

Reference No. HRRT 022/2019

UNDER THE HUMAN RIGHTS ACT 1993

BETWEEN DEAF ACTION NEW ZEALAND
INCORPORATED

PLAINTIFF

AND TELEVISION NEW ZEALAND LIMITED

DEFENDANT

AT WELLINGTON

BEFORE:

Mr RPG Haines ONZM QC, Chairperson

REPRESENTATION:

Mr G Robins for plaintiff

Mr B McAnulty for defendant

DATE OF HEARING: Heard on the papers

DATE OF DECISION: 3 September 2019

**DECISION OF TRIBUNAL REFERRING COMPLAINT BACK TO
HUMAN RIGHTS COMMISSION AND RELATED ORDERS¹**

Introduction

[1] In this claim under Part 1A of the Human Rights Act 1993 (in the alternative, under Part 2, s 44) the plaintiff claims Television New Zealand Ltd has failed to provide simultaneous New Zealand Sign Language translation of national election debates, ad hoc coverage of civil defence or emergency events and TV 1 News. It is alleged the failure

¹ [This decision is to be cited as *Deaf Action New Zealand Inc v Television New Zealand Ltd (Referral back to Human Rights Commission)* [2019] NZHRRT 43.]

to provide New Zealand Sign Language translation amounts to discrimination by reason of disability.

[2] Television New Zealand denies any breach of the Act.

[3] Ahead of a teleconference scheduled for 10am on Tuesday 3 September 2019 counsel have filed a joint memorandum agreeing to the Tribunal referring this complaint back to the New Zealand Rights Commission for mediation.

Discussion

[4] Section 92D of the Act relevantly provides:

92D Tribunal or Chairperson or Deputy Chairperson may refer complaint back to Commission, or adjourn proceedings to seek resolution by settlement

- (1) When proceedings under section 92B are brought, the Tribunal or the Chairperson or a Deputy Chairperson—
 - (a) must (whether through a member or officer) first consider whether an attempt has been made to resolve the complaint (whether through mediation or otherwise); and
 - (b) must refer the complaint under section 76(2)(a) to which the proceedings relate back to the Commission unless the Tribunal or the Chairperson or a Deputy Chairperson is satisfied that attempts at resolution, or further attempts at resolution, of the complaint by the parties and the Commission—
 - (i) will not contribute constructively to resolving the complaint; or
 - (ii) will not, in the circumstances, be in the public interest; or
 - (iii) will undermine the urgent or interim nature of the proceedings.
- (2) The Tribunal or the Chairperson or a Deputy Chairperson may, at any time before, during, or after the hearing of proceedings, refer a complaint under section 76(2)(a) back to the Commission if it appears to the Tribunal or the Chairperson or a Deputy Chairperson, from what is known to it about the complaint, that the complaint may yet be able to be resolved by the parties and the Commission (for example, by mediation).
- (3) The Tribunal or the Chairperson or a Deputy Chairperson may, instead of exercising the power conferred by subsection (2), adjourn any proceedings relating to a complaint under section 76(2)(a) for a specified period if it appears to the Tribunal or the Chairperson or a Deputy Chairperson, from what is known about the complaint, that the complaint may yet be able to be resolved by the parties.

[5] As both parties ask that the complaint by Deaf Action New Zealand Inc be referred back to the Human Rights Commission, the requirements of s 92D(2) are satisfied. That is, it appears to the Tribunal from what is known to it about the complaint that the complaint may yet be able to be resolved by the parties and the Commission (for example, by mediation).

Conclusion

[6] As the statutory criteria in s 92D(2) have been satisfied the complaint is to be referred back to the Commission. There is a clear interest in the parties seeking to resolve their differences informally before engaging the Tribunal's adversarial litigation process.

ORDERS

[7] For the reasons given the following orders are made:

[7.1] Pursuant to s 92D(2) of the Human Rights Act 1993 the complaint by Deaf Action New Zealand Inc is referred back to the Human Rights Commission for resolution by the parties and the Commission (whether through mediation or otherwise).

[7.2] To ensure the proceedings are not left in suspension indefinitely, by 4pm on Friday 18 October 2019 the parties are to provide (by way of joint memorandum, or individual memoranda if agreement cannot be reached) the next suggested step in the proceeding.

[7.3] The proceedings before the Tribunal are stayed in the interim with leave reserved to both parties to seek further directions if and when the need arises.

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Mr RPG Haines ONZM QC
Chairperson