

Reference No. HRRT 029/2017

UNDER THE HUMAN RIGHTS ACT 1993

BETWEEN KATHY APOSTOLAKIS

PLAINTIFF

AND ATTORNEY-GENERAL

FIRST DEFENDANT

AND ROB GARLICK

SECOND DEFENDANT

AND SIMON NICHOLAS MIEKLE

THIRD DEFENDANT

AT WELLINGTON

BEFORE:

Mr RPG Haines QC, Chairperson

REPRESENTATION:

Mrs K Apostolakis in person

Mr RS May and Ms R Kós for first defendant

Mr C Matsis for second defendant

Mr SN Miekle in person

DATE OF HEARING: Heard on the papers

DATE OF DECISION: 27 November 2017

**DECISION OF CHAIRPERSON DIRECTING THAT PLAINTIFF'S
APPLICATION FOR CONSOLIDATION BE DISMISSED¹**

Background

[1] At the present time Mrs Apostolakis has five proceedings before the Tribunal awaiting determination. Details follow:

¹ [This decision is to be cited as: *Apostolakis v Attorney-General No. 3 (Consolidation Refused)* [2017] NZHRRT 48.]

HRRT No.	Defendant(s)	Act	Status at 27 November 2017
HRRT072/15	Attorney-General	HRA	Strike-out application
HRRT078/16	Attorney-General	HRA	Strike-out application
HRRT008/16	Peter Gilbert	PA	To be heard on 29 November 2017
HRRT010/16	Jacinda Rennie Jana De Polo	HRA	Struck out on 2 November 2017
HRRT029/17	Attorney-General Rob Garlick Simon Mickle	HRA	Strike-out application
HRRT046/17	Public Trust	PA	Strike-out application

[2] It can be seen four of the listed proceedings have been brought under the Human Rights Act 1993 while two of the proceedings have been brought under the Privacy Act 1993.

[3] The proceedings in HRRT010/16 were struck out on 2 November 2017. See *Apostolakis v Rennie (Strike-Out Application)* [2017] NZHRRT 42.

[4] The Privacy Act proceedings in HRRT008/16: *Apostolakis v Gilbert* were to be heard on 9 and 10 March 2017 but at the commencement of the hearing on 9 March 2017 Mrs Apostolakis was granted an adjournment on medical grounds. The new hearing dates allocated are 29 and 30 November 2017.

[5] By application dated 27 October 2017 filed in HRRT029/17 (but not filed in any of the other proceedings) Mrs Apostolakis has sought consolidation and joinder of all of her extant claims.

[6] Submissions have now been received from the Attorney-General. On 24 November 2017 Mrs Apostolakis filed her submissions in reply.

DECISION

The proceedings under the Privacy Act 1993

[7] As mentioned the proceedings in HRRT008/16: *Apostolakis v Gilbert* will be heard on 29 and 30 November 2017. This is a fixture of long standing. The consolidation application is declined on the grounds that:

[7.1] There is no commonality between the proceedings instituted by Mrs Apostolakis under the Privacy Act on the one hand and the Human Rights Act on the other.

[7.2] There is no commonality between the two proceedings brought under the Privacy Act.

[7.3] The hearing of the claim against Mr Gilbert is about to commence. The making of a consolidation order will inevitably lead to an adjournment. This will severely prejudice Mr Gilbert. The proceedings against him relate to alleged events which occurred in 2011. These proceedings were not filed until 16 February 2016 and Mrs Apostolakis obtained an adjournment at the last hearing which took place on 9 March 2017. These delays speak for themselves.

[7.4] Consolidation will serve no useful purpose.

[8] As to the proceedings in HRRT046/17: Apostolakis v Public Trust, Mrs Apostolakis alleges an information privacy request by her was not responded to in a manner which complied with the Privacy Act 1993. The Public Trust denies this allegation and protests the jurisdiction of the Tribunal. It has applied to have the proceedings struck out. In a *Minute* issued on 31 October 2017 at [5] and [11.10] I directed that all pre-trial applications made by Mrs Apostolakis (including the application for consolidation) be deferred until the issue of jurisdiction has been determined.

[10] There is nothing in the submissions made by Mrs Apostolakis which provides a sensible ground for me to change that direction.

[11] The consolidation application is declined on the grounds that:

[11.1] There is no commonality between the proceedings instituted by Mrs Apostolakis under the Privacy Act on the one hand and the Human Rights Act on the other.

[11.2] There is no commonality between the two proceedings brought under the Privacy Act.

[11.3] The jurisdiction of the Tribunal having been put in issue by the Public Trust and there being a strike-out application, those issues must be determined before the question of consolidation can be considered.

The proceedings under the Human Rights Act 1993

[12] In each of the three proceedings under the Human Rights Act (HRRT072/15, HRRT078/16 and HRRT029/17) application has been made for the proceedings to be struck out.

[13] It is my view that those applications must be determined before the question of consolidation can be considered.

[14] In each of the three proceedings the parties have now filed their submissions. As mentioned, the reply submissions by Mrs Apostolakis were filed on 24 November 2017. The strike-out applications are now ready for determination. The question of consolidation is premature.

ORDERS

[15] The consolidation applications made by Mrs Apostolakis are dismissed in relation to each and every of the proceedings she currently has before the Tribunal.

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Mr RPG Haines QC
Chairperson