

Te Rito



Human rights case studies

December 2009



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Commission
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Te Rito

Responding to human rights complaints

Te Rito is the heart or core of the flax bush,
as human rights are at the heart of
the Commission's enquiries and complaints service.

Hutia te rito o te harakeke,
kei hea te kōmako e ko?
Kī mai ki au, he aha te mea nui?
Māku e ki atu,
he tangata, he tangata, he tangata.

Take the heart from the flax bush
and where would the bellbird sing?
Ask what is the greatest in all creation?
I will tell you,
it is people, people, people.

Names and details of cases have been changed to protect privacy.

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Introduction

The 25 case studies in this issue of Te Rito are a selection of complaints handled by the Human Rights Commission's mediation-based Enquiries and Complaints Service. This service, launched in 2002, is free and confidential. It deals with complaints of unlawful discrimination and related situations. It provides information about the Human Rights Act and encourages people to agree on how to resolve disputes fairly. With an emphasis on low-level, informal dispute resolution, complaints are generally quickly resolved.

Mediators closed almost 75 per cent of complaints within 60 days and 96 per cent within a year, over the past 12 months. Where complainants are not satisfied with the results, they can approach the Director of Human Rights Proceedings for representation in the Human Rights Review Tribunal. However, due to the effective mediation process, only a small number of complainants go on to seek legal representation.

In the year to June 2009, the Commission's free InfoLine service recorded 5834 enquiries and complaints by email, phone, fax, in person or from the hrc.co.nz website. Of these, 3489 were seeking direct intervention by the Commission, with 1405 of those complaints involving some form of unlawful discrimination.

The remaining 2084 complaints involved broader human rights issues, such as prisoners' rights, the rights of migrant and seasonal workers, and the right to education. For these complaints, the Commission used a range of approaches. These included providing information, referral to more appropriate agencies, assisting communication, and encouraging policy and practice that reflects human rights standards.

Some people do not want direct involvement with the mediation process, but would still like the Commission to address their issue. One woman complained about difficulties people encounter when trying to book online for events at a particular venue, when requiring wheelchair access. While the complainant resolved her situation, the Commission is now working with ticket marketers to ensure their policies better accommodate customers who use wheelchairs.

The following 25 cases studies highlight some of the issues affecting New Zealanders in their everyday lives. If you or someone you know has an enquiry or complaint about a human rights issue, contact the Human Rights Commission. Our details are on the inside cover of this booklet.



Race

Complaints and enquiries related to race, colour, ethnic or national origins, racial harassment and racial disharmony make race-based issues the highest percentage of approaches to the Commission. However, there was a slight decrease in the number of race-based approaches compared to the previous year.

1 "No Asians need apply" job ad

WHAT HAPPENED?

While searching on an internet trading agency, Kim noticed a job advertisement that said "No Asians need apply".

She saw the comment had been there for about a year. Kim emailed the agency to complain and was told the comment would be removed immediately.

A month later, Kim saw it was still on the website.

THE MEDIATION PROCESS

Kim complained to the Commission about the ad on the website. A mediator spoke to the agency, who said they would investigate.

OUTCOME

The agency removed the comment and notified the trader who had posted it that this kind of language was unacceptable and against the website's regulations.

The agency told the Commission there had been two unsavoury remarks placed by this trader, and they had removed the other one when Kim had first complained.

Both parties were satisfied with the outcome.

Race

2 Moko resolution

WHAT HAPPENED?

Nathan was refused entry into a North Island nightclub, because the bouncer said the club had a “no tattoos” policy. Nathan felt this was a racist decision and that his facial moko should be acceptable as a symbol of his cultural identity. A confrontation developed between Nathan and the bouncer and the police were called. The bouncers alleged Nathan hit one of them in the face.

THE MEDIATION PROCESS

Nathan contacted the Commission, who informed the nightclub that refusing Nathan entry into their establishment could be racial discrimination. They were asked to attend mediation with Nathan but refused due to Nathan’s aggressive behaviour with the bouncer.

The Commission told Nathan he could take his case to the Human Rights Review Tribunal or the Office of Human Rights Proceedings. Nathan applied to the Director of Human Rights Proceedings, who referred the case back to the Commission for mediation.

OUTCOME

The nightclub owners eventually agreed to mediation with Nathan. The matter was quickly resolved, and Nathan received an apology from the club owners and \$500 compensation. The club changed its “no tattoo” policy to allow religious and cultural tattoos.

NOTE

Some cases can become more complicated if they are not initially resolved through mediation. In this case, the club owners considered mediation would be a more satisfactory avenue than being taken to court.



3 Experience counts, not nationality

WHAT HAPPENED?

Dale phoned a farm owner to apply for a job as second-in-charge on the farm. During the conversation, Dale was asked about his nationality. After replying he was Fijian Indian, Dale said the farm owner was not interested in proceeding any further with his application. The farmer said he had employed Fijian Indians in the past and it hadn't worked out.

THE MEDIATION PROCESS

Dale contacted the Commission upset that the farm owner had not asked about his work history. Dale is a New Zealand citizen with eight years farming experience.

When the Commission contacted the owner, he denied Dale's allegations of racism. He did concede he might have been rude, as Dale had called at an inconvenient time. He said they employ an ethnically diverse workforce on the farm, including a Fijian Indian.

OUTCOME

The mediator sent the farm owner some information about the Human Rights Act and a copy of the Commission's pre-employment guidelines, *Getting a Job: An A to Z for Employers and Employees*.

The farm owner wrote Dale a letter of apology, which Dale gladly accepted. They both considered the matter successfully resolved.

NOTE

The pre-employment guidelines are available on the resources section of the Commission's website: www.hrc.co.nz.

Race

4

Young shoppers receive apology

WHAT HAPPENED?

Two teenage girls and their younger cousin were trying on clothes in a store. When they came out of the changing rooms, two police officers were waiting for them. Their bags were searched, and while no stolen items were found, the manager issued trespass notices against them. The store manager told police the girls had been in the shop the previous week and alleged they had presented a credit card that was declined. The girls were upset and embarrassed at what they believed was unfair treatment.

The girls' families approached the store manager in an attempt to explain the impact the incident had on the girls. They told the manager the girls had never been in trouble before. Unfortunately, this interaction escalated the situation.

THE MEDIATION PROCESS

A family member complained to the Commission about the way the girls had been treated by the store manager, including allegations of racist comment. They believed they had been treated this way because of their race.

The Commission mediated between the parties and the matter was resolved.

OUTCOME

The girls received a letter of apology from the store and the trespass notices were withdrawn.



5 Talk sorts text issue

WHAT HAPPENED?

Jim, a black South African, attempted to enter a local bar. Entry was via a text invite sent to customers' mobile phones, but Jim had not received one. He then observed other patrons entering the bar without text invites, but noticed Africans and Indians had to provide them.

THE MEDIATION PROCESS

Jim told the Commission he had been refused entry into the establishment because of his race.

A Commission mediator contacted the bar's company director, who carried out an investigation of the matter. He asked if he would be able to contact the complainant directly to talk about the situation and try to resolve the matter. Both parties agreed, having been advised that mediation was still an option.

Jim and the company director told the mediator they had a constructive conversation. Jim was invited to get in touch with certain members of the bar staff if he had future questions about the establishment's policies.

OUTCOME

Jim thanked the Commission's mediator for assistance in resolving the matter. He said he felt positive about the company and was comfortable with the option of raising future concerns with relevant bar staff.

The company director also thanked the Commission's mediator for helping with the issue. He was pleased at being given the opportunity to resolve it directly with the complainant.

NOTE

The Commission encourages flexibility and empowerment by letting parties decide how they would like to resolve matters. Sometimes mediators initiate conversations without the need to get directly involved in the issue.

Age

The number of complaints the Commission receives on the basis of age has stayed steady over the past few years. Of these, there has been an increase in employment-related age issues, up 10 per cent from 2006-07.

6 Rejected because of age

WHAT HAPPENED?

Simon applied for a job advertised through an employment agency. They responded to his application, saying they would send his CV to the employer.

During initial contact with the company, Simon alleged he was asked his age on two separate occasions. He was then told by the employment agency he had not been successful in obtaining an interview. The employment agent told Simon the company was probably looking for a younger candidate, possibly around 18 years of age. From this response, Simon felt the employment agency condoned age discrimination.

THE MEDIATION PROCESS

The Commission spoke to the employer on the telephone. He explained it was common practice to ask for the applicant's age, because the job involved hard work. The employer was unaware you could not select applicants based on their age. He apologised for offending Simon and for any hurt he may have felt.

The Commission also spoke to the employment agency and outlined the law based around age discrimination.

OUTCOME

The employer was not able to reconsider Simon for the position, as his business circumstances had changed and the position was no longer available.

The employment agency stated it would review its practices.



7

Redundancy deficient

WHAT HAPPENED?

Pete had worked for a national corporation for many years when he opted to take voluntary redundancy. His redundancy package did not include certain benefits he had expected he would receive. Pete discovered he would have been entitled to these benefits if he had been over a certain age, regardless of his length of service. He understood this was intended to compensate older workers who would have limited options for re-employment in this particular industry.

THE MEDIATION PROCESS

Pete contacted the Commission complaining he had been discriminated against by his employer based on age. He said his redundancy package was less than it would have been if he had been older.

The Commission arranged a mediation meeting, which both parties attended. The matter was not resolved at the initial meeting.

OUTCOME

A settlement agreement, which included compensation, was developed through subsequent correspondence between the Commission and the parties without the need for further meetings.

Age

8

45-plus job candidate misses out

WHAT HAPPENED?

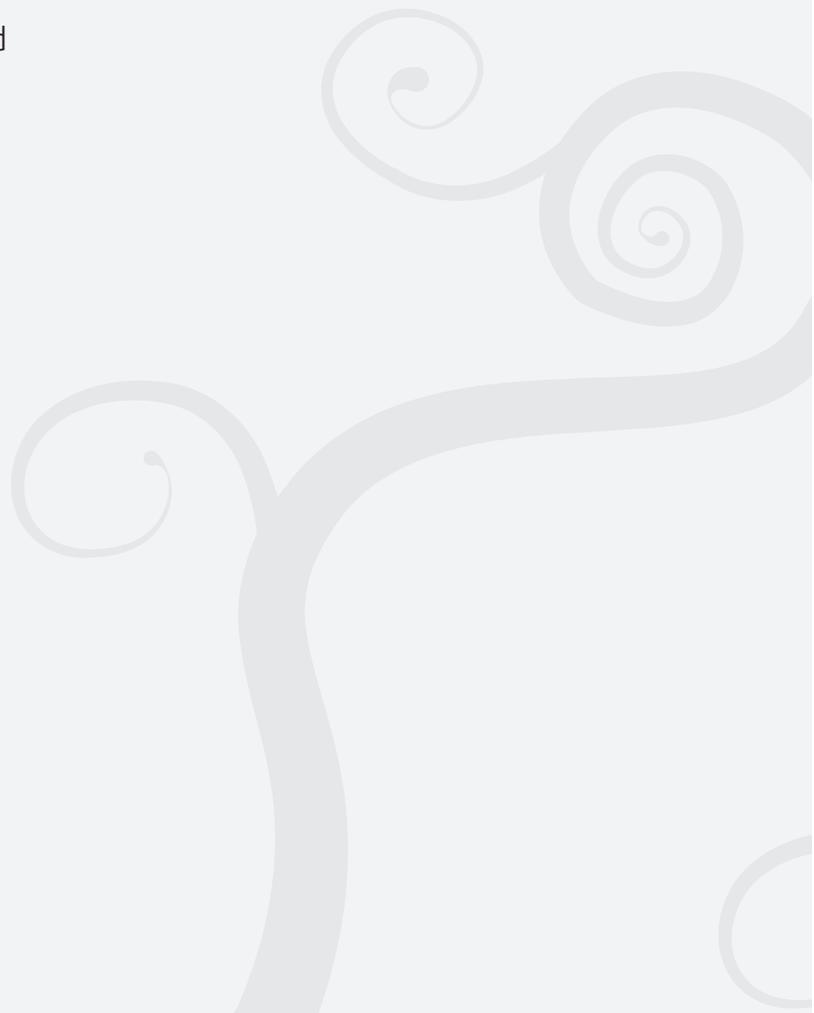
Jack saw a job advertised in a Chinese language newspaper for a casual mail-out position. When he called the company, he was asked if he was under or over 45 years of age. When Jack told them he was over 45, he was told they were sorry but people under 45 were needed.

THE MEDIATION PROCESS

Jack told the Commission he would consider the matter resolved if the company was contacted and informed age discrimination is against the law. He also wanted to be interviewed for the job if it was still available.

OUTCOME

The supervisor of the company said they did not practise age discrimination and apologised for what had happened. She asked Jack to contact her to arrange a time for an interview. The mediator also sent a copy of the Commission's pre-employment guidelines to Jack and the company.



Disability

Disability issues make up the second highest number of complaints to the Commission. The main issues disabled people face are lack of support services and reasonable accommodation; difficulties enrolling at school; suspensions and expulsions; and exclusion from school activities, such as school camps and field trips.

9 Guide dog accommodation

WHAT HAPPENED?

Stephen is blind and reliant on a guide dog. He booked accommodation at a rural location for a short getaway and took along his guide dog, Jessie.

After a day out, they arrived back at the accommodation to find Jessie's bed and bowls outside. The owner told Stephen he had taken advice and didn't have to let Jessie stay in the room. He told him there was a boarding kennel next door they could use. Stephen said this was not possible as he was reliant on Jessie at all times.

Despite Stephen's explanation about the rights of guide dogs and their handlers, the guest house manager refused to allow Jessie inside. Stephen had no alternative but to look for alternative accommodation.

Disability

THE MEDIATION PROCESS

Stephen complained to the Commission about disability discrimination and access to services and accommodation.

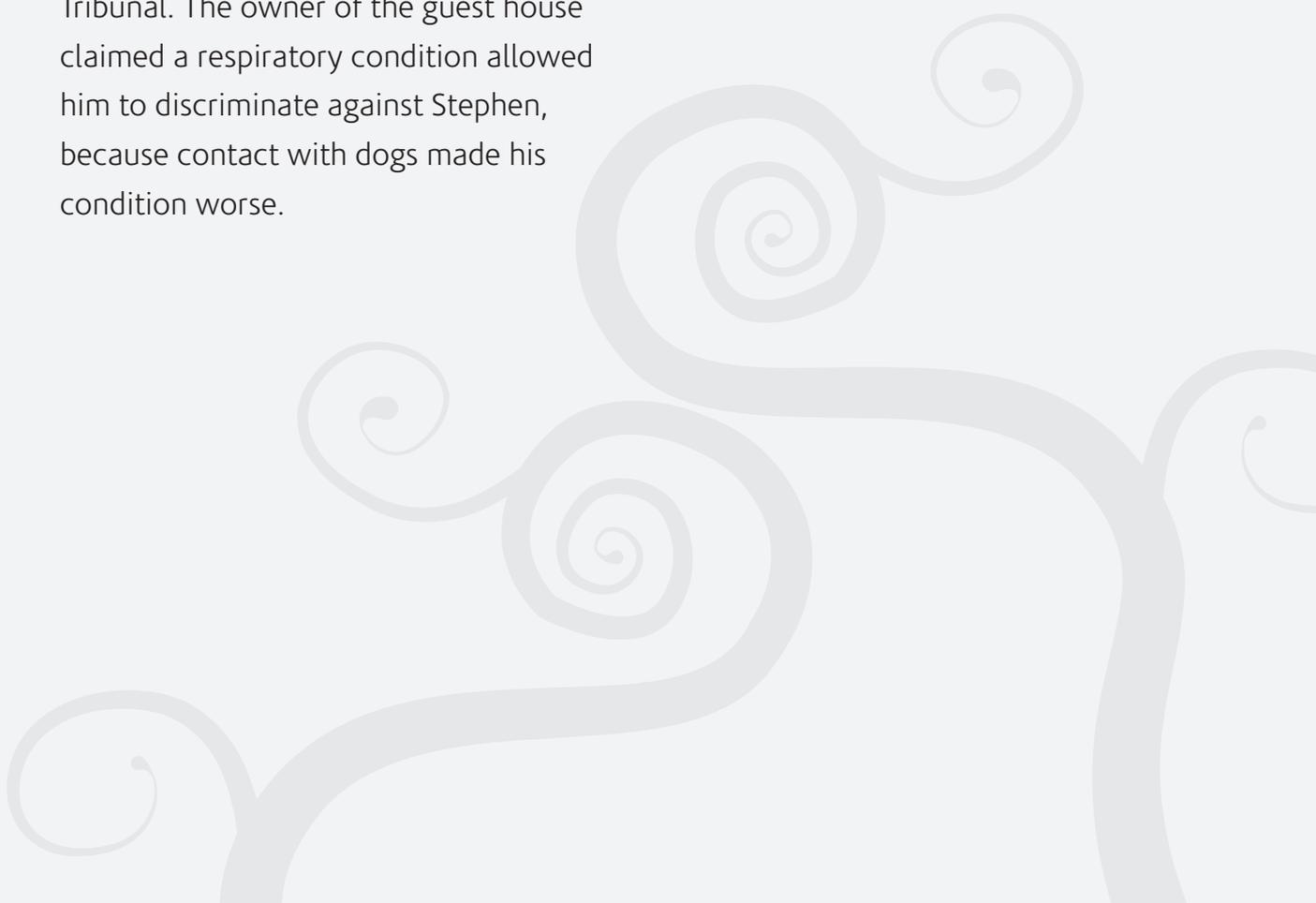
Mediation failed to resolve the situation between Stephen and the accommodation owner, so Stephen took his case to the Office of Human Rights Proceedings. The Office agreed to provide Stephen with legal representation to take his case to the Human Rights Review Tribunal.

Both parties put their case to the Tribunal. The owner of the guest house claimed a respiratory condition allowed him to discriminate against Stephen, because contact with dogs made his condition worse.

OUTCOME

Lawyers negotiated on behalf of the parties and an agreement was reached to settle the case. The owner admitted he had discriminated against Stephen because of his disability, and that his medical condition was not severe enough to warrant this. He sent Stephen a written apology and agreed to pay \$8000 for emotional harm.

Stephen was happy with the result and gave \$5000 of the payment to the Royal NZ Foundation of the Blind's Guide Dog Services.



10 ► **Bus access resolved**

WHAT HAPPENED?

Ron has several disabilities, including mobility issues, and uses a walking stick. Being on a limited income, he uses buses, rather than taxis, to get around.

Ron claimed some bus drivers on his route refused to “kneel” their low-floor bus (or drop down the metal ramp) at the indoor depot. On one occasion, Ron said the bus driver was rude and refused to kneel the bus to allow him to get on. The driver said they were not allowed to kneel buses in the depot. He then apparently told the rest of the passengers to ignore Ron and get on the bus.

THE MEDIATION PROCESS

The Commission set up a mediation meeting between Ron, two representatives of the bus company and someone from the regional council.

The bus company explained their buses could not be lowered at the depot. This

would interfere with the global positioning of the buses, which is used to inform passengers of arrival and departure times across the city. The regional council was not aware of this policy and the bus company conceded it had not been properly tested.

OUTCOME

The bus company offered to test every bus in their fleet to see if kneeling affected the global positioning. Ron was invited along to watch. They discovered only a few of the buses caused interference when they were lowered.

The bus company sent a reminder to drivers to be aware of mobility difficulties. They were told they should always kneel their bus if a passenger requests it.

Ron was given details of a bus company staff member to contact if he had any problems in the future.

Disability

11 ▶ Seatbelt exemption

WHAT HAPPENED?

Ashley is physically disabled and drives her modified car without using the seatbelt. She keeps a seatbelt exemption notice from the NZ Transport Authority on the windscreen. A police officer pulled Ashley over and told her the exemption was out of date and needed to be renewed annually. Ashley alleged she had previously been told the exemption was indefinite.

Ashley said she felt belittled and humiliated by having to argue the point with the officer, who did not believe her.

THE MEDIATION PROCESS

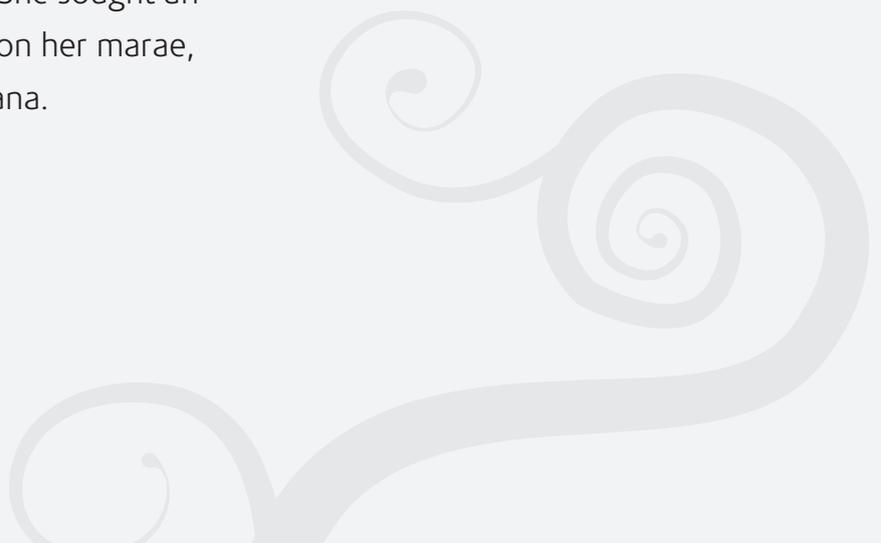
Ashley was deeply embarrassed and upset about the incident and complained to the Commission of humiliation, injury to feelings and loss of dignity on the grounds of her disability. She sought an apology from the officer on her marae, in order to restore her mana.

The complaint was held open while Ashley tried to organise the marae event, but she then fell ill. Realising it would be difficult to arrange the event around her illness, Ashley informed the Commission.

OUTCOME

Ashley received a letter from NZ Police apologising for what had happened. All officers would be advised of the correct information on seatbelt exemptions and Ashley was sent a copy of the relevant seatbelt code.

Ashley was very happy with the outcome and said she would give the code to her local disability agency. She was glad she had approached the Commission, even though some people had advised her “not to stir up trouble”.



12 ► **Mobility van access**

WHAT HAPPENED?

Gordon, a wheelchair user, was having trouble finding a mobility taxi. He required a taxi a few evenings per week, one of which was later in the night, to get home from work. The taxi company Gordon contacted said it had mobility vans and could collect him in the evenings but not at the later time, as the driver was not available.

Gordon said he would have to quit his job if the mobility van could not collect him.

THE MEDIATION PROCESS

Gordon brought his concern to the Commission, anxious that he could not access the type of transport he needed because of his disability.

The manager of the taxi company was more than happy to try and resolve the issue directly with Gordon. He called Gordon and explained the logistical considerations, which meant a mobility van had not been available at the times Gordon needed it.

OUTCOME

The day after his conversation with Gordon, the manager of the taxi company had rearranged schedules to ensure a mobility van was available at the times Gordon needed it.



Disability

13

Mental health disclosure

WHAT HAPPENED?

When Colin took on his job at a manufacturing company, he was required to take a drug test and disclose any prior medical conditions. He was asked, “Have you had an injury or medical condition caused by gradual process, disease or infection arising out of work that may be aggravated or further contributed to by the tasks of this job?” Colin answered no.

After several months of work, Colin became stressed, due to a workplace situation, and he took some time off. Colin was asked to attend a meeting with the company, where he mentioned he had a mental illness. He told them he was stressed because of the way another worker was treating him. Colin said there was discussion about transferring him to another site. When he was called in for another meeting the next day, he was dismissed.

THE MEDIATION PROCESS

Colin believed the way he had been treated was because of his disability and complained to the Commission. When the company was contacted, they agreed to take part in mediation.

OUTCOME

A month after the mediation meeting, the matter was settled. The company agreed to pay Colin \$7500 compensation for hurt and humiliation.



Sex

Taken alone, there was a slight drop in the number of complaints and enquiries related to sex discrimination in the past year. However, when sex, sexual harassment and sexual orientation are combined, they were the basis for almost a quarter of all complaints and enquiries to the Commission.

14 ▶ Debatable humour

WHAT HAPPENED?

Mark went to a local café for lunch and saw an item on the menu described as “slightly gay but very tasty”. As a gay man, Mark found this offensive. After speaking to friends later on about the café menu description, he decided to make a complaint.

THE MEDIATION PROCESS

The Commission spoke to the café owner, who was surprised that anyone would be offended by the “light-hearted” description on their menu. She said the menu was due to be revised and she would look at amending the wording then.

OUTCOME

A few weeks later the café had reprinted the menu, without the offending description. The new menu included a footnote, saying the café did not welcome people with no sense of humour.

Sex

15 ▶ Gay blood donor rejected

WHAT HAPPENED?

George is a homosexual. He tried to donate blood but discovered that he was unable to because he is a sexually active gay man. He complained of sexual orientation discrimination to the Commission.

THE MEDIATION PROCESS

The Commission placed George's complaint on hold, pending the outcome of an independent expert review into blood donation criteria. The review group recommended the deferral period for men who have had male-to-male sex be shortened from 10 years to five years before they can give blood.

George had questions about the review document, so the Commission arranged a mediation meeting between George and the New Zealand Blood Service (NZBS). George said the meeting was productive and he could see that the NZBS was doing everything it could.

OUTCOME

The NZBS accepted the review recommendations. The stand-down period has been reduced to five years for specific sexual acts. The NZBS is now working with the New Zealand Aids Foundation to improve its communication and understanding in the gay community about the deferral criteria.

NOTE

Some complaints lead to a broader review of particular issues. For other complainants, expressing their concerns to decision and policy makers through mediation provides the resolution needed.

Since this case was resolved, the Commission has received a complaint from another party, saying the changes (post-review) have not gone far enough.

16

Pregnancy prevents promotion?

CO-MEDIATION

The Human Rights Commission and the Department of Labour's dispute resolution team recently established a co-mediation option. In the past, complaints involving discrimination and employment issues have been dealt with separately by each organisation or by one or other of the agencies. The option of co-mediation, involving a mediator from each agency, allows all issues to be dealt with at the same time. Attention is given to obligations under both the Employment Relations Act and the Human Rights Act.

WHAT HAPPENED?

Lorna was appointed temporary team leader for her division and received an allowance while she held the position. It was understood the position would be advertised externally a couple of months later. In the meantime, Lorna claimed her manager had advised her she would get the position.

Some months after the position was to have been advertised, Lorna sought clarification with her manager. She also told her she was pregnant. Lorna said the position was then advertised externally and her manager advised her not to apply, as it would be too hard on her with pregnancy and family commitments. She raised concerns with the human resources manager that she was being treated differently because of her pregnancy.

Sex

THE MEDIATION PROCESS

Lorna complained to the Commission that she had been denied the position of permanent team leader because she was pregnant. The human resources department at Lorna's work told the Commission there were work performance issues and that management had a different view about what Lorna had been told about the position.

Lorna's lawyer decided to take the issue to the Department of Labour, and Lorna requested a Human Rights Commission mediator be involved. At co-mediation, Lorna's manager denied telling Lorna she would get the permanent job or referring to her pregnancy. She said it was Lorna's work performance that was the issue and also mentioned Lorna had told her she didn't feel well enough to take the job. Lorna said she was unaware of any concerns about her performance.

OUTCOME

The parties came to an agreement that was recorded in an official Employment Relations Act settlement agreement. Lorna received a written and verbal apology for any hurt caused to her and \$3000 compensation for injury to feelings.



17 ▶ Exam accommodates pregnancy

WHAT HAPPENED?

Lesley, a school counsellor, complained to the Commission on behalf of a pregnant student who was about to sit exams. Lesley said she had contacted the examining authority for approval to accommodate the student's specific needs. Being pregnant, the student required a comfortable chair at the back of the exam room so she could go to the toilet frequently without disturbing other students. Lesley said the examining authority had refused the request.

THE MEDIATION PROCESS

The Commission spoke to a manager at the examining authority. The school principal also contacted the authority. The conversations were productive and the examining authority was surprised the situation had escalated so far.

OUTCOME

The examining authority said the student was allowed to sit her exams in a separate room with a comfortable chair. The authority also offered to pay for the extra supervisor required to accommodate this.

Sex

18 ▶ Car grooming "men only"

WHAT HAPPENED?

Sally applied for a position as a car groomer. When she turned up for the interview, she was told by the employer females were not being interviewed for the position.

THE MEDIATION PROCESS

Sally complained to the Commission she had been discriminated against in employment because of her gender.

The employer told the Commission she was protecting women from a job they would find difficult because of the heavy lifting and climbing involved. She also explained that since her conversation with Sally, and on reflection of jobs other women are now doing, she had a different perspective.

OUTCOME

The employer said she would explain the job to all applicants in future and allow them to consider if it was something they wanted to do. She asked if Sally would still like to be interviewed for the position, but Sally had since successfully gained employment elsewhere.



19 Workplace harassment

WHAT HAPPENED?

Kylie worked in a male-dominated profession and was used to holding her own and dealing with male workplace banter. When she started work at a new company, the banter seemed to be on a different level and she was constantly subjected to sexual comments, suggestions and jokes, which she found offensive. The rest of the staff seemed to take their lead from the supervisor, so Kylie felt she couldn't complain.

Thinking she could tough it out, Kylie stayed at the job and said nothing. Eventually, she started to dislike the profession, which she had originally felt so proud to be part of. When she was allegedly unjustifiably dismissed, she decided to speak out about the work environment and sexual harassment.

THE MEDIATION PROCESS

When the Commission contacted the employer, they were upset Kylie hadn't mentioned it to them at the time. If she had complained, they would have responded immediately and taken steps to implement their anti-harassment policies. The employer agreed to discuss it further at a mediation meeting.

The meeting was attended by the managing director, a company lawyer, Kylie, her lawyer and a Commission mediator. Kylie and the company said the mediation was very useful.

OUTCOME

The company agreed to renewed efforts to make sexual harassment training and awareness more explicit through its induction processes. They would also hang posters and appoint an independent person for staff to go to if they felt threatened by harassment.

The company paid Kylie \$4000 in compensation for hurt and stress.

Religious and ethical belief

The Commission receives a higher proportion of complaints about religious belief than ethical belief (having no religious belief). Together they made up just under five per cent of all complaints and enquiries to the Commission in the past year.

20 Dining rules exclude Muslim guest

WHAT HAPPENED?

Jill and Frank took their billeted international student, Mary, to an incorporated friendly society to celebrate her university graduation. While not members themselves, Jill and Frank had dined at the club as guests of members before.

The vice president of the club told them Mary would have to remove her head scarf, because headwear was prohibited. Being Muslim, Mary felt she could not do that for religious reasons. The party left as they did not want to dine without Mary.

THE MEDIATION PROCESS

Frank and Jill complained to the Commission that Mary had been discriminated against because of religion.

While there is an exception under the Human Rights Act that allows clubs to stipulate entry conditions for members, the Commission said it might not apply in this case – the diners were not club members, so the Act may cover them as members of the public.

At mediation, both parties spoke about the attitude demonstrated on the night, in regard to the club's by-law and dress code.

OUTCOME

The club apologised for Jill, Frank and Mary's experience. They committed to review the club's by-law and to discuss the outcome with the complainants. The club said they would include the reviewed by-law in their main rules.

At the end of the mediation, there was an exchange of good will, and the complainants said they looked forward to dining at the club again.

21 Religion in schools

WHAT HAPPENED?

Rebecca and Gareth enrolled their son at their local primary school. They were asked whether they wanted Liam to take part in weekly religious education (RE). Being atheists, they said no.

During the school year, Rebecca and Gareth discovered Liam had been left in his classroom during the RE sessions. After mentioning this to the teacher, Liam was subsequently sent to join other children not taking part. The children either played in the school reception area or were asked to read quietly in the library.

THE MEDIATION PROCESS

Rebecca and Gareth complained to the Commission that the school was not adequately catering for children not attending RE. They said more information should be provided so parents can make an informed choice, RE should be “opt in” rather than “opt out”, and it should be held outside normal school hours.

The Commission notified the Ministry of Education of the complaint, citing discrimination on the ground of ethical belief. Crown Law responded on behalf of the Ministry and a mediation conference was set up between Rebecca and Gareth, another complainant, the school principal and chair of the Board of Trustees, and representatives from Crown Law and the Ministry of Education.

The meeting was lively and constructive, and covered the main issue as well as wider considerations about the place of religious education in schools.

Religious and ethical belief

OUTCOME

The school agreed to survey parents of their students to gather views on RE. Based on the results, they would decide on the future of the RE programme.

The survey found most parents wanted RE to continue (48 per cent); 30 per cent wanted to opt out and 22 per cent didn't respond. The school board decided to continue with RE. However, parents would now need to opt in rather than opt out, they would receive information about RE, sessions would take place in the library, and children not attending would stay in the classroom with the teacher

While Rebecca and Gareth found the mediation useful, they were not particularly satisfied with the outcome. They would have preferred religious education not be available at public schools at all. They were advised of their right to take the matter to the Human Rights Review Tribunal but they elected not to.

NOTE

For more information on the place of religion in schools, please view the Human Rights Commission's recent publication Religion in New Zealand Schools: Questions and Concerns. This is available under the Resources section of the Commission's website: www.hrc.co.nz.

22 Religion and work

WHAT HAPPENED?

Karla had recently qualified from her training course and applied for a senior role with a company. She was advised she would be more suited to an alternative role also being advertised.

Karla was interviewed by the company manager and the process was more of an informal chat. She said the manager gave her the impression the job was hers, introducing her to the person who “would be her supervisor”.

The company is religious based and during the conversation, Karla was asked about her beliefs, which are atheist. The manager told Karla her beliefs were incompatible with the organisation and therefore they would not employ her. Karla was upset about this so asked for a written explanation as to why the job possibility had been withdrawn. When no one responded, she complained to the Commission of unlawful discrimination on the grounds of ethical belief.

THE MEDIATION PROCESS

Karla, the company director and the manager attended a mediation meeting. Karla again asked for the reasons why she was not considered suitable for the job. The company director acknowledged their employment processes were unclear and that the manager had not followed proper policy or process.

OUTCOME

The company director made a personal apology to Karla for the distress, hurt and loss of confidence she experienced as a result of the interview experience. The manager acknowledged it was inappropriate of him to pursue his own religious interests in the interview.

The company paid \$3000 in compensation to Karla for the loss of dignity, injury to feelings and poor process.

Family and marital status

Family status includes having or not having dependants, or being in a relationship with or related to a particular person. Complaints of this sort, along with those based on marital status discrimination, accounted for under six per cent of complaints to the Commission in the past 12 months, slightly less than the previous year.

23 Family ties a hindrance to job

WHAT HAPPENED?

Pat was employed at a company as temporary clerical support. Pat's husband, Martin, also worked there, but he had no responsibility for the clerical staff.

A permanent position became available, so Pat decided to apply. The staff member handling the recruitment told Martin he could not accept Pat's application because the position would be working under people who reported to Martin. Martin was surprised as no one had mentioned anything when Pat started work as a temporary employee. He explained that Pat would not be reporting directly to him.

THE MEDIATION PROCESS

Pat complained to the Commission of family status discrimination. A resolution was not reached during mediation.

Pat was told she could take her case to the Office of Human Rights Proceedings, asking for legal representation to take her case to the Human Rights Review Tribunal. The Office decided Pat's complaint raised issues of family status discrimination in employment under the Human Rights Act and agreed to represent her.

OUTCOME

Before the Office of Human Rights Proceedings issued proceedings, the company indicated it was willing to discuss Pat's complaint further. The company acknowledged they had not considered Pat's application and agreed to pay her \$10,000 for emotional harm. They also agreed to provide training for managerial staff about the Human Rights Act.

Pat was delighted with the outcome.

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Dentists revise employment practice

WHAT HAPPENED?

Sarah applied for a job as a dental assistant at a practice where her husband worked. Her experience and qualifications gave her a good chance of getting the position. In the advertisement for the job, it stated the person appointed would be reporting to the practice manager.

Sarah received a phone call from the practice in relation to her application. She was asked questions that she felt were inappropriate: if she had children and whether she knew about the Privacy Act. Sarah said the practice manager told her she was the best candidate, but she would not get the job because her husband also worked there.

THE MEDIATION PROCESS

Sarah complained to the Commission that she had been discriminated against because of her family status. The parties had already tried to resolve the matter themselves and through lawyers, but a resolution had been unsuccessful. Both parties were now willing to work with the Commission on the mediation process.

OUTCOME

Both parties brought lawyers to the mediation meeting and a settlement was negotiated. Sarah received compensation and the practice agreed to review its hiring policies.

Family and marital status

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No permanent jobs after separation

WHAT HAPPENED?

Doug was looking for a new job and applied to a recruitment agency for assistance. During his interview, he disclosed to the employment consultant that he had recently separated from his wife.

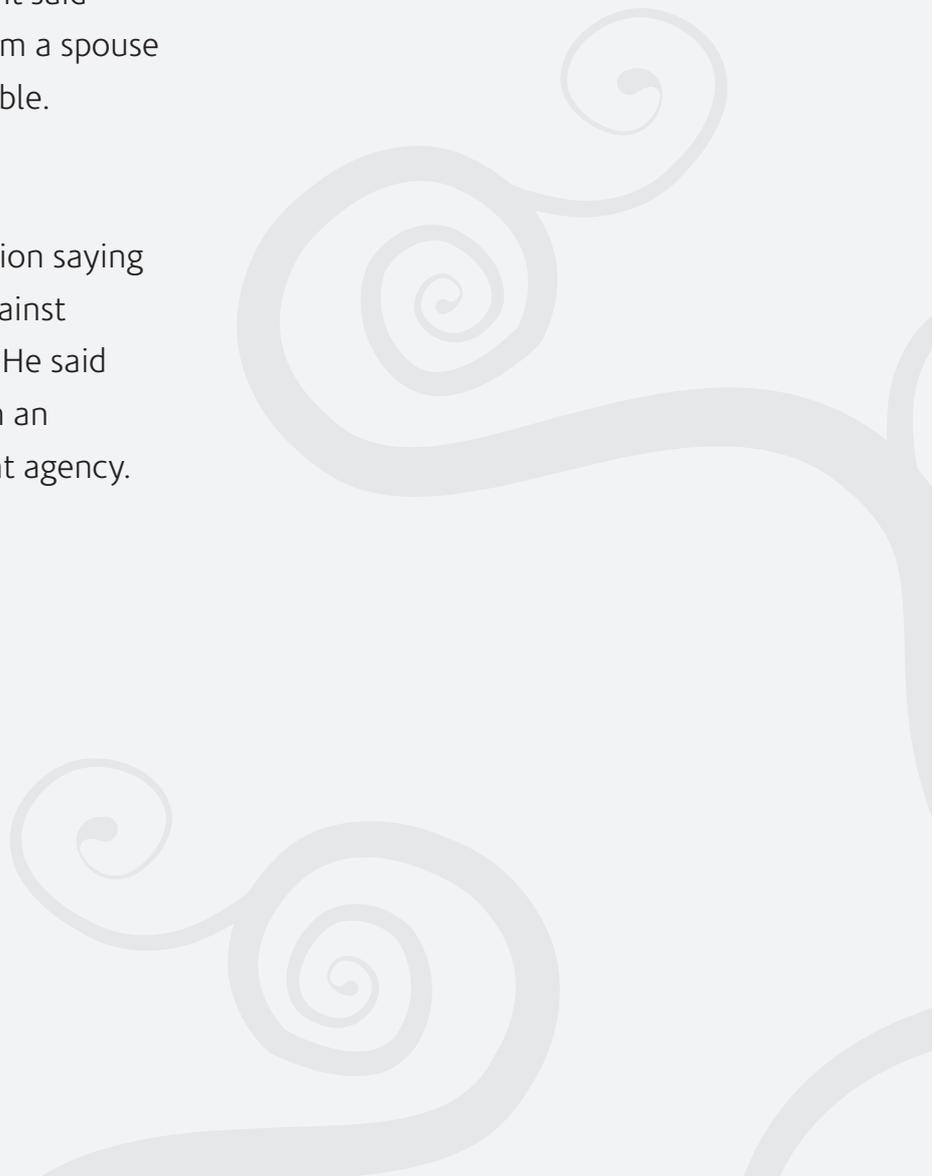
The consultant told Doug they would not recommend him for permanent positions because of this. The consultant said people recently separated from a spouse or partner tended to be unstable.

THE MEDIATION PROCESS

Doug contacted the Commission saying he had been discriminated against because of his marital status. He said he wanted nothing more than an apology from the employment agency.

OUTCOME

When the Commission contacted the employment agency, the owner agreed to provide a written apology to Doug, which was sent to him the same day.





Confidentiality of complaints and enquiries

The Human Rights Commission treats enquiries and complaints as confidential.

The Commission is required by the Official Information Act to make a case-by-case assessment of whether information requested under that act should not be disclosed. It is unlikely that complaints and enquiries will have to be disclosed.

As part of any assessment the Commission will make all reasonable efforts to contact the provider of the information to discuss any concerns.



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