

**CITATION:** Maddeford v The Scheme Manager - Department of Justice and Attorney-General (Victim Assist Queensland) [2014] QCAT 350

**PARTIES:** Yvonne Maddeford (Applicant)  
v  
The Scheme Manager - Department of Justice and Attorney-General (Victim Assist Queensland) (Respondent)

**APPLICATION NUMBER:** GAR098-14

**MATTER TYPE:** General Administrative Review

**HEARING DATE:** 15 July 2014

**HEARD AT:** Brisbane

**DECISION OF:** **Member Gardiner**

**DELIVERED ON:** 21 July 2014

**DELIVERED AT:** Brisbane

**ORDERS MADE:** **1. The decision of Victim Assist Queensland dated 21 November 2013 is confirmed.**

**CATCHWORDS:** GENERAL ADMINISTRATIVE REVIEW – EXTERNAL REVIEW OF DECISION – Where altercation occurred – Where one person sustained injuries – Where claim made under *Victims of Crime Assistance Act 2009* – Where different versions of events – Where allegation that claimant instigated altercation – Whether claim can be sustained

*Victims of Crime Assistance Act 2009* ss 21, 23, 25, 80, 125  
*Criminal Code Act 1899 (Qld)* s 245

**APPEARANCES and REPRESENTATION (if any):**

**APPLICANT:** Ms Yvonne Maddeford appeared for herself

**RESPONDENT:** Ms A C Freeman of Counsel appeared for Department of Justice and Attorney-General

(Victim Assist Queensland)

## REASONS FOR DECISION

- [1] It was a Sunday afternoon in a small town in western Queensland when a backyard fight broke out between two women. Yvonne Maddeford had been drinking with her partner earlier in the day. She was visiting at the home of the estranged husband of Amanda Spackman who was then using her married name of Amanda Andrews.
- [2] Ms Spackman had on her evidence, very recently had surgery for breast cancer.
- [3] It is not disputed that the fight took place on 19 June 2011. Ms Spackman admits to pushing Ms Maddeford while standing on the stairs of the back door of her estranged husband's home that Sunday afternoon. Inside the kitchen at that time were James Andrews, Ms Spackman's husband and Bernard Shane Edwards (known as Shane), Ms Maddeford's partner.
- [4] Ms Maddeford had gone to the house first and on Mr Edward's evidence, he had arrived at the home of Mr Andrews looking for her. They were all sitting at the kitchen table when Ms Spackman knocked on the back door. Ms Maddeford answered the door to find Ms Spackman standing on the second top stair. It is then that the fight occurred.
- [5] What now happens is that the evidence between these two women and the men supporting them diverges substantially. Each of the women accuses the other of starting the fight and each of their partners backs up their partner's version of the story, at least at the hearing of this matter.
- [6] It is accepted that Ms Maddeford suffered injuries from this incident.
- [7] On 29 August 2013 Ms Maddeford applied to Victim Assist Queensland for financial assistance in relation to what she alleged to be an act of violence by Ms Spackman on that Sunday in June 2011. Ms Maddeford had complained to Police and the government assessor obtained the statements from all of the people present that afternoon made to the Queensland Police. A statement was also provided by the doctor Ms Maddeford attended just after the fight. These statements are statements made by witnesses within a very short period (some no more than three days) from the date of the fight.
- [8] Ms Spackman was interviewed in a recorded electronic interview by the Police as Ms Maddeford alleged she was the perpetrator of an assault. Ms Spackman gave verbal evidence to this Tribunal as her original statements were not available in written form. The Tribunal also had further statements by Ms Maddeford and Mr Edwards provided to support her application to Victims Assist.

- [9] The Tribunal has jurisdiction to conduct a review of VAQ's decision pursuant to Victims of Crime Assistance legislation.<sup>1</sup>
- [10] 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.<sup>2</sup>
- [11] In conducting the review, the Tribunal has all of the functions of the decision maker for the reviewable decision.<sup>3</sup> The purpose of the review is to produce the correct and preferable decision following a fresh hearing on the merits.<sup>4</sup> The hearing does not examine the process of the original decision maker. In effect, the Tribunal stands in the shoes of the decision maker and makes the decision afresh.
- [12] The *Victims of Crime Assistance Act 2009* (Qld) establishes a scheme for the payment of financial assistance to a victim of an act of violence<sup>5</sup>. If successful, the assistance is available to Ms Maddeford as the primary victim of an act of violence<sup>6</sup>.
- [13] Part 2 of the *Victims of Crime Assistance Act* sets out the meaning of an act of violence and is defined as a crime committed in Queensland directly resulting in injury to a person irrespective of where the injury happened<sup>7</sup>.
- [14] There is an explanatory note to this section which says '*that in general terms it is intended that this section can give assistance to a person even though the person who committed the act has not been or cannot be found guilty of an offence because of justification excuse or defence*'. The note does however refer in particular to section 80 of the Act itself.
- [15] The alleged offence by Ms Maddeford is an assault on her person by Ms Spackman. Section 245 of the *Criminal Code Act 1899* (Qld) defines an assault as any bodily act or gesture which attempts or threatens to apply force of any kind to a person without the person's consent under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect the persons purpose.
- [16] Section 80 of the *Victims of Crime Act* says that a grant of assistance to Ms Maddeford cannot be made if, on the balance of probabilities, the decision-maker is satisfied that the only reason or the main reason that the act of violence was committed against the primary person was because the person was involved in a criminal activity when the act of violence happened.

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

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

3 *Ibid* s 19(a).

4 *Ibid* s 20.

5 *Victims of Crime Assistance Act 2009* s 21(1)(a).

6 *Ibid* s 23(1)(a).

7 *Ibid* s 25(1)(a) and (b).

- [17] On the evidence collected by the Police at the time of the fight between these two women, the Police declined to proceed with a prosecution of Ms Spackman. After review of the original Senior Constable's investigation, both the Regional Officer and the Prosecutions area were satisfied that there was insufficient independent evidence which could separate the two versions of events that took place that Sunday afternoon. It was the conclusion of the Police that, in the absence of any more evidence or witnesses, the matter could not be forwarded to prosecutions because there would be a bar to the prosecution being a defence of self-defence by Ms Spackman.
- [18] In considering whether assistance should be given to Ms Maddeford as a victim of crime, it is therefore necessary for this Tribunal to decide, on the balance of probabilities, which version of events is more likely to have occurred that Sunday afternoon.
- [19] This involves a determination on the evidence of which witness's account of the fight is to be preferred by this Tribunal.
- [20] Ms Spackman's evidence is that she had had the week before the fight surgery for breast cancer. During her hospitalisation, her husband and family looked after her children. Ms Spackman says she arrived at her husband's house that afternoon to speak to him about the children and was unaware that Ms Maddeford was also there. She says that she walked up the stairs to the third of four steps leading to the back door of her husband's property and knocked at the door.
- [21] Ms Spackman says Ms Maddeford answered the door looking down on her from the top step. She says Ms Maddeford spoke to her although she does not remember the exact words.
- [22] Ms Spackman says that she apprehended that Ms Maddeford had been drinking by smelling alcohol on her breath and she thought Ms Maddeford was about to hit her. Ms Spackman put her arms up to protect her chest and accepts that she pushed Ms Maddeford backwards. She says she then walked downstairs into a pergola area and Ms Maddeford came down to continue the fight with her.
- [23] Ms Spackman says that the two men came down and grabbed Ms Maddeford and told Ms Spackman to leave which she says she did.
- [24] When questioned Ms Spackman says that Ms Maddeford called her a '*whore*' although she can't remember what other words were used. She said she feared for herself because Ms Maddeford was '*right in her face*' and abusive.
- [25] Ms Spackman says she was protecting herself as she had recently had breast surgery. Ms Spackman's version of events is supported by the statement of her then husband Mr Andrews given to police by him on 20 July 2011, one month after the fight.

- [26] In contrast, the evidence given by Ms Maddeford to the hearing before this Tribunal is in many ways markedly different to the evidence she gave to the Police in her sworn statement of 22 June 2011 - some three days after the fight. The evidence of her partner Mr Edwards is also different in the same way.
- [27] Although the events in the kitchen and at the top of the stairs in the early part of the fight are agreed, there is no real answer to why the fight started.
- [28] For Ms Spackman to arrive at the house not knowing that Ms Maddeford was there and then, to stand below her on a set of stairs one week after breast surgery and push Ms Maddeford (which is admitted) without some provocation seems, on the balance of probabilities, to be an unreasonable scenario.
- [29] What is more likely is that in her inebriated state, Ms Maddeford did make derogatory remarks to Ms Spackman, which instigated the fight. Ms Spackman says she was called her a '*whore*'. Mr Andrews says that Ms Maddeford called Ms Spackman a '*slut*'. I accept on the balance of probabilities, that these are the more reasonable explanations for the beginning of the argument.
- [30] It became apparent in oral evidence before the Tribunal that Ms Maddeford believes that Ms Spackman and Mr Andrews actively took steps to influence persons in the town. As locals, Ms Maddeford alleged Ms Spackman and Mr Andrews were able to change evidence, change medical records and instigate serious earlier assaults on Ms Maddeford.
- [31] This Tribunal accepts that all of these allegations are highly charged and very unlikely.
- [32] What this does show however is that Ms Maddeford's current recollection is coloured by events that have happened since the fight and that her reliability as a witness because of that is impuned.
- [33] There is substantial disagreement about what happened after the parties moved away from the stairs. Ms Spackman says that she left. Ms Maddeford says that further fighting occurred between the men and between herself and Ms Spackman on the ground outside the house. Ms Maddeford alleges that she was further injured in those fights.
- [34] None of these further events were referred to in Ms Maddeford's Police statement made two days after the event and in fact a different version of these events was relayed to the doctor the day after the alleged assault.

- [35] In all there are at least four different versions proffered by Ms Maddeford and three<sup>8</sup> by Mr Edwards of events that afternoon and evening.
- [36] On reviewing all of the witness statements where one recollection of events must be preferred over another, I accept the evidence of Ms Spackman and Mr Andrews as more accurate. I accept that Ms Maddeford's evidence is coloured by her injuries and that her recollection and further medical events which have occurred since that time also affect her memory.
- [37] I also accept that Mr Edwards' statement is changed to support his partner.
- [38] I am therefore satisfied that the argument between the two women that Sunday afternoon was instigated by Ms Maddeford. I find Ms Spackman acted in self-defence when she retaliated by pushing Ms Maddeford backwards in the argument at the top of the stairs.
- [39] Because I have accepted Ms Spackman's evidence on the events of that afternoon, I am satisfied that the main reason, on the balance of probabilities, that the act of violence was committed against Ms Maddeford was because she was involved in a criminal activity when the act of violence happened. I am satisfied on the balance of probabilities she was the instigator of the argument and, under the definition of assault as set out above, she assaulted Ms Spackman.
- [40] Having made this finding there can be no grant of assistance to Ms Maddeford under s 80 of the *Victims of Crime Assistance Act 2009* and the decision to refuse assistance made initially on 21 November 2013 and confirmed by internal review on 29 January 2014 of the government reviewer under the Victim Assist Queensland legislation is confirmed.

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<sup>8</sup> Mr Edwards' original statement to police dated 20 July 2011, his statutory declaration dated 5 December 2013 and the record of a conversation with Kirsten Gudzinski dated 29 November 2013.