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ADMINISTRATIVE APPEALS TRIBUNAL**J v CCT****Mrs Rosen****8 October 1993**

THE APPLICANT SOUGHT COMPENSATION FOR PAIN AND SUFFERING AS A RESULT OF 6 ACTS OF INCEST. HAVING REGARD TO EVIDENCE THAT REPEATED SEXUAL ASSAULTS OVER A PERIOD OF TIME HAVE A COMPOUNDING EFFECT, AN INCREASED AWARD WAS MADE IN RESPECT OF EACH CRIMINAL ACT.

"... [15] The question arises as to whether the applicant is entitled to six separate awards of compensation or one award. Clearly, if the applicant is entitled to six awards, she is able to receive an amount in excess of the prescribed limit for one award. The amount prescribed for the purposes of [16] s18 of the Act at the relevant time was \$20,000. The applicant lodged six applications for compensation with the CCT and six separate awards of compensation were made by the CCT. It happened that the total amount of the awards of \$12,000 did not exceed the amount prescribed for one single award of \$20,000. In the Tribunal's view, the approach of the CCT was correct. The effect of s18 is that a person who is injured or killed in Victoria by the criminal act of another person may be awarded compensation for pain and suffering. J is the victim of six separate criminal acts, namely, six incidents of incest. X was charged separately in relation to each incident. Had he been found guilty, he would have been sentenced separately for each conviction. The fact that the criminal acts were of a similar nature and committed by the same person, does not require the Tribunal to treat the criminal acts as one; each criminal act had its own separate profound and distinct effect on J.

A similar approach was taken in *Re Application for Criminal Injuries Compensation No. 69 of 1989* 103 FLR 297. In that case, Master Hogan considered an application for compensation under the *Criminal Injuries Compensation Act 1983* (ACT), where an applicant was subjected to a series of sexual acts by her father and by her brother during a period of about two years. He found that such damage, or exacerbation of existing damage that the applicant suffered as a result of each of the crimes of which her father was [17] convicted constituted a separate prescribed injury for which compensation may be ordered and that the limitation effected by s7 of the Act must be applied separately to each one. In dealing with the problem of separating each separate act, he said at p297:

"The next problem arises from the impossibility of separating out the extent to which her present psychological condition is the result of each separate incident. It is the totality of a conduct over a number of years that has led to her present state. The task of apportioning her damage to the separate incidents is indeed a difficult one and impossible to carry out with any pretence of precision. But is not unlike another situation with which common law courts must grapple quite often, where as a result of a series of work or motor car accidents, a plaintiff finishes up with a complex of injuries and disabilities. All that can be done is to adopt a broad and common sense approach, often starting with a total sum which represents full compensation, and dividing it roughly according to the responsibility of each tortious act in contributing to the total loss".

Master Hogan found that a proper award for the totality of the injuries she sustained as the result of the 9 assaults for which her father was convicted was \$50,000. He stated that he did not think it necessary to define how much of the total was attributable to each separate incident. However, he went on to say at p304:

"I think the purposes of the legislation are properly met if I award \$6000 in respect of the first prescribed injury and \$5500 in respect of each of the other eight".

Of course, a common sense approach in calculating awards of compensation in applications of this nature is required. [18] Where an applicant is a victim of a large number of criminal acts

of the same nature, committed by the same person over a period of time, the Tribunal must keep in mind that:

"The purpose of the Act ... is not to award damages of the kind comparable or analogous to damages which an injured party, as a plaintiff, might seek and recover from a tortious wrongdoer, but to give to the victim of a criminal act or omission some solatium by way of compensation out of the public purse for the injury sustained, whether or not the culprit is brought to book, and whether or not the culprit might otherwise be liable to the victim" (per Anderson J. in *Fagan's case* at p889).

In the end each case must be treated separately and on its own merits. The Tribunal now turns to the amount of compensation which should be awarded to J. As stated earlier, the amount of compensation prescribed for the purposes of S18 at the relevant time is \$20,000. Mr Sullivan in his report stated that "the trauma of the repeated sexual assaults is significantly greater than that occasioned as a result of one incident". Ms Field supported this view. In the Tribunal's view, the injuries suffered by J as a result of the criminal acts are substantial and enduring and require a substantially higher amount than that awarded by the CCT. The Tribunal awards J the total sum of \$54,000, being;

\$6,500 for the first criminal act
 \$7,500 for the second criminal act
 \$8,500 for the third criminal act
 \$9,500 for the fourth criminal act
 \$10,500 for the fifth criminal act
 \$11,500 for the sixth criminal act

[19] In awarding these amounts, the Tribunal has had regard to the evidence of Mr Sullivan that repeated sexual assaults over a period of time have a compounding effect. The Tribunal has also taken into account the fact that J will need continuing therapy for a very long time to assist her in dealing with the effect of the criminal acts upon her. The Tribunal has considered whether it should reduce the amount awarded to J on the basis that the pain and suffering arose partly from the criminal acts and partly from other acts of incest perpetrated by X but not reported by J to the police. The Tribunal notes that the Act is a remedial enactment and there is no justification for construing it restrictively (see *Fagan's case* at p673). Accordingly, the Tribunal does not consider it appropriate to reduce the awards. In forming this view, the Tribunal has had regard to the fact that J had "blocked out" her memory of many acts of incest that took place, that she was only 12 years old when she reported the criminal acts to the police, and that she believed the consequences for X might be less severe if she reported only six acts of incest.

J also sought an order from this Tribunal increasing the amount awarded by the CCT for legal costs. In the Tribunal's view, there is no power of this Tribunal to vary such order. Section 26 of the Act states:

[20] "(1) An application may be made to the Administrative Appeals Tribunal for review of a decision of the Crimes Compensation Tribunal -
 (a) refusing to make an award;
 (b) determining the amount of compensation;
 (c) refusing to vary an award upon application;
 (d) determining the amount of compensation upon an application for variation of an award;
 (e) making an order under section 27; and
 (f) determining pursuant to section 28 that a person is required to make a refund, or determining the amount of such a refund".

The section does not empower the Tribunal to review a decision of the CCT in relation to costs. There is a further matter to which the Tribunal wishes to refer. J reported to the police that her father had raped her. J said the rape occurred in 1991 after X committed suicide. The date on which she made her report is unclear. It would appear that after J filed applications with the CCT for compensation in relation to the criminal acts by X, Constable Edge of Victoria Police filed a report in which she stated that she was not in the police force when "the alleged offence occurred between (J) and her step-father (X), but since I have been stationed at (D) (J) has alleged that her real father has raped her. This was found to be untrue. In my opinion (J) does not deserve a pay out as she has been proven to be a compulsive liar".

[21] Further, in a letter to the applicant's solicitor from Acting Sergeant Findlay dated 22 September 1992, Sergeant Findlay stated that police records showed that J's father was interviewed by the police but that he denied the offence and was not charged "as it was revealed that [J] was not telling the truth". The letter went on to say that the enquiry into J's allegations against her father "revealed that [J] was very careless with the truth on the second occasion and this also made her original claim against [X] look false. What I know regarding these cases, I do not feel that [J] has a claim for compensation.

In the Tribunal's view, it is totally inappropriate that a member of the police should make any attempt to influence the CCT or any other body as to an applicant's entitlement to compensation. It is also inappropriate, in the Tribunal's view, that such statements concerning J remain on the police file. In making these comments the Tribunal makes no finding that J's father raped her. That matter was not in issue in these proceedings. The Tribunal sets aside the decision under review and orders that the sum of \$54,000 be paid to J as compensation for pain and suffering. A further order is made that the CCT pay J's costs in accordance with Scale A of the County Court Scale of costs. Liberty to apply is granted.
