

**IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE**

**CIV-2023-409-364
[2023] NZHC 2358**

UNDER the Crimes of Torture Act 1989,
Commonwealth Countries Act 1977,
New Zealand Bill of Rights Act 1990,
Corrections Act 2004, and Declaratory
Judgement Act 1908

IN THE MATTER OF a breach of the New Zealand Bill of Rights
Act 1990, Corrections Act 2004,
The International Bill of Human Rights, and
Extradition Act 1988

BETWEEN ABDULLAH ROBERT BOYD
Plaintiff

AND THE AUSTRALIA FEDERAL POLICE
First Defendant

THE NEW SOUTH WALES LEGAL AID
Second Defendant

THE NEW ZEALAND DEFENCE FORCE
Third Defendant

THE NEW ZEALAND POLICE
Fourth Defendant

THE ATTORNEY-GENERAL
Fifth Defendant

THE OFFICE OF THE INSPECTORATE
Sixth Defendant

CANTERBURY INTELLIGENCE TEAM
Seventh Defendant

THE MINISTRY OF HEALTH
Eighth Defendant

On the papers:

Judgment: 28 August 2023

JUDGMENT OF CHURCHMAN J

Introduction

[1] The applicant in this matter, Mr Abdullah Robert Boyd, is self-represented and has filed a statement of claim alleging wide-ranging claims against eight defendants, a number of which are government or executive entities, and two of which are Australian, namely the Australian Federal Police and New South Wales Legal Aid. This matter has been referred to me by the Registrar under r 5.35A of the High Court Rules 2016 seeking directions under r 5.35B.

Rules 5.35A and 5.35B

[2] Rule 5.35A allows a Registrar, if they believe that a proceeding tendered for filing is, on the face of it, “plainly an abuse of the process of the court”, to accept the proceeding for filing but refer it to a Judge for consideration and directions under r 5.35B.

[3] If the Judge is satisfied the proceeding is plainly an abuse of the process of the court, under r 5.35B the Judge may make an order or give directions to ensure that the proceeding is disposed of or proceeds in a way that complies with the rules, including an order under r 15.1 that the proceeding be struck out or stayed. There is no requirement that a party have an opportunity to be heard before making such an order.¹

[4] These powers enable the Court to prevent misuse of its process when the procedure being adopted would be manifestly unfair to another party or would otherwise bring the administration of justice into disrepute.² In exercising the power to strike out a proposed proceeding as an abuse (which ought to be exercised

¹ High Court Rules 2016, r 5.35B(3).

² *Mathiesen v Fildes* [2017] NZHC 2258, (2017) 24 PRNZ 405 at [4].

sparingly),³ the Court should consider whether it would be manifestly unfair to the respondent that they be required to respond, and whether right thinking people would regard the Court as “exercising very poor control of its processes if it were to allow the applicant’s document to be regarded as a proper document.”⁴

Mr Boyd’s claims

[5] Mr Boyd, who is unrepresented, is currently serving a 12 year and four-month sentence of imprisonment for sexual offending against a family member and a former partner. He is detained at Rolleston Prison in Christchurch.

[6] Mr Boyd brings a number of claims under the Crimes of Torture Act 1989, the Commonwealth Countries Act 1977, the New Zealand Bill of Rights Act 1990, the Corrections Act 2004, the Declaratory Judgments Act 1908, the Extradition Act 1988 and the International Bill of Human Rights. He also refers in his statement of claim to breaches of the Search and Surveillance Act 2012, the Universal Declaration of Human Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

[7] There are eight defendants listed, namely the Australian Federal Police, New South Wales Legal Aid, New Zealand Defence Force, New Zealand Police, Attorney-General, Office of the Inspectorate, Canterbury Intelligence Team and Ministry of Health.

[8] Mr Boyd’s claims are wide-ranging. He says he was unlawfully arrested by the Australian Federal Police and the New Zealand Defence Force removed him from Australia without a clearance check from Sydney immigration. He says the New South Wales Legal Aid denied him protection within the International Bill of Human Rights by not assigning him counsel, thereby forcing him to represent himself while suffering from psychological torture.

³ *Commissioner of Inland Revenue v Chesterfields Preschools Ltd* [2013] NZCA 53, [2013] 2 NZLR 679 at [89].

⁴ *Mathiesen v Slevin* [2018] NZHC 1032, (2018) 25 PRNZ 116 at [6], citing *Mathiesen v Fildes*, above n 2, at [4]; and *Reid v New Zealand Trotting Conference* [1984] 1 NZLR 8 (CA) at [9].

[9] He also says that a number of the defendant entities have either subjected him to, or failed to protect him from, psychological torture. He alleges that by denying him protections within the International Bill of Human Rights, the Attorney-General has breached his duty of care to protect Mr Boyd as a prisoner incarcerated within New Zealand and effectively contributed to forms of psychological torture. Mr Boyd also claims that the Office of the Inspectorate, by denying him protections within the Inspection Standards and the Crimes of Torture Act, left him in the hands of the alleged abusers of psychological torture, and similarly, that the Ministry of Health, by denying him protection under the New Zealand Bill of Rights Act, the Universal Declaration of Human Rights and the “Crimes of Torture Act”, failed to protect him from any further forms of torture.

[10] Mr Boyd’s claims refer among other things to illegal arrest, detention, breach of a duty of care owed towards him, and contribution to psychological torture. The allegations contain aspects of bad faith on the part of government entities, both in New Zealand and in Australia. These are serious allegations, with government or executive action, both here and across the Tasman, said to breach the law, natural justice and fundamental universal human rights and conventions, including the non-derogable human right of torture.

[11] However, Mr Boyd’s claims are devoid of any specificity or particularity. For example, Mr Boyd claims the New Zealand Police intentionally misled the Australian Federal Police to arrest and detain him by using an arrest warrant they knew to be illegal, having been informed by Interpol that the warrant had errors and deficiencies dating back to February 2013. However, it is not clear what those errors and deficiencies are said to be.

[12] Similarly, Mr Boyd says the seventh defendant, the Canterbury Intelligence Team in New Zealand Prisons, denied him protections within the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Again, it is not clear how this is said to be the case. Mr Boyd claims the New Zealand Defence Force erred in removing him from Australia without a fully trained surgeon on board, in case he had internal bleeding from swallowing two razor blades several days earlier. However, it is not stated on what basis the Defence Force ought to have known this.

[13] Mr Boyd’s affidavit filed in support is of no assistance in elucidating the particulars of his claims. Rather, his affidavit contains a request for a minimum of 14 hours per week in the computer room at the prison as well as 10 hours’ legal assistance prepaid for the supply of case law from the law library.

[14] There is no statutory basis referred to on which Mr Boyd submits the requests should be granted. By way of authority in support of his request for computer access, Mr Boyd refers to the case of *Gorgus v Chief Executive of the Department of Corrections*.⁵ However, in that case Corrections had agreed to provide Mr Gorgus with computer access, which he subsequently lost due to insufficient resource for Corrections to monitor and supervise him in the computer suite outside the usual educational hours. Palmer J considered overall the balance of convenience favoured an interim order because of the effect of Mr Gorgus’ medical condition on his ability to meaningfully realise his right to pursue legal proceedings.⁶ Mr Gorgus’ medical condition included short-term memory loss and difficulties with visuo-spatial processing and planning. Corrections was aware of Mr Gorgus’ medical condition but it was agreed there was no evidence Corrections took Mr Gorgus’ medical condition into account in making its decision. However, Palmer J noted:

[38] It is important to note that the precedent of Mr Gorgus being given access to word processing facilities in this judgment depends crucially on his medical condition otherwise prolonging and therefore inhibiting his access to Court in his proceedings. For that reason, I consider he should be provided with access to computer facilities for the purpose of word processing only. That does not extend to internet access, which is no doubt a more significant security concern ...

[15] The computer access in that case was limited to word processing purposes only and did not extend to internet access, and, “crucially”, was granted only due to Mr Gorgus’ medical condition prolonging and therefore inhibiting his access to court. Mr Boyd says he is legally blind and victims of torture often suffer from elevated rates of anxiety, depression, adjustment disorders, PTSD (post-traumatic stress disorder) and DESNOS (disorders of extreme stress not otherwise specified).

⁵ *Gorgus v Chief Executive of the Department of Corrections* [2020] NZHC 2249.

⁶ At [37].

[16] However, other than Mr Boyd's self-reporting, there is no evidence that Mr Boyd suffers from any of these afflictions nor any confirmation from Corrections as to this. There is no evidence that a lack of access to the computer is inhibiting his ability to bring proceedings in this court, nor is it clear that Mr Boyd is wanting computer access only for word processing purposes. Rather, it appears that he is wanting such access for purposes of legal research, which will necessarily require internet access. Mr Boyd's affidavit therefore raises no legal basis to support his requests made in that affidavit, nor does it provide any additional assistance in articulating his substantive claims.

[17] Similarly, in a second affidavit Mr Boyd requests "Oral Interim Orders" protecting his legal rights to natural justice and a voice as a victim of psychological torture and granting him a personal laptop with software installed on the laptop to protect these rights as well as receive additional assistance due to the severity and nature of this legal case. This affidavit similarly does not assist in detailing the particulars of his claims any more clearly, and there is no evidential or legal basis provided on which to make such orders.

[18] Mr Boyd seeks rehabilitation and redress. Again, it is not stated what form such rehabilitation and redress ought to take.

[19] Other aspects of Mr Boyd's statement of claim are entirely unclear. He "brings To The Courts attention" s 18 of the Evidence Act 2006, relating to hearsay evidence, although does not explain why. In the following paragraph, Mr Boyd states:

16) The Plaintiff requests by way of Oral Interim Orders from The Court, relating to an Legal Hold to be placed onto the Plaintiff, so that the Plaintiff will remain in Christchurch at [sic]

[20] It is not possible to discern what this is intended to mean.

[21] Mr Boyd's statement of claim does not comply with the requirements under s 14 of the Crown Proceedings Act 1950.

[22] Neither does the New Zealand High Court have jurisdiction in respect of the claims purporting to sue the Australian entities in respect of actions by them that occurred in Australia.

[23] Finally, I note that there is an element of duplication with other existing proceedings where Mr Boyd has made similar claims.

[24] For all these reasons, overall I consider that right-thinking people would regard this Court as “exercising very poor control of its processes if it were to allow the applicant’s document to be regarded as a proper document”, and allowing this proceeding to continue would therefore bring the administration of justice into disrepute.

Conclusion

[25] I therefore make an order under r 5.35B striking out the proceeding as an abuse of process.

[26] I direct that a copy of my decision be served on each of the respondents, pursuant to r 5.35B(4).

[27] As required by r 5.35B(3), I record that Mr Boyd has a right to appeal my decision.

Churchman J