# HIGH COURT OF AUSTRALIA

McHUGH J

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RE MINISTER FOR IMMIGRATION AND
MULTICULTURAL AFFAIRS & ORS RESPONDENTS

EX PARTE MEIR COHEN APPLICANT

*Re Minister for Immigration and Multicultural Affairs; Ex parte Cohen*
[2001] HCA 10
*1 March 2001*
S166/2000

**ORDER**

*Application dismissed with costs.*

**Representation:**

R T Beech-Jones for the first respondent (instructed by Sparke Helmore)

No appearance for the second and third respondents

D C Rangiah for the applicant (instructed by Dominic David Stamfords)

## CATCHWORDS

### Re Minister for Immigration and Multicultural Affairs; Ex parte Cohen

Constitutional law – Constitutional relief – Jurisdictional error – Whether the Migration Review Tribunal made a jurisdictional error.

Practice and procedure – Constitutional relief – Migration Regulations 1994 (Cth) – Whether the applicant was entitled to have his application determined on the basis that the "special need relative" criterion was still available.

Practice and procedure – Constitutional relief – Remitter to the Federal Court – When remitter to the Federal Court is appropriate.

Practice and procedure – Constitutional relief – Whether writ of prohibition properly sought against the Minister.

Practice and procedure – Constitutional relief – Whether writ of mandamus properly sought against the Principal Member of the Migration Review Tribunal.

1 McHUGH J. This is an application for an injunction and for orders nisi for writs of prohibition, mandamus and certiorari. The applicant seeks these remedies in order to overturn a decision of the Migration Review Tribunal dated 21 June 2000. The application must be dismissed.

Background and procedural history

2 The applicant, an Israeli national, met a woman, Monique Hill, in Japan in February 1997. A relationship developed between them until Ms Hill became pregnant to the applicant in April 1997. Ms Hill then returned to Australia, and the applicant later returned to Israel. A boy, known as Ariel, was born on 26 December 1997.

3 The applicant came to Australia on 2 April 1998. He and Ms Hill resumed their relationship, but apparently it did not prosper. When the applicant arrived in Australia, he held a visa which entitled him to stay in Australia until 2 October 1998. In September 1998, he applied for a "Family (Residence) (Class AO) visa", which the Migration Review Tribunal described as a "subclass 806 'special need relative' visa".

4 In January 1999, the Minister's delegate refused to grant the applicant a visa. In April 1999, a review officer affirmed the delegate's decision. According to the Migration Review Tribunal:

> "The … applicant lodged an application for review with the Immigration Review Tribunal on 14 May 1999. This became an application for review to the Migration Review Tribunal on 1 June 1999 by way of a transitional provision in the *Migration Legislation Amendment Act (No 1) 1998* [Act No 113 of 1998[1]]. The decision is reviewable by the [Migration Review] Tribunal".

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**1** Item 41(1) of Sched 1 to Act No 113 of 1998 provides:

> "For the purposes of Part 5 of the *Migration Act 1958* as amended by this Act, if:
>
> (a) before the commencement of this Schedule, an application had been properly made under section 347 of that Act for review of a decision; and
>
> (b) the applicant had not been given a statement relating to the review under section 368 of that Act before that commencement;
>
> the application is taken to be an application properly made, on the day of that commencement, under section 347 of that Act as amended by this Act."

5 In May 2000, the Migration Review Tribunal ("the Tribunal") heard the application. In June 2000, the Tribunal affirmed the decision under review.

The legislation

6 When the applicant applied for a "Family (Residence) (Class AO) visa", subclass 806 of the Migration Regulations 1994 (Cth) relevantly provided:

> "**806.21 Criteria to be satisfied at time of application**
>
> ...
>
> 806.213 The applicant is … a *special need relative* of another person who:
>
> (a) is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen; and
>
> (b) is usually resident in Australia; and
>
> (c) has nominated the applicant for the grant of the visa.
>
> **806.22 Criteria to be satisfied at time of decision**
>
> 806.221 The applicant continues to satisfy the criteria in clause 806.213." (emphasis added)

At that time, reg 1.03 of the Migration Regulations provided:

> "'**special need relative**', in relation to an Australian citizen usually resident in Australia, an Australian permanent resident usually resident in Australia or an eligible New Zealand citizen, means a relative who is willing and able to provide *substantial and continuing assistance* to the citizen or resident if:
>
> (a) the citizen or resident has a permanent or *long-term need for assistance because of death, disability, prolonged illness or other serious circumstances affecting the citizen or resident personally, or a member of his or her family unit*; and
>
> (b) the assistance cannot reasonably be obtained from:
>
> (i) any other relative of the citizen or resident, being a relative who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; or

(ii) welfare, hospital, nursing or community services in Australia." (emphasis added)

The Tribunal's decision

7 The Tribunal held that the applicant had been "nominated" by Ariel as required by cl 806.213. It then considered whether "Ariel had a long term need for assistance because of a disability, prolonged illness or other serious circumstance affecting him personally or a member of his family unit at the time of application and of decision".

8 The Tribunal found that there was no evidence that Ariel had a disability or a prolonged illness. It also found that Ariel was not affected by "any serious circumstances of the order of death, disability or prolonged illness". The Tribunal noted that the applicant had "initially relied on the fact that he was the father of Ariel as sufficient grounds to meet the definition of a special need relative". However, the Tribunal rejected this argument. It applied *Huang v Minister for Immigration and Ethnic Affairs*[2], where Hill J (with whom Jenkinson J agreed) said[3]:

> "In my opinion, the present definition of *'special need relative' relevant to subclass 104 visas, should not be construed so as to include every case involving a child of tender years unable to care for himself or herself*. The words 'other serious circumstances' affecting the citizen or resident personally, or a member of his or her family unit, refer to circumstances similar to death, disability or prolonged illness and not to the mere fact that the citizen or resident is of tender years. It is hardly conceivable that the expression 'serious circumstances' should reflect merely the tender age of a person. In so holding, I express no view as to whether *Chen's* case[4] was correctly decided on the regulations and in the context then prevailing." (emphasis added)

9 Accordingly, the Tribunal did not consider whether assistance could be reasonably obtained from a source other than the applicant.

Proceedings in this Court

10 The applicant filed a draft order nisi on 20 July 2000. The draft order nisi sought orders against:

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**2** (1996) 71 FCR 95.

**3** (1996) 71 FCR 95 at 99. See also at 101 per Lehane J.

**4** *Chen v Minister for Immigration and Ethnic Affairs [No 2]* (1994) 51 FCR 322.

- the first respondent, the "Minister for Immigration and Multicultural Affairs" ("the Minister");

- the second respondent, "Julie Bail, Member of the Migration Review Tribunal"; and

- the third respondent, "Sue Tongue, Principal Member of the Migration Review Tribunal".

*The orders sought*

11 The draft order nisi asked the Minister to "show cause why a Writ of Prohibition and/or an injunction should not issue to the [Minister] prohibiting [him] from giving effect to or relying upon the decision of the Second Respondent dated 21 June 2000 affirming a decision of a delegate of the [Minister]".

12 The draft order nisi asked the second respondent to "show cause why a Writ of Mandamus and/or an injunction should not issue commanding the Second Respondent to hear and determine the [applicant's] application for the visa according to law". In the alternative, it asked the third respondent to "show cause why a Writ of Mandamus and/or an injunction should not issue compelling the Third Respondent to appoint a member of the Migration Review Tribunal other than the Second Respondent to hear and determine the [applicant's] application for the visa according to law".

13 The draft order nisi also asked the second respondent to "show cause why a Writ of Certiorari should not issue removing the Second Respondent's decision into the High Court of Australia to be quashed".

*The grounds relied upon*

14 In its original form, the draft order nisi relied on the following grounds:

> "1. The Second Respondent erred in law in failing to find that the [applicant's] 2 ½ year old child was, by reason of the child's age, a person who had a long term need for assistance because of '*disability*' within the meaning of that expression in regulation 1.03 *Migration Regulations 1994* and that the [applicant] was therefore a '*special need relative*' within the meaning of that expression in regulation 1.03.
>
> 2. The Second Respondent erred in law in finding that the [applicant's] child was not, by reason of the child's age, a person who had a long term need for assistance because of '*other serious*

> *circumstances*' within that [sic] meaning of that expression in regulation 1.03 and that the [applicant] was therefore not a '*special need relative*' within the meaning of that expression in regulation 1.03.
>
> 3. The Tribunal erred in law in failing to consider whether the alleged psychological problems and dependence on drugs and alcohol of the mother of the [applicant's] child were or were capable of amounting to '*other serious circumstances affecting … a member of* [the citizen's or resident's] *family unit*' within the meaning of that expression in regulation 1.03 *Migration Regulations*."

*Written submissions*

15 Prior to the matter coming before me on 18 October 2000, the parties filed written submissions. The thrust of the applicant's written submissions was that *Huang* was wrongly decided or distinguishable and that the Tribunal had committed a jurisdictional error by following that decision. The main contention of the Minister was that the matter should be remitted to the Federal Court of Australia under the power conferred by s 44 of the *Judiciary Act* 1903 (Cth). The Minister contended that the applicant's "only purpose in commencing proceedings in the original jurisdiction of this Court is to overcome the obstacle that appears to be presented by *Huang*". According to the Minister, "such an approach represents an attempt to circumvent s 35A of the *Judiciary Act*".

16 In his written reply, the applicant conceded that he had "initiated proceedings in the High Court in order to avoid the application of section 35A of the *Judiciary Act*". This was done because otherwise:

> "[The applicant] may find that ultimately he cannot obtain a decision of a Court based solely upon the merits or otherwise of his argument. It would be difficult to succeed in the Federal Court in view of the decision … in [*Huang*]. It would be difficult to demonstrate a question of public importance in an application for special leave to the High Court, since the subclass of special need relative visas no longer exists."

*Regulations and jurisdictional error*

17 The applicant also submitted that:

> "The provisions relating to special need relative visas were repealed by the *Migration Amendment Regulations* SR 259 of 1999; regulation 4 and schedule 2 (commencing 31 October 1999). Under regulation 5(5) of SR 259 of 1999 if an application for a Family (Residence) (Class AO) visa was made before 1 November 1999, but not finally determined, the *Migration Regulations* in force at that date continue to apply."

That is, the applicant submitted that, notwithstanding the repeal of the "special need relative" criterion, *by virtue of reg 5(5) of SR 259 of 1999*, the matter should be determined as though the "special need relative" criterion was still in force. Regulation 5(5) of SR 259 of 1999 provides:

> "If an application for a visa of one of the following classes was made before 1 November 1999, but was not finally determined … before that date, the *Migration Regulations 1994*, as in force immediately before 1 November 1999, continue to apply in relation to the application:
>
> …
>
> (c) Family (Residence) (Class AO)".

18 When the matter came before me, I informed counsel that I had doubts about the assumption on which the applicant's written submissions were based. It appeared to me that SR 259 of 1999 did not repeal the "provisions relating to special need relative visas" because the "special need relative" criterion had been omitted from the Migration Regulations by SR 306 of 1998, which commenced on 1 December 1998. As a result, when SR 259 of 1999 repealed subclass 806 on 1 November 1999, that subclass did not contain the "special need relative" criterion. Moreover, reg 1.03 did not contain a definition of a "special need relative". That being so, if the Migration Regulations *as in force immediately before 1 November 1999* applied to the application, then arguably the applicant was not entitled to rely on the "special need relative" criterion.

19 I was also concerned that the matters relied on by the applicant did not appear to raise jurisdictional errors but (at best) mere errors of law or fact.

20 In those circumstances, I ordered counsel to file supplementary written submissions concerning:

> "(1) whether the subclass of special need relative visas still applies to these proceedings having regard to the terms of SR 259 of 1999, regulation 5(5) and the fact that the special need relative subclass of visa was removed by SR 306 of 1998, which commenced on 1 December 1998; [and]
>
> (2) whether the matters relied on by the applicant raise questions of jurisdictional error as opposed to mere error of law or fact."

*Amended order nisi*

21 The applicant filed an amended draft order nisi, which contained a new ground 3 in place of that set out above:

"The Second Respondent failed to take into account a relevant consideration, namely the inability of the child to care for himself by reason of his age."

The issues

22 This application raises three issues for decision:

1. Is the applicant entitled to have his application determined on the basis that the "special need relative" criterion is available?

2. Has the applicant shown an arguable case of jurisdictional error that would justify the grant of an order nisi?

3. Should the matter be remitted to the Federal Court?

The "special need relative" criterion is still available

23 In his supplementary written submissions, the applicant:

"… conceded that the Applicant's previous submission that SR 259 of 1999 applied to special need relative visas was wrong. The expression '*Family (Residence) (Class AO)*' visas in regulation 5(5) does not refer to special need relative visas."

24 Both the applicant and the Minister submitted that the applicant was entitled to have his matter determined on the basis that the "special need relative" criterion was still in force. In my view, this submission should be accepted for two reasons.

25 First, reg 5(5) of SR 259 of 1999 provides that, if an application has not been finally determined, the regulations "as in force immediately before 1 November 1999, *continue* to apply in relation to the application" (emphasis added). If the regulations "as in force immediately before 1 November 1999" did not apply to the application before 1 November 1999, which is arguably the case in relation to the present application, then the word "continue" in reg 5(5) seems to suggest that reg 5(5) does not apply to the applicant's application.

26 Second, s 50 of the *Acts Interpretation Act* 1901 (Cth) provides:

"Where an Act confers power to make regulations, the repeal of any regulations which have been made under the Act shall not, unless the contrary intention appears in the Act or regulations effecting the repeal:

(a) affect any right, privilege, obligation or liability acquired, accrued or incurred under any regulations so repealed; or

(b) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any regulations so repealed; or

(c) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act or regulations had not been passed or made."

27 In *Esber v The Commonwealth*[5], this Court considered ss 8(c) and (e) of the *Acts Interpretation Act*, which are in similar terms to ss 50(a) and (c), but which deal with the repeal of an Act rather than a regulation. In *Esber*, the appellant had challenged in the Administrative Appeals Tribunal a decision by a delegate of the Commissioner for Employees' Compensation not to allow the appellant to convert weekly compensation payments into a lump sum. Mason CJ, Deane, Toohey and Gaudron JJ noted that the first step in a consideration of s 8 (and therefore of s 50) is to identify the right which was acquired or accrued under the repealed Act (here a repealed regulation)[6]. Their Honours held that[7]:

> "Once the appellant lodged an application to the [Administrative Appeals] Tribunal to review the delegate's decision, he had a right to have the decision of the delegate reconsidered and determined by the [Administrative Appeals] Tribunal. It was not merely 'a power to take advantage of an enactment'[8]. Nor was it a mere matter of procedure[9]; it was a substantive right[10]. Section 8 of the *Acts Interpretation Act* protects anything that may truly be described as a right, 'although that right might

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**5** (1992) 174 CLR 430.

**6** (1992) 174 CLR 430 at 439.

**7** (1992) 174 CLR 430 at 440-441.

**8** *Mathieson v Burton* (1971) 124 CLR 1 at 23 per Gibbs J; and see *Robertson v City of Nunawading* [1973] VR 819.

**9** See *Newell v The King* (1936) 55 CLR 707 at 711-712.

**10** See, by way of analogy, *Australian Coal and Shale Employees Federation v Aberfield Coal Mining Co Ltd* (1942) 66 CLR 161 at 175, 178, 185, 194; *Colonial Sugar Refining Co v Irving* [1905] AC 369 at 372-373.

> fairly be called inchoate or contingent'[11]. This was such a right. It was a right in existence at the time the 1971 Act was repealed. That being so, and in the absence of a contrary intention, the right was protected by s 8 of the *Acts Interpretation Act* and was not affected by the repeal of the 1971 Act."

In this case, SR 306 of 1998 removed the "special need relative" criterion on 1 December 1998. This was *after* the applicant had made his application for a visa on 4 September 1998, but before the Minister's delegate refused to grant the visa on 19 January 1999.

28 In my view, the applicant had a relevant "right" by virtue of s 65(1) of the *Migration Act* 1958 (Cth). That sub-section relevantly provides:

> "After considering a valid application for a visa, the Minister:
>
> (a) if satisfied that:
>
> …
>
> (ii) the … criteria for it prescribed by this Act or the regulations have been satisfied;
>
> …
>
> is to grant the visa; or
>
> (b) if not so satisfied, is to refuse to grant the visa."

In *Chen Shi Hai v Minister for Immigration and Multicultural Affairs*, Gleeson CJ, Gaudron, Gummow and Hayne JJ said[12]:

> "[A]lthough the Minister's satisfaction (or, in the case of the Tribunal, its satisfaction) is still required, s 65(1) imposes an obligation to grant a visa, as distinct from conferring a power involving the exercise of a discretion. The satisfaction that is required is a component of the condition precedent to the discharge of that obligation[13]."

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**11** *Free Lanka Insurance Co Ltd v Ranasinghe* [1964] AC 541 at 552; see also *Continental Liqueurs Pty Ltd v G F Heublein and Bro Inc* (1960) 103 CLR 422 at 426-427; *Director of Public Works v Ho Po Sang* [1961] AC 901.

**12** (2000) 74 ALJR 775 at 782 [41]; 170 ALR 553 at 563.

**13** *Minister for Immigration and Multicultural Affairs v Eshetu* (1999) 197 CLR 611.

Assuming that the applicant made a "valid application for a visa" within the meaning of s 65(1) on 4 September 1998, the Minister was therefore obliged to grant the applicant a visa if (inter alia) he was satisfied that "the … criteria for it prescribed by … the regulations have been satisfied". Accordingly, the applicant had a right to be granted a visa if the Minister was satisfied of all of the s 65(1) factors, including the "special need relative" criterion. Unless the contrary intention appears in SR 306 of 1998, it follows that:

- the removal of the "special need relative" criterion did not affect the right which I have just described;
- the removal of the "special need relative" criterion did not affect any legal proceeding or remedy in respect of the right; and
- the applicant was entitled to institute any legal proceeding or remedy in respect of the right as if SR 306 of 1998 had not been made.

29 In my view, the Minister was correct to concede that "no such contrary intent is manifest by either Statutory Rule 306 of 1998 or Statutory Rule 259 of 1999".

There was no arguable case of jurisdictional error

30 The amended draft order nisi relied on three grounds:

- the Tribunal erred by not finding that the applicant's son had a "disability" within the meaning of reg 1.03 because he was young;
- the Tribunal erred by not finding that the applicant's son faced an "other serious circumstance" within the meaning of reg 1.03 because he was young;
- the Tribunal failed to take into account a relevant consideration, namely that the applicant's son could not care for himself because he was young.

31 It is convenient to deal with the third ground first. The failure to take into account relevant considerations can constitute a jurisdictional error[14]. But the Tribunal *did* consider the fact that the applicant's son was young. It held, however, that this fact, of itself, did not mean that the applicant's son was a special need relative. While the applicant disagrees with this conclusion, the Tribunal did not fail to consider his son's age.

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**14** *Re Minister for Immigration and Multicultural Affairs; Ex parte Durairajasingham* (2000) 74 ALJR 405 at 412 [36]; 168 ALR 407 at 417.

32 The first and second grounds assert that the Tribunal erred by failing to find that the applicant's son's age was a "disability" or "other serious circumstance". These grounds involve a submission that *Huang*, which the Tribunal followed, was wrongly decided or distinguishable.

33 While, perhaps, it did not do so in terms, it is clear from the Tribunal's reasons that it asked itself whether the applicant's son's age constituted a "disability" or "other serious circumstance". It answered these questions in the negative because, following *Huang*, it was of the view that age, of itself, did not constitute a "disability" or "other serious circumstance". Accordingly, the Tribunal did not "identify a wrong issue [or] ask itself a wrong question"[15]. It is the answer, and not the question, to which the applicant objects.

34 The applicant submits that the Tribunal "misunderstood the nature of the opinion which [it] is to form"[16]. He submits that the Tribunal did not understand the true meaning of "disability" and "other serious circumstance" in the definition of "special need relative" in reg 1.03. But, assuming that the Tribunal erred in determining the meaning of these expressions because it applied an erroneous precedent in determining the meaning of "disability" and "other serious circumstance", it does not follow that it committed a jurisdictional error. Adopting an incorrect interpretation is not always synonymous with jurisdictional error. Nor does it make a difference to the validity of that proposition that the relevant tribunal has applied an erroneous precedent rather than adopting its own erroneous interpretation.

35 The Tribunal understood the question that it had to answer. Even if it applied an erroneous precedent, it did not commit a jurisdictional error. The expressions "disability" and "other serious circumstances" were used in reg 1.03 in their ordinary, non-technical sense. The ordinary meaning or common understanding of a non-technical word is generally a question of fact[17]. Leaving aside questions of jurisdictional fact, an administrative tribunal will ordinarily not commit a jurisdictional error unless it has made an error of law[18]. A factual error made in the course of making a determination or decision is unlikely to be a jurisdictional error unless the particular fact is a jurisdictional fact. Courts

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**15** *Craig v South Australia* (1995) 184 CLR 163 at 179.

**16** *R v Connell; Ex parte The Hetton Bellbird Collieries Ltd* (1944) 69 CLR 407 at 432 per Latham CJ.

**17** *Hope v Bathurst City Council* (1980) 144 CLR 1; *Collector of Customs v Agfa-Gevaert Ltd* (1996) 186 CLR 389.

**18** cf *Craig v South Australia* (1995) 184 CLR 163 at 179.

should be slow to find that an erroneous finding of fact or an error of reasoning in finding a fact, made in the course of making a decision, demonstrates that an administrative tribunal so misunderstood the question it had to decide that its error constituted a jurisdictional error.

36 If an administrative tribunal applies a wrong legal test or asks itself or decides a wrong legal question, it may be a short step to concluding that it did not decide the question that it had to decide. But questions of fact are ordinarily for an administrative tribunal to determine and so are the reasoning processes employed to make such findings. Disagreement with a finding of fact or the reasoning process used to find it is usually a slender ground for concluding that a tribunal misconceived its duty.

37 Even if *Huang* was wrongly decided, which I doubt, the Tribunal did not commit a jurisdictional error. At worst, it made an error of fact because, by applying *Huang*, it erroneously reasoned that Ariel did not have "need for assistance because of a disability, prolonged illness or other serious circumstance"[19]. I do not think that applying a case that wrongly decides a question of fact – the meaning of a non-technical word – can be equated to applying a wrong legal test. *Huang* decided a question of fact, not a question of law. If the Tribunal had adopted the meanings given in *Huang*, but without reference to that case, it would not have made a jurisdictional error. It makes no difference that it used *Huang* as its dictionary instead of interpreting the expressions itself.

38 It follows that the applicant has not demonstrated an arguable case of jurisdictional error. His application must be dismissed.

Remitter to the Federal Court

39 In light of the conclusion which I have reached regarding jurisdictional error, it is unnecessary to consider whether, in all the circumstances, the application should be remitted to the Federal Court. However, given the manner in which the applicant has conducted his case, it is appropriate to note that, unless there is something special or urgent about an application, ordinarily this Court will remit it to the Federal Court (so long as it has jurisdiction to hear it). The fact that there is a decision of a Full Court of the Federal Court which is contrary to the applicant's position, and which is likely to be followed by a judge of the Federal Court sitting alone, will *not* usually be a reason *not* to remit the matter to the Federal Court. It should be remembered that[20]:

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**19** cf *R v The District Court; Ex parte White* (1966) 116 CLR 644 at 654.

**20** *Re Minister for Immigration and Multicultural Affairs; Ex parte Durairajasingham* (2000) 74 ALJR 405 at 407 [10]; 168 ALR 407 at 410.

> "One of the principal reasons for the setting up of the Federal Court in 1976 was the recognition that, with more and more matters arising under laws of the Parliament, this Court could not act as a federal trial court and still have adequate time for research and reflection in respect of the important matters falling within its constitutional and appellate jurisdiction."

Relief sought

40 In this case, the applicant sought (inter alia) prohibition against the Minister and mandamus against the third respondent. As was the situation in *Re Ruddock; Ex parte Reyes*[21], there can be no suggestion that the Minister has done anything which could justify a writ of prohibition being issued against him. If writs of mandamus and certiorari were issued against the Tribunal then, in an appropriate case, the proper remedy would be to injunct the Minister. Similarly, there is no suggestion that the third respondent has done anything which would justify a writ of mandamus being issued against her. A writ of mandamus may issue if, at some future time, the third respondent failed to appoint a person to carry out the duties of the Tribunal.

Order

41 The application must be dismissed with costs.

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**21** [2000] HCA 66.