

CITATION: *Rintoul v State of Queensland & Ors* [2017] QCAT 78

PARTIES: Jennette Rintoul
(Applicant)
v
State of Queensland
Doug Quadrio
Peter Lemon
(Respondents)

APPLICATION NUMBER: APL270-16

MATTER TYPE: Appeals

HEARING DATE: 8 and 9 June 2017

HEARD AT: Brisbane

DECISION OF: **Member PJ Roney QC**

DELIVERED ON: 13 June 2017

DELIVERED AT: Brisbane

ORDERS MADE: **1. The appeal and the application for leave to appeal are dismissed.**

CATCHWORDS: HUMAN RIGHTS – DISCRIMINATION – GENERALLY – ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – FUNCTIONS OF TRIBUNALS – where applicant sought to appeal on the basis of mixed facts and law – where the applicant raised multiple factual errors with the conduct of the matter at first instance – Allegations of direct and indirect discrimination on grounds of race, racial attributes presumed by the discriminating party; Education, teachers, apprehended or actual bias by QCAT Member, natural justice. Re-examination of facts on appeal-whether the appeal should be allowed

HUMAN RIGHTS – DISCRIMINATION – GENERALLY – where applicant alleged that she suffered discrimination in the workplace on the basis of an apprehended or actual bias that she was of Aboriginal descent – whether the

applicant's allegations were made out

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 7, s 28(3)(a) and (e), s 95, s 142

Bakker & Kramer v Richards Projects Pty Ltd
[2014] QCATA 99
Lida Build Pty Ltd v Miller and Anor [2011]
QCATA 219

APPEARANCES:

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)* (QCAT Act).

REASONS FOR DECISION

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Nature of the proceedings and jurisdiction

- [1] This is an appeal and application pursuant to s 142 of the QCAT Act for leave to appeal against a decision of the Tribunal in its Human Rights division.
- [2] On 11 July 2016, the Tribunal dismissed the Applicant's application for compensation for what she alleged was discriminatory conduct by the Respondents against her whilst she was employed by the Department of Education and taught at the Atherton State High School. The Department ran the school. The Respondents were staff at the school. She sought compensation for that alleged discriminatory conduct on the basis that she contended that although she did not actually hold the attribute identified under s 7 of the QCAT Act as "race", she had been subjected to discrimination on the basis of a race based attribute that she was presumed to have by the persons discriminating. This meant in the context of that complaint that it was necessary for her to prove that one or more of the Respondents, or all of them, believed she had the attribute of being of Aboriginal descent, or was associated with a person who had Aboriginal descent and that the person discriminating presumed that she had that attribute.

- [3] In her application she sets out the following as the grounds of appeal:
- a) That the hearing was procedurally flawed under s 28(3)(a) and (e), which are concerned with a duty to observe the rules of natural justice, so far as is practicable, that all relevant material is disclosed to the Tribunal to enable it to decide the proceedings with all the relevant facts;
 - b) That the decision is inconsistent with facts incontrovertibly established by the evidence;
 - c) That the QCAT Member who heard the matter had “palpably misused his advantage”.
- [4] The orders which were sought were that the Appeal Tribunal:
- a) Re-examine the factual evidence;
 - b) Examine allegations of bias;
 - c) Make a finding that the Applicant, on the balance of probabilities was discriminated against;
 - d) Make a finding that the Applicant is entitled to a remedy and costs.

Legal issues associated with appeals in QCAT

- [5] It is well accepted that a party may not appeal on a question of fact without the Appeal Tribunal’s leave, unless the decision falls into certain limited categories which do not presently apply. That is, appeals to the Appeal Tribunal may be permitted on questions of fact, or questions of mixed law and fact, only if the Appeal Tribunal gives leave to appeal.¹
- [6] This Tribunal held in *Lida Build Pty Ltd v Miller and Anor* [2011] QCATA 219 at [7]-[12] as follows (footnotes omitted):

[7] Finality in litigation is highly desirable because any further action beyond the hearing can be costly, and unnecessarily burdensome on the parties. A finding of fact will generally not be disturbed on appeal if the evidence before the Tribunal supports the inferences drawn and the facts found. It is not the Appeal Tribunal’s task to decide where the truth lay as between the competing versions given by the parties.

[8] Whether a decision is based on findings of fact which are open on the available evidence, is a question of law. The appeal jurisdiction is not generally the proper forum to receive evidence on disputed facts.

[9] Leave to appeal will ordinarily only be granted when a question of general importance upon which further argument and a decision of the Appeal Tribunal is to public advantage; there is a reasonably arguable case that the primary decision-maker made an error and there are reasonable prospects that the applicant would be granted orders in its favour; or to correct a substantial injustice to the applicant caused by error.

[10] The statutory regime under which the Queensland Civil and Administrative Tribunal operates places obligations upon parties

¹ QCAT Act, s 142.

themselves: to take care in their dealings with Tribunal matters, and to act in their own best interests. QCAT's resources for the resolution of disputes are in high demand and serve, as the High Court has recently observed in relation to court resources, "... the public as a whole, not merely the parties to the proceedings".

[11] In the context of an appeal, a party has an obligation to present an identifiable argument that an error has been made by the Tribunal in reaching its decision. It must be more than mere disagreement with the Tribunal's findings on a contested issue.

[12] As the discussion above suggests, the primary function of the Appeal Tribunal is to correct errors made by the Tribunal. It is not to allow an applicant to have a second opportunity to present or argue their case in the hope that the Appeal Tribunal will consider the evidence differently, and the party will achieve a different result on the issues appealed.

- [7] In support of her grounds for seeking leave to appeal, and indeed the appeal itself, the Applicant, who is self-represented, filed a 24 page written outline of submissions in August 2016, supplementary submissions of 4 pages in length filed on 25 November 2016, and 5 pages of submissions responsive to the Respondents' written submissions, those submissions in reply filed 4 May 2017. Written submissions settled by Counsel for the Respondents were filed on 19 April 2017. I have carefully reviewed all of the material which all of the abovementioned written outlines identify as relevant considerations, and have of course reviewed the relevant Member's Reasons, and have been provided with the transcript of hearing and the exhibits which were tendered at the hearing.

Findings in relation to the 17 complaints below

- [8] The subject complaints are summarised in the Member's Reasons in narrative form² and also extracted from the 17 complaints which the Applicant identified in what the Member described as her final argument.
- [9] They were identified in the final argument in these terms:

First complaint

[62] At the end of term two 2010, Mr Lemon raised complaints to Deputy Principal Helen Carne that I had not attended any English department meetings, even though I was not due to start the contract for Rayanne Chalk's long service leave until the next term (term 3)

Second Complaint

[63] Prior to third term (previously incorrectly stated second term but in any case it was the Rayanne Chalk contract) Mrs Chalk approached the Applicant and informed me that Mr Lemon "did not like" me.

Third Complaint

[64] Mr Lemon, in line with his status as my HOD for the Mrs Chalk contract in term 3, 2010 was approached by the Applicant as she was having difficulties with the behaviour of another staff member's son (and his two friends) and requested he attend the class and speak with the

² Reasons, [40]-[62].

misbehaving boys. Instead, Mr Lemon did not speak to the boys but sat and took notes and observed the Applicant teach. This was not the purpose of his visit to the class and was not understood by the Applicant as such.

Fourth Complaint

[65] On 2 August 2010, subsequent to being refused a copy of the performance review notes undertaken by Mr Lemon, the Applicant made a written complaint to Mr Jason Pascoe, acting Deputy Principal at ASHS.

Fifth Complaint

[66] After 2 August, during term 3 (incorrectly stated as term 2) the Applicant immediately commenced alternate supply duties offered by Mr Pascoe. The Applicant was informed by Mrs Morellini (Miss Rookwood) and others that Miss Delooze had stated that "she'll never get another day's work here (ASHS) not even supply teaching". The Applicant understood this view to have been formed as a result of Mr Lemon's assessment in relation to her teaching skills and abilities which had now obviously become common knowledge among other members of the English Department staff.

Sixth Complaint

[67] On November 1, 2010 the Applicant made a second written complaint in relation to the conduct of Mr Lemon toward her and the failure of the school to address the same. The complaint was addressed and provided to Mr Pascoe and was in relation to Mr Lemon allowing a student to enter her class after she had refused.

Seventh Complaint

[68] In or around term two 2010 the Applicant refused two students to enter her classroom as a result of their behaviour. The students were subsequently sent back to the classroom by Mr Lemon who contradicted their earlier refusal. The Applicant then sent students to the staffroom to obtain a key for the laptop computers. The students were sent back by Mr Lemon who had informed them he "didn't know where the key was N, this was despite the key being hung on a hook in the staffroom at all times on a large clear pink piece of perspex plastic, easily visible to all".

Eighth Complaint

[69] On or around the 20 May 2011, the Applicant was absent from work. On her return the Applicant was informed by other English Department staff members that Mr Lemon had told them he had had a "good day" because "Rintoul wasn't here!".

Ninth Complaint

[70] On or around 23 May 2011 the Applicant verbally reported the comments made by Mr Lemon in relation to her absence to Mr Pascoe. No action was taken (as far as the Applicant is aware) in relation to same by ASHS.

Tenth Complaint

[71] In or around term 3 2011, the Applicant was offered a full-time contract by Mr Pascoe. The Applicant was specifically requested to do Amanda Morellini's contract as one of the classes included Aboriginal poetry (this was the contract covering her absence for her trip to Africa). A few days

following the offer, Mr Pascoe informed the Applicant that the offer was withdrawn because "Peter (Lemon) will not have you.

Eleventh Complaint

[72] In or around term three 2011 the Applicant received a contract teaching students numeracy and literacy off-campus. The Applicant was subsequently informed that Mr Lemon was criticising the work being undertaken by the Applicant and making comments as to the ability of the Applicant to do this work in an open staffroom.

Twelfth Complaint

[73] In or around June 2011 the Applicant had increased her regular working hours at ASHS. As a result the Applicant was "eligible" for a desk in the staffroom. The Applicant approached Mr Lemon to request that a desk be made available to which Mr Lemon provided he would rather the Applicant take-up a desk in the business staffroom.

Thirteenth Complaint

[74] On September 12, 2011 the Applicant, after significant preparation, attended a suitability interview with the Department of Education to enable her to teach on a full-time basis in Queensland to increase her work prospects. The Applicant was interviewed by a panel including Mr Doug Quadrio. Mr Quadrio was unknown to the Applicant as were the other panel members, nonetheless, Mr Quadrio made a number of comments in relation to racial issues concerning to the Applicant, including: "I see you're an expert in Aboriginal education"; "Do you identify as Aboriginal?"; and whether the Applicant intended on teaching in a remote Aboriginal community.

Fourteenth Complaint

[75] On or around the 13 or 14 September 2011, a few days after the suitability interview, Mr Lemon approached the Applicant in the staffroom and forcibly laughed in front of her and made direct eye contact.

Fifteenth Complaint

[76] On 16 September 2011, the Applicant was informed that the outcome from the suitability assessment interview undertaken was that she was "unsuitable". The Applicant had followed a precedent (sic) in her Application from another teacher who had rated at the "top of the criteria". The Applicant was informed that the decision could not be appealed.

Sixteenth Complaint

[77] On or about 18 September 2011 Mr Shaun Joseph, a teacher at ASHS who identifies as Aboriginal, informed the applicant that Mr Lemon, during work, had made comments in relation to the race or perceived race of the Applicant, specifically that the Applicant was a "pretend Aboriginal"; that the applicant was "dangerous and incompetent" and that the applicant was a "coon lover". Further, Mr Joseph informed the applicant he had overheard Mr Lemon making comments to the effect of "why do we have to learn about these coons, it all happened over 200 years ago."

Seventeenth Complaint

[78] The Applicant, despite the overturning of the original suitability interview outcome, was not offered any permanent work by the Department of Education for a period of approximately twelve months following same.

The Applicant had undertaken the interview originally as a result of the need to work on a full-time basis. Facing financial difficulty the Applicant and her family were compelled to relocate as a means to obtaining full-time work and because it was apparent, the Applicant's reputation had become tarnished in the state of Queensland.

[10] The Member summarised the evidence of the principal witnesses at pages 18 to 22 of his Reasons. He did so before arriving at his findings in relation to each of those complaints. For that purpose, he summarised the evidence of:

- a) A teacher's aide, Shaun Joseph;
- b) Another teacher at the school, Rayanne Chalk;
- c) Another teacher, Amanda Morelli;
- d) A school administrator, Gilbert Jansen;
- e) A psychologist, Lucy Dow;
- f) The school Principal, Matthew Baker;
- g) The Third Respondent, Peter Lemon, who was the head of the English Department at the school to which the complained of events are alleged to have occurred;
- h) The Second Respondent, Doug Quadrio, who was the chair of the interview panel that interviewed the Applicant during a suitability process;
- i) The Deputy Principal of the school, Jason Pascoe;
- j) Another teacher at the school, Cathy Campbell;
- k) Another teacher at the school, Janice Deluce;
- l) The Head of Department at the school, Gerald Raciti;
- m) The Deputy Principal at the school, Helen Carne;
- n) the Deputy Principal at the Cairns School of Distance, Chris Rigden;
- o) Another member of the suitability panel, Alison Bradford; and
- p) Scott Rogers, a human resources officer in the Education Department.

[11] In describing the roles of the abovementioned witnesses, I have adopted the description used by the Member, acknowledging that the Applicant takes issue in her submissions in the appeal with some of these descriptions and roles as inaccurate.

[12] In dealing with each of the complaints, the Learned Member made the following findings with respect to each of the complaints:³

[136] With respect to the first complaint I am not satisfied that complaint is made out. There is no credible evidence to support the complaint. Further,

³ Reasons, [136]-[159].

even if the complaint was made out there is no credible evidence that it occurred because of discrimination.

[137] With respect to the second complaint, I find that it is not made out and it is not supported by credible evidence. I accept the evidence of Mr Lemon to the contrary. Further, even if the complaint was made out there is no credible evidence that it occurred because of discrimination.

[138] With respect to the third complaint, I accept that Mr Lemon did observe Ms Rintoul teaching at her request and took notes. I accept the evidence of Mr Lemon in this regard over the evidence of Ms Rintoul. Further, even if the complaint was made out there is no credible evidence that it occurred because of discrimination.

[139] With respect to the fourth complaint, I accept that Ms Rintoul did make a complaint to Mr Pascoe however it was not a formal complaint. I note however the nature of the complaint is not necessarily concerning Mr Lemon except if it meant to be a complaint about the failure to give review notes. In my view that failure has been adequately explained. Further, even if the complaint was made out there is no credible evidence that it occurred because of discrimination.

[140] With respect to the fifth complaint, I do not accept it has been made out. It is not supported by credible evidence. In any event, it is difficult to associate this complaint with conduct by Mr Lemon. Further, even if the complaint was made out there is no credible evidence that it occurred because of discrimination.

[141] With respect to the sixth complaint, I accept that Ms Rintoul made a complaint to Mr Pascoe but it was not a formal complaint. I accept the evidence of Mr Lemon about his conduct. Further, even if the complaint and the substance of the contents of the second written complaint was made out there is no credible evidence that it occurred because of discrimination.

[142] With respect to the seventh complaint, I accept that the incidents described in the complaint may have occurred but I accept the general explanation of how the system worked in that regard given by Mr Lemon. Further, even if the sense of the complaint was made out there is no credible evidence that it occurred because of discrimination.

[143] With respect to the eighth complaint, I do not accept that the complaint is supported by credible evidence. I accept the evidence of Mr Lemon and others above that of Ms Morelli. Further, even if the complaint was made out there is no credible evidence that it occurred because of discrimination.

[144] With respect to the ninth complaint, I accepted that the report was made but I do not accept the comments the subject of the complaint were made by Mr Lemon. There is no credible evidence to support the subject of the complaint. Further, even if the complaint was made out there is no credible evidence that it occurred because of discrimination.

[145] As to the tenth complaint, I accept that the applicant was offered the full time contract as alleged. I do not accept that Mr Pascoe informed Ms Rintoul that the offer was withdrawn because Peter Lemon will not have Ms Rintoul. That is contrary to available evidence. Further, even if the complaint was made out there is no credible evidence that it occurred because of discrimination.

[146] As to the eleventh complaint, I accept the fact of the teaching contract but I do not accept that Mr Lemon was criticising Ms Rintoul or her work in an open staff room. That is contrary to the credible evidence. Further, even if the complaint was made out there is no credible evidence that it occurred because of discrimination.

[147] As to the twelfth complaint, I do not accept that Mr Lemon "provided he would rather the applicant take up a desk in the business staff room. Further, even if the complaint was made out there is no credible evidence that it occurred because of discrimination.

[148] As to the thirteenth complaint, I accept that the interview by a panel chaired by Mr Quadrio occurred. I accept that Mr Quadrio may have asked a question about whether the applicant would consider going to a remote community. Otherwise I accept the evidence of Mr Quadrio and the other two panel members. I accept the explanation given by Mr Quadrio. Further, even if the complaint was made out there is no credible evidence that it occurred because of discrimination.

[149] As to the fourteenth complaint, I do not accept the complaint occurred. Further, even if the complaint was made out there is no credible evidence that it occurred because of discrimination.

[150] As to the fifteenth complaint, I accept that what is said in the complaint occurred. However there is nothing to link the content of the complaint with Mr Lemon and there is nothing to suggest that any of the content is incorrect. Further if the complaint was made out there is no credible evidence that it occurred because of discrimination.

[151] As to the sixteenth complaint, I accept that Mr Joseph may have told Ms Rintoul the content of the complaint but I do not accept the truth of the words attributed to Mr Lemon. I accept the evidence of Mr Lemon over that of Mr Joseph.

[152] As to the seventeenth complaint, I accept the concerns and content contained therein but there is no link with any of the respondents and there is no credible evidence that what happened occurred because of discrimination.

[153] I am not satisfied that any of the complaints are supported by credible and reliable evidence. An examination of the concessions made by Ms Rintoul tells against much of her claim.

[154] I am not satisfied that Mr Lemon engaged in the conduct alleged.

[155] I am not satisfied that he was of the understanding or perception that Ms Rintoul was of Aboriginal descent.

[156] Nor am I satisfied that Mr Quadrio was of the understanding or perception that Ms Rintoul was of Aboriginal descent.

[157] I find that the decision of the suitability assessment interview panel was not because of any discrimination because of race or association but because Ms Rintoul did not follow the interview process correctly in that she did not provide necessary references in the approved manner.

[158] Accordingly, on the facts found there is no basis to make the findings sought.

The denial of natural justice associated with the evidence of Mr Shaun Joseph

- [13] It is settled law that the question of whether a party was denied natural justice is a question of law.⁴ Therefore, no leave is required to appeal on this ground. It is axiomatic that QCAT provides that the Tribunal must allow a party to a proceeding a reasonable opportunity to call or give evidence and examine, cross-examine and re-examine a witness.⁵ The Applicant contends in her written submissions that she was denied natural justice in the conduct of her case because she was denied the right to question her most important witness-in-chief, Mr Shaun Joseph. She asserts that Mr Joseph was the critical witness to the discriminatory behaviour and the denial of her right to question him first, presumably to lead further evidence beyond what was in his statement, on matters directly pertaining to the complaint, prejudiced her case. She contends that she asked the Member at the time why she was not able to question this witness. She contends that she did not question Mr Joseph first, i.e. before he was cross-examined, and was denied the right to question this witness “in chief”, and that she was only allowed to re-examination “on questions by Counsel for the Respondents”.
- [14] As a separate issue, she contends that she was not allowed access to “all relevant material” and that therefore the Tribunal did not have disclosed to it all relevant material to enable it to decide the proceeding based on the facts.
- [15] The transcript reveals that early in the proceeding the Member explained to the Applicant that she would be calling her witnesses first, and asked if she understood how the hearing would operate, that is “you will call your witnesses. They’ll be sworn in ... you can ask them questions ... then Mr Farren will be given the opportunity to cross-examine them ... and if need be, you can re-examine them. And then after your witnesses have all been heard, Mr Farren will have the same opportunity with his witnesses and the same procedure will occur”.
- [16] In the course of these statements the Applicant was affirming her understanding that that was to be the procedure.
- [17] The transcript shows that when it came to Mr Joseph giving his evidence, the Applicant tendered a statutory declaration from Mr Joseph.⁶ After Mr Joseph’s statutory declaration was admitted, the Learned Member asked the Applicant if she wanted to add something. Her response was that she just thought she was going to question first. To which the Member responded that since he was her witness she did not get to cross-examine him. In reply, she said “Okay”. The Member then said “But if there is something that is in addition to his evidence that you want to lead, I’ll give you permission to do that, but I was of the understanding, from what you

⁴ *Bakker & Kramer v Richards Projects Pty Ltd* [2014] QCATA 99, [24].

⁵ QCAT Act, s 95.

⁶ T1-70.

told me earlier, that everything that's contained in his affidavit is his evidence". To that remark, the Applicant responded "Yes".⁷

- [18] Later in the evidence of Mr Joseph, and in the course of her re-examination, the Member asked her if she had any more questions, to which she replied "Not particularly".⁸
- [19] There is nothing in the transcript which supports the assertion made in the Applicant's submissions before me to substantiate the proposition that she was denied the opportunity to question this witness. Nor is there anything in the arguments put before me to demonstrate what, if anything, he might have said or which could have led from him that she was denied the opportunity to have led. It is open to be inferred that this complaint is rather more formal in nature than substantive, because as the Applicant concedes, Mr Joseph had supported her case without compulsion, and she had some limited role in the preparation of his statutory declaration.
- [20] The Applicant disputes that she had very much to do with the preparation of Mr Joseph's statement, and says in her written outline to the Appeal Tribunal that all she did was help with minor spelling and grammatical errors. Even accepting that to be true, she would clearly have known what was in the statement.
- [21] She therefore had every opportunity to include in that declaration any material that she thought that was relevant. To the extent that it missed out anything that she thought was relevant, she could have included it in a supplementary declaration, or indicated to the Member that she wished to adduce some oral evidence to supplement the declaration. She did not do so.
- [22] In my view, there is nothing to demonstrate that the Applicant was either denied natural justice, denied the opportunity to lead evidence that she might otherwise have led, or indeed, even if there was no denial per se, that she lost an opportunity to lead evidence which would have been relevant to have been considered in the case before the Member. In my view, this ground of appeal has no merit.
- [23] There is also a contention, which is a corollary to her complaint described above, that the refusal to allow her to lead evidence from Mr Joseph demonstrated bias on the part of the Member.⁹ Since there was no relevant refusal, it is impossible to conclude that there was a lack of partiality on the part of the Member. Nor would a refusal of leave to lead evidence from a party to supplement a statement, even had that happened here, without more, demonstrate bias on the part of the Member. I therefore reject that contention as well.

⁷ T1-70.

⁸ T1-87.

⁹ Applicant's primary submissions, 3.

The allegation that the Member lunched with the Respondent's legal representatives and witnesses

- [24] The Applicant contends that on 12 November 2015, the Member, whom she refers to in her written outline as the "Adjudicator" went to lunch with two instructing lawyers from the Crown Law department who were representing the Respondents, and some of the Respondents' witnesses. The hearing occurred at the Cairns Courthouse. She asserts that she and her assistant, Deborah Hayward, went to go into a cafe opposite the Courthouse and saw the QCAT Member and the other individuals just referred to at one table. She asserts that these facts were not denied by those representing the Respondents and their response was that "it was never raised by the Applicant at the time the conduct is alleged to have occurred".
- [25] Attached to the application for leave to appeal or appeal is a statement from the aforesaid Ms Haywood filed on 11 August 2016 in the form of a statutory declaration dated 2 August 2016. The declaration states as follows:
- I'm a friend of Mrs Jenette Rintoul and travelled with her to Cairns to support her during her court hearing. On Thursday 12th November at lunch break, Jenette, I and another friend (Sally) entered "Silk", a cafe opposite the Cairns Courthouse where we saw Member Favell seated with Mr Farren and Ms Smith from the Crown, accompanied by the Respondents' witnesses.
- We promptly left the cafe to eat at a hotel across the road where we could discuss the hearing proceedings privately.
- [26] With a view to supporting this contention, the Applicant applied to this Tribunal for leave to file fresh evidence in relation to her application for leave to appeal, however the decision of Senior Member Stilgoe OAM of this Tribunal of 28 February 2017 was to dismiss that application.
- [27] None of the parties to the appeal addressed the issue, by reference to any authority, of whether, if in fact the Member had conducted himself in the way the Applicant contends, that it would have given rise to an inference of apprehended or actual bias. In days gone past, it was not unheard of for Counsel and Judges on circuit to dine together to relieve the isolation that sometimes presents on circuit hearings. However, that would never have properly occurred with only one party's legal representatives present or invited. And it would of course never occur in circumstances in which witnesses in the proceeding were also present. One could well understand that if the events occurred in the way in which the Applicant contends, that it might well give the appearance of bias.
- [28] The Member's Reasons¹⁰ indicate that without any notice or without the question having been raised during the hearing, and without any evidence, the Applicant asserted in her final submissions below that the lack of the impartiality of the Tribunal "was clearly demonstrated on the 3 day hearing

¹⁰ Reasons, [128]-[130].

in Cairns when Member Favell went to lunch with not only Mr Farren (Counsel for the Respondents) and Nicola Smith for the Crown, but also the Respondents' witnesses". The Member referred to the issue as one as to whether a fair minded observer might reasonably apprehend bias and whether there is evidence of actual bias, referring to authority on this issue.

- [29] The assertion that such a lunch had occurred was made in a paragraph of the Applicant's final submissions, in which she complains about a wide range of things, and as a precursor to the statement about what occurred at the cafe, contended that "it has become apparent over the course of the past few years that the Applicant can have no confidence in the decision making or impartiality of the Tribunal". That was one of a number of examples that she then gave. Of course, had these matters been raised at the time the events in question were allegedly observed, they might well have been able to be dealt with in a more satisfactory way than by having the Member himself respond to the allegations in his Reasons.
- [30] Apparently, no material was put before the Tribunal on behalf of the Respondents to demonstrate that that meeting did not occur.
- [31] In his Reasons,¹¹ the Member said:

[130] The assertion concerning lunching with witnesses and legal representatives of the respondents is untrue. Prior to the hearing, as far as I can recall, I had no contact with Mr Farren or Ms Smith. I have not had lunch with either of them or any witnesses for the respondent. I have not had contact (apart from the hearing and written submissions filed) with any of those persons. The allegation made reflects poorly on the credibility of Ms Rintoul and reflects a certain desperation to advance her claims.

- [32] The position therefore is that there is no evidence that in fact such a lunch occurred. There is no leave to present Ms Haywood's evidence, and there is a statement on the record by the Member which refutes the Applicant's contention. There is no basis to conclude that there was partiality on the part of the Member who heard the matter, nor for that matter that the facts about the lunch are other than as he described them in his Reasons.

Factual errors complained of

- [33] The remnant part of the Applicant's grounds to appeal, and which extend to in excess of 20 pages, are all concerned with what the Applicant describes as "factual errors". An examination of these reveals that they are a mixture of complaints about a wide range of issues, not all factual:
- a) She objects that some particular witnesses, including the Applicant herself, were attributed an incorrect job description in the findings. In the end none of that affects the result;

¹¹ Reasons, [30].

- b) She repeats her complaint about the denial to her of the opportunity to lead evidence from Mr Joseph. This has been dealt with above;
- c) She makes complaint about whether the evidence showed that the Respondents “clearly knew” she had the protected attribute or assumed that she had. The Member rejected this contention on the evidence;
- d) She makes complaint about whether it was appropriate for the Member to make the observation that she was not obviously a person of Aboriginal descent. This was an observation open to the Member who observed the complaint;
- e) She makes complaint about whether the Applicant was correctly described as having been no longer confident in the performance of her role as a teacher after an unsuccessful performance review. This issue makes no difference to the result;
- f) She makes complaint that some of the language used in the reasoning about what documents she failed to take a suitability interview give the impression that she was aware that she was supposed to take these documents to the interview and that this resulted in what she describes as “careless disregard for the evidence or deliberate blindness to the actual facts of the matter” by the Member. This issue makes no difference to the result;
- g) She includes other broadly described argumentative material about whether the Member’s interpretation of the evidence in arriving at his conclusions was or was not true, or “entirely true”, or was based on what she described as his being “selective with the facts”. The Member’s task was to reconcile conflicting evidence, and he did so;
- h) She complains that the Member selectively quoted from parts of the evidence. Reasons are not required to deal with every part of all the evidence in a matter;
- i) She complains about a finding that certain injury was suffered by the Applicant’s husband was not supported by documentary evidence and was “false”. This issue makes no difference to the result;
- j) She complains of a lack of “credible evidence” to support some of the findings. The Member’s task was to decide what was credible and he did so;
- k) She complains that the Member’s articulation in broad terms of some of the events amounted to a retelling of those events and this revealed the Member’s lack of impartiality and a failure to analyse the facts according to the evidence. One of those takes issue with a finding by the Member that the Third Respondent thought that he had a collegiate relationship with the staff at the school. This finding is taken to task on the basis, as the Applicant would have it, that some other evidence demonstrated that others did not regard him as having a collegiate relationship of that kind. This issue makes no difference to the result;

- l) She complains about the Member's findings as to her demeanour, in describing his assessment of her in places as "confusing", "without direction" and "misleading". It was for the Member to decide what her demeanour was, and he did so in a conventional way;
- m) She complains about the Member's conclusion that his impression from her was that she was reconstructing events to fit her theory, but to which a specific reference is given in the transcript to demonstrate the basis for that finding. The comments at l) apply;
- n) She complains about his finding that her evidence was often contradicted by other witnesses, when she contends that undue weight was given to the Respondents' evidence which contradicted her evidence. The comments at j) apply;
- o) She complains that the Member's critical finding that the outcome of her suitability interview did not occur because of racial discrimination, and further the finding that there was no evidence to connect the Third Respondent with that conclusion. The Applicant contends that there was "circumstantial evidence" linking some of the individuals involved. The comments at g) apply;
- p) She repeats her complaint that the Member had lunch with witnesses and legal representatives for the other parties. This has been dealt with already;
- q) She complains that the Member's findings about whether evidence was available to support the complaints made by the Applicant demonstrated a lack of partiality by the Member. There is nothing to suggest a want of impartiality by the Member;
- r) She complains about whether in fact there was some corroborating evidence for parts of the Applicant's version of events. The comments at j) and n) apply;
- s) She complains that the Member has ignored some evidence and given no justification for doing so in arriving at his conclusion in relation to the third complaint. The comments at h) and j) apply;
- t) She complains about whether, with respect to the fourth complaint, the things that were said by the Applicant to Mr Pascoe at a particular time did or did not constitute "a formal complaint". This issue makes no difference to the result;
- u) She complains that, despite the Tribunal's findings that derogatory racist remarks were not in fact made, or made out on the evidence that in fact they did occur, and that the discriminatory conduct she alleged had been perpetrated was a direct result of racist assumptions and tendencies. The comments at g) and o) apply;
- v) She complains about the Member's finding in respect of the eighth complaint that it was unsupported by credible evidence, that it occurred because of discrimination, whilst on the other hand making a finding that there was a relevant verbal complaint made. The point of course being made by the Member here was concerned with whether the eighth complaint, that is the conduct which was alleged

to have supported it, was one which was demonstrated to have occurred on the basis of discrimination, not whether the verbal complaint itself might have been made;

- w) She complains in relation to the findings on the tenth complaint that a witness Pascoe did not inform the Applicant that an employment offer was withdrawn because of something the Third Respondent said whereas the transcript suggested otherwise and that this demonstrated impartiality by the Member. The comments at q) apply;
 - x) She complains that in relation to the Member's findings in relation to the seventeenth complaint were not shown on credible evidence to have occurred on the basis of the attribute, or as he put it "because of discrimination" and she contends for some different interpretation of the facts based on other evidence that she suggests should have been preferred. The comments at j) apply.
- [34] In her written submissions in the appeal, she takes up the cudgels on the cafe incident once more by contending that she wished she had taken a picture with a phone on that day and there was no desperation to advance her claims, as the Member suggested that there was.
- [35] She summarises her position in these terms:¹²
- All the Applicant ever wanted was a fair assessment of the available evidence. This has not happened in this judgement and it is demonstrably partial. There are also many factual errors in Member Favell's decision as stated in this submission. His use of the evidence is very selective and he had foregrounded the Respondent's position, even when the evidence supports the Applicant's version of events and plainly ignored corroborating evidence from the Applicant's witnesses.
- [36] She also complains about the finding that she was "consumed by a conspiracy theory" whereas she denies that she was so consumed.
- [37] She goes on to complain that QCAT "somehow lost its way and been consumed with trivial peripheral details and in the Applicant's opinion the main issues have not been dealt with".
- [38] It is more than evident that a substantial number, if not the entirety of the complaints made about the reasoning process of the Member, and the conclusions that he has reached which are said to be factually inaccurate, are matters which, even if shown to be inaccurate, have not been demonstrated to have been likely to have led to any different result. Many of them are in the nature of technical complaints designed to support the proposition that the Member's analysis was dysfunctional and penetrated by bias or some other improper judicial attribute.
- [39] Many involve the contention that the Member ought to have preferred certain evidence, which the Applicant contended supported her case, over

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the evidence that he preferred and acted upon in determining the matter. Those were matters for the Member to decide.

- [40] None of these issues demonstrate any error on the part of the Tribunal Member in arriving at the conclusions that he reached. Nor, in most cases would acceptance that such an error was made, have made any difference to the outcome.
- [41] The evidence before the Member, which he accepted and acted upon, clearly demonstrated that the Applicant's circumstantial case that the ways she was variously treated in the way she complained about were not shown to have been on the basis of discriminatory conduct. Accepting that to be the case, it follows that even if the Applicant's version of events about what occurred to her had been accepted by the Member, he would have been obliged to have dismissed the complaint because that circumstantial case which enlivened the liability of any of the Respondents was not made out.
- [42] It is not the function of this Tribunal and in an appeal such as this to review all of the evidence and decide whether some or other different conclusion might have been open to the Member below. I do not accept that there has been any substantial injustice caused to the Applicant either by the manner in which the Member conducted the proceeding, or in relation to any of the matters which are asserted to be in error in his Reasons. There is nothing that in my view, justifies an order granting leave to appeal in respect of those matters which are matters other than law.
- [43] It follows that the leave to appeal in relation to matters other than law is refused, and I dismiss the appeal in relation to the matters which do raise issues of law.
- [44] The Respondents have indicated that they wish to be heard on the issue of costs. If that becomes necessary I will hear the parties in relation to that issue however I would intimate that the circumstances as I perceive them to be in this case, would not seem to me to justify an order for costs in favour of the Respondents.
- [45] I therefore order that the appeal and the application for leave to appeal be dismissed.