

# Crimes compensation

by John Duguid, Waters James McCormack

*This article is one in a series of six about crimes compensation, the others being entitled 'Aggravated damages', 'Conduct of victim', 'Injury (emotional as well as mental?)', 'Proof of mental injury' and 'Victim (secondary/ indirect as well primary/direct?)' - please contact the author if you want copies of any of them.*

Although the amounts involved (both the amount to be awarded in favour of the victim and the amount payable in costs) are relatively low, crimes compensation matters are not always easy. The purpose of the articles is to shed light on some of the more difficult issues encountered by the author in practising as a solicitor.

Entitlement to crimes compensation in the NT (under either the Crimes Compensation Act 1982 or the Crimes (Victims Assistance) Act 1989) depends in part on an offence "whether indictable or not" having been "committed"

Under Section 2 of the Criminal Code, an offence is "committed" if various requirements are met, as follows:

- (a) any prescribed mental element is possessed;
- (b) the act, omission or event etc. constituting the offence is done, made or caused (the physical element?); and
- (c) the act, omission or event is not authorised or justified.

Under Section 23, a person is not guilty if the act, omission or event is authorised, justified or excused.

Under Section 26, various defences of authorisation are set out. Under Sections 27 - 29, various defences of excuse are set out e.g. provocation.

## Cases

In *Sullivan v NT of A & Nudjulu* (Gray CSM, 10 March 1995, unreported), His Worship said as follows:

"However, the NT of A argued that the

assault has not been proved unless the Applicant has negated any defences available under the Criminal Code i.e. disproved that the offence was authorised, justified or excused. The NT of A argued that as in the Applicant's case, the Offender was considered to be insane, such insanity would have constituted a possible defence to many charges arising out of the incident. The NT of A conceded that the burden of proof on this issue would in fact lie on the Offender, i.e. that the Offender would be obliged to prove (on the balance of probabilities) that he was insane at the time of the incident to avail himself of the defence under Section 35 of the Code. The Offender gave no evidence in this matter.

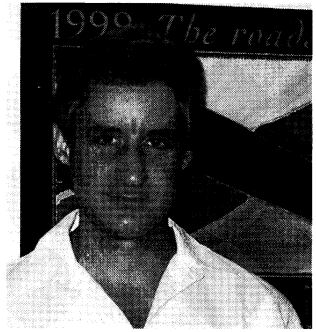
Insanity has not been made out. It is not necessary for the Applicant to exclude it. It does not in my opinion, fall within the same category of defence as self-defence and provocation which must be negated by the Prosecution. I am satisfied that the Applicant has established that he was assaulted by (the Offender)."

## Conclusion

Various propositions would seem to be supportable as follows:

(a) The word "committed" in the definition of "offence" in Section 4 of the Crimes Compensation Act 1982 and Section 4 of the Crimes (Victims Assistance) Act 1989 should be interpreted consistently with Section 2 of the Criminal Code.

(b) Therefore, this element of the 'cause of action' (for entitlement to crimes compensation) will be satisfied if there is no prescribed mental element, the Applicant proves (on the balance of probabilities) that the Offender did, made or caused the act, omission or event constituting the offence and the NT of A Offender does not try/ fails to prove (on the balance of probabilities) any defence i.e. an Offender can have "committed" an offence and yet be "not guilty".



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(c) even if insanity had been made out in *Sullivan*, the outcome should have been no different. If self defence had been made out, the application should have been dismissed because no offence would have been committed. If provocation had been made out, this fact would probably have been relevant to whether (under Section 10) the Applicant's conduct had contributed to his injury but not to whether any offence had been committed.

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