

PARTIES: SOLICITOR FOR THE NORTHERN  
TERRITORY

v

PAULINE MOKETARINJA

TITLE OF COURT: SUPREME COURT OF THE  
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE NORTHERN  
TERRITORY AT ALICE SPRINGS

FILE NO: 25 of 1996

DELIVERED: 7 October 1996

HEARING DATES: 27 September 1996

JUDGMENT OF: MILDREN J

**CATCHWORDS:**

Appeal - Power of local court to award costs in relation to claim made under *Crimes (Victims Assistance) Act* - Is court precluded from making an order until such time as an assistance certificate is issued.

Does s 8(10) of the *Crimes (Victims Assistance) Act* allow an award of costs only in favour of an applicant - Intention of the legislature - The way s 31 of the *Local Court Act* should be read with the provisions of the *Crimes (Victims Assistance) Act*.

Cases

*Goodwin v Phillips (1908) 7 CLR 1 approved*

Legislation

*Crimes (Victims Assistance) Act*

*Local Courts Act 1989*

*Local Courts Act 1941-1983*

Text

*Statutory Interpretation in Australia 4th Edition*

**REPRESENTATION:**

*Counsel:*

Appellant: Mr J Stirk  
Respondent: Ms K Judd

*Solicitors:*

Appellant: McBride & Stirk  
Respondent: CAALAS

Judgment category classification: B  
Judgment ID Number: MIL96025  
Number of pages: 9

IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA  
AT ALICE SPRINGS

No. 25 of 1996  
(9511830)

BETWEEN:

**SOLICITOR FOR THE NORTHERN  
TERRITORY**

Appellant

AND:

**PAULINE MOKETARINJA**

Respondent

CORAM: MILDREN J

REASONS FOR JUDGMENT

(Delivered 7 October 1996)

This is an appeal by leave pursuant to the provisions of the *Local Courts Act*.

The respondent made application to the Local Court for assistance under the provisions of the *Crimes (Victims Assistance) Act*. She claimed to have been injured as a result of an assault with an iron bar perpetrated by one Seymour Fly (now deceased). The hearing of the substantive application was listed before the Local Court on 15 February 1996. On that day the respondent

failed to appear and the appellant sought an order for costs. The learned Magistrate heard argument in relation to the order for costs on 20 March 1996. The respondent's submission was that the Court had no jurisdiction to award costs against the respondent. The appellant's submission was that as the proceedings were heard in the Local Court, the Court had the power to award costs pursuant to s 31 of the *Local Court Act*.

The learned Magistrate considered that the power of the Local Court to award costs in relation to a claim made under the *Crimes (Victims Assistance) Act* was limited by s 8(10) and that as no assistance certificate had yet been issued, no order for costs could be made. The learned Magistrate indicated that if and when a certificate issued, the Court could then make an order for costs, including an order for costs in favour of the appellant.

It is the appellant's contention that the learned Magistrate was incorrect in concluding that s 8(10) of the *Crimes (Victims Assistance) Act* precluded the making of an order for costs until such time as an assistance certificate was issued. It was submitted that the Court could make an award of costs against the respondent pursuant to s 31 of the *Local Court Act*.

The respondent filed a notice of contention complaining that the learned Magistrate was incorrect in deciding that an award of costs could be made in favour of the Solicitor for the Northern Territory once an assistance certificate was issued.

The respondent contended first that there was no power to award costs to the appellant because of its status as the Crown; and further there was no power to award costs against the respondent in favour of any other party. In effect, the respondent argued that s 8(10) of the *Crimes (Victims Assistance) Act* provided a power to award costs only in favour of an applicant.

The *Crimes (Victims Assistance) Act* was assented to by the Administrator on 29 June 1982 and came into force on 28 January 1983. The preamble to the Act states that it is “an Act to provide assistance to certain persons injured or who suffer grief as a result of criminal acts”.

The scheme of the Act is that a “victim”, i.e. “a person who is injured or dies as the result of the commission of an offence by another person” may, within twelve months after the date of the offence, apply to the Local Court for an assistance certificate in respect of the injury suffered by him as a result of that offence: see s 5(1). The applicant is required by s 6 to serve a copy of the application upon the Solicitor for the Northern Territory and, where the identity of the offender who caused the injury or death is known, the offender. Section 7 of the Act provides that the Crown and the offender are parties to the proceedings.

Section 8 provides that upon hearing an application under s 5, the Court may issue an assistance certificate, and if it does the certificate shall certify that the Northern Territory shall pay inter alia an amount specified in the certificate by way of assistance for the injury suffered by the victim.

Section 8(10) provides:

“Where the Court issues an assistance certificate it may make such order as to costs and disbursements as it thinks fit.”

Sections 9 and 10 set out certain matters which are relevant to the assessment of the amount to be specified in the assistance certificate. Section 11 provides that certain matters are not to be included in assessing the amount of compensation to be so specified. Section 12 provides that in certain circumstances an assistance certificate is not to be issued. Section 13 provides a limit to the amount which may be specified in the certificate and also provides for the Court to have regard to the amount of any payments received or payable to the victim by way of compensation or damages from the offender or any person on behalf of the offender under various laws of the Territory or the Commonwealth.

Section 15 of the Act sets out the procedure on the hearing by the Court of an application - essentially, subject to the Act, the regulations and any Rules or practice directions made or given specifically for the conduct of the business of the Court under the Act, the procedure of the Court is within the discretion of the Court; the hearing is to be conducted with as little formality and technicality and with as much expedition as the requirements of the Act and a proper consideration of the application permit, and subject to the Act, the Court is not bound by any rules of evidence but may inform itself on any matter in such manner as it thinks fit.

Section 20 of the Act provides as follows:

## “20 PAYMENTS BY TERRITORY

The Territory shall, within 28 days after the issue of an assistance certificate, pay the amount specified in the certificate -

- (a) to the applicant; or
- (b) in accordance with any order made under section 8(8),

as the case may be and as soon as practicable pay such amount, by way of costs and disbursements, as is ordered by the Court.”

Section 21 of the Act provides a procedure for the recovery of the amount of the assistance costs and disbursements paid under s 20 by the Territory from the offender. Payments made by the Territory are debited to the Victims’ Assistance Fund established pursuant to s 25A of the Act. The Fund is financed by the imposition of victims’ assistance levies imposed upon persons convicted of criminal offences dealt with otherwise than by way of imprisonment.

The *Local Court Act 1989* was assented to by the Administrator on 28 June 1989 and came into operation on 1 January 1991. Section 14 of the *Local Court Act* provides that the Local Court has jurisdiction to hear and determine certain claims within its jurisdictional limit; certain claims with the consent in writing of the parties which exceed its jurisdictional limit and “any other matter or cause of action if it is given jurisdiction to do so by or under an Act other than this Act.”

Section 31 of the Act provides as follows:

## “31 COSTS TO BE IN DISCRETION OF COURT

(1) Subject to this or any other Act or the Rules, the costs of and incidental to the proceedings in the Court are in the Court’s discretion and it has full power to determine by whom, to whom and to what extent the costs are to be paid.

(2) This section and section 32 apply to a purported proceeding in the Court which is beyond its jurisdiction as if the purported proceeding were within its jurisdiction.”

Section 32 of the *Local Court Act* enables the Court to award costs against legal practitioners in certain circumstances.

The *Local Court Act 1989* repealed the *Local Court Act 1941-83*. One of the consequences of that repeal was that the various local courts previously in existence were abolished and were replaced by a single local court with jurisdiction throughout the whole of the Northern Territory.

There is no provision in the *Crimes (Victims Assistance) Act* other than s 8(10) which touches upon the subject of whether or not costs may be awarded to anyone other than an applicant.

The question of whether or not the Local Court has power to award costs to the appellant depends initially upon the answer to whether or not s 31 of the *Local Court Act* applies to proceedings brought in the Local Court for the grant of an assistance certificate. This depends on the intention of the legislature.

I consider that the intention of the legislature is that an award of costs may be made in relation to an application for an assistance certificate under s 5 of the Act only in favour of the applicant and that the legislature did not intend there would be a power to award costs in favour of the Crown or in favour of an alleged offender. Section 8(10) limits the Court's power to award costs to the circumstance where the Court issues an assistance certificate. Therefore, if it had been the Crown or the victim who had sought an adjournment of the hearing and not the applicant, the applicant would not have been entitled to an order for costs at that stage. Further, if an order for costs could be made in favour of the Crown, it would appear by s 20 that those costs would have to be paid by the Crown to itself. Payments by the Northern Territory are to be debited to the Victims' Assistance Fund pursuant to s 25A(5). It would appear that the Fund is established for the purpose of financing the amounts to be paid to applicants who obtain assistance certificates, as well as any orders for costs and disbursements which the Court has made in their favour. Payments out of the fund depend upon the issue of an assistance certificate. It would seem unlikely in the extreme that the legislature intended that, in circumstances where the applicant failed, thereby giving rise on ordinary principles to a claim for costs by the other parties, that the legislature intended that the Court, in the exercise of its general powers to award costs, could order the unsuccessful applicant to pay the costs of the successful respondent.

The draftsman of s 31 of the *Local Court Act* provided that that section was "subject to this or any other Act or the Rules". This would appear to indicate that s 31 is to be read subject to the provisions of the *Crimes (Victims*

*Assistance) Act*. The problem may be approached by reference to the maxim *generalia specialibus non derogant*. The *Local Court Act* is a later Act. It is true that before the *generalia specialibus* approach can be called into operation, it is necessary to show that there is irreconcilable conflict between the relevant provisions: see Pearce and Geddes, *Statutory Interpretation in Australia*, 4th Ed, p 202. The appellant's argument is that there is no irreconcilable conflict; but it seems to me that there is. Section 8(10) of the *Crimes (Victims Assistance) Act* does not empower the Court, on the face of its language, to make any order for costs until such time as a certificate is issued. That appears to be quite contrary to the general power contained in s 31 of the *Local Court Act*. Further, for the reasons which I have already discussed, if the general power existed, it would give rise to the possibility that an order for costs could be made payable by the Crown to itself or by the Crown to the successful alleged offender, which would ultimately come out of the fund intended to benefit the victims of crime. In *Goodwin v Phillips* (1908) 7 CLR 1 at 14, O'Connor J said:

“Where there is a general provision which, if applied in its entirety, would neutralize a special provision dealing with the same subject matter, the special provision must be read as a proviso to the general provision, and the general provision insofar as it is inconsistent with the special provision, must be deemed not to apply.”

For the reasons which I have endeavoured to express, I consider that s 31 of the *Local Court Act*, if applied in its entirety, would neutralise s 8(10) when read with the other provisions of the *Crimes (Victims Assistance) Act* to which I have referred. Alternatively, adopting the approach of the Privy Council in *Associated Minerals Consolidated Ltd v Wyong Shire Council* (1974) 4 ALR

353 at 359, the legislative intention to be derived from a consideration of the *Crimes (Victims Assistance) Act* was that awards of costs in relation to applications for assistance certificates may be made only in favour of the applicant and only then upon the issue of an assistance certificate.

However, if an applicant is successful, and obtains a certificate, the Local Court would have a discretion to deprive the applicant of the whole or some part of the applicant's costs as it thinks fit by reason of the failure to attend at the hearing in February.

Accordingly, the appeal is dismissed with costs.

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