

	Reference No. HRRT 039/2019
UNDER	THE PRIVACY ACT 2020
BETWEEN	SONJA MARIE LAWSON
	PLAINTIFF
AND	HEALTH AND DISABILITY COMMISSIONER
	DEFENDANT

AT WELLINGTON

BEFORE:

Ms G Goodwin, Deputy Chairperson

Ms L Ashworth, Member

Mr MJM Keefe QSM JP, Member

REPRESENTATION:

Miss SM Lawson in person

Mr M Smith for defendant

DATE OF HEARING: On the papers

DATE OF DECISION: 31 May 2023

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

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[1] In December 2016 Miss Lawson made a complaint to the Health and Disability Commissioner (HDC) against a (then) District Health Board. Between December 2016 and September 2017 Miss Lawson submitted various documents to the HDC pursuant to that claim. Those documents included a statement of correction to the information the HDC had about Miss Lawson on its file.

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<sup>1</sup> [This decision is to be cited as *Lawson v Health and Disability Commissioner (Strike-out)* [2023] NZHRRT 15.]

[2] On 24 September 2019 Miss Lawson filed this claim with the Tribunal. She claims that, in dealing with the complaint referred to at [1] above, the HDC did not attach her statement of correction in the manner required by Rule 7 of the Health Information Privacy Code 1994 ("Code"). Miss Lawson also alleges the HDC breached other aspects Rule 7 of the Code.

[3] The HDC denies a breach of Rule 7 of the Code. The HDC says that it twice reconsidered requests made of it by Miss Lawson and attached Miss Lawson's statement of correction to its file.

[4] On 15 December 2022, the HDC applied for an order striking out Miss Lawson's claim in its entirety as being an abuse of process pursuant to s 115A(1)(d) of the Human Rights Act 1993 (HRA).

## **BACKGROUND**

[5] Miss Lawson's claim has not progressed in the three and a half years since it was filed.

[6] Following the filing of this claim, the Tribunal attempted to set down a first teleconference to set pre-hearing timetable steps on 28 January 2020, 21 February 2020 and 4 June 2020. On each occasion Miss Lawson either advised she was not able to attend or did not attend. Accordingly, no teleconferences were able to be held on those dates.

[7] The Tribunal then required Miss Lawson to advise of her availability to attend a first teleconference by *Minute* dated 1 July 2020, letters dated 30 November 2020 and 8 March 2021 and a further *Minute* dated 29 April 2021.

[8] It was not until 6 July 2021 that Miss Lawson advised she would be available for a first teleconference, which she said she wanted convened on 4 August 2021 at 1.30pm. The teleconference did take place at that time. In the *Minute* issued following that teleconference the parties were directed to complete discovery and inspection of documents on an informal basis, by 19 November 2021. Miss Lawson failed to provide her informal discovery and did not seek any extension in relation to this.

[9] By memorandum dated 10 March 2022 the HDC noted that while it had not been provided with any documents from Miss Lawson by way of informal discovery it was content to progress this proceeding on the basis that Miss Lawson was not holding any relevant non-privileged documents which had not been discovered.

[10] A second teleconference was convened on 16 March 2022 to set pre-hearing timetable steps. Miss Lawson was disconnected or disconnected herself from that teleconference before further pre-hearing timetable steps were able to be set. The parties were, however, directed to advise the Tribunal secretary of a range of dates and times during the week commencing Monday 25 April 2022 on which they would be available for a further teleconference. Miss Lawson failed to advise of her availability.

[11] By *Minute* dated 29 April 2022, Miss Lawson was again directed to advise times she would be available for a further teleconference to discuss pre-hearing timetable steps. Miss Lawson did not do this.

[12] On 9 August 2022 the Tribunal received an email on behalf of Miss Lawson, advising that Miss Lawson had said she was still in the process of seeking legal representation and that this matter should be put on hold. No time period was specified for this. It is noted that Miss Lawson had two years previously, by letter dated 16 June 2020, first advised the Tribunal that she was seeking legal representation.

[13] By *Minute* dated 12 August 2022, Miss Lawson was given until 2 December 2022 to file and serve her evidence. This generous four-month period was allowed to enable Miss Lawson to secure legal representation. The *Minute* noted that as this was Miss Lawson's case, she had an obligation to pursue it. Miss Lawson did not file any evidence.

[14] On 15 December 2022, the HDC applied for an order striking out Miss Lawson's claim in its entirety but suggested that the Tribunal might first consider giving Miss Lawson a last opportunity to file evidence.

[15] By *Minute* dated 21 December 2022, Miss Lawson was afforded another opportunity to file and serve her evidence by 10 February 2023, to avoid the matter being struck out. In that *Minute* directions were also made timetabling the filing of written evidence and submissions in relation to the HDC's strike-out application.

[16] Miss Lawson did not file or serve any evidence in compliance with the direction referred to at [15] above. Instead, by email dated 30 January 2023 sent on behalf of Miss Lawson, the Tribunal was advised that she was "progressing towards obtaining a lawyer" but that she wanted this matter to be adjourned while she first progressed another claim before the Tribunal.

[17] On 27 February 2023 the Tribunal received a further email on behalf of Miss Lawson, together with a letter from her, advising that she wanted this matter adjourned until she obtained legal aid. Miss Lawson said she wanted another claim dealt with first and that she would be applying for legal aid separately for each claim.

[18] On 9 March 2023 Miss Lawson filed her opposition to HDC's application to strike-out this proceeding.

### **JURISDICTION TO STRIKE-OUT**

[19] Pursuant to HRA, s 115A (which applies to these proceedings under s 111 of the Privacy Act 2020) the Tribunal has a power to strike out proceedings:

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

[20] Accordingly, the Tribunal can strike-out a proceeding under HRA, s 115A(1)(d) if it is satisfied it is an abuse of process.

[21] The Tribunal's exercise of the discretion to strike out a proceeding for an abuse of process involves a two-stage test: whether there was an abuse of process; and if so,

whether discretion should be exercised to strike out the proceeding, see *Gwizo v Attorney-General*<sup>2</sup>.

[22] In *Gwizo* the High Court noted the Tribunal's strike out jurisdiction under HRA, s 115A is equivalent to the strike out jurisdiction of the High Court under r 15.1 of the High Court Rules, so the principles adopted by the High Court under r 15.1 inform the approach of the Tribunal to strike out decisions. The High Court said that one situation giving rise to an abuse of process is where a plaintiff lacks any intention of bringing the proceeding to a conclusion in a timely way. The Court said this may be evidenced by a long period of inactivity.<sup>3</sup>

[23] A finding that there has been an abuse of process on this ground does not (in contrast to some of the other grounds for striking out a proceeding) require the defendant to show any prejudice from the plaintiff's inactivity.<sup>4</sup>

### **WHETHER THE CLAIM SHOULD BE STRUCK OUT**

[24] The issues for the Tribunal are, therefore, whether Miss Lawson's claim is an abuse of process and, if so, whether it should be struck out under HRA, s 115A(1)(d).

[25] The HDC submits Miss Lawson's claim is an abuse of process because Miss Lawson repeatedly breached Tribunal directions and that failure reflects a broader failure by her to advance her claim in a timely way.

[26] In her opposition to the strike-out Miss Lawson does not explain why she has not complied with Tribunal directions or progressed her claim. In relation to her failure to file and serve evidence, Miss Lawson again says she has not been able to secure a lawyer and she intends to proceed first with another claim. She says she should not be disadvantaged because the person assisting her is away.

[27] Miss Lawson also makes a number of allegations of impropriety against the HDC and its counsel. All allegations against it and its counsel are rejected by the HDC. In any event, they are not relevant to the potential strike-out of Miss Lawson's claim.

### **Whether an abuse of process**

[28] As referred to at [22] above, of relevance as to whether Miss Lawson's failure to progress her claim is an abuse of process, is whether Miss Lawson has any intention of bringing this proceeding to a conclusion in a timely way.

[29] Miss Lawson has failed to take any steps to progress her claim since it was filed approximately three and a half years ago.

[30] It took almost two years for the Tribunal to be able to convene the first teleconference. This, despite the Tribunal contacting Miss Lawson by *Minute* or letter attempting to schedule that teleconference on at least eight separate occasions.<sup>5</sup>

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<sup>2</sup> *Gwizo v Attorney-General* [2022] NZHC 2717 (*Gwizo*) at [47].

<sup>3</sup> See *Gwizo* at [45]

<sup>4</sup> *Gwizo* at [46]

<sup>5</sup> See [6] and [7] above

[31] Miss Lawson has had over 15 months to prepare her evidence but has not done so, despite receiving a warning from the Tribunal, in its *Minute* of 21 December 2022, that she should do so to avoid the risk that her claim may be struck out.

[32] In opposition to her claim being struck out, Miss Lawson refers to still seeking legal representation. Miss Lawson has, however, been trying to obtain legal representation since June 2020. She has had two and a half years to instruct counsel or to get legal aid but has not done so. There is no evidence that Miss Lawson has attempted to seek legal representation or even applied for legal aid for this claim. Rather, Miss Lawson refers to first seeking legal aid for another claim, before doing so for this claim.

[33] Even if Miss Lawson obtains legal representation, she says that she wishes to adjourn this proceeding indefinitely to progress that other claim. Accordingly, even if legal aid was to be granted, Miss Lawson has indicated that she has no current wish to progress this proceeding.

[34] Finally, in her opposition to the strike-out application Miss Lawson says she should not be disadvantaged because the person assisting her was away. The Tribunal understands that this absence was from 6 March 2023 until early April 2023.

[35] Miss Lawson has, however, known since 21 December 2022 that she was required to file her evidence and, in default, to oppose the strike-out application. Miss Lawson had ample opportunity to apply for an extension to the scheduled filing dates before the person assisting her went away but did not do so.

[36] For the sake of completeness, we also note that while Miss Lawson did not comply with timetable directions made in *Minutes* dated 1 July 2020, 29 April 2021, 4 August 2021, 16 March 2022, 29 April 2022, 12 August 2022 and 21 December 2022 she did send a number of letters to the Tribunal (for example letters dated 15 June 2021, 24 February 2022, 6 March 2022 and 9 March 2023) expressing her strong views on the Tribunal processes and complaining, amongst other things, of unfair treatment.

[37] It is not accepted that Miss Lawson has been subjected to unfair treatment. She has been afforded a number of opportunities to progress her case, by way of amended timetable directions, but she has not done so.

[38] In the above circumstances the Tribunal is satisfied that Miss Lawson lacks any intention to bring this proceeding to a conclusion in a timely way and that her claim is an abuse of process.

#### **Whether the Tribunal should exercise its discretion to strike-out Miss Lawson's claim**

[39] Having determined that Miss Lawson's claim is an abuse of process we must now consider whether to exercise our discretion to strike-out the claim.

[40] For the reasons set out above, we consider it is appropriate to exercise our discretion to strike-out this claim under HRA, s 115A(1)(d). To leave the claim extant would be an abuse of the Tribunal's processes.

## **COSTS**

**[41]** No issue as to costs arises. HDC accepts that, in the interests of finality, all costs associated with this proceeding will lie where they fall.

## **ORDERS**

**[42]** The following orders are made.

**[42.1]** Miss Lawson's claim against the Health and Disability Commissioner is struck out in its entirety.

**[42.2]** Costs associated with this proceeding are to lie where they fall.

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**Ms GJ Goodwin**  
**Deputy Chairperson**

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

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**Mr MJM Keefe QSM JP**  
**Member**