ACT CIVIL & ADMINISTRATIVE TRIBUNAL

EZEKIEL-HART v REIS & ANOR (Discrimination) [2017] ACAT 3

DT 7/2016

Catchwords: **DISCRIMINATION** – unfavourable treatment because of race and political conviction – whether unfavourable treatment occurred in access to premises or provision of services – whether decision not to approve an application for a practicing certificate was because of race or political conviction – whether a reasonable and definite inference of racism can be drawn from the circumstances – whether *Briginshaw* principle applies to the standard of proof – victimisation – vilification

Legislation cited: *ACT Civil and Administrative Tribunal Act 2008* s 32
Discrimination Act 1991 ss 7, 8, 15, 19, 20, 67A, 68
Human Rights Commission Act 2005 ss 53A. 53CA, 53E

Cases cited: *Briginshaw v Briginshaw* (1938) 60 CLR 386
Council of the Law Society of the ACT v Legal Practitioner 2 [2016] ACAT 120
Council of the Law Society of NSW v Sullivan [2017] NSWCATOD 2
CPS Management v The President and Members of the Equal Opportunity Board [1991] 2 VR 107
David Lander v Council of the Law Society of the ACT [2009] ACTSC 117
De Domenico v Marshall [1999] FCA 1305
Ezekiel-Hart v The Law Society of the ACT and Anor [2014] FCCA 658
Ezekiel-Hart v The Law Society of the ACT [2013] FCA 257
Ezekiel-Hart v The Law Society of the ACT & Ors [2012] ACTSC 103
Ezekiel-Hart and Child Support Registrar [2014] AATA 612
Gama v Qantas Airways Ltd (No 2) [2006] FMCA 1767
Kovac v The Australian Croatian Club Ltd [2014] ACAT 41
Nestle Australia Ltd v The President and Members of the Equal Opportunity Board [1990] VR 805
Nevil Abolish Child Support v Telstra Corporation Limited [1997] VADT 44
Ralph M Less Pty Ltd v Fort (1991) EOC 92-357
Tadawan v South Australia [2001] FMCA 25

Qantas Airways v Gama [2008] FCAFC 69
Sharma v Legal Aid (Qld) [2002] FCAFC 196

List of Papers/Texts cited: Attorney-General's Department, *Consolidation of Commonwealth Anti-Discrimination Laws Discussion paper*, September 2011
Allen D, *Reducing the Burden of Proving Discrimination in Australia*, Sydney Law Review Vol 31, 2009, 579
Drawing inferences of racial discrimination, *Federal Discrimination Law online*

Tribunal: Senior Member L Beacroft

Date of Orders: 24 January 2017
Date of Reasons for Decision: 24 January 2017

AUSTRALIAN CAPITAL TERRITORY)
CIVIL & ADMINISTRATIVE TRIBUNAL) DT 7/2016

BETWEEN:

EMMANUEL TAM EZEKIEL-HART
Applicant

AND:

ROBERT REIS
First Respondent

COUNCIL OF THE LAW SOCIETY OF THE ACT
Second Respondent

TRIBUNAL: Senior Member L Beacroft

DATE: **24 January 2017**

ORDER

The Tribunal orders that:

1. The application is dismissed.

……..
President G Neate AM
delivered for and on behalf of
Senior Member L Beacroft

REASONS FOR DECISION

1. Mr Ezekiel-Hart (the **applicant**) sought relief for discrimination on the grounds of race and political conviction, and vilification and victimisation. The application was against Robert Reis, (the **First Respondent**), and The Law Society of the Australian Capital Territory, (the **Second Respondent** or **Law Society**) which is the first respondent's employer. The reasons below explain why the ACT Civil and Administrative Tribunal (the **Tribunal or ACAT**) has dismissed the application, as set out in the order above.

2. In summary, the Tribunal found that there was no unfavourable treatment for the purposes of the *Discrimination Act 1991* (**Discrimination Act**) in relation to access to premises or provision of services on 23 February 2016. Also the Tribunal found that the decision not to approve the applicant's practicing certificate on 21 March 2016 was not because of race or political conviction. The Tribunal considered the evidence and could not draw a reasonable and definite inference of racism from the circumstances. The Tribunal found that there was not victimisation or vilification of the applicant. Given the serious nature of the applicant's allegations, the Tribunal found that the principle in *Briginshaw v Briginshaw* (1938) 60 CLR 336 (the ***Briginshaw* principle**) applied to the standard of proof in this case. However the Tribunal could make the findings above on the basis of the usual standard of proof due to the sheer weight of evidence in favour of the respondents.

Background

3. In a letter dated 29 June 2016 the ACT Human Rights Commission (the **Commission**) referred a complaint of Mr Ezekiel-Hart (the **applicant**) to ACAT under section 53A of the *Human Rights Commission Act 2005* (the **HRC Act**).[1] The referral letter set out the nature of the applicant's complaint, being allegations of discrimination by the respondents on various grounds, and victimisation and racial vilification. The referral letter also provided the applicant's complaint form with attachments, and various correspondence between the Commission and the parties. Before ACAT, the complaint is referred to as an application.

[1] Letter from ACT Human Rights Commission to ACAT, dated 29 June 2016, advising that the applicant requested that his complaint be referred to ACAT, setting out the nature of the complaint, and attaching various documents related to the complaint

4. Prior to the substantive hearing the parties exchanged a considerable amount of material which was before the Tribunal. The applicant served a number of subpoenas to give evidence and produce documents.

5. The matter was complicated due to the number of prior proceedings that had occurred between the parties on various legal bases. Aspects of this litigation history were relevant to the matter before the Tribunal, and are referred to where relevant in these reasons. Various documents filed by both parties presented their versions of this history.[2] The litigation history based on published judgments is that the applicant had made four main applications in various courts in 2009, 2011, 2012 and 2013.[3] The applicant obtained a default judgment due to the non-filing of a defence that was later set aside.[4] In each of his applications the applicant was finally unsuccessful and subject to adverse costs orders.

6. As early as 2011 the Law Society wrote to the applicant and noted that the accumulative sum of the cost orders awarded to them at that stage was $63,439.56.[5] These costs were not paid by the applicant, and the Law Society filed for the applicant's bankruptcy. After an unsuccessful review initiated by the applicant, the applicant became bankrupt on 6 June 2013.[6] At the substantive hearing before the Tribunal, evidence was provided from the National Personal Insolvency Index that the applicant remained an undischarged bankrupt on the ground that he "failed to return to Australia when requested."[7]

7. Relevant to the matter before the Tribunal was the most recent judgment by Neville J in *Ezekiel-Hart v The Law Society of the ACT and Anor* [2014] FCCA 658 which concerned various claims by the applicant including a claim of racial discrimination by

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2 Applicant's timeline, filed 21 September 2016; respondent's document, 'History of Proceedings between the Applicant and the Respondents', Exhibit R2 at the hearing on 3 November 2016

3 Neville J, *Ezekiel-Hart v The Law Society of the ACT and Anor* [2014] FCCA 658, page 12 at [40], Exhibit R1 at the hearing on 3 November 2016

4 Default judgment, dated 13 October 2011, attachment to applicant's submission, 'Applicant Submission in Opposition to the Respondent's Interim Applications dated 11 October 2016, Last Fight the Battle for the Survival of the Black Lawyers in ACT, Further Submissions Requested by the Tribunal' dated 9 November 2016

5 Letter from Law Society to applicant, dated 31 May 2011, attachment to applicant's submission, filed 14 November 2016

6 National Personal Insolvency Index, extracted 4 November 2016 filed in the respondent's tender bundle, filed 10 November 2016, tab 1

7 National Personal Insolvency Index, extracted 4 November 2016 in the respondent's tender bundle, filed 10 November 2016, tab 1

the Law Society under federal laws and the associated complaints regime.[8] In his judgment Neville J referred to the "essentially identical"[9] legal and factual nature of the applicant's claims in the matter before him and past applications and he referred in particular to two prior decisions: by Foster J in *Ezekiel-Hart v The Law Society of the ACT* [2013] FCA 257, and by Refshauge J in *Ezekiel-Hart v The Law Society of the ACT & Ors* [2012] ACTSC 103.

8. On 11 October 2016 the respondents applied to have the application before ACAT dismissed in whole or in part under section 32 of the *ACT Civil and Administrative Tribunal Act 2008* (the **ACAT Act**) because "the Applicant has been declared vexatious by the Federal Court of Australia", and/or because it was an 'abuse of process' given the issues had been dealt with in prior proceedings.[10] The respondents also applied to have most of the subpoenas served by the applicant for office-bearers and staff of the Law Society set aside under section 41(6) of the ACAT Act.

9. A hearing on the respondents' applications set out in paragraph 8 above was conducted on 3 November 2016 (the hearing on striking out the application), and three exhibits were provided by the parties at this hearing. The Tribunal made orders dated 14 November 2016 that dismissed "…so much of the Complainants application that relates to the discrimination complaint dealt with by Neville J in *Ezekiel-Hart v The Law Society of the ACT and Anor* [2014] FCCA 658, delivered on 4 April 2014", and the orders also set aside a number of the subpoenas issued by the applicant. In effect this resulted in the Tribunal considering the applicant's allegations in regard to two events that occurred during 2016, and hearing evidence from the applicant, the first respondent, (who is a staff member of the Law Society) and three witnesses the applicant had subpoenaed who were office-bearers or staff members of the Law Society.

10. During the proceedings for striking out the application, the second respondent voluntarily provided certain documents which the applicant had requested, to the applicant and the Tribunal. Also the respondents advised they did not wish to cross-examine two witnesses at the substantive hearing who had provided affidavits in support of some of the applicant's contentions at the substantive hearing. Finally, during the

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8 *Australian Human Rights Act 1986* and the *Racial Discrimination Act 1975*

9 Neville J, *Ezekiel-Hart v The Law Society of the ACT and Anor* [2014] FCCA 658, page 37 at [126], Exhibit R1 in hearing on 3 November 2016

10 Respondent's applications for interim or other orders – general, dated 11 October 2016 and related oral and written submissions

proceedings for striking out the application the applicant agreed that 'spent conviction' was not a ground relevant to him, and so the Tribunal dismissed by consent this aspect of his application prior to the substantive hearing.[11]

11. A hearing on the remaining substantive issues was held on 21 and 22 November 2016.

Conduct of the hearing

12. At the hearing on 21 and 22 November 2016 the applicant appeared in person and gave evidence. Mr Michael Phelps appeared for both respondents.

13. At the beginning of the hearing and at each resumption of the hearing the Tribunal requested that any issues about procedural matters or fairness be raised, and any that were raised were dealt with during the proceedings. During the hearing thirteen exhibits were provided by the parties, and five persons gave oral evidence, namely the applicant, Ms Sarah Avery (an elected Councillor of the second respondent and the Chair of the Council meeting on 21 March 2016), Ms Kathleen Lui (the second respondent's bookkeeper), Ms Robyn Guilfoyle (second respondent's receptionist) and Mr Robert Reis (the first respondent and the Professional Standards Manager, employed by the Law Society).

14. In the final minutes of the hearing, the applicant raised that the second respondent had failed to comply with order 4, in the order dated 14 November 2016, in relation to two members of the Council, Noor Blumer and Peter Woodhouse. The Tribunal raised with the applicant that he should have raised this issue earlier in the hearing given the opportunities to do so. Also the Tribunal noted that these Council members had given their apologies for the relevant Council meeting. The applicant raised this issue in a context where six other Council members who had attended the relevant Council meeting had already provided written evidence about any material they had received for the relevant Council meeting in compliance with the order dated 14 November 2016.[12] Further, the applicant had the opportunity at the hearing to cross-examine the Chairperson of the Council meeting, Sarah Avery, about any aspect of the Council meeting. Nonetheless, the applicant contended that the absence of the subpoenaed material was of significance to his case. The Tribunal ordered, in an order dated

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11 Orders 1 and 2, order dated 14 November 2016

12 Respondents' second tender bundle, part 2 – letters from Councillors in response to subpoena to produce, tabs 10 – 15: Catherine Coles, Phillipa Spence, Craig Painter, Martin Hockridge, Elizabeth Lee, Louise Vardenega

22 November 2016, that the second respondent fully comply with order 4, in the order dated 14 November 2016.

15. The second respondent submitted a letter from Mr Woodhouse, dated 24 November 2016, stating that the material he had received for the Council meeting of 21 March 2016 was the documents which were listed in his letter. The second respondent also submitted a letter from Ms Blumer, dated 5 December 2016, stating that she was unable to attend the meeting on 21 March 2016 and did not access or read any papers for that meeting. The list of documents provided in the letter from Mr Woodhouse was the same list of documents that each of the six Councillors and the Chair, Ms Avery, had previously confirmed in their evidence that they had received prior to the Council meeting,[13] and each of these documents had been previously made available by the second respondent for the proceedings.[14] The applicant had access to these documents prior to the hearing and had the opportunity to cross examine the Chairperson of the Council meeting on 21 March 2016 and three staff of the Law Society about any or all of these documents during the hearing.

16. In the applicant's reply to the subpoenaed evidence of Mr Woodhouse and Ms Blumer submitted by the second respondent, the applicant did not raise that any new issues arose from the material provided by the respondents after the hearing and did not request that the hearing be re-opened.[15] The Tribunal reviewed all-post hearing submissions by both parties and concluded that none of it, including the evidence of Mr Woodhouse and Ms Blumer, raised new issues, and there was therefore no necessity to re-convene the hearing.

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[13] Respondents' second tender bundle, part 2 – letters from Councillors in response to subpoena to produce, tabs 10 - 15

[14] Respondents' second tender bundle, part 1 – Council meeting of 21 March 2016, tabs 1-9

[15] Applicant's submission, 'Reply to Respondent's Documents submitted Friday 25 November 2016 with Information of Material Significance', dated 29 November 2016; applicant's submission, 'Reply to Respondent's Documents' submitted 5 December 2016 with 'Information of Material Significance', dated 7 December 2016

17. The uncontested facts were as follows:

    (a) The applicant attended the offices of the second respondent on 23 February 2016 in order to gain assistance in completing his online application for an unrestricted Practicing Certificate."[16]

    (b) The applicant's application in 2016 for a practicing certificate was not approved.[17]

18. The contested issues relate to each of the two events set out in paragraph 17 above and are as follows:

    (a) What is the standard of proof, more particularly does the *Briginshaw* principle,[18] which concerns the weightiness of the evidence required to meet the standard, apply in this case?

    (b) Did either respondent directly discriminate against the applicant in that they:

        (i) treated the applicant unfavorably;[19]

        (ii) because of the applicant's race and/or political conviction[20]; and

        (iii) in the area of work – professional or trade organisations[21], and/or access to premises[22] and/or provision of goods and services[23] ?

    (c) Did either respondent racially vilify the applicant?[24]

    (d) Did either respondent victimise the applicant?[25]

Legislative Framework

19. In summary, section 53A of the HRC Act provides that a complaint about an unlawful act under the Discrimination Act must be referred to ACAT in certain circumstances,

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16 Applicant's statutory declaration for application for practicing certificate, dated 22 February 2016, page 1, in respondents' second tender bundle, part 1 – Council meeting of 21 March 2016, tab 9
17 Letter to applicant from the second respondent, dated 5 April 2016
18 *Briginshaw v Briginshaw* [1938] 60 CLR 336
19 Section 8(2) of the *Discrimination Act 1991*
20 Section 8(2), 7(h) and 7(i) of the *Discrimination Act 1991*
21 Section 15 of the *Discrimination Act 1991*
22 Section 19 of the *Discrimination Act 1991*
23 Section 20 of the Discrimination Act
24 Section 67A of the *Discrimination Act 1991*
25 Section 68 of the *Discrimination Act 1991*

which occurred in this case by letter dated 29 June 2016. The letter set out the nature of the complaint, which in this case is threefold.

20. Firstly, there is an allegation by the applicant that the respondents discriminated against him[26] on the grounds of him having a protected attribute, being his political conviction,[27] race[28] and/or spent conviction.[29] The applicant consented during the proceedings before ACAT to having the claim on the grounds of spent conviction dismissed (see paragraph 10 above). He also clarified during the proceedings before ACAT that his complaint alleged direct discrimination,[30] that is he alleged that he was treated unfavourably because of one or more protected attributes.

21. Race includes "colour, descent, ethnic and national origin and nationality."[31] Political conviction is not defined in the Discrimination Act. As Professor Spender sets out in *Kovac v The Australian Croatian Club Ltd* [2014] ACAT 41 (the ***Kovac* case**), the weight of authority establishes that it refers to where a person holds a political belief "with a view to changing or influencing government…It is sufficient if the belief is one that 'bears on government' or involves the processes, policies or obligations of government…".[32]

22. The applicant's application at ACAT alleged discrimination in the area of work, that is membership of a professional or trade organisation,[33] and also discrimination in access to premises[34] and provision of goods and services.[35]

23. His application secondly alleged that he had suffered unlawful vilification on the ground of race, that is that the respondents had "incit[ed] hatred toward, revulsion of, serious

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26 As defined in section 8 of the *Discrimination Act 1991*
27 Section 7(1)(i) of the *Discrimination Act 1991*
28 Section 7(1)(h) and dictionary of the *Discrimination Act 1991*
29 Section 7(1)(o) of the *Discrimination Act 1991*
30 Hearing on 21 November 2016
31 Dictionary, *Discrimination Act 1991*
32 *Kovac v The Australian Croatian Club Ltd* [2014] ACAT 41, [80], citing cases of *CPS Management v The President and Members of the Equal Opportunity Board* [1991] 2 VR 107, *Nestle Australia Ltd v The President and Members of the Equal Opportunity Board* [1990] VR 805, *Ralph M Less Pty Ltd v Fort* (1991) EOC 92-357 and *Nevil Abolish Child Support v Telstra Corporation Limited* [1997] VADT 44
33 Section 15 of the *Discrimination Act 1991*
34 Section 19 of the *Discrimination Act 1991*
35 Section 20 of the *Discrimination Act 1991*

contempt for, or severe ridicule of him on the ground [of race] …other than in private."[36]

24. His application thirdly alleged that he had suffered victimisation, that is, the respondents had subjected, or threatened to subject him to a detriment because he had taken or proposed to take discrimination action.[37]

25. In regard to the applicant's alleged discrimination, section 53CA of the HRC Act provides that "it is a rebuttable presumption that discrimination has occurred" if the complainant establishes that the "treatment …is unfavourable" and the complainant presents evidence that "the treatment …is because of a protected attribute" in the absence of any other explanation.[38] In regard to the standard of proof, as set out by Professor Spender in the *Kovac* case the applicant must prove his case on the balance of probabilities. However, as also set out by Professor Spender in the *Kovac* case, there is a question of whether the *Briginshaw* principle, which concerns the weightiness of the evidence required to meet this standard, applies in a case.

26. When considering the cause of any unfavourable treatment, Professor Spender sets out the test for causation in the *Kovac* case as follows:

> *whether the applicant's* [protected attribute] *is, either alone or in combination with other reasons, a real, genuine and not insubstantial reason for the unfavourable treatment….so in determining whether the respondent* [in that case] *has treated the applicant unfavourably…,the Tribunal will take into account all reasons for doing the act other than those that are not real or genuine or insubstantial.*[39]

27. Section 53E of the HRC Act sets out the extent of the Tribunal's powers in regard to remedies for unlawful acts under the Discrimination Act. Section 53E of the HRC Act provides that where the Tribunal is satisfied that the respondent/s complained about engaged in an unlawful act, the Tribunal must make one or more of a range of orders, including that the respondent/s "not repeat or continue the unlawful act", "perform a stated reasonable act to redress any loss or damage", and/or "pay…a stated amount by way of compensation for any loss or damage…"[40]

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36 Section 67A(1)(d) of the *Discrimination Act 1991*
37 Section 68(1)(a) of the *Discrimination Act 1991*
38 Section 53CA(2)(a) and (b) of the HRC Act
39 *Kovac v The Australian Croatian Club Ltd* [2014] ACAT 41 at [90]
40 Subsections 53E(1) and (2) of the HRC Act

Applicant's Contentions

28. Before summarising the applicant's contentions, it is necessary to make some observations about the submissions and evidence provided by the applicant for these proceedings. The applicants' submissions and oral evidence were wide-ranging, for example the applicant's submission dated 3 November[41] dealt with matters already dealt with in the decision of Justice Neville mentioned above (see paragraph 7, 9 above).[42] Some of the applicant's submissions concerned the applicant's prior complaint under the *Racial Discrimination Act 1975* (Cth) rather than under the Discrimination Act.[43] Many of the applicant's submissions had significant overlap in that they presented the same contentions and re-stated the same history of events and evidence.

29. The applicant confirmed in his oral evidence that he regarded himself as fluent in English and that had been raised and educated in English.[44] Nonetheless, the manner of communication of the applicant was at times non-standard when compared with Australian standard English in that it was ungrammatical and used unusual phrasing. For example, in his witness statement dated 17 November 2016 he described an element of his application as follows:

> *The law Society, after my Application was made for renewal of certification, I strongly believe that because I am a Blackman, and have political view to expose illegal conduct against Black lawyers and seek to advertise it as a duty I owe to my electorate, the Law Society complaint to its self, judged me guilty by its self and destroy my livelihood with without taking me to Court or Tribunal……..*
>
> *…*
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> *…All the complaint must involve a Black person and a White person and the Black person fighting oppression to survive, or seeking justice and equity. The fact that the complaint is only when Black and White people are involved many members of my electorate had told me that such conduct is discriminatory, and I believe so…* [45]

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41 Applicant's submission, 'Applicant Submission in Opposition to the Respondent's Interim Applications, Last Fight the Battle for the Survival of the Black Lawyers in ACT', dated 11 October 2016, revised 9 November 2016 (Applicant Submissions dated 11 October, revised 9 November 2016)

42 Neville J, *Ezekiel-Hart v The Law Society of the ACT and Anor* [2014] FCCA 658, Exhibit R1 at the hearing on 3 November 2016

43 Applicant's reply to respondents documents submitted Friday 25 November 2016 with Information of Material Significance', received 29 November 2016 at [28], [35]

44 Oral evidence of the applicant in hearing 21 November 2016

45 Applicant's witness statement, dated 17 November 2016 at [15], [54]

30. Given the circumstances set out above, the Tribunal clarified the nature of the applicant's application with him at the beginning of the hearing, and clarified with him his contentions and evidence as the hearing proceeded. The applicant's contentions on the four contested issues in paragraph 18 above are summarised below.

Issue 1: Does the *Briginshaw* principle apply here?

31. The applicant in his oral and written submissions contended that the principle did not apply, and contended that the weight of jurisprudence on this issue supported his view.[46]

Issue 2: Did either respondent directly discriminate against the applicant?

32. The applicant alleged that discrimination is a reason for the unfavourable treatment of him by the respondents. The unfavourable treatment by the respondents he complained of, for the purposes of these proceedings, was being denied access to the second respondent's premises and services on 23 February 2016, and the respondents colluding to not approve his 2016 application for a practicing certificate.

33. There was conflicting evidence about what occurred on 23 February 2016 and as a result a contested issue was whether the applicant had received unfavourable treatment. The applicant attended the premises of the second respondent to sort out a problem he had encountered when trying to submit his 2016 online application for a practicing certificate. He contended that the receptionist, Ms Robyn Guilfoyle (the **receptionist**) and bookkeeper, Ms Kathleen Lui (the **bookkeeper**)[47] were serving him well at the premises of the Law Society. In the course of their service, they gave him access to an area behind reception that required a code to enter (the **secure area**), and that he was completing his online application there with the bookkeeper's assistance. While being assisted by the bookkeeper in this area, the applicant contended that the receptionist called the bookkeeper away after the receptionist had received a phone call. The applicant contended that he then heard a conversation between the bookkeeper and Mr Reis, about the applicant being there, including Mr Reis saying words to the effect, "he can do that outside, send him away from here now".[48] This was then followed by the bookkeeper returning with a changed "countenance", closing down the web page he was on and confirming with him that he was to leave.[49] He paid his fee and then left without finding out "what the actual problem was in relation to my earlier [application]

46 Applicant's submission, 'Reply to Respondent's Documents', dated 25 November 2016 at [17]
47 See witness affidavit of Robyn Guilfoyle, dated 17 October 2016
48 Applicant's witness statement, dated 17 November 2016 at [94]
49 Applicant's witness statement, dated 17 November 2016 at [94]-[95]

form".[50] However the applicant successfully submitted an online application at a later date.[51]

34. The applicant submitted statements from three witnesses who the applicant had contacted about his attendance at the premises of the Law Society. Mr Mpofu said that the applicant told him that "I had to be told to leave from inside the office, that I usually pass to attend meetings as a member of ….[a] Committee". [52] Ms Gindy said that on or about 23 February she saw the applicant and that he "was very worried and obviously upset he explained that he was treated like a nonentity by Mr Reis using Kathleen to send him out of the office of the ACT Law Society".[53] Ms Moutrage said that she received two text messages from the applicant in the morning of 23 February 2016, the later one being at 10:58AM and it said:

> *It was Mr Reis saying, why do you allow that one inside here, she starting to explain he said words to tge [sic] effect, no, let him go and do whatever he has to do outside not here. However the poor lady came back to confirm with me what she wanted to do and took me outside at the front desk to complete her discussion with me…* [54]

35. The applicant cross examined the witnesses for the respondents about the alleged incident on 23 February 2016, namely Mr Reis, the bookkeeper and the receptionist. In the oral evidence each witness confirmed the accuracy of their affidavits. Their evidence was not supportive of the applicant's account of what happened in that they all confirmed that Mr Reis was not aware of the presence of the applicant in the premises until after the applicant had left. The applicant's contention about unfavourable treatment on 23 February 2016 was linked to the role that the applicant contended Mr Reis had in the alleged incident. The applicant contended in his written and oral submissions and in his cross-examination of Mr Reis that Mr Reis holds a discriminatory attitude about the applicant: "Mr Reis used the ACT Law Society to consciously discriminate against me, bully me, treat me unfavourable [sic] because of my colour and political views…intimidate, humiliate and vilify me for questioning his

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50 Applicant's witness statement, dated 17 November 2016 at [95]
51 Applicant's online application for practicing certificate 2016 filed in the respondent's second tender bundle, tab 9
52 Witness statement of Cebelihle Mpofu, dated 19 September 2016 at [24]
53 Witness Statement of Laila Gindy, dated 19 September 2016 at [3]
54 Witness Statement of Mona Moutrage, dated 19 September 2016 at [8]

authority…:",[55] He contended in essence that it was Mr Reis who caused him to be treated unfavourably on 23 February 2016.

36. The evidence of the bookkeeper and the receptionist were inconsistent in some respects, and the bookkeeper's evidence was not consistent with her affidavit in some respects, as set out in paragraphs 37 and 38 below.

37. In her affidavit, the bookkeeper gave evidence that "while [the applicant] was attending to his application I spoke to our Receptionist…[who] mentioned that Mr …Reis (Rob) had previously stated that [the applicant]was not to be allowed access to the secure part of the office."[56] In her affidavit she further stated that she "went back to the [applicant] and helped with his enquiries, and then escorted him out of the secure area …" Her affidavit stated that after the applicant left the office she then went to "Rob's office to inform him that [the applicant] had visited the secure part of the office…[and she recalled] Rob responding with words to the effect of, "That's OK, but because the Law Society has a number of difficult issues with him at the moment he should not generally be allowed in the secure area".[57]

38. In her oral evidence, the bookkeeper said that the receptionist entered the code to allow the applicant into the secured area. When asked about interactions with the receptionist while the applicant was in the secure area, the bookkeeper did not specifically mention the receptionist advising her about the applicant not being allowed in the secure area.[58] The receptionist in her oral evidence said that she had limited recall of the event, however she said that she was not aware of anyone not allowed in the secure area, which is contrary to the evidence of the bookkeeper in her affidavit[59](see paragraph 37 above). The bookkeeper agreed that the applicant did not complete the online form while at the premises. Her oral evidence was in effect that she gave her usual service, that is showing the applicant on the computer in the secure area how to complete his online application in his own time elsewhere, and then taking him to the reception desk where he paid his fee. Her oral evidence was that she spoke to Mr Reis after the

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55 Applicant's witness statement, dated 17 November 2016 at [30]
56 Affidavit of Kathleen Lui, dated 18 August 2016 at [8]
57 Affidavit of Kathleen Lui, dated 18 August 2016 at [11] – [12]
58 Affidavit of Kathleen Lui, dated 18 August 2016 at [11] – [12]
59 Oral evidence Robyn Guilfoyle, 23 November 2016; Affidavit of Kathleen Lui, dated 18 August 2016 at [8]

applicant had left and that he said words to the effect, "don't invite members of the public into the secure area".

39. Considering now the decision by the Law Society to not approve the applicant's 2016 application for a practicing certificate, the fact that the applicant's practicing certificate application was not approved is unfavourable treatment. The contested issue was whether this adverse decision for the applicant was because of his race and/or political conviction, as the applicant contended. In essence, the applicant contended that his race and/or political conviction were each "a real, genuine and not insubstantial reason for [any unfavourable] treatment…" (see paragraph 26 above).[60]

40. Considering the applicant's contentions about race discrimination, in summary the applicant repeated a contention throughout his oral and written submissions that the two matters before the Tribunal involved discrimination against him because of his "race or ethnic origin",[61] "African descent",[62] a "Blackman and Nigerian"[63] and a "Black lawyer"[64]. The applicant confirmed that Neville J, in earlier proceedings referred to above (paragraph 7, 9 above) had dismissed the applicant's contention that the Law Society had been racially discriminatory, however the applicant regarded that decision as a result of Neville J being "misled".[65]

41. In regard to the Council decision not to approve his application for a practicing certificate on 21 March 2016, in summary the applicant raised issues about the accuracy of the material put before Council by the respondents and also its comprehensiveness given that his response to the 2013 complaint was not provided to Council for the meeting. He was also concerned that the 2013 complaint against him was used as a basis for the decision given its age, and that his bankruptcy was a basis for the decision when he regarded it as a "racial bankruptcy"[66] which in any case should have been discharged due to the passage of time. The applicant was also concerned that material relevant to a child support matter was before the Council.

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60 *Kovac v The Australian Croatian Club Ltd* [2014] ACAT 41 at [90]
61 Applicant's submission, dated 5 December 2016 at [3]
62 Applicant's witness statement, dated 17 November 2016 at [32]
63 Applicant's witness statement, dated 17 November 2016 at [16]
64 Applicant's witness statement, dated 17 November 2016 at [15]
65 Applicant Submissions dated 11 October, revised 9 November 2016 at [14]
66 Applicant Submissions dated 11 October, revised 9 November 2016 at [38]

42. The Tribunal notes that Neville J considered some issues between the parties that were also relevant to the proceedings before the Tribunal. These issues were firstly, whether racial discrimination is evidenced by a complaint about the applicant raised internally by the second respondent, by Mr Larry King the then executive Director of the ACT Law Society, dated 17 September 2013 (the **2013 complaint against the applicant**).[67] Secondly, an issue that both proceedings have in common was whether racial discrimination is evidenced by the applicant's bankruptcy as a result of unpaid costs orders arising from his litigation against the Law Society.[68] These two matters among others formed the basis for the applicant not being approved to hold a practicing certificate in the proceedings before Neville J and also formed part of the basis for the applicant not being approved to hold a practicing certificate in 2016 in the proceedings before the Tribunal.[69]

43. Neville J's decision had considered in some detail the evidence including that provided by the applicant about whether racial discrimination had occurred, and found against the applicant in no uncertain terms (refer to paragraph 56 below). However the applicant contended in the proceedings before ACAT that his contention of racial discrimination had not been considered fully in any of the prior litigation since "no evidence was read in open court or allowed to be cross examined",[70] and in any case the proceedings by the ACAT concerned a new 2016 decision by the second respondent and incident in February 2016.

44. The applicant contended in much of his evidence that the Tribunal should infer that racial discrimination had occurred because "there is no other reason for such inequitable treatment".[71] He cited authority to support his contention: "it is unusual to find direct evidence of racial discrimination, and the outcome of a case will usually depend on

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67 See respondent's second tender bundle, part 1 – Council meeting of 21 March 2016, received 18 November 2016. The Law Society decided to "commence disciplinary action against the applicant arising from the a complaint by Mr Larry King" at its meeting on 17 August 2015 (professional standards memorandum, tab 2), and the details of the 2013 complaint are set out in draft application for disciplinary proceedings (tab 3)

68 Extract of personal insolvency index, dated 3 March 2016, filed in the respondents' second tender bundle, part 1 – Council meeting of 21 March 2016, tab 7

69 Respondent's second tender bundle, received 18 November 2016, tab 1, part 1, minutes of Council meeting 21 March 2016; letter from Mr Reis, on behalf of the Law Society, to the applicant, dated 5 April 2016, respondent's tender bundle, filed 10 November 2016, tender bundle, tab 4

70 Applicant Submissions dated 11 October, revised 9 November 2016 at [14]

71 Applicant's 'Reply to Respondents' Documents submitted Friday 25 November 2016 with Information of Material Significance', dated 29 November 2016 at [13]; applicant's submission, 'Reply to Respondent's Documents', dated 5 December 2016 at [3]

what inferences it is proper to draw from the primary facts."[72] He further raised that the history of events between him and the respondents which he contended continued in 2016 whereby he "continued to be treated in the manner that I am being treated" demonstrated racial discrimination.[73]

45. In regard to the incident on 23 February 2016, his main contention was that he "was singled out not to be allowed when Ms Lui takes other people to the same place and computer…"[74] In regard to the decision not to approve his practicing certificate he raised that the respondents colluded to prevent him holding a practicing certificate, and that the decision not to approve his practicing certificate was based on grounds that arose from racial discrimination.

46. The applicant contended that Mr Reis, being "the person in charge of complaint and certificate"[75], had showed a racist attitude towards the applicant since 2008-09 (see paragraph 35 above), indeed "desperate to discriminate…since 2008",[76] demonstrated by a series of alleged behaviours and incidents,[77] for example:

(a) in 2008, allegedly "encouraging a lady sitting at my left side to make a complaint against my employer of African descent";[78]

(b) Mr Reis allegedly boasting in 2009 that "he will not see me a Blackman and Nigerian hold a certificate",[79] and Mr Reis writing in his reply to the applicant's email about renewing his practicing certificate in 2013 as follows: "Rest assured your so called "Blackman" status has nothing whatsoever to do with the Law Society's dealings with you in the past, the present, or the future";[80]

(c) Mr Reis marking one test and reviewing other course exercises of the applicant, and then advising the applicant that he had failed to satisfactorily complete the

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72 Applicant's submission, 'Applicant's Reply to Respondents documents submitted Friday 25 November 2016 with Information of Material Significance', received 29 November 2016, [14], citing *Sharma v Legal Aid (Qld)* [2002] FCAFC 196 at [40]; Applicant's submission, 'Reply to Respondent's Documents', dated 5 December 2016 at [2]

73 Applicant's submission, 'Reply to Respondent's Documents', dated 25 November 2016 at [30]

74 Applicant Submissions dated 11 October, revised 9 November 2016 at [18]

75 Applicant's witness statement, dated 17 November 2016 at [16]

76 Applicant's submission, dated 5 December 2016 at [21]

77 Applicant's witness statement, dated 17 November 2016 at [16]

78 Applicant's witness statement dated 17 November 2016 at [35]

79 Applicant's witness statement dated 17 November 2016 at [16]

80 Email exchange between applicant and Mr Reis, 2013, Exhibit A5 in hearing on 21 and 22 November 2016

Practice Management Course[81], resulting in his application for an unrestricted practicing certificate being refused;[82]

(d) Mr Reis allegedly advising a member of the public Mr Mpofu "don't go to [the applicant] find someone else [the applicant] cannot help you";[83]

(e) Mr Reis and the Law Society pursued the bankruptcy of the applicant yet they "allowed White lawyers to pay installments including a lawyer who was allowed …to $100,000 [sic] in 4 years installments";[84]

(f) Mr Reis colluding with the Law Society to raise and maintain a complaint about the applicant when no client had complained and the applicant had no conviction, and which the applicant contended was in retribution "simply for taking them to court";[85]

(g) Mr Reis on the 23 February 2016 ensuring that the applicant "was sent away…[leaving the applicant] questioning why does this man so hated me and not forget old issues and move on";[86] and

(h) in 2016, continuation of behaviours by Mr Reis in concert with the Law Society to ensure that his practicing certificate again was not approved.

47. In regard to the bankruptcy, the applicant contended that the respondents were determined to make the applicant bankrupt and so prevent him obtaining a practicing certificate. An offer to settle all matters between the parties had been made by the applicant during earlier proceedings.[87] Prior to the bankruptcy the applicant had made an offer dated 5 April 2013 that presented three options for repayment by the applicant

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81 Applicant's complaint form submitted to Australian Human Rights Commission, dated 1 July 2013 at [31]-[45]; minute paper from Mr Reis to executive regarding practice management course, dated 8 September 2008, attachment to copy of applicant's affidavit dated 31 May 2013; letter from Mr Reis, on behalf of the Law Society to the applicant, dated 12 September 2008, first and second respondent's further written submission, dated 10 November, tender bundle, tab 7

82 Letter from the Law Society to applicant, dated 30 September 2008, first and second respondent's further written submissions, dated 10 November, tender bundle, tab 11

83 Applicant's witness statement dated 17 November 2016 at [55]

84 Applicant's witness statement dated 17 November 2016 at [49]

85 Applicant's witness statement dated 17 November 2016 at [51]

86 Applicant's witness statement dated 17 November 2016 at [96]

87 Letter from applicant to the Law Society, dated 28 June 2011, attached to the complaint to the ACT Human Rights and Discrimination Commissioner, dated 8 April 2016; letter from applicant to the Law Society, annexure 17, date unstated, copy of applicant's affidavit, dated 31 May 2013

of the outstanding costs orders,[88] however this was not accepted and the bankruptcy proceeded. He contended that "white lawyers" were allowed better options than bankruptcy, for example paying off the debt.[89] He contended that his bankruptcy should have ended in 2016, given he had kept the Trustee and the respondents informed of his arrangements to be overseas beyond 2014.[90] The applicant contended that the bankruptcy was a "racial bankruptcy",[91] in that it "was obtained for ulterior motive of taking my certificate and stopping me from taking action against the respondents."[92] The applicant provided evidence of other practitioners who owed money to the second respondent, one in the sum of $100,000,[93] being given time to repay without their practicing certificates being refused or bankrupted.[94] During the proceedings the applicant was under the belief that he was a discharged bankruptcy, and when presented with an extract from national personal insolvency index that showed he was not, he queried whether this showed evidence that "the Respondents had conspired to extend it".[95]

48. In regard to the 2016 decision to not approve the applicant's practicing certificate, the applicant contended that the Council in its meeting on 21 March 2016 "had no balanced knowledge of what transpired between 2008 to 2013"[96], Mr Reis "misled" the Council[97], "there was no agenda" and the minutes were subsequently "concocted".[98] The applicant contended that since the respondents "avoided bringing all these to cross examination [being the Councillors] …it should be held against the respondents."[99]

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88 Emailed letter from the applicant to the Law Society, dated 5 April 2013, annexure 16, applicant's submission, 'Applicant Submission in Opposition to the Respondent's Interim Applications, Last Fight the Battle for the Survival of the Black Lawyers in ACT', dated 11 October 2016

89 Applicant's oral submissions and evidence at the hearing on 21 November 2016

90 Applicant Submissions dated 11 October, revised 9 November 2016 at [49]-[51]

91 Applicant Submissions dated 11 October, revised 9 November 2016 at [38]

92 Copy of applicant's affidavit, dated 31 May 2013 at [3]

93 *Council of the Law Society of the ACT v Legal Practitioner 2* [2016] ACAT 120

94 For example: applicant's submission, 'Applicant Submission in Opposition to the Respondent's Interim Applications, Last Fight the Battle for the Survival of the Black Lawyers in ACT', dated 11 October 2016 at [37]; annexures 2-4, applicant's complaint, 'Complainant Response to Letter and Updates', dated 3 June 2016; OR 34/2015 a decision of ACAT, annexure 7 to the applicant's witness statement, dated 17 November 2016

95 Applicant Submissions dated 11 October, revised 9 November 2016 at [51]

96 Applicant's submission, dated 5 December 2016 at [32]

97 Applicant's submission, dated 5 December 2016 at [30]

98 Applicant's submission, dated 5 December 2016 at [7]

99 Applicant's submission, dated 5 December 2016 at [4]

49. The applicant was particularly concerned that the material before the Council at its meeting in 2016 did not include his response[100] to the 2013 complaint against the applicant dated 17 September 2013 (refer to paragraph 41).[101] During the proceedings the applicant vigorously criticised the substance of this complaint, in essence contending that since it was based on matters that arose during his litigation against the respondents it was punishment for him pursuing litigation. He contended that it amounted to "double punishment"[102] given the litigation also resulted in him facing adverse costs orders. He contended that this complaint should not have been before the Council because it had not been properly processed by the respondents and was three years old.[103] The applicant contended that when he had submitted his response in 2013 "the whole matter died a natural death".[104]

50. In regard to his claim of discrimination due to his political conviction, the applicant contended that he has "a political duty to expose danger to any race through conducts of those manning [sic] instrumentalities of government",[105] "in obedience to my father's teaching I learned how to speak out"[106], and holds "a political view to expose the illegal conduct against Black lawyers."[107] He contended that these views were known to the respondents. He also contended that his political activities including writing to a Minister in the ACT government about these issues,[108] demonstrating,[109] standing as a candidate in elections and applying for leadership positions of a political nature[110], were known to the respondents. He contended that the respondents discriminated against him because of his political conviction and activities, giving the example that he attended a

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[100] Applicant's submission, dated 5 December 2016 at [21], referring to the applicant's response '17/18 September 2013 complaint response to All Members of Council', attachment to applicant's submission, 'Applicant Submission in Opposition to the Respondent's Interim Applications, Last Fight the Battle for the Survival of the Black Lawyers in ACT', dated 11 October 2016

[101] Annexure 5, applicant's complaint, 'Complainant Response to Letter and Updates', dated 3 June 2016

[102] Applicant's witness statement, dated 17 November 2016 at [57]

[103] Applicant's complaint, 'Complainant Response to Letter and Updates', dated 3 June 2016 at [47]

[104] Applicant's submission, 'Applicant Submission in Opposition to the Respondent's Interim Applications, Last Fight the Battle for the Survival of the Black Lawyers in ACT', dated 11 October 2016, revised 9 November 2016 at [34]

[105] Applicant's submission, dated 5 December 2016 at [23]

[106] Applicant's witness statement, dated 17 November 2016 at [5]

[107] Applicant's witness statement, dated 17 November 2016 at [15]

[108] For example, copy of letter to Deputy Chief Minster and Attorney-General of the ACT, dated 4 April 2016, annexure 2 to the applicant's witness statement, dated 17 November 2016

[109] Applicant's 'Reply to Respondents' Documents submitted Friday 25 November 2016 with Information of Material Significance', received 29 November 2016 at [4]

[110] Applicant's oral submissions and evidence at the hearing on 21 November 2016

public protest on 13 April 2014 and " it was this exercise of my right …that amongst other reasons led Mr Phelps…recommended [sic] in 2014 to take me out of the roll…[111] In support of his contentions about the discrimination because of his political conviction, the applicant cited the case of *David Lander v Council of the Law Society of the ACT* [2009] ACTSC 117 (the ***David Lander* case**).

Issue 3: Did either respondent directly discriminate against the applicant in the area of work and/or access to premises and/or provision of goods and services?

51. The applicant contended, in relation to the alleged incident on 23 February 2016, that he had been discriminated against in 'access to premises' (section 19, Discrimination Act) and 'provision of goods, services and facilities' (section 20, Discrimination Act). In relation to the Council decision on 21 March 2016 not to approve his application for a practicing certificate, he contended that he had been discriminated against in 'membership of a professional or trade organisation' (section, 15 Discrimination Act) and 'employment' (section 10, Discrimination Act).

Issue 4: Did either respondent victimise the applicant?

52. The applicant's contention that he was victimised due to his discrimination complaint about the respondents overlaps with his contention that he was discriminated against for his political conviction. In essence he contended that a reason the matters in 2016 occurred, the 2013 complaint was raised by the Law Society against him and his bankruptcy was pursued by the respondents, was that "I made a complaint to government as my political rights and to the courts seeking my rights...".[112]

Issue 5: Did either respondent racially vilify the applicant?

53. The applicant's contentions about vilification mostly arose from the alleged statements made by Mr Reis to Mr Mpofu that in essence gave the message "don't go to Emmanuel find someone else Emmanuel can't help you". [113]

Respondent's Contentions

54. The respondent's contentions against the four issues listed in paragraph 18 above are summarised below.

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[111] Applicant's 'Reply to Respondents' Documents' submitted Friday 25 November 2016 with 'Information of Material Significance', received 29 November 2016 at [6]

[112] Applicant's witness statement, dated 17 November 2016 at [25]

[113] Applicant's witness statement, dated 17 November 2016 at [55]

Issue 1: Does the principle in the *Briginshaw* case apply here?

55. The respondents in their oral submissions contended that the principle did apply given the seriousness of the allegations.

Issue 2: Did either respondent directly discriminate against the applicant?

56. Overall, the respondents denied any discrimination on any grounds against the applicant. They contended that the applicant received the usual service at the second respondent's premises on 23 February 2016. They contended that the decision to not approve the applicant's practicing certificate at the Council meeting on 21 March 2016 was based on reviewing evidence before the Council that supported a finding that he is not a "fit and proper person" under the *Legal Profession Act 2006*.[114] While the 2016 decision was not before the courts in prior proceedings, whether discrimination was a reason for previous refusals by the Law Society on some over-lapping grounds had been considered by various courts in prior proceedings. This prior litigation was considered in detail by Neville J in *Ezekiel-Hart v The Law Society of the ACT and Anor* [2014] FCCA 658,[115] who reviewed the decisions of Foster J in *Ezekiel-Hart v The Law Society of the ACT* [2013] FCA 257 and Refsauge J in *Ezekiel-Hart v The Law Society of the ACT& Ors* [2012] ACTSC 103 among other proceedings. Neville J made strongly worded findings: "in none of the correspondence to which I have referred is there any hint of conduct that could remotely, let alone reasonably, sustain – by inference or otherwise – the claims asserted by Mr Ezekiel-Hart [which included a claim of racial discrimination]."[116]

57. The respondents' specific responses to matters contended by the applicant were as follows. In regard to the alleged incident on 23 February 2016, Mr Reis's evidence was that he was not aware of the applicant being at the premises until after he had left and Ms Lui informed him.[117] On this basis Mr Reis contended that he could not have orchestrated the removal of the applicant from the premises as the applicant alleged. In any case the applicant successfully submitted an online application.

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[114] Respondent's second tender bundle, received 18 November 2016, tab 1, part 1, minutes of Council meeting 21 March 2016

[115] Neville J, *Ezekiel-Hart v The Law Society of the ACT and Anor* [2014] FCCA 658, page 37, Exhibit R1 at the hearing on 3 November 2016

[116] Neville J, *Ezekiel-Hart v The Law Society of the ACT and Anor* [2014] FCCA 658, page 37 at [54], Exhibit R1 at the hearing on 3 November 2016

[117] Oral evidence Robert Reis, 2 November 2016; affidavit of Robert Reis, dated 19 August 2016, at [9]

58. In regard to the decision of Council on 21 March 2016 to not approve the applicant's application for a practicing certificate, the respondents contended that the decision had been properly made and that the information before the Council was relevant, accurate and comprehensive. The respondents contended that there was an agenda and provided an extract of the agenda showing the applicant's matter under the heading "Confidential matters", as Item 10(c).[118] Under the order dated 14 November 2016, six of the eight Councilors who the applicant had sought to subpoena, including the Chair Sarah Avery, each confirmed either in oral or written evidence that they had received seven documents in relation to the decision not to approve the applicant's practicing certificate.[119] Councilors Ms Blumer and Mr Woodhouse did not attend the meeting, however Mr Woodhouse confirmed that he had received seven documents, being the same documents as those present. [120] Ms Blumer advised that she had not accessed the information for the meeting since she was not attending.[121]

59. A key document at the Council meeting on 21 March 2016 was a professional standards memorandum dated 17 March 2016, with seven attachments,[122] which was drafted by Mr Reis. The material before the Council did not include the applicant's response to the 2013 complaint against him, however the respondents contended that this was not essential to the decision-making of the Council given the objective nature of many of the matters before Council for example the applicant then and now is a confirmed bankrupt and has an unresolved complaint against him. An extract of the Minutes of the meeting was provided by the respondents in evidence, setting out a summary of issues and details of the decision not to approve the applicant's practicing certificate as follows:

> [the applicant] *is not a fit and proper person to hold a practicing certificate pursuant to sections 11(1)(b)* [whether the person had been an insolvent], *11(1)(f)* [whether the person is currently subject to an unresolved complaint etc] *and 36(2)* [suitability and other relevant matters] *of the Legal Profession Act 2006*.[123]

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[118] Extract of agenda for Council meeting 21 March 2016, Exhibit R3 at the hearing on 21-22 November 2016

[119] Oral evidence of Ms Sarah Avery on 22 November 2016 and respondent's second tender bundle, received 18 November 2016, part 2

[120] Letter from Mr Woodhouse, dated 24 November 2016

[121] Letter from Ms Blumer, dated 5 December 2016

[122] Respondent's second tender bundle, received 18 November 2016, tab 2, part 1

[123] Extract of minutes of the Council meeting of the Law Society, dated Monday 21 March 2016, respondent's second tender bundle, received 18 November 2016, tab 1, part 1

60. In relation to the 2013 complaint against the applicant, the respondents contended that the complaint raised a range of legitimate issues, being "Vexatious Proceedings, Communications with the Court and Judicial Criticism, and Threatened communications".[124] The complaint had not been processed to a conclusion, that is been dismissed or the Law Society had taken action against the applicant,[125] in the usual timeframes at the time of the decision or at the hearing. The respondents contended that this was due to the necessity to resolve the previous proceedings between the parties and also because the Law Society "was unaware of the whereabouts of [the applicant] other than he was overseas"[126] . The Council had resolved to commence disciplinary proceedings against the applicant arising from the 2013 complaint at a meeting on 17 August 2015.[127] The respondents only became aware that the applicant had returned to Australia in early 2016,[128] and then the current discrimination proceedings before the ACAT were initiated by the applicant. The respondents contended that processing the 2013 complaint against the applicant in the usual way was made difficult due to the applicant's behavior. The applicant was overseas without approval from the Bankruptcy Trustee, who had given approval for a short trip in 2014 but not to stay until 2016,[129] and also in contravention of a revoked departure authorization certificate arising from the applicant's non-compliance with child support laws and responsibilities since 2007.[130]

61. In regard to the bankruptcy of the applicant due to unpaid costs orders owed to the Law Society, the respondents agreed that in some cases where costs are owed to the Law Society an agreed repayment arrangement is put in place. The respondents contended that in the case of the applicant's offer to settle earlier matters[131] and then later his 2013

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124 Exhibit A6, letter to applicant from the second respondent, dated 18 September 2013

125 'ACT Law Society Complaint Management Process Brochure', attachment to submission letter by respondents, dated 25 November 2016

126 Professional standards memorandum, dated 17 March 2016, respondents' second tender bundle, part 1 – Council meeting of 21 March 2016, tab 2

127 Professional standards memorandum, dated 17 March 2016, respondents' second tender bundle, part 1 – Council meeting of 21 March 2016, tab 2

128 Professional standards memorandum, dated 17 March 2016, respondents' second tender bundle, part 1 – Council meeting of 21 March 2016, tab 2

129 Exhibit A9, letter from bankruptcy trustee Kazar Slaven about overseas travel approval, dated 15 July 2014

130 *Ezekiel-Hart and Child Support Registrar* [2014] AATA 612, respondents' second tender bundle, part 1 – Council meeting of 21 March 2016, tab 4

131 Letter from applicant to the Law Society, copy of applicant's affidavit, dated 31 May 2013 annexure 17

offer to repay $56,000 to the second respondent[132], these offers involved the second respondent agreeing to a condition that the applicant's practicing certificate be re-instated. The respondents maintained that this was their understanding of the offer,[133] although the wording of the offer in evidence before the Tribunal does not clearly put this as a condition.[134] In any case, the Law Society contended that it cannot issue a practicing certificate unless the requirements under the *Legal Profession Act 2006* are met and the Council was not so satisfied of this in regard to the applicant at the time of these offers. The respondents contended that on the date of the 2016 decision (and indeed at the date of the hearing before ACAT) the applicant remained an undischarged bankrupt, and that this was due to the applicant's own behavior in that he had "failed to return to Australia when requested". [135]

62. Mr Reis denied that he held discriminatory attitudes towards the applicant. In regard to matters contended by the applicant in paragraph 46 above, Mr Reis's evidence was in essence that he denied doing discriminatory acts or saying discriminatory or vilifying words. For example, when Mr Reis replied to the applicant's email about renewing his practicing certificate in 2013 and referred to the applicant's so called 'Blackman status', Mr Reis used inverted commas around the phrase 'Blackman' to indicate that he was quoting from the applicant's own email to Mr Reis in his email reply that aimed to explain that he simply denied that this status was the basis for any decision-making.[136] In regard to other matters raised by the applicant in paragraph 46 above, Mr Reis gave evidence that he had simply done his job. For example, in relation to the enquiry by Mr Mpofu about the applicant, Mr Reis gave evidence that he had informed him orally and in a letter about the nature of the applicant's practicing certificate which meant that the applicant "is not permitted to represent [Mr Mpofu]'.[137] Refshauge J had found in

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[132] Emailed offer, dated 5 April 2013, applicant's submission, 'Applicant Submission in Opposition to the Respondent's Interim Applications, Last Fight the Battle for the Survival of the Black Lawyers in ACT', dated 11 October 2016, annexure 16

[133] Second respondent's oral submissions and evidence 22 November 2016

[134] Letter from applicant to the second respondent, copy of applicant's affidavit, dated 31 May 2013 annexure 17

[135] Extract of personal insolvency index, dated 3 March 201, respondents' second tender bundle, part 1 – Council meeting of 21 March 2016, tab 7

[136] Email exchange between applicant and Mr Reis, 2013, Exhibit A5 at the hearing on 21 and 22 November 2016

[137] Exhibit R2, letter from Mr Reis to Mr Mpofu, dated 23 December 2008 at the hearing on 21-22 November 2016

previous proceedings that 'the claim [set out in this letter by Mr Reis to Mr Mpofu] is true….There is no cause of action maintainable arising…"[138]

Issue 3: Did either respondent directly discriminate against the applicant in the area of work and/or access to premises and/or provision of goods and services?

63. In relation to the alleged incident on 23 February 2016, the respondents denied that the applicant had been discriminated against in 'access to premises' (section 19 of the Discrimination Act) and 'provision of goods, services and facilities' (section 20 of the Discrimination Act). They contended that Mr Reis didn't know that the applicant was being served until after he had left. They contended that the applicant received the usual service and did at a later date successfully submit his online application. On this basis they argued that the applicant had not received unfavourable treatment (section 8(2) of the Discrimination Act).

64. In relation to the Council decision on 21 March 2016 not to approve his application for a practicing certificate, the respondents contended that since the applicant was not an employee he was not able to be discriminated against in 'employment' (section 10 of the Discrimination Act). They contended that he had not been discriminated against in "membership of a professional or trade organisation" (section 15 of the Discrimination Act) for the reasons set out in paragraphs 56 to 62 above.

Issue 4: Did either respondent victimize the applicant?

65. The respondents in essence contended that his discrimination allegations were not fully understood by them until he lodged his complaint to the Commission – while he did raise race discrimination in the proceedings before Neville J resulting in his 2014 decision this was only one of many claims that the applicant had pleaded and not prominent. Furthermore, the 2016 decision to not approve the applicant's practicing certificate was largely based on matters that arose well before the applicant had lodged his complaint to the Commission, indeed in 2014 or prior to that, for example the 2013 complaint against the applicant and the 2014 bankruptcy which resulted from costs orders in prior proceedings. The respondents contended that the decision not to approve the applicant's practicing certificate was made in accordance with the *Legal Profession Act 2006* and not in reaction to any threatened or acted upon discrimination complaint.

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[138] *Ezekiel-Hart v The Law Society of the ACT & Ors* [2012] ACTSC 103, page 18 at [77]

Issue 5: Did either respondent racially vilify the applicant?

66. The respondents denied any vilification of the applicant. Mr Reis denied the allegation by the applicant in paragraphs 46 and 53 regarding vilification of the applicant when communicating with Mr Mpofu, as set out in paragraph 62 above.

Findings and Decision

Issue 1: Does the principle in the *Briginshaw* case apply here?

67. The applicant must prove his case on the balance of probabilities. The Discrimination Act is exemplary legislation[139] in that it provides for a rebuttable presumption that discrimination has occurred if the applicant proves that the treatment was unfavourable and in the absence of any other explanation that this was because of the protected attribute, in this case race and/or political conviction (section 53CA of the HRC Act). However there was an issue in this case about whether the *Briginshaw* principle applied (refer to paragraphs 31 and 55 above). As mentioned above (refer to paragraph 25 above), Professor Spender in the Kovacs case explained that "*Briginshaw* is authority for the proposition that the more serious the allegation, the more weighty the evidence must be for the Tribunal to be satisfied that it is proven."[140]

68. In the *Kovac* case the Tribunal found that the *Briginshaw* principle did not apply where a club, which relied on patronage of club members, was the respondent. Professor Spender referred to Branson J's judgment in *Qantas Airways v Gama* [2008] FCAFC 69, which "challenged the routine application of *Briginshaw* in discrimination cases".[141] In assessing "the gravity of the matters alleged", Professor Spender observed in the *Kovac* case that it did not "involve an allegation of fraud or lack of probity" and that the allegations were not as serious as the allegations in other cases where the *Briginshaw* principle was found to apply[142], for example, of sexual harassment against a public figure or adultery.

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139 Attorney-General's Department, Consolidation of Commonwealth Anti-Discrimination Laws Discussion paper, September 2011, 15 at https://www.ag.gov.au/Consultations/Documents/ConsolidationofCommonwealthanti-discriminationlaws/Consolidation%20of%20Commonwealth%20Anti-Discrimination%20Laws.pdf ; see also Allen D, Reducing the Burden of Proving Discrimination in Australia, Sydney Law Review Vol 31, 2009, 579

140 *Kovac v The Australian Croatian Club Ltd* [2014] ACAT 41 at [94]

141 *Kovac v The Australian Croatian Club Ltd* [2014] ACAT 41 at [99]

142 *Kovac v The Australian Croatian Club Ltd* [2014] ACAT 41 at [103], citing *De Domenico v Marshall* [1999] FCA 1305

69. In this case the allegations were about discriminatory behaviour by a professional body in its statutory functions and a senior employee of that body. The allegations were of a very serious nature, and repeated in the applicant's final submission after he had the opportunity of reviewing all the evidence during the proceedings. The applicant's contentions were not of unconscious racism and other forms of unconscious discrimination. His allegations were that there was collusion among the respondents over many years to discriminate against the applicant, respondents who are haters of black people[143], "desperate to discriminate"[144], who concoct minutes of Council meetings[145] and tell lies.[146] The Tribunal finds that the gravity of the allegations are at the higher end of the scale and concludes that the *Briginshaw* principle applies in this case.

70. The Tribunal finds that even if the *Briginshaw* principle does not apply in this case, the applicant did not prove that he had been subject to discrimination on the balance of probabilities, as set out below (refer to paragraphs 71 to 86 below). While the Discrimination Act provides for a rebuttal presumption (refer to paragraphs 25 and 67 above), this presumption was not enlivened in this case. The applicant did not prove he had experienced unfavourable treatment in the alleged incident on 23 February 2016, and the adverse decision of Council on 21 March 2016 had an alternative coherent explanation to that of discrimination (section 53CA(2)(a) and (b) of the Discrimination Act).

Issue 2: Did either respondent directly discriminate against the applicant?

71. Firstly, considering the evidence about the alleged incident at the premises of the Law Society on 23 February 2016, the key issues were whether there was unfavourable treatment, and if so was it because of race or political conviction.

72. The Tribunal accepts the evidence of the respondents on the issue of whether there was unfavourable treatment. In particular the Tribunal notes that whatever problem the applicant had in submitting his online application, after his attendance at the premises of

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143 Applicant's submission, 'Reply to Respondent's Documents submitted 5 December 2016 with Information of Material Significance', dated 7 December 2016 at [26]

144 Applicant's submission, 'Reply to Respondent's Documents submitted 5 December 2016 with Information of Material Significance', dated 7 December 2016 at [21]

145 Applicant's submission, 'Reply to Respondent's Documents submitted 5 December 2016 with Information of Material Significance', dated 7 December 2016 at [7]

146 Applicant's submission, 'Reply to Respondent's Documents submitted 5 December 2016 with Information of Material Significance', dated 7 December 2016 at [16]

the Law Society he later did successfully submit an online application. While the evidence of respondents' witnesses was inconsistent in some respects (see paragraphs 36 to 38), these inconsistencies were not material in the Tribunal's view. The applicant's witnesses (see paragraph 34) about this alleged incident could not confirm what transpired since they were not present, and could only confirm what the applicant said had occurred. So their evidence was not probative about whether there was unfavourable treatment, and was only relevant in that it confirmed that the applicant felt aggrieved.

73. In the alternative, if there was unfavourable treatment by the respondents on 23 February 2016, was it due to the applicant's race or political convictions? Even if Mr Reis did direct the early exit of the applicant from the secure area of the Law Society's premises, there is no evidence that this was due to the applicant's race or political conviction, that is, that either of these were reasons at all .

74. Mr Reis gave oral evidence that he feared the applicant, that Mr Reis had interpreted previous statements by him as threatening and indeed these formed part of the basis of the 2013 complaint against the applicant, knew the applicant to be a vexatious litigant and on this basis did not want the applicant in the secure areas of the Law Society's premises.[147] Mr Reis' perspective was criticised by the applicant for being over-reactive, and the Tribunal does not need to make a finding about this. The point here is that there is no evidence that Mr Reis's reasons, for not wanting the applicant in the secure areas of the Law Society's premises, were based on his race or political conviction.

75. Under cross-examination by the applicant it became clear that Mr Reis had some patchy knowledge of the applicant's activities that might be regarded as political, for example that the applicant had been a candidate in various elections. However Mr Reis's evidence made it clear that he had no detailed knowledge of what the applicant's political convictions were until these proceedings, if indeed then. [148]

76. The applicant contended that the respondents discriminated against him in not approving his application for a practicing certificate. On this issue the Tribunal accepts that there is unfavourable treatment, namely not approving the application. The disputed

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[147] Oral evidence, Mr Robert Reis at the hearing on 22 November 2016
[148] Oral evidence, Mr Robert Reis at the hearing on 22 November 2016

issue was whether it was because of the applicant's race or political convictions. The Tribunal finds that there was no evidence that race or political conviction were reasons for this adverse decision by the Law Society. Indeed there is a coherent well-evidenced basis to the second respondent's decision which was set out by the respondents in their evidence as summarised above (see paragraphs 41 to 50).

77. The Tribunal accepts the applicant's submissions that the weight of precedent supports his submission that inferences about race discrimination can be drawn from the evidence in any case, since discrimination can be hidden even to those who are racist.[149] Raphael FM in *Tadawan v South Australia* [2001] FMCA 25 summarised the law in this respect as follows:

> *In the absence of direct proof an inference may be drawn from the circumstantial evidence. The High Court has said that where direct proof is not available it is enough if the circumstances appearing in evidence give rise to a reasonable and definite inference; they must do more than give rise to conflicting inferences of equal degrees of probability so that the choice between them is mere matter of conjecture …* [150]

78. In this case however the Tribunal can find no circumstances from the evidence that "give rise to a reasonable and definite inference of racism". [151] The applicant contended that the Tribunal should infer that racial discrimination had occurred because "there is no other reason for such inequitable treatment."[152] He further raised that the history of events between him and the respondents whereby he "continued to be treated in the manner that I am being treated" demonstrated racial discrimination.[153] However there was no evidence of acts by the respondents that even suggested racism. This is in contrast to the situation Raphael FM had in *Gama v Qantas Airways Ltd* (No 2) [2006] FMCA 1767. In the *Gama* case there were statements which he found to be racist such as "he looked like a Bombay taxi driver" and that he walked up the stairs "like a monkey."[154] By contrast, in this case a key witness, Ms Avery, who the applicant Mr Ezekiel-Hart alleged was complicit in concocting documents to cover up the

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[149] Drawing inferences of racial discrimination, in *Federal Discrimination Law online*, page 27 athttps://www.humanrights.gov.au/sites/default/files/content/legal/FDL/2011/3_RDA.pdf

[150] Raphael FM, *Tadawan v South Australia* [2001] FMCA 25 at [52]

[151] Raphael FM, *Tadawan v South Australia* [2001] FMCA 25 at [52]

[152] Applicant's reply dated 29 November 2016 at [13]; Applicant's submission, 'Reply to Respondent's Documents', dated 5 December 2016 at [3]

[153] Applicant's submission, 'Reply to Respondent's Documents', dated 25 November 2016 at [30]

[154] Raphael FM, *Gama v Qantas Airways Ltd (No 2*) [2006] FMCA 1767 at [97]

discrimination[155], gave oral evidence that she had never met the applicant. She said, "before today I did not know what the applicant looked like but remembered his name from prior meetings".[156]

79. The key evidence the applicant presented in this case about alleged race discrimination was when Mr Reis referred to the applicant as a 'Blackman' (see paragraph 45). However it is clear to the Tribunal that this reference in Mr Reis's email was a quotation derived from the applicant's own description of himself used in the applicant's email to Mr Reis (see paragraph 62).

80. The key evidence the applicant presented about discrimination due to the applicant's political conviction was various letters he had written to a Minister in the ACT government about his situation and the issues that arose for him, and his demonstrating about racism by the Law Society, against a backdrop of the applicant trying to be elected or appointed to various bodies over many years. As explained above (see paragraph 21), Professor Spender sets out in the *Kovac* case that , 'political conviction' refers to where a person holds a political belief "with a view to changing of influencing government…It is sufficient if the belief is one that 'bears on government' or involves the processes, policies or obligations of government…". The Tribunal finds that the applicant has not demonstrated that he has a political conviction for the purposes of the Discrimination Act. The mere standing for an elected office, seeking appointment to senior positions, or attending a public demonstration, do not alone meet the test set out in Kovacs. The other activities that the applicant brought to the Tribunal's attention, for example writing to a Minister about his situation[157] and demonstrating against racism including alleged racism by the Law Society[158], are expressions of his personal grievances against the respondents, and are not evidence of a higher order political conviction for the purposes of the Discrimination Act. The applicant cited the *David Lander*[159] case, but this case is not relevant here where the applicant alleges discrimination due to political conviction. The David Lander case considers whether

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155 Applicant's submission, 'Reply to Respondent's Documents submitted 5 December 2016 with Information of material Significance', dated 7 December 2016 at [18]

156 Oral evidence of Sarah Avery at the hearing on 22 November 2016

157 For example, copy of letter to Deputy Chief Minster and Attorney-General of the ACT, dated 4 April 2016, annexure 2, applicant's witness statement, dated 17 November 2016

158 Photo, applicant's submission, 'Reply to Respondent's Documents submitted Friday 25 November 2016 with Information of Material Significance', dated 29 November 2016, attachment page 10

159 *David Lander v Council of the Law Society of the ACT* [2009] ACTSC 117

certain activities by a solicitor should result in a finding of unsatisfactory professional conduct, and may be relevant if the applicant seeks a review of the 2016 decision not to approve his practicing certificate.

81. The Tribunal finds that there were coherent well-evidenced reasons presented by the respondent (see paragraphs 58 to 62) about why the Law Society did not approve the applicant's application, had acted in certain ways, for example, made the 2013 complaint against the applicant and not finalised it, and pursued his bankruptcy. It is true that the 2013 complaint and the bankruptcy involved some exercise of discretion by the second respondent. However this does not mean the second respondent was discriminatory. The applicant queried the relevance of child support issues to professional misconduct and hence the 2016 decision, but compliance with child support laws and decisions may be relevant to a professional misconduct finding[160]. If the decision not to approve the applicant's 2016 application for a practicing certificate is an improper decision because it in part relies on the 2013 complaint against him, this does not mean that decision is discriminatory. As Neville J pointed out in prior proceedings where race discrimination was also raised, the appropriate course for the applicant if he regards the decision as inappropriate and/or procedurally unfair is to appeal the merits of the decision in the ACT Supreme Court under section 81 of the *Legal Profession Act 2006*[161] (s81 review).

82. Whatever the strengths or weaknesses of a s 81 review, that is not what was before the Tribunal. What was alleged is that the 2016 decision by the Law Society to not approve the applicant's application for a practicing certificate is discriminatory, and the Tribunal finds no evidence of this decision being made because of the applicant's race or political conviction.

83. The applicant provided limited probative evidence to support his contentions or to refute the respondent's evidence. Similar to observations made by Neville J in his 2014 decision the Tribunal found many of his submissions to be "unsubstantiated" assertions, indeed at times "unintelligible."[162] In some matters the applicant misrepresented the clear facts. For example, the applicant contended that his bankruptcy should have

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[160] *Council of the Law Society of NSW v Sullivan* [2017] NSWCATOD 2

[161] Neville J, *Ezekiel-Hart v The Law Society of the ACT and Anor* [2014] FCCA 658, page 12 at [90], Exhibit R1 at the hearing on 3 November 2016

[162] Neville J, *Ezekiel-Hart v The Law Society of the ACT and Anor* [2014] FCCA 658, page 12, at [117], Exhibit R1 at the hearing on 3 November 2016

expired in mid-2016 since he had been compliant with the Trustee's requirements, and that the respondents had somehow conspired to extend it (see paragraph 47). His oral evidence was that he told the Trustee of his plans to stay overseas, and that he sought and obtained an extension in the period he was authorised to be overseas. His account in this regard is difficult to sustain given the letter he offered as an exhibit to support his case, which states unambiguously that the Trustee required him to return to Australia by 6 August 2014.[163]

84. Further examples of the applicant's misrepresentation of facts and general incoherence in his arguments are set out in the applicant's final submission, where he continued his contention about the respondents being dishonest. He stated that the Tribunal should infer a "cover-up and blatant lies"[164] due to:

(a) receipt of the letters submitted from the two Councillors referred to above (see paragraphs 14-15) who he described as having previously "refused to sign that document"[165], when it was clear from the proceedings that this was a misunderstanding and unintentional omission by the second respondent which the Tribunal's order dated 22 November 2016 rectified (see paragraph 14 above);

(b) the fact that Sarah Avery in her oral evidence said she could not specifically recall many aspects of the meeting on 21 March 2016 and did not submit any written evidence, which the applicant contended was because "Ms Avery knew that the concocted generic paper of items…were false…"[166]; and

(c) his contention that the respondents "avoided bringing all these [Councillors] to cross-examination"[167], when the question of which of the many subpoenaed witnesses were required to give oral evidence had been fully canvassed in a hearing and the Tribunal had made an order on this point (refer to paragraphs 8 to 10 above) and the attendance of these witnesses was not at the Law Society's discretion.

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163 Exhibit A8, at the hearing on 21-22 November 2016, Letter from applicant to Trustee, Kazar Slaven, dated 16 July 2016

164 Applicant's submission, 'Reply to Respondent's Documents submitted 5 December 2016 with Information of material Significance', dated 7 December 2016 at [18]

165 Applicant's submission, 'Reply to Respondent's Documents submitted 5 December 2016 with Information of material Significance', dated 7 December 2016 at [11]

166 Applicant's submission, 'Reply to Respondent's Documents submitted 5 December 2016 with Information of material Significance', dated 7 December 2016 at [19]

167 Applicant's submission, 'Reply to Respondent's Documents submitted 5 December 2016 with Information of material Significance', dated 7 December 2016 at [4]

Issue 3: Did either respondent directly discriminate against the applicant in the area of work and/or access to premises and/or provision of goods and services?

85. The applicant's contention that he was denied access to premises was rejected by the respondents for various reasons (refer to paragraph 57, 63). A reason was that the part of the premises that the applicant contended he was prematurely escorted from was a secure area and not public. On this basis the respondents contended that section 19 of the Discrimination Act was not relevant. The Tribunal accepts that the part of the premises in question, the secure area of the Law Society's premises, was not public. However the Tribunal notes that the staff members assisting the applicant on 23 February 2016 were the ones that allowed the applicant to enter the secure area in order to assist him, it was not the applicant who sought to enter this secure area (paragraph 33). Section 15 of the Discrimination Act makes it unlawful for the respondents to discriminate by failing to accept a non-member's application (if the applicant was not a member on 23 February 2016). If the applicant was a member, then the Discrimination Act (section 15(3)) makes it unlawful to discriminate by denying the member a benefit such as receiving a service. On this basis section 15 of the Discrimination Act may have offered a basis for discrimination in accessing premises albeit non-public, given it appears from the evidence that the staff of the Law Society deemed it necessary to take the applicant to the secure area in order to serve him. However the Tribunal does not need to make a finding on this issue given the Tribunal's other findings (refer to paragraphs 72 to 85).

86. The applicant contended that he had been discriminated against in the area of work, specifically in "Professional or trade organisation" (section of the 15 Discrimination Act) in that his practicing certificate was not approved by the Law Society. The Tribunal notes that members of the ACT Law Society do not necessarily hold practicing certificates. It may be that the applicant should have made his claim under section 16 of the Discrimination Act, discrimination by a "Qualifying Body", in this case the Law Society in its statutory role to approve or otherwise practicing certificates under *Legal Profession Act 2006*. However the Tribunal does not need to make a finding on this given the Tribunal's other findings as set out above (refer to paragraphs 72 to 85)).

Issue 4: Did either respondent victimize the applicant?

87. The applicant's main contention was that a reason the matters in 2016 occurred, the 2013 complaint was made against him and his bankruptcy was pursued, was that "I

made a complaint to government as my political rights and to the courts seeking my rights..."[168] The Tribunal accepts the evidence of the respondents on this issue (see paragraph 66).

Issue 5: Did either respondent racially vilify the applicant?

88. The applicant made various allegations about vilification, involving various statements by Mr Reis (see paragraph 54). The respondents denied any vilification of the applicant (see paragraph 67). Mr Reis denied the allegation by the applicant regarding vilification of the applicant when communicating with Mr Mpofu, as set out in paragraph 63 above. The applicant prefers the evidence of the respondents, including the evidence of Mr Reis to the applicant because of the tendency for the applicant to mis-represent clear facts (refer to paragraph 84-85). While the Tribunal does not find that the applicant is dishonest, it confirms Neville J's comments that the applicant "has a 'strong sense of grievance'…[that] has overwhelmed any proper sense of perspective or proportion, and certainly any objective assessment of the issues, the evidence and the decisions …made against him".[169]

89. The Tribunal orders as follows:

    1. The application is dismissed.

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President G Neate AM
delivered for and on behalf of
Senior Member L Beacroft

[168] Applicant's witness statement, dated 17 November 2016 at [25]
[169] Neville J, *Ezekiel-Hart v The Law Society of the ACT and Anor* [2014] FCCA 658, page 12 at [117], Exhibit R1 at the hearing on 3 November 2016

HEARING DETAILS

FILE NUMBER:	DT 7/2016
PARTIES, APPLICANT:	Emmanuel Tam Ezekiel-Hart
PARTIES, RESPONDENTS:	Mr Robert Reis and The Law Society of the ACT
COUNSEL APPEARING, APPLICANT	N/A
COUNSEL APPEARING, RESPONDENT	N/A
SOLICITORS FOR APPLICANT	Self-Represented
SOLICITORS FOR RESPONDENT	Phelps Reid
TRIBUNAL MEMBERS:	Senior Member L Beacroft
DATES OF HEARING:	21 & 22 November 2016