

Reference No. HRRT 049/2017
UNDER THE HUMAN RIGHTS ACT 1993
BETWEEN GUY GREENSLADE
PLAINTIFF
AND COMMISSIONER OF POLICE
DEFENDANT

Reference No. HRRT 003/2018
UNDER THE PRIVACY ACT 1993
BETWEEN GUY GREENSLADE
PLAINTIFF
AND COMMISSIONER OF POLICE
DEFENDANT

AT WELLINGTON

BEFORE:
Mr RPG Haines ONZM QC, Chairperson

REPRESENTATION:
Mr G Robins for the plaintiff in HRRT 049/2017
Mr G Greenslade in person in HRRT 003/2018
Mr P Gunn and Ms A Lawson for defendant

DATE OF HEARING: Heard on the papers

DATE OF DECISION: 27 February 2019

CONSOLIDATION ORDER¹

¹ [This decision is to be cited as *Greenslade v Commissioner of Police (Consolidation Order)* [2019] NZHRRT 10.]

Background

[1] Mr Greenslade has brought two proceedings against the Commissioner of Police:

[1.1] In HRRT049/2017 (filed on 11 September 2017), Mr Greenslade alleges a breach of the Human Rights Act 1993. He claims to have been discriminated against on the grounds of disability.

[1.2] In HRRT003/2018 (filed on 23 January 2018), Mr Greenslade alleges a breach of the Privacy Act 1993. His case is that in the course of the events which relate to the discrimination claim the Commissioner of Police breached IPPs 1, 3, 8 and 10.

[2] As can be seen, the claims arise from the same factual background.

[3] In the claim under the Human Rights Act Mr Greenslade is represented by the Director of Human Rights Proceedings (Director). However in the claim under the Privacy Act Mr Greenslade is self-represented. The Commissioner of Police is represented by the Crown Law Office in both proceedings.

The application for consolidation

[4] By way of consent memorandum dated 25 January 2019 and signed by the Director, Mr Greenslade and counsel for the Commissioner of Police application is made for a consolidation order. It is submitted consolidation will reduce the cost and time to the parties as well as to the Tribunal.

[5] The parties rely on:

[5.1] High Court Rules, r 10.12.

[5.2] The Human Rights Review Tribunal Regulations 2002, reg 16.

[5.3] *Rafiq v Chief Executive, Ministry of Business, Innovation and Employment* [2013] NZHRRT 9 and *Rafiq v Civil Aviation Authority of New Zealand* [2013] NZHRRT 10. In both cases consolidation orders were made under the Human Rights Review Tribunal Regulations, reg 16.

[6] The parties submit that without a consolidation order it is likely there will be two hearings of similar length as the parties are likely to call the same witnesses to give very similar evidence. There will be a real risk of conflicting findings on an identical factual background.

Conduct of proceedings

[7] The parties envisage a consolidation order directing that the proceedings be heard successively, with the Human Rights Act claim being heard first.

[8] The following detailed proposal is made:

[8.1] The Human Rights Act claim will be heard without any reference being made to the Privacy Act proceedings. The order will be:

[8.1.1] Plaintiff's opening submissions by Director.

- [8.1.2] Plaintiff's evidence.
- [8.1.3] Opening legal submissions by Commissioner.
- [8.1.4] Defendant's evidence.
- [8.1.5] Closing submissions by Director.
- [8.1.6] Closing submissions by Commissioner.
- [8.1.7] Reply by Director.
- [8.1.8] Tribunal reserves its decision.
- [8.1.9] The Director will then be excused.

[8.2] The Privacy Act claim will then be heard:

[8.2.1] Steps [8.1.1] to [8.1.8] will be repeated but as Mr Greenslade will be self-represented he will present his submissions in person.

[8.2.2] The evidence heard earlier in the context of the Human Rights Act claim will be part of the record for the Privacy Act claim.

[8.2.3] If good reason exists, the Tribunal will grant leave to Mr Greenslade or to the Commissioner of Police to recall any witnesses for the purposes of examination-in-chief or cross-examination.

[8.2.4] Mr Greenslade and the Commissioner of Police can call any other witnesses or produce any other evidence they wish to in the ordinary way.

[9] It is acknowledged that while there is sufficient commonality between the factual matrices to warrant consolidation, there remain factual distinctions between the two claims which will likely require additional evidence to be led in respect of the Privacy Act proceeding. Mr Greenslade's additional evidence in that matter is likely to be brief.

[10] The joint memorandum further records Mr Greenslade is aware the variation in legal representation between the Human Rights Act and Privacy Act claims poses practical difficulties. The process outlined above is intended to address those difficulties. The alternative – hearing all evidence relevant to the Human Rights Act and Privacy Act matters concurrently, and then all submissions concurrently – creates difficulty when attempting to discern whether the Director ought to conduct the matter (particularly during cross-examination).

Discussion

[11] The Tribunal has power to regulate its procedure as it thinks fit. See the Human Rights Act 1993, s 104(5). In the exercise of that power it will on occasion draw on the High Court Rules, subject to such modification as may be necessary to reflect the fact the Tribunal is not a court and that it has a unique human rights jurisdiction.

[12] In the present case the parties have appropriately made reference to High Court Rules, r 10.12 which usefully identifies the circumstances in which a consolidation order is ordinarily made in civil litigation:

Subpart 3—Consolidation of proceedings

10.12 When order may be made

The court may order that 2 or more proceedings be consolidated on terms it thinks just, or may order them to be tried at the same time or one immediately after another, or may order any of them to be stayed until after the determination of any other of them, if the court is satisfied—

- (a) that some common question of law or fact arises in both or all of them; or
- (b) that the rights to relief claimed therein are in respect of or arise out of—
 - (i) the same event; or
 - (ii) the same transaction; or
 - (iii) the same event and the same transaction; or
 - (iv) the same series of events; or
 - (v) the same series of transactions; or
 - (vi) the same series of events and the same series of transactions; or
- (c) that for some other reason it is desirable to make an order under this rule.

[13] In *Medlab Hamilton Ltd v Waikato District Health Board* (2007) 18 PRNZ 517 (HC) at [8] Rodney Hansen J observed that the discretion to make orders under this rule is a wide one, to be exercised broadly in the interests of justice. Among the factors which will favour an order are the savings that will be achieved in time and cost to the parties and in judicial resources and removing the risk of inconsistent decisions.

[14] In the present case the parties are identical and the claims arise out of the same factual background. It is likely the same witnesses will be called to give very similar evidence. Two hearings of similar length will be needed and there is a real risk of conflicting findings on an identical factual background. In these circumstances the savings in time and cost to the parties and in judicial resources and the removal of the risk of inconsistent decisions fully justify the conclusion a consolidation order will ensure the two proceedings are heard, determined or otherwise dealt with fairly, efficiently, simply and speedily as is consistent with justice as required by Regulation 16(1) of the Human Rights Review Tribunal Regulations.

The terms of the order

[15] For the reasons given it is ordered that these two proceedings be consolidated. They are to be tried successively with the claim under the Human Rights Act 1993 being heard first. The procedure and order of presentation is to be that agreed to by the parties as recorded at [8] above.

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Mr RPG Haines ONZM QC
Chairperson