

Reference No. HRRT 009/2015

UNDER THE HUMAN RIGHTS ACT 1993

BETWEEN WAYNE JURY EAGLESOME (ALSO KNOWN AS ALEXANDER DE VILLIERS)

PLAINTIFF

AND CHIEF EXECUTIVE OF THE DEPARTMENT OF CORRECTIONS

DEFENDANT

TRIBUNAL: Rodger Haines QC, Chairperson

REPRESENTATION:

Mr WJ Eaglesome in person

Ms A Mobberley and Mr M Freedman for defendant

DATE OF DECISION: 8 June 2015 at 3pm

DECISION OF CHAIRPERSON RECORDING CONSENT INTERIM ORDERS¹

Background

[1] These proceedings were filed on 9 February 2015. A few days later, on 13 February 2015, Mr Eaglesome sought an interim order requiring the defendant to adhere to an agreement dated 29 August 2014 between Mr Eaglesome and the Department of Corrections relating to the provision to Mr Eaglesome of food which conformed to a kosher diet. Mr Eaglesome submitted that if the interim order was not granted he would be forced to eat non-kosher meals and foodstuffs. This would have a significant impact on his psychological welfare.

[2] Following significant delay by the defendant (see the *Minute* issued by me on 22 May 2015 at [1] to [5]) an interim order application was scheduled to commence at 10am tomorrow, Tuesday 9 June 2015.

¹ [This decision is to be cited as: *Eaglesome v Department of Corrections (Interim Orders)* [2015] NZHRRT 20]

[3] By notice of opposition dated 29 May 2015 the defendant advised the application would be opposed on two grounds:

[3.1] It was not necessary in the interests of justice to make the order as the defendant would be proposing a process for the resolution of the issue; and

[3.2] There were strong policy reasons against a Tribunal making interim orders or declarations requiring positive action.

The consent memorandum

[4] By email dated 8 June 2015 and timed at 2:04pm the parties submitted a consent memorandum recording a settlement by which the defendant has agreed to purchase and provide specified kosher food to Mr Eaglesome, that food to be paid for by Mr Eaglesome. In return, Mr Eaglesome withdraws his application for interim orders. The parties agree the consent orders do not indicate acceptance of liability by the defendant and are simply a means of preserving the position of the parties pending final disposition of these proceedings.

[5] In terms of s 95(1) of the Human Rights Act 1993 I am satisfied by the terms of the consent memorandum that it is necessary in the interests of justice to make the orders sought to preserve the position of the parties pending final determination of these proceedings. The terms of the formal order follow. Those terms adopt to the greatest degree possible the wording of the consent memorandum. It is to be noted the interim order has effect until further order by the Chairperson or by the Tribunal or until Mr Eaglesome's release from prison, whichever is the earlier.

THE INTERIM ORDERS

[6] The following interim orders are made:

[6.1] On an ongoing basis, but only for the duration of the plaintiff's current period of imprisonment (his statutory release date is 7 July 2015) the defendant is to purchase for the plaintiff reasonable quantities of the following items ("the food") for weekly distribution to the plaintiff:

[6.1.1] 5 x packet of beef noodles.

[6.1.2] 1 x 700g packet of Aussie Bodies Protein FX.

[6.1.3] 1 x 400g jar of Anatoth Blackberry jam.

[6.1.4] 2 x 500 ml pot of yoghurt (any flavour).

[6.1.5] 1 x 2 loaves of Freya bread.

[6.1.6] 1 x 1 litre bottle of Ribena (concentrate).

[6.1.7] 1 x 500g mixed dried fruit and nuts.

[6.1.8] 5 x small tins tuna (in oil).

[6.1.9] 5 x small tins sardines.

[6.2] The food is to be delivered to Auckland Regional Prison where the defendant will assess it in accordance with the prison's security requirements.

Provided the food satisfies such requirements, the defendant is to then deliver it to the plaintiff at his prison unit.

[6.3] Should one or more items in [6.1] not be available for purchase, the defendant is entitled to purchase reasonable substitutions.

[6.4] The plaintiff will reimburse the defendant for the cost of purchasing the food (“the payment”).

[6.5] The food is not to be delivered to the plaintiff until the payment is made (or as otherwise agreed between the parties).

[6.6] The defendant is to facilitate the making of the payment through the P119 prison purchasing system.

[7] These interim orders are to have effect from 3pm on Monday 8 June 2015 and are to continue in force until further order of the Chairperson or of the Tribunal or until the plaintiff’s release from prison, whichever is the earlier.

[8] Leave is reserved to both parties to make further application should the need arise.

[9] The interim order application is noted as withdrawn.

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Mr RPG Haines QC
Chairperson