

Reference No. HRRT 027/2011

UNDER THE PRIVACY ACT 1993

IN THE MATTER OF AN APPLICATION BY THE DEFENDANT FOR COSTS

BETWEEN RAZDAN RAFIQ

PLAINTIFF

AND COMMISSIONER OF INLAND REVENUE

DEFENDANT

AT WELLINGTON

BEFORE:

Mr RPG Haines QC, Chairperson  
Dr SJ Hickey, Member  
Dr AD Trlin, Member

REPRESENTATION:

Mr Rafiq in person (no appearance)  
Mr E Child and Mr T Hallett-Hook for Defendant

DATE OF DECISION: 18 September 2013

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**DECISION OF TRIBUNAL ON COSTS APPLICATION BY DEFENDANT**

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**Background**

[1] These proceedings were heard at Wellington on 11 April 2012. In a decision given on 23 May 2012 Mr Rafiq's claim was dismissed. The Tribunal determined that:

[1.1] All of the information which Inland Revenue refused to disclose in response to Mr Rafiq's Principle 6 request had been properly and justifiably refused.

**[1.2]** Mr Rafiq clearly and egregiously breached the standards to be expected of a litigant and he was therefore to be denied a declaration that Inland Revenue interfered with his privacy by failing to comply with the information privacy request within the statutory 20 working day period.

As the decision given on 23 May 2012 must speak for itself we do not intend repeating the reasons for these findings.

### **The Commissioner's application for costs**

**[2]** The Commissioner was represented by Crown Counsel. The actual legal fees and disbursements invoiced to the Commissioner by Crown Law were:

**[2.1]** Legal fees: \$17,540.84 (GST incl.).

**[2.2]** Disbursements: \$644.67 (GST incl.).

**[3]** Indemnity costs are not sought. Rather, the Commissioner seeks costs of \$8,560.00 (GST inclusive) as a contribution to his legal fees together with disbursements of \$644.67. Time billed for junior counsel's attendance has been excluded as it is accepted that two counsel were not required.

**[4]** The Commissioner's figure has been arrived at by taking into account the following factors:

**[4.1]** On 27 January 2012 the Commissioner advised Mr Rafiq that he (the Commissioner) was willing to agree not to seek costs against Mr Rafiq if he (Mr Rafiq) formally withdrew his proceedings by 17 February 2012. Mr Rafiq did not, however, discontinue his claim. On 6 March 2012 the Commissioner again wrote to Mr Rafiq providing him with a further opportunity to discontinue his proceedings without costs being sought against him. Mr Rafiq did not accept this offer.

**[4.2]** At the time Mr Rafiq rejected the 6 March 2012 settlement offer he knew, or should have known that his proceedings were unlikely to succeed having declined to file any evidence on his own behalf. He had also been served with the Commissioner's statement of reply and evidence.

**[5]** In support of his application for increased costs the Commissioner submits:

**[5.1]** This was not a finely balanced case. The Tribunal found that the Commissioner's decision to withhold information from Mr Rafiq was justified "by the widest of margins". Mr Rafiq's claim can be said to have been comprehensively rejected and that this should be reflected in the costs awarded.

**[5.2]** Mr Rafiq failed to genuinely participate in the proceedings as exemplified by his refusal to participate in telephone conferences and his failure to file meaningful evidence or submissions.

**[5.3]** Mr Rafiq subsequently declined to attend the hearing despite being warned by both the Commissioner and the Tribunal that this could have costs implications for him.

**[5.4]** The effect of this conduct was that the Commissioner ended up bearing the burden of progressing this matter to a hearing and presenting the case to the

Tribunal. Mr Rafiq, on the other hand, largely avoided the expense and inconvenience of pursuing his claim.

[5.5] Mr Rafiq's unpredictable behaviour and failure to properly participate in the Tribunal's pre-hearing processes created significant uncertainty for the Commissioner.

[5.6] On 30 January 2012 Mr Rafiq applied to summon a wide range of witnesses. The Commissioner substantively responded to this application on 22 February 2012. The Tribunal considered it was apparent from the categories of witnesses sought that Mr Rafiq's demand for summonses was "frivolous, vexatious or not made in good faith".

[5.7] The Tribunal found that Mr Rafiq had seriously breached the standards to be expected of a litigant. The Commissioner submits that it is appropriate that the level of costs awarded reflect Mr Rafiq's inappropriate conduct in relation to the Commissioner's witness and counsel during the course of the proceeding.

[6] Mr Rafiq has filed no submissions in opposition to the application.

## DISCUSSION

[7] The general principles applicable to the award of costs in proceedings before the Tribunal were recently reviewed in *Haupini v SRCC Holdings Ltd* [2013] NZHRRT 23 (28 May 2013) at [13] to [18].

[8] Because in the present case indemnity costs are not sought the Tribunal must determine what, in the circumstances, is a reasonable contribution to the Commissioner's costs.

[9] The Tribunal's substantive decision given on 23 May 2012, particularly at paras [2] to [5], gives examples of how these proceedings of little merit were made as difficult and protracted as Mr Rafiq could make them. The Tribunal concluded at [4] that from the outset Mr Rafiq had decided to participate in these proceedings on his own terms and without regard to his obligation to participate in them meaningfully and in good faith.

[10] For all the reasons given by the Commissioner in support of his application we agree that this is a clear case in which increased costs are justified, particularly in light of Mr Rafiq's twice rejection of reasonable and responsible settlement offers.

### Formal orders as to costs

[11] Pursuant to s 85(2) of the Privacy Act 1993 costs in the sum of \$8,560 plus disbursements of \$644.67 are awarded to the Commissioner of Inland Revenue. The total sum is \$9,204.67. This sum includes GST.

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**Mr RPG Haines QC**  
Chairperson

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**Dr SJ Hickey**  
Member

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**Dr AD Trlin**  
Member

