IN THE HUMAN RIGHTS REVIEW TRIBUNAL **[2017] NZHRRT 42**

	Reference No. HRRT 010/2016
UNDER	**THE HUMAN RIGHTS ACT 1993**
BETWEEN	**KATHY APOSTOLAKIS**
	PLAINTIFF
AND	**JACINDA RENNIE**
	FIRST DEFENDANT
AND	**JANA DE POLO**
	SECOND DEFENDANT

AT WELLINGTON

BEFORE:
Mr RPG Haines QC, Chairperson
Ms GJ Goodwin, Member
Mr BK Neeson JP, Member

REPRESENTATION:
Mrs K Apostolakis in person
Mr A Darroch for first defendant
Ms J De Polo in person

DATE OF HEARING: **Heard on the papers**

DATE OF DECISION: **2 November 2017**

DECISION OF TRIBUNAL STRIKING OUT STATEMENT OF CLAIM[1]

INTRODUCTION

[1] The first defendant (Ms JH Rennie) is a lawyer in private practice in Wellington who specialises in Family Court work. She is a partner in the law firm, McWilliam Rennie. In 2006 she was working as an associate at Wellington Family Law. The second

[1] [This decision is to be cited as: *Apostolakis v Rennie (Strike-Out Application)* [2017] NZHRRT 42.]

defendant is the daughter of Mr Damir De Polo who in 2006 was represented by Ms Rennie in proceedings in the Family Court. In those proceedings Mr De Polo sought a Protection Order against his former de facto partner, Mrs K Apostolakis, the plaintiff in the present proceedings. Ms Rennie was also acting for Mr De Polo in relationship property matters arising out of his relationship with Mrs Apostolakis. According to the statement of claim, Mr De Polo passed away on 13 July 2015.

[2] In these proceedings under Part 2 of the Human Rights Act 1993 (HRA) Mrs Apostolakis alleges that Ms Rennie and Ms De Polo discriminated against her (Mrs Apostolakis) on the grounds of her family status.

[3] Although the discriminatory acts of which Mrs Apostolakis complains allegedly occurred in 2006, she did not complain to the Human Rights Commission until 3 September 2015. The Commission by letter dated 23 October 2015 notified Mrs Apostolakis that it had declined to progress her complaint because she had known of the matters complained about for more than 12 months (HRA, s 80(2)). These present proceedings before the Tribunal were not filed until 11 February 2016. The issue of delay will be returned to later in this decision.

[4] In a statement of reply dated 14 March 2016 Ms Rennie has pleaded (inter alia) that the statement of claim discloses no grounds which establish against her a claim of unlawful discrimination. She also contends the claim is without substantive merit and that it should be dismissed.

[5] By formal application dated 7 April 2017 Ms Rennie has now applied for an order that the statement of claim be struck out on the following grounds:

1. The claim does not disclose any basis for discrimination on the grounds of family association by the First Defendant.
2. The claim alleges the First Defendant misled the Family Court on 15 September 2006. This allegation is identical in substance to two complaints made about the First Defendant by the Plaintiff to the New Zealand Law Society in 2007 and 2008. The complaints were dismissed by the relevant Standards Committees concerned.
3. The allegations relate to events which occurred a considerable time ago (in 2006).
4. The claim is frivolous and vexatious and an abuse of process; and
5. As set out in the affidavit of Jacinda Helena Rennie filed in support.

[6] Ms De Polo has taken no steps in the proceedings.

[7] In this decision we explain our reasons for concluding that the proceedings are to be struck out as against both Ms Rennie and Ms De Polo.

JURISDICTION TO STRIKE OUT

[8] The Tribunal has in recent cases addressed its jurisdiction to strike out proceedings. Examples include *Parohinog v Yellow Pages Group Ltd (Strike-Out Application No. 2)* [2015] NZHRRT 14 (5 May 2015) at [21] to [33], *New Zealand Private Prosecution Services Ltd v Key (Strike-Out Application)* [2015] NZHRRT 48 at [36] to [45] and *Rossi v Chief Executive, Ministry of Business, Innovation and Employment (Strike-Out Application)* [2016] NZHRRT 18 at [11] to [23].

[9] For the purposes of the present decision we begin by referring to HRA s 115 which provides:

115 Tribunal may dismiss trivial, etc, proceedings

The Tribunal may at any time dismiss any proceedings brought under section 92B or section 92E if it is satisfied that they are trivial, frivolous, or vexatious or are not brought in good faith.

[10] It was recognised by Wild J in *Mackrell v Universal College of Learning* HC Palmerston North CIV-2005-485-802, 17 August 2005, that this provision confers on the Tribunal a wide discretionary power to strike out or dismiss a proceeding brought before it:

> [45] Subject to observance of natural justice, fairness and reasonableness, and equity, the Tribunal has a wide discretion as to the procedure which follows: ss 104 and 105 of the Human Rights Act. Section 105 requires the Tribunal "to act according to the substantial merits of the case, without regard to technicalities". That section applies, with necessary modifications, to decisions of this Court on appeal against a decision of the Tribunal: s123(5).
>
> [46] The Tribunal has an express power to dismiss proceedings, if satisfied that they are frivolous, vexatious or not brought in good faith: s115. As Mr Laurenson points out, the Tribunal deliberately did not exercise this power. It struck out Ms Mackrell's claim.
>
> [47] There are also the Human Rights Review Tribunal Regulations 2002 which place, in terms of the Tribunal's procedures, an emphasis on fairness, efficiency, simplicity and speed. I refer particularly to regulation 4.
>
> [48] Thus, the Tribunal has a wide discretionary power to strike out or dismiss a proceeding brought before it. This will be appropriate in situations similar to those contemplated by rr 186 and 477 of the High Court Rules which are the basis for the present application.

[11] The reference by Wild J to rr 186 and 477 of the High Court Rules is now to be read as a reference to High Court Rules, r 15.1 which provides:

15.1 Dismissing or staying all or part of proceeding

(1) The court may strike out all or part of a pleading if it—
  (a) discloses no reasonably arguable cause of action, defence, or case appropriate to the nature of the pleading; or
  (b) is likely to cause prejudice or delay; or
  (c) is frivolous or vexatious; or
  (d) is otherwise an abuse of the process of the court.

…

[12] It is clearly established (and confirmed by High Court Rules, r 15.1(1)(a)) that abuse of process extends to proceedings where there is no arguable case. See *Waterhouse v Contractors Bonding Ltd* [2013] NZSC 89, [2014] 1 NZLR 91 at [30]-[32]:

> [30] We accept the submission of Mr Harrison that the power, under the High Court Rules or the inherent powers of a court, to stay a proceeding for abuse of process is not limited to the narrow tort of abuse of process. In any event, Mr Mills accepts the abuse of process ground would also be available in the circumstances set out by Lord Diplock in *Hunter v Chief Constable of the West Midlands Police*:
>
> > ... the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people. The circumstances in which abuse of process can arise are very varied; ... It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances in which the court has a duty (I disavow the word discretion) to exercise this salutary power.
>
> [31] In Australia, a majority of the High Court in *Jeffery & Katauskas Pty Ltd v SST Consulting Pty Ltd* identified the following categories of conduct that would attract the intervention of the court on abuse of process grounds:

(a) proceedings which involve a deception on the court, or those which are fictitious or constitute a mere sham;
(b) proceedings where the process of the court is not being fairly or honestly used but is employed for some ulterior or improper purpose or in an improper way;
(c) proceedings which are manifestly groundless or without foundation or which serve no useful purpose; and
(d) multiple or successive proceedings which cause or are likely to cause improper vexation or oppression.

[32] The majority also said that, although the categories of abuse of process are not closed, this does not mean that any conduct of a party or non-party in relation to judicial proceedings is an abuse of process if it can be characterised as in some sense unfair to a party. It does, however, extend to proceedings that are "seriously and unfairly burdensome, prejudicial or damaging" or "productive of serious and unjustified trouble and harassment".

[Footnote citations omitted]

[13] As noted in *Parohinog* at [30] and [31] two important qualifications must be added.

[13.1] First, the jurisdiction to dismiss is to be used sparingly. If the defect in the pleadings can be cured, an amendment of the statement of claim will normally be ordered. See *Commissioner of Inland Revenue v Chesterfields Preschools Ltd* [2013] NZCA 53, [2013] 2 NZLR 679 at [89].

[13.2] Second, the fundamental constitutional importance of the right of access to courts (and tribunals) must be recognised. Such right of access must, however, be balanced against the desirability of freeing defendants from the burden of litigation which is groundless or an abuse of process. See *Heenan v Attorney-General* [2011] NZCA 9, [2011] NZAR 200 at [22].

[14] The ordinary rule is that a strike-out application proceeds on the assumption that the facts pleaded in the statement of claim are true. See *Attorney-General v Prince and Gardner* [1998] 1 NZLR 262 (CA) at 267. However, where the factual allegations are plainly incorrect it is not appropriate to assume their truth. There must be an objective factual basis for the allegations. A court or tribunal is not required to assume the correctness of factual allegations obviously put forward without any foundation. See *Collier v Panckhurst* CA 136/97, 6 September 1999 at [19].

Vexatious

[15] In the context of the present case it is not necessary to engage in a comprehensive survey of the case law interpreting the term "vexatious". It is well-established that a vexatious proceeding is one which contains an element of impropriety. See *Commissioner of Inland Revenue v Chesterfields Preschools Ltd* at [89] and *Burchell v Auckland District Court* [2012] NZHC 3413, [2013] NZAR 219 at [16]. To this may be added:

[15.1] A proceeding may be vexatious, notwithstanding that it may contain the germ of a legitimate grievance or may disclose a cause of action or a ground for institution. See *Attorney-General v Hill* (1993) 7 PRNZ (CA) at 23.

[15.2] The subjective intention of the party is not determinative of vexatiousness, which is a matter to be objectively assessed. See *Attorney-General v Collier* [2001] NZAR 137 at [35].

[15.3] The issue is not whether the proceeding was instituted vexatiously, but whether it is a vexatious proceeding. See *Attorney-General v Brogden* [2001]

NZAR 158 at [58] (appeal dismissed in *Brogden v Attorney-General* [2001] NZAR 809).

Or are not brought in good faith

[16] This ground for striking out proceedings captures other circumstances in which the Tribunal's processes are misused and is perhaps best understood as a different way of expressing the grounds for striking out set out in High Court Rules, r 15.1(1) namely circumstances where there is no reasonably arguable cause of action or where the proceedings are otherwise an abuse of the process of the Tribunal.

Abuse of process

[17] The scope of this ground in High Court Rules, r 15.1(1)(d) was set out in *Air National Corporate Ltd v Aiveo Holdings Ltd* [2012] NZHC 602 at [30] as follows:

> The ground of abuse of process is said to extend beyond the other grounds set out in r 15.1(1) to catch all other instances of misuse of the Court's process, including where a proceeding has been brought with an improper motive or to seek a collateral advantage beyond that legitimately gained from a Court proceeding. [Citations omitted]

Formal application to strike out not required

[18] The power to strike out a proceeding does not depend on a formal application having been made. See *Siemer v Stiassny* [2011] NZCA 1 at [14] – see also *McGechan on Procedure* HR 15.1.09 (1):

> [14] First, the power to strike out a proceeding under r 15.1 of the High Court Rules (the Rules) does not depend upon an application having been made. By contrast, r 15.2 expressly contemplates applications. In any event, in the present case an application was made, but not by all the defendants. This was because Priestley J directed that the proceedings be served only on the Solicitor-General. But that does not prevent the Court from exercising its powers under r 15 in respect of all defendants.

THE STATEMENT OF CLAIM

[19] As the statement of claim is the key document the material parts are reproduced in full:

1. I, the plaintiff was living in a concurrent de facto relationship with the 2nd defendant's father Damir Amil De Polo. The father (Damir Amil De Polo) of Jana Pierrina De Polo (2nd defendant) passed away 13th July 2015. Division of assets between Nick and I have not been completed.
2. An abuse of process of law occurred in December 2007 when the father of the defendant lodged a caveat over the title of my home at 12 Colville Street Newtown WN 817/71. The action was vexatious frivolous and entirely illegal because legally married spouses have priority section 25 Rel. Act 2007.
3. I placed a caveat over the property at 63 King Street Kingsland Auckland to protect my financial interest under section 42 and section 44C Property Relationship Act 2007. An abuse of process of law occurred and the caveat was removed without settlement of debt, or, consent.
4. The amount of judgment for $205,102.10 was declared to be an error by Mr Charles M Gallagher solicitor for the "Crown" or Attorney-General. Mr Gallagher stated on 20 August 2010 the true and correct amount to be $192,766.88. The "Crown" erred.
5. The second defendant continues to harass and threaten me to pay $25,253.63 an amount calculated by Mr Simon Nicolas Meikle counsel for De Polo Family Trust. The District Court has calculated an amount of $22,012.85 less $577.38 leaving me owing Jana De Polo $21,435.47.
6. I am unable to pay the outstanding amount of $25,253.63 or $21,435.47, or, $9,431.00 which was calculated to be the amount by Mr John Dean, lawyer. These events are all the direct result of unlawful discrimination Family Status by Ms Jacinda Rennie.

7. On 31 May 2006 Ms Jacinda Rennie wrote a letter to me. I was not represented by counsel at that time. Ms Jacinda Rennie discriminated against me because I am a relative of Nick and Kosta Apostolakis and the event of 22nd March 1996 when Damir Amil De Polo and I were victims.
8. I replied to the letter of 31 May 2006 and informed Ms Jacinda Rennie that the Disputes Tribunal is the proper forum as division in FP085/29/94 has not been concluded, and that her client Damir Amil De Polo does not have any entitlement to an equal share in WN 817/71. It is illogical.
9. Ms Jacinda Rennie continued to harass and threaten me with proceedings about "Protection/Property" orders under the Domestic Violence Act 1995 on the grounds of unlawful discrimination Family Status by being a relative of Nick and Kost. She was able to use violence against me.
10. I have suffered pecuniary loss under section 88(a). I have suffered loss of benefit under section 88(b). I have suffered humiliation, loss of dignity and injury to my feelings under section 88(c). I have suffered loss of Trust moneys transferred August 2010 intended for my benefit, now, in De Polo trust.

[20] At the centre of the pleaded claim against Ms Rennie is the letter referred to in para 7 of the statement of claim. It has been annexed to the statement of claim. The letter is dated 31 May 2006, on the letterhead of Wellington Family Law Centre and has been signed by Ms Rennie in her capacity as the lawyer representing Mr Damir De Polo who, as mentioned, was at one time in a relationship with Mrs Apostolakis. The letter was in the following terms:

> Dear Ms Apostolakis
>
> Re: Protection Order
>
> We act for Mr Damir De Polo. We refer to the letter from Tripe Matthews & Feist to you dated 26 April 2006. You have continued to harass Mr De Polo, and for that reason, he has filed an application in the Wellington Family Court for a protection order against you. You will be served with the documents by a bailiff from the Family Court. If you wish to arrange to collect the documents, you can contact the Wellington Family Court.
>
> We also confirm that Mr De Polo is no longer going to pay you the voluntary payments of $100 per week. We have seen your most recent applications to the Disputes Tribunal and note that this is not the appropriate jurisdiction for disputes in relation to relationship property matters.
>
> In order to resolve relationship property matters, you need to see a family lawyer and get proper advice from them.
>
> Please instruct your family lawyer to prepare a relationship property agreement for our consideration. The agreement should confirm that all matters between you and Mr De Polo have been resolved, and neither party is required to pay the other any compensation.
>
> If you are not willing to do this, then Mr De Polo will file an application in the Family Court for division of all relationship property assets. This includes his entitlement to an equal share in the family home, being the property at 12 Colville Street, Newtown, Wellington.
>
> We suggest that you talk to your lawyer about these issues and get your lawyer to contact us.
>
> Yours faithfully
> Wellington Family Law Centre
>
> Jacinda Rennie

Other documents filed by Mrs Apostolakis

[21] In addition to the statement of claim (and supporting documents) Mrs Apostolakis has also filed a number of memoranda which have sometimes been styled as "applications" and sometimes as "submissions". As the documents are rambling in content and full of irrelevancies, attempting a summary would be of little benefit. To the extent that the documents do contain matters relevant to the strike out application appropriate reference will be made.

[22] In response to the strike out application filed by Ms Rennie, on 7 April 2017 Mrs Apostolakis sought both discovery and pre-trial payment by the defendants of $129,049.32, such payment being to:

> … Perpetual Guardian Trust, 854538.2.1 debt over title WN 817/71 12 Colville Street. This payment may be made to the Tribunal and/or to the plaintiff to meet legal fees for representation, on the grounds that Mr Robert Kee states that the plaintiff is "vague and cryptic".

The Tribunal has no jurisdiction to order the pre-trial payment of moneys but this has not troubled Mrs Apostolakis.

[23] At para 19 of the 7 April 2017 document Mrs Apostolakis asserted that Ms Rennie discriminated against her (Mrs Apostolakis) by:

> … raising criminal matters on 15 Sep 2006 and in May 2006 which are not part of any court judgment and cannot be construed as re-litigating because "its a joke". May 2006 is 4 months before the court hearing of 15 September 2006.

This allegation exemplifies how thoroughly Mrs Apostolakis has misunderstood the requirements of a discrimination claim under the HRA.

[24] By *Minute* dated 2 May 2017 the Chairperson directed that the strike out application by Ms Rennie be determined before the discovery application by Mrs Apostolakis. The *Minute* also directed that if Mrs Apostolakis intended opposing the strike out application, she had to file a notice of opposition setting out the grounds on which the application was opposed and, if any of the evidence set out in the affidavit sworn by Ms Rennie on 7 April 2017 was disputed, Mrs Apostolakis was to file her own affidavit setting out the evidence on which she intended relying in opposing the application.

[25] Regarding Ms De Polo, the Chairperson's *Minute* at [10] put Mrs Apostolakis on notice that the statement of claim disclosed no recognisable cause of action under the HRA:

> **[10]** While Ms De Polo, the second defendant, has elected to take no part in these proceedings the Tribunal is driven to observe that the only allegation made against her is that she (allegedly) continues to harass and threaten Mrs Apostolakis to pay a judgment debt. This does not constitute a recognisable cause of action under the Human Rights Act 1993. Mrs Apostolakis is accordingly on notice that in determining the strike out application filed by Ms Rennie the Tribunal will also address the question whether the claim against Ms De Polo should also be struck out on the basis no recognisable cause of action against her is established by the statement of claim.

[26] In a memorandum dated 5 May 2017 styled as an "application to strike out [Ms Rennie's] application" Mrs Apostolakis at para 2 articulated her case against Ms Rennie as a complaint that Ms Rennie had conducted herself unlawfully as a lawyer:

> There is unequivocal evidence attached by way of exhibit on 11.2.2016 that 1st defendant unlawfully and illogically stated that the Family Court had jurisdiction to make an order for division of property with Protection/property orders under the Domestic Violence Act 1995 and acting on that malicious and/or incompetent and/or contributory negligent advice, a caveat was lodged. The issue is Ms Rennies knowledge of "no jurisdiction" did Ms Rennie continue the Protection Order application beyond that point of time, activated by malice s 13 Domestic Protection Act.

This allegation seeks to resurrect complaints which in 2007 and 2008 were dismissed by the relevant Standards Committee of the Law Society.

[27] In an unsworn "affidavit" also dated 5 May 2017 at para 9 Mrs Apostolakis alleged that Ms Rennie and Ms De Polo instigated "more than 2 vexatious proceedings against the plaintiff which comes within the parameters of sections 166-169 Senior Courts Act

2016 which replaces section 88B Judicature Act 1908 'vexatious actions'". At para 11 Mrs Apostolakis alleged that but for the claimed "vexatious" actions of Ms Rennie and Ms De Polo her (Mrs Apostolakis') reputation "would not have been damaged". Mrs Apostolakis goes on to allege at para 13 that she:

> Relies on the fact that [Ms Rennie] was the proximate cause in various laws and statutes being broken that is: section 24(2)(b) Property Law Act 2007, regulation 19 Land Transfer Act Regulations withdrawal of caveat Josh McBride did not place a further or second caveat after removing the plaintiff's caveat in April 2011. Counsel for Jana De Polo broke the law Oh dear! Oh dear! Oh dear!

[28] Finally, at para 18 of this document Mrs Apostolakis says that she relied also on affidavits and pleadings containing "hate speech" by Ms Rennie.

[29] All of these allegations underline the degree to which the proceedings are being used not to advance a genuine claim of discrimination, but to re-litigate issues which have long been determined against Mrs Apostolakis in the Family Court and in the civil courts.

[30] On 19 May 2017 Mrs Apostolakis filed a notice of opposition to the strike out application. This document was also styled as an application to file an amended statement of claim. The proposed amendments to the statement of claim have been taken into account in the preparation of this decision. In this document Mrs Apostolakis (inter alia) asserted that the discrimination alleged against Ms Rennie and Ms De Polo was "under the Summary Proceedings Act 1957 by demanding more money from plaintiff than what was lawfully owing by the plaintiff in the judgment":

> The judgment is not in dispute in this tribunal but the discrimination to enable threats, duress and blackmail. The fallout of the "unlawful discrimination" was that threats, duress, blackmail succeeded in [Ms De Polo] obtaining "trust moneys" which are not in keeping with the deceased's intentions, and, an amount belonging to the plaintiff's mother Mrs Dorothy Clare Kennelly which is a significantly lesser amount than the $367,903.90 decision in the High Court at Wellington as reported in the Dominion Post on Wednesday 10th May 2017.

[31] In an affidavit sworn by Mrs Apostolakis on 18 May 2017 in support of her opposition to the strike out application, Mrs Apostolakis (inter alia):

[31.1] Challenged the refusal by Ms De Polo to file any statement of reply to para 5 of the statement of claim dated 11 February 2016 (see para 2).

[31.2] Asserted she (Mrs Apostolakis) had advised Ms Rennie by telephone and in writing between April and 14 September 2006 that she (Mrs Apostolakis) perceived her threats of litigation to be vexatious and a form of unlawful discrimination and that Mrs Apostolakis perceived that Ms Rennie was treating her (Mrs Apostolakis) less favourably because (see para 2):

> I was related to notorious criminals, Nick and Kosta Apostolakis, my ex-husband and son. (See para 2).

[31.3] Further asserted that the statement of claim at paras 5 and 7 is "about unlawful discrimination by the first and second defendants because I am a relative of notorious criminals, Nick and Kosta, who are my ex-husband and son". Mrs Apostolakis alleges that it was her perception that she was treated less favourably than people who are not related to notorious criminals (see para 5).

[31.4] Expressly "confirmed" (at para 9) that the allegations made at para 7 of the statement of claim "now forms [the] sole basis of my claim against [Ms Rennie]".

[31.5] Deposed (at para 11) that it is her allegation that Ms Rennie failed "to make sufficient enquiries as to the veracity of her client's statements because I am a relative of notorious criminals, Nick and Kosta, my ex-husband and son".

[31.6] Further claimed (at para 11) that Ms De Polo discriminated against Mrs Apostolakis "by treating me less favourably than normal people are treated by 'taking the money and running' without waiting".

[32] On any view, none of these allegations can sensibly be construed as disclosing an arguable case of unlawful discrimination under the HRA.

[33] In a memorandum dated 17 August 2017 Mrs Apostolakis gave further "particulars" of the alleged unlawful discrimination. See para 9:

> Normal people do not receive unlawful discrimination. Relatives of notorious criminals do receive unlawful discrimination such as:
>
> 1. Non-payment of debt to Ms Dorothy Clare Kennelly.
> 2. Breach of Fair Trading Act 1986, advertisement on Trade Me "Mortgagee Sale" by Leaders (1987) Ltd.
> 3. Cancellation of plaintiff's contract for purchase of title WN 817/71, and, no notification to remedy any defect such as inability to settle after payment of cash deposit section 7 Contractual Remedies Act 1979.
> 4. Non-refundable deposit of $54,000 now in Crown bank account ss 15, 18, 242(b) Property Law Act still not returned to the plaintiff or enforcement of contract by certiorari or declaratory judgment by way of estoppel.

Summary of claims against Ms Rennie and Ms De Polo

[34] Although expressed in different terms in different documents, the recurring theme of the complaints made by Mrs Apostolakis against Ms Rennie is that by representing Mr De Polo in proceedings before the Family Court in which Mr De Polo successfully obtained a Protection Order against Mrs Apostolakis and by acting for Mr De Polo in relationship property matters, Ms Rennie discriminated against Mrs Apostolakis by reason of the fact that she (Mrs Apostolakis) is the ex-wife of Mr Nick Apostolakis and the mother of Mr Kosta Apostolakis. In this regard Mrs Apostolakis, in her affidavit sworn on 18 May 2017 at para 9 confirmed that the allegations at para 7 of the statement of claim forms the "sole basis" of her claim against Ms Rennie. That is, the letter dated 31 May 2006 sent by Ms Rennie to Mrs Apostolakis is the platform of the claim against Ms Rennie.

[35] The affidavit of 18 May 2017 also confirms the basis of the claim against Ms De Polo is a claim that because she (Ms De Polo) is pursuing Mrs Apostolakis for a judgment debt, she (Ms De Polo) is discriminating against Mrs Apostolakis on the same family status grounds. The alternative way in which this claim is articulated (see para 11 of the affidavit by Mrs Apostolakis) is that Ms De Polo treated Mrs Apostolakis less favourably than normal people are treated by "taking the money and running" without waiting. These claims are untenable. Mrs Apostolakis says her claim against Ms De Polo cannot be struck out as there is no strike out application. This is wrong in law. See *Siemer v Stiassny* earlier referred to. If the claim by Mrs Apostolakis against Ms De Polo is so without foundation that for it to continue would be to allow an abuse of process, the Tribunal is duty bound to strike it out. Given the essence of the claim is that Ms De Polo "took the money and ran", the application of the strike out principles is, on these facts, both simple and straightforward.

The strike out application by Ms Rennie

[36] In the case of Ms Rennie there is a formal strike out application and supporting affidavit. It is therefore necessary to address her evidence as well as the basis of her application. Her affidavit sworn on 7 April 2017 is in the following terms:

> I, Jacinda Helena Rennie, of Wellington, Lawyer, swear:
>
> 1. I am the First Defendant. I provide this affidavit in support of the Application to Strike Out the claim. I am a lawyer in private practice in Wellington and specialise in Family Court work. I am a partner in the law firm McWilliam Rennie. In 2006 I was working as an associate at Wellington Family Law.
> 2. In 2006 I was instructed to act for Mr Damir De Polo. I drafted an application for Mr De Polo to the Family Court for a Protection Order against his former de facto partner, Mrs Kathy Apostolakis, the Plaintiff in the current claim. Mr De Polo also asked me to act in relation to relationship property matters. As a result, I wrote to Mrs Apostolakis on 31 May 2006. This letter is mentioned in the current claim. A copy of my letter is attached marked A.
> 3. Mrs Apostolakis opposed the application for a protection order and made her own application for a protection order against Mr De Polo. The applications were heard at the Family Court on 15 September 2006. The Court granted the protection order against Mrs Apostolakis. The Judge took the unusual step of extending the ambit of the protection order to include me personally as well as Mr De Polo. I have not annexed a copy of the Court's decision because of the restriction on Family Court decisions. I will seek leave to include it if this is required at a later point.
> 4. On 12 July 2007 Mrs Apostolakis complained to the Wellington District Law Society about my conduct while acting for Mr De Polo. She alleged that I had:
>   (a) intentionally drafted an affidavit containing false statements;
>   (b) remained silent in Court when my client was making false statements;
>   (c) provided copies of the Family Court documents in my letter of explanation to the Law Society; and
>   (d) breached the rules of professional conduct.
> 5. This complaint was not upheld by the Standards Committee. A copy of their decision dated 23 November 2007 is attached marked B.
> 6. I left Wellington Family Law on 19 December 2007. Another solicitor, Mr Simon Meikle, took over acting for Mr De Polo. I have not engaged directly with Mrs Apostolakis since this time. I understand that Mrs Apostolakis has made a number of complaints about Mr Meikle.
> 7. On 17 March 2008, Mrs Apostolakis made a second complaint about me to the Wellington District Law Society. She complained that I had misled the Court with respect to a Disputes Tribunal claim she had filed against Mr De Polo. She also alleged that I had tampered with an exhibit attached to Mr De Polo's affidavit.
> 8. This complaint was dismissed by the Standards Committee on 28 May 2008. A copy of the decision is attached marked C.
> 9. The claim filed by Mrs Apostolakis dated 11 February 2016 alleges that I have discriminated against her by way of the letter I wrote on 31 May 2006, and that I harassed and threatened her with proceedings about protection and property orders. She goes on to state that this discrimination is because she is a relative of "*Nick and Kosta Apostolakis*" (at paragraph 7).
> 10. I have no knowledge of who these people are although I infer they are her family members. They had no input or relevance in the issues of the protection order or relationship property aspects which I was instructed on by Mr De Polo, as far as I can recall.
> 11. My knowledge of Mrs Apostolakis, and her relationship with Mr De Polo was limited entirely to the instructions I obtained from Mr De Polo. He provided me with his version or understanding of the facts and I advised him on his legal options. I then prepared the correspondence and Court documents based on his instructions.
> 12. My view was that Mr De Polo was entitled to pursue the remedies he sought from Mrs Apostolakis. I believe that I acted appropriately in following those instructions.

[37] The terms of the application to strike out have been set out earlier in this decision.

APPLICATION OF THE LAW TO THE FACTS

[38] As there are two defendants we address separately the question whether the claim by Mrs Apostolakis should be struck out as against one or the other (or both).

The first defendant – Ms Rennie

[39] As pleaded in the statement of claim at para 7, the case against Ms Rennie is that she sent to Mrs Apostolakis the letter dated 31 May 2006. The question is whether this circumstance can, on any rational basis, be said to properly found a claim of discrimination under Part 2 of the HRA. We are of the view it cannot. Our reasons follow.

[40] First, under Part 2, discrimination by persons or agencies dealing with the public is only unlawful when it occurs in the context of one of the seven areas stipulated by the Act, namely:

> **[40.1]** access to employment and employment opportunities (ss 22 to 35);
>
> **[40.2]** admission to or expulsion from partnerships (s 36);
>
> **[40.3]** admission to or loss of membership of industrial, professional or trade associations, or of professional qualifying and vocational training bodies (ss 37 to 41);
>
> **[40.4]** access to places, vehicles and facilities (ss 42 to 43);
>
> **[40.5]** provision of goods and services (ss 44 to 52);
>
> **[40.6]** sale, occupation and use of land, housing and accommodation (ss 53 to 56); and
>
> **[40.7]** access to educational establishments (ss 57 to 60).

[41] The only enumerated area of activity of possible relevance to the present case is s 44(1) which provides:

> **44 Provision of goods and services**
>
> (1) It shall be unlawful for any person who supplies goods, facilities, or services to the public or to any section of the public—
> (a) to refuse or fail on demand to provide any other person with those goods, facilities, or services; or
> (b) to treat any other person less favourably in connection with the provision of those goods, facilities, or services than would otherwise be the case,—
> by reason of any of the prohibited grounds of discrimination.
>
> …

[42] In the present case Ms Rennie was providing legal services to her client, Mr Damir De Polo, not to Mrs Apostolakis. She was not acting for Mrs Apostolakis and indeed could not do so as she (Ms Rennie) would then have had a conflict of interest. Section 44 of the HRA having no application and there being no other relevant enumerated area of activity recognised by the Act, the claim by Mrs Apostolakis must inevitably fail.

[43] Second, no matter how beneficially one construes the allegations in the statement of claim (read to include the "amendments" advanced in the 19 May 2017 documents), no arguable case of discrimination is disclosed. It is not sufficient for a statement of claim to list a series of complaints and then to assert, improbably, that the cause of the

events was a prohibited ground of discrimination listed in HRA, s 21. There must be an objective factual basis for the allegations. The terms in which the letter of 31 May 2006 from Ms Rennie to Mrs Apostolakis were framed were entirely proper and provide no support at all for the claim by Mrs Apostolakis that she was discriminated against on the grounds of her family status.

[44] Third, because Ms Rennie had a statutory obligation under the Lawyers and Conveyancers Act 2006, s 4(d) to protect the interests of Mr De Polo as her client, the provisions of HRA, s 21B(1) applied to the alleged discriminatory act, namely the sending of the 31 May 2006 letter:

> **21B Relationship between this Part and other law**
>
> (1) To avoid doubt, an act or omission of any person or body is not unlawful under this Part if that act or omission is authorised or required by an enactment or otherwise by law.
>
> …

[45] For all these reasons the claim against Ms Rennie must be struck out.

The second defendant – Ms Jana De Polo

[46] As pleaded in the statement of claim, the case advanced by Mrs Apostolakis against Ms De Polo is that she (Mrs Apostolakis) is unhappy about the outcome of certain civil proceedings, an outcome which has led to her owing a substantial sum of money to Ms De Polo.

[47] A discrimination claim in these terms is untenable because the pleaded circumstances cannot on any sensible view be construed as containing any element of discrimination. But above all, none of the seven fields of activity enumerated in Part 2 of the HRA are engaged.

[48] It is true that Ms De Polo has not filed a strike out application but formal application is not required. The Tribunal would be failing in its duty to allow its processes to be used to advance a claim so bereft of any factual and legal foundation.

Further reasons for striking out the claim

[49] There are two further grounds on which the statement of claim must be struck out:

> **[49.1]** It is clear from the various documents filed by Mrs Apostolakis that under the guise of a "discrimination" claim she is attempting to re-litigate before the Tribunal issues which have already been determined in the Family Court and the civil courts. This form of collateral attack is an abuse of process. Mrs Apostolakis is also attempting to use the Tribunal's processes to re-visit complaints dismissed by the Law Society.
>
> **[49.2]** The long and unexplained delay in bringing these proceedings must also be taken into account. The events in question occurred in 2006. Complaint was not made to the Human Rights Commission until 3 September 2015. After the Commission declined to progress the complaint there was a further delay of nearly four months before the statement of claim was filed on 11 February 2016.

CONCLUSION

[50] By way of summary we conclude that:

> **[50.1]** The statement of claim discloses no reasonably arguable cause of action against Ms Rennie or against Ms De Polo.
>
> **[50.2]** In addition the claims are vexatious, involving as they do an attempt to re-litigate matters already determined in the Family Court and in the civil courts. They are being used to pursue old grievances against Ms Rennie, grievances which have been dismissed by the appropriate professional body. Ms De Polo is being pursued because Mrs Apostolakis owes her money. There are unmistakable elements of impropriety and the proceedings are properly stigmatised as vexatious, an abuse of the process of the Tribunal and not brought in good faith in the sense in which these terms have been earlier explained. The abusive nature of the proceedings is underlined by the long delay between the alleged events in question and the filing of these proceedings.

[51] The statement of claim is accordingly struck out as against Ms Rennie and as against Ms De Polo.

[52] The hearing scheduled for 27 and 28 November 2017 is vacated.

Costs

[53] Costs are reserved. Unless the parties are able to reach agreement on the question of costs, the following procedure is to apply:

> **[53.1]** Ms Rennie and Ms De Polo are to file their submissions within 14 days after the date of this decision. The submissions by Mrs Apostolakis are to be filed within a further 14 days with a right of reply by Ms Rennie and Ms De Polo within seven days after that.
>
> **[53.2]** The Tribunal will then determine the issue of costs on the basis of the written submissions without an oral hearing.
>
> **[53.3]** In case it should prove necessary, we leave it to the Chairperson of the Tribunal to vary the foregoing timetable.

.....	.....	.....
Mr RPG Haines QC	**Ms GJ Goodwin**	**Mr BK Neeson JP**
Chairperson	**Member**	**Member**