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Supreme Court awards first damages under ACT Human Rights Act

In [*Morro, N & Ahadizad v Australian Capital Territory \[2009\] ACTSC 118*](#) (10 September 2009) the ACT Supreme Court awarded damages to three plaintiffs who sought compensation under s 18(7) of the *Human Rights Act 2004* (ACT). This is the first time the ACT Supreme Court has awarded damages under that Act.

Justice Gray held that s 18(7), which states that 'anyone who has been unlawfully arrested or detained has the right to compensation for the arrest or detention', gives an independent right to compensation—it does not merely have a declaratory function that a right to compensation exists in circumstances of unlawful detention.

Key points

Justice Gray held that the Act should be interpreted as it is drafted and that, accordingly, the Act confers a right to compensation for a breach of s 18(7) of the Act.

The Act differs from the *Australian Human Rights Commission Act 1986* (Cth) (the AHRC Act) (formerly the *Human Rights and Equal Opportunity Act 1986*) and the Victorian *Charter of Human Rights and Responsibilities Act 2006* in that those Acts do not expressly provide for a right to compensation (although the Australian Human Rights Commission will sometimes recommend payments of compensation for breaches of human rights).

Justice Gray found in the case of each of the three plaintiffs that:

- general damages should be awarded for injury to liberty and injury to feelings, including physical injury
- although the conduct of the Sentence Administration Board of the ACT had not been so unjustifiable that aggravated damages should be awarded, the mental and physical state of each plaintiff before and during imprisonment resulted in more severe emotional and mental harm than would typically accompany wrongful imprisonment. Accordingly, the effect of the Board's conduct on each of the plaintiffs should be taken into account in the calculation of general damages
- as the Board had not acted with conscious disregard of the plaintiffs' rights, exemplary damages (which take into account whether an element of punishment is required in the award of damages because of the conduct of the defendant) were not justified.

Background

Each plaintiff had been charged, convicted and sentenced for certain offences. Each had breached the terms of their periodic detention orders for various reasons, including concerns for personal safety and mental illness.

In each case, the invalid orders of the Board, the lack of effort on the part of the Board to ascertain the reasons for the breaches and/or an absence of procedural fairness led to the false imprisonment of the plaintiffs.

Mr Morro, N and Mr Ahadizad spent 72, 20 and 29 days, respectively, in detention.

Mr Morro suffered physical and psychological problems as a result of and during his time in prison.

N suffered violence at the hands of other inmates that resulted in him being taken to hospital. This violence was not prevented by the staff at the prison and resulted in significant physical and psychological damage.

Mr Ahadizad suffered from various mental conditions that made his time in prison particularly stressful, and this had continuing effects.

All three plaintiffs relied on medical evidence in support of their claims for damages.

The defendant, the Australian Capital Territory, admitted that these periods of detention occurred as a result of errors on the part of the Board, so to that extent there was no real dispute as to liability. The ACT also admitted breach of duty in respect of the personal injury suffered by N.

Decision

Justice Gray noted that the source of the human rights protected by the Act is the *International Covenant on Civil and Political Rights* of the United Nations General Assembly. However, the ACT is not a state party to this UN covenant (although Australia is). Justice Gray also noted that ss 18(7) and 23 of the Act both refer to a right to compensation and that, where such legislative provisions are drafted, they are intended to give effect to a substantive remedy where a relevant right has been violated. By contrast, the AHRC Act is not drafted in a way that suggests any right to damages.

Justice Gray rejected the defendant's use of the text of the second reading speech, which stated that the Act was not intended to create a new remedy for breach of any of the rights set out in Part 3 of the Act (which includes s 18(7)). He cited several authorities which confirm that the meaning of the words of a statute cannot be interpreted with reference to the parliament's intention.

Justice Gray held that s 18(7) of the Act should be considered to provide a substantive statutory right to compensation.

Justice Gray noted that there was also a common law right to remedy for the tort of false imprisonment which would be relevant in determining the appropriate compensation for the plaintiffs.

Justice Gray awarded the plaintiffs compensation arising from the false imprisonment as follows:

- 72 days: \$95,000 in general damages to Mr Morro (this amount included withheld Centrelink payments and damages for loss of liberty arising from his time in detention and resultant adjustment disorder)
- 20 days: \$40,000 in general damages to N (this amount included economic loss sustained and \$3,000 referable to the assault while in detention and its ongoing effects, including acute stress disorder)
- 29 days: \$55,000 in general damages to Mr Ahadizad (this amount included economic loss sustained and reflects Justice Gray's finding that the wrongful imprisonment had a deleterious effect on his mental state).

Justice Gray also awarded compensation for the legal costs of the plaintiffs' applications for habeas corpus.

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