

CITATION: *Rosily v Department of Justice and Attorney General (Victims Assist Queensland)* [2016] QCAT 492

PARTIES: Gila Rosily
(Applicant)
v
Department of Justice and Attorney General
(Victims Assist Queensland)
(Respondent)

APPLICATION NUMBER: GAR116-16

MATTER TYPE: General administrative review matters

HEARING DATE: 19 September 2016

HEARD AT: Brisbane

DECISION OF: **Member Ryan**

DELIVERED ON: 4 December 2016

DELIVERED AT: Brisbane

ORDERS MADE: **1. The decision of the respondent dated 2 February 2016 is confirmed**

CATCHWORDS: GENERAL ADMINISTRATIVE REVIEW-
VICTIM ASSISTANCE - Where claim made under *Victims of Crime Assistance Act* 2009 (Qld) - Where claimant involved in altercation - Where versions of events conflicting - Whether 'act of violence' committed - where no charges were laid - whether any basis for a claim can be established

Victims of Crime Assistance Act 2009 (Qld)
ss 5, s 25, s 21, s 23, s 80, s 82, s 85
Queensland Civil and Administrative Tribunal Act 2009 (Qld) s 19, s 20, s 24
Criminal Code Act 1899 (Qld), s 345

Eastman v DPP(ACT) [2003] 214 CLR 318

APPEARANCES and REPRESENTATION:

APPLICANT:	Ms Rosily appeared in person
RESPONDENT:	Department of Justice and the Attorney-General (Victims Assist Queensland) represented by Mr D Robinson of Counsel

REASONS FOR DECISION

Background

- [1] Ms Rosily has applied to the Tribunal to review the decision by Victims Assist Queensland to refuse her application for financial assistance under the *Victims of Crime Assistance Act 2009* (Qld) ('Victims Act').
- [2] In her application to Victims Assist Queensland dated 22 January 2015,¹ Ms Rosily said she was the victim of an act of violence which occurred on 9 October 2014 and also over the period of time between 31 August 2014 and 31 December 2014. On 19 January 2016, Ms Rosily's solicitors at the time confirmed to the respondent that the relevant act had in fact occurred on 9 October 2014. In describing what happened in her application to Victims Assist Queensland, she said her son was violated at home, he was threatened with being '*all cut up by squatters*' and she was hit by a shovel.² She claimed for property damage, prescription glasses, an ophthalmologist appointment and travelling to and from PA (Princess Alexandra) Hospital.
- [3] Ms Rosily requested that the original decision by Victims Assist made on 2 February 2016 be reviewed internally. The original decision was confirmed³ on 18 April 2016. She was refused financial assistance on the basis she was not eligible to apply because the 'act of violence' as described by Ms Rosily had not occurred against her.

Review by the Tribunal

- [4] The Tribunal has jurisdiction to conduct a review of Victim Assist Queensland's decisions, and to make the correct and preferable decision.⁴ The Victims Act establishes a scheme for the payment of financial assistance to a victim who suffers death or injury directly as a result of an act of violence⁵. A victim is relevantly defined⁶ as a person

¹ Exhibit 1, p1.

² Exhibit 1, p4.

³ Exhibit 1, pp103-108.

⁴ *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ('QCAT Act'), s 20(1).

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

⁶ *Ibid*, s 5(1)(a).

who has suffered harm to the person because a crime is committed against them. Ms Rosily's application under the Victims Act is made as the primary victim of an act of violence.⁷

- [5] The review is a new hearing on the merits of the application.⁸ The Tribunal has the functions of the original decision maker for the decision to be reviewed.⁹ The Tribunal does not engage in an investigation of the decision maker and its practices, such as, for example, a perceived conflict of interest in an individual. The Tribunal looks at the evidence and the way the law has been applied to it afresh and makes a fresh decision. The Tribunal stands in the shoes of the decision maker, examining the evidence available to the original decision maker and any other relevant evidence put before the Tribunal. 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.¹⁰
- [6] Ms Rosily had requested a Hebrew interpreter in her application to the Tribunal.¹¹ An interpreter was not able to be obtained. Ms Rosily was asked by the Tribunal if she wished the matter to be heard on another day in order that further efforts be made to obtain an interpreter. After some discussion with her son, she elected to proceed without an interpreter. Her son gave his oral evidence first in order that he could sit with her during the hearing to support her.
- [7] Applicants to the Tribunal are provided with an opportunity to put their case by filing relevant material before the hearing and by attending the hearing. The respondent is afforded the same opportunity. The Tribunal makes its decision on the relevant and reliable evidence before it. At the end of the hearing, the evidence is closed. Ms Rosily attended the hearing, and spoke to the Tribunal. Towards the end of the hearing she was allowed to accept a call on her mobile phone which she said may be relevant to the hearing, but then indicated it was not. Ms Rosily sought to submit further material after the hearing, and the Tribunal declined to accept it. In making this decision, the Tribunal has considered the approach of the Administrative Appeals Tribunal¹² which has applied *Eastman v DPP (ACT)*(2003)¹³ In that case, McHugh J said:

Parties to matters before the court need to understand that, once a hearing in the court has concluded, only in very exceptional circumstances, if at all, will the court later give leave to a party to supplement submissions. Parties have a legal right to present their arguments at the hearing. If a new point

⁷ Ibid, s 23(1)(a).

⁸ QCAT Act, s 20(2).

⁹ Ibid, s 19(c).

¹⁰ Ibid, s 24.

¹¹ Exhibit 4, p109-114.

¹² In for example *Kowalski and Military Rehabilitation and Compensation Commission* [2007] AATA 1988 (28 November 2007), *Groom and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs* [2008] AATA 202 (14 March 2008).

¹³ 214 CLR 318, at 330.

arises at the hearing, the court will usually give leave to the parties to file further written submissions within a short period of the hearing — ordinarily seven to fourteen days. But a party has no legal right to continue to put *submissions to the court* after the hearing. In so far as the rules of natural justice require that a party be given *an opportunity to put his or her case*, *that opportunity is given at the hearing*.

The parties' submissions

- [8] According to her application to the Tribunal¹⁴, Ms Rosily seeks financial assistance from Victims Assist Queensland for prescription glasses, travelling to a medical clinic, and medical appointments related to an eye injury she claims to have received, and rehabilitation. Reference was made elsewhere to the possible need for counselling and to a pre-existing back injury which may have been exacerbated. The majority of the receipts she provided related to repair work to the Eagleby property.
- [9] The respondents' submissions, both oral and written¹⁵ are detailed and cogent, and will not be set out here for the sake of brevity. In summary, they address each of the relevant legal tests for eligibility set out in the Victims Act, and point to the particular aspects of the evidence which show her application fails to satisfy any of those tests. Consequently, her application under consideration in these proceedings must be refused by Victims Assist Queensland.

The Law and the requirements for a successful claim

- [10] To be successful in her application, Ms Rosily must be able to show that the incident on which she bases her application under the Victims Act, which occurred on 9 October 2014, falls within the definitions in that Act.
- [11] An 'act of violence' is defined as a crime committed in Queensland directly resulting in injury to a person.¹⁶ A 'crime' must be an act or omission which falls within the elements of a prescribed offence,¹⁷ and a 'prescribed offence' is an offence, or attempt to commit an offence, against a person¹⁸. It is not necessary for a person to be found guilty of an offence.¹⁹ However, if the inability to prove the offence is because the victim/applicant has not given reasonable assistance to police in investigating the alleged crime and did not have reasonable excuse for not doing so,²⁰ assistance cannot be granted.
- [12] The Tribunal must determine from the evidence and the application of the law:

¹⁴ Exhibit 4, p112-3.

¹⁵ Exhibit 14.

¹⁶ Victims Act, s 25(1)(a) and (b).

¹⁷ Ibid, s 25(2).

¹⁸ Ibid, s 25(8).

¹⁹ Ibid, Note to s 25(1)(b) and s80 and s82.

²⁰ Ibid, s82.

(a) Was there a violent act which was a crime in which Ms Rosily was harmed?

(b) If so, was Ms Rosily's involvement in criminal activity the main or only cause of the act of violence?

(c) Did Ms Rosily actions directly or indirectly contribute to her injuries?

(d) Did Ms Rosily fail to give reasonable assistance to the police investigation?

(e) Is Ms Rosily entitled to financial assistance for property damage?

[13] If the answer to the first question is that there was not a violent act as defined in the Victims Act, Ms Rosily is precluded from financial assistance under that Act, regardless of the answers to the other questions.

[14] To decide these issues, the Tribunal must weigh the evidence and determine on the balance of probabilities, what occurred or is more likely to have occurred on 9 October 2014 at 2 Parkland Court, Eagleby ('the Eagleby property').

Was there a violent act which was a crime and resulted in personal injury to Ms Rosily?

[15] The uncontested facts indicate that on 9 October 2014 at the Eagleby property an altercation occurred between Ms Rosily and a number of persons. The persons who have been named in the Queensland Police Service report²¹ were residing in the property. Ms Rosily said variously that she owned the Eagleby property, or her son, Mr Talel Rosily owned it, or they owned it together, however, ownership was not at issue. Police officers and the Queensland Ambulance Service were called to the address as a result of the incident. Ms Rosily did not make a complaint of assault on the day to the police or any other person present, but did so one week later. The investigation by the Queensland Police Service of the crime of Common Assault found not only that there was insufficient evidence to show that a crime had been committed, but more emphatically, that there was sufficient evidence to show that no crime had been committed.

Ms Rosily's versions of events

[16] These Reasons will demonstrate that there is inconsistency between Ms Rosily's own various accounts of relevant events, and between her accounts and the accounts of others.

²¹

Exhibit 1, pp44-56.

- [17] *Ms Rosily's police statement:* In her statement made to Officer Kitching at Jimboomba police station on 16 October 2014²² Ms Rosily said (in summary) that she was inside the house at the Eagleby property at about 11am on 9 October 2014 looking for a phone charger belonging to her son when five people entered the house, began yelling and abusing her, and started pushing her out the front door. A female had a shovel and began hitting the front door. Ms Rosily was threatened but not hit with the shovel. The five people pushed her into the side of her car which was damaged by them. She said she left in her car. She said she returned to the property at 2.30pm with a friend, Mr Ron Summers, entered the house, found the phone charger, and was cleaning the house and about to leave at around 3pm when the same group of people returned.
- [18] 'Jacob' shoved her glasses into her eyes and then took them from her. She said this 'caused her eyes to be bloodshot'. 'David' hit her on her thigh with a shovel. She got into her car and the group hit the bonnet and side of her car with the shovel, taking turns. She locked herself in her car and she called the police and the ambulance, and the police arrived five minutes later. She said her injuries were temporary loss of sight in her eye and bruising from her thigh to her chest.

The inconsistencies between Ms Rosily's versions of events:

- [19] *Identity of the alleged suspect(s):* In her police statement she said it was 'David' who hit her on the thigh. She also claims 'Jacob' caused the injury to her eye by pushing her glasses into her eyes. On 24 August 2015, Ms Rosily made a supplementary police report²³ naming an Elene Berta as the person who had hit her with a shovel.
- [20] *The injury and its causes:* In her application to the Tribunal²⁴, Ms Rosily indicates that the act of violence was 'break and enter', use of a shovel as a weapon against her, and that there was ongoing permanent damage to her eye.²⁵
- [21] In her police statement, Ms Rosily claims to have been hit on the thigh with a shovel, and that her car was hit with a shovel while she had locked herself inside. She did not claim to have been hit in her eye with a shovel. Rather, she said her eye was made bloodshot when Jacob grabbed her face, and shoved her glasses into her eyes.²⁶
- [22] In oral evidence at the hearing Ms Rosily said that she was injured by a shovel in her eye, that her eye was bleeding, and she had not shown it to the ambulance officers at the time. She also claimed she was bruised extensively on the side of her body. Yet the doctor she saw on 16 October

²² Ibid, pp39-40.

²³ Exhibit 1, p56.

²⁴ Exhibit 4, p109-114.

²⁵ Exhibit 4, p112.

²⁶ Exhibit 1, p40.

2014, Dr Thomas, a general practitioner, noted a healing contusion on her right thigh which measured 5cms by 3cms.

- [23] In a supplementary police report²⁷ she states the assault caused major problems with her eye, for which she had '*surgeries to correct the problem*'. The Tribunal could find no evidence that Ms Rosily has required and had 'surgeries' for her eye as a result of anything which occurred on this day.
- [24] In the letter dated the day after the incident from her Optometrist, Ms Lyons, there was no mention of a shovel injury to her eye.²⁸
- [25] There was no mention that her eye injury was caused by a shovel in Dr Thomas's letter dated 16 October 2014,²⁹ the date she saw him. At that consultation, she indicated her eye injury had settled and he saw no external injury.
- [26] On the other hand, the Ophthalmologist, Dr Briner (who found no abnormalities), said in his letter to Ms Lyons dated 26 November 2014,³⁰ that he understood the history was that Ms Rosily was struck above the right eyelid on 9 November (sic) 2014, and that she was knocked to the ground. One can reasonably assume that this is the history Ms Rosily has provided to him. She did not indicate in her police statement that she was knocked to the ground.
- [27] The contradictions in Ms Rosily's evidence make her versions of events in many aspects mutually exclusive: for example, was the shovel wielded by 'David' or Elene Bene? Was the shovel used on her vehicle as well as her person? Was she hit by the shovel on her thigh only, or in her eye as she later claims? If there was an eye injury, was it caused by a person wielding a shovel, or by 'Jacob' pushing her glasses into her eyes? Was her eye bloodshot, or bleeding? Did she have surgery to her eyes? or was her vision 'good' as she reported it to Dr Thomas³¹ one week after the altercation? Was she knocked to the ground? or did she get into her vehicle and lock the doors while the vehicle was hit?
- [28] In short, Ms Rosily's statement to police, her application to Victims Assist Queensland, her application to the Tribunal, and the information she has provided to others such as her doctors, are not consistent. In fact it seems that on each occasion she has revisited the events, her narrative has varied. This vast disparity was not resolved but was further complicated by her oral evidence.

Ms Rosily's witnesses:

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- 27 Exhibit 1, p56.
28 Ibid, p20-21.
29 Ibid, p22.
30 Ibid, p19.
31 Ibid, p22.

- [29] Ms Rosily nominated three witnesses in relation to these proceedings. Two of those witnesses provided affidavits sworn on 8 July 2016: Mr Talel Rosily³², her son, and Mr Joshua Dunn,³³ her son's friend. These affidavits were not available to the original decision maker. Mr Rosily and Mr Dunn gave evidence at the hearing. The third witness, Mr Ron Summers, made a police statement on 8 November 2014. He was not available to give evidence at the hearing.
- [30] *Mr Rosily and Mr Dunn's evidence:* Mr Rosily did not refer to the day or the incident in his short affidavit. He stated that he had not allowed the persons living in the house to do so. His oral evidence at the hearing was that he was not at the Eagleby property on 9 October 2014. He said he 'saw the aftermath', which he clarified meant that his mother was hurt and upset.
- [31] Mr Dunn referred in his affidavit to 'a day in October 2014' when he went with Ms Rosily to the Eagleby property (which he described as 'Taly's house', meaning Mr Talel Rosily's house) and the residents reacted violently with a knife and hit Ms Rosily in the eye with a shovel. He and Ms Rosily then left in fear and went to meet a representative of Prince Realty, Sunnybank at McDonalds Beenleigh. In the course of giving oral evidence, Mr Dunn acknowledged he was unable to recall which date or which month he was speaking about, that he was not there when police and ambulance officers attended, he had not heard of a Mr Ron Summers and had not made a statement to police. Ms Rosily was asked in oral evidence if either Mr Rosily or Mr Dunn were there on the day, and she responded equivocally, saying how did she or anyone know, they could have been in the bushes.
- [32] Constable McKinney, who attended the incident, gave evidence³⁴ that neither Mr Talel Rosily nor Mr Dunn was at the Eagleby property on the day to his knowledge. Ms Rosily was telephoned from the scene precisely because he was not present, and the police had spoken to him. The Constable noted that Ms Rosily had given the name of one witness, Mr Summers when making her police statement. The police investigation found³⁵ that those present at the Eagleby property on the relevant date were the named suspects, and Mr Summers and Ms Rosily.
- [33] The Tribunal concludes that neither Mr Rosily nor Mr Dunn were present to witness the incident. Consequently, it attributes minimal weight to their evidence as to those occurrences.
- [34] *Mr Summers' evidence:* Conversely, the version of events provided by Mr Summers³⁶ is more consistent with the observations of the attending

³² Exhibit 9, p121.

³³ Exhibit 10, p122.

³⁴ Exhibit 3, p206-207 and in oral evidence.

³⁵ Exhibit 1, p44-5.

³⁶ Ibid, p42.

police³⁷, the Queensland Ambulance Service attendees³⁸, the police records of the alleged suspects' contemporaneous versions, and the findings of the police investigation into the alleged crime.³⁹ These versions diverge from Ms Rosily's in key respects.

- [35] Mr Summers statement to police⁴⁰ was made on 8 November 2014 to Constable McKinney at Beenleigh Police Station, at the request of the police.
- [36] In summary, he said that he went with Ms Rosily on 9 October 2014 to help her clean the yard of the Eagleby property. He arrived at about 10am, and Ms Rosily was there alone. She had been inside the house and put her dog in the bathroom. He and she moved things, such as tree branches and an old table, onto the footpath. Three or four teenagers, one of whom he thought was a girl, came into the yard and asked Ms Rosily and Mr Summers what they were doing. They told Ms Rosily they had a lease agreement and showed it to Ms Rosily. She took it from them and tore it up. The conversation became an argument. Ms Rosily had locked the front door and there was an argument about keys or something else. It became a physical confrontation with one of the boys, which lasted only a few seconds. Mr Summers could not remember who threw the first blow; there were a couple of slaps by both Ms Rosily and one of the boys and then it was over. He said everyone was a bit hysterical. He said Ms Rosily was not knocked to the ground. He believed that the tenants had rung the police. Ms Rosily asked him to go with her to the police station and he did so. He said Ms Rosily did not say she was injured or that she needed medical attention and he did not see any obvious injuries. She was worried about her dog in the bathroom.
- [37] Mr Summers said he and Ms Rosily later returned to the property after speaking to police, to get Ms Rosily's dog. Council workers were there to turn the water off. The house was empty and there was no-one else there. He left before Ms Rosily did.
- [38] *Inconsistencies with Ms Rosily's versions of events:* The inconsistencies are fundamental and go to the essence of Ms Rosily's claims: whether there was an assault, whether a weapon was used, whether Ms Rosily was knocked to the ground, whether Ms Rosily was injured, and how the altercation was initiated. Mr Summers makes no reference to a shovel or any other weapon. He makes no mention of an attack on, or damage to, Ms Rosily's car on either visit to the Eagleby property. Ms Rosily did not tell him she was injured, and he saw no injury. He was unsure who had instigated the altercation, but it was of a few seconds duration. He saw Ms Rosily tear up what was purportedly a lease agreement. The statement that Mr Summers and Ms Rosily left and went to the police station does

³⁷ Ibid, p53; Exhibit 3, p206-8.

³⁸ Exhibit 2, p194-7.

³⁹ Exhibit 1, p53-4.

⁴⁰ Ibid, p42.

not appear in other evidence as far as the Tribunal is aware but it was not contested at the hearing. The impression left from Mr Summers' evidence is of a minor altercation, in which Ms Rosily was at least an equal participant, and that her action in tearing up the purported lease document was likely to have inflamed the situation.

The police evidence and investigation findings:

- [39] Constable McKinney investigated Ms Rosily's complaint of assault, considering whether the crime of common assault could be made out.⁴¹ He confirmed under oath at the hearing that an email noting the contents of a conversation between himself and Ms Seto of Victims Assist Queensland on 30 August 2016⁴² was accurate.
- [40] In summary, his evidence was that he and another officer had been called to attend the Eagleby property on 9 October 2014. The time which appears to be noted for the triple zero call in the police supplementary report referring to the CAD Log entry was between 15.00-17.00 (3pm and 5pm).⁴³ This accords with the Queensland Ambulance Service report⁴⁴ which notes that the ambulance was called at 3.30pm on that date. The police attending took no notebook statements, as neither Ms Rosily nor the other participants in the altercation made a complaint of assault on that day.
- [41] The alleged suspects stated to police on the day that they had been living at the Eagleby property with Mr Talel Rosily, and had signed a lease with him. They arrived home on 9 October 2014 to find Ms Rosily had strewn their belongings over the front lawn. When shown the lease, she tore it up. The alleged suspects said there was a scuffle, started by Ms Rosily when she slapped one of the suspects. Police noted that the suspect had fresh scratches on his chest and a torn shirt.
- [42] Ms Rosily told police she was there as she wished to remove the alleged suspects from the premises. According to the police investigation report⁴⁵ she denied having torn up any kind of lease agreement. Police contacted the real estate agent nominated by Ms Rosily, a Bernard Lewis, who indicated that Ms Rosily was not their client. They also spoke to Mr Talel Rosily by phone, whom Ms Rosily called. He said he did not want to be involved and would not tell police about the basis of the alleged suspects residing in the property.
- [43] The police examined Ms Rosily's vehicle and found there was no damage to it. There was no shovel evident at the scene. Ms Rosily did not mention a shovel at the time. The police did not see any obvious injury to Ms Rosily, and she did not complain of one. Ms Rosily did not complain of

⁴¹ Exhibit 1, p44-56.

⁴² Exhibit 3, p206-8.

⁴³ Exhibit 1, p51.

⁴⁴ Exhibit 2, p194-6.

⁴⁵ Exhibit 1, p54.

threats to her, and no formal assault complaints were made on the day. The alleged suspects inquired about making one but decided against it.

- [44] A Queensland Police District Duty Officer was asked by the attending police to join them at the scene, as Ms Rosily's version of events was confusing. The police decided on the day the altercation was essentially a civil dispute about the occupancy of the property. They concluded that they were unable to determine whether there was or was not a lease. They advised the suspects that Ms Rosily would seek to evict them and that they had better find other accommodation, and advised Ms Rosily that she would need to formally have the offenders evicted.
- [45] The Ambulance Service was called because Ms Rosily said she was short of breath. The ambulance report⁴⁶ was that she was standing talking to police, and was not injured in any way, that she said she was 'medically fine' and wanted to sort things out with police. She was not taken to hospital or treated.
- [46] Constable McKinney also said that the five alleged offenders were there when police arrived. The constable said that the alleged offenders had been aware the police had been called and waited and spoke to them, which in his opinion, suggested they were confident of their position.⁴⁷
- [47] *Inconsistencies with Ms Rosily's versions of events noted in the investigation:* In addition to the inconsistencies already canvassed, the report noted that Ms Rosily had left out information from her statement which the police were aware had in fact occurred. For example, removing the furniture from the house, leaving the suspects belongings on the lawn, and the tearing up of the purported lease agreement. Ms Rosily was asked to attend the police station to change her statement, as it did not sufficiently describe all elements of the incident. She refused and the police report noted she was aggressive and abusive in doing so.⁴⁸
- [48] Ms Rosily asserted in an email to Victims Assist Queensland requesting an internal review that she did not remember the ambulance attending and she was passed out on the steering wheel.⁴⁹ However, she referred to the ambulance officers attending in her police statement,⁵⁰ and at the hearing she said she declined to show her eye to the ambulance personnel.
- [49] Ms Rosily was assessed and found to be uninjured by the ambulance officers attending.⁵¹ No injury was observed or complained of to the police or ambulance officers. Her vehicle showed no signs of damage. The alleged suspects described Ms Rosily as the aggressor, and one had

⁴⁶ Exhibit 2, pp194-198.

⁴⁷ Exhibit 13, p207-8.

⁴⁸ Exhibit 1, p54.

⁴⁹ Ibid, p100.

⁵⁰ Ibid, p40.

⁵¹ Exhibit 2, p196-198.

a torn shirt and physical injury as a result. This was confirmed by Mr Summers and the police. Ms Rosily's oral evidence on this issue, and the statement in her affidavit dated 16 September 2016⁵² was that she was entitled to protect herself and her belongings.

- [50] Ms Rosily claimed in her application to Victims Assist Queensland that she was physically assaulted with a shovel. Amongst the many photographs of property damage she provided, Ms Rosily included a photo of a shovel.⁵³ This has no evidentiary value, as there is nothing in the photograph to place it in the hands of the alleged suspects on the day of the incident, or to show it was wielded in the manner Ms Rosily claims.
- [51] The police investigation considered the crime of common assault.⁵⁴ Section 335 of the *Criminal Code Act* (QLD) provides that common assault occurs where any person unlawfully assaults another. It would be necessary to prove that Ms Rosily had been injured as a result of an assault by a person she identified as the perpetrator and that the assault was unlawful.
- [52] The only person present at the incident who claims that an injury occurred in any of the ways Ms Rosily described was Ms Rosily. No-one other than Ms Rosily who can reliably be said to have been present on 9 October 2014 saw a shovel being used against her, or heard her complain of injuries. The police investigation found that the offence of common assault was not made out. Significantly, it there was sufficient evidence to show that there was not a crime.
- [53] Mr Talel Rosily said he later saw Ms Rosily was very upset. However, as he was not at the Eagleby house and was not a witness to the incident on the relevant day, he is not in a position to verify what caused her reaction.
- [54] Ms Rosily did not seek the attention of a medical practitioner until seven days after the incident. The Optometrist she saw on the day following the incident noted an injury to the lid of her right eye and a haematoma (bruise).⁵⁵ When Ms Rosily did attend the doctor on 16 October 2014, Dr Thomas, a general practitioner, noted a healing contusion on her right thigh which measured 5cms by 3cms, did not note any observable eye injury, and Ms Rosily is noted to have reported that the injury had healed.⁵⁶ Her further medical referrals are made on the basis of her reporting ongoing difficulties, but there have been no medical findings of injury requiring ongoing treatment. There was a reference to the potential for the exacerbation of a pre-existing back injury, but no further investigations. There was also a suggestion from Ms Rosily that she may need counselling. She had an existing counsellor she had been consulting over other matters. It emerged at the hearing in Ms Rosily's

⁵² Exhibit 11.

⁵³ Exhibit 12, p157 and 159.

⁵⁴ Exhibit 1, p44.

⁵⁵ Ibid, p20.

⁵⁶ Ibid, p22.

oral evidence that she had had previous injuries in the past and had lodged claims with Victims Assist on the basis of those. There was no concrete evidence of the exacerbation of injuries, or psychological injury or required treatment.

- [55] The Tribunal finds on the balance of probabilities that Ms Rosily may have received an injury on 9 October 2014 in the altercation, but if so she did not receive it in the way she claimed, by being hit in the eye with a shovel, but more likely as a result of a scuffle in which she was at least an equal but likely, an instigating, party. There was no other act of violence reported to the police. There was no act of violence constituting a crime.
- [56] In her application to the Tribunal⁵⁷, Ms Rosily referred to a crime of break and enter. She had not made this claim in her original application to Victims Assist Queensland. She would need to show that burglary with violence causing injury to her person had occurred. It has not been investigated, and the police did not suggest it as a possible charge arising from the circumstances.

Conclusions

- [57] The Tribunal found Ms Rosily to be an unreliable historian. Whether Ms Rosily's recall was imperfect, or her recollections of 9 October 2014 were affected by other events earlier or later, or she was changing her evidence, the Tribunal found it to be laden with inconsistency and contradictions, and was unable to give her evidence significant weight where it was uncorroborated by other reliable evidence. The disparity between her accounts was so marked as to make them irreconcilable. None of the reliable and relevant evidence supports Ms Rosily's versions of an attack on her by a person with a shovel. As already noted, Mr Dunn's evidence and Mr Talel Rosily's evidence was given little weight. The information provided by the suspects to the police may also be seen as coloured by self interest. The Tribunal has given greater weight to the more consistent and independent accounts of Mr Summers and the attending police and ambulance officers. The police investigation, in which the attending police were involved, made similar findings.
- [58] The Tribunal finds the weight of reliable and relevant evidence points to a dispute and a scuffle between the named protagonists, including Ms Rosily, and the only observable injury at the time was sustained by one of the protagonists, not Ms Rosily. Ms Rosily may have also received some injury. The Tribunal finds it is impossible to separate her from the cause of that altercation, and she may have been the instigator on that day. In any event, an act of violence within the meaning of the Victims Act did not take place on the date and in the way Ms Rosily said, an assault on her person with a shovel.

⁵⁷

Exhibit 4, p109-114.

- [59] Having made this finding, Ms Rosily is precluded from applying for financial assistance under the Victims Act on the basis of the injury she claims in her original application occurred on 9 October 2014.
- [60] However, for the sake of completeness, the Tribunal has also considered whether Ms Rosily would be entitled to claim assistance if the incident were construed to fall within the definition of violent act in the Victims Act, in order to demonstrate that there are other aspects to her claim which impede its success.

Was the main or only reason for the act of violence Ms Rosily's involvement in criminal activity?

- [61] The Victims Act provides that no assistance may be given to a victim/applicant if the main or only reason for the act of violence was their involvement in criminal activity.
- [62] Ms Rosily made it clear at the hearing that she did not accept any 'blame' for the altercation with the 'squatters'. She maintained her perceived entitlement to protect her property. She acknowledged she took matters into her own hands, entering the Eagleby house and moving the alleged suspects' goods outside. The lawful process for removal of tenants who breach the terms of a lease was outlined to her by the police on the day.⁵⁸ Her destruction of the purported lease, which may have proven the nature of the alleged suspects residency, could be seen as self-serving. In any case, Ms Rosily would not acknowledge that her rights as owner to enter and 'protect' her property would have been affected by any permission they had to reside there. She was vehement in defending her position. The tearing up of a document, not hers, and purporting to be a lease, whether valid or not, is inflammatory in what was clearly already a volatile interchange. Even if the occupiers of the property were 'trespassers', particularly where the facts are uncertain, the owner can become the wrongdoer and initiator of a criminal act in taking forceful action.
- [63] The evidence of Mr Summers was effectively that Ms Rosily was as much part of a short scuffle as the alleged suspects.⁵⁹ One of the alleged suspects had a ripped shirt and scratches, whereas there was no contemporaneous evidence of any injury to Ms Rosily.
- [64] Ms Rosily's failure to include references to her contribution to the altercation in her police statement, and her adamant refusal to amend her statement when requested by police to do so shows her lack of co-operation with the investigation. In these circumstances, if the altercation were seen as a 'violent act', Ms Rosily can be seen as the main

⁵⁸ Exhibit 1, p54.
⁵⁹ Ibid, p42-3.

protagonist, and Victims Assist Queensland would have no discretion but to refuse to grant financial assistance.⁶⁰

Did Ms Rosily's behaviour contribute to her injuries?

- [65] The Victims Act also provides that any financial assistance to a claimant may be reduced if the claimant's actions contributed to their injuries.⁶¹ As canvassed above, Ms Rosily's actions were described as at least equally provoking as those of the other persons if not more so. In that case, Victims Assist would be entitled to reduce any assistance up to 100%.

Did Ms Rosily provide reasonable assistance to the police in their investigation, or did she have reasonable excuse not to?

- [66] Victims Assist Queensland would be precluded from granting financial assistance⁶² to Ms Rosily if inability to prove the offence resulted from the victim/applicant's failure to give reasonable assistance to police in investigating the alleged crime and the victim/applicant did not have reasonable excuse for not doing so.

- [67] The police investigation report⁶³ said Mrs Rosily's statement to police '...did not sufficiently cover the whole truth of what had occurred.' It had omitted any reference to the fact that she had torn up the purported lease document, or that she had removed the alleged suspects property from the house at the Eagleby property and left it on the lawn, or that she had slapped one of the alleged suspects and he was injured. However, when requested to provide an addendum to her untrue statement on 7 November 2014, Constable McKinney' recorded⁶⁴ that Ms Rosily was aggressive and argumentative in refusing to do so. Having refused to comply with a police request to provide further and accurate information, Ms Rosily cannot be seen as providing reasonable assistance to the police. Ms Rosily gave no excuse at the time, or since, for not amending her statement.

Is Ms Rosily entitled to financial assistance for property damage?

- [68] Ms Rosily was very concerned with damage she claimed had been done to the Eagleby house by 'squatters'. These concerns featured in her discussions with police on the day of the altercation, as the police gave both Ms Rosily and the alleged suspects information about eviction procedures.
- [69] Ms Rosily believed herself both entitled to reclaim her property and to take whatever steps she felt were necessary to do so. She also felt entitled to compensation for damage she claimed was caused by the 'squatters'.

⁶⁰ Victims Act, s80.

⁶¹ Ibid, s 85(2)(a).

⁶² Victims Act s 82.

⁶³ Exhibit 1, p54.

⁶⁴ Ibid, p53-4.

Much of her material, including photographs,⁶⁵ and oral evidence, related to property damage its repair cost. The Victims Act provides for financial assistance for injury to the person. As a matter of law, financial assistance for other damage was not able to be considered in these proceedings, a proposition Ms Rosily found difficult to accept.

Decision

[70] The order of the Tribunal is that the decision of the respondent dated 2 February 2016 and affirmed by it on 18 April 2016 is confirmed.

⁶⁵

Exhibit 12, p124-153.