

Reference No. HRRT 085/2016

UNDER THE PRIVACY ACT 1993

BETWEEN ALAN GREER

PLAINTIFF

AND CHIEF EXECUTIVE, DEPARTMENT OF CORRECTIONS

DEFENDANT

AT WELLINGTON

BEFORE:

Ms SJ Eyre, Deputy Chairperson  
Dr SJ Hickey MNZM, Member  
Dr JAG Fountain, Member

REPRESENTATION:

Mr A Greer in person for plaintiff  
Ms H Carrad and Mr J Watson for defendant

DATE OF HEARING: Heard on the papers

DATE OF DECISION: 21 December 2020

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

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[1] Mr Greer made an information privacy request to the Department of Corrections (Corrections) on 20 October 2014. Mr Greer is dissatisfied with the length of time taken to respond to the request and the withholding of information by Corrections. Corrections disputed this and maintained they had responded to the information privacy request.

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<sup>1</sup> [This decision is to be cited as *Greer v Corrections (Strike-Out Application)* [2020] NZHRRT 49.]

## BACKGROUND

[2] On 2 February 2017 Mr Greer filed a statement of claim and accompanying documents. The claim alleged failure by Corrections to provide any response to Mr Greer's information privacy request dated 20 October 2014.

[3] Mr Greer's information privacy request was made on a Prisoner Complaint 01 form (PC01 form). The statement of claim did not specify the number of the PC01 form on which the request was made.

[4] Corrections filed a statement of reply on 15 March 2017. Following receipt of the statement of reply Mr Greer filed a document entitled "Submissions for Further Particulars, Discovery Orders and Inspection". This document was not accepted for filing by the Chairperson of the Tribunal for a number of reasons, including the fact that it contained scandalous, offensive or abusive statements or allegations.

[5] On 23 June 2017 a further application for particulars, discovery orders and inspection was filed by Mr Greer. This application attached PC01 form 329243 which contained the information privacy request at issue in this claim. It was only after receipt of this document that it subsequently became apparent that Mr Greer had in fact made two information privacy requests on 20 October 2014. Corrections realised then that Mr Greer was referring to a different information privacy request from the one it originally understood the claim related to. An amended statement of reply was subsequently filed by Corrections on 31 October 2019.

[6] On 13 March 2020 Corrections provided a re-created response to the 20 October 2014 information privacy request (PC01 form 329243).

[7] On 22 June 2020, the Tribunal issued a *Minute* directing, amongst other matters, that Mr Greer's evidence be filed by 28 August 2020. Mr Greer did not file his evidence.

[8] On 3 September 2020 Mr Greer filed a further application for directions which contained scandalous material which was offensive and abusive. In response, on 17 September 2020, Corrections requested that the Tribunal reject the application and also filed an application seeking an "unless" order. Corrections submitted that unless Mr Greer complied with new timetabling directions issued by the Tribunal his claim should be struck out.

[9] The Tribunal rejected Mr Greer's application dated 3 September 2020 in a *Minute* dated 5 October 2020. In the same *Minute* the Tribunal directed Mr Greer to file and serve written statements of his evidence by 4pm on Friday 23 October 2020. If Mr Greer failed to file his evidence by Friday 23 October 2020 he was advised the Tribunal may consider striking out the claim. Mr Greer was also directed that if he wished to oppose the strike-out of his claim, he was to file a memorandum setting out the reasons why his claim should not be struck out by Friday 30 October 2020.

[10] Mr Greer did not file his evidence by 23 October 2020. Nor did Mr Greer file by 30 October 2020 any opposition to the possible strike-out of his claim. At the date of this decision Mr Greer had still not filed any evidence or any opposition to the possible strike-out.

[11] On 10 November 2020 Corrections requested that the Tribunal strike out Mr Greer's claim.

[12] On 4 December 2020 the Tribunal issued a *Minute* indicating to the parties that it intended to consider striking out Mr Greer's claim on the papers. The parties were directed to provide any comments regarding the intention of the Tribunal to determine the strike-out on the papers by 16 December 2020. Neither party has filed any response to this *Minute*.

## **JURISDICTION TO STRIKE OUT**

[13] The Tribunal's jurisdiction to strike out proceedings is explicitly provided for in the Human Rights Act 1993, s 115A, which applies to privacy claims pursuant to the Privacy Act 1993, s 89. Section 115A provides:

### **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.

[14] Corrections submits that Mr Greer's claim should be struck out for failure to comply with directions and for want of prosecution as this would amount to an abuse of process pursuant to the Human Rights Act, s 115A(1)(d).

[15] 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 and reiterated in *Taylor v Department of Corrections (Strike-Out Application)* [2020] NZHRRT 42 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.

[16] 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 GREER'S CLAIM BE STRUCK OUT?**

[17] Mr Greer has failed to comply with repeated timetabling directions. In particular Mr Greer has not filed his evidence as directed by the Tribunal in a *Minute* dated 22 June 2020 and a further *Minute* dated 5 October 2020. The *Minute* dated 5 October 2020 provided Mr Greer with a final opportunity to file his evidence, notwithstanding that he had missed the filing deadline set out in the earlier *Minute*. Mr Greer was required to file his evidence by 23 October 2020. Mr Greer did not file his evidence.

[18] Mr Greer has not complied with two specific directions to file evidence over a period of almost six months. Mr Greer has also not engaged with the Tribunal regarding this failure to file evidence and has not responded to the Tribunal's most recent *Minutes* dated 5 October 2020 and 4 December 2020. It is an abuse of process to consistently and without explanation fail to comply with directions of the Tribunal. Mr Greer filed this claim. He has the obligation to prove it. The failure to file evidence is a breach of this obligation.

**[19]** While it is acknowledged that Mr Greer represents himself and is currently in prison, this claim was filed in 2017 and has been under active case management since October 2019. There has been ample opportunity for Mr Greer to prepare his evidence over the past year. If the proceedings were to remain on foot, Corrections would be significantly prejudiced by being required repeatedly and for an extended period to remain ready to defend this claim. Mr Greer's actions are an abuse of process and his claim must now be struck out.

### **COSTS**

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

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

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

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

### **ORDER**

**[21]** Mr Greer's claim against the Chief Executive, Department of Corrections is struck out under s 115A(1)(d) of the Human Rights Act 1993.

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

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**Dr SJ Hickey MNZM**  
**Member**

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**Dr JAG Fountain**  
**Member**