

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Victim Assist Queensland v LA* [2019] QCATA 142

PARTIES: **VICTIM ASSIST QUEENSLAND**
(appellant)
v
LA
(respondent)

APPLICATION NO/S: APL235-18

ORIGINATING APPLICATION NO/S: GAR297-16

MATTER TYPE: Appeals

DELIVERED ON: 27 September 2019

HEARING DATE: 14 June 2019

HEARD AT: Brisbane

DECISION OF: Senior Member Howard, Presiding
Member Kanowski

ORDERS

- 1. The appeal is allowed.**
- 2. The decision of the Tribunal made on 16 August 2018 is amended as follows:**
 - (i) by vacating Orders numbered 2 and 3;**
 - (ii) re-numbering Orders numbered 4 and 5 as 2 and 3.**
- 3. Publication of any information about these proceedings (APL235-18) that may identify the respondent or her children or may allow them to be located is prohibited.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – RIGHT OF APPEAL – WHEN APPEAL LIES – ERROR OF LAW – WHAT IS – GENERALLY – where the Tribunal below did not refer to or apply part of a statutory definition – whether Tribunal below applied wrong legislative test – whether Tribunal below failed to give adequate reasons – whether a non-publication order should be made

Guardianship and Administration Act 2000 (Qld) sch 4
Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 66(2), s 146, s 146(a), s 147
Victims of Crime Assistance Act 2009 (Qld), sch 2, sch 3, s 1(3), s 26(1), s 39(h), s 219

John Urquhart t/as Hart Renovations v Partington [2016] QCA 199
SS v Public Guardian [2015] QCATA 142

**APPEARANCES &
 REPRESENTATION:**

Applicant: B Corbiere, Senior Legal Officer of Victim Assist
 Queensland

Respondent: No appearance

REASONS FOR DECISION

Introduction

- [1] Victim Assist Queensland ('Victim Assist') is part of the Department of Justice and Attorney-General. It administers the Victims' Financial Assistance Scheme ('the Scheme') established by the *Victims of Crime Assistance Act 2009 (Qld)* ('Victims of Crime Assistance Act').¹
- [2] LA claimed financial assistance under the Scheme. She was a victim of violence in 2015 during an incident in which the perpetrator also murdered LA's partner. Victim Assist decided the application. LA sought review in QCAT of Victim Assist's decision about her claim. The review was decided.
- [3] The Tribunal's decision on the review was as follows:
1. The Tribunal confirms the decision of Victim Assist Queensland that the act of violence is category C under Schedule 2 of the Victims of Crime Assistance Act.
 2. The Tribunal finds that there were category B circumstances for the act of violence, in that the applicant suffered a serious injury.
 3. The amount of special assistance payable in relation to the act of violence and circumstance is \$2,400.
 4. The Tribunal does not have jurisdiction to review expenses that have not been the subject of an internal review; the application is dismissed.
 5. The Tribunal prohibits the publication of any information in these proceedings that could identify the applicant or her children in any way.
- [4] Victim Assist now appeals in respect of Orders 2 and 3 made by the Tribunal. It advances two grounds of appeal. In summary, the first ground is that the Tribunal did not apply the correct legislative test in deciding that there were category B circumstances. The second ground, advanced in the alternative, is that the Tribunal

¹ Schedule 2 which provides for the amount that may be paid to a victim pursuant to the Victims of Crime Assistance Act has been amended since Victim Assist decided the application. However, the amendments are not relevant in this proceeding: see s 219; sch 2. We refer in these reasons for decision to Schedule 2 at the time the application for assistance was decided.

failed to give adequate reasons for its conclusion that there were category B circumstances.

- [5] LA provided written submissions on the appeal, but did not attend the hearing. The Appeal Tribunal is satisfied that LA had notice of the hearing and decided that it was appropriate to proceed with the hearing in her absence. We have read LA's written submissions. However, it must be said that they do little to address the grounds of appeal.

The Tribunal's decision

- [6] In the review proceeding, the Tribunal decided that there were category B circumstances, and that therefore, LA was entitled to \$2,400 in special assistance. This was more than would have been payable had the Tribunal concluded that category B circumstances did not apply. 'Category B circumstances' are defined as follows:²

Category B circumstances, for a primary victim of a category C or D act of violence, means—

(a) the victim has, as a direct result of the act—

- (i) suffered a serious injury; or
- (ii) been a victim of a series of related crimes; or
- (iii) suffered a deprivation of liberty; and

(b) when the act of violence was committed or, if the act of violence involved a series of related crimes, when 1 or more of the acts were committed, the victim was—

- (i) a child under 16 years; or
- (ii) a person over 60 years; or
- (iii) a person with impaired capacity.

- [7] In the review proceeding, the Tribunal found that LA had suffered a serious injury as a direct result of the act of violence inflicted on her. On this basis, the Tribunal made Order 2, which was to the effect that category B circumstances applied, and Order 3, which awarded special assistance on that basis.

Ground of appeal 1: Did the Tribunal err in identifying the relevant test in deciding that there were Category B circumstances?

- [8] The review proceeding related to LA's entitlements as a 'primary victim',³ and so the nature of the violence committed against her, as distinct from that committed against her partner, was relevant. The financial assistance granted to a primary victim may include 'special assistance'.⁴ The amount of special assistance which a person may be

² *Victims of Crime Assistance Act 2009* (Qld) sch 2, s 1(3) ('Victims of Crime Assistance Act').

³ See *ibid* s 26(1).

⁴ *Ibid* s 39(h).

given is provided for and determined using Schedule 2 (as it then was),⁵ to the Victims of Crime Assistance Act.

- [9] The Schedule to the Victims of Crime Assistance Act is somewhat complex. It sets ranges of permissible payments depending on whether the act of violence is categorised as a category A, B, C or D act of violence. However, after that first process of categorisation has been completed, it is then necessary to determine whether certain categories of circumstances apply. There are category A, B and C circumstances. This second process of categorisation can serve to ‘uplift’ the amount of assistance available to a higher payment range.
- [10] The police did not charge the perpetrator with any offence in relation to the perpetrator’s actions against LA during the relevant incident. The police focussed, instead, on charging the perpetrator with the murder of her partner.
- [11] Victim Assist, and in turn the Tribunal on review, had to evaluate the incident in order to categorise the act of violence against LA: whether it should be classed as a category A, B, C or D act of violence. Victim Assist classed it as a category C act of violence, on the basis that it involved an assault occasioning bodily harm. In the review proceeding, the Tribunal reached the same conclusion on categorisation, although on the basis that the act of violence involved a serious assault rather than an assault occasioning bodily harm. The Tribunal did not accept LA’s submission that the act of violence should be classed as a category A act of violence on the basis that it constituted attempted murder.
- [12] While LA in her submissions filed on 21 March 2019 said that she should be considered a ‘category A victim’, no appeal has been lodged by her against Order 1 of the Tribunal, which confirmed the categorisation of the act of violence as category C. Victim Assist Queensland’s appeal raises questions of law only and is an appeal in the strict sense. Accordingly, the Appeal Tribunal must decide this appeal proceeding pursuant to s 146 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (‘QCAT Act’). There is no element of rehearing the review application.⁶ There is no basis upon which the Appeal Tribunal could disturb Order 1. That said, even had there been an appeal on this issue, it does not have apparent merit.
- [13] The first ground of Victim Assist’s appeal is that in the review proceeding, the Tribunal applied paragraph (a) of the definition of category B circumstances but failed to apply paragraph (b). As a consequence, Victim Assist submits that the Tribunal failed to apply the correct legislative test, constituting an error of law.
- [14] As explained in the earlier discussion, the Tribunal found that because LA suffered a serious injury as a direct result of the violence, category B circumstances applied. It proceeded to award special assistance on that basis. There is no mention of paragraph (b), or the content or effect of it, in the reasons of the Tribunal in the review proceeding. It is apparent from the learned Member’s reasons for decision that the second component of the definition, paragraph (b), was not identified as relevant, or

⁵ Refer footnote 1.

⁶ If there was an appeal on a question of fact, or a question of mixed law and fact, the appeal, if allowed, would be decided by way of rehearing pursuant to s 147 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (‘QCAT Act’).

considered and applied in determining the review. Therefore, the correct legislative test for whether category B circumstances applied was not applied.

[15] The Tribunal erred as alleged by Victim Assist. The appeal should be allowed.

Ground of appeal 2: Were the Tribunal’s reasons for decision inadequate?

[16] The second ground is put forward by Victim Assist in the alternative, in the event that the appeal fails on the first ground. Although the appeal succeeds on ground 1, in case we are wrong on the first ground, we must consider it.⁷

[17] The second ground is that the Tribunal’s reasons for decision in the review proceeding were inadequate because:

- a) they failed to refer to, consider or discuss the application of paragraph (b) of the definition of ‘category B circumstances’; and
- b) they failed to explain how the definition was satisfied on the evidence before the Tribunal.

[18] A failure to provide adequate reasons is an error of law.⁸

[19] If we were wrong in our conclusions about ground of appeal 1, we would accept, in the alternative, that the Tribunal’s reasons for decision are inadequate. There was no mention, let alone any explanation, in the reasons of a vital element necessary to found Orders 2 and 3, namely how paragraph (b) in the definition was satisfied.

What should the outcome of the appeal be?

[20] Victim Assist submits that it was not open to the Tribunal in the review proceeding to find that paragraph (b) of the definition of ‘category B circumstances’ was met. There is no submission that LA was under 16, over 60, or that she had impaired capacity at the time of the incident. In relation to ‘impaired capacity’, the Victims of Crime Assistance Act adopts the definition in the *Guardianship and Administration Act 2000* (Qld).⁹ In summary, a person has impaired capacity if they are not capable of understanding the nature and effect of decisions about a matter, or of freely and voluntarily making decisions about a matter, or of communicating the decisions in some way.¹⁰

[21] Victim Assist’s submissions in this regard have not been challenged, and they are correct. There is no evidence that LA was under 16, over 60, or a person with impaired capacity at the time of the incident.

[22] Had paragraph (b) of the definition of ‘category B circumstances’ been applied by the Tribunal in the review proceeding, Order 2, and consequently Order 3, could not have been made. It is open to us to amend the decision.¹¹ The appropriate outcome of the appeal is to amend the Tribunal’s decision by deleting Orders 2 and 3. While the remaining Orders do not specify the amount of special assistance, as the maximum

⁷ *John Urquhart t/as Hart Renovations v Partington* [2016] QCA 199.

⁸ *SS v Public Guardian* [2015] QCATA 142.

⁹ Victims of Crime Assistance Act sch 3.

¹⁰ *Guardianship and Administration Act 2000* (Qld) sch 4.

¹¹ QCAT Act s 146(a).

amount specified in the Schedule¹² for a category C act of violence (not ‘uplifted’ by Category B circumstances) was awarded by Victim Assist Queensland, there is no need for the Orders to specify the amount.

Non-publication order

- [23] A non-publication order can be made by the tribunal if it is necessary for reasons including to avoid endangering the physical or mental health or safety of a person; to avoid publication of information whose publication would be contrary to the public interest; or for any other reason in the interests of justice.¹³
- [24] A non-publication order expressed to be ‘unless otherwise ordered’ was made by the Appeal Tribunal on 27 March 2019. The order prohibited, on an interlocutory basis, the publication of information that may identify the respondent or her children. An order in similar terms was made on a final basis in the proceeding before the Tribunal.
- [25] LA did not appear at the Appeal Tribunal hearing or make an application for a non-publication order in the appeal proceeding. That said, there was evidence of psychiatric and/or psychological conditions suffered by LA and her children provided in the review proceeding. Further, her submissions to the appeal tribunal include evidence from her about ongoing effects of those conditions. It is reasonable to infer, and we do, that it may likely be detrimental to their mental health for information about the proceedings to become public. Also, we infer that it may endanger their physical health and safety should the perpetrator become aware of the proceedings or obtain information on the tribunal’s files.
- [26] Further, it would be contrary to the public interest for information about the victim and her children to be publicly available through publication, including to the perpetrator, as a result of the proceedings which occur here as a consequence of the administration of legislation enacted to benefit victims of violent crime. Similarly, it is not in the interests of justice more broadly for LA and her children, as victims of violent crime, to be subject to the possible disclosure of information about them that may be accessed by the perpetrator.
- [27] On the Appeal Tribunal’s own initiative, we are satisfied that it is necessary to make a final non-publication order to prohibit publication of any information about the proceedings that may identify LA or her children or their whereabouts.

Orders

- [28] We make orders amending the decision that the Tribunal made on 16 August 2018 by deleting Orders 2 and 3, and renumbering the remaining orders.
- [29] Further, we make a non-publication order in the terms discussed above.

¹² Refer to footnote 1.

¹³ QCAT Act s 66(2).