damages against the defendant because the plaintiff's father decided to believe him rather than the plaintiff, as it was really the action of the plaintiff's father that led to the split with him and the resultant harm to her. On the whole I do not find the reasons for an award of aggravated damages in that matter convincing.
- [47] In *Davis & Anor v Bound & Anor* [2011] QDC 82 the plaintiff claimed damages for psychiatric injury as a result of the murder of her son by the defendants. Aggravated damages were awarded against the first defendant in that matter, on the basis of his conduct at the committal and after the hearing of his appeal, which was not detailed in the judgment but which was said to have been designed to cause the first plaintiff stress and showed a contumelious disregard for her dignity, and was malicious and insulting. His Honour noted the absence of evidence that it had aggravated her psychiatric condition, but accepted it would have caused ongoing fear and apprehension in the event of the defendant's release from prison. It is difficult to know just what this relates to, but I take it from what his Honour said that this was conduct extraneous to the defence of the criminal proceedings which was directed specifically at the first plaintiff and which was deliberately intended to distress her. That could well be seen as going far beyond a mere protestation of innocence, even coupled with the assertion that the plaintiff's statements to the contrary are lies.

¹⁸ There is authority that in claims for defamation and false imprisonment a failure to apologise is relevant to the assessment of ordinary compensatory damages, rather than aggravated damages: *Clark v Ainsworth* (1996) 40 NSWLR 463; *Schmidt v Argent* [2003] QCA 507.

¹⁹ *Seabrook v Allianz Aust. Insurance Ltd* [2005] QCA 58 at [11].

- [48] In *Grieve v Gomez* [2017] QDC 298 the plaintiff sued for damages for psychiatric injury suffered because the defendant, a doctor, had during the course of a medical examination gratuitously massaged the breasts and buttocks of the plaintiff. In that case there was no subsequent conduct by the defendant that could be said to justify an award of aggravated damages, and there was no violence or persistence despite resistance in the sexual assaults. Nevertheless, an award of \$15,000 was made because the defendant was the plaintiff's doctor at the time, which put him in a position of power and trust and enabled him to take advantage of a vulnerable woman, in a way which had increased the plaintiff's suffering.²⁰ The corresponding feature here, that the defendant is the plaintiff's father, has been taken into account in the award for violation of personal integrity.

Past economic loss

- [49] The plaintiff's claim on this aspect of her damages was advanced on three bases:
- (a) Between 1990 and 1997 the plaintiff lost income because she was virtually unemployed during that period, because of an unwillingness to leave her sons with anyone else, which was a consequence of her psychiatric state.
 - (b) Because of her psychiatric problems, her education was severely disrupted, producing much lower results than she otherwise would have obtained, and preventing her from engaging in tertiary education.
 - (c) Since obtaining employment with the public service, she had passed up opportunities for promotion because of her psychiatric problems, so that her income in her career was less than it would have been but for those problems.
- [50] The plaintiff undertook a computing course from March 1990, which she was able to complete satisfactorily (para 66) but then discovered she was pregnant and did not work until 1994, when she obtained part-time customer service work on a Saturday only for several months before she gave birth to another son in May 1995: para 67, 68. She did not return to work until 1997 when her younger son started kindergarten; all the staff at the kindergarten were female so she was comfortable leaving her son with them: para 73. She related an overprotective attitude to them to the consequences of the abuse she had suffered. Doctor Foxcroft in Exhibit 2 referred to an impairment in her ability to work due to her symptoms for her psychiatric condition during the sons' early childhood years: p 11. I accept this evidence, but the difficulty is in proceeding from that finding to a conclusion that, had the plaintiff not suffered the psychiatric injury, she would have worked throughout this period of six years.
- [51] It is common enough for women not to work for a period when they have quite young children, and there are many occupations in which maternity leave is available, commonly for 12 months.²¹ When it is an exercise of comparing what in

²⁰ In *Henry v Thompson* (*supra*) the fact that the assailant was a police officer was regarded as relevant to the award of aggravated damages.

²¹ There is a right to 12 months unpaid parental leave, subject to some conditions, under the national employment standards which apply to all employees covered by the Commonwealth Workplace Relations System. Employees can get up to 18 weeks of paid parental leave paid at the national minimum wage, and employers can also be liable for paid leave under registered agreements employment contracts and workplace policies.

fact the plaintiff experienced with what would have happened had the abuse never happened, it is necessary to assess that hypothetical situation by reference to the principles in *Malec v JC Hutton Pty Ltd* (1990) 169 CLR 638. I think it is very likely that the plaintiff would have had some time off following the birth of her children anyway, and it is quite likely that she would have had a period which was not insignificant.

- [52] There is the consideration that at the beginning of that period she had no established employment, so that once she decided to seek some work it would have been a matter of finding suitable work for her to do. There is the further difficulty that, although the income lost was quantified in submissions at \$30,000 per annum, there does not seem to be any evidence of any earning rate at about that time. There is a schedule of income but only for the period from 1 July 2011.²² By this time she was working as a laboratory manager: para 85.
- [53] There are further difficulties with this claim. The plaintiff may well have spent more time looking after young children had she not suffered the psychiatric effects of the assaults, because she probably would have had more than two children. The plaintiff in her affidavit referred to terminating a third pregnancy for reasons which were associated with her psychological reaction to the abuse (para 72), so if the abuse had not happened that pregnancy at least probably would not have been terminated, and indeed there might have been additional pregnancies. It may be that the plaintiff would have returned to work sooner after giving birth had it not been for the abuse, but against that must be set the fact that, had it not been for the abuse, she would have been off work as a result of giving birth more often. Another factor is that, if she had been at work, she would have been paying childcare costs, which were avoided by her staying home to look after the children herself. There is no evidence about this either, or evidence to suggest that she would have had access to unpaid childminding but was prevented from using it by her psychiatric state.
- [54] The claim for loss of income because of an unwillingness to leave the children with others when they were really young is therefore by no means as straightforward as the submissions for the plaintiff would suggest. Overall I think it is likely that the plaintiff has suffered some financial loss in this way, but there is really not a proper evidentiary basis to enable me to make a substantial award, certainly nothing like the amount claimed in the submissions for the plaintiff. This is a situation where a court has to determine an amount as best it can with little practical guidance from the evidence. On that basis I allow \$20,000 for this past economic loss.
- [55] It is convenient to consider next the third aspect, that the plaintiff has lost the advantage of promotions that would otherwise have come to her. Again this is supported by medical evidence, partly on the basis of difficulty with concentration which has limited her efficiency at work and made it more difficult for her to undertake training in connection with her employment, and partly for a lack of self-confidence in pursuing advancement or other courses. Doctor Foxcroft in his report Exhibit 2 said that her symptoms of post-traumatic stress disorder have impaired her ability to undertake promotions, and have increased her difficulty in performing her work because of difficulties with concentration impairing her efficiency. He also later referred to a particular difficulty in the plaintiff's pursuing any role in work

²² Affidavit of plaintiff exhibit DTB01 p 297.

which involved her providing training, because of diminished self-esteem and self-belief as a result of her psychiatric problems: Exhibit 3.

- [56] Again one has to approach the matter on the basis of probabilities, but in the light of the evidence I think it likely that the plaintiff would have made more progress in her career by now had it not been for her psychological problems, and would probably therefore have been earning a higher income. The plaintiff has since 2009 been at the top band of level 5 of the operational stream under the relevant award.²³ The rate of salary at that band is \$68,797 per annum, whereas for level 6 the salary ranges from \$71,693 to \$75,423, and for level 7 the range is \$78,945 to \$82,676. On the administrative stream, the level 5 salary ranges from \$79,337 to \$86,042. These were the amounts relied on by the plaintiff, by reference to particular individuals she has worked with who were at one stage on a lower level than her but have since been promoted to higher levels. It is possible the plaintiff might have had an even higher salary. Again, this is a matter to be assessed by reference to the probabilities.
- [57] Promotion within any organisation is always subject to uncertainty, but I think the various probabilities can be allowed for if I proceed on the basis that, had it not been for the restraint on her promotion caused by her psychiatric issues, she would by now have been earning an extra \$10,000 per annum. This however is a gross figure and needs to be adjusted to produce a net figure. The current applicable marginal tax rate is almost 35 per cent, so the net annual loss currently of the plaintiff is \$6,500.
- [58] The plaintiff has been employed in the public service, initially in a temporary position, from end of July 2006. Obviously it would have taken some time for the plaintiff to achieve promotion in any event, but she was promoted to level four in 2008, and may well have achieved promotion earlier than that had things been otherwise, so there could have been some difference in her career path from a fairly early stage. However, that would not translate into an increase in after tax income of \$6,500 per annum immediately, and no doubt the extra salary from achieving further promotion would have been greater with the passage of time. Overall I think the best approach is to allow half of a loss of \$6,500 per year over a period of 12 years, that is, half of \$78,000, or \$39,000. Because of the way in which this has been derived, I will not discount it further for contingencies.
- [59] The third basis on which past economic loss is sought is essentially derived from the argument that the plaintiff's education was severely disrupted by her psychiatric problems, and that, but for those problems, she would probably have done much better in the course of her education, and would probably have gone on to tertiary studies. She had, when young, some interest in psychology or criminology, and indeed in 2015 began a university degree in criminology through Open Universities, and did well, but found the course very difficult and time consuming. The medical evidence supports the conclusion that her ability to study, both at school and at university, has been adversely affected by her psychiatric condition consequent upon the abuse. Dr Foxcroft has also expressed the opinion that but for the abuse the plaintiff could probably have pursued a career in psychology or criminology: Exhibit 3.

²³ General Employees (Queensland Government Departments) and Other Employees Award –2015; plaintiff's affidavit, exhibit p 111.

- [60] The plaintiff has expressed an interest in such a career, and on her evidence had such an interest at a relatively early stage, but well after the abuse started. I suspect that it was the abuse that prompted her interest in that field. Given the young age at which the abuse started, it is really impossible to know what would have happened to the plaintiff had the abuse not occurred. It does appear however that neither parent particularly encouraged the plaintiff to do well at school, and the defendant was not sued, and I am not awarding damages, for being in a general way a bad parent. It is likely that the plaintiff had a somewhat disadvantaged background in any event. Some people from such backgrounds do manage to do very well, but many of them do not. The real difficulty is that there is no way of knowing whether the plaintiff would have been motivated to pursue tertiary studies, and in what area, and how she would have gone if she had done so, if the abuse had not occurred.
- [61] It does appear however that her school results up to the point where she left school were unusually poor, and from Dr Foxcroft's report, and from her subsequent performance in her work notwithstanding the difficulties she has faced because of her psychiatric problems, she would have done much better at school had it not been for the abuse. She could well have gone to university, and could well have obtained more remunerative employment than she has obtained, particularly in the earlier years. The plaintiff is now 52, so there was the prospect of higher income over a period of 30 years as a result of better educational outcomes, and a significant allowance should be made for this, even though there is no basis on which such an allowance could be calculated. Doing the best I can, I make a global allowance of \$200,000. That produces a total for past economic loss of \$259,000.
- [62] The plaintiff also claimed for loss of superannuation benefits in respect of past lost income. There have been superannuation guarantee payments since 1992, initially at a rate of three per cent, increasing progressively to nine per cent in 2003, and subsequently to 9.5 per cent in 2014. The loss has no doubt been greater more recently when the superannuation rate is higher. I think the changing percentages can be appropriately taken into account by allowing 8 per cent of the total award for past loss of superannuation, \$20,720.²⁴

Future economic loss

- [63] For future economic loss, the plaintiff submitted that an allowance of \$10,000 per year for 16 years should be made, less 20 per cent for contingencies. The plaintiff has said that she plans to work as long as she can, but I suspect essentially for economic reasons: para 103. Had her financial position been better she might have retired earlier. The loss of income because of an inability to pursue promotion is likely to be a continuing loss and there should I think also be a continuing allowance for the loss of the ability to engage in other generally more remunerative employment, a loss which cannot of course be calculated. I think it is reasonable to assess future economic loss over a period of 15 years, and for the former aspect, allow the present value of \$6,500 per annum over that period. The present value is to be calculated by reference of a discount rate of five per cent.²⁵ \$6,500 per annum

²⁴ I was given a copy of a table from a publication listing the rates, and giving what purports to be an average rate over the 27 years of 7.94%. I do not know how this figure was derived, but the average I get is 7.88% ($212.75 \div 27$)

²⁵ *Civil Proceedings Act 2011* s 61.

is the equivalent of \$125 per week, and using a multiplier of 555 this produces a figure of \$69,375, which I will round up to \$70,000.²⁶

- [64] The other aspect is future earnings from other more remunerative employment had the plaintiff's education not been compromised. This might actually have been greater in the future than in the past, but the relevant period for the future is about half that for the past. Again this is not a figure which can be calculated, but adopting an approach broadly consistent with the approach for the assessment of past loss I allow a figure of \$100,000. This is not discounted to a present value, since the income disparity would probably have been even higher in the future than in the past. That produces a total for future economic loss of \$170,000. Superannuation guarantee percentages are to increase further in the future, and I accept the figure of 11.33 per cent for future loss of superannuation, which produces an amount of \$19,261.

Special damages

- [65] The plaintiff in her affidavit para 140 verified a schedule of medical expenses involving the two visits to the psychiatrist (\$655), three visits to a psychologist (\$300) and four visits to a general practitioner (\$367.05), producing a total of \$1,322.05 for medical expenses. The amount the plaintiff was out of pocket is \$922. The plaintiff also claimed travelling expenses of \$231.45, calculated on the basis of 75 cents per kilometre. The distance travelled to the particular psychologist's practice utilised seems surprisingly large, and I strongly suspect that there were plenty of psychologists who were much closer than this practice, but this was not a matter raised with the plaintiff in cross-examination. The same can be said for the figure of 75 cents per kilometre. I suspect that this is a figure derived from an amount used by the Australian Taxation Office for some purpose, and may well represent the fully allocated cost of running a car, or at least some kinds of car.
- [66] There would however be few plaintiffs for whom the cost of owning a car would have been incurred only because of the injuries for which compensation is being assessed, and in my view the correct basis to assess travelling costs is by reference to the fully allocated cost of using a car, that is the cost of fuel and the allocated cost of maintenance which is related to use, and which I suspect would be more like 35 cents per kilometre. Again this was not a matter raised with the plaintiff or her counsel during the hearing, so I will allow the amount claimed. The total for special damages is therefore \$1,553.50. The out of pocket amount is \$1,153.45.

Future medical expenses

- [67] Dr Foxcroft in Exhibit 2 recommended treatment for the plaintiff from a clinical psychologist skilled in the treatment of traumas or a specialist psychiatrist also skilled in the treatment of traumas, on a weekly basis for at least three years. He gave a figure of \$220 per session, which over three years comes to about \$33,000. He also recommended anti-depressant medication for at least five years, at a cost of \$40 per month. The plaintiff in her affidavit recorded how she attended two sessions with a psychiatrist and three with a psychologist, but did not persist with the treatment from the psychiatrist because she felt that it was exacerbating her symptoms: para 135. She also said at para 155 that she did not think she would be able to endure further treatment unless she was able to get control over her

²⁶ Luntz *Assessment of Damages for Personal Injury and Death* (4th edition 2002) Appendix table 2.

symptoms. She did not refer to taking medication and said that she had told the psychiatrist that she did not want to take medication: para 134.

- [68] In oral evidence, however, she said that she had been taking medication prescribed by a general practitioner, she thought since the end of 2015 (p 13), but the schedule of medical expenses has the first general practitioner attendance claimed for in January 2016, which suggests that she has not been taking it earlier than 2016. She said that she did not always take it, but it depended on her condition at the time; at the time of the trial she was taking it every day. She said that she intended to take it in the future, but I assume that that will also depend on how she is feeling from time to time, so that it will be taken when required rather than being taken constantly. Hopefully with the passage of time the need for her to take it will diminish.
- [69] She also said that she had every intention of getting the psychiatric treatment that she needed: p 14. I accept this evidence, but it does not necessarily follow that she will undertake the full course of treatment; Dr Foxcroft, who said that he specialises in this condition to some extent, and runs such courses, said that commonly about 50 per cent of those who start such a course of treatment drop out: p 23. He said that it all depended on whether the patient can be successfully desensitised, because otherwise the patient is just not going to persist with the treatment. That sounds plausible and I accept it, and it follows that, accepting that the plaintiff will start the course, I should make allowance for the possibility that she will not finish it. Making that allowance, I think an appropriate figure for the cost of such a course is \$18,000.²⁷
- [70] The other issue is one of additional future general practitioner attendances. No doubt most people attend a general practitioner from time to time anyway in the course of their lives, particularly as they get older, but to accommodate the possibility of future additional general practitioner attendances, particularly for medication if the plaintiff does not complete the course of treatment recommended, I will allow an amount of \$1,500. In view of the plaintiff's attitude to medication, I am not prepared to assume that she will be taking anti-depressant medication routinely for a period of five years or more. No doubt her use of it will depend on what happens with her symptoms.
- [71] With both the criminal and civil proceedings behind her, if she embarks on the course of treatment recommended by Dr Foxcroft, and is able to persist with it, it is likely that her condition will improve and this is likely to lead to less regular use of anti-depressants, or even to her giving them up entirely. My impression is that she remains reluctant to take medication unless she feels she really needs it. On the other hand, if she embarks on the course of treatment and the desensitisation process is a failure, she may be taking the medication more regularly, and for longer. On the whole if I allow \$40 per month for five years, \$2,400, that should be a reasonable allowance, taking into account the various possibilities.
- [72] A claim was also made, though not developed in detail, for travelling costs associated with future treatment. In these circumstances I am prepared to approach the matter on the basis of allowing a more reasonable rate per kilometre, and a more limited number of kilometres travelled to attend treatment, and will allow a lump sum of \$600. This produces a total for future treatment costs of \$22,500.

²⁷ Presumably even if she drops out she will start the course and attend a number of sessions before that occurs.

Interest

- [73] Interest is also claimed on the components of past loss under the *Civil Proceedings Act* 2011 s 58. The *Civil Liability Act* 2003 s 60 does not apply to this matter.²⁸ Interest under s 58 and its legislative predecessors was allowed only on the components of past loss, and was not always allowed on the same basis on each of them.²⁹ In the case of general damages, the practice was to allow a lower than usual rate to take into account the fact that the assessment of general damages contains within it an element of inflation, because general damages are assessed at a figure appropriate as at the date of the assessment, rather than as at the date on which the wrong is committed.³⁰
- [74] Since at least 1992, a rate of four per cent has been adopted in Queensland for the past component of general damages, which have been generally treated as accruing progressively from the time of the accident until the time of judgment, so that interest was allowed at two per cent on the full amount of the past component for the full period.³¹ This approach has been departed from on occasions, for example where the general damages related to injuries which resolved completely within a certain time, but generally a substantial departure from a progressive accrual in this way was required in order to produce something other than the usual approach.
- [75] Although any physical injuries would have been transient, overwhelmingly the damages for pain and suffering and loss of amenities relate to the plaintiff's psychiatric injury, which has always been with her although its severity has no doubt fluctuated from time to time. The matters complained of date from August 1973 to September 1983, although the last rapes occurred during the period from late 1978 to mid-1979: para 13. On the whole it is convenient to treat the psychiatric injuries as dating from 1976, so interest should be allowed at two per cent per annum for 43 years, an amount of \$51,600.
- [76] The other aspect of general damages is the figure of \$50,000 allowed for violation of personal integrity. This I have characterised as something occurring specifically at the time of the assaults, so I will proceed on the basis that it occurred in 1976. Accordingly interest on this sum should be allowed at the rate of four per cent per annum for the period of 43 years, a total of \$86,000. This produces a total award for interest on the past component of general damages of \$137,600.
- [77] Past economic loss was assessed on three bases, each of which has a different relevant time period. The first related to the period between 1990 and 1997, so that the losses allowed on that basis can be seen as being suffered effectively 15 years ago. Interest on past economic loss has not been subject to the same constraints as interest on past general damages, but the approach has been largely one of compensating the plaintiff for the loss of the opportunity to invest the money during the relevant period. Twenty years ago it was common enough to allow rates of eight or ten per cent on this basis; more recently this matter has been superseded by the provisions of s 60. Commercial interest rates have continued to decline since then, and these days I suspect that a figure of four per cent, or even less, would be

²⁸ The Act s 4(4).

²⁹ *Fire and All Risks Insurance Co Ltd v Callinan* (1978) 140 CLR 427.

³⁰ *MBP (SA) Pty Ltd v Gogic* (1991) 171 CLR 657.

³¹ *Jackson v Bagwell* [1992] 2 Qd R 390.

an appropriate interest rate assessed otherwise. Given the relevant period, I will adopt a rate of six per cent, which over 15 years comes to \$18,000.

- [78] The past loss of the opportunity for promotion was treated as having accrued over a period of 12 years prior to the trial, so the appropriate course is to allow interest at half of that rate, three per cent, on the full amount of the loss for the period of 12 years. This comes to \$14,040.
- [79] The third aspect of past economic loss was the global allowance for the income lost as a result of the plaintiff's compromised education. The plaintiff said that she started her last year at primary school in 1997 (para 36) so if she had completed secondary school in the normal time she would have expected to start at university in 1985. In those circumstances I expect that she would have been earning from about 1989, so this loss may be taken as having accrued over a period of about 30 years. At the beginning of this period, the practice was to allow interest at 12 per cent per annum in respect of past economic loss,³² although the approach was to allow interest over the full period at half that rate on the relevant amount.³³ Since then interest rates have progressively declined, and I consider that a more appropriate average rate in respect of the period of the last 30 years is a rate of eight per cent. If applied to the full amount for the whole period, a rate of four per cent should be adopted. This produces a figure of \$180,000. The sum of the three interest figures for past economic loss therefore comes to \$212,040.
- [80] The remaining matter of past loss is out-of-pocket medical expenses. These were incurred almost entirely in 2016, and I allow three years interest at four per cent per annum on the out-of-pocket component of \$1,153.45, which comes to \$138.41.
- [81] One matter which I have assumed in favour of the plaintiff for the purposes of this assessment is that it is appropriate to allow interest under s 58 for the full period which is relevant in respect of each of the different heads of damage. There have certainly been examples in the past where awards of interest have been limited if it has appeared that the matter has taken an unusually long time to come to trial. In *Camm v Salter* [1992] 2 Qd R 342 Thomas J at p 344 said:
- “When a very substantial period has elapsed between accident and trial it is not uncommon for the trial judge to limit the assessment of interest to a period such as five years. Of course the circumstances are infinitely various and the trial judge's discretion in this respect is unfettered.”

In the present case there was, unsurprisingly, no argument addressed to me to the effect that interest should be limited in this or some other way, on the basis that it would have been open to the plaintiff to have brought this claim against the defendant at a much earlier time, either as of right or, potentially, with the benefit of an extension of the limitation period. For the purposes of this assessment, I am assuming rather than deciding that interest should not be limited in such a fashion.

- [82] Overall therefore my assessment may be summarised as follows:

General damages	\$130,000
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³² See Jackson, S, “Damages for personal injuries in Queensland: interest please!” (1992) 13 Qld Lawyer 27.

³³ *Callinan v Borovina* [1977] Qd R 366 at 376.

Interest on general damages	\$137,600
Past economic loss	\$259,000
Interest on past economic loss	\$212,040
Past loss of superannuation	\$20,720
Future economic loss	\$170,000
Future loss of superannuation	\$19,261
Special damages	\$1,553.50
Interest on special damages	\$138.41
Future medical expenses	\$22,500
Total	\$972,812.91

[83] I therefore certify the damages assessed pursuant to the default of judgment at \$972,812.91.