

CITATION: BN v Victim Assist Queensland, Department of Justice and Attorney-General [2013] QCAT 379

PARTIES: BN
(Applicant)
V
Victim Assist Queensland, Department of Justice and Attorney-General (First Respondent)
and
Attorney-General for Queensland (Second Respondent)

APPLICATION NUMBER: GAR298-11

MATTER TYPE: General administrative review matters

HEARING DATE: 7 & 8 May 2013

DECISION OF: **Hon K Cullinane AM QC, Member
Kerrie O'Callaghan, Senior Member**

DELIVERED ON: 16 August 2013

DELIVERED AT: Brisbane

ORDERS MADE:

- 1. The decision of Victim Assist Queensland to refuse BN's application for financial assistance to travel to Canada and undertake a spiritual healing program is confirmed.**
- 2. The publication of any information that may enable the applicant to be identified is prohibited.**

CATCHWORDS: REHEARING – GENERAL ADMINISTRATIVE REVIEW – EXTERNAL REVIEW OF REVIEWED DECISION – where applicant sought financial assistance under the *Victims of Crime Assistance Act 2009* (Qld) – where the first respondent refused the application – where the applicant applied for review of the first respondent's decision – where the Tribunal found that the applicant was entitled to financial assistance based on 'exceptional circumstances' – where respondents appealed that decision – where Appeal Tribunal allowed appeal – where the Appeal Tribunal set aside

the decision and returned the matter to the Tribunal for reconsideration – whether the treatment sought by the applicant should be categorised as ‘medical’, ‘counselling’ or ‘other expenses’ – whether proposed expenditure reasonable in the circumstances – whether exceptional circumstances exist for the applicant – whether expenses would be incurred to ‘significantly help’ the applicant recover the act of violence

Victims of Crime Assistance Act 2009
Queensland Civil and Administrative Tribunal Act 2009

APPEARANCES and REPRESENTATION (if any):

APPLICANT: BN was self represented

RESPONDENT: Victim Assist Queensland was represented by Ms AC Freeman, of counsel
The Attorney General was represented by Mr AD Keys, of counsel

REASONS FOR DECISION

- [1] This is an external review by the Tribunal of a decision of Victim Assist Queensland (VAQ) refusing further financial assistance to BN in respect of the consequences of violence sustained by her. The assistance is sought to enable BN and a companion to attend what is described as a spiritual healing program to be conducted by the Cree people of Canada.

Decision under review and background to that decision

- [2] Unfortunately for all concerned it has taken some time for BN’s application for assistance to be finally determined.
- [3] The application to VAQ arises from an assault committed on BN in 2007. At that time she had been engaged by an Aboriginal clan to assist in the negotiation of a native title compensation claim.
- [4] During this process she was subjected to an assault by an Aboriginal woman. She suffered emotional and physical trauma and has been undergoing therapy with mental health practitioners since that time. It is not disputed that BN’s suffers from post traumatic stress disorder. As will be discussed further in these reasons BN has had previous treatment from mental health practitioners for stress and trauma.
- [5] BN made an application in May 2010 for various types of assistance from VAQ including a claim for expenses due to “exceptional circumstances”

for the cost for herself and her companion to travel to Canada to enable her “to see family and spend time with counselling and getting strong support and distancing myself from Australia, as reminders of assault and threats sometimes often felt like living in nightmares”.

- [6] VAQ made a decision on 16 August 2011 approving certain of the claims for assistance but refusing the claim for the cost of the trip and therapy in Canada.
- [7] BN applied to QCAT to review that decision. As part of the review process VAQ was directed to reconsider its decision. As a consequence VAQ made a new decision on the application for assistance dated 18 April 2012. The decision was that the application for payment of the costs should be refused but on different grounds to the previous decision.
- [8] BN continued with the review of that decision in QCAT. The application was heard in July 2012. The Tribunal set aside VAQ’s decision and ordered that they pay her \$20,480.00 being the cost of BN and her companion to travel to Canada and attend a treatment program.
- [9] VAQ appealed. The Attorney-General joined as a party to the appeal. On appeal the Tribunal’s decision was set aside on the basis that the Member had erred in failing to make a finding about the whether the expenses for travel and treatment classified as “medical” or “counselling” on the one hand or “other” expenses and would be incurred “to significantly help the victim recover”.
- [10] The Appeal Tribunal returned the application to the Tribunal for reconsideration. This is the decision and the reasons following that reconsideration.
- [11] The hearing took place over 2 days. BN appeared and gave evidence on her own behalf. She also relied on oral evidence of her psychologist Jo Chibnall and her GP Dr Goel and video evidence of her proposed escort to Canada, Mr Gordon Charlie. VAQ and the Attorney General were represented by counsel. The decision maker, Mr Brendan James, gave evidence and was available for cross examination.

Nature of the review

- [12] The Tribunal has jurisdiction to conduct a review of VAQ’s decision pursuant to Victims of Crime Assistance legislation.¹
- [13] On review, the Tribunal may confirm or amend the decision; set aside the decision and substitute its own decision; or set aside the decision and return the matter to the decision maker.²
- [14] In conducting the review the Tribunal has all of the functions of the decision maker for the reviewable decision.³ The purpose of the review is

¹ *Victims of Crime Assistance Act 2009* (Qld) s 125.

² *Queensland Civil and Administrative Tribunal Act 2009* (Qld) s 24 (‘QCAT Act’).

to produce the correct and preferable decision following a fresh hearing on the merits.⁴ In effect, the Tribunal stands in the shoes of the decision maker and makes the decision afresh.

- [15] The task of the Tribunal is not to review the process by which the original decision maker made the decision. In this regard we note that BN spent a considerable amount of time cross examining the decision maker as to the matters he took into account in making the decision and whether he had had due regard to and understanding of her spiritual beliefs.
- [16] Whilst we understand these issues to be of concern to BN it is important that she understands the concept that the Tribunal considers all of the material afresh and makes its own decision. It is not concerned with whether there was an error made by the decision maker in its process in making the decision under review.

What is the legislative framework governing the decision

- [17] The *Victims of Crime Assistance Act* 2009 was enacted to (amongst other purposes) provide a scheme to give financial assistance to certain victims of acts of violence. The objectives of the scheme are set out in s 3(2) as:⁵

- (a) to help victims of acts of violence to recover from the acts by giving them financial assistance; and
- (b) for primary victims, to give the victims amounts representing a symbolic expression by the State of the community's recognition of the injuries suffered by them; and
- (c) ...
- (d) to add to other services provided by or for government to victims of acts of violence.

- [18] Sub-section (3) is also of importance. It provides:

However, grants of financial assistance (including special assistance and assistance as mentioned in section 49(1)(f)) to victims of acts of violence under the scheme are not intended to reflect the level of compensation to which victims of acts of violence may be entitled at common law or otherwise.

- [19] BN is a primary victim of violence. There is a statutory limit of \$75,000.00 on the financial assistance which may be paid to a primary victim.⁶
- [20] Section 39 provides for the components of assistance which might be provided:

³ QCAT Act s 19(a).

⁴ QCAT Act s 20.

⁵ *Victims of Crime Assistance Act* 2009 s 3(2)(a).

⁶ *Victims of Crime Assistance Act* 2009 s 38(1).

The assistance granted under section 38(1) to a primary victim of an act of violence may consist of one or more of the following components -

- (a) reasonable counselling expenses incurred, or reasonably likely to be incurred, by the victim as a direct result of the act of violence;
- (b) reasonable medical expenses incurred, or reasonably likely to be incurred, by the victim as a direct result of the act of violence;
- ...
- (g) if exceptional circumstances exist for the victim, other expenses incurred, or reasonably likely to be incurred, by the victim to significantly help the victim recover from the act of violence;”

[21] The question of how to categorise the cost of the trip to Canada and the treatment by Cree Nations Institute has been considered a number of times by the original decision maker, the Tribunal and the Appeal Tribunal. This issue is dealt with later in these reasons.

The issues for determination

[22] The Appeal Tribunal set out what they considered the issues in dispute were for determination on a rehearing, subject to the proviso their relevance on the basis the material ultimately put before the Tribunal.

[23] From the evidence, written material and oral submissions put before the Tribunal at the rehearing the Tribunal has identified the following issues for determination:

1. Is the treatment properly categorised as either “medical”, “counselling” or “other expenses”.
2. Is the proposed expenditure reasonable in the circumstances.
3. Whether exceptional circumstances exist for BN.
4. Whether the expenses incurred in obtaining the treatment would be incurred to “significantly help” BN recover from the act of violence.

The categorisation of the treatment

[24] In her original application to VAQ BN did not specify the type of treatment she sought funding for. She simply said that she needed to go overseas to Canada to see her family and spend time with counselling and getting strong support.⁷

[25] In the application form she claimed the costs under the heading of “other expenses” because of exceptional circumstances.⁸ She said her exceptional circumstances were that the mainstream treatment for her post traumatic stress disorder had failed and she needed spiritual healing

⁷ Exhibit 13 – Bundle of Documents – Document 1.

⁸ Exhibit 13 – Bundle of Documents – Document 1.

treatment by a program designed for Indigenous Canadians with whom she identified.

- [26] Subsequently in September 2010 her treating psychologist, Jo Chibnall, advised VAQ that BN had told her that mainstream therapy was not working for her: that she identified as an Indigenous person due to her ancestry and upbringing in Canada and as a result was “in need of traditional healing model that was available in Canada - the Nechi Institute”. BN wanted the cost of this treatment included in her application for assistance. In its first decision,⁹ VAQ determined that although exceptional circumstances may exist for BN, the cost of the travel to and the treatment in Canada was not reasonable as there was insufficient evidence to indicate that such treatment would significantly assist her recovery.
- [27] As part of her review of that decision BN sought funding to attend a different healing program at the “Eyaa Keen Centre” in Canada. Eyaa Keen had recommended a program which involved participating in a 10 day therapy session entitled “higher way of life”. The centre described their programs as Aboriginal traditional based behavioural treatment programs.¹⁰
- [28] In its second decision following a reconsideration¹¹ VAQ changed their position and decided that the treatment BN was seeking at Eyaa Keen was properly categorised as medical or counselling treatment and therefore they did not have to consider whether special circumstances existed and whether the treatment would significantly assist her recovery.
- [29] They found it was not necessary to decide whether the treatment was counselling or medical as in either case the expenses needed to be reasonable and they were not.
- [30] Subsequent to that decision and prior to the first hearing of the QCAT review, Eyaa Keen withdrew their offer to provide treatment, advising in an email to VAQ on 2 May 2012:

We thank you for your consideration and ask that [BN’s] needs be looked after closer to her residence. This is in order for her to have a support system nearby. After examining the situation, we feel that the distance between our countries makes it challenging to ensure quality of care.¹²

- [31] BN then turned to the “Cree Nations Treatment Haven” in Canada which is the centre she now seeks financial assistance from VAQ to attend.

⁹ Exhibit 13 – Bundle of Documents – Documents 41 & 42.

¹⁰ Exhibit 13 – Bundle of Documents – Document 657.

¹¹ Exhibit 13 – Bundle of Documents – Document 97.

¹² Exhibit 13 – Bundle of Documents – Document 102.

[32] Cree Nations had written to VAQ setting out an explanation of what their program offered.¹³

[33] They described the program in these terms:

Our (35) day in-patient program consists of Aboriginal traditional intensive multi-disciplinary treatment for adult individuals, couples and groups by offering treatment for trauma and major loss, group work, therapeutic training and individual support, and all with a view to personal and community healing, change and development. The holistic approach enables participants to recognise their natural gifts and abilities with the aim of leading to a productive healthy life.

...

We provide ceremonial sweats for individuals who wish to participate to discover their identity and spirituality.

[34] The decision maker for VAQ, Mr James, filed an affidavit in which he deposed to having sent 3 emails to Cree Nations asking for information as to the proposed treatment and that as at the date of his affidavit he had received no response.

[35] He also said that he conducted internet searches of Cree Haven and the material he found indicated that the focus was the treatment of addictions. The website described the Haven's services in these terms:

Cree Nations Treatment Haven utilises the "life process" model of addiction, providing a client directed outcome therapy approach which encourages clients to develop individualised treatment plans based on their own needs, situations, values and beliefs.

[36] The website listed 23 programs that were offered including "addictions; spirituality; abuse issues; anger management; relaxation of mind; body and spirit; group therapy; 1 on 1 counselling...". There was not a specific program for treating post traumatic stress disorder.

[37] BN produced a letter from Cree Nations to VAQ dated 19 April 2013.¹⁴ Apparently the letter was in response to Mr James' affidavit. The letter said in effect that Cree had not responded to his emails because "of the extreme demands on them for healing". They explained that their website was introductory only and not comprehensive. They said "we offer tailored programs like the one that we have devised for BN. She is an initiated family tribal member and the causation factors are not alcohol related, although commonality with alcoholics her post traumatic stress disorder symptoms are caused from severe trauma that is in need of our unique holistic program that caters to all causation stresses and factors."

¹³ Exhibit 13 – Bundle of Documents – Document 110 (Letter from Cree Nations Treatment Haven to VAQ 15 June 2012).

¹⁴ Exhibit 13 – Bundle of Documents – Document 167 (Affidavit of applicant 25-4-12 Exhibit 1).

- [38] Despite the information provided it is still difficult to comprehend with any precision what the treatment entails. Unfortunately, representatives from the Cree Nation Haven were not available to give telephone evidence at the hearing.
- [39] As to the specific issue of whether the treatment can be classified as a counselling or medical expense BN was consistent in all of her material and oral evidence that it did not fit comfortably within those categories and was instead an “other” expense to which she was entitled. The VAQ had originally rejected the claim on the basis that it didn’t fit the requirements of “other expenses” therefore by implication it was not regarded as a medical or counselling expense.¹⁵
- [40] In their second decision (the one under review) they found that the expense of attending the Eeya Keen centre was properly categorised as either medical or counselling treatment and didn’t fall within the “other expenses, exceptional circumstances” component.
- [41] They said they formed this view because Eeya Keen proposed to provide “treatment” to heal victims of trauma and this was consistent with the concept of “treatment” contemplated by the medical and/or counselling expense components of section 39.
- [42] At the hearing before this Tribunal neither VAQ nor the Attorney-General pressed for or made any submissions that would support a finding that the therapy to be provided by Cree Nations would be a medical or counselling expense. Their submission was to the effect that it didn’t matter whether the expense was categorised as medical, counselling or “other” as in any case the expenditure had to be reasonable which this was not.
- [43] Despite the volumes of material, there is little substantive information about the actual services and the treatment that BN will receive at Cree Haven. The best we can conclude is that it is holistic and spiritually based therapy and is apparently different to clinical therapy provided by mainstream psychological services. From the nature of the program as emerges from the material we do not consider that it could be categorised as either medical or counselling.
- [44] The Appeal Tribunal came to the same conclusion and agreed with the Member at first instance that “it was properly described as “holistic and spiritually based”. It said “it appears different in nature from what is considered to be counselling in this country”.

Is the expense reasonable?

- [45] If the expense was properly categorised as counselling or medical then the legislation requires that it be reasonable before it can be paid. If it’s more properly categorised, as we think it is, as “other expenses” then the legislation doesn’t expressly state that it must be reasonable however we

¹⁵ Exhibit 13 – Bundle of Documents – Documents 41 & 42.

accept that it is appropriate to imply the requirement that the expenses are reasonable. This was also the approach that the Appeal Tribunal took. The Appeal Tribunal found:

It was appropriate for the Member to find whether or not the expenses sought for the provision of that treatment were reasonable...because it is appropriate to construe s 39(g)... as authorising the grant of assistance if there are exceptional circumstances and if the expenses incurred to significantly help the victim recover from the act of violence can be regarded as reasonable in all those circumstances.

- [46] Since making the claim for assistance in 2010 BN has received a grant in excess of \$11,000.00 for expenses including medical, counselling, travel to psychologist appointments and legal expenses.¹⁶
- [47] Cree Nation Haven have offered the 35 day treatment at a cost of \$4,000.00 on the condition that VAQ pay for the flights for BN and her escort. BN has put forward a number of quotes from travel agents to cover the costs of travel.
- [48] Her evidence was that because of her anxiety she would require 3 stopovers on the way. She also did not want to fly through Asian or American airports as she found them stressful. Her psychologist Jo Chibnall gave evidence that she agreed it would be necessary for BN (because of her heightened state of anxiety) to have an escort. She said it would be beneficial although not essential for her to have 3 stopovers to break the journey.
- [49] The most recent quote for BN and her companion to travel to Canada with 3 stopovers was \$15,658.00.¹⁷
- [50] The *Victims of Crime Assistance Act* 2009 provides for approval by the Chief Executive of a table of costs as a guide for deciding whether costs are reasonable for the scheme. The current table¹⁸ says that VAQ will reimburse the cost of medical treatment and counselling services at the current rate specified in the QCOMP Schedule. The schedule¹⁹ sets out the hourly rate and the number of hours that can be claimed for an initial and subsequent consultation. The maximum appears to be an initial consultation of 2-3 hours and subsequent consultations of at 4-6 hours at \$158 per hour.
- [51] These figures are specific to counselling costs and therefore not particularly helpful as the Tribunal does not find that the expense is a counselling expense, however, they do give a flavour of the amount and the nature of what would be regarded as a reasonable award. Clearly it is not intended that the payments for the cost for treatment and therapy be open ended.

¹⁶ Exhibit 13 – Bundle of Documents – Document 166 (Exhibit BJ3).

¹⁷ Exhibit 13 – Bundle of Documents – Document C8 (Travel quote from STA Travel).

¹⁸ Exhibit 13 – Bundle of Documents – Document 166 (Exhibit BJ7).

¹⁹ Exhibit 13 – Bundle of Documents – Document 166 (Exhibit BJ7).

- [52] There is no reference to “other costs” in the table other than to say that transport costs can be considered under “other costs” if the transport cost will significantly help the victim recover from the act of violence.
- [53] BN’s consistent submissions on the issue of reasonableness were:
- She identified as an Indigenous Canadian;
 - Mainstream therapy had not assisted her to recover from the assault; and
 - She believed a spiritual holistic healing program such as that offered by Cree was the only treatment that could help her recover.
- [54] None of these points were in dispute.
- [55] It is accepted that the therapy BN has received to date has not successfully treated her underlying post traumatic stress disorder. There is ample evidence to this effect from her current treating psychologist, Jo Chibnall, to this effect. For example in her report of 19 March 2012²⁰ she says “despite our best efforts, my client’s post traumatic stress disorder remains largely unchanged.”
- [56] In oral evidence she said she had helped BN with dealing with her day to day high levels of stress and anxiety but that she felt BN has not and will not respond to mainstream treatment because it does not encompass spiritually and cultural aspects of her upbringing that are important to her.²¹
- [57] For this reason the Tribunal could come to the conclusion that the first criteria section 39(g) has been met, that is that exceptional circumstances exist for BN in that she has not responded to mainstream therapy. She’s convinced that only a Canadian Indigenous treatment program will be effective. It is accepted that there are Indigenous treatment programs available in Australia however BN is of the view, as is her psychologist, that these programs would not be effective because of the cultural and spiritual differences and the fact that as her assault was at the hands of an Aboriginal woman she has a fear of Aboriginal Australians.
- [58] The underlying argument through BN’s submissions was that it was not only reasonable for VAQ to pay for her to travel to Canada and obtain treatment but that they had an obligation to do so.
- [59] Comments such as:
- “The Victims Assist has a duty of care to assist me to obtain the optimal recovery from my psychological state.”²²

²⁰ Exhibit 13 – Bundle of Documents – Document 96.

²¹ From CD of oral evidence 7-5-13.

²² Exhibit 13 – Bundle of Documents – Document 56.

“As the ethos of the Victims Assist Act is to cater to my religious belief system, it is important that the expenses that cover \$4,000.00 for a 35 day treatment including accommodation and food for myself and my escort is considered reasonable...”

were common throughout her oral and written submissions.

[60] She was of the view that in denying her the opportunity to attend the centre the VAQ (and the Attorney-General) were displaying racial and religious prejudice which was inconsistent with their obligations.

[61] She said:

As my circumstances are unusual in that my belief system is unique to Australia, but common place in Canada that it makes common sense and good sense that I simply stop wasting the time of the Tribunal, and that Victims Assist with the Attorney-General stop wasting tax payers dollars and fund me and simply send me urgently for treatment as BOTH OF THEM HAVE A FIDUCIARY DUTY OF CARE TO MY TREATMENT and that I receive the optimum recovery.

Both have demonstrated ethnocentric racist attitudes common in Australia and are in breach of section 116 of the constitution...²³

[62] This expectation is however inconsistent with the specific objects of the *Victims of Crime Assistance Act 2009*.

[63] Regard should be had to these objects when determining whether the expenses claimed are reasonable.

[64] The purposes of the assistance is set out as:

for primary victims, to give the victims amounts representing a symbolic expression by the State of the community's recognition of the injuries suffered by them; (emphasis added)²⁴

[65] The terms of section 3(2) make it clear that it is not the legislative intent that assistance might be provided for permanent treatment or to permit a victim to pursue all possible and alternative treatments when the initial treatment has not been successful.

[66] The assistance is not intended in any way to be compensation and it is not the case that VAQ has an obligation or duty to do all it can to provide a possible cure for the victims injuries suffered by them.

[67] VAQ and the Attorney-General submitted that regard should also be had to the cause of BN's current post traumatic stress disorder in determining whether the assistance sought is a reasonable expense.

²³ Exhibit 13 – Bundle of Documents – Document 158 at page 5.

²⁴ *Victims of Crime Assistance Act 2009* s 3(2)(b).

- [68] BN has acknowledged that she has suffered post traumatic stress prior to the assault the subject of this application. She stresses however that on previous occasions she has recovered to the extent that she could continue with her various studies, occupation and maintain a normal lifestyle.
- [69] This is not disputed. What is put forward by the respondents however is that the reason she has been unable to recover from this most recent assault through mainstream therapy is because of the accumulative effect of previous trauma. They say therefore the cost of the treatment and the trip to Canada is not an expense to assist her to recover from the act of violence but rather from the accumulative effect of various traumas.
- [70] She received psychological treatment from a Dr Bright in Cairns 23 years ago to treat significant psychological trauma resulting from a motor vehicle accident.²⁵
- [71] In 1995 BN was the victim of a serious sexual assault from which she suffered post traumatic stress disorder. She received criminal compensation and undertook conventional mainstream psychological treatment to assist in her recovery.²⁶
- [72] In 2005, BN suffered unwanted male attention. She went to Canada and obtained treatment at Cree Nations for what she describes as “women’s issues”. She says at this time she had not been diagnosed with any serious anxiety or stress disorder and was able to return to Australia and continue with study and work.²⁷
- [73] The respondents submit that BN’s extreme reaction to the assault (namely that some 6 years after the event and after many years of therapy she is still suffering post traumatic stress disorder), and her belief that she can only recover by attending Indigenous treatment in Canada, may well be a result not of the act of violence in 2007 alone but an accumulative effect of the previous trauma in her life.
- [74] This view is supported by her psychologist Jo Chibnall, particularly in her oral evidence.
- [75] She said she had only (in the last couple of weeks) become aware of the assault in 1995 and the resulting trauma.²⁸
- [76] She said it was well known that when there has been repeated or prolonged trauma each traumatic event will further impact on the person’s

²⁵ Exhibit 13 – Bundle of Documents – Document 158 (Letter Dr Bright 6/8/2012 annexure AC 16 to applicant’s affidavit 25 March 2013).

²⁶ Exhibit 12 – Affidavit of Brendan James 3-5-13 (Exhibit BJ1).

²⁷ Exhibit 13 – Bundle of Documents – Document 158 (Applicants submissions to QCAT directions – page 10 – para M).

²⁸ CD of oral evidence 7 May 2013.

wellbeing. She said the fact there had been another serious assault was certainly going to impact on BN's ability to heal from this assault."²⁹

- [77] She said the latest assault, "had just been one assault too many".
- [78] In cross examination she agreed that the other assaults made BN's condition a complex trauma which affected the severity of her reaction and made her resistant to treatment.
- [79] The Tribunal accepts that there is a strong possibility that BN's inability to recover from the trauma with assistance of mainstream therapy is the result of an accumulation of previous traumas. Without that history it may well be that the therapy she received to date would have been of greater assistance in her recovery. This is a relevant consideration regarding the reasonableness of the expense.
- [80] A further factor that the respondents submit the Tribunal should consider in determining the reasonableness or otherwise of the expense is whether the treatment will significantly help BN recover from the post traumatic stress disorder which she maintains arises from the act of violence in 2007.
- [81] This factor not only goes to the issue of reasonableness but if the claim is to be considered under section 39(g) it is a prerequisite to the grant of assistance.
- [82] BN is in no doubt that the treatment is essential to her recovery. This is apparent from the voluminous written statements and submissions filed and from her oral evidence.
- [83] Since the hearing of this matter has concluded BN has continued to provide the Tribunal with statements and material which she maintains establishes her entitlement to and her desperate need for the treatment in Canada. The Tribunal has not taken that material into account in its decision. There has been no fresh evidence application and no opportunity for the respondents to respond to the material.
- [84] As alerted to earlier in these reasons, despite the amount of material it is still difficult for us to determine with any precision the treatment BN will receive and how that treatment will address her disorder.
- [85] The evidence from BN's treating psychologist and GP did not convince the Tribunal that the treatment which will be provided would significantly assist her to recover from the act of violence or indeed her condition of post traumatic stress disorder.
- [86] BN put into evidence 3 reports under the hand of her GP Dr Goel.³⁰

²⁹ CD of oral evidence 7 May 2013.

³⁰ Exhibit 1 (24 January 2013), Exhibit 2 (15 April 2013) and Exhibit 3 (16 May 2013).

- [87] In oral evidence Dr Goel conceded that BN had in fact written these reports and that he had approved them before he signed them. He said that he “asked BN to draft a report that she wanted and asked her to write what she thought was appropriate.”³¹
- [88] He confirmed he did not know what the treatment from Cree Nations involved but that he was satisfied from what BN had told him (and the fact that the program was accredited by Canadian Government) that he thought it would help her.
- [89] He conceded he did not know whether the treatment would help her but he agreed to support her request for assistance because “anything I can do to make the patient feel better and less anxious I will support” and “it was worth giving it a go.”
- [90] The Tribunal has no doubt that Dr Goel had BN’s best interests at heart but felt his oral evidence detracted from the forcefulness of his written reports in regard to the likelihood of success of the Cree program.
- [91] BN also put forward a number of written reports and letters from her current treating psychologist Jo Chibnall. Ms Chibnall also gave oral evidence.
- [92] The thrust of her evidence was that:
- She commenced treating BN in 2010.
 - BN suffers from severe post traumatic stress disorder.
 - BN identifies as an Indigenous Canadian.
 - The mainstream therapy she is providing is of assistance in managing BN day to day stress but is not working to treat her post traumatic stress disorder because of BN’s strong religious beliefs and cultural ties.
- [93] In her written report dated 22 August 2012 she commented:
- The fact that BN has found the Canadian model of Indigenous holistic treatment successful in the past, suggests the probability of it “significantly helping the victim recover from the act of violence” is high, whereas doing more of the same unsuccessful treatment within the mainstream/clinical approach is certainly not recommended.³²
- [94] This statement is no doubt intended to address the requirement in section 39(g) and is the only evidence (apart from BN’s herself) that comes close to supporting a finding that the expenses would significantly assist BN to recover.

³¹ CD of oral evidence 7 May 2013.

³² Exhibit 13 – Bundle of Documents – Document 158 (B2 – report of Jo Chibnall 22-8-12).

- [95] Ms Chibnall's oral evidence before the Tribunal was not as persuasive.
- [96] She said that BN had not responded as well as she would have expected and that she had referred her to Cree because her cultural and spiritual beliefs were so strong. She said for this reason a holistic spiritual approach would be more likely to be successful. She expressed the view that this approach was "the only avenue that I can see that has some hope of healing her".
- [97] Whilst the Tribunal accepts BN is convinced that Canadian treatment will help her recover, the less subjective evidence falls short of satisfying us that the program will significantly help her recover from the act of violence and from the post traumatic stress disorder.

Findings

- [98] We do not consider the cost of the program and travel to Canada could properly be categorised as counselling or medical expenses. We accept that exceptional circumstances may exist for BN in that she has not responded positively to mainstream therapy and as such the claim is one of "other expenses". We do not consider however that the proposed expenditure is reasonable for the following reasons:

- The amount sought for travel and treatment goes beyond a symbolic expression by the State of the community's recognition of the injury suffered by BN in 2007.
- Whilst she may well benefit from the treatment we are not satisfied the need for this treatment arises solely from the act of violence occurred in 2007. It is more likely a result of the accumulative effect of a number of traumatic events and indeed escalated because of this litigation.
- We are not sufficiently informed as to how the program will treat her disorder and the evidence falls short of satisfying us that it will significantly assist her to recover from the assault she was unfortunately subjected to in 2007.

- [99] The decision of VAQ to refuse the grant of assistance to BN to travel to Canada to undertake a spiritual healing program is confirmed.

Findings

Non publication order

- [100] At the commencement of the hearing BN applied for an order prohibiting the publication of information that would lead to her being identified. She said that publicity around the case has had a negative impact on her already fragile mental health.

- [101] Section 66 of the QCAT Act allows the Tribunal to make non publication orders if the Tribunal thinks it is necessary to avoid endangering the mental health of a person.
- [102] The Tribunal is satisfied that BN is suffering post traumatic stress disorder and has high levels of stress and anxiety. In the circumstances and being no opposition from the respondents the Tribunal made the order prohibiting publication of any information that may identify the applicant.