

Reference No. HRRT 037/2011, 038/2011
& 039/2011

UNDER THE PRIVACY ACT 1993

IN THE MATTER OF AN APPLICATION BY THE DEFENDANT
FOR COSTS

BETWEEN RAZDAN RAFIQ

PLAINTIFF

AND CHIEF EXECUTIVE, MINISTRY OF
BUSINESS, INNOVATION AND
EMPLOYMENT

DEFENDANT

AT WELLINGTON

BEFORE:

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

REPRESENTATION:

Mr R Rafiq in person (no appearance)
Mr S Cohen-Ronen for Defendant

DATE OF DECISION: 18 September 2013

DECISION OF TRIBUNAL ON COSTS APPLICATION BY DEFENDANT

Background

[1] These proceedings were heard at Wellington on 12 April 2012. In a decision given on 8 April 2013 Mr Rafiq's claim was dismissed, the Tribunal concluding that no

interference with the privacy of Mr Rafiq had been established either in relation to information privacy Principle 6 or in relation to Principle 7.

The Ministry's application for costs

[2] The Ministry was represented by an in-house litigation solicitor. The matter was not referred to the Crown Law Office or to any external counsel. Accordingly no external expenses have been incurred by the Ministry.

[3] Nevertheless substantial preparation was required from the time the proceedings were filed by Mr Rafiq. The Ministry submits that an award of costs of \$5,000 (GST inclusive) is appropriate and represents a reasonable contribution to the Ministry's legal costs.

[4] No submissions have been filed by Mr Rafiq in response to the Ministry's application.

DISCUSSION

[5] 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]. The circumstances in which indemnity costs will be appropriate are addressed at [20] to [24]. Generally indemnity costs are awarded where a party has behaved either badly or very unreasonably.

[6] In the course of delivering its decision the Tribunal determined (inter alia) that it was satisfied under s 115 of the Human Rights Act 1993 (incorporated into the Privacy Act by s 89 of that Act) that these proceedings were vexatious and not brought in good faith. The reasons given at [30] were as follows:

[6.1] Without proper basis to do so, Mr Rafiq instituted three separate proceedings against the Ministry and then failed to attend the hearing to give evidence in support of his multitudinous allegations.

[6.2] His statements of claim and statements of evidence were largely incoherent and should be categorised as unintelligible. See by analogy *Ward v ANZ National Bank Ltd* [2012] NZHC 2347 (12 September 2012) at [20].

[6.3] In an unsworn statement dated 26 March 2012 Mr Rafiq made threats against Mr Blakemore and Ms Cantlon. In making those threats Mr Rafiq cross-referenced to his abuse of officers of the Inland Revenue Department. Mr Rafiq's proceedings against the Commissioner of Inland Revenue were heard on 11 April 2012, the day before the hearing of these three proceedings against the Ministry. The repeated, calculated, serious and wholly unjustified attacks which Mr Rafiq has made on virtually all persons within Inland Revenue who have had dealings with him were described in the Tribunal's decision in *Rafiq v Commissioner of Inland Revenue* [2012] NZHRRT 12 (23 May 2012) at [49]. The abuse and threats directed at Mr Blakemore and Ms Cantlon replicate those made against officers of the Inland Revenue.

[7] In these circumstances indemnity costs could be justified but as they have not been sought the Tribunal must determine what, in the circumstances, is a reasonable contribution to the Ministry's costs.

[8] Given the nature of the allegations faced by the Ministry and the accusations made against its officers, thorough preparation was required. This is a clear case in which increased costs are justified and if anything, the \$5,000 costs sought could be said to be too modest.

Formal orders as to costs

[9] Pursuant to s 85(2) of the Privacy Act 1993 costs in the sum of \$5,000 are awarded to the Ministry of Business, Innovation and Employment. This sum is intended to be all inclusive.

.....
Mr RPG Haines QC
Chairperson

.....
Dr SJ Hickey
Member

.....
Dr AD Trlin
Member