

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF THE *CRIMINAL INJURIES  
COMPENSATION ACT*, R.S.N.W.T. 1988 c.32  
(SUPP.), AND AMENDMENTS THERETO;

AND IN THE MATTER OF an Appeal of the  
Decision of the Criminal Injuries Compensation  
Officer made on September 2, 1992;

BETWEEN:

PIERRE NORMAN

Appellant

- and -

THE COMMISSIONER OF THE NORTHWEST TERRITORIES

Respondent

**REASONS FOR JUDGMENT**

1 Pierre Norman claims compensation pursuant to the *Criminal Injuries  
Compensation Act* as a result of an injury he received during a domestic quarrel in his  
home in Fort McPherson in November 1991. The main issue is whether his own behaviour  
is such as to disentitle him, in whole or in part, to an award for compensation.

2 In May 1992 Mr. Norman, a 60 year old native of Fort McPherson, filled out  
an application form under the Criminal Injuries Compensation Program, with the assistance  
of a friend. His application was denied by the criminal injuries compensation officer in  
September 1992. With the assistance of a lawyer, he then filed an appeal to this Court  
pursuant to s.20 of the Act. On counsel's agreement, the appeal has been heard in this

Court by considering Mr. Norman's application *de novo*.

3           The Court has now received *viva voce* testimony of witnesses who were present at the time of the applicant's injury, together with some documentary evidence as well. The recitation of facts which follows is based, *inter alia*, on my findings of credibility with respect to the witnesses who testified.

4           On November 24, 1991, Mr. Norman was drinking at the home of a friend in Fort McPherson. He returned to his own home in an intoxicated condition. Family members living with him in that home at that time were his wife Bella, five adult children and six grandchildren. When Mr. Norman returned home that day, his wife Bella was asleep. His eldest daughter, Martina, and two other daughters, Verna and Donna, were engaged in housecleaning chores. Mr. Norman made a negative remark about the mess in the house and told Martina she should "smarten up and keep the house clean". Mr. Norman then sat down on the couch in the living room. Martina got angry at her father and picked up a large two-prong meat fork in the kitchen and threw it at her father. The fork stuck in Mr. Norman's right eye. Mr. Norman pulled the fork out, put a towel over his eye, and then left the house and walked to the nursing station. He was, understandably, in a great deal of pain. He was administered pain-killing medication and later that day was medivaced to hospital in Yellowknife. As a result of this injury, Mr. Norman lost all vision in his right eye. Today he has an artificial eye and, from time to time, requires special eye drops to relieve the pain.

5           This was not the first act of violence committed by Martina Norman against

a member of her family. In 1987 she stabbed her brother Brian with a knife. She was convicted of assault with a weapon and sentenced to 4 months imprisonment.

6           On November 8, 1991 (just sixteen days prior to injuring her father), she stabbed her mother with a knife on the arm, causing a wound which required five stitches to close. For that crime, she was on December 5, 1991, convicted of assault with a weapon and sentenced to five months imprisonment.

7           In her testimony at the within hearing, Martina admitted that she threw the fork at her father. She tearfully described how she saw it stick in his eye. She said she threw the fork out of anger and that she and her father had been yelling at each other about his remark re housecleaning. During the argument she said her father said words like "Stab me, because you stabbed your mother". She says it was these words in particular, reminding her of what she had done to her mother, which angered her.

8           Martina also stated at one point in her testimony that when she raised her arm as if to throw the fork she meant to drop the fork behind her. I do not accept that part of her evidence, and I find that she indeed intended to throw the fork at her father, although perhaps not intending the precise serious injury which ensued.

9           At the nursing station Mr. Norman told the nurse that his daughter Martina had thrown the fork which injured him and that he wanted to talk to the police. When a police officer attended at the nursing station Mr. Norman told the officer that he and Martina had an argument and during the argument Martina had thrown a fork at him. The officer's notes made at the time state "Norman told me to wait upon his return before

starting any court procedure against his daughter".

10                   In Mr. Norman's testimony he stated that upon his return to Fort McPherson, following medical treatment in Yellowknife and Edmonton, he was still in a great deal of pain, and he could not stand to be in the light. His family covered the windows in his bedroom, and he says he stayed in the darkened bedroom for one and a half months.

11                   It is Mr. Norman's testimony that during the month of December 1991 when a police officer came to his house to get a statement from him, he told the officer that because he was in a great deal of pain he didn't want to talk to anyone, that he just wanted to stay in the darkened bedroom. The police officer's notes dated December 13, 1991, read: "I spoke with Pierre Norman at his residence. I asked him for a statement but he refused to provide one. He also said that it was all his fault". (It will be remembered that on December 5, 1991, Martina Norman had been sentenced to jail for 5 months for assaulting her mother).

12                   Mr. Norman acknowledged during cross-examination by counsel representing the Criminal Injuries Compensation Program that he did not want his daughter to go to jail for assaulting him. In his affidavit filed at the time of filing this appeal, Mr. Norman states, *inter alia*, "I did not want to be the one to lay charges which might result in my daughter going to jail again".

13                   No criminal charges have been brought against Martina Norman as a result of the injury to her father.

14                   The statute contemplates a situation whereby a compensation award may be made in the absence of any conviction against the wrongdoer:

s.1. In this Act,

...

"occurrence" means an act or omission referred to in subsection 2 (1).

s.2. (1) Where an act or omission of a person in the Territories during

(a) the commission of a prescribed criminal offence,

...

results in the injury or death of a person, other than the person who commits the act or omission, a claim for compensation may be made by or on behalf of a person having an interest in the claim by filing a claim in the prescribed form with an officer.

...

s.9. An officer may

(a) award compensation whether or not a person is prosecuted for or convicted of an offence as a result of an occurrence ...

...

s.10. In determining whether to make an award for compensation, an officer shall have regard to all relevant circumstances, including any behaviour of the victim that may have directly or indirectly contributed to his or her injury or death.

15                   The list of prescribed criminal offences includes (a) assault, (b) assault causing bodily harm, (c) assault with a weapon, (d) criminal negligence causing bodily harm, and (e) unlawfully causing bodily harm.

16                   In previous cases in this Court where the applicant was unable to rely on the fact of a criminal conviction of the alleged wrongdoer, it has been held that the onus is on the applicant to establish, on a balance of probabilities, that his injury was caused by or occurred in the commission of a prescribed offence. *Parsons v. Commissioner of N.W.T.*, S.C.N.W.T. #CV 00089, June 6, 1988, unreported; *Laidlaw v. Commissioner of N.W.T.*, [1991] N.W.T.R. 319.

17                   On the evidence presented on this application, I am satisfied that it has been established by a preponderance of evidence that Martina Norman committed a prescribed offence, in particular, assault causing bodily harm, and that Mr. Norman's injury to his eye was caused by the commission of that offence by his daughter.

18                   The issue thus becomes whether there exists relevant circumstances, to be taken into consideration pursuant to s.10 of the Act, which would cause the Court, in its discretion, to decline to award compensation to Mr. Norman, pursuant to the statute. Counsel representing the Criminal Injuries Compensation Program submits that such circumstances exist in the present case, in particular, Mr. Norman's behaviour at the time of the occurrence and subsequent thereto.

19                   Counsel points out that the statute directs that regard be had to (a) any behaviour of Mr. Norman which may have directly or indirectly contributed to his injury, and (b) other relevant circumstances (which counsel submits includes Mr. Norman's lack of cooperation with the police).

20                   As to the first category, counsel in her argument lists Mr. Norman's state of intoxication, his knowledge of his daughter's previous violent behaviour, his belligerent demeaning of her house-cleaning and his invitation to her to stab him as behaviour which directly or indirectly led to the injury he suffered. I disagree that the first three items mentioned may have contributed to his injury. The last item, however, is a different matter. In my view Mr. Norman's deliberate taunting of his daughter by reference to her recent stabbing of her mother amounts to a kind of provocation. This provocative conduct of Mr. Norman would not constitute a defence available to Martina Norman on a criminal charge of assault; however, it is the very sort of conduct or behaviour which is contemplated by s.10 of the Act. Here, on the evidence presented, I am satisfied that Mr. Norman's use of those particular words in the heat of the argument may very well have been an indirect cause of the terrible injury he sustained.

21                   Aside from that provocation, however, it cannot be said that Pierre Norman was the sole author of his own misfortune in the sense found in *Dick v. Commissioner of NWT* [1985] N.W.T.R. 144 and in *Laidlaw, supra*.

22                   As to the argument that Mr. Norman's lack of cooperation with the police is a relevant circumstance which should disentitle him to compensation normally available to a victim of a violent crime, this submission bears close examination.

23                   There is no specific provision in the Northwest Territories statute requiring the victim to report the matter to the police, or to cooperate with the police, as there is in some of the provincial statutes (see, for example, *Compensation for Victims of Crime*

Act R.S.O. 1990, ch.24, s.17).

24                   There is, however, a policy document prepared by the office of the criminal injuries compensation officer for public distribution. This document provides information about the Criminal Injuries Compensation Program, who may apply for compensation, how to apply, etc. In this document one of the "conditions" for receiving compensation is worded thus: "All details of the crime should be reported to the police within a reasonable time, however, it is not necessary that a charge be laid, or that a conviction be obtained in order for an award to be made". A copy of this document was provided to Pierre Norman with the prescribed application form in early 1992.

25                   I agree with the submission that an applicant's cooperation, or lack of cooperation, with law enforcement agencies is a "relevant circumstance" within s.10 of the Act. However, I do not agree that the conduct of the applicant here, Pierre Norman, was such as to constitute a failure to cooperate with the R.C.M.P.

26                   Within a hour of the occurrence, Mr. Norman reported the matter to an R.C.M.P. officer. He told the officer exactly what happened to cause his injury. Given his medical condition and the fact that he was being medivaced out of the community, it is understandable that no formal written statement was taken from him at that time. When he returned to the community a few weeks later, he either "declined" to give a formal statement at that time because of his pain and depression (his characterization) or he refused to give a formal statement (the police officer's characterization). In either case that did not prevent the laying of a criminal charge against Martina Norman.



27                   There is no evidence that the police again attempted to obtain a formal written statement until January 1993. In early January 1993, after Mr. Norman had filed an appeal of the decision of the criminal injuries compensation officer refusing Mr. Norman any compensation, the criminal injuries compensation officer requested the R.C.M.P. in Fort McPherson to do further interviews. This led to the R.C.M.P. obtaining a formal written statement on January 18, 1993 (Ex. 1-13) from Pierre Norman.

28                   The decision to commence, or not to commence, criminal proceedings against Martina Norman was that of the R.C.M.P. (and properly so). It was not the decision of Pierre Norman. There is no evidence that Pierre Norman was served with a witness subpoena and failed to attend court. There is no evidence that Pierre Norman refused to testify against his daughter.

29                   The evidence is clear that Pierre Norman did not want, and does not want, his daughter Martina to go to jail again. That is understandable. She is his daughter. His concern in that regard is entirely reasonable and is a common occurrence when the criminal law process is brought to bear on matters of domestic violence. But Mr. Norman's legitimate feelings in that regard do not make him any less a victim, nor his daughter's conduct any less a crime.

30                   Nor, in my view, is Mr. Norman's concern about the penal consequences for his daughter a "relevant circumstance" in the context of the awarding of compensation under the Criminal Injuries Compensation Program.

31           The N.W.T. statute does not deny compensation to an applicant simply because he or she is related to the wrongdoer, as was the case in years past in some Canadian jurisdictions and is the case today in many American jurisdictions. *Re MacDonald* (1975) 26 C.C.C. (2d) 517 (S.C.N.W.T.); Burns, Criminal Injuries Compensation (2nd ed.), pp. 72-79.

32           For these reasons, I therefore find that the only relevant circumstance of any import in the determination whether to make an award for compensation, pursuant to s.10 of the Act, is the victim's provocation of the wrongdoer by taunting her to harm him as she had harmed her mother. I propose to reduce by 25% the award that would otherwise be made, because of this circumstance.

33           Thus far on this hearing I have received evidence only with respect to the merits of Mr. Norman's application. I would now invite counsel to present evidence and/or submissions on the issues of damages and costs. Counsel may speak to the Clerk as to a date for re-convening the hearing.

J.E. Richard  
J.S.C.

Yellowknife, Northwest Territories  
November 28, 1994

Counsel for the Appellant:           J. Posynick

Counsel for the Respondent:       W. Hutchinson