

Reference No. HRRT 064/2017

UNDER THE HUMAN RIGHTS ACT 1993

BETWEEN LARA ELLMER-KIEHN

PLAINTIFF

AND THE BOARD OF TRUSTEES OF KERIKERI HIGH SCHOOL

DEFENDANT

AT WELLINGTON

BEFORE:  
Ms J Foster, Deputy Chairperson

REPRESENTATION:  
Dr P Butler for plaintiff  
Mr R Harrison for defendant

DATE OF HEARING: Heard on the papers

DATE OF DECISION: 15 November 2019

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**DECISION OF TRIBUNAL REFERRING COMPLAINT BACK TO HUMAN RIGHTS COMMISSION AND RELATED ORDERS <sup>1</sup>**

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**Introduction**

[1] The plaintiff alleges the defendants have breached s 57(1) of the Human Rights Act (discrimination by an educational establishment). The prohibited ground relied on is that in s 21(1)(h) (disability). The defendants deny the alleged breach.

[2] At the teleconference held on 14 November 2019 counsel for the plaintiff advised that her clients are keen to resolve this matter through mediation. Counsel for the defendant advised his client agreed with this course of action. Both parties wish to attend mediation with a view to attempting to resolve the matter.

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<sup>1</sup> [This decision is to be cited as *Ellmer-Kiehn v Board of Trustees of Kerikeri High School (Referral back to Human Rights Commission)* [2019] NZHRRRT 50.]

**[3]** In these circumstances s 92D(2) of the HRA applies:

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

(1) ...

(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) ...

**Conclusion**

**[4]** The statutory criteria in s 92D(2) have been satisfied and the complaint is to be referred back to the Commission. There is an interest in the parties seeking to resolve this matter informally before engaging the Tribunal's adversarial litigation process.

**ORDERS**

**[5]** For the reasons given above the following orders are made:

**[5.1]** Pursuant to s 92D(2) of the Human Rights Act 1993 the complaint by Ms Ellmer-Kiehn is referred back to the Human Rights Commission for resolution by the parties and the Commission (whether through mediation or otherwise).

**[5.2]** So the proceedings are not left in suspension indefinitely, the parties are to provide the Tribunal with a progress report in approximately three months. Such report must be filed no later than 5pm on Friday 28 February 2020.

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

.....  
**Ms J Foster**  
**Deputy Chairperson**