IN THE HUMAN RIGHTS REVIEW TRIBUNAL **[2016] NZHRRT 35**

Reference No. HRRT 049/2016

UNDER **THE HUMAN RIGHTS ACT 1993**

IN THE MATTER OF
INTENDED PROCEEDINGS BY **KATHY APOSTOLAKIS**

AT WELLINGTON

BEFORE:
Mr RPG Haines QC, Chairperson
Ms GJ Goodwin, Member
Mr BK Neeson JP, Member

REPRESENTATION:
Mrs K Apostolakis in person
The intended first and second defendants were not heard

DATE OF DECISION: **11 November 2016**

DECISION OF TRIBUNAL THAT INTENDED STATEMENT OF CLAIM NOT BE ACCEPTED FOR FILING[1]

Introduction

[1] On 24 August 2016 Mrs Apostolakis presented for filing in the office of the Tribunal a statement of claim under the Human Rights Act 1993. That document was rejected by the Secretary on the grounds it disclosed no discernible cause of action under the Act. By submissions dated 2 September 2016 Mrs Apostolakis has challenged the Secretary's decision. The issue for determination by the Tribunal is whether the intended proceedings are to be accepted for filing.

The Secretary's letter

[2] Notice of the rejection of the statement of claim was given by the Secretary to Mrs Apostolakis by letter sent on 29 August 2016 but mistakenly dated 9 August 2016. It was in the following terms:

[1] [This decision is to be cited as: *Re Apostolakis (Rejection of Statement of Claim)* [2016] NZHRRT 35.]

> Dear Ms Apostolakis
>
> I refer to your statement of claim under the Human Rights Act 1993 received on 24 August 2016 and in which you are the plaintiff and the intended defendants are Mr SN Meikle and Ms JP De Polo.
>
> This is to advise you that the statement of claim cannot be accepted for filing as no discernible cause of action under the Human Rights Act is disclosed.
>
> The statement of claim is hereby returned to you.

[3] By submissions dated 2 September 2016 Mrs Apostolakis has asked the Tribunal to review the Secretary's decision. Those submissions are addressed shortly.

[4] First it is necessary to refer to the statutory provisions governing the manner in which proceedings are commenced before the Tribunal. It is also necessary to note neither of the two intended defendants have been served with the proceedings nor have they been heard as to whether the intended proceedings should be accepted for filing. This is because the rejection or acceptance of an intended statement of claim is a decision summary in nature. Such decision does not affect a defendant's statutory right under s 115 of the Act to apply to have proceedings, once filed, dismissed on the grounds they are trivial, frivolous, or vexatious or not brought in good faith.

Intending plaintiff must use correct form

[5] The forms approved by the Tribunal under the Human Rights Review Tribunal Regulations 2002, reg 5 for the commencement of proceedings, are published on the Tribunal's website. There are three forms in all, reflecting the Tribunal's separate and distinct jurisdictions under the Human Rights Act, the Privacy Act 1993 and the Health and Disability Commissioner Act 1994. To initiate proceedings an intending plaintiff must first satisfy the eligibility requirements separately prescribed by the three statutes and in addition meet the description of one of the persons listed in reg 6. An intending plaintiff must then use the form appropriate to the particular statute under which the proceedings are brought.

[6] In the present case the form tendered by Mrs Apostolakis to the Secretary was the form for initiating proceedings under the Human Rights Act. That the form was intended for use in Human Rights Act proceedings only was transparently clear on the face of the document. It is not possible for a person with literacy skills to mistake the Human Rights Act form for the one under (say) the Privacy Act. Reference can be made to the following:

[6.1] The document is headed:

> **Statement of claim**
> (Under the Human Rights Act 1993)

[6.2] The next line explains the form is for use in relation to claims under the Human Rights Act:

> **What is this form for?**
> Use this form if you have a claim under sections 92B(1), 92B(3), 92B(4), and 97 of the Human Rights Act 1993 and its amendments.

[6.3] Part 3 of the form requires the intending plaintiff to specify the provisions of the Human Rights Act alleged to have been contravened:

> **Part 3: Relevant provisions of the Human Rights Act 1993**

Specify the provisions of the Human Rights Act 1993 which you consider to have been contravened.
Take notice that the plaintiff says that the defendant has (or the defendants have) contravened the following provisions of the Human Rights Act 1993.

[6.4] Part 4 requires particularisation of what the defendant has allegedly done in contravention of the Human Rights Act:

Part 4: Facts of the case
What do you say the defendant has done or not done (or the defendants have done or not done) that contravened the provisions of the Human Rights Act 1993 in your case?

[6.5] Part 5 requires specificity of the relief sought under the Human Rights Act:

Part 5: What order(s) do you want the Tribunal to make?
With reference to sections 92I to 92W of the Human Rights Act 1993, please state the particular orders that you want the Tribunal to make.

Informal applications

[7] Notwithstanding the requirements of reg 5, the Tribunal has a discretion to determine proceedings have been commenced by informal application, but only if the intending plaintiff is entitled to bring the intended proceedings in the first place. This is a significant restriction on the exercise of the discretion. See regs 7 to 11. Only regs 5, 7, 8 and 10 are relevant in the present context:

5 Commencement of proceedings

(1) Proceedings are commenced by filing a form—
  (a) approved for the purpose by the Tribunal; and
  (b) provided by the chief executive of the Ministry of Justice.
(2) The form must be filed in the office of the Tribunals Division of the Ministry of Justice in Wellington.
(3) The form must be completed and filed by, or on behalf of, the person or persons or body bringing the proceedings, as specified in column 2 of the table in regulation 6.

7 Tribunal's powers to determine proceedings to have been commenced by informal applications

The Tribunal's powers, under regulations 8 to 11, to determine proceedings to have been commenced by an application in writing, may be exercised despite regulation 5 and regardless—
(a) of the form of the application in writing; and
(b) of the way in which the application in writing was completed or given to the Tribunal.

8 Proceedings under section 92B or section 92E of Act

The Tribunal may determine that proceedings under section 92B of the Act or, as the case requires, under section 92E of the Act, have been commenced by an application in writing made by, or on behalf of,—
(a) the complainant, the person aggrieved (if not the complainant), or the Commission, if he or she or it is entitled to bring the proceedings under section 92B(1) of the Act; or
(b) the person against whom a complaint referred to in section 76(2)(a) of the Act has been made, if that person is entitled to bring the proceedings under section 92B(3) of the Act; or
(c) a party to a complaint under section 76(2)(a), if that party is entitled to bring the proceedings (to enforce a settlement of the complaint) under section 92B(4) of the Act; or
(d) the Commission, if the proceedings are brought under section 92E(1) of the Act.

10 Proceedings under section 82 or section 83 of Privacy Act 1993

The Tribunal may determine that proceedings under section 82 or section 83 of the Privacy Act 1993 have been commenced by an application in writing made by, or on behalf of,—
(a) the Director of Human Rights Proceedings, if the proceedings are brought under section 82 of that Act; or

(b) the aggrieved individual, if he or she is entitled to bring the proceedings under section 83 of that Act.

The documents filed by Mrs Apostolakis

[8] The two documents which Mrs Apostolakis presented to the Secretary on 24 August 2016 for filing were:

[8.1] A statement of claim under the Human Rights Act.

[8.2] A letter dated 15 July 2016 from the Chief Mediator, Human Rights Commission to Mrs Apostolakis.

[9] Reduced to its essentials the statement of claim alleged:

[9.1] On 3 January 2008 the intended first defendant (a lawyer) lodged a caveat over certain property "in an illogical and frivolous and vexatious manner".

[9.2] On 24 August 2010 the intended first defendant wrote a letter to a third party (also a lawyer). The contents of the letter allegedly interfered with the privacy of Mrs Apostolakis. The intended first defendant allegedly refused to correct the information in the letter. It is claimed the letter caused Mrs Apostolakis a loss of $128,049.32 as well as the loss of a deposit on the purchase of real estate.

[9.3] On 5 December 2010 the intended first defendant interfered with the privacy of Mrs Apostolakis by removing documents from the glove box of a certain motor vehicle.

[9.4] In 1996 the consent of Mrs Apostolakis was sought to the dropping of certain criminal charges.

[10] The remedies sought by Mrs Apostolakis were specified in the following terms:

[10.1] "An order for damages to compensate for loss of deposit GA81712 $54,000 right to sue. $128,049.32 under the District Courts Act 1947".

[10.2] "An order for damages for humiliation, loss of dignity and injury to my feelings and loss of benefit as beneficiary of trust of Mrs DC Kennelly".

[11] Addressing now the second document presented by Mrs Apostolakis, being the letter dated 15 July 2016 from the Chief Mediator, Human Rights Commission, this document had as its subject:

[11.1] Fifteen complaints of alleged unlawful discrimination lodged by Mrs Apostolakis with the Commission between 3 September 2015 and 19 February 2016.

[11.2] Other complaints made by Mrs Apostolakis either through the Commission's Infoline or in person by visits to the Commission's Wellington office.

[12] The letter advised Mrs Apostolakis that the Commission could find no indication of unlawful discrimination in any of her complaints and went on to inform her that Infoline staff had been instructed not to accept any more complaints from her by telephone because the complaints lacked sufficient detail. The Commission had also decided it would not respond to any complaints involving historical court cases or court decisions. The full text of the letter follows:

> I refer to the meeting you had with me and Mr Peter Jackson on 18 February 2016 to discuss the 15 complaints of alleged unlawful discrimination you lodged with the Commission since 3 September 2015, and Mr Jackson's letter to you dated 19 February 2016.
>
> Since then you have made further complaints to our Infoline by phone, and by calling in to our Wellington office. These further complaints have not contained any indication of a ground of unlawful discrimination, so we are not able to progress them.
>
> I have advised our Infoline staff that they are not to accept any more complaints from you by telephone because there is insufficient detail to your complaints when conveyed by phone. We will assess any written complaint that you send us, but if it involves the historical Court cases or Court decisions you have already complained about, we will file it but not respond.
>
> We remain open to anything new which you may raise with us where it is received in writing and cites a ground and circumstances which are able to be considered under the Human Rights Act.

The submissions by Mrs Apostolakis

[13] It is not intended to recite in detail the submissions dated 2 September 2016 filed by Mrs Apostolakis in support of her application that the Tribunal review the Secretary's rejection of the papers on 24 August 2016.

[14] The main points are:

[14.1] Mrs Apostolakis asserts she is entitled to file the proceedings under s 83 of the Privacy Act which provides:

> **83 Aggrieved individual may bring proceedings before Human Rights Review Tribunal**
>
> Notwithstanding section 82(2), the aggrieved individual (if any) may himself or herself bring proceedings before the Human Rights Review Tribunal against a person to whom section 82 applies if the aggrieved individual wishes to do so, and—
> (a) the Commissioner or the Director of Human Rights Proceedings is of the opinion that the complaint does not have substance or that the matter ought not to be proceeded with; or
> (b) in a case where the Director of Human Rights Proceedings would be entitled to bring proceedings, the Director of Human Rights Proceedings—
> (i) agrees to the aggrieved individual bringing proceedings; or
> (ii) declines to take proceedings.

However, no attempt is made to show that any of the s 83 prerequisites have been satisfied.

[14.2] In her submissions Mrs Apostolakis asserts the sole issue in the proceedings is the content of the letter dated 24 August 2010 allegedly sent by the intended first defendant to the third party.

[14.3] Mrs Apostolakis relies on information privacy principles 6 and 7. Principle 6 confers a right to access to personal information while Principle 7 entitles an individual to request correction of the information held by an agency.

[14.4] Reference is made to the decision in *Sievwrights v Apostolakis* HC Wellington CIV-2005-485-527, 17 December 2007 (Ronald Young J, Dr A Trlin and G Kerr). Relying on this case Mrs Apostolakis submits the intended first defendant was an "agency" for the purpose of the Privacy Act and although the letter of 24 August 2010 was not addressed to Mrs Apostolakis, it nevertheless contained information about her personally and she was entitled to access to that information.

[14.5] The taking of evidence under s 91 of the Privacy Act is necessary. As an aside it must be mentioned this provision falls under Part 9 of the Privacy Act which applies to the proceedings of the Privacy Commissioner, not to proceedings before the Tribunal. Mrs Apostolakis' reliance on s 91 is accordingly misguided.

[14.6] Finally, Mrs Apostolakis submits that discovery is necessary as in *Boyce v Westpac New Zealand Ltd (Non-Party Discovery)* [2015] NZHRRT 31. It is not intended to address this submission because discovery against a defendant or a third party can only be ordered if the proceedings in which discovery is sought are accepted for filing and are within the Tribunal's jurisdiction.

Discussion

[15] It is evident from the Chief Mediator's letter that from at least September 2015 Mrs Apostolakis has been making complaints to the Human Rights Commission, complaints which have been adjudged to be groundless in the sense that they have not contained any indication of a ground of unlawful discrimination encompassed by Part 2 of the Human Rights Act. Many of the complaints have related to historical court cases and decisions.

[16] It is possible the absence of substance to some of the discrimination complaints made by Mrs Apostolakis to the Human Rights Commission is due to the fact that some of her complaints are, in truth, complaints that her privacy has been interfered with. This much is clear from the submissions filed by Mrs Apostolakis. But the Human Rights Commission has no jurisdiction over such complaints, falling as they do under the Privacy Act. Any complaint under that Act must be received, investigated and dealt with within the four corners of that statute.

[17] In addition the Privacy Act permits proceedings before the Tribunal only in the limited circumstances allowed by s 83. That is, the aggrieved individual must first lodge a complaint with the Privacy Commissioner who, in turn, must follow the Part 8 provisions relating to complaints. Only at the end of that process can proceedings be brought before the Tribunal and even then, only if the statutory pre-conditions in s 83 are satisfied. See generally *Director of Human Rights Proceedings [NKR] v Accident Compensation Corporation (Strike-Out Application)* [2014] NZHRRT 1, (2014) 10 HRNZ 279 at [18] to [44] and *Fehling v Ministry of Health (Strike-Out of Second Defendant)* [2016] NZHRRT 29 at [37] to [44].

[18] In the present case there is no evidence whatsoever the matters pleaded in the intended statement of claim and addressed in the submissions of 2 September 2016 have been the subject of a complaint, investigation and determination by the Privacy Commissioner. Rather, the issues have been impermissibly pursued under the Human Rights Act. We do not see this as an inadvertent error on the part of Mrs Apostolakis. She has initiated several proceedings before the Tribunal, some under the Human Rights Act (HRRT 072/2015, 010/2016 and 078/2016) and others under the Privacy Act (HRRT 008/2016). She is well able to distinguish the Tribunal's separate jurisdictions and her submissions of 2 September 2016 show a working familiarity with the Privacy Act. Indeed her earlier proceedings before the Tribunal in *Apostolakis v Sievwrights* [2005] NZHRRT 1 followed by the subsequent decision of the High Court in *Sievwrights v Apostolakis* were proceedings under the Privacy Act.

[19] Quite apart from the fact that Mrs Apostolakis has chosen to initiate proceedings before the Tribunal under the Human Rights Act knowing full well the proceedings are

required to be brought under the Privacy Act, there is nothing in the papers filed by her to establish satisfaction of s 83 of the Privacy Act. This is a fatal omission which is not overcome by her submissions.

The discretion to permit informal applications

[20] The final point to be addressed is whether a determination should be made under regs 7 and 10 to the effect that the intended statement of claim be treated as having been commenced under the Privacy Act.

[21] In our judgment it is not possible for such determination to be made. There are two reasons:

> **[21.1]** Mrs Apostolakis knew that to commence proceedings before the Tribunal in relation to alleged breaches of the Privacy Act it was necessary she use the form of statement of claim prescribed for use in Privacy Act cases. For reasons of her own, she knowingly elected to bring the proceedings under the Human Rights Act.
>
> **[21.2]** More fundamentally, the discretion to permit informal applications can only be exercised if the requirements of reg 10(b) are first satisfied. That is, Mrs Apostolakis must show she is "entitled to bring the proceedings under section 83 of [the Privacy Act]". As there is a complete absence of such evidence there is no room for the exercise of the informal application discretion.

CONCLUSION

[22] In summary, it is plain on the face of the intended statement of claim that:

> **[22.1]** It discloses no cause of action under the Human Rights Act.
>
> **[22.2]** The alleged interferences with Mrs Apostolakis' privacy are not recognisable causes of action under the Human Rights Act. A claim under that Act cannot be used to pursue a complaint under the Privacy Act.
>
> **[22.3]** There is no evidence Mrs Apostolakis is entitled to bring the proceedings under s 83 of the Privacy Act.

[23] It follows the Secretary acted correctly when rejecting the intended statement of claim. That decision is upheld.

.....	.....	.....
Mr RPG Haines QC	**Ms GJ Goodwin**	**Mr BK Neeson JP**
Chairperson	**Member**	**Member**