

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

**CIV-2017-404-001760
[2017] NZHC 1852**

UNDER the Judicature Act 1908

BETWEEN RAZDAN RAFIQ
Plaintiff

AND ATTORNEY-GENERAL
First Defendant

SECRETARY FOR DEPARTMENT OF
INTERNAL AFFAIRS
Second Defendant

INDEPENDENT POLICE CONDUCT
AUTHORITY
Third Defendant

CHIEF EXECUTIVE OF THE
MINISTRY OF SOCIAL
DEVELOPMENT
Fourth Defendant

COMMISSIONER OF POLICE
Fifth Defendant

AUCKLAND COUNCIL
Sixth Defendant

Hearing: On the papers

Judgment: 4 August 2017

JUDGMENT OF COURTNEY J

This judgment was delivered by Justice Courtney
on 4 August 2017 at 3.30 pm
pursuant to R 11.5 of the High Court Rules

Registrar / Deputy Registrar

Date.....

Introduction

[1] The Registrar has referred to me applications by Razdan Rafiq for leave to commence proceedings and to review the Registrar's decision rejecting his documents.

Application for review

[2] The proceedings that Mr Rafiq wishes to bring name as defendants the Attorney-General, the Secretary for the Department of Internal Affairs, the Independent Police Conduct Authority, the Chief Executive of the Ministry of Social Development, the Commissioner of Police and the Auckland Council. The Registrar rejected the documents because they did not comply with r 5.1(1)(a) of the High Court Rules which requires proceedings to be filed in the place of residence or principal place of business of the first-named defendant. Because the first defendant is the Attorney-General, that Registry would be Wellington. The Registrar was therefore correct to reject the documents on that ground. The application for review is dismissed.

Application for leave to commence proceedings

[3] Since May 2015 Mr Rafiq has been a declared vexatious litigant under s 88B of the Judicature Act 1908.¹ He may only commence civil proceedings with the leave of the Court. That leave is not to be granted "unless the Court or Judge is satisfied the proceeding is not an abuse of process of the Court and that there is a prima facie ground for the proceeding".

[4] In *Re Collier* Randerson J considered what would be required to meet this threshold. He accepted as applicable the definition of "prima facie case" contained in Spiller Butterworths New Zealand Law Dictionary:²

A serious, as opposed to a speculative case.

A litigating party is said to have a prima facie case where the evidence in his or her favour is sufficiently strong for his or her opponent to be called on to answer it.

¹ *Attorney-General v Rafiq* [2015] NZHC 1153.

² Spiller Butterworths *New Zealand Law Dictionary* (6 ed 2005).

[5] Randerson J went on to consider the threshold under s 88B(2) against that definition.³

This definition adequately captures the flavour of the expression “prima facie ground” in s 88B(2), focusing on the strength of the evidence which must reach a sufficiently high threshold to require the potential defendant to respond to it. But the threshold to be established before leave may be given under s 88B(2) is not to be confused with the level of scrutiny required in respect of the claim. The “careful scrutiny” test remains apposite and the Court is not bound to accept uncritically the assertions made by the vexatious litigant seeking leave.

[6] The proposed pleading contains several causes of action against each defendant. As a general observation, many of the causes of action are inadequately particularised, some are incomprehensible and some are clearly incapable of success.

[7] Mr Rafiq had not filed an affidavit filed in support of the application.

[8] The first cause of action, against the Attorney-General, is based on the refusal of a Justice of the Peace to allocate a final fixture date for criminal proceedings arising from a conviction for speeding for which Mr Rafiq was fined \$30 with court costs of \$30 and required to come up for sentence if called upon. Mr Rafiq wishes to appeal that decision to the High Court. Mr Rafiq has a right of appeal to the District Court as of right⁴ but no automatic right to a second appeal; that would require a matter of general or public importance or a miscarriage of justice, neither of which, on the information contained in the pleading, could be made out.⁵

[9] As against the Secretary for the Department of Internal Affairs, Mr Rafiq alleges defamation arising from the publication of aliases that Mr Rafiq asserts are defamatory. He also complains about a statement made by the Department referring to the fact that he was a vexatious litigant and has been convicted of criminal harassment. Essentially the same complaints were dealt with by Davison J, who found that there was no serious case, given the undeniable fact that Mr Rafiq is a vexatious litigant.⁶ In relation to aliases Mr Rafiq has used, the position is similar; any complaint is likely to be defeated by the assertion of truth.

³ At [16].

⁴ Criminal Procedure Act 2011, s 219.

⁵ Criminal Procedure Act 2011, s 223.

⁶ *Rafiq v Secretary of the Department of Internal Affairs* [2017] NZHC 584.

[10] As against the Independent Police Conduct Authority (IPCA), Mr Rafiq alleges a failure to investigate various complaints made by him in January 2017 against the NZ Police for: not identifying offenders who stole items from his car; failing to supply a fixture date for a defended hearing on a speeding fine; failing to supply a fixture date for a defended hearing on another speeding fine; alleged assault inside a Police vehicle in 2012; failing to investigate another robbery. The cause of action baldly asserts a failure by the IPCA to investigate these various incidents/complaints and seeks exemplary damages of \$3m. Self-evidently, the lack of particulars on this pleading or evidence in the form of an affidavit to support it means that threshold required for leave is not reached.

[11] The causes of action against the fourth defendant, the Chief Executive of the Ministry of Social Development, rest on: failure to process applications to review WINZ decisions; being asked for identification at the entrance of a WINZ office; being asked for identification to print out a review of the decision form, being being insulted by a security company engaged by WINZ; refusing to process another WINZ decision. Mr Rafiq seeks declarations that the fourth defendant has contravened his rights under the Social Security Act 1964 and seeks exemplary damages of \$1m.

[12] The allegations relating to being asked for ID cannot possibly found a cause of action likely to succeed. The alleged insults by a security guard do not reach the threshold for a serious claim to be brought against the Chief Executive. The other complaints, over the review of various decisions, do not give any indication whether Mr Rafiq has followed the statutory process that would be available to him and does not provide the basis for any serious claim to be brought.

[13] As against the fifth defendant, the Commission of Police, Mr Rafiq alleges defamation by accusing Mr Rafiq of speeding. Self-evidently, this is not a serious claim for which a vexatious litigant would be granted leave to commence proceedings. Mr Rafiq also complains about being prosecuted for speeding and relying on fabricated evidence for a conviction. No particulars are provided and, as I have mentioned, there is no affidavit in support. A further complaint relates to the publication of Mr Rafiq's conviction history report, though it is not suggested that

the report is incorrect. Mr Rafiq seeks a declaration and exemplary damages of \$30m. None of these proposed claims reach the requisite threshold.

[14] As against the sixth defendant, the Auckland Council, Mr Rafiq alleges that the Council has been “vexatious and abuse to the court system’s nature of criminal proceedings” in alleging breaches by Mr Rafiq of the Transport Act. This complaint is incomprehensible.

[15] For the various reasons noted in relation to each of the causes of action, the proceedings that Mr Rafiq wishes to bring do not meet the threshold required for leave under s 88B(2). The application is therefore refused.

P Courtney J