

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

**I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE**

**CIV-2014-092-1026  
[2018] NZHC 1401**

BETWEEN

MELISSA JEAN OPAI  
Plaintiff

AND

THE ATTORNEY-GENERAL OF NEW  
ZEALAND  
Defendant

Hearing: On the papers

Appearances: N W Woods for Plaintiff  
M F McClelland QC and A Todd for Defendant

Judgment: 13 June 2018

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**JUDGMENT OF LANG J  
[dealing with objections to passages contained  
in the plaintiff's brief of evidence]**

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*This judgment was delivered by me on 13 June 2018 at 3.30 pm,  
pursuant to Rule 11.5 of the High Court Rules.*

*Registrar/Deputy Registrar*

*Date.....*

[1] This morning I was scheduled to hear argument regarding objections raised by counsel for the defendant to matters contained in the plaintiff's brief of evidence. Counsel have now conferred and have helpfully reached agreement regarding most of the issues in dispute.

[2] The only remaining issue relates to the admissibility of paragraphs 278 to 307 of the brief of evidence. Both counsel have filed written submissions in relation to that issue and have agreed that I should determine the objections on the papers.

### **The plaintiff's claim**

[3] The plaintiff sues the Attorney-General on behalf of the New Zealand Police in defamation. She alleges that other police officers made defamatory statements about her on five separate occasions. They are as follows:

- (a) Statements made by Senior Sergeant Culpan in the plaintiff's performance appraisal for the period 1 July 2012 to 30 June 2013.
- (b) Statements made by Senior Sergeant Culpan in a briefing paper prepared on or about 1 November 2013.
- (c) Statements made by Senior Sergeant Culpan in a "258 Report Form" prepared on or about 5 November 2013.
- (d) Oral statements made by Inspector Ann Wilkie and Senior Sergeant Culpan during Section Meetings held between 26 November 2013 and 20 December 2013.
- (e) Statements made by Senior Sergeant Culpan in a document headed "Diary Notes – Melissa Opai 2013 – 14 Performance Year" prepared between March and May 2014.

[4] The plaintiff alleges Senior Sergeant Culpan published the documentary statements to other named police officers between September 2013 and 2015.

## **Approach**

[5] I propose to determine the objections based solely on the basis of the relevance I consider the challenged statements have to the pleaded claims, defences and replies to defences. For reasons that will become obvious I do not consider it necessary to consider the remaining grounds relied on by counsel for the defendant.

[6] In this context I have difficulty understanding the relevance to the plaintiff's claim of the allegations made in a section of the amended statement of claim headed "Malevolent campaign to Vilify". The allegations relate to actions taken by Senior Sergeant Culpan but do not relate directly to the making and publication of the allegedly defamatory statements. For the most part they read as if they relate to an employment dispute rather than a claim in defamation. This is exemplified by the fact that the section concludes by stating "the complained about statements are singularly and cumulatively bullying".

[7] It will be a matter for the trial Judge to determine what relevance if any this section of the amended statement of claim has to the plaintiff's claim. For present purposes, however, I propose to put the allegations to one side.

## **Decision**

### *Paragraphs 278-282*

[8] These paragraphs relate to the preparation by Senior Sergeant Mullin of the plaintiff's performance appraisal for the 2014-2015 year. The plaintiff says she did not become aware of the existence of the appraisal until early September 2015, and contends she ought to have been consulted about the contents of the appraisal much earlier. She also complains that Senior Sergeant Mullin sent a copy of the document to another staff member in breach of police policy.

[9] I make two points about this evidence. First, it concerns events that occurred after the last of the allegedly defamatory statements made by Senior Sergeant Culpan and Inspector Wilkie. Secondly, the 2014-2015 performance appraisal was prepared by Senior Sergeant Mullin. He is not alleged to have made or published any of the

allegedly defamatory statements that are the subject of the plaintiff's claim. I therefore fail to see how any issues arising out of the preparation and dissemination of the 2014-2015 performance appraisal can be relevant to either the plaintiff's claim or any of the pleaded defences and replies.

[10] I therefore uphold the defendant's objection to these paragraphs.

*Paragraphs 283-285*

[11] These paragraphs relate to a personal grievance, or integrity report, the plaintiff raised against Senior Sergeant Mullin as a result of his conduct in preparing and disseminating the 2014-2015 performance appraisal. It is irrelevant to the issues raised by the pleadings for the same reasons as the evidence about the performance appraisal is irrelevant.

*Paragraphs 286-288*

[12] These paragraphs also relate to the 2014-2015 performance appraisal and are irrelevant for the reasons already given.

*Paragraphs 289-290*

[13] In these paragraphs the plaintiff complains about the fact that in September 2015 Senior Sergeant Mullin disseminated confidential information about the plaintiff to a person working in the Human Resources section of the New Zealand Police. It has no relevance to the pleaded claims, defences or replies.

*Paragraphs 291-292*

[14] These paragraphs relate to comments Senior Sergeant Mullin is said to have made to the plaintiff between August 2014 and January 2015. The plaintiff also alleges both Senior Sergeant Mullin and Senior Sergeant Culpan "were operating behind the scenes to ensure that, one way or the other, [the plaintiff] would be 'performance managed and exited'".

[15] Both paragraphs are irrelevant to the issues raised in the pleadings.

*Paragraph 293*

[16] This paragraph relates to an integrity report the plaintiff raised against Assistant Commissioner Alan Boreham on 28 November 2013. The plaintiff alleges the Assistant Commissioner's personal assistant wrongly disclosed the report to four other people whilst she was ignored. The paragraph has no relevance to any of the plaintiff's pleaded claims.

*Paragraph 294*

[17] This paragraph relates to an integrity report the plaintiff raised against Deputy Commissioner Viv Rickard on 16 March 2014. The plaintiff alleges she receives no direct response to the report and her claims were ignored.

[18] The evidence contained in this paragraph is irrelevant to the plaintiff's pleaded claims.

*Paragraphs 295-296*

[19] These paragraphs relate to the plaintiff being approached by a work colleague in July 2014. This person warned her to "watch her back" because Inspector Alison Brand had made threats against her and / or was "gunning for her". The plaintiff says Inspector Brand had no genuine or justifiable reason to treat her in this way, and claims it is a continuation of the campaign Senior Sergeant Culpan had begun against her a year earlier.

[20] The plaintiff does not allege Inspector Brand made or published any of the allegedly defamatory comments that form the basis of this proceeding. The paragraphs therefore have no relevance to the issues raised by the pleadings.

*Paragraphs 297-299*

[21] These paragraphs relate to concerns raised by the plaintiff when Inspector Brand was moved into her direct reporting line in March 2017. She alleges the police administration failed to take her concerns seriously, and that she has been seriously disadvantaged in her career by Inspector Brand's actions.

[22] These allegations relate to events that occurred well after the allegedly defamatory statements made by Senior Sergeant Culpan and Inspector Wilkie. They have no relevance to those statements in any event given that they relate to the actions of Inspector Brand.

*Paragraph 300*

[23] This paragraph contains an allegation that the police administration failed to deal with concerns raised by the plaintiff in accordance with its “Speak up” policy and disciplinary process. She says this “further evidences that the Defendant has acted in flagrant disregard of [her] rights and identifies that the Defendant’s attitude towards allowing justice to take its course ought to be severely questioned given its repeated and unjustified acts of misconduct and/or negligence”. These statements may have some relevance if this was an employment dispute but they are self-evidently irrelevant to the issues raised by the pleadings.

*Paragraphs 301-303*

[24] In these paragraphs the plaintiff describes another colleague, Senior Sergeant Phillips, being “standoffish” with her in April 2017. When she confronted him about his attitude, Senior Sergeant Phillips advised her that another senior officer had told him Inspector Brand had issued a directive that he was not to talk to the plaintiff. The plaintiff expresses disbelief that Inspector Brand would “continue the orchestrated and malevolent campaign” against her, and that Inspector Brand’s actions were in breach of police policy.

[25] Again, these allegations may have some relevance in an employment dispute but they have no relevance to the issues raised in this proceeding.

*Paragraphs 304-307*

[26] In paragraphs 304 and 305 the plaintiff describes how Inspector Brand and Senior Sergeant Culpan were appointed to act in her direct reporting line after Inspector Shearer resigned from the police on 15 May 2017. She says this occurred

notwithstanding the fact that she had already issued court proceedings calling into question the actions of those officers.

[27] The plaintiff also alleges the police administration has “neglected, refused or failed to provide [her] with a safe working environment, free from bullying and harassment”, and that the appointment of Senior Sergeant Culpan is “a further clear example that poor behaviours are being rewarded”.

[28] The final two paragraphs describe a restructuring exercise the plaintiff says Inspector Brand and Senior Sergeant Culpan were “driving” between April and July 2017. She says the defendant has neglected, refused or failed to address concerns she has raised about this process. She also says the police have neglected, refused or failed to manage actual or perceived conflicts of interest, thereby “setting [her] up to suffer further reprisal conduct at the hands of those very members [she is] challenging”.

[29] For reasons that will now be obvious all of these paragraphs have no relevance to the issues raised by the pleadings.

### **Result**

[30] I direct that paragraphs 278-307 are to be removed from the plaintiff’s brief of evidence because they have no relevance to the issues the Court will be required to determine.

### **Costs**

[31] If counsel cannot reach agreement regarding costs they have leave to file and serve concise memoranda dealing with that issue and I will determine it on the papers.

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Lang J

Solicitors:  
Crown Law, Wellington  
M McClelland QC, Wellington