

Reference No. HRRT 013/2022

UNDER

THE PRIVACY ACT 2020

BETWEEN

SONJA MARIE LAWSON

PLAINTIFF

AND

INTENDED DEFENDANT

AT WELLINGTON

BEFORE:

Ms GJ Goodwin, Deputy Chairperson

REPRESENTATION:

Miss S M Lawson in person

Ms I Clarke for defendant

DATE OF HEARING: Heard on the papers

DATE OF DECISION: 13 October 2023

**DECISION OF DEPUTY CHAIRPERSON REJECTING
APPLICATION TO EXTEND TIME TO COMMENCE PROCEEDINGS¹**

[1] Miss Lawson alleges that the Intended Defendant failed to respond to her requests for access to her personal information. Her claim in the Tribunal was, however, filed outside the six-month time period prescribed by the Privacy Act 2020 (PA).

[2] That six-month time period runs from the date the Privacy Commissioner gives notice to the parties under any of PA, ss 98(2) to (7).² The Privacy Commissioner gave his notice to the parties on 31 March 2021. The Tribunal received Miss Lawson's claim

¹ [This decision is to be cited as *Lawson v Intended Defendant (No. 2) (Extension of time to commence proceedings)* [2023] NZHRRT 33.]

² In this case notice was given under PA, s 98(3) that the Privacy Commissioner, having commenced an investigation, decided not to further investigate the complaint or matter.

on 30 March 2022. Accordingly, a jurisdictional issue arises as Miss Lawson's claim was lodged after the prescribed six-month limitation period.

[3] Miss Lawson's claim can only be accepted if the Chairperson or a Deputy Chairperson, on application made by Miss Lawson, is satisfied that exceptional circumstances prevented her claim from being commenced within the statutory six-month timeframe.

THE TRIBUNAL'S JURISDICTION

[4] Section 98 of the PA enables aggrieved individuals to commence proceedings in the Tribunal provided certain requirements are satisfied. Where those requirements are met, proceedings can be commenced as of right within specified time periods.

[5] The relevant time period for commencing the proceedings may, however, be extended under PA, s 98(8). That section provides that the Chairperson³, may extend the six-month limitation period, if the Chairperson is satisfied that "exceptional circumstances prevented proceedings from being commenced within the specified period".

[6] The provisions of PA, s 98 relevant to this case are set out below:

98 Aggrieved individuals may commence proceedings in Tribunal

- (1) An aggrieved individual, a representative on behalf of an aggrieved individual, or a representative lawfully acting on behalf of a class of aggrieved individuals may commence proceedings in the Tribunal in respect of a complaint received by the Commissioner, or a matter investigated under subpart 2, in any case where—
...
 - (b) the Commissioner, having commenced an investigation, decides not to further investigate the complaint or matter; or
...
- (3) A person commencing proceedings under subsection (1)(b) must do so within 6 months after the Commissioner has given notice to the parties under section 81(4).
...
- (8) The Chairperson may agree to extend any period specified in subsections (2) to (7) for commencing proceedings if, on an application made for the purpose by the person proposing to commence proceedings, the Chairperson is satisfied that exceptional circumstances prevented proceedings from being commenced within the specified period.

[7] As Miss Lawson's claim was not lodged within the time period specified in the PA, s 98(3), before her claim can proceed, I must be satisfied that there were exceptional circumstances which prevented her from lodging that claim within the limitation period. Miss Lawson has the onus of satisfying me as to the existence of such circumstances.

[8] If that onus is met, I then have a discretion to extend the relevant period within which Miss Lawson's claim had to be filed with the Tribunal.

³ Which includes a Deputy Chairperson pursuant to the Human Rights Act 1993, s 101A.

What constitutes exceptional circumstances

[9] The phrase “exceptional circumstances” is not defined in the PA. Its meaning was, however, recently considered by the Tribunal⁴:

[15] The meaning of the phrase “exceptional circumstances” as it arose in a different statute but a similar context relating to the power to extend time to bring a late claim was considered by the Supreme Court in *Creedy v Commissioner of Police* [2008] NZSC 31 at [24]-[33]. At issue in that case was s 114(4) of the Employment Relations Act 2000 that allows the Employment Relations Authority to grant leave to extend the time for raising a personal grievance after the statutory time limit if “satisfied the delay in raising the personal grievance was occasioned by exceptional circumstances.” The Court held “exceptional circumstances” in this context meant unusual or uncommon. This interpretation was preferred as it accords with ordinary English usage, is easier to apply and did not unduly limit the power to extend time. At [32] it was noted that in *R v Kelly* [1999] 2 All ER 13 (CA) at p 20 when construing a reference to “exceptional circumstances” Lord Bingham of Cornhill said:

“We must construe “exceptional” as an ordinary, familiar English adjective, and not as a term of art. It describes a circumstance which is such as to form an exception, which is out of the ordinary course, or unusual, or special or uncommon. To be exceptional, a circumstance need not be unique, or unprecedented, or very rare, but it cannot be one that is regularly, or routinely, or normally encountered.”

[16] The phrase “exceptional circumstances” in s 98(8) of the Privacy Act 2020 should similarly be given its ordinary or plain meaning of circumstances that are unusual, or uncommon. This interpretation accords with the purpose and context of s 98(8). The purpose of s 98(8) is to provide a discretion to the Chairperson of the Tribunal to agree to late commencement of proceedings when exceptional circumstances have prevented an aggrieved individual from commencing proceedings within the six-month statutory time limit. The jurisdiction to extend time under s 98(8) is a narrowly confined one and it should not be unduly limited by adopting a more stringent interpretation of “exceptional circumstances”.

ISSUES

[10] The issues to be determined are, therefore:

[10.1] Whether there are exceptional circumstances (determined in accordance with the discussion at [9] above) which prevented Miss Lawson commencing these proceedings within six months after the Privacy Commissioner gave notice to the parties that he had decided to take no further action on the complaint.

[10.2] If so, whether my discretion should be exercised to extend the time for commencing proceedings to 30 March 2022.

OPPORTUNITIES TO PROVIDE DETAILS OF EXCEPTIONAL CIRCUMSTANCES

[11] As noted above, the Privacy Commissioner gave his notice to the parties on 31 March 2021. The six-month period for issuing proceedings as of right in the Tribunal therefore expired at the end of September 2021. Miss Lawson’s claim was not filed until 30 March 2022.

[12] The Tribunal attempted to set down a teleconference to discuss the jurisdictional issue with the parties on 16 August 2022.

⁴ *Keston v Redwood Corporation Ltd (Extension of Time to Commence Proceedings)* [2022] NZHRRT 50 at [15] and [16]

[13] On 9 August 2022 the Tribunal received an email from Mr Victor Boyd, on behalf of Miss Lawson, noting that Miss Lawson had asked him to relay that she was in the process of seeking legal representation and that this matter should be put on hold until further notice. No time period was specified.

[14] On 12 August 2022 the Tribunal issued a *Minute* noting that Miss Lawson was approximately six months out of time to file this claim and also noting that the time period could be extended under PA, s 98(8) if, on application made by Miss Lawson, the Chairperson or Deputy Chairperson was satisfied that exceptional circumstances prevented proceedings from being commenced within the specified six-month time period. The *Minute* noted:

[14.1] If Miss Lawson wished to pursue her claim in the Tribunal, she would need to apply for an extension to file out of time.

[14.2] Her application for an extension to file out of time would need to specify the exceptional circumstances Miss Lawson relied on as preventing her from bringing her claim within the statutory six-month period.

[14.3] Miss Lawson would be able to bring her claim only if she succeeded in satisfying the Chairperson or Deputy Chairperson that there were such exceptional circumstances.

[15] The *Minute* directed Miss Lawson file her application to file out of time, including any submissions and evidence relating to exceptional circumstances, by Friday 9 December 2022.

[16] Miss Lawson did not comply with that direction.

[17] By memorandum dated 2 February 2023, counsel for the Intended Defendant:

[17.1] Sought directions affording Miss Lawson a final opportunity to file her application and submissions in relation to exceptional circumstances;

[17.2] Sought orders dismissing this matter for want of jurisdiction if Miss Lawson did not comply with the direction in [17.1] above.

[18] By *Minute* dated 14 February 2023 Miss Lawson was given a further opportunity to file and serve her application relating to exceptional circumstances by Friday 17 March 2023.

[19] On 1 March 2023 Mr Boyd sent an email to counsel for the Intended Defendant (which counsel subsequently forwarded to the Tribunal) advising that Miss Lawson wanted “all matters” before the Tribunal adjourned until she had obtained legally aided representation. Mr Boyd advised that he understood legal aid had been applied for in the previous year for another claim, but that Miss Lawson wanted that claim to be dealt with first, after which she would be applying for legal aid for this and another other claim before the Tribunal.

[20] On 9 March 2023 Miss Lawson filed and served a letter, which she had sworn before a Justice of the Peace, detailing the matters she said gave rise to exceptional circumstances. The content of that letter is discussed at [28] to [35] below.

[21] By memorandum dated 20 March 2023 counsel for the Intended Defendant said that the submissions in Miss Lawson's letter focused on the content of her substantive claim and concerns around legal aid matters. Counsel said that Miss Lawson had not provided any substantive reasons explaining or justifying the delay.

WHETHER THERE WERE EXCEPTIONAL CIRCUMSTANCES

[22] On the copy of the Privacy Commissioner's certificate of investigation, attached to her statement of claim, Miss Lawson had handwritten "*Privacy refused to provide me with COI as well as refused to correct wrong info contained in COI & file! I only received this COI on 10-3-22!*" Miss Lawson did not refer to the matter of the timing of the receipt of the certificate in any submissions made to the Tribunal. It is not referred to in Mr Boyd's emails or Miss Lawson's sworn letter of 9 March 2023. In a letter dated 6 April 2022, addressed to the Tribunal, the Privacy Commissioner confirmed that he issued the notice under PA, s 98 on 31 March 2021.

[23] Accordingly, the documents which the Tribunal has before it in relation to alleged exceptional circumstances which prevented Miss Lawson from commencing this proceeding in time are the emails from Mr Boyd dated 9 August 2022 and 1 March 2023 and the sworn letter filed and served by Miss Lawson, dated 9 March 2023.

The two emails

[24] Mr Boyd's email of 9 August 2022 merely noted that Miss Lawson had asked him to relay that she was in the process of seeking legal representation and that the matter should be put on hold. The email contained no explanation for the delay in filing this claim.

[25] Mr Boyd's subsequent email of 1 March 2023 was a request that all matters Miss Lawson had before the Tribunal be adjourned pending Miss Lawson getting legal aid. The email did not comment on why Miss Lawson's claim was unable to be filed within the six-month period. Rather, the email stated that Miss Lawson would like another claim to be dealt with first before this one. It seemed that Miss Lawson had not applied for legal aid for this claim, notwithstanding that she had known for over six months of the jurisdictional issue. No time period for the matter to be put on hold for was specified.

[26] Miss Lawson had already been advised that it was not appropriate for the matter of whether there were exceptional circumstances to be put on hold indefinitely. In addition, we do not accept that the absence of legal aid would have prevented Miss Lawson advising the Tribunal of any exceptional circumstances which prevented her from filing this claim within time. Miss Lawson is an experienced self-represented litigant before this Tribunal.⁵

[27] There is no information relating to exceptional circumstances in Mr Boyd's two emails.

Miss Lawson's sworn letter

[28] Miss Lawson's letter of 9 March 2023 alleged the Intended Defendant deliberately lied in stating it had no record of requests from Miss Lawson her for information. Miss Lawson said there were multiple pieces of correspondence where she requested

⁵ See *Lawson v Health and Disability Commissioner (Strike-out)* [2023] NZHRRT 15

files. This, however, goes to her substantive case. It does not explain any reason for a late filing.

[29] Miss Lawson said she had provided more than enough documents to cover exceptional circumstances and that the evidence was the same as another claim she was making at the time⁶. The matters Miss Lawson raised in that claim failed to establish that there were exceptional circumstances. It would be unrealistic to rely on those rejected grounds as a basis for establishing exceptional circumstances relating to this proceeding.

[30] Miss Lawson said that the Tribunal was aware that the issues she had with the Intended Defendant were dependent on the outcome of another case, so this claim must be adjourned. Miss Lawson's statement of claim makes no mention of the other case.

[31] Miss Lawson has not provided any information to link this claim to the result in any other proceeding by her before the Tribunal. In any event, even if such a link was established, that does not explain why Miss Lawson could not have filed this claim in the Tribunal within the specified six-month period.

[32] Miss Lawson says the Intended Defendant victimised her by deliberately withholding information and files which would have been evidence to support her claim in the Tribunal. She said the Intended Defendant had continued to deny her access to her files and made allegedly defamatory comments about her. These matters do not go to any exceptional circumstances which delayed the timely commencement of these proceedings.

[33] Miss Lawson's letter again said this claim must be adjourned to enable her to get legal aid for another case, which needed to be proceeded with before this claim. As previously referred to, there is nothing before the Tribunal that links the matters in Miss Lawson's statement of claim to another proceeding in this Tribunal.

[34] Miss Lawson said the Intended Defendant had targeted her for years and she had a lot of criminal acts done against her, which the Intended Defendant had done nothing about. Again, this does not go to any issue relating to the timing of the filing of her claim with the Tribunal.

[35] Miss Lawson says a third party illegally and maliciously provided information to Intended Defendant, including in relation to her health. She denies all such matters relating to her health. These matters do not relate to any issue of commencing proceedings in a timely manner.

[36] The general tenor of Miss Lawson's submissions is that she has been the subject of lies and defamatory statements by a party unconnected to the Intended Defendant in this case. There is nothing in Miss Lawson's letter which explains an inability to file her claim within the statutory six-month period. She does not explain or give details of any matters which could be considered exceptional circumstances, preventing her claim from being brought within the statutory time period.

⁶ See *Lawson v Intended Defendant (Extension of time to commence proceedings)* [2023] NZHRRT 20 which held there were no exceptional circumstances preventing Miss Lawson from commencing within six months after the Commissioner gave notice to the parties, under PA, s 81(4) and declined Miss Lawson's application to extend time under PA, s 98(8).

No exceptional circumstances

[37] Overall, there are no exceptional circumstances which prevented Miss Lawson from commencing her proceedings within six months after the Commissioner gave notice to the parties, under PA, 81(4).

[38] I therefore do not need to consider whether to exercise my discretion to extend the date for filing of Miss Lawson's claim.

[39] Miss Lawson's application to extend time for commencing proceedings under PA, s 98(8) is declined.

[40] The Tribunal file on this matter will now be closed.

ORDER

[41] For the reasons given above Miss Lawson's application to extend time to commence proceedings under s 98(8) of the Privacy Act 2020 is declined.

.....
Ms GJ Goodwin
Deputy Chairperson