

SUPREME COURT OF QUEENSLAND
CIVIL JURISDICTION
MACKENZIE J

No 1812 of 2004

D	Applicant
and	
P	Respondent

BRISBANE

..DATE 29/03/2004

JUDGMENT

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: The respondent to this application under the Criminal Offence Victims Act (1995) pleaded guilty to carrying on the business of trafficking in cannabis as well as the personal offences of a sexual nature upon which the application is based. They were committed on the applicant when she was 15 years of age; she is now 18.

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The respondent had a clientele of young people in his business. On the day of the offences, the applicant went to his home to purchase cannabis. While she was there, she consumed alcohol and smoked cannabis. There were others present at various times. She decided to stay for the night because she did not want to go home drunk. She was subsequently given amphetamines by the respondent. She was then persuaded by him to go to his bedroom where he put the question to her what he would get in return for the drugs he had given her.

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He took his jeans off and exposed himself. He then briefly forced his penis into her mouth. He told her to remove her jeans and underwear and lie on the bed on her stomach. He then had sexual intercourse with her from behind. He then performed oral sex on her, kissed her on the mouth and again penetrated her vagina. After that he committed sodomy on her. He again tried to force his penis into her mouth but she bit him.

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The personal offences to which he pleaded guilty were two offences of unlawful carnal of a girl under 16, one of sodomy

and two of unlawfully and indecently dealing with a girl under 16. He was sentenced on the basis that the applicant was not a consenting party but that he had an honest and reasonable but mistaken belief as to consent.

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The applicant suffered only minor physical discomfort from the offences but, needless to say, she felt degraded by the experience. Afterwards, she says, she lost self-esteem and has bad memories of the event as well as a concern she may have contracted AIDS. Fortunately, tests have proved negative in that regard. She says also that the incident has affected her capacity to have the degree of intimacy in personal relationships that she thought would be normal.

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Notwithstanding that, she has been in a stable relationship for four years and had a son in July 2002. She also claimed a history of sexual interference by her father when she was about six. However, nothing of the type that occurred in this case happened in those incidents, and she said she does not remember them as vividly as the present ones.

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She was somewhat rebellious in the family and school environment before the relevant events and, according to her affidavit, had actually left school by then.

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Dr McGuire, a psychiatrist, reports that in her opinion the applicant has a diagnosable psychiatric disorder, post traumatic stress disorder, as evidenced by her symptoms of flash-backs, nightmares, avoidance of cues reminding her of the incident, anxiety and depression. She considers the

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symptoms are present to a severe degree. She believes that the offences reinforced pre-existing problems as a result of the alleged conduct of her father, thereby rendering her more vulnerable to the offences. The response may possibly have been more severe than what otherwise may have happened. Dr McGuire says that the applicant experiences a sense of violation and markedly reduced self-worth. She also suffers anxiety and insecurity, rendering her virtually housebound unless accompanied.

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The applicant is also entirely aversive of sexual relations, a condition that the doctor believes will continue for an indefinite period. Dr McGuire also says that despite her situation, she appears to have a fairly optimistic view of the future with an ambition to obtain her year 10 certificate to gain employment in a vocation that she is interested in pursuing.

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The somewhat intractable relation between regulation 1A of the Criminal Offences Victims Regulation (1995) and the provisions of the Act itself were discussed in dialogue between Ms Fadden and me in the course of the hearing. It is not the occasion to say more about the regulation at this point except to reinforce the recognition of the members of the Court in *Jullie v. Attwell* [2002] 2 Qd R 367 that a wholly consistent interpretation of Regulation 1A is very difficult. Not the least of that is the interface between the condition of post traumatic stress disorder and specific categories that have been listed.

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In any event, the regulation prescribes that the totality of the adverse impacts of a sexual offence suffered by a person to the extent that impacts are not otherwise an injury under Section 20 are prescribed as an injury. The definition of "adverse impact" sets out a number of consequences that are to be taken into account including anything not in the specific examples that the Court considers is an adverse impact. The range of compensation that may be awarded for adverse impacts of sexual offence apart from post traumatic stress disorder is from 1 per cent to 100 per cent of prescribed amount which is at present \$75,000. There is an obligation to scale compensation for a particular injury according to seriousness with the maximum allowable being reserved for the most serious injuries.

In a broad sort of way, the applicant's decisions on the day placed her in the environment in which the offences occurred. However, she was young at the time and apparently not used to alcohol or amphetamines. She did nothing that indicated that she was interested in engaging in sexual activity with the respondent, whatever else she may have been interested in. In reality, she was preyed on by the respondent who was in his mid-30s. In the particular circumstances, no reduction under Section 25(7) is required.

I accept that the incident has had relatively serious effects. However, the serious, physical consequences referred to in regulation 1A(2) (d) (e) (f) were not suffered. She has fortunately been in a stable relationship for about four years

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albeit subject to the emotional limitations referred to earlier. According to the psychological assessment, there is some hope that her future will not be permanent impaired to the same extent as her past has been. There is evidence of minor bruising. The minimum amount prescribed is accepted as appropriate compensation for that - that is, a sum of \$750.

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With regard to mental or nervous shock, the claim is for 30 per cent. It is always open to debate where a particular injury falls in the scheme of things. It is, however, in my view, not outside a proper exercise of discretion to allow for that amount in this particular case. A slightly smaller amount may also have been justifiable, but since it is an imprecise science I am prepared to accept that submission. With regard to the effects not falling within the diagnostic criteria of post traumatic stress disorder, after debate during the course of submissions, I am satisfied that 15 per cent is appropriate for that. The total amount is therefore 46 per cent which represents an award of \$34,500.

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