

Reference No. HRRT 025/2019

UNDER THE PRIVACY ACT 1993

IN THE MATTER OF  
INTENDED PROCEEDINGS BY IVAN STRYDER

AT WELLINGTON

BEFORE:  
Mr RPG Haines ONZM QC, Chairperson

REPRESENTATION:  
Mr I Stryder in person  
The intended first, second, third, fourth and fifth defendants were not heard

DATE OF DECISION: 10 July 2019

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**DECISION THAT INTENDED STATEMENT OF CLAIM  
NOT BE ACCEPTED FOR FILING<sup>1</sup>**

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**Introduction**

[1] By email dated 7 March 2019 Mr Stryder presented for filing in the office of the Tribunal a statement of claim dated 7 March 2019. The claim was made under the Privacy Act 1993 but mistakenly used the form intended for proceedings under the Health and Disability Commissioner Act 1994. The hard copy of the statement of claim was received by the Tribunal on 19 March 2019.

[2] The five intended defendants, as named in the statement of claim are:

[2.1] “Dr Chris Sharp and Dr David Beaumont – Director, Fit For Work”

[2.2] “Stephanie Lovell, ACC”

[2.3] “Katrina Baddeley, ACC”

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<sup>1</sup> [This decision is to be cited as: *Re Stryder (Rejection of Statement of Claim)* [2019] NZHRRT 34.]

**[2.4]** Carolyn Stacey, Fit For Work”.

**[3]** The following documents were attached to the statement of claim:

**[3.1]** Certificate of Investigation C/29494 dated 29 October 2018 issued by the Privacy Commissioner. This document records that on a complaint by Mr Stryder against Fit For Work, the Commissioner carried out an investigation whether Fit For Work had breached the Health Information Privacy Code 1994, r 6.

**[3.2]** Certificate of Investigation C/29912 dated 27 February 2019 issued by the Privacy Commissioner. This document records that on a complaint by Mr Stryder against Accident Compensation Corporation (ACC), the Commissioner carried out an investigation whether ACC had breached the Health Information Privacy Code 1994, r 6.

### **The Secretary’s letter**

**[4]** By email dated 19 March 2019 timed at 12:20pm the Secretary advised Mr Stryder she had rejected the statement of claim on the grounds it was apparent on the face of the documents the Tribunal did not have jurisdiction in relation to the five intended defendants as none had been the subject of an investigation conducted by the Privacy Commissioner under Part 8 of the Privacy Act 1993. The Secretary also noted the two Certificates of Investigation tendered by Mr Stryder had been extensively amended by handwritten interlineation and supplementation. There were also unexplained gaps in the typescript. The Secretary’s letter was in the following terms:

Dear Mr Stryder

On Tuesday 19 March 2019 the Tribunal received your statement of claim and the two Certificates of Investigation provided by the Office of the Privacy Commissioner.

The statement of claim cannot be accepted for filing. There are two reasons:

1. The Certificate of Investigation C/29494 dated 29 October 2018 states that the agency investigated was Fit For Work and the Certificate of Investigation C/29912 dated 27 February 2019 states that the agency the subject of that investigation was the Accident Compensation Corporation. As the jurisdiction of the Tribunal is limited to the agency investigated by the Privacy Commissioner it is not possible for you to institute proceedings against the five individuals you have named as defendants in the statement of claim, being Dr Chris Sharp, Dr David Beaumont, Ms Stephanie Lovell, Ms Katrina Baddeley and Ms Carolyn Stacey. The Tribunal cannot accept for filing a statement of claim which on its face names the wrong parties.
2. Neither of the two Certificates of Investigation are in their original form. Both have been substantially amended by handwritten interlineation and supplementation. There is also the possibility the certificates themselves have been altered because there are unexplained gaps in the typescript. In the result their content cannot be relied on.

Should you wish to file proceedings in the Tribunal in proper form it will be necessary for you to file new statements of claim, one citing Fit For Work (2016) Ltd as defendant and the other (separate) statement of claim citing the Accident Compensation Corporation as defendant. In neither case is it permissible for you to join any other agency or person as defendant. It will also be necessary for each statement of claim to be accompanied by a relevant Certificate of Investigation in the form as originally received by you from the Privacy Commissioner without any alteration, amendment, interlineation or margin comment.

In view of the concerns which have been expressed regarding the integrity of the two Certificates of Investigation please advise if you have any objection to the Tribunal referring the certificates to the Privacy Commissioner for comment.

Yours sincerely

### **Mr Stryder's response to the Secretary's letter**

**[5]** By email dated 19 March 2019 timed at 12:53pm Mr Stryder responded that he would file two new claims against Fit For Work and ACC. He asked that the Tribunal not contact the Privacy Commissioner. His email was in the following terms:

I will write 2x new HRRT Claims against Fit For Work and ACC and post them into the HRRT for serving to Fit For Work and ACC and await the 2x Hearings.

How many copies would you like?

Please don't contact The Privacy Commissioner regarding their incompetence to even Investigate my 2x Complaints against ACC and Fit For Works Breach's of The Information and Privacy Act and The Health and Information Privacy Codes.

**[6]** By email also dated 19 March 2019 timed at 3:24pm the Secretary acknowledged receipt of Mr Stryder's email and advised him that for each claim he filed in the Tribunal, it would be necessary that he present the original statement of claim and three copies.

**[7]** No documents were thereafter received from Mr Stryder.

**[8]** On 5 July 2019 Mr Stryder telephoned the Ministry of Justice administration team wanting an update on his claim. That inquiry was referred to the Secretary. By email dated 8 July 2019 timed at 12:27pm Mr Stryder was reminded that the statement of claim received in hard copy on 19 March 2019 had been rejected for the reasons explained by the Secretary in her email dated 19 March 2019 timed at 12:20pm. It was also pointed out to Mr Stryder that although he had stated he would lodge two new claims (against Fit for Work and ACC), no further documents had in fact been filed by him.

**[9]** By email dated 8 July 2019 timed at 1:06pm Mr Stryder requested that the statement of claim filed on 19 March 2019 be processed:

As mentioned on the phone, can you please process my one application against The Privacy Commissioners 2x Certificates of Investigation, as I filed 19.3.19 and posted you 3x copies of.

Please process my HRRT Hearing and send a copy of my HRRT Hearing I posted to the HRRT, to ACC/Fit For Work/The Privacy Commissioner regarding my one HRRT Hearing I filed on the 19.3.19 with you.

**[10]** By email dated 9 July 2019 timed at 2:29pm the Secretary again pointed out to Mr Stryder that the two new claims he intended lodging against Fit For Work and ACC had in fact not been filed. Consequently there were no claims to process:

I refer to your email dated 8 July 2019 timed at 1:06pm.

While you said you would lodge two new claims (against Fit for Work and ACC) you have not taken this step. The new claims have not been received by the Tribunal.

In these circumstances there is nothing to process and this will remain the position unless and until you comply with the instructions set out in my email dated 19 March 2019 timed at 3:24pm.

[11] By email dated 9 July 2019 timed at 5:46pm Mr Stryder asserted the Secretary's "continued ignorance" over his claim would not be "tolerated any longer" and asked that the matter be referred to "the Manager" of the Tribunal.

Please get the Manager of The Human Rights Review Tribunal to process my one Claim Hearing 'as is already written and filed' against The Privacy Commissioners Certificates of Investigation/Decisions of NO Breaches.

It is The Privacy Commissioners 2x Certificates of Investigation Decisions that I filed my one claim/appeal against involving ACC.

Please get the Manager of The Human Rights Review Tribunal to call me urgently to discuss these 2x Certificates of Investigation by The Privacy Commissioner finding no breaches, when clearly there is a breach by ACC.

Your continued ignorance over my claim/appeal to The Human Rights Review Tribunal will not be tolerated any longer as your refusal to process my one claim against The Privacy Commissioners Decisions is itself a breach of my Human Rights to have my one claim/appeal Hearing over The Privacy Commissioners Certificates of Investigation Decisions of NO Breaches by ACC found, when clearly ACC have breached The Information and Privacy Act and The Health and Information Privacy Codes.

[12] It is in these circumstances the statement of claim tendered by Mr Stryder and the subsequent email correspondence have been referred to me as Chairperson of the Tribunal pursuant to the Human Rights Review Tribunal Regulations 2002, regs 12(a) and 16.

[13] It is necessary to note none of the five 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.

## THE JURISDICTION ISSUE

### The investigation of complaints by the Privacy Commissioner

[14] The Tribunal's jurisdiction is governed by statute.

[15] As explained in *Director of Human Rights Proceedings [NKR] v Accident Compensation Corporation (Strike-Out Application)* [2014] NZHRRT 1, (2014) 10 HRNZ 279 at [19], the purpose of Part 8 of the Privacy Act is to ensure that in the first instance a complaint about an interference with the privacy of an individual must be dealt with by the Privacy Commissioner. Proceedings before the Tribunal are permitted by s 82 only where an investigation has been conducted under Part 8 or where conciliation (under s 74) has not resulted in settlement. For the complaint resolution process to work a person in respect of whom a complaint is made and an investigation conducted must know he or she is under investigation and must also know what is the subject of the investigation so an effective response can be made. This imperative is explicitly recognised by the Privacy Act. The complaints process mandated by it in ss 67, 70 and 73 is designed to ensure the person under investigation and the matter under investigation by the Privacy Commissioner are clearly identified.

[16] The statutory stipulations governing the investigative process under Part 8 are reflected in the provisions (ss 82 and 83) which govern access to the Tribunal:

#### 82 Proceedings before Human Rights Review Tribunal

(1) This section applies to any person—

- (a) in respect of whom an investigation has been conducted under this Part in relation to any action alleged to be an interference with the privacy of an individual; or
  - (b) in respect of whom a complaint has been made in relation to any such action, where conciliation under section 74 has not resulted in a settlement.
- (2) Subject to subsection (3), civil proceedings before the Human Rights Review Tribunal shall lie at the suit of the Director of Human Rights Proceedings against any person to whom this section applies in respect of any action of that person that is an interference with the privacy of an individual.
- (3) ...

**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.

**[17]** The effect of s 82 of the Privacy Act is that an aggrieved individual who wishes to bring proceedings before the Tribunal must establish that the defendant is a person in respect of whom an investigation has been conducted by the Privacy Commissioner under Part 8 of the Act in relation to any action alleged to be an interference with the privacy of that individual. Similarly, before an aggrieved individual can bring proceedings before the Tribunal under s 83 the “complaint” must first have been considered by the Privacy Commissioner as a complaint.

**The investigation by the Privacy Commissioner**

**[18]** Certificate of Investigation C/29494 dated 29 October 2018 issued by the Privacy Commissioner unambiguously records that the entity in relation to which the investigation was conducted was Fit For Work.

**[19]** Equally, Certificate of Investigation C/29912 dated 27 February 2019 issued by the Privacy Commissioner unambiguously records that the entity in relation to which the second investigation was conducted was the Accident Compensation Corporation.

**CONCLUSION**

**[20]** It is plain on the face of the two Certificates of Investigation and on the face of the intended statement of claim dated 7 March 2019 that none of the five proposed defendants are persons in respect of whom an investigation has been conducted under Part 8 of the Privacy Act 1993. It follows the Tribunal does not have jurisdiction and that Mr Stryder’s statement of claim dated 7 March 2019 cannot be accepted for filing.

**[21]** I accordingly conclude the Secretary acted correctly in rejecting the intended statement of claim. That decision is upheld.

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**Mr RPG Haines ONZM QC**  
**Chairperson**