

Reference No. HRRT 010/2015

UNDER THE PRIVACY ACT 1993

BETWEEN ARTHUR WILLIAM TAYLOR

PLAINTIFF

AND CHIEF EXECUTIVE, DEPARTMENT OF CORRECTIONS

DEFENDANT

AT WELLINGTON

BEFORE:

Ms SJ Eyre, Deputy Chairperson

Ms L Ashworth, Member

Ms NJ Baird, Member

REPRESENTATION:

Mr AW Taylor in person

Mr D Jones for defendant

DATE OF HEARING: Heard on the papers

DATE OF DECISION: 20 October 2020

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**DECISION OF TRIBUNAL STRIKING OUT CLAIM<sup>1</sup>**

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[1] In 2014, while in prison, Arthur Taylor sent a letter to Brian Hunter. The letter was withheld by the Department of Corrections (Corrections). Mr Taylor requested that the letter be returned to him, however this request was refused by Corrections. Mr Taylor complained to the Privacy Commissioner. The Privacy Commissioner concluded there was a breach of information privacy principle (IPP) 6 and an interference with Mr Taylor's privacy. Corrections maintains that the letter was lawfully withheld.

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<sup>1</sup> [This decision is to be cited as *Taylor v Department of Corrections (Strike-Out Application)* [2020] NZHRRT 42.]

## BACKGROUND

[2] Mr Taylor and Mr Hunter initially filed this claim together, on 13 February 2015. A statement of reply was filed on 27 March 2015. On 22 March 2019, the Tribunal struck out Mr Hunter as a plaintiff. The Tribunal also restricted the scope of the claim to IPP 6, which was the only matter that had been investigated by the Privacy Commissioner. See *Taylor v Corrections (Jurisdiction)* [2019] NZHRRT 17.

[3] In the present proceedings a case management teleconference was held on 6 November 2019 and, inter alia, Mr Taylor was directed to file and serve written statements of evidence by 4pm on Friday 21 February 2020. The hearing was set down for 3 June 2020.

[4] Mr Taylor did not file his evidence by 21 February 2020. However, on 18 May 2020 he sought an adjournment of the hearing and an extension of time to file his evidence.

[5] That application was granted, the Tribunal directing Mr Taylor to file and serve his written statements of evidence by Friday 24 July 2020 and adjourning the hearing to 18 November 2020.

[6] By 13 August 2020 Mr Taylor had still not filed any evidence and Corrections filed an application to strike out Mr Taylor's claim.

[7] On 18 August 2020 the Tribunal issued the following directions:

[10] The following timetabling directions are made:

[10.1] Written statements of the evidence for Mr Taylor are to be filed and served by 4pm on Friday 28 August 2020. By the same date Mr Taylor is to provide Corrections with a list of documents he wishes to have included in the common bundle of documents.

[10.2] If Mr Taylor does not file any evidence, but wishes to oppose the strike-out application, he is to file and serve a notice of opposition and memorandum by 4pm on Friday 28 August 2020.

[8] Mr Taylor has not filed his evidence nor has he filed any opposition or response to Corrections' application to strike out his claim.

## JURISDICTION TO STRIKE OUT

[9] The Tribunal's jurisdiction to strike out proceedings is explicitly provided for in s 115A Human Rights Act 1993:

### 115A Tribunal may strike out, determine or adjourn proceedings

- (1) The Tribunal may strike out, in whole or in part, a proceeding if satisfied that it–
  - (a) Discloses no reasonable cause of action; or
  - (b) Is likely to cause prejudice or delay; or
  - (c) Is frivolous or vexatious; or
  - (d) Is otherwise an abuse of process.

[10] Corrections submits that Mr Taylor's claim should be struck out for failure to comply with directions and for want of prosecution pursuant to s 115A(1)(d) Human Rights Act 1993.

[11] The Tribunal has canvassed the key principles for applications to strike out in a number of decisions. As noted in *Willing v New Zealand Police (Strike-Out Application)* [2020] NZHRRT 17 the jurisdiction to strike out must be used sparingly. The Tribunal

stated in *Tan v Ministry of Social Development (Strike-Out Application)* [2020] NZHRRT 2, that if a defect in a proceeding can be cured, that is preferable to striking out a claim.

[12] However, any defect in proceedings or any allowance for a plaintiff not complying with Tribunal directions, must be balanced against the desirability of freeing defendants from the burden of litigation which is not being progressed to resolution. Failure to comply with an order or direction of the Tribunal causes prejudice and as reiterated in *Handy v New Zealand Fire Service Commission (Strike-Out Application No. 2)* [2019] NZHRRT 19 at [17], a consistent failure to comply with directions can amount to an abuse of process.

### **SHOULD MR TAYLOR'S CLAIM BE STRUCK OUT**

[13] Corrections applied to strike out Mr Taylor's claim on the basis that he failed to file his evidence as directed by the Tribunal in a *Minute* dated 6 November 2019 and a further *Minute* dated 18 May 2020.

[14] After receiving the application to strike out, the Tribunal provided Mr Taylor with one final opportunity to file his evidence by 28 August 2020. Mr Taylor did not file his evidence. Neither has Mr Taylor filed any opposition to the strike-out application.

[15] Mr Taylor has not complied with three specific directions to file evidence, over the period of almost a year. It is an abuse of process to consistently and without explanation fail to comply with directions of the Tribunal. Mr Taylor filed this claim. He has the obligation to prove it. The failure to file evidence is a breach of this obligation.

[16] If the proceedings were to remain on foot Corrections would be significantly prejudiced by being required to repeatedly and for an extended period remain ready to defend this claim. Mr Taylor's actions are an abuse of process and his claim must now be struck out.

### **COSTS**

[17] Costs are reserved. Unless the parties come to an arrangement on costs the following timetable is to apply:

[17.1] Corrections is to file its submissions within 14 days after the date of this decision. The submissions for Mr Taylor are to be filed within the 14 days which follow. Corrections is to have a right of reply within seven days after that.

[17.2] The Tribunal will then determine the issue of costs on the basis of the written submissions without further oral hearing.

[17.3] In case it should prove necessary, the Chairperson or Deputy Chairperson of the Tribunal may vary the foregoing timetable.

**ORDER**

[18] Mr Taylor's claim against the Chief Executive, Department of Corrections is struck out.

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**Ms SJ Eyre**  
**Deputy Chairperson**

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**Ms L Ashworth**  
**Member**

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**Ms NJ Baird**  
**Member**