

BETWEEN:

NICK HOLLINGHURST

Appellant

-and-

(1) AN ADJUDICATOR
(2) LEAD ADJUDICATOR
(3) INITIAL RESPONDENT

Respondents

FINAL RULING

12 August 2021

Harry Samuels (Member of the Federal Appeals Panel)

Case Manager

1. I have been appointed as case manager for this appeal.

Background

2. This appeal arises out of the decision by the Adjudicator to summarily dismiss the Appellant's complaint. His complaint was against a party I have called the Initial Respondent for the purposes of this ruling.
3. The complaint was, in substance, identical to the complaint underlying my recent ruling in the case of Hayes v Adjudicator (No. 26/2021), and the two cases were linked. The Adjudicator made his determination in respect of both Hayes and the present case (i.e. one determination was produced which covered both of the cases).

Determination

4. I grant permission to appeal, allow the appeal without the need for an oral hearing, and remit it back to the Adjudicator for reconsideration in light of my ruling. I do so with a direction that this complaint continue to be linked to Complaint No. 833.

Reasons

5. As I set out in *Hayes*, the Federal Appeals Panel has jurisdiction under **Article 22.3(B) of the Federal Constitution** to hear appeals from an initial decision by an adjudicator to dismiss a complaint when such a dismissal infringes upon the complainant's rights under the Constitution.
6. Such jurisdiction will only exist where there has been a material failure in process, a material unfairness, or a serious error of reasoning such that the complainant's right to fair and reasonable consideration of their complaint has been infringed.
7. For the same reasons I set out in *Hayes* (which must be the case since the determination in *Hayes* was identical to the determination of the present complaint), I am of the view that the adjudicator in this case unfortunately fell into a serious error of reasoning.
8. In brief, this is because the adjudicator misinterpreted the definition of 'disrepute' in the party's Complaints Procedure, applied too high a bar for conduct which might "risk" (**Complaints Procedure r. 4.3.1**) bringing the party into disrepute, and considered irrelevant factors such as the complainant's alleged motivations in making the complaint.
9. Furthermore, I exercise my power to dispense with an oral hearing on this case for the same reasons as in *Hayes*. I therefore remit this case back to the Adjudicator to reconsider in light of my ruling and my discussion of the facts in *Hayes*.
10. I see no reason not to publish this determination. I therefore direct that it be published on the FAP section of the party website under the title "*Hollinghurst v Adjudicator*".