

1.4/94

## ADMINISTRATIVE APPEALS TRIBUNAL

**BULESIC v CCT****Mrs Bretherton****November 1993**

**THE APPLICANT CLAIMED COMPENSATION FOR AN INJURY TO HER NOSE WHEN ALLEGEDLY ASSAULTED BY ANOTHER PERSON. THE APPLICANT WAS UNABLE TO SATISFY THE TRIBUNAL THAT THE INJURY WAS SUSTAINED IN THE CIRCUMSTANCES. APPLICATION DISMISSED.**

"[1] The Applicant has applied to the Tribunal for review of a decision of the Respondent refusing to award compensation under the *Criminal Injuries Compensation Act 1983* ("the Act"). The Applicant gave evidence, the substance of which was as follows:

- a. On Monday, January 6, 1992 she and her friend Lisa Jennings went to a pin ball parlour in Sunshine where she saw some familiar faces.
- b. At about 2 p.m. whilst she and Lisa were playing pool with two guys they had met there, a chap known to the Applicant only as "Erдин" approached her and accused her of having stolen his keys.
- c. One night she and Erдин went to a night club, Cafe Cliquoe, where he gave her a set of keys, including keys to his home, to hold for him. As they were leaving the night club she returned the keys to him. On January 6 1992, upon being accused of having stolen his keys she told Erдин that she had returned the keys to him as they were leaving the night club. An argument commenced, Erдин called her a liar and unexpectedly head butted her ("the Incident").
- d. As a result of the Incident she fell to the floor and blacked out for a few seconds. After regaining consciousness, as her nose was bleeding and she could not walk properly, Lisa helped her to the ladies restroom where she cleaned her face.
- [2] e. Before going to the ladies restroom she heard someone yell that the police had been called and she observed that the "place had emptied". Assuming the police were in attendance, she and Lisa waited in the ladies restroom and then, after some time had elapsed, they left the premises.
- f. She had waited in the ladies restroom because she had not wished to speak to the police at that time.
- g. At the time of the Incident, although Erдин had been a friend of her boyfriend, her boyfriend and Erдин were not talking.
- h. Following the Incident she obtained medical assistance.
- i. Because a friend told her that compensation for criminal acts could be claimed, a few days after the Incident she consulted a solicitor. As a result of the advice received on January 10, 1992 she attended at the Sunshine Police Station where she made a statement in respect of the Incident.
- j. Although she knew the house in Forrest Street, Sunshine where Erдин lived, she did not know the house number. When making her statement the police had not offered to drive her to Forrest Street. As a result of the Incident she was scared Erдин might attack her again and she was reluctant to go near his house. Indeed initially she had been reluctant to report the Incident for fear Erдин would learn she had "dobbed him in" and seek revenge.
- k. On two occasions after January 10, 1992 a police officer asked her for the exact address for Erдин and she advised she had not been to Forrest Street to ascertain the house number. In April 1992 the officer contacted her again, at [3] which time she stated she was not sure she wished to pursue the matter as she was scared of Erдин. Sometime later a police officer asked her to attend the police station for the purpose of identifying the house in which Erдин lived. Having told the police officer to contact her solicitor, and having sought legal advice herself, in July she attended at the police station. She then accompanied the officer to Forrest Street where she pointed out Erдин's house. However Erдин no longer lived there.
- l. Her criminal record includes the following:
  1. On August 4, 1993 in the Magistrates' Court at Ballarat she entered a plea of guilty and was convicted of making a false report to police.
  2. On October 15, 1991 in the Magistrates' Court at Williamstown she was convicted of having made a false report to police.
  3. On March 3, 1988 in the Magistrates' Court at Broadmeadows she was placed on a good behaviour bond for theft.
- m. In October 1991 she reported to police that she had been assaulted by her then boyfriend. Subsequently she decided that she did not wish to have her boyfriend charged.

The Applicant's friend, Lisa Jennings gave evidence. However her memory of the Incident was imprecise and in some respects surprisingly vague. However unlike the Applicant she stated that following the Incident the Applicant was taken directly to premises next door to the pin ball parlour, a pizza shop, where the Applicant cleaned herself up in the ladies restroom.

[4] The Applicant's solicitor gave evidence in respect of the dates on which legal advice had been provided to the Applicant, the discussions she had with police officers in respect of the Incident and her requests to police for copies of all statements made in regard to the Incident. On behalf of the Applicant it was submitted that the police had been less cooperative and frank in the matter and the Tribunal was urged to look carefully at the material provided by police. Having considered the file carefully, although there was considerable delay in the provision of the relevant documents in connection with the Applicant's application for compensation and some confusion over certain statements, the Tribunal is not of the view that the police deliberately hindered the Applicant or set out to ensure that her claim would be wrongfully rejected.

Ms. C. Lechner, a consultant psychologist who first saw the Applicant in April 24 1992 at the request of the Applicant's solicitors, gave evidence. However much of her evidence was based upon the assumption that the information she had been provided with by the Applicant was frank and truthful. Her evidence may have been more helpful had the Applicant consulted her earlier. Clearly the Applicant sustained an injury to her nose on January 6 1992. However having considered all of the evidence the Tribunal is not satisfied that the injury was sustained in the circumstances alleged. Had she been the victim of an assault in the circumstances alleged the Tribunal finds it [5] surprising that the Applicant chose to avoid the police on the day of the Incident. The Tribunal is also suspicious of the claimed lack of knowledge of Erdin's surname and house number given he was a friend of the Applicant's boyfriend and she had gone to a night club with him. Had the Applicant not known Erdin's precise address at the time of the Incident, clearly she could have ascertained his house number shortly thereafter. However she failed to go to Forrest Street to ascertain the number until some months after the Incident and by that time Erdin had vacated the premises.

The Tribunal is of the view that on January 10 1992 the Applicant failed to make a report to police that was complete and accurate and that thereafter she failed to cooperate with police in regard to ascertaining Erdin's house number, notwithstanding several requests by police. To have pointed the house out in July 1992 does not rectify the situation. Had the house been pointed out soon after the Incident the police may have been able to locate and interview Erdin. The explanation given by the Applicant for her failure to cooperate promptly is rejected by the Tribunal. The Tribunal rejects the assertion that it was attributable to the Applicant's fear of Erdin. For the reasons set out above the Applicant's application is dismissed and the decision of the Respondent is affirmed. As the issue of costs was not argued and the Tribunal was requested to grant liberty to the parties to apply, the parties are at liberty to apply for an order as to costs."