



## Civil and Administrative Tribunal New South Wales

Case Name: Zonneville v Minister for Education

Medium Neutral Citation: N/A

Hearing Date(s): On the papers

Date of Orders: 25 January 2019

Date of Decision: 27 March 2019

Jurisdiction: Administrative and Equal Opportunity Division

Before: L Pearson, Principal Member

Decision: The request by the applicant to participate in the hearing listed at 10.00am on 29 January 2019 by telephone is refused.

Legislation Cited: Civil and Administrative Tribunal Act 2013  
Government Information (Public Access) Act 2009

Cases Cited: Nil

Texts Cited: Nil

Category: Procedural and other rulings

Parties: Peter Zonneville (Applicant)  
Minister for Education (Respondent)

Representation: Solicitors:  
P Zonneville (Self Represented)(Applicant)  
Crown Solicitor's Office (Respondent)

File Number(s): 2018/00333885

Publication Restriction: Nil

## **REASONS FOR DECISION**

- 1 Mr Peter Zonneville has requested reasons for a decision made on 25 January 2019 to refuse his request for leave to appear by telephone at a hearing listed for 29 January 2019. The following are the reasons.

### **Background**

- 2 The proceedings are an application made by Mr Zonneville on 31 October 2018 for orders relating to what are asserted to be breaches by the respondent of his obligations under the *Government Information (Public Access) Act 2009*.
- 3 The proceedings were first listed for case conference on 11 December 2018. Leave was granted for Mr Zonneville to appear by telephone at that case conference, in response to his request made on 7 November 2018 in which he stated that he had a medical appointment on that date and would be unable to attend in person.
- 4 Directions were made on 11 December 2018. Those directions included the listing for hearing of an application made by the respondent for dismissal of the proceedings, and for the parties to provide to the Tribunal and to each other evidence and submissions on the application for summary dismissal before the hearing of that application.
- 5 The hearing of the application for summary dismissal was listed for 28 January 2019. That date was changed to 29 January 2019, to accommodate the public holiday.

### **Request to appear by telephone**

- 6 On 23 January 2019 Mr Zonneville emailed the Tribunal stating that he required "for another reason" to attend the preliminary hearing on 29 January 2019 by telephone. He was asked to advise why he was unable to attend in

person, and advised that his application would be considered by a Tribunal member.

7 Mr Zonneville responded by email on 24 January 2019, stating "I require to attend this preliminary hearing for 'another reason'".

8 The request was refused, with the following reasons stated:

"The applicant does not live in a regional area, and no reason has been provided as to why he is unable to attend in person."

9 The Notice sent to the parties on 25 January 2019 was clarified on 29 January 2019 when an email was sent to Mr Zonneville, before the listed hearing time, confirming that his request to attend by telephone had been refused and he was required to attend in person.

#### Reasons

10 The request for written reasons was forwarded to me on 20 March 2019. Section 62(3) of the *Civil and Administrative Tribunal Act 2013* (the NCAT Act) requires that a written statement of reasons provided on request must set out:

- (a) the findings on material questions of fact, referring to the evidence or other material on which those findings were based,
- (b) the Tribunal's understanding of the applicable law,
- (c) the reasoning processes that lead the Tribunal to the conclusions it made."

11 My finding that Mr Zonneville does not live in a regional area was made based on his application to the Tribunal in which he provided as his address an address in Concord West NSW 2138. The Tribunal file records that Mr Zonneville had previously been granted leave to appear by telephone at the case conference on 11 December 2018, based on his medical appointment on that date. The file records that Mr Zonneville was given an opportunity to provide a reason why he was unable to appear in person on 29 January 2019, and did not provide a reason.

- 12 The Tribunal's management of the conduct of a hearing, including the participation of the parties and witnesses, is an aspect of the Tribunal's power under s 38 of the NCAT Act to determine its procedure. In exercising any power under the NCAT Act or the procedural rules the Tribunal is required by s 36(2) of the NCAT Act to give effect to the guiding principle stated in s 36(1), which is to facilitate the just, quick and cheap resolution of the real issues in dispute in the proceedings.
- 13 A party has a right to appear at a Tribunal hearing. Tribunal hearings take many different forms, from short directions hearings, to full hearings where oral evidence is heard and tested, and in the Administrative and Equal Opportunity Division, case conferences where the parties have an opportunity for discussion to clarify or narrow or resolve the issues in dispute. The Information Sheet provided to parties for Directions Hearings states that a party must contact the Tribunal if they want to participate by telephone "because you live in a regional area or you are unable to attend for another reason". The Information Sheet for a Hearing does not include that advice, however the Tribunal receives requests to appear by telephone for parties or witnesses located in a regional area or for other reasons such as illness, disability, or carer responsibilities. Any such request is considered and determined having regard to all the circumstances, and to the guiding principle in s 36(1) of the NCAT Act.
- 14 The submissions of the respondent in support of the application for summary dismissal received on 7 January 2019, 18 pages, referred to a significant number of documents likely to be in issue in the hearing of the summary dismissal application. The documents provided by Mr Zonneville with his application were also extensive. The efficient conduct of such a hearing would ordinarily be enhanced by the presence of both parties or their representatives at the hearing. In the absence of any reason as to why Mr Zonneville would be unable to appear in person at the hearing on 29 January 2019, I was not satisfied that his request to appear by telephone should be approved.

**Order**

- (1) The request by the applicant to participate in the hearing listed at 10.00am on 29 January 2019 by telephone is refused.

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I hereby certify that this is a true and accurate record of the reasons for decision of the New South Wales Civil and Administrative Tribunal.

Registrar