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IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CP 186/SD02

BETWEEN **JOHN DAVID MCVEAGH**

Plaintiff

AND **ATTORNEY-GENERAL**

Defendant

Hearing: 7 March 2003

Appearances: Mr J D McVeagh (in person)
Mr J Beaglehole and Ms Williams for defendant

Date of judgment: 7 March 2003

(ORAL) JUDGMENT OF MASTER LANG
[re application for order striking out statement of claim]

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Introduction

[1] The defendant in this case seeks an order striking out the plaintiff's statement of claim in its entirety.

[2] Before turning to consider the matters which have been raised by the parties in support of and in opposition to the application, it is helpful to review the principles which apply to applications such as this.

Relevant principles

[3] The principles applicable in a strike out application were confirmed by the Court of Appeal in the well-known case of *Attorney-General v Prince and Gardner* [1998] 1 NZLR 262, 267 where it is said:

> A striking-out application proceeds on the assumption that the facts pleaded in the statement of claim are true. That is so even although they are not or may not be admitted. It is well settled that before the Court may strike out proceedings the causes of action must be so clearly untenable that they cannot possibly succeed. (*R Lucas & Son (Nelson Mail) Ltd v O'Brien* [1978] 2 NZLR 289 at pp 294-295; *Takaro Properties Ltd (in receivership) v Rowling* [1978] 2 NZLR 314 at pp 316-317); the jurisdiction is one to be exercised sparingly, and only in a clear case where the Court is satisfied it has the requisite material (*Gartside v Sheffield, Young & Ellis* [1983] NZLR 37 at p 45; *Electricity Corporation Ltd v Geotherm Energy Ltd* [1992] 2 NZLR 641); but the fact that applications to strike out raise difficult questions of law, and require extensive argument does not exclude jurisdiction (*Gartside v Sheffield, Young & Ellis*).

[4] In determining a strike out application the Court must proceed on the basis that the allegations which are contained in the statement of claim are true. They are usually based on the pleadings alone. It is permissible, however, to refer to affidavit evidence where such evidence is undisputed and is not inconsistent with the pleadings: *Attorney-General v McVeagh* [1995] 1 NZLR 558, 566.

[5] In the present case, Mr McVeagh has chosen to file an affidavit and an answer to the defendant's request for further particulars. The latter helpfully

annexes a number of documents which are relevant to Mr McVeagh's claim. The Court will be taking those documents into account in reaching its decision.

Factual background

[6] It is helpful also to consider briefly the factual background to this matter. This proceeding has its genesis in events which occurred many years ago. It is, in fact, the latest development in a long series of Court cases which Mr McVeagh has brought against the Attorney-General on behalf of a number of Government agencies. All of these proceedings have as their starting point his committal to a number of mental institutions between 1984 and February 1993. A fully detailed narrative of the events which occurred during those 10 years can be found in the judgment of Gallen J, which is reported as *Re M* [1992] 1 NZLR 29. A shorter summary can be found in the judgment of the Court of Appeal in *Attorney-General v McVeagh* [1995] 1 NZLR 558. I do not propose to traverse the events which are referred to in those decisions. They will be well known to any person who has read the various judgments which relate to this saga.

[7] Whilst in custody Mr McVeagh unsuccessfully applied to the Court for release on no less than five occasions. On each of those occasions he was apparently represented by counsel. They were as follows:

- [a] In 1984 Judge Unwin reported that Mr McVeagh's detention was still necessary for his own good and in the public interest.

- [b] In 1986 Greig J held that he was satisfied that Mr McVeagh was mentally disordered, that he suffered from a mental illness that substantially impaired his mental health, that he required care and treatment and that he ought to be detained both for his own good and in the public interest.

- [c] In 1988 Ellis J commenced an enquiry into Mr McVeagh's committal. That was subsequently adjourned until 1990 when it was completed. Ultimately Ellis J held that Mr McVeagh suffered from a mental

disorder which required care and that he required treatment which necessitated him remaining in detention.

[d] In 1991 Gallen J embarked on an enquiry in relation to the findings reached by Ellis J. Although that enquiry was limited to questions of law, nevertheless Gallen J agreed with Ellis J that the material which had been before Ellis J was sufficient to find that Mr McVeagh's detention as a mentally disordered person was in the public interest.

[e] In 1992 Judge McElrea considered Mr McVeagh's then circumstances and found that he was mentally disordered as defined by the Mental Health Act, and that his continued detention, even if on leave, was necessary both in his own and the public interest.

[8] Even after his release Mr McVeagh has continued to be the subject of the attention of the Courts. In *McVeagh v Attorney-General* (*on behalf of the Minister of Health*) (Unreported, High Court Auckland, CP141/93, 4 August 1994) Mr McVeagh alleged that he was wrongly retained by the Compulsory Treatment Order because he was not subject to a mental illness as that term was defined by the Mental Health Act 1969. He also argued that any mental illness which he might have had had been caused by his detention and that the Crown had been negligent in relation to the committal procedures. Temm J dismissed the Crown's strike-out application on the basis that he was of the view that Mr McVeagh should be entitled to air his grievances in open Court.

[9] That decision was the subject of an appeal by the Crown, and in *Attorney-General v McVeagh* [1995] NZLR 558 the Court of Appeal allowed the appeal. By that stage Mr McVeagh had amended his statement of claim to add a fourth cause of action alleging that the decisions to detain him and keep him detained were made maliciously and with improper motives. The Crown's appeal in relation to the first three causes of action was allowed and they were struck out on the basis that they were statute barred by virtue of the provisions of the Accident Rehabilitation and Compensation Insurance Act 1992. The fourth (and new cause of action) was struck out as being vexatious and an abuse of the Court's process. Even in 1994 the Court

of Appeal was concerned at the fact that significant litigation had been generated by Mr McVeagh's ongoing sense of grievance. In delivering its decision the Court of Appeal said (at p 567):

> Against that background, the allegations of malice, which are tantamount to an allegation of a grand conspiracy against him by the mental health profession over the past ten years, which is still continuing, are vexatious and an abuse of the Court's process. The reality is that Mr McVeagh is not willing to accept the result of the enquiries that he initiated, and now wishes to reopen the whole issue of the justification for his committal and his detention. It is inescapable that the allegations of malice are introduced at this late stage simply in an attempt to overcome the difficulties that he otherwise faces. The allegations as to events in 1994 cannot have any bearing on the matter. The justification for the original committal and for Mr McVeagh's continued detention has been thoroughly canvassed. The Court has a duty to ensure that its processes are fairly used and that they do not lend themselves to oppression and injustice: *Reid v New Zealand Trotting Conference* [1984] 1 NZLR 8, 9: and see also *New Zealand Social Credit Political League Inc v O'Brien* [1984] 1 NZLR 84. In accordance with that duty the allegations of malice must be struck out.

[10] In *McVeagh v Accident Rehabilitation and Compensation Insurance Corporation* [2000] NZAR 1 Salmon J dismissed an application by Mr McVeagh for special leave to appeal against a decision of the District Court dismissing an appeal against a decision of the Accident Compensation Appeal Authority. This litigation was the result of a claim by Mr McVeagh to claim compensation for mental stress as a result of the events which had occurred to him between 1984 and 1995.

[11] The litigation involving Mr McVeagh has also spread to foreign shores. In *A v New Zealand* Communication No 754/1997, 20 April 2000 the Human Rights Committee of the United Nations dismissed a complaint by Mr McVeagh that his original detention was unlawful, that Judge Unwin's review was unlawful and that the judicial reviews of his detention were designed to continue his unlawful detention.

[12] Mr McVeagh commenced a further action seeking damages against the Crown in *McVeagh v Attorney-General* (Unreported, High Court Auckland, M2110/99, 17 April 2000). In that case Robertson J dismissed an application by Mr

McVeagh for leave to proceed against the Crown in a civil action for unlawful committal, negligence and malicious false imprisonment. Many of the allegations which were contained in the statement of claim filed by Mr McVeagh in that proceeding substantially duplicated those which were the subject of the decision delivered by Ellis J in 1998.

[13] In that case Robertson J held that a number of Mr McVeagh's claims were barred by reason of the fact that they were *res judicata* having already been the subject of a determination by the Court. He also held that one cause of action was *res judicata* in the broader sense, because the issues which it raised were so clearly part of the subject matter of earlier litigation that they could and ought to have been raised therein. In reaching this decision Robertson J said:

> There is in that matter nothing more than a variation on the original theme. It is another focus or slant on the matter which has exercised Mr McVeagh for almost a decade. I accept that he made clear to McElrea DCJ in 1992 that he felt a sense of grievance about what had occurred, was unhappy and wished to pursue it. But his specific introduction of matters arising out of the Judicial Review are questions which could and should have been part of the earlier proceedings.

[14] Mr McVeagh subsequently appealed against Robertson J's decision striking out his statement of claim. In so doing he sought to rely on s 27 of the New Zealand Bill of Rights Act which provides for the right to natural justice and the right to bring proceedings against the Crown. He also sought to rely on s 23A of the International Covenant on Civil and Political Rights. The Court of Appeal dismissed that application (CA90/00, 24 August 2000). I am advised that Mr McVeagh's subsequent application for leave and special leave to appeal to the Privy Council was refused by both the Court of Appeal and the Privy Council.

[15] In dealing with the issue of *res judicata* the Court of Appeal had this to say (at p 6):

> The substance of the causes of action numbered 1 to 4 in the "second amended statement of claim" is the same as the substance of the causes of action struck out by this Court in 1994. That decision was a final decision of a court of competent jurisdiction on those four issues. That leaves the fifth, additional cause of action raised only in

> the second amended statement of claim. That cause of action concerns the question whether the 1990 enquiry conducted by Ellis J involved a breach of natural justice. The 1990 inquiry was the subject of proceedings before Gallen J in 1992. The new claim does not raise precisely the same legal questions considered by Gallen J. However, the new cause of action is so closely connected to that earlier litigation that it could and should have been raised and considered at that stage or in the 1993 proceedings if it was to be the subject of proceedings at all. The fifth cause of action must on that basis also be considered to be res judicata.

[16] In *McVeagh v Attorney-General (on behalf of the Commissioner of Police)* (Unreported, High Court Auckland, CP22/01, 30 January 2001) Master Faire struck out Mr McVeagh's statement of claim. One of the issues which arose in that proceeding also similar to one of the issues which was raised in the present proceeding. I will return to that topic shortly.

[17] In *McVeagh v Attorney-General and Auckland High Court* [2001] 3 NZLR 566 Mr McVeagh sought damages under the Habeas Corpus Act 1640 because of the refusal of the Court in 1989 to hear his application for Habeas Corpus. O'Regan J struck out this proceeding on the ground that the Habeas Corpus Act only applied to the exercise of prerogative power but at all material times Mr McVeagh had been detained under statutory powers.

[18] Mr McVeagh appealed against this decision. That appeal was also unsuccessful. In *McVeagh v Attorney-General* [2002] 1 NZLR 808 the Court of Appeal upheld the view that the Habeas Corpus Act did not apply to statutory detention under the Mental Health Act. In dealing with new proposed causes of action which had a basis other than the Mental Health Act the Court stated that those causes of action (which are similar to some of those in this proceeding) were an abuse of process and that they should be struck out on that basis.

The present causes of action

[19] I now turn to consider the causes of action which are contained within the amended statement of claim which has been filed in this proceeding.

[20] Although they are difficult to discern from the amended statement of claim itself, an analysis of the document reveals that in essence Mr McVeagh seeks to maintain three causes of action. These can be described as follows:

[a] The ongoing refusal of the Crown to admit that Mr McVeagh was never mentally ill and that he was held as a secret political prisoner for eight years amounts to an ongoing defamation.

[b] The fact that a secret meeting was held by Crown ministers and the Police during June or July 1984 at which it was decided to arrange his committal at Lake Alice. He alleges that this amounts to a conspiracy by the Crown to unlawfully imprison the plaintiff and a conspiracy to cover up the plaintiff's false imprisonment by not arresting those people who recommended committal before he received a psychiatric examination. Mr McVeagh maintains also that those actions amount to breaches of ss 66(b),(c) and (d) of the Crimes Act 1961.

[c] Mr McVeagh alleges that he was defamed by the defendant when his name was placed on a list of 37 former psychiatric patients who had been released from compulsory treatment orders after the Mental Health Compulsory Treatment and Assessment Act 1992 came into force. He alleges that that defamatory statement was published to both the police and the magazine "North and South".

[21] I now turn to deal with each of those causes of action.

(a) Refusal of Crown to make admissions

[22] Mr McVeagh maintains that the Crown is guilty of ongoing defamation because it refuses to admit that he was never mentally ill and that he had been held as a secret political prisoner for eight years. The damages which he claims are general damages in the sum of $500,000 together with a claim for the sum of $10,000 for every day upon which the defendant "fails to admit it framed and

defamed the plaintiff'. Mr McVeagh maintains that, because the proceeding is based on the tort of defamation, it is completely different from the proceedings which he has brought seeking other forms of relief against the Crown.

[23] The defendant for her part asserts that this cause of action should be struck out on two grounds. I now deal with each of these:

(i) No cause of action pleaded

[24] Mr Beaglehole for the defendant points out that a "refusal" to admit anything is not a positive act. Rather, it is if anything an omission. He goes on to submit that a plaintiff in a defamation action must establish three elements. They are:

> [a] The fact that a defamatory statement has been made.
>
> [b] The fact that the statement related to the plaintiff, and
>
> [c] The statement has been published by the defendant. (See Todd, *The Law of Torts in New Zealand*, 3rd ed, 2001, para 16.2).

[25] The Attorney-General submits that in this case a failure or refusal to admit anything cannot amount to the making of a defamatory statement. In my view this submission is well founded. The essence of the law of defamation is that a plaintiff has made a statement about a defendant which is defamatory according to its natural or ordinary meaning. Only when a statement has been made can the tort of defamation become actionable. In the present case, and on the face of the pleading, the Crown has made no such statement. The essence of Mr McVeagh's complaint is that it has in fact refused to make a statement. In those circumstances I do not see how Mr McVeagh can establish the first element of the tort of defamation which is that a defamatory statement has been made. I consider that the first cause of action cannot survive this fatal flaw.

(ii) Res judicata

[26] The defendant contends also that the first cause of action has either been decided as a result of earlier decisions of this Court or the Court of Appeal or, alternatively, that it is so closely related to issues which have been decided by those Courts that it is itself *res judicata.*

[27] It is well established that a point or issue becomes *res judicata* when it has been decided by a Court so as to conclusively settle the matter, and so as to prevent the same question from being raised again by the same parties or their representatives. In order to found an estoppel based on *res judicata* it is axiomatic that the parties and the subject matter of the two proceedings must be identical, and that there is also sufficient co-extensiveness of the standard of proof.

[28] The first and third elements in the present case are clearly met. The parties to this proceeding are the same as the parties to earlier proceedings. I am satisfied also that the standard of proof which applies in respect of this proceeding will also be the same as that which has applied in relation to earlier proceedings. The only issue therefore is whether the subject matter of this proceeding is itself *res judicata* or is sufficiently similar to matters which have already been decided to come within the wider sense in which the doctrine of *res judicata* has been held to apply.

[29] In *Fraser v Robertson* [1991] 3 NZLR 251 the Court of Appeal said (at p 60):

> ... it is settled that there is a wider sense in which the doctrine is available, covering issues so clearly part of the subject-matter of earlier litigation that they could and ought to have been raised therein.

[30] It is this principle which has been applied in earlier litigation involving Mr McVeagh so as to deny him the ability to relitigate matters which relate to his committal and detention between the years 1984 and 1993. Mr McVeagh argues that this proceeding is a new and different proceeding because it relates to the ongoing defamation by the Crown in refusing to admit its earlier wrongdoing.

[31] I find, however, that this distinction falls into the same category as that identified by Robertson J in the case which he dealt with involving Mr McVeagh

(*McVeagh v Attorney-General,* Unreported, M2110/M99, High Court, Auckland, 17 April 2000). In that case Robertson J said (at para 9):

> Having read again the decision of the Court of Appeal [*Attorney-General v McVeagh* [1995] 1 NZLR 558], and with respect to Mr McVeagh, I am of the view that his argument involves a difference without a distinction. It is impossible to read that decision without concluding that the Court of Appeal reached the view that this proceeding which Mr McVeagh wished to maintain against the Crown could not proceed.

[32] In the present case, however one views it, the first cause of action arises out of an allegation that Mr McVeagh was wrongly detained and that he was never mentally ill. That must require the Court to review once again the various decisions which were made between 1984 and 1993 regarding Mr McVeagh's mental health and the legal basis upon which he was detained during those years. I take the view that those matters have all been thoroughly canvassed in earlier decisions of this Court and the Court of Appeal. I consider that it would be wrong and an abuse of process to allow them to be reviewed once again in the context of this proceeding. I would therefore hold that, at least within the wider sense in which the *res judicata* doctrine is available, the issues which are raised in the first cause of action have either been decided by the earlier proceedings or they are so clearly part of the subject matter of earlier litigation that they could and ought to have been raised therein. For that reason also I consider that the first cause of action must be struck out.

(b) The secret meeting

[33] The second cause of action involves an allegation by Mr McVeagh that in June or July 1994 a meeting occurred at which members of the police and ministerial representatives were in attendance. He asserts that those present at the meeting decided to detain him unlawfully and that the meeting therefore amounted to a conspiracy to unlawfully imprison him in breach of a number of provisions of the Crimes Act 1961.

[34] I am satisfied that this matter has also been fully aired in earlier proceedings. Mr McVeagh evidently raised the issue orally in the application which was heard by

O'Regan J in 2001. In his points of appeal to the Court of Appeal he also made specific reference to the meeting. The Court of Appeal had this to say when referring to the statement of claim in that proceeding so far as it related to the alleged meeting:

> *The proposed new causes of action*
>
> [34] That leaves the relief sought on bases other than the claimed breaches of the 1640 Act included in the draft amended statement of claim. That proposed extension must be seen as an abuse of process and is rejected on that basis. The earlier proceedings, up to the judgment of this Court in August 2000, have already addressed those matters at length and with no success so far as the appellant is concerned.

[35] The Court of Appeal was therefore not prepared to countenance the claim which was put forward by Mr McVeagh in virtually identical terms to the manner in which it is framed in the present amended statement of claim.

[36] A similar pleading was contained in the statement of claim which was the subject of the hearing before Master Faire. In that case Master Faire had this to say:

> I leave to one side, for the present time, the pleading in paragraph 46. Pleadings which allege secret meetings for purposes designed to have the plaintiff committed, threatening behaviour and the conduct alleged in paragraph 43 do not, by themselves, provide the elements of any cause of action which the law recognises.

[37] Viewing the matter in the round I take the view that this pleading does not disclose a cause of action and that in any event it has been raised squarely before this Court and the Court of Appeal in other proceedings which were broadly dealing with the same purpose. I consider that it would be an abuse of process for the Court to allow any further cause of action to continue based on allegations such as those contained in paragraph 14 of the amended statement of claim. I am therefore of the view that this cause of action should also be struck out on the basis that it is either *res judicata* (having been considered in earlier proceedings in this Court and the Court of Appeal) or is vexatious and an abuse of the Court's process.

(iii) Publication of the "List of 37"

[38] The third cause of action alleges that the Crown has published to news media and the police Mr McVeagh's inclusion in the so-called "List of 37". This allegation has, to the best of my knowledge, not been specifically raised before in other proceedings. It has its genesis in the fact that in or about 1994 a list was compiled of certain persons who had been released from compulsory treatment orders after the Mental Health Compulsory Treatment and Assessment Act 1992 came into force. There was at that time a great deal of media interest in the fact that those patients had been released. Indeed Mr McVeagh has, in his answer to the defendant's request for particulars, annexed a number of newspaper articles from 1994 dealing with this subject. There was also a substantial article dealing with this topic in the June 1994 issue of "North and South" magazine. A copy of that article has also been placed before the Court. Mr McVeagh complains that his name was placed on the list and that the list was published to other persons including the New Zealand Police and the "North and South" magazine.

[39] When asked by the defendant to provide particulars of the defamatory statement complained of, he responded:

> The assertion that I am a cruel, amoral, selfish psychopath who by character is likely to commit a violent crime. And that I have been released via a legal loophole.

[40] When he was asked in relation to this cause of action how the defendant is alleged to have allowed the news media and police to know that his name was on the list, he replied:

> By someone in the Health Department informing the Assistant Police Commissioner and/or North and South magazine (refer Police computer printout 2 March 1994).

[41] He confirmed that the publication of the alleged defamatory statements had been made via the North and South article in June 1994 and that it had been made to the general public (all of New Zealand).

[42] In those circumstances I need to consider Mr McVeagh's assertion that this cause of action is completely separate to and different from any cause of action which he has maintained in the past. I also need to consider the grounds upon which the Attorney-General now alleges that this cause of action should be struck out. I bear in mind also that in this proceeding Mr McVeagh is not pursuing the "North and South" magazine for the comments contained in the article. He is suing the Attorney-General for the publication of the list, which included his name, to the police and to "North and South".

[43] Mr McVeagh does not claim that the mere inclusion of his name on the list by the Minister of Health was defamatory. This is understandable given that the tort of defamation requires the defamatory statement to be published to a third party. His complaint, as elucidated by the particulars, relates to the publishing of the fact that his name was on the list to the Police and to the North and South magazine.

(a) The "North and South" article

[44] So far as the latter is concerned the defendant contends that the essential elements of this part of the cause of action must have been known to the defendant, or they could have been discovered by him with due diligence, as soon as the "North and South" article had been published. Given that that occurred in June 1994, the defendant argues that the filing of the claim containing this cause of action in July 2002 means that this part of the cause of action is statute barred by virtue of the provisions of the Limitation Act 1950.

[45] I consider that, so far as it relates to the North and South article, this submission must be correct. Mr McVeagh says that he did not see the article in June 1994 because of the circumstances which then prevailed. The fact remains that the article was in public circulation and available to be discovered in June 1994. The article was in fact available to a very wide public audience. In those circumstances I consider that the elements which gave rise to any cause of action so far as the North and South article is concerned were available to be discovered with due diligence in June 1994, and that proceedings ought to have been issued in respect of that article no later than June 2000. For that reason I consider that this

aspect of the third cause of action is statute-barred by virtue of s 4 of the Limitation Act 1950 and cannot continue.

(b) Publication to the New Zealand Police

[46] The position is a little different so far as the alleged publication to the police is concerned. Mr McVeagh has only ascertained the fact that the police were aware of his inclusion on the list by virtue of documents which have recently been provided to him. That fact would of course not have been in the public domain in the same way as the material contained in the North and South article. To that extent, therefore, I am satisfied that the cause of action so far as it relates to the alleged publication to the police could not arise until such time as Mr McVeagh received the documents from the police. So far as these allegations are concerned the claim would therefore not be statute-barred.

[47] Mr Beaglehole argues that Mr McVeagh will not be able to establish the basic elements of the tort of defamation against the police because of the limited nature of the information which was published to the police. In order to establish this cause of action Mr McVeagh relies on a computer printout, a copy of which was provided to him by the police in the course of discovery. This printout reveals that in March 1994 the police received the following information:

> 1 MAR 94: *** MCVEAGH/JOHN ***** ALERT *****
>
> ENQUIRY FROM THE HEALTH DEPARTMENT THROUGH THE ASSISTANT COMMISSIONER MR [deleted]
>
> D/S/ /[deleted] HAS ADVISED AK CIS [deleted] THAT MCVEAGH IS LISTED AS ONE OF THE 37 NOTED MDP'S RELEASED INTO THE COMMUNITY.
>
> AS AT 18 MAR 94 THE LIST OF 37'S EXISTANCE HAS BEEN DENIED BY THE HEALTH DEPT. (D/S/S QUINN)

[48] Mr Beaglehole says that if the text of this message is compared to the defamatory meanings alleged by Mr McVeagh, the publication by the Ministry of Health to the police of the information contained in the printout could never amount to the publication of a defamatory statement on any view of the facts or the law. It

is worth repeating that, as I have already indicated, the particulars which have been provided by Mr McVeagh particularise the defamatory meaning of the alleged publication as follows:

> The assertion that I am a cruel, amoral, selfish psychopath who by character is likely to commit a violent crime and that I have been released via a legal loophole.

[49] In my view the information contained on the computer printout could never convey the defamatory meaning alleged by Mr McVeagh. The computer printout is no more than brief advice that Mr McVeagh was listed as one of the "37 noted MDPs ["mentally disordered persons"] released into the community. The message goes on to note that the existence of the list had been denied by the Health Department. The computer printout contains nothing which could possibly give rise to the defamatory meanings particularised by Mr McVeagh. On that basis his claim against the Attorney-General based on this cause of action is doomed to fail also. Normally, of course, the Court would only reach such a finding after hearing the evidence, but in this case I am mindful of the fact that the Court has the benefit of both the particulars provided by Mr McVeagh and also the prime document on which he relies, namely the police computer printout.

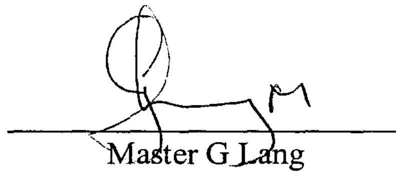
[50] I therefore conclude that Mr McVeagh has no chance of establishing the third cause of action so far as it relates to the alleged publication of defamatory material to the police either. To the extent therefore that the amended statement of claim does introduce a cause of action which has not been the subject of earlier litigation, I uphold Mr McVeagh's submission that it is a new cause of action, but I find that it is one that could never succeed and that it ought to be struck out at this point.

Conclusion

[51] For the reasons set out above, I am of the view that Mr McVeagh should not be permitted to continue with this proceeding against the Attorney-General either. For the reasons given above each of the causes of action is struck out.

Costs

[52] At this stage Mr Beaglehole does not have instructions to seek costs in respect of today's hearing or the present application generally. If he wishes to seek costs he may file a memorandum within 14 days of today's date. Mr McVeagh is to file any memorandum in response within 14 days thereafter and I will then deliver a decision on the papers.



Master G Lang