

Northern Territory of Australia v Piper

Supreme Court No. 122 of 2002

Judgment of Riley J delivered 20 August 2002

CIVIL LAW - CRIMES (VICTIMS ASSISTANCE) ACT

The defendant was the offender in an earlier proceeding under the *Crimes (Victims Assistance) Act*. The Territory was in that proceeding ordered by the Local Court to pay the victim a total of \$30,770.74.

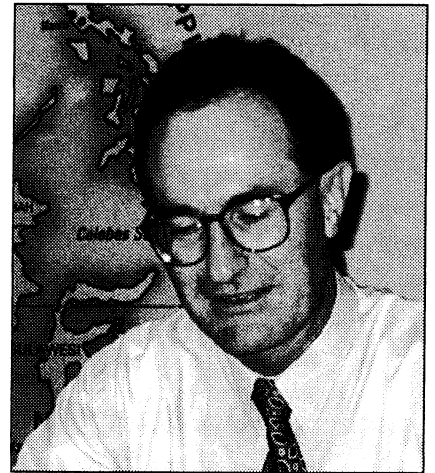
The Territory paid this sum in August 1999, and the "Victims' Assistance Fund" was duly "debited" pursuant to s25A(5) of the Act.

In October 1999 the Territory obtained judgment in the Local Court against the defendant for \$30,770.74 pursuant to s21 of the Act, to be paid into the Fund.

The instant proceeding arose out of an application under the Act which was instituted by the defendant in November 1999. The Territory was in September 2001 ordered by the Local Court to pay him the sum of \$6,000 plus \$4816 in costs, again pursuant to s20 of the Act.

The judgment obtained by the Territory in 1999 remained wholly unsatisfied. The Territory sought equitable relief against being required to pay the defendant unless and until he made his (\$30,770.74) contribution to the Fund.

The Territory relied upon the rule in *Cherry v Boulton* (1839)



Mark Hunter

4 My & Cr 442. This rule provides that, subject to statute or prior agreement between the parties, a person who is obliged to contribute to a fund may not collect from it before he or she has made that contribution.

HELD

The rule in *Cherry v Boulton* applies; the defendant is entitled to receive from the Territory the sum ordered by the Local Court (\$10,816), *but only out of the money* (\$30,770.74) *that he already owes the Territory.*

APPEARANCES

Plaintiff - Alderman / Halfpennys

Defendant - Southwood QC / Ward Keller

Centrelink and subpoenas

Centrelink is responsible for the maintenance of social security records on behalf of the Department of Family and Community Services. It is often tempting for lawyers to try to examine a person's Centrelink file, especially if you are running a compensation or family law matter. But you could be wasting your time and your client's money.

Centrelink resists most of the subpoenas it receives. Section 207 of the *Social Security (Administration) Act 1991* provides:

207. An officer must not, except for the purposes of the social security law or the *Farm Household Support Act 1992*, be required:

- (a) to produce any document in his or her possession; or
- (b) to disclose any matter or thing of which he or she had notice; because of the performance or exercise of his or her duties, functions or powers under the social security law or the *Farm Household Support Act 1992*, to:
 - (c) a court; or
 - (d) a tribunal; or
 - (e) an authority; or

- (f) a person; having power to require the production of documents or the answering of questions.

The *Family Assistance (Administration) Act 1999* contains a similar provision at section 167, which provides:

167. An officer must not, except for the purposes of the family assistance law, be required:

- (a) to produce any document in his or her possession; or
- (b) to disclose any matter or thing of which he or she had notice; because of the officer's powers, or the performance of the officer's duties or functions, under the family assistance law, to:
 - (c) a court; or
 - (d) a tribunal; or
 - (e) an authority; or
 - (f) a person; having power to require the production of documents or the answering of questions.

Generally, Centrelink will only be able to give out information
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