

CITATION: *Wheaton v Victim Assist Queensland* [2016] QCAT 105

PARTIES: Simon James Wheaton
(Applicant)
v
Victim Assist Queensland
(Respondent)

APPLICATION NUMBER: GAR270-15

MATTER TYPE: General administrative review matters

HEARING DATE: 8 March 2016

HEARD AT: Brisbane

DECISION OF: **Member Howard**

DELIVERED ON: 11 May 2016

DELIVERED AT: Brisbane

ORDERS MADE: **1. The decision of Victim Assist Queensland to refuse assistance to Simon James Wheaton is confirmed.**

CATCHWORDS: GENERAL ADMINISTRATIVE REVIEW-
VICTIM ASSISTANCE- whether victim
reasonably assisted police to investigate violent
act- whether victim had reasonable excuse for
not assisting police

*Queensland Civil and Administrative Tribunal
Act 2009 (Qld), s 19, s 20
Victims of Crime Assistance Act 2009 (Qld),
s 82*

APPEARANCES:

APPLICANT: Mr Simon James Wheaton represented himself

RESPONDENT: Brendan James, Team Leader, appeared for
Victims Assist Queensland

REASONS FOR DECISION

- [1] During the evening of 3 October 2014, Simon James Wheaton sustained injuries in an alleged assault at his home. He says that persons unknown to him entered his home and seriously assaulted him. After they had left, he staggered to the shed at the back of his property, where another person was living, for assistance. The person living in the shed telephoned emergency services.
- [2] Mr Wheaton was taken to the emergency department of the Princess Alexandra Hospital. He was diagnosed with lacerations to his scalp, his left upper lip and his left ear, as well as multiple facial fractures and fractures of two of his left teeth and associated gingival de-gloving injury. He has subsequently undergone significant treatment for these injuries.
- [3] Police officers attended the Princess Alexandra Hospital and spoke with Mr Wheaton later that evening. However, ultimately there was no investigation into the assault. The police officers concerned (including Detective Matheson) understood that Mr Wheaton did not wish to make a complaint and recorded this in police records. Mr Wheaton says this is not so. There was no CCTV. There are no witnesses to the alleged assault (other than Mr Wheaton) and no suspects have been nominated.
- [4] Mr Wheaton later applied under the *Victims of Crime Assistance Act 2009* (Qld) ('Victims Act') for financial assistance for medical expenses; special assistance; and legal expenses. The extent of his claim was unknown. (Indeed, at the date of this Tribunal hearing, Mr Wheaton was unable to clarify how much assistance he sought.) The application was refused by Victims Assist Queensland. An internal review occurred, and it was once again refused. Mr Wheaton has now applied to the Tribunal for external review of the decision to refuse his application for assistance.

The Tribunal review process

- [5] The purpose of the review in the Tribunal is to produce the correct and preferable decision.¹ The Tribunal must hear and decide the review by way of a fresh hearing on the merits of the application.² Essentially, the Tribunal stands in the shoes of the original decision maker and makes its own decision about the application for assistance. For this purpose, it has all of the functions of the decision maker for the decision reviewed.³
- [6] In conducting the review, the Tribunal must apply the relevant legislation, namely the Victims Act. The Victims Act provides that assistance may not be granted to a person if, on the balance of probabilities, the decision-maker is satisfied that the person has not given reasonable assistance to the police investigation into the act of violence or the arrest or prosecution of the person or persons who committed, (or allegedly committed the act of

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

² *Ibid*, s 20(2).

³ *Ibid*, s 19(c).

violence), and that failure has prevented the arrest or prosecution of that person or persons.⁴

- [7] However, that prohibition on granting assistance does not apply if the decision-maker is satisfied the person had a reasonable excuse for not providing the assistance.⁵ In considering whether a person had a reasonable excuse, the Victims Act specifies matters which must be considered, including: whether the person has an impaired capacity; the nature of the injury; whether the person was intimidated; any special circumstances which prevented the person providing the assistance; and any other matter which is relevant.⁶
- [8] There are a variety of other requirements and exclusions, but in the context of this matter they are not relevant because of the conclusions I have reached, as explained below.

Did Mr Wheaton give reasonable assistance to the investigation?

The evidence about Mr Wheaton's actions following the assault

- [9] Mr Wheaton's evidence about his discussions with police later during the evening of the assault, and subsequently, is confusing. It is contradicted by other accounts of those same events that he has given to support his application. Some of his evidence is contained in written material he gave Victim Assist. Some other versions of events emerged during the course of his oral evidence at the hearing. Some of the statements he gave in oral evidence contradicted other statements he made orally a short time later, as well as his written material. None of these versions is consistent with the QPS records.
- [10] In a submission to Victims Assist on 28 May 2015,⁷ Mr Wheaton said that the police report obtained by Victim Assist contained '*obvious omissions and inaccuracies*'. The police occurrence report⁸ sets out that Mr Wheaton told police who attended the hospital that he did not want to make a complaint, because he was unable to recall the incident. The police report further says that he elaborated that he was aware that he was soon to be imprisoned for other matters and did not want to make complaint because it would make his life in prison '*uncomfortable*'.⁹
- [11] In the submission, Mr Wheaton further said that the only interview with police was on the night of the assault while he was undergoing '*life saving treatment*'. He states that '*obviously*' he was in no condition then to '*discuss, recall, identify my attackers and to discuss with the police with any logic*'.¹⁰ He said that the police left a card for him that evening, so that he could

4 Victims Act, s 82(1).

5 Victims Act, s 82(3).

6 Ibid.

7 Exhibit 1, p 62.

8 Ibid, pp 44 – 47.

9 Ibid, p 47.

10 Ibid, p 62.

contact them at a later date for interview. He then says that he followed up and left messages for the officer on three occasions between November and January, but without a return call from the officer concerned (Detective Matheson). He concluded that statement by saying that the officer finally made contact with him on an unrelated matter and when he pointed out that he had left three messages during the period for the follow up interview, that the police officer told him, in effect, that it was too late.

- [12] Later, in another submission, accompanying his application for internal review of the decision made by Victims Assist, Mr Wheaton said that on the night of the assault he was in no condition to assist police due to the critical nature of his injuries and his *'semi conscious [sic] condition'*.¹¹ He further says that he was too ill and *'in great fear of further attacks in the post-incident period'*. He asserts again that he followed up with police on several occasions, but that they did not respond. At this stage he says *'when they finally did make contact with me in Feb 2015, they told me "to –uck off, the file is closed"'*.¹² At that stage, he said that his fear of further assaults is linked to his *'medical history and that being diagnosed as Bipolar Disorder and Paranoid Schizophrenia'*.¹³
- [13] Mr Wheaton's psychiatrist, a Dr Walters, subsequently advised Victim Assist by telephone that Mr Wheaton has not been diagnosed with schizophrenia or bipolar disorder, *'but is certainly paranoid and has some delusion episodes. Dr stated that the applicant would have certainly [sic] have a right to fear reprisals.'*¹⁴ He was unable to offer a reason why the assault was not pursued with police by Mr Wheaton.
- [14] Detective Matheson told Victim Assist by telephone that Mr Wheaton withdrew his complaint *'as soon as it was made'*.¹⁵ He advised that the reason for that was Mr Wheaton's imminent incarceration for a separate offence and that Mr Wheaton did not want to be known as *'dog'* in prison for *'dobbing'*.¹⁶ Detective Matheson denied that Mr Wheaton had tried to contact him on several occasions but received no response. He told Victim Assist that subsequent to Mr Wheaton withdrawing the complaint, Mr Wheaton was a suspect in a burglary with violence, and that Detective Matheson was searching for Mr Wheaton with respect to the burglary. He made attempts through his (Mr Wheaton's) friends and associates to locate him, but with no avail. He considers that Mr Wheaton was making it difficult to locate him. Eventually he was found on 13 December 2014, and at that point, there was no mention by Mr Wheaton that he wished to make a complaint in respect of the October assault. Detective Matheson advised Victim Assist that if Mr Wheaton wanted to make a complaint, the police would certainly have accommodated that and investigated the matter.¹⁷

11 Exhibit 1, p 68.

12 Exhibit 1, p 68.

13 Ibid.

14 Ibid, p 74.

15 Ibid, p 75.

16 Ibid.

17 Ibid, p 75.

- [15] Victim Assist provided a screen shot from police records made by Detective Matheson on 4 October 2014.¹⁸ It recorded that Mr Wheaton didn't want to make a complaint and that his 'withdrawal advice' was captured on digital recorder.
- [16] At the commencement of the hearing on 8 March 2016, Mr Wheaton confirmed, that the information he had given, particularly to Victim Assist, was true and correct in every respect. However, when he was cross-examined, he made a variety of inconsistent statements. Although he maintained that he wasn't a suspect in a burglary at the time of the assault, and that wasn't a reason for him to withdraw his complaint, he initially said that when the police came to the Princess Alexandra Hospital, he was '*sort of in intensive care*'. He denied that he had at that time said he wanted to make a complaint or withdraw it.
- [17] He said initially that he could not give information at that time because his jaw was being stitched up: he said he couldn't speak because his palate was cracked and all of his front teeth were missing. He further asserted that he was semi-conscious at the time, and/or *drifting in and out*. It was put to him that the hospital records¹⁹ indicate that he had a Glasgow Coma Scale score of 15 on arrival (which meant he was fully alert), and further stated that he '*remained alert and oriented throughout his presentation*'.²⁰ He said that the report was incorrect. He says he understood that Detective Matheson and his partner would see him at another date. Although he had initially indicated that one reason he couldn't speak was because all of his front teeth were missing, the hospital report suggests he had two damaged teeth. When that was suggested to him in cross-examination, Mr Wheaton then said it was three teeth.
- [18] Later, under cross-examination, Mr Wheaton gave another version of events, asserting that he had in fact spoken with police at the hospital. He said he had told them he was not willing to complete a witness statement at that time as he would need to consider closely and think carefully about what he wanted to say at a different time, because in addition to the assault, the police officers were asking him questions about items that they had found at his home. When it was put to him that he had earlier said he wasn't able to speak coherently to them, he claimed that Mr James was mixing up his words. He said that he didn't think it was the time and the place to be interviewed. He felt the police officers were hassling him. He felt they were not really there to support him in relation to the assault: rather, they were really trying to drill him about items they had found in his home. At this stage, he then said the conversation with police took no more than five minutes.
- [19] In the course of giving this version of events, he said that his girlfriend commented about his future safety in the house and reprisals if he said anything. He further said her comments related to reprisals, both in prison and at the house. He acknowledged that he has been to jail on several

¹⁸ Exhibit 2.

¹⁹ Exhibit 1, p 21.

²⁰ Ibid.

occasions before the assault and since. However, he asserted that he did not, at any stage, withdraw the complaint. He said that during his contact with the police service he had waited for up to an hour for Detective Matheson and that he had always said he would have to catch up with him later. He then later admitted the contact he spoke about occurred in the context of him being pulled over by police and detained so that Detective Matheson could talk to him. He said that on two occasions, Detective Matheson had been unable to attend in a timely manner and he had been released.

- [20] Also in cross-examination, Mr Wheaton said that following the initial discussion with police at the hospital, it was left on the basis that either he would contact Detective Matheson, or Detective Matheson would contact him to follow up. He asserted at that point he had left three messages for Detective Matheson, so that when he was next pulled over, he would not have to sit at the side of the road. The second meeting he had with Detective Matheson was on 13 December 2014. He asserted that at that stage he wanted to talk about making a complaint, but Detective Matheson told him he had missed his chance. Subsequently when asked to confirm that he had raised the issue of making a complaint at this stage with Detective Matheson, Mr Wheaton gave a confusing answer.
- [21] He later conceded that he had, in fact, not left messages for Detective Matheson or spoken with him after 13 December, 2014, and that he had been mistaken in making reference to contact (at p 68 of Exhibit 1) on February 15. Further, he confirmed that his last contact with him was face to face contact, not telephone contact.
- [22] In response to suggestions in cross-examination that he had not been diagnosed with bipolar disorder or schizophrenia, Mr Wheaton claimed it was a *loose* diagnosis by another specialist, which was *with the Supreme Court* and that he had not been able to obtain a copy at this stage. He also asserted he was being treated for it, whether or not it was diagnosed, by receiving monthly injections of an anti-schizophrenic medication.
- [23] When he was questioned about his fear of reprisal, he indicated he personally had had no particular concerns for his safety in respect of making the complaint, and that it was his girlfriend who held those concerns for both her safety and his. When he was referred back to his statements (at p 68 of Exhibit 1) where he refers to his own fear, he said that that was his paranoia causing that. However, he said he did not feel scared, although he was paranoid about it. He also asserted that he was not concerned about reprisals.
- [24] He denied tailoring his answers to suit the questions, asserting that Mr James was doing a thorough job of questioning him and that the time of the assault was a confusing time.
- [25] Detective Matheson and Dr Walters were not available for cross-examination at the hearing.

Discussion of the evidence

- [26] Mr Wheaton has provided many different, inconsistent and contradictory statements about the events during the course of his application and within his own oral evidence at the hearing. I consider him to be an unreliable historian. I am unable to place significant weight on any of his versions of the events. Even where his evidence is not directly contradicted by something else he or anyone else said, I am not persuaded on the balance of probabilities that events occurred as he claims in any one particular version of the events he gave.
- [27] Detective Matheson was not available at the hearing, so his evidence was not tested. Some statements attributed to him are contained in a file note of a telephone conversation and made by an officer of Victim Assist. These of themselves can be given little weight. However, they are consistent with the contemporaneous written police records. The police occurrence report was made the day following the assault (and the hospital visit by police), as were the details contained in Exhibit 2. Detective Matheson recorded that Mr Wheaton did not want to make a complaint and that he withdraw the complaint at that time. Whether it was 'not made' or 'withdrawn', it is clear that the police officer/s involved understood that Mr Wheaton did not want to proceed with a complaint. I accept this contemporaneous written record of the events. I find that Mr Wheaton told police that he did not wish to proceed with a complaint following the assault. Further, I find that he has not subsequently taken steps to do so.

Conclusions

- [28] In the circumstances, I find on the balance of probabilities that Mr Wheaton has not give reasonable assistance in the police investigation into the act of violence. Further, I find that his failure to do so has prevented an arrest or prosecution of the person or persons who committed the act.
- [29] In accordance with s 82(1), the granting of assistance to Mr Wheaton is therefore prohibited, unless he had reasonable excuse for not providing the assistance.

Did Mr Wheaton have reasonable excuse for failing to do so?

- [30] I have had regard to all of the matters set out for consideration in s82(3) of the Victims Act which are relevant to determining whether Mr Wheaton had a reasonable excuse for not providing the assistance.
- [31] Although Mr Wheaton's evidence in relation to his mental state and its effect on his ability to provide reasonable assistance to a police investigation is somewhat confusing, it raises the possibility that that he has a mental illness which may suggest he has an impaired capacity.²¹

²¹ An impaired capacity is relevant under Victims Act, s82(3) (b)

- [32] As discussed earlier, Mr Wheaton's psychiatrist, Dr Walters, advised Victim Assist by telephone that Mr Wheaton has not been diagnosed with schizophrenia or bipolar disorder (as Mr Wheaton had claimed), '*but is certainly paranoid and has some delusion episodes. Dr stated that the applicant would have certainly [sic] have a right to fear reprisals.*'²² He was unable to offer a reason why the assault was not pursued with police by Mr Wheaton.
- [33] Dr Walters has not provided a report and was not available for cross-examination. Again, the statements attributed to him appear in an internal Victim Assist file note. That said, Mr Wheaton ultimately accepted at the hearing that he had not in fact been diagnosed with the mental health conditions, which he had earlier claimed. Mr Wheaton's comments about a *loose diagnosis*, implies that he is aware of no actual diagnosis.
- [34] While Mr Wheaton's apparent inability to tell the same version of events twice and the comments recorded by Victims Assist from Dr Walters to the effect that he has paranoia and delusions at times raises the possibility he has an impaired capacity, it is also possible, as was suggested to him in cross-examination, that he was merely tailoring answers to suit the question. If so, that would demonstrate no more than making the statement/s he considered more advantageous at the time. On the evidence that I have before me, I am not reasonably satisfied that Mr Wheaton has an impaired capacity which rendered him unable to provide reasonable assistance to the police from the date of the offence until the time of the hearing. Even if I accept, based on the Victim Assist file note of a conversation with Dr Walters, that Mr Wheaton was paranoid and affected by delusions at times, and that this affected his ability to give reasonable assistance, there was still opportunity for him, when not so affected, to take steps to pursue a complaint with the police. He has not. I am not satisfied that Mr Wheaton has an impaired capacity which has prevented him from rendering reasonable assistance.
- [35] The evidence also raises the possibility that Mr Wheaton fears reprisal.²³ I have considered whether this may provide him with a reasonable excuse. The difficulty is that Mr Wheaton does not suggest now (although he said in one of his earlier statements) that he fears reprisal. Accordingly, once again, even if I accept that he had a fear of reprisal (whether or not it was reasonably based fear) for some period of time, he could have taken steps at some stage when he did not fear reprisal to make a complaint and assist in an investigation. He has not done so. In these circumstances, I am not reasonably satisfied that his fear of reprisal is a reasonable excuse for his ongoing failure to provide assistance.
- [36] On the evidence, there is no other relevant basis upon which Mr Wheaton may have a reasonable excuse for not providing assistance.

²² Exhibit 1, p 74.

²³ Fear of reprisal may potentially be relevant under Victims Act, s82(3)(e), (g) and/or (h).

Conclusions and orders

- [37] Accordingly, granting assistance to Mr Wheaton is prohibited by the Victim Act.
- [38] The correct and preferable decision is to refuse the claim. I make orders confirming the refusal of his application.