

Reference No. HRRT 036/2013

UNDER THE PRIVACY ACT 1993

BETWEEN THE DIRECTOR OF HUMAN RIGHTS PROCEEDINGS

PLAINTIFF

AND CAMERON JOHN SLATER

DEFENDANT

AT AUCKLAND

BEFORE:

Mr RPG Haines ONZM QC, Chairperson

Ms GJ Goodwin, Member

Mr RK Musuku, Member

REPRESENTATION:

Mr SRG Judd for plaintiff

Mr CJ Slater in person

DATE OF HEARING: 28 and 29 October 2014 and 2 February 2015

DATE OF SUBSTANTIVE DECISION: 12 March 2019

DATE OF DECISION ON COSTS: 9 April 2019

DECISION OF TRIBUNAL ON COSTS¹

Introduction

[1] In a decision given on 12 March 2019 (*Director of Human Rights Proceedings v Slater* [2019] NZHRRT 13) the Tribunal made four orders in favour of the Director of Human Rights Proceedings:

¹ [This decision is to be cited as: *Director of Human Rights Proceedings v Slater (Costs)* [2019] NZHRRT 22]

[1.1] A declaration of interference with privacy.

[1.2] A restraining order.

[1.3] A take down order.

[1.4] Damages.

The application for costs

[2] The Director now applies for costs. His actual costs are not disclosed but he seeks an award based on the Tribunal's current standard tariff of \$3,750 per day of hearing time. An amount of \$11,250 is sought, being three days at \$3,750 per day. In support the following brief submissions are made:

[2.1] Costs should follow the event. That is, Mr Slater, as the unsuccessful defendant, should be ordered to pay costs to the Director.

[2.2] The Director would be justified in seeking increased costs by analogy with High Court Rules, r 14.6(3)(b) and (d) because (it is submitted) Mr Slater contributed unnecessarily to the time and expense of the proceeding. In particular, his failure to call any evidence led to the need for an adjournment and a further hearing day that should not have been required.

No submissions by Mr Slater

[3] Mr Slater has not filed any submissions. This may be attributable to the fact that on 27 February 2019 he was adjudicated bankrupt on his own application under the Insolvency Act 2006, s 47, a matter referred to at [16] of the Tribunal's decision delivered on 12 March 2019.

The law

[4] The Tribunal's power to award costs in respect of proceedings under the Privacy Act 1993 is in the following terms:

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(1) ...

(2) In any proceedings under section 82 or section 83, the Tribunal may award such costs against the defendant as the Tribunal thinks fit, whether or not the Tribunal makes any other order, or may award costs against the plaintiff, or may decline to award costs against either party.

[5] The principles to be applied were reviewed in *Commissioner of Police v Andrews* [2015] NZHC 745, [2015] 3 NZLR 515. For the purpose of the present case we mention only the following:

[5.1] A flexible approach can be taken by the Tribunal to costs. See [60].

[5.2] There must be caution about applying the conventional civil costs regime in the Tribunal's jurisdiction. See [61].

[5.3] The Tribunal has broad powers to do justice even if this means departing from the conventional rules applying to civil proceedings. See [62].

[5.4] Costs orders should not have the effect of deterring claims involving human rights. See [64] and also *Wall v Fairfax New Zealand Ltd (Costs)* [2017] NZHRRT 28, (2017) 11 HRNZ 337.

[5.5] Nevertheless, some claims in the Tribunal should have costs consequences. See [65].

[6] In *Lohr v Accident Compensation Corporation (Costs)* [2016] NZHRRT 36 at [6.8.3] the Tribunal said that while litigants in person face special challenges and are to be allowed some latitude, they do not enjoy immunity from costs, especially where there has been needless, inexcusable conduct which has added to the difficulty and cost of the proceedings.

Discussion

[7] The exemption of news media from the information privacy principles in the Privacy Act 1993 recognises the important role news media play in the democratic process and in protecting the right to freedom of expression. The step-change brought about by the digital revolution and the internet had not, prior to the hearing and determination of the present claim, been the subject of examination by the Tribunal. Nor had the application of the Privacy Act to blogs and internet sites.

[8] It is correct Mr Slater's self-representation added to the length of the hearing, but not substantially so. He was entitled to represent himself and it should be noted that in approximately 75% of cases coming before the Tribunal one or both parties are self-represented. Such parties face special challenges, as recognised in *Lohr*.

[9] A costs order should not have the effect of deterring defendants from resisting claims where fundamental human rights are in issue. Access to justice must be preserved.

[10] Because the present proceedings were in the nature of a test case there should be no costs consequences. The application for costs is accordingly dismissed.

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Mr RPG Haines ONZM QC
Chairperson

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Ms GJ Goodwin
Member

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Mr RK Musuku
Member