

Reference No. HRRT 011/2017

UNDER THE PRIVACY ACT 1993

BETWEEN MICHAEL TAI RAKENA

PLAINTIFF

AND CHIEF EXECUTIVE, DEPARTMENT OF CORRECTIONS

DEFENDANT

AT WELLINGTON

BEFORE:

Mr RPG Haines QC, Chairperson  
Mr R K Musuku, Member  
Mr B K Neeson JP, Member

REPRESENTATION:

Mr M Tai Rakena in person  
Ms V McCall and Ms G Taylor for defendant

DATE OF HEARING: Heard on the papers

DATE OF DECISION: 17 May 2018

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**DECISION OF TRIBUNAL<sup>1</sup>**

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[1] By application dated 4 May 2018 the Chief Executive, Department of Corrections has applied to have these proceedings struck out on the grounds:

[1.1] The Tribunal lacks jurisdiction to hear the claim as no investigation has been conducted in terms of the Privacy Act 1993 (PA), s 82(1)(a). It is submitted the policy reasons in *Gray v Ministry for Children (Strike-Out Application)* [2018] NZHRRT 13 apply.

[1.2] Mr Tai Rakena has failed to comply with case management directions relating to the filing of evidence and submissions and has not taken any steps necessary to enable his claim to be set down for a hearing. Nor, since his release from prison, has he provided an address at which he can be contacted.

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<sup>1</sup> [This decision is to be cited as *Tai Rakena v Corrections (Strike-Out Application)* [2018] NZHRRT 19]

[2] In this decision we explain our reasons for dismissing the claim on the second of the grounds advanced. It is not necessary that we make a determination regarding the first ground.

## BACKGROUND

[3] These proceedings were commenced by Mr Tai Rakena on 27 February 2017 at a time when he was in prison. His claim concerns a number of requests made by him to Corrections for personal information and submitted through the prisoner complaints system. Mr Tai Rakena complained to the Privacy Commissioner about the Department's response to his requests and the Privacy Commissioner commenced an investigation into whether there had been a breach of Principle 6 of the information privacy principles. The Privacy Commissioner discontinued the investigation because Mr Tai Rakena did not present as being able to participate in the dispute resolution process and did not desire that the Commissioner take any further action on his complaint.

[4] On 12 May 2017 and at a time when he was still a serving prisoner, Mr Tai Rakena participated in a first case management teleconference. In the course of that conference a case management timetable was agreed to and set. Details are to be found in the *Minute* issued on that date.

[5] On 19 May 2017 Mr Tai Rakena filed a document described as "Comprehensive Statement of Claim, s 66 of the Act" which was accompanied by 12 pages of documents. This statement was treated as his statement of evidence and exhibits in support of his claim.

[6] On 3 November 2017 Corrections filed a statement of evidence by Mr Simon Hicks on behalf of the Chief Executive of the Department of Corrections. The timetable was by subsequent *Minute* dated 9 November 2017 amended in relation to the filing by Mr Tai Rakena of his evidence in reply and in relation to the filing by the parties of their submissions.

[7] According to the amended timetable Mr Tai Rakena was required by 5pm on Friday 15 December 2017 to file and serve any statement of evidence in reply (if he wished to do so). Thereafter, by 5pm on Friday 26 January 2018 he was required to file and serve his submissions.

[8] By *Minute* dated 14 February 2018 the Tribunal recorded that as at that date Mr Tai Rakena had not filed any evidence in reply nor had he filed his submissions.

[9] Two days earlier, by memorandum dated 12 February 2018, counsel for Corrections had advised that it was their understanding Mr Tai Rakena had been released from custody on 2 August 2017 and had been subject to standard and special release conditions until 4 February 2018. One of the conditions was that he live at a stipulated address in Palmerston North (the release address). By letter dated 30 January 2018 addressed to the release address Crown counsel had reminded Mr Tai Rakena of his obligations under the case management timetable. The letter had also notified him that Corrections would apply to the Tribunal to defer the timetable if it did not receive submissions from him, or an explanation of when they would be filed. Mr Tai Rakena did not respond to this letter.

[10] In their memorandum counsel for Corrections further advised that should Mr Tai Rakena not file submissions or give any further indication that he intended

pursuing his claim, Corrections would apply to have the proceedings dismissed on the basis that Mr Tai Rakena has not taken the steps necessary to pursue his claim. If, on the other hand, Mr Tai Rakena filed submissions in the interim, Corrections would file submissions in response and the hearing would proceed as originally intended.

[11] In the circumstances the Chairperson concluded it was premature for Corrections to be required to file submissions before it was clear whether Mr Tai Rakena intended to pursue his claim. As a consequence by *Minute* dated 14 February 2018 the time for Corrections to file and serve its submissions was extended to a date ten working days before the hearing date.

[12] The *Minute* dated 14 February 2018 was sent to Mr Tai Rakena at his release address but the courier package was subsequently returned to the Tribunal on 12 March 2018 as it could not be delivered.

[13] By *Minute* dated 19 April 2018 the Tribunal gave directions that any strike out application by Corrections was to be filed and served by 4 May 2018. Although that *Minute* was sent to Mr Tai Rakena at his release address, it was undelivered.

[14] In the result, while Mr Tai Rakena is not obliged to file evidence in reply, he has yet to file and serve submissions in support of his claim. More importantly, he has failed to keep in touch with the Tribunal and his whereabouts are not known. It is not possible for the Tribunal to serve any notice of hearing.

## DECISION

[15] As recently noted in *Mihaka v Housing New Zealand Corporation (Dismissal)* [2017] NZHRRT 29 at [79.7] the resources of the Tribunal are presently under sustained pressure. The reasons are set out in *Wall v Fairfax New Zealand Ltd (Delay)* [2017] NZHRRT 8. Briefly, in 2015 the number of new cases filed with the Tribunal increased 113% over 2014 and in 2016 that increase was 145%. Owing to legislative oversight, the Human Rights Act 1993 does not allow the appointment of a deputy chair (or chairs) to assist the Chairperson to keep pace with this large inflow of new cases. Consequently the Tribunal has a backlog of cases awaiting hearing as well as a backlog of cases awaiting determination. Because the Tribunal's resources are limited it has a responsibility to all litigants to ensure those resources are employed effectively and not needlessly wasted on trying to find a litigant who has not bothered to notify the Tribunal of his change of address.

[16] Mr Tai Rakena has not communicated with the Tribunal or Corrections about his claim for almost a year and he has not otherwise indicated that he wants his claim heard.

[17] In the circumstances the claim must be dismissed on the grounds Mr Tai Rakena has not complied with the Tribunal's directions and has not notified the Tribunal of an address to which communications about his case can be addressed.

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**Mr RPG Haines QC**  
Chairperson

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**Mr RK Musuku**  
Member

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**Mr B K Neeson JP**  
Member

