SUPREME COURT OF QUEENSLAND

CITATION:	*Hannigan v Ragh & Anor* [2010] QSC 242
PARTIES:	**MICHAEL ANDREW HANNIGAN** **(applicant)** **v** **PETER F RICHARDS** **(first respondent)** **NOEL WILLIAM RAGH** **(second respondent)**
FILE NO:	BS8517 of 2009
DIVISION:	Trial Division
PROCEEDING:	Application for statutory order of review and application for review
DELIVERED ON:	7 July 2010
DELIVERED AT:	Brisbane
HEARING DATE:	27 April 2010
JUDGE:	Mullins J
ORDER:	**Application dismissed**
CATCHWORDS:	ADMINISTRATIVE LAW — JUDICIAL REVIEW — GROUNDS OF REVIEW — ERROR OF LAW — jurisdiction of Misconduct Tribunal under *Misconduct Tribunals Act* 1997 (Qld) – where original decision-maker found police officer guilty of misconduct and imposed sanctions – where officer appealed findings of misconduct and that the sanctions were excessive to the Tribunal – where no appeal against inadequacy of sanctions by the Crime and Misconduct Commission – where prior to delivering the decision on the appeal the Tribunal member informed the parties that he proposed setting aside the sanctions and substituting increased sanctions – where the officer abandoned his appeal against sanctions – where Tribunal confirmed the findings of misconduct but made no formal orders in relation to the sanctions – where original decision-maker claims the Tribunal made an error of law in allowing the officer to withdraw his appeal in respect of the sanctions – whether Tribunal had the jurisdiction to increase sanctions imposed by the original decision-maker when there was no appeal against the inadequacy of the sanctions *Crime and Misconduct Act* 2001, s 50 *Misconduct Tribunals Act* 1997, s 15, s 16, s 18, s 20, s 23, s 24, s 26, s 28

Police Service Administration Act 1990, s 7.4
Police Service (Discipline) Regulations 1990, reg 5, reg 6, reg 7, reg 8, reg 10

Aldrich v Ross [2001] 2 Qd R 235, considered
Chapman v Richards [2008] QSC 120, considered

COUNSEL: GP Long SC and SA McLeod for the applicant
No appearance for the first respondent
P Callaghan SC for the second respondent

SOLICITORS: Queensland Police Service Solicitor for the applicant
No appearance for the first respondent
Bell Miller for the second respondent

[1] The second respondent is a police officer. He was found to have committed misconduct in relation to two matters by the applicant who was the relevant decision-maker for deciding disciplinary charges of misconduct against the second respondent under s 7.4 of the *Police Service Administration Act* 1990 (*PSAA*). The applicant's decision was made on 6 June 2008. In relation to matter 1 the applicant fined the second respondent. In relation to matter 2 the applicant ordered a reduction in salary for the second respondent for a period of six months, but suspended that sanction for a period of six months on conditions to which the second respondent agreed. The second respondent appealed to the Misconduct Tribunal (the Tribunal) on grounds that the decision of the applicant to find the charges made out was wrong in fact and in law and that, in finding the charges proven, the sanction was excessive. The first respondent constituted the Tribunal for the purpose of hearing the second respondent's appeal.

[2] The hearing of the appeal took place on 11 June 2009. The first respondent arranged to deliver his decision on 9 July 2009. When the parties reconvened, the first respondent informed counsel of the orders that he proposed to make, namely confirming the applicant's decisions that the second respondent had committed misconduct in respect of each of matters 1 and 2, but proposing to set aside the applicant's decisions imposing the sanctions and substituting more severe sanctions, on the basis that the sanctions imposed by the applicant were inadequate. The first respondent gave the second respondent notice of the proposed orders on the sanctions to give the second respondent the opportunity to abandon his appeal. That is what the second respondent then did. As a result, the formal orders made by the first respondent as the Tribunal were limited to confirming the decisions appealed against in relation to the findings of the applicant with respect to matters 1 and 2, but no formal orders were made in relation to the appeal against the sanctions imposed by the applicant in respect of matters 1 and 2, on the basis that the appeal to the Tribunal in respect of the sanctions was abandoned by the second respondent.

[3] The applicant applies for relief under either Parts 3 or 5 of the *Judicial Review Act* 1991 (*JRA*) on the basis that in reaching the decision to make no formal orders in respect of the sanctions imposed by the applicant against the second respondent, the Tribunal erred at law in allowing or acceding to the application by the second respondent to withdraw his appeal in respect of the sanctions or acted contrary to law or, alternatively, the Tribunal failed to exercise the jurisdiction of the Tribunal. Implicit in the application made by the applicant is an assertion that the Tribunal had the jurisdiction to impose harsher sanctions than were imposed by the applicant.

The second respondent asserts, however, that the first respondent had no jurisdiction to impose harsher sanctions than those imposed by the applicant, as the Tribunal's jurisdiction was constrained by the ground of the appeal that the sanctions were excessive.

[4] In accordance with the usual practice, the first respondent did not participate in the hearing of this application under the *JRA*.

Jurisdiction of the Tribunal

[5] The Tribunal was established under the *Misconduct Tribunals Act* 1997 (the Act) to hear and decide charges of a disciplinary nature of official misconduct against prescribed persons and appeals from particular decisions made in relation to charges of a disciplinary nature made against prescribed persons. The definition of "prescribed persons" is found in the dictionary in the schedule to the Act and means a prescribed person under s 50 of the *Crime and Misconduct Act* 2001. The definition of a prescribed person in that provision includes a member of the police service.

[6] Section 7.4(2) of the *PSAA* provides that a police officer is liable to disciplinary action in respect of the officer's conduct which the prescribed officer considers to be misconduct (or a breach of discipline) on such grounds as are prescribed by the regulations. The definition of "prescribed officer" in s 7.4(1) is an officer authorised by the regulations to take disciplinary action in the circumstances of any case in question. Subsections (2A) and (3) of s 7.4 of the *PSAA* provide:

> **"**(2A) If the prescribed officer—
> (a) decides a disciplinary charge of misconduct brought against the officer; or
> (b) when deciding a charge of breach of discipline brought against the officer, finds the officer is guilty of misconduct;
> the commissioner must give written notice of the decision, including the discipline imposed on the officer, or the finding and the discipline imposed on the officer to the Crime and Misconduct Commission and the officer within 14 days after making the decision or finding.
>
> (3) Without limiting the range of disciplines that may be imposed by the prescribed officer by way of disciplinary action, such disciplines may consist of—
> (a) dismissal;
> (b) demotion in rank;
> (c) reprimand;
> (d) reduction in an officer's level of salary;
> (e) forfeiture or deferment of a salary increment or increase;
> (f) deduction from an officer's salary payment of a sum equivalent to a fine of 2 penalty units."

[7] The regulations made under the *PSAA* are the *Police Service (Discipline) Regulations* 1990 (the Regulations). The disciplinary sanctions that may be imposed are set out in regulation 10:

> **"10 Disciplines that may be imposed**

> Subject to regulations 11 and 12 (and without limiting the range of disciplines that may be imposed by the commissioner or a deputy commissioner pursuant to section 7.4(3) of the Act or regulation 5) the disciplinary sanctions that may be imposed under these regulations are—
> (a) cautioning or reprimand;
> (b) a deduction from the officer's salary or wages of an amount equivalent to a fine of 2 penalty units;
> (c) a reduction in the officer's level of salary or wages (not being a reduction to a level outside that applicable to an officer of that rank);
> (d) forfeiture or deferment of a salary increment or increase;
> (e) a reduction in the officer's rank or classification;
> (f) dismissal from the police service."

[8] The officers who are authorised by the Regulations to take disciplinary action are referred to in regulations 5 to 8. The disciplinary powers of the officers differ according to the place of the officer in the hierarchy. Under regulation 5 where the commissioner or a deputy commissioner has formed the opinion that an officer should be disciplined, the commissioner or deputy commissioner may order that the officer be disciplined in a manner that appears to be warranted and there is no restriction on the powers of the commissioner or a deputy commissioner to exercise any of the sanctions that are permitted under regulation 10. The respective disciplinary powers of an assistant commissioner, a commissioned officer and a non-commissioned officer are subject to the restrictions set out in regulations 6, 7 and 8.

[9] The findings of the applicant that the second respondent was guilty of misconduct and the decisions to impose sanctions were reviewable decisions within the meaning of s 15 of the Act. Notice of the decisions was required under s 7.4(2A) of the *PSAA* to be given to the Crime and Misconduct Commission (the Commission) within 14 days of the decisions. The Tribunal was exercising appellate jurisdiction under s 16 of the Act in relation to the second respondent's appeal to the Tribunal against reviewable decisions. The procedures for instituting an appeal to the Tribunal in its appellate jurisdiction are set out in s 18 of the Act. The notice of appeal must identify the decision to which the appeal relates and the grounds for the appeal. In relation to the second respondent's matter, the only parties that had a right to appeal against the applicant's decision were the Commission or the second respondent himself. As the applicant had found the charges of misconduct against the second respondent proved, the only scope for an appeal by the Commission was against the sanctions imposed by the applicant and there was no such appeal instituted.

[10] The procedures applying to the Tribunal are set out in division 2 of part 4 of the Act. Section 23 of the Act regulates the conduct of a proceeding before the Tribunal and relevantly provides in subsections 23(1) to (6):

> **"23 Conduct of proceeding**
> (1) When conducting a hearing in a proceeding, a misconduct tribunal must—
> (a) observe natural justice; and
> (b) act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues before it.

(2) In conducting the hearing, the tribunal—
(a) is not bound by the rules of evidence; and
(b) may inform itself of any thing in the way it considers appropriate; and
(c) may decide the procedures to be followed for the proceeding.
(3) However, the tribunal must comply with this division and any procedural rules.
(4) If the tribunal is exercising appellate jurisdiction, the appeal is by way of rehearing on the evidence (*original evidence*) given in the proceeding before the original decision-maker (*original proceeding*).
(5) However, the tribunal may give leave to adduce fresh, additional or substituted evidence (*new evidence*) if the tribunal is satisfied—
(a) the person seeking to adduce the new evidence did not know, or could not reasonably be expected to have known, of its existence at the original proceeding; or
(b) in the special circumstances of the case, it would be unfair not to allow the person to adduce the new evidence.
(6) If the tribunal gives leave under subsection (5), the appeal is—
(a) by way of rehearing on the original evidence; and
(b) on the new evidence adduced."

[11] Under s 24(1) of the Act, a Tribunal hearing must be open to the public, unless the Tribunal orders, before or during the hearing, that it be closed to the public on the basis that an open hearing would be unfair to a person or contrary to the public interest.

[12] The powers exercisable by the Tribunal in relation to its appellate jurisdiction include those set out in s 26 and s 28 of the Act:

"**26 Misconduct tribunal decisions—appellate jurisdiction**
(1) A misconduct tribunal exercising appellate jurisdiction may make the following orders—
(a) confirm the decision appealed against;
(b) set aside the decision and substitute another decision;
(c) set aside the decision and return the matter to the original decision-maker with the directions the tribunal considers appropriate.
(2) In substituting another decision, the misconduct tribunal may impose any punishment provided for on a finding of the charge being proved even though the original decision-maker's power to impose the punishment may have been restricted.
(3) The decision of the tribunal is final and conclusive, and is binding on, and must be given effect by, all persons concerned.

…

28 Misconduct tribunal's power to suspend punishment
(1) This section applies if punishment has been imposed on a prescribed person by—

(a) a misconduct tribunal exercising original or appellate jurisdiction; or
(b) the decision-maker of a reviewable decision.

(2) A misconduct tribunal may order that punishment imposed on the prescribed person be suspended if the tribunal considers it is appropriate to do so in the circumstances.

(3) The tribunal must state an operational period for the period of suspension and the suspension may be given on conditions.

(4) If the prescribed person is found to have committed an act of misconduct or official misconduct or to have contravened a condition during the operational period, on the finding—
(a) the suspension on the punishment is revoked; and
(b) the punishment imposed has immediate effect.

(5) If the prescribed person is not found to commit an act of misconduct or official misconduct or contravene a condition during the operational period, the punishment imposed on the person is taken to have been satisfied.

(6) Subsection (4) does not limit the person's liability to punishment for the further act of misconduct or official misconduct."

[13] The nature of the Tribunal's jurisdiction was considered by Thomas JA (with whom the other members of the Court of Appeal agreed) in *Aldrich v Ross* [2001] 2 Qd R 235 (*Aldrich*). In *Aldrich* the police officer Ross was charged with two charges of misconduct. The first charge related to the disclosure by him of confidential information to his brother and to the person who was the subject of the confidential information. The second charge related to his possession of steroids and assisting his brother to obtain steroids. The deputy commissioner who heard the charges found the misconduct proved and ordered that Ross be dismissed from the police service. Ross appealed to the Tribunal which ordered that the dismissal be suspended for a period of 12 months which had the effect under s 28(5) of the Act that if Ross did not commit an act of misconduct or official misconduct during the period of 12 months, the punishment would be taken as satisfied and the dismissal would not take effect. The deputy commissioner was unsuccessful on judicial review at first instance, because it was held that the appeal to the Tribunal was of a limited kind and that the appeal could not succeed unless an error of the kind in *House v The King* (1936) 55 CLR 499 (*House v The King*) could be demonstrated.

[14] The issue raised in *Aldrich* in the Court of Appeal was whether an appeal to the Tribunal could succeed only if error of the kind described in *House v The King* was demonstrated. Thomas JA stated at [37]:

> "For reasons which will be further developed I have concluded that the appeal to the Misconduct Tribunal should not be taken to be limited by the principles of *House v The King*, or by the need to identify some error that the original decision-maker had committed. It is an appeal in which the appellate tribunal is entrusted with making its own determination on the evidence before it whether or not new evidence is received."

[15] After analysing the nature of the hearing before the original decision-maker and the statutory provisions that regulated the hearing before the Tribunal, Thomas JA's conclusion at [41] was:

> "In the end, although there are countervailing factors, I consider that the Misconduct Tribunal is required to make its own decision on the available evidence rather than merely to determine the correctness of the original decision in the limited manner permitted by an appeal in the strict sense against the exercise of a discretion."

[16] The role of the Tribunal as an "outsider" to the police service was the subject of further comment by Thomas JA who referred to the purpose of misconduct proceedings at [42]:

> "The purpose of misconduct and discipline proceedings within the police force has been identified in a number of decisions including *Hardcastle v Commissioner of Police, Police Service Board v Morris* and *Re Bowen*. The protection of the public, the maintenance of public confidence in the Service and the maintenance of integrity in the performance of police duties are the primary purposes of such proceedings." (*footnotes omitted*)

[17] Thomas JA made further observations on the Tribunal's jurisdiction at [43]:

> "The provision of a system which permits one external public review of the disciplinary decision is not only the protection against a wrong or unacceptable decision, it is also the provision of a source which can be expected to bring a perspective to bear from the public point of view. That is not to say that considerable respect should not be paid to the perceptions of the Commissioner as to what is needed for the maintenance of internal discipline. It would be appropriate for the Misconduct Tribunal in making up its own mind to give considerable weight to the view of the original decision-maker who might be thought to have particular expertise in the managerial requirements of the police force."

[18] After deciding that the wrong test had been applied at first instance on the judicial review application, Thomas JA then considered whether there was any error in the Tribunal's decision. Thomas JA noted at [45] that the issue on appeal to the Tribunal in that matter was whether the penalties were manifestly excessive in all the circumstances and then stated:

> "For the reasons which have been given, the first duty of a Misconduct Tribunal is to make up its own mind as to the facts that are proved by the evidence and the inferences that should be drawn from those facts, giving appropriate weight to the opinion of the original decision-maker. If the materials are inadequate, there is adequate power to obtain further information under ss 20 and 23(5). If further evidence were received the proceeding would necessarily become a rehearing de novo. If there is no serious contest as to the primary facts (as was essentially the position here), it is still necessary for the Misconduct Tribunal to make up its own mind on the facts and on the inferences to be drawn from them, though it might well see them the same way as the original decision-maker if that person's view of the facts is ascertainable. The exercise is quite different from that which takes place in this court in sentence appeals against the exercise of a judicial discretion, where the principles of *House* and *Cranssen* apply, and where the essential issue is often compendiously reduced to whether the sentence is manifestly

> excessive. If the Misconduct Tribunal has the same view of the facts and inferences as the original tribunal, it would again be appropriate to give considerable respect to the views of the original tribunal as to the appropriate disciplinary sanction, but the ultimate determination must be that of the Misconduct Tribunal." (*footnotes omitted*)

[19] Thomas JA endorsed the Tribunal's decision to suspend the sanction imposed by the original decision-maker making the observation at [47]:

> "He was entitled, indeed obliged, to consider the matter afresh, and if he thought necessary to use a power not possessed by the original decision-maker."

[20] No reference is made by Thomas JA in *Aldrich* to the effect of the notice of appeal on the Tribunal's jurisdiction or decision-making. The decision of the Tribunal that was upheld by the Court of Appeal, however, had the effect of ameliorating the original decision-maker's decision on penalty by suspending the operation of the sanction. That meant that the police officer succeeded on his ground of appeal that the penalty was excessive.

Preliminary issue

[21] The preliminary issue that must be determined on this application is whether the Tribunal had jurisdiction to increase the sanctions imposed by the applicant. That depends on the construction of relevant provisions of the Act.

[22] Before considering the jurisdictional question, reference should be made to the submissions that were put to the Tribunal in relation to the powers that it could exercise in respect of the sanctions that had been imposed by the applicant.

The submissions made to the Tribunal on the sanctions

[23] The second respondent's written submissions before the Tribunal were primarily directed to the issue of whether the conduct the subject of matters 1 and 2 could be properly characterised as misconduct. As an alternative submission, the second respondent submitted that an appropriate way of dealing with his conduct that was the subject of matter 1, if it were found to be inappropriate conduct, was correction by way of guidance.

[24] In written submissions before the Tribunal, the applicant contended that the second respondent was limited to the grounds in his notice of appeal, but that did not limit the jurisdiction of the Tribunal to substitute a greater penalty or to make a factual finding that was different to that of the applicant. The applicant made the express submission that the penalty he had imposed was not excessive, but expressly did not make a submission that the penalty was adequate. The applicant expressed his position on penalty at paragraph 45 of the written submissions in terms that it was a matter for the Tribunal:

> "In that context however no submission is made by the [applicant] that the penalty was adequate. Should the Tribunal form the view that the penalty was inadequate, then, the Tribunal is bound, consistent with its primary purposes, to impose a sanction that is adequate. The Tribunal is not bound solely by the decision of the [applicant] but must exercise its role in ensuring a proper public review of decisions."

[25] The applicant made an additional written submission in relation to penalty which suggested that the Tribunal may find it necessary to consider whether the suspension that was imposed by the applicant under regulation 12 was imposed lawfully and submitted that the Tribunal must impose its own sanction, if the suspension was not imposed lawfully.

[26] The solicitor who appeared for the applicant before the Tribunal submitted (at line 2810) that "the situation may arise where an officer appeals a sanction, merely because the officer's appealed it doesn't mean that the tribunal can't impose a higher sanction" and (at line 2815) "in this case if the tribunal were to form a view that the penalty imposed was inadequate, then the tribunal ought to impose a sanction that it considers is, is adequate and appropriate." After those statements the first respondent asked the applicant's solicitor as to what his submission was as to the adequacy or otherwise of the sanction and the response (at line 2823) was to the effect that the solicitor did not want to make a submission that "was entirely inappropriate given that that may be a conflict of my position." The second respondent's counsel responded to this exchange (at line 2917) that "The Crime and Misconduct Commission is the entity which appeals the sanction if it feels it's inadequate." That submission was repeated (at line 3017) that there was no appeal against the unlawfulness or inadequacy of the sanction.

[27] The applicant's solicitor repeated the submission (at line 3235) to the effect that it was a matter for the Tribunal "which is entirely within the discretion of the Tribunal if it forms that view that a higher penalty is required." There was then an exchange of views between the first respondent and the applicant's solicitor about alternative penalties, such as a caution or a reprimand, and whether it was appropriate to suspend those penalties.

[28] The second respondent's counsel was invited to reply and again focused on the issue of whether the conduct amounted to misconduct. The second respondent's counsel confirmed that the submission was not being made that the penalty for the conduct (if it was misconduct) should be reduced. The second respondent's counsel did not attempt to dissuade the first respondent from the view that he expressed (at line 3511) that he would make his own mind up about the sanctions.

Did the Tribunal have the power to impose harsher sanctions?

[29] The applicant relies on the decision in *Aldrich* to submit that the Tribunal on the hearing of the appeal was obliged to bring a fresh view to the matter that was before the Tribunal and was not constrained by the notice of appeal.

[30] The applicant relies on the express terms of s 26(2) of the Act as indicating that the Tribunal's discretion on penalty is unfettered.

[31] The second respondent also relies on s 26(2) of the Act, but contends that it must be read in the context of the scheme provided for by the Act. The second respondent points out that there may be limitations upon the sanctions which might be imposed on disciplinary proceedings for misconduct brought pursuant to s 7.4 of the *PSAA*, because of the rank of the officer taking the disciplinary action. By way of example, an assistant commissioner taking disciplinary action is precluded by regulation 6 of the Regulations from imposing the disciplinary sanction of dismissal. If the Commission appealed to the Tribunal against the sanction imposed by the assistant commissioner, the Tribunal's power to impose punishment by way of dismissal

would not be restricted in the manner that applied to the assistant commissioner. Reference was made to *Chapman v Richards* [2008] QSC 120 which is an example of an appeal to the Tribunal by the Commission against the inadequacy of the penalty imposed by the assistant commissioner against the relevant police officer. In that matter the Tribunal imposed a more severe sanction (which was consistent with the Commission's notice of appeal) and the police officer was unsuccessful in applying for judicial review of the Tribunal's decision.

[32] The second respondent also submits that the observations by Thomas JA in *Aldrich* must be read in the context of the issue raised in *Aldrich* and that the reference in *Aldrich* at [41] to the Tribunal "making its own decision" is a reference to the approach of the Tribunal in determining the issues in an appeal before it and should not be read as conferring a power on the Tribunal to frame those issues for itself.

[33] The second respondent is not prevented from pursuing this argument that the Tribunal lacked jurisdiction to increase the sanctions in the absence of an appeal by the Commission by the fact that counsel who appeared for the second respondent before the Tribunal (who was not the same counsel as now appears for the second respondent) did not take the point about the Tribunal's jurisdiction in respect of the sanctions being limited by grounds in the notice of appeal of the second respondent.

[34] Section 26(2) of the Act must be construed in the context of the scheme that provides for appeals to the Tribunal. The appellate jurisdiction by the Tribunal is engaged only by the filing of a notice of appeal under s 18(1) of the Act which must clearly state the grounds for the appeal. Reference is made in s 23(1)(b) of the Act to "the issues" before the Tribunal in the context of the manner in which the Tribunal must conduct the hearing in a proceeding. The issues before the Tribunal must be those raised by the notice or notices of appeal. Although the original decision-maker will always be a party to any appeal, whether instituted by the police officer or the Commission, the Act provides the means for both sides of the argument to be agitated on an appeal, because both the relevant police officer and the Commission are given rights of appeal.

[35] Section 26(2) of the Act may have application in many different cases. *Aldrich* is an example where the Tribunal exercised the power conferred on it by s 28(2) of the Act which was not available to the deputy commissioner who was the original decision-maker in *Aldrich* who would have been limited to the suspension power under regulation 12 of the Regulations which permits suspension of the effect of the disciplinary sanction, subject to the officer agreeing to perform voluntary community service or undergo voluntary counselling, treatment or some other program designed to correct or rehabilitate, where the community service, counselling, treatment or program is designated by the disciplinary officer and which is relevant to the act or omission which led to the disciplinary action being taken. Section 26(2) of the Act could have application where the Commission appeals against the finding of an original decision-maker that a disciplinary charge of misconduct has not been proved against a police officer and enables the Tribunal on an appeal by the Commission against that finding to impose a punishment appropriate for a finding that the charge has been proved. In *Chapman v Richards* [2008] QSC 120, s 26(2) of the Act enabled the Tribunal to substitute an order for the dismissal of the police officer on the appeal by the Commission, where the assistant commissioner who was the original decision-maker did not have the power to impose that sanction because of the restriction in regulation 6 of the Regulations.

[36] It was not necessary for Thomas JA in *Aldrich* to consider the role played by the notice of appeal in the proceeding before the Tribunal, as the outcome of the Tribunal's decision in that case was consistent with the appeal by Ross against the excessiveness of the sanction that had been imposed by the original decision-maker.

[37] The emphasis placed by the applicant on statements found in *Aldrich* is misplaced, when the decision and the observations in *Aldrich* are understood in the context of the respective issues decided by the Tribunal and the Court of Appeal in that matter.

[38] In this matter, if there had been a concern that the sanctions imposed by the applicant were inadequate and the public interest required a review of the sanctions, the Commission had the means to ensure the public interest was pursued.

[39] As there was no appeal against the applicant's sanctions on the basis that they were inadequate, the Tribunal's jurisdiction was constrained by the only ground of appeal before it relating to the sanctions which was that they were excessive. The second respondent correctly asserts that the Tribunal had no jurisdiction in this matter to impose harsher sanctions than those imposed by the applicant. There is therefore no point in proceeding to determine the arguments put by the applicant for seeking review of the course taken by the Tribunal in allowing the second respondent to withdraw his appeal in respect of the sanctions.

[40] One of the reasons that the applicant advanced for seeking judicial review that would result in the matter returned to the Tribunal was to pursue the issue raised in the written submissions before the Tribunal of the lawfulness of the conditions imposed by the applicant in support of the suspension of the sanctions. It is an odd position for the applicant to take to challenge the lawfulness of the conditions which the applicant imposed. The Commission did not seek to appeal to raise the issue of whether those conditions could lawfully be imposed. Although it is unnecessary for me to consider this issue, I note that the arguments on the issue focused on whether the conditions provided for voluntary community service to be performed by the second respondent and were not directed at the other category of conditions and whether the conditions could be characterised as requiring the second respondent to undergo a program of activities designed by the applicant to assist in correcting the relevant behaviour of the second respondent.

Orders

[41] It follows that the application must be dismissed.

[42] It should also follow that the applicant should pay the second respondent's costs of the application to be assessed. I will, however, give the parties an opportunity to make submissions in relation to costs before making any costs order.