

AUSTRALIAN CAPITAL TERRITORY DISCRIMINATION TRIBUNAL

CITATION: ALMASSEY AND OMARI AND ACT MULTICULTURAL COUNCIL INC [2008] ACTDT 2 (31 MARCH 2008)

DT05/71 and DT05/72

Catchwords: Discrimination – goods, services and facilities – disability – complainant attended at council premises – complainant sought information from council staff and to address committee meeting – council president spoke to complainant in derogatory manner and suggested she had mental illness – complainant not mentally ill but taking medication for rheumatoid arthritis – committee voted on president's motion to eject complainant from premises – whether conduct in relation to goods, services or facilities – whether complainant was treated unfavourably because of disability – whether council vicariously liable.

Discrimination – goods, services and facilities – disability – damages – claims for lost wages, domestic assistance, exemplary and general damages – principles of assessment of damages for discrimination.

Discrimination Act 1991, ss 4A, 5AA, 8, 19, 20, 99

IW v Perth (1998) 191 CLR 1

HREOC v Mt Isa Mines (1993) 46 FCR 301

Purvis v NSW (2003) 217 CLR 92

University of Ballarat v Bridges [1995] 2 VR 418

Re Prezzi and Discrimination Commissioner (1996) 39 ALD 729

Lewin v ACT Health & Community Care Service [2002] ACTDT 2

Alexander v Home Office [1988] 2 All ER 118

Hall v A & A Sheiban Pty Ltd and ors (1989) 20 FCR 217

Re Marshall and Discrimination Commissioner & ors [1998] ACTAAT 287

Walker v Advance Supermarkets [2000] ACTDT 5

Hughes v Car Buyers Pty Ltd [2004] FMCA 526

Cross v Hughes [2006] FMCA 976

Butcher v The Key King Pty Ltd [2000] ACTDT 3

Bloomfield v Westco Jeans Pty Ltd [2001] ACTDT 4

Kilgariff v Aerial Taxi Cabs Ltd [2001] ACTDT 3

Whiting v ACT Health [2008] ACTDT 1

Tribunal: Mr R J Cahill, President

Date: 31 March 2008

AUSTRALIAN CAPITAL TERRITORY)
DISCRIMINATION TRIBUNAL)

NO: DT05/71
DT05/72

RE: **ALENA ALMASSEY**
Complainant

AND: **MOHAMED OMARI**
First Respondent

AND: **ACT MULTICULTURAL
COUNCIL INC**
Second Respondent

ORDER

Tribunal : Mr R J Cahill, President

Date : 31 March 2008

THE TRIBUNAL ORDERS:

1. That the Respondent Mohamed Omari pay the Complainant Alena Almassey the sum of \$1,500 by way of compensation for the loss and damage suffered as a result of the unlawful discrimination of the Respondent.
2. That the complaint against the Respondent ACT Multicultural Council Inc be dismissed on the ground that it has not been substantiated.

.....
President

AUSTRALIAN CAPITAL TERRITORY)
 DISCRIMINATION TRIBUNAL)

NO: DT05/71
 DT05/72

RE: **ALENA ALMASSEY**
 Complainant

AND: **MOHAMED OMARI**
 First Respondent

AND: **ACT MULTICULTURAL
 COUNCIL INC**
 Second Respondent

REASONS

31 March 2008

Mr R J Cahill, President

1. This case concerns a complaint by Alena Almassey, a member and delegate of the ACT Multicultural Council (the Multicultural Council), under the *Discrimination Act 1991* (the Act). She alleges discrimination on the part of Mohamed Omari, the then President of the Council, and the Council itself vicariously. On 12 March I announced my decision in this matter and stated I would provide written reasons. I now do so.

Procedural History

2. On 22 April 2005 the Respondents were ordered to file and serve their reply by 9 June. On 10 June they were ordered to file any outstanding material by 1 July. They were granted extensions of time to comply with this order on 12 August and 4 November. Affixed to this last order was a note warning that a failure to comply may result in the hearing proceeding in the absence of the Respondents' evidence. On 19 January 2006, the Complainant advised the Tribunal that the Respondents had still not complied. The hearing proceeded on 3 February 2006 in the Respondents' absence. On 5 May a further hearing was held, with the Respondents given leave to appear and make submissions but not to present evidence.

Facts

3. The facts emerge from the witness statements of Ms Almassey and Ms Forostenko dated 20 April 2005 and admitted as Exhibits A and B respectively, and the T documents, some of which were also admitted separately as exhibits.

4. On 27 November 2003 Ms Almassey attended the office of the Multicultural Council. Her purpose was to ask the staff about why she had not been receiving information and to check her address details in the Council's database.

5. A meeting of the Council executive had also been called for that day. Ms Almassey had arrived 15 minutes before the executive meeting was due to start. She was not at that time a member of the executive. There were, however, two vacancies

on the executive, one of which was due to the death of one of the two Vice-Presidents. Ms Almassey sought to put a case for filling that vacancy to the rest of the executive. Also on the agenda for that meeting was the selection of delegates to attend the Federation of Ethnic Communities Councils of Australia (FECCA) conference scheduled for the following month in Melbourne. Ms Almassey wished to attend and sought selection as one of the delegates. Ms Forostenko, a member of the executive at the time, had invited Ms Almassey to attend the meeting for these purposes.

6. Mr Omari arrived shortly before the meeting began, saying “I have all the proxies”. When he saw Ms Almassey he started yelling, saying “get this woman out of here, get her out of my office. She has no right to be here. She is unstable.”

7. Ms Almassey responded by saying “I have every right to be in the office”, and explaining that she had come to find out why she hadn’t been receiving information about the Multicultural Council. Mr Omari replied by instructing the office administrator to “call the police[;] I want this woman out of my office.” He then turned to the others present (Mr Ng, Mr Yoon and Ms Forostenko) and asked “who brought this woman off the street?”

8. Ms Forostenko said that she had invited Ms Almassey, stating “[s]he has a right to come to the office” and adding that she wished to address the executive about filling the Vice-President vacancy. Mr Omari then told her “[y]ou invited her, you remove her from the office.” Ms Forostenko replied: “I will not, she has every right to be here.”

9. Mr Omari responded to this by saying:

I want her to leave immediately. This is an Executive Committee meeting, she is not welcome and she has no right to be here. She is not worthy to be on the Executive because of her mental state, I know about her, she is on medication and mentally unstable. We don’t want her.

10. Mr Omari then said to the others “[w]e will put this to a vote. I want you to vote as to whether she stays or goes”. This may have been said after Ms Almassey asked them “how can you just sit there as leaders of your communities and let this kind of behaviour continue.” In any event, Mr Yoon and Mr Ng voted for Ms Almassey’s expulsion.

11. The office administrator voiced a complaint that she was finding the working conditions stressful. Ms Almassey offered to help her if need be. Mr Omari said “I have had enough of you.” He then said to Ms Forostenko “[h]ow dare you bring this woman off the street.” Ms Almassey left at this time.

The Legislative Scheme – Discrimination

12. Discrimination is defined in s 8 of the Act:

8 What constitutes discrimination

(1) For this Act, a person *discriminates* against another person if—

- (a) the person treats or proposes to treat the other person unfavourably because the other person has an attribute referred to in section 7; or
 - (b) the person imposes or proposes to impose a condition or requirement that has, or is likely to have, the effect of disadvantaging people because they have an attribute referred to in section 7.
- (2) Subsection (1) (b) does not apply to a condition or requirement that is reasonable in the circumstances.
- (3) In deciding whether a condition or requirement is reasonable in the circumstances, the matters to be taken into account include—
- (a) the nature and extent of the resultant disadvantage; and
 - (b) the feasibility of overcoming or mitigating the disadvantage; and
 - (c) whether the disadvantage is disproportionate to the result sought by the person who imposes or proposes to impose the condition or requirement.
13. Among the attributes mention in s 7, relevantly, are sex and disability. Disability is defined in s 5AA:

5AA Meaning of *disability*

- (1) In this Act:

disability means—

- (a) total or partial loss of a bodily function; or
 - (b) total or partial loss of a part of the body; or
 - (c) malfunction of a part of the body; or
 - (d) malformation or disfigurement of a part of the body; or
 - (e) the presence in the body of organisms that cause or are capable of causing disease; or
 - (f) an illness or condition which impairs a person's thought processes, perception of reality, emotions or judgment or which results in disturbed behaviour; or
 - (g) an intellectual disability or developmental delay.
- (2) Except in section 49 (Work related discrimination) and section 50 (Discrimination by qualifying bodies etc), ***disability*** includes a disability—
- (a) that the person has, or is thought to have (whether or not the person in fact has the disability); or
 - (b) that the person had in the past, or is thought to have had in the past (whether or not the person in fact had the disability); or
 - (c) that the person will have in the future, or is thought will have in the future (whether or not the person in fact will have the disability).

14. A discriminatory act must occur in an area of public life covered in Part 3. The relevant ones here are access to public premises (s 19) and the provision of goods, services and facilities (s 20):

19 Access to premises

It is unlawful for a person to discriminate against another person—

- (a) by refusing to allow the other person access to, or the use of, any premises (**public premises**) that the public or a section of the public is entitled or allowed to enter or use (whether for payment or not); or
- (b) in the terms or conditions on which the discriminator is prepared to allow the other person access to, or the use of, public premises; or
- (c) in relation to the provision of means of access to public premises; or
- (d) by refusing to allow the other person the use of any facilities (**public facilities**) in public premises that the public or a section of the public is entitled or allowed to use (whether for payment or not); or
- (e) in the terms or conditions on which the discriminator is prepared to allow the other person the use of public facilities; or
- (f) by requiring the other person to leave public premises or cease to use such facilities.

20 Goods, services and facilities

It is unlawful for a person (the **provider**) who (whether for payment or not) provides goods or services, or makes facilities available, to discriminate against another person—

- (a) by refusing to provide those goods or services or make those facilities available to the other person; or
- (b) in the terms or conditions on which the provider provides those goods or services or makes those facilities available to the other person; or
- (c) in the way in which the provider provides those goods or services or makes those facilities available to the other person.

Unfavourable treatment in relation to goods, services and facilities

15. Ms Almassey submits that the Multicultural Council provided services in the form of information to members and assistance with inquiries. In *IW v Perth*¹ Brennan CJ and McHugh J note that “services” has a wide meaning. Their Honours further state that “in an appropriate case allowing the use of property or facilities owned by or under the control of the [Perth City] Council may constitute the provision of a service by that Council”, and this may include “the provision of intangibles such as advice and information in respect of building and town planning matters”². In addition, the *Privacy Act 1988* (Cth) entitles Ms Almassey to verify the accuracy of her membership details stored on the Multicultural Council’s database.

16. It seems, therefore, that the Multicultural Council provided a service to its members of supplying them with information. Section 20 of the Act does not require

¹ (1998) 191 CLR 1 at 11

² (1998) 191 CLR 1 at 12

services to be available to the public at large. It is not necessary to consider whether answering inquiries by members of the public is a service covered by the Act.

17. It cannot be said that the Multicultural Council refused to provide that service to Ms Almassey. She had entered the office prior to the meeting beginning and had been able to ask staff present about checking the database, albeit without success. In her statement (Exhibit A), Ms Almassey quotes the office administrator as telling her “I had been instructed not to give you information”. Without further evidence as to who gave the instruction and why, one cannot say this was a discriminatory act, even if it does seem improper on its face.

18. On the other hand, the conduct of persons involved in delivering a service is clearly part of the “way” in which the service is provided. Mr Omari, upon his arrival, immediately demanded Ms Almassey leave, thus interrupting her efforts to obtain the information she sought. In the event I am satisfied she was treated unfavourably in relation to the provision of services or facilities.

“Because of”

19. Under the Act, unfavourable treatment must be “because of” an attribute mentioned in s 7. The meaning of “because of” is affected by s 4A(2), which states:

In this Act, a reference to doing an act because of a particular matter includes a reference to doing an act because of 2 or more matters that include the particular matter, whether or not the particular matter is the dominant or substantial reason for doing the act.

20. The Respondents deny that Ms Almassey was asked to leave because of her sex or disability; rather, she was asked to leave because she had no right to be present at the executive committee meeting.

21. In *IW v Perth*³, Kirby J discussed the effect of a similar provision in the Western Australian anti-discrimination legislation at issue in that case. Although his Honour was in dissent, the majority did not discuss the application of the provision. Kirby J said that an act will be taken to have been done on a discriminatory ground if it “truly played a causative part” in the act and was “not [a] trivial or insubstantial” reason or ground. I consider that this approach more closely accords with the text of s 4A(2).

22. Under the Act, the use of insulting or offensive words to a person is not discriminatory *per se*, even though it is unfavourable treatment of that person because of an attribute (although the words may amount to vilification under s 66). There has to be a connection between the words used and an area of public life mentioned in Part 3. Relevantly, there must be a connection between the words and the denial of public premises (s 19) or the provision of goods, services or facilities (s 20).

23. Clearly, the use of such words would be part of “the way in which the provider provides ... goods or services” or facilities (s20(c)). They would not, however, be part of the “conditions” within the meaning of ss 19(b), 19(e) and 20(b); the context in which that word appears in those provisions (as part of the phrase “terms and

³ (1998) 191 CLR 1 at 63

conditions”) indicates that the intended meaning is *contractual* conditions. The words may also serve as evidence of a person’s motive, state of mind or state of knowledge when doing an act mentioned in ss 19 and 20, and thus show that the act was “because of” an attribute.

24. The test for discrimination is an objective one. “This task may involve the consideration of subjective material such as the intention or even motive, purpose or reason of the alleged discriminator; but its significance will vary from case to case ...” (Lockhart J in *HREOC v Mt Isa Mines*⁴). In *Purvis v NSW*⁵, Gummow, Hayne & Heydon JJ stated that the central question is “*why* was the aggrieved person treated as he or she was? [emphasis in original]” Their Honours further stated that “Motive, purpose, effect may all bear on that question” (Ibid).

25. In *University of Ballarat v Bridges*, Ormiston J said that “motive and purpose should be treated as largely irrelevant so long as it can be shown that the person charged intended to do an act which in fact amounts to unlawful discrimination”.⁶ A similar approach has been taken in this jurisdiction. The Administrative Appeals Tribunal ruled in *Re Prezzi and Discrimination Commissioner & anor*⁷ that it was sufficient to prove that a person acted advertently with knowledge of another person’s disability or its essential manifestations. This Tribunal accepted that approach in *Lewin v ACT Health and Community Care Service*.⁸

26. Ms Almassey cites the words “woman off the street” as evidence that the Respondents discriminated against her on the basis of sex, as they connote a prostitute in her culture. While they may very well carry that connotation in Ms Almassey’s culture, they do not carry that connotation in other cultures. There is no evidence about what the phrase means in Mr Omari’s culture, but to a native English speaker the phrase “woman (or “man” or “person”) off the street” means a person picked at random, indistinguishable from any other member of the public. In the absence of evidence to the contrary, I do not think that Mr Omari intended his use of the phrase to refer to a prostitute.

27. There is no evidence that Mr Omari knew that Ms Almassey would take the words used to mean “prostitute”, nor even that a reasonable person in his position would have known that. Accordingly, Mr Omari did not treat Ms Almassey unfavourably because of her sex.

28. In relation to disability discrimination, Ms Almassey cites phrases such as “she is on medication” and “she is mentally unstable”. Ms Almassey does not actually have any mental disability; however s 5AA(2) defines disability as including a disability a person is thought to have, whether or not they actually do.

29. The evidence is clear that Mr Omari believed she had a mental disability and that he took that into account in asking her to leave. Among other things, he said (emphasis added):

⁴ (1993) 46 FCR 301 at 325 (Black CJ agreeing at 307)

⁵ (2003) 217 CLR 92 at 163 [236]

⁶ [1995] 2 VR 418 at 433. See also Tadgell J at 426-7

⁷ (1996) 39 ALD 729

⁸ [2002] ACTDT 2 at [48]

- “Get this woman out of here, get her out of my office. *She has no right to be here. She is unstable.*”
- “I want her to leave immediately. This is an Executive Committee meeting, she is not welcome and she has no right to be here. *She is not worthy to be on the Executive because of her mental state, I know about her, she is on medication and mentally unstable. We don’t want her.*”

30. In his response to the Discrimination Commissioner, entered as Exhibit E at the hearing, Mr Omari stated that his “understanding” of Ms Almassey’s condition was that “she must continue her medications intake or she will become unstable person [sic].” In actual fact, Ms Almassey was taking medication for rheumatoid arthritis at the time.

31. It is therefore likely that Mr Omari acted to remove Ms Almassey because he perceived her to be mentally unstable.

32. This is an unusual case, in that the discrimination, in my view, can be brought under the mental illness aspect; although in fact mental illness was not actually suffered by the complainant, the allegation was made that she did. Under the Act, the lack of possession of the particular disability is not a disqualifying factor for discrimination on the basis of disability. In my view, I am satisfied that discrimination is made out.

Vicarious liability

33. Ms Almassey submits that, as Mr Omari was the President of the Multicultural Council at the time, the Council is said to be vicariously liable for his actions. In this respect, Ms Almassey cites s 108H of the Act, now s 73, and s 108I(4) (as it was from 9 April 2004).⁹ I note at the outset that, by virtue of s 108I(2), that section applied to prosecutions for offences; it has no application here. The vote by the executive is said to have amounted to an endorsement by the Council of Mr Omari’s discriminatory actions.

34. Mr Omari was President of the Multicultural Council at the time these events occurred. The minutes record that Mr Omari was chairing the executive meeting. They state “As a Chair [sic] Mohamed [Omari] has put the matter [ie Ms Almassey’s expulsion] to the Executive Committee members.”

35. Although Mr Omari was the president and chairing the meeting, I am not satisfied that he had implied authority to do what he did in respect of Ms Almassey on behalf of the Multicultural Council. I do not consider that the committee voting for her expulsion is the same as adopting and being vicariously liable for the statements by Mr Omari that amount to discrimination; I do not think that that decision goes far enough to say they completely supported Mr Omari’s conduct and made the council liable for it. Accordingly, I find that vicarious liability on the part of the Multicultural Council is not made out, and Ms Almassey’s complaint against the Council fails.

⁹ Section 108I was omitted on 1 November 2006.

Remedies

36. Remedies were formerly provided for in s 102 of the Act. The current provision is s 99(3), and is not materially different:

99 Decisions following hearing

...

(3) If the tribunal is satisfied that the respondent has engaged in unlawful conduct, the tribunal must make 1 or more of the following orders:

- (a) that the respondent not repeat or continue the unlawful conduct;
- (b) that the respondent perform a stated reasonable act to redress any loss or damage suffered by a person because of the unlawful conduct;
- (c) except if the complaint has been dealt with as a representative complaint—that the respondent pay to a person a stated amount by way of compensation for any loss or damage suffered by the person because of the unlawful conduct.

37. Ms Almassey has sought \$4,000, a written apology from Mr Omari and publication of the payment in the next Annual Report of the Multicultural Council. She also claims out of pocket expenses and “exemplary damages”.

38. In *Alexander v Home Office*¹⁰ May LJ declared that the objective of awards of damages in discrimination cases was restitution.

39. In *Hall v A & A Sheiban Pty Ltd & ors*,¹¹ the full Federal Court discussed the principles applicable to awards of damages under anti-discrimination laws. French J stated that the measure of damages was to be found in the words of the statute and not through the principles applicable to damages in tort. His Honour continued:¹²

It may be that while there are events for which the conduct complained of is a sine qua non, they would not be recognised in any practical sense as arising “by reason of” it. Exclusion principles analogous to concepts of remoteness, and failure to mitigate may then be seen to operate. In the end, however, these are to be subsumed in a practical judgment of cause and effect.

40. Lockhart J took a similar approach to French J. His Honour stated that it would be “difficult” and “unwise” to prescribe an inflexible measure of damages in discrimination cases; “in particular, to do so exclusively by reference to common law tests in branches of the law that are not the same, though analogous in varying degrees, with anti-discrimination law”.¹³ Nevertheless, Lockhart J accepted that the measure of damages in tort was the closest analogy and one that “in most foreseeable cases” was a “sensible and sound” test.¹⁴

¹⁰ [1988] 2 All ER 118 at 122

¹¹ (1989) 20 FCR 217 (*Hall v Sheiban*)

¹² (1989) 20 FCR 217 at 281

¹³ (1989) 20 FCR 217 at 239

¹⁴ Ibid

Generally speaking, the correct way to approach the assessment of damages ... is to compare the position in which the complainant might have been expected to be if the discriminatory conduct had not occurred with the situation in which he or she was placed by reason of the conduct of the respondent.

41. The ACT Administrative Appeals Tribunal, citing *Hall v Sheiban*, accepted that, while tort may be a useful analogy, “the extent of damages must be governed by the language of the statute”.¹⁵ This Tribunal has previously endorsed Lockhart J’s approach to damages quoted above.¹⁶

42. With regard to exemplary damages, both Lockhart J and French J expressed doubt about their availability.¹⁷ More recently, in *Hughes v Car Buyers Pty Ltd*¹⁸ and *Cross v Hughes*,¹⁹ the Federal Magistrates Court has stated that such damages are not available in discrimination cases.

Special damages

43. Ms Almassey has filed an affidavit outlining her claimed loss and damage. Annexed to the affidavit are a letter from her treating GP, Dr Kristine Powell, dated 1 March 2006 and several payslips from her employer, the Australian National University. Among the particularised claims are costs associated with travelling to Adelaide to visit relatives “for support”, lost wages and amounts to compensate for domestic assistance provided by family and friends. This last is essentially a *Griffiths v Kerkemeyer* claim.

44. Dr Powell’s letter demonstrates that Ms Almassey was diagnosed with rheumatoid arthritis in 1998. From November 2003 through 2004, she attended at the surgery every 1-2 months. November 2003 was the time of the incident. The letter does not indicate whether this was an increase in frequency of visits. The letter indicates that Ms Almassey has been taking immunosuppressive medication, anti-inflammatories and analgesics, but gives no specifics on what types or in what quantities other than to say that she is intolerant to many of the drugs used to treat her condition.

45. Dr Powell says “I would also suggest that stress from other sources will adversely affect any patient’s experience of chronic disease.” From this one can infer that the discriminatory conduct of the Respondents would likely have aggravated her condition; however, to what extent, if at all, it did so in Ms Almassey’s case is not explained. This prevents the awarding of special damages for medical expenses.

46. The payslips indicate that Ms Almassey worked 11.5 hours in the (presumably) fortnight ending 28 January 2004. In the period ending 7 April 2004 she worked 4 hours. Both of those were as “Theatre Staff – Paid Extra Rates”. In the period ending 8 September 2004, she worked 19.5 hours as an “ANU Officer Grade 3”, and the following fortnight she worked 48.5 hours. In paragraph 7 of her affidavit, Ms

¹⁵ *Re Marshall and Discrimination Commissioner & ors* [1998] ACTAAT 287 at [7]

¹⁶ *Walker v Advance Supermarkets* [2000] ACTDT 5 at [82]

¹⁷ *Hall v Sheiban* at 240-1 (Lockhart J), 282 (French J)

¹⁸ [2004] FMCA 526

¹⁹ [2006] FMCA 976

Almassey swears that she filled in “emergencies” on 28 January and 7 April 2004; otherwise, she was off work from early January 2004 to May that year. She estimates her lost income for that period as \$6,400, based on working 20 hours per week at a rate of \$20 per hour for four months.

47. The payslips for September 2004 suggest a before-tax wage rate of \$21.69 per hour. In *Butcher v The Key King Pty Ltd*²⁰ this Tribunal determined that compensation should be assessed on the basis of the net lost wage. The net wage loss seems to differ between the two payslips. The 8 September payslip shows that net wages were just under \$20 per hour, while the 22 September payslip discloses a net rate of \$17 per hour.

48. It must be noted that the payslips all postdate the incident in November 2003. There is no evidence of Ms Almassey’s income before then other than her estimate of \$20 per hour contained in her affidavit. In *Butcher*, by contrast, there was evidence of the complainant’s wages for the last six months of employment. Ms Almassey’s estimate fails to distinguish between net income and gross income. The payslips, as noted above, indicate that the net wage rate could vary, as could her hours. Overall, the evidence is insufficient to accurately calculate Ms Almassey’s lost wages.

49. There is no evidence that Ms Almassey’s decision to take time off work was medically justified. This is not a case of discrimination at the workplace. The discriminatory conduct occurred quite separately from Ms Almassey’s employment. There would need to be a causal link between the act and her decision to take time off work. There is no evidence of such a link.

50. Similar considerations apply to the *Griffiths v Kerkemeyer*-style claim. Ms Almassey estimates the value of the assistance she received at \$25 per hour; but there is nothing to support the valuation. Nor is there evidence showing the need for such assistance, especially for a four-month period.

51. Lastly, there is the claim for travel to Adelaide. Again, the evidence does not demonstrate that this travel was necessary for Ms Almassey’s recovery from the incident.

52. In all the circumstances of this case, I do not believe special damages are justified.

General damages

53. The awards for general damages made in this Tribunal range from \$250²¹ to \$3,000,²² with \$2,500 being the most frequently awarded amount. I recently made an award of \$2,500 for employment discrimination in respect of a health worker.²³

54. Ms Almassey suffers from rheumatoid arthritis. This condition causes her chronic pain and psychological stress. Ms Almassey asserts, and Dr Powell agrees,

²⁰ [2000] ACTDT 3 at [6]

²¹ *Bloomfield v Westco Jeans Pty Ltd* [2001] ACTDT 4

²² *Kilgariff v Aerial Taxi Cabs Ltd* [2001] ACTDT 3

²³ *Whiting v ACT Health* [2008] ACTDT 1

that stress aggravates her condition. I accept that there would be some aggravation of a person's general wellbeing and wellness if an allegation of the sort made in this case was aired and dealt with in the way that Mr Omari did.

55. This matter, obviously, was very upsetting for the complainant; there is no doubt about that. However, it was restricted to the one occasion. I am satisfied that Ms Almassy was humiliated, hurt and belittled as a result of what happened.

56. On the question of the amount of damages, I am satisfied that the general damages, taking in mind other awards, should be listed at \$1,500; I award that against Mr Omari personally.

**AUSTRALIAN CAPITAL TERRITORY
DISCRIMINATION TRIBUNAL**

APPEARANCE DETAILS

To be completed by Member's Staff

FILE NO: DT05/71 & DT05/72

COMPLAINANT: ALENA ALMASSEY
FIRST RESPONDENT: MOHAMED OMARI
SECOND RESPONDENT: ACT MULTICULTURAL COUNCIL INC

COUNSEL APPEARING: **COMPLAINANT:** MS T WARWICK
RESPONDENTS: MR L OWENS

SOLICITORS: **COMPLAINANT:** ST LAWYERS
RESPONDENTS:

OTHER: **COMPLAINANT:**
RESPONDENTS:

TRIBUNAL MEMBER: MR R J CAHILL, PRESIDENT

DATE OF HEARING: 3 FEBRUARY 2006 **PLACE:** CANBERRA
5 MAY 2006
12 MARCH 2008

DATE OF DECISION: 31 MARCH 2008 **PLACE:** CANBERRA

COMMENT:
