

Reference No. HRRT 024/2015

UNDER THE HUMAN RIGHTS ACT 1993

BETWEEN NEW ZEALAND PRIVATE
PROSECUTION SERVICE LIMITED

PLAINTIFF

AND JOHN PHILIP KEY

DEFENDANT

TRIBUNAL: Rodger Haines QC, Chairperson

REPRESENTATION:

Mr G McCready in person for plaintiff

Mr P Kiely for defendant

DATE OF MINUTE: 11 June 2015

**MINUTE OF CHAIRPERSON
DECLINING APPLICATION BY PLAINTIFF FOR DISCLOSURE ORDER¹**

Background

[1] These proceedings were filed on 14 May 2015. Service on the defendant, the Rt Hon John Key (Mr Key), was effected on or about 21 May 2015 with the result a statement of reply is not due to be filed until on or about 20 June 2015.

[2] As at today's date neither Mr Key nor the aggrieved person (Ms Amanda Bailey) has filed an address for service or any other document.

The application for a "disclosure order"

[3] By application dated 9 June 2015 (received on 10 June 2015) Mr McCready (NZPPSL) has applied for an order that the National Secretary of Unite Union disclose:

[3.1] The residential address and contact phone number of Ms Bailey.

[3.2] The name and contact number of counsel representing Ms Bailey.

¹ [This decision is to be cited as: *NZ Private Prosecution Service Ltd v Key (Application for Disclosure Order No. 1)* [2015] NZHRRT 23]

[4] In support of the application the following grounds are given:

[4.1] The information is required to ensure Ms Bailey is served by Mr McCready (NZPPSL) with all papers filed by Mr McCready.

[4.2] The information is required in order to serve Ms Bailey with a witness summons in the event of the case proceeding to a hearing.

[5] The only “authority” cited in support of the application is a reference to Information Privacy Principle 11(e)(iv) found in s 6 of the Privacy Act 1993. Principle 11 limits disclosure of personal information unless the agency holding that information believes, on reasonable grounds, that non-compliance is necessary for the conduct of proceedings before any court or tribunal.

Discussion

[6] There is nothing in the Human Rights Act 1993, Part 4 which empowers the Tribunal to issue an order compelling a non-party to provide the residential address or phone number of a potential witness or of his or her counsel. As to Information Privacy Principle 11, this provision governs the disclosure of personal information held by an agency and authorises the release by that agency of certain information in some circumstances. It does not confer a power on a court or tribunal to require disclosure of that information pursuant to Principle 11. Any such power must be found elsewhere than in the Privacy Act and Human Rights Act. No such power has been identified by Mr McCready.

[7] As the Tribunal does not have jurisdiction or power to make the order sought, the application must be dismissed.

Witness summons

[8] The Human Rights Act, s 109 makes provision for the issue of a witness summons. To prevent abuse or wrongful use of the summons process a summons can only be issued at the express direction of the Tribunal or of the Chairperson.

[9] The present application has been filed when the case is in its preliminary stages only. No statement of reply has been filed by Mr Key. A case management conference will not be convened until that step has been taken. Only after all jurisdictional and preliminary matters have been determined and only after the case has been set down for hearing on its merits will the question of a witness summons become relevant.

[10] Whether any such summons is to be authorised by the Tribunal or by the Chairperson is an issue for determination much later in these proceedings. In the meantime, neither Ms Bailey nor any other potential witness is to be bothered, vexed or harassed by Mr McCready or NZPPSL. It must be emphasised that potential witnesses are under no obligation to speak to a person who is a party to civil proceedings.

Observation

[11] In his application Mr McCready asserts Ms Bailey has been identified by the Tribunal “as a person who should be served”. This is an inaccurate representation of the directions made by me in the *Minute* issued on 21 May 2015. The *Minute* required Ms Bailey to be served “with the statement of claim and other documents received by the Tribunal from Mr McCready (NZPPSL) **to date**”. The purpose was to allow Ms Bailey to decide on the information then available whether to make an application under s 108 of the Human Rights Act. No direction has been given that she be served with

any and all documents which Mr McCready (NZPPSL) may subsequently wish to serve on her. Unless and until Ms Bailey files an address for service or makes an application under s 108 of the Act, neither she nor her counsel are to be bothered, vexed or harassed by Mr McCready (NZPPSL). Ms Bailey is not a party to these proceedings.

Order

[12] For the foregoing reasons the application by Mr McCready (NZPPSL) dated 9 June 2015 for a “disclosure order” is dismissed.

“Rodger Haines”

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Rodger Haines QC
Chairperson
Human Rights Review Tribunal