

BULLOCK V THE DEPARTMENT OF CORRECTIONS

Human Rights Review Tribunal of New Zealand (Hindle, Chairperson, Davies and Daly, Members)
19 March 2008
[2008] NZHRRT 4

New Zealand – human rights – incorporation of Maori traditions into workplace – Maori custom assigning different roles to participants on the basis of sex – conflict between cultural rights and sex discrimination rights – *Human Rights Act 1993* (NZ) – detriment suffered in the workplace by reason of sex – dismissal by reason of sex

Facts:

The plaintiff was employed by the defendant, the Department of Corrections, as a probation officer. On 9 December 2004, the Department held a *poroporoaki* (a Maori ceremony) at its service centre in Auckland to celebrate the completion of one of its education programs. According to Maori protocol pertaining to the *poroporoaki*, front-row seating was reserved for men only. The plaintiff, who is a woman, was expected to sit at the back of the audience, behind the men who were present. Despite a lack of volunteers and her willingness to speak, the plaintiff was not considered as a potential speaker because of her sex. Believing her treatment to be degrading and humiliating, the plaintiff refused to sit at the back. She moved to the front row, sat down and declined to move when she was asked to do so by her colleagues. On 14 December 2004, the Maori Staff Network within the Department made a formal complaint about the plaintiff's behaviour at the graduation. An investigating officer found the plaintiff's behaviour was deliberate, intended to cause offence and unprofessional. She was issued with an oral warning, recorded in a letter and also on her file. The plaintiff was told, as per the Departmental Code of Conduct, that she was not to comment publicly on the events. Despite this, the plaintiff appeared on television and radio programs and gave numerous interviews condemning the Department's actions. A second investigation into the plaintiff's conduct was initiated, focusing on whether she had breached the Department's media policy and alleging serious misconduct. The plaintiff was suspended from service on 26 July 2005 and then was dismissed on 19 October 2005.

The main issue for consideration was whether the Department had, in its treatment of the plaintiff during and after the *poroporoaki*, subjected her to unlawful discrimination contrary to the *Human Rights Act 1993* (NZ), ss 22(1)(c), 21(1)(a).

Held, granting a declaration but refusing damages:

1. In accordance with the Department's Code of Conduct, the plaintiff was under an obligation to respect the rights of others, including respecting and being responsive to people from all cultures: [16]–[17].
2. Despite forming concerns prior to the *poroporoaki* as to what she saw as a tendency of Department management to improperly favour Maori offenders, the plaintiff did not clearly take up these concerns with management prior to the *poroporoaki* in question: [21].
3. In reformulating its policies in relation to the incorporation of Maori cultural practices in the workplace, so as to take account of gender issues, the Department has taken the plaintiff's complaint seriously and responded diligently: [70], [92].
4. The Department's expectations of the plaintiff when she attended the *poroporoaki* amounted to detrimental treatment by reason of her sex. However, in light of the Department's subsequent policy changes, a declaration in respect of the *poroporoaki* would serve little purpose. Due to insufficient evidence that the plaintiff suffered emotional harm from the

poroporoaki, no award of damages should be made: [83]–[98].

5. The plaintiff was subjected by the Department to detrimental treatment, in the form of an investigation and warning about her behaviour, that male employees of the Department would not have been subjected to. A formal declaration to that effect should be made. The evidence of emotional harm in relation to the investigation and warning does not justify an award of damages: [107]–[114].

6. The plaintiff's claims that she was discharged because of her sex should be dismissed: [115]–[119].