

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

**CIV 2014-404-001950
[2014] NZHC 2821**

BETWEEN RAZDAN RAFIQ
 Plaintiff

AND THE COMMISSIONER OF THE NEW
 ZEALAND POLICE
 Defendant

Hearing: 12 November 2014

Appearances: R Rafiq in person
 A Longdill and O Klaassen for the Defendant

Judgment: 13 November 2014

JUDGMENT OF GILBERT J

*This judgment is delivered by me on 13 November 2014 at 3 pm
pursuant to r 11.5 of the High Court Rules.*

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Registrar / Deputy Registrar

Introduction

[1] The Commissioner applies to strike out Mr Rafiq's claims on the grounds that they are frivolous or vexatious or otherwise an abuse of the process of the Court. In the alternative, the Commissioner seeks an order for security for costs.

Background

[2] Mr Rafiq has declared himself to be a vexatious litigant as will be apparent from various statements he has made over the past 12 months. I set out some of these below.

[3] Mr Rafiq sent an email to Meredith Connell on 25 November 2013 in the following terms:¹

At the outset of next year, I am going to flood judicial review proceedings in all the High Court of New Zealand against the Court of Appeal, Supreme Court, Judicial Conduct Commissioner, Attorney-General, Justice Minister, Minister for Courts, each and every Judge in the High Court, Court of Appeal and Supreme Court...

[4] In an email sent on 20 May 2014, Mr Rafiq stated:²

It is not my fault that I cannot control filing litigations. It has become my disease. The Ministry of Justice should get the blame. ... In this criminal proceeding process I was given a disease of litigation. Since then I could not stop myself from filing litigations ...

Without litigations I cannot survive. Since Ministry of Justice gave me this litigation disease everyone will face litigation who shall stand in my life.

[5] Mr Rafiq made a similar statement in an application for leave to bring defamation proceedings out of time against the Secretary for the Department of Internal Affairs:³

Further the applicant shall file multiple litigations against the respondent. The litigations shall also encompass the Internal Affairs Minister and the Prime Minister and appeal shall follow right to the Supreme Court. The process shall be repeated multiple times until and unless justice is secured. Those who shall resist any proceedings and or stand in the path of the applicant shall face series of litigations.

¹ See *Rafiq v Meredith Connell* [2014] NZHC 1597 at [50].

² At [51].

³ See *Rafiq v The Secretary for the Department of Internal Affairs of New Zealand* [2014] NZHC 2064 at [25].

[6] Mr Rafiq has demonstrated that these were not hollow threats. In 2013, he filed proceedings against the Commissioner of Police, the Auckland District Court, the Department of Labour and two separate proceedings against the Chief Executive of the Ministry of Business, Innovation and Employment. In the first nine months of this year Mr Rafiq filed no fewer than 19 further civil proceedings in the Auckland registry of this Court alone, including four separate proceedings against the Commissioner of Police, two against the Privacy Commissioner, two against the Secretary for the Department of Internal Affairs, four against Meredith Connell, one against the Director of the Civil Aviation Authority of New Zealand and one against the Chief Executive of the Ministry of Social Development.⁴ Mr Rafiq attempted to file numerous other proceedings against some of these parties but leave to do so was declined.⁵

[7] The Solicitor General has now filed an application to have Mr Rafiq declared a vexatious litigant. This application is yet to be dealt with.

The present proceeding

[8] Mr Rafiq commenced the present proceeding on 5 August 2014. His first cause of action related to a request he made to the police in June 2014 seeking disclosure of various information. This request was declined in reliance on s 27(1)(c) of the Privacy Act 1993. Mr Rafiq was notified of this decision in July 2014 and advised that if he was not satisfied with the response, he had the right to request the Privacy Commissioner to carry out a review. Mr Rafiq has not availed himself of this avenue of redress. Instead, he seeks an order from this Court directing the Commissioner to provide complete disclosure of all the information he has requested.

[9] Mr Rafiq's second cause of action related to the way he was dealt with following his arrest on 28 June 2014 pursuant to a warrant issued by the District Court in respect of unpaid fines. Mr Rafiq sought a declaration that his rights had been breached and exemplary damages in the sum of \$20,000.

⁴ See *Re Rafiq* [2014] NZHC 2291 at [2].

⁵ At [4] to [7].

[10] On 8 September 2014, Mr Rafiq filed an amended statement of claim adding two further causes of action. The first of these was a claim in defamation for which he sought compensatory damages of \$50 million, aggravated damages of \$30 million and exemplary damages of \$20 million, a total of \$100 million. The allegedly defamatory statements were:

- (a) statements in a summary of facts prepared for the Auckland District Court relating to a charge of criminal harassment against Mr Rafiq;
- (b) a statement allegedly made by a police sergeant stationed at the High Court to a lawyer waiting outside a courtroom that Mr Rafiq “is a painful plaintiff”; and
- (c) a statement allegedly made by the same police sergeant to Mr Rafiq in the presence of lawyers outside a courtroom, “you are here again, don’t you have better things to do?”

[11] The second cause of action that Mr Rafiq added at this stage concerned an alleged failure by the Independent Police Conduct Authority to investigate an assault complaint Mr Rafiq made in December 2013. Mr Rafiq complained that the Commissioner directed the Authority not to investigate the complaint. He sought exemplary damages in the sum of \$6 million in relation to this.

[12] A second amended statement of claim followed on 3 October 2014 and then a third statement of claim on 7 October 2014. This, current, pleading is in three parts. Part A is a claim in defamation and is confined to the two statements allegedly made by the police sergeant at the Court. Although compensatory, aggravated and exemplary damages are still sought, Mr Rafiq has not specified the amounts claimed. However, at the hearing he advised that he would be seeking \$20 trillion in damages in relation to these allegedly defamatory statements.

[13] Part B of the third amended statement of claim concerns alleged breaches of Mr Rafiq’s rights under the New Zealand Bill of Rights Act 1990 as follows:

- (a) searching his mobile phone while he was in custody at the Manukau Police Station on 17 April 2012;
- (b) detaining him in custody for "almost more than half a day" on 17 April 2012 in a cell that had no provision for water. He claims that during this time he was not provided with food and was not allowed to speak to a lawyer;
- (c) warning him, on or about 20 December 2013, not to send further emails to Meredith Connell and that he could be prosecuted if he did;
- (d) requesting the Independent Police Conduct Authority not to investigate the assault complaint he made on 23 December 2013;
- (e) unreasonably refusing to grant him police bail on 29 June 2014 after he was arrested on a warrant issued by the District Court in relation to unpaid Court fines and detaining him in a cold cell:
 - (i) with a "thin, dirty, slightly torn blanket that appeared to come from the road side or flea market [sic]"
 - (ii) with a water tap "pointing downwards" that he said made drinking impossible. He claims that he was without water for two days while he was detained;
 - (iii) that was unhygienic, "smelled like rubbish bin from road side" and "the floor appears not to have been washed for ages";
 - (iv) that had inadequate ventilation;
 - (v) with a toilet that was dirty and full of rubbish; and
 - (vi) without providing breakfast or lunch.

- (f) providing him with a list of lawyers when requested at 12.43 am and directing him to use an “intercom” that was “rusted and had a low voice output”;⁶
- (g) transporting him to Court on 30 June 2014 in a vehicle that was dirty and lacked oxygen.

[14] Mr Rafiq seeks unspecified exemplary damages for these alleged breaches of his rights.

[15] Part C of the third amended statement of claim relates to Mr Rafiq’s request for information in June 2014 as follows:

- (a) the different number of aliases entered in the system;
- (b) the emails from Meredith Connell “for criminal assessment liabilities” on 13 December 2013;
- (c) the details of the warnings entered under his name; and
- (d) all information stored in the Police database concerning him.

[16] The relief sought by Mr Rafiq in relation to this “cause of action”, which is not identified, is “complete disclosure” of all this information.

Should the proceedings be struck out as an abuse of process?

[17] It is clear from statements Mr Rafiq has repeatedly made that his purpose in issuing numerous proceedings against various Government agencies and others is to harass those defendants, not for the genuine purpose of vindicating his legal rights.

[18] Mr Rafiq’s improper purpose of vexing and harassing his defendants through litigation is confirmed by the amounts he has claimed. Originally, he claimed

⁶ Mr Rafiq also complains that it took him more than five minutes to make contact with a lawyer. This might be explained by the fact that he made the call just after midnight. In any event, the police cannot be responsible for this.

\$100 million in relation to his defamation claim. He now advises that he intends to increase this to \$20 trillion. This is outrageous, as is Mr Rafiq's claim for exemplary damages of \$6 million in relation to the alleged interference with his complaint to the Independent Police Complaints Authority.

[19] The abusive nature of Mr Rafiq's claims is underscored by their evident lack of merit. The first allegedly defamatory statement, which is denied, is said to have been made in May 2014. Mr Rafiq raised no concern about this statement at the time. He did not even mention it in his original statement of claim filed in August 2014. It was not until he filed his amended statement of claim in September 2014 that any complaint was made. The second allegedly defamatory statement appears to be more in the nature of a greeting. It is not immediately obvious how it could be regarded as defamatory. It is hard to see how anything more than nominal damages could be awarded in relation to the defamation claim, even if it could succeed. The extraordinary sums claimed demonstrate Mr Rafiq's lack of good faith in bringing the claim.

[20] The present proceeding is also an abuse of the process of the Court to the extent that it is based on the same events that are the subject of other proceedings commenced by Mr Rafiq in this Court. These other proceedings have either been stayed or struck out and it is not open to Mr Rafiq to defeat the effect of those orders by initiating this further proceeding.

[21] Mr Rafiq's complaint in the present proceeding concerning his treatment at the Manukau Police Station following his arrest on 17 April 2012 was raised in proceedings he issued in this Court under CIV-2013-404-2407. That proceeding was struck out by Venning J on 28 November 2013.⁷ Mr Rafiq's attempt to re-litigate this claim, that his rights assured under the New Zealand Bill of Rights Act were infringed by the police at that time, is an abuse of the process of the Court.

[22] Mr Rafiq's claim relating to the events on 20 December 2013 is a repetition of a claim he made in proceedings commenced in this Court under CIV-2014-404-

⁷ *Rafiq v Chief Executive of the Ministry of Business Innovation and Employment* [2013] NZHC 3138.

1385. These proceedings were struck out on 1 August 2014 in terms of an “unless” order made by the Court on 29 July 2014. On 5 August 2014, Venning J confirmed that the proceedings were struck out and he directed that the registry was not to accept any further documents from Mr Rafiq relating to the claims raised in those proceedings. In blatant defiance of Venning J’s order, Mr Rafiq re-introduced the same complaint about these matters in his second amended statement of claim on 3 October 2014. These complaints remain in the third amended statement of claim.

[23] Mr Rafiq’s assertion that the police attempted to persuade the Independent Police Conduct Authority not to investigate his assault complaint is inherently implausible. Mr Rafiq has provided no particulars or evidence to substantiate this allegation of serious misconduct by the police. The evidence indicates that there was no interference. The Independent Police Conduct Authority did carry out an independent review and was satisfied that there was no evidence of misconduct or neglect of duty by the police in relation to the matter. Mr Rafiq was advised of this in January 2014.

[24] Mr Rafiq’s complaint in the present proceeding that he was not given police bail when he was arrested in June 2014 on a fines warrant is without foundation. The police did not have jurisdiction to grant such bail given that the warrant had been issued by the District Court.

[25] Documentary and photographic evidence produced by the police show that Mr Rafiq’s other complaints concerning his detention at this time are wrong. For example, the intercom described by Mr Rafiq as “rusty” is made of stainless steel and has no rust. Although Mr Rafiq is correct that the tap in the cell points downwards, this is not unusual. This does not mean that water cannot be obtained from the tap for drinking and other purposes. Three meals per day are provided to all prisoners held in the police cells. Contrary to Mr Rafiq’s claim, the police custody sheet records that he was provided with breakfast at 7.27 am on Sunday 30 June 2014. The van in which Mr Rafiq was transported to Court is a standard police van.

[26] I am satisfied that there is no underlying merit in any of these claims. Mr Rafiq has no realistic prospect of obtaining the relief he seeks which is an award of exemplary damages arising out of these matters. This provides further confirmation that the proceedings have nothing to do with genuinely vindicating Mr Rafiq's rights and are merely intended to harass the defendants and cause them unnecessary trouble and expense.

[27] That leaves the Privacy Act claim. If Mr Rafiq is not satisfied with the response to his request for information, the appropriate remedy is to refer the matter to the Privacy Commissioner. The fact that he has chosen to bring the present proceeding rather than take that simple step is further evidence that the proceeding is part of his signalled campaign of harassment. In any event, the basis of this claim is not clear. Mr Rafiq has not identified any basis on which he could be entitled to the relief he seeks.

[28] I conclude that Mr Rafiq is not genuinely seeking to vindicate his legal rights and has issued this proceeding as part of his stated intention to "flood" this Court with multiple claims against various Government agencies, including the Commissioner. Litigation commenced for such an improper and collateral purpose is an abuse of the process of the Court. The Court has a duty to strike out such claims to prevent this abuse for reasons explained by Richardson J in *Reid v New Zealand Trotting Conference*:⁸

Misuse of the judicial process tends to produce unfairness and to undermine confidence in the administration of justice. In a number of cases in recent years this Court has had occasion to consider the inherent jurisdiction of the High Court, and on appeal this Court, to take such steps as are considered necessary in a particular case to protect the processes of the Court from abuse. In exercising that jurisdiction the Court is protecting its ability to function as a Court of law in the future as in the case before it. The public interest in the due administration of justice necessarily extends to ensuring that the Courts' processes are fairly used and that they do not lend themselves to oppression and injustice. The justification for the extreme step of staying a prosecution or striking out a statement of claim is that the Court is obliged to do so in order to prevent the abuse of its processes.

[29] While the Court will always hesitate before striking out a claim and will only do so in clear cases, I consider that this is such a case. The Court cannot allow its

⁸ *Reid v New Zealand Trotting Conference* [1984] 1 NZLR 8 (CA) at 9. Citations omitted.

processes to be used in this way as an instrument of oppression and injustice. The Court's scarce resources must be preserved for dealing with genuine claims. Otherwise, public confidence in the administration of justice will be undermined.

Result

[30] The proceeding is struck out in its entirety.

[31] The plaintiff is to pay the defendant's costs in relation to the proceeding on a 2B basis.

M A Gilbert J