
IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 8/2026

BETWEEN

RUSSELL THOMAS HOBAN

Appellant

AND THE

ATTORNEY-GENERAL

Respondent

AND

TE KĀHUI TIKA TANGATA | THE HUMAN
RIGHTS COMMISSION

Intervener

RESPONDENT'S OUTLINE OF ORAL ARGUMENT

7 October 2026



**Te Tari Ture
o te Karauna**
Crown Law

PO Box 2858
Wellington 6140
Tel: 04 472 1719

Contact Person:

Daniel Perkins / Olivia Kiel

Daniel.Perkins@crownlaw.govt.nz / Olivia.Kiel@crownlaw.govt.nz

MAY IT PLEASE THE COURT:

Issues

1. Whether s 61 of the Human Rights Act 1993 (**HRA**) limits s 19 of the New Zealand Bill of Rights Act 1990 (**Bill of Rights Act**) because it:
 - 1.1 is discriminatory for the purposes of s 19(1); and
 - 1.2 does not fall within the exception in s 19(2).
2. If s 61 limits s 19, whether the limit is a reasonable one that can be demonstrably justified in a free and democratic society, within the meaning of s 5 of the Bill of Rights Act.
3. If any limit cannot be demonstrably justified, whether this Court should grant a declaration under s 92J of the HRA.

Section 61 is not discriminatory for the purposes of s 19(1)

Written submissions at [31]–[44]

4. A preliminary observation about the proper methodological approach to s 19. A positive (albeit under-inclusive) measure directed at addressing a particular form of discrimination might not be discriminatory at all.
5. Section 61 provides targeted protection for three groups. It does not remove legal protection from any other groups. The provision of additional protection to some does not, without more, impose a material disadvantage on others.
6. Absent material disadvantage, s 19(1) is not engaged.

Section 61 falls within the exception provided by s 19(2)

Written submissions at [45]–[65]

7. A preliminary observation about the interpretation of s 19(2). The question is not whether s 61 accords with an abstract conception of “affirmative action”. It is whether it satisfies the requirements of s 19(2).
8. The relevant “**measure taken**” is Parliament’s enactment of s 61. It would be artificial to characterise a legislative omission as a “measure taken ...”.

9. Section 61 was enacted in **good faith** to implement New Zealand's international obligations.
10. Section 61 **assists** groups that may experience racist hate speech. It has symbolic value and confers practical rights.
11. Section 61 assists, and may advance, groups **disadvantaged by unlawful discrimination**.

Any limitation is reasonable and demonstrably justified in a free and democratic society

Written submissions at [66]–[104]

12. The justification analysis turns on legal and constitutional considerations, rather than social or empirical facts. Conventional *Hansen* analysis is of limited assistance.
13. Section 61 gives effect to New Zealand's international obligations concerning racial discrimination. New Zealand does not have comparable obligations requiring it to prohibit of other forms of hate speech. That provides a rational and objective basis for the legislative distinction.
14. Section 5 accommodates legislative judgment, especially where the issue is political and social in nature. Whether other forms of hate speech should be prohibited has been frequently considered by the elected branches of government (Ms Kiel to outline key historical events demonstrating that consideration).
15. This is an area of social policy in which the elected branches of government possess institutional competence.
 - 15.1 Parliament is entitled to affirm, protect and promote the rights and freedoms of different groups through different measures.
 - 15.2 The Court should avoid an unintended ratcheting effect, under which assistance provided to one group must be extended to all.

- 15.3 Any prohibition of speech engages others' expressive rights. Expanding the prohibition of hate speech requires balancing competing rights, social harms, practical considerations and international obligations. Parliament should be afforded latitude to determine these.

A declaration should not be granted

Written submissions at [105]–[107]

16. A declaration would risk undermining New Zealand's commitment to its international obligations concerning racial discrimination.
17. The appeal raises questions of institutional competence and democratic legitimacy. Those considerations favour judicial restraint.

7 October 2026

D J Perkins / O Kiel
Counsel for the respondent

TO: The Registrar of the Supreme Court of New Zealand.

AND TO: The appellant.

AND TO: The intervener.