

CITATION: *Brown v Northern Territory of Australia & Forrester* [2003] NTMC 049

PARTIES:

CINDY BROWN

v

NORTHERN TERRITORY OF AUSTRALIA  
&  
FORRESTER

TITLE OF COURT:

Local Court

JURISDICTION:

Crimes (Victims assistance) Act

FILE NO(s):

20210587,20210163,20210588,20210164

DELIVERED ON:

27 August 2003

DELIVERED AT:

Darwin

HEARING DATE(s):

22 August 2003

JUDGMENT OF:

Judicial Registrar Monaghan

**CATCHWORDS:**

Taxation of Costs following issue of victims assistance certificates- whether lump sum fee for hearing can be claimed on individual files when all matters heard at one hearing-whether composite fee for interlocutory applications can be claimed on individual files when all matters dealt with at one interlocutory hearing.

*Crimes(Victims Assistance) Act* s5, 24(4) & (5); *Crimes(Victims Assistance)*

Regulations r 6 ; *Interpretation Act* s 24(b), s62A

*Bullock v Nationwide News & Bradshaw* [2002] NTMC 050

**REPRESENTATION:**

*Counsel:*

Applicant:

V Farmer

1<sup>st</sup> Respondent

J Johnson

2<sup>nd</sup> Respondent

unrepresented

*Solicitors:*

Applicant:

Withnall Maley

1<sup>st</sup> Respondent

Priestleys

2<sup>nd</sup> Respondent

unrepresented

Judgment category classification:

Judgment ID number:

[2003] NTMC 049

Number of paragraphs:

21

IN THE LOCAL COURT  
AT DARWIN IN THE NORTHERN  
TERRITORY OF AUSTRALIA

No. 20210587, 20210163, 20210588 and 20210164

BETWEEN:

**CINDY BROWN**  
Applicant

AND:

**NORTHERN TERRITORY OF  
AUSTRALIA**  
1<sup>st</sup> Respondent

**SHANE FORRESTER**  
2<sup>nd</sup> Respondent

RULING ON TAXATION

(Delivered 27 August 2003)

JUDICIAL REGISTRAR MONAGHAN

1. The applicant had four applications under Section 5 of the *Crimes (Victims Assistance) Act* (the Act) which were heard contemporaneously on 28 February 2003. A decision was handed down by Mr Luppino on 28 March 2003 granting assistance certificates in each matter. The issue of the taxation of costs is presently before me.
2. Mr Johnson, solicitor for the Territory has two objections only. The first objection is that the applicant's solicitor Withnall Maley, have claimed for their attendance at hearing by seeking on each of the 4 files the lump sum provided in Regulation 6(i)(c)(ii) of the Crimes(Victims Assistance) Regulations. The lump sum is sought on each file despite the fact that all of the above files were ultimately disposed of at one hearing.
3. Section 24(5) of the Act states :

“A legal practitioner who is entitled to recover costs in respect of an application under section 5 may claim those costs as prescribed under subsection (4)(a) or as prescribed under subsection (4)(b).

Section 24 (4) reads as follows:

The Regulations –

- (a) may prescribe a lump sum fee for specified work done in respect of an application under section 5, and specified disbursements incurred in doing that work, as the costs allowable in respect of that application; and
- (b) may prescribe a percentage of the costs otherwise allowable under the Appendix to Order 63 of the Supreme Court Rules as the costs allowable for work done in respect of an application under section 5.

4. Regulations 5 and 6 proceed to prescribe lump sum percentage fees. The applicant has claimed under Regulation 6 as each of the assistance certificates issued is for assistance in excess of \$5,000. Regulation 6 states:

“6.Costs: lump sum fees etc. allowable if assistance over \$5 000

- (1) For the purposes of section 24(4)(a) of the Act, the fees and disbursements allowable as costs in respect of an application under section 5 of the Act, where the assistance certificate specifies an amount exceeding \$5 000, are as follows:

a fee of –

- (i) \$1 000 for work up to and including the first prehearing conference, including taking instructions, obtaining preliminary medical reports, preparing, filing and serving the application, attending the mention and attending the first prehearing conference; or
- (ii) \$1 300 if the work referred to in subparagraph (i) also includes an application for an extension of time for the purposes of section 5(3) of the Act;

an additional fee of –

\$400 for further work up to the hearing of the application, including obtaining additional expert medical reports, attending further prehearing conferences and all preparation for the hearing; or

- (ii) \$800 if the work referred to in subparagraph (i) relates to an application in respect of which the offender has not been found guilty of the offence that resulted in the injury suffered by the victim and where it was necessary to obtain police records or obtain evidence from witnesses;

for attending the hearing of an application, an additional fee of –

- (i) \$500 if the hearing does not exceed half a day;
- (ii) \$850 if the hearing exceeds half a day but does not exceed one day; or \$850 for the first day of the hearing plus \$500 for each day or part of a day thereafter;
- (d) all reasonable disbursements, excluding counsel's fees.”

5. Mr Johnson takes issue with the fact that the worker has claimed hearing costs on each file under Reg 6(i)(c)(ii) and submits that the taxing officer must have the power to look behind the lump sum fee in circumstances such as this where one hearing resulted in the resolution of all matters.
6. Ms Farmer, counsel for the applicant, disagrees and submits that the plain meaning of the governing legislation allows the applicant to elect to calculate their costs by claiming either the lump sum fee or to time cost their work and claim a percentage (see Sec 24(4) supra). She submits that should they elect to claim the lump sum for the hearing on each individual file, then they are entitled to do so-even if all matters were in fact dealt with at the same time.
7. Ms Farmer further submits that the wording of the Act, Regulations and Rules for Victims Assistance applications only speaks of “*an application under section 5*” rather than “*an application or applications under section 5.*” Ms Farmer emphasises that s 24, in giving the applicant the choice of either the lump sum or percentage scale relates this choice to “*an application under section 5*” in the singular. Ms Farmer concludes that the applicant has the discretion to choose the lump sum scale for the cost of the hearing with respect to an application without any need for justification if in fact that application was heard with other matters for which the lump sum

scale is also being claimed. It is a simple either/or choice which the applicant alone can make and that they should be confident that they will not be called upon to justify their decision.

8. Ms Farmer's final submission is that the Taxing Officer does not have an overriding discretion to look behind any lump sum fee claimed under the Crimes Victims Assistance legislation as amended in late 2002. She states that the Crimes (Victims Assistance) Rules and Regulations that came into force on 1 November 2002 were designed to "stand alone" on the issue of legal costs and there is no clear reference in the legislation to the Supreme Court Rules –which contain wider discretions given to the taxing Officer.
9. I have considered Ms Farmer's submissions but I am not persuaded that the plain meaning of the Crimes (Victims Assistance) legislation as amended in fact allows an applicant to claim four composite fees for one hearing in the manner she suggests. Ms Farmer relies heavily on the fact that the Regulations relate an applicant's entitlement to costs to "*an application under Section 5*". In other words she places great reliance on the draftsman choosing throughout the singular –"*an application under Section 5*" rather than the plural or both.
10. My first comment is that section 24 (b) *Interpretation Act* states that in an Act, "*words in the singular shall include the plural and words in the plural shall include the singular.*" In other words, it is questionable whether one can rely on the use of the singular rather than the plural as evidence of the legislator's intent.
11. My next point is that I am not persuaded that an ordinary reading of the words in the legislation lead only to the interpretation that Ms Farmer suggests. I refer particularly to Regulation 6(1)(c) which states:

“(c) for attending the hearing of an application, an additional fee of–

- (i) \$500 if the hearing does not exceed half a day;

- (ii) \$850 if the hearing exceeds half a day but does not exceed one day; or
- (iii) \$850 for the first day of the hearing plus \$500 for each day or part of a day thereafter;(my emphasis)”

12. It seems to me that the Taxing Officer should be concentrating on the words “for attending the hearing” in deciding whether or not an amount can be claimed rather than the words “an application” that follow it. With respect to the 4 applications, “the hearing” in question took place on 28 February 2003 and lasted half a day. The interpretation I would place on these words is that the applicant should be compensated for their time in attending that hearing. Should they choose the lump sum scale, then they are only entitled to claim for the hearing once irrespective of the number of applications dealt with at the hearing.

13. The above interpretation appears to be in line with one of the stated intentions of the amendments to the Crimes (Victims Assistance) legislation in late 2002-namely the reduction in legal costs payable under the scheme. This purpose is clearly stated in Second Reading Speech of the Attorney General Dr Toyne on 22 August 2002. He states at page 3;

“The other significant amendment is the proposed reduction in legal costs payable under the scheme.....With the simplification of the process effected by the Bill, it now seems appropriate to reduce costs and to reduce them across the board.”

14. I note that Section 62A of the Interpretation Act states:

“In interpreting a provision of an Act, a construction that promotes the purpose or object underlying the Act (whether the purpose or object is expressly stated in the Act or not) is to be preferred to a construction that does not promote the purpose or object.”

15. It appears to me that Regulation 6 can and should be read in a manner that promotes one of the stated purposes or objects underlying the Act-namely a reduction of legal costs. This means in the case in question that the applicant is entitled to claim the lump sum fee for attending the hearing only

once-irrespective of the number of applications that were dealt with at that hearing.

16. The Territory's second objection is similar in nature. The applicant has claimed the composite rate for attending the uncontested interlocutory hearing of the extension of time application on 28 August 2002. The composite fee of \$618 has been claimed on each of the files. This fee necessarily includes recompense for all matters relating to the interlocutory application including preparation of documents and preparation for and attendance at hearing. The Territory's objection is to that portion of the composite fee that relates to the hearing time on the basis that the applicant should not in effect be compensated four times for attending the hearing when all four matters were dealt with at the same hearing which lasted less than two hours including waiting time.
17. This interlocutory application was heard prior to the commencement of the new Rules and Regulations on 1 November 2003 and is therefore to be considered in the light of the Rules at that time. Mr Luppino SM considered those rules and the question of whether a Taxing Officer could go behind a claim for a composite fee in *Bullock v Nationwide News & Bradshaw [2002]NTMC 050*.

He found that they could. He stated at paragraphs 17 to 19:

"17. It is an accepted principle that the discretion as to costs is absolute. At common law a court has the power to disallow any work which is improperly done or unnecessarily done (see *Edwards v Edwards* [1958] P 235 and *Myers v Elman* (1940) AC 282. The exercise of this power in relation to composite fee items necessarily involves the Court having the power to go behind the composite fee."

18. The absolute discretion of the courts in relation to costs is the common thread in the various authorities on costs. Further there is authority for the proposition that an interpretation of legislation (or rules) which purports to fetter that discretion is not to be lightly adopted, see *Copping v ANZ McCaughan Ltd* (1995) 63 SASR 523.

19. In my view the effect of this is that a clear statement is required in any legislation (or rules) which purports to fetter the discretion of a court in relation to costs. It is for this reason that I consider it very telling that there is no clear statement in the Rules to indicate that the option of the party entitled to costs to claim a composite fee overrides the general discretion.”
18. I intend to look behind the composite fee in the matter before me. It appears to me that if one hearing is required for 4 matters, then the applicant should be properly reimbursed for attending at that hearing-but not by the awarding of 4 composite fees. I consider that the only way I can do this is if I am provided with amended bills of costs based on time records rather than the composite scale with respect to this interlocutory matter. An alternative would be for the applicant to claim the composite fee on one file and then claim on a time basis for the other files less the hearing time.
19. I intend to adjourn this matter sine die with liberty to apply. Now that the solicitors involved know my view on each of the issues, they may well be able to resolve the costs without needing a detailed ruling. If they want a detailed ruling, then I require amended bills to be provided in taxable form in the manner suggested above and written objections on this issue from Mr Johnson.
20. The taxation is adjourned sine die with liberty to apply.
21. Internal Review by JR Monaghan in 14 days.

Dated this 29th day of August 2003

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**B MONAGHAN**  
JUDICIAL REGISTRAR