

Reference No. HRRT 036/2017

UNDER THE PRIVACY ACT 1993

BETWEEN DIRECTOR OF HUMAN RIGHTS
PROCEEDINGS (in respect to BENJAMIN
LIGHTBODY)

PLAINTIFF

AND THE CHIEF EXECUTIVE OF THE
DEPARTMENT OF CORRECTIONS

FIRST DEFENDANT

AND SERCO NEW ZEALAND LIMITED

SECOND DEFENDANT

AT WELLINGTON

BEFORE:

Mr RPG Haines ONZM QC, Chairperson
Dr SJ Hickey MNZM, Member
Mr BK Neeson JP, Member

REPRESENTATION:

Mr R Kee, Director of Human Rights Proceedings
Ms V McCall for first defendant
Mr B Duthie for second defendant

DATE OF HEARING: Heard on the papers

DATE OF DECISION: 4 December 2018

**DECISION OF TRIBUNAL JOINING SERCO NEW ZEALAND LIMITED
AS SECOND DEFENDANT¹**

¹ [This decision is to be cited as *Director of Human Rights Proceedings [Lightbody] v Corrections (Joinder of Second Defendant No. 2)* [2018] NZHRRT 54.]

[1] The jurisdiction objection addressed by the Tribunal in *Director of Human Rights Proceedings [Lightbody] v Corrections (Joinder of Second Defendant)* [2018] NZHRRT 32 has been overcome. Following the Tribunal's decision, the Privacy Commissioner reopened his investigation. Serco New Zealand Limited (Serco) was respondent. The Commissioner found Serco interfered with Mr Lightbody's privacy by breaching IPP 5 and referred the matter to the Director of Human Rights Proceedings (Director) under the Privacy Act 1993, s 77(2). The Director has given Serco an opportunity to be heard and decided to take proceedings against Serco under s 82(2) of the Act.

[2] Consequently the Chief Executive of Corrections renews his application of 11 July 2018 that Serco be joined to the claim as second defendant. Serco, in turn, has confirmed its consent to being so joined. The Director has similarly confirmed his consent.

[3] The terms of the consent memorandum filed on 29 November 2018 provide:

May it please the Tribunal

Background

1. By application dated 11 July 2018, Corrections sought an order that Serco New Zealand Limited (Serco) be joined as a defendant to the current proceedings.
2. Serco confirmed its consent to being joined as a defendant in writing.
3. The Director did not oppose the application in principle, but pointed out the Tribunal lacked jurisdiction to hear the case in respect to Serco because the Office of the Privacy Commissioner had not investigated Serco as a respondent.
4. The Tribunal addressed that issue in *Director of Human Rights Proceedings [Lightbody] v Corrections (Joinder of Second Defendant)* [2018] NZHRRT 32 by making a formal declaration at [21] that:

[I]n the circumstances presently known to the Tribunal we conclude and declare that the presence of Serco before the Tribunal may be necessary for it to adjudicate on and settle all questions involved in the proceeding.
5. The jurisdiction issue has been cured. Following the Tribunal's declaration, the Privacy Commissioner reopened his investigation, with Serco as respondent. The Privacy Commissioner found Serco had interfered with Mr Lightbody's privacy by breaching Information Privacy Principle 5. He referred the matter to the Director under s 77(2) of the Privacy Act 1993 (PA). The Director has given Serco an opportunity to be heard and decided to take proceedings against Serco under s 82(2) of the PA.

Joinder order requested

6. Counsel for Corrections' Application for Joinder and Memorandum dated 11 July 2018 are accepted as correctly explaining why joinder should be ordered.
7. The Tribunal's comments at [19]-[21] of *Joinder of Second Defendant* in that regard remain valid.
8. The substance of the Director's case will not change if Serco is joined. Joinder will simply enable the Tribunal to conveniently deal with Serco in this proceeding rather than in a duplicated proceeding.
9. The Director and Serco consent to the Tribunal making the order sought.

Suggested timetable

10. Should the Tribunal make the order joining Serco as second defendant, the following (agreed) timetable is suggested:
 - (a) The Director is to prepare a second amended statement of claim that includes Serco as a second defendant, which is to be filed in the Tribunal and served on Corrections (and a copy provided to Serco) by 5pm on Friday 14 December 2018.

- (b) The Secretary is to formally serve Serco with a notice of proceedings and the second amended statement of claim by 5pm on Friday 21 December 2018 by sending those documents by email to: brett.duthie@serco-ap.com

(It is noted that by virtue of reg 15(1) of the Human Rights Review Tribunal Regulations 2002, Serco's statement of reply will be due within 30 days of service of the notice of the proceedings.)

- (c) Corrections is to file and serve an amended statement of reply by Friday 8 February 2018.

[Footnote citations omitted]

Formal declaration

[4] Given the terms of the consent memorandum the Tribunal declares that the presence of Serco New Zealand Limited before the Tribunal is necessary for it to adjudicate on and settle all questions involved in the proceeding and the presence of Serco New Zealand Limited will enable the proceedings to be determined fairly and consistently with the interests of justice as required by Regulation 16(1) of the Human Rights Review Tribunal Regulations 2002.

[5] Serco New Zealand Limited is accordingly to be added as second defendant to these proceedings.

Directions

[6] The following case management directions are made:

[6.1] The Director of Human Rights Proceedings is to file a second amended statement of claim setting out the allegations made against Serco New Zealand Limited as second defendant. That statement of claim is to be filed in the Tribunal and served by the Director on the Chief Executive of Corrections and on Serco New Zealand Limited on or before 4pm on Friday 14 December 2018.

[6.2] The Secretary of the Tribunal is to formally serve Serco New Zealand Limited with a notice of proceedings and with the second amended statement of claim. This step is to be taken by 4pm on Friday 21 December 2018 by sending those documents by email to: brett.duthie@serco-ap.com.

[6.3] The Chief Executive of Corrections is to file and serve an amended statement of reply by 4pm on Friday 8 February 2019.

[6.4] Leave is reserved to all parties to make further application should the need arise.

.....
Mr RPG Haines ONZM QC
Chairperson

.....
Dr SJ Hickey MNZM
Member

.....
Mr BK Neeson JP
Member