IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV-2011-485-2459
[2012] NZHC 3423

UNDER	the Judicature Amendment Act
IN THE MATTER OF	an application for a Judicial Review
BETWEEN	JOHN CARNE MURRAY Applicant
AND	HUMAN RIGHTS REVIEW TRIBUNAL First Defendant
AND	GISBORNE DISTRICT COUNCIL Second Defendant

Hearing: 5 December 2012

Counsel: C J Hodson QC for Applicant
D M Consedine for First Defendant
D J O'Connor for Second Defendant
K Evans for Privacy Commissioner (Appearance)

Judgment: 18 December 2012

In accordance with r 11.5, I direct the Registrar to endorse this judgment with the delivery time of 12.30pm on the 18th December 2012.

JUDGMENT OF WILLIAMS J

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[1] The application before me is yet another attempt to strikeout yet another judicial review proceeding commenced by Mr Murray in person. In the substantive proceeding, he seeks various orders in an attempt to limit the publication of adverse findings of the Human Rights Review Tribunal to the effect that he had levelled threats against an officer of the Gisborne District Council (Council), Mr Birt. The Council has applied to strike-out this claim insofar as it relates to it.

[2] The application before the Tribunal was for the Council to provide full disclosure of a memorandum dated 11 December 2008 that had been partially redacted. Prior to the hearing, the Council agreed to provide full disclosure of the memorandum, but the hearing went ahead anyway, Mr Murray seeking additional relief including damages. He was represented by a lay advocate who was formally qualified as a legal executive.

[3] On the Friday before the hearing was to commence, a fresh statement of grounds of defence was filed by the Council. This added significant new grounds changing the complexion of the Council's defence. Fresh evidence was also filed. The Council also advised that a bundle of undisclosed documents would be filed at the hearing. At the hearing the following Monday, Mr Murray's advocate consented to these late changes. An adjournment was apparently offered by the Tribunal but Mr Murray's advocate declined. These concessions on behalf of Mr Murray were, it transpires, strategic errors.

[4] The newly filed evidence contained allegations that Mr Murray had threatened to kill Mr Birt on more than one occasion, once "on about" 3 December 2008 and again on 11 December. Mr Murray's advocate did not challenge any of this material or cross-examine relevant Council witnesses in that respect.

[5] The Tribunal's eventual judgment then (perhaps understandably) traversed all of these allegations as if they were fact, even though the allegations were largely untested. To be fair, Mr O'Connor appearing for the Council, did put these allegations to Mr Murray when he gave evidence (he denied them). So there was at least some contestation over them, but they were not comprehensively tested before finding their way into the Tribunal's judgment as fact. That of course is no reflection

on the Tribunal at all, rather it reflects a failure on the part of Mr Murray's advocate to challenge these matters as vociferously as Mr Murray might have preferred in hindsight.

[6] The overall effect of these lapses was that Mr Murray is treated in the judgment as if he had in fact threatened Mr Birt on a number of occasions when Mr Murray says he did not. This is core of Mr Murray's concern. It is to be remembered that these matters were not directly relevant to the issue before the Tribunal. The issue for the Tribunal was the disclosure to Mr Murray of information personal to him and the downstream orders such as damages that I have mentioned. Although successful in substance, Mr Murray was unhappy with the judgment, partly at least because of these adverse but irrelevant findings.

[7] Mr Murray then appealed out of time but the appeal was struck-out, there being no discretion in the court to receive a late appeal.[1] He then sought leave to appeal to the Court of Appeal and this was refused.[2] He then applied to the Court of Appeal for special leave and to the Supreme Court by the same procedure and these applications were also declined.[3] He then brought fresh judicial review proceedings against the Council and the Privacy Commissioner, and these were struck-out.[4] He finally commenced the current action against the Tribunal and the Council, this time attacking the Tribunal's decision to proceed to hear his original application despite the last minute changes to the Council's defence and the additional evidence.

[8] Mr Murray obviously faces formidable obstacles, as he has in every other attempt to address his concerns in respect of the Tribunal's final decision. The first is of course that he got the disclosure he sought – in fact by consent. The second is that his advocate consented on his behalf to the late changes to the Councils' defence and the additional bundle of documents. The third is that in any event it would usually be for the Tribunal to control its own procedures.[5]

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1 *Murray v Gisborne District Council* HC Wellington CIV-2010-485-743, 3 June 2010.
2 *Murray v Gisborne District Council* HC Wellington CIV-2010-485-743, 30 March 2011.
3 *Murray v Gisborne District Council* [2011] NZCA 282.
4 *Murray v Gisborne District Council* [2012] NZHC 553.
5 Human Rights Act 1993, s 104(5).

[9] There are two significant factors in Mr Murray's favour however. First, his representation left much to be desired. Second, the apparent findings of fact complained of here were peripheral to the application. Whatever the legal position, there is something to be said, in basic justice, for the appellant's underlying complaint.

[10] Mr Hodson QC appeared as amicus and provided very helpful submissions including a suggested way forward so that the parties do not become further embroiled in an endless and probably pointless cycle of challenges by Mr Murray and pre-emptive responses by the Council. Mr Hodson QC suggested that, given the findings complained of were indeed peripheral, I might exercise this court's inherent jurisdiction to suppress publication of the offending paragraphs. The Council was prepared to consent to this as a practical way forward and Mr Murray was too.

[11] It is appropriate to record at this point that both the Privacy Commissioner and the Tribunal were represented when the matter first came before me but each took the position that it would formally abide any decision I make. The Tribunal was made aware of Mr Hodson's proposal before confirming that position. I take from that, that there is no objection from the Tribunal or the Commissioner to this course.

[12] As a robust and common sense way of bringing this particular grievance to a close, I am prepared to accede to Mr Hodson's proposal. But this must be on the basis that the orders I make are an absolute end to this dispute and that Mr Murray will not cause it to rise up again in another guise. That must be clearly understood.

[13] The application to strike the proceeding out is dismissed by consent accordingly. There will be final orders (also by consent) as follows:

(a) paragraphs 7, 12, 16, 19 and 20 of the decision of the Human Rights Review Tribunal of 31 March 2010 in *Murray v Gisborne District Council* [6] are suppressed and must not be published in any form from this point on;

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[6] *Murray v Gisborne District Council* [2010] NZHRRT 7 (Reference No. HRRT 37/09).

(b) any copy of the judgment that may be published or republished after this order is made, whether in paper or electronic form, shall bear the banner across the top of the judgment "*Paragraphs 7, 12, 16, 19 and 20 of this judgment have been suppressed by order of the High Court and may not be published in any form*";

(c) any published form of the judgment as aforesaid will be redacted accordingly;

(d) such suppression to remain in place on condition that the appellant does not bring any further proceedings relating directly or indirectly to the decision of the Human Rights Review Tribunal of 31 March 2010;

(e) there will be no award of costs.

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Williams J