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Tribunal Case Update

In *Ash v Minister [etc]*, the Full Federal Court applied the *Jabari* principles for determining whether a court has overlooked a representation or material which it was bound to consider. The Court found that the representations were considered at a high level of generality, as was appropriate in the circumstances.

In *Cawthorne v NSW Land and Housing Corporation*, the NCAT Appeals Panel declined to make orders by consent to set aside a decision and substitute other orders. It found that its power to make the orders was exercisable only if it satisfied that there is 'arguable appealable error' in the decision.

In *Broms v IPT*, the NZ High Court held that the tribunal had met its duty to a party to afford him a fair hearing via AVL link by informing him of its requirements for the remote location arrangements and obtaining his assurances that the requirements were met.

In *Jones v Family Court at Whangarei*, the Supreme Court of NZ refused leave to appeal on the grounds that the Court of Appeal did not permit a McKenzie friend to sit at the bar table to take notes and provide silent assistance.

In *White v Homes Victoria*, Hannan J found that the tribunal failed to ensure that a self-represented party knew that he could ask that the opponent call its witnesses so that he might cross-examine them. In conjunction with other circumstances, Her Honour held that the party had been denied procedural fairness.

In *Leo's Olo v Minister [etc]*, the Full Federal Court found that, for the purpose of evaluating an allegation of apprehended bias, the court could have regard to remarks in the tribunal's reasons demonstrating a previously unsuspected animosity towards a party's lawyers and an opinion that the party's case was futile from the outset.

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In *Sofronoff v ACT Integrity Commission*, Abrahams J dismissed an application for judicial review of the Commission's findings of 'corrupt conduct' against Mr Sofronoff for his conduct when acting as a Board of Inquiry. The decision considers the relationship between apprehended bias, misbehaviour and corrupt conduct.

In *OF (India)*, the Immigration and Protection Tribunal (NZ) found that a history of intimate partner violence, in conjunction with systemic discrimination, denial of state protection and a real chance of serious harm upon return to the home country, qualified a woman as a person entitled to protection as a Convention refugee.

Satisfying the duty to consider

Section 501(CA)(3) of the *Migration Act 1958* (Cth) provides that, if the Minister decides to cancel a visa under s 501(3A), the Minister must invite the person to make representations to the Minister about revocation of the decision. The Minister may revoke the decision if the person makes representations and the Minister is satisfied that the decision should be revoked (s 501CA(4)).

In *Plaintiff M1/2021 v Minister for Home Affairs* [2022] HCA 17 ([24]-[27]), Kiefel CJ, Keane, Gordon and Steward JJ explained the scope of the duty to consider representations. The principles are summarised by Goodman J in *BCC21 v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] FCA 1072 [37], reported in Issue No 1 of 2024 of the Bulletin at page 3.

In *Jabari v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2023] FCAFC 98 [55], the Full Court of the Federal Court summarised the principles that a reviewing court will apply in determining whether a representation or material has been overlooked.

Applying *Jabari* to the facts, the Full Court discussed the level of generality required in the tribunal's findings, and how this can vary depending on whether the representation is accepted by the tribunal.

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Ash v Minister for Immigration and Citizenship [2025] FCA 467

Full Court of the Federal Court of Australia (Colvin, Stellios and Hill JJ), 5 December 2025

The former Administrative Appeals Tribunal affirmed the Minister's decision not to revoke the cancellation of Mr Ash's visa under s 501CA of the *Migration Act 1958* (Cth). The primary judge dismissed an application to review the Tribunal's decision. In his appeal to the Full Court, Mr Ash argued that the Tribunal erred in failing to consider his 'substantial and clearly articulated representations' about his eldest son's attention deficit hyperactivity disorder ('ADHD').

Section 499 of the Migration Act empowers the Minister to give binding written directions to decision makers as to the exercise of their powers and functions under the Act. At the relevant time, Ministerial Direction 99 provided that the decision maker must, as 'the primary consideration', determine whether non-revocation of the visa 'is, or is not, in the best interests of a child affected by the decision'. Para 8.4 of the Direction set out factors which must be considered where relevant in making the determination.

It was clear that the representations about the son's ADHD were relevant to a mandatory consideration.

Was the duty to consider satisfied?

The Full Court (at [23]) referred to *Plaintiff M1/2021 v Minister for Home Affairs* [2022] HCA 583 ('*Plaintiff M1/2021*') in which the plurality of the High Court of Australia discussed the content of the decision maker's obligation to consider representations under s 501CA(4) of the Migration Act ([22]). Briefly stated, the decision maker must 'read, identify and evaluate the representations, and 'bring their mind to bear upon' the facts, arguments and opinions stated. Once that is done, it is for the decision maker to decide what weight can appropriately be given to the representations. The decision maker is not required 'to make actual findings of fact as an adjudication of all material claims' made by the person' (*Plaintiff MI/2021* [24] (Kiefel CJ, Keane, Gordon and Steward JJ)). The plurality added the following caveat:

> [I]f review of a decision maker's reasons discloses that the decision maker ignored, overlooked or misunderstood relevant facts or materials or a substantial and clearly articulated argument; misunderstood the applicable law; or misunderstood the case being made by the former visa holder, that may give rise to jurisdictional error (*Plaintiff MI/2021* [27]).

In the present case, the Full Court (at [23]) proceeded to apply *Jabari v Minister for Citizenship, Migrant Services and Multicultural Affairs* [2023] FCAFC 98 at [55] in which the Full Court set out principles to guide the determination of whether a representation or material has been overlooked. These include the following:

- A conclusion that the decision maker has not engaged in an active intellectual process will not lightly be made and must be supported by clear evidence…
- [The reviewing court is] required to assess, in a qualitative way, whether the decision-maker has as a matter of substance had regard to the relevant matter.
- The onus lies on the appellant to establish on the balance of probabilities that a relevant matter was not considered…
- The requisite degree of consideration is affected by the centrality, to the issues, of the matter with which it is said that the decision maker did not engage, and the prominence of the matter assumed in the representations.
- Whether or not a matter has been considered can be a matter of inference drawn from the reasons as a whole.

Were the representations overlooked?

While the Tribunal did not mention the son's ADHD in its reasons, the Full Court concluded that 'the proper inference is not that the representation was overlooked', but that 'these particular claims are subsumed in findings of greater generality' ([27]).

The appropriate level of generality of the findings required was indicated by the terms of Direction 99 para 8.4 ([26]). The son's ADHD was part of a factual matrix to establish matters specified in para 8.4(4)(b) and (d), namely the extent to which Mr Ash was likely to play a positive parental role in the future and the likely effect of separation from Mr Ash on his son ([26]). The Tribunal agreed with the parties that the best interests of the children weighed in favour of revocation of the cancellation decision. In those circumstances, the Tribunal did not consider that the son's ADHD required specific mention in the reasons.

The Full Court found that the Tribunal did not err in the way it weighed the different considerations for and against revoking the decision to cancel Mr Ash's visa.

The appeal was dismissed.

Guide to Tribunal Practice (6th ed) [6.3.4.1], [6.3.4.4].

The power to make orders by consent

The case below arose in the context of an internal appeal from a decision of NCAT at first instance to the Tribunal's Appeal Panel. The parties asked the Appeal Panel to make orders disposing of the proceedings by consent. The Appeal Panel declined to make the orders proposed because they contained a contradiction and, more fundamentally, because the appellant had failed to show any appealable error in the tribunal's decision.

The Appeal Panel determined that its powers to set aside the decision under review and to substitute other orders sought by the parties were exercisable only if it was satisfied of the existence of an 'arguable appealable error' in the decision under appeal.

While the decision below construes the interpretation of the appeal provisions of the NCAT Act, it is a salutary reminder of the need for a tribunal to check that it has power to make the orders requested by the parties.

Some tribunal legislation deals with this requirement expressly. For example, s 103(1)(d) of the *Administrative Review Tribunal Act* 2004 (Cth) provides that the tribunal's power to make orders by consent is subject to the tribunal's satisfaction that it would have power to make a decision in the terms proposed by the parties.

Cawthorne v NSW Land and Housing Corporation [2025] NSWCATAP 297

NCAT Appeal Panel (G Blake AM SC, Principal Member), 18 Nov 2925

In proceedings between the respondent ('Housing NSW') and the applicant, the applicant lodged an internal appeal from orders made by the Civil and Administrative Tribunal. On behalf of both parties, the applicant applied for the making of consent orders disposing of the appeal. In substance, the proposed consent orders were that:

1. the orders made by the Tribunal at first instance were to be set aside and other specified orders made in substitution for them.
2. The appeal would be 'otherwise dismissed'.

In support of the application for the making of consent orders, the parties jointly submitted that, pursuant to ss 32(2) and 81(2) of the NCAT Act, the Appeal Panel may exercise all the functions conferred on the tribunal at first instance, including the power conferred by r 9(1)(a) of the *Civil and Administrative Tribunal Regulation 2022* (NSW) ('NCAT Act') to set aside or vary the decision under appeal with the consent of all the parties.

The Appeal Panel (constituted by a Principal Member) was not satisfied that it had power to make the proposed orders. While a differently constituted Appeal Panel had been satisfied in *Zahra v Baker* [2022] NSWCATAP 145 [11]-[13] that such a power exists, the Principal Member considered that the earlier decision was wrong on this question ([29(2)]). Having considered the principle of consistency in Appeal Panel decisions expounded in *Australian Postal Corporation v Williams* [2024] NSWCATAP 168 [27]-[32], the Principal Member decided not to follow *Zahra v Baker* ([29(2)]).

The Principal Member found that, like a court, the Appeal Panel was not bound to make consent orders proposed by the parties ([25]-[26]. Its function under s 81(1) of the NCAT Act is to determine the internal appeal by way of rehearing. Therefore, the powers of the Appeal Panel are exercisable only if the appellant can show that the order appealed from is the result of an error ([36], citing *Allesch v Maunz* [2000] HCA 40 [23]). The Principal Member found no contrary indication in the NCAT Act ([29]).

After considering the authorities on the making of consent orders by appellate courts, the Principal Member concluded:

> Where the Appeal Panel is considering whether to make consent orders allowing an appeal, I am satisfied that the principle that should be applied is that the Appeal Panel is satisfied of the existence of arguable appealable error [36]).

The application for the making of the consent orders was dismissed.

Guide to Tribunal Practice (6th ed) [6.5]

Conducting a fair hearing via AVL

At least since the COVID epidemic, it is common for parties to ask to take part in tribunal hearings via audio-visual link ('AVL'). A tribunal is under a duty to ensure that the hearing conducted by AVL is fair, but case law on what is required to satisfy the duty is sparse.

Where a party proposes to join the hearing from a remote location, the tribunal has limited opportunity to assess the suitability of the location and the arrangements made for the party's participation. It is therefore important that the party is clearly informed about the tribunal's requirements, and that the tribunal satisfies itself that the arrangements made by the party meet the requirements.

Broms v Immigration & Protection Tribunal [2025] NZHC 2077

New Zealand High Court (Osborne J), 28 July 2025

The Immigration and Protection Tribunal declined Mr Brom's appeal from the Minister's decision that he was liable to deportation. Mr Broms applied to the High Court for leave to appeal and for judicial review of the Tribunal's decision on the ground that he had been denied natural justice contrary to section 27 of the *New Zealand Bill of Rights Act 1990* (NZ) in the process leading up to the hearing and in the conduct of the hearing by the IPT by audio-visual link ('AVL'). The breaches consisted of the lack of information given to him about the hearing; the

lack of a support person for him; the fact that the AVL hearing was 'heard' at his workplace; and his inability to call witnesses ([8]).

Osborne J found that none of the alleged breaches of natural justice were substantiated, being on key points materially inconsistent with the contemporaneous record and other evidence ([103]). His Honour found that Mr Broms was given 'all the necessary procedural information to enable him to make his own decision' on each step ([102]), and that he was told and clearly knew that he could be legally represented or have a support person present, and could call witnesses ([98], [100]).

With respect to Mr Broms' participation in the hearing from his workplace by AVL, His Honour rejected the submission of counsel that it is 'obvious' that a person should not participate in a deportation hearing from his workplace.

> Provided proper arrangements are made in advance, as the evidence indicates they were, a person's workplace will often by an appropriate location from which that person may attend and fully participate in the hearing of a tribunal or a court ([101]).

His Honour held that 'it is the responsibility of the Court to ensure that any AVL hearing is fairly conducted', and that the need can be substantially assured by the use of a protocol ([29], citing *Deutshe Finance New Zealand Ltd v Commissioner of Inland Revenue* (2007) 18 PRNZ 710 at [17]). The tribunal had a protocol which provided for remote hearings with persons attending from various locations. Under the protocol, the appellant is required to confirm that they have arranged for a private room prior to the hearing ([26]).

Mr Broms had told the Tribunal that he was participating in the hearing from a locked and private room and that his employer had granted him the use of the room for the day and had given him permission to fully attend to the requirements of the hearing ([71], [76], [101]].

His Honour acknowledged that difficulty might arise when calling witnesses to a workplace. There was no such difficulty in this case as Mr Broms had had previously told the Tribunal he was not calling witnesses ([101]).

Guide to Tribunal Practice (6th ed) [4.2.3], [5.5.4], [5.6.7]

The arrangements for a McKenzie friend

In issue 2 of 2025 at page 4, the Bulletin reported *Myers v VCAT* [2024] VCAT 206, a decision on the Tribunal's discretion to determine whether a nominated person is suitable to assist a self-represented party as a McKenzie friend. In the following case, the New Zealand Supreme Court refused leave to appeal on the ground that the court below had not allowed the appellant's McKenzie friend to be present at the bar table during the hearing.

Jones v Family Court at Whangarei [2026] NZSC 1

NZ Supreme Court (Ellen France, Kos and Miller JJ), 11 Feb 2026

Mr Jones sought leave to appeal a decision of the Court of Appeal. The primary ground presented for appeal was that the Court had refused Mr Jones permission to have a McKenzie friend at the bar table during the hearing 'to provide silent assistance, including management and note taking'. The Court had instead given permission for the assistant to sit in the public gallery and take notes there.

The Supreme Court refused leave to appeal, finding that the issue raised no question of general or public importance requiring the Court's review ([3]). Their Honours added:

> [W]e accept that a court's refusal to allow a lay litigant a McKenzie friend is capable of giving rise to a question of general or public importance, but we are satisfied that here it does not. The legal merits of the substantive appeal before the Court of Appeal were such that the more proximate presence of the assistant could not have made a difference to the outcome. ([4] (footnotes omitted)).

Guide to Tribunal Conduct (6th ed) [5.5.3]

Scope of duty to self-represented parties

In this case, a self-represented party was unaware that he could ask to have the other party call their witnesses to be sworn and available for cross-examination. As the allegations in the witness' written statements were of a serious nature and were contested, Hannan J found that the outcome of the hearing might have been different if the party had been afforded a sufficient opportunity to test the evidence in cross-examination.

Hannan J acknowledged that VCAT's Residential Tenancies List is a high-volume jurisdiction in which members 'are regularly listed to hear many contested hearings each day. It would therefore be unfair to compare the way VCAT approaches contested tenancy matters to the approach that might be taken by a court ([70]-[71].

Her Honour went on to conclude that in the circumstances of the case, natural justice required the Tribunal to explain to the self-represented party that he could ask to have the other party's witnesses called for him to cross-examine. If that course would exceed the short time allowed for the telephone hearing, 'then another form of hearing to accommodate the evidence was required' ([80]).

White v Homes Victoria [2026] VSC 2

Supreme Court of Victoria (Hannan J), 20 Jan 2026

In proceedings before VCAT, the respondent rental provider ('Homes Victoria') sought a possession order against Mr White on the ground of failure to comply with a nuisance order. Homes Victoria relied on a written summary 'record of incidents' as evidence of breaches of the orders. Mr White disputed the allegations.

At the telephone hearing, Homes Vic proposed to call two of the neighbours who were ready and available to give oral evidence. It did not call them after the Tribunal indicated that this was not required. The Tribunal proceeded to find that Mr White had breached the orders and that it was reasonable and proportionate to make a possession order.

Mr White contended that the Tribunal failed to accord him procedural fairness by:

1. discouraging Homes Victoria from calling their witnesses, without explaining to him that he had the right to request that the witnesses be called and made available for cross-examination;
2. failing to give him a sufficient opportunity to present documentary evidence on which he sought to rely.

Section 102 (1) of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) provides that the Tribunal must allow a party a reasonable opportunity to call or give evidence, make submissions and examine and cross-examine witnesses.

Loss of opportunity to cross-examine

Homes Victoria argued that Mr White was aware of his right to have the witnesses sworn for cross-examination, and that the Tribunal was under no duty to ensure that he took advantage of that right ([73]).

Hannan J held that it was open to the Tribunal to decide that it did not require Homes Victoria to call the witnesses to prove the breaches when written evidence of the breaches was already before it ([76]). But the record of incidents comprised behaviour reported by neighbours, some of which were anonymised and hearsay, and some that made allegations against Mr White of a serious character ([78]). It would have been difficult for the Tribunal to refuse a request to call the witnesses if either party had insisted upon it ([78]).

Her Honour concluded that the Tribunal had failed to ensure that the self-represented Mr White understood that it was open to him to ask that Homes Victoria call its witnesses so that he might cross-examine them ([76]-[80]). Had Mr White been afforded the opportunity to test the evidence in this way, there was a realistic possibility of a different decision outcome ([86]).

Loss of opportunity to present his evidence

Mr White had failed to file his documentary materials within six days as directed but had provided them to Homes Vic. Hannan J found that the Tribunal could have read them with a short adjournment but appeared to have concluded that they were insufficiently relevant to afford Mr White a further opportunity to put them before the tribunal ([81]-[83]).

The matters raised therein were relevant to the questions the tribunal had to decide, and there

was a realistic possibility of a different result if the material had been considered ([86]-[87]). Considered together with the loss of opportunity to cross-examine, Her Honour concluded that the overall effect of the hearing was to deny Mr White procedural fairness ([88]).

Orders

The Court granted Mr White leave to appeal. The appeal was allowed, the possession order was set aside and the matter was remitted to the Tribunal to redetermine.

Guide to Tribunal Practice 6th ed [5.5.8], [5.5.9],

Remarks in reasons: apprehended bias

Can what a tribunal says in its reasons be used as evidence of prejudgment or bias for purposes of judicial review? The general principle as stated by the plurality of the High Court of Australia in *Michael Wilson & Partners Ltd v Nicholls* (2011) 244 CLR 427 (*'Michael Wilson'*) ([67]-[68]) is that the tribunal's reasons cannot be used to establish a reasonable apprehension of bias by prejudgment.

Some later authorities have treated the statement by the plurality in *Michal Wilson* as cautionary rather than a blanket rule. In *MZAEU v Minister for Immigration and Border Protection* 2016] FCAFC 100 (*'MZAEU'*) [45], the Full Court of the Federal Court identified circumstances which might be exceptions to the general rule in *Michael Wilson*.

In the case reported below, Rangiah J found that the circumstances fell within one of the exceptions. The tribunal's reasons revealed animosity towards the party's lawyers and an opinion that they should have known the case was futile. These views, capable of supporting a reasonable apprehension of bias, were not previously known to the parties.

Leo's Olo v Minister for Immigration & Multicultural Affairs [2026] FCA 10

Federal Court of Australia (Rangiah J), 22 Jan 2026

The Administrative Appeals Tribunal affirmed a decision of the respondent ('Minister') cancelling the applicant's visa. The applicant applied to the Federal Court for judicial review of the Tribunal's decision on grounds including apprehended bias. The applicant submitted that the Tribunal's reasons for decision disclosed that the Tribunal was hostile to the applicant's lawyers and regarded the applicant's case as futile from the outset.

The Minister contended that, in determining an allegation that the tribunal was affected by apprehended bias, the court was not permitted to take account of the Tribunal's remarks in its reasons. The Minister relied upon *Michael Wilson & Partners Ltd v Nicholls* (2011) 244 CLR 427 (*Michael Wilson*) in which the plurality of the High Court cautioned against 'inverting the proper order of inquiry' by 'reasoning backwards from what was decided' to find a reasonable apprehension of prejudgment ([67], (Gummow ACJ and Hayne, Crennan and Bell JJ)).

The plurality observed that this inverted approach risks two serious errors. First, by assuming the existence of a reasonable apprehension at the outset, it 'confuses the different inquiries' that are required to be made for actual bias and apprehended bias respectively. It directs attention to the wrong question, namely, whether the judge had in fact prejudged the case. Second, it risks an erroneous conclusion that because one side lost the case the judge must have been biased, or that some appealable error in the reasoning indicates prejudgment against the losing party ([67]).

The remarks in the reasons

In *MZAEU v Minister for Immigration and Border Protection* [2016] FCAFC 100 (*MZAEU*) [45] the Full Court of the Federal Court observed that the principle in *Michael Wilson* did not in all cases preclude a reviewing court from considering remarks made in reasons, for the purpose of assessing an allegation of apprehended bias. The Full Court gave examples of circumstances that might be exceptions to the principle ([45], [46]).

Rangiah J found that the Tribunal's remarks in the reasons to be a 'quite unjustified'… hostile tirade… of the gravest kind' directed against the applicant's lawyers. It included 'attacking their honesty and integrity as lawyers' ([58]). Prior to the giving of the reasons the Tribunal had given no indication of animosity towards the applicant's lawyers. This hostility fell within

the exception the *Michael Wilson* principle recognised in *MZAEU*, being in the nature of '"a fact not previously known to the parties which supports an allegation of apprehended bias"' (Rangiah J at [57], quoting *MZAEU* at [45]).

The Tribunal in its reasons had also criticised the applicant's lawyers for proceeding with a case which they should have assessed at the outset as doomed to fail. Rangiah J found that these remarks suggested that the Tribunal had prejudged the case as being doomed to fail before hearing the oral evidence and submissions ([59], [75]). Prior to those remarks in the reasons, the Tribunal had given no indication that it had assessed the case as futile before the hearing. The disclosure of that opinion fell within the exception in *MZAEU* as being a relevant fact not previously known to the parties ([60], [81]).

Other conduct giving rise to apprehended bias

Apart from the indications in the reasons, His Honour identified other conduct by the Senior Member constituting the Tribunal which might give rise to apprehended bias.

Although the Minister was legally represented, the Senior Member undertook 'extensive and often hostile' cross-examination of the applicant's witnesses ([65], [74]). The Tribunal had effectively taken on the role of a contradictor, thereby creating a conflict of interest that was 'incompatible with the role of an impartial adjudicator' [70], [74]).

Considering the indications in the reasons in conjunction with the Tribunal's conduct in dealing with the witnesses, His Honour found that a fair-minded lay observer might reasonably have apprehended bias ([76]).

Order

A writ of certiorari was issued to quash the decision of the Tribunal. Mandamus was issued to the ART to determine the applicant's application according to law.

Guide to Tribunal Practice (6th ed) [6.3.4], [6.3.4.2], [3.4.5.3]

Apprehended bias, misbehaviour and corrupt conduct

Conduct by a tribunal or member that gives rise to a reasonable apprehension of bias can have various consequences. It can provide a ground for an application for recusal or judicial review. It can invalidate a decision. It can constitute a breach of statute and a breach of a member code of conduct. Can it in any circumstances support a finding of 'misbehaviour' as a ground for termination of appointment, and/or as an element of corrupt conduct pursuant to anti-corruption legislation?

In the following case, a judge dismissed an application for judicial review of the findings of the ACT Integrity Commission that conduct of a member of a board of inquiry satisfied several elements of the definition of 'corrupt conduct' under s 9(1) of the *Integrity Commission Act 2018* (ACT) ('IC Act'). The Commission made findings of corrupt conduct on multiple alternative bases.

One of the Commission's findings was that conduct giving rise to apprehended bias could constitute 'misbehaviour' which could have provided grounds for the Executive to terminate the member's appointment pursuant to s 11 of the *Inquiries Act 1991* (ACT). The Commission stopped short of concluding that on this basis the member's conduct satisfied the definition of 'corrupt conduct' in IC Act s 9(1)(a)(ii) and (iii). Nevertheless, the member challenged the Commission's conclusion that the existence of a reasonable apprehension of bias or a breach of the rules of natural justice could constitute misbehaviour and could have provided reasonable grounds to terminate the member's appointment.

With respect to this conclusion, the judge found that the member had established no error by the Commission.

Sofronoff v ACT Integrity Commission [2025] FCA 1565

Federal Court of Australia (Abraham J), 11 December 2025

Mr Sofronoff KC was appointed as the sole member of a Board of Inquiry pursuant to the *Inquiries Act 1991* (ACT) ('Inquiries Act'). The

Board was tasked with inquiring into certain matters arising from the investigation and criminal trial of Mr Bruce Lehrman ('Inquiry'), including the conduct of the DPP, Mr Shane Drumgold SC, as prosecutor. The Board subsequently delivered its Inquiry Report that was highly critical of the conduct of Mr Drumgold.

The ACT Integrity Commission ('Commission') received a mandatory corruption notification pursuant to s 62 of the *Integrity Commission Act 2018* (ACT) ('IC Act') reporting that there was a suspicion on reasonable grounds that Mr Sofronoff, acting as the Board, had engaged in serious corrupt conduct. The Commission commenced an investigation inro Mr Sofronoff's conduct, code-named Operation Juno. On 18 March 2025, the Commission provided to the Speaker of the ACT Legislative Assembly its report ('*Juno Report*').

In the report the Commission found (at [5]-[6]) that several aspects of Mr Sofronoff's conduct fell within elements of the definition of 'corrupt conduct' in s 9(1) of the *Integrity Commission Act 2018* (ACT) ('IC Act'), based on its findings that:

1. he had disclosed confidential material to journalists contrary to the obligations of confidentiality prescribed by the Inquiries Act, which could constitute offences under ss 17 and 36 of the Act;
2. he had disclosed the Board's report to journalists before it had been publicly released, contrary to the Act's requirement to provide it exclusively to the Chief Minister;
3. the disclosures were dishonestly concealed from Mr Drumgold and the Chief Minister which prevented them taking protective legal action; and
4. by this conduct he had exercised his official functions 'in a way that was not impartial, significantly compromised the integrity of the Inquiry constituting a breach of public trust', and in respect of his communications with [one journalist]'… 'gave rise to an apprehension of bias that affected some of his findings' (*Juno Report* [5]).

Moreover, the Commission found that the conduct constituted 'serious corrupt conduct' within the meaning of s 10 of the IC Act on the basis that it had 'significantly undermined the integrity of the Board's processes and the fairness and probity of its proceedings' to such as extent as to have been

> likely to have threatened public confidence in that aspect of public administration and the assessments and judgments made in the Board's report… (*Juno Report* [6]).

The judicial review proceedings

Mr Sofronoff applied to the Federal Court for judicial review of the Juno Report on multiple grounds, including that certain of the Commission's factual findings were illogical, irrational, unreasonable and unsupported by evidence ([108], [187]). Abraham J found that these submissions were based upon the Commission's non-acceptance of Ms Sofronoff's testimony on certain matters. Her Honour found that in view of the evidence and the Commission's reasons, it was open to the Commission to make the findings that it did on the matters ([106]), [193], [198], [218], [221], [288]).

Apprehended bias as 'misbehaviour'

Pursuant to s 9(1)(a)(i) of the IC Act, conduct can be 'corrupt conduct' if it constitutes a 'serious disciplinary offence', defined in s 9(3) to include conduct which could constitute 'reasonable grounds for … terminating the services of a public official'. Abrahams J dismissed an argument that the term 'serious disciplinary offence' was limited to the employment context, holding that it extended to a statutory appointment ([161]).

Section 18(a) of the Inquiries Act placed the Board under a duty to comply with the rules of natural justice in conducting the inquiry. Section 11 of the Inquiries Act provided that the Executive may terminate the appointment of a member of a Board of Inquiry for 'misbehaviour'. The Commission reasoned that apprehended bias could reasonably have provided grounds to terminate Mr Sofronoff's appointment, on the basis that a lay observer might reasonably have apprehended that he might not conduct a fair and impartial inquiry into Mr Drumgold's conduct (*Juno Report* [127]). Among the circumstances supporting this conclusion, the Commission noted the number and frequency of Mr Sofronoff's communications with a journalist who had published many articles that were highly critical of Mr Drumgold (*Juno Report* [36]- [38]).

While noting that the Commission's conclusion on misbehaviour was not based solely on apprehended bias ([182], Abrahams J held that

> The applicant has not established that either an apprehension of bias or a denial of natural justice can never be capable of satisfying the concept of misbehaviour for the purposes of s 11 of the Inquiries Act. …Whether either could satisfy that criterion in a particular case is necessarily dependent on the facts of the case' ([175]).

The Commission conceded ground 2 of the application, namely that it erred in concluding that Sofronoff's conduct could have constituted the offence of contempt under s 36 of the Inquiries Act. Given that this was 'a separate and alternative' finding to the Commission's other findings of corrupt conduct under s 9(1)(a), Abrahams J found that the error was not material ([295]).

Her Honour held that Mr Sofronoff had not established jurisdictional error in the Juno report ([303]).

The application for review was dismissed

Note: The decision is under appeal.

Guide to Tribunal Practice 6th ed [8.6.2], [9.5.4.1]

Refugee Convention: Continuing threat of family violence

The following redacted research copy of a decision of the Immigration and Protection Tribunal (NZ) considers how, in the family violence context, the threats can be of such a kind that the terror they inspire, and are intended to inspire, has a continuing and long-term effect. This means that, even where the offender is no longer an actual threat, a return to the home country can be a return to continuing harm.

The Tribunal concluded that a woman who had been subjected to such threats may qualify for protection as a refugee under the United Nations *Convention relating to the Status of Refugees* (18 July 1951).

OF (India) [2023] NZIPT 802113

Immigration and Protection Tribunal (NZ) (SA Aitchison, Member), 13 Apr 2023

In this appeal the Tribunal analysed a claim for refugee status in the context of a history of intimate partner violence. The Tribunal said that it prefers a 'predicament approach' to the assessment of persecution, which 'takes a broad temporal lens' to the person's exposure to harm, as opposed to 'a narrow, event-based approach, where violence equates solely with a concrete event or isolated act' ([82]). This was relevant to the impact on a claimant who had been subjected, in the past, to threats which were intended to have a long-term, terrorising effect on her. The Tribunal took account of the psychological impact of threats of harm, and not just whether there is a real chance of the threatened harm taking place ([168]).

As to the question of a Convention reason for the persecution, in the context of systemic discrimination against women and the failure of the state to protect them, challenging patriarchal norms (such as by leaving an abusive husband) can be seen as a political act, and lead to a real chance of serious harm upon return to their home country ([213]). It was found that these conditions applied in the case at hand. The applicable Convention grounds 'were political opinion, religion and membership of a particular social group, namely, women' ([214]).

All information relating to the particular case was redacted in the 'research copy' released by the Tribunal, to protect the identity of the claimant.