IN THE HUMAN RIGHTS REVIEW TRIBUNAL **[2016] NZHRRT 18**

	Reference No. HRRT 037/2014
UNDER	**THE HUMAN RIGHTS ACT 1993**
BETWEEN	**JUSTIN ROSSI**
	PLAINTIFF
AND	**CHIEF EXECUTIVE OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT**
	FIRST DEFENDANT
AND	**COMMISSIONER OF POLICE**
	SECOND DEFENDANT
AND	**NELSON DISTRICT COURT**
	THIRD DEFENDANT

AT WELLINGTON – ON THE PAPERS

BEFORE:
Mr RPG Haines QC, Chairperson
Dr SJ Hickey MNZM, Member
Mr BK Neeson JP, Member

REPRESENTATION:
Mr J Rossi in person
Ms EF Tait for first defendant
Mr I McArthur for second defendant
Ms M Majeed for third defendant

DATE OF DECISION: **26 May 2016**

DECISION OF TRIBUNAL STRIKING OUT STATEMENT OF CLAIM[1]

[1] [This decision is to be cited as: *Rossi v Chief Executive of the Ministry of Business, Innovation and Employment (Strike-Out Application)* [2016] NZHRRT 18.]

INTRODUCTION

Background circumstances

[1] The statement of claim filed by Mr Rossi on 22 December 2014 is not an informative document. Insofar as it does reveal Mr Rossi's case, it is alleged that in their dealings with him, the immigration authorities, the New Zealand Police and the District Court at Nelson contravened "the entire" Human Rights Act 1993. In four brief paragraphs it is claimed:

> **[1.1]** The New Zealand Police and the Nelson District Court seized Mr Rossi's passport prior to the expiration of his work permit, forcing him to remain in New Zealand after being assaulted in Motueka by three named individuals. In addition he was allegedly assaulted by two named Police Constables.
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> **[1.2]** After "having due process violated for over one year" and after Mr Rossi had experienced "dozens of miscarriages of justice" he was placed in prison pending trial. Immigration New Zealand would not extend his visa. During the period of his detention Mr Rossi experienced "social injustice" which could be "described as torture of the mind in having so many violations of fundamental justice and being stripped of civil liberties and imposed intimidation and fear tactics".
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> **[1.3]** Mr Rossi was illegally detained and deported to the United States of America by Immigration New Zealand.
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> **[1.4]** He was denied legal aid for his High Court proceedings challenging the decisions made by Immigration New Zealand. In addition the hearing was neither transcribed nor recorded, Mr Rossi was not present for questioning and his challenge was rejected.

Just how these alleged acts breached "the entire" Human Rights Act (or any particular provision of that Act) is not explained.

[2] Accompanying the statement of claim is a 23 page typed document in the form of a draft statement addressed to the United Nations High Commissioner for Human Rights in which Mr Rossi complains of his removal from New Zealand as well as his treatment by the New Zealand Police and by the New Zealand judicial system. The document is best described as rambling in nature and provides no assistance in identifying relevant breaches of the Human Rights Act. It is also incomplete, the introductory statement recording that the draft was started on 9 December 2014 and that it (the "report") was being sent to the High Commissioner incomplete:

> … as it contains a lot of information and I expect it to contain much more once I have finalized it, however I would like to get it into your hands sooner so that the United Nations Working Group can assess it for their report on NZ's system that they plan to conclude in early 2015.

Further statements by Mr Rossi have since been filed but they are without exception discursive, unfocused and rambling.

[3] Of greater assistance in understanding the context in which the present proceedings have been brought are the judgments of the High Court and of the Court of Appeal addressing many of the complaints now repeated before the Tribunal. Those judgments are *Rossi v Chief Executive of the Ministry of Business, Innovation and Employment* [2014] NZHC 2168 (9 September 2014) and *Rossi v R* [2015] NZCA 539 (13 November 2015).

[4] The criminal proceedings which led to Mr Rossi's conviction for assault with intent to injure were summarised by the Court of Appeal in *Rossi v R* at [1] in the following terms:

> [1] The appellant, Mr Rossi, was charged with five counts, comprising assault with intent to injure, male assaults female, two counts of common assault and one count of assaulting a constable. Following his trial before a jury, Mr Rossi was acquitted of all but the charge of assault with intent to injure. The acquittals all related to events at a party on 2 June 2013. The charge on which he was convicted related to an altercation taking place between himself and his then fiancée, Ms Meiring, earlier in May 2013. Mr Rossi was convicted and sentenced for that offence to eight months' imprisonment by Judge Barry in the Nelson District Court.

The appeal was dismissed.

[5] In the High Court Whata J summarised the immigration facts in the following terms:

> [1] Mr Rossi is a citizen of the United States of America. He is challenging a deportation order. His temporary working visa expired on 10 August 2013. He had 42 days to appeal his liability for deportation. He did not do so. During this time he was facing various charges including an alleged assault of his girlfriend. He says he found himself in desperate circumstances, breached his bail by living with his girlfriend and was remanded in custody pending the trial. Mr Rossi claims he had no ability to preserve his immigration status while in prison. He also says he was advised by Immigration New Zealand (INZ) that he could only request visa waiver from the Minister under s 61 of the Immigration Act 2009. The Minister declined to consider that request.
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> [2] Mr Rossi was found guilty on one charge of assault and was sentenced to a term of imprisonment for a period of eight months with a release date of 11August 2014. He has appealed against his conviction and sentence. The appeal was due to be heard on 28 July 2014 but the hearing date was vacated to allow Mr Rossi to instruct new counsel.
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> [3] In the meantime, Mr Rossi was served with a notice of deportation order on 9 May 2014 and was later interviewed as to his personal circumstances in accordance with s 177 Immigration Act 2009 on 30 July 2014. On about 4 August 2014 following completion of the interview as to Mr Rossi's personal circumstances, INZ confirmed that the deportation order would not be cancelled. On 26 August 2014 INZ advised Mr Rossi at the time that deportation would not be enforced pending clarification of the status of his appeal to the Court of Appeal. INZ then agreed not to deport Mr Rossi pending determination of his proceedings in the High Court in this matter then scheduled for September 2014.
>
> [4] …
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> **The key issue**
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> [5] With the benefit of argument and the evidence, the central issue is:
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> > Whether Mr Rossi's (allegedly) destitute circumstances, incarceration and the refusal to consider the grant of a temporary visa, constitute special reasons for relief from immediate deportation.

The judicial review proceedings were dismissed.

The proper defendants

[6] As named in the statement of claim, the four intended defendants are "Immigration New Zealand", "The Deputy Chief Executive of the Ministry of Business Innovation and Employment", "The Motueka Police Department" and the "Nelson District Court".

[7] As Immigration New Zealand is a business unit within the Ministry of Business, Innovation and Employment the first and second intended defendants are unnecessarily duplicated. The Chief Executive of the Ministry of Business, Innovation and Employment is the administrative head of the Ministry and is responsible for the administration of the Immigration Act 2009. The Chief Executive is therefore the proper party to respond to proceedings concerning immigration matters. This is supported by s

227 of the Act which provides that the Chief Executive (or Minister) is a party to any proceedings under that Act.

[8] In these circumstances the Chief Executive of the Ministry of Business, Innovation and Employment is to be substituted for Immigration New Zealand and the Deputy Chief Executive.

[9] As to the intended defendant described as "The New Zealand Police at Motueka", such is not a legal entity. In place the second defendant is to be described as the Commissioner of Police.

The strike out applications

[10] All three defendants have filed strike out applications. Although the applications overlap to a degree, each is best considered separately. Mr Rossi opposes the applications. For each he has filed three notices of opposition together with three documents intituled as supporting "affidavits". However, the documents have not been sworn and are simply signed statements.

JURISDICTION TO STRIKE OUT

[11] The Tribunal's jurisdiction to strike out proceedings has recently been addressed in *Parohinog v Yellow Pages Group Ltd (Strike-Out Application No. 2)* [2015] NZHRRT 14 (5 May 2015) at [21] to [33] and in *New Zealand Private Prosecution Services Ltd v Key (Strike-Out Application)* [2015] NZHRRT 48 at [36] to [45]. For the purpose of this decision we largely duplicate what was said in *Parohinog*.

[12] Section 115 of the Human Rights Act provides:

> **115 Tribunal may dismiss trivial, etc, proceedings**
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> 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.

[13] 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.
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> [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.
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> [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.

[14] 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.

[15] It is clearly established that abuse of process extends to proceedings where there is no arguable case and 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*:
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> > ... 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.
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> [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:
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> > (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".
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> [Footnote citations omitted]

[16] 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:

[16.1] The pleading must be accurate, clear and intelligible.

[16.2] Sufficient particulars must be given to enable the defendant to be fairly informed of the case to be met.

[16.3] While adequate particulars are required, the statement of claim must not stray into setting out the evidence relied upon.

[17] 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.
>
> [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 incomprehensible claims, because that only visits prejudice and injustice upon the respondent, not to mention enormous inconvenience to the Court or Tribunal.

[18] 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]

[19] 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]

[20] 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.

[21] To the general principles earlier discussed 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].

[22] 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.

[23] 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]:
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> > The Court is not required to assume the correctness of factual allegations obviously put forward without any foundation.
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> I accept the applicant's submission that these allegations have no foundation. The misfeasance cause of action has no prospect of success.

[24] In the present case the statement of claim is bereft of meaningful content and the defendants are left to search through an incomplete "report" to a third party along with the three unsworn statements now filed by Mr Rossi for clues as to what is in fact alleged against them under the Human Rights Act. It is clear from the content of the three unsworn statements that Mr Rossi sees these proceedings as an opportunity not to advance claims which properly fall within the Human Rights Act, but to ventilate again every grievance and complaint he has in relation to his time in New Zealand. Having been given an opportunity to clarify his plainly defective pleadings, he has simply compounded the difficulties faced by all three defendants.

[25] We address now the particular grounds of the three separate strike out applications.

THE STRIKE OUT APPLICATION BY THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT

[26] The Ministry of Business, Innovation and Employment applies for all aspects of Mr Rossi's claim (as against the Ministry) to be struck out on the following grounds:

[26.1] An absence of jurisdiction.

[26.2] No reasonably arguable cause of action.

[26.3] Abuse of process

Absence of jurisdiction

[27] Section 392(3) of the Immigration Act explicitly recognises that immigration matters inherently involve different treatment on the basis of personal characteristics. The section prohibits the bringing of a complaint under the Human Rights Act in respect of (inter alia) the content or application of the Immigration Act or of any regulations or immigration instructions made under that Act:

> **392 Relationship between this Act and Human Rights Act 1993**
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> (1) The Human Rights Commission may perform, in relation to immigration matters, all of its functions (as described in section 5 of the Human Rights Act 1993), including—

(a) making public statements in relation to any matter affecting human rights:
(b) receiving and inviting representations from members of the public on any matter affecting human rights:
(c) inquiring generally into any matter, practice, or procedure if it appears to the Commission that the matter involves, or may involve, the infringement of human rights:
(d) reporting to the Prime Minister on any matter affecting human rights.

(2) However, despite anything in the Human Rights Act 1993,—
(a) no complaint may be made under that Act in respect of—
(i) the content or application of this Act or any regulations made under this Act; or
(ii) the content or application of any immigration instructions made in accordance with section 22:
(b) the Human Rights Commission may not, in relation to any matter referred to in paragraph (a),—
(i) bring any proceedings of a kind referred to in section 5(2)(i) of the Human Rights Act 1993; or
(ii) exercise in relation to any proceedings the powers conferred by section 5(2)(j) of that Act (which relates to applications to a court or tribunal to be appointed as intervener or counsel, or taking part in proceedings in any other way).

(3) This section recognises that immigration matters inherently involve different treatment on the basis of personal characteristics.

[28] The effect of this provision is that:

[28.1] By virtue of s 392(2)(a)(i) and (ii) a complaint in respect of the content or application of the Immigration Act or immigration instructions cannot be made to the Human Rights Commission.

[28.2] The Commission is barred by s 392(2)(b)(i) from bringing proceedings before the Tribunal under ss 92B, 92E, 92H and 97 of the Human Rights Act.

[28.3] The Commission is barred by s 392(2)(b)(ii) from applying under s 5(2)(j) of the Human Rights Act to the Tribunal to be appointed as intervener or as counsel assisting the Tribunal or from otherwise taking part in proceedings before the Tribunal.

[29] By precluding access to the Commission, s 392(2) of the Immigration Act has also deprived aggrieved persons of access to the Tribunal because s 92B of the Human Rights Act stipulates that civil proceedings before the Tribunal can only be brought if a complaint of the kind referred to in s 76(2)(a) has been made to the Commission. By prohibiting the making of such complaint, s 392(2) of the Immigration Act has made it impossible for civil proceedings to be initiated under s 92B of the Human Rights Act. As there is no other point of entry to the Tribunal's jurisdiction, the bar in s 392(2) is absolute.

[30] It is acknowledged Mr Rossi attempted to make a complaint to the Commission on 3 July 2014. This is confirmed by the Commission's letter dated 30 January 2015 addressed to the Tribunal. However, as that letter makes clear, this attempted complaint was rejected by the Commission due to the operation of s 392(2)(a) of the Immigration Act. The relevant part of the letter follows:

> On 3 July 2014 the Commission received a complaint from Justin Rossi that he was liable for deportation as a result of a decision by Immigration New Zealand.
>
> On 7 July 2014 the Commission informed Justin Rossi that it had no jurisdiction to deal with the matter because of the limitation in s 392 of the Immigration Act.

[31] Mr Rossi cannot circumvent s 392(2)(a) by asserting that his attempt to do that which is prohibited is a "complaint" for the purposes of s 92B of the Human Rights Act.

The plain intent of s 392(2) of the Immigration Act is to close not only the gate to the Human Rights Commission but also to the Human Rights Review Tribunal.

[32] It follows the Tribunal has no jurisdiction to hear any complaint by Mr Rossi under the Human Rights Act relating to the content or application of the Immigration Act or of any immigration instructions made under that Act.

No reasonably arguable cause of action

[33] We address next the submission that the statement of claim discloses no reasonably arguable cause of action.

[34] Mention has been made that when asked to specify the provisions of the Human Rights Act alleged to have been contravened by the Ministry and the other defendants Mr Rossi's statement of claim pleaded "the entire Act". However, the statement of claim does not identify any specific alleged breach by the Ministry of Part 1A or Part 2 of the Human Rights Act. Nor does it identify any alleged action by the Ministry capable of amounting to a breach of the Human Rights Act. Rather it refers in general terms to unspecified alleged breaches of the Immigration Act and the New Zealand Bill of Rights Act 1990 (Bill of Rights).

[35] As correctly pointed out in the submissions for the Ministry, the Tribunal's jurisdiction is limited to the Human Rights Act, the Privacy Act 1993 and the Health and Disability Commissioner Act 1994. The Tribunal does not have jurisdiction in respect of other New Zealand statutes, including alleged breaches of the Immigration Act and the Bill of Rights. See *Howard v Attorney-General* [2006] NZHRRT 46 at [19] to [21].

[36] However, account must be taken of the fact that in his notice of opposition and in the accompanying unsworn signed statement of 16 February 2015 Mr Rossi alleges the Ministry breached s 66 of the Human Rights Act and Articles 1 to 30 of the Universal Declaration of Human Rights, 1948. As the Tribunal has no jurisdiction to adjudicate on alleged breaches of the Universal Declaration, we address only the claim under s 66 of the Human Rights Act. That provision provides:

> **66 Victimisation**
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> (1) It shall be unlawful for any person to treat or to threaten to treat any other person less favourably than he or she would treat other persons in the same or substantially similar circumstances—
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> (a) on the ground that that person, or any relative or associate of that person,—
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> (i) intends to make use of his or her rights under this Act or to make a disclosure under the Protected Disclosures Act 2000; or
>
> (ii) has made use of his or her rights, or promoted the rights of some other person, under this Act, or has made a disclosure, or has encouraged disclosure by some other person, under the Protected Disclosures Act 2000; or
>
> (iii) has given information or evidence in relation to any complaint, investigation, or proceeding under this Act or arising out of a disclosure under the Protected Disclosures Act 2000; or
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> (iv) has declined to do an act that would contravene this Act; or
>
> (v) has otherwise done anything under or by reference to this Act; or
>
> (b) on the ground that he or she knows that that person, or any relative or associate of that person, intends to do any of the things mentioned in subparagraphs (i) to (v) of paragraph (a) or that he or she suspects that that person, or any relative or associate of that person, has done, or intends to do, any of those things.
>
> (2) Subsection (1) shall not apply where a person is treated less favourably because he or she has knowingly made a false allegation or otherwise acted in bad faith.

[37] The unsigned statement of 16 February 2015 by Mr Rossi advances the submission:

[37.1] Residents of New Zealand who are appealing cannot be deported prior to any determination and Mr Rossi should have been awarded the same right.

[37.2] Residents and citizens of New Zealand charged with criminal offences have the right to work while they await the hearing of their case. Mr Rossi was not afforded this right and this too was a violation of s 66 of the Human Rights Act.

[38] The Ministry submits neither of these contentions is capable of amounting to victimisation as set out in s 66 of the Human Rights Act. This is because there is no evidence or assertion that the alleged actions were in any way linked to Mr Rossi exercising (or intending to exercise) rights under either the Human Rights Act or the Protected Disclosures Act 2000, as required by s 66.

[39] We agree. Mr Rossi's claim does not engage Part 1A or Part 2 of the Human Rights Act. That being so his claim against the Ministry does not disclose any reasonably arguable cause of action and should be struck out.

Abuse of process

[40] As earlier mentioned, the pleadings are neither clear nor intelligible, even when read in the light of the unsworn statements filed by Mr Rossi with the notices of opposition. The Tribunal and the parties should not be left in the position of attempting to make sense of a document bereft of meaningful content (the statement of claim) or of accompanying documentation (the "incomplete" draft report intended for the UN High Commissioner for Human Rights) or of equally unhelpful unsigned statements. As pointed out in *Mackrell v Universal College of Learning* at [58] and [59], parties should not have to make sense of the incomprehensible. Lay litigants are not to be permitted to file unintelligible claims because that only visits prejudice and injustice upon the opposing party, not to mention the enormous inconvenience to the court or tribunal. In *Waterhouse v Contractors Bonding Ltd* at [30] to [32] it was accepted abuse of process extends to proceedings which are seriously and unfairly burdensome, prejudicial or damaging or productive of serious and unjustified trouble and harassment.

[41] Allied to the abuse of process argument is the fact that Mr Rossi is using the Tribunal's process to re-litigate the legality of his deportation, a matter already finally determined by the High Court in *Rossi v Chief Executive of the Ministry of Business, Innovation and Employment*. Whata J held that the decision not to cancel the deportation order under s 177 of the Immigration Act was not unreasonable or unlawful and that Mr Rossi's application could not succeed. His Honour made specific findings that Mr Rossi's rights under the Bill of Rights Act and the International Covenants on which he relied had not been unlawfully breached and there was no substantive unfairness or breach of fundamental rights. We are of the view the attempted re-litigation amounts to an abuse of the process of the Tribunal.

Conclusion

[42] For the reasons given these proceedings are struck out as against the Chief Executive of the Ministry of Business, Innovation and Employment.

THE STRIKE OUT APPLICATION BY COMMISSIONER OF POLICE

[43] The Commissioner of Police applies for all aspects of Mr Rossi's claim (as against the Commissioner) to be struck out on (inter alia) the following grounds:

[43.1] No reasonably arguable cause of action.

[43.2] Abuse of process.

[44] Many of the comments made in relation to the Ministry's application apply with equal force to the Commissioner's application. We do not intend unnecessarily repeating them here.

No reasonably arguable cause of action

[45] The claim as articulated in the statement of claim is that the Police seized Mr Rossi's passport and assaulted him. These allegations on their own cannot amount to a cause of action under the Human Rights Act. In his notice of opposition Mr Rossi pleads, for the first time, that the actions of the Police constituted victimisation as defined in s 66 of the Act. The fundamental difficulty with this assertion is that there is no evidence or contention that the alleged actions were in any way linked to Mr Rossi exercising (or intending to exercise) rights under either the Human Rights Act or the Protected Disclosures Act, as required by s 66.

[46] Furthermore, it is clear from the documents placed before the Tribunal by the Commissioner that Mr Rossi's passport was seized as a condition of bail. The Notices of Bail signed by Mr Rossi on 7 August 2013 and 20 February 2014 explicitly provided that it was a condition of his bail that he surrender to the Registrar of the Nelson District Court any passport presently held by him.

[47] As Mr Rossi's claim against the Commissioner of Police does not engage Part 1A or Part 2 of the Human Rights Act the statement of claim does not disclose any reasonably arguable cause of action and it should be struck out.

Abuse of process

[48] Mention has been made that the pleadings in the statement of claim fall well below the required standard. Mr Rossi's unsworn statement filed in support of the notice of opposition compounds the difficulties inherent in trying to discover whether he has a case under the Human Rights Act (and what that case is). The following extract exemplifies the breadth of his claims, a breadth not accommodated by the limited focus of the Human Rights Act:

> The plaintiff states that the wrongful actions of the [Commissioner of Police] are the root of the perfect storm of social injustice that the plaintiff suffered during his **affliction** as he was forced to remain in New Zealand to defend himself against coercion, collusion, false allegations, perjury, and premeditated determinations between the [Commissioner of Police] and Immigration New Zealand some of which can be found in analyzing the original opposition to bail from 3 June 2013. The plaintiff has sought the Tribunal as the last contact in regards to domestic remedies as all other agencies have not performed their duties despite efforts from the plaintiff to seek domestic remedies. [Emphasis in original]

[49] This passage goes some distance explaining why, apart from the specific allegation of victimisation under s 66 of the Human Rights Act, the Commissioner and the Tribunal are left to guess what Mr Rossi's claim actually is. This offends the principle that parties should not be placed in the position of having to try to make sense of the incomprehensible. Lay litigants are not permitted to file unintelligible claims because, as earlier mentioned, that only visits prejudice and injustice upon the opposing party. Abuse of process extends to proceedings which are seriously and unfairly burdensome, prejudicial or damaging or productive of serious and unjustified trouble and harassment.

Conclusion

[50] For the reasons given these proceedings are struck out as against the Commissioner of Police.

THE STRIKE OUT APPLICATION BY THE NELSON DISTRICT COURT

[51] The Nelson District Court applies for all aspects of Mr Rossi's claim (as against the Court) to be struck out on a number of grounds:

[51.1] An absence of jurisdiction.

[51.2] No reasonably arguable cause of action.

[51.3] Abuse of process.

[52] We do not find it necessary to deal with each and every ground as it is plain there is no jurisdiction and no arguable cause of action.

An absence of jurisdiction

[53] In his reply submissions dated 6 April 2015 Mr Rossi has placed before the Tribunal a copy of his complaint dated 28 July 2015 lodged with the Human Rights Commission. While that complaint does refer to the "Nelson District Court" by name, the document makes no complaint against the Court other than the following assertion:

> Due process neglected. Trial postponed from Nov 18th 2013 – June 16th 2013.

[54] Mr Rossi's reply submissions of 6 April 2015 at para 5 expand this allegation:

> In exhibit 1 [the complaint dated 28 July 2014 to the Human Rights Commission] it is clear that I made complaint to the HRC with regards to due process which also raises attention to the to a trial without undue delay, in this instance the undue delay was eight months long.

[55] To this claim there is a short answer. It is not possible for a person to complain to the Commission about a judgment or other order of a court, or an act or omission of a court affecting the conduct of any proceedings. See s 79(3) of the Human Rights Act:

> (3) Despite every other provision of this section, if the complaint or part of it concerns a judgment or other order of a court, or an act or omission of a court affecting the conduct of any proceedings, the Commission must take no further action in relation to the complaint or relevant part of it.

[56] In turn, s 92B(7) prohibits the bringing of civil proceedings before the Tribunal in respect of a complaint to which s 79(3) applies:

> (7) Despite subsections (1) to (6), no proceedings may be brought under this section in respect of a complaint or relevant part of a complaint to which section 79(3) applies.

[57] As the Human Rights Act bars Mr Rossi from bringing proceedings against the Nelson District Court for postponing his trial, his proceedings against the District Court must be struck out.

No reasonably arguable cause of action

[58] Both in his notice of opposition dated 11 February 2015 and in his signed statement of the same date Mr Rossi says his case against the District Court is based on s 66 of the Human Rights Act.

[59] The fundamental difficulty with this allegation is that nowhere in the statement of claim or in any of the subsequent documents filed by Mr Rossi is there any claim or any vestige of evidence to show that the eight month "delay" to his jury trial was grounded on Mr Rossi's intended or actual use of his rights under the Human Rights Act or his intended or actual making of a disclosure under the Protected Disclosures Act. This is an insuperable obstacle to his case. The allegation of undue delay is not, in these circumstances capable of engaging Part 1A or Part 2 of the Act.

[60] In the circumstances it is not necessary to address the abuse of process ground relied on by the District Court.

Conclusion

[61] For the reasons given these proceedings are struck out as against the Nelson District Court.

ORDER

[62] The order of the Tribunal is that these proceedings are struck out in their entirety as against all three defendants.

[63] Costs are reserved.

.....	.....	.....
Mr RPG Haines QC	**Dr SJ Hickey MNZM**	**Mr BK Neeson JP**
Chairperson	**Member**	**Member**