

1.5/94

## ADMINISTRATE APPEALS TRIBUNAL

**CATULLO v CCT****Deputy President Mr Galvin — 13 August 1993**

**THE APPLICANT'S LEFT EAR WAS BITTEN OFF DURING A SCUFFLE. THE CCT AWARDED THE APPLICANT \$10000 BUT REDUCED IT BY 20% HAVING REGARD TO THE APPLICANT'S BEHAVIOUR AND HIS STATE OF INTOXICATION. AWARD: \$10,000 PLUS COSTS.**

"[1] On 7 December 1990, the applicant and friends were drinking and playing billiards at the Grand View Hotel in Brunswick. They arrived there at about 5:00 p.m. At approximately 11:00 p.m. as a result of some remarks made about the applicant's girl friend to which he took offence, an altercation broke out between the applicant and Shane Bugeja. The two began to punch each other until friends intervened. Shortly after, the combatants resumed hostilities and had to be separated a second time. It would appear that in the fight the applicant got the better of Bugeja who was escorted from the premises by a friend. The applicant who had been a friend of Bugeja for some ten years, says that he had [2] endeavoured to stop the fight by calling out "Enough, enough". The applicant's evidence to the Tribunal included the following: When he left the hotel, he was confronted in the street by Bugeja and the altercation resumed. Bugeja was angry and came at him "full on" pushing him so that he rolled into the gutter with Bugeja on top of him. In the course of the scuffle, Bugeja bit off his left ear. Bugeja then left the scene.

The applicant was then taken to the Royal Melbourne Hospital. He could not be operated on immediately because of the alcohol in his system. There was a delay of 24 hours before surgery was performed to re-attach his ear. The operation proved unsuccessful and the ear had to be removed by further surgery. In consequence, the applicant had to undergo skin grafts and was in hospital for some 21 days.

The applicant subsequently applied for criminal injuries compensation under the *Criminal Injuries Compensation Act 1983* (the Act). He was awarded the sum of \$8000 as compensation for pain and suffering. Believing that the amount of compensation was inadequate, he has applied to this Tribunal for review of the decision. [3] It is not contested that the applicant was the victim of a criminal act. The only issue is quantum having regard to the relevance of s20(1) of the Act. Section 20(1) is in the following terms:

"In determining whether to make an award of compensation, or the amount of an award, the Tribunal shall have regard to any behaviour, condition, attitude or disposition of the victim which directly or indirectly contributed to the victim's injury or death and to all other circumstances it considers relevant".

In determining to make an award to the applicant, the respondent having decided that an award of \$10,000 for pain and suffering as appropriate, deducted \$2000 by reference to S20(1) having regard "to the state of intoxication of the Applicant and his behaviour during the evening". In my opinion, the confrontation between the applicant and his assailant which occurred outside the hotel was in no way contributed to by the applicant himself. Whatever occurred on the premises earlier, it was not reasonably to be expected that an assault of the particular degree of viciousness of that perpetrated by Bugeja outside the hotel might have been anticipated and there is nothing in the evidence to suggest that the applicant himself contributed to it in any way whatsoever. I do not consider that there is any basis for concluding that the applicant's prior consumption of alcohol in some way contributed to Bugeja's barbaric behaviour. Whilst I consider that the amount of compensation determined without reduction by the respondent [4] viz \$10,000 was appropriate in the circumstances, I do not consider that there was any justification for reduction of that amount by reference to S20. Accordingly, I vary the decision of the respondent to the extent that such reduction was made and determine that the applicant be paid the sum of \$10,000 compensation for pain and suffering. I order that the respondent pay the applicant's costs which I fix at \$1500."