

## ***AB v Northern Territory of Australia* [2010] NTSC 8 (18 March 2010) – Northern Territory Supreme Court**

‘Aggravated assault’ – ‘Compensation to victim’ – ‘History of abuse’ – ‘Physical violence and harm’ – ‘Rape’ – ‘Unlawfully causing serious harm’

Charges: Aggravated assault, unlawfully causing serious harm, rape

Appeal type: Appeal against amount of compensation ordered for victim

Facts: The appellant and the offender were living together in a domestic relationship. On the first occasion, the offender assaulted the appellant with a curtain rod, causing severe lacerations to her head, arms and body, substantial blood loss, broken teeth, and swelling and bruising to her face and lower back. In relation to this conduct, the offender was charged with aggravated assault. The appellant was again assaulted by the offender several weeks later, resulting in a fractured clavicle. The pattern of assaults continued when approximately three months later the offender followed the victim home, dragged her outside, bashed her with a stick and fists, verbally abused her and raped her twice. As a result, the victim suffered extensive injuries to her face and scalp, a fractured jaw and bruises all over her body. The offender was found guilty of unlawfully causing serious harm to the victim and two counts of sexual intercourse without consent.

The victim made an application for compensation under the *Victims of Crime Assistance Act 2006* (NT) (the Act) and was awarded \$35,000 for the compensable violent act, as determined by an assessor. She subsequently appealed to the Local Court on the basis that the compensation awarded was inadequate when considering the injuries suffered. It was argued that the respondent erred in considering the three incidents constituted a single violent act and in failing to assess her psychological injuries. Alternatively, it was argued that the respondent erred in determining the award quantum under Schedule 3, Part 1(c) of the Act.

Issue: Several questions of law were reserved for the Supreme Court including:

- Were the criminal acts committed against the appellant on the three separate days a single violent act for the purposes of s 5 of the Act?
- Does s 25 of the Act prevent the appellant from obtaining an assessment for psychological injury?

Decision and reasoning: Kelly J first detailed the operation of the Act and its application to victims of domestic violence ([9]-[44]).

- Kelly J answered this question in the negative. Section 5(4) of the Act provides that a series of related criminal acts constitutes a single violent act. Whether the three assaults constituted a series of related

criminal acts depended on whether they could be said to 'occur over a period of time' under s 5(3)(b)(ii). For this to be the case, the criminal acts must have been continuing in the sense of forming a single episode of offending. The assaults committed by Mr Barnes occurred months apart and each resulted in separate injuries. Therefore, the three sets of criminal acts were not committed 'over a period of time' within the meaning of s 5(3)(b)(ii).

- Nothing in s 25 prevents the appellant from obtaining compensation for psychological or psychiatric injury suffered as a result of the assaults. The first two assaults are not 'compensable violent acts' within the Act however the appellant is entitled to claim an award for the 'compensable injuries' suffered as a result of those acts. As these offences are not included in Schedule 2 to the Regulations, she could only include a psychological or psychiatric injury as one of the three compensable injuries under Regulation 18 *Victims of Crime Assistance Regulations* (NT) if the recognisable psychological or psychiatric disorder was severely disabling (Reg 15(2)). The third incident involving raping the appellant is a compensable violent act and therefore she could apply for an award for the assault per se (s 10(4)(a)(i)) or an award for compensable injuries suffered as a result of the violent act. The appellant chose to do the latter, and therefore the assessor was obliged to take into account all of her injuries including any psychological or psychiatric disorders that resulted from the attack as part of the common law assessment of damages.