QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*Balemi v Ingles* [2020] QCATA 58
PARTIES:	**GRANT BALEMI** (appellant) **v** **GRAEME ANGUS INGLES** (respondent)
APPLICATION NO/S:	APL074-19
ORIGINATING APPLICATION NO/S:	MCDO 652/18 (Southport)
MATTER TYPE:	Appeals
DELIVERED ON:	24 April 2020
HEARING DATE:	On the papers
HEARD AT:	Brisbane
DECISION OF:	Member Gordon
ORDERS:	**1. The application by Grant Balemi to put fresh evidence before the Appeal Tribunal in this appeal is refused.** **2. The application by Graeme Angus Ingles for leave to be legally represented in this appeal is refused.** **3. Leave to appeal is refused. This means that the appeal fails.** **4. The stay on the order of 9 January 2019 is lifted.**
CATCHWORDS:	APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – WHEN NO APPEAL LIES – where there was no appearance for the respondent at the hearing – where the respondent unsuccessfully applied to reopen the proceeding – where section 139(5) of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld) provides that a decision on a reopening application is final and cannot be appealed against – whether that is always fatal to any appeal on similar grounds APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – WHEN NO APPEAL LIES – where there was no appearance for the respondent at the hearing – where the tribunal sent a notice of hearing to the respondent but not to his legal representative – where the legal representative was telephoned at the beginning of

the hearing but said that they were not instructed to attend – where the outcome would be unlikely to be different if the respondent or his legal representative had attended – whether any reasonably arguable grounds of appeal

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – JUDGMENTS AND ORDERS – GENERALLY – JUDGMENT FOR SUM OF MONEY – APPROPRIATE CURRENCY – where goods were purchased using barter dollars – where a claim for a refund in Australian dollars was made on the basis that the goods were defective – where the claim assumed that one barter dollar was worth one Australian dollar – where the order was made on the same assumption – whether order should have been made in barter dollars – whether it was right to regard the value as at parity

Acts Interpretation Act 1954 (Qld), s 39A
Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 57, s 92, s 93, s 139
Queensland Civil and Administrative Tribunal Rules 2009 (Qld)
Uniform Civil Procedure Rules 1999 (Qld), Division 19

Burns v James [2010] QCATA 101
Kay v Habermann [2014] QCAT 17
Todd v Downing [2011] QCATA 74

REPRESENTATION:

Appellant:	Self-represented but assisted by Phoenix Law & Associates
Respondent:	Self-represented but assisted by Frampton Legal
APPEARANCES:	This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld)

REASONS FOR DECISION

[1] This is an appeal from a decision made by an Adjudicator in a minor civil dispute. On 9 January 2019 an Adjudicator ordered Grant Balemi to pay to Graeme Angus Ingles the sum of $13,388.20 within 14 days. This order was made on Mr Ingles' application for a refund for the purchase of a jet ski which he said was defective in a major way, and which was not 'in perfect working order' as Mr Balemi has claimed.[1]

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[1] The allegation in the application that Mr Balemi had represented the jet ski to be 'in perfect working order' was only obliquely referred to in the application, but does appear in pre-application correspondence attached to the application and in evidence submitted at the hearing.

[2] In his formal written response to the claim, Mr Balemi said that the sale was private and not done in the course of a business. Therefore his only obligation under the Australian Consumer Law was to provide good title to the jet ski, which he did. He also denied giving any promises about the condition of the jet ski.[2] Mr Balemi put his case in an affidavit attached to his response.

[3] The private sale issue was an important one. Not only did it define the legal obligations arising on the sale, but it went to the question of the tribunal's jurisdiction to hear and determine the application, because the tribunal has no jurisdiction to hear and determine a dispute over a private sale unless it is a claim to recover a debt or liquidated demand of money.[3]

[4] Mr Ingles paid for the jet ski by crediting Mr Balemi's Bartercard account with 13,000 Bartercard dollars. A Bartercard account permits payment in barter or trade dollars. In the papers, the parties have variously described Bartercard dollars also as 'Bartercard points', 'Bartercard credit points' or 'Bartercard trade points'. For consistency I shall refer to them as Bartercard dollars.

[5] There is another jurisdictional issue which could arise from a minor civil dispute claim in the tribunal concerning a purchase using barter dollars. This arises from the fact that, as can be seen from the discussion below, the tribunal cannot make an award in barter dollars. This means that if the applicant succeeds, then in order to determine the correct amount to award the applicant in Australian dollars, the tribunal needs to make an assessment of the value of the barter dollars at the appropriate time. The need for this assessment means that the claim could not be one to recover a debt or liquidated demand of money.[4] There is no such impediment however, in the case of a trader-consumer claim which is how the Adjudicator dealt with this application.[5]

[6] The Appeal Tribunal has obtained a transcript of the hearing. Mr Ingles attended the hearing but Mr Balemi did not do so and his lawyer did not attend either. The circumstances giving rise to this are discussed under ground 1 of the appeal below.

[7] At the hearing, Mr Ingles handed up some documents which he said were in reply to Mr Balemi's response to the application.[6] The Adjudicator was careful to put to Mr Ingles the points made by Mr Balemi in his response. So the Adjudicator investigated with Mr Ingles whether Mr Balemi was correct in saying the sale was a private sale, and also about the sale of the jet ski being 'as is'.

[8] The Adjudicator gave careful reasons for the decision. The Adjudicator found that the transaction was not a private one and that the jet ski was not fit for the purpose. The Adjudicator ordered the 'purchase price' of $13,000 to be returned to Mr Ingles together with the filing fee and bailiff's service fee, totalling $13,388.20. The

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2 In pre-application correspondence attached to the application Mr Balemi denied having misrepresented the quality of the jet ski, saying that it was advertised as 'an older ski in average condition' and that it was sold 'as is'.

3 This is because the tribunal has jurisdiction to hear claims between traders and between a trader and a consumer, but not to hear claims between consumers.

4 *Kay v Habermann* [2014] QCAT 17, [28].

5 This is because in a successful trader-consumer claim, the tribunal will be assessing the correct level of damages in any case.

6 Transcript 1-2 line 14.

Adjudicator ordered that upon the payment being made, Mr Ingles was to make the jet ski and its trailer available for collection.

[9] The grounds of appeal appear in amended grounds for application for leave to appeal or appeal,[7] and in submissions in support. There are two grounds:

Ground of appeal 1

(a) Prior to the hearing Mr Balemi was given leave to be legally represented but the tribunal did not send the notice of hearing to his lawyers. Instead it was sent to Mr Balemi but he did not see it because he was not able to check his post and at the time of the hearing was overseas in a remote area and unable to receive emails. He relied on his lawyers to deal with the hearing and to inform him of any requirement, but they did not receive notice of the hearing, so no one attended. The result was that Mr Balemi was not given the opportunity to present his case at the hearing, it being fundamental that a person is entitled to be present at the hearing of a matter and to dispute the case of the other side and to give their own evidence.

Ground of appeal 2

(b) The purchase was made in Bartercard dollars and not Australian dollars. Hence any refund should have been in Bartercard dollars. Failing to do this overcompensated Mr Ingles.

[10] I shall deal with these grounds of appeal in turn.

Ground of appeal 1

[11] Consideration of this ground of appeal is assisted by a study of the copy of the minor civil dispute file which has been provided by Southport registry. From this it can be seen that on 12 November 2018 Mr Balemi applied for leave to be legally represented by Phoenix Law & Associates. On 15 November 2018 the tribunal granted this leave. There was a mediation on 29 November 2018 and the certificate on the file shows that neither Mr Balemi nor his lawyers attended it. On 30 November 2018 the tribunal posted a notice of a hearing to take place on 20 December 2018 to Mr Balemi's address but not to his lawyers. On 3 December 2018 the tribunal posted an amended notice of a hearing to take place on 9 January 2019 to Mr Balemi's address but not to his lawyers. The reason why the notices were not sent to Mr Balemi's lawyers as would be the usual practice, was that due to an administrative error those lawyers were not marked on the record as representing Mr Balemi until 19 February 2019. This was after the hearing on 9 January 2019 had already taken place.

[12] The following note on the tribunal file made on the day of the hearing is significant. It is noted that at 2.15pm on that day the hearing support officer called Phoenix Law and was told that they were not aware of the hearing date and held no instructions from Mr Balemi beyond completing the response. They said that therefore they were unable to attend the hearing because they had no instructions to do so. That

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7 Amended on 1 April 2019.

telephone call must have been made before the hearing commenced. The Adjudicator was aware of what had been said by Phoenix Law.[8]

[13] The transcript of the hearing starts at 2.14pm and there is no discussion recorded there between the Adjudicator and Mr Ingles about Mr Balemi's absence. There is nothing on the transcript giving the Adjudicator's reasons for continuing with the hearing despite the absence of Mr Balemi or his lawyer. This makes the appeal more difficult to resolve. Certainly it can be said that the absence of a party in minor civil dispute hearings is common and usually the first decision made by the Adjudicator is whether it is fair to proceed in the circumstances. Since this was not discussed in the hearing, it is likely that the Adjudicator made this decision before the hearing started in the light of the result of the telephone call, but without recording any reasons for this decision.

[14] Provided the parties had been properly served it was open to the Adjudicator to proceed with the hearing if this were fair. The requirement to act fairly is in section 28(2) of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld) (QCAT Act) and is also required by section 28(3)(a),[9] and acting fairly is one of the objects of the QCAT Act.[10] Since 1 January 2020 the right to a fair hearing is also provided by section 31 of the *Human Rights Act* 2019 (Qld). The statutory provisions which apply to a party's absence are section 57 of the QCAT Act which states that the tribunal may 'act in the absence of a party who has had reasonable notice of a proceeding', and section 93 of the Act which refers to section 92 of the Act in these terms:

> **92 Notice**
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> The principal registrar must give notice, as stated in the rules, of the time and place for the hearing of a proceeding to—
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> (a) each party to the proceeding; and
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> (b) each other person to whom notice of the hearing must be given under an enabling Act or the rules; and
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> (c) any other person the tribunal directs to be given notice of the hearing.
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> **93 Deciding in absence of person**
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> (1) This section applies if—
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> (a) a person has not attended a hearing and the tribunal is satisfied the person has been given notice of the hearing under section 92; or
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> (b) the tribunal is satisfied a person can not be found after reasonable inquiries have been made.
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> (2) The tribunal may hear and decide the matter in the person's absence.
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> (3) This section applies even if the absent person is a party to the proceeding.

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8 This appears from the transcript 1-3 line 5.

9 Requiring observation of the rules of natural justice.

10 Section 3(b) of the QCAT Act.

[15] There are two questions to be asked therefore, where a party is absent at a hearing. Has the notice of hearing been sent out as required by section 92? And if so, is it fair to proceed in the absence of the party?

[16] Here the Adjudicator could see from the file that two notices of hearing had been sent to Mr Balemi's address. The first was for a hearing on 20 December 2018 which never took place. It was replaced with a hearing on 9 January 2019. This second notice of hearing had been posted on 3 December 2018. The Adjudicator would have been mindful of section 39A of the *Acts Interpretation Act* 1954 (Qld) which provides that unless the contrary is proved postal service is taken to have been effected at the time at which the letter would be delivered in the ordinary course of post.

[17] As for who needed to be served with the notice of hearing, section 92 requires each party to be notified and also each other person to whom the notice must be given under, in this case, the QCAT rules. It is significant that, although it is usual practice to send a notice of hearing to a legal representative of a party, this not required by the rules.

[18] It follows that section 92 of the Act was satisfied in this case. The Adjudicator would therefore consider whether it was fair to proceed with the hearing in the respondent's absence. Here, Mr Balemi had put his evidence in affidavit form and given a detailed written response, seemingly drafted by his lawyers. Hence it was perfectly feasible that, as often happens in minor civil disputes, he had simply decided not to attend the hearing for one reason or another, even in the knowledge that the other party is likely to attend and give evidence. This would have seemed more likely bearing in mind Mr Balemi had failed to attend the mediation. If, as seems likely, the Adjudicator formed this view, then it was a reasonable view to take.

[19] Mr Balemi did have leave for legal representation however, and the telephone call to the lawyers concerned was the correct approach. It is notable that the lawyers did not ask for the hearing to be adjourned so that either they, or Mr Balemi, could participate in the hearing. Instead, they indicated they could not attend because they had not been instructed to do so. Overall therefore, the impression would have been left that Mr Balemi had decided not to attend the hearing, and had decided not to instruct his lawyers to attend the hearing either. If he had intended for his lawyers to attend the hearing he would have notified them of the hearing date being 20 December 2018, or as later amended 9 January 2019, but he had not done so.

[20] In the circumstances, and on the assumptions that the Adjudicator made the decision to proceed in Mr Balemi's absence on the above basis, the decision was clearly the correct one.

[21] Mr Balemi says in this ground of appeal that he was not only unaware of the hearing, but that he was unaware of the mediation. It seems strange that he would be unaware of the contents of the three notices sent by the tribunal to his address for service. In this respect, it is notable that none of these notices were returned to the tribunal by Australia Post.

[22] In any case there is an additional difficulty facing Mr Balemi under this ground of appeal. It is a point made by Mr Ingles. It arises because Mr Balemi had applied to

reopen the proceeding and this application was refused by the tribunal.[11] In that application Mr Balemi said that he was in New Zealand at the time of the hearing and his lawyer was not informed of the hearing because his details had not been entered, so that neither of them were aware that the hearing was to take place. Following submissions about this, an Adjudicator refused this application on the basis that there was insufficient evidence in its support.

[23] Mr Ingles contends that ground 1 of this appeal amounts to an appeal against the tribunal's decision on the reopening and such an appeal is not permitted by section 139(5) of the QCAT Act.[12]

[24] Section 139(5) is in strong terms:

> (5) The tribunal's decision on the application is final and can not be challenged, appealed against, reviewed, set aside, or called in question in another way, under the *Judicial Review Act 1991* or otherwise.

[25] The 'application' referred to here is the application to reopen. The reopening provisions in the QCAT Act provide a quick and efficient way to correct unfairness where a party has a reasonable excuse for not attending the hearing, or where a party would suffer a substantial injustice if the proceeding was not reopened because significant new evidence has arisen and that evidence was not reasonably available when the proceeding was first heard and decided (a 'reopening ground' as defined in Schedule 3 of the Act). No doubt no appeal is permitted from that decision to achieve some finality and also to stop a party trying to have second chance to reopen having failed in the first attempt.

[26] In some appeal cases, section 139(5) has been regarded as fatal to the appeal where the appeal is a patent attempt to appeal against the reopening decision.[13] In other appeal cases it has been recognised that the requirements of procedural fairness might go beyond the limited grounds permitted to reopen the proceeding. One reason for this might be the provisions of section 139(4) of the Act. This says that an application to reopen will fail unless the reopening ground could effectively or conveniently be dealt with by reopening the proceeding under this division, whether or not an appeal under part 8 relating to the ground may also be started. Another reason might be the requirements of sections 92 and 93 and the need for a fair decision about whether to proceed in a party's absence, which are a little different from the reopening ground. It can be seen that different tests could well apply on appeal from those which apply when considering an application to reopen. Because of this, where there has been an unsuccessful application to reopen it will not be fatal in every case to an appeal on the grounds of procedural unfairness because the decision maker has decided to proceed in a party's absence. But certainly, to the extent that an appeal is an appeal against an unsuccessful application to reopen the proceeding, it should be dismissed.

[27] Here, ground 1 of the appeal is closely similar to the grounds relied on to reopen the proceeding, and the tests which would have been applied in determining the reopening application would be closely similar to the tests to apply when

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11 The application is dated 30 January 2019 but it is unclear when it was filed.

12 Paragraph 5 of submissions made on 28 August 2019.

13 Examples are *Burns v James* [2010] QCATA 101, [13] and *Todd v Downing* [2011] QCATA 074, [12], both decisions of Justice Alan Wilson, President.

considering procedural fairness in this appeal. Section 139(5) would seem to preclude a successful appeal on ground 1.

[28] In addition to the above, it is difficult to say that had Mr Balemi or his lawyer been in attendance at the hearing on 9 January 2019 the result of the application would have been any different. There was considerable evidence to support the two elements of the claim, firstly that the sale was not a private sale and secondly that the jet ski was not fit for the purpose. In this respect it is notable that it is not one of the grounds of appeal that the Adjudicator was wrong in finding those elements proved on the evidence. Instead, apart from the procedural fairness point, the only other ground relied on is the Bartercard point in ground of appeal 2, which as I have found below, cannot succeed.

[29] In the circumstances, ground of appeal 1 is not reasonably arguable.

Ground of appeal 2

[30] The point being made in this ground of appeal is that a Bartercard dollar is worth less than one Australian dollar, hence the order that Mr Balemi compensate Mr Ingles the sum of $13,388.20 in Australian dollars instead of Bartercard dollars means that Mr Ingles is 'unduly enriched'.

[31] It is said therefore that the award should be in Bartercard dollars and not Australian dollars. The difficulty with this is that the tribunal, when hearing a claim for a minor civil dispute, cannot make an award in barter dollars.

[32] There is a description of how a Bartercard account works in *Kay v Habermann* [2014] QCAT 17, [5]. Barter dollars can be used to purchase and sell things and payment is made by a transfer of barter dollars between one account holder and another. A credit in a Bartercard account only exists as a right against Bartercard. It is not in the nature of cash or money.[14]

[33] Although it is true that barter dollars are recognised by the Queensland Treasury as having a value for the purpose of the *Duties Act* 2001 (Qld),[15] and by the Australian Taxation Office for Goods and Services Tax,[16] both emphasise that a barter dollar is not in the nature of money.

[34] In the Queensland Treasury's Public Ruling DA501.2.1 – *Treatment of barter or trade dollars*, [2] it is stated:

> Trade dollars are not legal tender and can only be traded with other member businesses. They are not redeemable through the trade exchange for cash.

[35] And the ATO, when considering whether such holdings are within section 66(1) of the *Superannuation Industry (Supervision) Act* 1993 (Cth) (which prohibits a self-managed super fund from intentionally acquiring an asset other than money from a related party), has determined in SMSFR 2010/1 – *Self Managed Superannuation Funds Ruling*:

> **Trade dollars or barter credits**

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14 *Kay* [2014] QCAT 17, [23].
15 *Treatment of barter or trade dollars* (DA501.2.1, 20 August 2009).
16 *Goods and services tax: tax invoices* (GSTR 2013/1, 3 April 2019).

> 132. The Commissioner considers trade dollars or barter credits are assets other than money. Trade dollars or barter credits can generally only be exchanged for goods and services. As such, they are not unconditional, nor convertible to cash, and have no assigned monetary value. In addition, credit units arising from barter and counter trade transactions are not acceptable forms of payment for parties external to the bartering arrangements.
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> 133. Therefore, the acquisition of trade dollars or barter credits by the trustee or investment manager from a related party contravenes subsection 66(1).

[36] The jurisdiction of the tribunal in a minor civil dispute is limited to those matters within the definition of minor civil dispute.[17] There are two limbs. The first is a claim to recover a debt or liquidated demand of money up to the prescribed amount. The relevant part of the second limb is a claim for the payment of money of a value of not more than the prescribed amount in a trader-trader or trader-consumer claim. Further, when hearing a minor civil dispute the only orders the tribunal can make are set out in section 13 of the QCAT Act. For an order giving direct financial benefit, the tribunal can only order that a person pay a stated amount to another person up to the prescribed amount.

[37] It would appear from the description of a barter dollar above that it could not come within the meaning of 'money' as used in the QCAT Act when describing the jurisdiction of the tribunal in minor civil disputes.

[38] This is emphasised by the fact that a tribunal order to transfer barter dollars would probably not be enforceable. It is clear that the words 'money' and 'pay an amount' refer to what is defined in the QCAT Act as a 'monetary decision'.[18] A monetary decision of the tribunal is enforceable by filing a copy of the decision in the registry of a court of competent jurisdiction, in this case the Magistrates Court, and then it is 'taken to be a money order of the court in which it is filed and may be enforced accordingly'.[19] A money order may be enforced as described in Division 19 of the *Uniform Civil Procedure Rules* 1999 (Qld). It is clear that an order requiring a transfer of barter dollars from one person to another is not enforceable under the available means of enforcement. This is because all the means of enforcement result in money being paid to the judgment creditor either directly,[20] or indirectly[21] and there is no way to force or directly implement a transfer of barter dollars.

[39] As a matter of legislative construction, the legislature would intend to limit the powers of the tribunal to make orders which could be enforced. Those powers would not extend to making an order 'in vain'.

[40] I must conclude therefore that, contrary to the suggestion in ground of appeal 2, the tribunal would not have had jurisdiction to hear and determine a claim seeking an order that Mr Balemi transfer a number of Bartercard dollars to Mr Ingles, and would not have been able to make such an order.

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17 In Schedule 3 of the QCAT Act.

18 As defined in Schedule 3 of the QCAT Act.

19 Section 131 of the QCAT Act.

20 For example by redirection of debts, regular deposits or earnings under Rules 840, 848 or 855 of the *Uniform Civil Procedure Rules* 1999 (Qld), respectively.

21 For example by seizure and sale of property under Rule 828, where (after fees and costs) the proceeds are paid the judgment creditor and any remaining amount is paid to the judgment debtor.

[41] Although not expressly stated in this ground of appeal, the implication in the suggestion that Mr Ingles has been overcompensated by the order made is that the Adjudicator was wrong to assume that one Bartercard dollar was worth one Australian dollar. The Adjudicator was certainly aware that the purchase was made by a transfer of Bartercard dollars. This appeared both from the paperwork before the Adjudicator,[22] and also from what was said at the hearing[23]. It was also referred to in the reasons.[24] The difficulty here is that although it is now said on Mr Balemi's behalf that Bartercard dollars and Australian dollars are 'of different values',[25] there was no evidence before the Adjudicator about this difference, and now on appeal there is no attempt to put evidence before the Appeal Tribunal that there is a difference in value.

[42] Mr Ingles' application was for an award in Australian dollars, treating one Bartercard dollar as equivalent to one Australian dollar. Despite this, neither the formal response to the claim nor the evidence submitted by Mr Balemi said that the award should not be in Australian dollars, or if it were in Australian dollars then there should be a discount because a Barter dollar was not equal to an Australian dollar. In the circumstances the Adjudicator was clearly justified to assume that they were at parity.

[43] In the circumstances, ground of appeal 2 is not reasonably arguable.

Application to adduce fresh evidence

[44] Mr Balemi has made an application put fresh evidence before the Appeal Tribunal. The fresh evidence is his Bartercard statement showing the credit to his account of $13,000 Bartercard dollars. This statement was submitted with the application for leave to appeal or appeal. It is said that this fresh evidence only became relevant after the tribunal made its decision ordering Mr Balemi to pay the sum of $13,388.20 in Australian dollars rather than in Bartercard dollars, and that it was necessary to show that the transaction was in Bartercard dollars.

[45] I do not accept this submission because as said earlier in these reasons it was always obvious that the transaction was in Bartercard dollars yet the tribunal was being asked by Mr Ingles to make an award in Australian dollars. Hence there is no reason why the fresh evidence could not, with reasonable diligence, have been added to the documents attached to the response to the application.

[46] In any case the statement has no probative value because at the hearing Mr Ingles handed up to the Adjudicator his corresponding Bartercard statement showing the transaction in question. This is on the minor civil dispute file.

[47] In the circumstances I refuse the application to adduce fresh evidence.

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22 It was in Mr Balemi's affidavit (paragraph 3).
23 Transcript 1-2 line 38, 1-3 line 36.
24 Transcript 1-6 lines 16 and 22.
25 Paragraph 14 of submissions dated 24 June 2019.

Application for representation

[48] Mr Ingles has applied for leave to be represented in this appeal by Frampton Legal. It is said that Mr Balemi had leave to be legally represented in the tribunal below, that the issues are complex and it would be unfair not to allow representation.

[49] The tribunal cannot stop a party from being assisted by lawyers to prepare submissions, or to gather evidence and put that evidence in a suitable form for submission to the tribunal. The evidence and submissions can then be submitted by the party themselves. No leave is required for this to happen. This appeal has been dealt with on the papers. Leave for legal representation is not required, and this application is refused.

Conclusions in the appeal

[50] In matters such as this, leave to appeal can only be given if there appears to be a reasonably arguable ground of appeal. In this appeal there is no reasonably arguable ground of appeal and so leave to appeal should not be given. This means that the appeal fails.

[51] The order made on 9 January 2019 has been stayed. In the circumstances it is right to lift the stay.