



Human Rights  
Commission  
*Te Kāhui Tika Tangata*

**Te Rito – November 2008**  
**Human rights complaints**  
**A selection of cases**

# Human Rights Commission

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Aotearoa – New Zealand

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In most case studies, names and details have been changed to protect privacy. The exceptions are cases where parties have consented to having their names used (*Mission Estate Winery in Concert car park concern*, *The Taieri Gorge Railway in Successful journey through mediation* and the parties in *Prayer objection at council meetings*). Details from the case that went to the Human Rights Review Tribunal and the High Court (*Sex discrimination at seafood company*) remain unchanged.

## **Te Rito – November 2008**

# **Human rights complaints A selection of cases**

Te Rito is the heart or core of the plant, as human rights are at the heart of the Commission's Enquiries and Complaints Service.

Hutia te rito o te harakeke  
Kei hea te komako e ko?

Whakatairangitia  
Rere ki uta, rere ki tai  
Ki mai ki ahau  
He aha te mea nui o tenei ao?  
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.



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# Introduction

Every day the Human Rights Commission fields inquiries about discrimination and social issues affecting New Zealanders.

In the year to 30 June 2008, the Commission's free Infoline received 14,530 calls, emails or letters, 3925 of which were complaints seeking intervention. These fell under a range of grounds of unlawful discrimination covered by the Human Rights Act such as race, sex, age, disability and family status. These complaints occurred in a variety of settings also outlined in the Act including government, education, work and goods and services.

Of the 3925 complaints, 1326 involved allegations of unlawful discrimination while the rest were about broader human rights issues such as freedom of expression and the right to education.

The 25 case studies in *Te Rito*, an annual Commission publication, are a selection of complaints handled by the Commission's mediation-based Enquiries and Complaints Service (formerly the Disputes Resolution Service). This service, launched in 2002, helps all parties explore the issues arising out of unlawful discrimination in a low-key way. It provides clear information about the Act and encourages parties to resolve disputes in a mutually satisfactory way. This form of dispute resolution replaced a sometimes adversarial system.

Over the past year, mediators closed almost 70 per cent of complaints within 60 days and almost 98 per cent within a year. Where complainants are not satisfied with the results of mediation they can approach the Director of Human Rights Proceedings for representation in the Human Rights Review Tribunal.

The Commission has also been working with the Department of Labour on a co-mediation pilot. All matters in the first joint case – a young woman complaining about discrimination on the grounds of pregnancy – were resolved. The Commission and the Department are now working on protocols for more co-mediations.

The *Te Rito* case studies illustrate the scope and the human toll of unlawful discrimination. Of the 25 cases in this volume, 10 were previously published in *10 Human Rights Cases* in 2007. They are examples of the most common types of complaint – race-based (40.6 per cent), disability (26.8 per cent), sex (12.4 per cent), age (9.8 per cent) and sexual harassment (7.7 per cent). Also included are cases about ethical belief (0.3 per cent).

# Race Discrimination

Race-based matters make up the biggest proportion of complaints to the Commission. Just over 40 per cent of all complaints in the year to July 2008 comprised some element of racial discrimination involving ethnic origins, colour, racial harassment and exciting racial disharmony. The proportion of race complaints was up on last year's tally of almost 35 per cent. The rise was mainly because of inquiries and complaints following the Police's Operation 8 in Ruatoki and other centres during October last year. Race complaints are often about indirect discrimination such as employer demands for "Kiwi accents" and "New Zealand work experience".

1

## Racist taunts about others

### WHAT HAPPENED

Dan worked with a group of men doing physical work. He complained that he was subjected to frequent abusive and insulting racist comments about black Africans by another worker, Charlie. Dan alleged the team leader had heard the insults but had done nothing about them.

### THE DISPUTES RESOLUTION PROCESS

Dan contacted the Commission and sought mediation to resolve the issue. When the company received his complaint it conducted its own inquiry. It interviewed other members of the gang and found that while some racist comments were made, other allegations were not supported. It was, however, prepared to attend mediation. The company brought five people along – an advocate, a union member, Charlie, his manager and a human resources

manager. It challenged Dan's standing under the Human Rights Act as the comments were not directed at him. The mediator explained that a recent decision had widened the interpretation of a complainant to include someone representing other people's rights. Dan said he was representing a group and was prepared to take the matter to the Office of Human Rights Proceedings if mediation did not result in a settlement. Charlie apologised for the distress he caused Dan and Dan accepted this. However, Charlie felt Dan did not acknowledge the stress his allegations had caused.

### THE OUTCOME

The matter was settled and included an apology from Charlie and compensation of \$3200.

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## Insults over taxi fleet's airwaves

### WHAT HAPPENED

Taxi driver Hernandez complained that a dispatcher made racist comments over the radio to fellow drivers. These included offensive remarks to ethnic drivers about their knowledge of English. He provided the taxi company with a list of the names of drivers who were upset about the dispatcher's comments.

### THE DISPUTES RESOLUTION PROCESS

A complaint was made to the Commission. The taxi company's managing director sought to resolve the matter with Hernandez, the dispatcher and other drivers. Hernandez agreed to this, while keeping the option of mediation open.

### THE OUTCOME

The parties later contacted the Commission and confirmed that the matter had been settled. The issues had been resolved by addressing concerns about communication with the dispatcher, educating all drivers and staff about the process for addressing complaints over communication and a process to identify training needs.

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## Compromise over pounamu

### WHAT HAPPENED

Janet, who is Māori and wears a pounamu, started a job in warehouse sorting and packing. After a week her supervisor noticed her pounamu and told her she had to remove it as the company had strict rules prohibiting the wearing of jewellery. Janet said she never removed her pounamu and offered to tape it up or wear it under a high-necked skivvy. Her employer decided this was not acceptable. The next day when Janet came to work with her pounamu under her skivvy, her employer removed her from her duties and told her she needed to sort out the issue.

### THE DISPUTES RESOLUTION PROCESS

Janet went home and contacted the Commission. A mediator called the company's regional manager who explained that the policy was designed to prevent jewellery falling into goods it exported and for health and safety reasons. The mediator acknowledged the concerns but explained that some items were culturally significant and requiring employees to remove them could constitute indirect discrimination under the Human Rights Act. The manager said he would consider the matter and call the mediator.

**THE OUTCOME**

The manager discussed the issue with other employees and called the mediator. He said some other companies did not allow employees to wear any items, including pounamu. However, his company did not want to be quite as strict and said Janet could wear her pounamu tucked inside a skivvy. Janet agreed and returned to work.

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**Race raised in fare furore****WHAT HAPPENED**

Jeff had a disagreement with a bus driver about the fare he had paid. He didn't have enough money to pay the extra he was being asked for and in the midst of a heated row, in which Jeff's immigrant status and command of English was brought up, Jeff found himself being put off the bus.

**THE DISPUTES RESOLUTION PROCESS**

The bus company investigated the incident and found the driver had followed procedures for when a passenger couldn't pay. It did, however, acknowledge that Jeff and the driver's accounts of the incident were different and agreed to mediation to hear Jeff's version of events in more detail.

**THE OUTCOME**

The company was not prepared to admit the driver's actions were discriminatory or based on racial harassment but agreed the situation was handled badly and apologised to Jeff about the distress it had caused. The company also agreed to develop a case study based on Jeff's experience to be used in driver induction training to show how actions and behaviour could be perceived to be discriminatory and the effects they can have.

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**Mind your language****WHAT HAPPENED**

Ron is a Māori man in his late 40s who was working as a labourer in the building industry. The language in the workplace was typically informal, which Ron was not too bothered about. However, some comments his supervisor made did bother him – Ron felt they crossed a line from being informal to offensive. In his hearing, the supervisor referred to Ron as "black", "black arse" or "that black c..." After a time, other workers picked up on this language and began referring to Ron in the same way. Ron tried to brush off the remarks but as the behaviour went on he felt increasingly uncomfortable at work and resigned. Ron found other work but the circumstances of his leaving

still bothered him. He resented having to leave a job he enjoyed because of others' behaviour. He made a complaint to the Commission.

### **THE DISPUTES RESOLUTION PROCESS**

The supervisor attended a mediation where he apologised for the comments and explained he did not mean to be derogatory or racist in any way. He admitted to having a gruff manner, particularly when under pressure. He said he would try to be more aware of his language and he would talk to the other workers about this as well.

### **THE OUTCOME**

Ron was offered his job back, but he declined as he had moved on to new employment.

### **MEDIATION HIGHLIGHT**

Racial harassment can be unintentional but is always unacceptable. Although a person may be unaware of the effect of their actions, they can still be held responsible. What is important is how the behaviour affects the person it is directed at. In this case both parties had listened to what the other had to say.

# Race/religious belief discrimination

Five per cent of complaints to the Commission were about discrimination based on religious beliefs. The following case illustrated how one couple felt discriminated against on both race and religious grounds.

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## Pain of cultural misunderstandings

### WHAT HAPPENED

Mohammed, who is Muslim, resigned from his job after four and a half years. He said he left after conversations with his employer, John, and requirements and behaviour that had the effect of putting down his religion and culture and gave the clear message that he needed to change his belief systems.

### THE DISPUTES RESOLUTION PROCESS

Mohammed made a complaint to the Commission and during the subsequent mediation process he said he found some of John's requests to be offensive to him as a Muslim man. An example was asking him to put out rubbish – but with a specific message about not letting his male ego and beliefs get in the way, because he was now in New Zealand. He said he was asked to give himself an Anglicised version of his name, although John disputed this. Mohammed spoke about the stress he felt at being unable to challenge John more directly and over John's behaviour towards his wife. He explained how he felt as a migrant brought to New Zealand by John, who

spoke and dined with him and his wife as friends. John said he believed his discussions with Mohammed had not been one-sided and that all employees were free to believe what they wanted and to practise their own religion. Mohammed had been able to pray as he required. John apologised for missing any cues Mohammed and his wife may have tried to give him about discussions and behaviour, for example physical contact with his wife.

### THE OUTCOME

Mohammed accepted \$9800 for loss of dignity and injury to his feelings in full and final settlement of his complaint. After the settlement, John offered to provide Mohammed with a positive reference and to apologise to Mohammed's wife for any offence caused. Mohammed accepted this offer.

# Disability discrimination

Complaints about disability (26.8 per cent) rank second only to those based on race. Over a third of disability complaints involved “reasonable accommodation” where employers can create an environment that caters for religious, family and disability needs. This might involve physical adjustments to a workplace to cater for a worker with a disability – but the Human Rights Act does not require changes that would unreasonably disrupt a workplace and it does provide some defences for employers.

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## Daycare dilemma for boy with autism

### WHAT HAPPENED

Lizzie’s son Ben had autism. Because Lizzie worked full time, Ben went to a daycare centre for before-school and after-school care. Then the daycare informed Lizzie that Ben couldn’t attend unless she paid an extra \$10.50 an hour over and above the \$3.50 an hour standard charge because he required “one-on-one” care. The centre is the only one in Lizzie’s area which provides both before and after-school care. Lizzie and her local MP approached the Commission about whether the Human Rights Act was being breached. Lizzie told the Commission that her application to the Government for payment of a taxi to take Ben from her workplace to school each morning was declined. If this funding had been approved, Lizzie said Ben would not have needed care before school so he could have gone to another centre for after-school care.

### THE DISPUTES RESOLUTION PROCESS

The Commission provided practical suggestions and information about the Human Rights Act. It offered to mediate if Lizzie wanted to pursue the complaint and both parties agreed to the process. Lizzie told the Commission she found its response – and the people she dealt with – extremely helpful.

### THE OUTCOME

A few weeks later Lizzie contacted the Commission to say the situation had been resolved because Ben’s school had arranged for him to be picked up from work as part of the morning taxi run. Ben had recently started after-school care at a new centre and was settling in well.

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## Concert car park concern

### WHAT HAPPENED

In October 2007, Mike booked tickets for the March 2008 Tom Jones concert at the Mission Estate Winery. One of the tickets was for a friend who uses a wheelchair, so Mike sent an email requesting an accessible car park and a suitable space in the grounds. A couple of weeks out from the concert, Mike emailed the venue to make sure everything was in place for his friend. The reply said the disability car park was full and the venue did not have a disability parking space. There was also no record of Mike's original email.

### THE DISPUTES RESOLUTION PROCESS

Mike contacted the Commission. A mediator called the winery and asked for a concert organiser to call the Commission. The organiser phoned and explained that there had been more bookings from people with disabilities than available space and the car park was full. He was, however, trying to find more space. If no more car parks became available, people with disabilities could be dropped off at the gate.

### THE OUTCOME

Two days before the concert, organisers contacted Mike and advised him he had

a car park. Mike said this had worked well and he didn't know how his group would have got on without it. He said they were also given space in the grounds suitable for wheelchairs. The Commission's input, he said, had been helpful.

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## Surcharge for wheelchair taxis

### WHAT HAPPENED

Jan, who uses a wheelchair, was astonished to find she and others in her situation had to pay a \$10 surcharge for the hire of a taxi van with a hoist. Although the surcharge was applied to all taxi vans, she thought the practice was indirect discrimination because people with wheelchairs did not have the choice of using other types of taxi vehicles.

### THE DISPUTES RESOLUTION PROCESS

Jan complained to the Commission and entered mediation with the taxi company. At the time the New Zealand Taxi Federation was negotiating with Land Transport New Zealand for a subsidy for owners of wheelchair-accessible taxis.

### THE OUTCOME

Mediation concluded amicably and the taxi company promised to let Jan know

about the outcome of the Taxi Federation's negotiations. Negotiations were successful and now a Land Transport NZ subsidy covers the surcharge for disabled passengers when a Total Mobility voucher is used.

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## Jenny misses out on school camp

### WHAT HAPPENED

Jenny has an intellectual disability. Her school decided she could not attend a school camp because it felt her behaviour posed a potential health and safety risk. The school had insufficient resources to reduce the risk by, for example, providing a teacher's aide. In its view Jenny would have needed one-on-one attention. Jenny's parents were not happy, believing the school should have discussed their concerns about her attendance with them. Jenny's parents complained to the Commission when they were told she was not allowed to attend the camp.

### THE DISPUTES RESOLUTION PROCESS

At mediation it became clear there had been a breakdown of communication between Jenny's school and home. It was evident that good communication was vital to ensuring Jenny's needs were met at school. During the process the school and Jenny's parents were able to sort out

their differences, acknowledging where things had gone wrong and where individual communication styles might not have been helpful. Jenny's parents were frustrated when their views were not taken into account and when responses from the school were slow. This frustration was felt by the school to be unhelpful. However, the parties agreed that together they could have come up with possible solutions for any concerns – for example, one of the parents attending camp with Jenny.

### THE OUTCOME

Although Jenny did not attend that school camp, processes were established to deal with the lack of notice, consultation and communication by the school in its decision that Jenny couldn't attend. The parties worked together to change the situation. The school agreed to review its policy on risk analysis for students attending EOTC (Education Outside The Classroom) in consultation with Jenny's parents and the student support person from the Ministry of Education. They agreed the starting point is that all students participate in EOTC. Where the school identifies risk, the policy requires consultation with parents and others to ensure all reasonable steps are taken to remove barriers and meet the needs of the student.

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## Sucessful journey through mediation

### WHAT HAPPENED

The Dunedin-based Taieri Gorge Railway has a train with a wheelchair hoist and accessible toilets. Labour Weekend 2006 was the centenary celebration of the railway and the train was fully booked months in advance. Frances is a local and a railway enthusiast. She has a spinal injury and uses a wheelchair. She and a friend were booked on the train for Labour Weekend. A few days out from the event Frances learned there had been a mistake in the booking and the accessible carriage was not available for the trip she had planned.

Frances was extremely disappointed and annoyed because she had requested the carriage when making the booking. She rang the railway but staff were unable to change carriages at that late date.

### THE DISPUTES RESOLUTION PROCESS

Frances made a complaint of disability discrimination to the Commission. She explained the complaint was for all disabled people who want to use the accessible carriage. Representatives of the railway were willing to attend mediation, so a mediator travelled to Dunedin that week.

### THE OUTCOME

The meeting was a success and had a number of positive outcomes. The railway apologised for the mistake and offered Frances a free train trip for her and a group of friends on the accessible carriage at a convenient time. She was refunded for the Labour Weekend event. In addition, at Frances' suggestion the accessible carriage was to have the international symbol of access affixed to it.

### MEDIATION HIGHLIGHT

Both Frances and the railway were positive about the mediation process. Frances said the meeting had provided a forum to work together and was the starting point for dialogue which continues. The railway commented it was "delighted with the mediation; the outcome was a win-win for all. Our advice to other parties who find themselves in this situation is to accept mediation given the expertise and professionalism of the staff at the Human Rights Commission."

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## No drugs allowed

### WHAT HAPPENED

Lisa had a contract for services as a counsellor at a residential facility for drug and alcohol addiction. The facility had a code of conduct which prohibited

staff and residents taking psychotropic (mind-altering) drugs. Lisa had been taking anti-depressant medication for some time and was unaware that the employer would have a problem with this. A staff member found that Lisa was taking the medication and reported her to their employer. Lisa was advised she was required to attend a disciplinary meeting as she had breached the facility's code of conduct. Lisa's lawyer was communicating with the employer and through a series of events the parties never met. Lisa was subsequently advised her contract was terminated.

### **THE DISPUTES RESOLUTION PROCESS**

After this, Lisa lodged a complaint with the Commission, alleging discrimination on the ground of disability. The facility declined to take part in mediation. Lisa took her case to the Director of Human Rights Proceedings. When the outcome of a similar fact case was known<sup>1</sup>, the director sent the complaint back to the Commission for mediation.

### **THE OUTCOME**

The complaint was settled in mediation with Lisa receiving an apology and a confidential financial sum.

1. Another employee was also dismissed and chose to take a personal grievance. The Employment Relations Authority found in favour of the employer in that case. In July 2007, the employee lodged an appeal. The case was settled out of court.

# Sex discrimination

The proportion of complaints on the ground of sex discrimination has dropped slightly from last year – from 13.8 per cent of complaints to 12.4 per cent. When added to complaints of sexual harassment and discrimination based on sexual orientation, the sex-based tally was almost 23 per cent.

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## Same job, fewer dollars

### WHAT HAPPENED

Kay discovered she was being paid a lesser hourly rate than her two male colleagues who did the same job. She approached her boss who told her he was entitled to pay her what he liked.

### THE DISPUTES RESOLUTION PROCESS

Kay's complaint to the Commission triggered a response from her employer's head office which ordered a review. As a result the company increased Kay's hourly rate, gave her back pay for two years and introduced an annual performance review system for the workplace in question.

### THE OUTCOME

Kay was very pleased with the result, in particular the introduction of the review system. The company saw the complaint as an opportunity to upgrade its scrutiny of the workplace in question.

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## Dispute over school rep selection

### WHAT HAPPENED

A group of parents believed a school's different policies for selection of girls' and boys' representative sports teams was discriminatory. The school did not field a boys' team in Saturday competitions so players from club teams were eligible for school rep selection, but in the case of girls, only players who turned out for the school were eligible.

### THE DISPUTES RESOLUTION PROCESS

The school's view was that the policy was a result of not having enough boys for selection. The Commission offered to mediate because the issue was a recurring one. The matter was not resolved at mediation and the parties continued to disagree over whether the policy was discriminatory.

### THE OUTCOME

The parents felt they had an opportunity to be heard. While the school disagreed its policy had been discriminatory, after mediation it found a way to uphold its

values on participation in school sport while being able to select the best players. It subsequently revised its selection process and eligibility criteria.

## Sex discrimination at seafood company

### WHAT HAPPENED

Caitlin Lewis and her partner Brett Edwards started seasonal work in fish processing during the hoki season at Talley's processing plant in Motueka.

Caitlin Lewis was allocated work as a fish trimmer, and Brett Edwards was allocated work as a fish filleter. Historically Talley's had allocated jobs on the basis of gender, but it meant that Caitlin Lewis was paid less than Brett Edwards because filleting was paid more than trimming. Talley's believed that filleting was harder work, more pressured, required regular heavy lifting and provided fewer opportunities for workers to socialise.

### THE HUMAN RIGHTS COMMISSION AND OFFICE OF HUMAN RIGHTS PROCEEDINGS

The allocation of men and women into the two different knife work roles and the difference in pay prompted Caitlin Lewis to complain to the Human Rights Commission on the ground of sex

discrimination. The complaint was received in 2000 before amendments to the Human Rights Act that established the current disputes resolution process. At this time the Commission investigated her complaint and the then Complaints Division formed the opinion that it had substance. When Talley's refused to settle she approached the Office of Human Rights Proceedings and her case was accepted for representation by the Director in 2002.

The Human Rights Review Tribunal partially upheld the complaint in 2005 and the decision was appealed by both parties to the High Court. In June 2007 a Wellington High Court Judge and two members of the Human Rights Review Tribunal ruled in favour of Caitlin Lewis and against Talley's. The High Court judgment found the filleting and trimming jobs were "substantially similar" and that Talley's had discriminated against Caitlin Lewis by paying her less money than filleters for her work. "The reason she received less money was because she was made a trimmer and the reason she was made a trimmer was because she was a woman," the judgment said.

The landmark decision means employers should not be segregating women into work that is substantially similar to work being undertaken by men but with less money. The court said what is

“substantially similar” needs to be assessed by looking at the core aspects of jobs rather than difference in detail.

### THE OUTCOME

Talley’s agreed to implement an Equal Employment Opportunities programme, to train managers about the Human Rights Act and pay compensation to Caitlin Lewis.

year because it fell outside the level of risk which could be covered under the company’s usual underwriting guidelines. Lucy was very upset about this. She discussed the matter with her doctor who was also distressed about the decision because there did not seem to be any good reason for deferring the application. Her insurance agent and her doctor requested that the insurance company reconsider its decision.

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## Insurance a-gender?

### WHAT HAPPENED

Lucy is a transsexual woman. She applied for life insurance with her partner when they got a mortgage. Her partner’s application was approved almost immediately but Lucy had no response after six weeks. She suspected her application was taking longer to process because she had disclosed she’d had gender reassignment surgery. Lucy had experienced discrimination in the past because of her gender identity and was concerned that it could be affecting such an important part of her life.

### THE DISPUTES RESOLUTION PROCESS

Lucy approached the Commission for information about her human rights in relation to her life insurance application. She then received a letter from the insurance company stating her application had been deferred for one

### The outcome

The company has now approved Lucy’s insurance application. Lucy was happy with the outcome and said that being able to discuss the situation with a Commission mediator had helped support her through the process.

**The Commission has published guidelines on the relationship between the Human Rights Act and the provision of insurance – *Guidelines: Insurance and the Human Rights Act 1993* is available from the Commission.**

# Age discrimination

Almost 10 per cent of complaints related to unlawful discrimination on the basis of age, slightly less than last year's proportion of nearly 12 per cent. About 43 per cent of complaints about employment or pre-employment related to age, down from 53 per cent last year. Age-related complaints in the area of government, however, increased from 17 per cent to 24.5 per cent.

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## Age barrier in damaged luggage claim

### WHAT HAPPENED

Bob, an older person, had flown back to Auckland from Europe and then taken a domestic flight to his home town. During the domestic flight, Bob's luggage was damaged and he put in an \$89 claim with his insurance company. He was astonished when he received a cheque for \$14 and an explanation that his travel insurance policy had an excess of \$75 for "senior travellers".

### THE DISPUTES RESOLUTION PROCESS

Bob was outraged and contacted the Human Rights Commission, claiming discrimination based on age. When approached by a Commission mediator, the insurance company wrote an apology to Bob and agreed that he should not have been charged an excess and offered to refund the full amount of his claim. The company conceded his claim had nothing to do with age.

### OUTCOME

Bob received his apology and the company offered an assurance it would be changing its policies. It was moving towards a model of differentials in premiums but removing differentials in excesses. This should be completed by the end of the year.

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## Concern over date of birth

### WHAT HAPPENED

John, who is over 60, was concerned about a question on a form he was asked to fill in when he applied for a job at a polytechnic. The form asked applicants their date of birth and John was concerned that age was a consideration. He complained to the Commission.

### THE DISPUTES RESOLUTION PROCESS

A mediator contacted the human resources manager at the polytechnic who agreed to remove the date-of-birth question immediately. He said someone

had added EEO (Equal Employment Opportunities) questions about age and ethnicity to the form when they had traditionally been kept on a separate document.

### **THE OUTCOME**

The human resources manager said the application form was being redesigned and the Human Rights Commission might be asked to audit it. John was pleased with the outcome of his complaint.

The Commission has received a range of complaints and inquiries about pre-employment processes. In response to these and other queries it has produced an A to Z of pre-employment guidelines for employers and employees titled *Getting a job*.

# Sexual harassment

Sexual harassment complaints make up about 7 per cent of all complaints annually to the Commission. Sexual harassment is unwelcome or offensive and harmful behaviour of a sexual nature in public life; or unwanted requests for sex combined with an implication that not meeting those requests will be disadvantageous. Most sexual harassment occurs in the workplace and most complainants are women. Sexual harassment in the workplace can lead to a hostile environment, absenteeism, low staff morale, lost productivity, loss of trained and experienced staff, recruiting and training costs and sometimes legal costs. Employers can protect their workplaces against sexual harassment by implementing an effective prevention programme which includes a clear policy statement, a process for dealing with complaints and training.

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## Badly handled by boss

### WHAT HAPPENED

Xanthe was attending a conference when, during a social function, her boss Nelson touched her inappropriately. Xanthe was shocked and embarrassed by this action and later asked Nelson why he had done it. She claimed he responded by asking for her room number.

### THE DISPUTES RESOLUTION PROCESS

Xanthe made several attempts to resolve the matter directly with Nelson. Initially, all she wanted was a sincere apology. She considered that Nelson's unprofessional response and threats significantly increased her distress. After unsuccessfully trying to resolve the matter with Nelson and after much consideration, Xanthe made a complaint

to the Commission but asked that Nelson's employers not be told because she was worried he could lose his job. Xanthe and Nelson attended mediation but were unable to reach a mutually successful resolution. At this stage, Xanthe requested Nelson's employers be notified so she could try to resolve the matter with them. The Commission offered mediation between Xanthe and Nelson's boss, who immediately demonstrated a willingness to participate. The company expressed concern that it had not been told about the incident until eight months after the conference.

### THE OUTCOME

A settlement was reached which included an assurance that the company expected its managers to conduct themselves properly, confirmation that

the company had taken Xanthe's complaint seriously, an invitation to Xanthe to contact a senior executive if she had any concerns about victimisation and compensation of \$9,400 for emotional distress.

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## Sexual advances shock worker

### WHAT HAPPENED

Sophie had worked for a small business for about a year. She'd got on well with the boss who was in his sixties. One day he called Sophie into his office and asked her to sit on his knee and she assumed it was a "grandfather thing". But then he put his hand down her pants and asked her for a kiss. Sophie was shocked and immediately walked out.

### THE DISPUTES RESOLUTION PROCESS

Sophie contacted the Commission and told a mediator she felt ashamed and violated by her employer's behaviour. She did not want to go back to work and never wanted to see him again. She did not want to go to the police because she might have to face her boss in court, nor did she want to meet him in mediation. The employer was notified of the complaint and he responded promptly through his lawyer.

### THE OUTCOME

Sophie's boss did not dispute what had happened and said he was prepared to do whatever he could to make amends. A settlement was negotiated which included a written apology and \$3000 for humiliation and injury to feelings.

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## Everyone sees things differently

### WHAT HAPPENED

Joan worked hard in her role at a factory. Although she appreciated recognition for the quality of her work she was uncomfortable that her manager expressed his approval by physical touch and caress. She found this inappropriate. Joan mentioned to her supervisor that she didn't like the manager's ways. However, the supervisor did not pick up that this was a serious and disturbing aspect of being at work for Joan. She grew stressed to the point that she was absent from work. Joan felt unable to talk directly to the manager for fear of disciplinary reprisal.

**THE DISPUTES RESOLUTION PROCESS**

Joan's complaint to the Human Rights Commission resulted in a mediation meeting with the manager and chief executive of the organisation. The manager was from a culture where demonstrative touching to acknowledge and show appreciation is the norm. He was shocked to learn it was perceived differently by Joan. He acknowledged her discomfort and apologised. It was agreed Joan would report to a different manager and timetables were rearranged to separate the two as much as possible.

**OUTCOME**

The organisation is working on a code of conduct which will cover respectful ways of working together and will be introduced with training for supervisors. The complaint was an eye-opener for the organisation and it valued the reminder to tighten up its procedures and training.

# Family status discrimination

Five per cent of complaints made in the 2007-2008 year were made on the ground of family status discrimination. Family status refers to having – or not having – dependants, being married to (or in a civil union or de facto relationship with) a particular person or being a relative of a particular person. This form of unlawful discrimination has traditionally affected sole parents, women and parents with young children. One case dealt with by the Commission resulted in the acceptance of an applicant as a Justice of the Peace after being initially turned down because his wife was a JP.

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## Unsuitable by association

### WHAT HAPPENED

Mary applied for a position with a large national organisation, had an interview and was given the impression she had been successful. She was shown around the workplace including where she would be sitting. Mary was excited at the prospect of beginning a new job. Soon after she was advised she had not secured the job because of her ex-partner's criminal record. Mary queried how this information had become known to the interview panel, how the recruitment process had proceeded to the point where she was congratulated on her success then advised of the opposite and, critically, the relevance of her ex-partner's criminal record to her ability to do the job. Mary was trying to move on with her life and was shocked to learn she was being denied employment – not because of her ability, but because of who her ex-partner was.

### THE DISPUTES RESOLUTION PROCESS

In mediation Mary was given the opportunity to tell representatives of the organisation about her distress at finding out she did not have the job. They acknowledged that the recruitment process was flawed and apologised to Mary.

Mary's complaint made the organisation aware of the need to review its recruitment procedures and retrain those involved in recruitment. It undertook to provide training and acknowledged the learning that resulted.

### OUTCOME

In addition to the apology, Mary received \$18,000 compensation in recognition of the stress she experienced.

### MARY'S STORY

"When the job offer was withdrawn I felt shattered – as if no one would ever be able to respect me, because of who I was married to. It took me several months to recover enough to get angry

instead of just being sad. From the moment [I received the] personal apology, I felt as if I was back in control of my life again. Somebody had treated me unfairly, and I was addressing it. I felt really proud of myself, and I stopped feeling ashamed and unworthy.

“[The mediator] supported me all the way through, always checking... that I had said everything that I wanted to say. I’m really pleased with what I’ve got from dealing with the Human Rights Commission, which is mainly my self-esteem back. I had a problem but there was a process where I could seek redress, and now I feel I’m able to move on.”

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## Solo dad left out

### WHAT HAPPENED

Roger is a young man who worked at a convenience store for several years. His wife developed a serious illness and died early in 2006, leaving him to care for their baby son.

The store allowed Roger to take unpaid leave for a number of months during his wife’s illness and he understood they would keep in contact with him about his return to work.

Soon after his wife died Roger wanted to return to work but he had not heard from the company. He contacted them three weeks after his wife’s death.

By that time the business had relocated and had employed new staff.

Roger was upset about this, but was relieved when the company created a position for him doing afternoon shifts. This worked well for his childcare arrangements.

After a time he was told this no longer suited the store’s needs and he would have to work an evening shift, or resign. Roger felt he had no option but to resign.

### THE DISPUTES RESOLUTION PROCESS

Roger made a complaint of discrimination on the ground of family status. The store was notified of the complaint and agreed to attend mediation. The day before the mediation the mediator travelled to meet Roger, to discuss how mediation works and how he might present his case. Roger was planning to attend on his own, but the mediator encouraged him to bring his son and new partner along for support if he wanted. The company was represented by three managers, one a lawyer from their human resources department. Roger attended with his new partner and son.

### THE OUTCOME

Roger’s complaint was resolved at mediation. He received a verbal apology, and a signed agreement which included the offer of a reference and employment in the future should he wish to take it up.

# Ethical belief discrimination

Complaints on the ground of ethical belief (not having a religious belief) generally make up less than one per cent of all complaints to the Commission. In the year to June 2008 such matters made up just 0.3 per cent. This may reflect New Zealand's generally secular public life. However, the conflict between secularism and selective recognition of some spiritual or religious traditions but not others within state institutions has prompted a number of complaints. As evidenced by the 2006 Census, diversity of belief has increased significantly, with more people (more than 30 per cent) professing no religion and belonging to non-Christian faiths such as Islam, Hinduism and Buddhism.

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## Prayer objection at council meetings

### WHAT HAPPENED

After he was elected as a councillor on the Hurunui District Council, Russell Black complained about starting council meetings with a prayer. He said he found the practice objectionable and raised the matter with the mayor Garry Jackson on several occasions, but as he was newly elected he did not want to be derisive and so didn't take it further. At the first council meeting after he was re-elected in 2007, Mr Black and another councillor objected to the prayer. Councillors voted – the mayor abstained – and the majority decision was to continue with the prayer.

### THE DISPUTES RESOLUTION PROCESS

Mr Black lodged a complaint with the Commission. He said he respected and upheld others' spiritual and religious

beliefs but he held his own beliefs closely and privately. He never sought to impose his views on others and expected the same respect. A mediator had several conversations with the parties involved including Mr Black, the mayor and the council's chief executive. They sought a legal ruling but the mediator explained that the Commission could not do this – but it could offer mediation. The parties decided to try to resolve the matter themselves.

### THE OUTCOME

Two more meetings were held and in January 2008 the mayor proposed the use of a non-religious pledge to replace the prayer. The mayor had developed the draft pledge and suggested that if adopted, it be followed by a brief period of silence for individual reflection. The proposal was put to a vote and was carried by a 5-4 majority. The mayor voted in support of the pledge. Mr Black

said he was satisfied with the pledge as a compromise but advised councillors he would not be withdrawing his complaint as he wanted to see the non-religious pledge used at a council meeting. After two meetings in February and April, Mr Black advised the Commission the pledge had been used and he considered the complaint resolved.

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## A matter of faith

### WHAT HAPPENED

Six-year-old Richard brought home a consent form from school inviting parents to approve their child's participation in a regular 30-minute religious instruction programme. Richard's parents chose not to have him participate.

Because the school would not provide supervision for Richard during the time of religious instruction, he had to be kept at home each Friday morning until the programme was over and usual classroom activities resumed. Richard's parents felt this was unfair. They complained to the Commission that because of their ethical belief, Richard was being discriminated against in his education.

### THE DISPUTES RESOLUTION PROCESS

Following a mediation meeting, the school agreed to supervise Richard in

the library while his classmates attended religious instruction. It was also agreed that the school board would review and likely amend the consent form. While Richard's parents were pleased with that outcome, the question of whether the practice was discriminatory remained for them and their complaint was taken to the Government for its response. Its position was that the Education Act 1964 does allow a school committee to close a school for not more than 20 hours in a school year for the purposes of religious instruction.

### THE OUTCOME

The mediation process enabled Richard's situation to be changed so that he was able to be supervised at school. The school also undertook to consider changes to its religious instruction programme. However, mediation was not able to progress the part of the complaint relating to the legislative provision which provides for religious instruction programmes.

**Over recent years, a number of complaints have been received by the Commission about this practice as it is applied within different schools. In most cases parents claim it is their religious or ethical belief behind their decision not to permit their children to attend religious instruction and as a result, their children are being treated**

unfairly in their education. These complaints have raised a number of issues including the content of the religious instruction programme, the exclusion of a child from a peer group, that no education is available to them during the time of the programme, that the school does not take responsibility for supervision of the child during the programme and the process by which a school chooses whether or not to close for religious instruction.

Recognising that the issue is one that is frequently brought to the Commission, and that it clearly has broader human rights implications, the Commission has developed a soon-to-be-released document, *Religion in New Zealand Schools, Frequently Asked Questions*. This is intended to provide guidance to school boards of trustees on the legal and human rights considerations involved and to encourage discussion on religious instruction in schools.



