ACT CIVIL & ADMINISTRATIVE TRIBUNAL

CURTIS v PHILLIPS (Civil Dispute) [2020] ACAT 115

XD 683/2020

Catchwords: **CIVIL DISPUTE** – defamation – jurisdiction – place of publication of online Facebook post – what imputations arise – defences – truth – triviality – reasonable opinion – fair comment – qualified privilege – comparative awards

Legislation cited: *ACT Civil and Administrative Tribunal Act 2008* s 48
Civil Law (Wrongs) Act 2002 ss 135, 136, 139A, 139B, 139D

Cases cited: *Bleyer v Google Inc* [2014] NSWSC 897
Browne v Dunn (1893) 6 R 67
CIC Australia Ltd v ACT Planning and Land Authority, Mainore Pty Ltd and Anor [2013] ACTSC 96
Dow Jones and Company Inc v Gutnick [2002] HCA 56
Errington & Anor v ACT Planning and Land Authority [2019] ACAT 47
Galovac Pty Limited v Australian Capital Territory [2010] ACTSC 132
General Steel Industries Inc v Commissioner for Railways (NSW) [1964] HCA 69
Lazarus v Azize [2015] ACTSC 344

Texts Cited: David Rolph, *Defamation Law* (Thompson Reuters Australia, 2015)

Tribunal: Senior Member B Meagher SC

Date of Orders: 18 December 2020
Date of Reasons for Decision: 18 December 2020

AUSTRALIAN CAPITAL TERRITORY)
CIVIL & ADMINISTRATIVE TRIBUNAL) XD 683/2020

BETWEEN:

LOUISE CURTIS
Applicant

AND:

SIMON PHILLIPS
Respondent

TRIBUNAL: Senior Member B Meagher SC

DATE: 18 December 2020

ORDER

The Tribunal orders that:

1. The respondent is to pay the applicant the sum of $10,159.50 by 12 February 2020 comprised of:
   (a) $10,000 damages.
   (b) $159.50 Tribunal filing fee.

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Senior Member B Meagher SC

REASONS FOR DECISION

1. Louise Curtis, an ACT resident, has made application to the Tribunal for remedies for defamation alleged to have been published by Mr. Phillips. a resident of South Australia on a Facebook page belonging to someone else and labelled "PINK FROSTING ARE THIEVES THEY OWE ME OR PEOPLE I KNOW MONEY".

2. Ms. Curtis was, at the time of the post by Mr. Phillips, in effect, the proprietor of the business known as Pink Frosting. This business conducts online sales but is based in the ACT. She had purchased it sometime earlier and the Facebook page was started prior to her acquisition. During the time of her interaction with Mr. Phillips she had sold the business but was still running it pending finalisation of the sale.

3. The post complained of, was made on 5 March 2020. It consisted of words and followed by a picture of women including the applicant and Melissa Doyle, a well-known television identity. The words were as follows;

> *How can Melissa Doyle possibly associate herself with a person like Louise Curtis.*
>
> *Louise is thieving innocent hard working Australians praying that we will all give up chasing her for a refund while in the middle of it all those who miss out are actually our kids. We had no decorations for our little girls 1st birthday! My wife was stressed crazy having had zero communication from their business re delivery instead we chased them up only to get excuses like "bushfires have affected us" (that's an insult to those who really were impacted) and "our printer is broken"*
>
> *I understand this is a private group but I am hoping somebody has a connection like Melissa Doyle who can share the disgraceful truth about this woman and her deceiving ways*
>
> *I'd happily sit in front of a camera and share my story*

4. At the hearing of the matter, Ms. Curtis represented herself. Ms. Noble of Meyer Vandenberg represented Mr. Phillips. Evidence was given by the two parties. Amber Phillips, who is married to Mr. Phillips, also gave evidence. Ms. Curtis called two witnesses, Ms. Laws and Mr. Carden. Witness statements of all were tendered.

5. There was some cross examination. There was no direct challenge to the truth of what each witness said. The hearing was by a telephone connection and whilst that has some challenges in assessing witnesses, I could see no reason not to accept the truth of what each witness said. There was really no substantive factual issue. There was some suggestion by the lawyer for Mr. Phillips that I might be suspicious about aspects of the evidence by Ms. Curtis and I will expressly refer to that. There was a discrepancy in detail between the evidence of Ms. Curtis and of Ms. Phillips but Ms. Curtis readily agreed that the detail provided by Ms. Phillips was correct and she had not had access to all the paperwork at the time she made her statement.

The facts

6. Mr. and Ms. Phillips had a baby girl who was due to turn one on about 23 February 2020 and a birthday party for that date was planned. On 17 January 2020, from her home in South Australia, Ms. Phillips, calling herself Amber Holmes (presumably her birth name) placed an order online for her daughter's birthday from the Pink Frosting business. She was unable to pay online as the online payment method was unavailable and was told she would be contacted by phone regarding payment.

7. She received a confirmation of the order the same date showing the order was made at 6:23pm on a Friday. It noted the event date and listed the items ordered. They were invitations, pennant flags and water bottle labels. The price including delivery was $32.49 and included a discount of $52.49. It referred to a tracking service and indicated the order would be dispatched and should take 10 days.

8. On 20 January 2020, she received an email from Pink Frosting saying they had tried to call her to finalise the order. She rang the same day and spoke to Ms. Curtis. She gave her credit card details and was told the order should arrive in a week. The credit card didn't work apparently and on 22 January 2020, she got another email saying the card was said to have insufficient funds. She had thought the card, which must have been a debit card, had already had the money deducted and had moved surplus funds from the bank account, to which it was attached, to savings but replied by email that she would put it back and it would

work. The money was debited to the bank account she held with Mr. Phillips the same day and she got a confirmation note later in the evening from Pink Frosting, telling her it was paid.

9. Nothing arrived, so Mr. Phillips emailed asking why, on 6 February, and pointed out that the invitations were supposed to be sent out a week before. She got no reply, so she wrote again on 13 February pointing out the invitations were no longer of use.

10. She got back an email the same day saying the order would be sent early next week. She replied saying don't send the invitations, and asked for an explanation and a partial refund for the invitations. As an aside, I am not sure how much that should be as the invoice set out the full price then discounted it but it was roughly one third of the order (about $11). By email of the same date, Ms. Curtis apologised and said she would refund the price for the invitations. No explanation for the delay was given.

11. On 14 February, Ms. Phillips thanked her and asked how the refund would be done and whether her card details were needed for that. She got a reply the same day saying they would refund back to the card.

12. The next Wednesday, 19 February (four days before the event), Ms. Phillips emailed saying there was still no delivery and asking where it was. She received back an email, the same day, saying the order cannot be filled as the printer was not working and she would have the amount refunded. An apology for the inconvenience was given.

13. Ms. Phillips was understandably unhappy, She immediately sent back an email saying:

> *Why did you not communicate this earlier I fot told late last week it would be sent early this week and I've had to again email to follow up and now 6 weeks later after my order your telling me your printer isn't working and will give me a refund, wow ive never had such bad customer service ever before. I understand things happen but communication is key for keeping your customers in the loop I've had to send multiple emails whth still no reasons behind why the order was so frayed now 6 weeks later and 3 days before our event your*

> *telling me your printer isn't working and will refund me... where does that leave me... it is way to late for me to organise personalised decorations for my daughters first birthday. If you advised me a week or so ago when I first asked what was going on I could have organised something else. I'm extremely disappointed in your customer service and communication. I will be following up re my refund and if I don't see it within the next day I will be contacting you*
>
> *Regards Amber Phillips*
>
> [errors in original]

14. She chased up the refund, as she promised, on 3 March, and was sent a refund notice on 12 March at 12.55pm. The notice was generated by an app, called "Squareup" which had also done the original invoice. The amount didn't get back into the account until 23 March.

15. Ms. Curtis did not challenge this evidence and in her evidence volunteered that she agreed that the service provided to Ms. Phillips was poor.

16. The post by Mr. Phillips was on 5 March 2020 which was after the agreement to refund but before it was received.

17. Ms. Phillips was sent a 'Notice of Concerns' document requesting an apology for the post. Later, after no apology was provided, she was told that proceedings were being commenced. She explains how the late notice caused her a considerable amount of emotional distress. She does not make any statement that implied that Ms. Curtis wasn't going to refund the money.

18. Mr. Phillips in his statement says that his wife rang him on 19 February and was emotionally distraught at the cancellation of the order. She had to rush around at the last minute to get party supplies. On 28 February he was told by his wife that the refund had not come through. He was shown the emails between Ms. Phillips and Pink Frosting. He was given a mobile number for the business and tried, unsuccessfully, to contact it by phone a number of times between 28 February and 4 March. He sent two emails following it up on 4 March. He referred to the Order Number but used his first name and did not mention his wife's name. If the emails were followed up the order might have been

identified by the number but as Ms. Curtis said, she did not know who Simon Phillips was when she first saw the matter complained of.

19. Mr. Phillips then did a Google search the next day and was shocked to see a number of complaints about the business on a site called www.productsreviews.com.au.

20. He annexed them to his statement. They contain a number of disparaging comments accusing the business of being a scam and worse. He was shocked. The complaints were similar to what had happened to Ms. Phillips and related to being let down for planned events by last minute cancellations and difficulty in getting a timely or any refund. Some went further and asserted the business was a scam. There are 14 pages of this.

21. It should be pointed out that ACAT, in its civil jurisdiction, is not bound by the rules of evidence. Nonetheless these complaints are hearsay. To the extent that they informed Mr. Phillips in guiding his actions which may be relevant to a defence, they are not reliable proof of the truth of what they say.

22. On the same day, 5 March, Mr. Phillips discovered a Facebook page which is the one where he posted the comment, which is the subject of these proceedings. He joined the group so he could do so. He did not know Ms. Doyle and did not explain where he found the picture, but it can easily be found on the internet, when searching images of Ms. Curtis.

23. On 12 March he saw the refund notice. He then removed his comment. He didn't receive the Notice of Concerns and first became aware of it when shown it by his wife on 22 June. He suggested that the timing of the refund and the Concerns Notice the next day is interesting. In her closing address his solicitor made a similar comment. She had cross examined witnesses for the applicant about the timing of when they first saw the post by Mr. Phillips. At the time I did not know why that was being asked. As will be seen the evidence was that Ms. Curtis did not become aware of the post until the morning of 13 March. It was not put to her or her witnesses that they were not truthful about that or that the timing of the refund was after she became aware of the post. As lawyers

well know, the rule in *Browne v. Dunn* requires this, if the contrary is to be asserted.[1] Whilst this is a rule of evidence, it is based on fairness which the Tribunal is obliged to afford. Thus, there is no proper basis here for finding anything but that the refund predated knowledge of the post. In any event, as I have previously said, I found all the witnesses to be truthful.

24. Mr Phillips also annexed a lot of internet references to Ms Curtis which he says reflects her reputation. Some of the material is disparaging and some is supportive. Again, this is not evidence of their truth either way.

25. Ms. Curtis in her statement, that she had affirmed to be true, says she was the owner of the business Pink Frosting but sold it to a competitor in January. The completion of the sale was not until March, and during January it had a sale with 70% off to clear existing stocks. The business sold party supplies and personalised confectionery.

26. After receiving the order a number of misfortunes plagued the business. Its premises were in Fyshwick. On Monday 20 January, a freak storm hit the premises causing hail damage to cars of staff and to the building. The business closed until 22 January but then had to close again the same day due to a bushfire known as the Beard fire. Power was cut off and the business could not reopen until the next week. This put them even further behind in processing existing as well as new orders. Then the main printer broke down. It appears to be necessary to make the labels and other products being provided. The repairers could not access the site for some time due to the fire and smoke emergency. Ms. Curtis told Ms. Phillips about the printer on 14 February. Her statement has missed a bit of the history related by Ms. Phillips and she agreed that Ms. Phillips was right about it. The business struggled to get on top of administration due to the two week disruption at the end of January and this also led to delays in consequent refunds. She said the refund was processed on 10 March but the paperwork evidencing it is dated 12 March. She said in evidence that the app Squareup that they used was very slow and she no longer uses it. The differences in these dates was not explored and I will assume it was

[1] *Browne v Dunn* (1893) 6 R 67, at pages 76-77

actually 12 March that the refund was initiated. In cross examination. Ms. Curtis explained that since the business was sold, she no longer has access to the paperwork although she does have access to the financial records she had generated.

27. On 5 March the Facebook page of the business received a number of posts from the respondent saying the business was a scam. Ms. Curtis did not know who the respondent was, so had these posts deleted. On the same day, he posted the matter complained of on a different Facebook page. She did not know of this until later. The post included a photo of Melissa Doyle with a number of women including Ms. Curtis. Ms. Doyle was tagged. Ms. Doyle is a well-known television personality and a member of the Board of the GWS Giants AFL team as well as its number one ticketholder. Ms. Curtis says that this then exposed the comment to Ms. Doyle's many friends or followers on Facebook. She put that number at 15,000. There is no direct evidence of this, but it is safe to assume that it would be a significant number.

28. It should be noted that the tagging does not necessarily mean that all these followers will see the post. Ms. Noble, acting for the respondent, tendered an extract about tagging as part of an application to dismiss the claim. She relied on it in the substantive hearing. I accept her explanation that it may need some action by Ms. Doyle to make it available to all her followers. It can be seen on the Facebook page that Ms. Doyle did log into the page and posted something on it. I cannot read it as it is too small. However, apparently, this inadvertently makes the post more widely known to her followers. I cannot be certain as to how many could have seen it, but it is potentially as wide as the number of followers of Ms. Doyle. Ms. Doyle had asked why she was being dragged into this. Ms. Curtis was asked by Ms. Doyle what it was about causing her significant embarrassment.

29. Ms. Curtis first became aware of the post when the Canberra Operations Manager of the Giants, Jack Masters rang her on the morning of 13 March. According to Ms. Curtis, he was extremely concerned and told her that while they "loved her" she was too much of a liability to continue in her public role

with the Giants. Not long after this her longtime friend Ms. Laws, who had seen the post the night before, rang her to warn her. Ms. Laws says Ms. Curtis was crying and told her she had just found out.

30. In her statement Ms. Curtis explained that she had been an inaugural member of a women's supporter group for the Giants in Canberra and had been an ambassador for them. In her oral evidence she explained also that she had attended many public functions for the team and spoke regularly on radio for them. She had thought she may be asked to join its Board. The Giants had an office in Canberra and Mr. Masters was based here. She said she had always loved AFL and was instrumental in getting a large group of prominent Canberra women together to support the team. The Group is known as the Giant Hearts. She had been approached by the AFL to assist in this being used for other teams.

31. As previously mentioned, Ms. Doyle, whom she had met several times, wanted to know why she was being dragged into this. At this time Ms. Curtis still did not know who Mr. Phillips was. Ms. Curtis spoke with her lawyer, Mr. Carden, the same day and he knew. Mr. Carden gave evidence that he was a follower of the Port Adelaide AFL team and he knew of Mr Phillips as he had played for that team. He was able to identify Ms. Philips as his wife and the connection became apparent. Later the same day Mr. Carden, who had downloaded the post, sent a Notice of Concerns letter to Mr. Phillips – although it wasn't received.

32. Ms. Curtis wrote again before commencing proceedings asking for an apology and Mr. Phillips did get that. No apology has been given.

33. Ms. Curtis explained that the business filled 25,432 orders in 2019, had been in operation for 17 years and was a substantial firm. She bought the business in 2016 when it had been at a low ebb and had hoped to get it back to a thriving business. She had to let a lot of former staff go and at that time the Facebook page had already been started. She found she had to refund substantial sums in respect of money received by the former owner. She said a number of the

people making comments online were not actually her customers and some, she believed, were disgruntled former staff.

34. She owns a number of businesses in Canberra and had twice been Telstra businesswoman of the year in the ACT and had won other accolades. She said her reputation had been damaged irreparably.

35. She explained that if she had received an apology she may not have sued. She felt the use of the photo and the tagging of Ms. Doyle was malicious and that was what made if different from the other bloggers who she was not suing. What has affected her most was the embarrassment she felt with the Giants and the loss of her role with them that she was proud of and enjoyed.

36. She did not seek to expand on any other hurt she suffered, but her friend Ms. Laws did. The only reason Ms. Laws and Mr. Carden gave evidence was to meet an argument that there was no jurisdiction in the ACT as there was no assertion in pleadings or statements provided showing the matter had been downloaded in the ACT as is required.[2] Ms. Laws had been worried about how she had been coping mentally with what she described as trolling. When she saw the post by Mr. Phillips, she was concerned about her and when she rang, Ms. Curtis was crying. To her credit, Ms. Curtis did not seek to put herself forward as a person that might be so affected but rather gave the impression that she was a strong person and could cope. The loss of her Giants role was what hurt her most.

The 'pleading' and applications

37. As is common in this jurisdiction, the application and response were not crafted as pleadings might be in a superior Court. Subsequently, both parties filed documents that followed a more familiar pleading path. The document filed by the applicant, for which she must have had legal help, was called an "amended pleading". It described the publication as on the internet and did not expressly plead any material facts that established it had been downloaded or that it had been done in the ACT. Its description of the aspects of the matter that were

[2] *Dow Jones and Company Inc v Gutnick* [2002] HCA 56

defamatory may have been a bit contentious. The word 'imputations' did not get mentioned. It referred instead to implications, which I have taken to be the same thing. The use of the word thief was said to imply that she was engaged in criminal activity during the ordinary course of her business dealings. It was also said that the publication "expressly implied' (sic) that the applicant was untrustworthy and deceitful.

38. Whilst the word 'thief' was used, an ordinary reader may see that some hyperbole was involved in this description and it is debatable that this would be seen as criminal in nature. However there can be no doubt that it carries the imputation that in her business dealings she is untrustworthy and deceitful. It is clear that the sting of the matter was that she was a dishonest person and someone that was an undesirable person for Ms. Doyle to associate with.

39. The claim sought damages, an apology and costs.

40. On the Wednesday before the hearing on Friday, an application to dismiss the case was made. It attacked the pleading, asserted that the Tribunal lacked jurisdiction to hear the case and argued the case should be dismissed as it was a waste of resources, relying on *Bleyer v Google Inc* [2014] NSWSC 897.

41. I dismissed the application for reasons given at the time. They included that the Tribunal was not a court of pleading and section 7 of the *ACT Civil and Administrative Tribunal Act 2008* required the proceedings to be dealt with as cheaply fairly and expeditiously as possible. The document was enough to make it clear what was being asserted. There was evidence that enabled an arguable case for jurisdiction,[3] and it was far too late to rely on the *Bleyer* principle as the resources were already committed.

42. The amended response pleaded a number of defences, namely, truth at common law and pursuant to sections 135 and 136 of the *Civil Law (Wrongs) Act 2002* (**the Act**) qualified privilege at common law and under section 139A of the Act;

[3] referring to *Errington & Anor v ACT Planning and Land Authority* [2019] ACAT 47; *General Steel Industries Inc v Commissioner for Railways (NSW)* [1964] HCA 69 and *Galovac Pty Limited v Australian Capital Territory* [2010] ACTSC 132

fair comment and honest opinion relying on section 139B of the Act and triviality under section 139D of the Act.

Consideration

43. The post clearly contains statements that would tend to make readers think less of Ms. Curtis. There is a clear imputation that she is dishonest. This is defamatory. The evidence discloses that a number of people in the ACT had read it and it was clearly downloaded here. The law assumes the statements are false unless proven otherwise. Therefore, unless a defence relied on succeeds, Mr. Phillips is liable to Ms. Curtis.

Triviality

44. The triviality defence was asserted as more significant than the others. As was correctly submitted, this related to injury to reputation not to feelings. It was argued that the readers were few, many of them rightly or not, already had a dim view of the reputation of Ms. Curtis; the people identified as downloading it in the ACT namely Ms. Laws and Mr. Carden did not believe it for a second, it was not on long and was removed.

45. The contrary argument is that the most significant persons in the ACT who knew of it were the staff of the Giants in Canberra. The post as impacted on Ms. Curtis greatly because the Giants would not want to be seen to associate with her. She has not been told that they believed the material but its existence leaves them unable to be publicly associated with her. I am satisfied that this post has impacted on her reputation with the Giants and this was significant for her. The defence of triviality fails.

Truth

46. The defence of truth was not the subject of any submissions. Aggravated damages that can arise from a failed defence of truth were not asked for and considering the short period since the pleading and the low profile given to this defence, I don't see they would be appropriate. There was no admissible evidence that Ms Curtis was dishonest. The experience of Mr. and Mrs. Phillips was evidence that her business gave them unsatisfactory service and that they were understandably upset by it. If Mr. Phillips had confined his post to being

critical of the service this would have been defensible, but he went further. He might be excused for fearing the worst when he read all the disparaging remarks, but his experience did not warrant him calling her a thief or deceitful or a person that Ms. Doyle should not associate with.

Fair comment and honest opinion

47. The defences of fair comment (at common law) and honest opinion depend on them being based on proper material under section 139B (5) or facts that are true. The material would have to be substantially true. This has not been shown. As explained above, the material might justify adverse comments about the poor service on this occasion but falls well short of verifying the truth of the imputations regarding deliberate dishonesty.

Qualified privilege

48. It is fair to conclude that Mr. Phillips had been angry with Ms. Curtis. The email Mrs. Phillips typed when told there were to be no goods, at the last minute, was an angry one. All her other emails were properly spelt and written. This must have been written quickly. It is reasonable for her to have been so upset. It is also very understandable why Mr. Phillips was totally dissatisfied and why the shock of what he saw online may have led him to jump to the conclusion that Ms. Curtis was operating a scam.

49. Ms. Curtis describes sourcing a photo and tagging Ms. Doyle as malicious. Malice is a term of art in defamation law. It defeats the defence.[4] I do not intend to articulate what is meant by it here but it is explained in the text David Rolph, *Defamation Law* (Thompson Reuters Australia, 2015) at [11.80]. It is arguable that the post was actuated by anger and to do Ms. Curtis harm and not by seeking to advance the public interest.

50. I still have to be persuaded that placing a post on a Facebook page that has such an extreme title, describing the applicant as a thief and making sure Ms Doyle and thus in all likelihood her wider followers (who have never dealt with the applicant or have any interest in knowing about her) is reasonable. It would be

[4] see too section 139A(4)

reasonable to write to the Fair Trading Authority or an equivalent body with a complaint. It seems highly unlikely that posting it to fellow complainants adds much to the public interest, but arguably it does. Tagging Ms. Doyle seems egregious. As she said, why am I being dragged into this? Assuming that there is otherwise an occasion of privilege it does not extend to the communication to Ms. Doyle of the followers of Ms. Doyle. This defence was not argued seriously by Ms. Noble and I am not satisfied it is made out.

51. I have come to the conclusion that the matter complained of was published in the ACT, bore a defamatory imputation that Ms. Curtis was untrustworthy and deceitful in her business dealings and was not justified by any of the pleaded defences.

Remedies

52. Apologies are not ordered in defamation cases.[5]

53. Costs are not available except as expressly set out in section 48(2) of the *ACT Civil and Administrative Tribunal Act 2008*.[6]

54. The filing fee may be ordered.[7]

55. The only available remedy is damages.

56. Ms. Noble helpfully drew my attention to some comparable awards in *Lazarus v Azize* [2015] ACTSC 344 (***Lazarus v Azize***).[8] There, the range for small circulation cases ranged from $3,000-$18,750.

57. An important object of an award, in the absence of a public apology, is vindication. Ms. Curtis has clearly also suffered a degree of harm to her feelings but she has not made a point of it. She seems to have been so harmed already by what her friend Ms. Laws describes as trolling. The only reason she brought these proceedings was because of the unnecessary dragging in of the Giants via Ms. Doyle. If she obtains an award that reflects vindication, she may be put in

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[5] see Rolph at 17.10
[6] *CIC Australia Ltd v ACT Planning and Land Authority, Mainore Pty Ltd and Anor* [2013] ACTSC 96
[7] ACAT Act section 48(2)(a)(i)
[8] at [33]

the position that she would have been if the post had not been published so far as her reputation was concerned. An apology may have had the same effect. The extent of the publication is not known. It may be wider than thought but it is unlikely that many outside the Giants community or a small number of readers of the site before it was removed would know about it. The users of the Facebook page may already have had an adverse opinion of the applicant or read it with a degree of scepticism. It is reasonable to treat it as having relatively limited relevant circulation. It is important not to award a sum that might be seen as derisory, without overcompensating the applicant. The amended pleading seeks $15,000. The jurisdiction is limited to $25,000. As Associate Justice Mossop, as he then was, said in *Lazarus v Azize* at [34]:

> *Plainly enough, ...a comparative exercise is overly simplistic in that it pays no regard to the particular circumstances of each case or whether or not those circumstances are comparable to the circumstances alleged in the present case. However it is clear that the damages awards, while modest, are not trivial.*

58. In all the circumstances, I have concluded that a fair amount is $10,000.

59. I have not enjoyed making this order against Mr. Phillips. He and his wife both presented as likable people and, as I have set out, were understandably upset at their treatment in their dealings with the applicant.

60. I was also impressed by Ms. Curtis for a number of different reasons. Her motivation for bringing the action at all was not to obtain any large sum but to get an apology. I was not surprised when Ms. Laws, who presented as a very sensible person, thought the claims made about Ms. Curtis were nonsense. It is hard to believe that a successful businesswoman who continues to run other businesses in the ACT would deliberately sacrifice her reputation by dishonestly holding on to relatively small amounts of money. She readily accepted that the Philips had received bad service. She readily conceded a number of propositions that she may have contested. She did not seek to elicit sympathy by talking about her emotional response when she was told of the post.

61. The orders I make are:

1. The respondent is to pay the applicant the sum of $10,000 damages
2. The respondent is to pay the applicant the sum of $159.50 for the ACAT filing fee.

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Senior Member B Meagher SC

Date(s) of hearing	27 November 2020
Applicant:	In person
Solicitors for the Respondent:	Ms C Noble, Meyer Vandenberg Lawyers