

CITATION: *Charlie v Department of Justice and Attorney General (Victim Assist Queensland)* [2011] QCAT 443

PARTIES: Gordon Charlie
v
Department of Justice and Attorney General (Victim Assist Queensland)

APPLICATION NUMBER: GAR185-11

MATTER TYPE: General administrative review matters

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **C Endicott, Senior Member**

DELIVERED ON: 22 August 2011

DELIVERED AT: Brisbane

ORDERS MADE: **An extension of time to commence an application for review is refused.**

CATCHWORDS: ADMINISTRATIVE REVIEW – decision made to reject an application for financial assistance under the *Victims of Crime Assistance Act 2009* – review sought from Queensland Civil and Administrative Tribunal – application for review lodged more than 28 days after reviewable decision was received – extension of time applied for – explanation for delay given – review has little or no prospect of success

Queensland Civil and Administrative Tribunal Act 2009, ss 33(3), 61
Victims of Crime Assistance Act 2009, ss 25, 26(1)
Criminal Code 1899, s 359

APPEARANCES and REPRESENTATION (if any):

The application was heard on the papers in the absence of the parties under section 32 of the *Queensland Civil and Administrative Tribunal Act 2009*.

REASONS FOR DECISION

- [1] On 27 June 2007 at Hopevale, Gordon Charlie overheard a woman making a threat "I will kill you and that Gordon Charlie" during an incident when his carer, Ruth Schaefer was physically attacked by the woman. Mr Charlie took the threat seriously and feared for his life. Some time later he developed post traumatic stress disorder.
- [2] His application for financial assistance was refused by Victim Assist Queensland on 15 November 2010 after an unsuccessful internal review. Mr Charlie lodged his application for review in the tribunal on 23 June 2011. He asked for an extension of time in which to commence the review application as he was some six months out of time to commence a review.
- [3] Victim Assist Queensland has objected to any extension of time being granted. In its submissions, Victim Assist Queensland contended that legislative time limits provide certainty to parties while at the same time acknowledging that QCAT has a very wide discretion to extend time limits in section 61 of the QCAT Act.¹
- [4] Despite that discretion, QCAT's power to extend time should be exercised in accordance with principles developed by the courts in similar situations.² Those principles have been summarised in QCAT previously as follows:
- a. Whether a satisfactory explanation or good reason is shown to account for the delay.
 - b. The strength of the case the Applicant wishes to bring (assuming it is possible for some view on this to be formed on the preliminary material).
 - c. Prejudice to adverse parties.
 - d. Length of the delay, noting that a short delay is usually easier to excuse than a lengthy one.
 - e. Overall, whether it is in the interests of justice to grant the extension.³
- [5] After considering all of the information provided to the tribunal and the submissions by the parties about the request for an extension of time, I have decided for the reasons set out in the following paragraphs to refuse to grant an extension of time for Mr Charlie to commence a review of the decision made by Victim Assist Queensland and as a consequence the review of that decision will not take place.

Whether satisfactory explanation for lengthy delay

- [6] Under section 33(3) of the *Queensland Civil and Administrative Tribunal Act 2009* an application for review to the tribunal must be lodged within 28 days of the day when the person seeking a review has been notified of the particular decision. Mr Charlie has not stated when he received the letter dated 15 November 2010 containing the decision made by Victim Assist Queensland. However, I note that the address on the letter sent by Victim

¹ *King v TIC Realty (No. 3)* [2010] QCATA 104.

² *CMC v Chapman & Anor* [2011] QCAT 229 at paragraphs 8.

³ See paragraph 9 in *CMC v Chapman* above.

Assist Queensland to Mr Charlie is the same address that Mr Charlie has stated to be his current contact address in this proceeding.

- [7] Mr Charlie does not deny receiving the letter from Victim Assist Queensland dated 15 November 2010. I am satisfied that he received the letter at his correct contact address in the ordinary course of post on or about 17 November 2010. The letter contained information about his right to commence a review of the decision to refuse his application for financial assistance in QCAT within 28 days of receipt of that decision. The letter gave contact details about QCAT.
- [8] Jo Chibnall, a clinical psychologist, in a letter dated 15 June 2011 has explained that Mr Charlie's lateness in commencing this review stems from significant and multiple health problems, language and literacy difficulties and cultural difficulties understanding mainstream processes.
- [9] She stated that Mr Charlie attempted a number of avenues to find assistance in completing the review documentation. These included the Aboriginal Torres Strait Legal Services in Cairns. She stated that the Townsville office of that service agreed to accept Mr Charlie as a client but then decided to hand him over to the Cairns office.
- [10] Ms Chibnall stated that Mr Charlie did not want to use the Cairns office of that service due to a previous encounter with them but he decided he had to go with their decision. Despite Ms Chibnall contacting both the Townsville and Cairns offices of that service on 8 occasions between 24 December 2010 and 28 March 2011, no help was given to Mr Charlie.
- [11] Mr Charlie with the assistance of Ms Schaefer and Ms Chibnall contacted a solicitor in Adelaide requesting assistance in regard to the review of the decision made by Victim Assist Queensland. The solicitor had stated that he would really like to assist but took several months and was unable to commit to a time.
- [12] Ms Chibnall further stated that all of this effort to acquire the necessary assistance took a considerable amount of time and energy by Mr Charlie and Ms Schaefer both of whom, Ms Chibnall stated, have significant mental health issues. Ms Chibnall stated that with the time it took to determine that the various avenues of help were unavailable to them, the time lapse was considerable.
- [13] Victim Assist Queensland submitted that QCAT should not find that the explanation given by Mr Charlie for a 6 month delay was satisfactory. I do not agree. I am satisfied that given the expressed difficulties with his health, language and literacy issues and cultural issues, Mr Charlie reasonably attempted to find appropriate legal help to commence the review of the decision made by Victim Assist Queensland. The process he followed in exhausting the avenues for help became unduly prolonged and was essentially beyond his control.
- [14] QCAT may only infrequently grant extensions of time 6 months after the due date but nothing in the QCAT Act prevents QCAT from exercising its discretion in such a case.

Strength of case for review

- [15] Mr Charlie relies on the report of Ms Chibnall to set out the grounds on which he intends to seek a review of the decision to reject his application for financial assistance. Those grounds appear to be an assertion that Mr Charlie should be found to be a primary victim as defined in the *Victims of Crime Assistance Act 2009* as a result of the incident in Hopevale on 27 June 2007.
- [16] Ms Chibnall has asserted that Mr Charlie was in a vehicle right beside Ms Schaefer when she was attacked. She has asserted that Mr Charlie had been advised to stay hidden in the vehicle as his life had been threatened in the community previously. During the attack, Mr Charlie's life was again threatened. Ms Chibnall asserted that Mr Charlie was a victim of this threat at a time when he felt extremely impotent in being unable to protect himself and Ms Schaefer. Ms Chibnall asserted that Mr Charlie had reported feeling extremely fearful for his life and was very shaken.
- [17] Ms Chibnall stated that Mr Charlie has met the criteria of a diagnosis of post traumatic stress disorder arising from this threat. That diagnosis was also made by Dr Matthew Warburton and Denice Jeffery, a consulting psychologist in Cairns. No medical evidence is before me to challenge the diagnosis expressed by Ms Chibnall and for the purposes of these reasons, I accept that diagnosis.
- [18] Mr Charlie has not contended that the assailant knew he was in the vehicle at the time or that she had known that he had heard the threat she made. Mr Charlie has given several different accounts of the incident of 27 June 2007 but in all these accounts he has stated that he had remained hidden during the incident. I am satisfied that the evidence establishes that Mr Charlie was hidden from the assailant at the time of the incident and that accordingly she did not know he was in the vehicle.
- [19] Is the same evidence capable of leading QCAT to a conclusion that Mr Charlie was a primary victim of an act of violence? To answer that question I must examine the definitions in the *Victims of Crime Assistance Act 2009* of primary victim and an act of violence.
- [20] Section 26(1) of that Act defines a primary victim as a person who dies or is injured as a direct result of an act of violence committed against the person. Section 25 defines an act of violence as a crime that is committed which directly results in an injury to a person. That section also defines crime as an act or omission constituting a prescribed offence which in turn is defined as an offence or an attempted offence, committed against a person.
- [21] The combination of those various definitions requires a primary victim to have had an offence committed, or attempted to be committed, against that person. The threat to kill Mr Charlie was made verbally on one specific occasion by the assailant to Ms Schaefer. Victim Assist Queensland concluded that the elements of the offence of making threats⁴ would not be made out on the case presented by Mr Charlie.

⁴ See sections 75 and 359 of the *Criminal Code 1899*.

[22] I have examined the elements of an offence of making threats under section 359 of the *Criminal Code 1899*. In addition to involving a threat to cause a detriment to a person, there must be an intention by the offender to prevent or hinder a person from doing some act which that person is lawfully entitled to do, or to compel a person to do an act that they would be lawfully entitled not to do or to cause public alarm or anxiety. I agree that the evidence is unlikely to establish that the verbal threat made against Mr Charlie, when he was hidden from view, came within the terms of an unlawful threat under the *Criminal Code 1899*.

[23] Although the decision maker at Victim Assist Queensland did not go on specifically to consider other possible offences under the *Criminal Code 1899*, I have considered the offence of unlawful stalking which involves the elements of threats of violence intentionally directed at a person.⁵ However unlawful stalking only occurs when the conduct takes place on more than one occasion or on one occasion when the conduct is protracted. None of the various statements have described the incident as having occurred over a protracted period of time. I concluded that the offence of unlawful stalking was unlikely to be made out on the facts of this case.

[24] I am unable to find any other specific offence in the *Criminal Code 1899* which is likely to be established on the facts of this case. The incident, although deeply disturbing for Mr Charlie, appears not to have given rise to an offence being committed against him. In the absence of an offence, there would be no act of violence as defined under section 25 of the *Victims of Crime Assistance Act 2009* and in the absence of an act of violence, there can be no primary victim who has any entitlement to financial assistance.

[25] In view of that analysis of the basis of the review case to be made on behalf of Mr Charlie, I have concluded that a review of the decision made by Victim Assist Queensland has little or no prospect of success.

Prejudice to other party

[26] A purpose of QCAT reviewing a decision by an administrative decision maker is to produce the correct and preferable decision.⁶ Once a decision is made by QCAT following a review, the decision made by QCAT is taken to be a decision of the administrative decision maker.⁷

[27] On that basis, there can be no prejudice to Victim Assist Queensland in the event that a review of its decision is conducted by QCAT. It is in everybody's interests for the correct and preferable decision to be made.

Whether extension is in the overall interests of justice

[28] Mr Charlie has developed serious ill health and he wants financial assistance to pay for treatment for his psychological disorder. He is already receiving treatment locally but he wants to travel overseas for further treatment.

⁵ Section 359B of the *Criminal Code 1899*.

⁶ Section 20(1) of the *Queensland Civil and Administrative Tribunal Act 2009*.

⁷ Section 24(2)(a) of the *Queensland Civil and Administrative Tribunal Act 2009*.

- [29] I have no doubt that it is in the interests of Mr Charlie that an extension of time be granted to enable a review of the decision of Victim Assist Queensland to commence. However what is in his interests may not be always the same as what is in the interests of justice in this case.
- [30] Time limits for the commencement of reviews by QCAT are part of an overall process that strives for certainty in administrative decision making. Decisions are considered to be final and can be implemented with confidence. The commencement of a review is designed to be notified relatively quickly after an administrative decision has been made so the parties to the decision can get on with the process of implementing the decision.
- [31] Certainty is central to the process of discerning how the public interest can be best served. In relation to statutory authorities such as Victim Assist Queensland, it is in the public interest that they can conduct their statutory duties in accordance with the relevant legislation and with independence and diligence. Having some reasonable certainty about their decisions contributes to their independence.
- [32] Victim Assist Queensland, while subject to review by QCAT, should not be unduly subjected to processes that may tend to undermine the integrity of the victims assistance scheme which has been implemented for the support of the general community. The public has an interest in administrative decisions being finalised within a reasonable time. The public has an interest in relevant time limits being enforced in a reasonable manner.
- [33] The submissions of Victim Assist Queensland refer to the statement of the Court of Appeal in *O'Callaghan v Hall & Anor*: "*The notion that the rules setting time limits should be treated as of no importance is one which if accepted would be destructive of the proper administration of justice.*"⁸ That statement is pertinent as statutory time limits will not be treated by QCAT as having no importance. The discretion given to QCAT to extend time must be exercised carefully and only in the interests of justice.

Conclusion

- [34] I have concluded that the review that Mr Charlie wants to commence has little or no prospect of success. In view of that conclusion, I find that the interests of justice support QCAT not allowing an action that would undermine the finality of the decision to refuse Mr Charlie's application for financial assistance as a primary victim of an act of violence.
- [35] I have not been persuaded that I should exercise discretion to extend time to 23 June 2011 for the commencement of a review of that decision. Rather I am satisfied that the interests of justice require the extension of time should be refused in this case.

⁸ *O'Callaghan v Hall & Anor* [1993] QCA 297 at p7.