

Reference No. HRRT 066/2017

UNDER THE PRIVACY ACT 1993

BETWEEN ALISHA MARIE COOK

PLAINTIFF

AND MANAWATU COMMUNITY LAW CENTRE

FIRST DEFENDANT

AND TRACEY ABRAHAM

SECOND DEFENDANT

TRIBUNAL: Martha Roche, Co-Chairperson

REPRESENTATION:

Ms R Oakley for plaintiff

Mr G O'Sullivan for first defendant

Ms A Smith for second defendant

DATE OF ORDER: 31 May 2019

**ORDER DECLARING MS ALEXANDRA KATE SMITH HAS CEASED TO
BE THE SOLICITOR ON THE RECORD FOR THE SECOND DEFENDANT¹**

Introduction

[1] Ms Alexandra Kate Smith, solicitor of Palmerston North is the solicitor on the record for the second defendant in this proceeding, Ms Tracey Abraham.

[2] By application dated 6 May 2019, Ms Smith has applied to the Tribunal for an order declaring that she has ceased to be the solicitor on record for Ms Abraham. That application is supported by an affidavit sworn by Ms Smith on 6 May 2019. It is not necessary for the contents of that affidavit to be recited here. It is sufficient to note only the following:

¹ [This decision is to be cited as: *Cook v Manawatu Community Law Centre (Withdrawal of Solicitor)* [2019] NZHRRT 28.]

[2.1] Ms Smith was engaged by Ms Abraham regarding the proceedings against her filed by Ms Cook.

[2.2] Ms Smith has been unable to contact Ms Abraham and has not received any communication from her since June 2018.

[2.3] Since then, Ms Smith has attempted to contact Ms Abraham by email, by leaving voice messages on her mobile phone, and by letters. Ms Abraham has not responded to Ms Smith's emails or letters or answered or returned any telephone calls since June 2018.

[3] In matters of procedure the Tribunal applies, with appropriate modifications, the High Court Rules 2016. Those Rules make specific provision for where a solicitor has ceased to act. Rule 5.41 states:

5.41 Withdrawal of solicitor who has ceased to act for party

- (1) If the solicitor on the record for a party to a proceeding has ceased to act for the party, the solicitor may apply to the court for an order declaring that the solicitor has ceased to be the solicitor on the record for the party in that proceeding and the court may make the order.
- (2) It is not necessary to make an application if—
 - (a) the party has effected a change of solicitor in accordance with rule 5.40; or
 - (b) the party—
 - (i) has filed a notice stating that the party intends to act in person and the party's new address for service; and
 - (ii) has served a copy of the notice on the solicitor on the record and on every other party to the proceeding who has given an address for service; and
 - (iii) has filed an affidavit proving that service and attaching and verifying a copy of the notice served.
- (3) Unless subclause (2)(a) or (b) applies, the solicitor on the record for a party to a proceeding, for the purposes of that proceeding, is the solicitor on the record for that party until the final conclusion of the proceeding unless and until the solicitor—
 - (a) obtains an order under subclause (1); and
 - (b) serves on every party to the proceeding who has given an address for service a copy of the order obtained under that subclause; and
 - (c) files an affidavit proving that service.
- (4) Every application under subclause (1) must be made by interlocutory application and must be supported by an affidavit giving the grounds of the application.
- (5) Unless the court otherwise directs, notice of every application under subclause (1), and a copy of the affidavit in support of the application, must be served on the party for whom the solicitor acted, and that notice must inform the party of the effect that rule 5.42 will have on the party's address for service if the solicitor obtains an order under subclause (1).
- (6) An order made under subclause (1) does not affect the rights of the solicitor and the party for whom the solicitor acted as between themselves.

[4] Applying these provisions to the particular fact circumstances, Ms Smith on 9 May 2019 served on Ms Abraham the application to withdraw and the supporting affidavit. Ms Abraham was served personally at [redacted]. The affidavit of service records that Ms Abraham acknowledged her identity and accepted service of the documents.

[5] In my view these steps are sufficient compliance with r 5.41 and it is appropriate for Ms Smith to be granted the order sought.

ORDER

[6] An order is made declaring that Ms Alexandra Kate Smith, solicitor of Palmerston North, has ceased to be the solicitor on the record for Ms Abraham in these proceedings.

[7] Ms Abraham's address for service is amended to [redacted].

[8] In terms of High Court Rules, r 5.41(3) Ms Smith must now serve on each party to these proceedings a copy of this order and file an affidavit proving that service.

.....
Martha Roche
Co-Chairperson
Human Rights Review Tribunal