

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

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

**CIV-2017-404-797
[2018] NZHC 2662**

UNDER the New Zealand Bill of Rights Act 1990 and
the Declaratory Judgments Act 1908

IN THE MATTER of unreasonable search and public law
compensation in the manner of Baigent
damages

BETWEEN ARTHUR WILLIAM TAYLOR
First Plaintiff

PHILLIP JOHN SMITH
Second Plaintiff

AND THE ATTORNEY-GENERAL ON BEHALF
OF THE CHIEF EXECUTIVE OF THE
DEPARTMENT OF CORRECTIONS
Defendant

Hearing: On the papers

Counsel: First Plaintiff self-represented
P J Gunn and K Laurensen for Defendant

Judgment: 15 October 2018

**JUDGMENT OF PETERS J
[Application for access to CCTV footage]**

This judgment was delivered by Justice Peters on 15 October 2018 at 5 pm
pursuant to r 11.5 of the High Court Rules

Registrar/Deputy Registrar

Date:

Solicitors: Crown Law Office, Wellington

Copy for: Mr A W Taylor

[1] I issued my judgment in this proceeding on 28 September 2018 but it remains for me to determine an application by Mr Taylor dated 4 July 2018, received on 10 July 2018, for an order that:

... his Agent, Mr Richard Francois, Barrister, is entitled as an agent of the First Plaintiff to a copy of the CCTV footage that was produced as evidence by the Defendant in this proceeding and which is held on the Court file.

[2] The application is made on the following grounds:

- (a) Mr Taylor is a party to the proceeding and is entitled to a copy of the footage;
- (b) Mr Taylor, as a serving prisoner, cannot attend the Court in person to exercise his right;
- (c) Mr Taylor wishes to do so by his duly appointed agent; and
- (d) additional grounds that appear in Mr Taylor's submissions.

[3] The application is made in reliance on High Court Rules 2016 ("HCR"), rr 1.2 and 1.6; Senior Courts (Access to Court Documents) Rules 2017 ("SCR"), r 9(1), alternatively, r 11(2); and s 14 New Zealand Bill of Rights Act 1990 ("NZBORA").

[4] The defendant opposes the application.¹

[5] The parties agreed that I should determine the matter on the papers.

Background

[6] The trial of this matter was held on 19, 20 and 21 March 2018. The issue at trial was the lawfulness or otherwise of a strip search of Mr Taylor and Mr Smith in October 2016, both then serving prisoners at Auckland Prison ("prison"). That search occurred following a violent and dangerous assault by several other prisoners on Department of Corrections staff.

¹ Notice of Opposition dated 24 July 2018.

[7] In the course of the trial, an 11 minute, 10 second excerpt of CCTV footage of the assault was played whilst Mr Sherlock, the manager of the prison at the time of the assault, was giving evidence. That excerpt was produced to the Court as exhibit B on 21 March 2018.

[8] At the conclusion of the trial, Radio New Zealand (“RNZ”) requested a copy of the footage that had been played. Despite the defendant’s opposition, I ordered that the footage be released to RNZ. The Court was not further involved in subsequent dealings between the defendant and RNZ, as matters were left on the basis that the defendant would make a copy available to RNZ.

Submissions

Rule 9(1) SCR

[9] Rule 9(1) SCR provides:

9 General rights of parties to proceedings

Civil proceedings

- (1) The parties to a civil proceeding and the parties’ lawyers may, under the supervision of the Registrar or a person appointed by the Registrar,—
 - (a) search and inspect the court file or any document relating to the proceeding, without paying a fee; and
 - (b) copy any part of the court file or any document relating to the proceeding on paying the prescribed fee (if any).

[10] As previously advised to the parties on 14 May 2018, r 9(1) SCR does not contemplate that a party’s agent may access the file. It is the party and his or her lawyer who may do so.

[11] That said, I consider r 10 SCR permits of a written request to the Registrar for a copy of a document (which includes exhibit B), that is the rules accommodate a request by a party, such as Mr Taylor, who is not able to exercise his right in person. Rule 10 SCR provides:

10 Exercising general rights

- (1) A person may exercise the rights to access documents under rule 8 or 9 by orally asking the Registrar of the relevant court registry that holds the file for access to 1 or more documents.
- (2) However, if rule 6 or 7 applies to the document, the Registrar may require the person to ask for access in writing, setting out—
 - (a) sufficient particulars of the document to enable the Registrar to identify it; and
 - (b) the person's reasons for asking to access the document.
- (3) ...

[12] Accordingly, it is open to Mr Taylor to make a written request to the Registrar for a copy of the footage if he wishes. It will be for the Registrar to consider the request on receipt. In previous applications or memoranda, Mr Taylor has advised he does not wish to have a copy sent to him. His reasons, whatever they may be, are immaterial to the present issue. The important point is that the Court can provide the information to Mr Taylor.

Rule 11 SCR

[13] Alternatively, Mr Taylor relies on r 11 which provides:

11 Any person may ask to access documents

- (1) This rule applies if a person is not entitled to access a document relating to a proceeding or an appeal under rule 8 or 9.
- (2) A person may ask to access any document by providing the Registrar of the relevant court registry with a letter, an email, or any other written form of request that—
 - (a) identifies the person and gives the person's address; and
 - (b) sets out sufficient particulars of the document to enable the Registrar to identify it; and
 - (c) gives reasons for asking to access the document, which must set out the purpose for which the access is sought; and
 - (d) sets out any conditions of the right of access that the person proposes as conditions that he or she would be prepared to meet were a Judge to impose those conditions (for example, conditions that prevent or restrict the person from disclosing

the document or contents of the document, or conditions that enable the person to view but not copy the document).

- (3) The Registrar must promptly give a copy of the request to the parties to the relevant proceeding or appeal, or to their lawyers.
- (4) A Judge may dispense with the requirement in subclause (3) if it would be impractical to require notice to be served.
- (5) A party who receives a copy of a request and who wants to object to it must give written notice of the objection to the Registrar, setting out the grounds on which the party objects,—
 - (a) before 3 pm on the third working day after the day on which the copy is received; or
 - (b) if the copy is received on a day on which a hearing relating to the document is proceeding, before 3 pm on the first working day after the day on which the copy is received.
- (6) ...
- (7) A Judge may—
 - (a) grant a request for access under this rule in whole or in part—
 - (i) without conditions; or
 - (ii) subject to any conditions that the Judge thinks appropriate; or
 - (b) refuse the request; or
 - (c) refer the request to a Registrar for determination by that Registrar.
- (8) Without limiting the powers in subclause (7), the Judge may refuse a request for access under this rule solely for the reason that the request does not comply with subclause (2)(a), (b), (c), or (d).

[14] Rule 11 does not apply in the present case. As the defendant submitted, r 11 contemplates a request by a third party for access to a document. Mr Francois has not made a request for access.

High Court Rules

[15] Mr Taylor also referred me to the following provisions from the High Court Rules:

1.2 Objective

The objective of these rules is to secure the just, speedy, and inexpensive determination of any proceeding or interlocutory application.

1.6 Cases not provided for

- (1) If any case arises for which no form of procedure is prescribed by any Act or rules or regulations or by these rules, the court must dispose of the case as nearly as may be practicable in accordance with the provisions of these rules affecting any similar case.
- (2) If there are no such rules, it must be disposed of in the manner that the court thinks is best calculated to promote the objective of these rules (see rule 1.2).

[16] I am not persuaded that these rules have any application to the construction of the SCR. They apply within the context of the High Court Rules themselves.

Section 14 NZBORA

[17] Section 14 NZBORA provides:

14 Freedom of expression

Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.

[18] I am not persuaded that any of the matters above impinge on Mr Taylor's rights under s 14. What Mr Taylor seeks is that the Court make the document available to a third party who has not asked for it. As I have said, if Mr Taylor wishes to have a copy of exhibit B, he is able to obtain a copy by making a written request, to be sent to the case officer in the first instance. This is consistent with s 14, not in contravention of the same.

Result

[19] I decline Mr Taylor's application of 4 July 2018.

[20] Either party should notify if costs are sought and cannot be agreed.