IN THE HUMAN RIGHTS REVIEW TRIBUNAL **[2017] NZHRRT 39**

	Reference No. HRRT 016/2016
UNDER	**THE PRIVACY ACT 1993**
BETWEEN	**FRIEDRICH JOACHIM FEHLING**
	PLAINTIFF
AND	**MINISTRY OF HEALTH**
	DEFENDANT

AT HOKITIKA

BEFORE:
Mr RPG Haines QC, Chairperson
Ms WV Gilchrist, Member
Ms ST Scott, Member

REPRESENTATION:
Mr FJ Fehling in person
Ms R Garden for defendant

DATE OF HEARING:	**20 March 2017**
DATE OF SUBSTANTIVE DECISION:	**24 August 2017**
DATE OF DECISION ON COSTS:	**5 October 2017**

DECISION OF TRIBUNAL ON COSTS[1]

INTRODUCTION

Background

[1] The Tribunal's substantive decision given on 24 August 2017 dismissed Mr Fehling's claim in its entirety.

[1] [This decision is to be cited as *Fehling v Ministry of Health (Costs)* [2017] NZHRRT 39]

[2] By application dated 7 September 2017 the Ministry of Health has now sought $4,000 as a contribution to its actual costs which amounted to approximately $26,000, exclusive of disbursements.

[3] In submissions dated 12 September 2017 Mr Fehling has provided the Tribunal with the first page of a letter dated 12 January 2017 from the New Zealand Insolvency and Trustee Service addressed to him. The letter confirms to Mr Fehling that he was adjudicated bankrupt voluntarily on 20 December 2016. This letter advises Mr Fehling that:

> - When a person becomes bankrupt, that person's rights to take legal action transfer to the Official Assignee.
>
> - A bankrupt person needs to tell the Official Assignee about any claim the bankrupt has or might have during their bankruptcy as soon as possible – a bankrupt person usually can't take action themselves, but might be able to if it is for personal injury.

[4] No earlier notification of his bankrupt status had been given by Mr Fehling to the Tribunal or to the Ministry of Health. In view of the explicit instructions given to Mr Fehling by the Insolvency and Trustee Service that failure was irresponsible. In the circumstances it would appear that the hearing before the Tribunal on 20 March 2017 and the subsequent filing of evidence and exchange of submissions was entirely unnecessary.

[5] Mr Fehling does not appear to be troubled by these circumstances and indeed describes himself as "exceptionally proud" of what can only be described as a tactical manoeuvre. His submissions of 12 September 2017 contain the following statement:

> Due to 25 years experience with fighting the monarch and its proven 99% corrupt judiciary, the plaintiff regarded it as pointless to accumulate *any* assets, in order to avoid any possible corruption or restriction of his fight that is unavoidably resulting in the replacement of the monarchy by a constitutionally safeguarded democracy. Judicial asset theft as punishment for doing the right thing for introducing democracy is thus disabled. The previous deliberately unlawful decision of HRRT … lead to the plaintiff's bankruptcy declaration, which he is exceptionally proud of, as it also proves his 100% integrity/honesty (see official assignee's bankruptcy confirmation No. 881705). This ensures that no assets/money will be paid for the Crown's unjustifiable cost demand. [Emphasis in original]

[6] Mr Fehling did not serve his submissions on counsel for the Ministry of Health. When this omission was remedied by the Tribunal itself, counsel for the Ministry by memorandum dated 29 September 2017 gave notice that in view of Mr Fehling's bankruptcy, the Ministry no longer sought costs against Mr Fehling.

Discussion

[7] As will be apparent from the Tribunal's decision dated 24 August 2017, Mr Fehling's conduct of these proceedings has been unhelpful. At the commencement of the decision the Tribunal recorded the following circumstances:

> **[2]** Mr Fehling's case has not been assisted by the unconventional manner in which it has been presented. Although directed on 17 August 2016 to file a written statement of evidence by 30 September 2016, he failed to do so. In a letter to the Tribunal dated 31 August 2016 he asserted that a statement of evidence "made no sense" as all documentary evidence had already been filed. While it is correct Mr Fehling has filed some documentary evidence, it has come in by informal means and as will be seen, some of it was filed not in relation to the case against the Ministry of Health, but in answer to a strike-out application filed by the West Coast District Health Board (WCDHB) which, until the Tribunal's decision in *Fehling v Ministry of Health (Strike-Out of Second Defendant)* [2016] NZHRRT 29 (17 August 2016) was the second defendant. There is no statement

or affidavit by Mr Fehling setting out the facts as asserted by him against the Ministry (and on which he could be cross-examined) together with the supporting documentation. By contrast the Ministry filed two affidavits (by Mr PB Knipe and by Ms CC Lyons) and Mr Fehling did not require either of these witnesses to attend the hearing for cross-examination. In the result there was no evidence to challenge the sworn evidence given by the Ministry.

[3] In addition Mr Fehling twice gave notice to the Tribunal that he would not attend an in person hearing by the Tribunal convened at Hokitika as it would be "time wasting, expensive and unnecessary". Nevertheless Mr Fehling did in fact attend the hearing held at Hokitika on 20 March 2017 "to prevent the Tribunal disadvantaging me for not appearing and ignoring vital documents".

[4] Nor has an understanding of Mr Fehling's case been facilitated by his characteristic rhetorical flourishes exemplified by the following paragraph taken from his post-hearing submissions dated 12 May 2017:

> This extreme systemic health-data collection/use/privacy breach and unwillingness to respect person's privacy is just one example of the total fascistic control that the British monarch and its freemason fascism (the princes are freemasons and thus fascists by definition) is silently installing in order to perpetuate rule by its rich aristocrats and maintain their unrestricted socially and environmentally damaging excesses, glitter and power.

[5] Equally his submissions are at times too abstract to be of meaningful assistance. We here refer by way of example to the "Improved Statement of Claim with Chronological Summary, Questions of Law, Argumentation for Health-Data Privacy" dated 1 September 2016. It contains in part template paragraphs which have been used by Mr Fehling in other, entirely unrelated proceedings under the Local Electoral Act 2001. See *Fehling v Attorney-General* [2016] NZHC 2911. In that case Dunningham J at [28] described Mr Fehling's pleadings as comprising "a sequence of lengthy and convoluted questions and lengthy and convoluted submissions". Provided as an example is a paragraph with the heading "Paramount Constitution Questions of Law". That same paragraph appears in Mr Fehling's "Improved Statement of Claim" in the present proceedings. It would be fair to say that Mr Fehling's various submissions to the Tribunal are for similar reasons difficult to follow.

[6] Furthermore, Mr Fehling's submissions to the Tribunal incorrectly assumed the Tribunal has jurisdiction over the broad policy issues which underpin the creation and maintenance of the NHI, including whether it should comprise numbers only or also include the name of the individual. For this reason it must be stressed the Tribunal is confined by ss 66 and 85 of the Privacy Act 1993 to determining only whether Mr Fehling has established there has been an interference with his privacy.

[8] In these circumstances the Tribunal would have been prepared to award in favour of the Ministry costs of $4,000 as sought in the application.

Decision

[9] However, in view of the fact that the Ministry no longer seeks costs against Mr Fehling, the application for costs is dismissed.

[10] The Secretary of the Tribunal is directed to forward a copy of this decision to the New Zealand Insolvency and Trustee Service for the attention of the Official Assignee.

.....	.....	.....
Mr RPG Haines QC	**Ms WV Gilchrist**	**Ms ST Scott**
Chairperson	**Member**	**Member**