

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: 21 May 2015

**MINUTE OF CHAIRPERSON
REGARDING SERVICE OF STATEMENT OF CLAIM AND RELATED MATTERS¹**

Background

[1] On the afternoon of Thursday 14 May 2015 Mr Graham McCready filed proceedings against the Prime Minister of New Zealand, the Rt Hon John Key (Mr Key). It is alleged Mr Key breached s 62(2) of the Human Rights Act 1993. The statement of claim describes the plaintiff as the New Zealand Private Prosecution Service Limited (NZPPSL) but the document is signed by Mr McCready. Neither Mr McCready nor NZPPSL claims to be the victim of the alleged sexual harassment nor do they claim to have brought the proceedings with the knowledge and consent of the alleged victim, Amanda Bailey. Indeed the statement of claim specifically acknowledges Ms Bailey has refused to cooperate in the bringing of this claim. The allegations in the statement of claim appear to have been gleaned from media reports. The question whether in these circumstances NZPPSL has standing will have to be determined having regard to (inter alia) *Attorney-General v Human Rights Review Tribunal [Judicial review]* HC Wellington CIV-2006-485-1713, (2006) 18 PRNZ 295.

¹ [This decision is to be cited as: *NZ Private Prosecution Service Ltd v Key (Service of Statement of Claim)* [2015] NZHRRT 22]

Service of proceedings

[2] These proceedings having been filed, the Human Rights Review Tribunal Regulations 2002, reg 12 requires the Secretary of the Tribunal to serve the defendant. Such service does not imply the Tribunal has formed a view on the merits of the case.

Filing and service of statement of reply

[3] Regulation 15 of the Human Rights Review Tribunal Regulations provides that a defendant who intends to defend the proceedings must, within 30 days after the day on which the notice of proceedings is served, file in the office of the Tribunals Division of the Ministry of Justice in Wellington a statement of reply to the plaintiff's claim. The defendant must also serve a copy of the statement of reply on the plaintiff.

[4] Compliance with this provision is mandatory. A defendant who intends taking jurisdiction or other preliminary points should do so in the statement of reply to avoid argument over whether a reply has been filed in time.

[5] As soon as the statement of reply has been filed the Chairperson will convene a case management teleconference.

The aggrieved person – whether entitled to be heard

[6] As it is not known whether Ms Bailey intends bringing her own proceedings under the Human Rights Act, she may value the opportunity to be heard which is afforded by s 108 of that Act. That is, having an interest in the proceedings greater than the public generally, Ms Bailey would appear to be a person entitled to be heard by the Tribunal. If she wishes to appear notice can be given under s 108 of the Act. For a relatively recent example of joinder being granted under this provision see *Director of Human Rights Proceedings v Sensible Sentencing Group Trust (Application by Victims to be Heard)* [2013] NZHRRT 26 (19 August 2013). Section 108 provides:

108 Persons entitled to be heard

(1) Any person who is a party to the proceedings before the Tribunal, and any person who satisfies the Tribunal that he or she has an interest in the proceedings greater than the public generally, may appear and may call evidence on any matter that should be taken into account in determining the proceedings.

(2) If any person who is not a party to the proceedings before the Tribunal wishes to appear, the person must give notice to the Tribunal and to every party before appearing.

(3) A person who has a right to appear or is allowed to appear before the Tribunal may appear in person or be represented by his or her counsel or agent.

[7] However, to exercise the right to apply under s 108 Ms Bailey must know what documents have been filed by Mr McCready (NZPPSL) and by Mr Key.

[8] In these circumstances I direct she be served with the statement of claim and other documents received by the Tribunal from Mr McCready (NZPPSL) to date. It will then be for Ms Bailey to decide whether an application is to be made under s 108 of the Act. She will be free to support or oppose the proceedings and any application made by the parties.

[9] It needs to be emphasised the direction that Ms Bailey be served with the proceedings is not a suggestion she should exercise her right to apply under s 108. It is simply a recognition that in fairness she should be in a position to make an informed

decision. While it is requested that Ms Bailey notify the Tribunal whether she intends availing herself of s 108, she does have the option of reserving her position until more is known. In the latter case she can file an address for service which will have the practical effect of ensuring that both the plaintiff and defendant must serve all documents on her (or her authorised representative). As the case progresses she can make a decision whether to utilise s 108.

Directions

[10] The following directions are made:

[10.1] Service of the proceedings on Rt Hon John Key is to be effected in terms of Regulations 12 and 13 of the Human Rights Review Tribunal Regulations 2002 but in a manner consistent with the Parliamentary Privilege Act 2014 and the 2014 Standing Orders, particularly Orders 409 and 410(c). If the Secretary is advised that Mr Key is represented by a lawyer and that that lawyer is authorised to accept service, service is to be effected by delivering the documents to that lawyer. At the same time the Secretary is also to provide to Mr Key (or his solicitor) a copy of this *Minute*.

[10.2] A statement of reply is to be filed and served by Mr Key within the 30 days prescribed by Regulation 15 of the Human Rights Review Tribunal Regulations 2002.

[10.3] Ms Amanda Bailey, is to be served with the statement of claim and other papers filed by Mr McCready (NZPPSL). At the same time the Secretary is also to provide to Ms Bailey a copy of this *Minute*.

[10.4] Within 30 days after the day on which the papers are served on her and if she so wishes, Ms Bailey is to file in the office of the Tribunals Division of the Ministry of Justice either an application under s 108 of the Human Rights Act 1993 or an address for service with a request that both the plaintiff and defendant serve on her all documents filed with the Tribunal until further notice.

[10.5] If an address for service is filed by Ms Bailey both the plaintiff and defendant must thereafter serve on Ms Bailey all documents filed with the Tribunal.

[10.6] As soon as a statement of reply has been filed by Mr Key the Secretary is to arrange a case management teleconference.

“Rodger Haines”

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**Rodger Haines QC
Chairperson
Human Rights Review Tribunal**