

## Vexatious Application dismissed by Canberra Tribunal *Paunovic and Australian Capital Territory [2020] AATA 5070 (20 November 2020)*

### Key Points

- The Tribunal was asked to dismiss an application because liability for the applicant's workers' compensation claim had been accepted and the application was considered vexatious.
- The Tribunal heard from both parties at an interlocutory hearing and then dismissed the application for review.

### Background

Mr Slobodan Paunovic commenced employment with Roads ACT (the ACT) in 1984. In January 2017 he was physically assaulted at work, by a colleague. In July 2017, Mr Paunovic was accused of sexual harassment and an investigation was commenced. Mr Paunovic's employment was terminated in June 2018.

Mr Paunovic submitted a claim for workers' compensation on 6 December 2018 in respect of a psychological condition caused by the assault on him by his colleague. Liability to pay compensation was denied under section 14 of the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act), on the basis that the psychological condition had not been contributed to, to a significant degree by Mr Paunovic's employment. Alternatively, if it had, the claim was excluded because the condition was caused by reasonable administrative action, pursuant to section 5A(1) of the SRC Act. The decision was affirmed on reconsideration and Mr Paunovic sought further review of that decision at the Administrative Appeals Tribunal.

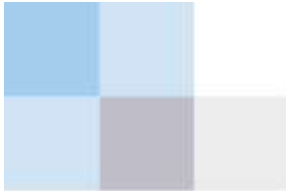
During the Tribunal proceedings, the ACT conducted a reconsideration of own motion under section 62 of the SRC Act and accepted liability to pay Mr Paunovic compensation for his psychological injury. Following this decision, the ACT made an interlocutory application to dismiss Mr Paunovic's application for review pursuant to section 42B(1)(a) of the *Administrative Appeals Tribunal Act 1975* (AAT Act), on the basis that it had become vexatious.

The issue for the Tribunal to decide was whether Mr Paunovic's application should be dismissed pursuant to subsection 42B(1)(a) of the AAT Act.

### The law

Section 42B(1) of the AAT Act provides the Tribunal with power to dismiss an application at any stage of the proceeding, if the Tribunal is satisfied that the application:

- a) is frivolous, vexatious, misconceived or lacking in substance; or

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- b) has no reasonable prospect of success; or
  - c) is otherwise an abuse of the process of the Tribunal.

## Conclusion

The Tribunal was satisfied that the ACT's reconsideration of own motion was made validly under section 62(1) of the SRC Act. The Tribunal was further satisfied that it retained jurisdiction to consider the reviewable decision the subject of the proceedings.

Accordingly, the real issue for determination by the Tribunal was whether or not Mr Paunovic had anything to gain from his application remaining before the Tribunal. If not, then no legitimate purpose could be achieved by continuing with that application and it would have therefore become vexatious.

The Tribunal found that the issue for resolution at a substantive hearing would be whether Mr Paunovic suffered a psychological ailment as a result of the workplace incident in January 2017. The ACT had found that he had suffered such an injury and had accepted liability for his claim. There was nothing more that Mr Paunovic could achieve from his application continuing before the Tribunal.

The Tribunal found that Mr Paunovic's application had become "vexatious" as it had no serious purpose or value following the ACT's acceptance of liability. Were the application to continue and be successful, it would be devoid of any practical effect.

Accordingly, as the Tribunal held that while the proceedings were not instituted vexatiously, they had become vexatious and they had no practical purpose and would therefore impose unnecessary burden and expense on both the ACT and the Tribunal were they to continue.

The Tribunal dismissed the application pursuant to section 42B(1)(a) of the AAT Act.

## Lessons Learnt

The Tribunal has the power to dismiss an application, but will not do so lightly. In circumstances where a Tribunal's substantive decision will offer no benefit and be of no practical effect, the proceedings may be considered vexatious and may be dismissed.

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