

1.14/94

## ADMINISTRATIVE APPEALS TRIBUNAL

**TUCKER v CCT**

Deputy President Mr Galvin

13 August 1993

**THE APPLICANT SOUGHT COMPENSATION FOR EMOTIONAL DISTRESS AND DEPRESSION SUFFERED AS A RESULT OF BEING INFORMED THAT HER 5-YEAR-OLD SON HAD BEEN SEXUALLY ABUSED BY HER DEFACTO HUSBAND. AWARD: \$3,500 PLUS COSTS.**

"... [5] Following Tristan's disclosure to her, she suffered from depression, took medication for three or four months and had difficulty in performing her parental duties. She is concerned as to her future relationship with her son especially in his adolescent years. For a year she did little more than feed her children and put them to bed. Most of the time, she slept. She refused to be apart from her children, was constantly angry, anti-social, unproductive and fearful. She was heartbroken at perceiving herself to have been party to what had occurred. She avoids bringing male friends into the house because she does not wish to run the risk of a repetition of the previous experience. When her son made his disclosures to her, she was in the course of university studies. As a result, those studies were interrupted for a period of time.

The applicant alleges that she was raped by Doherty in the course of her relationship with him. She has made a [6] previous successful application for criminal injuries compensation in relation to that episode. When she was asked how she divorced the effects upon her of the rape from those resulting from her son's disclosures, she replied that she had not suffered from depression after the rape but rather feelings of fear and worthlessness. During her relationship with Doherty, she was also subjected to abuse and physical maltreatment from him. In cross-examination, she said that she was seeing her local doctor, Dr Williams, sometimes weekly, sometimes more often but she had not believed that she needed to see a psychiatrist.

Counsel for the applicant asked the Tribunal to accept as a means of establishing the psychological consequences for the applicant of Tristan's disclosure, the particulars of Global Level of Functioning by reference to criteria described in the *American Psychiatric Association's Diagnostic and Statistical Manual* (3rd Revised Edition) set out in Susan Hook's report in which she noted a drop of 10 points after the rape but prior to disclosure and a further drop of ten points after disclosure. Counsel also asked the Tribunal to take account of the devastating effect upon the applicant of the disclosure, the resultant short term loss of trust in her by her son, the effect upon her self-esteem, the resultant guilt, depression and consequent medication and the effect upon her relationship with men.

[7] Mr Sizeland, on behalf of the respondent, submitted that the Tribunal must be satisfied at the outset as to whether a crime was committed. He pointed to the difficulties of determining the frequency of any abuse, determining the applicant's response in relation thereto and the extent of her injury (if any). He submitted further that the Tribunal must determine what aspects of the applicant's medical condition are able to be attributed to the alleged abuse of her son. Unfortunately, there is no psychiatric evidence before the Tribunal either directly linking the pain and suffering suffered by the applicant to the alleged criminal abuse of Tristan or purporting to allocate any part of her medical condition to that abuse rather than to other factors. She did not seek any professional treatment in relation to her reaction to her son's disclosure.

Dr Williams found her to be suffering from a "depressive condition associated with significant psychological impairment as a result directly of abuse to both herself and her son" while Susan Hook concluded that the "alleged sexual assault of (Tristan) and (the) harassment of (the applicant) have all led to considerable feelings of fear and insecurity" adding that "(s)he has suffered considerable emotional pain and suffering" and that "(t)he majority of the symptoms she reported are exacerbated by the disclosure of the sexual assault and its sequelae".

[8] Having regard to what evidence is before the Tribunal, I am satisfied and find that it is more probable than not that Tristan was sexually abused by Doherty and that therefore there were criminal acts committed. I am also satisfied and find that the applicant is a victim of those criminal acts in that she suffered injury in consequence of them upon their disclosure to her by her son. The injury is identifiable from the evidence as a combination of "depression associated with significant psychological impairment", "feelings of fear and insecurity" and the exacerbation of a psychological condition from which she was already suffering as a result of maltreatment by Doherty. The applicant was also a victim of direct physical and psychological abuse by Doherty and indeed she has received the maximum compensation under the Act for pain and suffering as a result of an alleged rape. It has been acknowledged by Dr Williams and Susan Hook that Doherty's treatment of her is a significant factor in her psychological condition. Neither attempted any mathematical apportionment of injury to maltreatment of her rather than disclosure of abuse of her son. The Tribunal is in no better position to do so. Suffice to say that there is evidence of the applicant having suffered emotional distress and depression as a result of learning of Doherty's abuse of her son which required short term medication but was not such as to persuade her of the need to seek psychiatric assistance.

[9] Having regard to the range of awards which have been made by this Tribunal in respect of similar injuries, I am of the view that the sum of \$3500 is an appropriate award of compensation for pain and suffering. In the result, I vary the decision of the respondent by substituting for the amount of \$2500, the amount of \$3500 as compensation for pain and suffering. I order that the respondent pay the applicant's costs which I fix at \$1200."

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