

SUPREME COURT OF QUEENSLAND

CITATION: *ADR v FDW; FDL v FDW* [2008] QSC 260

PARTIES: **ADR**
(applicant)
v
FDW
(respondent)

FDL
(applicant)
v
FDW
(respondent)

FILE NOS: No 14 of 2008
No 15 of 2008

DIVISION: Trial Division

PROCEEDING: Application for Criminal Compensation

ORIGINATING
COURT: Supreme Court, Maryborough

DELIVERED ON: 24 October 2008

DELIVERED AT: Maryborough

HEARING DATE: 17 October 2008

JUDGE: Lyons J

ORDER:

1. That the respondent being a person convicted of indictable personal offence pay compensation to FDL in the sum of \$9,000 for the injuries suffered by him because of the offence.
2. That the amount awarded be paid to the Public Trustee who shall hold the moneys as a separate trust fund on trust for FDL.
3. That the respondent being a person convicted of indictable personal offence pay compensation to ADR in the sum of \$9,000 for the injuries suffered by him because of the offence.
4. That the amount awarded be paid to the Public Trustee who shall hold the moneys as a separate trust fund on trust for ADR.

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND
PROCEDURE – JUDGMENT AND PUNISHMENT –
ORDERS FOR COMPENSATION, REPARATION,

RESTITUTION, FORFEITURE AND OTHER MATTERS
RELATING TO DISPOSAL OF PROPERTY –
COMPENSATION – QUEENSLAND – the respondent
pleaded guilty to two counts of attempting to unlawfully kill
the applicants – the applicants seek criminal compensation
from the respondent – the applicants suffered moderate
mental or nervous shock – where there was more than one
cause of injury – whether the respondent’s behaviour directly
or indirectly contributed to the injury

Criminal Offence Victims Act 1995 (Qld), s 5, s 19, s 20, s 21,
s 22, s 24, s 25

R v Kazakoff; ex parte Ferguson [2000] QSC 156; [2001] 2
Qd R 320, cited

Summers v Dougherty & Anor [2000] QSC 365, cited

COUNSEL: PJ Paglione (sol.) for the applicant
No appearance for the respondent

SOLICITORS: Carswell & Co Solicitors for the applicant
No appearance for the respondent

LYONS J:

- [1] In April 2005 the respondent took his two sons then aged five and four and put them in his car. He took them to buy a garden hose, then drove them to a secluded area and attached the hose to the exhaust of the vehicle. He subsequently started the ignition of the vehicle and set about killing himself and the boys by carbon monoxide poisoning. After a period of time however, he turned off the engine and then took the children to hospital for medical help.¹ Whilst the children were exposed to carbon monoxide for an extended period they have survived. The long term effects of the poisoning however are not known.
- [2] On 12 September 2005, the respondent pleaded guilty to two counts of attempting to unlawfully kill and in respect of each count he was sentenced to imprisonment for five years, with a recommendation for post-prison community based release after serving 18 months. One hundred and fifty-seven days of pre-sentence custody were declared as time served under the sentence.
- [3] In his sentencing remarks Justice Byrne, the learned sentencing judge, said:²
“You had expected that you and the children would go to sleep and die. One of the children called out in pain, complaining of a difficulty with his stomach. Whether that woke you up or not is by the way. What it appears to have done is to have caused you to stop the car engine and to take the children for medical help. In this sense, it may be said that, eventually, although probably after the engine had been running and the children exposed to carbon monoxide for quite some time, you desisted. As a result, the children

¹ Sentencing remarks, Byrne J, 12 September 2005, p 1.

² Sentencing remarks, Byrne J, 12 September 2005, p 3, ll 20-50.

have survived; and their age is such is they have no understanding of what you had in mind for them.

There are considerations which matter significantly in the sentence which ought to be imposed. The most significant, apart from you having desisted so that the children survived, is your early pleas of guilty.”

The current applications

- [4] There are currently three applications before the court for criminal compensation pursuant to Part 3 of the *Criminal Offence Victims Act* 1995 (Qld) (“the COVA”). On 21 April 2006, LDM, the mother of the boys filed applications on her own behalf (S13/08) and as the litigation guardian for her FDL (S15/08) and ADR (S14/08) for an order that the respondent pay compensation pursuant to s 24 of the Act. FDL is now almost nine years of age and ADR is almost eight. LDM’s application has been dismissed and the reasons for that decision have been set out in a separate decision.³
- [5] Although served with the application, the respondent did not appear on the hearing of the application.
- [6] Section 24 of the COVA provides:
 - “**Court may make an order compensating someone injured by personal offence**
 - (1) This section applies if someone (the *convicted person*)—
 - (a) is convicted on indictment of a personal offence; or
 - (b) is convicted on indictment and a personal offence is taken into account on sentence.
 - (2) The person against whom the personal offence is committed may apply to the court before which the person is convicted for an order that the convicted person pay compensation to the applicant for the injury suffered by the applicant because of the offence.
 - (3) The court may make an order (a *compensation order*) for an amount to be paid by the convicted person to the applicant because of the injury.”

The reports of psychologist Kay Morgan

- [7] The psychologist Kay Morgan has prepared three reports in respect of FDL and ADR dated 14 February 2006, 16 July 2007, and 7 October 2008 in relation to this application.

THE APPLICATION FOR COMPENSATION BY FDL (S15/08)

The report of psychologist Kay Morgan dated 14 February 2006

- [8] At the time of the first report neither boy had been made aware that their father had attempted to kill them and the psychologist reported that FDL was reticent and

³ *LDM v FDW* [2008] QSC 259.

confused discussing his father during the assessment and that he seemed to be trying to make sense of his memories of the attempt by his father to kill him. That report provides as follows:⁴

“Diagnostic formulation

66. [FDL] presented with a number of symptoms including Anxiety, a sleep disorder including distressing nightmares, bedwetting and labile mood.

67. Based on the evidence presented at interview and from a psychological perspective [FDL] has symptoms consistent with an Adjustment Disorder with Anxious mood: Chronic.

68. [LDM] said that [FDL’s] symptoms developed immediately after the attempt and his hospitalisation. Their frequency and severity remained fairly constant since the attempt.

69. [FDL’s] symptoms fulfil the criteria for an Adjustment Disorder with Anxious mood:

- A. The development of emotional or behavioural symptoms in response to an identifiable stressor(s) occurring within 3 months of this stressor(s).

[LDM] reported [FDL’s] symptoms occurring after the incidents described in this report.

- B. these symptoms or behaviours are clinically significant as evidenced by either of the following:

- a. Marked distress that is in excess of what would be expected from exposure to the stressor.
[LDM] describes symptoms ‘anxiety, nightmares, and bedwetting’ that have started immediately after the attempt and had not resolved.

...

- b. significant impairment in social or occupational (academic) functioning.

[LDM] reported that [FDL] had given up on one important sporting activity (Tai Kwan Do).

- C. The stress related disturbance does not meet the criteria for another specific Axis I disorder and is not merely an exacerbation of a pre-existing Axis I or Axis II disorder.

[LDM] did not report symptoms consistent with the existence or pre-existence of another Axis I or Axis II disorder for [FDL].

- D. the symptoms do not represent Bereavement ...

...

[LDM] reported that neither the stressors nor the consequences of the stressors had been resolved for [FDL].

70.A pre-existing condition to this diagnosis is FDW's abuse of his sons prior to the attempt."

- [9] The psychologist was unable to give a definitive diagnosis for FDL at that time because she was unable to estimate how he would respond when told of his father's intention to kill him. She considered, however, that FDL would suffer some of the effects of the trauma for the rest of his life. Furthermore, she considered the prognosis was compounded by the fact that it is not possible to establish what effects the actual poisoning would have on his long-term health. The psychologist considered that he would remain vulnerable to further trauma in the future.
- [10] It is clear that at the time of the first interview FDL was a bright and articulate young boy who had memories of the incident, in particular, he said that his father had told them that they were going to a party and that he remembered "...[ADR] was asleep in the car" and that his father drove them to the hospital and that "...[ADR] was asleep at the hospital". He mentioned that he had heard nurses talk about "poison" at the first interview with the psychologist. FDL indicated that he had bad dreams and that he woke up scared but could not remember the dreams. He also remembered that "Daddy got sick" and then he said "...Daddy took us to the hospital". He said, "...[t]he doctors checked on me".⁵

The report of psychologist Kay Morgan dated 16 July 2007

- [11] The second report of the psychologist is dated 16 July 2007.⁶ This report was written after the children were told of their father's actions and FDL said that he remembered that "...Dad tried to kill us". He also described smelling "gas". In this second report the psychologist indicated that FDL presented with a range of symptoms, including anxiety, a sleep disorder including distressing nightmares, bedwetting and labile mood. His anxiety symptoms indicated separation anxiety from his mother, and fears of being kidnapped by his father when released from prison. The psychologist then stated, "...[b]ased on direct observation and the information provided at assessment and from a psychological perspective, [FDL] has symptoms consistent with an Adjustment Disorder with Anxious mood: Chronic (DSM IV 2005)."⁷

The third report of the psychologist dated 7 October 2008

- [12] This report was prepared after the respondent's release from custody in 2007. At this interview it was clear that [FDL] was turning nine in October and was in Grade 4 at school. He told the psychologist that he remembered that his dad "...did something bad" and that "...[h]e tried to hurt us".⁸ He indicated that he did not think about the attempt on his life often and "...did not want to talk about it any further." At the time of his third interview, whilst FDL was a mature and responsible boy, he was having disturbed sleep and was still wetting the bed most nights and had nightmares on some nights. It was noted that whilst his mood was generally happy, he could get scared, moody and often held grudges. It is clear that FDL is an excellent student and has earned awards for spelling and maths. The only

⁵ Exhibit "KM2" to the affidavit of Kay Morgan, filed 21 April 2006.

⁶ Exhibit "KM1" to the affidavit of Kay Morgan, filed 8 October 2008.

⁷ Exhibit "KM1" to the affidavit of Kay Morgan, filed 8 October 2008.

⁸ Exhibit "KM2" to the affidavit of Kay Morgan, filed 8 October 2008.

significant concern was in relation to his mood swings. He also has fears of being kidnapped or hurt by his father.

- [13] The psychologist concluded:⁹
 “[FDL’s] symptoms and diagnosis of an Adjustment Disorder with Anxious Mood is partially resolved. The symptoms developed immediately after the attempt on his life. The frequency and severity of his symptoms have abated somewhat, but are maintained by his ongoing fears for his personal safety. It is estimated that [FDL] will remain vulnerable to further abuse.”

Prognosis

- [14] The psychologist, in her third report, stated that the prognosis for both boys remains difficult because of the ongoing nature of the events being assessed and because a pre-existing condition may have existed prior to the diagnosis, namely the abuse of the children by their father prior to the attempt on their lives. Furthermore, the psychologist indicated that she believed her prognosis was also compromised by her inability to establish the effects that the carbon monoxide poisoning may have on the boys’ health in the long term. The report concluded that both boys have recovered from their trauma and were resilient and protective of their mother. The psychologist also indicated that LDM “...continues to provide a stable, loving and caring home for them”.¹⁰
- [15] It was also clear that at the time of the third assessment the boys’ mother had not told them of their father’s release from prison because they were happy and doing well and she had not been able to formulate a way of telling them.

THE APPLICATION BY ADR (S14/08)

The report of the psychologist Kay Morgan dated 14 February 2006¹¹

- [16] At the first interview ADR was a talkative five year old boy who remembered very little about the attempt as he was thought to have slept through the attempt until he woke in the hospital. Whilst it would appear that he woke a few times crying after the attempt, he settled but continued to be drowsy for a week after the attempt. Whilst there was a short period of increased verbal anger after the attempt, that resolved quite quickly. There was, however, an increase in his anxiety after the attempt. It would also appear that he was tearful and clingy, with the major concern that his mother would leave him. At the time of the first interview the psychologist was unable to make a diagnosis because of his age and also noted that a pre-existing condition would be the respondent’s abuse of his sons prior to the attempt.
- [17] The psychologist indicated that the prognosis for FDL remained guarded at that time because of the danger inherent in the attack on his life and also because some of his symptoms are of several years duration and the psychologist was unable to estimate how he would respond when told of his father’s intention to kill him.¹²

⁹ Exhibit “KM2” to the affidavit of Kay Morgan, filed 8 October 2008.

¹⁰ Exhibit “KM2” to the affidavit of Kay Morgan, filed 8 October 2008.

¹¹ Exhibit “KM1” to the affidavit of Kay Morgan, filed 21 April 2006.

¹² Exhibit “KM1” to the affidavit of Kay Morgan, filed 21 April 2006.

“Although he does not have a formal diagnosis at present, it is estimated that [ADR] will suffer some of the effects of the trauma for the rest of his life. His prognosis is compounded by the writer’s inability to establish what effects the poisoning may have on his health in the long term. However, if his life remains stable, some of his psychological symptoms may reduce somewhat over the next 18 months.”

- [18] She concluded, “...[h]owever, [ADR’s] condition is neither stationary nor stable, and he remains vulnerable to further trauma.”¹³

The second report of the psychologist Kay Morgan dated 16 July 2007

- [19] In the second report, which was written after the boys were told in August 2006 of their fathers’ actions, the psychologist indicated that ADR said he was aware of what happened during the attempt even though he had slept through the incident. He stated, “...Daddy put poison in the car ... I think it was the gas; Daddy was nasty” and “...I do not want to see Daddy, he’s nasty.”¹⁴ It would appear that ADR’s behaviour changed markedly after he had been told about his father being in prison and that he commenced wetting his pants at school every day, often more than once, that the behaviour had been going on for several weeks, and that the behaviour only happened at school. In the second report the psychologist indicated that the boys were told that the respondent had been sent to prison and that they responded by saying that they hoped he stayed in gaol for a long time. When FDL responded that he wanted to “...be in a house where Daddy can’t get me”, ADR agreed and the boys discussed the concerns about their safety, hoping to be able to “...lock us in a house where Daddy does not know”.¹⁵
- [20] A letter from ADR’s class teacher and the acting principal of his school was provided to the psychologist. The letter was dated 1 September 2006 and it contained information about his school behaviour, namely that towards the end of 2006 the behaviour gradually deteriorated and the letter stated:¹⁶

“To Whom It May Concern

1 September 2006

Re [ADR]

Towards the end of July 2006 there began a gradual deterioration in [ADR’s] behaviour. He is no longer able to concentrate and remain on task for the required length of time. He now often disturbs other students.

At this time toileting also became a problem for [ADR]. The following lists some of the behaviours that have developed in recent weeks.

- reluctant to go to the toilet

¹³ Exhibit “KM1” to the affidavit of Kay Morgan, filed 21 April 2006.

¹⁴ Exhibit “KM1” to the affidavit of Kay Morgan, filed 8 October 2008.

¹⁵ Exhibit “KM1” to the affidavit of Kay Morgan, filed 8 October 2008.

¹⁶ Exhibit “KM1” to the affidavit of Kay Morgan, filed 8 October 2008.

- leaves it too late to seek permission to go
- his physical body movements indicate a need to go
- says he doesn't want to go
- develops urgency
- goes several times in a few minutes
- accidents occur 2 or 3 times a week
- denies being wet
- refuses to change or changes reluctantly
- cries and wants "Mum"
- hides in the school ground and refuses to return to class."

Attached was a list indicating the wet days at school from 25 August to 15 September, which indicated 11 wet days. When he was interviewed by the psychologist he indicated that when he was drawing a picture of his family he did not want to put his father in the picture.

- [21] At the second interview the psychologist was told that ADR had matured and was able to calm himself if he became upset, however, he remained afraid "...that his father would hurt him again". At this interview his memory, concentration, and energy levels were all good. Subsequent to the earlier concerns in relation to his wetting at school, strategies were put in place to address this and he "...stopped wetting himself at school after he was escorted to the toilet by one of two friends".¹⁷ This alleviated his fear of being abducted. ADR's mother showed the psychologist a copy of a piece of ADR's schoolwork. It was entitled "*Who Am I?*" ADR wrote, "...[h]e is a boy. He nearly killed me. He put gas in the car to kill me. He starts with a d. He is not in school. Who am I. I am dad."¹⁸

- [22] The psychologist indicated that she observed anxiety symptoms in ADR, including separation anxiety from his mother and "...fears of being kidnapped by his father when released from prison". The psychologist concluded:¹⁹

"Based on direct observation and the information provided at assessment and from a psychological perspective, [ADR] has symptoms consistent with an Adjustment Disorder with Anxious mood: Chronic (DSM IV 2005). The frequency and severity of his symptoms have remained fairly constant since the attempt for some time and have recently started to abate. [ADR's] symptoms continue to be maintained by his ongoing fears for his personal safety."

The third report of the psychologist Kay Morgan dated 7 October 2008

- [23] At the time of the third report²⁰ it was clear that ADR was doing well at school. He liked maths and was reading extremely well. He had already achieved an academic award in 2008 and he had matured into an intelligent and articulate seven year old boy. It was clear, however, that ADR's biggest fear was about his father and that he continued to avoid any mention of his father. He stated, "...I don't have a father" and recently refused to make a Father's Day card at school. On the other hand, it was clear that ADR still continued to express concerns about his father leaving

¹⁷ Exhibit "KM1" to the affidavit of Kay Morgan, filed 8 October 2008.

¹⁸ Exhibit "KM1" to the affidavit of Kay Morgan, filed 8 October 2008.

¹⁹ Exhibit "KM1" to the affidavit of Kay Morgan, filed 8 October 2008.

²⁰ Exhibit "KM2" to the affidavit of Kay Morgan, filed 8 October 2008.

prison. The psychologist concluded that whilst his diagnosis of Adjustment Disorder with Anxious Mood was partially resolved, his symptoms continued to be maintained by his ongoing fears for his own personal safety. She also estimated that ADR would remain vulnerable to further abuse.

Prognosis

- [24] The psychologist repeated the prognosis she had made in respect of FDL in her report.²¹ She stated that the prognosis for both boys remains difficult because of the ongoing nature of the events being assessed and because a pre-existing condition may have existed prior to the diagnosis, namely the abuse of the children by their father prior to the attempt on their lives. Furthermore, the psychologist indicated that she believed her prognosis was also compromised by her inability to establish the effects that the carbon monoxide poisoning may have on the boys' health in the long term. Whilst she concluded that both boys have recovered from their trauma and were resilient and protective of their mother, the psychologist also indicated that LDM "...continues to provide a stable, loving and caring home for them".

The COVA

- [25] Section 19 of the COVA provides that Part 3 establishes a scheme for the payment of compensation to an applicant for injury suffered by the applicant and caused by a "personal offence" committed against the applicant. Section 20 defines "injury" as meaning "...bodily injury, mental or nervous shock, pregnancy or any injury specified in the compensation table or prescribed under a regulation." The definition does not limit injury to those specified in the compensation table or those prescribed under a regulation.
- [26] There is no definition of "mental or nervous shock" but s 22(3) provides that compensation "...is not intended to reflect the compensation to which the applicant may be entitled under common law..." In *R v Kazakoff; ex parte Ferguson*,²² Thomas JA stated that the scheme of the Act is to provide for payment of compensation to a claimant for the *injury* suffered by the applicant because of the offence and will not correspond to the approach to the assessment of damages for nervous shock in tortious claims. As his Honour observed, this requires something more than a normal human reaction or emotion after a stressful event. He stated that "...[u]nless the court is affirmatively satisfied that mental or nervous shock has been suffered compensation should not be awarded for such reactions."²³
- [27] Section 21 describes a "personal offence" as an "...indictable offence committed against the person of someone." FDL and ADR were unquestionably the victims of an indictable offence as their father pleaded guilty to two counts of attempted murder. Accordingly, they are both persons against whom a personal offence was committed and are persons who may apply to the court for an order that the respondent pay compensation to them for the injury suffered because of the offence. They are both suffering from an Adjustment Disorder with Anxious Mood which has only partially resolved. They will both remain vulnerable in the future and they

²¹ Exhibit "KM2" to the affidavit of Kay Morgan, filed 8 October 2008.

²² [2000] QSC 156.

²³ *R v Kazakoff; ex parte Ferguson* [2000] QSC 156 at [21].

are still not yet aware that their father has in fact been released from prison. I consider that this knowledge may well lead to an exacerbation of their conditions.

- [28] I am satisfied that FDL's response to the injury inflicted upon him as a consequence of the unlawful acts of the respondent constitutes mental or nervous shock for the purposes of being awarded compensation under the Act.
- [29] I am satisfied that ADR's response to the injury inflicted upon him as a consequence of the unlawful acts of the respondent constitutes mental or nervous shock for the purposes of being awarded compensation under the Act.
- [30] The difficulty is in trying to assess an appropriate figure as compensation for each of them and s 25 sets out the scheme provided for by the Act. Section 25 provides:
- “25. What amount may be required to be paid under a compensation order:
- (1) In making a compensation order, a court is limited to ordering the payment of an amount decided under this section.
 - (2) A compensation order may only order the payment to the applicant of a total amount of not more than the scribed amount (the *scheme maximum*).
 - (3) If more than 1 amount is payable under subsections (4) to (6), the amounts must be added together, and, if the total is more than the scheme maximum, only the scheme maximum may be ordered to be paid.
 - (4) In deciding the amount that should be ordered to be paid for an injury specified in the compensation table, the court is limited to making an order for—
 - (a) if there is only 1 percentage listed opposite the injury — an amount up to the amount that is the listed percentage of the scheme maximum; or
 - (b) if there is a range of percentages listed opposite the injury—an amount that is within the listed range of percentages of the scheme maximum.
 - (5) In deciding the amount that should be ordered to be paid for an injury specified under a regulation, the court is limited to making an order for the prescribed amount.
 - (6) In deciding the amount that should be ordered to be paid for an injury to which subsections (4) and (5) do not apply, the court must decide the amount by—
 - (a) comparing the injury with injuries to which subsections (4) and (5) apply; and
 - (b) having regard to the amounts that may be ordered to be paid for those injuries.
 - (7) In deciding whether an amount, or what amount, should be ordered to be paid for an injury, the court must have regard to everything relevant, including, for example, any behaviour of the applicant that directly or indirectly contributed to the injury.
 - (8) A decision on the amount that should be ordered to be paid under a compensation order—

- (a) does not involve applying principles used to decide common law damages for personal injuries; and
- (b) is to be decided by applying the principles mentioned in section 22(3) and (4)."

- [31] A compensation order may only order an amount up to the scheme maximum and s 25 sets out what amount may be required to be paid under a compensation order. Section 25(4) then provides that when the court is ordering an amount to be paid for an injury specified in the compensation table, which is a reference to the compensation table appearing in Schedule 1, the court is limited to making orders as described in 25(4). It is clear that the maximum amount which can be awarded under the scheme must be reserved for the most serious of cases and that a degree of proportionality applies. Schedule 1 to the Act sets out particular injuries and allocates a percentage range for those injuries which represents a percentage of the maximum sum which is \$75,000. Items 31, 32, and 33 relate to mental or nervous shock, minor, moderate or severe respectively.
- [32] In *Summers v Dougherty & Anor*²⁴ White J considered what was an appropriate award for a 14 year old school boy who experienced mental or nervous shock following a violent home invasion where he was threatened with violence. He experienced symptoms for a period of about six months and thereafter was recovering. He was compensated under Item 31 of the Schedule, that is for minor mental or nervous shock and her Honour placed him at the upper end of that range which is 10 per cent of the maximum and awarded him \$7,500. In that case the applicant experienced fear, anger, and alarm and was still suffering from nightmares. He was also vigilant and fearful although those symptoms had reduced and initially his relationships with his peer group deteriorated significantly but then improved. It was considered that he was likely to have been suffering from Post Traumatic Stress Disorder but had not actually been diagnosed as such.
- [33] I consider that the nature of the injuries in the current case are similar to those outlined in *Summers v Dougherty* but are, in fact, likely to persist for a longer period for a number of reasons. I consider that the fact that FDL and ADR's father was the perpetrator is significant as is the fact that both FDL and ADR actually have a diagnosis of an Adjustment Disorder. Furthermore, FDL's initial symptoms were also moderately severe and persistent and really did not resolve until three years after the attempt on his life. I also consider that whilst ADR would have initially appeared to have been minimally affected he deteriorated significantly once told of his father's attempt on his life.
- [34] I also take into account as relevant factors under s 25(7) the fact that neither boy as yet knows that their father has been released, that their Adjustment Disorder with Anxious Mood may well be exacerbated by this knowledge, and that the psychologist's opinion is that both boys will not only suffer some trauma for the rest of their lives but will also be vulnerable to further abuse. I do not consider that the manifestation of the injuries in the boys is such that a different amount should be awarded as I consider that on the whole the injury to each boy is sufficiently similar and as such indistinguishable.

- [35] I consider that FDL should be compensated under Item 32 of the Schedule, that is, for moderate mental or nervous shock but that this should be towards the lower end namely 12 per cent or \$9,000.
- [36] I also consider that ADR should be compensated under Item 32 of the Schedule, that is, for moderate mental or nervous shock but that this should be towards the lower end namely 12 per cent or \$9,000.

Order

1. That the respondent being a person convicted of indictable personal offence pay compensation to FDL in the sum of \$9,000 for the injuries suffered by him because of the offence.
2. That the amount awarded be paid to the Public Trustee who shall hold the moneys as a separate trust fund on trust for FDL.
3. That the respondent being a person convicted of indictable personal offence pay compensation to ADR in the sum of \$9,000 for the injuries suffered by him because of the offence.
4. That the amount awarded be paid to the Public Trustee who shall hold the moneys as a separate trust fund on trust for ADR.