

Reference No. HRRT 040/2017

UNDER THE HUMAN RIGHTS ACT 1993

BETWEEN ALEX KAPIARUMALA

PLAINTIFF

AND ROMAN CATHOLIC CHURCH (NEW ZEALAND CATHOLIC BISHOPS CONFERENCE)

FIRST DEFENDANT

AND MICHAEL GIELEN

SECOND DEFENDANT

AND SEXUAL ABUSE PROTOCOL COMMITTEE

THIRD DEFENDANT

AND BISHOP STEPHEN LOWE

FOURTH DEFENDANT

TRIBUNAL: Rodger Haines QC, Chairperson

REPRESENTATION:

Mr CG Tuck for plaintiff

Mr S O'Sullivan and Mr M Booth for first defendant

Mr DS McGill for second defendant

Mr B Cullen for third and fourth defendants

DATE OF ORDER: 15 December 2017

ORDER DECLARING MS LISA ABRAMS HAS CEASED TO BE THE SOLICITOR ON THE RECORD FOR THE PLAINTIFF¹

[1] Ms Lisa Abrams, solicitor of Tauranga is the solicitor on the record for the plaintiff in this proceeding.

¹ [This decision is to be cited as: *Kapiarumala v New Zealand Catholic Bishops Conference (Withdrawal of Solicitor)* [2017] NZHRRT 56]

[2] By application dated 12 December 2017 Ms Abrams has applied to the Tribunal for an order declaring that she has ceased to be the solicitor on the record for the plaintiff. That application is supported by an affidavit sworn by Ms Abrams on 12 December 2017. It is not necessary that the contents of that affidavit be recited here. It is sufficient to note only the following:

[2.1] Ms Abrams was engaged by the plaintiff on 12 May 2015 regarding his complaints in respect of the Catholic Church of New Zealand.

[2.2] As a consequence of recent events Ms Abrams is no longer able to continue representing the plaintiff.

[2.3] The plaintiff has been given the opportunity to receive independent counsel and has been advised to do so. He has been aware since 2 December 2017 of Ms Abrams' intention to withdraw.

[2.4] The plaintiff continues to be represented by Mr Craig Tuck, barrister of Tauranga. Mr Tuck has also been informed of the reasons why Ms Abrams can no longer represent the plaintiff.

[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 Abrams on 14 December 2017 served on Mr Craig the application to withdraw and the supporting affidavit. The plaintiff was not served personally because Mr Tuck's chambers are the address for service given in the statement of claim filed on 19 July 2017.

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

ORDER

[6] An order is made declaring that Ms Lisa Abrams, solicitor of Tauranga, has ceased to be the solicitor on the record for the plaintiff in these proceedings.

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

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Mr RPG Haines QC
Chairperson
Human Rights Review Tribunal