

AUSTRALIAN CAPITAL TERRITORY DISCRIMINATION TRIBUNAL

CITATION: TERENCE BROOKS AND ACT GOVERNMENT
[2008] ACTDT 5 (3 July 2008)

DT 07/18

Catchwords: Discrimination in area of housing – failure to comply with basic human right to adequate housing – no seriously arguable case of discrimination.

Discrimination Act 1991, ss8, 21, 77A, 79
International Bill of Rights

McCormack and Charles Sturt University [2008] ACTDT 4 of
30 June 2008

Tribunal: Mr G C Lalor, Deputy President

Date: 3 July 2008

**AUSTRALIAN CAPITAL TERRITORY
DISCRIMINATION TRIBUNAL**

) **DT 07/18**
)

RE: TERENCE BROOKS
(Complainant)

AND: ACT GOVERNMENT
(Respondent)

ORDER

Tribunal: Mr G C Lalor, Deputy President

Date: 3 July 2008

THE TRIBUNAL ORDERS, pursuant to section 79 of the Discrimination Act 1991, that the complaint be dismissed on the ground that it lacks substance.

G C Lalor
Deputy President

AUSTRALIAN CAPITAL TERRITORY)
DISCRIMINATION TRIBUNAL)

NO: DT 18 of 2008

RE: **TERENCE BROOKS**
Complainant

AND: **ACT GOVERNMENT**
Respondent

REASONS FOR DECISION

3 July 2008

Mr G C Lalor, Deputy President

1. By application dated 16 May 2007 Mr Terence Brooks ("the complainant") complained to the Human Rights Commission essentially that the Government of the Australian Capital Territory had treated him unfavourably because of a number of designated personal attributes including his multiple disabilities, his political conviction which was set out as being a belief in "*a genuine democracy*", his religious conviction, set out as "*thinker*" and his profession, trade, occupation or calling, all of which are set out as "*thinking*".
2. The complainant appended photocopies of various newspaper articles and the International Bill of Rights in so far as it related to the human right to adequate housing. A report dated 15 January 2007 setting out the existence of asbestos in 16 Block B/41 – 45 Allambee Street, Reid and an advisory form concerning management of asbestos was also attached.
3. By letter dated 16 November 2007 a delegate for the ACT Discrimination Commissioner advised the complainant as follows:
"As outlined in my letter to you dated 3 August 2007 in order to proceed further with your complaint, I required you under s.73 of the HRC Act to clarify the organisation or the individuals you are making your complaint about and how you allege they have discriminated against you. You have stated that you do not wish to amend your complaint and have not provided any further information. As indicated in my letter to you dated 3 August 2007 I have now closed your complaint under s.78(1)(c) and s.78(2)(c)(iv) of the HRC Act as it does not reveal any discrimination and you have not provided the further information requested".
4. The complainant on 23 November requested that his complaint be referred to this Tribunal.

5. On 6 December 2007 directions were given in relation to the conduct of this matter before the tribunal. The complainant in compliance with these directions, filed further material including:
 1. Reasons for Decision dated 21 November 2007 of the Administrative Appeals Tribunal affirming a decision not to grant him rental assistance under the Social Security Act 1991.
 2. A transcript of proceedings before Mr A Anforth, Member, Residential Tenancies Tribunal, of 15 October 2007.
 3. Decision and Reasons for Decision of Mr A Anforth, dated 28 November 2007.
 4. Advice dated 22 October 2007 from the Welfare Rights and Legal Centre obtained for use in the Residential Tenancies matter.
6. On 6 March 2008 the complainant filed, under cover of a letter, a copy of the Record of Proceedings before Higgins CJ of 29 February 2008 whereby he was granted leave to appeal from the decision of the Residential Tenancies Tribunal, the appeal was upheld and the matter remitted to the Tribunal to be dealt with according to law. He also filed a letter from the Department of Housing and Community Services/ACT dated 3 March 2008. In the covering letter filing the documents, the complainant advised that his electricity had been cut off on 28 February 2008 without any prior warning.
7. On 7 March 2008 the complainant filed a letter dated 2 January 2008 from Housing and Community Services/ACT in which he was advised, among other things, of the arrangements for the removal of asbestos sheeting and fire safety works at Kanangra Court, commencing with Blocks E and F.
8. By application dated 23 January 2008 the ACT Government Solicitor as solicitor for the respondent filed an application pursuant to section 79 of the Discrimination Act 1991 to strike out the complainant's complaint.
9. On 25 February 2008 the complainant requested that his matter be expedited as ACTEW "*were threatening*" to cut off his electricity. That request was unable to be consented to as hearing time was not available. The complainant in person on 1 April 2007 advised the Tribunal that his electricity had been reconnected that day after having been disconnected for twelve to thirteen days.
10. The application to strike out the complaint alleges it to be frivolous, vexatious or lacking in substance. It says that the complaint does not identify any one person alleged to have discriminated against the complainant or treated him unfavourably. The application is grounded in the alternative asking the Tribunal to exercise its power under section 77A of the Discrimination Act 1991 and refuse to hear or further hear the complainant's complaint due to his failure to comply with the Tribunal's direction.

11. The hearing of the “strike out application” came before me for hearing on 1 July 2008. At the outset I endeavoured to have the complainant particularize what facet or department or instrumentality of the ACT Government had treated him unfavourably and in what area he had been so mistreated.
12. Following some discussion the complainant put before me a letter he had received from his then landlady dated 12 September 2006 in which he was given eight weeks’ notice to vacate his rented premises as she wished to sell them with vacant possession. He then filed a copy of his Registration to Apply for Housing ACT Public Rental Assistance dated 11 October 2006. This form states
“You will be advised of the outcome of your application within 28 days of receipt”.
13. This, according to the complainant, was not complied with. He was ultimately given two hours to look at a unit in Kanangra Court, Reid, something he said was inappropriate given his immobility, asking him to use public transport and view the proposed accommodation whilst he was on crutches.
14. The complainant has described his difficulty in securing what he considers to be satisfactory, safe accommodation to be “*the catalyst factor*” in his assertion that the ACT Government has discriminated against him. He alleged that Housing and Community Services/ACT had a hidden agenda which was to attempt to force him into accommodation at Ainslie Village. He said that he had attempted to discuss the matter with Mr Hargreaves who at the time was smoking and who, at the request of the complainant, declined to desist from smoking to discuss the matter with him.
15. The complainant further alleged that he had, at the request of Housing and Community Services/ACT, been diligent in obtaining the correct forms for the property inspection, something it had insisted on but not itself complied with. He asserted that the Department had acted incompetently and “*with malice aforethought*” having “*contempt for a certain class of people, especially if they say things they don’t want said*”, things unfavourable to the ACT Government.
16. More specifically, the complainant asserts that the ACT Government has failed in its duty to the citizens of the ACT by failing to put tenants with special needs in specific accommodation and not in general housing. He stated that he was not accommodated at Kanangra Court but was “*camped*” there as he did not ask to be given a room in a cell for the “*criminally insane or the insanely criminal*”. He asserts that the International Bill of Rights guarantees a right to adequate housing and that the ACT Government fell well short of providing that.
17. This concern with the provision of accommodation suitable to the complainant has since January 2007 been the genesis of his various actions against the Government. He said that he found his situation intolerable and “*tried my best to do something about it*”. It was his view that people such as he should not be housed with people who were drug dealers, suffering mental illness or generally anti-social. By failing to provide adequate accommodation for such members of the community he was being discriminated against.

18. It seems to me, giving the oral and filed material put before me by the Tribunal, that I have to consider whether the ACT Government, through Housing and Community Services/ACT has acted contrary to section 21 of the discrimination Act 1991. That section provides:

“(1) It is unlawful for a person (whether as principal or agent) to discriminate against another person—

(a) by refusing the other person’s application for accommodation; or

(b) in the terms or conditions on which accommodation is offered to the other person; or

(c) by deferring the other person’s application for accommodation or according to the other person a lower order of precedence in any list of applicants for that accommodation.

(2) It is unlawful for a person (whether as principal or agent) to discriminate against another person—

(a) by denying the other person access, or limiting the other person’s access, to any benefit associated with accommodation occupied by the other person; or

(b) by evicting the other person from accommodation occupied by the other person; or

(c) by subjecting the other person to any other detriment in relation to accommodation occupied by the other person.”

19. Section 8 of the Act provides that discrimination occurs if

(a) the person treats or proposes to treat the other person unfavourably because the other person has, inter alia, a disability; or

(b) the person imposes or proposes to impose a condition or requirement (other than a condition or requirement which is reasonable in the circumstances) that has, or is likely to have, the effect of disadvantaging people because of the disability.

20. The application to strike out the proceedings is brought under section 79 of the Act. That section provides:

“The person against whom a complaint is made may, at any time after the complaint is referred to the tribunal and before the tribunal begins hearing the complaint (other than a time when the complaint is being conciliated under the HRC Act), apply to the tribunal to strike out the complaint on any of the following grounds:

(a) the complaint is frivolous, vexatious or not made honestly;

(b) the complaint lacks substance.

21. I adopt with respect the law relating to such applications as set out in McCormack and Charles Sturt University [2008] ACTDT 4 of 30 June 2008 by Deputy President Peedom:
- “41. In order for the complaint to be substantiated there would need to be some evidence favourable to the complainant’s contentions which, taken at their highest in favour of those contentions, would render them seriously arguable (see Legal Aid Commissioner (ACT) & Ors v Grundy [1999] ACTSC 318). In determining whether a complaint should be struck out pursuant to section 79 of the Discrimination Act, the Tribunal ordinarily accepts that it should be assumed that the factual allegations relied on by the complainant are true and such inferences in favour of the respondent as are open should be drawn (see Grundy’s Case, paras 4 and 5). If, however, it is clear beyond doubt that the complainant has no arguable case, which should be allowed to be resolved at a full hearing, a complaint may be dismissed as lacking in substance pursuant to section 79 of the Act (see State Electricity Commission v Rabel & Ors [1997] EOC 92/875). The power to dismiss a claim as without substance is required to be exercised with considerable caution (see Clean Ocean Foundation v Environment Protection Authority (2003) 20 VAR 227 at 230-231. See also Lucy Couper and ACT Housing [2004] ACTDT 4 (22 June 2004)).
22. The complainant has a firmly held view that by the conduct of Housing and Community Services/ACT he has been discriminated against to his detriment. This has led, being as he described it “*the catalyst factor*”, to his application to the Human Rights Commission, his withholding of rental payments which has led, in part, to his appearance before the Residential Tenancies Tribunal and ultimately the Supreme Court of the Australian Capital Territory, all actions in his trying his best to do something about what he considers to be an intolerable situation.
23. However sympathetic I might be to the perceived plight of the complainant, I have to apply the law, both statutory and interpretative to his application. On being told this, the complainant stated that where a person was “*working for evil forces you should give them the flick*”, that any moral person would decline to continue working for a corrupt government. Be that as it may, I am bound to apply the laws of the Territory.
24. I am of the view that the complainant’s allegations, taken at their highest, do not lead to a seriously arguable case of discrimination against him as defined in the Discrimination Act 1991. He has, in my view, no arguable case which should be allowed to be pursued at a full hearing in this Tribunal. It may be that there are avenues of redress open to the complainant but this Tribunal does not fall within that category.
25. I therefore conclude that the complaint lacks substance and should be struck out und section 79 of the Act.

I certify that this and the 5 preceding

pages are a true copy of the decision
and reasons for decision herein of
Mr G C Lalor, Deputy President.

S M Welsh
Associate

Dated: 3 July 2008

**AUSTRALIAN CAPITAL TERRITORY
DISCRIMINATION TRIBUNAL**

APPEARANCE DETAILS

FILE NO: DT 07/18

COMPLAINANT: TERENCE BROOKS
RESPONDENT: ACT GOVERNMENT

APPEARING: **COMPLAINANT:** SELF
RESPONDENT: ACT GOVERNMENT
SOLICITOR
(MS REBECCA KNOX)

SOLICITORS: **COMPLAINANT:**
RESPONDENT:

TRIBUNAL MEMBER: MR G C LALOR, DEPUTY PRESIDENT

DATE OF HEARING: 1 JULY 2008 **PLACE:** CANBERRA

DATE OF DECISION: 3 JULY 2008 **PLACE:** CANBERRA
