

1.3/94

## ADMINISTRATIVE APPEALS TRIBUNAL

**BRADY v CCT**

Mrs Rosen

13 December 1993

**THE APPLICANT SOUGHT COMPENSATION FOR SEVERE INJURIES SUSTAINED AS A RESULT OF BEING STABBED WITH A KNIFE. THE APPLICANT WAS ENTITLED TO AN AWARD OF \$12,500, BUT DUE TO HIS BEHAVIOUR, REDUCED TO \$7500.**

".... [6] I am satisfied that the applicant received severe injuries as a result of the assault. It is unlikely the applicant will have full movement again of his right arm, he continues to suffer pain and discomfort in that arm, and he has Horner's syndrome in his left eye and blurred vision. Further, I accept Dr Watson Munro's evidence that the applicant suffers from a severe post-traumatic stress syndrome as a result of the assault. The effect of the applicant's injuries is such that it is unlikely that he will be able to resume his sporting activities, and he is now limited in his career opportunities. On that basis, it is my view that he is entitled to an award of \$12,500. However, S20 of the Act requires the Tribunal to have regard to any behaviour, condition, attitude or disposition [7] of the victim which directly or indirectly contributed to the victim's injury or death. In my view, the award should be reduced because of the following circumstances:

- (a) The applicant was injured when he went to Bennett's house armed with a boktah. I am not satisfied on the material before me that the applicant's motive for taking the boktah to Bennett's house was solely to protect himself against Bennett's dog. I think it likely that the applicant expected an altercation might occur, and indeed he told Ms Caldow to lock the car doors on arrival at the house.
- (b) Just prior to going to Bennett's house, Bennett threatened to kill the applicant if he saw him or came to his house. The applicant took this threat seriously and went to the house in full knowledge that his life might be endangered.
- (c) The applicant knew Bennett had violent friends, and that Bennett himself had inflicted violence on his girlfriend.
- (d) The applicant's relationship with Bennett, a drug dealer, involved an illegal activity, that is the purchasing of marijuana.

[8] In my view, the applicant's behaviour in going to Bennett's house in the circumstances I have described, was foolhardy and reckless, and in so doing, the applicant put his own safety at risk. There is no doubt in my mind that this behaviour directly contributed to his injury. On this basis the award should be reduced substantially. As His Honour Judge Rowlands said in *Holt v CCT* (1987) 1 VAR 367 "the aim of the legislation is to grant modest benefits to innocent victims of crimes but not to compensate those who "live by the sword" if they are hurt in the process". In my view, the amount awarded by the CCT of \$7500 is appropriate in all the circumstances, and I affirm the decision under review. No order is made as to costs."