IN THE HUMAN RIGHTS REVIEW TRIBUNAL **[2015] NZHRRT 14**

	Reference No. HRRT 005/2013
UNDER	**THE HUMAN RIGHTS ACT 1993**
BETWEEN	**ELSA PAROHINOG**
	PLAINTIFF
AND	**YELLOW PAGES GROUP LIMITED**
	FIRST DEFENDANT
AND	**ERIC MCINTOSH**
	SECOND DEFENDANT

AT AUCKLAND

BEFORE:
Mr RPG Haines QC, Chairperson
Dr SJ Hickey MNZM, Member
Mr RK Musuku, Member

REPRESENTATION:
Ms E Parohinog in person
Mr JO Upton QC and Mr R Upton for first defendant
Second defendant not served

DATE OF HEARING: **9 April 2015**

DATE OF DECISION: **5 May 2015**

DECISION OF TRIBUNAL STRIKING OUT STATEMENT OF CLAIM

The challenge – identifying what Ms Parohinog's human rights case is about

[1] Ms Parohinog sincerely and honestly believes she is the subject of covert surveillance, a microchip having been implanted in her through her food or by way of syringe when receiving a flu vaccination. Motor vehicle registration numbers are used to send her coded messages of a threatening kind. She is followed by strangers, her computer is turned on remotely even in the middle of the night and she hears noises in

her home. She is the victim of "organised gangstalking, organised stalking, electronic harassment, workplace bullying, psychiatric reprisal, discrimination, bullying, invasion of privacy, intimidations, threats, harassment, victimisation, terrorism suspicions, abuse of power, surveillance abuse, sabotage, conspiracy, corruptions and covert illegal operations and electronic warfare".[1] She believes Yellow Pages Group Ltd (Yellow Pages) is part of this conspiracy. By bringing these proceedings she hopes to get back her reputation and her life so she can "live freely, be able to work freely, free from all these discriminations and man-made illness accusing me of mentally ill and paranoia, terrorist, asylum seeker, thief, mail order bride, massage parlour, inside trading, mortgage broking and tax evasion".[2] The difficulty faced by Yellow Pages and by the Tribunal is that it is difficult to see how, in this context, the Human Rights Act 1993 is engaged.

[2] The statement of claim is some 82 pages in length and as filed, was supported by 188 pages of documentation and 17 photographs. The material is meticulously, if not obsessively cross-referenced. In the Tribunal's earlier decision given as *Parohinog v Yellow Pages Group Ltd (Strike-Out Application)* [2014] NZHRRT 2 (4 February 2014) the Tribunal upheld a submission by Yellow Pages that many of Ms Parohinog's claims fall well outside the Tribunal's jurisdiction under the Human Rights Act. The Tribunal ordered those parts of the statement of claim not relevant to complaints of harassment and discrimination were to be struck out. Because of the prolixity of the statement of claim the Tribunal found it impractical to identify which specific passages were to be removed. The Tribunal considered but rejected the option of requiring Ms Parohinog to file an amended statement of claim as it was of the view (borne out by subsequent events) the drafting of a crisp statement of claim is beyond her ability. Furthermore, the Tribunal wished to avoid delay and Yellow Pages did not at that time apply to have the entire statement of claim struck out. The objection raised at that time was based on jurisdiction, with the Tribunal affirming the limited reach of the Human Rights Act.

[3] Since then Ms Parohinog on 24 October 2014 has filed her written statement of evidence. It is plain from the face of this document she has largely if not completely ignored the Tribunal's explicit ruling as to the limited matters over which it has jurisdiction. It is difficult to find anything meaningful in this 12 page document (53 paragraphs) touching on the claim against Yellow Pages under the Human Rights Act. Instead the focus is on Ms Parohinog's views on orders made in the Family Court relating to the custody dispute over her son and she further details the conspiracy to which she has fallen victim. She says her difficulties can be traced to the dispute over her son's custody:

> 5. After the March 2013, after receiving some of my files from CYFS (MSD), the NZ Police, IRD, the Auckland Family Court, James Family Trust, W&I, my son's school and after school care, and some other private and public organisations and some information from my old colleagues and people from my community, now I know why I have been harassed, my privacy was invaded and why my life has been scrutinised and have been terrorised for so long.
> 6. It's to do with the CYFS (MSD) and the NZ Police Investigations in regards to Court Appointed Counsellor Ian Cranstoun in October 23, 2004 fabricated a call to CYFS stating that [Ms Parohinog would do harm to herself and her son]. This was frivolous and vexatious. I have never said this to this person.

[4] For its part, Yellow Pages on 17 December 2014 filed a statement of evidence by one of its Senior HR Advisors.

[1] See her submissions of 9 April 2014 at para 3.
[2] Ibid, para 27.

[5] This was followed by an application dated 9 January 2015 by Ms Parohinog for an order that a large number of witness summonses be issued. That application is returned to shortly.

[6] After Yellow Pages filed the present strike out application on 4 March 2015 Ms Parohinog filed three applications which demonstrate she is incapable of understanding the proceedings before the Tribunal are confined solely to her complaints relating to racial harassment and discrimination.

[7] The first application was dated 5 March 2015 and sought an order from the Tribunal appointing a lawyer to represent her not only in the present proceedings but also in "other Civil Matters and Criminal Matters", she believing her case "is all connected to these CYFS and NZ Police Investigations, IRD, Work & Income and the ANZ Bank matters". Her application was preoccupied with the Family Court proceedings and her interaction with associated agencies such as the Police, CYFS, the Court appointed child psychologist and counsel for the child. She alleged the lawyer representing her in the Family Court had resigned because government organisations were fabricating false allegations that she (Ms Parohinog) has a mental illness. But the letter dated 1 July 2014 from the lawyer (incorporated in Ms Parohinog's application) says nothing of the sort. What the lawyer in fact said was that he could not represent Ms Parohinog because she insisted on making false allegations:

> Ms Parohinog has made allegations that CYFS, Lawyer for Child and other Government organisations are fabricating false allegations against her that she has a mental illness.
>
> However, Ms Parohinog's allegations are unfounded and without any evidence to support them.
>
> Because of this we decided that we could no longer act for Ms Parohinog.

[8] Ms Parohinog's "misreading" of the clear and explicit terms of this letter illustrates her obsessive preoccupation with events as perceived by her to the total exclusion of any objective evidence.

[9] In a *Minute* issued on 17 March 2015 the Chairperson dismissed the application on the grounds the Tribunal has no jurisdiction to appoint a lawyer to represent a party. The Chairperson also pointed out Ms Parohinog's fundamental misconception of the nature of the proceedings before the Tribunal. He reminded her the decision of the full Tribunal given on 4 February 2014 had made it plain the Tribunal could not and would not investigate the multiplicity of complaints she has against the world at large:

> **[8]** It is also necessary to observe that Ms Parohinog continues to labour under a misapprehension as to the scope of the proceedings before the Tribunal. The narrative in her application dated 5 March 2015 proceeds on the assumption the Tribunal has unlimited jurisdiction to enquire into anything and everything about which she is unhappy. See for example para 35:
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> > I am hoping that the Tribunal will re-open my case against the ANZ Bank at the ERA in June 14, 2010 and the matter at the Hamilton High Court against Diwa Feck and the matter against Brian Roe and Jeanette Roe T/A Abacus Realty at the Tenancy Tribunal in August 2012 will be incorporated on the hearing as these are all connected with the NZ Police, CYFS, IRD, Work & Income and ANZ Bank Investigations about me. The Yellow Pages Group are aware with all of these, that's why they did not do anything when I was called a Terrorist with Eric MacIntosh and when I was bullied and harassed and discriminated while I was working at the Yellow Pages Group.
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> **[9]** This misapprehension was addressed in the Tribunal's decision in *Parohinog v Yellow Pages Group Ltd (Strike Out Application)* [2014] NZHRRT 2 (4 February 2014). The Tribunal made it abundantly clear that its jurisdiction is confined to hearing Ms Parohinog's complaints relating to racial harassment and discrimination under the Human Rights Act 1993.

[10] Undeterred, Ms Parohinog on 20 March 2015 re-filed her application that the Tribunal appoint a lawyer to represent her. Once again she explicitly linked the present proceedings with her "Civil and Criminal Matters", detailed an alleged stalking incident at a parking building in Hamilton, revisited her difficulties with the Family Court, spoke of her problems in the High Court regarding her dispute with her aunt, Diwa Feck and concluded with a request the Tribunal inspect the photographs attached to the application:

> 13. Please your Honour, see the attached photos of the Organised Crime of Covert Electronic Assault Stalking and Surveillance New Zealand, Stalking, Gangstalking, Harassment, Multi-Stalking and Mobbing are in there and the photo of Organised Stalking and Electronic Harassment Chart, so you can comprehend what I have been through for so long. It's over 10 years, not very nice.

[11] By *Minute* dated 25 March 2015 the Chairperson dismissed the application, again explaining the Tribunal had no jurisdiction to appoint a lawyer to represent Ms Parohinog and underlining that the jurisdiction of the Tribunal is limited exclusively to the complaint that various provisions of the Human Rights Act have been breached by Yellow Pages.

[12] Undaunted, on 31 March 2015 Ms Parohinog filed a request that she be allowed more time to file evidence. Particularly, she requested the Tribunal to order:

> 14. … that the NZ Police, CYFS, the ANZ Bank, the Yellow Pages Group, the IRD, Work & Income and Sykeman Enterprise would release any correspondence they have with these organisations and an Order that the Third Party Organisations such as all Security Companies, Interpol, MFAT, Border Security, Auckland Airports and Seaports, Civil Aviations Authority and any Court to release the information they held about me as I have been followed around everywhere I go. I was like the "PERSON OF INTEREST", is the Monitoring to do with the Care of Children Act 2004, S77 or with the ANZ Bank's and the NZ Police Monitoring Security in relation to Diwa Feck's complaint about me? No ordinary people can afford to pay people stalking and harassing me, whether I am at home, on the road, the telephone, the internet and even when I am asleep. I know that the Auckland Family Court Judge made an Order for COCA 2004, S77 to be placed since 2005, but I don't need to be followed around and GANGSTALKED and HARASSED.
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> …
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> 26. IPCA (INDEPENDENT POLICE CONDUCT AUTHORITY) – please refer letter dated 11th March 2015 which is attached) has considered my complaint with the UNETHICAL and IMMORAL CONDUCTS of some Police staff and CYFS staff and the ANZ Bank (please check the letter attached dated 10th March 2015) has acknowledge Diwa Feck's complaint about me to the ANZ Bank, then I should be given all those documents about any complaints as they are crucial evidence to my case. They are the ones who mocked around with me. I am in Long Work Litigations for so long, have lost everything and I think an Intervention of the Human Rights Review Tribunal Order to release all the NZ Police files to me and the ANZ Bank's files in regards to their INVESTIGATIONS and Complaints that they received about me especially the ones from DIWA FECK will help the Tribunal to deal with my case and would help any lawyers to deal with my case.

[13] At the hearing of the strike out application it was hoped Ms Parohinog would focus her submissions on those of her complaints against Yellow Pages which conceivably might fall under the Human Rights Act. This did not happen. Her written and oral submissions focussed instead on the custody dispute in the Family Court and her complaints against those agencies which have had contact with her in that context, her employment dispute with the ANZ Bank, her disputes with Diwa Feck and with various government agencies (including Inland Revenue). To the very limited degree that complaints against Yellow Pages were referred to, they were mentioned in the context of Ms Parohinog's allegation she is the victim of a general conspiracy into which everything is folded. See her written submissions of 9 April 2015:

22. The A64 Team led by Michael Waldron was all the group of people paid by the ANZ Bank, the NZ Police, CYFS, IRD, Work & Income, MFAT, Civil Aviations Authority, NZ Security Intelligence Services, Customs, Border Security, Airports, Seaport, Military, Airlines, Interpol, Department of Justice and many other Government/Private Organisations who have been Communicated with the COCA S77 [Care of Children Act].
23. The Yellow Pages Group denied knowing all these Orders, I have been advised with Barristers and Solicitors that these Orders when in placed, they advise employers, schools, Landlord, Doctors, Hospitals and many other organisations and Individuals for the Child's Protection but how are these communicated to them?
24. They sent me home, accusing me of Terrorist, Asylum Seeker, Thief, Mail Order Bride, Massage Parlour, Tax Evasion, Inside Trading, Mortgage Broking, Mentally Ill and Paranoia, now they have to admit accountability for it. Because My life and my son's life has been affected with all the actions of the individuals and organisations involved.

[14] In post-hearing submissions dated 15 April 2015 Ms Parohinog made further submissions in opposition to the strike-out application. These new submissions largely encapsulate Ms Parohinog's oral submissions at the hearing and usefully (if not vividly) illustrate how in her world everything which has happened to her is interconnected, interrelated and indivisible:

3. … These two reports are not dated at the same date, also the contents of the reports that was provided by Sean Sullivan to the First Defendant on the 07/03/2012 was fabricated and exaggerated and this shows how Unethical and Immoral he is. Sean Sullivan was sent up to see me to send me to Psychiatric Reprisal because I lodged a complaint to the Human Rights Commission and he was part of the CONSPIRACY and SABOTAGED with the A64 Team at The Yellow Pages Group handled by Michael Waldron due to the NZ Police/CYFS Investigations, Work & Income, IRD and the ANZ Bank. His report should not be considered at all and be used for the First Defendant to require me for Psychiatric Assessment, because it was vexatious, malicious and abused of Power. Sean Sullivan and the Yellow Pages Group are discriminating me by accusing me of paranoia, delusional and depressed. I believe that he obtained his report from Diwa Feck (my aunt) who was looked after by a Social Worker in Hamilton who has been depressed because of her separation from her ex-husband in 2007. These Professionals like Sean Sullivan and Suzanne Glendinning are paid professionals by this Elite Group that supported the ANZ Bank, the NZ Police, CYFS & Work & Income (Ministry of Social Development), IRD and many other Private and Public organisations.
…
17. The Yellow Pages Group, especially the A64 Team handled by Michael Waldron has been monitoring me when I was working with them from November 01, 2010 to a 7th March 2012 not because of the Care of Children Act 2004, S77 (Preventing a Child to Travel Overseas which was extended to greater Auckland Area on the 18th April 2011) but because I was suspected as Terrorist and was suspected as Late ONGKOY PAROJINOG'S daughter or his niece who was involved with the "Kurating Baleleng's" activities in the Philippines. That's why I was always bullied at work and outside work, followed around, cut-off on the road, sent to Psychiatric Reprisals, abused and terrorised for years, ridiculed with names that the "Kurating Baleleng" are accused of in the Philippines. That's why the NZ Police are wanting to meet me as per letter from IPCA dated 11 March 2015 as I was BLACKLISTED (using the Care of Children Act 2004 S77 as the reason for monitoring/surveillance – I don't believe this as the reason at all), perceived and accused as a Threat to the New Zealand Securities.

[15] It can be seen from these extracts and from those extracts quoted earlier in this decision that the harassment and discrimination complaint ostensibly made by Ms Parohinog against Yellow Pages is barely visible and when it can be identified as being present, it is a complaint which is not articulated as a harassment and discrimination claim under the Human Rights Act as ordinarily understood, but as a claim Yellow Pages is part of a general conspiracy in which the conspirators are all those with whom Ms Parohinog is unhappy.

The strike-out application

[16] By application dated 4 March 2015 Yellow Pages applied for an order that Ms Parohinog's entire proceedings be struck out on the basis they are vexatious, frivolous

and even if proven, the facts contained in the statement of claim dated 20 April 2013 do not establish an arguable case.

[17] Ms Parohinog opposes the application, arguing the Tribunal must hear what she wishes to say in evidence at the substantive hearing. She also wants the Tribunal to issue summonses to the 69 persons listed in her statement of claim and to the further 18 persons named in her written submissions dated 9 April 2015.

[18] The list of 87 persons she wishes to have summonsed illustrates the astonishing breadth of the case she intends advancing before the Tribunal at the substantive hearing. The potential witnesses include the Commissioner of Police, the Director of Security for the Security Intelligence Service, staff of the Office of the Privacy Commissioner, various police officers, staff employed by CYFS, the father of her child, the court appointed lawyer for her child, employees of the ANZ Bank including the CEO, a Registrar at the Auckland Family Court and the CEOs of six security companies. Other potential witnesses whose evidence cannot on any view be relevant include her ex-landlords, persons from Abacus Realty, NZ Home Loans, Ray White Realty and court bailiffs. With regard to Yellow Pages itself, she asks that no fewer than 27 staff members be summonsed.

[19] The essential points made by Yellow Pages are:

> **[19.1]** Yellow Pages may end up proceeding on one basis as to what it believes Ms Parohinog's complaints to be, but (because they have not been identified with any particularity in the statement of claim) it may turn out that Ms Parohinog is wanting to argue some other issues, or to put whatever Yellow Pages has identified as her issues in a different light, or to construe them in a different way, based on other material which she says is relevant.
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> **[19.2]** Yellow Pages is likely to end up being put to significant and unnecessary cost of defending a five day fixture that will be entirely lacking in any prospect of success by Ms Parohinog. There is little, if no scope for Ms Parohinog to contribute to the costs incurred by Yellow Pages.
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> **[19.3]** Ms Parohinog cannot or will not accept the limitations on the Tribunal's jurisdiction. She has shown a determination to re-run issues which have been struck out and simply re-ploughs all the old ground which the Tribunal has said it does not have jurisdiction to consider.
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> **[19.4]** What, on the face of it, purports to be a human rights case is, on closer analysis, simply part of a major and ongoing perceived conspiracy as seen by Ms Parohinog, from which she will not be shaken. The Yellow Pages component in the perceived conspiracy is nothing more than a small part of a greater whole, with many players (governmental, judicial, corporate and individual) involved and covering activity and conduct over many years.
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> **[19.5]** Ms Parohinog's concerns are irrational. She sees issues which are not there. She attaches a significance to every day events or conduct which is not warranted. She sees as sinister the most mundane things such as a car parked outside, a particular number plate, someone looking at her from a distance.
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> **[19.6]** Looked at objectively, there is no sustainable evidence whatsoever of any racial harassment or discrimination.

[20] In his closing submissions Mr Upton QC submitted that even though it was unpleasant to say, Ms Parohinog is not anchored in reality. She lives in a world of her own. For many years she has misunderstood and misconstrued things which have happened to her. Her case against Yellow Pages is incomprehensible. At best it revolves around allegations of conspiracy and sabotage.

JURISDICTION TO STRIKE OUT

[21] The Tribunal's jurisdiction to strike out proceedings for what might loosely be called abuse of process flows from three primary statutory provisions. It is unnecessary to examine the question whether the Tribunal has an inherent power to prevent an abuse of process similar to that possessed by the District Court and established in *Department of Social Welfare v Stewart* [1990] 1 NZLR 697 (Wylie J) and *Watson v Clarke* [1990] 1 NZLR 715 (Robertson J). The three statutory provisions referred to are:

[21.1] Section 115 of the Human Rights Act:

> **115 Tribunal may dismiss trivial, etc, proceedings**
>
> The Tribunal may at any time dismiss any proceedings brought under section 92B or section 92E if it is satisfied that they are trivial, frivolous, or vexatious or are not brought in good faith.

[21.2] Section 105 of the Human Rights Act:

> **105 Substantial merits**
>
> (1) The Tribunal must act according to the substantial merits of the case, without regard to technicalities.
> (2) In exercising its powers and functions, the Tribunal must act—
> (a) in accordance with the principles of natural justice; and
> (b) in a manner that is fair and reasonable; and
> (c) according to equity and good conscience.

[21.3] Regulation 4 of the Human Rights Review Tribunal Regulations 2002:

> **4 Purpose of these regulations**
>
> (1) The purpose of these regulations is to make it possible for proceedings before the Tribunal to be determined—
> (a) in harmony with the purpose and spirit of the Acts under which the proceedings arise; and
> (b) as required by those Acts (for example, in a manner consistent with the performance of the Tribunal's duties under section 105 of the Act); and
> (c) as fairly, efficiently, simply, and speedily as is consistent with justice.
> (2) These regulations must be read in the light of their purpose.

[22] It was recognised in *Mackrell v Universal College of Learning* HC Palmerston North CIV-2005-485-802, 17 August 2005, Wild J these provisions confer on the Tribunal a wide discretionary power to strike out or dismiss a proceeding brought before it:

> [45] Subject to observance of natural justice, fairness and reasonableness, and equity, the Tribunal has a wide discretion as to the procedure which follows: ss 104 and 105 of the Human Rights Act. Section 105 requires the Tribunal "to act according to the substantial merits of the case, without regard to technicalities". That section applies, with necessary modifications, to decisions of this Court on appeal against a decision of the Tribunal: s123(5).
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> [46] The Tribunal has an express power to dismiss proceedings, if satisfied that they are frivolous, vexatious or not brought in good faith: s115. As Mr Laurenson points out, the Tribunal deliberately did not exercise this power. It struck out Ms Mackrell's claim.

[47] There are also the Human Rights Review Tribunal Regulations 2002 which place, in terms of the Tribunal's procedures, an emphasis on fairness, efficiency, simplicity and speed. I refer particularly to regulation 4.

[48] Thus, the Tribunal has a wide discretionary power to strike out or dismiss a proceeding brought before it. This will be appropriate in situations similar to those contemplated by rr 186 and 477 of the High Court Rules which are the basis for the present application.

[23] The reference by Wild J to rr 186 and 477 of the High Court Rules is now to be read as a reference to High Court Rules, r 15.1 which provides:

15.1 Dismissing or staying all or part of proceeding

(1) The court may strike out all or part of a pleading if it—
  (a) discloses no reasonably arguable cause of action, defence, or case appropriate to the nature of the pleading; or
  (b) is likely to cause prejudice or delay; or
  (c) is frivolous or vexatious; or
  (d) is otherwise an abuse of the process of the court.

(2) If the court strikes out a statement of claim or a counterclaim under subclause (1), it may by the same or a subsequent order dismiss the proceeding or the counterclaim.

(3) Instead of striking out all or part of a pleading under subclause (1), the court may stay all or part of the proceeding on such conditions as are considered just.

(4) This rule does not affect the court's inherent jurisdiction.

[24] It is clearly established that abuse of process extends to proceedings which are seriously and unfairly burdensome, prejudicial or damaging or productive of serious and unjustified trouble and harassment: *Waterhouse v Contractors Bonding Ltd* [2013] NZSC 89, [2014] 1 NZLR 91 at [30]-[32]:

[30] We accept the submission of Mr Harrison that the power, under the High Court Rules or the inherent powers of a court, to stay a proceeding for abuse of process is not limited to the narrow tort of abuse of process. In any event, Mr Mills accepts the abuse of process ground would also be available in the circumstances set out by Lord Diplock in *Hunter v Chief Constable of the West Midlands Police*:

> ... the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people. The circumstances in which abuse of process can arise are very varied; ... It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances in which the court has a duty (I disavow the word discretion) to exercise this salutary power.

[31] In Australia, a majority of the High Court in *Jeffery & Katauskas Pty Ltd v SST Consulting Pty Ltd* identified the following categories of conduct that would attract the intervention of the court on abuse of process grounds:

(a) proceedings which involve a deception on the court, or those which are fictitious or constitute a mere sham;
(b) proceedings where the process of the court is not being fairly or honestly used but is employed for some ulterior or improper purpose or in an improper way;
(c) proceedings which are manifestly groundless or without foundation or which serve no useful purpose; and
(d) multiple or successive proceedings which cause or are likely to cause improper vexation or oppression.

[32] The majority also said that, although the categories of abuse of process are not closed, this does not mean that any conduct of a party or non-party in relation to judicial proceedings is an abuse of process if it can be characterised as in some sense unfair to a party. It does, however, extend to proceedings that are "seriously and unfairly burdensome, prejudicial or damaging" or "productive of serious and unjustified trouble and harassment".

[Footnote citations omitted]

[25] Striking out on the grounds of prejudice and delay is often the appropriate course where the statement of claim is prolix and unintelligible. See *Commissioner of Inland Revenue v Chesterfields Preschools Ltd* [2013] NZCA 53, [2013] 2 NZLR 679. At [84] the Court of Appeal set out the requirements of a statement of claim (High Court Rules, rr 5.17, 5.26 and 5.27). Those requirements apply equally in proceedings before the Tribunal. Specifically:

> **[25.1]** The pleading must be accurate, clear and intelligible.
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> **[25.2]** Sufficient particulars must be given to enable the defendant to be fairly informed of the case to be met.
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> **[25.3]** While adequate particulars are required, the statement of claim must not stray into setting out the evidence relied upon.

[26] See also *Mackrell v Universal College of Learning* at [57] to [59]:

> [57] Parties seeking redress from Tribunals and Courts must state their claim in a way which enables the Court or Tribunal and parties responding to the claim to understand what the claim is about. Claims should be pleaded in the most succinct and concise way possible.
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> [58] Tribunals and Courts, and responding parties, should not be left in the position of attempting to make sense of a "morass of information" (to borrow the Tribunal's description of Ms Mackrell's claim). To put Courts and respondents in the position of having to try and make sense of the incomprehensible is what is meant by the rather quaint terms "embarrass" and "prejudice" in relation to pleadings.
>
> [59] Due allowance is to be made for lay litigants such as Ms Mackrell, and it was made by the Tribunal here. But lay litigants, like litigants who are professionally represented, are required to comply with the pleading rules and procedures of Tribunals and Courts. They are not to be permitted to file incomprehensive claims, because that only visits prejudice and injustice upon the respondent, not to mention enormous inconvenience to the Court or Tribunal.

[27] A statement of claim drafted in compliance with these requirements gives both the Tribunal and the defendant notice of what is being alleged and against whom. Pleading should not be permitted to be a means of oppressive conduct against opposing parties. See *Commissioner of Inland Revenue v Chesterfields Preschools Ltd* at [87]:

> [87] If a statement of claim has been drafted in compliance with the above requirements, then both the court and the defendant parties should have a clear understanding of what is being alleged and against whom. However, verbose, ill-drafted pleadings may defeat the purpose of a statement of claim to such an extent that it is an abuse of process. This principle is intended, as *Odgers* suggests, to "prevent the improper use of [the court's] machinery". Pleading should not be permitted to be a means of oppressive conduct against opposing parties.
> [Footnote citation omitted]

[28] If there has been such abuse, the statement of claim may be struck out. See *Commissioner of Inland Revenue v Chesterfields Preschools Ltd* at [89]:

> [89] The grounds of strike out listed in r 15.1(1)(b)–(d) concern the misuse of the court's processes. Rule 15.1(1)(b), which deals with pleadings that are likely to cause prejudice or delay, requires an element of impropriety and abuse of the court's processes. Pleadings which can cause delay include those that are prolix; are scandalous and irrelevant; plead purely evidential matters; or are unintelligible. In regards to r 15.1(1)(c), a "frivolous" pleading is one which trifles with the court's processes, while a vexatious one contains an element of impropriety. Rule 15.1(1)(d) – "otherwise an abuse of process of the court" – extends beyond the other grounds and captures all other instances of misuse of the court's processes ….
> [Footnote citations omitted]

[29] On the facts the Court of Appeal found the statement of claim filed by Chesterfields Preschools Ltd an abuse of process because it was pleaded in a highly prolix and diffuse way in relation to material facts spread throughout the pleadings in an

incomprehensible way. That description aptly fits the statement of claim filed by Ms Parohinog, a point remarked upon by the Tribunal in its earlier decision in *Parohinog v Yellow Pages Ltd (Strike-Out Application)* at [11]:

> **[11]** The statement of claim is best described as a prolix document and has many of the faults identified by the Court of Appeal in relation to the statement of claim in *Commissioner of Inland Revenue v Chesterfields Preschools Ltd* [2013] NZCA 53, [2013] 2 NZLR 679 at [90] and [91]. The description which follows applies as much to the plaintiff's statement of claim:
>
> > [90] The major issue with the statement of claim is that it is overwhelmingly prolix. It comprises 419 paragraphs. The narrative of facts presented by the statement is not straightforward but diffuse: there are large tracts of factual material and much of the material facts relating to an individual claim are dispersed throughout different parts of the document. This makes it difficult, if not impossible, to understand. …
> >
> > [91] Much of the factual material pleaded is irrelevant, provides excessive detail or is evidence rather than pleading. The large tracts of factual information pleaded do not identify the main issues but obfuscate them by adding to the prolix nature of the document and making it burdensome to read. A major concern is the excessive pleading of matters of evidence. For example, the document refers to certain evidence as particularly supporting a fact and then at other times it quotes directly from the evidence. …

[30] Two important qualifications must be added. First, the jurisdiction to dismiss is to be used sparingly. If the defect in the pleadings can be cured, an amendment of the statement of claim will normally be ordered. See *Commissioner of Inland Revenue v Chesterfields Preschools Ltd* at [89].

[31] Second, the fundamental constitutional importance of the right of access to courts (and tribunals) must be recognised. Such right of access must, however, be balanced against the desirability of freeing defendants from the burden of litigation which is an abuse of process. As stated in *Mackrell v Universal College of Learning* at [59], litigants are not to be permitted to file incomprehensible claims as that only visits prejudice and injustice on the opposing party.

[32] Where a statement of claim is challenged on the basis it is prolix, unintelligible and an abuse of process, it is neither necessary nor appropriate to assume the truth of the pleaded allegations. There must be an objective factual basis for the allegations. See *Siemer v Stiassny* High Court Auckland CIV-2008-404-6822, 30 November 2009, Winkelmann J at [21]:

> … Mr Siemer has set out in affidavit form the basis for his allegations. The affidavit is so insubstantial that it is clear that this is a case where Mr Siemer should not have the benefit of the assumption normally applying in such applications – that is, that the factual assertions are capable of proof. As the Court of Appeal said in *Collier v Panckhurst* CA136/97, 6 September 2006 at [4]:
>
> > The Court is not required to assume the correctness of factual allegations obviously put forward without any foundation.
>
> I accept the applicant's submission that these allegations have no foundation. The misfeasance cause of action has no prospect of success.

[33] Finally, it has been noted this is the second strike out application filed by Yellow Pages. The first sought the removal of those parts of the statement of claim which lie outside the jurisdiction of the Tribunal. The present application seeks the striking out of the statement of claim in its entirety on the grounds of abuse of process. The decision on the first application did not exhaust the Tribunal's powers as it is plain the particular statutory provisions are of continuing availability. Section 115 expressly stipulates the Tribunal may dismiss proceedings "at any time" and must be construed as recognising

the possibility of more than one strike out application. Section 16 of the Interpretation Act 1999 further reinforces the point:

> **16 Exercise of powers and duties more than once**
>
> (1) A power conferred by an enactment may be exercised from time to time.
> (2) A duty or function imposed by an enactment may be performed from time to time.

[34] We address now the particular circumstances of the present case.

APPLICATION OF THE LAW TO MS PAROHINOG'S CASE

[35] This is a clear case where the statement of claim must be struck out. In view of the lengthy examination of Ms Parohinog's pleadings earlier set out, the reasons for this finding can be shortly stated:

[35.1] The statement of claim is prolix, unintelligible and oppressive. It is seriously and unfairly burdensome and prejudicial to Yellow Pages. The document is an abuse of process.

[35.2] Time and time again it has been explained to Ms Parohinog that the Tribunal's jurisdiction is limited to determining complaints of discrimination. Ms Parohinog has steadfastly ignored this advice, simply repeating her belief Yellow Pages is part of a generalised conspiracy.

[35.3] Ms Parohinog's sincerely held view that she is the victim of a conspiracy plainly has no objective foundation.

[35.4] No matter how many further opportunities Ms Parohinog is given to articulate a case recognisable under the Human Rights Act, her case will not be improved because she is incapable of understanding what is required of her. Her request that 87 witness summonses be issued together with her applications dated 5 March 2015, 20 March 2015, 31 March 2015 and her submissions of 9 April 2015 and 15 April 2015 demonstrate a fundamental incapacity to accept that the conspiracy (apparently centred on Family Court proceedings) is not relevant to any complaint she may have against Yellow Pages under the Human Rights Act. Asked four times during the hearing on 9 April 2015 to explain the relevance of those proceedings to her case against Yellow Pages, Ms Parohinog was able to offer only rambling, disjointed, illogical and incoherent responses. We are in no doubt her evidence at any substantive hearing will be little improved.

[35.5] Nowhere in the statement of claim, in her statement of evidence or in the other documents filed by Ms Parohinog can we find any foundation for the assertion she has been discriminated against or harassed by Yellow Pages and its staff.

[35.6] It is accepted Ms Parohinog honestly believes everything she has narrated to the Tribunal. But the world inhabited by her is not the world inhabited by Yellow Pages, the Tribunal and most other people. Ms Parohinog's sincere but objectively baseless illusions are not sufficient to justify this case proceeding to a substantive hearing.

DECISION

[36] For the reasons given these proceedings are struck out.

Costs

[37] Very properly, Yellow Pages does not seek costs.

.....	.....	.....
Mr RPG Haines QC	**Dr SJ Hickey MNZM**	**Mr RK Musuku**
Chairperson	**Member**	**Member**