



SAT

State
Administrative
Tribunal

Western Australia

HUMAN RIGHTS

DECISIONS BULLETIN

for the period 1 November 2008 - 30 November 2008

This Bulletin contains summaries of all written reasons for decisions published by the Tribunal in the Human Rights stream for the period 1 November 2008 - 30 November 2008. The full text of decisions and reasons can be found on the Tribunal's website at www.sat.justice.wa.gov.au. If you would like the monthly bulletin emailed to you directly, please enter your email address and details at our subscription page.

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EQUAL OPPORTUNITY ACT 1984 (WA)

SINGH AND BELMONT COUNSELLING CLINIC PTY LTD [2008] WASAT 271

19 NOVEMBER 2008

MS J TOOHEY (SENIOR MEMBER), MS F CHILD (MEMBER), PROF C MULVEY (SESSIONAL MEMBER)

Discrimination - Race - Religious conviction - Applicant Indian Sikh - Whether applicant employed by respondent - Credibility of applicant's evidence - Finding that the applicant had fabricated documents - Tribunal not satisfied employment relationship existed - Any different treatment not unlawful discrimination - Complaint dismissed - Victimisation - Whether respondent's complaints to professional body and the police about the applicant's conduct constituted victimisation - Finding that complaints did not constitute victimisation within the meaning of the *Equal Opportunity Act 1984 (WA)* - Applications dismissed

The applicant, who was a Sikh born in India, claimed that Belmont Counselling Clinic Pty Ltd unlawfully discriminated against him on the grounds of race and religious conviction in the area of employment. He further claimed that Belmont Counselling Clinic Pty Ltd was vicariously liable for the unlawful conduct of its director, Genevieve Milnes, who he claimed victimised him when he complained to the Commissioner for Equal Opportunity about the discrimination.

The applicant graduated from Curtin University in 2004 with an honours degree in psychology. To obtain registration as a psychologist, he was required by the Psychologists Board of Western Australia to undergo two years supervised practice. In December 2005 he entered into an arrangement with Belmont Counselling Clinic Pty Ltd by which Ms Milnes would supervise his practice. He claimed the arrangement constituted a contract of employment.

The applicant claimed that, over six months to June 2006 when the arrangement ended, Ms Milnes subjected him to constant discrimination by making offensive remarks about

his race and his religion, making him perform menial cleaning work, not allocating clients to him, refusing him access to computers and telephones and refusing to pay him. He further claimed that she victimised him in various ways including threatening him and making complaints to the Psychologists Board of Western Australia and the police about him.

Belmont Counselling Clinic Pty Ltd denied there was an employment relationship with the applicant.

The Tribunal found much of the applicant's evidence exaggerated and implausible. It was not satisfied that he was a credible witness. It further found that he had fabricated a number of documents he had submitted to the Tribunal as evidence of an employment relationship.

The Tribunal found the applicant was on an unpaid, supervised placement at Belmont Counselling Clinic Pty Ltd for the purposes of meeting Psychologists Board of Western Australia requirements for registration as a psychologist. It did not accept that Belmont Counselling Clinic Pty Ltd agreed to pay him or that an employment relationship existed.

As there was no employment relationship, the conduct complained of could not constitute unlawful discrimination in employment within the meaning of the *Equal Opportunity Act 1984* (WA). It was therefore not necessary to deal with the incidents of alleged discrimination in detail. The Tribunal dismissed the application.

In relation to the complaint of victimisation, the Tribunal was not satisfied that Ms Milnes threatened him or acted in other ways complained of. It was not satisfied that her conduct in lodging complaints with the Psychologists Board of Western Australia and the police constituted victimisation within the meaning of s 67(1) of the *Equal Opportunity Act 1984* (WA). It followed that Belmont Counselling Clinic Pty Ltd was not liable for any unlawful conduct. The Tribunal dismissed the applications.

GUARDIANSHIP AND ADMINISTRATION ACT 1990 (WA)

M [2008] WASAT 262

7 NOVEMBER 2008

**MS J TOOHEY (SENIOR MEMBER), MS H LESLIE (SENIOR SESSIONAL MEMBER),
MR J MANSVELD (MEMBER)**

Administration - Proposed represented person incapable of managing her affairs by reason of dementia - Need for someone with lawful authority to act on her behalf - Intense conflict between her sons - Relatively complex estate - Whether enduring power of attorney a less restrictive means of meeting needs - Conflict of interest - Son donee of enduring power of attorney failed to appreciate the obligations of an attorney - Even if no conflict of interest for the attorney, conflict between sons made it unworkable for him to act as attorney or administrator - Consideration of wishes of proposed represented person - Public Trustee appointed plenary administrator

M was an elderly woman who spoke little English. Her husband had died and her sons, G and E, were in dispute over the management of her financial affairs. Her estate included residential properties, interests in a family company and family trust, and she was a party to, or had an interest in, various legal proceedings including proceedings against her for default on a loan for which her investment property was security.

G lodged applications under the *Guardianship and Administration Act 1990* (WA) for orders revoking enduring powers of attorney (EPA) made by M and appointing the Public Trustee her administrator.

M and E maintained that she was capable of managing her estate.

The Tribunal found, on the evidence of three geriatricians and M's general practitioner, that she was unable, by reason of dementia, to make reasonable judgments about her estate and that she needed someone with lawful authority to act on her behalf.

The Tribunal was not satisfied that it was in M's best interests for E to manage her estate. In many respects their property and interests overlapped. M had transferred substantial assets to E in circumstances in which her understanding of the transactions was questionable, and she had executed a new will under which E was the sole beneficiary.

E maintained these transactions reflected M's wishes and were necessary to protect her property from dealings by G. However, he did not recognise any conflict of interest involved in his dealings with M's estate or her need for independent legal advice and representation. The Tribunal was not satisfied that he appreciated sufficiently the obligations on an attorney or that it was in M's best interests that he manage her estate pursuant to an EPA or as her administrator.

The Tribunal accepted that M's wish would be for her private affairs to be managed by one or both of her sons and not by someone outside the family. However, the conflict between G and E was such that neither was willing to put it aside in their mother's interests. Managing her estate would involve communication and negotiation between G and E. Even if E had been otherwise suitable to act pursuant to an EPA or as administrator, the intense conflict would make the arrangement unworkable.

The Tribunal appointed the Public Trustee plenary administrator for M for two years in the hope that G and E might resolve the conflict in that time and that M's wishes might then be given effect.

EP AND BB [2008] WASAT 264

13 NOVEMBER 2008

MS D DEAN (MEMBER), DR E LEIPOLDT (SENIOR SESSIONAL MEMBER), DR D STEPNIAK (SENIOR SESSIONAL MEMBER), MS V O'TOOLE (SENIOR SESSIONAL MEMBER)

Application for administration - Capacity to make reasonable judgments - Need for an administrator - Potential conflict of interests - Husband not suitable to be appointed administrator - Need for an independent decision-maker

In December 2007, applications were made to the Tribunal for both guardianship and administration orders for EP, an elderly woman living with her second husband JD. The applications were heard over several months. In May 2008, for reasons outlined in the hearing, an order was made appointing the Public Advocate limited guardian to make accommodation, medical treatment, contact and service decisions. The application for administration was adjourned for further evidence to be provided in relation to EP's capacity to make reasonable judgements in relation to her estate. Evidence subsequently provided to the Tribunal was that EP has dementia and significant memory loss with limited ability to make decisions in relation to her estate.

During the course of the hearings the Tribunal heard evidence that EP's estate left to her by her first husband had been significantly depleted and the properties left to her by her first husband had recently been transferred into joint names with her husband JD. EP was unable to provide clear information to the Tribunal about how her estate is currently managed. She was adamant that she had not transferred or sold the properties which she said she still owned. During the course of the hearings, in June 2008, EP executed an enduring power of attorney appointing JD her attorney. In August 2008 EP advised the Tribunal that she had no memory of executing this document.

The Tribunal found that EP was a person for whom an administration order could be made and that she was in need of an order. The Tribunal further found that, given the confusion in relation to the transfer of the properties, the execution of the enduring power of attorney and the potential conflict of interest if JD was appointed administrator, that an

appointment independent of the couple was in EP's best interests. The Public Trustee was appointed plenary administrator for a period of one year. The Tribunal found that operation of the enduring power of attorney was inconsistent with the administration order and revoked it.