

Reference No. HRRT 027/2013

UNDER THE PRIVACY ACT 1993

BETWEEN KAREN MAY HAMMOND

PLAINTIFF

AND CREDIT UNION BAYWIDE

DEFENDANT

AT AUCKLAND

TRIBUNAL: Rodger Haines QC, Chairperson

**REPRESENTATION:**

Ms KM Hammond in person

Mr AJ Harris for defendant

Mr P Fowler, Radio New Zealand (peter.fowler@radionz.co.nz)

DATE OF DECISION: 27 November 2014

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**DECISION OF CHAIRPERSON GRANTING IN-COURT MEDIA APPLICATION  
SUBJECT TO CONDITIONS**

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[1] The hearing of these proceedings will commence at Napier on Monday 1 December 2014. The period 1 December 2014 to 10 December 2014 has been set aside.

[2] On 20 November 2014 Mr Peter Fowler, Radio New Zealand, lodged an application for in-court media coverage. Permission is sought to take still photographs during the hearing and to record for the purpose of radio (Radio New Zealand, Morning Report and Checkpoint).

[3] By *Minute* dated 21 November 2014 the plaintiff and defendant were asked to advise whether the application was opposed and if so, the reasons for the opposition.

**Position of the plaintiff**

[4] By memorandum dated 24 November 2014 the plaintiff opposes the application in part only. That is, the plaintiff does not oppose sound recording of the proceedings but



opposes the taking of still photographs while she and her witnesses are giving evidence. It is said that the presence of the camera will have a negative impact on the plaintiff and her witnesses. The plaintiff also asks that an order be made that her Facebook screenshot and the photograph of the cake in question be “suppressed”. It is submitted that this is the plaintiff’s personal information, was not obtained lawfully and is an aspect of her privacy.

### Position of the defendant

[5] By memorandum dated 26 November 2014 Mr AJ Harris raises two points:

[5.1] The application by Radio New Zealand has been filed at a late hour and outside the guideline ten working days before the hearing commences.

[5.2] The photographing of witnesses during their evidence and the recording of their testimony may create a risk that they feel inhibited from providing evidence with candour. This concern was referred to as “the chilling effect”.

However, having raised the above matters, the defendant will abide the decision of the Tribunal.

### Discussion

[6] The principles to be applied are set out in *Gay and Lesbian Clergy Anti-Discrimination Society Inc v Bishop of Auckland (Camera In-Court Application by TVNZ)* [2013] NZHRRT 16 (30 April 2013) and it is not intended to repeat what is said there.

[7] The importance of open judicial proceedings is not in question and neither the plaintiff nor the defendant have in substance opposed the application. There are only two issues. The first is whether still photographs may be taken of witnesses while giving evidence and the second relates to exhibits.

[8] As to the taking of photographs of a witness giving evidence, the plaintiff has asked that no photographs be taken of her and of her witnesses. A similar request has in effect also been made by the defendant. In *Gay and Lesbian Clergy Anti-Discrimination Society Inc v Bishop of Auckland (Camera In-Court Application by TVNZ)* at [15] it was accepted that the experience of giving evidence in public can be stressful and that being filmed or photographed at the same time can be more than disconcerting. This, in turn, may impact on the quality of the evidence given. The *In-Court Media Coverage Guidelines 2012* specifically recognise that a relevant consideration on an application such as the present is whether the presence of a photographer or a sound recorder is likely to lead to a witness not turning up to give evidence and whether being photographed or recorded may cause undue stress or anxiety to the witness.

[9] Given the concerns that have been expressed as to the likely adverse effect on the quality of the evidence to be given by witnesses and of the additional stress and anxiety they will face, I conclude that the interests of the witnesses outweigh the public interest in having them photographed while giving their evidence. In the circumstances I am persuaded that the application to take still photographs of witnesses while giving evidence is to be declined.

[10] The application is in all other respects granted subject to the standard conditions for still photography and for recording which apply to the Environment Court. Those standard conditions are set out in Schedules 3 and 4 to that court’s *In-Court Media Coverage Guidelines 2011* which are better adapted to hearings outside the original



context. Both Schedule 3 and 4 are, of course, to be interpreted and applied having regard to the specific context of the Tribunal's jurisdiction under the Privacy Act 1993.

[11] As to photographing the exhibits produced during the course of the hearing, it is to be noted that Schedule 3, cl 6 stipulates that exhibits must not be photographed without leave of the Tribunal or of the Chairperson. Any application to photograph the exhibits will be addressed if and when made.

[12] Finally, the defendant has referred to the fact that the application by Radio New Zealand has been lodged outside the ten working day period before the hearing is scheduled to commence.

[13] While it is, of course, convenient to both the Tribunal and the parties to have adequate notice of any media application and opportunity to respond, the time limit is not mandatorily prescriptive. Often the media do not learn of an impending case until shortly before the hearing or, indeed, after it has begun. While the Welcome page of the Tribunal's website gives notice of upcoming hearings, the names of the parties and details of the case are not published. Notice is given only of the venue, the hearing date and the statute under which the claim is made.

[14] The overriding point is that the Tribunal is required by s 107 of the Human Rights Act 1993 (applied to the Privacy Act 1993 by virtue of s 89 of the latter Act) to hold all its hearings in public except in special circumstances. Unless real prejudice can be shown a late application by the media to film, photograph or record the proceedings will not be refused by reason only of the lateness of the application.

#### Orders

[15] In the result the following orders are made:

[15.1] The application to photograph witnesses while giving evidence is declined.

[15.2] The application to take still photographs and to record is otherwise granted.

[15.3] The Environment Court *In-Court Media Coverage Guidelines 2011*, appropriately adapted, are to apply including Schedule 3: Standard Conditions for Still Photography and Schedule 4: Standard Conditions for Recording.

[15.4] Leave is reserved to both parties and to Radio New Zealand to make further application should the need arise.

  
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Mr RPG Haimes QC  
Chairperson

