

Reference No. HRRT 014/2016

UNDER THE PRIVACY ACT 1993

BETWEEN JAMES LEONARD WILLIAMS

PLAINTIFF

AND NEW ZEALAND POLICE

DEFENDANT

AT WELLINGTON

BEFORE:

Mr RPG Haines QC, Chairperson

Ms DL Hart, Member

Mr RK Musuku, Member

REPRESENTATION:

Mr D Stringer for plaintiff by AVL from Christchurch Mens Prison (together with Mr JL Williams)

Ms C Scott for defendant

DATE OF HEARING: 28 September 2017

DATE OF DECISION: 28 September 2017

**ORAL DECISION OF TRIBUNAL DISMISSING STRIKE-OUT APPLICATION
AND GIVING FURTHER TIMETABLE DIRECTIONS¹**

DECISION ON STRIKE-OUT APPLICATION

[1] This is the decision of the Tribunal on the application by the Police to have these proceedings struck out.

[2] At a telephone conference convened by the Chairperson on 28 April 2017 directions were given that required the parties to give informal discovery by 19 May 2017 and Mr Williams was required to file his evidence by 23 June 2017.

¹ [This decision is to be cited as *Williams v Police (Strike-Out Application)* [2017] NZHRRT 37.]

[3] By application dated 14 September 2017 the Police seek the striking out of Mr Williams' proceedings on the grounds that Mr Williams has not complied with these two key timetable directions. He has not given informal discovery and has not filed any evidence.

[4] By notice of opposition and submissions dated 18 September 2017 Mr Stringer has taken full responsibility for the delays. It is not necessary that the detail of that explanation be repeated here. The notice of opposition by Mr Stringer also contended that Mr Williams does indeed have an arguable case on the facts.

[5] The two main issues on this application are the explanation for the delay and the prejudice to the Police. Dealing first with the issue of delay account must be taken of the fact that Mr Williams is a prisoner and must necessarily rely on his counsel to prepare the case for him. In the circumstances outlined by Mr Stringer in his memorandum we are of the view that it would be unfair if not unreasonable to require Mr Williams to bear responsibility for the matters and events that are described by Mr Stringer.

[6] As to prejudice it is correct that the events in question occurred in mid-2009 some eight years ago and on any view it is unsatisfactory that the parties be required to address matters of such antiquity. However, such prejudice as has happened to the Police and their witnesses has already occurred and we do not see how the Police position is made any worse by granting Mr Williams a further delay to allow him to get his case into order.

[7] For these reasons briefly stated we dismiss the strike out application. In doing so we must reiterate that owing to the Tribunal's current workload it will not be possible for Mr Williams' case to be heard until at the earliest late-2018 and more likely some time in 2019. When this issue was raised with Mr Stringer and Mr Williams earlier today we were told that this would not be a problem as far as Mr Williams is concerned.

MINUTE GIVING TIMETABLE DIRECTIONS

[8] The application to strike out having been dismissed it is now necessary for a further timetable to be constructed. The timetable which the Tribunal now suggests effectively gives Mr Williams and the Police another twelve months within which to prepare their cases. On any view this is a timetable which is generous and Mr Williams is therefore on notice that if it is not complied with in any respect he can anticipate that the Police will immediately file a second strike out application and in view of the indulgence that he has received today by having the current strike out application dismissed, he must understand that the chances of him surviving a second strike out application based on non-compliance with the timetable could only be described as slim.

[9] As I go through the timetable I ask Mr Stringer and Ms Scott to intervene if for any reason they are of the view the timetable is not capable of achievement or that there is some other reason why a different date should be chosen. Mr Stringer and Ms Scott, if you have with you at the present time the *Minute* issued on 28 April 2017 the timetable directions are found at paragraph 17 of that document. Effectively what I am now going to do is to reset the dates in that timetable. Starting with paragraph [17.2] the Police having already given informal discovery to Mr Williams, it remains for Mr Williams to give informal discovery to the Police. This is to be done by 5pm on Friday 27 October 2017. Mr Stringer do you or Mr Williams have any difficulty with that date?

[10] Ms Scott: [intervenes to advise she will be absent from New Zealand at this time.] First day back in the office 29 November 2017.

[11] Chairperson: What are the dates of your absence Ms Scott? What is the last day in the office and the first day back in the office? Last day is 12 October 2017. I will address that shortly but at the moment all that I have directed is that Mr Williams give discovery. The Police have already given discovery so the date of 27 October doesn't affect you. I will go through the timetable and once you have seen it counsel can come back and ask for variations to be made.

[12] Chairperson: So perhaps if I just run through the timetable that we propose. Discovery by Mr Williams to be given by 27 October 2017. The written statements of the evidence to be called at the hearing by Mr Williams are to be filed and served by 5pm on Friday 23 February 2018. Written statements of the evidence to be called at the hearing by the Police are to be filed and served by 5pm on Friday 27 April 2018. Should Mr Williams wish to file any statements of evidence in reply such statements are to be filed and served by 5pm on Friday 29 June 2018. In consultation with the Police, Mr Williams (meaning you, Mr Stringer) is to prepare the common bundle of documents and that bundle is to be filed and served by 5pm on Friday 27 July 2018. The date of hearing and the venue are to be advised by the Secretary. Leave is reserved to both parties to make further application should the need arise and should the timetable require adjustment for any reason the Tribunal leaves this to the Chairperson to do on his own rather than having to have all three members of the Panel reconvene.

[13] Chairperson: Mr Stringer do you want me to repeat the timetable or do you think you have an accurate note? You will be getting a *Minute* but for the purposes of today's discussion before we set these dates in concrete do you want to quickly run through the dates?

Mr Williams: I have those dates 27 October for informal disclosure to Police. Written statements by my client on 23 February 2018. Witness statements by the Police 27 April 2018. Next date 29 June 2018, documents 27 July 2018. Venue and date of hearing to be advised.

[14] Chairperson: Ms Scott thank you for telling us of your absence and we do understand that timetables need to take into account the needs of other parties. On the timetable that you can now see do you need any adjustment to take into account either your personal requirements or the operational needs of the Police?

Ms Scott: No.

Chairperson: No need to apologise, you weren't to know what was to come next.

[15] Chairperson: A further *Minute* will be issued recording the reasons for the dismissal of the present strike out application and further recording the new timetable directions. If I could reiterate possibly unnecessarily to you, Mr Williams and to you, Mr Stringer, the new timetable that has been set has to be complied with to the letter. Effectively another twelve months has been granted for Mr Williams to file his evidence which was originally due on 23 June 2017. You can rest assured that if the new timetable is not complied with Ms Scott will be at the door of the Tribunal with a fresh strike out application and it would be unlikely that that second application could be survived in the same way that you have survived today.

[16] Chairperson: So Mr Williams you need to keep in close touch with Mr Stringer and he with you to make sure that between the two of you, you ensure that this time around you take advantage of what is best described as a last chance. Do you understand Mr Williams?

Mr Williams: Yes.

[17] Chairperson: All right Mr Stringer do you have any questions or matters that you want to raise before we adjourn?

Mr Stringer: No questions.

Mr Williams: [raises the question of a possible transfer from Christchurch Mens Prison.]

Chairperson: That's a fair enough point Mr Williams. I will add to the directions that I am making now that you, Mr Williams, obviously through Mr Stringer, must notify the Tribunal and Ms Scott of any Parole Board hearing and its outcome and in addition you must notify the Tribunal and Ms Scott immediately you should be transferred out of Christchurch Men's Prison to some other custodial institution. Do you understand that?

Mr Williams: Yes.

Chairperson: Because if communication is lost with you, responsibility cannot be attributed either to the Tribunal or to Ms Scott. We have no way of knowing what happens to you in prison. You are the only person who can discharge the responsibility of telling us where we can communicate with you and what is happening in your personal life, in other words if you are still in custody, are you on parole and if so your contact address, where you are working, cell phone numbers, the whole lot. We need to be able to know how to reach you. Do you understand?

Mr Williams: Yes.

Chairperson: Ms Scott we do understand that the decision today may be a disappointment to the Police, however there is a provision in the Human Rights Act that I am sure you are aware of, section 105, which effectively says that the Tribunal has to bend over backwards to be fair to litigants. Mr Williams has for a large part of the time been self-represented and the difficulties that Mr Stringer has outlined in his memorandum are not matters that are within the control of Mr Williams so, its most unfortunate from everyone's point of view. Its not been a decision that has been easy for the Tribunal to reach as you would have noted from the time that its taken for us to come back with a decision and we fully expect that any further slippage in the timetable will be a matter that won't escape your attention.

Madam Registrar we will now adjourn. Mr Stringer, thank you for your attendance today and we do hope that with a renewed focus on the case that Mr Williams' preparation can move forward purposefully and diligently. Thank you, we are adjourned.

Directions

[18] The following directions are made:

[18.1] Discovery by Mr Williams is to be given on an informal basis in the first instance and completed by 5pm on Friday 27 October 2017.

[18.2] Written statements of the evidence to be called at the hearing by Mr Williams are to be filed and served by 5pm on Friday 23 February 2018. By the same date Mr Williams is to provide to the Police a list of documents he wishes to have included in the common bundle of documents.

[18.3] Written statements of the evidence to be called at the hearing by the Police are to be filed and served by 5pm on Friday 27 April 2018. By the same

date the Police are to provide Mr Williams with a list of documents the Police wish to have included in the common bundle of documents.

[18.4] Should Mr Williams wish to file any statements of evidence in reply, such statements are to be filed and served by 5pm on Friday 29 June 2018.

[18.5] In consultation with the Police, Mr Williams is to prepare the common bundle of documents and that bundle is to be filed and served by 5pm on Friday 27 July 2018.

[18.6] As it is possible Mr Williams' custodial status may change prior to the hearing, he is to give notice to the Tribunal and to Ms Scott of:

[18.6.1] Any Parole Board hearing (and of its outcome).

[18.6.2] Each and every transfer from or to a custodial institution.

[18.7] The venue at which the proceedings are to be heard and the dates on which it is to be heard are to be advised by the Secretary.

[18.8] In case it should prove necessary we leave it to the Chairperson of the Tribunal to vary the foregoing timetable.

[18.9] Leave is reserved to both parties to make further application should the need arise.

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Mr RPG Haines QC
Chairperson

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Ms DL Hart
Member

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Mr RK Musuku
Member