

BETWEEN:

JO HAYES

Complainant/Appellant

-and-

AN ADJUDICATOR
THE LEAD ADJUDICATOR
INITIAL RESPONDENT

Respondents

FINAL RULING

5 August 2021

Harry Samuels (Member of the Federal Appeals Panel)

Case Manager

1. This is an appeal by Jo Hayes against an adjudicator's decision to summarily dismiss a complaint she made. The complaint was against the Initial Respondent. This is my final ruling on the appeal.

Background

2. On 5 March 2021, the Appellant made a complaint against the Initial Respondent.
3. On 18 May 2021, the Adjudicator dismissed the Appellant's complaint.
4. By an appeal notice dated 31 May 2021, the Appellant now seeks permission to appeal against that decision to dismiss.
5. On 22 July 2021, I gave directions that I was minded to allow the appeal pending submissions by the Adjudicator and the Lead Adjudicator as to the jurisdiction of the Federal Appeals Panel on cases of this nature.

Determination

6. Having now received submissions from both the Adjudicator and the Lead Adjudicator, I allow the appeal.

Reasons

Jurisdiction

7. In my interim directions, I raised a preliminary question as to whether the Panel has jurisdiction to hear an appeal of this nature.
8. For disciplinary cases, the Panel's jurisdiction is conferred by **Article 23.3 of the Federal Constitution** and the Complaints Procedure ("**CP**") made thereunder.
9. The CP only discusses appeals to this body from the decision of a Complaints Panel. It does not give an express right of appeal to those whose complaints are dismissed summarily by the initial adjudicator.
10. However, the Federal Appeals Panel also has a general power under **Article 22.3(B) of the Federal Constitution** to hear cases which allege infringement upon a member's rights under the Federal Constitution.
11. It seems to me that party members have an implied right under the Federal Constitution to have their complaints dealt with fairly and reasonably. Such a term would be implied into the Federal Constitution on the grounds of obviousness: the existence of the disciplinary process in the Federal Constitution presupposes that it will be a fair and reasonable one.
12. Such an implied right would mean that a seriously erroneous or procedurally unfair decision by an adjudicator would be a breach of that right.
13. This would put an appeal from such a decision by an adjudicator squarely within the Federal Appeals Panel's jurisdiction under **Article 22.3(B)**.

14. In my interim directions, I invited the Adjudicator and Lead Adjudicator to make submissions on whether they agreed with my assessment on jurisdiction.
15. Both agreed that the Panel theoretically does have jurisdiction on this ground, but both expressed reservation that this could potentially open the floodgates to a new tranche of complainants dissatisfied with summary dismissal by an adjudicator.
16. The Adjudicator stated that he considered that the Panel should have only supervisory jurisdiction, I infer to be exercised rarely. He considered that the supervisory jurisdiction should be used only *“where there has been (for example) a material failure of process, manifest unfairness, or where a decision has been reached which is outside the range of decisions that a reasonable adjudicator could make”*.
17. The Lead Adjudicator agreed with the Adjudicator’s response and expressed his concern that the **Article 22.3(B)** jurisdiction would be abused.
18. I am grateful to them for their submissions.
19. Having considered them, I am satisfied that I do have jurisdiction for the reasons set out above.
20. While I share the concerns raised by the Adjudicator and Lead Adjudicator, I am of the view that a balance can be struck between protecting the right of members to a fair and reasonable complaints process and preventing the abuse of the system by vexatious complainants.
21. First, I note **FAP Published Procedures r. 3.5(a)**, which makes clear that the Federal Appeals Panel will not entertain applications which are vexatious or insubstantial.
22. Secondly, the **Article 22.3(B)** jurisdiction for appeals from summary dismissals by initial adjudicators is one which I can only anticipate being used sparingly, in cases where there was a material failure of process, a material unfairness, or where the adjudicator’s reasoning was seriously erroneous. These are all circumstances in which

a complainant's rights under the Federal Constitution to have their complaint considered fairly and reasonably would, in my view, be infringed upon.

23. However, mere disagreement with an adjudicator who has come to a reasonable conclusion based on the facts would not cause such an infringement. I anticipate that Federal Appeals Panel case managers who receive appeals in such circumstances would move quickly to deny permission to appeal.

Should the jurisdiction be exercised?

24. I return then to the question of whether the Appellant's implied right to have her case dealt with fairly and reasonably has been infringed in the present case.
25. The Appellant's initial complaint is a detailed one, raising 16 separate grounds of complaint against the Initial Respondent.
26. The Adjudicator's determination, at paragraphs [10]-[11], was on the basis that, even taking the complaint at its highest, the Initial Respondent's actions would not have been capable of bringing the party into disrepute. Additionally, the Adjudicator relied upon his view of the motives of the Appellant in bringing the complaint.
27. The Appellant's case on appeal is that:
 - a. The Initial Respondent's actions if proven would be capable of bringing the party into disrepute;
 - b. In any event, the Adjudicator failed to consider whether the Initial Respondent's actions amounted to bullying, harassment or intimidation such as would also constitute disreputable behaviour under the Federal Constitution;
 - c. The Adjudicator was influenced by considerations which the Appellant considers irrelevant, such as the timing or motivation of the complaint (see the Adjudicator's determination at [12]).

28. In my view, it is plainly the case that the issues raised in the Appellant's Complaint could, taken at their highest, amount to conduct which risks bringing the party into disrepute.
29. As the Appellant rightly points out, **Article 3.1(b) of the Federal Constitution** states that:
- “Members or Registered Supporters of the Liberal Democrats must treat others with respect and must not bully, harass, or intimidate any Party member or Registered Supporter, member of staff employed to support Liberal Democrats, Party volunteer, or member of the public. Such behaviour will be considered to be bringing the Party into disrepute.”*
30. A breach of **Article 3.1(b)** is expressly deemed to constitute disreputable behaviour by **CP r. 1.3(e)**.
31. Of course, I make no determination on the truth or otherwise of the Appellant's Complaint at this stage. However, in my view it is clearly arguable that several of the allegations within it raise questions of bullying and intimidation which, if made out, could constitute disreputable conduct.
32. The Adjudicator either did consider this but decided that such conduct could not constitute disrepute (in which case he has unfortunately misinterpreted the meaning of 'disrepute' in the Complaints Procedure), or he did not consider this (in which case he has not applied the full definition as set out in the Complaints Procedure).
33. Furthermore, it is at least arguable that several other allegations which do not appear to disclose bullying, intimidation or harassment nonetheless appear to engage questions of disrepute in other ways – e.g. an allegation of seeking to interfere with a contract between a regional party and a district council.
34. The test the Adjudicator had to apply was, as in **CP r. 4.3.1**, whether he believed the complaint to relate to matters which risk bringing the party into disrepute.

35. It is unclear based on the Adjudicator's written determination precisely why he did not consider these other allegations to relate to matters which even risked bringing the party into disrepute. As set out above, I consider it unarguably to be the case that they do so risk.
36. Finally, the Adjudicator's conclusion as to the Appellant's motivations appears to have been of some weight in making his decision to dismiss. He also stated at [6] that he made his decision with "*other complaints in mind*".
37. In his submissions to me, the Adjudicator made the fair point that the Complaints Procedure specifically allows for cases to be linked, and so it would be artificial to require an adjudicator to close their mind to the context of the linked complaints. Based on this, he says it was valid for him to consider the Appellant's motivations in bringing the complaint.
38. I accept that an adjudicator may take into account some degree of context from linked cases insofar as it helps them answer the test given by **CP r. 4.3.1**. For instance, if facts disclosed by a linked case demonstrate that allegations were more or less serious than presented in the original complaint, this may impact upon the adjudicator's assessment of risk of disrepute.
39. However, such use of linked cases should only be used to assist in determining whether the alleged conduct risks disrepute or is "*too inconsequential*". A complainant's motives in bringing a complaint are, in that context, rarely of relevance. The narrow test prescribed by **CP r. 4.3.1** is one of substance. Even if the Appellant's motives were suspect or political, that should not affect the assessment of the substance of whether the alleged conduct, if proven, risks bringing the party into disrepute.
40. Accordingly, while I am sympathetic to the difficult job that adjudicators in our system have to carry out, and am grateful to the Adjudicator for his submissions and effort in dealing with this complex complaint, I consider that he unfortunately strayed into error.

41. The Adjudicator, in my view, misinterpreted the definition of ‘disrepute’ in the Complaints Procedure, applied much too high a bar in determining whether alleged conduct ‘risk[ed]’ bringing the party into disrepute, and took into account factors which were not relevant in answering the question set out in **CP r. 4.3**. This, in my judgment, took his determination outside the range of reasonable responses. This is therefore one of the cases outlined above where there was a serious error of reasoning which infringed upon the Appellant’s rights under the Federal Constitution.
42. I am accordingly satisfied that the Panel’s jurisdiction under **Article 22.3(B)** is engaged in this case.

Exercising the power to remit straight back

43. **PP r. 3.8** allows a Case Manager to “*determine, in relation to any complaint where there is no (or no material) dispute as to the facts, that the matter should be determined without an oral hearing.*”
44. This is a somewhat technical appeal concerning the correct interpretation of the test applicable by an adjudicator, and whether the factors the Adjudicator’s determination in this case actually took into account were relevant ones. It is not one where I perceive any dispute as to the facts: we have the Adjudicator’s determination, and the Appellant engages with it in her appeal notice. Put simply, the Appellant’s case is that the Adjudicator’s determination was wrong as a matter of interpretation of the party’s rules.
45. I am therefore satisfied that I have the power to dispense with an oral hearing.
46. I also consider that this is an appropriate case in which to exercise that power. This is because, for the reasons set out above, I consider the Adjudicator to have erred in his interpretation of the Complaints Procedure and the Federal Constitution in reaching his view on what constitutes disreputable conduct. In my view, the complaints relate to matters which, if proven, could clearly risk bringing the party into disrepute.

47. The Adjudicator also took into account irrelevant factors which have influenced his determination.
48. Accordingly, I allow the appeal on the papers and direct the Adjudicator to reconsider the complaint in light of my ruling.

Publication

49. Given the importance of this case for clarifying the jurisdiction of the Panel, I direct that a copy of this ruling be published on the Federal Appeals Panel section of the party's website under the name "*Hayes v Adjudicator*".